

Prisoner Voting and Power Struggle: a Never-Ending Story?

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On 29 October 2017, it was [announced](#) that the UK authorities are planning to revoke the blanket ban on prisoner voting and allow those who are sentenced to under a year in prison to go home for a day and vote. This was done to ensure the compliance with the judgment of the European Court of Human Rights in the case of [Hirst No 2](#) which was delivered in 2005. It took the UK government twelve years to come up with a proposal that would put English law in line with the case law of the European Court of Human Rights.

It is very unlikely that this suggestion will have any impact on voting patterns in the UK. [Only 8% of the overall prison population](#) in 2017 were inmates incarcerated for 1 year or less. Since the overall prison population is about 85,000, only about 7,000 people will potentially become enfranchised as a result of this reform. With [over 47 million registered](#) voters this number is really negligible. The UK authorities waited for twelve year to formally comply with the judgment of the Court that does not change much in real terms. Even despite this the proposed amendment has been [severely criticised by the backbench MPs](#). So, the crust of this problem is not in the real impact of prisoner voting legislation on election – it is in general Euroscepticism of the British political elites. Also, some MPs with use this opportunity to be populist to show that they are tough on crime irrespectively of the fact that disenfranchisement has virtually no deterrent effect. It is unlikely that unlikely that the threat of disenfranchisement can succeed where the threat of imprisonment fails.

As Professor Fiona de Londras and I argue in our upcoming monograph “[Great Debates on the European Convention on Human Rights](#)”: “We might ask why it is that this question has generated so much controversy... Three key conditions are present for this to cause such a standoff. Firstly, because voting rights are usually determined by legislation, national parliaments can block the execution of the Court’s judgment. Secondly, the judgment concerns unpopular minorities, easily vilified in the media and among the voting public. Thirdly, parliamentarians may perceive this to be a question in which the ECtHR should not get involved. In some countries, this may be because the question is perceived as ‘political’. In others, it may be a microcosm of broader Euroscepticism. In others, such as Russia and the UK, it may be a mixture of both.

The accumulation of these three conditions may explain why decisions as to prisoner voting cause standoff in some counties, but not in others. Thus, in Austria, the judgment in [Frodl v. Austria](#) was executed without any major issues, and in Ireland the national parliament initiated appropriate reforms without there having been any specific ECtHR judgment against them. Yet in Russia, Turkey, the UK, and potentially in Bulgaria—all states with growing levels of Euroscepticism—the prisoner voting issue is a major bone of contention.”

It seems that prisoner voting has become a symbolic rather than real battle for human rights in Europe. It is symbolic because the real life impact of losing or winning is very limited. Of course, voting rights are important for democracy which is the only compatible system of government with the European Convention on Human Rights. Of course, prisoner rights are also important and worth fighting for but proper treatment of prisoners, good conditions of detention are perhaps more pressing in many European countries. And the Court has extensive case law on that issue. At the same time, the effectiveness and legitimacy of the Strasbourg system is undermined by the fact that prisoners are not allowed to vote because this case law is not complied with.

Both the Court and the states needed to make concessions in relation to prisoner voting to preserve the legitimacy of the system. The ECtHR has already downgraded the standard required. In [Frodl v Austria](#) the Court suggested that the only system compatible with the Convention will be the one in which disenfranchisement is decided by the sentencing judge in each individual case and only when the crime can justify disenfranchisement. For example, perhaps crimes against the state can be appropriate here. In [Scoppola No 3](#) the Court rolled back from this demanding standards by saying that automatic disenfranchisement can be compatible with the

Convention if it is not blanket. In Italy, those in prison for under three years could vote and therefore the Court did not find a violation of the Convention.

The UK is the founding member of the Council of Europe, it normally complies with the judgments of the European Court and it is considered as the birthplace of human rights. The proposed changes in the UK law will have almost no impact the UK elections but it will deprive those countries in which serious human rights violations can happen of the argument in favour of non-execution. As [Ed Bates pointed out](#), the UK cannot pressure Azerbaijan in compliance with human rights judgments if the UK itself has an unenforced judgment in its docket for more than ten years.

One can argue that the UK resistance to comply with the *Hirst No 2* judgment was one of the reasons for Russia to fail to implement a similar judgment in *Anchugov and Gladkov v Russia*. The Committee of Ministers is a political body of the Council of Europe that is responsible for execution of the judgment of the European Court of Human Rights. Its main “weapon” is diplomatic pressure. The level of such pressure on Russia in prisoner voting cases can be very limited because the UK has failed to implement an identical judgment.

The move of the UK government to enfranchise prisoners should be welcome as it shows that the UK is still committed to collaboration with the European Court of Human Rights. At the same time, the delay of twelve years of execution of the Court’s judgment is clearly unacceptable.

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