THIRD SECTION

**CASE OF HUGH JORDAN v. THE UNITED KINGDOM**

(*Application no. 24746/94*)

JUDGMENT

STRASBOURG

4 May 2001

**FINAL**

*04/08/2001*

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

**In the case of Hugh Jordan v. the United Kingdom,**

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Mr J.-P. Costa, *President*,
Mr W. Fuhrmann,
Mr L. Loucaides,
Mrs F. Tulkens,
Mr K. Jungwiert,
Sir Nicolas Bratza,
Mr K. Traja, *judges*,
and Mrs S. Dollé, *Section Registrar*,

Having deliberated in private on 4 April 2000 and on 11 April 2001,

Delivers the following judgment, which was adopted on the last-mentioned date:

## PROCEDURE

1. The case originated in an application (no. 24746/94) against the United Kingdom lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Irish and British national, Mr Hugh Jordan ("the applicant"), on 13 May 1994.

2. The applicant, who had been granted legal aid, was represented by Mr K. Winters and Mr S. Treacy, lawyers practising in Belfast. The United Kingdom Government ("the Government") were represented by their Agent, Mr C. Whomersley of the Foreign and Commonwealth Office.

3. The applicant alleged that his son Pearse Jordan had been unjustifiably shot and killed by a police officer and that there had been no effective investigation into, or redress for, his death. He invoked Articles 2, 6, 13 and 14 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. Having consulted the parties, the President of the Chamber decided that in the interests of the proper administration of justice, the proceedings in the present case should be conducted simultaneously with those in the cases of *McKerr v. the United Kingdom*, no. 28883/95, *Kelly and Others v. the United Kingdom,* no. 30054/96 and *Shanaghan v. the United Kingdom*, no. 37715/97 (see judgments of the same date).

7. Third-party comments were received from the Northern Ireland Human Rights Commission on 23 March 2000, which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 61 § 3).

8. A hearing took place in public in the Human Rights Building on 4 April 2000.

There appeared before the Court:

(a) *for the Government*
Mr C. Whomersley, *Agent*,
Mr R. Weatherup, QC,
Mr P. Sales,
Mr J. Eadie,
Mr N. Lavender, *Counsel,*
Mr O. Paulin,
Ms S. Mcclelland,
Ms K. Pearson,

Mr D. Mcilroy,
Ms S. Broderick,
Ms L. Mcalpine,
Ms J. Donnelly,
Mr T. Taylor, *Advisers*;

(b) *for the applicant*
Mr S. Treacy, QC,
Ms K. Quinliven, *Counsel,*
Ms P. Coyle, *Solicitor*.

The Court heard addresses by Mr Weatherup and Mr Treacy.

9. By a decision of 4 April 2000, the Chamber declared the application admissible.

10. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

11. The facts of the case, in particular concerning what happened when Pearse Jordan was shot on 25 November 1992, are in dispute between the parties.

### A. Events relating to the death of Pearse Jordan

12. On 25 November 1992, the applicant's son, Pearse Jordan, aged 22, was shot and killed in Belfast by an officer of the Royal Ulster Constabulary (the RUC), later identified as Sergeant A.

13. The official statement issued by the RUC to the media indicated that an RUC unit had pursued a car on the Falls Road and brought it to a halt. On stopping the car, the officers had fired several shots at the driver, fatally wounding him a short distance from where his car had been abandoned. No guns, ammunition, explosives, masks or gloves had been found in the car and the driver, Pearse Jordan, had been unarmed.

14. The *post mortem* report found two entry wounds in Pearse Jordan's back and one in the back of the left arm, and noted a bruise on the face and shin. It concluded that he had been struck by three bullets which had come from behind and to the left. There was nothing to indicate the range.

15. The shooting was witnessed by four civilians, who on 26 November 1992 made statements to the Committee for the Administration of Justice (CAJ), an independent non-governmental human rights organisation based in Belfast. The four witnesses gave the following account of the shooting, which is not accepted by the Government.

16. The four civilians were walking together along the Falls Road and passed Andersontown RUC station at 5 p.m. approximately. They noticed two unmarked police cars parked with their headlights dimmed, each containing three RUC officers: one car was red and the second dark blue/green.

As they proceeded along the road, they heard a crash behind them and turned to see on the opposite side of the road the red police car pulling alongside a car (Pearse Jordan's) and ramming it up onto the footpath. The red police car came to a halt in front of the car while the dark blue/green police car pulled up behind hitting it in the rear. The four civilians stopped and had an unobstructed view across the road. Pearse Jordan emerged from the immobilised car, and appeared shaken. He staggered across the road towards the four men followed by four police officers. As Pearse Jordan reached the white line in the centre of the road, an officer about 12 feet away fired a number of shots. The civilians heard no warning shout or challenge given by any of the officers and saw nothing in Pearse Jordan's hands or anything threatening in his actions. Some of the shots struck

Pearse Jordan. He staggered a little further then turned to face the police who, when they caught up with him, verbally abused him and pushed his face into the ground where he was kicked and searched. The police carried out a search of the car.

The four witnesses followed the ambulance which took Pearse Jordan to hospital where they stated that they were subjected to hostile and threatening remarks by members of the security forces.

17. According to the applicant, prior to the release of the official RUC statement (see paragraph 13 above), there were a number of unofficial reports widely circulated in the media to the effect that gloves, masks, guns and bombs had been found in the car, and one report to the effect that Pearse Jordan was a former Republican prisoner who had been charged in 1991 with possession of explosives. This information was not correct. Pearse Jordan did however receive an IRA funeral and, in the Republican News, he was described as a Volunteer of the Belfast Brigade of the IRA and it was said that he had died on active service.

18. An official RUC statement stated that a deputy superintendent of the RUC from outside Belfast would investigate the shooting. In a later statement, it was announced that the Independent Commission for Police Complaints (the ICPC) would supervise the RUC investigation.

19. On 26 November 1992, at 10.55 p.m., a detective chief inspector of the RUC criminal investigation department interviewed Sergeant A, in the presence of his solicitor and a representative of the ICPC. Sergeant A, member of an HMSU unit[1], stated as follows.

He had been at a briefing at 11 a.m. the day before concerning reports of a planned distribution of kit and munitions, including weapons, explosives and mortars, by the Provisional IRA in West Belfast. A surveillance operation was to be mounted and he was in charge of the teams on the ground which were going to intervene if possible to intercept the munitions. He was carrying a Smith and Wesson 59 pistol and a MP5 Heckler & Koch. At about 3.20-3.30 p.m., following reports of a car acting suspiciously at White Rock leisure centre, he and his teams left Woodbourne police station to wait at Andersontown police station. They heard reports there of a build up of activity at the back of two houses in Arizona street, which were under surveillance. The red car from the leisure centre arrived in Arizona street. Sergeant A thought that this was possibly the re-supply of terrorist equipment taking place. He was told by radio to gather his people together – car crews with call signs 8, 9, 3 and 12. When the red Orion left Arizona street, he and his crews left the police station but were called back almost immediately to allow the red Orion to make its run. A red Cavalier left Arizona street and they were told to allow that to run. News arrived that the red Orion had come back to Arizona street. Sergeant A was told on the radio that the next time the red Orion came out they were to intercept it. He split his crews in two, his own team (call signs 8 and 12) to approach from the city side and the crews with call signs 3 and 9 to approach from the country side.

When the red Orion came past the two police cars, Sergeant A saw that there was one driver. They pulled out behind it. His driver flashed his lights at it. They switched on their police klaxon but had no blue flashing light on the car and none of them were wearing their police caps. Sergeant A's car drew level with the Orion and he signalled for it to pull over. The Orion slowed falling behind and then shot past on the passenger side, accelerating down the Falls Road in the direction of the city. Sergeant A told his driver to pursue him and force him off the road. The car possibly reached the speed of 60, maybe 70 miles per hour at the fastest. They were in a built up area, in traffic so it was difficult to judge. Their klaxon was going throughout. They drew parallel with the red Orion and nudged it once. The impact was hard enough to force the Orion partly up on the pavement and stop it. Sergeant A's own car stopped partly on the pavement in front of the Orion. The lock of his door had broken on the impact. He burst out of the door onto the pavement moving towards the Orion. He saw the driver running across the road from left to right at an angle away from him. He was looking over his right shoulder in Sergeant A's direction as he ran. Sergeant A said that he called out "Police. Halt." or "Halt. Police."

The driver of the Orion turned around towards him. He could not see the man's hands which were below his waist. His vision was either obscured by the roof of the police car in front of him or the arrival of the other black car (crew 12) on the scene. As he could not see the man's hands, he

thought that his own life or the life of his own driver might be at risk. He feared the man was armed as he had spun round so quickly. He fired a short burst from his MP5 at the trunk of the man. When he made the split second decision to fire, the man was facing him but he could not say whether he had turned or moved in some other way. He was aware of other police officers shouting. He ran towards the driver who ran towards the footpath on the far side of the road. Constable F was shouting at him to get down on his knees. The driver fell flat, toppling over. It was realised at that stage that he was seriously injured.

Sergeant A quickly searched the car, while other security force personnel administered first aid to the driver. Either base, or he himself, suggested that the police officers move to Arizona street. The military took over the first aid. He had directed most of the police officers to leave the scene as soon as they had arrived, including crew 12 in their car. He did not know that car 12 had come into contact with the Orion or the deceased. He arrived back at the station at about 5.30 to 6.00 p.m. There was a 20-30 minute debriefing in which he participated. He also discussed the matter casually with the others who were there. He was instructed to hand in his weapon at about that time.

20. On 30 March 1993, a detective inspector carried out a second interview of Sergeant A, in the presence of his solicitor. Further questions were put about his position and actions at the time of the shooting. He recalled that he had had a clear view of the deceased from the waist up. When the deceased turned to face him, he did not make any movements towards him. His arms remained down though. When asked to explain precisely why he had considered that his life was in danger, given that he could not confirm that the deceased was armed, Sergeant A replied that it had been a prolonged operation lasting several hours involving serious terrorist activity. The red Orion had reacted in a very aggressive manner in driving at excessive speed on a busy road. When the Orion was stopped, the driver ran away and when he was ordered to stop, he turned towards the Sergeant in what the Sergeant interpreted as an aggressive manner. His arms were down and his hands out of sight. In that short space of time, he formed the opinion that the deceased was a threat to his life. The man's actions had not been of someone about to surrender. He was certain that there were no viable alternatives to discharging his own weapon.

21. Forensic examinations of the cars involved in the incident were carried out. Interviews were conducted with the other police officers and army personnel involved in the incident.

According to the statements of police officers D, E and F in the car call sign 12, they had been pursuing the red Orion car close behind the red police Sierra in which Sergeant A was driving. When the Orion stopped, their car pulled up behind. As they were stopping, the driver was running from the car and either he ran into them or their car struck him, clipping him on the right thigh. The driver span round towards call sign 8. At that point, there was a short burst of gunfire. Their car had also at some point made contact with the red Orion in the rear. Only officer D heard shouting coming from the call sign 8 direction before the shooting. Shortly after moving their car to facilitate the flow of traffic, they had been directed to Arizona street.

