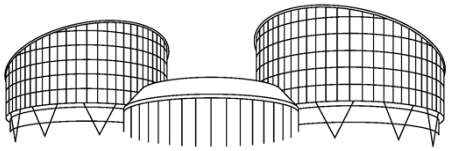

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF HORA v. THE UNITED KINGDOM

(Application no. 1048/20)

JUDGMENT

Art 3 P1 • Ineligibility of prisoner serving an indeterminate sentence of imprisonment to vote in 2019 general (parliamentary) election • Clear guidance in the Court's case-law on whether the disenfranchisement of a prisoner serving an indeterminate sentence following conviction of a serious offence is compatible with Art 3 P1 • No general support domestically for enfranchisement of prisoners convicted of serious offences serving lengthy or indeterminate sentences • Unjustified to examine impugned provision in the abstract or to identify categories of prisoners whose disenfranchisement might be incompatible with Art 3 P1 • Disenfranchisement of applicant on account of the seriousness of offending, his conduct, his risk to the public and the imposition of a harsh sentence, not disproportionate • Continued disenfranchisement, despite expiry of minimum term of imprisonment, proportionate

Prepared by the Registry. Does not bind the Court.

STRASBOURG

23 September 2025

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Hora v. the United Kingdom,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Arnfinn Bårdsen*, President*,
Tim Eicke,
Jovan Ilievski,
Oddný Mjöll Arnardóttir,
Gediminas Sagatys,
Stéphane Pisani,
Juha Lavapuro*, judges*,
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 1048/20) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a British national, Mr Michael Christopher Hora ("the applicant"), on 6 January 2020;

the decision to give notice to the United Kingdom Government ("the Government") of the complaint concerning the applicant's ineligibility to vote in the general election of 12 December 2019 and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 2 September 2025,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The applicant was serving an indeterminate sentence of imprisonment when a general (parliamentary) election took place in the United Kingdom on 12 December 2019. Pursuant to section 3 of the Representation of the People Act 1983 ("the 1983 Act"), he was ineligible to vote in that election. He complains under Article 3 of Protocol No. 1 to the Convention.

THE FACTS

2. The applicant was born in 1966 and is detained in HMP Bure, Norwich. He was represented by Mr S. Humber of Leigh Day Solicitors, a law firm based in London.

3. The Government were represented by their Agent, Ms K. Pleming, of the Foreign, Commonwealth and Development Office.

4. The facts of the case may be summarised as follows.

A. The facts concerning the applicant

5. The applicant was convicted on 10 October 2007 of two counts of rape and one count of sexual assault, perpetrated on the victim in her home. The applicant's defence that sexual relations with the victim had been consensual was rejected by the jury. The applicant had previously been convicted of rape in similar circumstances in 2000 and had been sentenced in 2001 to a term of imprisonment of seven years, which had been reduced on appeal. Following his 2007 conviction, the court therefore sentenced him to an indeterminate sentence of imprisonment for the public protection (see paragraph 35 below) with a minimum term of four years, less 296 days spent in custody on remand. The minimum term expired in 2011 but the applicant remains in detention as the Parole Board has not yet recommended his release.

6. A general election took place on 12 December 2019. Pursuant to section 3 of the 1983 Act, convicted prisoners are not allowed to vote in elections in the United Kingdom unless one of the exceptions in the legislation applies (see paragraphs 27-29 below). The applicant was ineligible to vote in the 2019 general election.

B. Domestic proceedings

7. The applicant did not bring any domestic proceedings concerning his ineligibility to vote. Although the courts in the United Kingdom may consider the Convention-compatibility of primary legislation, they are not able to disapply statutory provisions. A domestic court had previously made a declaration that section 3 of the 1983 Act was incompatible with a Convention right (see paragraphs 38-40 below). The applicant saw no value in seeking another such declaration.

C. Political developments in the United Kingdom since the judgment in *Hirst v. the United Kingdom (no. 2)* in respect of the disenfranchisement of prisoners

8. In December 2006, in light of the Court's finding of a violation of Article 3 of Protocol No. 1 in its judgment of 6 October 2005 in *Hirst v. the United Kingdom (no. 2)* ([GC], no. 74025/01, ECHR 2005-IX), the government launched the first stage of a consultation on prisoner voting, intended to ascertain views on the arguments for and against allowing prisoners to vote.

9. In April 2009 the government published a second stage consultation paper indicating that there should be a limited enfranchisement of some prisoners but that the final decision was for Parliament.

10. On 6 May 2010, while the question of prisoner voting remained under consideration, a general election took place. A new government was

subsequently formed. On 2 November 2010 there was a short debate in the House of Commons following a question to the new government regarding their plans to give prisoners the right to vote. In the course of that debate, the government emphasised that they were under a legal obligation to change the law following the judgment in *Hirst* (cited above). They said that they were actively considering how to implement the judgment and that once decisions had been made, legislative proposals would be brought forward. The majority of those who intervened in the debate expressed disquiet at the prospect of extending the right to vote in light of the *Hirst* judgment.

11. On 20 December 2010 the government, referring to *Hirst* (cited above) and the Court's subsequent pilot judgment of *Greens and M.T. v. the United Kingdom* (nos. 60041/08 and 60054/08, ECHR 2010 (extracts)), said the following in a written statement to Parliament:

> "It is plain that there are strong views across Parliament and in the country on the question of whether convicted prisoners should be entitled to vote. However, this is not a choice: it is a legal obligation. So the Government are announcing today that we will act to implement the judgment of the European Court of Human Rights. In deciding how to proceed, we have been guided by three principles. First, that we should implement the *Hirst* judgment in a way that meets our legal obligations, but does not go further than that. Secondly, that the most serious offenders will not be given the right to vote. Thirdly, that we should seek to prevent the taxpayer having to face future claims for compensation.
>
> The Government will therefore bring forward legislation providing that the blanket ban in the existing law will be replaced. Offenders sentenced to a custodial sentence of four years or more will lose the right to vote in all circumstances, which reflects the Government's clear view that more serious offenders should not retain the right to vote. Offenders sentenced to a custodial sentence of less than four years will retain the right to vote, but legislation will provide that the sentencing judge will be able to remove that right if they consider that appropriate. Four years has in the past been regarded as the distinction between short and long-term prisoners, and the Government consider that permitting prisoners sentenced to less than four years' imprisonment to vote is sufficient to comply with the judgment.
>
> ...
>
> We believe that these proposals can meet the objectives that we have set out of implementing the judgment in a way that is proportionate; ensuring the most serious offenders will not be given the right to vote; and seeking to prevent future claims for compensation. We will bring forward legislation next year for Parliament to debate."

12. On 10 January 2011 a general debate on prisoners' voting rights took place in the House of Commons. Most speakers did not express support for granting prisoners the right to vote.

13. On 10 February 2011 a backbench debate took place in the House of Commons on the subject of prisoner voting. Again, the majority of views expressed were opposed to giving prisoners the right to vote. At the end of the debate, the following non-binding motion was passed by a majority of 234 votes to 22:

> "That this House notes the ruling of the European Court of Human Rights in *Hirst v the United Kingdom* in which it held that there had been no substantive debate by members of the legislature on the continued justification for maintaining a general restriction on the right of prisoners to vote; acknowledges the treaty obligations of the UK; is of the opinion that legislative decisions of this nature should be a matter for democratically-elected lawmakers; and supports the current situation in which no prisoner is able to vote except those imprisoned for contempt, default or on remand."

14. On 23 May 2012, in response to a question in the House of Commons, the Prime Minister confirmed that he believed that the issue of whether prisoners were entitled to vote should be a matter for Parliament to decide and noted that Parliament had made its decision.

15. On 24 October 2012, in response to a question in the House of Commons, the Prime Minister said:

> "The House of Commons has voted against prisoners having the vote. I do not want prisoners to have the vote, and they should not get the vote – I am very clear about that. If it helps to have another vote in Parliament on another resolution to make it absolutely clear and help put the legal position beyond doubt, I am happy to do that. But no one should be in any doubt: prisoners are not getting the vote under this Government."

16. On 22 November 2012 the government published a draft bill on prisoners' voting eligibility. The draft bill included three proposals: (1) to ban from voting those sentenced to four years or more; (2) to ban from voting those sentenced to more than six months; or (3) to ban from voting all prisoners. The proposals covered both local and parliamentary elections.

17. A Joint Committee of both Houses of Parliament was established to conduct pre-legislative scrutiny of the draft bill. The Joint Committee was composed of six members of the House of Commons and six members of the House of Lords. It received written evidence and heard oral evidence from, *inter alia*, non-governmental organisations, members of parliament, persons working with prisoners, academics, government ministers and officials, legal practitioners, and representatives of the Council of Europe.

18. On 18 December 2013 the Joint Committee published its report. It made, by majority vote (with three members of the House of Commons dissenting), the following recommendation:

> "We recommend that the Government bring forward a Bill, at the start of the 2014-15 session of Parliament, to give legislative effect to the following conclusions:
>
> - That all prisoners serving sentences of 12 months or less should be entitled to vote in all UK parliamentary, local and European elections;
>
> ...
>
> - That prisoners should be entitled to apply, 6 months before their scheduled release date, to be registered to vote in the constituency into which they are due to be released."

19. In response to the report, the government indicated that the matter was under active consideration.

20. A general election took place on 7 May 2015. On 2 December 2015 the Secretary of State for Justice appeared before the Constitution Committee of the House of Lords. In response to a question about when a substantive response to the Joint Committee's report (see paragraph 18 above) might be expected, the Secretary of State replied that "whatever any of our individual views are about the judgment in *Hirst*, the last Parliament made its view very clear on the issue, and I cannot see, given the constitution of the new Parliament, that it would be likely to be dramatically different". He continued:

> "... I would argue that whatever I, as a government Minister, or the whole of the Government, were to do, our Parliament would not accept a change to the law to grant prisoners the vote. In that sense, you have a clash between two principles: on the one hand, our desire to respect the judgment of the European Court of Human Rights but, on the other hand, our desire to recognise that, ultimately, as we touched on earlier, parliamentary sovereignty is the essence of our democracy. In having to choose between the two – it is always difficult and I would rather not – I err on the side of saying that we must respect the democratic principles of parliamentary sovereignty. I would argue that it is not letting the side down if Parliament decides that it does not wish to implement [the *Hirst* judgment] in this way."

21. On 8 June 2017 a general election took place. On 2 November 2017 the Secretary of State for Justice made a statement to the House of Commons concerning the government's response to the Court's judgment in *Hirst* (cited above). He explained:

> "For many years, it has been a feature of United Kingdom law that when someone commits a crime that is sufficiently serious to receive a prison sentence they are deemed to have broken their contract with society to such an extent that they should not have the right to vote until they are ready to be back in the community. This prohibition is currently set out in the Representation of the People Act 1983, as amended, and the principle behind it has been reaffirmed by this House, most recently in 2011.
>
> ...
>
> We have decided to propose administrative changes to address the points raised in the 2005 judgment, while maintaining the bar on convicted prisoners in custody from voting. First, we will work with the judiciary to make it clear to criminals when they are sentenced that while they are in prison they will lose the right to vote. That directly addresses a specific concern of the *Hirst* judgment that there was not sufficient clarity in confirming to offenders that they cannot vote in prison.
>
> Secondly, we will amend guidance to address an anomaly in the current system, where offenders who are released back in the community on licence using an electronic tag under the home detention curfew scheme can vote, but those in the community on temporary licence cannot vote. Release on temporary licence is a tool typically used to allow offenders to commute to employment in the community and so prepare themselves for their return to society. Reinstating the civic right of voting at this point is consistent with that approach. Release on temporary licence is absolutely not an automatic entitlement and every case is subject to rigorous risk assessment. The measures I am announcing today do not involve any changes to the criteria for temporary release, and no offenders will be granted release in order to vote.

