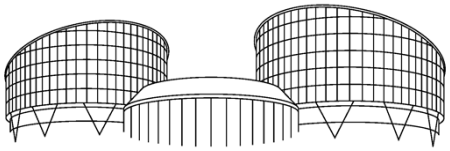

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF TINGAROV AND OTHERS v. BULGARIA

(Application no. 42286/21)

JUDGMENT

Art 3 P1 • Statutory voting ban preventing serving prisoners from voting in legislative elections incompatible with Art 3 P1 by reason of its blanket character

STRASBOURG

10 October 2023

FINAL

19/02/2024

This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.

In the case of Tingarov and Others v. Bulgaria,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Pere Pastor Vilanova*, President*,
Yonko Grozev,
Georgios A. Serghides,
Darian Pavli,
Ioannis Ktistakis,
Andreas Zünd,
Oddný Mjöll Arnardóttir*, judges*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 42286/21) 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") on 10 August 2021 by eight Bulgarian nationals ("the applicants"), indicated in the appended table;

the decision to give notice to the Bulgarian Government ("the Government") of the complaints concerning prisoners' disenfranchisement;

the decision to give priority to the application (Rule 41 of the Rules of Court);

the parties' observations;

Having deliberated in private on 12 September 2023,

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

INTRODUCTION

1. The application concerns complaints about a breach of Article 3 of Protocol No. 1 to the Convention as a result of the impossibility for the applicants to vote in two legislative elections for Bulgarian Parliament, held respectively on 4 April 2021 and 11 July 2021, because they were convicted prisoners effectively serving their sentences at the time the elections were held.

THE FACTS

2. The applicants were born on different dates, indicated in the appended table. They were represented by Mr K. Kanev, chairman of the Bulgarian Helsinki Committee, a non-governmental organisation based in Sofia.

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

4. The facts of the case may be summarised as follows.

5. The applicants were all serving prison sentences in Pazardzhik Prison, following their respective criminal convictions, when legislative elections for

Bulgarian Parliament were held on 4 April 2021 and 11 July 2021. They were automatically prevented from voting in those elections pursuant to the relevant legislation.

RELEVANT LEGAL FRAMEWORK

6. 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, 21 July 2016).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL No. 1 TO THE CONVENTION

7. The applicants complained that as convicted prisoners they had been subject to a blanket ban on voting in elections (see paragraph 5 above). They relied on Article 3 of Protocol No. 1, which 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

8. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

9. The applicants submitted that they were unable to vote in the above-mentioned elections as a result of the applicable legal provisions, which had not been changed since the Court had found a violation of the Convention in the first case raising this issue in respect of Bulgaria, namely *Kulinski and Sabev*, cited above.

10. The Government conceded that the legal provisions – examined in detail in *Kulinski and Sabev*, cited above – had prevented the applicants from voting in those elections.

11. The Government further provided an update in respect of the relevant developments at the national level after the delivery of the Court's judgment in that case. Specifically, the Committee of Ministers, in the context of supervising the execution of the Court's judgments, had invited the Bulgarian authorities to explore all possible avenues within their wide margin of appreciation for implementing the judgment. As a result, the Minister of

Justice and the Council of Ministers approached respectively Parliament and the Constitutional Court with a view to pursuing measures aimed at enforcing that judgment.

12. On 18 October 2022, the Constitutional Court declared inadmissible the case it had opened following the Council of Ministers' request for it to provide a binding interpretation of Article 42 § 1 of the Constitution, so as to overcome the consequences of the Court's judgment in *Kulinski and Sabev*, cited above. The Constitutional Court found that bringing the said provision in conformity with the Court's case-law could not be achieved by a binding interpretation, since that provision was unambiguous. It emphasised that its power to interpret the Constitution did not extent to amending or expanding it.

13. There have been no further developments.

14. The Government pointed out that disenfranchisement would be proportionate if tailored so as to apply solely to perpetrators of serious crimes. Given that the first, second, third, seventh and eight applicants were serving long-term prison sentences for having committed serious offences, they would have been barred on that basis from voting, even if Parliament had amended the legislation to make it compliant with the requirements of the Convention. The Government invited the Court to find that those applicants' complaints were unfounded as, in any event, any nuanced approach in the legislation would not have benefitted them in view of the seriousness of their offences.