In his statement of 6 December 1992, Sergeant H, from the car call sign 11, stated that on arrival at the scene he had instructed car 12 to be moved to facilitate the movement of a bus which had stopped very close to the injured man. He was not aware that car 12 might have struck the red Orion car or the deceased. The car was only moved back slightly and he was not involved in directing its complete removal from the scene.

Inspector M gave a statement on 7 December 1992 that, on being satisfied that the injured man was receiving first aid and that the red Orion had been secured, he gave directions for all the HMSU police teams to go to Arizona street for searches. Some sort of device has been located there.

22. During the investigation, appeals were made by the police in newspapers and broadcast media for potential eyewitnesses to come forward. A number of civilians made statements to the police and subsequently gave evidence at the inquest. In May 1993, the RUC concluded its inquiry. Its report on the investigation was submitted to the Director of Public Prosecutions (the DPP) on 25 May 1993.

23. On 3 June 1993, the ICPC wrote to the applicant's family expressing the view that the RUC report of 25 May 1993 concerning the criminal investigation into the shooting was satisfactory. On

15 June 1993, the RUC wrote to the applicant advising him that the papers had been sent to the DPP. The applicant and his family were not however provided with any indication as to the nature of the RUC's findings.

24. On 16 November 1993, the DPP's department issued to the Chief Constable of the RUC a direction of "no prosecution" in respect of the fatal shooting of Pearse Jordan. It had been concluded that the evidence was insufficient to warrant the prosecution of any person.

25. On 22 November 1993, having considered a submission by the CAJ, the DPP notified the CAJ that the direction of "no prosecution" should stand.

26. On 11 February 1994, the RUC Complaints and Discipline Department wrote to the applicant to inform him that the report on the shooting had been sent to the ICPC.

27. On 31 August 1994, the ICPC wrote to the applicant to inform him that after careful scrutiny of all the details it was of the opinion that the evidence was insufficient to warrant the preferment of disciplinary charges against the police officers concerned.

### B. The inquest

28. On 29 November 1993, the RUC notified the Coroner that the DPP had directed "no prosecution". Following that decision, the Coroner decided to hold an inquest.

29. On 4 November 1994, the Coroner received the case papers from the RUC.

30. On or about 13 November 1994, the Coroner wrote to interested parties informing them that the inquest would begin on 4 January 1995.

31. Prior to the commencement of the inquest, the Secretary of State for Defence issued a certificate in which he identified information whose disclosure at the inquest he believed would be contrary to the public interest on grounds of national security, and made an application that the identities of certain military witnesses be withheld and that they should give their evidence from behind a screen.

32. On 20 December 1994, the Coroner held a preliminary hearing at which he decided to:

(a) protect certain categories of information from disclosure on the grounds of national security;

(b) protect the identity of three military witnesses, Soldiers V, W and X by withholding their names and screening them from all except the Coroner, the jury and the legal representatives of the interested parties; and

(c) protect the identity of certain RUC officers, including Sergeant A (the officer who fired the shots which killed Pearse Jordan) by withholding their names.

33. On 2 January 1995, the Secretary of State for Northern Ireland issued a certificate in which he identified information whose disclosure at the inquest he believed would be contrary to the public interest as compromising the integrity of RUC intelligence operations.

34. On 4 January 1995, the Coroner's inquest commenced. The applicant and his family were represented by a solicitor and counsel. The RUC were represented. The Coroner sat for three and a half days, hearing evidence from 19 witnesses, including the applicant, 8 civilians, Soldiers V, W and X, 7 police officers and a pathologist. These witnesses were subject to cross-examination. Sergeant A had informed the Coroner that he would not appear.

35. On or about 8 January 1995, the CAJ provided the Coroner with a statement which they had received from another civilian witness, a driver of a black taxi who had been at the scene.

36. On 10 January 1995, the Coroner rejected the request by the applicant's counsel to withdraw the protection of the identities of the RUC witnesses.

37. The proceedings were adjourned on 16 January 1995, at the request of Pearse Jordan's family, to enable the DPP, in the light of new evidence from the taxi driver, to reconsider the decision whether or not to bring a prosecution. The Coroner wrote to the DPP informing him that new evidence had come to light which should be considered.

38. On 10 February 1995, the DPP decided that the evidence remained insufficient to warrant the prosecution of any person in relation to Pearse Jordan's death. He requested that any further evidence adduced at the inquest relevant to his functions be reported to him.

39. On 14 February 1995, the applicant's legal representatives were informed by the DPP that his decision not to bring a prosecution still stood.

40. On 10 March 1995, the applicant's legal representatives made an application for the Coroner to discharge himself from the Inquest on the grounds that he was not conducting the inquest fairly. The Coroner refused the application.

41. On 11 April 1995, the Coroner wrote to the interested parties informing them that the inquest would resume on 12 June 1995.

42. On 26 May 1995, the applicant's legal representatives commenced judicial review proceedings seeking declarations that certain rulings given by the Coroner in the course of the inquest were wrong in law. Leave was granted on 2 June 1995. The applicant sought orders of certiorari to quash *inter alia* (a) the Coroner's refusal to give the next of kin access to the statements of the witnesses before they gave evidence at the inquest and (b) the decision of the Coroner to grant anonymity to RUC witnesses. Legal aid was granted to the applicant for this purpose. The Coroner adjourned the inquest pending these proceedings.

43. Leave was granted to bring judicial review proceedings against the Coroner on 2 June 1995.

44. The judicial review application was heard on 9 and 10 November 1995. By judgment of 11 December 1995, Lord Justice Carswell refused the applicant's claims. In doing so he had regard to the inquisitorial nature of inquest proceedings. He referred to the remarks of Griffiths J in *Ex parte Peach*:

> "A coroner's inquest is an inquisitorial procedure with a very limited objective indeed. The objective is set out in rule 26 of the Coroners Rules 1953. It is limited to ascertaining the following matters: who the deceased was; how, when and where the deceased came by his death. There is a further specific limitation provided by the Coroners (Amendment) Rules 1977. These provide by rule 7 that no verdict shall be framed in such a way as to appear to determine any question of criminal liability on the part of a named person or of civil liability.
>
> It is quite true that the coroner may allow interested parties to examine a witness called by the coroner. But that must be for the purpose of assisting in establishing the matters which the inquest is directed to determine. It is not intended by rule 16 to widen the coroner's inquest into adversarial fields of conflict."

45. Lord Justice Carswell also referred to the statutory background governing the procedure at inquest: Section 31(1) of the Coroners Act (Northern Ireland) 1959 providing that the jury shall give their verdict in the form prescribed by rules,

> "setting forth, so far as such particulars have been proved to them, who the deceased person was and how, when and where he came to his death."

and Rule 16 of the Coroners (Practice and Procedure) Rules 1963 providing:

> "neither the coroner nor the jury shall express any opinion on questions of criminal or civil liability ..."

46. On 8 January 1996, the applicant appealed against the decision of Lord Justice Carswell. The appeal was dismissed by the Court of Appeal of Northern Ireland on 28 June 1996. The applicant's application for leave to appeal to the House of Lords was refused on 4 October 1996. The House of Lords also refused leave on 20 March 1997.

47. The inquest was due to recommence on 1 December 1997. However, it was adjourned on 19 November 1997 by the Coroner, after consultation with the parties, pending the outcome of a judicial review application in the High Court concerning the availability of legal aid for legal representation for the family of the deceased at inquests.

48. On 16 March 1999, final judgment was given in the case of *Sharon Lavery v. the Secretary of State and the Legal Aid Department*, in which a challenge concerning the unavailability of legal aid for inquests was dismissed.

49. On 1 July 1999, the Coroner informed the interested parties that he intended to resume the inquest on 1 November 1999.

50. On 13 October 1999, the Coroner adjourned the inquest pending the applicant's application for the disclosure of documents by the Chief Constable of the RUC in the wake of the Home Office Circular issued on 28 April 1999 on deaths in police custody which recommended, *inter alia*, that

material supplied by the police to the Coroner should be made available to the families of deceased persons (see paragraphs 73 and 74 below).

51. On 2 February 2000, the applicant was informed that the Chief Constable would provide copies of the statements of the witnesses who were to appear at the inquest and copies of any statements which the Coroner proposed to read out.

52. On 3 March 2000, the applicant was granted leave to bring judicial review proceedings against the Chief Constable, challenging his decision not to provide further documents to the applicant.

53. When the inquest resumed, the Coroner proposed to call, in addition to the witnesses who gave evidence in January 1995, 12 police officers and Soldier Y involved in the anti-terrorist operation in which Pearse Jordan died, forensic experts and three police officers involved in the RUC investigation into the shooting.

54. On a date unspecified between 4 April and 2 October 2000, the applicant was provided with the witness statements of persons whom the Coroner has decided should be called to give evidence at the inquest.

#### C. Concerning the civil proceedings

55. The applicant was granted legal aid to pursue a civil action for compensation in the High Court. On 7 December 1992, the applicant instituted civil proceedings, alleging death by wrongful act.

56. On 5 October 1995, the applicant served a statement of claim in the civil proceedings. On 24 October 1995 the Ministry of Defence served their defence, together with a request for further and better particulars of the statement of claim. The applicant did not reply to this request until a date unspecified subsequent to 27 August 1998.

57. On 8 October 1999, the Crown Solicitor wrote to the applicant seeking consent to a remittal of the civil action to trial.

58. The applicant stated that the case is currently at the discovery stage but that this cannot be concluded until the inquest is terminated.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

#### A. Use of lethal force

59. Section 3 of the Criminal Law Act (Northern Ireland) 1967 provides *inter alia*:

> "1. A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting the arrest or assisting in the lawful arrest of offenders or suspected offenders or persons unlawfully at large."

Self-defence or the defence of others is contained within the concept of the prevention of crime (see e.g. Smith and Hogan on Criminal Law).

#### B. Inquests

##### *1. Statutory provisions and rules*

60. The conduct of inquests in Northern Ireland is governed by the Coroners Act (Northern Ireland) 1959 and the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963. These provide the framework for a procedure within which deaths by violence or in suspicious circumstances are notified to the Coroner, who then has the power to hold an inquest, with or without a jury, for the purpose of ascertaining, with the assistance as appropriate of the evidence of witnesses and reports, *inter alia*, of *post mortem* and forensic examinations, who the deceased was and how, when and where he died.

61. Pursuant to the Coroners Act, every medical practitioner, registrar of deaths or funeral undertaker who has reason to believe a person died directly or indirectly by violence is under an obligation to inform the Coroner (section 7). Every medical practitioner who performs a *post*

*mortem* examination has to notify the Coroner of the result in writing (section 29). Whenever a dead body is found, or an unexplained death or death in suspicious circumstances occurs, the police of that district are required to give notice to the Coroner (section 8).

62. Rules 12 and 13 of the Coroners Rules give power to the Coroner to adjourn an inquest where a person may be or has been charged with murder or other specified criminal offences in relation to the deceased.

