CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 47916/99
by Alex MENSON and Others
against the United Kingdom

The European Court of Human Rights (Second Section), sitting on 6 May 2003 as a Chamber composed of

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Sir Nicolas BRATZA,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN,
Mr M. UGREKHELIDZE, *judges*,,

and Mr T.L. EARLY, *Deputy Section Registrar*,

Having regard to the above application lodged on 22 February 1999 and to the applicants' supplementary submissions of 30 January 2001,

Having deliberated, decides as follows:

THE FACTS

The applicants are Alex, Chris, Daniel, Essie, Kwesi and Samantha Menson. They are siblings of Michael Menson, a black man who was killed as a result of being set on fire by assailants in a racist attack during the night of 27-28 January 1997. The applicants are all British nationals living in England. They are represented before the Court by Bindman & Partners, a firm of solicitors practising in London, England.

A. The circumstances of the case

The facts of the case, as submitted by the applicants, may be summarised as follows.

1. The attack on Michael Menson

At the time of his death, Michael Menson was a single thirty-year old black man. He suffered a mental breakdown in 1991 and was subsequently diagnosed and treated in hospital for schizophrenia. After March 1996, Michael Menson frequently received treatment at Chase Farm Hospital for his mental condition.

When Michael Menson was not in hospital he lived in his own accommodation in New Southgate, London. However, two months before his death he moved into accommodation for persons with mental health problems at Holden Lodge, North London.

On about 21 January 1997, Michael Menson was given leave from Chase Farm Hospital and went to stay at Holden Lodge.

On the night of 27 January 1997, at about 10 p.m., Chie Menson telephoned Michael Menson at Holden Lodge. She told him that she had received a message from Chase Farm Hospital that he was to return there as soon as possible for his "ward-round". Some time after that telephone call Michael Menson left Holden Lodge with the apparent intention of returning to Chase Farm Hospital.

It appears that having left Holden Lodge, Michael Menson took the wrong bus for his destination and he ended up getting off the bus in Edmonton, North London. He was subsequently attacked by four white youths who had got off the bus with him. They set his back on fire, probably whilst he was lying face down on the ground.

He was found on fire at approximately 1.40 a.m. on 28 January 1997 by an off-duty fireman who had been passing by in a car. At the time he was found, Michael Menson appeared to be in a severe state of shock with severe burns to his back, buttocks and upper thighs. The off-duty fireman flagged down a passing police car with two police officers in it. They in turn summoned an ambulance.

2. The police response to the attack

According to the applicants, the two police officers did not treat the circumstances of Michael's discovery as suspicious and wrongly assumed that he had set fire to himself. Consequently, they failed to investigate the crime scene at all at that stage or to set in motion any trains of inquiry to search for or identify and catch Michael Menson's attackers. It was only after specific instructions from Michael Menson's family at a later stage that the police began to treat the attack as suspicious and to investigate it.

An ambulance arrived and Michael Menson was taken to North Middlesex Hospital where he was admitted and treated. It seems that the police officers left the scene of the incident when Michael Menson was taken to hospital.

Michael Menson was found to have sustained full thickness third degree burns to 30% of his body. Owing to the severity of his burns, he was transferred to the Regional Burns Unit in Billericay Hospital.

Sometime between 2 a.m. and 3 a.m. on 28 January 1997, two officers arrived at the house of Ezekial Adewale, Michael Menson's friend, in the mistaken belief that he was Michael Menson's next-of-kin. It appears that the police had made this mistake as a result of inquiries to Chase Farm Hospital where Ezekial Adewale's name and address were obtained.

The two police officers told Ezekial Adewale that Michael Menson had set himself on fire whilst walking along the North Circular Road in North London. The officers repeated this and stated that Michael Menson had been lucky because they had been passing, saw him on fire and had stopped and helped to extinguish the fire. Ezekial Adewale asked these officers if they had informed Michael Menson's family. They told him they had not and he immediately gave them the address of Michael Menson's brothers, Kwesi and Daniel.

Shortly afterwards, again sometime between 2 a.m. and 3 a.m., the same two police officers arrived at Kwesi and Daniel Menson's home. The police officers told them that Michael Menson had set himself on fire in Edmonton, that he had been seriously injured and had initially been taken to the North Middlesex Hospital but had been subsequently transferred and was receiving treatment in the Regional Burns Unit in Billericay Hospital. The officers then asked Kwesi Menson to sign for some charred papers and two burnt keys which had been found on Michael Menson's person and asked him whether Michael had been on medication or whether he had a mental health background.

