PARTIAL

AS TO THE ADMISSIBILITY OF

Application No. 16244/90
by Stephen WINDSOR
against the United Kingdom

The European Commission of Human Rights sitting in private on 12 December 1991, the following members being present:

MM.C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
SirBasil HALL
MM.F. MARTINEZ
C.L. ROZAKIS
Mrs.J. LIDDY
MM.L. LOUCAIDES
J.-C. GEUS
A.V. ALMEIDA RIBEIRO
M.P. PELLONPÄÄ
B. MARXER

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 9 January 1990 by Stephen WINDSOR against the United Kingdom and registered on 26 February 1990 under file No. 16244/90;

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 British citizen born in 1952 and currently serving a prison sentence in H.M. Prison Perth.

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

On 27 November 1985, the applicant was convicted of armed robbery and sentenced to 20 years imprisonment. His appeal against conviction was dismissed on 21 November 1986, but his sentence reduced to 14 years.

The applicant introduced application no. 13081/87 before the Commission on 16 May 1987. His application, which concerned various complaints concerning his arrest and trial, was declared inadmissible on 14 December 1988.

The applicant alleges that since he started serving his sentence his correspondence has been interfered with.

He complains that the following letters were interfered with or stopped:

Letter no. 1: - a letter dated 19 September 1988 to his Member of Parliament, Dr. J. Reid, was not posted;

Letter no. 2: - a letter dated 20 September 1988 to Councillor Ms. H. Graham, a member of the Visiting Committee, was opened and read. The applicant states that the Governor questioned him about the contents;

Letter no. 3: - a letter dated 23 or 24 October 1988 to Councillor Mrs. Knighton was opened and read. The applicant alleges that the certificate of postage issued was fraudulent and the letter not sent. He was also questioned concerning the contents;

Letter no. 4: - a letter dated 27 or 28 October 1988 to the Chief Constable of Strathclyde was opened and read. The applicant was questioned as to the contents which reported a prison officer for theft. The applicant alleged that he had given a prison officer £6 on one occasion to buy him a tape from a record shop and three blank tapes to record music for him on another. He alleged that the prison officer kept these items and denied that they had been given to him. He later instituted civil proceedings against the prison officer in the Sheriff Court. The Sheriff Court dismissed his case on 23 June 1989. The Sheriff's judgment referred to the fact that the applicant's letter of 28 October 1988 had been intercepted by the prison authorities and an internal investigation carried out before it was sent on 8 November 1988;

Letter no. 5: - a letter dated 30 December 1988 to Mrs. S. Calvert was stopped;

Letter no. 6: - a letter dated 4 January 1989 to Mr. R. Burnett, a solicitor, enclosing Letter no. 5 (above) was stopped;

Letter no. 7: - a letter dated 3 February 1989 to Councillor Murray, chairman of the Social Work Department and a member of Lord Macaulay's working party on the penal system, was stopped and the applicant instructed to rewrite it;

Letter no. 8: - a letter dated 17 June 1989 to Mr. K. French (an internal prison letter) concerning a civil action against the prison officer for theft (see Letter No. 4 above) was allegedly not delivered;

Letter no. 9: - a letter dated 13 November 1988 to Mr. R. Jenkinson (a prisoner at another prison) was stopped without explanation. The letter contained, inter alia, the sentence "I won't forget this spell Russ and will repay all debts in full regardless of consequences";

Letter no. 10: - a letter dated 23 January 1989 to Mr. R. Jenkinson was stopped without explanation. It was later posted after the applicant had approached the Scottish Home and Health Department (hereafter the Department) which then directed that it should be allowed;

Letter no. 11: - a letter dated 5 January 1989 to Mrs. S. Calvert was stopped without explanation. It was posted on 18 January 1989 after the applicant had sent it to the Department, which directed that it should be allowed;

Letter no. 12: - a letter dated 4 January 1989 to Councillor Murray did not arrive. The applicant alleges that a fraudulent certificate of postage was issued by the prison authorities (since it contained different handwriting;

