



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

FIRST SECTION

DECISION

Application no. 32001/18
John George MILLER
against the United Kingdom

The European Court of Human Rights (First Section), sitting on 2 July 2019 as a Committee composed of:

Aleš Pejchal, *President*,

Tim Eicke,

Raffaele Sabato, *judges*,

and Renata Degener, *Deputy Section Registrar*,

Having regard to the above application lodged on 2 July 2018,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr John George Miller, is a British national, who was born in 1951 and lives in Washington, United Kingdom.

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

A. The circumstances of the case

3. The applicant is the father of Corporal Simon Miller.

4. In March 2003 Iraq was invaded by coalition forces led by the United States of America and with a sizeable force from the United Kingdom. Major combat operations were formally declared complete on 1 May 2003 but coalition forces remained in occupation of Iraq until 28 June 2004, when authority was formally transferred to an Iraqi interim government.

5. The Royal Military Police (“RMP”), a regulatory body with exclusive investigative and policing skills which undertakes complementary military tasks, formed part of the United Kingdom armed forces in Iraq in June 2003.

6. Corporal Miller was one of six RMPs serving in “C Section” who were unlawfully killed by members of an Iraqi crowd at a police station in Majar al-Kabir in Maysan Province, South East Iraq, on 24 June 2003 (see paragraphs 14 to 22 below). The soldiers had been tasked with rebuilding the local police force as part of the mission to restore and maintain law and order.

1. Investigations and Inquiries

(a) British Army investigations

(i) Joint Commander’s investigation

7. A Joint Commander’s investigation (led by the officer with operational command of UK forces assigned to overseas joint and combined operations) was commissioned within a few days of the deaths with the purpose of establishing “a clearer understanding of the context and circumstances of the incident” and any lessons to be learned. The report, prepared by Colonel C., was submitted to the Chief of Joint Operations on 8 July 2003.

(ii) Special Investigation Branch (“SIB”) investigation

8. The purpose of the SIB investigation was to interview witnesses and gather evidence with a view, if possible, to identifying and prosecuting the perpetrators. The investigation took place against the background of a difficult security situation. The investigation resulted in a report to the Central Criminal Court in Baghdad in April 2004 (see paragraphs 26 and 27 below). Seven suspects were eventually arrested and charged but none were convicted in relation to the deaths.

(iii) Land Accident Prevention and Investigation Team investigation

9. The aim of the investigation was to “provide an accurate record of the events leading up to the incident in order to assist a future Board of Inquiry”. A report was produced dated 12 March 2004.

(iv) British Army Board of Inquiry

10. The Board of Inquiry was convened on 15 March 2004. Its purpose was to investigate the circumstances surrounding the deaths of the soldiers and to draw conclusions and make recommendations, but not to attribute blame or to recommend that disciplinary action be taken by the British Army. The Board received evidence from 157 witnesses over three months.

11. The investigation completed on 18 June 2004 and the Board made a series of recommendations regarding lessons to be learnt and actions which should be considered in the light of its findings. Following the Board of

Inquiry, the British Army concluded that disciplinary action against any individual in the chain of command was not appropriate.

(v) British Army Brigadier's report

12. A Brigadier (a senior British Army officer) was appointed to report on the issue of whether administrative action for misconduct should be taken against any individual, bearing in mind the aim of action of this type to safeguard the efficiency and operational effectiveness of the service rather than to punish individuals for wrongdoing. The Brigadier recommended that administrative action should not be taken against two individuals but should be considered in the case of two others; however, the latter recommendation was not accepted by senior British Army command. The Chief of Staff also considered that the imposition of administrative sanctions:

“may actually harm long-term operational effectiveness because of the signal it would send to others ... The best way to enhance operational effectiveness is to take forward the recommendations of the Board of Inquiry, especially those concerning training and procedures which are in hand.”

13. The families of the deceased RMPs, including the applicant, were informed that no administrative action would be taken in a letter from Brigadier A. dated 9 February 2005.

(b) Inquest

14. An inquest was held into the deaths of the six RMPs between 14 and 31 March 2006 before the Coroner. The Coroner heard oral evidence from around twenty witnesses and considered further written witness statements. A narrative verdict of unlawful killing was returned on 31 March 2006.

15. The Coroner found that the RMPs had made arrangements to visit the police station in Majar al-Kabir as the first of three scheduled meetings on 24 June 2003.

