

PRISONER VOTING AND HUMAN RIGHTS IN THE UK

June 2013

Contents

1. Summary	2
2. The ban on prisoner votes in the UK	4
3. Legal proceedings in the UK	4
4. Legal proceedings before the European Court of Human Rights	6
5. Political response to the prisoner votes judgments	10
6. Implications of non-execution of the prisoner votes judgments	15
7. Prisoner voting in other jurisdictions	18

1. Summary

- i. In its first judgment against the United Kingdom regarding prisoners' right to vote, *Hirst v. the United Kingdom (no. 2)* (74025/01) of 6 October 2005, the Grand Chamber of the Court found that a blanket ban preventing all convicted prisoners from voting, irrespective of the nature or gravity of their offences, constituted a violation of Article 3 of Protocol No. 1 ECHR.
- ii. The court did not give any detailed guidance as to the steps which the United Kingdom should take to make its law compatible with Article 3 of Protocol No. 1, emphasising that there were numerous ways of organising and running electoral systems and that it was for each Member State of the Council of Europe to decide on its own rules.
- iii. In its Chamber judgment in *Greens and M.T. v. the United Kingdom* (60041/08 and 60054/08) of 23 November 2010, the Court again found a violation of the right to free elections, as the Government of the United Kingdom had failed to amend the blanket ban legislation. The Court held that the Government should bring forward legislative proposals to amend the law and to enact the legislation within a time-frame decided by the Committee of Ministers, the executive arm of the Council of Europe, which supervises the implementation of the Court's judgments.
- iv. The Government was granted an extension of time pending proceedings before the Court's Grand Chamber in an Italian case concerning prisoners' right to vote (*Scoppola v. Italy (No. 3)* (126/05), Grand Chamber judgment of 22 May 2012).
- v. The Committee of Ministers has been following the UK Government's progress in complying with the Court's rulings.
- vi. On 22 November 2012, the Government published a draft bill on prisoners' voting eligibility. The draft bill includes three proposals: (1) ban from voting those sentenced to four years' imprisonment or more; (2) ban from voting those sentenced to more than six months; or (3) ban from voting all prisoners (i.e. maintain the status quo).
- vii. On 16 April 2013, a motion was approved in the House of Commons stipulating that a committee be set up with the following powers:
 - (i) to send for persons, papers and records;
 - (ii) to sit notwithstanding any adjournment of the House;
 - (iii) to report from time to time;

- (iv) to appoint specialist advisers; and
- (v) to adjourn from place to place within the United Kingdom

The members of the Joint Select Committee from the House of Commons are:¹

Mr Crispin Blunt (Cons)
Steve Brine (Cons)
Lorely Burt (Lib Dem)
Mr Nick Gibb (Cons)
Sir Alan Meale (Lab) and
Derek Twigg (Lab)

- viii. The following members of the House of Lords (the Upper Chamber of the UK parliament) will sit on the committee²:

L Dholakia (Lib Dem)
B Gibson of Market Rasen (Labour)
B Noakes (Cons)
L Norton of Louth (Cons)
L Peston (Lab)
L Phillips of Worth Matravers (Crossbench)
- ix. The committee should report on the draft Bill by 31 October 2013.³
- x. The Council of Europe's Committee of Ministers is overseeing the progress of the draft Voting Eligibility (Prisoners) Bill. It has decided to resume consideration of the case at the latest at its September 2013 meeting.
- xi. In view of the Committee of Ministers' decision, the Court decided to adjourn its consideration of the pending applications against the United Kingdom concerning prisoners' right to vote until, at the latest, 30 September 2013.⁴
- xii. In June 2013, the UK Supreme Court heard the cases of George McGeoch and Peter Chester who are challenging their disenfranchisement from European Union elections i.e. under EU law, rather than the Human Rights Act and/or European Convention on Human Rights.⁵

¹ HC Deb, 16 April 2013 c294.

² Prisoner Voting Committee — Membership Motion 3.08pm 14 May 2013.

³ *Ibid.*

⁴ On 26 March 2013, the European Court of Human Rights adjourned its consideration of 2,354 applications against the United Kingdom concerning prisoners' right to vote pending before it until September 2013 *Firth and 2,353 Others v. United Kingdom* (47784/09 and *others*).

⁵ Judgment to follow.