> We expect the change to temporary licence to affect up to 100 offenders at any one time and none of them will be able to vote from prison or to register a prison as a home address. The prisoner would have to have satisfied the conditions for registration at a genuine home address. This measure will require no changes to the Representation of the People Act 1983, but instead will entail a change to Prison Service guidance."

22. The Secretary of State for Justice concluded that, in the government's view, the changes addressed the points raised in the *Hirst* judgment in a way that respected the clear direction of successive Parliaments and the strong views of the British public. In the ensuing debate, the approach proposed was generally commended.

23. On 4 July 2018 the Ministry of Justice confirmed in a written answer to Parliament that updated guidance had been provided to prison governors and that a leaflet had been produced informing prisoners of their rights.

24. On 12 December 2019 a general election took place.

D. Political developments in devolved legislatures of the United Kingdom

25. In February 2020 the Scottish Parliament passed the Scottish Elections (Franchise and Representation) Act 2020. Pursuant to section 5 of that Act, which modified section 3 of the 1983 Act (see paragraph 27 below) in so far as it concerns local elections in Scotland, prisoners sentenced to a term of imprisonment not exceeding twelve months are eligible to vote in elections to the Scottish Parliament and in local elections in Scotland.

26. In February 2020 the Welsh Government published proposed amendments to the Local Government and Elections (Wales) Bill which would have extended the right to vote in local elections in Wales to prisoners sentenced to less than four years' imprisonment. The intention was to introduce these amendments at the subsequent stage of the Bill's passage through parliament. However, in April 2020, the responsible Minister informed the Welsh Parliament that "as part of the Welsh Government's wider consideration of its legislative programme at the start of our planning for coping with the grave circumstances we are in" related to the Covid-19 pandemic, she had decided not to commit any future official resource to the proposed amendments. The relevant amendments to the Bill were accordingly not proposed.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. Electoral legislation and practice

27. At the relevant time, section 3 of the 1983 Act provided:

> "(1) A convicted person during the time that he is detained in a penal institution in pursuance of his sentence or unlawfully at large when he would otherwise be so detained is legally incapable of voting at any parliamentary or local election."

28. As outlined above, the section has since been amended with respect to elections to the Scottish Parliament and local elections in Scotland to permit a prisoner who has been sentenced to a term of imprisonment not exceeding twelve months to vote in such elections (see paragraph 25 above).

29. The disqualification from voting does not apply to persons imprisoned for contempt of court (section 3(2)(a)) or to those imprisoned only for default in, for example, paying a fine (section 3(2)(c)).

30. Section 4 of the 1983 Act provides:

> "(1) A person is entitled to be registered in the register of parliamentary electors for any constituency or part of a constituency if on the relevant date he–
>
> (a) is resident in the constituency or that part of it;
>
> (b) is not subject to any legal incapacity to vote (age apart)."

31. A person who is remanded in custody prior to being convicted of any offence is not disqualified from voting. Specific provision is made for the determination of the residence of such a person, for the purpose of registration, by section 7A of the 1983 Act.

32. On 21 June 2018 HM Prison and Probation Service in England and Wales notified prison governors that prisoners released on temporary licence were no longer disqualified from voting. Prison governors in Northern Ireland were notified on 26 June 2018 and those in Scotland on 22 August 2018. On these same dates, prison governors in the three jurisdictions were notified that prisoners who were released early during the custodial element of their sentence on home detention curfew or equivalent schemes could also vote.

33. The Warrant of Committal was amended in England and Wales on 21 July 2018 and in Northern Ireland on 5 July 2018 to make clear at the point of sentence that prisoners were disenfranchised, by the inclusion of the phrase "Convicted offenders sentenced to imprisonment lose the right to vote while they are detained in custody". Taking into account the different legal and courts system in Scotland, from 22 August 2018 the information was made available in the areas where prisoners are first received into prisons in Scotland to ensure that they are notified of their disenfranchisement.

B. Sentencing legislation

34. By section 230(2) of the Sentencing Act 2020 – which re-enacts previous provisions – Parliament has set the general principle in relation to custodial sentences as follows:

> "The court must not pass a custodial sentence unless it is of the opinion that—
>
> (a) the offence, or

(b) the combination of the offence and one or more offences associated with it,

was so serious that neither a fine alone nor a community sentence can be justified for the offence."

35. At the time the applicant was sentenced, the Criminal Justice Act 2003 provided for the imposition of indeterminate sentences for the public protection. These sentences were imposed where the offender had committed a specified serious sexual offence, which included rape and sexual assault, and the sentencing court was of the opinion that there was a significant risk to members of the public of serious harm occasioned by the commission by him or her of further specified offences (section 225(1)(b), as originally enacted). Any pattern of offending which could be identified from the individual's criminal record was a relevant factor in the assessment of whether the criteria for the imposition of an indeterminate sentence for the public protection were met. A prisoner sentenced to such a sentence can, after the expiry of his minimum term, apply to have his or her case referred to the Parole Board and will be released on licence if directed by the Parole Board. Release can only be directed if the Parole Board is satisfied that it is no longer necessary for the protection of the public that the prisoner be confined in prison. Further details of indeterminate sentences for the public protection are set out in *James, Wells and Lee v. the United Kingdom* (nos. 25119/09 and 2 others, §§ 124-33, 18 September 2012).

36. The Sentencing Council for England and Wales recorded that in 2022 "around 68,000 defendants were given an immediate custodial sentence, representing 6 per cent of offenders sentenced that year".

C. The Human Rights Act 1998

37. Section 3 of the Human Rights Act 1998 ("the 1998 Act") provides that in so far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with Convention rights.

38. Section 4(2) of the Human Rights Act 1998 provides that if a court is satisfied that a provision of primary legislation is incompatible with a Convention right, it may make a declaration of incompatibility.

D. Relevant consideration of the prohibition on voting by prisoners by domestic courts

1. Smith v. Scott *(2007)*

39. In *Smith v. Scott* (2007 SLT 137) the Registration Appeal Court in Scotland was asked to consider the application of section 3(1) of the 1983 Act (see paragraph 27 above) to a convicted prisoner serving a sentence of five years' imprisonment, in light of the Court's ruling in *Hirst* (cited above) and

pursuant to sections 3 and 4 of the 1998 Act (see paragraphs 37-38 above). It found that to read down, under section 3 of the 1998 Act, section 3(1) of the 1983 Act as providing for full or partial enfranchisement of convicted prisoners serving custodial sentences would be "to depart substantially from a fundamental feature of the legislation". It observed:

> "27. ... Without the benefit of consultation or advice, this Court would, in a real sense, be legislating on its own account, especially in view of the wide range of policy alternatives from which a 'possible' solution would require to be selected ..."

40. The court noted that the Secretary of State accepted the Court's decision in *Hirst* (cited above) and it observed, "[i]t follows that as regards convicted prisoners no election in the UK to any legislature would be compatible with the Convention". The court also had regard to the history of what had taken place in the United Kingdom since the Court's *Hirst* judgment, noting that an action plan had been produced setting out a timetable for consideration of policy, consultation and, if appropriate, the drafting and adoption of relevant amending legislation (see paragraph 8 above). It concluded that, having regard to all the circumstances of the case, it was appropriate to make a declaration of incompatibility in respect of section 3(1) of the 1983 Act (see paragraph 38 above).

2. R (Chester) v. Secretary of State for Justice *(2013)*

41. On 16 October 2013 the Supreme Court handed down judgment in *R (Chester) v. Secretary of State for Justice*; *McGeoch v. The Lord President of the Council and another* ([2013] UKSC 63). Mr Chester was a prisoner serving a life sentence, with a minimum term of twenty years, for murder. He challenged his statutory disfranchisement from voting in elections, relying on the 1998 Act (see paragraphs 37-38 above) and Article 3 of Protocol No. 1 to the Convention. Mr McGeoch was also serving a life sentence for murder but he challenged his exclusion from voting exclusively on the basis of European Union law. In his pleadings in respect of Mr Chester's appeal, the Attorney General invited the Supreme Court not to follow the judgments of this Court in *Hirst* (cited above) and *Scoppola v. Italy (no. 3)* ([GC], no. 126/05, 22 May 2012).

42. As far as the Convention argument was concerned, Lord Mance, giving the leading judgment (with which Lord Hope, Lord Hughes and Lord Kerr agreed), reiterated that the Supreme Court would only refuse to follow a clear and consistent line of Strasbourg decisions where the effect of such decisions was inconsistent with some fundamental substantive or procedural aspect of English law. He therefore declined to follow the Attorney General's suggestion that *Hirst* and *Scoppola* be disavowed. He explained that even though prisoner voting was an area in which there was room for "deep philosophical differences of view between rational people", it would exaggerate the importance of such differences to equate them with some

fundamental aspect of English law. Moreover, it was difficult to see how prisoner disenfranchisement was fundamental to a stable democracy and legal system such as the United Kingdom enjoyed. Indeed, it was possible to argue that the objective of promoting civic responsibility and respect for the law might be undermined, rather than enhanced, by denying serving prisoners the right to vote.

43. The only question, then, was whether the Supreme Court should issue a declaration of incompatibility. Lord Mance noted, first, that the incompatibility of section 3 of the 1983 Act (see paragraph 27 above) with Article 3 of Protocol No. 1 had already been recognised in *Smith v. Scott* (see paragraphs 39-40 above), where a declaration of incompatibility had been made. The issue of prisoner voting was before Parliament and under active consideration in light of the decisions in *Hirst, Greens and M.T.* and *Scoppola* (all cited above). In these circumstances there was no point in making a further declaration of incompatibility. Second, it could be said with "considerable confidence" by that time that the ban on Mr Chester's voting was one Parliament could maintain without violating the Convention, even if some amendments might be required to allow any prisoners detained for different reasons or periods to vote. Lord Mance pointed out that the Court had accepted in *Scoppola* (cited above) that a lifelong ban on voting by prisoners sentenced to five or more years' imprisonment was legitimate. He concluded that it was therefore for Parliament to complete its consideration of the position. In these circumstances, there was no further current role for the Supreme Court.

44. Lady Hale, in her judgment (with which Lord Hope and Lord Kerr agreed) began by referring to public opinion polls from 2011 and 2012 showing that there was a substantial majority against relaxing the ban on prisoners voting. In these circumstances, she said, it was not surprising that in February 2011 elected parliamentarians had voted overwhelmingly against any relaxation of the law (see paragraph 13 above). It was therefore incumbent upon the courts to "tread delicately".

