

EUROPEAN COMMISSION OF HUMAN RIGHTS

Application No. 8186/78

Sidney DRAPER

against

the United Kingdom

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REPORT OF THE COMMISSION

(adopted on 10 July 1980)

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I. INTRODUCTION

1. The following is an outline of the case as it has been submitted by the parties to the European Commission of Human Rights.

The substance of the application

2. The applicant, Mr. Sidney Draper, is a United Kingdom citizen born in 1948. He is detained in Parkhurst Prison in the Isle of Wight, where he is serving a sentence of life imprisonment. He is represented by Messrs. Roach Pittis & Co., Solicitors, of Newport, Isle of Wight and Mr. Norman Rudd, barrister-at-law, acting on their instructions.

3. In July 1977 the applicant applied to the Governor of Parkhurst Prison for permission to leave prison in order to marry. His request was referred to the Home Office which refused it in September 1977. Their decision was in accordance with a policy whereby prisoners serving life sentences are not allowed temporary release in order to marry unless either the effect of the marriage would be to legitimise a child or a provisional date for release has been fixed. No facilities are available for the celebration of marriages within prisons in the United Kingdom and marriage by proxy is not permitted. The applicant submits that in the circumstances his right to marry, as guaranteed by Art. 12 of the Convention, was violated.

Proceedings before the Commission

4. The application was introduced with the Commission on 16 November 1977 and registered on 6 March 1978. On 10 May 1978 the member of the Commission acting as Rapporteur requested the respondent Government to submit certain relevant information in accordance with Rule 40 (2) (a) of the Commission's Rules of Procedure. The Government submitted the information requested on 9 June 1978 and the applicant submitted comments in reply on 6 July 1978. On 7 December 1978 the Commission considered the case along with another concerning the right to marry of a prisoner (1). It decided, in accordance with Rule 42 (2) (b) of its Rules of Procedure, to invite the

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(1) Application No. 7114/75, Hamer v. the United Kingdom, see Decisions and Reports 10, p. 174 for Decision on Admissibility.

respondent Government to submit written observations on the admissibility of the application. On 14 March 1979 the Government stated that, whilst they made no admission concerning the substance of the complaint, they did not wish to submit detailed arguments at that stage. On 1 May 1979 the Commission declared the application admissible, since it raised substantial questions under Art. 12 of the Convention similar to those arising in Application No. 7114/75 (sup. cit.).

5. Written observations on the merits of the case were submitted by the respondent Government on 3 October 1979 and on behalf of the applicant on 6 December 1979. On 7 February 1980 the Secretary, on the instructions of the Acting President, requested the parties to state whether they wished to make any further submissions (written or oral) on the merits of the case. Neither party indicated a wish to do so and the Commission proceeded with its examination of the case without obtaining any further submissions.

#### The present Report

6. The present Report has been drawn up by the Commission in pursuance of Art. 31 of the Convention and after deliberations and votes in plenary session, the following members being present:

MM. G. SPERDUTI, Acting President (Rules 7 & 9 of  
the Rules of Procedure)

J. E. S. FAWCETT  
C. A. NØRGAARD  
F. ERMACORA  
E. BUSUTTIL  
L. KELLBERG  
B. DAVER  
C. H. F. POLAK  
J. A. FROWEIN  
R. J. DUPUY  
G. TENEKIDES  
B. KIERNAN  
N. KLECKER  
J. SAMPAIO  
J. A. CARRILLO

7. The text of the Report was adopted by the Commission on 10 July 1980 and is now transmitted to the Committee of Ministers in accordance with Art. 31 (2).

8. A friendly settlement of the case has not been reached and the purpose of the present Report, pursuant to Art. 31 of the Convention, is accordingly:

- (1) to establish the facts; and
- (2) to state an opinion as to whether the facts disclose a breach by the respondent Government of its obligations under the Convention.

9. A schedule setting out the history of proceedings before the Commission and the Commission's Decision on Admissibility in the case are attached hereto as Appendices I and II. An account of the Commission's unsuccessful attempt to reach a friendly settlement has been produced as a separate document (Appendix III).

