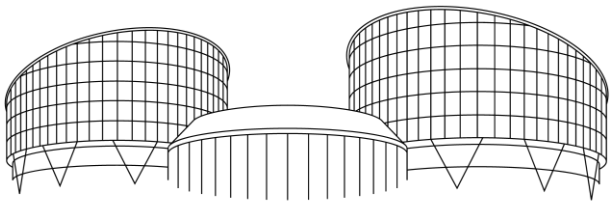

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF SHINDLER v. THE UNITED KINGDOM

(Application no. 19840/09)

JUDGMENT

STRASBOURG

7 May 2013

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 Shindler v. the United Kingdom,

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

Ineta Ziemele, *President,*
David Thór Björgvinsson,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Vincent A. De Gaetano,
Paul Mahoney, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 9 April 2013,

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

PROCEDURE

1. The case originated in an application (no. 19840/09) 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 Harry Shindler ("the applicant"), on 26 March 2009.

2. The applicant was represented by Ms C. Oliver, a lawyer practising in Rome. The United Kingdom Government ("the Government") were represented by their Agent, Mr D. Walton, of the Foreign and Commonwealth Office.

3. The applicant alleged that his disenfranchisement as a result of his residence outside the United Kingdom constituted a violation of Article 3 of Protocol No. 1 to the Convention, taken alone and taken together with Article 14, and Article 2 of Protocol No. 4 to the Convention.

4. On 14 December 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1921 and lives in Ascoli Piceno, Italy. He left the United Kingdom in 1982 following his retirement and moved to Italy with his wife, an Italian national.

6. Pursuant to primary legislation, British citizens residing overseas for less than fifteen years are permitted to vote in parliamentary elections in the United Kingdom (see paragraphs 10-11 below). The applicant does not meet the fifteen-year criterion and is therefore not entitled to vote. In particular, he was unable to vote in the general election of 5 May 2010.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The United Kingdom

1. General provisions on voting in parliamentary elections

7. Section 1(1) of the Representation of the People Act 1983 ("the 1983 Act") provides that a person is entitled to vote as an elector at a parliamentary election if on the date of the poll he is, *inter alia*, registered in the register of parliamentary electors for a constituency and is either a Commonwealth citizen or a citizen of the Republic of Ireland. Pursuant to section 4(1), a person is entitled to be registered if on the relevant date he is, *inter alia*, resident in the constituency and is either a Commonwealth citizen or a citizen of the Republic of Ireland.

2. Provisions regarding persons with a service qualification

8. Sections 14-17 of the 1983 Act allow certain categories of persons otherwise eligible to vote who do not fulfill the normal residence requirements to continue to register to vote by making a "service declaration". A service declaration can be made by a person who is (a) a member of the forces, (b) employed in the service of the Crown in a post outside the United Kingdom of any prescribed class or description, (c) employed by the British Council in a post outside the United Kingdom, or (d) the spouse or civil partner of a person falling within categories (a), (b) or (c) above.

9. Section 17 provides that where a person's service declaration is in force, he shall be regarded for the purposes of section 4 of the 1983 Act as a resident on the date of the declaration at the address specified in it (current or former address in the United Kingdom).

3. Provisions regarding overseas voters

(a) Current legislation

10. Section 1 of the Representation of the People Act 1985 as amended ("the 1985 Act") provides that a person who is a British citizen is entitled to vote as an elector at a parliamentary election if he qualifies as an overseas elector on the date on which he makes an "overseas elector's declaration" (see paragraph 14 below). A person qualifies as an overseas elector if he is

not resident in the United Kingdom and he satisfies one of the sets of conditions set out in the legislation.

11. The relevant set of conditions for the purpose of the present case is set out in section 1(3):

> "The first set of conditions is that—
>
> (a) he was included in a register of parliamentary electors in respect of an address at a place that is situated within the constituency concerned,
>
> (b) that entry in the register was made on the basis that he was resident, or to be treated for the purposes of registration as resident, at that address,
>
> (c) that entry in the register was in force at any time falling within the period of 15 years ending immediately before the relevant date [i.e. the date on which the applicant makes a declaration under section 2], and
>
> (d) subsequent to that entry ceasing to have effect no entry was made in any register of parliamentary electors on the basis that he was resident, or to be treated for the purposes of registration as resident, at any other address."

12. Section 2(1) provides that a person is entitled to be registered pursuant to an "overseas elector's declaration" in the constituency where he was last registered to vote or last resided and the registration officer concerned is satisfied that he qualifies as an overseas elector in respect of that constituency. Where the entitlement of a person to remain registered as an overseas voter terminates, the registration officer concerned shall remove that person's entry from the register (section 2(2)).

13. Section 2(3) requires that an overseas elector's declaration state the date of the declaration, that the declarant is a British citizen, that the declarant is not resident in the United Kingdom, and the date on which he ceased to be so resident.

14. Section 2(4) stipulates that an overseas elector's declaration must show which set of conditions in section 1 of the Act the declarant claims to satisfy and, in the case of the first set of conditions, specify the address in respect of which he was registered.

(b) History to the current legislation

15. Prior to the enactment of the 1985 Act, no British citizen living overseas could vote in a parliamentary, i.e. general, election in the United Kingdom, other than members of the armed forces or Crown servants.

16. In 1982 a parliamentary committee, the Home Affairs Select Committee, published a report on the Representation of the People Acts which recommended that British citizens living in what were then Member States of the European Economic Community should be able to vote in parliamentary elections for an indefinite period. The Government's response to that report recommended a seven-year limit for all overseas voters, expressing the view that a person's links with the United Kingdom were

likely to have weakened significantly if he had lived outside it for as long as ten years.

17. The 1985 Act as originally enacted extended the right to vote to British citizens resident overseas but who had been resident in the United Kingdom within the previous five years. The bill originally proposed a seven-year period but concerns were expressed during the passage of the bill that that period was both too long and too short. Further concerns regarding the inability of a straightforward time-limit to reflect the positions and intentions of individuals regarding their contact with the United Kingdom were also raised.

18. The five-year period was extended to twenty years by virtue of section 1 of the Representation of the People Act 1989. The bill which led to the Act was prepared following consultation and proposed increasing the time-limit to twenty-five years. During parliamentary debates, the Secretary of State acknowledged that there was no correct answer as to where the correct cut-off point lay and explained that a balance had to be struck between the interests of those who, although resident abroad for some time, had retained close and continuing connection with the United Kingdom and those who had "cut adrift" from such links much earlier. Parliamentarians expressed a broad spectrum of views, with some opposing any change which would allow those resident abroad for long periods to vote and others arguing that restrictions on the right to vote should be kept to a minimum.

19. Section 1 of the 1989 Act was subsequently repealed and replaced, with retention of the twenty-year period, by section 8 and Schedule 2 of the Representation of the People Act 2000.

20. In September 1998 the Home Affairs Select Committee published a report on Electoral Law and Administration. It proposed that the period during which overseas voters be permitted to vote be reduced. The relevant extract of its report reads:

> "113. The Representation of the People Act 1985 introduced a right for British citizens resident overseas on the qualifying date to register as a voter for parliamentary and European elections for up to five years following their move overseas. This period was increased to twenty years under the Representation of the People Act 1989. The peak year for actual registrations under the Act was in 1991 when 34,500 registered; the numbers have steadily decreased since then until a rise in 1997, when the total stood at 23,600, followed by a further fall in 1998 to 17,300. Estimates of the potential number who could register have ranged as high as three million.
>
> 114. It has been suggested that it is unreasonable for people who have been away for so long to retain the right to vote. Professor Blackburn argued that the system meant that 'an expatriate living hundreds or thousands of miles away, for the duration of a period exceeding a whole generation, carrying memories of British politics in the past and with little or no personal knowledge of contemporary issues in the constituency where he or she used to live, can influence the election of the government of a country to which he is not subject and to whom he or she may be paying no taxes'. Electoral administrators pointed out that there were costs attached to registering overseas

citizens and that a shorter period might be cheaper and easier to operate. The Labour Party and Liberal Democrat representatives both suggested that 20 years was perhaps too long. Professor Blackburn suggested that the right to vote while overseas might be related in some way to the nature of the links retained with the UK or to an intention to return.

115. On the other hand, it is clear that the present rules – with so few persons actually registering – cause very little disruption or distortion to the actual results and, for the Labour Party, Mr Gardner indicated that changing the time limit was not a priority issue. It must also be likely that those who do register are those with the greater commitment to events in the UK and are those most likely to be planning to return. A further restraining factor is that overseas voters have to vote by proxy (because it is not possible to send a ballot paper overseas reliably in the time available) which means that in order to exercise their right to vote they have to establish some form of connection with their former home. The Home Office reported that most of the correspondence they received on this issue was not from people calling for the twenty year period to be lowered but from people who had been resident overseas for more than twenty years arguing for it to be increased.

116. On balance, **we take the view that the twenty year maximum period within which a British citizen overseas may retain the right to vote is excessive and that the earlier limit – five years – should be restored**." (emphasis in original; references omitted)

21. The twenty-year period was subsequently reduced to fifteen years pursuant to section 141(a) of the Political Parties, Elections and Referendums Act 2000. The bill preceding the Act proposed a reduction to ten years. During parliamentary debates, the relevant Government minster explained that the proposed ten-year period struck a balance between the various strongly-held views expressed. During the bill's passage through the House of Lords, the Government minister proposed an increase to fifteen years in response to concerns aired during the debate. While the minister accepted that the amendment represented a broad-brush approach, he considered it to be the most equitable approach that could be adopted.

