

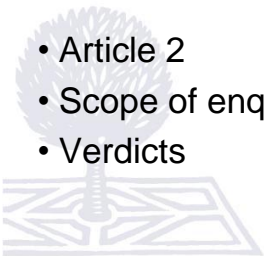


Inquests and public law - case law update Kate Stone

11th July 2013

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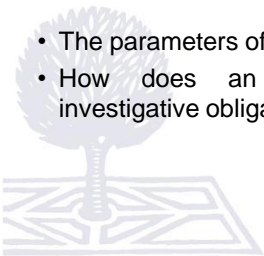
Themes



- Article 2
- Scope of enquiry
- Verdicts

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Article 2



- The parameters of the operational duty
- How does an inquest satisfy the investigative obligation?

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Article 2: the parameters of the operational duty



Rabone v Pennine Care NHS Trust [2012] UKSC 2

- Operational duty on the state to take reasonable steps to protect from a real and immediate risk of suicide those who are under the control of the state
- In most cases involving medical negligence no operational duty but there is an exception for psychiatric patients detained in hospital under the Mental Health Act 1983
- Could an operational duty be owed to a psychiatric patient who was not detained under the 1983 Act?

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Article 2: the parameters of the operational duty



Rabone and another v Pennine Care NHS Trust [2012] UKSC 2 (cont.)

- Relevant considerations were (i) whether there had been an assumption of responsibility by the state; (ii) the individual's vulnerability; (iii) the nature of the risk
- MR had been admitted to hospital because she was a suicide risk and vulnerable due to her mental state
- Although she was a voluntary patient the hospital had power to prevent her leaving should she have insisted on doing so
- The difference between her position and that of a detained psychiatric patient was one of form and not substance
- The Trust plainly owed her the operational duty

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Article 2: the parameters of the operational duty



R (Medihani) v HM Coroner for Inner South District of London [2012] EWHC 1104 (Admin)

- Arguable breach of operational duty where police on notice of threat to life of deceased
- Contrary decision by coroner was unreasonable
- Coroner's decision not to resume inquest following criminal proceedings unlawful
- Coroner's discretion circumscribed by requirements of Article 2

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Article 2: the parameters of the operational duty



R (Kent County Council) v HM Coroner for the County of Kent (North-West District) [2012] EWHC 2768 (Admin)

- In 'potential territory' of Art 2 operational duty where a child of 14 was known by social services to be at risk of harm
- However, no operational duty arose on the facts
- No real and immediate risk to life of which the authorities were or should have been aware
- Not proportionate to require local authority to exercise sufficient control over each 'child in need' for operational duty to arise
- Coroner's decision to hold Article 2 inquest quashed

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Article 2: the parameters of the operational duty



Worcestershire County Council and Worcestershire Safeguarding Children Board v HM Coroner for the County of Worcestershire [2013] EWHC 1711

- 'Distinct possibility' of Article 2 inquest based on apparent failures of state agencies in dealing with a child of 16 who had been in the case of the local authority.

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Article 2: how does an inquest satisfy the investigative obligation?



R (Lewis) v HM Coroner for Mid and North Division of County of Shropshire [2009] EWCA Civ 1403

- Power but no duty to take jury's verdict on matters which are potentially but not probably causative of death
- Relevance of Coroner's power to make rule 43 report

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Article 2: how does an inquest satisfy the investigative obligation?



R (Lepage) v HM Assistant Deputy Coroner for Inner South London [2012] EWHC 1485 (Admin) 30.05.12 (NB Chief Coroner)

- No duty on coroner to investigate possible as well as probable causes of death and to leave possible causes to the jury for consideration in their verdict
- No part of **Lewis** that in the absence of a Rule 43 report the power to investigate potentially causative matters becomes a duty

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Scope



- R (Sreedharan) v HM Coroner for the County of Greater Manchester and others [2013] EWCA Civ 181
- R (Kent County Council) v HM Coroner for the County of Kent (North-West District) [2012] EWHC 2768 (Admin)
- R (Duffy) v HM Deputy Coroner for County of Worcestershire [2013] EWHC 1654 (Admin)

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Verdicts



- R (Secretary of State for Justice) v HM Deputy Coroner for the Eastern District of West Yorkshire [2012] EWHC 1634 (Admin)
- R (Wilkinson) v HM Coroner for the Greater Manchester South District [2012] EWHC 2755 11.10.12
- R (Lagos) v HM Coroner for the City of London [2013] EWHC 423

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Hillsborough



- **Her Majesty's Attorney-General v Her Majesty's Coroner of South Yorkshire (West), Her Majesty's Coroner of West Yorkshire (West) [2012] EWHC 3783 (Admin)** – inquisitions quashed and new inquests ordered pursuant to application by Attorney-General under section 13 Coroners Act 1988
- New inquests listed to begin 31.03.14
- Article 2 inquests to be heard with jury

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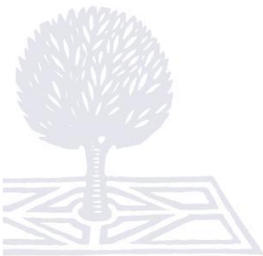
European Court of Human Rights



- **Mižigárová v Slovakia** (Articles 2, 3, 13, 14)
- **Eremiášová and Pechová v the Czech Republic** (Articles 2, 13)
- **Dordević v Croatia** (Articles 2, 3, 8, 14)

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