
COUNCIL
OF EUROPE



CONSEIL
DE L'EUROPE

(Or. English)

EUROPEAN COMMISSION
OF HUMAN RIGHTS

Application No. 8231/78

Sardar TEJENDRASINGH

against

UNITED KINGDOM

**Second
Report of the Commission**

(Adopted on 13 May 1985)

STRASBOURG

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I. INTRODUCTION

1. The following is an outline of the case, as submitted to the European Commission of Human Rights, and of the procedure before the Commission.

2. The applicant is a citizen of India, born in 1932, who at the time of lodging his application was detained in HM Prison, Stafford, England.

A. The substance of the application

3. Whilst the applicant was detained in prison, 24 of his outgoing letters were stopped by the prison authorities. He complains to the Commission of an unjustified interference with his right to respect for correspondence, contrary to Art 8 of the Convention. The applicant had also originally complained to the Commission about his conditions of detention in prison, restrictions on his choice and use of writing materials, on his access to the prison library, newspapers and periodicals, restrictions on sending his written work out of prison and its scrutiny during his detention and on release.

B. Proceedings before the Commission

4. The application was introduced with the Commission on 21 March 1977 and registered on 5 May 1978.

5. On 27 February 1979, after a preliminary examination of the case by a Rapporteur, the Commission decided to request information from the respondent Government concerning the conditions of the applicant's imprisonment, pursuant to Rule 42 (2)(a) of the Rules of Procedure, and at the same time to give notice of the applicant's complaints of interference with correspondence, pursuant to Rule 42 (2)(b) of the Rules of Procedure, without asking for observations at that stage pending the outcome of the test case, Silver and Others v the United Kingdom. The information requested from the Government was received on 2 May 1979, and the applicant's comments thereon were dated 6 June 1979. On 3 October 1979 the Commission decided to adjourn its consideration of the application pending its examination of Application N° 8317/78, McFeeley et al against the United Kingdom.

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6. On 11 March 1980 the Commission decided to give notice to the respondent Government of the application in so far as it concerned the conditions of the applicant's imprisonment pursuant to Rule 42 (2)(b) of the Rules of Procedure and to request observations on the admissibility of these complaints. The observations of the respondent Government were dated 14 July 1980 and the observations of the applicant in reply were dated 26 January 1981. On 19 March 1981 the Commission decided to request further observations on admissibility and further information relating to the conditions of the applicant's imprisonment from the respondent Government, pursuant to Rule 42 (3)(a) of the Rules of Procedure. The further observations of the respondent Government were dated 29 July 1981, and the observations of the applicant in reply were dated 27 October 1981.

7. On 4 and 6 March 1982 the Commission examined the admissibility of the application in the light of the submissions it had received and declared the application in part admissible, in part inadmissible, and adjourned that part of the application concerning interference with the applicant's correspondence.

8. The Commission drew up a Report under Art 31 of the Convention concerning the applicant's removal from association, access to the prison library, to newspapers and periodicals, facilities for private writing and complaints under Art 10 of the Convention. The text of the Report was adopted on 12 October 1983 and transmitted to the Committee of Ministers on 22 December 1983 before whom it is still pending.

9. As regards the applicant's correspondence complaint, which the Commission had adjourned at the admissibility stage, the judgment of the European Court of Human Rights in the aforementioned test case of Silver and Others was awaited. The Court delivered its judgments on 25 March 1983 (merits) and 24 October 1983 (Art 50 question).

10. On 9 March 1984, after a review of the various adjourned prisoners' correspondence cases, the Commission decided to seek clarification of the facts of the remaining case from the respondent Government and to invite them, should the case resemble that of Silver and Others, to consider a waiver of objections to its admissibility. In a general letter of 6 July 1984, the Government informed the Commission that they were "prepared to waive the admissibility and submit no observations on the merits of those cases which the Commission has identified as raising similar issues to those raised in the test case of Silver and Others. The issues not dealt with by the test cases are all covered by changes in administrative practice". No specific clarification of the facts of the applicant's remaining case was provided.

11. On 4 March 1985, the Commission declared the remainder of the application admissible (see Final Decision as to Admissibility, Appendix II to this Report). No observations on the merits of the case were submitted by the parties.

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12. After declaring the case admissible, the Commission, acting in accordance with Art 28 (b) of the Convention, also placed itself at the disposal of the parties with a view to securing a friendly settlement. In the light of the parties' reaction, the Commission now finds that there is no basis on which such a settlement can be effected.

