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*(subject to editorial corrections)*

**IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND**

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**IN THE MATTER OF AN APPLICATION BY HUGH JORDAN FOR JUDICIAL REVIEW**

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**Nicholson LJ, McCollum LJ and Campbell LJ**

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**NICHOLSON LJ**

[1] This is an appeal from the decision of Kerr J dismissing an application by Hugh Jordan for judicial review of the "continuing decision" of the Director of Public Prosecutions for Northern Ireland ("the DPP") refusing to give reasons other than in the most general terms for his decision not to prosecute the police officer who caused the death of Pearse Jordan, the son of the appellant.

[2] The events relating to the death of Pearse Jordan were summarised by the European Court of Human Rights in Jordan v United Kingdom (2003) 37 EHRR 2 at pp. 63-67. For the purposes of this appeal it is sufficient to say that the evidence of a number of civilian witnesses was disputed by the Government of the UK. It follows that the credibility of these witnesses was disputed.

[3] It was undisputed that Pearse Jordan was shot and killed by a member of the RUC, Sergeant A, while he was unarmed and that the post mortem report found two entry wounds in his back and one in the back of the left arm. It concluded that he had been struck by three bullets which had come from behind and to the left. There was nothing to indicate the range.

[4] The RUC conducted an investigation and its report was submitted to the DPP on 25 May 1993. On 16 November 1993 the DPP's department issued to the Chief Constable of the RUC a direction of "no prosecution", having concluded that the evidence was insufficient to warrant the prosecution of Sergeant A. Following that decision the Coroner decided to hold an inquest which commenced on 4 January 1995. During the course of the inquest the

Coroner was supplied with a statement from a new witness and at the request of Pearse Jordan's family the inquest was adjourned on 16 January 1995 to enable the DPP to reconsider the decision whether or not to bring a prosecution. A supplementary police report concerning the death of Pearse Jordan was received by the DPP and the original direction of 'no prosecution' was affirmed on 10 February 1995. On the same date the legal representatives of the deceased were informed that the Director had asked that any further evidence adduced at the inquest into the death which was relevant to the Director's statutory functions under the Prosecution of Offences (Northern Ireland) Order 1972 should be reported.

[5] On 21 March 1995 the legal representatives of the deceased wrote to the DPP stating that they would be grateful if he would provide reasons for the decision contained in the letter of 10 February 1995. In reply Mr White wrote on 27 March 1995:-

> "Having regard to the functions of the Director, you will understand that for good and coercive (sic) reasons it is an invariable practice of the Director to refrain from giving reasons for decisions not to institute or continue with criminal prosecutions, other than in the most general terms. However, I can inform you that, following careful consideration of the facts and information reported in the supplementary report, it was concluded that the evidence remained insufficient to warrant the prosecution of any person in relation to the death of Mr Jordan."

It seems likely, as Mr McCloskey QC for the DPP suggested, that the word "coercive" was written inadvertently for the word "cogent".

[6] Prior to the commencement of the inquest the appellant lodged an application with the European Commission alleging that his son Pearse Jordan had been unjustifiably shot and killed by a police officer and that there had been no effective investigation into, or redress for, his death. He invoked Articles 2,6,13 and 14 of the Convention. The application was transmitted to the European Court on 1 November 1998. It was decided that in the interests of the proper administration of justice the proceedings should be conducted simultaneously with those in the case of McKerr v United Kingdom and two other cases.

[7] The judgment of the European Court in Jordan v UK was given on 4 May 2001 and became final on 4 August 2001. This referred at paragraph 26 to the direction of 'no prosecution' made on 16 November 1993 and at paragraph 38 to the decision of the DPP that the evidence remained

insufficient to warrant the prosecution of any person in relation to Pearse Jordan's death.

[8] At paragraph 66 the court stated that in Northern Ireland the Coroner is under a duty to furnish a written report to the DPP where the circumstances of any death appear to disclose that a criminal offence may have been committed: see Article 6(2) of the Prosecution of Offences Order (Northern Ireland) 1972.

