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

November 2020

Execution of Judgments of the European Court of Human Rights

Group of cases:

McKerr v UK, 2001

Jordan v UK, 2001

Kelly and others v UK, 2001

Shanaghan v UK, 2001

McShane v UK, 2002

Finucane v UK, 2003

Hemsworth v UK, 2013

McCaughey and others v UK, 2013

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Introduction

Relatives For Justice (RFJ) is a human rights' framed victim support NGO that provides holistic support services to the bereaved and injured of all the actors of the conflict on an inclusive and non-judgemental basis. We also seek to examine and develop transitional justice and truth recovery mechanisms assisting with individual healing, contributing to positive societal change, and ensuring the effective promotion and protection of human rights, social justice and reconciliation in the context of an emerging participative post-conflict democracy.

As part of our engagement with human rights bodies, RFJ has made several submissions to the Committee of Ministers (the Committee), most recently earlier this month.

RFJ hopes that the Committee 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. Pursuant to our own mandate, the information we provide focuses on the situation in the North of Ireland with reference to arrangements for dealing with the legacy of the conflict.

Purpose of this communication

Earlier this month, we sent a Rule 9 submission outlining recent developments in relation to the various elements of the legal, political and investigative regime in this jurisdiction dealing with the requirements to establish an Article 2 compliant approach to dealing with legacy. In it, we stated that

"The UK Government has virtually and unilaterally abandoned the Stormont House Agreement. Furthermore, it has failed to provide any details of its alternative proposal to

deal with the legacy of the conflict in the North of Ireland, as requested by the Committee of Ministers in September 2020.”

Since we submitted our observations, RFJ has received a letter from the Northern Ireland Office (responding to one from RFJ) that is of relevance - and gives credence - to this conclusion. This correspondence, we believe, may be of interest and assistance to Ministers during their deliberations on the UK government’s plans to implement the ruling of the ECtHR in *McKerr v. UK* and many follow up cases. The two letters are appended.

The first letter is from our Chief Executive, Mark Thompson, to British government minister at the Northern Ireland Office, Brandon Lewis, M.P., seeking clarification of plans for legacy investigations. The second is the response from British junior minister, Robin Walker, M.P., and is dated 9th November, 2020.

This letter appears to represent the most recent position statement by the British government on these matters and shows that it has resiled completely from any notion that it has international human rights obligations to carry out Article 2 compliant investigations, arising from ECtHR rulings in *McKerr & Others v UK*. The focus outlined in the letter on “*effective information recovery and reconciliation*” appears to subvert entirely the requirement for prompt, independent, thorough and impartial investigations into state killings.

In our submission, we suggest that it is not for the British government summarily to decide whether prosecutions are likely, particularly where state agents have caused – or are implicated in – deaths or have committed torture. Their only role should be to facilitate the establishment of an independent investigative mechanism – as was agreed in the Stormont House Agreement; the British authorities have promised repeatedly to the Committee of Ministers of the Council of Europe that this would be done.

We also note in the letter from Mr Walker that: *“the Government believes the focus should be on helping Northern Ireland look to the future”*. This is simply a euphemism for impunity and lack of accountability. The formulation seeks to justify a refusal to fulfil previous promises to implement investigations that are consistent with international obligations.

This approach is of a piece with recent high-level statements by the Conservative government that it intends to withdraw the UK from the international legal architecture of the European Convention of Human Rights. It is evident that it believes it can, thereby, avoid its obligations in relation to investigations arising from the conflict in the north of Ireland that ended in 1998.

In this context, it is worth remembering the remarks by then EU Commissioner for Human Rights, Nils Muižnieks, in November 2014¹ during a visit to Belfast. He pointed out that the UK cannot avoid its obligations because there is now a devolved administration. At the time when its agents allegedly took life unlawfully or committed torture, the jurisdiction was subject to direct rule from Westminster. Accordingly, the UK will continue to be held to account for events during that time.

In similar fashion, we submit that, because the UK was voluntarily subject to the ECHR during the conflict, it must be held to account under those rules, even if, subsequently, it withdraws from the ECHR.

We continue to believe that the Committee of Ministers has a vital role in monitoring the execution of judgments of the European Court and reminding the UK Government of its obligations.

¹ <https://thedetail.tv/articles/uk-government-cannot-wash-its-hands-of-legacy-of-the-troubles>

APPENDIX

1. Letter from Mark Thompson, CEO of Relatives for Justice to Brandon Lewis, MP

Brandon Lewis MP

British Secretary for State

BY EMAIL

October 19 2020

Dear Mr Lewis,

I am writing to you for information as to what steps you have taken since your March 18th “Westminster Statement” to the House of Commons concerning the Stormont House Agreement (SHA) legacy mechanisms agreed with the Irish government and the five main political parties to the Executive.

