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When An Individual is Killed By the Use of Force,
the Convention for Protection of Human Rights and
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EUROPEAN COURT OF HUMAN RIGHTS – CONVENTION FOR PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS – ARTICLE 2 – ARTICLE 13 – EFFECTIVE INVESTIGATION – EFFECTIVE REMEDY – The European Court of Human Rights held that a country who is a signatory to the Convention for Protection of Human Rights and Fundamental Freedoms must provide an effective investigation, including an opportunity to cross-examine witnesses, and an effective remedy when a person dies while in police custody.

Edwards v. United Kingdom, 2002 WL 347058 (ECHR).

On November 27, 1994, Christopher Edwards was arrested in Colchester for making lewd comments to women while walking down the street.¹ He was taken to the police station where he addressed a female officer in a similar manner leading those on duty to believe he may suffer from a mental illness.² Edwards then spoke with a social worker who discussed her findings by phone with a psychiatrist.³ Being unaware of Edwards' prior mental illness, the two agreed that he was not in need of immediate attention and could continue to be held at the station.⁴

The following day, Edwards was taken to the Colchester Magistrates' Court where he continued to make lewd suggestions about

1. *Edwards v. United Kingdom*, 2002 WL 347058, at *6 (ECHR).

2. *Id.*

3. *Id.*

4. *Id.* There was agreement, however, between the sociologist and psychologist that Edwards' behavior may be an indication that schizophrenic behavior was beginning to occur. The policewoman was unaware that her own assessment of Edwards was enough to justify characterizing him as high risk and she did not complete a Form CID2, which would have indicated that Edwards was a high-risk prisoner according to the social worker. However, the officer did write in the Confidential Information Form (MG6A) that, in her own opinion, if Edwards did not receive psychiatric attention, he may harm a female. Following the administrative procedures, Edwards was placed in a cell by himself. *Id.*

women to a female prison officer and the duty solicitor.⁵ While entertaining the possibility of sending Edwards to a hospital, the Bench held that it lacked the authority to do so and remanded Edwards to police custody.⁶

When Edwards arrived at Chelmsford Prison, he was isolated from the other arrivals where his conduct was noted as abnormal and violent.⁷ At the time Edwards was finally interviewed, no medical doctor was present and the only thing that Mr. N., a member of the health care staff, knew was that Edwards had attacked a female constable.⁸ Since Edwards displayed no abnormal behavior during the 10-minute interview, he was accepted into the main prison and transferred to his own cell.⁹

In a separate case, Richard Linford was arrested in Maldon for attacking his friend and her neighbor.¹⁰ At the station, a police surgeon spoke with Linford and believed that he might be mentally ill.¹¹ However, a psychiatric registrar, who knew that Linford had a history of schizophrenia and drug abuse, spoke with a con-

5. *Id.* Upon arrival at the courthouse, Edwards broke through a crowd of prisoners and made lewd remarks to a female prison officer. He was detained in a cell by himself and upon being brought back in to the courtroom, continued to make obscene remarks. It was at this time that Edwards' parents spoke with the duty solicitor about their son's prior mental illness and sought to have him released from custody so that he could obtain medical treatment. The prosecutor, though, wanted to have Edwards returned to police custody since it was believed that he would be a repeat offender and that his mental state was questionable. It was also necessary, according to the prosecutor, that further psychiatric evaluations be made. *Id.*

6. *Edwards*, 2002 WL 347058, at *6-7. The Bench was basing its decision on the Magistrates' Courts Act of 1980. However, those involved with the case failed to consider the Mental Health Act of 1983, which had civil provisions providing for evaluation in a hospital setting. Following the hearing, Edwards' father contacted the probation officer at Chelmsford prison and informed him of his son's prior mental illness. He was told that Edwards was prescribed stelazine, but refused the medication. *Id.* at *7. However, given the report by the social worker of no immediate medical attention being necessary, the senior medical doctor decided that normal procedures for admission would be followed. The probation officer informed the doctor in the Health Care Centre of the conversation with Edwards' father, but it was unclear how much of that conversation was conferred to the doctor. The police officers, though, had informed the prison staff of Edwards' behavior prior to his arrival and suggested that he might be a threat to females given his previous conduct. *Id.*

7. *Id.* at *7. Edwards attempted to strike a prison officer. *Id.*

8. *Id.* The concerns of the prosecutor and police were not conveyed to the reception staff and Edwards did not disclose that he was prescribed stelazine. Edwards did reveal that he had been seen by a psychiatrist three years ago. *Id.*

