AS TO THE ADMISSIBILITY OF

Application No. 14176/88
by Thomas Michael Joseph RYDER
against the United Kingdom

The European Commission of Human Rights sitting in private on 19 January 1989, the following members being present:

MM. C.A. NØRGAARD, President
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
G. BATLINER
H. VANDENBERGHE
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY

Mr. H.C. KRÜGER, Secretary to the Commission

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

Having regard to the application introduced on 24 June 1988 by Thomas Michael Joseph RYDER against the United Kingdom and registered on 2 September 1988 under file No. 14176/88;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen born in 1957. He is currently serving a sentence of imprisonment in H.M. Prison Durham. The facts as submitted by the applicant may be summarised as follows.

The applicant was arrested in June 1985 and detained on remand in connection with drugs offences. On 30 August 1985, the applicant escaped from custody while appearing in the magistrates court. He was re-arrested in January 1986 and charged with escape from legal custody, grievous bodily harm and possession of a fire-arm.

The applicant was subsequently classified as a violent prisoner likely to escape or be rescued by an armed gang.

On 20 March 1986, the applicant was additionally charged with an offence of robbery and of demanding money with menaces. On 22 May 1986, the applicant made an unsuccessful attempt to escape, following which he was charged with assault and threatening to kill.

The applicant was tried in relation to the drugs charge in October 1986. He was convicted and sentenced to 4 years' imprisonment.

On arrival at H.M. Prison Walton, Liverpool, the applicant was placed on the "E" list (escape) and given category "A" status (maximum security). On 11 November 1986, the applicant was moved to H.M. Prison Strangeways, Manchester.

During November - December 1986, the applicant received two letters from his solicitor marked "Rule 37 A - Private and Confidential" on both sides of the envelope. However, these letters had been opened and read by the prison censor. The applicant complained to the Acting Governor, who assured him that "Rule 37 A" correspondence would only be opened if he was present and that once the inside of the envelope had been inspected, the letter would be replaced and returned. Despite this assurance, the applicant's mail in December 1986 was again opened and read. His solicitor however was assured that letters subject to Rule 37 A would not be censored in future.

On 17 March 1987, the applicant returned to H.M. Prison Walton, Liverpool. In April 1987, he received a letter marked "Rule 37 A" which had been opened. The applicant complained to the Principal Officer who apologised, stated that he had only recently received Home Office instructions regarding "Rule 37 A" letters and assured the applicant that mail would not be abused in future.

Later in April 1987, the applicant received a visit from his solicitor and discovered that a letter sent by his solicitor four days before and marked "Subject to Rule 37 A", concerning counsel's advice, had not yet been received by him. The solicitor wrote to the prison governor enquiring about the letter. The Governor stated that enquiries would be made to trace the letter.

On 1 May 1987, a prison officer visited the applicant with a cheque to be signed: he informed the applicant that the letter accompanying the cheque would be distributed that evening. The applicant however did not receive the letter until the following afternoon and the applicant complained to the assistant governor concerning the delay. The assistant governor said that he would look into the matter. He also said that enquiries had failed to discover the missing letter from the solicitor. On 18 May 1987, the applicant submitted a petition to the Secretary of State regarding the opening of his correspondence.

On 24 July 1987, a prison officer attempted to give the applicant a letter from his solicitor marked "Rule 37 A" which had been opened. The applicant refused to accept the letter and applied to see the Governor. On 27 July 1987, the applicant had an interview with the Acting Governor, who stated that she would look into the matter. The applicant now requested that he be given the letter and was told that it would be returned to him after the Governor had spoken to the official censor. The applicant was informed later that afternoon that the letter had gone missing. He gave the Governor his solicitor's address in order that a copy of the letter could be forwarded. The applicant petitioned the Secretary of State on 29 July 1987 regarding this matter. The applicant petitioned again on 19 August 1987 concerning further letters from his solicitor having been opened on 1, 4 and 15 August 1987. The Governor had apologised to the applicant concerning the letter of 1 August 1987, explaining that a novice censor had opened it by mistake.

On 29 September 1987, the Secretary of State replied to the petitions of 18 May and 19 August but it appears that the reply did not reach the applicant at that time.

On 27 November 1987, the Secretary of State replied to the applicant's petition of 29 July 1987, regretting that the letter handed to the applicant on 24 July 1987 had been accidentally opened. It was stated that the letter had not been read and that when it went

missing, his solicitor had been immediately contacted in order to request a second copy. The applicant was also informed that the letter of 15 August 1987 had been opened since his name had not been visible.

