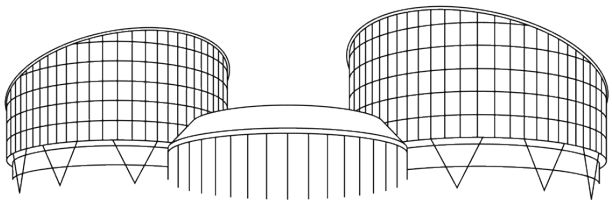

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

Application no. 59253/11
THE POA and Others
against the United Kingdom
lodged on 14 September 2011

STATEMENT OF FACTS

THE FACTS

The first applicant, the Professional Trades Union for Prison, Correctional and Secure Psychiatric Workers (the "POA") is an independent trade union which represents prison officers working in the public and private sector in the United Kingdom. The second and third applicants, Mrs Jacqueline Bates and Mr Adrian Watts, are British nationals who were born on 1 December 1960 and 7 April 1965 and live in Lancashire and the West Midlands respectively. The second and third applicants are prison officers working in the public sector. The applicants represented before the Court by Ms V Phillips, a lawyer practising in London.

A. The circumstances of the case

The facts of the case, as submitted by the applicants, may be summarised as follows.

The POA represents prison officers in the public and private sectors. As of 1 August 2011 the POA had 33,835 members of whom 881 were in the private sector.

In the United Kingdom the management of prisons is governed by Her Majesty's Prison Service, a branch of the National Offender Management Service ("NOMS") which is itself a part of the Ministry of Justice. The Secretary of State for Justice is the government minister responsible for all aspects of criminal justice including the prison service. NOMS has entered into a number of contracts for the provision of prison services by private companies.

From 1938 industrial disputes in the prison service have been regulated by a formal joint committee of state management and staff representatives

known as the Whitely Council. There is no binding dispute settlement mechanism available where agreement is not reached.

Under domestic law, since 1993, trade unions have been prohibited from inducing public and private sector prison officers to take industrial action or to commit a breach of discipline (see *Home Office v. Evans*, 19 May 1993, unreported; Criminal Justice and Public Order Act 2004, section 127).

The pay of public sector prison officers in England and Wales and Northern Ireland is regulated through the Government appointed Prison Services Pay Review Body ("PSPRB"), created in April 2001. The PSPRB has no jurisdiction to provide pay reviews for private sector prison establishments. Pay and employment matters are the sole responsibility of the private employers. However, the Government have stated that they have sought and received assurances for each of the private sector companies currently operational that appropriate negotiation and dispute resolution procedures are in place. The applicants claim that there is no independent verification or evidence supporting the fulfilment of these undertakings.

The PSPRB has the power simply to recommend pay rates to the Secretary of State for Justice who has no duty to accept its recommendations (Prison Service (Pay Review Body) Regulations 2001). The members of the PSPRB are appointed by the Public Appointments department of the Ministry of Justice. The involvement of trade unions in the activities of the PSPRB is limited to submitting evidence and making representations (Regulation 5, Prison Service (Pay Review Body) Regulations 2001). By contrast, the Government are entitled to give directions, in the form of a "remit letter", to the PSPRB as to the considerations to which they are to have regard (Regulation 4, Prison Service (Pay Review Body) Regulations 2001). The Government have repeatedly exercised their power to issue remit letters. In addition, the Chair of the PSPRB meets with the Chancellor of the Exchequer or the Chief Secretary of the Treasury prior to the start of the pay round and before the submission of evidence to discuss the general economic context.

In the field of non-pay related disputes in April 2001 the POA and prison service entered into the Industrial Relations Procedure Agreement ("IRPA"). The IRPA contained a legally binding prohibition on strike action on the part of the union without equivalent binding obligations on the part of the State. The POA believed that the prison service persistently failed to regard the IRPA as applicable to disputes which the POA felt fell within its scope. On 27 January 2004 the POA served notice of their intention to withdraw from the IRPA, effective one year later.