10. The full text of the pleadings of the parties, together with the documents lodged as exhibits, are held in the archives of the Commission and are available to the Committee of Ministers, if required.

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## II. ESTABLISHMENT OF THE FACTS

11. The facts of the case are not generally in dispute between the parties.

### The factual basis of the applicant's complaint

12. On 10 April 1974 the applicant was sentenced to life imprisonment at the High Court in Glasgow on his conviction for murder in the course of a robbery. The judge made a recommendation, in accordance with S. 1 (2) of the Murder (Abolition of Death Penalty) Act 1965, that the applicant should serve a minimum of 25 years before his release was considered. At all relevant times he has been detained in Parkhurst Prison. No date for his release has been fixed, whether provisionally or otherwise.

13. The applicant has stated that he and a Miss Jacqueline Bowen wish to marry and Miss Bowen has written a letter to the Commission to confirm this. Miss Bowen was previously married to a Mr. Roderick. They were divorced and the divorce, according to the applicant, became final on 21 September 1976.

14. On 11 July 1977 the applicant applied to the Governor of Parkhurst Prison for permission to leave prison in order to marry Miss Bowen. This request was transmitted to the Home Office who on 14 September 1977 informed the Governor that permission could not be granted. The decision was conveyed to the Governor in a Memorandum, the relevant part of which read as follows:

"It is not intended that prisoners serving a sentence of life imprisonment should be given facilities to marry unless either they have been given a provisional date of release or the marriage would legitimise a child. Since neither consideration applies in Draper's case, I am afraid it is not possible to allow him temporary absence from the prison to be married."

15. The applicant was informed of the decision on or about the following day.

### Domestic law of marriage

16. No provision of English law expressly removes or regulates the right of a prisoner to marry. Prisoners are subject to the general laws in force concerning such matters as legal capacity, consanguinity and the time, place and manner of celebration of a marriage. The fact that a person is serving a sentence of imprisonment does not affect his legal capacity to marry. Marriage by proxy is not permitted.

17. The Marriage Act 1949 (1) contains detailed provisions as to the places in which marriages may be celebrated. Broadly speaking the places of marriage prescribed by the Act are all places to which the public has access. No such prescribed places exist within prisons. Subject to two exceptions any marriage must be celebrated at a prescribed place. The exceptions arise (a) where a special licence has been granted by the Archbishop of Canterbury or one of his officers and (b) where a Registrar General's licence has been granted under the Marriage (Registrar General's Licence) Act 1970 (2). A Registrar General's licence may be issued in certain cases of serious illness. A special licence from the Archbishop of Canterbury is available only for marriages celebrated in accordance with the rites of the Church of England. It does not appear from the parties' submissions that it is open in practice to a prisoner to marry in prison on the basis of such a licence.

18. It was thus not possible for the present applicant to marry within prison.

Domestic law and practice concerning life imprisonment and the marriage of life prisoners

19. S.1 of the Murder (Abolition of Death Penalty) Act 1965 (3) (the "1965 Act"), provides that a person convicted of murder shall be sentenced to imprisonment for life. S.1 (2) of the Act empowers the court, on passing such a sentence, "to declare the period which it recommends to the Secretary of State as the minimum period which in its view should elapse before the Secretary of State orders the release of that person on licence ...".

20. A life prisoner has no right to be released from prison at any time. However S. 61 (1) of the Criminal Justice Act 1967 (4) (the "1967 Act"), empowers the Secretary of State (the Home Secretary in practice) to order the release of such a prisoner on licence, on the recommendation of the Parole Board (5) and after consultation with the Lord Chief Justice and (if available) the trial judge. The Home Secretary cannot order such release unless the Parole Board recommends it. However if it does so recommend, the final decision rests with the Home Secretary, who is not bound either by the recommendation of the Parole Board or the views of the judiciary. Nor is he bound by any recommendation made by the Court under S. 1 (2) of the 1965 Act although, according to the Government, he attaches great weight to it when considering a prisoner's release.

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(1) 12, 13 and 14 Geo. 6, c. 76.