[9] At paragraph 80 the court stated:-

> "80. The Director of Public Prosecutions (the DPP), appointed pursuant to the Prosecution of Offences (Northern Ireland) 1972 (the 1972 Order) is an independent officer with at least 10 years' experience of the practice of law in Northern Ireland who is appointed by the Attorney General and who holds office until retirement, subject only to dismissal for misconduct. His duties under Article 5 of the 1972 Order are *inter alia*:-
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> > '(a) to consider, or cause to be considered, with a view to his initiating or continuing in Northern Ireland any criminal proceedings or the bringing of any appeal or other proceedings in or in connection with any criminal cause or matter in Northern Ireland, any facts or information brought to his notice, whether by the Chief Constable acting in pursuance of Article 6(3) of this Order or by the Attorney General or by any other authority or person;
> >
> > (b) to examine or cause to be examined all documents that are required under Article 6 of this Order to be transmitted or furnished to him and where it appears to him to be necessary or appropriate to do so to cause any matter arising thereon to be further investigated;
> >
> > (c) where he thinks proper to initiate, undertake and carry on, on behalf of the Crown, proceedings for indictable offences and for such summary offences

> or classes of summary offences as he considers should be dealt with by him.'"

[10] At paragraph 81 the court stated:-

> "81. Article 6 of the 1972 Order requires *inter alia* Coroners and the Chief Constable of the RUC to provide information to the DPP as follows:-
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> > '(2) Where the circumstances of any death investigated or being investigated by a coroner appear to him to disclose that a criminal offence may have been committed he shall as soon as practicable furnish to the [DPP] a written report of those circumstances.
> >
> > (3) It shall be the duty of the Chief Constable, from time to time, to furnish to the [DPP] facts and information with respect to –
> >
> > (a) indictable offences [such as murder] alleged to have been committed against the law of Northern Ireland; ...
> >
> > and at the request of the [DPP], to ascertain and furnish to the [DPP] information regarding any matter which may appear to the [DPP] to require investigation on the ground that it may involve an offence against the law of Northern Ireland or information which may appear to the [DPP] to be necessary for the discharge of his functions under this Order.'"

[11] At paragraph 82 the court stated:-

> 82. According to the Government's observations submitted on 18 June 1998, it had been the practice of successive DPPs to refrain from giving reasons for decisions not to institute or proceed with criminal prosecutions other than in the most general terms. This practice was based upon the consideration that

(1) if reason were given in one or more cases, they would be required to be given in all. Otherwise, erroneous conclusions might be drawn in relation to those cases where reasons were refused, involving either unjust implications regarding the guilt of some individuals or suspicions of malpractice;

(2) the reason not to prosecute might often be the unavailability of a particular item of evidence essential to establish the case (e.g. sudden death or flight of a witness or intimidation). To indicate such a factor as the sole reason for not prosecuting might lead to assumptions of guilt in the public estimation;

(3) the publication of the reasons might cause pain or damage to persons other than the suspect (e.g. the assessment of the credibility or mental condition of the victim or other witnesses);

(4) in a substantial category of cases decisions not to prosecute were based on the DPP's assessment of the public interest. Where the sole reason not to prosecute was the age, mental or physical health of the suspect, publication would not be appropriate and could lead to unjust implications;

(5) there might be considerations of national security which affected the safety of individuals (e.g. where no prosecution could safely or fairly be brought without disclosing information which would be of assistance to terrorist organisations, would impair the effectiveness of the counter-terrorist operations of the security forces or endanger the lives of such personnel and their families or informants)."