Letter no. 13: - a letter dated 24 October 1989 to Mrs. S. Calvert did not arrive. The applicant alleges a fraudulent certificate of postage was issued;

Letter no. 14: - a letter of 25 April 1989 to Mr. D. Clater of the Department was not delivered by the prison authorities;

The applicant also complains that the following letters were delayed in posting:

Letter no. 15: - a letter of 22 November 1988 to the Chief Constable of Strathclyde Police was not posted until 24 November 1988;

Letter no. 16: - a letter of 23 November 1988 to a solicitor, Mr. R. Burnett, was not posted until 28 November 1988;

Letter no. 17: - a letter of 11 November 1988 to Mrs. M. Windsor was not posted until 14 November 1988;

Letter no. 18: - a letter of 21 November 1988 to Gingerbread (a single parents' association) was not posted until 24 November 1988;

Letter no. 19: - a letter of 28 November 1988 to Mr. Burnett was not posted until 31 November 1988.

The applicant has complained of interference with his correspondence to the Prison Governor, the Visiting Committee and to the Secretary of State and his various representatives.

On 17 October 1988, the applicant requested to see a Visiting Sheriff. No visit has as yet taken place.

On 17 July 1988, the applicant requested to see the Visiting Committee. A meeting took place in July 1989, but the applicant states that no answer to his correspondence complaints has as yet been received.

By letter dated 20 November 1989, the Department replied in respect of the applicant's complaints of letters not arriving at their destination, that outgoing mail was not recorded and that enquiry should be made at the Post Office.

By petition dated 28 October 1988, the applicant complained to the Secretary of State that letter no. 3 (see above) had not been sent despite postage being paid and a certificate of postage being issued. In fact, he alleges that it had been opened, and then given by hand to Mrs. Knighton. He complained of this interference with his mail. He also complained that the Governor read mail sent to the Visiting Committee. In petitions dated 19 and 22 December 1988, the applicant again complained of unreasonable interference with his mail. By letter dated 13 March 1989, the Department replied that his complaints had been investigated. It explained that the prison authorities were authorised to examine prisoners' correspondence to check for prohibited material. It also stated that the prison authorities could not be held responsible for mail which went missing in the post and that there was no statutory requirement to provide prisoners with a proof of postage.

By petition dated 9 January 1989, the applicant complained about the stopping of letters nos. 5 and 6. By reply dated 13 March 1989, the Department replied that the applicant had already been informed why letter no. 5 had been stopped. By reply dated 29 June 1989 the

Department explained that letter no. 6 had been stopped after it had been opened in the applicant's presence since it contained two letters which had been written on opposite sides of a single sheet of note paper and this did not comply with the rules for corresponding with solicitors on legal proceedings.

By letter dated 2 September 1989, the Department informed the applicant that letter no. 6 was stopped since it contained two letters written on the opposite sides of a single sheet of note paper. As this did not comply with the rules for corresponding with solicitors on legal proceedings, the letters were returned to be rewritten.

By petitions dated 3 October 1989, the applicant complained of letters nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9.

By letter dated 15 November 1989, the Department replied as follows:

Letter no. 1: - that the prison had no knowledge of a letter to Dr. J. Reid;

Letter no. 2: - that this letter was unsealed and addressed to Ms. Graham at her home address. Since Ms. Graham had only recently been appointed, the prison authorities were not aware that she was member of the Visiting Committee;

Letter no. 3: - that this letter was in fact received by Ms Knighton unopened;

Letter no. 4: - that there was no evidence to substantiate the applicant's allegations;

Letter no. 5: - that the applicant had already had explained to him why this letter was stopped, i.e. it was not on prison paper;

Letter no. 6: - that letters between a solicitor and a client should not contain correspondence to a third party;

Letters nos. 7 - 9: - that the prison authorities had no knowledge of these matters;

By letter dated 14 September 1989, the Department stated that it had no record of letter no. 14.

COMPLAINTS

The applicant complains of interference with his correspondence by the prison authorities. He also submits that he has no effective remedy in respect of his complaints. He invokes Articles 8 and 13 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 9 January 1990 and registered on 26 February 1990.