Following the termination of the IRPA the Government announced that they intended to repeal the statutory prohibition on strike action. This intention was expressed to be conditional upon the existence of a binding Industrial Relations Procedure. On 11 November 2004 the Joint Industrial Relations Procedure Agreement ("JIRPA") was concluded. Like the IRPA, the JIRPA contained a legally binding prohibition on strike action but no State equivalent obligations. Once the agreement was in place the Government disapplied, but did not repeal, the statutory strike prohibition. Again, after repeated disputes concerning the scope of the Agreement, the POA gave notice to withdraw from the JIRPA on 8 May 2007, effective on 8 May 2008. The Government responded by introducing legislation

empowering the suspension or reviving of the statutory strike prohibition (section 127A, Criminal Justice and Public Order Act 1994 inserted by section 139 of the Criminal Justice and Immigration Act 2008).

On 19 February 2008 the POA special delegates' conference adopted a motion not to accept any further agreement containing a no-strike obligation. In response the Government stated that it was extremely unlikely that a voluntary agreement would be reached in the foreseeable future (*Fifteenth Report of the Joint Committee on Human Rights 2008*, para. 2.54).

Today, the National Disputes Resolution Agreement, dated 18 February 2011, provides for binding arbitration of certain disputes. However, certain crucial matters including pay are expressly excluded from the scope of that agreement. By contrast, in Scotland there exists a Voluntary Industrial Relations Agreement which provides that, in the absence of agreement, pay disputes are to be resolved by binding independent arbitration.

On 20 August 2004 the POA complained to the Freedom of Association Committee of the International Labour Organisation ("ILO") that the statutory prohibition of industrial action by prison officers constituted a breach of the right to strike under ILO Convention no. 87. The Committee has considered the applicants' complaint on four occasions (see *336th Report of the Committee on Freedom of Association*; *338th Report of the Committee on Freedom of Association*; *343rd Report of the Committee on Freedom of Association*; and *359th Report of the Committee on Freedom of Association*). The Committee's responses are set out in Part C below.

B. Relevant domestic law and practice

Under the law of the United Kingdom a worker who participates in industrial action will be acting in breach of his contract of employment. Workers who strike are therefore exposed to penalties which employers may lawfully impose. Penalties may include refusing to pay wages, suing for damages and even dismissal. In *Metrobus Ltd v Unite the Union* [2009] IRLR 851, para 118 Maurice Kay LJ usefully summarised the status of the right to strike in English law:

> "In this country, the right to strike has never been much more than a slogan or a legal metaphor. Such a right has not been bestowed by statute. What has happened is that, since the Trade Disputes Act 1906, legislation has provided limited immunities from liability in tort. At times the immunities have been widened, at other times they have been narrowed. Outside the scope of the immunities, the rigour of the common law applies in the form of breach of contract on the part of the strikers and the economic torts as regards the organisers and their union. Indeed, even now the conventional analysis at common law is that by going on strike employees commit repudiatory breaches of their contracts of employment. ... No statutory immunity attaches to such individual breaches, although those who induce them are protected and, since 1999, the dismissal of those taking part in official, but not unofficial, industrial action will in defined circumstances constitute unfair dismissal. ... It helps to keep this history and conceptual framework in mind when construing and applying the detailed provisions of the statute.

The Trade Union and Labour Relations (Consolidation) Act 1992 states *inter alia*:

"**219.— Protection from certain tort liabilities.**

(1) An act done by a person in contemplation or furtherance of a trade dispute is not actionable in tort on the ground only—

(a) that it induces another person to break a contract or interferes or induces another person to interfere with its performance, or

(b) that it consists in his threatening that a contract (whether one to which he is a party or not) will be broken or its performance interfered with, or that he will induce another person to break a contract or interfere with its performance.

(2) An agreement or combination by two or more persons to do or procure the doing of an act in contemplation or furtherance of a trade dispute is not actionable in tort if the act is one which if done without any such agreement or combination would not be actionable in tort.

...

244.— Meaning of "trade dispute" in Part V.

