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REPORT

on the petition declared admissible on discrimination towards priests in the UK
by Reverend Owen (Petition 395/2001)
(2002/2209 (INI))

Committee on Petitions

Rapporteur: The Earl of Stockton

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PROCEDURAL PAGE

On 26 April 2001 Petition 395/2001 by Reverend Owen, on discrimination towards priests in the UK, was referred to the Committee on Petitions pursuant to Rule 174(5) of the Rules of Procedure.

At its meeting of 19 September 2001 the Committee on Petitions declared the petition admissible and decided to draw up a report pursuant to Rule 175(1).

It appointed The Earl of Stockton rapporteur at its meeting of 21 February 2002.

At the sitting of 26 September 2002 the President announced that he had referred the petition to the Committee on Employment and Social Affairs at the request of the Committee on Petitions for its opinion.

The Committee on Petitions considered the draft report at its meetings of 12 September 2002 and 8 October 2002.

At the last meeting it adopted the motion for a resolution unanimously.

The following took part in the vote Vitaliano Gemelli, Chairman, Astrid Thors, Vice-Chairman, Felipe Camisón Asensio, Michael Cashman, Marie-Hélène Descamp, Glyn Ford, Janelly Fourtou, Laura González Álvarez, Margot Keßler, Jean Lambert, Ioannis Marinos, Christian Ulrik von Boetticher, Rainer Wieland, Eurig Wyn and Stavros Xarchakos.

The opinion of the Committee on Employment and Social Affairs is attached.

The report was tabled on 9 October 2002 .

MOTION FOR A RESOLUTION

Resolution on Petition declared admissible on discrimination towards priests in the UK by Reverend Owen (Petition 395/2001) (2002/2209 (INI))

The European Parliament,

- having regard to Petition 395/2001,
- having regard to Rule 175 of its Rules of Procedure, notably paragraphs 1 and 5
- having regard to the report of the Committee on Petitions and the opinion of the Committee on Employment and Social Affairs (A5-0342/2002),
- A. Whereas members of the clergy should enjoy the same human rights as other citizens of the European Union;
- B. Whereas their relationship with their employers in the United Kingdom is governed by common law and ecclesiastical law which fail to provide essential rights to the clergy to which they should be entitled, notably the right to a fair and public hearing by an independent and impartial tribunal in cases of dispute;
- C. Bearing in mind the responsibilities entrusted to the Reverend Raymond Owen as a Team Rector in the Parish of Hanley, Stoke-on-Trent (UK) and the way in which his tenure of office was terminated in July 1999;
- D. Whereas Council Directive 2000/78 of November 2000 establishes a general framework for equal treatment in employment and occupation, although its coverage of certain types of atypical worker would depend upon definitions resulting from national legislation and implementation;
- E. Whereas the provisions of Council Directive 91/533/EEC do not apply to the clergy in the United Kingdom, although they do apply in certain other EU countries;
- F. Notes, in this context, that directives refer variously to workers, employees and the working population but that no standard definition is provided of these terms; notes also that the range of persons to whom these terms apply would appear to vary between directives and, further, that this range is frequently left to be defined by national law;
- G. Whereas the Church authorities have sought to remove the Reverend Owen and his family from their home which was provided as tied accommodation for the Team Rector of Hanley;

