



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

Information Note on the Court's case-law 152

May 2012

Scoppola v. Italy (no. 3) [GC] - 126/05

Judgment 22.5.2012 [GC]

Article 3 of Protocol No. 1

Vote

Ban on prisoner voting imposed automatically as a result of sentence: *no violation*

Facts – In 2002 an assize court sentenced the applicant to life imprisonment for murder, attempted murder, ill-treatment of members of his family and unauthorised possession of a firearm. Under Italian law his life sentence entailed a lifetime ban from public office, which in turn meant the permanent forfeiture of his right to vote. The applicant's appeals against the ban were unsuccessful. The Court of Cassation dismissed an appeal on points of law in 2006, pointing out that only prison sentences of between five years and life entailed permanent disenfranchisement (where the offence attracted a sentence of less than five years, the disenfranchisement lasted only five years). In a judgment of 18 January 2011 a Chamber of the Court held, unanimously, that there had been a violation of Article 3 of Protocol No. 1 (see [Information Note 137](#)).

Law – Article 3 of Protocol No. 1: The measure complained of constituted an interference with the applicant's right to vote. It pursued the legitimate aims of enhancing civic responsibility and respect for the rule of law and ensuring the proper functioning and preservation of the democratic regime. As to the proportionality of the interference, after noting a trend in Europe towards fewer restrictions on convicted prisoners' voting rights the Court reaffirmed the principles set out by the Grand Chamber in the *Hirst (no. 2)* judgment, in particular the fact that when disenfranchisement affected a group of people generally, automatically and indiscriminately it was not compatible with Article 3 of Protocol No. 1.

On the question whether the ban on voting should be imposed by a court, the *Hirst (no. 2)* judgment referred to above made no explicit mention of the intervention of a judge among the essential criteria for determining the proportionality of a disenfranchisement measure. While the intervention of a judge was clearly likely to guarantee the proportionality of restrictions on prisoners' voting rights, contrary what was suggested in the *Frod* judgment such restrictions would not necessarily be automatic, general and indiscriminate simply because they were not ordered by a judge. The circumstances in which the right to vote was forfeited might be detailed in the law, making its application conditional on such factors as the nature or the gravity of the offence committed. Arrangements for restricting the voting rights of convicted prisoners varied considerably from one national legal system to another, particularly as to the need for such restrictions to be ordered by a court. The Contracting States were free to decide either to leave it to the courts to determine the proportionality of a measure restricting convicted prisoners' voting rights, or to incorporate provisions into their laws defining the circumstances in which such a measure should be applied. In this latter case, it would be for the legislature itself to balance the competing interests in order to avoid any general, automatic and indiscriminate restriction. On that basis, removal of

the right to vote without any *ad hoc* judicial decision, as in the present case, did not, in itself, give rise to a violation of Article 3 of Protocol No. 1.

The impugned measure also had to be found to be disproportionate to the legitimate aims pursued – in terms of the manner in which it was applied and the legal framework surrounding it. In the Italian system the measure was applied to individuals convicted of certain well-defined offences, or to people sentenced to certain terms of imprisonment specified by law. This showed the legislature’s concern to adjust the application of the measure to the particular circumstances of the case in hand. The law also adjusted the duration of the measure to the sentence imposed and thus, indirectly, to the gravity of the offence. A large number of convicted prisoners in Italy were not deprived of the right to vote in parliamentary elections. It was also possible for a convicted person who had been permanently deprived of the right to vote to recover that right. This showed that the Italian system was not excessively rigid, and that the margin of appreciation afforded to the respondent Government in this sphere had not been overstepped. In the circumstances the Court could not find that the disenfranchisement provided for in Italian law was of the general, automatic and indiscriminate nature that led it, in its *Hirst (no. 2)* judgment, to find a violation of Article 3 of Protocol No. 1.

Conclusion: no violation (sixteen votes to one).

(See *Hirst v. the United Kingdom (no. 2)* [GC], 74025/01, 6 October 2005, Information Note 79; and *Frodl v. Austria*, 20201/04, 8 April 2010, Information Note 129)

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