CONSEIL DE L'EUROPE

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COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

COURT (CHAMBER)

CASE OF CAMPBELL v. THE UNITED KINGDOM

(Application no. 13590/88)

JUDGMENT

STRASBOURG

25 March 1992

In the case of Campbell v. the United Kingdom*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention")** and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr J. CREMONA, *President*,
Mr J. PINHEIRO FARINHA,
Mr R. MACDONALD,
Mr A. SPIELMANN,
Mr S.K. MARTENS,
Mr I. FOIGHEL,
Mr R. PEKKANEN,
Mr J.M. MORENILLA,
Sir John FREELAND,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 28 September 1991 and 28 February 1992,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court on 12 October 1990 by the European Commission of Human Rights ("the Commission") and by the Government of the United Kingdom of Great Britain and Northern Ireland ("the Government") on 22 November 1990, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 13590/88) against the United Kingdom lodged with the Commission under Article 25 (art. 25) on 14 January 1986 by Thomas Campbell, a British citizen.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby the United Kingdom recognised the compulsory jurisdiction of the Court (Article 46) (art. 46), and the Government's application to Article 48 (art. 48). The object of the request

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* The case is numbered 52/1990/243/314. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

** As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

and the application was to obtain a decision from the Court as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 8 (art. 8) and also, in the case of the request, Article 25 (art. 25) of the Convention.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings pending and designated the lawyer who would represent him (Rule 30).

3. The Chamber to be constituted included ex officio Sir Vincent Evans, the elected judge of British nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 30 October 1990, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr J. Pinheiro Farinha, Mr R. Macdonald, Mr A. Spielmann, Mr S.K. Martens, Mr I. Foighel, Mr R. Pekkanen and Mr J.M. Morenilla (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently Sir John Freeland, the newly elected judge of British nationality, who had taken up his duties before the hearing, replaced Sir Vincent Evans who had resigned (Rule 2 para. 3).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the Government, the Delegate of the Commission and the applicant's representative on the need for a written procedure (Rule 37 para. 1).

In accordance with the President's orders and directions, the Registrar received, on 1 March 1991, the applicant's memorial, on 4 March 1991, the Government's, and, on 24 July and 16 August 1991, the applicant's claim under Article 50 (art. 50). By letter of 22 April 1991 the Secretary to the Commission informed him that the Delegate would submit his observations at the hearing.

5. Having consulted, through the Registrar, those who would be appearing before the Court, the President directed on 3 December 1990 that the hearing should open on 23 September 1991 (Rule 38).

6. The hearing took place in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting beforehand. Mr Cremona, Vice-President of the Court, replaced Mr Ryssdal who was unable to take part in the further consideration of the case (Rule 21 para. 5, second sub-paragraph).

There appeared before the Court:

- for the Government

Mrs A. GLOVER, Legal Counsellor,
Foreign and Commonwealth Office, *Agent*,
Mr A.F. RODGER, Q.C., Solicitor General for Scotland,
Mr R.J. REED, Advocate,
Mr J.L. JAMIESON,
Mr C. REEVES, *Advisers*;

- for the Commission
Mr. ROZAKIS, *Delegate*;
- for the applicant
Mr J. CARROLL, Solicitor.

7. The Court heard addresses by Mr Rodger for the Government, by Mr Rozakis for the Commission and by Mr Carroll for the applicant, as well as replies to questions put by the Court. The applicant and the Government filed further submissions concerning Article 50 (art. 50) on 2 and 29 October 1991.

AS TO THE FACTS

I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

8. On 10 October 1984 the applicant was convicted of assault and murder at the High Court, Glasgow, and was sentenced to life imprisonment. One of the offences involved setting fire to the front door of a flat thereby killing six of the nine members of one family asleep there at the time. A recommendation was made by the trial judge that he should serve not less that twenty years' imprisonment in view, inter alia, of the appalling nature of the crimes and his previous criminal record which indicated that he was "a ruthless man of violence".

Mr Campbell was initially classified as a Category B prisoner, the minimum classification for any prisoner either sentenced to three or more years' imprisonment or convicted of a crime involving serious violence. Following an incident at Peterhead Prison he was charged with a number of offences and was re-classified as a Category A prisoner, the classification pertaining to the group of inmates requiring the highest degree of security. These charges were later abandoned by the Crown but he remained a Category A prisoner from 4 November 1985 until 9 March 1988. Since then he has been a Category B prisoner again.

He has been detained in, inter alia, Perth and Peterhead Prisons which are situated at a considerable distance from the offices of his solicitor in Glasgow. He is now serving his sentence in the Special Unit in Barlinnie Prison, Glasgow.

9. Since his imprisonment the applicant had been advised by his solicitor in respect of:

1. an action for damages against the Secretary of State for Scotland for injuries sustained following an assault by a prison officer in Peterhead Prison on 3 November 1985;

2. an action for damages against the Secretary of State for Scotland in respect of an infestation of lice while in the hospital wing of Peterhead Prison in November 1985;

3. a potential claim against the Secretary of State for Scotland for damages in respect of an alleged assault by a prison officer during an incident in Barlinnie Prison on 25 April 1987;

4. a possible prosecution for an alleged assault on a prison officer arising out of the same incident;

5. a denial of communication with his solicitor following the said incident;

6. the denial of the applicant's right to full and unrestricted correspondence between himself and his legal advisers on all of the above matters;

7. an application (application no. 12323/86) to the European Commission of Human Rights ("the Commission") concerning inter alia his solitary confinement and access to his solicitor while in custody in hospital; and

8. the application with which the present case is concerned.

10. On 16 September 1985, the applicant's solicitor wrote to the Governor of Peterhead Prison, asking that all correspondence between him and his client should pass without interference. After having discussed the matter with the applicant, the Deputy Governor wrote on 23 September 1985 to the applicant's solicitor indicating that outgoing mail from the applicant to his solicitor concerning his petition to the Commission, if properly marked so as to indicate that it concerned the Convention, would not be opened.

11. In a further letter dated 4 October 1985 to the Governor of Peterhead Prison his solicitor claimed that the letter of 16 September had not been answered in its entirety as he had been given no assurance by the Deputy Governor that letters to Mr Campbell would not be subject to interference. On 15 October 1985 the Deputy Governor replied that incoming mail from solicitors concerning an application to the Commission, suitably identified by placing (a) the name of the solicitor's firm and (b) the initials ECHR in a prominent position on the envelope, would be opened in the presence of the prisoner and handed to him unread (see paragraph 25 below). The Deputy Governor explained that this arrangement would not apply to solicitors' correspondence about matters other than the application to the Commission.

