

**Application No. 9013/80**

Olive FARRELL

against

the UNITED KINGDOM

**REPORT OF THE COMMISSION**

(adopted on 2 October 1984)

	<u>Page</u>
<b>INTRODUCTION .....</b>	<b>1</b>
<b>PART I: Statement of Facts .....</b>	<b>2</b>
<b>PART II: Solution reached .....</b>	<b>4</b>

9013/80

## INTRODUCTION

1. This report relates to Application No. 9013/80 lodged against the United Kingdom by Mrs. Olive Farrell on 29 May 1980 under Art. 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The applicant was represented by Mr. K. Connolly of S.C. Connolly & Co., Solicitors, Newry, Co. Down, Northern Ireland, Mr. Ferguson, QC, Mr. Boyle, Counsel, and Mr. Bonnon. The Government were represented by their Agent, Mr. Eaton, Foreign and Commonwealth Office, Mr. Carswell, QC, Mr. Laws, as counsel and Miss J. McNeill as well as Mr. Steel, Law Officers Department, Mr. Ellis, Treasury Solicitors Department and Mr. Elliot, Ministry of Defence, as advisers.

2. On 11 December 1982 the European Commission of Human Rights declared admissible the applicant's complaint that the death of her husband had been caused in breach of Art. 2 of the Convention and proceeded to carry out its task under Art. 28 of the Convention which provides as follows:

"In the event of the Commission accepting a petition referred to it:

(a) it shall, with a view to ascertaining the facts, undertake together with the representatives of the parties an examination of the petition and, if need be, an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities, after an exchange of views with the Commission;

(b) it shall place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for Human Rights as defined in this Convention."

3. The Commission found that the parties had reached a friendly settlement of the case and on 2 October 1984 it adopted this Report which, in accordance with Art. 30 of the Convention, is confined to a brief statement of the facts and of the solution reached.

The following members of the Commission were present when the Report was adopted:

MM. C.A. NØRGAARD, President  
G. SPERDUTI  
J.A. FROWEIN  
G. JORUNDSSON  
S. TRECHSEL  
B. KIERNAN  
J.A. CARRILLO  
A. WEITZEL  
J.C. SOYER  
H.G. SCHERMERS

9013/80

PART I: Statement of Facts

4. The applicant, Mrs. Olive Farrell, is an Irish citizen, born in 1945 and resident at Maynooth, Co. Kildare, Ireland.

On the night of 23 October 1971, in Newry in Northern Ireland, the applicant's husband and two other men were shot dead by a patrol of four British soldiers. The four soldiers were stationed on the roof of a two-storey building overlooking Hill Street. They had information that on the night of 23 October a terrorist attack would most probably be made on the Provincial Bank in that street. The soldiers saw three men, one of whom was the applicant's husband, approaching two persons who were leaving money in the night safe of the Provincial Bank. When the soldiers saw a scuffle between the men outside the bank, one of them called "Halt". The applicant's husband, and the other two men with him, took to their heels. They did not stop when the soldier shouted "Halt. I am ready to fire". All four soldiers fired, and killed the three men running. It turned out that the three men were unarmed. In subsequent civil proceedings a jury found that the soldiers had fired as they suspected that the applicant's husband and the two other men had attempted to place a bomb at the bank. The jury also found that the men had been attempting to rob one of the men at the night safe.

5. The applicant issued proceedings as the widow and administratrix of her husband's estate, claiming compensation for assault, battery and negligence against the Ministry of Defence. The proceedings commenced with the issue of a writ of summons on 19 April 1973. The action came on for hearing before Lord Justice Gibson and a jury in the High Court of Northern Ireland on 22 February 1977. The judge ordered judgment to be entered for the defendant on 25 February 1977.

6. The applicant appealed to the Court of Appeal in Northern Ireland which gave its decision in favour of the applicant on 20 December 1978 and ordered a new trial between the parties on all the issues.

7. On 15 January 1979 the defendant Ministry applied to the Court of Appeal in Northern Ireland for leave to appeal to the House of Lords. Leave was granted. The appeal was heard in the House of Lords on 5 and 6 November 1979. Judgment was given for the defendant Ministry on 19 December 1979. The House of Lords reversed the decision of the Court of Appeal and restored the order of Lord Justice Gibson and the trial verdict.

