

Agenda: Camp Zeist should stand as a warning for our justice system

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By Professor Robert Black

The Scottish Government is promoting legislation that will permit rape cases to be tried, on a trial basis, without a jury. The only recent instance in which judges of the High Court of Justiciary have presided over a trial on indictment without a jury is the Lockerbie case, where a case was set up under Scottish jurisdiction at Camp Zeist in the Netherlands.

The conviction of Abdelbaset al-Megrahi in that trial in 2001 has been widely criticised. The late Ian Hamilton KC opined, with only slight exaggeration, "I don't think there's a lawyer in Scotland who now believes Mr Megrahi was justly convicted." I myself commented "that a shameful miscarriage of justice has been perpetrated and that the Scottish criminal justice system has been gravely sullied."

The official report by Professor Hans Köchler, a United Nations-appointed observer at the trial, contains the following: "The Opinion of the Court is exclusively based on circumstantial evidence and on a series of highly problematic inferences. [To my] knowledge, there is not one single piece of material evidence linking the two accused to the crime. In such a context, the guilty verdict in regard to the first accused appears to be arbitrary, even irrational.

"This impression is enforced when one considers that the actual wording of the larger part of the Opinion of the Court points more into the direction of a 'not proven' verdict. (...) "This leads [me] to the suspicion that political considerations may have been overriding a strictly judicial evaluation of the case and thus may have adversely affected the outcome of the trial. This may have a profound impact on the evaluation of the professional reputation and integrity of the Scottish judges. [...]"

"In the above context, [I have] reached the general conclusion that the outcome of the trial may well have been determined by political considerations and may to a considerable extent have been the result of more or less openly exercised influence from the part of actors outside the judicial framework – facts which are not compatible with the basic principle of the division of powers and with the independence of the judiciary ...

"On the basis of the above observations and evaluation, [I have] – to [my] great dismay – reached the conclusion that the trial, seen in its entirety, was not fair and was not conducted in an objective manner. Indeed, there are many more questions and doubts at the end of the trial than there were at its beginning. The trial has effectively created more confusion than clarity and no rational observer can make any statement on the complex subject matter 'beyond any reasonable doubt.' ... "

The Lockerbie trial resulted in a conviction. But it also gravely besmirched the reputation of the Scottish criminal justice system. Instituting, on a trial basis, non-jury courts in rape cases may well achieve the apparently desired objective of increasing convictions in such cases. But at what cost to public confidence in the administration of justice and the reputation of the Scottish criminal justice system? Let the Lockerbie case stand as a warning.

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