- H. Whereas there are doubts as to whether the rules established by the Archbishop's Council regarding the appointment and duties of Team Rectors have been properly applied in relation to the Reverend Owen;
- I. Whereas there is a clear case for ensuring that the clergy are not at a disadvantage by comparison with other workers where employment rights and avenues of redress are concerned;
1. Calls upon the Church of England to review the way in which decisions were taken which led to the termination of the office of Team Rector in the Parish of Hanley for the Reverend Raymond Owen, and to reconsider their conclusions in the light of the arguments made in this report, notably regarding the rights accorded to the Reverend Owen;
 2. Recognises that Reverend Raymond Owen's situation is unacceptable in terms of the spirit of Article 136 of the Treaty of Rome on improved living and working conditions, of Article 47 of the Charter of Fundamental Rights and Freedoms on the right to a fair and public hearing by an independent and impartial tribunal and appears contrary to Article 6 of the European Convention on Human Rights;
 3. Whereas there is no evidence to suggest that the Reverend Owen acted in any way which, as a result of a fair hearing, would have led to his removal from office;
 4. Whereas there are clear breaches of natural justice and basic human rights in the procedures which were used to justify his removal from office and the attempted eviction of the Reverend Owen from his home;
 5. Regrets that, as highlighted by the Reverend Owen's petition, certain types of working relationships, especially those that are "atypical" in nature, are not covered by the employment protection afforded under European Community law which may mean the individuals concerned have insufficient legal or other recourse against decisions affecting them;
 6. Notes, in this context, that directives refer to different categories of working people (e.g. "workers", "employees" and the "working population") but that no standard definition is provided of these terms; notes also that the range of persons to whom these terms apply would appear to vary between directives and, further, that this range is frequently left to be defined by national law;
 7. Accepts that there may be good grounds for excepting some categories of working people, such as the genuinely self-employed, from the application of certain directives or from certain provisions within them;
 8. Accepts, in particular, that it may not always be appropriate, for constitutional reasons, to afford certain types of workers – such as the clergy and elected representatives – the same *fora* for redress as other economically dependent workers;
 9. Believes, nonetheless, that no worker should be disadvantaged in terms of employment rights, including those to due process, unless this can be objectively justified;

10. Calls upon the Commission to engage in a comprehensive review of its directives in the area of employment, and in particular directive 91/533/EEC, with a view to ensuring that existing rights are extended to the widest possible range of workers, especially those dependent on a single employer or source of income for their livelihood and to make proposals to this effect;
11. Calls, also, on the Commission to bring forward a proposal or proposals to give effect to this and, further, to specify clearly the range of workers covered by any future proposals for legislation;
12. Calls, in particular, for the Commission to engage in constructive dialogue with Member States and for Member States to do so internally in order to find a means of securing for workers with a distinct constitutional status all the employment rights, both substantive and procedural, consonant with that status.
13. Urges all parties to this dispute to resolve their differences in the spirit of reconciliation and understanding which is the way of the Church, and which corresponds to the basic principles on which democracy is founded and preserved within the European Union;
14. Instructs its President to forward this resolution to the Commission and Council and His Grace, the Archbishop of Canterbury.

EXPLANATORY STATEMENT

Introduction.

The Reverend Raymond Owen submitted a petition to the European Parliament in April 2001. The Rev. Owen, through his petition, was appealing against the decision of his Bishop to terminate his tenure as the Team Rector in the parish of Hanley, Stoke on Trent as of July 18, 1999. He had served as Team Rector since January 1991, firstly for a seven year term, then as a result of an extension, for a further 18 months. The petitioner believes that the process which led to the ending of his tenure by the Bishop of Stafford was fundamentally flawed, and that adequate personal safeguards were absent from the review meeting set up to discuss the renewal of the term of office of the Team Rector, which was conducted according to the guidelines laid down in the Code of Recommended Practice for Team and Group Ministries. This is published on the authority of the Standing Committee of the General Synod of the Church of England.

Reverend Owen alleges that not only have his fundamental rights not been respected in the course of the process, but that European Directives have been either breached or not properly applied by the UK authorities. In his petition, he refers in particular to the fact that he has been discriminated against, contrary to Article 13 of the Amsterdam Treaty, and contrary to Articles 48,2 and 112 of the Treaty of Rome. He furthermore claims that Council Directive 91/533/EEC of October 1991 has not been properly incorporated into UK law.

The Committee on Petitions forwarded the Reverend Owen's petition for the Commission to investigate, which it did, and a reply was received by the Committee in December 2001. The Commission failed to identify any breaches of the treaty or of any current EU legislation. They note that Article 13 of the Amsterdam Treaty does not grant rights to individuals, but provides a legal basis for Council Directive 2000/78 of November 2000 establishing a general framework for equal treatment in employment and occupation. This however, will only come into effect at the end of 2003.

