

**SECRETARIAT GENERAL**

SECRETARIAT OF THE COMMITTEE OF MINISTERS  
SECRETARIAT DU COMITE DES MINISTRES



Contact: Anna Austin  
Tel: 03 88 41 22 29

Date: 19/11/2014

**DH-DD(2014)1402**

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: 1214 meeting (2-4 December 2014) (DH)

Item reference: Communication from "Police Ombudsman for Northern Ireland" (05/11/2014) concerning the case of McKerr against United Kingdom (Application No. 28883/95) and reply from the authorities (14/11/2014)

Information made available under Rule 8.2.a 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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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 : 1214 réunion (2-4 décembre 2014) (DH)

Référence du point : Communication de "Police Ombudsman for Northern Ireland" (05/11/2014) concernant l'affaire McKerr contre Royaume-Uni (requête n° 28883/95) et réponse de »s autorités (14/11/2014) (**anglais uniquement**).

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

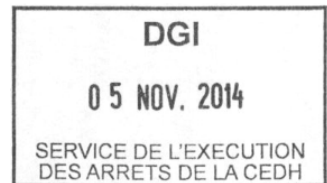
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Our ref: MM/MQ  
Your ref: Application No. 28883/95

5 November 2014

Ms Corinne Amat  
Head of Division  
Directorate General  
Human Rights and Rule of Law  
Dept for the Execution of Judgments  
Of the European Court of Human Rights  
Council of Europe



BY EMAIL ONLY

Dear Ms Amat

**Re: McKerr against the United Kingdom (and seven similar cases) group**

I am taking the unusual step of writing directly to you in relation to the above matters as a result of the circumstances which I find the Office in.

Over the past number of years the Committee of Ministers has been supervising the execution of the judgments in relation to the above cases until all necessary general measures have been adopted. A central plank amongst those general measures has been the role and powers of the Office of the Police Ombudsman for Northern Ireland. Since becoming Police Ombudsman in July 2012 I have done all within my power to ensure that any investigation undertaken by the Office is conducted efficiently, effectively, independently and in a timely fashion (having regard to the resources at my disposal). It remains my intention to continue in this regard.

The number of cases my Office has been receiving in relation to deaths attributable to the "conflict" in Northern Ireland, many of which have the potential for Article 2 to be engaged, has increased from 135 in July 2012 to 278 in October 2014. This demonstrates, in my view, increased confidence in the ways the Office has been undertaking work in this area. In addition the Office has been subject to three external inspections since July 2012 by the Criminal Justice Inspectorate in Northern Ireland. Each inspection has been a positive; one the most recent (September 2014) clearly stating that the independence of the Office in how it investigates historical cases has been fully restored.

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Ms Corinne Amat

In view of the increasing number of these historic cases being received by my Office, earlier this year I set out a compelling business case to the Department of Justice for an increase in funding to £3.2m per annum. This was in order to ensure the programme of related investigations was completed in a reasonably timely manner by 31 March 2019. The Office was given an expectation that this resource would be made available.

Recent events in Northern Ireland have caused me considerable concern regarding my ability to properly investigate 'historic' matters over the next number of years. Instead of having my funds increased to meet the increasing workload, funding for historic investigations has been progressively reduced since 2012, when the Department of Justice approved £2.23m, to £2.02m for this year with the likelihood of a further reduction in 2015/16. It now no longer appears that the business case for funding to £3.2m per annum will be met.

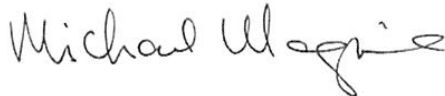
As a consequence I have had little option but to extend my target for the completion of these investigations by at least six years, meaning that some inquiries may not be completed until 2025 within the current resourcing envelope. This unacceptable development has caused considerable distress to families many of whom have been waiting patiently for many years for their cases to be subject to examination.

This will be subject to change should further budget cuts be imposed and may ultimately undermine the strategy in place for the delivery of effective investigations of these grave and often controversial matters.

