
1443rd meeting, 20-22 September 2022 (DH)

H46-32 McKerr group v. the United Kingdom (Application No. 28883/95)

Supervision of the execution of the European Court's judgments

Reference document
CM/Notes/1443/H46-32

Decisions

The Deputies

1. recalling that these cases concern procedural violations of Article 2 of the Convention due to various shortcomings in the investigations into the death of the applicants' next-of-kin in Northern Ireland in the 1980s and 1990s, either during security force operations or in circumstances giving rise to suspicion of collusion in their deaths by security force personnel;
2. recalling the concern previously expressed as to what is a fundamental change of approach from the Stormont House Agreement, December 2014;
3. noted the continued passage in Parliament of the Northern Ireland Troubles (Legacy and Reconciliation) Bill, with the proposal to create a new body, the Independent Commission for Reconciliation and Information Recovery (ICRIR), to review deaths and other harmful conduct forming part of the Troubles in Northern Ireland between 1 January 1966 and 10 April 1998, and that it passed the House of Commons on 4 July 2022;
4. emphasised again that it is crucial that the legislation if progressed and ultimately adopted is in full compliance with the European Convention and will enable effective investigations into all outstanding cases;
5. underlined again the importance for the success of any new investigative body, particularly if aimed at achieving truth and reconciliation, of gaining the confidence of victims, families of victims and potential witnesses;
6. noting the United Kingdom's explanation of stakeholder engagement to date, noted nevertheless with serious concern the lack of formal public consultation on the Bill thus far, the concerns about whether if enacted the Bill would be compatible with the European Convention and, as also highlighted by the Council of Europe Commissioner for Human Rights, the minimal support for, and public confidence in the Bill and its mechanisms in Northern Ireland from victims groups, civil society, the Northern Ireland Human Rights Commission and political representatives;
7. noting the authorities' expressed openness to constructive engagement with stakeholders as the Bill proceeds through Parliament, strongly reiterated therefore their calls on the authorities to take all necessary measures and devote sufficient time, before they pursue progression and adoption of the Bill, for discussions and meaningful effective engagement with all stakeholders to address their concerns and garner the widest possible public trust and confidence;

8. noting the United Kingdom's repeated position that the Bill is compatible with Convention obligations, nevertheless urged the authorities to amend the Bill, if it is progressed, to allay concerns about compatibility with the European Convention, including by addressing the following key issues: ensuring that the Secretary of State for Northern Ireland's role in the establishment and oversight of the ICRIR is more clearly circumscribed in law in a manner that ensures that the ICRIR is independent and seen to be independent; ensuring that the disclosure provisions unambiguously require full disclosure to be given to the ICRIR; ensuring that the Bill adequately provides for the participation of victims and families, transparency and public scrutiny; urged them further to reconsider the conditional immunity scheme in light of concerns expressed around its compatibility with the European Convention;

9. noted that, while ongoing civil claims that were brought before the date of the Bill's introduction will continue, the new legislation will prevent new civil claims from being brought or continued and reiterated their serious concern about the proposal to terminate pending inquests that have not reached substantive hearings, bearing in mind the progress finally being made in those inquests further to the measures recently undertaken; urged the authorities to reconsider this proposal and allow the limited number of pending legacy inquests to conclude, to avoid further delay for families;

10. invited the authorities to provide updated information by 24 October 2022 on all developments in the legislative process and the measures undertaken to work with victims, their families and all other stakeholders;

11. decided to resume consideration of this group at their 1451st meeting (December 2022) (DH).