C. The present Report

13. 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 (1):

MM C.A. Nørgaard, President
J.A. Frowein
E. Busuttil
G. Jörundsson
S. Trechsel
B. Kiernan
A.S. Gözübüyük
A. Weitzel
J.C. Soyser
H.G. Schermers
H. Danelius
G. Batliner
H. Vandenberghe
Mrs G.H. Thune
Sir Basil Hall

14. The text of the Report was adopted by the Commission on 13 May 1985 and is now transmitted to the Committee of Ministers in accordance with Art 31 (2) of the Convention.

15. A friendly settlement of the case not having been reached, 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 found disclose a breach by the respondent Government of its obligations under the Convention.

16. A schedule setting out the history of proceedings before the Commission and the Commission's Final and Partial Decisions on Admissibility are attached hereto as Appendices I, II and III.

17. 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.

(1) Since Mr Ermacora was not present when the final vote on a breach of the Convention was taken, the Commission took a special decision on 13 May 1985, in accordance with Rule 52 (3) of its Rules of Procedure, to permit him to have recorded his separate opinion, concurring with the Commission's conclusions.

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II. ESTABLISHMENT OF THE FACTS

18. The facts of the remaining case before the Commission are not in dispute and are as follows:

A. The relevant domestic law and practice

19. The relevant domestic law and practice relating to the censorship of prisoners' correspondence at the material time is extensively set out in paras 34 - 50 of the Commission's Report in the test case of Silver and Others v the United Kingdom, adopted on 11 October 1980 (see also Eur. Court HR case of Silver and Others judgment of 25.3.83 paras 25 - 56).

20. By virtue of the Prison Act 1952 the Home Secretary is responsible for prisoners and may make rules "for the regulation and management of prisons and for the classification, treatment, employment, discipline and control of persons required to be detained therein" (Section 47 (1) Prison Act 1952). Such rules are contained in statutory instruments laid before Parliament, presently the Prison Rules 1964, as amended.

21. Rule 33 (1) of those Rules states the Home Secretary's discretion to control prisoners' communications, either generally or in a particular case, for the maintenance of discipline and good order, the prevention of crime or the protection of the interests of any person. It is only with the Home Secretary's leave that a prisoner may communicate with the outside world, the Prison Governor or authorised prison officer having the power to examine correspondence and stop any which is "objectionable" (Rule 33 (2) and (3)). With a view to securing uniformity of practice throughout prison establishments, the Home Secretary also issues to prison governors management guidelines in the form of Standing Orders or Circular Instructions.

B. The particular facts of the case

22. The applicant alleges that, between January 1977 and September 1978, 24 of his letters were unjustifiably stopped by the prison authorities (for further details see Appendix to Final Decision as to Admissibility, Appendix II pp 19 - 21 hereto):

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1. 31 January 1977 to Cambridge Crown Court
2. 1 February 1977 to the Registrar of the Cambridge County Court
3. 7 (5?) February 1977 to Lord Elwyn-Jones, Lord Chancellor
- 4.-5. Letters of 10 March 1977 to his brother in India and a girl in Belgium
6. 7 April 1977 to a friend called David in Cambridge
7. 27 April 1977 to the Duke of Edinburgh
- 8.-9. 9 and 12-15 May 1977 to a friend called Graham in London
- 10.-11. 15 and 17 May 1977 to David in Cambridge
12. 16 June 1977 to a friend Hermann in Cambridge
13. 19 June 1977 to David in Cambridge
14. 28 November 1977 to Graham in London
15. 4 January 1978 to the Lord Chancellor of England
16. 15 February 1978 to Graham in London
17. 27 February 1978 to Shri Ahil Behari Vajpayee (the Minister of Foreign Affairs in India)
18. 30 May 1978 to the Chancellor of the University of Cambridge
19. 21 June 1978 to Lt-Col S. Kwarindrasing, the applicant's brother
20. 26 June 1978 to the Chancellor of the University of Cambridge, Buckingham Palace
21. 16 July 1978 to the British Foreign Minister
22. 19 July 1978 to the "Member of the British Parliament for Stafford" addressed to him c/o a friend of the applicant
23. 17 August 1978 to Graham in London
24. 14 September 1978 to the MP for Stafford

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III. SUBMISSIONS OF THE PARTIES

A. The applicant

23. The applicant has contended that the stopping of his 24 letters constituted an unjustified interference with his correspondence, contrary to Art 8 of the Convention.

