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## EFFECTIVE INVESTIGATION AS A PART OF POSITIVE OBLIGATIONS OF A STATE: IN THE CONTEXT OF NORTHERN IRELAND CONFLICT<sup>1</sup>

### **Abstract**

*Protection of the right to life has an essential role in the Human Rights system and is vital for realization of other remaining rights. For several years while dealing with cases related to other rights and creating complex elements, the European Court of Human Rights in cases concerning the right to life just examined whether the negative obligation not to kill was violated or not. However, the situation changed first with McCann v UK case, where the Court put a positive obligation on States to conduct effective investigations and evolved it with other cases that were also related to the conflict in Northern Ireland. The conflict itself is interesting from another perspective too which is called 'Collusion', where the State agents allegedly contacted Loyalist paramilitaries in order to eliminate Nationalist minorities so that it seemed there was not a violation of negative obligation 'not to kill'.*

### **Annotasiya**

*Yaşamaq hüququnun qorunması digər hüquqların həyata keçirilməsi üçün vacibdir və İnsan Hüquqları sistemində əhəmiyyətli rola malikdir. Avropa İnsan Hüquqları Məhkəməsi uzun illər digər hüquqlarla əlaqəli işlərə baxarkən yaşamaq hüququ ilə əlaqədar işlərdə sadəcə öldürməməklə bağlı olan neqativ öhdəliyin pozulub-pozulmamasını yoxlayırdı. Amma vəziyyət ilk dəfə McCann Birləşmiş Krallığa qarşı işində dəyişdi, Məhkəmə Dövlətlərin üzərinə effektiv təhqiqatın aparılması ilə əlaqəli pozitiv öhdəlik qoydu və bunu Şimali İrlandiyadakı konfliktlə bağlı olan bütün işlərə aid etdi. Konflikt "Gizli razılaşma" adlandırılır və özlüyündə maraqlı görünür, çünki Dövlət qulluqçuları Milliyətçi azlıq nümayəndələrini sıradan çıxarmaq üçün Kraliyət tərəfdarı döyüşçülərlə müntəzəm şəkildə əlaqəyə girir və neqativ öhdəliyi pozmamış kimi görünürlər.*

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## Introduction

The right to life, one of the basic human rights and fundamental freedoms, is enshrined in many international human rights documents, such as the Universal Declaration of Human Rights<sup>2</sup>, International Covenant on Civil and Political Rights<sup>3</sup>, African Charter on Human and Peoples' Rights<sup>4</sup> and Charter of Fundamental Rights of the European Union<sup>5</sup>. Within the United Nations' human rights protection system, the mandate of Special Rapporteur on Extrajudicial, Summary or Arbitrary executions was also established in 1982. With these global and regional human rights instruments that provided basic protection and were also improved further with documents such as The United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (hereinafter 'the UN Principles')<sup>6</sup> and the United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (hereinafter 'the UN Manual')<sup>7</sup>, safeguards for the right to life progressed during the last few decades. The UN Principles require thorough, prompt, and impartial investigations of alleged violations of the right to life by competent investigators with adequate authority to conduct an effective investigation that will be followed up by a written report. Additionally, the UN Principles invite governments to conclude investigations with the prosecution of the perpetrators, regardless of the location of the murder and the identity or nationality of the perpetrator or victim. The blanket immunity, defenses of superior orders, or command responsibility, by which a commanding officer blames his troops for any violations are also forbidden.

The UN Manual grows upon the concepts provided in the U.N. Principles by setting forth special guidelines on conducting investigations into deprivations of life. Particularly, the U.N. Manual endorses the Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions (hereinafter 'Minnesota Protocol'). The Minnesota Protocol provides model methods of investigation, purposes, and procedures of an inquiry and processing of the evidence. The Minnesota Protocol demands that all investigations be embodied by competence, thoroughness, promptness, and impartiality.

At the regional level, a broader definition, protection, and circumstances under which the right can be deemed was set up by Article 2 of The Convention for the Protection of Human Rights and Fundamental Freedoms

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<sup>2</sup> Universal Declaration of Human Rights, art. 3 (1948).

