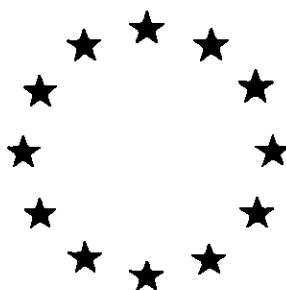

COUNCIL
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CONSEIL
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EUROPEAN COMMISSION
OF HUMAN RIGHTS

Application No. 8574/79

William COSTELLO
against
UNITED KINGDOM

Report of the Commission

(Adopted on 18 October 1985)

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I. INTRODUCTION

1. The following is an outline of the case, as submitted to the European Commission of Human Rights, and of the procedure before the Commission.

2. The applicant is a United Kingdom citizen, born in 1936, who at the time of lodging his application was detained in HM Prison Stafford, England.

A. The substance of the application

3. Whilst the applicant was detained in prison, between August 1977 and November 1979, 72 of his outgoing letters were stopped by the prison authorities. He complains to the Commission of an unjustified interference with his right to respect for correspondence, contrary to Art 8 of the Convention, as well as a denial of access to court, contrary to Art 6 (1) of the Convention. The applicant had also originally complained to the Commission about his trial and conviction and alleged victimisation by prison staff.

B. Proceedings before the Commission

4. The application was introduced on 12 October 1978 and registered on 12 February 1979.

5. After a preliminary examination of the case by a Rapporteur, the Commission decided on 13 March 1980 to give notice of the applicant's complaint concerning censorship of correspondence to the respondent Government, pursuant to Rule 42 (2)(b) of the Rules of Procedure. Observations were not, however, requested at that stage pending the outcome of the test case of Silver and Others v the United Kingdom. The Commission also decided to declare the remainder of the application inadmissible.

6. On 18 September 1980 the Government submitted information about the alleged censorship of the applicant's correspondence.

7. The European Court of Human Rights delivered judgments in the test case of Silver and Others on 25 March 1983 (merits) and 24 October 1983 (Art 50 question).

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8. On 16 January 1984, when a copy of the Art 50 judgment was sent to the applicant, the Secretary to the Commission, also referring to a reform in the prison censorship rules, which the Government had implemented in England and Wales, asked whether the applicant wished to maintain his application. On 23 January 1984 the applicant replied that he wished to maintain his application and seek redress (unspecified).

9. On 9 March 1984, after a review of the various adjourned prisoners' correspondence cases, the Commission decided to invite the parties to submit their written observations on the admissibility and merits of the application, with particular regard to the censorship of the applicant's correspondence to the criminal courts and another prisoner. The parties did not submit any observations. However, in a general letter of 6 July 1984 concerning all cases of adjourned prisoners' correspondence complaints, which were still pending before the Commission, the Government stated that they were "prepared to waive the admissibility and submit no observations on the merits of those cases which the Commission has identified as raising similar issues ... not dealt with by the test case of Silver and Others. The issues ... not dealt with by the test case are all covered by changes in administrative practice ...".

10. On 18 July and 2 October 1984 the Government were asked to clarify in what way the revised administrative practices satisfied the applicant's complaints about correspondence to the criminal courts and another prisoner. No reply was received to this inquiry.

11. On 4 March 1985, the Commission declared the remainder of the application admissible (see Final Decision on Admissibility, Appendix II to this Report). No observations on the merits of the case were submitted by the parties.

12. Since declaring the case admissible, the Commission, acting in accordance with Art 28 (b) of the Convention, has also been at the disposal of the parties with a view to securing a friendly settlement. In the light of the parties' reaction, the Commission now finds that there is no basis on which such a settlement can be effected.

C. The present Report

13. The present Report has been drawn up by the Commission in pursuance of Art 31 of the Convention and after deliberations and votes in plenary session, the following members being present (1):

(1) Since Mr Ermacora was not present when the final vote on a breach of the Convention was taken, the Commission took a special decision on 18 October 1985, in accordance with Rule 52 (3) of its Rules of Procedure, to permit him to have recorded his separate opinion, concurring with the Commission's conclusions.

