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1. PROJECT MONNET DISCUSSED IN BRUSSELS BY FAIR WITH EU JUSTICE AND HUMAN RIGHTS COMMISSIONER, MR FRATTINI

After meeting in Brussels with Franco Frattini EU Justice and Human Rights Commissioner and Jim Allister MEP to discuss Project Monnet, FAIR representatives William Frazer and William Wilkinson were upbeat.

"The Commissioner was clearly interested in hearing from victims first-hand and saw value in the contribution which innocent victims can make in winning the propaganda war against terrorism. We already have contacts with groups in Spain, France, Germany and Italy. We believe these can be built upon to provide a vibrant counter-balance to the evil influence of terrorism," stated William Frazer.

William Wilkinson spoke of Libyan case as an example of how victims can unite to oppose terrorism, particularly if it is state-sponsored – important at a time when the EU is moving towards closer relations with Libya – while Jim Allister commented that "*now, in a worthwhile fightback, a vision exists to create a viable network of victims across Europe and further afield. Who better to articulate the case against terrorism than those who have suffered from it at first hand.*"

2. PROJECT MONNET TO PROMOTE THE EUROPEAN UNION COUNTER-TERRORISM STRATEGY

Since the terrorist attacks in Madrid on 11 March 2004, the European Union has developed a counter-terrorism strategy with a commitment to combat terrorism globally while respecting human rights and making Europe safer, allowing its citizens to live in an area of freedom, security and justice.

The strategy sets out the objectives of the European Union, which are to prevent new recruits to terrorism, to protect potential targets, to pursue and investigate members of existing networks and improve the European Union's ability to respond to and manage the consequences of terrorist attacks.

Within the context of this global strategy Project MONNET (Mobilising Opposition Networks to Nationalistic European Terrorism) seeks to expose and counter the methods and propaganda used by terrorist organisations in Northern Ireland, with the aim of mobilising the public against terrorism in all its forms.

FAIR (Families Acting for Innocent Relatives) has been entrusted with the responsibility of carrying out the Project by creating networks in Northern Ireland and the European Union to represent victims at government and European level; delivering seminars and conferences with a European dimension; developing a spirit of solidarity with regard to victims; and publishing a bi-mensual newsletter and a quarterly magazine, and running a website.

Northern Ireland has been plagued by three decades of terrorism and presents a unique example in Europe of what terrorists may be able to attain if they are given the opportunity to achieve their political aims. It has often been stated and should always be remembered that terrorism cannot coexist with democracy. The analysis of the impact of terrorism on the democratic institutions of Northern Ireland and the human rights and fundamental freedoms of its people would prove this.

The articles published in this magazine analyse the judgments rendered by the European Court of Human Rights concerning the right to life under Article 2 of the European Convention, following the deaths of terrorists at the hands of the security forces, or the deaths of victims of terrorist attacks. Rather than being a legal means by which genuine victims of terrorism can see justice done, the right to life has often been used at European level to intensify terrorist propaganda against the security forces of the United Kingdom, so as to discredit them and advance the political agenda of terrorists.

3. RIGHT TO LIFE, A COURT DIVIDED: FACING LOGIC AND OPPOSING TERRORISM

The McCann and Others v. United Kingdom[1] ruling by the European Court of Human Rights set a precedent in the Court's case-law in 1995. Yet with ten judges ruling in favour of terrorists in this case and nine against, it was obviously in no way a clear-cut decision. Do terrorists not put at risk their own right to life when they deliberately violate other, innocent persons' right to life? It seems the time has come for the European Court of Human Rights to review its case-law. Take a look at (A) the facts and at (B) the arguments for and (C) against and see for yourself where the logic in the matter lies.

[1] European Court of Human Rights, Grand Chamber, Judgment McCann and others v. the United Kingdom, 5 September 1995 (A324).

A. THE FACTS

Three known IRA terrorists cross the border into Gibraltar. Two had been previously convicted for detention and use of explosives and the other was described as a bomb-making expert: dangerous criminals, suspected of being on a mission to plant a bomb in the centre of Gibraltar. The authorities are aware that the Provisional IRA is planning an attack, so when the three suspects appear on 6 March 1988 in the centre of Gibraltar they are closely observed by Gibraltar police. When they are then seen parking a car in the assembly area and leaving, the possibility of a car-bomb cannot be ruled out and an operational order is signed by the Gibraltar Commissioner giving orders to soldiers of the British Special Air Service (SAS) to proceed with the arrest of the three suspects.

