

Osman v United Kingdom 1998

- Reported: [1998] ECHR 101
- Year: 1998
- Court: European Court of Human Rights
- Category: Negligence
- Read full case: [Here](#)

FACTS:-

The First Applicant was the widow of Mr Ali Osman who was shot dead by Paul Paget-Lewis on the 7th March 1988. The Second Applicant, Ahmet Osman was her son, who had been wounded in the same incident.

The case was based on a failure by the police to act on a series of clear warning signs that Mr Paget-Lewis represented a serious threat to the safety of Ahmet Osman and his family. In 1986 the headmaster of Ahmet's school had noticed that one of his teachers, Mr Paget-Lewis had developed an attachment to Ahmet. In January 1987, the mother of another child at the school complained to the school about Mr Paget-Lewis' attachment to her own son, Leslie Green.

There followed a series of incidents throughout 1987 and 1988.

The head teacher interviewed Mr Paget-Lewis, who admitted spreading false rumours about Ahmet's relationship with Leslie Green. He had also made threats against Ahmet Osman. As a result the Osman family requested a move to another school. The matter was reported to the police but it was decided to deal with the matter internally at the school.

Eventually Ahmet Osman was transferred to another school, but owing to curriculum difficulties, he had to return 14 days later. Mr Paget-Lewis then changed his name by deed poll to Paul Ahmet Yildirim Osman. The school wrote to the Inner London Education Authority, saying that Paget-Lewis should have been removed from the school as soon as possible. The matter was again reported to the police. It also came out that Mr Paget-Lewis had changed his name before from that of Ronald Potter to the name of a pupil called Paget-Lewis, whom he had taught at another school. The head teacher again wrote to ILEA saying that Paget-Lewis needed medical help.

Paget-Lewis was seen by a psychiatrist, who said that he did indeed give cause for concern. A brick was thrown through the window of the Osman house, and on two occasions, the tyres of Ali Osman's car were burst. Mr Paget-Lewis was designated unfit for work, at which point he left the school and he was later suspended. The mother of the other child, who had been harassed by Mr Paget-Lewis made a further complaint. The suspension of Mr Paget-Lewis was later lifted and he began working as a supply teacher at another school.

There was more criminal damage to the Osman house, in a series of incidents all of which were reported to the police. The police spoke to Mr Paget-Lewis but there was a dispute as to precisely what he said. A car in which the other boy, Leslie Green was

travelling was then rammed by Mr Paget-Lewis, who explained that it was an accident. The driver of the van told the police that Mr Paget-Lewis had told him that in a few months time, he would be serving a life sentence. The police took a detailed statement from Leslie Green and his family. Leslie Green said that he was frightened to go to school. The matter was further investigated by the police. ILEA interviewed Mr Paget-Smith who said that he was in a deeply self destructive mood. This was passed on to the police. In December 1987, the police then arrived at Mr Paget-Lewis' house with the intention of arresting him on suspicion of criminal damage.

In January 1988, Mr Paget-Lewis' name was put on to the Police National Computer as being wanted in relation to the collision incident and on suspicion of having committed offences of criminal damage.

In March 1988, Leslie Green saw Paget-Lewis wearing a black crash helmet near the Osman home. Finally on the 7th March 1988, Paget-Lewis shot and killed Ali Osman and seriously wounded Ahmet. He then drove to the home of Mr Perkins, the deputy head at Ahmet's school and seriously wounded Mr Perkins, as well as killing his son. He was later convicted of manslaughter and detained in a secure institution pursuant to Section 41 of the **Mental Health Act 1983**.

The Osman family commenced proceedings against the Commissioner of Police for the Metropolis. They also commenced proceedings against the psychiatrist who examined Paget-Lewis but later abandoned that action. The case against the police was struck out by the Court of appeal on the grounds that no action could lie against the police in negligence in the investigation and suppression of crime on the grounds that public policy required an immunity from suit. Leave to appeal to the House of Lords was refused.

JUDGMENT:-

The European Court of Human Rights (ECHR) went over the findings of fact by the European Commission of Human Rights. They also went over the relevant criminal law, murder and manslaughter and the procedure for investigating crime and apprehending suspected offenders.

The ECHR also considered caselaw. In **Dorset Yacht Co. Limited v The Home Office ([1970] Appeal Cases at p.1004)** the owners of a yacht damaged by Borstal boys, who had escaped from the supervision of prison officers, sought to sue the Home Office alleging negligence by the prison officers. The House of Lords held that in the particular case a duty of care could arise.

In **Hill v Chief Constable of West Yorkshire [1989] Appeal Cases at p 53** the House of Lords said that there was no duty of care owed to individual members of the public by the responsible authorities to prevent the escape of a known criminal or to recapture him. There were clear public policy objections to any such duty.

