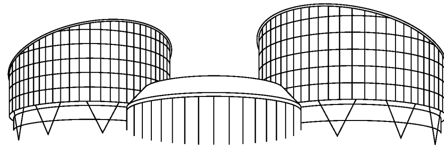

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 62964/14
Martyn MINTER
against the United Kingdom

The European Court of Human Rights (First Section), sitting on 2 May 2017 as a Chamber composed of:

Linos-Alexandre Sicilianos, *President,*
Aleš Pejchal,
Krzysztof Wojtyczek,
Ksenija Turković,
Pauliine Koskelo,
Tim Eicke,
Jovan Ilievski, *judges,*
and Renata Degener, *Deputy Section Registrar,*

Having regard to the above application lodged on 12 September 2014,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Martyn Minter, is a British national, who was born in 1975 and lives in Hampshire. He was represented before the Court by Mr P. Rule, counsel, a barrister practising in London.

2. The United Kingdom Government (“the Government”) were represented by their Agent, Ms R. Sagoo of the Foreign and Commonwealth Office.

COUNCIL OF EUROPE
CONSEIL DE L’EUROPE

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

1. The statutory background

(a) "Extended sentences"

4. When a person is sentenced to a determinate term of imprisonment, the normal practice is for that person to be released "on licence" after serving half of the sentence. The licence period usually lasts for the remainder of the sentence and during this period the person may be recalled to prison if he or she breaches the conditions of the licence.

5. When an offender is convicted of certain sexual or violent offences, the sentencing court may pass an "extended sentence" (see paragraphs 23-26 below). In such cases, if the offender is sentenced to a determinate term of imprisonment he or she is usually released after serving half of that sentence. However, an additional licence period known as "the extension period" takes effect after the normal licence period ceases. This extension period can be of such length as the court considers necessary to protect members of the public from serious harm.

(b) Notification requirements for those convicted of sexual offences

6. 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 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 for the purpose of verifying their identity. They must also give advance notice to the police of any foreign travel.

7. 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 ("the SOA 2003" – see paragraphs 27-31 below). The notification period varies according to the term of imprisonment imposed on the offender. For a person sentenced to a term of imprisonment of between six and thirty months, it is ten years from the date of conviction, but for a person sentenced to a term of imprisonment of thirty months or more it is indefinite.

8. In *R v. S (Graham)* [2001] Cr App R 111 the Court of Appeal, in observations which were subsequently treated as *obiter*, expressed the view that on plain construction the phrase "term of imprisonment" in the SOA 2003 did not include a sentence of extended licence. However, in *R v. Wiles* [2004] 2 Cr App (S) 467 the Court of Appeal held that in this respect *R v. S (Graham)* had been decided *per incuriam* and was wrong. In

determining the length of the "qualifying sentence" for the purposes of making an order disqualifying an offender from working with children, the Court of Appeal found that the whole length of the extended sentence had to be taken into account.

2. The applicant's conviction and notification requirements

9. 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. The maximum penalty for the offences of taking indecent photographs of a child and indecent assault was ten years' imprisonment.

10. 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.

11. On 17 August 2007 the applicant was issued with a notice by the prison at which he was detained stating that he would be subjected to the sex offender notification requirements for a period of ten years. However, the notice warned that it was "not a complete statement of the law." It went on to add: "It is suggested that you confirm this with the police when you make your notification on release from imprisonment. It is your responsibility to check this if you are not certain."

12. The Chief Constable of Hampshire subsequently notified the applicant by letter of 22 September 2010 that he would be subjected to the notification requirements indefinitely. The Chief Constable reasoned that the applicant had been sentenced to a term of imprisonment of more than thirty months since the extended sentence was one of fifty-four months (the custodial term of eighteen months plus the extension period of thirty-six months).

3. The judicial review proceedings

13. 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 have been counted and, given that this was less than thirty months, the notification period should only have been ten years. Accordingly, in December 2010 he sought judicial review of the Chief Constable's decision.

14. In the course of the judicial review proceedings, the applicant also submitted that the legal framework in respect of the notification requirement lacked the degree of clarity and certainty required to be "in accordance with

the law" within the meaning of Article 8 of the Convention; and that the Chief Constable's interpretation of the relevant legislation constituted a disproportionate interference with his right to respect for his private life under that Article. He further submitted that there had been a breach of Article 14 taken in conjunction with Article 8 of the Convention because, after he had been sentenced, the sentencing regime had changed so that for persons sentenced after 14 July 2008 an extended sentence was no longer available unless they either had a previous conviction for a serious offence or the custodial term was at least four years' imprisonment (see paragraph 26 below). As a consequence, someone in his position sentenced under the new sentencing regime would not receive the extended sentence he received.