In January of the same year an IRA car-bomb was found in Brussels with a radio-controlled detonating device. Could the suspects have planted something similar? As they follow the suspects in the street the SAS shout a clear warning to them. No sign of surrender – and it could take just a push of a button… The suspects' behaviour makes the soldiers think they could be about to press that button and detonate the bomb. In accordance with the rules of engagement in such circumstances and in order to preserve the lives of innocent civilians, the soldiers open fire on the suspects, killing them. When the bodies of the three suspects are searched however, no weapon or detonating device is found, although the Spanish police later find a car linked to the suspects in a basement car-park in Marbella with an explosive device in the boot, destined to detonate at the time of a military parade due to take place in the centre of Gibraltar on 8 March 1988.

At the inquest on 6 September 1988 the jury returned verdicts of lawful killing by a majority of nine to two. After the relatives of the suspects lodged an application with the European Commission of Human Rights, arguing that the killings of the three terrorists by members of the SAS constituted a violation of Article 2 of the Convention (upholding the "right to life"), the Commission concluded by eleven votes to six that there had been no violation of Article 2 of the Convention. When the case was finally referred to the European Court of Human Rights on 20 May 1994, the Court rendered a judgment on 5 September 1995 ruling that the United Kingdom had indeed breached Article 2 of the European Convention.

B. THE ARGUMENTS FOR

In its judgment the Court stated that the SAS soldiers were permitted to use force in order to defend any person from unlawful violence (Art. 2-2-a). It was accepted that the soldiers acted on the basis of the honest belief that the suspects had the capability of detonating a bomb, causing serious loss of innocent lives, and that it was absolutely necessary to use lethal force to prevent such an event. The Court concluded that the soldiers' actions were <u>not</u> in violation of Article 2 of the European Convention.

However, the Court found that the authorities could have controlled and organised the operation differently so as to prevent the use of lethal force, which it believed was not absolutely necessary, since they could have:

- prevented the suspects from travelling into Gibraltar by stopping them at the border;
- made sufficient allowances for the possibility that their intelligence assessments might be erroneous and that other scenarios were plausible;
- manifested more caution in the use of firearms so as shoot to wound rather than shoot to kill.

The Court concluded that it was not persuaded that the suspicions held concerning the three terrorists warranted the use of force, which was not absolutely necessary unless in defence of innocent persons from unlawful violence, and that Article 2 of the Convention had therefore been breached.

C. THE ARGUMENTS AGAINST

The European Court was almost equally divided: ten judges to nine. Among the nine judges who opposed the decision was the President of the Court, Mr Rolv Ryssdal. The opinion of these nine judges, published at the end of the judgment, deserves careful consideration, as they convincingly gave their reasons for disagreeing with the judgment and found no breach of Article 2 by the United Kingdom in this case.

The dissenting judges first outlined three general remarks, which should always be taken into consideration particularly when dealing with cases involving terrorists:

- When assessing the decisions made by the authorities of the State who were preparing an anti-terrorist operation the Court should only have taken into account what was known at the time by the authorities concerning the terrorist plan and strategy and resist the temptation to judge with the benefit of hindsight;
- The Court should have taken into account the fact that the terrorists had no regard for the lives of security forces, which were their prime target, nor for the lives of civilians and as a result deliberately placed themselves in a position where their lives were at risk, since the duty of the authorities was to protect the lives of innocent civilians and military personnel;
- The Court should have evaluated the decision made by the authorities on the basis of the most recent information received about plans for a major terrorist attack and any evidence of technological advance by the terrorist group (such as the discovery in January 1988 of the IRA car-bomb in Brussels with a radio-controlled detonating device).

