

NATIONAL ARCHIVES

IRELAND



| | |
|---------------------------|--|
| Reference Code: | 2011/127/1053 |
| Creation Date(s): | 7 May 1981 |
| Extent and medium: | 11 pages |
| Creator(s): | Department of the Taoiseach |
| Access Conditions: | Open |
| Copyright: | National Archives, Ireland. May only be reproduced with the written permission of the Director of the National Archives. |

cc PSM
PSS
Mrs Neligan
Mrs Mally
Mrs Kinahan
Mrs. O'Hara
P.S. Attorney General

Mr. Neligan

Attached hereto is a paper setting out some of the points which occur to me in relation to a possible petition to the European Commission on Human Rights.

I also attach three draft petitions. Those for a hunger striker or a prisoner are obviously virtually the same and that for a family is the one worked out earlier. It did not seem appropriate to include reference to the so-called agreement in this latter petition.

I am not sure what the next step should be but perhaps you would keep me informed.



Legal Adviser

7 May 1981

Petitions to the European Commission of Human Rights

The chances of success in getting an ultimate finding by the Court against the UK or of even having a case by whatever applicant admitted by the Commission in relation to the present situation regarding the hunger strikers are in my view virtually non-existent. In the inter-State case of Ireland v. U.K. where much more extreme allegations and substantiating evidence was produced the finding of the Court was less than wholehearted. It does seem however that our primary aim here is not to put the U.K. in the dock.

Our present aim is limited to creating a situation which would allow each side an opportunity to reconsider its position and in particular to give an opportunity to the hunger strikers to call off their strike, while a solution is sought.

If this is the case then any method which would enable the Commission to take immediate action might provide an answer and the first step is to ensure that they are properly seized of the case. The Commission would be entitled in my view to examine the application, presumably by whatever means it thought appropriate (e.g. by a visit), even before deciding whether the case was admissible under Article 27 of the Convention. In the application of Marcella Sands they did not consider themselves to be properly seized of the application since no evidence existed that Bobby Sands, on whose behalf she purported to make the application, associated himself with it. In fact the contrary, seemed to be the case. We must be sure therefore the same situation does not arise.

To bring the case before the Commission the applicant must be entitled to do so under either Articles 24 or 25 of the Convention.

The question of the State bringing a case as is provided for under Article 24 has been ruled out. Apart from the political considerations it would not seem to be an appropriate method for an emergency application and would need to be based on much firmer grounds than seem to exist. It would also create difficulties with regard to the parties engaged in seeking a friendly settlement which is the first objective in this case i.e. it seems that the hunger strikers or those negotiating on their behalf, would not be involved since it would be a matter for the Commission with the parties.

An application must therefore be brought under Article 25 by a victim of a violation of the Convention. It seems that the most appropriate applicant would be a hunger striker if one was prepared to proceed. It will be necessary to ensure that he signs the application or gives very clear evidence of associating himself with the application, in order to avoid a repetition of the Sands case. Other options with less chance of success - i.e. of achieving even our immediate objective - are applications by members of the families of the hunger strikers or by another prisoner or prisoners.

The second and in my view equally difficult hurdle which must be cleared relates to the grounds for the application given the previous applications made and the requirement in Article 27 (1)(b) that any petition which is substantially the same as a matter which has already been examined shall not be dealt with by the Commission. In this regard the McFeeley case is not helpful. The facts appear to be substantially the same except in so far as the element of hunger strike is added and it must be recognised that this is a self-inflicted condition and unlikely to carry weight with the Commission (see paragraph 54 of McFeeley v U.K.)