63. Where the Coroner decides to hold an inquest with a jury, persons are called from the Jury List, compiled by random computer selection from the electoral register for the district on the same basis as in criminal trials.

64. The matters in issue at an inquest are governed by Rules 15 and 16 of the Coroners Rules:

> "15. The proceedings and evidence at an inquest shall be directed solely to ascertaining the following matters, namely: -
>
> (a) who the deceased was;
>
> (b) how, when and where the deceased came by his death;
>
> (c) the particulars for the time being required by the Births and Deaths Registration (Northern Ireland) Order 1976 to be registered concerning his death.
>
> 16. Neither the coroner nor the jury shall express any opinion on questions of criminal or civil liability or on any matters other than those referred to in the last foregoing Rule."

65. The forms of verdict used in Northern Ireland accord with this recommendation, recording the name and other particulars of the deceased, a statement of the cause of death (e.g. bullet wounds) and findings as to when and where the deceased met his death. In England and Wales, the form of verdict appended to the English Coroners Rules contains a section marked "conclusions of the jury/coroner as to the death" in which conclusions such as "lawfully killed" or "killed unlawfully" are inserted. These findings involve expressing an opinion on criminal liability in that they involve a finding as to whether the death resulted from a criminal act, but no finding is made that any identified person was criminally liable. The jury in England and Wales may also append recommendations to their verdict.

66. However, in Northern Ireland, the Coroner is under a duty (section 6(2) of the Prosecution of Offences Order (Northern Ireland) 1972) to furnish a written report to the DPP where the circumstances of any death appear to disclose that a criminal offence may have been committed.

67. Until recently, legal aid was not available for inquests as they did not involve the determination of civil liabilities or criminal charges. Legislation which would have provided for legal aid at the hearing of inquests (the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, Schedule 1 paragraph 5) has not been brought into force. However, on 25 July 2000, the Lord Chancellor announced the establishment of an Extra-Statutory Ex Gratia Scheme to make public funding available for representation for proceedings before Coroners in exceptional inquests in Northern Ireland. In March 2001, he published for consultation the criteria to be used in deciding whether applications for representation at inquests should receive public funding. This included *inter alia* consideration of financial eligibility, whether an effective investigation by the State was needed and whether the inquest was the only way to conduct it, whether the applicant required representation to be able to participate effectively in the inquest and whether the applicant had a sufficiently close relationship to the deceased.

68. The Coroner enjoys the power to summon witnesses who he thinks it necessary to attend the inquest (section 17 of the Coroners Act) and he may allow any interested person to examine a witness (Rule 7). In both England and Wales and Northern Ireland, a witness is entitled to rely on the privilege against self-incrimination. In Northern Ireland, this privilege is reinforced by Rule 9(2) which provides that a person suspected of causing the death may not be compelled to give evidence at the inquest.

69. In relation to both documentary evidence and the oral evidence of witnesses, inquests, like criminal trials, are subject to the law of public interest immunity, which recognises and gives effect to the public interest, such as national security, in the non-disclosure of certain information or

certain documents or classes of document. A claim of public interest immunity must be supported by a certificate.

*2. The scope of inquests*

70. Rules 15 and 16 (see above) follow from the recommendation of the Brodrick Committee on Death Certification and Coroners:

> "... the function of an inquest should be simply to seek out and record as many of the facts concerning the death as the public interest requires, without deducing from those facts any determination of blame... In many cases, perhaps the majority, the facts themselves will demonstrate quite clearly whether anyone bears any responsibility for the death; there is a difference between a form of proceeding which affords to others the opportunity to judge an issue and one which appears to judge the issue itself."

71. Domestic courts have made, *inter alia*, the following comments:

> "... It is noteworthy that the task is not to ascertain how the deceased died, which might raise general and far-reaching issues, but 'how...the deceased came by his death', a far more limited question directed to the means by which the deceased came by his death.
>
> ... [previous judgments] make it clear that when the Brodrick Committee stated that one of the purposes of an inquest is 'To allay rumours or suspicions' this purpose should be confined to allaying rumours and suspicions of how the deceased came by his death and not to allaying rumours or suspicions about the broad circumstances in which the deceased came by his death." (Sir Thomas Bingham, MR, Court of Appeal, *R. v the Coroner for North Humberside and Scunthorpe ex parte Roy Jamieson*, April 1994, unreported)
>
> "The cases establish that although the word 'how' is to be widely interpreted, it means 'by what means' rather than in what broad circumstances ... In short, the inquiry must focus on matters directly causative of death and must, indeed, be confined to those matters alone ..." (Simon Brown LJ, Court of Appeal, *R. v. Coroner for Western District of East Sussex, ex parte Homberg and others*, (1994) 158 JP 357)
>
> "... it should not be forgotten that an inquest is a fact finding exercise and not a method of apportioning guilt. The procedure and rules of evidence which are suitable for one are unsuitable for the other. In an inquest it should never be forgotten that there are no parties, no indictment, there is no prosecution, there is no defence, there is no trial, simply an attempt to establish the facts. It is an inquisitorial process, a process of investigation quite unlike a trial...
>
> It is well recognised that a purpose of an inquest is that rumour may be allayed. But that does not mean it is the duty of the Coroner to investigate at an inquest every rumour or allegation that may be brought to his attention. It is ... his duty to discharge his statutory role - the scope of his enquiry must not be allowed to drift into the uncharted seas of rumour and allegation. He will proceed safely and properly if he investigates the facts which it appears are relevant to the statutory issues before him." (Lord Lane, Court of Appeal, *R v. South London Coroner ex parte Thompson* (1982) 126 SJ 625)

*3. Disclosure of documents*

72. There was no requirement prior to 1999 for the families at inquests to receive copies of the written statements or documents submitted to the Coroner during the inquest. Coroners generally adopted the practice of disclosing the statements or documents during the inquest proceedings, as the relevant witness came forward to give evidence.

73. Following the recommendation of the Stephen Lawrence Inquiry, Home Office Circular No. 20/99 (concerning deaths in custody or deaths resulting from the actions of a police officer in purported execution of his duty) advised Chief Constables of police forces in England and Wales to make arrangements in such cases for the pre-inquest disclosure of documentary evidence to interested parties. This was to "help provide reassurance to the family of the deceased and other interested persons that a full and open police investigation has been conducted, and that they and their legal representatives will not be disadvantaged at the inquest". Such disclosure was recommended to take place 28 days before the inquest.

74. Paragraph 7 of the Circular stated:

> "The courts have established that statements taken by the police and other documentary material produced by the police during the investigation of a death in police custody are the property of the force commissioning the investigation. The Coroner has no power to order the pre-inquest disclosure of such material... Disclosure will therefore be on a voluntary basis."

Paragraph 9 listed some kinds of material which require particular consideration before being disclosed, for example:

– where disclosure of documents might have a prejudicial effect on possible subsequent proceedings (criminal, civil or disciplinary);

– where the material concerns sensitive or personal information about the deceased or unsubstantiated allegations which might cause distress to the family; and

– personal information about third parties not material to the inquest.

Paragraph 11 envisaged that there would be non-disclosure of the investigating officer's report although it might be possible to disclose it in those cases which the Chief Constable considered appropriate.

### C. Police Complaints Procedures

75. The police complaints procedure was governed at the relevant time by the Police (Northern Ireland) Order 1987 (the 1987 Order). This replaced the Police Complaints Board, which had been set up in 1977, by the Independent Commission for Police Complaints (the ICPC). The ICPC has been replaced from 1 October 2000 with the Police Ombudsman for Northern Ireland appointed under the Police (Northern Ireland) Act 1998.

76. The ICPC was an independent body, consisting of a chairman, two deputy chairmen and at least four other members. Where a complaint against the police was being investigated by a police officer or where the Chief Constable or Secretary of State considered that a criminal offence might have been committed by a police officer, the case was referred to the ICPC.

77. The ICPC was required under Article 9(1)(a) of the 1987 Order to supervise the investigation of any complaint alleging that the conduct of a RUC officer had resulted in death or serious injury. Its approval was required of the appointment of the police officer to conduct the investigation and it could require the investigating officer to be replaced (Article 9(5)(b)). A report by the investigating officer was submitted to the ICPC concerning supervised investigations at the same time as to the Chief Constable. Pursuant to Article 9(8) of the 1987 Order, the ICPC issued a statement whether the investigation had been conducted to its satisfaction and, if not, specifying any respect in which it had not been so conducted.

78. The Chief Constable was required under Article 10 of the 1987 Order to determine whether the report indicated that a criminal offence had been committed by a member of the police force. If he so decided and considered that the officer ought to be charged, he was required to send a copy of the report to the DPP. If the DPP decided not to prefer criminal charges, the Chief Constable was required to send a memorandum to the ICPC indicating whether he intended to bring disciplinary proceedings against the officer (Article 10(5)) save where disciplinary proceedings had been brought and the police officer had admitted the charges (Article 11(1)). Where the Chief Constable considered that a criminal offence had been committed but that the offence was not such that the police officer should be charged or where he considered that no criminal offence had been committed, he was required to send a memorandum indicating whether he intended to bring disciplinary charges and, if not, his reasons for not proposing to do so (Article 11(6) and (7)).

79. If the ICPC considered that a police officer subject to investigation ought to be charged with a criminal offence, it could direct the Chief Constable to send the DPP a copy of the report on that investigation (Article 12(2)). It could also recommend or direct the Chief Constable to prefer such disciplinary charges as the ICPC specified (Article 13(1) and (3)).

### D. The Director of Public Prosecutions

80. The Director of Public Prosecutions (the DPP), appointed pursuant to the Prosecution of Offences (Northern Ireland) 1972 (the 1972 Order) is an independent officer with at least 10 years' experience of the practice of law in Northern Ireland who is appointed by the Attorney General and who holds office until retirement, subject only to dismissal for misconduct. His duties under Article 5 of the 1972 Order are *inter alia*:

"(a) to consider, or cause to be considered, with a view to his initiating or continuing in Northern Ireland any criminal proceedings or the bringing of any appeal or other proceedings in or in connection with any criminal cause or matter in Northern Ireland, any facts or information brought to his notice, whether by the Chief Constable acting in pursuance of Article 6(3) of this Order or by the Attorney General or by any other authority or person;

(b) to examine or cause to be examined all documents that are required under Article 6 of this Order to be transmitted or furnished to him and where it appears to him to be necessary or appropriate to do so to cause any matter arising thereon to be further investigated;

(c) where he thinks proper to initiate, undertake and carry on, on behalf of the Crown, proceedings for indictable offences and for such summary offences or classes of summary offences as he considers should be dealt with by him."

81. Article 6 of the 1972 Order requires *inter alia* Coroners and the Chief Constable of the RUC to provide information to the DPP as follows:

"(2) Where the circumstances of any death investigated or being investigated by a coroner appear to him to disclose that a criminal offence may have been committed he shall as soon as practicable furnish to the [DPP] a written report of those circumstances.