Having stated a logical approach to the Court's assessment of the control and organisation of the operation, the dissenting judges expressed their criticism of the three arguments given by the majority of their colleagues against the use of force:

- the argument that it was "*a serious miscalculation*" not to have arrested the suspects at the border was logically dismissed. If the authorities had done so, they probably would not have had sufficient evidence to warrant the suspects' detention and trial. In that case they would have been forced to release them and run the risk of a renewed and more covert IRA operation at a later stage. The authorities could not take such a risk and dealt with the situation appropriately;
- the argument that "*insufficient allowances appear to have been made for other assumptions*" was pointedly dismissed. It was said that on 6 March 1988 the terrorists could have been on a "*reconnaissance mission*" – not yet the bombing mission. However, the authorities considered that the use of a blocking car (to be removed when the real car-bomb car could be parked in its place) was unlikely; further evidence produced showed that the suspects' reconnaissance was at the time complete; and these explain why the authorities were operating on the basis of a worst-case scenario i.e. that the car contained a bomb ready to be detonated and that the public had to be immediately protected;
- finally, the Court suggested that the soldiers' training should in such circumstances have led them to consider "*shooting to wound*" rather than shooting to kill. However, the circumstances in this case were clear. The suspects were believed to be capable of detonating a bomb by pushing a button and therefore shooting to wound would have increased the probability of them doing so and had to be ruled out by soldiers of an exceptional standard of discernment and ability such as the SAS. Contrary to what the Court stated, the soldiers did not lack the degree of caution necessary in the use of firearms by law-enforcement personnel in a democratic society.

The dissenting judges came to a logical and well-balanced decision that the authorities did not fail in their organisation and control of the operation in this case. The force used against the suspects for the purpose of defending innocent persons from unlawful violence was therefore absolutely necessary and proportionate given the circumstances.

CONCLUSION
Considering the increased threat that terrorists pose to the life of others in democratic societies, it is becoming imperative that the European Court of Human Rights prepare to review its case-law. In future, the use of lethal force in counter-terrorism operations such as this one in Gibraltar, which was so well controlled, organised and carried out by the UK authorities, should be regarded as wholly justified and in no way a breach of Article 2 of the European Convention. The defence of democracy and the human rights of innocent law-abiding people warrants the use of lethal force against those who have no respect for the sanctity of life themselves and who intend to wilfully destroy the rights of others.

4. SHOOT-TO-KILL POLICY BY UNITED KINGDOM SECURITY FORCES: REALITY OR TERRORIST PROPAGANDA?

It has been alleged that a shoot-to-kill policy was purposefully enforced by British security forces against IRA terrorist suspects both in Northern Ireland and abroad. As usual, the reality is more complex than it first appears. Such a policy of killing rather than arresting the suspect cannot be considered even as plausible, but it is clear that in particular circumstances, when a terrorist suspect resists lawful arrest and it is absolutely necessary to use force, shooting can lawfully lead to him being killed. We will consider whether the existence of this policy has been acknowledged by the European Court of Human Rights in the cases of (A) McCann and (B) Kelly and McKerr against the United Kingdom.

A. McCANN AND OTHERS AGAINST THE UNITED KINGDOM

The issue of the existence of a shoot-to-kill policy was first raised before the European Court of Human Rights in the case of McCann, Farrell and Savage against the United Kingdom[1]. This case was originated in an application against the UK lodged by the relatives of the two men and one woman, member of the PIRA (Provisional IRA), shot dead in Gibraltar by soldiers of the British Special Air Service (SAS). The applicants alleged that there had been a premeditated plan to kill the deceased. They had no evidence of a direct order given by the Ministry of Defence, but claimed that there was strong circumstantial evidence in support of their thesis. They claimed that a plot to kill could be achieved by other means such as hints and innuendoes, coupled with a choice of military unit, such as the SAS, which was made up of soldiers trained to shoot to kill.

In response, the UK Government argued that there was no plot to kill the three terrorists and that the aim of the operation in Gibraltar was to effect their lawful arrest. It was therefore for this purpose that the assistance of the military was provided.

On 6 March 1988, four soldiers were given orders to arrest Mr McCann, Mrs Farrell and Mr Savage, who were on a mission to plant a car-bomb in Gibraltar that was believed could have been detonated by simply pressing a button on a radio-control device. When the suspects were ordered to surrender, they failed to obey, thus rendering the use of lethal force absolutely necessary in order to prevent them from pressing the button and detonating the car-bomb, believed to be in a white

[1] European Court of Human Rights, Grand Chamber, Judgment McCann and Others v. the United Kingdom, 5 September 1995 (A324).

