



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

THIRD SECTION

**CASE OF SHANAGHAN v. THE UNITED KINGDOM**

*(Application no. 37715/97)*

JUDGMENT

STRASBOURG

4 May 2001

**FINAL**

*04/08/2001*

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 Shanaghan v. the United Kingdom,**

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

Mr J.-P. COSTA, *President*,

Mr W. FUHRMANN,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mr. K. JUNGWIERT,

Sir Nicolas BRATZA,

Mr K. TRAJA, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 4 April 2000 and on 11 April 2001,

Delivers the following judgment, which was adopted on the last-mentioned date:

**PROCEDURE**

1. The case originated in an application (no. 37715/97) against the United Kingdom lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Irish national, Mrs Mary Theresa Shanaghan (“the applicant”), on 3 October 1996.

2. The applicant, who had been granted legal aid, was represented by Mr P. Mageean and Mr D. Korff, lawyers practising in the United Kingdom. The United Kingdom Government (“the Government”) were represented by their Agent, Mr C. Whomersley of the Foreign and Commonwealth Office.

3. The applicant alleged that her son Patrick Shanaghan was killed by an unknown gunman in circumstances disclosing collusion by members of the security forces and that there was an inadequate investigation into his death. She invoked Articles 2, 13 and 14 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. Having consulted the parties, the President of the Chamber decided that in the interests of the proper administration of justice, the proceedings in the present case should be conducted simultaneously with those in the cases of *Hugh Jordan v. the United Kingdom*, no. 24746/94, *McKerr v. the*

*United Kingdom*, no. 28883/95 and *Kelly and Others v. the United Kingdom*, no. 30054/96 (see judgments of the same date).

7. Third-party comments were received from the Northern Ireland Human Rights Commission on 23 March 2000, which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 61 § 3).

8. A hearing took place in public in the Human Rights Building on 4 April 2000.

There appeared before the Court:

(a) *for the Government*

Mr C. WHOMERSLEY,	<i>Agent,</i>
Mr R. WEATHERUP, QC,	
Mr P. SALES,	
Mr J. EADIE,	
Mr N. LAVENDER,	<i>Counsel,</i>
Mr O. PAULIN,	
Ms S. McCLELLAND,	
Ms K. PEARSON,	
Mr D. McILROY,	
Ms S. BRODERICK,	
Ms L. McALPINE,	
Ms J. DONNELLY,	
Mr T. TAYLOR,	<i>Advisers;</i>

(b) *for the applicants*

Mr D. KORFF,	
Ms F. DOHERTY,	<i>Counsel,</i>
Mr P. MAGEEAN,	<i>Solicitor.</i>

The Court heard addresses by Mr Weatherup and Mr Korff.

9. By a decision of 4 April 2000, the Chamber declared the application admissible.

10. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

## THE FACTS

11. The facts of the case, in particular concerning the circumstances surrounding the death of Patrick Shanaghan on 12 August 1991, are in dispute between the parties.

### **A. Events prior to 12 August 1991**

12. Patrick Shanaghan was a thirty-year-old Catholic and active member of Sinn Fein when he was killed.

13. The Royal Ulster Constabulary (the RUC) suspected him of being an IRA member and that he was involved in terrorism. Between 15 April 1985 and 19 May 1991 he was arrested and detained pursuant to investigations into acts of terrorism in Northern Ireland. Six of the ten arrests resulted in detention for four or more days. He was never charged with any crime.

14. Patrick Shanaghan gave several written statements to his solicitors alleging physical assaults by RUC officers while in custody, including being punched in the back, punched under the chin with a clenched fist, stabbed in the throat with extended fingers, slapped in the face, having his arms wrenched back and forth repeatedly, being forced to keep a crouched position for hours, having his head struck against a wall, and being hit and kicked in the testicles. The applicant alleged that on several occasions RUC detectives threatened to kill her son during interrogations, for example, by telling him that “Loyalists in Castlereagh know you now and they'll get you”.

15. During his detention in Castlereagh from 9 to 15 April 1986, it was recorded that Patrick Shanaghan complained to a doctor that he had been ill-treated – this referred to the pulling of his hair and the forcing back of his fingers. The doctor reported this to the custody sergeant, who invited Patrick Shanaghan to make a written statement. Patrick Shanaghan declined to reply. He also declined to reply when the custody sergeant asked him if he would be willing to attend a police disciplinary hearing.

16. On 4 April 1989, Patrick Shanaghan instituted proceedings against the Chief Constable of the RUC for alleged assault, battery, trespass to the person, unlawful arrest and unlawful imprisonment in respect of his detention from 9 to 15 April 1986. These were discontinued by him on 3 September 1990.

17. The applicant also claimed that there was an attempt on Patrick Shanaghan's life, on 17 February 1989, but that he managed to escape. The RUC were called but no charges were brought against a suspect for the murder attempt. When Patrick Shanaghan was arrested a year later, in February 1990, he publicly stated that RUC officers repeatedly mentioned this murder attempt during interrogation and one officer claimed, “We won't miss next time”.

18. The RUC warned Patrick Shanaghan twice that he was under potential threat from loyalist paramilitary groups. On 10 December 1990, a RUC detective informed him that security force documentation containing information about him, including a photographic montage, had accidentally fallen out of the back of an army vehicle. He was advised to take measures for his personal safety as there was a risk that the material had come into the hands of loyalist paramilitaries. A letter dated 11 January 1991 was sent to

the RUC by Patrick Shanaghan's solicitors who requested, as a matter of urgency in order to assess the risk to his life, information relating to the documentation, including the type of information lost, dates when the information was first recorded, the exact date and under what circumstances it went missing, copies of photographs and addresses included in the files, and information in relation to the social movement and employment of persons involved in handling the files. On 29 July 1994, over three and a half years later, the RUC responded to this letter by stating that the police investigation was concluded and that the document had been accidentally lost by the Army.

On 27 April 1991, Sergeant Norden of the RUC called at Mr Shanaghan's home and informed him that he had received information to suggest that he was being targeted by loyalists.

19. The Government gave further details about the loss of the photographs. They stated that on 10 December 1990 during the journey of an army patrol vehicle from Rockwood Base to Hump Vehicle Checkpoint near Strabane in County Tyrone, the rear doors of the vehicle fell open and a helmet, armoured vest and combat suit belonging to one of the drivers fell from the vehicle. The jacket of the combat suit contained three terrorist recognition photographic montages comprising a total of 38 photographs, including some of Patrick Shanaghan. Upon arrival, it was discovered that the said equipment was missing and a search carried out of the route, which resulted in the recovery of the helmet. The officer responsible for the missing equipment was cautioned and interviewed by the Special Investigation Branch about the loss of the photographic montages. He was subsequently reported and disciplinary proceedings instituted against him. The officer attended a disciplinary interview with his Brigade Commander. No formal disciplinary sanction was recorded as imposed, although the Government stated that it was possible that he received a formal rebuke which would not have been recorded. The RUC informed Patrick Shanaghan promptly of the loss of the photographs. There was no evidence who, if anyone, recovered the photographs or that they played any later role in events.

20. Patrick Shanaghan was stopped and questioned by RUC and UDR officers on a daily basis. The Shanaghan family home, which the applicant shared with her son, was searched sixteen times between 1985 and 1991. No illegal material was ever found. According to the applicant, sometimes the RUC would not even enter certain rooms indicating that the search was not a concerted effort to locate and seize illegal material but was carried out solely to harass the family.

## **B. The killing of Patrick Shanaghan**

21. At about 8.30 a.m. on 12 August 1991, Patrick Shanaghan was driving his van to his job when he was shot dead by a masked gunman. About twenty shots had been fired into the van as it passed down the Learmore Road in the direction of Castledearg.

The UFF (Ulster Freedom Fighters – a loyalist organisation) later claimed responsibility for the murder in the local press.

22. RUC officers arrived at the scene shortly after the shooting was reported. A scene of crimes officer attended the scene and recovered bullet casings and glass samples. The scene was photographed, including the tyre impressions. These items were analysed by a member of the Northern Ireland Forensic Science Laboratory. The applicant alleged that the behaviour of the police at the scene was not consonant with any concern for her son's life or proper police procedures, claiming that no ambulance was called to the scene and that the police prevented a priest approaching to give the last rites. The Government stated that no ambulance was called as it was apparent that an ambulance could not have assisted Patrick Shanaghan. When the priest arrived, he was initially asked to go to Incident Control Point before approaching the car, to enable the officers to make the necessary arrangements for the preservation of the evidence at the scene.

23. At 2.30 p.m. on the same day, a *post mortem* examination disclosed that Patrick Shanaghan had died from a bullet wound to the chest.

24. The police attempted to identify potential eye-witnesses by speaking to all those present at the scene, conducting house to house enquiries, setting up vehicle check points and making press appeals for witnesses to come forward. They also interviewed the police officers who had been attending a road traffic accident to which personnel had been diverted shortly before the shooting occurred. The Government stated that there had been nothing suspicious in the conduct of the police in this respect. Three cars had been tasked to attend the road traffic accident at the village of Killen, it being normal practice for more than one vehicle to respond due to the risk of attacks on the security forces by the Provisional IRA.

25. Shortly after the shooting, the RUC discovered a car which they believed had been used by the people involved in the shooting. However, a forensic and fingerprint examination disclosed no evidence to connect it with any person suspected of the murder. Enquiries showed that the car had been recently bought for cash by unknown persons from a private vendor.

26. As later revealed in the inquest, the investigating police officer believed that he knew the identity of the persons involved in the killing but had no evidence to prove it. Several suspects had been arrested and interviewed but no evidence of admission had been obtained from them.

27. On 26 January 1995, the applicant accepted the sum of 25,520 pounds sterling from the Criminal Injuries Compensation Scheme in respect of the death of her son.

