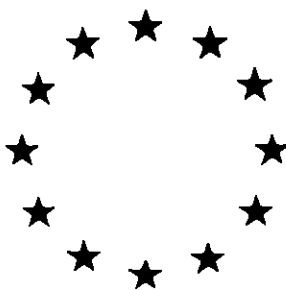


COUNCIL
OF EUROPE



CONSEIL
DE L'EUROPE

Or. English

EUROPEAN COMMISSION
OF HUMAN RIGHTS

Application No. 7365/76

Roger GLEAVES
against
UNITED KINGDOM

Report of the Commission

(Adopted on 18 October 1985)

STRASBOURG

	<u>Page</u>
I. <u>INTRODUCTION</u> (paras 1 - 18)	1 - 3
A. The substance of the application (para 3)	1
B. Proceedings before the Commission (paras 4 - 13)	1 - 2
C. The present Report (paras 14 - 18)	2 - 3
II. <u>ESTABLISHMENT OF THE FACTS</u> (paras 19 - 25)	4 - 7
A. The relevant domestic law and practice (paras 20 - 23)	4 - 5
B. The particular facts of the case (paras 24 - 25)	5 - 7
III. <u>SUBMISSIONS OF THE PARTIES</u> (paras 26 - 30)	8
A. The applicant (paras 27 - 28)	8
B. The Government (paras 29 - 30)	8
IV. <u>OPINION OF THE COMMISSION</u> (paras 31 - 55)	9 - 15
A. Points at issue (para 31)	9
B. General considerations (paras 32 - 46)	9 - 13
1. As regards Art 8 of the Convention (paras 32 - 44)	9 - 12
a) The test case of Silver and Others (paras 32 - 40)	9 - 11
b) Matters outside the scope of the test case (paras 41 - 44)	11 - 12

	<u>Page</u>
i) Letters presenting a threat to good order and discipline (para 43)	12
ii) Letters containing begging requests (para 44)	12
2. As regards Art 10 of the Convention (paras 45 - 46)	12 - 13
C. The present case (paras 47 - 53)	13 - 15
D. Conclusion (paras 54 - 55)	15
APPENDIX I History of Proceedings	16 - 18
APPENDIX II Decision of the Commission as to Admissibility	19 - 33

7365/76

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 1932, who at the time of lodging his application was detained in HM Prison Brixton, London.

A. The substance of the application

3. Whilst the applicant was detained in prison 37 of his outgoing letters and 3 incoming 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 breach of Art. 10 of the Convention

B. Proceedings before the Commission

4. The application was introduced on 3 March 1975 and registered on 19 January 1976.

5. After a preliminary examination of the case by a Rapporteur, the Commission decided on 12 December 1977 to give notice of the application 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.

6. In a subsequent review of the state of procedure, on 9 October 1978, the Commission decided to invite the parties to submit their observations on the admissibility of the application.

7. The Government's observations on admissibility were submitted on 3 August 1979, the applicant's reply on 27 February 1980, legal aid having been granted by the Commission to the applicant for this purpose on 14 December 1979 for his representation before the Commission by Messrs Anthony Gold & Co, Solicitors, London.

8. The Commission declared the application admissible on 13 March 1980 and further adjourned its examination pending the outcome of the aforementioned test case.

7365/76

9. 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).

10. 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 29 February 1984 the applicant's representatives replied that their client wished to maintain his application.

11. 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 conclusions on the merits of the application, with particular regard to the censorship of the applicant's letters deemed to be "begging requests". The Government 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 would not submit any "observations on the merits of those cases which the Commission has identified as raising similar issues to those raised in the test case of Silver and Others. The issues ... not dealt with by the test case are all covered by changes in administrative practice ...".

12. On 18 July and 2 October 1984 the Government were again asked to clarify whether revised administrative practices abolished the restrictions on prisoners' letters which were deemed to contain "begging requests". No reply was received to this query. The applicant submitted his observations on the merits on 12 October 1984.

13. '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

14. 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.

7365/76

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

15. 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.

16. 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.

17. A schedule setting out the history of proceedings before the Commission and the Commission's Decision on Admissibility are attached hereto as Appendices I and II.

