

THE THREAT TO OUR BASIC RIGHTS

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The right to vote at election time is a basic civic right – part of our birthright as equal citizens in a modern democracy governed by the rule of law. It is a right that had to be fought for by workers and suffragists here and by black people in the American South. Since 1954, it has been the fundamental right of Europe's citizens protected by the European Convention on Human Rights. The Attlee government opposed including the right to vote in the original Convention lest it lead to proportional representation, but it was added to the Convention in a protocol accepted by Winston Churchill's government in November 1952.

Last February, David Davis MP introduced a Commons debate disputing the Strasbourg Court's judgment in the Hirst case that the blanket exclusion of all convicted prisoners in custody from the right to vote was in breach of the Convention. His motion argued that the issue should be for democratically elected lawmakers, and supported the current position. David Davis was supported by the former Lord Chancellor, Jack Straw MP, who accused the European Court of having over-interpreted the Convention to extend its jurisdiction improperly. It was Mr. Straw who deliberately failed to introduce legislation to give effect to the Court's judgment during his term of office. His criticism lacked substance.

Last Monday, Messrs. Straw and Davis went further. They went to Strasbourg together to remonstrate with the President of the Court, the British Judge, Sir Nicolas Bratza. It is deeply regrettable that Jack Straw, who takes justifiable credit for his role as Home Secretary in making the Human Rights Act, should now campaign to disobey the Court's judgment in Hirst, in breach of the UK's duty to abide by the Court's judgment.

Britain has had a fine and unblemished record in complying with the Strasbourg Court's judgments and in upholding the European rule of law. The continuing failure to introduce legislative reform sets a bad example to the governments of States which would love to clip the Court's wings and be able to pick and choose which judgments to respect.

The Strasbourg Court is repeatedly attacked by some sections of the British media and politicians for over-reaching and judicial 'activism'. The British media have good reason to support the Court for it is as a result of cases brought by The Times and other newspapers that we now have an enforceable legal right to freedom of expression. Some who attack do so

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because they dislike the way the Court has developed necessary protection against unwarranted media intrusion on personal privacy.

The attacks by politicians are unfair and politically motivated. The Court does not over-reach or become 'activist' in a political sense. It has repeatedly stressed that the machinery of protection under the Convention is subsidiary to the national systems protecting human rights. It has recognized that the national authorities are better placed than an international court to evaluate local needs and conditions, and that they have a wide margin of discretion in securing Convention rights at home. That is what is meant by the principle of subsidiarity which limits the role of the Strasbourg Court.

In Hirst, for example, the Court recognized that the Convention right to vote is not absolute and that the margin of discretion enjoyed by our Parliament is very wide. It noted that there are many ways of organising and running electoral systems, and that, while there is no place for automatic disenfranchisement "based purely on what might offend public opinion", restrictions on electoral rights may well be justified to prevent disorder or crime. What was found wanting was a "general, automatic and indiscriminate restriction".

Ireland and Cyprus, though not directly bound by the Hirst judgment, promptly gave convicted prisoners postal votes. But successive UK Governments have failed for seven years to give Parliament the chance to consider reforming legislation. The Court is likely to decide early next year that legislation must at last be introduced, resulting, no doubt, in more political furore.

Meanwhile, the constant attacks on the Strasbourg Court and the Convention undermine the Government's important efforts during its Presidency of the Committee of Ministers to muster support for much needed reforms. The Commission on a Bill of Rights for the UK, of which I am privileged to be a member, has advised the Government on what we see as urgent practical reforms. They include improving the way in which its judges are selected and elected, ways of urgently tackling the crushing backlog of some 165000 pending cases so that the Court is able to focus on the important issues, and changes to the Court's remedies so that financial awards become exceptional.

The European Court is meant to be a court of last resort and not of first recourse. Before the Human Rights Act, there were insufficient legal remedies in this country for breaches of our basic civil and political rights and freedoms. The Act gave much needed protection. We do not have a written constitution. Were Parliament to do as some would wish and scrap or emasculate the Human Rights Act or withdraw from the Convention, British

citizens, unlike the citizens of the risk of Europe, would lack effective legal protection by our courts against the tyranny of majorities and the abuse of State power.