



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

FOURTH SECTION

CASE OF DIMOV AND OTHERS v. BULGARIA

*(Applications nos. 45660/17 and 13 others –
see appended list)*

JUDGMENT

STRASBOURG

8 June 2021

This judgment is final but it may be subject to editorial revision.

In the case of Dimov and Others v. Bulgaria,

The European Court of Human Rights (Fourth Section), sitting as a Committee composed of:

Iulia Antoanella Motoc, *President*,

Gabriele Kucsko-Stadlmayer,

Pere Pastor Vilanova, *judges*,

and Ilse Freiwirth, *Deputy Section Registrar*,

Having regard to:

the applications against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by nineteen Bulgarian nationals (“the applicants”) on different dates (see the appended table for a list of the applicants, the introduction dates of their applications and the names of their representatives);

the decision to give notice to the Bulgarian Government (“the Government”) of the complaint concerning the applicants’ inability to vote while serving their prison sentences and to declare inadmissible the remainder of the second, third, fourth, fifth, sixth, seventh, eighth, ninth and tenth applications;

the parties’ observations;

Having deliberated in private on 11 May 2021,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns complaints under Article 3 of Protocol No. 1 to the Convention that the applicants had been unable to vote while effectively serving prison sentences.

THE FACTS

2. The applicants were born on different dates between 1958 and 1990. The applicants in the first and fourteenth applications were represented by Mr K. Kanev, acting in his capacity as head of the Bulgarian Helsinki Committee. The applicants in the remaining applications were represented by Ms S. Ivanova, a lawyer practising in Sofia.

3. The Government were represented by their Agent, Ms R. Nikolova, from the Ministry of Justice.

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

5. The applicants in the first to tenth applications were all effectively serving different prison sentences when elections for the Bulgarian Parliament were held on 26 March 2017. As the relevant legislation

excluded individuals serving prison sentences from voting, the applicants could not vote in those elections.

6. The applicants in the first application, with the exception of Mr T.P. Stamenov, as well as the applicants in the eleventh, twelfth, thirteenth and fourteenth applications, were effectively serving different prison sentences on 26 May 2019 when elections of Members of the European Parliament were held. As a result, in application of the relevant legislation, they could not vote in those elections. As regards in particular Mr T.P. Stamenov (who is one of the six applicants in the first application), the Government pointed out, and his representative accepted, that he had not been serving a prison sentence at the time of the elections for Members of the European Parliament on 26 May 2019.

RELEVANT LEGAL FRAMEWORK

7. The relevant legal provisions concerning prisoners' right to vote have been set out in the Court's judgment in the case of *Kulinski and Sabev v. Bulgaria*, no. 63849/09, §§ 10 and 15-22, 21 July 2016.

THE LAW

I. JOINDER OF THE APPLICATIONS

8. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. PRELIMINARY ISSUE

9. The Government stated that under Rule 36(4)(a) of the Rules of Court the representative acting on behalf of the applicants had to be an advocate authorised to practice in any of the Contracting Parties and resident in the territory of one of them, or any other person approved by the President of the Chamber. They pointed out that they were not aware that those conditions were fulfilled in respect of the applicants in a number of applications and invited the Court to clarify that question.

10. The Court finds that no issue arises under Rule 36(4)(a) of the Rules of Court in respect of the representatives of any of the applicants. In particular, according to the official register maintained by the Supreme Bar Council, the representative of the applicants in the second to thirteenth applications, Ms S. Ivanova, is a lawyer authorised to practise in Bulgaria and residing on its territory. Furthermore, while Mr K. Kanev, the representative of the applicants in the first and fourteenth applications, is not an advocate authorised to practise in any of the Contracting Parties by the terms of Rule 36 § 4 (a), in view of the circumstances of the cases and in the

interests of the proper administration of justice, the President of the Section granted him leave to represent the applicants in the proceedings before the Court in those two applications.

III. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL NO.1 TO THE CONVENTION

11. All applicants complained under Article 3 of Protocol No. 1 to the Convention about the impossibility to vote because they were convicted prisoners, effectively serving their sentences at the time when two parliamentary elections were held. In particular, the applicants in the first to tenth applications complained in relation to the elections to the Bulgarian Parliament on 26 March 2017, and the applicants in the first and eleventh to fourteenth applications, complained in relation to the elections of Members of the European Parliament on 26 May 2019. The relevant part of Article 3 of Protocol No. 1 reads as follows:

“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.”

