

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES



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DH - DD(2010)609E

Item reference: Communications from different NGOs (AIRE, UNLOCK, PRI, PRT) in the case of Hirst No. 2 against the United Kingdom (*Application No. 74025/01*).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments.

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Référence du point : Communications par différentes ONG (AIRE, UNLOCK, PRI, PRT) dans l'affaire Hirst n° 2 contre le Royaume-Uni (*Requête n° 74025/01*) (**anglais uniquement**).

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts.

This document will be declassified after the 1100th DH meeting, in accordance with Rule 8 (Access to information) of [the rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements](#). Ce document sera déclassifié à l'issue de la 1100e réunion DH conformément à la règle 8 (Accès aux informations) des [Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables](#).

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THE AIRE CENTRE

Advice on Individual Rights in Europe

The President of the Committee of Ministers
Department for the Execution of Judgments for the Council of Europe
Council of Europe
Strasbourg
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By fax , post and email

22 November 2010

Mr President

Re: Hirst (No2) v United Kingdom – Application number 74025/01

The Committee of Ministers will recall that the judgment in *Hirst (No.2)* was delivered by a Grand Chamber of the Court on 6th October 2005, more than five years ago. The Committee will also recall that the case originated in a complaint brought to the Court on 5th July 2001, almost ten years ago.

The Committee of Ministers is already aware that the AIRE Centre was accepted as a third party intervener before the Grand Chamber in this case and has made previous submissions to the Committee of Ministers about the non-execution of this judgment. The AIRE Centre represented the applicant in the case of *Frodl v Austria* (Application number 20201/04), which also concerned voting rights for prisoners. The judgment in *Frodl* became final some six weeks ago on 4th October 2010.

It is therefore of great concern that, at a time when the Convention institutions are placing such emphasis on compliance with judgements of the Court that, this important Grand Chamber judgment should have gone unexecuted for so long.

The Committee of Ministers will recall that at the High Level Conference in Interlaken earlier this year it was “[c]onvinced that over and above the improvements already carried out or envisaged additional measures are indispensable and urgently required in order to ... ensure the full and rapid execution of judgments of the Court and the effectiveness of its supervision by the Committee of Ministers”.

In addition, *Hirst (No.2)* was listed and considered at the 1092nd meeting of the Committee of Ministers of the Council of Europe on 15 September 2010, which was devoted to the supervision of the execution of the judgments of the European Court of Human Rights.

At this meeting the Deputies “deeply regretted that despite the Committee’s calls to the United Kingdom over the years to implement the judgment, the risk of repetitive applications to the European Court has materialised as the Court has communicated 3 applications to the government with a view to adopting the pilot judgment procedure and has received over 1 340 applications”.

They also “regretted, however, that no tangible and concrete information was presented to the Committee on how the United Kingdom now intends to abide by the judgment”. As a result they “decided to resume

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THE AIRE CENTRE

Advice on Individual Rights in Europe

consideration of this item at their 1100th meeting (November-December 2010) (DH) and instructed the Secretariat, in the absence of any concrete developments, to prepare a draft second interim resolution."

There are a number of important concerns in relation to this persistent failure by the UK Government to comply with the *Hirst* judgment.

Firstly, and perhaps most importantly, the disregard by the UK Government of the rule of law. It is well known that the UK Government did not agree with the *Hirst* judgment, but under Article 46(1) of the Convention the Government has agreed to be bound by the Court's rulings. The failure to comply with this judgment five years after it was delivered is an affront to the rule of law and to the Court and sends an inappropriate message to other member states of the Council of Europe.

Secondly, the failure to comply with the judgment sends unacceptable and negative signals to the prison estate in the UK. Those deprived of their liberty for breaking the law see that the system which has imprisoned them can – apparently – disregard the judgments of the highest court in Europe with impunity.

Thirdly, prisoners remained, unlawfully in ECHR terms, disenfranchised during the general elections last year. Further elections are due to be held in May 2011. The prison estate presently comprises some 80,000 persons of whom it is estimated at the very least 70,000 British, Commonwealth and EU citizens would, in principle, be eligible to vote. Prisoners and those who look after their interests are now likely to be forced to bring further cases to Strasbourg - burdening an already overburdened court - as a consequence of the continuing failure by the UK Government to take the necessary steps to execute this judgment.

As noted above, it is now over five years since the Grand Chamber delivered its judgment. If the UK does not present to the upcoming November meeting of the Committee of Ministers an acceptable, realistic and timely proposal for promptly introducing the measures necessary to comply with the judgment, the AIRE Centre respectfully submits that this will be an appropriate case for the Committee of Ministers to use the new powers under Article 46(4) of Protocol 14 to refer to the Court the question of whether the UK has failed to fulfil its obligations under the Convention.

Yours faithfully

Nuala Mole
Director

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22 November 2010

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Dear Committee of Ministers,

Hirst v UK (No. 2) Judgement

I write to you under Rule 9 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

In May 2010 the United Kingdom held a General Election which, despite the ECHR judgement in *Hirst v UK (No.2)*, took place with the blanket ban on sentenced prisoners from voting still in place, and thereby in repeated violation of Article 3 Protocol 1 of the European Convention on Human Rights.

In June 2010 the Committee of Ministers "expressed confidence that the new United Kingdom government will adopt general measures to implement the judgement ahead of elections scheduled for 2011 in Scotland, Wales and Northern Ireland, and thereby also prevent further, repetitive applications to the European Court." UK Justice Minister stated shortly afterwards that the government would look "afresh at the best way forward on the issue of prisoners voting rights".

Following the welcome announcement by the UK Government on 2 November 2010 that it intended to comply with the ruling, the Prime Minister was questioned in Parliament the following day and stated, "...it makes me physically ill to contemplate giving the vote to prisoners. They should lose some rights including the right to vote." However he acknowledged that "We are in a situation we have to deal with", indicating that the government did in fact intend to act in the near future to meet its obligations.