<sup>3</sup> International Covenant on Civil and Political Rights, art. 6 (1966).

<sup>4</sup> African Charter on Human and Peoples' Rights, art. 4 (1981).

<sup>5</sup> Charter of Fundamental Rights of the European Union, art. 6 (2012).

<sup>6</sup> The United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (1989).

<sup>7</sup> United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (1991).

(European Convention on Human Rights, as amended) (hereinafter 'the ECHR')<sup>8</sup>. The first paragraph of the Article stresses that life is protected by the law, and arbitrary deprivation of life is prohibited. The Article gives in its second paragraph exact conditions that are not contraventions to the right. Additionally, the European Court of Human Rights (hereinafter 'the Court') throughout its case law, such as *McCann v the UK*,<sup>9</sup> *McKerr v the UK* and three other related cases (hereinafter 'McKerr group cases'),<sup>10</sup> *Isayeva, Yusupova and Bazayeva v Russia*<sup>11</sup> developed a set of standards as positive obligations for the States to comply with on the basis of those conditions, as also concluded by Chavelieur-Watts.<sup>12</sup> Particularly in relation to the cases dealing with the conflict in Northern Ireland, the Court clarified some substantive and procedural obligations. Part I is dedicated to the analysis of these obligations and requirements in case of breaches of the right to life. Part II concentrates more especially on effective investigations into the deaths that occur either by the use of force by state agents or under suspicious situations. The Court recognized the obligation of effective investigation initially in the *McCann* case, then advanced different key elements of this notion in *McKerr* group cases. In Part III, the definition of 'collusion' and challenges to it, inquiries into killings will be examined and the reason behind the hesitation of the Court will be gone through. The paper will analyze the respective judgments of the Court, evaluate what were the main aspects and shortages of these cases regarding effective investigations and outline how these cases impacted the conflict and future case law.

## I. Positive obligations of States according to Article 2 of the ECHR

The States upon signing international human rights treaties take responsibility to abide by their rules, to respect and to protect human rights provisions codified in the document. For instance, states should refrain from intervening in the realization of the rights for the execution of negative obligations. However, for fulfilling positive obligations they should engage in activities.<sup>13</sup> As Mowbray stresses, states cannot fulfill their duties just

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<sup>8</sup> The Convention for the Protection of Human Rights and Fundamental Freedoms, (European Convention on Human Rights, as amended) (1953).

<sup>9</sup> *McCann and others v the UK*, App no 18984/91 (1995).

<sup>10</sup> *McKerr v the UK*, App no 28883/95 (2001); *Hugh Jordan v the UK* App no 24746/94 (2001); *Shanaghan v the UK* App no 37715/97 (2001); *Kelly and others v the UK* App no 30054/96 (2001).

<sup>11</sup> *Isayeva, Yusupova and Bazayeva v Russia*, App nos 57947/00, 57948/00 and 57949/00 (2005).

<sup>12</sup> Juliet Chevalier-Watts, *Effective Investigations under Article 2 of the European Convention on Human Rights: Securing the Right to Life or an Onerous Burden on a State?*, 21(3) *The European Law Journal of International Law* 701, 703 (2010).

<sup>13</sup> Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice*, 76 (2013).

remaining passive.<sup>14</sup> Concerning violations of Article 2 of the ECHR, the Court established several positive obligations in different contexts following the *McCann* case which is discussed below, namely creating a system of norms and adequate control for reducing the risk to a reasonable minimum<sup>15</sup> to protect lives of persons from environmental disasters; establishment of the reason of individual's death who is under the care of medical staff and their liability<sup>16</sup> for deaths occurring during a surgical or medical procedure<sup>17</sup>; or having an obligation to protect an individual with preventive measures whose life is threatened by illegal acts of not state agents, but another individual.<sup>18</sup> In its case law, the Court also stressed that once the authorities get the information about the death, they should immediately take appropriate actions, without waiting for a formal complaint by the next-of-kin.<sup>19</sup>

Besides these cases, the Court also defined the essential elements of the use of force by state agents that can breach the right to life. According to *Janis, Kay, and Bradley*, the case law of the Court regarding this aspect of Article 2 can be divided into 3 subcategories:<sup>20</sup>

1. The use of excessive force by state agents;
2. Adequate planning and control of operations; and
3. Effective investigation of deaths.