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MM C.A. Nørgaard, President
G. Sperduti
J.A. Frowein
G. Jörundsson
G. Tenekides
S. Trechsel
B. Kiernan
A.S. Gözübüyük
A. Weitzel
J.C. Soyer
H.G. Schermers
H. Danelius
G. Batliner
Mrs G.H. Thune
Sir Basil Hall

14. The text of the Report was adopted by the Commission on 18 October 1985 and is now transmitted to the Committee of Ministers in accordance with Art 31 (2) of the Convention.

15. A friendly settlement of the case not having been reached, the purpose of the present Report, pursuant to Art 31 of the Convention, is accordingly:

- 1) to establish the facts; and
- 2) to state an opinion as to whether the facts found disclose a breach by the respondent Government of its obligations under the Convention.

16. A schedule setting out the history of proceedings before the Commission and the Commission's Decisions on Admissibility are attached hereto as Appendices I, II and III. The Commission's proposal under Art 31 (3) of the Convention is contained in Appendix IV, prepared as a separate document for reasons of convenience.

17. Documents relevant to the application are held in the archives of the Commission and are available to the Committee of Ministers, if required.

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II. ESTABLISHMENT OF THE FACTS

18. The facts of the remaining case before the Commission are not substantially in dispute and are as follows:

A. The relevant domestic law and practice

19. The relevant domestic law and practice relating to the censorship of prisoners' correspondence at the material time is extensively set out in paras 34 - 50 of the Commission's Report in the test case of Silver and Others v the United Kingdom, adopted on 11 October 1980 (see also Eur Court HR case of Silver and Others judgment of 25.3.83 paras 25 - 56).

20. By virtue of the Prison Act 1952 the Home Secretary is responsible for prisoners and may make rules "for the regulation and management of prisons and for the classification, treatment, employment, discipline and control of persons required to be detained therein" (Section 47 (1) Prison Act 1952). Such rules are contained in statutory instruments laid before Parliament, presently the Prison Rules 1964, as amended.

21. Rule 33 (1) of those Rules states the Home Secretary's discretion to control prisoners' communications, either generally or in a particular case, for the maintenance of discipline and good order, the prevention of crime or the protection of the interests of any person. It is only with the Home Secretary's leave that a prisoner may communicate with the outside world, the Prison Governor or authorised prison officer having the power to examine correspondence and stop any which is "objectionable" (Rule 33 (2) and (3)).

22. With a view to securing uniformity of practice throughout prison establishments, the Home Secretary also issues to prison governors management guidelines in the form of Standing Orders or Circular Instructions. At the material time, the Standing Orders further restricted prisoners' correspondence in various ways including the following prohibitions:-

- a) on correspondence between prisoners or ex-prisoners (Standing Order (SO) 5A22);
- b) on attempts to circumvent or evade regulations (SO 5A24);
- c) on complaints about courts, police or prison authorities, deliberately calculated to hold them up to contempt (SO 5A26 (4)b.ii);
- d) on material intended for publication (SO 5A26(4)b.iv);
- e) on complaints about prison treatment (SO 5A26(4)b.viii);

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- f) on allegations against officers (SO 5A26(4)b.ix);
- g) on representations about conviction or sentence, other than to the Home Secretary (SO 5A31(1));
- h) on complaints about prison treatment to Members of Parliament or lawyers, where the matter had not first been aired through internal prison channels, ie non-observance of the prior ventilation rule (SO 5C1(2)a.ii and SO 17A6);
- i) on letters to Government Ministers unless the prisoner is of the Minister's constituency (SO 5C2(2)); and
- j) on attempts to initiate a private criminal prosecution, prisoners wishing to initiate such proceedings concerning external prison matters being referred to the appropriate Chief Officer of Police, or, concerning internal prison matters, being referred to the internal prison channels of complaint (SO 17B).

