

Application No 7630/76
John Michael REED v the United Kingdom

REPORT OF THE COMMISSION
(Adopted on 12 December 1981)

73.366
06.2

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INTRODUCTION

This Report relates to application No 7630/76 lodged against the United Kingdom by Mr John Michael REED on 4 February 1976 under Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The applicant is represented by a solicitor, Mr Philip Hamer of Messrs Philip Hamer & Co.

On 6 December 1979 the European Commission of Human Rights declared the parts of the application summarised in Part I of this Report admissible and proceeded to carry out its task under Article 28 of the Convention which provides as follows:-

"In the event of the Commission accepting a petition referred to it:

(a) it shall, with a view to ascertaining the facts, undertake together with the representatives of the parties an examination of the petition and, if need be, an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities, after an exchange of views with the Commission;

(b) it shall place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for Human Rights as defined in this Convention."

The Commission found that the parties had reached a friendly settlement of the case and, during its session on 12 December 1981, it adopted this Report which, in accordance with Art.30 of the Convention is confined to a brief statement of the facts and of the solution reached.

The following members of the Commission were present when the Report was adopted:

C. A. NØRGAARD (President)
G. SPERDUTI
J. A. FROWEIN
J. E. S. FAWCETT
L. KELLBERG
G. JÖRUNDSSON
S. TRECHSEL
B. KIERNAN
M. MELCHIOR
J. SAMPAIO
J. A. CARRILLO
A. S. GÖZÜBÜYÜK
J. C. SOYER
A. WEITZEL
H. G. SCHERMERS

PART I

STATEMENT OF THE FACTS

1. The applicant was born in England in 1939 and at the time of introducing his application was detained in Hull Prison, serving a sentence of life imprisonment.

Those of his complaints which were declared admissible by the Commission relate to interference with his access to Court, to legal advice and with his correspondence and to assaults on him by Prison Officers.

(a) He complains that he was prevented from seeking legal advice about an alleged libel by a Prison Officer, which had resulted in his being subjected to disciplinary proceedings on 15 January 1976. The applicant was told that he would be required to petition the Home Secretary in relation to his complaint before being permitted to write to his solicitor with a view to instituting proceedings, or to his Member of Parliament.

On 19 February 1976 the applicant was permitted to consult his solicitor about complaining to the Commission about this restriction but his solicitor was not permitted to advise him on questions of domestic law. Thereafter, on 17 March 1976 and on the advice of his solicitor, the applicant submitted a written complaint to the Governor and on 24 March 1976 was granted permission to seek legal advice on domestic law.

Before the Commission the applicant invokes Article 6 (1) of the Convention in relation to the resultant delay in his access to Court.

(b) He further complains that, following a riot in Hull prison between 31 August and 2 September 1976, in which he was suspected of having participated, he was repeatedly seriously assaulted by Prison Officers on 4 September 1976.

He petitioned the Home Secretary in relation to these assaults on 28 September 1976, but was not permitted to seek legal advice with a view to instituting legal proceedings until 5 September 1978 owing to the requirement that his complaints about his treatment be subjected first to internal investigation. This investigation was initially carried out by the Chief Inspector of Prisons and subsequently by the Police, and ultimately resulted in the prosecution of certain Prison Officers. During this period the applicant's correspondence with his solicitor was continuously interfered with.

Before the Commission the applicant invokes Article 3 of the Convention in relation to the assaults and Articles 6 and 8 of the Convention in respect of his attempts to institute proceedings and his attempted correspondence with his solicitor.

(c) The applicant further complains of interference with his correspondence with his Member of Parliament and another person to whom he complained about the conditions of his detention, but where no legal proceedings were contemplated. In this respect he invokes Article 8 of the Convention.

2. The application was introduced with the Commission on 4 February 1976 and registered on 23 August 1976. On 11 July 1978 the Commission examined the question of its admissibility and decided, in accordance with Rule 42 (2) (b) of the Rules of Procedure, to invite the respondent Government to submit their written observations on its admissibility.

