



Prime Minister

2

MO 19/3/12

Prime Minister
Attorney's reaction
at flag A.

FERB
27.6.

Advis' advised?
and

To note that Her
Secretary of State for Defence is
proposing to discuss a settlement,
though on conditions which they do not
expect Her other side to accept.

SECRETARY OF STATE FOR NORTHERN IRELAND

FERB

24.6

EUROPEAN COMMISSION ON HUMAN RIGHTS: FARRELL v UK

This case stems from an incident in Newry in 1971. Information had been received that a terrorist attack would be made on a bank and soldiers were keeping watch from a nearby roof. They saw two men go to the night safe and then three other men cross the road and a scuffle started. The soldier in charge shouted 'Halt' but the three men ran off, after a further warning the soldiers opened fire killing the three men. None of the men was armed or carrying a bomb; they were not terrorists only petty thieves.

2. Mrs Farrell (the widow of one of the men involved) brought an action against MOD alleging that we were liable for the death of her husband. The case finally reached the House of Lords in December 1979 and their judgement upheld the verdict of the jury in the original trial that it was reasonable for the soldiers to believe that the three men had attempted to plant a bomb and for them to shoot to kill both to prevent a crime and to make an arrest.

3. Mrs Farrell then submitted an application to the European Commission. Although some of her contentions have been rejected by the Commission they have declared admissible the central part of her application. Put simply Mrs Farrell's argument is that the Criminal Law Act (Northern Ireland) 1967 (which is the same as English law in this respect) which allows "such use of force as is reasonable in the circumstances in the prevention of crime or in effecting or assisting in the lawful arrest of offenders" is a subjective and



therefore less stringent test than the objective test contained in Article 2(2) of the European Convention "the use of force which is no more than is absolutely necessary". Although the UK has submitted a strong case informal indications from the Secretary of the Commission are that the Commission's provisional opinion, by a substantial majority, is that the UK is in breach of Article 2 and that our domestic law falls short of the standards imposed by the Convention. As the Convention requires the Commission have now asked both sides to consider a friendly settlement.

4. We are therefore faced with some unpalatable choices. If we fight on and Commission find against us the case will then be referred to the Council of Ministers and then the European Court. At this stage proceedings would be public and we must expect that the European Court will also find against the UK. This would be a major propaganda victory for the IRA and would also lead almost certainly to the requirement to change UK domestic law which on all past precedents we would have to follow. The effects of such a change would go far wider than the operation of the security forces in Northern Ireland and would involve the police throughout England and Wales.

5. On the other hand, although all our past policy has been to fight this case, there are arguments for exploring the possibility of a settlement now. First, there is the point that in order to defuse some of the sympathy that is evident in the Commission for Mrs Farrell and to maintain our relations with the Commission it would put us in a better light if we were to indicate that we would not oppose a settlement and ask what the other side have in mind. Since they already know of the preliminary conclusions of the Commission they may not want a settlement and their terms may lose them support at the Commission. Such a move on our part may also drive a wedge between Mrs Farrell and some of her more politically motivated advisers.

6. If there is any prospect of a settlement then our conditions will need to be fairly stiff so that a settlement is on significantly



better terms than a defeat at the Commission and the Court. We would therefore have to insist on no explicit admission of liability, no explicit recognition that the UK law was defective or in conflict with the Convention and no payment to Mrs Farrell that was so high as to imply such an admission or recognition.

7. Such a settlement would receive no publicity from the Commission and if the other side attempted to make capital out of it we would argue that Mrs Farrell's husband was not a terrorist only a petty criminal and that she had so far been denied any compensation and we were therefore making a small gesture in recognition of her suffering which we had not been able to do earlier because wider legal issues had been involved.

8. None of these options is palatable and any settlement, however strict the conditions carries some implication that we are at fault. However my own preliminary view, taken with extreme reluctance, is that we should at least make it clear that we are not adverse to a settlement and if negotiations develop drive a hard bargain along the lines I have indicated above. If a settlement is not possible then we have no alternative but to fight on and put forward the best case we can. The Commission have asked for any proposals we might have by the end of the month and I would be grateful for your own views and those of my colleagues to whom I am copying this minute.

9. Copies of this minute go to the Prime Minister, the Attorney General, the Foreign and Commonwealth Secretary and the Home Secretary.

WDS
Ministry of Defence
17th June 1983

IRELAND : Farrell - v - M&D

Nov. 1979.

24 JUN 1981





10 DOWNING STREET

From the Private Secretary

1 July 1983

European Commission on Human Rights: Farrell v UK

The Prime Minister has seen your Secretary of State's minute of 17 June, the Attorney General's minute of 22 June, the Foreign and Commonwealth Secretary's minute of 27 June and the Northern Ireland Secretary's minute of 28 June.

She agrees that we should explore the possibility of a settlement of this case on the lines suggested in paragraphs 5, 6 and 8 of Mr. Heseltine's minute.

I am copying this letter to the Private Secretaries to the Attorney General, the Foreign and Commonwealth Secretary, the Home Secretary and the Northern Ireland Secretary.

A. J. COLES

Richard Mottram, Esq.,
Ministry of Defence.

NR



10 DOWNING STREET

Prime Minister

European Commission on Human

rights : Farrell v U.K.

The Attorney - General, the Foreign Secretary and the Northern Ireland Secretary all agree that we should explore the possibility of a settlement of this case on the lines suggested in paras. 5, 6 and 8 of the Deane Secretary's minute (attached).

