



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

Communicated on 15 December 2015

FIRST SECTION

Application no. 62964/14
Martyn MINTER
against the United Kingdom
lodged on 12 September 2014

STATEMENT OF FACTS

1. The applicant, Mr Martyn Minter, is a British national, who was born in 1957. He is represented before the Court by Mr M. Vincent, a lawyer practising in Hampshire with MWA Solicitors, assisted by Mr H. Southey QC and Mr P. Rule, counsel.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

1. The statutory background

(a) Notification requirements for those convicted of sexual offences

3. In England and Wales, persons convicted of certain sexual offences are required to notify the police of various personal details. This includes the person's current address, any change of address and any other address at which they intend to stay for seven days or more. They must provide their national insurance numbers to the police and must allow the police to take their photograph and fingerprints. They must give advance notice to the police of any foreign travel.

4. These notification requirements were first enacted in the Sexual Offences Act 1997 and subsequently re-enacted, with minor amendments, in sections 80–92 of the Sexual Offences Act 2003 (see relevant domestic law and practice at paragraphs 25–30 below). The notification period varies according to the term of imprisonment imposed on the offender. For instance, for a person sentenced to a term of imprisonment of 30 months or more the notification period is indefinite. For a person sentenced to a term

of imprisonment of between six and thirty months the notification period is 10 years from the date of his or her conviction.

(b) “Extended sentences”

5. When a person is sentenced to a term of imprisonment, the normal practice is for the person to be released “on licence” after serving half of the sentence. The offender may be recalled to prison if he or she breaches the conditions of the licence. Ordinarily, the licence lasts for the remainder of the sentence.

6. However, in respect of certain sexual or violent offences, the sentencing court may pass an “extended sentence”. In such a case, the offender is sentenced to a term of imprisonment. This is referred to as “the custodial term”. As normal, the prisoner serves half of that sentence in prison and is then released. However, the crucial difference in an extended sentence is that, when it is passed, the licence period is not automatically set as the remainder of the sentence of imprisonment. Instead, when a court imposes an extended sentence, it may set a longer licence period. This longer licence period can be of such length as the court considers necessary to protect members of the public from serious harm. This longer licence period is known as “the extension period” of the extended sentence. Thus, an extended sentence has two parts: the custodial term and the extension period.

2. The applicant’s conviction and notification requirements

7. On 16 August 2006, the applicant pleaded guilty to six offences of taking indecent photographs of a child, five offences of voyeurism and one of indecent assault. On 17 November 2006, the applicant was sentenced in respect of the most serious of the offences to an extended sentence. This extended sentence comprised a custodial term of eighteen months and an extension period of thirty-six months. Lesser sentences were imposed for the other offences. The sentencing judge gave the applicant credit for his early guilty pleas, his previous absence of any criminal convictions, his genuine remorse and his disgust at his own behaviour.

8. On 17 August 2007, the applicant was issued with a notice by the prison at which he was detained, HMP Lincoln, stating that he would be subjected to the sex-offender notification requirements for a period of ten years.

9. Subsequently, the Chief Constable of Hampshire came to the decision, formally communicated by letter of 22 September 2010, that the applicant would be subjected to the notification requirements indefinitely. The Chief Constable reasoned that the extended sentence was one of fifty-four months (the custodial term of eighteen months plus the extension period of thirty-six months), meaning that, for the purpose of calculating the notification period, the term of imprisonment was more than thirty months.

3. The judicial review proceedings

10. The applicant disagreed with the Chief Constable’s interpretation of the relevant statutory provisions. He considered that, when calculating the term of imprisonment, only the custodial term should be counted and, given

that this was less than thirty months, he fell within the category of offenders for whom the notification period was only ten years. Accordingly, in December 2010 he sought judicial review of the Chief Constable’s decision.