2. The ban on prisoner votes in the UK

- i. By virtue of section 3 of the Representation of the People Act 1983, a convicted person is legally incapable of voting at any parliamentary or local election during the time that he is detained in a penal institution in pursuance of his sentence.
- ii. The disqualification does not apply to persons imprisoned for contempt of court (section 3(2)a) or to those imprisoned only for default in, for example, paying a fine (section 3(2)c).
- iii. Remand prisoners and unconvicted patients in mental health institutions are also exempt from the disqualification by virtue of the Representation of the People Act 2000.
- iv. The European Parliamentary Elections Act 2002 provides that a person is entitled to vote at an election to the European Parliament only if he is entitled to vote as an elector at a parliamentary election on the day of the poll.

3. Legal proceedings in the UK

- i. *Pearson, Martinez and Hirst 2001*
 - i. In 2001 three convicted prisoners challenged an Electoral Registration Officer's decision not to register them to vote arguing it was incompatible with Article 14 (non-discrimination) and Article 3 Protocol 1 (free elections) European Convention on Human Rights (ECHR) as contained in the UK's Human Rights Act (HRA).
 - ii. The High Court dismissed the applications, which in the case of two of the applicants were for judicial review of the Officer's decision (to compel him to re-take the decision on the ground that it was unlawful), and in the case of the third (*Hirst v HM Attorney General*), was for a declaration that the Representation of the People Act 1983 is incompatible with the Convention rights in the HRA.⁶ Such a 'declaration of incompatibility' does not change the law but signals to government and parliament that the law violates human rights and permits a fast-track procedure to be used to remedy the defect identified.
 - iii. The court highlighted how following the enactment of the Representation of the People Act 1983, a working group on electoral procedures had been established to consider changes to electoral law and practice. A subsequent

⁶ *R v (1) Secretary of State for the Home Department (2) Two Election Registration Officers, Ex Parte (1) Pearson (2) Martinez: Hirst v HM Attorney General* (2001) [2001] EWHC Admin 239.

recommendation that remand prisoners and mental health patients (other than those who had been convicted and placed in custody) should be allowed to vote was enacted in the Representation of the People Act 2000. As to convicted prisoners, the view prevailed that a loss of rights was part of a convicted prisoner's punishment, and that removal from society entailed removal from society's privileges, including the right to vote. The Bill had been accompanied by a declaration that disenfranchisement of prisoners was consistent with the jurisprudence of the ECHR (as required by section 19 Human Rights Act (HRA), which came into force in October 2000).

- iv. The allegation that disenfranchisement of convicted prisoners was contrary to Protocol 1, Art. 3 had had been considered on three occasions by the European Commission⁷ and on each occasion the complaint had been found to be manifestly ill-founded and therefore inadmissible, since the restrictions on voting rights were considered to be justified.⁸ By virtue of s2(1) HRA, these decisions had to be taken into account.
 - v. The court looked at the evidence of practice in other jurisdictions and, accepting that the ban serves legitimate aims pertaining to punishment and electoral law, deferred to the legislature on the question of the proportionality of the settlement in the Representation of the People Act 1983.
 - vi. Appeal from the decision was refused.
- ii. *UK cases post-Hirst (see section 4)*
- i. In 2007, following the European Court's ruling in *Hirst*, a prisoner in Scotland brought a claim asking the court to use its powers under section 3 HRA to 'read down' the domestic legislation to comply with the ECHR right and thereby remove the ban on prisoners voting. The court said this was not possible. The Act was clear in its intentions; there was no 'grain of the legislation' that could permit a section 3 interpretation. The court issued a Declaration of Incompatibility under s4 HRA that s3(1) of the 1983 Representation of the People Act was incompatible with Prot 1 Art 3.⁹

⁷ The body that screened applications before they got to the European Court on Human Rights until 1998.

⁸ See e.g. *X v. the Netherlands* [1974] 1 D.R. 87, *H v. the Netherlands* [1983] 33 D.R. 242

⁹ *Smith v Scott* [2007] CSIH 9 and *Mathieu-Mohin and Clerfayt v. Belgium* (1988) 10 E.H.R.R. 1.

