



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

FOURTH SECTION

CASE OF BRECKNELL v. THE UNITED KINGDOM

(Application no. 32457/04)

JUDGMENT

STRASBOURG

27 November 2007

FINAL

27/02/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Brecknell v. the United Kingdom,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Mr J. CASADEVALL, *President*,

Sir Nicolas BRATZA,

Mr G. BONELLO,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 6 November 2007,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 32457/04) 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”) by an Irish national, Ms Ann Brecknell (“the applicant”), on 10 September 2004.

2. The applicant, who had been granted legal aid, was represented by Madden & Finucane, solicitors practising in Belfast. The United Kingdom Government (“the Government”) were represented by their Agent, Mr J. Grainger of the Foreign and Commonwealth Office, London.

3. The applicant alleged that there had been no adequate investigation into allegations of collusion and/or involvement by security forces in the killing of her husband, nor any effective remedy for the same. She invoked Articles 2 and 13 of the Convention.

4. By a decision of 6 March 2007, the Court declared the application admissible.

5. The applicant and the Government each filed further written observations (Rule 59 § 1), to which they each responded with further written comments (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1933 and lives in Armagh. She is the widow of Trevor Brecknell.

A. The attack on Donnelly's Bar and the initial investigation

7. On 19 December 1975, loyalist gunmen arrived at Donnelly's Bar, Silverbridge, in County Armagh and fired a machine gun at persons outside the bar. Two men entered the bar. One sprayed the room with automatic gunfire and the other threw a bomb into the premises. Trevor Brecknell, Patrick Donnelly and Michael Donnelly (aged 14) were killed and six other people received serious injuries. The applicant was at the time in hospital following the birth of her daughter and was informed of her husband's death by the hospital chaplain and her doctor.

8. The emergency services and the police were alerted to the incident within a short time. While the dead and injured were being removed from the scene, soldiers of the Royal Scots Regiment were stoned upon their arrival and had to withdraw. As a consequence of the hostile reception, police decided not to investigate the scene until first light.

9. On 20 December, detectives and scene of crime officers attended the scene. Items were taken for forensic examination, including 9mm spent cartridge cases. A number of persons who had been in the bar on the previous night were spoken to and later statements were taken from a substantial number of the customers who had been there during the incident. The Government believed that all had been spoken to but that some would only give detectives an oral account.

10. The bodies of the deceased were identified and post mortems held.

11. A claim of responsibility for the incident was subsequently made by the Red Hand Commandos, an illegal loyalist paramilitary organisation.

12. The Government stated that despite the efforts of the police it was not possible to identify any particular suspect. No one had witnessed the arrival of the gunmen on the night of the attack. While a Ford Cortina car had been seen moving away from the location after the attack no one was able to identify this vehicle as belonging to the gunmen or as being used by them as a getaway vehicle. Although conversations with customers in the bar had led to a photofit picture being compiled this did not lead to anyone being connected with the incident. The view of the investigating officer at the time was that extreme loyalist elements from the Portadown area were likely to be responsible. It was believed that some persons in this category were arrested and interviewed but without any positive outcome. A report

was prepared for the Director of Public Prosecutions who, in the absence of any evidence linking individuals to the incident, did not direct any prosecution to be brought.

13. On 26 November 1976 an inquest was held into the deaths of the three deceased persons.

14. The applicant was first contacted by the police three days after the murder. The investigating officer of the Royal Ulster Constabulary (“RUC”) who returned her husband’s personal effects told the applicant that the police knew who was responsible for the attack but that they all had alibis that they were playing pool in Markethill at the time of the murder. There was no further contact by the RUC with the applicant concerning the case at this time.

B. The investigations concerning McCaughey, Weir, McClure and Shields 1978-1981

15. The investigation into the attack on Donnelly’s Bar did not close and became active again in 1978, when a Catholic priest Father Hugh Murphy was abducted by loyalist paramilitaries intending to use him as a hostage vis-à-vis the IRA. The police arrested a reserve police constable William McCaughey, who, in the course of questioning, revealed his part in the abduction of the priest and in a variety of other loyalist paramilitary incidents. A number of other arrests followed, including that of a police officer John Weir who was named as having been involved in the murder of a shopkeeper called Strathearn in Ahoghill in April 1977: he was convicted for that murder in June 1980. The Government stated that both McCaughey and Weir refused to name the two loyalist paramilitaries also involved with them in the murder unless they received immunity from prosecution. The police and prosecuting authority took the decision prior to the trial not to enter into any process of bargaining with Weir and McCaughey. While both were approached by the police after their convictions to see if at that stage they would give evidence against the loyalist paramilitaries, each again refused to do so unless there was something in it for themselves. The Government stated that during the period in which Weir was detained he was interviewed on a large number of occasions. At no time did he implicate himself or others in any offence other than the Strathearn murder.

16. McCaughey, however, did name a RUC reserve officer Laurence McClure as being involved in a range of incidents including the attack on Donnelly’s Bar.

17. McClure was arrested along with a woman called Elizabeth or Liz Shields.¹ After questioning, both admitted to driving three persons, McConnell, who was a member of the Ulster Defence Regiment and two

¹ Her name also appears as Lily.

other unknown persons on the night of the incident. While admitting to knowing that the three persons must have been engaged in illegal activity they claimed that they did not know the details and only after the event were able to relate the picking up of these persons to the incident at Donnelly's Bar. McClure and Shields were charged with offences under section 5 of the Criminal Law Act (Northern Ireland) 1967 – failure to disclose information relating to an offence. McConnell had by this date been murdered by the IRA and it was not possible to identify the other two persons in the car. In April 1981 the DPP made a decision not to pursue the charges against McClure and Shields. This decision was based on the receipt of an opinion of senior prosecuting counsel and was based on a series of factors: the delay in bringing the case to trial, the disposal of charges against others accused of offences arising from the investigation into McCaughey's revelations, the absence of a prospect of a custodial sentence and the impact of a judgment of Jones LJ cited in another case (*R v Donnelly* [1986] NI 54) which was viewed as eliminating any reasonable prospect of conviction as a legal defence was available to the accused on a charge of withholding information.

C. The Weir allegations and the response of the authorities

18. In or about January 1999 John Weir, who had been released from prison on licence in 1993, made a statement to a journalist alleging RUC and Ulster Defence Regiment (“UDR”) collusion with loyalist paramilitaries from the Portadown area in the mid-1970s. This statement was published in the Sunday Times newspaper in March 1999. It was obtained by the Patrick Finucane Centre, a human rights non-governmental organisation in Derry (hereinafter “the Centre”). A copy was provided by the Centre to Alan Brecknell, Trevor Brecknell's son.

19. John Weir's statement made detailed allegations about security force collusion with loyalist paramilitaries, including the allegation that he had been told by McClure, a former reserve constable in the RUC, that Mitchell's farmhouse owned by another RUC officer was used as a base from which to carry out loyalist attacks, including the attack on Donnelly's Bar in Silverbridge. Weir also alleged that Stuart Young, Sammy McCoo, Shilly Silcock [suspect T] and Robert McConnell (a part-time UDR member) were responsible for the attack and that the getaway car was provided by Laurence McClure and Elizabeth Shields. He alleged that after the attack the group re-assembled at Mitchell's farmhouse.

