DORAN v. SECRETARY OF STATE[1]

Criminal injury to persons—Engagement in terrorism—Applicant sustained criminal injury—Previously convicted of offence of making petrol bombs—Whether applicant engaged in terrorism—Whether public or section of the public put in fear—Criminal Injuries (Compensation) (Northern Ireland) Order 1977, (S.I. No. 1248 N.I. 15), Art. 6(3)(b).

The applicant sought compensation for a criminal injury under the Criminal Injuries (Compensation) (Northern Ireland) Order 1977. The County Court judge dismissed the claim by virtue of Article 6(3)(b) of the 1977 Order by reason of the fact that the appellant had been convicted on 18 October 1982 of making petrol bombs on 14 August 1981 contrary to Section 2(a) of the Protection of the Person and Property Act (Northern Ireland) 1969. The appellant appealed against the said dismissal. The issue on appeal was whether the commission by the appellant of the said offence meant that he had been engaged in the commission, preparation or instigation of acts of terrorism within the meaning of Article 6(3)(b).

Held, dismissing the appeal, that:

(1) The definition of "terrorism" includes two types of conduct. There is the use of violence for political ends or any use of violence for the purpose of putting the public or any section of the public in fear (see page 360H).

(2) The petrol bombs which the appellant helped to make, which were part of a large cache of petrol bombs, were clearly going to be put to a violent use in serious rioting for the purpose of putting the public or a section of the public in fear (see page 364C).

The following cases are referred to in the judgment:

Devlin v. *Armstong* [1971] N.I. 13.

Houston v. *Secretary of State for Northern Ireland* (unreported) 25 October 1985.

Kinnear v. *Secretary of State for Northern Ireland* [1985] 6 N.I.J.B.

McCabe v. *Secretary of State for Northern Ireland* (unreported) 1 March 1985.

McCann v. *Secretary of State for Northern Ireland* (unreported) 21 January 1983.

APPEAL from an order of refusal by the learned County Court Judge for the Division of Armagh on an application for compensation under the Criminal Injuries (Compensation) (Northern Ireland) Order 1977. The facts appear sufficiently in the judgment of Hutton J.

Miss A. F. Finegan for the appellant.
D. P. Marrinan for the respondent.

Cur. adv. vult.

HUTTON J. This is an appeal by the applicant, Gerard Francis Doran, against the decision of his Honour Judge Russell Q.C. at the County Court for the Division of Armagh dismissing his claim for compensation under the Criminal Injuries (Compensation) (Northern Ireland) Order 1977.

[1]In the Queen's Bench Division before Hutton J.: 26 September 1986.

The learned County Court judge dismissed the claim by virtue of Article 6(3)(b) of the 1977 Order, and the issue to be determined by this Court is whether the learned County Court judge was correct in his decision.

Article 6(3) of the 1977 Order provides:—

> "Without prejudice to Article 5(2), compensation shall not be payable to or for the benefit of, or in respect of a criminal injury to, any person—
>
> . . .
>
> (b) who has been engaged in the commission, preparation or instigation of acts of terrorism at any time whatsoever, or is so engaged."

In an unreported judgment in *Houston* v. *Secretary of State for Northern Ireland* delivered on 25 October 1985 Gibson L.J. stated at page 2:—

> "It is to be observed that if the conditions of the paragraph are satisfied the court has no power to award compensation. The nature of the applicant's involvement with terrorism is cast in the widest terms, namely, commission, preparation or instigation, and the time during which that involvement has occurred is 'at any time whatsoever', namely, during, before or after the date of the criminal injury. There need be no connection whatsoever between the incident giving rise to the claim and the act of terrorism which may be totally unrelated in time, place, character and degree. So the matter turns upon whether the applicant has at any time been in any way concerned with acts of terrorism."

Article 2(2) defines "terrorism" as follows:—

> "'Terrorism' means the use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear."

At the Magistrates' Court at Craigavon on 18 October 1982 the applicant, having pleaded "Guilty", was convicted of the offence of making a quantity of petrol bombs on 14 August 1981 contrary to section 2(a) of the Protection of the Person and Property Act (Northern Ireland) 1969 and was fined the sum of £100. Therefore the issue before the Court is whether the commission by the applicant of the offence of making petrol bombs on 14 August 1981 means that he had been engaged in the commission, preparation or instigation of acts of terrorism.