12. On 24 October 1985 the applicant's solicitor wrote to the Scottish Home and Health Department ("SHHD"), the Government department concerned with the administration of prisons in Scotland, again requesting that all of his correspondence to the applicant should be allowed to pass to him without interference.

13. On 29 October 1985 the applicant petitioned the Secretary of State for Scotland complaining about censorship of his correspondence with his solicitor. In their reply of 19 June 1986 to this and other petitions the SHHD

advised the applicant that his solicitors had been informed by the Deputy Governor, Peterhead, on 15 October 1985 that correspondence "in respect of ECHR procedures" should be clearly marked to ensure privacy but that any other correspondence between an inmate and his legal advisers was subject to scrutiny under standing instructions to prison establishments.

14. On 16 June 1986 the SHHD wrote to the applicant's solicitor confirming the arrangements for solicitors' correspondence concerning matters before the Commission but reaffirming that other correspondence was still subject to the normal rules which provided for the opening and reading of all letters to and from a prisoner (see paragraphs 19-22 below).

15. On 19 June 1986 the applicant again complained that incoming mail from his solicitor was scrutinised. He repeated these complaints on 27 June 1986. In these petitions, the applicant also drew the attention of the authorities to the fact that correspondence to and from the European Commission of Human Rights was being opened. The reply from the SHHD, received by the applicant on 15 July 1986, referred to the existing arrangements as discussed in correspondence between his solicitor and management at Peterhead Prison in September and October 1985.

In a petition dated 4 November 1986, the applicant again complained that all legal correspondence apart from letters relating to the Convention was being opened. The reply to this petition and others received by him on 24 July 1987 stated, inter alia, that his correspondence was being dealt with in accordance with Prison Standing Orders. However, he was advised that the terms of the existing Standing Orders were under review in this respect.

In a further petition dated 30 December 1986 he complained that a letter from a firm of solicitors was opened and photocopied before he received it.

16. In a letter dated 16 June 1987 to the applicant's solicitor, the SHHD confirmed that the rules relating to prisoners' correspondence were under review in the light of the friendly settlement reached in the case of McComb (application no. 10621/83, report of the Commission dated 15 May 1986 - see paragraph 23 below). The applicant's solicitor was advised that, pending the outcome of discussions between the SHHD and the Law Society of Scotland, the current rules would continue to apply to correspondence between a prisoner and his legal adviser; in particular, only correspondence concerning matters before the Commission would be allowed to pass unopened.

However, it is established that at least some of the correspondence from the Commission had been opened. The applicant referred to letters dated 20 June 1985, 17 July 1985, 9 October 1985, 20 November 1985, 22 April 1986, 22 May 1986, 7 January 1987, 4 June 1987, 18 August 1987, 2 October 1987, 7 October 1987 and 3 November 1987 from the Commission which allegedly show the prison censor's mark on the top right hand corner. The Government accepted that five of these letters (17 July 1985, 9 October 1985, 20 November 1985, 22 April 1986 and 18 August 1987) were opened.

They considered that three other letters (20 June 1985, 22 May 1986 and 7 January 1987) may have been opened but that it was not possible to identify the markings. Of the remaining letters the Government stated that there were no identifiable marks and thus no opinion could be expressed as to whether they had been opened or not.

17. The applicant's solicitor applied for legal aid to bring civil proceedings in respect of the interference with the applicant's correspondence. Legal aid was refused on 7 October 1986 by the Supreme Court Legal Aid Committee on the ground that the applicant had no probable cause of action. The Committee also noted that the applicant was not being denied visits from his legal advisers and that he had not indicated that he was unable to give instructions verbally to his advisers. The applicant's appeal against this decision was refused on 5 December 1986 by the Legal Aid Central Committee of the Law Society of Scotland.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. General legal framework

18. At the relevant time the prison system in Scotland was governed by the Prisons (Scotland) Act 1952 ("the 1952 Act"), which has since been repealed. Similar provisions were re-enacted in the Prisons (Scotland) Act 1989.

Sections 1 and 3 of the 1952 Act vested general control and superintendence over prisons in Scotland in the Secretary of State for Scotland. He was empowered, by section 35 (1), to "make [by statutory instrument] rules for the regulation and management of prisons ... and for the classification, treatment, employment, discipline and control of persons required to be detained therein".

In exercise of his powers under section 35 (1), the Secretary of State made the Prison (Scotland) Rules 1952 ("the Prison Rules"), which have been amended from time to time and which are published. He also, in supplement of the Prison Rules and by virtue of his general jurisdiction over prisons and of various powers conferred by the Prison Rules themselves, issues instructions to the Governors of prisons in the form of Standing Orders and administrative circulars. The Standing Orders relevant to correspondence are also published. Every prisoner, on his admission to prison, is given or given access to a booklet summarising the Rules and Standing Orders.

B. Correspondence with legal advisers

19. Communications between prisoners and their legal advisers and others are governed principally by Rule 74 of the rules. Rule 74 (4) provides that - subject to one exception which is not relevant in the present case - "every letter to or from a prisoner shall be read by the Governor or by an officer deputed by him for that purpose".

The validity of Rule 74 (4) was judicially considered and upheld in the case of Leech v. Secretary of State for Scotland (judgment of the Outer House of the Court of Session of 26 October 1990) which concerned the reading of a prisoner's correspondence with a legal adviser relating to potential legal proceedings. The Court considered inter alia that Rule 74 (4) could not be described as irrational since "it cannot be supposed that there are no sound grounds for requiring control over correspondence involving a prisoner even when it takes place between him and his legal adviser".

20. In the case of remand prisoners, Rule 124 (2) provides that they shall be allowed to write to their legal advisers. Under Rule 124 (3) any confidential written communications prepared by such a prisoner as instructions for his legal adviser may be delivered to the legal adviser without being examined by any officer of the prison unless the Governor has reason to suppose that it contains matters not relating to such instructions. Under Rule 127 this facility is also available to convicted prisoners who are the subject of further charges. Similar provisions apply under Rule 132 (2) to an appellant in connection with his appeal.

21. These rules are supplemented by Standing Order M, which deals in detail with communications between prisoners and others. Copies of this Standing Order are available to prisoners and the public. Standing Order Ma1 (a) sets out the purpose of examination of the correspondence, namely to prevent its use to plan escapes or disturbances or otherwise jeopardise the security of the establishment and to satisfy other reasonable requirements of prison administration. Under Standing Order Ma1 (d), when correspondence is examined or read this is to be done as quickly as possible.

