

## AS TO THE ADMISSIBILITY OF

Application No. 13214/87  
by Malcolm LOWES  
against the United Kingdom

The European Commission of Human Rights sitting in private on  
9 December 1988, the following members being present:

MM. C.A. NØRGAARD, President  
S. TRECHSEL  
E. BUSUTTIL  
A.S. GÖZÜBÜYÜK  
A. WEITZEL  
J.C. SOYER  
H.G. SCHERMERS  
H. DANELIUS  
J. CAMPINOS  
H. VANDENBERGHE  
Mrs. G.H. THUNE  
Sir Basil HALL  
MM. F. MARTINEZ  
C.L. ROZAKIS  
Mrs. J. LIDDY

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 31 December 1986  
by Malcolm LOWES against the United Kingdom and registered on  
17 September 1987 under file No. 13214/87;

Having regard to the report provided for in Rule 40 of the  
Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

### THE FACTS

The applicant is a United Kingdom citizen, born in 1947, and  
detained in H.M. Prison Albany, Isle of Wight.

This is the applicant's second application to the Commission.  
His first, No. 5442/72, concerned, inter alia, the applicant's freedom  
of religion as a Buddhist and freedom to publish from prison. It was  
declared inadmissible on 20 December 1974.

The present application concerns the refusal by the  
authorities at Norwich Prison, where the applicant was detained, to  
allow him to receive Issue No. 16/17 of a publication called "Gothic  
Ripples". In a petition reply dated 16 March 1987 the Secretary of  
State upheld the censorship of the publication in the following terms:

"The Secretary of State has fully considered your petition  
but can find no grounds for taking any action in regard to  
it. 'Gothic Ripples' has been stopped under Standing Order  
4A 8c because it is explicitly anti-semitic and can  
reasonably be held to be a threat to good order and  
discipline within the prison."

Standing Order 4A 8c provides that "the Governor may also

withhold or withdraw any newspaper or periodical or any particular issue, or any book, if he considers that the content would present a threat to good order and discipline...."

Other literature which had arrived at the same time from the Palestine Liberation Organisation was handed to the applicant.

The applicant submitted that "Gothic Ripples" is not anti-semitic, but anti-zionist, and that the censorship was unnecessary. He claims that the bulletin is only critical of Jewish people insofar as they are anti-Palestine.

The applicant has no record of prison indiscipline and has in the past been allowed to receive other copies of "Gothic Ripples".

At the request of the Rapporteur, pursuant to Rule 40 para. 2 (a) of the Commission's Rules of Procedure, the Government submitted a copy of the document in question to the Commission.

The first two pages of the bulletin, Issue No. 16/17, offers a list of books which may be bought from "Gothic Ripples". The list includes the following works:

"Blood and Soil" by Anna Bramwell .... "An objective study of Hitler's Minister of Agriculture".

"Improvised Munitions Handbook" .... "Essential in the event of a red revolution or Soviet attack, a US Army manual detailing how to make explosives, weapons, incendiaries".

"Mein Kampf" by Adolf Hitler.

"The Hoax of the Twentieth Century" by AR Butz .... "One of the principal and most exhaustive, critical studies of the alleged extermination of 6 millions Jews in World War II".  
"The Great Holocaust Trial" by Michael Hoffman .... "A full account of the sensational trial of Ernst Zündel in Toronto in 1985 where Jewish extermination was disproved".

"The Camp of the Saints" by Jean Raspail .... "A novel concerning an ultimate, global population explosion when vast hordes of coloured immigrants migrate to the West, swamping the Whites".

Pages 3-7 of the bulletin contain an article entitled "Democracy Shows Fangs: World-wide suppression of racial nationalism". The article purports to describe how "democratic claptrap designed to fool the masses" is suppressing the national socialist movements as it did "the world's one and only successful revolt against the negation of true freedom", i.e. "National Socialist Germany". The article includes the following statement:

"The world drive to suppress racial free speech as a liberty dangerous to the rule of the Jew through the manipulation of mongrel masses was founded on the conception of 'genocide' coined by the Jew Raphael Lemkin, and its incorporation in the Genocide Convention adopted by the Jew - United Nations General Assembly on 9 December 1948."