[12] At paragraphs 122 to 124 the court considered the role of the DPP:-

"122. The Court recalls that the DPP is an independent legal officer charged with the responsibility to decide whether to bring prosecutions in respect of any possible criminal offences committed by a police officer. He is not required to give reasons for any decision not to prosecute and in this case he did not do so. No challenge by way of judicial review exists to require him to give reasons in Northern Ireland, though it may be noted that in England and Wales, where the inquest jury may still reach verdicts

> of unlawful death, the courts have required the DPP to reconsider a decision not to prosecute in the light of such a verdict, and will review whether those reasons are sufficient. This possibility does not exist in Northern Ireland where the inquest jury is no longer permitted to issue verdicts concerning the lawfulness or otherwise of a death.
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> 123. The Court does not doubt the independence of the DPP. However, where the police investigation procedure is itself open to doubts of a lack of independence and is not amenable to public scrutiny, it is of increased importance that the officer who decides whether or not to prosecute also gives an appearance of independence in his decision-making. Where no reasons are given in a controversial incident involving the use of lethal force, this may in itself not be conducive to public confidence. It also denies the family of the victim access to information about a matter of crucial importance to them and prevents any legal challenge of the decision.
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> 124. In this case, Pearse Jordan was shot and killed while unarmed. It is a situation which, to borrow the words of the domestic courts, cries out for an explanation. The applicant was however not informed of why the shooting was regarded as not disclosing a criminal offence or as not meriting a prosecution of the officer concerned. There was no reasoned decision available to reassure a concerned public that the rule of law had been respected. This cannot be regarded as compatible with the requirements of Article 2, unless that information was forthcoming in some other way. This however is not the case."

[13] At paragraph 142 the court concluded that the proceedings at the inquest disclosed six shortcoming of which one was a lack of information to the victim's family of the decision of the DPP not to prosecute any police officer. It concluded at paragraph 145 that "there has been a failure to comply with the procedural obligation imposed by Article 2 of the Convention and that there has been, in this respect, a violation of that provision."

[14] By letter to the DPP dated 10 September 2001 the legal representatives of the appellant referred to paragraph 124 of the judgment in Jordan and "on behalf of the Jordan family and in light of the decision of the European Court

requested full reasons for the decision not to prosecute issued on 16 November 1993 and full reasons for the decision not to prosecute" issued on 10 February 1995. After further correspondence Mr Kitson on behalf of the DPP replied on 1 February 2002 stating that the decisions predated the effective date of the Human Rights Act 1998 and that section 6 of the Human Rights Act did not oblige the Director to give reasons for these decisions.

He stated that the Director was alert to the separate issue currently pending in connection with the Jordan inquest, that is to say the measures to be taken at the level of the United Kingdom Government in response to the judgment of the European Court.

[15] On 1 March 2002 the Attorney General, Lord Goldsmith, in a written answer to a question from Baroness Whitaker in the House of Lords stated:-

> "The Government are considering a package of measures which, taken together, should meet the concerns expressed by the European Court of Human Rights in its judgments in a series of cases from Northern Ireland, including Jordan v United Kingdom. In furtherance of that objective, I have had a number of discussions with the Director of Public Prosecutions for Northern Ireland (the Director) regarding the giving of reasons when a decision is reached not to initiate or continue a prosecution.
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> We have agreed that the following statement should issue:-
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> > "The policy of the Director in the matter of providing reasons for decisions not to initiate or continue prosecutions, is to refrain from giving reasons other than in the most general terms. The Director recognises that the propriety of applying the general practice must be examined and reviewed in every case where a request for the provision of detailed reasons is made. The policy is based on a series of public interest considerations. It also reflects the duties owed by the Director to a range of parties as a public authority under section 6 of the Human Rights Act 1998. The lawfulness of the policy was upheld by the Northern Ireland Court of

Appeal in Re Adams Application for Judicial Review [2001] NI 1.

