



DOES THE STATE REALLY CARE ABOUT YOUR RIGHTS WHEN IT KILLS YOU?

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When a person is killed by the state...

- By whom were they killed?
- Why were they killed?
- Was it justified?
- Whose fault was it?
- What can be done to keep it from happening to someone else?

What do we expect from a
“caring state”?

(1) *A timely investigation*

(2) A full and proper investigation

(3) Equality of arms

(4) Prevention of collaboration
among state agents

(5) Independence

(6) Adequate disclosure

(7) Openness and honesty

(8) Not hiding

(9) Fair treatment

(10) Treating the dead with respect

Race

- Black people are 3% of the population.
- Of the 164 deaths in or following police custody 2010-2020, 8% were black.
- Between April 2018-March 2019, there were 38 stop and searches per 1,000 Black people, compared to 4 stop and searches per 1,000 white people.
- The Lammy Review found that Black people make up 12% of prisoners and 21% of those in youth custody.

Mental health

- Many deaths at the hands of the police happen during a mental health crisis.
- For instance: Ibrahim Sey, Sean Rigg, Olaseni Lewis, Thomas Orchard, Mzee Mohammed and Kevin Clarke.
- Deaths of mentally ill people also happen on psychiatric wards and in prisons.
- A Guardian investigation in 2015 found that between 2010 and 2013 there had been 662 deaths of mentally ill detainees that could have been avoided.

Immigration

- Deaths at the hands of immigration enforcement personnel – Jimmy Mubenga, Joy Gardner.
- Suicides in immigration detention.
- Deaths following deportation/removal.

Poverty

- Deaths caused by benefit sanctions – Errol Graham.
- Deaths of asylum-seekers who are not allowed to work or claim benefits – Mercy Baguma.
- Deaths of street-homeless people.
- Deaths caused by unsafe housing conditions.
- Deaths caused by cuts to mental health services.

Coroners

- An ancient office – the earliest mention is in 1194.
- They hold inquests into sudden or unexplained deaths.
- They decide who the deceased was and how, when and where the deceased came by their death.

What coroners used to do

- *R v HM Coroner for North Humberside and Scunthorpe, Ex p Jamieson* [1995] QB 1.
- Limited to deciding “by what means” the deceased came by their death, not “in what circumstances”.
- Not their function to apportion guilt or attribute blame.

Article 2 of the ECHR

- The right to life

Article 2 positive duties:

(1) The systems duty

- Duty to have a system to protect life
- Criminal law provisions to deter and punish offences against the person

Article 2 positive duties:

(2) The operational duty

- Engaged where the state knows, or ought to know, that there is a “real and immediate risk” to a person’s life.
- Duty on the authorities to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.
- Includes:
 - Protecting people from criminal acts (*Osman v UK* (2000) 29 EHRR 245).
 - Protecting prisoners and detainees from suicide (*Keenan v UK* (2001) 33 EHRR 913)

Article 2 positive duties:

(3) The investigative duty

- Duty to investigate deaths where the state is involved/responsible.
- *Jordan v United Kingdom* (2001) 37 EHRR 52.
- The investigation must be effective.
- The person carrying out the investigation must be independent.
- Reasonable steps must be taken to obtain evidence.
- The next of kin must be involved to an extent necessary to protect their interests.

Inquests had to change...

- ...to comply with the Article 2 investigative duty.
- *R (Middleton) v Coroner for the Western District of Somerset* [2004] UKHL 10.
- An Article 2 inquest is wider than a normal inquest.

When is Article 2 engaged?

- The classic situations:
 - Where the state kills someone – e.g. killings by police or prison officers.
 - When a person dies in the custody of the state – e.g. from suicide.
- But it is not limited to these situations:
 - Article 2 was engaged where the state failed to protect people against a dangerous municipal rubbish tip (*Oneryildiz v Turkey* (2005) 41 EHRR 20).
 - And when it failed to protect people against a natural disaster (*Budayeva v Russia* (2014) 59 EHRR 2).
 - It is engaged in the Grenfell inquiry.

The role of the bereaved family

- The families have a right to participate in the Article 2 inquest.
- But there is no automatic legal aid, and legal aid is normally means-tested.
- Families have to apply for “exceptional case funding”.
- Even when there is funding for the inquest, there may not be funding for judicial review to challenge the coroner’s decisions.

Police restraint

- George Floyd
- Kevin Clarke

Secrecy

- When should police officers be anonymised?
- When should police officers be screened from the family and/or the public?
- When should the state be allowed to rely on secret documents?
- When should inquests be held in private?

Is the system working?

- According to INQUEST, there have been 1,755 deaths in or following police custody since 1990.
- 0 successful prosecutions for murder or manslaughter.

Discrimination and Article 2

- Article 2 read with Article 14 imposes a duty to investigate racist motives for a killing (*Angelova v Bulgaria* (2008) 47 EHRR 7, *Nachova v Bulgaria* (2006) 42 EHRR 43).
- Does this go further? Should the state be investigating wider patterns of discrimination?
- Discrimination can be inferred from statistics (*DH v Czech Republic* (2006) 43 EHRR 41).

"Society cannot give [my son] back his life but we can, in his death, give him the right to an honest and correct accounting of the way in which he died. It pains me to my core to know, every single day, that the public record of how he died is wrong. For untruths to be held on public record is nothing less than injustice. It dishonors the memory of my son."

- A bereaved parent

Questions



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