AS TO THE ADMISSIBILITY OF

Application No. 40146/98
by Robert William Andrew IBBOTSON
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 21 October 1998, the following members being present:

MM	M.P. PELLONPÄÄ, President
	N. BRATZA
	E. BUSUTTIL
	A. WEITZEL
	C.L. ROZAKIS
Mrs	J. LIDDY
MM	L. LOUCAIDES
	I. BÉKÉS
	G. RESS
	A. PERENIČ
	C. BÎRSAN
	M. VILA AMIGÓ
Mrs	M. HION
Mr	R. NICOLINI

Mrs M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 1 September 1997 by Robert William Andrew IBBOTSON against the United Kingdom and registered on 9 March 1998 under file No. 40146/98;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen born in 1954. He lives in Sheffield and is represented before the Commission by Mr B. Emmerson, counsel, and Mr J. Dickinson, solicitor, of Messrs Graysons, Sheffield.

The particular circumstances of the case

The applicant was convicted on 3 May 1996 on six charges of possession of obscene and indecent material, contrary to Section 2 (1) of the Obscene Publications Act 1959 and Section 1 (c) of the Protection of Children Act 1978. He was sentenced to a total of three and a half years imprisonment. He was released on 20 August 1997, although his sentence did not expire until later.

On 21 March 1997 the Sex Offenders Act 1997 ("the Act") became law. It entered into force on 1 September 1997. As a result of the Act, the applicant was required to register with the police under the reporting provisions of the Act.

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 life imprisonment or for a term of 30 months or more, the registration requirements are indefinite. The periods in respect of other sentences are:

Admission to hospital with a restriction order	Indefinite
Prison sentence of between 7 months and 29 months	10 years
Prison sentence of less than 7 months	7 years

Admission to hospital without a restriction order	7 years
Other	5 years

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 alleges a violation of Article 7 of the Convention. He claims that the provisions of Sex Offenders Act 1997, as they apply to him, constitute a "heavier penalty ... than the one that was applicable at the time the criminal offence was committed". Referring to the case of Welch v. the United Kingdom (Eur. Court HR, Welch v. the United Kingdom judgment of 9 February 1995, Series A no. 307-A), he notes that the characterisation of the measure in domestic law is only a starting point, and he underlines that:

- requirements to register under the Act can only (and must) be imposed where a person has been convicted of a criminal offence;

- a person who is a greater potential risk to the community than the applicant (who was not alleged to have had any actual contact with minors) cannot be made subject to measures if he has not been convicted;

- the Act does not apply to those offenders whose sentences had expired before the Act came into force;

- penal sanctions, including imprisonment, exist for failure to abide by the Act's requirements, and that

- the period for which a person remains subject to the Act's requirements depends only on the length and nature of his original sentence, and thus reflects the measure of his criminal culpability.

The applicant submits that all these factors together indicate that he faces a "more far-reaching detriment" now than he did at the time the offences were committed.

THE LAW

The applicant alleges a violation of Article 7 of the Convention. Article 7 para. 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 Commission notes that the Act was passed after the applicant committed the offences at issues, and, indeed, it entered into force after he had been released from prison, even though the sentence was still in force. The only 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 Article 7 of the Convention.

The Commission recalls that the concept of penalty in Article 7 of the Convention is an autonomous concept: it is for the Convention organs to determine whether a measure is a "penalty" within the meaning of Article 7 para. 1. The second sentence of Article 7 para. 1 indicates that the starting point of any assessment of the existence of a penalty is whether the measure in question was imposed following conviction for a "criminal offence". Other relevant factors are the nature and purpose of the measure in question, its characterisation in domestic law, the procedures involved in the making and implementation of the measure, and its severity (Eur. Court HR, Welch v. the United Kingdom judgment of 9 February 1995, Series A no. 307, p. 13, paras. 27, 28).

The Commission first notes that there is a link in the present case between the conviction and the impugned measure: the registration requirements only apply to a person who, like the applicant, has been convicted of certain offences. Indeed, as the applicant points out, where a relevant conviction is made, the registration requirements apply automatically. It is evident that the measure follows a conviction in the sense that it follows it in time, and it is also true that the conviction is a necessary pre-condition for the registration requirements. Against this must be set the fact that the judge in the case has no role whatever to play in the imposition of the Act's requirements; not as to whether the registration requirements apply, not as to the time for which they apply, and not as to the way in which they apply.

As to the nature and purpose of the measure in question, the Commission accepts that the applicant may have felt the requirements of the Act as "punitive" in the sense that he is now required to register with the police, whereas before the entry into force of the Act he was not. That is not, however, sufficient to establish a "punitive" nature or purpose. To the extent that the registration requirements are specific to the applicant, the Commission considers them to be preventative in the sense that the knowledge that a person has been registered with the police may dissuade him from committing further offences.

The Act's requirements are, according to the preamble, "to require the notification of information to the police by persons who have committed certain sexual offences". The Commission sees nothing in this domestic characterisation of the requirements which militates in favour of the measures being regarded as a penalty. Rather, the preamble affirms that the measures do not go beyond a requirement to furnish to the authorities

information which could, in any event, be in the public domain: a requirement to register with the police (or some other authority) cannot be considered to be a penalty, and the fact that an individual has committed sexual offences may well be available to the police, even if it is not generally available to the public after a certain amount of time.

The Commission notes that the measures complained of are imposed as a matter of law: no procedure whatever is involved. Beyond the requirement to register, no further procedures are involved in the implementation of the measures. Whilst the Commission accepts that failure to comply with a measure is a criminal offence, it considers that the position is different from that in the case of Welch, where periods of imprisonment in default of payment were fixed at the sentencing stage (above-mentioned Welch judgment, p. 9, para. 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 Commission recalls that the severity of a measure is not decisive (Welch judgment, p. 14, para. 32). It is, however, aware that cases have been reported in which information on the Sex Offenders Register has been made available to the public, and local campaigns have been mounted against sex offenders, making re-integration into society difficult. These difficulties (not referred to by the applicant) cannot be relevant to the Commission's determination of whether the Act imposes a "penalty" as they stem from the public's reaction to particular types of offence, rather than from the registration requirements.

Overall, the Commission 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 the measures 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 the application is incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

M.P. PELLONPÄÄ
President
of the First Chamber