The cases decided in relation to Article 6(3)(b) make it clear that the definition of "terrorism" includes two types of conduct, either of which constitutes "terrorism" within the meaning of the 1977 Order. There is "the use of violence for political ends" or there is "any use of violence for the purpose of putting the public or any section of the public in fear". This twofold meaning of the term "terrorism" in the 1977 Order was first stated by MacDermott J. in the unreported case of *McCann* v. *Secretary of State for Northern Ireland* in a judgment delivered on 21 January 1983. In *McCann's* case the applicant had previously been convicted of offences under the Firearms Act (Northern Ireland) 1969 which arose from carrying a loaded sten gun from Leeson Street in Belfast to the Ardoyne district in Belfast, and MacDermott J. held that he was debarred from recovering compensation.

MacDermott J. stated at page 3:—

"Mr. Kelly argues that the effect of this definition is that the Crown, to avail itself of Article 6(3)(b), must prove political motivation as the words 'and includes' must be read conjunctively with the previous phrase. On the face of the words used I ventured to doubt if this were the correct construction. I have since reminded myself that the words 'and includes' are often used to enlarge the meaning of a definition beyond the limits imposed by the words initially used.

. . .

In this type of case it would often be impossible to prove political motivation. However the consequences of a certain construction do not determine how the Statute should be construed. In this case applying recognised principles of construction I have no doubt that in this definition 'includes' is meant to and does enlarge the meaning of the words previously used.

Thus the question is—was the appellant in 1973 engaged in acts involving the use of violence for the purpose of putting the public or a section of it in fear? Before answering this question it is necessary to ask if the appellant's act was one of 'commission, preparation or instigation'. Mr. Quinn relies, in my view rightly, solely on the word 'preparation'. There is nothing in Article 6 or in the definition Article 2, which suggests that the preparatory act has to be performed by the person who has committed or is to commit the act of violence. In my judgment carrying a loaded sten gun across a part of Belfast in times of lawless activity involving the use of such a weapon is an act of preparation for an act of terrorism to be committed by someone."

In the unreported decision of *McCabe* v. *Secretary of State for Northern Ireland* in a judgment delivered on 1 March 1985 MacDermott J. restated the wide construction which he had given to the term "terrorism" in *McCann's* case. In *McCabe's* case the applicant had previously been convicted of two offences of armed robbery of shopkeepers with an imitation firearm and MacDermott J. held that the applicant was not debarred from recovering compensation for a criminal injury and stated at page 4:—

"Clearly some crimes will fall on one side of the line and others on the other. Transporting a loaded sten gun fell clearly, in my judgment, on the wrong side of the line for McCann. This appellant's offences, though serious, appear to have been for personal gain but more importantly lack the flavour of terrorism which I believe to be implicit in article 6(3)(b). Accordingly in my judgment this appellant is not debarred by article 6(3)."

In his judgment in *Houston* v. *Secretary of State for Northern Ireland* Gibson L.J. stated at page 2:—

"Terrorism is defined by Article 2(2) as:

'. . . the use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear.'

It, therefore, comprehends the use of violence for either of two purposes, namely, political or to put the public or any section of it in fear, the latter of which may have no political implications. The common feature must be the use of violence and one or other of the indicated purposes. In this connection I agree with the conclusion of MacDermott J. in *McCann's* case that the clear effect of the use of the words 'and includes' in the definition of terrorism is to extend terrorism beyond acts which have a political purpose. In *McCabe's* case two incidents of armed robbery on shopkeepers for private gain were held not to constitute acts of terrorism because neither was there any political purpose nor did two individual shopkeepers constitute a section of the public."

I respectfully consider that it is to be inferred from the judgment of O'Donnell L.J. in *Kinnear* v. *Secretary of State for Northern Ireland* [1985] No.6 N.I.J.B. that the learned Lord Justice accepted this twofold meaning of terrorism as defined in the 1977 Order. In that case it was alleged by the respondent that the applicant had been engaged in two acts of terrorism: on 9 August 1981, the anniversary of internment, throwing petrol into a tyre depot in Dungannon and setting it on fire and on another occasion throwing bottles and stones at police landrovers. O'Donnell L.J. held that these were not acts of terrorism and stated at page 94:—

"I was referred to the case of *McCabe* v. *Secretary of State*, in which MacDermott J. delivered judgment on 1 March 1985. He held that the conviction of the appellant for two offences of armed robbery with an imitation firearm, prior to the criminal injury, did not debar the appellant from successfully claiming compensation under the 1977 Order.

