AS TO THE ADMISSIBILITY OF

Application No. 33068/96
by Mark ADRIAN
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 14 January 1998, the following members being present:

MM M.P. PELLONPÄÄ, President
N. BRATZA
E. BUSUTTIL
A. WEITZEL
Mrs J. LIDDY
MM L. LOUCAIDES
B. MARXER
B. CONFORTI
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs M. HION
Mr R. NICOLINI

Mrs M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 6 June 1996 by Mark ADRIAN against the United Kindgom and registered on 20 September 1996 under file No. 33068/96;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a citizen of the United Kingdom, born in 1973, and currently serving a prison sentence in HMP Blundestone in Lewestoft. He is represented by Mr T.J. Bancroft of Messrs John Coplan & Son, Solicitors in Sheerness.

The facts of the case, as submitted by the applicant, may be summarised as follows.

a. Particular circumstances of the case

At the relevant time, the applicant was serving a prison sentence in HMP Swaleside, a Category B Training Prison housing convicted prisoners requiring conditions of high security. On 26 April 1995, the Governor of HMP Swaleside decided to transfer the applicant to the so-called Restricted Regime unit located at Wing A1 at this prison on grounds of unacceptable conduct.

It was the third time the applicant had been transferred to the A1 Restricted Regime unit for adverse behaviour. The first time was on

1 January 1995. He was transferred back to a Normal Regime unit on 4 February 1995. The second period the applicant was subject to the A1 Restricted Regime lasted from 27 February 1995 until 7 April 1995.

On 19 June 1995, the applicant was transferred back to a Normal Regime unit. On 2 July 1995, the applicant was transferred for a fourth time to the A1 Restricted Regime Unit. On 31 July 1995, he was transferred back to a Normal Regime unit after having signed an agreement as to his future conduct.

On 3 July 1995, the applicant and three others applied for judicial review of the Governor's orders to transfer the applicant and the three others to the A1 restricted regime on grounds that this regime was unlawful.

In his application for judicial review, the applicant relied, inter alia, on the findings in the 1994 Annual Report from the HMP Swaleside Board of Visitors as to the A1 Restricted Regime.

Under the title "The A-1 Restricted Regime", this Report reads as follows:

> "The Board recognised that there was a need to assist staff with the difficult and recalcitrant prisoners who were arriving at Swaleside in increasing number. The Board have, however, from the outset been seriously concerned at the regime which has been put in place. Since last September, the Board have regularly raised their serious concerns with the management and in November requested a special meeting with the Governor, when it was made absolutely clear that the Board were most unhappy with the regime. The prisoners were, and still are, being held in solitary confinement for 23+ hours per day. They have no association with other prisoners (other than at exercise), they are precluded from work and there is a "strip cell" on the spur apparently in regular use. It is hard to see that they are in other than Rule 43 conditions - without limit of time - without the daily supervision of a governor, or of a medical officer, or of the chaplaincy, and certainly without the authorisation of the Board of Visitors.*
>
> The perception of the prisoners is that they are in cellular confinement in an unsupervised segregation unit.
> ...
> (*The Board are pleased to record that the Governors Rounds have been introduced with effect from February 1995)."

On 13 December 1995, after the Governor had assured the applicant's representative that it did not intend to reintroduce the Restricted Regime in the same form as it operated prior to 17 July 1995, the application for judicial review was withdrawn by agreement between the parties. The terms of this agreement were incorporated in an Order of 11 January 1996. The applicant agreed to withdraw his application for judicial review on the basis of the understanding that the High Court refuses to make orders of the kind initially sought unless they achieve some practical effect.

b. Relevant domestic law

The treatment of convicted prisoners is governed by the Prison Rules of 1964, as amended, made under the Prison Act 1952. These Rules are supplemented by Standing Orders and Circular Instructions made by the Secretary of State which set out the detailed practice to be followed in applying these Rules.

The Governor has a power to segregate prisoners pursuant to Prison Rule 43 which, insofar as relevant, provides as follows:

"1. Where it appears desirable, for the maintenance of good order or discipline or in his own interests, that a prisoner should not associate with other prisoners, either generally or for particular purposes, the Governor may arrange for the prisoner's removal from association accordingly.

2. A prisoner shall not be removed under this Rule for a period of more than 3 days without the authority of a member of the Board of Visitors or of the Secretary of State. An authority given under this paragraph shall be for a period not exceeding one month ....

3. The Governor may arrange at his discretion for such a prisoner as aforesaid to resume association with other prisoners, and shall do so if in any case the medical officer so advises on medical grounds."

Prison Rule 47 sets out a number of disciplinary offences which a detainee may commit. Pursuant to Prison Rule 49, a detainee charged with a disciplinary offence must be informed of the charge as soon as possible and is entitled to be heard on the charge. Where an inmate has been found guilty of a disciplinary offence, the Governor may order a forfeiture of privileges for a maximum of 28 days, exclusion from associated work for a maximum of 14 days or cellular confinement for a maximum of 14 days.

On 7 September 1994, the so-called Restricted or Basic Regime as opposed to the Normal or Standard Regime was introduced in HMP Swaleside upon the Governor's decision. The Restricted Regime operated until 17 July 1995. It was meant to create a systematic approach to the granting and withholding of facilities for inmates with a view to providing the latter with an incentive to good behaviour.