B. The particular facts of the case

23. The applicant alleged that whilst imprisoned, between August 1977 and November 1979, 72 of his outgoing letters were stopped by the prison administration. The prison records disclose the following disposal of the applicant's letters:

Date	Addressee	Basis of Censorship
1. ? .8.77	Mr C. Braily, a prisoner at Shrewsbury prison and alibi witness for applicant on appeal	Stopped. Prisoners can only correspond if the two are jointly convicted (SO 5A22(1)b)
2. ? .8.77	Mr Watson, prison officer at Shrewsbury prison, witness	Stopped. The applicant was informed that the officer's statement would be sent direct to the Court of Appeal if the latter so requested
3. 1.8.77	Chief Clerk, Crown Court, Shrewsbury	Apparently posted, although it contained complaints about the Governor of HM Prison Shrewsbury

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| 4. | 2.8.77 | Governor, Shrewsbury Prison | Stopped. The applicant threatened the Prison Governor with a summons for suppressing legal documents |
| 5. | 12.8.77 | National Council for Civil Liberties (NCCL) | Stopped. Non-observance of prior ventilation rule |
| 6. | 2.9.77 | Magistrates Court, Wolverhampton | Stopped. Sought to take out summons against Featherstone's Prison Governor for obstructing appeal. Prohibition on initiating private criminal prosecution |
| 7. | 7.9.77 | Clerk to the Justices, Bridgnorth | Stopped. Complaint concerning Clerk's handling of applicant's perjury allegations |
| 8. | 28.9.77 | Mr G.T. Fowler (his MP) | Stopped. Allegations against police and prison officers |
| 9. | 14.10.77 | NCCL | Stopped. Complaints against police |
| 10. | 11.11.77 | Clerk to the Justices, Cannock | Stopped. Initiation of private criminal prosecution |
| 11. | 26.11.77 | " | " |
| 12. | 25.11.77 | Home Office (Private Secretary) | Stopped. Complaints about Bridgnorth Magistrates Court |
| 13. | 4.12.77 | " | " |
| 14. | 28.11.77 | His MP | Stopped. Non-observance of prior ventilation rule |
| 15. | 20.12.77 | Lord Chief Justice | Stopped. Complaint about the Court of Appeal |
| 16. | 6.1.78 | A Chief Constable | Stopped. Allegations against prison officer and about prison treatment |
| 17. | 12.1.78 | Lord Chancellor's Department | Stopped. Circumvention of letter issue rules and complaints against the Court of Appeal and Prison Governor of Featherstone Prison |

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18. 14.2.78	Director of Public Prosecutions	Stopped. Complaints about Chief Constable and Featherstone Prison Governor
19. 14.2.78	A Chief Constable	Stopped. Non-observance of prior ventilation rule
20. 16.2.78	Messrs Gwynne & Sons (his solicitors)	"
21. 17.2.78	His MP	"
22. 7.3.78	Clerk to the Justices, Bridgnorth	Stopped. Initiation of private criminal prosecution
23. 10.4.78	His MP	Stopped. Non-observance of prior ventilation rule
24. 29.6.78	Clerk to the Justices, Shrewsbury	Stopped. Initiation of private criminal prosecution
25. 30.6.78	His solicitors	Stopped. Non-observance of prior ventilation rule
26. 7.7.78	"	"
27. 7.7.78	His MP	"
28. 9.7.78	His solicitors	Stopped. Initiation of civil proceedings
29. 11.7.78	Clerk to the Justices, Cannock	Stopped. Complaint against the courts
30. 12.7.78	His MP	Stopped. Non-observance of prior ventilation rule
31. 13.7.78	His solicitors	"
32. 14.7.78	His MP	"
33. 14.7.78	Clerk to the Justices, Bridgnorth	Stopped. Complaint against the courts
34. 14.7.78	Clerk to the Justices, Shrewsbury	Stopped. Initiation of private criminal prosecution
35. 18.7.78	His solicitors	Stopped. Non-observance of prior ventilation rule
36. 19.7.78	"	"

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37.	21.7.78	His MP	Not clear what happened
38.	26.7.78	"	Stopped. Non-observance of prior ventilation rule
39.	5.8.78	Lord Chief Justice	Stopped. Representations about conviction and sentence
40.	14.9.78	Clerk to the Justices, Birmingham	Stopped. Initiation of private criminal prosecution
41.	15.9.78	His MP	Stopped. Non-observance of prior ventilation rule
42.	16.9.78	Messrs Lanyons, Solicitors	Stopped. Concerning private criminal prosecution
43.	8.10.78	Clerk to the Justices, Birmingham	Stopped. Initiation of private criminal prosecution
44.	16.10.78	"	Stopped. Initiation of civil proceedings in person
45.	24.10.78	"	Stopped. Non-observance of prior ventilation rule
46.	27.10.78	A solicitor	No record at all
47.	28.10.78	His solicitors	No record of censorship
48.	3.11.78	His MP	Stopped. Concerning private criminal prosecution
49.	9.11.78	Clerk to the Justices, Shrewsbury	"
50.	18.11.78	Clerk to the Justices, Birmingham	"
51.	23.12.78	A civil court (unspecified)	No record of censorship
52.	11.2.79	His wife	"
53.	12.2.79	"	"
54.	16.2.79	"	No record at all
55.	15.2.79	His solicitors	No record of censorship
56.	26.3.79	Chief Clerk, the High Court, Birmingham	"

