

UN observer says Scots law is flawed

Mark Macaskill

THE United Nations observer at the Lockerbie trial, Hans Köchler, said that Scotland has the reputation of a "banana republic" because of its handling of the case.

The academic, who advises the European Commission on democracy and human rights, said Scotland does not deserve to be granted independence until it addresses the failings within its judicial system.

He was responding to reports that evidence that would have undermined the crown's case against Abdelbaset Ali Mohamed al-Megrahi, the Libyan convicted of the atrocity, was withheld from his defence lawyers. It has been alleged that evidence relating to a timer device was planted by investigators to implicate the Libyan as responsible for the bombing that claimed the lives of 259 people when Pan Am flight 103 was brought down in 1988.

evidence given at the trial by Tony Gauci, the Maltese shopkeeper who claimed he sold Megrahi clothing that was wrapped around the bomb. Last week, well-placed sources claimed that Gauci and his brother Paul were paid about £2.5m by the US intelligence services soon after Megrahi's appeal collapsed in 2002. Details of the alleged payment emerged in 2005 when one of Gauci's relatives sought legal advice in an attempt to claim a share of the money.

Köchler's intervention will be a blow to the Crown Office, which is still reeling from the collapse of the World's End murder trial. In August, the trial judge Lord Clarke threw out the case against Angus Sinclair ruling there was not enough evidence for the jury to reach a verdict.

An unseemly public row ensued between Lord Hamilton, the lord justice general, and Elish Angiolini, the lord advocate, after she insisted there had been a strong enough case to put to the jury.

"The whole Lockerbie affair has not

Köchler said he believed the Crown Office regarded Megrahi as a "headache" and wanted him out of Scotland to avoid further embarrassment.

"They would prefer to have him out of the country and have the entire legal case collapse without asking any further questions," he said.

"But I think it won't be so easy because there are still some people in Scotland who are committed to the rule of law and who do not want the country to appear like a banana republic because that is what it is, for me, after I have followed [the case] over so many years.

"If they aspire to independence then they should show they can do things in the right way in the judicial domain, in devolved areas, and if they cannot do things in the right way and if they handle judicial proceedings like intelligence operations then in my view the aspirations towards independence are not very well founded."

Köchler's comments follow speculation that a US intelligence document

— which disputes claims that Megrahi used a digital timer bought from a Swiss company and then planted the bomb on a flight from Malta to Germany — was shown to senior crown officials but never disclosed to Megrahi's defence team.

It is understood to be one reason why the Scottish Criminal Cases Review Commission, which spent three years considering the safety of Megrahi's conviction, decided last June to refer the case to the Court of Appeal.

"My most serious concern is about the timer, because if something was indeed inserted, that would have devastating consequences for the entire judicial and political system of Scotland and of the United Kingdom," Köchler added.

Sources close to the case have claimed that evidence was fabricated to implicate Mohammed Abu Talb, a Palestinian terrorist, before the focus of the investigation switched to al-Megrahi and Libya in 1989.

Doubts have also been raised over

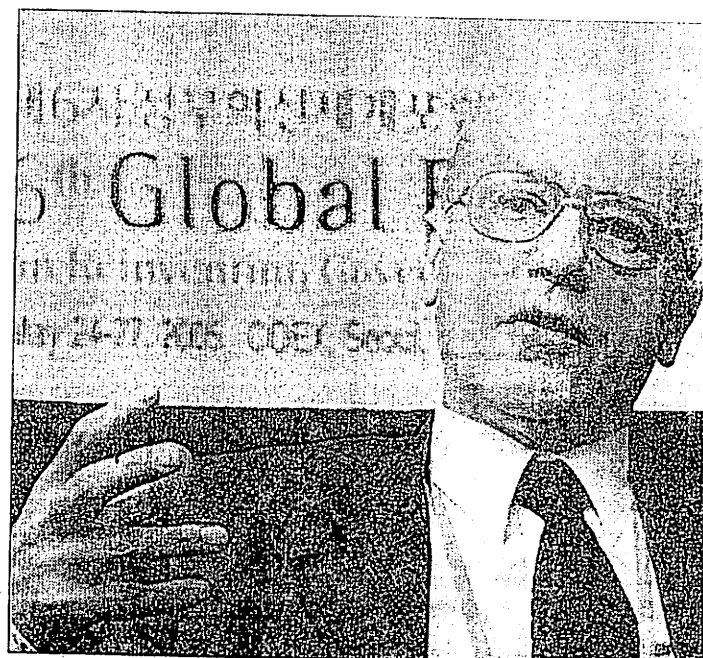
been a good advertisement for Scottish justice but there is now the opportunity to rectify what went wrong," said Professor Robert Black from Edinburgh University, who brokered Megrahi's trial at Zeist in the Netherlands.

"Provided the lessons are learnt then the experience could yet prove to be a beneficial one. Köchler cast doubts over the quality of the evidence after the trial. He wasn't taken seriously at the time but all credit to him, they are now coming to the surface," said Black.

Alex Salmond, the first minister, dismissed Köchler's remarks.

"The strength of the legal system is in the processes it adopts to ensure justice is done and seen to be done. The fact that the Lockerbie conviction is going before the Court of Appeal is not a sign of weakness, it's a sign of strength in our legal system.

A spokeswoman from the Crown Office, said: "It would be inappropriate to comment while the case is yet to come before the appeal court."



Köchler, UN observer of the case, believes operations were mishandled