(c) Recent legislative and policy developments

22. On 6 May 2009, during the passage through Parliament of the bill which led to the Political Parties and Elections Act 2009, an amendment was proposed to raise the period for overseas voting from fifteen to twenty years. The reasons given for the proposed amendment were as follows:

"The first is that we live in an era of increasing globalisation and internationalisation of economic activity, a process which has gathered pace since the reduction of the qualifying period in 2000. Secondly, we need to reflect the different nature of modern society and the mobility of populations. Thirdly, I seek to reflect the fact of Britain's membership of the European Union."

23. The Government minister defended the fifteen-year period, noting the absence of any compelling argument or evidence that would justify a change. He considered that the focus should be instead on raising the registration rate of overseas voters, noting that fewer than 13,000 overseas

voters were registered in England and Wales as of 1 December 2008. The amendment was not passed.

24. During a short debate in the House of Lords on 2 March 2011 regarding voting arrangements for overseas electors, some members called on the Government to reconsider the fifteen-year period. Attention was drawn to the fact that those who worked abroad for international organisations did not have the same voting rights as members of the armed forces, Crown servants and employees of the British Council, who were not subject to the fifteen-year limit. The Government minister acknowledged that the Government ought to address the issue of overseas votes, noting that of an estimated 5.5 million British citizens resident abroad, only about 30,000 actually voted.

25. On 27 June 2012, during the passage through Parliament of the bill which led to the Electoral Registration and Administration Act 2013, an amendment was proposed in the House of Commons to remove the fifteen-year rule. The reasons for the proposed amendment were explained as follows:

> "According to the Institute for Public Policy Research, 5.6 million British citizens currently live abroad. The shocking truth is that although, as of last December, about 4.4 million of them were of voting age, only 23,388 were registered for an overseas vote, according to the Office for National Statistics' electoral statistics. Out of 4.4 million potential overseas voters, only 23,000-odd are actually registered! ...
>
> ...
>
> In most other countries, both developed and emerging, voting rights for parliamentary elections depend solely on nationality, not on an arbitrary time limit. For example, US nationals can vote in presidential, congressional and state elections, regardless of where they reside in the world. Similarly, Australian nationals can vote in the equivalent elections there, no matter where they live. However, the most startling example comes from our nearest neighbour. French citizens in the UK have just elected a new President and taken part in parliamentary elections for one of the 11 Members of Parliament whose job it is solely to represent French people abroad ....
>
> The right of Spaniards abroad to vote is enshrined in article 68 of the Spanish constitution. ...
>
> ...
>
> [A]ll Portuguese citizens living abroad have the same right to vote in Assembly elections as fellow citizens living in their home country. The simple fact is that the citizens of the US, Australia, Belgium, the Netherlands, France, Germany, Portugal, Slovenia, Spain, Sweden and all these other countries have better voting rights for their citizens abroad than we do for British citizens living abroad.
>
> For a democracy as ancient as ours, it is not an exaggeration to say that it is a stain on our democratic principles that our citizens are placed at such a disadvantage when they have moved abroad compared with citizens from those other countries. Her Majesty's Government is very happy to collect tax from most of the enormous number of people involved, but denies them the vote."
>
> ...

> "The states in which these British citizens reside do not allow them to vote as residents, because voting rights are based on nationality and not residence, and they cannot vote in the UK on the basis of the current rule, for which there is no obvious rationale. I challenge the Deputy Leader of the House to state where there would be any disadvantage in abolishing the rule. The consequence of the rule is that many British citizens living abroad are in a state of electoral limbo, unable to participate in any election whatsoever. That seems to be a very unsatisfactory state of affairs."

26. The Government minister replied that the Government would give the issue "serious consideration". The amendment was subsequently withdrawn.

27. A similar amendment to the bill was proposed at the Committee stage in the House of Lords on 14 January 2013. The reasons given for the proposed amendment were as follows:

> "The fundamental issue at stake here is the complete exclusion of so many British citizens living abroad for more than 15 years from the right to vote here. According to the Institute for Public Policy Research, 55% of those who moved abroad in 2008 did so for work-related reasons, 25% for study and 20% for life in retirement. With an ageing population, and increased opportunities for work and study abroad, people are likely to continue to leave the United Kingdom in substantial numbers. Many of them will reside abroad for more than 15 years. In the countries to which they move, voting rights rest overwhelmingly on nationality, not residence. Apart from some nine Commonwealth countries – mainly islands in the West Indies – I understand that no state permits British citizens to vote in its principal national elections. They therefore exist in an electoral limbo.
>
> ...
>
> Within the European Union, Britain compares unfavourably with most of its partners. Of the 27 EU members, 22 countries allow their expatriate citizens the right to vote, without any restriction on the period of residence outside the home country. That is apart from Germany, which restricts it to 25 years for expatriates living outside the EU. Just two countries, Denmark and the United Kingdom, restrict the period for voting rights: the UK to 15 years and Denmark to four. In three countries – Cyprus, the Republic of Ireland and Malta – expatriates have no right to vote.
>
> The world has become much smaller. Britons overseas can listen to our radio via their computer, they can watch British television and read British newspapers just as rapidly as anyone living here, if they subscribe to them electronically. I make a confident prediction that this debate in our House today will attract one of the largest television online audiences abroad that your Lordships have had. I have met many British overseas residents who are as well, if not better, informed about British political affairs than the average voter here. So the old argument about expatriates' inability to make an informed judgment about the great issues in our political life no longer holds."

28. The Government minister responded that the question whether the time limit was appropriate was a wider question which remained under consideration within Government. He noted that there were valid arguments on both sides which needed to be carefully considered alongside any practical issues before any informed decisions could be taken. The amendment was withdrawn but it was subsequently reintroduced on

23 January 2013 during the Report stage of the bill, with further debate taking place. Again, the Government minister indicated that the issue was under consideration by Government and the amendment was withdrawn.

(d) Judicial review proceedings in *Preston* ([2011] EWHC 3174 (Admin) and [2012] EWCA Civ 1378)

29. On 1 December 2011, the High Court handed down judgment in the case of *Preston v Wandsworth Borough Council and Lord President of the Council*. The claimant was a long-term resident of Spain who sought judicial review of the fifteen-year rule under section 1(3) of the 1985 Act. He argued that he had a directly effective right under European Union law to move to and reside in other Member States and that the fifteen-year rule operated unjustifiably to interfere with the exercise of that right.

30. The court found that there was no evidential basis for the contention that the fifteen-year rule created a barrier of any kind to free movement. The matter therefore did not fall within the scope of EU law. That being so, the issue of justification did not arise. The court nonetheless indicated that it considered the rule to be a proportionate interference with the right to free movement. It was of the view that the Government were entitled to hold that there was a legitimate objective which the rule was designed to achieve, namely to remove the right to vote from those whose links with the United Kingdom had diminished and who were not, for the most part at least, directly affected by the laws passed there. It observed:

> "44. ... [T]he 15 year rule is designed to establish a test to identify when the absence of residence can fairly be said to have diluted the link with the UK sufficient to justify the removal of the right to vote. The fact that some residence tests do not properly or proportionately measure the strength of commitment does not mean that the adoption of a non-residence test cannot legitimately measure the weakening of commitment. This rule does not fix on non-residence at some particular point in time; it requires a consistent period of non-residence. In my judgment that is a justified way to measure the dilution of commitment. Thereafter the choice of a bright line rule is inevitable. It would in my view be wholly impracticable to adopt a rule which required consideration of the personal circumstances of all potential expatriate voters ..."

31. The court found that decisions of this Court upholding residence rules were "highly material" (referring to *Hilbe v. Liechtenstein* (dec.), no. 31981/96, ECHR 1999-VI; *Melnychenko v. Ukraine*, no. 17707/02, § 56, ECHR 2004-X; and *Doyle v. the United Kingdom* (dec.), no. 30158/06, 6 February 2007).

32. Finally, the court considered that the exceptions to the fifteen-year period for certain categories of citizens were justified as the individuals concerned were resident in other States at the request of the United Kingdom in order to look after its national interests.

33. In its judgment of 25 October 2012, the Court of Appeal upheld the judgment of the High Court on both the question of the existence of an interference with free movement rights and the question of justification.

Lord Justice Mummery gave the judgment for the court and, on the latter issue, noted in particular:

> "89. First, the Divisional Court was entitled to hold ... that the 15 year rule had a legitimate aim, i.e. to test the strength of a British citizen's links with the UK over a significant period of time by measuring past commitment to the UK and seeing whether it was sufficiently diminished or diluted to justify removal of the right to vote in parliamentary elections. That aim was legitimate for the purpose of confining the parliamentary franchise to those citizens with an ascertainable, continuing, close and objective connection with the UK, whose government made decisions and whose Parliament passed laws that most directly affected those British citizens resident in the UK.
>
> 90. Secondly, the residence of a citizen is not ... an arbitrary measure of connection with a country: far from it, residence is a relevant, rational and practicable criterion for assessing the closeness of the links between a British citizen and the UK.
>
> 91. Thirdly, the 15 year rule is proportionate to the aim. The length of the period represents three Parliamentary terms. It provides a substantial opportunity for continued voting by British citizens who have moved to reside in another EU country.
>
> 92. Fourthly, it is impracticable for the franchise criteria to be other than bright line rules capable of reasonably consistent practical application. It would be unworkable and disproportionate for the electoral authorities to have to make individual merits assessments of the particular circumstances of each resident in another EU country on a case-by-case basis in order to determine how close a connection there is between that particular individual and the UK despite prolonged absence.
>
> 93. Fifthly, there is no objectionable inconsistency of treatment arising from the excepted categories of overseas residents, such as members of the armed services and Crown employees. In general, they do not move to reside overseas as a voluntary exercise of the right to free movement ... [T]heir circumstances are distinguishable from those of the claimant and others who, like him, have chosen, for their own personal reasons, to live in another Member State."