20. The statement also made links between the attack on Donnelly's Bar and other attacks allegedly carried out by members of the security forces, both RUC and UDR, and loyalist paramilitaries. This group used the farmhouse in Glennane owned by James Mitchell, a RUC reservist, as a base from which to carry out attacks on Catholics and nationalists. Other

attacks allegedly included the murder of Colm McCartney and Sean Farmer at a bogus vehicle checkpoint in August 1975 (see application no. 34575/04); the murder of John and Brian Reavey and wounding of Anthony Reavey in their home on 4 January 1976 (see application no. 34640/04); the murder of Joseph, Barry and Declan O'Dowd and wounding of Barney O'Dowd in the latter's home in January 1976 (see application no. 34622/04); and the attack on the Rock Bar in which Michael McGrath was seriously injured (see application no. 34651/04). Weir also linked these attacks to the Dublin and Monaghan bombings in which 33 people were killed in the Republic of Ireland.

21. On or about 10 June 1999, RTE, an Irish television channel, broadcast a television programme that contained allegations of security force involvement in a number of deaths, including that of Trevor Brecknell. Weir made allegations on that programme that members of the RUC and UDR were directly involved in the attack on Donnelly's Bar. A BBC Spotlight programme produced a similar documentary dealing with these allegations.

22. These allegations attracted considerable attention on both sides of the Irish border and became the subject of police investigation in both jurisdictions. The Government stated that the police investigation in Northern Ireland was focussed on determining whether Weir's allegations should be assessed as sufficiently credible to require a full investigation. They obtained from the journalist an edited transcript of the interview with Weir. While his whereabouts were unknown to the RUC, Weir met with senior Irish police officers at the Irish Embassy on 15 April 1999. A copy of his statement was provided by the Garda to the RUC, along with a further statement made by Weir to another journalist dated 3 February 1999. The police analysed the available materials and sought to identify the personalities to be interviewed. It became apparent that some had died and that others, living abroad, could not be traced. A series of seven interviews were conducted, under cautions, between July and December 2001, of those individuals central to Weir's account who could be traced. No charges were preferred. The interviews followed the format of Weir's allegations being put to the interviewee for his or her response. The predominant response was denial of any involvement and claims that Weir had been untruthful. No admissions were made by any interviewee. Interviews were also conducted with less central personalities and with police officers involved in interviewing Weir in 1978. The latter stated that Weir had not mentioned the matters now being alleged.

23. Meetings were held regularly with RUC counterparts in the Republic of Ireland. The RUC co-operated also with the judicial inquiry established in the Republic of Ireland into the Dublin and Monaghan bombings (see further below). Amongst matters about which the RUC team provided information to the inquiry was ballistics information which linked some of

the weapons used to more than one incident. In February 2000 a substantial report was compiled by the RUC for the Garda dealing with Weir's allegations. It profiled Weir and dealt *inter alia* with a description of the 1978 investigation into McCaughey, Weir and others. It concluded that the investigation would continue but that his credibility was in doubt. According to the Government, despite inquiries being conducted, Weir's whereabouts could not be traced. This report was not disclosed as the investigation was continuing. An internal RUC report dated 27 February 2001 concluded that it would be necessary to interview Weir before any view could be finalised in respect of the credibility of his allegations: such interview was not possible as his whereabouts were not known. The report noted the absence of any previous mention of the allegations before 1999 and that much of what he said was hearsay and speculation. Inquiries made of the British Embassy in Nigeria (where he had a known address) and the criminal intelligence service and others failed to locate Weir. Contact was made with the Garda and the secretariat of the Inquiry into the Dublin and Monaghan bombings without positive result.

24. In November 2003, a further report was written for the Assistant Chief Constable (Crime Operations) in respect of Weir's allegations. This also could not be disclosed due to the ongoing investigation but the Government have stated that this focussed directly on the attack on Donnelly's Bar, noting that Weir had mentioned the names of six persons, three of whom were known to have played a role in the attack. It noted that it was difficult to advance inquiries without interviewing Weir and recommended that there should be an overall review of the file on the attack and that the case be examined by the Serious Crime Review Team ("SCRT") so that it could be determined whether the investigation should be reopened. This recommendation was accepted. The SCRT was established in March 2004, with responsibilities including the review of all historical murders by way of case assessment for evidential and investigative opportunities. It carried out a preliminary case review culminating in a report dated 14 June 2005 by Detective Inspector Ramsay of the Police Service Northern Ireland ("PSNI"). His view was that the investigation if looked at alone could not be progressed but that in the context of linked cases might be worth further exploration. He suggested a referral of the case for further assessment. The Historical Enquiry Team ("HET") director of Investigations, Detective Chief Superintendent James of the London Metropolitan Police Force, took over personal supervision of the investigation which progressed through the first three of five stages of the HET process (collection of all relevant material; assessment of the investigations to date; review of evidence, with intelligence and open and non-police sources, together with a meeting with the families of the victims of the attack). As a number of investigative opportunities were identified and to be followed up, the case was to continue to be processed by HET,

which had been put in touch with Weir by the Centre. The Government submitted that if any evidence of police involvement in the murders was found, the Office of the Police Ombudsman for Northern Ireland would then become involved. For the latest information from the Government concerning the investigation, see their most recent observations, paragraph 64 below.

D. The position of the applicant and the concerned families

25. Meanwhile, in July 1999, Mr Donnelly, owner of the bar and father of one of the people killed in the attack, informed the applicant's family that he had received a summons to appear in court many years earlier. After contact with the authorities by the applicant's lawyers and the Centre, it appeared that in or about 1980 Laurence McClure, a RUC reservist and Elizabeth Shields, housekeeper at Mitchell's farm, had been charged with withholding information in relation to the murders. McClure had been the person identified by Weir as the main source of his information about security force collusion. The applicant and her family had never been informed about these proceedings.

26. By letters dated 5 July and 10 November 1999, the Northern Ireland Office informed the Centre that the allegations made by Weir and shown on the RTE programme were under investigation by the RUC.

27. On 31 January 2000, the Centre was informed by Chief Superintendent Sillery, on behalf of the Chief Constable, that charges against two persons connected with the attack had been dropped. This followed a meeting on 22 January, when relatives of Trevor Brecknell and others killed at Donnelly's Bar met with Chief Superintendent McCann of the RUC, who had been the investigating officer in that incident and also for the murders of the Reavey family. He advised the relatives and a member of the Centre that as a result of his investigations he believed that there had been collusion between the loyalist paramilitaries and members of the security forces (RUC and UDR) and that the gang that had carried out the attack included security force personnel. While he was sure of the identities of the gang members, one of whom he named as Sammy McCoo, a well-known loyalist extremist, he considered however that there had been insufficient evidence available to convict; he dismissed suggestions of any conspiracy or any policy to block from above and gave his view that the charges against McClure and Shields had been thrown out for lack of evidence. He commented that some of those involved were now dead and one was very old, in his seventies.

