



Complaint concerning alleged police entrapment declared inadmissible

The case of **Mills v. Ireland** (application no. 50468/16) concerned the applicant's complaint that his conviction for selling drugs was unfair as it was based on evidence obtained by police entrapment.

In its decision in the case the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The Court concluded that the role of the police in the case had been essentially passive and that their conduct had not crossed the line to become entrapment or incitement to commit an offence. Moreover, the course of the domestic proceedings had demonstrated that, had Mr Mills succeeded in demonstrating that he had been entrapped, the evidence against him would have been deemed inadmissible.

At the same time, the Court underlined that – as highlighted by the Irish courts in Mr Mills' case – there was a need for some sort of formal procedure in domestic law regulating undercover operations by the police.

Principal facts

The applicant, Robert Mills, is an Irish national, who was born in 1990 and lives in Dublin.

In June 2013 Mr Mills was arrested following a drugs test purchase exercise conducted in Dublin to identify individuals engaged in the sale and supply of illicit drugs. The exercise began on 28 March 2013, when two officers of the National Drug Unit, working undercover, randomly approached two young men and asked if there was "any weed around". One of the young men made a telephone call, and a few minutes later a car arrived in which Mr Mills was a passenger. He sold one of the officers a 25-euro sachet of cannabis. At the officer's request, Mr Mills gave him a mobile phone number for future contact. On the following day, the officer contacted him by telephone. Shortly afterwards they met and Mr Mills sold him another sachet of the drug. He advised the officer to buy a larger quantity the next time. The third and final purchase took place a few days later, following the same pattern and involving 50 euros' worth of the drug.

Following his arrest and questioning by the police, Mr Mills was charged under the Misuse of Drugs Act. His counsel applied to have the police evidence excluded on the ground that the applicant had been entrapped by the undercover officers. Following a legal argument on the admissibility of the evidence heard over two days in the absence of the jury (*voir dire*) during which the police witnesses were cross-examined the trial judge refused to exclude the evidence. Mr Mills then changed his plea to guilty and he was sentenced to two years' imprisonment on each count, suspended for two years.

The Court of Appeal dismissed his appeal in December 2015. It made extensive reference to the relevant case-law of the European Court of Human Rights and noted that Ireland was the only country in a comparative survey covering 22 Member States that lacked a formal regulatory basis for the use of undercover police. While it considered that situation to be unsatisfactory, the Court of Appeal nevertheless concluded that there had been no infringement of Article 6 of the European Convention on Human Rights in the circumstances of the case and that the trial judge had been correct in deciding to admit the evidence. The Court of Appeal noted in particular that: the undercover officers who had participated in the exercise had been adequately trained and advised as to their conduct; the defendant had been provided with no more than an unexceptional opportunity to commit a crime and it appeared that he would have behaved in the same way if the

same opportunity had been offered by anyone else; and he had not been incited, persuaded or pressured into committing a crime. The Supreme Court refused leave to appeal in June 2016.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 18 August 2016.

Relying on Article 6 § 1 (right to a fair trial), Mr Mills complained that the refusal of the domestic courts to exclude the evidence against him arising out of the test purchase meant that he had not received a fair trial.

The decision was given by a Committee of three judges, composed as follows:

Nona Tsotsoria (Georgia), *President*,
 Síofra O’Leary (Ireland),
 Lətif Hüseynov (Azerbaijan), *Judges*,

and also Anne-Marie Dougin, *Acting Deputy Section Registrar*.

Decision of the Court

The Court observed that – as already noted by the domestic courts in Mr Mills’ case – there had been no formal system for authorising and supervising undercover police operations in Ireland at the time. The Court agreed with the domestic courts’ criticism of the lack of such a formal procedure. The line between legitimate infiltration by an undercover agent and instigation of a crime was more likely to be crossed if no clear and foreseeable procedure for authorising such operations was in place.

However, the Court did not consider that the lack of such a formal procedure meant that the undercover operation in the instant case had been carried out without safeguards. In particular, it had taken place within the framework of a broader operation authorised at the highest level of the police; the officers participating in the exercise had been specifically instructed, including on the issue of entrapment; and the police witnesses had been cross-examined in detail in court by the applicant’s counsel about the conduct of the test purchase.

Moreover, having regard to the facts of the case – established in detail by the domestic courts and as such uncontested by Mr Mills – the Court noted that the initial approach had been an indirect one. The officers’ interest in purchasing a small amount of drugs had been transmitted to him by a third party approached at random. The fact that that person was able to immediately contact Mr Mills suggested that he was known in the area to be involved in drug dealing. Nothing in the interaction between him and the officers indicated that there had been any pressure exerted on him by the police. In particular, he had arrived on the scene within minutes, ready to make a small sale to a person completely unknown to him; and the other two sales were made with the same speed and ease as the first one. The domestic courts had considered that he would have behaved in the same way had he been offered the same opportunity to sell drugs by anyone else. The Court agreed and concluded that the role of the police in the case had been essentially passive and that their conduct had not crossed the line to become entrapment or incitement to commit an offence.

Furthermore, the Court considered that the course of the domestic proceedings had demonstrated that, had Mr Mills succeeded in demonstrating that he had been entrapped, the evidence against him would have been deemed inadmissible. The procedure followed by the trial judge had met the relevant criteria deriving from the Court’s case-law, having been adversarial, thorough and comprehensive.

The Court nevertheless underlined that – as it had previously found and as had been highlighted by the Court of Appeal in Mr Mills’ case – there was a need in Ireland for a formal procedure in domestic law regulating undercover operations by the police.

It followed from the Court’s considerations that the application was manifestly ill-founded and had to be rejected in accordance with Article 35 of the Convention (admissibility criteria). The Court therefore declared the application 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.