Renault parked in the assembly car-park and which could have killed many innocent civilians. In such circumstances the soldiers had been trained to shoot until the suspect was dead, in order to defend any innocent person from unlawful violence, in compliance with Article 2.2 of the European Convention.

The Court concluded that it did not find it had been established that there was an execution plot at the highest level of command in the Ministry of Defence or in the Government, or that the SAS soldiers had been instructed by their superiors to carry out the killing, or that they had decided on their own initiative to kill the suspects irrespective of any justification for the use of lethal force and in disobedience to the arrest instructions they had received. The Court also excluded that the soldiers had been implicitly encouraged by hints and innuendoes to execute the three suspects, since there was no evidence to prove such a claim. The Court finally stated that it "*rejects as unsubstantiated the applicants' allegation that the killing of the three suspects was premeditated or the product of a tacit agreement amongst those involved in the operation*".

B. KELLY AND McKERR AGAINST THE UNITED KINGDOM

Other cases were also brought before the European Court of Human Rights concerning the issue of the 'shoot-to-kill' policy, in relation to a nine-man PIRA terrorist unit killed during a security force operation at Loughgall on 8 May 1987[2], as well as in relation to the killing of other PIRA members by the Royal Ulster Constabulary during an arrest operation carried out by the Royal Ulster Constabulary near Lurgan on 11 November 1982[3].

The relatives who introduced the petitions against the United Kingdom maintained that the terrorists involved had been arbitrarily killed as a result of a shoot-to-kill policy rather than arrested. The government in response denied the existence of such a policy. The Court finally stated in both judgments that it is "*not prepared to conduct, on the basis largely of statistical information and selective evidence, an analysis of incidents over the past thirty years with a view to establishing whether they disclose a practice by security forces of using disproportionate force. This would go far beyond the scope of the present application*."

Despite these decisions, it has been recently alleged that the report by Mr Stalker, who had been appointed to investigate the killing of Mr McKerr and others in 1982, could bring evidence of the existence of such policy. Disclosure of this report was deemed to cause serious damage to the public interest and for this reason was not produced at the inquest. The allegations are based on a book written by Mr Stalker, which according to the RUC contained many inaccuracies and distortions and gave a misleading impression, as the European Court stated in its judgment. This report did not establish the existence of such a policy and only fuelled the propaganda against security forces in a vain attempt to discredit them.

CONCLUSION

These judgements have made it clear that the European Court of Human Rights:

- has never accepted that there was an implicit or explicit shoot-to-kill policy put in place by the government of the United Kingdom and/or enforced by its security forces;
- refused to conduct on the basis of largely statistical information an analysis of incidents over a period of thirty years in view of establishing whether they disclose a practice by security forces of using disproportionate force;
- rejected, as unsubstantiated that the terrorists shot in Gilbraltar died as a result of a shoot-to-kill policy;

[2] European Court of Human Rights, Third Section, Judgment Kelly and Others v. the United Kingdom, 4 May 2001 (Application no. 30054/96).
[3] European Court of Human Rights, Third Section, Judgment Mc Kerr and Others v. the United Kingdom, 4 May 2001 (Application no. 28883/95).

- stated that there had been no discrimination on behalf of the United Kingdom authorities against the men shot, whether on the grounds of their national origin or their association with a national minority.

It appears that the focus has always been directed and kept on the security forces because in certain circumstances recourse to lethal force was necessary. Little attention has been paid to the fact that security forces were confronted by terrorists, who were beyond a doubt carrying out shoot-to-kill attacks themselves aimed at civilians and members of the security forces, or who were believed with justifiable reasons to have the potential to do so. Indeed, what is alleged against the security forces is what terrorists themselves have been blatantly doing for the past thirty-eight years. Considering all the murders committed by the IRA it can be objectively stated that the shoot-to-kill policy is definitely what IRA terrorists have been carrying out in Northern Ireland, not something that United Kingdom security forces can be reproached of doing.

