

EUROPEAN COMMISSION OF HUMAN RIGHTS

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Application No. 6840/74

A.

against

the United Kingdom

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Report of the Commission  
(adopted on 16 July 1980)

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### INTRODUCTION

This Report relates to the application (No. 6840/74) introduced against the United Kingdom by Mr. A on 3 June 1974 under Art. 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The applicant is represented by Mr L.O. Gostin, Legal Director of the National Association for Mental Health (MIND), of Harley Street, London. He has been granted legal aid by the Commission.

The European Commission of Human Rights declared this application admissible in part on 12 May 1977. Subsequently, the Commission proceeded to fulfil its functions under Art. 28 of the Convention which provides that:

"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."

On 16 July 1980, having found that a friendly settlement of the case had been effected, the Commission adopted this Report. In accordance with Art. 30 of the Convention it is confined to a brief statement of the facts and of the settlement reached. The following members were present when the Report was adopted:

MM. C.A. NØRGAARD, Acting President (Rule 7 of the Rules of Procedure)

E. BUSUTIL  
B. DAVER  
C.H.F. POLAK  
R.J. DUPUY  
S. TRECHSEL  
B. KIERNAN  
N. KLECKER  
M. MELCHIOR  
J.A. CARRILLO

PART ISTATEMENT OF THE FACTS

The applicant, Mr. A., was born in England in 1950. He states that he is of Irish nationality. At the date of introduction of the application, he was detained in Broadmoor Hospital. This is a "special hospital" provided for the detention of persons who "require treatment under conditions of special security on account of their dangerous, violent or criminal propensities" (1). The applicant was held there, from February 1973 onwards, on the basis of orders made under SS. 60 and 65 of the Mental Health Act 1959. These orders were made on his conviction for assaulting a police officer, on the basis of evidence that he was suffering from a "psychopathic disorder". He was transferred to another mental hospital, in Lincoln, later and has since been released.

On 7 May 1974 a fire occurred in the house where the applicant was detained at Broadmoor Hospital. He was suspected of having started it and was transferred to Ward I of Somerset House (then known as Monmouth House), the hospital's intensive care unit. For about five weeks thereafter he was kept in a secure single room there with only limited opportunities for exercise and association with other persons.

Before the Commission the applicant complained of the conditions in which he had been detained during this period and alleged that they contravened Art. 3 of the Convention. He complained in particular of the length of time he had allegedly had to spend alone in the room. He also complained, amongst other matters, that he had been deprived of adequate furnishing and clothing. He alleged that conditions in the room had been insanitary and it had been inadequately lit and ventilated.

The respondent Government denied that there had been any breach of Art. 3 and did not accept the applicant's version of the facts as correct in all respects. Further details of the parties' submissions are set out in the decision on admissibility (Decisions and Reports, Vol. 10, p. 5).

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(1) National Health Service Reorganisation Act 1973 - S. 40.

The application was introduced with the Commission on 3 June 1974 and registered on 13 December 1974. The Commission examined its admissibility on 21 May 1976 and decided, in accordance with Rule 42 (2) (b) of its Rules of Procedure, to invite the respondent Government to submit written observations on the admissibility of the above-mentioned complaints. Both parties thereafter submitted written observations and supplementary written observations on admissibility and on 11 and 12 May 1977 made further submissions at a hearing on admissibility and merits. At the same time the Commission also heard submissions on three other applications against the United Kingdom (Nos. 6870/75, 6998/75 and 7099/75). After the hearing, on 12 May 1977, the Commission declared the above complaints admissible and declared the remainder of the application (on which observations from the Government had not been sought) inadmissible.

Thereafter the Commission appointed five of its members as Delegates to investigate the facts of the present case in conjunction with those of Application No. 6870/75, in which the applicant also made complaints concerning Broadmoor Hospital. In the course of their investigation the Delegates obtained various written information from the parties, they visited Broadmoor Hospital on 21 and 22 July 1977, inspected accommodation and interviewed various persons there and on 4 November 1977 two of the Delegates interviewed the applicant in Lincoln.

