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

FOURTH SECTION

DECISION

Application no. 5363/24
Rosaleen DALTON
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 27 May 2025 as a Committee composed of:

Ana Maria Guerra Martins*, President*,
Tim Eicke,
András Jakab*, judges*,
and Simeon Petrovski, *Deputy Section Registrar,*

Having regard to:

the application (no. 5363/24) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 14 February 2024 by an Irish national, Ms Rosaleen Dalton, who was born in 1966 and lives in Derry/Londonderry ("the applicant"), and who was represented by Mr M. Clements of KRW Law, a firm of solicitors based in Belfast;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The issue in the present case is whether the respondent State has complied with its obligations under Article 2 of the Convention, read alone or together with Article 13, to investigate a murder in 1988.

2. The applicant's father ("ED") was one of three people killed in Derry/Londonderry on 31 August 1988, when a bomb exploded in a neighbouring flat. The bomb, planted by the Provisional IRA ("PIRA"), was intended to kill members of the security forces. It detonated when ED entered the flat to check on his neighbour. The incident has since been known as "the Good Samaritan bombing".

3. A police investigation followed but no charges were brought.

4. Following an inquest on 7 December 1989, a coroner concluded that ED had died from his injuries when the bomb exploded.

5. In February 2005 the applicant's brother wrote to the Police Ombudsman for Northern Ireland ("PONI"). He referred to incidents prior to the explosion which suggested the police had intelligence about the existence of a bomb in the area. He therefore complained that the police had failed properly to investigate ED's death, that they had knowingly allowed the bomb to remain in a residential area in order to protect an informant, that they had failed to advise local communities of terrorist activity in the area, and that they had failed to comply with their Article 2 responsibilities to uphold ED's right to life.

6. The PONI commenced an investigation.

7. In 2012, while the PONI investigation was ongoing, the applicant's sister issued a civil claim for damages against the police and the Ministry of Defence alleging, *inter alia*, breaches of their statutory duties to uphold ED's right to life and to carry out an effective investigation into his death as required by Article 2 of the Convention.

8. The PONI published his 67-page report in July 2013. He described his investigation as "wide-ranging and thorough". He had identified 65 potential witnesses, and interviewed 42. He recorded 23 statements and secured 372 documents. However, he identified two shortfalls. Although many retired police officers had co-operated, a "substantial number ... in key positions to assist [the] investigation" had not. Significant documentation concerning the management of the police investigation had also been lost.

9. The PONI found "strong evidence" that the police had sufficient intelligence to identify the bomb's location before it exploded, and concluded that further steps could and should have been taken to mitigate the threat and warn the local community. There was no evidence that the police had failed to act in order to protect an informant; nevertheless, there had been a failure to uphold ED's right to life under Article 2 of the Convention, and the murder investigation had been flawed, incomplete and inadequate.

10. In October 2013 the Association of Retired Police Officers responded to the report, claiming it had given inadequate consideration to the threat levels under which policing had been delivered in Derry/Londonderry in 1988. The Association indicated that there might have been fatal repercussions for an "agent" if their awareness of the bomb was made public.

11. The applicant's sister subsequently asked the Attorney General for Northern Ireland ("AGNI") to direct a new inquest into ED's death. The AGNI refused as the surrounding circumstances had already been the subject of detailed examination and the claimant had not established what utility a new inquest would have.

12. The applicant's sister sought – and was granted – permission to judicially review the AGNI's decision on Article 2 grounds.

13. The High Court refused the application. It doubted whether the "revival" test in *Brecknell v. the United Kingdom* (no. 32457/04, §§ 67-72, 27 November 2007) was satisfied, since any new inquest could not secure the prosecution or conviction of the persons responsible for ED's death. In any event, the PONI had dealt fully with the Article 2 complaint and civil proceedings were ongoing. The AGNI had therefore been entitled to conclude that the financial and human cost of a further inquest was not justified.

14. The applicant continued the proceedings after her sister's death.

15. The Court of Appeal allowed her appeal. It accepted that the Article 2 duty had been revived in 2005, and found that the PONI investigation did not meet the State's Article 2 obligations, as it was unclear how key conclusions were reached, some officers had refused to co-operate and documents were missing.

16. On 18 October 2023 the Supreme Court, sitting with seven Justices, unanimously allowed the AGNI's appeal as ED's death had occurred outside the temporal scope of the Human Rights Act 1998 ("HRA"). For the purposes of a claim under the HRA, the "critical date" was 2 October 2000, the date the HRA came into force. While the ten-year time-limit set down in *Janowiec and Others v. Russia* ([GC], nos. 55508/07 and 29520/09, § 146, ECHR 2013) was not inflexible, the Article 2 duty to investigate could not apply to deaths – like that of ED – which occurred more than twelve years before 2 October 2000.

17. The six Justices who addressed the Article 2 obligation agreed that the revival of the duty to investigate was not confined to investigations which might lead to the identification and punishment of the perpetrators. Three considered that the Article 2 obligation had in any event been satisfied by the PONI report. The other three took the view that that was strongly arguable, without ruling on it.