16. The Coroner recorded that there “was, or what appeared to them to be, an excellent and friendly relationship with the Police...” The Coroner noted that the RMPs did not report their arrival and estimated time of departure to the Company desk and that they seemed to have been “in the habit” of not reporting in during the course of the day. It was noted that the RMPs did not have an iridium satellite phone, despite an order having been issued on 24 May 2013 requiring all patrols (including RMP patrols) to be equipped with this item.

17. The Coroner found that:

“Nobody seems to have had any intelligence to the effect that trouble was brewing in Majar Al-Kabir that morning.”

18. Regarding the sequence and timing of the events at the police station on 24 June 2003, the Coroner noted the following:

“... I have to rely on the evidence from the 16 anonymous Iraqi witnesses, which in a few respects can be checked by reference to other witnesses, the forensic evidence and deductions that can reasonably be made.

It appears to me that the Iraqi evidence although perhaps coloured a little, as explained by Major [P.], is in general terms quite reliable but, bearing in mind that few Iraqis wear watches, and in any event have a rather different concept of time than obtains in the Western World, their time estimates might be honest but inaccurate. However, their perception of the sequence of events is likely to be more reliable.”

19. The Coroner summarised the evidence of various witnesses regarding the sequence of events wherein a crowd of armed and mostly young men arrived at the police station and entered its vicinity, before the RMPs attempted to withdraw to a store room. It was found that “it was there or nearby after some of them had been assaulted that they were all shot”. The Coroner noted that there was “ample evidence” of the use of AK47s and rocket-propelled grenades but no evidence that the RMPs had used their weapons.

20. In respect of the time of death, the Coroner found that the RMPs

“met their deaths shortly after 10:30 that morning but before 11 o’clock.”

21. The key findings of the Coroner were as follows:

“2. [The RMPs] did not have reliable means of communication with either the Operations Room or any other troops that might be in the vicinity.

3. Between 10.30 and 11.00am a mob of armed civilians invaded the Police Station and shot [each of the RMPs].”

22. The Coroner wrote a letter to the Secretary of State pursuant to Rule 43 of the Coroners Rules 1984 of 13 April 2006, which sets out that a coroner who believes that action should be taken to prevent the recurrence of fatalities similar to that in respect of which the inquest is being held may announce at the inquest that he is reporting the matter in writing to the person or authority who may have power to take such action. The Coroner made observations about the supply of ammunition to the RMPs, the road-worthiness of the vehicles supplied to them and the adequacy of their communications.

(c) Requests for further investigations

23. The solicitor representing the RMPs families wrote to the Metropolitan Police to ask them to investigate whether the evidence taken at the inquest showed default by military personnel in failing to take steps to protect the soldiers which constituted a criminal offence. The Metropolitan Police decided not to carry out an investigation, but referred the matter to the Attorney General who in turn referred it to the Adjutant General as the appropriate senior military authority. The families met with the Adjutant General and presented written submissions. Brigadier M. reported to the Adjutant General that there was no new evidence meriting further

investigation or other action on 24 September 2007. This conclusion was communicated to the families in October 2007.

(d) Application to this Court

24. An application to this Court was lodged on 31 August 2008 challenging the decision of the Metropolitan Police not to investigate the matter (*Keys v. United Kingdom*, application no. 16919/08). The Court informed the applicants in a decision dated 16 March 2010 that the application had been declared inadmissible on the basis that domestic remedies had not been exhausted.

(e) Request by the applicant for independent inquiry

25. The applicant asked the Minister of State for the Armed Forces to initiate an independent inquiry into the deaths of the RMPs in late 2010. The request was rejected but a review of the relevant evidence was ordered, which culminated in a report set out in July 2012. It was not accepted that a new investigation was either necessary or appropriate.

(e) Criminal proceedings in Iraq and civil proceedings

26. In April 2004 a file resulting from the SIB investigation was submitted to the Central Criminal Court of Iraq, and investigative hearings began in February 2006. Arrest warrants were issued for eight suspects. In August 2010 the Minister for the Armed Forces advised the families of the RMP that the Investigating Judge in Iraq had satisfied himself, on the basis of witness testimony, that five of the seven detained suspects had no case to answer and that their release had been authorised.

27. The criminal trial of the remaining two suspects commenced in October 2010. One suspect was acquitted and one was held to face separate charges related to handling a stolen weapon. Appeals by the families of the RMPs to the Court of Cassation and to the Plenary Committee of the Court of Cassation in November 2010 and March 2011, respectively, were unsuccessful.