The Director, in consultation with the Attorney General, has reviewed his policy in the light of the judgments delivered by the European Court of Human Rights on the 4 May 2001 in a number of Northern Ireland cases, including the case of Jordan v United Kingdom. Having done so, the Director recognises that there may be cases in the future, which he would expect to be exceptional in nature, where an expectation will arise that a reasonable explanation will be given for not prosecuting where death is, or may have been, occasioned by the conduct of agents of the State. Subject to compelling grounds for not giving reasons, including his duties under the Human Rights Act 1998, the Director accepts that in such cases it will be in the public interest to reassure a concerned public, including the families of victims, that the rule of law has been respected by the provision of a reasonable explanation. The Director will reach his decision as to the provision of reasons, and their extent, having weighed the applicability of public interest considerations material to the particular facts and circumstances of each individual case."

[16] On 5 March 2002 the Solicitor-General was asked in the House of Commons what reasons had been given by the DPP for Northern Ireland for not prosecuting Sergeant A for the killing of Pearse Jordan in 1992 and in a written answer the Solicitor-General stated:-

"No reasons, other than in general terms, have been given to date. Inquest proceedings in relation to the death of Pearse Jordan are currently live. Once the proceedings have been completed, the Director of Public Prosecutions for Northern Ireland will give further consideration to whether any prosecution

> should follow. Following the decision of the ECHR in the case of Jordan v UK the Director has reviewed his policy on the giving of reasons."

She then referred to the written reply of the Attorney-General set out at paragraph [15] above.

[17] Meanwhile leave to apply for judicial review of "a continuing decision of the Director of Public Prosecutions" was sought on behalf of the appellant on 30 January 2002. The statement under Order 53 Rule 3(2)(a) set out the relief sought at paragraph 2 and the grounds upon which the relief was sought were set out at paragraph 3. I consider that it is unnecessary to set them out in this judgment.

[18] Leave was granted by Kerr J and, upon hearing counsel for the parties, Kerr J dismissed the application on 6 January 2003. We were informed by Ms Quinliven, counsel for the appellant, that the matters set out at paragraphs [6] to [8] of his judgment, although forming part of the skeleton argument submitted to Kerr J, were expressly abandoned on the hearing before him.

[19] It was argued, however, before him that the refusal by the DPP to give reasons not to prosecute was a continuing one and constituted a fresh violation of Article 2 when faced with the request for reasons in September 2001. The Court of Appeal in Re Adams' Application for Judicial Review [2001] NI 1 had rejected submissions that a decision not to prosecute and not to give reasons for that decision were continuing acts which came within the 1998 Act. The further submission that since the court, as a public authority, may not act in a way which is incompatible with a Convention right must afford to the appellant the appropriate relief was also rejected on the ground that, if upheld, it would stultify section 22(4) of the 1998 Act. Kerr J held that these conclusions were binding on him. He went on to state that he considered that the decisions of the DPP, taken before the Convention had been incorporated into domestic law, could not be transformed into decisions that are subject to the Convention simply because the DPP has been asked to review those earlier decisions. He referred to the decisions of the House of Lords in R v Lambert [2001] 3 All ER 577 and R v Kansal (No. 2) [2002] 2 AC 69 and said:-

> "To require the DPP to give reasons for his decisions in 1993 and 1995 would inevitably involve giving retrospective effect to the 1998 Act and this is simply not possible."

[20] The appellant appealed to this court. It is not necessary to set out the grounds of appeal.

[21] The main arguments advanced on behalf of the appellant were:-

(1) That the European Court had held that the DPP was in breach of his procedural obligations under Article 2 in refusing to give reasons for deciding not to prosecute in 1993 and 1995 and that failure to give reasons for a decision not to prosecute is an aspect of Article 2.

(2) That the DPP made a decision in January 2002, communicated to the legal advisers of the appellant by letter dated 1 February 2002, not to give reasons which was in breach of section 6(1) of the Act.

(3) That the DPP was in continuing breach of those obligations, when asked for reasons in September 2001, contrary to section 6(1) of the Human Rights Act 1998.

(4) That the Act was retrospective, that Lambert and Kansal related only to criminal proceedings and that Wilson and Wainwright were fact specific.

