

SECRETARIAT GENERAL SECRETARIAT OF THE COMMITTEE OF MINISTERS SECRÉTARIAT DU COMITE DES MINISTRES

Contact: Simon Palmer Tel: 03.88.41.26.12

Date: 05/09/2011

DH - DD(2011)679E *

Item reference: 1120th DH meeting (September 2011)

Please find enclosed correspondence between United Kingdom authorities and the Registry of the European Court concerning the case of Greens and M.T. against the United Kingdom (Applications No. 60041/08 and 60054/08).

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Référence du point : 1120e réunion DH (septembre 2011)

Veuillez trouver, ci-joint, un échange de correspondance entre les autorités du Royaume-Uni et le Greffe de la Cour européenne relatif à l'affaire Greens et M.T. contre le Royaume-Uni (Requêtes n° 60041/08 et 60054/08) *(anglais uniquement).*

In the application of Article 21.b of the rules of procedure of the Committee of Ministers, it is understood that distribution of documents at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers (CM/Del/Dec(2001)772/1.4). / Dans le cadre de l'application de l'article 21.b du Règlement intérieur du Comité des Ministres, il est entendu que la distribution de documents à la demande d'un représentant se fait sous la seule responsabilité dudit représentant, sans préjuger de la position juridique ou politique du Comité des Ministres CM/Del/Dec(2001)772/1.4).



26 July 2011

By E-Transmission

Mr T L Early

Dear Sir,

ECHR Application Nos: 60041/08 AND 60054/08 **GREENS & MT v. THE UNITED KINGDOM**

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Section Registrar **European Court of Human Rights** Strasbourg

- 1. On 23 November 2010, the Fourth Section of the Court published its judgment in the above cases. The Court found that there had been a breach of the applicants' rights under Article 3 of the First Protocol to the ECHR ("Article 3"), declined to award compensation to the applicants and, pursuant to the Court's pilot judgment procedure, indicated certain further steps that the Government should take in order to give effect to the judgment.
- 2. In particular, the Court noted that a wide range of policy alternatives were available to the Government and emphasised the broad margin of appreciation which applies in this area. It was for the Government, following appropriate consultation, to decide in the first instance how to achieve compliance with Article 3 when introducing legislative proposals (§114 of the judgment). In §115, the Court prescribed a timetable for the introduction of legislative proposals, namely a period of six months from the date on which the judgment became final (which was 11 April 2011). The Government has actively been considering the appropriate course of action in order to respond to the judgment in Greens and MT.
- 3. Recently, the Grand Chamber has accepted a referral in the case of Scoppola v Italy (no. 126/05, judgment of the Second Section of 18 January 2011). A hearing before the Grand Chamber has been scheduled for 2 November 2011. The issue which arises in Scoppola is similar to that which arose in Hirst v UK and in Greens and MT, in that the applicant complains about Italian legislation which has the effect of disenfranchising certain offenders. The Italian legislation is many respects more onerous than that which is in operation in the UK, because those affected by it are disenfranchised for life, but the legal issues under Article 3 are analogous to those which arose in Hirst and in Greens and MT, and the Second Section referred in its judgment to Hirst and to Frodl v Austria (which, in the Government's view, is inconsistent with Hirst). In its referral request, the Italian Government has referred to Hirst and made submissions regarding the contrast between the Italian and UK legislation.

- 4. Given the close relationship between the issues in *Scoppola* and those which arise under *Hirst* and *Greens and MT*, the Government intend to request leave to intervene, by written and oral submissions, in the proceedings before the Grand Chamber. On any view, it is likely that the judgment of the Grand Chamber in *Scoppola* will have a direct impact on the question of which legislative proposals should be brought forward in order to comply with the judgment in *Greens and MT*.
- 5. It is for that reason that the Government now seek leave to defer the time limit specified by the Fourth Section in *Greens and MT*, which is due to expire on 11 October 2011. It would be highly undesirable for the Government to be required to reach a decision as to legislative proposals in response to *Greens and MT* at a time when *Scoppola* is pending before the Grand Chamber. Given the issues which arise in *Scoppola*, that decision ought to be taken in the light in the judgment of the Grand Chamber rather than in anticipation of it. The Government therefore seek leave to defer the timetable in §115 of *Greens and MT* so that it expires six months after the date of the judgment of the Grand Chamber in *Scoppola*.

Yours faithfully,

Harriet Moynihan

Agent of the Government of the United Kingdom

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BY E-TRANSMISSION

Mr T L Early Section Registrar European Court of Human Rights Strasbourg

which may have been agreed".

10 August 2011

Dear Sir,

ECHR Application Nos: 60041/08 and 60054/08 Greens & MT v. the United Kingdom

Thank you for your letter of 28 July 2011, asking for "further information on the steps which

There have been a range of developments in the United Kingdom and in Europe on the question of prisoner voting rights since the *Greens and MT* judgment was handed down on 23 November 2010, reaffirming the broad discretion established in *Hirst (No. 2)* and setting a deadline for the introduction of legislative proposals.

have been taken to date to give effect to the judgment and to submit a copy of any action plan

Less than a month after that judgment, the Minister for Political and Constitutional Reform announced to Parliament on 20 December 2010 the Government's planned approach to implementation.

The Government announced that it would bring forward legislation for Parliament to debate, providing that the blanket ban in the existing law be replaced. The Government proposed that prisoners sentenced to less than four years would retain the right to vote, although the sentencing judge would have discretion to remove that right if considered appropriate. Offenders sentenced to four years or more would be automatically disenfranchised. The Government proposal sought to maintain the link between the seriousness of the offence committed and the sanction of removal of the right to vote.