(2) 1970 c. 34.

(3) 1965 c. 71.

(4) 1967 c. 80.

(5) A statutory body set up under S. 59 of the 1967 Act.

21. A life sentence is never completely discharged. A prisoner who is released is on a licence which remains in force for the rest of his life. S. 62 of the 1967 Act contains provisions allowing for the revocation of such licences and recall to prison.

22. The Government state that in considering the release of a life sentence prisoner the Home Secretary takes account of a number of factors including the offence, the prisoner's background and record, his progress in prison, medical and psychiatric considerations, considerations of retribution and general deterrence and any formal recommendation by the trial judge. The overriding factor is the protection of the public. He will not authorise release unless satisfied, so far as reasonably possible, that this is unlikely to constitute a risk to any individual or to the public at large. Where he decides that release is appropriate, a provisional date for release is fixed some time ahead. This is usually a year but may be more or less. Release is normally made conditional on good conduct, the prisoner completing satisfactorily a period on a pre-release employment scheme (involving work outside the prison) and his having suitable resettlement arrangements.

23. S. 47 of the Prison Act 1952 (1) empowers the Secretary of State to make rules for the regulation and management of prisons and, by virtue of S. 47 (5), such rules may provide for the temporary release of persons detained in a prison. Rule 6 of the Prison Rules 1964 (as amended) provides for such temporary release and is in the following terms:

"Temporary release

1. A prisoner to whom this Rule applies may be temporarily released for any period or periods and subject to any conditions.
2. A prisoner may be temporarily released under this Rule for any special purpose to enable him to engage in employment, to receive instruction or training or to assist him in his transition from prison life to freedom.
3. A prisoner released under this Rule may be recalled to prison at any time whether the conditions of his release have been broken or not.
4. This Rule applies to prisoners other than persons committed in custody for trial or to be sentenced or otherwise dealt with by or before the Crown Court, or remanded in custody by a Court."

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(1) 15 and 16 Geo. 6 and 1 Eliz. 2 c. 52.



24. As indicated above, the practice concerning the marriage of life prisoners is, and has at all relevant times been, that they are not allowed to leave prison in order to marry unless either the effect of the marriage would be to legitimise a child or a provisional date for release has been fixed.

25. Until 1977 the general rule was that prisoners were not allowed to leave prison in order to marry except to legitimise their children or on compassionate grounds. The position was then changed so as to allow convicted prisoners (other than those serving life sentences) to leave prison in order to marry if they had over 12 months to serve before their "earliest date of release". The 12 months period has since been reduced to six months.

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### III. SUBMISSIONS OF THE PARTIES

#### Initial submissions of the applicant

26. In his application the applicant complained that he had been denied the right to marry guaranteed him by Art. 12 of the Convention. Commenting on information submitted by the Government as to the policy concerning the marriage of life prisoners, he observed that Art. 12 protected his right to marry "according to the national laws ...". No existing law denied him the right to marry or gave the Government the right to determine whether he should be allowed to do so. Departmental policy, on which the Government relied, was not law. The change of policy affecting prisoners other than life prisoners had resulted only from another case brought before the Commission. The fact that the applicant in that case had been serving a determinate sentence was academic since neither Art. 12 nor United Kingdom law contained any provision allowing for differentiation or discrimination in the implementation of human rights, according to the status or sentence of a prisoner.

27. In effect all the Government said was that they did not like to allow life prisoners to leave prison so as to marry. They gave no consideration to the lady involved, who was also denied her rights. The applicant and his fiancée would be prepared to marry by proxy if necessary.

#### Submissions of the respondent Government

28. In their observations on the merits the Government first referred to the law and practice relevant to life prisoners, their release and their marriage (see above).

29. They stated that marriage to legitimise a child was allowed since the child's interest was considered the overriding consideration. Nonetheless it might result in delaying the prisoner's release if the fact of the marriage would put mother or child at risk. The reason for the second exception to the practice, namely allowing marriage where a provisional release date had been fixed, was that then the reality of a marriage in the full sense of the word could be foreseen.