15. In support of his Article 14 argument, the applicant relied on *Clift v. the United Kingdom*, no. 7205/07, 13 July 2010, in which the Court had accepted that the different treatment of different categories of prisoners depending on the sentences imposed on them was based on "other status".

(a) The Divisional Court's judgment

16. By judgment of 28 June 2011 the Divisional Court dismissed the applicant's claim. Having reviewed both the domestic legislation and case-law, it considered "it plain that the entirety of the extended sentence is a sentence of imprisonment 'in respect of the offence' for which it is imposed".

17. Therefore, in respect of Article 8, the court held that the legal framework was sufficiently certain to satisfy the "in accordance with the law" requirement. Furthermore, as the purpose of the extension period was to manage and reduce the risk posed by an offender 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. In doing so, it had struck a fair balance for the purposes of Article 8 of the Convention.

18. In respect of Article 14 taken in conjunction with Article 8, the court considered itself 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 the treatment of prisoners based on differences in length of sentence did not constitute differential treatment on the ground of "other status", even though in *Clift v. the United Kingdom* this Court had subsequently reached the opposite conclusion. In any event, the Divisional Court found it "difficult to see how changes in the legislative regime referred to, affecting those sentenced at different dates, could give rise to discrimination".

(b) The Court of Appeal's judgment

19. The Court of Appeal unanimously dismissed the applicant's appeal on 1 May 2013. It upheld the Divisional Court's finding that the prison term for the purpose of ascertaining the notification period was the aggregate term of the extended sentence. In this regard, it noted that "the Divisional Court was, with respect, plainly right on the short ground that the statutory language permits no other sensible conclusion".

20. In respect of Article 8, the applicant had submitted that the imposition upon him of an indefinite notification requirement had been arbitrary and disproportionate. However, the court found that, given the purposes of the notification requirement and of extended sentences, there was nothing "arbitrary" or disproportionate in the imposition of an indefinite notification requirement in the applicant's case. Moreover, it would, in time, be possible for the applicant to seek review of the indefinite notification period (see paragraph 34 below).

21. In respect of Article 14 taken in conjunction with Article 8, the court 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

22. On 17 March 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

23. In 2006, when the applicant was sentenced, extended sentences were regulated by section 85 of the Powers of Criminal Courts (Sentencing) Act 2000 ("the 2000 Act") which provided, as relevant:

> "**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

24. The Criminal Justice Act 2003 ("the CJA 2003") subsequently enacted new provisions governing extended sentences for offences committed after 4 April 2005.

25. Before an extended sentence may 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 (section 226A of the CJA 2003).

26. 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 CJA 2003); or

(ii) have committed an offence or offences meriting a custodial term of four years (section 226A of the CJA 2003).

2. The notification period for sex offenders

(a) The Sexual Offences Act 2003

27. The notification requirements for those convicted of certain sexual offences are now contained in the Sexual Offences Act 2003 ("the SOA 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.

28. 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).

29. 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.

30. 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.

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

(b) *R (on the application of F) and Thompson v. Secretary of State for the Home Department* [2010] UKSC 17

32. The applicants in *R (on the application of F) and Thompson* had sought a declaration that in the absence of any mechanism for review, the indefinite notification period under the 2003 Act was incompatible with Article 8 of the Convention. A Divisional Court of the Queen's Bench Division granted the declaration of incompatibility and the Court of Appeal upheld that decision. The Secretary of State appealed to the Supreme Court.

33. The Supreme Court dismissed the appeal. It accepted that the indefinite notification requirement under the SOA 2003 was capable of causing significant interference with the right to respect for private and family life and, in the absence of any provision for individual review of the requirement, it constituted a disproportionate interference with Article 8 of the Convention.

(c) Subsequent legislative amendments

34. Following *R (F) and Thompson*, the SOA 2003 was amended so as to make provision for review of the indefinite notification requirement. In respect of England and Wales, the review provisions are set out in sections 91A-F. Pursuant to these provisions, 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 requirement (section 91B). The offender must satisfy the relevant Chief Officer of Police that indefinite notification is no longer necessary for the purpose of protecting the public or any particular members of the public from sexual harm (section 91C(2)).

There is a right of appeal to the local Magistrate's Court against any negative determination by the Chief Officer of Police (section 91E).

