



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

COURT (CHAMBER)

CASE OF McCALLUM v. THE UNITED KINGDOM

(Application no. 9511/81)

JUDGMENT

STRASBOURG

30 August 1990

In the McCallum case*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of the Rules of Court**, as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,
Mr Thór VILHJÁLMSSON,
Mrs D. BINDSCHEDLER-ROBERT,
Sir Vincent EVANS,
Mr J. DE MEYER,
Mrs E. PALM,
Mr I. FOIGHEL,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, Deputy Registrar,

Having deliberated in private on 24 May and 26 June 1990,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court on 8 September 1989 by the Government of the United Kingdom of Great Britain and Northern Ireland ("the Government"), within the three-month period laid down in Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 9511/81) against the United Kingdom lodged with the European Commission of Human Rights ("the Commission") under Article 25 (art. 25) by Mr Michael Peter McCallum, a British citizen, on 31 August 1981.

The Government's application referred to Article 48 (art. 48). Its object was to obtain a decision on whether there had been a breach of Article 13 in conjunction with Article 3 (art. 13+3) of the Convention.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

* The case is numbered 20/1989/180/238. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

** The amendments to the Rules of Court which entered into force on 1 April 1989 are applicable to this case.

3. The Chamber to be constituted included ex officio Sir Vincent Evans, the elected judge of British nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 2 October 1989 the President drew by lot, in the presence of the Registrar, the names of the other five members, namely Mrs D. Bindschedler-Robert, Mr R. Bernhardt, Mr J. De Meyer, Mrs E. Palm and Mr I. Foighel (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr Thór Vilhjálmsson, substitute judge, replaced Mr Bernhardt, who was unable to take part in the consideration of the case (Rules 22 para. 1 and 24 para. 1).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the Government, the Delegate of the Commission and the representative of the applicant on the need for a written procedure (Rule 37 para. 1). In accordance with the order made in consequence, the registry received, on 30 March and 3 April 1990 respectively, the applicant's and the Government's memorial.

By letter of 3 May 1990, the Secretary to the Commission informed the Registrar that the Delegate would submit her observations at the hearing.

5. Having consulted, through the Registrar, those who would be appearing before the Court, the President directed on 21 December 1989 that the oral proceedings should open on 21 May 1990 (Rule 38).

6. The hearing took place in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr M. WOOD, Legal Counsellor,

Foreign and Commonwealth Office,

Agent,

Mr R. MACDONALD, Q.C.,

Mr R. REED, Advocate,

Counsel,

Mrs M. MACDONALD, Scottish Office,

Mr C. REEVES, Scottish Office,

Advisers;

- for the Commission

Mrs G. H. THUNE,

Delegate;

- for the applicant

Mr P. CULLEN, Advocate,

Miss L. MCELHONE, Solicitor.

The Court heard addresses by Mr Macdonald for the Government, by Mrs Thune for the Commission and by Mr Cullen for the applicant, as well as replies to questions put by the President of the Court.

7. During the hearing, the Government lodged a document. The registry subsequently received, on 5 June, further particulars of the applicant's claim under Article 50 (art. 50) of the Convention and, on 22 June, the Government's comments thereon.

AS TO THE FACTS

I. PARTICULAR CIRCUMSTANCES OF THE CASE

8. On 11 March 1980 Mr Michael Peter McCallum, who had previously been dealt with by the courts and served sentences of imprisonment on a number of occasions, was convicted by the High Court of Justiciary at Glasgow of assault and robbery. He was sentenced to six years' imprisonment, to run from 26 November 1979.

Following his conviction, he was initially allocated to Peterhead Prison. In July 1982 he was transferred to Barlinnie Prison, because of the serious disruptive effect which he was having on other prisoners. Whilst in custody he lost 509 days' remission of sentence for a series of offences against prison discipline. He was released from prison on 18 April 1985.

9. During the course of his sentence, Mr McCallum spent two periods in the Segregation Unit at Inverness Prison (see paragraphs 13-20 below), the first from 22 November 1980 to 27 January 1981 and the second from 30 June to 15 October 1981. The second period exceeded the usual three months' maximum in view of his particularly uncooperative attitude whilst he was there.

Both transfers to the Unit followed periods of bad behaviour on the part of the applicant, involving notably assaults on and abuse of staff. In each case it was considered that the transfer could benefit both him and the general situation in Peterhead Prison.

