



Press Summary

18 October 2023

In the matter of an application by Rosaleen Dalton for Judicial Review (Northern Ireland)

[2023] UKSC 36

On appeal from [2020] NICA 26

Justices: Lord Reed (President), Lord Hodge (Deputy President), Lord Sales, Lord Leggatt, Lord Burrows, Lady Rose, Dame Siobhan Keegan

Background to the Appeal

This case principally concerns the extent to which the positive obligation on public authorities to investigate an individual’s death under article 2 of the European Convention on Human Rights (the “**Convention**”), as given effect in the UK by the Human Rights Act 1998 (the “**HRA**”), extends to deaths that occurred before the HRA came into force.

Sean Dalton died in a bomb explosion on 31 August 1988 in Derry/Londonderry. The Provisional Irish Republican Army (the “**IRA**”) took responsibility for the bomb. The police investigated but did not charge anyone. An inquest was held into Mr Dalton’s death on 7 December 1989, which concluded that he died from injuries suffered in the explosion.

In February 2005, Mr Dalton’s son lodged a complaint with the Police Ombudsman of Northern Ireland (the “**Ombudsman**”) about the police’s behaviour in the lead up to and investigation of his father’s death. The Ombudsman investigated and reported his findings on 10 July 2013. The Ombudsman criticised the police in his report, finding that the police had failed to thoroughly investigate Mr Dalton’s death. He also noted that his own investigation had been hampered by missing documents and the refusal of some police officers to cooperate.

On 25 July 2013, Mr Dalton’s family asked the Attorney General of Northern Ireland (the “**AGNI**”) to open a fresh inquest into Mr Dalton’s death. They contended that a fresh inquest was needed to take account of the Ombudsman’s report in particular because a coroner, unlike the Ombudsman, would be able to compel people to answer questions. The AGNI refused the request on 2 October 2014.

On 26 June 2015, Mr Dalton’s daughter (Rosaleen Dalton) challenged the AGNI’s refusal in the High Court of Northern Ireland. The High Court dismissed this challenge on 28 March 2017. Rosaleen Dalton appealed to the Court of Appeal of Northern Ireland. On 4 May 2020,

the Court of Appeal allowed her appeal and remitted the matter to the AGNI for re-consideration. The AGNI appealed this judgment to the UK Supreme Court.

Judgment on the Principal Issue

The Supreme Court unanimously allows the AGNI's appeal. It holds that Rosaleen Dalton cannot challenge the AGNI's refusal to open a new inquest into her father's death because it occurred outside the temporal scope (i.e., too long before the coming into force) of the HRA.

The Supreme Court delivers four judgments: (i) Lord Reed, (ii) Lord Hodge, Lord Sales, and Lady Rose, (iii) Lord Leggatt, and (iv) Lord Burrows and Dame Siobhan Keegan, Lady Chief Justice of Northern Ireland. While allowing the appeal of the AGNI, the Supreme Court is unanimous in rejecting the AGNI's submission that it should depart from the earlier decision of the Supreme Court in *In re Finucane* [2019] UKSC 7 ("*Finucane*") and the obiter dicta (i.e., a statement of the law that was not strictly necessary to decide that appeal) of the Supreme Court in *In re McQuillan* [2021] UKSC 55 ("*McQuillan*") at paragraph 144.

Reasons for the Judgment on the Principal Issue

Although there are different degrees of emphasis, and some disagreement as to precisely what the European Court of Human Rights has decided on the temporal scope of the Convention, the main reasoning of the Supreme Court is as follows [44], [51], [170], [172], [260 – 261], [333 – 334], and [337].

First, the decision in *Finucane* should not be departed from, albeit that the Supreme Court disagrees with the wide multi-factorial reasoning that the majority of the Justices consider was adopted in that case.

Second, the obiter dicta at paragraph 144 in *McQuillan*, with some slight amendments for clarity, set out the correct analysis.

Third, that means that the obligation under article 2 of the Convention to investigate a death is only capable of applying to deaths which occurred within an outer period of 12 years before the HRA came into force on 2 October 2000 (unless what is called "**the Convention values test**" is met). In other words, if the death occurred more than 12 years before 2 October 2000, a court should strike out proceedings alleging a breach of this obligation unless the Convention values test applies. The Convention values test imposes an extremely high hurdle for someone seeking to rely on it. What is principally in mind are serious crimes under international law, such as war crimes, genocide, or crimes against humanity.

Fourth, if the death occurred between 10 and 12 years before 2 October 2000 then a claim may only be brought in exceptional circumstances (even leaving to one side the Convention values test). Those circumstances (as explained in *McQuillan* at paragraph 144) are that any original investigation into the death can be seen to have been seriously deficient or non-existent and that the bulk of such investigative effort which has taken place, or which ought to have taken place, post-dates 2 October 2000.

Fifth, the analysis of the law approved by the Supreme Court combines the certainty of two fixed periods (10 years and 12 years) with the flexibility, for the compelling reasons explained in paragraph 144 of *McQuillan*, to extend the primary period of 10 years to the outer period of 12 years.

Sixth, if the death occurred less than 10 years before 2 October 2000, then it must still be shown that a major part of the investigation took place, or ought to have taken place, after 2 October 2000.

Applying that analysis of the law to the facts of this case, because Sean Dalton's death occurred more than 12 years before the HRA came into force on 2 October 2000, and because there is no question of the Convention values test being satisfied in this case, Rosaleen Dalton has no claim for the alleged infringement of her article 2 right under the HRA. Put another way, the domestic courts do not have jurisdiction under the HRA in respect of Mr Dalton's death.

That decision on the principal issue in the case is sufficient for the appeal of the AGNI to be allowed.

Two Other Issues

Six of the Justices (not including Lord Reed) dealt with two further issues. First, and contrary to the submissions for the AGNI, the six Justices are unanimous that the rationale of the article 2 procedural obligation – and hence the revival of the obligation to investigate following an earlier investigation – is not confined solely to investigations which may lead to the identification and punishment of the perpetrators [189], [216], and [316].

Secondly, in line with the submissions for the AGNI, three Justices (Lord Leggatt, Lord Burrows, and Dame Siobhan Keegan) consider that, in any event, the article 2 obligation was satisfied by the report of the Ombudsman so that no new inquest was required [232], [320], and [324]. The other three Justices (Lord Hodge, Lord Sales, and Lady Rose) take the view, without ruling on it, that that was strongly arguable [194]. Further the civil proceedings in this case give additional scope for involvement of the families and could potentially lead to a detailed examination of facts by a judge and a public judgement [194], [230], [321], and [324].

References in square brackets are to paragraphs in the judgment.

NOTE:

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)