



21 April 2010

## PRESS SUMMARY

**R (on the application of F (by his litigation friend F)) and another (Respondents) v Secretary of State for the Home Department (Appellant) [2010] UKSC 17**  
*On appeal from the Court of Appeal [2009] EWCA Civ 792*

**JUSTICES:** Lord Phillips (President), Lord Hope (Deputy President), Lord Rodger, Lady Hale, Lord Clarke

### BACKGROUND TO THE APPEAL

Under section 82 Sexual Offences Act 2003 all persons sentenced to 30 months' imprisonment or more for a sexual offence become subject to a lifelong duty to keep the police notified of where they are living and of travel abroad ('the notification requirements'). There is no right to a review of the necessity for the notification requirements at any time.

The respondents are convicted sex offenders subject to the notification requirements. Both brought claims for judicial review claiming that the absence of a right of review of the requirements rendered them a disproportionate manner of pursuing the legitimate aim of preventing crime and thereby breached their right to privacy protected by Article 8 of the European Convention on Human Rights.

The Divisional Court granted the respondents' claims and made a declaration that s 82 (1) Sexual Offences Act 2003 was incompatible with Article 8. The Court of Appeal dismissed an appeal by the Secretary of State for the Home Department, who then appealed to the Supreme Court.

### JUDGMENT

The Supreme Court unanimously dismissed the appeal and repeated the declaration of the lower courts that s 82(1) Sexual Offences Act 2003 was incompatible with Article 8 because it made no provision for individual review of the notification requirements.

### REASONS FOR THE JUDGMENT

Lord Phillips (with whom all the members of the court agreed) stated that the issue in the case was one of proportionality. It was common ground that the notification requirements interfered with the offenders' rights to privacy, that the interference was in accordance with the law and that it was directed at the legitimate aims of the prevention of crime and the protection of the rights and freedoms of others. The court had to consider three questions: (i) what was the extent of the interference with the Article 8 rights, (ii) how valuable were the notification requirements in achieving the legitimate aims and (iii) to what extent would that value be eroded if the notification requirements were made subject to review [paragraph 41]?

If someone subject to the notification requirements could demonstrate that they no longer posed any significant risk of committing further sexual offences, there was no point in subjecting them to the interference with their Article 8 rights, which would then merely impose an unnecessary and unproductive burden on the responsible authorities [paragraph 51]. The critical issue was whether a reliable risk assessment could be carried out in the case of sex offenders. The research into reoffending rates relied on by the Secretary of State showed that 75% of the sexual offenders who were monitored over a 21 year period were not reconvicted and there was no evidence before the court that showed that it was impossible to identify some at least who posed no significant risk of re-offending [paragraph 56].

For various other provisions affecting sex offenders the degree of risk of reoffending had to be assessed. It was obvious that there must be some circumstances in which an appropriate tribunal could reliably conclude that the risk of an individual carrying out a further sexual offence could be discounted to the extent that continuance of the notification requirements was unjustified. The existence of review provisions in other countries with similar registration requirements for sex offenders suggested that a review exercise was practicable [paragraph 57].

Accordingly the courts below were correct to find that the notification requirements constituted a disproportionate interference with Article 8 rights because they made no provision for individual review of the requirements.

#### **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**

**[www.supremecourt.gov.uk/decided-cases/index.html](http://www.supremecourt.gov.uk/decided-cases/index.html)**