The Commission considers that Council Directive 91/533/EEC applies to every paid employee having a contract or employment relationship defined by the law in force in a member state and/or governed by the law in force in a member state. It does not however provide an EU definition of an employee, which is left to national employment legislation. Where, says the Commission, clergymen do not have the status of employees according to national law the provisions of the Directive cannot apply.

In his statement to the Committee on January 24th 2002, Reverend Owen pointed to the steady erosion of the clergy's fundamental employment rights since the war. He said "the ancient protection of the freehold office is being removed, and many clergy are being licensed...as members of team ministries, where licences can be removed at any time". Unable to appeal before employment tribunals in the UK, he took his case for judicial review by the courts but failed. The Church authorities have sought a possession order for his tied house, the rectory, and a counter-claim before the courts is pending based on Articles 6&8 of the European Convention on Human Rights.

The position of Reverend Owen remains unresolved at this point in time, yet the Committee on Petitions believed that his case warranted a report to Parliament because of the principles involved in the case, and because of the apparent unreasonableness of the procedures through which he and his family, and arguably his parishioners, have suffered. One would have

expected more care and consideration from the established Church of England.

Principles.

English law has contrasted the position of an “office holder”, such as a parish priest, to that of an “employee”. The law does not afford them the same protection as regards their employment.

The Church of England, through the Archbishops’ Council has gone to the trouble to try to explain the distinction in a note providing the legal background to this case, as they see it. Most senior clergy of the Church of England, they state, and most clergy serving in parishes serve solely as office holders and do not enter into any contract of employment or otherwise for their services. They provide case law in evidence.

But they unintentionally or otherwise, concede an important but relevant point to this case when they state the following: “The degree of security of tenure that a member of the clergy who is an office holder enjoys is governed by ecclesiastical law, which...is part of English law, and depends on the post he or she holds. Senior clergy such as bishops, archdeacons and deans and residential canons of cathedrals and rectors or vicars of parishes, enjoy a very high security of tenure, subject to factors explained in paragraph 5 below. (To which we shall return) They are subject to a mandatory retiring age, normally age 70, and can be removed from office as a result of disciplinary proceedings of a judicial nature..., on grounds of ill health..., or in some cases (subject to financial payments) in the case of breakdown of relations in a parish or abolition of the relevant office. Other clergy - such as priests in charge or curates - may enjoy a lesser degree of security of tenure, but where a member of the clergy who is appointed for a fixed term is removed from office during the term, whether after disciplinary proceedings or otherwise, *this is subject to a right of appeal.*”

The same document defines a team ministry (governed by the Pastoral Measure 1983, now as amended by the Team and Group Ministries Measure 1995) where two or more priests collaborate to provide pastoral care for a particular area (possibly with the assistance of other clergy or lay people). The team includes the team rector, *who is responsible for the leadership of the team*, and one or more team vicars.

Paragraph 5 of the Archbishops’ Council document makes clear that the 1983 Measure allowed the *Team Rector to serve an indefinite period* on his appointment, under the conditions mentioned above, in contrast to the team vicar who would be appointed for a specified number of years, which will be seven years unless some other period is specified for the particular team. The Reverend Owen was appointed Team Rector in 1991 under the terms of the 1983 Measure. It was in 1995 that a new Measure provided that all Team Rectors as well as Team Vicars, *appointed after the measure came into force*, would hold office for a specified term of years.

Provisional conclusions.

A number of anomalies appear; or a number of hypotheses can be drawn.

The Reverend Owen was appointed an office holder under the 1983 Measure, which provides

for indefinite tenure for the Team Rector, in which case there were no grounds for his removal. If his removal was sought, financial compensation should have been agreed.