On 29 February 1988, the applicant, now in H.M. Prison Durham, was handed the reply dated 29 September 1987 to his petitions of 18 May and 19 August 1987. In this reply, the Secretary of State regretted that the letter of 4 August 1987 had been opened but commented that this was understandable given the absence of any "Rule 37 A" indication on the envelope. The loss of the solicitor's letter was regretted and reference made to a previous apology made in writing to the applicant's solicitors.

COMPLAINTS

The applicant complains that because of his classification as category "A" he was prevented from receiving normal visits and interviewing potential witnesses for the defence. He also complains that the move to H.M. Prison Strangeways made it difficult for him to see his solicitors. He complains that as a result he was unable to prepare any of his cases properly. He invokes Article 6 paras. 1 and 3 (b) and (d) of the Convention in this respect.

The applicant also complains of continuous interference with his correspondence with his solicitor, which was opened in his absence. Despite his complaints, the applicant submits that this censorship continued and invokes Articles 8, 10 and 13 of the Convention.

THE LAW

1. The applicant has complained of interference with his correspondence with his solicitor and has invoked Article 8 (Art. 8) of the Convention. While the applicant has also invoked Article 10 (Art. 10) of the Convention, the Commission recalls that where interference is alleged in the communication of information by correspondence Article 8 (Art. 8) is the lex specialis and no separate issue arises under Article 10 (Art. 10). The Commission will therefore examine the applicant's complaint under Article 8 of the Convention, which provides:

> "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."

Insofar as the applicant complains of interference with letters which he brought to the attention of the Secretary of State in his petition of 29 July 1987, the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of this provision, as Article 26 (Art. 26) of the Convention provides that the Commission "may only deal with the matter ... within a period of six months from the date on which the final decision was taken".

In the present case the reply of the Secretary of State which was the final decision regarding the subject matter of this petition, was given on 27 November 1987, whereas the application was submitted to the Commission on 24 June 1988, that is, more than six months after the date of this decision. Furthermore, an examination of the case

does not disclose the existence of any special circumstances which might have interrupted or suspended the running of the six months period.

It follows that this part of the application has been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

As regards the other alleged interferences, the Commission recalls that on 1 May 1987 a letter allegedly went missing and that letters which arrived on 1 August, 4 August and 15 August 1987 from his solicitor had been opened. In the reply to the applicant's petitions of 18 May 1987 and 19 August 1987, the Secretary of State referred to the written apology to the applicant's solicitors concerning the missing letter and explained that the letter of 4 August 1987 had not been marked Rule 37 A. The reply to the applicant's other petitions had already explained that the letter of 15 August 1987 had not been addressed to the applicant and had been opened to discover to whom it was sent. As regards the letter of 1 August 1987, the Commission recalls that the Governor had apologised to the applicant for its opening and explained that a novice censor had been responsible.

The Commission's previous case-law indicates that the opening of a prisoner's correspondence with his solicitor may raise issues under Article 8 (Art. 8) of the Convention. In the case of McComb v. the United Kingdom (No. 10621/83, Dec. 11.3.85, to be published in D.R.), the Commission declared admissible the complaints of a prisoner regarding the censorship of his correspondence with his solicitor. The Commission also recalls that pursuant to a friendly settlement in that case, the United Kingdom Government agreed to issue instruction that such correspondence would not be opened, save in the presence of the prisoner concerned.

The Commission notes that these instructions appear to have been implemented in the prisons in which the applicant was detained but that various incidents occurred in which letters from his solicitor were nonetheless opened. The Commission further notes that the applicant was able to complain to the Governor and the Secretary of State concerning these incidents and received various apologies and explanations, which the Commission finds to be reasonable in the circumstances of this case. In the absence of any evidence of a deliberate flouting or disregard of the Secretary of State's instructions, the Commission finds that the applicant can no longer claim to be a victim of a violation of Article 8 (Art. 8) of the Convention.

It follows that these complaints are manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant has also invoked Article 13 (Art. 13) of the Convention in relation to his correspondence complaints.

Article 13 (Art. 13) of the Convention provides:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Commission finds however, in light of previous case-law, that a petition to the Secretary of State constitutes an effective remedy where, as in this case, the applicant complains of the misapplication of the Secretary of State's own directives (see e.g. Eur. Court H.R., Silver judgment of 25 March 1983, Series A no. 61, para. 116, p. 43). The Commission accordingly finds that this complaint discloses no appearance of a violation of Article 13 (Art. 13) of the

Convention.

It follows that this complaint is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant has also complained of being hampered in the preparation of his cases as a result of his classification and of the location of his prison. He invokes Article 6 paras. 1 and 3 (b) and (d) (Art. 6-1, 6-3-b, 6-3-d) of the Convention.

The Commission has examined these complaints as they have been submitted by the applicant. The Commission however finds that these complaints, expressed in general and unspecific terms, have been unsubstantiated and consequently disclose no appearance of a violation of the Convention. It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)