On 11 July 1991, the Rapporteur requested the United Kingdom Government to submit information on the applicant's complaints concerning interference with his correspondence.

The Government's reply was submitted on 10 September 1990 and 15 April 1991 and the applicant's comments in reply were submitted on 27 November, 30 December 1990 and 9 May 1991.

THE LAW

1. The applicant complains of interference with his correspondence by the prison authorities and invokes Article 8 (Art. 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."

In its opinion in the case of Silver and Others v. the United Kingdom (No. 5947/72, Comm. Report 11.10.80) the Commission stated as follows:

"... a prisoner has the same right as a person at liberty to respect for his correspondence, the ordinary and reasonable requirements of imprisonment being of relevance in assessing the justification for any interference with that right under the exceptions permitted by Article 8 para. 2 (Art. 8-2) ...

The Commission considers, therefore, that the right under Article 8 para. 1 (Art. 8-1) to respect for correspondence envisages a free flow of such communications, subject only to the limitations prescribed by Article 8 para. 2 (Art. 8-2).

The Commission concludes that the censorship of prisoners' correspondence by prison authorities, in principle, constitutes an interference with the right of prisoners to respect for their correspondence under Article 8 para. 1 (Art. 8-1)." (paras. 269 - 271)

As regards Article 8 para. 2 (Art. 8-2), the Commission recalled in that case that the interference had to be in accordance with the law, which entailed three requirements - that the interference in question must have some basis in domestic law and that the law must be adequately accessible and foreseeable (Eur. Court H.R., Sunday Times judgment of 26 April 1979, Series A No. 30, pp. 30-31, paras. 47-49). In respect of the condition "necessary in a democratic society" the Commission recalled that restrictions imposed on a prisoner's right to respect for correspondence had to be necessary and proportionate to meet a legitimate governmental aim. Thus a balance had to be struck between the need to rehabilitate a prisoner and the interest of public order and security (Silver and Others Report, loc. cit., paras. 286-290).

The opinion of the Commission was not substantially contested by the respondent Government before the European Court of Human Rights, which confirmed most of the Commission's conclusions (Eur. Court H.R., Silver and Others judgment of 25 March 1983, Series A, No. 61, pp. 32-40, paras. 83-104). The Court also applied in its judgment the general principles underlying the phrase "necessary in a democratic society", including inter alia, the principle that to be compatible with the Convention the interference must correspond to a "pressing social need" and be "proportionate to the legitimate aim pursued" (loc.cit., pp. 37-38, para. 97).

The case of Silver concerned almost exclusively complaints of the stopping of letters. As regards the opening of letters, without stopping, the case-law of the Commission and Court establishes that the

supervision of prisoners' correspondence, while being an interference with the right to respect for correspondence, is in general justified under the provisions of Article 8 para. 2 (Art. 8-2) for the prevention of disorder and crime (Silver and Others Report, loc. cit., paras. 423 - 426). In addition, the delay in the posting of a letter while the authorities contacted the applicant's representative was found in the case of McCallum v. the United Kingdom (No. 9511/81, Comm. Report 4.5.89) to be an interference justified under Article 8 para. 2 (Art. 8-2) as being for the protection of the rights and freedoms of others. Similarly, in Silver (loc. cit., paras. 423-426) the Commission found that a three week delay in the posting of a letter while it was referred to the Secretary of State did not constitute a violation of Article 8 (Art. 8) of the Convention.

The Commission has examined the applicant's complaints in light of the principles and case-law set out above.

Letter no. 1

The applicant alleges that this letter to his Member of Parliament was not sent. By reply dated 15 November 1989 to a petition, the Department stated that it had no knowledge of this matter. The Government submits that the records indicate that the applicant corresponded regularly with Members of Parliament and that there was no restriction imposed on this correspondence. It suggests that if the letter did not arrive, it must have gone astray in the post.

The Commission finds no indication on the facts of this case that this letter was stopped, or interfered with by the prison authorities.