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57.	11.4.79	His solicitors	Stopped. Non-observance of prior ventilation rule
58.	13.4.79	Birmingham Magistrates Court	Posted inadvertently
59.	15.4.79	Stafford Magistrates Court	Stopped. Initiation of private criminal prosecution
60.	10.5.79	Messrs Taylor, Hall-Wright & Co, Solicitors	"
61.	9.6.79	Clerk to the Justices of a London area	"
62.	18.7.79	Birmingham Magistrates Court	"
63.	18.7.79	His wife	Stopped for asking wife to contact the press
64.	25.7.79	Birmingham Magistrates Court	Stopped. Initiation of civil proceedings
65.	28.7.79	Private Secretary to the Prime Minister	Stopped as Prime Minister not his MP
66. and 67.	1.8.79	Messrs Brindley & Simon, Solicitors	Stopped. Initiation of private criminal prosecution and non-observance of prior ventilation rule
68.	27.8.79	Howard League for Penal Reform	"
69.	1.10.79	His wife	Stopped. Circumvention of regulations by asking wife to contact PM's private secretary
70.	1.10.79	Bridgnorth Magistrates Court	Stopped. Initiation of private criminal prosecution
71.	30.10.79	His children	No record at all
72.	27.11.79	Mr W. Hawksley, MP	Posted

24. Although the applicant disputes the absence of a record of certain instances of censorship, in the absence of further information, the Commission does not find it established that letters N^os 3, 46, 47, 51-56, 58, 71 and 72 were stopped by the prison authorities. However it does find that the other 60 letters were stopped.

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III. SUBMISSIONS OF THE PARTIES

A. The applicant

25. The applicant has contended that the aforementioned censorship of his letters constituted an unjustified interference with his correspondence, contrary to Art 8 of the Convention, as well as a breach of Art 6 (1) of the Convention.

B. The Government

26. The Government have expressed no particular view about this individual application, but generally have accepted that to a certain extent it resembles the issues raised in the test case of Silver and Others v the United Kingdom, on which the European Court of Human Rights gave judgment on 25 March 1983 and following which the administrative practices have been changed (paras 8 and 9 above). The Government also state that any issues raised, which are not dealt with in the test case, are all covered by the said changes in administrative practices.

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IV. OPINION OF THE COMMISSION

A. Points at issue

27. The only points at issue in the present application are whether the censorship of the applicant's correspondence constituted an unjustified interference with the applicant's right to respect for correspondence, ensured by Art 8 of the Convention, and a denial of access to court, contrary to Art 6 (1) of the Convention, in respect of those letters involving civil proceedings.

B. General considerations

1. As regards Art 8 of the Convention

a) The test case of Silver and Others

28. The relevant part of Art 8 of the Convention reads as follows:

"1. Everyone has the right to respect forhis 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."

29. In the Commission's opinion in the test case of Silver and Others v the United Kingdom (Comm Report 11.10.80) it held as follows:

".... a prisoner has the same right as a person at liberty to respect for his correspondence, the ordinary and reasonable requirements of imprisonment being of relevance in assessing the justification for any interference with that right under the exceptions permitted by Art 8 (2)

The Commission considers, therefore, that the right under Art 8 (1) to respect for correspondence envisages a free flow of such communications, subject only to the limitations prescribed by Art 8 (2).