Kwesi and Daniel Menson immediately went to Billericay Hopsital sometime around 3 a.m. They could not see Michael Menson at first because he was still receiving treatment for his burns. At about 11 a.m. they were allowed to see him briefly. He appeared alert and lucid and was able to answer their questions. Kwesi Menson asked his brother what had happened and Michael replied that he had been attacked by four white boys.

Michael Menson's explanation to his brother conflicted with the report given by the police officers and so Kwesi Menson telephoned Edmonton Police Station at approximately 11.30 a.m. on 28 January 1997. He spoke to a police officer and told her that Michael Menson had told him that he had been attacked by four white boys.

On the evening of 28 January 1997, Alex Menson telephoned the hospital and was able to speak to Michael. Once again, although in pain, he was lucid and able to tell his sister about his recollection of the incident. He

said that he remembered catching a bus in the wrong direction and that there had been four white boys on the bus, one of whom had been wearing a black leather jacket. He had got off the bus at the same stop as these white boys and followed them to ask for directions. He remembered that shortly after this he was leaning against something and then had felt something on his back. He then discovered that he was on fire and started to take his clothes off.

Following this conversation Alex Menson spoke to the ward sister at the hospital and a consultant treating Michael Menson and received confirmation that there were no contra-medical indications preventing Michael from being interviewed by the police. She also made requests to the police that they should come and interview Michael Menson about the attack.

Over the next 48 hours, Kwesi Menson again asked Michael Menson about what had happened. Michael Menson gave the same account. Kwesi Menson took notes on these occasions. Kwesi Menson had been asked to keep notes of these conversations by his sister, Alex Menson, because the police had resisted her requests to take a statement directly from Michael.

Kwesi Menson called the police on approximately three occasions from 28 to 29 January 1997 urging them to come to the hospital to take a statement from Michael. Alex Menson also called the police on repeated occasions over the same period requesting them: to take a statement from Michael; to go to the site of the incident; to take finger prints from the telephone box near to the place where Michael had been found; to interview local people; to put up an incident board requesting information; and to launch a media appeal for witnesses.

On 30 January 1997 Detective Inspector Williams came to the hospital, but he arrived at a time when Michael Menson was drowsy. Detective Inspector Williams decided not to take a statement from Michael Menson. Kwesi Menson gave a statement to Detective Inspector Williams summarising Michael's account of the incident. However, during this meeting Kwesi Menson became very concerned because Detective Inspector Williams did not appear to take a full or accurate record of what Kwesi Menson was saying.

During the period between 28 January to 3 February 1997 Michael Menson received surgical treatment almost every day. When he was not in a post-operative state and up until 31 January, he was lucid, sitting up, talking to his family, feeding himself, doing crosswords, chatting with hospital staff and taking telephone calls. This included a telephone conversation with Ezekial Adewale during which Michael repeated his account of the incident and the attack by four young white men which, he stated, had occurred near a telephone box in Edmonton.

Notwithstanding Michael's ability to make such statements to his family and friends, neither Detective Inspector Williams nor any other police officer took a statement from him at any stage.

3. The death of Michael Menson, the inquest and subsequent procedures

On 3 February 1997 Michael Menson had a cardiac arrest and fell into a coma until 13 February 1997, when he died.

On 26 February 1997 the inquest into Michael Menson's death before the Coroner's Court was opened. It was adjourned on a number of occasions. During this time the police reported to the Coroner on several occasions, but copies of these reports were not disclosed to Michael Menson's family.

In January 1998 an examination into the procedures and practices during the first stage of the investigation into Michael Menson's death was carried out by the Metropolitan Police Service ("MPS"). In March 1998 the results of this examination were produced. The family were informed that this examination confirmed some of the doubts that the enquiry was not handled as well as it could have been and that an Investigating Officer had been formally appointed to look into the matter. The examination was made available to the Coroner but was kept back from the family as being confidential.

4. The applicants' complaints to the Police Complaints Authority and follow-up

On 19 August 1998 the Menson family sent a letter of complaint to the Police Complaints Authority ("PCA") concerning the MPS's decision to withhold evidence from Michael Menson's family prior to the inquest.

