

SECRETARIAT / SECRÉTARIAT

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRÉTARIAT DU COMITÉ DES MINISTRES

COMMITTEE
OF MINISTERS
COMITÉ
DES MINISTRES



Contact: Zoë Bryanston-Cross
Tel: 03.90.21.59.62

Date: 03/12/2021

DH-DD(2021)1300

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: 1419th meeting (December 2021) (DH)

Communication from the authorities (02/12/2021) concerning the group of cases of MCKERR v. the United Kingdom (Application No. 28883/95).

Information made available under Rule 8.2a of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

* * * * *

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1419^e réunion (décembre 2021) (DH)

Communication des autorités (02/12/2021) relative au groupe d'affaires MCKERR c. le Royaume-Uni (requête n° 28883/95) **[anglais uniquement]**.

Informations mises à disposition en vertu de la Règle 8.2a des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

02 DEC. 2021

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH**McKerr group of cases v United Kingdom**

McKerr v United Kingdom (Application 28883/95), judgment final on 4 August 2001
Hugh Jordan v United Kingdom (Application 24746/94), judgment final on 4 August 2001
Kelly and others v United Kingdom (Application 30054/96), judgment final on 4 August 2001
Shanaghan v United Kingdom (Application 37715/97), judgment final on 4 August 2001
McShane v United Kingdom (Application 43290/98), judgment final on 28 August 2002
Finucane v United Kingdom (Application 29178/95), judgment final on 1 October 2003
Hemsworth v United Kingdom (Application 58559/09), judgment final on 16 October 2013
McCaughey and others v United Kingdom (Application 43098/09), judgment final on 16 October 2013

Information provided by the United Kingdom Government

The UK Government has been clear about its continued commitment to the principles of the Stormont House Agreement (SHA). The proposals which we recently set out in the Command Paper¹, including an Oral History Archive and an information recovery body, are based on these principles and will provide answers to victims and family members who have waited too long for these and help wider society in Northern Ireland to move forward.

The Stormont House Agreement established the key principles for effectively dealing with legacy issues, including a focus on the needs of victims and survivors. The UK Government understands the importance of the Stormont House Agreement, and remains committed to the principles and spirit that it enshrined. But we also want to ensure that any process for dealing with the past focuses on measures that can deliver positive outcomes for as many of those directly affected by the Troubles as possible - as well as for society in Northern Ireland as a whole. Therefore, any process must address fundamental implementation issues within the Stormont House Agreement that are likely to prevent this.

STORMONT HOUSE AGREEMENT

The Stormont House Agreement (SHA) in 2014 was the result of talks between the UK Government, Irish Government and the NI political parties. The Agreement included a framework for dealing with the legacy of the Troubles in Northern Ireland.

The Northern Ireland parties requested that the relevant legislation be taken through the UK Parliament, following significant consultation with the parties. The UK Government responded to this request and subsequently developed, including through extensive discussions with the parties, a draft bill.

The consultation on the draft bill in 2019 received over 17,000 responses. These covered a wide range of themes. The consultation also highlighted the importance

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1002140/CP_498_Addressing_the_Legacy_of_Northern_Ireland_s_Past.pdf

that those responding placed on information recovery to achieve reconciliation, and on hearing and acknowledging the voices of victims. There was also a strong interest in issues of funding, resource, staffing, timeframes, and the independence and transparency of any legacy body. There was a general consensus that the current system requires reform, but also some concern about how the SHA institutions would work in practice. The consultation demonstrated that there were many concerns with the bill which would make progress impossible.

COMMAND PAPER PROPOSALS

The UK Government's focus since the consultation has been on developing a way forward which would address some of the practical issues identified during the consultation and subsequently in discussions with partners - including the operational difficulties involved with investigating such a high number of complex, historical cases in an efficient, sensitive and timely way.

We firmly believe that the proposals we put forward in the Command Paper are consistent with the 6 general principles outlined in the SHA:

- **Facilitating the pursuit of justice and information recovery**

The SHA proposed to establish a Historical Investigation Unit that would complete all outstanding investigations, which would all be referred to the PPS for a prosecutorial decision, within 5 years. Subsequent consultation and analysis has shown that this timescale is unachievable, and a more realistic timescale for completing such a task would be 10-20 years, including the conclusion of any subsequent trial processes. As noted above the prospect of a successful criminal conviction for a legacy offence is very small and continues to reduce as the time period since the offence increases.

The current system does not provide the vast majority of families with either a successful prosecution, or the information they are seeking. The process for dealing with the past must focus on measures that can deliver positive outcomes for as many victims, survivors, and families as possible - as well as for society in Northern Ireland as a whole - before opportunities to do so are lost forever. It is clear to us that the mechanisms for investigating cases contained within the Stormont House Agreement will not do this within the timeframe needed.

The UK Government does, however, entirely agree that access to information and accountability, via a thorough and robust investigative process, is absolutely vital to victims and survivors, and their families. That is why obtaining information - supported by full disclosure by the State - is the cornerstone of the proposals the UK Government has put forward.