22. Most correspondence with legal advisers is governed by Standing Order Ma6 (e) which concerns general correspondence. Under Standing Order Ma7 such correspondence:

> "may not contain the following:
>
> (a) Escape plans, or material which if allowed would jeopardise the security of a prison establishment.
>
> (b) Plans or material which would tend to assist or encourage the commission of any disciplinary offence or criminal offence (including attempts to defeat the ends of justice by suggesting the concoction or suppression of evidence).
>
> (c) Material which could jeopardise national security.

(d) Descriptions of the making of any weapon, explosive, poison or other destructive device.

(e) Obscure or coded messages which are not readily intelligible or decipherable.

(f) Threats of violence or of damage to property likely to induce fear in the recipient.

(g) Blackmail or extortion.

(h) Indecent or obscene material.

(i) Information which would create a clear threat or present danger of violence or physical harm to any person.

(j) Complaints about prison treatment which the inmate has not yet raised through the prescribed procedures ...

(k) Material which is intended for publication or for use by radio or television (or which, if sent, would be likely to be published or broadcast) ...

(l) Material constituting the conduct of business activity ...

(m) In the case of an inmate against whom a deportation order is in force, material constituting or arranging any financial transaction ...

(n) In the case of an inmate in respect of whom a receiving order has been made or who is an undischarged bankrupt, material constituting or arranging any financial transaction ..."

23. Following the friendly settlement of 15 May 1986 in the case of McComb v. the United Kingdom (application no. 10621/83, report of the Commission, Decisions and Reports (DR) no. 50, pp. 81-89), new procedures dealing with correspondence between a prisoner and his legal adviser in respect of legal proceedings which have been instituted came into force on 21 March 1988, as set out in Standing Order Ma8:

"Correspondence with a legal adviser about legal proceedings to which an inmate is already a party or, about a forthcoming adjudication, may not be read or stopped unless the Governor has reason to suppose it contains other material. Such a letter may be examined for illicit enclosures, but should only be opened for that purpose in the presence of the inmate by whom it is sent or to whom it is addressed.

Other correspondence with a legal adviser may be read and may not contain anything specified in Standing Order Ma7 (a) to (i) and (k) to (n). Such correspondence may not be stopped on the grounds that it contains material prohibited by Standing Order Ma7 (j) unless it is clear that the inmate is not seeking legal advice but is writing for some other purpose."

The procedure to be followed in respect of such correspondence was described in a Circular issued to Prison Governors on 26 February 1988. The solicitor is required to send such mail within a sealed envelope bearing

the words "Legal Proceedings" and his signature. This envelope is placed within another envelope addressed to the Prison Governor. The inner envelope is passed unopened to the prisoner.

When a prisoner is not yet a party to legal proceedings, but is contemplating bringing them, all mail is liable to be opened and read. In practice, mail is not opened at low-security "open prisons" or at the very high-security "Special Units". In other prisons the letters of prisoners in high-risk categories are those most frequently opened.

C. Correspondence concerning proceedings under the European Convention on Human Rights

24. Standing Order M also contains specific provisions relating to correspondence with the European Commission or Court of Human Rights or with a legal adviser in connection with a petition to the Commission or pending proceedings before the Commission or the Court. Under Standing Order Ma10 such correspondence may not contain material prohibited under Standing Order Ma7 (a) to (c) or (e) (see paragraph 22 above).

25. Further general provisions relating to the Convention are to be found in Standing Orders Ma1 (b) and Mf. In particular, Standing Order Mf7 expressly provides that correspondence between an inmate and his legal adviser about a petition to the Commission or proceedings resulting therefrom should not be read unless the Governor has reason to suppose that the correspondence contains other matters.

26. The Government state that, in practice, as regards correspondence between prisoners and the Commission, outgoing letters if sealed will normally go unopened. Incoming letters from the Commission are opened; the contents are examined to confirm that they are what they purport to be but they are not read; they are thereafter issued promptly to the prisoner.

PROCEEDINGS BEFORE THE COMMISSION

27. Mr Campbell lodged his application with the Commission on 14 January 1986 (no. 13590/88). He complained of interference by the prison authorities with his correspondence with his solicitor, the Commission and a Member of Parliament contrary to Articles 8 and 10 (art. 8, art. 10) of the Convention. He also complained of a violation of Article 6 para. 1 (art. 6-1) of the Convention in that he had been refused legal aid to challenge in the civil courts the actions of the prison authorities in respect of his correspondence.

28. On 8 November 1989 the Commission found admissible the complaint that correspondence with his solicitor and the Commission had

been opened by the prison authorities in violation of his right to respect for correspondence under Article 8 (art. 8). It declared the other complaints inadmissible but decided to examine further whether the opening of the applicant's correspondence with the Commission was compatible with Article 25 para. 1 (art. 25-1) of the Convention.

In its report of 12 July 1990 (Article 31) (art. 31), the Commission expressed the opinion:

1. by eleven votes to one, that there had been a violation of Article 8 (art. 8) in respect of the opening of the applicant's correspondence with his solicitor concerning contemplated and pending proceedings;

2. by eight votes to four, that there had been a violation of Article 8 (art. 8) in respect of the opening of the applicant's general correspondence with his solicitor;

3. by eleven votes to one, that there had been a violation of Article 8 (art. 8) as a result of the opening of the applicant's correspondence with the Commission;

4. by ten votes to two, that the applicant had not been hindered in the effective exercise of the right of individual petition under Article 25 para. 1 (art. 25-1).

The full text of the Commission's opinion and of the dissenting opinions contained in the report is reproduced as an annex to this judgment*.

FINAL SUBMISSIONS MADE TO THE COURT BY THE GOVERNMENT

29. At the hearing on 23 September 1991 the Government invited the Court to hold that:

1. there had been no violation of Article 8 (art. 8);

2. that the applicant had not been hindered in the effective exercise of the right of individual petition under Article 25 para. 1 (art. 25-1) in fine of the Convention.

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* Note by the Registrar: For practical reasons this annex will appear only with the printed version of the judgment (volume 233) of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 (art. 8)

30. The applicant complained that correspondence to and from his solicitor and the Commission was opened and read by the prison authorities in breach of Article 8 (art. 8) which reads:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. 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."

31. Both the Government and the Commission have made reference to the European Agreement relating to persons participating in proceedings of the European Commission and Court of Human Rights of 6 May 1969 ("the European Agreement"). This Agreement is distinct from the Convention and is binding on twenty Contracting Parties, including the United Kingdom from 1971. It also applies to the applicant and his solicitor (Article 1 para. 1 (b) and (c)).