### **C. The inquest**

28. An inquest into the killing was opened on 26 March 1996, over four and a half years after the murder. The RUC file had been transmitted to the Coroner on 14 January 1994. The delay in their inquiries resulted, according to the Government, from the extent of other criminal activities requiring police attention in the Castlederg area at that time. The inquest was further delayed to February 1996 pending the completion of further inquiries required by the Coroner.

29. No explanation was given to the Shanaghan family to account for the delay. During this period, the family had not known whether any murder investigation had been conducted by the police and were not provided with any indication as to the nature of the RUC's findings, if any, as to how the applicant's son had died.

30. The inquest was heard over six days, between 26 March and 20 June 1996. It was presided over by the Coroner who sat with a jury and was assisted by a lawyer. The RUC were represented by counsel and a solicitor.

31. During the inquest, the solicitor acting for the family of Patrick Shanaghan sought to introduce evidence in support of allegations that the RUC had prior knowledge that he was to be murdered, that the RUC had made threats against him and that the police investigation had been inadequate. This consisted of evidence from a forensic science consultant who criticised the RUC for not taking a plaster-cast of car tyre impressions found at the scene of the crime, and the oral testimony of D.C. who claimed to have been told by Patrick Shanaghan of threats to his life made by RUC officers and who had heard such threats made by officers when he himself was in custody. When the Coroner accepted that the evidence should be admitted, the RUC Chief Constable applied for judicial review of those decisions. On 18 June 1996, the High Court quashed the Coroner's decision, holding that:

“... it is now well-settled in the jurisprudence on this topic that a Coroner's function is not, and one may say emphatically not, to conduct a wide-ranging inquiry into the broad circumstances in which a deceased has met his death. It is now clearly established by the decisions to which I have referred that the word “how” should receive the connotation “by what means” and it seems to me ... that it cannot be the case that the evidence in relation to the calibre of the police investigation - the quality of the police investigation – touches upon the means by which Mr. Shanaghan was killed. Rather it is directly relevant to the possible criticism of the standard of the police investigation and that ... goes well beyond the scope of the inquiry of the Coroner. By the same token I consider that the evidence ... from Mr [D.C.] ... is not germane to the question which the Coroner and the jury must decide and that is by

what means the deceased met his death. Evidence has already been given without apparent challenge that the deceased was the target of loyalist terrorists before he was murdered. That evidence has not been disputed and is no way controversial and in those circumstances it appears to me that the only issue which Mr [D.C.]'s evidence could shed light upon is whether these threats were uttered by police officers. That, for the reasons I have already referred to, is not a matter for the Coroner's inquest to enquire into ...”

32. The Coroner refused to admit in evidence statements made by Patrick Shanaghan to his solicitors. The applicant stated that her original statement was edited by the RUC to exclude references to police collusion when it appeared in a Coroner's deposition.

33. On 20 June 1996, the Coroner's Inquest issued the verdict that Patrick Shanaghan had died on 12 August 1991 on Learmore Road in Castlederg from a bullet wound to the chest.

#### **D. Police complaints procedure**

34. On 14 July 1996, the applicant made a complaint about the conduct of the RUC at the scene of the shooting in denying Dr Stewart access to the body and in failing to call an ambulance. This complaint was investigated by an assistant chief constable, under the supervision of the Independent Commission for Police Complaints (the ICPC), as a result of which the Inspector concerned was given advice which was recorded in the Divisional Discipline Book.

35. A Superintendent of the Complaints and Discipline Section of the RUC made attempts to investigate the allegations made by D.C. that, during an interview with police, RUC officers had made threats against Patrick Shanaghan (see paragraph 31 above). By letter of 2 October 1996, D.C.'s solicitors replied that their client would not make a statement concerning Patrick Shanaghan as none had been sought at the time of the incident. Attempts were made to take statements from three other witnesses mentioned at the inquest, only one of whom agreed. The RUC officers who had interviewed D.C. on 14 and 15 May 1991 were themselves interviewed.

36. On 26 June 1997, a copy of the unofficial inquiry report was sent by the applicant's daughter to the Secretary of State for Northern Ireland (see below, concerning the unofficial inquiry). She complained of the failure to make a plaster cast of the tyre tracks at the scene and that Constable D. had said that he had been sent to the scene of the shooting at 8 a.m. before it had taken place. As a result, the RUC conducted further enquiries under the supervision of the ICPC and the RUC subsequently reported to the Director of Public Prosecutions (the DPP).

37. On 16 July 1997, the ICPC wrote to the applicant's daughter and son-in-law informing them that the ICPC was satisfied by the police investigation which had taken place.

38. On 30 November 1998, the ICPC wrote to the applicant's daughter to inform her that Constable D. would be spoken to about the error which he had made as to the time at which he was detailed to the scene but that no other disciplinary proceedings would be taken in respect of the matters complained of on 26 June 1997. They stated that they were satisfied with the action taken.

39. In January 1999, having considered the results of the RUC's further enquiries in the light of the unofficial enquiry, the DPP decided that there should be no prosecution in relation to the shooting.

### **E. Unofficial inquiry**

40. A community inquiry into the circumstances surrounding the murder was organised by family and friends after the conclusion of the inquest in the hope that the whole truth about the murder could be revealed. The inquiry, conducted by the Castlederg-Aghyaran Justice Group and chaired by a retired United States Judge, Andrew Somers, heard thirteen witnesses over the period from 17 to 19 September 1996. The witnesses included family, local residents and friends of the deceased. Evidence was given alleging that police officers had frequently stopped Patrick Shanaghan in the street and issued threats, that the police warned people to keep away from him or they would end up being shot, that police officers made comments to persons in custody before the incident that Patrick Shanaghan would be targeted and, after the incident, claimed that they had had him killed. Two witnesses claimed that they had seen Patrick Shanaghan still moving after the shooting had occurred. The Judge concluded that the applicant had been murdered by the British Government and, more specifically, with the collusion of the RUC.

### **F. Civil proceedings**

41. On 22 July 1994, the applicant issued a writ against the Chief Constable of the RUC and, by amendment of 15 September 1994, against the Ministry of Defence also. The writ was served on 17 July 1995. In the proceedings, the applicant claimed damages for loss and damage sustained by her and the estate of her son by reason, *inter alia*, of negligence, breach of confidence and misfeasance in public office relating to the storing, handling and use of information.

On 19 July 1995, the defendants gave notice of intention to defend the proceedings. No further steps have been taken.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Inquests

#### 1. Statutory provisions and rules

42. The conduct of inquests in Northern Ireland is governed by the Coroners Act (Northern Ireland) 1959 and the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963. These provide the framework for a procedure within which deaths by violence or in suspicious circumstances are notified to the Coroner, who then has the power to hold an inquest, with or without a jury, for the purpose of ascertaining, with the assistance as appropriate of the evidence of witnesses and reports, *inter alia*, of *post mortem* and forensic examinations, who the deceased was and how, when and where he died.

43. Pursuant to the Coroners Act, every medical practitioner, registrar of deaths or funeral undertaker who has reason to believe a person died directly or indirectly by violence is under an obligation to inform the Coroner (section 7). Every medical practitioner who performs a *post mortem* examination has to notify the Coroner of the result in writing (section 29). Whenever a dead body is found, or an unexplained death or death in suspicious circumstances occurs, the police of that district are required to give notice to the Coroner (section 8).

44. Rules 12 and 13 of the Coroners Rules give power to the Coroner to adjourn an inquest where a person may be or has been charged with murder or other specified criminal offences in relation to the deceased.

45. Where the Coroner decides to hold an inquest with a jury, persons are called from the Jury List, compiled by random computer selection from the electoral register for the district on the same basis as in criminal trials.

46. The matters in issue at an inquest are governed by Rules 15 and 16 of the Coroners Rules:

“15. The proceedings and evidence at an inquest shall be directed solely to ascertaining the following matters, namely: –

- (a) who the deceased was;
- (b) how, when and where the deceased came by his death;
- (c) the particulars for the time being required by the Births and Deaths Registration (Northern Ireland) Order 1976 to be registered concerning his death.

16. Neither the coroner nor the jury shall express any opinion on questions of criminal or civil liability or on any matters other than those referred to in the last foregoing Rule.”

47. The forms of verdict used in Northern Ireland accord with this recommendation, recording the name and other particulars of the deceased, a statement of the cause of death (e.g. bullet wounds) and findings as to when and where the deceased met his death. In England and Wales, the form of verdict appended to the English Coroners Rules contains a section marked “conclusions of the jury/coroner as to the death” in which conclusions such as “lawfully killed” or “killed unlawfully” are inserted. These findings involve expressing an opinion on criminal liability in that they involve a finding as to whether the death resulted from a criminal act, but no finding is made that any identified person was criminally liable. The jury in England and Wales may also append recommendations to their verdict.

48. However, in Northern Ireland, the Coroner is under a duty (section 6(2) of the Prosecution of Offences Order (Northern Ireland) 1972) to furnish a written report to the DPP where the circumstances of any death appear to disclose that a criminal offence may have been committed.

49. Until recently, legal aid was not available for inquests as they did not involve the determination of civil liabilities or criminal charges. Legislation which would have provided for legal aid at the hearing of inquests (the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, Schedule 1 paragraph 5) has not been brought into force. However, on 25 July 2000, the Lord Chancellor announced the establishment of an Extra-Statutory Ex Gratia Scheme to make public funding available for representation for proceedings before Coroners in exceptional inquests in Northern Ireland. In March 2001, he published for consultation the criteria to be used in deciding whether applications for representation at inquests should receive public funding. This included *inter alia* consideration of financial eligibility, whether an effective investigation by the State was needed and whether the inquest was the only way to conduct it, whether the applicant required representation to be able to participate effectively in the inquest and whether the applicant had a sufficiently close relationship to the deceased.

50. The Coroner enjoys the power to summon witnesses who he thinks it necessary to attend the inquest (section 17 of the Coroners Act) and he may allow any interested person to examine a witness (Rule 7). In both England and Wales and Northern Ireland, a witness is entitled to rely on the privilege against self-incrimination. In Northern Ireland, this privilege is reinforced by Rule 9(2) which provides that a person suspected of causing the death may not be compelled to give evidence at the inquest.