On 25 August 1998 Deputy Assistant Commissioner Townsend of Area 3 of the MPS responded informing the family that the complaint did not fall within section 84 of the Police and Criminal Evidence Act 1984 and therefore would not be recorded as such. This letter went on to respond to points of concern expressed in the letter of complaint.

On 16 September 1998 a verdict of unlawful killing was returned by a jury at Hornsey Coroner's Court following a hearing lasting just over one week during which evidence had been given by a number of witnesses including fire experts on behalf of the MPS.

On 16 September 1998 Deputy Assistant Commissioner John Townsend issued a statement on behalf of the MPS regretting that for the first 12 hours after the attack on Michael Menson, the police treated it as a case of self-immolation.

On 25 September 1998 the family lodged a further letter of complaint with the PCA setting out the particulars of complaints in detail from the time that Michael Menson was discovered by the police in the early hours of

28 January 1997 until shortly after the inquest. The following criticism of the police's handling of the case was made in the letter of complaint:

1. There were major errors in the police investigation of Michael Menson's death, at the very outset of the case (and beyond) which substantially diminished the chances of detecting and prosecuting those responsible for Michael Menson's death.

2. There was a concerted effort by all key officers (from the officers first on the scene, to Deputy Assistant Commissioner level) to minimise and obscure these errors and deflect criticism from the police.

3. These imperatives led the police:

– to continue, beyond the first 12 hours of the investigation of Michael Menson's death, to fail diligently or promptly to investigate the death;

– to pressurise, abuse and mislead the Menson family about how Michael Menson met his death and the police investigation, with a view to affecting their ability properly to grieve and be represented at the inquest;

– improperly to influence the Coroner conducting the inquest and to seek to lead the jury to bring a verdict which was least embarrassing to the Metropolitan Police.

4. The police investigation into Michael Menson's death was affected by racism and the subsequent internal investigation into the quality of the investigation failed even to address this issue.

The PCA appointed the Chief Constable of the Cambridgeshire Constabulary to carry out an investigation into the family's complaint.

On 20 January 1999 the applicants were advised by Counsel that there were no reasonable grounds for advising the grant of legal aid to bring proceedings against the police in the light of the domestic law in respect of actions in negligence and claims of racial discrimination against the police.

On 15 February 1999 a Report of an Inquiry chaired by Sir William Macpherson of Cluny, a retired High Court Judge, was published into matters arising from the death of Stephen Lawrence, a black 18-year old youth who was murdered by a group of youths on 22 April 1993. The Inquiry investigating his death and its subsequent investigation by the MPS found that institutional racism existed both in the MPS and in other police services and institutions countrywide. The Inquiry found institutional racism primarily apparent in the actual investigation of Stephen Lawrence's murder, including the police treatment and approach to the victim, key

witnesses and the family of Stephen Lawrence and the "lack of urgency and commitment in some areas of the investigation".

5. The arrest, trial and conviction of Michael Menson's killers, and the on-going PCA enquiry

On 4 March 1999 the family of Michael Menson, with the assistance of campaigners, leafleted the area within which the suspects lived appealing for further information in respect of the murder.

On 9 March 1999 a suspect was arrested and later charged in connection with the death of Michael Menson. Two further suspects were arrested and later charged on 11 March 1999. Two of the accused (M.P. and C.C.) were committed for trial at the Central Criminal Court, London, for the murder of Michael Menson and conspiracy to pervert the course of justice. The third accused (H.A.) was committed to stand trial at the Central Criminal Court for conspiracy to pervert the course of justice. On 5 May 1999 another suspect (O.C.) was arrested in northern Cyprus and charged there on 5 August 1999 with the murder of Michael Menson.

On 15 June 1999 the applicants' solicitor wrote to the PCA asking that the PCA also investigate other areas of complaint including the failure of the pre-inquest investigating teams to co-operate fully with the Racial and Violent Crime Unit and the making of untrue and misleading press statements damaging to Michael Menson's family.

On 21 October 1999 the applicants' solicitor was informed that the PCA had felt it wise to delay any further investigation into the applicants' complaints pending the outcome of the criminal case against the accused in the English courts.

Further letters of complaints were addressed by the applicants' solicitors to the Director of the Task Force alleging a failure on the part of the Task Force to liaise or to communicate adequately with the Menson family in respect of the criminal proceedings against the accused including the trial taking place in northern Cyprus.

