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Mr Kirk

Mr Jackson

cc Mr Burns
Mr Hammond
Mr Chesterton
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JLJ

12.10.87

ACCESS TO PRISONS BY SINN FEIN'S ELECTED REPRESENTATIVES

1. The written judgement of the appeal in the McCartney case (in which Sinn Fein sought to challenge our policy of refusing access to the prisons to their elected representatives) has just become available. Sinn Fein's appeal was dismissed. The judgement was discussed at Mr Hammond's seminar last Friday; but since the case has implications for our wider policy towards Sinn Fein, it seems worth summarising the main points for the record. I have a text of the full judgement if anyone wishes to see it.

2. The arguments advanced by Counsel for Sinn Fein, and the view of each taken by the Court of Appeal, were:

- (i) that the Secretary of State, in deciding to refuse permission to Sean Keenan (a Belfast City councillor and Sinn Fein member) to visit Raymond Pius McCartney in HMP Maze, had not taken account of relevant considerations. Argument revolved around the question of whether the Prison Department's letter conveying the Secretary of State's decision had, in explaining the Government's general policy, constituted refusal to consider reasonable arguments for a change in the policy in individual cases. The Court of Appeal found that it had not, and that the Secretary of State's discretion had been properly exercised under the Prison Rules. It went on to add, however, that had the letter indicated a refusal to consider the possibility of exceptions to the general policy, then the outcome might well have been different;

- (ii) that the evidence of Sinn Fein's violent aims, on which the Secretary of State had based his general policy, was inadequate. The Court of Appeal dismissed this argument also, pointing out that the aims of Sinn Fein had been judicially noticed both in Northern Ireland and the Republic (the latter in a 1982 case);
- (iii) that the Secretary of State's refusal to permit Mr Keenan access to the prison was contrary to Section 19 of the Northern Ireland Constitution Act 1973, which forbids discrimination on ground of political opinion. The Court of Appeal noted that there was no general ban on visits to prisons by Sinn Fein members, but rather a specific policy of refusing visits by elected representatives to other than close relatives. The judgement went on:

'The reason why elected members of Sinn Fein are singled out is because they must give unequivocal support to the armed struggle before they can be considered as candidates for elections. It is clear that the decision to prohibit visits by elected members was taken not because of the political opinions which such elected members might hold but because of their support for violence as a means of achieving political objectives.'

This ground of appeal was, therefore, also dismissed.

Comment

3. The main point of interest is that the Court of Appeal has decided that our policy of denying access to Prisons by Sinn Fein's elected representatives is in conformity with Section

19. Since arguments based on Section 19 had been a point of potential weakness in the Government's wider policy of refusing access to Government to Sinn Fein elected representatives, this judgement is most welcome.

4. The other points in the judgement, whilst reassuring, are of less interest. The main lesson to be learned from them is that in operating a policy of denying access to Sinn Fein, we must be careful always to avoid the suggestion that the policy is not open to exceptions, or that our minds are closed to arguments in favour of such exceptions. We should keep a careful eye, accordingly, on the drafting of letters, etc, on this subject.

5. Overall, a very good result.

(signed)

S L RICKARD

CPL

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