

Prime Minister

European Convention on Human Rights

1. Further to my note of last week, I think that you would be interested to see a copy of Ian Percival's letter to Jim Prior, dated 21st December, and this I attach.
2. Ian Percival and Jim Prior are both very sensitive about this issue of the Closed Shop and the European Convention.
3. As you know, the Freedom Association is determined to pursue this matter, not least because it sees the procedures of the Convention, and ultimately of the European Court of Human Rights, as the only way open to bring further pressure on the Government to toughen up the Closed Shop provisions in the present Employment Bill.
4. As you know, the Freedom Association has always taken the view that the Closed Shop should be unlawful in this country, as it is in many European countries, (a view which I share).

24th December 1979

IAN GOW



01-405 7641 Extn

ROYAL COURTS OF JUSTICE  
LONDON, WC2A 2LL

21 December, 1979

The Rt. Hon. James Prior, MP,  
Secretary of State for Employment,  
Department of Employment,  
Caxton House,  
Tothill Street,  
London, SW1.

European Convention on Human Rights.

I believe that you have copies of the two letters from and the one letter to De L'Isle which Ian Gow gave to me on Monday during the debate on the Employment Bill.

Those letters - and the comments made from time to time by some of our colleagues - suggest that there is considerable lack of understanding of the relevant features of these "proceedings". And it is clear that that is militating very much to our disadvantage. That is a pity because when the position is fully understood it becomes pretty obvious that most of the observations and criticisms offered are based on false premises.

I felt therefore that you might like to have a note on the present position and the "further stages" now to follow - and I am enclosing one herewith.

When the above mentioned letters are read in the light of that note it does, I think, put a somewhat different complexion on them.

You may perhaps think that it would also be useful to give some sort of press release dealing with the procedures present and past both to counter some of the Press publicity given to the sort of assertions and views expressed in De L'Isle's letters and so that our

/colleagues

*x. No doubt you will know that the Commission has now put out a Press Release. I understand that it is very short.*

1.

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*IC  
I hope this will help. The more our colleagues know of the procedure the better they will be able to judge what the freedom argument we have to treat us referred to in para 2 of the NTE as confidential. However we do stress decline to do  
Yrs Jm 21/12/79*

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colleagues may know the procedures too  
and thus be better able to judge the validity  
of such assertions and views.

I am copying this letter and the enclosure to  
Ian Gow.

SIR IAN PERCIVAL

2.

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FURTHER STAGES IN THE 'CLOSED SHOP' CASE (YOUNG, JAMES & WEBSTER v THE UK) BEFORE THE EUROPEAN HUMAN RIGHTS COMMISSION

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1. The Commission adopted their Report on December 14th, 1979. It will be sent to the Committee of Ministers in January 1980.
2. It has been intimated to HMG and to the applicants that the Commission's provisional decision is that there has been a breach of the Convention (article 11(1)) because the right to associate includes a right not to associate in these particular cases viz when existing employees are required to join a union at the time when a new closed shop agreement is negotiated.
3. The applicants (which is not the same as Lord de Lisle or his Association) can disclose (1) above when it is the subject of a Commission press release. They cannot disclose (2) above without breaching the 'in camera' rule in the Convention and nor can HMG until the Commission Report is published.
4. Precisely what the Commission will find the UK has done in breach of the Convention will not be known by the applicants until the Report is published. Lord de Lisle is guessing so far as he goes beyond what he has been (improperly) told by the applicants of the Commission's provisional intimation. What is clear is that the complaint of the applicants was about the application of the Trade Union and Labour Relations Acts of 1974 and 1976. Its relevance to the present Bill cannot be clearly understood until the Report is available and is studied.
5. A copy of the Report will be sent to HMG at the same time as it is sent to the Committee of Ministers. The Convention prohibits us from publishing it at that stage. The applicant will not receive a copy.
6. The case can be referred to the Court of Human Rights by HMG or the Commission within three months of it being sent to the Committee of Ministers. The Report would then be published when the chamber to hear the case is constituted.
7. If the case is not referred to the Court the Report will certainly not be published until after the Committee of Ministers have reached a conclusion, and will then only be published if we agree.
8. It will thus be clear that even when HMG receive the Report they cannot inform Parliament of its contents until some months ahead (if the matter goes to the Court) or for a much longer period. (if the matter stays with the Committee of Ministers).

Please see below.

NOTE: The information in paragraph 2 is not of course to be given to anyone outside the Government.