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Ex-soldiers' bid for Nelson probe anonymity fails

Thursday, 12 February 2009

Twelve former soldiers yesterday lost their challenge to a ruling that they should be named at the inquiry into the murder of solicitor Rosemary Nelson.

The Court of Appeal backed a judgment dismissing their fight to remain anonymous by a two-to-one majority.

The ex-Royal Irish Regiment soldiers wanted their identities shielded, amid fears they could be targeted by dissident republicans.

All of them served in Lurgan, Co Armagh, when Mrs Nelson (40), was killed in a loyalist car bomb attack outside her home in March 1999.

They have provided statements to the tribunal examining allegations of security force collusion surrounding the murder, but were refused anonymity.

A High Court judge endorsed the inquiry's position last July by declaring public interest in its transparency outweighed any risks to the former soldiers from giving evidence.

After hearing an appeal against the dismissed judicial review application, Lord Chief Justice Sir Brian Kerr held that it was the correct outcome.

He pointed out that the risk to the ex-soldiers — whose names will appear in the book evidence and on the inquiry website, although they are not to be called to testify — was regarded in the lower moderate range.

Sir Brian said: "I consider that the panel was correct to have regard to the fact that the evidence which they have supplied is uncontroversial and is unlikely to excite the interest of malevolent forces."

He also noted that if the soldiers were not identified, many other witnesses could make the same claim to have their identities protected.

"Quite apart from this, I consider that the impact on the authority of the inquiry and the general view as to its openness will be considerable if an entire category of witnesses, whose evidence is not remotely of a sensitive nature, remains unidentified," Sir Brian added.

He suggested that a final decision on anonymity could be deferred, although he stressed it was a matter for the tribunal's own discretion.

Lord Justice Higgins backed his reasons for dismissing the appeal, adding that the inquiry would have the advantage of its conclusions if it delayed identifying the soldiers until it planned to publish its report.

But Lord Justice Girvan said he would have allowed the appeal, finding it was premature to withhold continued anonymity at this stage.

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