

SOME UPDATES FROM JIM SWIRE

Appeal can continue even if appellant (Megrahi) should die. The highlighted section of the Act, below, shows that if necessary, we, the relatives could seek to have the appeal continued.

Jim S 23/10/08

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21 Oct 2008

Professor Black says Lockerbie appeal could continue even if Megrahi dies

Professor Robert Black has shed some light on the legal status of Abdelbasel Ali Mohamed Al Megrahi's current criminal appeal, in the event that Megrahi succumbs to cancer, as reported earlier.

Black points out, in a posting on his daily blog on the case, that Megrahi's appeal could be continued, even after Megrahi's death, if it were to occur. However, he states that "in simple humanity", the current appeal should proceed with the "greatest possible expedition."

"Given that the mills of the Scottish criminal justice system grind exceeding slow, it seems worthwhile to consider what the legal position would be if Abdulbaset Megrahi were to succumb to his illness before the current appeal has been decided," Black says.

"In such circumstances, the provisions in the Criminal Procedure (Scotland) Act 1995, section 303A, relating to the transfer of the rights of appeal of a deceased person, would come into play."

"Were Abdulbaset Megrahi to die before the conclusion of the appeal, it seems probable that resort would be made to this procedure and that the appeal would continue. But in simple humanity, surely all concerned in the current proceedings should strive to the utmost to secure that the appeal proceeds with the greatest possible expedition, in order to render resort to the transfer procedure superfluous."

The relevant section of the 1995 act reads:

'(1) Where a person convicted of an offence has died, any person may, subject to the provisions of this section, apply to the High Court for an order authorising him to institute or continue any appeal which could have been or has been instituted by the deceased.

'(2) An application for an order under this section may be lodged with the Clerk of Justiciary within three months of the deceased's death or at such later time as the Court may, on cause shown, allow. (...)

'(4) Where an application is made for an order under this section and the applicant—

(a) is an executor of the deceased; or

(b) otherwise appears to the Court to have a legitimate interest,

the Court shall make an order authorising the applicant to institute or continue any appeal which could have been instituted or continued by the deceased; and, subject to the provisions of this section, any such order may include such ancillary or supplementary provision as the Court thinks fit.

'(5) The person in whose favour an order under this section is made shall from the date of the order be afforded the same rights to carry on the appeal as the deceased enjoyed at the time of his death and, in particular, where any time limit had begun to run against the deceased the person in whose favour an order has been made shall have the benefit of only that portion of the time limit which remained unexpired at the time of the death.'

'(6) In this section "appeal" includes any sort of application, whether at common law or under statute, for the review of any conviction, penalty or other order made in respect of the deceased in any criminal proceedings whatsoever.'

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21 Oct 2008

No limits on skye as legal academics aim for new way ahead

Over two days at a retreat in the north of Skye, a unique and unprecedented international accord was drafted in an effort to provide Scots law with a way out of the Lockerbie judicial quagmire, and provide a better model for future cases. Steven Raeburn was there to hear the outcomes.

A secluded idyll at practically the northwesternmost fringe of the European continent is an incongruous site for an international conference. The ripples that could emanate from a quiet country hotel sited at the end of a rutted road, promulgated by two legal academics at the invitation of Scotland's most dogged and effective patriot, far from the entrenched attitudes, vested interest and closed minds of the madding crowd of Holyrood and central belt establishment, could ripple out and write a profoundly significant chapter in the history of Scottish justice.

The Greshornish House Accord proposes that if Scotland was charged with managing such an international case in the future, it could be held at the International Criminal Court in the Hague. And that non Scottish judges could participate in a Scottish trial, citing international precedent. It also proposes practical amendments to the Criminal Procedure (Scotland) Act 1995, the 'bible' of criminal law, and to the Scotland Act to amend the 'inappropriate' situation where the Chief Legal Adviser to the Government is also head of criminal prosecutions.

"I hope that we can set a hare running from this point, and that this message will eventually get to the powers-that-be, and they will take some cognisance of it," said Robbie the Pict, who had gathered Professor Robert Black and Dr Hans Kochler, UN appointed observer to the Lockerbie proceedings, to discuss four key questions "in the hope of guidance in the pursuit of proper justice for all in relation to the destruction of PanAm Flight 103 over Lockerbie in December 1988". The resultant accord is a four part template providing both a philosophical and a practical way out of the quagmire surrounding the ongoing Lockerbie proceedings which have stained Scots law. Proceedings which presently appear to be hostage to the strategic interests of UK and US foreign policy and Libyan governmental expedience.

The scale and depth of the mess has been extraordinary. The ease with which Scots law was hijacked is troubling. The lack of fuss or even interest from within the legal and political establishment, and the evident assent of Scots law to serve the geopolitical interest gives the impression of collusion, complicity and denial. Court doors have literally been closed as proceedings carry on in secret, to the exclusion even of the defence and the accused. The era of hidden justice is upon us. The proponents of the Greshornish House accord don't think this is good enough.

"As an observer, I just would like to know exactly what the causes of this incident in the air over

Lockerbie really are. I just hope that there will be a new appeal. If evidence is withheld from the defence, there can be no appeal," Hans Kochler said, announcing the joint conclusions on Skye.