The cases regarding the Northern Ireland conflict touch upon all three aspects and are related to the murders by state agents or paramilitaries. Since 1921, after twenty-six counties gained their independence from Britain, but the Northern part remained within it, Unionists and Nationalists had divided views over the fate of the island of Ireland. The murders which were called 'the Troubles', occurred with regard to this disagreement. Initially, emerging as a civil rights movement because of discrimination against the Catholic Nationalists, the events made an abrupt turn into violence when the UK government sent militaries to the island. While this paper will not address political, religious, and other aspects of the conflict, it should be remembered that because of this conflict many people lost their lives.<sup>21</sup>

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<sup>14</sup> Alastair Mowbray, *The Creativity of European Court of Human Rights*, 5 Human Rights Law Review 57, 78 (2005).

<sup>15</sup> *Binişan v Romania*, App no 39438/05, 126 (2014).

<sup>16</sup> *Powell v the UK*, App no 45305/99, § 1 (2000).

<sup>17</sup> Tony McGleenan, *Investigating Deaths in Hospitals in Northern Ireland, Does the System Comply with European Convention on Human Rights*, Northern Ireland Human Rights Commission, 13 (2004).

<sup>18</sup> *Osman v the UK*, App no 23452/94, § 115 (1998).

<sup>19</sup> *Ahmet Özkan and others v Turkey*, App no 21689/93, § 310 (2004).

<sup>20</sup> Mark Janis, Richard Kay and Anthony Bradley, *European Human Rights Law: Texts and Materials*, 130 (3rd ed. 2008).

<sup>21</sup> Lynn Warchow, *Civil and Human Rights Violations in Northern Ireland: Effects and Shortcomings of the Good Friday Agreement in Guaranteeing Protections*, 3(1) Northwestern Journal of International Human Rights 1, 1-4 (2005).

The Court formulated important elements of substantive and procedural obligations of states in relation to Article 2 with cases concerning the conflict. First time in the *McCann* case, the Court stressed the importance of proportionality and the absolute necessity of the act of lethal force. Not giving the exact definitions, the Court emphasized that necessity test under Article 2 should be more stringent than 'necessary in a democratic society' test applicable under Articles 8-11<sup>22</sup> because what is at stake is life which is vital for the realization of other rights.

The Court found a breach of the right because of the planning and conduct of operations where State agents killed three Irish Republican Army (hereinafter 'IRA') members. It determined that the operation was not well-planned. The authorities could have stopped the suspects from entering Gibraltar, and made no reservation for their intelligence assessments being flawed, which led to the use of fatal force.<sup>23</sup> Therefore, judgment emphasized states' positive obligations to take effective security measures before resorting to lethal force.<sup>24</sup>

This paper argues that the judgment can be challenged on many grounds, as written down by nine judges in their dissenting opinions. First, arresting at the border and releasing them because of a lack of evidence would result in a renewed and more successful terrorist attack. Second, the intention and actions, including previous ones, of terrorists were clear that they would have no hesitation to detonate a bomb, risking many lives. Finally, only they knew their plan exactly. Consequently, any plan of state agents would be assumed one, so they acted with honest belief.<sup>25</sup> The Court did not address separate means of communication used by intelligence, military, and police units that actually have a great impact on the conduct of the operation. The reasoning of the Court is also interesting and questionable, as the Court accepted that training, instruction, and operational control 'carefully reflected' the ECHR standards.<sup>26</sup>

Nonetheless, the importance of the *McCann* case for the protection of the right to life should not be underestimated. The judgment accentuated proportionality and the absolute necessity of the use of force and the significance of planning any action of a state that can result in death.

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<sup>22</sup> *Supra* note 9, § 149.

<sup>23</sup> *Id.*, § 213.