(5) That there was an obligation on the court to act in a manner which was compatible with the Article 2 rights of the appellant.

(6) That there was a right on the part of the appellant to an effective official investigation at common law including an obligation on the Secretary of State to ensure that it was carried out and an obligation on the DPP to comply with rules of procedural fairness to disclose his reasons for directing 'no prosecution'.

(7) That the court must impose such an obligation on the Secretary of State and on the DPP.

(8) That there was an obligation of promptness imposed by Article 2 and that the adjournment of the inquest necessitated a disclosure of the DPP's reasons now.

(9) That the common law acknowledged a right to life and that the court should develop the common law in the light of the decision in Jordan.

(10) That the decision in Re Adams should not be followed as it preceded the decision in Jordan and was inconsistent with the decisions of the Court of Appeal in re McKerr.

[22] The main arguments advanced on behalf of the respondent in reply were:-

(1) That the European Court had held that there were six shortcoming in the investigation by the State, one or two of which might not amount to a

breach of Article 2 and, therefore, it was not correct to say that the court had found the DPP to be in breach of Article 2.

(2) That the DPP did not act or fail to act, within the meaning of section 6(1) when the letter dated 1 February 2002 was written. The DPP acted in 1993 and 1995. The decision not to prosecute and not to give reasons was one decision.

(3) Every decision has a continuing effect but there was no continuing obligation to give another decision. To give another decision in February 2002 or now might pollute the inquest and any subsequent decision by the DPP in respect of a prosecution. The decision not to prosecute was not a continuing act: see In re Adams [2001] at p. 19. There is no conflict between the decisions in Re Adams and Re McKerr.

(4) Section 6(1) is not retrospective subject to the limited exception contained in section 22(4).

(5) The obligation on the part of the DPP and of the court turns on the construction of section 6(1). Jordan does not assist in the construction of section 6(1).

(6) There is no duty on the DPP In domestic law to give reasons for his decision not to prosecute. The various shortcomings referred to by the European Court belong to the realms of international law, and, therefore, do not assist in the construction of section 6(1).

(7) A package of measures is proposed to meet the shortcomings indicated by the European Court. A reform of the Coroners' Rules has been made: a fresh inquest or the adjourned inquest will be conducted according to those Rules: the scope of the inquest could be wider, depending on the decision of the House of Lords in Middleton; further measures may be taken to widen the scope of the investigation. The DPP does not rule out the provision of reasons for deciding 'not to prosecute', if that is the outcome of his decision whether or not to prosecute, after he has received the Coroners' report of the more thorough investigation which is to be carried out. The time to address the duty to give reasons, if there is a duty, is when the inquest is completed or a fresh inquest is held.

(8) There is no current breach of Article 2 by the DPP. He has given a public commitment to re-consider his decision not to prosecute, following receipt of the Coroners' report.

(9) The appellant is not a victim within the meaning of section 7(1)(b).

[23] I accept that the European Court held that the DPP was in breach of his procedural obligations under Article 2 of the Convention to give reasons for 'no prosecution' in 1993 and 1995: see paragraphs 122 to 124 of the judgment set out at paragraph [12] of this judgment. The court summarised its views by stating:-

> "There is no reasoned decision available to re-assure a concerned public that the rule of law had been respected. This cannot be regarded as compatible with the requirements of Article 2 unless that information was forthcoming in some other way." The information was not forthcoming by way of an inquest conducted under the Coroners Act (Northern Ireland) 1959 and the rules made in 1963, the court held: see paragraphs 125 to 140 of the judgment of the Court.
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> Notwithstanding the practice of successive DPPs to refrain from giving reasons for decisions not to institute or proceed with criminal prosecutions other than in the most general terms, based upon the consideration set out at paragraph 82 of the judgment of the Court it held that in the case of Jordan, this practice did not accord with Article 2.
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> It concluded that the proceedings for investigating the use of lethal force by Sergeant A had been shown to disclose six forthcomings: see paragraph 142 of the judgment.