51. In relation to both documentary evidence and the oral evidence of witnesses, inquests, like criminal trials, are subject to the law of public interest immunity, which recognises and gives effect to the public interest, such as national security, in the non-disclosure of certain information or certain documents or classes of document. A claim of public interest immunity must be supported by a certificate.

## 2. *The scope of inquests*

52. Rules 15 and 16 (see above) follow from the recommendation of the Brodrick Committee on Death Certification and Coroners:

“... the function of an inquest should be simply to seek out and record as many of the facts concerning the death as the public interest requires, without deducing from those facts any determination of blame... In many cases, perhaps the majority, the facts themselves will demonstrate quite clearly whether anyone bears any responsibility for the death; there is a difference between a form of proceeding which affords to others the opportunity to judge an issue and one which appears to judge the issue itself.”

53. Domestic courts have made, *inter alia*, the following comments:

“... It is noteworthy that the task is not to ascertain how the deceased died, which might raise general and far-reaching issues, but 'how...the deceased came by his death', a far more limited question directed to the means by which the deceased came by his death.

... [previous judgments] make it clear that when the Brodrick Committee stated that one of the purposes of an inquest is 'To allay rumours or suspicions' this purpose should be confined to allaying rumours and suspicions of how the deceased came by his death and not to allaying rumours or suspicions about the broad circumstances in which the deceased came by his death.” (Sir Thomas Bingham, MR, Court of Appeal, *R. v the Coroner for North Humberside and Scunthorpe ex parte Roy Jamieson*, April 1994, unreported)

“The cases establish that although the word 'how' is to be widely interpreted, it means 'by what means' rather than in what broad circumstances ... In short, the inquiry must focus on matters directly causative of death and must, indeed, be confined to those matters alone ...” (Simon Brown LJ, Court of Appeal, *R. v. Coroner for Western District of East Sussex, ex parte Homberg and others*, (1994) 158 JP 357)

“... it should not be forgotten that an inquest is a fact finding exercise and not a method of apportioning guilt. The procedure and rules of evidence which are suitable for one are unsuitable for the other. In an inquest it should never be forgotten that there are no parties, no indictment, there is no prosecution, there is no defence, there is no trial, simply an attempt to establish the facts. It is an inquisitorial process, a process of investigation quite unlike a trial...”

It is well recognised that a purpose of an inquest is that rumour may be allayed. But that does not mean it is the duty of the Coroner to investigate at an inquest every rumour or allegation that may be brought to his attention. It is ... his duty to discharge his statutory role - the scope of his enquiry must not be allowed to drift into the uncharted seas of rumour and allegation. He will proceed safely and properly if he investigates the facts which it appears are relevant to the statutory issues before him.” (Lord Lane, Court of Appeal, *R. v. South London Coroner ex parte Thompson* (1982) 126 SJ 625)

## 3. *Disclosure of documents*

54. There was no requirement prior to 1999 for the families at inquests to receive copies of the written statements or documents submitted to the

Coroner during the inquest. Coroners generally adopted the practice of disclosing the statements or documents during the inquest proceedings, as the relevant witness came forward to give evidence.

55. Following the recommendation of the Stephen Lawrence Inquiry, Home Office Circular No. 20/99 (concerning deaths in custody or deaths resulting from the actions of a police officer in purported execution of his duty) advised Chief Constables of police forces in England and Wales to make arrangements in such cases for the pre-inquest disclosure of documentary evidence to interested parties. This was to “help provide reassurance to the family of the deceased and other interested persons that a full and open police investigation has been conducted, and that they and their legal representatives will not be disadvantaged at the inquest”. Such disclosure was recommended to take place 28 days before the inquest.

56. Paragraph 7 of the Circular stated:

“The courts have established that statements taken by the police and other documentary material produced by the police during the investigation of a death in police custody are the property of the force commissioning the investigation. The Coroner has no power to order the pre-inquest disclosure of such material... Disclosure will therefore be on a voluntary basis.”

Paragraph 9 listed some kinds of material which require particular consideration before being disclosed, for example:

- where disclosure of documents might have a prejudicial effect on possible subsequent proceedings (criminal, civil or disciplinary);
- where the material concerns sensitive or personal information about the deceased or unsubstantiated allegations which might cause distress to the family; and
- personal information about third parties not material to the inquest.

Paragraph 11 envisaged that there would be non-disclosure of the investigating officer's report although it might be possible to disclose it in those cases which the Chief Constable considered appropriate.

## **B. Police Complaints Procedures**

57. The police complaints procedure was governed at the relevant time by the Police (Northern Ireland) Order 1987 (the 1987 Order). This replaced the Police Complaints Board, which had been set up in 1977, by the Independent Commission for Police Complaints (the ICPC). The ICPC has been replaced from 1 October 2000 with the Police Ombudsman for Northern Ireland appointed under the Police (Northern Ireland) Act 1998.

58. The ICPC was an independent body, consisting of a chairman, two deputy chairmen and at least four other members. Where a complaint against the police was being investigated by a police officer or where the Chief Constable or Secretary of State considered that a criminal offence

might have been committed by a police officer, the case was referred to the ICPC.

59. The ICPC was required under Article 9(1)(a) of the 1987 Order to supervise the investigation of any complaint alleging that the conduct of a RUC officer had resulted in death or serious injury. Its approval was required of the appointment of the police officer to conduct the investigation and it could require the investigating officer to be replaced (Article 9(5)(b)). A report by the investigating officer was submitted to the ICPC concerning supervised investigations at the same time as to the Chief Constable. Pursuant to Article 9(8) of the 1987 Order, the ICPC issued a statement whether the investigation had been conducted to its satisfaction and, if not, specifying any respect in which it had not been so conducted.

60. The Chief Constable was required under Article 10 of the 1987 Order to determine whether the report indicated that a criminal offence had been committed by a member of the police force. If he so decided and considered that the officer ought to be charged, he was required to send a copy of the report to the DPP. If the DPP decided not to prefer criminal charges, the Chief Constable was required to send a memorandum to the ICPC indicating whether he intended to bring disciplinary proceedings against the officer (Article 10(5)) save where disciplinary proceedings had been brought and the police officer had admitted the charges (Article 11(1)). Where the Chief Constable considered that a criminal offence had been committed but that the offence was not such that the police officer should be charged or where he considered that no criminal offence had been committed, he was required to send a memorandum indicating whether he intended to bring disciplinary charges and, if not, his reasons for not proposing to do so (Article 11(6) and (7)).

61. If the ICPC considered that a police officer subject to investigation ought to be charged with a criminal offence, it could direct the Chief Constable to send the DPP a copy of the report on that investigation (Article 12(2)). It could also recommend or direct the Chief Constable to prefer such disciplinary charges as the ICPC specified (Article 13(1) and (3)).

#### **D. The Director of Public Prosecutions**

62. The Director of Public Prosecutions (the DPP), appointed pursuant to the Prosecution of Offences (Northern Ireland) 1972 (the 1972 Order) is an independent officer with at least 10 years' experience of the practice of law in Northern Ireland who is appointed by the Attorney General and who holds office until retirement, subject only to dismissal for misconduct. His duties under Article 5 of the 1972 Order are *inter alia*:

“(a) to consider, or cause to be considered, with a view to his initiating or continuing in Northern Ireland any criminal proceedings or the bringing of any appeal or other proceedings in or in connection with any criminal cause or matter in Northern

Ireland, any facts or information brought to his notice, whether by the Chief Constable acting in pursuance of Article 6(3) of this Order or by the Attorney General or by any other authority or person;

(b) to examine or cause to be examined all documents that are required under Article 6 of this Order to be transmitted or furnished to him and where it appears to him to be necessary or appropriate to do so to cause any matter arising thereon to be further investigated;

(c) where he thinks proper to initiate, undertake and carry on, on behalf of the Crown, proceedings for indictable offences and for such summary offences or classes of summary offences as he considers should be dealt with by him.”

63. Article 6 of the 1972 Order requires *inter alia* Coroners and the Chief Constable of the RUC to provide information to the DPP as follows:

“(2) Where the circumstances of any death investigated or being investigated by a coroner appear to him to disclose that a criminal offence may have been committed he shall as soon as practicable furnish to the [DPP] a written report of those circumstances.

(3) It shall be the duty of the Chief Constable, from time to time, to furnish to the [DPP] facts and information with respect to -

(a) indictable offences [such as murder] alleged to have been committed against the law of Northern Ireland; ...

and at the request of the [DPP], to ascertain and furnish to the [DPP] information regarding any matter which may appear to the [DPP] to require investigation on the ground that it may involve an offence against the law of Northern Ireland or information which may appear to the [DPP] to be necessary for the discharge of his functions under this Order.”

64. According to the Government's observations submitted on 18 June 1998, it had been the practice of successive DPPs to refrain from giving reasons for decisions not to institute or proceed with criminal prosecutions other than in the most general terms. This practice was based upon the consideration that:

(1) if reason were given in one or more cases, they would be required to be given in all. Otherwise, erroneous conclusions might be drawn in relation to those cases where reasons were refused, involving either unjust implications regarding the guilt of some individuals or suspicions of malpractice;

(2) the reason not to prosecute might often be the unavailability of a particular item of evidence essential to establish the case (e.g. sudden death or flight of a witness or intimidation). To indicate such a factor as the sole reason for not prosecuting might lead to assumptions of guilt in the public estimation;

(3) the publication of the reasons might cause pain or damage to persons other than the suspect (e.g. the assessment of the credibility or mental condition of the victim or other witnesses);

(4) in a substantial category of cases decisions not to prosecute were based on the DPP's assessment of the public interest. Where the sole reason not to prosecute was the age, mental or physical health of the suspect, publication would not be appropriate and could lead to unjust implications;

(5) there might be considerations of national security which affected the safety of individuals (e.g. where no prosecution could safely or fairly be brought without disclosing information which would be of assistance to terrorist organisations, would impair the effectiveness of the counter-terrorist operations of the security forces or endanger the lives of such personnel and their families or informants).