The Commission concludes that the censorship of prisoners' correspondence by prison authorities, in principle, constitutes an interference with the right of prisoners to respect for their correspondence under Art 8 (1)." (paras 269 - 271)

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"Art 8 (2) of the Convention requires that any interference with a person's right to respect for correspondence be firstly in accordance with the law

The Commission considers that [this] phrase is not merely a reference to the State's domestic law, but also a reference to the rule of law, or the principle of legal certainty, which is common to democratic societies and the heritage of member States of the Council of Europe." (paras 277 and 281)

30. This entails two requirements - the law must be adequately accessible and foreseeable (Eur Court HR Sunday Times case judgment of 26.4.79 para 49). Thus whilst the Prison Rules 1964, as amended, satisfy the requirement of accessibility, the same cannot be said of the management guidelines unless they could be reasonably deduced from the Rules. Consideration of the foreseeability test was postponed to the examination of the substantive justification issues (paras 282 - 285).

31. Concerning restrictions on prisoners' letters in the management guidelines, the Commission found that the prohibition on attempts to circumvent or evade prison regulations was an obvious requirement of imprisonment, which flows clearly from the Home Secretary's powers under Rule 33 (1) of the Prison Rules 1964 to impose restrictions "with a view to securing good order and discipline". In principle, therefore, such a restriction could be said to be "in accordance with the law" within the meaning of Art 8 (2) (paras 376-377). Similarly, the restriction on material deliberately calculated to hold the court, police or prison authorities up to contempt was to be foreseen in the Home Secretary's aforementioned powers, and, therefore, was "in accordance with the law" (para 353).

32. However, the Commission noted that restrictions in prisoners' letters containing material intended for publication and complaints about prison treatment, including complaints to Members of Parliament and lawyers, where the matter had not first been aired through internal prison channels, were not specifically laid down in the Prison Rules 1964, and, in view of their breadth, could not reasonably be foreseen in the general discretion conferred upon the prison administration by Rule 33 (1) and (3). The same opinion was reached as regards restrictions on allegations against officers and on representations about conviction or sentence. Hence such restrictions in the management guidelines could not be considered to be "in accordance with the law" under Art 8 (2) (paras 297-299, 310, 319-320, 344-345, 361 and 386).

33. As regards the second element of Art 8 (2), "necessary in a democratic society", restrictions imposed on a prisoner's right to respect for correspondence must be necessary and proportionate to meet a legitimate governmental aim. Thus a balance must be struck between the need to rehabilitate a prisoner and the interests of public order and security (paras 286 - 290).

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34. As regards the substantive issues, the principal justification that could be put forward for the censorship of prisoners' correspondence is the need to prevent disorder. However, the Commission found that the management guidelines concerning material intended for publication and complaints about prison treatment (particularly letters of complaint to Members of Parliament and lawyers), contemptuous complaints about the courts, police or prison authorities, allegations against officers and representations about conviction and sentence, were overbroad restrictions which were not "necessary in a democratic society ... for the prevention of disorder" within the meaning of Art 8 (2) of the Convention (paras 301-303, 311-314, 322-323, 346-348, 354-357, 362-363 and 387-388).

35. On the other hand, the Commission also found that the prohibition on attempts to circumvent regulations (assuming those regulations were compatible with the provisions of the Convention) was, in principle, justified for the "prevention of disorder" (para 379) (1).

36. These opinions of the Commission were not substantially contested by the respondent Government before the European Court of Human Rights, which upheld the majority of the Commission's conclusions, including those outlined above (Eur Court HR Case of Silver and Others, judgment of 25.3.83, paras 91, 95 and 99).

b) Matters outside the scope of the test case

37. Certain restrictions on the present applicant's correspondence were not in dispute in the test case of Silver and Others:-

- the prohibition on correspondence with other prisoners;
- the prohibition on writing to Government Ministers, unless the prisoner was one of the Minister's constituents;
- the prohibition on initiating private criminal prosecutions.

(1) Although not in the particular circumstances of the test case.

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38. The Commission is of the view that its approach to the examination of the compatibility with the Convention of these restrictions must be the same as that adopted in the test case, given the general considerations outlined above (at paras 29, 30 and 33).

i) Letters to prisoners and ex-prisoners

39. The Commission observes the general prohibition, in force at the time of the introduction of this application, on prisoners' letters to each other, with few exceptions such as the correspondence of persons, jointly convicted, having appeal matters to settle. There was no specific provision in the Prison Rules 1964, as amended, for such a restriction. The prohibition was contained in the unpublished Standing Orders Section 5A Order 22(1)b.

