

Joint Committee on Human Rights

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Hirst (No 2) v United Kingdom

During this session, the Joint Committee on Human Rights will be continuing its practice, established in the previous Parliament, of reviewing the implementation of judgments of the European Court of Human Rights finding the UK to be in breach of the European Convention on Human Rights (ECHR).

I am writing to ask for further information about the Government's response to the judgment of the Grand Chamber of the European Court of Human Rights in *Hirst (No 2) v United Kingdom*. In that case, the Grand Chamber decided that the current ban on prisoners' voting in the UK is disproportionate and incompatible with the Convention right to participate in free and fair elections (guaranteed by Article 3 of Protocol 1 ECHR). That the relevant statutory provisions have never been subject to a full parliamentary debate played a part in the decision of the court. The statutory ban has also been declared incompatible with Convention rights under Section 4 of the Human Rights Act 1998 by the Court of Session in Scotland. We understand that a further challenge to the blanket ban by Peter Chester, a prisoner currently serving a life sentence, but who has served the 'tariff' set for his offence.¹

The Committee last reported on this case in its report on the Political Parties and Elections Bill (Fourth Report of Session 2008-09), where we revisited our two previous reports on human rights judgments, regretting the delay in the Government's response to this judgment. We concluded:

It is unacceptable that the Government continues to delay on this issue. The judgment of the Grand Chamber was clear that the blanket ban on prisoners voting in our current electoral law is incompatible with the right to participate in free elections (paragraph 1.19)

The Government published its second stage consultation on the issue of prisoners' voting on 8 April 2009. We have seen the information provided by the Government to the Committee of Ministers in April 2009, summarising the Government's position and introducing the second stage of consultation. It indicates that there may be some time

¹ Daily Mail, *Child killer gets legal aid to launch bid for vote (and you're paying)*, 10 July 2009.

after the consultation closes in September, before the Government introduces any legislative solution to address the breach identified by the Grand Chamber:

Following its conclusion, the Government will consider the next steps towards implementing the judgment through legislation.²

At its last meeting in early June 2009, the Committee of Ministers reached a similar conclusion about the delay in this case and indicated that it would be willing to consider an interim resolution in respect of the delay by the UK on this occasion, if progress were not made by December 2009. The Ministers' Deputies:

[...] expressed concern about the significant delay in implementing the action plan and recognised the pressing need to take concrete steps to implement the judgment particularly in light of upcoming United Kingdom elections which must take place by June 2010 at the latest.³

During a debate on a probing amendment proposed by Lord Ramsbottom to the Coroners and Justice Bill, on this issue, one of our members, Lord Lester of Herne Hill, asked the Minister, Lord Bach whether the Government would consider using the remedial order process after the consultation was complete, in order to ensure that the Government's proposals would be in force before the next general election. Lord Bach replied:

We do not think that this is an appropriate issue for a remedial order; it is an appropriate issue for both Houses to decide whether and how this particular ruling of the European Court of Human Rights should be brought into force. (HL Deb 15 Jul 2009)

We have already raised our serious concerns about the delay in this case. We would be grateful if you could answer a number of questions on the Government's second consultation and other recent developments.

The Second Stage Consultation

In our last report on this issue, we asked the Government to publish the responses to the first stage consultation, in order to allow for more effective public and parliamentary scrutiny of the Government's approach. In the Government's response to our report, it did not deal with our request. The Second Stage Consultation summarises the responses, but the responses themselves are not publicly available, unless published by individual consultees.

1. **We would be grateful if you could agree to publish the responses to the first stage consultation – if necessary, redacted to protect anonymity, if requested – to allow for more effective parliamentary and public scrutiny of the Government's next steps.**

We note that the Government accepts that the responses to its consultation was "heavily polarised". Of 88 respondents, 41 responses argued in favour of full enfranchisement and 25 responses argued in favour of the status quo. The Government makes no comment on

²Ministry of Justice, Information Note to Committee of Ministers, 8 April 2009

³CM/Del/Dec(2009)1059immediatE / 08 June 2009; 1059th (DH) meeting, 2-4 and 5 (morning) June 2009 - Decisions adopted at the meeting

the fact that a significant proportion of the responses to the consultation argue in favour of full enfranchisement, an option rejected by the Government before the consultation took place. We understand that the Government does not support this option, but it would be helpful if the Government could provide a more detailed response to the arguments proposed by the individual respondents to its consultation.

