CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 29178/95
by Geraldine FINUCANE
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 2 July 2002 as a Chamber composed of

Mr M. PELLONPÄÄ, *President,*
Sir Nicolas BRATZA,
Mr A. PASTOR RIDRUEJO,
Mrs E. PALM,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr S. PAVLOVSCHI, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 5 July 1995,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Geraldine Finucane, is an Irish national, who was born in 1950 and lives in Belfast. She was represented before the Court by Mr P. Madden, a lawyer practising in Belfast.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

At around 7.25 p.m. on 12 February 1989 the applicant's husband, solicitor Patrick Finucane, was killed in front of her and their three children by two masked men who broke into their home. She herself was injured, probably by a ricochet bullet. Patrick Finucane was shot in the head, neck and chest. Six bullets had struck the head and there was evidence that one or more of these had been fired within a range of 15 inches when he was lying on the floor. The day after the murder, on 13 February 1989, a man telephoned the press and stated that the illegal loyalist paramilitary group, the Ulster Freedom Fighters ("UFF") claimed responsibility for killing Patrick Finucane, the Provisional Irish Republican Army ("PIRA") officer not the solicitor.

Patrick Finucane was a solicitor who represented clients from both sides of the conflict in Northern Ireland and was involved in a number of high profile cases arising from that conflict. The applicant believes that it was because of his work on these cases that prior to his murder he received death threats delivered, via his clients, by officers of the Royal Ulster Constabulary ("RUC") and was targeted for murder. Occasional threats had been made against Patrick Finucane since the late 1970s. After acting for Brian Gillen in a case concerning maltreatment in RUC custody, the threats apparently escalated, and clients reported that police officers often abused and threatened to kill him during interrogations at holding centres such as Castlereagh. On 5 January 1989, five weeks before his death, one of Patrick Finucane's clients reported that an RUC officer had said that Patrick Finucane would meet his end. On 7 January 1989, another client claimed that he was told that Finucane was "getting took out" (murdered). His death came less than four weeks after Douglas Hogg MP, then Parliamentary Under-Secretary of State for the Home Department, in a Committee stage debate on the Prevention of Terrorism (Temporary Provisions) Bill on 17 January 1989 said:

> "I have to state as a fact, but with great regret, that there are in Northern Ireland a number of solicitors who are unduly sympathetic to the cause of the IRA."

Investigation into the killing

After the shooting, the applicant's house was cordoned off by the RUC and a forensic examination of the scene conducted by experts. Photographs were taken and maps prepared. A scene of crimes officer examined the car believed to have been used by those responsible for the shooting which had been found abandoned.

On 13 February 1989, a consultant in pathology conducted a post mortem examination.

A major incident room was set up as the Antrim Road police station. Many suspected members of the Ulster Freedom Fighters (UFF) were detained and interviewed about the murder.

On 4 July 1989, the RUC found the weapon believed to have been used in the murder. On 5 April 1990, three members of UFF were convicted of possessing this and another weapon and of membership of the UFF. The weapon had been stolen from the Ulster Defence Regiment's barracks in August 1987 and in 1988 a member of the UDR was convicted of this theft.

Inquest proceedings

The inquest into Patrick Finucane's death commenced on 6 September 1990 and ended the same day. Evidence was heard from RUC officers involved in investigating the death, the applicant, two neighbours and a taxi driver whose car had been hijacked and used by those responsible for the shooting. The applicant was represented at the inquest by counsel who was able to question witnesses on her behalf. After giving evidence, the applicant wished to make a statement but was refused permission to do so by the Coroner on grounds that it was not relevant to the proceedings.

Forensic evidence showed that the victim had been hit at least eleven times by a 9mm Browning automatic pistol and twice by a .38 Special Revolver. Detective Superintendent ("D/S") Simpson of RUC, who was in charge of the murder investigation, gave evidence that the Browning pistol was one of thirteen weapons stolen from Palace army barracks in August 1987 by a member of the Ulster Defence Regiment (UDR – a locally recruited regiment of the British army) who was subsequently jailed for theft. These weapons found their way into the hands of three members of the UFF who were convicted of possession of the weapons and of membership of the UFF. However, the police were satisfied that those individuals had not been in possession of the weapons at the time of Patrick Finucane's murder.

