

DTI Consultation	ECHR judgement in the case of ASLEF vs. UK case – implications for trade union law
Response to consultation	University and College Union

Introduction

The European Court of Human Rights February 2007 judgement in ASLEF vs. UK was a decision welcomed by UCU. We welcomed its decision that ASLEF's right to freedom of association under Article 11 of the European Convention on Human Rights, had been violated by section 174 of the Trade Union and Labour Relations Act 1992 (.). This decision in turn followed decisions by an ET and the EAT that Section 174 TULR(C)A 1992 had made its expulsion of an ASLEF member on the grounds of his membership of the British National Party unlawful.

The DTI has set out in its subsequent limited consultation document two options for legislative amendment to reflect the ECHR ruling.

The two options by the DTI consultation are:

- Option A - no explicit reference in Section 174 TUL(C)A to conduct relating to political party membership or activities or
- Option B - retain an explicit reference in Section 174 TUL(C)A to conduct relating to political party membership or activities but in an amended form).

This response from UCU strongly prefers Option A, but also explains why we believe the Government should go further than the two options we are invited to consider.

Name: Roger Kline

Organisation: University and College Union

Position: Head of Equality and Employment Rights

Status: Trade union representing 114,000 lecturers in Further & Higher Education

Address: 27 Britannia Street, London WC1X 9JP

Email: rkline@ucu.org.uk

Context

ASLEF expelled Mr Lee, the BNP member and councillor in question, on the grounds that his membership of the BNP was incompatible with his membership of ASLEF that he was likely to bring the union into disrepute and that he was opposed to the objects of the union.

Both the ET and then the EAT ruled in favour of Mr Lee's claim that ASLEF's expulsion contravened section 174 TULR(C)A.

UCU, in common with many trade unions has included a commitment to equality and an opposition to discrimination, alongside opposition to racist and fascist organisations, in its rules and aims, and in further policy decisions. In particular UCU's Rules state that:

"2.5. To actively oppose all forms of harassment, prejudice and unfair discrimination whether on the grounds of sex, race, ethnic or national origin, religion, colour, class, caring responsibilities, marital status, sexuality, disability, age or other status or personal characteristic." (2.5)

and

"All members and student members have an obligation to abide by the Rules of the University and College Union and shall refrain from conduct detrimental to the interests of the Union, from any breach of these Rules, Standing orders or directions (properly made in accordance with these Rules or Standing orders) and from all forms of harassment, prejudice and unfair discrimination whether on the grounds of sex, race, ethnic or national origin, religion, colour, class, caring responsibilities, marital status, sexuality, disability, age or other status or personal characteristic." (6.1)

It is no surprise therefore that UCU has followed the ASLEF vs. UK case closely.

The ECHR did not agree with the EAT. In reaching its decision that section 174 TULR(C)A breached ASLEF's own right to freedom of association under Article 11 ECHR, the court stated:

"The right to form trade unions involves, for example, the right of trade unions to draw up their own rules and to administer their own affairs."

The ECHR stated that this includes the right to choose its own members, a right that includes the right of a union to decide, in accordance with its rules, issues of admission and expulsion from the union. Whilst the ECHR went on to say that the fair and proper treatment of minorities must be achieved and that dominant positions must not be abused, it said a proper balance must be achieved between the rights of individuals and those of a trade union and but that this was not achieved by section 174 TULR(C)A.

Instead the Court found that ASLEF's rights as a trade union had been violated and that such violation could not be justified under Article 11 ECHR, especially as Mr Lee had suffered no detriment through expulsion.

The Government in the current consultation document accepts that the Court's judgement requires section 174 TURL(C)A to be amended, notwithstanding the initial amendment of the Act introduced after the EAT ruled on Mr Lee's initial expulsion. Unfortunately the Employment Relations Act 2004 introduced complex rules regulating expulsion from a union which do not address the ECHR view that membership of the BNP alone, not additional evidence of activities contrary to the union's rules and aims, is sufficient to justify expulsion.

Specific questions

The DTI asks that those responding to the consultation document to address two questions in particular:

Question 1.

What is your assessment of the Court's judgement and do you agree with the Government's decision to respond to the judgement by adopting either Option A or Option B?

UCU response. No, we believe the decision warrants a wider consideration of a number of unnecessary and onerous restrictions on the ability of a union to regulate its membership or engage in certain activities. Moreover we believe that section 174 TULR(C)A should be repealed in its entirety not least as we believe its other provisions, notably those preventing trade unions disciplining members who refuse to join industrial action, are in breach of European Social Charter Article 5 and ILO Convention 87.

Question 2. Which Option (either A or B) do you prefer?

UCU response. We strongly prefer Option A not least since Option B would introduce further complex and unnecessary regulation on this issue. Members have substantial protection from other sources, not least the ability to take legal action should a union not follow its own rules in expelling a member

Summary

UCU has held for some time, as have colleagues in other unions, that there is a need to consider broader changes to the TUL(C)A 1992 than those offered by this consultation. In particular we have held for many years that the 1992 Act excessively impinges on the autonomy of trade unions and believe that the ECHR judgement and the DTI consultation should trigger a wider discussion beyond the narrow parameters set by the Government.

Indeed we believe that the ASLEF judgement establishes a wider principle beyond action related to membership or activities of political parties. Trade unions should be able to set their own rules concerning conditions for membership rather more broadly than the Government suggests.

Whilst we would strongly prefer Option A to Option B, we believe that Section 174 TUL(C)A should be repealed in its entirety.

We believe this view is underlined by the International Labour Organisation Committee of Experts which found that UK employment law breaches international labour standards and the Council of Europe's Social Rights Committee which believes UK employment law breaches the European Social Charter Articles 5 and 6.

We further endorse the TUC's view that Sections 64-67 of TUL(C)A more generally also fail to strike the right balance between the interests of a members being disciplined and the interests of other union members and the union itself.

Finally, we believe that the excessive and unfair bureaucratic burden which places onerous restrictions on trade unions undertaking industrial action should also be reviewed as being potentially in breach of article 11 of ECHR.