On 25 November 1999 a criminal court in northern Cyprus found O.C. guilty of the manslaughter of Michael Menson and sentenced him to fourteen years' imprisonment. By letter dated 23 December 2002, the applicants' lawyer informed the Registry that the accused's appeal had been rejected on 29 June 2001.

In December 1999 the Central Criminal Court in London found M.P. guilty of murder and sentenced him to life imprisonment. C.C. received a ten-year prison sentence for manslaughter. H.A. (and his co-accused) was convicted of perverting the course of justice in connection with the murder of Michael Menson and the subsequent investigation. All three accused received separate sentences on this count. According to the applicants' lawyer's letter of 23 December 2002, all of the accused's appeals were rejected although the sentence of one of them was reduced.

The applicants maintain that the evidence given in the trials against the accused revealed the inadequacy of the police investigation. The applicants listed twenty-two areas of concern in a letter addressed by their solicitor to the PCA on 22 June 2000, including: the unfounded belief of police officers following the attack on Michael Menson that he had tried to commit suicide; the failure to seal the scene of the crime resulting in a loss of evidence; the failure to record or act on Michael Menson's accounts to medical and nursing staff that other persons were responsible for what happened to him; the error of the police in recording the deceased's injuries as non-life-threatening; threats made to and harassment of members of the deceased's family by the police when, for example, they queried the police appeal for witnesses to come forward; assertions made by a police officer at the inquest that there was no evidence that others were involved in Michael Menson's death; and the conduct of the police with respect to the conduct of the inquest and the criminal trials.

The Menson family members made formal statements to the Cambridge Constabulary investigating the case on behalf of the PCA in support of these complaints, as well as the complaints set out in the letter dated 25 September 1998 from the applicants' solicitor.

On 8 February 2000 the PCA wrote to the applicants' solicitor reporting on the evidence collated to date. The letter stated among other things:

> "Carefully examining the first 12 hours will be fundamental to understanding what came later as it appears that once flawed explanations had entered the minds of police officers, to varying degrees it appears it remained present throughout the ensuing period up to, including and after the inquest. To what extent racial stereotyping of both Michael Menson and the Menson family took place and how this may have affected the investigation of his death will be an integral part of the investigation throughout. Similarly we will be examining whether there was an institutional failure by the Metropolitan Police to challenge with sufficient rigour the assumptions made at the start. This will include examining this issue up to and including Chief Officer levels if necessary."

On 22 April 2000 the PCA wrote to the applicants' solicitors stating, among other things:

> "There is now available a significant body of evidence containing new information about these events, which appears to provide support for the family's complaints from a number of independent directions ...."

On 13 September 2000 the applicants' solicitor received an anonymous statement dated 1 September from a member or ex-member of the MPS. This statement, purportedly made on behalf of certain unidentified "serving and retired members", contained serious allegations of misconduct by certain police officers involved in the investigation, including an allegation that one had lied to the Coroner during the inquest proceedings.

On 2 November 2000 the applicants' representatives were informed at a meeting that the PCA had begun to interview nine police officers under

caution but that only one had chosen to answer questions. A further difficulty was that certain key police officers had retired or were about to retire and could not be interviewed without their consent, and in any event not under caution. A report could not expected before November 2001 at the latest.

One key officer (S.) retired on at the beginning of 2001 and was therefore no longer subject to the police disciplinary code.

On 31 December 2002 the PCA informed the applicants' solicitors in writing that it had received the Investigating Officer's report and that the PCA was satisfied with the investigation which had been carried out into the applicants' complaints. A copy of the report (which was supported by 218 statements, 465 documents, 18 interviews with officers under investigation and 17 appendices) had been made available to the Crown Prosecution Service ("CPS"). The applicants' solicitors' were further informed that they would be notified if the CPS decided to bring criminal charges in the event of findings that any police officers had committed a criminal offence. The PCA's letter concluded:

> "I regret that there may be yet further delay while these next steps in dealing with your complaint are completed. The Authority will consider the disciplinary aspects of the case only after any criminal issues have been decided."

B. Relevant domestic law

1. Cause of action sounding in damages in respect of a person's death

a. Common Law

In England it is a rule of the common law that no one can recover damages in tort for the death of another (Baker v. Bolton (1808) 1 Camp. 493).

b. Statute

The Section 1 of the Fatal Accidents Act 1976 confers a right of action for a wrongful act causing death. Section 1(2) of that Act provides that an action may be brought for the benefit of the "dependants" of any deceased person against a person who wrongfully caused the death. If there is no dependency, there is no pecuniary loss to recover as damages. Bereavement damages (currently fixed at £7,500) are only available to parents of a child under the age of 18 (section1A(2)). Funeral expenses are recoverable (section 3(5)).