COMPLAINTS

35. The applicant complained that the application of the indefinite notification period was in breach of Article 8 of the Convention, either read alone or together with Article 14.

THE LAW

A. Alleged violation of Article 8 of the Convention

36. The applicant complained that the application of the indefinite notification period was in breach of Article 8 of the Convention, which reads as follows:

> "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."

1. The parties' submissions

37. The Government accepted that the notification requirements constituted an interference with the applicant's Article 8 rights. They contended, however, that the interference was "in accordance with the law" since the relevant provisions of the SOA 2003 were sufficiently precise. In this regard, the Government noted that the impugned provisions of the SOA 2003 mostly re-enacted the Sexual Offences Act 1997, which this Court found to be "in accordance with the law" in *Adamson v. the United Kingdom* (dec.), no. 42293/98, 26 January 1999 and *Massey v. the United Kingdom* (dec.), no. 14399/02, 8 April 2003. In the context of extended sentences, they argued that if there had ever existed any doubt as to whether the extension period counted as part of the term of imprisonment for the purposes of ascertaining the notification period, this had been resolved by the Court of Appeal in *R v. Wiles* (see paragraph 8 above), some two years and seven months before the applicant was sentenced.

38. Although the applicant was initially told that the notification requirement would last ten years, the Government pointed out that this notification came with a warning that it was his responsibility to confirm the position with the police following his release.

39. With regard to the proportionality of the notification requirement, the Government noted that in *Adamson* and *Massey* (both cited above) the Court had held that the interference caused by requirements to provide information to the police (on pain of penalty) was proportionate to the aims pursued by the legislation. Furthermore, in *R (F) and Thompson* (see paragraphs 32-33 above) the sole reason why the Supreme Court found the indefinite notification requirements to be in breach of Article 8 was the absence of any mechanism for review. However, the SOA 2003 now provides for a review (see paragraph 34 above), and the applicant would be able to request such a review after fifteen years.

40. The applicant, on the other hand, submitted that the notification requirements constituted an interference with his Article 8 rights which was neither in accordance with the law nor proportionate to the legitimate aim pursued.

41. In particular, he complained that the domestic law as applied to him was not adequately "foreseeable" as he was initially told that the requirement to notify was to last for a duration of ten years and was only later informed that he would be required to notify for the rest of his life.

42. With regard to proportionality, the applicant argues that as he would not have received an extended sentence had he been convicted of the same offence after 14 July 2008 (see paragraph 26 above), and would therefore not have been subject to the indefinite notification requirement, it cannot have been "necessary" to subject him to such a requirement.

2. *The Court's assessment*

43. The Government did not dispute that the notification requirement imposed on the applicant constituted an interference with his Article 8 rights. It therefore falls to the Court to determine whether that interference was justified under Article 8 § 2 of the Convention: that is, whether it was in accordance with the law, in pursuit of a legitimate aim; and necessary in a democratic society.

(a) In accordance with the law

44. The expression "in accordance with the law" under Article 8 § 2 requires that the impugned measure should have some basis in domestic law; it also refers to the quality of the law in question, requiring that it should be compatible with the rule of law and accessible to the person concerned, who must be able to foresee its consequences for him (see, among other authorities, *Rotaru v. Romania* [GC], no. 28341/95, § 52 ECHR 2000-V.

45. In the present case it is not in dispute that the interference had a legal basis in the SOA 2003 (see paragraphs 27-31 above). The applicant, however, contended that the domestic law as applied to him was not adequately "foreseeable" as he was initially told that the requirement to notify was to last for a duration of ten years, only to be later informed that he was required to notify for the rest of his life.

46. The applicant does not appear to have raised this complaint before the domestic courts. Before the Divisional Court, he complained that the interference with his Article 8 rights was not "in accordance with the law" because the legal framework concerning the notification requirement lacked the necessary degree of clarity (see paragraph 14 above), and before the Court of Appeal he focused his Article 8 complaint not on the lawfulness of the interference but rather on the issue of proportionality (see paragraph 20 above).

47. In any case, the Court observes that the notification sent to the applicant on 17 August 2007 clearly warned that it was "not a complete statement of the law" and advised him to "confirm [the notification period] with the police when you make your notification on release from imprisonment" (see paragraph 11 above). It does not, therefore, consider that this document, in and of itself, had any effect on "foreseeability" for the purposes of Article 8 § 2 of the Convention.