Since that announcement, the United Kingdom Parliament has considered the issue on a number of occasions and the matter has been formally debated on two separate occasions. The first was a Westminster Hall adjournment debate on 11 January 2011 in which the vast majority of MPs who participated in the debate voiced views strongly against giving prisoners the right to vote. The Minister for Political and Constitutional Reform spoke for the Government. The second, on 10 February 2011, was an all-day debate on the floor of the House of Commons on a motion put forward jointly by two senior backbench MPs (from the opposition Labour Party and the Conservative Party). The motion was:

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"That this House, noting that the ECHR commented in Hirst v. the United Kingdom that 'it cannot be said that there was any substantive debate by members of the legislature on the continued justification in 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', and conscious of the treaty obligations of the UK, is of the opinion that (a) legislative decisions of this nature should be a matter for democratically elected lawmakers and (b) that on the merits of the issue, the current policy by which no sentenced prisoner is able to vote except those imprisoned for contempt, default or on remand, is confirmed."

The motion was carried by 234 votes to 22 (Government ministers and their official Opposition counterparts abstained from voting).

The Attorney General spoke for the Government during the debate, highlighting to the House the international legal obligations on the United Kingdom. The vote is not binding on the Government but provided a clear indication of the strength of feeling on this issue in the House of Commons.

In light of these debates, and conscious of its obligations under the Convention, the Government requested the judgment in *Greens and MT* be referred to the Grand Chamber of the European Court of Human Rights, pursuant to Article 43 of the Convention. The Government considered it proper that confronted with such difficulties in reconciling the judgments with the national context that these matters are put to the Court before the judgment becomes final. Since the *Greens and MT* judgment effectively confirms the *Hirst* judgment, the Government requested that the Grand Chamber reconsider *Hirst*.

This referral request was rejected by the Grand Chamber Panel on 11 April 2011. Since that date, the Government have been actively considering the next steps in relation to implementation. Work has been underway in Government on a range of options; with a view to bringing forward proposals in time for the Court's 11 October deadline, and officials in the Ministry of Justice and Cabinet Office are in regular contact on this issue. A number of different approaches to implementation have been under discussion in the UK context. As set out above, the Government announced an approach based on a combination of an automatic ban and judicial discretion in December 2010; and a range of other suggestions for implementation have been made in the context of Parliamentary debates.

As we said in our letter of 26 July 2011, it is likely that the judgment of the Grand Chamber in *Scoppola* will have a direct impact on the question of which legislative proposals should be brought forward in order to comply with the judgment in *Greens and MT*.

As a number of approaches have been under discussion, no action plan has yet been agreed with the Committee of Ministers or its Secretariat. At its last meeting in June 2011, the Committee of Ministers adopted a decision which noted that the request for a referral to the Grand Chamber in *Greens and M.T.* was refused by the panel of the Grand Chamber on 11 April 2011, noted further that the United Kingdom authorities have until 11 October 2011 to introduce legislative proposals with a view to the enactment of an electoral law to achieve compliance with the Court's judgments in *Hirst* and *Greens and M.T.* according to any time-scale determined by the Committee of Ministers, and consequently invited the United Kingdom authorities to present an action plan to this effect without delay.

The Government had been working towards presenting an action plan to the Committee of Ministers in accordance with the normal timetable for supervision of the execution of judgments (according to which the latest date for an action plan is 11 October 2011). Given the uncertainty generated by the decision to accept the referral request in *Scoppola* and pending the Court's decision on the Government's request of 26 July, the Government is not in a position to produce a more detailed action plan at this stage.

It will be essential for the Government to consider the outcome of the Grand Chamber's judgment in the *Scoppola* case before deciding its approach to the implementation of *Greens and MT* in the United Kingdom context.

I am copying this letter to the Committee of Ministers' Secretariat.

Yours faithfully,

John Grainger

for Harriet Moynihan

John Gringer

Agent of the Government of the United Kingdom



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FOURTH SECTION

ECHR-LE0.1G bis (mod) MLA/ji

30 August 2011

BY E-TRANSMISSION ONLY

Application nos. 60041/08 and 60054/08 Greens and M.T. v. the United Kingdom

Dear Madam,

On 30 August 2011 the Chamber examined your request for the timetable in § 115 of the Court's judgment in *Greens and M.T. v. the United Kingdom*, nos. 60041/08 and 60054/08, 23 November 2010, to be deferred so that it expires six months after the date of the judgment of the Grand Chamber in *Scoppola v. Italy (no. 3)*, no. 126/05. It had before it your letters of 26 July 2011 and 10 August 2011 and the letter of 10 August 2011 from the applicants' legal representative.

Having regard to the lapse of almost six years since the ruling of the Grand Chamber in *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, ECHR 2005-IX; to the fact that a general election took place in May 2010 and that no measures had been put in place by that time to give effect to the Court's judgment in *Hirst*, resulting in numerous applications being lodged with this Court; and to the further lapse of time which would occur pending the delivery of the Grand Chamber judgment in *Scoppola (no. 3)*, the Chamber cannot contemplate any further unnecessary delay.



The Chamber would therefore regard as reasonable an extension of six months after the date of the Grand Chamber judgment in *Scoppola* (*no. 3*) for the introduction of a Bill to Parliament.

Yours faithfully,

T.L. Early Section Registrar

cc: Taylor & Kelly Solicitors