

COUNCIL OF EUROPE

EUROPEAN COMMISSION OF HUMAN RIGHTS

DECISION OF THE COMMISSION

AS TO THE ADMISSIBILITY

Application No 9054/80  
by A           A  
against the United Kingdom

The European Commission of Human Rights sitting in private on 8 October 1982, the following members being present:

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

J.E.S. FAWCETT  
E. BUSUTTIL  
T. OPSAHL  
G. JORUNDSSON  
G. TENEKIDES  
S. TRECHSEL  
B. KIERNAN  
M. MELCHIOR  
A.S. GOZUBUYUK  
A. WEITZEL  
J.C. SOYER  
H.G. SCHERMERS

Mr H.C. KRUGER, Secretary to the Commission

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

Having regard to the application introduced on 11 May 1980 by A           A against the United Kingdom and registered on 21 July 1980 under file No 9054/80;

Having regard to

- the reports provided for in Rule 40 of the Rules of Procedure of the Commission;
- the Commission's decision of 20 March 1981 to give notice of the application to the respondent Government and to invite the parties' written observations on admissibility and merits in accordance with Rule 42 (2)(b) of the Rules of Procedure;

- the Government's observations of 12 August 1981;
- the applicant's observations in reply of 9 November 1981 and 9 February 1982;
- the Commission's decision of 6 May 1982 to invite the parties to a hearing on the admissibility and merits of the case, in accordance with Rule 42 (3)(b) of the Rules of Procedure);
- the said hearing on 8 October 1982;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a United Kingdom citizen born in 1953 who at the time of lodging his application was detained in HM Prison Gartree, Leicestershire, serving a sentence of life imprisonment. He is represented before the Commission by Messrs R.J. Burrough & Co, Solicitors, Maidstone.

As a result of an official statement that information about prisoners' clinical treatment was not subject to security classification, a committee of seven including three doctors was established by the Citizens' Commission on Human Rights (CCHR) to examine prisoners' medical records on their written request. This Committee is sponsored by the Church of Scientology. It seems that the applicant leads a counterpart of the CCHR, the League for Human Rights Observance (LHRO).

The applicant wrote to the CCHR giving his permission for them to obtain and examine his prison medical record. The Chairman of the CCHR is Mr A, with whom the applicant corresponds freely. The applicant wrote to him suggesting a visit to the prison to enable the applicant to give more confidential details about his medical history. This Mr A agreed to do and advised the applicant to send him a visiting order. However on 9 April 1980 the prison authorities did not allow the applicant to send Mr A such an order, as he was not a relative or friend of the applicant prior to imprisonment. (A similar refusal was made in respect of a proposed visit by a journalist and former chairman of the CCHR, Mr B, but this does not form part of the applicant's complaint.) Mr A raised the matter with the prison governor and the Prison Department of the Home Office, the latter replying on 18 April 1980 as follows:

"In general prisoners are not permitted to receive visits from people with whom they were not acquainted before they came into custody. I understand that the governor considered carefully [the applicant's] application to receive a visit from you, and your subsequent request, but concluded that there were no grounds for departing from our usual practice. We too have carefully considered whether a visit might be permitted, and concluded that there were no grounds for varying the governor's decision in the matter." An element of this decision stems from the Government's concern about the possible harmful effects of the activities of the Church of Scientology and the apparently unethical methods to obtain information used by Mr A's committee to unjustifiably discredit the prison medical service.

Mr A was, however, informed that the applicant would be allowed to continue corresponding with him. He was also informed that the basis for the decision lay in Rules 33 and 34 (8) of the Prison Rules 1964, which prohibits communication with outside persons without the leave of the Secretary of State. Such leave is usually refused in respect of persons not known to prisoners before entering custody, as in the present case.

The applicant protests that Mr A is a law abiding citizen, who has become a friend of his having written to him since the beginning of 1980.

#### COMPLAINTS

The applicant complains that the denial of visiting facilities to Mr A constituted a breach of his right to respect for private life ensured by Art 8 of the Convention and a breach of his right to freedom of association ensured by Art 11 of the Convention.

#### Proceedings before the Commission

The application was lodged with the Commission on 11 May 1980 and registered on 21 July 1980.

On 20 March 1981 the Commission decided to give notice of the application to the United Kingdom Government in accordance with Rule 42 (2)(b) of the Rules of Procedure and to invite the parties to submit their written observations on the admissibility and merits of the case.

The Government submitted its observations on 12 August 1981 to which the applicant first replied, in person, on 9 November 1981 and then, through his legal representative, on 9 February 1982.

On 6 May 1982 the Commission decided to invite the parties to a hearing on the admissibility and merits of the case (Rule 42 (3)(b) of the Rules of Procedure).

