

EUROPEAN COMMISSION OF HUMAN RIGHTS
PARTIAL DECISION ON THE APPLICATION BY
4 REPUBLICAN PROTESTERS AT MAZE

JUNE 1980

A SUMMARY

Background

1. The European Commission of Human Rights is part of the machinery set up under the European Convention on Human Rights to investigate alleged breaches by the States party to the Convention (the 21 members of the Council of Europe). The UK has accepted the optional protocol which allows individuals, as well as other Governments, to make applications under the Convention. The Commission's task is to decide, first, whether such applications are admissible and, only then, to consider their 'merits'. As part of such consideration the Commission tries to achieve a 'friendly settlement' and then prepares a report for the Committee of Ministers which may or may not be referred to the European Court of Human Rights for a ruling.

2. The present application was made by 4 of the protesting prisoners at Maze Prison. Some of the complaints related to features of the normal prison regime, but the most significant ones directly concerned the 'dirty' protest and followed the general theme that the very unpleasant conditions pertaining in some of the cell blocks were the result of governmental policy. The Government has submitted detailed observations on the bulk of the application, further observations on the correspondence aspects and a memorandum of points arising from a list of questions tabled by the Commission. The applicants have commented in detail on each of these. The Commission has therefore been able to study in detail both the protesters' and the Government's view of the 'dirty' protest at Maze.

3. The Commission has now decided that the bulk of the application is inadmissible. It has reserved 2 particular aspects for further consideration.

The Findings

4. The applicants' main complaint was that their right to freedom of conscience and belief (under Article 9) had been denied

them because the prison authorities sought to apply to them the normal prison regime. The Government argued that the right to freedom of belief did not extend to opinions or attitudes about whether some prisoners should enjoy a more favourable regime than others and furthermore that the requirements to do prison work and wear prison clothing were necessary and lawful adjuncts to any prison regime. The Commission found "that the right to such a preferential status for a certain category of prisoners is not amongst the rights guaranteed by the Convention or by Article 9 in particular" (paragraph 30 of the Decision) and observed that the applicants were not entitled to the status of political prisoner under national law or under the Convention or under "the existing norms of International law" (paragraph 43). The Commission concluded that "the protest cannot derive any legitimacy or justification from the Convention and cannot be attributed to any positive action on behalf of the respondent Government" (paragraph 43). The Commission added that "it did not consider there to be anything inherently degrading or objectionable about the requirement to wear a prison uniform or to work" and found the applicants' complaints under Article 9 inadmissible.

5. The applicants also argued that the regime under which they lived amounted to inhuman and degrading treatment in breach of Article 3 of the Convention. The Government pointed out that some of these complaints (for example, the alleged denial of exercise, library facilities and toilet facilities) were completely unfounded in that basic rights such as these have never been removed and remain available to all prisoners. Other allegations (for example, that the protesters were "denied" educational facilities, remission, extra visits, extra letters and periods of free association), it was argued, were misleading in that privileges of this kind may, under Prison Rules, be removed by the prison governor as part of a disciplinary award in the interests of maintaining good order within the prison. Finally, other complaints (for example, that the protesters were "forced" to go naked, to stay in their cells 24 hours a day, to live in cells bare of furniture and in disgusting and unhygienic conditions) were misleading in that the circumstances about which the applicants were complaining were self-imposed.

6. The Commission declared all the applicants' complaints under Article 3 inadmissible. It recognised that "the fact that they choose not to avail of the above opportunities to leave their cells is plainly their own responsibility"; that in relation to the applicants' refusal to take exercise or use the library facilities, "they alone must bear responsibility for the choice they have made"; and "that any inadequacy in the medical attention they received or are receiving as a result of such behaviour is attributable to their own actions in furtherance of the protest". The Commission was "satisfied with the general provision of medical care at the Maze", including that given to the protesters. In relation to their unhygienic living conditions the Commission said (paragraph 54) it had no doubt that the conditions were "inhuman and degrading" within the meaning ascribed to them under the Convention but observed that "these conditions are self-imposed by the applicants as part of their protest for 'special category status' and, were they motivated to improve them, could be eliminated almost immediately".

7. The Commission found that a range of other measures about which the applicants complained were either not breaches of the Convention or were justified as necessary in a democratic society in the interests of public safety and for the prevention of crime or disorder. (A number of Articles of the Convention explicitly allow certain of the rights and freedoms they guarantee to be curtailed on grounds which are specified in the Articles.)

8. The Commission did not reach a decision on the admissibility of two particular aspects. These were prisoners' rights to correspondence and the effectiveness of national remedies for prisoners' complaints. Restrictions which the Prison Rules of England and Wales impose on prisoners' correspondence are already being considered by the Commission in connection with alleged breaches of the Convention and so the Commission has decided to adjourn consideration of this case until that in Great Britain has been settled. In relation to the effectiveness of national remedies for prisoners' complaints, the Commission found that "this issue gives rise to difficult questions of law and fact which require further observation in the light of the parties' observations"

and accordingly adjourned its consideration of the admissibility of this aspect of the applicants' complaints. These two aspects are peripheral to the applicants' main complaints and are relevant to any convicted prisoner in Northern Ireland, not just to protesting prisoners.

9. Although the Commission's ruling does vindicate the Government's refusal to grant special category and rejects the claims of ill-treatment, it does in paragraph 64 contain a note of criticism. The Commission was concerned at what it saw as a lack of flexibility in the approach of the State authorities towards exploring ways of resolving the protest. The Commission also believed that efforts should have been made to ensure that the prisoners took "regular exercise in the open air with some form of clothing (other than prison clothing) and made greater use of the prison amenities under similar conditions". It also said that "arrangements should have been made to enable the applicants to consult outside medical specialists even though they were not prepared to wear prison uniform or underwear".

10. The Government has anticipated part of this criticism: the Secretary of State announced on 26 March that prisoners would be allowed to exercise wearing sports gear. The protesting prisoners have refused to take advantage of this offer. More generally, it is difficult to see how the Government could be more flexible in its approach to the protest as the protesters will be satisfied by nothing less than a status which applies only to them and thus differentiates them from other convicted prisoners. However the points made by the Commission are being considered as part of the continuing review of conditions in the prisons.

Northern Ireland Office

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