10. During 1981 and 1982, the prison authorities imposed the following particular restrictions on the applicant's correspondence.

(a) Two letters from the applicant, one to his solicitor and one to a Member of Parliament and each dated 24 June 1981, were stopped in accordance with Standing Order Ic 1(3)(d) and Standing Order Ic 3(6)(a), respectively (prohibitions on complaints about prison treatment; see paragraph 22 (a) and (b) below).

(b) A letter of 5 October 1981 from the applicant to the editor of the Daily Record, asking for a copy of an article in that newspaper concerning the applicant ("Cage Man Euro Court Plea") and enquiring if two previous letters had been received, was stopped. The prison authorities considered that the letter did not conform to Standing Orders, but there is no record of the grounds for this view.

(c) A letter dated 18 December 1981 from the applicant to the Procurator Fiscal was stopped because it contained allegations of assault on other prisoners, who had not themselves complained through any internal or external channel. The letter was regarded as objectionable in terms of Standing Order Ic 1(3)(d); the authorities also considered that to allow letters complaining on behalf of other prisoners would be contrary to good

order and discipline. Mr McCallum was allowed to write another letter containing allegations of assault concerning himself alone.

(d) A letter dated 19 January 1982 from the applicant to Miss Hampson of Dundee University was stopped on the grounds that she was not a previous correspondent of his, nor a legal adviser for the purposes of his petition to the Commission (Standing Orders Ic 4(12) and Ic 3(10)(g)(i); see paragraph 22 (d) and (c) below).

(e) Letters dated 20 and 23 February 1982 from the applicant to his representative Mr Godwin were delayed and eventually posted on 18 March 1982. The Government had agreed that Mr McCallum could, pursuant to Standing Order Ic 3(10)(g)(i), correspond with Mr Godwin in relation to his application to the Commission, on the understanding that Mr Godwin would abide by the Commission's rules of confidentiality. Some particulars of the applicant's complaints had appeared in the press and the Scottish Home and Health Department was unwilling to allow further letters without an assurance from Mr Godwin that he would comply with the rules in the future. After the Department had received such an assurance, the letters in question were posted.

(f) Copies of letters written by Mr Godwin to the Prison Service Headquarters on 4 June 1982 and to the Secretary of State on 22 June 1982 were withheld from the applicant under Standing Order Ic 4(12)(b) (see paragraph 22 (d) below). The letters suggested that there had been a breakdown of discipline on the part of the staff at Peterhead Prison and predicted disturbances among prisoners; the second letter also implied that staff might have been responsible for causing a fire in the applicant's cell. The prison Governor considered the letters objectionable on the grounds of good order and discipline, fearing in particular that prisoners might be encouraged to make the disturbances predicted if the letters came into their hands.

11. On 22 December 1982 the Visiting Committee of Barlinnie Prison imposed on the applicant a disciplinary award which included an absolute prohibition for 28 days on all correspondence, pursuant to Rule 74(2) of the Prison (Scotland) Rules 1952 (see paragraph 21 below). On 11 January 1983 the Secretary of State for Scotland, to whose attention the terms of this prohibition had been drawn, ruled that it was not to affect Mr McCallum's correspondence relating to his application to the Commission or his correspondence with his Member of Parliament, the Procurator Fiscal or his legal adviser.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. General legal framework

12. At the relevant time the prison system in Scotland was governed by the Prisons (Scotland) Act 1952 ("the 1952 Act"), sections 1 and 3 of which vested general control and superintendence over prisons in Scotland in the Secretary of State for Scotland. He was empowered, by section 9, to commit prisoners to such prison as might be appointed by rules made under the Act and to transfer prisoners from one prison to another and, by section 35(1), to "make [by statutory instrument] rules for the regulation and management of prisons ... and for the classification, treatment, employment, discipline and control of persons required to be detained therein".

In exercise of his powers under section 35(1), the Secretary of State made the Prison (Scotland) Rules 1952 ("the Prison Rules"), which have been amended from time to time. He also, in supplement of the Prison Rules and by virtue of his general jurisdiction over prisons and of various powers conferred by the Prison Rules themselves, issues instructions to the Governors of prisons in the form of Standing Orders and administrative circulars.

The 1952 Act and the Prison Rules apply to the Segregation Unit at Inverness Prison, as do most of the Standing Orders and administrative circulars. There are also administrative instructions particular to the Unit.