According to the evidence given by D/S Simpson at the inquest, the police had interviewed fourteen people in connection with the murder, but had found that, although their suspicions were not assuaged, and they remained reasonably certain that the main perpetrators of the murder were among the suspects, there was insufficient evidence to sustain a charge of

murder. None of the fourteen persons had any connection with the security forces. D/S Simpson further stated that none of the suspects had any connection with the security services. He rejected the claim made by the UFF that Patrick Finucane was a member of the Provisional IRA.

The inquest heard evidence that the assassins had used a red Ford Sierra car, Registration no. VIA 2985, that had been hijacked by three men from a taxi driver, WR, shortly before the murder. D/S Simpson stated in evidence that he did not consider the hijackers to have carried out the murder and that he considered the precision of the killing to indicate that the killers had murdered before. He had heard that a death threat had been made to a prisoner client of the deceased. He had also seen parts of a report by a group of international lawyers. This had been investigated by the Stevens inquiry with whom he liaised closely. Though he did not know who was interviewed, as it was separate from the murder investigation, he said that no evidence was found substantiating the allegation. On further questioning, he stated that he had only read the report by the international lawyers that lunchtime and was unaware of the existence of material linking the security forces to Mr Finucane's death.

The Stevens inquiries

On 14 September 1989, the Chief Constable of the RUC appointed John Stevens, then Deputy Chief Constable of the Cambridgeshire Constabulary, to investigate allegations of collusion between members of the security forces and loyalist paramilitaries.

While the applicant stated that it was claimed by the RUC at Patrick Finucane's inquest that John Stevens had also investigated Patrick Finucane's death, the Government stated that the inquiry was prompted by events other than the shooting of Patrick Finucane. The outcome of the inquiries has never been made public.

On 5 April 1990, John Stevens presented his report to the Chief Constable of the RUC. While the full report was not made public, the Secretary of State for Northern Ireland made a statement to the House of Commons on 17 May 1990. He stated, *inter alia*, that as a result of the inquiry 94 persons had been arrested, of whom 59 had been reported or charged with criminal offences. He stated that while the passing of information to paramilitaries by the security forces had taken place, it was restricted to a small number of individuals and was neither widespread or institutionalised. Any evidence or allegation of criminal conduct had been rigorously followed up. No charges had been laid against members of the RUC, but Mr Stevens had concluded that there had been misbehaviour by a few members of the UDR. Mr Stevens had made detailed recommendations aimed at improving the arrangements for the dissemination and control of sensitive information.

As a result of the Stevens inquiry, Brian Nelson, who had worked as an undercover agent providing information to British military intelligence and who had become the chief intelligence officer of the Ulster Defence Association ("UDA"), an illegal loyalist paramilitary group which directed the activities of the UFF, was arrested. At his trial, the British authorities claimed that he had got out of hand and had become personally involved in loyalist murder plots. Originally he faced thirty-five charges, but thirteen were dropped and he was eventually convicted of five charges of conspiracy to murder, for which he was sentenced to ten years' imprisonment. During the Stevens inquiry, members of the team had interviewed him. According to the Government, he had denied any complicity in the murder.

In prison, Brian Nelson allegedly admitted that, in his capacity as a UDA intelligence officer, he had himself targeted Patrick Finucane and, in his capacity as a double agent, had told his British Army handlers about the approach at the time. It was also alleged that Nelson had passed a photograph of Patrick Finucane to the UDA before he was killed. Loyalist sources further alleged that Nelson had himself pointed out Finucane's house to the killers. These allegations were transmitted in a BBC Panorama programme on 8 June 1992 and the transcript of the programme was sent to the DPP.

Following the Panorama programme, the DPP asked the Chief Constable of the RUC to conduct further enquiries arising from the issues raised in the programme. In April 1993, John Stevens, then Chief Constable of the Northumbria Police, was appointed to conduct a second inquiry. According to the Government, he made inquiries into the alleged involvement of Brian Nelson and members of the Army in the death of Patrick Finucane (see however John Steven's press statement below). The applicant states that no member of the inquiry team contacted her or her legal representative, or any former clients of Patrick Finucane, about the death threats made prior to the murder.

On 21 January 1995, John Stevens submitted his final report to the DPP, having submitted earlier reports on 25 April 1994 and 18 October 1994. On 17 February 1995 the DPP issued a direction of "no prosecution" to the Chief Constable of the RUC.

In answer to a parliamentary question published on 15 May 1995, Sir John Wheeler MP said that the DPP had concluded that there was insufficient evidence to warrant the prosecution of any person, despite Nelson's alleged confession. He refused to place copies of Mr Stevens' three reports in the House of Commons library, claiming that police reports were confidential.

