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Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1259 meeting (7-9 June 2016) (DH)

Item reference: Communication from a NGO (Relatives for Justice (RFJ)) (complementary note) (28/04/2016) in the McKerr group of cases against the United Kingdom (Application No. 28883/95) and reply from the authorities (29/04/2016)

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1259 réunion (7-9 juin 2016) (DH)

Référence du point : Communication d'une ONG (Relatives for Justice (RFJ)) (note complémentaire) (28/04/2016) dans le groupe d'affaires McKerr contre Royaume-Uni (Requête n° 28883/95) et réponse des autorités (29/04/2016)
(anglais uniquement)

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.



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Rule 9 submission (supplementary note) to the Committee of Ministers of the Council of Europe

April 2016

Execution of Judgments of European Court of Human Rights



McKerr, Hemsworth, McCaughey, Grew, Kelly, McCann & (many) others v. UK (28883/95)

On Monday 24th April 2016 Relatives for Justice (RFJ) held an event in Belfast attended by families bereaved in the conflict, other NGO's, the Irish government head Secretariat representative to the North, the UK government (NIO), the Office of the (Joint) First & (Deputy) Ministers from the devolved institutions, other statutory agencies and civil servants from the Department of Culture, Arts & Leisure (DCAL) that has responsibility for the Public Records Office NI (PRONI).

The Minister for DCAL, Ms. Carál Ní Chuilín, addressed the event as guest speaker outlining her role as the Legal Keeper of the Records, what she has been doing in terms of releasing files including some of the difficulties encountered. The Minister also answered questions from families.

Importantly the Minister has laid before the devolved Assembly Statutory Rules enabling the release of information to families in a more responsive way, as previously the process was becoming stuck with delays and interference by the NIO, PSNI and the Department of Justice (DOJ) through Freedom of Information Act 2000 (FOI) requests for public records. Difficulties previously arose as to exactly who was the proper responding authority with the NIO, supported by the PSNI and DOJ, claiming they were the correct responding authority and not the Minister and therefore the decision to release information was solely a matter for these agencies. In a sense the approach of the NIO, Theresa Villiers, caused a moment of constitutional crisis between the devolved institutions and London. The Minister in her address herein addresses this matter resulting from a court case.

However, there are concerns, that were spoken to in the course of a Q&A, that the UK government has indicated that they could technically remove this power (Statutory Rules) from the Assembly by determining that under national security a UK Cabinet Minister in London could assume responsibility for releasing Public Record papers thus undermining the hard won achievements of the DCAL Minister. If this were to happen it would also effectively undermine the Assembly - not to mention be questionable in law and consequently the application of the Convention.



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The following note is taken directly from the Minister's speaking notes on Monday and we believe this note may assist and help inform the Committee in how they proceed with regards to the UK meeting their Article 2 obligations with respect to the disclosure of public records.

Speech by Department of Culture, Arts & Leisure (DCAL) Minister Carál Ní Chuilín at the Houben Center, Belfast to event organised by Relatives for Justice Monday April 24th 2016

Release of information contained in inquest and court files under the Public Records Act (NI) 1923

Reasons for delay in releasing information to relatives and their representatives.

Introduction of Statutory Rules to provide privileged access to information contained in court and inquest files.

I am committed to helping families and their representatives obtain information contained within court inquest files, trial files, and prison files which are held by PRONI. I stand before you all and re-affirm my support for full disclosure.

I am aware that many people are seeking access to this information with the assistance of Relatives for Justice. Unfortunately I cannot comment on individual requests, but I am happy to talk to you after this event.

I understand the needs of families to request and receive information about conflict-related deaths.

On August 9th 2013, the British Secretary of State and the Chief Constable got and emergency injunction from the High Court at midnight, against me, Relatives for Justice and KRW Law, to try and prevent the release of Court and inquest files to families. The legal challenge was subsequently dismissed and families kept the information that I had properly released to them as Keeper of the Records. The Attorney General represented me in Court, which resulted in the High Court recognising me as the "responsible authority".

During the autumn of 2013, a consultation protocol was put in place to assist with the release of information.

In May 2014, I announced the publication of an online index of Coroner's Inquests from 1969-1999, which are preserved by PRONI. The aim of this index is to assist families to find out if a record exists about the death of a loved one and importantly how to gain access to it. This contained details of over 3000 conflict-related deaths.

