



MINISTRY OF DEFENCE WHITEHALL LONDON SW1A 2HB

TELEPHONE 01-218 9000
DIRECT DIALLING 01-218 2111/3

MO 19/3/12

Prime Minister

22nd February 1984

This case stems from an incident in Norway in 1971 (see attached letter) Subject to colleagues, agree to proposal overleaf to handling?

De Lin

*Yes - but
A.J.C. 24 1/2
a mistake to open as low
at 11,000. I
would start
at 20,000.
They may
just
consider
that - but
11,000 may
be
Please
ask for
further
by d
advice
on prop
amount
no*

EUROPEAN COMMISSION ON HUMAN RIGHTS: FARRELL v UK

In our correspondence last June we agreed that in view of the likely attitude of the Commission on the merits of this case we should make it clear to the Commission and the other side that we would not be averse to a settlement although we also agreed that our terms for any settlement would have to be very strict.

So far our tactics have worked well and have I believe enhanced our standing with the Commission whilst lowering that of the other side. The Commission transmitted our offer to consider a settlement and the initial response from the other side was that the applicant would require a "clear holding of a violation of the Convention" together with substantial compensation to reflect this fact but they refused to name a sum arguing that we should make the first offer. The Commission replied that the applicant must state the amount of compensation required. In response the other side have asked for £100,000 based they argue on loss of earnings plus exemplary damages.

We now need to decide how to respond to this offer. First the claim for £100,000 is not serious and is probably not intended to be so. We could simply reject the proposal, make no counter-offer and let the case continue. However, I think our original aim of trying to reach a settlement on our terms if possible is still right

The Rt Hon James Prior MP



and that there is much to be said for making our settlement terms clear to the Commission and establishing the position that it is the other side who turn down a reasonable settlement offer. Also we must try and make sure that our offer is made known to Mrs Farrell who may well be attracted by a reasonable sum thereby isolating her legal advisers who we suspect are politically motivated.

I suggest that we should put the following position to the Commission:

- a. The claim for £100,000 is unjustifiable and out of the question.
- b. The demand that a violation of the Convention is admitted is unacceptable.
- c. HMG nevertheless remains willing to consider serious proposals for a settlement but only on the lines I set out in my letter of 17th June ie no admission of liability, no recognition that UK law is defective or in conflict with the Convention, no settlement high enough to imply such admission or recognition.
- d. We are prepared to meet representatives of the other side under the aegis of the Commission to consider an ex-gratia settlement on compassionate grounds.
- e. An indication of the sort of figure we have in mind.

On the last point I understand that leading Counsel's best estimate is that if an action for damages by the other side had been successful the award might have been about £30-40,000. This assessment rests on various assumptions in the Applicant's favour (as to her husband's personal circumstances at the time of his death) which are not well founded. Our offer therefore should be



significantly lower than this, though obviously not derisory. I suggest that we might open at £15,000 but be prepared to go up to £25,000 if a settlement looks possible.

I would be grateful for your, and colleagues agreement to this proposal.

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

yes in
A handwritten signature in cursive script, appearing to read "Michael Heseltine".

Michael Heseltine



FILE

67

10 DOWNING STREET

From the Private Secretary

27 February, 1984

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

The Prime Minister saw over the weekend your Secretary of State's minute to the Secretary of State for Northern Ireland about the above case.

Mrs. Thatcher is in general agreement with the proposals that Mr. Heseltine plans to put to the European Commission but she is inclined to think that it would be a mistake to open with an offer as low as £15,000. She believes that an offer of this size might alienate those concerned and would therefore be inclined to start with £20,000. But she would like to see further legal advice on the opening amount - perhaps the Attorney General could take this into account in commenting on your Secretary of State's letter.

I am copying this letter to John Lyon (Northern Ireland Office), Hugh Taylor (Home Office), Roger Bone (Foreign and Commonwealth Office) and to Henry Steel (Attorney General's Office).

A.J. COLES

R. Mottram, Esq.,
Ministry of Defence

CONFIDENTIAL



Time limits
 subject to colleagues' views, you

MO 19/3/12

Yes ml

SECRETARY OF STATE FOR NORTHERN IRELAND

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.

WMS
Ministry of Defence
17th June 1983

CONFIDENTIAL

CS/C



QUEEN ANNE'S GATE LONDON SW1H 9AT

12 March 1984

Dear Secretary of State,

EUROPEAN COMMISSION OF HUMAN RIGHTS: FARRELL v UK

N. B. P. R.

Thank you for sending me a copy of your letter of 22 February to Jim Prior. I have also seen the response from the Prime Minister's Office of 27 February.

m-13/3

I agree generally with your proposed line. As I indicated on the previous round of correspondence, I am concerned at the implications of this case for our domestic law on the reasonable use of force, and I am thus heartened at the initial signs of success for the tactics being adopted. The level at which the initial offer should be pitched should obviously be high enough to show that we are seriously interested in a settlement, without implying thereby a doubt as to the ability of our own procedures to stand up to independent scrutiny.

I am sending copies of this letter to the Prime Minister, Geoffrey Howe, Jim Prior and Michael Havers.

Yours sincerely,

Nigel Parry

APPROVED BY THE SECRETARY OF STATE
AND SIGNED IN HIS ABSENCE

The Rt Hon Michael Heseltine, MP

CONFIDENTIAL

(Ireland) : Farrell v M.O.D. Nov. 79

113 Nov 1979

11 12 1 2 3 4 5 6 7 8 9 10 11 12 1 2 3 4 5 6 7 8 9 10 11 12