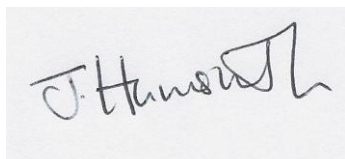
Nevertheless, on 16 November, the Rt Hon Kenneth Clarke, Secretary of State for Justice, gave evidence to the Joint Committee on Human Rights and was asked what action the government proposed to take on the matter. Mr Clarke's response was, "The extent of the legal obligation [is] a little confused. Two European judgements aren't really consistent with each other. It's the ban on all prisoners not having the vote that was upheld by the European Court". He was clearly referring to the judgements in both *Hirst v UK (2004)* and

Frodl v Austria (2010) appearing not to know whether the UK government must apply the more detailed ruling of the later as well as the former.

UNLOCK is dismayed at the UK Government's apparent confusion and is concerned that this will provide yet another excuse for further delay. Moreover, we are concerned that the Government is minded to enact legislation eventually automatically limiting prisoner enfranchisement to categories of prisoners according to sentence length in accordance with two previous public consultations on the matter (the results of which remain unpublished). Such limitation would be incompatible with the 2010 Frodl judgement and, we suggest, would inevitably give rise to further prisoner litigation at the ECHR in the future. There are already cases pending at both European and domestic courts brought by prisoners disenfranchised at the General Election last May.

Next year the UK will see further elections taking place across the UK with the very real prospect of the ban on prisoner voting still in place. We are increasingly doubtful that the UK Government will present the Committee of Ministers with a clear proposal setting out in any meaningful way how it intends to comply with its obligations at your meeting on 30 November. Once again, we urge the Committee to serve the UK government with formal notice of intention, under Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, to refer back to the Court since it has patently failed to fulfil its obligation. Further we urge you to take appropriate action to ensure that the UK Government is fully conversant with the impact of the Frodl case on any proposed amendment to UK legislation.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J. Harmsworth', on a light grey background.

Julie Harmsworth (formerly Wright) | Deputy Chief Executive



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22 November 2010

Dear Secretary to the Committee of Ministers,

Re: Right of prisoners to vote

I write on behalf of Penal Reform International (PRI), an international, non-governmental organization which enjoys consultative status with the Council of Europe. It works to promote the use of constructive sanctions which support the social reintegration of offenders, and implementation of international human rights standards. These standards attach great importance to reintegration and rehabilitation as essential components of Member States' criminal justice policy.

In the case *Hirst v UK* (No. 2) the ECtHR ruled that the UK Government blanket ban on voting by sentenced prisoners was unlawful. PRI recognizes that the right to vote, contained in the European Convention on Human Rights, is not an absolute right: a state is not precluded from imposing conditions on the right to vote, provided that the conditions pursue a legitimate aim and are not disproportionate. However, the UK Government has still not complied with the judgement by bringing forward legislation to ensure that elections due in May 2011 are compliant with the decision of the European Court and specify the voting rights of prisoners in the UK.

While prisoners are inevitably deprived of their liberty, they are still entitled to exercise civil rights which are consistent with this. Many European countries allow prisoners the right to vote and there appear to be no reasonable grounds for the UK government's delay in complying with the Court's decision in this regard. We hope that this submission will be placed before the Committee of Ministers for consideration.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Alison Hannah".

Alison Hannah
Executive Director



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22 November 2010

Dear Committee of Ministers,

Hirst v UK (No. 2) judgement

I write to you under Rule 9 of the Rules of the Committee of Ministers for the supervision of the execution of judgements and of the terms of friendly settlements.

As you are aware, it is more than six years since the European Court of Human Rights (ECtHR) ruled in *Hirst v UK (No. 2)* that the UK Government's blanket ban barring sentenced prisoners from voting is unlawful. Yet, despite the UK Government's appeal being rejected in 2005 and two protracted public consultation exercises, the policy remains in place.

In the UK general election held on 6 May 2010, as many as 73,000 people were unlawfully denied the right to the vote. This resulted, as the Committee highlighted at its meeting in September, in the risk of repetitive applications to the European Court materialising, with over 1,300 applications received at the time of the meeting.

With national elections due to be held in Scotland, Wales and Northern Ireland in May 2011, along with local elections in England, there is now very little time left for the UK authorities to bring forward legislation to ensure these elections are compliant with the European Convention, and avoid the risk of further, repetitive applications to the Court.

The Coalition Government has acknowledged that it is required to comply with the judgement, although it has not clarified how it will do so or agreed a legislative timetable for overturning the ban. Mark Harper

MP, Parliamentary Secretary at the Cabinet Office, in a debate on the issue in the House of Commons on 2 November, said: “The Government accept, as did the previous Government, that as a result of the judgement of the Strasbourg Court in the Hirst case, there is a need to change the law. This is not a choice; it is a legal obligation. Ministers are currently considering how to implement the judgement, and when the Government have made a decision the House will be the first to know.”

Rt Hon David Cameron MP, at Prime Minister’s Question Time in the House of Commons the next day, following significant media interest in the issue, said: “It makes me physically ill even to contemplate having to give the vote to anyone who is in prison. Frankly, when people commit a crime and go to prison, they should lose their rights, including the right to vote. But we are in a situation that I am afraid we have to deal with. This is potentially costing us £160 million, so we have to come forward with proposals, because I do not want us to spend that money; it is not right. So, painful as it is, we have to sort out yet another problem that was just left to us by the last Government.”

