

COUNCIL OF EUROPE

EUROPEAN COMMISSION OF HUMAN RIGHTS

DECISION OF THE COMMISSION

AS TO THE ADMISSIBILITY

of Application No. 3868/68
by A H
against the United Kingdom

The European Commission of Human Rights sitting in private on 25th May, 1970, under the presidency of Mr. M. SØRENSEN, and the following members being present:

MM. J. E. S. FAWCETT, Vice-President
A. SUSTERHENN
F. ERMACCORA
F. WELTER
P. P. O'DONOGHUE
P. O. DELAHAYE
E. BUSUTTIL
L. KELLBERG
B. DAVER

Mr. A. B. McNULTY, Secretary to the Commission.

Having regard to the application lodged on 22nd October, 1968, by A H against the United Kingdom and registered on 2nd December, 1968, under file No. 3868/68;

Having regard to

- the report of a group of three members of the Commission of 3rd October, 1969;
- the decision of the Commission of 15th December, 1969, to invite the respondent Government, according to Rule 45, paragraph 3, of the Commission's Rules of Procedure, to submit its observations in writing on the admissibility of the application;
- the respondent Government's observations on the admissibility of the application dated 9th February, 1970;
- the applicant's reply of 8th and 13th March, 1970;
- the report of the group of three members of the Commission dated 20th March, 1970;

Having deliberated,

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THE FACTS

Whereas the facts presented by the parties may be summarised as follows:

The applicant is a citizen of the United Kingdom, born in 1932 and at present detained in prison at Leeds.

On 22nd September, 1968, the applicant was arrested, together with two other men, by the Leeds City Police on suspicion of having committed burglary and robbery. He was taken subsequently to two different police stations at each of which he spent a night. On 23rd September, the applicant appeared before the Leeds City Magistrates' Court and was remanded in custody.

The applicant complained to the Magistrates' Court that he had been beaten up, punched and brutally kicked by a certain Sergeant C. of the Leeds City Police in the course of the arrest. He also alleged that he had afterwards been refused medical attention. The same day the police prosecutor present in Court made out a report to the Deputy Chief Constable for Leeds stating that the applicant had made these complaints and an inquiry was opened. The applicant was medically examined the same day by the police surgeon and later transferred to Leeds prison where he was again medically examined by the Prison Medical Officer. An investigation was then held into the applicant's complaints and the two men who had been arrested with the applicant were interviewed. The result of this investigation was referred, on 17th December, 1968, to the Director of Public Prosecutions who subsequently advised that there was insufficient evidence to institute criminal proceedings against Police Sergeant C. Consequently the Chief Constable informed the applicant that he did not propose to take any further action with regard to the applicant's complaint.

The applicant alleges that the statements concerning his alleged ill-treatment, although of highly confidential character, were communicated to all policemen in Leeds and that this had caused his treatment by the policemen to be even worse. The applicant also submits that, as a result of his complaints, the Leeds City Police, who allegedly have great influence over the Magistrates' Court, were using their influence to prevent his release on bail and therefore from defending himself. The applicant maintains in this respect that he was able to produce four persons of impeccable character to stand as sureties for his appearing before the Court and that he had a fixed and permanent domicile, that, consequently, no danger of his absconding existed but that, nevertheless, his release on bail was refused.

Following his conviction on 13th December, 1968, the applicant was remanded in detention in Leeds prison. Subsequently he was placed on the waiting list for Lancaster prison, which is a

training prison, but no vacancy was available. The applicant lodged several petitions with the Home Secretary complaining that he would thereby be deprived of several privileges such as home leave, association with other prisoners at meal times, use of a personal wireless set and a hobby set in his cell. He further complained that no communal wireless set was provided in Leeds prison and that prisoners in other prisons were allowed to write more letters.

The applicant also wrote several letters to a Member of Parliament. However, these complaints had no result since the applicant was informed that he was granted all the privileges to which he was entitled at Leeds prison. The Home Secretary appreciated that the conditions in Leeds prison were inferior to some other prisons of the United Kingdom but he could find no grounds for removing the applicant to another prison. The applicant also lodged complaints that he was unable to take a vocational training course in this prison and that the work which he was required to do, that of sewing mailbags, was not adequate. The applicant was later moved to Bedford prison where he complained that his earnings were less than at Leeds prison.

