

1475th meeting, 19-21 September 2023 (DH)

H46-44 McKerr group v. the United Kingdom (Application No. 28883/95)

Supervision of the execution of the European Court's judgments

Reference document
CM/Notes/1475/H46-44

Decisions

The Deputies

1. welcomed the presence of the Parliamentary Under Secretary of State at the Northern Ireland Office;
2. 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;

As regards individual measures

3. reiterated their profound concern that over four years have passed since the Supreme Court judgment finding that there has still not been an Article 2-compliant inquiry into Mr Finucane's death in 1989 and that there is still no clear indication of how the Secretary of State proposes to proceed; exhorted the authorities again to provide their full and clear response to the Supreme Court judgment, including a decision on the measures they intend to take as soon as possible;
4. reiterated also their profound regret that the inquests in the cases of *McKerr* and *Kelly and Others* have still not been completed, nor been listed for hearing; called upon the authorities to take all measures to expedite proceedings so that they can be concluded before 1 May 2024 when they will have to be terminated and transferred to the Independent Commission for Reconciliation and Information Recovery (ICRIR), risking further delays;
5. decided, without prejudice to the Committee's evaluation of the general measures, to close the examination of the *Shanaghan* and *McCaughey and Others* cases by adopting Final Resolution CM/ResDH(2023)272;

As regards general measures

6. recalling their decisions adopted at their examinations of the cases at the 1443rd meeting (September 2022) (DH), the 1451st meeting (December 2022) (DH), the 1459th meeting (March 2023) (DH) and the interim resolution adopted at their last examination at the 1468th meeting (June 2023) (DH);
7. recalling their concerns about the Northern Ireland Troubles (Legacy & Reconciliation) Bill's compatibility with the European Convention and their repeated calls upon the authorities to sufficiently amend the Bill, if progressed and ultimately adopted, to allay those concerns;
8. noting with interest the amendments to the Bill tabled by the government since their last examination of the cases which, in particular strengthen the participation of the next-of-kin of victims and public scrutiny in the work of the ICRIR;

9. noted however that a number of issues relating to independence, disclosure and the initiation of reviews remain uncertain; urged the authorities therefore to provide additional information on the planned practical and other measures to ensure that these issues are fully addressed, including: to ensure the independence of the ICRIR appointment process; to further strengthen in practice the procedural safeguards for victims and their families; to develop clear disclosure protocols from all relevant authorities to the ICRIR; and to ensure referral to the ICRIR of all cases that might engage Articles 2 and 3 of the European Convention;
10. deeply regretted furthermore that, while the cut-off date has been extended to May 2024, the proposal to terminate pending inquests remains in the Bill; expressing profound concern that, if effective handover measures are not put in place, this may lead to further delay and distress for individuals, including some of the individual applicants in this group of cases, urged the authorities to consider taking additional practical measures to ensure that as many inquests as possible can conclude before 1 May 2024 and that all of the preparatory work done on these pending cases is not lost in any transfer to the ICRIR;
11. underlining 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, acknowledged the steps taken by the authorities in an attempt to engage with victims and stakeholders over the past twelve months; noted with deep regret nevertheless that despite those efforts, support for the ICRIR remains minimal; strongly encouraged the authorities to take all necessary additional measures to garner public trust and the confidence of victims, their families and all stakeholders;
12. reiterated their serious concern about the proposed conditional immunity scheme which risks breaching obligations under Article 2 of the European Convention to prosecute and punish serious grave breaches of human rights, and seriously undermining the ICRIR's capacity to carry out effective investigations within the meaning of Article 2 of the Convention; deeply regretted therefore the authorities' decision not to support the House of Lords' amendment to remove the scheme from the Bill and its subsequent rejection; strongly urged the authorities to consider repealing the immunity provisions;
13. invited the Chair of the Committee of Ministers to send a letter to the United Kingdom authorities in order to raise the concerns above;
14. decided to resume the examination of this group of cases at their DH meeting in June 2024 at the latest.