<sup>24</sup> Onder Bakirciglu and Brice Dickson, *The European Convention in Conflicted Societies: The Experience of Northern Ireland and Turkey*, 66(2) *International and Comparative Law Quarterly* 263, 277 (2017).

<sup>25</sup> *Supra* note 9, Dissenting opinion.

<sup>26</sup> *Id.*, § 156.

## II. Effective investigation and its key elements as a procedural obligation

The notion of the effective investigation was an innovative term in the context of Article 2 of the ECHR brought with the *McCann* case. The Court stated that without a method examining the legality of the use of force, the prohibition of arbitrary murder would be meaningless.<sup>27</sup> According to Weekes, the obligation to carry out an effective investigation is 'adjectival' to the substantive obligation of protecting life.<sup>28</sup> Although the Court did not find a violation of the right in this regard, the emergence of the concept in the case law of the Court is of vital importance. The Court did not provide what it meant with the effective investigation in the *McCann* case. It went on just stating that in this case the form and conditions of such investigation were unnecessary, as authorities carried out the inquest in a proper manner.<sup>29</sup> Subsequently, the Court missed a chance for six years to better analyze the details of effective investigation. Sicilianos believes that the reasoning of the Court was to be prudent for not imposing an excessive burden on national authorities.<sup>30</sup> The paper is of the opinion that the Court did so in order not to enter the area of sovereignty and margin of appreciation of States Parties, as also reckoned by Irwin.<sup>31</sup>

This paper also claims that instead of finding a violation in the conduct of the operation, the Court could have found a violation of effective investigation. As it is clear from the facts, no proper investigation and collecting evidence from the scene took place<sup>32</sup> and the Court did not address arguments submitted by applicants regarding the independence of the jury<sup>33</sup>. Therefore, although there was an investigation, but one cannot call it 'effective' within the terms of Article 2.

However, the Court clarified the purpose and essential elements of effective investigation in *McKerr* group cases which also concern the conflict. Securing the implementation of domestic legislation, protecting the right to life, and ensuring accountability of those who are responsible is the ultimate purpose of effective investigation.<sup>34</sup> It is not an obligation of result, but of means<sup>35</sup> since it is not about obtaining prosecution or conviction, but swiftly

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<sup>27</sup> *Id.*, §161.

<sup>28</sup> Robert Weekes, *Focus on the ECHR, Article 2*, 10(1) *Judicial Review* (2005), <https://www.tandfonline.com/doi/abs/10.1080/10854681.2005.11426412> (last visited Oct. 4, 2019).

<sup>29</sup> *Supra* note 9, § 162.

<sup>30</sup> Linos-Alexandr Sicilianos, *Preventing Violations of the Right to Life: Positive Obligations under Article 2 of the ECHR*, 3(2) *Cyprus Human Rights Law Review* 117, 128 (2014).

<sup>31</sup> Kara Irwin, *Prospects for Justice: The Procedural Aspect of the Right to Life under the European Convention on Human Rights and Its Applications to Investigations of Northern Ireland's Bloody Sunday*, 22 *Fordham International Law Journal* 1822, 1857 (1999).

<sup>32</sup> *Supra* note 9, § 94-95.

<sup>33</sup> *Id.*, § 157.

<sup>34</sup> *McKerr v the UK*, App no 28883/95, § 111 (2001).

<sup>35</sup> *Id.*, § 113.

reacting to the deaths and conducting an investigation in accordance with requirements. Additionally, the Court noted that where there is an adversarial procedure before an independent and impartial judge in a criminal trial, then the process must be regarded as furnishing the strongest safeguards of an effective procedure.<sup>36</sup> It should be stressed neither the prevalence of violent armed clashes nor the high incidence of fatalities can discharge the states from the obligation of conducting an effective investigation into deaths arising out of clashes involving the security forces under Article 2.<sup>37</sup>

Regarding the elements, while the Defence Committee Report stresses just three elements,<sup>38</sup> Chavelieur-Watts argues that the notion has four key components consisting of being given official sanction, independence, openness, and expediency.<sup>39</sup> Analyzing the case law, this paper concludes that there are four elements of effective investigation, namely independence, adequacy, promptness and reasonable expediency, public scrutiny, and participation of the next-of-kin.

