COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

Or. English

EUROPEAN COMMISSION
OF HUMAN RIGHTS

Application No. 4451/70

Sidney Elmer GOLDER

against

the United Kingdom

Report of the Commission

(Adopted on 1 June 1973)

Strasbourg

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Memorial of the applicant on the merits, of 30 April 1971	Memorial
Counter-Memorial of the United Kingdom Government on the merits, of 25 August 1971	Counter-Memorial
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I N T R O D U C T I O N

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 applicant is a United Kingdom citizen born in 1923 who was convicted in 1965 of robbery with violence and sentenced to fifteen years' imprisonment. When he introduced this application he was detained in H. M. Prison, Parkhurst, on the Isle of Wight. He was granted parole and released from prison on 12 July 1972. The applicant is represented by Mr. A. Wright, a solicitor practising in Rochdale.

In the applicant's original submissions to the Commission, he alleged that he had been wrongly convicted. He later stated that further submissions concerning this matter were being made on his behalf to the United Kingdom authorities; therefore, he only wished to proceed with his complaint that he had been refused permission to consult a lawyer with a view to bringing proceedings for defamation against a prison officer.

This latter complaint, which now forms the basis of the present application, arose out of an incident in October 1969 when the applicant was detained in Parkhurst Prison. He was employed as an electrician within the prison and therefore had little social contact with other prisoners. He was apparently not aware that certain of his fellow prisoners had organised a demonstration against the prison authorities. On the evening of 24 October 1969 the applicant was in the prison association rooms when this demonstration began. He was present during the demonstration but took no part in it. He remained with prison officers who later stated that he had not been involved.

On 25 October 1969 the applicant wrote to his Member of Parliament. He explained that he had not been a party to the demonstration but felt some anxiety on the ground that his having been present at the time might jeopardise his chances of sitting for an examination and of obtaining other facilities which the Member of Parliament thought he should be given. He was told by the prison authorities that this letter could not leave the prison.

On the same day, unknown to the applicant, one of the prison officers, who had been present at the demonstration and had suffered injuries, made a statement. This statement alleged inter alia that the officer had been attacked by three prisoners who had been armed with pieces of broken furniture. Two of the three prisoners were clearly named but the third was identified as "another prisoner whom I [know by] sight, I think his name is Golder".

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On 26 October the applicant was moved to a separate wing of the prison. This wing was set aside for those prisoners suspected of involvement in the demonstration. He was not charged with any offence but was told by prison officers that he was in serious trouble. He was kept in solitary confinement without books or working tools. Although he asked the Governor and other members of the prison administration to inform him of the charge he was facing, he received no reply. He was interviewed by the police on 28 October and on 30 October he was again interviewed, this time by a Detective Chief Inspector of the Hampshire Police Constabulary. The Chief Inspector informed him that an allegation had been made that he had assaulted a prison officer during the demonstration. The applicant denied the allegation and burst into tears. The Chief Inspector then questioned the applicant as to who might have been responsible for the riot and finished by saying that the facts would be reported in order that consideration could be given to the question whether or not the applicant should be prosecuted for assault.

The applicant again attempted to write to his Member of Parliament on 1 November 1969 and to the Chief Constable on 4 November 1969. Both letters were stopped.

On 5 November 1969, the prison officer who had made the statement saying that he had been assaulted by someone whose name he thought was Golder, made a fresh statement. This fresh statement contained the following passages: "When I mentioned the prisoner Golder, I said, 'I think it was Golder' ... If it was Golder and I certainly remember seeing him in the immediate group who were screaming abuse and generally making a nuisance of themselves, I am not certain that he made an attack on me."

On 7 November the applicant was returned to his cell.

Subsequently, solicitors acting for other prisoners showed the applicant a copy of the prison officer's statement made on 25 October.

On 20 March 1970 the applicant petitioned the Home Secretary for permission to consult a solicitor. He wished to obtain the solicitor's advice as to whether the prison officer's statement gave him cause to institute an action for defamation. His petition was rejected on 6 April.

The applicant considered that the prison officer's statement had been clearly defamatory. It had caused him to be detained for two weeks in solitary confinement, during which time he had been so terrified that he had been driven to contemplate suicide. Furthermore, although the applicant had been told that he had been cleared of the charge, it appeared that mention of it had not been deleted from his

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prison record. He had, therefore, good reason to suppose that it would affect his treatment in prison. During the five years that he had been detained, most of his spare time had been spent in studying radio, television, electronics and mathematics. He had already passed eight examinations and was seeking permission to attend an examination centre at a technical college in November 1969. He was anxious to obtain a transfer from Parkhurst Prison to a semi-open prison where he could continue his technical education. This would further his prospects of release on parole. After the disturbances, the applicant was neither given leave to attend the examination centre nor transferred to a semi-open prison.

In fact, on 10 November 1969 the prison authorities had prepared a list of charges which might be preferred against particular prisoners in respect of offences against prison discipline. The applicant was one of the prisoners on that list. And this was corroborated by two entries in the applicant's prison record. These entries were not erased when the case was dropped but were marked "not proceeded with". The applicant considered that the existence of these entries prejudiced his chances of obtaining parole and he wished them to be erased. In the United Kingdom Government's Counter-Memorial on the Merits of the Application (para. 30) the Government offered to expunge the entries if the applicant so wished. The entries were in fact expunged at some time between 17 December and 23 December 1971. The Home Office then took steps to ensure that the local review committee of the Parole Board was provided with the expurgated record only.

On 12 July 1972 the applicant was released from prison on parole. He was originally sentenced to fifteen years' imprisonment in 1965. A United Kingdom prisoner may receive remission of up to one third of his sentence if he has been of good behaviour. Apart from this, he may be paroled at any time after he has served one third of his sentence. In the present case, therefore, without parole but with full remission for good behaviour, the applicant should in the normal course of events have been released in 1975. The Government announced in August 1971 (1) that for reasons not connected with the present application he had been granted special remission and would be released on 16 March 1973. On 26 April 1972 the Parole Board considered the applicant's case and recommended that he should receive parole as from 12 July 1972. The Secretary of State approved this recommendation, and he was released on that date.

2. The application was introduced on 2 August 1970.

By its decision of 30 March 1971, the Commission rejected certain parts of the application as being inadmissible (2).

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(1) Counter-Memorial, para. 19.

(2) Appendix II to this Report.

On the other hand, the Commission, having obtained written observations from the Parties, declared admissible the applicant's complaints under Art. 6 (1) of the Convention concerning the refusal by the authorities to allow the applicant to consult a solicitor with a view to bringing an action for defamation against a prison officer.

The Commission considered that the applicant's allegation that the same refusal constituted also a violation of Art. 8 (1) of the Convention was closely connected with the wider questions of the existence of a right of access to the courts and the scope of any such right. It considered therefore that this remaining issue depended for its determination on an examination of the merits of the main issue. The Commission, after having received the written submissions of the Parties on the merits, heard their oral pleadings on 16-17 December 1971.

Legal aid as regards the proceedings before the Commission was granted in accordance with the Addendum to the Commission's Rules of Procedure. Details of the Parties' representation appear at Appendix I "History of Proceedings".

The present Report has been drawn up by the Commission in pursuance of Art. 31 of the Convention and is now transmitted to the Committee of Ministers in accordance with para. (2) of that Article. It was adopted on 1 June 1973, the following members of the Commission being present:

MM. G. SPERDUTI, Acting President
J. E. S. FAWCETT
F. ERMACORA
F. WELTER
T. B. LINDAL
E. BUSUTTIL
B. DAVER
T. OPSAHL
K. MANGAN

A friendly settlement of the case has not been reached (1) and the purpose of the Commission in the present Report, as provided in para. (1) of Art. 31, 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.

The full text of the oral and written pleadings of the Parties together with further documents handed in as exhibits are held in the archives of the Commission and are available, if required.

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(1) An account of the Commission's unsuccessful attempts to reach such a settlement has been produced as a separate document (Appendix III to this Report).

POINTS AT ISSUE

3. The following points are at issue in the present case:

(1) Whether Art. 6 (1) of the Convention guarantees to a person the right of access to the courts with a view to instituting legal proceedings in order to obtain the determination of his civil rights;

(2) If Art. 6 (1) guarantees the right of access to the courts, whether that right or its exercise is subject to any inherent limitation which may be applicable in the present case;

(3) If Art. 6 (1) guarantees this right, whether it is qualified by the requirement "within a reasonable time".

(4) Whether Art. 8 of the Convention granting the right to respect for correspondence is applicable in the present case.

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I. WHETHER ART. 6 (1) GUARANTEES THE RIGHT OF ACCESS TO THE COURTS

A. SUBMISSIONS OF THE APPLICANT

4. The applicant first submits (1) that the wording of Art. 6 (1) of the Convention in its context is paramount. The historical development should only be looked at if the meaning is not clear. This Article, in the context of the Instrument, clearly and unequivocally guarantees the right of access to the courts. Its subject matter in regard to the civil aspect is the determination of rights and obligations, not the determination of pending legal proceedings. The wording of Art. 6 (1) cannot be interpreted to mean that it applies only when proceedings have already been instituted. The use of the introductory word "in" (2) rather than the word "for", does not demonstrate a limitation to pending proceedings but is really a matter of semantics. If it applied only to a lis pendens situation, there would be a serious hiatus in the Convention. It would mean that to block access to the courts at any time up to the institution of proceedings would not infringe the Convention; to do so afterwards would. This would be illogical; it would give to the arbitrary moment of time when proceedings are instituted a significance out of all proportion and it would mean that the purpose of the Article would only be partially fulfilled.

Secondly, the aim and object of Art. 6 (1) is to provide a right to a fair trial. If the draftsmen of the Convention intended to limit this right to matters where proceedings already had been instituted, they would have used language which showed quite clearly the limitation; the introduction of such a limitation by way of interpretation would mean the rewriting of the first sentence of the Article by introducing new words.

Thirdly, the elimination of a right of access from Art. 6 (1) would defeat the scope of the phrase "in the determination of any criminal charge against him", because criminal proceedings are not co-extensive with the criminal charge; the charge usually precedes the initiation of judicial

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(1) Memorial, paras. 5-10; Golder hearing, pp. 10-22; cf. also Knechtl hearing, pp. 5-23.

(2) Art. 6 (1) of the Convention: "In the determination of his civil rights and obligations or of any criminal charge against him ...".

process. This should be equally valid for the determination of civil rights and obligations (1). A "civil right" comes into existence before litigation commences (2).

Fourthly, the wording of Art. 6, referring to the quality, time and nature of a hearing, does not limit or qualify the subject matter of what the person amenable to the jurisdiction must be allowed to present to the tribunal. This is supported by the Preamble to the Convention and the Universal Declaration of Human Rights.

5. If in this connection the Vienna Convention on the Law of Treaties is to be relied upon with regard to the principles of interpretation of treaties as laid down in its Arts. 31 and 32, it speaks in favour of the applicant. The Human Rights Convention is a Convention which confers rights upon individuals and therein lies its particular nature. It is submitted that Art. 31, which provides that a treaty shall be interpreted in good faith, that it shall be given its ordinary meaning and is to be read in its context, supports the applicant's contention that Art. 6 (1) guarantees the right of access to the courts. The subsequent practice of one signatory could not in these circumstances, even if made in good faith, affect this interpretation. Art. 32 of the Vienna Convention is auxiliary in providing that recourse to supplementary means of interpretation may be had in order to confirm the ordinary meaning, or if the attempt to interpret a treaty provision according to Art. 31 leaves its meaning ambiguous or obscure, or if it leads to a result which is manifestly absurd or unreasonable; none of this applies in regard to Art. 6 (1).

6. The drafting history is therefore not necessary for interpretation in this case. In case of doubt and before going to the drafting history and subsequent practice, there should be a leaning towards a wider interpretation (3). However, in any event, e.g. should any ambiguity still be seen, the origins of Art. 6 (1) tend to support rather than deny the existence of right of access to the courts. As for

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(1) Golder hearing, pp. 11-12; counsel referred to Application No. 2257/64 (Soltikow v. Federal Republic of Germany) and Fawcett, The Application of the European Convention on Human Rights, p. 135, with regard to the interpretation of "any criminal charge"; cf. also Knechtl hearing, pp. 9-13, where counsel in this respect also referred to the judgment by the European Court of Human Rights in the Wemhoff case, paras. 18-19, pp. 26-27.

(2) Golder hearing, p. 72.

(3) Golder hearing, pp. 15-16, referring to the Knechtl Memorial, para. 22.

subsequent practice (1), although the United Kingdom may have had in mind a narrower interpretation of Art. 6 (1), particularly when drafting various constitutions for other countries, this did not show a practice from which could be derived an agreement of the High Contracting Parties, as Art. 31 (3) of the Vienna Convention would require.

Art. 6 (1) follows closely the wording of Art. 10 of the United Nations Universal Declaration of Human Rights both in the English and the French text. In the early days of the drafting of Art. 10 the right of access was provided for. The drafting history of Art. 10 of the Universal Declaration "was not a change of concept but a chronological tightening up and making for economy of language".