18. The full text of the pleadings of the parties, together with the documents lodged as exhibits, are held in the archives of the Commission and are available to the Committee of Ministers, if required.

7365/76

II. ESTABLISHMENT OF THE FACTS

19. The facts of the present case are not substantially in dispute, and are as follows:

A. The relevant domestic law and practice

20. 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).

21. 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.

22. 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)). In particular, Rule 34 (8) prohibits communications "with any person in connection with any legal or other business, or with any person other than a relative or friend, except with the leave of the Secretary of State". No distinction was made in this Rule between prisoners on remand and prisoners detained after conviction.

23. 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 threats of violence (Standing Order (SO) 5A26(4) b.iii);
- b) on material intended for publication (SO 5A26(4) b. iv);

7365/76

- c) on grossly improper language (SO 5A26(4) b.v);
- d) on begging requests for money or valuable property (SO 5A26(4) b.vii);
- e) on complaints about prison treatment (SO 5A26(4) b. viii);
- f) on allegations against officers (SO 5A26(4) b.ix); and
- g) on complaints about prison treatment to Members of Parliament or lawyers, where the matter had not first been aired through internal prison channels, i.e. non-observance of the prior ventilation rule (SO 5C1(2) a. ii and 17A6).

B. The particular facts of the case

24. The particular facts of the case are set out fully in the Commission's Decision on Admissibility of 13 March 1980 (Appendix II to the present report pp 19-33, in particular pp 29-33), and may be summarised as follows:-

25. Whilst the applicant was detained on remand in HM Prisons Lewes and Brixton 3 of his incoming letters were withheld and 14 of his outgoing letters were stopped by the prison administration. Whilst the applicant was detained after conviction at HM Prison Wandsworth 23 of his outgoing letters were also stopped by the prison administration:-

Date	Correspondent	Basis of censorship
<u>On remand</u>		
1. 16.10.74	to Lloyds Bank Ltd	Business letter
2. 1.12.74	to Yorkshire TV Ltd	" "
3. 2.12.74	to Boots Ltd	" "
4. 21.2.75	from Yorkshire TV Ltd	" "
5. 9.1.75	to Mr D Cooper	Erroneous censorship
6. 26.1.75	to Mr J Harding	Complaints about prison treatment
7. 7.2.75	to Mr F Burden, MP	Non-observance of prior ventilation rule
8. 24.2.75	to Mr Levy, Solicitor	Business letter
9. 3.3.75	to National Council for Civil Liberties (NCCL)	Non-observance of prior ventilation rule

7365/76

10. 6.3.75	to Lloyds Bank Ltd	Business letter
11. 24.3.75	from Radical Alternatives to Imprisonment (RAP)	Threat to good order and discipline in respect of enclosed pamphlet
12. 24.3.75	from Up Against the Law (UPAL)	Threat to good order and discipline in respect of enclosed pamphlet in poor physical condition
13. 31.3.75	to RAP	Complaint about prison treatment
14. 31.3.75	to UPAL	"
15. 14.4.75	to Radio Kaleidoscope	Erroneous application of rule against material intended for publication
16. 15.4.75	to Daily Telegraph	"
17. 26.4.75	to Trustee Savings Bank	Business letter

After Conviction

18. 30.6.75	to Trustee Savings Bank	"
19. 3.7.75	to Mr H James	"
20. 31.7.75	to Mr Gold, Solicitor	Improper language
21. 5.8.85	to Mr Harding Offending phrases included, "Apart from my intentions to drive over any Sussex pigs I come across in my car, I am also going to assault any newspaper personnel who come near me once I am free to do so - I have quite a few scores to settle, I assure you".	Threats of violence, allegations against staff and improper language
22. 18.8.75	to Mr H James	Begging request
23. 22.8.75	to Mr H Mosesson, barrister	Erroneous application of rule against complaint about prison treatment

