



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Response by the Northern Ireland Human Rights Commission
to the Quigley Review on The Parades Commission
and Public Processions (Northern Ireland) Act 1998**

Scope of response

1. The NIHRC has focused its consideration of the Quigley Review on those recommendations that have a direct bearing on human rights issues, notably the criteria on which determinations by the Parades Commission and related decisions by other agencies should be based and the procedures through which those determinations and decisions are made. It has not sought to comment in detail on other more practical aspects of the regulation of parades, such as the proposed arrangements for the provision and training of marshals, the obligation to carry out risk assessments or the regulation of bands or of paramilitary symbols.

Bringing the statutory criteria into line with Article 11 of the ECHR

The Quigley Review recommends that the criteria on which determinations are made should be modelled precisely on Article 11 of the European Convention on Human Rights (paras.36-37).

2. The NIHRC strongly supports this recommendation. It would, as the Quigley Review suggests, emphasise that human rights principles are the essential basis of decisions in this area and help to remove any confusion over the grounds on which determinations are made. The courts in reviewing decisions by the Parades Commission and other agencies are in any event bound to apply the provisions of Article 11, which in its reference in paragraph (2) to the rights and freedoms of others incorporates all other relevant articles of the Convention. This recommendation is also in line with the approach which the NIHRC has consistently taken to the regulation of parades, notably by commissioning a report on the interpretation of the ECHR in respect of parades and related protests, published as *Parades, Protests and Policing: A Human Rights Framework* in March 2001, and by suggesting in its Consultation Paper *Making a Bill of Rights for Northern Ireland* that the provisions of Article 11 provide sufficient protection to all those involved.
3. It is important in this context to emphasise that all of the provisions of the Convention are of equal importance in decisions on parades. The provisions of Article 8 are particularly relevant in respect of the interference with family life which may arise from the heavy security which has in the past been associated with contested parades. So too are those of Article 10 in respect of the right to free expression for both marchers and

Addition of a provision emphasising the obligation to respect the honour and dignity of all
The Quigley Review recommends that consideration be given to the inclusion of the following provision (para.45):

In the exercise of their right to freedom of peaceful assembly, all have a right to have their honour respected and their dignity recognised and must themselves respect the honour and recognise the dignity of others.

4. There are some advantages in relying exclusively on the provisions of Article 11, as they have been interpreted by the European Court of Human Rights. Its recent decisions, notably *Plattform "Ärzte für das Leben" v Austria* and *Stankov v Bulgaria*, have emphasised that the right to peaceful assembly is not to be curtailed merely because it may annoy or give offence to others or because it may give rise to tension and heated exchange between opposing groups and that in such cases it should where practicable be protected by the authorities rather than subordinated to considerations of public order. The Court has also emphasised in *G v Federal Republic of Germany* and *Steel v United Kingdom* that the right of peaceful assembly does not cover cases where the organisers of a demonstration have violent intentions which may result in public disorder or where they take action which may significantly obstruct others or which is likely to provoke others to violence. Given the obligation imposed on courts and public bodies under the Human Rights Act 1998 to follow the principles established by the European Court of Human Rights, there is no need to spell them out in national legislation.
5. On the other hand there is nothing in the European Convention which would prevent the inclusion of more specific provisions to emphasise these principles or to give further guidance to those making relevant decisions in the light of the particular circumstances in any State. Members of the Human Rights Commission differ between themselves as to the utility of including such provisions; the majority support their inclusion but a small number of Commissioners hold the opposite view. The European Court of Human Rights has consistently given a wide margin of appreciation to national bodies to adopt measures of this kind. Additions to the Convention are precisely what the NIHRC is called on to consider and recommend in respect of the proposed Bill of Rights for Northern Ireland. However, the obligation to respect the honour and dignity of others, as suggested in the Quigley Review, would not, in the view of the whole Commission, provide any particularly useful guidance to the Parades Commission or other agencies in making decisions on contested parades. If further provisions are to be added to those in Article 11, either in the proposed legislation or in associated guidelines or codes of conduct, they should, in the view of those Commissioners who are in favour of such additional provisions, be more directly focused on two issues:

- (i) an obligation to tolerate the expression of opposing views and cultures (see para.6 below), and
- (ii) an obligation to refrain from any form of provocation or harassment (see para.7).