As you will be aware, the Government failed to provide the Committee at its last meeting in September with any “tangible and concrete information” on how it intends to abide by the judgement. This is despite Lord McNally, Minister of State at the Ministry of Justice, saying in a debate in the House of Lords in June on the issue that the Government would “fully update” the Committee at its September meeting on the Government’s intentions. Lord McNally has since said that the Government would update the Committee at its forthcoming meeting in November.

We note that the Committee at its September meeting “called upon the United Kingdom, to prioritise implementation of this judgement without any further delay and to inform the Committee of Ministers on the substantive steps taken in this respect”. We also note that it instructed the Secretariat, in the absence of any concrete developments, to prepare a draft second interim resolution.

If the UK Government does not now act urgently to adopt general measures to implement the ruling in time for next year’s elections, we would ask that the Committee does all in its power to require the UK authorities to comply fully with the judgement. In particular, we would ask the Committee to consider serving the UK Government with formal notice of its intention under Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms that it will refer to the Court the question of whether the Government has failed to fulfil

its obligation. We would ask the Committee to consider waiving the six month notice period given that the UK authorities have had over six years to comply with the Convention. We understand that under Protocol 14 Rule 11 Infringement Proceedings could now begin.

It is important for the Committee to make clear to the UK authorities the very small “margin of appreciation” they have in implementing the judgement. The Committee said at its September meeting that “the measures to be adopted should ensure that if a restriction is maintained on the right of convicted persons in custody to vote, such a restriction is proportionate with a discernible and sufficient link between the sanction, and the conduct and circumstances of the individual concerned.” This is consistent with the ruling in the case of *Frodl v Austria*.

By contrast, the Daily Telegraph newspaper reported on the 1 November 2010: “Ministers are now examining ways that limits could be placed on which inmates can vote. They will push for strict conditions, including a ban on ‘lifers’ and murderers from voting. In an attempt to limit the political fallout, there is likely to be a push to implement a threshold that would see those serving sentences longer than four years being excluded from voting.” If true, these plans would seem to be in clear breach of the European Convention, with the resulting risk, if implemented, of further, repetitive applications to the European Court.

Up to now this process has been characterised by continuous delay. The Government has yet to publish the results of its second consultation despite the fact the consultation received only 100 responses, an analysis that should have taken the skilled Ministry of Justice and Human Rights team a short time had they been authorised to proceed. In correspondence with the Prison Reform Trust and others the Ministry of Justice has repeatedly said it is in the process of considering the responses with no indication of when the results will be published.

Repeated reminders to the Government to comply with the Convention have been issued by a number of official bodies including the UK Parliament’s Joint Committee on Human Rights, the UN Human Rights Committee, and civic society groups including the Prison Reform Trust, UNLOCK, the association of reformed offenders, Liberty, Penal Reform International and the Aire Centre.

Through its audit procedures the Ministry of Justice has been systematically seeking prisoners' level of interest in voting and in general is thought to have received positive responses. The Prison Service does not envisage practical problems in enfranchising prisoners and already has arrangements in place for remand prisoners to exercise their right to vote. The Electoral Commission has set out in its response to the Ministry of Justice's second consultation on prisoners voting in 2009 a mechanism by which prisoners could be enfranchised through a system of postal or proxy voting, involving a modification to the existing declaration of local connection in electoral law.

We should be pleased to provide additional information if that would be of use to the Committee.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Juliet Lyon', with a long horizontal stroke extending to the right.

Juliet Lyon CBE
Director of the Prison Reform Trust

Enclosures

Hansard

Debates in the House of Commons on prisoners voting

2 November 2010

Sadiq Khan (Tooting) (Lab) (*Urgent question*): To ask the Deputy Prime Minister if he will make a statement on the Government's plans to give prisoners the vote.

The Parliamentary Secretary, Cabinet Office (Mr Mark Harper): The UK's blanket ban on sentenced prisoners voting was declared unlawful by the grand chamber of the European Court of Human Rights in October 2005, as a result of a successful challenge by a prisoner, John Hirst. The Government accept, as did the previous Government, that as a result of the judgment of the Strasbourg Court in the Hirst case, there is a need to change the law. This is not a choice; it is a legal obligation. Ministers are currently considering how to implement the judgment, and when the Government have made a decision the House will be the first to know.

Sadiq Khan: Mr Speaker, you have yet again agreed to allow an urgent question so that we can ask the Government to account to the House for decisions that have been preannounced in the media. The news that prisoners are to be given the vote is a matter of great concern to the public. The House will note that the Deputy Prime Minister is not here to answer this important urgent question. I have 10 short questions for the Minister who is here to speak on his behalf.

When the previous Government consulted on this matter, the right hon. and learned Member for Beaconsfield (Mr Grieve), who was then the shadow Secretary of State for Justice and is now the Attorney-General, described the prospect of giving prisoners the vote as "ludicrous". Does the Minister share that view? One of the most troubling aspects of the European Court ruling is that it opens the door to the possibility of serious offenders being given the vote. Will he explain how the Government would ensure that serious offenders are not given the vote? Press reports suggest that sentence length will be the key determinant in deciding which prisoners can vote. If that is the case, what length of sentence do the Government have in mind? How will they ensure that prisoners who are guilty of serious offences but serving short sentences are not given the vote? Will the Minister provide details of the precise mechanics that prisoner voting will entail? Can he also tell us whether prisoners will be allowed to vote in referendums as well as elections?

The Prime Minister is reportedly "exasperated" and "furious" at having to agree to votes for prisoners. Does the Minister share that view? There is a strong sense that the decision is being forced on this country against the will both of the Government and of the people's representatives in this Parliament. For the sake of public trust in British democracy, will the Minister who is standing in for the Deputy Prime Minister therefore agree that any legislation put before the House on this vital issue should be the subject of a free vote?