In his application to the Commission the applicant complains:

- of a violation of Article 3 in that he was ill-treated by the police at the time of his arrest;
- that he was subjected to inhuman and degrading treatment whilst detained in prison at Leeds and Bedford;
- of a violation of Article 5, paragraph (3) in that the police prevented his release on bail as he had lodged complaints against them and that he was thereby prevented from defending himself;
- that his statements made in the course of the investigations were communicated to all the policemen in Leeds.

The applicant has subsequently complained that his appeal was hindered as vital witnesses were refused access to him. He also alleges that his correspondence with the Commission is censored and that he is not allowed enough writing paper to make his submissions to the Commission.

Proceedings before the Commission

A group of three members of the Commission carried out, on 3rd October, 1969, a preliminary examination of the application and reported unanimously that the application appeared to be inadmissible for several reasons.

On 15th December, 1969, the Commission examined the question of the admissibility of the application and decided that the respondent Government should be invited, according to Rule 45, paragraph 3, of the Commission's Rules of Procedure, to submit its observations in writing on the admissibility of the application.

The United Kingdom Government submitted written observations on 9th February, 1970. These were communicated to the applicant on 12th February and he was invited to submit his written observations in reply before 26th March, 1970. The applicant submitted his reply by letters of 8th and 13th March, 1970.

Submissions of the Parties

I. As to the applicant's allegations concerning his ill-treatment by the police (Article 3)

1. The respondent Government submit that the applicant was arrested by police officers at about 1 a.m. on Sunday, 22nd September, 1968. The applicant and his two accomplices attempted to avoid arrest by running away. The applicant employed great violence in resisting arrest and was forcibly placed in a police van by the arresting officers. When the applicant appeared before the Magistrates Court he complained that he had been ill-treated whilst in police detention. The magistrates granted the applicant legal aid for his criminal proceedings.

The Government point out that the applicant was medically examined the same day, once by the police surgeon and again by the prison medical officer, but the reports of both of them did not prove the applicant's allegations. Immediately afterwards an investigation was held in accordance with Section 49 of the Police Act 1964 into the applicant's complaints. In the course of this investigation the two men who had been arrested with the applicant were also interviewed. One of them corroborated the complaint made by the applicant, whilst the other stated that at no time did he see the applicant being assaulted in any way by a police officer. Furthermore, 25 police officers were interviewed but they did not confirm the applicant's allegations. The investigation resulted in a report, which was made to the Chief Constable of Leeds City Police on 18th November, 1968. Therein it was stated that there was no foundation whatsoever for the applicant's complaints and that any force which the police had used was necessary in the execution of their duty and for the lawful apprehension of the applicant. Subsequently, the Director of Public Prosecutions advised that there was insufficient evidence to institute criminal proceedings in this case.

On 6th January, 1969, the Chief Constable informed the applicant that he did not propose to take any further action with regard to the complaint and that it was open to the applicant to take his own action if he so desired. The applicant, however, has not yet commenced any proceedings either civil or criminal in respect of the alleged assault. The respondent Government consequently submit that the applicant has not exhausted his domestic remedies which were available to him in respect of his complaints.

As regards the alleged refusal of medical attention, the respondent Government submit that it appears from the reports in the applicant's case that the applicant was not in any urgent need of medical attention and that he was medically examined twice on 23rd September, 1968. The Government refer in this respect to the statements of the two medical officers who examined the applicant. The respondent Government are consequently of the opinion that this complaint is manifestly ill-founded or, alternatively, incompatible with the provisions of the Convention.

2. The applicant maintains in reply that the investigation was not impartial as it was carried out by the Leeds City Police. He further indicates that it took four months to complete a report in this matter and that the evidence given by the witnesses, namely his two accomplices, was contradictory. The applicant submits, in this respect, that the one witness who gave evidence against him was induced by fear and threats.

As regards the medical examinations, the applicant replies that the police surgeon is a colleague of the police sergeant who allegedly committed the assault and that consequently the surgeon minimised the extent of the injuries and failed to follow normal police routine and photograph the injuries or get a hospital opinion. The applicant does not dispute the statement of the prison medical officer who considered that nothing abnormal had been noted other than an infection of the applicant's right thumb and the fact that he had complained of dizzy spells. The applicant, however, alleges that he had never told him about the assault and the injuries as at the time he had felt that he might work for the police. The applicant further refers to the police surgeon's report and the injuries he observed, namely the ones on the left and right parietal regions. The applicant maintains that it would have been appropriate to send him to hospital for a more thorough check.