9. *Id.*

10. *Id.*

11. *Edwards*, 2002 WL 347058, at *7.

sultant psychiatrist on the phone.¹² They concluded that Linford did not require hospital admission and could be held.¹³

While being detained at the station, Linford continued to display strange behavior and to assault police officers, however, he was never reevaluated by a doctor.¹⁴ Linford was presented to the magistrate as “sane but dangerous.”¹⁵ When Linford arrived at Chelmsford Prison, the same people that spoke with Edwards interviewed him.¹⁶ At this time, Linford was behaving appropriately.¹⁷ Linford was initially detained in a cell on his own but because of limited space was moved in with Edwards.¹⁸

Late that night, a prison officer heard a pounding sound on one of the landings.¹⁹ Upon entering the cell, the officer found Edwards lying dead on the floor with Linford standing above him saying that he (Linford) was possessed by “evil spirits and devils.”²⁰ After pleading guilty to manslaughter “by reason of diminished responsibility,”²¹ Linford was found to be mentally ill and transferred to a Special Hospital.²²

Following Linford’s sentencing, the Coroner’s inquest was closed.²³ Edwards’ parents were informed that there was insufficient evidence to charge anyone with manslaughter by gross neg-

12. *Id.*

13. *Id.* The registrar attributed Linford’s behavior to drug abuse. *Id.* at *8.

14. *Id.* at *8. In addition, no form CID2 was completed by the police officers even though they continued to believe he was unstable. *Id.*

15. *Id.*

16. *Edwards*, 2002 WL 347058, at *8.

17. *Id.* The individuals who spoke with Linford saw no reason to further assess his mental condition and Mr. N. was not aware of Linford’s previous criminal record, which would have informed him of a prior prison hospital admission in 1988. *Id.*

18. *Id.* The cell was equipped with a security system that could be activated by the prisoners in the event of an emergency and, at some point, either Linford or Edwards pressed the button that engaged the system. An officer, noticing that the green light outside the cell was activated, checked on the prisoners to find that everything was all right. The system was not working properly, though, because a buzzer should have gone off, and a red light should have been activated on a control panel. Even if the prisoner stopped pressing the alarm button, the buzzer was still supposed to sound. However, the buzzer did not sound, and the officer did not report the malfunction. *Id.*

19. *Id.* The prison officer had heard a buzzer sound earlier accompanied by a red light on the control panel. At that time, he saw another officer checking on the situation. *Id.*

20. *Id.* at *8. When an officer went to investigate the situation, he saw the green light outside of the cell on and Linford holding a plastic fork with blood on it. It took the officers around five minutes to get into the cell and it was 17 minutes since the cell was last patrolled. Upon entering the cell, the officers found that Edwards was stomped and kicked to death. *Id.*

21. *Edwards*, 2002 WL 347058, at *8.

22. *Id.* Linford was sentence under section 37 and 41 of the Mental Health Act of 1983. He was diagnosed as paranoid schizophrenic. *Id.*

23. *Id.*

ligence for their son's death. However, they could recover for funeral costs and for pain and suffering.²⁴

A private non-statutory inquiry was initiated by the Prison Service, the County Council and the Health Authority, all of whom owed a statutory duty to Edwards.²⁵ It had no power to subpoena witnesses or documents and two of the prison officers refused to appear and testify.²⁶ Edwards' parents were informed after the Inquiry that there were no civil remedies available to them and that criminal charges would not be filed against any of the individuals or agencies involved.²⁷ As a result, Paul and Audrey Edwards filed an application against the United Kingdom of Great Britain and Northern Ireland in the European Court of Human Rights under Article 34 of the Convention for Human Rights and Fundamental Freedoms (the Convention).²⁸ The application claimed that the agencies involved had failed to guard their son's life and it sought to establish a case under Articles 2, 6, 8, and 13 of the Convention.²⁹

Under Article 2, "Everyone's right to life shall be protected by law..."³⁰ The provision requires not just that the State avoid in-

24. *Id.* at *9. The Criminal Injuries Compensation Board granted the parents 4550 GBP for funeral expenses but concluded there would be no "dependency or bereavement award." *Id.*

