



An Chartlann Náisiúnta National Archives

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Note on developments under Articles 7 and 8
of the Anglo-Irish Agreement

1. Legal Matters including the Administration of Justice
(Article 8)

Background

- Two official working groups were established as a result of the meeting of the Secretary of State, the Minister for Justice and the two Attorneys General within the framework of the Conference at London on 13 February.

Present Position

- The Working Group on the Administration of Justice has focussed on mixed courts, three-judge courts and power-sharing in the judiciary. The British have indicated that the question of three-judge courts is now a matter for political decision. They have provided a paper outlining the difficulties which they see with this proposal. A response has been prepared but not yet handed over.
- We have been informed that the British will accept certain of the recommendations for reform of the Emergency Provisions Act made in the Baker Report of 1984.
- The question of "supergrass" trials has been raised by the Irish side. We have noted the statement of the British Attorney General of 19 March which is significant in so far as the Director of Public Prosecutions is concerned. The recent judgement in the Black case, sustaining the appeal of 18 of 22 convicted persons, is a positive development. Appeals in the Quigley and Kirkpatrick cases are scheduled to be heard in Autumn. However, the British

side have pointed out that, under law, the police must accept evidence when proffered by any legitimate source. Angela Whoriskey, a supergrass whose evidence is currently with the DPP, may prove a test case in this regard.

- The Working Group on Criminal Law matters has concentrated on extradition and on the Irish legislation to implement the European Convention on the Suppression of Terrorism, signed on 24 February. The Irish side has pointed out that the implementing legislation due for introduction in the Autumn is linked to the progress which will be made in the areas of the administration of justice in Northern Ireland (Article 8) and relations between the security forces and the community (Article 7) on the basis of paragraph 7 of the Hillsborough Communique.

Background

- A Sub-Group of representatives of the Attorneys General, has drawn up a checklist which will help to avoid mistakes and misunderstandings in any future extradition cases.
- On 3 September the Attorney General's Office was informed by the British Attorney General's Office that all outstanding warrants in the hands of the Gardai which had been received from the RUC in connection with scheduled offences were being "recalled as soon as possible". The decision was taken by the British Attorney General "as a counsel of perfection and following representations to him from Northern Ireland". We understand that the return of the warrants will be sought by the RUC. (Note: The reason for the British action appears to be that it has been NI practice to add charges to warrants which might not be pursued or stand up in Court, for lack of evidence).

Time Scale

- A meeting of the Working Groups is due in September when discussion will focus on a final report for Conference on the administration of justice. We have been informed that

legislation amending the Emergency Provisions Act will be introduced early in the next Parliamentary session, probably in November. Appeals in two 'supergrass' cases will be heard in the near future. The appeal in the Quigley case will open in the first half of September, the appeal in the Kirkpatrick case is likely to open at the end of October.

2. Relations between the security forces and the community.
Programme of special measures to make the security forces more acceptable to the nationalist community (Article 7(c))

Background

- We have been considering proposals involving structural and policing changes which we have been discussing with the British side through the Secretariat e.g., the phasing out of the RUC's security role, the creation of local police forces, improving local consultative arrangements, crime prevention schemes involving the local community (including a possible Neighbourhood Watch programme) strengthening the level of Catholic recruitment to the police and the issue of ethos.

Present Position

- Arising out of the meeting of officials to discuss Article 7(c) on 29 May 1986, the British side handed over a brief paper on 19 June on "the concept of a single police force". It dealt only with that question and did not cover the other areas mentioned in the first paragraph above.
- An Irish paper setting out proposals on the various issues covered by Article 7(c) will be handed over shortly.

Time Scale

- We would envisage a further officials meeting with the British side before the end of September at which it would be hoped that a specific package of proposals could be agreed for submission to the Conference.

3. Police Complaints Procedure (Article 7(c))

Background

- The British Government's proposals for reform of the police complaints procedure were set out in a discussion paper which was published in 1985. Under Article 7 of the Anglo-Irish Agreement, the Irish Government has given its views on the proposals, welcoming them in general but seeking the introduction of an independent investigative element and the retention of Section 13 Tribunals.