(f) Judicial review proceedings

28. The mother of one of the other RMPs killed (Corporal P.L.) sought judicial review in October 2012 by way of a declaration that there had been an insufficient investigation into the circumstances of the death of her son and his five colleagues in breach of the State's continuing obligation, pursuant to Article 2 of the Convention, and a mandatory order requiring the Secretary of State for Defence to secure an effective independent investigation.

29. The High Court dismissed the claim on 15 July 2014 (see *R (Long) v. Secretary of State for Defence* [2014] EWHC 2391 (Admin)). The

claimant appealed the decision before the Court of Appeal (see *The Queen on the application of Long v. Secretary of State for Defence* [2015] EWCA Civ 770). The Court of Appeal set out the three issues it was to consider during the appeal, and the conclusion of the High Court, at paragraphs 3 and 4 of its judgment:

“3. Three issues arise in the appeal. These are (i) whether there was an arguable substantive breach of article 2 of the Convention so as to trigger a duty to investigate the circumstances of the soldiers’ deaths; if the answer to (i) is yes, (ii) whether the investigative duty has been discharged by steps already taken to investigate the circumstances of the deaths; and if the answer to (ii) is no, (iii) whether the investigative duty is still continuing.

4. The Divisional [High] Court decided that (i) there was no arguable substantive breach of article 2 so as to trigger a duty to investigate the circumstances of the soldiers’ deaths (paras 59 to 87); (ii) if there was an investigative duty, it was discharged by the combined effect of the investigation undertaken by the Army Board of Inquiry (“BOI”) between March and June 2004 and the inquest conducted by the Oxfordshire Coroner in March 2006 (paras 88 to 101); and (iii) it would in any event not be reasonable to require the Secretary of State to undertake a further investigation now because there was no reasonable prospect of obtaining more illuminating answers to the relevant questions than the contemporaneous investigations had revealed (paras 102 to 108).”

30. The Court of Appeal found at paragraphs 29 to 33 of its judgment, contrary to the decision of the High Court, that there had been an arguable breach of the state’s positive obligation to safeguard the lives of members of its armed forces as

“... there are clear indications that this is a case of *systemic* insufficiency of control and not mere negligent control by an individual ...It is sufficient [for the engagement of Article 2] to show a failure to take reasonable measures which could have had a real prospect of avoiding the deaths ...For all these reasons, I conclude that an article 2 compliant investigation was required in this case.”

31. The Court of Appeal noted that the Divisional Court held that, insofar as there was an arguable breach of the state’s substantive obligations under Article 2, such investigations as had already occurred, viewed in their totality, were sufficient to discharge the state’s investigative obligation under Article 2. In this respect the Court of Appeal noted the Divisional Court’s reference to the investigations and recommendations of the Board of Inquiry and to the inquest.

32. The appellant in the case accepted that the inquest had been “Article 2 compliant” insofar as it was independent, but argued that the investigation, on the other hand, had been inadequate. He submitted that the Divisional Court had been wrong to rely on the combined effect of the Board of Inquiry investigation and the inquest as discharging Article 2, as:

“43. ... it is wrong in principle to conclude that one body can supply investigative breadth and depth while lacking independence, while another can supply independence without breadth and depth: article 2 requires a coincidence of components.”

33. Specifically, the applicant argued that the investigation was inadequate because

“44. The full facts have not yet been unearthed and important questions remain unanswered ... There is a duty on the state under article 2 to hold an independent investigation to identify whose responsibility it was to ensure compliance with the communications order and to hold those individuals accountable.”

34. The Court of Appeal noted the limited scope of the additional investigation sought by the appellant, namely that there be a further investigation into the question of how the Communications Order came to be disregarded so that it became normal practice to allow patrols to go out without iridium phones. The court remarked that the fact that only this limited information was sought was not surprising

“in view of the extensive scope of the BOI [Board of Inquiry] investigation and the Inquest.”

35. In finding that the Article 2 investigative obligation had been discharged, the Court of Appeal noted that:

54. ... the facts have been sufficiently revealed by the BOI investigation and the Inquest to discharge the article 2 obligation in the circumstances of this case. It has been established that this was not a case of isolated human error on the part of the soldiers. It has also been established that there was confusion and lack of control and coordination in the booking out of RMP patrols. This was the result of the relative lack of experience of the RMP platoon command. One of the objects of the article 2 investigative obligation is to enable lessons to be learnt. I repeat that the Board made a series of recommendations regarding lessons to be learnt.

