

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

**QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)**

----

**IN THE MATTER OF AN APPLICATION BY DAVID WRIGHT FOR**

**JUDICIAL REVIEW**

----

**KERR J**

**Introduction**

[1] The applicant is the father of a man called Billy Wright who was murdered on 27 December 1997 while an inmate of Her Majesty's Prison, the Maze, Lisburn, County Antrim. By this application Mr Wright seeks judicial review of the decision of the Chief Constable of the Police Service of Northern Ireland refusing to disclose the file of the police investigation into the murder of his son.

**Background**

[2] Billy Wright was a member of a loyalist paramilitary organisation known as the Loyalist Volunteer Force (LVF). At the time of his murder he was serving a sentence of imprisonment in H block 6 in the Maze. LVF prisoners were accommodated in wings C and D of H block 6 and Irish National Liberation Army (INLA) prisoners were housed in wings A and B of the same block. After Mr Wright's murder INLA claimed responsibility for the killing.

[3] The three individuals who carried out the shooting were inmates of the Maze prison held in the INLA wings. Mr Wright was murdered while he waited in a prison van in the forecourt of H block 6 to be transported to the visitors' area. Those who murdered him had made their way from their wing to the forecourt by a hole cut in security fencing. An improvised weapon was used to carry out the shooting.

[3] Those who killed Mr Wright were tried and convicted of his murder on 20 October 1998. They did not give evidence during their trial and it was not disclosed how they were able to obtain the equipment to make the hole in the security fence or to assemble the weapon used to kill Mr Wright. The question of how they were able to go from the part of the prison where they were held to the forecourt of H block 6 did not arise in the criminal trial.

[4] An inquest into the death of Mr Wright was held in February 1999. A number of prison officers who had made statements about the killing did not give evidence. The inquest jury's findings were recorded as follows: -

“[Billy Wright] died on 27 December 1997 as the result of a gunshot wound to the chest sustained whilst in the process of visitor transfer by van from H block 6 Maze Prison which at the time was inhabited by both LVF and INLA prisoners. His murder was carried out by three INLA inmates in an elaborate, premeditated and pre-planned act. Access to the murder scene, namely the forecourt of H block 6, was gained by the cutting of a hole by person or persons unknown, in an undetected and unobserved section of security fencing.”

The circumstances in which the murderers of Mr Wright were able to gain access to the forecourt at the time that he was in the van waiting to be transported to the visitors' area were not revealed by the inquest nor was the suspicion of collusion considered.

[5] At the time that Mr Wright was murdered an inquiry was being carried out by Mr Martin Narey into the escape of a prisoner from the Maze prison on 10 December 1997. Mr Narey was the Director of Regimes of England & Wales. After Billy Wright's murder, Mr Narey's inquiry was extended to cover the circumstances of that murder. In the report on his inquiry (published on 2 April 1998) Mr Narey stated,

“We are conscious that the incident [*i.e.* the murder of Mr Wright] is the subject of an ongoing investigation and it would be inappropriate for us to comment in detail on the precise circumstances or persons involved. We have therefore confined our inquiry to the background to the shooting and the general issues it raises, particularly the scope for illicit items to be smuggled into the prison.”

At the time of Mr Narey's investigation into Mr Wright's murder 26 members of prison staff were absent from work through illness and therefore not available for interview. At least some of these could have provided information about the circumstances of the shooting of Mr Wright.

[7] On 5 January 2001 the applicant's solicitors wrote to the Chief Constable asking that he provide the police investigation file. A reply was sent on 12 April 2001 which stated that the file remained confidential to the Chief Constable and the Director of Public Prosecutions. A similar request made by the Northern Ireland Human Rights Commission on 9 February 2001 received a similar response.

### **The arguments**

[8] The applicant claimed that the failure to carry out a thorough, impartial and independent investigation into the outstanding questions surrounding the death of his son constitutes a breach of article 2 of the European Convention on Human Rights. One of the aspects of the murder of his son that Mr Wright wishes to have addressed is whether there was collusion on the part of the authorities that facilitated the killing. It was submitted on his behalf that the refusal of the Chief Constable to make the police file available has contributed to the breach of article 2 in that it hindered the full investigation of all the circumstances of the killing of Mr Wright including the possibility of collusion.

[9] For the respondent it was submitted that the Human Rights Act 1998 does not apply to the applicant's case. The investigation of the death of Mr Wright was treated as closed on the conviction of those responsible for his murder. It was not possible to circumvent the non-retrospective effect of HRA by engaging in correspondence after the date that it came into force.

[10] Alternatively the respondent claimed that the applicant had not demonstrated a breach of ECHR. To do so it would have been necessary to show that disclosure of the police file was required for an effective investigation of the circumstances of the death to occur. Not only was this not the case but there were substantial public policy reasons that the file's confidentiality should be preserved.

### **The retrospectivity issue**

[11] HRA came into force on 2 October 2000. By virtue of section 6 (1) it is unlawful for a public authority to act in a way which is incompatible with a Convention right. It is on this provision that the applicant relies in order to require the Chief Constable to provide the police investigation file into his son's death. Section 7 (1) of the Act enables an individual to rely on the Convention in legal proceedings. So far as is material, it provides: -

“7. - (1) A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) may-

(a) bring proceedings against the authority under this Act in the appropriate court or tribunal, or

(b) rely on the Convention right or rights concerned in any legal proceedings ...”