To find either any circumstances or areas of the Convention which have not already been dealt with in relation to these same circumstances seems extremely difficult. The Commission ruled as inadmissible and rejected the application in the McFeeley case in so far as it related to Article 3 (see paragraphs 65, 72, 75 and 77), Article 6 (see paragraph 104), Article 8(2) (see paragraphs 83 and 86), Article 9 (see paragraph 31), Article 10 (see paragraph 111), Article 11 (see paragraph 115), Article 14 in conjunction with Articles 3, 8, 9, 10 and 11 (see paragraphs 124, 125, 127 and 130) and Article 18 (see paragraph 134). Only Article 8, in so far as it relates to correspondence, and Article 13 have been adjourned for further consideration.

As far as proceeding other than by a new application to the Commission the position is that only a Contracting State or the Commission can bring a case before the Court. Having rejected the McFeeley application it is unlikely that it would be open to the Commission to refer that matter to the Court or even to make a report since this implies that the case was not rejected but that a solution was at least sought (see Article 31 of the Convention).

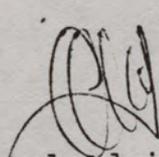
Whether the State as a Contracting Party could still refer the questions raised by the Commission's findings in the McFeeley case to the Court under Article 48(b) - i.e. as a Contracting Party whose national is alleged to be a victim - is not clear to me but this procedure also suffers from the same disadvantages as any case taken by the State.

In any case we are in my view relying on the goodwill of the Commission and the evident readiness of its members not to reject out of hand any application. The Commission would probably be more likely to deal with the petition of an applicant who was a hunger striker as a matter of urgency. An application by another prisoner or even by members of the hunger strikers families would make it more difficult to propose a settlement, to involve the hunger strikers themselves

In light of the foregoing and in view of the decision to proceed as set out above I attach three drafts for the three categories of applicant.

Although I do not believe that failure to honour the so-called "agreement" is a basis for complaint under the Convention and although I am unsure as to whether this document can be treated as an agreement I include it in the petition particularly since the Attorney General seemed to think that it would be useful. Each allegation would need to be checked with the applicant to ensure that there was some basis for it before it is included. You will wish to discuss these texts further with the Taoiseach's Department. The Attorney General's Office may also be in touch with them and produce other drafts in this matter.

It has also been suggested to me that it would be possible for the British authorities themselves to invite the Commission to return to Belfast. They might do this on the basis that consideration by the Commission of the question of prisoners correspondence (Article 8) and of Article 13 has not been completed. They could use the opportunity to show the Commission that their attitude to the Commission described as inflexible in that decision has altered. This would of course, be totally a matter for the British authorities to decide and for political decision here as to whether any suggestion in this regard would be made to them.



Legal Adviser

May 1981

DRAFT

To the Secretary General of the Council of Europe
For the European Commission on Human Rights

I (hunger striker) as a victim of violations by the British Government of the rights set forth in Articles 3, 6, 8, 13 and 14 of the European Convention on Human Rights hereby petition the European Commission of Human Rights under Article 25 of the Convention.

The grounds for my application for intervention by the Commission are:

- (1) that I am being subjected to [inhuman and] degrading treatment causing severe physical and mental suffering by reason of the prison regime under which I am detained;
- (2) that in the application of the prison regime the authorities discriminate between me and other prisoners detained for similar offences as regards my treatment on the grounds of my political beliefs;
- (3) that because of the lack of adequate and effective remedies which would be capable of providing reliefs for my complaints I have been forced to resort to hunger strike to achieve this objective so that my life is in danger;
- (4) that the British Government has failed in its duty to safeguard my health while a prisoner and has failed to keep the humanitarian aspects of the prison regime under review;
- (5) that the British Government has failed to respect my family life by the restrictions imposed on the correspondence between me and my family thus causing me further severe anguish and distress;

(6) . that the British Government has failed to honour the agreement regarding prison conditions as set out in a document circulated to H-Block protesters on 18 December 1980;

(7) that by the foregoing actions and the inflexible approach of the British authorities (adverted to by the Commission in paragraph 64 of its Partial Decision on Admissibility in Application No. 8317/78 - T. McFeeley et al v. U.K.) and by continuing to refuse to meet the legitimate demands for investigation and alteration of prison conditions the British Government is guilty of violating my rights under the Convention and is in breach of the provisions thereof.

