Prison Reform Trust, 15 Northburgh Street, London EC1V 0JR
www.prisonreformtrust.org.uk

21 May 2010

Dear Committee of Ministers,

Hirst v UK (No. 2) judgment

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.

As many as 73,000 people were unlawfully denied the right to the vote in the UK general and local elections on 6 May, after the Government failed to overturn the blanket ban on sentenced prisoners voting. In March 2004, 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 March the Committee required the UK authorities to "rapidly adopt measures, of even an interim nature, to ensure the execution of the court's judgment before the forthcoming general election", a requirement with which the government has clearly failed to comply. As the Crossbench Peer David Pannick QC has said in an article for the Times newspaper (enclosed), the fact that the Government was prepared to go into the election in clear breach of the European Convention is a constitutional disgrace and undermines the legitimacy of the democratic process. We urge the Committee of Ministers to do all in its powers to ensure that the UK Government complies with the *Hirst* judgment without further delay.

The UK authorities have repeatedly avoided legislative opportunities to act on the judgment of the European Court. The Conservative Party in opposition consistently failed to challenge the ban. Before the election an amendment was tabled by the former Chief Inspector of Prisons, Lord Ramsbotham, to the Constitutional Reform and Governance Bill to enable sentenced prisoners to vote. A transcript of the House of Lords debate is enclosed. The Government failed to support the amendment and it was eventually withdrawn due to the pressures of parliamentary time. In the debate Lord Ramsbotham said: "What message does that attitude to the law send, not just to criminals but to young people who may be tempted to turn to crime?" Baroness Butler-Sloss, the former Lord Justice of Appeal and Deputy Coroner of the Queen's Household, added: "I hope that whichever party comes into power after 6 May will make this matter a priority. It will be very sad if we continue for years to come to have my noble friend Lord Ramsbotham asking whichever Government are in power to get on with something that has become a disgrace."

In March the Committee reiterated its "serious concern that a failure to implement the Court's judgment before the general election and the increasing number of persons potentially affected by the restriction could result in similar violations affecting a significant category of persons, giving rise to a substantial risk of repetitive applications to the European Court". We are aware of a number of sentenced prisoners who have since filed applications to the European Court over the Government's systemic failure to take the necessary steps to allow them to vote. Lord Pannick estimates that each prisoner could be awarded in the region of £750, and possibly more in the light of the delay in implementing the original ruling. The cost to UK taxpayers of Government foot-dragging is likely to be high.

A recent judgment in April by the European Court clarifies the "margin of appreciation" which the UK authorities have in implementing the Court's ruling. In the case of Frodl v Austria (enclosed) the Court ruled that the 2004 decision makes it unlawful for Austrian law to disenfranchise all prisoners serving a sentence of more than one year in jail. The Court emphasised that a decision to deny a prisoner the vote "should be taken by a judge, taking into account the particular circumstances". Moreover, "there must be a link between the offence committed and issues relating to elections and democratic institutions". This means that disenfranchisement may lawfully be imposed only on a small number of prisoners who have been sentenced for electoral fraud or a related offence.

However, the Government's 2nd consultation on prisoners' voting rights, which ran from 8 April to 29 September 2009, contained no option for overturning the ban completely but only allowed for the enfranchisement of prisoners serving a sentence of up to four years. This would seem to contradict the "margin of appreciation" as outlined in the Frodl judgment. The former Justice Minister, Michael Wills MP, in a letter to the Prison Reform Trust dated 31 March 2010 (correspondence enclosed), said: "The Government believes that those that commit an offence that is serious enough to attract a custodial sentence have broken their contract with society and therefore the loss of the right to vote can be a proper and proportionate punishment in some circumstances. For these reasons, the Government did not propose extending voting rights to all convicted prisoners for the first or for the second stage consultations."

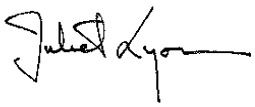
The systemic failure to implement the ECtHR's decision reflects a lack of political will manifested in a series of delaying tactics. Successive Justice Ministers have seemed preoccupied with political considerations of this case rather than fairness or the rule of law. The Government has yet to publish the results of its 2nd consultation despite the fact the consultation received only 100 responses, and analysis that should have taken the skilled Ministry of Justice and Human Rights team a couple of days 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 enabling sentenced prisoners 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 though a system of postal or proxy voting, involving a modification to the existing declaration of local connection in electoral law.

The Prison Reform Trust believes the UK Government's current position is morally and legally unsustainable and incompatible with its obligations as a member of the Council of Europe. We ask the Committee to consider now 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 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 can now begin.

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

Yours sincerely,



Juliet Lyon CBE
Director of the Prison Reform Trust

Enclosures