The Law Commission

DOUBLE JEOPARDY AND PROSECUTION APPEALS

Summary

LAW COM No 267 (Summary)

DOUBLE JEOPARDY AND PROSECUTION APPEALS: SUMMARY

1. In its report Double Jeopardy and Prosecution Appeals (Law Com No 267) the Law Commission makes recommendations for the reform of two distinct but related rules: the rule against double jeopardy, and the rule that the Crown cannot appeal against an acquittal even if it results from an erroneous ruling by the judge.

Double jeopardy

2. The rule against double jeopardy states that a person who has been acquitted or convicted of an offence may not subsequently be charged with the same offence again. It makes no difference that new evidence of guilt is discovered after an acquittal.

3. The Law Commission's report recognises the fundamental importance of the general rule, and recommends that it be put on a statutory basis. It concludes, however, that a very limited exception to the rule should be introduced. It recommends that, in murder cases only, the Court of Appeal should have power to quash an acquittal where there is reliable and compelling new evidence of guilt and a retrial would be in the interests of justice. This new exception would apply equally to acquittals which have already occurred.

4. The report also recommends a number of reforms to the "tainted acquittal" procedure, which permits a retrial where an acquittal has been secured by intimidating, or otherwise interfering with, jurors or witnesses.

Prosecution appeals

5. An acquittal in the Crown Court is normally final: the Crown cannot challenge it. This rule applies not only where the jury has considered the evidence and acquitted on the merits, but also where the judge has stopped the case on a point of law, or has given a ruling which makes it impossible for the Crown to continue.

6. The Crown can appeal against a ruling made by the judge at a "preparatory hearing" held before the start of the trial, but preparatory hearings can only be held where the trial is expected to be long or complex.

7. The report recommends that, in certain types of case, the Crown should have the right to appeal against a ruling by the judge which has the effect of terminating the proceedings. This would include (a) a ruling made in advance of the trial, even if not made at a preparatory hearing; (b) a ruling made during the prosecution's case; and (c) a ruling at the close of the prosecution's case that there is no case to answer, provided that it is made under the first limb of

Galbraith[1] (that is, on the basis that the Crown has adduced no evidence of one or more elements of the offence). The report does *not* recommend a right of appeal against a ruling (other than one made at a preparatory hearing) which does not result in an immediate acquittal, nor against a misdirection which results in an acquittal by the jury.

8. The new right of appeal would be limited to the more serious cases. The criterion adopted for this purpose is whether, had the defendant been convicted, the Attorney-General would have had power to refer the sentence to the Court of Appeal as being unduly lenient.

9. The report also recommends certain extensions to the scope of the preparatory hearing regime. This would have the effect of extending the circumstances in which a ruling made in advance of the trial can be appealed, even if it does not bring the proceedings to an end.

[1] [1981] 1 WLR 1039.