However in **Swinney v Chief Constable of Northumbria [1997] Queen's Bench Reports at p 464** the Court of Appeal allowed a claim where the identity of an informant had been

disclosed by mistake, leading to threats of violence against her. It was arguable that the police had assumed a responsibility of confidentiality towards the Claimant and the case should therefore proceed to trial.

The ECHR said that it was fair, just and reasonable that the law should impose a duty, there being no overwhelming dictate of public policy to exclude the prosecution of a claim against the police. On the one hand there was an important public interest that the police should be able to carry out their difficult duties to the best of their endeavours without being fettered by the spectre of litigation. On the other hand, good citizens should be able to entrust information to the police without also expecting that they are entrusting their safety to the police.

In **Kirkham v Chief Constable of Manchester [1989] 2 Queen's Bench Reports at p. 283** the Court of Appeal upheld a finding of liability in negligence under the Fatal Accidents Act 1976 where the police had taken a man into custody, knew that he was a suicide risk but did not communicate that information to the prison authorities.

In **Rigby v Chief Constable of Northamptonshire [1985] 2 All ER 986** the High Court found negligence against the police after they fired a gas canister into the Claimant's premises. In **Knightley v Johns [1982] 1 All ER 301** the police failed to close a tunnel following an accident, and ordered officers to go back through the tunnel thereby leading to a further accident. In **R v Dytham [1979] 1 Queen's Bench Reports at p. 722** a police officer stood by whilst a man died outside a club in a murderous assault. The Court of Appeal upheld the conviction of the officer for willful neglect to perform a duty.

The ECHR then turned to the alleged breaches of the Human Rights Convention:-

Alleged violation of Article 2 of the Convention

Article 2 stated:-

“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.”

The ECHR went over the arguments of both sides. It noted that there was never any independent judicial determination at the domestic level of the facts of the instant case. The first sentence of Article 2 enjoined the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives within its jurisdiction. Bearing in mind the difficulties involving in policing modern societies, the unpredictability of human conduct and the operational choices which had to be made in terms of priorities and resources, such an obligation must be interpreted in a way that did not impose an impossible or disproportionate burden on the authorities.

In the opinion of the court where there was an allegation that the authorities had violated their positive obligation to protect the right to life in the context of their above mentioned duty to prevent and suppress offences against the person, it had to be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take

measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. Gross negligence or willful disregard of the duty was not required.

However in the view of the court the Applicants had failed to point to any decisive stage in the sequence of the events leading up to the tragic shooting when it could be said that the police knew or ought to have known that the lives of the Osman family were at real and immediate risk from Paget-Lewis. The court concluded that there had been no violation of Article 2.

Alleged violation of Article 8 of the Convention

Article 8 of the Human Rights Convention stated:-

“Everyone has the right to respect for his private and family life, his home and his correspondence.”

The ECHR, referring to their findings of fact above, concluded that there was no breach of Article 2.

Alleged violation of Article 6 of the Convention

Article 6 of the Human Rights Convention stated:-

“In the determination of his civil rights and obligations....everyone is entitled to a.....hearing.....by [a].....tribunal.”

The issue here was the operation of the immunity rule for the police. The ECHR accepted the government’s contention that the rule did not automatically doom to failure such a civil action from the outset but in principle allowed a domestic court to make a considered assessment on the basis of the arguments before it as to whether a particular case was or was not suitable for the application of the rule.

Therefore Article 6.1 was applicable. The ECHR noted that the Applicants’ claim never fully proceeded to trial in that there was never any determination on its merits or on the facts on which it was based. The claim was struck out by the Court of Appeal, who assumed that the facts were as pleaded in the Particulars of Claim. Whilst the ECHR could understand that the aims of the immunity rules were legitimate, the Court had to have particular regard to its scope and especially its application in the case at issue. The ECHR observed that the application of the rule in this matter without further enquiry into the existence of competing public interest considerations only served to confer a blanket immunity on the police for their acts and omissions. This was an unjustifiable restriction on an applicant’s right to have a determination on the merits of his or her claim against the police in deserving cases.

The ECHR was not persuaded that the immunity rule as interpreted by the domestic court did not provide an automatic immunity to the police. Nor was it persuaded that the Applicants had alternative remedies to secure compensation, i.e. civil proceedings against Paget Lewis.

Alleged violation of Article 13 of the Convention

Article 13 stated:-

“Everyone whose rights and freedoms as set forth in [the] 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 said that having regard to its findings of a breach in Article 6, no separate issue arose on Article 13.

Damages

Each of the Applicants would be awarded £10,000 together with £30,000 by way of costs, less monies already advanced by way of legal aid by the Council of Europe. Interest would also be awarded on the judgement at the date of adoption at 7.5% per annum.