CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

THIRD SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 57248/00
by Mueen CHISHTI
against Portugal

The European Court of Human Rights (Third Section), sitting on 2 October 2003 as a Chamber composed of

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr R. TÜRMEN,
Mr B. ZUPANČIČ,
Mrs H.S. GREVE,
Mr K. TRAJA, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application introduced on 5 August 1999 and registered on 15 May 2000,

Having regard to the partial decision on 10 July 2001,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Mueen Chishti, is an United States national of Pakistani origin, born in 1958 and residing in Montclair, California (USA).

A. The circumstances of the case

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

1. The criminal proceedings

On 19 December 1995, the applicant was arrested in Portugal. He was suspected, with 11 other persons, of fraud, consisting in encoding information of credit cards, belonging to other people, on the magnetic bands of blank plastic cards using a personal computer and an encoding/decoding device. These plastic cards were then used at P.O.S. ("point of sale") terminals, with the collaboration of their owners, to draw sums to be paid by the banks in question.

On 11 November 1997, the Lisbon Criminal Court sentenced the applicant to seventeen years' imprisonment for computer fraud (*burla informática*), falsification of credit cards and corruption.

The applicant appealed to the Supreme Court (*Supremo Tribunal de Justiça*) complaining, *inter alia*, of a violation of his rights of defence.

In a judgment of 4 June 1998, served on the applicant on 8 June 1998, the Supreme Court rejected the appeal against conviction. It however reduced the sentence of the applicant to fourteen years 'imprisonment.

Some of the defendants, but not the applicant, appealed to the Constitutional Court. According to the applicant, the Constitutional Court gave its judgment in October 1999.

2. The applicant's detention and transfer to the United States

After an initial period of detention at the prison of Caxias, the applicant was transferred, on 23 March 1998, to the prison of Pinheiro da Cruz.

On 10 May 1998, a member of the prison staff handed back to the applicant a letter that he had written in Urdu (Pakistani) to his family in Pakistan. It was explained to the applicant that he could not use the Urdu language in his correspondence for "security reasons".

On 11 May 1998, the applicant complained about the situation to the prison governor. He was then informed that some other letters that his family had send to him in Urdu had been confiscated and filed in his individual file.

Following the subsequent complaints of the applicant concerning his impossibility to correspond in Urdu, the prison governor requested, on 30 July 1998, advice from the Directorate General of Prisons. The Court was unable to find in the individual file of the applicant, submitted by the

Government at the Court's request, any reply from the Directorate General to the prison governor's request.

At Christmas 1998, the prison governor exceptionally authorised the applicant to send a letter in Urdu to his parents in Pakistan.

According to the applicant, he registered his name twice to complain about the ban concerning his correspondence to the prison judge (*juíz de execução de penas*) but never had a reply. The Court was however unable to find any of these alleged requests in the applicant's individual file.

Informed by the applicant, the United States Embassy offered, on March 1999, its services in order to solve the problem. The Embassy found a translator willing and able to translate from English into Urdu and vice-versa, without costs to the applicant, all the necessary incoming and outgoing mail. According to the Embassy, this solution would meet with the approval of the prison governor. However, in May 1999, the applicant declined the offer.

The applicant was again authorised to send a letter in Urdu at one occasion, at Christmas of 1999.

On 6 December 2000, the applicant was transferred to the United States to serve the remainder of his sentence.

On 15 March 2001 the applicant was released conditionally.

B. Relevant domestic law and practice

The execution of prison sentences is regulated by the Decree Law No 265/79 of 1 August 1979.

Section 43 of this Decree Law provides, in its paragraph 1, that the prison governor can order the stopping of inmates' outgoing and incoming mail if written in an unknown foreign language and without special reasons justifying the use of such language. The letters in question are filed in the individual file of the person concerned.

The provisions of this Decree Law were supplemented by a Circular No 3/94/DEP/1 issued by the Directorate General of Prisons on 11 November 1994. Under this Circular, correspondence is withheld only after being scrutinised in accordance with the provisions of Decree Law No 265/79.

Inmates can submit complaints concerning the withholding of their correspondence, or any other matter, to the inspectors of the Directorate General of Prisons and to the prison judge. According to Section 139 of the Decree Law No 265/79, inmates should register their names in a special book in order to see the prison judge during the latter's monthly visits to the prison. The prison judge should then try to solve the matter in agreement with the prison governor. If there is no agreement, the issue is submitted to the Technical Council of the prison in question (Section 139). The Technical Council is composed of the prison judge, who presides, the prison governor and five other members of the prison staff. According to Section

139 § 5, each of the members of the Technical Council has a right of appeal against the Council's decisions to the Minister of Justice.

COMPLAINTS

The applicant complains, under Article 8 of the Convention, of the impossibility to correspond with his family living in Pakistan in Urdu, the only language that they understand.

