In the case of Campbell and Fell,

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:

(*) Note by the registry: In the version of the Rules applicable when proceedings were instituted. A revised version of the Rules entered into force on 1 January 1983, but only in respect of cases referred to the Court after that date.

Mr. G. Wiarda, President,
Mr. J. Cremona,
Mr. Thór Vilhjálmsson,
Mr. F. Gölcüklü,
Sir Vincent Evans,
Mr. R. Macdonald,
Mr. C. Russo,

and also Mr. M.-A. Eissen, Registrar, and Mr. H. Petzold, Deputy Registrar,

Having deliberated in private on 23 September and 8 and 9 December 1983 and on 2 and 3 May 1984,

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

PROCEDURE

1. The present case was referred to the Court by the European Commission of Human Rights ("the Commission") on 14 October 1982, within the period of three months laid down by Articles 32 para. 1 and 47 (art. 32-1, art. 47) of the Convention. The case originated in two applications (nos. 7819/77 and 7878/77) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission in 1977 by Mr. John Joseph Campbell and Father Patrick Fell under Article 25 (art. 25). The Commission ordered the joinder of the applications on 14 and 19 March 1981.

2. 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). The purpose of the request was to obtain a decision from the Court as to the existence of violations of Articles 6 and 8 (art. 6, art. 8) in the case of Mr. Campbell and of Articles 6, 8 and 13 (art. 6, art. 8, art. 13) in the case of Father Fell.

3. The Chamber of seven judges to be constituted included, as ex officio members, Sir Vincent Evans, the elected judge of British nationality (Article 43 of the Convention) (art. 43), and

Mr. G. Wiarda, the President of the Court (Rule 21 para. 3 (b) of the Rules of Court). On 28 October 1982, the President drew by lot, in the presence of the Registrar, the names of the five other members, namely Mr. J. Cremona, Mr. Thór Vilhjálmsson, Mr. G. Lagergren, Mr. R. Macdonald and Mr. C. Russo (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr. F. Gölcüklü, a substitute judge, took the place of Mr. Lagergren, who was prevented from taking part in the consideration of the case (Rules 22 para. 1 and 24 para. 1).

4. Mr. Wiarda, who had assumed the office of President of the Chamber (Rule 21 para. 5), ascertained, through the Registrar, the views of the Agent of the Government of the United Kingdom ("the Government") and the Delegate of the Commission regarding the procedure to be followed. He decided on 17 November that the Agent should have until 31 January 1983 to file a memorial and that the Delegate should be entitled to reply in writing within two months from the date of the transmission of the Government's memorial to him by the Registrar. The President agreed on 25 January to extend the first of these time-limits until 14 March 1983.

The Government's memorial was received at the registry on 17 March 1983. By letter of 18 May, the Secretary to the Commission transmitted to the Court a memorial which had been submitted to the Delegate by the applicants' representatives; that letter also set out the Delegate's views concerning the scope of the case before the Court and indicated that he reserved the right to comment on both memorials at the hearings.

5. After consulting, through the Registrar, the Agent of the Government and the Delegate of the Commission, the President directed, on 7 July 1983, that the hearings should open on 20 September 1983 and, on 27 July, that their scope should be limited in the manner set out in his Order of the last-mentioned date.

6. The hearings were held in public at the Human Rights Building, Strasbourg, on 20 September 1983. Immediately before they opened, the Chamber had held a preparatory meeting.

There appeared before the Court:

- for the Government:

Mrs. A. Glover, Legal Adviser, Foreign and Commonwealth Office, Agent,

Mr. M. Baker, Barrister-at-Law, Counsel,

Mr. C. Osborne,

Mr. P. Stevens,

Mr. J. Le Vay, Home Office, Advisers;

- for the Commission:

Mr. T. Opsahl, Delegate,

Mr. C. Thornberry, Barrister-at-Law, and

Mr. A. Logan, Solicitor, the applicants' lawyers before
the Commission, assisting the Delegate
(Rule 29 para. 1, second sentence, of the
Rules of Court).

The Court heard addresses by Mr. Baker for the Government and by Mr. Opsahl and Mr. Thornberry for the Commission and also replies to questions put by it and by two of its members.

7. At the hearings, Mr. Baker and Mr. Thornberry had made certain submissions regarding the application of Article 50 (art. 50) of the Convention in the event that the Court should find a violation to have occurred. In accordance with the President's Orders and directions, the registry subsequently received the following documents on this question:

- on 13 October 1983, through the Commission's Delegate, observations of the applicants;

- on 2 December 1983, memorial of the Government;

- on 13 January 1984, letter from the Secretary to the Commission, indicating, inter alia, that the Delegate left the matter to the decision of the Court.

AS TO THE FACTS

I. PARTICULAR FACTS OF THE CASE

A. General background and the incident on 16 September 1976

8. The first applicant, Mr. John Joseph Campbell, is a United Kingdom citizen, born in Northern Ireland in 1944 and resident in England since 1965.

In November 1973, he was convicted of various offences, including conspiracy to rob and possession of a firearm with intent to commit robbery, and sentenced to ten years' imprisonment. He was subsequently detained in a number of different prisons and, on 16 September 1976, was in Albany Prison, Isle of Wight. He is now at liberty.

9. The second applicant, Father Patrick Fell, is a United Kingdom citizen, born in England in 1940. He is a Roman Catholic priest.

In November 1973, after being convicted of conspiracy to commit arson, conspiracy to commit malicious damage, and taking part in the control and management of an organisation using violent means to obtain a political end, he was sentenced to twelve years' imprisonment. He too was subsequently detained in a number of different prisons and, on 16 September 1976, was in Albany Prison. He is now at liberty.

10. At all relevant times, both applicants were classified as "category A" prisoners (see paragraph 44 (a) below). The offences of

which they were convicted were believed by the authorities to form part of, or to be connected with, Irish Republican Army terrorist activities. According to the Commission's report, both applicants have consistently denied that they were members of that organisation.

11. On 16 September 1976, an incident occurred in Albany Prison. Before the Commission, there was considerable dispute between the Government and the applicants as to precisely what took place, notably as to the weapons and amount of violence used, but the following summary suffices for the present purposes.

Mr. Campbell, Father Fell and four other prisoners engaged in a protest at the treatment of another prisoner, by sitting down in a corridor of the prison and refusing to move. They were removed by prison officers after a struggle and in the process injuries were sustained by certain members of staff and by both applicants. Mr. Campbell, who had been more seriously injured, was transferred to Parkhurst Prison hospital for treatment and returned to Albany Prison on 3O September 1976.

B. The disciplinary proceedings against Mr. Campbell

12. The six prisoners involved in the above-mentioned incident were all charged with, and found guilty by the Prison Board of Visitors of, disciplinary offences against the Prison Rules 1964, as amended ("the Rules"; see paragraphs 26-33 below). The Board heard the cases on 24 September 1976, except that of Mr. Campbell who was then still at Parkhurst.

13. On 1 October 1976, immediately after his return to Albany Prison, Mr. Campbell was informed that he was charged with the disciplinary offences of mutiny or incitement to mutiny and doing gross personal violence to an officer, contrary to Rules 47 (1) and (2) (see paragraph 27 below). The first charge concerned his participation with the other prisoners in the incident; the basis of the second charge was an allegation that, on that occasion, he had struck an officer with a broomhandle.

A preliminary hearing before the Prison Governor (see paragraph 31 below) took place on 1 October, when the charges were referred to the Prison Board of Visitors. The latter heard the case, in private, on 6 October. The applicant had received, before both hearings, "notices of report" and, before the Board's hearing, a copy of a form outlining its procedure (see paragraph 36 below). The "notices of report" in connection with the Board's proceedings were issued at 8 a.m. on 5 October. One notice began as follows:

"A report has been made against you by [a prison officer] that at about 19.30 on 16 September 1976 at 'D' hall you committed an offence under paragraph 1 of Rule 47, i.e. mutiny."

The other notice began:

"A report has been made against you by [a prison officer] that at about 22.05 on 16 September 1976 at 'D' hall you committed an offence under paragraph 2 of Rule 47, i.e. did strike an officer with a broomhandle."

Both notices concluded as follows:

"Your case will be dealt with at adjudication tomorrow, when you will be given every opportunity to make your defence.

If you wish to reply to the charge in writing you may do so on the back of this form."

Mr. Campbell attended neither hearing. It is recorded that he declared prior to the Governor's hearing that he would be prepared to attend only if he were legally represented. His request for legal representation before the Board was also refused, in accordance with the standard practice at the time (see paragraph 36 below). Before the Board met, he had been visited by its chairman and warned that it would proceed in his absence; the records state that he understood this warning and the charges against him. It appears that he did not expressly seek either an adjournment of the Board's hearing or a consultation with a solicitor beforehand; under the then practice, a request of the latter kind would also have been unsuccessful (ibid.).

Before the Commission and the Court, Mr. Campbell gave additional reasons for his non-attendance: firstly, having learned of the outcome of the Board's hearing on 24 September and having previous experience of such proceedings himself, he did not believe that he would receive a fair hearing and considered that his presence would be otiose; secondly, he was feeling very ill as a result of his injuries and, on 6 October, he was "in the punishment cell; lying on the floor; unable to walk; not being fed and in considerable pain". As regards the latter allegations, which were disputed by the Government, the applicant had been certified by the medical officer, before both hearings, to be fit for punishment. The Commission concluded that it was not established that Mr. Campbell was prevented from attending rather than that he had decided, for his own reasons, not to attend; it proceeded on the assumption that his absence from the Board's hearing was a matter within his own responsibility.

14. Before the Board of Visitors, a plea of not guilty on each charge was entered on behalf of the applicant, who did not submit any written defence. According to the record of the proceedings - which apparently in neither case lasted longer than fifteen minutes -, one prison officer gave evidence on the mutiny charge, reading a statement describing the part allegedly played by Mr. Campbell and the other prisoners in the incident, and another gave evidence on the personal violence charge, to the effect that he had been struck by Mr. Campbell. The evidence of the first witness was accepted by the Board and its chairman put certain questions to the second.

On 6 October 1976, the applicant was found guilty on both charges and was awarded, for the mutiny and the violence offences respectively, 450 days' and 120 days' loss of remission, together, again respectively, with 56 days' and 35 days' loss of certain privileges, exclusion from associated work, stoppage of earnings and cellular confinement, the sanctions for the two offences to run consecutively (see paragraphs 28 and 29 below). On his reception into prison, Mr. Campbell had been given an estimated date for release (see paragraph 29 below) of May 1980; at the time of the Board's award, he

had already forfeited 145 days of remission in ten separate adjudications for offences against discipline and the balance of potential remission available to him totalled 1,072 days.

15. Observations filed with the Commission on behalf of Mr. Campbell on 1 September 1977 and on 17 April 1979 indicated, respectively, that he was contemplating making and had made an application to the English courts, by way of certiorari proceedings (see paragraphs 39-41 below), for review of the October 1976 adjudication by the Board of Visitors in his case.

A memorandum filed on 23 July 1980 revealed, however, that on counsel's advice, given in November 1979 and June 1980, both Mr. Campbell and Father Fell had decided not to make such an application; counsel considered, as regards the former, that proceedings would be destined to fail on the ground that he had "refused" to participate in the adjudication. At the hearings of 20 September 1983 before the Court, the Government indicated that, even in 1980, the Home Office would probably not have opposed a request by Mr. Campbell for leave to apply for certiorari out of time (see paragraph 41 below), but would do so now. He has, in fact, never pursued the matter.

The question was subsequently reconsidered in the case of Father Fell who had previously been advised, in November 1979, that an application might be feasible. In February 1981, senior counsel advised him to seek certiorari immediately on the ground of "substantial unfairness" in the Board's hearing of 24 September 1976 in his case, which he had attended. Later in the year, he obtained the necessary leave from the court, but his application failed, both at first instance and on appeal.

16. Whilst in custody Mr. Campbell was the subject of fifteen adjudications for disciplinary offences, as a result of which he lost 957 days of remission (including the 570 forfeited as a result of the Board's award of 6 October 1976). Following applications by him pursuant to the procedure described in paragraph 38 below, 236 days of remission were restored to him. He was released from prison on 31 March 1982, having served approximately eight years and eight months of his ten years' sentence, including time spent in custody on remand.

C. The applicants' access to legal advice in connection with their personal-injuries claim

17. Father Fell petitioned the Home Secretary on or about 21 September 1976 in the following terms: "During the course of [an incident at Albany Prison on 16 September], I sustained a number of physical injuries. My request to yourself is that I be permitted to see and to consult with my lawyer, pending further action that I may deem necessary to take." About a week later, in a supplementary petition, the applicant stated that he wanted to see his solicitor regarding compensation for his injuries and any civil proceedings he might be advised to take.

The Home Secretary replied on 1 October. He informed Father Fell that, in accordance with the "prior ventilation rule" (see

paragraph 44 (c) below), he would be able to seek legal advice on the substance of his complaints once they had been investigated through the normal internal channels and he had been given the result of the investigation.

18. Father Fell petitioned again on 4 October 1976. He gave details of his allegations concerning the incident of 16 September and its aftermath and asked for a thorough investigation; he added further information concerning his injuries in a supplementary petition of 27 October.

In his reply of 9 February 1977, the Home Secretary indicated that he was satisfied, after investigation, that there was no substance in the applicant's allegations of assault and of inadequate or unnecessarily delayed medical treatment; he informed the applicant that he would be granted facilities to seek legal advice on the matters referred to in his petition, if he still wished to do so.

19. In a petition of 28 November 1976 to the Home Secretary, Mr. Campbell stated, but without indicating the reasons, "I want to see my lawyer". On 8 December, the request was refused, on the ground that he had not supplied sufficient details for a proper internal inquiry to commence. On 3 March 1977, the same ground was given for refusing a further petition, dated 28 December 1976, in the following terms: "As a result of injuries received at the hands of prison staff at Albany Prison I intend to take legal action and therefore need to see my solicitor. The incident happened in mid-September and I have petitioned about it once before."

20. At this time, there was also a certain amount of correspondence with Messrs. Woodford & Ackroyd, the solicitors then acting for both applicants. After a letter of 17 January 1977 from Mr. Campbell to them had been posted through the normal prison channels, they wrote to the Home Office on 28 January stating that they had been instructed to represent him in civil proceedings and seeking authority to approach the Prison Governor to discuss their client's allegations. However, a letter of 24 January from them to Mr. Campbell, referring, it seems, to legal aid, was stopped.

Instructions from the prisoners involved in the September 1976 incident also apparently reached the solicitors by other means. On 10 February 1977, they wrote to the Albany Prison Governor stating that both of the applicants and four other prisoners wished to see them "concerning certain matters of a legal nature" and requesting confirmation that this could be done in private. On 14 February - that is five days after the Home Secretary had told Father Fell that he could consult a lawyer (see paragraph 18 above) -, the Governor replied that appointments to see, inter alios, that applicant could be made, but that according to prison rules Mr. Campbell was not yet in a position to seek legal advice, since the Prison Department's examination of his complaints had not yet been completed.