48. Furthermore, although the applicant does not repeat before this Court the more general complaint about the clarity of the legal framework concerning the notification requirement, it nevertheless recalls that both the Divisional Court and the Court of Appeal agreed that "the statutory language permitted no other sensible conclusion" than that the prison term for the purpose of ascertaining the notification period was the aggregate term of the extended sentence (see paragraphs 16 and 19 above). It is true that this issue had previously been subject to some judicial discussion at the domestic level. However, this does not, of itself, indicate that it lacked the requisite degree of clarity or certainty so as to satisfy the requirements of Article 8 § 2 of the Convention, since the Court has accepted that no matter how clearly drafted a legal provision may be, in any system of law there will always be an inevitable element of judicial interpretation (*Onur v. the United Kingdom*, no. 27319/07, § 50, 17 February 2009 and *C.R. v. the United Kingdom*, 22 November 1995, § 34, Series A no. 335-C). Furthermore, any doubts about whether, for the purposes of the SOA 2003, "term of imprisonment" included the extension period were dispelled in 2004, when the Court of Appeal held in *R v. Wiles* that insofar as *R v. S (Graham)* had suggested otherwise, it had been decided *per incuriam* and was wrong (see paragraph 8 above).

49. The Court therefore considers that the interference complained of in the present case was "in accordance with the law".

(b) In pursuit of a legitimate aim

50. The applicant does not contest that the notification requirement pursued a legitimate aim, namely the prevention of crime and the protection of the rights and freedoms of others, by protecting the general population from sexual and other violent offenders.

(c) Necessary in a democratic society

51. An interference will be considered "necessary in a democratic society" for a legitimate aim if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it are "relevant and sufficient". While it is for the national authorities to make the initial assessment in all these respects – and a margin of appreciation must be left to the competent national authorities in this assessment – the final evaluation of whether the interference is necessary remains subject to review by the Court for conformity with the requirements of the Convention (see, for example, *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, §§ 101-102, ECHR 2008).

52. In *Massey* and *Adamson* (both cited above) the Court held that the indefinite registration requirements under the Sex Offenders Act 1997 were proportionate to the aims pursued by the legislation in view both of the gravity of harm which may be caused to victims of sexual offences and the duty that States have under the Convention to take certain measures to protect individuals from such grave forms of interference (*Stubbings and Others v. United Kingdom*, judgment of 22 October 1996, Reports 1996-IV, p. 1505, §§ 62 and 64).

53. The applicant does not dispute that the SOA 2003 mostly re-enacted the registration requirements in the Sexual Offenders Act 1997 (see paragraphs 7 and 37 above). Moreover, since the Court considered the cases of *Massey* and *Adamson* one important additional safeguard had been introduced to the statutory regime: following *R (F) and Thompson* (see paragraphs 32-33 above) persons subject to the indefinite notification requirement now have a right to a review of that requirement after fifteen years (see paragraph 34 above).

54. Nevertheless, it is the applicant's contention that the Court should find that the indefinite notification requirement was not "necessary" within the meaning of Article 8 § 2 of the Convention, since, had he been convicted of the same offence after 14 July 2008, he would only have been subjected to a ten-year notification requirement as he would not have qualified for an extended sentence. However, the Court considers the basis for this contention to be entirely speculative. The more serious offences of which the applicant was convicted carried a maximum penalty of ten years imprisonment (see paragraph 9 above). He could, therefore, have been subjected to an indefinite notification requirement if a domestic court

sentencing him after 14 July 2008 imposed a custodial term of thirty months or more.

55. In any event, this is an argument which more properly falls to be considered under Article 14 of the Convention read together with Article 8. Consequently, it cannot impact on the Court's assessment of the applicant's complaint under Article 8 of the Convention standing alone.

56. Therefore, in view of its findings in *Massey* and *Adamson*, and having regard to the recently added mechanism for reviewing the indefinite notification requirements after fifteen years, the Court cannot but conclude that the interference with the applicant's Article 8 rights was "necessary in a democratic society".

(d) Conclusion

57. The foregoing considerations are sufficient to enable the Court to conclude that the indefinite notification requirements did not disproportionately interfere with the applicant's right to respect for his private life.

58. The applicant's Article 8 complaint must therefore be rejected as manifestly ill-founded pursuant to Article 35 (3)(a) of the Convention.

B. Alleged violation of Article 14 of the Convention read together with Article 8

59. The applicant argued that, if sentenced today, he would not receive an extended sentence and would thus not be subjected to the indefinite notification period. Relying on *Clift v. the United Kingdom*, no. 7205/07, 13 July 2010, he submitted that this amounted to an unjustified difference in treatment based on "other status" as referred to in Article 14.

