EUROPEAN COURT DECISION AIDS BRITISH PRISONERS

An article in The Guardian Weekly of March 1st 1975 reports an interesting spin off from Britain's involvement in Europe. According to The Guardian report the European Court of Justice recently held Britain's prison rules restricting access of prisoners to lawyers and the courts to be in breach of the European Convention on Human Rights.

The decision will seemingly require the Home Office to make fundamental changes in the rules in order to give prisoners virtually unlimited rights to communicate with solicitors and to start legal proceedings.

The court, deciding the first case against Britain to reach it, found unanimously that there had been a breach of Article 8 (1) guaranteeing the right of correspondence and, by a majority of 9 - 3 that there had been a breach of Article 6 (1) guaranteeing a right of a public hearing for the determination of civil rights.

The Guardian reports that the case was brough by Mr Sidney Golder, who in October 1969, was serving a 15-year sentence for armed robbery in Parkhurst prison when riots occurred. A prison officer accused him of being involved. These charges were in the end not proceeded with

On March 20, 1970, Mr Golder wrote to the Home Secretary for permission to consult a solicitor about suing the prison officer, a Mr Laird, for defamation. On April 6, 1970, the Home Office wrote denying this request without stating reasons. Mr Golder then complained to the European Commission on Human Rights – which does not need permission of the Home Secretary.

Some five years later, the court ruled in his favour, though it decided that it was not appropriate to award him any damages. Mr Golder was released on parole on July 12, 1972, and has not in fact proceeded with his action.

The court's ruling affects two distinct issues – prisoners' correspondence with lawyers and access to the courts. On correspondence, all the 12 judges who took part agreed that, although control of prisoners' correspondence was permissible on certain grounds, interference was not.

Article 8 (1) states that "everyone has the right to respect for his private and family life, his family and his correspondence. Article 8 (2) says "there shall be no interference by a public authority with the exercise of this right" except in so far as may be necessary "in the interests of national security, for the prevention of disorder or crime, for the protection of the health or morale or for the protection of the rights of others."

According to the court, interference with this right could only be justified here to prevent disorder or crime and no such justification had been made out. "It was not for the Home Secretary to appraise the prospects of the action contemplated; it was for a solicitor to advise the applicant on his rights and then for a court to rule on any action that might be brought."

According to the Guardian this ruling would seem to require abolition of Prison Rule 34, which prevents a prisoner from corresponding with a solicitor without the consent of the Home Secretary. Prisoners will have to be allowed freedom to correspond with lawyers subject only to such minimal control through censorship as is necessary for the prevention of crime or disorder.

The judgement would also seem to invalidate the rules which restrict the number of letters a prisoner may write to family or friends. But the court's interpretation of Article 6 (1) goes even further. For it means that prisoners will have to be given the right actually to initiate legal proceedings without leave. The judgement does not make clear whether this new right could lawfully be restricted in any way.

The court simply held that in denying Mr Golder access to consult a solicitor the Home Secretary was in effect denying him the right to have the matter determined by a court, contrary to Article 6.

In the light of such decisions it is sad to reflect on the fate of former Attorney General Lionel Murphy's proposed Australian Bill of Rights.