45. Lady Hale considered the Attorney General's argument that by deciding an offence was so serious it merited a custodial penalty, the court was also deciding that the offence merited exclusion from the franchise. She observed that this argument did not explain the purpose of the exclusion; this could be, for example, an additional punishment, a mark of society's disapproval of the criminal offence, or a measure to encourage a sense of civic responsibility and respect for democratic institutions. She noted that if it were the latter, it could well be argued that this was "more likely to be achieved by retaining the vote, as a badge of continuing citizenship, to encourage civic responsibility and reintegration in civil society in due course". She observed that this was a matter on which thoughtful people could hold diametrically opposing views. A more concrete objection to the Attorney General's argument was that the custody threshold in the United

Kingdom had never been particularly high. Deciding when an offence was so serious that only a custodial sentence could be justified (see paragraph 34 above) was "one of the most elusive problems of criminal sentencing". Lady Hale further observed that the custody threshold had varied over time in accordance with changes in penal policy which had nothing to do with electoral policy; and that it had traditionally varied as between different parts of the United Kingdom. The sentencing regimes were different in England and Wales, Scotland and Northern Ireland, but the exclusion from voting was the same.

46. Lady Hale therefore expressed some sympathy for the view that the current state of the law was arbitrary and indiscriminate. She pointed to the element of arbitrariness in selecting the custody threshold as a unique indicator of offending so serious as to justify exclusion from the democratic process, the random impact of happening to be in prison on polling day and the various reasons why someone who had been sentenced to a period of imprisonment might not in fact be in prison on that day. But she acknowledged how difficult it would be to devise any alternative scheme which would not also have some element of arbitrariness about it.

47. Lady Hale continued:

> "99. However, I have no sympathy at all for either of these appellants. I cannot envisage any law which the United Kingdom Parliament might eventually pass on this subject which would grant either of them the right to vote. In *Hirst* ..., the Strasbourg court declined to conclude that applying the ban to post-tariff life prisoners would necessarily be compatible with article 3 of the First Protocol. But it seems clear from the decision in *Scoppola v Italy (no. 3)* that Strasbourg would now uphold a scheme which deprived murderers sentenced to life imprisonment of the right to vote, certainly while they remained in prison, and probably even after they were released on licence, as long as there was then a power of review."

48. Lady Hale could, therefore, not see how Mr Chester could sensibly have a claim to a remedy under the 1998 Act (see paragraphs 37-38 above). In so far as he was a "victim", this was only in the sense that he was directly affected by the law in question. The majority of the Grand Chamber in *Hirst* (cited above) had examined the compatibility of the law with the Convention, irrespective of whether the applicant there might justifiably have been deprived of the vote under some other law. However, the minority of the Grand Chamber had pointed out that the Court did not usually review the law *in abstracto* but rather determined whether the manner in which it had been applied to, or affected, the applicant gave rise to a violation of the Convention. Lady Hale considered it appropriate for courts in the United Kingdom to adopt the sensible practice, favoured by the minority in *Hirst*, of indicating in what way an individual's rights had been violated by the impugned law when considering the application of the various remedies provided by the 1998 Act.

49. Lady Hale said that there was no question of the court's reading and giving effect to the 1983 Act in a way which was compatible with the

Convention rights, in accordance with its duty under section 3(1) of the 1998 Act (see paragraph 37 above). She explained, "[i]t is obvious that any incompatibility can only be cured by legislation and the courts cannot legislate". She added, "But even if we could, we would only seek to 'read and give effect' to the statute in a way which was compatible with the rights of the individual litigant before us". In Lady Hale's view, the ban on voting was not incompatible with the rights of Mr Chester. A reading which was compatible with the rights of a completely different litigant would therefore do him no good.

50. As to whether a declaration of incompatibility (see paragraph 38 above) ought to be made, she accepted that the legislation appeared to leave open the possibility of a declaration *in abstracto*, irrespective of whether the provision in question was incompatible with the rights of the individual litigant. However, she considered that the court should be "extremely slow to make a declaration of incompatibility at the instance of an individual litigant with whose own rights the provision in question is not incompatible". She noted that any other approach was to invite a multitude of unmeritorious claims. For that reason, she indicated that she would also decline to make a declaration of incompatibility on the application of either Mr Chester or (had he made one) Mr McGeoch.

51. Lord Sumption, in his judgment (with which Lord Hughes agreed), agreed with the orders proposed by Lord Mance, for all the reasons given in his judgment (see paragraphs 42-43 above) and in the judgment of Lady Hale (see paragraphs 44-50 above). He observed that there was "only negligible" support in the House of Commons, and very little among the public at large, for amending the 1983 Act to give at least some prisoners the right to vote. He further underlined that the relevant provisions were "entirely clear": there was no way in which they could be read down (see paragraph 37 above) so as to allow voting rights to any category of convicted prisoners other than those falling within the specified exceptions (see paragraphs 27-29 above).

52. Lord Sumption referred to the practice in other countries and commented as follows:

> "114. The exclusion of convicted prisoners from the franchise is not a universal principle among mature democracies, but neither is it uncommon. Information provided by the Foreign Office in answer to a parliamentary question (updated to July 2012) indicates that at least 18 European countries including Denmark, Finland, Ireland, Spain, Sweden and Switzerland have no restrictions on voting by prisoners. Bulgaria, Estonia, Georgia, Hungary, Japan, Liechtenstein, Russia and the United States ban all convicted prisoners from voting, as do two of the seven Australian states. In some countries such as France disenfranchisement is reserved for those convicted of certain particularly serious offences, and in others such as Belgium for cases in which the prisoner is sentenced to a period of imprisonment exceeding a given threshold. In France, the Netherlands and Belgium disenfranchisement is an additional penalty imposed as a matter of judicial discretion. In other countries, such as Germany and Italy, it is automatic in specified cases. In Belgium, Italy and some jurisdictions of the United

States, the loss of voting rights may continue even after a prisoner's release. It is apparent that this is not a question on which there is any consensus."

53. Lord Sumption considered that from a prisoner's point of view, the loss of the right to vote was likely to be a very minor deprivation by comparison with the loss of liberty. Undoubtably, there were prisoners whose interest in public affairs or strong views on particular issues were such that their disenfranchisement represented a serious loss, just as there were prisoners whose enthusiasm for active sports made imprisonment a special hardship. The severity of a sentence of imprisonment for the convicted person would always vary with a wide variety of factors whose impact on him or her would inevitably be arbitrary to some degree. He observed:

"115. ... It has been said, for example, that disenfranchisement may bear hardly on someone sentenced to, say, a short period of imprisonment which happens to coincide with a general election. For some prisoners, this will no doubt be true. But I decline to regard it as any more significant than the fact that it may coincide with a special anniversary, a long anticipated holiday or the only period of fine weather all summer."

54. Lord Sumption discussed the United Kingdom's response to the Court's judgment in *Hirst* (cited above) and set out the history of the disenfranchisement of prisoners in the United Kingdom. He doubted whether the disenfranchisement of convicted prisoners could realistically be regarded as an additional punishment or a deterrent, and observed that it might at least arguably be said to work against the reform and rehabilitation of the offender. In his opinion, disenfranchisement had a more fundamental rationale, which he explained as follows:

"... The sentencing of offenders, and imprisonment more than any other sentence, is a reassertion of the rule of law and of the fundamental collective values of society which the convicted person has violated. This does not mean that the offender is disenfranchised because he is unpopular. Nor does it mean that he is regarded as having lost all civil rights or all claims against society, which is why the expression 'civil death' is inappropriate. The present rule simply reflects the fact that imprisonment is more than a mere deprivation of liberty. It is a temporary reclusion of the prisoner from society, which carries with it the loss of the right to participate in society's public, collective processes. Similar principles appear to underlie the exclusion of convicted offenders from the franchise in the many other jurisdictions which practise it, whether on an automatic or a discretionary basis, and in particular those in which the suspension or abrogation of voting rights may be imposed independently of a prison sentence or continue after a term of imprisonment has been served.

129. Fundamental to this approach, and to the automatic character of the exclusion of convicted prisoners from the franchise is the principle that sentences of imprisonment are imposed only for the more serious offences ..."

55. Lord Sumption noted that only 8% of persons convicted of an offence in England and 15% in Scotland were sentenced to imprisonment. A statistical breakdown of the prison population as at 30 September 2010 suggested that 85% of prisoners serving sentences of less than five years were convicted of violent or sexual offences, robbery, burglary, theft, handling,

fraud, forgery or drug offences. Lord Sumption observed that the threshold of seriousness for the passing of a sentence of imprisonment would undoubtedly vary in practice from one country to another. Although the United Kingdom was widely thought to have a relatively low threshold, Lord Sumption was not aware that any comprehensive comparative study had been carried out which took account of the underlying patterns of criminality.

56. Having reviewed this Court's judgments in *Hirst* and *Scoppola* (both cited above), Lord Sumption made the following observation:

> "Accordingly, the Strasbourg Court has arrived at a very curious position. It has held that it is open to a Convention state to fix a minimum threshold of gravity which warrants the disenfranchisement of a convicted person. It has held that the threshold beyond which he will be disenfranchised may be fixed by law by reference to the nature of the sentence. It has held that disenfranchisement may be automatic, once a sentence above that threshold has been imposed. But it has also held that even with the wide margin of appreciation allowed to Convention states in this area, it is not permissible for the threshold for disenfranchisement to correspond with the threshold for imprisonment. Wherever the threshold for imprisonment is placed, it seems to have been their view that there must always be some offences which are serious enough to warrant imprisonment but not serious enough to warrant disenfranchisement. Yet the basis of this view is nowhere articulated. It might perhaps have been justified by a careful examination of the principles of sentencing in the United Kingdom, with a view to demonstrating that they involve the imprisonment of some categories of people for offences so trivial that one could not rationally suppose them to warrant disenfranchisement. That would be an indictment not just of the principle of disenfranchisement but of the sentencing principles themselves. However, no such exercise appears to have been carried out.
>
> 136. I confess that I also find it surprising that the Strasbourg Court should have concluded in *Hirst* that the United Kingdom Parliament adopted the present rule *per incuriam*, so to speak, in 1969, without properly considering the justification for it as a matter of penal policy. The absence of debate to which the court referred reflects the attention which had already been given to the issue by the Speaker's Conference, and the complete consensus on the appropriateness of the voting ban."

57. He underlined that, had it not been for *Hirst* and *Scoppola*, he would have held that the question of how serious an offence had to be to warrant a temporary disenfranchisement was a classic matter for political and legislative judgment, and that the United Kingdom rule was well within any reasonable assessment of the margin of appreciation. However, he acknowledged that the contrary view had been upheld twice by the Grand Chamber of the Court and was firmly established in the Court's case-law. It could not be said that the Grand Chamber had overlooked or misunderstood any relevant principle of English law. The problems about the view which the Court had ultimately come to had been fairly pointed out in both cases in the course of argument. Lord Sumption took the view that there was no realistic prospect that further dialogue with the Court would produce a change of heart. In these circumstances, he said, the Supreme Court would only be justified from departing from the Court's case-law if the disenfranchisement of convicted prisoners could be categorised as a fundamental feature of national

law. He agreed with Lord Mance that this would be an extreme exaggeration (see paragraph 42 above).

58. Lord Clarke, in his judgment, agreed with the views expressed by Lord Mance (see paragraphs 42-43 above), Lady Hale (see paragraphs 44-50 above) and Lord Sumption (see paragraphs 51-57 above), although he indicated that he would be less critical than Lord Sumption of the decisions of this Court. He said:

> "109. As I see it, the thrust of the conclusions in the Strasbourg cases is that a blanket ban is disproportionate and indiscriminate, at any rate without detailed analysis of the problem because, as it is put at para 82 of *Hirst (No. 2)*, the ban applies automatically to all prisoners irrespective of the nature and gravity of the relevant offence or the individual circumstances of the particular offender. It thus applies to those sentenced to very short sentences and operates in an arbitrary way for two reasons. First, it applies in the same way to a person sentenced to 28 days or 28 years. Yet there is clearly an enormous gulf in terms of culpability between those sentenced to 28 days for, say, persistent shoplifting and those sentenced to 28 years for a very serious offence. Secondly, whether a person loses the right to vote depends upon the chance that the relevant person happens to be in prison on a particular day, by comparison perhaps with a co-defendant who received an identical sentence but is on bail pending appeal. Moreover, it is difficult to see how it can be proportionate to deprive a person of a vote which is relevant to the governance of the state for a period of five years in circumstances where that person may be in prison for no more than 14 days."

