

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

KA's Application [2014] NIQB 108

APPLICATION BY KA FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

WEIR J

Introduction

[1] This is an application for leave to apply for judicial review of three decisions of the Parades' Commission for Northern Ireland ("the Commission") given on 3 July 2014 whereby it determined to impose conditions upon virtually identical intended parades by three Orange Lodges on the early evening of Saturday 12 July 2014. The only condition to which objection is taken is that:

"On the notified return the parade shall not process between the junction of Woodvale Parade and Woodvale Road and the junction of Hesketh Road and Crumlin Road."

[2] The applicant for leave resides near to the prohibited section of route and asserts that she is a supporter of the Orange Institution who has enjoyed watching the Orange parades on 12 July in each year and the bands that accompany them. She deposes that the parade is an important event for the protestant unionist community as it provides it with an opportunity to celebrate its heritage and culture and that for many years the Orangemen walked down the Crumlin and Woodvale Roads going to and coming from the main Twelfth celebrations in Belfast. It was her normal practice to go to watch the parade as it passed nearby. She recalls that there was a similar prohibition on the Orangemen on 12 July 2013 but that she believed that, although unwelcome to her, that decision would be for that year only. She frankly acknowledges that there were significant public protests following the 2013

determination and that there was violence and disorder on 12 July 2013 which continued for many nights thereafter.

[3] The applicant expresses concern that if her name were made known in connection with these proceedings danger to her family and property could result and therefore seeks an order for anonymity. I accede to that application which was not opposed and order that nothing may be published of or concerning these proceedings to identify the applicant or her address, whether directly or indirectly. The grounds upon which the application is brought are in summary these:

Ground 1.1

[4] That the impugned condition is Wednesbury unreasonable as the Commission has not explained why a parade has been permitted to pass through the prohibited area on the morning of 12 July whereas the impugned condition has been imposed on its return along the same route in the evening of that day without explanation for this distinction in the determination. It is contended that this approach and without the giving of sufficient reasons for it is irrational in the Wednesbury sense.

Ground 1.2

That the Commission has acted irrationally in concluding that the disorder which occurred on 12 July 2013 and for a number of days following shows that the parade organisers have failed to respect the July 2013 determination.

Ground 1.3

That the Commission has acted irrationally in concluding that the dialogue entered into by the Orange Order was not "sustained".

Ground 1.4

That the Commission has failed to have regard to the relevant consideration and/or attach appropriate weight to the sincere and concerted effort by the Orange Order to reach an agreement and make real attempts to address the concerns of objectors.

Ground 2

That the impugned decision is ultra vires Section 8.1 of the Public Processions (Northern Ireland) Act 1998 ("the Act") insofar as it is not a "necessary" condition. The respondent could not reasonably have concluded that the condition is necessary when it had determined that no such similar condition was necessary on the outward morning parade. In those circumstances the Commission did not have the power to impose the impugned condition.

Ground 3

That the impugned condition had been imposed for a purpose collateral to that permitted by Section 85 of the Act and the guidelines, namely to punish the parade organisers and Orange Order for the violence and disorder that occurred in July 2013.

Ground 4

That the impugned condition represents a disproportionate interference with the Article 11 rights of the applicant and this is clearly so because no similar conditions have been imposed on the outward parade on the morning of the same day along the same route.

Ground 5

That the impugned condition is in breach of the applicant's legitimate expectation that this condition would not be imposed on the July 2014 parade arising from the terms of the Commission's determination of July 2013 in which it had said that:

"In the event of the Loyal Orders respecting this determination and in the event of sustained and sincere dialogue we expect that any future Commission will look favourably upon the notification for a similar evening return parade on 12 July 2014."

[5] Because this matter was brought on at very short notice today and the impugned decision relates to a parade to be held tomorrow evening there was no opportunity for the Commission to file an affidavit in reply. But Ms Murnaghan who appeared on its behalf and Ms Kylie who appeared for the applicant each presented their clients' respective positions with great economy and clarity and I am indebted to both of them.

[6] I have dealt with this matter as a rolled up application because of the time factor. Also by reason of the limited time available I do not propose to set out here the legislative and administrative framework under which the impugned decisions have purportedly been made. It is to be found in the Act and in the Commission's guidelines for public processions and related protest meetings made pursuant to Section 5 of the Act.

[7] At the hearing it became clear that the grounds of challenge resolved into three broad complaints. The first is that the Commission had acted irrationally in allowing the morning parade to proceed through the area from which the evening parade has been excluded. A sub - argument on this point is that the Commission

could not reasonably have found it “necessary” to impose this restrictive condition on the evening parade when it had not done so in respect of the morning parade and since Section 8.1 of the Act only entitles the Commission to impose such conditions as it considers “necessary” the imposition of the restriction cannot have been validly imposed.