The statutory survival of causes of action enables recovery on behalf of the deceased's estate of damages for losses suffered by the deceased before

he died. This includes any non-pecuniary loss such as damages for any pain and suffering experienced between the infliction of injury and death.

2. Cause of action against the police in the tort of negligence or other torts

Domestic case-law on the liability of the police at the relevant time in civil law for acts or omissions in the investigation and suppression of criminal offences is summarised in the Court's *Osman v. the United Kingdom* judgment (*Reports of Judgments and Decisions* 1998-VIII).

3. Cause of action against the police in respect of racial discrimination

On 30 November 2000 the Race Relations (Amendment) Act received Royal Assent. The aim of this Act ("the 2000 Act") is to bring about changes to the Race Relations Act 1976 ("the 1976 Act") by allowing applicants to bring proceedings in respect of racially discriminatory acts by (among other public authorities) the police in carrying out their public duties of law enforcement and investigation, and to bring proceedings against the chief officers of police for acts of racial discrimination by police officers under their command. The 2000 Act has no retrospective effect.

Section 57 of the 1976 Act, as in force at the relevant time, provides that claimants should bring proceedings in the County Court. Section 68 (2) requires such proceedings to be brought within "the period of six months beginning when the act complained of was done". Complaints brought outside this period may not be considered out of time if, in all the circumstances of the case, the court considers that it is just and equitable to do so (s.68(6)).

Section 75 provides for the application of the provisions of the Act to persons holding statutory office as it applies to private persons. Therefore police constables are subject to its provisions.

A discrimination claim against the police in the conduct of its investigations may only be brought if it falls within the exhaustive provisions set out in the 1976 Act and, in particular, section 20, which deals with the provision of services to the public or a section of the public.

The Court of Appeal has held in the case of Farah -v- Commissioner of Police of the Metropolis [1997] 2 WLR 824 that only those parts of a police officer's duties involving assistance to or protection of members of the public amount to the provision of services to the public for the purposes of section 20(1) of the 1976 Act. According to the applicants, this greatly limits the scope of any claim under the 1976 Act against the police. In the applicants' conclusion, there is no provision in the 1976 Act that permits an action to be brought in respect of the police investigation of the attack on Michael Menson or confers any legal remedy in respect thereof.

COMPLAINTS

The applicants complain under Articles 2, 6 § 1, 8, 13 and 14 of the Convention in respect of Michael Menson's death.

Under Article 2, they maintain, among other things, that the authorities of the respondent Government failed to comply with their positive obligation to carry out a proper and comprehensive investigation into the unlawful killing of Michael Menson, or to treat the incident as an attack at all at first, notwithstanding that the MPS was or ought to have been aware that an attack had been carried out.

Under Article 6 § 1, the applicants complain that were denied effective access to court to bring civil proceedings both in connection with the death of Michael Menson and the negligent and racist handling of the investigation into his death. They also complain in respect of the same matters under Article 8 in their capacity as the family and next-of-kin of the deceased.

Under Article 13, they complain that they have been deprived of a proper and effective investigation into the criminal homicide of Michael Menson and that they do not have an effective remedy in national law enabling them to have an independent adjudication of their claim that the police did not do all that was required of them under Article 2 of the Convention to investigate properly the attack upon the life of Michael Menson, or to obtain redress either in respect of his death or the manner in which the investigation was conducted.

Under Article 14, the applicants complain that the MPS discriminated against them and their deceased sibling on the grounds of their race by failing to carry out a proper and comprehensive investigation into his murder, as required under Article 2.

THE LAW

1. The applicants complain of a breach of the positive obligation under Article 2 to ensure the conduct of an effective independent investigation into the unlawful killing of Michael Menson. Article 2 provides as relevant:

> "1. Everyone's right to life shall be protected by law. (...)"

