



## Conference

### **Challenges to Implementing the Judgments of the European Court of Human Rights: Dialogues on Prisoner Voting Rights**

Moscow, 30 October 2015

Organisers

Council of Europe, University of Liverpool, Moscow State University,  
PluriCourts/University of Oslo, and Higher School of Economics

The effectiveness and legitimacy of the European Court of Human Rights (ECtHR) is dependent on how readily its judgments are executed by the Contracting Parties. This workshop will look at one of the most controversial confrontations between the ECtHR and the Contracting Parties in its history: the prisoners' voting saga. In 2005, the ECtHR ruled that a British blanket ban on prisoners' voting violates Article 3 of Protocol 1 to the Convention. To date, this judgment has not been executed and this forced the ECtHR to deliver a pilot judgment confirming *Hirst No 2*. This subsequent judgment created a further barrage of public outcry in the UK and has also not yet been executed. In a more recent case of *Anchugov and Gladkov v. Russia* a similar blanket constitutional ban in Russia was found incompatible with the Convention; it too was not implemented by the respondent party. Simultaneously, Austria and Ireland, in contrast to Russia and the United Kingdom, passed laws to enfranchise their prisoners with minimal controversy or fanfare. This project aims to assess why the issue of prisoner enfranchisement is so controversial in some States while it passes unnoticed in others. This workshop aims to explore acceptable ways of implementing of prisoners' voting judgments in Russia and the United Kingdom. The presentations at the workshop will explore the possibility of facilitating national sovereign decision-making and national traditions within the Strasbourg supervisory mechanism. The participants will focus their addresses on the roots of the issue and the possible solutions to the prisoners' voting crisis. This workshop brings together academics, legal practitioners and policy makers from Russia, the United Kingdom, Norway, Ireland and the Council of Europe.



## PROGRAMME\*

9:00 Registration

### **INTRODUCTION**

(Chair Dr Maxim TIMOFEEV)

9:30 *Welcoming address from the organisers*

Dr Kanstantsin DZEHTSIAROU

Representatives of the Council of Europe, PluriCourt/University of Oslo and Moscow State University

10:00 *Key note address –*

*Prisoners Voting and the Reasons for Controversy: Views from the Bench*

Judge Anatoly KOVLER

Judge Sverre Erik JEBENS

11:00 Coffee Break

### **SECTION 1. PRISONERS' VOTING: COMPARATIVE PERSPECTIVE**

(Chair Dr Alan GREENE)

11:30 *Erga Omnes Implementation in Ireland*

Dr Eimear SPAIN

11:50 *The Prisoners Voting Issue in the UK:  
the Politics of Compliance with Hirst v UK*

Dr Ed BATES

12:20 *Norwegian Experience in Facilitating Prisoners' Voting*

Prof Andreas FØLLESDAL

Prof Geir ULFSTEIN

12:40 Question time

13:00 Lunch

### **SECTION 2. NATIONAL CHALLENGES TO THE IMPLEMENTATION OF THE ECtHR JUDGMENTS**

(Chair Dr Gleb BOGUSH)

14:00 *National Implementation Mechanisms and Challenges*

TBC

14:20 *Practical Implementation Challenges*

Dr Natalya KHUTORSKAYA

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\* Please note that this is a draft Programme. Minor amendments may follow.

14:40 *Supervision of National Implementation*  
Mr Christos GIAKOUMOPOULOS, Council of Europe

15:00 *Panel discussion on the issue of best practices  
in facilitating of right of prisoners to vote*

16:00 Coffee break

**SECTION 2. NATIONAL CHALLENGES TO THE IMPLEMENTATION  
OF THE ECtHR JUDGMENTS (CONT)**

(Chair Mr Grigory DIKOV, Venice Commission)

16:30 *Panel Discussion on approaches to the issue of prisoner voting  
rights in the light of the relationship of international law to  
municipal law*