55. In short, the investigations of the BOI and the Inquest have revealed why iridium phones were not provided to C Section of the RMP on 24 June 2003, what went wrong and what lessons were to be learnt. In my judgment, article 2 does not require more.”

36. Having concluded that the investigations which had occurred were sufficient to discharge the investigative duty under Article 2, the court considered that the question of whether that duty was still continuing did not arise. It did however express its agreement with the findings of the Divisional Court at paragraph 65 of its judgment that

“...(i) it would be unrealistic to suppose that further significant or useful information could be obtained by questioning the RMP officers and those who were responsible for ensuring compliance with the Communications Order about their recollection of these matters again so many years after the event; and (ii) there was no reasonable prospect that there could be further lessons to be learnt from the events of 24 June 2003 that were of current or future relevance at this distance in time....”

37. The appeal was dismissed on 17 July 2015.

2. The applicant's request for a fresh inquest

(a) Matters relied on

38. In 2013, the applicant's solicitor asked the Attorney General to provide authority for applications to be made for a fresh inquest into the deaths of four of the six RMPs.

39. According to domestic law, it was necessary for the Attorney General to grant authority (a "*fiat*") before an application could be made to the High Court for a fresh inquest.

40. The applicant's solicitor relied on three matters in support of his request, namely; (i) new evidence relating to the state of the intelligence surrounding whether there was a real and immediate threat to the lives of the RMP; (ii) new evidence relating to the circumstances and time of deaths; and (iii) the absence during the original inquest of evidence from any Iraqi witnesses and in particular the revelation of the identities of key suspects.

41. The applicant's solicitor asserted that the "new information" relied on was either not put before the Coroner or constituted "new facts", and went to the essential question the inquest needed to investigate, namely: who, how, when and where the deceased came by his death.

42. On 30 October 2014 the applicant's solicitor made a witness statement, intended to constitute the evidence that the families he represented would seek to put before a Coroner in the event a new inquest was ordered.

(i) State of intelligence and nature of the threat

43. The applicant's solicitor asserted that he had been contacted on 2 September 2013 by a former Lieutenant Colonel in the Special Air Service Regiment who had seen press coverage about the deaths of the RMPs (referred to as 'Lieutenant Colonel X'). It was set out in the witness statement that Lieutenant Colonel X had stated that the authorities had received intelligence prior to 24 June 2003 that there would be an escalation of violent attacks in the region, amounting to a real and immediate threat to the lives of armed forces personnel in the area.

44. The applicant's solicitor asked the Government's lawyers to authorise Lieutenant Colonel X to provide a witness statement. On 11 November 2013 authorisation was declined but an indication was made that Lieutenant Colonel X could contact the Ministry of Defence and provide the information to it, and consideration would be given thereafter to disclosure to the applicant's solicitor.

45. The applicant's solicitor set out that Lieutenant Colonel X had consequently informed him that he had made contact with the "disclosure cell" and had been advised that he could not go on record. Further attempts at contact with Lieutenant Colonel X had been unsuccessful. Nonetheless,

the applicant's solicitor stated that he was "confident" that if a new inquest was ordered and Lieutenant Colonel X was authorised to provide information, he would attend a hearing and give evidence.

(ii) Circumstances and time of death

46. The applicant's solicitor had set out in April 2014 that the sister of one of the other RMPs who had died had received a message via social media from a Major R., understood to be a serving officer in the British Army. Summarised, Major R. appeared to dispute the sequence of events accepted by the Coroner before the deaths occurred, particularly in relation to exactly where and how the RMPs were killed and whether the RMPs had fired their weapons during the attack. In particular, Major R. appeared to allege that four of the RMPs had died in a location other than the police station. Further, he had provided the name of one individual who he asserted was "the single most responsible individual" for the deaths of at least four of the RMPs.

47. Major R. had not had contact with the applicant's solicitor either before or after the message was sent via social media. However, the applicant's solicitor pointed out the consistency of the information contained in the message with other information which had been before the Board of Inquiry.

48. The applicant's solicitor further asserted that while the Coroner relied on the time of the deaths as occurring between 10:30 and 11:00 am, it had emerged subsequently that an Iraqi interpreter ("Witness 1") was able to provide more specific evidence in this respect. It was asserted that Witness 1 had provided a witness statement in which he recorded that he had left the RMPs at 11:20am, at which time they were still alive. The applicant's solicitor submitted that the evidence was of critical significance because the accepted time of death had been relied on as a basis for concluding that nothing could have been done to prevent the deaths of the soldiers through intervention.