59. Lord Clarke appreciated that, wherever the line might be drawn, there might be an element of arbitrariness as to the choice and effect of a particular line. He considered that there was "much to be said for the Strasbourg Court's approach to a blanket ban, at any rate absent detailed consideration of the pros and cons of such a ban".

II. PROCEEDINGS BEFORE THE COUNCIL OF EUROPE'S COMMITTEE OF MINISTERS

60. The Committee of Ministers of the Council of Europe examined the state of execution of *Hirst* (cited above) on many occasions after the delivery of the Court's judgment. The most relevant aspects of this process are summarised below.

61. On 3 December 2009 the Committee adopted an Interim Resolution (CM/ResDH(2009)160). It recalled that the United Kingdom authorities had committed in a December 2006 Action Plan to undertaking a two-stage consultation process to determine the measures necessary to implement the judgment of the Court, with a view to introducing the necessary draft legislation before Parliament in May 2008. However, it noted, the second consultation stage had ended on 29 September 2009 and the United Kingdom authorities were undertaking a detailed analysis of the responses received. The Committee of Ministers expressed serious concern that the substantial delay in implementing the judgment had given rise to a significant risk that the next general election would be performed in a way that failed to comply

with the Convention. It urged the United Kingdom to rapidly adopt the measures necessary to implement the Court's judgment.

62. On 6 March 2014 the Committee adopted a decision (CM/Del/Dec(2014)1193/28) noting the publication of the report of the Joint Committee (see paragraph 18 above). It welcomed the report's recommendation and highlighted the fact that the Joint Committee had chosen not to recommend re-enacting the existing ban, recalling that "an option aimed at retaining the blanket restriction criticised by the ... Court [could not] be considered compatible with the ... Convention". In conclusion, it urged the authorities to adopt the recommendation to introduce a bill to Parliament at the start of the 2014-2015 parliamentary session.

63. On 5 June 2014 the United Kingdom Government informed the Committee of Ministers that, as deliberations over implementation of the *Hirst* judgment were ongoing, it had not been possible to include in the recently announced legislative programme for the 2014-2015 parliamentary session a reference to potential legislation. On 2 September 2014 the Committee adopted a decision (CM/Del/Dec(2014)1208/27) noting "with profound concern and disappointment" that the authorities had not introduced a bill to Parliament at the start of its 2014-2015 session as recommended by the Joint Committee. It urged them to introduce such a bill as soon as possible.

64. On 6 August 2015 the United Kingdom Government informed the Committee of Ministers that, following the May 2015 general election, there remained widespread hostility in Parliament to giving prisoners the right to vote, and that government ministers in the United Kingdom continued to believe that this was ultimately a matter for elected representatives in national parliaments to decide. On 24 September 2015 the Committee of Ministers adopted a decision (CM/Del/Dec(2015)1236/25) reiterating its call on the authorities to introduce a bill to Parliament as recommended by the Joint Committee without further delay.

65. On 9 December 2015 the Committee of Ministers adopted a second Interim Resolution (CM/ResDH(2015)251), expressing profound concern that the blanket ban on the right of convicted prisoners in custody to vote remained in place, inviting the Secretary General of the Council of Europe to raise the issue with the United Kingdom, and calling on the authorities to follow up their commitment to continuing high-level dialogue leading to the presentation of concrete information on how the United Kingdom intended to abide by the *Hirst* judgment.

66. On 5 February 2016 the United Kingdom Government informed the Committee of Ministers that the Government had begun a process of enhanced dialogue with the Secretary General and relevant parts of the Secretariat of the Council of Europe with the aim of finding a way through the current impasse. The letter noted that the opinion among the public and in Parliament remained overwhelmingly unfavourable to relaxing the ban.

On 2 June 2016 the Government provided a further update of the enhanced dialogue underway.

67. On 2 November 2017 the Government submitted an Action Plan to the Committee of Ministers outlining their proposals for the execution of the *Hirst* judgment (see also paragraph 21 above). The Action Plan made the following proposal:

> "**D. Proposal**
>
> Possibility of voting for prisoners released on temporary licence
>
> 13. The UK Government would change its policy and guidance to prisons to make clear that prisoners can register to vote, and vote, while released on temporary licence. Most prisoners eligible to vote under this proposal would likely be on short sentences, and will have been granted temporary release, primarily for employment-related reasons.
>
> Voting for prisoners released on home detention curfew
>
> 14. Although it is established policy that prisoners are permitted to vote if permanently released on licence, it has never been made clear that this includes prisoners released on Home Detention Curfew. The Home Detention Curfew scheme applies to prisoners who are serving short sentences. It allows prisoners to live outside of prison providing they do not breach the rules of their curfew.
>
> 15. Clarifying this point in guidance would highlight the fact that the disenfranchisement of offenders in prison that is provided for in section 3 of the Representation of the People Act 1983 ends as soon as they are released, whenever that is. We would reiterate that this is not the case in several other Council of Europe member States. This is a further demonstration of the proportionality of the UK's approach in this regard. Our proposals would, additionally, make clear that those prisoners who are in the process of being reintegrated back into society through the home detention curfew scheme can vote.
>
> Clarity for prisoners at the point of sentencing
>
> 16. The Court in Hirst noted that 'in sentencing, the criminal courts in England and Wales make no reference to disenfranchisement'. We propose amending the standard warrant of committal to prison to ensure that prisoners are notified of their disenfranchisement. The UK judiciary, when sentencing, is aware that the loss of the right to vote is a consequence of a custodial sentence, and decides accordingly. This further amendment emphasises the United Kingdom's commitment to transparency and clarity in individual prisoners' cases."

68. On 7 December 2017 the Committee of Ministers adopted a decision (CM/Del/Dec(2017)1302/H46-39) noting with satisfaction the package of administrative measures proposed. Considering in light of the wide margin of appreciation applicable that the measures responded to the Court's judgments in this group of cases, it strongly encouraged the authorities to implement the proposed measures as soon as possible.

69. On 1 September 2018 the United Kingdom Government submitted to the Committee of Ministers an Action Report explaining how the measures in the 2017 Action Plan (see paragraph 67 above) had been implemented. The report explained that prison and probation services had notified prison

governors that prisoners released on temporary licence were no longer disqualified from applying to vote. Relevant guidance had been amended to clarify that those released on home detention curfew were entitled to vote and, again, prison governors had been informed. Finally, the warrant of committal in England and Wales and Northern Ireland had been amended to make clear at the point of sentence that prisoners were disenfranchised. Taking into account the specificities of the Scottish legal and court system, information was made available there to notify prisoners of their disenfranchisement.

70. The Secretariat of the Committee of Ministers provided an analysis of the Action Report, which contained the following passages:

> "As strongly encouraged by the Committee at its last examination, the authorities have now implemented the proposed administrative measures to respond to these judgments.
>
> It is recalled that the changes to the policy and guidance to the prison service make it clear that two categories of convicted prisoners, previously effectively disenfranchised, are now able to vote. These include primarily those who are serving short sentences and who pose no risk to society. Electoral Registration Officers have also been informed of the changes. The blanket ban on convicted prisoners voting, irrespective of the length of sentence and individual circumstances, as identified by the European Court in *Hirst*, is therefore no longer in place.
>
> Furthermore, the change to ensure that prisoners are notified of their disenfranchisement at the point of sentence responds to the European Court's criticism at § 77 in *Hirst No. 2* that 'in sentencing, the criminal courts in England and Wales make no reference to disenfranchisement'.
>
> In light of the European Court's repeated emphasis that the margin of appreciation in this area is wide (see for example § 114 *Greens and M.T.* and § 83 *Scoppola v. Italy (No. 3)*, No. 126/05) and that a wide range of policy alternatives is available to the government in this context (see § 114 *Greens and M.T.*), the administrative measures adopted by the authorities appear to be an adequate response to the present judgments. The Committee may therefore wish to close its supervision of the execution of this group of cases."

71. On 6 December 2018 the Committee of Ministers adopted a Resolution (CM/ResDH(2018)467) declaring that it was satisfied with the measures adopted by the Government and deciding to close the examination of the *Hirst* group of cases.

THE LAW

ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL NO. 1 TO THE CONVENTION

72. The applicant complained that he had been prevented from voting in the general election on 12 December 2019, in violation of Article 3 of Protocol No. 1 to the Convention, which reads as follows:

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

A. Admissibility

73. The Government argued that the application was inadmissible as it was manifestly ill-founded. They submitted that there was no serious prospect that the applicant would be able to show that the prohibition on his voting was anything other than a proportionate interference with Article 3 of Protocol No. 1 in circumstances where he was a recidivist serious sex offender and rapist, imprisoned because of the risk he continued to pose to the public.

74. The applicant disputed the Government's contention that the application was manifestly ill-founded.

75. The question whether the particular facts of the applicant's case preclude the finding of a violation of Article 3 of Protocol No. 1 is a matter for the Court's examination of the merits. The Government's arguments in this respect will accordingly be examined in that context. The Court therefore considers that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

76. As regards his disenfranchisement at the 2019 election, the applicant reiterated that he had been serving an indeterminate sentence of imprisonment since 2007 following a conviction for serious sexual offences. The minimum term, intended for punishment and deterrence, had been set at four years minus time spent detained on remand. It had expired in 2011 (see paragraph 5 above). The applicant explained in a witness statement to the Court that "the fact that I maintain my innocence means that it is not really possible for me to attend the offending behaviour courses that I would need to complete in order to satisfy the Parole Board that I would not pose a risk if released" (see paragraph 35 above). He underlined that his detention at the time of the 2019 election had been solely attributable to the assessment of the Parole Board that he would pose a risk if released. His situation was therefore very similar to that of the applicant in *Hirst* (cited above). He emphasised that his three previous applications to the Court in respect of disenfranchisement at earlier elections had resulted in a finding of a violation of Article 3 of Protocol No. 1 (see *McHugh v. the United Kingdom* [Committee], no. 51987/08 and 1,014 others, 10 February 2015; *Millbank and Others v. the United Kingdom*

[Committee], nos. 44473/14 and 21 others, 30 June 2016; and *Miller and Others v. the United Kingdom* [Committee], no. 70571/14 and 6 others, 11 April 2019).

77. The applicant submitted that any restriction on rights under Article 3 of Protocol No. 1 had to be a proportionate means of pursuing a legitimate aim. He accepted that the interference with his right to vote under Article 3 of Protocol No. 1 pursued the legitimate aims of "preventing crime by sanctioning the conduct of convicted prisoners" and "enhancing civic responsibility and respect for the rule of law".