(1) In this Part a "trade dispute" means a dispute between workers and their employer which relates wholly or mainly to one or more of the following—

...

280.— Police service.

(1) In this Act "employee" or "worker" does not include a person in police service; and the provisions of sections 137 and 138 (rights in relation to trade union membership: access to employment) do not apply in relation to police service.

(2) "Police service" means service as a member of any constabulary maintained by virtue of an enactment, or in any other capacity by virtue of which a person has the powers or privileges of a constable."

In *Home Office v. Evans*, 18 May 1993, unreported, May J held that since prison officers had the "powers of a constable" they were not "workers" within the definition of section 280 of the Trade Union and Labour Relations (Consolidation) Act 1992. It followed that prison officers could not, as a matter of law, be parties to a "trade dispute" between workers and employers:

"... It is, in my judgment, quite plain that trade disputes between workers and employers and workers are defined to exclude persons in police service and that persons in police service is defined to include service in any other capacity where the person has the powers and privileges of a constable. I can quite see that on the ground prison officers may and do not exercise a very large number of the powers of police officers but that does not alter the fact that there is a statutory provision of the powers and privileges of a constable and that this could and should be taken into account when considering whether Section 280 which removes prison officers from the definition of worker."

Consequently, prison officers lost any statutory protection from liability for engaging in official industrial action. Further, under the 1992 Act trade unions can only consist of workers. Accordingly, the POA was no longer a trade union but merely an unincorporated association.

Following *Evans v. Home Office*, cited above, the Government introduced the Criminal Justice and Public Order Act 1994 which provides as relevant:

"**126.— Service in England and Wales and Northern Ireland.**

(1) The relevant employment legislation shall have effect as if an individual who as a member of the prison service acts in a capacity in which he has the powers or

privileges of a constable were not, by virtue of his so having those powers or privileges, to be regarded as in police service for the purposes of any provision of that legislation.

(2) In this section "the relevant employment legislation" means—

(a) the Trade Union and Labour Relations (Consolidation) Act 1992 and the Employment Rights Act 1996; and

(b) the Industrial Relations (Northern Ireland) Order 1976; the Industrial Relations (No. 2) (Northern Ireland) Order 1976 and the Industrial Relations (Northern Ireland) Order 1992.

(3) For the purposes of this section a person is a member of the prison service if he is an individual holding a post to which he has been appointed for the purposes of section 7 of the Prison Act 1952 or under section 2(2) of the Prison Act (Northern Ireland) 1953 (appointment of prison staff).

(4) Except for the purpose of validating anything that would have been a contravention of section 127(1) below if it had been in force, subsection (1) above, so far as it relates to the question whether an organisation consisting wholly or mainly of members of the prison service is a trade union, shall be deemed always to have had effect and to have applied, in relation to times when provisions of the relevant employment legislation were not in force, to the corresponding legislation then in force.

(5) Subsection (6) below shall apply where—

(a) the certificate of independence of any organisation has been cancelled, at any time before the passing of this Act, in consequence of the removal of the name of that organisation from a list of trade unions kept under provisions of the relevant employment legislation; but

(b) it appears to the Certification Officer that the organisation would have remained on the list, and that the certificate would have remained in force, had that legislation had effect at and after that time in accordance with subsection (1) above.

(6) Where this subsection applies—

(a) the Certification Officer shall restore the name to the list and delete from his records any entry relating to the cancellation of the certificate;

(b) the removal of the name from the list, the making of the deleted entry and the cancellation of the certificate shall be deemed never to have occurred; and

(c) the organisation shall accordingly be deemed, for the purposes for which it is treated by virtue of subsection (4) above as having been a trade union, to have been independent throughout the period between the cancellation of the certificate and the deletion of the entry relating to that cancellation.

127.— Inducements to withhold services or to indiscipline.

(1) A person contravenes this subsection if he induces a prison officer—

(a) to take (or continue to take) any industrial action;

(b) to commit a breach of discipline.