65. Decisions of the DPP not to prosecute have been subject to applications for judicial review in the High Court.

In *R. v. DPP ex parte C* (1995) 1 CAR, p. 141, Lord Justice Kennedy held, concerning a decision of the DPP not to prosecute in an alleged case of buggery:

“From all of those decisions it seems to me that in the context of the present case this court can be persuaded to act if and only if it is demonstrated to us that the Director of Public Prosecutions acting through the Crown Prosecution Service arrived at the decision not to prosecute:

(1) because of some unlawful policy (such as the hypothetical decision in Blackburn not to prosecute where the value of goods stolen was below £100);

(2) because the Director of Public Prosecutions failed to act in accordance with his own settled policy as set out in the code; or

(3) because the decision was perverse. It was a decision at which no reasonable prosecutor could have arrived.”

66. In the case of *R. v. the DPP and Others ex parte Timothy Jones* the Divisional Court on 22 March 2000 quashed a decision not to prosecute for alleged gross negligence causing a death in dock unloading on the basis that the reasons given by the DPP – that the evidence was not sufficient to provide a realistic prospect of satisfying a jury – required further explanation.

67. *R v. DPP ex parte Patricia Manning and Elizabeth Manning* (decision of the Divisional Court of 17 May 2000) concerned the DPP's decision not to prosecute any prison officer for manslaughter in respect of the death of a prisoner, although the inquest jury had reached a verdict of unlawful death – there was evidence that prison officers had used a neck lock which was forbidden and dangerous. The DPP reviewing the case still

concluded that the Crown would be unable to establish manslaughter from gross negligence. The Lord Chief Justice noted:

“Authority makes clear that a decision by the Director not to prosecute is susceptible to judicial review: see, for example, R. v. Director of Public Prosecutions, ex parte C [1995] 1 Cr. App. R. 136. But, as the decided cases also make clear, the power of review is one to be sparingly exercised. The reasons for this are clear. The primary decision to prosecute or not to prosecute is entrusted by Parliament to the Director as head of an independent, professional prosecuting service, answerable to the Attorney General in his role as guardian of the public interest, and to no-one else. It makes no difference that in practice the decision will ordinarily be taken by a senior member of the CPS, as it was here, and not by the Director personally. In any borderline case the decision may be one of acute difficulty, since while a defendant whom a jury would be likely to convict should properly be brought to justice and tried, a defendant whom a jury would be likely to acquit should not be subjected to the trauma inherent in a criminal trial. If, in a case such as the present, the Director's provisional decision is not to prosecute, that decision will be subject to review by Senior Treasury Counsel who will exercise an independent professional judgment. The Director and his officials (and Senior Treasury Counsel when consulted) will bring to their task of deciding whether to prosecute an experience and expertise which most courts called upon to review their decisions could not match. In most cases the decision will turn not on an analysis of the relevant legal principles but on the exercise of an informed judgment of how a case against a particular defendant, if brought, would be likely to fare in the context of a criminal trial before (in a serious case such as this) a jury. This exercise of judgment involves an assessment of the strength, by the end of the trial, of the evidence against the defendant and of the likely defences. It will often be impossible to stigmatise a judgment on such matters as wrong even if one disagrees with it. So the courts will not easily find that a decision not to prosecute is bad in law, on which basis alone the court is entitled to interfere. At the same time, the standard of review should not be set too high, since judicial review is the only means by which the citizen can seek redress against a decision not to prosecute and if the test were too exacting an effective remedy would be denied.”

As regards whether the DPP had a duty to give reasons, the Lord Chief Justice said:

“It is not contended that the Director is subject to an obligation to give reasons in every case in which he decides not to prosecute. Even in the small and very narrowly defined cases which meet Mr Blake's conditions set out above, we do not understand domestic law or the jurisprudence of the European Court of Human Rights to impose an absolute and unqualified obligation to give reasons for a decision not to prosecute. But the right to life is the most fundamental of all human rights. It is put at the forefront of the Convention. The power to derogate from it is very limited. The death of a person in the custody of the State must always arouse concern, as recognised by section 8(1)(c), (3)(b) and (6) of the Coroner's Act 1988, and if the death resulted from violence inflicted by agents of the State that concern must be profound. The holding of an inquest in public by an independent judicial official, the coroner, in which interested parties are able to participate must in our view be regarded as a full and effective inquiry (see McCann v. United Kingdom [1996] 21 EHRR 97, paragraphs 159 to 164). Where such an inquest following a proper direction to the jury culminates in a lawful verdict of unlawful killing implicating a person who, although not named in the verdict, is clearly identified, who is living and whose whereabouts are known, the ordinary expectation would naturally be that a prosecution would follow. In the absence of compelling grounds for not giving reasons, we would expect the Director

to give reasons in such a case: to meet the reasonable expectation of interested parties that either a prosecution would follow or a reasonable explanation for not prosecuting be given, to vindicate the Director's decision by showing that solid grounds exist for what might otherwise appear to be a surprising or even inexplicable decision and to meet the European Court's expectation that if a prosecution is not to follow a plausible explanation will be given. We would be very surprised if such a general practice were not welcome to Members of Parliament whose constituents have died in such circumstances. We readily accept that such reasons would have to be drawn with care and skill so as to respect third party and public interests and avoid undue prejudice to those who would have no opportunity to defend themselves. We also accept that time and skill would be needed to prepare a summary which was reasonably brief but did not distort the true basis of the decision. But the number of cases which meet Mr Blake's conditions is very small (we were told that since 1981, including deaths in police custody, there have been seven such cases), and the time and expense involved could scarcely be greater than that involved in resisting an application for judicial review. In any event it would seem to be wrong in principle to require the citizen to make a complaint of unlawfulness against the Director in order to obtain a response which good administrative practice would in the ordinary course require."

On this basis, the court reviewed whether the reasons given by the DPP in that case were in accordance with the Code for Crown Prosecutors and capable of supporting a decision not to prosecute. It found that the decision had failed to take relevant matters into account and that this vitiated the decision not to prosecute. The decision was quashed and the DPP was required to reconsider his decision whether or not to prosecute.

68. *In the Matter of an Application by David Adams for Judicial Review*, the High Court in Northern Ireland on 7 June 2000 considered the applicant's claim that the DPP had failed to give adequate and intelligible reasons for his decision not to prosecute any police officer concerned in the arrest during which he had suffered serious injuries and for which in civil proceedings he had obtained an award of damages against the police. It noted that there was no statutory obligation on the DPP under the 1972 Order to give reasons and considered that not duty to give reasons could be implied. The fact that the DPP in England and Wales had in a number of cases furnished detailed reasons, whether from increasing concern for transparency or in the interests of the victim's families, was a matter for his discretion. It concluded on the basis of authorities that only in exceptional cases such as the Manning case (paragraph 67 above) would the DPP be required to furnish reasons to a victim for failing to prosecute and that review should be limited to where the principles identified by Lord Justice Kennedy (paragraph 65 above) were infringed. Notwithstanding the findings in the civil case, they were not persuaded that the DPP had acted in such an aberrant, inexplicable or irrational manner that the case cried out for reasons to be furnished as to why he had so acted.

### III. RELEVANT INTERNATIONAL LAW AND PRACTICE

#### A. The United Nations

69. The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN Force and Firearms Principles) were adopted on 7 September 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

70. Paragraph 9 of the UN Force and Firearms Principles provides, *inter alia*, that the “intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life”.

71. Other relevant provisions read as follows:

##### Paragraph 10

“... law enforcement officials shall identify themselves as such and shall give a clear warning of their intent to use firearms, with sufficient time for the warnings to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.”

##### Paragraph 22

“... Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.”

##### Paragraph 23

“Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependants accordingly.”

72. Paragraph 9 of the United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted on 24 May 1989 by the Economic and Social Council Resolution 1989/65, (UN Principles on Extra-Legal Executions) provides, *inter alia*, that:

“There shall be a thorough, prompt and impartial investigation of all suspected cases of extra legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances ...”

73. Paragraphs 10 to 17 of the UN Principles on Extra-Legal Executions contain a series of detailed requirements that should be observed by investigative procedures into such deaths.

Paragraph 10 states, *inter alia*:

“The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the inquiry ... shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify ...”

Paragraph 11 specifies:

“In cases in which the established investigative procedures are inadequate because of a lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognised impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided in these principles.”

Paragraph 16 provides, *inter alia*:

“Families of the deceased and their legal representatives shall be informed of, and have access to, any hearing as well as all information relevant to the investigation and shall be entitled to present other evidence ...”

Paragraph 17 provides, *inter alia*:

“A written report shall be made within a reasonable time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures, methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law ...”

74. The “Minnesota Protocol” (Model Protocol for a legal investigation of extra-legal, arbitrary and summary executions, contained in the UN Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions) provides, *inter alia*, in section B on the “Purposes of an inquiry”:

“As set out in paragraph 9 of the Principles, the broad purpose of an inquiry is to discover the truth about the events leading to the suspicious death of a victim. To fulfil that purpose, those conducting the inquiry shall, at a minimum, seek:

- (a) to identify the victim;
- (b) to recover and preserve evidentiary material related to the death to aid in any potential prosecution of those responsible;
- (c) to identify possible witnesses and obtain statements from them concerning the death;
- (d) to determine the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death;
- (e) to distinguish between natural death, accidental death, suicide and homicide;

(f) to identify and apprehend the person(s) involved in the death;

(g) to bring the suspected perpetrator(s) before a competent court established by law.”

In section D, it is stated that “In cases where government involvement is suspected, an objective and impartial investigation may not be possible unless a special commission of inquiry is established...”.