As you correctly pointed out in your statement there were over 17,000 responses to the consultation on taking forward legislation to implement the SHA; (*an international agreement involving two governments and related to the implementation of the GFA embedding peace, promoting and protecting civil liberties and not least human rights.*) This is the largest public response to any government consultation on these islands. The overwhelming number of responses, from across the community, sought full implementation of the legacy mechanisms. This outcome was acknowledged with us in meetings with senior NIO staff and subsequently in the NIO document of July 2019 entitled “*Addressing the legacy of the past – Analysis of the consultation responses.*” In particular the Historic Investigations Unit (HIU) was, and remains, the focus of families and the majority of respondents.

As you will appreciate many of those bereaved and injured in the conflict are of an ageing population. Many have died waiting on your government to implement the agreement, having experienced undue and unnecessary delay. This has further aggravated the trauma of existing harms experienced by the killing of a loved one; which continues because of the failure of your government to honour the commitments made in the SHA. Families are left in a limbo, their lives suspended indefinitely. It has also added insult to injury. These harms deepen as the delay continues.

Therefore, the expectation to have an independent and effective investigative process, compliant with the UK’s domestic and international legal obligations under Article 2 of the European Convention on Human Rights, into the killing of their loved ones is one of urgency for bereaved families from across the community to say the least.

Commitments to implement the SHA legacy mechanisms were also given on numerous occasions, in written submissions and at verbal hearings in Strasbourg in response to Relatives for Justice Rule 9 submissions, by your government to the Committee of Ministers and Committee of the Execution of Judgments (CoM/CoE) as part of the supervision of your government following significant rulings at the European Court that have consistently found the UK in violation of Article 2 investigative legal obligations; families from this jurisdiction being forced to bring their plight to the European Court of Human Rights. This supervision has been ongoing since May 2001 and the UK has yet to satisfy CoM/CoE that it has put in place satisfactory arrangements compliant with the Convention and thus closing its supervision.

From 2015 the UK response has been that it will implement the legacy package agreed as part of the SHA. The UK has also made similar commitments in Geneva to the UN-OHCHR (ICCPR), CAT, and CEDAW to name but some. Similarly the UK Ambassador to the US is on record in response to both the Congress and Senate on these matters as ensuring human rights in this jurisdiction and taking forward the SHA legacy package; not abandoning it. Article 2 is a key human right. Article 3 may also be engaged with aggravated trauma caused through deliberate unnecessary and systemic delay. Families cite decades of delay as “torturous” while the UK simply waits on them to die.

Due process and the rule of law must be the priority of the day rather than that of delay, prevarication, and obfuscation or by continuing with contrived and deliberate distractions; the clear purpose of which is to deflect, conflate and ultimately attempt to wriggle out of legal obligations by the UK. This approach must cease.

Implementation of the agreed legacy mechanisms as per the SHA is urgently required and as the UK’s representative here in the North you need to set out how your government intends to achieve this.

Is mise le meas

Mark Thompson

Mark Thompson

CEO

Relative for Justice

2. Letter from Junior Minister Walker to Mark Thompson

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Mark Thompson

By Email: mark.thompson@relativesforjustice.com

Our Ref: MC/20/444

9 November 2020

Dear Mark,

Thank you for your correspondence on 19 October regarding Northern Ireland legacy proposals. I am responding on the Secretary of State's behalf.

The Government remains committed to bringing forward legislation to address the legacy of the Troubles. Progress on this has, like other priorities, been affected by the challenging wider circumstances of the past few months. However, let me assure you we are moving forward as quickly as we can, and we remain committed to working with all parts of the community in Northern Ireland, including victims' support groups, as part of this.

Feedback to the consultation on the proposed way forward in 2018 raised a significant number of concerns, including about how the proposed institutions would operate in practice. It was clear that changes would be needed in order to address the legitimate concerns of those who responded to the consultation, as well as to find the broad consensus on the specific and technical detail necessary to enable the introduction of legislation on this complex and sensitive issue.

The Government has enormous sympathy for those who have suffered and continue to suffer as a result of the Troubles. Family members have waited far too long for answers about what happened to their loved ones and, as you have pointed out, in many cases have sadly passed on without ever knowing. It is therefore vital that we focus resources and energy on measures which are most likely to produce constructive outcomes for victims, their families and wider society.

This is why the Government believes effective information recovery and reconciliation should be at the heart of a revised legacy system that is fair and

proportionate, and in line with our obligations. With the likelihood of a successful prosecution in many cases low, the Government believes the focus should be on helping Northern Ireland look to the future and helping provide families with answers before the opportunity to do so is lost.

Thank you for taking the time to contact us. We look forward to engaging with you constructively on this matter as soon as we are in a position to do so.

Kind regards,

ROBIN WALKER MP
MINISTER OF STATE FOR NORTHERN IRELAND