78. However, he argued that the bar on convicted prisoners' voting imposed by section 3 of the 1983 Act (see paragraph 27 above) remained disproportionate for the reasons given by the Grand Chamber in *Hirst* (cited above). While the Court was not formally bound by any doctrine of precedent, it was well established that "it is in the interests of legal certainty, foreseeability and equality before the law that it should not depart, without good reason, from precedents laid down in previous cases" (citing *Scoppola*, cited above, § 94). That principle applied with especial force in the present context, given that (i) *Hirst* was a judgment of the Grand Chamber; (ii) the Grand Chamber in *Scoppola* (cited above, §§ 95-96) had considered and rejected an invitation from the Government to revisit the principles articulated in *Hirst*; and (iii) the *Hirst* principles had since been applied in numerous judgments concerning both the respondent State and other Contracting States.

79. The applicant submitted that there had been no material change of circumstances since *Hirst* to justify any departure from the principles articulated in that case. In particular, none of the administrative measures announced in 2017 (see paragraph 21 above) affected the continuing applicability of the Grand Chamber's reasoning in *Hirst*: the violation in that case was a consequence of the terms of section 3 of the 1983 Act (see paragraph 27 above) which therefore could not be cured without amendment to the legislation. No relevant amendment had been made.

80. Policy and guidance could not change the legal entitlement to vote granted by the 1983 Act. Notably, during the period that a person was released on temporary licence or on home detention curfew, they were neither "detained in a penal institution" nor "unlawfully at large" (see paragraph 27 above). They were therefore not disqualified from voting by section 3 of the 1983 Act. Indeed, the premise of the change to the policy and guidance for those on temporary licence was that there was nothing in the 1983 Act to prohibit a person from voting while released on temporary licence. As regards those released on home detention curfew, the Government did not present the amendment of this guidance as involving any change in who was entitled to vote: they had merely confirmed their previous position that the 1983 Act did not prohibit persons released on home detention curfew from voting. Indeed, in so far as those on temporary licence or home detention curfew had been, prior to 2017, prevented by guidance or in practice from voting, the

restrictions on the franchise had been even more severe than the Court had understood to be the case in *Hirst* (cited above).

81. The amendment of the standard warrant of committal, so that a prisoner was now notified at the time of sentencing that they were deprived of the vote while detained, did not address the concern expressed by the Court at § 77 of its judgment in *Hirst* (cited above). The point being made in that passage was that there was no indication that, in practice, the sentencing process involved any substantive consideration of whether loss of the right to vote was appropriate in any individual case. The addition of some template wording to the standard warrant of committal did nothing to change this. The omission to notify Mr Hirst at the time of sentencing that he would be deprived of the right to vote had not been material to the Court's conclusion: the crux of the reasoning in *Hirst* appeared at § 82 of the judgment, not § 77 (citing *Scoppola*, cited above, § 100). In any event, the present applicant had been sentenced in 2007, ten years before the change to the warrant of committal had been implemented.

82. Moreover, these administrative changes had only had a very small impact on who was able to vote. According to the Government's own estimate, the change to policy and guidance as regards release on temporary licence would affect "up to 100 offenders at any one time". This was a tiny number in the context of a total prison population of over 90,000 prisoners. On the day of the 2019 election, 1,604 prisoners had been released from prison on temporary licence. On the basis of the Government's estimate that 100 offenders would be affected by the changes to the policy and guidance (see paragraph 21 above), it appeared that only around 6% of those released on temporary licence on the day of the 2019 election were in practice able to cast a vote. There were several possible reasons for this.

83. First, a prisoner would only be able to vote while on temporary licence if they happened to be granted release on the day of an election, they had registered to vote while released on temporary licence on a previous occasion, and the terms of their licence did not preclude them from taking the steps necessary to vote and to register to do so. The change in policy and guidance was therefore arbitrary in its impact. The applicant explained that release on temporary licence was often granted on a periodic basis. For example, a prisoner may be released for one day per week or per fortnight in order to attend work or maintain family ties. The 2019 election had taken place on a Thursday. Thus a prisoner who was released on temporary licence every Thursday might have been able to vote; but a prisoner whose circumstances were identical but who was released every Wednesday would have been ineligible.

84. Moreover, a serving prisoner was not permitted to use their prison address for the purposes of registering to vote. A prisoner detained at a prison in, or close to, a constituency where they had maintained a home address, and who happened to be released on temporary licence on polling day, might be

able to vote; but an identical prisoner who had not maintained a home address would be unable to vote, as would an identical prisoner who detained far from the constituency where they had maintained a home address since they would be unlikely to have sufficient time during their temporary release to make a round-trip to the relevant constituency to cast a vote.

85. Finally, a licence often only permitted a prisoner to travel between the prison and a specified address (for example, a workplace) by a prescribed route and mode of transport. Whether a prisoner could vote might therefore depend on whether the terms of the licence happened to allow them to visit a polling station or walk past a postbox (to post a postal ballot).

86. As to the Government's other arguments, many had already been made, considered and rejected by the Grand Chamber notably their arguments based on the breadth of the margin of appreciation; the variety in practice across Contracting States; the fact that disenfranchisement did not apply to prisoners detained on remand, for contempt of court or for default in paying a fine; and the principle that only those who had committed serious offences should be sentenced to imprisonment (referring to *Hirst*, §§ 47-52 and 76-85, and *Scoppola*, §§ 75-80 and 92-96, both cited above).

87. The position was not affected by the consideration which Parliament had given to the matter since *Hirst* (cited above). Notably, the debate in Parliament on 10 February 2011 (see paragraph 13 above), on which the Government placed particular reliance, had been drawn to the Court's attention in *Scoppola* (cited above, §§ 79 and 93) and had not been held to justify re-visiting *Hirst*. Moreover, most of the contributions to the debate had made little or no attempt to evaluate the proportionality or otherwise of the existing arrangements. It was significant that a Joint Committee of Parliament had concluded in 2013 that the Government had "failed to advance a plausible case for the prohibition [on convicted prisoners voting] in terms of penal policy", and had recommended that the 1983 Act be amended in such a way as to enable persons serving sentences of less than twelve months to vote (see paragraphs 17-18 above). The Government had failed to bring forward any proposed legislation to give effect to that recommendation. The debate following the Government's statement of 2 November 2017 (see paragraphs 21-22 above) had been brief and had not included any evaluation of the proportionality or otherwise of the UK's arrangements. The difficulty associated with persuading Parliament to adopt legislation to amend the 1983 Act did not justify non-compliance with obligations under the Convention (citing *Anchugov and Gladkov v. Russia*, nos. 11157/04 and 15162/05, § 111, 4 July 2013).

88. Insofar as the Government referred to the judgment of the Supreme Court in *R (Chester)* (see paragraphs 41-59 above), the applicant underlined that in that case the majority of the Justices had expressed some sympathy for this Court's conclusion that the United Kingdom's blanket disenfranchisement of prisoners was "arbitrary and disproportionate". In any

event, the Supreme Court had rightly recognised that it was for the Court (and not the domestic courts) to determine what was required to comply with Article 3 of Protocol No. 1.

89. As regards the resolution of the Committee of Ministers (see paragraph 71 above), the applicant submitted that the Committee did not appear to have appreciated that the measures adopted simply meant that the restriction on the franchise was now only as severe as provided for under domestic law and as understood by the Court in *Hirst* and subsequent cases and that the practical effect of the measures on who was able to vote was small and arbitrary (see paragraphs 82-85 above). The analysis by the Committee's secretariat (see paragraph 70 above) that "[t]he blanket ban on convicted prisoners voting, irrespective of the length of sentence and individual circumstances, as identified by the European Court in *Hirst*, is therefore no longer in place" was incorrect. All that had happened was that steps had been taken to address unlawful administrative practices by which certain individuals had been prevented from voting in circumstances where section 3 of the 1983 Act (see paragraph 27 above) did not in fact prohibit them from doing so. No weight should therefore be accorded to the conclusion reached by the Committee of Ministers.

90. For these reasons, the applicant argued that the restriction on the franchise imposed by section 3 of the 1983 Act remained incompatible with Article 3 of Protocol No. 1 and that there had been a violation of his rights under that Article since he had been denied the right to vote in the 2019 general election by virtue of that legislation.

91. The applicant invited the Court to reject the Government's argument that even if the arrangements in general remained incompatible with Article 3 of Protocol No. 1, there had been no violation in his case (see paragraphs 107 et seq. below). First, he contended that much the same argument had been made, considered and rejected in *Hirst* (cited above at §§ 49, 52 and 72). The position in *Hirst* had been underlined in *Greens and M.T.* (cited above, § 120), where the Court had confirmed that until section 3 was amended there would be a violation of Article 3 of Protocol No. 1 in respect of every prisoner unable to vote in an election to the legislature. There had been numerous subsequent cases confirming that where an applicant was disenfranchised pursuant to legislation that was incompatible with Article 3 of Protocol No. 1, there was no need for any examination of their individual circumstances. There was no justification for any departure from this established principle of the Court's case-law. While in *Kalda v. Estonia (no. 2)* (no. 14581/20, 6 December 2022) the Court had found that Estonia's blanket ban on voting by convicted prisoners did not give rise to a violation of Article 3 of Protocol No. 1 in the specific circumstances of that applicant's case, it had only reached that conclusion (and distinguished *Hirst*) because the domestic courts in Estonia had considered whether disenfranchisement was proportionate in that applicant's individual case and had concluded that it was. There had been

no such conclusion by any domestic court in the present applicant's case; indeed there had been no domestic proceedings at all because there was no effective remedy at domestic level and he could not be expected to pursue futile domestic proceedings. The approach taken by the Court in *Kalda* was accordingly inapplicable in this case.

92. Insofar as there might be some inconsistency between *Hirst* and *Kalda*, the approach in *Hirst* was to be preferred. First, *Hirst* was a judgment of the Grand Chamber and had been followed in many cases; *Kalda*, by contrast, stood alone. Second, the applicant was not bringing an *actio popularis*: he had been directly affected by the provision in question since it was the cause of his disenfranchisement (citing *Hirst*, § 72, and *Scoppola*, § 102, both cited above). Third, the Court's task was to consider whether "the wording of the law" (see *Scoppola*, cited above, § 102) complied with Article 3 of Protocol No. 1. This reflected the principle that, where a Contracting State adopted "general measures which apply to predefined situations regardless of the individual facts of each case", it was the proportionality of the general measures which fell to be examined (relying on *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, §§ 106-10, ECHR 2013 (extracts)). Accordingly, if the Contracting State could establish the proportionality of a general measure, the facts of "individual hard cases" would not give rise to a violation. The corollary was that if a Contracting State chose to adopt a general measure but failed to establish its proportionality, it was not open to the State to invoke the particular facts of individual cases to which the general measure had been applied: there could be no proportionate application of a disproportionately restrictive, and thus Convention-incompatible, law. Finally, the approach adopted in *Kalda* (cited above) required the Court to consider whether hypothetical legislation, the precise terms of which were unspecified, could disenfranchise an applicant without a breach of Article 3 of Protocol No. 1. Such an approach was contrary to the principles that the Court's task was to examine the concrete circumstances of the case before it, which included the terms of the actual legislation applied, and that any interference with a Convention right had to be provided for by an existing (not hypothetical) domestic law.