Our current proposals build, and indeed go beyond the information recovery mechanism set out in SHA to also provide information to those who sustained

serious injuries during the Troubles.

- **Acknowledging and addressing the suffering of victims and survivors**

Our focus is on putting measures in place that will help get the best possible outcomes that can realistically be achieved for as many families as possible, and helping society in Northern Ireland to move forward from the past.

The UK Government's proposed approach recognises that victims and families have individual requirements. The victim centred approach set out in the Command Paper will allow families to choose if they want to engage in the information recovery process. Where families do want answers the information recovery process set out in our proposals will help those who have already waited too long for these. The oral history initiative would also provide a mechanism for those who have been directly affected by a death or injury, to have their experiences acknowledged. Alongside this, work will be undertaken to consider how wider acknowledgement and commemoration of the past can be taken forward in a way that is balanced and respectful.

- **Upholding the rule of law**

The UK Government remains entirely committed to the rule of law. The difficult truth is that the current system for addressing the legacy of the past is not working for anyone and families are left without justice or information.

The proposal of a statute of limitations for Troubles-related offences is challenging. However the UK Government believes that such a bold, but difficult, step is required in order to provide information, certainty, acknowledgement, and reconciliation.

The prospect of convictions resulting from criminal investigations is vanishingly small. Between 2015 and 2021 just 9 people were charged in connection with Troubles-related deaths, with one convicted. The Government has given significant consideration to the best way forward - including the possibility of keeping open the option of prosecutions in a small number of cases while facilitating effective information recovery for the vast majority. But this would be very difficult to achieve in a way which is consistent with our principles of reconciliation and information recovery, deterring individuals from coming forward to provide meaningful information and hampering the timeliness and effectiveness of the information recovery process.

It is also important that the proposed end to criminal investigations into Troubles-related incidents is not seen in isolation but alongside the establishment of an independent recovery body which will conduct rigorous investigations into Troubles-related deaths to provide answers about a death or serious injury in line with Articles 2 and 3 of the European Convention on Human Rights.

- **Promoting reconciliation**

Oral history is widely recognised as an effective way of offering people, some of whose voices will not have been heard before, an opportunity to heal through sharing experiences and perspectives. The oral history and memorialisation proposals in the Command Paper take forward and build on the oral history initiative set out in SHA. In partnership with relevant expert organisations, our intention is that wider memorialisation initiatives focused on the need to remember and address the past in a balanced and respectful way would be taken forward. It is intended that this would be supported by the creation of a suite of physical and online resources which would help people to come together to address the past with a sense of understanding. Focusing on information recovery and reconciliation will help Northern Ireland address the past together, enabling communities to then start looking together to the future.

- **Human rights compliant**

The UK values its membership of the Council of Europe and is committed to upholding our commitments under Articles 2 and 3 of the European Convention of Human Rights. The Government is committed to dealing with legacy issues in a way that complies with international human rights obligations, supports information recovery and reconciliation, and responds to the needs of individual victims and survivors, as well as society as a whole.

As we noted in our response to the Council of Europe's Human Rights Commissioner, and set out above, the comprehensive information recovery mechanism we have set out would conduct investigations into all cases as requested by the family, and proactively seek information about a death or serious injury where this is required by Article 2 and Article 3 of the European Convention on Human Rights.

- **Balanced, proportionate, transparent, fair and equitable**

The approach to legacy reform must seek to ensure that the disproportionate pursuit of criminal justice outcomes does not act as a barrier to the ability to obtain answers about what happened to loved ones.

The independent recovery body that forms a core part of our proposals will conduct investigations into Troubles-related deaths and cases of very serious injury, proactively seek information about a death or serious injury where this is required by Articles 2 and 3 of the European Convention on Human Rights.

Rather than re investigating all 3,500 Troubles-related deaths to a criminal standard - which could take 20 years and would result in few if any convictions - our focus is on obtaining information for families. A focus on reconciliation and helping society in Northern Ireland to look forward rather than back is a powerful incentive to encourage individuals to engage with the information recovery process. While we acknowledge that some may choose to remain silent and not come forward with information, we do think - and engagement has suggested this - individuals would be

more likely to come forward with information if the prospect of prosecutions was removed.

The needs of individual families and victims are often different and our victim-centered approach will allow families and victims to choose if they wish to participate. The proposed wider initiatives, including an oral history project that will facilitate storytelling and understanding, and a balanced approach to memorialisation, would provide a more proportionate and fair system that will support acknowledgement of the past while helping society to move towards the future together.

CONCLUSION

We remain entirely committed to the key principles of the SHA, and have sought to identify a way forward which is consistent with these, while addressing the implementation challenges which have been identified and which have prevented the agreement from being given practical effect to date.

The Command Paper places emphasis on gathering information for families; on retrieving knowledge before it is lost; and doing more to help individuals and society come together in order to share and understand the tragic experiences of the past. Our approach remains true to the principles of SHA ensuring that our proposals will deliver for victims, families, veterans and wider society.