The article is illustrated with cartoons of Jewish men in positions of powers, e.g. cracking the whip at the Houses of Parliament over politicians on their hands and knees, and a trick photograph of Leon Brittan, MP, with a hangman's rope around his neck and the caption "Leon Brittan who drew up the new law to protect his tribe from criticism", i.e. the incitement to racial hatred provisions of the Public Order Act 1986.

The brochure's remaining articles are in a similar vein, describing allegedly unjustified criminal proceedings or other sanctions for racist offences.

## COMPLAINTS

The applicant complains that the withholding of Issue No. 16/17 of the publication "Gothic Ripples" by the prison authorities constituted a violation of his freedom to receive information ensured by Article 10 of the Convention. The applicant also invoked Articles 5, 8, 9, 13 and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention.

Commenting on Issue No. 16/17 after it had been submitted to the Commission by the Government, the applicant stated that it was not his claim that the publication contained any serious debate about Zionism, only that he believed it to be anti-Zionist. He was unable to say, not having seen the particular issue of the bulletin at that stage, whether its line of debate was serious or mischievous. He could only refer to his own situation and motives: He is anti-Zionist and does not hate Jewish people. He only dislikes Jewish and non-Jewish people who fund continued atrocities against the native inhabitants of Palestine, whether those native inhabitants are Arabs or the Oriental Jews originally there.

"Gothic Ripples" and the books featured in the bibliography of the censored Issue No. 16/17 are not illegal publications and the said books may be obtained from public lending library services. "The Hoax of the Twentieth Century" is one such book which the applicant is allowed in his prison cell. The applicant acknowledged that it is controversial, but he is only seeking to read lawfully published material pursuant to his rights under Article 10 of the Convention.

He has been allowed to receive Issue No. 19 of "Gothic Ripples". Its principal articles denigrate Winston Churchill's war role and reflect on "the real war criminals who got away with it", i.e. the allied forces. It does contain references to certain "Jews" and a "half Jew", but it is devoid of cartoons and bibliographies. The applicant contended that in banning Issue No. 16/17, one small insignificant item which the applicant claimed only he and the prison censor would know about, the prison authorities were being grossly inconsistent. The applicant averred that no incident has ever arisen out of his imprisonment, whether as a result of his opinions or his behaviour, or in connection with such publications.

## PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 31 December 1986 and registered on 17 September 1987. On 4 January 1988 the Rapporteur, pursuant to Rule 40 para. 2 (a) of the Commission's Rules of Procedure, requested the respondent Government to submit a copy of the censored publication "Gothic Ripples". The Government submitted the publication, Issue No. 16/17, on 26 January 1988. The applicant was not sent a copy of the publication at that stage, although certain of its contents were described to him in the following terms:

"... there appear to be no references in the aforementioned document to any serious debate about Zionism .... Remarks are made about Jews and their alleged power in British life. It contains seemingly offensive cartoons of Jewish characters, including a photograph of Leon Brittan, MP, with a rope around his neck, accused of protecting 'his tribe from criticism'. It also indicates a bibliography of such works as 'The Hoax of the 20th Century, One of the principal and most exhaustive, critical studies of the alleged extermination of 6 million Jews in World War II', and 'The Great Holocaust Trial, A full account of the sensational trial of Ernst Zündel in Toronto 1985, where Jewish extermination was disproved' (underlining added)."

The applicant submitted comments on this information on 7 March 1988 (paragraphs 2-4 THE COMPLAINTS, above).

The Commission decided on 3 May 1988 to request the Government to make arrangements for the applicant to have sight of the censored document. Thereafter the applicant was invited to submit his comments on the justification for the original censorship. The Government complied with the Commission's request, but the applicant submitted no further comments relevant to the issues in his case.

## THE LAW

1. The applicant complained that the British prison authorities refused him permission to receive Issue No. 16/17 of a magazine called "Gothic Ripples".