- ii. In 2010, another case was brought in the domestic courts in which the court refused to indicate what legislative changes were necessary to comply with the ECtHR rulings stressing that this remains a political responsibility.¹⁰
- iii. In 2011, the domestic courts struck out a request for damages in light of the UK's failure to implement the ECtHR rulings since section 6(6) HRA prevents such claims.¹¹
- iv. A legal challenge to the ban has also been made under EU law.¹² Mr George McGeoch, who is serving a life sentence in Dumfries, Scotland for murder tried to have his name added to the electoral register but was unsuccessful. His lawyers argued that his rights as an EU citizen were being denied because he will not be able to vote in the European Parliamentary elections. Likewise, Peter Chester, who is serving life for raping and strangling his seven-year-old niece argues he should be allowed to vote in European elections under the European Parliamentary Act 2002.¹³

4. Legal proceedings before the European Court of Human Rights (ECtHR)

- i. *Hirst v UK (No 2)* 6 October 2005 (Grand Chamber)

(Note, *Hirst v UK* 2001 (i.e. *Hirst* no. 1) was a Chamber decision in which the court held that the delay between the Parole Board reviews of the applicant's continued detention as a prisoner serving a sentence of discretionary life imprisonment violated Article 5(4)). Same applicant.)

- i. In *Hirst v the UK (No. 2)* [2005] ECHR 681, the Grand Chamber affirmed the unanimous Chamber judgment in *Hirst v UK (No 2)* (2004) 38 EHRR 40 that the UK ban on prisoners voting in parliamentary or local elections constitutes a violation of Article 3 Protocol 1.¹⁴
- ii. John Hirst, one of the applicants in the *Pearson, Martinez and Hirst* case, was convicted of manslaughter on grounds of diminished responsibility and sentenced to a

¹⁰ *Peter Chester v (1) Secretary Of State For Justice (2) Wakefield Metropolitan District Council* [2010] EWCA Civ 1439.

¹¹ *Tovey et al v Ministry of Justice* [2011] EWHC 271 (QB).

¹² The challenge was launched in 2010.

¹³ Guardian, *Supreme court urged to reject challenge to prisoner voting ban* 11 June 2013 <http://www.guardian.co.uk/law/2013/jun/11/supreme-court-challenge-prisoner-voting>.

¹⁴ 12 judges gave the majority judgment, with 5 dissenting.

term of discretionary life imprisonment with continued detention on grounds of risk and dangerousness. In May 2004, he was released from prison on licence.

- iii. The Grand Chamber accepted that the voting ban pursues a legitimate aim, namely to punish and incentivise citizen-like conduct [75].
 - iv. However, it held that the general, automatic and indiscriminate restriction on a vitally important Convention right must be seen as falling outside any acceptable margin of appreciation, however wide that margin might be, as being incompatible with Article 3 Protocol 1. [82].
- ii. *Frodl v Austria* 8 April 2010 (Chamber)
- i. In *Frodl v Austria* [2010] ECHR 508, the court (this time a Chamber, not the Grand Chamber) found a violation of Article 3 Protocol 1 in respect of a disenfranchised applicant who had been convicted of murder and sentenced to life imprisonment.
 - ii. Austrian law provided for the disenfranchisement of “anyone who has been convicted by a domestic court of one or more criminal offences committed with intent and sentenced with final effect to a term of imprisonment of more than one year”. Disenfranchisement ends six months later [14].
 - iii. The court said that it was an essential element of the right that the decision on disenfranchisement should be taken by a judge and that such a measure should be accompanied by specific reasoning as to why in the circumstances of the case disenfranchisement was necessary [34-35].
- iii. *Greens and MT v UK* 23 November 2010 (Chamber)
- i. In *Greens and MT v the UK* (2011) EHRR 21, the ECtHR invoked its pilot judgment procedure and unanimously held that the ineligibility of the applicants to vote in the European Parliament elections of 2009 and the general election in the UK in 2010 constituted a violation of Article 3 Protocol 1 (as per its finding in *Hirst* above).
 - ii. Invoking the pilot judgment procedure (to identify structural problems and induce a State to resolve large

numbers of cases arising from such problems¹⁵), the Court noted that there were 2,500 applications in which a similar complaint has been made, of which around 1,500 had been registered and were awaiting a decision. The court stressed that numbers are growing and pose a threat to the future effectiveness of the Convention machinery. [111].

- iii. The court stated that legislative amendment is required in order to render the electoral law compatible with the requirements of the Convention, but it is for the government to decide in the first instance how to achieve compliance in this way [112].
- iv. The court concluded that the respondent **State must introduce legislative proposals to amend section 3 Representation of the People Act 1983 (and if appropriate the 2002 Act) within six months**¹⁶ of the date on which the Greens judgment becomes final, with a view to the enactment of an electoral law to achieve compliance with the Court's judgment in *Hirst* according to any time-scale determined by the Committee of Ministers [115].
- v. The court stated that in future follow-up cases, it would be likely to consider that legal costs were not reasonably and necessarily incurred and so would not be likely to award costs under Article 41 ECHR [120].
- vi. The court discontinued its examination of applications registered prior to the date of the *Greens* judgment and raising similar complaints to those in *Hirst* pending compliance by the UK with the judgment. It resolved to strike out these cases once compliance is achieved but could restore the applications if the UK fails to enact an amendment to the electoral law to achieve compliance with *Hirst* [121].