The applicants point to the very many complaints which they lodged with the Police Complaints Authority ("PCA") about the inadequacy of the police investigation during the first twelve hours following the racist attack on Michael Menson. They further rely on the evidence of the procedural shortcomings in the police investigation which emerged from the evidence at the Coroner's Inquest and at the criminal trial of three of the accused at the Central Criminal Court. In brief, there was compelling evidence that

Michael Menson had been attacked. However, no statement was ever taken from him while he was in hospital although he was at times capable of (and willing to) give a statement. The police worked on the false assumption that he had set himself alight, with the result that, during the first twelve hours vital evidence, including forensic evidence, must have been lost or the opportunity to find it reduced. In addition, the first concentrated appeal for witnesses only took place one year after Michael Menson's death, despite the applicants' earlier requests to the police for local and/or media appeals for witnesses to come forward.

The applicants contend that the Metropolitan Police Service ("MPS") failed to treat the incident as a racially motivated crime notwithstanding the existence of clear evidence confirming this. In the applicants' submission, the police's initial approach to the crime and the manner in which the MPS conducted its own inquiry into the police investigation of the case confirmed the existence of institutionalised racism within the MPS.

The Court observes that the applicants have not laid any blame on the authorities of the respondent State for the actual death of Michael Menson; nor has it been suggested that the authorities knew or ought to have known that Michael Menson was at risk of physical violence at the hands of third parties and failed to take appropriate measures to safeguard him against that risk. The applicants' case is therefore to be distinguished from cases involving the alleged use of lethal force either by agents of the State or by private parties with their collusion (see, for example, *McCann and Others v. the United Kingdom,* judgment of 27 September 1995, Series A no. 324*; Hugh Jordan v. the United Kingdom*, no. 24746/94, judgment of 4 May 2001, ECHR 2001-III (extracts)*; Shanaghan v. the United Kingdom*, no. 37715/97, judgment of 4 May 2001, ECHR 2001-III (extracts), or in which the factual circumstances imposed an obligation on the authorities to protect an individual's life, for example where they have assumed responsibility for his welfare (see, for example, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, judgment of 14 March 2002, ECHR 2002-II), or where they knew or ought to have known that his life was at risk (see, for example, *Osman v. the United Kingdom,* judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII).

However, the absence of any direct State responsibility for the death of Michael Menson does not exclude the applicability of Article 2. It recalls that by requiring a State to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, judgment of 9 June 1998, *Reports* 1998-III, p. 1403, § 36), Article 2 § 1 imposes a duty on that State to secure the right to life by putting in place effective criminal law provisions to deter the commission of offences against the person, backed up by law enforcement machinery for the prevention, suppression and punishment of breaches of such provisions (see *Osman*, cited above, § 115).

With reference to the facts of the instant case, the Court considers that this obligation requires by implication that there should be some form of effective official investigation when there is reason to believe that an individual has sustained life-threatening injuries in suspicious circumstances. The investigation must be capable of establishing the cause of the injuries and the identification of those responsible with a view to their punishment. Where death results, as in Michael Menson's case, the investigation assumes even greater importance, having regard to the fact that the essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life (see *mutatis mutandis*, the *Paul and Audrey Edwards* judgment, above-cited, § 69).

The Court recalls that in its judgments in cases involving allegations that State agents were responsible for the death of an individual, it has qualified the scope of the above-mentioned obligation as one of means, not of result (see, for example, the *Shanaghan* judgment, cited above, § 90 and the judgments referred to therein). Thus, 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. 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.

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*, *Ilhan v. Turkey* [GC], no. 22277/93, ECHR 2000-VII, § 63). While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, 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 (see, for example, the *Hugh Jordan* judgment, cited above, §§ 108, 136-140).

Although there was no State involvement in the death of Michael Menson, the Court considers that the above-mentioned basic procedural requirements apply with equal force to the conduct of an investigation into a life-threatening attack on an individual regardless of whether or not death results. The Court would add that, where that attack is racially motivated, it is particularly important that the investigation is pursued with vigour and impartiality, having regard to the need to reassert continuously society's

condemnation of racism and to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence.

Against this background, the Court must have regard at the outset to the fact that the police investigation into the death of Michael Menson ultimately led to the identification and arrest of the culprits between March 1999 and May 1999. They were all convicted and received heavy prison sentences later that same year. It is also to be observed that a public inquest into the cause of Michael Menson's death was held shortly after he died and a Coroner's jury returned a verdict of unlawful killing in September 1998.

The Court cannot but note that the first findings of the official inquiry into the police's handling of the case in the early stages appear to be critical of the way in which certain officers of the MPS reacted to the attack on Michael Menson. Indeed, the evidence advanced before the Coroner's jury and at the trial of the accused clearly indicates that they were very serious defects in the handling of the attack on Michael Menson and which were entirely at odds with the requirements of an effective investigation as outlined above.

