

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

JM's Application [2014] NIQB 102

IN THE MATTER OF AN APPLICATION BY JM FOR JUDICIAL REVIEW

STEPHENS J

Introduction

[1] This is an application for leave to apply for judicial review of a decision made on 30 July 2014 by the Parades Commission ("the Commission") to impose conditions on two protest meetings due to be held in Royal Avenue, Belfast on Sunday 10 August 2014. Those protest meetings are connected to a public procession, an anti-internment parade, which is due to pass through Royal Avenue on Sunday. The condition imposed by the Commission is that the maximum permitted number of those attending each of the protest meetings should not exceed two hundred. Accordingly the total number of those permitted to attend the protest meetings would be four hundred. The applicant asserts that given the risk of public disorder and violence that it was Wednesday unreasonable to permit that number of persons to attend the protest meetings and that the permitted numbers should be confined to twenty to thirty persons. It is asserted that a reduction in the number of those attending the protest meetings would reduce the risks of public disorder and violence to an acceptable level. That would mean that the maximum total number of those permitted to attend the protest meetings would be sixty. Alternatively, the applicant asserts that permitting two hundred persons to protest in each of these protest meetings is in breach of his Article 11 ECHR right to freedom of association in that the risks posed by that number of persons attending the protest meetings would be such as to inhibit him and others from participating in or supporting the parade. The applicant's aim is not to prevent the protest meetings but rather he contends that the numbers permitted to attend are Wednesday unreasonable or in breach of Article 11 ECHR.

[2] Mr Gordon Anthony appears on behalf of the applicant and Mr McLaughlin appears on behalf of the proposed respondent. At the outset of this judgment I would like to acknowledge the assistance that I have received from both counsel, whose submissions were both informative and succinct.

[3] The parade and the protest meetings are scheduled for this Sunday and this application was first notified to the court office late this afternoon. I held a short directions hearing at approximately 4.30 pm, at which time no papers had been lodged on behalf of the applicant. I directed that the applicant's papers should be lodged by 6.30 pm. The hearing of the application commenced at approximately 6.40 pm. I now proceed to give this ex tempore judgment just before 8.00 pm.

[4] Also by way of introduction I should deal with a number of further matters.

[5] The first is that the parties agreed and I directed that the leave application and the judicial review application should be rolled up into this hearing. The test that I apply is not the low threshold at the leave stage, but the appropriate test for the determination of the judicial review application itself.

[6] The second is that given the timescales involved documents have been submitted to me on behalf of the respondent without any supporting or replying affidavit. Also certain factual matters have been summarised to me by Mr McLaughlin on behalf of the Commission. I make it clear that there is a recording of what has taken place so that there is a record of everything that I have been told. If necessary an affidavit can be sworn by a responsible person on behalf of the Commission setting out the facts as summarised to me by Mr McLaughlin.

[7] The next matter is that the applicant wishes to be granted anonymity in these proceedings. The application for anonymity is based on the applicant's fear of reprisals in the context of damage to property including his own property in 2013, which coincided with the anti-internment parade. The respondent did not oppose anonymity being granted. Whether it is granted is always a matter for the court. On the basis of the information which I have presently available to me and the timescale involved in this case, I consider that it is a suitable one in which to grant anonymity and accordingly I will refer to the applicant as JM and I order that nothing is to be published that would directly or indirectly identify the applicant. However I have made it clear and I do so again now, that anonymity could be revoked if an application is made to that effect to the court and that application is successful.

Legal principles

[8] The role of the court is supervisory, the decision-maker is the Commission. The decision-maker is not this court.

[9] I set out the terms of Article 11 of the Convention.

“11(1). Everyone has the right to freedom of peaceful assembly, and to freedom of association with others, including the right to form and to join Trade Unions for the protection of his interests.

11(2). No restriction shall be placed on the exercise of these rights, other than such as are prescribed by law and are necessary in a democratic society, in the interest of national security or public safety for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police, or of the administration of the State”.

[10] Offence and annoyance at a public procession on the basis of dislike of or difficulty with, the views of those processing is no reason to limit the freedom of association of those involved in that procession. Likewise, dislike of or disagreement with, the views of those protesting is no reason to limit the freedom of association of those involved in the protest meetings.