Mr Harper: No one would have realised, listening to that, that the right hon. Gentleman was ever a member of the previous Government, who also accepted that the law needed to be changed, and accepted the judgment. I have looked carefully at the media reports, and all I can see is an expression by the Government, relating to what they are going to say in a pending legal case, that they must comply with the law. I would not have thought that explaining that the Government had to comply with the law was particularly revelatory. In fact, the right hon. Gentleman shared our view when he was in government. He was quite right to draw the House's attention to the fact that the Prime Minister is exasperated. I

suspect that every Member of the House is exasperated about this, but we have no choice about complying with the law.

The fact that the previous Government failed for five years to do what they knew was necessary has left our country in a much worse position, both because of the possibility of having to pay damages and because case law has moved on. The only thing that would be worse than giving prisoners the vote would be giving them the vote and having to pay them damages as well. That is the position that the previous Government left us in.

I shall now turn to the right hon. Gentleman's questions. I made it clear in my statement that Ministers were considering how to implement the judgment, and when decisions have been taken they will be announced to the House at the Dispatch Box in the usual way. No decisions have been taken, and I am therefore unable to answer any of his questions at this time. The previous Government took five years to do nothing when they knew that something had to be done—in exactly the same way as they behaved in not dealing with the deficit. This Government have been in office for only a matter of months, but yet again our two parties are having to deal with the mess left behind by Labour.

Mr David Nuttall (Bury North) (Con): Will the Minister explain how the damages figure of millions of pounds has been arrived at, bearing in mind that nobody has yet had a payment? If ever we are forced into paying out damages, I suggest that we knock them off the payments that we have to make to Brussels.

Mr Harper: My hon. Friend should know that the European Court of Human Rights is based in Strasbourg, and that this is nothing to do with the European Union. The two issues are completely separate. We have been a signatory to the European convention on human rights for the best part of 60 years. Indeed, British lawyers helped to draft it after the second world war. There are currently more than 1,000 pending cases, and there is a real risk that judges will award millions of pounds in damages to be paid by our taxpayers to prisoners who have been denied the vote. That risk has been left to us by the inaction of the previous Government.

Steve McCabe (Birmingham, Selly Oak) (Lab): What estimate have the Government made of the cost to the honest law-abiding taxpayer of their decision to run up the white flag on this issue?

Mr Harper: As I said, the previous Government and this Government have both accepted that the Government generally have to comply with the law. We are currently considering how to comply with it, and we will announce our decisions in due course. This is not a choice; it is an obligation. The hon. Gentleman needs to understand that the only way of avoiding this would be if he were prepared to leave the European convention, which his Front Benchers are not prepared to do.

Sir Alan Beith (Berwick-upon-Tweed) (LD): Is my hon. Friend not being a little unfair to the previous Government, who, after all, had done a lot of detailed work on how they would eventually implement this provision? Is it not fairly clear that if the Government are saying to somebody, "You must be in prison, and you must abide by the law and the decision of the court," they can hardly add, "But we will ignore the decisions of the courts"?

Mr Harper: The right hon. Gentleman is right. The previous Government accepted that the law needed to be changed and brought forward a number of proposals to enfranchise prisoners, but they simply did not have the gumption to do anything. As ever, they left it behind for somebody else to clear up.

Mrs Jenny Chapman (Darlington) (Lab): I have worked in prison, and I know that there are many hundreds of incarcerated people who should have no role whatever in this country's democracy, and no say in how it is run. When will we be able to decide for which offences, and for which length of sentences, prisoners will remain excluded from the right to vote?

Mr Harper: As I said in my statement and in my response to the right hon. Member for Tooting (Sadiq Khan), Ministers are currently considering how to implement the judgment. When the Government have taken those decisions we will announce them to this House, which is the right thing to do. If we need to make changes in the law we will bring our proposals before the House in the usual way.

Mark Pritchard (The Wrekin) (Con): Is this not another case of more legal nonsense from Europe? Is it not about time that we scrapped the Human Rights Act 1998 and introduced a British Bill of Rights-or at the very least repealed the Human Rights Act within a freedom Bill?

Mr Harper: I am afraid that my hon. Friend has not followed this case very closely. If the Human Rights Act disappeared today, that would make no difference. The decision was made by the European Court in Strasbourg. British courts upheld our domestic law, which is why the decision was appealed to the Strasbourg Court. Even if the Human Rights Act disappeared tomorrow, I am afraid that the judgment would still stand.

Mr Dennis Skinner (Bolsover) (Lab): Is the Minister aware that the Murdoch scribblers and other tabloid writers are busy writing the headline, "Tories soft on crime, and soft on the perpetrators of crime"?

Mr Harper: I am pleased that the hon. Gentleman is so focused on what the Murdoch press is doing. The Government are considering how to comply with the law, just as the hon. Gentleman's Government had to comply with it. The Government whom he supported accepted that the law had to be changed- *[Interruption.]* Or rather I should say, as has just been pointed out to me, the Government whom he sometimes supported. The right hon. Member for Blackburn (Mr Straw) and others consulted on detailed proposals to change the law, but they just never got round to doing anything.

David T. C. Davies (Monmouth) (Con): Does the Minister recognise that there is a great deal of exasperation on the Conservative Benches not just about the disgraceful change in the law, but about the fact that Labour Members are trying to present themselves as Eurosceptics when they signed up to every bit of European legislation that was put before them?

Mr Harper: My hon. Friend has made his point very well. The synthetic outrage expressed by Labour Members whose Government accepted the need to comply with the law, consulted on proposals to do so, and yet again failed to make the necessary decisions- *[Interruption.]* The shadow Justice Secretary, the right hon. Member for Tooting, is yelling from a sedentary position. His party was in power for five years after the judgment was made, and did nothing about it. We have been in power for only six months, but we are getting on with considering how to implement the judgment, and when we have made our decisions we will present them to the House.