Thereafter at the invitation of the Commission each party submitted final written observations on the merits of the case, the applicant's observations being submitted on 28 April 1978 and those of the Government on 23 August 1978.

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

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## PART II

SOLUTION REACHED

On 6 December 1978, following deliberations on the merits of the case, the Commission placed itself at the disposal of the parties with a view to securing a friendly settlement in accordance with Art. 28 (b) of the Convention. It invited the parties to submit any proposals they might wish to make.

The applicant's representative submitted certain proposals in a letter dated 26 January 1979, which reached the Commission's Secretariat on 19 February 1979. The respondent Government made proposals in a letter of 14 February 1979. On 23 April 1979 the Secretary to the Commission had separate meetings with the representatives of each party. Later on the same day a meeting attended by representatives of both parties and of the Commission was held at which the possibility of a settlement was further discussed. The Government thereafter put forward further proposals in a letter of 17 October 1979. Following further correspondence and a meeting with representatives of the Commission in London on 15 February 1980, the applicant's representative made further proposals by letter of 13 March 1980. The respondent Government made their final proposals by letter of 29 April 1980. The applicant's representative accepted these proposals in a telex message received in the Commission on 11 July 1980.

The proposals put forward by the Government comprise two elements, namely (a) information of a general nature concerning physical conditions in Broadmoor Hospital and guidelines which have been introduced concerning the use of seclusion there and (b) the offer of an ex gratia payment to the applicant. The Government have specified that they are made without admission of liability under the Convention or otherwise.

In their letter of 14 February 1979 the Government included the following information concerning conditions at Broadmoor Hospital:

"The programme of refurbishment and general improvement of the amenities will continue. In particular, during 1977 the Intensive Care Unit (the unit which accommodates the most disturbed patients in the hospital) was transferred from Somerset House to Norfolk House which had been completely refurbished prior to the change. The refurbishment included

a number of structural alterations, a complete re-flooring, a complete redecoration and the supply of new furniture. The unit, which is divided into 3 wards, is designed to accommodate 40 patients in single rooms and at present there are just over 30 patients resident in the unit. This move has enabled Somerset House - the House in which the applicant was detained in the single room - to be refurbished. It now comprises an admissions ward, a ward for adolescent male patients and a ward for long-stay patients. The single room, on the ground floor of Somerset House, in which the applicant was accommodated for 5 weeks is now no longer used for patient accommodation and has been converted into office accommodation.

In addition a major refurbishing exercise is taking place in Kent House which includes, as an experiment, 3 single rooms on each of 3 floors being converted so as to provide instead 2 rooms on each floor each with wash basin and toilet facilities en suite.

The work on the building of the fourth Special Hospital is proceeding and it is expected that the first 100 beds in this hospital will be ready for occupation during the first half of 1980. At the same time the redevelopment of Broadmoor Hospital is proceeding. This is necessarily a long-term project which will span some 20 years and cost approximately £18 million. The first patient accommodation in the redevelopment will consist of a new ward block containing two 20-bedded special care wards, two 25-bedded wards and an admission ward containing 25 beds. It is hoped that this new accommodation will be available for occupation in about 5 years' time. Further redevelopment will result in a hospital accommodating approximately 400 patients together with facilities for occupations and various amenities for recreation. As will be seen every endeavour is being made to improve conditions."

Under cover of their letter of 17 October 1979 they gave the following information concerning guidelines in force at Broadmoor Hospital governing the use of seclusion:

"1. New working guidelines concerning the seclusion of patients at Broadmoor Special Hospital have now been introduced and are in operation.

