Foreign & Commonwealth Office

Room K.G.106a
Legal Advisers
King Charles Street
London SW1A 2AH

Tel: 020 7008 3785
Fax: 020 7008 4069
Email: Derek.Walton@fco.gov.uk
www.fco.gov.uk

28 October 2011

Mr T.L. Early
Section Registrar
European Court of Human Rights
Council of Europe
F-67075 Strasbourg CEDEX
France.

By E-transmission

Dear Sir

Application No. 19840/09
SHINDLER v UNITED KINGDOM

I refer to your letter of 30 September in which you invited the Government to send you comments on the applicant's claims for just satisfaction and any further observations they may wish to make. In response I can inform you that the Government wish to make the following brief points in response to the applicant's Observations dated 25 July 2011.

The applicant has not provided a satisfactory response to the Government's contention that he has failed to exhaust his domestic remedies prior to submitting his application. The applicant seeks to distinguish the domestic case of *Preston*, firstly on the grounds that it is a claim brought pursuant to EU law and secondly on the grounds of the shorter period of time during which Mr Preston had lived outside the UK. Neither are relevant points of distinction. The relief claimed in *Preston* is a declaration that the 15 year rule is unlawful and that Mr Preston's application to be registered as a voter should be reconsidered on the basis of that declaration. Both parties rely upon the case-law of this Court in support of their arguments. The exhaustion principle does not require that an available claim under domestic law is a claim for breach of Convention rights (which has in fact only been possible in the UK since 2000), provided that the claim would provide a realistic basis for achieving the result which, it is claimed, the Convention requires. That is the case here. The duration of Mr Preston's stay abroad is irrelevant. If he had brought the same claim as Mr Preston, the applicant would have had to show that he had *locus standi* to mount a judicial review claim, but that could have been established by him demonstrating that he had been adversely affected by the 15 year rule in the past, or would be in the future.

The Government also stand by their submission that the applicant is not a "victim" according to principles established in the case-law of the Court. The applicant has not addressed that case-law in his Observations.

The applicant rightly recognises that the judgment of the Court in *Doyle v UK* represents a substantial obstacle to his application. He submits that the factors relied upon by the court in that case in support of the 15 year rule have now become outdated, but then lists a series of matters, including the internet and the growth of active expatriate communities which were also present in 2007, at the time that *Doyle* was decided. In any event, the Court has noted in *Hilbe v Liechtenstein* that the justification for a residence-based requirement is not undermined by the fact that some expatriates do retain close connections with the country of their citizenship. The legal concept of domicile, to which the applicant refers, is irrelevant to the issues in this case but it is in any event very unlikely that the applicant would be considered to be domiciled in the UK (having lived in Italy for the past 29 years and so evinced a clear intention permanently to leave the UK).

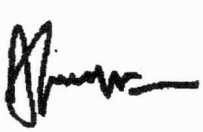
The applicant also accepts that he is in the same situation as Mr Doyle in that it has been open to him to take Italian citizenship, and so acquire a right to vote in elections to the Italian national Parliament, in the applicant's case without having to give up his UK citizenship. His choice not to do so, apparently influenced by a desire to limit his integration into Italian society, is a legitimate choice but it is not a choice which the law is obliged to accommodate by permitting him to continue to vote in the UK after 15 years residence abroad.

The applicant relies upon statements by other organs of the Council of Europe in favour of voting by expatriates. In this context, the Government would refer to the Venice Commission's recent *Report on Out-of-Country Voting* (24 June 2011) which concludes (§98) that "while the denial of the right to vote to citizens living abroad or the placing of limits on that right constitutes a restriction of the principle of universal suffrage, the Commission does not consider at this stage that the principles of the European electoral heritage require the introduction of such a right".

The applicant notes that the Government have not responded to his complaint of breach of Article 14. The Government were not invited by the Court to submit Observations on Article 14 but remain ready to do so should the position of the Court change.

So far as the applicant's claim for just satisfaction is concerned, the Government would comment only that the hourly rate claimed by his legal representative is high, and that the overall costs claimed should accordingly be reduced if the Court comes to make an award of costs.

Yours faithfully



Derek Walton
(Agent for the Government of
the United Kingdom)