B. Italy

34. A foreign national may acquire Italian citizenship after having been resident in Italy and enrolled in the register of the population of a municipality for four years in the case of nationals of European Union Member States. Citizenship may also be acquired after two years of marriage to an Italian citizenship. Dual citizenship is permitted.

35. A foreign national wishing to acquire Italian citizenship must pay a fee of 200 euros plus a notarial fee of around 15 euros. Application forms are available on the website of the Ministry of Interior. An oath of allegiance to the Italian Republic must be sworn.

36. All Italian citizens are entitled to vote in Italian parliamentary elections (unless excluded for such things as conviction for certain offences etc.).

III. RELEVANT COUNCIL OF EUROPE MATERIAL

A. The Parliamentary Assembly

37. The Parliamentary Assembly of the Council of Europe ("the Assembly") has adopted a number of resolutions and recommendations regarding migration issues, including implications for the right to vote.

38. In 1982 it adopted Recommendation 951 (1982) on voting rights of nationals of Council of Europe member states. The recitals to the recommendation read, in so far as relevant, as follows:

> "1. Noting that an estimated 9 million nationals of Council of Europe member states do not reside in their country of origin, but in some other member state of the Council;
>
> 2. Considering that these citizens cannot normally take part in elections or referenda held in their country of residence because they are not nationals of that country;
>
> 3. Noting that many of them are also unable, under national legislation, to take part from the territory of their country of residence in elections and referenda held in their country of origin because they have no domicile there;
>
> ...
>
> 5. Considering that millions of nationals of Council of Europe member states are thereby deprived of all civic rights;
>
> 6. Mindful that one of the major concerns of the Council of Europe is to preserve and strengthen democracy and civic rights in member states;
>
> 7. Emphasising the importance it attaches to the rights guaranteed by the European Convention on Human Rights and the First Protocol thereto, particularly freedom of expression, freedom of peaceful assembly and freedom of association, as well as the obligation for member states to hold free elections at regular intervals ;
>
> 8. Believing that steps should, therefore, be taken to ensure that every national of a member state is able to exercise his political rights, at least in his country of origin, when he resides in another Council of Europe member state ..."

39. The Assembly recommended, *inter alia*, that the Committee of Ministers:

> "c. consider the possibility of harmonising member states' laws in the interests of maintaining the voting rights of their nationals living in another member state with regard to nation-wide elections and referenda, especially with a view to enabling votes to be cast by post or through diplomatic or consular missions;
>
> d. envisage, if appropriate, the drawing up of a protocol to the European Convention on Human Rights whereby member states would undertake to respect such voting rights for their nationals living in another member state and refrain from hindering the exercise thereof by any measure whatever."

40. In Recommendation 1410 (1999) on links between Europeans living abroad and their countries of origin, the Assembly noted that "several tens of millions" of Europeans were living outside their countries of origin. It continued:

"3. The Assembly believes that it is in the interest of states to ensure that their nationals continue actively to exercise their nationality, so that it does not become merely passive or essentially a matter of feelings and emotions, and that those nationals can in fact play an important go-between role in host countries, working for better political, cultural, economic and social relations between their country of origin and the country where they live."

41. It recommended that the Committee of Ministers:

"iii. prepare a recommendation to the member states with the intention of fostering voluntary participation of expatriates in political, social and cultural life in their country of origin, by instituting and harmonising arrangements for specific representation, such as the unrestricted right to vote or specific parliamentary and institutional representation through various consultative councils ...

...

v. invite member states:

...

c. to draw up, at national level, an in-depth, systematic analytical description of the respective situations of expatriates, with a view to co-ordinating expatriate relations policies at European level and harmonising arrangements for the institutional and political representation of expatriates, for example by creating a real expatriate status through appropriate legal instruments;

d. to take account of their expatriates' interests in policy-making and in national practices concerning:

...

iii. the right to vote in loco in the country of origin;

iv. the right to vote of expatriates in embassies and consulates in their host countries;

..."

42. In Recommendation 1650 (2004) on links between Europeans living abroad and their countries of origin, the Assembly noted that the question of links between countries of origins and their expatriates was a relatively new problem, particularly in central and eastern Europe, that relations varied from strong and institutionalised to loose and informal and that there was no harmonisation in this respect at the pan-European level. It continued:

"4. The Parliamentary Assembly believes that it is in the interest of states to ensure that their expatriate nationals continue to actively exercise their rights linked to nationality and contribute in a variety of ways to the political, economic, social and cultural development of their countries of origin."

43. The recommendation further noted that expatriation was the outcome of increasing globalisation and should be viewed as a positive expression of modernity and dynamism, bringing real economic benefit for both host countries and the countries of origin. The Assembly regretted the lack of follow-up to Recommendation 1410 (1999) and recommended that the Committee of Ministers invite member states, *inter alia*:

"c. to take account of their expatriates' interest in policy making, in particular concerning questions of nationality; political rights, including voting rights; economic rights, including taxation and pension rights; social rights, including social schemes; and cultural rights ..."

44. It further recommended that the Committee of Ministers:

"ii. promote an exchange of views and co-operation between Council of Europe member states as regards political, legal, economic, social and cultural measures aimed at strengthening the links between European expatriates and their countries of origin;

iii. review the existing models of relations between expatriates and their countries of origin, with a view to making proposals for the introduction of legally-binding measures at the European level ..."

45. In Resolution 1459 (2005) on abolition of restrictions on the right to vote, the Assembly stressed at the outset the importance of the right to vote and to stand in elections as a basic precondition for preserving other fundamental civil and political rights upheld by the Council of Europe. It noted that electoral rights were the basis of democratic legitimacy and representativeness of the political process and considered that they should, therefore, evolve to follow the progress of modern societies towards ever inclusive democracy. It stated:

"3. The Assembly considers that, as a rule, priority should be given to granting effective, free and equal electoral rights to the highest possible number of citizens, without regard to their ethnic origin, health, status as members of the military or criminal record. Due regard should be given to the voting rights of citizens living abroad."

46. The resolution continued:

"7. Given the importance of the right to vote in a democratic society, the member countries of the Council of Europe should enable their citizens living abroad to vote during national elections bearing in mind the complexity of different electoral systems. They should take appropriate measures to facilitate the exercise of such voting rights as much as possible ... Member states should co-operate with one another for this purpose and refrain from placing unnecessary obstacles in the path of the effective exercise of the voting rights of foreign nationals residing on their territories."

47. In conclusion, the Assembly invited the member and observer States concerned to:

"b. grant electoral rights to all their citizens (nationals), without imposing residency requirements;

c. facilitate the exercise of expatriates' electoral rights by providing for absentee voting procedures ..."

48. In its follow-up Recommendation 1714 (2005) on abolition of restrictions on the right to vote, the Assembly called upon the Committee of Ministers to appeal to member and observer States to, *inter alia*, review existing instruments with a view to assessing the possible need for a

Council of Europe convention to improve international co-operation with a view to facilitating the exercise of electoral rights by expatriates.

49. In Resolution 1591 (2007) on distance voting (i.e. the exercise of the right to vote when absent from the country) the Assembly reiterated that the right to vote was an essential freedom in every democratic system and invited member States to introduce distance voting.

50. In 2008, the Assembly adopted two resolutions and two corresponding recommendations on the state of democracy in Europe, one on specific challenges facing European democracies (Resolution 1617 (2008) and Recommendation 1839 (2008)); and the other on measures to improve the democratic participation of migrants (Resolution 1618 (2008) and Recommendation 1840 (2008)). In these, the Assembly recalled that the essence of democracy was that all those concerned by a decision must be directly or indirectly part of the decision-making process. Accordingly, it considered representativeness to be of crucial importance and found it unacceptable that large groups of the population were excluded from the democratic process. It further observed that there were over sixty-four million migrants in Europe and that their increasing number resulted in a corresponding increasing need to ensure that they were given a "fair share" in the democratic process. While the Assembly focussed on the importance of the participation of migrants in the political process of the host country, it noted that democratic participation for migrants in their countries of origin was also important.

51. In Resolution 1696 (2009) on engaging European diasporas, the Assembly noted that policies to manage the many challenges and opportunities that had emerged with migration had not kept pace with the development of the phenomenon. It recalled that it had been engaged in dealing with the issue of Europeans living abroad and their links to their homelands for the last fifteen years. It continued:

> "4. The Assembly considers it essential to strike and maintain a proper balance between the process of integration in the host societies and the links with the country of origin. It is convinced that seeing migrants as political actors and not only as workers or economic actors enhances the recognition of their capacity in the promotion and transference of democratic values. The right to vote and be elected in host countries and the opportunity to take part in democratically governed European non-governmental organisations can enable diasporas to endorse an accountable and democratic system of governance in their home countries. Policies that grant migrants rights and obligations arising from their status as citizens or residents in both countries should therefore be encouraged.
>
> 5. The Assembly regrets that, notwithstanding its long-standing calls to revise the existing models of relations between expatriates and their countries of origin, relations between member states of the Council of Europe and their diasporas are far from being harmonised. Many member states from central and eastern Europe are only beginning to recognise the potential development and other benefits of engaging their diasporas in a more institutionalised manner, especially in the context of the current global economic crisis.