Mr Nigel Dodds (Belfast North) (DUP): It has not been a good couple of days for the Government as far as Europe is concerned. Yesterday we heard the ludicrous announcement of an increase in the EU budget, and today we have heard this announcement. Rather than uttering expressions of exasperation and frustration, will the Minister tell the House what the Government will do to bring powers back to the House on behalf of the British people?

Mr Harper: Like others, the right hon. Gentleman is confusing the European Court and the European convention on human rights with the European Union. They have nothing to do with the European Union.

Mr Dodds: I know that.

Mr Harper: So the right hon. Gentleman must know that they are not in any way connected. We could do as he suggests only if Britain were to abrogate its signature to the European convention on human rights. Is that really what he wants us to do?

Andrea Leadsom (South Northamptonshire) (Con): Will my right hon. Friend please explain, for the edification of the House, what would happen if the Government refused to accept the findings of the European Court of Human Rights, and what would happen if we accepted the findings but refused to make any compensatory payments?

Mr Harper: My hon. Friend will know that 60 years ago Britain signed up to the European convention.*[Interruption.]* The shadow Justice Secretary is yelling again; he clearly needs telling again, so I will tell him again. Because Britain signed up to the European convention 60 years ago, it binds us legally. The Government must act in accordance with the law, as the previous Government accepted. The danger is that compensation payments will be awarded against us to prisoners. As I said earlier, the only thing worse than giving prisoners the vote would be giving them the vote and then having to give them compensation on top of that.

Mr Jack Straw (Blackburn) (Lab): Before the Minister gets away with this nonsense that we did nothing—in fact, we held not one but two consultations on the issue—will he tell us on what occasion during those five years either he or any other member of his Front Bench, or Conservative Opposition Back Bencher, did anything other than call for us not to make any decisions about prisoner voting rights?

Mr Harper: The right hon. Gentleman has proved the point that I made: he says that the Government consulted on doing something but failed to do anything. Five years passed after the judgment, and the right hon. Gentleman and the Government of whom he was a senior member did nothing in terms of implementing the judgment.

Tom Brake (Carshalton and Wallington) (LD): In the spirit of consensus, does the Minister agree that while there may be a case for allowing those who are guilty of the most minor offences to vote, it is clear that that cannot possibly apply to those who are guilty of the most serious offences?

Mr Harper: The hon. Gentleman will know that Ministers are thinking about exactly how to implement the judgment, and are considering exactly the sort of issues that he has raised. When we have made our decisions we will come and announce them to the House in the proper way.

Cathy Jamieson (Kilmarnock and Loudoun) (Lab/Co-op): I appreciate that this is a difficult and sensitive issue, and I know that many of my constituents will be shocked at the notion that murderers, rapists and child molesters should be given the vote, but can the Minister tell us more about how he will ensure that any attempt to determine whether people are given the vote on grounds of length of sentence or type of crime will be ECHR-compliant?

Mr Harper: In respect of what the hon. Lady said in the first part of her question, she is leaping ahead. Ministers are considering how to deal with the judgment in the Hirst case. I

should also explain that one of the problems with the previous Government's inaction is that if they had implemented the judgment based on the decision in the Hirst case, we might well have been in a stronger position. As she will know-I am sure she follows this issue closely-case law has moved on. Ministers are considering these issues and, as I have said, when we have taken the decisions we will come and announce them to the House.

Mr Charles Walker (Broxbourne) (Con): We in this place have a duty to represent the people who elect us and, almost to a man and woman, they will be saying, "No, no, no." What is the point of having a sovereign Parliament if we have to bend down to the European Court on this? Surely we can help the Minister by having a vote and sending a strong message that we do not want this, and then he can go and negotiate it away.

Mr Harper: My hon. Friend will know that we do have a sovereign Parliament but that about 60 years ago it signed up to the European convention on human rights and effectively made that part of our law and our legal obligations. The Government are following the judgment of the Court in implementing our legal obligations-nothing more and nothing less.

Rachel Reeves (Leeds West) (Lab): Armley jail in my constituency houses 1,128 prisoners, including 55 lifers. What assurance will the Minister give law-abiding citizens in Armley ward in Leeds West that their electorate will not increase by more than 1,000 and that their votes will not be diluted as a result of these changes?

Mr Harper: The hon. Lady will know from what I said earlier that we are considering how to implement the Hirst judgment. When we have made those decisions we will announce them to the House, and she will be able to ask those specific questions at that time.

Gavin Williamson (South Staffordshire) (Con): I would like my hon. Friend to assure the House how he is going to make sure that rapists, murderers and paedophiles will not have the right to vote in my constituency of South Staffordshire, and across this country.

Mr Harper: My hon. Friend can be reassured by what I said earlier, which was that pretty much every Member on the Government Benches, from the Prime Minister down, is unhappy about having to implement this judgment. We are going to have to do it, however, but he can take it from the fact that we are not very happy about having to do that, that when deciding on the judgments we need to reach and in bringing our proposals forward, we will take into account everything that he has said.

Mr Kevan Jones (North Durham) (Lab): Two Durham prisons contain 1,700 prisoners, including Ian Huntley, the Soham murderer. In the Minister's deliberations, will he consider excluding individuals such as Huntley from getting the vote in Durham? Will he also consider the fact that 1,700 prisoners getting the vote in a marginal seat such as City of Durham could sway the outcome of an election?

Mr Harper: The hon. Gentleman makes a perfectly good point, of which the Government are well aware-and these are all exactly the sort of points that we are taking into account as we formulate our proposals.

Mr Robert Buckland (South Swindon) (Con): Before the Government make their decision, will my hon. Friend and all his colleagues bear in mind that the ultimate expression of liberty is the right to vote, and that the principle is that it should be surrendered upon conviction and imprisonment?