In a reply of 3 March to the solicitors' above-mentioned letter of 28 January, the Home Office stated that Mr. Campbell's letter of 17 January to them had been posted in error and that he could not correspond with or receive visits from them until the "prior ventilation rule" (see paragraph 44 (c) below) had been complied with

as regards any complaint he might wish to make.

On 23 March, Messrs. Woodford & Ackroyd were given permission to consult with Mr. Campbell in connection with his application to the Commission (see paragraph 44 (e) below). His account of the September 1976 incident, contained in a memorandum of 1 September 1977 to the Commission, was subsequently accepted by the authorities as a sufficient basis for an internal inquiry into his complaints to be commenced. The inquiry - in which the applicant had not co-operated - was completed on 29 November and, on or about 16 December 1977, he was told that he could take legal advice concerning the complaints that had been investigated.

21. Both applicants subsequently obtained various legal advice and, by writs issued on 13 September 1979, instituted proceedings, alleging assault, against individual prison officers, the Deputy Governor and the Home Office. These actions, in which statements of claim were served some fifteen months later, were still pending at the time of the hearings before the Court (September 1983).

D. Conditions for visits to Father Fell by his solicitors

22. In a reply of 23 March 1977 to a letter of 21 March from Messrs. Woodford & Ackroyd - who had already raised the matter in their letter of 10 February (see paragraph 20 above) -, the Albany Prison Governor stated that at that stage a visit by them to Father Fell would be subject to Rule 37 (2) (see paragraph 44 (d) below) and would therefore have to take place within sight and hearing of an officer. They replied that they were unable to accept these conditions and intended to refer the matter to "the European Court of Human Rights".

On 11 May, the solicitors informed the Governor of the introduction, on 31 March, of Father Fell's application to the Commission; on the following day, the Governor informed them that they could interview their client in connection with that application in sight but out of hearing of an officer (see paragraph 44 (e) below).

E. The applicants' access to medical advice

23. On or about 23 September 1976, Father Fell asked, in a petition to the Home Secretary, for the opportunity for an independent medical consultation. On 5 October, the Home Office stated that the Secretary of State was not prepared to grant this request.

24. After Mr. Campbell's return from Parkhurst to Albany Prison, a request was made by him or his family, apparently on about 18 October 1976, for him to be examined by an independent doctor. According to the Government, he was advised to pursue the matter by way of petition to the Home Secretary, but did not do so. According to the applicant, the request was categorically refused.

F. Restrictions on Father Fell's personal correspondence

25. In October 1974, when in Hull Prison, Father Fell was informed, in reply to his petition of the previous July, that the Home Secretary was not prepared to allow him to correspond with a Sister

Monica Power, on the ground that although she had been known to him before he came into custody, their relationship was not considered to amount to a "close personal friendship". In a letter of 17 December to a Member of Parliament, the Home Secretary maintained this decision, which he explained by reference to the practice concerning the permitted correspondents of "category A" prisoners (see paragraph 44 (a) below): there was no evidence of a friendship as aforesaid between the applicant and Sister Power, although he had known her for longer than some of his approved correspondents.

Father Fell also alleged that he had not been allowed to correspond with other friends, including another nun, Sister Mary Benedict. According to the Government, he corresponded with 200 persons prior to his conviction, whilst detained on remand, and was allowed to correspond with 40 persons thereafter.

II. DOMESTIC LAW AND PRACTICE

A. Prison discipline

1. Disciplinary offences and sanctions

26. The control over and responsibility for prisons and prisoners in England and Wales is vested by the Prison Act 1952 in the Home Secretary. He is empowered by section 47 (1) of that Act to make rules "for the regulation and management of prisons ... and for the classification, treatment, employment, discipline and control of persons required to be detained therein". Such rules are contained in statutory instruments laid before Parliament and made in accordance with the negative resolution procedure, that is, they come into operation unless Parliament otherwise resolves.

The rules made by the Home Secretary and currently in force are the Prison Rules 1964, as amended.

27. Rule 47 creates a total of twenty-one disciplinary offences of varying degrees of seriousness. So far as relevant to the present case, it provides that "A prisoner shall be guilty of an offence against discipline if he

(1) mutinies or incites another prisoner to mutiny;

(2) does gross personal violence to an officer".

These acts are classified as "especially grave offences".

28. The Rules list the "awards" which may be made for an offence against discipline; they range from a caution upwards and include:

(a) forfeiture of certain privileges;

(b) exclusion from associated work;

(c) stoppage of earnings;

(d) cellular confinement;

(e) forfeiture of remission of sentence.

In the case of an "especially grave offence", the sanctions mentioned at (b), (c) and (d) above may not be imposed for a period exceeding 56 days but there is no limit as regards those mentioned at (a) and (e) (Rules 51 and 52).

Where more than one offence has been committed, the respective awards may be ordered to run consecutively, although there is no provision in the Rules on this point.

29. Section 25 (1) of the Prison Act 1952 provides:

"Rules made under section 47 of this Act may make provision whereby, in such circumstances as may be prescribed by the rules, a person serving a sentence of imprisonment for such a term as may be so prescribed may be granted remission of such part of that sentence as may be so prescribed on the ground of his industry and good conduct, and on the discharge of a person from prison in pursuance of any such remission as aforesaid his sentence shall expire."

Under Rule 5 (made pursuant to this section), a prisoner serving a sentence of imprisonment other than for life "may ... be granted remission" not exceeding one-third of his sentence. This therefore represents the maximum period that may be forfeited under a disciplinary award.

Under both the Prison Act and the Rules, remission - which is seen by the authorities as part of the process for encouraging the reform of prisoners - is a discretionary measure. In practice, at the outset of his sentence every prisoner is given an estimated date for release, calculated by reference to the maximum possible remission, and he will be released on that date unless remission has been forfeited in disciplinary proceedings. Forfeiture of remission - which is not awarded solely for the most serious offences - does not have the effect of increasing the original sentence and it is the latter which continues to provide the legal basis for the detention.

2. Disciplinary proceedings

(a) Institution of proceedings

3O. Conduct constituting a disciplinary offence under the Rules may also amount to an offence under the criminal law. Thus, doing gross personal violence to an officer corresponds to the crime of assault occasioning actual bodily harm. Mutiny and incitement to mutiny, on the other hand, are not as such offences under the general criminal law, although the underlying facts might found a charge of, for instance, conspiracy.

According to the Government, where the conduct amounts to both a disciplinary and a criminal offence, the Prison Department of the Home Office decides on an ad hoc basis whether the matter should be referred to the police with a view to prosecution in the courts. Conduct so referred, they said, generally involved substantial violence; other relevant factors might be the prevalence of the conduct in question within the prison, the feelings of staff and

inmates, the prisoner's record and behaviour, the amount of any remission he might previously have lost and of his sentence remaining to be served, and the cost, inconvenience and security risks involved in a criminal trial.

According to the applicants, however, an individual prison officer may himself report the matter to the police, and the Government recognised that, in any case where the police themselves decided not to prosecute, a private prosecution remained a possibility. Moreover, the same facts may, theoretically at least, give rise to both criminal and disciplinary proceedings (see R. v. Hogan [1960] 3 All England Law Reports 149).

31. Where a prisoner is to be charged with an offence against discipline, the charge must be laid as soon as possible and must, in the first instance, be inquired into by the prison governor, generally not later than the day following the laying of the charge (Rule 48). The prisoner must be informed of the charge as soon as possible and, in any event, before the governor's inquiry (Rule 49).

Certain less serious matters are dealt with by the governor alone. In the case, however, of a charge of an "especially grave offence", he has to inform the Home Secretary forthwith and, unless otherwise directed by him, refer the charge to the prison's Board of Visitors (Rule 52).

(b) The Board of Visitors

32. A Board of Visitors is a body that has to be appointed, by the Home Secretary, for each prison in England and Wales; its members, at least two of whom must be justices of the peace - who are not necessarily lawyers -, hold office for three years or such less period as the Home Secretary may appoint (section 6 of the Prison Act 1952, as amended by the Courts Act 1971, and Rule 92). They may be re-appointed.

There are l15 Boards in all and each has between 8 and 24 members, who are unpaid but are reimbursed their expenses. Anyone may seek appointment but in practice most candidates are persons suggested by existing members. The main principles adopted in making appointments are to achieve a roughly equal number of magistrates and non-magistrates; to provide members having the requisite personal qualities, interest and time; and to ensure that membership contains a good cross-section of the population. A Board is normally appointed for a three-year term; there is no express statutory provision enabling the Home Secretary to dismiss a member and resignation before expiry of a term of office would, according to the Government, be required only in the most exceptional circumstances.

33. A Board's duties include, in addition to inquiring into charges of disciplinary offences, satisfying itself as to the state of the premises, the administration of the prison and the treatment of inmates, hearing a prisoner's complaints or requests, directing the governor's attention to matters calling for his attention and making reports to the Home Secretary (Rules 94, 95 and 97). In case of urgent necessity, it has power to suspend any prison officer until the decision of the Home Secretary is known (Rule 94 (4)). Its members

are required to visit the prison frequently, have a right of access to every part of the prison and to prison records and may interview any prisoner out of the sight and hearing of officers (Rule 96). A Board's adjudicatory functions generally account for a small proportion of its overall duties and, of the small percentage of prison disciplinary proceedings which are conducted before Boards, few concern "especially grave offences".

The various functions of Boards of Visitors were examined by an independent committee set up by "Justice", the Howard League for Penal Reform and the National Association for the Care and Resettlement of Offenders. In its report of 1975 ("the Jellicoe report"), this committee noted that "Boards take their duties of adjudication very seriously", but that "in spite of the efforts made to do justice it is doubtful whether it is seen to be done". It concluded that to be involved in the adjudication of serious offences was incompatible with the supervisory body's need to establish conspicuous independence and therefore recommended that "the body responsible for supervision should not have a disciplinary function". Nevertheless, "after careful consideration", the Home Secretary decided in 1976 that "the independence of Boards of Visitors was compatible with their other functions".

The status of Boards was also considered in the St. Germain case (see paragraph 39 below). In the Court of Appeal, Lord Justice Waller stated that "Boards of visitors hold the balance between the governor and the internal discipline of the prison and the prisoner himself and, when sitting [in an adjudicatory capacity], can be regarded as 'an impartial and independent authority'"; for Lord Justice Megaw, a Board's adjudicatory function "was properly regarded as a separate and independent function, different in character from [its] other functions".

(c) Procedure before the Board of Visitors

34. When a charge of an "especially grave offence" is referred to a Board, its chairman must summon a special meeting at which not more than five nor fewer than three members - at least two being justices of the peace - must be present (Rule 52). If, after inquiring into the charge, the Board finds the offence proved, it has to make one of the awards mentioned in paragraph 28 above, although the implementation thereof may be suspended.

35. Neither the Prison Act 1952 nor the Rules lay down a detailed code of procedure for disciplinary proceedings before Boards of Visitors. However, Rule 49 (2) - a similar provision appears in section 47 (2) of the Act - reads as follows: "At any inquiry into a charge against a prisoner he shall be given a full opportunity of hearing what is alleged against him and of presenting his own case."

The procedure used to be arranged as a matter of practice. Since 1977 Boards have been issued by the Prison Department of the Home Office with a booklet entitled "Procedure for the Conduct of an Adjudication by a Board of Visitors".

36. Proceedings before the Board are initiated by means of a report by a prison officer to the governor containing details of the

alleged offence. The prisoner will receive a "notice of report", stating the alleged offence and the time, date and place thereof, and may reply to the charge in writing. He will also be given a form, which has no statutory force, outlining the procedure which will be followed when he appears before the Board: he will be asked to plead to the charge and may question witnesses in support of the charge, request that witnesses on his behalf be heard and himself give evidence or make his defence. The hearing takes place in private within the prison and the Board's decision is pronounced under the same conditions.

The Rules themselves contain no specific provision as regards legal advice about, or legal representation at, an adjudication before a Board. Under the practice followed prior to 1981, a prisoner would not have been granted leave to seek legal advice before the hearing. Furthermore, the Court of Appeal held in Fraser v. Mudge ([1975] 3 All England Law Reports 78) that although a Board had to observe the requirements of natural justice and act fairly in disciplinary proceedings, a prisoner was not entitled to legal representation thereat. However, in its judgment of 8 November 1983 in R. v. Albany Prison Board of Visitors, ex parte Tarrant ([1984] 1 All England Law Reports 799), the Divisional Court held that although there is no absolute entitlement to such representation, a Board does have a discretion to allow it. Furthermore, the prisoner has a right to require that that discretion be exercised and that his request for representation be properly considered on its merits; if the Board fails to exercise its discretion properly, its decision must be quashed. Mr. Justice Webster added that in most, if not all, cases involving a charge of mutiny no Board of Visitors, properly directing itself, could reasonably decide not to allow legal representation.

37. In 1978, in the St. Germain case (see paragraph 39 below), the Court of Appeal had to consider, for reasons of jurisdiction, whether disciplinary proceedings before a Board of Visitors were a "criminal cause or matter", within the meaning of the relevant legislation. It answered this question in the negative.

Lord Justice Waller based his decision on the fact that the charges heard by the Board were not "criminal", that is charges "of an offence against public law", and that the Board was not a court of criminal jurisdiction.

Lord Justice Shaw considered that the Board's proceedings possessed some of the attributes of a criminal cause or matter (for example, accusation, inquiry, adjudication and possible punitive consequences) but lacked the essential characteristic, namely a penal proceeding for the infraction of a requirement relating to the enforcement and preservation of public law and order. In determining the nature of proceedings, account also had to be taken of their context and overall objective. Although an offence under the Rules might coincide with a crime under the general law and lead to a measure corresponding to a penalty or punishment, this did not transform the Board's adjudication into a criminal cause or matter. It was essentially a domestic disciplinary proceeding, which did not purport to deal with misconduct in its relation to the public law or the public interest and was designed and pursued with the limited objective of maintaining order within the confines of a prison. It would also be illogical and

anomalous to regard as a criminal cause or matter proceedings arising from an offence under the Rules which did not amount to a criminal offence under the general law.

However, in R v. Highpoint Prison Board of Visitors, ex parte McConkey, Mr. Justice McCullough, in his judgment of 2O September 1982 (Times Law Reports, 23 September 1982), referred to the "close similarity" between an accusation of breach of the Rules and an accusation of a criminal offence: each was followed by an adjudication and might lead to consequences of a punitive character, for example, in the former case, forfeiture of remission. Although prison disciplinary offences were offences against a private code, they were also "penal"; in principle, the relevant Rules should be construed no more harshly against a prisoner than would be appropriate were the offences criminal. Again, in the Tarrant case (see paragraph 36 in fine above) it was conceded on behalf of the Board of Visitors that the standard of proof to be applied in disciplinary adjudications was a criminal one.

3. Subsequent review of Board of Visitors' disciplinary proceedings

(a) Internal channels

38. Under Rule 56, disciplinary awards made by a Board of Visitors may be remitted or mitigated by the Home Secretary or, subject to his directions, by the Board itself. Procedures and criteria for the restoration of forfeited remission of sentence are laid down in Circular Instruction 58/1976 issued by the Minister: basically, the prisoner must show a significant improvement indicative of a genuine change of attitude, and the power to restore is not to be used merely to modify an award which is subsequently thought excessive or open to doubt.

