



6 March 2019

PRESS SUMMARY

In the matter of an application by Hugh Jordan for Judicial Review (Northern Ireland)
[2019] UKSC 9
On appeal from [2015] NICA 66

JUSTICES: Lady Hale (President), Lord Reed (Deputy President), Lord Carnwath, Lord Lloyd-Jones, Lady Arden

BACKGROUND TO THE APPEAL

On 25 November 1992, Pearse Jordan was shot and killed by a member of the Royal Ulster Constabulary. In 1994, his father, Hugh Jordan, made an application to the European Court of Human Rights (“**ECtHR**”) complaining that the failure to carry out a prompt and effective investigation into his son’s death was a violation of article 2 of the European Convention on Human Rights (“**ECHR**”). An inquest commenced on 4 January 1995 but was adjourned shortly afterwards. On 4 May 2001, in *Jordan v United Kingdom* (2003) 37 EHRR 2, the ECtHR upheld the complaint and awarded damages of £10,000.

A fresh inquest into Pearse Jordan’s death commenced on 24 September 2012, and a verdict was delivered on 26 October 2012, but Hugh Jordan then brought proceedings for judicial review, which resulted in the verdict being quashed: *In re Jordan’s Application for Judicial Review* [2014] NIQB 11.

In 2013, Hugh Jordan brought the present proceedings for judicial review seeking declarations that the Police Service of Northern Ireland (“**PSNI**”) and the Coroner had violated his article 2 rights by delaying the commencement of the inquest and an award of damages under section 8 of the Human Rights Act 1998 (“**HRA**”) in respect of the delay from 4 May 2001 until 24 September 2012.

At first instance, Stephens J upheld the claim against the PSNI and awarded damages of £7,500 but dismissed the claim against the Coroner. The PSNI appealed against the declaration and damages award, and Hugh Jordan cross-appealed against the dismissal of his claim against the Coroner.

On 22 September 2015, the Court of Appeal ordered that the proceedings should be stayed until after the inquest had been completed. That order was subsequently withdrawn, and an order in similar terms was made on 10 June 2017, which Mr Jordan appealed against. Meanwhile, a further inquest had commenced on 22 February 2016, and a verdict was delivered on 9 November 2016. The stay was lifted on 23 October 2017.

JUDGMENT

The Supreme Court unanimously allows the appeal. Lord Reed, with whom the rest of the Court agrees, delivers the judgment.

REASONS FOR THE JUDGMENT

The Court of Appeal in Northern Ireland held that in so-called ‘legacy’ cases, which concern deaths that occurred in Northern Ireland during the ‘Troubles’, “*the issue of damages against any public authority for breach of the adjectival obligation in article 2 ECHR [i.e. the obligation to investigate the circumstances of the death] ought to be dealt with once the inquest has finally been determined*”. This appeared to constitute general guidance, and, consistently with this, the Court of Appeal ordered that “*the claim for damages for breach of the article 2 procedural requirement that an inquest be conducted ‘promptly’ should not be brought until the inquest has finally been determined*”. [16]-[17] The appeal was against this part of the Court of Appeal’s order. [20]

After the hearing of this appeal, the Court of Appeal, in another legacy case, *In Re McCord’s Application for Judicial Review*, clarified the remarks in *Jordan*, so that it appears that it intends the guidance to be confined to cases where damages are the only outstanding issue and where an inquest can be expected to begin in the near future, if not already under way. Further, the appropriateness of the stay should be kept under review, and it should be lifted if the claim for damages will otherwise not be determined within a reasonable time. [24]

Lord Reed states that “*it must be borne in mind at the outset that, in cases of the present kind, it is the delay itself which constitutes a breach of the claimant’s Convention rights*” and that “[*t*he breach does not crystallise only after the inquest has been concluded”. [25] Section 7(1)(a) of the HRA, pursuant to which claims arising from such delay are brought, confers a statutory right on any person to bring proceedings against a public authority that acted in a way which was incompatible with their Convention right. [26] No court can take that statutory right away. [27] However, it can exercise powers of case management, including ordering a stay, but, when doing so, three important aspects of Convention rights must be borne in mind. [28]

First, Convention rights must be practical and effective. [29] Second, a stay will be unlawful if it results in a breach of the “reasonable time” guarantee in article 6 of the Convention. [31]-[32] Third, a stay also engages another aspect of article 6, namely the guarantee of an effective right of access to a court. It must therefore pursue a legitimate aim, and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be achieved. [33] This requires an assessment of the weight of the competing interests in the particular case: the risk of a proliferation of litigation, the avoidance of which was the legitimate aim pursued by the stay, against the importance to the claimant of obtaining monetary redress for the violation of his or her Convention rights without avoidable delay. There may be factors in individual cases which make the expeditious determination of the claim particularly important. The present case, for example, illustrates the importance of avoiding delay where proceedings are brought by claimants who are elderly or infirm, since Hugh Jordan’s health has so deteriorated that his wife had to take over the conduct of these proceedings. [37]

On its face, the guidance given by the Court of Appeal in the present case involved no assessment of proportionality or consideration of individual circumstances. It was also liable to render the article 2 procedural right ineffective resulting in breaches of the reasonable time guarantee. [39] However, the *McCord* judgment resolved this. Nevertheless, it remains necessary to consider whether that general guidance should be applied in the circumstances of an individual case. In the present case, the stay was imposed without any evident consideration of its proportionality. It is uncertain whether it would have been imposed if proportionality had been considered in the light of all the relevant facts, including Hugh Jordan’s declining health. The appeal is therefore allowed. [41]-[42]

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:

<http://supremecourt.uk/decided-cases/index.html>