6. Although there is no direct recognition of a right to toleration, an obligation to tolerate different religions and cultures is referred to in all the main international human rights conventions. The European Framework Convention on the Rights of National Minorities includes a more direct provision requiring States to:

“encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory ...”

It would be possible on this basis to include a provision in the associated guidelines or codes of conduct for the relevant legislation requiring the Parades Commission and other agencies to take into account, when making determinations or imposing conditions, whether or not a spirit of tolerance for parades or demonstrations by opposing groups had been shown by those opposing as well as those organising contested parades.

7. It would also be possible to include in the associated guidelines or codes of conduct for the relevant legislation some more detailed guidance on the interpretation of what is meant by “peaceful assembly” in the context of contested parades. There is already a wide range of criminal offences in the Public Order (NI) Order 1987 in respect of disorderly, intimidating or threatening behaviour, the use of words or behaviour likely to stir up hatred or arouse fear and provocative conduct at a public meeting or procession and in the Public Processions (NI) Act 1998 in respect of abusive behaviour towards a person taking part in a lawful public procession. In addition, the “Rights” section of the Belfast (Good Friday) Agreement includes a commitment by the parties to “freedom from sectarian harassment”. The NIHRC has already suggested in its Consultation Paper *Making a Bill of Rights for Northern Ireland* that this should not be restricted to sectarian harassment but should include other forms of harassment. On this basis the Parades Commission and other agencies could be required to take into account, when making determinations or imposing conditions, whether or not those organising a parade or protest had taken effective measures to avoid or prevent disorderly, threatening, intimidating or abusive behaviour or harassment by those taking part.
8. The objective of including provisions of this kind would be to encourage all those on either side in respect of any contested parade to seek an accommodation and in the longer term to promote a society in which mutual tolerance of expressions of language and culture by other communities need not be regarded as a threat to their own. It might also assist in reversing the current trend in some areas and villages towards the assertion of exclusive “ownership” by one or other community and the exclusion of any expression, however temporary, by another. That degree of communal separation would not in the view of the Commission represent an acceptable vision for the future of Northern Ireland as a whole and would run counter to the underlying principles of the Belfast (Good Friday) Agreement.

The separation of decisions on rights from those of public order

The Quigley Review recommends that decisions in respect of public safety, as opposed to the rights issues to be dealt with by the Parades Commission, should be the exclusive responsibility of the police, subject to a reserve power for the Secretary of State to intervene (para.63).

9. The NIHRC is strongly opposed to this recommendation on a number of related grounds. In the first place, it is unrealistic to separate the various considerations that are relevant to a decision under Article 11. Issues of public order and public safety, as well as the rights of peaceful assembly and free expression, are an integral part of any decision on whether or under what conditions a parade or protest is to take place. All these matters must be taken into account by the initial decision-making body, by national courts in appeal proceedings and ultimately by the European Court of Human Rights, all of which are now directly bound by the terms of the European Convention. Secondly, since issues of public order and public safety are often a determining factor in decisions on contested parades in Northern Ireland, to remove these from the Parades Commission would in effect involve a return to the situation prior to 1998 under which the effective decision was left to the police. One of the principal advantages of the provisions of the Public Processions (NI) Act 1998 is that the police are now able to use their professional skills in enforcing communally contentious decisions made by an independent body rather than having to make and then enforce their own decisions. Thus far the police have been able to implement the determinations of the Parades Commission without calling for intervention by the Secretary of State and the NIHRC is not aware of any desire on the part of the Police Service of Northern Ireland, or any other relevant body, to return to the pre-1998 position. Thirdly, the police would in any event retain their common law power to intervene to maintain public order on the ground if, as the situation develops, it becomes impracticable to enforce a determination or condition.
10. An additional consideration in rejecting this recommendation is that it would add to the widespread concern that determinations by the Parades Commission have not been made in a sufficiently open and transparent manner, notably in that the advice on issues of potential public disorder by the police is not made available to other interested parties. Although it is not entirely clear whether decisions on parades fall within the terms of Article 6 of the ECHR, which requires decisions on civil rights and obligations to be made by an independent and impartial tribunal, the NIHRC considers that it is in any case desirable for all the relevant considerations, including those relating to potential disorder, to be made available to and open to representations from all the parties to a contested parade or demonstration. This can best be achieved by requiring the police to present their advice on public order and public safety issues to the Parades Commission. Other interested parties should then be allowed to comment on or contest that advice, although the views of the police would naturally be expected to be given considerable weight.

