AS TO THE ADMISSIBILITY OF

Application No. 18187/91
by C.W.
against the United Kingdom

The European Commission of Human Rights (Second Chamber) sitting in private on 10 February 1993, the following members being present:

MM. S. TRECHSEL, President of the Second Chamber
G. JÖRUNDSSON
A. WEITZEL
J.-C. SOYER
H. G. SCHERMERS
H. DANELIUS
Sir Basil HALL
Mrs. G. H. THUNE
MM. F. MARTINEZ
J.-C. GEUS

Mr. K. ROGGE, Secretary to the Second 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 12 March 1991 by C.W. against the United Kingdom and registered on 14 May 1991 under file No. 18187/91;

Having regard to

- the report provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 2 July 1992 and the observations in reply submitted by the applicant on 10 October 1992;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen. He was born in 1957. He is currently detained at H.M. Prison Albany.

The facts, as submitted by the parties and as apparent from the documents enclosed with the application may be summarised as follows.

On 20 February 1991 the applicant was sentenced to three years' imprisonment for common assault. He had pleaded guilty to this offence at trial.

The applicant was transferred from H.M. Prison Norwich to H.M. Prison Blundeston in March 1991.

At Blundeston there is a policy that prisoners should spend 13 weeks after induction in a workshop, unless medical reasons prevent it. At his reception before the Prison Works Committee the applicant was told that he would be expected to work in the print shop. The

applicant says that he stated that he would not work in the print shop because his Vegan beliefs prevented him from working with animal tested products (i.e. dyes).

On 13 March 1991, the applicant refused to go to work in the print shop. He was charged with the disciplinary offence of disobeying a lawful order contrary to rule 47 para. 19 of the Prison Rules. The charge was dealt with on 19 March 1991 and a penalty of 2 days' loss of remission imposed.

On 19 March 1991 the applicant was again charged with refusing to obey an order to go to work. The penalty of stoppage of £ 1 of his wages was imposed on 22 March 1991.

A further charge attracted the penalty of a £ 2 wage stoppage on 17 April 1991.

The Government state that in the above disciplinary proceedings, the applicant made no mention of his Vegan beliefs. In a statement read out on 19 March 1991, the applicant is recorded as saying:

> "I will not try to pull the wool over your eyes with a load of garbage in this matter. I will state clearly the reason why I did refuse work in the print shop ...
>
> I am not a person to work inside. I would rather lose all the remission that I got than to be forced to work inside a factory ..."

The applicant however submitted an internal complaint on 14 March 1991 about being required to work in the print shop. He protested that he did not consider inside work suitable and that also his belief as a Vegan prohibited working with products that are unnecessarily tested on animals. By reply dated 19 March 1991 he was informed of the relevant policy. In addition it was suggested to him that he submit a change of labour form for the purposes of getting on a fresh-air party. He was informed that when he had completed his 13 weeks in a workshop and when he had reached the top of the relevant waiting list, his application would be considered. It appears that the applicant did not submit a change of labour form. The applicant submitted a further complaint on 27 March 1991. By reply dated 16 April 1991 he was informed that until he submitted a change of labour form an application for outside work would not be considered. The applicant submitted another complaint on 24 April 1991. By reply dated 30 April 1991 the applicant was reminded of the relevant policy and told that since he was in solitary confinement his complaint relating to workshops was academic.

From 18 April 1991, the applicant had been placed in segregation under rule 43 of the Prison Rules, after which he was not under an obligation to work in the print shop. The Government state that he was removed from association as a result of his conduct in making threats to staff and to foment a riot. Before his transfer to another prison, he was convicted of further disciplinary offences, including 2 assaults on prison officers and setting fire to his cell.

On 6 September 1991, the applicant was transferred to another prison.

On 11 February 1992, the applicant wrote to the Home Secretary, who by reply of 1 May 1992 stated that he was satisfied after detailed enquires that the dyes used are of organic or synthetic pigments and that they are not tested on animals.

By letter dated 29 March 1991, the Vegan Society informed the applicant that although the majority of printing dyes are synthetic they will have been tested on animals at some stage.

The applicant applied for leave to appeal against his sentence. He was refused leave to appeal by a single judge of the Court of Appeal. After this refusal he applied to the Full Court of Appeal. His application was rejected on 13 November 1991.

COMPLAINTS

The applicant complains of the policy at H.M. Prison Blundeston whereby he was required to work in the prison print shop. He also complains of the loss of remission and the fines imposed on him for his refusal to work in the print shop.

He also complains about his sentence, that his application for leave to appeal was hampered by the prison authorities in that he has not been permitted phone calls or appropriate forms and in that he has been denied access to the prison legal aid officer and that visits by his solicitor have been stopped.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 12 March 1991 and registered on 14 May 1991.