The applicants maintain that these defects have their basis in racism within the MPS, in particular the refusal of certain police officers to deal with an attack on a black victim with an open and independent mind as regards the cause of his injuries. However, it is not for the Court, in the context of Article 2 and in the circumstances of this case, to pronounce on these claims, including the applicants' allegations of an institutional cover-up of police misconduct and harassment of them at various stages of the investigation. It would make three points in this connection. In the first place, the legal system of the respondent State ably demonstrated, in the final analysis and with reasonable expedition, its capacity to enforce the criminal law against those who unlawfully took the life of another, irrespective of the victim's racial origin. For the Court, this must be considered decisive when deciding whether the authorities complied with their positive and procedural obligations under Article 2. Secondly, the inquiry into the applicants' complaints has not yet terminated. It appears from the communication of the PCA to the applicants' solicitor, dated 31 December 2002, that the report prepared by the Chief Constable of Cambridgeshire Constabulary into the applicants' complaints has been forwarded to the Crown Prosecution Service ("CPS") for consideration. Thirdly, although the applicants' stress the authorities' failure to secure the accountability of the police for the alleged discriminatory approach to the investigation, this is a matter which falls to be examined, if at all, under Article 6 of the Convention and, since they are close family members of the deceased, under Article 13. Article 2 is primarily concerned with the assessment of a Contracting State's compliance with its substantive and procedural obligations to protect the right to life. That Article does not

guarantee as such an applicant a right to a remedy in respect of any alleged defects occurring in the discharge of those obligations.

Having regard to the above considerations, the Court concludes that the applicants' complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

2. The applicants complain that they have been unable to secure access to a court to have an independent assessment of the police authorities negligent and racist conduct during the investigation of the death of Michael Menson. They rely on Article 6 of the Convention, which states as relevant:

> "In the determination of his civil rights and obligations .... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law..."

In the applicants' submission, the combined effect of the common law rules on negligence actions against the police and, in particular, the principle of immunity from suit, coupled with the exclusion at the relevant time of police investigations of crime from the definition of "services" within section 20 of the Race Relations Act 1976, is to deprive them of an independent judicial assessment of the extent to which the authorities complied with their positive obligation to carry out a proper and comprehensive investigation of Michael Menson's death. The applicants also highlight the fact that the decision to adopt the Race Relations (Amendment) Act in November 2000 confirmed the inadequacy of the Race Relations Act 1976 to secure redress for individuals who are discriminated against by the police on grounds of race. In addition, they maintain that the combined effect of the common law and statutory rules concerning death as a cause of action is to deny them their right of effective access to court to bring civil proceedings in respect of their brother's death.

As to the applicants' contention that the rule on police immunity prevented them from bringing a claim against the police, the Court observes that on 8 October 1998 the Committee of Ministers of the Council of Europe adopted Resolution DH (99)720 concerning the measures taken by the United Kingdom Government to comply with the Court's finding of breach of Article 6 of the Convention in the above-mentioned *Osman* judgment. In the appendix to that Resolution, the respondent Government stated, *inter alia*:

> "The government anticipates that the rule established by the Hill case will be applied with more circumspection in the future.
>
> (...) In addition, the judgment has been circulated to civil servants and, by means of a circular letter, to all Chief Officers of Police. The government notes that it is for the latter officers to decide, in any given case alleging negligence against the police in the conduct of their investigations, whether to seek to have such an action struck out on grounds of public policy immunity. The circular letter urges them, in the light of the Osman judgment, to exercise considerable caution before applying for a strike-out on

> these grounds. The circular letter also points out that a claim of immunity may require full consideration of the facts of the case so that the strike-out hearing will be virtually indistinguishable from a full hearing on the merits.
>
> Following these measures, the competent authorities will ensure in cases of alleged police negligence that all the material necessary will be put before the courts. The government further considers that the courts will not fail to take into account the European Court's judgment in the Osman case (...) so as not to confer automatically a total immunity on the police, but rather make a judgment on the proportionality of the immunity sought, considering all the circumstances of the case."

It would appear to the Court that, notwithstanding the advice which the applicants received from Counsel, this change of practice would have allowed the applicants to take a civil action against the police and to argue that, in the circumstances alleged, it was fair, just and reasonable to allow their claim to be decided on its merits. The applicants cannot maintain, therefore, that were prevented from having access to a court by reason of the existence of a doctrine of absolute police immunity in respect of acts and omissions in the investigation and suppression of criminal offences.

