

CONFIDENTIAL

Prime Minister

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PRIME MINISTER

THE EUROPEAN COURT OF HUMAN RIGHTS  
COMPENSATION FOR CLOSED SHOP VICTIMS

1. I have seen a copy of the Secretary of State for Employment's minute to you of 1 December. This is essentially a question of policy rather than of law but there are two points on which I should comment.

2. First, the danger of setting a precedent for cases on other subjects, which is discussed in paragraph 5, is a very real one. Once we accept that a finding of a violation of the Convention in a particular case carries with it a moral obligation to pay compensation not only in that case but in all comparable cases, it will be difficult indeed to resist demands for the payment out of public funds of what may be quite large sums - and in cases that we may find much less politically attractive than the present case. I have to say that the distinction which is suggested in the second half of paragraph 5 of the Secretary of State's minute is one which I find unconvincing. I find it hard to see why there is a greater moral obligation to pay compensation in respect of a defect in our law which was of short duration and was in fact removed from our statute book even before the Court's judgment than there is in respect of a defect which we deliberately persisted in to the bitter end and removed only under the compulsion of a finding by the European Court.

3. My second comment relates to the procedure for awarding compensation which is described in the last section of the note attached to the Secretary of State's minute. In working out the details of that procedure and in formulating the terms in which it is prescribed, we shall need to be very careful that we do not

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leave any scope for further complaints to the European Commission of Human Rights asserting that what is involved amounts to a violation either of Article 6 of the Convention (the right to a fair adjudication in the determination of one's civil rights) or Article 14 (no discrimination in the enjoyment of one's rights). It is precisely because I agree with the assessment in paragraphs 1 and 3 of the Secretary of State's minute that further complaints to the Commission based upon the original dismissal are no longer possible that I think that the Freedom Association, if they are dissatisfied with the terms offered, may be astute to find grounds such as this for taking their case once more to Strasbourg.

4. I am copying this minute to those to whom the Secretary of State's minute was itself copied.

A handwritten signature in red ink, appearing to be "H. Smith", is written above the typed name.

for Attorney-General

(Draft approved by Attorney-General  
before his departure.)

3 December, 1981

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