Applications for remission or mitigation of awards are normally made in the first instance to the Board itself. Its decision may be the subject of a petition by the prisoner to the Home Secretary. Under Rule 7, every prisoner has to be provided on or shortly after his reception into prison with information in writing about, inter alia, the proper method of making petitions.

In the St. Germain case (see paragraph 39 below), the members of the Court of Appeal expressed the view that a petition under Rule 56 was not to be regarded as a formal appeal; it was noted, amongst other things, that the Home Secretary was not empowered to quash the Board's finding of guilt.

(b) Application to the domestic courts

39. (a) The question whether the English courts have jurisdiction to review disciplinary proceedings before Boards of Visitors was considered in R. v. Hull Prison Board of Visitors, ex parte St. Germain and others. In that case, application was made for orders of certiorari to quash, on the ground of failure to observe the rules of natural justice, certain decisions imposing disciplinary awards, taken by a Board in 1976.

(b) In a judgment of 6 December 1977 ([1978] 2 All England Law Reports

198), the Divisional Court held that although a Board was in the nature of a judicial body under a duty to act judicially, it was not subject to control by way of certiorari, a remedy which did not extend to private disciplinary proceedings in a closed body enjoying its own form of discipline and rules. It was stressed that a Board had an "intimate relationship" with the prison and, when adjudicating, was part of the latter's disciplinary machinery.

(c) Notice of appeal against this decision was served on 20 December 1977. The Court of Appeal allowed the appeal in its judgment of 3 October 1978 ([1979] 1 All England Law Reports 701). It held that there was no rule of law that the courts were to abdicate jurisdiction merely because the proceedings under review were of an internal disciplinary character. There was no binding authority as to whether certiorari would lie against disciplinary decisions of a Board of Visitors and the question had to be decided in the light of public policy. A Board's disciplinary functions were separate and independent from its other functions. When hearing disciplinary charges it was not imposing summary discipline as part of the day to day administration of the prison but was instead an independent body which could only punish a prisoner after a formalised inquiry and/or hearing. In doing so it was exercising a judicial function and its decisions were therefore subject to control by the courts by certiorari in appropriate cases. However, the remedy was discretionary and relief would be granted only where there had been a failure to act fairly, having regard to all the circumstances, and such unfairness had given rise to a substantial, as distinct from a trivial or merely technical, injustice.

4O. The case was then remitted to the Divisional Court which, by judgment of 15 June 1979 ([1979] 3 All England Law Reports 545), quashed certain of the decisions taken by the Hull Prison Board of Visitors. The Divisional Court observed that section 47 (2) of the Prison Act 1952 and Rule 49 (2) (see paragraph 35 above) were declaratory of the basic rule of natural justice that every party to a controversy had a right to a fair hearing; although, on the facts, this rule had not been observed as regards the quashed decisions, there was nothing in the Board's procedure in general to which any objection could properly be taken.

The Divisional Court pointed out that the right to a fair hearing before a Board of Visitors included the right to call evidence; the chairman's power to refuse to allow a prisoner to call witnesses had to be exercised reasonably, in good faith and on proper grounds (which would not include mere administrative convenience). Further, the prisoner must also have a sufficient opportunity to deal with the evidence given against him, which might necessitate giving him the opportunity to cross-examine witnesses whose evidence was initially before the Board in hearsay form.

41. Applications for certiorari must in principle be made within a prescribed time-limit running from the date of the decision challenged: in 1976, the time-limit was six months; since 11 January 1978, it has been three months. Leave may be granted to apply out of time; this is a matter for the court's discretion but experience shows that if a late application is not opposed by the Home Office, leave will not be refused.

Where decisions taken by a Board of Visitors in disciplinary proceedings are quashed by a court, the charges in question may subsequently be the subject of a fresh adjudication by a differently constituted Board.

B. Prisoners' correspondence and visits

42. The question of prisoners' correspondence and visits is dealt with in a number of the Rules.

With a view to securing uniformity of practice throughout prison establishments, the Home Secretary also issues to prison governors management guides or directives in the form of Standing Orders ("Orders") and Circular Instructions ("Instructions"). Unless otherwise authorised, governors are required to comply with these directives, but they do not have, or purport to have, the force of law. As far as correspondence and visits are concerned, the directives are intended to serve a dual function: on the one hand, to circumscribe the discretion conferred on governors by the Rules, and, on the other, to state the manner in which the Home Secretary has decided in certain respects to exercise his own discretionary powers thereunder.

Prior to 1 December 1981, the directives in question were made available to Members of both Houses of Parliament for reference but not to the public or prisoners, although the latter received, by means of cell cards, information about certain aspects of the control of correspondence and visits.

1. Position at the time of the events giving rise to the present case

43. The basic Rules on correspondence and visits, which were in force at the time of the events giving rise to the present case, included the following:

"33(1) The Secretary of State may, with a view to securing discipline and good order or the prevention of crime or in the interests of any persons, impose restrictions, either generally or in a particular case, upon the communications to be permitted between a prisoner and other persons.

(2) Except as provided by statute or these Rules, a prisoner shall not be permitted to communicate with any outside person, or that person with him, without the leave of the Secretary of State.

(3) Except as provided by these Rules, every letter or communication to or from a prisoner may be read or examined by the governor or an officer deputed by him, and the governor may, at his discretion, stop any letter or communication on the ground that its contents are objectionable or that it is of inordinate length.

(4) Every visit to a prisoner shall take place within the sight of an officer, unless the Secretary of State otherwise directs.

(5) Except as provided by these Rules, every visit to a prisoner shall take place within the hearing of an officer, unless the

Secretary of State otherwise directs.

(6) The Secretary of State may give directions, generally or in relation to any visit or class of visits, concerning the days and times when prisoners may be visited."

"34 (8) A prisoner shall not be entitled under [Rule 34]" - which regulates the quantity of correspondence and visits - "to communicate with any person in connection with any legal or other business, or with any person other than a relative or friend, except with the leave of the Secretary of State."

44. The foregoing Rules were supplemented or modified, either by Orders or Instructions or by further Rules, in a number of respects, including the following.

(a) Under Rule 34 (8), as supplemented by Order 5A 23, prisoners had to seek the Home Secretary's leave to correspond with or be visited by any person other than a close relation; they were, however, also normally allowed, without the necessity to seek such leave, to correspond with or be visited by other relatives or existing friends, but the governor could forbid such correspondence or visits on grounds of security or good order and discipline or in the interests of the prevention or discouragement of crime. Governors had a discretion to allow communications with certain other persons not personally known to the prisoner before he came into custody. However, it would have been unlikely that such discretion would have been exercised in favour of "category A" prisoners, such as Mr. Campbell and Father Fell; this is the security category reserved for persons who, if they escaped, would be highly dangerous to the public or the police or to the security of the State.

(b) With effect from 1 January 1973, the extent of the control of correspondence relating to civil or criminal proceedings to which the prisoner is already a party was limited by Rule 37A (1), which reads:

"A prisoner who is a party to any legal proceedings may correspond with his legal adviser in connection with the proceedings and unless the Governor has reason to suppose that any such correspondence contains matter not relating to the proceedings it shall not be read or stopped under Rule 33 (3) of these Rules."

(c) Until 6 August 1975, inmates had to petition the Home Secretary for permission to seek advice about, or give instructions for, the institution of civil proceedings (with the exception of certain divorce cases). On that date, Instruction 45/1975 introduced changes that were subsequently reflected in Rule 37A (4), which came into operation on 26 April 1976 and reads:

"Subject to any directions of the Secretary of State, a prisoner may correspond with a solicitor for the purpose of obtaining legal advice concerning any cause of action in relation to which the prisoner may become a party to civil proceedings or for the purpose of instructing the solicitor to issue such proceedings."

Instruction 45/1975 - and subsequently Order 17A - further provided, inter alia, that:

(i) the inmate had to have sought a solicitor's advice before he would be permitted to institute proceedings;

(ii) at each stage a written application, with reasons, had first to be made to the prison governor for the necessary facilities, which could take the form of a letter or a visit; they had to be granted immediately, except that, in the case of prospective civil proceedings against the Home Office (or any servant thereof) "arising out of or in connexion with" the imprisonment, the "prior ventilation rule" generally applied.

The effect of the last-mentioned rule was that the prisoner would not be granted facilities to obtain legal advice, by correspondence or at a visit, about such proceedings unless and until he had raised his complaint through the normal internal channels (petition to the Home Secretary, or application to the Board of Visitors, a visiting officer of the Home Secretary or the prison governor) and been given a definitive reply, whether favourable or not.

(d) Visits by legal advisers were subject to the following special Rule:

"37 (1) The legal adviser of a prisoner in any legal proceedings, civil or criminal, to which the prisoner is a party shall be afforded reasonable facilities for interviewing him in connection with those proceedings, and may do so out of hearing but in the sight of an officer.

(2) A prisoner's legal adviser may, with the leave of the Secretary of State, interview the prisoner in connection with any other legal business in the sight and hearing of an officer."

Disciplinary proceedings before a Board of Visitors were not considered by the authorities to be "legal proceedings" for the purposes of the Rules, notably Rule 37 (1) and Rule 37(A) 1.

(e) There were special, less strict, provisions concerning applications to the Commission (Order 5B 22).

2. Position with effect from 1 December 1981

45. Prior to 1 December 1981, both Orders and Instructions contained, in addition to directives on the control of prisoners' correspondence and visits, internal rules and guidance of a general nature concerning the day to day administration of the prison. With effect from that date, the directives on correspondence and visits were substantially revised. In addition, revised Orders on those subjects have been published in their entirety, matters of a management or administrative nature which do not concern a prisoner's entitlement to correspond or receive visits and were considered inappropriate for publication having been eliminated from the Orders and embodied in Instructions. The Rules themselves have not been amended, although the Government have indicated that as soon as practicable Rule 34 (8) (see paragraph 43 above) would be repealed in so far as it affected correspondence.

46. So far as is material to the present case, the earlier position is now modified in the following respects.

(a) The new Orders (nos. 5B23-5B30) state that, with certain exceptions, a prisoner may correspond with any person or organisation, provided always that the regulations on the contents of correspondence and the "simultaneous ventilation rule" are observed.

(b) The "simultaneous ventilation rule", set out in Order 5B34 j, has taken the place of the "prior ventilation rule" (see paragraph 44 (c) in fine above). Legal advice concerning civil proceedings in respect of prison treatment may now be obtained as soon as the prisoner has raised his complaint through the prescribed procedures; he no longer has to await the outcome of the internal inquiry.

(c) Rule 37 (1) (see paragraph 44 (d) above) continues to apply to visits by a legal adviser concerning legal proceedings to which the prisoner is already a party. Under new Order 5A34, other visits by a legal adviser acting in a professional capacity are also now allowed out of the hearing of a prison officer, provided the subject to be discussed is disclosed to the governor in advance and does not offend against the restrictions on correspondence with legal advisers set out in new Order 5B34 (including the "simultaneous ventilation rule"). If the subject to be discussed is not disclosed, the visit will still be allowed but will be in the hearing of an officer.

C. Obtaining of medical advice by prisoners

47. Under Rule 17, responsibility for the health of prisoners is placed on the prison medical officer; he has discretion to call in another medical practitioner.

The prison authorities will not generally allow a convicted prisoner to be examined by an outside doctor (other than one called in as aforesaid) unless the prisoner is a party to legal proceedings, in which event Rule 37A (3) applies. This Rule provides:

"Subject to any directions given in the particular case by the Secretary of State, a registered medical practitioner selected by or on behalf of [a prisoner who is party to any legal proceedings] shall be afforded reasonable facilities for examining him in connection with the proceedings, and may do so out of hearing but in the sight of an officer."

D. Complaints concerning the control of correspondence and visits

1. Internal channels of complaint

48. An inmate who is aggrieved by a decision concerning his correspondence or visits may complain to the prison governor, the Board of Visitors or a visiting officer of the Home Secretary or he may petition the Home Secretary himself. A prisoner may ventilate his complaint through any or all of these channels and, if more than one is utilised, in such sequence as he wishes.

(a) The Board of Visitors

49. As far as the Board of Visitors is concerned, it may examine the compatibility of the decision complained of with the Rules and the Home Secretary's directives. It will draw the governor's attention to any irregularity, or report to the Home Secretary; although its powers are advisory in character, its advice will be implemented save in exceptional circumstances.

(b) Petitions to the Home Secretary

50. Inmates have the right to submit petitions to the Home Secretary about any matter, for example to seek a permission which the local prison management is not empowered to grant or has refused, or to complain of prison treatment.

On a petition being made by a prisoner, complaining of a decision of the prison authorities concerning his correspondence or visits, the Home Secretary would, if he concluded that the relevant Orders had not been properly interpreted or applied by the prison authorities, issue directions to them to secure compliance. Although it is possible for him to depart from the Orders in particular cases, this is likely to occur only rarely, if at all, since their very purpose is to ensure uniformity of practice.

Prior to 1 December 1981, directives concerning the submission of petitions were contained in Orders 5B l-16. It was, in particular, provided that, with certain exceptions, a prisoner could not petition if and so long as he was awaiting a reply to an earlier petition (Order 5B 12 (2)).

With effect from 1 December 1981, the provisions of Order 5B 12 (2) have been relaxed by new Orders 5C9 and 5ClO. A further petition may now be submitted if a month has elapsed since the submission of the previous petition. Moreover, even though an earlier petition be outstanding, a prisoner may petition forthwith on certain specified matters, including interferences with his correspondence but not restrictions on his visits.

2. The Parliamentary Commissioner for Administration

51. Complaints concerning the control of correspondence or visits may also, on certain conditions, be raised with the Parliamentary Commissioner for Administration (the Ombudsman). However, his jurisdiction does not extend to restrictions effected pursuant to a correct exercise of a discretion conferred by the Rules or the Home Secretary's directives; moreover, the Ombudsman cannot grant direct relief since he is limited to reporting the results of his investigation to a Member of Parliament, the authority concerned and, in certain circumstances, each House of Parliament (sections 10 and 12 of the Parliamentary Commissioner Act 1967).

3. Application to the domestic courts

52. The exercise by the prison authorities of their powers under the Rules to control correspondence and visits is subject to the supervisory control of the English courts by way of proceedings for judicial review. In the exercise of this jurisdiction the courts will intervene to secure compliance by the prison authorities with the

Rules in so far as they confer on prisoners an entitlement to correspond or receive visits (for example, Rules 37(A) 1 and 37 (1); see paragraph 44, sub-paragraphs (b) and (d), above), and to ensure that the discretion conferred on the authorities by the Rules is not exercised arbitrarily or unreasonably, in bad faith, for an improper motive or in an ultra vires manner.

The Court notes in this context that in Raymond v. Honey [1982] 1 All England Law Reports 759, Lord Wilberforce pointed out that it was a principle of English law that "a convicted prisoner, in spite of his imprisonment, retains all civil rights which are not taken away expressly or by necessary implication."