B. The Segregation Unit at Inverness Prison

1. Purpose and use

13. Rule 6 of the Prison Rules empowers the Secretary of State to "set aside particular prisons or parts of prisons for particular classes of prisoners or for particular purposes".

The Segregation Unit at Inverness Prison was set up in 1966 to provide a secure place of segregation for those prisoners who, through their violent or subversive behaviour, seriously disrupt the establishments in which they are accommodated, who had not responded to the forms of treatment available there and who flagrantly refuse to cooperate in the normal prison routine. The Unit also offers a special level of protection for staff.

Transfer to the Unit, which is not employed as a punishment, is intended to remove a threat to the good order and discipline of the transferring prison, to provide relief for staff there and to achieve an improvement in the prisoner's attitude.

14. The Unit is used sparingly, prisoners being transferred there only when the facilities available elsewhere are considered ineffective. It is not

used to capacity and has lain empty on a number of occasions. It was closed in 1972 but re-opened in 1979.

Authority to transfer prisoners to the Unit is given personally by the Secretary of State for Scotland or another Scottish Office Minister, upon the recommendation of both the Governor of the transferring prison and the prison administration division of the Scottish Office and after consultation of the Standing Committee on Difficult Prisoners. Except in case of crisis or emergency, transfers are normally effected only after thorough consideration of the particular circumstances.

No prisoner will be detained in the Unit longer than is considered necessary. No minimum period is prescribed; the maximum will not exceed three months, save in exceptional circumstances.

15. The progress of each prisoner detained in the Unit is constantly monitored by its staff, who report weekly to the prison administration division of the Scottish Office. Each case is also examined monthly by the Inverness Unit Review Board, which may make recommendations to the Secretary of State for the individual's transfer out of the Unit.

2. Nature of the regime

16. The Unit comprises five single cells of 14 square metres in total area, to which prisoners are confined except for exercise periods, toileting, visits and authorised interviews. They are not permitted to associate with other prisoners.

The area in which the prisoner is confined, measuring 3 metres by 2½ metres, is separated from the cell's entrance lobby by a security grille, designed to protect staff. The area in question is larger than the minimum recommended for a single cell in a security prison. The lighting, heating and ventilation of cells in the Unit are comparable or superior to those in separate cell areas in other prisons and to those in many ordinary cells in other prisons.

17. Letters and visits are allowed on the basis normal in prisons in accordance with the Prison Rules and Standing Orders. Unit visits normally take place at weekends and can be extended up to two hours.

18. Library books and newspapers are provided on the normal prison basis, prisoners being free to purchase additional materials out of their own funds. Piped radio facilities are provided in each cell and notebooks are made available in accordance with Standing Orders. Prisoners already taking correspondence courses are encouraged to continue.

19. Meals are taken and paid work, when available, is carried out by Unit inmates in their cells. Exercise is provided for them for two half-hour periods daily, but not in association with other prisoners.

20. In addition to visits from friends and relatives, prisoners in the Unit are visited by the Governor and the Chief Officer of Inverness Prison daily,

by the Prison chaplain and a psychiatrist weekly and by the Prison Medical Officer on request.

C. Correspondence

21. Rule 74 of the Prison Rules provides, inter alia:

"(2) Every prisoner shall be allowed to write and to receive a letter on his admission, and shall thereafter be allowed to write and receive letters and to receive visits at intervals laid down by the Secretary of State. The intervals so prescribed may be extended as a punishment for misconduct, but shall not be extended so as to preclude a prisoner from writing and receiving a letter, and receiving a visit, every eight weeks.

...

(4) Subject to the provisions of Rule 50(4) every letter to or from a prisoner shall be read by the Governor or by an officer deputed by him for that purpose and it shall be within the discretion of the Governor to stop any letter if he considers that the contents are objectionable."

22. At the relevant time, these provisions were supplemented by various Standing Orders, of which the following were pertinent in the present case.

(a) Standing Order Ic 1(3) dealt with the exercise of the Governor's discretion under Rule 74(4) to stop "objectionable" letters. It stated:

"All ordinary matter, including news of public events, should be passed. Comment by a prisoner on his own conviction and sentence is not objectionable if expressed in proper terms. Objectionable matter falls within narrow limits, viz.-

...

(d) Complaints of prison treatment. These should be addressed to the Secretary of State or the Visiting Committee by petition.

...

..."