6. The Assembly reiterates that it is in the interest of member states to ensure that their diasporas continue to actively exercise the rights linked to their nationality and contribute in a variety of ways to the political, economic, social and cultural development of their countries of origin. It is convinced that globalisation and growing migration may have an impact on host countries in many positive ways by contributing to building diverse, tolerant and multicultural societies."

52. It encouraged member States, as countries of origin, to adopt a number of policy initiatives, including civil and political incentives to:

"9.1.1. develop institutions and elaborate policies for maximum harmonisation of the political, economic, social and cultural rights of diasporas with those of the native population;

9.1.2. ease the acquisition or maintenance of voting rights by offering out-of-country voting at national elections;

..."

53. The corresponding Recommendation (1890 (2009)) recalled previous recommendations on the subject and instructed the European Committee on Migration to:

"5.2.1. define the status, rights and obligations of diasporas in Europe, both in their countries of origin and in host countries;

...

5.2.3. carry out a study on the experience of member states in setting up government offices for diasporas and the experience of granting voting rights to diasporas and access to other political participation mechanisms;

..."

54. Finally, in its Resolution 1897 (2012) on ensuring greater democracy in elections the Assembly called on the member States to foster citizen participation in the electoral process, in particular by, *inter alia*:

"8.1.12. enabling all citizens to exercise their right to vote through proxy voting, postal voting or e-voting, on the condition that the secrecy and the security of the vote are guaranteed; facilitating the participation in the electoral process of citizens living abroad, subject to restrictions in accordance with the law, such as duration of residence abroad, whilst ensuring that, if polling stations are set up abroad, their establishment is based on transparent criteria; safeguarding the right to vote of vulnerable groups (people with disabilities, people who are illiterate, etc.) by adapting polling stations and voting material to their needs; abolishing legal provisions providing for general, automatic and indiscriminate disenfranchisement of all serving prisoners irrespective of the nature or gravity of their offences;"

55. In a number of the above texts, the Assembly also addressed the question of the political participation of migrants in their host countries (see also Recommendation 1500 (2001) on participation of immigrants and foreign residents in political life in the member States).

B. The Committee of Ministers

56. In its reply to Recommendation 1650 (2004) on links between Europeans living abroad and their countries of origin (see paragraphs 42-44 above), the Committee of Ministers commented that the Recommendation raised important and timely issues that should be given serious consideration and therefore brought it to the attention of the governments of the member States. The Committee of Ministers agreed with the Assembly that growing expatriation could be a positive effect of globalisation that contributed to building diverse, tolerant and multicultural societies and recognised the role that migrants could play as vectors of development for both countries of origin and destination. It further agreed that the right balance between the integration into host societies and the links with the country of origin should be achieved and maintained, and charged the European Committee on Migration with examining the concrete mechanisms linked to the migratory processes at the pan-European level, with a view to identifying the legal measures that could contribute to such a balance.

57. In its reply to Recommendation 1714 (2005) on abolition of restrictions on the right to vote (see paragraph 47 above), the Committee of Ministers agreed that the abolition of existing restrictions on the right to vote should be the subject of further activities of the Council of Europe. It also agreed that that member States should take measures to facilitate the exercise of voting rights of citizens living abroad, for example through postal, consular or e-voting. However, it did not see any pressing need to elaborate a convention to improve international co-operation on the issue.

58. In its Final Declaration at the 8th Council of Europe Conference of Ministers responsible for migration affairs regarding "Economic migration, social cohesion and development: towards an integrated approach", 4-5 September 2008, the Committee of Ministers recognised that the Council of Europe had the potential to develop holistic and coherent policies in the field of migration based on human rights. The thematic report prepared as a main reference for the Conference contained a chapter on migration and social cohesion. On the question of links between the migrant and the country of origin, the report noted:

> "286. At the same time, long term and permanent immigrants increasingly maintain multiple social, economic and political ties and sometimes, dual citizenship with both host and home countries, establishing social and communities that transcend geographical, cultural and political borders. As well, migrants are developing transnational activities and multicultural and multilingual skills. These evolving features of international migration also need to be taken into account in designing policies and practices to ensure social inclusion and cohesion in European countries."

59. The report also commented on the emergence of "transnationalism" in the area of migration:

"386. ... The term transnationalism refers to processes whereby migrants develop multiple social ties between the society from which they come and the host society, establishing social communities that transcend geographical, cultural and political borders. More people attain multiple identities, transnational relationships and dual or multiple citizenship. An increasing number of migrants are organising their lives with reference to two or more societies and are developing transnational activities and multicultural and multilingual skills. Dual citizenship and European 'citizenship' reflect greater freedom of movement, multicultural societies, employment mobility, activities in two or more countries, and so on. An increasing migratory circulation within the European area reflecting a gradual emergence of cosmopolitan, intercultural and global citizenship."

C. The Venice Commission

60. The European Commission for Democracy though Law ("Venice Commission") adopted Guidelines on Elections at its 51st Plenary Session on 5-6 July 2002. As regards the principle of universal suffrage, the Guidelines provided:

"Universal suffrage means in principle that all human beings have the right to vote and to stand for election. This right may, however, and indeed should, be subject to certain conditions ..."

61. These conditions included conditions of age, nationality, residence and other grounds for deprivation of the right to vote. As to residence, the Guidelines noted:

"i. A residence requirement may be imposed.

ii. Residence in this case means habitual residence.

iii. A length of residence requirement may be imposed on nationals solely for local or regional elections.

iv. The requisite period of residence should not exceed six months; a longer period may be required only to protect national minorities.

v. The right to vote and to be elected may be accorded to citizens residing abroad."

62. The Guidelines were subsequently included, together with an explanatory report, in the Code of Good Practice in Electoral Matters adopted by the Venice Commission at its 52nd Plenary Session, 18-19 October 2002.

63. At its 61st Plenary Session, 3-4 December 2004, the Venice Commission endorsed two reports on the Abolition of Restrictions on the Right to Vote in General Elections (CDL-AD (2005) 012 and CDL-AD (2005) 011). One of the reports contained reflections on the right to vote of expatriates in their countries of origin. It noted:

"28. Most of the citizens in European countries who are temporarily working or staying abroad are registered in the Voters' List in their country of origin. Those persons are mainly registered according to their last place of residence prior to the departure abroad. This clearly indicates the determination of the legislators to use

residence as a basis for allocation of the citizens (who have a right to vote) in the Voters' List ..."

64. It continued:

"31. One question arises from the aforesaid facts: why do most of the states decide to adopt the concept that links the right of a citizen to vote with his or her residence? The methodology of voter registration determines the distribution of the polling stations, and accordingly results in the layout of the electoral districts. But, citizens who are abroad on Election Day in the same Council of Europe member states may exercise their right to vote in the diplomatic and consular offices or by mail. However, according to the legislation of the same countries, they would have to return to their country and cast their vote in the polling station located in the municipality where their last residence was before they left the country. Not all of them might be in a position to do so.

32. In our view, the country of origin should find a formula to encompass this category of voters who reside abroad and want to exercise their right to vote, but cannot come to their country on Election Day. It is up to the citizen to decide whether or not he/she wishes to exercise this right. The same approach should be applied to the legal requirement for passive suffrage ... This approach is particularly important for countries with a large numbers of its nationals living abroad, who, at the same time, maintain relations with [the] state ..."

65. A subsequent opinion on the Assembly's Recommendation 1714 (2005) (see paragraph 47 above) adopted by the Venice Commission in October 2005 noted:

"3. The right to vote as one of the fundamental political rights is also fundamental for the fulfilment of a number of civil and social rights. At the same time the principles of universality, equality, freedom and secret ballots are the four pillars of the European electoral heritage and they are introduced into the constitutions and electoral legislation of the member and observer states of the Council of Europe. In this respect the abolition of existing restrictions on the right to vote should be of interest to states and it should also serve as an issue for further activities of the Council of Europe and other international organisations.

4. In some member and observer states of the Council of Europe, the implementation of existing standards and general principles is deeply influenced by customs, and traditions, but most of all by the level of political culture. In a number of cases and situations in countries of Europe and elsewhere various norms and practices have been established which restrict the right to vote to certain categories of people. Such restrictions are problematic from a human rights perspective. European institutions and in this case the Parliamentary Assembly of the Council of Europe are working to overcome such restrictions."

66. The opinion concluded that the Venice Commission was following the achievements in the area of democratic elections and in respect of voting rights as one of the basic human rights which would continue to influence improvements in international and national legislation.

67. A report on Electoral Law and Electoral Administration in Europe, adopted by the Venice Commission in June 2006 (CDL-AD (2006) 018), noted, on the question of overseas voters:

"57. External voting rights, e.g. granting nationals living abroad the right to vote, are a relatively new phenomenon. Even in long-established democracies, citizens living in foreign countries were not given voting rights until the 1980s (e.g. Federal Republic of Germany, United Kingdom) or the 1990s (e.g., Canada, Japan). In the meantime, however, many emerging or new democracies in Europe have introduced legal provisions for external voting (out-of-country voting, overseas voting). Although it is yet not common in Europe, the introduction of external voting rights might be considered, if not yet present. However, safeguards must be implemented to ensure the integrity of the vote ....."

68. In June 2011 the Venice Commission adopted a report on Out-of-Country Voting (CDL-AD (2011) 022). The report noted the complexity of the issue of the right to vote of overseas electors and indicated that it was within the scope of the State's own sovereignty to decide whether to grant the right to vote to citizens residing abroad. The report identified the following arguments in favour of out-of-country voting:

"63. Legal recognition of citizens is based on the principle of 'nationality'. The citizens of a country therefore enjoy, in principle, all the civil rights recognised in that country.

