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Local & National

Unprecedented move as Omagh judge goes to Dublin

Monday, May 12, 2008

By Lesley-Anne Henry

The £14 million civil action taken against five suspected Omagh bombers will make history again today when the court sits in Dublin.

The unprecedented case, brought by victims' families, has been transferred to the Republic's Four Courts - a building that still bears the scars of Ireland's bloody history after it was fired on by the British in 1916, and shelled by the Free State army during the Irish Civil War in 1922.

The extraordinary move, at the request of the plaintiffs, is the first time a Northern Irish judge has travelled south of the border on official judicial business.

The civil action has already made history in that it is the first time in the UK, and probably anywhere in the world, that private citizens have taken on alleged terrorists through the courts.

Mr Justice Morgan will head a special commission assisted by an Irish judge to take hearsay evidence from an FBI spy, and to hear from Garda officers protected under public interest immunity legislation in the Republic.

A spokesman for the Northern Ireland Courts Service said: "We believe this is the first time a judge is to take evidence on commission in another jurisdiction under the Rules of the Supreme Court (Northern Ireland) 1980."

Michael McKevitt, Liam Campbell, Colm Murphy, Seamus Daly and Seamus McKenna all deny any part in the 1998 explosion that killed 29 people and unborn twins. The trial is due to stay in Dublin for four days this week, and scheduled to return on May 27 for another three days.






During that time, 2,300 emails and other documents that passed between US trucker-turned-spy, David Rupert, who infiltrated the Real IRA, and his security service handlers will be read to the court.

Applications to hear evidence from a total of 50 Garda officers were lodged at the High Court in Belfast, but it is thought not all will be called to take the stand.

The Irish police are expected to provide knowledge of the defendants' alleged involvement with the RIRA at the time of the Omagh bombing and, where appropriate, their alleged direct participation in the planning and implementation of the bomb.

The Garda statements are also expected to corroborate Rupert's hearsay evidence; talk about an interview with alleged RIRA director of operations, Liam Campbell; provide evidence connecting Seamus McKenna and Seamus Daly to the RIRA and tell the court about alleged admissions made by the fifth named defendant, Colm Murphy.

In a special ruling on taking the non-jury trial to Dublin, Judge Morgan said: "Although the rule provides that a judge may take evidence on commission in another jurisdiction, it is unusual for such a course to be followed. There must, therefore, be some factors which justify taking such an exceptional course. I consider that there are two such factors.

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"The first is that it is proposed that a substantial body of evidence, which may be controversial between the parties, should be taken in this way. It may be necessary to determine whether or not I accept as credible some of the witnesses. Even though I would not be sitting as a judge, I would be entitled to take into account the demeanour of witnesses when answering questions.

"The second factor relates to public interest immunity issues. The circumstances in which they might arise cannot be foretold but it may become necessary to give some assistance to the parties as to how they should proceed."

Added Mr Justice Morgan: "The plaintiffs' submit that the evidence they wish to adduce is of substantial importance to the case they wish to make. They point out that a Garda officer giving evidence in this jurisdiction who refused to answer a question because of the public interest in the prevention of disclosure of certain information might, in certain circumstances, find themselves liable to proceedings for contempt.

"Accordingly, the plaintiffs say the attitude of the authorities in the Republic of Ireland is understandable. Unless the order is made, the plaintiffs may be deprived of the opportunity to bring this evidence before the court. The order is, therefore, necessary for the purposes of justice."

No-one can be jailed as a result of the civil action, but the families of six victims hope it will help uncover the truth about what happened and give them some sort of justice.

In his ruling Judge Morgan added: "They say firstly it is not established that the proposed course is necessary as the present government in the Republic of Ireland has not indicated a firm view as to how, if at all, it will co-operate with the plaintiffs.

"Secondly, they contend that the reference to the protection of public interest immunity is misplaced, since a judge taking evidence on commission will not make any determination in relation to a public interest immunity claim.

"Thirdly, the application did not expressly say the witnesses would not attend court in Northern Ireland.

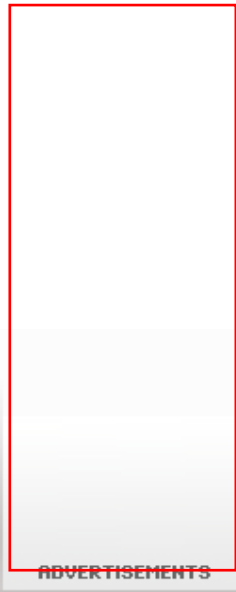
"Fourthly, the application did not have sufficient detail about the proposed evidence to enable a decision to be made and finally, it would be inappropriate for the judge hearing the trial to take evidence on commission in another jurisdiction at some time during it."

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