As regards the exhaustion of domestic remedies, the applicant finally observes that the Chief Constable did not indicate in his letter, by which he informed the applicant about the results of the statutory investigation, that the applicant could be granted legal aid to pursue the charge of assault and that he needed the permission of the Home Secretary to lay such charges.

In his observations of 13th March, 1970, the applicant informs the Commission that he was still hindered by the prison authorities in pursuing legal remedies in this respect. He alleges that he wrote to the Law Society asking for their help to prepare his case. It appears that the Law Society sent the necessary application form to the applicant and the latter filled it in and posted it in the prison mailing box. Thereupon he was informed by the Deputy Prison Governor that he had to petition the Home Secretary in order to get permission to take legal action for that purpose. The applicant alleges that he had done so already but he had to do it again.

II. The applicant's allegations about inhuman and degrading treatment in prison (Article 3)

1. The respondent Government deny that the applicant was subject to inhuman or degrading treatment in either Leeds or Bedford prison. The applicant's complaints relate to the following allegations:

- that he was retained at Leeds prison although allocated to Lancaster prison and was thereby deprived of extra privileges which he would have enjoyed at the latter prison;
- that by reason of being retained at Leeds prison he was deprived of the opportunity of being considered for home leave;
- that prisoners in other prisons were allowed extra visits and letters;
- that he was unable to take a vocational training course whilst in Leeds prison;
- that he was not allowed a personal wireless set whilst at this prison;
- that he was refused permission to associate with other prisoners at meal times and to watch television; and
- that his prison earnings at Bedford prison were less than his earnings at Leeds prison.

The respondent Government submit in this respect that the applicant was not refused any privileges to which he was entitled whilst in prison in Leeds and Bedford. Moreover, the particular matters of which the applicant complains are, by reason of their very nature and character, incapable of constituting inhuman or degrading treatment within the ordinary meaning of those words and within the meaning accorded to them under Article 3 of the Convention. The respondent Government

accordingly submit that these complaints are manifestly ill-founded or, alternatively, incompatible with the provisions of the Convention.

2. The applicant in reply maintains that his wages at Bedford prison were 27% lower than those paid in Leeds prison. He indicates that the living conditions in the said prisons were very bad since they were overcrowded. According to the applicant the living conditions in prisons differ to an intolerable extent. Central prisons allow many privileges to their inmates which local prisons do not grant. The applicant points out that under these circumstances prisoners are discriminated against, since their privileges depend largely on the prison they are sent to. The applicant indicates that all his above allegations are true and that consequently he has been treated in an inhuman and degrading manner.

III. The complaints relating to the applicant's release on bail (Article 5, paragraph (3))

1. The respondent Government submit that the applicant did not request release on bail when first heard by the Magistrates Court on 23rd September, but asked for it at a later stage of the proceedings. The police objected to bail on the grounds that the applicant would be likely to abscond as he had no fixed address or employment and particularly as there was a warrant for his arrest outstanding in Glasgow for failure to answer bail in connection with a previous matter; that the charges were of a serious nature; and that there was a likelihood that the applicant would intimidate witnesses. The Magistrates Court refused the applicant's application for bail. On his further application to a High Court Judge in Chambers, it was decided that he should make this further application to the Trial Court. The applicant produced two persons prepared to stand surety for him if bail were granted and, although they maintained their objection to bail, the police raised no objection to these sureties.

On 13th December, 1968, the applicant pleaded guilty at Leeds Assizes to several offences and was sentenced to a total of three years and nine months' imprisonment in respect of these offences. The United Kingdom Government submit that where the Court seized of the matter refuses bail in the given circumstances, the detention of the person concerned does not constitute a breach of the obligations under Article 5, paragraph (3), of the Convention. Alternatively, the United Kingdom submit that the applicant was tried within a reasonable time of his arrest and that consequently, irrespective of the question of his release pending trial, there was no violation of the rights conferred by Article 5 (3). The period between arrest and conviction was eleven weeks and six days. Having regard to the fact that the applicant was charged with four

offences and that a preliminary inquiry before a magistrates court was necessary before his trial at the Assizes, the United Kingdom Government submit that such a period was reasonable in this case. Accordingly, the applicant's complaint appears to be manifestly ill-founded, or, alternatively, incompatible with the provisions of the Convention.

