EUROPEAN COURT OF HUMAN RIGHTS

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Press release issued by the Registrar

GRAND CHAMBER JUDGMENT
HIRST v. THE UNITED KINGDOM (NO. 2)

The European Court of Human Rights has today delivered at a public hearing a Grand Chamber judgment[1] in the case of ***Hirst v. the United Kingdom (No. 2)*** (application no. 74025/01).

The Court held:

- by 12 votes to five, that there had been **a violation of Article 3 of Protocol No. 1** (right to free elections) to the European Convention on Human Rights; and,
- unanimously, that no separate issue arose under Article 10 (freedom of expression) or Article 14 (prohibition of discrimination) of the Convention.

Under Article 41 (just satisfaction), the Court held, unanimously, that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant and, by twelve votes to five, awarded the applicant 23,200 euros (EUR) for costs and expenses. (The judgment is available in English and French.)

1. Principal facts

The applicant, John Hirst, is a British national, aged 54, who was serving a sentence of life imprisonment in HM Prison Rye Hill, Warwickshire (United Kingdom). On 25 May 2004, he was released from prison on licence.

On 11 February 1980 Mr Hirst pleaded guilty to manslaughter on the ground of diminished responsibility. He was sentenced to a term of discretionary life imprisonment. His tariff (the part of his sentence relating to retribution and deterrence) expired on 25 June 1994. However, he remained in detention, as the Parole Board considered that he continued to present a risk of serious harm to the public.

As a convicted prisoner, Mr Hirst is barred by section 3 of the Representation of the People Act 1983 from voting in parliamentary or local elections. According to the United Kingdom Government's figures, some 48,000 other prisoners are similarly affected.

Mr Hirst issued proceedings in the High Court, under section 4 of the Human Rights Act 1998, seeking a declaration that section 3 was incompatible with the European Convention on Human Rights. On 21 and 22 March 2001 his application was heard before the Divisional Court; but his claim and subsequent appeal were both rejected.

[1] Grand Chamber judgments are final (Article 44 of the Convention).

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 5 July 2001 and declared partly admissible on 8 July 2003. A hearing took place in the Human Rights Building, Strasbourg, on 16 December 2003. In a judgment of 30 March 2004 (see press release no. 157 for 2004), the Court held that there had been a violation of Article 3 of Protocol No. 1 to the Convention, and that no separate issue arose under Articles 10 and 14.

The case was referred to the Grand Chamber at the Government's request, under Article 43 (referral to the Grand Chamber), and, on 10 November 2004, the panel of the Grand Chamber accepted that request. A Grand Chamber hearing took place in public in the Human Rights Building on 27 April 2005. Third Party interventions were received from the Prison Reform Trust, the AIRE Centre and the Latvian Government (please see judgment for details).

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Luzius **Wildhaber** (Swiss), ***President***,
Christos **Rozakis** (Greek),
Jean-Paul **Costa** (French),
Nicolas **Bratza** (British),
Giovanni **Bonello** (Maltese),
Lucius **Caflisch** (Swiss)[1],
Françoise **Tulkens** (Belgian)
Peer **Lorenzen** (Danish),
Nina **Vajić** (Croatian),
Kristaq **Traja** (Albanian),
Anatoli **Kovler** (Russian),
Vladimiro **Zagrebelsky** (Italian),
Antonella **Mularoni** (San Marinese),
Ljiljana **Mijović** (Citizen of Bosnia and Herzegovina),
Sverre Erik **Jebens** (Norwegian),
Danute **Jočienė** (Lithuanian),
Ján **Šikuta** (Slovakian), ***judges***,

and also Erik **Fribergh**, ***Deputy Registrar***.

3. Summary of the judgment[2]

Complaints

The applicant alleged that, as a convicted prisoner in detention, he was subject to a blanket ban on voting in elections. He relied on Article 3 of Protocol No. 1, Article 14, as well as Article 10 of the Convention.

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[1] Elected in respect of Liechtenstein.
[2] This summary by the Registry does not bind the Court.

Decision of the Court

Article 3 of Protocol No. 1

General Principles
The Court stressed that the rights guaranteed under Article 3 of Protocol No. 1 were crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law and also that the right to vote was a right and not a privilege.

Nonetheless, the rights bestowed by Article 3 of Protocol No. 1 were not absolute. There was room for implied limitations and States which had ratified the European Convention on Human Rights (Contracting States) had to be given a margin of appreciation in that sphere. There were numerous ways of organising and running electoral systems and a wealth of differences, among other things, in historical development, cultural diversity and political thought within Europe which it was for each Contracting State to mould into its own democratic vision.

However, any limitations on the right to vote had to be imposed in pursuit of a legitimate aim and be proportionate. Any such conditions had not to thwart the free expression of the people in the choice of the legislature – in other words, they must reflect, or not run counter to, the concern to maintain the integrity and effectiveness of an electoral procedure aimed at identifying the will of the people through universal suffrage. Any departure from the principle of universal suffrage risked undermining the democratic validity of the legislature elected and its laws. Exclusion of any groups or categories of the general population had therefore to be reconcilable with the underlying purposes of Article 3 of Protocol No. 1

Concerning prisoners in particular, the Court emphasized that they generally continued to enjoy all the fundamental rights and freedoms guaranteed under the Convention, except for the right to liberty, where lawfully imposed detention expressly fell within the scope of Article 5 (right to liberty and security). There was, therefore, no question that prisoners forfeit their Convention rights merely because of their status as detainees following conviction. Nor was there any place under the Convention system, where tolerance and broadmindedness were the acknowledged hallmarks of democratic society, for automatic disenfranchisement based purely on what might offend public opinion.