Civil proceedings

On 11 February 1992, the applicant issued a writ of summons against the Ministry of Defence and Brian Nelson, claiming damages on behalf of the

estate of the deceased, herself and other dependants of the deceased. It was alleged that the deceased's murder was committed by or at the instigation of or with the connivance, knowledge, encouragement and assistance of the first defendant and by the second defendant, who was at all material times a servant or agent of the first defendant. It was also alleged that the first defendant was negligent in the gathering, recording, retention, keeping safe and dissemination of material concerning the deceased, and in the warning, protection and safeguarding of the deceased.

The applicant's statement of claim was served on 8 December 1993 and the defence of the Ministry of Defence on 29 December 1993. In its amended defence of 11 October 1995, it was admitted that Brian Nelson acted as agent for and on behalf of the Ministry of Defence but claimed that if, however, he had any information about the proposed attack on Patrick Finucane it had not been communicated to the Ministry as he was required to do.

On 22 January 1998, the applicant served further and better particulars of her case and a request for further and better particulars of the Ministry of Defence's case. She served a list of documents on 8 April 1998. On 20 May 1999, a supplemental list of documents, verified by an affidavit sworn by the Permanent Under Secretary of the Ministry of Defence, was served on the applicant. The applicant requested copies of those documents which were provided on 20 July 1999. The applicant then requested inspection of the originals but was informed on 21 October 1999 that the Ministry of Defence was not in possession of the originals.

Recent developments

The third Stevens inquiry

On 12 February 1999, the Government state that at a meeting between the applicant and Dr. Mowlem, the Secretary of State for Northern Ireland, a paper was handed over to Dr Mowlem which, it was claimed, contained new material relating to the murder of Patrick Finucane. This paper was passed to John Stevens, now Deputy Commissioner of the Metropolitan Police who had been appointed by the Chief Constable of the RUC to conduct an independent investigation into the murder of the applicant's husband.

On 28 April 1999, at a press conference, John Stevens stated:

> "... in September 1989... I was appointed... to conduct the so-called 'Stevens Inquiry' into breaches of security by the Security Forces in Northern Ireland.
>
> This commenced after the theft of montages from Dunmurry Police Station.
>
> This Inquiry resulted in 43 convictions and over 800 years of imprisonment for those convicted.

> My subsequent report contained over 100 recommendations for the handling of security documents and information.
>
> All those recommendations were accepted and have been implemented.
>
> This 'Stevens 1' inquiry was followed by a 'Stevens 2' inquiry in April 1993...
>
> At the request of the DPP I was asked to investigate further matters which solely related to the previous inquiry and prosecutions. [The RUC Chief Constable] referred to our return as 'tying up some loose ends'.
>
> At no time, either in Stevens 2 or in the original Stevens 1 inquiry did I investigate the murder of Patrick Finucane... However, those inquiries through the so-called double agent Brian Nelson, were linked to the murder of Patrick Finucane.
>
> [The] Chief Constable of the [RUC] has now asked me to conduct an independent investigation into the murder of Patrick Finucane. I am also investigating associated matters raised by the British Irish Rights Watch document "Deadly Intelligence" and the UN Commissioner's Report. ..."

Arrests were reported as being made by officers in the Stevens inquiry in March 2002, with persons named as being questioned in relation to the Finucane murder.

Criminal prosecution

On or about 23 June 1999, charges were brought against:

– William Alfred Stobie for the murder of Patrick Finucane;

– Mark Barr, Paul Alexander Givens and William Gary Hutchinson for three offences of possession of documents containing information useful to terrorists.

It was reported by the Committee for the Administration of Justice that on being charged William Stobie made the following statement:

> "Not guilty of the charge that you have put to me tonight. At the time I was police informer for Special Branch. On the night of the death of Patrick Finucane I informed Special Branch on two occasions by telephone of a person who was to be shot. I did not know at the time of the person who was to be shot."

William Stobie's solicitor told the court that his client was a paid police informer from 1987 to 1990 and that he gave the police information on two occasions before the Finucane murder which was not acted upon. He also stated that, at his client's trial on 23 January 1991 on firearms charges, the prosecution offered no evidence and his client was acquitted. The bulk of the evidence against his client had, he alleged, been known to the authorities for almost 10 years.

On 26 November 2001, it was reported in the press that the trial of William Stobie had collapsed, when the Lord Chief Justice returned a verdict of not guilty in the absence of evidence. The prosecution had

informed the court that the central witness, a journalist, was not capable of giving evidence.