Art. 10 of the Universal Declaration makes no reference to a "suit at law". That expression appears only in the early drafts of the European Convention. This showed that it was thought that the reference to a suit at law introduced an ambiguity. This might possibly have been the case by reason of a suggestion that the freedom being granted by Art. 10 of the Universal Declaration, which was to be brought into the European Convention, was being somehow qualified, limiting it on the civil side to rights and obligations already the subject matter of a lis pendens. The applicant contends that the introduction of the words "suit at law" does not necessarily mean that Art. 6 (1) in its final form, had it contained those words, would have been limited to freedoms in litigious process. If it were so, the matter would have been ambiguous but on balance it would still mean that the freedom would be in respect of all civil rights and obligations whether the subject matter of pending proceedings or not. The important thing is that the words were expunged from the drafts in the interests of clarification. The obvious reason for the deletion of the words "suit at law" was to remove the doubt.

7. With regard to the respondent Government's arguments (2) that Art. 8 of the Universal Declaration - which corresponds to Art. 13 of the Convention - shows that the draftsmen clearly had in mind the idea of access to the courts, as was expressly provided for by Art. 8, the applicant observes as follows: Broadly there are probably three categories of rights which can be dealt with by international Conventions: first, the rights which are provided by the instrument itself, secondly, fundamental rights granted by domestic law and, thirdly, the rights and duties at large under the domestic law of a participating State. The respondent Government themselves

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(1) Golder hearing, p. 16, referring to the Knechtl Memorial, para. 67.

(2) Counter-Memorial, paras. 47-50.

draw this distinction (Counter-Memorial, p. 39). Obviously these categories overlap but they are different groupings dealing with different matters. These categories are of considerable importance not only under Art. 8 of the Universal Declaration but also under various other articles of instruments on which the respondent Government have relied. But it is equally important to distinguish between a "right" and a "remedy". Under Art. 6 (1) one is concerned with a right of an individual to go before a court or a tribunal to have his legal rights determined. Although there is a close relationship, the "remedy" which the law gives for an infringement of those rights, as referred to under Arts. 8 of the Universal Declaration and 13 of the Convention, is a different concept and relates to damages, a court order, etc.

8. The Government argue that, if Art. 10 provided a right of access, there was no need for Art. 8 concerning the right to a remedy. The applicant, however, submits that these are quite different things. It may well be that in the jurisdiction of a particular member State there was no remedy provided by law for an infringement of a particular human right contained in the Declaration. If that were so, Art. 8 was necessary, irrespective of whether Art. 10 gives the right of access. For instance, Art. 20 of the Declaration provides for peaceful assembly. Supposing that in a member's jurisdiction there was no remedy for the infringement of the right of peaceful assembly; supposing that Art. 10 of the Universal Declaration gives a right of access: no right of access to the courts is then going to help the person who has assembly peacefully, or tried to assemble peacefully, and then been stopped, if his domestic jurisdiction gives no remedy. Thus inevitably there is a need for Art. 8. It cannot be said that Art. 8 and Art. 10, if both are taken to include a right of access, are tautologous.

Similarly, Art. 13 of the Convention deals with remedies. It does not bear on the question whether there is a right of access under Art. 6 (1). Assuming that Art. 6 (1) gives a right of access, there is still a need for Art. 13 because, although everybody may have access to the courts in a member country, the law of that country may give no remedy for a breach of one of these Articles. So the same argument applies there.

9. With regard to the respondent Government's argument based on the drafting history of the corresponding provision in Art. 14 (1) of the United Nations International Covenant of Civil and Political Rights (Counter-Memorial, pp. 38-39, cf. below para. 26), the applicant submits that this is a marginal matter, the International Covenant not being an instrument referred to in the Convention. Nor does it assist the respondent Government's argument as, by the introduction at the fifth session of the words "in a suit

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at law" (1), Art. 14 (1) excludes quasi-judicial domestic tribunals, etc.; it refers only to justiciable rights and obligations. This Article does not show that the draftsmen were concerned only with rights during the judicial process. Again this may be seen in the fact that a criminal charge is dealt with in the same terms as rights and obligations.

With regard to the argument on the basis of Art. 2 of Part II of the Covenant (2), again one comes to the question of remedy, and the applicant here refers to his previous arguments on Art. 8 of the Universal Declaration and Art. 13 of the Convention (see supra para. 7).

10. The applicant further submits that the Report of the Committee of Experts on Human Rights of the Council of Europe to the Committee of Ministers (3) on problems arising from the co-existence of the United Nations Covenant on Human Rights and the European Convention on Human Rights does not help in the interpretation of Art. 6 (1). It does not belong to the drafting history. It is not binding, and, anyway, does not support the alleged interpretation.

The Committee of Experts in comparing Art. 14 of the Covenant to Art. 6 (1) of the Convention, does not seek to define the ambit of Art. 14 or Art. 6 (1) and even less do they say that the right to a fair trial is provided for only in cases already before the courts. Their statement is as consistent with one interpretation as with the other.

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(1) Art. 14 (1) of the United Nations International Covenant for Civil and Political Rights reads:

> "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, and of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law ..."

(2) Similar to Art. 13 of the Convention and Art. 8 of the Universal Declaration.

(3) H (70) 7, referred to by the Government in their Counter-Memorial, paras. 61-62, infra para. 27.

11. As to the argument (1) that Art. 5 (4) of the Convention was not necessary if Art. 6 (1) provided for a right of access, the applicant observes that Art. 5 (4) deals with "remedy" and this, under English law, would be a question of "habeas corpus". It could be that certain signatory States did not have - or in the future might not have - in their domestic law any equivalent procedure. Art. 5 (4) says that this particular remedy shall be available. It does not touch the question whether there is or is not a right of access under Art. 6 (1). For the same reasons as set out before (cf. above paras. 4-5) the applicant contends that Art. 5 (4) is irrelevant.

12. If it is absurd that Art. 6 (1) contemplates a right to take every issue to a final and public hearing (2), it is even more absurd from this angle to read Art. 6 (1) as applicable only to issues already brought before the courts. If it is limited in the latter sense, there can never be a summary dismissal of a case, because dismissal presupposes that the issue is already the subject of a pending litigious process. Judicial process can determine summarily whether there is an arguable right or obligation; this is how one reconciles Art. 6 (1) with summary processes that are available, and necessarily available, in all jurisdictions.

13. Finally, the French text of Art. 6 (1) does not militate against the wider construction, i.e. that Art. 6 (1) includes the right of access, but tends to support it (3). In the context "sa cause" means, it is submitted, "his cause of action" or "his case". The draftsmen have chosen a word capable of many meanings, depending upon its context; this strongly suggests that they did not intend to use it as a technical term in law (i.e. as meaning "pending suit"), but intended it to have a broader, ordinary meaning (i.e. "cause of action", or "case" in the wider sense). Had the draftsmen intended the narrow meaning, so as to cover only a suit actually initiated, presumably they would have chosen to use an unambiguous technical term. "Toute personne a droit" shows again the entitlement of the person. He is given a right "dans un délai raisonnable, par un tribunal ... établi par la loi" to have the matter determined: he is enabled to avail himself of that right, but there is no requirement on him to do so. This is consistent with the inclusion of a right of access. The use of the words "qui décidera" further supports the wider meaning. The reference to "accusation en matière pénale dirigée contre elle" is consistent with, and in the applicant's submission underlines, the argument advanced in para. 4 : on the criminal side the French text deals not with an initiated process, but with an accusation or criminal allegation at whatever stage.

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(1) Counter-Memorial, para. 71, cf. below paras. 18 and 32.

(2) Counter-Memorial, paras. 69-70.

(3) Counsel here relied on the Knechtl Memorial, para. 26,

B. SUBMISSIONS OF THE RESPONDENT GOVERNMENT (1)

14. The Government submit that Art. 6 (1) of the Convention does not confer a right of recourse to a court but is concerned only with a right to a fair trial in judicial proceedings already begun.

15. Whether their interpretation be right or wrong, it is absolutely clear that the Government of the United Kingdom had no idea when they agreed to Art. 6 (1) of the Convention that they were accepting the obligation now alleged, namely to accord a right of access without qualification. The Government are therefore not now trying to repudiate an obligation freely undertaken. They had no intention of assuming, and did not know that they were expected to assume, any such obligation. The Convention is a treaty between Sovereign States and the obligations imposed by the Convention are limitations on the free exercise of sovereignty in favour of individuals, whether they be foreigners or nationals. Limitations of this kind on the free exercise of sovereignty are not to be presumed.

16. The applicant claimed an extended interpretation while the respondent Government claimed a more limited one. Even if the Commission had a choice it should lean in favour of a more limited interpretation. The Preamble to the Convention makes it quite clear that the High Contracting Parties had the limited objective of taking the first steps for the collective enforcement of certain of the human rights stated in the Universal Declaration, and they were not trying to cover the whole possible range of human rights in one set of Articles. This means that one would expect to find some of the rights covered in the Declaration that have not been included in the Convention. It also means that, in the interpretation of the Convention, one should not, by implication, read into the language of the Convention rights and obligations which were not provided for in the corresponding provisions of the Declaration. If new and additional obligations were to be imposed on the Governments, this should be done by the proper recognised procedure, that is by the adoption and ratification of protocols and not by the process of legislation through interpretation. The procedure by way of individual petition is a procedure voluntarily undertaken by the Governments. It is a most exceptional procedure in international affairs and, on this ground alone, it should not be presumed that Governments have undertaken obligations beyond those which they foresaw and for which clear provision was made. Not only is an extensive interpretation of Art. 6 (1) wrong but in the present case it is also in a sense unnecessary. If

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(1) Counter-Memorial, paras. 38-39; Golder hearing, pp. 36-53; cf. also Knechtl hearing, pp. 84-101.

the fact of preventing an applicant from consulting a solicitor is to be considered under the Convention, it concerns rather the application of Art. 8 than Art. 6 (1).

17. The Government maintain that the natural and ordinary meaning of the words in Art. 6 (1) does not allow the extended interpretation which the applicant claims. It would mean rewriting its first sentence, by disregarding all it is designed to do, namely to provide a right related to the procedures and modalities of a trial. It is plain that Art. 6 (1) does not expressly provide for a right of access to the courts. And if there is an ambiguity, the weight of other considerations is against the applicant. If the language of the first sentence is read as a whole in the context of Art. 6 (1) and of the other Articles and of the Preamble to the Convention, the natural and ordinary meaning is in the opposite sense. At best, from the point of view of the applicant, there is a doubt about that meaning: whether the rights under Art. 6 (1) operate only when proceedings have been initiated; or, alternatively, whenever the individual believes that his civil rights are in issue. Such a test of belief is subjective, and there is no warrant for it in the language of Art. 6 (1). Even assuming that in the case of a criminal charge, Art. 6 (1) operates from the point of time when this charge exists, it does not follow that its operation has to be extended backward, in the case of a civil right, to the point where a person first believes he has that right. No point of origin is indicated in the case of civil rights or obligations. A more reasonable assumption would be that the provision intended the nearest possible point, namely the point at which proceedings are instituted; the right kind of parallel in English law would be the time of issue of the writ (1).

18. The Government thus pointed to the following three relevant aspects of the case: first, the right of access to the courts, which should be distinguished not only from the second - the right to a fair hearing - but also from the third aspect, namely the right to communicate with a solicitor. The last would appear to be more pertinent to Art. 8, while matters pertaining to a hearing or trial are pertinent to Art. 6 (1). The case for the Government then is that the first aspect is not covered by Art. 6 (1). When the Convention gives a right of access or recourse, this is clearly and specifically provided; as in Arts. 5 (4) and 13; Art. 6 (1) has no comparable language and deals with different matters. Had a right of access been intended there, it could have been expressly and easily spelled out. But the distinction between a right to a fair trial in

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(1) Golder hearing, pp. 40-43; reference is made by the Government to Fawcett, op. cit., pp. 130, 135.

Art. 6 (1) and the relevant provisions for access or recourse [illegible] deliberate. These propositions are established and supported by:

(a) the general international law background;

(b) the origin of the relevant Articles compared with other provisions;

(c) a textual analysis and comparison;

(d) a consideration of the practical effects of Art. 6 (1) (1).

19. In explanation of this method, counsel for the Government argued that in the interpretation of a provision such as Art. 6 (1) which is not clear on the face of it, it is permissible and proper, as with any treaty provision, to take into account this background. In particular it was maintained that the language of the first sentence of Art. 6 (1) was not so clear as to preclude consultation of the travaux préparatoires (2).

20. The distinction between the right of access to the courts and the right to certain guarantees for securing a fair trial when a case comes before the courts is of long standing and well established in international law, and must be assumed to have been in the minds of the draftsmen of the Convention (3).

21. The distinction is illustrated (Annex 6 to the Counter-Memorial) by the established practice of States over the years in the drafting of commercial treaties, which expressly and separately provide, where necessary, for the right of access to the courts. Similarly, Art. 7 of the European Convention on Establishment expressly confers on nationals of the contracting States "the right of access to the competent judicial and administrative authorities"; corresponding provisions are made in the draft European Convention on the Legal Status of Migrant Workers. Apart from providing further evidence of the practice referred to, these provisions are also difficult to explain on the suggested basis that the European Human Rights Convention itself conferred a right of access to the courts in all cases and irrespective of nationality.

22. Secondly, the preparatory work on Art. 6 (1), like that on the corresponding provisions of the related instruments, the Universal Declaration of Human Rights and the International

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(1) Counter-Memorial, para. 38.

(2) Golder hearing, p. 44.

(3) Counter-Memorial, para. 39.

Covenant on Civil and Political Rights, suggests that it was not intended to confer a right of access but merely to regulate the conduct of the judicial process.

23. In the corresponding provision of the Universal Declaration on Human Rights, on which the rights guaranteed by the Convention are based, a similar wording is found: Art. 10 provides that "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him". The earlier drafts of this provision (1) expressly provided for the right of access. However, in a later draft (2) the emphasis was changed; where the earlier draft referred to "access to independent and impartial tribunals for the determination of his rights and obligations", the later draft spoke of such "access in the determination, etc.".

In a further draft (3), which is substantially the final text of Art. 10 of the Declaration, all mention of a right of access was abandoned and the whole emphasis was placed on the procedure "in the determination"; the proceedings and their conduct became the key concept in the proposition.

24. In addition to their examination of Art. 6 (1) with the background of its "predecessors and relatives" dealing with the same subject matter (see further below, para. 26), the Government argued that the field of access to the courts had been covered by other provisions which pre-empted that field (4). Therefore, again, it cannot be regarded as falling within Art. 6 (1). Here, the Government first considered Art. 8 of the Universal Declaration (5) which provides: "Everyone has a right to an effective remedy by the competent national tribunal for acts violating the fundamental rights granted him by the constitution or by law".

This Article does not speak about remedy in any abstract sense but speaks about a remedy through the competent national tribunal. The language corresponds to that commonly used to deal with the question of access to courts. This is the effective remedy before a court or a national tribunal. The abstract analysis of the distinction between right and remedy

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(1) Report of the Drafting Committee of 1 July 1947; Cassin's draft of 9 December 1947; texts reproduced in the Counter-Memorial, para. 43.

(2) Counter-Memorial, para. 44.

(3) Ibidem, para. 45.

(4) Golder hearing, p. 46.

(5) Counter-Memorial, paras. 47-50: Golder hearing, pp. 46-47.

is beside the point when one looks at the whole language of Art. 8 which is not dealing with remedies in the abstract but with the question of an effective remedy through the competent national tribunal.

The text of Art. 8 was based upon an amendment introduced by Mexico, repeating the text of the Bogota Declaration which had just been adopted unanimously by 21 Latin American Deputations. Its Art. XVIII provides: "Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple brief procedure whereby the courts will protect him from acts of authority that, to this prejudice, violate any fundamental constitutional rights". In fact it speaks in the first sentence of the right of every person to resort of the courts to ensure respect for his legal rights and, in Art. 8 of the Universal Declaration, this has been inverted and narrowed to read: "Everyone has a right to an effective remedy by the competent national tribunals".

At that time a provision corresponding to Art. 10 of the Declaration was already included in the draft and a number of representatives in the Third Committee of the General Assembly recognised that the Mexican amendment introduced a new idea into the draft Universal Declaration which, according to the Government, did not contain a right of access. The French text of the Mexican amendment was put forward by Professor Cassin and it provided for "recours effectif". This, of course, is the French language appropriate for giving a right of access to the courts and the English text in this respect follows the French. But counsel for the Government stressed that Art. 8, although it should be interpreted as giving a right to go before the competent national tribunals, only does so by way of a remedy for acts violating fundamental rights. It is thus limited and does not extend to other civil rights and obligations.

25. There is here a common pattern. Art. 8 of the Declaration is dealing with the right to seek from the courts protection for fundamental rights, while Art. 10 is dealing with what might be called fair trial or due process. It cannot be assumed that the latter Article should be regarded as providing precisely the same right as the former, namely the right of access. In the subsequent history, the pattern persists. The European Convention provides for fair trial in Art. 6 (1) and, in Art. 13, for access with respect to the rights provided by the Convention. This interpretation follows the pattern of the Declaration (1).

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(1) Golder hearing, p. 43.

26. Art. 14 (1) of the International Covenant on Civil and Political Rights contains provisions corresponding to Art. 6 (1) of the Convention with the difference that Art. 14 (1) speaks of "rights and obligations in a suit at law" (1). Previous drafts of Art. 14 (1) contained the terms "civil rights and obligations" (2). It is thus seen that, at a time when the drafting proceedings of the Universal Declaration would have been fresh in everyone's mind, the draft of the International Covenant was deliberately changed so as to replace the possibly equivocal phrase "civil rights and obligations" by the unambiguous phrase "rights and obligations in a suit at law". In the Government's submission, the adoption of the latter expression shows that Art. 14 (1) of the Covenant is concerned only with the conduct of proceedings, and it is also evidence that a similar intention underlay Art. 10 of the Universal Declaration. Part III of the International Covenant, to which Art. 14 belongs, sets out substantive rights and freedoms but contains no general provision for access to the courts. However, Art. 2, which is found in Part II of the Covenant, makes certain provisions for access but, unlike Art. 8 of the Universal Declaration, it is limited to violations of rights expressly mentioned in the Covenant. There is no general extension to rights guaranteed under the constitution or domestic law and, in any case, there is no specific requirement of access to the courts.

27. In the drafts of Art. 6 (1) of the Convention the expression "rights and obligations in a suit at law" was dominant (3). This formula goes back to the very first draft of the Convention and this was also the formula adopted by the draftsmen of the International Covenant as accurately reflecting the thought underlying Art. 10 of the Universal Declaration. The French text appears to have remained constant throughout.

The term "civil rights and obligations" replaced the above formula at the very last stage immediately before the Convention was signed; there is no recorded explanation of why this change was made but, having regard to the circumstances in which it was made, it cannot have been intended to be a change of substance and can only have been made for drafting reasons.

In order to strengthen this argument reference is made to the Report of the Committee of Experts on Human Rights of the Council of Europe to the Committee of Ministers (4) on problems arising from the co-existence of the United Nations Covenant on Human Rights and the European Convention on Human Rights.

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(1) Counter-Memorial, pars. 51-53; Golder hearing, pp. 48-49; see text of Art. 14 (1) above, p. 10, footnote 1.

(2) Cf. Counter-Memorial, par. 52.

(3) Counter-Memorial, pars. 54-62; cf. Draft "B" of the Committee of Experts, ibidem, para. 55. Draft of the Conference of Senior Officials, June 1950, ibidem, para. 57.

(4) H (70) 7.

In para. 139 (p. 36) they say:

"Art. 14 (1) of the United Nations Covenant, which provides for the right to a fair trial in civil and criminal matters, has its counterpart in Art. 6 (1) of the European Convention".

In para. 138 (ii) (on p. 37) they say:

"The English text of the United Nations Covenant uses the wording 'rights and obligations in a suit at law' while the English text of the European Convention speaks of 'civil rights and obligations'. However, in view of the fact that the French text use identical terms ('des contestations sur ses droits et obligations de caractère civil') the experts considered that the intention was the same".

Although the Committee of Experts is not competent to give authoritative decisions on the interpretation of the Convention, their views obviously have great persuasive authority.

28. It is therefore submitted that the provisions of the Universal Declaration (Art. 8) and the International Covenant (Art. 2) which grant right of access to the courts, correspond not to Art. 6 (1) but to Art. 13 of the Convention. That started in Bogota as a broad right of access to courts was narrowed down to the present Art. 13 (and Art. 5 (4)) where it is dealt with specifically and explicitly; it is not, according to the Government, covered generally and implicitly by Art. 6 (1)(1).

29. Thirdly, the United Kingdom Government, in drafting constitutions for its dependencies (often to give effect to the provisions of the Convention), has consistently adopted the narrower construction. For example, section 21 (9) of the Independence Constitution of Kenya (2) provides that: "Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time". No provision is made for the right of access to the courts.

30. Furthermore (3), in the Constitution of the Republic of Cyprus, in the drafting of which the United Kingdom Government played no part, the right of access to the courts is expressly

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(1) Counter-Memorial, pp. paras. 65-66; Golder hearing, p. 50.

(2) Counter-Memorial, Annex 7, appendix.

(3) Ibidem, Annex 7, para. 3.

and separately guaranteed by Art. 30 (1); the right to a fair trial is guaranteed by Art. 30 (2) in terms identical with Art. 6 (1) of the Convention.

31. It is submitted that the wording of Art. 6 (1) is directed only to the requirements of a fair trial. It is emphasised that the phrase is "in the determination" not "for the determination". There is mention of a "hearing" which is different from "access" and the exceptions are such as to exclude persons "from all or part of the trial". Had a right of access been intended, it would have been necessary to provide for exceptions to it, e.g. for immunities. In the French text, the term "cause" suggests "suit at law", the term "contestation" suggests contentious legal proceedings and the phrase "qui décidera" implies only that, once a suit is on foot, it is for the court to decide. For the textual analysis of Art. 6 (1) the respondent Government rely, in their method of interpretation, on Arts. 31, 32 and 33 of the Vienna Convention (1).

32. It may also be noted that a right to "take proceedings" is specifically provided for in Art. 5 (4) and that the expression is not repeated in Art. 6 (1). A comparison of Art. 5 (4) with Art. 6 (1) in the French text shows that "recours" is used to describe the process of invoking the courts and this word is, significantly, not used in Art. 6 (1).

33. The provisions in Art. 6 (1) that deal with criminal proceedings also support the contention that this paragraph as a whole is concerned with the conduct of proceedings already instituted; both the English and the French texts refer to proceedings that have been instituted in some more or less formal way. Application 2257/64 (Soltikow v. Federal Republic of Germany), referred to by the applicant, does not support the contrary view as, first, that complaint was rejected for non-exhaustion of domestic remedies and, secondly, as in any event proceedings had already been instituted.

34. The expression "within a reasonable time" can only have significance in relation to the date when proceedings are instituted by a party to a civil dispute; it can hardly refer to the time when the cause of action arose since proceedings relating to that cause of action may never be instituted.

35. Considering finally the contested part of Art. 6 (1) in relation to the rest of its text, two additional observations were made by the Government (2) : first, that the text of

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(1) Counter-Memorial, pars. 68 et seq. and Annex 8.

(2) Golder hearing, pp. 50-53, cf. Counter-Memorial, paras. 79-80.

the Article as a whole is concerned with matters relating to judicial hearings and is essentially concerned with matters of procedure in a wide sense; secondly, that a special protection is provided in the case of a person charged with a criminal offence (paras. (2) and (3)) and it would be contrary to this context to give a civil plaintiff a more extensive right. There are detailed exceptions in the second sentence of Art. 6 (1) as regards publicity and it is astonishing that such exceptions which would obviously be necessary (e.g. for immunities, bankruptcy, minors, vexatious litigants), if a right of access in civil cases were included, should not have been mentioned. The absence of such exceptions is therefore not, as is submitted by the applicant (1), inconsistent with, but it indeed supports, the Government's contention that no such right of access exists. If it did exist, it would be reasonable to expect such qualifications as are included in respect of publicity. Finally, the absence of such a right in other articles is no basis for presuming its presence in Art. 6 (1).

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(1) Memorial, para. 7.

C. ESTABLISHMENT OF THE FACTS

36. It may be observed that there is no substantial disagreement in the present case as to the facts relevant to the main issue of interpretation. The applicant, while detained in prison, was refused permission to consult a solicitor with a view to bringing proceedings for defamation against a prison officer. The Government does not deny this nor that the applicant was thus denied access to the courts. From his side the applicant admits that on the facts of the case he has no claim under Art. 6 (1) (but still may have under Art. 8) unless, as he submits, this Article protects the general right of access to courts. The prison officer had made a statement on 25 October 1969, saying that he had been attacked by three prisoners one of whom he knew by sight and whose name he thought was Golder. The applicant thought that this statement was defamatory and that it might have an adverse effect upon his chances of obtaining parole and of being granted certain privileges while in prison. On 5 November 1969 the prison officer made a further statement qualifying the first statement.

37. The applicant submits that the statement made on 25 October 1969 was clearly defamatory. The Government submit that it was not clearly defamatory. Nevertheless, the Government do not lay emphasis on this point because they claim that, whether or not the statement was defamatory, it was made on an occasion that was "privileged" and so could not have been the subject of an action for defamation. It appears that the English law of defamation recognises two forms of privilege: absolute privilege and qualified privilege. The distinction between the two forms is that a statement made on an occasion covered by absolute privilege can never form the subject matter of an action for defamation even if the statement was made in bad faith. A person who makes a defamatory statement on an occasion governed by qualified privilege will have a good defence to an action for defamation but only if he was not actuated by "malice".

38. The Government submit that the statement made on 25 October 1969 may have been made on an occasion governed by absolute privilege. If it was not made on an occasion governed by absolute privilege, it was certainly covered by qualified privilege and, as there was no indication of malice, the prison officer would have had a complete defence to any action for defamation brought against him.

39. The applicant admits that the occasion may have been governed by qualified privilege but claims that this is not certain and that in any case the prison officer might have been actuated by "malice" in the technical sense. The applicant submits that the facts in this case deserved further investigation and that the applicant had every reason to wish to consult his solicitor with a view to

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determining his legal position. The applicant does not claim to know to what conclusion a properly instructed lawyer would have come, but submits that there was ample justification for proceeding further with the determination of his civil right.

40. The Commission considers that the only fact which remains to be established is whether or not the applicant was seeking the determination of a civil right. It is perhaps arguable that, if the applicant had requested permission to see a lawyer about a claim which was totally absurd or a figment of his imagination, then a refusal by the authorities to allow him to consult a lawyer would not have been an interference with the determination of one of his civil rights. Whether absurd or clearly frivolous claims raised, e.g. in bad faith, could be disregarded, does not, however, need to be decided here. The statement made by the prison officer on 25 October 1969 could well be interpreted as defamatory. It is not necessary to decide whether it was prima facie defamatory. Whether or not the defence of privilege would be open to the prison officer and whether or not such a defence would succeed, is a question which it is not possible for the Commission to decide. These are clearly matters which should be examined by English lawyers or the English courts. The Commission is satisfied that the facts that have been presented to it raise the issue of the existence of a "civil right" and that the applicant was justified in requesting that his right be "determined".

In this context the Commission refers to its decision of 8 March 1968 in application No. 808/60 (1) where it said (2): "whereas the right to enjoy a good reputation and the right to have determined before a tribunal the justification of attacks upon such reputation must be considered to be civil rights within the meaning of Article 6, paragraph (1) of the Convention".

In the Commission's opinion, therefore, it is irrelevant for the present purpose whether the applicant in such a suit at law would succeed or lose. It is sufficient to establish as a fact that the court would be called upon to determine the existence or non-existence of a civil right.

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(1) Isop v. Austria, Yearbook 5, p. 108.

(2) Ibid, p. 122.

D. OPINION OF THE COMMISSION

Introduction

41. The Commission first recalls its earlier observation (1) that the question whether Art. 6 (1) of the Convention guarantees the right of access to the courts has never been expressly decided. This is an important issue concerning the interpretation of the Convention. In the practice of the Commission and Court of Human Rights, certain assumptions relevant to this issue may be identified and undoubtedly carry some weight. (Below, paras. 72-79). However, at the present stage there is no sufficiently settled practice as would make superfluous an examination of the various other elements of interpretation discussed by the Parties in the present case. Indeed, for the first time all these other elements have been brought forward and examined. The Commission cannot feel bound by obiter dicta or assumptions expressed in earlier practice where other issues concerning Art. 6 (1) have been paramount and decisive. It is therefore first going to examine these other elements.

42. The main problem of interpretation has been well defined by the Parties in their written and oral submissions: Does Art. 6 (1) - within its field of application (2) - grant a right of access to courts, or does it only lay down procedural guarantees applicable to proceedings once they have begun? If the former is the case, further questions of interpretation arise concerning the scope and content of such a right (3).

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(1) See the Commission's decision of 16 December 1970 on the admissibility of application No. 4115/69, Knechtl v. United Kingdom, Collection of Decisions, Vol. 36, p. 43, and its decision of 30 March 1971 on the admissibility of the present application, Appendix II to this report.

(2) The problem of defining its field of application figures prominently in the practice of the Commission and Court. It also appears in the travaux préparatoires, which, however, only indirectly affect the present problem (see below paras. 61 and 62).

(3) Cf. below under II and III.

If the latter is the case, the Contracting Parties are not required under the Convention to provide for such access and this is left to be determined freely under their own law (1). This main problem concerns a pure question of law and obviously an important matter of principle, on which the particular facts of this case have no bearing (2).

43. A right of access to courts is not explicitly stated in Art. 6 (1). But the applicant contends that it clearly follows from the wording in its proper context. He also relies on the purpose and object of the Convention and maintains that this right is further confirmed by a correct appreciation of its drafting history. The Government, however, in reaching a different conclusion relies on the same elements, although on the basis of a different analysis, taking them in another order and giving them a different weight and emphasis.

The Commission agrees that in the choice of interpretation it is important to approach the task in the right perspective (3) but notes that it is disputed between the Parties as to what precisely this right perspective is.

Principles of interpretation

44. The Commission considers that the case requires a brief examination as to what principles of interpretation are applicable to the European Convention on Human Rights. Both the respondent Government and the applicant have invoked the articles in the Vienna Convention on Interpretation of Treaties (4), although they have drawn different conclusions from those articles. They have also invoked other general guidelines.

The Commission observes that the rather general provisions of the Vienna articles could be regarded as an expression of customary law and general principles recognised by nations, including the Contracting Parties to the European Convention. For the limited guidance one may find in these provisions, it is therefore not material whether the Vienna Convention is in force for the Contracting Parties, in

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(1) Reservation must here be made for other obligations under international law, e.g. other treaties providing for a more or less general right of access, cf. Government submissions, above para. 21, and the Commission's opinion below para. 69.

(2) Counsel for the applicant, Golder hearing, p. 9.

(3) Counsel for the Government, Golder hearing, p. 37.

(4) Counter-Memorial, para. 68, Golder hearing, pp. 10 and 13. See also above paras. 5 and 6 (Applicant) and para. 38 (Government).

particular the United Kingdom. The question of applying these and other commonly invoked principles of treaty interpretation to the Human Rights Convention should, however, be answered only after taking into account the special nature of this Convention.

In the Commission's opinion the object of the international application of the Convention is to interpret its provisions objectively (1), and not to interpret the Convention by reference to what may have been the understanding of one Party at the time of its ratification. Furthermore, whatever may be the case as regards an ordinary international treaty, both the Commission and the Court, wherever they have expressed an opinion on this general point, have stated that the provisions of the Convention should not be interpreted restrictively so as to prevent its aims and objects being achieved (2).

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(1) "... the obligations undertaken by the High Contracting Parties in the Convention are essentially of an objective character, being designed rather to protect the fundamental rights of individual human beings from infringement by any of the High Contracting Parties than to create subjective and reciprocal rights for the High Contracting Parties themselves". Application No. 788/60, Austria v. Italy, Yearbook 4, p. 116 at p. 140.

(2) "Lemhoff" case

"Given that it /the Convention/ is a law-making treaty, it is also necessary to seek the interpretation that is most appropriate in order to realise the aim and achieve the object of the treaty, not that which would restrict to the greatest possible degree the obligations undertaken by the Parties". (Judgment of the Court, para. 8).

Belgian Linguistic Case

"The Court considers that the general aim set for themselves by the Contracting Parties through the medium of the European Convention on Human Rights, was to provide effective protection of fundamental human rights, and this, without doubt not only because of the historical context in which the Convention was concluded, but also of the social and technical developments in our age which offer to States considerable possibilities for regulating the exercise of these rights. The Convention therefore implied a just balance between the protection of the general interest of the community and the respect due to fundamental human rights while attaching particular importance to the latter". (Judgment of the Court, p. 32).

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45. The Commission, in considering this question of interpretation, in accordance with the "general rule" in Art. 31 of the Vienna Convention, will first examine the ordinary meaning of the wording of Art. 6 (1) in its proper content, combined with the object and purpose of the Convention. It is only on the basis of its opinion in this respect that it will next take account of supplementary means of interpretation, namely the travaux préparatoires and other human rights instruments which have been invoked, with the object of assessing their effect on its preliminary opinion on the ordinary meaning of Art. 6 (1). The Commission will finally consider what is the relation of its own and the Court's jurisprudence to this preliminary opinion.

46. Before beginning this examination, it should first be observed that, according to Art. 32 of the Vienna Convention, preparatory works are only supplementary means to which recourse may be had (a) to confirm the meaning resulting from the application of the "general rule", (b) to determine the meaning when this rule leaves it ambiguous or obscure, or (c) to correct a manifestly absurd or unreasonable result but, in the Commission's reading of Art. 32, not to depart from the result of the application of the general rule in other cases.

Alternatives (a) and (c) do not seem applicable here. As will be considered more fully below, the Commission cannot admit that the application of the "general rule" in Art. 31 of the Vienna Convention gives beyond doubt a meaning which could positively be confirmed by recourse to supplementary means, including preparatory work, as Art. 32 indicates. Even less is there a question of any of the contending interpretations leading to a result so manifestly absurd or unreasonable that it should be corrected by recourse to such means.

In considering whether alternative (b) is applicable and whether therefore the preparatory work should be relied upon in order to determine the meaning, the Commission apparently must decide whether the arguments drawn from the wording and

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(2) cont.

Delcourt Case

"In a democratic society within the meaning of the Convention, the right to a fair administration of justice holds such a prominent place that a restrictive interpretation of Art. 6 (1) would not correspond to the aim and the purpose of that provision (see, mutatis mutandis, the Wemhoff judgment of 27 June 1968, 'As to the Law', para. 8)." (Judgment of the Court, para. 25.)

context of Art. 6 (1), in particular in relation to the preamble and other provisions of the Convention such as Art. 13, leave the result more or less ambiguous or obscure. Further, if alternative (b) is applicable, it also remains to be decided how conclusive the preparatory work really is, in particular whether the alleged distinction between, on the one hand, a right to a fair trial during proceedings which have been commenced and, on the other hand, provisions for access or recourse to a tribunal, was really intended in the European Convention. This is a distinction of some subtlety. If at times it may have been intentionally drawn within the United Nations, it is not clear whether such distinction is reflected in the corresponding provisions of the European Convention and, if so, whether such distinction in this context was intentional.

The Commission therefore in order to decide the question of the applicability of alternative (b) will first examine the ordinary meaning and context of Art. 6 (1).

The ordinary meaning: its context, purpose, etc.

47. In law, as elsewhere, single words usually cannot be interpreted in isolation. Only the sentences in which they occur convey meaning, legal or otherwise, and one sentence must always, in order to be properly understood, be seen in its context. The sentence is only a fragment interacting with other sentences.

The relevant context of a legal provision is not limited to the section or article in which it occurs. As regards treaties the Vienna Convention defines the context in more detail. By way of comparison it may be observed that for the interpretation of a provision in national legislation the whole existing body of legislation, and not only the particular act, is sometimes the relevant context. This is so at least as far as one may assume that the legislator was not unaware of the existing legislation other than that with which he was concerned. In defining the context of a treaty the Vienna Convention (Art. 31) takes into account the special nature of inter-State relations where the subjects, being the States, are only bound by written law to which they have given their consent. Besides the ordinary meaning of the terms in their context this general rule under Art. 31 also refers to the object and purpose of the treaty.

The Commission adopts the same approach. In examining the meaning of Art. 6 (1), the text, or wording, therefore may only serve as a point of departure and the Commission is inevitably led to look beyond that point before drawing any conclusion.

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The text itself

48. It is not said in Art. 6 (1) in terms that there shall be a right of access to courts. Apparently, however, it has often been read in this way although without much reflection. Such a reading appears to the Commission to be quite understandable. In effect, whether one relies on the English or the French texts, such a reading may be said to be a natural one. Upon reflection, however, it must probably be admitted that there may be some doubts concerning the "ordinary" sense of the text in both languages. Indeed, the Commission considers that the reading into the Article of a right of access to courts probably cannot be arrived at on purely linguistic grounds to the exclusion of other possible interpretations and, in particular, the way it is interpreted by the respondent Government.

49. But this situation is not unique. More often than not, what is read into legal texts as their "natural" or "ordinary" meaning goes beyond the purely linguistic appreciation which is based on the text itself and nothing else. When faced with legal texts, even the simplest ones, both laymen and lawyers consciously or unconsciously are applying the pragmatism popularly called "common sense". This means a sense of purpose and consistency with the factual and legal background which, in the case of lawyers, are assisted by their professional skill. Therefore a pragmatic, as distinct from a merely linguistic, interpretation is always set in motion from the very outset.

50. The text in question is a complex one. The dispute which has now arisen, more than twenty years after this text came into being, shows that a simple reading is not even sufficient to discover, much less settle, such a point as the present one. Otherwise, the problem would have been put squarely, and probably solved, long ago.

The Commission is therefore bound to recognise that, in the determination of the meaning of the disputed point, an assessment of the context, object and purpose of the Convention cannot be left aside. Moreover, subjective appreciations easily also enter into this process and cannot be considered completely extraneous to the task. What is given as the "natural" and "ordinary" meaning of the text, is often influenced by a particular way of reading which supports the result one wants to reach for other reasons. What one "finds" in a text often depends on what one is looking for. Conscious of this, the Commission makes the following observations..

51. In the French text Art. 6 (1) appears to suggest that a right of access to the courts is intended. However, the use of the term "cause" is not conclusive since it may be used as a technical term (case pending before the courts). Equally, the term "qui décidera" is not conclusive since it does not

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necessarily imply a right to have the case determined. But the opening words of the French text, "Toute personne a droit à ce que sa cause soit entendue" suggests that it is not intended to limit Art. 6 (1) to proceedings already instituted. If such a limitation had been intended, a different structure of Art. 6 (1) would have been expected. The French text appears to suggest, in effect, that everyone is entitled to a hearing of his claim, wherever there is a dispute as to his civil rights and obligations.

52. The English text is less clear. The Government emphasise the phrase "in the determination". But there seems no reason why this should be taken to mean only in the judicial process; it is just as natural to take this phrase to mean "wherever his civil rights and obligations are being determined". This reading of the text would mean that civil rights and obligations under the Convention must in principle be justiciable and not only subject to other procedures of determination, e.g. administrative proceedings. The fact that the text treats them together with criminal charges confirms this reading in the Commission's view. Certainly, the access to courts is not necessarily given effect to in the same way in the two kinds of proceedings. In the case of a criminal charge access to courts in some countries may only be claimed indirectly by the individual himself; the determination of the charge by a court may depend on whether the prosecution authorities maintain it or not, and normally it is for them to commence the proceedings. On the other hand, to have a civil right or obligation determined positive action is normally taken by the plaintiff himself by suing the other party. The principle of justiciability, however, in the view of the Commission is not affected by this difference.

53. For these reasons the Commission finds that the reading of both the English and the French texts together justifies the interpretation that there is a right of access to the courts combined, of course, with the requirements of Art. 6 (1) concerning the judicial procedure. These procedural requirements by themselves are not sufficient to establish the full raison d'être of Art. 6 (1); they simply represent elementary guarantees exactly such as distinguish judicial procedures from other ways of determining the legal position of the individual. It is these requirements, combined with access, which are the essence of the rule of law. The procedural guarantees would mean considerably less if a right of access to them were not part of the meaning of Art. 6 (1).

The Commission observes that this reading, as suggested earlier, from the outset is a pragmatic one. It remains to be seen if it is sustained by the context in the light of the object and purpose of the Convention. Therefore, the Commission, before determining the meaning of Art. 6 (1) has to look beyond these preliminary observations relating to the text itself.

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The context, object and purpose

54. In discussing the context of the Convention as a whole, the Parties have emphasised different aspects and introduced various analyses and distinctions. The Commission wishes to indicate its own approach, referring to the position of the Parties wherever this is called for.

The immediate context of the disputed provision concerning civil rights and obligations, i.e. the rest of Art. 6, has already to some extent been taken into account above. The requirements of a "fair and public hearing" etc., confirm the idea of the rule of law. This idea, in the Commission's view, cannot be separated from the idea of access to the courts and the guarantees which court proceedings offer in the determination of a person's legal position within the scope of the Article. The wider context of the Convention itself nowhere else offers a similar basis for meeting this requirement of the idea of the rule of law which, according to its Preamble, is one of the main objects and purposes of the Convention. It is therefore natural to understand the whole context of the Convention as confirming that the justiciability of civil rights and obligations is guaranteed by a right of access to courts.

The limitations on publicity permitted in Art. 6 (1), as well as the following paragraphs relating to the position of everyone charged with a criminal offence, do not seem to alter this picture. It is true, as observed by the respondent Government, that the immediate context referred to here relates to the conduct of judicial proceedings but these guarantees become meaningful only when this process is obligatory to the extent suggested by the scope of Art. 6 (1).

55. If, on the other hand, Art. 6 (1) is concerned only with the conduct of proceedings, the consequence might be that there would be no obligation under the Convention to have any courts at all in civil matters. However, this interpretation would not only mean that such an obligation was missing, but also entail the possibility of a serious encroachment on rights of a "civil" nature by refusing individuals, perhaps large groups, access to the existing courts. And on the other hand, once they had obtained access to the court, they would afterwards have important guarantees under the Convention. As argued on behalf of the applicant, it would be astonishing if the moment of introduction of a lawsuit should make such a vital difference. The Commission cannot but find it unreasonable to adopt an interpretation leading to such results.

56. The Commission does not agree with another argument which also purports to be drawn by the respondent Government from the context. According to this argument the present issue is pre-empted by other articles of the Convention,

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notably Arts. 5 (4) and 13. These Articles, so the argument goes, provide expressly and specifically for a limited access to courts or for similar remedies, and it would be inconsistent with the drafting pattern of the Convention to add, impliedly and generally, a right of access into Art. 6 (1)(1). In the Commission's view, however, the nature of these Articles is different. Arts. 5 (4) and 13 are applicable to other rights specifically mentioned in the Convention.

The civil rights referred to in Art. 6 (1) are themselves not, indeed, otherwise specified or granted substantial protection under the Convention (2).

57. The Commission does not share the view that the finding of a right of access to courts in Art. 6 (1) amounts to giving the Article an "extended" meaning, where this term is taken to mean an interpretation going beyond the ordinary meaning with due regard to context and purpose. It has already been shown that this meaning is supported by the text itself in both languages, although perhaps more clearly in the French text than in the English version and, since the meaning cannot, and should not, be determined without recourse to the context, object and purpose of the Convention, the Commission sees no difficulty in retaining the meaning as already derived from the text itself. Whether it be considered as explicit, implied or inherent, does not seem to matter very much, given the nature of the process of interpretation as earlier described. Should there be any doubt or ambiguity on this point, however, the Commission accepts the position of the applicant that the "extended" meaning should be preferred to the "restricted" one put forward by the Government. The decisive consideration here must be that the overriding function of this Convention is to protect the rights of the individual and not to lay down as between States mutual obligations which are to be restrictively interpreted having regard to the sovereignty of these States. On the contrary, the role of the Convention and the function of its interpretation is to make the protection of the individual effective. It is true that it represents only the "first steps" for the enforcement of human rights as the Preamble says. But this fact cannot be relied upon to justify restrictive interpretations running contrary to its overall purpose.

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(1) Golder hearing, pp. 44-50; cf. Counter-Memorial, para. 38 where the Government to a large extent also relies on the drafting history of various instruments (above, summary of submissions of the Government, paras. 22-26).

(2) Cf. also the distinction made between right and remedy by counsel for the applicant, Golder hearing, pp. 18-19 (above, summary of submissions of the applicant, paras. 7-8).

58. If Art. 6 (1) does guarantee the right of access to the courts, the consequences are that (subject to the problem of "inherent limitations", below, part II) all persons have the right of access and that certain distinctions in this respect between different categories of persons might raise a question under Art. 14 in combination with Art. 6 (1). It is probable that applying this interpretation to the legal systems of the States Parties to the Convention would not, generally speaking, make substantial changes necessary. It seems certain that all these States, including the United Kingdom, recognise the right of access as a general principle and the question would therefore only be one of the scope of this right. In this respect there are limitations in the Convention itself. In particular, there is an important limitation in the term "civil rights and obligations". The interpretation of this term excludes large areas of administrative proceedings from the right to judicial review as the case-law of the Commission and Court has shown (1). Next, there is the question of what, more exactly, the right of access to courts means. It does not have to mean that the court must always pronounce on the merits of the claim; immunity, prescription, etc., may be grounds for not doing so. Nor does it have to mean that the court cannot deny jurisdiction (e.g. ratione materiae or ratione loci), or that the exercise of the right of access must be unconditional (below, part II). If, as suggested below (part II, para. 100), Art. 6 (1) does not guarantee the right to a final determination on the merits but does guarantee the right to a court hearing, its consequences do not seem to go far beyond the present practice of States Parties to the Convention.

59. The above considerations concerning both the terms of Art. 6 (1) in its context and the object and purpose of the Convention, together with the view of the Commission of what is reasonable in regard to the consequences of the alternatives before it, have so far led the Commission to conclude that it is the natural interpretation of Art. 6 (1) that it guarantees a right of access to courts. This conclusion has, in the Commission's view, a positive basis in all the elements of interpretation referred to above.

60. According to the principles of interpretation of the Vienna Convention, there would perhaps be no need to go further as the result to which the Commission has arrived cannot possibly be regarded as so manifestly absurd or unreasonable as to justify the application of alternative (c) referred to above (para. 46) and thereby necessitate recourse to supplementary means of interpretation. But if, against the view of the Commission, any ambiguity or obscurity should be held to remain as to this interpretation, an examination of

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(1) Applications Nos. 3435-3438/67, W.X.Y., and Z. v. United Kingdom, Yearbook 11, pp. 562 (602-604); 3798/68, Church of X. v. United Kingdom, Yearbook 12, pp. 306 (316).

such supplementary means could, in principle, become decisive only if it were found to lead to a contrary result. These supplementary means of interpretation may, therefore, deserve an examination to see if they contradict this meaning. They have been very broadly dealt with by the parties, in particular by the respondent Government. The Commission therefore now turns to the supplementary means of interpretation and, in the first place, the travaux préparatoires.

Travaux préparatoires

61. It appears that those who drafted the Convention did not consider the question of the right of access to the courts and nor was it mentioned during the discussions in the Consultative Assembly.

The first draft produced by the Committee of Experts simply reproduced Art. 10 of the Universal Declaration of Human Rights as it stands; thus not even the word "civil" figured therein.

During its second meeting in March 1950, the Committee of Experts adopted a formula similar to that of Art. 13 (later Art. 14) of the draft International Covenant of Human Rights. The French version contained the phrase "de caractère civil" although the English version referred to "in a suit at law".

It was in fact at the last minute that the expression "rights and obligations in a suit at law" was replaced in the English text by "civil rights and obligations". There are no official documents stating the reasons for such a modification but it was probably inspired by the wish to bring the two official texts into line.

If the expression "rights and obligations in a suit at law" had been retained in the final text, it might have been arguable, on the basis of the ordinary meaning of the words, that Art. 6 (1) should be construed in the narrower sense, i.e. confined to cases which are already pending. But even this hypothetical inference is doubtful. And in any case the text of Art. 6 (1) in its present form is different, and if any argument at all is to be drawn from the change in the text it is an argument against the view that Art. 6 only deals with procedure.

62. Neither the study of the history of the Convention itself, nor the texts and travaux préparatoires of related provisions in the United Nations instruments to which reference has been made, contain anything which in the Commission's opinion contradicts the interpretation arrived at above (para. 59).

The importance of other treaties and practices

63. In order to support its distinction between the right to a fair hearing and the right to access to courts, as being a well-established one in international law, the Government

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also refer to commercial treaties which separately guarantee the right of access. However, these treaties have a special purpose, namely to guarantee the right of access to the courts of a State by the nationals or another State on the same terms as its own nationals. They do not, in themselves, seem to be particularly relevant. The European Convention on Establishment seeks to achieve the same purpose on a European level. Therefore, the Government argue (1) that it would not have been necessary for the right of access to be guaranteed by this Convention or by the draft European Convention on the Legal Status of Migrant Workers, if the Convention on Human Rights conferred a right of access in all cases. In the opinion of the Commission, however, this argument is misconceived since the guarantee of the right of access in Art. 6 (1) of the Convention on Human Rights concerns only "civil rights and obligations", while the provisions of the Conventions quoted by the Government are wider in their scope.

64. The colonial and independence constitutions referred to by the respondent Government, demonstrate only that the United Kingdom in its unilateral practice has placed the narrower interpretation on Art. 6 (1). As to the argument drawn by the respondent Government from the Constitution of Cyprus it is at best inconclusive because the circumstances surrounding the drafting of this Constitution may explain the special mention of the right of access (2). These are more or less extraneous matters and the points made in respect of them are not sufficiently relevant to affect the opinion of the Commission.

Jurisprudence of the Commission

65. It is true, as has been said above, that the problem has never been dealt with as such by the organs of the Convention. It is nevertheless possible to conclude from the Commission's jurisprudence that it has already impliedly followed the course now suggested.

66. For example, the Commission was clearly including in its reasoning the idea that Art. 6 (1) guarantees the right of access to a tribunal, while assuming that it could normally be renounced, when it decided that a written agreement to take a particular matter to arbitration might be contrary to the Convention if it was signed under duress (cf. Application No. 1197/61, Yearbook 5, p. 97).

67. In the same way, the Commission decided that the existence of a time-limit, within which a claim had to be lodged, was not incompatible with Art. 6 (1) because it only interfered with access to the courts after a certain date (cf. Application No. 4045/69, Collection of Decisions 34, p. 35-36.

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(1) Counter-Memorial, paras. 35-36.

(2) Cf. Counter-Memorial, para. 56 in fine.

68. In a series of cases where the Commission has considered in some depth the notion of "civil rights and obligations", it has assumed, without expressly so stating, that Art. 6 (1) does guarantee the right of access to the courts: see in particular Nos. 3435-3438/67 (W., X., Y., Z. v. United Kingdom: Yearbook , p. 562); 3651/68 (Shinder v. United Kingdom: Collection of Decisions, Vol. 31, p. 72).

69. It is, however, in its report of 19 March 1970 on the merits of application No. 2614/65 (Ringeisen v. Austria) that the Commission has clearly implied that Art. 6 (1) provided for a right of access to the courts.

Ringeisen, an Austrian citizen, who was a real estate and insurance agent, was arrested in Austria in 1963 on suspicion of fraudulent property dealings and detained in prison. He stated that he had intended to buy certain property, divide it up in plots and sell it, but had subsequently been unable to transfer to the proposed purchasers the titles of the various plots. The reason for this was that the Agricultural Commission, whose approval is required under Austrian law for such transactions, had refused to approve the contract of sale under which he himself had originally acquired the properties concerned. Ringeisen appealed to the Constitutional Court denouncing the lack of impartiality of the members of the Agricultural Commission and the allegedly obvious arbitrariness in their decision. The Constitutional Court rejected his appeal on 27 September 1965. In his application to the Commission Ringeisen alleged that he was refused "right of access to the courts" guaranteed according to him under Art. 6 (1).

70. On 18 July 1968, the Commission declared this complaint admissible (Yearbook 11, p. 268). In its report the Commission set out (paras. 131 on p. 62) the particular points at issue under Art. 6 (1) upon which it was called to decide:

> "(1) whether or not the proceedings for the approval of the sale of real property under the Act relating to the Approval of Transactions concerning Agriculture and Forestry Land of Upper Austria can be considered as involving the 'determination of a civil right' within the meaning of Article 6, paragraph (1), of the Convention?
>
> (2) <u>if so</u>, whether or not the applicant had <u>access</u> to a 'tribunal' within the meaning of that provision /underlining to be found in the report, para. 131/
>
> (a) by having his case examined by the Real Property Sales Commissions set up under the above Act, or
>
> (b) by having the possibility of a constitutional appeal to the Constitutional Court?

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(3) whether or not the applicant had a hearing on his allegations of bias on the part of certain members of the Regional Real Property Sales Commission of Linz?"

By a majority of 7 votes against 5 votes the Commission found that Ringeisen's complaint was not a question of "determination of his civil rights and obligations" (paras. 142, pp. 70-73). However, in its opinion the Commission stated that, if the question whether the proceedings concerned did involve the determination of a civil right was answered in the affirmative:

"it follows that an independent and impartial tribunal should have determined whether or not the applicant should be allowed to buy the plots of land, and in determining this issue the tribunal should have observed the procedural safeguards provided for by Article 6, paragraph (1)."

71. The Commission in using the words "should have determined" was thus apparently of the opinion that Art. 6 (1) not only guaranteed the prodecural safeguards referred to but guaranteed also the right to have the issue determined by an independent and impartial tribunal. In other words the Commission saw in Art. 6 (1) an "institutional" element. The above-cited phrase seems to be all the more important because it was in no way indispensable; normally, the Commission's decisions and opinions in similar cases conclude that Art. 6 (1) is simply inapplicable and do not contain obiter dicta as the above.

72. The five members of the minority considered in their dissenting opinion (para. 143, pp. 74-76) that there had been a violation of Art. 6 (1). In their collective opinion they also relied, as did the majority, on a "right to a judicial control". It appears, therefore, that the Commission unanimously accepted in that case the existence of a right of access to the court. The judgment of the European Court of Human Rights in the Ringeisen case does not seem to have any bearing on this issue.

Conclusion

73. The Commission, having had regard to all the elements of interpretation, including in particular the ordinary meaning of Art. 6 (1) in the English and French texts and the objects and purposes of the Convention and of Art. 6 itself, is unanimously of the opinion that Art. 6 (1) of the Convention guarantees a right of access to the courts.

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II. WHETHER ART. 6 IS SUBJECT TO ANY INHERENT LIMITATIONS APPLICABLE IN THE PRESENT CASE

A. SUBMISSIONS OF THE APPLICANT

74. The applicant submitted (1) that there was under the Convention no general restriction or limitation preventing convicted prisoners from invoking the rights guaranteed by Art. 6 (1) (or Art. 8 (1)) of the Convention. It was clear that there was no express general restriction. If, therefore, a general restriction were to exist, it would, of necessity, be an implied or inherent restriction. According to the applicant, no such implication could properly be found to exist.

75. It was clear that the draftsmen of the Convention had inserted specific restrictions applicable to certain articles, and also general restrictions (Arts. 15, 16 and 17) to cover special circumstances. Some of the specific restrictions showed that the draftsmen had taken account of the position of convicted prisoners, as demonstrated by Art. 5. It was a rule of law, as well as of reason and good sense that, when restrictions or exceptions were expressly dealt with in a text, there was no room for further restrictions by implication.

76. Furthermore, Art. 18 of the Convention made it clear that the application of restrictions should be carefully delimited. It required that the permitted restrictions should not be applied for any purpose other than those for which they had been prescribed. Art. 18 was a conclusive argument against the existence of implied restrictions of any sort because it would not be possible to formulate the purpose of any such implied restriction. Any "margin of appreciation" left to a High Contracting Party must fall within the express restrictions relevant to specific articles.

77. Further, Art. 15 provides expressly a very limited form of circumscribing the various freedoms; the introduction of other restrictions through interpretation should not be accepted. The judgment of the European Court of Human Rights in the "Vagrancy" cases (paras. 91-93 of the judgment) strengthened the argument that the Convention contained no implied limitations (2).

78. The case law of the Commission was not against this argument (3). All the cases invoked by the Government are reconcilable with it on the basis either of the specific

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(1) Golder hearing, pp. 23-24, referring to Knechtl hearing, pp. 26-34.

(2) Knechtl hearing, p. 129.

(3) Golder hearing, p. 24, cf. further Knechtl hearing, pp. 31-33.

restrictions contained in the articles or of the particular facts which were before the Commission. The Government had suggested that an unrestricted right of access to the courts for all persons in detention would lead to chaos and to a breakdown in prison discipline. The applicant submitted that this was fallacious. Art. 6 (1) did not give an unfettered right of access. It referred to the determination of a person's "civil rights". Art. 6 (1) could only be invoked if there were some semblance of a bone fide claim. Secondly, there were built-in safeguards in the English system. The courts had a procedure for striking out vexatious, hopeless or scandalous claims. Thirdly, a potential litigant would normally need to obtain legal aid which he would not get in a hopeless case and, even if he could afford to pay a lawyer out of his own funds, the lawyer would refuse to take a case which offered no prospect of success (1).

79. The applicant admitted that physical confinement after conviction must involve loss of some of those liberties enjoyed by others who were free. But he did not agree that on this basis he should be denied access to the courts in order to determine his civil rights arising particularly out of incidents occurring during the period of his detention (2). It could not (3) be accepted that Art. 5 was a sufficient basis for implying restrictions in other articles such as Art. 6.

80. But, even supposing that the applicant was wrong on this point and that Art. 6 (1) did contain an inherent restriction, it was for the Government to show that the present facts fell within such restriction. There was no doubt that the statement of the prison officer made on 25 October 1969 was defamatory. There was no doubt that it was not true. Although it was open to the defendant to establish the defence of qualified privilege and although it appeared not improbably that the defence would succeed, it was necessary that he should "establish" it. It was also possible that the applicant might bring an action for wrongful detention rather than for defamation. The wisdom of such a course he could not decide for himself. It would be for his solicitor to advise him.

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(1) Knechtl Memorial, para. 30, which was apparently also relied on in the Golder case.

(2) Memorial, paras. 11-13.

(3) See a statement by counsel in the Knechtl hearing, p. 128 which seems to have been implicitly relied on also in the Golder case.

81. Again, even supposing that Art. 6 (1) contained an inherent restriction, it was not reasonable that the Home Secretary should apply that restriction in a case where he, or someone responsible to him, was the potential defendant. A man has no right to act as a judge in his own case.

The applicant submitted, therefore, that Art. 6 (1) contained no inherent limitation. Alternatively, even supposing that it did contain a limitation, the present facts could not fall within it.

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B. SUBMISSIONS OF THE RESPONDENT GOVERNMENT

82. The respondent Government contended that, if Art. 6 (1) granted a right of access to the courts, it must of necessity provide for some inherent limitations on that right. For example, there would have to be limitations on the right of infants, persons of unsound mind, bankrupts and vexatious litigants to institute litigation. Such limitations are in practice imposed by States. There would have to be a limitation on a person's right to commence an action against a diplomat. Such limitation is required under international law. The Commission's case law showed that the loss of liberty involved in lawful detention carried with it certain inherent limitations of the other rights granted by the Convention. In Application No. 892/60 (Yearbook 4, p. 240) the Commission had upheld the legitimacy of certain restrictions on the right to marry under Art. 12 notwithstanding that Art. 12 contains no exceptions corresponding to those in Arts. 8 (2), 9 (2), 10 (2) and 11 (2).

83. The Commission had also frequently relied on the doctrine of inherent qualifications even in cases where the article in question did contain an express limitation. In this respect the Government drew the Commission's attention to eight of its previous decisions (1).

It was naturally impossible to point to a decision of the Commission in which the Commission had decided on the inherent limitations surrounding the right of access to the courts granted by Art. 6 (1). This was because the Commission had never held that Art. 6 (1) granted a right of access and so it was perfectly consistent with the Government's claim that Art. 6 (1) did not enshrine such a right. But, if Art. 6 (1) granted a right of access, it would of necessity provide for inherent limitations on this right and the action of the Home Secretary, in preventing the applicant from writing to a solicitor, was certainly within such a limitation.

84. The Government submitted that no action for defamation against the prison officer could possibly succeed on the facts of the case. It was open to doubt whether the words spoken by the prison officer were, in fact, defamatory. But, even if they were defamatory, there was no doubt that there was a good defence to any action in defamation brought against the officer. This defence was the defence of "privilege". It was not clear whether the statement had been made on an occasion which English law would regard as "absolutely privileged" but this question was of no real significance. If it was not made on an occasion which was "absolutely

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(1) Counter-Memorial, para. 90.

privileged", the statement was certainly made on an occasion covered by "qualified privilege". No action for defamation could be brought on such a statement unless the plaintiff could show malice. On the facts of the present case there was not the slightest indication of malice (1). No action for defamation could possibly succeed in English law on such facts.

85. Under the Prison Rules which had been laid before Parliament for its approval (see Appendix IV setting out the relevant sections of the Prison Act and the Prison Rules), the Secretary of State had the right and the duty to control prisoners' correspondence. Rule 37 provided that where a prisoner had already begun legal proceedings his legal adviser would be afforded reasonable facilities for interviewing him. But Rule 34 (8), which covered the situation where a prisoner wished to institute fresh proceedings, prevented the prisoner from communicating with his legal adviser (concerning fresh proceedings) except with the leave of the Secretary of State. The Secretary of State dealt with requests to institute legal proceedings neither as a mere formality nor in an arbitrary and capricious manner. Each case was considered on its merits and the Secretary of State's primary concern was to discover whether or not there was a prima facie cause of action. This might also be described as a "sustainable" cause or a serious cause. The Secretary of State considered not only the account of the matter given by the prisoner but also evidence and information from official or other sources including information from an enquiry instituted at his own request. Finally, the Secretary of State would consider whether, if the prisoner were not granted permission to seek legal advice, his claim might become statute-barred before the expiration of his prison sentence (Counter-Memorial on the Merits, paras. 5-12).

86. The present case was an example of the correct and reasonable exercise of the Home Secretary's right and duty. It was not only fair and reasonable but necessary for the correct administration of the prison system that some check should be kept on the institution of civil actions by prisoners. Prisoners frequently suffered from imaginary grievances and, with time on their hands, often showed an unhealthy desire to indulge in litigation over matters which persons outside prison would shrug off. It was essential that there should be some form of safeguard. It was wrong to say that in the present case the Home Secretary had acted as a judge in his own case. The proposed litigation was not directed against the Home Secretary but against a prison officer. If prison officers were to be open to unlimited actions of this sort, it would be impossible to keep good order in the prisons. The Home Secretary had considered the applicant's petition, he had noted that under English law no action for defamation could

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(1) Golder hearing, pp. 66-67; cf. Counter-Memorial, paras. 13-18, where the facts and law of defamation are further described.

possibly succeed on the facts and he had refused the applicant permission to consult a solicitor. This was perfectly reasonable. Nor would it have been possible on the facts to bring an action for wrongful detention.

This was, therefore, a case which really could not and must not be brought within Art. 6 (1) of the Convention.

The Government, therefore, submitted that, if Art. 6 (1) granted a right of access to the courts, it must contain a limitation upon such right and that the present facts must fall within such limitation.

C. ESTABLISHMENT OF FACTS

87. Cf. above: Introduction, paras. 1-2, and Establishment of Facts, paras. 36-40.

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D. OPINION OF THE COMMISSION

88. The Commission considers that the complete definition of a right, including the description of its nature, scope and content, will expressly, or by implication, indicate the limitations on that right. For this reason it is not possible to regard as two quite separate problems the question whether Art. 6 (1) of the Convention grants a right of access to the courts and the question whether there are any implied or inherent limitations upon this right.

89. On the other hand, the Commission of course has to recognise that the exercise of a right must always be subject to formal (procedural and administrative) conditions in cases where it is necessary to have recourse to public authorities, such as the courts, for the protection or enforcement of that right. Illustrations could easily be given: not only time limits, security for costs, etc., are such conditions which have to be respected, but even trivial requirements such as office hours, the use of certain forms and so on. The proposition that one should distinguish between a right and its exercise may be a difficult one in theory. Nevertheless, the Commission is of the opinion that for the present purpose it may adopt a distinction between formal requirements for the exercise of the right and the substantial limitation of, or interference with, the right itself. In the special context of imprisonment this distinction is of considerable practical importance. The Commission accepts that the proper administration of order in prison requires rules governing the exercise of prisoners' rights, including the one under consideration here. The right to consult a lawyer in order to seek legal advice and, if consequently appropriate, to institute proceedings, must be regulated for this purpose. Still, if such regulation amounts to interference with the substance of the right concerned, it seems necessary to find a basis in the Convention for such limitation of that right.

90. The judgment of the European Court of Human Rights in the "Vagrancy" cases (paras. 91-93) offers some indication that the Convention does not make room for inherent limitations upon the rights which it confers. But, whether or not the Convention allows inherent limitations, the Commission can envisage none which is applicable to the present case. In concluding that Art. 6 (1) grants a right of access to the courts the Commission has also considered, if not completely defined and described, the scope of this right. It can find no justification for limiting the right in the way envisaged by the respondent Government, of indeed, at all; Art. 6 (1) contains no provisions similar to those in Art. 8 (2) and others. Had the draftsmen intended to limit its scope in other ways than they have expressly done, one would naturally expect that they would have written such other limitations expressly into the Article as well.

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Apart from the practice in the United Kingdom no evidence has been presented to the Commission that there is anything in the practice of Parties to the Convention to support the view of the United Kingdom Government. If a limitation on the extent of Art. 6 (1) were to be implied, it would be necessary to lay down the scope of this limitation. The Government have argued that there is a limitation restricting the right of a convicted prisoner to institute litigation and for that purpose to consult his lawyer. If the Government's views were accepted, it would be necessary to decide to which classes of detainees this restriction was applicable. Art. 18 of the Convention also requires that restrictions "shall not be applied for any purpose other than those for which they have been prescribed". This means that not only the scope but also the purpose of an implied restriction must be decided upon if such an implied restriction is found to exist.

91. The respondent Government have argued that, if Art. 6 (1) of the Convention grants a right of access to the courts, some limitation must exist to protect persons who enjoy diplomatic immunity and to restrict the bringing of actions by infants, persons of unsound mind, bankrupts and vexatious litigants. They have argued that similar limitations may be placed on convicted prisoners.

92. The Commission does not agree that these examples, well known to State practice, amount to a denial of access to courts comparable to the one defended by the Government.

93. The Commission has, in application No. 3374/67 (Collection of Decisions 29, p. 29) already dealt with the question of parliamentary immunity. Parliamentary immunity and diplomatic immunity raise very similar issues. In the above-mentioned case the Commission decided that the immunity from suit of members of parliament was both generally recognised and necessary for the proper functioning of parliamentary institutions. But both parliamentary and diplomatic immunity are applicable not by virtue of the person of the plaintiff but by virtue of the person of the defendant. The obstacle is therefore on the other side: not the court, but the defendant, is inaccessible. And it is for the court to apply the corresponding limitation of its jurisdiction. The rights of access to courts does not require that courts shall have unlimited jurisdiction.

94. In guaranteeing a fair hearing "in the determination of ... civil rights and obligations", Art. 6 (1) furthermore does not necessarily guarantee or require that all cases are decided on their merits. If an impartial tribunal, the court, decided that it does not have jurisdiction in a case or that for other reasons, e.g. procedural defects, limitation periods, etc., the claim cannot be decided on its merits, then the plaintiff has received a fair hearing "in

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the determination" (or rather "termination") of his case. There is no conflict with the terms of Art. 6 (1). The Commission considers, therefore, that the cases of parliamentary and diplomatic immunity and other jurisdictional limitations have no relevance to the present facts.

95. Although the cases of infants, persons of unsound mind, bankrupts and vexatious litigants are closer to the situation in the present case in that they concern certain groups who may be barred from acting in person as plaintiffs, they are also distinguishable from the cases of convicted prisoners. Vexatious litigants in the United Kingdom are persons whom the courts treat specially because they have abused their right of access. But, having been declared a vexatious litigant, it is open to a person to prove to the court that he has a sustainable cause of action and he will then be allowed to proceed. The control of vexatious litigants is entirely in the hands of the courts and contains no element of executive discretion. Such control must be considered as an acceptable form of judicial proceedings.

As for infants, persons of unsound mind and bankrupts, it is true that all three suffer from a disability. In the United Kingdom persons in these categories are not themselves generally permitted to institute civil actions. Similar categories are, of course, traditionally recognised and similarly treated in all countries. This may perhaps in certain cases lead to unsatisfactory results, especially as regards children. Such disability, however, is usually said not to affect the rights of the persons concerned but only to require that they are exercised in a particular way, namely by others, for instance, their parents: infants, etc., are considered to have the same rights as other members of the community, but are not allowed to exercise these rights in person. Litigation for the benefit of an infant or a person of unsound mind must be instituted on his behalf by his guardian or "best friend", and for the bankrupt by his trustee (1). None of these cases is quite comparable to the present problem.

96. The Commission observes that this problem relating to convicted prisoners in detention seems to have arisen above all in the United Kingdom in connection with the Prison Rules. In accordance with these Rules it is the position of the respondent Government that, before a convicted prisoner may institute a civil action in the courts and before he may consult his legal advisers about the bringing of such an action, he must first obtain the permission of the executive

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(1) Cf. also concerning the position of vexatious litigants, bankrupts and persons of unsound mind, the submissions of counsel for the applicant in the Knechtl hearing, pp. 30-31.

authorities. This is so even if the proposed action is directed against the executive or its servants.(1) This system may contradict the maxim that a person may not be a judge in his own case. The Commission can find no justification for such a view in Art. 6 (1) of the Convention and does not consider that such a restriction can be implied.

97. The Commission is of the opinion that to allow the notion of "inherent limitations" - which seems rather loose as an independent concept - in Art. 6 (1) would make the rights guaranteed by that Article uncertain and perhaps open to arbitrary definition. When the idea is applied as here with regard to persons under detention, the exclusion of such persons from the enjoyment of normal rights is not based on logical grounds or justified because they are mentally or physically incapable. Rather it refers to the fact that certain restrictions on their freedom and movements, communications, etc., are regarded in the current expression as being an "inherent feature" of their situation, being a situation which in itself, of course, is lawfully established. The respondent Government has relied particularly on Art. 5 of the Convention as a basis for limitations of other articles such as Art. 6 (1). But the view of these "inherent features" is steadily changing and the expression is therefore slightly misleading in this sense; restrictions involved in imprisonment have more to do with what is at any time regarded as desirable and reasonable than with any "inherent" feature. Consequently, Art. 5 does not offer in principle any more solid basis for introducing "inherent limitations" of the regular human rights of prisoners laid down elsewhere in the Convention than for their total denial to detainees in general.

98. More particularly, the legitimate need to maintain good order in prisons, and the understandable desire to protect e.g. prison officers against abusive litigation, are not, in the Commission's opinion, sufficient grounds under the Convention to justify such restrictions as those under consideration here. It is true that the presentation of frivolous claims ought to be discouraged but this practical concern will then have to be met otherwise than by refusing legal advice or the subsequent institution of judicial proceedings. The Commission has not become convinced that the practical effects of removing the present obstacles are unmanageable from the points of view of prison order or the interests of the staff.

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(1) Cf. the statement of the relevant Prison Rules and practices above, para. 85 and Appendix IV.

Conclusion

99. The Commission is unanimously of the opinion that, in Art. 6 (1), whether read alone or together with other articles of the Convention, there are no inherent limitations on the right of a convicted prisoner to institute proceedings and for this purpose to have unrestricted access to a lawyer. It follows that the restrictions imposed by the present practice of the United Kingdom authorities, in requiring the Home Secretary to be satisfied that there is a prima facie case, are inconsistent with Art. 6 (1).

The Commission, of course, recognises that there are other restrictions on the exercise of the right of access to courts which necessarily follow from the very fact of his detention combined with administrative needs. Such restrictions, e.g. limitation of consultations with lawyers to certain visiting hours, or of the prisoners' appearance in person in court, are the result of normal prison administration.

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III. WHETHER THE RIGHT TO ACCESS TO COURTS IS NOT IN ANY EVENT QUALIFIED BY THE REQUIREMENT "WITHIN A REASONABLE TIME"

A. SUBMISSIONS OF THE APPLICANT (1)

100. The applicant submits that proceedings for defamation in England must be instituted within a period of six years from the time when the cause of action arises. In the present case the cause of action arose on 24 October 1969. Provided he obtained full remission for good behaviour, the applicant expected to be released in March 1975 (2). If the applicant were not free to commence proceedings until March 1975, this would be almost five and a half years after the cause of action arose. He would have only a few months within which to apply for legal aid and comply with the necessary formalities for issuing legal process before the date on which the proceedings would be barred.

101. The respondent Government have contended that this refusal of the applicant's request for facilities to commence an action from prison did not prevent him from bringing a claim within a reasonable time. The applicant could not share this view. He submitted that "a reasonable time" in the present context does not mean any period of time up to the last moment before an action would be barred by the relevant provision on limitation. He pointed out that normally the passing of time makes it more difficult to pursue a legal claim as, for example, witnesses' recollections fade, documents are lost and it may become difficult to find witnesses or even a defendant.

The applicant added that, where a person wishes to bring a civil action based on an event which occurred six months earlier, he is inevitably put to additional expense and trouble when told to delay that action for three or four years. The applicant, therefore, contends that it is clear that he has been prevented from bringing his action within a reasonable time.

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(1) Memorial, para. 11; Golder hearing, p. 32; Knechtl hearing, pp. 24-25.

(2) The applicant was later granted "special remission". This brought the probable date of his release forward to March 1975. In April 1972 he was recommended for parole and was, in fact, released on 12 July 1972 - see Introduction, para. 1.

B. SUBMISSIONS OF THE RESPONDENT GOVERNMENT (1)

102. The respondent Government emphasise their view that Art. 6 (1) of the Convention does not confer a right of access to the courts. They add that, if this view is correct and the right is not granted, then the question of reasonable time is not relevant to the present case. Alternatively, they submit that, if they are wrong in their principal contention and it is held that Art. 6 (1) does give a right of access to the courts, then it provides a right of access in order to obtain a hearing within a reasonable time. However, the Government submit that the applicant has not in fact been prevented from obtaining a hearing within a reasonable time.

103. The Government point out in this connection that the cause of action arose on 24 October 1969 and that originally the applicant would have been released after he had been granted special remission of sentence, namely on 16 March 1973 (2). It follows that, after his release, he would have had two years and seven months within which to institute proceedings.

104. As regards the starting point of the period concerned, the Government submit that a "reasonable time" must begin to run from a particular event. In a criminal matter that event will be the bringing of charges. The analogous event in the civil process will be the issue of the writ or equivalent act instituting the proceedings. The question of reasonable time is, therefore, one of delay in the administration of justice and is in no way linked with limitation of actions. The question of limitation of actions has been brought into the present case by reading Art. 6 (1) in such a way as to give a right of access to the courts. This is an incorrect reading.

105. If it is to be suggested that Art. 6 should be construed in one way with regard to the question of access and in another with reference to the question of reasonable time, the Government submit that there is no basis for such dual approach in the wording of the Article. Indeed it is because a reasonable time must run from some starting point that the conclusion is inevitable that there is no general rights of access provided by Art. 6 (1). Certainly no such right exists at the time when the prospective claimant believes that he has a civil right.

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(1) Counter-Memorial, paras. 82-84; Golder hearing, pp. 53-54; Knechtl hearing, pp. 100-101.

(2) The oral submissions of the Government were made after the applicant had been granted a "special" remission of two years but before he was released on parole.

106. The Government finally contend that, to the extent that the restrictions imposed in a particular case are legitimate, the resultant delay in the hearing of an action brought by a prisoner cannot be considered as depriving him of a hearing within a reasonable time.

C. ESTABLISHMENT OF FACTS

107. Cf. above: Introduction, paras. 1-2, and Establishment of Facts, paras. 36-40.

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D. OPINION OF THE COMMISSION

108. Both Parties argue on the basis of the assumption that the right of access to the courts, if guaranteed by Art. 6 (1) of the Convention, is qualified by the requirement of "reasonable time". In the view of the Commission that is not the logical approach to the problem. Even if his access to the court is protected, it is for the individual himself to take the initiative. It is therefore more logical to consider that the requirement of "reasonable time", insofar as it represents an obligation on the authorities, applies only to the conduct of proceedings from the moment they have already been instituted before the courts.

109. The right to institute proceedings, in the Commission's opinion, could not be considered as similarly qualified; a delayed access to courts differs from a delayed hearing. Admittedly, this does not solve all problems. In particular, it is probably impractical to hold that the actual institution of proceedings should follow immediately in any literal sense as a consequence of the right of access to courts. But, at any rate, obstacles of any kind must not be substantial. Particularly, such obstacles as the Prison Rules, if practised as to cause in fact a delay in the institution of proceedings equal to the length of the prison term, would seem acceptable only if that term itself is very short. Moreover, even on the Government's assumption that the right to access is qualified by the requirement of "reasonable time", their argument is clearly untenable when they submit (1) that, if the action may be brought "within a limitation period which is not itself unreasonable" (e.g. 6 years), the action is also within a reasonable time under Art. 6 (1). This contention seems to overlook the fact that the test of "reasonable" here would have to be directed to two entirely different aspects of the problem. To say that it is reasonable that a person should lose his right if he does not act before six years have passed (a "reasonable" period of limitation) is very different from saying that it is also reasonable that he could be made to wait up to six years for the enforcement of his right even if he wants to act at once. In effect, justice delayed might, on such an occasion, be justice denied.

Conclusion

110. The Commission is unanimously of the opinion that the right of access to the courts guaranteed by Art. 6 (1) is not qualified by the requirement "within a reasonable time", which applies only to the conduct of proceedings already instituted before the courts.

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(1) Counter-Memorial, para. 84.

IV. WHETHER ART. 8 OF THE CONVENTION (THE RIGHT TO CORRESPONDENCE) IS APPLICABLE

A. SUBMISSIONS OF THE APPLICANT

111. The applicant submitted (1) that, to a large extent, the argument which he had adopted to show that no inherent limitation could be read into Art. 6 (1) of the Convention was equally applicable to Art. 8. He again emphasised the difficulty of reconciling the existence of inherent limitations with Arts. 15, 16 and 18 of the Convention and invoked paras. 91-93 of the judgment of the European Court of Human Rights in the "Vagrancy" cases.

112. The difference between Art. 6 (1) and Art. 8 was that Art. 8 (2) specifically listed the occasions upon which a public authority might interfere with the right granted in Art. 8 (1). "Expressio unius est exclusio alterius". The existence of express restrictions made it virtually impossible to find further implied restrictions. Art. 8 (2) began with the words "There shall be no interference by a public authority with the exercise of this right except ...". Such words were irreconciliable with the existence of an implied restriction. Any "margin of appreciation" claimed by the Government must fall within the terms of Art. 8 (2).

The terms of Art. 8 (2) required that any interference with the exercise of the right must fulfill three conditions. First, it must be in accordance with the law. This condition was fulfilled. But, secondly, it must be "necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country" and, thirdly, it must be "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". On the facts of the present case there was no sign whatsoever that preventing the applicant from writing to a lawyer had been necessary in the interests of national security, public safety or the economic well-being of the country nor that it had been necessary 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.

There was no allegation of interference with any particular piece of correspondence in the applicant's attempt to contact a lawyer. But an inherent part of this contact, which he was refused, was inevitably correspondence.

The action of the Government, constituted, therefore, a violation of Art. 8.

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(1) Golder hearing, pp. 33-34; cf. Knechtl hearing, pp. 34-37; Knechtl Memorial, para. 18.

B. SUBMISSIONS OF THE RESPONDENT GOVERNMENT

113. The Government (1) again emphasised their view that Art. 6 (1) of the Convention grants no right of access to the courts. If, therefore, the present case were to be brought within the terms of the Convention it would have to be through the alleged violation of Art. 8.

114. As to Art. 8, the Government submitted that there was no reason why, because it contained express limitations, it should not also contain an implied limitation. There was good reason for controlling the correspondence of mentally deranged persons whether or not they were in detention although Art. 8 (2) did not clearly refer to this. But the case par excellence of an implied right to control correspondence was the case of convicted prisoners. This was clearly recognised by the Commission's jurisprudence and in this respect the Government referred to a number of the Commission's previous decisions (2). Just as there might be a restriction on a prisoner's right to marry, Art. 12, so there might be one on his right to correspond, Art. 8.

115. The Government noted that the Commission had observed, on page 16 of its Decision on Admissibility, that the issue under Art. 8 (1) was closely linked with the question whether Art. 6 (1) of the Convention granted a right of access to the courts. They submitted that on this basis, if there were no violation of Art. 6 (1), either because Art. 6 (1) did not grant a right of access to the courts or because it contained inherent limitations on that right, then it would follow that the limitations on the right of correspondence granted by Art. 8 (1) would lead to the conclusion that there was no violation of this Article either.

116. In the alternative, if it were not accepted that Art. 8 (1) contained inherent limitations, the Government suggested that the present facts must be covered by the restrictions in Art. 8 (2). The Government suggested that Art. 8 (2) should not be dissected but should be read as a whole. But, if the Government were obliged to point to the specific part of Art. 8 (2) relevant to the present case, they would say that the interference had been "for the prevention of disorder or crime" and also as having been "necessary ... in the interest ... of public safety". The maintenance of good order in the prisons had a direct effect on public safety. The Commission had held in a number of cases (3) that interference with a prisoner's correspondence was justified under Art. 8 (2).

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(1) Golder hearing, pp. 54-55, cf. p. 38.

(2) Counter-Memorial, para. 90.

(3) Counter-Memorial, para. 101.

The Government observed that on the facts of the case there was never an interception of any particular letter, because none was ever written (1) but, if an interference with correspondence was nevertheless seen, it was justified for these reasons.

117. Accordingly the Government submitted that their practice fell within the margin of appreciation left to States under Art. 8 (2) of the Convention and that it was exercised in this particular case properly and without maladministration.

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(1) This argument refers, of course, only to the admitted parts of the application; a separate complaint as to the stopping of certain letters referred to in the Decision on Admissibility of 30 March 1971 was declared inadmissible under Art. 26 of the Convention.

C. ESTABLISHMENT OF FACTS

118. The Commission has first considered the facts as they relate to Art. 8.

On 20 March 1970, the applicant petitioned the Home Office. He said that he was suffering from nervousness and nightmares and that he wished to be transferred to another prison. He also requested permission to "consult" a solicitor with a view to bringing a libel action. Alternatively, if this permission were not granted, he requested an investigation of his prison record by a magistrate whom he named. The Home Office replied on 6 April 1970 refusing his request for transfer and saying that there were no grounds for taking any action in regard to the "other matters" raised in his petition.

The applicant did not write a letter to a solicitor nor did he specifically request permission to write a letter. He requested permission to "consult" a solicitor. Art. 8 can only be relevant to the present case if there was, as a matter of fact, failure to respect the applicant's correspondence.

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D. OPINION OF THE COMMISSION

119. The Commission considers that it is difficult to define precisely "respect for correspondence". There is obviously a failure to respect correspondence if the authorities read and destroy letters which prisoners have written. It is equally a failure to respect correspondence if the authorities destroy letters without reading them. If the authorities fail to provide prisoners with the means of writing letters, this has exactly the same effect as if prisoners' letters are destroyed without being read. If a prisoner is told that he may not write to such and such a person, he is in exactly the same position as if his letters to this person are confiscated and destroyed.

120. The applicant requested permission to "consult" a solicitor. As he had no opportunity of meeting a solcitor in the ordinary course of his confinement, this meant in fact that he was requesting permission to write to a solicitor. When permission was refused, he was in exactly the position in which he would have found himself had he first written a letter which was later "stopped". For all practical purposes there was an implied refusal of his right to correspond.

121. On this basis, the majority of the Commission is of the opinion that Art. 8 (1) is applicable to the facts of the present case. The implied refusal of the applicant's right to correspond amounted to an interference with his right to respect for his correspondence within the meaning of this Article.

122. The Commission has already explained that, in its view, the facts of the case constitute a violation of Art. 6 (1) of the Convention and has stated (para. 104) that there are not sufficient grounds under the Convention to justify the restrictions presently under consideration.

The Commission considers that the self same facts which constitute a violation of Art. 6 (1) constitute also a violation of Art. 8 (1). It has considered whether any of the limitations permitted by Art. 8 (2) might cover the present facts but does not find them relevant. Although the interference with the applicant's correspondence was in accordance with the law (the Prison Rules) it was not necessary "for the prevention of disorder or crime" or for any of the other reasons listed in Art. 8 (2).

Nevertheless, as the refusal to allow the applicant to consult a lawyer constitutes, according to this view, both a violation of Art. 6 (1) and Art. 8, the Commission does not consider it necessary to elaborate further on this finding. Any measures which are taken to compensate for, or correct, the first violation will necessarily compensate for, or correct, the second.

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Conclusion

123. For the above reasons the Commission is of the opinion that the same facts which constitute a violation of Art. 6 (1) constitute also a violation of Art. 8.

A P P E N D I X I

HISTORY OF PROCEEDINGS

Item	Date	Note
Introduction of application	2 August 1969	
Registration of application	18 April 1970	
Examination by a group of three members (Rules 34, 45 of the Rules of Procedure)	21 July 1970	MM. de Gaay Fortman, O'Donoghue, Kellberg
Receipt of Government's observations on admissibility	1 October 1970	
Receipt of applicant's observations on admissibility	15 January 1971	
Examination by a group of three members (Rules 34, 45 of the Rules of Procedure)	28 January 1971	MM. Busuttil, Kellberg, Opsahl
Commission's deliberations - decision to hold an oral hearing on admissibility on 30 March 1971	3 February 1971	MM. Sørensen, Fawcett, Ermacora, Sperduti, Welter, O'Donoghue, Delahaye, Lindal, Kellberg, Daver, Opsahl
Respondent Government's statement that they did not wish to avail themselves of the opportunity of oral hearing on admissibility	26 February 1971	
Commission's deliberations and decision on admissibility	30 March 1971	MM. Sørensen, Fawcett, Ermacora, Sperduti, Welter, de Gaay Fortman, O'Donoghue, Delahaye, Lindal, Busuttil, Kellberg, Daver, Opsahl
Receipt of applicant's observations on the merits	8 May 1971	
Commission's deliberations - decision to hold hearing on the merits on 20 July 1971 if Counter-Memorial available	27 May 1971	MM. Sørensen, Fawcett, Ermacora, Sperduti, Welter, Delahaye, Lindal, Busuttil, Kellberg, Daver, Opsahl

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Item	Date	Note
Commission's deliberations - decision to extend time-limit for counter-memorial until 30 August 1971 upon Government's request	20 July 1971	MM. Sørensen, Ermacora, Sperduti, Welter, de Gaay Fortman, Delahaye, Lindal, Busuttil, Kellberg, Daver, Opsahl, Mangan
Commission's deliberations - decision to hold a hearing on the merits at the December session	24 September 1971	MM. Sørensen, Fawcett, Süsterhenn, Ermacora, Sperduti, Welter, Delahaye, Lindal, Kellberg, Daver, Opsahl, Mangan
Oral hearing of Parties on the merits	16-17 December 1971	MM. Sørensen, Fawcett, de Gaay Fortman, Delahaye, Busuttil, Kellberg, Daver, Opsahl, Mangan Applicant represented by: Mr. Norman Tapp, Mr. A. Wright; Government represented by Mr. Paul Fifoot, Sir Francis Vallat, Mr. Gordon Slynn, Mr. A. H. Hammond, Mr. G. P. Renton, Mr. J. D. F. Turnham
Commission's deliberations	11 February 1972	MM. Sørensen, Fawcett, Süsterhenn, Ermacora, Sperduti, Delahaye, Lindal, Busuttil, Kellberg, Daver, Opsahl, Mangan
Commission's deliberations	21 July 1972	MM. de Gaay Fortman (Acting President), Fawcett, Süsterhenn, Sørensen, Welter, Lindal, Kellberg, Daver, Opsahl, Mangan, Custers

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Item	Date	Note
Exchange of views by 8 members of the Commission	9 February 1973	MM. Fortman (Acting President, Fawcett, Sperduti, Lindal, Daver, Opsahl, Mangan, Custers
Commission's deliberations	28 May 1973	MM. Ermacora (Acting President) Fawcett, Sperduti, Welter, Lindal, Busuttil, Kellberg, Daver, Opsahl, Mangan, Custers
Adoption of Report by Commission	1 June 1973	MM. Sperduti (Acting President) Fawcett, Ermacora, Welter, Lindal, Busuttil, Daver, Opsahl, Mangan