[8] Ms Murnaghan pointed out that the morning parade is not discussed in the impugned determination because, somewhat unusually, there were in fact separate applications lodged in respect of the morning and evening parades so that each fell to be considered and determined separately. She also pointed out that there has historically been a clear distinction between the events occurring at the morning and evening parades. Apparently the morning parades have passed off without significant incident whereas as appears from paragraphs 19-22 of the determination, much of the content of which I was told came from a police submission to the Commission in advance of the impugned decision, there has been very considerable disorder surrounding the evening parades in the most recent three years beginning with 2011.

[9] The Commission set out its reasons for its decision to restrict the evening route at paragraph 24 of the determination as follows:

“In considering all of the evidence received, including the determination and route map for the previous year, the Commission has concluded that the level of disruption to the life of the community, the impact of the parade upon community relations, and the potential for public disorder would be disproportionate to the significance of this procession processing the entirety of the notified route. Accordingly the Commission determines that, subject to restrictions noted in the body of the determination, the parade notified for 12 July 2014 may not process the full length of its notified route.”

[10] It is clear from that explanation of its reasons that the matters the Commission took account of are all matters which it is obliged to consider both by the Act at Section 8(6) and by its guidelines and that at the time when it took its decision it was well aware of the stark qualitative distinction between the history of events at the morning and evening parades. I conclude that there is no basis for contending that the disparate treatment accorded to the morning and evening parades so far as a restriction on part of the route is concerned was in any way unreasonable or outwith the range of reasonable decisions. Indeed, I consider that the distinction between the treatment of the morning and afternoon parades was entirely justified on all the material available to the Commission at the time of its decision.

[11] The second main ground of attack upon the decision was the contention that there is a legitimate expectation to be derived from certain observations of the

Commission in its July 2013 determination on the similar evening parade, of the Commission looking favourably upon the evening parade in 2014. What the Commission said in 2013 on this subject is repeated in paragraphs 9 and 10 of the impugned decision:

“Two issues arise from the July 2013 determination. The first is the level of engagement between the parade organiser and those who raise objections to the parade. The second is the degree to which the July 2013 determination has been respected by the parade organiser. These matters are set out clearly in the July 2013 determination, which stated:

“The Commission sets out the following “route map” for parades at Ardoyne: For this year 2013 the return parades for the three Lodges will be restricted from that part of the notified route between the junction of Woodvale Parade and Woodvale Road and the junction of Hesketh Road and Crumlin Road;

- (a) The Commission will facilitate, or support others to facilitate, a sincere and concerted mediation effort between CARA and the Orange Order to reach an agreement on parades notified for this location, both morning and evening. This should start by September 2013 and must be substantive and meaningful so as to help inform the 2014 parading decisions; and
- (b) In the event of the Loyal Orders respecting this determination and in the event of sustained and sincere dialogue, we expect that any future Commission will look favourably upon the notification for a similar evening return parade on 12 July 2014.”

[12] Ms Kylie submitted that, as the Commission acknowledged in the succeeding paragraphs of the 2014 determination, the Orange Order had engaged in sincere and meaningful dialogue that led to the legitimate expectation of an unrestricted approval for this year’s evening parade. However, Ms Murnaghan pointed out that the Commission had also concluded that the dialogue had not been sustained, that the talks had paused in April 2014 and that no resolution or agreement between the parties has yet occurred. That this is indeed the position is confirmed in an affidavit filed on behalf of the applicant by a participant in these talks. Ms Murnaghan also drew attention to the first limb of para 10(b) which calls for the Loyal Orders to

respect the 2013 determination as a further pre-requisite to the favourable consideration which might be expected in 2014. She read from paragraph 13 of the determination which recorded the Commission's view with detailed reasons as to why the July 2013 determination had not been sufficiently respected. I consider that the Commission's approach to the 2013 "road map" (as it describes it) for 2014 cannot be faulted. Whoever, if anyone, was responsible for the lack of progress in the discussions, the agreed position is that no agreement has so far been reached between those wishing to parade and those past whom the parade is intended to process.

[13] In those circumstances the Commission cannot be said to have acted unreasonably in deciding that no basis had been established between 2013 and 2014 to enable the likely outcome of the 2014 evening parade to be viewed more favourably. Given the lack of concrete progress, no one could have legitimately expected that circumstances had sufficiently changed for the better in the intervening period to warrant the giving of permission to parade over the contentious area.

[14] The third ground of challenge can be dealt with shortly. Ms Kylie argued, though rather faintly, that the Commission had decided to impose the restriction on the 2014 evening parade in order to punish the parade organisers for the violence and disorder that occurred in July 2013. There is no evidence whatever to support this claim other than the applicant's bald statement at paragraph 8(b) of her affidavit that she believes that to be the case. I have searched in vain within the commission's determination for anything that might support such a belief. I consider that no evidential basis for any such assertion has been advanced, much less established.

[15] Accordingly, I find that none of the applicant's grounds of challenge to the Commission's impugned decisions of 3 July 2014 has been established. The application is accordingly dismissed.