Whilst the general measure concerning the Office relates to the need for appropriate legislative reform to provide me with the necessary means and powers to conduct effective investigations in conformity with Convention requirements, an equally important issue now concerns the appropriate funding of the Office to allow me to conduct effective, Convention-complaint investigations. I have shared these concerns with the Secretary of State for Northern Ireland, the Department of Justice and the leaders of all the main political parties in Northern Ireland.

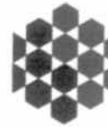
In the circumstances, I believe I have no other recourse but to update the Committee of the situation as it presently stands in order to ensure that you are fully appraised of the situation we find ourselves in.

Yours sincerely



**MICHAEL MAGUIRE**  
*Police Ombudsman for Northern Ireland*

Policing Policy and Strategy Division  
Rosemary Crawford

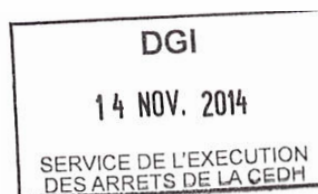


Department of  
**Justice**  
www.dojni.gov.uk

Block A Castle Buildings  
Stormont  
BELFAST  
BT4 3SG  
Tel: 028 9052 2740  
Fax: 028 9052 0063  
email: Rosemary.Crawford@dojni.x.gsi.gov.uk

Ms Corinne Amat  
Head of Division  
Directorate General  
Human Rights and Rule of Law  
Department for the Execution of  
Judgments of the European Court of  
Human Rights  
Council of Europe

Your reference  
Our reference



14 November 2014

Dear Ms Amat

**Subject: McKerr Group v. United Kingdom (application n°28883/95) Judgment of 4/5/2001, final on 4/8/2001**

Thank you for the opportunity to comment on the correspondence to the Counsel from the Police Ombudsman for Northern Ireland in respect of the general measures in the above case. Before dealing specifically with the question of funding for the Ombudsman's Office, I would make the following general observations.

As our Minister, David Ford, pointed out to the Assembly's Committee for Justice recently, the justice system in Northern Ireland is funded to deal with the present, not the past. The Department of Justice has been dealing with the past, through coroners' inquests, and the work of the Police Ombudsman and the PSNI's Historic Enquiries Team, but there are Article 2 obligations to protect the life of people today, as well as to investigate deaths in the past, and we must strike a balance.

The Minister made precisely these points to Commissioner Muižnieks when they met last week. He emphasised that we needed a new specialist unit, something like the Historical Investigations Unit that was recommended by Richard Haass last year, and that we should seek funding for that from the United Kingdom government. To judge from his closing remarks to the transitional justice conference he was attending, the Commissioner accepted that the UK's responsibilities included funding.

The Department of Justice fully acknowledges the responsibility on the State to conduct Article 2-compliant investigations into historic cases involving State actors, but it is simply not possible to fund those investigations to the level sought from the justice budget.

Turning now to the Ombudsman's Office, when funding allocations were made for the Budget 2011-15 period, that Office was the only area in the justice system that received a resource cash increase (of £271,000, or 3% over the four years) in its budget from the Department.

In March 2012, the Department approved a business case for £2m per annum for six years, for funding investigations into historic cases. In January 2014, the Ombudsman submitted a revised business case seeking in excess of an additional £1m per annum for such investigations. The Department was unable to provide this in full in 2014-15, but hoped funding of £400,000 might be redirected from other areas within the Departmental core: however, when the scale of the budgetary reductions facing the Department in the current and future years became apparent, that was no longer possible.

In the context of the current financial situation facing the Northern Ireland Executive, there has been no option but to require the Ombudsman's Office, along with all other areas of the justice system, to apply reductions to its budget. At one point, these would have amounted to 6.2% in-year. We have recently been able to reduce that to 4.4%, making the Ombudsman's Office one of the most protected, in funding terms, of the bodies we sponsor. However, all of our sponsored bodies have been asked to assess the impact of further reductions in budget of 10% and 15% in 2015-16.

I hope the Council finds this information helpful.

Yours sincerely



**ROSEMARY CRAWFORD**  
Deputy Director