At paragraph 145 it found that there had been a failure to comply with the procedural obligation imposed by Article 2 of the Convention and, therefore, a violation of that provision in that respect.

[24] I consider that the decisions taken in 1993 and 1995 not to prosecute and not to give reasons other than in the most general terms for no prosecution were 'acts' within the meaning of section 6(1). But no further information was made available to the DPP after 1995 to warrant a review of these decisions. The criticism made by the Court related to the decisions of 1993 and 1995.

[25] As soon as the decision of the European Court in Jordan v UK became effective in August 2001, it was the duty of the Government of the UK to honour its international obligations under Article 2 of the Convention and provide a forum for investigating the death of Pearse Jordan which was as compliant with Article 2 as was possible. It is apparent that it decided that a

fresh inquest into his death was the appropriate forum. It sought to remedy one of the shortcomings referred to by the court by amending the Rules governing inquests so that the police officer who shot Pearse Jordan could be required to attend the inquest as a witness. It remains to be seen what, if any, further steps will be taken by the Government to extend the scope of the inquiry. Consultation has taken place between the law officers of the Crown and the DPP as recorded at paragraph [15] and [16] of this judgment.

[26] The reform of the Coroners' Rules, to which I have referred, related to the Coroners (Practice and Procedure) (Amendment) Rules (NI) 2002 which came into operation on 11 February 2002. These Rules amended the 1963 Rules which provided by Rule 9 that a person suspected of causing a death should not be compelled to give evidence at the inquest. The Rules of 2002 substituted for Rule 9(1) the following:-

> "9(1) No witness at an inquest should be obliged to answer any question tending to incriminate himself or spouse.
>
> (2) Where it appears to the coroner that a witness has been asked such a question, the coroner shall inform the witness that he may refuse to answer."

The effect of this Rule is that Sergeant A may now be required by the Coroner to give evidence but is not obliged to answer any question tending to incriminate himself. Where there has been a decision by the DPP not to prosecute, this alters the nature of the inquest. In the present case the DPP must, I consider, have based his decision partly on the statement of Sergeant A who will be faced with cross-examination: see the summary of events set out in the judgment of the court. If he declines to answer a question on the ground that he may incriminate himself, the question or questions which he refuses to answer, will doubtless, be taken into account by the coroner when he reports to the DPP under section 2 of the Prosecution of Offenders (NI) Act 1972 and by the DPP when he receives the report.

[27] In the letter written on behalf of the DPP on 1 February 2002 it was indicated that the Director was 'alert to the separate issue which is currently pending in connection with the Jordan inquest, that is to say the measures to be taken at the level of the United Kingdom government in response to the judgment of the European Court …'

[28] Accordingly I reject the contention that a decision was taken in January 2001 and communicated in February to the legal advisers of the appellant involving a fresh examination of the decisions of 1993 and 1995 not to prosecute and not to give reasons other than in general terms for 'no

prosecution'. Nor was there a decision made at that time to refuse to give full or detailed reasons for those decisions.

[29] If I am wrong in rejecting this contention, I hold that it would not have been a breach of Article 2 of the Convention to refuse to give full or detailed reasons as this would have involved an assessment of the credibility of civilian witnesses: see the statement of facts set out at paragraphs 63 to 67 of the judgment of the European Court. Such an assessment in the form of a public statement would compromise the inquest, whether the coroner sits with a jury or on his own, would impair the confidence of the public in the impartiality of the DPP when he comes to review his decision of 'no prosecution' after the inquest has been completed, would, if he decides to direct a prosecution, be likely to affect a fair trial and would impair public confidence if he decided to direct 'no prosecution'. If he gave reasons for a decision not to prosecute, as I consider that he would be obliged to do, public confidence in those reasons would also be impaired. He could not be expected to give a "reasoned decision to re-assure a concerned public that the rule of law had been respected" whilst he was awaiting the outcome of the fresh inquest.