On 12 December 2001, William Stobie was shot dead by gunmen, shortly after having received threats from loyalist paramilitaries.

Proposed international investigation

On 24 October 2001, the Government announced in Parliament that, amongst the measures proposed to the Irish Government in the context of the Good Friday Agreement, was the proposal for the United Kingdom and Irish Government to appoint a judge of international standing from outside both jurisdictions to undertake an investigation into allegations of security force collusion in loyalist paramilitary killings, including that of Patrick Finucane. In light of the investigation, the judge would decide whether to recommend a Public Inquiry into any of the killings.

B. Relevant domestic law and practice

1. Inquests

(a) Statutory provisions and rules

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.

Pursuant to the Coroners Act, every medical practitioner, registrar of deaths or funeral undertaker who has reason to believe that 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).

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.

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.

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."

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.

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.

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.

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.

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.

(b) The scope of inquests

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."

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)

2. The Director of Public Prosecutions

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."

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."

C. Relevant international law and practice

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 ..."

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 ..."

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...".

COMPLAINTS

The applicant complained that her husband, Patrick Finucane, was deprived of his life intentionally and that his life was not protected, in violation of Article 2 of the Convention. She claimed in particular that no mechanism has been invoked or provided whereby the circumstances of his death have received public and independent scrutiny.

THE LAW

The applicant complains of the death of her husband and the lack of effective investigation into his death, invoking Article 2 of the Convention which provides:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

1. Exhaustion of domestic remedies

The Government submitted that the applicant had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention, pointing out that she had introduced an action in the civil courts relating to the death of her husband and these were still pending. They argued that if the civil proceedings progressed to trial, this would result in a judicial finding whether or not her allegations were supported by the facts of the case and a possible award of damages to her deceased husband's estate.

The applicant argued that the justifiable issues before the Court were not the same as those in the domestic proceedings. She submitted that the main thrust of her application was the failure of the respondent Government to provide the necessary mechanisms whereby the deprivation of Patrick Finucane's life would have received proper public and independent scrutiny. Civil proceedings would not be adequate or effective to address this.

The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the

formal requirements laid down in domestic law, but not that recourse should be had to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, no. 21987/93, §§ 51-52, ECHR 1996-VI, and *Akdivar and Others v. Turkey,* no. 21893/93, §§ 65-67, ECHR 1996-IV).

In the present case, the Court observes that a civil action has been instituted by the applicant against the Ministry of Defence alleging *inter alia* that her husband was killed by or at the instigation of or with the connivance of security forces. The Court is aware of the subsidiary nature of its role and that it must be cautious in taking on the role of a first instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case. Indeed, the object and purpose underlying the Convention, as set out in Article 1 – that rights and freedoms should be secured by the Contracting State within its jurisdiction – would be undermined if applicants were not encouraged to pursue the means at their disposal within the State to obtain available redress (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, dec. 4 April 2000).

Nonetheless, it notes that the applicant's complaints in this case focus essentially on the failure to provide a proper and adequate investigation into her husband's death as regards the suspicions of collusion of members of the security forces with loyalist paramilitaries. This raises issues concerning the procedural requirement that the State carry out an effective investigation into deaths caused by its agents (see *McCann and Others v. the United Kingdom,* no. 18984/91, § 161, ECHR 1995-III), including the extent to which civil proceedings can be of any relevance, depending as they do on the initiative of the deceased's relatives who have to establish their claims to a certain standard of proof.

While the applicant's complaints did originally include an allegation that the State was responsible for her husband's deprivation of life, a matter which is squarely in issue in the domestic proceedings, the Court considers that this may be regarded as reflecting her own strong belief as to events. It finds no suggestion in the applicant's recent submissions that she wishes to pursue this allegation or proposes that this Court should embark on a fact finding exercise on this aspect of the case. At this point of time, and against a background of an apparent dearth of accessible information, the Court is, in any event, of the opinion that it would not be the appropriate body to take on the task.

Accordingly, the Court does not consider that the applicant has failed to exhaust domestic remedies in respect of her complaints about the procedural failings at the heart of this case.

2. The six-month rule

The Government submitted that, assuming that no effective remedies existed in respect of the applicant's complaints, the six month time-limit

imposed by Article 35 § 1 of the Convention ran from the date of the shooting in February 1989 and her complaint, as many years out of time.

