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NEWSLETTER

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OPINION

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Austen Morgan

The UK has slapped down Troubles lawfare against the security forces



On 7 May 2026, the supreme court allowed the secretary of state's appeal in a case called Dillon, inflicting a major defeat on the clamorous legacy practitioners – the academics, NGOs and five law firms who engage in lawfare against the UK state.

The ruling also possibly ended the provincial activism of the Northern Ireland judiciary, which has indulged this legal onslaught.

Some 3,750 people died in the troubles (1968-98), 60 per cent at the hands of republican terrorists, 30 per cent at the hands of loyalist terrorists, and ten per cent in state killings. All the terrorist killings were unlawful but most of the state killings, involving force which was no more than absolutely necessary, were lawful. But that is not how history is being written, by his majesty's judges in the Royal Courts of Justice in Belfast. There, the focus is on state killings. This is lawfare. Applicants have included innocent Catholics, with families seeking to clear their names – as in Ballymurphy.

But there are now cases involving the IRA. For example, the daughter of Tony Doris, a member of the East Tyrone brigade of the IRA, who had been the driver of a IRA car in Cosh targeting a soldier, argued – unsuccessfully – that his human rights had been violated because he had been unarmed when killed. Increasingly, the IRA fights through the courts.

This litigation started in May 2001, when the European Court of Human Rights at Strasbourg decided four cases known as McKerr. The court held that troubles deaths had to be effectively investigated, and families involved. And this three years after the 1998 Belfast agreement, when the United Kingdom – in its pragmatic way – had settled all matters seemingly.

Utter it not, but I suspect that Strasbourg thought the UK state was responsible for most of the deaths (no lawyers, including for the state, telling them otherwise). These continental judges (largely academics and justice officials) have not sought to hold the IRA to article 17 of the convention (prohibition of abuse of rights) in the twenty-first century.



The supreme court overruled NI courts in Dillon. Legacy practitioners had cited 1998 deal

Republicans only gain from human rights; never lose.

The McKerr cases started the 'not article 2 compliant' mantra of the past 25 years, chanted religiously by unthinking police, ideological academics, quangoes, alternative justice bureaucrats and NGO activists. This is used to mean the UK falling foul of the article 2 of the convention, which protects right to life (the claim is that the UK state did not do enough to protect life).

We can now see that the House of Lords, and then the supreme court, sought to get away from the intervention of Strasbourg judges, in an alternative line of troubles cases: McKerr (2004); followed by McCaughey (2012); Keyu (2015); and Finucane (2019); and then McQuillan (2023); Dalton (2023) Maguire (2025); and now Dillon (2026) – the outcome of the four letter cases being a winning streak for legality and decency, by limiting lawfare.

The supreme court held in McQuillan regarding the Human Rights Act 1998: 'The general presumption is that a statute which creates rights and obligations does not have retrospective effect. This reflects values of fairness, legal certainty and the rule of law. It is desirable that people, including public officials and public authorities, should be able to determine their legal rights and obligations at the time of acting or omitting to act. It is generally unfair to treat people as subject to obligations of which they were not on notice at

Terrorists did 90% of the killing, but legacy focuses on the 10% of killings by the state

the time.'

In other words, we do not do retrospective legislation in the UK, even – especially – when the human rights court so insists. But we, in the UK supreme court, find it difficult to criticise the Strasbourg court. The Human Rights Act 1998 did not enter into force until 12 October 2000 – after the troubles and the Belfast agreement.

In Dalton, the supreme court held that article 2 did not apply to troubles deaths before 2 October 1998 (much of the killing preceding this date). It thereby created two classes of troubles victims, those who could not access article 2 to assist the investigation into the death of their loved one and those who could still do so.

UK judges, however, were accepting a ten-year rule of Strasbourg's that was unlawful in going back at all, which the former Northern Ireland lord chief justice Lord Kerr made even worse by increasing it to twelve years, in order to get Patrick Finucane – killed 12 February 1989 – included among the victims who

would get an investigation.

The law needs to be restored to 2 October 2000, in the UK supreme court if not in Strasbourg, and section 2 of the Human Rights Act 1998 should help with that.

At some point, the judiciary in NI became provincially activist. That relates principally to cases brought by the legacy practitioners. The cutting edge of this judicial activism was a desire to respond to the victims and families (in state killings only). Thus began the show trials against the UK state, where the process became the punishment.

This was regardless of how the executive and legislative branches of government, in London and Belfast, were doing on legacy...which was not very well.

In substituting itself for the executive and legislature, I submit that the judiciary acted, not only unlawfully, but also unconstitutionally. Brexit, where NI left the European Union as part of the UK, nevertheless saw some European law continue to apply in the province. This became the basis of a major lawfare offensive (the Dillon troubles case, which opened up, a new apparently EU-aided front against the UK state), based on article 2 (separate article 2) of the Northern Ireland protocol of October 2019 (rights of individuals).

The Irish had played the Belfast agreement card politically in the post 2016 EU negotiations, Michel Barnier's people in Brussels had adopted it, and the UK had failed to argue legally that the Belfast agreement did not require to be mentioned in the UK/EU withdrawal agreement.

The supreme court overruled the NI courts in Dillon, with considerable ease. The legacy practitioners had relied upon three paragraphs in the Belfast agreement, which were obviously political and not legal.

The justices in the supreme court – applying EU law – said these three paragraphs had no 'direct effect' (that is, were not available to the applicants), because they did not meet the EU legal test of a clear and precise obligation. I thought it inevitable that the applicants would lose. The interveners in Dillon – sup-

The judiciary in NI became activist on behalf of victims – in state killings only

porting the applicants against the secretary of state – included: the police ombudsman; Stormont's department of justice; the human rights commission; the equality commission; and Amnesty International (UK). These are all public bodies (save the latter), which deserve to be held to account for their activism at public expense.

The other interveners were the NI veterans movement, represented by Lord Wolfson KC, the shadow attorney general. Faced with the Labour government having abandoned the original human rights appeal, he advanced legacy law without going near article 2 of the NI protocol – on which all the rest were banking.

The supreme court – putting paid finally to the Queen's University professors – noted of the intervention: 'Our conclusion, in summary, is that the (Strasbourg) cases leave open the possibility that there may be circumstances in which the Strasbourg court could recognise an exception to the general rule that breaches of articles 2 and 3 (inhuman or degrading treatment) of the Convention should be prosecuted but that it has not done so to date.'

The NI veterans have put the international law of amnesty on the table. With the UK, to say nothing of the Irish state, fully behind the concessions achieved by republicans (only some of which apply to loyalists), can the veterans movement across the UK and commonwealth finally secure the drawing of a line, in its own interests, which will benefit all in time, save for the legacy practitioners – the five law firms, six NGOs and seven (mainly Queen's) professors who seem to thrive ideologically on this litigation?

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