Information Note on the Court's case-law No. 124

November 2009

Rai and Evans v. the United Kingdom (dec.) - 26258/07 and 26255/07

Decision 17.11.2009 [Section IV]

Article 11

Article 11-1

Freedom of peaceful assembly

Conviction for holding an unauthorised demonstration in a security-sensitive area designated by law: *inadmissible*

Facts – In 2005 the first applicant organised, and together with the second applicant participated in, a demonstration against the Iraqi conflict. The demonstration was held in Whitehall, opposite Downing Street, a "designated area" requiring authorisation to demonstrate under the Serious Organised Crime and Police Act 2005 ("the 2005 Act"). Prior to the event, the first applicant had informed the police orally that the demonstration was going to be held and that an authorisation would not be sought. The police informed him that he would be arrested under the 2005 Act. The second applicant was also aware of this. At the demonstration, the applicants read out names of Iraqi citizens and British soldiers killed in the Iraqi conflict. Placards were displayed and a bell was rung at regular intervals. The applicants behaved in a peaceful and orderly manner throughout. The police attended the demonstration and warned the applicants that they would be arrested and charged if they continued given the lack of an authorisation. The police then withdrew to enable the applicants to stop the demonstration. They chose to continue and were arrested and subsequently convicted of having held an unauthorised demonstration in a "designated area" contrary to the 2005 Act. The first applicant was sentenced to a fine of 350 pounds sterling (GBP) and ordered to contribute to prosecution costs in the sum of GBP 150, and the second applicant was sentenced to a conditional discharge of twelve months and to contribute to costs in the sum of GBP 100. The magistrates' court noted police evidence to the effect that, had authorisation been sought, no conditions would have attached to it. The High Court later noted that the demonstration had been just as much a demonstration against the requirement for an authorisation under the 2005 Act as against the Iraqi conflict.

Law – Article 11: The applicants' prosecution had constituted an interference with their rights guaranteed by Article 11. The interference was "prescribed by law" and pursued the legitimate aims of protecting national security and preventing disorder or crime. The applicants had not disputed this and both of them had been aware prior to the relevant date that demonstrating in the intended location without an authorisation was unlawful. However, they had considered the interference disproportionate since their conviction had concerned only a lack of authorisation and had not taken into account the peaceful nature of the demonstration. Having regard to the reasonable and calm manner in which the police had ended the demonstration, it could not be said that their intervention had been so excessive as to render the impugned interference disproportionate. Moreover, the applicants had not suggested they had had insufficient time to

apply for the authorisation and, given the subject matter of their demonstration and the evidence of their prior knowledge and planning, the time-limits set down in the 2005 Act had not constituted an obstacle to their freedom of assembly. Furthermore, the Court did not agree with the applicants' description of the pre-authorisation procedure as a "blanket ban". In particular, the authorisation was required only as regards certain designated zones considered sensitive from a security point of view and, in the present case, in proximity to the Prime Minister's office and residence. The authorisation had to be accorded, although it could be subjected to conditions which were statutorily defined and which had to be necessary in the "reasonable opinion" of the Commissioner of Police of the Metropolis to prevent defined risks of a public-order, safety and security nature. However, the domestic evidence was that it was unlikely that conditions would have been imposed given the nature of the demonstration the applicants had proposed. Nor had it been demonstrated that the pre-authorisation requirement was, of itself, a deterrent to demonstrations as the applicants had suggested: the deterrent was rather against unauthorised demonstrations, which limitation was not *a priori* incompatible with Article 11. The criminal sanctions concerned only unauthorised demonstrations in certain limited and security-sensitive areas. The applicants had continued with the demonstration even after the police had given them an opportunity to disband without the imposition of any sanction. Moreover, the sanctions actually imposed had not been severe. While the first applicant had risked imprisonment and/or a fine, he had been ordered to pay a fine at the lowest end of the statutory scale and to contribute a relatively small sum to prosecution costs. The second applicant had risked a fine but had had simply been conditionally discharged and ordered to contribute a small sum to prosecution costs. The interference with the applicants' rights could not therefore be considered to have been disproportionate.

Conclusion: inadmissible (manifestly ill-founded).