Article 3 of the Agreement provides:

> "1. The Contracting Parties shall respect the right of the persons referred to in paragraph 1 of Article 1 of [the] Agreement to correspond freely with the Commission and the Court.
>
> 2. As regards persons under detention, the exercise of this right shall in particular imply that:
>
> (a) if their correspondence is examined by the competent authorities, its despatch and delivery shall nevertheless take place without undue delay and without alteration;
>
> (b) such persons shall not be subject to disciplinary measures in any form on account of any communication sent through the proper channels to the Commission or the Court;
>
> (c) such persons shall have the right to correspond, and consult out of hearing of other persons, with a lawyer qualified to appear before the courts of the country where they are detained in regard to an application to the Commission, or any proceedings resulting therefrom.
>
> 3. In application of the preceding paragraphs, 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 interests of national security, for the detection or prosecution of a criminal offence or for the protection of health."

Article 6 of the Agreement states:

"Nothing in [the] Agreement shall be construed as limiting or derogating from any of the obligations assumed by the Contracting Parties under the Convention."

A. Correspondence with his solicitor

1. "Interference"

32. The Government maintained that the applicant had not substantiated his claims of an interference with the right to respect for correspondence to and from his solicitor since he did not specify any letter which he said was opened and related to pending proceedings. In their view the applicant was required to substantiate his claims and had failed to do so. Moreover, at the hearing they stressed that the applicant's complaint only related to the opening, and not to the reading, of his correspondence.

33. The Court cannot accept these arguments. It notes in the first place that from the outset in his application to the Commission of 14 January 1986 the applicant complained that "his correspondence with his solicitors and the European Commission of Human Rights has regularly been subjected to interference in so far as it has been opened, perused, scrutinised and censored by the prison authorities". He added that he was restricted in his contacts with his solicitor and the Commission because he knew that "this correspondence will be read (...) and noted by the prison authorities". The Court further observes that the Government did not dispute that the applicant's incoming and outgoing correspondence with his solicitor, other than that concerning a petition to the Commission, could be examined under the Prison Rules. Indeed, the SHHD had informed the applicant and his solicitor that this correspondence was subject to the existing rules which provided for the opening and reading of such letters (see paragraphs 13-14 above). In these circumstances, the applicant can claim to be a victim of an interference with his right to respect for correspondence under Article 8 (art. 8).

34. Such interference amounts to a violation of this provision unless it was "in accordance with the law", had an aim or aims that is or are legitimate under Article 8 para. 2 (art. 8-2) and was "necessary in a democratic society" for the aforesaid aim or aims (see, amongst many others, the Kruslin v. France judgment of 24 April 1990, Series A no. 176-A, p. 20, para. 26).

2. "In accordance with the law"

35. In paragraph 51 of its report the Commission noted that it was not disputed between the parties that the measure complained of was in conformity with Scottish law. The applicant did not comment on this statement in writing, but he submitted for the first time at the hearing that the interference with his correspondence was not in accordance with the law. He questioned the legal validity of the power to open correspondence under the Prison Rules and Standing Orders on the grounds that it is a criminal offence under section 56 of the Post Office Act 1953 to "prevent or impede" the delivery of the post and that the Secretary of State had in effect granted himself a general search warrant which is unlawful under the law of Scotland.

36. Both the Government and the Commission considered that the interference with the applicant's correspondence was based on the Prison (Scotland) Rules 1952 (as amended) made by the Secretary of State in pursuance of his statutory powers under section 35 of the Prisons (Scotland) Act 1952 and supplemented by Standing Orders which were published and available to prisoners and the general public.

37. Although the phrase "in accordance with the law" refers in the first place to national law, it is not, in principle, for the Court to examine the validity of secondary legislation. This is primarily a matter which falls within the competence of national courts which in the present case have examined and upheld the validity of the prison rule providing for the opening and reading of prisoners' correspondence (see paragraph 19 above). In the circumstances the Court sees no reason to call into question the findings of the national court.

38. Accordingly, the Court, like the Commission, finds that the interference was "in accordance with the law" within the meaning of Article 8 para. 2 (art. 8-2).

3. Legitimate aim

39. The applicant did not accept that the purpose of the interference with his correspondence was the "prevention of disorder or crime", within the meaning of Article 8 para. 2 (art. 8-2). As regards incoming mail, he suggested that the aim of the prison authorities was not to check for prohibited material but to learn of the contents of letters before the prisoner did.

40. The Government submitted that such correspondence was opened for "the prevention of disorder or crime" in pursuit of a legitimate aim in terms of Article 8 para. 2 (art. 8-2). The Commission agreed.

41. In the Court's view there is no reason to doubt that the control of the applicant's correspondence was carried out under the Prison Rules and Standing Orders to ensure inter alia that it did not contain material which

was harmful to prison security or the safety of others or was otherwise of a criminal nature. The interference thus pursued the legitimate aim of "the prevention of disorder or crime" within the meaning of Article 8 para. 2 (art. 8-2).

4. "Necessary in a democratic society"

42. The applicant contested the necessity of opening and examining letters to and from his solicitor. He pointed out that many of the items of correspondence with his solicitor concerned legal actions or complaints against prison officials who had an interest in protecting their positions. It was unjust that they and their colleagues should be allowed access to what was essentially private information and legal advice. Such access was susceptible to abuse in view of the solidarity which existed amongst prison staff.

He further submitted that the rights, duties and privileges of lawyers were specifically developed to protect the liberty and privacy of the individual as well as the right to a fair trial and the proper administration of justice. He pointed out that the purpose of the principle of confidentiality between lawyer and client is to enable a person to consult his solicitor freely without the risk that information would be communicated to his opponent.

43. The Government did not contest that, if correspondence relating to pending proceedings had been routinely opened, there would have been a breach of Article 8 (art. 8). They limited their plea in this context to maintaining that the applicant had not substantiated his complaint (see paragraph 32 above). Nor did they seek to argue that there existed any particular suspicion in respect of the applicant's mail on account of his own or his solicitor's personal circumstances.

However, they argued that it was necessary inter alia in the interests of prison security to open letters to and from a solicitor concerning contemplated legal proceedings, as well as general correspondence, with a view to determining whether or not they contained prohibited material. In addition, it was contended that Contracting States enjoy a certain margin of appreciation in striking a balance between the protection of prison security and respect for the confidentiality of correspondence. How the balance was to be struck was a matter of judgment best made by those familiar with the Scottish prison system who had experience in dealing with both prisoners and solicitors in Scotland. The prison authorities were entitled to strike a different balance in relation to correspondence between prisoners and solicitors which concerned matters other than pending legal proceedings.