(iii) Absence of evidence from Iraqi witnesses

49. The applicant's solicitor submitted that the general prohibition on the calling of evidence from Iraqi nationals at the inquest was irregular, and that there was no risk of a criminal prosecution being prejudiced by evidence being called in the United Kingdom.

50. In particular, the applicant's solicitor considered that Witness 1's evidence, as one of the few eye witnesses to the events immediately prior to the deaths, demonstrated that the findings in respect of the time of death could be wrong.

(b) Ministry of Defence response

51. On 26 June 2015 the Ministry of Defence (“MOD”) responded on behalf of the Attorney General to the applicant’s solicitor’s request. The MOD considered that no fresh evidence had been discovered which may have reasonably lead to the conclusion that the substantial truth about how the RMPs met their deaths was not revealed at the first inquest.

52. In respect of the state of intelligence before the deaths the MOD considered that the “scant details” of Lieutenant Colonel X’s statements did not contradict the evidence given to the Board of Inquiry by other soldiers. The MOD considered that the Coroner had accurately summarised the position regarding the lack of intelligence prior to the attack and that no evidence had been provided to the contrary.

53. Further, the MOD denied that Lieutenant Colonel X had been instructed not to disclose information in his possession. In fact, an arrangement had been proposed whereby he could explain in confidence the information he wished to disclose in order that any genuinely sensitive material it contained could be considered for redaction before disclosure. Lieutenant Colonel X had chosen not to avail of this arrangement and no contact had been received by him since September 2013.

54. In respect of the circumstances of the deaths and the social media message sent by Major R., the MOD considered that there had been no inconsistency between the Coroner’s narrative verdict that the soldiers were killed in an ambush on a police station, and Major R.’s account. In any event, the MOD considered that the social media message contained “multiple hearsay” and that Major R. was not in fact serving in Iraq at the time of the deaths.

55. In respect of the time of the deaths, the MOD pointed out that the Coroner had been aware of the “apparently inconsistent nature of the evidence provided as to the time of death”, but had weighed it before making his conclusions. The MOD considered that the evidence from the Iraqi interpreter (“Witness 1”) was not “new evidence”.

(c) Senior Coroner’s response

56. On 29 June 2015 the Senior Coroner wrote to the Attorney General with his comments on the application. The Senior Coroner considered that “the principal problem faced by the families in this case is simply the lapse of time”. The Senior Coroner gave his view that the evidence relied on by the applicant’s solicitor was not of a quality and weight that would make it necessary to reconsider the original verdicts.

3. Decision of the Attorney General

57. On 29 June 2017 the Attorney General decided not to provide his authority or *fiat* for an application to be made to the High Court to quash the

original inquest findings and for a fresh inquest into the deaths of four of the RMPs. In making this decision, the Attorney General had decided that there was no reasonable prospect that the High Court would be satisfied that the test to meet to order a new inquest was met.

(i) Evidence from Lieutenant Colonel X

58. The Attorney General noted that no witness statement had been made detailing the nature of the intelligence or the circumstances in which it was received, and that there were no details beyond his claim that the evidence existed.

59. As such, it was considered that the High Court would not be satisfied that had the evidence been available at the original inquest, it would have been recognised as credible and relevant to an issue of significance in the inquisition, and might have led to a different verdict.

60. The Attorney General did not consider that Lieutenant Colonel X had been prevented from supporting the application by providing a witness statement, as he had been instructed how to obtain prior authorisation in writing from the Ministry of Defence's "disclosure cell" unit yet had not attempted to do so. Lieutenant Colonel X had provided no reason why he had decided not to contact the unit, in circumstances where the authorisation process exists to ensure that the public disclosure of information by army personnel does not jeopardise national security or put serving personnel at risk.

61. Further, it was noted that the State's investigative obligations arise in relation to systemic failings only, and that it was unclear whether the evidence of Lieutenant Colonel X would suggest individual or wider systemic failings. Without being in a position to evaluate the evidence, the High Court would not be able to assess whether Article 2 requires an investigation of these matters.

62. In any event, the Attorney-General expressed doubt whether a fresh inquest would be able to properly explore the circumstances or reveal useful lessons that might prevent deaths in future considering the length of time that had passed since the deaths.

(ii) Evidence from Major R.