His reasons for so holding were that the appellant's offences 'though serious, appear to have been for personal gain, but more importantly lack the flavour of terrorism, which I believe to be implicit in article 6(3)'.

My first impression was that article 6(3)(b) was wide enough to include not merely the instant case, but also McCabe's case, and that MacDermott J. had been unduly generous in his interpretation.

On a closer reading of article 6(3)(b), and the definition section, I have come to the conclusion that MacDermott J. is correct in holding as he did. The definition section appears to concentrate not so much on the act, as the underlying reasons for the act. In other words a court must look at the mind of the actor, as well as at the act itself. This construction would appear to be in keeping with the apparent reason for article 6(3)(b) namely, that a person who has engaged in acts of terrorism for the purpose of undermining the state, cannot look to the state for compensation for criminal injury.

It is a reprehensible, but undeniable fact, that many young people now involve themselves in rioting, and in the throwing of petrol bombs, particularly at times of so called political anniversaries. It is a regrettable phenomenon unfortunately not restricted to Northern Ireland. It would more properly be described as 'violent hooliganism' than terrorism since it lacks the ideological commitment implicit in article 6(3)(b).

In the present case having heard the appellant I am satisfied that he was motivated by no serious political conviction and that no persons were in the vicinity of the tyre depot at the time of arson.

There may well be cases where the throwing of petrol bombs would be masterminded, or used for political purposes, and where article 6(3)(b) would debar the instigator, or mastermind, from compensation, but as MacDermott J. says some crimes will clearly fall on one side of the line and others on the other.

In my view this case falls clearly on the side of the appellant. I do not regard the stone throwing incident as serious enough to invoke article 6(3)(b) since the police were in their landrovers at the time of the incident and therefore unlikely to be injured or put in fear."

Therefore in his judgment O'Donnell L.J. accepted that there were two issues in relation to the allegation of terrorism raised by the respondent: was the applicant motivated by political conviction or was a section of the public put in fear? Thus in *Houston's* case at page 3 Gibson L.J. referred to *Kinnear's* case as follows:—

"The acts under consideration in *Kinnear's* case were first, setting fire to a tyre depot in the presence of another boy, and no one else, and, secondly, throwing bottles and stones at police landrovers. In neither case was there any ideological involvement and in the second the circumstances were such that the applicant's acts were unlikely to injure any one or put any section of the public in fear."

In *Houston's* case Gibson L.J. held that the applicant was debarred from recovering compensation by reason of previous acts of violence and stated at page 3:—

"The present applicant has made two police statements as to incidents in which he has been involved in the summer of 1983 the accuracy of which he admitted in evidence.

On the first occasion, a group of about 30 youths had hijacked a bus and set it on fire. He joined them, made a mask for himself, and like them engaged in throwing petrol bombs at police jeeps, some of which struck the vehicles. Later he and others hi-jacked a van, parked it across a road and set it on fire.

On the second occasion he and other youths decided to start a riot and to that end, wearing a mask, he and others hijacked a tractor and trailer and placed it across a road with the object of drawing the police into the area. When the police arrived he petrol bombed their jeeps, setting one of them on fire.

There is no doubt that to engage in rioting in the streets of the City of Londonderry is an act calculated to arouse fear in those who either must use the streets or who live or work or have their places of business in the vicinity, and they are either the public or a section of the public, and one must conclude that this was one of the purposes of the rioters, including the applicant.

I, therefore, hold that the court is precluded by virtue of Article 6(3)(b) from awarding payment of any compensation to the applicant. I, accordingly, allow the appeal and dismiss the application."

In the light of the principles established by these cases I turn to consider the circumstances of the offence of making petrol bombs on 14 August 1981 for which the applicant was convicted.