According to the Court, independence means the persons conducting the investigation should be independent of those involved in the events. Such independence should be clear and practical, not only hierarchical or institutional.<sup>40</sup> There should be independence and impartiality in the entire process entirely, beginning from police investigation to the judicial process. In *Jaloud v the Netherlands*, the Court in the context of the conduct of military operations concluded that the mere fact, that the investigators and the investigated shared the same living quarter, did not mean that the element of independence was violated.<sup>41</sup>

Next, according to the precedents of the Court, adequacy is about deciding if the used force was justified or not and finding and penalizing the liable individuals. In order to test whether the use of force was justified, it is apparently important to collect evidence. Hence, adequacy embraces gathering eyewitness testimonies, forensic evidence, and autopsy.<sup>42</sup> Moreover, if there is a plausible or credible piece of evidence or item of information relevant to the unlawful murder, the authorities have responsibility to carry out further investigation.<sup>43</sup>

Another key constituent of effective investigation is its promptness and expediency. Under this term, the Court means a quick reaction of the governmental bodies to the events having an element of the use of lethal

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<sup>36</sup> *Id.*, § 134.

<sup>37</sup> *Kaya v Turkey*, App no 158/1996/777/978, § 91 (1998).

<sup>38</sup> Defence Committee, *Investigations into Fatalities in Northern Ireland involving British Military Personnel*, 11 (2016).

<sup>39</sup> Chevalier-Watts, *supra* note 12, 711.

<sup>40</sup> *Supra* note 34, § 112.

<sup>41</sup> *Jaloud v the Netherlands*, App no 47708/08, § 189 (2014).

<sup>42</sup> *Armani Da Silva v the UK*, App no 5878/08, § 233 (2016).

<sup>43</sup> *Brecknell v UK*, App no 32457/04, § 71 (2008).

force, even though there can be hardships hindering the process.<sup>44</sup> Additionally, the passage of time can damage the investigation.<sup>45</sup>

Finally, the fourth feature is public scrutiny and participation of next-of-kin. The Court clarifies the notion as disclosure of investigation materials to the public, except for some sensitive materials and access to the stages of the procedure.<sup>46</sup>

The Court, stressing all of these elements, touched upon the importance of effective investigations in the framework of the conflict, where lack of such an investigation can serve as a 'fuel to fears of sinister motivations, as is illustrated inter alia by the submissions made by the applicant concerning the alleged practice of collusion by security personnel with loyalist paramilitaries'.<sup>47</sup>

### **III. Collusion and its traces in the conflict in Northern Ireland**

One of the arguments put forward within the framework of the conflict is that the State agents provided information and helped to the Loyalist paramilitaries in order to get rid of the people who were suspected to be a member of the IRA. The argument of collusion is very debatable, as there is no clear definition of it. According to Campbell and Brenner, the 'Collusion' is a form of death squad activity<sup>48</sup> and these death squads are paramilitary groups involved in state-sponsored or state-tolerated terror against political opponents<sup>49</sup>. Cory uses a broader definition for the necessity of public confidence in them and defines it as 'ignoring or turning a blind eye to the wrongful acts of servants or agents of police and army or supplying information to assist them in their wrongful acts or encouraging them to commit wrongful acts'.<sup>50</sup> This paper argues that using broad definition is understandable in the context of the conflict. However, individual acts of state agents which happen without the command or the knowledge of superiors and with personal incentive and belief cannot be covered by this term. From the point of view of the author, such a definition not only puts an unreasonable burden on states but also disregards the individualistic character of criminal act of the perpetrator.

The inquiries into the alleged collusion in the murders occurring in Northern Ireland became the centre of attention especially after the case of

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<sup>44</sup> *Hugh Jordan v the UK*, App no 24746/94, § 108 (2001).

<sup>45</sup> *Mocanu and others v Moldova*, App nos 10865/09, 45886/07 and 32431/08, § 337 (2017).

