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AN RÚNAÍOCHT ANGLA-ÉIREANNACH
BÉAL FEIRSTE

ANGLO-IRISH SECRETARIAT
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19 November, 1999. No of pages including this one : 2+18

TO: **G. Ansbro / J. Biggar,**
Anglo Irish Division.

[redacted]
Mr O'Leary

FROM: **V. O'Donnell / P. Hickey.**

Copied directly to B. Callaghan, DOJELR

Subject: Williamson Judicial Review of SOS for NI's Decision on PIRA Ceasefire

Mr. O'Donnell attended the High Court today for the delivery, by Mr. Justice Kerr, of his judgement in the above case. The overall verdict (conveyed orally to you) was a complete vindication of the approach adopted by the (former) SOS for NI in her interpretation of the relevant provisions in section 3 of the Northern Ireland (Sentences) Act, 1998, and as regards the test she applied in exercising her functions under the section. The application by Michelle Wialliamson was accordingly dismissed.

A copy of the judgement, which we have received (early) from a court source is attached.

You will see from the judgement that the Williamson case relied on three principal arguments, viz.

- the SOS had applied the wrong test in deciding whether PIRA should be specified under s.3(8) in asking herself whether the ceasefire had broken down rather than whether PIRA was failing to maintain a complete and unequivocal ceasefire;

- the SOS had applied the wrong approach to the application of the factors outlined in s.3(9) by considering those factors as part of an "overall judgement" instead of giving specific consideration to them and, once she concluded PIRA continued to be involved in violence, acting to specify the organisation;

- the SOS's conclusion that she did not believe that PIRA was not maintaining a complete and unequivocal ceasefire was irrational.

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Kerr J. - having reviewed the relevant statutory provisions and taking account of the affidavit filed by David Watkins which he held to be admissible - found against the applicant on all three grounds. You will have seen that media reports are highlighting his finding in relation to the third ground above which is dealt with at page 17 of the judgement, viz.:

> "The short answer to this point - [the SOS's decision not to specify under s.3(8) was perverse since she had concluded that PIRA had been invoved in acts of violence including Mrf. Kerr's murder] - is that Parliament clearly contemplated that it would be possible for an organisation to be engaged in acts of violence while maintaining such a ceasefire. Apart from this, however, it appears to me that the word 'ceasefire' in the context of section 3 must connote a suspension of hostilities rather than a complete abstention from any form of violence. The Secretary of State's conclusion that, notwithstanding PIRA's involvement in both these incidents, it was maintaining a complete and unequivocal ceasefire cannot, therefore, in my opinion, be characterised as irrational."

Similarly Kerr. J., again relying principally on Watkins' affidavit, held that the SOS had applied the correct test and said that her use of the shorthand "breakdown of the ceasefire" did not constitute compelling evidence to the contrary and that the SOS was not obliged to to specify an organisation even if she concluded that that organisation was in default of the matters specified in section 3(9).

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