44. The Court recalls that the notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued. In determining whether an interference is "necessary in a democratic society" regard may be had to the State's margin of appreciation (see, amongst other authorities, The Sunday

Times v. the United Kingdom (no. 2) judgment of 26 November 1991, Series A no. 217, pp. 28-29, para. 50).

45. It has also been recognised that some measure of control over prisoners' correspondence is called for and is not of itself incompatible with the Convention, regard being paid to the ordinary and reasonable requirements of imprisonment (see the Silver and Others v. the United Kingdom judgment of 25 March 1983, Series A no. 61, p. 38, para. 98). In assessing the permissible extent of such control in general, the fact that the opportunity to write and to receive letters is sometimes the prisoner's only link with the outside world should, however, not be overlooked.

46. It is clearly in the general interest that any person who wishes to consult a lawyer should be free to do so under conditions which favour full and uninhibited discussion. It is for this reason that the lawyer-client relationship is, in principle, privileged. Indeed, in its S. v. Switzerland judgment of 28 November 1991 the Court stressed the importance of a prisoner's right to communicate with counsel out of earshot of the prison authorities. It was considered, in the context of Article 6 (art. 6), that if a lawyer were unable to confer with his client without such surveillance and receive confidential instructions from him his assistance would lose much of its usefulness, whereas the Convention is intended to guarantee rights that are practical and effective (Series A no. 220, pp. 15-16, para. 48; see also, in this context, the Campbell and Fell v. the United Kingdom judgment of 28 June 1984, Series A no. 80, p. 49, paras. 111-113).

47. In the Court's view, similar considerations apply to a prisoner's correspondence with a lawyer concerning contemplated or pending proceedings where the need for confidentiality is equally pressing, particularly where such correspondence relates, as in the present case, to claims and complaints against the prison authorities. That such correspondence be susceptible to routine scrutiny, particularly by individuals or authorities who may have a direct interest in the subject matter contained therein, is not in keeping with the principles of confidentiality and professional privilege attaching to relations between a lawyer and his client.

48. Admittedly, as the Government pointed out, the borderline between mail concerning contemplated litigation and that of a general nature is especially difficult to draw and correspondence with a lawyer may concern matters which have little or nothing to do with litigation. Nevertheless, the Court sees no reason to distinguish between the different categories of correspondence with lawyers which, whatever their purpose, concern matters of a private and confidential character. In principle, such letters are privileged under Article 8 (art. 8).

This means that the prison authorities may open a letter from a lawyer to a prisoner when they have reasonable cause to believe that it contains an illicit enclosure which the normal means of detection have failed to disclose.

The letter should, however, only be opened and should not be read. Suitable guarantees preventing the reading of the letter should be provided, e.g. opening the letter in the presence of the prisoner. The reading of a prisoner's mail to and from a lawyer, on the other hand, should only be permitted in exceptional circumstances when the authorities have reasonable cause to believe that the privilege is being abused in that the contents of the letter endanger prison security or the safety of others or are otherwise of a criminal nature. What may be regarded as "reasonable cause" will depend on all the circumstances but it presupposes the existence of facts or information which would satisfy an objective observer that the privileged channel of communication was being abused (see, mutatis mutandis, the Fox, Campbell and Hartley v. the United Kingdom judgment of 30 August 1990, Series A no. 182, p. 16, para. 32).

49. The Government have argued that the opening of the applicant's correspondence did not prevent him from having an effective opportunity to communicate in confidence with his solicitor during prison visits. By way of analogy they pointed out that Article 3 para. 2 (c) of the European Agreement only guaranteed, in the context of proceedings before the Strasbourg organs, the confidentiality of legal consultations with a prisoner during a visit. In a commentary to the Agreement, the Committee of Experts on Human Rights considered that correspondence between a prisoner and his lawyer, in this context, was susceptible to examination by the competent authorities (report to the Committee of Ministers, 27 October 1969, para. 58, H (69)15.)

50. However, these arguments do not answer the applicant's complaint. In the first place, the provisions of the European Agreement are not to be interpreted as limiting the obligations assumed under the Convention, as indicated by Article 6 of the Agreement. They thus cannot be interpreted as prejudicing the rights guaranteed in the Convention (see, mutatis mutandis, the Ekbatani v. Sweden judgment of 26 May 1988, Series A. no. 134, p. 13, para. 26). Moreover, the application of Article 3 para. 2 (c) is subject to the safeguards contained in Article 3 para. 3 which raise problems of interpretation similar to those raised by Article 8 para. 2 (art. 8-2) of the Convention. It therefore offers little clarification of the point at issue and cannot be construed as permitting the opening of such correspondence under Article 8 (art. 8).

Further, correspondence is a different medium of communication which is afforded separate protection under Article 8 (art. 8). The right to respect for correspondence is of special importance in a prison context where it may be more difficult for a legal adviser to visit his client in person because, as in the present case, of the distant location of the prison (see paragraph 8 above). Finally, the objective of confidential communication with a lawyer could not be achieved if this means of communication were the subject of automatic control.

51. The Government have also argued that the professional competence and integrity of solicitors could not always be relied on. The Government added that they not infrequently broke their disciplinary rules and various abuses had come to light since the coming into force of the new rules in respect of correspondence relating to pending proceedings. Moreover, if it were known that all correspondence with solicitors would pass unopened there existed a risk that they would become the target of pressure from those wishing to smuggle forbidden material into or out of prisons. Since drugs or even explosives could be concealed within an ordinary letter this was a real risk. It was thus wholly proportionate for the authorities to minimise risks of this kind by opening such letters.

52. The Court, however, is not persuaded by these submissions. The possibility of examining correspondence for reasonable cause (see paragraph 48 above) provides a sufficient safeguard against the possibility of abuse. It must also be borne in mind that solicitors in Scotland are officers of the court and are subject to disciplinary sanctions by the Law Society of Scotland for professional misconduct. It has not been suggested that there was any reason to suspect that the applicant's solicitor was not complying with the rules of his profession. In sum, the mere possibility of abuse is outweighed by the need to respect the confidentiality attached to the lawyer-client relationship.

53. There being no further room for allowing for a margin of appreciation, the Court finds that there was no pressing social need for the opening and reading of the applicant's correspondence with his solicitor and that, accordingly, this interference was not "necessary in a democratic society" within the meaning of Article 8 para. 2 (art. 8-2).