30. Art. 12 did not protect an absolute right. Firstly it was clear that it was subject to the national law governing its exercise. A life prisoner, like anyone else, must wait until he could satisfy the requirements of the law before he could marry. Art. 12 must also be interpreted in the light of the circumstances of the individual claiming to exercise the right. In the case of a prisoner

in the applicant's position, there was no prospect, if he married, that he could live with his wife and so ensure a sound and normal start to their married life. The Government referred to the factors taken into account by the Commission in Application No. 892/60 in deciding that the refusal to allow a prisoner to marry in that case did not breach Art. 12 (1). These included the District Court's finding that the applicant had to expect a heavy prison sentence and possibly detention for an indefinite period and could not therefore expect for a long time to live with his future wife, though this was essential for the marriage of a young couple to have a sound foundation. In the present case the applicant faced the prospect of at least another 20 years before his possible release.

31. At the request of the Commission the Government also gave details of the reasons for adopting a different policy towards life prisoners than towards others. A life prisoner's relationships with women were often critical factors in deciding whether he should be released. Marriage might thus have the effect of postponing his eventual release, or increasing the risk to the public in his release. The Home Secretary must have regard to his overriding responsibility for the protection of the public. He would be open to severe criticism if, by allowing the marriage in custody of a life prisoner with a history of violent or sexual offences against women or children, the wife or any children would be put at risk on his release. The Government gave examples of particular cases in which difficulties could arise. They might involve a prisoner who had killed his wife or mistress, who had killed children or committed serious sexual offences against them, or who had killed his wife, or the husband of his mistress, in order to be free to marry his mistress. In the latter category of case public opinion would be outraged if it were known that the Home Secretary had enabled him to fulfil his object. In the other cases the risk of future violence against any woman or child with whom the prisoner might associate would have to be taken into account in considering his release. If a provisional release date were authorised, it followed that objections to his marriage resulting from such risks were thought no longer to apply, or to have been substantially reduced.

32. The Government therefore requested the Commission to conclude that the practice concerning the marriage of life prisoners was consistent with Art. 12.

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(1) X. v. the Federal Republic of Germany, Yearbook IV, p. 240 at p. 254.

Applicant's observations in reply

33. On behalf of the applicant it was submitted that the applicant, as a man of marriageable age, had the right to marry under Art. 12. The only qualification on the right was that it was subject to the national laws governing its exercise. It would be contrary to Art. 14 of the Convention to discriminate against him in the enjoyment of the right by reason of his status as a prisoner.

34. Under English law, a prisoner retained full legal capacity, in the absence of express provision removing it (as for example in the case of the right to vote). His capacity to marry was not removed. English law had also refused to recognise a disability to marry imposed by foreign law, when it was penal in character (1). He could observe the formalities prescribed by English law either within the prison by obtaining a special licence or outside it. It appeared from the Government's arguments that they did not deny the applicant the right to marry, but purported to deny him the means to do so. If their case was simply that they would not allow the applicant to leave prison, that objection could be overcome by a marriage within prison. If in fact by denying him permission to leave prison the Government sought to deny him the right to marry, such denial was contrary to Art. 12.

35. As to the purported justification on grounds of "policy" the applicant retained the relevant capacity in law and such "policy" was not part of the law. If it existed, and had a written form, the applicant had no access to the relevant document.

36. As to the exception to the rule where a child would be legitimised, its rationale was to confer a status (legitimacy) on a third party. Illegitimacy was in fact of little relevant consequence in English law. The exception showed that appropriate arrangements could be made for a prisoner to leave prison. Furthermore the woman with whom the applicant wished to intermarry had a right to marry under Art. 12 and thus to attain the status of a married person. Though not the subject of this application, her right to marry was effectively denied.

37. The applicant accepted that his right to marry under Art. 12 was subject to the national laws governing its exercise. However he had demonstrated that he did not need to leave prison in order to comply with the laws. By alleging that he must wait until he could satisfy the requirements of the law, the Government was denying him the right to marry by denying him the means to do so. This approach contravened Art. 18 of the Convention. The suggestion

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(1) Scott. v. AG, 1886 11 P.D. 128.

that Art. 12 should be interpreted in the light of the circumstances of the individual concerned should not be followed. It was a negation of the principles of the Convention, a recipe for totalitarianism and a basis for discrimination in breach of Art. 14.