Mr Harper: My hon. Friend will know that that is exactly what our representation of the people legislation currently says, but that has been judged to be unlawful by the European Court, and the Government are in the position of having to implement that judgment-as were

the previous Government. That is what we are wrestling with at the moment, and when we have made our decisions we will bring them before the House.

Ian Murray (Edinburgh South) (Lab): Following on from the question asked by my hon. Friend the Member for Leeds West (Rachel Reeves), will the Minister tell the House if the numbers of incarcerated prisoners in the UK will be used to help gerrymander the boundaries that the Government are currently proposing?

Mr Harper: I wondered how long it was going to take before we had the first rather ridiculous question, and it took about 20 minutes.

Anna Soubry (Broxtowe) (Con): In my 16 years at the criminal Bar, not one of my clients facing a custodial sentence has been upset at the prospect of losing his or her right to vote. Will the Minister please look with real care at the allegation that prisoners would receive huge sums in compensation? A report on the BBC says that the amount is some £700 per prisoner. If prisoners were to sue, I would urge the Government to take the view, "Bring it on."

Mr Harper: If only my hon. Friend had represented everybody who is currently in prison, perhaps they would not be there today. Unfortunately, a significant number of prisoners have brought legal cases against the Government; there are more than 1,000 pending. Even though the amounts payable in individual cases may not seem very high, if such an amount was awarded to a significant number of prisoners the bill would run into millions of pounds of hard-earned taxpayers' money.

Mr Speaker: Order. It may be tempting-or otherwise-for the Minister to look behind him from time to time, but he must address the House.

Mr Tom Watson (West Bromwich East) (Lab): The Minister has my sympathy, because he is on a sticky wicket today-if I may say so, he is doing a good job-and the truth is that the Deputy Prime Minister is on the run. He should be there answering to this House today. His junior is doing a better job than he could, but he should be here. On a specific point, may I ask whether it is the Minister's personal view that people should have the vote where they are interned, or that they should have the choice of which constituency to vote in?

Mr Harper: I will take the first part of the hon. Gentleman's question in the spirit in which it was intended. On the second part, we are of course considering how to implement the judgment. The sorts of issues that he has raised are ones that we are thinking about. When we have taken those decisions we will, of course, announce them to the House.

Gordon Henderson (Sittingbourne and Sheppey) (Con): The shadow Secretary of State for Justice urged during his question that any legislation that comes forward should be subject to a free vote. I do not really care whether there is a free vote or not, because I shall vote against any such legislation.

Mr Harper: I did not detect a question in there, Mr Speaker, so I shall merely say to my hon. Friend that I do not think anybody on the Government Benches is particularly happy about having to deal with this issue, but we do have to implement the law.

Frank Dobson (Holborn and St Pancras) (Lab): Whatever the priorities of the European Court, it is the British Government who decide what the priorities are for this House of Commons. Most people will think it rather bizarre that they are giving priority to a Bill that might give the right to vote to Harry Roberts, who shot three Metropolitan policemen in cold blood, but are paying no attention to and putting no effort whatever into getting the 3.5 million decent citizens who are not on the electoral register on to that register.

Mr Harper: The right hon. Gentleman would know, if he followed proceedings in this House, that that is simply not true. I made a statement at this Dispatch Box in September, when I set out clearly that the Government were as committed to the completeness of the electoral register as to its accuracy. If there are, as there are, citizens missing from the electoral register, some of the responsibility for that falls on the Labour party, which was in power for 13 years and did nothing effective about it.

Dr Julian Huppert (Cambridge) (LD): Does the Minister share my concern that the first response of so many Members here to a court judgment going against them is to refuse to accept the verdict of the court? What does that say about the rule of law? Does he also share my concern at the number of Members who do not understand the difference between the European convention on human rights, the Human Rights Act and the European Union?

Mr Harper: The hon. Gentleman raised two points, and I shall deal with the second one first. I did spell out the difference very clearly earlier, because as soon as things are prefaced with the word "Europe" people do roll them all in together and think that they are the same thing. The European Court is separate from the European Union; they are nothing to do with each other, apart from the fact that they both happen to be based in Europe. On the hon. Gentleman's first point, I think that the general view of those on the Government Benches is that we are not happy or pleased about having to implement the judgment, but we recognise that in a country bound by the rule of law, we have to do it.

Bill Esterson (Sefton Central) (Lab): Constituents of mine living near the new prison at Maghull will want to know which prisoners will be able to vote and which will not. So far the Minister has not answered the question, so I shall ask it in a slightly different way. In his personal view, who will be able to vote and who will not?

Mr Harper: The hon. Gentleman read that out very well, if I may say so. He will know that the Minister does not have a personal view; the Minister is here to speak on behalf of the Government. I have already set out very clearly the Government's view. The details about how we are going to implement the decision are still being considered- *[Interruption.]* It is no good Opposition Front Benchers groaning just because I have said it before. It is still true. We are considering how to implement the judgment. When we have taken those decisions, they will be announced in the House in the proper way.

Mrs Eleanor Laing (Epping Forest) (Con): Does the Minister recall that the House fully debated this issue and voted on it on 11 January 2006, at which point we on the Opposition Benches were trying to help the then Government to resolve a difficult situation? They took absolutely no action for the following five years. Will the Minister reassure the House that the Court objection is to the blanket ban on prisoners being able to vote and that it is within the power of the Government to resolve the situation by making a decision about which prisoners can vote and which cannot?

Mr Harper: If I may say so, I think that that was probably the first very sensible question that we have had in this session-

Hon. Members: Oh!

Mr Speaker: Order. I know that the House is in rather an excitable state, but I always enjoy listening to the Minister and I particularly want to listen to him now.