28. By letter dated 31 January 2001, the Northern Ireland Office informed the Centre that the police were not investigating the attacks on the bar and that the current police inquiry centred on establishing the veracity of the disclosures made by John Weir and whether or not any further

investigation was justified. The family would be informed if a further investigation was found to be warranted.

29. On 18 February 2001, members of the Centre met with John Weir in Paris. He made links between the attack on Donnelly's Bar and the other incidents above. He named Stuart Young, Sammy McCoo, Shilly Silcock and Robert McConnell (a part-time UDR member, allegedly working with the army and SAS) as carrying out the attack on the bar and considered that the security forces would have known about it. He mentioned that McConnell had been shot dead in a later incident.

30. During this period the Centre was in contact with the police (which had changed name from the RUC to the Police Service of Northern Ireland "PSNI") seeking to have questions answered about the original investigations into the various incidents. On 19 December 2001, a meeting was held between members of the Centre and Detective Inspector Aiken. Questions were put by and on behalf of the families concerning the investigations into the incidents. A request was made by the Brecknell family to have access to the investigation file.

31. The applicant's representatives made further requests for access to the police investigation file, on 29 May 2002 to the DPP and the Secretary of State and on 19 September 2002 to the PSNI.

32. On 28 October 2002, the PSNI wrote to the applicant's solicitors:

"(i) The investigation into the allegations made by John Weir has been advanced as far as possible at this stage – this investigation focussed on establishing the veracity of allegations made by John Weir and whether or not there is any justification for further investigation.

(ii) There are a number of discrepancies contained within the allegations made by John Weir and he has not made himself available to PSNI detectives for further interview in an effort to clarify these discrepancies. He is presently living outside the jurisdiction.

(iii) As a consequence of an investigation in 1978, former Reserve Constable Laurence McClure and civilian Sarah Elizabeth (Lily) Shields were interviewed and admitted that they had conveyed three other persons, including Robert McConnell (now deceased) from the area... about eight miles from Donnelly's Licensed Premises to Mitchell's farm. Neither person was able to identify the other two persons collected. The allegations made by Weir in relation to this incident are similar to the facts disclosed by McClure and Shields during interview and would have been in the public domain at the time of the court case. The names of Stuart Young, Sammy McCoo and Phillip Silcock have been given by Weir as also involved – these personalities would have been known to John Weir.

(iv) Much of what John Weir alleged is based on hearsay allegedly having been told to him by other police officers, including the former Reserve Constables McClure and James Mitchell. Those persons have been re-interviewed and deny all Weir's allegations, other than what they admitted during the 1978 investigation. As previously stated, there are a number of allegations made by John Weir which

detectives would like to clarify with him but because he is outside the jurisdiction, this has not been possible to date.”

33. On 20 November 2002, a further meeting was held with Detective Chief Inspector Williamson attended by members of the Centre and the Brecknell family as well as relatives of victims of other incidents, in which questions were asked about the investigation and prosecution *inter alia* in the Brecknell case.

34. On 11 December 2002, the applicant’s solicitors requested the Secretary of State for Northern Ireland to conduct an Article 2-compliant investigation into the allegations made by John Weir, in particular submitting that it was not compatible with Article 2 that it was the PSNI that had conducted the investigation into the allegations implicating RUC officers. They also submitted that an investigation was required to be prompt, public and accessible, that the relatives be kept fully informed of the course of the investigation and involved to the fullest extent and that they should receive full disclosure of the documents relating to the investigation.

35. On 29 January 2003, the Centre requested on behalf of the families involved, ballistics information about the guns used in the various attacks. On 3 October 2003, the PSNI replied that such information was not given out as it could prejudice the trial of any person charged in the future but that if an individual family could show how they might be prejudiced by non-disclosure the Chief Constable would give the matter full consideration.

36. On 30 April 2003, the applicant’s solicitors wrote to the DPP requesting *inter alia* copies of the admissions made by Laurence McClure and Elizabeth Shields and an explanation as to why no prosecution had been brought. On 9 May 2003, the DPP stated that the fact that a custodial sentence was not likely was not the only factor in the decision not to prosecute, while on 12 May 2003, the DPP referred them to the PSNI regarding the statements and on 22 May 2003 refused to provide them.

37. In June and August 2004, the Centre had meetings with the Chief Constable of the PSNI, aimed at persuading him to recommence investigations in these cases and to discuss a way forward. No commitment was made, although the Chief Constable expressed the view that if an investigation was carried out it would be conducted from within the PSNI.

38. Repeated requests for information concerning the investigation and for access to the file met with the response that the matter was under consideration by the SCRT (letters of 14 December 2004 and 9 February 2005).

E. Application for judicial review concerning the inadequacy of the investigation

39. On or about 1 April 2003, the Brecknell family applied for permission to apply for judicial review *inter alia* for a declaration that there had been no adequate investigation into the death of the applicant's husband as required by Article 2 of the Convention and requiring that the Secretary of State provide for an Article 2-compliant investigation. Leave was granted by the High Court on 30 April 2003. The proceedings were adjourned pending the outcome of another case

40. On 11 March 2004, the House of Lords held in the case of *McKerr v. the Secretary of State for Northern Ireland* that a complainant alleging a procedural breach of Article 2 could not bring a complaint under the Human Rights Act 1998 unless the death in question occurred on or after 2 October 2000, when that Act came into force. This overturned the decision of the Northern Ireland Court of Appeal on 10 January 2003 to the effect that the obligation to provide an effective investigation was a continuing one.

41. On 3 September 2004, following an application by the Secretary of State to set aside the grant of leave in the applicant's case, the Brecknell family withdrew their application for judicial review.

F. Reports of the Independent Commissions of Inquiry (Republic of Ireland)

1. The report into the Dublin and Monaghan bombings

42. Meanwhile in October 2003 the Report of the Independent Commission of Inquiry into the Dublin and Monaghan bombings (known as the Barron Report) was given to the Taoiseach of the Republic of Ireland. The report was made public on 10 December 2003. The Independent Commission had taken into account interviews by the Irish police with John Weir in 1999 (concerning allegations of offences in the Irish Republic), a memorandum of a meeting between an organisation known as the Justice for the Forgotten and John Weir in 1999, a transcript of audiotapes sent by Weir to Justice for the Forgotten in June 2000 and the inquiry's own interview with John Weir on 15 and 16 February 2001. The Report listed sectarian attacks alleged to have a link with the "Glennane group" of known paramilitaries and members of the RUC and UDR, including the murder of the applicant's husband. It noted:

"John Weir's allegations have been subject of inquiries by both the RUC and [the Irish police]. These inquiries have relied on shared information, for the most part obtained by the RUC. Despite this, the RUC and [the Irish police] have arrived at markedly different conclusions regarding his credibility as a witness."

