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INQUESTS IN NORTHERN IRELAND
The McKerr Case

On 8 March 1990 the House of Lords in a unanimous verdict upheld an appeal by the British government against a ruling of the Northern Ireland High Court that compelled members of the security forces involved in killings to give evidence at inquests. Their decision has implications for a total of 24 controversial deaths involving the security forces, some dating back to 1982, which have not yet come to inquest. The decision has been condemned by Séamus Mallon as "possibly the worst judicial decision that has been made in the past 20 years".

Background

The shooting dead of three unarmed members of the IRA, Sean Burns, Gervaise McKerr and Eugene Toman, near Lurgan Co. Armagh on 11 November 1982 was the first of three incidents at the end of that year which gave rise to suspicions of an RUC shoot-to-kill policy, and evidence of a subsequent cover-up by the police was to lead ultimately to the Stalker/Sampson Inquiry. (The other two incidents were the shooting dead of 17-year-old Michael Justin Tighe and of INLA members Roderick Carroll and Seamus Grew). The comments of Lord Justice Gibson when acquitting three RUC officers on charges of murder in the case provoked considerable controversy at the time when he praised their courage and determination in "bringing the three deceased men to justice, in this case, the final court of justice."

Controversy continued to surround the case when in 1984 the then Armagh coroner, Gerry Curran, adjourned the inquests into the deaths both of Grew and Carroll and Burns, McKerr and Toman, because of "unexplained delays by the Director of Public Prosecutions" and subsequently resigned citing "grave irregularities" in police evidence. He was replaced as Armagh coroner by his deputy, James Rogers, who subsequently withdrew from presiding over the inquests on the grounds of "professional commitments". The Fermanagh and Omagh coroner, Rainey Hanna, was appointed in his stead but owing to ill health was replaced in February 1988 by James Elliot, the Belast Coroner. The inquest into the deaths of the three men finally opened in Craigavon on 14 November 1988, six years after the killings and over four years after the acquittal of the three policemen accused of their murder.

Inquests - the legal position

Inquests in Northern Ireland are governed by the Coroners Act (Northern Ireland) 1959 and the Coroners Rules (NI) drawn up under Section 36(1)(B) of the Act and differ in three important respects from procedures in Britain. First, unlike the position in England and Wales (or for that matter Gibraltar), though analogous to the provisions of Irish law, the scope of an inquest is limited to determining who the deceased person was and how, when and where he came to his death. The Coroners Rules specifically state that neither the coroner nor the jury shall express any opinion on questions of criminal or civil liability.

Secondly, while section 17(1) of the 1959 Act provides that:

Where a coroner proceeds to hold an inquest, whether with or without a jury, he may issue a summons for any witness whom he thinks necessary to attend such inquest at the time and place specified in the summons, for the purpose of giving evidence relative to such dead body ...

Rule 9(2) and (3) of the Coroners Rules provides that:

- 9.2 where a person is suspected of causing the death, or has been charged or is likely to be charged with an offence relating to the death, he shall not be compelled to give evidence at the inquest.
- 9.3 Where a person mentioned in paragraph(2) offers to give evidence the coroner shall inform him that he is not obliged to do so, and that such evidence may be subject to cross-examination

This rule is at variance with the practice in both Britain and in this jurisdiction.

Thirdly, it is also the practice of coroners in Northern Ireland, though there is no rule to this effect, not to open any inquest until they have been informed by the prosecuting authorities that no charge is to be made in respect of the killing or until any charges have been disposed of. This practice has meant that in some instances the inquest has opened long after the disputed death or deaths.

The net effect of these provisions has been that inquests in Northern Ireland have in certain important cases failed to meet the general public expectation of a speedy and complete investigation of the circumstances of disputed killings.

Craigavon Inquest

Accordingly at the Craigavon inquest the Coroner, Mr James Elliot, informed the jury the three RUC officers suspected of causing the deaths of the three men did not wish to give evidence at the inquest and that he proposed to admit in evidence written statements made by them. This was challenged on the opening day of the inquest by the solicitor acting for the widow of Gervaise McKerr, Mr Pat Finucane, who sought leave for a judicial review

of the Coroner's decision. This was granted by Mr Justice Carswell in Belfast High Court on 16 November 1988, and after an initial delay, the Coroner agreed to adjourn the inquest pending the outcome of the review.

Mr Justice Carswell, however, in his judgment delivered on 22 November 1988 refused to make a declaration that Rules 9(2) and (3) were ultra vires. This decision, however, was in turn referred to the Court of Appeal and was overturned in a judgment delivered by the Lord Chief Justice, Brian Hutton, on 20 December 1988, which stated that the coroners rules "constituted a major departure from the general law relating to the compellability of witnesses in coroners' courts." The Court of Appeal also made an order prohibiting the coroner from proceeding with the current inquest and requiring a fresh inquest to be instituted in which the three RUC officers suspected of causing the deaths would be compellable witnesses (although once sworn, it would open to them to claim privilege against self-incrimination, as provided under the 1959 Act). In January 1989 the British Government sought leave to appeal from the House of Lords. In their judgment the law lords upheld the appeal arguing that the Coroners Rules in question were merely procedural and did not modify substantive law.

Other cases pending

Despite the limited scope of inquests in Northern Ireland, they are often the only form of public inquiry into the circumstances of controversial killings involving the security forces and so assume a more than ordinary significance. Apart from the Craigavon inquest, the ruling of the House of Lords will have implications for the inquests into the three other 1982 shoot-to-kill cases (Tighe, Grew and Carroll) as well as eighteen others - all of them highly controversial - which have not yet reached inquest stage and where security force evidence would be relevant i.e.: nine Loughall deaths, Aidan McAneaspie at Aughnacloy, Martin and Gerard Harte and Brian Mullen at Drumnakilly, Seamus Duffy killed by a plastic bullet, Brian Robinson, the UVF member shot on the Crumlin Road in September 1989 and the three Whiterock Road shootings.

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Anglo-Irish Division
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