40. The Commission considers that the control of prisoners' correspondence between them may be said to have been a reasonable and foreseeable consequence of the Home Secretary's powers under Rule 33 (1) of the Prison Rules 1964 to impose restrictions in the interests of good order or the prevention of crime, given the possible security risks that could be created by such correspondence. This restriction could, accordingly, be said to have been an interference with the right to respect for correspondence ensured by Art 8 (1) of the Convention, but which was "in accordance with the law" within the meaning of the second paragraph of that provision.

41. However, on the question of justification, the Commission considers that the restriction, which took no account of the security risk of the prisoners concerned and the contents of the correspondence, was overbroad. To take an example, prisoners, particularly those serving long sentences, may form friendships with each other, but may later be separated for purely administrative reasons. It may not always be evident why all contacts between such prisoners should be severed. The Commission is of the view, therefore, that a blanket prohibition on correspondence between prisoners has not been shown to have been "necessary in a democratic society ... for the prevention of disorder" within the meaning of Art 8 (2) of the Convention.

ii) Letters to Government Ministers

42. The Commission notes the restriction, at the material time, on a prisoner's correspondence to Ministers, including Parliamentary Secretaries, unless the prisoner was a constituent of the Minister. There was no specific provision in the Prison Rules 1964 for such a restriction, it having been contained in the unpublished Standing Orders Section 5C Order 2(2). The Commission considers that the restriction was one of pure administrative convenience, given the practice of British Members of Parliament to deal primarily with the problems of their own particular constituents, and therefore did not reasonably flow from the general discretion, conferred upon the prison administration by Rule 33 of the Prison Rules 1964, to control prisoners' correspondence with a view to securing good order and

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discipline. It finds, therefore, that this limitation constituted an interference with the right to respect for correspondence ensured by Art 8 (1) of the Convention, and that it cannot be said to have been "in accordance with the law" within the meaning of the second paragraph of that provision. Furthermore, although there may have been practical reasons for channelling prisoners' problems to the Member of Parliament most likely to deal with them, ie the Member of Parliament in whose constituency the prisoner resided or originated from, and indeed prisoners should have been advised accordingly, it is not clear how the interests of good order could have been threatened by leaving the addressee to decide whether he or she would have been willing or competent to assist the prisoner (cf mutatis mutandis the restriction on representations about conviction and sentence, Silver and Others Comm Report paras 361-363).

43. The Commission is of the opinion, therefore, that the wide prohibition on prisoners' letters to Ministers has also not been shown to have been "necessary in a democratic society ... for the prevention of disorder" within the meaning of Art 8 (2) of the Convention.

iii) Letters concerning private criminal prosecutions

44. The Commission notes the prohibition on prisoners' letters concerning a possible private criminal prosecution. Such a prohibition also constitutes an interference with the right to respect for correspondence, ensured by Art 8 (1) of the Convention. The Commission observes that there is no provision in primary (the Prison Act 1952) or delegated legislation (the Prison Rules 1964, as amended) which denies prisoners the general right under English law to institute a private criminal prosecution. Nor is there a clear law indirectly depriving them of that right by way of authorised censorship of their correspondence. The restriction is only contained in the management guidelines, Standing Orders Section 17B at the material time. Although that administrative directive does not leave prisoners without any outlet for their criminal accusations, which will be referred to the appropriate Chief Constable of Police or internal prison channels of complaint, it is not made clear in that directive why prisoners should be denied direct access to the criminal courts, or indirect access, through competent legal advisers. Moreover, in the Commission's opinion such a broad restriction does not flow automatically from the powers of the prison administration to censor prisoners' letters under Rule 33 (1) and (3) of the Prison Rules 1964, as amended. In these circumstances the Commission finds that the restriction in question was not "in accordance with the law" within the meaning of Art 8 (2) of the Convention.