## **B. The European Committee for the Prevention of Torture**

75. In the report on its visit to the United Kingdom and the Isle of Man from 8 to 17 September 1999, published on 13 January 2000, the European Committee for the Prevention of Torture (the CPT) reviewed the system of preferring criminal and disciplinary charges against police officers accused of ill-treating persons. It commented, *inter alia*, on the statistically few criminal prosecutions and disciplinary proceedings which were brought, and identified certain aspects of the procedures which cast doubt on their effectiveness:

The chief officers appointed officers from the same force to conduct the investigations, save in exceptional cases where they appointed an officer from another force, and the majority of investigations were unsupervised by the Police Complaints Authority.

It stated at paragraph 55:

“As already indicated, the CPT itself entertains reservations about whether the PCA [the Police Complaints Authority], even equipped with the enhanced powers which have been proposed, will be capable of persuading public opinion that complaints against the police are vigorously investigated. **In the view of the CPT, the creation of a fully-fledged independent investigating agency would be a most welcome development. Such a body should certainly, like the PCA, have the power to direct that disciplinary proceedings be instigated against police officers. Further, in the interests of bolstering public confidence, it might also be thought appropriate that such a body be invested with the power to remit a case directly to the CPS for consideration of whether or not criminal proceedings should be brought.**

In any event, **the CPT recommends that the role of the 'chief officer' within the existing system be reviewed.** To take the example of one Metropolitan Police officer to whom certain of the chief officer's functions have been delegated (the Director of the CIB [Criminal Investigations Bureau]), he is currently expected to: seek dispensations from the PCA; appoint investigating police officers and assume managerial responsibility for their work; determine whether an investigating officer's report indicates that a criminal offence may have been committed; decide whether to bring disciplinary proceedings against a police officer on the basis of an investigating officer's report, and liaise with the PCA on this question; determine which disciplinary charges should be brought against an officer who is to face charges; in civil cases, negotiate settlement strategies and authorise payments into court. It is doubtful whether it is realistic to expect any single official to be able to perform all of these functions in an entirely independent and impartial way.

57. ...Reference should also be made to the high degree of public interest in CPS [Crown Prosecution Service] decisions regarding the prosecution of police officers (especially in cases involving allegations of serious misconduct). Confidence about the manner in which such decisions are reached would certainly be strengthened were the CPS to be obliged to give detailed reasons in cases where it was decided that no criminal proceedings should be brought. The CPT recommends that such a requirement be introduced.”

## THE LAW

### I. ALLEGED VIOLATIONS OF ARTICLE 2 OF THE CONVENTION

76. The applicant submitted that her son Patrick Shanaghan had been killed with the collusion of the security forces and that there had been no effective investigation into the circumstances of his death. She invoked 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 submissions made to the Court

##### *1. The applicant*

77. The applicant submitted that the death of her son was the result of collusion by the security forces with loyalist paramilitaries and that he was the victim of a widespread pattern of killings whereby persons perceived as IRA members or sympathisers were targeted with the knowledge and involvement of the authorities. Strong suspicions about such activities led to a special enquiry being carried out by Mr John Stevens. Though his report had not been made public, Mr Stevens concluded that he had found a degree of collusion and that he had drawn firm conclusions that members of the

security forces had passed on information to paramilitaries. In that context, she pointed out that international and domestic NGOs (Amnesty International, the Human Rights Watch and the British Irish Rights watch), as well as the UN Special Rapporteur on the Independence of Judges and Lawyers, had expressed concern, in particular about the murder of Patrick Finucane. She argued that the conduct of the police before and on the day of the shooting of her son disclosed prior knowledge and implication in the killing.

78. In this case, the applicant submitted that collusion was shown by *inter alia* the alleged “loss” of photographic material, the harassment and threats suffered by Patrick Shanaghan from the police before his death, and the evidence of others (given at the unofficial inquiry) that they had heard threats issued against Patrick Shanaghan by police officers before his death and boasts afterwards that they had been involved in his death. She also argued that police conduct on the day of the incident was highly suggestive. She referred to the fact that most personnel had been sent to a damage-only road traffic accident shortly before the shooting and that no-one at the scene sent for an ambulance. While the Sergeant who received the report stated that he had been unable to contact the officers at the road accident due to a radio black spot, the applicant alleged that they had tested the area with a taxi and found no such blackspot. Although the police officers claimed that there was no sign of life when they checked the body, a number of civilians on the scene shortly beforehand said that Patrick Shanaghan was still moving. Though Dr Stewart had been summoned to the scene, he was denied access to the body on the purported basis that it was necessary to preserve the scene. The priest who arrived was also diverted and it took him ten minutes to gain entry to administer the last rites. There were unexplained discrepancies in police evidence, in particular that of Constable D. who at first claimed that he was sent to the scene from Strabane station at 8.00 a.m. and then 8.20 or 8.30 a.m., while the first official report of the death was at 8.31 a.m.. The police investigators also failed to take plaster casts of the tyre marks at the scene.

79. The applicant submitted that she had been denied any effective resolution to her claims of collusion and that there was sufficient evidence to justify the Court ruling that there had been a substantive violation of Article 2. To the extent that the Court felt unable to reach any conclusions on the facts, she argued that the Court should hear evidence from the police officers involved in the incident and the investigation, and also from Mr John Stevens who had investigated collusion in Northern Ireland.

80. The applicant further submitted that there had been no effective official investigation carried out into the killing, relying on the international standards set out in the Minnesota Protocol. She argued that the RUC investigation was inadequate and flawed by its lack of independence and possible implication in events, as well as a lack of publicity or input from

the family. The DPP's own role was limited by the RUC investigation and he did not make public his reasons for not prosecuting. The inquest procedure was flawed by the delays, the limited scope of the enquiry which was not permitted to deal with the adequacy of the police investigation or allegations of collusion, a lack of legal aid for relatives, a lack of access to documents and witness statements, the non-compellability of security force or police witnesses and the use of public interest immunity certificates. The Government could not rely on civil proceedings either, as this depended on the initiative of the deceased's family.

## *2. The Government*

81. While the Government did not accept the applicant's claims under Article 2 that her son had been killed with the knowledge or involvement of the security forces, they considered that it would be wholly inappropriate for the Court to seek itself to determine the issues of fact arising on the substantive issues of Article 2. This might involve the Court seeking to resolve issues, and perhaps examining witnesses and conducting hearings, at the same time as the High Court in Northern Ireland, with a real risk of inconsistent findings. It would also allow the applicant to forum-shop and would thus undermine the principle of exhaustion of domestic remedies. They submitted that there were in any event considerable practical difficulties for the Court to pursue an examination of the substantive aspects of Article 2 as the factual issues would be numerous and complex, involving live evidence with a substantial number of witnesses. This primary fact finding exercise should not be performed twice, in parallel, such an undertaking wasting court time and costs and giving rise to a real risk of prejudice in having to defend two sets of proceedings simultaneously.

82. In so far as the applicant invited the Court to find a practice of collusion between security forces and loyalist paramilitaries, this allegation was emphatically denied. The Government denied that there had been any inadequacy in the investigation in this case, which was prompt and thorough. The RUC had taken the necessary steps to secure the evidence at the scene and done their best to contact eye-witnesses. As photographs had been taken, it had not been considered necessary to take plaster-casts of the tyre tracks. No ambulance had been called as there was no purpose, and the priest had been diverted from the scene only to enable it to be properly preserved. There was nothing suspicious in the number of police personnel sent to the scene of an accident before the shooting of Patrick Shanaghan, such a measure being justified by security concerns.

83. The Government further denied that domestic law in any way failed to comply with the requirements of this provision. They argued that the procedural aspect of Article 2 was satisfied by the combination of procedures available in Northern Ireland, namely, the police investigation, which was supervised by the Independent Commission for Police

Complaints and by the Director of Public Prosecutions, the inquest proceedings and civil proceedings. These secured the fundamental purpose of the procedural obligation, in that they provided for effective accountability for the use of lethal force by State agents. This did not require that a criminal prosecution be brought but that the investigation was capable of leading to a prosecution, which was the case in this application. They also pointed out that each case had to be judged on its facts since the effectiveness of any procedural ingredient may vary with the circumstances. In the present case, they submitted that the available procedures together provided the necessary effectiveness, independence and transparency by way of safeguards against abuse.

### *3. The Northern Ireland Human Rights Commission*

84. Referring to relevant international standards concerning the right to life (e.g. the Inter-American Court's case-law and the findings of the UN Human Rights Committee), the Commission submitted that the State had to carry out an effective official investigation when an agent of the State was involved or implicated in the use of lethal force. Internal accountability procedures had to satisfy the standards of effectiveness, independence, transparency and promptness, and facilitate punitive sanctions. It was however, in their view, not sufficient for a State to declare that while certain mechanisms were inadequate, a number of such mechanisms regarded cumulatively could provide the necessary protection. They submitted that the investigative mechanisms relied on in this case, singly or combined, failed to do so. They referred, *inter alia*, to the problematic role of the RUC in Northern Ireland, the allegedly serious deficiencies in the mechanisms of police accountability, the limited scope of and delays in inquests, and the lack of compellability of the members of the security forces who have used lethal force to appear at inquests. They drew the Court's attention to the form of enquiry carried out in Scotland under the Sheriff, a judge of criminal and civil jurisdiction, where the next-of-kin have a right to appear. They urged the Court to take the opportunity to give precise guidance as to the form which investigations into the use of lethal force by State agents should take.

## **B. The Court's assessment**

### *1. General principles*

85. Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, to which in peacetime no derogation is permitted under Article 15. Together with Article 3, it also

enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which deprivation of life may be justified must therefore be strictly construed. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see the *McCann and Others v. the United Kingdom* judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-147).

86. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as for example in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death which occur. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC] no. 21986/93, ECHR 2000-VII, § 100, and also *Çakıcı v. Turkey*, [GC] ECHR 1999-IV, § 85, *Ertak v. Turkey* no. 20764/92 [Section 1] ECHR 2000-V, § 32 and *Timurtaş v. Turkey*, no. 23531/94 [Section 1] ECHR 2000-VI, § 82).