Mr Richard CLAYTON, QC, Venice Commission

Ms Claire BAZY MALAURIE, Conseil constitutionnel

18:00 **CONCLUDING REMARKS**  
(Chair Prof Gennady ESAKOV)

TBC

18:30 Reception

**ORGANISING COMMITTEE**

(in alphabetical order)

Dr Gleb BOGUSH (Moscow State University)

Dr Kanstantsin DZEHTSIAROU (University of Liverpool)

Prof Gennady ESAKOV (High School of Economics)

Dr Alan GREENE (University of Durham)

Dr Maxim TIMOFEEV (European Humanities University)



## CONFERENCE

### Challenges of Implementation of the Judgments of the European Court of Human Rights: Dialogues about Prisoners' Voting

Moscow, 30 October 2015

#### ORGANISERS AND SPEAKERS

(in alphabetical order)

##### **Dr Ed BATES**

Dr Bates is a senior lecturer in Law at Leicester Law School, the University of Leicester, UK, that he joined from the University of Southampton in 2014. His current research interests lie with the work of the European Court of Human Rights. In particular, he is interested in analysing the appropriate role and function of the Court, and the future evolution of the Convention system, as well as the position occupied by Convention rights in UK law, and the controversies generated by that. He is the author of various publications, including: E. Bates, *The Evolution of the European Convention on Human Rights* (Oxford University Press, 2010) and is a co-author of Harris, O'Boyle and Warbrick, *The Law of the European Convention on Human Rights* (3rd ed, Oxford University Press, 2014). His recent publications include E. Bates, 'Analysing the Prisoner Voting Saga and the British Challenge to Strasbourg' 14(3) (2014) *Human Rights Law Review* 504-540, and E. Bates, 'The UK and Strasbourg: a strained relationship – the Long View', (in K Ziegler et al (eds), *The UK and European Human Rights – a Strained Relationship?* (Oxford, Hart, 2015)). Ed also runs the blog 'UKStrasbourgspotlight' (<https://ukstrasbourgspotlight.wordpress.com/>).

##### **Ms Claire BAZY MALAURIE**

Ms Claire Bazy Malaurie holds an office of the member of the Constitutional Council (*Conseil constitutionnel*) since 2010. Before being appointed to the Constitutional Council, she was a chairman of the Monitoring Committee on freedoms and responsibilities of universities (2008-2010). A graduate of Paris Institute of Political Studies (l'Institut d'études politiques de Paris) and a student of a former National School of Administration (l'Ecole nationale d'administration), starting from 1980 she held different positions at the French National Accounting Court (Cour des comptes), where she became a President of a Chamber at 2006. She is an officer of the Legion of Honour, officer of the National Order of Merit and a Knight of the Order of Academic Palms.

##### **Dr Gleb BOGUSH**

Dr Gleb Bogush is an Associate Professor and Deputy Director of the Centre for International and Comparative Criminal Law at the Faculty of Law of the Lomonosov Moscow State University. His

research interests include criminal law, public international law, and human rights. Gleb Bogush cooperates with international inter-governmental and non-governmental organisations as an expert in international and Russian law. He is also a member of the editorial boards of Russian Law Journal and Journal of Constitutionalism and Human Rights.

### **Mr Richard CLAYTON, QC**

Mr Richard Clayton is a barrister practicing in London. He is a member of the Venice Commission and a visiting professor at the University College London. As a barrister, Mr Richard Clayton undertakes a wide range of advisory and litigation work (both for and against public bodies) covering community care, data protection/Freedom of Information, discrimination and public sector equality duties, education, environmental, healthcare, human rights, licensing, local government (e.g. vires and powers, constitutional issues and governance, elections, finance), public procurement, Privy Council and international work and regulatory/disciplinary work.

