APPLICATION N° 25681/94

Kevin McDAID and others v/the UNITED KINGDOM

DECISION of 9 April 1996 on the admissibility of the application

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Article 26 of the Convention :

a) The six month period runs from the date of the final decision given in the context of exhaustion of effective and adequate remedies.

A request to the Executive to reopen an inquiry into the shooting of demonstrators (22 years) after the original tribunal of inquiry published its findings is not an effective remedy for the purposes of exhaustion of domestic remedies.

b) When no effective domestic remedy is available, the six month period runs from the date of the act or decision complained of. If it concerns a continuing situation, it runs from the end of that situation.

A "continuing situation" refers to a state of affairs which operates by continuous activities by or on the part of the State to render the applicants victims. Where complaints relate to specific events which occurred on identifiable dates, the fact that the events continue to have serious repercussions on the applicants' lives does not constitute a continuing situation.

c) There is no provision for waiver of compliance with the six month rule.

THE FACTS

The applicants are (1) Kevin McDaid, born in 1955.
(2) Ita McKinney, born in 1938.
(3) Eileen Green, born in 1942.
(4) Anthony Doherty, born in 1963.
(5) Bernard Gilmour, born in 1946.
(6) Margaret Montgomery, born in 1958.
(7) Mary Doherty, born in 1946.
(8) Gerald Duddy, born in 1957.
(9) John Kelly, born in 1948.
(10) Margaret McGilloway, born in 1954.
(11) Lawrence McElhinney, born in 1924.
(12) Maura Duffy, born in 1951.
(13) William Wray, born in 1953.
(14) Michael McKinney, born in 1951.

The applicants are all resident in Derry (also known as Londonderry), Northern Ireland. They are represented before the Commission by Messrs. Madden and Finucane, solicitors practising at Belfast. The facts, as submitted by the applicants, may be summarised as follows.

The applicants are the relatives of thirteen individuals, Michael McDaid, Gerald McKinney, Patrick Doherty, Hugh Gilmore, Bernard McGuigan, Gerald Donaghy, John Duddy, Michael Kelly, Kevin McElhinney, William Nash, John Young, James Wray and William McKinney, who were shot dead by the British army in Derry on 30 January 1972, subsequently known as "Bloody Sunday". They had been participating in a demonstration against internment without trial which had been organised by the Northern Ireland Civil Rights Association. Estimates of the number of participants vary between 3,000 and 30,000.

The march began in the Creggan area at approximately 2 p.m. and progressed down to the William Street area with the intention of terminating at the Guildhall Square for a rally involving speeches by civil rights activists and MPs. The march progressed without incident until it reached the junction of William Street and Rossville Street. The British army had erected a barrier in William Street. As a result, the lorry at the head of the march turned into Rossville Street, leading the marchers away from confrontation with the soldiers at the William Street barrier. The march proceeded to Free Derry Corner where the rally began.

Approximately 200 marchers, mainly young men, broke away from the march and began throwing stones at the soldiers manning the barricade. As a result of this low-level rioting, the soldiers responded by firing a number of rubber bullets. They also turned water cannons on the youths and threw CS gas canisters into their midst. These

measures were effective in repelling the rioters and succeeded in containing the marchers within the Rossville Street, Little James Street, Chamberlain Street, Glenfada Park and Abbey Park areas of Derry known as the Bogside.

At 4.07 p.m. members of the First Battalion Parachute Regiment (the Paras) were ordered into the Bogside area to commence a pre-planned arrest or "scoop up" operation. At 4.10 p.m. the Paras opened fire on the civilian demonstrators and by 4.37 p.m. thirteen people had been shot dead and thirteen others had been wounded.

Fifty-four arrests were made during the operation and some of those arrested were charged with riotous behaviour. On 1 August 1972 the Attorney General announced that all of those charges were to be withdrawn.

On 31 January 1972 the British Prime Minister, Edward Heath, announced an immediate public inquiry under the Tribunals of Inquiries (Evidence) Act 1921. The Lord Chief Justice, Lord Widgery, was selected by the Government to undertake the inquiry alone, despite calls from several Members of Parliament for any tribunal or inquiry to be undertaken by more than one judicial member. On 1 February 1972 Parliament, in setting up the tribunal, adopted a resolution that, "... It is expedient that a Tribunal be established for inquiring into a definite matter of urgent public importance namely the events on Sunday 30 January which led to the loss of life in connection with the procession in Londonderry on that day".