(b) Standing Order Ic 3(6)(a) dealt with the conditions governing the contents of letters to Members of Parliament. It provided that such letters should be sent, after being read, "except where they include a complaint or request concerning prison treatment, including allegations against prison staff, which has not completed the prescribed procedure for remedying the grievance i.e. by petition to the Secretary of State or other appropriate official means".

(c) Standing Order Ic 3(10) related to petitions by inmates to the Commission and included the following passage:

"(g) If the question of legal advice arises it will be dealt with as under:

(i) a prisoner may correspond with his legal adviser and with other persons in connection with the preparation of the petition to the Commission on the same basis as if he were an appellant.

..."

(d) Standing Order Ic 4(12) provided, with certain savings, that prisoners would be allowed to correspond with "close relations" and normally also with "other relatives and existing friends". The Order also contained the following passages:

"(b) ... Governors have discretion to forbid [letters in the second category] ... on the grounds of security or good order and discipline or in the interests of the prevention or discouragement of crime.

(c) Governors have discretion to allow communication with other persons not personally known to the prisoner before he came into custody. ..."

D. Remedies

23. In addition to a complaint to the Governor of the prison, a prisoner in Scotland who is aggrieved by his treatment has available to him various remedies. They fall into the following three categories:

(a) internal channels of complaint, namely:

(i) a petition to the Secretary of State for Scotland; (ii) a complaint to the Visiting Committee; (iii) a complaint to a Sheriff or Justice of the Peace; (iv) representations to the Inverness Unit Review Board; (v) representations to the Standing Committee on Difficult Prisoners;

(b) an investigation by the Parliamentary Commissioner for Administration;

(c) judicial remedies.

Particulars concerning the remedies listed at (a) (i) and (ii) and (b) appear in the Court's Boyle and Rice judgment of 27 April 1988, Series A no. 131, at pp. 17-19, paras. 36-39. An indication of those referred to at (a) (iii)-(v) is given at paragraph 26 of the Commission's report in the present case. Judicial remedies are of the following two kinds.

1. Remedies in private law

24. A prisoner aggrieved by prison conditions may challenge them by the ordinary remedies of private law as an infringement of his civil rights.

It was emphasised by the House of Lords in *Raymond v. Honey* ([1983] Appeal Cases 1 and [1982] 1 All England Law Reports 759) that "a convicted prisoner, in spite of his imprisonment, retains all civil rights which are not taken away expressly or by necessary implication". Thus, the general principle of Scots law that a person has a right not to be subjected, deliberately or negligently, to physical or mental harm remains applicable to

a prisoner. For example, he can bring an action against the Secretary of State seeking declarator and damages in respect of an alleged assault by prison staff or in respect of harm to his physical or mental health allegedly suffered as a result of unduly rigorous or inhumane conditions (see, *inter alia*, *Middleweek v. Chief Constable of Merseyside* (1985), *The Times Law Reports*, 1 August 1985).

The Government cited a number of authorities in support of the proposition that treatment of prisoners which is so inhuman or degrading that it cannot be regarded as having been authorised by Parliament will be unlawful and actionable as a civil wrong. In the context of correspondence, they stated that a restriction that infringed a right retained by a prisoner, such as his right of access to a legal adviser relating to possible civil proceedings, would be considered to be unlawful (*R. v. Home Secretary, ex parte Anderson* [1984] *Queen's Bench Division Reports* 778).

2. Remedies in public law

25. The exercise by public authorities of statutory powers and duties is subject to judicial review. The grounds on which such review may be open are in substance the same in Scotland as in England and Wales (see *Brown v. Hamilton District Council*, 1983 *Scottish Law Times* 397, per Lord Fraser at 414). In particular, an exercise of discretionary power may be challenged on the grounds that the authority concerned has acted arbitrarily, in bad faith, unreasonably, for an improper purpose or otherwise outside its statutory powers (see, for example, the speech of Lord Diplock in *Council of Civil Service Unions v. Minister for the Civil Service* [1985] *Appeal Cases* 374 at 410 and [1984] 3 *All England Law Reports* 935 at 950-951, as quoted in the *Weeks* judgment of 2 March 1987, *Series A* no. 114, p. 18, para. 30). In Scotland, the supervisory jurisdiction over public authorities is exercised by the Court of Session, which can grant a wide range of remedies, including the annulment of any unlawful decision and the award of damages in appropriate conditions.

