Prison Reform Trust, 15 Northburgh Street, London EC1V 0JR
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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.

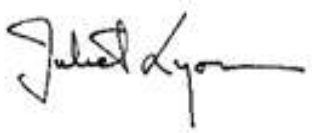
Up to now this process has been characterised by continuous delay. The Government has yet to publish the results of its second consultation despite the fact the consultation received only 100 responses, an analysis that should have taken the skilled Ministry of Justice and Human Rights team a short time 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 though 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,



Juliet Lyon CBE
Director of the Prison Reform Trust

Enclosures