64. The principle of 'out-of-country voting' enables citizens living outside their country of origin to continue participating in the political life of their country on a 'remote' basis ...

65. Out-of-country voting guarantees equality between citizens living in the country and expatriates.

66. It ensures that citizens maintain ties with their country of origin and boosts their feeling of belonging to a nation of which they are members regardless of geographical, economic or political circumstances."

69. Discussing the nature and effects of restrictions imposed, the report observed:

"70. In the case of states whose citizens live abroad in large numbers, to the extent that their votes could appreciably affect election results, it seems more appropriate to provide parliamentary representation for the citizens resident abroad by pre-defined numbers of members of parliament elected by them ...

71. Given that, in the case of national elections at least, it is exceptional for foreign nationals to have the right to vote in their place of residence, citizens residing abroad are likely to be unable to vote anywhere if they do not have the right to vote in their country of origin. Denying them that right is therefore equivalent to a derogation from the right to vote. It should be possible to find a solution more in keeping with the principle of proportionality by placing certain restrictions on voting rights of citizens residing abroad.

72. Restrictions of a formal nature or based on the voting procedure make it possible to exclude persons having no ties with the country of origin – who will probably not vote anyway. The mere fact of requiring registration on an electoral roll, usually for a limited period, calls for action on the part of potential voters.

73. One might also wonder whether, instead of excluding citizens residing abroad completely, it would not be preferable to restrict the right to vote to those who have

lived in the country for a certain time, and to set a limit on the period for which they retain the right to vote after leaving the country ..."

70. As regards the loss of the right to vote after a specified period of absence, the report added:

"76. ... it would nevertheless be preferable for the situation to be reconsidered, rather than for provision to be made for the right to vote to be purely and simply lost."

71. The report concluded that national practices regarding the right to vote of citizens living abroad and its exercise were far from uniform in Europe. However, developments in legislation pointed to a favourable trend in out-of-country voting, in national elections at least, as regards citizens who had maintained ties with their country of origin. The Commission accepted that the denial of the right to vote to citizens living abroad or the placing of limits on that right constituted a restriction of the principle of universal suffrage. However, it did not consider at this stage that the principles of the European electoral heritage required the introduction of such a right, namely a right for all expatriate citizens to vote in their State of nationality which was subject to no residence qualification. The Commission nonetheless suggested, in view of citizens' European mobility, that States adopt a positive approach to the right to vote of citizens living abroad, since this right fostered the development of national and European citizenship

IV. PRACTICE IN COUNCIL OF EUROPE MEMBER STATES

72. In the context of the Venice Commission's recent report on Out-of Country Voting (see paragraphs 68-71 above), a review of the legislation of the law and practice of the forty-seven member States of the Council of Europe was conducted. From this, together with other information at the Court's disposal, one can draw the following broad picture of the right of non-residents to vote in national elections in the country of citizenship.

73. In three States, voting by non-residents is either prohibited or restricted to a very limited category of persons (Armenia, Ireland and Malta).

74. In thirty-five States no restrictions are placed on the period of absence from the country (Albania, Andorra, Austria, Azerbaijan, Belgium, Bulgaria, Cyprus, Czech Republic, Croatia, Estonia, Finland, France, Georgia, Greece, Iceland, Italy, Latvia, Lithuania, Luxembourg, Moldova, Monaco, Norway, Netherlands, Poland, Portugal, Romania, Russia, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey and Ukraine).

75. Nine States allow non-residents to vote but impose restrictions. Seven States restrict the right to vote from overseas to those "temporarily" abroad (Bosnia and Herzegovina, Denmark, Hungary, Liechtenstein,

Montenegro, Serbia and the former Yugoslav Republic of Macedonia). In three of these States the term "temporary" is not defined and no particular conditions are imposed on non-residents to demonstrate that their residence abroad is temporary (Bosnia and Herzegovina, Montenegro and Serbia). Two States grant a right to vote to overseas electors abroad for a long-term period but remove the right at the expiry of this period (Germany, which removes the right after twenty-five years, and the United Kingdom).

76. In the forty-four States which allow some degree of voting by non-residents, the modalities of voting differ, with some allowing votes by post or proxy, others requiring voting in person at embassies and consulates, and yet others permitting voting in person on national territory only (see *Sitaropoulos and Giakoumopoulos v. Greece* [GC], no. 42202/07, §§ 32-45, ECHR 2012 for further details).

THE LAW

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

77. The applicant complained that he was no longer permitted to vote in United Kingdom elections and alleged a 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."

78. The Government contested that argument.

A. Admissibility

1. Exhaustion of domestic remedies

79. The Government contended that the applicant had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention as he had failed to seek judicial review of the fifteen-year rule relying on EU law. In this respect, they pointed to the judicial review proceedings in *Preston* (see paragraphs 29-33 above), which at the time the Government submitted their observations had just been granted leave to proceed.

80. The applicant denied that any effective remedy to provide redress to his complaint was open to him. He emphasised that the claimant in *Preston* was not seeking to rely on his right under Article 3 of Protocol No. 1 to argue that the disenfranchisement was disproportionate, but was relying on general EU law. In any event, he did not agree that the proceedings offered

reasonable prospects of success, despite the fact that permission to bring the proceedings had been granted.

81. The Court observes that the applicant's complaint concerns a provision of primary legislation regulating the right to vote in parliamentary elections. This matter does not fall within the scope of EU law. The claimant in *Preston* sought to recast the issue as one concerning free movement rights, in order to engage EU law. Ultimately, his attempt failed, with judges in both the High Court and the Court of Appeal ruling that there was no evidence that the fifteen-year rule interfered with free movement rights (see paragraphs 30 and 33 above). In any case, given the reasons handed down by the Court of Appeal (as noted in paragraph 33 above) – reasons which transcend the issue of freedom of movement – it cannot be said that the applicant had a reasonable prospect of success had he undertaken to commence judicial review proceedings.

2. Victim status

82. The Government contended that the applicant was not a victim of an alleged violation by reason of his failure to apply to be registered to vote in any parliamentary elections since his emigration to Italy. They argued that the position was analogous to that of claims by widowers who complained to the Court about discriminatory access to various benefits (see, *inter alia*, *Cornwell v. the United Kingdom* (dec.), no. 36578/97, 11 May 1999; and *Hooper v. the United Kingdom* (dec.), no. 42317/98, 9 September 2008).

83. The applicant maintained that he was directly affected by the existence of the impugned law as he had been resident outside the United Kingdom for more than fifteen years.

84. In order to be able to lodge a petition by virtue of Article 34, a person, non-governmental organisation or group of individuals must be able to claim to be the victim of a violation of the rights set forth in the Convention. In order to claim to be a victim of a violation, a person must be directly affected by the impugned measure: the Convention does not envisage the bringing of an *actio popularis* for the interpretation of the rights it contains or permit individuals to complain about a provision of national law simply because they consider, without having been directly affected by it, that it may contravene the Convention. However, it is open to a person to contend that a law violates his rights, in the absence of an individual measure of implementation, if he is required either to modify his conduct or risks being prosecuted, or if he is a member of a class of people who risk being directly affected by the legislation (see *Burden v. the United Kingdom* [GC], no. 13378/05, §§ 33 and 34, 29 April 2008; and *Tănase v. Moldova* [GC], no. 7/08, § 104, ECHR 2010).

85. The applicant, who has resided in Italy since 1982, is now precluded from voting in the United Kingdom on account of statutory provisions removing this right from those resident abroad for more than fifteen years.

He makes no claim for pecuniary or non-pecuniary damage. His interest in pursuing his complaint is limited to the point of principle at issue, namely whether the primary legislation precluding from voting those who, like himself, have been resident outside the United Kingdom for more than fifteen years is compatible with Article 3 of Protocol No. 1. No purpose is served by requiring the applicant, prior to lodging his application with this Court, to make an application to be registered as an overseas voter which would be bound to fail in light of the explicit terms of the 1985 Act. There can be no doubt that he belongs to a class of people directly affected by the legislation.

86. Given the nature of the complaint and the terms of the primary legislation, the applicant can claim to be a victim despite the absence of an individual measure of implementation in his case (see *Norris v. Ireland*, 26 October 1988, §§ 31-34, Series A no. 142; and *Burden*, cited above, § 34).

3. Conclusion on admissibility

87. The complaint cannot be rejected for failure to exhaust domestic remedies or for lack of victim status. No other ground for inadmissibility has been established. The complaint must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

88. The applicant argued that no time-limit should be imposed on the right of EU citizens resident abroad to vote in their country of origin while they retained the nationality of that country. Addressing the Court's decision in *Doyle*, cited above, he argued that the four factors identified to justify the residence requirement were now outdated. Globalisation, modern technology and low-cost travel companies made it easier for citizens resident overseas to maintain contact with their country of origin both remotely and by frequent visits. Those who considered a residence requirement to be justified failed to recognise the reality of many nationals living abroad in the exercise of their free movement rights guaranteed by EU law. Despite their residence abroad, journalists could continue to work for British newspapers, businessmen could be employed by British companies and lawyers could provide advice on English law. Notwithstanding long-term residence abroad, British nationals might still be considered domiciled in the United Kingdom, which had particular relevance to matters concerning tax and inheritance.

89. The applicant maintained that he had retained very strong ties with the United Kingdom. He was a retired serviceman of the British army; he received a pension from the State, paid into a British bank account; he paid tax on his pension to the Inland Revenue; he had family members in the United Kingdom and was a member of a number of clubs and organisations there; and he was the representative in Italy of a British ex-servicemen organisation. He pointed out that he was entitled to return to the United Kingdom to live and to receive treatment from the National Health Service. Matters such as pensions, banking, financial regulations, taxation and health, which were all the subject of political decisions in the United Kingdom, affected him.