I am a victim of a continuing denial of my rights.

I make this application for the Commission to examine immediately on a formal or informal basis the said violations of the Convention by the British Government.

In particular I refer to Rules 36 and 41 of the Commission's Rules of Procedure and would ask that a specific on the spot investigation be undertaken as a matter of urgency under these or any other appropriate rules.

DRAFT

I (prisoner) as a victim of violations by the British Government of the rights set forth in Articles 3, 6, 8, 13 and 14 of the European Convention on Human Rights hereby petition the European Commission of Human Rights under Article 25 of the Convention.

The grounds for my application for intervention by the Commission are:

(1) that I am being subjected to inhuman and degrading treatment causing severe physical and mental suffering by reason of the prison regime under which I am detained;

(2) that in the application of the prison regime the authorities discriminate between me and other prisoners detained for similar offences as regards my treatment on the grounds of my political beliefs;

(3) that there exists adequate and effective remedies which would be capable of providing reliefs for my complaints;

(4) that the British Government has failed in its duty to safeguard my health while a prisoner and has failed to keep the humanitarian aspects of the prison regime under review;

(5) that the British Government has failed to respect my family life by the restrictions imposed on the correspondence between me and my family thus causing me further severe anguish and distress;

...../..

(6) that the British Government has failed to honour the agreement regarding prison conditions as set out in a document circulated to H-Block protesters on 18 December 1980;

(7) that by the foregoing actions and the inflexible approach of the British authorities (adverted to by the Commission in paragraph 64 of its Partial Decision on Admissibility in Application No. 8317/78 - T. McFeeley et al v. U.K.) and by continuing to refuse to meet the legitimate demands for investigation and alteration of prison conditions the British Government is guilty of violating my rights under the Convention and is in breach of the provisions thereof.

I am a victim of a continuing denial of my rights.

I make this application for the Commission to examine immediately on a formal or informal basis the said violations of the Convention by the British Government.

In particular I refer to Rules 36 and 41 of the Commission's Rules of Procedure and would ask that a specific on the spot investigation be undertaken as a matter of urgency under these or any other appropriate rules.

DRAFT

To the Secretary General of the Council of Europe
For the European Commission on Human Rights

We (members of the family) of (hunger striker) as victims of the violation by the British Government of the rights set forth in Articles 3 and 8 of the European Convention on Human Rights hereby petition the European Commission of Human Rights under Article 25 of the Convention.

The grounds for our application for intervention by the Commission are:

(1) the British Government is in breach of Article 3 of the Convention by subjecting us to extreme mental anguish and distress by their treatment of our son whose life is in danger. No conventional remedy being open to him by which to seek redress he was left with no choice but to go on hunger strike (now in its day). There is no fundamental rights charter or written constitution justicible in Northern Ireland or other domestic remedy on which we can rely for redress.

(2) The British Government is in breach of Article 8 of the Convention by failing to respect our private and family life and home in depriving us as set out at (1) above of the comfort and support of our son now and in the future.

We are victims of a continuing denial of our rights.

The continuation of the inflexible approach of the British authorities (adverted to by the Commission) in paragraph 64 of its Partial Decision on Admissibility in Application No. 8317/78 by T. McFeeley et al v. United Kingdom) to the legitimate demands for investigation of prison conditions

by our son has led to the present critical state of health of our son and will inevitably lead to his death. Our consequent mental anguish, the interference with our private and family life and home resulting from being deprived of his comfort and support constitutes a continuing breach of our rights under the Convention.

We make this plea for the Commission to examine immediately, on a formal or informal basis, the said violations by the British Government.

In particular we would refer to Rules 36 and 41 of the Commission's Rules of Procedure and would ask that a specific on the spot investigation be undertaken as a matter of urgency under that or any other appropriate rule.