5. DEPRIVATION OF LIFE: EUROPEAN COURT REQUIREMENTS FOR INVESTIGATING PROCEDURES BENEFIT RELATIVES OF TERRORISTS

The review of the United Kingdom's investigating procedures by the European Court of Human Rights in relation to the deprivation of life came following a number of cases involving terrorist suspects being killed by security forces. The European Court examined every stage of the investigations and set the requirements for compliance with Article 2 of the Convention, the right to life. The justification given by the Court for higher investigating standards has been to maintain public confidence and dispel the concerns raised by relatives of deceased terrorist suspects, but for the relatives of innocent victims of terrorist lethal force, this has done little to strengthen confidence in State authorities. (A) The European Court has given the principles and has also indicated (B) how they should be applied to the United Kingdom investigating procedures.

A. THE PRINCIPLES GIVEN BY THE EUROPEAN COURT

Article 2 of the European Convention safeguards the right to life and provides for three circumstances when deprivation of life may be justified as a result of the use of force if it is no more than absolutely necessary: in the defence of any person from unlawful violence; in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or in action lawfully taken for the purpose of quelling a riot or insurrection.

The European Court noted in a number of cases that the right to life ranks as one of the most fundamental provisions in the European Convention and in peacetime it can suffer no derogation. All cases dealing with deprivation of life in the United Kingdom or in the rest of Europe have occurred in peacetime. This renders null and void the terrorist propaganda that would have people in the United Kingdom and across the world believe that Northern Ireland has been a war/conflict zone for the past thirty-eight years.

Because the right to life is of primary importance in a democratic society, the Court indicated that deprivation of life must be subjected to the most careful scrutiny in order to determine whether or not it was lawful. The investigation should take into account both the actions of State agents and all surrounding circumstances. There is a duty on the part of the State authorities to initiate and carry out effective investigations for the purpose of ensuring that State agents are accountable when deprivation of life results from their actions.

The Court outlined the conditions necessary for an investigation to be found effective when there has been a shooting by State agents:

- The investigation must be carried out by a body or a person who is hierarchically and institutionally independent and conducted in practice in an independent manner;
- The aim of the investigation must be to determine whether the force used was justified or not given the circumstances of the case and must lead to the identification and punishment of those responsible, including the gathering of evidence, testimonies of eye-witnesses, forensic evidence and, where appropriate, an autopsy;
- The investigation must be commenced promptly and must be carried out with reasonable promptness in order to maintain public confidence that the State authorities respect the rule of law and are not involved in nor condone or tolerate unlawful acts;
- The investigation must involve an element of public scrutiny, so as to guarantee satisfactory accountability and the next-of-kin of the person killed must be involved in the procedure so as to safeguard his/her interests.

The Court made clear that it was not its duty to specify which procedures the State authorities should adopt, whether it be a unified procedure or a procedure in different stages involving several authorities, provided the requirements set are fulfilled.

B. APPLICATION OF THESE PRINCIPLES TO THE UNITED KINGDOM INVESTIGATING PROCEDURES

Among the different cases referred to the Court, that of McKerr[1] and Kelly[2] against the United Kingdom has led to the most thorough examination of the investigating procedure. In this case, a car with three terrorist suspects resisted arrest and forced a police barrage. The suspects were subsequently shot dead by three Royal Ulster Constabulary (RUC) police officers who were also members of Special Branch, but it was later discovered that the terrorist suspects were unarmed. The police officers were instructed not to reveal that they belonged to Special Branch, a fact which was later discovered in the course of the investigation.

While assessing the compatibility of the investigation carried out, the European Court of Human Rights considered the different stages of the investigating procedures: the police investigation, the role of the Director of Public Prosecutions (DPP), the criminal trial, the independent police inquiry, and the inquest. In doing so, the Court endeavoured to address the particular issues of concern raised by the terrorist suspects' relatives, namely the independence of those who investigated the shooting; the clarification of possible evidence that members of the police perverted the course of justice and that the police officers involved were operating under a shoot-to-kill policy; and finally the existence of a process that could secure the prosecution of those responsible for the killing.

Concerning the independence of the authorities, the Court found that all the authorities involved in the investigation were independent except those who carried out the police investigation following the killing. Indeed, the police investigation of events in which RUC police officers were involved was carried out by other RUC officers. There was a hierarchical link between the officers investigating and those subject to investigation, who were all under the responsibility of the RUC Chief Constable. The Court logically concluded that the police officers who investigated the event lacked independence in relation to those implicated in the killing.