A placement in a Restricted Regime unit involved weekly assessments with a review every 28 days. Unlike a regime imposed under Prison Rule 43, a Restricted Regime did not require prior or subsequent approval of the Board of Visitors.

Like the Regime under Prison Rule 43, there is no association with other detainees under the Restricted Regime outside the exercise hour. A placement under the Restricted Regime did further entail more or less important restrictions as regards association with other inmates, restrictions on leisure activities, work, library access, contacts by telephone and permitted personal belongings.

Under the Normal Regime, detainees can spend £20 per week on phone cards and, apart from the time they are locked in their cells, they enjoy unrestricted access to the telephone without supervision. Under the Restricted Regime, detainees were allowed one £2 or one £4 phone card per week, the latter at an officer's discretion, and they were allowed one supervised telephone call per day.

A detainee subject to a Restricted Regime could either make a phone call or use an iron or cell cleaning equipment. There were further certain restrictions under the Restricted Regime as to a detainee's visits.

On 17 July 1995, the Prison (Amendment) (No. 2) Rules 1995 S.I. 1598 entered into force. Prison Rule 4, as amended, sets rules for prison Governors as to the granting or withdrawal of privileges in respect of detainees. New national standards were further introduced on 25 July 1995 by Instruction to Governors 74/1995.

In R. v. Deputy Governor of Parkhurst ex parte Hague ([1992] 1 A.C. 58), intolerable conditions of detention were recognised as constituting a basis for an application for judicial review.

In proceedings before the Crown Court at Canterbury, to which the applicant was not a party, which concerned criminal charges against a number of inmates of HMP Swaleside in connection with their protest against the conditions imposed on them while subject to the A1 Restricted Regime in HMP Swaleside, Judge Langdon held on 17 May 1996:

> "..., I think the prisoners could be forgiven for thinking that complaints to the Governor might be counter productive so far, particularly, as far as the length of their stay in restrictive custody was concerned, because it was after all the Governor's baby.
>
> As it is, I have not had to grasp the nettle as firmly as at one stage it seemed I might have to. I find that there was a significant erosion of the spirit of the prison rules, such as to justify stigmatising that restrictive regime as oppressive. The prisoners had something legitimate to complain about."

COMPLAINTS

1. The applicant complains that the Restricted Regime, entailing a placement in an inadequately equipped, virtually unsupervised segregation unit without a clear time-limit as to the duration of such a placement, constitutes treatment contrary to Article 3 of the Convention.

2. The applicant further complains that his placement in the Restricted Regime unit was decided without respecting the procedural safeguards prescribed by Article 6 of the Convention.

3. The applicant complains that his placement in the Restricted Regime Unit constitutes an unjustified interference with his rights under Article 8 para. 1 of the Convention, in particular in that this interference is not foreseen in any statutory or secondary rules. The applicant submits that this Regime was an unnecessary and disproportionate way of enforcing prison discipline as a full disciplinary code of offences, system of trial and punishments was available to the Governor under the Prison Rules.

4. The applicant finally complains under Article 13 of the Convention of his inability to obtain proper redress or compensation for his suffering unlawfully.

THE LAW

The applicant complains that the decision to transfer him to the A1 Restricted Regime unit in HMP Swaleside entailed violations of his right not to be subjected to treatment contrary to Article 3 (Art. 3) of the Convention, his right to a fair hearing under Article 6 (Art. 6) of the Convention, his right under Article 8 (Art. 8) of the Convention to respect for his private life and correspondence and his right to an effective remedy under Article 13 (Art. 13) of the Convention.

The Commission notes that the applicant withdrew his application for judicial review following the entry into force on 17 July 1995 of an amendment of the Prison Rules. The question, therefore, arises whether the applicant has complied with the requirement of exhaustion of domestic remedies within the meaning of Article 26 (Art. 26) of the Convention.

The applicant has submitted that the High Court refuses to make orders of the kind initially sought by the applicant unless they achieve some practical effect. However, the Commission does not find that the applicant has sufficiently established, on the basis of relevant case-law, that the High Court would in fact have refused to

deal with the case (cf. No. 18598/91, Dec. 18.5.94, D.R. 78, p. 71; and No. 19819/92, Dec. 5.7.94, D.R. 78, p. 88).

The Commission is, therefore, of the opinion that the applicant has failed to comply with the requirement of exhaustion of domestic remedies within the meaning of Article 26 (Art. 26) of the Convention as regards his complaints under Articles 3, 6 and 8 (Art. 3, 6, 8) of the Convention.

It follows that this part of the application must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

As to the remainder of the application, the Commission recalls that a refusal by a court to deal with an arguable complaint on the ground that there is no legal interest which requires determining has been held to be incompatible with Article 13 (Art. 13) of the Convention (No. 21353/93, B.C. v. Switzerland, Comm. Report 3.9.96, paras. 63-68, currently pending before the Court). However, no refusal of this kind has in fact occurred in the present case.

It follows that this part of the application must be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

M.P. PELLONPÄÄ
President
of the First Chamber