43. The Report referred to a report sent by the RUC on 14 February 2000 to the Garda team investigating Weir's allegations (see also page 10). The RUC report concluded that as Weir was a convicted murderer his credibility had to be in doubt and that the results of research did not encourage any belief that he was now being genuine. The Independent Commission did not find the RUC's reasons sufficient to dismiss Weir's claims and it also noted a number of errors and discrepancies: for example, the RUC claimed that Lily Shields was dead whereas Garda enquiries revealed that she was still alive and the information given did not take into account Special Branch extracts, which indicated that James Mitchell knew ten named loyalists who came to the farm, of whom six appeared in Weir's allegations. Nor had the RUC paid sufficient attention to the evidence which supported Weir's allegations. The Garda officers, in contrast to the view formed by the RUC, found Weir "came across as an intelligent and discerning man who is a very convincing witness" and that he was "highly credible and had very comprehensive details about the crimes he purports to have knowledge of." The Report concluded that :

"... in relation to the attacks on Donnelly's Bar (Silverbridge)... John Farmer and Colm McCartney, the Reavey family and the O'Dowd family, information was given by one or more of the interviewees which confirmed Weir's account of who was responsible in each case."

44. The Report mentioned that the Garda had, with the assistance of the RUC, interviewed Mitchell, McClure, Shields, McCaughey and others mentioned by Weir; they denied his allegations. While the Garda had doubts as to their credibility, no further evidence was forthcoming to implicate them in the incidents, beyond any statements already made in other proceedings. The Report also set out ballistics evidence provided by the RUC, indicating that there was a chain in gun use between the attacks on Donnelly's Bar, the shooting of the Reavey family, the murder of Farmer and McCartney and the attack on the Rock Bar.

45. The Report stated that:

"All this information leads strongly to the conclusion that there were one or more groups operating in Northern Ireland involving not only loyalist paramilitaries but also members of the RUC and of the UDR, and using weapons obtained from the central quartermaster to whom the guns were returned after use. ..."

2. The report into the Dundalk bombing

46. The Independent Commission was also commissioned to investigate the bombing of Kay's Tavern in Dundalk in the Republic of Ireland which was bombed on 19 December 1975, the same date as the gun and bomb attack on Donnelly's Bar, Silverbridge, in which Trevor Brecknell was killed and which the Barron Report had found to be linked.

47. In July 2006 the Commission issued an interim report. It found a number of factors suggested that the two incidents were linked. Both attacks were claimed by the Red Hand Commandos. The evidence before it was not conclusive but suggested that the Dundalk bombing was carried out by a group of loyalist subversives associated with the Mid-Ulster Ulster Volunteer Force (“UVF”) with the assistance of UVF members from the Shankill Road area of Belfast. As regarded the RUC investigation, it noted that eight persons contacted by the Centre stated that they had not given statements to the RUC and that it seemed that no house-to-house inquiries had been made. According to the owner of the bar, however, the investigating officer did keep in touch with him as the investigation proceeded and he was satisfied that the officer was genuinely trying to identify and arrest those responsible. It was also noted that on 29 December 1975 the RUC made a public appeal for anyone with information about the Silverbridge attack to come forward, with particular reference to two cars that had been seen in the area at the time. The information about the cars had been forwarded to the Irish police.

48. The report considered the further inquiries which followed in 1978-81 and quoted parts of the statements given by McClure admitting involvement in an attack on the Rock Bar and concerning a possible role in the Silverbridge attack, when together with Lily Shields, he drove Robert O’Connell and two other men on that night. Part of the statement of Lily Shields was also quoted. The report also quoted extracts from police Daily Record Sheets which indicated that William McCaughey incriminated Sammy McCoo and [Suspect T] in the Silverbridge attack while James Mitchell stated that O’Connell and some ‘Portadown boys’, one of whom was named, as a guess, as McCoo, were involved. Noting the lack of information about what had happened on 28 June 1980 when the RUC had said that the charges against McClure and Shields were marked “no prosecution” and about the judgment of Jones LJ that was relied on (see page 8 above), it stated that “a perception persisted that the case against McClure and Shields was managed or dropped in order to reduce the culpability of the latter when he came to be sentenced for his role in the Rock Bar attack”. It also referred to a letter sent by the Centre to the Northern Ireland Office, assessing McClure’s admissions as going beyond failure to provide information to giving actual assistance to the perpetrators. It did not consider that correspondence from the Northern Ireland Office, which set out reasons for not pursuing more serious charges against the two accused and clarified that the DPP had been aware at the time of Jones LJ’s judgment, could be taken as a complete answer to the allegations of managing the matter to lessen McClure’s perceived culpability in the Rock Bar attack.

49. It was stated that before his trial for involvement in the attack on Donnelly’s Bar, on 30 June 1980, McClure had been sentenced to two

years' imprisonment, suspended for three years, for his involvement in the attack on the Rock Bar (possession of an explosive substance and firearms and ammunition with intent to endanger life).

G. Proceedings against the Director of Public Prosecutions

50. On 14 April 2003, the applicant commenced proceedings against the DPP, challenging various aspects of his decision-making in connection with the decision not to proceed with the case against McClure and Shields, in particular seeking orders to quash any decisions not to prosecute, offer evidence or enter a *nolle prosequi* and to quash his refusal to provide full and comprehensive reasons for not continuing the prosecution and his refusal to make available copies of their admissions. The applicant also challenged the failure of the DPP to exercise his statutory power under Article 6(3) of the Prosecution of Offences (Northern Ireland) Order 1972 to conduct further investigations into the death of Trevor Brecknell.

51. In an affidavit from a senior officer of the Public Prosecution Service dated 2 February 2006, it was stated that due to the considerable vintage of the prosecutions in question the full facts relating to the mechanism whereby the prosecutions were actually terminated could not be established. It was known that the opinion of senior prosecuting counsel was considered before a discontinuance direction of 8 April 1981 was made. The effective decision maker had been the then DPP Sir Barry Shaw who had retired some sixteen years before. The senior Assistant Director involved in the decision, and author of the discontinuance direction, had since died.