63. The Attorney General considered that the difficulties noted in relation to Lieutenant Colonel X's evidence also arose in relation to the evidence of Major R. It was not apparent to the Attorney General why, if Major R. had relevant evidence, he was unwilling to provide a witness statement or to co-operate with the application. There was no apparent reason why he should provide the relevant evidence in the future when he had declined to do so now.

64. Further, the Attorney General considered that there was no reasonable prospect that evidence along the lines of that set out in the social

media message would lead to the High Court ordering fresh inquests. It was noted that:

“47. ... The content of the message does not support the view that four of the six Royal Military Policemen were killed away from the police station; rather it appears to support the version of events that was found by the coroner. Similarly, the version of events set out in the message is consistent with the six Royal Military Policemen having been killed by a mob.

48. In any case, to the extent that there is any inconsistency between the evidence of Major [R.] and the version of events found by the coroner, there does not appear to be a reasonable prospect that the High Court would find that any such inconsistency requires a fresh inquest in order to resolve it. Major [R.] was not on the ground in Majar Al Kabir on the day that the killings took place, and was not in Iraq at that time; and he is not therefore in a position to give any first-hand evidence to dispute the accounts of those who were present that day.”

(iii) Evidence concerning timing of the deaths

65. The Attorney General noted that the evidence cited to dispute the Coroner’s finding on the timing of the deaths was before the Coroner at the original inquests. The Coroner had therefore heard the evidence, along with the other evidence, before determining that the deaths had occurred between 10:30 and 11:00 am.

66. It was considered that the findings reached by the Coroner were ones he was entitled to reach, and that the High Court would only set those conclusions aside if it was satisfied that the Coroner had acted in a way that was *Wednesbury* unreasonable. A reasoning or decision is *Wednesbury unreasonable* (or irrational) if it is so unreasonable that no reasonable person acting reasonably could have made it (*Associated Provincial Picture Houses Ltd v Wednesbury Corporation* (1948) 1 KB 223). The test is a different (and stricter) test than merely showing that the decision was unreasonable. There was sufficient evidence to support the Coroner’s findings on timings and there was no reasonable prospect in the Attorney General’s view that the Coroner’s decision was *Wednesbury* unreasonable.

(iv) Absence of Iraqi witnesses

67. The Attorney General noted that the Coroner had provided reasons why no Iraqi witnesses were called at the inquest, and that it was a matter for his discretion as to what evidence ought to be admitted at a hearing.

(v) Private meetings with serving army officers during the inquest

68. The applicant’s solicitor had also alleged that the Coroner had held private meetings with one or more army officers during the course of the original inquest, without pointing to any specific conclusions that were unfairly influenced as a result. The Attorney General noted that no evidence had been put forward to demonstrate or suggest that army officers made

representations to the Coroner on matters that were under consideration in the inquest.

4. *Decision upheld in January 2018*

69. The applicant asked the Attorney General to reconsider his decision, however, the decision was upheld by letter dated 8 January 2018. The applicant had made reference to the issue of communication methods including iridium phones.

70. While noting that this issue had not formed part of the application for a *fiat*, the Attorney General recalled that this was not a new issue and had been previously considered by the Coroner. Further, the issue had been the subject of consideration during the High Court judicial review proceedings initiated by the mother of Corporal P.L. The High Court had decided that the original inquest, combined with the Board of Inquiry, had considered this issue in sufficient detail.

71. In respect of the applicant's criticism that the Coroner had not sought to ask who was responsible for the deaths, the Attorney General set out that at the time the inquest took place, domestic legislation prohibited the Coroner from reaching any verdict as to criminal liability on the part of a named person. There was no prospect of the High Court ordering a fresh inquest in order to enable those responsible for the deaths to be publicly identified.

B. Relevant domestic law

72. The legislative provision addressing the quashing of inquest findings and holding of a fresh inquest, which requires the *fiat* of the Attorney General, is set out in Section 13 of the Coroner's Act 1988 (as amended), which reads as follows:

"13 Order to hold [investigation]

(1) This section applies where, on an application by or under the authority of the Attorney-General, the High Court is satisfied as respects a coroner ("the coroner concerned") either—

(a) that he refuses or neglects to hold an inquest [or an investigation] which ought to be held; or

(b) where an inquest [or an investigation] has been held by him, that (whether by reason of fraud, rejection of evidence, irregularity of proceedings, insufficiency of inquiry, the discovery of new facts or evidence or otherwise) it is necessary or desirable in the interests of justice that [an investigation (or as the case may be, another investigation)] should be held.