A. Admissibility

12. The Court observes that, following the communication of the applications, the Government pointed out and the representative accepted that one of the applicants in the first application, Mr T.P. Stamenov, was not serving a prison sentence at the time of the elections for Members of the European Parliament on 26 May 2019 (see paragraph 6 above). Consequently, the Court finds that he cannot claim to have been a victim of a violation of Article 3 of Protocol No. 1 in respect of those elections. His complaint related to those elections is therefore incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected as inadmissible under Article 35 §§ 1 and 4 of the Convention.

13. The Court further notes that the complaint, made by the rest of the applicants (see paragraph 11 above), is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. The Court further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' position

14. The applicants in the first and fourteenth applications emphasised that, just like in the case *Kulinski and Sabev v. Bulgaria*, (no. 63849/09,

21 July 2016), they had been deprived of the right to vote, in particular in relation to the elections indicated in their complaints. The prohibition on their voting rights stemmed from the Constitution and the Election Code, was of a blanket nature and did not allow for an assessment of proportionality through the establishment of a discernible and sufficient link between the sanction and the conduct of the individuals concerned.

15. The applicants in the second to the thirteenth applications stated that the Court had repeatedly found a violation of the Convention in situations such as that of the applicants. The disenfranchisement of persons effectively serving a prison sentence represented a dehumanising penal policy, impeding prisoners in their work toward resocialisation.

16. The Government stated that Article 3 of Protocol No. 1 to the Convention did not provide for an absolute right. Likewise, that Convention provision contained no exhaustive list of restrictions which might accompany the right to free elections. A violation of Article 3 of Protocol No. 1 could not be justified only because prisoners serving custodial sentences could not exercise their voting right, since that restriction was not arbitrary and pursued a legitimate aim related to ensuring the rule of law. That restriction did not prejudice the requirement of the Convention to ensure the free expression of the opinion of the people. Disenfranchisement had a further re-education effect on the convicted person and, in this sense, it was introduced as a punitive measure in order to achieve a legitimate aim.

17. The Government pointed out that the Bulgarian legal system provided for several mechanisms allowing early termination of the effective implementation of a prison sentence. Those were the release on parole and a reduction of sentence, as well as a possibility for release, as a result of presidential clemency or amnesty. Those mechanisms allowed for an early recovery of the right to vote and demonstrated that the Bulgarian criminal justice system had a certain degree of flexibility as it provided a legal opportunity for a differentiated approach. In view of the above, they stated, it could not be said that the Bulgarian legislation, presupposing disenfranchisement for the period of serving a prison sentence, had a common and undifferentiated application with regard to prisoners.

2. *The Court's assessment*

18. The Court observes that the facts underlying the present complaints and the arguments advanced by the Government are similar to those that have already given rise to the finding of a violation of Article 3 of Protocol No. 1 to the Convention in the case of *Kulinski and Sabev* (cited above, §§ 8-9 and 29-30). Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion. The Court notes in this connection that the Government have not shown or argued, that the relevant domestic legal

provisions, or related practice, which had been at the origin of the Court's finding of a violation in *Kulinski and Sabev* (cited above, §§ 37 and 41), have been amended in any way, or that the Constitutional Court has interpreted the relevant Constitutional provision in compliance with the Convention requirement that there be no general, automatic and indiscriminate restriction to the right to vote of prisoners effectively serving their sentences (see, *mutatis mutandis*, *Anchugov and Gladkov v. Russia*, nos. 11157/04 and 15162/05, § 111, 4 July 2013).

19. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 3 of Protocol No. 1 to the Convention in respect of the applicants in the first to the tenth applications as regards the election to the Bulgarian Parliament on 26 March 2017. The Court also finds that there has been a violation of this provision in respect of the applicants in the first and eleventh to fourteenth applications as regards the election to the European Parliament on 26 May 2019, save for Mr T.P. Stamenov in the first application whose related complaint was declared inadmissible (see paragraph 12 above).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

21. The applicants claimed different amounts in respect of non-pecuniary damage.

22. The Government stated that in case the Court found a violation of the applicants' right to free elections, the ruling in this regard and the publication of the judgment would constitute just satisfaction.

23. Having regard to the circumstances of the present case, the Court considers that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage sustained by the applicants (see *Kulinski and Sabev*, cited above, § 55 with further reference).

