

Some Developments in Criminal Law in Ireland '05/'06

A: Legislation

1. Safety, Health and Welfare at Work Act 2005.

Many offences; penalties include 2 years imprisonment; directors/managers liable on grounds of neglect; onus on accused to show it was not practicable to prevent the breach.

2. Criminal Justice (Terrorist Offences) Act 2005

Financing terrorism; Retention of traffic and location data relating to communications by phone; European Arrest Warrant.

3. Proceeds Of Crime (Amendment) Act 2005

Various amendments.

4. Codifying the Criminal Law

The Expert Group appointed by the Minister for Justice reported in November 2004 and recommended embarking on the task.

5. Numerous criminal provisions proposed in 2006 Bill

The Minister is busy pushing through a wide variety of amendments.

B: Some Supreme Court judgements: Judicial Review

1. PM v DPP [2006] IESC 22

Blameworthy prosecutorial delay alone not sufficient to injunct proceedings.

2. J.F. v DPP [2005] IESC 24

A refusal by a complainant in a JR sex delay case to submit to defence psychologist examination results in limiting the grounds of opposition and excluding the defence that the criminal acts of the accused caused the delay.

3. Scully v DPP [2005] IESC 11

Police failure to obtain CCTV footage will not necessarily ground a case for injunction of criminal proceedings. But *Braddish v DPP* and *Dunne v DPP* still stand.

4. *D.C. v DPP* [2005] IESC 77

Trial judges in criminal proceedings retain the jurisdiction and duty to direct verdicts of not guilty where JR type grounds lead to conclusion that there is a real risk that the accused cannot get a fair trial.

5. *Brady v Haughton* [2005] IESC 54

Notice to the party affected is not required in Mutual Assistance evidence gathering exercise; many issues not addressed.

C: Some Supreme Court judgements: Criminal Appeals

The Supreme Court only hears appeals from the Court of Criminal Appeal where the latter (or the DPP or Attorney General) has certified that the matter involves a point of law of exceptional public importance.

1. *DPP v Kelly* [2006] IESC 20

A Chief Superintendent may refuse cross-examination as to the basis of belief that an accused is a member of the IRA by asserting a claim of informer confidentiality, even though the law provides that such evidence on its own is sufficient to ground a conviction.

2. *O'Brien v DPP* [2005] IESC 29

The deliberate denial of the constitutional right of access to a solicitor does not render the detention unlawful or subsequent statements inadmissible, unless there is a causative link.

3. *DPP v Cronin* [2006] IESC 9

Trial judges are not obliged to put to the jury possible defences that arise on the evidence unless requested by the defence. The appellate Courts are now extremely reluctant to entertain complaints as to errors by trial judges in the absence of requisition at the time. "Transcript trawling is to be abhorred."

4. *Fresh evidence* is next

There have been a number of recent Court of Criminal Appeal decisions clearly indicating that the same restrictive approach is to be applied in refusing applications to adduce fresh evidence.

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