Present Position

- A draft Order in Council on Police Complaints Procedures was made public on 24 July. This does not contain provision for an independent investigative element, though in practice the supervising member of the Commission will have considerable discretion and involvement through supervising the investigation. The Section 13 Tribunal will be abolished. Interested parties have been invited to submit comments on the proposal before 30 September. We understand that the ICTU's Northern Committee will submit comments on the proposals. The Standing Advisory Commission on Human Rights and the Commission on the Administration of Justice can also be expected to submit comments.

- Seamus Mallon has indicated that he will convey the views of the SDLP during the Commons debate. He will express regret that the proposals fall short of the SDLP's desideration in some respects; he will welcome those points which represent an improvement on the Consultative document and he will tease out the practical implications of the new Commission's supervisory role.

Time Scale

- No date has been set for the debate on the Government's proposals although we have been told they will be debated 'early' in the new session which begins on 23 October.

4. Code of Conduct for the RUC (Article 7(c))

Background

- The Chief Constable informed the Conference at its meeting on 11 December that he would introduce a Code as soon as possible in 1986. The draft Code is to contain a clause on the respect for the identities and traditions of both communities.
- At the meeting of the Conference on 17 June, the Chief Constable did not outline the timing for completion of the Code beyond saying that it was "coming on very well". He said that the draft Code is currently with the Superintendents' Association and the Police Federation. When their response is received it will go before the Police Authority.
- The Chief Constable feels that the full backing of the Police Authority and the police representative bodies is necessary for the Code "or else it is useless".

Time Scale

- The Chief Constable said at the Conference meeting on 17 June that he did not wish to make any promises on the time scale on the introduction of the Code, indicating that his "desire is to get a document which is meaningful and that takes first place to timing". We would propose to raise the matter again in September, through the Secretariat.

5. Accompaniment of Army Patrols by RUC (Article 7(c))

Background

- Following the reference in the Hillsborough communique, the Conference, at its meeting of 11 December, considered the steps which were being taken progressively in applying the principle that the armed forces (which include the UDR) operate only in support of the civil power. This had the particular objective of ensuring as rapidly as possible that, (save in exceptional circumstances) there would be a police presence in all operations involving direct contact with the community.
- Statistics supplied by the British side show that during a sample week in March, selected by them, 40% of all military patrols in direct contact with the community were accompanied by the RUC. If this were representative it would show an improvement in comparison with late last year when there was an accompaniment rate of about 25%.

Present Position

- At the Conference meeting on 17 June the Irish side requested more recent and more detailed figures. The British agreed to provide figures for patrol accompaniment for September next.

Time Scale

- We will continue to monitor the situation and await with particular interest the statistics for September.
6. Stalker/Sampson Report (Article 7)

Background

- On 24 May 1984 John Stalker the Deputy Chief Constable of Manchester was appointed to take charge of an investigation into three incidents in Co. Armagh in 1982 in which six men were shot dead by the RUC, giving rise to allegations that the "force was operating a 'shoot to kill' policy".
- Having completed an interim report (rumoured to be highly critical of the RUC) but before he had finalised the investigation, Mr. Stalker was removed from the case by the Chief constable of the RUC at the beginning of June 1986, following the commencement of an investigation of Mr. Stalker himself for alleged misconduct, in his capacity as Deputy Chief Constable of Manchester.
- Mr. Colin Sampson, the West Yorkshire Chief Constable, was asked by the RUC Chief Constable to take charge of the RUC investigation, in Mr. Stalker's place. Mr. Sampson had meanwhile also taken charge of the investigation into the allegations of misconduct against Mr. Stalker.
- Mr. Sampson's report on Mr. Stalker was considered by the Manchester Police Authority on 22 August 1986. Mr. Stalker was cleared of the charges against him and reinstated as Deputy Chief Constable.

Present Position

- Mr. Sampson has meanwhile been continuing his RUC investigation assisted by the team of detectives which had assisted Mr. Stalker. It is not known when the investigation will be completed. Mr. Stalker says that there is no question of him returning to the investigation.
- There has been renewed media speculation since Mr. Stalker's reinstatement that the allegations brought against him were part of a conspiracy to have him removed from the RUC investigation. "The Observer" of 7 September 1986 carried a story claiming that a copy of Mr. Sampson's Report on Mr. Stalker had been leaked to them and that they had shown it to the latter. Mr. Stalker, "The Observer" claims, is considering legal action on what he describes as "material inaccuracies" in the (Sampson) Report.