7365/76

24. 29.8.75	to Trustee Savings Bank	Business letter
25. 23.10.75	to Registrar of Wandsworth County Court	Complaint about prison treatment
26. 6.11.75	to Mrs Chick, Kent County Council Social Service Dept.	Erroneous censorship
27. 7.11.75	to Mr Kyle	Begging request
28. 7.11.75	to Secretary of London (West) Legal Aid Committee	Non-observance of prior leave rule
29. 9.11.75	to Mr H James	Complaints about prison treatment and improper language
30. 9.11.75	to Lloyds Bank Ltd	Begging request and business letter
31. 14.11.75	to Mr Kyle	Erroneous censorship
32. 17.11.75	to Mr Harding	Complaint about prison treatment and begging request
33. 17.11.75	to Lloyds Bank Ltd	"
34. 27.11.75	to NCCL	Non-observance of prior ventilation rule
35. 7.11.75	to BBC	Erroneous application of rule against material intended for publication
36. 30.11.75	to NCCL	Non-observance of prior ventilation rule
37. 5.12.75	to NCCL	"
38. 11.12.75	to Mr James	Begging request
39. 14.12.75	to Mr Taylor	Complaint about prison treatment
40. 15.12.75	to Mr Taylor	"

7365/76

III. SUBMISSIONS OF THE PARTIES

26. The submissions of the parties may be summarised as follows:

A. The Applicant

27. The applicant complains that the censorship of his correspondence constituted an unjustified interference with his right to respect for correspondence ensured by Art. 8 of the Convention and an unjustified interference with his right to receive information ensured by Art. 10 of the Convention, particularly in respect of the correspondence and pamphlets which were sent to him by RAP and UPAL (letters 11 and 12 above p 6), but withheld by the prison authorities. He comments that the withholding from remand prisoners of publicly available publications of this kind, merely because the documents are in poor physical condition, cannot constitute a necessary justification for censorship or constitute a genuine threat to good order and discipline in prisons.

28. The applicant claims that a reading of letters N°s 22, 27, 30 and 32 (pp 6 and 7 above) shows that they could not be considered to be begging requests, nor N° 30 a business letter. He submits that anyway English law does not prohibit the sending of begging requests for money, the Standing Orders or Circular Instructions not having the force of law. Thus censorship on this ground was neither "in accordance with the law" nor "necessary" on the basis of any of the exceptions laid down in Art 8 (2) of the Convention. He contends that the fact that this management guideline has now been abolished supports his contention.

B. The Government

29. The Government contended, prior to the admissibility of the application (See Decision on Admissibility Appendix II pp 22-25), that if the censorship in question constituted an interference with the applicant's right to respect for correspondence, it was necessary for the prevention of disorder within the meaning of Art 8 (2) of the Convention, having regard to the ordinary and reasonable requirements of imprisonment and the notion of the "margin of appreciation". Similarly any interference with the applicant's freedom of expression was similarly necessary under Art 10 (2) of the Convention.

30. Since the Commission's Decision on Admissibility, the Government have refrained from submitting further observations on the merits of the case given its partial similarity with the test case of Silver and others and the reform in the prison censorship practice implemented in December 1981 (see paras 10 and 11 above).

7365/76

IV. OPINION OF THE COMMISSION

A. Points at issue

31. 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 his freedom of expression ensured by Art 10 of the Convention.

B. General considerations

1. As regards Art 8 of the Convention

a) The test case of Silver and Others

32. 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."

33. 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).

7365/76

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)

"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)

34. 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).

35. Concerning restrictions on prisoners' letters to "any person in connection with any legal or other business, or with any person other than a relative or friend, except with the leave of the Secretary of State", the Commission noted that there was specific provision for this in Rule 34 (8) of the Prison Rules 1964, and concluded, assuming that these restrictions would be applied pursuant to Rule 33 (1) of those Rules, that, in principle, such restrictions were "in accordance with the law" within the meaning of Art. 8 (2) of the Convention (paras 316, 327-329, 336-338 and paras 395-396) (1). Furthermore, the Commission found that the prohibition in management guidelines on threats of violence 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 also be said to be "in accordance with the law" within the meaning of Art 8 (2) (paras 410-411).

(1) Although not entirely in the particular circumstances of the test case (para 330). The Court, however, confirmed that these restrictions were "in accordance with the law", even in the circumstances of the test case (Eur Court HR, case of Silver and Others, judgment of 25.3.83, para 93).

7365/76

36. 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 about prison staff and on the use of improper language. 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, 308-310, 319-320, 344-345, 385-386 and 402-404).

