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'The right to vote is not a privilege' – Time for Parliament to act

JUSTICE welcomes the decision of the European Court of Human Rights confirming that the right to vote is a fundamental right guaranteed by international human rights law, including the European Convention of Human Rights.

All restrictions to the franchise must be strictly justified and 'the presumption in a democratic State must be in favour of inclusion and universal suffrage'.

This right is not, however, absolute. Limitations on the right of prisoners to vote can be acceptable, but must be necessary and proportionate:

- The Court confirms that the absolute ban on prisoners' voting in the UK must change. The UK has six months to introduce legislation for reform.
- The absolute ban in UK law is general, automatically and indiscriminately applied and undermines the essence and effectiveness of the right to vote.
- The scope of reform is now for Parliament to consider and its discretion is wide. Following submissions by the UK and Italian Governments, Strasbourg has abandoned previous guidance that only a judge could effectively remove the right to vote.

Angela Patrick, Director of Human Rights Policy said:

"We should welcome any prisoner who wants to participate in the democratic process. The time has come for Parliament to act."

For further comment, please contact Angela Patrick, JUSTICE's Human Rights Policy Director, on 020 7762 6415 (direct line) or apatrick@justice.org.uk.

Notes for editors

1. The decision of the European Court of Human Rights Grand Chamber in *Scoppola (No 3) v Italy* was handed down on 22 May 2012. The decision is available here: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=908352&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.
2. The UK Government participated in the case as a third-party intervener. The Attorney General argued that the Court's decision in *Hirst (No 2)* which found the UK ban on prisoner voting incompatible with the right to participate in free elections (Article 3 Protocol 1 ECHR) was wrong. The Court in *Scoppola (No3)* confirmed its decision in *Hirst (No 2)* but did not find a violation on the facts of the case. The key parts of the judgment include:

On the UK's intervention

93. In its observations, the third-party intervener affirmed that the Grand Chamber's findings in the *Hirst* (no. 2) case were wrong and asked the Court to revisit the judgment. It argued in particular that whether or not to deprive a group of people – convicted prisoners serving sentences – of the right to vote fell within the margin of appreciation afforded to the member States in the matter.

[...]

95. It does not appear, however, that anything has occurred or changed at the European and Convention levels since the *Hirst* (no. 2) judgment that might lend support to the suggestion that the principles set forth in that case should be re-examined. On the contrary, analysis of the relevant international and European documents... and comparative-law information... reveals the opposite trend, if anything – towards fewer restrictions on convicted prisoners' voting rights.

The scope of any limitations

In addition, according to the comparative-law data in the Court's possession (see paragraphs 45-48 above), arrangements for restricting the right of convicted prisoners to vote vary considerably from one national legal system to another, particularly as to the need for such restrictions to be ordered by a court...

102. This information underlines the importance of the principle that each State is free to adopt legislation in the matter in accordance with "historical development, cultural diversity and political thought within Europe, which it is for each Contracting State to mould into their own democratic vision [...]

Contracting States may decide either to leave it to the courts to determine the proportionality of a measure restricting convicted prisoners' voting rights, or to incorporate provisions into their laws defining the circumstances in which such a measure should be applied. In this latter case, it will be for the legislature itself to balance the competing interests in order to avoid any general, automatic and indiscriminate restriction. It will then be the role of the Court to examine whether, in a given case, this result was achieved and whether the wording of the law, or the judicial decision, was in compliance with Article 3 of Protocol No. 1.

Chairman of Council Baroness Kennedy of The Shaws QC Director Roger Smith

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