### **Mr Grigory DIKOV**

Grigory Dikov has been working as a lawyer at the Registry of the European Court of Human Rights for over twelve years. Formerly a practising lawyer in Russia, he has many publications, including books, on criminal justice, fair trial and international human rights law. He also taught comparative human rights law at the Syracuse University (USA) Centre in Strasbourg for seven years. He is currently a member of the editorial board of the periodical "Comparative constitutional law journal". Currently Grigory Dikov is the legal officer in the Secretariat of the Venice Commission dealing with constitutional reforms, judiciary and fundamental rights issues.

### **Dr Kanstantsin DZEHTSIAROU**

Dr Kanstantsin Dzehtsiarou is a senior lecturer in Law at Liverpool Law School, the University of Liverpool, UK. Kanstantsin moved to the University of Liverpool in 2015 from the University of Surrey where he has been a lecturer and then a senior lecturer in Law since January 2012. He is also a visiting professor at the European Humanities University (Lithuania), he cooperates with international inter-governmental and non-governmental organisations as an expert in international and European human rights law. Holding his undergraduate law degree from Belarus, he took a MA in European Studies from the University of Sussex. In 2011 Kanstantsin defended his PhD project in 2011 at University College Dublin, Ireland. His research interests spread between interpretation of the European Convention of Human Rights, reform of the European Court of Human Rights, administration of international justice, comparative and constitutional law. Recently, Dr Dzehtsiarou published a book *European Consensus and the Legitimacy of the European Court of Human Rights* (Cambridge University Press, 2015).

### **Prof Gennady ESAKOV**

Gennady Esakov, Doctor of Law, Professor, Head of Department of Criminal Law and Criminalistics in National Research University Higher School of Economics (since September, 2012). From 2002 till 2012 Prof Esakov was teaching at the O.E. Kutafin Moscow State Law University. Prof Esakov is an author of more than 180 articles, books, textbooks and commentaries on criminal code. He is also a member of the editorial boards of European Journal of Criminology and Russian Law Journal.

### **Prof Andreas FØLLESDAL**

Dr Andreas Føllesdal is a Professor of Political Philosophy, Faculty of Law, University of Oslo. He is co-director of *PluriCourts*, a Centre of Excellence for the Study of the Legitimate Roles of the Judiciary in the Global Order, and principal investigator, European Research Council Advanced Grant *MultiRights 2011-16*, on the legitimacy of multi-level human rights judiciary. Andreas Føllesdal holds his Ph.D. in Philosophy from Harvard University (1991). He publishes in the field of political philosophy, mainly on issues of international political theory, globalisation/Europeanisation, human rights, and socially responsible investing.

### **Dr Alan GREENE**

Dr Alan Greene is a lecturer in Law at Durham Law School and Co-Director of the Durham Human Rights Centre. He holds BCL, LLM and PhD degrees from University College Dublin School of Law. His research interests lie in the area of human rights, public law, counter-terrorism, and states of emergency. He has published in journals such as *The Modern Law Review*, *Legal Studies* and *Public Law*.

### **Mr Christos GIAKOUMOPOULOS**

Christos Giakoumopoulos was appointed Director of Human Rights in the Directorate General Human Rights and Rule of Law of the Council of Europe in 2011. He was also recently appointed Special adviser of the Secretary General for Ukraine. He was Director of Monitoring in the same Directorate General since 2006. Before joining the Directorate General of Human Rights, he was General Counsel and General Director for Legal and Administrative Affairs of the Council of Europe Development Bank (Paris). Since joining the Council of Europe in 1987, he held posts in the Registry of the European Court of Human Rights, the Venice Commission and Director in the Office of the Commissioner for Human Rights, A. Gil Robles.

### **Judge Sverre Erik JEBENS**

Sverre Erik Jebens, born 1949, is a Norwegian judge. He is currently judge at the Frostating Court of Appeal. He was judge of the European Court of Human Rights from 2004 to 2011. Before that he was counsellor at the Justice Department, police superintendent and practicing lawyer. He has published the book *Menneskerettigheter I straffeprosessen* (Human Rights in Criminal Proceedings) in 2004, and several articles on human rights topics.