52. By decision dated 23 May 2006, the High Court judge rejected the applicant's application. He found that correspondence with the Attorney General in April 2003 established that the Attorney General had not issued a *nolle prosequi*. It appeared that a decision was taken by the DPP not to offer evidence against the accused at trial, which practice at the time was called, misleadingly, a *nolle prosequi*. Noting that the offence occurred in 1975 and the charges dropped in 1981 and that it had been clear throughout 2002 when the family and the Centre had been in contact with the police that no further action on this matter would be taken, he commented that the passage of time until bringing the judicial review application in May 2003 was very considerable. However, if he was wrong on the question of delay, the application still failed on the merits. The application for disclosure of files failed on the procedural ground that it was brought against the DPP, not the Chief Constable who had control of the said files. The decision of the DPP not to use his statutory power to direct a police investigation was a matter of discretion and the decision could not be said to be irrational or unlawful in the circumstances. As regarded reasons, the DPP had departed from his practice and reasons had been given by his officer in affidavit. In any event,

the extent of the reasoning was a matter for the DPP and the court could not make an order to require the decision maker to give sufficient reasons to justify the decision not to prosecute. In relation to the discontinuance of the prosecution, the judge noted that the reasons included delay in bringing the case to trial, the perceived unlikelihood of a custodial sentence and "crucially the impact of a judgment in another case which was judged to eliminate any reasonable prospect of a conviction" which was a reference to the decision of Jones LJ discussed in *R v Donnelly* [1986] NI 54. He considered that it was evident that the decision was taken at the highest level and not lightly. At this long remove, with the death and retirement of the principal actors, it was not possible to establish that the decision, which had a rational basis was *Wednesbury* irrational or unlawful. He emphasised that a legal challenge of this kind directly affected third parties, namely the two defendants against whom the prosecution was dropped, and that it would be intrinsically unfair to reach a decision adverse to their position without giving them an opportunity to be heard - neither had been given notice of the application – and such a decision might also, potentially, be in breach of their rights or of the presumption of innocence. He noted that the purported entry of a *nolle prosequi* by the prosecution was admitted to be wrong in principle and law, as only the Attorney General could do such. The court record and documentation tended to suggest that the court was told that there was a *nolle prosequi*. While it would have been open to the prosecution merely to tender no evidence, this could have led to the direction of an acquittal; it was less clear whether an acquittal should have followed as a matter of law. He declined to give declaratory relief as to the invalid nature of the purported *nolle prosequi* due to the universal acceptance that this had been inappropriate, the fact that this practice had ceased, the applicant's delay and the absence of the accused as parties to the application.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

53. The applicant complained that the United Kingdom had failed to provide an effective official investigation into the circumstances of her husband's death after allegations were made in 1999 by John Weir as to RUC involvement, invoking Article 2 of the Convention which provides:

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”.

A. The parties’ submissions

1. The applicant

54. The applicant did not invite the Court to assess the adequacy of the original investigation into her husband’s death, though, in answer to the Government’s submissions, she drew attention to the fact that some eight potential witnesses had never given statements to the RUC and that house-to-house enquiries had not been carried out. She also disputed that McClure and Shields had only been implicated to the degree of realising after the event that they had picked up the persons involved in the attack: to the extent that she had been able to see the statements, reproduced in the Dundalk report, the state of knowledge of both McClure and Shields was such as properly to give rise to a charge of murder, as McClure admitted knowing that a shooting was involved and Shields realised that it had something to do with “The Troubles”. She also considered that doubts arose as to the circumstances in which a *nolle prosequi* had been entered against McClure, there being no adequate explanation for dropping these charges, the delay in proceeding with them or their separation from other charges faced by him. She submitted that the separation of these charges undoubtedly impacted on the sentencing for the Rock Bar attack in which he only received a suspended sentence.

55. As regarded the investigation into Weir’s allegations, which was the subject-matter of her complaint, the applicant drew attention to the discrepancies between the conclusions reached by the RUC and the Barron Report as regarded credibility. The latter noted that the Irish police who had interviewed Weir and had access to all the information at the RUC’s disposal found him a convincing witness. This underlined, in her view, the lack of RUC independence, both hierarchical and practical and the lack of an effective and thorough investigation by the RUC. She pointed out that the PSNI did not come into existence until November 2001 and in any event was largely a continuation of the former organisation without hierarchical or practical independence. In particular, she noted that the RUC officer conducting the investigation in 1999 was denied access to the information

held by RUC Special Branch (*e.g.* the abstracts of information from interview notes, themselves since lost, known as Daily Record Sheets); the significant number of factual errors and inaccuracies in the RUC report (*e.g.* it stated that Shields was dead when she was in fact still living at Mitchell's farm); the failure of the RUC report to draw sufficient attention to evidence which supported Weir's stories; and the fact that discrepancies in the accounts given by Mitchell in 1978 and 2000 were not explored, while denials made by David Payne which were contradicted by his previous convictions¹ were not followed up, thus showing that the interview process by the RUC in 1999 was inadequate. Indeed, she asserted that the interviews conducted by the RUC were only carried out at the behest of the Irish police and that they were conducted in a manner which did not press the interviewees in relation to their involvement in terrorist activities and contributed to the conclusion that Weir lacked credibility. Insofar as the Government claimed that it had not been possible for the authorities to interview Weir themselves, she noted that he had been easily accessible to journalists, the Irish Police and the Independent Commission and that it had been possible for the HET, some seven years later, to trace him using the Centre as a conduit. Similarly the process of linking the weapons used in various attacks only appeared to have been done at the behest of the Independent Commission.

56. The applicant also contradicted the Government's assertion that Weir had never made reference to his allegations during the 1978 investigation, pointing to Weir's affidavit in which he stated that he had provided some information to the RUC in 1978 but that they had been uninterested. As shown by the failure to interview a named suspect in the murder of Colm McCartney and John Farmer (see application no. 34575/04), the RUC were not interested in a full investigation into security force collusion with loyalists and had closed down relevant lines of inquiry. The reports dated November 2003 to which the Government referred had not been made available to the applicant.

57. The applicant pointed out that Weir made his allegations in 1999 and that the investigation into these matters did not therefore coincide with examination of the deaths during "The Troubles" which was carried out by the SCRT (established in March 2004) and by HET (established in March 2005). There was no basis for suggesting a lack of adequate resources.

58. The applicant argued that an obligation arose to conduct an Article 2 - compliant investigation due to the nature of the allegations made by Weir, which were credible and from a person in a position to have the relevant knowledge, and due to the fact that the RUC, in accordance with domestic law, decided to conduct an investigation in 1999. The Court's

¹ In his 2002 interview he denied knowing Mitchell's farm although his conviction in the late 80s related to the possession of arms obtained at Mitchell's farm.

case-law established that such an obligation could arise where circumstances, in particular the emergence of new evidence, arose casting doubt on the original investigation or which raised new or wider issues. The test for determining whether an investigation was required was whether the nature of the evidence was such as to make it reasonable to impose a duty on the authorities to investigate that information or material or whether it was in the interests of justice to impose a duty on the authorities to investigate the new evidence. Further, where the state's own authorities determined that an investigation was necessary, such investigation must necessarily be Article 2 - compliant. The requirements of independence, accountability and transparency, effectiveness, promptness and expedition remained undiminished, even after the passage of time, although the steps that could reasonably be taken might be influenced by that factor. Also relevant was the nature and efficacy of any earlier investigation and the nature of the new evidence. However the investigation in this case, lasting over seven years, could not be regarded as prompt. Commenced in July 1999, the RUC investigation concluded in October 2003, then further work was undertaken prior to transmission to the SCRT, the HET took up the case in April 2006 and the investigation was still ongoing. She noted that in any event the HET was not carrying out a full effective investigation but was only seeking to identify if further evidentiary opportunities existed. Furthermore the applicant had not been informed by the RUC of the investigation but only found out through the efforts of the Centre to persuade the authorities to take action and since then information had only been provided in a "drip-feed manner". She had obtained far more information from the Barron and Dundalk Reports, the RUC and DPP refusing to provide her with information which was provided to those inquiries.

