

## **O'NEILL AND LAUHLAN v. THE UNITED KINGDOM**

*(Applications nos. 41516/10 and 75702/13)*

**This week the ECHR ruled that Scottish prosecutors took too long to bring two killers to justice.**

Charles O'Neill and William Lauchlan first appeared on petition over Allison McGarrigle's murder in 2005 but the legal process did not end until 2014. Judges in Strasbourg ruled that the nine-year proceedings breached the pair's right to a fair hearing.

In 2010, at the High Court in Glasgow, following a four week trial before Lord Pentland, both men were jailed for life by over Ms McGarrigle's murder, with O'Neill being ordered to serve at least 30 years while Lauchlan received a minimum of 26 years.

The pair appealed against their convictions and sentences, with the final appeal being dismissed in 2014.

Here is a summary of the judgment of the ECHR

### **Admissibility**

- The Court rejected the UK Government's argument that O'Neill had failed to exhaust domestic remedies since at the time of lodging the ECHR application his application for permission to appeal against his conviction and sentence was pending. The determining factor seemed to be the desire that he should not suffer a procedural injustice because of the manner in which the Court had dealt with his application. Almost 6 years had passed since he had lodged his application with the Court and if it had been rejected in the earlier stages of these proceedings he would have had time to submit a fresh application whereas rejecting it now would deprive him of that possibility through no fault of his own since it would be time-barred. The Court also rejected the UK Government's argument that the complaint was manifestly ill-founded. It, therefore, declared the applications admissible.

### **Merits**

- The Court reiterated that the period to be taken into consideration must be determined autonomously. In criminal matters the "reasonable time" referred to in Article 6(1) begins to run as soon as the person is "charged" and covers the whole proceedings in question, including appeal proceedings. While it was common

ground that the proceedings ended on 27 March 2014 for O'Neill and 19 June 2014 for Lauchlan, there was a dispute about the starting date for calculating the length of the proceedings. The Court, however, did not consider it necessary to resolve that disputed issue. Even taking the Government's argument that it was 5 April 2005, the Court was satisfied that the resulting overall length of the criminal proceedings could not be regarded as compatible with the requirement of a "trial within a reasonable time" under Article 6(1). A finding that they started earlier would not have materially affected the Court's overall conclusion since the lapse of time between September 1998 and April 2005 was not the result of a lack of diligence on the part of the authorities. The Court had, therefore, proceeded on the basis of a start date of 5 April 2005 i.e. almost 9 years for O'Neill and just over 9 years and 2 months for Lauchlan.

The reasonableness of the length of proceedings must be assessed in the light of the circumstance of the case which called for an overall assessment and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the conduct of the relevant authorities. Prosecution for serious crimes such as murder, even some years after their commission, on the basis of progressively assembled or freshly discovered evidence did not in itself raise an issue in relation to the obligation to ensure a trial within a reasonable time but, depending on the circumstances, a significant lapse in time could bring with it a need for heightened diligence in the conduct of the ensuing proceedings. In this case (serious criminal offences attracting a weighty sentence) the Court accepted that what was at stake was significant.

The long duration of the proceedings called for convincing justification by the Government. The Court had to give careful scrutiny to whether the necessary diligence had been given when conducting the criminal proceedings against the applicants. The Court acknowledged: the undoubted complexity; the difficulties faced by the prosecution; that the police were conducting a difficult exercise of building up an evidential case; that the delay in going ahead with the prosecution was not because of negligence but because of a careful and reasoned analysis that resulted in a decision not to prosecute until there was a sufficiency of evidence; that the applicants had lodged a number of motions designed to prevent the trial from taking place; that the many successive motions and appeals had an inevitable delaying effect; that there was no identified undue delay on the part of the Scottish prosecuting or judicial authorities; that the trial stage was not in itself over-long and disclosed no unwarranted delay; and that the ancillary appeals had an unavoidable delaying effect.

The Court also noted, however, that the four year length of the appeals period appeared to be long for an appeal against conviction and sentence and took the view that what was determinative was whether the overall length of proceedings, taken as

a whole, could be regarded as excessive. Here, although there were no specific incidents of outright dilatoriness attributable to the prosecuting and judicial authorities, there were certain stages which were protracted - most notably the 4 year appeal period. Although the applicants' own actions had greatly contributed to that delay, in view of the need for diligence triggered by the significant lapses in time between the commission of the offence and the laying of charges, and between the laying of charges and the convictions becoming final, the Court considered that the overall length of proceedings (almost 9 years and 9 years and 2 months respectively) was excessive and failed to meet the reasonable-time requirement. There was accordingly a breach of Article 6(1).

The Court rejected the applicants' complaint about the alleged unfairness of their trial following the delay as manifestly ill-founded.

### **Just Satisfaction**

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The Court rejected O'Neill's claim for £333,900 in respect of pecuniary damage and the claim from both applicants for £10000 in respect of non-pecuniary damage. There was no causal link between the violation found and the pecuniary damage alleged. The violation found was not owing to culpable dilatoriness on the part of the prosecuting or judicial authorities but because, when viewed as a whole, the length of proceedings was excessive. During that period the applicants had engaged in the exercise of multiple avenues of recourse aimed at preventing their trial. In these special circumstances the Court considered that a finding of a violation of Article 6(1) in itself constituted adequate just satisfaction for the purposes of Article 41 in respect of any non-pecuniary prejudice sustained.

### **Costs and Expenses**

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The Court awarded 4500 costs and expenses to O'Neill but rejected Lauchlan's claim for £10000 costs on the basis that they had failed to itemise the figure claimed.