38. The argument based on the fact that the applicant could not live with his wife confused his legal right to marry with the manner in which he exercised it, or in which the Government would like him to exercise it. If two citizens wished to intermarry and were free to do so, and did so in accordance with law, whether or not they lived together or their marriage was sound or normal were matters in which the Government had no right to interfere under English law and such interference would be in breach of Art. 8 of the Convention. A valid marriage could be contracted under English law notwithstanding that it had not been consummated.

39. As to the Government's observations concerning the relations of life prisoners with women, no reason was advanced as to why the applicant should not be able to foster a sound relationship with a woman such as would enable release to be considered.

40. The Government in effect admitted that it denied the applicant the right secured him under Art. 12. The only substantial argument they advanced for doing so was that the right must be interpreted in the light of the circumstances of the individual claiming to exercise it. This gloss on the interpretation of the Convention should be rejected and the argument condemned unequivocally.

#### IV. OPINION OF THE COMMISSION

##### Points at issue

41. The principal point at issue in the present case is whether the refusal to allow the applicant temporary release from prison in order to marry involves a violation of his right to marry, as guaranteed by Art. 12 of the Convention. In his observations on the merits the applicant has also suggested that the same facts also violate his rights under Arts. 8, 14 and 18 of the Convention.

##### Article 12

42. Art. 12 is in the following terms:

"Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right."

43. The Commission first recalls that in a previous decision on admissibility, it found that a refusal to allow a prisoner to marry was not in breach of Art. 12 (Application No. 892/60, X. v. the Federal Republic of Germany, Yearbook IV, p. 240; Collection of Decisions 6, p. 17). The respondent Government have referred to that decision and invited the Commission to reach the same conclusion. However the circumstances of the present case are not altogether comparable. In particular in the earlier decision the Commission laid emphasis on the existence of particular rules of German law concerning the right to marry and the extent to which prisoners' rights could be restricted.

44. In any event in interpreting Art. 12 of the Convention the Commission must now have regard to subsequent case-law of the European Court of Human Rights on the scope of permissible limitations to Convention rights, of prisoners in particular. It must also consider the facts now before it in the light of present-day conditions. In this respect it is relevant to note the general tendency in European penal systems in recent years towards reduction of the differences between prison life and life at liberty and the increasing emphasis laid on rehabilitation.

45. The Commission has also previously held that the right to "found a family", guaranteed by Art. 12, was not infringed by a refusal to allow conjugal relations in prison (Application No. 6564/74, X. v. the United Kingdom, 2 Decisions and Reports, p. 105; Application No. 8166/78, X. v. Switzerland, 12 Decisions and Reports, p. 241). However in the

Commission's opinion different considerations apply in the case of the right to marry. This is, essentially, a right to form a legal relationship, to acquire a status. Its exercise by prisoners involves no general threat to prison security or good order comparable to those referred to by the Commission in the above-mentioned decisions (see especially Application No. 8166/78, sup. cit.). In particular a marriage ceremony can take place under the supervision of the prison authorities.

46. The Commission therefore finds the previous case-law to which it has referred of little assistance in the present case.

47. As to the general question of interpretation it is clear that Art. 12 guarantees a fundamental "right to marry". Whilst this is expressed as a "right to marry ... according to the national laws governing the exercise of this right", this does not mean that the scope afforded to national law is unlimited. If it were, Art. 12 would be redundant. The role of national law, as the wording of the Article indicates, is to govern the exercise of the right.

48. The Court has held that measures for the "regulation" of the rights to education (Art. 2 of Protocol No. 1) or access to court (Art. 6) "must never injure the substance of the right" (Belgian Linguistic Case, Judgment of 23 July 1968, Series A, No. 6, p. 32, para. 5; Golder Case, Judgment of 21 February 1975, Series A, No. 18, pp. 18-19, para. 38). In the Commission's opinion this applies also to the national laws which govern the exercise of the right to marry.