25. *Id.*

26. *Edwards*, 2002 WL 347058, at *9. The officer that passed by Edwards' door the night he was murdered declined to testify. *Id.* The Report concluded that Edwards and Linford should never have been in prison yet alone placed in a cell together. It also established a failure among all the parties involved to communicate all of the necessary information, a violation of the Prison Health Service Standards by not having a medical doctor present upon admissions, and a defective and inadequate security cell system was in place since it could be disabled with a matchstick by a prison officer who did not want to hear the buzzer. *Id.* at *10. The Inquiry findings also stated that a doctor should have been requested by the officer to see Edwards; that the police failed to complete the necessary paperwork which would have alerted others to Edwards being high risk because of his mental state; that the Magistrates' Court should have considered admitting Edwards to a hospital for further evaluation; that there was a break down of communication among the agencies involved; that Mr. N. was inadequately trained to detect mental disturbances; and that since the parties knew Linford was high risk, a formal warning should have been issued to the prison officials. *Id.* at *10-11.

27. *Id.* at *11. Since the inquiry failed to determine a time span between Edwards' injuries and his death, no remedy for Edwards' pain and suffering prior to his death was available. In addition, under the common law no one can be awarded damages in tort for the death of another person. While the Fatal Accidents Act of 1976 permits damages, it only applies to the deceased's dependents, parents of a child under 18, and recovery for funeral expenses. Since Edwards had no dependents and he was over 18, his parents were only entitled to funeral expenses. *Id.*

28. *Id.*

29. *Id.* at *1.

30. *Id.* at *12.

tentionally taking the life of another, but also that it takes the necessary measures to prevent a breach of the Article.³¹ In each instance in the present case, the authorities either knew or should have known that Linford was mentally ill.³² His prior medical history and record of violent attacks should have been conveyed to the prison authorities as well as to those who had the ability to place him in the Health Care Prison.³³ However, because of poor communication between all of the agencies involved, Linford's background was overlooked and instead of the authorities using caution, Linford was treated the same as any other prisoner.³⁴

The same breakdowns in the system occurred with Edwards.³⁵ In spite of his perceived mental state, a doctor was not requested to examine him at the police station, the forms documenting his state were not recorded and the information known to the police officer, the court and the applicants was not passed on to the prison medical officer.³⁶ Because of these shortcomings and the inadequate screening of Linford, the agencies involved failed to protect the life of Edwards, thereby breaching Article 2 of the Convention.³⁷

Also implied under Article 2, in order to protect the right to life there should be a speedy and effective investigation when death by use of force occurs.³⁸ In this case, the Court found that civil proceedings instituted by Edwards' family alone would not be sufficient under Article 2 since Edwards' death occurred while he was under the care of the state.³⁹ The problem with the investigation

31. *Edwards*, 2002 WL 347058, at *14.

32. *Id.* at *15. The reports that he had been in the hospital before, was currently being seen by a psychiatrist, taking medication for his schizophrenia, and being considered for commitment under the Mental Health Act combined with his violent outbursts at the station would have alerted the officials that he was a serious risk and that he should not have been detained with Edwards. *Id.* at *15-16.

33. *Id.* at *16.

34. *Id.* Had the registrar reviewed Linford's files, he would have found that, if Linford's current treatment failed, compulsory committal was an option. However, the registrar did not check the information and when the prison officer received Linford, even though he was bruised, the officer had no history to alert him of his previous mental health. The Inquiry Report stated that if the prison health worker had known more about Linford, he may have used more caution. *Id.* at *15. The standard, though, is not whether he knew but whether he should have known. The Court says he should have known. *Id.* at *16.

35. *Id.*

36. *Edwards*, 2002 WL 347058, at *16. The Inquiry Report also found that the screening health worker at the prison was insufficiently trained. *Id.*

37. *Id.*

38. *Id.* at 18.

39. *Id.* at 19. However, relying on the Inquiry, the members stated that the report adequately detailed the principle facts and while a list of prisoners to be interviewed was

arose from its inability to compel witnesses -- one of whom was the last guard to walk by the cell before Edwards was killed.⁴⁰ As a result, the Inquiry's authority as an investigative and fact-finding body was weakened and its Article 2 procedural requirement was not achieved.⁴¹

Since the Inquiry sat in private and then made its findings public, the applicants were able to establish an Article 2 violation over the lack of exposure received by the case.⁴² The court stated that given the public nature of the agencies involved, the publicity received by the event was not sufficient nor was an adequate reason established for employing this type of investigation.⁴³ In addition, since Edwards' parents were unable to attend the hearings and were unrepresented, their interests in the proceedings were not adequately safeguarded.⁴⁴ While Article 2 also requires that there be a prompt hearing, given the extent of the Inquiry in this case, there was no violation in this respect.⁴⁵

In the original application to the court, Edwards' parents asserted that under Article 6 and Article 8 of the Convention, their inability to bring civil proceedings in relation to the death of their son and the absence of an independent investigative system was disrespectful to family life.⁴⁶ However, since no further issues

lost and the call system in the cell was never tested, the Court did not believe these details disturbed the principal facts established by the Inquiry. *Id.* at 19-20.

