

E.R.

PS/SofS(L)

CONFIDENTIAL



cc PS/SofS(B) - M
PS/Mr Scott (L&B) - M
PS/PUS (L&B) - M
Mr Bloomfield - M
Mr Burns (via PUS(B)) M
Mr Chesterton
Mr Elliott - M
Mr Spence - M
Mr O Hewitt - M
Mr E Hewitt - M
Mr Kirk
Mr McConnell - M
Mr Wood (L&B) - M
Mr George RID FCO

THE AGREEMENT AND THE IRISH CONSTITUTION: DR MCGIMPSEY'S PROPOSED CHALLENGE

The Secretary of State asked if more could be found out about the challenge under the Irish Constitution to Article 1 of the Agreement that Dr Christopher McGimpsey proposed to make. PAB, Liaison Staff, the Secretariat, the Dublin Embassy, FCO and we have all pursued this. So far as we can see, the case has made no progress at all.

Background

The news of Dr McGimpsey's intended challenge was carried in the Irish Times on 6 December (attached) which suggested it would begin the following month. Since then, there has been no public mention of the action. The Department of Justice knows of no steps being taken to start the case. There is a suggestion that Dr David Trimble, a lawyer at QUB and a prominent figure in recent Unionist campaigns against the Agreement, including the Ulster Clubs' Grand Committee scheme, is also involved; but we have no confirmation.

CONFIDENTIAL

Why no movement?

PAB have no information from Dr McGimpsey or his circle about the case. One could guess about why it has not moved further. Dr McGimpsey apparently intended reaction to gain the support of the Unionist parties and become a 'focal point for constitutional Loyalist protest'; the parties might have wished not to draw attention from their other activities, especially the petition. Trimble, if he was involved, has been busy elsewhere. The public financial support Dr McGimpsey was seeking might not have been forthcoming; or else the parties might have felt an appeal would draw contributions from the fund to pay Mr Robinson's final expenses in the Clontibret case. Or (as the DOJ suggest) he might have had difficulty finding senior counsel to conduct his case.

The possible outcome

Alternatively Dr McGimpsey might have thought further about the prospects of a satisfactory outcome. His analysis in the Irish Times article is that if the Agreement were held unconstitutional in the case, it would probably fall; if it were held constitutional, Loyalists would see that Article 2 of the Constitution stood, and the Agreement gave them nothing. This is simplistic (even if it were true, it might be difficult to see the case gripping popular Unionist imagination). It would be open to an Irish Court to reconcile the two provisions, in a way that showed Article 1 to have real meaning. The Irish Government were confident (though could not be certain) at the time of signing the Agreement that Article 1 would be upheld in the courts. The meaning of the Articles 2 and 3 of the Constitution has been a matter of intense argument among Irish constitutional lawyers, and it is impossible to be certain what the court would decide; but judicial decisions and legal writings of recent years suggest that the court's interpretation of the articles would show them in a much less hostile light than Unionists usually see them in. We can give the Secretary of State a further note on this if he wishes.

E.R.

CONFIDENTIAL

Conclusion

I shall keep the Secretary of State closely in touch with any developments in Dr McGimpsey's action.

P W BELL

April 1987

CONFIDENTIAL

J51