

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 23276/09
Susan ALEXANDER
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 29 May 2012 as a Committee composed of:

Päivi Hirvelä, *President,*
Ledi Bianku,
Zdravka Kalaydjieva, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 14 April 2009,

Having regard to the formal declarations accepting a friendly settlement of the case,

Having deliberated, decides as follows:

PROCEDURE

The applicant, Susan Alexander, is a British national who was born in 1960 and lives in Middlesex, the United Kingdom. She is represented before the Court by Hickman Rose, a firm of solicitors practising in London. The United Kingdom Government ("the Government") were represented by their Agents, Ms Laura Dauban and, subsequently, Ms Ahila Sornarajah, both of the Foreign and Commonwealth Office.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

1. Background facts

On 30 April 2005 the applicant's son, Azelle Rodney, was shot dead by police officers acting, *inter alia*, on the basis of intelligence received.

2. The Independent Police Complaints Commission ("IPCC") and the Crown Prosecution Service ("CPS")

The IPCC investigated whether a criminal offence had been committed and referred a report to the CPS which advised in July 2006 that there was insufficient evidence to bring criminal charges.

From this point, the applicant sought pre-Inquest disclosure from the IPCC. In December 2006 and February 2007 she obtained a redacted IPCC report and in July 2007 some redacted investigation material.

3. Inquest

On 2 August 2007 the Coroner ruled on pre-Inquest disclosure. The Coroner held that, while he was obliged to hold an Article 2 compliant inquest, the IPCC could not lawfully disclose to him the redacted or gisted material nor could the jury or the Coroner hear this evidence at an Inquest; yet, the material was relevant to the investigation. The Coroner stated that he would take no further steps towards holding an Inquest in order to allow Counsel for the parties to consider the effect of these findings.

4. Intervening legislative changes

(a) The Counter-Terrorism Bill and Act 2008 ("the CTB", the CTA")

By letter of 14 September 2007 to the Secretary of State for Justice, the applicant threatened legal action in default of immediate intervention to legislate to allow the IPCC/CPS to disclose, *inter alia*, to the Coroner evidence secured under an intercept warrant. By letter dated 30 November 2007 the Treasury Solicitors agreed legislation was required and requested her to postpone any legal action pending legislation.

In early 2008 the CTB was published. Part 6 would allow the Secretary of State to certify that an Inquest would involve the consideration of material that should not be made public so that the Inquest could be held without a jury and be run by a specially appointed Coroner assisted by a Special Counsel. The Coroner and Counsel would see disclosed sensitive material but the next-of-kin would not. The Regulation of Investigatory Powers Act 2000 ("the RIPA") would be amended to allow intercept evidence to be disclosed in exceptional circumstances.

During June and July 2008 the applicant, the Treasury Solicitors and the Home Office disputed, in correspondence, whether the proposed legislation would be Convention compliant.

On 14 October 2008, during its passage before the House of Lords, Part 6 of the CTB was withdrawn (apart from a clause which proposed to amend the Inquiries Act 2005 ("the 2005 Act") and section 18 of the RIPA). The applicant wrote immediately to the Treasury Solicitors seeking urgent legislation. On 28 October 2008 the Treasury Solicitors responded confirming the intention to legislate.

The CTA entered into force on 15 February 2009. Section 74 (which amended the RIPA 2000) allowed the disclosure of intercept material to an Inquiry set up under the 2005 Act or to Counsel to such an Inquiry.

(b) Coroners and Justice Bill and Act 2009 ("the 2009 Bill", "the 2009 Act")

On 14 January 2009 the applicant was informed that the 2009 Bill would be published that day. The Bill was published with "secret Inquest provisions" similar to those withdrawn from the CTB.

On 15 May 2009 the secret inquest provisions were withdrawn from the 2009 Bill. The Government announced that, where it was not possible to proceed with Inquests, they would consider establishing an Inquiry under the 2005 Act. Between June 2009 and March 2010 the applicant enquired about the holding of an Inquiry into her son's death.

In late 2009 the 2009 Act entered into force allowing for an Inquiry under the 2005 Act to take place instead of an Inquest.

5. The Azelle Rodney Inquiry

On 30 March 2010 the Government announced its intention to establish an Inquiry under the 2005 Act into Azelle Rodney's death.

By letters of 29 April and 20 May 2010 to the Treasury Solicitors, the applicant pursued the early setting-up of the Inquiry. By letter dated 27 May 2010 the Treasury Solicitors responded, recognising the "unusual and considerable" delay and answering the applicant's questions in detail.

In June 2010 the Secretary of State for Justice announced the establishment of the Azelle Rodney Inquiry. In July 2010 the Chairman adopted a Protocol on the procedure to be followed when a disclosure application was made. In August 2010 the Chairman adopted a Protocol on costs and anonymity issues. The Inquiry opened in public on 6 October 2010: various submissions were made including on behalf of the applicant concerning delay. No rulings were made and a directions hearing was scheduled for oral submissions on the terms of an undertaking from the Attorney General. On 4 November 2010 those oral submissions were made. On 4 April 2011 the Attorney General delivered an undertaking essentially to the effect that witness evidence would not be later used against that witness. In June 2011 guidelines were adopted on the burden and standard of proof to be adopted at the Inquiry.

The internet site of the Azelle Rodney Inquiry indicates that the substantive Inquiry hearing is due to begin in September 2012.

COMPLAINT

The applicant complained under Article 2 about the delay to date in holding an Article 2 compliant investigation into the death of her son in 2005. It was claimed that this delay had been mainly caused by an unjustifiable failure by the authorities to resolve in a timely manner the question of disclosure and admission into evidence of secret material at an Inquest or Inquiry.

THE LAW

On 23 February 2012 the Court received a letter from the Government stating that it had agreed a friendly settlement of the case with the applicant in the sum of £6100 (pounds sterling) in full and final settlement of her complaints, which sum included all costs and expenses as well as any tax that might be payable. The Government's letter continued:

> "The Government also accept and regret that there has been a breach of the applicant's procedural rights under Article 2 of the Convention in relation to the length of time it has taken to carry out a full investigation into the death of the applicant's son."

The Government agreed that the case could be struck out of the Court's list of cases on the basis of the friendly settlement.

By letter received on 28 March 2012 the applicant agreed to conclude her complaint against the United Kingdom on the basis of the above-described letter of the Government.

The Court takes note of the friendly settlement reached between the parties. It is satisfied that the settlement is based on respect for human rights as defined in the Convention and its Protocols and finds no reasons to justify a continued examination of the application (Article 37 § 1 *in fine* of the Convention).

In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Fatoş Aracı Deputy Registrar	Päivi Hirvelä President