[11] The State has a positive obligation under Article 11 to facilitate freedom of association. This is clear from the decision of the European Court of Human Rights in the case of *Plattform Ärzte für das Leben v Austria* (Application no. 10126/82) which is a decision dated 21st June 1988. At paragraph 32 of the court’s decision it was stated:-

“A demonstration may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. The participants must, however, be able to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents; such a fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community. In a democracy the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate. Genuine, effective freedom of peaceful assembly cannot, therefore, be reduced to a mere duty on the part of the State not to interfere: a purely negative conception would not be compatible with the object and purpose of Article 11 (art. 11). Like Article 8 (art. 8), Article 11 (art. 11) sometimes requires positive measures to be taken,

even in the sphere of relations between individuals, if need be (see, *mutatis mutandis*, the X and Y v. the Netherlands judgment of 26 March 1985, Series A no. 91, p. 11, § 23).”

The court however went on to say at paragraph 34:-

“While it is the duty of Contracting States to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully, they cannot guarantee this absolutely and they have a wide discretion in the choice of the means to be used (see, *mutatis mutandis*, the Abdulaziz, Cabales and Balkandali judgment of 28 May 1985, Series A no. 94, pp. 33-34, § 67, and the Rees judgment of 17 October 1986, Series A no. 106, pp. 14-15, §§ 35-37). In this area the obligation they enter into under Article 11 (art. 11) of the Convention is an obligation as to measures to be taken and not as to results to be achieved.”

[12] Those are the defining paragraphs in respect of the States positive obligation under Article 11. There is a positive obligation. The State has a duty to discharge it. There is a wide measure of discretion in the choice of means to be used. The State does not have to guarantee that a procession or a protest meeting will be peaceful. It is not sufficient for an applicant to establish some risk of a disturbance. If in fact there is a disturbance that is not necessarily a breach of the State’s positive obligation. The result on its own does not establish that the means falls outside the wide ambit of discretion. The means to be used to discharge the positive obligation are diverse. They include, for instance, appropriate criminal laws, appropriate criminal proceedings, appropriate methods of gathering evidence to bring criminal proceedings against anybody who is alleged to have broken the criminal law, setting up and maintaining an appropriate police force, a requirement on the police force to plan for and then to deal with anticipated problems that may arise. The State’s positive obligations are discharged through a number of institutions including in Northern Ireland the Commission and the PSNI. The discharge of the positive obligation is also to be seen in the context of there being a Police Ombudsman who can deal with complaints and monitor appropriate standards. All those are methods by which the State discharges its positive obligations. This application concerns a narrow area of that positive obligation namely the appropriate numbers permitted to attend the two protest meetings.

[13] I should also make it clear that under Section 6 of the Human Rights Act 1998 it is unlawful for a public authority to act in a way which is incompatible with a Convention Right. The Commission as a public authority must act in a Convention compliant manner in exercising its powers under the 1998 Act having regard to the guidelines that are in place.

Factual background

[14] There is to be anti-internment parade this Sunday 10 August 2014. This application is not brought on behalf of the organisers of the parade. The applicant, JM, is a member of the public who wishes to participate in it. He has played no part in the organisation of the parade, nor does he have authority on behalf of the organisers to bring this application on their behalf. He has not been involved in any discussions between the organisers and the Commission nor in any discussions between the organisers and the PSNI. He is not privy to any of the fine details of the organisation of the parade, of the organisation of the protest meetings or of the precautions that can be or have been put in place.

[15] The plan is that the parade will start in North Belfast and then proceed to Belfast City Centre before returning to North Belfast. Advance notice in writing of this public procession was given to the Commission under Section 6 of the Public Processions (Northern Ireland) Act 1998. The advance notice specifies that the assembly time is 12.30 pm and that the assembly will take place in Ardoyne Avenue. The anticipated number of participants including band members is stated to be four thousand, the number of anticipated bands is fourteen, and the likely number of supporters is stated to be four thousand. Accordingly what is envisaged is a public procession which including participants and supporters will have approximately eight thousand people in attendance. The Commission gave a determination in relation to that public procession on 30 July 2014 and the parade is to proceed this Sunday.

[16] In the meantime advance notice in writing under Section 7 of the 1998 Act was also given in respect of two protest meetings on the route of the parade. The first was advance notice on behalf of the Shankill Residents Group. This advanced notice was for a protest meeting between 1.00 pm and 4.30 pm on the Castlecourt side of Royal Avenue. The anticipated number of participants was stated to be six hundred and the purpose of the protest meeting was stated to be to commemorate the murder of two Ulster Defence Regiment (“UDR”) soldiers at Royal Avenue. There is a plaque on Royal Avenue in memory of the two soldiers who were assassinated. The second advance notice of a protest meeting was put in by the Loyal Peoples Protest. Again it is for a protest to take place in Royal Avenue and it also was stated to be to commemorate the UDR soldiers murdered at Royal Avenue. Another stated purpose of the protest was in memory of all the innocent people injured in the bombings in Belfast City Centre. The anticipated number of participants in the second protest meeting was stated to be five hundred. So the total anticipated numbers of those wishing to attend the protest meetings was stated to be one thousand one hundred.