54. Accordingly, there has been a breach of Article 8 (art. 8) in this respect.

B. Correspondence with the Commission

55. The applicant further complained under this provision that his mail to and from the Commission had been opened and read.

1. Interference

56. The Government maintained that letters to the Commission are not normally opened and that the applicant had not substantiated his claim of an interference in this respect. On the other hand, they stated that letters from the Commission were opened, but not read, to ensure that they actually came from the Commission.

57. The applicant's outgoing mail to the Commission was not, in practice, subject to scrutiny (see paragraphs 13, 16 and 25-26 above) and there is no indication that any such letters have been opened. The Court therefore finds that it has not been established that such outgoing mail had

been opened. However, the practice of opening letters from the Commission, whether or not they were read, amounts to an interference with the applicant's right to respect for correspondence which falls to be justified, in accordance with the Court's case-law (see paragraph 45 above), under Article 8 para. 2 (art. 8-2).

2. "In accordance with the law"

58. The applicant contested that the opening of his correspondence was "in accordance with the law" (see paragraph 35 above).

59. The Court rejects his arguments for the reasons outlined above (see paragraphs 35-37). The opening of letters from the Commission was based, inter alia, on the Standing Orders which were published and available (see paragraph 18 above). The interference was thus "in accordance with the law".

3. Legitimate aim

60. Although the applicant argued that the interference did not pursue a legitimate aim (see paragraph 39 above) the Court sees no reason to doubt that the letters were opened for "the prevention of disorder or crime" within the meaning of Article 8 para. 2 (art. 8-2) (see paragraph 41 above).

4. "Necessary in a democratic society"

61. The Government claimed that the prison authorities were entitled to open letters from the Commission to confirm that they were what they purported to be. In their view, there existed a risk that letters which appeared to come from the Commission could be used as a channel for illicit materials. In addition, the opening of correspondence from the Commission was compatible with Article 3 para. 2 (a) of the European Agreement. Some clarification of the intention of the drafters of the Convention was thus provided on this point.

62. For its part, the Court considers that it is of importance to respect the confidentiality of mail from the Commission since it may concern allegations against the prison authorities or prison officials. Indeed, the need for confidentiality in this context is reflected in the rules concerning outgoing mail to the Commission (see paragraph 25 above). The opening of letters from the Commission undoubtedly gives rise to the possibility that they will be read and may also conceivably, on occasions, create the risk of reprisals by the prison staff against the prisoner concerned.

Moreover, there is no compelling reason why such letters from the Commission should be opened. The risk, adverted to by the Government, of Commission stationery being forged in order to smuggle prohibited material or messages into prison, is so negligible that it must be discounted.

63. Finally, for the reasons indicated above (see paragraph 50), the provisions of the Agreement cannot be invoked to limit the scope of Article 8 (art. 8). In addition, Article 3 para. 2 (a) of the European Agreement merely provides that if the correspondence of persons under detention is opened "its despatch and delivery shall nevertheless take place without undue delay and without alteration". Its purpose is thus to ensure that mail shall not be stopped or delayed or altered.

64. Accordingly, the Court finds that the opening of letters from the Commission was not "necessary in a democratic society" within the meaning of Article 8 para. 2 (art. 8-2). There has thus been a breach of Article 8 (art. 8) in this respect also.

II. AS REGARDS ARTICLE 25 PARA. 1 (art. 25-1)

65. Article 25 para. 1 (art. 25-1) provides:

> "The Commission may receive petitions addressed to the Secretary General of the Council of Europe from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in [the] Convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognises the competence of the Commission to receive such petitions. Those of the High Contracting Parties who have made such a declaration undertake not to hinder in any way the effective exercise of this right."

66. The question of compliance with this provision was raised ex officio by the Commission but was not pursued before the Court. There is no reason to examine this matter.

III. APPLICATION OF ARTICLE 50 (art. 50)

67. Article 50 (art. 50) provides as follows:

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

68. The applicant claimed £3,000 by way of compensation for the interference with his correspondence. At the hearing his lawyer claimed that an award of compensation might discourage the Government from interfering with prisoners' correspondence.

69. The Government and the Delegate of the Commission considered that no award of damage should be made.

70. The Court considers that, in the circumstances of the case, the finding of breaches of Article 8 (art. 8) constitutes sufficient just satisfaction under this head for the purposes of Article 50 (art. 50).

B. Costs and expenses

71. The applicant claimed £9,257.69 by way of costs and expenses. This amount related to solicitor's fees and disbursements for work done in Scotland and in connection with the proceedings before the Convention institutions. No claims were made for travel and subsistence expenses which were covered by the grant of legal aid from the Council of Europe. The applicant has received by way of legal aid 7,205 French francs in respect of fees.

72. Neither the Government nor the Delegate of the Commission disagreed with the above claim.

73. The Court holds that the applicant should be awarded the amount claimed, namely £9,257.69 less 7,205 French francs already paid by way of legal aid in respect of fees. This figure is to be increased by any value-added tax that may be chargeable.

FOR THESE REASONS, THE COURT

1. Holds by eight votes to one, that the interference with the applicant's correspondence with his solicitor gave rise to a violation of Article 8 (art. 8);

2. Holds by eight votes to one, that the interference with the applicant's correspondence with the Commission gave rise to a violation of Article 8 (art. 8);

3. Holds unanimously, that it is not necessary to examine whether or not there was a breach of Article 25 para. 1 (art. 25-1);

4. Holds unanimously, that the United Kingdom is to pay to the applicant within three months, in respect of costs and expenses, the sums resulting from the calculations to be made in accordance with paragraph 73 of the judgment;

5. Dismisses unanimously the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 25 March 1992.

John CREMONA
President

Marc-André EISSEN
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) separate opinion of Mr Pinheiro Farinha;

(b) partly dissenting opinion of Mr Morenilla;

(c) partly dissenting opinion of Sir John Freeland.

J.C.
M.-A.E.

SEPARATE OPINION OF JUDGE PINHEIRO FARINHA

(Translation)

I am unable to accept paragraph 48 of the judgment as it stands, for, in my opinion, it offers no guarantee that letters will not be read.

What is meant by "suitable guarantees"?

Will the presence of the prisoner suffice?

I could have accepted the following wording: "It is necessary to provide suitable guarantees: in principle the letter should be opened in the presence of the prisoner or, when that is not possible, in the presence of the Chairman of the Bar Council (bâtonnier du barreau) or of a lawyer of his choice."