37. 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).

38. 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 Rule 34 (8) of the Prison rules 1964 and the management guidelines concerning complaints about prison treatment (particularly in respect of letters of complaint to Members of Parliament and lawyers), material intended for publication, allegations against prison officers and improper language 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 300-303, 311-314, 316, 321-323, 331-333, 339-341, 346-348, 387-388, 397-399 and 405-407).

39. On the other hand, the Commission also found that the prohibition on threats of violence was, in principle, justified "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", within the meaning of Art 8 (2) of the Convention (para 413).

40. 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, 93, 95, 99 and 103).

b) Matters outside the scope of the test case

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

7365/76

- the prohibition on letters presenting a threat to good order and discipline;
- the prohibition on letters containing begging requests.

42. 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 33, 34 and 37).

i) Letters presenting a threat to good order and discipline

43. The Commission recalls the general powers of the Home Secretary under Rule 33 (1) of the Prison Rules 1964, as amended, to impose restrictions on prisoners' correspondence with a view, inter alia, to securing discipline and good order. The Commission considers that censorship for this reason alone, assuming that a particular letter presented a real and present danger to these legitimate governmental interests, could, in principle, be said to be an interference with correspondence, which is "in accordance with the law and is necessary in a democratic society ... for the prevention of disorder" within the meaning of Art 8(2) of the Convention.

ii) Letters containing begging requests

44. The Commission observes the general prohibition, in force at the time of the introduction of this application, on prisoners' letters containing begging requests. There is no specific provision in the Prison Rules 1964, as amended, for such a restriction, it being contained in the unpublished Standing Orders Section 5A Order 26(4) b. vii. The Commission considers that such a restriction cannot reasonably be foreseen in the discretion conferred upon the prison administration by Rule 33 of the Prison Rules. It finds, therefore, that the restriction on prisoners' letters containing begging requests cannot be said to be "in accordance with the law" within the meaning of Art 8 (2) of the Convention. In the absence of any observations from the Government or obvious requirements of imprisonment, the Commission also finds that this restriction on prisoners' correspondence has not been shown to have been "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 10 of the Convention

45. Art. 10 of the Convention reads as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by

7354/76

public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

46. The Commission recalls its opinion in the test case of Silver and Others that, after an extensive examination of the applicants' complaints of censorship of correspondence under Art 8 of the Convention, it was not necessary to pursue a further examination of those complaints under Art 10, the element of freedom of expression through correspondence having been dealt with (Comm Report 11.10.80, paras 427-428). This approach was subsequently endorsed by the parties to that case and the Court (Eur Court HR judgment 25.3.83, para 107).

C. The present case

47. As regards the facts of the present case, the Commission notes that 37 of the applicant's outgoing letters and 3 incoming 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.

48. The Commission also notes that the 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.

49. Since December 1981 there has been a substantial reform of the relevant management guidelines. 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.

7365/76

50. It should be noted in particular that, apparently, the restriction on prisoners' letters containing begging requests has been abolished (cf The Revised Standing Orders Relating to Correspondence, Memorial of the Government to the Court in Silver and Others, Cour (81) 68).

51. 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 letters dealing with business matters (N°s 1-4, 8, 10, 17-19, 24 and 30, pp 5-7 above);
- b) the letters censored erroneously (N°s 5, 15, 16, 23, 26, 31 and 35, pp 5-7 above);
- c) the letters containing complaints about prison treatment (N°s 6, 13, 14, 23, 25, 29, 32, 33, 39 and 40, pp 5-7 above);
- d) the letters to Members of Parliament and lawyers where the prior ventilation rule had not been observed (N°s 7, 9, 34, 36 and 37, pp 5 and 7 above);
- e) the letters originally deemed to contain material intended for publication (N°s 15, 16 and 35, pp 6 and 7 above);
- f) the letters written in improper language (N°s 20 and 29, pp 6 and 7 above);
- g) the letters deemed to contain begging requests (N°s 22, 27, 30, 32, 33 and 38, pp 6-7 above); and
- h) the letter which failed to observe the prior leave rule (N° 28, p 7 above).

