

APPLICATION/REQUÊTE N° 5442/72

X. v/the UNITED KINGDOM

X. c/ROYAUME-UNI

DECISION of 20 December 1974 on the admissibility of the application

DÉCISION du 20 décembre 1974 sur la recevabilité de la requête

Article 8 of the Convention : Right to respect for correspondence. Detention after conviction. Complaint not pursued.

Article 9 of the Convention : Buddhist prisoner not permitted to send out material for publication in a Buddhist magazine. Failed to prove that this was a necessary part of his religious practice.

Article 10 of the Convention : Buddhist prisoner not permitted to send out material for publication in a Buddhist magazine. Difficulties for prison authorities of checking such correspondence. Measure necessary for the prevention of disorder or crime (Article 10, paragraphe 2).

Article 8 de la Convention : Droit de toute personne au respect de sa correspondance. Détenu après condamnation. Grief abandonné.

Article 9 de la Convention : Détenu bouddhiste empêché d'envoyer des articles destinés à être publiés dans une revue bouddhiste. N'a pas montré en quoi la pratique de sa religion impliquait la publication de tels articles.

Article 10 : Détenu bouddhiste empêché d'envoyer des articles destinés à être publiés dans une revue bouddhiste. Difficulté pour les autorités pénitentiaires de contrôler de tels envois. Mesure nécessaire à la défense de l'ordre et à la prévention du crime (article 10, paragraphe 2).

SUMMARY OF THE FACTS

(français : voir p. 43)

Sentenced to five years' imprisonment. Recorded as a Buddhist by the prison authorities. Sent the text of an article to Mr Y, an editor of a Buddhist magazine with whom he was corresponding. Article eventually published. This fact came to the knowledge of the prison authorities who prevented the applicant from sending further articles although he had pointed out that his contribution was free and that the publication of his articles was a link with his fellow religionists. He alleges that the exchange of ideas between Buddhists is an element in the exercise of that religion.

The respondent Government generally stress that if prisoners were allowed to publish material, it would be difficult for the prison authorities to administer a system of reading and control.

THE LAW

The applicant, while a prisoner at D..., was refused permission to send out articles for publication in a Buddhist magazine. He claims that this constitutes a violation of Articles 8, 9 and 10 of the Convention.

The Commission has first examined the complaint in the light of Article 9 of the Convention. Article 9 provides :

"Everyone has the right to freedom of thought, conscience and religion ; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in worship, teaching, practice and observance."

However, the Commission notes that, while the applicant was detained in prison, the authorities did what they could to find a Buddhist minister for him (the applicant has not suggested otherwise) and that they eventually allowed him to write an extra letter to a Buddhist every week when it was not possible to find a minister. There is no indication of any interference with the applicant's right to freedom of thought, conscience or religion.

The applicant has produced statements to the effect that communication with other Buddhists is an important part of his religious practice. But he has failed to prove that it was a necessary part of this practice that he should publish articles in a religious magazine. Viewed in the light of Article 9 the complaint is manifestly ill-founded.

The Commission has next considered the complaint within the terms of Article 8 which provides for respect for correspondence. It is not clear whether the applicant originally intended to allege that at one time he had been refused permission to write to Mr Y., the Buddhist publisher. Whether or not this complaint formed part of his original submission, it is clear that the applicant has not pursued it. The respondent Government, in their observations, have denied that the applicant was ever refused permission to write and he does not now contradict them.

The applicant was told that he would not be allowed to send out material for publication but there is no indication of interference with his letters, as such, and the complaint is again manifestly ill-founded with respect to this Article.

Finally, the Commission has reviewed the matter under Article 10, which provides :

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary."

The applicant was prevented by Rule 33 of the Prison Rules, as applied by the authorities, from enclosing with his letters to the Buddhist publisher, Mr Y., any material intended for publication, even though he was to receive no money in the event of its publication.

The Commission considers that this might constitute an interference with the applicant's freedom of expression, his right to impart information and ideas without interference.

However, the Commission recognises the extra work and the administrative difficulties of checking all material that might be sent out by prisoners for the purpose of publication and the potential security risk involved without careful control being exercised. The Rule, duly prescribed by law, is necessary for the maintenance of prison discipline and the Commission concludes that the Rule is necessary in a democratic society for the prevention of disorder or crime within the meaning of Article 10 (2).

The Commission considers that, for the same reasons, the application of Rule 33 to the applicant was reasonable. The Commission is not of the opinion that the applicant's situation in the particular circumstances warranted a special exception to the Rule.

The Commission finds therefore that the applicant's complaint does not disclose any appearance of a violation of the rights and freedoms set out in the Convention and in particular in Articles 8, 9 and 10.

It follows that the application is manifestly ill-founded within the meaning of Article 27 (2) of the Convention.

For these reasons, the Commission

DECLARES THIS APPLICATION INADMISSIBLE.

Résumé des faits

Condamné à une peine de cinq ans d'emprisonnement s'est annoncé comme bouddhiste aux autorités pénitentiaires. Ecrivant à un M. Y., rédacteur d'une revue bouddhiste, il lui adresse en même temps le texte d'un article, que M. Y. publie. S'étant aperçues de ce fait, les autorités pénitentiaires interdisent au requérant l'envoi d'autres articles, bien que ce dernier ait fait valoir que sa collaboration n'était pas rétribuée et que la publication de ses articles constituait pour lui un lien avec ses coreligionnaires. Il allègue que l'échange d'idées entre bouddhistes est un élément de la pratique de cette religion. Le Gouvernement mis en cause, de son côté, souligne notamment, d'une manière générale, la difficulté de la tâche qui incomberait aux autorités pénitentiaires qui, si les détenus étaient autorisés à publier des articles, devraient assurer leur lecture et leur contrôle préalables.

Résumé des considérants

En ce qui concerne la liberté de pensée, de conscience et de religion (article 9 de la Convention), la Commission relève que les autorités pénitentiaires se sont efforcées de trouver un prêtre bouddhiste et que, lorsque ce dernier n'était pas disponible, le requérant pouvait écrire chaque semaine une lettre supplémentaire à un bouddhiste. Le requérant n'a pas montré en quoi la pratique de sa religion impliquait la publication d'articles dans une revue religieuse.

La liberté de correspondance du requérant (article 8 de la Convention) n'a pas été entravée et le requérant n'a d'ailleurs pas maintenu le grief qu'il avait formulé à cet égard.

Quant à la liberté d'expression (article 10 de la Convention), il apparaît qu'elle a souffert des restrictions. Toutefois, il serait difficile pour les autorités pénitentiaires de contrôler tous les articles écrits par des détenus si ceux-ci étaient autorisés à les envoyer pour publication. Mais l'absence de contrôle impliquerait un risque. La restriction soufferte est donc justifiée comme une mesure nécessaire, dans une société démocratique, à la défense de l'ordre et à la prévention du crime (article 10, paragraphe 2).

Requête irrecevable pour défaut manifeste de fondement (article 27, paragraphe 2, de la Convention).