

THE COURT ORDERED that no one shall publish or reveal the names or addresses of the Respondents who are involved in these proceedings or publish or reveal any information which would be likely to lead to the identification of them or of any member of their families in connection with these proceedings.



21 February 2018

PRESS SUMMARY

Commissioner of Police of the Metropolis (Appellant) v DSD and another (Respondents)
[2018] UKSC 11
On appeal from [2015] EWCA Civ 646

JUSTICES: Lord Neuberger, Lady Hale, Lord Mance, Lord Kerr, Lord Hughes

BACKGROUND TO THE APPEAL

Between 2003 and 2008, John Worboys, the driver of a black cab in London, committed sexual offences against many women. The respondents were two of his victims and both reported their assault to the police. DSD was one of Worboys' first victims. She was attacked in 2003. After her assault Worboys was not identified as her assailant. In NBV's case, following an attack in 2007, Worboys was quickly arrested as a suspect but released without charge. Following a review of sexual assault cases by police in February 2008, cases were identified which involved a particular modus operandi by the perpetrator. This resulted in a police media appeal. This led to DSD and NBV being identified as his victims. Many other women were also identified as being victims of his attack. Worboys was eventually convicted of 19 counts of sexual assault, including the assault on NBV.

Both women brought proceedings against the police, alleging failure to conduct effective investigations into Worboys' crimes. They claimed that these failures constituted a violation of their rights under article 3 of the European Convention on Human Rights (ECHR), which provides that no one shall be subjected to torture or inhuman or degrading treatment or punishment.

The main issue was to what extent article 3 imposes a positive obligation on states effectively to investigate reported crimes perpetrated by private individuals. The High Court and the Court of Appeal held that a positive obligation to investigate did exist and that, in this case, this obligation had been breached. Compensation was awarded to the respondents. The Commissioner of Police of the Metropolis appealed to the UK Supreme Court, although it was accepted that, whatever the outcome of the appeal, recoupment of any of the compensation paid would not be sought.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Kerr gives the main judgment, with which Lady Hale agrees. Lord Neuberger agrees with Lord Kerr but also gives a judgment with which Lady Hale agrees. Lord Hughes and Lord Mance give separate judgments with differing reasons but agreeing with the outcome.

REASONS FOR THE JUDGMENT

The main area of dispute is the nature of the positive obligation imposed by article 3 of the ECHR, particularly the issue of whether the obligation relates only to systemic failures or whether it also includes operational failures [6].

Lord Kerr examines the ECHR case law supporting the existence of the positive obligation under article 3 and concludes that there is an operational duty to conduct a proper inquiry into behaviour amounting to a breach of article 3 [20, 54-58].

In order to be an effective deterrent, laws which prohibit conduct constituting a breach of article 3 must be rigorously enforced and complaints of such conduct must be properly investigated [24]. Deficiencies in investigations do not have to be part of a flawed approach of the system generally for a breach of article 3 to arise. It is clear, however, that errors must be serious in order to give rise to such a breach [29-30]. The ECtHR case law demonstrates a clear and constant line of authority to the effect that the state has a duty to conduct an effective investigation into crimes involving serious violence to the individual [44-48]. It has consistently been held that the positive obligation to investigate effectively is not solely confined to cases of ill-treatment by state agents [59-62].

Lord Neuberger agrees with Lord Kerr that serious failures which are purely operational will suffice to establish a claim. ECtHR case law supports this approach. There is no basis in that case law for the suggestion that the investigatory duty should be limited to systemic, as opposed to operational, failures [85, 93].

Lord Hughes differs from this view in that he considers there is a positive obligation to ensure that there are appropriate legal structures in place but that there is no operational obligation. ECtHR case law leaves uncertainty as to the source and extent of the investigative duty [117]. The proper test for the positive obligation under article 3 to investigate reports of past violence is whether the state has a proper structure of legal and policing provision designed to punish it when it occurs and has administered that structure in good faith and with proper regard for the gravity of the behaviour under consideration. The test is not whether the investigation was careless or involved mistakes which ought not to have been made [127]. There is a breach of the positive obligation in this case as there were plain structural errors [140].

Lord Kerr considers that the fact that the police do not have a common law duty of care in tort does not extend to claims advanced under the Human Rights Act 1998 (HRA). The bases of liability are different and no assumption should be made that the policy reasons which underlie the exemption of police from common law liability apply in the same way to liability for breach of HRA obligations. The existence of a duty to investigate effectively does not depend on whether it is fair, just or reasonable to impose one [67-70].

Lord Hughes takes a different view and examines the public policy reasons why English law does not recognise a duty of care owed in tort by the police to individual citizens. Law enforcement and the investigation of alleged crime involve a complex series of judgments and discretionary decisions – to revisit such matters step by step by way of litigation with a view to private compensation would inhibit the robust operation of police work. English law cannot control the operation of the ECHR, but there is a delicate balance to be struck and it is undesirable to permit detailed review of a particular criminal investigation by way of the ECHR, which is why the positive obligation should be confined to structural failings [131-132, 134].

Lord Mance considers that the distinction between operational and systemic failures has been replaced by a distinction between simple errors/isolated omissions and more serious failings, and emphasises that the positive obligation under article only relates to more serious failings [151].

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>