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Ozlem Yildirim,

Policy Officer,
International Department
CGT France

Director

Daniel Blackburn, MA, barrister

Researcher

Ciaran Cross. LLM



International Centre for Trade Union Right

Centro Internacional para los Derechos Sindical
Centre International pour les Droits Syndical

Address: 177 Abbeville Road, London SW4 9RL, U
Tel: +44 (0) 20 7498 470
Fax: +44 (0) 20 7498 061
E-mail: ictur@ictur.or;
Web: www.ictur.or

ICTUR was founded
to defend and extend trade union right
and to raise awareness of these right
and their violations around the world

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By e-mail:

david.lidington.mp@parliament.uk

Attn:

Mr. David Lidington
Secretary of State for Justice
Minsitry of Justice
102 Petty France
London
SW1H 9AJ

CC:

Steve Gillan, General Secretary, Prison Officers Association

Dear Mr. David Lidington,

The International Centre for Trade Union Rights wishes to raise serious concerns about the injunction recently sought by the Ministry of Justice against the Prison Officers' Association (POA).

The permanent injunction granted by the High Court on 19 July 2017 – preventing the POA from inducing prison officers to take part in 'any industrial action' pursuant to Section 127 Criminal Justice & Public Order Act 1994 (CJPOA) – raises a number of concerns regarding the fundamental rights of prison workers and trade unions in the UK.

The POA Circular issued to its members on 27 February 2017 asked members only to withdraw from certain voluntary activities. While the Court agreed that these tasks were not contractual in nature, it nevertheless held that the reference to 'the withholding of services as a prison officer' (CJPOA, s. 127(1A)(a)) was sufficiently broad to cover 'any services that a prison officer was carrying out'. This interpretation means that any third party (in this case the union) may incur secondary liability under the Act for inviting a prison officer not to (or to cease) to volunteer for tasks which a prison officer acting alone has no obligation to carry out. The classification of withdrawal from voluntary tasks as industrial action has potentially far-reaching implications for the law of industrial relations.

Equally concerning is the fact that the POA's Circular was deemed likely to induce prison officers to take 'action that would be likely to put at risk the safety of any person...' (CJPOA, s.127(1A)(b)). As detailed below, the actions proposed by the POA were aimed – among other things – precisely *at addressing a situation in which persons are currently at risk*. As the POA has clearly stated, the prison officers would still have been 'on duty' during their withdrawal from voluntary tasks. A minimum service is regularly maintained in prisons (for instance, on weekends) and prison governors have powers (under Bulletin No. 8) to ensure that such minimum service is maintained; the POA Circular did not interfere with these powers. In dismissing these arguments put forward by the POA, Mr Justice Jay ruled that 'the issue under section 127(1A)(b) is not the level of risk at the moment, but what the level would be if predicated action were taken.'

However, as the Ministry of Justice is clearly aware, the crisis in UK prisons which the POA has demanded the government address is a very real one. The Ministry of Justice's own report (*Safety in Custody Statistics Bulletin, England and Wales: Deaths in prison custody to September 2016; Assaults and Self-harm to June 2016*) illustrates that the POA's warnings about violence and understaffing in UK prisons are well founded. The 2016 report records a clear upward trend in serious assaults in prisons since December 2012, including:

- **324 deaths in prison custody (up 21% from the previous year)**
- **23,775 assault incidents, of which 5,954 were against staff (up 43% the previous year)**

The Ministry's decision to ignore the POA's collective grievances over increasing violence in understaffed facilities, as well as working conditions and remuneration of prison officers, is – to use the language of the CJPOA – likely to put the safety of persons at risk, including prison officers, prisoners, and the wider public.

ICTUR wishes to remind the government that by taking recourse to litigation against the POA, rather than committing to negotiation with the union in good faith, the UK is further failing to meet its obligations under the International Labour Organisation Conventions that it has ratified. The ILO's Committee on Freedom of Association does include 'public or private prison services' within the category of 'essential services' for which the right to strike may be legitimately prohibited (*Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, Fifth Edition, 2006, para. 585). However, the Committee also notes that 'where the right to strike is restricted or prohibited in certain essential undertakings or services, adequate protection should be given to the workers to compensate for the limitation thereby placed on their freedom of action with regard to disputes affecting such undertakings and services'. Ensuring 'appropriate guarantees' in such cases

means that 'restrictions on the right to strike should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage and in which the awards, once made, are fully and promptly implemented' (*ILO Digest*, paras. 595-596).

Precisely this issue – the adequacy of available mechanisms in the UK to compensate prison officers for the limitation of their right to strike – has been addressed by the Committee on several occasions (Case No. 2383). After first being raised with the ILO in 2005, the UK government has repeatedly assured the Committee that it is addressing the need for such mechanisms, stating that it has accorded the Committee's recommendations 'the highest priority' (Report No. 364, June 2012, para. 74).

The very fact that the POA and its members have had to take recourse to such action in order to raise critical issues around the safety, welfare and working conditions of prison officers suggests that the measures adopted are neither appropriate nor adequate. **The Ministry of Justice's pursuit of a legal injunction preventing prison officers from withdrawing from even voluntary tasks further calls into question the manner in which the government has sought to properly consult and negotiate with the POA over the adequacy and independence of these mechanisms, or their proper functioning.**

ICTUR calls on the Ministry of Justice to cease its antagonistic attempts to obstruct the POA and its members from engaging in legitimate activities in defence of their interests, and to finally engage in meaningful and effective consultations to seek a resolution to this crisis. ICTUR will report these incidents in the journal *International Union Rights*, which was established in 1993, and which enjoys a readership in more than 100 countries.

Yours Faithfully,

A handwritten signature in black ink, appearing to read 'D. Blackburn', followed by a horizontal line extending to the right.

Daniel Blackburn, Director