The Widgery Tribunal sat from 21 February 1972 until 14 March 1972. Lord Widgery restricted his terms of reference to the streets of Londonderry in which the disturbances and the shooting took place and to the period beginning with the moment when the march first became involved in violence and ending with the deaths of the deceased. He also considered the orders given to the army before the march.

Lord Widgery had discretion to decide what information would be of help to the Tribunal. He heard evidence from military personnel and civilian eyewitnesses, including international journalists, cameramen, photographers, civilian demonstrators and local priests. Evidence was given by only seven out of the thirteen people who were wounded by the soldiers.

The evidence given by military witnesses claimed that the members of the First Parachute Regiment were fired upon first by gunmen and that they fired aimed shots at identified targets. The Tribunal also heard evidence that the soldiers were stoned, abused and attacked with nail/petrol/acid bombs.

The evidence given by civilian witnesses claimed that the soldiers had fired indiscriminately at innocent people fleeing or attempting to hide from the gunfire and that the dead and wounded were unarmed when they were shot.

The Widgery Report was published on 18 April 1972. The Report in effect exonerated the members of the Parachute Regiment and their commanding officers in

relation to the thirteen killings and thirteen woundings. It concluded, *inter alia*, that the intention had been to carry out an arrest operation, that the soldiers had come under fire and returned fire in accordance with the standing orders set out in the Yellow Card, which were satisfactory:

> "8. Soldiers who identified armed gunmen fired upon them in accordance with the standing orders in the Yellow Card. Each soldier was his own judge of whether he had identified a gunman. Their training made them aggressive and quick in decision and some showed more restraint in opening fire than others. At one end of the scale some soldiers showed a high degree of responsibility; at the other, notably in Glenfada Park, firing bordered on the reckless. These distinctions reflect differences in the character and temperament of the soldiers concerned.
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> 11. There was no general breakdown in discipline. For the most part the soldiers acted as they did because they thought their orders required it. No order and no training can ensure that a soldier will always act wisely, as well as bravely and with initiative. The individual soldier ought not to have to bear the burden of deciding whether to open fire in confusion such as prevailed on 30 January. In the conditions prevailing in Northern Ireland, however, this is often inescapable."

The Royal Ulster Constabulary (RUC) conducted their own investigation into the deaths and woundings that occurred on 30 January 1972. On 4 July 1972 the RUC passed their file to the Director of Public Prosecutions (DPP) for Northern Ireland. On 1 August 1972, the Attorney-General, in a written answer to a parliamentary question, stated that, after considering the evidence, together with the DPP for Northern Ireland, there was insufficient evidence to warrant the prosecution of any member of the Security Forces who took part in the events of 30 January 1972.

An Inquest into the deaths was held on 21 August 1973 by Mr. Hubert O'Neill, Coroner. The jury returned open verdicts in respect of the 13 deceased. However, the Coroner was quoted in The Irish Times the following day as saying, "It strikes me that the Army ran amok that day without thinking what they were doing. They were shooting innocent people. The people may have been taking part in a march that was banned but that does not justify the troops coming in and firing live rounds indiscriminately. I would say without hesitation that it was sheer, unadulterated murder. It was murder".

The applicants issued civil actions in the High Court in Northern Ireland. The Government then issued a statement acknowledging that none of the deceased had been proved to have been shot whilst handling a firearm or bomb and that they should be regarded as having been found not guilty of such an allegation. The Government made small *ex gratia* payments to the applicants and the civil claims were withdrawn.

Since 1975 the applicants have called on the Government to set up a new, independent inquiry to re-examine the events of "Bloody Sunday". The Government have consistently refused to do so.

On 24 January 1994, the applicants' legal representatives wrote to Prime Minister John Major formally requesting reopening of the cases and a new public inquiry. By letter dated 17 February 1994 the Prime Minister's Under Secretary stated that it would not be right, after a Tribunal of Inquiry had reported, to set up a further inquiry into events that took place 22 years previously.

COMPLAINTS

The applicants claim that the rights of the deceased under Article 2 of the Convention have been violated. They submit that the deceased were intentionally and wrongfully deprived of their right to life. They submit that the State has a positive duty to protect the right to life and that the United Kingdom Government failed to do so in this case. The applicants also claim that the failure to examine thoroughly and impartially the circumstances of the deaths of the deceased and to take criminal or other proceedings against those involved in the killings is a continuing breach of that duty.