93. In any event, any hypothetical legislation which would have prevented the applicant from voting would have resulted in a violation of his rights under Article 3 of Protocol No. 1. His disenfranchisement was not a proportionate means of achieving the aims of "preventing crime by sanctioning the conduct of convicted prisoners" and "enhancing civic responsibility and respect for the rule of law" (see paragraph 77 above). By the time of the 2019 general election, the applicant had completed the part of his sentence attributable to punishment and deterrence and the sole reason for his continued detention had been the assessment of the risk that he would reoffend if released (see paragraph 76 above). Second, the Government had

adduced no evidence that the applicant's disenfranchisement in any way assisted in reducing that risk, or in otherwise preventing crime and/or enhancing civic responsibility and/or respect for the rule of law. Third, and in any event, if and insofar as the applicant's disenfranchisement made any contribution to those aims, such contribution was likely to be very small and not commensurate with the total denial of his right to participate in the democratic process. Finally, in *Hirst* (cited above), the Court had left open the question whether a law which disenfranchised post-tariff prisoners would be compatible with Article 3 of Protocol No. 1 since on the approach adopted there that question did not need to be determined (cited above, § 72). However, in his concurring opinion Judge Caflisch had expressed the view that any disenfranchisement of post-tariff prisoners would be incompatible with Article 3 of Protocol No. 1.

(b) The Government

94. The Government, relying on *Ždanoka v. Latvia* ([GC], no. 58278/00, § 115, ECHR 2006-IV), argued that the standards to be applied for establishing compliance with Article 3 of Protocol No. 1 were "less stringent than those to be applied under Articles 8 to 11 of the Convention"; this included a reduced degree of individualisation being required in general measures. They emphasised the wide margin of appreciation applicable in this area and States' entitlement to shape their own democratic vision according to their own history and political context. This wide margin of appreciation had been reiterated by the Grand Chamber in *Scoppola* (cited above, § 83) and in *Greens and M.T.* (cited above, §§ 113-14).

95. The Government acknowledged that in *Hirst* (cited above), the Grand Chamber had held that the general exclusion of prisoners from the right to vote in general elections under the 1983 Act (see paragraph 27 above) violated of Article 3 of Protocol No. 1. However, it had accepted that the 1983 Act "pursues the aim of preventing crime by sanctioning the conduct of convicted prisoners and also of enhancing civic responsibility and respect for the rule of law" as well as imposing an additional punishment, and that those aims were legitimate within the framework of Article 3 of Protocol No. 1 (cited above, §§ 71, 74-75, 77 and 82).

96. The implications of the ruling in *Hirst* (cited above) had been revisited by the Grand Chamber in *Scoppola* (cited above). There, the Court had specifically accepted the legitimacy of the State implementing automatic disenfranchisement of prisoners by reference to a threshold of seriousness identified by reference to the sentence imposed, although it had rejected the legitimacy of the selection of a threshold of seriousness which was the imposition of a custodial sentence.

97. The 1983 Act had long distinguished between those in prison because of the commission of a criminal offence which warranted a sentence of imprisonment, and other contexts in which a person might be in prison. Thus

those imprisoned for the civil matter of contempt of court, or for failure to pay a fine imposed instead of a custodial sentence, or those remanded in custody prior to conviction, continued to be entitled to vote. The Government agreed that it would be disproportionate to impose disenfranchisement on that category of persons given the identified aims (see paragraph 95 above), recognised and accepted in *Hirst* (cited above, §§ 74-75).

98. The Government underlined the three new measures announced in 2017 (see paragraph 21 above). As a result of these measure, the categories of those who continued to be subject to a sentence of imprisonment but who were entitled to vote had been extended, whether by clarification or by change to previous policy. Accordingly, prisoners assessed as being of sufficiently low risk to be released into the community, subject to various restrictions on their freedom of movement, to assist in their rehabilitation, had since 2018 been able to vote. The Government considered all three measures to be significant and explained that each had a particular rationale.

99. The change in policy to permit prisoners released on temporary licence to vote extended the right to vote to a new category of person. It involved a change in how the Government interpreted "time that he is detained" in section 3 of the 1983 Act (see paragraph 27 above). Release on temporary licence was particularly relevant to prisoners serving short sentences for whom incarceration over the period of an election might be considered more of an accident of timing and less proportionate. The clarification of existing policy that prisoners released on home detention curfew were entitled to vote was also important because the core rationale for disenfranchising convicted prisoners in the United Kingdom no longer applied after their release, even if they remined under specific controls. The amendment of the warrant of committal addressed the critical observation in *Hirst* (cited above, § 77) that sentencing courts in England and Wales made no reference to disenfranchisement. This enhanced transparency as to the choice made by Parliament through the 1983 Act regarding the disenfranchisement of convicted prisoners for the period of their imprisonment.

100. The Government argued that the overall legislative and policy approach adopted by the United Kingdom to when and which prisoners could now vote therefore struck a different balance to the one struck at the time of the Grand Chamber's judgment in *Hirst*, and was a balance which was within the wide margin of appreciation applicable. As regards the applicant's reliance on the allegedly small impact on a prison population of some 90,000 prisoners (see paragraph 82 above), this was misleading: that figure included around 10,000 prisoners who were ineligible to vote because they were foreign nationals and some 16,000 prisoners who were eligible to vote (principally those detained on remand).

101. There had been no amendment to section 3 of the 1983 Act as it applied in England and Wales. However, the Government reiterated that a

wide margin of appreciation was applicable in this context and was justified because of the particular need for the scope of the franchise to have democratic legitimacy. It was a quintessential exercise of judgement for the national legislature, as a matter of democratic, penal and social policy. It was plain that there had now been considerable parliamentary debate and consideration of how to respond to the judgment in *Hirst* (cited above), and serious concerns expressed by the House of Commons in debate on that subject, rejecting legislative change by an overwhelming majority in 2011 (see paragraph 13 above). That parliamentary debate had been supplemented by a number of policy consultations and parliamentary reports considering how the balance might be struck. The length of time taken to finally respond to the judgment in *Hirst* was a reflection of the serious difficulty there had been in identifying any form of consensus in the United Kingdom on the appropriate changes.

102. It was well-established in the Court's case law in relation to prisoner voting that there was no consensus either among the Contracting States or internationally as to the appropriate balance to be struck between voting rights and the position of convicted prisoners. In the United Kingdom, only some offences were serious enough to attract the possibility of imprisonment and only some of those offences in fact resulted in a sentence of imprisonment. There was a long-standing guiding principle in the United Kingdom that a custodial sentence was reserved for the most serious offending (see paragraph 34 above). Whether or not imprisonment was imposed, and if so the length of sentence imposed, directly reflected the seriousness of the particular circumstances of the particular offence. Only a very small percentage of persons convicted of criminal offences in England and Wales (6%) were sentenced to terms of imprisonment (see paragraph 36 above). There was a clear correlation between the commission of the most serious crimes and the additional step of disenfranchisement; and between such crimes and the legitimate aims pursued. There was an equally a clear correlation between the length of disenfranchisement and the seriousness of the crime (and thus of the term of imprisonment). Unlike the law in other Contracting States, the 1983 Act did not perpetuate the disenfranchisement of a convicted person after the end of their sentence of imprisonment.

103. The application of Article 3 of Protocol No. 1 to the 1983 Act had been considered in detail by the Supreme Court in *R (Chester)* (see paragraphs 41-59 above). The Supreme Court had accepted that it should follow the judgments in *Hirst* and *Scoppola* (both cited above), and that the position in the United Kingdom therefore required revision to bring it into compliance. However, the judgments had also set out a number of serious and considered concerns and criticisms of the reasoning of this Court and its application to the United Kingdom. In particular, the judgments of Lady Hale and Lord Sumption had emphasised in clear and principled terms the fundamental need for extensions of the franchise to serving prisoners to be

the subject of democratic approval by Parliament, and the absence of that approval from both Parliament and the public.

104. In *Greens and M.T.* (cited above) the Court had indicated an expectation that remedying the violation identified in *Hirst* (cited above) would require legislative amendment. However, it had not previously been invited to consider the ability to expand the categories of prisoner entitled to vote through administrative measures. The Government drew attention to the December 2018 resolution of the Committee of Ministers closing the examination of the cases concerning prisoner voting on the basis of these three measures (see paragraph 71 above). The Committee of Ministers had been right to accept that administrative measures were sufficient once they and their effect had been drawn to the Committee's attention (see paragraphs 67-71 above). In particular, the Committee had been right to accept that the margin of appreciation had to reflect the clarity with which the democratically elected and accountable House of Commons had overwhelmingly voted in 2011 for the continued disenfranchisement of convicted prisoners (see paragraph 13 above), and the lack of any realistic likelihood that Parliament would pass legislation which was materially contrary to that vote.

105. The United Kingdom had been found by the Committee of Ministers to be acting in compliance with its obligations under the Convention, and to have appropriately and lawfully acted to ensure that the position of prisoners and their right to vote struck a balance which was within the wide margin of appreciation afforded to States, and complied with Article 3 of Protocol No. 1. The Committee of Ministers had been both entitled and right to conclude that the measures implemented by the United Kingdom in 2018 rendered the overall legislative and policy scheme compliant with Article 3 of Protocol No. 1. While the resolution adopted by the Committee of Ministers did not formally bind the Court in its legal assessment of whether the applicant's rights under Article 3 of Protocol No. 1 had been violated, its assessment was due proper and weighty respect in circumstances where it had carefully considered the measures in accordance with the Convention. In reaching its resolution, the Committee of Ministers had adopted and applied the emphasis the Court had placed on the wide margin of appreciation, and the lack of any consensus regionally or internationally on the balance to be struck in respect of prisoner voting (citing *Hirst*, § 84 and *Greens and M.T.*, §§ 113-14, both cited above). The applicant had failed to address properly the relevance of the role of the Committee of Ministers in supervising the execution of judgments.

106. For these reasons, the Government invited the Court to concur with the considered opinion of the Committee of Ministers and find that the law and practice applicable in the UK to the enfranchisement of prisoners was within the wide margin of appreciation and that there was no violation of Article 3 of Protocol No. 1.

107. The Government further argued that, in any event, there had clearly been no violation of Article 3 of Protocol No. 1 as a result of this particular applicant's inability to vote in the 2019 election. They underlined that the applicant was a recidivist serious sex offender. Having been convicted of rape in 2001, he had been released from prison in 2003 and had gone on to attack another woman in her home, locking her in to prevent her escape before raping her twice and sexually assaulting her. His present period of incarceration had followed his conviction for these very serious offences in 2007 and the imposition of an indeterminate sentence for the public protection because of the danger he posed to the public. At the time of the 2019 election, the applicant had been in prison for some twelve years. There was no credible basis upon which it could be said that he had suffered any violation of his Article 3 of Protocol No. 1 rights. There was equally no credible basis to suggest that any approach to enfranchisement of convicted prisoners that the United Kingdom might take or could be required by the Convention to take would extend to requiring the right to vote to be afforded to a prisoner convicted of rape and serving a sentence of imprisonment of over a decade. The denial of the applicant's right to vote was, in the circumstances of his case, proportionate and justified. His argument that that the Government would not be entitled in accordance with Article 3 of Protocol No. 1 to design a legislative scheme which enfranchised some detained prisoners but continued to disenfranchise him (see paragraph 93 above) was fanciful.

