



ECHR finds inadmissible complaint brought by convicted paedophile about his trial

In its decision in the case of **O'Neill v. the United Kingdom** (application no. 14541/15) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned Charles Bernard O'Neill, who was convicted in 2010 of murder and several sexual assaults against vulnerable boys. He complained that the part of his trial which related to the sexual offences against children had not respected his right to be presumed innocent.

The Court found that the language used by the trial judge to direct the jury had not undermined Mr O'Neill's acquittal of one of the charges of sexual assault. Similarly, in pointing out that there had been a procedural error in his acquittal, the Appeal Court had neither suggested that he had been guilty of the crimes of which he had been acquitted, nor voiced any suspicions in that regard. In coming to those conclusions, the Court considered it relevant that the "acquittal" on one of the charges had been based on a lack of jurisdiction, as opposed to being a true acquittal "on the merits".

Principal facts

The applicant, Charles Bernard O'Neill, is a British national who was born in 1962 and is currently serving a prison sentence at HMP Saughton, Edinburgh (United Kingdom), for murder and a series of sexual offences against children.

He was indicted in 2008 on a number of serious charges, including murder and four sexual assaults against vulnerable boys.

At the trial, which took place in Scotland in 2010, he was acquitted of one of the charges of sexual assault. The acquittal was made on the sole basis that the court did not have jurisdiction to determine the matter as the victim's evidence at trial had only referred to acts which took place in England. Following the acquittal, the trial judge permitted the jury to use evidence in respect of this charge as corroboration for the other charges. The jury convicted Mr O'Neill of the three remaining charges. He was sentenced to three ten-year sentences to run concurrently with the life sentence for the murder charge.

Mr O'Neill appealed against his conviction, arguing that the trial judge had erred in directing the jury to use the evidence which formed the basis of the charge of which he had been acquitted in order to corroborate the other charges.

His appeal was dismissed in 2014. The Court of Appeal pointed out that, although there had been a procedural error at his trial (the trial court had not had the competence to acquit him), his acquittal on one of the charges still stood. It nevertheless found that the evidence of indecent assault and sodomy in England remained available to provide corroboration for the other charges in the indictment and that the trial judge's directions could not be faulted.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 13 March 2015.

Relying on Article 6 § 2 (presumption of innocence), Mr O'Neill complained of a breach of his right to be presumed innocent in his case. First of all, despite his acquittal on one of the charges, the trial

judge had permitted the jury to use evidence in respect of that charge as corroboration for other charges on the indictment; and, secondly the Appeal Court had subsequently found that the decision to acquit him of that charge had been in error.

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

Linos-Alexandre **Sicilianos** (Greece), *President*,
Ksenija **Turković** (Croatia),
Krzysztof **Wojtyczek** (Poland),
Armen **Harutyunyan** (Armenia),
Pauliine **Koskelo** (Finland),
Tim **Eicke** (the United Kingdom),
Gilberto **Felici** (San Marino),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

First, the Court noted that there was no single approach to ascertaining the circumstances in which the presumption of innocence would be violated in proceedings which followed the conclusion of criminal proceedings. Much depended on the nature and context of the proceedings, and in particular on the language used by the decision-maker.

In the applicant's case, the Court found that the language used by the trial judge had not undermined his acquittal of one of the charges of sexual assault. In directing the jury he had made it clear that an accused person was presumed innocent of any charge against him and that, in deciding what evidence could be used to corroborate the offences charged, it had been for them to decide first, if the evidence of the victims had been reliable and credible; and secondly, whether the crimes alleged had been sufficiently close in time, character and circumstance for them to be mutually corroborative.

Moreover, all of Mr O'Neill's defence rights had been observed throughout the trial, and domestic law was clear that even after an acquittal the evidence remained available to prove the remaining charges.

The Court therefore rejected as inadmissible the applicant's complaint concerning the trial judge having permitted the jury to use evidence in respect of the charge of which he had been acquitted as corroboration for other charges on the indictment.

It also rejected as inadmissible his complaint concerning the statements made by the Appeal Court on his acquittal. In pointing out that there had been a procedural error, the Appeal Court had neither suggested that the applicant had been guilty of the crimes of which he had been acquitted, nor voiced any suspicions in that regard.

As concerned both complaints about a breach of his right to be presumed innocent, the Court considered it relevant that the "acquittal" had been based on a lack of jurisdiction, as opposed to being a true acquittal "on the merits".

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.