If he was appointed Team Rector in 1991 under the 1983 Measure, but a specific fixed term of seven years was agreed, then his rights and duties were governed by a decision anomalous to a contract of employment or a legally binding relationship, in addition to his status as office holder. This is reinforced by the recognition that his duties included leadership of the team. He was not given a right of appeal against the decision of the Bishop, but had to seek Judicial review.

Either way, an injustice may have been seen to have occurred.

The Reverend Owen has provided a number of documents attesting to his certificate of pay, income tax and NI contributions from the Church Commissioners for England.

He has provided contrasting accounts of the Review meeting which led to the decision of the Bishop of Stafford, and the least that can be said of the reports of the meeting is that they clearly represent a one-sided testimony where the Reverend Owen had no right of defence.

His fundamental rights thus appear to have been denied not only by the peculiar procedures which were used (which in addition do not seem to have respected the spirit of the Church of England's Code of Recommended Practice,) but also by the fact that his case appears to fall entirely outside of either English or European Law. If, the fixed nature of his contract as Team Leader is however accepted by the Church authorities even though it lies outside of the provisions of the 1983 Measure, and therefore a legally binding contract is recognised, there may be grounds for considering that he be covered as an employee of the Church and afforded the protection of the law after all, both English and European.

The Committee might wish to take this discussion further on the basis of such considerations and obtain the further advice from the Committee on Employment and Social Affairs in the form of an opinion.

19 December 2001

NOTICE TO MEMBERS

Petition 395/2001 by Raymond Owen (British), on alleged discrimination with regard to his dismissal

1. Summary of petition

The petitioner, a Church of England clergyman, indicates that he has been dismissed by his bishop which has caused him serious financial and family problems since he has also lost his entitlement to the housing to which he was entitled by virtue of his office. He maintains that he has been the victim of discrimination because of his religion, nationality and country of employment since, had he been employed in Sweden, Denmark or Finland or certain other Member States he could have appealed to the courts, whereas the House of Lords has rejected his petition. He argues that this constitutes an infringement of Community law by the United Kingdom which has failed to implement under its national law Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship.

Information

- The petitioner contacted Roy Perry and Glyn Ford, MEPs.

2. Admissibility

Declared admissible on 19 September 2001. Information requested from Commission under Rule 175(3).

3. Commission reply, received on 13 December 2001

Facts

Reverend Raymond Owen, priest in the Church of England, was in January 1999 subject of a review for the renewal of tenure as the Team Rector of the Parish of Hanley, in the Diocese of Lichfield.

Following the proposal of the review panel, the Bishop informed the petitioner that his tenure of office would end on 18 July 1999.

According to the petitioner, the review process presented many procedural anomalies. He therefore took the case to the High Court to seek leave to bring an application to judicial review of the Bishop's decision. The application was refused, although the three judges criticised the handling of the review process. An appeal to the House of Lords was refused, as

well as a petition.

The petitioner claims that he has been discriminated against on the basis of his religion, nationality and country of work. He also argues that the United Kingdom failed to correctly implement the Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship¹.

Appreciation

Concerning the alleged discrimination

With regard to Article 13, it is important to underline that this provision as such does not grant individuals any right which can be enforced before national courts or the European Court of Justice.

This Article constitutes the legal base for a set of legal instruments aimed at combating discrimination, notably Council Directive 2000/78 of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

This Directive establishes a general principle of prohibition of any direct or indirect discrimination based, *inter alia*, on religion or belief. Member States must adopt the laws, regulations and administrative provisions necessary to comply with the Directive by 2 December 2003 at the latest. It is therefore not applicable to events which took place before that date.

Concerning the application of directive 91/533/EEC

Directive 91/533/EEC applies *to every paid employee having a contract or employment relationship defined by the law in force in a Member State and/or governed by the law in force in a Member State*.

The aim of this Directive is to provide employees with improved protection against possible infringements of their rights and to create greater transparency on the labour market. To this end, the directive states that every employee must be given a document containing information on the essential aspects of the contract or employment relationship.