- 2. How does the Government respond to the significant number of responses to the first consultation which argued in favour of full enfranchisement? In particular, please outline the consultation respondent's arguments in favour of full enfranchisement and the Government's responses to them.**

The Government's consultation proposes 4 options for consultation, each based on the duration of sentence being served by a prisoner (roughly 1, 2 or 4 years and a hybrid of 2 or 4 years). This would mean all prisoners crossing a custodial threshold would automatically be deprived of the right to vote. Only 4 respondents to the first stage consultation argued in favour of a system of enfranchisement based on duration of sentence.

- 3. Given the low numbers of respondents to the first stage consultation who favoured this approach, we would be grateful if you could explain why the Government has adopted this approach.**

In our earlier report on this issue, we noted the conclusion of the Grand Chamber in *Hirst* that:

[The standard of tolerance required by the Convention] does not prevent a democratic society from taking steps to protect itself against activities intended to destroy the rights or freedoms set forth in the Convention. Article 3 of Protocol 1, which enshrines the individual's capacity to influence the composition of the law-making power, does not therefore exclude that restrictions on electoral rights are imposed on an individual who has, for example, seriously abused a public position or whose conduct has threatened to undermine the rule of law or democratic foundations [...] The severe measure of disenfranchisement must, however, not be undertaken lightly and the principle of proportionality requires a discernible and sufficient link between the sanction and the conduct and circumstances of the individual concerned.

- 4. We would be grateful if you could explain the Government's view that maintaining a blanket ban for all prisoners serving a custodial sentence over a set duration is justified, proportionate and compatible with Article 3 of Protocol 1 ECHR. Please specify any other similar arrangements which operate in other Council of Europe States which have influenced the Government's thinking on this issue.**
- 5. In particular, we would be grateful if you could explain how an absolute ban based on length of sentence (a) allows for a sufficient link between the sanction, the offence and the rule of law or its democratic foundations and (b) allows for the consideration of the conduct and circumstances of each individual offender.**

The second stage consultation includes further consultation proposals in respect of the involvement of judicial discretion in removing the right to vote. During the debate on the Coroners and Justice Bill in July 2009, Lord Bach explained that the Government was

“not entirely opposed” to allowing each judge to consider an individual case on its merits. This however is not provided for in any of the four options proposed for detailed consultation. The consultation paper explains:

A system that places the decision on enfranchisement or disenfranchisement completely on the sentencing court would impose considerable burdens on the courts and on institutions where individuals are currently held in custody. Fundamentally, however, the Government agrees with the argument that ultimately Parliament must debate and decide the extent of the franchise.

6. **Please list the additional burdens on the courts and on institutions where individuals are currently held in custody which affected the Government’s view on whether or not sentencing courts should be responsible for decisions in respect of the right of an individual prisoner to vote.**
7. **Why does the Government consider that it would be inappropriate for Parliament to delegate the decision on the extent of an individual’s right to participate in elections to the sentencing court?**

The consultation explains the Government’s view that removal of the franchise is not “only a punitive measure” in order to justify the decision on the bar being taken by politicians rather than the independent and impartial trial judge. This appears at odds with the Grand Chamber decision in *Hirst* which refers to removal of the franchise as a sanction. As the Government will understand, specific safeguards generally accompany the imposition of criminal sanctions (Article 6 ECHR).

8. **Please explain why the Government’s view that removal of the franchise should not be treated like any other criminal sanction is compatible with the decision of the Grand Chamber in *Hirst* and Article 6 ECHR.**

Remedial Orders

9. **We would be grateful if you could provide reasons why the Government considers that the consideration of both Houses of a remedial order on affirmative resolution will not provide adequate opportunity to debate the issues explored by the Grand Chamber in its decision and the Government’s proposals to remove the breach in *Hirst*.**

The Committee of Ministers

10. **We would be grateful if you could provide us with any information which the Government has provided the Committee of Ministers since its decision in June 2009 expressing concern about the delay in this case and calling for a solution before the next general election.**
11. **In particular, we would be grateful if you could tell us:**
 - a. **Whether the Government has made any commitment to ensure that a solution will be in place before the next general election; and**
 - b. **Any steps which the Government intends to attempt to meet this goal.**

Further Convention challenges?

- 12. Please explain whether the Government considers that the conduct of a general election before the blanket ban in Section 3 of the Representation of the People Act is removed will be compatible with the United Kingdom's international obligations under the Convention, including Article 13 ECHR.**
- 13. We would be grateful if you could provide us with the details of any further Convention challenges pending against the Government, either before our domestic courts or at the European Court of Human Rights, based on the failure of the United Kingdom to remove the blanket ban in Section 3 of the Representation of the People Act 1983. Please include any details of the grounds of the challenge and any Government response.**

I would be grateful for a response by **4 September 2009** and if you could send a Word version to jchr@parliament.uk.

ANDREW DISMORE MP
Chair, Joint Committee on Human Rights