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20 September 2005

Dear Mr O'Boyle,

Application No. 58243/00
LIBERTY & OTHER ORGANISATIONS v. UNITED KINGDOM

Thank you for sending a copy of the Respondent Government's letter of 4 August commenting on the Applicants' Reply dated 30 June 2005 to the Government's Supplementary Observations. I apologise that it has taken some time for the Applicants to send this response.

The Applicants wish to respond very briefly to the three main points made by the Government, namely:

(1) Its defence of that part of the IPT's 2004 Ruling which held that s. 6 HRA contributes to the allegedly "foreseeable" and "accessible" status of the external interception provisions of RIPA;

(2) Its reliance on the IPT's receipt of "closed" evidence as a factor lending weight to the 2004 Ruling; and

(3) Its observations on Article 6.

Section 6 HRA

The Court is concerned with complaints about activity undertaken before the relevant provisions of RIPA and HRA (including s. 6) came into force. However, the

Government asks this Court to give weight to the IPT 2004 Ruling, and its letter makes plain that it relies for that purpose on this aspect of the IPT's reasoning.

The Applicants' submissions on this point are at para. 28 of our June Reply. We do not repeat their substance here. However, we observe that the point is of considerable general importance to the proper operation of the Convention in domestic law.

The purpose of enacting the HRA was to ensure that domestic courts had full jurisdiction to deal with a Convention complaint. Previously the only remedy in many cases lay in a direct application to Strasbourg. Section 6 is part of a series of provisions – the Court will be familiar with sections 7 and 8 – designed to provide a domestic judicial remedy for the victim of an act or decision that section 6 makes unlawful by reason of incompatibility with (that is, in Strasbourg terms, violation of) a Convention right. The domestic court's task, like this Court's, is to rule on whether the matters complained of amount to a violation of Convention rights. Section 6 provides a vehicle for that exercise. It would be quite absurd if the section were to be regarded as having some sort of self-correcting effect, *preventing* the court from finding what would otherwise be a violation of Convention rights.

The Government's submission, if correct, has serious implications for the United Kingdom's compliance with Article 13. Given its significance, this issue ought not to be resolved at the admissibility stage but following a hearing on the merits.

"Closed" evidence

The issue is not the standing or quality of the members of the IPT, but the weight its decision on Article 8(2) should carry as a factor in this Court's deliberations bearing in mind the nature of its procedures. The Government's task in this court is to justify pursuant to Article 8(2) an interference with the Applicants' rights under Article 8(1). The material on which a Respondent Government relies is invariably handled by the Court according to proper standards of openness and transparency, including disclosure to applicants to enable them to respond to it. The point at para. 5.c. of our June Reply is simply that the Court should approach with caution the conclusions of a domestic body whose views have been informed by material that has not been handled according to those norms.

Article 6

The Applicants do not raise a "new" complaint. Insofar as the Government seeks to rely on the IPT's final disposal of the RIPA case (as opposed to the reasoned 2004 Ruling), the Applicants were entitled to observe that the disposal is recorded in a formulaic letter which reveals nothing of the IPT's reasoning. That severely

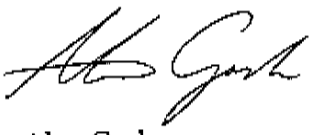
undermines the Government's attempt to place weight on it – all the more so given that an unreasoned decision departs from the standards of Article 6, which the IPT itself has held applicable to the proceedings before it as explained at paragraph 5.d. of our June Reply.

The cases the Government cites do not help it. *B v. UK* (36337/97 and 35974/97, judgment of 24.4.01) concerned the question whether children proceedings should be heard, and judgment pronounced, in open court rather than in chambers. The domestic court conducted the proceedings, and gave its reasoned judgment in the presence of all parties. The only issue was whether members of the wider public should be present. There was no question of one party's evidence, or the court's reasoning, being concealed from the other party. Indeed the reason relied on by the UK Government in *B* for maintaining the privacy of the proceedings was precisely to enable each side to give full and frank evidence (judgment, para. 32), a process taking place *inter partes*.

The *Z. v. Finland* judgment of 25.2.97 did not encompass a complaint under Article 6. So far as material, the applicant complained under Article 8 that criminal proceedings against her husband, in which sensitive information about her personal health was revealed, should have been held *in camera* and references to that information should have been excised from the court's judgment. There was no suggestion that any part of the proceedings should have been heard in the absence of any party or that the court's reasoning should have been concealed from a party. Again, the only question was the extent to which information revealed during the proceedings should be disseminated to the wider public.

We thank you for this further opportunity to comment, and look forward to hearing from the Court in due course.

Yours sincerely,



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