



Automatic and indiscriminate ban on prisoners' voting rights in Bulgaria was disproportionate

In today's **Chamber** judgment¹ in the case of [Kulinski and Sabev v. Bulgaria](#) (application no. 63849/09) the European Court of Human Rights held, unanimously, that there had been:

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

no violation of Article 13 (right to an effective remedy).

The case concerned the constitutional ban on prisoners' voting rights in Bulgaria.

The Court confirmed its finding in its earlier case-law that a general, automatic and indiscriminate restriction of the right to vote for prisoners was disproportionate to any legitimate aim pursued.

Principal facts

The applicants, Krum Kulinski and Asen Sabev, are Bulgarian nationals who were born in 1970 and 1977 respectively. Convicted of hooliganism, Mr Kulinski served his sentence between 6 November 2008 and 30 December 2009, when he was released. Convicted of robbery and murder in 2003, Mr Sabev is currently serving a life sentence, with the possibility of commutation.

While both applicants were serving their sentences, elections to the European Parliament and to the Bulgarian Parliament took place in June and July 2009 respectively. In accordance with the relevant legislation, which did not allow sentenced prisoners to vote, no polling station was set up in the prison where the applicants were held. Subsequently, Mr Sabev was not allowed to vote in the elections to the Bulgarian Parliament in May 2013 and October 2014, nor in the European Parliament election in May 2014.

Complaints, procedure and composition of the Court

Both applicants complained that their disenfranchisement on the ground that they were convicted prisoners violated their rights under Article 3 of Protocol No. 1 (right to free elections).

Relying on Article 13 (right to an effective remedy) taken in conjunction with Article 3 of Protocol No. 1, they also complained that they did not have effective domestic remedies in respect of their complaint under Article 3 of Protocol No. 1.

The application was lodged with the European Court of Human Rights on 30 November 2009.

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

Angelika **Nußberger** (Germany), *President*,
Khanlar **Hajiyev** (Azerbaijan),

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.

Erik Møse (Norway),
André Potocki (France),
Síofra O’Leary (Ireland),
Carlo Ranzoni (Liechtenstein), *judges*,
Pavlina Panova (Bulgaria), *ad hoc judge*,

and also Claudia Westerdiek, *Section Registrar*.

Decision of the Court

Article 3 of Protocol No. 1

The Court emphasised that Article 3 of Protocol no. 1 was to be read as comprising individual subjective rights of participation – the “right to vote” and the “right to stand for election to the legislature”.

The applicants’ deprivation of the right to vote in the elections to the European Parliament and to the Bulgarian Parliament had constituted an interference with their right under Article 3 of Protocol No. 1. The Court accepted the Government’s argument that the ban on voting for convicted prisoners was aimed at promoting the rule of law and enhancing civic responsibility, both of which were legitimate aims for the purposes of Article 3 of Protocol No. 1.

However, the Court came to the conclusion that the restriction was disproportionate to the aims pursued. There had accordingly been a **violation of Article 3 of Protocol No. 1** in respect of both applicants as regards the elections which took place in 2009, and in respect of Mr Sabev as regards the elections which took place in 2013 and 2014.

In arriving at that conclusion, the Court observed that the applicants had been deprived of the right to vote as a result of a blanket ban on voting which applied to all convicted persons who were in detention. That prohibition was unambiguous and categorical; it stemmed from the Bulgarian Constitution and was reproduced in several ordinary laws. The situation in the applicants’ case was thus comparable to that examined by the Court in another case, *Anchugov and Gladkov v. Russia*,² where the Constitution imposed a blanket ban on voting on all convicted prisoners serving prison sentences, which the Court had found to be in breach of the Convention.

In the case of *Scoppola v. Italy (n° 3)*,³ where the law provided for a prohibition on voting only in respect of persons sentenced to a prison term of three years or more, the Court had underlined that the removal of the right to vote – not by a decision of a judge but in law – did not, in itself, give rise to a violation of Article 3 of Protocol No. 1. However, unlike in *Scoppola (no.3)*, in the applicants’ case the relevant legal provisions did not adjust the voting ban to the circumstances of the particular case, the gravity of the offence or the conduct of the offender.

While States had a certain room for manoeuvre (“margin of appreciation”) in respect of voting rights, a general, automatic and indiscriminate restriction of the right protected under Article 3 of Protocol No. 1 was not acceptable.

Finally, the Court addressed, in particular, the Bulgarian Government’s argument that prisoners regained their right to vote upon their release from prison. The Court observed that this did not change the fact that under the law in force at the time of the elections in question all convicted prisoners in Bulgaria, including the applicants, regardless of their individual circumstances, their conduct and the gravity of the offences committed, had been deprived of the right to vote.

² *Anchugov and Gladkov v. Russia* (11157/04), Chamber judgment of 4 July 2013

³ *Scoppola v. Italy (n° 3)* (126/05), Grand Chamber judgment of 22 May 2012

Article 13

The Court found that there had been **no violation of Article 13** in respect of the applicants' complaint under Article 3 of Protocol No. 1. It had already held in previous cases that Article 13 did not guarantee a remedy allowing a State's laws as such to be challenged before a national authority on the ground of being contrary to the Convention.

Just satisfaction (Article 41)

The Court considered that the finding of a violation constituted sufficient just satisfaction in the case for any non-pecuniary damage sustained by the applicants. Furthermore, the Court held that Bulgaria was to pay the applicants 2,727 euros (EUR) in respect of costs and expenses.

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.