(3) It shall be the duty of the Chief Constable, from time to time, to furnish to the [DPP] facts and information with respect to -

(a) indictable offences [such as murder] alleged to have been committed against the law of Northern Ireland; ...

and at the request of the [DPP], to ascertain and furnish to the [DPP] information regarding any matter which may appear to the [DPP] to require investigation on the ground that it may involve an offence against the law of Northern Ireland or information which may appear to the [DPP] to be necessary for the discharge of his functions under this Order."

82. According to the Government's observations submitted on 18 June 1998, it had been the practice of successive DPPs to refrain from giving reasons for decisions not to institute or proceed with criminal prosecutions other than in the most general terms. This practice was based upon the consideration that

(1) if reason were given in one or more cases, they would be required to be given in all. Otherwise, erroneous conclusions might be drawn in relation to those cases where reasons were refused, involving either unjust implications regarding the guilt of some individuals or suspicions of malpractice;

(2) the reason not to prosecute might often be the unavailability of a particular item of evidence essential to establish the case (e.g. sudden death or flight of a witness or intimidation). To indicate such a factor as the sole reason for not prosecuting might lead to assumptions of guilt in the public estimation;

(3) the publication of the reasons might cause pain or damage to persons other than the suspect (e.g. the assessment of the credibility or mental condition of the victim or other witnesses);

(4) in a substantial category of cases decisions not to prosecute were based on the DPP's assessment of the public interest. Where the sole reason not to prosecute was the age, mental or physical health of the suspect, publication would not be appropriate and could lead to unjust implications;

(5) there might be considerations of national security which affected the safety of individuals (e.g. where no prosecution could safely or fairly be brought without disclosing information which would be of assistance to terrorist organisations, would impair the effectiveness of the counter-terrorist operations of the security forces or endanger the lives of such personnel and their families or informants).

83. Decisions of the DPP not to prosecute have been subject to applications for judicial review in the High Court.

In *R v. DPP ex parte C* (1995) 1 CAR, p. 141, Lord Justice Kennedy held, concerning a decision of the DPP not to prosecute in an alleged case of buggery:

"From all of those decisions it seems to me that in the context of the present case this court can be persuaded to act if and only if it is demonstrated to us that the Director of Public Prosecutions acting through the Crown Prosecution Service arrived at the decision not to prosecute:

(1) because of some unlawful policy (such as the hypothetical decision in Blackburn not to prosecute where the value of goods stolen was below £100);

(2) because the Director of Public Prosecutions failed to act in accordance with his own settled policy as set out in the code; or

(3) because the decision was perverse. It was a decision at which no reasonable prosecutor could have arrived."

84. In the case of *R v. the DPP and Others ex parte Timothy Jones* the Divisional Court on 22 March 2000 quashed a decision not to prosecute for alleged gross negligence causing a death in dock unloading on the basis that the reasons given by the DPP – that the evidence was not sufficient to provide a realistic prospect of satisfying a jury – required further explanation.

85. *R v. DPP ex parte Patricia Manning and Elizabeth Manning* (decision of the Divisional Court of 17 May 2000) concerned the DPP's decision not to prosecute any prison officer for manslaughter in respect of the death of a prisoner, although the inquest jury had reached a verdict of unlawful death - there was evidence that prison officers had used a neck lock which was forbidden and dangerous. The DPP reviewing the case still concluded that the Crown would be unable to establish manslaughter from gross negligence. The Lord Chief Justice noted:

"Authority makes clear that a decision by the Director not to prosecute is susceptible to judicial review: see, for example, R. v. Director of Public Prosecutions, ex parte C [1995] 1 Cr. App. R. 136. But, as the decided cases also make clear, the power of review is one to be sparingly exercised. The reasons for this are clear. The primary decision to prosecute or not to prosecute is entrusted by Parliament to the Director as head of an independent, professional prosecuting service, answerable to the Attorney General in his role as guardian of the public interest, and to no-one else. It makes no difference that in practice the decision will ordinarily be taken by a senior member of the CPS, as it was here, and not by the Director personally. In any borderline case the decision may be one of acute difficulty, since while a defendant whom a jury would be likely to convict should properly be brought to justice and tried, a defendant whom a jury would be likely to acquit should not be subjected to the trauma inherent in a criminal trial. If, in a case such as the present, the Director's provisional decision is not to prosecute, that decision will be subject to review by Senior Treasury Counsel who will exercise an independent professional judgment. The Director and his officials (and Senior Treasury Counsel when consulted) will bring to their task of deciding whether to prosecute an experience and expertise which most courts called upon to review their decisions could not match. In most cases the decision will turn not on an analysis of the relevant legal principles but on the exercise of an informed judgment of how a case against a particular defendant, if brought, would be likely to fare in the context of a criminal trial before (in a serious case such as this) a jury. This exercise of judgment involves an assessment of the strength, by the end of the trial, of the evidence against the defendant and of the likely defences. It will often be impossible to stigmatise a judgment on such matters as wrong even if one disagrees with it. So the courts will not easily find that a decision not to prosecute is bad in law, on which basis alone the court is entitled to interfere. At the same time, the standard of review should not be set too high, since judicial review is the only means by which the citizen can seek redress against a decision not to prosecute and if the test were too exacting an effective remedy would be denied."

As regards whether the DPP had a duty to give reasons, the Lord Chief Justice said:

"It is not contended that the Director is subject to an obligation to give reasons in every case in which he decides not to prosecute. Even in the small and very narrowly defined cases which meet Mr Blake's conditions set out above, we do not understand domestic law or the jurisprudence of the European Court of Human Rights to impose an absolute and unqualified obligation to give reasons for a decision not to prosecute. But the right to life is the most fundamental of all human rights. It is put at the forefront of the Convention. The power to derogate from it is very limited. The death of a person in the custody of the State must always arouse concern, as recognised by section 8(1)(c), (3)(b) and (6) of the Coroner's Act 1988, and if the death resulted from violence inflicted by agents of the State that concern must be profound. The holding of an inquest in public by an independent judicial official, the coroner, in which interested parties are able to participate must in our view be regarded as a full and effective inquiry (see McCann v. United Kingdom [1996] 21 EHRR 97, paragraphs 159 to 164). Where such an inquest following a proper direction to the jury culminates in a lawful verdict of unlawful killing implicating a person who, although not named in the verdict, is clearly identified, who is living and whose whereabouts are known, the ordinary expectation would naturally be that a prosecution would follow. In the absence of compelling grounds for not giving reasons, we would expect the Director to give reasons in such a case: to meet the reasonable expectation of interested parties that either a prosecution would follow or a reasonable explanation for not prosecuting be given, to vindicate the Director's decision by showing that solid grounds exist for what might otherwise appear to

be a surprising or even inexplicable decision and to meet the European Court's expectation that if a prosecution is not to follow a plausible explanation will be given. We would be very surprised if such a general practice were not welcome to Members of Parliament whose constituents have died in such circumstances. We readily accept that such reasons would have to be drawn with care and skill so as to respect third party and public interests and avoid undue prejudice to those who would have no opportunity to defend themselves. We also accept that time and skill would be needed to prepare a summary which was reasonably brief but did not distort the true basis of the decision. But the number of cases which meet Mr Blake's conditions is very small (we were told that since 1981, including deaths in police custody, there have been seven such cases), and the time and expense involved could scarcely be greater than that involved in resisting an application for judicial review. In any event it would seem to be wrong in principle to require the citizen to make a complaint of unlawfulness against the Director in order to obtain a response which good administrative practice would in the ordinary course require."

On this basis, the court reviewed whether the reasons given by the DPP in that case were in accordance with the Code for Crown Prosecutors and capable of supporting a decision not to prosecute. It found that the decision had failed to take relevant matters into account and that this vitiated the decision not to prosecute. The decision was quashed and the DPP was required to reconsider his decision whether or not to prosecute.

86. *In the Matter of an Application by David Adams for Judicial Review*, the High Court in Northern Ireland on 7 June 2000 considered the applicant's claim that the DPP had failed to give adequate and intelligible reasons for his decision not to prosecute any police officer concerned in the arrest during which he had suffered serious injuries and for which in civil proceedings he had obtained an award of damages against the police. It noted that there was no statutory obligation on the DPP under the 1972 Order to give reasons and considered that no duty to give reasons could be implied. The fact that the DPP in England and Wales had in a number of cases furnished detailed reasons, whether from increasing concern for transparency or in the interests of the victim's families, was a matter for his discretion. It concluded on the basis of authorities that only in exceptional cases such as the Manning case (paragraph 85 above) would the DPP be required to furnish reasons to a victim for failing to prosecute and that review should be limited to where the principles identified by Lord Justice Kennedy (paragraph 83 above) were infringed. Notwithstanding the findings in the civil case, they were not persuaded that the DPP had acted in such an aberrant, inexplicable or irrational manner that the case cried out for reasons to be furnished as to why he had so acted.

## III. RELEVANT INTERNATIONAL LAW AND PRACTICE

### A. The United Nations

87. The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN Force and Firearms Principles) were adopted on 7 September 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

88. Paragraph 9 of the UN Force and Firearms Principles provides, *inter alia*, that the "intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life".

89. Other relevant provisions read as follows:

Paragraph 10

"... law enforcement officials shall identify themselves as such and shall give a clear warning of their intent to use firearms, with sufficient time for the warnings to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident."

Paragraph 22

"... Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control."

Paragraph 23

"Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependants accordingly."

90. Paragraph 9 of the United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted on 24 May 1989 by the Economic and Social Council Resolution 1989/65, (UN Principles on Extra-Legal Executions) provides, *inter alia*, that:

"There shall be a thorough, prompt and impartial investigation of all suspected cases of extra legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances ..."

91. Paragraphs 10 to 17 of the UN Principles on Extra-Legal Executions contain a series of detailed requirements that should be observed by investigative procedures into such deaths.

Paragraph 10 states, *inter alia*:

"The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the inquiry ... shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify ..."

Paragraph 11 specifies:

"In cases in which the established investigative procedures are inadequate because of a lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognised impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided in these principles."

Paragraph 16 provides, *inter alia*:

"Families of the deceased and their legal representatives shall be informed of, and have access to, any hearing as well as all information relevant to the investigation and shall be entitled to present other evidence ..."

Paragraph 17 provides, *inter alia*:

"A written report shall be made within a reasonable time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures, methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law ..."

92. The "Minnesota Protocol" (Model Protocol for a legal investigation of extra-legal, arbitrary and summary executions, contained in the UN Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions) provides, *inter alia,* in section B on the "Purposes of an inquiry":

"As set out in paragraph 9 of the Principles, the broad purpose of an inquiry is to discover the truth about the events leading to the suspicious death of a victim. To fulfil that purpose, those conducting the inquiry shall, at a minimum, seek:

(a) to identify the victim;

(b) to recover and preserve evidentiary material related to the death to aid in any potential prosecution of those responsible;

(c) to identify possible witnesses and obtain statements from them concerning the death;

(d) to determine the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death;

(e) to distinguish between natural death, accidental death, suicide and homicide;

(f) to identify and apprehend the person(s) involved in the death;

(g) to bring the suspected perpetrator(s) before a competent court established by law."