40. *Id.* at 20. Even though the guard submitted a written report, he was not available for questioning that may have revealed any discrepancies or oversights. *Id.*

41. *Edwards*, 2002 WL 347058, at *20. The Inquiry was found to act, though, as an independent body even though it was established by the agencies with statutory responsibilities towards Edwards. The chairman was a senior member of the bar and the other members had experience in the prison, police or medical fields. There was no showing that they were influenced by the agencies, represented the agencies or operated in a dependent capacity. *Id.*

42. *Id.*

43. *Id.* at 20-21.

44. *Id.*

45. *Id.* at 21. Edwards died in 1994. The proceedings began in May 1996 and the final report was issued in June 1998. In addition to the written evidence, about 150 people attended the Inquiry and the members of the Inquiry traveled to the places involved and interviewed Linford. *Id.*

46. *Edwards*, 2002 WL 347058, at * 22. Article 6 states that, "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..." *Id.* at *21. Article 8 says:

There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Id.

were raised under these two sections in subsequent proceedings, the Court did not reach the merits of these complaints.⁴⁷

The final breach claimed by the applicants arose out of Article 13, which states that all those who suffer a violation of their rights under the Convention are entitled to a remedy even if the violation is by someone behaving in an official capacity.⁴⁸ The Inquiry itself, while thorough in its investigation, did not present any possibility of recovering damages, and under Article 13, a bereaved parent may be entitled to damages.⁴⁹ As a result, Article 13 of the Convention was breached.⁵⁰

When breaches of the Convention are established, Article 41 permits the Court to award damages.⁵¹ Edwards' family was awarded non-pecuniary damages and costs and expenses.⁵²

The Court unanimously held in this case that Edwards' death and the subsequent investigation constituted violations of Article 2 of the Convention.⁵³ However, no separate issues arose under Article 6 or 8, which the applicants had first raised in the proceedings but had later declined to address.⁵⁴ Article 13 was also violated since no assessment of damages was available to Edwards' family.⁵⁵ As a result of these violations, Article 41 permitted the Court to award both pecuniary damages and cost and expenses which arose out of the case.⁵⁶

The European Court of Human Rights was established in 1959 under The European Convention of Human Rights (Convention) in order to enforce the rights enumerated in the United Nations Uni-

47. *Id.* at *22.

48. *Id.* Article 13 requires that there be a civil remedy available to anyone who raises a claim under the provisions of the Convention. *Id.* However, States may enforce the provision as they deem appropriate as long as it meets the Convention standards and the remedy corresponds to the nature of the complaint. The Article does not always necessitate state inquiry action, but it does require that the victim's family have a way to establish the liability of the state for any acts or omissions that contravene the Convention. In particular, if there is a violation of Article 2 or 3, there should be an award available for non-pecuniary damages. *Id.* at 23.

49. *Id.*

50. *Id.*

51. *Edwards*, 2002 WL 347058, at *24.

52. *Id.* at *25. The Court awarded 20,000 GBP non-pecuniary damages and 20,000 GBP for costs and expenses. The Court awarded less under Cost and Expenses than the applicants sought since they believed the expenses to be overestimated. The 20,000 GBP awarded did not include the additional value added tax award. Both judgments were subject to a 7.5% interest rate. *Id.*

53. *Id.* at 26.

