

#DeniedMyVote Judicial Review - Our legal arguments summarised

12th July 2019

1. All of us have the fundamental right to vote, which is the most important individual right to democratic participation guaranteed by law. The right ensures that citizens have their say in the formulation of public policy, that parties and candidates must seek democratic authority as a precondition for the exercise of power and that each citizen, regardless of how they vote, is represented by those who are elected by the majority. For each vote to carry equal weight in a democracy, the right to vote must be equally capable of being exercised by all eligible citizens.
2. These principles are reflected in EU and European Convention of Human Rights ('ECHR') law. Article 10 the Lisbon Treaty states that "[t]he functioning of the Union shall be founded on representative democracy", "[c]itizens are directly represented at Union level in the European Parliament..." and "[e]very citizen shall have the right to participate in the democratic life of the Union." Article 20(2)(b) of the Treaty on the Functioning of the EU ('TFEU') adds "[c]itizens of the Union shall enjoy the rights... provided for in the Treaties. They shall have, inter alia... the right to vote... in elections to the European Parliament ... in their Member State of residence, under the same conditions as nationals of that State." Article 22 TFEU and Article 39 of the EU Charter of Fundamental Rights ('the Charter') reiterate these words. Article 3 of Protocol 1 ECHR contains a similar guarantee to the "free expression of the opinion of the people in the choice of the legislature."
3. A large number of EU27 citizens contacted the3million following the recent 2019 European Parliament Elections in the UK ('the 2019 Elections'). It is apparent that many such citizens were deprived of their right to vote because of unlawful systemic flaws in the processes under which the 2019 Elections were conducted, and that they have suffered unlawful discrimination at the hands of the UK Government, which ought to have been anticipated and prevented, but was not.
4. We ask the Government to acknowledge that there was illegality and discrimination; to accept that it was responsible; and to take remedial action, in so far as that is possible, including the payment of compensation to those who have been deprived of their right to vote. If these steps are not taken in respond to our lawyer's letter, the3million plans bring a judicial review claim seeking appropriate remedies, including declaratory relief.
5. The key reasons why the conduct of the 2019 Elections was unlawful, and the grounds for the proposed judicial review, are as follows.
6. Council Decision (EU, Euratom) 2018/767 of 22 May 2018 confirmed 23 to 26 May 2019 as the period for the 2019 Elections. On 7 May 2019, following a period of equivocation, the Government confirmed publicly that the UK would be participating. The poll itself took place in the UK on 23 May 2019 and was concluded in other Member States three days later. There was a greater turnout of those who were eligible to vote in the UK in the 2019 Elections than in the 2014 European Parliament Elections. This is unsurprising because the 2019 Elections were seen by many UK and EU citizens as an important opportunity to express their view on the positioning of various UK parties on the political spectrum and their policies of on whether the UK should leave the EU and, if so, when and on what terms.

7. However, a large number of people who wanted to vote could not. Some of them were British Citizens who had registered as overseas voters but did not receive postal ballots in time or at all, or those who wished to register but could not do so in time. Others were EU27 citizens resident here in the UK other than citizens of the Republic of Ireland, Cyprus or Malta (**'EU24 citizens'**) who were unaware of, or unable to comply with, the UK's system of requiring them not only to register, but also to indicate their intention of voting here (and not in their country of EU24 citizenship) by completing and returning a 'UC1' or 'EC6' form (**'Declaration Form'**). Other EU24 citizens did manage to comply with that requirement in time, but were still not permitted to vote.
8. The UK's Declaration Form system is unique. That is not objectionable in itself as EU Member States have some discretion on how to give effect to Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals (**'the Voting Directive'**) which is the main implementing measure for the EU law rights discussed at §2 above. This includes measures to discourage and identify double voting (i.e. voting both here and in EU27 states, which is not permitted). However, the UK's system unlawfully impedes the ability of registered EU24 citizens, or makes it excessively difficult for them, to exercise their voting rights. This happens because of the following cumulative features of the UK system:
 - (1) EU24 citizens may register to vote in the UK in European elections;
 - (2) however, EU24 who have registered to vote here are automatically removed from the electoral register when it is being updated for a forthcoming poll, by means of their name being struck through and/or the use of a 'G' code indicating they are disqualified;
 - (3) to prevent this from happening automatically, EU24 citizens must access, complete and send a separate Declaration Form to a local Electoral Registration Officer (**'ERO'**);
 - (4) the Declaration Form must be received by an ERO and processed before a deadline that corresponds to the last date for registering to vote; and
 - (5) although local authority officers are encouraged by guidance to advise EU citizens of these requirements in advance, and to send out Declaration Forms to registered voters, there is no legal obligation for them to do so. Local practice varies considerably.
9. By contrast, UK citizens resident in the UK who are resident in two or more places, and have registered to vote in more than one local authority area, are not required to identify where they intend to vote, or to complete any additional form declaring that they intend to vote in a particular area. It is simply an offence to vote more than once. Moreover, citizens of the Republic of Ireland, Cyprus and Malta resident in the UK are treated as if they are UK citizens, as are people who are dual nationals of both the UK and a EU27 state. They are not required to complete Declaration Forms, but may vote in the UK, without any additional formality, if they have registered to do so.
10. The features of the Declaration Form system set out above were identified in 2014 as having significant disenfranchising effects. The Government undertook to reform the system, but failed to honour that commitment.

11. Compounding these systematic problems, the Government's confirmation on 7 May 2019 that the UK would participate in the 2019 Elections was given on the very same day on which the Declaration Forms had to be returned. As the Electoral Commission stated on Twitter on 23 May 2019, "[t]he very short notice from the government of the UK's participation in these elections impacted on the time available for awareness of this process amongst citizens, and for citizens to complete the process."
12. The net result was unlawful in three respects.
13. First, there was a large scale direct breach of the voting rights set out at above. The data which has so far been gathered by the 3million suggests that, in some local authority areas, only 10.7% of registered EU24 citizens were able to vote. This is reinforced by empirical information and research data.
14. Secondly, the operation of the UK's system was unlawfully discriminatory. Only EU27 citizens from the Republic of Ireland, Cyprus and Malta were able to vote here under the same conditions as nationals of the UK as required by law. EU24 citizens were discriminated against, because of their nationality, contrary to:
 - (1) the specific non-discrimination provisions of Articles 20(2)(b) and 22 TFEU and Article 39 of the Charter;
 - (2) the general prohibitions on nationality discrimination in Articles 18 and 45 of the TFEU and Article 21(2) of the Charter which should be read with Articles 2 and 9 of the Lisbon Treaty;
 - (3) Article 2(1) read with 3(1)(h) of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('**the Equal Treatment Directive**');
 - (4) Article 14 ECHR read with Article 3 of Protocol 1; and
 - (5) section 29(1), (2) and (6) read with section 9(1)(b) of the Equality Act 2010 ('**the 2010 Act**');
15. Thirdly, there was a failure to discharge the public sector equality duty set out in section 149 of the 2010 Act ("**PSED**"). When the Government made arrangements for the 2019 Elections in the UK, you failed to have any regard, let alone the "*due regard*" required by the statute, of the need to "*eliminate unlawful discrimination*", "*advance equality of opportunity*" (including by encouraging participation in public life) and "*foster good relations*" between, on the one hand, UK citizens, citizens from the Republic of Ireland, Cyprus and Malta and, on the other, EU24 citizens.