



1 July 2015

PRESS SUMMARY

In the matter of an application by JR38 for Judicial Review (Northern Ireland) [2015] UKSC 42
On appeal from [2013] NIQB 44

JUSTICES: Lord Kerr, Lord Clarke, Lord Wilson, Lord Toulson, Lord Hodge

BACKGROUND TO THE APPEAL

The Appellant, referred to in these proceedings as JR38, was involved in serious rioting which took place in Derry in July 2010. At the time he was 14 years old. CCTV images taken of him in the course of rioting were later published in two newspapers as part of a police campaign designed identify individuals involved in the riots and also to discourage further sectarian rioting.

The Appellant complained that the publication of the images breached his rights under Article 8 of the European Convention on Human Rights. Dismissing the application, the Divisional Court held that the Appellant's Article 8 right was engaged because that the published image was of a child, where it was at least possible he was involved in serious public disturbances. This risked stigmatising the child and impairing his rehabilitation and reputation. The interference with Article 8 was justified, however, because it was necessary for the administration of justice and not excessive in the circumstances.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Kerr, with whom Lord Wilson agrees, holds that Article 8 is engaged but the interference with the right is justified. Lord Toulson, with whom Lord Hodge agrees, holds that Article 8 is not engaged, but if it were engaged the publication would be proportionate. Lord Clarke writes a separate judgment concurring with Lord Toulson.

REASONS FOR THE JUDGMENT

Lord Kerr examines the Strasbourg jurisprudence on engagement of Article 8 and concludes that a nuanced approach is needed to reach a conclusion on this issue [55]. The test is essentially a contextual one, involving not only whether the person asserting the right had a reasonable expectation of privacy but also many other possible factors such as the applicant's age, consent, the risk of stigma and the use to which the published material is put. Reasonable expectation of privacy may be a factor of considerable weight but it is not determinative [56]. In the present case Article 8 is engaged because of JR38's age and the effect which the publication of the photographs may have on him. The emphasis under Article 8 should be on the publication of the photographs rather than the activity in which the Appellant was engaged [65].

Lord Kerr concludes, however, that the interference with Article 8 is justified. The police were entitled to disclose the image under the Data Protection Act 1998 as the publication was for the purposes of the prevention and detection of crime and the apprehension and prosecution of offenders [70]. Publication furthered these objectives as well as seeking to divert young people from criminal activity [73]. The police's painstaking approach showed that this was a measure of last resort [76-77]. The publication struck a fair balance between the interests of the Appellant and the community. The

Appellant stood to benefit from being diverted from criminal activity, as did his community from the prevention of crime and apprehension of offenders [79-80].

Lord Toulson concludes that Article 8 is not engaged. The “touchstone” for engagement of Article 8 is whether the person seeking to assert their rights had a reasonable expectation of privacy [88]. The fact that the Appellant was a child at the relevant time does not justify using another test but may be relevant to its application [95]. It is an objective test [98]. There was no reasonable expectation of privacy in these circumstances. Article 8 does not exist to protect rioting and the Appellant’s involvement in the riot was not an aspect of his private life which he was entitled to keep private [100]. Alternatively, if Article 8 were engaged, any interference with the Appellant’s Article 8 right was justified for the reasons given by Lord Kerr [103].

Lord Clarke holds that Article 8 was not engaged or, alternatively, that any engagement was justified. The relevant test is whether there was a reasonable expectation of privacy [107]. The Appellant could not have had an objectively reasonable expectation that such photographs would not be published [112].

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: www.supremecourt.uk/decided-cases/index.html