

AS TO THE ADMISSIBILITY OF

Application No. 15817/89
by Douglas WAKEFIELD
against the United Kingdom

The European Commission of Human Rights sitting in private on
1 October 1990, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
F. ERMACORA
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.C. GEUS
A.V. ALMEIDA RIBEIRO
M.P. PELLONPÄÄ

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the
Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 2 October 1989
by Douglas WAKEFIELD against the United Kingdom and registered on
23 November 1989 under file No. 15817/89;

Having regard to the report provided for in Rule 47 of the
Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a citizen of the United Kingdom born in 1947
and detained in HM Prison Full Sutton, Yorkshire, where he is serving
two separate life sentences for murder (1974) and manslaughter
(1979). He is a high security risk "category A" prisoner. This is
his second application to the Commission. His first concerned an
alleged denial of writing facilities for his autobiography and the
postponement of any parole date for him. The Commission rejected
these claims under Articles 10 and 3 of the Convention as manifestly
ill-founded within the meaning of Article 27 para. 2 of the Convention
(No. 14972/89, Dec. 12.7.89).

The facts of the present case, as submitted by the parties,
may be summarised as follows.

On 6 December 1988 the applicant petitioned the Home Secretary
with a request that he be either permanently or temporarily
transferred to a Scottish prison to enable his fiancée, who lives in
Scotland, to visit him. His fiancée has three young children and

lives on social security benefits. She does not, therefore, have the money to visit him in Full Sutton. The applicant submits that his relationship with his fiancée is very sound and has great promise for the future. She represents no security risk for the prison administration. Moreover, the applicant has established strong ties with his fiancée's children. The applicant has no one else visiting or writing to him.

In June 1989 the Home Office telephoned the applicant's prison to ask if he still wanted a Scottish Prison transfer. A speedy reply was required and the applicant immediately confirmed his transfer request. However, three months later the applicant received a petition-reply, dated 7 September 1989, refusing any transfer without giving reasons for this decision.

The Government provided the Commission with the following reasons for the refusal:

"The Government are normally prepared to grant transfers provided that the inmate has at least six months to serve, that he was normally resident in Scotland at the time of his offence or has close family ties there, and that he appears unlikely, if transferred, to disrupt or attempt to disrupt any prison establishment or otherwise pose an unacceptable risk to security. Any exceptional circumstances may also be taken into account...

The applicant's request for permanent transfer was refused because on the evidence available both the Home Office and the Scottish Home and Health Department were not satisfied that he had established sufficiently strong links with Scotland during his time in custody. The applicant was not ordinarily resident in Scotland prior to his offence and, to the best of the Government's knowledge, had not lived there at all. He had no close family residing there. The applicant had met his fiancée on only one occasion, although they had written a considerable number of letters. The applicant's circumstances therefore did not meet the criteria referred to above and it was considered that there were not strong compassionate or other compelling grounds for transfer.

A temporary transfer to receive accumulated visits was refused because it was thought that the applicant would pose an unacceptable risk in terms of security and management in Scotland. Where category A inmates are involved, a request for temporary transfer must be considered with particular care because of the risk involved in any movement of an inmate requiring conditions of maximum security. Particular security risks arise with this type of transfer because the inmate will know roughly when the return journey is likely to take place; moreover he may deliberately prompt his immediate return by misbehaviour with a view to an escape attempt in transit.

However, in recognition of the efforts made by the applicant over the last few years to improve his behaviour, the Prison Service are currently reviewing his application for temporary transfer."

The applicant has now been informed by the prison administration that if he wishes to go to a Scottish prison for a month of visits he has to comply with the strict security conditions which would normally apply to a double escapee as there is no equivalent to his category A classification in Scotland. He is hesitant about accepting these conditions which he deems unreasonable in view of the fact that he has never tried to escape.

COMPLAINTS

The applicant complains that the refusal of a transfer, even temporary, under reasonable conditions, to facilitate visits from his fiancée, constitutes inhuman and degrading treatment, as it may destroy his de facto family ties. He also complains of a denial of his right to respect for private and family life and home. He invokes Articles 3 and 8 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 20 October 1989 and registered on 23 November 1989. On 20 December 1989, pursuant to Rule 40 para. 1 of the Rules of Procedure, the Rapporteur requested the Government to provide information about the refusal of the applicant's transfer to a Scottish prison. The Government provided this information (above in THE FACTS) on 26 February 1990, to which the applicant replied on 12 April 1990. On 5 June 1990 the applicant informed the Commission of the present proposals and conditions upon which he could be temporarily transferred to a Scottish prison.

THE LAW

The applicant has complained that the original refusal and present conditions placed on the proposal to transfer him to a Scottish prison so that he can be visited by his fiancée constitute violations of Articles 3 and 8 (Art. 3, 8) of the Convention.

Article 3 (Art. 3) of the Convention prohibits, inter alia, inhuman and degrading treatment and Article 8 para. 1 (Art. 8-1) of the Convention ensures, inter alia, the right to respect for private and family life. The second paragraph of Article 8 (Art. 8) provides for certain limited exceptions to that right, such as measures necessary in a democratic society for the prevention of disorder or crime.

The Commission finds that the handling of the applicant's request for a transfer to a Scottish prison, whilst frustrating for the applicant, does not amount to the severe level of ill-treatment proscribed by Article 3 (Art. 3) of the Convention. The Commission also finds that the relationship between the applicant and his fiancée cannot be said to amount to the kind of family life protected by Article 8 (Art. 8) of the Convention. For such family life to arise more substantial ties than the one meeting and correspondence in this case must exist. Moreover, there is no evidence in the case-file of any family relationship between the applicant and his fiancée's children.

However, the Commission considers that the relationship between the applicant and his fiancée does fall within the scope of the notion of private life envisaged by Article 8 (Art. 8) of the Convention. It is of the opinion that Article 8 (Art. 8) requires the State to assist prisoners as far as possible to create and sustain ties with people outside prison in order to promote prisoners' social rehabilitation. In this context the location of the place where a prisoner is detained is relevant. Accordingly the Commission finds that the refusal to allow the applicant a permanent transfer to Scotland to be near his fiancée constitutes an interference with the applicant's right to respect for private life ensured by Article 8 para. 1 (Art. 8-1) of the Convention.

The question arises whether that interference was justified for one or more of the reasons laid down in the second paragraph of Article 8 (Art. 8). In this context the Commission must take account of the serious nature of the offences for which the applicant was convicted and his classification as a category A, high security risk.

With the applicant's background it is conceivable that certain restrictions on his transfer may be necessary to pursue the legitimate aim of preventing disorder or crime, within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention. The Commission has also taken account of the extent of the applicant's relationship with his fiancée and the Government's present proposal to transfer the applicant temporarily to a Scottish prison, under strict security conditions, to facilitate the fiancée's visits. The Commission finds that in the circumstances of the case this proposal is proportionate to the aforementioned aim. It concludes, therefore, that the interference with the applicant's right to respect for private life is justifiable as necessary in a democratic society for the prevention of disorder or crime, within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention.

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

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission

President of the Commission

(H.C. KRÜGER)

(C.A. NØRGAARD)