The applicant argued that an application could not have been lodged when the investigation was allegedly ongoing. In her view, the relevant decision activating the six month time-limit was the publication of the decision not to prosecute on 15 May 1995.

Article 35 § 1 of the Convention requires that the Court may only deal with a matter where it has been introduced within six months from the date of the final decision in the process of exhaustion of domestic remedies. The object of the six month time limit under Article 35 § 1 is to promote legal certainty, by ensuring that cases raising issues under the Convention are dealt with in a reasonable time and that past decisions are not continually open to challenge. The rule also affords the prospective applicant time to consider whether to lodge an application and, if so, to decide on the specific complaints and arguments to be raised (see, for example, the Worm v. Austria judgment of 29 August 1997, *Reports* 1997–V, at p. 1547, §§ 32-33).

Normally, the six-month period runs from the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset however that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect or prejudice on the applicant (see e.g. Hilton v. the United Kingdom, no. 12015/86, Commission decision of 6 July 1988, DR 57, p. 108). Furthermore, Article 35 § 1 cannot be interpreted in a manner which would require an applicant to seize the Court of his complaint before his position in connection with the matter has been finally settled at the domestic level (see *Paul and Aubrey Edwards v. the United Kingdom* (dec), no. 46477/99, 4 June 2001).

The Court observes that in the present case information relating to the death and various investigations into the death have emerged piecemeal over a number of years. The applicant was not informed about the progress of the initial RUC investigation, while the inquest which opened on 6 September 1990 and finished the same day did not inquire into any of the applicant's concerns about the threats made against her husband by the RUC before his death. The first Stevens inquiry which appears to have concerned general allegations about collusion between the security forces and the RUC led to the arrest of 94 persons including Brian Nelson who had worked as an undercover agent and as a member of a loyalist paramilitary group. It was after his conviction and imprisonment on conspiracy to murder charges that he apparently made claims about his involvement in the Finucane murder and that the security forces were aware that it was going to happen in advance. This led to a second Stevens inquiry which was directed to allegations of collusion raised by Brian Nelson connected with the Finucane case.

The Court considers that it cannot be regarded as unreasonable for the applicant to have awaited the outcome of this inquiry into concrete information about security force complicity in the killing before introducing her application to Strasbourg. It notes that it was on the basis of the information about Brian Nelson's involvement that her solicitors took the step of lodging civil proceedings against both Nelson and the Ministry of Defence.

Accordingly as the applicant introduced her application within six months of the publication in Parliament on 15 May 1995 of the decision not to prosecute anyone as a result of the second Stevens inquiry, the Court considers that her application must be regarded as having been introduced within the requisite time-limit imposed by Article 35 § 1 of the Convention.

3. Concerning the substance of the application

The Government argued that the investigations carried out into Patrick Finucane's death satisfied any procedural requirement imposed by Article 2 of the Convention. It was the primary responsibility of the police to investigate violent deaths and the RUC had, in the present case, conducted a prompt and thorough investigation into the shooting. The inquest provided a public examination of the circumstances in which he died, involving the hearing of evidence and the opportunity for the applicant's representative to cross-examine witnesses. A further lengthy investigation was conducted into the death by Mr Stevens, and the Director of Public Prosecutions examined the evidence produced by the inquiry to determine whether any criminal charges should be brought or any further investigation taken. Furthermore, civil proceedings were continuing, which offered the prospect of a further public hearing at which the factual allegations of the applicant could be investigated and determined on the evidence.

The applicant submitted that none of the investigations relied on by the Government satisfied the requirements imposed by Article 2 of the Convention. The RUC investigation into the death was hopelessly inadequate as it failed entirely to explore the possibility of collusion. The inquest was also strictly limited in its scope, involving no key witnesses or any persons suspected of involvement in the death or anyone from the Stevens inquiry. As regarded the Stevens inquiry, the inquiry team never made contact with the applicant's family, her husband's firm of solicitors or any of his clients who had reported death threats and its findings were never made public. Similarly, the examination by the DPP of the evidence was a secret and undisclosed process, giving no reasons for his decision not to prosecute. Finally, she claimed that civil proceedings could not be regarded as part of the effective official investigation envisaged by Article 2 of the Convention.

The Court finds that complex issues of fact and law arise under the Convention which should be examined on the merits. The application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and no other grounds for declaring it inadmissible have been established.

For these reasons, the Court unanimously

Declares the application admissible, without prejudging the merits of the case.

Michael O'BOYLE
Registrar

Matti PELLONPÄÄ
President