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Contact: Clare OVEY
Tel: 03 88 41 36 45

Date: 02/11/2017

DH-DD(2017)1229

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Meeting: 1302nd meeting (December 2017) (DH)

Item reference: Action plan (02/11/2017)

Communication from the United Kingdom concerning the case of HIRST (No. 2) v. the United Kingdom (Application No. 74025/01)

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Réunion : 1302^e réunion (décembre 2017) (DH)

Référence du point : Plan d'action

Communication du Royaume-Uni concernant l'affaire HIRST (n° 2) c. le Royaume-Uni (requête n° 74025/01)
(anglais uniquement)

DGI

02 NOV. 2017

SERVICE DE L'EXECUTION
DES ARRÊTS DE LA CEDH

Execution of Judgments of the European Court of Human Rights

Action Plan

Hirst No. 2 (application no. 74025/01; judgment final on 06/10/2005)
Greens and MT (application no. 60041/08+; judgment final on 11/04/2011)
Firth and others (application no. 47784/09+; judgment final on 15/12/2014)
McHugh and others (application no. 51987/08+; judgment final on 10/02/2015)
Millbank and others (application no. 44473/14+; judgment final on 30/06/2016)
Information submitted by the United Kingdom Government on 2 November 2017

A. Case description

1. In the *Hirst* group of cases the European Court of Human Rights found that the restrictions on convicted prisoners voting in parliamentary elections violated Article 3 of Protocol No. 1 to the European Convention on Human Rights.
2. The Court noted that section 3 of the Representation of the People Act 1983 imposes a blanket restriction on all convicted prisoners, and that it applies automatically to such prisoners.
3. The Court concluded that such a general, automatic and indiscriminate restriction on a vitally important Convention right must be seen as falling outside any acceptable margin of appreciation, and was therefore incompatible with Article 3 of Protocol No. 1.

B. Individual measures

4. The just satisfaction awards (costs and expenses) have been paid and the evidence previously supplied.

C. General measures

5. As agreed with the Committee of Ministers in December 2016, this action plan sets out the United Kingdom's concrete proposals to address the *Hirst* judgment. The measures we are proposing have been developed to address the judgment and bring us within the margin of appreciation. The proposals arise from the fruitful dialogue we have had on this issue with other member States and the Secretariat, to understand the varied approaches others have taken. For example, we have considered allowing judges a role in deciding whether the right to vote should be withdrawn, whether disenfranchisement should be permanent, or whether it should be linked to the number of times an offender has been imprisoned.
6. The United Kingdom Government position is that, given the custodial threshold in the UK is such that a custodial sentence is only given in the most serious offences and where it is appropriate and proportionate to do so, prisoners who reach that custodial threshold should not in general vote. However, the UK Government remains

committed to the principle (enshrined in section 3 of the Representation of the People Act 1983) that disqualification from voting should not last beyond the period in which a person remains in custody.

7. Considerable efforts have been made in the UK to ensure the voting ban is proportionate. In the UK, most prisoners given a determinate prison term are released on licence halfway through their sentence of imprisonment: they are then able to vote.
8. This action plan outlines the UK Government's proposals to make a policy change. Our proposals will bring the UK's policy framework within the margin of appreciation envisaged by the European Convention on Human Rights. These proposals are set out in detail below. In particular, we are proposing to allow prisoners being prepared for release through a temporary licence, and are registered, to vote. Such prisoners are primarily, as in other countries, prisoners who are serving short sentences. They are prisoners who are released during the day based on individual risk assessments.
9. The UK Government has in bringing forward proposals looked at how it can address other aspects of the *Hirst* judgment. The judgment stated that the UK did not make it clear to individual prisoners that they were losing the right to vote. We will work with the judiciary to change the warrant of committal to prison to ensure that prisoners are individually notified of their disenfranchisement. The UK judiciary, when sentencing, is aware that the loss of the right to vote is a consequence of a custodial sentence and decides accordingly. This further amendment will make it more transparent to the prisoner as well.
10. In coming to the position above we have examined any and all options that could potentially help to address this judgment, and not just a binary choice of a legislative solution. The administrative measures are the best approach to credibly, effectively and swiftly address the *Hirst* group of cases.
11. In recent weeks, officials representing the United Kingdom Government have started discussions with the Secretariat and member States to explain how this package of administrative measures will address the *Hirst* judgement. In the run-up to the December meeting, the United Kingdom will, of course, continue to engage with the Secretariat and member States, whose advice and ideas have been very useful.
12. We invite the Committee of Ministers to endorse these proposals. We will implement these proposals, following this endorsement at the December DH meeting. This will require close working with the devolved administrations of the United Kingdom, who are responsible for aspects of elections and prisons.

D. Proposal

Possibility of voting for prisoners released on temporary licence

13. The UK Government would change its policy and guidance to prisons to make clear that prisoners can register to vote, and vote, while released on temporary licence. Most prisoners eligible to vote under this proposal would likely be on short sentences, and will have been granted temporary release, primarily for employment-related reasons.

Voting for prisoners released on home detention curfew

14. Although it is established policy that prisoners are permitted to vote if permanently released on licence, it has never been made clear that this includes prisoners released on Home Detention Curfew. The Home Detention Curfew scheme applies to prisoners who are serving short sentences. It allows prisoners to live outside of prison providing they do not breach the rules of their curfew.
15. Clarifying this point in guidance would highlight the fact that the disenfranchisement of offenders in prison that is provided for in section 3 of the Representation of the People Act 1983 ends as soon as they are released, whenever that is. We would reiterate that this is not the case in several other Council of Europe member States. This is a further demonstration of the proportionality of the UK's approach in this regard. Our proposals would, additionally, make clear that those prisoners who are in the process of being reintegrated back into society through the home detention curfew scheme can vote.

Clarity for prisoners at the point of sentencing

16. The Court in *Hirst* noted that “in sentencing, the criminal courts in England and Wales make no reference to disenfranchisement”. We propose amending the standard warrant of committal to prison to ensure that prisoners are notified of their disenfranchisement. The UK judiciary, when sentencing, is aware that the loss of the right to vote is a consequence of a custodial sentence, and decides accordingly. This further amendment emphasises the United Kingdom's commitment to transparency and clarity in individual prisoners' cases.

E. Conclusion of the authorities

17. In summary, these proposals would lead to the situation where:
- a. prisoners on remand could vote;
 - b. prisoners committed to prison for contempt of court could vote;
 - c. prisoners committed to prison for default in paying fines could vote;
 - d. some prisoners released on temporary licence could vote;
 - e. prisoners released on home detention curfew could vote; and

- f. prisoners would be notified of their disenfranchisement at the time of sentence.

18. These proposals are an effective package to ensure compatibility with the Hirst judgment. We would update the Committee of Ministers when the measures have been adopted. Making voting accessible to prisoners released on temporary licence fits with our proportional system where those prisoners on Home Detention Curfew and remand can also vote.