PROCEEDINGS BEFORE THE COMMISSION

53. Mr. Campbell and Father Fell applied to the Commission on 4 and 31 March 1977 respectively. In their applications or in subsequent memoranda each of them:

(a) alleged that he had been convicted by the Board of Visitors of disciplinary charges amounting in substance to "criminal" charges, without having been afforded a hearing complying with the requirements of Article 6 (art. 6) of the Convention;

(b) contended that the delay in allowing him to obtain legal advice following the incident of 16 September 1976 involved breaches of his right of access to court, guaranteed by Article 6 (art. 6), and of his right to respect for correspondence, guaranteed by Article 8 (art. 8);

(c) maintained that the refusal to allow independent medical examination involved a further infringement of his rights under Article 6 (art. 6);

(d) made a number of other complaints, notably concerning his treatment during and after the aforementioned incident.

On 6 May 1978, the Commission declared Mr. Campbell's application admissible as regards items (a), (b) and (c) above and inadmissible as regards the remainder.

By a partial decision of 9 October 1980 and a final decision of 14 and 19 March 1981, the Commission:

- declared Father Fell's application admissible as regards items (b) and (c) above and his additional allegations that the refusal to allow him to consult with his lawyer in confidence constituted breaches of Articles 6 and 8 (art. 6, art. 8), that the refusal to allow him to correspond with certain individuals amounted to a violation of Article 8 (art. 8) and that, in breach of Article 13 (art. 13), he had no effective remedy for his complaints;

- declared Father Fell's application inadmissible as regards items (a) and (d) above, on the ground, in the case of item (a), that at the time of its March 1981 decision he had failed to exhaust the domestic remedy of applying for certiorari (see paragraphs 15 and 39-41 above).

In the last-mentioned decision, the Commission also ordered the

joinder of the two applications in pursuance of Rule 29 of its Rules of Procedure.

54. In its report of 12 May 1982 (Article 31 of the Convention) (art. 31), the Commission expressed the opinion:

- that the proceedings before the Board of Visitors in Mr. Campbell's case had involved a breach of his rights under Article 6 (art. 6) (nine votes, with three abstentions);

- that the delay in allowing both applicants to obtain legal advice involved breaches of Article 6 para. 1 and Article 8 (art. 6-1, art. 8) (unanimously);

- that no breach of Article 6 para. 1 (art. 6-1) arose from the refusal to allow the applicants facilities for an independent medical examination (unanimously);

- that the refusal to allow Father Fell to consult in private with his lawyer was in breach of Article 6 para. 1 (art. 6-1) and that it was not necessary to consider whether it also breached Article 8 (art. 8) (unanimously);

- that the refusal to allow Father Fell to correspond with Sister Power and Sister Benedict constituted a violation of Article 8 (art. 8) (unanimously);

- that no effective remedy was available to Father Fell in relation to his complaints under Article 8 (art. 8) and that in this respect there was a breach of Article 13 (art. 13) (unanimously).

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

FINAL SUBMISSIONS MADE TO THE COURT BY THE GOVERNMENT

55. At the hearings on 20 September 1983, the Government invited the Court to decide the case - subject to such concessions as they had made on that occasion - in the manner stated in their memorial of 17 March 1983, namely:

"With regard to Article 6 (art. 6)

(i) to decide and declare that Article 6 (art. 6) of the Convention does not apply to a Board of Visitors' inquiry into and adjudication upon the offences against discipline specified in Rule 47 of the Prison Rules 1964 (as amended) or any of them;

(ii) to decide and declare that the facts found disclose no breaches arising out of the Prison Board of Visitors' inquiry into and adjudication upon the offences alleged against John Joseph Campbell;

(iii) to decide and declare that John Joseph Campbell has failed to exhaust all domestic remedies in relation to all or any breaches arising out of the aforesaid inquiry and adjudication;

(iv) to take express note in its judgment of the changes made to the law and practice in the United Kingdom relating to the control of communication between prisoners and their legal advisers since the judgment of the Court in the Golder case, and

(a) in the light of such changes to decline to examine further the claims of breaches of Article 6 (art. 6) of the Convention relating thereto

or alternatively

(b) to decide and declare that the facts found disclose no breaches by the United Kingdom of its obligations under Article 6 (art. 6) of the Convention relating thereto other than as set forth in the report of the Commission.

With regard to Article 8 (art. 8)

(i) insofar as the Commission concluded that the facts found disclosed no breach by the United Kingdom of its obligations under Article 8 (art. 8) of the Convention, to confirm and uphold the Commission's conclusions;

(ii) insofar as the Commission's findings of breaches of the Convention are not contested by the United Kingdom Government on the grounds of the changes made by the revised Standing Orders to the practice in the United Kingdom relating to prisoners' correspondence:

(a) to decide and declare that the facts found disclose no breaches otherwise than as set forth in the report of the Commission;

(b) to take express note in its judgment of the changes made by the revised Standing Orders as remedying the breaches so found by the Commission.

With regard to Article 13 (art. 13)

To decide and declare that the facts found would not disclose a breach by the United Kingdom of its obligations under Article 13 (art. 13) of the Convention after the coming into effect of the revised Standing Orders relating to prisoners' correspondence and visits."

AS TO THE LAW

I. PRELIMINARY PLEAS

A. Mr. Campbell's alleged failure to exhaust domestic remedies as regards the Board of Visitors' proceedings

56. In their memorial of 17 March 1983 to the Court, the Government submitted that by failing to apply for judicial review, seeking an order of certiorari (see paragraphs 15 and 39-41 above), of the Board of Visitors' adjudication in his case, Mr. Campbell had not exhausted all his domestic remedies and that for that reason his complaints concerning those proceedings ought not to be given consideration.

57. The Court will take cognisance of preliminary pleas of this kind if and in so far as the respondent State may already have raised them before the Commission to the extent that their character and the circumstances permitted; this should normally be done at the stage of the initial examination of admissibility. If this condition is not fulfilled, the Government are estopped from raising the plea before the Court (see, inter alia, the Artico judgment of 13 May 1980, Series A no. 37, pp. 12 and 13, paras. 24 and 27).

1. Estoppel

58. The Government's observations on the admissibility of Mr. Campbell's application were filed with the Commission on 20 December 1977; they contained no reference to the question of the exhaustion of domestic remedies as regards the Board's proceedings. It was only in their observations on the merits (13 December 1978) that the Government requested the Commission to reject, under Articles 26 and 29 (art. 26, art. 29) of the Convention, the complaints concerning those proceedings, on the ground that no application for certiorari had been made. The Commission, which had already, on 6 May 1978, declared these complaints admissible, found, on 14 and 19 March 1981, that there was no basis for the application of Article 29 (art. 29), that provision requiring unanimity.

59. The Court notes that on 6 December 1977 it had been held by the Divisional Court in the St. Germain case that certiorari did not lie in respect of Board of Visitors' proceedings (see paragraph 39 (b) above). It would therefore have been difficult for the Government, a fortnight later, to plead before the Commission - contrary to the argument put to the Divisional Court by counsel for the Hull Prison Board of Visitors, who was instructed by the Treasury Solicitor - that this remedy was available. In contrast to the view expressed by the Commission's Delegate, the Court also considers that since the authorities had just succeeded in the domestic action, the Government could scarcely have maintained that this was an uncertain or unresolved issue in English law and that Mr. Campbell should therefore test the matter in the courts.

Notice of appeal in the St. Germain case was served on 20 December 1977 but the matter was not finally resolved until 3 October 1978, when the Court of Appeal reversed the Divisional Court's decision (see paragraph 39 (c) above). It was clearly the 1978 judgment that prompted the Government to supplement their initial arguments and, in the particular circumstances, the Court does not consider that they could reasonably have been expected to raise the plea of non-exhaustion at an earlier stage (see the above-mentioned Artico judgment, ibid., p. 13, para. 27, third sub-paragraph). There is accordingly no estoppel.

2. Whether the plea is well-founded

60. The only remedies which Article 26 (art. 26) of the Convention requires to be exercised are those which relate to the breaches alleged and are at the same time available and sufficient (see, inter alia, the Van Oosterwijck judgment of 6 November 1980, Series A no. 40, p. 13, para. 27).

As regards Mr. Campbell, the Commission expressed no opinion as to whether the remedy of certiorari fell within this category.

61. The existence of a remedy must be sufficiently certain before there can be an obligation to exhaust it (see the De Wilde, Ooms and Versyp judgment of 18 June 1971, Series A no. 12, p. 34, para. 62, the Deweer judgment of 27 February 1980, Series A no. 35, p. 18, para. 32, and, mutatis mutandis, the Van Droogenbroeck judgment of 24 June 1982, Series A no. 50, p. 30, para. 54). At the time of Mr. Campbell's application to the Commission (4 March 1977), there was nothing to indicate that certiorari lay in respect of a Board of Visitors' adjudication; as the Court of Appeal observed in the St. Germain case, there was no binding authority on this point (see paragraph 39 (c) above). The position changed, however, with the Court of Appeal's judgment of 3 October 1978 in that case, which established that prisoners could seek judicial review of such disciplinary proceedings.

It has nevertheless to be remembered that in Mr. Campbell's case the prescribed time-limit within which certiorari must in principle be applied for had long expired (see paragraph 41 above and the above-mentioned De Wilde, Ooms and Versyp judgment, Series A no. 12, pp. 34-35, para. 62). It is true that leave may be granted to apply out of time and, indeed, the Government submitted that if Mr. Campbell had applied for leave soon after the Divisional Court's second judgment in the St. Germain case (15 June 1979), this would not have been refused; however, they conceded that it was predictable that he would not now obtain leave because his delay would be regarded as inordinate and inexcusable (see paragraphs 15, 40 and 41 above). The availability of the remedy has to be seen in the light of these considerations.

62. As to whether the remedy would have been effective, the Government conceded at the hearings before the Court that it would not have been in respect of a substantial number of the applicant's complaints, namely his inability to obtain legal assistance before the Board's hearing, the fact that the Board neither conducted its proceedings in public nor pronounced its decision publicly and the allegation that the Board was not "independent". They took the same view as regards the question of legal representation at the Board's hearing, subject, however, to the outcome of the Tarrant case. The Court notes that in that case it was established, contrary to the Government's opinion, that an application for judicial review seeking an order of certiorari could provide an effective remedy against an unreasonable decision not to allow legal representation (see paragraph 36 in fine above). Nevertheless, although the law has now been clarified in that sense, the fact remains, as was admitted by the Government, that Mr. Campbell could no longer expect to obtain leave to pursue this remedy in his case.

63. It is true that there are Mr. Campbell's other complaints, namely his allegations that the Board was not "impartial" and had not afforded him a "fair" hearing, that the presumption of innocence had been infringed, that he had not been sufficiently informed of the accusations against him nor had adequate time to prepare his defence, and that he had been deprived of rights concerning witnesses.

In respect of these complaints, the Government submitted that they could and should have been made the subject of proceedings for

judicial review after 3 October 1978. However, when the existence of a remedy by way of an application for judicial review had been established by the Court of Appeal's judgment in the St. Germain case and when in the Government's submission it was still available to Mr. Campbell, the Commission decided not to reject his application on this ground. In this situation Mr. Campbell was, in the opinion of the Court, justified in relying on the Commission's decision for the purpose of pursuing his case under the Convention and in not applying to the domestic courts for judicial review of the Board of Visitors' proceedings. Furthermore, the Government concede that recourse to that remedy is predictably no longer available to him. Consequently, the Court considers that it would be unjust now to find these complaints inadmissible for failure to exhaust domestic remedies.

B. The admissibility of Father Fell's complaints as regards the Board of Visitors' proceedings

64. Father Fell's complaints regarding the Board of Visitors' adjudication in his case were declared inadmissible by the Commission on the ground that, at the time of its decision (14 and 19 March 1981), he had failed to exhaust the domestic remedy of applying for certiorari (see paragraph 53 above).

In his memorial to the Court, Father Fell, after pointing out that he had since made such an application, albeit unsuccessfully (see paragraph 15 above), submitted that the aforesaid complaints were now admissible.

65. According to the settled case-law of the Court, decisions by the Commission to reject applications which it considers to be inadmissible are without appeal and the Court's jurisdiction in contentious matters is limited to applications which have been accepted by the Commission (see, inter alia, the above-mentioned De Wilde, Ooms and Versyp judgment, Series A no. 12, p. 30, para. 51, the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 63, para. 157, and the Foti and Others judgment of 10 December 1982, Series A no. 56, p. 14, paras. 40-41).

It follows that the Court has no jurisdiction to examine Father Fell's submission.

II. THE BOARD OF VISITORS' PROCEEDINGS IN THE CASE OF MR. CAMPBELL

66. Mr. Campbell alleged that he had been convicted by the Board of Visitors of disciplinary charges amounting in substance to "criminal" charges, without having been afforded a hearing complying with the requirements of Article 6 (art. 6) of the Convention, which provides certain guarantees "in the determination of ... civil rights and obligations or of any criminal charge".

A. The applicability of Article 6 (art. 6)

1. The existence of a "criminal charge"

67. The Commission came to the conclusion that the adjudication by the Board of Visitors in Mr. Campbell's case did involve the determination of "criminal charges" and that Article 6 (art. 6) was

therefore applicable.

As their principal submission, the Government contested this view.

68. The Court was confronted with a similar issue in the case of Engel and Others, which was cited in argument by those appearing before it in the present proceedings. In its judgment of 8 June 1976 in that case (Series A no. 22, pp. 33-35, paras. 80-82), the Court, after drawing attention to the "autonomy" of the notion of "criminal charge" as conceived of under Article 6 (art. 6), set forth the following principles which it re-affirmed in its O ztu rk judgment of 21 February 1984 (Series A no. 73, pp. 17-18, paras. 48-50).

(a) The Convention is not opposed to the Contracting States creating or maintaining a distinction between criminal law and disciplinary law and drawing the dividing line, but it does not follow that the classification thus made is decisive for the purposes of the Convention.

(b) If the Contracting States were able at their discretion, by classifying an offence as disciplinary instead of criminal, to exclude the operation of the fundamental clauses of Articles 6 and 7 (art. 6, art. 7), the application of these provisions would be subordinated to their sovereign will. A latitude extending thus far might lead to results incompatible with the object and purpose of the Convention.

69. The Court was careful in the Engel and Others judgment to state that, as regards the dividing line between the "criminal" and the "disciplinary", it was confining its attention to the sphere with which the case was concerned, namely military service. It is well aware that in the prison context there are practical reasons and reasons of policy for establishing a special disciplinary regime, for example security considerations and the interests of public order, the need to deal with misconduct by inmates as expeditiously as possible, the availability of tailor-made sanctions which may not be at the disposal of the ordinary courts and the desire of the prison authorities to retain ultimate responsibility for discipline within their establishments.

However, the guarantee of a fair hearing, which is the aim of Article 6 (art. 6), is one of the fundamental principles of any democratic society, within the meaning of the Convention (see the Golder judgment of 21 February 1975, Series A no. 18, p. 18, para. 36). As the Golder judgment shows, justice cannot stop at the prison gate and there is, in appropriate cases, no warrant for depriving inmates of the safeguards of Article 6 (art. 6).

