

Justice Committee

Offensive Behaviour at Football and Threatening Communications (Scotland) Bill

Written submission from Tony McKelvie

I write as the Scottish Parliament's Justice Committee is convened by you today to consider the Offensive Behaviour at Football and Threatening Communications Bill.

On reading the Bill, Section 5 introduces measures to address the increasing use of the internet to disseminate offensive or threatening material. Given the ubiquity of the internet, there does appear to be justification in the introduction of measures designed to discourage its use as a medium for behaviour that would be unacceptable in hard copy or other format.

Section 1 on the other hand, appears largely to extend sentencing for offences already well provided for, with much of the emphasis in the text reflecting Section 74 of the Criminal Justice Act 2003 and other relevant legislation. If it is the Government's policy to provide the courts with sentencing options that may deter others from carrying out discriminatory offences, few of the law abiding majority will complain.

However Section 1, subsection 2e provides an ill defined catch all that raises a profound concern: A person will be considered to have committed an offence under the terms of this section if they participate in "other behaviour that a reasonable person would be likely to consider offensive".

Explanatory Note 7 states "this would include, but is not limited to, sectarian songs or chants."

I note in paragraph 63 of the Explanatory Notes accompanying the Bill that, with reference to Offensive Behaviour at Football "The Scottish Government does not rule out that individuals who are not currently considered to be acting criminally will be arrested on the basis of these new offences".

In its judgement in *Kokkinakis v. Greece* 1993, the European Court of Human Rights held that under Article 7 of the European Convention on Human Rights: "an offence must be clearly defined in the law. ... this requirement is satisfied where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him criminally liable."

The profound issue with the wording of Section 1 Subsection 2e is that it does not clearly define from the wording what acts will make a person criminally liable. Indeed, it does not define it at all, other than presumably, by reference to behaviour that the courts have already held to be in Breach of the Peace. This contradicts the Explanatory Note 63 above.

I ask you, as Convener of the Justice Committee, to direct the Committee to examine the intent of the Government behind this specific provision, and to seek confirmation and clarity as to what might constitute an offence under this provision. Practically and usefully, some examples of behaviour from the past season that would be considered indictable under the provisions of Section 1 (2) (e) would be wholly welcome.

Indeed, such clarity is simply essential.

Tony McKelvie
22 June 2011