2. The applicant replies that no proof was furnished by the police as regards their allegations that the applicant might abscond and that he might intimidate witnesses. He also states that he had a fixed abode, that he was a native of the area and that his common law wife and family are householders and rate-payers in this district. As regards the outstanding offence in Glasgow, the applicant alleges that this was only for contravening a city bye-law and only a misdemeanour, not a criminal offence. The applicant also states that he was refused bail on the sole ground that he did not act according to the instructions of the police. He points out that one of his accomplices was granted bail because he co-operated with the police.

IV. The applicant's complaint that his appeal was hindered by the prison administration (Article 6)

1. The Government submit that this allegation apparently relates to the appeal against the second sentence which was imposed on the applicant by the Petersborough Magistrates Court. The Government point out that the applicant was entitled, whilst awaiting his appeal at Bedford prison, to the rights afforded to an appellant by Rule 60 of the Prison Rules 1964 as to corresponding with his appeal, and would have been allowed to send such letters as he may have wished in connection with his appeal and to contact witnesses had he applied to the prison authorities. However, no application for such facilities was made by the applicant. Moreover, having regard to the fact that the appeal was an appeal against sentence, the Government are of the opinion that the question of witnesses would appear to be without relevance. The Government accordingly submit that this complaint is manifestly ill-founded.

2. The applicant has made no further observations in his reply.

V. The applicant's allegation as to the making public of his statements made to the police (Article 8)

1. The respondent Government submit that the applicant's statements in the course of the police investigation concerning his complaints about ill-treatment had been made in the Leeds City Magistrates Court. This is a place open to the public. This complaint was therefore a public complaint made by the applicant himself and the fact that the making of it was capable of becoming known and did

become known cannot constitute lack of respect for the applicant's private and family life, his home or his correspondence. The two statements made by him in the course of the statutory investigation were made in amplification of this original public complaint. The Government indicate in this respect that the applicant must be taken to have known that these statements would be used in the course of the investigation. The United Kingdom Government are therefore of the opinion that this complaint is manifestly ill-founded or, alternatively, incompatible with the provisions of the Convention.

2. The applicant has made no further observations in his reply.

VI. Allegations relating to the applicant's communications to the Commission (Article 23)

1. The respondent Government indicate that owing to his detention a prisoner may not communicate with other persons outside the prison without the leave of the authority responsible for his imprisonment. Paragraph 22 of Prison Standing Order 5 (b), however, deals specifically with petitions by prisoners to the European Commission of Human Rights (cf. copy of the text which is attached in Annex B to the Government's observations). Thus it is provided that an application to the Commission can be lodged without seeking any permission. The application should be made on white lined foolscap paper written on one side only. Sufficient foolscap should be provided. The application should be read by the prison authorities but will in no case be stopped, and it has to be posted immediately after having been read.

On 14th November, 1969, the applicant was interviewed by the Governor of Bedford prison and informed that a letter written by him to the Commission was not in accordance with the above Rule of the Prison Standing Order and that he should rewrite the letter on white foolscap paper as required by that Rule. The applicant was issued with the appropriate paper and rewrote the letter to the Commission later the same day. This letter was immediately posted.

2. The applicant in reply informs the Commission that he is still not allowed enough note paper to answer the Commission's questions. He points out that he is restricted to three sheets of paper from day to day. The applicant says that he has protested against this attitude but without success.