90. The applicant also pointed to the extensive activities of Council of Europe bodies in this area and their support of expatriates' right to exercise their nationality and right to vote (see paragraphs 38-71 above). He referred to the fact that other member States allowed unrestricted overseas voting by their nationals.

91. The possibility of obtaining Italian nationality could not render the fifteen-year rule in the United Kingdom a reasonable or proportionate restriction on the right to vote. Although he would be entitled to retain his British nationality, the acquisition of Italian nationality would have other consequences in Italian law that would be detrimental to him, including the application of Italian, rather than English, laws on succession. Further, he disputed the suggestion that he would be able to participate fully in the democratic process in Italy, explaining that he could not read, write or speak Italian to the same level as Italian citizens.

92. The applicant concluded that the time-limit imposed by the respondent State had the effect of disenfranchising him completely. Disenfranchisement was a very serious breach of human rights, requiring a discernible and sufficient link between the sanction of disenfranchising someone and the circumstances of the person being disenfranchised. He contended that the question went to the heart of a fundamental right, the removal of which had serious consequences. The small number of potential overseas electors who took the time and trouble to register as voters (see paragraphs 20-25 above) demonstrated that there was insufficient public interest to continue to exclude nationals overseas for more than fifteen years from voting. The decision in *Doyle* required reconsideration because it was clear that the residence requirement in the United Kingdom impaired the essence of the applicant's fundamental right to vote and resulted in a violation of Article 3 of Protocol No. 1.

(b) The Government

93. The Government disagreed that the fifteen-year rule was incompatible with Article 3 of Protocol No. 1. They pointed to the wide margin of appreciation in this area, and the freedom enjoyed by States to

organise and run their electoral systems in keeping with their own democratic vision (citing *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, § 61, ECHR 2005-IX).

94. In their view, the Court's case-law clearly established that a residence condition was, in principle, justifiable as a proportionate limitation on the right to vote (citing *Hilbe*, *Melnychenko* and *Doyle*, all cited above). The fifteen-year period imposed in the United Kingdom reflected the view that during a lengthy period of absence an individual's connection with the country was likely to diminish. The small number of non-residents who registered to vote provided some support for this view. It was undeniable that a non-resident absent for more than fifteen years was affected by the decisions of Government to a lesser extent than residents. It was therefore legitimate to conclude that the ability of non-residents to have a direct influence on democratic processes by voting should also diminish with time.

95. The Government accepted that a rule imposing a time-limit after which some individuals were no longer permitted to vote might be perceived as having a more serious impact on some individuals, who had in fact retained strong ties with the United Kingdom. This was an inevitable feature of a rule of general application. The alternative was to impose a restriction which varied in individual cases, perhaps depending on actual ties with the United Kingdom, but this would be very difficult if not impossible to administer fairly in practice. Parliament had considered the issue on a number of occasions. Following extensive consideration of competing arguments, it had concluded that a fixed time-limit was appropriate and had set that time-limit at fifteen years. This was a substantial period and could only be considered a disproportionate restriction on the right to vote on the basis that voting by non-residents must be permitted regardless of the period of absence. This would be a radical departure from the case-law to date and would amount to an unacceptable abrogation of the margin of appreciation in this area.

96. The Government pointed to the fact that, as regards those who moved elsewhere within the EU, the express policy of EU law was that they should be able to participate in some of the political processes of the State where they were resident, to facilitate their integration into society in that State. In this case, the applicant could also have acquired Italian nationality which would have entitled him to vote in Italian elections, without giving up his British nationality. He therefore had an opportunity to participate fully in the political life of the country which he had chosen to make his home for thirty years.

97. The various political pronouncements of Council of Europe organs did not call into question the compatibility of the fifteen-year rule. While the Parliamentary Assembly, for example, had called upon member States to facilitate voting by non-residents, it had never suggested that the

Convention imposed on them an absolute obligation to do so. On the contrary it recognised that proportionate limitations to the right to vote were permitted. The Committee of Ministers has focussed on the participation by migrants in the political life of countries to which they had emigrated. The Venice Commission had recently concluded that while the denial of a right to vote to citizens living abroad constituted a restriction on the principle of universal suffrage, it did not consider that the principles of the European electoral heritage required the introduction of such a right at this stage.

98. The Government therefore invited the Court to find no violation of Article 3 of Protocol No. 1.

2. The Court's assessment

(a) General principles concerning the right to vote

99. Article 3 of Protocol No. 1 enshrines a characteristic principle of an effective political democracy and is accordingly of prime importance in the Convention system. Despite its general formulation, it implies individual rights, including the right to vote and the right to stand for election (see *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, §§ 47 and 51, Series A no. 113; and *Sitaropoulos and Giakoumopoulos*, cited above, § 63).

100. However, the rights bestowed by Article 3 of Protocol No. 1 are not absolute. There is room for implied limitations and Contracting States must be allowed a margin of appreciation in this sphere (see *Hirst (no. 2)*, cited above, § 60). For a measure to be deemed compatible with the right to vote, the Court must be satisfied that the conditions to which the right to vote is made subject do not curtail the right to such an extent as to impair its very essence and deprive it of its effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate (see *Tănase*, cited above, § 162; *Hirst (no. 2)*, cited above, § 62; *Yumak and Sadak v. Turkey* [GC], no. 10226/03, § 109, 8 July 2008; and *Sitaropoulos and Giakoumopoulos*, cited above, § 64).

101. The concept of "implied limitations" under Article 3 of Protocol No. 1 is of major importance for the determination of the relevance of the aims pursued by restrictions on the rights guaranteed by this provision (see *Mathieu-Mohin and Clerfayt*, cited above, § 52; and *Sitaropoulos and Giakoumopoulos*, cited above, § 64). Given that Article 3 of Protocol No. 1 is not limited by a specific list of "legitimate aims", the Contracting States can justify a restriction by reference to any aim which is compatible with the principle of the rule of law and with the general objectives of the Convention (see *Ždanoka v. Latvia* [GC], no. 58278/00, § 115, ECHR 2006-IV; and *Sitaropoulos and Giakoumopoulos*, cited above, § 64).

102. When reviewing the proportionality of the measure, it must be borne in mind that numerous ways of organising and running electoral systems exist. There is a wealth of differences, *inter alia*, in historical development, cultural diversity and political thought within Europe which it is for each Contracting State to mould into its own democratic vision (see *Hirst (no. 2)*, cited above, § 61; and *Sitaropoulos and Giakoumopoulos*, cited above, § 66). This means that the proportionality of electoral legislation (and of any limitations on voting rights) must be assessed also in light of the socio-political realities of a given country. Furthermore, since the Convention is first and foremost a system for the protection of human rights, the Court must have regard to the changing conditions within the respondent State and within Contracting States generally and respond to any emerging consensus as to the standards to be achieved. In this regard, one of the relevant factors in determining the scope of the authorities' margin of appreciation may be the existence or non-existence of common ground between, or even trends in, the laws of the Contracting States (see *Hirst (no. 2)*, cited above, §§ 78, 81 and 84; and *Sitaropoulos and Giakoumopoulos*, cited above, § 66). Whether the impugned measure has been subjected to parliamentary scrutiny is also relevant, albeit not necessarily decisive, to the Court's proportionality assessment (see *passim Hirst (No. 2)*, cited above, especially §§ 78-79; *Doyle*, cited above; and *Alajos Kiss v. Hungary*, no. 38832/06, § 41, 20 May 2010).

103. Finally, it should be recalled that the right to vote is not a privilege. In the twenty-first century, the presumption in a democratic State must be in favour of inclusion (see *Hirst (no. 2)*, cited above, § 59; and *Sitaropoulos and Giakoumopoulos*, cited above, § 67). The exclusion from the right to vote of any groups or categories of the general population must be reconcilable with the underlying purposes of Article 3 of Protocol No. 1 (see *Ždanoka*, cited above, § 105; and *Sitaropoulos and Giakoumopoulos*, cited above, § 67). Any general, automatic and indiscriminate departure from the principle of universal suffrage risks undermining the democratic validity of the legislature thus elected and the laws it promulgates (see *Hirst (no. 2)*, § 62; and *Sitaropoulos and Giakoumopoulos*, cited above, § 68).

(b) General principles concerning restrictions imposed by a residence requirement

104. The Commission, in a series of cases beginning in 1961, found complaints concerning restrictions on the right to vote based on residence to be inadmissible as manifestly ill-founded (see *X. and Others v. Belgium*, no. 1065/61, Commission decision of 18 September 1961, Yearbook Vol. 4, p. 269; *X. v. the United Kingdom*, no. 7566/76, Commission decision of 11 December 1976, Decisions and Reports (D.R.) 9, p. 121; *X. v. the United Kingdom*, no. 7730/76, Commission decision of 28 February 1979, D.R. 15, p. 137; *X. v. the United Kingdom*, no. 8873/80, Commission decision of

13 May 1982, D.R. 28, p. 99; *Polacco and Garofalo v. Italy*, no. Allemagne, Commission decision of 15 September 1997, unpublished; and *Luksch v. Germany*, no. 35385/97, Commission decision of 21 May 1997, D.R. 89B, p. 175).