iv. *Scoppola v Italy (No 3)* 22 May 2012 (Grand Chamber)

- i. The UK government was given permission to intervene in the hearing of *Scoppola v Italy (No 3)* [2012] ECHR 868 before the Grand Chamber, in which the court held that the disenfranchisement of the applicant did not violate 3 Protocol 1, reversing the decision of the Chamber (since the Chamber had followed *Frod*).¹⁷ The deadline for

¹⁵ See further http://www.echr.coe.int/NR/rdonlyres/61CA1D79-DB68-4EF3-A8F8-FF6F5D3B3BB0/0/FICHES_Arrets_pilotes_EN.pdf.

¹⁶ 23 May 2012.

¹⁷ 16 judges in the majority, 1 dissenting.

compliance with the Greens judgment was extended to sixth months from the date of the Scoppola judgment i.e. 22 November 2012.

- ii. The applicant was an Italian national convicted of murder, attempted murder, ill-treatment of his family and unauthorised possession of a firearm. He was subject to a lifetime ban from public office and therefore banned from voting.
- iii. Italian law provides for disenfranchisement as an ancillary penalty imposed on those convicted of certain offences (e.g. embezzlement of public funds, certain offences against the judicial system like perjury by a party) and any offence punishable by imprisonment for which the ban is temporary (where the sentence is between three and five years) or permanent (for sentences of five years or more and life imprisonment). Application for rehabilitation (and restoration of the right to stand and vote for public office) is possible three years after the main penalty has been completed/extinguished.
- iv. The court did not share the view expressed in *Frod* that disenfranchisement decisions must be taken by a judge in order to render them proportionate [99].
- v. The court stressed that restrictions on voting rights will not necessarily be automatic, general and indiscriminate (and therefore disproportionate) just because they were not ordered by a judge; the circumstances in which the right to vote is forfeited may be detailed in the law, making its application conditional on such factors as the nature or the gravity of the offence committed [99].
- vi. Given the different approaches taken in the various jurisdictions, Contracting States may decide either to leave it to the courts to determine the proportionality of a measure restricting prisoner's voting rights or to incorporate provisions into their laws defining the circumstances in which such a measure should be applied in order to avoid any general, automatic and indiscriminate restriction. It will then be the role of the Court to examine whether, if challenged, this result was achieved and whether the wording of the law, or the judicial decision, was in compliance with Article 3 of Protocol No. 1[102].
- vii. Judge David Björgvinsson of Iceland disagreed with the majority on the following grounds:

>>> The concrete situation of the applicants in *Hirst* and *Scoppola* is exactly the same (both serving long prison sentences and denied voting rights)

>>> In both instances, the domestic criminal courts made no reference to the disenfranchisement (a point noted in *Hirst* but brushed aside by the majority in *Scoppola*).

>>> Both legislative instruments are blunt, stripping a significant number of persons of their Convention right to vote and doing so in an indiscriminate manner and to a large extent regardless of the nature of their crimes, the length of their sentences and their individual circumstances.

>>> Whilst the Italian legislation appears more lenient (since prisoners sentenced to less than three years retain their right to vote), it is in fact stricter since it deprives prisoners of their right to vote beyond the duration of their prison sentence and, for a large group of prisoners, for life.

>>> There was no evidence the UK government had sought to weigh the competing interests (*Hirst*) but nor is there evidence of a proportionality assessment by the legislature or by the courts on the facts of *Scoppola*.

- v. *McLean and Cole v. the United Kingdom* (application nos. 12626/13 and 2522/12) 28 June 2013

Applications from two prisoners challenging the ban were declared inadmissible since they relate to elections not covered by Article 3 Protocol 1 (which concerns election to the “legislature” i.e. not European and local elections), were brought too late (the latest election complained about was May 2011) and/or prematurely - **the effect of the current ban would only be felt if a further election to a “legislature” occurred before any amendment was enacted.**¹⁸

5. Political response to the prisoner votes judgments

- i. Immediately following the *Hirst* judgment in 2005, the then Prime Minister Tony Blair told the House of Commons:

“The current position in law is that convicted prisoners are not able to vote, and that will remain the position under this Government.”