54. *Id.*

55. *Id.*

56. *Edwards*, 2002 WL 347058, at *24.

versal Declaration of Human Rights of 1948.⁵⁷ The United Kingdom ratified the Convention in 1951 and in 1966 granted its citizens the right to seek relief in the Human Rights Court provided there were no effective domestic remedies.⁵⁸ It was not until years later that Parliament enacted the Humans Rights Act 1998, which incorporated specific provisions of the Convention into domestic law.⁵⁹

Since the Humans Right Act 1998 came into force on October 2, 2000, the domestic court of England has only addressed two cases under Article 2 and 3 of the Convention.⁶⁰ In *R. (on the application of Wright) v. The Secretary of State for the Home Department*, the court had to decide whether Articles 2 and 3 of the Convention had been breached as a result of the deceased prisoner's treatment while in custody and the failure of officials to conduct a proper investigation.⁶¹ The High Court, Administrative Court of England and Wales concluded that the articles in question required the state to conduct an effective investigation, the form of which would depend on the facts and circumstances of the case.⁶² Wright died in prison as a result of a severe asthma attack.⁶³ The medical staff was aware of his condition but had failed to prescribe the proper medication.⁶⁴ The inquest that was held following his

57. *The European Court of Human Rights: Historical Background, Organization, and Procedure* (April 5, 2002), at <http://www.echr.coe.int/Eng/Edocs/HistoricalBackground.htm>. The Convention for the Protection of Human Rights and Fundamental Freedoms was signed on November 4, 1950 and entered into enforcement on September 1953. *Id.*

58. Christina M. Kitterman, *The United Kingdom's Human Rights Act of 1998: Will the Parliament Relinquish its Sovereignty to Ensure Human Rights Protection in Domestic Courts?*, 7 ILSA J. INT'L & COMP. L 583, 588 (2001):

59. Susan R. Gihring, Book Note, 1 CHI. J. INT'L L 203 (2000) (reviewing *The Human Rights Act 1998 What it Means: The Incorporation of the European Convention on the Human Rights in the Legal Order of the United Kingdom*). The act adopted Article 2 to 12 and 14 of the Convention, 1 to 3 of the First Protocol and 1 and 2 of the 6th protocol in conjunction with Articles 16 to 18 of the Convention. Human Rights Act 1998, 1998, C. 42, §1, available at <http://www.hms.gov.uk/acts/acts1998/80042--a.htm>.

60. *Edwards*, 2002 WL 347058, at *12. Article 2 states that "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." Article 3 reads, "No one shall be subjected to torture or to inhuman or degrading treatment or punishment." CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS AS AMENDED BY PROTOCOL NO. 11, Art. 2 - 3, (November 1998), available at <http://www.echr.coe.int/Convention/webConvenENG.pdf>.

61. *R. (on the application of Wright) & Anor v. The Secretary of State for the Home Department*, 2001 WL 606447 at *3 (QBD (Admin. Ct.)).

62. *Id.* at *9.

63. *Id.* at *4.

64. *Id.* It was disputed how much time had elapsed between the time he arrested and the time someone had come to his aid. *Id.*

death was ineffective under Article 2 because key witnesses were not called and no consideration was given to the inadequate medical treatment or the role the doctor played in Wright's treatment.⁶⁵

In a similar case, *The Queen (on the application of Amin) v. The Secretary of State of the Home Department*, the question was again raised whether an effective investigation in accordance with Article 2 had been conducted.⁶⁶ The Court held that for the investigation to be proper it had to be independent and public with the family adequately represented and able to cross-examine the main witnesses.⁶⁷ The death of Mubarek, who was bludgeoned to death by his cellmate, a known racist, was not adequately investigated because it was not established why Mubarek was placed in the cell with the man nor was the family appropriately represented in the proceedings.⁶⁸

Prior to the enactment of the Human Rights Act, the European Convention of Human Rights was not incorporated into the domestic law and the domestic courts did not enforce the Convention.⁶⁹ Therefore, the rights guaranteed by the Convention did not have a definitive role in the legal community and the cases decided by the European Court of Human Rights had no binding effect on the domestic courts.⁷⁰ The Human Rights Act was only applicable for continuing violations that occurred after October 2, 2000, the date of enforcement.⁷¹ Therefore, for those claiming a violation of the Convention prior to that date, petitioning the European Court of Human Rights was the only option when the domestic law provided an inadequate remedy.⁷²

Article 2 of the Convention states that "Everyone's right to life shall be protected by law."⁷³ In *L.C.B. v. United Kingdom*,⁷⁴ the European Court of Human Rights stated that the article "enjoins the State not only to refrain from the intentional and unlawful

65. *Id.*

66. *The Queen on the application of Amin v. The Secretary of State for the Home Department*, 2001 WL 1135068 at *1 (QBD (Admin. Ct.)).

67. *Id.* at *1.

68. *Id.* at *4.