108. The Government emphasised that the Court determined questions of violations of Convention rights against the particular facts and context of the particular applicant before it. It had explained that its task was not to review domestic law and practice *in abstracto* and to express a view as to the compatibility of the provisions of legislation with the Convention, but to determine whether the manner in which they were applied to or affected the applicant gave rise to a violation of the Convention (referring, *inter alia*, to *Taxquet v. Belgium* [GC], no. 926/05, § 83, ECHR 2010; *Anchugov and Gladkov v. Russia,* cited above, §§ 51-52, 4 July 2013; and *Strøbye and Rosenlind v. Denmark*, nos. 25802/18 and 27338/18, § 115, 2 February 2021). That principle had been recognised and correctly applied by the Court in *Kalda* (cited above, § 49). The Estonian Supreme Court had dismissed the applicant's claim of a violation of Article 3 of Protocol No. 1 on the basis that, although criticisms could be levied at the absolute nature of the prohibition in Estonian law, it was proportionate to prohibit the applicant from voting in all the circumstances of his offending and sentence. The Court had found that the Estonian Supreme Court had been entitled to reach the conclusion that there had been no violation of Article 3 of Protocol No. 1 in the applicant's case (cited above, §§ 51-53). The Government pointed out that the applicant in the present case had brought no domestic proceedings and they argued that his refusal to avail himself of domestic remedies could not

form a proper or principled basis to avoid the application of the principle reiterated and applied in *Kalda*. The applicant had failed, in his observations, to engage with the Court's judgment in *Kalda* despite its evident importance. The Government did not agree that *Kalda* stood alone (see paragraph 92 above): rather it was an orthodox and proper restatement by the Court of the approach which was usually applied. The approach taken by Lady Hale in her judgment in *R (Chester)* (see paragraphs 47-50 above) was precisely the analysis subsequently adopted by this Court, and the Estonian Supreme Court, in *Kalda*.

109. The proportionality of the interference with the applicant's rights under Article 3 of Protocol No. 1 was, the Government submitted, crystal clear in circumstances where: (i) his convictions were for inherently very serious offences; (ii) the sentence imposed on him was one specifically targeted for individuals posing a particularly high risk to the public; (iii) he was serving a lengthy and continuing period of imprisonment for those serious offences; (iv) no domestic consideration of alternative approaches to the enfranchisement of some prisoners, such as the draft bill and the Parliamentary committee report on it (see paragraphs 16-17 above), would have provided the applicant the vote; (v) and the particular legislation enacted by the Scottish Parliament in respect of local elections in Scotland would not benefit the applicant if he were otherwise eligible to vote in Scotland.

2. The Court's assessment

(a) General principles

110. The general principles concerning the disenfranchisement of convicted prisoners were recently summarised in *Kalda* (cited above, §§ 37-41) and *Myslihaka and Others v. Albania* (nos. 68958/17 and 5 others, §§ 54-57, 24 October 2023).

(b) Interference

It is undisputed that the restriction on the applicant's right to vote arose from section 3 of the 1983 Act (see paragraph 27 above). This restriction amounted to an interference with his right to vote enshrined in Article 3 of Protocol No. 1.

(c) Legitimate aim

111. The Court has previously accepted that the disenfranchisement of convicted prisoners pursues the aims of "preventing crime by sanctioning the conduct of convicted prisoners" and "enhancing civic responsibility and respect for the rule of law", and that these aims are legitimate (see *Hirst*, §§ 74-75, and *Scoppola*, § 92, both cited above; see also *Myslihaka and Others*, §§ 61-63). It sees no reason to reach a different conclusion in the present case.

(d) Proportionality

(i) The approach in previous relevant judgments against the respondent State

112. In *Hirst*, the first of a series of cases against the United Kingdom concerning prisoners' right to vote, the Court noted that the applicant in that case had been directly and immediately affected by the measure in section 3 of the 1983 Act and that in these circumstances it was justified to examine the compatibility with the Convention of that measure, without regard to the question whether, had the measure been drafted differently and in a way which was compatible with the Convention, the applicant might still have been deprived of the vote (cited above, § 72). The Court also noted that it would not be right for it to assume that, if Parliament were to amend section 3, restrictions on the right to vote would necessarily still apply to post-tariff life prisoners like the applicant or to conclude that such an amendment would necessarily be compatible with Article 3 of Protocol No. 1 (ibid.). The Court in *Hirst* went on to find that the restriction in section 3 was incompatible with Article 3 of Protocol No. 1 to the Convention, describing it as a "blunt instrument" which applied automatically to convicted prisoners in prison, irrespective of the length of their sentence and irrespective of the nature or gravity of their offence and their individual circumstances (ibid., § 82).

113. The Court has subsequently found a violation of Article 3 of Protocol No. 1 in respect of a number of applicants, including the present applicant, whose disenfranchisement in respect of elections in the United Kingdom which took place up to and including 8 June 2017, while the execution of the *Hirst* judgment remained under the supervision of the Committee of Ministers (see paragraphs 61-71 above), resulted from that same, unamended provision. In its judgments in these cases, the Court applied directly its conclusion in *Hirst*, without examining the particular offences for which the applicants in question had been convicted or the lengths of the sentences imposed upon them (see *Greens and M.T.*, cited above, §§ 77-79; *Firth and Others v. the United Kingdom*, nos. 47784/09 and 9 others, §§ 14-15, 12 August 2014; and the Committee decisions in *McHugh and Others*, §§ 10-11; *Millbank and Others*, §§ 8-10; and *Miller and Others*, §§ 12-14, all cited above).

(ii) The scope of the Court's review in this case

(α) Introduction

114. The Court has repeatedly underlined that its task in individual cases is not to review relevant legislation in the abstract (see, for example, *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, §§ 69-70, 20 October 2011; *Anchugov and Gladkov*, cited above, §§ 51-52; and *Kalda*, cited above, § 49). It is true that in some cases a degree of abstraction is necessary; this is notably the case, for example, when the Court is asked to assess the quality of law of the applicable legal provisions in order to determine the lawfulness of an interference (see, for example, *Huvig v. France*, 24 April 1990, § 31,

Series A no. 176-B; *Dragojević v. Croatia*, no. 68955/11, § 86, 15 January 2015; and *Ships Waste Oil Collector B.V. and Others v. the Netherlands* [GC], nos. 2799/16 and 3 others, § 167, 1 April 2025). However, as a rule, in cases arising from individual applications, the Court must focus its attention not on the law as such but on the manner in which it was applied to the applicants in the particular circumstances (see *Dragojević*, cited above, § 86; and *Ships Waste Oil Collector B.V. and Others*, cited above, § 167).

115. As explained above (see paragraph 112), the Court considered it justified in *Hirst* to examine the compatibility with the Convention of section 3 of the 1983 Act, without examining whether the disenfranchisement of the specific applicant in that case was disproportionate.

116. The present case is the first to come before the Court concerning an election which took place following the completion by the Committee of Ministers of its supervision of the execution of the judgments in the *Hirst* group of cases (see paragraphs 67-71 above). The Government do not contend that the Court has no jurisdiction to examine the applicant's complaint concerning his ineligibility to vote at the 2019 general election (compare *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], no. 32772/02, §§ 47-54, ECHR 2009). However, they have argued that the Court should give proper and weighty respect to the 2018 resolution adopted by the Committee of Ministers in assessing the law and practice applicable to the enfranchisement of prisoners (see paragraph 105 above). They further contend that, in any event, the present applicant's inability to vote in the 2019 election was clearly justified (see paragraph 107 above). The applicant, on the other hand, has argued that no weight should be given to the 2018 resolution, and that until the legislation has been amended there will be a violation of Article 3 of Protocol No. 1 in respect of every prisoner unable to vote in an election to the legislature (see paragraphs 89 and 91 above).

117. It cannot be said that the powers assigned to the Committee of Ministers are being encroached on where the Court has to deal with relevant new information, consisting in the present case of the applicant's ineligibility to vote in the 2019 election after the application of the new administrative measures, in the context of a fresh application (see, similarly, *Verein gegen Tierfabriken Schweiz (VgT)*, cited above, § 67). However, the Court's approach to the examination of the complaint made in this application must take account of relevant developments since its *Hirst* judgment was adopted. It is therefore necessary for the Court to consider the scope of its review of the present complaint, taking into account its Article 46 indication in *Greens and M.T.* (cited above, § 115), subsequent relevant developments, and the 2018 resolution of the Committee of Ministers.

(β) The Article 46 indication in *Greens and M.T.*

118. Under Article 46 § 2 of the Convention, the Committee of Ministers is responsible for the supervision of the execution of the Court's judgments

(see, in this respect, *Verein gegen Tierfabriken Schweiz (VgT)*, cited above, § 61). The supervision mechanism established under Article 46 provides a comprehensive framework for the execution of the Court's judgments, reinforced by the Committee of Ministers' practice (see *Ilgar Mammadov v. Azerbaijan* (infringement proceedings) [GC], no. 15172/13, §§ 161 and 163, 29 May 2019). Subject to monitoring by the Committee of Ministers, the respondent State in principle remains free to choose the means by which it will discharge its obligations under Article 46 § 1 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment. However, in certain special circumstances the Court has found it useful to indicate to a respondent State the type of measures that might be taken to put an end to the situation – often a systemic one – which has given rise to the finding of a violation (ibid., § 153).

119. In *Greens and M.T.* (cited above, §§ 110-14), adopted in 2010, the Court decided to indicate specific measures to the respondent Government under Article 46 of the Convention. It acknowledged the work then underway on draft legislative proposals to amend section 3 of the 1983 Act and declined to express itself on the content of the future legislation. However, it stipulated a timetable for the introduction of legislative proposals, with a view to "the enactment of an electoral law to achieve compliance with the Court's judgment in *Hirst* according to any time-scale determined by the Committee of Ministers" (ibid., § 115).

120. No amending legislation was ultimately enacted in respect of general elections in the United Kingdom. Instead, after enhanced dialogue with the Secretary General and the Committee of Ministers, the Government proposed, in a November 2017 Action Plan, administrative measures aimed at ensuring the execution of the *Hirst* judgment (see paragraphs 66-67 above). Having regard to the wide margin of appreciation, the Committee of Ministers took the view that the measures proposed responded to the Court's judgments in the *Hirst* group of cases (see paragraph 68 above). In September 2018 the Government submitted an Action Report explaining how the measures in the 2017 Action Plan had been implemented (see paragraph 69 above). Based on the implementation of the measures in the Action Plan, the Committee of Ministers closed the examination of the *Hirst* group of cases in December 2018, concluding its supervision of the execution of the various judgments handed down against the United Kingdom before that date (see paragraph 71 above).

121. The applicant argues, relying on *Greens and M.T.* (cited above), that the enactment of amending legislation was a necessary condition for execution of the *Hirst* judgment and that no weight can therefore be accorded to the Committee of Ministers resolution in respect of the *Hirst* group of cases (see notably paragraphs 79 and 89 above). The Court cannot accept this argument. The use of the pilot judgment procedure by the Court is pursued with due respect for the Convention organs' respective functions: it falls to

the Committee of Ministers to evaluate the implementation of individual and general measures under Article 46 § 2 of the Convention (see *Greens and M.T.*, cited above, § 107, and the further authorities cited there). An approach which limited the supervision process to the Court's explicit indications would remove the flexibility needed by the Committee of Ministers to supervise, on the basis of the information provided by the respondent State and with due regard to the evolving situation, the adoption of measures that are feasible, timely, adequate and sufficient (see, *mutatis mutandis*, *Ilgar Mammadov*, cited above, § 184). At the time the Court made its Article 46 indication in *Greens and M.T.* (cited above, § 115), legislative proposals were under active consideration by the respondent Government (see paragraphs 8-10 above). It was not, at that time, suggested by any of the parties or by the Committee of Ministers that compliance with Article 3 of Protocol No. 1 might be achieved other than through the amendment of section 3 of the 1983 Act. The Article 46 indication by the Court did not stipulate that legislative amendment was required but rather proceeded on the basis that the Government and the Committee of Ministers had already identified such amendment as the relevant specific measure necessary for the execution of the Court's judgment in *Hirst* (see notably paragraph 61 above). In setting out a timetable for the introduction of these proposals, the Court's Article 46 indication in *Greens and M.T.* was complementary to the supervision exercise being undertaken by the Committee of Ministers to encourage the speedy execution of the *Hirst* judgment with a view to ensuring the effectiveness of the Convention machinery as a whole (see *Greens and M.T.*, cited above, § 111 *in fine*). This complementarity is further clear from the Court's reference to the anticipated role of the Committee of Ministers in determining any time-scale for the enactment of the measures (ibid., § 115 *in fine*).