"To me it is extremely frustrating that in regard to such an incident, just one person has been presented as the culprit, with no further questions asked and no investigations ever having been made. This is not a credible explanation.

"Why doesn't Scotland, independent in regard to the administration of criminal justice, undertake the appropriate measures to investigate this matter fully? This is a case that is not closed. This is something that is ongoing, and I will not run away until I am presented with a clear, unambiguous and comprehensive decision of a court."

"If this is an independent system, theoretically, the prosecutorial authorities of Scotland could still initiate investigations into this incident and into what caused it. I do not think everything is just connected to the question of the personal criminal responsibility of one lone individual."

The ongoing court proceedings in the case, returned to the High Court on the basis that a miscarriage of justice may have occurred, are presently diverted with procedural issues relating to the disclosure or otherwise of evidential letters, which have been given considerable weight by the court and the Scottish Criminal Cases Review Commission, although sources who are aware of the contents of the documents have told the Firm that their contents are well known and irrelevant. The sleight of hand will result, say both Black and Kochler, in unavoidable prejudice to Megrahi's case, and his inevitable repatriation.

"This panel basically agrees that if they uphold the PII certificate, no appeal is possible, and Mr Megrahi will be sent home. He would have to be sent home. We cannot offer him a fair hearing of his appeal," said Robbie the Pict, who brokered the accord and convened the panel.

"If the FCO are urging that this is a highly sensitive document, this cannot be taken lightly. So it would prevail over the interests of Scottish justice. If that happens, there is an implicit duty upon the judges to say there is not an equality of arms, therefore they cannot offer Mr Megrahi a fair appeal hearing."

Professor Robert Black, instrumental in orchestrating the original trial proceedings in Zeist, says there is currently no political will to reinvestigate the circumstances of the event, even if Megrahi is repatriated and proceedings close without a solid conviction as predicted.

"I am not convinced that there is such political will. One of the things we have been trying to do is insert some backbone into those politicians who have the power to make it happen," he said.

Kochler in turn drew comparison with the Shirley Mckie embarrassment, which resulted in a lengthy and productive inquiry process that shed some welcome light on the dustier corners of the Scottish judicial and political power structure. Such an outcome is warranted in the Lockerbie scenario he says.

"The present case definitely has as much weight as the Mckie case for the rule of law, and for democratic structures. Why would the government of Scotland not agree to an independent inquiry? Scotland would also do a great service to the international rule of law. This was an incident of international nature. To know the truth about it is extremely important."

The nexus between Scots law and UK foreign policy is directly affected by the friction arising from the handling of this case. Kochler believes that this presents an opportunity for Scots law to assert its credibility and ensure the maintenance of its international reputation.

"It is a test case to see how independent the Scottish judiciary acts and how determined the authorities of this country are to assert the supremacy of the law over political interests," he says.

“Scottish justice may still come out very well, if there is a new appeal, which is fair, and conducted with all the material and all the evidence made available to both sides, then there is still a chance. If not, this will just be one of the many cases where politics finally prevailed over law. This is the result of a political and international constellation that Scotland cannot control. But still, the judiciary should try to act independently and not give in to the political pressures.”

Decisions over Megrahi's future lie with the Scottish Parliament. It is for the Libyans to approach that Parliament.

I understand that they seek to do that in the very near future.

Jim S.

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Press Association

Salmond silent on bomber's appeal

18 hours ago

First Minister Alex Salmond refused to say if the Scottish Government would give a sympathetic hearing to pleas made on behalf of the Lockerbie bomber.

There have been calls for Abdelbaset Ali Mohamed Al Megrahi to be freed or for his appeal to be speeded up after it emerged he was battling advanced cancer. But Mr Salmond said any questions were "hypothetical" as no application had so far been made on behalf of the former Libyan intelligence agent.

Al Megrahi, who is 56, is serving a life term in Greenock prison with a minimum 27 years for the bombing.

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From the Herald

Salmond declines to answer 'hypothetical' Al Megrahi questions

First Minister Alex Salmond today refused to say if the Scottish Government would give a sympathetic hearing to pleas made on behalf of the Lockerbie bomber.

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But Mr Salmond today said any questions were "hypothetical" as no application had so far been made on behalf of the former Libyan intelligence agent.

Al Megrahi, who is 56, is serving a life term in Greenock prison with a minimum 27 years for the bombing.

After the disclosure yesterday that he has prostate cancer which has spread to other parts of this body, there were calls for a pending appeal to be speeded up.

The possibility of a transfer back to Libya has also been raised.

Campaigning in the Glenrothes by-election, Mr Salmond said the Scottish Government never commented on the medical condition of any prisoner.

"I note that Mr Megrahi's legal team have asked for privacy on that matter," he said.

"And secondly, there's no application for prisoner transfer or anything else before the Scottish Government, therefore there's no consideration being given to it because there's no application."

He said he would not answer hypothetical questions, saying: "One thing you could never do under any circumstances is prejudge how you would treat any such application - if indeed one arrived.

"As far as the medical condition of any prisoner in Scotland is concerned, we don't discuss it - that's a matter for them and their medical advisers.