

Work of the Committee in 2008–09

Second Report of Session 2009

Oral evidence

Taken before the Joint Committee on Human Rights on Tuesday 20 January 2009

Witnesses: Rt Hon Jack Straw MP, Lord Chancellor and Secretary of State for Justice, and Mr Michael Wills MP, Human Rights Minister, Ministry of Justice, gave evidence.

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Q66 Lord Lester of Herne Hill: Secretary of State, as you rightly said, the UK has a good record of complying with the judgments of the European Court of Human Rights. It has an extremely bad record in the case of *Hirst v United Kingdom*, the prisoner voting rights case. I want to remind you of the background briefly, which is the judgment was in 2005, it was speedily implemented by Cyprus and by Ireland, who gave postal votes very quickly even though they were not parties. In Hong Kong a judgment on 10 December which said that it was unlawful to exclude prisoners from voting in Hong Kong is to be implemented by the Legislative Council within eight months. You carried out a consultation which we thought would lead to legislation or an immediate order or whatever. You are now carrying out another consultation. Lord Bach has not been able to tell me when it will begin or when it will end at all. The suspicion is that what you are seeking to do—and I am sorry to put it in this adversarial way—is to delay it until after the next election for fear that the tabloid newspapers would crucify the Government. What I would like to know from you is how you think you are complying with your international obligations to abide by the judgment binding on the UK by prevaricating in this way and exactly what it is now that you propose to do well before the next general election? Finally, the Scottish position, as you know, in Scotland the exclusion has been held to be unlawful there and there has been a declaration of incompatibility. We are talking about very large numbers of prisoners in Scotland, Northern Ireland, England and Wales, often in prison for rather minor offences (I am not talking about the serious ones) and you propose to do absolutely nothing, as far as I can see, between now and the election in terms of abiding by the judgment, so could you tell us exactly what it is you are going to do?

Mr Straw: We do take our obligations seriously and we do meet our obligations, Lord Lester. Why has this taken some time? First of all, the European Court in Strasbourg said that it was out with the Convention rights for there to be a blanket ban on convicted prisoners voting. It did not provide a very specific remedy for that, except to say that we needed to qualify that restriction. What we have been consulting about is how we meet the obligations in the best possible way and we raised a series in the first consultation. We are about to embark on the second consultation. Why is this difficult? Most of the obligations which are imposed by decisions in the Strasbourg Court are obligations on the executive, and where that for example involves the liberty or freedom of a particular individual, for example *Chahal*, then they are swiftly implemented because they involve an executive decision. Other cases are rather easier to pursue. If you take the more recent judgment of the Strasbourg Court in *Marper*, which was about the collection of DNA evidence, whilst what is in the statute was declared to be to some [Ev 14] degree out with the Convention rights, I believe—and I read the judgment through very carefully—that there will be a way through and that it is possible to find a consensus which meets the will of both Houses of Parliament and establishes a more satisfactory system. The difficulty we have got—and there is no secret about this—is this is an issue of prisoner voting rights

on which both the main parties have had a very clear position, which has not been the subject of any significant controversy whatsoever within their parties, that when people are convicted and sentenced to prison they lose their civic right to vote. This is a very unusual situation where the European Court is saying one thing but this is not changing the law, it is not within the gift of the Government, it depends on Parliament. If Members of Parliament decide they are not going to accept what the European Court says then they will not accept it. What we have been seeking to do is to identify the best possible way of meeting the obligations under that decision and to do so in a way that shows respect and achieves consent for that decision, and I happen to think that that is sensible and it recognises the unusual reality of this particular decision.

Q67 Lord Lester of Herne Hill: Why is it that in Cyprus, in Ireland and in Hong Kong they find ways of dealing with this promptly? Why can you not decide as a matter of policy that certain kinds of offences—terrorism and perhaps other serious offences—should not entitle people to vote but in the generality of the prison population they should be in the same position as many other countries? Why can you not introduce a remedial order? You say it is in the gift of Parliament and not government but it is for government to introduce either a remedial order or an amendment to legislation, not for Parliament to do so. What I am suggesting to you is that when the Committee of Ministers at their next meeting come to look at UK compliance with *Hirst*, they will read what you have just said and they will think that the United Kingdom is in gross dereliction of its obligations, which is not desirable for our international reputation.

Mr Straw: I do not accept that. Lord Lester, if I may say so, if you were in my position you would also wish to have a care for the view taken by both of the largest democratically elected parties in this country. I am afraid I cannot speak for the political class in Cyprus or Hong Kong or wherever else it was; my knowledge does not extend that far. What I do know, not least from my time as Foreign Secretary, is that time and again there were issues which did not feature on our political radar at all which were huge issues of controversy in other EU Member States and vice versa. This is an issue on which both main political parties agree. I cannot ever recall there being a debate in the Labour Party except when there was a proposition by another party which came out at a Labour Party Conference to say we were against voting rights for prisoners. There has been no debate in the Labour Party and I do not think there has been ever in the Conservative Party either. We have to meet our obligations but we need to do it in a way which achieves consent as well as meeting in full our obligations. You beg the question essentially of where and how you draw the line because *Hirst* did not lay down any precise prescription about which prisoners should or should not be able to vote. They simply said that a blanket ban was unacceptable. What we are having to do is look at which categories of prisoner should be able to vote and, for sure, it would not include those convicted of very serious offences, but what is a maximum prison sentence which would be acceptable, and then whether within that maximum, or you could say out with it, you give discretion to the court about how that is administratively enforced as well. There are other issues because I think it would be wrong if somebody happened to have a prison in their constituency and the prisoners were registered to vote in respect of their prison address that that could influence the result of an election. There are those issues as well. That is the same explanation that we will offer to the Council of Ministers. I also rely on the fact that this has been an exception, for good reason, to what is, in my view, a pretty exemplary record.

Mr Wills: There are practical issues as well. If prisoners are allowed to vote there is then the issue of putting them on an equal footing with other voters. Other voters have not a right but an expectation of access to parliamentary candidates so that they can judge them first-hand. What implications does that have for prison and prison access at a time when the Prison Service is already very stretched? There are a lot of practical questions as well as principle questions that have got to be addressed and they have got to be got right.