Time Scale

- As it is not known when Mr. Sampson will have his RUC report ready for submission to the DPP, it is not possible to put together a time scale for likely developments at this stage. (It will be up to the DPP to decide on what action, if any, to take on foot of the report).

7. Prisons Policy (Article 7(a)(iii))

Background

- We have been seeking a more liberal policy in relation to life sentence review. While there has recently been some encouraging progress in this area, one or two cases have given cause for concern.

- We have also raised a number of individual cases.
- Our views have also been conveyed on strip-searching especially of women prisoners.

Time Scale

- We would propose to get an update on strip-searching statistics from the British side in September.

Anglo-Irish Division

7 September, 1986

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Note on Three-Judge Courts

Background

1. Since the establishment in February 1986 of an official working group to examine matters related to the administration of justice in Northern Ireland, the Irish side has been arguing strongly for the introduction of three-judge courts for the trial on indictment of criminal offences. Discussion has taken place against the background of paragraph 7 of the Hillsborough Communique which links Ireland's accession to the European Convention on the Suppression of Terrorism to early progress on measures to strengthen confidence in the administration of justice in Northern Ireland. The specific possibility mentioned in the Agreement is mixed courts, recognising that progress on this proposal is unlikely in the short term, the Irish side has focussed attention on the proposals for three-judge courts.

Confidence in the Administration of Justice

2. Central to the case advanced by the Irish side is the argument that there is a widespread perception among nationalists in Northern Ireland that the 'Diplock' courts have not operated fairly. A number of factors underlie this perception:
 - the association of Diplock courts with supergrass trials
 - a number of obiter dicta which have disclosed bias on the part of some judges sitting on 'Diplock' courts.
 - the uneven composition of the Northern bench which makes it likely that a nationalist defendant will be tried before a judge from the loyalist community.

We believe that the presence of three-judges would increase the likelihood of a nationalist presence on the bench and would bolster the confidence of the minority in the administration of justice.

Legal Arguments Advanced by the Irish Side

3. Apart from the effect of such a change on minority confidence on the administration of justice, it has been argued by the Irish side that a three-judge court is intrinsically better than a court of one judge for the trial of criminal offences:

- The need to decide matters of fact and law places an onerous burden on a single judge who may, under these conditions, make an error of judgement - a fact recognised by Gardiner in his review of Diplock.
- Because of the frequent hearing of cases in Diplock conditions, the problem has arisen of 'case-hardening' among single judges. The provision of three judges would guard against this.
- The automatic right of appeal to a three-judge court does not compensate for the loss of safeguards elsewhere. Appeal judges do not hear the facts as they appear to the trial judge. They cannot, for example, observe the demeanour of witnesses. In practice they can only consider the reasoning behind the judges' decision.
- Non-jury three-judge courts for trial of criminal offences are not without precedent in British legislation. The Prevention of Crime (Ireland) Act 1882 provided for the trial by a tribunal of three judges for certain offences including treason, murder and assaults on dwelling houses.

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- We have argued that three-judge courts should deliver a unanimous judgement. This also has a precedent in the British system. Section 36 of the Judicature Act (1978) prohibits dissenting judgements on matters of fact in criminal appeals, including those for scheduled offences.

Technical Arguments Advanced by the Irish Side

4. The British side has contested that a three-judge court at first instance would encounter major procedural difficulties, that the "oral adversarial system of procedures is ill-adapted to the collegiate conduct of a trial of a fact". The Irish side has drawn on the experience of the Special Criminal Court to show that a trial at first instance by three judges sitting without a jury does work on practice and that many of the procedural difficulties envisaged by the British simply do not arise. Lord Diplock advanced the argument in 1973 that there were too few judges available to man three-judge courts. Baker concluded that six appointments to the senior bench would be required to staff three-judge courts. In 1972 there were 14 judges on the High Court and County Court. There are now 23 such judges and there has been a comparable increase at the senior bar.

Present Position

5. At the last meeting of the Working Group on the administration of justice, held on 18 July, the British indicated that the question of three-judge courts is now a matter for political decision. They provided a paper summarising their objections to the proposal. We have prepared a paper outlining our arguments in favour of three judge courts and this will be passed over in the

secretariat in a matter of days. A meeting of the Working Group is scheduled for next week. The meeting will focus on the preparation of a final report for submission to the next Intergovernmental Conference.

Anglo-Irish Section
4 September, 1986

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