[1] European Court of Human Rights, Third Section, Judgment Mc Kerr and Others v. the United Kingdom, 4 May 2001 (Application no. 28883/95).
[2] European Court of Human Rights, Third Section, Judgment Mc Kerr and Others v. the United Kingdom, 4 May 2001 (Application no. 28883/95). Other cases: Judgment Hugh Jordan v. the United Kingdom, 4 May 2001 (Application 24746/94); Judgment Shanagan v. the United Kingdom, 4 May 2001 (Application 37715/97); Judgment McShane v. the United Kingdom, 28 May 2002 (Application no. 43290/98).

Concerning the allegations of excessive use of force and concealment of information and evidence, the Court found that none of the investigating procedures had permitted to address these issues. The criminal trial of the three police officers accused of having shot the terrorist suspects dealt with their criminal responsibility but was not wide enough to encompass these issues. The independent police inquiry requested by the DPP and ordered by the Chief Constable in order to establish whether there was evidence of perverting the course of justice also considered the alleged shoot-to-kill policy but did not clarify these issues since the report was never published. The inquest, which is a public hearing conducted by an independent judicial officer to determine the facts regarding a suspicious death, did not address these matters either. The scope of the inquest was too narrow, since it was limited to the facts immediately relevant to the deaths and did not include the allegations of cover-up and shoot-to-kill policy. The three police officers suspected of causing death could not be compelled to give evidence. The jury could not reach a verdict of "unlawful death". The witnesses' statements were not disclosed in advance of the proceedings, and placed the relatives at a disadvantage in regard to their participation in the procedure. The report prepared by the independent police inquiry at the request of the DPP was not produced.

Concerning the existence of a process that could secure the prosecution of those responsible for the killing, the Court found that if a decision not to prosecute is made, the DPP should be required to give adequate reasons. It should also be possible to challenge the DPP by way of judicial review so that a reasoned explanation is given for not prosecuting. It also concluded that when a verdict of "unlawful death" is reached by the inquest, it should be possible to request the DPP to consider a decision to prosecute or to reconsider a previous decision not to prosecute.

CONCLUSION

The Court emphasised that the purpose of proper investigating procedures is to maintain public confidence and meet any legitimate public concerns that may arise from the use of lethal force. It stated that the lack of such procedures will only fuel fears of sinister motivations, as was illustrated by the submission made by the relatives concerning the alleged shoot-to-kill policy. In order to satisfy the requirements set by the European Court, a number of reforms have been introduced in Northern Ireland, such as the creation of the Police Ombudsman.

It must be remembered though, that in practice such reforms were meant to satisfy the families of those who have constantly sought to undermine the United Kingdom authorities by terrorist activity and propaganda, while for the overwhelming majority of <u>innocent</u> victims of <u>terrorist</u> activity, the perpetrators have never been brought to justice and in most cases the State authorities did not implement all that was in their power and duty to do in order for justice to be done and be seen to be done.

It is now time for the authorities of the United Kingdom, with the support of the European Union and the Council of Europe, to take all necessary measures so that proper, full and fair investigations be carried out to bring to justice those responsible for <u>terrorist</u> atrocities in Northern Ireland that justice may also be done for the relatives of innocent victims.

6. COLLUSION! COLLUSION! BUT HAS THE EUROPEAN COURT OF HUMAN RIGHTS CONFIRMED IT IN ANY WAY?

In its press release on 27 November 2007, the BBC announced that judgments rendered by the European Court of Human Rights have vindicated the fact that allegations that security forces colluded with a loyalist gang had not been properly investigated. The publicity and comments made around these cases may have led people to believe that collusion was a widespread practice within the Royal Ulster Constabulary (RUC), and that it prevented proper investigations from being carried out in view of bringing murderers to justice.

However, a closer look at the European Court judgments[1] shows (A) the extent of the investigations carried out by the British authorities, and will help to single out (B) the sole reason for which the Court decided that police investigations into recent allegations of collusion did not comply with Article 2 of the European Convention.

