

Prison Reform Trust submission to the Equality and Human Right Committee on prisoners voting

The Prison Reform Trust is an independent UK charity working to create a just, humane and effective prison system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliaments, governments and officials towards reform. www.prisonreformtrust.org.uk

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Introduction

The Prison Reform Trust welcomes the decision of the Equality and Human Rights committee to hold a one-off oral evidence scoping session on prisoners voting. The Prison Reform Trust has, along with other NGOs, MSPs, AMs, MPs and peers, long been supportive of reforming the ban on voting rights for prisoners. We believe that there is a clear and unambiguous case for reform. This rests on the conviction that voting is not a privilege. It is a basic human right. It is certainly not a reward to be granted to those whom the Government has judged morally decent.

The UK context

The blanket ban on prisoners voting in the UK is contained in the Representation of the People Act 1983. It is based on the 19th century notion of “civic death”, whereby prisoners cease to count as citizens and lose their identity. By maintaining the blanket ban, the UK is in breach of its international obligations under the European Convention on Human Rights (ECHR), as confirmed by repeated judgements of the European Court of Human Rights (ECtHR). It is also out of step with all but five member states of the Council of Europe, as well as with the majority of developed nations throughout the world. A cross-party group of MPs and peers set up to consider draft government legislation on prisoners voting concluded that the blanket ban should be repealed and proposals brought forward by the UK authorities to comply with the judgement of the European Court. This proposal was rejected by the previous UK Conservative Government and the blanket ban remains in place. We believe the refusal of the UK to move on this issue seriously undermines its credibility as a nation committed to human rights and upholding the rule of law.

The Scottish context

We are aware that the debate in Scotland, and related legal judgements, have focussed narrowly on whether the ECHR applies to referendums. Although understandable given the context of the 2014 referendum on Scottish independence, this fails to appreciate the full weight and nature of international opinion coming to bear on the UK and the devolved nations. We share the view expressed by Patrick Harvie in his letter to the Committee that “We [Scotland] now have greater devolved responsibility for the democratic process, and I believe that alternatives to the blanket ban must be actively considered if further legal challenges are to be avoided.” As the Scottish government accrues more powers in this area, so it can expect greater scrutiny of its adherence to international standards and norms of democratic accountability and representation.

- The International Covenant on Civil and Political Rights (ICCPR) gives every citizen the right to participate in the conduct of public affairs, to vote in elections which have universal suffrage and to have equal access to public service. The United Nations Human Rights Committee, which monitors compliance with the ICCPR, has expressed concern on several occasions about countries which do not allow their prisoners to vote. The Committee “fails to discern the justification for such practice in modern times, considering that it amounts to an additional punishment and that it does not contribute towards the prisoner’s reformation and social rehabilitation, contrary to Article 25 of the Covenant.”
- The ECtHR has been critical of countries where restrictions on the right to vote are largely derived unquestioning and passive adherence to historical tradition, which is certainly the case in the UK. It has observed that the right to vote must be acknowledged as “the indispensable foundation of a democratic system.”
- Successive UK Governments have justified the ban on the grounds that it prevents crime and punishes offenders, whilst enhancing civic responsibility and respect for the law. However, the ECtHR found no evidence to support the claim that disenfranchisement deterred crime and considered that the imposition of a punishment on all prisoners regardless of their crime or individual circumstances indicated no rational link between the punishment and the offender. It judges the ban “runs counter to the rehabilitation of the offender as a law abiding member of the community and undermines the authority of the law as derived from a legislature which the community as a whole votes into power.”
- In the words of the ECtHR: “Nor is there any place under the Convention system, where tolerance and broadmindedness are the acknowledged hallmarks of democratic society, for automatic disenfranchisement based purely on what might offend public opinion.”

Scottish Referendum (Franchise) Act

Against this background, we were disappointed by the inclusion of Sections 2(2)(b) and 3 in the Scottish Referendum (Franchise) Act. These parts of the Act were included exclusively to impose a blanket ban at the referendum even if changes were introduced at Westminster between the enactment of the legislation and the date of the referendum in September 2014. Without these parts of the Bill, under Section 2(2)(a) the franchise for the referendum would have simply been in line with whatever was current practice for elections more generally at the time, including whatever rules applied for convicted prisoners. During the Parliamentary debate on the legislation, the Prison Reform Trust, the Howard League for Penal Reform, and other civic society bodies and academics, submitted evidence arguing that there was no coherent or defensible case for applying a stricter ban on prisoner voting at the referendum than for elections more generally. In particular, we draw attention to the views of the Electoral Commission, in response to a Ministry of Justice consultation in 2009, which specifically sought views on whether any change should apply only to national elections, or also local elections and referendums:

“We are not taking a view on which prisoners should or should not be able to vote. However, we feel that prisoners who have been allowed the vote should be entitled to vote in all elections that their age, nationality and deemed place of residence would allow them to, were they not imprisoned.”

Conclusion

The former First Minister Alex Salmond once described the potential for Scotland to be “a beacon for progressive opinion south of the border and further afield”. The Scottish government’s support for a blanket ban on prisoners voting specifically applied to the 2014 referendum was in direct contradiction of that vision. The current ban achieves no purpose. It neither protects public safety, nor acts as an effective deterrent. It does not function as a means to correct the behaviour of offenders and does not assist in their rehabilitation. It is not articulated at the point of sentence and bears no relation to the crime committed and so is an additional and arbitrary punishment. Its application to the 2014 Scottish referendum meant people in prison in Scotland were denied a voice in the debate on the future direction of their country. We hope that the Committee will use its influence to support proposals which recognise that at least some, if not all, convicted prisoners in Scotland are expected to be contributing citizens, who have a stake in the potentially life-changing constitutional decisions facing the country now and in the years to come.