

The Lockerbie case and the corruption of justice, or: justice delayed is justice denied

Comment article written by Dr. Hans Köchler, international observer at the Scottish Court in the Netherlands, upon invitation of the Scottish Sunday Express

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Back in August 1998 the United Nations Security Council had “welcomed” the resolution of the legal-political dispute between Libya and the governments of the United States and the United Kingdom over the explosion of Pan Am flight 103 over Lockerbie through the trial of two Libyan suspects before an extraterritorial Scottish Court in the Netherlands. While the dispute between the governments has been settled years ago and Libya now entertains businesslike relations with both the US and UK, the only individual convicted in the Lockerbie case, the Libyan Abdelbaset Ali Mohmed al Megrahi, still awaits a final verdict in his case, the announcement of which he may not live to see because, while in Scottish custody, he has fallen ill with cancer that was detected only at a time when, so the prison authorities say, it was already too late to administer more than palliative care.

The hopeless, indeed Kafkaesque, situation which the lone Libyan prisoner finds himself in is further aggravated by the fact that his second appeal has suffered from enormous delays – which are scandalous under any circumstances and, seen in the context of deliberate withholding of evidence, are tantamount to an obstruction of justice. His predicament became even more serious when certain quarters confronted him with the alternative of either giving up his appeal in order to be sent back to Libya on the basis of a recently ratified “prisoner exchange agreement” between the UK and Libya – or die in a Scottish jail.

Under these circumstances, Scotland’s Cabinet Secretary for Justice (who certainly has seen the latest medical reports) should act without further delay on Mr. al Megrahi’s second request (the first was rejected) for “compassionate release” under the provisions of Scots law. This would allow the appeal to continue and avoid the circumstances of “emotional blackmail” the Lockerbie prisoner faces in regard to the prisoner exchange option. Apart from the convicted Libyan national’s right – under the European Convention on Human Rights and Fundamental Freedoms – to a proper judicial review, it is in the supreme public interest of Scotland and the United Kingdom that this second appeal proceed unhindered and that, eventually, a decision be reached beyond a reasonable doubt. This fundamental criterion of Scots law was not in any way met by the trial verdict and (first) appeal decision of the Scottish Court sitting in the Netherlands back in 2001 and 2002. The Opinions of the Court issued by the two panels of Scottish judges were inconsistent and based almost entirely on circumstantial evidence; on testimony of at least two key witnesses who had received huge amounts of money; on the opinions of forensic experts of, to say the least, dubious reputation and with problematic links to intelligence services; and on at least one piece of evidence that had been inserted at a later stage into the list of documents and apparently been tampered with. Furthermore, vital evidence such as that of a break-in at a luggage storage area at Heathrow airport in the night before the departure of the doomed flight had been withheld from the court during the first trial (a fact that still has not been properly explained), and further vital evidence is still being withheld in the phase of the second appeal due to the British Foreign Secretary’s having issued a so-called Public Interest Immunity (PII) certificate. Concerns similar to those which I had raised in my reports to the United Nations

Organization in 2001 and 2002 about improprieties, irregularities and judicial malpractices have also been raised by the Scottish Criminal Cases Review Commission (SCCRC) that, in June 2007, referred Mr. al Megrahi's case back to the appeal court, suspecting – as I had done on the day of the original verdict on 31 January 2001 – that a miscarriage of justice may have occurred. Regrettably, the SCCRC has decided to keep some of the reasons for its decision secret.

The public is also kept in the dark about what Scotland's Justice Secretary discussed at his meeting with Mr. al Megrahi at Greenock prison, which was indeed an unprecedented step in Scottish legal history. One thing should be taken for certain, however: If Mr. MacAskill is a man of honour, he will not have made granting the prisoner's request for "compassionate release" conditional upon the latter's dropping the ongoing appeal. This would not only be morally outrageous, it would also be illegal in terms of Scots law and, as infringement upon a convicted person's freedom to seek judicial review, in outright violation of the European Human Rights Convention the provisions of which are binding upon Scotland.

If Scotland prides itself in its unique judicial system, which it has practiced since long before devolution, the authorities should exercise all efforts to repair the damage that has been done to the country's reputation by the flawed judicial proceedings in the case of Abdelbaset Ali Mohamed al Megrahi. If Mr. MacAskill is indeed serious about dealing with the matter strictly within legal parameters, as he repeatedly said, the competent Scottish authorities should finally make those steps that are necessary to identify the actual "Lockerbie bombers" (in the plural!) wherever they may be and however powerful they still may be, apparently having succeeded for so long in using the Scottish judicial system to make Mr. al Megrahi a scapegoat in the strange and ugly world of international power politics.

Lockerbie observer mission of the International Progress Organization  