

Sexual Offences : Age of Consent

Summary of Advice to the Scrutiny Panel

SECOND ADDENDUM

45. I have been asked to advise upon the Act of the States of the 30th October, 1951, recording the agreement of the States to inform the Secretary of State that it was the desire of the Assembly that the European Convention on Human Rights should be extended to Jersey. I have been asked for clarification of certain reservations and provisions expressed in the Act, namely –

- (1) The same reservations as made by HM Government and detailed in the Act of the Legislation Committee of the 28th May, 1951;
- (2) The provisions of the *Loi (1862) sur les Saisies en vertu d'Ordres Provisoires*.

46. The reservations of the United Kingdom Government were recorded in the Act of the Legislation Committee as follows –

“(1) His Majesty’s Government were not prepared to recognise as compulsory ipso facto and without special agreement the jurisdiction of the Court of Human Rights (Article 47) and that it was not their intention to make a declaration under Article 25 recognising the competence of the Commission of Human Rights to receive petitions from individuals or groups; and

(2) It was not contemplated that any legislation would be necessary in the United Kingdom in order to give effect to the terms of the Convention and that His Majesty’s Government had not made any reservations under Article 64 of the Convention to cover those provisions of the United Kingdom law, which, it might be arguable, did not exactly conform to the working of the substantive provisions in the Convention.”

47. The drafting of the European Convention on Human Rights was completed in 1950. The right of petition to the Commission was conditional and the jurisdiction of the European Court on Human Rights optional.

48. The United Kingdom Government decided to agree to ratification subject to the condition that the UK would not accept the right individual of petition and the European Court's jurisdiction in individual cases. The Government ratified the Convention on the 8th March, 1951, on those terms.

49. On the 14th January, 1966, the United Kingdom Government formally accepted the right of petition. Since that date it has been possible for any individual within the jurisdictions for which the United Kingdom is answerable in respect of the European Convention on Human Rights, including Jersey, to petition the European Court in respect of any alleged breach of the Convention. This reservation is therefore now a dead letter.

50. The *Saisie Provisoire* Law is a law which enables a creditor, on an ex parte application, to obtain a provisional order for the arrest and incarceration of a debtor. Because the application is ex parte (that is, made by the creditor in the absence of the debtor) and because the order involves a loss of liberty, there was presumably an apprehension that the Law might be regarded as being in breach of the Convention. The Law has since been unsuccessfully challenged before the European Commission in the case of *Dick v United Kingdom* 1998 JLR 236. It was there held by the Commission that the Order of Justice which contained the provisional order for arrest and detention was an interim measure in the course of proceedings to determine the applicant's civil rights and obligations, but was not in itself such a determination. There had been no unfairness in the proceedings as a whole and the applicant had been afforded several inter partes hearings (that is, hearings at which he was present and had the opportunity of putting his case).

Solicitor General

22nd February, 2006.

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