



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

3 September 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 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.

As a consequence, in the UK general election held on 6 May 2010, as many as 73,000 people were unlawfully denied the right to the vote. In its report on the election, which saw the election of a new Coalition Government, the OSCE/ODIHR Election Observation Mission to the UK stated that "the existing legislation on the suffrage rights of prisoners should be brought in line with the judgments of the ECtHR" (enclosed).

At its last meeting the Committee of Ministers "expressed confidence that the new United Kingdom Government would adopt general measures to implement the judgment ahead of elections scheduled for 2011 in Scotland, Wales and Northern Ireland, and thereby also prevent further, repetitive applications to the European Court." Subsequently the new Coalition Government has said it is "considering afresh the best way forward on the issue of prisoner voting rights" and would "fully update" the European Council of its views in September (see Lord McNally, Minister of State for Justice, House of Lords, debate on prisoners voting, 9 June 2010, enclosed).

While we welcome the Coalition's indication of a fresh approach, with next year's elections due to be held in May 2011 there is now very little time left to bring forward legislation to ensure the elections are compliant with the European Convention. Therefore, 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 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 exact nature of their obligations under the European Convention, given the previous UK Government's flexible interpretation of the "margin of appreciation" in complying with the Court's ruling. The previous UK Government's position, as clearly articulated in a letter from the former Justice Minister Michael Wills MP to the Prison Reform Trust (enclosed), is to regard persons who have committed an offence serious enough to warrant imposition of a custodial sentence as deserving the punishment of disenfranchisement.

By contrast, the Committee of Ministers have, in their recommendation establishing the revised European Prison Rules (REC(2006)2 available at <https://wcd.coe.int/ViewDoc.jsp?id=955747>), confirmed their support for the principles that prisoners retain all rights not lawfully taken away by the decision sentencing them and that they are sent to prison as punishment and not for punishment. It is contrary to the principles endorsed by the Committee of Ministers to consider prisoners as meriting the punishment of disenfranchisement, as well as being in flagrant violation of the duty to implement the Court's judgement.

As outlined in our previous submission to the Committee (enclosed), the former Government's position would also seem to contradict a recent judgment in April by the European Court in the case *Frodl v Austria*, which clarified the strict limits on the "margin of appreciation" the UK authorities have in implementing the Court's ruling.

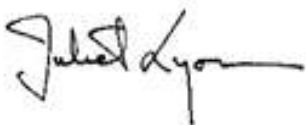
Up to now this process has been characterised by continuous delay. The Government has yet to publish the results of its second consultation despite the fact the consultation received only 100 responses, an analysis that should have taken the skilled Ministry of Justice and Human Rights team a short time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

Juliet Lyon CBE
Director of the Prison Reform Trust