45. As regards the question of whether this restriction is "necessary in a democratic society" under Art 8 (2) of the Convention, the Commission further notes that the Government submitted no observations on the point. The Commission considers that the right to respect for correspondence extends to communications with courts,

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either civil or criminal, regardless of the contents of that correspondence, and to communications with lawyers or other competent advisers, in connection with such proceedings. In the Commission's opinion it is the role of the courts, and the lawyers concerned, to decide how to deal with or dispose of such correspondence from prisoners, and not the role of the prison administration. Moreover, the Commission observes that under English law the individual has a general right to institute a private criminal prosecution before the Criminal Courts (1). It has not been established what legitimate requirement of imprisonment would justify the denial of this general right to prisoners. In these circumstances, the Commission also finds that this restriction on prisoners' correspondence has not been shown to be "necessary in a democratic society ... for the prevention of disorder" or for any other reason laid down in Art 8 (2) of the Convention.

2. As regards Art 6 (1) of the Convention

46. The relevant part of Art 6 (1) of the Convention reads as follows:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ..."

47. In the Golder case the Court held that this provision embodies "the right to a court", an aspect of which is the right of access to court and to legal advice (Eur Court HR judgment of 21.2.75 paras 36 and 40). Thus, as regards the test case, the refusal by prison authorities to allow Mr Silver to seek legal advice concerning prospective civil proceedings was deemed, by both the Commission and the Court, to be a breach of Art 6 (1) of the Convention (Comm Report paras 429-434, Eur Court HR judgment paras 80-82).

(1) Save where statute provides otherwise, when the consent of a judge, the Attorney General, the Director of Public Prosecutions or other officer is required eg for criminal libel cases.

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C. The present case

1. As regards Art 8 of the Convention

48. As regards the facts of the present case, the Commission notes that 60 of the applicant's outgoing letters were stopped by the prison administration. Thus the Commission finds that there was an interference with the applicant's right to respect for correspondence, ensured by Art 8 of the Convention. The question remains, however, whether the conditions justifying such interference, and which are laid down in the second paragraph of that provision, have been fulfilled.

49. The Commission also notes that part of the censorship in question was in accordance with certain management guidelines (Standing Orders) which themselves could not be said to have been either "in accordance with the law" or "necessary in a democratic society for the prevention of disorder", within the meaning of Art 8 (2) of the Convention.

50. Since December 1981 there has been a substantial reform of the relevant management guidelines. In particular, the restriction on prisoners' correspondence with each other has been modified to allow such communication unless it would impede rehabilitation or jeopardise security, good order or discipline and prisoners may now correspond with any Member of Parliament, whether a Minister or not. Whilst welcoming this relaxation of the censorship practice, the Commission must express its opinion on the alleged breach because the said reform was not in force at the material time and it is not the Commission's task to examine the compatibility with the Convention of the new regulations in the present case.

51. It should be noted, however, that the management guideline prohibiting prisoners' letters about private criminal prosecutions has remained unchanged (cf the Revised Standing Orders Relating to Correspondence, Memorial of the Government to the Court, Cour (81) 68).

52. In the light of the above general considerations, and in the absence of submissions on the merits of the case from the respondent Government, the Commission is unable to discern any relevant or sufficient reason which might have justified the stopping of the following of the applicant's letters as being "necessary in a democratic society ... for the prevention of disorder" within the meaning of Art 8 (2) of the Convention:-

- a) the letter to another prisoner (N° 1 p 5 above);
- b) the letters the justification for whose censorship under the Prison Rules and regulations is unclear (N°s 2, 4, 28, 37, 44 and 64 pp 5, 7-9 above);

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- c) the letters containing complaints about prison treatment, particularly those letters to Members of Parliament and legal advisers where the prior ventilation rule had not been observed (N^os 5, 14, 16-21, 23, 25-27, 30-32, 35, 36, 38, 41, 45, 57 and 66-68 pp 6-9 above);
- d) the letters concerning the institution of private criminal proceedings (N^os 6, 10, 11, 22, 24, 34, 40, 42, 43, 48-50, 59-62, 66-68 and 70 (pp 6-9 above);
- e) the letters containing allegations against prison officers (N^os 8 and 16 p 6 above);
- f) the letters apparently containing contemptuous complaints about the courts, the police or the prison authorities (N^os 7, 9, 12, 13, 15, 29 and 33 pp 6 and 7 above);
- g) the letter containing representations about conviction and sentence (N^o 39 p 8 above);
- h) the letter concerning possible material intended for publication (N^o 63 p 9 above); and
- i) the letter to the Prime Minister's Private Secretary (N^o 65 p 9 above).