(1A) In subsection (1) "industrial action" means—

(a) the withholding of services as a prison officer; or

(b) any action that would be likely to put at risk the safety of any person (whether a prisoner, a person working at or visiting a prison, a person working with prisoners or a member of the public).

(2) The obligation not to contravene subsection (1) above shall be a duty owed to the Secretary of State or, in Scotland, to the Scottish Ministers or, in Northern Ireland, to the Department of Justice .

(3) Without prejudice to the right of the Secretary of State or, in Scotland, to the Scottish Ministers or, in Northern Ireland, of the Department of Justice, by virtue of the preceding provisions of this section, to bring civil proceedings in respect of any apprehended contravention of subsection (1) above, any breach of the duty mentioned in subsection (2) above which causes the Secretary of State or, in Scotland, to the Scottish Ministers or, in Northern Ireland, the Department of Justice to sustain loss or damage shall be actionable, at his suit or instance, against the person in breach.

(4) In this section "prison officer" means any individual who—

(a) holds any post, otherwise than as a chaplain or assistant chaplain or as a medical officer, to which he has been appointed ... under section 2(2) of the Prison Act (Northern Ireland) 1953 (appointment of prison staff), or

(aa) holds any post, other than as a chaplain or assistant chaplain, to which he has been appointed for the purposes of section 7 of the Prison Act 1952 (appointment of prison staff),

(c) is a custody officer within the meaning of Part I of this Act or a prisoner custody officer, within the meaning of Part IV of the Criminal Justice Act 1991 or Chapter II or III of this Part.

(5) The reference in subsection (1) above to a breach of discipline by a prison officer is a reference to a failure by a prison officer to perform any duty imposed on him by the prison rules or any code of discipline having effect under those rules or any other contravention by a prison officer of those rules or any such code.

(6) In subsection (5) above 'the prison rules' means any rules for the time being in force under section 47 of the Prison Act 1952, section 39 of the Prisons (Scotland) Act 1989 or section 13 of the Prison Act (Northern Ireland) 1953 (prison rules).

(7) This section shall be disregarded in determining for the purposes of any of the relevant employment legislation whether any trade union is an independent trade union.

(8) Nothing in the relevant employment legislation shall affect the rights of the Secretary of State or in Scotland, the Scottish Ministers or, in Northern Ireland, the Department of Justice by virtue of this section.

(9) In this section 'the relevant employment legislation' has the same meaning as in section 126 above.

128.— Pay and related conditions.

(1) The Secretary of State may by regulations provide for the establishment, maintenance and operation of procedures for the determination from time to time of—

(a) the rates of pay and allowances to be applied to the prison service; and

(b) such other terms and conditions of employment in that service as may appear to him to fall to be determined in association with the determination of rates of pay and allowances.

(2) Before making any regulations under this section the Secretary of State shall consult with such organisations appearing to him to be representative of persons working in the prison service and with such other persons as he thinks fit.

(3) The power to make regulations under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Regulations under this section may—

(a) provide for determinations with respect to matters to which the regulations relate to be made wholly or partly by reference to such factors, and the opinion or recommendations of such persons, as may be specified or described in the regulations;

(b) authorise the matters considered and determined in pursuance of the regulations to include matters applicable to times and periods before they are considered or determined;

(c) make such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit; and

(d) make different provision for different cases.

(5) For the purposes of this section, the prison service comprises all the individuals who:

(a) hold any post, other than as chaplain or assistant chaplain, to which they have been appointed for the purposes of section 7 of the Prison Act 1952;

(b) hold any post, otherwise than as a medical officer, to which those individuals have been appointed for the purposes of section 3(1A) of the Prisons (Scotland) Act 1989."

The Prison Service (Pay Review Body) Regulations 2001, which entered into force on 17 April 2001, provide as relevant:

"**Establishment of the Pay Review Body**

2. The Prime Minister shall appoint a Pay Review Body to examine and report on such matters relating to the rates of pay and allowances to be applied to the prison service in England and Wales, and Northern Ireland, as may from time to time be referred to them by the Secretary of State.

...

