

Right to vote of British national who has lived outside UK for over 30 years not violated by UK election laws

In today's Chamber judgment in the case of [Shindler v. the United Kingdom](#) (application no. 19840/09), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 3 of Protocol No. 1 (right to free elections) of the European Convention on Human Rights.

The case concerned whether the right to vote of a British national not resident in the United Kingdom since 1982 had been violated by election laws preventing those resident outside of the United Kingdom for more than 15 years from voting.

The Court, taking into account the room for manoeuvre ('margin of appreciation') to be left to the United Kingdom Government in regulating its parliamentary elections, decided that the election law in question had not gone too far in restricting the right to Mr Schindler's right to free elections.

The Court has also notified in writing today a committee judgment in the case of *Erdoğan Çoban v. Turkey* (no. 18375/09)², which is final.

Principal facts

The applicant, Harry Shindler, is a British national who 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.

Under primary legislation, British citizens residing overseas for less than 15 years are permitted to vote in parliamentary elections in the United Kingdom. Mr Shindler does not meet the 15-year criterion and is therefore not entitled to vote. In particular, he was unable to vote in the general election of 5 May 2010.

Complaints, procedure and composition of the Court

Relying on Article 3 of Protocol No. 1, Mr Shindler complained 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. Mr Shindler maintained that he had retained very strong ties with the UK as a retired serviceman of the British Army

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

² In this case, the applicant complained in particular about the excessive length of criminal proceedings brought against him for aiding and abetting an illegal organisation, the DHKP-C.

Violation of Article 6 § 1 (right to a fair trial within a reasonable time)
Violation of Article 13 (right to an effective remedy)

receiving a pension from the State paid into a British bank account on which he paid tax and had family members in the UK. He argued that the fifteen year time limit had the effect of disenfranchising him completely and that it was not a proportionate limitation of his right.

The application was lodged with the European Court of Human Rights on 26 March 2009.

Judgment was given by a Chamber of seven judges, composed as follows:

Ineta **Ziemele** (Latvia), *President*,
David Thór **Björgvinsson** (Iceland),
George **Nicolaou** (Cyprus),
Ledi **Bianku** (Albania),
Zdravka **Kalaydjieva** (Bulgaria),
Vincent A. **de Gaetano** (Malta),
Paul **Mahoney** (the United Kingdom),

and also Fatoş **Aracı**, *Deputy Section Registrar*.

Decision of the Court

[Article 3 of Protocol No. 1 \(right to free elections\)](#)

Neither Mr Shindler nor the government had expressly identified the legitimate aim of the restriction on non-resident voting in this case. However, the Court was satisfied that it pursued the legitimate aim of confining the parliamentary franchise to those citizens with a close connection to the United Kingdom and who would therefore be most directly affected by its laws.

The Court noted that if Mr Shindler returned to live in the United Kingdom, his right to vote as a resident would be restored. In those circumstances it could not be said that the restriction impaired the very essence of Mr Shindler's rights under Article 3 of Protocol No. 1. Consequently, the Court considered that the central question in the case was whether the election laws in question were a proportionate limitation on the right to vote which struck a fair balance between the competing interests.

The Court reviewed the activities of Council of Europe bodies and found that they had demonstrated a growing awareness at European level of the problems posed by migration in terms of political participation in countries of origin and residence. However, there was a disparity in approaches, and the Court therefore emphasised the importance of leaving Governments room for manoeuvre ('margin of appreciation') in this area. It also noted that Parliament had sought to weigh the competing interests in the case on several occasions and had debated the question of non-residents' voting rights in some detail. The evolution of its views could be seen in amendments to the period on non-residence since the introduction of overseas voting in 1985.

The Court found that allowing non-residents to vote for 15 years after leaving the country was not an unsubstantial period of time. Having regard to the significant burden which would be imposed if the United Kingdom were required to ascertain in every application to vote by a non-resident whether the individual had a sufficiently close connection to the country, the Court was satisfied that the general measure in this case promoted legal certainty and avoided problems of arbitrariness and inconsistency inherent in weighing interests on a case-by-case basis.

The Court concluded, having regard to the margin of appreciation available to the United Kingdom in regulating its parliamentary elections, that the restriction imposed on Mr Shindler's right to vote was proportionate to the legitimate aim pursued. Therefore

there had been no violation of Article 3 of Protocol No. 1 of the Convention in Mr Shindler's case.

Separate opinions

Judge Kalaydjieva expressed a concurring opinion, annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.