87. The text of Article 2, read as a whole, demonstrates that it covers not only intentional killing but also the situations where it is permitted to “use force” which may result, as an unintended outcome, in the deprivation of life. The deliberate or intended use of lethal force is only one factor however to be taken into account in assessing its necessity. Any use of force must be no more than “absolutely necessary” for the achievement of one or more of the purposes set out in sub-paragraphs (a) to (c). This term indicates that a stricter and more compelling test of necessity must be employed from that normally applicable when determining whether State action is “necessary in a democratic society” under paragraphs 2 of Articles 8 to 11 of the Convention. Consequently, the force used must be strictly proportionate to the achievement of the permitted aims (the *McCann* judgment, cited above, §§ 148-149).

88. The obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, the *McCann* judgment, cited above, p. 49, § 161, and the *Kaya v. Turkey* judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 329, § 105). 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. What form of investigation will achieve those purposes may vary in different circumstances. However, whatever mode is employed, the authorities must act of their own motion, once the matter has come to their attention. They cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures (see, for example, *mutatis mutandis*, *İlhan v. Turkey* [GC] no. 22277/93, ECHR 2000-VII, § 63).

89. For an investigation into alleged unlawful killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events (see e.g. *Güleç v. Turkey* judgment of 27 July 1998, *Reports* 1998-IV, §§ 81-82; *Öğür v. Turkey*, [GC] no. 21954/93, ECHR 1999-III, §§ 91-92). This means not only a lack of hierarchical or institutional connection but also a practical independence (see for example the case of *Ergı v. Turkey* judgment of 28 July 1998, *Reports* 1998-IV, §§ 83-84, where the public prosecutor investigating the death of a girl during an alleged clash showed a lack of independence through his heavy reliance on the information provided by the gendarmes implicated in the incident).

90. The investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances (e.g. *Kaya v. Turkey* judgment, cited above, p. 324, § 87) and to the identification and punishment of those responsible. This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including *inter alia* eye witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death (see concerning autopsies, e.g. *Salman v. Turkey* cited above, § 106; concerning witnesses e.g. *Tanrikulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 109; concerning forensic evidence e.g. *Gül v. Turkey*, no. 22676/93, [Section 4], § 89). Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling foul of this standard.

91. A requirement of promptness and reasonable expedition is implicit in this context (see the *Yaşa v. Turkey* judgment of 2 September 1998, *Reports* 1998-IV, pp. 2439-2440, §§ 102-104; *Cakıcı v. Turkey* cited above, §§ 80, 87 and 106; *Tanrikulu v. Turkey*, cited above, § 109; *Mahmut Kaya v. Turkey*, no. 22535/93, [Section I] ECHR 2000-III, §§ 106-107). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating a use of lethal force may

generally be regarded as essential in maintaining public confidence in their maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.

92. For the same reasons, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary for case to case. In all cases, however, the next of kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *Güleç v. Turkey*, cited above, p. 1733, § 82, where the father of the victim was not informed of the decisions not to prosecute; *Öğur v. Turkey*, cited above, § 92, where the family of the victim had no access to the investigation and court documents; *Giil v. Turkey* judgment, cited above, § 93).

## 2. *Application in the present case*

### a. **Concerning alleged responsibility of the State for the death of Patrick Shanaghan**

93. There is no evidence before the Court concerning the identity of the gunman who shot and killed Patrick Shanaghan. A loyalist paramilitary organisation claimed responsibility for the killing and the applicant has not argued that this was unlikely to be the case. Her complaints centred on her allegations that the RUC or other members of the security forces assisted the loyalist gunman *inter alia* by providing information for the purposes of targeting Patrick Shanaghan and by facilitating the gunman's task, before the event, by their dispersal of men away from the area and, after the event, by making sure that Patrick Shanaghan received no medical assistance, and taking inadequate steps to locate or apprehend the perpetrator.

94. If these allegations were true, serious issues would arise as to whether Patrick Shanaghan's right to life had been protected by law as required by Article 2 of the Convention and as to whether the degree of collusion attracted State responsibility in respect of the killing itself. A number of key factual issues would however have to be resolved in the case, *inter alia* whether Patrick Shanaghan had received death threats from the police as alleged, whether the police had boasted of involvement in the killing after the event; whether the "loss" of the photographs by a member of the security force was deliberate or merely careless; whether there was anything suspicious about the police response to the road traffic accident which occurred shortly before the shooting; or whether there was anything untoward about police actions at the scene after the shooting. The evidence of the police officers at the scene and involved in the investigation are on a number of points in conflict with allegations made by the applicant. Assessment of the credibility and reliability of the various witnesses would play a crucial role.

95. These are all matters which are currently pending examination in the civil proceedings brought by the applicant alleging collusion by the security forces in the killing, including the way in which the photographs were lost. The Court considers that in the circumstances of this case it would be inappropriate and contrary to its subsidiary role under the Convention to attempt to establish the facts of this case by embarking on a fact finding exercise of its own by summoning witnesses. Such an exercise would duplicate the proceedings before the civil courts which are better placed and equipped as fact finding tribunals. While the European Commission of Human Rights has previously embarked on fact finding missions in cases from Turkey where there were pending proceedings against the alleged security force perpetrators of unlawful killings, it may be noted that these proceedings had were criminal and had terminated, at first instance at least, by the time the Court was examining the applications. In those cases, it was an essential part of the applicants' allegations that the defects in the investigation were such as to render those criminal proceedings ineffective (see e.g. *Salman v. Turkey*, cited above, § 107, where the police officers were acquitted of torture due to the lack of evidence resulting principally from a defective autopsy procedure; *Gül v. Turkey*, cited above, § 89, where *inter alia* the forensic investigation at the scene and autopsy procedures hampered any effective reconstruction of events).

96. In the present case, the Court does not consider that there are any elements established which would deprive the civil courts of their ability to establish the facts and determine any misfeasance or negligence on the part of the security forces (see further below concerning the applicant's allegations about the defects in the police investigation, paragraph 100).

97. Nor is the Court persuaded that it is appropriate to rely on the documentary material provided by the parties to reach any conclusions as to responsibility for the death of the applicant's son. Many of the written accounts provided have not been tested in examination or cross-examination and would provide an incomplete and potentially misleading basis for any such attempt. The situation cannot be equated to a death in custody where the burden may be regarded as resting on the State to provide a satisfactory and plausible explanation.

98. The Court is also not prepared to conduct, on the basis of selective evidence, an analysis of incidents over the past thirty years with a view to establishing whether they disclose a practice of collusion by security forces. This would go far beyond the scope of the present application.

99. Conversely, as regards the Government's argument that the availability of civil proceedings provided the applicant with a remedy which he has yet to exhaust as regards Article 35 § 1 of the Convention and, therefore that no further examination of the case is required under the Article 2, the Court recalls that the obligations of the State under Article 2 cannot be satisfied merely by awarding damages (see e.g. *Kaya v. Turkey*,

p. 329, § 105; *Yaşa v. Turkey*, p. 2431, § 74). The investigations required under Articles 2 and 13 of the Convention must be able to lead to the identification and punishment of those responsible. The Court therefore examines below whether there has been compliance with this procedural aspect of Article 2 of the Convention.

**b. Concerning the procedural obligation under Article 2 of the Convention**

100. Following the death of Patrick Shanaghan, an investigation was commenced by the RUC. No prosecution resulted. An inquest was opened on 26 March 1996 and closed on 20 June 1996.

101. The applicant has made numerous complaints about these procedures, while the Government have contended that even if one part of the procedure failed to provide a particular safeguard, taken as a whole, the system ensured the requisite accountability of the police for any unlawful act.

*(i) The police investigation*

102. Firstly, concerning the police investigation, the Court finds little substance in the applicant's criticisms. It appears that the investigation started immediately after the death. While there are a number of allegedly puzzling features, such as the despatch of most local police personnel to a road traffic accident shortly before the incident and alleged difficulties in recalling them by radio, these have not been shown to have impinged on the effectiveness of the investigative procedure. The only significant defect adverted to in this regard is the fact that the forensic officers did not take plaster-casts of the tyre marks at the scene. The applicant sought to introduce evidence at the inquest that this was bad practice. However, it is not apparent that this alleged shortcoming prevented the tracing of the car used in the attack. This was apparently found abandoned nearby and had been recently bought for cash by persons who could not be traced. It has not been shown that the RUC failed to look for or find civilian witnesses. Appeals were made to the public and it is apparent that in this case, as in others, for whatever reason, some witnesses were reluctant to come forward. Civilian witnesses made statements and the RUC attempted to take statements from some of those who later appeared at the inquest – two of those persons declined to co-operate. If therefore there were aspects of the investigation that could have been more efficiently performed, it cannot be said that these undermined its overall effectiveness.

103. That said however, it is not apparent to what extent, if any, the initial police investigation included possible collusion by the security forces in the targeting of Patrick Shanaghan by a loyalist paramilitary group. Some investigation was made into allegations of police threats against Patrick Shanaghan following the unofficial enquiry. This was however in 1997, some five to six years after the killing.

104. Insofar as the investigations were conducted by RUC officers, they were part of the police force which was suspected by the applicant and other members of the community of harassing and issuing threats against Patrick Shanaghan. They were all under the responsibility of the RUC Chief Constable, who played a role in the process of instituting any disciplinary or criminal proceedings (see paragraphs 59-61 above). The power of the ICPC to require the RUC Chief Constable to refer an investigating report to the DPP for a decision on prosecution or to require disciplinary proceedings to be brought is not, however, a sufficient safeguard where the investigation itself has been for all practical purposes conducted by police officers connected with those potentially under investigation. The Court notes the recommendation of the CPT that a fully independent investigating agency would help to overcome the lack of confidence in the system which exists in England and Wales and is in some respects similar (see paragraph 75 above).