¹⁸ See the court’s press release <http://hudoc.echr.coe.int/web/services/content/pdf/003-4417926-5309408> 28 June 2013.

- ii. The Labour government then announced a public consultation on prisoner voting rights. The first consultation document was published in December 2006 with a number of potential options including retaining the ban as it is, enfranchising prisoners sentenced to less than a specified term, allowing sentencers to decide on withdrawal of the franchise and enfranchising all post-tariff life sentence prisoners (like Mr Hirst).
- iii. A second consultation document followed in April 2009 alongside a summary of results from the first paper. 88 highly polarised responses had been received - 41 strongly believed in full enfranchisement, 22 wanted the full ban to remain; of the 40 members of the public who responded, the split was exactly 50/50.
- iv. In May 2010, the Coalition government was formed between the Conservatives and Liberal Democrats.
- v. On 3 November 2010, Prime Minister David Cameron told the House of Commons:

"It makes me physically ill even to contemplate having to give the vote to anyone who is in prison."

He nevertheless suggested that failure to comply with the Hirst judgment would cost the taxpayer £160 million and, in order to avoid such expenditure, advocated bringing forward proposals.
- vi. In December 2010, the Minister for Political and Constitutional Reform announced in a Written Ministerial Statement that the UK stood in breach of international law obligations and prisoners were bringing forward compensation claims. The Minister stated the Government's intention to bring forward legislation, but the introduction of this was subsequently paused, and the Government intervened in *Scoppola*.
- vii. On 10 February 2011, the following motion was debated in the House of Commons and agreed on by 234 votes to 22¹⁹:

"That this House notes the ruling of the European Court of Human Rights in *Hirst v United Kingdom* in which it held that there had been no substantive debate by members of the legislature on the continued justification for maintaining a general restriction on the right of prisoners to vote; acknowledges the treaty obligations of the UK; is of the opinion that legislative decisions of this nature should be a matter for democratically-elected lawmakers; and supports the current situation in which no sentenced prisoner is able to vote except

¹⁹ There are 650 elected Members of Parliament.
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 June 2013

those imprisoned for contempt, default or on remand.”

- viii. David Cameron has more recently stated that he does not agree that prisoners should have the vote and does not intend to grant them the vote under his government. On 24 October 2012 he told the House of Commons:

“The House of Commons has voted against prisoners having the vote. I do not want prisoners to have the vote, and they should not get the vote—I am very clear about that. If it helps to have another vote in Parliament on another resolution to make it absolutely clear and help put the legal position beyond doubt, I am happy to do that. But no one should be in any doubt: prisoners are not getting the vote under this Government.”

- ix. Also on 24 October 2012, the Attorney General (the government’s chief legal adviser) made the following statement to the parliamentary Justice Committee:

“The United Kingdom Government are adherents to the convention and it is one of our international legal obligations. Successive Governments, including this one, have always put great emphasis on the observance of our international legal obligations. We live in a world where international law matters increasingly, and the United Kingdom has always been seen as a role model in areas of international law as to how we go about our business and the fact that we observe international obligations imposed on us. It is, of course, entirely a matter for Government to make proposals but ultimately for Parliament to determine what it wants to do. Parliament is sovereign in this area; nobody can impose a solution on Parliament, but the accepted practice is that the United Kingdom observes its international obligations. That is spelt out in a number of places, including the ministerial code.”²⁰

- x. On 2 November 2012 *the Times* newspaper published a letter from eleven legal academics and judges, including the former Conservative Lord Chancellor, Lord Mackay of Clashfern, and the former Lord Chief Justice, Lord Woolf of Barnes. The authors of the letter suggested that:

“Disregard for the European Convention would encourage those nations whose commitment to the rule of law is tenuous. It also contravenes the Ministerial Code. Moreover, such defiance of the Court would not be on a par with measures such as the

²⁰ Uncorrected transcript of oral evidence HC 644-I *Oral evidence taken before the Justice Committee: the work of the Attorney General* 24 October 2012 Retrieved from <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/uc644-i/uc64401.htm>.