8. Before the Commission the applicant complained that the husband was shot dead in circumstances which did not justify the use of lethal force and that she did not obtain compensation for her husband's death. She invoked Art. 2 (right to life), Art. 6 (right to a fair trial) and Art. 13 of the Convention (right to an effective remedy).

9013/80

9. The application was introduced on 29 May 1980 and registered on 11 June 1980. On 5 May 1981 the Commission decided, in accordance with Rule 42 (2) (b) of its Rules of Procedure, to bring it to the notice of the respondent Government and invite them to submit written observations on its admissibility and merits.

The Government's observations were dated 12 October 1981 and the applicant's observations in reply were submitted on 27 January 1982.

Legal aid under the Addendum to the Commission's Rules of Procedure was granted to the applicant on 22 November 1982.

On 10 July 1982 the Commission decided to invite the parties to appear before it at a hearing on the admissibility and merits of the application. The hearing took place on 10 December 1982.

Following the hearing the Commission decided on 11 December 1982 to declare the application admissible\* insofar as the applicant complained that the death of her husband was a breach of Art. 2 of the Convention. The remainder of the applicant's complaints were declared inadmissible.

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\* This decision has been published in Decisions and Reports 30, p. 96.

9013/80

PART II: Solution reached

10. Following its decision on the admissibility of the application, the Commission placed itself at the disposal of the parties with a view to securing a friendly settlement in accordance with Art. 28 (b) of the Convention and invited the parties to submit any proposals they wished to make.

After having received further written submissions the Commission decided to invite the parties to a meeting in London on 28-29 June 1984 with a view to discussing with them the possibilities of securing a friendly settlement. The Commission was represented by its President, who was assisted by the Secretary and another member of the Secretariat. Following separate discussions with first the representatives of the applicant and then with the Agent of the United Kingdom Government and officials of the Law Officers Department, the Ministry of Defence and the Treasury Solicitors Department, the President called a meeting with representatives of both parties present. In the course of this meeting it became apparent that a settlement might be secured and it was agreed to meet again on 26 or 27 July in order to continue the discussions.

The further meeting was held in London on 27 July 1984 and at this meeting the parties reached agreement to settle the case on the basis of an ex gratia payment to the applicant in the amount of £37.500 and the payment of a contribution towards her legal costs.

11. In his letter of 20 August 1984 the Agent of the United Kingdom Government confirmed the agreement making the following declaration:

"The Government consider that the death of the applicant's husband was an unfortunate mistake which would not have occurred, had the soldiers not mistakenly believed that the husband was attempting a terrorist attack on the Provincial Bank. The Government acting on compassionate grounds and in order to terminate these proceedings, are therefore prepared, without implying any admission of a violation of the Convention or any reproach against the soldiers, to make to the applicant an ex gratia payment of £37.500 and to make a contribution towards the legal costs incurred by the applicant, in full and final settlement of the claims made in Application No. 9013/80."

9013/80

12. In his letter of 9 August 1984 the applicant's representative, Mr. Connolly, made the following declaration on behalf of the applicant:

"With reference to Application No. 9013/80 pending before the European Commission of Human Rights in Strasbourg, and in view of the offer made by the United Kingdom Government to pay £37.500 to the applicant, and an agreed amount as a contribution towards her legal costs, in full and final settlement of the claims made therein, I hereby declare the Application No. 9013/80 to be settled.

This declaration is being made in view of the settlement within the meaning of Article 28 sub-section (b) of the European Convention on Human Rights which has been reached in co-operation with the European Commission of Human Rights in the proceedings concerning this application."

13. The Commission at its session on 2 October 1984 found that the parties had come to an agreement regarding the terms of a settlement. It noted the Government's statement that the death of the applicant's husband was "an unfortunate mistake" and found, having regard to Art. 28 (b) of the Convention, that a friendly settlement of the present application has been secured on the basis of respect for human rights as defined in the Convention.

For these reasons, the Commission adopted this Report.

Secretary to the Commission

President of the Commission

(H.C. KRUGER)

(C.A. NØRGAARD)