It follows that the principles set forth in the Engel and Others judgment are also relevant, mutatis mutandis, in a custodial setting and that the reasons mentioned above cannot override the necessity of maintaining, there too, a dividing line between the "criminal" and the "disciplinary" that is consistent with the object and purpose of Article 6 (art. 6). It therefore has to be determined whether the proceedings against Mr. Campbell have to be regarded as coming within the "criminal" sphere for Convention purposes. To this end, the Court considers it right to apply, making due allowance for the different context, the criteria stated in that judgment.

70. The first matter to be ascertained is whether or not the text defining the offences in issue belongs, according to the domestic legal system, to criminal law, disciplinary law or both concurrently (see the above-mentioned Engel and Others judgment, Series A no. 22, pp. 34-35, para. 82).

It is clear that, in English law, the offences with which Mr. Campbell was charged belong to disciplinary law: Rule 47 states that conduct of this kind on the part of a prisoner shall be "an offence against discipline" and the Rules go on to provide how it shall be dealt with under the special prison disciplinary regime (see paragraphs 27-31 above). Confirmation that domestic law regards Board of Visitors' adjudications as falling outside the criminal sphere is to be found in the Court of Appeal's decision in the St. Germain case that they are not a "criminal cause or matter" (see paragraph 37 above). Lord Justice Shaw there expressed the view that such an adjudication was essentially a domestic disciplinary proceeding, which did not purport to deal with misconduct in its relation to the public law or the public interest and was designed and pursued with the limited objective of maintaining order within the confines of the prison. Indeed, the Court notes that it is for this precise purpose, amongst others, that the Home Secretary is empowered by section 47 (1) of the Prison Act 1952 to make rules (see paragraph 26 above). Nevertheless, the Court also notes that certain parallels between Board of Visitors' proceedings and criminal proceedings were drawn in the McConkey and the Tarrant cases (see paragraph 37 in fine above).

71. In any event, the indications so afforded by the national law have only a relative value; the very nature of the offence is a factor of greater import (see the above-mentioned Engel and Others judgment, ibid., p. 35, para. 82).

In this respect, it has to be borne in mind that misconduct by a prisoner may take different forms; certain acts are clearly no more than a question of internal discipline, whereas others cannot be seen in the same light. Firstly, some matters may be more serious than others; in fact, the Rules grade offences, classifying those committed by Mr. Campbell as "especially grave" (see paragraph 27 above). Secondly, the illegality of some acts may not turn on the fact that they were committed in prison: certain conduct which constitutes an offence under the Rules may also amount to an offence under the criminal law. Thus, doing gross personal violence to a prison officer may correspond to the crime of "assault occasioning actual bodily harm" and, although mutiny and incitement to mutiny are not as such offences under the general criminal law, the underlying facts may found a criminal charge of conspiracy (see paragraph 30 above). It also has to be remembered that, theoretically at least, there is nothing to prevent conduct of this kind being the subject of both criminal and disciplinary proceedings (ibid.).

The Court considers that these factors, whilst not of themselves sufficient to lead to the conclusion that the offences with which the applicant was charged have to be regarded as "criminal" for Convention purposes, do give them a certain colouring which does not entirely coincide with that of a purely disciplinary matter.

72. It is therefore necessary to turn to the last criterion stated in the above-mentioned Engel and Others judgment (ibid., p. 35, para. 82) and in the above-mentioned O ztu rk judgment (Series A no. 73, p. 18, para. 50), namely the nature and degree of severity of the penalty that Mr. Campbell risked incurring. The maximum penalties which could have been imposed on him included forfeiture of all of the remission of sentence available to him at the time of the Board's award (slightly less than three years), forfeiture of certain privileges for an unlimited time and, for each offence, exclusion from associated work, stoppage of earnings and cellular confinement for a maximum of 56 days; he was in fact awarded a total of 570 days' loss of remission and subjected to the other penalties mentioned for a total of 91 days (see paragraphs 14 and 28 above).

There was considerable discussion, both in the St. Germain case and before the Convention institutions, as to the nature of remission of sentence and its forfeiture. Under English law, remission is a discretionary measure (see paragraph 29 above). It is regarded by the English courts as being technically a privilege rather than a right, but the Court of Appeal did observe in the St. Germain case that "although in form remission of sentence may have been the grant of a privilege, loss of remission was in fact a punishment or deprivation affecting the rights of the subject".

The Court, for its part, does not find that the distinction between privilege and right is of great assistance to it for the present purposes; what is more important is that the practice of granting remission - whereby a prisoner will be set free on the estimated date for release given to him at the outset of his sentence, unless remission has been forfeited in disciplinary proceedings (see paragraph 29 above) - creates in him a legitimate expectation that he will recover his liberty before the end of his term of imprisonment. Forfeiture of remission thus has the effect of causing the detention to continue beyond the period corresponding to that expectation. Confirmation of the foregoing is found in the following passage from the judgment of Lord Justice Waller in the St. Germain case :

"... it was common ground ... that a prisoner is credited with his full remission when he arrives in prison after sentence and he is told then his earliest date of release. Whether it is a right or a privilege a prisoner can expect to be released on that date unless he is ordered to forfeit some remission. Lord Reid quoted deprivation 'of rights or privileges' as being of equal importance, and I respectfully agree with him. Whether remission is a right or a privilege is in my opinion immaterial. It is only necessary to consider the case of [X], who was ordered to forfeit 720 days. As a result he would have to serve nearly two years beyond his earliest date of release. It was a very substantial privilege which he had lost." ([1979] 1 All England Law Reports, pp. 723j-724b)

In its above-mentioned Engel and Others judgment (ibid., p. 35, para. 82), the Court stated that deprivation of liberty liable to be imposed as a punishment was, in general, a penalty that belonged to the "criminal" sphere. It is true that in the present case the legal basis for the detention remained, even after the Board's award, the original sentence of imprisonment and that nothing was added thereto (see paragraph 29 above). However, the Court is of the opinion that the

forfeiture of remission which Mr. Campbell risked incurring and the forfeiture actually awarded involved such serious consequences as regards the length of his detention that these penalties have to be regarded, for Convention purposes, as "criminal". By causing detention to continue for substantially longer than would otherwise have been the case, the sanction came close to, even if it did not technically constitute, deprivation of liberty and the object and purpose of the Convention require that the imposition of a measure of such gravity should be accompanied by the guarantees of Article 6 (art. 6). This conclusion is not altered by the fact that a considerable number of days of remission were subsequently restored to the applicant (see paragraph 16 above).

73. Taking into account, therefore, both the "especially grave" character of the offences with which Mr. Campbell was charged (see paragraph 27 above) and the nature and severity of the penalty that he risked incurring - and did in fact incur -, the Court finds that Article 6 (art. 6) is applicable to the Board of Visitors' adjudication in his case. It is accordingly not necessary to consider the sanctions, other than forfeiture of remission, which could have been or were imposed on him.

2. The existence of a "determination" of "civil rights"

74. Having regard to the finding in the preceding paragraph, there is also no need to examine whether the aforesaid adjudication involved a "determination" of "civil rights". Like the Commission, the Court considers this question to be devoid of interest for the decision in the particular case (see the above-mentioned Deweer judgment, Series A no. 35, p. 24, para. 47).

B. Compliance with Article 6 (art. 6)

75. Mr. Campbell submitted that before the Board of Visitors he did not receive a "fair hearing" complying with paragraphs 1 (art. 6-1) and 3 (a) to (d) of Article 6 (art. 6-3-a, art. 6-3-b, art. 6-3-c, art. 6-3-d). He also contended that the presumption of innocence (Article 6 para. 2) (art. 6-2) had been infringed.

1. Article 6 para. 1 (art. 6-1)

76. Article 6 para. 1 (art. 6-1) of the Convention reads as follows:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

It was not disputed in the present case that a Board of Visitors, when carrying out its adjudicatory tasks, is a "tribunal established by

law". It is, in fact, clear that the relevant English legislation confers on Boards a power of binding decision in the area in question and the dicta in the St. Germain case show that this is a judicial function (see paragraphs 38 and 39 above). Again, the word "tribunal" in Article 6 para. 1 (art. 6-1) is not necessarily to be understood as signifying a court of law of the classic kind, integrated within the standard judicial machinery of the country (see, mutatis mutandis, the X v. the United Kingdom judgment of 5 November 1981, Series A no. 46, p. 23, para. 53).

(a) "Independent" tribunal

77. Mr. Campbell alleged that the Board of Visitors which heard his case was not an "independent" tribunal, within the meaning of Article 6 para. 1 (art. 6-1). He contended that Boards were mere "cyphers", were not seen by prisoners to be independent and were, in practice, an arm of the executive: as regards many of their functions, they were under the control of the prison authorities and had to accept the Home Secretary's directions. In particular, it was submitted that they were not independent in exercising their adjudicatory role.

The Commission, whilst recognising that Boards were under a legal obligation to act independently and impartially, stated that this was not of itself sufficient: to be truly "independent" the body concerned must be independent of the executive in its functions and as an institution, such independence ensuring, notably, that justice is seen to be done. In the Commission's view, a Board did not possess the necessary institutional independence: firstly, its members were appointed for limited periods by the Home Secretary and did not appear to be irremovable; secondly, although a Board was not part of the administration, its other functions were such as to bring it into day to day contact with the officials of the prison in such a way as to identify it with the management of the prison.

This conclusion was contested by the Government. They maintained, inter alia, that a Board was not part of the management structure of the prison: it was independent of the prison administration locally and nationally and, in discharging its administrative role, did not act on behalf of the executive.

78. In determining whether a body can be considered to be "independent" - notably of the executive and of the parties to the case (see, inter alia, the Le Compte, Van Leuven and De Meyere judgment of 23 June 1981, Series A no. 43, p. 24, para. 55) -, the Court has had regard to the manner of appointment of its members and the duration of their term of office (ibid., pp. 24-25, para. 57), the existence of guarantees against outside pressures (see the Piersack judgment of 1 October 1982, Series A no. 53, p. 13, para. 27) and the question whether the body presents an appearance of independence (see the Delcourt judgment of 17 January 1970, Series A no. 11, p. 17, para. 31).

The factors which were relied on in the present case as indicative of the Board's lack of "independence" will be considered in turn.

79. Members of Boards are appointed by the Home Secretary, who is

himself responsible for the administration of prisons in England and Wales (see paragraphs 26 and 32 above).

The Court does not consider that this establishes that the members are not independent of the executive: to hold otherwise would mean that judges appointed by or on the advice of a Minister having responsibilities in the field of the administration of the courts were also not "independent". Moreover, although it is true that the Home Office may issue Boards with guidelines as to the performance of their functions (see paragraph 35 above), they are not subject to its instructions in their adjudicatory role.

80. Members of Boards hold office for a term of three years or such less period as the Home Secretary may appoint (see paragraph 32 above).

The term of office is admittedly relatively short but the Court notes that there is a very understandable reason: the members are unpaid (ibid.) and it might well prove difficult to find individuals willing and suitable to undertake the onerous and important tasks involved if the period were longer.

The Court notes that the Rules contain neither any regulation governing the removal of members of a Board nor any guarantee for their irremovability.

Although it appears that the Home Secretary could require the resignation of a member, this would be done only in the most exceptional circumstances and the existence of this possibility cannot be regarded as threatening in any respect the independence of the members of a Board in the performance of their judicial function.

It is true that the irremovability of judges by the executive during their term of office must in general be considered as a corollary of their independence and thus included in the guarantees of Article 6 para. 1 (art. 6-1). However, the absence of a formal recognition of this irremovability in the law does not in itself imply lack of independence provided that it is recognised in fact and that the other necessary guarantees are present (see the above-mentioned Engel and Others judgment, Series A no. 22, pp. 27-28, para. 68).

81. There remains the question of the Board's independence having regard to the fact that it has both adjudicatory and supervisory roles (see paragraph 33 above).

In that latter role, a Board is, as the Government pointed out, intended to exercise an independent oversight of the administration of the prison. In the nature of things, supervision must involve a Board in frequent contacts with the prison officials and just as much with the inmates themselves; yet this in no way alters the fact that its function, even when discharging its administrative duties, is to "hold the ring" between the parties concerned, independently of both of them. The impression which prisoners may have that Boards are closely associated with the executive and the prison administration is a factor of greater weight, particularly bearing in mind the importance in the context of Article 6 (art. 6) of the maxim "justice must not only be done: it must also be seen to be done". However, the

existence of such sentiments on the part of inmates, which is probably unavoidable in a custodial setting, is not sufficient to establish a lack of "independence". This requirement of Article 6 (art. 6) would not be satisfied if prisoners were reasonably entitled, on account of the frequent contacts between a Board and the authorities, to think that the former was dependent on the latter (see, mutatis mutandis, the above-mentioned Piersack judgment, Series A no. 53, p. 15, para. 30 in fine); however, the Court does not consider that the mere fact of these contacts, which exist also with the prisoners themselves, could justify such an impression.

82. In the light of the foregoing, the Court sees no reason to conclude that the Board in question was not "independent", within the meaning of Article 6 (art. 6).

(b) "Impartial" tribunal

83. Mr. Campbell further contended that the Board of Visitors which heard his case was not an "impartial" tribunal.

The Government contested this allegation. The Commission expressed no specific opinion thereon, although it took care to point out that the conclusions in its report were not to be taken as implying a finding of bias or anything similar on the part of the Board.

84. The personal impartiality of members of a body covered by Article 6 (art. 6) is to be presumed until there is proof to the contrary (see the above-mentioned Le Compte, Van Leuven and De Meyere judgment, Series A no. 43, p. 25, para. 58). In the present case, the applicant has adduced no evidence to give the Court any cause for doubt on this score.

85. However, it is not possible to confine oneself to a purely subjective test: in this area, appearances may be of a certain importance and account must be taken of questions of internal organisation (see the above-mentioned Piersack judgment, Series A no. 53, pp. 14-15, para. 30).

Prior to 6 October 1976, the Albany Prison Board of Visitors played no role whatsoever in the disciplinary proceedings against the applicant; when it sat on that date, it came fresh to his case (see paragraphs 12-14 above). The Court, therefore, perceives nothing in the actual organisation of the adjudication that would reflect adversely on the Board's objective "impartiality".

There remains the fact that Mr. Campbell might not have seen the Board as being totally free from bias. However, for reasons similar to those given in paragraph 81 above, the Court does not consider that, in the particular context, this suffices to establish that this requirement of Article 6 (art. 6) was not satisfied.

(c) "Public hearing"

86. The applicant complained of the fact that the adjudication by the Board of Visitors in his case had not been conducted in public, although he admitted that for him this was a marginal point.

The Commission considered that there had been a failure to comply with Article 6 (art. 6) in this respect. The Government submitted that the practice whereby a Board's proceedings were always held in private (see paragraph 36 above) was legitimate: they relied on the entitlement under Article 6 (art. 6) to exclude press and public from a trial "in the interests of ... public order or national security in a democratic society", "where ... the protection of the private life of the parties so require[s]" or, alternatively, because there were "special circumstances where publicity would prejudice the interests of justice". Security problems, the possible propagation of malicious allegations by a prisoner and the latter's own wishes for privacy were cited in support of this submission.