“veto” of the EU financial treaty, the proposed opt-out from EU criminal measures, or the threat to veto the EU budget. All those measures, whatever their merits, are perfectly lawful. In this case the Prime Minister appears set upon a course which is clearly unlawful.”²¹

- xi. On 22 November 2012, just within the deadline set by the court following *Scoppola*, the government published the Voting Eligibility (Prisoners) Draft Bill.²²
- xii. When he introduced the draft Bill to parliament, the Secretary of State for Justice made the following statement:

“The Prime Minister has made clear, on the record, his personal views on this subject, and I have done the same. Those views have not changed. However, the Government are under an international law obligation to implement the Court judgment. As Lord Chancellor, as well as Secretary of State for Justice, I take my obligation to uphold the rule of law seriously. Equally, it remains the case that parliament is sovereign, and the Human Rights Act explicitly recognises that fact. The current law passed by parliament remains in force unless and until Parliament decides to change it. As Lord Justice Hoffmann put it in a case in 1999:

Parliamentary sovereignty means that parliament can, if it chooses, legislate contrary to fundamental principles of human rights. The Human Rights Act 1998 will not detract from this power. The constraints upon its exercise by parliament are ultimately political, not legal. But the principle of legality means that parliament must squarely confront what it is doing and accept the political cost.”

- xiii. The draft Bill contains three options:
 - A ban for prisoners sentenced to 4 years or more.
 - A ban for prisoners sentenced to more than 6 months.
 - A ban for all convicted prisoners – a restatement of the existing ban.
- xiv. On 22 November 2012, the government also announced the establishment of a joint committee, comprising both members of the House of Lords and the House of Commons, to conduct pre-legislative scrutiny of the draft bill on the basis of evidence taken from interested parties. It may recommend an altogether different solution from either of the three options contained in the draft Bill. The government will introduce a Bill (draft law) into the

²¹ *Votes for prisoners*, letter to the Times, 2 November 2012.

²² *The Voting Eligibility (Prisoners) Draft Bill*, Cm8499, November 2012

<http://www.justice.gov.uk/legislation/bills-and-acts/bills/voting-eligibility-prisoners-draft-bill>

Human Rights Futures Project, LSE

June 2013

House of Commons taking into account the Committee's recommendations, to be debated and voted upon.

- xv. Following its meeting of 6 December 2012, the Committee of Ministers, the body responsible for supervising the execution of ECtHR judgments, made clear that "the third option [in the draft Bill] aimed at retaining the blanket restriction criticised by the European Court cannot be considered compatible with the European Convention on Human Rights."²³
- xvi. The Committee of Ministers will review the case in **September 2013**.²⁴
- xvii. The Secretary General of the Council of Europe, Jagland Thorbjørn, has urged the UK to implement the prisoner votes judgments.²⁵
- xviii. On 26 March 2013, the ECtHR decided that, in light of the publication of the Voting Eligibility (Prisoners) Draft Bill on 22 November 2012 and the Committee of Ministers oversight of the Bill's progress, it will adjourn its consideration of the 2 354 pending applications against the UK concerning prisoners' right to vote until, at the latest, **30 September 2013**.²⁶
- xix. On 16 April 2013, a motion was approved in the House of Commons stipulating that a committee be set up with the following powers:
 - (i) to send for persons, papers and records;
 - (ii) to sit notwithstanding any adjournment of the House;
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The members of the Joint Select Committee from the House of Commons are:²⁷

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Steve Brine (Cons)
Lorely Burt (Lib Dem)
Mr Nick Gibb (Cons)

²³ See 1157th meeting notes, Hirst No. 2 Group, decision #6 at <https://wcd.coe.int/ViewDoc.jsp?id=2013315>

²⁴ *Ibid.*

²⁵ See Bowcott, O. (2012, 10 December) Votes for prisoners: UK told it must implement ECHR decisions *The Guardian* Retrieved from <http://www.guardian.co.uk/politics/2012/dec/10/votes-for-prisoners-uk-delaying-tactics>.

²⁶ *Firth and 2,353 Others v. United Kingdom* (47784/09 and others).

²⁷ HC Deb, 16 April 2013 c294.

Sir Alan Meale (Lab) and
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- xx. The following members of the House of Lords (the Upper Chamber of the UK parliament) will sit on the committee²⁸:

L Dholakia (Lib Dem)
B Gibson of Market Rasen (Labour)
B Noakes (Cons)
L Norton of Louth (Cons)
L Peston (Lab)
L Phillips of Worth Matravers (Crossbench)

- xxi. The committee should report on the draft Bill by **31 October 2013**.²⁹

6. Implications of non-execution of the prisoner votes judgments

i. *International law obligations*

Failure to execute the judgment would constitute a breach of the UK's international law obligations.

ii. *Unfreezing of pending applications and award of damages*

The Court has said that the finding of a violation of the Convention combined with its direction under Article 46³⁰ that the UK must introduce legislative proposals within six months constitutes 'just satisfaction'.³¹

However, if the UK fails to provide just satisfaction by changing the law, it is possible that the 2 354 applications (and growing) in which a similar complaint has been made will be unfrozen and damages awarded as just satisfaction.³² The Equality and Human Rights Commission estimates that over 100 000 prisoners have missed the opportunity to vote since the Court's decision in *Hirst*.³³

In seven cases against Italy involving a ban on voting in respect of undischarged bankrupts, the Court awarded the sum of EUR

²⁸ Prisoner Voting Committee — Membership Motion 3.08pm 14 May 2013.