[17] On 30 July 2014 the Commission gave a determination in relation to the two applications for protest meetings.

[18] I should explain something about the process by which the Commission arrived at all three determinations, something about the layout of the protests and also something about the history and background of what occurred in 2013.

[19] There was undoubtedly serious violence in 2013 on the occasion of the first anti-internment parade and the protests that then took place. Fifty four police officers were injured. There was serious violence and disturbance. In 2013 those attending the protest meetings were on both sides of Royal Avenue, so that in effect, there was a tunnel through which those participating in the anti-internment parade had to pass. In 2014 it is a condition that those wishing to attend the protest meetings are to be on one side only of Royal Avenue. That is on the side opposite Castlecourt Shopping Centre.

[20] It was stated that the Commission has been informed by the PSNI that there are to be the usual precautions such as crowd barriers which will be erected together with all the other types of equipment that is usually deployed in dealing with events such as these. That in arriving at the number of people who are allowed to participate in the protest meetings, there was liaison between the Commission and the organisers of the procession, there was liaison between the Commission and the organisers of the two protest meetings, and that there was liaison between the Commission and the Police Service of Northern Ireland. The number of two hundred which was arrived at was not an arbitrary number plucked out of the air, but was rather a number arrived at after consideration of and analysis of various factors, including, what occurred last year, of the crowd control methods, of barriers, of CCTV recording devices that are already present in the city centre, of the PSNI evidence gathering devices which are available and will be deployed, and detailed analysis of operational matters including I assume numbers of police officers suitably equipped who are going to be in attendance and also other police officers who can be held in reserve locations proximate to the parade and the protest meetings.

[21] There is a balance between on the one hand flooding Royal Avenue with too many police officers, so that in itself inhibits the Article 11 rights of those who wish to participate in the parade and in the two protest meetings, and on the other hand not having sufficient police officers present or in reserve to deal with the risk of disturbances taking place.

[22] In the event after that process of consultation was gone through by the Commission and after they had received a detailed written report from the PSNI a condition was imposed in relation to each of these protest meetings limiting the permitted numbers of those attending to two hundred. The total initial number asked for was one thousand one hundred permitted attendees. The total number was reduced from that to four hundred. That is two hundred in each protest meeting.

[23] These conditions were imposed under powers contained in the Public Processions (Amendment) (Northern Ireland) Order 2005 which amended the Public Processions (Northern Ireland) Act 1998. In order to arrive at that determination the Commission as I have indicated received information and advice from the Police Service of Northern Ireland. The Commission was also under the duty contained in Section 9A(6) to have regard to any public disorder, or damage to property which may result from the protest meeting, any disruption to the life of the community which the meeting may cause, and any impact which the meeting may have on relationships with the community. It is also of note that the Chief Constable has a power to request the Secretary of State to review a determination issued by the Commission under Section 9(A) that is in relation to a protest meeting, and indeed the Secretary of State has powers to prohibit protest meetings. So there are ways in which further conditions could be imposed or the protest meetings prohibited if circumstances developed and required such action to be taken. In this case, the Chief Constable has not made such a request to the Secretary of State.

[24] There are a number of differences between 2013 and 2014. The tunnel effect is no longer going to be a feature. In 2013 there were six locations along Royal Avenue for the protest meetings, there are going to be two this year. In 2013 the access arrangements through side streets were considered to be somewhat inadequate and now that issue has been addressed through the planning of the policing operation.

Conclusion

[25] In the result I have to consider whether the imposition of the condition limiting the permitted numbers to two hundred was *Wednesbury* unreasonable. I am wholly un-persuaded that the decision as to numbers was *Wednesbury* unreasonable. I consider that it is well within the range of reasonable decisions which could be arrived at by the Commission. The number of two hundred emerged as a result of informed discussion between the Commission, the PSNI and those organising both the parade and the protest meetings. It takes into account all the operational planning conducted by the PSNI and is to be seen in the context of this year's political climate. There is a complete absence of the type of evidence that would even begin to persuade this court to intervene on the basis that the condition was outside the range of reasonable decisions. In contrast to the figure contained in the condition imposed by the Commission the figure postulated by the applicant is arbitrary and uninformed.

[26] I also consider that the conditions as to numbers permitted to attend the protest meetings was well within the wide discretion as to the choice of means in connection with the positive obligation on the State under Article 11 of the Convention.

[27] I dismiss this judicial review application.