The Commission held the hearing in the case on 8 October 1982 in Strasbourg. At the hearing the applicant was represented by Mr A. Newman, counsel, and Mr R.J. Burrough, solicitor. The Government were represented by Mrs A. Glover, as Agent, Foreign and Commonwealth Office, Mr N. Bratza, counsel, Mr C. Osborne and Miss V. Dews, Home Office, and Mr R. Phillips, Treasury Solicitors Office.

## Summary of the observations of the parties

### Observations of the Government

#### 1. The facts

The Government points out that the applicant is allowed to correspond with Mr A and nearly 100 other persons. The prison records indicate that during the first six months of 1980 the applicant received three visits from a prison visitor, two from a Miss X and one from a Miss Y. Since this time the applicant has received several other visits from persons who are members of the Church of Scientology but who have visited him in their personal capacity.

The Government stresses that Mr A is Chairman of a Committee anxious to find evidence to unjustifiably discredit the prison medical service and which has apparently used unethical methods to obtain information about the service's operations, one medical member of the Committee having been censured by the General Medical Council in this respect. Although the Church of Scientology, which sponsors the said Committee, is lawfully established in the United Kingdom, the Government regards it with suspicion and keeps a close watch on its activities.

#### 2. The relevant domestic law and practice

The relevant domestic law relating to prisoners' visits is contained in Rules 33 and 34 (8) of the Prison Rules 1964 as amended by which prisoners may only be visited by relatives or friends unless otherwise decided by the Home Secretary. The Home Secretary has advised prison governors not to exercise this discretion in relation to persons known to be connected with the Church of Scientology. However, this advice is no more than that, ie it is not a Standing Order or directive formally limiting prisoners' visiting rights.

Generally prisoners take the initiative to obtain visiting orders from the prison authorities. A visiting order is a document which authorises the person named in it to visit a prisoner.

#### 3. Admissibility and merits

The Government submits that the right to respect for private life does not confer an unlimited right to establish and develop personal relations. This must depend of the individual's circumstances, the case of a prisoner requiring greater restrictions.

The Government submits that it was not a personal relationship which the applicant sought to develop with Mr A. He was not seeking a meeting of a social nature, but rather a meeting to further the aims of Mr A's organisation. Such a visit does not fall within the scope of the term "private life" within the meaning of Art 8 (1).

Alternatively, even assuming that there could be said to have been an interference with the applicant's right to respect for private life, the measure complained of was in accordance with the law and justified for reasons of public safety, the prevention of disorder or crime, the protection of health and the rights of others. In any event, respect was shown for the applicant's private life as he was allowed to correspond freely and receive certain other visits.

The Government requests therefore that this aspect of the case be declared inadmissible as being manifestly ill-founded or alternatively, that there be a finding of no breach of the Convention.

In so far as the applicant relies on Art 11 of the Convention, the Government refers to Application No 8568/79 for the proposition that this provision does not confer a right to enjoy the personal company of others. Alternatively the restriction imposed was also justified under the second paragraph of Art 11. The Government concludes, therefore, that the complaint is either manifestly ill-founded or discloses no breach of the Convention.

#### Submissions of the applicant

##### 1. The facts

The applicant contends that there is no basis under Art 8 (2) of the Convention for preventing Mr A visiting him. He could supply character references if necessary. To cut the applicant off from the outside world in this manner is contrary to the rehabilitative function of imprisonment.

Of the hundred correspondents mentioned by the Government the applicant states that most of them were business or other concerns such as State administrations, probation officers, solicitors etc. At the most only twenty were friends.

The applicant claims to have had very few visits during his ten years of imprisonment, having seen his parents, for example, for a total of 19 hours. He has not been visited by Miss Y and the other visits during the first six months of 1980, mentioned by the Government, were by official prison visitors concerned, precisely, about the few visits the applicant received.

As a member of the LHRO, the applicant states that he has been involved in investigations concerning misconduct in the prison medical services. He claims such investigations are legitimate and that, contrary to a parliamentary statement, prisoners' medical records are not being disclosed despite the prisoner's consent. The applicant intends initiating legal action to remedy this.

The applicant denies that Mr A's Committee has acted unethically or that the Church of Scientology merits the Government's suspicions nowadays. He contends that it is an established religion which is subjected to unjustifiable discrimination by State authorities.

2. Admissibility and merits

The applicant's main contention is that the refusal of Mr A's visit was in breach of his right to respect for private life ensured by Art 8 of the Convention. He submits that he is entitled, like a person at liberty, to receive visits, there being no inherent limitations on the right itself laid down in Art 8 (1) (cf Golder case Judgment paragraph 44).

The applicant contends that the denial of a visit from Mr A was not in accordance with the law within the meaning of Art 8 (2), as the "advice" to prison governors which attempted to restrict visits from members of the Church of Scientology, was confidential, not known to either prisoners or the public, and could not reasonably have been deduced from the Prison Rules.

