

COUNCIL
OF EUROPE



CONSEIL
DE L'EUROPE

(Or. English)

EUROPEAN COMMISSION
OF HUMAN RIGHTS

Application No. 8568/79

Benjamin WILSON

against

UNITED KINGDOM

Report of the Commission

(Adopted on 13 May 1985)

STRASBOURG

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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 1916, who at the time of lodging his application was detained in HM Prison, Long Lartin, Evesham, England.

A. The substance of the application

3. Whilst the applicant was detained in prison, three 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. The applicant had also originally complained to the Commission about the refusal of the Home Secretary to allow him to institute criminal proceedings and a removal from association with other prisoners.

B. Proceedings before the Commission

4. The application was introduced on 12 January 1979 and registered on 2 March 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. 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).

7. On 18 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 6 March 1984 the applicant replied that he wished to proceed with his case and seek damages (unspecified).

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8. On 9 March 1984, after a review of the various adjourned prisoners' correspondence cases, the Commission decided to invite the respondent Government to consider a waiver of objections to the admissibility of the applicant's remaining case. In a general letter of 6 July 1984, the Government informed the Commission 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 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 ...".

9. 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.

10. After declaring the case admissible, the Commission, acting in accordance with Art 28 (b) of the Convention, also placed itself 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

11. 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):

MM C.A. Nørgaard, President

J.A. Frowein

E. Busuttil

G. Jörundsson

S. Trechsel

B. Kiernan

A.S. Gözübüyük

A. Weitzel

J.C. Soyer

H.G. Schermers

H. Danelius

G. Batliner

H. Vandenberghe

Mrs G.H. Thune

Sir Basil Hall

(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 13 May 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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12. The text of the Report was adopted by the Commission on 13 May 1985 and is now transmitted to the Committee of Ministers in accordance with Art 31 (2) of the Convention.

13. 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.

14. A schedule setting out the history of proceedings before the Commission and the Commission's Final and Partial Decisions on Admissibility are attached hereto as Appendices I, II and III. Appendix IV, containing the Commission's proposals under Art 31 (3) of the Convention, has been produced as a separate document, for reasons of convenience.

15. 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

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

A. The relevant domestic law and practice

17. 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).

18. 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.

19. 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 other than a relative or friend, except with the leave of the Secretary of State" (the "friends and relatives" Rule).

20. 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, these guidelines prevented prisoners from including in their letters, inter alia, material deliberately calculated to hold prison authorities up to contempt and complaints about prison treatment (Standing Orders Section 5 A Order 26 (4) b ii and viii respectively).

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B. The particular facts of the case

21. The applicant alleges that pursuant to a Guardian newspaper report in December 1978 on a meeting of the British Institute of Psychologists attended by a barrister concerned with convictions on false confessions, the applicant attempted to write to the barrister on 27 December 1978. On 29 December 1978 the applicant's letter was referred to the Home Office for posting instructions. On 10 January 1979 the applicant was informed that the Home Office had refused permission to send the letter out because it contained complaints about the prison authorities which were considered to be a deliberate and calculated attempt to hold them up to contempt and the barrister was not a relative or friend known to the applicant before he entered custody.

22. With the assistance of the National Council for Civil Liberties a third party contacted the barrister on the applicant's behalf. The barrister said that she would be willing to meet the applicant and discuss his case. The applicant wrote to the third party on 24 January 1979 enclosing a visiting order for that person, the barrister and another person. The letter was posted after the order was amended to exclude the barrister and the other person. The applicant was requested to do this because he was not allowed to correspond with the barrister.

23. It is recorded that after the applicant's transfer to HM Prison Parkhurst on 23 May 1979 he was allowed to write to the barrister on three occasions.

24. The applicant states that his letter of 29 October 1979 to the General Medical Council was sent to Prison Headquarters and that he was informed on 3 November 1979 that the Home Secretary had decided that the letter should not be posted. He also states that a letter written sometime in November 1979 to a Mrs J. Edmunds was stopped. These letters were apparently censored for complaining about prison treatment.

25. The Commission notes that the Government have not contested the applicant's allegations. It concludes, therefore, in the absence of specific contradiction by the Government, that three of the aforementioned letters of the applicant were stopped by the prison administration.

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III. SUBMISSIONS OF THE PARTIES

A. The applicant

26. The applicant has contended that the stopping of three letters constituted an unjustified interference with his correspondence, contrary to Art 8 of the Convention.

B. The Government

27. The Government have expressed no particular view about this individual application, but generally have accepted that 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 (para 7 above).

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IV OPINION OF THE COMMISSION

A. Points at issue

28. The only point at issue in the present application is whether the censorship of the applicant's three letters constituted an unjustified interference with the applicant's right to respect for correspondence ensured by Art 8 of the Convention.

B. General considerations

29. 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."

30. 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)

31. 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).

