

Justice

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Three possibilities

Criminal

Civil

Coroners' Courts

And, of course, Article 2 ECHR

- To whom does it apply?
- When does it apply?
- What does it require?

Criminal prosecutions

- Acts of violence should be investigated by the State
- Police take the lead in investigating; decisions about whether to prosecute are for the PPS/DPP
- NB The standard of proof is “beyond a reasonable doubt”

Criminal prosecutions

The “evidential test” and the problem of time

The “public interest test”

Civil actions

- Civil actions are possible in respect of acts of violence; the standard of proof here is the “balance of probabilities”
- Tort law – trespass to the person. But note evidential problems here too?
- Claims under the Human Rights Act 1998 (not easy to make: see *Van Colle* [2009] 1 AC 225)

Coroners' courts

- Examine any death other than those caused by natural illness or a disease for which treatment has recently been sought (Coroners Act NI 1959, s 7)
- “Inquisitorial” rather than “adversarial”?
- Do not make findings about criminal fault or civil liability
- Problem with verdicts?
- Juries? – *Re Jordan's Application* [2014] NIQB 11

Article 2 ECHR – three scenarios

(i) The state is directly involved in a death

(ii) The state is indirectly involved in a death (collusion)

(ii) The state is not involved in a death, i.e. one “private party” kills another “private party”

Article 2 ECHR – what does it require?

- Investigations that are independent, effective, timely, etc. This requirement has been developed most obviously in the context of scenarios (i) and (ii)
- Investigations are also required in scenario (iii), albeit that the rationale for the state's obligations here are different
- The state must also have an effective system of criminal justice that all investigations can feed into
- Prosecutions should therefore be possible in all three scenarios – though note there is no absolute right to a prosecution/conviction: *Brecknell v UK* (2008) 46 EHRR 42
- Can “amnesties” be compatible with Article 2 ECHR?
- And note the role that other mechanisms can play in discharging the investigative obligation: Coroners; HET; PONI; etc

Thank-you