Do you also agree?

A. S. C. $\frac{29}{6}$.



10 DOWNING STREET

~~BF 1.7.83~~

~~TO FERB.~~

~~see note attached~~

John Coles has
given the PM's answer.

FERB

FERS



10 DOWNING STREET

I have told
Mr. Evans that
we will let him
have a reply
first thing tomorrow
when the PM
is likely to

Farrell v MOD . have read the
papers.

Nick Evans have asked ^{FERS} 30.6
whether the PM has
any comments on s/s MOD's
~~to s/s NIO~~ minute of 17/6
on the above. It went
into folder 1 of the box
last night and has not
as yet been looked at.

Mr Evans said a reply
~~would~~ need to be sent
urgently (ie this afternoon)
but added that he

didn't expect the PM
would have any comments.

Can I con him with
Mr Evans that he
can go ahead?

Mark
30/6/83

CONFIDENTIAL



Mr. Gles - 16 see
MR 1/2

NB PM 1 suggest.

FRB
1-7.

SECRETARY OF STATE FOR DEFENCE

EUROPEAN COMMISSION OF HUMAN RIGHTS: FARRELL v U.K.

Thank you for sending me a copy of your minute of 17 June to the Northern Ireland Secretary. I have seen the subsequent responses of the Attorney General, the Foreign and Commonwealth Secretary and the Northern Ireland Secretary.

I should be very reluctant to see existing domestic law on the lawful use of force brought into question by the European Court. The present test on the lawful use of force found in section 3 of the Criminal Law Act 1967 is a proper one, and superior to the test apparently contended for by the applicants in the Farrell case. Properly understood, we think our law already requires the use of only such force as is absolutely necessary. What is unacceptable is that those words should be applied without reference to the circumstances in which the officer acted. It may have been necessary for him to use deadly force because of his reasonable perception of the situation.

Although no doubt we could argue as much before the European Court, the circumstances of the Farrell case are not likely to put our arguments in the best light. And it would be unfortunate to get ourselves into the position of allowing what might be seen as a hard case to lead to what would undoubtedly be bad law. I therefore agree with you that steps should be taken to secure a friendly settlement, and one which does not bring domestic law into dispute. It follows that if there is a balance to be struck in fixing the terms of a friendly settlement, I should naturally like reasonable priority to be given to the avoidance of bringing domestic law into dispute.

I am sending a copy of this minute to the Prime Minister, the Foreign and Commonwealth Secretary, the Northern Ireland Secretary and the Attorney General.

L.B.

30 June 1983

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NORTHERN IRELAND OFFICE
GREAT GEORGE STREET,
LONDON SW1P 3AJ

SECRETARY OF STATE
FOR
NORTHERN IRELAND

The Rt Hon Michael Heseltine MP
Secretary of State for Defence
Main Building
Whitehall
LONDON
SW1 2HB

28 June 1983

Dear Secretary of State

EUROPEAN COMMISSION ON HUMAN RIGHTS: FARRELL v UK

Thank you for your minute of 17 June.

I agree that none of the options available in this case are particularly palatable, and that the balance of advantage lies in favour of our indicating a willingness to settle, with a view to an eventual settlement along the lines which you propose. I accept that a friendly settlement does not necessarily insure us against future cases which seek to bring a change in the law, but feel that it is nonetheless the best course to pursue in the present circumstances.

Copies of this letter go to the recipients of yours.

Yours sincerely

David Hill

JAMES PRIOR
(Approved by the
Secretary of State
and signed in his
absence)

CONFIDENTIAL

Ireland
Nov 29
Famell v. M20

29 JUL 1983

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SECRETARY OF STATE FOR DEFENCE

EUROPEAN COMMISSION OF HUMAN RIGHTS : FARRELL

Thank you for sending me a copy of your minute to the Northern Ireland Secretary of 17 June. ^{requested} I have, as you know, kept in close touch with this case throughout the domestic proceedings (where I myself represented the Ministry of Defence in the House of Lords) and in the current proceedings in Strasbourg.

I substantially agree with your analysis of the position in which we now find ourselves and I would support your recommendation that we should reply to the Commission to the effect that, while we are not ourselves making any specific offer, we would be willing to consider sympathetically any reasonable suggestion that the applicant might make for the friendly settlement of the case. I agree that, in any negotiations which might then ensue, we should be guided by the conditions indicated in paragraph 6 of your minute. I expect - and I think that this is your view also - that it will prove impossible to achieve a settlement consistent with these conditions but I think that, if we respond in this way, we shall finish up in a better position vis-a-vis the Commission than if we had refused even to contemplate the possibility of a settlement.

I understand that officials of all the Departments concerned are working closely together on the handling of this and other aspects of the case and are being assisted and advised by the Counsel whom I have nominated for the purpose (Senior Crown Counsel, Northern Ireland, and a

/very



very reliable Junior, from the English Bar) and I suggest that we might now leave the detailed handling of the negotiations to them. I myself would propose to continue to keep a very close eye on the matter and you and other interested colleagues would of course be consulted if (which, as I say, I do not really expect) a settlement compatible with our conditions seemed obtainable.

I am copying this minute to the Prime Minister, the Northern Ireland Secretary, the Foreign and Commonwealth Secretary and the Home Secretary.

M.H.

LAW OFFICERS' DEPARTMENT

22 June 1983

23 JUN 1983