A prisoner aggrieved by prison conditions can in principle bring an application to the supervisory jurisdiction to establish that the Secretary of State had failed to perform the duties incumbent on him or that his decision to institute or maintain those conditions was unreasonable. Thus in *R. v. Home Secretary, ex parte McAvoy* [1984] 1 *Weekly Law Reports* 1408 and *Thomson v. Secretary of State for Scotland* 1989 *Scottish Law Times* 343 applications for judicial review were brought by prisoners aggrieved by conditions in prisons to which they had been transferred. Likewise, a prisoner may challenge a restriction upon his correspondence as *ultra vires* in that it infringed his civil rights or as unreasonable, and such a challenge can be brought whether the restriction has been imposed by the Secretary of State (*R. v. Home Secretary, ex parte Anderson*, cited above), the prisoner Governor (*Leech v. Deputy Governor of Parkhurst Prison* [1988] *Appeal*

Cases 533) or a Visiting Committee in the exercise of disciplinary powers (R. v. Board of Visitors of Hull Prison, ex parte St. Germain [1979] Queen's Bench Division Reports 425).

PROCEEDINGS BEFORE THE COMMISSION

26. In his application (no. 9511/81) lodged with the Commission on 31 August 1981 Mr McCallum raised various complaints concerning the conditions and circumstances of his imprisonment. He invoked Articles 3, 8, 10 and 13 (art. 3, art. 8, art. 10, art. 13) of the Convention.

27. By a partial decision of 9 July 1984, the Commission:

(a) declared inadmissible as manifestly ill-founded the applicant's complaint that the conditions of his detention, notably in the Inverness Segregation Unit, and other matters had given rise to a breach of Article 3 (art. 3) and his allegation that there had been unnecessary interference with his right to respect for family life, as guaranteed by Article 8 (art. 8);

(b) adjourned its consideration of his complaints under Articles 8, 10 and 13 (art. 8, art. 10, art. 13), relating to interference with his correspondence and the remedies therefor, as well as the complaint under Article 13 (art. 13) in so far as it related to Article 3 (art. 3).

By a final decision of 10 July 1985 the Commission declared admissible the complaints listed at (b) above.

28. In its report of 4 May 1989 (drawn up in accordance with Article 31) (art. 31), the Commission expressed the opinion:

(a) unanimously, that there had been violations of Article 8 (art. 8) in respect of the stopping of the two letters of 24 June 1981 and of the letters of 5 October 1981, 18 December 1981 and 19 January 1982, the withholding of the copies of the letters dated 4 and 22 June 1982 and the 28-day restriction on correspondence imposed by the disciplinary award (see paragraphs 10 (a) to (d) and (f) and 11 above);

(b) unanimously, that there had been no violation of Article 8 (art. 8) in respect of the delaying of the letters of 20 and 23 February 1982 (see paragraph 10 (e) above);

(c) that it was unnecessary to pursue a further examination of the matter in the light of Article 10 (art. 10);

(d) unanimously, that there had been a violation of Article 13 (art. 13) in relation to the applicant's complaints under Article 8 (art. 8) concerning the stopping of the letters of 24 June 1981 and 18 December 1981 and the restriction under the disciplinary award;

(e) unanimously, that there had been no violation of Article 13 (art. 13) in relation to the applicant's complaints under Article 8 (art. 8) concerning the stopping of the letters of 5 October 1981 and 19 January 1982, the

delaying of the letters of 20 and 23 February 1982 and the withholding of the copies of the letters dated 4 and 22 June 1982;

(f) by nine votes to six, that there had been a violation of Article 13 in conjunction with Article 3 (art. 13+8).

The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment*.

FINAL SUBMISSIONS TO THE COURT

29. At the hearing on 21 May 1990 the Government maintained the concluding submissions set out in their memorial, in which they had requested the Court to decide and declare that:

(a) there had been a violation of Article 8 (art. 8) in respect of the matters listed at paragraph 28 (a) above, but not in respect of that mentioned at paragraph 28 (b);

(b) no separate issue arose under Article 10 (art. 10);

(c) there had been no violation of Article 13 (art. 13) in relation to the applicant's claims under Articles 3 and 8 (art. 3, art. 8).

The applicant, for his part, invited the Court to reach the same decisions.

AS TO THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 8 (art. 8)

30. Article 8 (art. 8) of the Convention 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."

31. Neither the Government nor Mr McCallum contested the opinion of the Commission on the allegations of breach of this provision (see paragraph 28 (a) and (b) above).