[30] I reject the submission that the decisions of 1993 and 1995 are continuing obligations and that the decision in Re Adams [2001] NI 1 cannot be reconciled with the decision of the Court of Appeal in Re McKerr. In Re McKerr Campbell LJ held at first instance that the obligation to hold an effective investigation was a continuing one. The Court of Appeal upheld his conclusion that the obligation to provide an investigation compliant with Article 2 did not end when the inquest was abandoned in 1994, but continued thereafter and that the failure to act after the coming into force of the Human Rights Act 1998 entitled the appellant to a declaration that the respondent Government had failed to carry out an investigation which complied with the requirements of Article 2 of the Convention. But it declined to grant any other relief as the Committee of Ministers had not yet ruled on the proposals made to them by the Government in respect of that case and the proceedings in the cases of Jordan v UK and two others which were heard together. It seems to me that in the cases of McKerr and Jordan there has not been an investigation compliant with Article 2. But this does not mean that no investigation should take place. Therefore the Court of Appeal was correct in holding that the appellant was entitled to a declaration and, in any event, the decision must be followed by this Court.

[31] On the other hand there have been decisions taken in 1993 and 1995 by the DPP to direct 'no prosecution' in Jordan and to give reasons only in general terms for such directions. There has been no continuing obligation to review these decisions. When an investigation has been carried out, hopefully as compliant with Article 2 as is possible, there will be an

obligation on the DPP to review these decisions. See paragraph [16] of this judgment.

[32] Section 7(7) of the Human Rights Act provides:-

For the purposes of this section, a person is a victim of an unlawful act only if he would be a victim for the purposes of Article 34 of the Convention if proceedings were brought in the European Court of Human Rights in respect of that act. I reject the argument of the respondent that the appellant is not a victim.

[33] The question of the 'retrospectivity' of the Act has been the subject of intense scrutiny by the House of Lords in The Queen v Lambert [2001] 3 All ER 577, The Queen v Kansal (No. 2) [2002] 1 All ER 257, Wilson v Secretary of State for Trade and Industry [2003] UK HL 40 and Wainwright v Home Office [2003] 4 All ER 877.

Section 22(4) provides:-

> "Paragraphs (b) of subsection (1) of section 7 applies to proceedings brought by or at the instigation of a public authority whenever the act in question took place; but otherwise that subsection does not apply to an act taking place before the coming into force of that section."

[34] None of the four decisions of the House of Lords support the appellant's argument about retrospectivity. Sections 6, 7 and 22 were extensively analysed in Lambert, Kansal (No. 2) and Wilson. As Lord Hope said in Lambert "But it is plain that s. 7(1)(b) may not be used with retrospective effect in proceedings against a public authority. That is the effect of the concluding words of s. 22(4). To contend that the first two decisions only relate to criminal proceedings and that Wilson is fact specific demonstrates the futility of the appellant's argument.

[35] The common law recognises the right to life referred to in Article 2 of the Convention as seen in such decisions as R v Lord Saville of Newdigate & Others Ex parte A and Others [1998] 4 All ER 860 but I cannot accept that this court should develop the common law so as to impose a duty on the DPP to give detailed reasons for his decision not to prosecute Sergeant 'A' in 1993 or 1995.

[36] The investigation of the death of Pearse Jordan by the Coroner has not been prompt but would not be compliant with Article 2 if it was carried out without regard to the criticisms contained in the decision of the European Court. It is not the fault of the DPP that the Government of the UK has not

yet agreed with the Council of Ministers as to the measures to be taken in order to carry out an appropriate investigation. But I do not accept that this lack of promptness is a valid ground for directing the DPP to give full or detailed reasons for directing 'no prosecution' in 1993 or 1995 in view of the fresh investigation which is to be undertaken.

[37] I would dismiss the appeal.