49. Such laws may thus lay down formal rules concerning matters such as notice, publicity and the formalities whereby marriage is solemnised (cf. Application No. 6167/73, X. v. the Federal Republic of Germany, Decisions and Reports 1, p. 64). They may also lay down rules of substance based on generally recognised considerations of public interest. Examples are rules concerning capacity, consent, prohibited degrees of consanguinity or the prevention of bigamy (cf. Application No. 3898/68, X. v. the United Kingdom, Collection of Decisions, Vol. 35, pp. 97 and 102). However in the Commission's opinion national law may not otherwise deprive a person or category of persons of full legal capacity of the right to marry. Nor may it substantially interfere with their exercise of the right.

50. As to the position of prisoners in general, in the Commission's opinion a person deprived of his liberty under Art. 5 remains in principle entitled to the right to marry and any restriction or regulation of the exercise of that right must not be such as to injure its substance (Belgian Linguistic and Golder Cases, sup. cit.).

51. As to the facts of the present case, the respondent Government have argued that the practice applied with regard to the marriage of life prisoners is consistent with Art. 12. They have first submitted that the right is subject to the national law governing its exercise and that a life sentence prisoner, like anyone else, must wait until he can satisfy the requirements of the law before he can marry. In substance the Government appear to suggest that the applicant has not been denied the right to marry, but is merely unable for the time-being to comply with the requirements of national law concerning the place of celebration of a marriage.

52. The Commission first recalls that the Court has held that, even though a right is not formally denied, "hindrance in fact can contravene the Convention just like a legal impediment" and "hindering the effective exercise of a right may amount to a breach of that right, even if the hindrance is of a temporary character" (Golder Case, sup. cit., p. 13, para. 26).

53. Here a combination of factors has prevented the applicant from marrying. He is in prison. National law does not allow of his marrying there. The prison authorities refuse to allow him temporary release so that he can marry in a prescribed place elsewhere.

54. This situation is not one of the applicant's own choice. Nor can it be said that his inability to marry is simply an inevitable result of his imprisonment, or of his own actions, for which the Government are not responsible. Personal liberty is not a necessary pre-condition to the exercise of the right to marry. The practice of States in allowing prisoners to marry, either within prison or on temporary release under escort, shows that no specially onerous or complex arrangements are necessary. The exercise of the right, particularly within a prison, does not, as the Commission has already pointed out, involve the prisoner escaping from the supervision and control of the prison authorities.

55. Some administrative arrangements must of course be made by the prison authorities before a prisoner can marry. However this also applies to other Convention rights, such as the right of access to court (Art. 6) and the right to respect for correspondence and family life (Art. 8). Some positive action is required on the part of the prison authorities to make these rights effective. A prisoner cannot correspond with his legal adviser or anyone else, unless the authorities transmit his letters. He cannot receive visits from members of his family unless arrangements are made for them to come



in. He cannot attend a family funeral unless he is allowed temporary release. Yet the case-law of both the Commission and Court shows that where a prisoner is refused the necessary permission or facilities in such cases, his inability to exercise the right in question is not to be seen as resulting from the mere fact that he is in prison, or from his own conduct. The refusal of the necessary permission or facilities is, rather, to be seen as an interference with the relevant Convention right by the competent authorities, which may or may not be justified under the Convention. This was the approach of the Commission and Court in the Golder Case (sup. cit., Series B, Vol. 16 - Report of the Commission) and that of the Commission in cases involving, for instance, the refusal of permission to attend a family funeral (Application No. 4623/70, X. v. the United Kingdom, Collection of Decisions 39, p. 63; Application No. 5229/71, X. v. the United Kingdom, Collection of Decisions 42, p. 140).

56. Following the same approach in the present case, the Commission considers that the respondent Government are responsible for an interference with the exercise of the applicant's right to marry.