As regards Art 8 (2) the applicant draws a parallel with the case of Silver and others to conclude that the prohibition, without leave, of visits by persons other than relatives or friends is an overbroad restriction (paragraphs 327 to 333 of the Commission's Report), there being no distinct considerations regarding correspondence and visits. An interference with the applicant's right to communicate with people through visits must be proportionate to the legitimate interests of prison administration (cf Silver case, Commission's Report, paragraph 322).

The applicant stresses that Mr A is not a criminal. He heads an organisation which is concerned with prison drug abuse, and seeks to stimulate public interest in an important matter. He contends that the margin of appreciation enjoyed by member States does not extend to restricting freedom for the sake of administrative convenience or vague disquiet.

He concludes with the request that the Commission declare the application admissible and find a breach of the Convention.

THE LAW

The applicant, a prisoner, has complained of the refusal of the prison administration to allow an acquaintance of his to visit him.

1. He invoked Art 11 of the Convention, paragraph 1 of which provides:

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests."

The Government contended that this provision has no relevance to the present case.

The Commission refers to paragraph 14 of its partial decision on admissibility in Application No 8317/78, McFeeley et al v the United Kingdom, as regards the applicants' complaints of their lack of association with other people.

"As the language of Art 11 suggests, the concept of freedom of association, of which the right to form and join trade unions is a special aspect, is concerned with the right to form or be affiliated with a group or organisation pursuing particular aims. It does not concern the right of prisoners to share the company of other prisoners or to 'associate' with other prisoners in this sense" (DR 20, p 98).

As regards the present case, the Commission considers that, similarly, Art 11 of the Convention does not afford the applicant a right to receive visits from an acquaintance for the purpose of discussing his medical history. Art 11 does not concern the right for a prisoner to "associate" with other persons in the sense of enjoying the personal company of others. In so far as the applicant was a member of an association, the LHRO, linked to Mr A's association, the CCHR, the Commission notes that the applicant was not barred from such membership or prevented from corresponding by the prison authorities.

The Commission concludes that there was no interference with the applicant's freedom of association under Art 11 and that this part of the application is therefore manifestly ill-founded within the meaning of Art 27 (2) of the Convention.



2. The applicant's principal contention, however, is that visiting facilities for prisoners raises an issue under Art 8 of the Convention, the relevant part of which reads:

"1. Everyone has the right to respect for his private  
.... life ....

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 applicant has contended that the refusal of the visit in question was in breach of his right to respect for private life. The Government submitted that there was no interference with this right, or, if there was, it was justified, being in accordance with the law and necessary in a democratic society in the interests of public safety, for the prevention of disorder or crime, for the protection of health and for the protection of the rights of others.

The Commission considers that while detention, lawful under Art 5, is by its nature a limitation on private and family life, it is an essential part of a prisoner's right to respect for family life that prison authorities assist him in maintaining effective contact with his close family members. It is also an essential part of both private life and the rehabilitation of prisoners that their contact with the outside world be maintained as far as practicable, in order to facilitate their reintegration in society on release, and this is effected, for example, by providing visiting facilities for the prisoners' friends and by allowing correspondence with them and others. As the Commission held in the case of X v Iceland (Application No 6825/74) the right to respect for private life "comprises also to a certain extent, the right to establish and to develop relationships with other human beings, especially in the emotional field for the development and fulfilment of one's own personality" (DR 5, p 86).

However, it also has to be recognised that visiting facilities in prison create a heavy administrative and security burden for prison administration. It would not be feasible, therefore, to require that prisons provide unlimited visiting facilities to prisoners. A general limitation, with certain exceptions, to visits from relatives and close friends, appears, therefore, to be reasonable and consistent with the principles described above.

As regards the facts of the present case the Commission notes that the applicant commenced writing to Mr A at the beginning of 1980 only a few months before requesting the visit. The purpose of the visit was to discuss medical records, apparently in furtherance of the aims of the applicant's and Mr A's organisation which, given their public character, ie a campaign to arouse public opinion about prison medical treatment, are not part of the applicant's private life. Thus it cannot be said that the proposed meeting was to foster the applicant's personal relationship with Mr A, who could only be described as an acquaintance of the applicant. Moreover it is not disputed that the applicant was allowed to correspond freely with Mr A and he has not shown that he could not have dealt with the subject matter to be discussed during the proposed visit by letter. The Commission does not find that, in the circumstances of the present case, there has been an interference with the applicant's right to respect for private life.

An examination of this part of the application does not, therefore, disclose any appearance of a violation of Art 8 of the Convention. It follows that this aspect of the application is also manifestly ill-founded within the meaning of Art 27 (2) of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission

Acting President of the Commission

(H.C. KRUGER)

(G. SPERDUTI)