In section D, it is stated that "In cases where government involvement is suspected, an objective and impartial investigation may not be possible unless a special commission of inquiry is established ...".

### B. The European Committee for the Prevention of Torture

93. In the report on its visit to the United Kingdom and the Isle of Man from 8 to 17 September 1999, published on 13 January 2000, the European Committee for the Prevention of Torture (the CPT) reviewed the system of preferring criminal and disciplinary charges against police officers accused of ill-treating persons. It commented, *inter alia*, on the statistically few criminal prosecutions and disciplinary proceedings which were brought, and identified certain aspects of the procedures which cast doubt on their effectiveness:

The chief officers appointed officers from the same force to conduct the investigations, save in exceptional cases where they appointed an officer from another force, and the majority of investigations were unsupervised by the Police Complaints Authority.

It stated at paragraph 55:

> "As already indicated, the CPT itself entertains reservations about whether the PCA [the Police Complaints Authority], even equipped with the enhanced powers which have been proposed, will be capable of persuading public opinion that complaints against the police are vigorously investigated. **In the view of the CPT, the creation of a fully-fledged independent investigating agency would be a most welcome development. Such a body should certainly, like the PCA, have the power to direct that disciplinary proceedings be instigated against police officers. Further, in the interests of bolstering public confidence, it might also be thought appropriate that such a body be invested with the power to remit a case directly to the CPS for consideration of whether or not criminal proceedings should be brought.**
>
> In any event, **the CPT recommends that the role of the 'chief officer' within the existing system be reviewed.** To take the example of one Metropolitan Police officer to whom certain of the chief officer's functions have been delegated (the Director of the CIB [Criminal Investigations Bureau]), he is currently expected to: seek dispensations from the PCA; appoint investigating police officers and assume managerial responsibility for their work; determine whether an investigating officer's report indicates that a criminal offence may have been committed; decide whether to bring disciplinary proceedings against a police officer on the basis of an investigating officer's report, and liase with the PCA on this question; determine which disciplinary charges should be brought against an officer who is to face charges; in civil cases, negotiate settlement strategies and authorise payments into court. It is doubtful whether it is realistic to expect any single official to be able to perform all of these functions in an entirely independent and impartial way.
>
> 57. ...Reference should also be made to the high degree of public interest in CPS [Crown Prosecution Service] decisions regarding the prosecution of police officers (especially in cases involving allegations of serious misconduct). Confidence about the manner in which such decisions are reached would certainly be strengthened were the CPS to be obliged to give detailed reasons in cases where it was decided that no criminal proceedings should be brought. The CPT recommends that such a requirement be introduced."

## THE LAW

### I. ALLEGED VIOLATIONS OF ARTICLE 2 OF THE CONVENTION

94. The applicant submitted that his son Pearse Jordan had been unjustifiably killed and that there had been no effective investigation into the circumstances of his death. He invoked Article 2 of the Convention which provides:

> "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.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

### A. The submissions made to the Court

#### *1. The applicant*

95. The applicant submitted that the death of his son was the result of the unnecessary and disproportionate use of force by an RUC officer and that his son was the victim of a shoot-to-kill policy operated by the United Kingdom Government in Northern Ireland. He referred, *inter alia*, to reports by Amnesty International and the Human Rights Watch, as well as the statements made by Mr John Stalker, a senior policeman, who carried out an investigation into allegations of such a policy. He argued that this case could not be looked at in isolation from the other cases in Northern Ireland involving the use of lethal force by State agents. In this context, it could be seen on analysis of the lethal force deaths between 1969 and 1994 that there was at the material time a practice whereby suspects were arbitrarily killed rather than arrested. He pointed to the common features of preplanning based on intelligence from informers, the deployment of specialist military or police units and the maximal use of force. In this case, Sergeant A had no evidence that Pearse Jordan was armed, and directed fire at the trunk of the body, making no attempt to wound or take evasive action in ducking behind his armoured car to protect himself. This could not be regarded as the use of minimum or proportionate force. The inadequate investigations into this and other cases were also evidence of official tolerance on the part of the State of the use of unlawful lethal force. Here, the police officer involved in the shooting was allowed to leave the scene with his weapons, a car involved in the incident had been moved from the scene and no adequate steps were taken to find independent eye witnesses, while witnesses who did come forward were subject to abuse and harassment.

96. The applicant submitted that while there were a few outstanding issues of fact, e.g. whether Sergeant A issued a warning, and whether and in what manner the deceased changed direction as he ran away, these elements were relevant only to issues of individual criminal responsibility and did not prevent the Court reaching its own conclusions under Article 2 of the Convention. To the extent that the Court felt there were any issues to resolve, it should of its own motion obtain the necessary material by an investigation under Article 38 § 1 a) of the Convention.

97. The applicant further submitted that there had been no effective official investigation carried out into the killing, relying on the international standards set out in the Minnesota Protocol. He argued that the RUC investigation was inadequate and flawed by its lack of independence and lack of publicity. The DPP's own role was limited by the RUC investigation and he did not make public his reasons for not prosecuting. The inquest was flawed by the delays, the limited scope of the enquiry, a lack of legal aid for relatives, a lack of access to documents and witness statements, the non-compellability of security force or police witnesses and the use of public interest immunity certificates. The Government could not rely on civil proceedings either as this depended on the initiative of the deceased's family.

#### *2. The Government*

98. While the Government did not accept the applicant's claims under Article 2 that his son was killed by any excessive or unjustified use of force, they considered that it would be wholly inappropriate for the Court to seek itself to determine the issues of fact arising on the substantive issues of Article 2. This might involve the Court seeking to resolve issues, and perhaps examining witnesses and conducting hearings, at the same time as the High Court in Northern Ireland, with a real risk of inconsistent findings. It would also allow the applicant to forum-shop and would thus undermine the principle of exhaustion of domestic remedies. They submitted that there were in any event considerable practical difficulties for the Court to pursue an examination of the substantive aspects of Article 2 as the factual issues would be numerous and complex, involving live evidence with a substantial number of witnesses. This primary fact finding exercise should not be performed

twice, in parallel, such an undertaking wasting court time and costs and giving rise to a real risk of prejudice in having to defend two sets of proceedings simultaneously.

99. Insofar as the applicant invited the Court to find a practice of killing rather than arresting terrorist suspects, this allegation was emphatically denied. The Government submitted that such a wide ranging allegation calling into question every anti-terrorist operation over the last thirty years went far beyond the scope of this application and referred to matters not before this Court. They denied that there had been any obstruction to the police investigation in this case, pointing out that the removal of the car from the scene was consistent with legitimate security concerns (i.e. the team being sent to Arizona Street where the presence of a bomb was suspected). They denied that there had been any intimidation or abuse of witnesses.

100. The Government further denied that domestic law in any way failed to comply with the requirements of this provision. They argued that the procedural aspect of Article 2 was satisfied by the combination of procedures available in Northern Ireland, namely, the police investigation, which was supervised by the ICPC and by the DPP, the inquest proceedings and civil proceedings. These secured the fundamental purpose of the procedural obligation, in that they provided for effective accountability for the use of lethal force by State agents. This did not require that a criminal prosecution be brought but that the investigation was capable of leading to a prosecution, which was the case in this application. They also pointed out that each case had to be judged on its facts since the effectiveness of any procedural ingredient may vary with the circumstances. In the present case, they submitted that the available procedures together provided the necessary effectiveness, independence and transparency by way of safeguards against abuse.

*3. The Northern Ireland Human Rights Commission*

101. Referring to relevant international standards concerning the right to life (e.g. the Inter-American Court's case-law and the findings of the UN Human Rights Committee), the Commission submitted that the State had to carry out an effective official investigation when an agent of the State was involved or implicated in the use of lethal force. Internal accountability procedures had to satisfy the standards of effectiveness, independence, transparency and promptness, and facilitate punitive sanctions. It was however, in their view, not sufficient for a State to declare that while certain mechanisms were inadequate, a number of such mechanisms regarded cumulatively could provide the necessary protection. They submitted that the investigative mechanisms relied on in this case, singly or combined, failed to do so. They referred, *inter alia,* to the problematic role of the RUC in Northern Ireland, the allegedly serious deficiencies in the mechanisms of police accountability, the limited scope of and delays in inquests, and the lack of compellability of the members of the security forces who have used lethal force to appear at inquests. They drew the Court's attention to the form of enquiry carried out in Scotland under the Sheriff, a judge of criminal and civil jurisdiction, where the next-of-kin have a right to appear. They urged the Court to take the opportunity to give precise guidance as to the form which investigations into the use of lethal force by State agents should take.

**B. The Court's assessment**

*1. General principles*

102. Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, to which in peacetime no derogation is permitted under Article 15. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which deprivation of life may be justified must therefore be strictly construed. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see the McCann and Others v. the United Kingdom judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-147).

103. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as for example in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death which occur. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC] no. 21986/93, ECHR 2000-VII, § 100, and also *Çakıcı v. Turkey*, [GC] ECHR 1999-IV, § 85, *Ertak v. Turkey* no. 20764/92 [Section 1] ECHR 2000-V, § 32 and *Timurtaş v. Turkey*, no. 23531/94 [Section 1] ECHR 2000-VI, § 82).

104. The text of Article 2, read as a whole, demonstrates that it covers not only intentional killing but also the situations where it is permitted to "use force" which may result, as an unintended outcome, in the deprivation of life. The deliberate or intended use of lethal force is only one factor however to be taken into account in assessing its necessity. Any use of force must be no more than "absolutely necessary" for the achievement of one or more of the purposes set out in sub-paragraphs (a) to (c). This term indicates that a stricter and more compelling test of necessity must be employed from that normally applicable when determining whether State action is "necessary in a democratic society" under paragraphs 2 of Articles 8 to 11 of the Convention. Consequently, the force used must be strictly proportionate to the achievement of the permitted aims (the McCann judgment, cited above, §§ 148-149).

105. The obligation to protect the right to life under Article 2 of the Convention, read 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", also 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*, the McCann judgment cited above, p. 49, § 161, and the Kaya v. Turkey judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 324, § 86). The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. What form of investigation will achieve those purposes may vary in different circumstances. However, whatever mode is employed, the authorities must act of their own motion, once the matter has come to their attention. They cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures (see, for example, *mutatis mutandis*, *İlhan v. Turkey* [GC] no. 22277/93, ECHR 2000-VII, § 63).

106. For an investigation into alleged unlawful killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events (see e.g. the Güleç v. Turkey judgment of 27 July 1998, *Reports* 1998-IV, §§ 81-82; *Öğur v. Turkey*, [GC] no. 21954/93, ECHR 1999-III, §§ 91-92). This means not only a lack of hierarchical or institutional connection but also a practical independence (see for example the Ergı v. Turkey judgment of 28 July 1998, *Reports* 1998-IV, §§ 83-84, where the public prosecutor investigating the death of a girl during an alleged clash showed a lack of independence through his heavy reliance on the information provided by the gendarmes implicated in the incident).