It follows that this complaint discloses no appearance of a violation of Article 8 (Art. 8) of the Convention and that it must be dismissed as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

Letter no. 2

The applicant complains that this letter dated 20 September 1988 to Councillor Ms Graham was opened and read. By reply dated 15 November 1989 to one of the applicant's petitions, the Department explained that the letter had been addressed to Ms. Graham at her home address and that since she had been recently appointed to the Visiting Committee, the prison officer had been unaware that it was to a member of the Visiting Committee.

The Commission notes that the letter which was sent to Ms. Graham was opened inadvertently and that generally letters to members of the Visiting Committee are unopened. In these circumstances the Commission therefore finds no indication of a violation of Article 8 (Art. 8) of the Convention and dismisses the complaint as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

Letter no. 3

The applicant complains that this letter dated 24 October 1988 to Councillor Mrs. Knighton was not sent. The Department in its letter of 15 November 1989 informed the applicant that Mrs. Knighton had received the letter and the Government have provided a letter from Mrs. Knighton confirming this fact. The Commission therefore finds that this complaint is unsubstantiated and must be dismissed as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

Letter no. 4

The applicant complains of the delay in the sending of his letter of 27 or 28 October 1988 to the Chief Constable of Strathclyde. The letter contained allegations that a prison officer had stolen property belonging to the applicant. It was not sent until 8 November 1988. He complained of this delay in his petition of 3 October 1989 and in its reply of 15 November 1989, the Department stated that the complaint was unsubstantiated. However, the Government have explained that following a request by the local police, the prison authorities accompany each letter from a prisoner with their comments on the prisoner's allegations.

The Commission notes that this in effect entails the prison authorities investigating a complaint before passing on a letter to the police and appears to impose a "de facto" prior ventilation rule. The Commission considers that this complaint raises questions of fact and law requiring further examination. It therefore adjourns examination of this complaint.

Letter no. 5

The applicant has complained of the stopping of this letter of 30 December 1988 to Mrs. Calvert. It appears that the applicant first complained of this interference in his petition of 9 January 1989, to which the reply was dated 13 March 1989. The Commission notes however that the applicant first introduced his complaint on 9 January 1990, which is more than six months after the decision to stop the letter. It follows that this complaint fails to comply with the six months time-limit imposed by Article 26 (Art. 26) of the Convention and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

Letter no. 6

The applicant complained of the stopping of this letter dated 4 January 1989 to his solicitor in his petitions of 9 January 1989 and 24 April 1989, to which he received a reply dated 29 June 1989. The Commission notes however that the applicant first introduced his complaint on 9 January 1990, which is more than six months after this decision. It follows that this complaint fails to comply with the six months time-limit imposed by Article 26 (Art. 26) of the Convention and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

Letter no. 7

The Commission recalls that the applicant's letter of 3 February 1989 to Councillor Murray was stopped and the applicant instructed to re-write it. This letter, which was addressed to a Councillor involved in a working party on penal reform, contained allegations of assault by prison officers on other prisoners. The Department in its reply of 15 November 1989 to the applicant's petition stated that it had no knowledge of these matters. The Commission finds that the alleged interference raises questions of fact and law necessitating further examination. It therefore adjourns examination of this complaint.

Letter no. 8

The applicant alleges that this letter, dated 17 June 1989, to a prisoner in a different part of the prison, was stopped. It concerned the applicant's civil suit alleging theft by a prison officer and the applicant intended to call the other prisoner as a witness. According to its reply of 15 November 1989, the Department had no knowledge of the matter. The Government state that the letter is recorded as having been sent and that it is not aware of any reason why it should have been stopped or diverted.

The Commission finds in the circumstances of the case that the

applicant has failed to substantiate this complaint. It follows that it must be dismissed as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

Letter no. 9

This letter dated 13 November 1988 to a prisoner in another prison was stopped. While the Department alleged that it was not aware of this in its reply of 15 November 1989, the Government state that it was stopped under the prison regulations in the interests of security or good order or discipline. The Commission notes that this letter contained veiled threats of retribution.