60. Article 14 of the Convention reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

1. The parties' submissions

61. The Government argued that the differential treatment on which the applicant relied flowed exclusively from changes in the legislative sentencing regime, which were prospective. However, pursuant to the Court's case-law, differential treatment caused purely by the commencement of a new legislative regime did not constitute discrimination (*Zammit and Attard Cassar v. Malta*, no. 1046/12, § 70, 30 July 2015 and *Massey*, cited above). Furthermore, the sentencing regime which applied to the applicant did not create "other status" for the purpose of Article 14, and *Clift* did not suggest otherwise.

62. Finally, the Government contested the applicant's assertion that the relevant comparators had been treated more favourably than him. The receipt of an extended sentence did not trigger the indefinite notification requirement; rather, it was the length of the term of imprisonment. It was therefore speculative to suppose that simply because a person sentenced at a later date could not be subject to an extended sentence they would not be given a sufficiently long custodial term to trigger the indefinite notification requirement.

63. The applicant identified a number of comparable groups which would have been treated differently had they committed an identical offence and been of the same previous good character: those who offended before 30 September 1998 and could not have received an extended licence; those who offended after 30 September 1998 but were released from custody prior to 1 April 2005, since it was understood at the time that they would not be subject to an extended sentence; and first-time offenders sentenced after 14 July 2008 who would not have qualified for an extended sentence.

64. Contrary to the findings of the domestic courts, the applicant argued that this difference in treatment was based on "other status" following this Court's conclusions in *Clift* (cited above).

65. The applicant further submitted that no objective justification existed for the failure to treat him in the same or similar manner to those individuals.

2. The Court's assessment

66. In order for an issue to arise under Article 14 there must be a difference in the treatment of persons in analogous, or relevantly similar, situations (see *Khamtokhu and Aksenchik v. Russia* [GC], nos. 60367/08 and 961/11, § 64 24 January 2017). As established in the Court's case-law, only differences in treatment based on an identifiable characteristic, or "status", are capable of amounting to discrimination within the meaning of Article 14 (see *Khamtokhu and Aksenchik*, cited above, § 61). Such a difference in treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised (*Khamtokhu and Aksenchik*, cited above, § 64).

67. In *Massey* (cited above) the applicant also invoked Article 14 in conjunction with Article 8, complaining that sex offenders convicted of more recent offences than his were not subject to the requirements of the Sex Offenders Act 1997 because they had completed their sentences on the commencement date of the legislation. However, the Court considered that no discrimination was disclosed by legislative measures being prospective only or by a particular date being chosen for the commencement of a new legislative regime. The Court has subsequently confirmed this position (for

a recent example, see *Zammit and Attard Cassar v. Malta*, cited above, § 70). In this regard, it has noted that the use of a cut-off date creating a difference in treatment is an inevitable consequence of introducing new systems which replace previous and outdated schemes. However, the choice of such a cut-off date when introducing new regimes falls within the wide margin of appreciation afforded to a State when reforming its policies (see *Amato Gauci v. Malta*, no. 47045/06, § 71, 15 September 2009).

68. Furthermore, the Court does not consider that *Clift* (cited above) supports the applicant's claim. It is true that in *Clift* the Court accepted that the different treatment of different categories of prisoners depending on the sentences imposed was based on "other status" within the meaning of Article 14 of the Convention. However, in the present case the different treatment complained of did not concern the length of the applicant's sentence but rather the different sentencing regime applied to him as a consequence of a new legislation. As such, his Article 14 complaint is indistinguishable from that which was declared inadmissible as manifestly ill-founded in *Massey.* Although *Massey* pre-dated *Clift*, in *Zammit and Attard Cassar* (cited above), a case which post-dated *Clift* by some four and a half years, the Court reaffirmed that no discrimination was disclosed by the selection of a particular date for the commencement of a new legislative regime.

69. In any event, as the Court has already noted, the applicant's assertion that an indefinite notification requirement would not have been imposed had he been sentenced after 14 July 2008 is entirely speculative (see paragraph 54 above).

70. In view of the aforementioned considerations, the Court considers that the applicant's Article 14 complaint must also be rejected as manifestly ill-founded pursuant to Article 35 § 3(a) of the Convention.

For these reasons, the Court, by a majority,

Declares the application inadmissible.

Done in English and notified in writing on 1 June 2017.

Renata Degener
Deputy Registrar

Linos-Alexandre Sicilianos
President