



*The untold stories of
Relatives, Victims, and Survivors*

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Rule 9 submission to the Committee of Ministers of the Council of Europe March 2019

Execution of Judgments of European Court of Human Rights
Jordan v the United Kingdom, 2001
Kelly and Ors v the United Kingdom, 2001
McKerr v the United Kingdom, 2001
Shanaghan v the United Kingdom, August 2001
McShane v the United Kingdom, 2002
Finucane v the United Kingdom, 2003
Hemsworth v UK, judgment 2013
McCaughey & Others v UK, 2013



Introduction

Relatives for Justice (RFJ) was founded in April 1991 when a number of bereaved families affected by the conflict came together to support one another. Instrumental in the formation of the organization were key figures that had, on a voluntary basis, been active for the previous 2 decades such as Monsignor Raymond Murray, Clara Reilly, Peter Madden, and the law practice partner of the late Pat Finucane. RFJ is one of only a few organizations operating on a regional basis across the North and on an all island basis.

Relatives for Justice is a world recognised NGO working with and providing support to relatives of people bereaved, and injured, by the conflict across Ireland and individuals in Great Britain.

We assist and support families coping with the effects of bereavement through violence and the resulting trauma. We have offices in Belfast, Dungannon and 5 regional outreach centres. We are an accredited centre for counselling and psychotherapy with BACP.

RFJ identifies and attempts to address the needs of those who have suffered loss and injury; this is achieved through one to one contacts, self-help, group support, outreach and befriending, counselling support and therapy work, welfare and legal advocacy.

As relatives and survivors we all need to have our experiences heard and valued. In terms of conflict resolution this will also allow those most marginalised to realise the pivotal role and vital contribution that they bring to the creation of a new society based upon equality, respect and above all where human rights are secured.

This work highlights and attempts to address outstanding human rights abuses. Our primary objective in this area of work is to assist in the bringing about of a more human rights-based culture in order to safeguard and protect human rights for all.

Relatives for Justice Vision

To support the empowerment of the bereaved and injured of the conflict to realise improved health and wellbeing, and full and equal participation at every level of our post-conflict society

1.1.1 Relatives for Justice Mission

- Building and providing access to safe, integrated and professional services and programmes of support for the bereaved and injured of the conflict
- Contributing to the health and wellbeing of victims and survivors
- Realising empowerment through building skills, confidence and self-awareness
- Encouraging the bereaved and injured to realise their role in peace building and processes designed to deal with the past
- Investing in Relatives for Justice through training and sustainable partnerships

1.1.2 Relatives for Justice Aims

- To provide a safe space for the bereaved and injured of the conflict
- To provide professional, appropriate and development-based individual, family and group support for the bereaved and injured in an holistic, integrated fashion
- To develop and deliver said support in partnership with other professional organisations where appropriate
- To support the bereaved and injured to tell their story and document their experiences
- To build awareness and foster an understanding of the specific experiences and needs of the bereaved and injured of the conflict in a transitional context
- To contribute to the search for truth, highlight injustice and contribute to a culture of human rights
- To support families engaging with relevant processes to deal with the past including legal processes
- To liaise with domestic and international human rights NGOs, government bodies and other international organisations in the furtherance of the realisation of the rights of victims and survivors of the conflict

1.1.3 Relatives for Justice Core Values

- An active commitment to universal human rights and social justice
- The promotion of equality and respect for the background, diversity and experience of **all** those bereaved and injured by the conflict
- The application and development of the highest standards of professional support programmes for victims and survivors of the conflict
- The promotion of recognition and remedy for the specific gender harms and experiences of the bereaved and injured of the conflict

1.2 Eligibility

Relatives for Justice **only** supports victims and survivors of the conflict in its work. Eligibility for services is determined at initial contact and evidence retained.

Submission

Relatives For Justice has made a number of submissions to the Committee of Ministers (CoM) of the Council of Europe over the last years, most recently in August 2017. The current submission seeks to provide an update of developments since then and to engage with the past findings by the Committee in June 2018.

Only consistent international scrutiny is likely to encourage the UK to implement its international human rights obligations in respect of legacy issues and Article 2 of the ECHR. It is therefore welcome that the CoM/CoE is maintaining its interest and pursuing its mandate with vigour.