Mr Harper: My hon. Friend listened to what I said in my statement. The blanket ban on sentenced prisoners voting has been ruled to be unlawful. The Government are considering how to implement the judgment to deal with that and, when the Government have made

those decisions, the proposals will be brought before the House. Colleagues would do well to listen to how she put her question and to my answer.

Graham Stringer (Blackley and Broughton) (Lab): The Minister's answers are inadequate and not reassuring. My constituents who live in the Cheetham ward want to know whether the rapists, murderers and paedophiles-and burglars, for that matter-in Strangeways prison will have the vote or not. Surely he can answer such a simple question.

Mr Harper: The hon. Gentleman was not listening carefully to what I said. As my hon. Friend the Member for Epping Forest (Mrs Laing) pointed out, I said that the blanket ban on sentenced prisoners voting has been ruled to be unlawful and we are currently considering how to implement the judgment. We have made it clear that we are not particularly happy about it and we will bring forward our proposals and announce them in this House. I am sure that the hon. Gentleman will then be able to ask that specific question again and we will be able to answer it.

Several hon. Members *rose* –

Mr Speaker: Order. We must now move on. I know that there are disappointed colleagues, but I feel quite certain that this is a matter to which, in due course, the House will return.

3 November 2010

Prime Minister's Question Time

Gareth Johnson (Dartford) (Con): Does the Prime Minister agree that it would be wrong for convicted prisoners to be able to vote, as suggested by the European Court of Human Rights? The incarceration of convicted prisoners should mean a loss of rights for that individual, and that must surely include the right to vote.

The Prime Minister: I completely agree with my hon. Friend. It makes me physically ill even to contemplate having to give the vote to anyone who is in prison. Frankly, when people commit a crime and go to prison, they should lose their rights, including the right to vote. But we are in a situation that I am afraid we have to deal with. This is potentially costing us £160 million, so we have to come forward with proposals, because I do not want us to spend that money; it is not right. So, painful as it is, we have to sort out yet another problem that was just left to us by the last Government.

Steve McCabe (Birmingham, Selly Oak) (Lab): Following the previous question, how does the Prime Minister view the prospect of prisoners electing the new police and crime commissioners?

The Prime Minister: The hon. Gentleman raises yet another reason- *[Interruption.]*

Mr Speaker: Order. I am particularly anxious to hear the Prime Minister's answer.

The Prime Minister: The hon. Gentleman makes an excellent point about why this proposal is so bad, but I am afraid that we have to deal with the situation in front of us. Are we going to delay and delay and waste another £160 million of taxpayers' money, or are we going to take difficult action and explain it to the British public as best we can? I do not think that we have a choice if we are to do the right thing and save the Exchequer money.

Denying prisoners the vote is unlawful and uncivilised

The government can not pick and choose which laws it obeys. It must put an end to this archaic punishment of civic death

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- **Juliet Lyon**
 - guardian.co.uk, Thursday 4 November 2010 11.00 GMT
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The UK's blanket ban on prisoners voting has been ruled unlawful by the European court of human rights. Photograph: Ian Waldie/Getty Images

People are sentenced to custody to lose their liberty, not to be stripped of other fundamental human rights. In South Africa, all prisoners have the right to vote. Handing down a landmark ruling in April 1999, the constitutional court of South Africa declared: "The universality of the franchise is important not only for nationhood and democracy. The vote of each and every citizen is a badge of dignity and personhood. Quite literally, it says that everybody counts."

Since the 1990s, the Prison Reform Trust has worked with allied agencies, and former and serving prisoners to ensure that people in prison are treated as such – as people – and this includes acknowledging their right to vote. The UK can take pride in a prison service that requires everyone in prison to be treated with decency and respect, regardless of the crime they have committed or the length of their sentence. Denying prisoners the right to vote has no place in a civilised justice system.

When you hear young men in jail arguing passionately about the importance of voting and confronting doubters – "if you don't vote you don't care so don't blame other people if you end up with hate politics", they say – then you realise how keenly disenfranchisement is felt. Before the general election I took part in a local prison debate, which included the parliamentary candidates. Topics ranged from the war in Iraq to the overuse of bureaucratic targets in public services. Would-be politicians were taken aback by the seriousness and intensity of the debate; none of the candidates had been to a prison before.

For over six years, political considerations have deflected the UK government from complying with an unequivocal judgement by the European court of human rights (Hirst v UK 2004) that the blanket ban on prisoners' voting is unlawful. A more recent judgment by the European court (Frodl v Austria 2010) further limits the UK government's room for manoeuvre and clarifies that disenfranchisement may be imposed by a judge on a small number of prisoners who have been sentenced for electoral fraud or a related offence.

The message that we can pick and choose which laws we obey is a poor one, for people in prison and for society as a whole. Now the coalition government has the opportunity, through its programme of constitutional reform, to put an end to an archaic punishment of civic death dating back to the Forfeiture Act of 1870. This will bring the UK into line with the vast majority of countries in the Council of Europe and enable a modern prison system to focus on civic responsibility and rehabilitation not social exclusion.

The prison service sees no practical problems in enabling sentenced prisoners to vote. The Electoral Commission set out, in its response to the Ministry of Justice's second consultation on prisoners voting in 2009, a mechanism by which prisoners could be enfranchised through a system of postal or proxy voting. The Prison Governors Association is on record as supporting prisoners voting as an important part of rehabilitation and resettlement. Through its own audit procedures the Ministry of Justice has been systematically seeking prisoners' level of interest in voting and is known to have received positive responses.

Instead of being pressed into responding to court cases and compensation claims, the government should use its authority to overturn this outdated and uncivilised ban.

Prisoners to get vote as ministers head off a multimillion payout

Richard Ford Home Correspondent

Murderers and rapists are likely to be allowed to vote after the Government announced yesterday that it is to lift the ban on convicted prisoners.