A. THE EXTENT OF THE INVESTIGATIONS CARRIED OUT BY THE BRITISH AUTHORITIES

During the years 1975-1976 several attacks were carried out on Catholics and nationalists by proscribed loyalist paramilitary organisations and in some cases by a few members of the Royal Ulster Constabulary (RUC) and Ulster Defence Regiment (UDR) acting as paramilitaries. The cases of attacks referred to the European Court concerned the following:

- On the night of 24 August 1975, Colm McCartney and Sean Farmer were returning home by car from the All-Ireland Gaelic football semi-finals in Dublin. Both men were stopped on the Cortamlet Road, Altnamachin in South Armagh and shot dead. Their car was found burnt out half a mile from the murder scene.

- On 19 December 1975, loyalist gunmen arrived at Donnelly's Bar, in Silverbridge, County Armagh and fired a machine gun at persons outside the bar. Two of them entered the bar, one fired shots with an automatic gun while the other threw a bomb into the premises. Trevor Brecknell, Patrick and Michael Donnelly were killed and six other people were seriously injured.

- On 4 January 1976 between 6.05 and 6.10 pm three gunmen entered a house in Armagh and shot dead John and Brian Reavey and seriously wounded Anthony Reavey. The same night at about 6.30 pm three gunmen forced their way into another house during a family meeting in Ballydongan, County Down, and shot dead Barry, Declan and Joseph O'Dowd and seriously injured Bernard O'Dowd.

- On 6 June 1976, a gunman named McClure who was also an RUC police officer drove a car stolen by an RUC Reserve Constable up to the Rock Bar. As Mr McGrath was leaving the bar, around 10.40 pm, he was shot twice in the stomach by McClure, who then placed a 10lb gelignite bomb against the door of the pub which failed to explode.

Shortly after each one of these attacks took place the security forces promptly investigated them. Despite their efforts, no suspect was identified and no-one was prosecuted. An inquest was held for each case.

The authorities did not close the investigations, which were reactivated in 1978 when Catholic priest Father Hugh Murphy was abducted by loyalists paramilitaries. The Police arrested a Reserve Police Constable, William McCaughey who confessed to taking part in the abduction of the priest and in other attacks. McCaughey cited the names of other police officers and his revelations lead to investigations in eleven other cases. Nine other suspects were arrested including five police officers, who were charged with offences. Police officer John Weir in particular was later convicted for the murder of a shopkeeper in Ahoghill in April 1977 and sentenced to life imprisonment in June 1980. Police officer McClure was identified, admitted to his involvement in the Rock Bar attack and was sentenced to two years imprisonment. McCaughey was convicted and received a seven-year

[1] European Court of Human Rights, Fourth Section, Judgment Brecknell v. the United Kingdom, 27 November 2007 (Application no. 32457/04); Judgment McCartney v. the United Kingdom, 27 November 2007 (Application no. 34575/04); Judgment Mc Grath v. the United Kingdom, 27 November 2007 (Application no. 34651/04); Judgment O'Dowd v. the United Kingdom, 27 November 2007 (Application no. 34622/04); Judgment Reavey v. United Kingdom, 27 November 2007 (Application no. 34640/04).

sentence. Another police officer was also charged with serious offences and resigned from the Police.

In January 1999, nineteen years after John Weir had been sentenced and six years after his release from jail, he made new allegations that had never been mentioned before. He made a statement that was published in the Sunday Times newspaper on the basis of which two documentaries were made and broadcast on both sides of the border, both on Irish television and on the BBC. Weir made allegations about security forces' collusion with loyalist paramilitaries against Catholics and nationalists. These allegations were promptly investigated on both sides of the border by the RUC in Northern Ireland and the Garda in the Irish Republic. Weir met with Irish police officers but refused to meet Northern Ireland police officers and did not make his whereabouts known. The RUC worked on the basis of information received by the Garda and carried out interviews with seven individuals who were central to the allegations.

Several reports were prepared by the RUC about Weir's allegations. The cases were then referred to the Serious Crime Review Team (SCRT), which was established in March 2004 to review all historical murders so as to determine whether investigations should be reopened. In the light of a preliminary case assessment, the cases were referred for further assessment to the Historical Enquiry Team (HET), which was in touch with Weir via the Finucane Centre. If evidence of police involvement in the murders is found, the authorities have already indicated that the Police Ombudsman for Northern Ireland will become involved.