The application of the same rules to both parades and protests

The Quigley Review recommends that the same body should be authorised to deal with both parades and protests and that the same criteria should be applied (para.59)

11. The NIHRC is opposed to some aspects of this recommendation on a number of grounds. It recognises the illogicality of the situation in which one body, the Parades

12. A better means of achieving the objective of the recommendation – to apply the same criteria for restrictions and conditions on those involved in both parades and associated protests along the route – would be to extend the jurisdiction of the Parades Commission in issuing its determinations and imposing conditions to cover both the parade and any contemporaneous protest. It would not be essential for this purpose to impose strict rules in respect of prior notification of intended protests, since those opposing an intended parade would have identified themselves during the extended process for facilitation or in the hearings before any eventual determination, as recommended by the Quigley Review. And the police would, as already indicated, retain their common law power to intervene to protect the peace in the event of unforeseen disorder.

The separation of the procedures for facilitation and determination

The Quigley Review recommends that there should be separate bodies to facilitate local accommodations, a Parades Facilitation Agency and, to make binding determinations, a legally qualified and independent Rights Panel (paras.67-72).

13. The NIHRC is generally in favour of the separation of the two functions of mediation/facilitation and adjudication. This would be in line with recent legislation on discrimination and equality throughout the United Kingdom and elsewhere, which has sought to distinguish clearly between the roles of promoting equality or fair treatment and making formal adjudications on rights. In Northern Ireland the role of the Equality Commission in promoting fair employment practices is formally separated from that of the tribunals which make binding decisions on disputed cases. The role of the NIHRC in promoting human rights and investigating alleged violations is similarly distinct from that of the courts in making rulings under the Human Rights Act 1998. There is no international standard on this issue. The UN's Paris Principles on National Human Rights Institutions, for example, accept that national human rights institutions may have a role in making formal adjudications as well as in more general promotion and investigation. But the recent policy in Britain and Northern Ireland of separating the two functions has generally worked better than the previous structures under which the roles of promotion and adjudication were combined.
14. An additional argument in support of this approach, as indicated above, is that it would ensure compliance with any obligations under Article 6 of the ECHR which might be held to apply to determinations on parades or protests. The proposed Rights Panel with a legally qualified chair would clearly fulfil the requirement for independence and impartiality and the opportunity for the presentation of opposing arguments and

The extension of prior notice requirements and of the duration of determinations

The Quigley Review recommends that the prior notice requirement for parades should be extended to six months to allow time for effective facilitation of local accommodations and that duration of determinations should be extended up to five years (paras.53-54).

15. The NIHRC is generally in favour of an extension of the period of notice for parades, although not as already indicated for protests. It has no strong views on the precise timetable, provided that it allows sufficient time for effective facilitation for each “marching season”. It is also in favour of an extension of the duration of determinations to allow determinations to cover the whole of an annual “marching season”. This would encourage marching bodies to put forward proposals for the whole of each year and enable the proposed Rights Panel to impose reasonable conditions on the number of parades in a given area. Given the disruption which large or repeated parades necessarily involve, this is clearly a legitimate concern for residents and businesses. It would also avoid the unnecessary and time-consuming procedures under the current legislation for the notification and consideration of multiple applications in respect of the same area or route. However, the NIHRC is not in favour of extending the potential duration of determinations for as long as five years, given the potential for circumstances changing from year to year in many areas and the procedural confusion which might arise from repeated applications for amendment of extended determinations.

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