The move opens the way for the mass murderer Rose West, the Soham killer Ian Huntley and the paedophile Roy Whiting to be given a postal vote at general elections. Ministers are desperately trying to find ways to exempt the most serious crim-

inals from being given the vote but a recent ruling in the European Court of Human Rights suggests they will fail.

The ban on convicted prisoners voting in UK elections is to be lifted to avoid a test case that could result in millions of pounds being paid in compensation to criminals denied the vote.

The decision provoked near universal hostility from both Labour and Conservative MPs when a minister answered an emergency question on the issue in the Commons yesterday.

Mark Harper, the Minister for Political and Constitutional Reform, told MPs that the Government accepted that the European Court ruling meant the law needed to be changed. "This isn't a choice, it's a legal obligation," he said.

Five years ago, the European Court of Human Rights in Strasbourg ruled that the blanket ban on convicted prisoners being allowed to vote was unlawful.

The case was brought by John Hirst, who served a sentence for manslaughter. The failure of the Labour Government to do anything about the court ruling has led to censure and calls for action by the Council of Europe.

Prisoners in some European countries have the right to vote, but British inmates were barred from voting in 1870 under the Forfeiture Act. About 1,300 prisoners in England and Wales have so far applied to join the three test cases for compensation, with payments expected to run to about £750 a head.

In April this year a separate case involving an Austrian murderer called Helmut Froidl established that the 2005 decision made it unlawful to disenfranchise all prisoners serving sentences of more than one

year in jail. Juliet Lyon, director of the Prison Reform Trust, said that the Froidl judgment emphasised that a decision to deny a prisoner the vote should be taken by a judge, "taking into account the particular circumstances".

CHRIS HARRIS FOR THE TIMES



Prisoners were barred from voting in 1870 as part of their punishment



Prisoners to get the vote for the first time

Daily Telegraph

1 November 2010

Andrew Porter, Political Editor

Prisoners will be given the vote in general elections for the first time in 140 years after David Cameron conceded there was nothing he could do to halt a European court ruling demanding the change, The Daily Telegraph can disclose.

For months, the Government's lawyers have tried to find a way to avoid allowing 70,000 British inmates the right to take part in ballots.

But on Wednesday a representative for the Coalition will tell the Court of Appeal that the law will be changed following legal advice that the taxpayer could have to pay tens of millions of pounds in compensation.

The decision, which brings to an end six years of government attempts to avoid the issue, opens the possibility that even those facing life sentences for very serious crimes could in future shape Britain's elections.

Ministers are now examining ways that limits could be placed on which inmates can vote. They will push for strict conditions, including a ban on "lifers" and murderers from voting.

In an attempt to limit the political fallout, there is likely to be a push to implement a threshold that would see those serving sentences longer than four years being excluded from voting.

It is understood that judges may be given responsibility for eventually deciding which criminals are allowed to vote when they are sentenced.

Senior government sources said Mr Cameron was "exasperated" and "furious" at having to agree to votes for prisoners, but the threat of costly litigation had forced his hand.

He was told that the Government faced a series of compensation claims from prisoners and potential legal action from the European Union if it did not agree to a change.

"This is the last thing we wanted to do, but we have looked at this from every conceivable angle and had lawyers poring over the issue," a senior government source said

"But there is no way out and if we continued to delay then it could start costing the taxpayers hundreds of millions in litigation."

The Prime Minister is likely to face criticism from some in his own party for allowing Europe to dictate the law on such a sensitive issue. Dominic Grieve, the Attorney General, has previously said it would be "ludicrous" to give inmates the right to vote.

Critics of the move have long argued that those who are guilty of preying on society should lose one of the most basic rights of a citizen.

But the decision will please the Liberal Democrats, who have campaigned for the law to be changed.

Nick Clegg, the Deputy Prime Minister, is understood to have taken a personal interest in examining how the system could be altered.

Laws prohibiting the right of prisoners to vote were formalised in the 14th century, when the concept of “civic death” was established.

After the 1867 Reform Act gave working men the right to vote, the Forfeiture Act established the practice that those who were guilty of felonies could not vote.

In 2004, the European Court of Human Rights ruled that the blanket ban imposed by Britain on its prisoners’ right to vote was discriminatory following a legal challenge by John Hirst, who was jailed for killing his landlady with an axe.

The Strasbourg-based court said each country could decide which offences should carry restrictions on voting rights. Most other European nations allow some prisoners to take part in elections. But despite two separate public consultations, Jack Straw, Labour’s justice secretary, failed to implement any changes

Legal experts have suggested that the bill for compensation could rise to more than £50 million if prisoners are not given the vote. In May Lord Pannick, a crossbencher, said there were 70,000 prisoners who could sue, with each in line for damages “in the region of £750”.

Earlier this year the Committee of Ministers of the Council of Europe warned the Government that its failure to act could lead to a string of compensation claims.

It raised the prospect that Britain could be the first country to fall foul of new powers which came into effect earlier this month. Potential sanctions include suspension or expulsion from the Council of Europe — a separate body from the EU.

Last year, Peter Chester, who raped and murdered his niece, launched a legal challenge claiming his human rights were being breached by the refusal to allow him to vote.

The case was thrown out but Chester’s appeal will be heard tomorrow and that is when the Government will make its statement. Its lawyers will acknowledge that Britain is in breach of the European court’s judgment and a legal amendment is needed.

Further details about the limits ministers want to see in place are likely to follow before Christmas. One proposal would see inmates being given a vote based on their last postal address to prevent an entire prison voting in one constituency.

The Prison Governors Association has warned that the ban hampers inmates’ rehabilitation.

Other groups that cannot vote include peers, the Royal family, the criminally insane and people convicted of election-related corruption.