* Note by the Registrar: For practical reasons this annex will appear only with the printed version of the judgment (volume 183 of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

The Court, for its part, sees no reason to disagree. It holds that the measures affecting the applicant's correspondence which are at issue in the present case (see paragraphs 10-11 above) constituted, with the exception of the delaying of the letters of 20 and 23 February 1982, violations of Article 8 (art. 8).

II. ALLEGED VIOLATION OF ARTICLE 10 (art. 10)

32. Before the Commission, the applicant also alleged a breach of Article 10 (art. 10) of the Convention, which guarantees freedom of expression. However, this claim was not pursued before the Court (see paragraph 29 above) and it sees no need to examine it of its own motion.

III. ALLEGED VIOLATION OF ARTICLE 13 (art. 13)

33. Article 13 (art. 13) of the Convention reads as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Before the Commission, Mr McCallum submitted that, in breach of this provision, he had no effective domestic remedy in respect of his claims that the conditions of his detention in the Segregation Unit at Inverness Prison and the measures affecting his correspondence had given rise to violations of Article 3 and Article 8 (art. 3, art. 8), respectively.

The Government contested this allegation. The Commission accepted it, by a majority, as regards the claim under Article 3 (art. 3) and unanimously as regards certain of the claims under Article 8 (art. 8) (see paragraph 28 (d) above).

In his memorial to the Court, the applicant adopted the Commission's conclusions. However, at the hearing on 21 May 1990 his counsel stated that, having considered the Government's memorial, he accepted that his client would have had "effective judicial remedies through the national courts" in relation to both the Article 3 and the Article 8 (art. 3, art. 8) claims and that there had therefore been no breach of Article 13 (art. 13).

34. Having regard to the facts that the applicant has in this way abandoned his claims of violation of Article 13 (art. 13) and that the matter was not further pursued by the Delegate of the Commission at the hearing, the Court finds that it is not necessary to examine the case under that provision.

IV. APPLICATION OF ARTICLE 50 (art. 50)

35. Article 50 (art. 50) of the Convention provides:

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

Mr McCallum claimed under this provision compensation for non-pecuniary damage, together with reimbursement of his costs and expenses referable to the proceedings before the Convention institutions.

A. Damage

36. The applicant sought a "reasonable" sum, which he quantified at £3,000, as compensation for the distress and increased sense of isolation occasioned by the unjustified interference with his correspondence.

The Government contested this claim, pointing out notably that no evidence of the alleged damage had been produced.

37. Even assuming that the applicant did suffer some degree of distress, the Court, having regard to the circumstances of the case, holds that the finding of violations of Article 8 (art. 8) constitutes sufficient just satisfaction for the purposes of Article 50 (art. 50).

B. Costs and expenses

38. For lawyer's fees and disbursements referable to the proceedings in Strasbourg the applicant sought reimbursement of the sum of £14,889.21.

The Government submitted a series of observations on this claim, which they described as "excessive in the extreme". The Delegate of the Commission made no comments, leaving the matter to the Court's discretion.

39. The Court has examined the claim in the light of the criteria emerging from its case-law and of the observations presented by the Government. It observes in particular that violations of the Convention have been found solely as regards certain of the allegations under Article 8 (art. 8) - which were not contested by the Government before the Court - arising from the measures affecting the applicant's correspondence (see paragraph 31 above). All the other complaints presented by him either were declared inadmissible by the Commission (see paragraph 27 above) or have not been upheld in the present judgment.

In these circumstances, the Court considers that only a proportion of the costs and expenses incurred is recoverable (see, for example, the above-mentioned Boyle and Rice judgment, Series A no. 131, p. 34, para. 91). Taking into account this factor and also the legal-aid payments made by the Council of Europe in respect of travel and subsistence expenses as well as

fees and making an assessment on an equitable basis, the Court holds that Mr McCallum should be awarded £3,000. This figure is to be increased by any value-added tax that may be chargeable.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that, with the exception of the delaying of the letters of 20 and 23 February 1982, the measures affecting the applicant's correspondence which are at issue in the present case constituted violations of Article 8 (art. 8);
2. Holds that it is not necessary to examine the case under Article 10 (art. 10) or under Article 13 taken in conjunction with Article 3 (art. 13+3) or Article 8 (art. 13+8);
3. Holds that the United Kingdom is to pay to the applicant, in respect of costs and expenses, the sum of £3,000 (three thousand pounds), together with any value-added tax that may be chargeable;
4. Dismisses the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 30 August 1990.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar