

THE FACTS

I. Description of the applicant and the relation of the present application to application No. 5155/71

On 20 August 1971 the first applicant, Mr. X., a citizen of the United Kingdom, introduced an application against the United Kingdom. He was represented by the second applicant, Mr. Y., a citizen of the United States of America and a lawyer practising in Buffalo, New York.

That application which concerned, inter alia, the first applicant's arrest in August 1971 and subsequent detention in Northern Ireland, was registered in the register of the Commission's Secretariat on 6 September 1971 under file No. 5155/71. On 25 September 1971 the Commission decided, in accordance with Rule 45, 3 (b) of its Rules of Procedure, to give notice of the application to the respondent Government and to invite the Government to submit its observations in writing on the admissibility of the application. The Commission also decided to give precedence to the application in accordance with Rule 38, 1 of the Rules of Procedure.

The respondent Government's observations on the admissibility were submitted on 18 February 1972. In these observations the respondent Government confirmed, inter alia, that the first applicant had been arrested on .. August 1971 under Regulation 11 issued under the Civil Authorities (Special Powers) Act (Northern Ireland) 1922 on the grounds that he was suspected of having committed an offence under Regulation 24 A by having in his possession documents relating to, or purporting to relate to, the affairs of an unlawful association, namely the Irish Republican Army (IRA). On .. September an order was signed by the Ministry for Home Affairs in his capacity as Civil Authority for the first applicant's internment under the provisions of Regulation 12 of the Special Powers Regulations. On .. September 1971 another order was made under the same regulations authorising his removal to Long Kesh Internment Camp where he is still being detained.

The respondent Government's observations on the admissibility of application No. 5155/71 were forwarded to the second applicant in his capacity as legal representative of the first applicant on 25 February and the second applicant was invited to submit observations in reply before 26 April 1972.

Under cover of a letter of 10 March 1972 the second applicant submitted to the Commission a "new petition" on behalf of the first applicant and on his own behalf. The Commission examined this petition (the full text of which will be reproduced under II below) on 23 March 1972. It decided that the petition should be regarded as a new application which was consequently registered in the register of the Commission's Secretariat under file No. 5459/72.

II. The applicants' application of 10 March 1972

The application states as follows:

"The undersigned attorney, Y, on behalf of X, who has previously filed a complaint against the Government of Great Britain herein and on behalf of himself as attorney for the said client, petitions the Human Rights Commission as follows:

In order to reply to the Government's answer, I must communicate with my client who is interned at the Long Kesh concentration camp. I cannot do this since the Government continuously intercepts and opens and censors all mail between my client and myself.

The internment of my client does not justify this breach of the confidential relationship between attorney and client, well recognised

by the Commission and the common law of Great Britain. It is unrealistic to expect an attorney to accept such conditions, knowing the British Government is taking note of each and every word exchanged between attorney and client.

The right to legal counsel, recognised by the Convention, implies the right to communicate with said counsel in private without interference from the Government. An attorney who cannot so act, is of little assistance to his client who, in effect, is unrepresented by counsel.

Due process of law requires legal representation free from governmental interference. The Government's action is an effect to intimidate and restrain both attorney and client herein.

The Government's action violates Article 5 of the Convention which guarantees 'liberty and security of person'. and Article 6 of the Convention which guarantees due process of law, including the right to communicate and be represented by legal counsel and the 'right to have adequate time and facilities for the preparation of his defence' as well as 'legal assistance'.

Article 8 guarantees the right of privacy and is also violated. Since Mr. X. is incarcerated, he is hardly a threat to public peace and order or a threat to the 'freedom of others'.

Article 11 is also violated since the petitioner is denied the right of 'freedom of association' with his attorney for the purpose of presenting his case through a legal representative.

Under British law, convicted criminals have the right to communicate in private with their attorneys without the aforementioned interference by the Government, yet the petitioner, who is not even charged with the commission of a crime, is denied this basic right.

Aside from the right of the interned petitioner X herein, the undersigned, as legal counsel of Mr. X is therefore afforded certain separate and distinct rights under the aforementioned articles of the Convention. He is also afforded additional rights, not as the original petitioner herein, but as legal counsel to said petitioner, pursuant to the provisions of the Council's European Agreement relating to persons participating in proceedings of the European Commission and Court of Human Rights.

Article 5 of that agreement guarantees said attorney 'the freedom of speech and the independence necessary for the discharge of their functions, tasks and duties, or the exercise of their rights in relation to the Commission and the Court'. The very purpose of this agreement is to protect the privileged communications passing between attorney and client, a relationship recognised under British law. In this case, said law is not applied to the petitioner X because he is an Irishman. If he were a convicted felon in a London prison, he would enjoy full rights of privacy without interference from the Government as alleged hereinbefore. The Government's action constitutes intimidation of counsel and wrongful interference in counsel's ability to perform any functions as attorney, as well as counsel's freedom of speech which includes the right to communicate in private, with his client either orally or in writing.

Article 3 of the aforementioned agreement protecting attorney and client provides that 'there shall be no interference by a public authority except such as is in accordance with the law and is necessary in a democratic society in the interest of national security, for the detection or prosecution of a criminal offence or for the protection of health'. It should be noted that my client is not being held in any criminal proceedings and has not been charged with a crime. In fact, the answer of the British Government herein merely states that my client is 'suspected' of being associated with the Irish Republican

Army. Suspicion does not constitute a crime under British law and the Government's action violates the Convention and the aforementioned agreement. There is no claim by the Government that for 'national security' purposes, it must open mail between attorney and client herein nor is there any claim that there is any need for the 'protection of health' herein. Therefore, there is no basis for the Government's interference.

The petitioner X and the undersigned attorney cannot accept any tortured interpretation of Article 3 which would interpret Article 3 as providing protection only to attorneys in Northern Ireland, thus affording the Government the right to interfere if the petitioner had an American or non-British attorney representing him. The Convention and the agreement clearly protect all petitioners and all attorneys.

Whereafter, the undersigned respectfully urges that the Commission direct the British Government to cease and desist with respect to the aforementioned practices and permit communications in private without opening of mail or other communications between attorney and client herein. This petition is filed on behalf of X and also on behalf of Y, New York, USA, Attorney for said petitioner whose rights are also protected under the aforementioned provisions of the Convention and the aforementioned agreement."

THE LAW

1. The Commission observes that the subject matter of the present application is only the alleged opening and censoring by the authorities of correspondence between the first and the second applicant relating to application No. 5155/71.

The applicants have complained that such examination of the correspondence between a lawyer and his client amounts to a violation of Articles 5, 6, 8 and 11 (Art. 5, 6, 8, 11) of the Convention and they have also invoked Articles 3 and 5 (Art. 3, 5) of the European Agreement relating to persons participating in proceedings of the European Commission and Court of Human Rights.

2. The Commission has first examined this complaint under Article 8 (1) (Art. 8-1) of the Convention which stipulates that "everyone has the right to respect for his correspondence". However, paragraph (2) of this Article (Art. 8-2) provides as follows:

"There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Commission first finds that the applicants have produced no evidence of censoring of correspondence in the sense that any communications have been allegedly stopped or their contents, wholly or partly, deleted or otherwise tampered with.

The Commission next finds that the examination of the correspondence in question clearly constitutes an interference by a public authority with the applicant's right to respect for their correspondence within the meaning of Article 8 (1) (Art. 8-1). The Commission is therefore called upon to consider whether or not this interference can be justified on the grounds set out in paragraph (2) of the said Article (Art. 8-2).

The Commission does not find it necessary, for this purpose, to determine whether the first applicant's detention as such is consistent with the provisions of the Convention, in particular Article 5 (Art. 5). It is sufficient to note that he is being detained at the

Long Kesh Internment Camp under the provisions of Regulation 12 of the Special Powers Regulations, in accordance with an order made by the Northern Ireland Minister of Home Affairs, on suspicion of "acting or having acted or being about to act in a manner prejudicial to the preservation of the peace and the maintenance of order in Northern Ireland". Moreover, Regulation 13 (2) provides that no "communications may be sent or received by a person interned under the regulations except such as have been examined and passed" by the competent officer.

It is therefore clear that the supervision complained of was "in accordance with the law" within the meaning of Article 8 (2) (Art. 8-2) of the Convention, having regard to the provisions of Regulation 13 (2) taken in conjunction with Sec. 1 (3) of the Civil Authorities (Special Powers) Act (Northern Ireland) 1922. Taking into account the reasons for the first applicant's internment, the Commission further finds that the examination of this correspondence was fully justified "in the interests of national security" or "for the prevention of disorder or crime" within the meaning of Article 8 (2) (Art. 8-2).

In this connection, the Commission recalls that it has frequently held that the examination of a detained person's correspondence, or, in certain circumstances even the stopping of particular letters sent or received by such a person, is not inconsistent with the provisions of Article 8 (see e.g. the decisions on the admissibility of applications No. 793/60, Yearbook, Vol. 3, pp. 444, 448; No. 2749/66, Yearbook, Vol. 10, pp. 388, 412 and No. 4445/70, Collection of Decisions, Vol. 37, pp. 119, 122). The Commission also refers in this respect to the judgment of 18 June 1971 of the European Court of Human Rights in the *De Wilde, Ooms and Versyp* Cases ("Vagrancy" Cases) (paragraphs 91 - 93, pp. 45 - 46).

The Commission has also noted the applicant's arguments with regard to the European Agreement relating to persons participating in proceedings of the European Commission and Court of Human Rights. This Agreement has been ratified by the United Kingdom and certain other High Contracting Parties and entered into force on 17 April 1971. The Commission observes that it derives its competence solely from the European Convention of Human Rights and has no competence to examine whether or not measures taken by a Contracting Party are consistent with the provisions of that Agreement.

It follows that, insofar as the applicants allege that the examination of their correspondence constitutes a violation of Article 8 (Art. 8) of the Convention, the application is manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention.

3. The Commission has next examined that applicants' complaints under Articles 5, 6 and 11 (Art. 5, 6, 11) of the Convention and considers that the arguments advanced by the applicant are wholly without merit. As regards alleged violations of Articles 5 and 11 (Art. 5, 11), the Commission has already found that the applicants' present complaints do not raise any issue under Article 5 (Art. 5) and the Commission is equally clear that the applicants have not shown the basis for any possible violation of Article 11 (Art. 11). It might further be pointed out that the provisions of Article 6 (1) (Art. 6-1) of the Convention only apply to proceedings before national tribunals charged with the determination of a person's "civil rights and obligations or of any criminal charge against him" and cannot be directly invoked in connection with proceedings before the Commission itself. It should be added that the applicants have not even suggested that their correspondence relates to any form of proceedings instituted before courts or authorities in the United Kingdom by the first applicant or by the second applicant on his behalf. The Commission finds, therefore, that an examination in this respect of the complaints as they have been submitted, do not disclose any appearance of a violation of the rights and freedoms set out in the Articles invoked by the applicants.

It follows that, also in this respect, the application is manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention.

For these reasons, the Commission DECLARES THIS APPLICATION INADMISSIBLE