

NATIONAL ARCHIVES

IRELAND



Reference Code:	2010/53/906
Creation Date(s):	4 December 1980
Extent and medium:	5 pages
Creator(s):	Department of the Taoiseach
Access Conditions:	Open
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4 December 1980

BACKGROUND

THE HUNGER STRIKE AND THE EUROPEAN COMMISSION OF HUMAN RIGHTS

The European Commission of Human Rights considered an Application made by four of the protesting prisoners at Her Majesty's Prison Maze against the conditions in which they were held. The Application was not made in relation to the protesting prisoners' five demands, nor in relation to political status as such. However, in its partial decision, given last Summer, the Commission touched upon most of these points, and also upon the Government's own position. The Commission's salient remarks upon these points are set forth below.

In its partial decision, given last summer, the Commission found the bulk of the Application inadmissible.

POLITICAL STATUS

ARTICLE 9 (Freedom of conscience and belief)

"Right to Special Status"

30. The Commission considers that the applicants are seeking to derive from Art 9 the right to a "special category status" whereby they are entitled to wear their own clothes and be relieved from the requirement of prison work and, in general, be treated in a way which distinguishes them from other prisoners convicted of criminal offences by the ordinary courts. The Commission is of the opinion that the right to such a preferential status for a certain category of prisoner is not amongst the rights guaranteed by the Convention or by Art 9 in particular. Moreover,

it considers that the freedom to manifest religion or belief "in practice" as contained in this provision cannot be interpreted to include a right for the applicants to wear their own clothes in prison."

ARTICLE 3 (Freedom from torture and inhuman or degrading treatment or punishment)

Paragraph 43

"The Commission, however, must observe that the applicants are seeking to achieve a status of political prisoner which they are not entitled to under national law or under the Convention. Furthermore, although this point has not been argued by the parties in their observations, the Commission does not consider that such an entitlement in the present context can be derived from existing norms of international law."

PRISON UNIFORM AND WORK

Article 3

Paragraph 44

"It must also be considered whether the Convention imposes on the Government an obligation to accept the demands of the applicants not to wear prison uniform or to work in the face of a dispute which continues to deteriorate in such a drastic way to the detriment of everyone concerned. However, the Commission does not consider that such an obligation exists in the present case."

Paragraph 45

"The Commission would add finally, that it does not consider there to be anything inherently degrading or objectionable about the requirement to wear a prison uniform or to work."

ARTICLE 8 (Right to respect for private and family life and correspondence)

"83. The Commission has also considered, ex officio whether the requirement that the applicants wear prison uniform constitutes an interference with their right to respect for their private lives. The Commission considers that such a requirement constitutes an interference with respect for private life under Art (1). However, it observes that the purpose of a prison

uniform is to facilitate identification of a prisoner with a view to preventing his escape or securing re-capture in the event of an escape, and secondly, to enable the prison authorities to distinguish between the prison community and visitors dressed in ordinary clothes. The requirement to wear the clothing provided by the prison authorities is contained in Rule 63 of the Prison Rules (Northern Ireland) 1954. The Commission thus finds that it is justified under Art 8(2) as "necessary in a democratic society in the interests of public safety and for the prevention of crime."

FREEDOM AND ASSOCIATION

ARTICLE 11 (Freedom of association)

"114. As the language of Art 11 suggests, the concept of freedom of association, of which the right to form and join trade unions is a special aspect, is concerned with the right to form or be affiliated with a group or organisation pursuing particular aims. It does not concern the right of prisoners to share the company of other prisoners or to "associate" with other prisoners in this sense.

115. Consequently the Commission considers that this complaint must be rejected under Art 27(2) as incompatible rations materiae with the provisions of the Convention."