Directions

4. With respect to matters referred to the Pay Review Board by him, the Secretary of State may give directions to the Pay Review Body as to the considerations to which they are to have regard and as to the time within which they are to report; and any such directions may be varied or revoked by further directions under these Regulations.

Notice

5. Where a matter has been referred to the Pay Review Body, they shall give notice of the matter and of any relevant direction to such organisations appearing to them to be representative of persons working in the prison service in England and Wales, and Northern Ireland, and shall afford every such organisation a reasonable opportunity of submitting evidence and representations on the issues arising,

Report

6. Where a matter has been referred to the Pay Review Body, their report shall contain their recommendations on that matter and such other advice relating to that matter as they think fit."

C. Relevant international law and practice

The United Kingdom is one of 43 Contracting States which have ratified the European Social Charter 1961, which was revised in 1996. Article 5 of the Social Charter provides for the following "right to organise":

"With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom ..."

Article 6 of the Charter is headed "The right to bargain collectively" and provides:

> "With a view to ensuring the effective exercise of the right to bargain collectively, the Contracting Parties undertake:
>
> (1) to promote joint consultation between workers and employers;
>
> (2) to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
>
> (3) to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;
>
> and recognise:
>
> (4) the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into."

Article 31 of the 1961 Charter (Article G(1) of the revised Charter) provides:

> 1. The rights and principles set forth in Part 1 when effectively realised, and their effective exercise provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals.
>
> 2. The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed.

The European Social Rights Committee does not appear to have specifically considered the situation in the United Kingdom regarding sanctions falling short of dismissal. However, in *Conclusions I* (1969/70), at 38-39, the European Social Rights Committee issued a statement on the interpretation of Article 6(4) of the Charter. Considering the compatibility with the Charter of a rule according to which a strike terminates the contract of employment, the Committee held:

> "In principle the Committee takes the view that this is not compatible with the respect of the right to strike as envisaged by the Charter. Whether in a given case a rule of this kind constitutes a violation of the Charter is, however, a question which should not be answered in the abstract, but in the light of the consequences which the legislation and industrial practice of a given country attaches to the termination and resumption of the employment relationship. If, in practice, those participating in a strike are, after its termination, fully reinstated and if their previously acquired rights (e.g. concerning pensions, holidays and seniority) are not impaired, the formal termination of the employment contract does not, in the opinion of the Committee, constitute a violation of the Charter."

The International Labour Organisation (ILO) has adopted two conventions of particular relevance; Freedom of Association and Protection of the Right to Organise Convention, 1948 (no. 87) and Right to Organise and Collective Bargaining Convention, 1949 (no. 98). Both Conventions have been ratified by 43 Contracting States including the United Kingdom. The United Kingdom ratified Convention 87 in 1949 and Convention 98 in 1950. Neither Convention 87 nor 98 expressly provide for a right to strike.

However, the ILO has considered that Convention 87 implicitly includes the right to strike as an essential means by which trade unions can protect the interests of their members (see *Freedom of Association and Collective Bargaining: General Survey by the Committee of Experts on the Application of Conventions and Recommendations 1994*, §§ 136-141, 148):

> "The promotion and defence of workers' interests presupposes means of action by which the latter can bring pressure to bear in order to have their demands met. In a traditional economic relationship, one of the means of pressure available to workers is to suspend their services by temporarily withholding their labour, according to various methods, thus inflicting a cost on the employer in order to gain concessions...the right to strike is one of the essential means available to workers and their organizations to promote their economic and social interests."

Convention no. 87 provides, *inter alia*:

> "Part I. Freedom of Association
>
> Article 1
>
> Each Member of the International Labour Organisation for which this Convention is in force undertakes to give effect to the following provisions.
>
> Article 2
>
> Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.
>
> Article 3
>
> Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.
>
> ...
>
> Article 8
>
> 2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.
>
> ...
>
> Article 10
>
> In this Convention the term ***organisation*** means any organisation of workers or of employers for furthering and defending the interests of workers or of employers.
>
> Part II. Protection of the Right to Organise
>
> Article 11
>
> Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise."