69. Andrew C. Geddis, *Confronting the "Problem" of Third Party Expenditure in UK Election Law*, 27 BROOK. J. INT'L L. 103, 116 (2001).

70. *Id.* at 116. However, the United Kingdom has generally amended the laws that were found to be in conflict to the Convention. *Id.*

71. *Edwards*, 2002 WL 347058, at *12.

72. Kitterman, *supra* note 52, at 588. The right to petition was granted in 1966. *Id.*

73. CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, *supra* note 60, at Art. 2 §1.

74. 76 Eur. Ct. H.R. 1390 (1998).

taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction.⁷⁵ The deciding factor in arriving at a violation is not whether the state did everything possible given the facts of the case, but whether it did everything required of it to avoid a person from being placed at risk.⁷⁶ The Court held that the applicant's claim of having contracted leukemia from her father's exposure to radiation as a serviceman did not establish a sufficient causal link to find a violation of the Article.⁷⁷

In a separate case, a teacher shot and killed the father of one of his pupils and wounded the pupil whom he had been stalking.⁷⁸ It was concluded that the individual events leading to the death were not substantial enough to constitute a breach of Article 2.⁷⁹ The Court said that the obligation upon the authorities cannot be such as to impose an impossible burden upon them.⁸⁰ Rather, it must be proven that the authorities knew or should have known of the existence of a real and imminent danger from the criminal acts of a third party and that they failed to take reasonable steps to protect against that danger.⁸¹

When death occurs while in custody, rigid scrutiny should be applied since these people in particular are in a vulnerable position.⁸² *Case of Salman* stated that it is the obligation of the authorities to account for an individual's death and to provide a satisfactory explanation.⁸³ So, when no documentation could explain the injuries to Salman's ankle, left foot, bruised chest, broken sternum or his death while in detention, the court found a violation of Article 2.⁸⁴ The burden of proof remains with the authorities to formulate a convincing and satisfactory account of the events.⁸⁵

75. *Id.* at 1403.

76. *Id.*

77. *Id.* at 1404. Evidence was never produced that established that the father had any symptoms indicating exposure to high levels of radiation. The Court also found it unsubstantiated that, had the child been monitored in utero, the effects of leukemia would have been less severe. *Id.*

78. *Osman v. The United Kingdom*, 95 Eur. Ct. H.R. 3124 (1998).

79. *Id.* at 3163.

80. *Id.* at 3159.

81. *Id.*

82. *Salman v. Turkey*, 2002 WL 33348683 at *31 (ECHR).

83. *Id.*

84. *Id.*

85. *Id.*

The Human Rights Court has repeatedly cited in its cases that when reading Article 2 together with Article 1, which “secure[s] to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention,”⁸⁶ there is an implied obligation to conduct an effective official investigation when individuals have been killed by force.⁸⁷ In *McCann*, officers of the United Kingdom shot and killed several members of the IRA.⁸⁸ The judges in the case stated that “there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, *inter alios* [sic], agents of the state.”⁸⁹

In *Hugh Jordan v. United Kingdom*, the court summed up a number of previous decisions in attempting to define “effective.”⁹⁰ It stated that the investigation should be prompt and reasonable, independent from those involved, capable of determining whether the force was justified, and subject to public scrutiny.⁹¹ The Court held in this case that a civil remedy was available to the applicant for the death of his son so there was no violation of Article 13.⁹²

Handed down the same day as *Hugh Jordan*, *Case of Kelly and Others v. United Kingdom*⁹³ stated that the purpose behind the investigation is to assure the effective execution of domestic laws that protect the right to life and, where state agents are a party, to guarantee that they are held answerable for deaths that occur under their responsibility.⁹⁴ The form of investigation that is required will differ with the facts and circumstances of each case,

86. CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, *supra* note 60, at Art. 1.

87. *Edwards*, 35 E.H.H.R. at 18; Güleç v. Turkey, 80 Eur. Ct. H.R. 1698 at 1732 (1998); *Hugh Jordan v. The United Kingdom*, Eur. Ct. H.R. at 23, at <http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=0&Action=Html&X=529033626&Notice=0&Noticemode=&RelatedMode=0>; *Salman*, 2002 WL 33348683 at *31.

88. *McCann and Others v. The United Kingdom*, 324 Eur. Ct. H.R. (ser. A) at 23-30 (1995).

