

EUROPEAN UNION LAW

CASE NOTES



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Sample

Hirst v United Kingdom (No 2) [2005] ECHR 681

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Court details: European Court of Human Rights

Procedural history:

- The case was first brought to the High Court but the case was dismissed. An appeal was lodged to the European Court of Human Rights

Facts:

- John Hirst, a prisoner then serving a sentence for manslaughter, was prevented from voting by section 3 of the Representation of the People Act 1983, which prohibits convicted prisoners from voting during their incarceration in a penal institution.
- In 2001, Hirst brought a case to the High Court, but the case was dismissed.
- He lodged an appeal to the European Court of Human Rights at Strasbourg later in 2001.

Issues:

- Whether prisoners in the UK have a right to vote at elections.

Reasoning / Decision (Commentary):

- In 2004, the Chamber of the European Court of Human Rights, recorded in *Hirst v UK (No 2)* (2006) 42 EHRR 41, ruled unanimously that there had been a violation of Hirst's human right under Article 3 of the First Protocol.
- The UK lodged an appeal to the Grand Chamber and on 6 October 2005 it found in favour of Hirst by a majority of twelve to five.
- The Court found that the restriction of prisoners' voting rights violated Protocol 1, Article 3 of the European Convention on Human Rights.
- Once a case has been decided by the ECtHR, it falls to the Committee of Ministers to supervise execution of the Court's judgment.
- The British Government initially attempted to introduce legislation to give prisoners the right to vote.
- This was rejected by the British Parliament and the Government has repeatedly stated since then that prisoners will not be given the right to vote in spite of the ruling.

Ratio:

- The European Court of Human Rights found that:
The starting point in the European Convention in article 1 is that:
"...the High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention"
- The Court added:

"It follows from this provision that the States Parties are answerable for any violation of the protected rights and freedoms of anyone within their "jurisdiction" – or competence – at the time of the violation...

...However, it must be reiterated that, for the purposes of the Convention, the sole issue of relevance is the State's international responsibility, irrespective of the national authority to which the breach of the Convention in the domestic system is imputable...

...Even though it is not inconceivable that States will encounter difficulties in securing compliance with the rights guaranteed by the Convention in all parts of their territory, each State Party to the Convention nonetheless remains responsible for events occurring anywhere within its national territory.

Further, the Convention does not merely oblige the higher authorities of the Contracting States themselves to respect the rights and freedoms it embodies; it also has the consequence that, in order to secure the enjoyment of those rights and freedoms, those authorities must prevent or remedy any breach at subordinate levels...The higher authorities of the State are under a duty to require their subordinates to comply with the Convention and cannot shelter behind their inability to ensure that it is respected...

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