²⁹ *Ibid.*

³⁰ In particular the obligation to abide by final judgments of the Court to which a State is party.

³¹ *Greens and MT v UK* 23 November 2010 (Chamber) at [98].

³² *Ibid.* at [111].

³³ Equality and Human Rights Commission, (2010, 25 January) *European court decision on voting rights yet to be implemented* Retrieved from <http://www.equalityhumanrights.com/news/2010/january/european-court-decision-on-voting-rights-yet-to-be-implemented/>.

1 500.³⁴

This would mean a damages bill of €150m (around £120m) for the UK – just in respect of applications already lodged.

iii. *Infringement proceedings*

Introduced by Protocol 14 to the ECHR and entered into force in 2010, infringement proceedings are a means by which, on the vote of two thirds of the members of the Committee of Ministers, a case can be sent back to the Court in the event of non-compliance. The procedure has yet to be invoked, although it has been raised in the context of Russian compliance with the judgments pertaining to abuses committed in Chechnya (partial implementation).³⁵

iv. *Council of Europe membership*

The Statute of the Council of Europe provides the CoM with powers of suspension and expulsion, although these have never been used.³⁶ Use of such powers is likely to be counter-productive and accordingly they are extremely unlikely to be used.³⁷

However, legal commentator Joshua Rozenberg has suggested that, since no country can join the Council of Europe unless it agrees to be bound by the Convention, to allow a country could pull out of the Convention having given the requisite six months' notice would render the former requirement pointless, and so cannot be permitted.³⁸

v. *EU membership*

Some commentators have suggested that the UK's membership of the European Union could be threatened by a failure to comply with the ECtHR judgment, since adherence to the European Convention on Human Rights and the Court is a

³⁴ E.g. *Pantuso v. Italy*, no. 21120/02, 24 May 2006; *La Frazia v. Italy*, no. 3653/02, 29 June 2006; *Pio and Ermelinda Taiani v. Italy*, no. 3641/02, 20 July 2006.

³⁵ European Human Rights Advocacy Centre *Infringement proceedings*, Retrieved from http://www.londonmet.ac.uk/research-units/hrsj/affiliated_centres/ehrac/infringement-proceedings.cfm.

³⁶ Arts 3 and 8.

³⁷ Leach, P. 2006 The effectiveness of the Committee of Ministers in supervising the enforcement of judgments of the European Court of Human Rights *Public Law Autumn* 443-456.

³⁸ Rozenberg, J. (2012, 6 December) Seat at international table at risk over human rights *Law Gazette* Retrieved from <http://www.lawgazette.co.uk/opinion/joshua-rozenberg/seat-international-table-under-threat-over-human-rights>

requirement of membership for those joining the EU.³⁹

vi. *The Convention system and human rights violations by other state parties*

The Attorney General has stressed the damage non-compliance with the judgment would do to the UK's reputation with regards to upholding the rule of law and to work carried out to promote the rule of law abroad by government officials.⁴⁰

Non-implementation of domestic judgments is one of the most common issues among the 'leading cases' currently before the Committee of Ministers (in particular in Azerbaijan, Moldova, Russia and the Ukraine⁴¹).

vii. *The rule of law and parliamentary sovereignty*

As articulated by the Attorney General (at 4.8), there is no conflict between respect for the rule of law and the sovereignty of parliament.⁴²

Parliament is at liberty not to bring forward legislation to execute the judgment(s), and the government is free to withdraw its consent to being bound by the Convention.

However, whilst still bound by the rulings of the European Court, it would be anathema to the rule of law to refuse to implement the judgment(s).

viii. *The rule of law in foreign policy*

Foreign Secretary, William Hague has spoken about "the centrality of human rights in the core values of our foreign policy."⁴³

In an article in the Daily Telegraph he explained that "British diplomats raise human rights every week on every continent, pressing for the release of political prisoners, urging free and fair elections, rallying other countries to take action in international organisations, and acting as an early warning system alerting us

³⁹ See further Miller, V. (2011, 18 April) *European Court of Human Rights Rulings: Are there Options for Governments?* Standard Note SN/IA/5941 House of Commons Library.