59. The applicant disputed the Government's claims that the evidence was not sufficient to warrant further investigation or prosecution, pointing out that the statements by McClure and Shields contained evidence justifying further prosecution and that, in any event, the investigation served not only the narrow aim of obtaining a prosecution but in reassuring the public and relatives. She further argued that the issue of police time and resources could not be used to justify a failure to conduct an effective investigation.

2. The Government

60. The Government submitted that no procedural obligation arose under Article 2 to investigate Weir's allegations as these were made in 1999, over 20 years' after the event and long after the period for fulfilment of the State's obligation of investigation had expired. They pointed out that there had been a police investigation into the murders immediately after they occurred, with an inquest; there had also been a second police investigation

in 1978-1981 in light of allegations made and information provided by McCaughey and information from McClure and Shields. There was no continuing obligation to investigate after this initial period and any complaints about these investigations would be out of time under Article 35 § 1 of the Convention.

61. The Government submitted that it was not open to an applicant to claim that the procedural obligations could be revived each time potentially relevant new evidence came to light. Such an approach would fundamentally undermine the legal certainty which Article 35 § 1 was intended to achieve. Not only was it not acceptable for the obligation to be revived after every new item of evidence, however trivial, arose but also no sensible dividing-line based upon the supposed quality of any further item of information received could be spelled out in clear and certain terms, which would enable all parties to know precisely where they stood in relation to whether the obligation of investigation had revived or not. Nor could any new investigation be wholly divorced in practical terms from those carried out before and with the lapse of time, the inability to trace complete files and lack of any useful recollection of details by erstwhile investigators, there might well be no realistic prospect of a further viable investigation that could reasonably be made the subject of further supervision by the Court. There was, accordingly, a powerful argument in support of the simple application of the clear limitation rule in Article 35 § 1 of the Convention (relying on *McDaid and Others v. the United Kingdom*, no. 25681/94, Commission decision of 9 April 1996, Decisions and Reports (DR) 85-A, p. 134 and *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I

62. In addition, where positive obligations arose, the Court had stated that no impossible or disproportionate burden should be placed on the State; when with the passage of time the objective of identifying and punishing those responsible for killing became less capable of being achieved, the point would eventually be reached where it became disproportionate to expect the State to devote scarce resources to undertaking investigations unlikely to yield any significant gains. To the extent that the case of Hackett appeared to support the contrary approach, the Court had adopted its decision without the benefit of argument on these points. In the present case, given a lapse of some 24 years from the death in issue, there was no realistic prospect that new material would be brought to light which would be likely to allow the perpetrators to be prosecuted and punished. Accordingly, no procedural obligation arose.

63. If this submission was not accepted, the Government submitted in the alternative that no procedural obligation arose as the allegations made by Weir in 1999 were not such as to give rise to any reasonable expectation that they would produce new evidence capable of supporting a prosecution after the time which had elapsed and hence were not of a character or

substance which could trigger or revive any procedural obligation of investigation. To do so, any new evidence would have to be very weighty and, prima facie, compelling in nature and hold out a serious or realistic prospect of a successful prosecution, otherwise the State authorities would face a disproportionate burden in investigating historic crimes, possibly to the detriment of the investigation of recent crimes and the prevention of future ones. In this case, the allegations made by Weir about this incident were limited references, made indirectly to third parties rather than to the authorities in Northern Ireland, based largely on hearsay and speculation and not pointing to any source of hard evidence. The most that could be done was to challenge the individuals named by Weir who would inevitably deny them. Further, Weir's credibility was seriously in doubt due to his own background and the fact that he did not make the allegations earlier despite having had the opportunity. For a long period he had gone to ground, leaving the United Kingdom and making himself untraceable.

64. However, even if the allegations did trigger or revive a procedural obligation, the investigations into his allegations did comply with the requirements of Article 2, which in the circumstances involving a serious lapse of time, were less stringent or extensive. What steps may reasonably be taken are also affected by the time factor. The investigations were independent, as the RUC personnel involved in the initial investigations had long since left the security forces or died, PSNI had undergone extensive reform and was to be regarded as independent of the RUC, and in any event the HET which was now carrying out the investigation was independent of both the RUC and PSNI, while the Police Ombudsman for Northern Ireland was also independent and in a position to investigate and monitor the HET investigation. The investigations were reasonably prompt having regard to the circumstances and the other pressures on policing resources in Northern Ireland: the police were hampered by the failure of Weir to give a statement to them and their attempts to trace him had proved fruitless. Further, the investigations had been as effective as could reasonably be expected in the circumstances, the applicant not identifying any concrete line of inquiry or step which should have been taken but was not. Efforts had been made to meet with Weir. However, when he did agree to meet with the HET in Dublin, he refused to make a written statement or to give evidence in court. There had also been involvement of the family and public scrutiny to the requisite degree, given that there was no obligation to provide relatives with access to the file of an ongoing criminal investigation and that police officers had met with and discussed the case with the family on a number of occasions. They referred to the Court's case-law that there was no absolute right to obtain a prosecution and that no breach arose in such cases where there were no culpable failures in seeking to hold perpetrators of criminal offences accountable (relying on *Szula v. the United Kingdom*, no. 18727/06, (dec.) 4 January 2007). In this case, where the review process

was close to conclusion, there were no more realistic additional evidential opportunities to follow up and they had been unable to compile a sufficient evidential case for further prosecutions.

B. The Court's assessment

1. Applicable principles

65. The obligation to carry out an effective investigation into unlawful or suspicious deaths is well-established in the Court's case-law (for a full statement of principles by the Grand Chamber, see, most recently, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, §§ 110-113, ECHR 2005-VII). When considering the requirements flowing from the obligation, it must be remembered that the essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. Furthermore, even where there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities is vital in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *McKerr v. the United Kingdom*, no. 28883/95, §§ 111 and 114, ECHR 2001-III).

66. The obligation comes into play, primarily, in the aftermath of a violent or suspicious death and in the normal course of events, a criminal trial, with an adversarial procedure before an independent and impartial judge, must be regarded as furnishing the strongest safeguards of an effective procedure for the finding of facts and the attribution of criminal responsibility. There is no absolute right however to obtain a prosecution or conviction (*e.g. Szula v. the United Kingdom*, cited above) and the fact that an investigation ends without concrete, or with only limited, results is not indicative of any failings as such. The obligation is of means only (*Avşar v. Turkey*, no. 25657/94, § 394, ECHR 2001-VII (extracts)) However, as in this case, it may be that some time later, information purportedly casting new light on the circumstances of the death comes into the public domain. The issue then arises as to whether, and in what form, the procedural obligation to investigate is revived.