B. The Government

24. The Government have expressed no particular view about this aspect of the application, but generally have accepted that it resembles the issues raised in the test case of Silver and Others v the United Kingdom, on which the European Court of Human Rights gave judgment on 25 March 1983 and following which the administrative practices have been changed (para 10 above).

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IV OPINION OF THE COMMISSION

A. Points at issue

25. The only point at issue in the present application is whether the censorship of the applicant's 24 letters constituted an unjustified interference with the applicant's right to respect for correspondence ensured by Art 8 of the Convention.

B. General considerations

26. The relevant part of Art 8 of the Convention reads as follows:

"1. Everyone has the right to respect for ...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."

27. In the Commission's opinion in the test case of Silver and Others v the United Kingdom (Comm Report 11.10.80) it held 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 Art 8 (2)

The Commission considers, therefore, that the right under Art 8 (1) to respect for correspondence envisages a free flow of such communications, subject only to the limitations prescribed by 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 Art 8 (1)." (paras 269 - 271)

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"Art 8 (2) of the Convention requires that any interference with a person's right to respect for correspondence be firstly in accordance with the law

The Commission considers that [this] phrase is not merely a reference to the State's domestic law, but also a reference to the rule of law, or the principle of legal certainty, which is common to democratic societies and the heritage of member States of the Council of Europe." (paras 277 and 281)

28. This entails two requirements - the law must be adequately accessible and foreseeable (Eur Court HR Sunday Times case judgment of 26.4.79 para 49). Thus whilst the Prison Rules 1964, as amended, satisfy the requirement of accessibility, the same cannot be said of the management guidelines unless they could be reasonably deduced from the Rules. Consideration of the foreseeability test was postponed to the examination of the substantive justification issues (paras 282 - 285).

29. As regards the second element of Art 8 (2), "necessary in a democratic society", restrictions imposed on a prisoner's right to respect for correspondence must be necessary and proportionate to meet a legitimate governmental aim. Thus a balance must be struck between the need to rehabilitate a prisoner and the interests of public order and security (paras 286 - 290).

30. As regards the substantive issues, the principal justification that could be put forward for the censorship of prisoners' correspondence is the need to prevent disorder. However, the Commission noted that many of the management guidelines concerning the contents and addressee of prisoners' letters were overbroad restrictions, which were not "necessary in a democratic society for the prevention of disorder", within the meaning of Art 8 (2) of the Convention (paras 294 - 426).

31. This opinion of the Commission was not substantially contested by the respondent Government before the European Court of Human Rights, which upheld the majority of the Commission's conclusions (Eur Court HR Case of Silver and Others, judgment of 25.3.83 paras 83 to 105).

C. The present case

32. As regards the facts of the present case, the Commission notes the censorship by the prison authorities of 24 of the applicant's letters. Thus it is clear that there has been an interference with the applicant's right to respect for correspondence, ensured by Art 8 of the Convention. The question remains, however, whether the conditions justifying such interference, and which are laid down in the second paragraph of that provision, have been fulfilled.

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33. In the absence of other information, the Commission assumes that the censorship in question was in accordance with management guidelines (Standing Orders) many of which could not themselves be said to have been either "in accordance with the law" or "necessary in a democratic society for the prevention of disorder", within the meaning of Art 8 (2) of the Convention.

34. The Commission notes that since December 1981 there has been a substantial reform of the relevant management guidelines. Whilst welcoming this relaxation of the censorship practice, the Commission considers it appropriate to express its opinion on the alleged breach in this case, because the said reform was not in force at the material time and it is not the Commission's task to examine the compatibility with the Convention of the new regulations in abstracto.

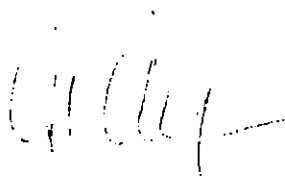
35. In the light of the above considerations, and in the absence of submissions from the respondent Government, the Commission is unable to discern any relevant or sufficient reason which might have justified the censorship of the applicant's letters as being "necessary in a democratic society for the prevention of disorder" within the meaning of Art 8 (2) of the Convention.