87. It is true that ordinary criminal proceedings - which may well concern dangerous individuals or necessitate the production of a prisoner before the court - nearly always take place in public, notwithstanding the attendant security problems, the possible propagation of malicious allegations and the wishes of the accused. However, the Court cannot disregard the factors cited by the Government, notably the considerations of public order and the security problems that would be involved if prison disciplinary proceedings were conducted in public. Such a course would undoubtedly occasion difficulties of greater magnitude than those that arise in ordinary criminal proceedings. A Board's adjudications are, as befits the character of disciplinary proceedings of this kind, habitually held within the prison precincts and the difficulties over admitting the public to those precincts are obvious. If they were held outside, similar problems would arise as regards the prisoner's transportation to and attendance at the hearing. To require that disciplinary proceedings concerning convicted prisoners should be held in public would impose a disproportionate burden on the authorities of the State.

88. The Court therefore accepts that there were sufficient reasons of public order and security justifying the exclusion of the press and public from the proceedings against Mr. Campbell. There was accordingly no violation of Article 6 para. 1 (art. 6-1) in this respect.

(d) Public pronouncement of the decision

89. Again as no more than a marginal point, the applicant complained of the fact that the Board of Visitors had not pronounced publicly its decision in his case.

The Commission considered that this also constituted a failure to comply with Article 6 (art. 6). The Government relied in this context too on problems of security and public order; they further submitted that, if it was considered that the power to exclude the public applied only to the trial as distinct from pronouncement of the judgment, this particular requirement of Article 6 (art. 6) should be read as subject to the implied limitation that members of the public could legitimately be excluded in those cases in which disciplinary offences by prisoners were adjudicated upon.

90. It is true that the Court has recognised that to a certain extent the right of access to the courts secured by Article 6 (art. 6) may be subject to limitations permitted by implication (see the

above-mentioned Golder judgment, Series A no. 18, pp. 18-19, para. 38). However, that recognition resulted from the fact that the right in question was inherent in the first sentence of Article 6 para. 1 (art. 6-1) but was not defined therein. Again, unlike the first sentence, the second sentence does already contain a detailed list of express exceptions. Bearing in mind the terms of Article 17 (art. 17) and the importance of the principle of publication (see, inter alia, the Sutter judgment of 22 February 1984, Series A no. 74, p. 12, para. 26), the Court does not consider that that principle may be regarded as subject to an implied limitation as suggested by the Government.

91. The Court has said in other cases that it does not feel bound to adopt a literal interpretation of the words "pronounced publicly": in each case the form of publication given to the "judgment" under the domestic law of the respondent State must be assessed in the light of the special features of the proceedings in question and by reference to the object pursued by Article 6 para. 1 (art. 6-1) in this context, namely to ensure scrutiny of the judiciary by the public with a view to safeguarding the right to a fair trial (see the Pretto and Others judgment of 8 December 1983, Series A no. 71, pp. 11-13, paras. 21 and 26-27, and the above-mentioned Sutter judgment, Series A no. 74, pp. 12 and 14, paras. 26 and 33).

92. However, in the present case it does not appear that any steps were taken to make public the Board of Visitors' decision. There has accordingly been a violation of Article 6 para. 1 (art. 6-1) on this point.

2. Article 6 para. 2 (art. 6-2)

93. Mr. Campbell claimed that during the course of the Board's adjudication there had been a violation of paragraph 2 of Article 6 (art. 6-2), which reads as follows:

"Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

The Government contested this allegation. The Commission expressed no specific conclusion thereon.

94. The Court notes that when Mr. Campbell failed to attend the Board's hearing, pleas of "not guilty" to both charges were entered on his behalf (see paragraph 14 above). He has adduced no evidence whatsoever to establish that the Board proceeded otherwise than on the basis of those pleas. His claim must therefore be rejected.

3. Article 6 para. 3 (a) (art. 6-3-a)

95. Mr. Campbell maintained that he had not been adequately informed of the nature of the accusation against him and that there had accordingly been a breach of sub-paragraph (a) of Article 6 para. 3 (art. 6-3-a), which entitles everyone charged with a criminal offence "to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him".

The Government contested this allegation. The Commission expressed no specific conclusion thereon.

96. The Court notes that, prior to both the Governor's and the Board's hearing, the applicant had received "notices of report" setting out the charges against him; he had also been visited by the chairman of the Board before it sat (see paragraph 13 above).

The main thrust of Mr. Campbell's argument appears to be that the offence of "mutiny" is a complex concept, especially in a prison context, and that he had not been sufficiently informed, or was not in a position to understand, precisely what was meant by this term or what defences might be available to him. He could, however, very well have obtained further information had he appeared at the Governor's or the Board's hearing; and it has to be remembered that his failure to attend on the latter occasion was, so the Commission found (see paragraph 13 in fine above), a matter within his own responsibility.

In all the circumstances, the Court does not consider that a breach of Article 6 para. 3 (a) (art. 6-3-a) occurred.

4. Article 6 para. 3, sub-paragraphs (b) and (c) (art. 6-3-b, art. 6-3-c)

97. The applicant submitted that in connection with the Board's adjudication he had been the victim of a violation of sub-paragraphs (b) and (c) of Article 6 para. 3 (art. 6-3-b, art. 6-3-c), which entitle everyone charged with a criminal offence "to have adequate time and facilities for the preparation of his defence" and "to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require". He stressed that, in view of the nature of the charges against him, he should have been able to obtain legal advice and assistance.

In its report, the Commission considered that there had been a failure to comply with the Convention's requirements, in that Mr. Campbell was not afforded the opportunity to obtain legal advice and assistance before, or legal representation at, the Board's proceedings; at the hearings before the Court, the Delegate added that, in view of the Commission's opinion that the absence of a right to any legal assistance involved a breach of sub-paragraph (c) (art. 6-3-c), it was unnecessary to consider that aspect of the case further under sub-paragraph (b) (art. 6-3-b). The Government accepted that, under the law in force at the time (see paragraphs 13 and 36 above), the applicant had no right to legal representation at the Board's hearing; they also conceded that had he requested legal assistance beforehand, this too would have been refused under the practice then followed (ibid.).

98. Mr. Campbell was informed of the charges against him on 1 October 1976, five days before the Board sat (see paragraph 13 above). He also received "notices of report", those relative to the Board's adjudication having been given to him on the day before it met; the notices drew attention to the fact that he could reply to the charges in writing (ibid.).

The Court considers that in all the circumstances the applicant was left with "adequate time" to prepare his defence; it notes that he

apparently did not seek an adjournment of the hearing (ibid.).

99. As regards sub-paragraph (c) of Article 6 para. 3 (art. 6-3-c), it is true that Mr. Campbell elected not to attend the Board's hearing, but the Convention requires that a "person charged with a criminal offence who does not wish to defend himself in person must be able to have recourse to legal assistance of his own choosing" (see the Pakelli judgment of 25 April 1983, Series A no. 64, p. 15, para. 31).

Moreover, a lawyer could scarcely "assist" his client - in terms of sub-paragraph (c) (art. 6-3-c) - unless there had been some previous consultation between them. This latter consideration leads the Court to the conclusion that the "facilities" contemplated by sub-paragraph (b) (art. 6-3-b) were not afforded.

Accordingly, there was a breach of sub-paragraphs (b) and (c) of Article 6 para. 3 (art. 6-3-b, art. 6-3-c).

5. Article 6 para. 3 (d) (art. 6-3-d)

100. The applicant also contended that as regards the Board's adjudication he had been the victim of a violation of sub-paragraph (d) of Article 6 para. 3 (art. 6-3-d), which entitles everyone charged with a criminal offence "to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him".

The Government contested this allegation. The Commission expressed no specific conclusion thereon.

101. Mr. Campbell has furnished no details in support of this claim. In addition, it can be seen from the Divisional Court's second judgment in the St. Germain case (see paragraph 40 above) that English law recognises that a prisoner appearing before a Board of Visitors does have definite rights in the matter of witnesses. Moreover and above all, this complaint has to be seen in the light of the fact that the applicant declined to attend the adjudication: what might have transpired had he been present is a matter of pure conjecture on which the Court cannot embark.

In these circumstances, no violation of sub-paragraph (d) of Article 6 para. 3 (art. 6-3-d) has been established.

6. Conclusions

102. To sum up, the Court has found that there was a failure to comply with the requirements of Article 6 (art. 6), in that:

- the Board of Visitors did not pronounce its decision publicly;

- Mr. Campbell was not entitled to obtain legal assistance prior to the Board's hearing or legal representation thereat.

There remains a more general allegation made by the applicant, namely that he did not receive a "fair" hearing by the Board. His submission that Boards do not make serious attempts to investigate charges

referred to them can be rejected at the outset, for he has furnished no data to contradict the Jellicoe committee's finding that Boards take their duties of adjudication very seriously (see paragraph 33 above). Secondly, leaving aside the specific complaints with which the Court has dealt above, Mr. Campbell has adduced no evidence to establish any unfairness or miscarriage of justice, whether as regards the actual conduct of the proceedings, the assessment of the evidence, the finding of guilt, the selection of the penalties or otherwise. Having particular regard to the fact that he was entitled but declined to attend the hearing, the Court finds that this allegation is not substantiated.

In reaching its conclusions on this part of the case, the Court has not been unmindful of the developments in English law in the matter of certiorari, as evidenced by the decisions in the St. Germain case (see paragraphs 39-40 above), and the recent changes as regards the possibility for a prisoner appearing before a Board of Visitors to obtain legal representation or assistance (see paragraphs 36 and 46 above). Neither has it overlooked the fact that, under the current practice (see paragraph 30 above), a criminal court rather than a Board of Visitors may be called upon to deal with misconduct which involves substantial violence or is committed by a prisoner having only a small part of his sentence remaining to be served.

III. THE APPLICANTS' ACCESS TO LEGAL ADVICE IN CONNECTION WITH THEIR PERSONAL-INJURIES CLAIM

A. Preliminary

103. It is convenient to deal first of all with certain pleas which the Government based on the modifications made to English law and practice since the time of the events giving rise to the present proceedings (see paragraphs 42-52 above). These pleas related not only to the applicants' access to legal advice in connection with their personal-injuries claim but also to the conditions for visits by a lawyer to Father Fell, to the restrictions on the latter's personal correspondence and to the alleged violation of Article 13 (art. 13) of the Convention (see sections IV, VI and VII below). The Government requested the Court:

- in the context of Article 6 (art. 6), to take express note in its judgment of the changes made as regards the control of communication between prisoners and their legal advisers;

- to take note of the changes made by the revised Standing Orders as "remedying the breaches" of Article 8 (art. 8) found by the Commission; and

- to declare that the facts of the case would not disclose a breach of Article 13 (art. 13) after the coming into effect of the revised Orders.

104. The Court examined analogous pleas by the United Kingdom Government in its Silver and Others judgment of 25 March 1983 (Series A no. 61, p. 31, para. 79); it sees no cause on the present occasion to depart from the ruling which it then gave. The Court therefore holds that it cannot examine the compatibility of the

modified law and practice with the Convention; however, it notes that, in particular with effect from December 1981, substantial changes have been made in this area by the United Kingdom with a view to ensuring the observance of the engagements undertaken by it in the Convention.

B. Article 6 para. 1 (art. 6-1)

105. The applicants submitted that the delay in granting them permission to seek legal advice in connection with a civil action claiming compensation for the injuries sustained during the incident of 16 September 1976 (see paragraphs 17-20 above) constituted a denial of access to the courts, in violation of Article 6 para. 1 (art. 6-1) of the Convention, as interpreted by the Court in its above-mentioned Golder judgment (Series A no. 18).

The Commission expressed the opinion that there had been a violation in this respect. The Government's principal plea was that the Court should decline to rule on the matter in the light of the changes made to the law and practice since the Golder judgment.

106. The Court is unable to accept this plea. The delay in allowing the applicants access to legal advice was occasioned in 1976-1977 by the "prior ventilation rule" but the latter was not replaced by the "simultaneous ventilation rule" until December 1981 (see paragraph 46 (b) above). Dating as it does from that time, this modification clearly could not have restored the right claimed by the applicants under Article 6 para. 1 (art. 6-1); it is therefore not possible to speak of a "solution", even partial, "of the matter" (see, mutatis mutandis, Rule 47 para. 2 of the Rules of Court and the above-mentioned Silver and Others judgment, Series A no. 61, pp. 31-32, para. 81). In addition, the applicants' observations of 13 October 1983 on the application of Article 50 (art. 50) (see paragraph 7 above) contain a claim for just satisfaction in respect, inter alia, of this alleged violation and a determination by the Court of the issue may be of relevance in this connection (see the same judgment, ibid.).

107. The Government, in the alternative, stated that, in the light of the subsequent change to domestic practice, they did not contest the Commission's finding that there had been a violation of Article 6 para. 1 (art. 6-1).

It is true that the applicants were eventually granted the permission which they sought and that, in Mr. Campbell's case, he may have contributed to the delay by not furnishing promptly sufficient details of his allegations for an internal inquiry to commence (see paragraphs 17-20 above). However, for evidentiary and other reasons speedy access to legal advice is important in personal-injury cases. Moreover, as the Court pointed out in its above-mentioned Golder judgment (Series A no. 18, p. 13, para. 26), hindrance, even of a temporary character, may contravene the Convention.

The principles stated in that judgment being applicable in the instant case, the Court shares the Commission's opinion that a violation has occurred.

C. Article 8 (art. 8)

108. The applicants contended that their inability, on account of the "prior ventilation rule", to correspond with their solicitors in connection with the aforesaid civil claim constituted a violation of Article 8 (art. 8) of the Convention, which reads as follows:

"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."

The Commission concluded that there had been a breach in this respect. The Government stated that, in the light of the subsequent change to domestic practice, they did not contest this opinion.

109. According to the evidence before the Court, one letter was stopped, namely that of 24 January 1977 from Messrs. Woodford & Ackroyd to Mr. Campbell (see paragraph 20 above). Furthermore, as the Commission rightly pointed out, it is clear that the effect of the "prior ventilation rule" was to prevent all correspondence between the applicants and their advisers concerning the proposed litigation until the internal inquiry had been completed.

There was, therefore, an interference with the applicants' right to respect for correspondence, as guaranteed by Article 8 (art. 8).

110. The Court has already had the occasion, in its above-mentioned Silver and Others judgment, to consider under Article 8 (art. 8) the "prior ventilation rule" and its prohibition on the inclusion in letters to legal advisers of unventilated complaints about prison treatment. It there saw no reason to disagree with the Commission's finding that this ground for stopping or restricting mail did not correspond to a necessity, within the meaning of Article 8 para. 2 (art. 8-2) (Series A no. 61, pp. 38-39, para. 99).

The Court perceives no cause to depart from this conclusion on the present occasion. There has, therefore, been a violation of Article 8 (art. 8).

IV. CONDITIONS FOR VISITS TO FATHER FELL BY HIS SOLICITORS

A. Article 6 para. 1 (art. 6-1)

111. After being given leave to contact his solicitors, Father Fell was, for about two months, refused permission to consult them out of the hearing of a prison officer (see paragraph 22 above). He alleged that this constituted a breach of Article 6 para. 1 (art. 6-1), as interpreted by the Court in its above-mentioned Golder judgment.

