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173/6

11/3

① Sir Ewan
② PDI



20/6
② PS/SR-SCB - M
PS/PVS (L+B) - M
PS/SR E BELL - M
MR GREY
MR BOURN - M
MR ANTEL
MR REEVE - M
MR BOYSSMITH
MR COULSON - M

MO 19/3/12

RECEIVED BY
18 20 JUN 83
PRIVATE OFFICE

FOR ADVICE
AND A DRAFT
READY BY 27/6/83
PSE

③ BF 27/6/83

SECRETARY OF STATE FOR NORTHERN IRELAND

RECEIVED
1615
20 JUN 1983
MUFAX ROOM
STORMONT HOUSE ANN

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

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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.

W.D.
Ministry of Defence
17th June 1983