Relatives For Justice hopes that the CoM finds the following information of assistance in its continued monitoring of the UK government's obligation to respond to the findings of the European Court in the variety of cases from this jurisdiction.

Last Examination by the Committees of Ministers

Recalling the 1318th meeting of the CoM Relatives for Justice welcomed the following findings:

Individual measures:

It is recalled that the authorities have committed to updating the Committee about on-going domestic litigation in relation to Mr Finucane's case and that the Committee decided to resume its consideration of reopening the individual measures in that case once the domestic litigation had concluded.

The Committee further called upon the authorities to take all measures to ensure that the PSNI and DPP (NI) review is completed as quickly as possible.

The completion of the investigations for the other cases in the group is linked to the progress made under the general measures, further underlining the need to take those measures.

General measures:

As both the United Kingdom authorities and the Committee have noted since 2014, the existing mechanisms for conducting investigations into legacy cases required to implement the present judgments are not working effectively and a new approach is required.

It continues to be a matter of serious concern therefore that, since the Committee's last examination of these cases at its 1294th meeting in September 2017, there has been no progress in the establishment of the proposed new single investigative body, the HIU, because it is caught up in the broader political discussions relating to the re-formation of a devolved power sharing government in Northern Ireland. Even the promised consultation on the legislation required for the HIU and other bodies which the authorities have, since September 2016, indicated to be necessary to move things forward has not yet been launched. Regardless of the complexities in the domestic

processes, this cannot be postponed indefinitely and a way out of the impasse must now be found so that the HIU can be established and become operational without any further delay.

In the meantime, it is positive that, in their most recent action plan, the authorities indicate that certain relevant authorities have started to discuss a refreshed bid for legacy inquest funding. Indeed, delays in inquest proceedings continue and no tangible progress has been made on the Lord Chief Justice of Northern Ireland's approach for dealing with the backlog of legacy inquests. In particular the resources required for his constructive approach have not been provided as they were until now considered to be part of the overall funding package for dealing with the Past and thus an aspect of the on-going political talks in Northern Ireland.

There is however, as most recently stated by the High Court of Northern Ireland in March 2018,[7] an obligation on the United Kingdom to ensure that the Coroners Service can effectively comply with Article 2 irrespective of whether an overall package has been agreed to deal with all legacy issues. The duty of the United Kingdom to ensure the timely disposal of inquests cannot allow an indefinite delay in the provision of resources until agreement for an overall package to resolve all legacy issues has been found. As is clearly set out by the authorities, negotiation of the overall package presents complex problems and has generated much delay. The linking of the two gives rise to a risk that the resolution of the question of funding to enable the State to comply with its obligations to ensure timely conduct of inquests will be delayed unduly.

It may be useful to recall that the Court indicated in 2013 under Article 46 that, whatever the specific modalities chosen, the United Kingdom must take, as a matter of some priority, all necessary and appropriate measures to ensure that, in cases where inquests concerning killings by the security forces in Northern Ireland are pending, the procedural requirements of Article 2 are complied with expeditiously.

The Case of Patrick Finucane

On 27th February 2019 the Supreme Court in London determined that there have not been Article 2 compliant inquiries into the death of Mr Finucane.¹ This was recognised as a significant victory for Mrs Geraldine Finucane who has argued for an effective human rights compliant inquiry into the death of her husband. It was not without irony that this judgment came in the fortnight marking the 30th anniversary of the killing of her husband.

The British Government statement in response has been less than fulsome, in saying that "We'll consider it in detail before determining our next step but in relation to the judgment I think it does not direct the holding of a public inquiry and it makes it clear that it is for the state to decide what sort of investigation if indeed any is now feasible is required in order to meet the investigative requirements under Article 2 [of the European Convention on Human Rights]."²

Given the continuous bad faith in this most important and emblematic of cases Relatives for Justice respectfully requests that the Committee continues scrutiny of this matter until such a time as a determination is made on this matter which is clearly compliant and effective.

