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Prime Minister

Foreign and Commonwealth Office

London SW1A 2AH

The wider issue of reducing the impact of the findings of the European Courts on our law is being studied by officials, who will report in April.

26 February, 1985

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Dear Charles, This deals with your suggestion of using an Ombudsman to filter cases going to the European Commission on Human Rights.

You wrote to me on 22 January about the Prime Minister's interest in exploring ways of reducing the number of cases which go to the European Commission on Human Rights. Sir Geoffrey Howe shares the Prime Minister's interest in this question, which is relevant incidentally to the Council of Europe Human Rights Conference in Vienna on 19-20 March (Mr Renton will lead the delegation).

problems with this, but the idea at X over seems sensible.

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Home Office and FCO officials are looking into the possibilities of reducing the flow of applications. You will have seen from Hugh Taylor's letter of 15 February the Home Secretary's views on how best to take this exercise forward. This is an interim reply dealing with the Prime Minister's thought that there ought to be a way of filtering cases, for instance through an ombudsman system.

It will be difficult to find an effective means of filtering applications to Strasbourg which would be consistent with the Convention or acceptable to other member states. As things stand the UK, having accepted the right of individual petition, is bound not to hinder in any way the effective exercise of this right. An additional mechanism, such as an agreement by member states that each would use its national Ombudsman to filter cases on their way to the ECHR, would require an amending protocol to the Convention on Human Rights which all states party to that Convention would have to sign. Many would resist.

The Secretariat already discourages applicants who patently have no complaint under the Convention and the Commission itself summarily declares cases inadmissible without communicating them to governments. In 1984 75% of applications to Strasbourg were dealt with in this way.

If the Ombudsman were to operate a filter system there is not likely to be a decrease in the number of particularly sensitive cases which go to the Commission and eventually attract public attention. In Sir Geoffrey Howe's

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view, an Ombudsman would have to allow politically sensitive cases to proceed, given the UK's obligations under the Convention. Indeed, he would have to allow all cases admissible under the Convention to proceed. One theoretical possibility would be to involve the Committee of Ministers to prevent politically sensitive cases going through the processes of the Commission and Court. But the pressure in the Council of Europe is to extend the jurisdiction of the Commission and Court in relation to applications. The UK would not gain support for a proposal which sought to restrict the number of applications.

X / The recent discussions during the drafting of the 8th Protocol to the Convention, which is designed to improve the efficiency of the Commission and Court, indicate some of the difficulties. One of the new articles in this Protocol establishes a group of three members of the Commission who can summarily declare cases inadmissible. Previously this was done by the full Commission. This reform was introduced in order to reduce the workload of the full Commission, but there was opposition on the grounds that applicants would regard themselves as disadvantaged if their applications were not considered by the full Commission. It therefore seems clear that many states would be against a Protocol which reduced a potential applicant's opportunity to have his case considered by the Commission.

#### Vienna Conference

The Vienna Conference will be an opportunity to discuss our apprehensions with those who tend to think like we do, notably the Dutch, the Germans and the French. Sir Geoffrey Howe sees a danger in putting forward what many would see as a radical proposal to "filter" cases which go to the Commission. We would run the risk of saddling ourselves with an enquiry not only into our own ideas, which by and large are not popular, but also into the Swiss and Austrian proposals, such as the Austrian proposal for a Human Rights Commissioner with the opposite purpose to our own, which could well find favour with a majority. We wish to avoid this. Our aim of killing off unsatisfactory proposals such as this will be set back if we introduce a proposal which others would regard as unsatisfactory. This brings us back to the question of incorporation of the Convention as a way of reducing the number of applications to Strasbourg. This is perhaps best pursued in the context of the exercise referred to in paragraph 2 above (Hugh Taylor's letter of 15 February to Robin Butler).

I am copying this letter to Hugh Taylor (Home Office), Michael Carpenter (Lord Chancellor's Department), and Michael Saunders (Law Officers' Department).

*Yours ever,  
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