On 2 April 1992, the Commission decided to communicate the application to the respondent Government and to ask for written observations on the admissibility and merits of the application insofar as it concerned Article 9 of the Convention.

The Government's observations were submitted on 7 July 1992 after one extension in the time-limit and the applicant's observations in reply were submitted on 10 October 1992 also after one extension in the time-limit.

THE LAW

1. The applicant complains that he was obliged to work in the print shop and punished for failing to do so despite his Vegan beliefs.

The Government submit that the applicant has failed to exhaust domestic remedies in respect of his complaint since he did not complain to the Board of Visitors. The Commission notes however that the Board of Visitors has only the power to make recommendations to the Governor. It finds therefore that this avenue of redress does not constitute a remedy which is adequate or sufficient for the purposes of Article 26 (Art. 26) of the Convention.

The Commission has therefore examined the applicant's complaints under Article 9 (Art. 9) of the Convention, which provides:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or in private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

The Commission recalls that the applicant refused to work in the

print shop because as a Vegan he wished to avoid contact with animal products or products which had been tested on animals. The Commission notes that the Government do not contest that Veganism is capable of concerning "conscience" or "belief" within the meaning of Article 9 (Art. 9) of the Convention. The Commission's case-law establishes that this provision protects the sphere of private, personal beliefs and the acts which are intimately linked to these attitudes (see e.g. No. 10358/83, Dec. 15.12.83, D.R. 37, p. 142). The Commission finds that the Vegan convictions with regard to animal products fall within the scope of Article 9 para. 1 (Art. 9-1) of the Convention.

The Government allege however that the applicant's Vegan beliefs were not the primary reason for his refusal, rather his desire to work outdoors; they refer in this respect to the records of the disciplinary proceedings, in particular, the prepared statement which he made in those proceedings and in which he made no reference to his Vegan beliefs. The Commission notes however that the applicant had expressly invoked the requirements of his Vegan beliefs in written complaints to the prison authorities before and contemporaneously with the disciplinary proceedings. The Commission therefore finds that a motive of his refusal, though apparently not the only motive, was his Vegan beliefs.

The Government further deny, in any event, that the dyes in the workshop had been manufactured out of animal products or tested on animals. The applicant, in support of his objection, has only provided a letter from the Vegan Society informing him that most dyes used had been tested on animals at some stage.

However, even assuming that the above facts disclose an interference with the applicant's rights under Article 9 (Art. 9) of the Convention, the Commission finds such interference to be justified under the second paragraph of that provision for the reasons set out below.

Concerning the requirements of the second paragraph of Article 9 (Art. 9) of the Convention, the Commission finds that the interference was "prescribed by law" in that any requirement to work is contained in the Prison Rules and pursued the aim of preserving good order in the prison.

The Government submit that it is necessary to have a system of allocation of work which is perceived to be fair and without favouritism and that as a result prisoners inevitably do not enjoy free choice of employment. The Commission recalls that all prisoners were generally required to work in the print shop for a period of 13 weeks after which time other employment was available. It notes the factual conflict as to the nature and extent of the connection between the dyes and animals, the fact that it was only one of the applicant's reasons for refusing the work and also the relatively minor nature of the penalties imposed on the applicant for refusing to comply with the normal work regime.

In these circumstances, the Commission finds that the principle of proportionality has not been infringed and to the extent that there has been an interference, the interference is justified under paragraph 2 of Article 9 (Art. 9-2) 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.

2. The applicant also complains of a number of other matters, including the length of his sentence, and of alleged obstruction by the prison authorities in the conduct of his appeal, in particular in the restriction of phone calls, access to the prison legal aid officer and visits from his solicitor.

As regards the length of his sentence, the Commission notes that the applicant was sentenced to a period of 3 years imprisonment for assault. It finds nothing in the facts of the case to indicate that this in any way discloses a violation of any of the provisions of the Convention. It follows that this complaint is manifestly ill-founded with the meaning of Article 27 para. 2 (art. 27-2) of the Convention.

As regards the applicant's complaints that he was obstructed in his appeal, 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, under Article 26 (Art. 26) of the Convention, it may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law.

The Commission notes that the applicant did not complain of these matters to the Secretary of State. Moreover, an examination of the case as it has been submitted does not disclose the existence of any special circumstances which might have absolved the applicant, according to the generally recognised rules of international law, from raising his complaint in the proceedings referred to.

It follows that the applicant has not complied with the condition as to the exhaustion of domestic remedies and his complaints must in this respect be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

For these reasons the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber — President of the Second Chamber

(K. ROGGE) — (S. TRECHSEL)