Convention no. 98 provides, *inter alia*:

> "Article 1
>
> 1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
>
> 2. Such protection shall apply more particularly in respect of acts calculated to –
>
> (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

(b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

In response to the applicants' complaint, the ILO Committee on Freedom of Association stated in its first report (*336th Report of the Committee on Freedom of Association*, § 722):

"767. Considering that the prison service constitutes an essential service in the strict sense of the term and that prison officers, as well as prisoner custody officers to the extent that they perform the same functions, exercise authority in the name of the State, the Committee is of the view that it is in conformity with freedom of association principles to restrict or prohibit the right to take industrial action in the prison service."

...

777. In light of the foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) Noting that the prison service is an essential service in the strict sense of the term where the right to strike can be restricted or even prohibited, the Committee requests the Government to take the necessary measures so as to establish appropriate mechanisms in respect of prisoner custody officers in private sector companies to which certain of the functions of the prison have been contracted out so as to compensate them for the limitation of their right to strike.

(b) The Committee requests the Government to initiate consultations with the complainant and the prison service with a view to improving the current mechanism for the determination of prison officers' pay in England, Wales and Northern Ireland. In particular, the Committee requests the Government to continue to ensure that:

(i) the awards of the Prison Service Pay Review Body are binding on the parties and may be departed from only in exceptional circumstances; and

(ii) the members of the Prison Service Pay Review Body are independent and impartial, are appointed on the basis of specific guidance or criteria and have the confidence of all parties concerned.

(c) The Committee requests to be kept informed of developments in respect of the above.

In its 359th Report the ILO Committee on Freedom of Association stated (*359th Report of the Committee on Freedom of Association*, § 159):

"181. With regard to the binding nature of PSPRB awards, the Committee notes the Government's statement that matters of public finances are for the Government to decide and that departures from PSPRB recommendations might on occasion become necessary to ensure acceptable award levels. The Committee recalls that the reservation of budgetary powers to the legislative authority should not have the effect of preventing compliance with the terms of awards handed own by a compulsory arbitration tribunal. Any departure from this practice would detract from the effective application of the principle that, where strikes by workers in essential services are prohibited or restricted, such prohibition should be accompanied by the existence of conciliation procedures and of impartial arbitration machinery, the awards of which are binding on both parties."

Two European Union instruments specifically address the right to strike. The Social Charter of the Fundamental Social Rights of Workers states *inter alia*:

"11. Employers and workers of the European Community shall have the right of association in order to constitute professional organisations or trade unions of their choice for the defence of their economic and social interests.

12. Employers or employers' organisations, on the one hand, and workers' organisations, on the other, shall have the right to negotiate and conclude collective agreements under the conditions laid down by national legislation and practice.

13. The right to resort to collective action in the event of a conflict of interests shall include the right to strike subject to the obligations arising under national regulations and collective agreements."

The Charter of Fundamental Rights of the European Union also makes provision for trade union rights:

"Article 12 – Freedom of assembly and of association

Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.

...

Article 28 – Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action."

Lastly, Article 8 § 1 of the International Covenant on Economic, Social and Cultural Rights 1966 expressly recognises the right to strike:

"1. The States Parties to the present Convention undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organisation concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade union organisations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country;"

COMPLAINTS

The applicants complain under Article 11 of the Convention that the United Kingdom's prohibition on prison officers' right to take industrial action violates their freedom of association. The first applicant specifically complains that the prohibition violates its right to call or support industrial action by prison officers. The second and third applicants specifically complain that the prohibition violates, *inter alia*, their rights to belong to a trade union for the protection of their interests and their right to free collective bargaining over pay.

QUESTIONS TO THE PARTIES

1. Can the applicants claim to be victims of any violation of Article 11 of the Convention?

2. Have they exhausted domestic remedies?

3. In the event that the application is admissible, can it be said that the applicants' rights to freedom of association are sufficiently protected under domestic law for the purposes of Article 11 of the Convention?