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2. These are to apply whenever a patient is compulsorily confined to a secure room between the hours of 7 a.m. and normal bedtime. Rooms used for seclusion are to have at least 4.7 square meters floor space and to have natural lighting.
3. The nurse in charge of a ward may take the initial decision to seclude a patient whose behaviour is, or seems likely to become, so disturbed that it is desirable to isolate him for his own safety or for the safety of others. The unit (or duty) nursing officer and the responsible medical officer, or his deputy, are to be advised at once of the decision and the reason for it.
4. A programme of care for any patient secluded for more than 3 hours is to be drawn up by the nurse in charge in consultation with the responsible medical officer. This programme is to be reviewed daily.
5. Where for safety or security reasons normal clothing and/or furniture is withdrawn, patients are to be provided with pyjamas or other special clothing (including suitable footwear unless this is specifically banned to prevent harm to himself or others), mattresses and bedding. Disposable bedpans and urinals and toilet paper are also to be provided. Writing materials, reading matter and other items are to be provided on request at the discretion of the nurse in charge.
6. Unless the patient's condition precludes it he is to be allowed out of his room for toilet purposes and to take exercise (for at least 30 minutes each morning and afternoon (or evening)) and to receive visitors.
7. Patients in seclusion are to be observed at irregular intervals not exceeding 15 minutes.
8. A special record book is to be maintained on every ward in which full reports of all occasions on which a patient is secluded will be made. This report, which will be cross-referenced with the daily ward report and patient's clinical records, will record, inter alia, the time the seclusion started and ended, the reason for it, details of clothing, bedding etc. supplied and observations and reviews made.



9. If the patient is secluded for more than 24 hours, the Hospital Management Team should be informed and if the seclusion lasts for a continuous period of 7 days the Hospital Management Team should make a full report to the hospital managers. Reports should thereafter be made to the hospital managers weekly for as long as seclusion continues."

By his letter of 13 March 1980 the applicant's representative stated, in the following terms, the applicant's willingness to accept these guidelines as part of a friendly settlement:

"We observe that guidelines for the use of seclusion have been adopted at Broadmoor Hospital as part of the friendly settlement offer of the respondent Government. We are prepared to accept these as part of the basis of a friendly settlement. We would observe, however, that Sir George Young, Minister for Health, in response to a Parliamentary Question (Wednesday, 16 January 1980, Written Answer) said 'the main effect of the guidelines is to clarify previously unwritten practices rather than to introduce changes'. The acceptance of the substantive terms of friendly settlement should not be taken to imply that we accept that the guidelines are adequate to prevent a repetition of the circumstances which gave rise to a finding of admissibility in respect of Art. 3 of the European Convention on Human Rights. I would like to express the hope that there will be further improvement in the use and conditions of seclusion, not only at Broadmoor Hospital, but at other special and local hospitals."

The final proposals made by the respondent Government in their letter of 29 April were in the following terms:

"The Government, without implying any admission of a violation of the Convention, undertake to make an ex gratia payment to the applicant of £500 on the understanding that he will withdraw his complaint.

The Government would like to point out that the new guidelines on seclusion of patients which have been adopted at Broadmoor Hospital will be kept under review and that any further improvements which might appear possible in the light of experience will receive proper consideration.

Whilst the Government is always anxious to implement improvements generally, it is considered that the friendly settlement should properly be confined to the special hospital, Broadmoor, concerned in this case."

By telex received on 11 July 1980 the applicant's representative declared that he accepted on behalf of the applicant the friendly settlement offered by the Government in their letter of 29 April 1980. He also reiterated his reservations, expressed in his letter of 13 March 1980 and an earlier letter, as to the adequacy of the guide lines adopted but stated that he was pleased to observe that the Government would keep them under review with a view towards further improvements.

The Commission, at its session on 16 July 1980, found that the above-mentioned declarations showed that the parties had come to an agreement regarding the terms of a settlement. The Commission also found, having regard to Art. 28 (b) of the Convention, that a friendly settlement of the matter had been secured on the basis of respect for human rights as defined in the Convention. For the above reasons, the Commission adopted this Report.

Secretary to the Commission

Acting President of the Commission

(H.C. KRUGER)

(C.A. NØRGAARD)