107. The investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances (e.g. the Kaya v. Turkey judgment, cited above, p. 324, § 87) and to the identification and punishment of those responsible (*Öğur v. Turkey*, cited above, § 88). This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including *inter alia* eye witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death (see concerning autopsies, e.g. *Salman v. Turkey* cited above, § 106; concerning witnesses e.g. *Tanrıkulu v. Turkey*

[GC], no. 23763/94, ECHR 1999-IV, § 109; concerning forensic evidence e.g. *Gül v. Turkey*, 22676/93, [Section 4], § 89). Any deficiency in the investigation which undermines its ability to establish the cause of death or the person or persons responsible will risk falling foul of this standard.

108. A requirement of promptness and reasonable expedition is implicit in this context (see the Yaşa v. Turkey judgment of 2 September 1998, *Reports* 1998-IV, pp. 2439-2440, §§ 102-104; *Cakıcı v. Turkey* cited above, §§ 80, 87 and 106; *Tanrikulu v. Turkey*, cited above, § 109; *Mahmut Kaya v. Turkey*, no. 22535/93, [Section I] ECHR 2000-III, §§ 106-107). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating a use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.

109. For the same reasons, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see Güleç v. Turkey, cited above, p. 1733, § 82, where the father of the victim was not informed of the decisions not to prosecute; *Öğur v. Turkey*, cited above, § 92, where the family of the victim had no access to the investigation and court documents; *Gül v. Turkey* judgment, cited above, § 93).

*2. Application in the present case*

**a. Concerning alleged responsibility of the State for the death of Pearce Jordan**

110. It is undisputed that Pearse Jordan was shot and killed by a police officer while he was unarmed. This use of lethal force falls squarely within the ambit of Article 2, which requires any such action to pursue one of the purposes set out in second paragraph and to be no more than absolutely necessary for that purpose. A number of key factual issues arise in this case, in particular whether Sergeant A acted on the basis of an honest belief perceived for good reasons to be valid at the time but which turned out subsequently to be mistaken, namely, that he or any other police officer was at risk from Pearse Jordan in the circumstances of the case (see McCann and Others judgment, cited above, p. 58-59, § 200). Determining this issue would involve *inter alia* an assessment of whether Sergeant A's view was blocked by any vehicle as alleged, whether Sergeant A gave a warning shout, whether Pearse Jordan was facing him or whether in fact his back was already turned at the moment when Sergeant A decided to open fire. The evidence of the police officers at the scene are on a number of these points in direct conflict with statements given by civilian eye witnesses (see paragraphs 16 and 19-21 above). Assessment of the credibility and reliability of the various witnesses would play a crucial role.

111. These are all matters which are currently pending examination in two domestic procedures - the civil proceedings brought by the applicant alleging death by wrongful act and the inquest into the death. The Court considers that in the circumstances of this case it would be inappropriate and contrary to its subsidiary role under the Convention to attempt to establish the facts of this case by embarking on a fact finding exercise of its own by summoning witnesses. Such an exercise would duplicate the proceedings before the civil courts which are better placed and equipped as fact finding tribunals. While the European Commission of Human Rights has previously embarked on fact finding missions in cases from Turkey where there were pending proceedings against the alleged security force perpetrators of unlawful killings, it may be noted that these proceedings were criminal and had terminated, at first instance at least, by the time the Court was examining the applications. In those cases, it was an essential part of the applicants' allegations that the defects in the investigation were such as to render those criminal proceedings ineffective (see e.g. *Salman v. Turkey*, cited above, § 107, where the police officers were acquitted of torture due to the lack of evidence resulting principally from a defective autopsy procedure; *Gül v. Turkey*, cited above, § 89,

where *inter alia* the forensic investigation at the scene and autopsy procedures hampered any effective reconstruction of events).

112. In the present case, the Court does not consider that there are any elements established which would deprive the civil courts of their ability to establish the facts and determine the lawfulness or otherwise of Pearse Jordan's death (see further below concerning the applicant's allegations about the defects in the police investigation, paragraphs 118-121).

113. Nor is the Court persuaded that it is appropriate to rely on the documentary material provided by the parties to reach any conclusions as to responsibility for the death of the applicant's son. The written accounts provided have not been tested in examination or cross-examination and would provide an incomplete and potentially misleading basis for any such attempt. The situation cannot be equated to a death in custody where the burden may be regarded as resting on the State to provide a satisfactory and plausible explanation.

114. The Court is also not prepared to conduct, on the basis largely of statistical information and selective evidence, an analysis of incidents over the past thirty years with a view to establishing whether they disclose a practice by security forces of using disproportionate force. This would go far beyond the scope of the present application.

115. Conversely, as regards the Government's argument that the availability of civil proceedings provided the applicant with a remedy which he has yet to exhaust as regards Article 35 § 1 of the Convention and, therefore, that no further examination of the case is required under the Article 2, the Court recalls that the obligations of the State under Article 2 cannot be satisfied merely by awarding damages (see e.g. the Kaya v. Turkey judgment cited above, p. 329, § 105; the Yaşa v. Turkey judgment cited above, p. 2431, § 74). The investigations required under Articles 2 and 13 of the Convention must be able to lead to the identification and punishment of those responsible. The Court therefore examines below whether there has been compliance with this procedural aspect of Article 2 of the Convention.

#### b. Concerning the procedural obligation under Article 2 of the Convention

116. Following the death of Pearse Jordan, an investigation was commenced by the RUC. On the basis of that investigation, there was a decision by the DPP not to prosecute any officer. An inquest was opened on 4 January 1995 and is still pending.

117. The applicant has made numerous complaints about these procedures, while the Government have contended that even if one part of the procedure failed to provide a particular safeguard, taken as a whole, the system ensured the requisite accountability of the police for any unlawful act.

##### *(i) The police investigation*

118. Firstly, concerning the police investigation, the Court finds little substance in the applicant's criticisms. It appears that the investigation started immediately after the death. While the scene of the incident was not maintained intact - it appears that cars involved in the collision were moved or sent away – this has not been shown either to have obstructed the investigation or to have been unjustified in the circumstances (see paragraphs 19-21 above). Nor was this measure of such a nature as to undermine any possibility of reconstructing events. There were numerous eyewitnesses who were able to give their version. Insofar as the applicant referred to a failure to seek out civilian witnesses, the Court does not consider it unreasonable of the police to concentrate on clearing the immediate scene of traffic and bystanders, where in a busy road there would be considerations of highway safety. It has not been shown that the RUC failed to look for or find civilian witnesses. Appeals were made to the public and it is apparent that in this case, as in others, for whatever reason, some witnesses were reluctant to come forward. Civilian witnesses have made statements and appeared at the inquest. There is no fundamental defect shown in this regard. Similarly, the Court does not consider that there is sufficient evidence to establish that there was intimidation of the witnesses who did come forward.

119. The investigation included the appropriate forensic examinations. While the gun of Sergeant A was not taken immediately, it appears that it was handed in when he returned to the police station at the conclusion of the operation and that satisfactory evidence is available concerning the number of bullets discharged. If therefore there were aspects of the investigation that could have been more efficiently performed, it cannot be said that these undermined its overall effectiveness.

120. It must be noted, however, that the investigation into the killing by a RUC police officer was headed and carried out by other RUC officers, who issued the investigation report on the file. The Government have pointed out that, as required by law, this investigation was supervised by the ICPC, an independent police monitoring authority. A member of the ICPC was present during the interviews of Sergeant A, for example. Their approval was required of the officer leading the investigation. There was nonetheless a hierarchical link between the officers in the investigation and the officers subject to investigation, all of whom were under the responsibility of the RUC Chief Constable, who plays a role in the process of instituting any disciplinary or criminal proceedings (see paragraphs 77-79 above). The power of the ICPC to require the RUC Chief Constable to refer the investigating report to the DPP for a decision on prosecution or to require disciplinary proceedings to be brought is not, however, a sufficient safeguard where the investigation itself has been for all practical purposes conducted by police officers connected with those under investigation. The Court notes the recommendation of the CPT that a fully independent investigating agency would help to overcome the lack of confidence in the system which exists in England and Wales and is in some respects similar (see paragraph 93 above).

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.

***(ii) The role of the DPP***

122. The Court recalls that the DPP is an independent legal officer charged with the responsibility to decide whether to bring prosecutions in respect of any possible criminal offences committed by a police officer. He is not required to give reasons for any decision not to prosecute and in this case he did not do so. No challenge by way of judicial review exists to require him to give reasons in Northern Ireland, though it may be noted that in England and Wales, where the inquest jury may still reach verdicts of unlawful death, the courts have required the DPP to reconsider a decision not to prosecute in the light of such a verdict, and will review whether those reasons are sufficient. This possibility does not exist in Northern Ireland where the inquest jury is no longer permitted to issue verdicts concerning the lawfulness or otherwise of a death.

123. The Court does not doubt the independence of the DPP. However, where the police investigation procedure is itself open to doubts of a lack of independence and is not amenable to public scrutiny, it is of increased importance that the officer who decides whether or not to prosecute also gives an appearance of independence in his decision-making. Where no reasons are given in a controversial incident involving the use of lethal force, this may in itself not be conducive to public confidence. It also denies the family of the victim access to information about a matter of crucial importance to them and prevents any legal challenge of the decision.

124. In this case, Pearse Jordan was shot and killed while unarmed. It is a situation which, to borrow the words of the domestic courts, cries out for an explanation. The applicant was however not informed of why the shooting was regarded as not disclosing a criminal offence or as not meriting a prosecution of the officer concerned. There was no reasoned decision available to reassure a concerned public that the rule of law had been respected. This cannot be regarded as compatible with the requirements of Article 2, unless that information was forthcoming in some other way. This however is not the case.

*(iii) The inquest*

125. In Northern Ireland, as in England and Wales, investigations into deaths may be conducted by inquests. Inquests are public hearings conducted by coroners, who are independent judicial officers, normally sitting with a jury, to determine the facts surrounding a suspicious death. Judicial review lies from procedural decisions by coroners and in respect of any mistaken directions given to the jury. There are thus strong safeguards as to the lawfulness and propriety of the proceedings. In the case of McCann and Others v. the United Kingdom (cited above, p. 49, § 162), the Court found that the inquest held into the deaths of the three IRA suspects shot by the SAS on Gibraltar satisfied the procedural obligation contained in Article 2, as it provided a detailed review of the events surrounding the killings and provided the relatives of the deceased with the opportunity to examine and cross-examine witnesses involved in the operation.

126. There are however a number of differences between the inquest as held in the McCann case and those in Northern Ireland.