(2) The High Court may—

(a) order an [investigation under Part 1 of the Coroners and Justice Act 2009] to be held into the death either—

- (i) by the coroner concerned; or
- (ii) by [a senior coroner, area coroner or assistant coroner in the same coroner area];
- (b) order the coroner concerned to pay such costs of and incidental to the application as to the court may appear just; and
- (c) where an inquest has been held, quash [any inquisition on, or determination or finding made at] that inquest.”

COMPLAINT

73. The applicant complained under Article 2 of the Convention that the investigations into the deaths of the RMPs failed to comply with the procedural duty under Article 2 of the Convention which required the authorities to conduct an effective investigation capable of leading to the establishment of the facts.

74. The applicant submitted that the investigations were inadequate and that there were evidential leads which indicate that key findings made by the Coroner pursuant to the inquest were flawed. He pointed in particular to potential evidence which might be provided at any fresh inquest by the former or present British Army personnel who made contact with the families, and the failure of the authorities to interview these individuals.

THE LAW

75. Article 2 of the Convention provides as follows:

“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.
....”

A. Admissibility

1. Jurisdiction

76. Article 1 of the Convention reads as follows:

“The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention.”

77. The Court summarised the applicable principles on jurisdiction within the meaning of Article 1 of the Convention exercised outside the territory of the Contracting State in *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, ECHR 2011, §§ 130-142. In that case the

Court found that following the removal from power of the Ba'ath regime and until the accession of the interim Iraqi government in June 2004, the United Kingdom (together with the United States of America) assumed in Iraq the exercise of some of the public powers normally to be exercised by a sovereign government. In particular, the United Kingdom assumed authority and responsibility for the maintenance of security in south-east Iraq. In these exceptional circumstances, the Court considered that the United Kingdom, through its soldiers engaged in security operations in Basra during the period in question, exercised authority and control over individuals killed in the course of such security operations, so as to establish a jurisdictional link between the deceased and the United Kingdom for the purposes of Article 1 of the Convention (see *Al-Skeini and Others*, cited above, § 49).

78. Whilst they occurred during the same time period as the facts in *Al Skeini and Others*, cited above, the circumstances leading to this application do not involve the deaths of individuals killed in the course of security operations carried out by United Kingdom troops, on the basis of which the Court in *Al-Skeini and Others*, cited above, considered that exceptionally it was able to establish a jurisdictional link between the deceased and the United Kingdom. The subject of the present case is the deaths of the RMPs, caused by members of a local crowd when the soldiers were carrying out activities as part of the United Kingdom's mission in Iraq to restore and maintain law and order (see paragraph 6 above). Accordingly, the Court considers that the question whether there is a jurisdictional link for the purposes of Article 1 of the Convention in the circumstances of the present case is potentially complex. However, it is not necessary to decide the matter as the application is in any event manifestly ill-founded for the reasons set out below.

2. *Exhaustion of domestic remedies*

79. The Court also notes that the applicant did not seek permission for an application for judicial review before the High Court of the decision of the Attorney General not to grant a *fiat* pursuant to section 13 of the Coroner's Act 1988. The susceptibility of the decision to judicial review remains unclear and has been the subject of recent developments in the domestic law. Accordingly, the Court does not consider it necessary to decide whether the applicant exhausted domestic remedies as the application is manifestly ill-founded for the reasons set out below.

B. Substance

1. *General Principles*

80. The Court reiterated in *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 220, ECHR 2004-III that the obligation to protect the right to life under

Article 2 of the Convention, taken in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, p. 49 § 161, and *Kaya v. Turkey*, judgment of 19 February 1998, Reports 1998-I, p. 329, § 105). Such investigations should take place in every case of a killing resulting from the use of force, regardless of whether the alleged perpetrators are State agents or third persons (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 220, ECHR 2004-III).

81. The State's obligation to carry out an effective investigation has been considered in its case-law as a distinct procedural obligation inherent in Article 2, which requires, *inter alia*, that the right to life be "protected by law" (see *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 231, 30 March 2016).

82. Where the death to be investigated under Article 2 occurs in circumstances of generalised violence, armed conflict or insurgency, obstacles may be placed in the way of investigators and concrete constraints may compel the use of less effective measures of investigation or may cause an investigation to be delayed. Nonetheless, the obligation under Article 2 to safeguard life entails that, even in difficult security conditions, all reasonable steps must be taken to ensure that an effective, independent investigation is conducted into alleged breaches of the right to life (see *Al Skeini and Others*, cited above, §§ 163-164, with further references to the Court's case-law).