THE LAW

Whereas the applicant alleges that the respondent Government is responsible for violations of Article 3 of the Convention in

his respect in that he was ill-treated by the police at the time of his arrest and that subsequently he did not receive adequate medical treatment; in this respect the respondent Government contended that the applicant has not exhausted the domestic remedies available to him under English law since he failed to institute criminal or civil proceedings against those persons who had allegedly ill-treated him; whereas the Commission notes that the institution of such charges, as the applicant was informed by the deputy prison director, requires the prior permission of the Home Secretary; consequently, it is doubtful whether, in these circumstances, the institution of such proceedings would have been an effective remedy within the meaning of Article 26 of the Convention; whereas, in any event, the Commission is of the opinion that the applicant's complaints are manifestly ill-founded within the meaning of Article 27, paragraph (2) of the Convention; whereas the applicant himself admits that he was examined soon after his arrest by two medical officers and that both of them stated in their medical reports that there were no signs of any injuries consistent with the kind of ill-treatment described by him; whereas the applicant has in no way established that these medical reports were incorrect nor has he otherwise shown that he had been subjected to an assault by the police in a manner amounting to a violation of Article 3 of the Convention; whereas, indeed, as regards the surface wounds found by the police doctor on the applicant's head, the Commission noted that one of the applicant's accomplices stated that the applicant, when trying to escape arrest by the police, fell down a steep railway embankment and was injured; furthermore, as the applicant was subjected to a thorough examination by two doctors, his allegation that there was again a violation of Article 3 in that he did not receive adequate medical treatment is also in no way established; whereas it follows that these two complaints in relation to Article 3 of the Convention are both manifestly ill-founded within the meaning of Article 27, paragraph (2) of the Convention;

Whereas the applicant further complains as to the living conditions in the prisons where he was detained, and submits that he was subjected to a degree of inhuman treatment in this respect as amounted to a violation of Article 3 of the Convention; whereas the Commission is of the opinion that the circumstances in which the applicant was detained in prison can in no way be said to constitute such treatment, and indeed the Convention does not guarantee certain privileges in the treatment of prisoners; whereas this further complaint in relation to Article 3 is again manifestly ill-founded;

Whereas the applicant also complains, having regard to Article 5, paragraph (3) of the Convention, that he was not released on bail by the Magistrates Court at Leeds; whereas the Commission is of the opinion that this decision was, in particular,

justified by the fact that the applicant had failed to answer bail in connection with a previous matter and that consequently there was no guarantee that he would appear in Court at the time of his trial; whereas it follows that this complaint also is also manifestly ill-founded;

Whereas the applicant complains under Article 6 of the Convention that his appeal against the decision of the Petersborough Magistrates was hindered as vital witnesses were refused access to him; in this respect the applicant has not contested the respondent Government's statement that he himself failed to take any steps in order to get in touch with these witnesses; whereas the Commission finds that, consequently, there is no basis for this allegation and that this complaint is also manifestly ill-founded;

Whereas the applicant alleges a breach of the Convention with respect to the fact that his statements made originally before the Magistrates Court, and later in the investigation carried out by the Chief Constable of Leeds City Police, became public and were communicated to all the police in Leeds; whereas the Commission presumes that the applicant intends to make this complaint under Article 8 of the Convention which secures the right to respect for private and family life, home and correspondence; whereas the applicant has not contested the respondent Government's statement that he alleged in open court that he had been beaten up by the police and refused medical attention; whereas the Commission finds that, even assuming that the applicant's allegations were true, these statements were originally made in the course of public proceedings and consequently the subsequent communication of them cannot constitute an interference with the applicant's right to respect of his private life within the meaning of Article 8 of the Convention; whereas, consequently, this part of the application is manifestly ill-founded;

Whereas, finally, the applicant states that his correspondence with the Commission was censored by the prison authorities and that he was not allowed enough writing paper to make his submissions to the Commission; whereas it is true that Article 25, paragraph (1) in fine of the Convention provides that a Government, having accepted the right of individual petition, shall in no way hinder the effective exercise of an individual's right to file an application under the Convention; whereas, however, the applicant has been able to submit his case in detail, including a substantial reply to the respondent Government's observations on the admissibility of his application; whereas, in these circumstances it does not appear that the applicant has been hindered in the effective exercise of his right of application within the meaning of the above provision.

Now therefore the Commission

1. DECLARES THIS APPLICATION INADMISSIBLE.
2. DECIDES TO TAKE NO FURTHER ACTION IN RESPECT OF THE ALLEGED INTERFERENCE WITH THE EFFECTIVE EXERCISE OF THE RIGHT OF INDIVIDUAL PETITION.

Secretary to the Commission

President of the Commission

(A. B. ~~McAULTY~~)

(M. SØRENSEN)