¹ Judgment in the matter of an application by Geraldine Finucane for Judicial Review (Northern Ireland) [2019] UKSC 7 27 February 2019

² "Government continues to press for Finucane murder inquiry despite UK court ruling - Family wins declaration that effective investigation into killing has not been carried out" Irish Times 27 February 2019 <<https://www.irishtimes.com/news/ireland/irish-news/government-continues-to-press-for-finucane-murder-inquiry-despite-uk-court-ruling-1.3808038>>

Establishment of the Historical Inquiries Unit and the consultation on Dealing with the Past

In May 2018 the Secretary of State Mrs Karen Bradley launched the long-awaited consultation on Dealing with the Past. The consultation launch was notable by its framing. In her forward to the consultation document the Secretary of State said the following:

I believe there are four important things we must consider as we try to find the best way to address the past. First, and foremost, any way forward must seek to meet the needs of victims and survivors. Second, it must promote reconciliation so that, in coming to terms with the past, we enable the people of Northern Ireland to move on to build a better future. Third, in order to build a shared future for all, the proposals must reflect broad political consensus and be balanced, fair, equitable, and crucially proportionate. Fourth, the proposals must follow the rule of law.³

The emphasis on political consensus, balance and proportionality have characterised the framing of the establishment of the HIU and other mechanisms, rather than compliance with the rights of victims of violations.

Relatives for Justice has highlighted significant problems with the legislative proposals for the HIU⁴ as they currently stand. The insertion of a national security veto for the British secretary of state in the operations of the HIU presents the potential for an abuse of process and a diminution of the potential effectiveness of the proposed unit. This heavily compromises its potential as remedy in the cases under scrutiny.

We are disappointed that the proposed legislation will establish a limit on the independence of the HIU director in respect of the “national security interest of the United Kingdom” (clause 7(2))⁵. The effect of this will be to allow the British Secretary of State, on the advice of intelligence organisations such as MI5, to inhibit a truthful account being given by the HIU to families of those bereaved during the conflict. Rather than establish a properly independent investigative body, the British officials and drafters of the legislation have instead undermined the promise of the SHA by inserting the Secretary of State as a block on any information which might be embarrassing or shows the commission of criminal offences by state operatives.

In this way, the British state is seeking to protect itself from negative publicity, proper accountability and legal liability, and protect its operatives from criminal liability. The promise was for a properly independent HIU with a director who would be able to make determinations on the basis of the evidence, without interference. The political veto inhibits and undermines this promise despite the various elements which seek to dress up the sanction.

Relatives for Justice full submission regarding the HIU and the proposals overall is attached

³ Consultation Paper “ADDRESSING THE LEGACY OF NORTHERN IRELAND’S PAST” Northern Ireland Office May 2018

⁴ Draft Northern Ireland (Stormont House Agreement) Bill May 2018 <
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/706283/Draft_Northern_Ireland__Stormont_House_Agreement__Bill.pdf>

⁵ Supra 3

at the end in Annex A.

The consultation ended on 5th October 2018. There is no timetable for publication of the responses, analysis of the government or the necessary implementation of proposals. For the past three years officials have spoken of autumn timetables for passage of legislation. This is again mooted. Without as much as the publication of a response to the consultation Relatives For Justice does not hold out much hope.

Amnesties/Statutes of Limitations

The efforts to establish the HIU have been heavily compromised by a debate on whether state actors suspected of engagement in violations should be afforded an amnesty. This debate has been engaged in by the Prime Minister Theresa May and her cabinet in public.⁶

While civil society and the public attempt to ensure that a human rights compliant and independent investigations unit is established those charged with responsibility have engaged in a deliberate and provocative exercise in elevating the interests of former soldiers and police officers. This debate was the background noise to the consultation on mechanisms to deal with the past and establish the HIU.

This significant debate evidently holds many implications for the efficacy and compliance of the proposed HIU.