67. The Court must reject the Government's argument that no new obligation arises and that a strict six month time-limit must be applied, rendering applications more than six months after the end of the original investigation out of time within the meaning of Article 35 § 1 of the Convention. It has already had cause to examine cases in which new evidence came to light after the conclusion of the original proceedings concerning a death. In *McKerr v. the United Kingdom* (cited above) where

there had been a criminal trial of three officers charged with murder of unarmed IRA suspects and subsequently serious concerns arose that this incident, together with two others at the time, involved a practice of excessive use of force by the RUC and the deliberate concealment of evidence, the Court held:

"... there may be circumstances where issues arise that have not, or cannot, be addressed in a criminal trial and that Article 2 may require wider examination. the aims of reassuring the public and the members of the family as to the lawfulness of the killings had not been met adequately by the criminal trial. In this case therefore, the Court finds that Article 2 required a procedure whereby these elements could be examined and doubts confirmed, or laid to rest. It considers below whether the authorities adequately addressed these concerns."

68. Similarly, where in *Hackett v. the United Kingdom* (no. 34698/04, (dec.) 10 May 2005) a book was published in which the author alleged that he had been wrongly convicted of the murder of the applicant's husband years earlier and purported to name the actual perpetrator, the Court noted that events or circumstances may arise which cast doubt on the effectiveness of the original investigation and trial or which raise new or wider issues and an obligation may therefore arise for further investigations to be pursued. It considered that the nature and extent of any subsequent investigation required by the procedural obligation would inevitably depend on the circumstances of each particular case and might well differ from that to be expected immediately after a suspicious or violent death has occurred.

69. The Court would also comment that there is little ground to be overly prescriptive as regards the possibility of an obligation to investigate unlawful killings arising many years after the events since the public interest in obtaining the prosecution and conviction of perpetrators is firmly recognised, particularly in the context of war crimes and crimes against humanity.

70. The Court would, however, draw attention to the following considerations. It cannot be the case that any assertion or allegation can trigger a fresh investigative obligation under Article 2 of the Convention. Nonetheless, given the fundamental importance of this provision, the State authorities must be sensitive to any information or material which has the potential either to undermine the conclusions of an earlier investigation or to allow an earlier inconclusive investigation to be pursued further. Both parties have suggested possible tests. The Court has doubts as to whether it is possible to formulate any detailed test which could usefully apply to the myriad of widely-differing situations that might arise. It is also salutary to remember that the Convention provides for minimum standards, not for the best possible practice, it being open to the Contracting Parties to provide further protection or guarantees. For example, contrary to the applicant's assertion, if Article 2 does not impose the obligation to pursue an investigation into an incident, the fact that the State chooses to pursue some

form of inquiry does not thereby have the effect of imposing Article 2 standards on the proceedings. Lastly, bearing in mind the difficulties involved in policing modern societies and the choices which must be made in terms of priorities and resources, positive obligations must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities (*Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, § 116).

71. With those considerations in mind, the Court takes the view that where there is a plausible, or credible, allegation, piece of evidence or item of information relevant to the identification, and eventual prosecution or punishment of the perpetrator of an unlawful killing, the authorities are under an obligation to take further investigative measures. The steps that it will be reasonable to take will vary considerably with the facts of the situation. The lapse of time will, inevitably, be an obstacle as regards, for example, the location of witnesses and the ability of witnesses to recall events reliably. Such an investigation may in some cases, reasonably, be restricted to verifying the credibility of the source, or of the purported new evidence. The Court would further underline that, in light of the primary purpose of any renewed investigative efforts (see paragraph 65 above), the authorities are entitled to take into account the prospects of success of any prosecution. The importance of the right under Article 2 does not justify the lodging, willy-nilly, of proceedings. As it has had occasion to hold previously, the police must discharge their duties in a manner which is compatible with the rights and freedoms of individuals and they cannot be criticised for attaching weight to the presumption of innocence or failing to use powers of arrest, search and seizure having regard to their reasonably held view that they lacked at relevant times the required standard of suspicion to use those powers or that any action taken would not in fact have produced concrete results. (*Osman*, cited above, § 121).

72. The extent to which the requirements of effectiveness, independence, promptness and expedition, accessibility to the family and sufficient public scrutiny apply will again depend on the particular circumstances of the case, and may well be influenced by the passage of time as stated above. Where the assertion or new evidence tends to indicate police or security force collusion in an unlawful death, the criterion of independence will, generally, remain unchanged (see, for the importance of this criterion from the very earliest stage of the procedure, *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, §§. 325, 333-341, ECHR 2007-...). Promptness will be likely not to come into play in the same way, since, for example, there may be no urgency as regards the securing of a scene of the crime from contamination or in obtaining witness statements while recollections are sharp. Reasonable expedition will remain a requirement, but what is reasonable is likely to be coloured by the investigative prospects and difficulties which exist at such a late stage.

2. *Application in the present case*

73. The Court recalls that in the present application the investigation into the shooting of the applicant's husband came to an inconclusive conclusion in 1981, when the decision was taken not to pursue charges against McClure and Shields, who had apparently driven the perpetrators on the night of the incident, for failure to disclose information about the killing. It was more than seventeen years later that allegations by John Weir were made public concerning collusion between security forces and loyalist terrorists and naming four loyalists as having been responsible for the attack. These allegations were published, or made known from March 1999 and received wide publicity when included in a television programme in June 1999. An investigative response appears to have been commenced by the RUC at around that time. Interviews with seven individuals central to Weir's allegations and amongst those who could be traced or were still alive, were conducted in 2001, without obtaining any useful new or incriminating evidence. Information was received from counterparts in the Irish police force and also provided to the inquiry in Dublin which was investigating a number of incidents at this time (paragraphs 42-45 above). It would appear that the RUC investigation was acknowledged as failing to progress due to the need to interview Weir directly. While the applicant alleged, in answer to the Government's assertion that Weir had proved inaccessible to the United Kingdom authorities, that the Dublin police and the Centre had no difficulty in talking to him, the Court would note that Weir refrained from coming within the jurisdiction, where he might well have risked further criminal charges being lodged against him or retaliatory steps from those whom he had been naming in the press. It sees no reason to disbelieve the Government's statement that they took steps to locate Weir, including approaching his last known address and making inquiries from the Irish police and the Barron inquiry staff.

74. The Court notes that in 2004 the case was transferred to the SCRT which carried out a further assessment and then referred it to the HET where evidence was reviewed under the supervision of a Metropolitan Police senior officer. This team did succeed in interviewing Weir who refused either to make a statement or to agree to give evidence in a United Kingdom court. The HET has now apparently reached the conclusion that there is insufficient evidence to proceed further although it does not appear that any formal decision has yet been issued to that effect.