105. In subsequent cases before the Court, it also found the imposition of a residence restriction compatible in principle with Article 3 of Protocol No. 1 (see *Hilbe*, *Melnychenko* and *Doyle*, all cited above). The justification for the restriction was based on several factors: first, the presumption that non-resident citizens were less directly or less continually concerned with their country's day-to-day problems and had less knowledge of them; second, the fact that non-resident citizens had less influence on the selection of candidates or on the formulation of their electoral programmes; third, the close connection between the right to vote in parliamentary elections and the fact of being directly affected by the acts of the political bodies so elected; and fourth, the legitimate concern the legislature might have to limit the influence of citizens living abroad in elections on issues which, while admittedly fundamental, primarily affect persons living in the country (see *Hilbe* and *Doyle*, both cited above; and *Melnychenko*, cited above, § 56). The Court has recognised that it is possible in an individual case that the applicant has not severed ties with his country of origin and that some of the factors indicated above are therefore inapplicable to his case. However, it took the view that the law could not take account of every individual case but must lay down a general rule (see *Hilbe* and *Doyle*, both cited above), while never discounting completely the possibility that in some circumstances the application of a general rule to an individual case could amount to a breach of the Convention.

106. Finally, the Court has previously implied that the ease with which an applicant can acquire the citizenship of his State of residence, and thus exercise his right to vote in that country, may be relevant to the proportionality of a residence requirement in his State of origin (see *Doyle*, cited above). The possibility of acquiring a new citizenship is not, however, decisive given that the acquisition of such citizenship may have adverse consequences in other areas of one's life and that an applicant's interest in casting his vote in the State to which he feels most closely connected must also be given due weight.

(c) Application of the general principles to the facts of the case

107. Neither the applicant nor the Government expressly identified the legitimate aim of the restriction in the present case. However, the Court is satisfied that it pursues the legitimate aim of confining the parliamentary franchise to those citizens with a close connection with the United Kingdom and who would therefore be most directly affected by its laws (see paragraphs 30 and 33 above).

108. The applicant contended that the restriction curtailed his right to vote to such an extent as to impair its very essence and deprive it of its effectiveness. The Court observes that non-residents are permitted to vote in national elections for fifteen years following their emigration. If the applicant returned to live in the United Kingdom, his right to vote as a resident would be restored. In these circumstances it cannot be said that the restriction in the present case impairs the very essence of the applicant's rights under Article 3 of Protocol No. 1. The central question in the present case, therefore, concerns the proportionality of the restriction imposed.

109. The applicant did not challenge the nature of the restriction imposed in the United Kingdom; nor did he raise any issue as to the meaning and extent of the word "resident" for the purposes of section 1(3) of the 1985 Act; rather, he contended that any restriction on voting in national elections based on residence was of itself disproportionate. In these circumstances, the Court must first examine whether Article 3 of Protocol No. 1 requires Contracting States to grant the right to vote to non-resident citizens (henceforth "non-residents") without any restriction based on residence. It must then examine whether in the instant case the current legislation, whereby non-residents are disenfranchised after fifteen years of non-residence, is a proportionate limitation on the right to vote which strikes a fair balance between competing interests. The instant case differs from the case of *Sitaropoulos and Giakoumopoulos*, cited above, where the Court was asked to consider whether Article 3 of Protocol No. 1 placed States under an obligation to introduce a system enabling expatriate citizens to exercise their voting rights from abroad.

110. The principal thrust of the reasoning adopted by the Court in *Doyle* to justify the imposition of a residence requirement has remained unchanged since the 1976 Commission decision in *X. v. the United Kingdom*, cited above. However, there is no doubt that since that time, migration has increased significantly. At the same time, the emergence of new technologies and cheaper transport has enabled migrants to maintain a higher degree of contact with their State of nationality than would have been possible for most migrants forty, even thirty, years ago. This has led a number of States including the United Kingdom to amend their legislation to allow for the first time non-residents to vote in national elections (see paragraphs 15 *et seq.* and 67 above). It is therefore appropriate to examine the nature and extent of the developments at international level and within the laws of the member States in order to determine whether there is any emerging trend or possibly even consensus which might affect the scope of the margin of appreciation afforded to States in this area (see paragraph 102 above).

111. It is clear that the Parliamentary Assembly of the Council of Europe and more recently the Venice Commission have been active in seeking to resolve questions of participation in the political process and

enjoyment of civic rights which arise as a result of migration. As early as 1982, the Assembly recommended that the Committee of Ministers explore the possibility of harmonising member States' laws in favour of preserving the voting rights of nationals residing abroad (see paragraph 39 above). In 1999 it recommended that the Committee of Ministers invite member States to take account of their expatriates' interests in policy making and in national practices concerning the right to vote in the country of origin (see paragraph 41 above). It re-examined the matter in 2004 and, as well as reiterating the substance of its 1999 recommendation, recommended that the Committee of Ministers consider making proposals for the introduction of legally-binding measures at European level concerning relations between expatriates and their country of origin (see paragraphs 42-44 above). In a 2005 resolution, the Assembly said that "due regard" had to be given to the voting rights of non-residents and that member States should take measures enabling non-residents to vote in national elections and facilitating the exercise of the right (see paragraphs 45-47 above). In a follow-up recommendation, it called on States to review existing instruments with a view to assessing the need for a Council of Europe Convention on the matter (see paragraph 48 above). Twin resolutions and recommendations in 2008 again drew attention to the question of democratic participation of non-residents in their countries of origin (see paragraph 50 above). In a 2009 resolution, the Assembly expressed regret at the failure of States to pursue harmonisation in this area and once again encouraged them to adopt policy initiatives to seek harmonisation and to offer out-of-country voting (see paragraphs 51-52 above). However, in a more recent resolution of 2012, the Assembly appears to have accepted that a condition based on residence abroad could be a justified restriction of the right to vote of non-residents (see paragraph 54 above).

112. While acknowledging the need to address the challenges in the political sphere posed by migration, the Committee of Ministers did not see the need for a Council of Europe instrument governing the right to vote of migrants (see paragraph 57 above).

113. The Venice Commission Code of Good Practice in Electoral Matters 2002 makes reference to the need for certain conditions to be imposed on the right to vote and accepts that a residence requirement may be imposed. It provides that the right to vote "may" be accorded to citizens resident abroad (see paragraphs 60-62 above). A report endorsed by the Commission in 2004 drew attention to the growing debate regarding the exercise of voting rights by non-residents (see paragraphs 63-64 above). The Commission's 2006 report on electoral law and administration observed that overseas voting rights were not yet common in Europe (see paragraph 67 above). Its 2011 report on out-of-country voting recognised that the grant of voting rights to non-residents was a matter of State sovereignty. It did, however, list a number of arguments in favour of the

grant of such rights and identified the nature and effects of restrictions imposed. Although it indicated that the fixing of a time-limit for retention of the right to vote after a national had emigrated was preferable to the complete exclusion of non-residents, it also indicated that even in the former case, it was preferable that the situation be "reconsidered" at the expiry of the time-period rather than that the right to vote simply be lost. Having regard to the lack of uniformity in national practices, the Commission concluded that the principles of the European electoral heritage did not, at this stage, require the introduction of a right to vote for non-residents. It did, however, suggest that States adopt a positive approach to this right, in view of citizens' European mobility (see paragraphs 68-71 above).

114. The above review of the activities of Council of Europe bodies demonstrates that there is a growing awareness at European level of the problems posed by migration in terms of political participation in the countries of origin and residence. However, none of the material forms a basis for concluding that, as the law currently stands, States are under an obligation to grant non-residents unrestricted access to the franchise. The differing approaches and political agendas of the various bodies concerned reveal an important disparity in preferred approaches. The material highlights that the question of voting rights for non-residents in their States of nationality must be seen within the larger context of the discussion surrounding migrants' political activities more generally. A key issue which still has to be addressed within this discussion is whether the focus should be on promoting participation in the State of origin, in the State of residence or in both. Further issues concern the modalities of the exercise by non-residents of the right to vote, which give rise to practical and security considerations. The 2011 report by the Venice Commission made an important contribution to the debate but reached no firm conclusions as to how member States should seek to develop their laws and practices over the coming years. The challenges posed in this regard should not be underestimated.

115. Turning to the laws and practices of the member States in this area, there is a clear trend in favour of allowing voting by non-residents, with forty-four States granting the right to vote to citizens resident abroad otherwise than on State service (see paragraphs 74-75 above). Of these, thirty-five States do not remove this right once a citizen has resided abroad for a certain period of time (see paragraph 74 above). Nine States appear to limit the right by reference to the duration of the citizen's stay abroad (see paragraph 75 above). While the majority in favour of an unrestricted right of access of non-residents to voting rights appears to be significant, the legislative trends are not sufficient to establish the existence of any common European approach concerning voting rights of non-residents. In particular, there is no common approach as to the extent of States' obligations to enable non-residents to exercise the right to vote (see paragraph 76 above

and *Sitaropoulos and Giakoumopoulos*, cited above, § 75). It therefore cannot be said that the laws and practices of member States have reached the stage where a common approach or consensus in favour of recognising an unlimited right to vote for non-residents can be identified. Although the matter may need to be kept under review in so far as attitudes in European democratic society evolve, the margin of appreciation enjoyed by the State in this area still remains a wide one.