⁴⁰ See 5.3.3.

⁴¹ Supervision of the execution of judgments of the European Court of Human Rights—Annual report, 2011, *Council of Europe*, April 2011, pp. 40-45.

⁴² *Attorney General speech to BPP Law School: Parliament and the judiciary* 25 October 2012 <http://www.attorneygeneral.gov.uk/NewsCentre/Speeches/Pages/AttorneyGeneralSpeechtoBPPLawSchool.aspx>.

⁴³ *Human rights are key to our foreign policy*, William Hague, 31 August 2010 <http://www.telegraph.co.uk/news/politics/conservative/7972463/Human-rights-are-key-to-our-foreign-policy.html#>.

to crises around the world” (emphasis added).⁴⁴

With respect to the potential impact of non-compliance on the work of British diplomats promoting human rights and the rule of law abroad, the Attorney General has made the following statement to the Justice Committee in October 2012:

“I hope I made clear that the United Kingdom has an enviable reputation in relation to human rights standards and adherence. In my time as Attorney General I have done quite a lot of foreign travel, including outside Europe. Most of it has been connected with what I call rule-of-law agenda, trying to persuade countries that have poor rule-of-law records to put in place the necessary structures that human rights are respected, that the police don’t beat people up in police cells and that standards are raised.

We are at the forefront of that. If I try to identify an area of benevolent soft power that the United Kingdom has to offer, it is one of our great prizes. Inevitably, if we were to be in default of a judgment of the European Court of Human Rights, while clearly there would be some people who could put forward logical arguments as to why we should be, equally I have absolutely no doubt that it would be seen by other countries as a move away from our strict adherence to human rights norms.”⁴⁵

Iran was quick to criticise the UK government’s handling of the riots in summer 2011 after Britain helped lead Western condemnation of Iran’s crackdown on protests against Ahmadinejad’s re-election in June 2009.⁴⁶

7. Prisoner voting in other jurisdictions

i. State Parties to the European Convention

- i.* Seven of the 47 state parties to the ECHR have total bans on prisoners voting, including Armenia, Bulgaria, Estonia, Georgia, Hungary, Russia and the UK.
- ii.* Twenty-one of the 47 state parties provide for some prisoners to votes – either decided in legislation and/or by the sentencing judge.

⁴⁴ *Ibid.*

⁴⁵ Uncorrected transcript of oral evidence HC 644-I *Oral evidence taken before the Justice Committee: the work of the Attorney General* 24 October 2012 Retrieved from <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/uc644-i/uc64401.htm>.

⁴⁶ (2011, 11 August) UK tells Iran happy to talk human rights after riot criticism *Reuters* <http://uk.reuters.com/article/2011/08/11/uk-britain-riot-iran-idUKTRE77A10V20110811>.

- iii. The remaining state parties to the ECHR (19) allow all prisoners to vote, irrespective of sentence.
 - iv. Ireland, Latvia and Cyprus, though not directly bound by the *Hirst* judgment, promptly gave convicted prisoners postal votes in the wake of the decision.⁴⁷
- ii. *Non-State Parties to the European Convention*
 - i. In Canada, the Supreme Court struck down a legislative provision banning all prisoners from voting in 1992, and in 2002 found a section of the 1985 Canada Elections Act denying the right to vote to all persons serving sentences of two years or more in a correctional institution unconstitutional (5:4). The majority found that the measure did not satisfy the proportionality test, in particular as the government had failed to establish a rational connection between the denial of the right to vote and its stated objectives of enhancing civic responsibility and respect for the rule of law and imposing appropriate punishment. The 1992 and 2002 cases were cited by the Court in *Scoppola*.
 - ii. In South Africa, the Constitutional Court ruled in 1999 that in the absence of legislation disenfranchising certain categories of prisoners, prisoners had the constitutional right to vote and neither the Electoral Commission nor the Constitutional Court had the power to disenfranchise them. Cited by the Court in *Scoppola*.
 - iii. In 2007, the High Court of Australia found by four votes to two against the general voting ban. The general ban replaced legislation which had provided for the loss of the right to vote only in connection with prison sentences of three years or more.

⁴⁷ See e.g. *The threat to our basic rights*, Anthony Lester, The Times, 6 December 2011.
 Human Rights Futures Project, LSE
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