PARTLY DISSENTING OPINION OF JUDGE MORENILLA

1. The applicant's complaints in the present case relate only to the prison authorities' examination of his correspondence with his solicitor and with the European Commission of Human Rights during the period dating from January 1985 to 21 March 1988, while serving a term of life imprisonment for murder after his conviction on 10 October 1984. On 21 March 1988 the new Prison Standing Order came into force following the friendly settlement in the case of McComb v. the United Kingdom (application no. 10621/83, report of the Commission of 15 May 1986, DR 50, pp. 81-89).

2. I fully share the view of the majority that the opening of inmates' correspondence by prison authorities constitutes an interference with their rights under Article 8 (art. 8) of the Convention unless justified under the requirements of legality (the law being adequately accessible and foreseeable), necessity ("pressing social need") and proportionality to the legitimate aim pursued by the national authorities, as set forth in the case-law of this Court. In this respect the Court has consistently recognised a certain but not unlimited margin of appreciation to the States Parties in the imposition of the restrictions (see, inter alia, the Silver and Others judgment of 25 March 1983, Series A no. 61, pp. 37-38, para. 97) under the supervision of this Court as to their compatibility with the Convention.

3. When assessing the necessity of the restrictions imposed on the applicant's mail by the prison authorities "a proper balance must be found between the interests of the prisoners and their lawyers on the one hand and those of the prison administration (and through them of society in general) on the other", as the member of the Commission Mr H.G. Schermers recalls in his dissenting opinion. For this evaluation the national authorities, within the margin of appreciation allowed to them, are certainly better equipped than international judges.

4. In the present case, the Government state that this interference pursued the aim of "the prevention of disorder or crime". The situation in Scottish prisons is described by the applicant himself during the period of his imprisonment as having "been rocked by the number of demonstrations, escape attempts, roof-top protests, hostage taking and other violent incidents" (memorial of the applicant, Cour (91) 69, p. 124).

5. The applicant, in the words of the trial judge, "a ruthless man of violence" (paragraph 8 of the present judgment), was classified following his conviction of assault and murder for security purposes as a Category B prisoner, which comprises "inmates who do not require maximum security but who ought to be kept in very secure conditions". Nevertheless, in November 1985, following an escape attempt by other prisoners, he was re-classified as a Category A prisoner and charged with a number of offences later abandoned by the Crown. Category A comprises "the group of inmates requiring the highest degree of security who ought to be kept in very secure

conditions". He remained in this category until 9 March 1988 when he was re-classified as a Category B prisoner (see memorial of the Government, pp. 4-5, para. 1.3, and of the applicant, ibid., p. 123, and paragraph 8 of this judgment).

6. In the instant case, the restrictions imposed on Mr Campbell's correspondence arose from his behaviour in prison. Consequently, in order to examine the alleged violations of Article 8 (art. 8), like Mr Schermers, I also consider it necessary to depart from the methodological reasoning of the majority and to make a distinction between the applicant's "incoming" and "outgoing" mail. I think that this approach highlights the question at issue, namely as to the necessity of opening the applicant's correspondence in his presence in order to check whether it includes other material (as referred to in Standing Order Ma7) that could endanger the order of the prison or create the risk of crime.

7. Regarding the applicant's incoming mail, while sharing the views of the majority as expressed in paragraph 48 and the first sub-paragraph of paragraph 62, I think that given the situation in Scottish prisons and the circumstances of the prisoner, the opening of the correspondence addressed to him bearing the return address either of his solicitor or the Commission in order to verify the origin and content in accordance with Standing Order Ma7 (see paragraph 22 of this judgment) was justified under Article 8 para. 2 (art. 8-2) of the Convention. In view of the applicant's classification as a Category A prisoner and the exceptional situation to which I have already referred, it seems clear to me that, objectively, the prison authorities did have a reasonable suspicion which constituted sufficient justification for the measures taken by them and that accordingly the risk of forgery cannot be said to have been negligible. Furthermore, having regard to the prejudice that the applicant claims to have sustained, I do not feel that the fact that he was not present when his mail was opened constituted sufficient grounds for excluding the prison authorities' justification in acting as they did in this particular case. I cannot, therefore, agree with the majority that the interference with the applicant's correspondence with the Commission gave rise to a violation of Article 8 (art. 8).

8. As regards the applicant's outgoing correspondence, the risk of abuse was, obviously, less and the justification for the interference has to be more apparent. But the evidence before the Court in this case does not disclose any element supporting the applicant's claim - denied by the United Kingdom Government - that letters sent by him to the Commission have been opened.

9. However, with respect to the opening of mail addressed by him to his solicitor, I share the reasoning of the majority and their conclusion that there is a violation of his right to respect for such correspondence as enshrined in Article 8 (art. 8). Such a measure does not satisfy the above-mentioned requirements of necessity and proportionality to the legitimate aims pursued

since the prison authorities were aware that the addressee was Mr Campbell's solicitor, and since the Government have failed to show any particular reason to justify the taking of measures which have impaired the applicant's rights of defence and the principle of respect for an uninhibited and confidential channel of communication between a lawyer and his client.

PARTLY DISSENTING OPINION OF JUDGE SIR JOHN FREELAND

1. I regret that I have found it necessary to part company with the majority of the Court on the question whether the interference with the applicant's correspondence with his solicitor gave rise to a violation of Article 8 (art. 8).

2. In the first place, I have felt unable to agree that there is no reason to distinguish between the different categories of correspondence with lawyers. In my view, the analytical approach of the Commission in treating as two separate categories (i) correspondence with a solicitor concerning contemplated or pending legal proceedings and (ii) general correspondence with a solicitor is both consistent with the earlier case-law and correct.

3. As to the substantive law applying to these categories, although my conclusions with regard to category (ii) are, for the reasons which I shall give below, at variance both with those of the Commission and with those of the majority of the Court, I would not dissent from the proposition that, because of the link with the principle of effective access to court under Article 6 (art. 6), correspondence in category (i) should not be opened by the prison authorities unless in any particular case they have reasonable cause to believe that the privileged channel is being abused. I accept that to include within this category contemplated proceedings, as well as pending proceedings, would be to require for the United Kingdom a further relaxation of the regime of control going beyond that introduced in the wake of the friendly settlement in the McComb case and would present the authorities with some difficulties of definition and identification; but I am not persuaded that such difficulties would be insuperable. I also accept that any such enlargement of the privileged channel of communication would involve some increase in the risk of abuse - but not, I consider, to an extent that should be intolerable.