83. An investigation must be effective in the sense that it is capable of leading to the establishment of the facts and, where appropriate, the identification and punishment of those responsible. Although it is not an obligation of result but of means, any deficiency in the investigation which undermines its ability to establish the circumstances of the case or the person responsible, will risk falling foul of the required standard of effectiveness (see *Al-Skeini and Others*, cited above, § 166).

84. It cannot be inferred that Article 2 may entail the right to have third parties prosecuted or sentenced for a criminal offence (*Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 306, ECHR 2011 (extracts)).

2. The Court's assessment

85. The Court observes that without taking account of the request for the Attorney General's *fiat* in order to ask the High Court to order a fresh inquest which led to the present application, no less than seven investigations were carried out, or reports were compiled, in respect of the deaths of the RMPs on 24 June 2003. Further, an inquest took place over

two weeks in 2006, returning a narrative verdict of unlawful killing. In addition, judicial review proceedings seeking a declaration that there had been an insufficient investigation into the circumstances of the death of the RMPs in breach of the state's continuing obligation, pursuant to Article 2 of the Convention were unsuccessful, being dismissed on appeal by the Court of Appeal in 2015 (see paragraphs 28 to 37 above) .

86. The Court's task, having regard to the proceedings as a whole, is to review whether and to what extent the domestic authorities have submitted the events of 24 June 2003 to the careful scrutiny required by Article 2 of the Convention.

87. In this regard, the Court notes the prompt creation of various British Army investigations after the deaths, and in particular the Board of Inquiry which was created in March 2004 and which received evidence from 157 witnesses (and oral evidence from over 100 of those witnesses) over three months. The applicant does not challenge the independence of those investigations. In any event there was also an independent judge-led investigation in the form of inquest proceedings in 2006, which the Court has previously found has the potential to satisfy the procedural obligation under Article 2 (*Duggan v. United Kingdom*, no. 31165/16, § 63, 12 September 2017). The Court also notes that the evidence gathered by the preceding investigations and reports was taken into account by the Coroner during the inquest proceedings.

88. The Court acknowledges the difficult security context in which the various British Army investigations took place and reiterates even in such context, all reasonable steps must be taken to ensure that an effective, independent investigation is conducted into alleged breaches of the right to life. However, in these circumstances the Court considers that the investigations which took place and the inquest proceedings constituted an effective investigation which discharged the duty of the State pursuant to Article 2, sharing the position taken by the domestic courts.

89. In respect of the grounds of application for a *fiat* made by the applicant, the Court notes the observations made by the MOD and the Attorney General in relation to the nature and utility of the proposed "new evidence", including the lack of detail in Lieutenant Colonel X's assertions and the apparent lack of inconsistency between Major R.'s assertions and the findings made by the Coroner.

90. The Court does not consider that the refusal of the Attorney General to grant a *fiat* as a result of the proposed "new evidence" indicates that the State has failed to follow a reasonable line of enquiry or to take reasonable steps to ensure an effective, independent investigation into the deaths of the RMPs. The nature and degree of scrutiny which satisfies the minimum threshold of an investigation's effectiveness depends on the circumstances of the particular case. The deaths of the RMPs occurred over fifteen years ago, in difficult security circumstances, and were the subject of inquest

proceedings wherein the Coroner had regard to all available evidence. Difficulties in ascertaining facts such as the time of death were noted by the Coroner at the time. The Coroner considered witness statements from Iraqi witnesses, despite the inherent difficulties in hearing oral evidence from those witnesses. The findings made were well-reasoned and based on extensive evidence. The fact that the identity of an individual or individuals potentially responsible for the deaths of the RMPs was not established by the various investigations or the inquest does not in itself mean that no effective investigation took place. In any event, criminal proceedings in Iraq took place following the SIB investigation, as set out at paragraphs 26 and 27.

91. The Court recalls that the Article 2 duty is an obligation not of result, but of means (see *Al-Skeini and Others*, cited above, § 166, and *Duggan*, cited above, § 50). None of the proposed “new evidence”, in regard to which various problematic issues arise, or criticisms made of the original inquest, cast doubt on the adequacy of the investigations undertaken by the State or the findings made by the Coroner pursuant to the inquest proceedings in 2006.

92. Accordingly, the Court finds that there was no failure to carry out an effective investigation under the procedural limb of Article 2 and the application is manifestly ill-founded.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 25 July 2019.

Renata Degener
Deputy Registrar

Aleš Pejchal
President