



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 42293/98
by David ADAMSON
against the United Kingdom

The European Court of Human Rights (Third Section) sitting on 26 January 1999 as a Chamber composed of

Present:

Mr J-P. Costa, *President*,
Sir Nicolas Bratza,
Mr L. Loucaides,
Mr P. Kūris,
Mr W. Fuhrmann,
Mrs H.S. Greve,
Mr K. Traja,

with Mrs S. Dollé, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 18 July 1997 by David ADAMSON against the United Kingdom and registered on 20 July 1998 under file no. 42293/98;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen born in 1941. He is represented before the Court by Mr D. Clarke, solicitor, of Clarke and Kiernan, Tonbridge, Kent.

Particular circumstances of the case

In July 1995 the applicant was convicted of indecent assault and sentenced to five years' imprisonment. His expected release date was in October 1998.

On 1 September 1997 the Sex Offenders Act 1997 entered into force. As a result of the Act, the applicant will be required to register with the police for an indefinite period following his release from prison. The applicant considers that this requirement is "depersonalising", robbing him of his "ability to reinvent [him]self and start a new life" and, in addition, he fears that it may put him and his family at risk. In this connection he refers to newspaper reports of vigilante attacks on paedophiles following their identification by the press and television.

Relevant domestic law

According to its preamble, the Sex Offenders Act 1997 ("the Act") is "an Act to require the notification of information to the police by persons who have committed sexual offences ...". The registration requirements apply to persons convicted of certain offences after the commencement of the Act and also, by virtue of Section 1 (3), to those "...serving a sentence of imprisonment ... in respect of a sexual offence to which this Part applies...".

A person required to register must inform the police of his name, any other names he uses, his date of birth and his home address, and must inform the police of any change of name or home address within 14 days of any change. He must also tell the police his name and address on the date he was convicted of the offence at issue, and must tell the police of any address where he lives or stays for 14 days or longer.

For a person who has been sentenced to a term of imprisonment of 30 months or more, the registration requirements are indefinite.

Failure to comply with the registration requirements, or to give the police false information, is a criminal offence punishable with up to 6 months' imprisonment or a fine.

COMPLAINTS

The applicant complains under Article 7 of the Convention, claiming that the provisions of the Act, as they apply to him, constitute a "heavier penalty ... than the one that was applicable at the time the criminal offence was committed".

In addition, he invokes Article 8, stating that the requirement to register constitutes an unjustified interference with private life.

He complains under Article 3 that the registration requirement under the Act is, in effect, branding him a sex offender for life, which is inhumane and degrading and might put his family at risk.

Finally, under Article 5 § 1, the applicant states that inclusion on the register might jeopardise his personal security and that of his family.

THE LAW

1. The applicant alleges a violation of Article 7 of the Convention. Article 7 § 1 provides as follows:

“No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.”

The Court notes that the Act was passed after the applicant had committed the indecent assault for which he was convicted and sentenced. The only relevant question is, therefore, whether the passing of the Act and its impact on the applicant can be considered as a “penalty” within the meaning of the second sentence of Article 7 § 1 (cf. the Commission's decision on the admissibility of application no. 40146/98, *Ibbotson v. the United Kingdom*, 21 October 1998).

The Court recalls that the concept of “penalty” in Article 7 of the Convention is an autonomous concept: it is for the Court to determine whether any particular measure is a “penalty”. The second sentence of Article 7 § 1 indicates that the starting point of such a determination is whether the measure in question was imposed following conviction for a “criminal offence”. Other relevant factors are the characterisation of the measure under domestic law, its nature and purpose, the procedures involved in its making and implementation, and its severity (see the *Welch v. the United Kingdom* judgment of 9 February 1995, Series A no. 307, p. 13, §§ 27 and 28).

The Court notes, first, that there is a link in the present case between the conviction and the impugned measures: the registration requirements automatically apply to the applicant because, at the time of the commencement of the Act, he was serving a sentence of imprisonment following his conviction for a sexual offence.

As to the domestic characterisation of the impugned measures, the Court notes that, according to its preamble, the Act is “to require the notification of information to the police by persons who have committed certain sexual offences”. Thus, the preamble affirms that the Act's requirements do not go beyond an obligation to furnish information to the authorities. The Court does not consider that this description militates in favour of the impugned measures being regarded as a penalty.

As to the nature and purpose of the measures in question, the Court accepts that the applicant may feel that the effects of the requirement to register with the police are punishing; he states that it is “depersonalising”, robbing him of his “ability to reinvent [him]self and start

a new life". This is not, however, sufficient to establish that the registration requirement has a "punitive" nature or purpose under Article 7.