In the written statement which he made to the police after caution on 26 August 1981 the applicant stated:—

"On the afternoon of Friday, 14 August this year I was at the bonfire on the waste ground at Taghnavin. I left the bonfire and dandered to the nursery nearby at the Old Portadown Road. At a wee ditch beside the nursery I saw Frank Curran, Mickey McAlinden, Jim O'Neill and Colin McDonald. I saw milk bottles with petrol in them and some of the boys were putting petrol into other bottles. I went over to help them out as they were mates of mine. One of them asked me to put wicks in the bottles. There was material beside them. I ripped it up and put pieces in the necks of the bottles. The bottles were in crates. Paul McCrory came down after me to help. After all the bottles were full I went back to the bonfire. The crates were still there when I left."

The applicant did not give evidence at the hearing of this appeal. Evidence on behalf of the respondent was given by Superintendent Long of the Royal Ulster Constabulary. Superintendent Long's evidence satisfied me that on 14 and 15 August 1981 there was serious rioting in support of the H Block protests which involved the throwing of petrol bombs at the police and at property and that this rioting took place close to the location at Taghnavin on the road between Lurgan and Craigavon where the applicant assisted in making the petrol bombs on the afternoon of 4 August 1981. Superintendent Long's evidence also satisfied me that on 14 August 1981 a police search of the area at Taghnavin described by the applicant in his statement discovered a large cache of petrol bombs and materials for making petrol bombs which included 56 made up petrol bombs, 144 empty milk bottles, two five gallon containers holding petrol and two five gallon containers holding diesel oil, two shopping trolleys, thirteen milk crates, a large bag containing rags and a roll of barbed wire.

In relation to the question whether the respondent has proved that violence was used or was going to be used for the purpose of putting the public or any section of the public in fear I am of opinion that the Court has to consider this question in a common sense and realistic way and it is relevant to have regard to the judgment of the Court of Appeal in *Devlin* v. *Armstrong* [1971] N.I. 13 which was a criminal case in which the Court of Appeal answered the questions in a case stated by a resident magistrate. At page 37 in delivering the judgment of the Court of Appeal Lord MacDermott stated:

"Q.6. Whether to support a conviction for riotous behaviour it is necessary for the prosecution to prove that at least one person of reasonable firmness and courage has been put in fear?

A. I read this question as referring to the fifth element of a riot which is described in *Field* v. *Receiver of Metropolitan Police* [1907] 2 K.B. 853, 860 thus:—

> 'Force or violence . . . displayed in such a manner as to alarm at least one person of reasonable firmness and courage.'

This element has to be proved by the prosecution, but this will be done if the evidence as a whole satisfies the court that, as a matter of fact, this requirement has been met, and irrespective of whether a witness has been called to prove a state of alarm on his own part or on that of another or others. In short, alarm may be inferred from sufficient material. Here the material was sufficient. What had to be considered was not the throwing of a single ineffective stone but the riot to which the appellant contributed."

On the facts proved in this case I am satisfied that the petrol bombs which the applicant helped to make, which were part of a large cache of petrol bombs, were clearly going to be put to a violent use in serious rioting for the purpose of putting the public or a section of the public in fear.

I consider that *Kinnear's* case is distinguishable from the present case because in that case petrol bombs were not being thrown, or were not made to be thrown, in the course of a riot, and the evidence satisfied the Court that the burning of the tyre depot would not have put any section of the public in fear as no persons were in the vicinity of the tyre depot at the time it was set on fire. In the present case the applicant was clearly assisting in making the petrol bombs for the purpose of enabling them to be thrown and I am therefore satisfied that he was engaged in the preparation of acts of terrorism. Accordingly I hold that he is debarred from recovering compensation because he had been engaged in the preparation of acts of terrorism, the acts of terrorism being the violent use of petrol bombs for the purpose of putting the public or any section of the public in fear.

The finding that the petrol bombs were being prepared to be violently used for the purpose of putting the public or a section of the public in fear is sufficient to dispose of the appeal, and therefore it is unnecessary for me to reach a decision on the question whether the applicant assisted in making the petrol bombs so that they could be violently used for political ends.

Appeal dismissed

Solicitors for the appellant: *Campbell & Haughey*
Solicitors for the respondent: *Crown Solicitor*

E.J.D.McB.