127. In inquests in Northern Ireland, any person suspected of causing the death may not be compelled to give evidence (Rule 9(2) of the 1963 Coroners Rules, see paragraph 68 above). In practice, in inquests involving the use of lethal force by members of the security forces in Northern Ireland, the police officers or soldiers concerned do not attend. Instead, written statements or transcripts of interviews are admitted in evidence. At the inquest in this case, Sergeant A informed the Coroner that he would not appear. He has therefore not been subject to examination concerning his account of events. The records of his two interviews with investigating police officers were made available to the Coroner instead (see paragraphs 19 and 20 above). This does not enable any satisfactory assessment to be made of either his reliability or credibility on crucial factual issues. It detracts from the inquest's capacity to establish the facts immediately relevant to the death, in particular the lawfulness of the use of force and thereby to achieve one of the purposes required by Article 2 of the Convention (see also paragraph 10 of the United Nations Principles on Extra-Legal Executions cited at paragraph 90 above).

128. It is also alleged that the inquest in this case is restricted in the scope of its examination. According to the case-law of the national courts, the procedure is a fact finding exercise and not a method of apportioning guilt. The Coroner is required to confine his investigation to the matters directly causative of the death and not to extend his inquiry into the broader circumstances. This was the standard applicable in the McCann inquest also and did not prevent examination of those aspects of the planning and conduct of the operation relevant to the killings of the three IRA suspects. The Court is not persuaded therefore that the approach taken by the domestic courts necessarily contradicts the requirements of Article 2. The domestic courts accept that an essential purpose of the inquest is to allay rumours and suspicions of how a death came about. The Court agrees that a detailed investigation into policy issues or alleged conspiracies may not be justifiable or necessary. Whether an inquest fails to address necessary factual issues will depend on the particular circumstances of the case. It has not been shown in the present application that the scope of the inquest as conducted so far has prevented any particular matters relevant to the death being examined.

129. Nonetheless, unlike the McCann inquest, the jury's verdict in this case may only give the identity of the deceased and the date, place and cause of death (see paragraph 64 above). In England and Wales, as in Gibraltar, the jury is able to reach a number of verdicts, including "unlawful death". As already noted, where an inquest jury gives such a verdict in England and Wales, the DPP is required to reconsider any decision not to prosecute and to give reasons which are amenable to challenge in the courts. In this case, the only relevance the inquest may have to a possible prosecution is that the Coroner may send a written report to the DPP if he considers that a criminal offence may have been committed (see paragraph 66 above). It is not apparent however that the DPP is required to take any decision in response to this notification or to provide detailed reasons for not taking any further action. In this case it appears that the DPP did reconsider his decision not to prosecute when the Coroner referred to him information about a new eye witness who had come

forward. The DPP maintained his decision however and gave no explanation of his conclusion that there remained insufficient evidence to justify a prosecution.

130. Notwithstanding the useful fact finding function that an inquest may provide in some cases, the Court considers that in this case it could play no effective role in the identification or prosecution of any criminal offences which may have occurred and, in that respect, falls short of the requirements of Article 2.

131. The public nature of the inquest proceedings is not in dispute. Indeed the inquest appears perhaps for that reason to have become the most popular legal forum in Northern Ireland for attempts to challenge the conduct of the police and security forces in the use of lethal force. The applicant complained however that his ability to participate in the proceedings as the next of kin to the deceased was significantly prejudiced as legal aid was not available in inquests and documents were not disclosed in advance of the proceedings.

132. The Court notes however that, as with the next of kin in the McCann case, the applicant has been represented by a solicitor and counsel throughout the inquest, even though legal aid only became available for inquests in Northern Ireland from 25 July 2000 (see paragraph 67 above). He has also been granted legal aid for the judicial review applications associated with the inquest. Nevertheless, it appears that the proceedings were adjourned effectively from 19 November 1997 to 1 November 1999, a period of almost two years, while developments were awaited in a pending case which concerned the availability of legal aid for families at inquests. While it cannot therefore be said that the applicant has been prevented, by the lack of legal aid, from obtaining any necessary legal assistance at the inquest, this has contributed significantly to prolongation of the proceedings. The Court considers this further below in the context of the delay (see paragraphs 136-140).

133. As regards access to documents, until recently the applicant was not able to obtain copies of any witness statements until the witness concerned was giving evidence. This was also the position in the McCann case, where the Court considered that this had not substantially hampered the ability of the families' lawyers to question the witnesses (cited above, p. 49, § 62). However it must be noted that the inquest in that case was to some extent exceptional when compared with the proceedings in a number of cases in Northern Ireland (see also the cases of *McKerr v. the United Kingdom*, no. 28883/95, *Kelly and Others v. the United Kingdom*, no. 30054/96, and *Shanaghan v. the United Kingdom*, no. 37715/97). The promptness and thoroughness of the inquest in the McCann case left the Court in no doubt that the important facts relating to the events had been examined with the active participation of the applicants' experienced legal representative. The non-access by the next-of-kin to the documents did not, in that context, contribute any significant handicap. However, since that case, the Court has laid more emphasis on the importance of involving the next of kin of a deceased in the procedure and providing them with information (see *Öğur v. Turkey*, cited above, § 92).

134. Further, the Court notes that the practice of non-disclosure has changed in the United Kingdom in the light of the Stephen Lawrence Inquiry and that it is now recommended that the police disclose witness statements 28 days in advance (see paragraph 73 above). Disclosure of the documents has now been made to the applicant in advance of the next stage of the inquest procedures (see paragraphs 50-54 above). This development must be regarded as a positive contribution to the openness and fairness of the inquest procedures. The Court is not prepared to reach any findings concerning the alleged incompleteness of the disclosure at this stage. There is nothing before it to suggest that materials necessary to the examination of the facts have been withheld. It may be observed however that lack of access to the witness statements was the reason for several adjournments in the inquest (see further below, paragraph 136). The previous inability of the applicant to have access to witness statements before the appearance of the witness must also be regarded as having placed him at a disadvantage in terms of preparation and ability to participate in questioning. This contrasts strikingly with the position of the RUC who had the resources to provide for legal representation and full access to relevant documents. The Court considers that the right of the family of the deceased whose death is under investigation to participate in the proceedings requires that the procedures adopted ensure the requisite protection of their interests, which may be

in direct conflict with those of the police or security forces implicated in the events. Prior to the recent development in disclosure of documents, the Court is not persuaded that the applicant's interests as next-of-kin were fairly or adequately protected in this respect.

135. Reference has also been made to the allegedly frequent use of public interest immunity certificates in inquests to prevent certain questions or disclosure of certain documents. In this case, the Secretary of State for Defence issued a certificate in or about September 1994, and the Secretary of State for Northern Ireland issued a second on 4 January 1995, to prevent disclosure of certain categories of information on the grounds of national security. As in the McCann case (*loc. cit.*), the Court finds no indication that these certificates have prevented examination of any circumstances relevant to the death of Pearse Jordan.

136. Finally, the Court has had regard to the delay in the proceedings. The inquest opened on 4 January 1995, more than 25 months after Pearse Jordan's death. The Coroner had been informed on 29 November 1993 that no prosecution would occur, but the RUC failed to pass on the case papers until almost a year later, on 4 November 1994. No explanation has been forthcoming for this delay.

The inquest has still not concluded at the date of this judgment, more than eight years and four months after the events in issue. There have been a series of adjournments:

– On 16 January 1995, the proceedings were adjourned on the application of the applicant to allow the DPP to reconsider the decision not to prosecute. That negative decision was communicated on 14 February 1995. However the inquest was not scheduled to resume until 12 June 1995.

– On 2 June 1995, there was a further adjournment on the application of the applicant who brought judicial review proceedings attempting *inter alia* to gain access to witness statements. The High Court rejected the application on 11 December 1995, while his applications for appeal and leave to appeal were dismissed by the Court of Appeal on 28 June 1996 and the House of Lords on 20 March 1997 respectively.

– Before the inquest was due to resume on 1 December 1997, there was another adjournment pending a case which might have affected the availability of legal aid in inquests. That decision did not issue until 16 March 1999, at which point the inquest was scheduled to resume on 1 November 1999.

– There was a fourth adjournment from 13 October 1999 as the applicant applied for the disclosure of witness statements in the light of the new policy introduced in England and Wales (see paragraphs 73-74 above). While partial disclosure was granted on in or about 2 February 2000, the applicant is currently pursuing a judicial review application to obtain full disclosure. The inquest has not yet resumed.

137. The Court observes that these adjournments were requested by, or consented to, by the applicant. They related principally to legal challenges to procedural aspects of the inquest which he considered essential to his ability to participate – in particular access to the documents. It may be noted that the judicial review proceedings which resulted in an adjournment from 2 June 1995 to 20 March 1997 (over one year and nine months) concerned access to witness statements which have now been disclosed voluntarily due to developments in what is perceived as desirable practice *vis-à-vis* a victim's relatives. Nor can it be regarded as unreasonable that the applicant consented to an adjournment to await a case which might have resulted in making legal aid available for his representatives. The Court notes that funding for legal representation at inquests in Northern Ireland has now become possible under an Extra-Statutory Scheme which recognises, under provisional criteria, that the family of the deceased may require legal assistance in order to participate effectively in inquest proceedings and that an effective investigation by the State into the death may be necessary in the circumstances of the case and the inquest may be the only way to conduct it (see paragraph 67 above).

138. While it is therefore the case that the applicant has contributed significantly to the delays, this has to some extent resulted from the difficulties facing relatives in participating in inquest procedures (see paragraphs 132 and 134 above, concerning a lack of legal aid and the non-disclosure of witness statements). It cannot be regarded as unreasonable that the applicant made use

of the legal remedies available to him to challenge these aspects of the inquest procedure. The Court observes that the Coroner, who is responsible for the conduct of the proceedings, acceded to these adjournments. The fact that they were requested by the applicant does not dispense the authorities from ensuring compliance with the requirement for reasonable expedition (see *mutatis mutandis* concerning the speed requirements under Article 6 § 1 of the Convention, Scopelliti v. Italy judgment of 23 November 1993, Series A no. 278, p. 9, § 25). If long adjournments are regarded as justified in the interests of procedural fairness to the victim's family, it calls into question whether the inquest system was at the relevant time structurally capable of providing for both speed and effective access for the deceased's family.

139. Nor has the inquest progressed with diligence in the periods outwith the adjournments. The Court refers to the delay in commencing the inquest and the delay (on two occasions of more than eight months), in scheduling the resumption of the inquest after the adjournments.

140. Having regard to these considerations, the time taken in this inquest cannot be regarded as compatible with the State's obligation under Article 2 of the Convention to ensure that investigations into suspicious deaths are carried out promptly and with reasonable expedition.

***(iv) Civil proceedings***

141. As found above (see paragraph 111), civil proceedings would provide a judicial fact finding forum, with the attendant safeguards and the ability to reach findings of unlawfulness, with the possibility of damages. It is however a procedure undertaken on the initiative of the applicant, not the authorities, and it does not involve the identification or punishment of any alleged perpetrator. As such, it cannot be taken into account in the assessment of the State's compliance with its procedural obligations under Article 2 of the Convention.

