



15 February 2017

PRESS SUMMARY

R (on the application of Hicks and others) (Appellants) v Commissioner of Police for the Metropolis (Respondent) [2017] UKSC 9
On appeal from [2014] EWCA Civ 3

JUSTICES: Lord Mance, Lord Reed, Lord Carnwath, Lord Toulson, Lord Dyson

BACKGROUND TO THE APPEAL

This appeal concerns the arrest and detention of four individuals on 29 April 2011, the day of the wedding of the Duke and Duchess of Cambridge. The appellants were part of a larger group of claimants but it was agreed before the Court of Appeal that their cases should be treated as test cases [1, 3]. The appellants were arrested in separate incidents at various places in central London on the grounds that their arrest was reasonably believed to be necessary to prevent an imminent breach of the peace. They were all released without charge once the wedding was over and the police considered the risk of a breach of the peace had been passed. Their period of custody ranged from 2.5 to 5.5 hours [3].

Complaints regarding the lawfulness of the policy for the policing of the royal wedding and the grounds for, and necessity of, the appellants' arrest were dismissed by the Administrative Court and these issues were not in dispute on appeal [5]. The appellants also alleged that their detention violated their rights under article 5 of the European Convention on Human Rights which provides that no one shall be deprived of their liberty save in the certain specific circumstances provided for in subsection (1). The police argued that the appellants' detention was lawful under article 5(1)(b), which allows for the lawful detention of a person in order to secure the fulfilment of any obligation prescribed by law, or under article 5(1)(c), which allows for the detention of a person "for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so". For the purposes of article 5 a breach of the peace counts as an offence, despite not being classified as an offence under English law [8].

The Administrative Court found that the appellants' arrest and detention were lawful under article 5(1)(c). It interpreted the phrase "effected for the purpose of bringing him before the competent legal authority" as applicable only where the purpose of the arrest was to bring the person before the court on reasonable suspicion of having committed an offence and not where the purpose of the arrest was to prevent a commission of an offence [8]. It felt it was therefore unnecessary to determine whether the arrest was lawful under article 5(1)(b) [9]. The Court of Appeal agreed but for different reasons. In light of the decision of the Strasbourg court in *Ostendorf v Germany* (2015) 34 BHRC 738, which post-dated the decision of the Administrative Court, it read the phrase "effected for the purpose of bringing him before the competent legal authority" as applying to the whole of article 5(1)(c). However, it inferred that the officers who arrested and detained the appellants appreciated the appellants would not be lawfully detained beyond the point at which it was reasonably practicable to take them before the magistrates' court. The appellants had therefore been arrested and detained with the intention of bringing them before the competent legal authority within the meaning of article 5.1(c) [11].

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Toulson, with whom the other Justices agree, gives the lead judgment.

REASONS FOR THE JUDGMENT

The fundamental principle underlying article 5 is the need to protect the individual from arbitrary detention, and an essential part of that protection is timely judicial control. However, article 5 must not be interpreted in such a way as would make it impracticable for the police to perform their duty to maintain public order and protect the lives and property of others [29]. An appreciation of the reality and practical implications is central to the principle of proportionality embedded in both article 5 and in the common law relating to arrest for breach of the peace [30]. The ability of the police to perform their duty would be severely hampered if they could not lawfully arrest and detain a person for a relatively short time (too short for it to be practical to take the person before a court) [31].

The Strasbourg case law on how such a preventative power can be accommodated within article 5 is not clear and settled and the Strasbourg court in *Ostendorf* was divided. Whilst the Supreme Court must take into account the Strasbourg case law, the final decision is the Court's [32]. The Court prefers the view of the minority of the Strasbourg court in *Ostendorf* that article 5(1)(c) is capable of applying to a case of detention for preventive purposes followed by early release [33]. It would be perverse if the law was such that in order to be lawfully able to detain a person so as to prevent their imminent commission of an offence, the police must harbour a purpose of continuing the detention, after the risk has passed, until such time as the person could be brought before a court with a view to being bound over to keep the peace in the future. This would lengthen the period of detention and place an unnecessary burden on police resources [36]. Rather, Lord Toulson reads the phrase "for the purpose of bringing him before the competent legal authority" as implicitly dependent on the cause for detention continuing long enough for the person to be brought before the court. Early release from detention for preventive purpose will not breach article 5 if the lawfulness of the detention can subsequently be challenged and decided by a court [38].

In respect of article 5(1)(b), the Court also prefers the view of the minority in *Ostendorf*. A general obligation not to commit a criminal offence or, in this case, a breach of the peace, is not "an obligation prescribed by law" for the purposes of article 5(1)(b) as it is not concrete or specific enough. Such a general obligation does not acquire the necessary degree of specificity by focusing narrowly on the particular facts or by the person concerned being given a reminder of it in specific circumstances. The police may be required to take action to prevent an imminent breach of the peace where there is insufficient time to give a warning [27, 40].

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>