



1 February 2017

PRESS SUMMARY

DB (Appellant) v Chief Constable of Police Service of Northern Ireland (Respondent)
(Northern Ireland) [2017] UKSC 7
On appeal from [2014] NICA 56

JUSTICES: Lord Neuberger (President), Lord Kerr, Lord Reed, Lord Hughes, Lord Dyson

BACKGROUND TO THE APPEAL

The Public Processions (Northern Ireland) Act 1998 (the “1998 Act”) placed responsibility for the management of parades in Northern Ireland in the hands of an independent statutory body called the Parades Commission. The Act placed a duty on anyone proposing to organise a public procession to give advance notice to the police and made it a criminal offence to organise, or take part in, a public procession of which notification had not been given.

On 3 December 2012 Belfast City Council decided to stop flying the Union flag over Belfast City Hall every day. The flag was to be flown on certain designated days only. The decision sparked a wave of protests by loyalists which continued for some months and became known as the “flags protests”. The protesters marched from a meeting point in East Belfast to Belfast City Hall in the centre of the city and back again. The route took the parade through the Short Strand, which is perceived to be a nationalist area, and where violence, disorder and sectarian abuse were directed at residents. No notification was made under the 1998 Act that a parade was due to take place.

Initially, in order to prevent potential disorder, the police had taken the decision not to permit the protesters to enter Belfast City Centre. But between 6 and 8 December 2012 this decision was changed, as it was considered there was a need to try to facilitate some form of protest in order to ease community tension. Therefore, when the parades began on 8 December 2012 the protesters were permitted to enter the City Centre and pass through the Short Strand area. The weekly parades continued until March 2013, during which time the police took no action to stop them. The police made a number of public announcements to the effect that it had no power to stop a parade that had not been notified under the 1998 Act. They also tried, unsuccessfully, to refer the matter to the Parades Commission.

The appellant, a resident of Short Strand, issued judicial review proceedings challenging the failure of the police to take action to prevent the parades from taking place. The High Court found that the police had failed to appreciate the extent of its powers to stop an un-notified parade, which had the effect of undermining the 1998 Act. The Court of Appeal allowed the Chief Constable’s appeal. DB appealed to the Supreme Court.

JUDGMENT

The Supreme Court unanimously allows DB’s appeal and declares that the Police Service of Northern Ireland misconstrued their legal powers to stop parades passing through or adjacent to the Short Strand area. Lord Kerr gives the judgment, with which the other Justices agree.

REASONS FOR THE JUDGMENT

The flag protests presented the Police Service of Northern Ireland with enormous, almost impossible difficulties [1]. There can be no suggestion that they failed to treat them with sufficient seriousness. This case is not about the sincerity and authenticity of those efforts, it is about whether, corporately, the police were sufficiently aware of the full range and scope of the powers available to them [3].

The police have a duty, under the general law, to prevent the commission of offences. Participating in an un-notified parade is a criminal offence under the 1998 Act and as such the police therefore had the power to prevent the parades. The police failed properly to appreciate this, instead believing that they only had a power to prevent the commission of general public order offences [10]. The police were not required to form a judgment as to whether a parade should take place, but they were required to decide whether the parade was taking place legally.

Failure to notify a proposed parade strikes at the heart of the effective functioning of the Parades Commission and therefore at the successful implementation of the 1998 Act. This Act represented a paradigm shift away from the old system where police were drawn into the controversial role of deciding which parades should be permitted to take place and under what conditions they should be allowed to proceed [63]. The police failed to recognise that the integrity of the system depended on the enforcement of the requirement to notify an intention to hold a parade [64]. It is the police, not the Parades Commission, who have the responsibility for preventing un-notified parades from taking place [45].

The police mistakenly believed that they were obliged by article 11 of the European Convention on Human Rights (freedom of assembly and association) to facilitate peaceful protests, even though they thought the protests were “technically illegal”. To the contrary, they had an inescapable duty to prevent, where possible, what were plainly illegal parades from taking place and to protect those whose rights under article 8 of the European Convention (respect for private life) were in peril of being infringed, subject to operational constraints. In general, a decision to disperse a parade or protest which has not been lawfully notified will not infringe article 11. There was no warrant for allowing article 11 considerations to determine how the parades should be policed [60-62].

The High Court was therefore right to conclude that the police laboured under a misapprehension as to the extent of their powers [70]. The police’s policy did not, however, have the intention or the effect of undermining the 1998 Act [66]. The police had an operational discretion in deciding how to respond to the parades. Discussion of what action might have been taken had the police properly understood the limits of their powers is unlikely to be unhelpful [74]. Difficulties in making policing decisions should not be underestimated, especially since these frequently require to be made in fraught circumstances [76]. The absence of a more proactive approach was not caused by police inertia, but by a concatenation of unfortunate circumstances, including misunderstandings about the powers available to them [77].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>