Although the Directive seeks to encourage substantial convergence of labour law in the Member States, it does not include a Community definition of "employee", "contract of employment" or "employment relationship". It therefore applies only to persons who, in the Member States, are protected as employees under national employment law.

Some divergences might exist in different Member States concerning the coverage of certain categories of persons, like clergymen, by labour law. Wherever clergymen do not have the status of employees according to national law, the provisions of Directive 91/533/EEC do not apply to them. This is precisely the case in the United Kingdom. Such absence of total harmonisation do not constitute discrimination on grounds of nationality under Community law.

Conclusions

On the basis of the information presented above, the Commission services consider that this petition could be closed.'

¹ OJ L 288, 18.10.1991, p. 32.

1 October 2002

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS

for the Committee on Petitions

on the petition declared admissible on discrimination towards priests in the UK by Reverend Owen (Petition 395/2001) (2002/2209 (INI))

Draftsperson: Elspeth Attwooll

PROCEDURE

The Committee on Employment and Social Affairs appointed Elspeth Attwooll draftsperson at its meeting of 19 June 2002.

It considered the draft opinion at its meetings of 11 September 2002 and 30 September 2002.

At the latter meeting it adopted the following conclusions unanimously.

The following were present for the vote: Theodorus J.J. Bouwman, chairman; Marie-Hélène Gillig, vice-chairperson; Elspeth Attwooll, draftsperson; Jan Andersson, Regina Bastos, Ieke van den Burg, Chantal Cauquil (for Sylviane H. Ainardi), Alejandro Cercas, Luigi Cocilovo, Harald Ettl, Carlo Fatuzzo, Ilda Figueiredo, Fiorella Ghilardotti (for Enrico Boselli), Anne-Karin Glase, Roger Helmer, Stephen Hughes, Anna Karamanou, Dieter-Lebrecht Koch (for Philip Bushill-Matthews), Arlette Laguiller, Jean Lambert, Raffaele Lombardo, Thomas Mann, Mario Mantovani, Paolo Pastorelli (for Rodi Kratsa-Tsagaropoulou), Bartho Pronk, Herman Schmid, Anne E.M. Van Lancker and Barbara Weiler.

CONCLUSIONS

The Committee on Employment and Social Affairs calls on the Committee on Petitions, as the committee responsible, to incorporate the following points in its motion for a resolution: Conclusion 1

Regrets that, as highlighted by the Reverend Owen's petition, certain types of working relationships, especially those that are "atypical" in nature, are not covered by the employment protection afforded under European Community law which may mean the individuals concerned have insufficient legal or other recourse against decisions affecting them;

Conclusion 2

Notes, in this context, that directives refer to different categories of working people (e.g. "workers", "employees" and the "working population") but that no standard definition is provided of these terms; notes also that the range of persons to whom these terms apply would appear to vary between directives and, further, that this range is frequently left to be defined by national law;

Conclusion 3

Accepts that there may be good grounds for excepting some categories of working people, such as the genuinely self-employed, from the application of certain directives or from certain provisions within them;

Conclusion 4

Accepts, in particular, that it may not always be appropriate, for constitutional reasons, to afford certain types of workers – such as the clergy and elected representatives – the same *fora* for redress as other economically dependent workers;

Conclusion 5

Believes, nonetheless, that no worker should be disadvantaged in terms of employment rights, including those to due process, unless this can be objectively justified;

Conclusion 6

Calls, therefore, on the Commission to engage in a comprehensive review of its directives in the area of employment with a view to ensuring that existing rights are extended to the widest possible range of workers;

Conclusion 7

Calls, also, on the Commission to bring forward a proposal or proposals to give effect to this and, further, to specify clearly the range of workers covered by any future proposals for legislation;

Conclusion 8

Calls, in particular, for the Commission to engage in constructive dialogue with Member States and for Member States to do so internally in order to find a means of securing for

workers with a distinct constitutional status all the employment rights, both substantive and procedural, consonant with that status.