EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 20855/15
Sally GRIBBEN and Letita QUINN
against the United Kingdom

The European Court of Human Rights (First Section), sitting on 15 March 2016 as a Committee composed of:
Kristina Pardalos, *President,*
Paul Mahoney,
Pauliine Koskelo*, judges,*
and André Wampach, *Deputy Section Registrar,*
Having regard to the above application lodged on 27 April 2015,
Having deliberated, decides as follows:

THE FACTS

The applicants, Ms Sally Gribben and Ms Letita Quinn, are Irish nationals born in 1961 and 1990 respectively who currently live in Dungannon. They were represented before the Court by Mr F. Shiels of Madden & Finucane, a firm of solicitors practising in Belfast.

A. The circumstances of the case

The facts of the case, as submitted by the applicants, may be summarised as follows.

The first applicant, Ms Sally Gribben, is the sister of Mr Martin McCaughey. The second applicant is the daughter of Mr Desmond Grew. On 9 October 1990 Mr McCaughey and Mr Grew were shot and killed by soldiers from a specialist military unit of the British Army. The deaths and the subsequent steps taken by the national authorities to investigate them (including an inquest conducted in 2012) were the subject of a previous application to this Court (see *McCaughey and Others*

v. the United Kingdom, no. 43098/09, ECHR 2013). Details of the shooting and the subsequent investigation are fully set out therein.

In its previous judgment the Court held that there had been a violation of Article 2 of the Convention by reason of excessive investigative delay. Additional complaints alleging that the inquest had failed to comply with the procedural requirements of Article 2 were held to be inadmissible as they were premature and/or domestic remedies had not been exhausted since judicial review proceedings – by which the first applicant was seeking to quash the inquest verdict and require a new inquest to be held – were still ongoing. However, the Court indicated that should the applicants be dissatisfied in the future with the progress or outcome of the domestic proceedings it would be open to them to reintroduce those complaints under the substantive and procedural aspects of Article 2 of the Convention (see §§ 47 – 67 and §§ 123 – 128).

The grounds raised by the first applicant in her application for permission to apply for judicial review are set out in *McCaughey and Others* (cited above), §§ 64 – 67, on 29 June 2012.

In summary, these grounds were that the questions put by the Coroner to the jury had failed to ensure that the central issues relating to the recourse to lethal force at each stage of the operation were identified and addressed; that the Coroner had misdirected the jury in respect of the soldiers' state of belief when they opened fire and continued to fire; that the Coroner had failed to direct the jury properly in response to its question about shooting at a corpse; that the Coroner' had refused to discharge a juror hostile to the next-of-kin; that the relatives had been deprived of effective and full participation in the inquest as a result of the Coroner's decision not to admit evidence concerning the involvement of the soldiers in other lethal-force incidents in Northern Ireland; that the Coroner had failed to take adequate steps to ensure the recall of Soldier A; and finally, that the Coroner's decision to hold the inquest before a jury had been contrary to Article 2 because statutory provisions in Northern Ireland requiring inquest juries to be anonymous precluded any inquiry into apparent or actual bias.

On 18 October 2012 the High Court granted the first applicant leave to apply for judicial review solely in respect of the Coroner's failure to secure the recall of Soldier A. Permission was refused on all other grounds.

The first applicant appealed in respect of all grounds on which permission to apply for judicial review had been refused. On 3 June 2014 the Court of Appeal granted leave to pursue the further grounds relating to the disclosure and admission of evidence of other lethal-force incidents in Northern Ireland. The decision on whether to grant leave in respect of the use of a jury was deferred to the substantive hearing in light of a pending decision of the Court of Appeal on the same issue in another case. Permission was again refused in respect of the remaining complaints.

On 30 October 2014 the first applicant was refused permission to appeal that decision to the Supreme Court.

On 13 April 2015 the High Court hearing the substantive claim for judicial review refused permission to apply for judicial review on the jury issue and dismissed the claim on all other grounds. It is not known whether the applicants have sought to appeal that decision.

B. Relevant domestic law and practice

The relevant domestic law and practice is set out in full in *McCaughey and Others* (cited above), §§ 68 – 89.

COMPLAINTS

The applicants complained under Article 2 of the Convention that there had been a breach of the procedural obligation to conduct an "effective official investigation" into the death of their relatives. In particular, they complained about the Coroner's failure to discharge a juror who lacked impartiality, and about the Coroner's failure to direct the jury in a manner consistent with Article 2 of the Convention.

THE LAW

The complaints raised by the applicants before this Court were all raised before the domestic courts in their application for permission to apply for judicial review. The applicants were refused permission on these grounds although permission was granted on other grounds. However, the purpose of the judicial review application was to seek an order quashing the previous inquest verdict and requiring a fresh inquest. Had the judicial review application been successful on the grounds on which permission was granted, the applicants would have achieved their overall aim and it is likely that the complaints currently before this Court would have been considered to be resolved.

Although the applicants' judicial review application was dismissed following a substantive hearing, they had a right of appeal against this decision. If they have sought to use this remedy, a successful ruling would likely result in the quashing of the previous inquest verdict and the ordering of a fresh inquest and, consequently, the present application would be premature. If they have not sought to use this remedy, they cannot be said to have exhausted domestic remedies.

Therefore, in view of the above circumstances, the complaints under Article 2 of the Convention are inadmissible as being premature and/or on the ground that domestic remedies have not yet been exhausted within the meaning of Article 35 § 1. The Court notes, however, that should the applicants be dissatisfied in the future with the progress or outcome of the domestic procedures, it would be open to them to reintroduce these complaints under the procedural aspects of Article 2 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Done in English and notified in writing on 7 April 2016.

André Wampach
Deputy Registrar

Kristina Pardalos
President