18. According to Lord Hodge, Lord Sales and Lady Rose, there was no realistic possibility that further investigation could lead to the identification and punishment of the perpetrators, or remedy the deficiencies in the investigation and the failure to gather or preserve evidence in the immediate aftermath of the bombing. Even if retired police officers were now compelled to give evidence it was "very doubtful that they could add anything to elucidate the facts beyond what appears from the contemporary documentary material already reviewed by the PONI". The PONI had investigated the circumstances of the death with considerable care and attention, and involved the families of the deceased.

19. Lord Leggatt considered the "deficiencies" identified by the Court of Appeal. In his view, the PONI report set out the investigative steps taken, facts established and conclusions drawn in sufficient detail to show that conclusions were arrived at on the basis of a thorough and objective review of the available evidence, and to allow for adequate public scrutiny. There was no reason to suppose that further searches would locate the missing

documents, and the likelihood that those officers who had declined to co-operate with the PONI could now add to the evidence already collected was "remote". The only purposes a further investigation might usefully serve would be to subject the alleged shortcomings in the police handling of the incident to further public scrutiny and/or to enable the victims' families to obtain compensation. The latter could be fulfilled by the civil proceedings, which could discharge an Article 2 procedural duty where no further criminal investigation was required. Shining further light on the conduct of the police might have been relevant if the death had occurred recently. However, it was very difficult to see how any practical benefit could now be obtained in going over the procedures being followed by police officers in Derry/Londonderry in 1988, at the height of the conflict in Northern Ireland.

20. Lord Burrows and Dame Siobhan Keegan also questioned what more a further inquest could achieve. While the PONI's investigation was not perfect, a thorough report had been compiled after eight years' work. The civil proceedings were at an advanced stage of readiness and were directed at the issue of police liability. As the prosecution or accountability of the perpetrator was no longer live, and State collusion was not in issue, the civil claim could potentially meet the Article 2 obligation.

21. The applicant argued that the refusal to hold an inquest had breached Article 2 of the Convention, read alone or together with Article 13.

THE COURT'S ASSESSMENT

22. No question arises as to the Court's temporal jurisdiction, as ED's death fell after the "critical date" for the purposes of a Convention complaint before the Court (being 14 January 1966 – see *Chong and Others v. the United Kingdom* (dec.), no. 29753/16, § 90, 11 September 2018). However, for the reasons articulated by the Supreme Court, the Court considers that if the Article 2 duty to investigate was revived in 2005, it has been satisfied by the PONI investigation in conjunction with the ongoing civil proceedings against the police.

23. As the applicant has herself acknowledged, the PIRA bears primary responsibility for ED's death, having planted the bomb that killed him. Therefore, the State's responsibility is only engaged by the alleged failure of its agents to protect life by acting on intelligence relating to the location of the bomb. This allegation is undoubtedly serious. However, it was examined in detail by the PONI, who upheld the majority of the complaints made by ED's son. The only question that remains unanswered is why the police failed to act but, as a number of Supreme Court Justices pointed out, there is little, if any, reason to believe that a further inquest will answer this question and/or cure the "shortfalls" in the PONI investigation.

24. The applicant's enduring concerns about shortcomings in the police handling of the incident are understandable. However, these shortcomings

may be further probed in the ongoing civil proceedings, through which ED's family may contest the liability of the police, before a judicial fact-finding forum with attendant safeguards, with the possibility of obtaining compensation (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 141, 4 May 2001 and *McKerr v. the United Kingdom*, no. 28883/95, § 156, ECHR 2001-III).

25. In cases concerning killings by State agents civil proceedings cannot satisfy the Article 2 duty to investigate as they are undertaken on the applicant's initiative and do not involve the identification or punishment of any alleged perpetrator (see *Hugh Jordan*, cited above, § 141 and *McKerr*, cited above, § 156). However, in the present case the killing was not by or in collusion with State agents, and the identification of and/or punishment of the perpetrator is not in issue.

26. Furthermore, when a duty to investigate a killing is "revived" after a lapse of time by the emergence of information purportedly casting new light on the circumstances of the death (see *Brecknell*, cited above, §§ 66-67), the nature and extent of that investigation will depend on the circumstances of the case and may well differ from that to be expected immediately after the death has occurred (see *Harrison v. the United Kingdom* ((dec.), nos. 44301/13, 44379/13 and 44384/13, § 51, 25 March 2014). In this regard, the Court has repeatedly stated that positive obligations must be interpreted in a way that does not impose an impossible or disproportionate burden on the authorities (see *Brecknell*, cited above, 70, with references therein).

27. As the Court observed in *Gribben v. the United Kingdom* (no. 28864/18, § 119, 25 January 2022), in Northern Ireland the inquest procedure has been unable to cope with the large number of ongoing and pending legacy inquests, and the coronial system has been beset by systemic delay. Bearing this in mind, in a case such as the present, where thirty-seven years have passed since a killing which was not carried out by or in collusion with State agents, Article 2 cannot require the respondent State to now incur the financial and human cost of a further inquest where it could not secure the prosecution or conviction of the persons responsible for the death, where it would be unlikely to shed further light on the circumstances in which it occurred, and where any unanswered questions may yet be addressed in ongoing civil proceedings.

28. The applicant's complaint under Article 2 of the Convention is therefore manifestly ill-founded and must be rejected as inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

29. As the Article 2 complaint is not "arguable", the complaint under Article 13 must be rejected as inadmissible *ratione materiae* pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 19 June 2025.

Simeon Petrovski Deputy Registrar	Ana Maria Guerra Martins President