(γ) Relevant developments since *Hirst*

122. There have been a number of relevant developments since the Court's *Hirst* judgment.

123. First, in the twenty years since the *Hirst* judgment was handed down, the Court has had the opportunity to develop, refine and apply its approach to the question of prisoners' right to vote (see, in particular, *Scoppola*, cited above; *Anchugov and Gladkov*, cited above; *Söyler v. Turkey*, no. 29411/07, 17 September 2013; *Kulinski and Sabev v. Bulgaria*, no. 63849/09, 21 July 2016; *Myslihaka and Others*, cited above; and *Kalda*, cited above). In its post-*Hirst* case-law, it has accepted as proportionate the exclusion from the franchise in Italy of those convicted of a series of specified offences and those sentenced to three years' imprisonment or more, and the permanent prohibition on voting in respect of prisoners sentences to five years or more or life imprisonment (*Scoppola*, cited above, §§ 103-10). It has found no violation of Article 3 of Protocol No. 1 on account of the exclusion from the

franchise in Albania of incarcerated prisoners convicted of serious specified criminal offences resulting in terms of imprisonment which the Court said could not be seen as light (*Myslihaka and Others*, cited above, §§ 64-75). It has also found the disenfranchisement of a prisoner serving a life sentence for murder in Estonia to be compatible with Article 3 of Protocol No. 1, even where that disenfranchisement resulted from legislation prohibiting all convicted prisoners from voting, in circumstances where the ban had been found to be proportionate on the facts of that applicant's case by the domestic courts (see *Kalda*, cited above, §§ 5 and 42-54). In light of this case-law, there is clear guidance on whether the disenfranchisement of a prisoner, such as the present applicant, serving an indeterminate sentence following conviction of a serious offence would be compatible with Article 3 of Protocol No. 1 (contrast *Hirst* cited above, § 72).

124. The second development of some importance is the consideration given to the potential amendment of section 3 of the 1983 Act by the Government and Parliament of the United Kingdom since the *Hirst* judgment in 2005 (compare *Hirst*, cited above, § 79). Although no amending legislation has been enacted, there have been a number of consultations in the United Kingdom culminating in the preparation of a draft bill and its examination by a Joint Committee of Parliament (see paragraph 17 above). It is noteworthy that the Joint Committee recommended the enfranchisement of those sentenced to a term of twelve months or less (see paragraph 18 above). That recommendation was not subsequently enacted in England, but it has resulted in an amendment to the applicable rules in Scotland, where those sentenced to a term of imprisonment not exceeding twelve months are now entitled to vote in local elections there and in elections to the Scottish Parliament (see paragraph 25 above). To the extent that there remains some divergence of views within or among the democratic institutions in the United Kingdom as to which prisoners ought to be permitted to vote, it is now quite clear that there is no general support for the enfranchisement of prisoners convicted of serious offences and serving lengthy or indeterminate sentences of imprisonment. It can therefore be said with some confidence that if Parliament were to choose to amend the current law as it applies to general elections in the United Kingdom, restrictions on the right to vote would still apply to prisoners, such as the applicant, convicted of serious offences and serving indeterminate sentences (contrast *Hirst* cited above, § 72).

125. Finally, the Supreme Court of the United Kingdom has examined the disenfranchisement, pursuant to section 3 of the 1983 Act, of a prisoner convicted of a serious offence and serving a life sentence, in the light of the further guidance given by this Court in its *Scoppola* judgment (cited above) (see paragraphs 41-59 above). The Supreme Court declined to make a declaration that section 3 of the 1983 Act was incompatible with the Convention because it was clear, following *Scoppola*, that the ineligibility to vote of the particular claimant in the case before it was compatible with

Article 3 of Protocol No. 1 (see, in particular, paragraphs 47-50 above). This Court's judgment in *Kalda* (cited above, §§ 45-53) supports the view that legislation may be found to be compatible with the Convention rights in the circumstances of one applicant, while incompatible with Convention rights in the circumstances of another.

(δ) The Committee of Ministers 2018 resolution

126. As explained above, the 2018 decision of the Committee of Ministers to close its examination of the *Hirst* group of cases does not preclude the Court's examination of the complaint made by the present applicant concerning his disenfranchisement in the subsequent 2019 election (see paragraph 117 above). However, it does have a bearing on the approach of the Court to the present complaint.

127. The Court's approach in *Hirst* (cited above), in which it examined the compatibility with the Convention of section 3 of the 1983 Act itself, allowed the respondent State to reflect and to consult on the most appropriate way to ensure respect for Article 3 of Protocol No. 1, having regard to the numerous ways of organising and running electoral systems and to the specific historical, cultural and political considerations which influenced that State's democratic vision (see, *mutatis mutandis*, *Hirst*, § 61, and *Kalda*, § 39, both cited above). The Court explained in its *Hirst* judgment that there were a number of different ways of addressing the question of the right of convicted prisoners to vote and explicitly recognised that it was primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used in its domestic legal order in order to discharge its obligation under Article 46 of the Convention (ibid., §§ 83-84). In allowing the respondent State freedom to decide how best to guarantee the right afforded by Article 3 of Protocol No. 1 in its legal order, the Court's approach can be seen as the application of the principle of subsidiarity, now reflected in the Preamble to the Convention.

128. Having widely debated the issue at domestic level and having engaged in enhanced dialogue with the Committee of Ministers and the Secretary General of the Council of Europe, the respondent State has chosen to maintain its existing legislative approach and to make administrative changes to the disenfranchisement regime in place. These changes were accepted by the Committee of Ministers as sufficient, in light of the applicable wide margin of appreciation, to address the concerns regarding the general legislative framework expressed in *Hirst*. This is not, therefore, a case where the closure of the supervision process was based on the introduction of significantly revised legislation intended to address the problems identified and whose ultimate compatibility with the Convention fell to be examined carefully by the Court (compare, for example, the dialogue between the Convention Organs and the respondent State in the series of cases concerning interception of communications, such as *Malone v. the United Kingdom*,

2 August 1984, Series A no. 82; *Liberty and Others v. the United Kingdom*, no. 58243/00, 1 July 2008; and *Kennedy v. the United Kingdom*, no. 26839/05, 18 May 2010; and in the series of cases concerning procedures governing the continued detention of life prisoners (*Thynne, Wilson and Gunnell v. the United Kingdom*, 25 October 1990, Series A no. 190-A; *Singh v. the United Kingdom*, 21 February 1996, *Reports of Judgments and Decisions* 1996-I; and *Stafford v. the United Kingdom* [GC], no. 46295/99, ECHR 2002-IV)).

129. The Court's judgments are intended to promote the practical and effective application of Convention rights (see, *mutatis mutandis*, *Semenya v. Switzerland* [GC], no. 10934/21, § 194, 10 July 2025, and *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 386, 22 December 2020). The process of dialogue in respect of the applicable legal framework in place in the respondent State, rendered possible by the interaction of the processes before the Court and the Committee of Ministers with the engagement of the respondent Government, plays a crucial role in securing the practical and effective protection of Convention rights in accordance with the principle of subsidiarity. Once that dialogue has reached its conclusion, it remains for the Court to determine in a particular case whether the application of the legislative framework in the case of a particular applicant has resulted in a violation of Convention rights. The focus of the Court's examination at this stage remains on securing the practical and effective observance of the Convention.

(ε) Conclusion

130. In view of the foregoing considerations, and having regard to the wide margin of appreciation applicable in this area, the Court considers that it is not justified to examine the Convention compatibility of section 3 of the 1983 Act in the abstract in the present case or to identify, in the abstract, particular categories of prisoners whose disenfranchisement might be incompatible with the right to vote. Instead, it will examine the manner in which section 3 was applied to this specific applicant, in his particular circumstances, in order to determine whether the restriction on his right to vote was compatible with Article 3 of Protocol No. 1.

131. The present applicant did not apply to the domestic courts for a declaration of incompatibility (see paragraph 7 above). The Court has not yet accepted that the practice of giving effect to the national courts' declarations of incompatibility by amendment of legislation is "so certain as to indicate that section 4 of the Human Rights Act is to be interpreted as imposing a binding obligation" (see *Burden v. the United Kingdom* [GC], no. 13378/05, § 43, ECHR 2008). The Government did not, therefore, argue that the applicant had failed to exhaust available domestic remedies on account of his choice not to seek a declaration of incompatibility. However, the Court notes that had the domestic courts been given the opportunity to perform a

proportionality review, of the nature carried out in *R (Chester)* (see paragraphs 41-59 above), this Court would have had the benefit of their views in determining the compatibility of the applicant's ineligibility to vote at the 2019 general election.

(iii) Proportionality of the present applicant's inability to vote at the 2019 general election

132. The present applicant was convicted of rape and sexual assault in 2007. There can be no doubt as to the gravity of these offences, which constituted a serious attack on the values of society and on social order (compare *Myslihaka and Others*, cited above, § 70). His conviction followed a previous conviction in 2000, also for rape. Taking into account the seriousness of the offences leading to the 2007 convictions, the pattern of offending demonstrated by the applicant's previous criminal conduct and the significant risk of serious harm he posed to members of the public (see paragraph 35 above), the sentencing court decided to impose an indeterminate sentence. Although the applicant's minimum term has expired, his release has not yet been directed by the Parole Board because he has failed to demonstrate that it is no longer necessary for the protection of the public that he continue to be detained (ibid.).

133. The Court has previously accepted as compatible with Article 3 of Protocol No. 1 the removal of the right to vote from prisoners convicted of serious offences warranting a particularly harsh sentence of imprisonment (see paragraph 123 above). Taking into account its case-law, it cannot be said that the disenfranchisement of the present applicant, on account of the seriousness of his offending, his conduct, the risk he was found to pose to the public and the resulting imposition of a harsh sentence of indeterminate detention, was disproportionate to the legitimate aims pursued by restrictions of the franchise applied to convicted prisoners (see paragraph 111 above).

134. This conclusion is not affected by the expiry of the minimum term imposed by the sentencing court in the applicant's case: the applicant's continued disenfranchisement, pursuant to his continued detention under an indeterminate sentence of imprisonment on account of the risk he continues to pose, remains proportionate to the legitimate aims pursued by the measure, and in particular to the aim of enhancing civic responsibility and respect for the rule of law. It is noteworthy that once the applicant has been deemed safe for release by the Parole Board and has, consequently, been released, his right to vote will be restored to him (see paragraphs 27 and 35 above, and compare *Scoppola*, cited above, § 105).

135. There has accordingly been no violation of Article 3 of Protocol No. 1 to the Convention on account of the ineligibility of the applicant to vote in the general election on 12 December 2019.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 3 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 23 September 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Arnfinn Bårdsen President