The Commission considered that this absence of privileged contact between lawyer and client amounted to an interference with the right of access to court that was incompatible with Article 6 para. 1

(art. 6-1).

112. The Government's principal plea was that, in the light of the subsequent change to domestic practice, the Court should decline to rule on this claim.

The reasons given in paragraph 106 above lead the Court to reject this plea. It notes, in this connection, that the rules on confidential consultation between a prisoner and his legal adviser were also not relaxed until December 1981 (see paragraph 46 (c) above).

113. As was pointed out by the Commission, there may well be security considerations which would justify some restriction on the conditions for visits by a lawyer to a prisoner. However, even though Father Fell was a "category A" prisoner (see paragraph 44 (a) above), the Government have not argued before the Court that, as regards out-of-hearing consultation, such considerations obtained in his case; indeed, they stated, in the alternative, that they did not contest the Commission's finding on this issue.

The Court sees no reason to disagree with that finding and therefore holds that there has been a violation of Article 6 para. 1 (art. 6-1) on this point.

B. Article 8 (art. 8)

114. Father Fell also maintained that the aforesaid restriction on confidential consultation with his solicitors was in breach of his right to respect for his private life, as guaranteed by Article 8 (art. 8).

115. The Commission, in view of its conclusion under Article 6 para. 1 (art. 6-1), considered that it was not necessary to examine this claim. The Court is of the same opinion.

V. THE APPLICANTS' ACCESS TO INDEPENDENT MEDICAL ADVICE

116. Before the Commission, the applicants alleged that the refusal to allow them access to independent medical advice (see paragraphs 23-24 above) also constituted a breach of Article 6 para. 1 (art. 6-1). This contention was not accepted by the Commission.

117. Since the applicants have not pursued this claim before the Court, there is no necessity to examine it (see, mutatis mutandis, the Sunday Times judgment of 26 April 1979, Series A no. 30, pp. 43-44, paras. 74-75).

VI. RESTRICTIONS ON FATHER FELL'S PERSONAL CORRESPONDENCE

118. Father Fell complained of a restriction on his correspondence arising from the application of the rule prohibiting correspondence with persons other than relatives or existing friends (see paragraph 44 (a) above); he referred in particular to the fact that he was not allowed to correspond with Sister Power and Sister Benedict (see paragraph 25 above) and alleged that there had been a breach of Article 8 (art. 8) in this respect.

The Commission concluded that the refusal to allow the applicant to correspond with these two nuns constituted a violation of Article 8 (art. 8). The Government stated that, in the light of the subsequent change to domestic practice (see paragraph 46 (a) above), they did not contest this opinion.

119. The only specific example of restriction on correspondence cited by the applicant dated back to 1974, well before his application to the Commission (see paragraphs 25 and 53 above). However, the Commission observed that the restrictions complained of appeared to have lasted until the relevant rules were changed in December 1981, and this was not disputed by the Government.

120. The Court has already had the occasion, in its above-mentioned Silver and Others judgment, to consider under Article 8 (art. 8) the restriction on prisoners' correspondence with persons other than a relative or friend. In the absence of special considerations relevant to the particular case in issue, it saw no reason, even as regards a "category A" prisoner (see paragraph 44 (a) above), to disagree with the Commission's finding that this ground for restricting mail did not correspond to a necessity, within the meaning of Article 8 para. 2 (art. 8-2) (Series A no. 61, pp. 38-39, para. 99).

The Court perceives no cause to depart from this conclusion on the present occasion. There has, therefore, been a violation of Article 8 (art. 8).

VII. THE ALLEGED VIOLATION OF ARTICLE 13 (art. 13)

121. Father Fell alleged that there existed in the United Kingdom no effective remedy in respect of his claims under Articles 6 para. 1 and 8 (art. 6-1, art. 8) and that he was therefore the victim of a violation of Article 13 (art. 13), which reads as follows:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Article 13 taken in conjunction with Article 6 para. 1 (art. 13+6-1)

122. According to the Commission, Father Fell's complaints under Article 6 para. 1 (art. 6-1), concerning access to legal advice, refusal to allow independent medical examination and refusal to allow confidential consultation with his lawyer, raised no separate issue under Article 13 (art. 13).

123. The Court agrees with this opinion, which was also urged by the Government. It has found that it is not necessary to examine the complaint concerning medical examination (see paragraph 117 above). The two other complaints relate to the question of access to court and, having regard to the Court's conclusions under Article 6 para. 1 (art. 6-1) (see paragraphs 107 and 113 above), there is no need to examine them under Article 13 (art. 13); this is because the requirements of the latter Article (art. 13) are less strict than, and are here absorbed by, those of the former (see, as the most recent authority, the above-mentioned Silver and Others judgment, Series A

no. 61, p. 41, para. 110).

B. Article 13 taken in conjunction with Article 8 (art. 13+8)

124. There remain Father Fell's complaints under Article 8 (art. 8), concerning access to legal advice, refusal to allow confidential consultation with his lawyer and the restrictions on his personal correspondence. These complaints were considered under Article 13 (art. 13) by the Commission, which concluded that there had been a violation by reason of the absence of an "effective remedy".

125. Having found that it is not necessary to consider under Article 8 (art. 8) the complaint relating to confidential consultation with a lawyer (see paragraph 115 above), the Court sees no call to examine this issue under Article 13 (art. 13). However, the same does not apply to the other two complaints.

126. It was not alleged that the restrictions at issue were unlawful under domestic law or resulted from a misapplication of the relevant directives. Again, it was not suggested that any remedies were available to the applicant other than the four channels of complaint examined by the Commission, namely an application to the Board of Visitors, an application to the Parliamentary Commissioner for Administration, the institution of proceedings before the English courts and a petition to the Home Secretary.

The Government accepted, in their memorial to the Court, that prior to December 1981 the first three channels of complaint would not have provided Father Fell with an "effective remedy", within the meaning of Article 13 (art. 13), in respect of the complaints in question. For the reasons given in its above-mentioned Silver and Others judgment (Series A no. 61, pp. 42-44, paras. 114-118), the Court finds that this must be so.

127. At the hearings before the Court, the Government stated that they did not seek to argue that a petition to the Home Secretary would have provided an "effective remedy" as regards the delay in allowing contact with a lawyer. However, they suggested that the position might have been otherwise as regards the refusal to allow correspondence with Sister Power and Sister Benedict, had Father Fell established that the authorities had incorrectly applied the relevant directives in treating these two nuns as not being "close personal friends" (see paragraphs 25 and 44 (a) above).

The Court has found (see paragraphs 110 and 120 above) that the restrictions on Father Fell's access to legal advice and on his personal correspondence were the result of the application of norms that were incompatible with the Convention. In such circumstances, as the Court held in its above-mentioned Silver and Others judgment (ibid., p. 44, para. 118), there could be no "effective remedy" as required by Article 13 (art. 13). In particular, a petition to the Home Secretary could only have been effective if the complainant alleged that a measure of control over correspondence resulted from a misapplication of one of the relevant directives (ibid., p. 43, para. 116). And in the present case, Father Fell made no such allegation nor do the circumstances suggest that he would have been in a position to do so.

128. As regards the applicant's complaints concerning the two restrictions in question, there has accordingly been a violation of Article 13 (art. 13).

VIII. THE APPLICATION OF ARTICLE 50 (art. 50)

A. Introduction

129. Article 50 (art. 50) of the Convention, the applicability of which was not contested in the present case, reads 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."

130. The Court, which has received the Government's observations on the applicants' claims under this Article (art. 50) and noted that the Commission leaves the matter to the Court (see paragraph 7 above), considers that the question is ready for decision (Rule 50 para. 3, first sentence, of the Rules of Court).

B. "General" and "special" damages

1. Mr. Campbell

(a) The Board of Visitors' disciplinary proceedings

131. Mr. Campbell maintained that because of the defects in the procedure followed by the Board of Visitors in its adjudication in his case, the proceedings were "null and void" and the penalties awarded could not be regarded as legitimately imposed; this was said to apply, in particular, to an additional period of imprisonment which he calculated at 427 days. Referring, inter alia, to loss of society and alleged deterioration in his health, he claimed in this respect "substantial" but unquantified "general" damages; he also sought, by way of "special" damages, £12,400 and £3,745, respectively, for loss of earnings and for expenses relating to family visits to him in prison during that period.

The Government resisted the argument that the Board's proceedings were a nullity. Their principal submission was that Mr. Campbell had not shown that he had suffered any prejudice.

132. The only violations of Article 6 (art. 6) found by the Court relate to Mr. Campbell's inability to obtain legal assistance or legal representation and to the failure of the Board of Visitors to pronounce its decision publicly (see paragraph 102 above). The Court's only task is to examine what consequences these violations had for Mr. Campbell.

133. Bearing in mind the Court's finding on Mr. Campbell's general allegation of unfairness (see paragraph 102 above), there is nothing to

suggest, nor can it be assumed, that the Board of Visitors would have reached any different conclusions if he had been legally assisted or represented. It also has to be remembered that the applicant did not avail himself of the possibility of replying in writing to the charges against him and, above all, declined to attend the hearing, thereby depriving himself of the opportunity of making a defence or raising a plea in mitigation (see paragraphs 13 and 14 above).

Again, it goes without saying that the consequences for Mr. Campbell of the Board's decision would have been the same even if it had been pronounced publicly.

134. Accordingly, no causal link has been shown to exist between these particular violations and the alleged damage, with the result that no just satisfaction falls to be awarded in this respect (see, mutatis mutandis, the Albert and Le Compte judgment of 24 October 1983, Series A no. 68, p. 7, para. 11).

(b) Access to legal advice in connection with the personal-injuries claim

135. Mr. Campbell claimed "substantial" but unquantified "general" damages in respect of the delay in allowing him access to legal advice in connection with his intended civil action for damages for personal injuries (see paragraphs 17-20 above).

The Government contested this claim, inter alia, on the ground that the delay had occasioned no prejudice.

136. The Court has found that the delay in question gave rise to breaches of Articles 6 para. 1 and 8 (art. 6-1, art. 8) (see paragraphs 107 and 110 above). However, Mr. Campbell was eventually able to obtain the advice which he sought and he has not shown in what way, if at all, his inability to do so at an earlier date adversely affected the institution or prospects of his civil action. The Court notes, in particular, that even after consulting his lawyers, the applicant appears to have been far from diligent in pursuing the matter (see paragraph 21 above).

This claim therefore has to be rejected.

2. Father Fell

(a) Access to legal advice in connection with the personal-injuries claim

137. The reasons given by the Court in the preceding paragraph for rejecting Mr. Campbell's claim apply equally to a claim by Father Fell for "general" damages, which in his case related not only to delay in obtaining access to legal advice but also to the absence of an effective domestic remedy in this regard (see paragraphs 17-20 and 124-128 above).

(b) Conditions for lawyers' visits

138. Father Fell sought "substantial" but unquantified "general" damages in respect of the refusal to allow him to consult his

solicitors out of the hearing of a prison officer (see paragraph 22 above).

The Government contested this claim, inter alia, on the ground that this restriction had occasioned no prejudice.

139. The Court has found that there was a breach of Article 6 para. 1 (art. 6-1) as a result of the restriction in question (see paragraph 113 above). However, the applicant has not shown in what way, if at all, it adversely affected his intended civil action for damages. The Court notes, in particular, that the restriction was in any event of short duration.

This claim must therefore be rejected.

(c) Restrictions on personal correspondence

140. Father Fell claimed "general" damages, again "substantial" but unquantified, in respect both of the restrictions on his personal correspondence and of the absence of an effective domestic remedy in this regard (see paragraphs 25 and 124-128 above).

The Government contested this claim on various grounds.

141. It is true that the applicant may have experienced some annoyance and sense of frustration as a result of the matters in question. It does not appear, however, that this was of such intensity that it would in itself justify an award of compensation for non-pecuniary damage. Father Fell was, in fact, apparently allowed to correspond fairly extensively (see paragraph 25 above) and he did not seek to establish that the prohibition on corresponding with Sister Power and Sister Benedict arose from a misapplication of the relevant directives (see paragraph 127 above). Furthermore, although the Court has held that it cannot examine the compatibility with the Convention of the correspondence control regime in force since 1981 (see paragraph 104 above), substantial changes have been introduced and do appear in principle to have led to a significant improvement.

In these circumstances, the Court considers that in relation to this head of claim its findings of violation of Article 8 (art. 8) and of Article 13 in conjunction with Article 8 (art. 13+8) (see paragraphs 120 and 128 above) constitute in themselves adequate just satisfaction, without it being necessary to afford financial compensation (see, amongst other authorities, the Silver and Others judgment of 24 October 1983, Series A no. 67, pp. 6-7, para. 10).

C. Mr. Campbell's and Father Fell's costs and expenses

142. The applicants claimed in respect of costs and expenses referable to their representation in the proceedings before the Commission and the Court the following sums:

(a) £13,860 for the fees and expenses of Mr. Thornberry, barrister-at-law;

(b) £10,923.90 (together with value added tax of £1,641.59) for the fees and disbursements of Messrs. George E. Baker & Co., solicitors.

143. The Court will apply the various criteria which emerge from its case-law on the subject, as regards both the purpose for which the costs in question were incurred and the requirements that they be actually incurred, necessarily incurred and reasonable as to quantum (see, inter alia, the Zimmermann and Steiner judgment of 13 July 1983, Series A no. 66, p. 14, para. 36).

It notes, in this connection, that Mr. Campbell, but not Father Fell, had the benefit of legal aid before the Commission and then, after reference of the case to the Court, in his relations with the Delegate (addendum to the Commission's Rules of Procedure).

144. The Government indicated that they were prepared to pay such costs and expenses of the applicants as the Court might find to have been actually incurred, necessarily incurred and reasonable as to quantum and which were not covered by the Commission's legal aid. With the exception of the points mentioned in paragraph 145 below, the Government did not assert that the applicants' claim failed to satisfy the Court's criteria; in particular, they did not contest that Mr. Campbell had incurred liability for costs additional to those covered by his legal aid (cf., inter alia, the Airey judgment of 6 February 1981, Series A no. 41, p. 9, para. 13). Subject to an examination of those points, the Court therefore retains the whole of the claim.

145. At the hearings before the Court, the Government submitted that a proportion of the Strasbourg costs should be disallowed to reflect the fact that a substantial proportion of the applicants' complaints had been found to be inadmissible or rejected. However, in their memorial of 2 December 1983, they stated that they left this matter to the Court's discretion.

The Government also contended that, as regards his fees, Mr. Thornberry had charged at an excessive hourly rate, for an excessive number of hours and too much for the preparation of the case; they suggested a figure of £5,456 (in lieu of £12,820). They also questioned certain of the amounts claimed for his expenses.

146. Having regard to the extent to which the applicants' complaints were unsuccessful, the Court considers that their costs and expenses should be reimbursed to them only in part (see the Le Compte, Van Leuven and De Meyere judgment of 18 October 1982, Series A no. 54, p. 10, para. 21). It also finds that the Government's objections concerning the amounts claimed for Mr. Thornberry's fees are warranted.