11. In the course of those proceedings, the applicant also submitted that the Chief Constable’s interpretation of the relevant legislation was a disproportionate interference with his right to respect for his private life under Article 8. He further submitted that it was contrary to Article 14 taken in conjunction with Article 8 of the Convention. This was because, after he had been sentenced, the sentencing regime changed such that someone in his position who was sentenced under the new sentencing regime would not receive the extended sentence he received (for those sentenced after 14 July 2008 an extended sentence was not available at all unless the offender either had a previous conviction for a serious offence or the custodial term was at least four years’ imprisonment: see relevant domestic law and practice at paragraphs 21–24 below).

12. Relying on this Court’s judgment in *Clift v. the United Kingdom*, no. 7205/07, 13 July 2010, the applicant submitted that a difference in treatment between prisoners was a difference in treatment based on “other status” within the meaning of Article 14.

(a) The Divisional Court’s judgment

13. By judgment of 28 June 2011 the Divisional Court (Richards LJ, Eady and Treacy JJ) dismissed the applicant’s claim: [2011] EWHC 1610 (Admin). It found that the Chief Constable’s interpretation of the relevant statutory provisions had been correct.

14. In respect of Article 8, the legal framework was sufficiently clear as to meet the “in accordance with the law” test. The purpose of the extension period was to manage and reduce the risk posed by an offender and thus it was proportionate for the extension period to be included in any calculation of the notification period. The legislature had been entitled to fix the threshold for indefinite-notification at thirty months. This struck a fair balance for the purposes of Article 8.

15. In respect of Article 14 taken in conjunction with Article 8, the Divisional Court held that it was bound by the House of Lords’ judgment in *R (Clift) v the Secretary of State for the Home Department* [2007] 1 AC 484, which had ruled that a treatment of prisoners based on differences in length of sentence did not constitute differential treatment on the ground of “other status”. The Divisional Court considered itself still bound by that ruling of the House of Lords, even though, in *Clift v. the United Kingdom*, this Court had subsequently reached the opposite conclusion, instead holding that the difference in treatment complained of was grounded on “other status”.

(b) The Court of Appeal’s judgment

16. The applicant appealed to the Court of Appeal, which unanimously dismissed the appeal on 1 May 2013: [2013] EWCA Civ 697. Lord Justice Laws (with whom Lord Justice Moore-Bick and Lord Justice Beatson agreed) upheld the Divisional Court’s finding that the Chief Constable’s interpretation of the relevant statutory provision had been correct.

17. In respect of Article 8, Laws LJ found that, given the purposes of the notification requirements and of extended sentences, there was nothing “arbitrary” or disproportionate in the indefinite-notification requirements in the applicant’s case. Moreover, it would, in time, be possible for the applicant to seek review of the indefinite-notification period (see relevant domestic law and practice at paragraph 30 below).

18. In respect of Article 14 taken in conjunction with Article 8, Laws LJ observed that all that had happened was that Parliament had altered its views as to the threshold for indefinite-notification requirements. That did not generate retrospectively a good Article 14 argument. Furthermore, Laws LJ considered that the Court of Appeal, like the Divisional Court, was bound by the House of Lords’ judgment in *R (Clift) v the Secretary of State for the Home Department*.

(c) **The Supreme Court**

19. On 16 June 2014, the Supreme Court refused the applicant permission to appeal.

B. Relevant domestic law and practice

1. Extended sentences

(a) **The legislative scheme which applied to the applicant**

20. In 2006, the time the applicant was sentenced, extended sentences were regulated by section 85 of the Powers of Criminal Courts (Sentencing) Act 2000 (“the 2000 Act”) which, where relevant, provides:

“85 Sexual or violent offences: extension of certain custodial sentences for licence purposes.

(1) This section applies where a court —

(a) proposes to impose a custodial sentence for a sexual or violent offence committed on or after 30th September 1998; and

(b) considers that the period (if any) for which the offender would, apart from this section, be subject to a licence would not be adequate for the purpose of preventing the commission by him of further offences and securing his rehabilitation.