89. *Id.* at 49. The Court did not decide what type of investigation should have been conducted since the inquest proceedings were public, witnesses were heard, and the applicants were legally represented. In the court’s opinion, there was no violation of Article 2. *Id.*

90. *Jordan*, Eur. Ct. H.R. at 24. *See, supra* note 81.

91. *Id.* at 24.

92. *Id.* at 33-34. The applicants son, Pearse Jordan, was shot in the back three times and killed by officers of the Royal Ulster Constabulary. No prosecution was initiated due to insufficient evidence but the inquest and civil proceedings were still pending at the time the case was decided. *Id.* at 4.

93. *Kelly & Others v. The United Kingdom*, Eur. Ct. H.R. at 23, at <http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=0&Action=Html&X=529043430&Notice=0&Noticemode=&RelatedMode=0>.

94. *Id.* at 23.

but regardless, the state should institute the investigation whether or not the next of kin does.⁹⁵ The court also believed that there was no breach of Article 13 since an effective remedy was available.⁹⁶

In the United Kingdom, the right to bring an action for a wrongful act causing the death of another individual arises under the Fatal Accidents Act 1976.⁹⁷ However, a parent is only entitled to bereavement damages if the deceased was "a minor who was never married."⁹⁸ Otherwise, the only damages permitted to the parents are funeral expenses.⁹⁹ The Law Reform (Miscellaneous) Provisions Act 1934 also provided for a cause of action to survive the death of any person for the benefit of the estate.¹⁰⁰ Recovery is permitted for losses suffered by the decedent as long as the death was not instantaneous.¹⁰¹ Therefore, it has to be proven that pain and suffering occurred before death.¹⁰² If the European Court determines, based on the facts of the case, that this is an ineffective remedy,¹⁰³ a violation of Article 13 of the Convention will be found.¹⁰⁴

Article 13 of the Convention states, "Everyone whose rights and freedoms as set forth in [the] Convention are violated have an ef-

95. *Id.*

96. *Id.*

97. Fatal Accidents Act 1976, c. 30, §1 (Eng.). The section reads that:

If death is caused by any wrongful act, neglect or defaults which is such as would (if death had not ensued) have entitled the person injured to maintain an action and recover damages in respect thereof, the person, who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured.

Id.

98. *Id.* at 1A (2)(b) Bereavement.

99. *Id.* at 3(5) Assessment of Damages.

100. Law Reform (Miscellaneous Provisions) Act 1934, UK ST 1934 c. 41 s. 1, Westlaw. "Subject to the provisions of this section, on the death of any person after the commencement of this Act, all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate." *Id.*

101. *Id.* at (4).

Where damage has been suffered by reason of any act or omission in respect of which a case of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for purposes of this Act, to have been subsisting against him before his death such cause of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered.

Id.

102. *Edwards*, 2002 WL 347058, at *12.

103. *Id.* at 24. The Court said that in this case, the authorities had not protected Edwards' life or the ability of the applicants to obtain an enforceable award for the damages suffered. *Id.*

104. *Id.*

factive remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."¹⁰⁵ Although states are given some latitude in the enforcement of the section, the provision requires that there be an adequate remedy at the domestic level that grants appropriate relief to the applicants.¹⁰⁶

In *Aksoy v. Turkey*,¹⁰⁷ the court stated that the obligation varies depending on the type of complaint arising under the Convention.¹⁰⁸ In any case, the remedy must be effective "in practice as well as in law."¹⁰⁹ This means that its use must not be obstructed by the acts or omissions of the state establishment.¹¹⁰ The court iterated that the State had failed to provide an effective remedy to Aksoy, who had been tortured while in custody and subsequently killed, by not conducting a comprehensive investigation that would lead to the punishment of those responsible.¹¹¹

Elaborating further on Article 13, the court held in *Aydin v. Turkey*¹¹² that while the State is given discretion as to the way in which it conforms to the Convention, the chief requirement is that there be domestic relief that affords an effective remedy.¹¹³ "Effective remedy" is a reference not only to the payment of compensation but also to a total investigation that can lead to the punishment of those accountable, together with the ability of the complainant to participate in the investigation.¹¹⁴ Since the public prosecutor failed to look into rape and torture allegations and the

105. CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, *supra* note 60, at Art. 13.

106. *Kaya v. Turkey*, 65 Eur. Ct. H.R.. 297 at 329-330 (1998).