2. His principal claim is that the withholding of this Issue of "Gothic Ripples" constituted a breach of Article 10 (Art. 10) of the Convention, the relevant part of which provides as follows:

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

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society .... for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others...."

The Commission notes that the prison authorities censored the publication in question because it was considered to be "explicitly anti-semitic". The applicant submitted, on the basis of his knowledge of previous issues, that "Gothic Ripples" was not anti-semitic, but anti-zionist. He also claimed that the censorship of Issue No. 16/17 and not other Issues or similar publications showed gross inconsistency on the part of the prison administration.

However the Commission has examined the censored copy of "Gothic Ripples" submitted by the Government and finds the conclusions of the prison authorities justified. Issue No. 16/17 of the bulletin contains no serious discussion of zionism. It advertises publications which apparently encourage anti-semitism, racial prejudice and the use of weapons. It uses language and illustrations which are anti-semitic and offensive.

The Commission has also examined Issue No. 19 of "Gothic Ripples" submitted by the applicant and does not find any inconsistency on the part of the prison administration in allowing the applicant to receive this document. It is less offensive, albeit controversial, with notably fewer anti-semitic references. The fact that the prison administration do not impose a blanket prohibition on this publication and the literature which it advertises, but rather review each item separately, shows commendable restraint, well within the margin of appreciation afforded to the High Contracting Parties by Article 10 (Art. 10) of the Convention in order to establish the necessary balance between the individual's freedom of expression (the right to receive information and ideas) and the legitimate interests of others or the prevention of disorder or crime.

In these circumstances the Commission finds that whilst the withholding of Issue No. 16/17 of the publication "Gothic Ripples" from the applicant constituted an interference with the applicant's freedom of expression, especially his right to receive information and ideas, under Article 10 para. 1 (Art. 10-1) of the Convention, that interference was nevertheless justified as being necessary in a democratic society for the prevention of disorder or crime or for the protection of the reputation or rights of others, within the meaning of Article 10 para. 2 (Art. 10-2) of the Convention. This aspect of the application is therefore manifestly ill-founded pursuant to Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant has invoked other Articles of the Convention in respect of his complaint: his right to liberty and security of person (Article 5) (Art. 5) , his right to respect for his correspondence (Article 8) (Art. 8), his freedom of thought and conscience (Article 9) (Art. 9), his right to an effective remedy for a breach of the Convention (Article 13) (Art. 13), his freedom from discrimination in the securement of Convention rights on grounds of his political or other opinions (Article 14) (Art. 14) and his right to property (Article 1 of Protocol No. 1 to the Convention) (P1-1).

However, the Commission finds that the circumstances of the present case disclose no appearance of a violation of these provisions of the Convention. The censorship of Issue No. 16/17 of "Gothic Ripples" casts no doubt on the lawfulness of the applicant's detention under Article 5 (Art. 5) of the Convention. There is no need for the Commission to examine the applicant's complaint further under Articles 8, 9 and 14 (Art. 8, 9, 14) of the Convention or Article 1 of Protocol No. 1 (P1-1) because the justification for the censorship under Article 10 (Art. 10) of the Convention would also justify any interference which there might have been with the applicant's rights under these provisions. Finally, as regards Article 13 (Art. 13) of the Convention, the applicant had the possibility of petitioning the Secretary of State about the censorship of "Gothic Ripples". He has not claimed that Standing Order 4A 8c, under which regulation censorship was imposed, was in itself incompatible with the Convention; the Commission assumes, therefore, that the applicant only wished to complain about the application of the regulation on this occasion. In these circumstances the possibility of a petition to the Secretary of State satisfied his claim and the requirements of Article 13 (Art. 13) of the Convention (Eur. Court H.R., judgment of Silver and Others of 25 March 1983, Series A no. 61, pp. 43-44, paras. 118 and 119).

The Commission concludes that these aspects of the applicant's case are also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission

President of the Commission

(H.C. KRÜGER)

(C.A. NØRGAARD)