<sup>46</sup> *Supra* note 34, § 115-129.

<sup>47</sup> *Shanaghan v the UK*, App no 37715/97, § 124 (2001).

<sup>48</sup> See generally, Bruce Campbell and Arthur Brenner, *Death Squads in Global Perspective: Murder with Deniability* (2000).

<sup>49</sup> Bill Rolston and Phil Scraton, *In the Full Glare of English Politics: Ireland, Inquiries and the British State*, 45(4) *British Journal of Criminology* 547, 547 (2005).

<sup>50</sup> House of Commons, *Cory Collusion Inquiry Report: Pat Funicane*, 21-22 (2004).



Patrick Finucane. In 1989 members of the Ulster Freedom Fighters, loyalist paramilitary organization, murdered Mr. Finucane, a human rights lawyer, in his home in front of his family.<sup>51</sup> After his death and on the background of pre-existing and long-lasting concerns of involvement of British state security force, there were two inquiries conducted, the first by the former Head of the Metropolitan Police Force Sir John Stevens (2003)<sup>52</sup>, the second by retired Canadian Judge Peter Cory (2004)<sup>53</sup>. The inquiries found clear and irrefutable evidence of collusion between loyalists, members of the Special Branch of the Royal Ulster Constabulary (RUC), and British Military Intelligence. The binding international Agreement was signed at Weston Park in 2001 where the British and Irish Governments took an obligation to commit themselves to hold a full public inquiry with Cory's recommendation. However, the promised public inquiry did not take place, and was replaced by an independent review procedure chaired by Sir Desmond de Silva. However, this new review did not answer the question whether the collusion was a pattern of policy or not.

The case was heard by the Court, as well, and it decided that the UK violated the right to life as the proceedings following the death of Mr. Finucane failed to provide a prompt and effective investigation into the allegations of collusion by security personnel.<sup>54</sup> The Court did not definitely say there was a collusion, as it did not want to be involved in such a highly political matter, like not deciding whether there was a shoot-to-kill policy in previous cases. Nevertheless, it criticized the inquiries and investigations held by Government authorities such as police investigations, inquests, Stevens inquiries, the investigation by the Director of Public Prosecutions as they did not satisfy the requirements set by Article 2 of the ECHR and did not address the question about the existence of collusion.

The inquiries and reports to the acts committed by State agents were in place before too. Immediately after the Bloody Sunday, where thirteen protestors shot dead by British officers in Derry, Widgery Tribunal was established, named after its lead Lord Chief Justice, Lord Widgery. In April 1972 the Widgery report was published and did not find any officer liable of committed acts.<sup>55</sup> Because of harsh criticism, in 1997 another inquiry mission was created led by Lord Saville of Newdigate. Despite its limitations and reporting 13 years later in June 2010, the Saville Inquiry refuted the original Widgery Inquiry, finding that British officers were responsible for the

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<sup>51</sup> Amnesty International, *Political Killings in Northern Ireland*, London, Amnesty International UK (1994).

<sup>52</sup> Sir John Stevens, *Stevens Enquiry: Overview and Recommendations*, QPM, DL, Commissioner of the Metropolitan Police Service (2003)

<sup>53</sup> *Supra* note 50.

<sup>54</sup> *See generally, Finucane v UK*, App no 29178/95 (2003).

<sup>55</sup> Report of the Tribunal appointed to inquire into the events on Sunday (1972), <https://cain.ulster.ac.uk/hmso/widgery.htm> (last visited Oct. 4, 2019).

‘unjustified and unjustifiable’ deaths of victims.<sup>56</sup> David Cameron, then the British Prime Minister, apologized on behalf of the British Government.