116. As far as the proportionality of the United Kingdom legislation is concerned, it allows non-residents to vote for fifteen years after leaving the country, which is not an unsubstantial period of time. That the applicant may personally have preserved a high level of contact with the United Kingdom and have detailed knowledge of that country's day-to-day problems and be affected by some of them does not render the imposition of the fifteen-year rule disproportionate: while they require close scrutiny, general measures which do not allow for discretion in their application may nonetheless be compatible with the Convention (see *James and Others v. the United Kingdom*, 21 February 1986, § 68, Series A no. 98; *Twizell v. the United Kingdom*, no. 25379/02, § 24, 20 May 2008; *Amato Gauci v. Malta*, no. 47045/06, § 71, 15 September 2009; *Allen and Others v. the United Kingdom* (dec.), no. 5591/07, § 66, 6 October 2009; *Sitaropoulos and Giakoumopoulos*, cited above, § 79; and paragraph 103 above. See also, *mutatis mutandis*, *Ždanoka*, cited above, §§ 114, 115(d) and 128). Having regard to the significant burden which would be imposed if the respondent State were required to ascertain in every application to vote by a non-resident whether the individual had a sufficiently close connection to country (see the findings of the High Court and the Court of Appeal in *Preston*, in paragraphs 30 and 33 above), the Court is satisfied that the general measure in this case serves to promote legal certainty and to avoid the problems of arbitrariness and inconsistency inherent in weighing interests on a case-by-case basis (see, *mutatis mutandis*, *Evans v. the United Kingdom* [GC], no. 6339/05, § 89, ECHR 2007-I). Finally the Court reiterates that the applicant has not raised, not even before the domestic courts, any issue as to the possible uncertainty or lack of clarity as to the meaning and extent of the word "resident" for the purpose of the 1985 Act (see paragraph 109 above and compare *Melnychenko*, cited above).

117. There is also extensive evidence before the Court to demonstrate that Parliament has sought to weigh the competing interests and to assess the proportionality of the fifteen-year rule (compare *Hirst (No. 2)*, cited above, § 79; and *Alajos Kiss*, cited above, § 41). The question of non-residents' voting rights has been examined twice by the Home Affairs Select Committee in the past thirty years, and on both occasions a report was produced (see paragraphs 16 and 20 above). The evolution of views in this area is demonstrated by the fact that the conclusion of the most recent report in 1998 was almost diametrically opposed to the conclusion reached

in the Committee's 1982 report. As a consequence of these reports and of consultation exercises, legislation was introduced in Parliament first granting a right to vote to non-residents in 1985 and subsequently, in 1989 and 2000, amending the time-period (see paragraphs 17-18 and 21 above). The question has been debated in Parliament on several occasions since 2000, in the context of amendments proposed to two draft bills on electoral law and a short debate specifically on non-residents' voting rights (see paragraphs 22-28 above). This is not to say that because a legislature debates, possibly even repeatedly, an issue and reaches a particular conclusion thereon, that conclusion is necessarily Convention compliant. It simply means that that review is taken into consideration by the Court for the purpose of deciding whether a fair balance has been struck between competing interests. With regard to the issue under examination, the Court notes that the matter remains under active consideration by the present Government of the respondent State.

118. In conclusion, having regard to the margin of appreciation available to the domestic legislature in regulating parliamentary elections, the restriction imposed by the respondent State on the applicant's right to vote may be regarded as proportionate to the legitimate aim pursued. The Court is thus satisfied that the impugned legislation struck a fair balance between the conflicting interests at stake, namely the genuine interest of the applicant, as a British citizen, to participate in parliamentary elections in his country of origin and the chosen legislative policy of respondent State to confine the parliamentary franchise to those citizens with a close connection with the United Kingdom and who would therefore be most directly affected by its laws. There has accordingly been no violation of Article 3 of Protocol No. 1 to the Convention in the present case.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN TOGETHER WITH ARTICLE 3 OF PROTOCOL NO. 1 TO THE CONVENTION

119. The applicant further complained under Article 14 of the Convention taken together with Article 3 of Protocol No. 1 that he was being discriminated against compared to British citizens resident in the United Kingdom. Article 14 provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

120. Following communication of his complaint, the applicant contended that he had also been discriminated against on the grounds of age because statistics would "most probably" show that a very significant percentage of British nationals who moved abroad did so after retirement.

121. Only differences in treatment based on an identifiable characteristic, or "status", are capable of amounting to discrimination within the meaning of Article 14. Moreover, in order for an issue to arise under Article 14 there must be a difference in the treatment of persons in analogous, or relevantly similar, situations. Such a difference of treatment is discriminatory if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see, for example, *Burden*, cited above, § 60).

122. In the present case, no evidence of any kind has been provided to substantiate the applicant's claim that the fifteen-year rule discriminates on grounds of age. The Court is further satisfied that for the reasons discussed in the context of its analysis of the applicant's complaint under Article 3 of Protocol No. 1, which justify the imposition of a residence requirement, the applicant cannot claim to be in an analogous position to British citizens resident in the United Kingdom.

123. The complaints under Article 14 of the Convention taken together with Article 3 of Protocol No. 1 are accordingly manifestly ill-founded and must therefore be rejected as inadmissible pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL NO. 4 TO THE CONVENTION

124. The applicant further argued under Article 2 of Protocol No. 4 to the Convention that he had the right to choose his place of residence without being disenfranchised.

125. The Court notes that the respondent State has not ratified Protocol No. 4 to the Convention. The applicant's complaint is therefore incompatible *ratione personae* with the provisions of the Convention and its Protocols and must therefore be declared inadmissible pursuant to Article 35 §§ 3 (a) and 4.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning Article 3 of Protocol No. 1 admissible and the remainder of the application inadmissible;

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 7 May 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Ineta Ziemele
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Judge Kalaydjieva is annexed to this judgment.

I.Z.
F.A.

CONCURRING OPINION OF JUDGE KALAYDJIEVA

I agree with the conclusion that there has been no violation of Article 3 of Protocol No. 1 to the Convention in the present case and I am fully prepared to accept the position of the United Kingdom Government expressed in paragraphs 94-97 of the judgment as sufficiently convincing for the purposes of the "implied limitations" under Article 3 of Protocol No. 1. The denial of a right to vote to citizens living abroad is clearly based on the assumption that their interest in the national political life is limited and there is nothing in the present case to make this assumption unreasonable. It also seems correct that an effort to afford an individualised approach in the assessment of the level of preserved individual interest in each case would require practical measures, which are not necessarily justifiable in view of their limited overall impact on the manner in which the authorities "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".

The Court has previously expressed its views as follows (see Sitaropoulos *and Giakoumopoulos v. Greece* [GC], no. 42202/07, § 69, ECHR 2012):

> "As regards restrictions on expatriate voting rights based on the criterion of residence, the Convention institutions have accepted in the past that these might be justified by several factors: firstly, the presumption that non-resident citizens are less directly or less continually concerned with their country's day-to-day problems and have less knowledge of them; secondly, the fact that non-resident citizens have less influence on the selection of candidates or on the formulation of their electoral programmes; thirdly, the close connection between the right to vote in parliamentary elections and the fact of being directly affected by the acts of the political bodies so elected; and, fourthly, the legitimate concern the legislature may have to limit the influence of citizens living abroad in elections on issues which, while admittedly fundamental, primarily affect persons living in the country (see *Hilbe*, cited above; see also *X and Association Y. v. Italy*, application no. 8987/80, Commission decision of 6 May 1981, Decisions and Reports (DR) 24, p. 192, and *Polacco and Garofalo v. Italy*, no. Allemagne, Commission decision of 15 September 1997, DR 90-A, p. 5). More recently, the Court has taken the view that having to satisfy a residence or length-of-residence requirement in order to have or exercise the right to vote in elections is not, in principle, an arbitrary restriction of the right to vote and is therefore not incompatible with Article 3 of Protocol No. 1 (see *Doyle v. the United Kingdom* (dec.), no. 30158/06, 6 February 2007)."

I disagree with the majority on certain aspects of the use of the margin of appreciation as part of the balancing exercise through which they arrived at the conclusion that there had been no violation of Article 3 of Protocol No. 1. In the present case, this was possible as a result of the unnecessary introduction, *proprio motu*, of some unknown "legitimate aim" and an unjustified opposition between the obligation to organise elections and the individual right to vote.

In its earlier cases the Court noted that this provision was:

> "not limited by any specific list of 'legitimate aims' such as those enumerated in Articles 8 to 11 of the Convention [and that] the Contracting States [were] therefore free to rely on an aim not contained in that list to justify a restriction, provided that the compatibility of that aim with the principle of the rule of law and the general objectives of the Convention [was] proved in the particular circumstances of a case" (see *Ždanoka v. Latvia* [GC], no. 58278/00, § 115, ECHR 2006-IV, with further references).

In the present case the UK Government indicated practical difficulties, but not necessarily any specific aim pursued by the restriction. The grounds on which the majority found the restriction proportionate to an unknown aim (paragraph 118) thus remain unclear.

While it is true that the Convention bodies have interpreted this provision as one phrased in terms of the obligation of the High Contracting Parties to hold elections, but also as implying individual rights, including the right to vote, I am not convinced that this is sufficient to make them "competing" (see paragraph 117), or necessarily implies some genuine and inherent "conflict of interest" between an individual's wish to participate in parliamentary elections in his/her country of origin and the chosen legislative policy to confine the parliamentary franchise to those citizens with a close connection to it (paragraph 118).

These two *proprio motu* steps in the analysis appear to lead the majority to have unnecessary recourse to the tool of the margin of appreciation in their reasoning, rather than relying on the elaborated concept of "implied limitations" under Article 3 of Protocol No. 1. As rightly pointed out by Judge Rozakis in his concurring opinion in the case of *Odièvre v. France* ([GC], no. 42326/98, ECHR 2003-III), "when ... the Court has in its hands an abundance of elements leading to the conclusion that the test of necessity is satisfied by itself ... reference to the margin of appreciation should be duly confined to a subsidiary role".