[12] Section 22 (4) of HRA provides: -

“Paragraph (b) of subsection (1) of section 7 applies to proceedings brought by or at the instigation of a public authority whenever the act took place; but otherwise that subsection does not apply to an act taking place before the coming into force of that section.”

[13] For the Chief Constable Mr McCloskey QC argued that all material events occurred before the coming into force of HRA and since the Act had prospective effect only (see, for instance *R v Lambert* [2001] 3 WLR 206 and *R v Kansal (No 2)* [2002] 2 AC 69) the applicant could not invoke it in the present proceedings.

[14] I do not accept this argument. True it may be that the police investigation was treated as closed when the murderers of Billy Wright were convicted but the file remains a potential source of material whose disclosure may be required in order to ensure that an article 2 compliant inquiry into the death takes place. The request for its disclosure occurred after the coming into force of HRA. The reason that Mr Wright has asked for access to the file is his dissatisfaction with the investigation that has thus far taken place into his son’s death. That dissatisfaction crystallised after the shortcomings of the inquest and the other inquiries became clear and this occurred after the coming into force of the Act.

[15] In any event, I am satisfied that an article 2 compliant investigation into the death of Mr Wright has not yet taken place. Such an investigation would have to address directly such issues (among others) as: - how the murderers were able to penetrate the forecourt area unobserved; how they were able to obtain the materials to manufacture the weapons used; how they knew that Mr Wright would be in the prison van at the time the murder took place and whether there was any evidence of collusion on the part of members of prison

staff. None of the inquiries so far held has provided a satisfactory answer to these questions.

[16] The obligation to conduct an effective investigation into the death of Mr Wright is a continuing one. In *McKerr v UK* (Application no 28883/95) ECtHR held that the national authorities had failed in the obligation imposed by article 2 to carry out a prompt and effective investigation into the circumstances of the death of the applicant's son in 1982. It awarded £10,000 compensation to the appellant by way of just satisfaction. In a subsequent judicial review application (*Re Jonathan McKerr's application* [2003] unreported) the Court of Appeal upheld the decision of Campbell LJ that the duty to hold an article 2 compliant investigation into the death of Mr McKerr's son endured notwithstanding that there had been a criminal trial of police officers who had shot the deceased and that an inquest into the death was opened although later abandoned in 1994. Campbell LJ held that the ordering of payment in just satisfaction was intended to bring the continuing obligation to an end. The Court of Appeal reversed this decision but held that "the judge was plainly correct in his conclusion that the obligation to provide an investigation compliant with article 2 did not end when the inquest was abandoned in 1994, but continued thereafter".

[17] The applicant as the next of kin of Mr Wright enjoys a current right under article 2 of ECHR to an effective investigation of his son's death. I do not consider that his claim to be entitled to access to the police file involves a retrospective invocation of HRA, therefore.

**Is the applicant entitled to access to the police investigation file?**

[18] Although Mr Wright is entitled, in my opinion, to an effective investigation into the circumstances of his son's death, it does not follow automatically that he is entitled to access to the police investigation file. Mr Treacy QC on behalf of the applicant accepted that disclosure of the police file was not an automatic requirement of article 2. In *Jordan v UK* [2001] ECHR 24746/94 ECtHR said at para 121: -

"121. As regards the lack of public scrutiny of the police investigations, the Court considers that disclosure or publication of police reports and investigative materials may involve sensitive issues with possible prejudicial effects to private individuals or other investigations and, therefore, cannot be regarded as an automatic requirement under Article 2. The requisite access of the public or the victim's relatives may be provided for in other stages of the available procedures."

[19] This approach has been followed in this jurisdiction in *Re Adams' Application for Judicial Review* [2001] NI 1, 22B/D where the Court of Appeal said: -

“... the ECtHR does not lay down any ruling that for an investigation to be regarded as effective the claimant must have access to the investigation papers. It is merely one element among others which may demonstrate the inadequacy of an investigation. It does not follow that a thoroughly conducted investigation is to be regarded as deficient if the complainant has not been given access to the investigators' documents. We would observe, moreover, that in referring to access to the case file in *Ogur v Turkey* the Court may have had in mind inspection of a document of the nature of the examining magistrate's dossier in an inquisitorial system, and that quite different considerations may apply to the investigation files of the RUC and DPP under our criminal law system. The principle with which the Court was concerned in each case was that the state's investigation of the conduct of its representatives be effective and independent. The steps which are required to achieve this will depend on the facts of the case and may vary enormously.”

[20] The emphasis on the need to examine the particular requirements of an individual case was echoed by the Court of Appeal in England in the case of *R (Green) v Prosecution Services* [2002] EWCA Civ 389. A decision on whether the police file requires to be disclosed must be taken in the context of what is necessary for a full and effective inquiry into the death of Mr Wright, therefore. Although the applicant's concern that all information necessary to allow such an inquiry to be held should be available is understandable, it is not necessarily the case that the police file be disclosed to him in order that an effective investigation of his son's death is undertaken.

[21] A retired judge from Canada, Mr Peter Cory, has been appointed to examine whether further inquiries into the circumstances of a number of deaths, including that of Mr Wright, are required. If it is concluded that such a further inquiry is required in Mr Wright's case that will be the occasion on which to determine whether the contents of the police investigation file should be revealed. At present it is impossible to conclude that the file must be released to the applicant in order that an effective investigation take place.

## **Conclusions**

[22] Although I am satisfied that the applicant is entitled to assert an article 2 adjectival right to an effective investigation into the death of his son, I have not been persuaded that in order that this right be vindicated it is necessary that the police file be disclosed to him. The application for judicial review must be dismissed.