105. As regards the lack of public scrutiny of the police investigations, the Court considers that disclosure or publication of police reports and investigative materials may involve sensitive issues with possible prejudicial effects to private individuals or other investigations and, therefore, cannot be regarded as an automatic requirement under Article 2. The requisite access of the public or the victim's relatives may be provided for in other stages of the available procedures.

*(ii) The role of the DPP*

106. The Court recalls that the DPP is an independent legal officer charged with the responsibility to decide whether to bring prosecutions in respect of any possible criminal offences carried out by a police officer. He is not required to give reasons for any decision not to prosecute and in this case he did not do so. No challenge by way of judicial review exists to require him to give reasons in Northern Ireland, though it may be noted that in England and Wales, where the inquest jury may still reach verdicts of unlawful death, the courts have required the DPP to reconsider a decision not to prosecute in the light of such a verdict, and will review whether those reasons are sufficient. This possibility does not exist in Northern Ireland where the inquest jury is no longer permitted to issue verdicts concerning the lawfulness or otherwise of a death.

107. The Court does not doubt the independence of the DPP. However, where the police investigation procedure is itself open to doubts of a lack of independence and is not amenable to public scrutiny, it is of increased importance that the officer who decides whether or not to prosecute also gives an appearance of independence in his decision-making. It appears that the DPP considered the report on the investigation conducted by the RUC into the allegations made in the unofficial inquiry as to police collusion and decided, without further explanation, that no action was necessary. Where

no reasons are given in a controversial incident involving a killing, this may in itself not be conducive to public confidence. It also denies the family of the victim access to information about a matter of crucial importance to them and prevents any legal challenge of the decision.

108. In this case, Patrick Shanaghan was shot and killed after photographs identifying him fell off the back of an army lorry. It is a situation which, to borrow the words of the domestic courts, cries out for an explanation. The applicant was however not informed of why the incident was regarded as not disclosing any problems of collusion. There was no reasoned decision available to reassure a concerned public that the rule of law had been respected. This cannot be regarded as compatible with the requirements of Article 2, unless that information was forthcoming in some other way. This however is not the case.

(iii) *The inquest*

109. In Northern Ireland, as in England and Wales, investigations into deaths may also be conducted by inquests. Inquests are public hearings conducted by coroners, independent judicial officers, normally sitting with a jury, to determine the facts surrounding a suspicious death. Judicial review lies from procedural decisions by coroners and in respect of any mistaken directions given to the jury. There are thus strong safeguards as to the lawfulness and propriety of the proceedings. In the case of *McCann and Others v. the United Kingdom* (cited above, p. 49, § 162), the Court found that the inquest held into the deaths of the three IRA suspects shot by the SAS on Gibraltar satisfied the procedural obligation contained in Article 2, as it provided a detailed review of the events surrounding the killings and provided the relatives of the deceased with the opportunity to examine and cross-examine witnesses involved in the operation. However it must be noted that the inquest in that case was to some extent exceptional when compared with the proceedings in a number of cases in Northern Ireland (see also the cases of *Hugh Jordan v. the United Kingdom*, no. 24746/94, *McKerr v. the United Kingdom*, no. 28883/95, and *Kelly and Others v. the United Kingdom*, no. 37715/97). The promptness and thoroughness of the inquest in the *McCann* case left the Court in no doubt that the important facts relating to the events had been examined with the active participation of the applicants' highly competent legal representative. The difficulties in the procedures adverted to by the next-of-kin in that case did not disclose any significant handicap.

110. It is alleged that the effectiveness of the inquest in that case was undermined by the limited scope of its examination. According to the case-law of the national courts, the procedure is a fact finding exercise and not a method of apportioning guilt. The Coroner is required to confine his investigation to the matters directly causative of the death and not extend his inquiry into the broader circumstances. This was the standard applicable in

the McCann inquest and did not prevent examination of those aspects of the planning and conduct of the operation relevant to the killings of the three IRA suspects. The Court is not persuaded therefore that the approach taken by the domestic courts necessarily contradicts the requirements of Article 2. The domestic courts accept that an essential purpose of the inquest is to allay rumours and suspicions of a how a death came about. The Court agrees that a detailed investigation into policy issues or alleged conspiracies may not be justifiable or necessary. Whether an inquest fails to address necessary factual issues will depend on the particular circumstances of the case.

111. In the present case, special elements arose. There was the acknowledged fact that photographs identifying Patrick Shanaghan had been lost by the security forces in suspicious circumstances. There was evidence which alleged that Patrick Shanaghan had been subject to threats to his life from police officers before his death and that police officers had claimed a role in arranging the killing after it had occurred. Following an application by the RUC challenging the admissibility of the evidence by D.C., the High Court ruled that it was not for the inquest to hear evidence as to threats made against Patrick Shanaghan's life by police officers before the incident. The Coroner then excluded statements made by Patrick Shanaghan to his solicitors about the threats made to him by police officers. The domestic courts appeared to take the view that the only matter of concern to the inquest was the question of who pulled the trigger, and that, as it was not disputed that Patrick Shanaghan was the target of loyalist gunmen, there was no basis for extending the enquiry any further into issues of collusion. Serious and legitimate concerns of the family and the public were therefore not addressed by the inquest proceedings.

112. Furthermore, unlike the McCann inquest, the jury's verdict in this case could only give the identity of the deceased and the date, place and cause of death (see paragraph 46 above). In England and Wales, as in Gibraltar, the jury is able to reach a number of verdicts, including "unlawful death". As already noted, where an inquest jury gives such a verdict in England and Wales, the DPP is required to reconsider any decision not to prosecute and to give reasons which are amenable to challenge in the courts. In this case, the only relevance the inquest may have to a possible prosecution is that the Coroner may send a written report to the DPP if he considers that a criminal offence may have been committed. It is not apparent, however, that the DPP is required to take any decision in response to this notification or to provide detailed reasons for not making any response.

113. Notwithstanding the useful fact finding function that an inquest may fulfil in some cases, the Court considers that in this case it could play no effective role in the identification or prosecution of any criminal offences

which might have occurred and, in that respect, fell short of the requirements of Article 2.

114. The public nature of the inquest proceedings is not in dispute. Indeed the inquest appears perhaps for that reason to have become the most popular legal forum in Northern Ireland for attempts to challenge the conduct of the police and security forces in controversial killings. The applicant complained however that her ability to participate in the proceedings as the next of kin to the deceased was significantly prejudiced as legal aid was not available in inquests and documents were not disclosed in advance of the proceedings.

115. The Court notes however that, as with the next of kin in the McCann case, the applicant has been represented by a solicitor at the inquest. It has not been established therefore that she has been prevented, by the lack of legal aid, from obtaining any necessary legal assistance at the inquest.

116. As regards access to documents, the applicant was not able to obtain copies of any witness statements until the witness concerned was giving evidence. This was also the position in the McCann case, where the Court considered that this had not substantially hampered the ability of the families' lawyers to question the witnesses (cited above, p. 49, § 62). However, since that case, the Court has placed more weight on the importance of protecting the interests of the next-of-kin of a deceased in the procedure (see *Öğür v. Turkey*, cited above, § 92). Further, the Court notes that the practice of non-disclosure has changed in the United Kingdom in the light of the Stephen Lawrence Inquiry and that it is now recommended that the police disclose witness statements 28 days in advance (see paragraph 55 above). This development must be regarded as a positive contribution to the openness and fairness of the inquest procedures.

117. The inability of the family of the deceased to have access to witness statements before the appearance of the witness must be regarded as having placed them at a disadvantage in terms of preparation and ability to participate in questioning. This contrasts strikingly with the position of the RUC who had the resources to provide for legal representation and full access to information about the incident from their own files. The Court considers that the right of the family of the deceased whose death is under investigation to participate in the proceedings requires that the procedures adopted ensure the requisite protection of their interests, which may be in direct conflict with those of the police or security forces implicated in events. The Court is not persuaded that the interests of the applicant as next-of-kin was fairly or adequately protected in this respect.

118. Reference has also been made to the allegedly frequent use of public interest immunity certificates in inquests to prevent certain questions or disclosure of certain documents. No certificate was issued in this case. There is therefore no basis for finding that the use of these certificates

prevented examination of any circumstances relevant to the death of the applicant's son.

119. Finally, the Court has had regard to the delay in the proceedings. The inquest opened on 26 March 1996, more than four and a half years after Patrick Shanaghan's death. The Government explained that the delay in the RUC sending the file to the Coroner on 14 January 1994 resulted from their heavy criminal workload. The Court does not find this a satisfactory explanation for failure to carry out a transfer of documents for an important judicial procedure. No explanation, beyond unspecified further enquiries, has been forthcoming for the delay after the transfer of the file. Once the inquest opened, it proceeded without delay, concluding within a month.

120. In the circumstances, the delay in commencing the inquest cannot be regarded as compatible with the State's obligation under Article 2 of the Convention to ensure that investigations into suspicious deaths are carried out promptly.

*(iv) Civil proceedings*

121. As found above (see paragraph 96), civil proceedings would provide a judicial fact finding forum, with the attendant safeguards and the possibility of obtaining findings of unlawfulness and damages. It is however a procedure undertaken on the initiative of the applicant, not the authorities, and it does not involve the identification or punishment of any alleged perpetrator. As such, it cannot be taken into account in the assessment of the State's compliance with its procedural obligations under Article 2 of the Convention.

*(v) Conclusion*

122. The Court finds that the proceedings for investigating the use of lethal force have been shown in this case to disclose the following shortcomings:

- no prompt or effective investigation into the allegations of collusion in the death of Patrick Shanaghan has been shown to have been carried out;
- a lack of independence of the police officers investigating the incident from the security force personnel alleged to have been implicated in collusion with the loyalist paramilitaries who carried out the shooting;
- a lack of public scrutiny, and information to the victim's family, of the reasons for the decision of the DPP not to prosecute in respect of alleged collusion;
- the scope of examination of the inquest excluded the concerns of collusion by security force personnel in the targeting and killing of Patrick Shanaghan;
- the inquest procedure did not allow for any verdict or findings which could play an effective role in securing a prosecution in respect of any criminal offence which might have been disclosed;

- the non-disclosure of statements prior to the appearance of the witnesses at the inquest prejudiced the ability of the applicant to participate in the inquest;
- the inquest proceedings did not commence promptly.