As regards the applicants' claim that they are unable to sue the police for their racially motivated behaviour during the investigation on account of the operation of the Race Relations Act 1976 ("the 1976 Act") and the non-retroactivity of the Race Relations (Amendment) Act 2000 ("the 2000 Act"), the Court is not entirely persuaded that the applicants can be excused from at least attempting an action under the 1976 Act at least against the individual police officers who, they alleged, acted in a racially discriminatory manner during the investigation. It would have been open to them to invite a court to broaden the scope of the Court of Appeal's 1997 judgment in the case of *Farah v. Commissioner of Police for the Metropolis* as regards the notion of "provision of services". It recalls in this connection that mere doubts about the prospects of success of an action do not in themselves suffice to displace the exhaustion rule contained in Article 35 § 1 of the Convention.

In any event, it observes that the alleged inability of the applicants to sue individual police officers and the Metropolitan Police Commissioner flowed not from an immunity from suit but from the applicable principles laid down in the 1976 Act governing the substantive right of action. If it is the case that Parliament intended at that time to exclude from the ambit of the 1976 Act the statutory liability of police officers for the behaviour alleged, it is not for the Court to create a right of action in their favour. It recalls that Article 6 § 1 extends only to *contestations* (disputes) over (civil) 'rights and obligations' which can be said, at least on arguable grounds, to be recognised under domestic law; Article 6 § 1 does not itself guarantee any particular content for (civil) 'rights and obligations' in the substantive law of the Contracting States (see, for example, *Z and Others v. the United Kingdom* and the case-law referred to therein, [GC], no. 29392/95, § 87,

ECHR 2001-V). The same reasoning must apply to their complaints concerning the combined effect of the existing common law and statutory rules concerning death as a cause of action.

The Court concludes, accordingly, that the applicants' complaints under Article 6 are manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

3. The applicants further maintain that the facts of their case disclose a breach of Article 8 of the Convention, which provides, so far as material:

> "Everyone has the right to respect for his (...) family life, (...)."

The applicants state that the lack of a right of access to court for the deceased's siblings to bring civil proceedings in connection with the deprivation of the life of their brother, Michael Menson, and the lack of any other independent investigative mechanism for their claim that the MPS handled the investigation of his death incompetently and in a racist manner, is a failure to respect their right to respect for family life.

The Court considers that the applicants' complaints under this head, assuming the applicability of Article 8, are a restatement of their case under Articles 2 and 6 of the Convention and do not require any separate examination.

4. The applicants complain of a breach of Article 13 in conjunction with Articles 2 and 8 in that they have had no proper and comprehensive investigation of Michael Menson's death and that they have no effective remedy in national law enabling them to have an independent adjudication of their claim that the MPS did not do all that was required of them to carry out the procedural obligation of a proper and comprehensive investigation into Michael Menson's death, or to enable the applicants to obtain redress in respect of his death. Article 13 provides, so far as material:

> "Everyone whose rights and freedoms as set forth in this 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."

The Court recalls that Article 13 applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention right (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52).

The Court has found above that the applicants' complaints under Articles 2, 6 and 8 are manifestly ill-founded. For similar reasons, the applicants did not have an "arguable claim" and Article 13 is therefore inapplicable to their case.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

5. The applicants complain of a breach of Article 14 in that their rights under Article 2 to a proper and effective investigation of their brother's

death have not been obtained due to the racially discriminatory way in which the MPS approached and carried out the investigation into their brother's death. Article 14 provides, so far as material:

> "The enjoyment of the rights and freedoms set forth in this 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 notional minority, property, birth or other status."

The applicants submit that the only reasonable inference from the facts in this case coupled with the findings of the Stephen Lawrence Inquiry was that the investigation into Michael Menson's death was infected by racial discrimination.

The Court reiterates at the outset that the applicants' complaints of police misconduct and racism during the investigation of the attack on Michael Menson are still under consideration. It further recalls that, even assuming the validity of these complaints, the obligations devolving on the authorities by virtue of Article 2 were in the final analysis fulfilled. The alleged discriminatory treatment to which they were subjected during a particular phase of the procedure did not ultimately affect the assurance of their or their deceased brother's rights under Article 2.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

T.L. EARLY
Deputy Registrar

J.-P. COSTA
President