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cc to Mr. ...

10 DOWNING STREET

From the Principal Private Secretary

19 May 1981

Dear Stephen,

MAZE PROTESTERS AND THE
EUROPEAN HUMAN RIGHTS COMMISSION

1. The Prime Minister held a meeting yesterday morning with your Secretary of State to discuss the possible reinvolvement of the European Commission on Human Rights in attempts to resolve the hunger strike at the Maze. Sir Robert Armstrong, Mr Marshall and *~~~~* were also present.

2. Your Secretary of State said that in 1978 four prisoners in the Maze had brought a wide range of complaints against the British Government under the European Human Rights Convention. In June 1980 the ECHR had rejected most of these complaints as inadmissible but two of them had been adjourned. The first of these was a complaint, under Article 8 of the Convention, about alleged restrictions on the applicants' correspondence. The second complaint, made under Article 13, was a claim by the applicants that they lacked an effective remedy before a national authority for alleged violation of Convention rights. We had maintained, and still did now, that these two complaints were inadmissible. Recently, however, the Commission had suggested, in an effort to help resolve the hunger strike, that they should deem the Article 13 complaint to be admissible so that they could investigate it and that we should not argue once more our position on admissibility, as a substantive objection in law, until they had completed their inquiry. The NIO's legal advice had been that our position would in this way be completely preserved and we had therefore agreed that the Commission should proceed as they had proposed. Under the provisions of the Convention the Commission, acting under Article 28, (a) would examine the complaints and ascertain the facts and subsequently (b) would place itself at the disposal of the parties with a view to securing a friendly settlement. The British Government had an obligation to facilitate (a) but did not have a similar obligation to facilitate the subsequent step at (b). If this procedure did not lead to a conclusion satisfactory to both parties, the Commission would proceed to arrive at a judicial decision on the complaints. The Commission now wanted to enter upon the procedure at (a). The question for decision was whether the Government should indicate a

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readiness to take part in the procedure under (b) or should make it clear now that it would not participate because it had nothing to offer.

3. Mr Atkins said that the PIRA had been in touch with the NIO through a known channel and had indicated that they wished to see the Commission follow the Article 28 procedure. They still believed that the Government was on a hook and was looking for ways of getting off it. If we did not facilitate an inquiry by the Commission under Article 28, the PIRA would claim that all we had said in the past about being ready to facilitate the involvement of the Commission in attempts to solve the hunger strike had been false and that the British were as inflexible as they always had been. There was a major risk that the Government would suffer a substantial public relations reverse, especially in the United States and the Republic. He therefore proposed that we should facilitate the Article 28 procedure.

* ~ * added that the PIRA's perception of the issue of the hunger strike was different from ours. They believed that the deaths of Sands and Hughes had strengthened their position and that the Government was in difficulty. They appeared to think that if the ECHR applied the Article 28 procedure this would give them the substance of what they wanted.

5. Mr Marshall said that the PIRA were pressing strongly for an indication of the Government's attitude. If we did not reach a decision within the next few hours, they would assume that our view of the Article 28 procedure was negative and they would begin to make this clear in their propaganda.

6. The Prime Minister said that she was worried that the Article 28 procedure was the start of a very slippery slope. The fact was that the Government was not on a hook. We had always said that we would give the Commission facilities to conduct an investigation provided a proper and specific complaint was laid with them. It seemed to her that the danger of the Article 28 procedure was that we would appear to be negotiating, and that she was not prepared to do. Moreover, it would be disingenuous of us to allow the Commission to embark upon this course if we had no intention of accepting a friendly settlement. It would be better if the Commission examined the complaints and ascertained the facts and then proceeded to a decision, omitting the stage of attempting to secure a friendly settlement. She did not feel able to reach a final view on the basis of the information before her and even though the matter was urgent, your Secretary of State should prepare a note setting out the question for decision, together with the advantages and disadvantages of the course proposed, which would serve as the basis for a further discussion.

7. Those present subsequently met again yesterday evening to consider the note attached to John Marshall's letter of 18 May to me. On that occasion the Home Secretary and the Attorney General were also present.

* ~ * Names deleted and retained under Section 3(4).

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OWayland, 13 October 2011

8. Your Secretary of State said that since the morning meeting the PIRA had come to realise that the Article 28 procedure was not a route by which they were going to see their five demands met. They were therefore no longer interested in proceeding in this way and were not pressing the Government to make a statement setting out its own views on the Article 28 procedure. There was therefore no need for a statement on the lines of the draft attached to Mr Marshall's letter. But it remained the advice of his security advisers that it was important that the Government avoided appearing as the party which prevented the ECHR trying to help resolve the hunger strike. He still proposed therefore that the Government should go along with the first part of the Article 28 procedure ((a) above) and that, even if we eventually said that we had no proposals for a friendly settlement to offer, we should not make this clear at the very outset, since to do so would effectively bring the procedure to an immediate halt.

9. The Prime Minister said that Article 13 referred to the duty of a signatory of the Convention to provide an effective remedy before a national authority for alleged violation of Convention rights. But there was no evidence that any rights had been violated. The only possibility was that rights concerning correspondence, which were covered by Article 8, had been contravened, but that complaint had not yet been investigated. It seemed to her that it was only in this area that Article 13 could apply, once an investigation - which we should certainly facilitate - had been completed and a violation demonstrated.

10. The Attorney General said that as regards the Article 28 procedure generally, although he was worried at the precedent which was being created, he believed that our position on admissibility was fully preserved and that we would be able, if necessary, to argue our case at a later date. Article 13 did not apply only to the Article 8 complaint in this case but allowed the Commission to investigate other alleged violations of Convention rights, even including complaints which they had earlier rejected. The friendly settlement which the Article 28 procedure provided for could range very widely but if the Commission had to move to a judicial decision, this had to be related narrowly to specific complaints.

11. The discussion then turned to the draft statement attached to John Marshall's letter, and a number of amendments were agreed.

12. The Prime Minister, summing up the discussion, said that they agreed that the Commission should examine the Article 8 and Article 13 complaints and that the Government should facilitate their efforts to ascertain the facts. Even though there was now no immediate need for the Government to issue a statement, the text which they had agreed (copy attached) would serve as a record of the meeting's conclusions and could be drawn upon as necessary.

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13. I am sending copies of this letter and of its attachment to John Halliday (Home Office), Jim Nursaw (Law Officers' Department) and David Wright (Cabinet Office).

Yours truly,

Alvin Shivers.

Stephen Boys-Smith, Esq.,
Northern Ireland Office.

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