Both parties then submitted their observations on this question. The Commission considered the application again on 11 July 1979 and decided to invite them to an oral hearing on the admissibility and merits of the case. The hearing was held on 6 December 1979 and on the same day the Commission declared the complaints summarised above admissible, and the applicant's remaining complaints inadmissible. (1)

Thereafter the parties were invited to submit written observations on the merits but the applicant's solicitor declared that he rested his case; the respondent Government submitted their written observations on 11 August 1980.

Finally a settlement of the case was reached, as described in Part II below.

(1) cf Decisions and Reports 19 p.113

PART II

SOLUTION REACHED

On 6 December 1979, following the decision on the admissibility of the application and its deliberations on the merits, the Commission placed itself at the disposal of the parties with a view to seeking a friendly settlement in accordance with Article 28 (b) of the Convention and invited the parties to submit any proposals they wished to make.

On 24 September 1980 the respondent Government made certain proposals for the settlement of part of the application. As a result, on 27 October 1980 a meeting was held in London between representatives of the Commission, assisted by the Secretary, first with the applicant's solicitor and subsequently with representatives of both parties at which proposals for a settlement of the whole application were considered. These proposals comprised two elements, namely the offer of an ex gratia payment to the applicant and an undertaking to implement certain changes in the Prison Rules relating to the internal ventilation of complaints and the restrictions on correspondence relating to prison conditions. These changes had been referred to by the respondent Government in their observations on the merits of the application as already in view. The Government have specified that these proposals were made without admission of liability under the Convention or otherwise.

On 24 February 1981 the Commission asked the applicant's lawyer to state his client's response to these proposals and to indicate the total amount of his fees and disbursements incurred on his client's behalf. This was received on 9 March 1981. After further correspondence the Commission considered the proposals for the settlement on 16 July 1981 and on 23 July 1981 the Secretary wrote to the parties suggesting that a settlement of the whole application might be secured on certain terms.

The applicant's solicitor confirmed by telex of 16 October 1981 that:-

"The applicant, Mr Reed, is prepared to declare this application as settled on the basis of the proposals set out in the Secretary's letter of 23 July 1981."

By letter of 11 November 1981 the respondent Government confirmed their agreement to the settlement in the following terms:-

"The Government, therefore, without implying any admission of a violation of the Convention, undertakes to do the following in order to bring about a friendly settlement of the whole of this application:-

- (i) to make an ex gratia payment to Mr Reed of £2000;
- (ii) to implement the changes in the restrictions on previous correspondence referred to in paragraph 14 (a) and (b) of the Government's observations on the merits on

1 December 1981. With regard to the change referred to in sub-paragraph (c) of paragraph 14, the Government has subsequently decided that the prior ventilation rule, whereby a prisoner may not raise a complaint about his prison treatment externally until it has been raised through the appropriate internal channel and the investigation has been completed, should be replaced by simultaneous ventilation rule. Prisoners will continue to be required to raise complaints about prison treatment through the appropriate internal channel so that the prison authorities may know about the complaint, investigate it and take any action which may be necessary. However, the prisoner will not have to await the outcome of the investigation before being able to raise the complaint externally. This change, which goes further than the change proposed in paragraph 14 (c) of the Government's observations on the merits will also be implemented on 1 December 1981; and

- (iii) to pay Mr Reed 6247.30 FF in respect of his lawyer's fees and disbursements."

On 19 November 1981 the Secretary wrote to the applicant and his solicitor pointing out the further change proposed by the replacement of the internal ventilation rule by a simultaneous ventilation rule and requesting them to notify the Commission before 7 December 1981 if these amended proposals were unacceptable to the applicant.

The Commission at its session on 12 December 1981, found that, since no such notification had been received, the parties had come to an agreement regarding the terms of a settlement. It further found, having regard to Article 28 (b) of the Convention, that a friendly settlement of the present application has been secured on the basis of respect for human rights as defined in the Convention. For these reasons, the Commission adopts this Report.

Secretary to the Commission

President of the Commission

(H.C. KRUGER)

(C. A. NORGAARD)