In January 2015, I also launched a pilot process for the private release of information under the Public Records Act (NI) 1923. This process is voluntary and has been used

successfully by over 130 applicants enabling them to receive inquest and court information privately.

Following the successful implantation of the pilot process, I proposed the introduction of Statutory Rules to set out in statute the process for the private release of information held in court and inquest files by the Public Record Office.

A public consultation exercise took place on the draft rules and there were a series of stakeholder engagements events in Derry, Portadown and Belfast in February 2016 explaining the purpose of the Rules and receiving responses.

This process was codified in March 2016 allowing families directly affected by the conflict to gain privileged access to sensitive information contained in court and inquest files. This also extended to legal advocates and NGO representing families.

Despite a recent challenge by the Department of Justice in a court hearing the Rules are compliant with the European Convention of Human Rights (ECHR) and Data Protection Principles set out under the Data Protection Act. The Attorney General again supports me in this process. What I am doing and what I have been trying to achieve over this past 5 years, despite attempts to undermine my ministerial responsibility, is to assist families from all backgrounds seeking information about the killing of a loved one from the Public Records Office.

The Rules also enable families and their representatives to gain privileged access to sensitive information contained in files related to non-conflict incidents for the first time including deaths as a result of suicide or an accident. This too is important as families want to know the circumstances of how a person died; circumstances that might not have been divulged and which for religious and other reasons of faith not discussed within families.

The Rules process complements other routes to access information provided by the Freedom of Information Act (2000) and Data Protection Act (1998).

The Pilot process and the new Rules have and will continue to benefit a wide range of people including victims, survivors and relatives as well as witnesses to an incident, recorded in any court or inquest file.

During the past 3 years, my department has released information to over 160 families and representatives using either the Public Records Act, the Freedom of Information Act or the Data Protection Act. My officials are currently dealing with a further 145 requests and aim to release information to families as quickly as possible.

I regret that families have had to wait for information to be released. However, families need to know that as go about my responsibilities in seeking to release files and provide information to families there are others agencies that seek to prevent disclosure.

I am aware that consultation with the Responsible Authorities is a necessary part of both the Rules and Freedom of Information Act when considering the release of information. I understand that it is important to consult the Department of Justice and Northern Ireland Office and allow them a reasonable period of time to provide their views.

There may be occasions when the consultees provide detailed or specific information that may require some details to be redacted, to ensure Article 2 compliance. However, I must emphasise that court and inquest records have been through a public court process and as a result are very unlikely to contain information which could be classed as falling under National Security.

I know that some information may be withheld as it relates to someone else such as home addresses of witnesses or juror names or that it could be very distressing.

As Minister of DCAL, I make the final decision on the release of information held by the Public Record Office.

It is important that organisations such as Relatives for Justice continue their critical work in assisting families to find out about the past and help them get the information they need.

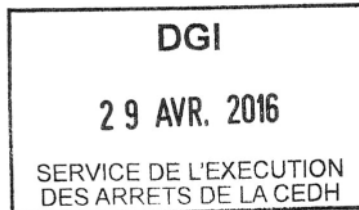
I remain fully committed to the release of information contained in inquest and court files and will continue to assist families and their representatives in any way I can.

I am fully aware of the current position taken by the UK government in respect to the implementation of mechanisms agreed in December 2014 in the Stormont House Agreement to address the legacy of the past in that they subsequently put in place a veto on national security. This meant that the process was unworkable. There are those within the NIO and London who would also seek to apply the same blanket veto on Public Records.

The Statutory Rules that I have put in place will hopefully ensure that this cannot now happen no matter who assumes the post of Minister for DCAL. ENDS



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29 April 2016

Dear Ms Amat

Subject: McKerr v. United Kingdom (Application No.28883/95 – Judgment of 4 May 2001, final on August 2001)

Thank you for your correspondence to Laura Dauban, Deputy Permanent Representative of the United Kingdom to the Council of Europe in relation to the Rule 9 submission from Relatives For Justice concerning the Minister for the Department of Culture Art and Leisure's implementation of the Court Files Access Rules (Northern Ireland) 2016

This topic has been covered by our previous correspondence of 26 April under the heading "Access to historical files at the NI Public Records Office"

**Simon Marsh
Deputy Director Legacy Group**