(2) Subject to subsections (3) to (5) below, the court may pass on the offender an extended sentence, that is to say, a custodial sentence the term of which is equal to the aggregate of —

(a) the term of the custodial sentence that the court would have imposed if it had passed a custodial sentence otherwise than under this section (“the custodial term”); and

(b) a further period (“the extension period”) for which the offender is to be subject to a licence and which is of such length as the court considers necessary for the purpose mentioned in subsection (1) above.

...

(4) The extension period shall not exceed —

(a) ten years in the case of a sexual offence; and

(b) five years in the case of a violent offence.

(5) The term of an extended sentence passed in respect of an offence shall not exceed the maximum term permitted for that offence.”

(b) The legislative scheme now in force

21. For offences committed after 4 April 2005, new provisions governing extended sentences were enacted in the Criminal Justice Act 2003 (“the 2003 Act”).

22. Before an extended sentence can be imposed under the new provisions the court must find that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences. This new requirement was initially set out in section 227. It is now contained in section 226A of the 2003 Act.

23. Further requirements for the imposition of an extended sentence were added as of 14 July 2008. These additional requirements are that the offender must either:

(i) have a previous conviction for a serious offence (as defined in Schedule 15A to the 2003 Act); or

(ii) have committed an offence or offences meriting a custodial term of four years.

When first enacted, these additional requirements were contained in section 227(2A) and (2B) of the Act.

24. For those convicted after 3 December 2012, all of the above requirements (i.e. those set out at paragraphs 22 and 23) are now contained in section 226A of the Act.

2. The notification period for sex offenders

25. The notification requirements for those convicted of certain sexual offences are now contained in the Sexual Offences Act 2003. Section 82 sets different notification periods. For a person sentenced to a term of imprisonment of more than six months but less than thirty months, the notification period is ten years. For a person sentenced to thirty months’ imprisonment or more, the notification period is indefinite (that is to say, lifelong).

26. A person subject to the notification requirements is required to give the police his biographical information (his name(s), date of birth, National Insurance number, his home address and any other address at which he regularly resides or stays) as well as any changes to that information (sections 83(5) and 84). Section 85 provides for periodic notification of the information specified in section 83(5).

27. Section 86 requires notification of any travel arrangements outside the United Kingdom, including the date on which the offender will leave, the country (or the first country) to which he will travel and his point of arrival in that country, and any other information which the offender holds about his departure from or return to the United Kingdom or his movements while outside the United Kingdom.

28. Section 87(4) provides that, where a notification is given, the relevant offender must, if requested to do so by a police officer or authorised person, allow the officer or person to take his fingerprints and/or photograph any part of him.

29. By section 91(1) it is an offence to fail, without reasonable excuse, to comply with these requirements.

30. The Act now makes provision for review of the indefinite-notification requirements. In respect of England and Wales, the review provisions are set out in sections 91A-F. Under the review an offender over eighteen years of age can, after fifteen years, apply to the chief officer of police for the area in which he resides for a determination that he or she should no longer be subject to the indefinite-notification requirements (section 91B). The offender must satisfy the relevant chief officer of police that indefinite-notification is not necessary for the purpose of protecting the public or any particular members of the public from sexual harm (section 91C(2)). There is the right of appeal to the local magistrate's court against any negative determination by the chief officer of police (section 91E).

COMPLAINTS

In the applicant's submission, that his indefinite-notification period is contrary to Article 8 of the Convention either alone or taken in conjunction with Article 14 of the Convention. In respect of Article 14, relying on *Clift v. the United Kingdom*, no. 7205/07, 13 July 2010, he argues that, if sentenced today, he would not receive an extended sentence and would thus not be subjected to the indefinite-notification period. He submits that this amounts to an unjustified difference in treatment based on "other status" as referred to in Article 14.

QUESTIONS TO THE PARTIES

1. Does the indefinite-notification period to which the applicant is subject amount to an interference with his right to respect for his private life within the meaning of Article 8 § 1 of the Convention? If so, is that interference "in accordance with the law" and "necessary in a democratic society" in terms of Article 8 § 2?

2. Has there been a violation Article 14 of the Convention taken in conjunction with Article 8?