



ELDH European Association of Lawyers for Democracy & World Human Rights

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EJDM Europäische Vereinigung von Juristinnen & Juristen für Demokratie und Menschenrechte in der Welt

EJDH Asociacion Europea de los Juristas por la Democracia y los Derechos Humanos en el Mundo

EJDH Association Européenne des Juristes pour la Démocratie & les Droits de l'Homme

EGDU Associazione Europea delle Giuriste e dei Giuristi per la Democrazia e i diritti dell'Uomo nel Mondo

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ELDH Statement on the Garvaghy Road Parade

ELDH expresses its serious concern at the decision of the Parades Commission to permit an Orange Order procession along the Garvaghy Road in Portadown, and at the legal and institutional process which has resulted in the reopening of a dispute carrying profound historical significance for the local community and for Northern Ireland as a whole.

It is essential to be precise about the rights at stake.

This is not a question of denying freedom of peaceful assembly or the right to parade. Those rights are protected, including under Article 11 of the European Convention on Human Rights.

Nor is the question whether members of the Orange Order may assemble, parade or attend Drumcree Church. For almost three decades those activities have continued while the procession has followed a route which does not pass along the Garvaghy Road.

The legal and human-rights question is therefore a different one: does the protection of freedom of assembly require that a procession be permitted to follow this particular route through this particular residential community, notwithstanding the historical context, the rights and interests of residents, and the availability of an alternative route which permits the parade itself to take place?

In ELDH's view, that distinction is fundamental.

Article 11 ECHR protects peaceful assembly, but it does not operate in isolation from the rights of others. Public authorities are required to reconcile competing rights and interests and to assess restrictions according to the principles of necessity and proportionality.

The existence of an alternative route is consequently of considerable relevance. Where the essential substance of the freedom — the ability to assemble and parade — can continue to be exercised, restricting access to a particular route cannot simply be equated with suppressing the right itself.

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There is also a dimension which cannot be captured by considering the proposed procession as if it were an entirely new dispute: the legacy of Drumcree and the settlement which has existed in practice for almost three decades.

For 28 years, the absence of Orange Order processions along the Garvaghy Road has formed part of the lived reality of the community. During that period, a dispute once associated with confrontation, violence, enormous policing operations and profound communal division ceased to dominate life in Portadown in the manner it had during the 1990s.

That achievement should carry substantial weight.

A situation which has enabled communities to live peacefully for almost three decades should not lightly be treated as a problem requiring a new solution. There is a legitimate public interest in protecting arrangements which have contributed to peace, stability and improved community relations.

The passage of time does not erase the historical circumstances in which those arrangements developed. On the contrary, the fact that an arrangement has endured peacefully for almost thirty years is itself relevant when considering the proportionality and consequences of disturbing it.

This is particularly important in a society emerging from conflict. Peace is not simply the absence of immediate disorder. It is also the result of accumulated confidence, institutional practice, compromise and the gradual reduction of fear between communities.

Reopening disputes which have effectively been settled over decades can therefore have consequences extending far beyond the particular administrative decision under consideration. It risks damaging years of painstaking work, reopening wounds and undermining confidence that compromises reached in the transition from conflict will be respected over time.

ELDH is concerned that insufficient weight appears to have been given to this dimension.

The fact that circumstances may have changed over 28 years cannot, by itself, provide a sufficient reason for reversing an arrangement which has contributed to peace. The relevant question must also be what has changed sufficiently to justify disturbing that arrangement, what legitimate objective requires that change, and whether that objective can be achieved without reopening a historically traumatic conflict.

The availability of an alternative route is especially significant in that proportionality assessment.

The legacy of the conflict must therefore form part of the human-rights analysis, rather than being treated merely as historical background.

ELDH is also concerned about the increasingly judicialised character of the dispute. Judicial review has an indispensable role in ensuring that public authorities exercise their powers lawfully. But a judicial determination concerning the legality of an administrative decision is not equivalent to recognition of an unrestricted substantive right to parade along the Garvaghy Road.

Nor can litigation by itself resolve the underlying social and historical conflict.

A court may determine whether a public authority has acted within the law. It cannot recreate the confidence painstakingly built between communities over decades, nor can repeated litigation substitute for political responsibility, dialogue and reconciliation.

For that reason, ELDH considers that the way forward must be based upon dialogue, negotiation and mediation, rather than upon a cycle of administrative decisions, judicial challenges and renewed confrontation.

ELDH therefore welcomes the proposal from representatives of the Garvaghy Road community for a genuinely independent international mediator.

The willingness to enter mediation should not be interpreted as conceding that the arrangements of the past 28 years were mistaken, nor as accepting that a procession along the Garvaghy Road must ultimately take place. Mediation should begin without a predetermined outcome and with full respect for the rights, dignity and legitimate concerns of all those involved.

Given the history of this dispute and the degree of mistrust surrounding it, an independent international mediator with appropriate experience of conflict and competing cultural traditions could provide a credible framework within which dialogue can take place.

ELDH therefore calls upon all parties and the relevant public authorities to support a serious process of dialogue and negotiation, facilitated by an independent international mediator acceptable to those directly concerned.

Nearly three decades after Drumcree became one of the most painful symbols of communal confrontation in Northern Ireland, the objective should not be to recreate the disputes of the past.

Twenty-eight years of relative peace and stability represent an achievement to be protected, not a failure requiring correction.

Where disagreements remain, they should be addressed through human rights, dialogue, mutual respect and negotiated agreement. That approach offers a means not only of resolving the immediate crisis, but also of protecting the painstaking work of reconciliation undertaken over the past three decades and of ensuring that dealing with the legacy of conflict contributes to peace rather than reopening old divisions.