That standard of tolerance did not prevent a democratic society from taking steps to protect itself against activities intended to destroy the rights or freedoms set out in the Convention. Article 3 of Protocol No. 1, which enshrined the individual's capacity to influence the composition of the law-making power, did not therefore exclude that restrictions on electoral rights be imposed on an individual who had, for example, seriously abused a public position or whose conduct threatened to undermine the rule of law or democratic foundations. However, the severe measure of disenfranchisement was not to be undertaken lightly and the principle of proportionality required a discernible and sufficient link between the sanction and the conduct and circumstances of the individual concerned. As in other contexts, an independent court, applying an adversarial procedure, provided a strong safeguard against arbitrariness.

Legitimate Aim
The Court recalled that Article 3 of Protocol No.1 did not specify or limit the aims which a measure must pursue. The United Kingdom Government had submitted that the measure aimed to prevent crime, by sanctioning the conduct of convicted prisoners, and to enhance civic responsibility and respect for the rule of law. The Court accepted that section 3 might be regarded as pursuing those aims.

Proportionality
The Government submitted that the ban was in fact restricted in its application as it affected only around 48,000 prisoners, those convicted of crimes serious enough to warrant a custodial sentence and not including those detained on remand, for contempt of court or default in payment of fines.

However, the Court considered that 48,000 prisoners was a significant figure and that it could not be claimed that the bar was negligible in its effects. It also included a wide range of offenders and sentences, from one day to life and from relatively minor offences to offences of the utmost gravity. Also, in sentencing, the criminal courts in England and Wales made no reference to disenfranchisement and it was not apparent that there was any direct link between the facts of any individual case and the removal of the right to vote.

As to the weight to be attached to the position adopted by the legislature and judiciary in the United Kingdom, there was no evidence that Parliament had ever sought to weigh the competing interests or to assess the proportionality of a blanket ban on the right of a convicted prisoner to vote. It could not be said that there was any substantive debate by members of the legislature on the continued justification, in the light of modern day penal policy and of current human rights standards, for maintaining such a general restriction on the right of prisoners to vote.

It was also evident that the nature of the restrictions, if any, to be imposed on the right of a convicted prisoner to vote was in general seen as a matter for Parliament and not for the national courts. The domestic courts did not therefore undertake any assessment of the proportionality of the measure itself.

Regarding the existence or not of any consensus among Contracting States[1], the Court noted that, although there was some disagreement about the state of the law in certain States, it was undisputed that the United Kingdom was not alone among Convention countries in depriving all convicted prisoners of the right to vote. It might also be said that the law in the United Kingdom was less far-reaching than in certain other States. Not only were exceptions made for those committed to prison for contempt of court or for default in paying fines, but unlike the position in some countries, the legal incapacity to vote was removed as soon as the person ceased to be detained. However the fact remained that it was a minority of Contracting States in which a blanket restriction on the right of convicted prisoners to vote was imposed or in

[1] Prisoners may vote in 16 countries: Albania, Bosnia and Herzegovina (unless serving a sentence imposed by the International Tribunal for the former Yugoslavia), Cyprus (though they must happen to be out of prison on the day of the elections) Croatia, the Czech Republic, Denmark, Finland, the former Yugoslav Republic of Macedonia, Iceland, Lithuania, Portugal, Slovenia, Spain, Sweden, Switzerland and Ukraine.
Prisoners may frequently/sometimes vote in 13 countries: Austria, Belgium, France, Germany, Greece, Italy, Luxembourg, Malta, the Netherlands, Norway, Poland, Romania and Turkey.
Prisoners cannot vote in 13 countries: Armenia, Azerbaijan, Bulgaria, Estonia, Georgia, Hungary, Ireland, Latvia, Liechtenstein, Moldova, Russia, Slovakia and the United Kingdom.

which there was no provision allowing prisoners to vote. Even on the Government's own figures, the number of such States did not exceed 13. Moreover, and even if no common European approach to the problem could be discerned, that could not of itself be determinative of the issue.

Therefore, while the Court reiterated that the margin of appreciation was wide, it was not all-embracing. Further, although the situation was somewhat improved by the Act of 2000 which for the first time granted the vote to persons detained on remand, section 3 of the 1983 Act remained a blunt instrument. It stripped of their Convention right to vote a significant category of people and it did so in a way which was indiscriminate. It applied automatically to convicted prisoners in prison, irrespective of the length of their sentence and irrespective of the nature or gravity of their offence and their individual circumstances. Such a general, automatic and indiscriminate restriction on a vitally important Convention right had to be seen as falling outside any acceptable margin of appreciation, however wide that margin might be, and as being incompatible with Article 3 of Protocol No. 1. The Court therefore held, by 12 votes to five, that there has been a violation of Article 3 of Protocol No. 1.

Considering that the Contracting States had adopted a number of different ways of addressing the question of the right of convicted prisoners to vote, the Court left the United Kingdom legislature to decide on the choice of means for securing the rights guaranteed by Article 3 of Protocol No. 1.

Article 10 and 14
Like the Chamber, the Grand Chamber found that no separate issue arose either under Article 10 or Article 14.

Judge Caflisch expressed a concurring opinion, Judges Tulkens and Zagrebelsky expressed a joint concurring opinion, Judges Wildhaber, Costa, Lorenzen, Kovler and Jebens expressed a joint dissenting opinion and Judge Costa expressed a separate dissenting opinion. Those opinions are annexed to the judgment.

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The Court's judgments are accessible on its Internet site (http://www.echr.coe.int).

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