B. Costs and expenses

24. The applicants in the first and fourteenth applications claimed 2,173 euros (EUR) for the costs and expenses incurred before the Court, of which EUR 2,160 was in respect of the legal fee of their representative. They asked for this amount to be paid directly into the account of the Bulgarian Helsinki Committee.

25. The applicants in the second to thirteenth applications claimed EUR 1,920 each in respect of the legal fees of their representative.

26. The Government considered that these claims were exaggerated and unjustified.

27. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum.

28. As regards the costs and expenses incurred before the Court, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award EUR 2,000 to each of the two representatives and that this amount should be paid directly into the respective bank accounts of the Bulgarian Helsinki Committee and of Ms S. Ivanova.

C. Default interest

29. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the complaint by one of the applicants in the first application, namely Mr T.P. Stamenov, inadmissible in respect of the elections to the European Parliament of 26 May 2019 and the remainder of the applications admissible;
3. *Holds* that there has been a violation of Article 3 of Protocol No. 1 to the Convention;
4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants;
5. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 2,000 (two thousand euros) jointly, plus any tax that may be chargeable to the applicants in the first and fourteenth applications in respect of costs and expenses, to be paid directly into the bank account of the Bulgarian Helsinki Committee;

- (ii) EUR 2,000 (two thousand euros) jointly, plus any tax that may be chargeable to the applicants in the second to thirteenth applications in respect of costs and expenses, to be paid directly into the bank account of their representative;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 June 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth
Deputy Registrar

Iulia Antoanella Motoc
President

APPENDIX

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1	45660/17	Dimov and Others v. Bulgaria	13/06/2017	Dimcho Yordanov DIMOV 1968 Belene Bulgarian Asen Todorov SABEV 1977 Sofia Bulgarian Ivan Gospodinov IVANOV 1990 Belene Bulgarian Kosta Rumenov KIROV 1980 Sofia Bulgarian Todor Petrov STAMENOV 1976 Sofia Bulgarian Ivaylo Rumenov ZHIVKOV 1980 Sofia Bulgarian	Krasimir Ivanov KANEV
2	70103/17	Zashev v. Bulgaria	20/09/2017	Yuliyana Lyubomirova	Svetlana Draganova

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No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
				ZASHEV 1975 Ihtiman Bulgarian	IVANOVA
3	70313/17	Ivanov v. Bulgaria	20/09/2017	Borislav Dimitrov IVANOV 1964 Asenovgrad Bulgarian	Svetlana Draganova IVANOVA
4	70333/17	Neshkov v. Bulgaria	20/09/2017	Svetlomis Nikolov NESHKOV 1971 Marten Bulgarian	Svetlana Draganova IVANOVA
5	70340/17	Aziz v. Bulgaria	20/09/2017	Nazam Nazmi AZIZ 1981 Pazardzhik Bulgarian	Svetlana Draganova IVANOVA
6	70362/17	Dimitrov v. Bulgaria	20/09/2017	Daniel Dimitrov DIMITROV 1974 Sofia Bulgarian	Svetlana Draganova IVANOVA
7	70370/17	Sabev v. Bulgaria	20/09/2017	Miroslav Sabev SABEV 1966 Pleven Bulgarian	Svetlana Draganova IVANOVA
8	70399/17	Nikolov v. Bulgaria	20/09/2017	Vladimir Veselinov NIKOLOV 1975 Sofia	Svetlana Draganova IVANOVA

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No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
				Bulgarian	
9	71540/17	Manolov v. Bulgaria	21/09/2017	Dragomir Tanev MANOLOV 1982 Sofia Bulgarian	Svetlana Draganova IVANOVA
10	73440/17	Prokopiev v. Bulgaria	20/09/2017	Prokopiy Iliev PROKOPIEV 1972 Sofia Bulgarian	Svetlana Draganova IVANOVA
11	37467/19	Valev v. Bulgaria	03/07/2019	Georgi Valev VALEV 1958 Pleven Bulgarian	Svetlana Draganova IVANOVA
12	44641/19	Veysyalov v. Bulgaria	16/08/2019	Kyazim Asanov VEYSYALOV 1973 Lovech Bulgarian	Svetlana Draganova IVANOVA
13	44726/19	Hasan v. Bulgaria	16/08/2019	Halil Adem HASAN 1973 Lavino Bulgarian	Svetlana Draganova IVANOVA
14	48629/19	Kulinski v. Bulgaria	05/09/2019	Krum Yordanov KULINSKI 1970 Buhovo Bulgarian	Krasimir Ivanov KANEV