***(v) Conclusion***

142. The Court finds that the proceedings for investigating the use of lethal force by the police officer have been shown in this case to disclose the following shortcomings:

– a lack of independence of the police officers investigating the incident from the officers implicated in the incident;

– a lack of public scrutiny, and information to the victim's family, of the reasons for the decision of the DPP not to prosecute any police officer;

– the police officer who shot Pearse Jordan could not be required to attend the inquest as a witness;

– the inquest procedure did not allow any verdict or findings which could play an effective role in securing a prosecution in respect of any criminal offence which may have been disclosed;

– the absence of legal aid for the representation of the victim's family and non-disclosure of witness statements prior to their appearance at the inquest prejudiced the ability of the applicant to participate in the inquest and contributed to long adjournments in the proceedings;

– the inquest proceedings did not commence promptly and were not pursued with reasonable expedition.

143. It is not for this Court to specify in any detail which procedures the authorities should adopt in providing for the proper examination of the circumstances of a killing by State agents. While reference has been made for example to the Scottish model of enquiry conducted by a judge of criminal jurisdiction, there is no reason to assume that this may be the only method available. Nor can it be said that there should be one unified procedure providing for all requirements. If the aims of fact finding, criminal investigation and prosecution are carried out or shared between several authorities, as in Northern Ireland, the Court considers that the requirements of Article 2 may nonetheless be satisfied if, while seeking to take into account other legitimate interests such as national security or the protection of material relevant to other investigations, they provide for the necessary safeguards in an accessible and effective manner. In the present case, the available procedures have not struck the right balance.

144. The Court would observe that the shortcomings in transparency and effectiveness identified above run counter to the purpose identified by the domestic courts of allaying suspicions and rumours. Proper procedures for ensuring the accountability of agents of the State are indispensable in maintaining public confidence and meeting the legitimate concerns that might arise from the use of lethal force. Lack of such procedures will only add fuel to fears of sinister motivations, as is illustrated *inter alia* by the submissions made by the applicant concerning the alleged shoot-to-kill policy.

145. The Court finds that there has been a failure to comply with the procedural obligation imposed by Article 2 of the Convention and that there has been, in this respect, a violation of that provision.

## III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

146. The applicant invoked Article 6 § 1 which provides as relevant:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

147. The applicant claimed that his son was arbitrarily killed in circumstances where an arrest could have been effected by the RUC, and that Sergeant A deliberately killed him as an alternative to arresting him. He referred to concerns expressed, for example, by Amnesty International that killings by the security forces in Northern Ireland reflected a deliberate policy to eliminate individuals rather than arrest them.

148. The Government submitted that the shooting of Pearse Jordan could not be regarded as a summary punishment for a crime. Nor could the alleged failure to prosecute deprive the applicant of a fair hearing as this did not relate to any civil right which the applicant had.

149. The Court recalls that the lawfulness of the shooting of Pearse Jordan is pending consideration in the civil proceedings instituted by the applicant. In these circumstances and in the light of the scope of the present application, the Court finds no basis for reaching any findings as to the alleged improper motivation behind the incident. Any issues concerning the effectiveness of criminal investigation procedures fall to be considered under Articles 2 and 13 of the Convention.

150. There has, accordingly, been no violation of Article 6 § 1 of the Convention.

## IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

151. The applicant invoked Article 14 of the Convention, which provides:

> "The enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

152. The applicant submitted that the circumstances of the killing of his son disclosed discrimination. He alleged that, between 1969 and March 1994, 357 people had been killed by members of the security forces, the overwhelming majority of whom were young men from the Catholic or nationalist community. When compared with the numbers of those killed from the Protestant community and having regard to the fact that there have been relatively few prosecutions (31) and only a few convictions (four, at the date of his application), this showed that there was a discriminatory use of lethal force and a lack of legal protection vis-à-vis a section of the community on grounds of national origin or association with a national minority.

153. The Government replied that there was no evidence that any of the deaths which occurred in Northern Ireland were analogous or that they disclosed any difference in treatment. Bald statistics (the accuracy of which was not accepted) were not enough to establish broad allegations of discrimination against Catholics or nationalists.

154. Where a general policy or measure has disproportionately prejudicial effects on a particular group, it is not excluded that this may be considered as discriminatory notwithstanding that it is not

specifically aimed or directed at that group. However, even though statistically it appears that the majority of people shot by the security forces were from the Catholic or nationalist community, the Court does not consider that statistics can in themselves disclose a practice which could be classified as discriminatory within the meaning of Article 14. There is no evidence before the Court which would entitle it to conclude that any of those killings, save the four which resulted in convictions, involved the unlawful or excessive use of force by members of the security forces.

155. The Court finds that there has been no violation of Article 14 of the Convention.

## V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

156. The applicant complained that he had no effective remedy in respect of his complaints, invoking Article 13 which provides:

> "Everyone whose rights and freedoms as set forth in the Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

157. The applicant referred to his submissions concerning the procedural aspects of Article 2 of the Convention, claiming that in addition to the payment of compensation where appropriate Article 13 required a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure.

158. The Government submitted that the complaints raised under Article 13 were either premature or ill-founded. They claimed that the combination of available procedures, which included the pending civil proceedings and the inquest, provided effective remedies.

159. The Court's case-law indicates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law (see the Aksoy v. Turkey judgment of 18 December 1996, *Reports* 1996-IV, p. 2286, § 95; the Aydın v. Turkey judgment of 25 September 1997, *Reports* 1997-VI, pp. 1895-96, § 103; the Kaya v. Turkey judgment cited above, pp. 329-30, § 106).

160. In cases of the use of lethal force or suspicious deaths, the Court has also stated that, given the fundamental importance of the right to the protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life, including effective access for the complainant to the investigation procedure (see the Kaya v. Turkey judgment cited above, pp. 330-31, § 107). In a number of cases it has found that there has been a violation of Article 13 where no effective criminal investigation had been carried out, noting that the requirements of Article 13 were broader than the obligation to investigate imposed by Article 2 of the Convention (see also Ergı v. Turkey, cited above, p. 1782, § 98; *Salman v. Turkey* cited above, § 123).

161. It must be observed that these cases derived from the situation pertaining in south-east Turkey, where applicants were in a vulnerable position due to the ongoing conflict between the security forces and the PKK, and where the most accessible means of redress open to applicants was to complain to the public prosecutor, who was under a duty to investigate alleged crimes. In the Turkish system, the complainant was able to join any criminal proceedings as an intervenor and apply for damages at the conclusion of any successful prosecution. The public prosecutor's fact finding function was often essential in that context to any attempt to take civil proceedings. In those cases, therefore, it was sufficient for the purposes of former Article 26 (now Article 35 § 1) of the

Convention that an applicant complaining of unlawful killing raised the matter with the public prosecutor. There was accordingly a close procedural and practical relationship between the criminal investigation and the remedies available to the applicant in the legal system as a whole.

162. The legal system pertaining in Northern Ireland is different and any application of Article 13 to the factual circumstances of any case from that jurisdiction must take this into account. An applicant who claims the unlawful use of force by soldiers or police officers in the United Kingdom must as a general rule exhaust the domestic remedies open to him or her by taking civil proceedings by which the courts will examine the facts, determine liability and if appropriate award compensation. These civil proceedings are wholly independent of any criminal investigation and their efficacy has not been shown to rely on the proper conduct of criminal investigations or prosecutions (see e.g. *Caraher v. the United Kingdom*, no. 24520/94, decision of inadmissibility [Section 3] 11.01.00).

163. In the present case, the applicant has lodged civil proceedings, which are pending. The Court has found no elements which would prevent those proceedings providing the redress identified above in respect of the alleged excessive use of force (see paragraph 112 above).

164. As regards the applicant's complaints concerning the investigation into the death carried out by the authorities, these have been examined above under the procedural aspect of Article 2 (see paragraphs 116-145 above). The Court finds that no separate issue arises in the present case.

165. The Court concludes that there has been no violation of Article 13 of the Convention.

## VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

166. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

### A. Damage

167. The applicant submitted that he was entitled to damages in respect of the unlawful deprivation of the life of his son Pearse Jordan.

168. The Government disputed that any award of damages would be appropriate in the present case.

169. The Court recalls that in the case of McCann and others (cited above, p. 63, § 219) it found a substantive breach of Article 2 of the Convention, concluding that it had not been shown that the killing of the three IRA suspects constituted the use of force which was no more than absolutely necessary in defence of persons from unlawful violence. However, the Court considered it inappropriate to make any award to the applicants, as personal representatives of the deceased, in respect of pecuniary or non-pecuniary damage, "having regard to the fact that the three terrorist suspects who were killed had been intending to plant a bomb in Gibraltar".

170. In contrast to the McCann case, the Court in the present case has made no finding as to the lawfulness or proportionality of the use of lethal force which killed Pearse Jordan, or as to the factual circumstances, including the activities of the deceased which led up to the killing, which issues are pending in the civil proceedings. Accordingly, no award of compensation falls to be made in this respect. On the other hand, the Court has found that the national authorities failed in their obligation to carry out a prompt and effective investigation into the circumstances of the death. The applicant must thereby have suffered feelings of frustration, distress and anxiety. The Court considers that the applicant sustained some non-pecuniary damage which is not sufficiently compensated by the finding of a violation as a result of the Convention.

171. Making an assessment on an equitable basis, the Court awards the sum of 10,000 pounds sterling (GBP).

### B. Costs and expenses

172. The applicant claimed a total of GBP 45,645.83. This included GBP 23,500 for senior counsel (inclusive of VAT), GBP 13,333.33 for junior counsel and solicitors' fees of GBP 8,812.50 (inclusive of VAT).

173. The Government submitted that these claims were excessive, noting that the issues in this case overlapped significantly with the other cases examined at the same time and proposed that a figure of GBP 15,000 was reasonable.

174. The Court recalls that this case has involved several rounds of written submissions and an oral hearing, and may be regarded as factually and legally complex. Nonetheless, it finds the fees claimed to be on the high side when compared with other cases from the United Kingdom and is not persuaded that they are reasonable as to quantum. Having regard to equitable considerations, it awards the sum of GBP 30,000, plus any value added tax which may be payable. It has taken into account the sums received by the applicant by way of legal aid from the Council of Europe.

**C. Default interest**

175. According to the information available to the Court, the statutory rate of interest applicable in the United Kingdom at the date of adoption of the present judgment is 7,5% per annum.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 2 of the Convention in respect of failings in the investigative procedures concerning the death of Pearse Jordan;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention;

3. *Holds* that there has been no violation of Article 14 of the Convention;

4. *Holds* that there has been no violation of Article 13 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three monthsfrom the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, plus any value-added tax that may be chargeable;
      (i) 10,000 (ten thousand) pounds sterling in respect of non-pecuniary damage;
      (ii) 30,000 (thirty thousand) pounds sterling in respect of costs and expenses;
   (b) that simple interest at an annual rate of 7,5% shall be payable from the expiry of the above-mentioned three months until settlement;

6. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 4 May 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. Dollé J.-P.Costa
Registrar President

1. Royal Ulster Constabulary Headquarters Mobile Support Unit ("RUC HMSU"), the members of which were specially trained in counter-terrorism.



HUGH JORDAN v. THE UNITED KINGDOM JUDGMENT