123. It is not for this Court to specify in any detail which procedures the authorities should adopt in providing for the proper examination of the circumstances of a killing in which State agents may be implicated. While reference has been made for example to the Scottish model of enquiry conducted by a judge of criminal jurisdiction, there is no reason to assume that this may be the only method available. Nor can it be said that there should be one unified procedure available satisfying all the necessary safeguards. If the aims of fact finding, criminal investigation and prosecution are carried out or shared between several authorities, as in Northern Ireland, the Court considers that the requirements of Article 2 may nonetheless be satisfied if, while seeking to take into account other legitimate interests, such as national security or protection of the material relevant to other investigations, they provide for the necessary safeguards in an accessible and effective manner. In the present case, the available procedures have not struck the right balance.

124. The Court would observe that the shortcomings in transparency and effectiveness identified above run counter to the purpose identified by the domestic courts of allaying suspicions and rumours. Proper procedures for ensuring the accountability of agents of the State are indispensable in maintaining public confidence and meeting the legitimate concerns that might arise from the use of lethal force. Lack of such procedures will only add fuel to fears of sinister motivations, as is illustrated *inter alia* by the submissions made by the applicant concerning the alleged practice of collusion by security personnel with loyalist paramilitaries in targeting suspected members of the IRA or members of Sinn Fein.

125. The Court finds that there has been a failure to comply with the procedural obligation imposed by Article 2 of the Convention and that there has been, in this respect, a violation of that provision.

## II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

126. The applicant invoked Article 14 of the Convention, which provides:

“The enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

127. The applicant submitted that the circumstances of the killing of her son disclosed discrimination. The vast majority of victims from collusion between the security forces and paramilitaries came from the nationalist

community. While it was difficult to establish with certainty the cases where collusion actually occurred, there was evidence to suggest that it was widespread. She referred to the enquiries led by Mr John Stevens, which resulted in positive findings of collusion and to the concerns of the United Nations Special Rapporteur and international and domestic non-governmental organisations. This showed that there was a discriminatory use of lethal force and a lack of legal protection vis-à-vis a section of the community on grounds of national origin or association with a national minority.

128. The Government replied that there was no evidence of any practice of collusion or difference of treatment disclosed by any of the deaths which occurred in Northern Ireland. The material relied on by the applicant was not enough to establish broad allegations of discrimination against Catholics or nationalists.

129. Where a general policy or measure has disproportionately prejudicial effects on a particular group, it is not excluded that this may be considered as discriminatory notwithstanding that it is not specifically aimed or directed at that group. Despite the legitimate concerns about collusion and the specific examples that have been highlighted, the Court does not consider that this can be regarded as establishing a practice or pattern which could be classified as discriminatory within the meaning of Article 14.

130. The Court finds that there has been no violation of Article 14 of the Convention.

## V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

131. The applicant complained that she had no effective remedy in respect of her complaints, invoking Article 13 which provides:

“Everyone whose rights and freedoms as set forth in the Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

132. The applicant referred to her submissions concerning the procedural aspects of Article 2 of the Convention, claiming that in addition to the payment of compensation where appropriate Article 13 required a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure.

133. The Government submitted that the complaints raised under Article 13 were either premature or ill-founded. They claimed that the combination of available procedures, which included the pending civil proceedings and the inquest, provided effective remedies.

134. The Court's case-law indicates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law (see the *Aksoy v. Turkey* judgment of 18 December 1996, *Reports* 1996-IV, p. 2286, § 95; the *Aydın v. Turkey* judgment of 25 September 1997, *Reports* 1997-VI, pp. 1895-96, § 103; the *Kaya v. Turkey* judgment cited above, pp. 329-30, § 106).

135. In cases of the use of lethal force or suspicious deaths, the Court has also stated that, given the fundamental importance of the right to the protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life, including effective access for the complainant to the investigation procedure (see the *Kaya v. Turkey* judgment cited above, pp. 330-31, § 107). In a number of cases it has found that there has been a violation of Article 13 where no effective criminal investigation had been carried out, noting that the requirements of Article 13 were broader than the obligation to investigate imposed by Article 2 of the Convention (see also *Ergi v. Turkey*, cited above, p. 1782, § 98; *Salman v. Turkey* cited above, § 123).

136. It must be observed that these cases derived from the situation pertaining in south-east Turkey, where applicants were in a vulnerable position due to the ongoing conflict between the security forces and the PKK and where the most accessible means of redress open to applicants was to complain to the public prosecutor, who was under a duty to investigate alleged crimes. In the Turkish system, the complainant was able to join any criminal proceedings as an intervenor and apply for damages at the conclusion of any successful prosecution. The public prosecutor's fact finding function was also essential to any attempt to take civil proceedings. In those cases, therefore, it was sufficient for the purposes of former Article 26 (now Article 35 § 1) of the Convention, that an applicant complaining of unlawful killing raised the matter with the public prosecutor. There was accordingly a close procedural and practical relationship between the criminal investigation and the remedies available to the applicant in the legal system as a whole.

137. The legal system pertaining in Northern Ireland is different and any application of Article 13 to the factual circumstances of any case from that jurisdiction must take this into account. An applicant who claims the unlawful use of force by soldiers or police officers in the United Kingdom, or collusion by such State agents in unlawful killings, must as a general rule exhaust the domestic remedies open to him or her by taking civil proceedings by which the courts will examine the facts, determine liability and if appropriate award compensation. These civil proceedings are wholly independent of any criminal investigation and their efficacy has not been shown to rely on the proper conduct of criminal investigations or prosecutions (see e.g. *Caraher v. the United Kingdom*, no. 24520/94, decision of inadmissibility [Section 3] 11.01.00).

138. In the present case, the applicant has lodged civil proceedings, which are still pending. The Court has found no elements which would prevent civil proceedings providing the redress identified above in respect of the alleged collusion by the security forces with the loyalist paramilitaries who killed her son (see paragraph 96 above).

139. As regards the applicant's complaints concerning the investigation into the death carried out by the authorities, these have been examined above under the procedural aspect of Article 2 (see paragraphs 100-125 above). The Court finds that no separate issue arises in the present case.

140. The Court concludes that there has been no violation of Article 13 of the Convention.

#### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

141. 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**

142. The applicant submitted that, though her primary goal was to obtain a judgment from the Court to the effect that the respondent Government had violated the Convention, she considered that an award of damages should be made. She argued that, where there was a finding of a violation of a fundamental right, the Court should impose the only penalty it can on the offending State. Not to do so sent the wrong signal and appeared to penalise the victims rather than those responsible for the violation. This was particularly the case concerning Patrick Shanaghan who was member of a lawful political party and not a member of the IRA. As he was working at

the time of his death and living in the applicant's home, the applicant should be awarded pecuniary damages for loss of earnings and non-pecuniary damages.

143. The Government disputed that any award of damages would be appropriate in the present case. They considered that the applicant had been fully compensated for the loss suffered as a result of the death of Patrick Shanaghan as she had accepted the sum of 25,520 pounds sterling (GBP) from the Criminal Injuries Compensation Scheme. In their view, no loss flowed from any violation of the procedural elements of Article 2 of the Convention and a finding of violation in that context would in itself constitute just satisfaction.

144. The Court has made no finding as to whether the security forces played any role in the death of Patrick Shanaghan, which issues are pending in the civil proceedings. No award can therefore be made in that respect. However, the Court has found that the authorities failed in their obligation under Article 2 of the Convention to carry out a prompt and effective investigation into the circumstances of the death. The applicant must thereby have suffered feelings of frustration, distress and anxiety. The Court considers that the applicant sustained some non-pecuniary damage which is not sufficiently compensated by the finding of a violation as a result of the Convention. It has not taken into account the *ex gratia* compensation payment from the Criminal Injuries Compensation Scheme which related to the damage flowing from a criminal act and not to the lack of procedural efficacy in the investigation.

145. Making an assessment on an equitable basis, the Court awards the applicant the sum of GBP 10,000.

## **B. Costs and expenses**

146. The applicant claimed a total of GBP 29,046.55. This included GBP 5,218.20 and GBP 13,344 respectively for two counsel, exclusive of VAT, and GBP 10,484.35 for solicitors' fees.

147. The Government submitted that these claims were excessive, noting that the issues in this case overlapped significantly with the other cases examined at the same time.

148. The Court recalls that this case has involved several rounds of written submissions and an oral hearing, and may be regarded as factually and legally complex. Nonetheless, it finds the fees claimed to be on the high side when compared with other cases from the United Kingdom and is not persuaded that they are reasonable as to quantum. Having regard to equitable considerations, it awards the sum of GBP 20,000, plus any value added tax which may be payable. It has taken into account the sums received by the applicant by way of legal aid from the Council of Europe.

### C. Default interest

149. According to the information available to the Court, the statutory rate of interest applicable in the United Kingdom at the date of adoption of the present judgment is 7,5% per annum.

### FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 2 of the Convention in respect of failings in the investigative procedures concerning the death of Patrick Shanaghan;
2. *Holds* that there has been no violation of Article 14 of the Convention;
3. *Holds* that there has been no violation of Article 13 of the Convention;
4. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, plus any value-added tax that may be chargeable;
    - (i) 10,000 (ten thousand) pounds sterling in respect of non-pecuniary damage;
    - (ii) 20,000 (twenty thousand) pounds sterling in respect of costs and expenses;
  - (b) that simple interest at an annual rate of 7,5% shall be payable from the expiry of the above-mentioned three months until settlement;
5. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 4 May 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ  
Registrar

J.-P. COSTA  
President