4. If I were satisfied that it had been established that a particular item of correspondence between the applicant and his solicitor indeed concerned either contemplated or pending proceedings and had been opened by the prison authorities without their having had reasonable cause to suspect abuse, I would therefore have been prepared to vote for a finding of violation of Article 8 (art. 8) in this respect. That is, however, not the case. The applicant has relied on generalised assertions about interference with his correspondence with his solicitor and has neither produced nor identified any particular letter which could be established to have related to contemplated or pending legal proceedings and to have been opened by the prison authorities without reasonable cause for suspicion of abuse. Any privilege from disclosure attaching to such a letter would be his and could be waived by him; and his failure to be specific in this context contrasts with the particularity of at least part of his complaints in relation to

correspondence with the Commission, where he submits copies of letters from the Commission which he says were opened (and the Government accept that some of them were). It also places the Government at a disadvantage in evaluating the allegations made against them and responding to the case which needs to be met; and it deprives the Court of the opportunity to consider in detail the situation with regard to individual letters, as it has done in the earlier cases concerning the application of Article 8 (art. 8) to interference with prisoners' correspondence. To my mind, more should be required before a State is found to be in violation of its obligations under the Article (art. 8) (the view of the majority that there is no reason to distinguish between the different categories of correspondence with lawyers of course enables it to be satisfied by the assertions made).

5. General correspondence with a solicitor, as distinct from correspondence relating to contemplated or pending proceedings, may include communications about any among an enormously varied and extensive range of personal or financial subjects - for example, property management - where the link with the principle of effective access to court is absent and the need for confidentiality is no more cogent, by the nature of the subject-matter, than in the case of correspondence with any other person of affairs who might be dealing with it. I accept, of course, that the relationship between lawyer and client is, for good reasons, normally to be regarded as privileged. I do not, however, find in Article 8 (art. 8) or in the previous case-law anything which seems to me to give that privilege so overriding a force as to limit the discretion of prison authorities, in relation to general correspondence between a convicted prisoner and his solicitor, to opening a letter only in an exceptional case where they have reasonable cause to believe it contains prohibited matter. Indeed, it seems quite clear from its judgment in the case of Silver and Others (Series A no. 61, in particular p. 39, para. 101) that the Court there considered that, making due allowance for their margin of appreciation, the authorities were entitled as a justifiable measure of control over prisoners' correspondence (and, by inference, irrespective of the extent to which they might have had prior cause for suspicion of abuse) to open and read - and in the circumstances of that case even to stop - a letter from a prisoner to his solicitor which did not relate to contemplated or pending proceedings.

6. I confess that I am not persuaded of the existence of any compelling reason for going further now. The responsibility on prison authorities to maintain security and order in prisons, and to prevent the instigation by prisoners of activities outside prison such as threats or violence against witnesses or the unlawful disposal of proceeds of crime, is a very heavy one. In the present case, the judge at the applicant's trial recommended that he "be kept in prison for at least twenty years in order to safeguard members of the public for at least that period of time"; and the applicant was for most

of the relevant period held as a Category A prisoner (that is, as one of "the group of inmates requiring the highest degree of security which will consist of those who must in no circumstances be allowed to get out, whether because of national security considerations or their violent behaviour is such that members of the public or the police would be in danger of their lives if they were to get out"). To require that the measures of control applicable in a prison where the inmates include prisoners such as the applicant must treat general correspondence with a solicitor no differently, so far as justification for opening is concerned, from correspondence relating to contemplated or pending proceedings seems to me to strike the balance between the protection of prison security, on the one hand, and the respect due to confidentiality, on the other, too much in favour of the latter. To do so would in my view be to underestimate the practical risks, to which the Government have drawn attention, of creating a privileged channel of communication so wide in scope as virtually to invite abuse.

7. Nor do I think it a sufficient answer to say, on the question of possible abuse, that solicitors are officers of the court and are subject to disciplinary sanctions for professional misconduct. Quite apart from the fact that disciplinary sanctions on a solicitor after the escape of a ruthless and violent prisoner might well come nowhere near to offsetting the harmful consequences to the public of such an escape, it is unnecessary even to go to the extent of postulating a failure of professional competence or integrity on the part of a solicitor. As Sir Basil Hall and Mrs Liddy pointed out in their partial dissent from the opinion of the Commission, use may be made of solicitors to convey information without their being aware of its significance. There is also the possibility of abuse, without the knowledge of a solicitor, as the result of, for example, pressure on a junior non-professional employee in the firm’s office who has access to its stationery.

8. I also differ from the majority as to the weight to be attached to the fact that the applicant was entitled to have visits in prison from his solicitor, which would take place out of the hearing of a prison officer. The essential element of the right of access to legal advice - the opportunity to consult in confidence with a lawyer - was therefore available to him in an effective and practical manner. Certainly there would be some inconvenience and additional expense if the lawyer had to travel a substantial distance to the prison for a consultation, as Mr Carroll had to do on his visits to the applicant in Peterhead. But the degree of burden which this imposes does not seem excessive in relation to the effects of other restrictions on freedom of movement which flow from the need to constrain a prisoner who is in a high-security risk category. If the applicant wished, visits could in any event be arranged from a solicitor practising locally (I should perhaps add here that I do not think it could reasonably be argued that the right of access to legal advice extends to an entitlement to receive advice from a particular

lawyer of the client's own choosing and only from him or her, whatever the physical situation of the client and that lawyer may be).

9. In sum, although the case here differs from that of category (i) in that there is ample ground for proceeding on the footing that there has been interference, under the restrictions in force, with general correspondence between the applicant and his solicitor, I have concluded that such interference was justifiable as "necessary in a democratic society" within the meaning of Article 8 para. 2 (art. 8-2), just as it was (and here I agree with the majority) "in accordance with the law" and legitimate in its aim. It therefore did not give rise to a violation of the Article.

10. As for correspondence with the Commission, I agree that the applicant has not substantiated his complaint of interference with his outgoing letters. In the case of incoming mail, I have after some initial hesitation concurred in the conclusion that the opening of letters from the Commission to him gave rise to a violation of Article 8 (art. 8). There must admittedly be some additional risk arising from the existence of a further channel of communication in which letters will not be liable to be opened unless in any particular instance there is reasonable cause to believe that the privilege is being abused. The view which I have reached, however, is that in the case of correspondence with the Commission the extent of that additional risk would be so slight that the routine opening of letters from it cannot be adequately justified as "necessary in a democratic society".