The Court notes that the applicant has referred to newspaper reports of vigilante attacks on paedophiles following their identification by the press and television. However, there is no evidence before it to suggest that these attacks were connected in any way with the registration of the offenders in question with the police or that the requirement to register will lead to information which is not already publicly available becoming known to the media or the general public. Again, having regard to the preamble to the Act and also to the nature of the Act's requirements, the Court considers that the purpose of the measures in question is to contribute towards a lower rate of reoffending in sex offenders, since a person's knowledge that he is registered with the police may dissuade him from committing further offences and since, with the help of the register, the police may be enabled to trace suspected reoffenders faster.

The Court notes that the measures complained of are imposed as a matter of law, with no additional procedure, following conviction of a sexual offence. Beyond the requirement to register, no further procedures are involved in their implementation. Whilst the Court accepts that failure to comply with the requirement to register is a criminal offence, it considers that the position is different from that in the above-mentioned case of *Welch*, where periods of imprisonment in default of payment were fixed at the sentencing stage (op. cit., p. 9, § 14). In the case of the Act, independent criminal proceedings would have to be brought against a defaulter, in which his degree of culpability in defaulting would be taken into account in sentencing.

Finally, as to the severity of the measures imposed, the Court recalls that the severity of a measure is not decisive (ibid., p. 14, § 32). In any case, it does not find that the obligation to notify the police of the information required by the Act can, in itself, be regarded as severe. As to the applicant's fears that his registration with the police will lead to attacks on him or his family, the Court repeats that it has not been provided with any evidence to suggest that the applicant will be put at risk in this way.

Overall, the Court considers that, given in particular the way in which the measures imposed by the Act operate completely separately from the ordinary sentencing procedures, and the fact that they do not, ultimately, require more than mere registration, it cannot be said that the measures imposed on the applicant amounted to a "penalty" within the meaning of Article 7 of the Convention.

It follows that Article 7 is not applicable in the present case, such that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3.

2. In addition, the applicant claims that the registration requirement amounts to an unjustified interference with his private and family life, contrary to Article 8 of the Convention, which provides:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

The Court considers that the requirement on the applicant to provide the information in question to the police amounts to an interference with his private life within the meaning of Article 8 § 1 (see, for example, with reference to the taking and retention of photographs and other data by law enforcement authorities, the *Murray v. the United Kingdom* judgment of 28 October 1994, Series A no. 300-A, pp. 34-35, §§ 84-86). It is therefore necessary for the Court to examine whether it is justified under the terms of the second paragraph of Article 8.

Since the measures in question are set out in clear terms under the Act, it cannot be doubted that they are “in accordance with the law”. Furthermore, the Court considers that the measures pursue legitimate aims, namely the prevention of crime and the protection of the rights and freedoms of others. It remains to be decided whether they are “necessary in a democratic society”, that is, proportionate to the aims pursued.

In this connection the Court refers to its above finding that there is no evidence before it to suggest that the applicant is at particular risk of public humiliation or attack as a result of his obligations under the Act. Thus, it will examine the proportionality of the impugned measures on the basis that the interference with private life in issue in the present case extends only to the requirement to register with the police.

The Court notes that the Act requires the applicant, upon being released from prison, to inform the police of *inter alia* his name, any other names he uses, his date of birth and his home address, and, during an indeterminate period, to notify them of any subsequent changes of name or home address within 14 days of any change.

It is necessary to weigh against this the importance of the aims pursued by the Act. The Court has previously referred to the gravity of the harm which may be caused to the victims of sexual offences (see the *Stubbings and Others v. the United Kingdom* judgment of 22 October 1996, *Reports* 1996-IV, p. 1505, § 64) and has held that States are under a duty under the Convention to take certain measures to protect individuals from such grave forms of interference (*ibid.*, §§ 62 and 64).

Against this background, the Court does not consider that the requirement to provide information to the police can be said to be disproportionate to the aims pursued.

It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must therefore be rejected in accordance with Article 35 § 4.

3. The applicant also alleges that registration as a sex offender will be inhuman and degrading and could affect the safety of his family, in breach of Article 3 of the Convention, which provides:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

The Court recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (see, for example, *A. v. the United Kingdom* judgment of 23 September 1998, *Reports of Judgments and Decisions* § 20). It refers to its above findings, in the context of Article 7, that the requirement to register in itself cannot be regarded as a severe measure and that there is no evidence to suggest that the applicant is at particular risk of any public humiliation or attack resulting from the requirements of the Act.

It follows that the complaint under Article 3 is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must therefore be rejected in accordance with Article 35 § 4.

4. Finally, the applicant contends that the requirement to register with the police will undermine his security and that of his family, allegedly in breach of Article 5 § 1 of the Convention. The Court recalls that Article 5 § 1 guarantees the right to liberty. However, there is no evidence to suggest that the applicant has suffered or risks suffering any unlawful or arbitrary deprivation of liberty in breach of Article 5 § 1. It follows that he cannot be described as a victim of a violation of Article 5 § 1, in the sense of Article 34 of the Convention.

It follows that this complaint is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must therefore be rejected in accordance with Article 35 § 4.

For these reasons, the Court, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

S. Dollé
Registrar

J-P. Costa
President