52. As regards the stopping of two of the applicant's incoming letters (N°s 11 and 12, p 6 above), which were deemed to present a threat to good order and discipline, although in principle censorship for such reasons may be justified, nevertheless the Government have not shown that a real and present danger to their legitimate interests was posed by the two letters in question. In particular, the Commission considers that the poor physical condition of the pamphlet enclosed with letter N° 12 cannot present a genuine threat to good order and discipline, justifying the withholding of correspondence. The Commission finds, therefore, that the stopping of letters N°s 11 and 12 was not "necessary in a democratic society ... for the prevention of disorder", within the meaning of Art 8 (2) of the Convention.

7365/76

53. As regards letter N° 21 (p 6 above), it was stopped because it was deemed to contain threats of violence, allegations against staff and improper language. The latter two reasons would not, in principle, be sufficient to satisfy the requirements of Art 8 of the Convention, in view of the general considerations outlined above (paras 36 and 38). However, threats of violence may constitute a necessary justification for censorship in accordance with Art 8 (2) of the Convention. The Commission notes the offending phrase in the letter in question, whereby the applicant voiced his intention to injure Sussex police and journalists on his release. These were not threats intended for his correspondent. Nevertheless the Commission considers that it was legitimate to censor such threats. Accordingly, it finds that the censorship of letter N° 21 was "necessary in a democratic society ... for the prevention of disorder or crime ... or for the protection of the rights and freedoms of others", within the meaning of Art 8 (2) of the Convention.

D. Conclusion


54. The Commission is unanimously of the opinion that the stopping of 39 of the applicant's letters constituted a breach of Art 8 of the Convention. However, the Commission is also unanimously of the opinion that the stopping of the applicant's letter of 5 August 1975 to a certain Mr Harding (letter N° 21, p 6 above) did not constitute a breach of Art 8 of the Convention.

55. In view of these conclusions and the fact that, in reaching them, the Commission has implicitly dealt with the element of freedom of expression through correspondence, the Commission does not deem it necessary to examine the same complaints under Art 10 of the Convention (1).

Secretary to the Commission


(H C KRÜGER)

President of the Commission


(C A NØRGAARD)

(1) Mr Ermacora concurred with these conclusions (cf footnote to para 14 above).

7365/76

APPENDIX I

HISTORY OF PROCEEDINGS

Item	Date	Note
Date of introduction	3 March 1975	
Date of registration	19 January 1976	
Commission's deliberations and decision to communicate the case to the respondent Government without requesting the parties' written observations at that stage	12 December 1977	MM. Sperduti Fawcett Nørgaard Ermacora Busuttil Kellberg Daver Opsahl Custers Polak Frowein Jörundsson Dupuy Tenekides Trechsel Kiernan Klecker
Commission's deliberations and decision to invite the parties to submit their written observations on admissibility	9 October 1978	MM. Sperduti Fawcett Nørgaard Ermacora Busuttil Daver Opsahl Polak Frowein Tenekides Trechsel Kiernan Klecker Melchior
Government's observations	3 August 1979	
Applicant's observations	27 February 1980	

7365/76

Item	Date	Note
Commission's deliberations and decision to declare the application admissible and to adjourn further examination of the case	13 March 1980	MM. Sperduti Fawcett Nørgaard Ermacora Busuttil Daver Polak Frowein Jörundsson Tenekides Kiernan Kleckner Melchior Carrillo
Commission Secretary's letter to applicant's representative concerning future procedure	16 January 1984	
Representative's letter in reply	29 February 1984	
Commission's deliberations and decision to invite the parties to submit written observations on the merits	9 March 1984	MM. Nørgaard Sperduti Frowein Ermacora Fawcett Busuttil Opsahl Jörundsson Tenekides Trechsel Melchior Sampaio Carrillo Soyer Schermers Danelius Batliner
Government's letter	6 July 1984	
Commission Secretary's letters to Government concerning observations on the merits	18 July and 2 October 1984	
Applicant's observations on the merits	12 October 1984	

7365/76

Item	Date	Note
Commission's deliberations	4 March 1985	MM. Nørgaard Jörundsson Tenekides Kiernan Soyer Schermers Danelius Batliner Vandenberghe Mrs Thune
Commission's deliberations and final vote	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