

NOTE OF A MEETING WITH REPRESENTATIVES OF THE EUROPEAN COMMISSION OF  
HUMAN RIGHTS, STRASBOURG 3 JUNE 1981 AT 2.00 PM

Present:

Professor C A Norgaard	- Acting President	Mr D N Edwards	- Legal Advisers
Professor T Opsahl	- Member of the Commission		Foreign & Commonwealth Office
Mr H C Kruger	- Secretary of the Commission	Mr A H Hammond	- Legal Advisers
Mr O'Boyle	- Commission Secretariat		Home Office
		Mr A C Abbott	- Northern Ireland Office

McFeeley et al v The United Kingdom

1. Opening the meeting, Professor Norgaard explained that the Commission wished to establish whether there was any basis for a friendly settlement under Article 28(b) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) of the outstanding complaints under Articles 8 and 13 in the case of McFeeley et al v the UK. From their meeting with the Applicants' Representatives that morning, the two Commissioners believed that they had established that the Applicants wanted a friendly settlement on the basis of improved prison conditions: it was said that they were not seeking political status. Professor Norgaard reminded the meeting that a friendly settlement under the Convention need not be based on the issues in dispute in the outstanding complaints: they could in theory be based on prison conditions generally.

2. In reply, Mr Edwards said that although the complaints under Articles 8 and 13 had been declared admissible, we regarded our position as fully preserved and were ready to argue our case at a later date. The UK had no proposals for a friendly settlement. We assumed that if the Applicants had any such proposals they would be processed through the Commission in the normal way. If any such proposals appeared, we would naturally take them to our Ministers.

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3. Discussion then turned to conditions in Northern Ireland prisons and the changes introduced in recent months. We accordingly judged it right to hand over our note, copy at Annex, "Protest at HM Prison Maze, Description of HMG's Position". Mr Edwards explained that, unlike the protesting prisoners, the Government had shown itself to be flexible in its readiness to improve the regime for all prisoners on humanitarian grounds. However, although flexible, there were certain points of principle on which the Government had not been, and would not be, prepared to move, viz no differentiation for particular groups of prisoners; and no ceding of control by the authorities to the prisoners over day to day life in the prisons. These principles were clearly stated on the first page of our note: the Commission had already rejected the motion of political status for certain prisoners in its Partial Decision last June. The Government, while standing firm on these issues, had of course made major improvements in the conditions of all prisoners in Northern Ireland as our note explained. Our handing over of this note did not imply that the points which it contained were in any way the subject of negotiation.

4. Professor Opsahl drew attention to the 32 page document "Regimes in Northern Ireland Prisons" which was made publicly available following the statement to Parliament by the Secretary of State for Northern Ireland on 4 December 1980 (this was the document placed in the House of Commons Library.) The Applicants' Representatives had told the Commission that the Government had not kept its word on the regime available to prisoners who ended their protests as explained in that and other documents and, perhaps, in oral undertakings. Was there another document? Professor Opsahl asked whether there had been a lack of communication between the Government and the protesting prisoners and whether clarification now would provide the basis for a friendly settlement.

5. Mr Abbott explained that, as Mr Atkins had told Parliament on 19 December, all prisoners in Maze and Armagh Prisons were given a note on 18 December explaining what would happen when the protest ended. This note, which had been reproduced in the Official Report for 19 December was consistent with the 32 page document. The Government had not gone back on its word: the regime available

to prisoners who ended their protests had been made wholly clear throughout. Mr Kruger confirmed that the Commission had been kept abreast of these developments.

6. Professor Norgaard pointed out that since nothing which had been said at the meeting provided the basis for a friendly settlement, he was not clear why the Government had apparently sought to expedite consideration of the outstanding complaints. Mr Edwards said that given the continuing prison protest and the hunger strikes we had not wanted to frustrate the Commission's continuing examination of the case by concentrating on technicalities; we were not concerned at what stage our arguments on the merits of the outstanding complaints were heard. (Mr Kruger confirmed that this was clearly understood.) But Mr Edwards explained that the line we had taken on admissibility did not mean that we had proposals to put forward, nor had we implied this at any time.

7. Professor Norgaard doubted whether the Applicants would be prepared to put forward proposals for a friendly settlement unless the Government indicated its readiness to seek one. The Commission Team pressed the United Kingdom to reconsider its approach - bearing in mind particularly that the Applicants were said not to be seeking political status - so that an opening could be found on which a friendly settlement could be based. Could the final sentence of paragraph 2 of the note we had handed over (Annex A) be taken as an indication that proposals by the Applicants channelled through the Commission would be considered? Would the Government be prepared to elaborate further in writing on what regime would be available to prisoners who ended their protests? At this point Professor Norgaard said that the Applicants were looking for some sign of the Government's goodwill. Mr Edwards reacted strongly to this suggestion: the Government had already demonstrated its goodwill by the changes which had been introduced on the prison regime. There was no question of needing further gestures to show goodwill.

8. The UK party repeated that any proposals by the Applicants would be shown to UK Ministers. We could not say more; but the Commission and its procedures were of course taken seriously by the UK Government.

If the Commission required further information about the regime available to prisoners in Northern Ireland, we would do our best to supply it; but the Commission were already aware of the Government's position on the issues of principle and on the key features of the regime. Mr Hammond emphasised that the note we had handed over was not in any way a basis for negotiation but was rather a record of what had been done by HMG. He also pointed out that the Government had demonstrated its flexibility through a number of important changes in the regime for all prisoners: it was the protesting prisoners who had been inflexible. Mr Hammond pointed out that there had been conflicting statements by people who purported to represent the protesting prisoners on what they were demanding: sometimes it appeared that the demand was for political status; at others for minor adjustments in the prison regime but it was our understanding that they were demanding the former. Mr Abbott pointed out that in their statement of 3 February, announcing the current hunger strike, the protesting prisoners had said in terms that they were "demanding to be treated as political prisoners".

9. Mr Kruger saw little prospect of a friendly settlement unless both sides were prepared to negotiate. It was in theory possible for a friendly settlement to be achieved by unilateral statements but in practice this was unlikely to yield results. The Commission Team noted that we had not come to negotiate. If there were no proposals for a friendly settlement, the Commission would move on to consider the merits of the outstanding complaints. In the case of the Article 13 complaints, this would probably not be before July. The complaints under Article 8 would await the judgement of the European Court of Human Rights in a Home Office case (Silver et al) which raised similar issues on prisoners' correspondence. Professor Opsahl suggested that the Article 13 issue might be wide enough to embrace issues other than those under Article 8. (It was possible, although unclear, that he might have been implying that the Article 13 issue was relevant to the hunger strikers' grievances.) Mr Hammond stressed that it was the Government's submission that Article 13 was relevant, if at all, only to the outstanding complaints under Article 8.

10. Mr Kruger emphasised that the proceedings before the Commission were confidential. He also noted that it was essential for the status of the Commission that it confined itself to legal matters and did not become involved in political issues. Mr Edwards said that this was well understood.

11. In conclusion, Professor Norgaard said that the Commission would tell the Applicants' Representatives of the Government's position and remind them that it was open to them to put forward proposals for a friendly settlement if they so wished. Professor Norgaard explained that the Commission was at the disposal of the parties at any time until the case closed should they wish to reach a friendly settlement.

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