In these circumstances, the Court, deciding on an equitable basis as is required by Article 50 (art. 50) and making due allowance for the sum received by Mr. Campbell from the Commission by way of legal aid, fixes the costs and expenses to be reimbursed at £5,000 for Mr. Thornberry and £8,000 for Messrs. George E. Baker & Co. These figures are to be increased by any value added tax that may be due.

FOR THESE REASONS, THE COURT

I. PRELIMINARY

1. rejects unanimously the Government's plea that Mr. Campbell failed to exhaust domestic remedies;

2. holds unanimously that it has no jurisdiction to examine Father Fell's submission that his complaints concerning the Board of Visitors' proceedings are now admissible;

II. AS REGARDS THE BOARD OF VISITORS' PROCEEDINGS IN THE CASE OF MR. CAMPBELL

3. holds by four votes to three that Article 6 (art. 6) of the Convention was applicable thereto;

4. holds by four votes to three that there has not been a breach of Article 6 para. 1 (art. 6-1) by reason of the fact that the Board did not conduct its adjudication in public;

5. holds by five votes to two that there has been a breach of Article 6 para. 1 (art. 6-1) in that the Board did not make public its decision;

6. holds by five votes to two that Mr. Campbell's inability to obtain legal assistance or legal representation constituted a violation of paragraphs (b) and (c), respectively, of Article 6 para. 3 (art. 6-3-b, art. 6-3-c);

7. holds unanimously that on the other points at issue there has been no violation of Article 6 (art. 6);

III. AS REGARDS THE APPLICANTS' ACCESS TO LEGAL ADVICE IN CONNECTION WITH THEIR PERSONAL-INJURIES CLAIM

8. holds unanimously that there have been breaches of Article 6 para. 1 and Article 8 (art. 6-1, art. 8);

IV. AS REGARDS THE CONDITIONS FOR VISITS TO FATHER FELL BY HIS SOLICITORS

9. holds unanimously that there has been a violation of Article 6 para. 1 (art. 6-1) and that it is not necessary also to examine this matter under Article 8 (art. 8);

V. AS REGARDS THE RESTRICTIONS ON FATHER FELL'S PERSONAL CORRESPONDENCE

10. holds unanimously that there has been a violation of Article 8 (art. 8);

VI. AS REGARDS ARTICLE 13 (art. 13)

11. holds unanimously that there has been a breach of this Article (art. 13) to the extent specified in paragraph 128 of the judgment;

VII. AS REGARDS THE APPLICATION OF ARTICLE 50 (art. 50)

12. holds unanimously that the United Kingdom is to pay to the

applicants, in respect of legal costs and expenses, the sum of thirteen thousand pounds sterling (£13,000), together with any value added tax that may be due.

Done in English and in French, the English text being authentic, at the Human Rights Building, Strasbourg, this twenty-eighth day of June, one thousand nine hundred and eighty-four.

Signed: Gérard WIARDA
President

Signed: Marc-André EISSEN
Registrar

A declaration by Mr. Thór Vilhjálmsson and, in accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 50 para. 2 of the Rules of Court, the following separate opinions are annexed to the present judgment:

- joint partly dissenting opinion of Mr. Cremona, Mr. Macdonald and Mr. Russo;

- joint dissenting opinion of Mr. Thór Vilhjálmsson and Mr. Go lcu klu ;

- partly dissenting opinion of Sir Vincent Evans.

Initialled: G. W.

Initialled: M.-A. E.

DECLARATION OF JUDGE THÓR VILHJÁLMSSON

The majority of the Court is not of the same opinion as I am on the applicability of Article 6 (art. 6). After having found the Article (art. 6) applicable, the Court therefore proceeded to examine whether certain of its provisions had been violated. I took part in this examination and voted on the various questions that were put to the Court for decision. This participation was not objected to by the President of the Court or my other brethren. The Convention itself does not contain any rule on whether or not this was the right course to take. Neither is anything said about this in the Rules of Court. My position is comparable to that taken by judges who were in a minority in the Ko nig and the Guzzardi cases and by the minorities who in several cases have been faced with the question of whether or not to take part in decisions on the award of just satisfaction under Article 50 (art. 50) of the Convention.

JOINT PARTLY DISSENTING OPINION OF JUDGES CREMONA, MACDONALD AND RUSSO

We agree with the conclusion reached in paragraph 73 of the judgment that Article 6 (art. 6) of the Convention is applicable to the Board of Visitors' adjudication in Mr. Campbell's case. Indeed, applying (due allowance being made for the different context) the criteria set out in the Engel and Others judgment to the present case, the proceedings against Mr. Campbell have, in the circumstances of the case and for the reasons stated in the judgment, to be regarded as

coming within the "criminal" sphere for the purposes of Article 6 (art. 6). This being so, it logically follows, as is in fact accepted in the judgment, that the requirements referred to in that Article (art. 6) had of course to be observed, save in the case that non-observance could be shown to come within any of the exceptions permitted by that Article (art. 6) itself.

Where we disagree with the judgment is in regard to whether, on the basis of the evidence adduced, failure to observe the Article 6 (art. 6) requirement of publicity of proceedings did in the present case come within the permitted exceptions to that requirement.

It was of course for the Government to show that the circumstances were such as to justify recourse to one of those exceptions. However, the Government (followed in this by the majority of the Chamber in paragraph 87 of the judgment) relied on the general nature of Board of Visitors' proceedings and on the general practice and, although Mr. Campbell was stated to be a "category A" prisoner, the Government adduced no evidence to show that the absence of publicity of proceedings was in his specific case warranted by Article 6 (art. 6) as coming within the permitted exceptions.

In the absence of such evidence we, like the Commission, conclude that there was a violation of Article 6 para. 1 (art. 6-1) also in this respect.

JOINT DISSENTING OPINION OF JUDGES THÓR VILHJÁLMSSON AND GO LCU KLU

The central question in this case is whether the events in Albany Prison on 16 September 1976 gave rise to proceedings to which Article 6 (art. 6) of the Convention is applicable. The majority of the Court has come to the conclusion that Mr. Campbell was faced with "criminal charges" and that, consequently, Article 6 (art. 6) is applicable. We are unable to share this view.

In its Engel and Others judgment of 8 June 1976, this Court laid down three criteria on which it based its decision in that case on the applicability of Article 6 (art. 6) under the "criminal" head. There the problem was whether, in the context of military justice, proceedings against the applicants had been criminal or disciplinary. It seems to us - and in this we are in agreement with the majority of the Court - that the same criteria should be applied in the present case.

On the first criterion - the position under domestic law - there is no doubt. Mr. Campbell was charged with offences against English disciplinary rules and these charges were dealt with according to English disciplinary procedure. There was a possibility of bringing criminal charges also, but that was not in fact done.

The second criterion set out in the Engel judgment is the nature of the offence. We take this to mean that a typical breach of disciplinary rules is outside Article 6 (art. 6). For us, the sit-down in which the applicant took part was just such a typical violation of prison discipline. It is, of course, possible to stage such incidents outside prisons but in a prison setting they take on a special and grave character. Forceful resistance to orders to move

from certain premises is also an act that, although it can happen in many places, has its own characteristics when it occurs in prisons. It seems to us, therefore, that in this case the incident that led to the proceedings against the applicant was a typical example of a prison disturbance that is and should as a rule be met with disciplinary measures.

The third criterion set out in the Engel judgment is the severity of the sanctions risked. These are described in paragraph 28 of the present judgment. The sanctions can be divided into two groups. In the first group are sanctions that consist of excluding prisoners from associated work, of stopping their earnings and of sending them into cellular confinement, in each case for a period not exceeding 56 days. Of these, we find only the last to raise any problem. Cellular confinement can have a serious impact on the person who is subject to it. However, it should be taken into account in this connection that this sanction is one of the traditional methods of prison discipline and that prisoners have already been deprived of their liberty. For these reasons we do not find it possible to interpret the words of Article 6 (art. 6) of the Convention in such a way that they oblige States not to use this sanction as a non-criminal, disciplinary measure in prisons. The second group of sanctions risked by Mr. Campbell consisted of forfeiture of certain privileges and of forfeiture of remission of his sentence. According to the relevant rules these forfeitures were not limited in time except that they could not exceed the original sentence. These rules are set out in more detail in paragraphs 28 and 29 of the judgment of the Court to which we refer. It is clear that "forfeiture of certain privileges" does not bring a case automatically from the disciplinary into the criminal sphere. We have more doubts concerning the forfeiture of remission of sentence. Obviously, the applicant had been sentenced to a specific period of imprisonment and this had been decided by the court which sentenced him. On the other hand, it is the general practice in England that, upon starting to serve a prison sentence, the prisoner is given an estimated date for release which is calculated by taking one-third of the sentence off the time stated in the sentence itself. In fact, the rules on remission are applied in such a way that a prisoner is released after serving two-thirds of his sentence unless a forfeiture has been awarded in disciplinary proceedings. Prisoners can thus expect to receive the benefit of the system of remission if they are of good behaviour: the rules governing the time involved are well-established and it is also rather clear what can change the prospects of being given remission. Thus, disciplinary proceedings can result in a considerable prolongation of the time actually served in prison. In spite of that, we have come to the conclusion that this cannot deprive the proceedings against the applicant of their disciplinary character. This is because the time spent in prison could not exceed the period fixed by the original sentence and because remission is an integral part of a system that is upheld by disciplinary measures.

We cannot see that any points other than those already mentioned can be relevant for the question of the applicability of Article 6 (art. 6) under the "criminal" head in this case. Our conclusion is therefore that the applicant was not faced with "criminal charges".

The rules set out in Article 6 para. 1 (art. 6-1) of the Convention - in

contrast to those in Article 6 paras. 2 and 3 (art. 6-2, art. 6-3) - apply not only to "criminal charges" but also to the determination of "civil rights and obligations". The applicant has argued that Article 6 (art. 6) is applicable under the latter head. We find that this issue has to be examined only in connection with a possible right to remission of sentence. Even if it were assumed that remission is a right rather than a privilege, we do not think it possible to call it a "civil right" in the context of Article 6 (art. 6) of the Convention. Remission and forfeiture of remission are typical disciplinary matters. Consequently, we find that we are here on the disciplinary side of the line between disciplinary proceedings and proceedings concerning civil rights and obligations.

For the reasons set out above, we are of the opinion that Article 6 (art. 6) is not applicable in the present case.

PARTLY DISSENTING OPINION OF JUDGE SIR VINCENT EVANS

1. I regret that I am unable to agree with the opinion of the majority of the Court that Article 6 (art. 6) of the Convention has been violated as regards the Board of Visitors' proceedings in the case of Mr. Campbell. In my view, Article 6 (art. 6) was not applicable to these proceedings because they were not concerned with the determination of any criminal charge against Mr. Campbell, or of his civil rights or obligations, within the meaning of that Article (art. 6).

2. In its judgment of 8 June 1976 in the case of Engel and Others, the Court recognised that the Convention allows the Contracting States to make a distinction between disciplinary proceedings and criminal proceedings and to draw the dividing line, provided that "the disciplinary does not improperly encroach on the criminal" and "lead to results incompatible with the purpose and object of the Convention" (Series A no. 22, pp. 33-34, paras. 80-81).

3. In determining whether the "charges" in the Engel and Others case, though vested by the State with a disciplinary character, nonetheless counted as "criminal" within the meaning of Article 6 (art. 6), the Court expressly limited itself to the sphere of military service (ibid., pp. 34-35, para. 82), and in paragraph 69 of its judgment in the present case it acknowledges that there are practical reasons and reasons of policy for establishing a special disciplinary regime in the prison context. Nevertheless, applying the criteria stated in its Engel and Others judgment and in its judgment of 21 February 1984 in the Oztu rk case (Series A no. 73, pp. 17-18, paras. 48-50), the Court has reached the conclusion that Article 6 (art. 6) was applicable to the disciplinary proceedings against Mr. Campbell. Even applying these criteria, the Court is wrong, in my opinion, in characterizing as "criminal" for the purposes of Article 6 (art. 6) charges which, as regards both the offences and the sanctions concerned, were essentially of a disciplinary nature. As a result, the Court has extended the requirements of Article 6 (art. 6) to proceedings to which I do not consider they were intended to be applicable.

4. No doubt, as the Government indeed admitted, criminal charges under English law might have been brought against Mr. Campbell on the basis of the same facts. It does not, however, follow, even in

accordance with the criteria stated in the Engel and Others judgment, that if disciplinary charges are brought in such circumstances they should be treated as criminal for the purposes of Article 6 (art. 6). There might be conduct which, although theoretically it could constitute both criminal and disciplinary offences, should properly be dealt with as criminal, as for example the murder of a prison officer. But the acts of which Mr. Campbell was accused, consisting of collective insubordination and defiance of prison authorities albeit with the use of violence on his part, were, though serious, clearly of a disciplinary character and appropriately charged as such.

5. The sanctions involved were also peculiarly disciplinary. Their aim was the maintenance of good order and behaviour within the prison. In particular, remission of part of a sentence of imprisonment is granted to a prisoner under section 25 (1) of the Prison Act 1952 on the ground of industry and good conduct. Forfeiture of remission has a correspondingly disciplinary function. Like the other awards which may be made under the Prison Rules 1964 for disciplinary offences, it is not a sanction of a kind which belongs to the "criminal" sphere. The loss of remission awarded by the Board of Visitors in Mr. Campbell's case was severe, but it did not and could not cause his term of imprisonment to exceed that to which he had been sentenced and thus it remained within the disciplinary sphere.

6. For these reasons I consider that the Government were justified in not regarding the charges against Mr. Campbell which gave rise to the Board of Visitors' proceedings as "criminal" within the meaning of Article 6 (art. 6).

7. Having found that Article 6 (art. 6) was applicable by reason of the "especially grave" character of the offence with which Mr. Campbell was charged and the nature and severity of the penalty that he risked incurring and did in fact incur, the Court did not consider it necessary to examine whether the Board of Visitors' adjudication involved a "determination" of "civil rights". In my opinion it did not. The object of the proceedings before the Board was clearly disciplinary and not the determination of "civil rights and obligations" within the meaning of Article 6 (art. 6) (see in this connection my dissenting opinion in the case of Le Compte, Van Leuven and De Meyere, Series A no. 43, pages 43-44).

8. I wish to add, however, that even on the assumption that Article 6 (art. 6) was applicable for the reasons stated by the Court, I share the view reached in the judgment that there were no reasons to conclude that the Board of Visitors which heard Mr. Campbell's case was not "independent" or "impartial" within the meaning of Article 6 (art. 6) or that any violation of paragraphs 2 or 3 (a) or (d) of Article 6 (art. 6-2, art. 6-3-a, art. 6-3-d) had been established or that he was denied a "fair" hearing by the Board. I also agree that there were sufficient reasons of public order and security justifying the exclusion of the press and public from the proceedings against Mr. Campbell.

9. On all issues other than those concerned with the application of Article 6 (art. 6) to the Board of Visitors' proceedings in Mr. Campbell's case, I am in agreement with the Court's judgment.