The Commission finds on the facts of this case that the stopping of this letter was "necessary in a democratic society" for the aim of preventing disorder or crime within the meaning of Article 8 para. 2 (Art. 8-2) 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.

Letters nos. 10 and 11

These letters of 23 January 1989 to Mr. Jenkinson and of 5 January 1989 to Mrs. Calvert were apparently stopped by the prison authorities but, on complaint by the applicant, the Prison Department instructed that both should be allowed to issue. In these circumstances the Commission finds no indication of a violation of Article 8 (Art. 8) of the Convention, a short delay while the authorities decide on the conformity of measures with prison regulations being in general compatible with this provision 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.

Letters nos. 12, 13 and 14

The applicant alleges that these letters were stopped. The Government state that letter no. 14 is recorded as having been issued on the relevant letter sheets. They have no knowledge of any stopping of these letters. They comment that the applicant had sent letters to these correspondents on numerous other occasions and that there was certainly no prohibition on correspondence with these persons, one of whom was an official with the Prison Department Headquarters.

The Commission finds in the circumstances of the case no evidence of any interference by the prison authorities. It follows that these complaints are manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

Letters nos. 15, 17, 18 and 19

The applicant complains of delay in the sending of these letters. Even assuming however that the applicant has complied with the requirements of Article 26 (Art. 26) of the Convention as regards the six months time-limit and exhaustion of domestic remedies, the Commission notes that the delay complained of did not exceed three days. Short periods of delay while letters are checked for conformity with prison regulations are in general compatible with the provisions of the Convention. The Commission finds no indication on the facts of this case of any interference contrary to 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.

Letter No. 16

The applicant complains that this letter to his solicitor was delayed five days before posting. The Commission has in previous cases acknowledged the importance of access by a prisoner to his solicitor, in particular where potential litigation is involved (see e. g. Campbell and Fell v. the United Kingdom, Comm. Report 12.5.82). It has also found that such correspondence should only be the subject of interference, by way of screening, in exceptional circumstances (see e.g. Campbell v. the United Kingdom, No. 13590/88, Comm. Report 12.7.90). The Commission however finds it unnecessary to decide whether substantial delay in the posting of letters to solicitors also raises problems under Article 8 (Art. 8) of the Convention. The Commission notes that it does not appear from the material submitted by the applicant that he raised this complaint with the Secretary of State. Since a petition to the Secretary of State has been found to constitute an effective remedy as regards the application of prison rules (Eur. Court H.R., Silver judgment of 25 March 1983, Series A No. 61, pp. 42-44, paras. 111-119), the Commission finds that the applicant has failed to exhaust domestic remedies as required by Article 26 (Art. 26) of the Convention.

This complaint must therefore be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

Fraudulent certificates of posting

The applicant alleges that various certificates of posting issued by the postal authorities relating to his correspondence have been fraudulently filled in or otherwise tampered with. He points out to different handwriting appearing on slips and numbers which do not appear to correspond. The Government have explained the alleged discrepancies arose from the fact that different prison officers fill in the certificates during the course of the day and have submitted the statement of the local postmaster, who observed nothing irregular in the certificates in question, noting that his members of staff had different ways of filling them in.

The Commission finds no indication on the facts of the case that the discrepancies noticed by the applicant disclose any interference with his correspondence.

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

Article 13 (Art. 13)

The applicant complains that he has no remedy for his complaints as required by Article 13 (Art. 13) of the Convention.

The Commission finds this complaint raises points of fact and law requiring further examination. It therefore adjourns examination of this part of the application.

For these reasons, the Commission by a majority

DECIDES TO ADJOURN its examination of the complaints concerning letters nos. 4 and 7 under Article 8 (Art. 8) of the Convention and the complaint under Article 13 (Art. 13) of the Convention;

DECLARES INADMISSIBLE the remainder of the application.

Secretary to the Commission President of the Commission

(H.C. KRÜGER) (C.A. NØRGAARD)