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UNITED KINGDOM: EUROPEAN COURT OF HUMAN RIGHTS CONDEMNS KILLINGS
IN GIBRALTAR IN 1988

Amnesty International welcomes yesterday's landmark decision by the European Court of Human Rights that the United Kingdom government violated the fundamental right to life when its agents killed three unarmed Irish Republican Army (IRA) members in 1988 in Gibraltar.

"The ruling by this supreme judicial body has profound implications for the UK Government," the organization said. "We are deeply disturbed by the reaction of the government at the highest levels which suggests that the government is unwilling to respect the Court's ruling."

The European Court of Human Rights declared that the killings of Mairead Farrell, Sean Savage and Daniel McCann by SAS soldiers had been unnecessary. It specifically stated that it was "not persuaded that the killing of the three terrorists constituted the use of force which was no more than absolutely necessary". The Court also held that there was "a lack of appropriate care in the control and organization of the arrest operation". It instructed the government to pay the relatives' costs.

This ruling overturned a previous decision by the European Commission on Human Rights which had accepted "that the deprivation of life resulted from the use of force that was no more than 'absolutely necessary' for [the] purpose .. of defending other persons from unlawful violence".

Amnesty International is dismayed by the reply given by the Deputy Prime Minister, Sir Michael Heseltine, in a radio interview when questioned as to whether there would now be a review of procedures: he stated, "we shall do nothing" and "we will not be swayed by this judgment".

"Given yesterday's judgment, the government should urgently institute an independent review of its legislation on the use of force and its procedures," Amnesty International said.

In March 1988, three unarmed IRA members: Mairead Farrell, Daniel McCann and Sean Savage were shot dead in Gibraltar by plainclothes SAS soldiers. Amnesty International consistently called for a thorough, prompt and independent investigation into the killings, as evidence suggested that no serious attempt had been made to arrest the three.

The inquest, held in Gibraltar six months later, failed to satisfy international standards for a proper investigation. The government prevented the inquest from conducting a thorough inquiry by issuing Public Interest Immunity certificates which blocked the disclosure of evidence concerning government policy, the planning of the operation, and the quality of the intelligence information. Thus the inquest was not able to tackle fully the fundamental question of whether the three had been deliberately killed rather than arrested.

The inquest found that the three had been lawfully killed. The European Court in its judgment stated: "the focus of concern of the inquest .. was whether the killings .. were reasonably justified in the circumstances as opposed to whether they were 'absolutely necessary'."

Amnesty International made a submission to the European Court of Human Rights, in which the organization emphasized that:

- the European Convention on Human Rights (ECHR) imposes a positive obligation on the government to protect the right to life
- this positive obligation requires domestic legislation to regulate the permissible use of lethal force
- intentional lethal use of firearms should be compatible with the ECHR only when strictly unavoidable in order to protect life
- the circumstances of a killing by agents of the State should be independently investigated and open to public scrutiny
- effective investigation requires the preservation of all relevant evidence
- effective public scrutiny requires procedural equality, including access to the evidence and legal representation
- the use of lethal force will be rendered contrary to the standard in the ECHR if inflicted by agents who have been trained automatically to shoot to kill.

Amnesty International reiterates its call for an independent inquiry into disputed killings of suspected opponents by the security forces in Northern Ireland; the inquiry should examine the investigative procedures; the legislation governing the use of lethal force; and the inquest system. All of which fall below international standards.

"This case also highlights the fact that the UK legislation does not adequately protect the human rights of its citizens, even the most basic right: the right to life," Amnesty International said.

The UN Human Rights Committee stated in July: "The Committee notes that the legal system of the United Kingdom does not ensure fully that an effective remedy is provided for all violations of the rights contained in the International Covenant on Civil and Political Rights". The UK Government must now consider incorporating human rights standards, as outlined in international treaties, into domestic legislation.

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