53. As regards the stopping of the applicant's letters which apparently also sought to circumvent regulations (N^os 17, 63 and 69 pp 6 and 9 above), although, in principle, censorship for such a reason may be justified, this presupposes that the regulations circumvented are themselves compatible with the provisions of the Convention. The applicant was attempting to circumvent the guidelines prohibiting contemptuous complaints about courts or prison authorities, material intended for publication and correspondence with Governmental Ministers. The Commission has already found that these restrictions were overbroad and not necessary for the prevention of disorder (paras 34 and 42-43 above). Thus, in the absence of specific observations from the respondent Government, the Commission is unable to discern in what way these three letters, despite their "irregularity" posed a threat to prison good order (cf Silver and Others, Comm Report paras 380-384, Eur Court HR judgment of 25.3.83, para 99 (f)). The Commission finds, therefore, that the censorship of these three letters has also not been shown to have been "necessary in a democratic society ... for the prevention of disorder", within the meaning of Art 8 (2) of the Convention.

Conclusion

54. The Commission is unanimously of the opinion that the stopping of 60 of the applicant's letters constituted a breach of Art 8 of the Convention.

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2. As regards Art 6 (1) of the Convention

55. The present applicant's complaint under Art 6 (1) of the Convention is identical to that of the applicants in the test case of Silver and Others. Accordingly, in view of the general considerations above (paras 48 and 49), the Commission finds that the censorship of the applicant's correspondence to legal advisers and courts (letters N°s 5, 9, 20, 25, 26, 28, 31, 35, 36, 44, 45, 57, 64 and 66-68), in so far as they may have involved possible civil litigation, constituted a denial of the applicant's right of access to court and to legal advice, ensured by Art 6 (1) of the Convention.

Conclusion

56. The Commission is unanimously of the opinion that the present case also discloses a breach of Art 6 (1) of the Convention.

D. Summary of the Commission's conclusions

57. (1) The Commission is unanimously of the opinion that the stopping of 60 of the applicant's letters constituted a breach of Art 8 of the Convention (para 54 above).

(2) The Commission is unanimously of the opinion that the present case also discloses a breach of Art 6 (1) of the Convention (para 56 above) (1).

Secretary to the Commission

President of the Commission


(H.C. KRÜGER)


(C.A. NØRGAARD)

(1) Mr Ermacora concurred with these conclusions (cf footnote to para 13 above).

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APPENDIX I
HISTORY OF PROCEEDINGS

Item	Date	Note
Date of introduction	12 October 1978	
Date of registration	12 February 1979	
Commission's deliberations and decision to communicate part of the case to the respondent Government without requesting the parties' written observations at that stage and to declare the remainder of the application inadmissible	13 March 1980	MM Sperduti Fawcett Nørgaard Ermacora Busuttil Daver Polak Frowein Jörundsson Tenekides Kiernan Klecker Melchior Carrillo
Information submitted by the Government	18 September 1980	
Commission Secretary's letter to applicant concerning future procedure	16 January 1984	
Applicant's letter in reply	23 January 1984	
Commission's deliberations and decision to invite the parties to submit written observations on admissibility and merits	9 March 1984	MM Nørgaard Sperduti Frowein Ermacora Fawcett Busuttil Opsahl Jörundsson Tenekides Trechsel Melchior Sampaio Carrillo Soyer Schermers Danelius Batliner

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Government's letter	6 July 1984	
Commission Secretary's letters to Government concerning observations	18 July and 2 October 1984	
Commission's deliberations and decision to declare the remaining application admissible	4 March 1985	MM Nørgaard Jörundsson Tenekides Kiernan Soyer Schermers Danelius Batliner Vandenberghe Mrs Thune
Commission's deliberations and final vote. Decision to make a proposal to the Committee of Ministers, pursuant to Art 31 (3) of the Convention	9 October 1985	MM Nørgaard Sperduti Frowein Jörundsson Tenekides Trechsel Kiernan Gözübüyük Weitzel Soyer Schermers Danelius Batliner Mrs Thune Sir Basil Hall
Adoption of Art 31 Report	18 October 1985	MM Nørgaard Frowein Ermacora Jörundsson Tenekides Trechsel Kiernan Weitzel Soyer Danelius Vandenberghe Mrs Thune Sir Basil Hall

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