75. Before assessing these investigative measures against the standards of Article 2 of the Convention, the Court notes, first, that the allegations made by Weir were serious, involving security force collusion in systematic targeting of innocent civilians and that they were, *prima facie*, plausible, deriving from a source who had been involved in such incidents and giving concrete details. In the circumstances an obligation arose on the authorities to verify the reliability of the information and whether a full investigation,

with a view to bringing charges against any suspect, could usefully be launched. Investigative measures have been carried out in this case. Their compliance with Article 2 is examined below.

a. Independence

76. The Court would observe that the initial inquiries were carried out by the RUC, which was itself implicated in Weir's allegations as their own officers had allegedly been heavily involved. They cannot be regarded as disclosing the requisite independence (see *Ramsahai*, cited above, §§ 333-341). It was the RUC which carried out the interviews with those named by Weir and which was entrusted with the initial assessment of the credibility of his allegations. This must be regarded as tainting the early stage of the enquiries. The Court recalls that the PSNI took over from the RUC in November 2001. It is satisfied that the PSNI was institutionally distinct from its predecessor even if, necessarily, it inherited officers and resources. It observes that the applicant has not expressed any doubts about the independence of the teams which took over from 2004 (the SCRT and HET). However this does not in the circumstances detract from the fact that for a considerable period the case lay under the responsibility and control of the RUC. In this respect, therefore, there has been a failure to comply with the requirements of Article 2 of the Convention.

b. Accessibility to the family and public scrutiny

77. The Court notes that this aspect of the procedural obligation does not require applicants to have access to police files, or copies of all documents during an ongoing inquiry, or for them to be consulted or informed about every step (*McKerr*, cited above, § 121; *Green v. the United Kingdom*, no. 28079/04, (dec.) 19 May 2005; *Hackett v. the United Kingdom*, cited above). It would appear that the police did make efforts to meet with members of the family from about 2000 onwards (see paragraphs 27, 30, 33 and 36) and there was also correspondence between the police and the applicant's representatives. If only limited information has been passed on, it is not apparent that this flowed from any obstructiveness or obfuscation rather than a lack of any concrete results. The Court is not persuaded in the present case that the applicant has been excluded from the investigative process to such a degree as would infringe the minimum standard under Article 2.

c. Promptness and reasonable expedition

78. The Court considers that the RUC took up inquiries without undue delay. If the matter has dragged on from 1999 to 2007 this has largely been due to the lack of any strong leads and difficulties in interviewing Weir, who remained outside the jurisdiction. It is not apparent that there has been any wilful foot-dragging or prevarication. The Court also takes into account

that a considerable number of other cases were being simultaneously reviewed over this period. While there might nonetheless be a question mark as to the slowness of progress in the early stages when the RUC were in charge, the Court notes its finding of lack of independence above and finds no separate issue arises in the circumstances. No breach of these requirements has been made out.

d. Effectiveness

79. As regards the adequacy of the steps taken, the Court is not persuaded by the applicant that there have been any significant oversights or omissions. The key traceable witnesses have been interviewed, and the available evidence collected and reviewed. The Court is not persuaded that the apparent errors or shortcomings of the RUC identified by the applicant (see paragraph 55) can be regarded as rendering the investigative process inadequate when viewed as a whole.

80. Insofar as the applicant claims that a further prosecution could be brought against McClure and Shields, the Court recalls that the earlier prosecution was dropped and that attempts to challenge the lawfulness of this step failed, *inter alia*, due to the delay by the applicant in raising the matter and the potential unfairness to the two involved individuals who had not been parties to the case. It would note that these two individuals were relatively minor participants in events and considers that the authorities could reasonably take the view that attempting to revive the previous charges, or upgrade them to aiding and abetting, would at this stage be either doomed to failure or be unduly oppressive and thus not assist materially in bringing to account those principally responsible for the death of the applicant's husband.

81. Nor is it apparent that any prosecution against any other person would have any prospect of success given Weir's refusal to make a statement or to give evidence himself. In the circumstances, the Court cannot impugn the authorities for any culpable disregard, discernable bad faith or lack of will (*mutatis mutandis*, *Szula v. the United Kingdom*, cited above).

e. Conclusion

82. The Court finds that the investigative response to Weir's allegations lacked the requisite independence in its early stages. There has been, in that respect alone, a violation of Article 2 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

83. The applicant complained under this provision about the lack of any effective remedy, submitting that the House of Lords decision of 11 March 2004 in the case of *McKerr v. the Secretary of State for Northern Ireland*

removed any domestic remedy for her allegation that the current investigation breached Article 2 of the Convention.

84. In view of its findings above, the Court considers that is not necessary to examine separately the complaint under this Article.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

86. The applicant claimed non-pecuniary damage for the suffering and distress caused by the State’s failure to conduct an effective official investigation into the circumstances of her husband’s death.

87. The Government submitted that even if there was a breach of the procedural obligation it would not be appropriate to apply the same scale as in cases of procedural breaches in the immediate aftermath of death. They considered a finding of a violation should be held in itself to constitute just satisfaction. Alternatively, any award should be modest.

88. The Court has found that the national authorities failed in their obligation to provide a properly independent investigative response in the initial stages following the allegations made by John Weir concerning the death of the applicant’s husband. In the circumstances, it considers that the applicant sustained some non-pecuniary damage which is not sufficiently compensated by the finding of a violation of the Convention. Making an assessment on an equitable basis, the Court awards the sum of EUR 5,000.

B. Costs and expenses

89. The applicant claimed, for legal fees and expenses, 29,239.71 pounds sterling (GBP) for her solicitors’ bill and GBP 29,375 for counsel’s fees, both sums being inclusive of value-added tax (VAT). The latter was a global figure which covered work in this case and the four associated cases.

90. The Government submitted that the overall solicitors’ charging rate (with an uplift of 50% for care and conduct) was excessive, and half the amount was appropriate. The overall hours claimed were also excessive given that similar issues arose in the four other cases considered at the same time; 200 hours for counsel was remarked upon. They proposed no more

than GBP 20,000 for solicitors' costs and GBP 15,000 for counsel in total for all four cases together.

91. The Court recalls that only legal costs and expenses found to have been actually and necessarily incurred and which are reasonable as to quantum are recoverable under Article 41 of the Convention (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, 25 March 1999, § 79, and *Smith and Grady v. the United Kingdom (just satisfaction)*, nos. 33985/96 and 33986/96, § 28, ECHR 2000-IX).

92. Having regard to the complexity of the case and the procedure adopted, the Court awards the applicant EUR 29,000 for solicitors' costs and EUR 22,000 for counsel's fees, which figures are inclusive of VAT.

C. Default interest

93. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 2 of the Convention due to the lack of independence of the RUC during the initial stages of the investigation begun in 1999;
2. *Holds* that it is not necessary to examine separately the applicant's complaint under Article 13 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention the following amounts, to be converted into pounds sterling at the rate applicable at the date of settlement;
 - (i) in respect of non-pecuniary damage, EUR 5,000 (five thousand euros);
 - (ii) in respect of costs and expenses, EUR 51,000 (fifty one thousand euros);
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Josep CASADEVALL
President