B. THE SOLE REASON THAT THE INVESTIGATION INTO NEW ALLEGATIONS OF COLLUSION HAS BEEN DECLARED NON-COMPLIANT WITH ARTICLE 2 OF THE EUROPEAN CONVENTION

The Court has regularly stated that the right to life, as protected by Article 2 of the European Convention, implies procedural obligations for the authorities of the State to carry out an effective investigation into unlawful or suspicious death. When State agents are involved, the purpose of such an investigation is to ensure accountability.

As a result of these cases being submitted to its consideration, the European Court had to determine the extent of the State authorities' obligation to investigate when new information in relation to a suspicious death is brought into the public domain.

The Court considered that the obligation to investigate under Article 2 of the Convention may in certain cases require an examination of wider issues than those addressed during the course of criminal trials, in this case collusion between terrorist organisations and police officers. The obligation to investigate on the basis of new allegations depends on the nature of the information and it is for the authorities to weigh up any information or material that may have the potential to undermine the conclusions of an earlier investigation or may allow an earlier investigation to be continued.

The requirements that apply to the investigation of new allegations are the same as those that apply to initial investigations, but the intensity will depend on the circumstances of the case. The requirements are that the investigation be independent, prompt and expeditious, accessible to the family, with sufficient public scrutiny and effective. The Court noted that the allegations made by Mr Weir were serious and apparently plausible. As a result, the authorities had an obligation to verify the reliability of the information and assess whether an investigation could usefully be launched in view of bringing charges against a suspect.

The Court considered that since Weir's allegations dealt with alleged RUC police officers' involvement in the attacks, the inquiry should not have been carried out by RUC police officers.

Therefore the first part of the investigation, between June 1999 until November 2001, did not have the independence required under Article 2 of the Convention. It was for this reason alone that the Court decided that the United Kingdom had breached the Convention. This does not mean that the Court found there had been collusion.

In fact, the Court found that all the other requirements for the investigation to be Convention-compliant were fulfilled. The investigation was started promptly and expeditiously without undue delay. If there was a lack of progress in the investigation, it was due mainly to the fact that Weir wilfully remained outside the jurisdiction of Northern Ireland and could not be interviewed despite the attempt made by the authorities to locate him and their willingness to do so. Concerning the accessibility of the families and public scrutiny, the Court acknowledged that the Police had made every effort since 2000 to meet with members of the families, who were given access to the investigating process. Concerning the effectiveness of the investigation, the Court acknowledged that the key traceable witnesses were interviewed in conjunction with the available evidence being collected and reviewed. The UK authorities did not disregard the new evidence, did not act in bad faith and did not show any lack of will. The suspects responsible for the deaths of those murdered could not be identified and no evidence could be adduced that would have had the prospect of leading to a conviction, due to the refusal of Weir to give evidence.

CONCLUSION

In the Police force of any country there are black sheep among the security forces and particularly in time of civil unrest this is even more likely to happen. This is what occurred in Northern Ireland. The investigations into these attacks were actively pursued by the Police itself at the end of the seventies. Those who took part in such activities were finally arrested and charged and some of them were convicted and sentenced.

Considering that no one has ever been brought to justice in numerous other murder cases, including those of many members of the security forces, the fact that in these cases thorough investigations were carried out and several police officers were eventually prosecuted and convicted, is very significant. It bears witness that the authorities have taken a clear stand against such abhorrent activities and have not wanted to be associated or seen to be associated with them in any way.

The judgments rendered by the European Court of Human Rights in relation to the investigations of new allegations did not confirm the thesis of those who relentlessly seek to undermine Northern Ireland security forces and particularly the RUC by way of collusion propaganda. Contrary to what that propaganda implies, the European Court did not confirm that there had been collusion on behalf of the British authorities. It is also clear that in actual fact a very limited number of RUC and UDR members took part in these activities similar to those of paramilitaries, and such practices were never condoned, but rightly condemned by the authorities of the United Kingdom.

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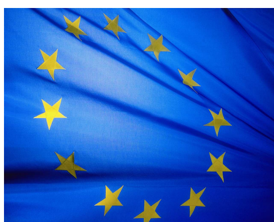

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