CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 30158/06
by Colin DOYLE
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 6 February 2007 as a Chamber composed of:

Mr J. CASADEVALL, *President*,
Sir Nicolas BRATZA,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA,
Mrs P. HIRVELÄ, *judges*,
and Mr T.L. EARLY, *Section Registrar*,

Having regard to the above application lodged on 18 July 2006,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Colin Doyle, is a British national who was born in 1947 and lives in Brussels.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant moved to Belgium in 1983 where he has resided ever since. On 13 June 2006, he enquired about registering on the electoral role in the United Kingdom.

On 11 July 2006 the Department for Constitutional Affairs (DCA) stated that on the basis of the Representation of the People Act 2002 only nationals resident overseas for less than 15 years could register to vote in United Kingdom general and European elections. It was pointed out that he could be reinstated on the electoral role if he returned to live in the United Kingdom and that he was entitled to vote in the European elections in Belgium as a citizen of the European Union. It was also drawn to his attention that eligibility to vote in other countries generally depended on domestic law but that nationality was generally a requirement: he could therefore apply for Belgian nationality, or dual nationality if he did not wish to lose his British nationality. By way of general information, custom and practice was said to differ in European Union States, Danish citizens overseas losing the right to vote after 8-10 years and no overseas Irish citizen being allowed to vote at all.

B. Relevant domestic law

The Representation of the People Act 1985 provided for the first time for United Kingdom citizens living overseas to be able to register to vote in general and European Parliamentary elections in the United Kingdom. The applicable time-limit was five years, which was extended to 20 years by the Representation of People Act 1989 (entry into force 1990).

The Representation of the People Act 2002, after debate in both Houses of Parliament, considered however that 15 years was a more appropriate period and the legislation was amended as from 1 April 2002).

COMPLAINT

The applicant complained under Article 3 of Protocol No. 1 about his inability to vote in United Kingdom elections stating that he should not be

denied his right to vote in national elections of his country of nationality, unless and until he is registered to vote in the elections of his country of residence.

THE LAW

The applicant complained that he was unable to vote in United Kingdom parliamentary elections, invoking Article 3 of Protocol No. 1 which provides:

> "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."

The Court reiterates that the right to vote is implicit in Article 3 of Protocol No. 1. However, the rights bestowed by that provision are not absolute. Contracting States have a wide margin of appreciation, given that their legislation on elections varies from place to place and from time to time. The rules on granting the right to vote, reflecting the need to ensure both citizen participation and knowledge of the particular situation of the region in question, vary according to the historical and political factors peculiar to each State. The number of situations provided for in the legislation on elections in many member States of the Council of Europe shows the diversity of possible choice on the subject. However, none of these criteria should in principle be considered more valid than any other provided that it guarantees the expression of the will of the people through free, fair and regular elections. For the purposes of applying Article 3, any electoral legislation must be assessed in the light of the political evolution of the country concerned, so that features that would be unacceptable in the context of one system may be justified in the context of another (*Py v. France*, no. 66289/01, § 46, ECHR 2005-... (extracts).

There is room for implied limitations and Contracting States must be given a wide margin of appreciation in this sphere (*Mathieu-Mohin and Clerfayt v. Belgium*, judgment of 2 March 1987, Series A no. 113, p. 23 § 52). The State's margin of appreciation, however, is not unlimited. It is for the Court to determine in the last resort whether the requirements of Protocol No. 1 have been complied with. It has to satisfy itself that any such conditions do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate. In particular, such conditions must not thwart "the free expression of the opinion of the people in the choice of the legislature" (see *Gitonas and Others v. Greece*, judgment of 1 July 1997, *Reports of Judgments and Decisions* 1997-IV, p. 233, § 39; *Matthews v. the United*

Kingdom [GC], no. 24833/94, § 63, ECHR 1999-I; *Podkolzina v. Latvia*, no. 46726/99, § 33, ECHR 2002-II; and *Mathieu-Mohin and Clerfayt*, cited above, p. 23, § 52).

The former Commission and the Court have 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 *Hilbe v. Liechtenstein* (dec.), no. 31981/96, ECHR 1999-VI, where the applicant, a Liechtenstein citizen, resident in Switzerland for four years had been unable to vote in Liechtenstein; *Polacco and Garofalo v. Italy*, no. 23450/94, Commission decision of 15 September 1997, DR 90-A, p. 5**;** *X and Association Y v. Italy*, application no. 8987/80, Commission decision of 6 May 1981, Decisions and Reports (DR) 24, p. 192; *X v. the United Kingdom*, application no. 7730/76, Commission decision of 28 February 1979, DR 15, p. 137; and *Luksch v. Germany*, application no. 35385/97, Commission decision of 21 May 1997, DR 89-B, p. 175).

Residence requirements have previously found to be justified by the following factors: firstly, the assumption that a non-resident citizen is less directly or less continually concerned with his country's day-to-day problems and has less knowledge of them; secondly, the fact that it is impracticable for the parliamentary candidates to present the different electoral issues to citizens abroad and that non-resident citizens have no 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. Even where it may be possible that the applicant has not severed ties with his country of origin and that some of the factors indicated above are therefore inapplicable to this case, the law cannot always take account of every individual case but must lay down a general rule (*Hilbe*, cited above).

As to the residence restriction in this case, the Court notes that the impugned measure has been the subject of parliamentary scrutiny. There was a debate on the time limit in both Houses of Parliament before the legislation was adopted (*c.f. Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, § 79, ECHR 2005-...).

Imposing a period of fifteen years as the cut-off point for eligibility to vote from overseas does not appear to be either disproportionate or irreconciliable with the underlying purposes of Article 3 of Protocol No. 1 (*Hirst (no. 2)*, cited above, § 62). Over such a time period, the applicant may reasonably be regarded as having weakened the link between himself

and the United Kingdom (*Matthews*, § 64) and he cannot argue that he is affected by the acts of political institutions to the same extent as resident citizens. It may be noted that in European Union countries, persons in the position of the applicant may generally vote in European Parliament elections. It is also open to the applicant, whether or not he so wishes, to seek to obtain the vote in the country of residence, if necessary by applying for citizenship. Furthermore, if he returns to live in the United Kingdom, his eligibility to vote as a British citizen will revive.

In the circumstances, the Court does not perceive any effective disenfranchisement of the applicant or impairment of the very essence of the right to vote. It follows that the application is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

T.L. EARLY
Registrar

Josep CASADEVALL
President