

Position Statement of Civic Party on “The Consultation Document on Prisoners’ Right to Vote”

Introduction

1. Before the High Court handed down its judgment on the three judicial review cases on 8 December 2008, the legislative provisions governing the right for Legislative Council elections to register as an elector and the right to vote precluded the following persons from registering to vote and, if already registered, from being eligible to vote (and therefore to stand for election):
 - (i) persons who have been sentenced to death or imprisonment in Hong Kong or elsewhere and who have not either served the sentence or been pardoned
 - (ii) persons serving a sentence of imprisonment on the date of application to register as an elector or on the date of election
 - (ii) persons who within 3 years prior to an election have been convicted of
 - (a) having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554)
 - (b) an offence against Part II of the Prevention of Bribery Ordinance (Cap. 201)
 - (c) any offence prescribed by regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541)
2. By virtue of s 109B(5)(a) of the Criminal Procedure Ordinance (Cap 221), a person who has been given a suspended sentence in Hong Kong which has not been activated is disqualified from registration as an elector and from voting in elections during the operational period of the suspended sentence. A prisoner given a conditional release pursuant to the provisions of the Long-term Prison Sentences Review Ordinance (Cap 524) also appears to be within the first sub-group, as a person who has neither served his full sentence nor received a free pardon.
3. The 3 cases covered the position of a serving prisoner who was not registered and who challenged the restriction on registering as an elector, the position of a serving prisoner who was registered but who was precluded from voting and therefore challenged the restriction on voting and the position of persons not convicted of any offence but who

were physically detained on remand before trial and therefore unable to vote on polling day.

4. The Judge questioned whether those who were sentenced to detention in detention centres, training centres, drug addiction treatment centres, rehabilitation centres and Siu Lam Psychiatric Centre were also within the prohibition as being sentenced to imprisonment or serving terms of imprisonment. The Judge declined to deal with the issue as Counsel appearing for the Secretary for Justice and the Electoral Affairs Commission took the position that they were not imprisoned or sentenced to imprisonment.
5. The Judge came to the conclusion that the disenfranchisement provisions concerned contravened the fundamental right to vote constitutionally guaranteed under Article 26 of the Basic Law and Article 21 of the Hong Kong Bill of Rights. The Government had not stated clearly what were the legitimate aims of the provisions in question and had not justified the restrictions as being proportionate to the achievement of those aims. Further, as there were no provisions restricting the right to vote of persons on remand, the restriction was purely the result of their being detained pending trial and clearly infringed their right to vote. The remedy to be granted to the applicants is to be decided on 23 February 2009.
6. The Government has decided not to appeal and is now consulting the public on various options for amending the legislation in question and the corresponding provisions governing registration and voting for District Council and Village elections (Consultation Document on Prisoners' Voting Right _ February 2009).

CP's Position on Voting Rights of Prisoners and others sentenced to detention

7. CP welcomes the belated recognition by the Government that the identified restrictions on the right to register as an elector and the failure to make voting arrangements for those detained on remand pending trial were and are indefensible. The same applies to an arbitrary and blanket restriction on the right to vote applied also to those serving a

suspended sentence and on conditional release.

8. Although the Government's position in court was that the legislative provisions did not apply to persons who were sentenced to custody in places of detention other than prisons, the Government has said nothing in the Consultation Document about whether arrangements will be made for such detainees to vote. Apart from those who are detained in Siu Lam Psychiatric Centre and who have been diagnosed as suffering from mental incapacity, arrangements should be made for all detainees to vote as their position is the same as persons on remand.
9. Civic Party considers that the Government should remove all existing restrictions on prisoners' right to vote and should not impose any further restriction. Although the Court considered that the legislature could impose restrictions on the voting rights of prisoners and other people, any restrictions can only be imposed to achieve a legitimate aim and must be proportionate to achieving that aim. The Administration has even now not advanced any aim which would be served by restricting the rights of prisoners to vote. Civic Party considers that the Government must provide sufficient grounds and good reasons before imposing any restrictions; otherwise, there will be more judicial reviews to come. As no legitimate aim has been advanced, no restrictions should be imposed.
10. In support of restricting the right of persons convicted of election-related or bribery offences from voting within 3 years after conviction, it is argued that disqualification will help to protect the integrity of the legislature. However, we see no inevitable, obvious, direct relationship between disqualifying such persons from voting for 3 years after conviction and protecting the integrity of the legislature.

Arrangements for Prisoners and other Detained Persons to Exercise their Voting Right

11. Civic Party considers that the Government must make arrangements for prisoners and other persons in custody (apart from those suffering from mental incapacity) to vote on election day which will ensure the secrecy



of the ballot and if necessary, to consider what special procedures are adopted to ensure that voters enjoy the same protection as they would if they were not detained and are able to exercise their free will and judgment in exercising their vote.

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Civic Party