

UK Legal News Analysis

Prisoner Voting Rights: Is Change Inevitable?

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Jurisdiction

European Union; UK

Related Legislation

Forfeiture Act 1870; Representation of the People Act 1983

Related Cases

R (on the application of Chester) v Governor of HMP Wakefield [2010] EWHC 63 (Admin), [2010] All ER (D) 159 (Jan); Hirst v United Kingdom (No 2) (App no 74025/01) [2005] ECHR 74025/01, [2005] All ER (D) 59 (Oct), (2005) 19 BHRC 546

Related Digests

Report: Voting by Convicted Prisoners--Summary of Evidence (Political and Constitutional Reform Committee--Fifth Report), LNB News 09/02/2011 62; Prisoners' Right to Vote, LNB News 14/02/2011 59; Briefing: Joint NGO Briefing on Prisoners Voting Rights, LNB News 11/02/2011 31; The MPs Voting Against Prisoners, and 21st Century Civic Death, LNB News 17/02/2011 109; Prisoner Voting Rights Must Not Be Ignored, Warns Rights Tsar, LNB News 04/02/2011 17; Lawyers 'Tout' For Jail Vote Business, LNB News 03/02/2011 27; Prisoner Voting--Parameters of Reform Remain Unclear, LNB News 25/11/2010 92

Abstract

The Political and Constitutional Reform Committee explored the legal issues relating to voting by convicted prisoners in a recent report. [Jon Robins](#) talks to Matt Evans, managing solicitor at the Prisoners' Advice Service, about whether or not a change to the law is inevitable

Analysis

MPs voted overwhelmingly to back the blanket ban on prisoners voting last week. MPs voted 234 to 22 supporting the cross-party motion which said parliament should decide on such an important issue.

This followed a report from the Political and Constitutional Reform Committee which considered expert evidence on how UK law related to the European Convention on Human Rights "with a view to exploring the current legal position, not with a view to questioning whether extending the right to vote to convicted prisoners in certain circumstances would be philosophically, morally or politically justifiable". In particular it identified the principles behind the European Court's decision in *Hirst v United Kingdom (No 2)* and other cases that found "the deprivation of civil rights is too important to be assumed to be tied up completely with the deprivation of liberty".

In March 2004 in the case of *Hirst* the Strasbourg court ruled that keeping an absolute bar on convicted prisoners voting was in breach of art 3 of the First Protocol to the European Convention on Human Rights--the right to free and fair elections. The ban was originally contained in the Forfeiture Act 1870 and

was retained in the Representation of the People Act 1983.

Matt Evans points to *R (on the application of Chester) v Governor of HMP Wakefield* which dismissed an application by a post-tariff life sentence prisoner on the basis that, as the shape and nature of the proposed legislation was undecided, it would be inappropriate for the court to interfere with the parliamentary process. "As the report highlights however, what the court in *Chester* didn't say or suggest was that it was solely up to Parliament to decide on whether prisoners got the vote at all," Evans explains. "As they made clear, any necessary proposal for electoral reform would have to be consistent with the decision of the European Court of Human Rights in *Hirst* concerning a blanket ban."

"A key legal issue is that the UK is bound by the rule of law and this requires us--beyond concerns around compensation or suspension from the Council of Europe--to comply with the judgement in *Hirst* and to amend the blanket ban," Evans argues. "The UK was the first state to sign the Convention in 1951 and though it has been found in violation on over 130 occasions it has never to my knowledge failed to adhere to its judgement. A lot of talk has been around the fact that a number of countries in Europe don't allow all prisoners to vote and that a number don't allow them to vote at all." These include Armenia, Bulgaria, the Czech Republic, Estonia, Hungary, Luxembourg and Romania. However, those countries that have a blanket ban are "only able to do this because no individual challenges have been made in those particular countries", Evans notes.

A much "more direct and instructive example" for the UK is Austria which in 2005 banned prisoners from voting where they were serving one year or more and, Evans points out, "where Cameron has argued the line should be drawn at". However, Evans adds this was successfully challenged by a convicted murder in Austria. "Austria now allows all prisoners the vote except in very particular circumstances such as conviction for electoral fraud."

Evans points out that applications to the European Court have to be made within six months of the cause of action. "So at moment no more fresh litigation can be pursued in the court because six months has elapsed from the general election," he says; adding that the view of human rights lawyers is "that the right to vote would include all elections including local and European". "This means claims from prisoners could and would start being made again following the local elections in April 2011. If the UK is stubbornly refusing to take any action the European Court might start fast tracking some of these claims."

"Lawyers know these cases are going through Europe and they know, like Ken Clarke, that change is inevitable," Evans says. "A one-year sentence ban would certainly be struck down as not effectively enfranchising prisoners as a group and I suspect a four-year ban would as well."

Evans thinks the European Court would be less likely to interfere where it can be shown a member state has debated the issue. Crimes targeted at the state such as terrorism or, for example, electoral fraud could in "the courts' eyes be cases where a member state could deny the vote". "The ban could come as part of their sentence and be imposed at the time of sentencing," Evans says. "Litigation will continue on this issue until parliament does change the law on prisoner voting--and also beyond given the current limitations of the changes proposed."

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