### Conclusion

The obligation of conducting an effective investigation for the protection of the right to life and its further evolution with *McKerr* group cases brought new value and perspective to international human rights law. Although there are delays in the implementation of the judgments, their influence is far-reaching within the UK.<sup>57</sup> After these cases, different acts and institutions were established for the protection of rights and for ongoing investigations into legacy cases. One of such documents is the Belfast Agreement of 1998 which is also known as the Good Friday Agreement. Both the British and Irish governments took part in the effort together with the eight political parties of Northern Ireland. The Belfast Agreement sets forth a commitment to civil and human rights and equal opportunity. The Agreement upholds eight key civil rights, including the right of free political thought, freedom of expression and religion, the right to equal opportunity, and the right to freedom from sectarian harassment. It also obliges the British Government to incorporate the ECHR into Northern Ireland law. The Agreement also encloses several crucial provisions with regard to areas of integrated education and housing, the advancement of women, and equal employment opportunity for the Nationalists and the Loyalists eliminating previous bad discriminatory experiences.

Nonetheless, there are shortfalls too. To begin with, the Belfast Agreement has two fundamental defects: Firstly, it did not give the people of Northern Ireland full legislative autonomy or a greater voice in Westminster Parliament. The local Assembly in Northern Ireland has still only limited legislative capacity. Secondly, the Northern Ireland Act of 2000 provides for the suspension of a devolved form of government. The British Prime Minister, acting through the Secretary of State for Northern Ireland, can suspend the Assembly and thereby stop its meeting or adoption of laws as well as halt the operation of the North-South Ministerial Council, British-Irish Council, and the British-Irish Intergovernmental Conference established under the Good Friday Agreement. The Agreement also forgets about the involvement of international actors, such as international non-governmental organizations and experts. They had contributions in rebuilding post-conflict societies that essentially helped to ensure both the success of that new society and its highest respect for human rights. The Agreement should have provided formal protection for human rights defenders too. It is essential on the background of murders of Patrick Finucane in 1998 and Rosemary

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<sup>56</sup> House of Commons, Report of the Bloody Sunday Inquiry (2010).

<sup>57</sup> Alice Donald, Jane Gordon and Philip Leach, The UK and the European Court of Human Rights, Research report 83, 49 (2012).

Nelson in 1999 which might have a chilling effect. The Agreement's language is ambiguous as to how the new commitments to human rights and impartial justice will effect defense lawyers.

The various institutions were also created, such as the Historical Enquiries Team in 2005 and its replacement with Legacy Investigations Branch (hereinafter 'LIB') in 2015 according to the Stormont House Agreement of 2014.<sup>58</sup> However, the activities of institutions were subject to high criticism too. For instance, in 2017 the Northern Ireland High Court ruled that LIB was not an independent institution under Article 2 of the ECHR.<sup>59</sup> As underlined in the decision, 'a fair-minded and informed observer' would conclude that LIB, which is part of the Police Service of Northern Ireland, is not fit for carrying out an investigation based on previous experiences.<sup>60</sup>

The cases concerning the conflict had a significant effect on the case law of the Court itself too. These cases influenced future cases regarding the conduct of the operation and effective investigation, such as Chechenya cases. On the ground of major elements of *McKerr* group cases, in *Isayeva v Russia* the Court highlighted the balance between pursued aim and means employed for achieving it.<sup>61</sup>

The cases are also important as to draw attention that the implementation of this obligation with its four elements maintains public confidence.<sup>62</sup> Although they can be criticized for many aspects, mentioned above, they underlined the continuing problems in Northern Ireland and tempted the UK government to adopt measures to tackle the issue. Thus far most of these attempts failed, being a 'piece-meal and minimalist approach to addressing discrete Jordan defects'.<sup>63</sup> Nonetheless, all the progress made should be welcomed and the Court, as the Guardian, must continue to use the ECHR as a 'living instrument' for defending human rights.

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<sup>58</sup> *Supra* note 38, 5-8.

<sup>59</sup> High Court of Justice in Northern Ireland, Queen's Bench Division, NIQB 28 [2017].

<sup>60</sup> *Id.*, § 118-125.

<sup>61</sup> *See generally, Isayeva v Russia*, App no 57950/00 (2005).

<sup>62</sup> *Supra* note 34, § 160.

<sup>63</sup> Christine Bell and Johanna Keenan, *Lost on the Way Home? The Right to Life in Northern Ireland*, 32 *Journal of Law and Society* 68, 75 (2005).