32. Concerning restrictions on prisoners' letters to persons other than relatives or friends, the Commission noted that there was specific provision for this in Rule 34 (8) of the Prison Rules 1964 and concluded, assuming that the refusal of leave to write to other persons would be pursuant to Rule 33 (1), that, in principle, such a restriction was "in accordance with the law" within the meaning of Art 8 (2) of the Convention (paras 327 - 329)*. Moreover, the Commission considered that, although the Prison Rules 1964, as amended, contained no specific provision restricting prisoners' letters which were deliberately contemptuous of prison authorities, such a prohibition could be reasonably deduced from the general powers of the Home Secretary under Rule 33 (1) to impose restrictions for the maintenance of good order and discipline. Thus, in principle, this restriction in the management guidelines could also be said to be "in accordance with the law" within the meaning of Art 8 (2) (paras 352 - 353). However, a general restriction on prisoners' letters of complaint, for which there was no specific provision in the Prison Rules 1964, as amended, could not be reasonably foreseen in the discretion conferred upon the prison administration by Rule 33. Hence this restriction in the management guidelines could not be said to be "in accordance with the law" in terms of Art 8 (2) (para 320).

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).

* Although not in the particular circumstances of the test case (Comm Report para 330).

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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 "friends and relatives" Rule and the management guidelines prohibiting in prisoners' letters complaints about prison treatment and deliberately contemptuous remarks about prison authorities 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 333, 322 - 323 and 356 - 357 respectively).

35. This opinion of the Commission was not substantially contested by the respondent Government before the European Court of Human Rights, which upheld the Commission's conclusions (Eur Court HR Case of Silver and Others, judgment of 25.3.83 paras 91 and 99). (1)

C. The present case

36. As regards the facts of the present case, the Commission notes the censorship by the prison authorities of three of the applicant's letters. Thus it is clear that there has been 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.

37. The censorship in question was pursuant to the Prison Rules 1964 and management guidelines restricting correspondence to friends and relatives and prohibiting letters deliberately contemptuous of prison authorities or containing complaints about prison treatment. The Commission observes that the said "friends and relatives" Rule and management guidelines were in themselves not "necessary in a democratic society for the prevention of disorder" within the meaning of Art 8 (2) of the Convention. Moreover the guideline generally prohibiting complaints in prisoners' letters was not "in accordance with the law" pursuant to Art 8 (2). However since December 1981 there has been a substantial reform of these guidelines.

(1) Although the Court upheld the Government's contention that in the particular circumstances of the test case the "friends and relatives" Rule was "in accordance with the law" within the meaning of Art 8 (2) of the Convention (judgment paras 92 - 93).

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Whilst welcoming the relaxation of the censorship practice, the Commission considers it appropriate to express its opinion on the alleged breach in this case, 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 abstracto.

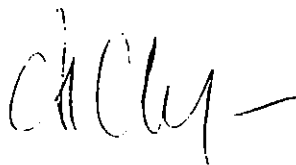
38. In the light of the above considerations, and in the absence of submissions from the respondent Government, the Commission is unable to discern any relevant or sufficient reason which might have justified the censorship of the applicant's letters as being "necessary in a democratic society for the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

D. Conclusion

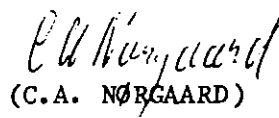
39. The Commission is unanimously of the opinion that the interference with the applicant's correspondence constituted a violation of Art 8 of the Convention (1).

Secretary to the Commission

President of the Commission



(H.C. KRUGER)



(C.A. NØRGAARD)

(1) Mr Ermacora concurred with this conclusion (cf footnote to para 11 above).

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APPENDIX I

HISTORY OF PROCEEDINGS

| Item | Date | Note |
|--|-----------------|---|
| Date of introduction | 12 January 1979 | |
| Date of registration | 2 March 1979 | |
| Commission's deliberations and decision firstly to give notice of part of the application to the respondent Government without inviting the parties to submit written observations and, secondly, 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 |
| Commission Secretary's letter to applicant concerning future procedure | 18 January 1984 | |
| Applicant's letter concerning his intentions | 6 March 1984 | |
| Commission's deliberations and decision to invite the Government to consider a waiver of objections to the admissibility of the remaining application | 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 general waiver
of objections to
admissibility and of an
opportunity to submit
observations on the merits

6 July 1984

Commission's deliberations and
decision to declare the
remainder of the application
admissible.
Deliberations on the merits

4 March 1985

MM Nørgaard
Jörundsson
Tenekides
Kiernan
Soyer
Schermers
Danelius
Batliner
Vandenberghe
Mrs Thune

Commission's deliberations on
the merits and final vote

7 May 1985

MM Nørgaard
Frowein
Busuttil
Jörundsson
Trechsel
Kiernan
Gözübüyük
Weitzel
Soyer
Schermers
Danelius
Batliner
Vandenberghe
Mrs Thune
Sir Basil Hall

Adoption of Art 31 Report

13 May 1985

MM Nørgaard
Sperduti
Ermacora
Jörundsson
Trechsel
Kiernan
Carrillo
Gözübüyük
Weitzel
Soyer
Schermers
Danelius
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Vandenberghe
Mrs Thune
Sir Basil Hall