RECREATION, VISITS, LETTERS AND FOOD PARCELS

ARTICLE 3

Exercise

"55. The applicants further complain that they are being denied exercise and have been so for considerable periods of time. The Commission has paid particular regard to this complaint since it considers that a denial of exercise constitutes a serious danger to the physical and mental well-being of prisoners and would raise a serious issue under Art 3, if established. However, once more it must observe that the applicants' claim is not correct. They are in fact entitled, under Prison Rule 58, to one hour's exercise in the open air every day. They can exercise either in prison uniform or prison underwear or naked. While it is true that the governor does not permit them to exercise covered in a blanket,

it cannot be deduced that exercise is being denied them. In reality they choose not to take advantage of the opportunities for exercise rather than compromise their protest. A similar situation exists in relation to use of the library facilities which may be availed of by the applicants in either prison uniform, prison underwear or naked. It follows, therefore, that they alone must bear responsibility for the choice they have made."

Visits

"85. The Commission notes that these restrictions on family visits are the direct consequence of the award of loss of privileges imposed on the applicants for their refusal to wear prison uniform. The Commission considers that whilst the restrictions appear to involve prima facie an interference with the applicants' right to respect for their family life, it is clear that they have been imposed as part of a regime of disciplinary punishments whose purpose is to bring the protest to an end. The measures taken were in accordance with Rule 31 of the Prison Rules (Northern Ireland) 1954 with due regard to Rule 102(1) which provides that special attention is to be paid to the maintenance of relationships between a prisoner and his family. The Commission thus finds that they were justified under Art 8(2) as "necessary in a democratic society ... for the prevention of disorder..."

Correspondence

The Commission adjourned its examination of the rules on correspondence to and from prisoners in Northern Ireland prisons with a view to further deliberation in the light of its examination of related cases concerning prisoners' correspondence in England and Wales.

RESTORATION OF FULL REMISSION

ARTICLE 3

"The Commission considers, firstly, that an award of loss of remission for a disciplinary offence does not constitute inhuman or degrading treatment in the sense developed above. Moreover, it notes that lost remission may be restored by the prison authorities where a prisoner conforms to the prison rules and after a period of good conduct."

OBLIGATIONS OF HER MAJESTY'S GOVERNMENT

The Commission also pointed out that the prisoners' protest did not absolve the Government from its responsibilities to safeguard the health and well-being of all prisoners, viz:

"46. On the other hand, the Commission considers that in such a situation, the State is not absolved from its obligation under the Convention and Art 3 in particular, because prisoners are engaged in what is regarded as an unlawful challenge to the authority of the prison administration. Although short of an obligation to accept the applicants' demands in the sense described above, the Convention requires that the prison authorities, with due regard to the ordinary and reasonable requirements of imprisonment, exercise their custodial authority to safeguard the health and well-being of all prisoners including those engaged in protest insofar as that may be possible in the circumstances. Such a requirement makes it necessary for the prison authorities to keep under constant review their reaction to recalcitrant prisoners engaged in a developing and protracted protest."

and

"64. No doubt the authorities consider that to make concessions to the applicants will result in strengthening their resolve to continue their protest to a successful conclusion. However, the Commission must express its concern at the inflexible approach of the State authorities which has been concerned more to punish offenders against prison discipline than to explore ways of resolving such a serious deadlock. Furthermore, the Commission is of the view that, for humanitarian reasons, efforts should have been made by the authorities to ensure that the applicants could avail of certain facilities such as taking regular exercise in the open air with some form of clothing (other than prison clothing) and making greater use of the prison amenities under similar conditions. At the same time, arrangements should have been made to enable the applicants to consult outside medical specialists even though they were not prepared to wear prison uniform or underwear.

The Government considered the Commission's comments within the normal process of review covering regimes for all prisoners. Subsequently a number of additional privileges were made available to the protesting prisoners:

- (a) Three additional letters in and out per month.
- (b) One additional visit per month.
- (c) One hour's additional physical recreation using sportswear provided for the purpose.
- (d) One period of evening association per week.
- (e) Compassionate leave is available subject to the same conditions as conforming prisoners.