THE LAW

The applicant complains of an interference with the right to respect for his correspondence, within the meaning of Article 8 of the Convention. In his view, the impossibility to correspond with his family in Urdu, the only language that they understand, is clearly a violation of this provision, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his 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."

The Government submitted that the applicant did not exhaust the domestic remedies as he did not avail himself of the possibilities provided by Decree Law No 265/79. He did not make any complaint to the inspectors of the Directorate General of Prisons nor to the prisons' judge. In the Government's view, these remedies were available to the applicant and he should have used them before submitting his complaints to the Strasbourg Court.

In any event, the Government maintained that there was no violation of Article 8 of the Convention. Even assuming that the ban imposed on the applicant's correspondence constituted an interference with his rights under Article 8, the Government noted that such an interference was provided for by law and entirely justified under paragraph 2 of Article 8 as a necessary measure to prevent crimes such as the co-ordination of criminal activities in the outside world or the preparation of escape.

For the Government, the ban at issue was entirely proportionate to the legitimate aim pursued. Moreover, a reasonable solution was offered to the applicant, when the US Embassy found him, without costs, a translator

willing and able to translate any necessary correspondence. As the applicant declined this offer, his application before the European Court could be even seen as an abuse of the right of petition.

For the Government, there is no violation of Article 8 and the application is therefore manifestly ill founded.

The applicant submitted that he did everything possible to resolve his problem. He filed several complaints with the prison governor and the Minister of Justice. The applicant submitted that he listed his name twice in the special book to request meeting with the prison judge. However, he had no reply. As for the inspectors of the Directorate General of Prisons, the applicant noted that the prison governor himself informed him, in 1998, that his problem was awaiting a reply of the Directorate General. He was however never informed of any reply received from the Directorate General.

As to the merits of his complaint, the applicant stated firstly that there was no objective reason to think that his correspondence with his family would jeopardise the security or the order in the prison.

The applicant also noted that while it was true that he refused the US Embassy's offer of translation, he did so because that would not be a viable solution for him: it would cause enormous delays, it would expose his and his correspondents' privacy to others and he would never be able to convey truly his message.

For the applicant, there is a clear violation of Article 8 of the Convention.

The Court considers that it can leave open the question of the exhaustion of domestic remedies because the application is, in any event, inadmissible for the following reasons.

The Court notes firstly that the ban imposed on the applicant's correspondence clearly amounts to an interference with his rights under Article 8. This provision protects not only the contents of correspondence but also the possibility of sending and receiving mail, which is sometimes the prisoner's only link with the outside world (see *Campbell v. the United Kingdom*, judgment of 25 March 1992, Series A no. 233, p. 18, § 45).

Such interference amounts to a violation of this provision unless it was "in accordance with the law", had an aim or aims that is or are legitimate under Article 8 § 2 and was "necessary in a democratic society" for the aforesaid aim or aims (see, amongst many others, *Kruslin v. France*, judgment of 24 April 1990, Series A no. 176-A, p. 20, § 26).

The ban on the applicant's correspondence was based on the Decree Law No 265/79, which was published and available to prisoners and the general public, and therefore "in accordance with the law" within the meaning of Article 8 § 2.

In the Court's view there is no reason to doubt that this interference was aimed to prevent crime and therefore in pursuit of a legitimate aim in the sense of Article 8 § 2.

As to the necessity of the measure at issue, the Court recalls that that notion implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued. In determining whether an interference is "necessary in a democratic society", regard may be had to the State's margin of appreciation (see, amongst other authorities, *The Sunday Times v. the United Kingdom (no. 2)*, judgment of 26 November 1991, Series A no. 217, pp. 28-29, § 50).

Moreover, it should be recognised that some measure of control over prisoners' contacts with the outside world is called for and is not of itself incompatible with the Convention (see, for example, *mutatis mutandis*, *Silver and Others v. the United Kingdom*, judgment of 25 March 1983, Series A no. 61, p. 38, § 98).

In this particular case, the Court finds that a ban such as the one at issue could raise a problem under Article 8 of the Convention, in particular when the applicant is, as in the present case, a foreign inmate without family residing in the country where he was detained.

This being said, the Court notes that the prison authorities have nevertheless authorised the applicant to send mail at two occasions (Christmas of 1998 and 1999). What is more, a possibility of putting an end to the ban at issue was offered to the applicant by the US Embassy, in agreement with the prison governor. This solution, which was, in the Court's view, reasonable and without costs to the applicant, was refused by him. The reasons set forward by the applicant to explain why he refused the US Embassy's offer of translation are not convincing.

Having regard to these two elements, the Court finds that the interference at issue was proportionate to the legitimate aim pursued. It follows that there is no violation of Article 8 of the Convention and that the application is therefore manifestly ill-founded within the meaning of Article 35 § 3.

For these reasons, the Court unanimously

Declares inadmissible the remainder of the application.

Vincent BERGER
Registrar

Georg RESS
President