### **Dr Natalia KHUTORSKAYA**

Dr Natalia Khutorskaya is a visiting associate professor at Moscow State University. Previously, she held academic positions at educational and research institutions under the Ministry of the Interior and the Federal Service for the Execution of Sentences, Russian Federation. She was a member of the Council of Penological Cooperation of the Council of Europe (PC-CP). Currently, Dr Khutorskaya is serving as a member of the Committee for the Prevention of Torture of the Council of Europe and also is a Board member of the Penal Reform International (PRI). Her research interests concern correctional law, international practices of execution of sentences, human rights. She authored about 80 publications both in Russian and English language.

### **Judge Anatoly KOVLER**

Prof. Kovler is a former judge of the European Court of Human Rights (1999–2012). Currently he is a professor at the Moscow State University and the Higher School of Economics. Before Strasbourg, Prof. Kovler was a senior researcher and then director of research at the Centre of Comparative Law of the Institute of State and Law of the Russian Academy of Sciences. After finishing his term in office as a judge of the European Court of Human Rights, Anatoly Kovler acted as an adviser to the Constitutional Court of Russia (2014-2015). Prof. Kovler is an author of 8 books and around 150 articles on issues of theory of law, legal anthropology, human rights and comparative constitutional law.

### **Dr Eimear SPAIN**

Dr. Eimear Spain is a Senior Lecturer in Law in the School of Law in the University of Limerick, which she joined in 2010. She lectures in health, criminal and intellectual property law. One of her key interest areas is in the field of law and emotions which draws on disciplines such as neuroscience and psychology. She has published numerous books, book chapters and articles in the areas of health, criminal, constitutional and administrative law both nationally and internationally, including a monograph entitled 'The Role of Emotions in Criminal Law Defences; Duress, Necessity and Lesser Evils' with Cambridge University Press. Eimear has worked with important stakeholders including Cosc, The National Office for the Prevention of Domestic, Sexual and Gender-based Violence, the Department of Justice, An Garda Síochána, the Irish Prison Service and the Inspector of Prisons. Much of her research is interdisciplinary in nature and she has secured grant funding with colleagues in obstetrics, midwifery, educational psychology and social psychology.

### **Dr Maxim TIMOFEEV**

Dr Maxim Timofeev is an associate professor at European Humanities University (Lithuania). He received his graduate (2000) and post-graduate (2005) degrees in Russia and then worked as an associate professor at the Russian Law Academy of the Ministry of Justice in St. Petersburg (2007–2011). Recently Maxim Timofeev has been involved in human rights trainings, in particular on issues of European non-discrimination law, for members of the bar in Russia and (as a CoE international expert) in Ukraine and Azerbaijan. His research interests concern comparative constitutional law, public international law and international human rights law. Dr Timofeev is an editor-in-chief of the Journal of Constitutionalism and Human Rights.

### **Prof Geir ULFSTEIN**

Prof. Geir Ulfstein is Professor of international law at the Department of Public and International Law, University of Oslo and Co-director of PluriCourts- Centre for the Study of the Legitimate Roles of the Judiciary in the Global Order ([www.jus.uio.no/pluricourts](http://www.jus.uio.no/pluricourts)). He has been Director of the Norwegian Centre for Human Rights, University of Oslo (2004-2008). Prof. Ulfstein has published in different areas of international law, including the law of the sea, international environmental law, international human rights and international institutional law. He recently co-edited (with Helen Keller) *UN Human Rights Treaty Bodies: Law and Legitimacy* (Cambridge University Press, 2012) and co-authored (with Jan Klabbers and Anne Peters) *The Constitutionalization of International Law* (Oxford University Press, 2009). He is General Editor (with Andreas Føllesdal) of the two book series *Studies on Human Rights Conventions* and *Studies on International Courts and Tribunals* (Cambridge University Press). He is member of the Executive Board of the European Society of International Law.

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**INFORMATION PARTNERS**

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Russian Law Journal