D. Conclusion

36. The Commission is unanimously of the opinion that the interference with the applicant's correspondence constituted a violation of Art 8 of the Convention (1).

Secretary to the Commission

President of the Commission



(H.C. KRUGER)



(C.A. NØRGAARD)

(1) Mr Ermacora concurred with this conclusion (cf footnote to para 13 above).

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APPENDIX I
HISTORY OF PROCEEDINGS

Item	Date	Note
Introduction of the application	21 March 1977	
Registration of the application	5 May 1978	
Preliminary examinations by a Rapporteur (Rule 40 of the Rules of Procedure)	October 1978 December 1978	
Commission's deliberations and decision to communicate the complaints concerning interference with correspondence to the respondent Government and to adjourn its examination of the complaints and to request information from the respondent Government pursuant to Rule 42 (2)(a) of the Rules of Procedure	27 February 1979	MM Sperduti Nørgaard Kellberg Opsahl Polak Tenekides Kiernan Klecker Melchior
Information received from the Government	2 May 1979	
Applicant's comments thereon	6 June 1979	
Commission's deliberations and decision to adjourn its consideration of the application pending its examination of Application N° 8317/78, McFeeley et al v the United Kingdom	3 October 1979	MM Sperduti Fawcett Nørgaard Triantafyllides Kellberg Daver Polak Jörundsson Tenekides Trechsel Kiernan Klecker Melchior Sampaio

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Commission's decision to communicate the applicant's complaints concerning the overall conditions of his detention to the Government and request written observations on their admissibility	11 March 1980	MM Sperduti Fawcett Nørgaard Ermacora Busuttil Kellberg Daver Polak Frowein Jörundsson Tenekides Trechsel Kiernan Klecker Melchior Sampaio Carrillo
Observations of the Government	14 July 1980	
Observations of the applicant in reply	26 January 1981	
Commission's decision to request further information and further observations from the Government pursuant to Rule 42 (2)(a) and 42 (3)(a) of the Rules of Procedure	19 March 1981	MM Sperduti Fawcett Nørgaard Busuttil Kellberg Daver Frowein Jörundsson Tenekides Trechsel Kiernan
Further observations of the Government	29 July 1981	
Further observations of the applicant in reply	27 October 1981	
Deliberations and partial decision of the Commission on the admissibility of the application, adjourning the correspondence complaint, declaring admissible complaints about writing materials and access to the prison library, newspapers and periodicals, and declaring inadmissible the remainder of the application	4 and 6 March 1982	MM Nørgaard Frowein Ermacora Fawcett Jörundsson Tenekides Trechsel Kiernan Melchior Sampaio Carrillo Gözübüyük Weitzel Soyer Schermers

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Commission's examination of first admissible complaints	6 March 1982 to 12 October 1983	
Commission's deliberations and adoption of first Art 31 Report	12 October 1983	MM Frowein Nørgaard Sperduti Jörundsson Tenekides Trechsel Kiernan Melchior Sampaio Gözübüyük Weitzel Soyer Schermers
Resumption of examination of correspondence complaints. Commission's deliberations and decision to invite the Government to consider a waiver of objections to the admissibility of the remaining application	9 March 1984	MM Nørgaard Sperduti Frowein Ermacora Fawcett Busuttil Opsahl Jörundsson Tenekides Trechsel Melchior Sampaio Carrillo Soyer Schermers Danelius Batliner
Government's general waiver of objections to admissibility and of an opportunity to submit observations on the merits	6 July 1984	
Commission's deliberations and decision to declare the remainder of the application admissible. Deliberations on the merits	4 March 1985	MM Nørgaard Jörundsson Tenekides Kiernan Soyer Schermers Danelius Batliner Vandenberghe Mrs Thune

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Commission's deliberations on
the merits and final vote

7 May 1985

MM Nørgaard
Frowein
Busuttill
Jörundsson
Trechsel
Kiernan
Gözübüyük
Weitzel
Soyer
Schermers
Danelius
Batliner
Vandenberghe
Mrs Thune
Sir Basil Hall

Adoption of Art 31 Report

13 May 1985

MM Nørgaard
Sperduti
Ermacora
Jörundsson
Trechsel
Kiernan
Carrillo
Gözübüyük
Weitzel
Soyer
Schermers
Danelius
Batliner
Campinos
Vandenberghe
Mrs Thune
Sir Basil Hall