Only last week this issue became particularly hotly contested as the Secretary of State Karen Bradley said in response to a question from the DUP MP for South Belfast regarding potential prosecutions of soldiers that the killings by the state were “not crimes” and that all actions by state actors were “appropriate and dignified”. Despite the ensuing apology for this statement against the backdrop of partial statements regarding whether state actors should face the rigour of the law this was seen as a governmental mindset.⁷

Inquests

Relatives for Justice was pleased to note on 28th February that the Department of Justice announced “a significant expansion of capacity to clear the outstanding legacy inquests over the next six years.” Which would “allow the implementation of proposals developed by the Lord Chief Justice in 2016”.⁸

While this is undoubtedly progress, diligence and care needs to be taken to ensure that the resources are released and that year on year budget allocations are indeed made so that implementation is secured. The statement by the Department recognises the need for

⁶ “PM: Northern Ireland system investigating past 'unfair'” BBC 9th May 2018 < <https://www.bbc.co.uk/news/uk-northern-ireland-44054424>>;

“Theresa May admits concern over prosecution of troops ahead of Bloody Sunday Charging Decision” The Telegraph 06 March 2019 <https://www.telegraph.co.uk/news/2019/03/06/theresa-may-admits-concern-prosecutions-troops-ahead-bloody/>

⁷ “Karen Bradley faces calls to resign over Troubles Comments” 06 March 2019 < <https://www.bbc.co.uk/news/uk-northern-ireland-47471469>>

Relatives for Justice 06 March 2019 <https://www.relativesforjustice.com/rather-than-the-miserable-spectacle-of-clarifying-in-case-she-is-misunderstood-karen-bradley-should-immediately-resign/>

⁸ “DOJ announces legacy inquest reform” Department of Justice 28th February 2019

increased resources from the PSNI, the Public Prosecution Service and other justice agencies. However, it is not clear where the budget allocation comes from in the current budget, indeed the last Minister for Justice Claire Sugden and Policing Board member Dolores Kelly MLA have both expressed concern in this regard. It is exactly this issue of resourcing which has prevented progress on compliant inquests to date.

Given this experience and concern, we respectfully submit that this announcement should not be seen as the end of the matter and that it is kept under scrutiny until such time as the legacy inquest plan is indeed up and running and delivering to families.

Office of the Police Ombudsman

On 14th February this year the Police Ombudsman made a statement that the office had become aware that the Police Service of Northern Ireland had not provided all relevant materials to them in relation to several investigations that his office was carrying out in cases of alleged state collusion. These investigations include multiple killings across several geographical areas.⁹

This has led to further delays in the publications of reports for the families in question including the case of the killing of 17yr old Damien Walsh, whose mother lodged a complaint to the office in 2003 yet still has not seen publication of the report. The position of the office Police Ombudsman as remedy for victims of violations is significantly undermined by the lack of disclosure by the PSNI.

This lack of disclosure has added to an already bleak picture for families relying on processes of remedy where PSNI disclosure is required. These include Police Ombudsman investigations, legacy inquests and civil proceedings. Given the extent and regularity of failings in disclosure in cases involving state actors or where allegations of collusion exist the pattern suggests a deliberate policy of failure to disclose.

Further this is a significant matter for PSNI independence and for community confidence in the “New Beginning to Policing” promised by the reforms of policing following the Good Friday Agreement.

Related to this is the concerning arrest of two journalists who had carried out research and drawn on findings from the Police Ombudsman regarding state collusion in killings in Loughinisland County Down in 1994. The arrests of Trevor Birney and Barry McCaffrey come as retired police officers engage in protracted challenges to the right of the office of the Police Ombudsman to use the term collusion in reports into violations.¹⁰ The two were arrested in August 2018. They were released on bail for six months and last week rearrested and released on bail for another six months. They will be on police bail for one year without

⁹ “Sean Graham Shop Killings: Police sorry for disclosure error” BBC 14th February 2019 <https://www.bbc.co.uk/news/uk-northern-ireland-47231937>;

“Relatives for Justice responds to statement by Police Ombudsman re PSNI Intelligence Failings” Relatives for Justice 14th February 2019 <https://www.relativesforjustice.com/relatives-for-justice-responds-to-statement-by-police-ombudsman-re-psni-intelligence-failings/>

¹⁰ “Loughinisland Verdict – Families’ Vindication” Relatives for Justice November 2018 <https://www.relativesforjustice.com/loughinisland-verdict-families-vindication/>

charges being proffered in a case which has raised concerns around press freedom and the actions of the PSNI and Durham Constabularies. These matters are currently subject to judicial review.¹¹

¹¹ National Union of Journalists 13 November 2018 <https://www.nuj.org.uk/news/screening-ends-with-thanks-and-an-appeal-for-support-for-trevor/>