57. It remains to be considered whether this interference amounts to a breach of that right, or whether it is justified as resulting from national law governing the exercise of the right to marry or by virtue of any implied limitation on the right. In this connection the Commission notes that the effect of applying the relevant practice to the applicant is to make it impossible for him to marry until a provisional date for his release has been fixed. This is clearly a very remote prospect in his case. He has no formal right to release at any time and is unlikely to be released on licence for a substantial number of years. If he serves the minimum sentence recommended by the trial judge he will not be released until about 1999 at the earliest. The applicant is thus faced with an indefinite delay, likely to last for a substantial number of years, before his proposed marriage can take place. He is thus effectively denied the right to marry for the foreseeable future.

58. In the Commission's opinion the imposition of any substantial period of delay on the exercise of the right to marry must in general be seen as an injury to the substance of that right. This is so whether the delay results from national law purporting merely to "govern the exercise" of the right, from administrative action, or a combination of both.

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59. Nevertheless the Commission must consider whether there are any particular circumstances arising from the applicant's position as a life sentence prisoner with little or no prospect of an early release, which could justify the interference in the present case. The respondent Government have submitted in particular that the Commission should have regard to the fact that he could not live with his wife before his eventual release. They have also pointed to various circumstances which may give rise to difficulty in the case of the marriage of life sentence prisoners.

60. As to the former point, the Commission does not regard it as relevant that the applicant could not cohabit with his wife or consummate his marriage whilst serving his sentence. The essence of the right to marry, in the Commission's opinion, is the formation of a legally binding association between a man and a woman. It is for them to decide whether or not they wish to enter such an association in circumstances where they cannot cohabit.

61. As to the latter point, in the Commission's opinion no general consideration of public interest arising from the fact of imprisonment itself can justify the denial of the right to marry for a substantial period as in the present case. In this context the Commission recalls its view that persons deprived of their liberty remain in principle entitled to the right to marry (para. 49 above). As it has also already pointed out, no particular difficulties are involved in allowing the marriage of prisoners. In addition there is no evidence before the Commission to suggest that, as a general proposition, it is in any way harmful to the public interest to allow the marriage of prisoners. Marriage may, on the contrary, be a stabilising and rehabilitative influence. In the Commission's opinion these considerations apply generally in the case of life sentence prisoners as they do to others.

62. In explaining the reasons for the practice followed in the specific case of life sentence prisoners, the Government have mentioned various particular types of case, notably involving prisoners convicted of crimes in a family context (such as murder of a spouse) or offences against women or children, where marriage or re-marriage of the prisoner could give rise to public outrage or difficulties concerning release. It is not the Commission's task to express an opinion in abstracto as to whether in any of the cases mentioned by the Government the right to marry of the prisoner might legitimately

be restricted under Art. 12 "according to the national laws governing the exercise of this right". It is conceivable that in cases involving certain types of offence, a restriction on the right to marry could be justified on the basis of considerations of public interest (cf. para. 48), regardless of the type or length of sentence imposed on the perpetrator. However in the Commission's opinion a general restriction on all life sentence prisoners cannot be so justified. Furthermore the offence of which the present applicant has been convicted, however serious it may have been, does not fall into any of the categories of case mentioned by the Government in this context.

63. The Commission therefore considers that the restriction imposed on the applicant's ability to exercise his right to marry, which has resulted from the combined effects of national law and administrative action, involves an injury to the substance of that right.

#### Conclusion

64. The Commission therefore finds by a unanimous vote that the applicant's right to marry guaranteed by Art. 12 of the Convention has been violated.

#### Articles 8, 14 and 18

65. In his observations on the merits the applicant has further suggested, for the first time, that the refusal to allow him temporary release in order to marry has also involved the violation of Arts. 14 and 18 of the Convention. He has also suggested that interference by the State with the lawful inter-marriage of its citizens may be in breach of Art. 8 of the Convention. Having found that the decision complained of was in breach of Art. 12 of the Convention, the Commission considers it unnecessary to go into these further issues, which have not in any event been fully argued in the proceedings before it.

Secretary to the Commission

Acting President of the Commission

(H.C. KRÜGER)

(G. SPERDUTI)

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