An alternative submission is that the only domestic remedy open to the applicants was to persuade the United Kingdom Government to reopen the inquiry. They claim that fresh material came to light prior to their letter to Mr. Major, which constituted cogent new evidence as to the lack of independence of the Widgery inquiry and that the application was timeously submitted after the Government's refusal to hold a fresh inquiry.

THE LAW

The applicants complain that the deceased were intentionally and wrongfully deprived of their right to life contrary to Article 2 of the Convention, which provides:

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

a. in defence of any person from unlawful violence;

b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

c. in action lawfully taken for the purpose of quelling a riot or insurrection."

The Commission recalls that the deaths caused during "Bloody Sunday" were raised previously in the context of the Inter-State application Ireland v. United Kingdom where the applicant Government alleged that the deaths of 22 persons in Northern Ireland were caused by the security forces in breach of Article 2 of the Convention. The Commission declared these complaints inadmissible, having found no substantial evidence of administrative practice of a failure to protect life and that the domestic remedies available in Northern Ireland in respect of these deaths had not been shown to be exhausted (Ireland v. United Kingdom, No. 5310/71, Dec. 1.10.72, Yearbook 15, p. 76 at pp. 240-242).

In the present application, the applicants complain that, *inter alia*, the United Kingdom Government sanctioned the military operation in order to regain control of the Bogside area knowing that civilian casualties were inevitable. The applicants also complain that they have no effective remedy in domestic law.

However, the Commission recalls that Article 26 of the Convention provides that the Commission "may only deal with the matter ... within a period of six months from the date on which the final decision was taken". It is established case-law that "the final decision" refers only to domestic remedies which can be considered "effective and sufficient" for the purpose of rectifying the complaint (e.g. No. 9599/81, Dec. 11.3.85, D.R. 42 p. 33). Where there is no remedy available, the six month period runs from the date of the act or decision complained of (e.g. No. 9360/81, Dec. 28.2.83, D.R. 32 p. 211).

In the present case, a Public Inquiry into the events of 30 January 1972 was held from 21 February 1972 to 14 March 1972. The Report was published on 18 April 1972 and it was clear to the applicants at that stage that the Parachute Regiment and their commanding officers had been exonerated in relation to the thirteen killings. In addition to the Public Inquiry, the RUC conducted their own investigation into the deaths and woundings. This resulted in the decision not to prosecute which was made public on 1 August 1972. Further, an Inquest into the deaths was held by the Coroner of Derry on 21 August 1973, which resulted in an open verdict.

In so far therefore as the applicants complain of a failure to provide an effective investigation into the circumstances of the deaths of their relatives or to commence a prosecution, they must have been aware by 21 August 1973 at the latest of the basis of their present complaint. In particular, it must have been clear to the applicants that no prosecution would be instituted and they would already have been aware of the allegedly unsatisfactory conclusion of the Widgery Report which was the official

response to the events. The applicants' complaints to the Commission however were introduced on 18 August 1994, which is more than twenty years after the Inquest terminated.

In so far as the applicants complain that they are victims of a continuing violation to which the six month is inapplicable, the Commission recalls that the concept of a "continuing situation" refers to a state of affairs which operates by continuous activities by or on the part of the State to render the applicants victims (see, e.g., No. 11192/84, Dec. 14.5.87, D.R. 52 p. 227; No. 12015/86, Dec. 6.7.88, D.R. 57 p. 108; No. 24841/94, Dec. 30.11.94, unpublished). Since the applicants' complaints have as their source specific events which occurred on identifiable dates, they cannot be construed as a "continuing situation" for the purposes of the six month rule. While the Commission does not doubt that the events of "Bloody Sunday" continue to have serious repercussions on the applicants' lives, this however can be said of any individual who has undergone a traumatic incident in the past. The fact that an event has significant consequences over time does not itself constitute a "continuing situation".

Finally, while the applicants argue, alternatively, that the six months time limit should run from the refusal of Mr. Major on 17 February 1994 to hold a fresh inquiry, the Commission does not consider that a request to reopen the inquiry submitted to the Executive 22 years after the original tribunal published its findings can be considered an effective remedy for the purposes of the exhaustion of domestic remedies pursuant to Article 26 of the Convention.

The Commission accordingly finds that an examination of the case does not disclose the existence of any special circumstances which might have interrupted or suspended the running of the six month period. It would note that there is no provision for waiver of compliance with the six month rule (see, e.g., No. 10416/83, Dec. 17.5.84, D.R. 38 p. 158).

It follows that the application has been introduced out of time and must be rejected under Article 27 para. 3 of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.