107. *Aksoy v. Turkey*, 26 Eur. Ct. H.R. 2260 (1996). Turkey was the site of much disharmony between the Security forces and members of the PKK (Worker's Party of Kurdistan). Aksoy was identified as a member of the PKK and taken into custody. He denied knowing the member that he was being questioned about. The police stripped him naked and tortured him by tying his hands behind his back and stringing him up by his arms. This is known as Palestinian Hanging. Electrodes were attached to his genitals while water was thrown on him. The torture lasted for 35 minutes and over the next two days he was allegedly repeatedly beaten. As a result, he had paralysis in his arms and hands. According to the government, he signed a release and made no charge of being tortured. After submitting an application to the Commission, he was threatened and eventually killed. *Id.* at 2265-2267.

108. *Id.* at 2286.

109. *Id.*

110. *Id.*

111. *Id.* at 2287.

112. *Aydin v. Turkey*, 50 Eur. Ct. H.R. 1866 (1997).

113. *Id.* at 1895-1896.

114. *Id.*

applicants were totally reliant on him to assemble the evidence, Article 13 was violated.¹¹⁵

Once the Court finds a violation of the Convention or any of the Protocols that compose the Convention, it is permitted under Article 41 to award just satisfaction if it is not granted by the domestic law of the Contracting Party.¹¹⁶

While Paul and Audrey Edwards' case was decided in the European Court of Human Rights, it is very likely that since the enactment of the Human Rights Act of 1998 the domestic courts of England would hear this case as evidenced by two similar cases that have recently submitted themselves to their jurisdiction.¹¹⁷ Since the European Convention on Human Rights has been adopted into the domestic law, judges now have the power to decide whether the legislation of the United Kingdom contravenes the rights enumerated in the Convention.¹¹⁸ If a provision in a piece of legislation before the British Court is in contradiction to a section of the Convention, the court is to declare it incompatible and it then becomes Parliament's duty to respond.¹¹⁹ One significant provision in the Act makes it unlawful for a public authority to act or fail to act in a manner contrary to the Convention.¹²⁰

The question that arises after the implementation of this Act is whether the Parliament will make the necessary adjustments in legislation to comply with the decision of the domestic courts. This was an issue that existed even before the Human Rights Act and one that will impact on the number of cases that will arise under the same issue. Concern also has been expressed that the

115. *Id.* at 1898. The applicant in this case, Aydin, and her family were taken from their home to gendarmerie headquarters and questioned about involvement in the PKK. Aydin claimed that while she was in custody, she was tortured and raped. Her and her family went to the prosecutor and complained about the incident. The prosecutor did not attempt to locate eyewitnesses or establish that the family was taken to the gendarmerie. The Court found that the prosecutor's attempt to establish the rape and corroborate all the evidence did not establish a comprehensive or effective investigation. *Id.* at 1875.

116. *Edwards*, 2002 WL 347058, at *24. Article 41 reads, "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." *Id.*

117. *Amin*, 2001 WL 1135068, at *719; *Wright*, 2001 WL 606447, at *1.

118. K.D. Ewing, *A Theory of Democratic Adjudication: Towards a Representative, Accountable and Independent Judiciary*, 38 ALBERTA L. REV. 708, 714 (2000). The Court may look at ECHR cases for guidance but they are not bound to the decisions. Kitterman, *supra* note 52, at 591.

119. Ewing, *supra* note 112, at 714. This is different than in Canada where the legislation may be struck down. *Id.*

120. Human Rights Act 1998, 1998 Chapter 42 Section 6, available at <http://www.hms.o.gov.uk/acts/acts1998/80042--a.htm>.

effect of the Act has been to make judges unaccountable legislators.¹²¹

In any case, the final result of the Human Rights Act can only be ascertained by the passage of time. It is an outward embrace of human rights that were previously only implied in English law, but whether or not its reach is broad enough to encompass all the rights and remedies available in the European Court of Rights remains to be seen. Regardless, the European Court is still the primary source of all the fundamental freedoms enumerated in the Convention. If a United Kingdom resident feels that the Human Rights Act 1998 has not protected the rights enumerated in the Convention, he may still petition the European Court of Human Rights for redress. As a result, a case similar to Edwards' arising today may first be heard in the domestic court of England, but if the petitioner feels that the right to life has not been protected and that there has not been an effective investigation or an adequate remedy in that venue, an application to the Human Rights Court may be submitted.

Lori Edwards

121. Ewing, *supra* note 112, at 721.

