



## Court dismisses claim by alleged Omagh bombers that their trial was unfair

In its decision in the case of **McKevitt and Campbell v. the United Kingdom** (application no. 61474/12 and no.62780/12) the European Court of Human Rights has unanimously declared the applications inadmissible. The decision is final.

On the afternoon of 15 August 1998, a 500lb bomb killed 29 people (including a woman pregnant with twins) in the centre of Omagh, Northern Ireland, in what the court noted was the single worst atrocity of the Troubles. Though there has never been a criminal prosecution of those responsible, a civil claim was brought against some of the alleged perpetrators by many of the families that suffered as a result of the bomb. Mr McKevitt and Mr Campbell were among the defendants to the claim. The action was successful, and they were ordered to pay substantial damages.

Mr McKevitt and Mr Campbell complained to the Court that their trial had been unfair. In particular, they claimed that the first instance court should have applied a criminal rather than civil standard of proof, due to the severity of the allegations against them; and that the admission of the evidence of an FBI agent who had not been made available in court for questioning was unfair.

The Court dismissed the complaints. In regard to the claim that the judge should have applied a criminal standard of proof, the Court found that this was not necessary because the proceedings had been for a civil claim for damages; there had been no criminal charge. In regard to the evidence of the absent FBI agent, the Court found in particular that the judge had fully considered the need for appropriate safeguards given the witness' absence; that the defendants had had an adequate opportunity to challenge the agent's evidence with their own; and that the judge had had due regard to the appropriate considerations when deciding what weight he could attach to the evidence of an absent witness.

In light of this, the Court found that the national court's findings could not be said to have been arbitrary or unreasonable. The applicants had not demonstrated that their trial was unfair, and the Court dismissed their applications.

### Principal facts

The first applicant, Michael McKevitt, is an Irish national who was born in 1949 and is currently imprisoned in Portlaoise, Ireland. The second applicant, Liam Campbell, is an Irish national, who was born in 1962 and is currently detained in HMP Maghaberry in Northern Ireland.

On the afternoon of 15 August 1998, a 500lb bomb exploded in the centre of Omagh, Northern Ireland. Around half an hour before the blast, three different warning calls had been made about the device, which gave conflicting and misleading information about its location. The calls were later found to have been specifically designed to prevent the bomb from being found. The blast killed 29 people, including a woman pregnant with twins, and injured more than three hundred. It was the single worst atrocity of the Troubles.

Though responsibility for the explosion was claimed by the Real Irish Republican Army ("the Real IRA"), no individual has ever been convicted for causing the explosion, or the resulting deaths. However, many of the families that suffered as a result of the bomb brought a civil action against those who they believed were responsible; claiming damages for trespass to the person, intentional infliction of harm, and conspiracy to injure. The defendants in this action included the two applicants, Mr McKevitt and Mr Campbell.

At the first instance hearing, Mr McKeivitt chose not to give any evidence, and Mr Campbell did not attend at all. The court found in the plaintiffs' favour, and ordered the applicants to pay substantial damages.

The principal witness for the plaintiffs was an FBI agent who had infiltrated dissident Republican terrorist groups. However, the FBI had refused to make the agent available to appear as a witness, allegedly due to a threat to his security and a medical condition. Therefore, though the agent did not attend the trial and could not be cross-examined, important material (including transcripts of evidence he had given in previous criminal trials and email traffic between him and his handlers), was admitted in evidence at trial.

The applicants appealed the judgment. Their complaints included the argument that the court should have applied a criminal rather than civil standard of proof due to the severity of the allegations; and also that the admission of the evidence given by the FBI agent was unfair, particularly given that the applicants had not had an opportunity to question him in court.

However, the appeal was dismissed by the Court of Appeal on 7 July 2011. The applicants were refused permission to appeal to the Supreme Court on 27 July 2012.

## Complaints, procedure and composition of the Court

The applications were lodged with the European Court of Human Rights on 18 September 2012.

Relying on Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses) of the European Convention on Human Rights, the applicants complained that they had not been given a fair hearing. Claiming that the proceedings against them had been fundamentally criminal in nature, they maintained that they had not been given the procedural protections necessary in criminal prosecutions. In the alternative, if the proceedings had indeed been of a civil nature, they argued that the use of hearsay evidence had violated their right to a fair trial.

The decision was given by a Chamber of seven, composed as follows:

Mirjana **Lazarova Trajkovska** ("the Former Yugoslav Republic of Macedonia"), *President*,  
Ledi **Bianku** (Albania),  
Linos-Alexandre **Sicilianos** (Greece),  
Paul **Mahoney** (United Kingdom),  
Aleš **Pejchal** (the Czech Republic),  
Robert **Spano** (Iceland),  
Pauliine **Koskelo** (Finland), *Judges*,

and also Renata **Degener**, *Deputy Section Registrar*.

## Decision of the Court

### [Article 6 § 3\(d\)](#)

Article 6 § 3(d) requires that defendants charged with a criminal offence have the right to examine witnesses who provide evidence against them. The applicants argued that, though the claim against them had been nominally a civil one, due to the severity of the allegations it had effectively involved the determination of a "criminal charge". Consequently, they argued that they should have been afforded the same right to question the FBI agent as they would have had in criminal proceedings, and that the court should also have applied a criminal standard of proof. The Government contested this on the grounds that the proceedings had not been criminal: noting that the claim had been

brought by private individuals and not the State; there had been no “offence” under consideration; and that the proceedings had had no penal consequences.

The Court ruled in favour of the Government, finding that the claim had been a civil one, and that the applicants’ complaint that different procedures should have been followed should be rejected.

### Article 6 § 1

The applicants maintained that, even if the claim against them had in fact been a civil one, it was still the case that the admission of the evidence of the FBI agent had breached their right to a fair trial. They maintained that there had been no good reason for the witness’ absence, the evidence the witness had provided was demonstrably unreliable, and they had been given no proper opportunity to challenge it.

The Court rejected those arguments, finding that adequate safeguards had been applied in order for the hearsay evidence to be adduced at trial. In particular, the judge had fully considered the need for safeguards in order for the applicants to have had a fair trial; the applicants had been given an adequate opportunity to challenge the informant’s credibility, both through investigations before the trial and in evidence during proceedings; and the judge had had due regard to the appropriate considerations when deciding what weight he could attach to the evidence, given the witness’ absence. Moreover, the applicants had had an opportunity to challenge the decision on appeal, and the appeal court had found that the judge had been justified in reaching his conclusion.

In light of this, the court found that the applicants had not demonstrated that their trial was unfair. It therefore dismissed the applicants’ complaint, ruling that it was manifestly ill-founded and inadmissible.

*The decision is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.