15. The Court refers to the principles established in its case-law regarding ineligibility to vote in elections. In the leading case in respect of Bulgaria, *Kulinski and Sabev*, cited above, just as in a number of earlier cases in respect of other countries – such as *Hirst v. the United Kingdom (no. 2)* ([GC], no. 74025/01, ECHR 2005-IX); *Greens and M.T. v. the United Kingdom* (nos. 60041/08 and 60054/08, ECHR 2010); and *Anchugov and Gladkov v. Russia* (nos. 11157/04 and 15162/05, 4 July 2013) – the Court found a violation in respect of issues similar to the one in the present case.

16. In respect of the Government's argument advanced in paragraph 14 above, the Court cannot speculate as to whether or not there had been grounds that could have justified the ban on voting in respect of the applicants identified by the Government in that paragraph. The seriousness of their offences, to which the Government referred, had not been put forward as the reason for their individual disenfranchisement at any time or form at the domestic level and was raised for the first time in the proceedings before the Court (compare, *mutatis mutandis*, *Vlasov and Benyash v. Russia*, nos. 51279/09 and 32098, § 36, 20 September 2016, and contrast *Kalda v. Estonia (no. 2)*, no. 14581/20, § 48, 6 December 2022). Likewise, it would not in any event be appropriate for the Court to assume that, if Parliament were to amend the impugned legal provisions, restrictions on the right to vote would still apply to prisoners sentenced for serious offences, or to conclude

that such an amendment would necessarily be compatible with Article 3 of Protocol No. 1 (compare, *mutatis mutandis*, *Hirst (no. 2)*, cited above, § 72).

17. The foregoing considerations are sufficient to enable the Court to conclude that, at the time when the elections at issue in the present case were held, the statutory ban on prisoners' voting in elections was, by reason of its blanket character, incompatible with Article 3 of Protocol No. 1.

18. There has accordingly been a violation of that Convention provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. 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

20. The applicants made claims for non-pecuniary damage.

21. The Court has found violations of Article 3 of Protocol No. 1 in a number of cases concerning prohibitions on prisoners' right to vote in various countries (see paragraph 15 above, as well as *Firth and Others v. the United Kingdom*, nos. 47784/09 and 9 others, § 18, 12 August 2014, with further references). In the vast majority of these cases, the Court expressly declined to make any award of damages. Similarly, in the present case the Court concludes that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage sustained by the applicants.

B. Costs and expenses

22. The applicants claimed their costs and expenses in relation to the proceedings before the Court.

23. 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. In *Greens and M.T.* (cited above, § 120), the Court said:

> "The award made in respect of costs in the present cases was limited to the proceedings before this Court and reflected the fact that extensive written submissions were lodged. In future follow-up cases, in light of the above considerations, the Court would be likely to consider that legal costs were not reasonably and necessarily incurred and would not, therefore, be likely to award costs under Article 41."

24. The Court established in its 2016 Chamber judgment in *Kulinski and Sabev*, cited above, that the existing electoral legislation in Bulgaria precluding prisoners from voting was incompatible with Article 3 of Protocol No. 1 to the Convention. This finding was repeated in the case of

Dimov and Others v. Bulgaria ([Committee], nos. 45660/17 and 13 others, 8 June 2021). Subsequent applicants lodging an application with the Court concerning their ineligibility to vote in an election needed only to complete an application form in which they (i) cited Article 3 of Protocol No. 1; (ii) stated that they had been in post-conviction detention in prison on the date of an identified election to which that provision applies; and (iii) confirmed that they had been otherwise eligible to vote in the election in question (in particular, that they had satisfied the applicable age and nationality requirements). It is clear that the lodging of such an application was straightforward and did not require legal assistance (compare *Firth and Others*, cited above, § 21).

25. In these circumstances, the legal costs claimed by the present applicants cannot be regarded as reasonably and necessarily incurred (ibid.). The Court therefore declines to make any award in respect of legal costs.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the application admissible;

2. *Holds*, unanimously, that there has been a violation of Article 3 of Protocol No. 1 to the Convention;

3. *Holds*, by six votes to one, that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants;

4. *Dismisses*, by six votes to one, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 10 October 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Pere Pastor Vilanova President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Serghides is annexed to this judgment.

P.P.V.
M.B.

PARTLY DISSENTING OPINION OF JUDGE SERGHIDES

1. The applicants' complaint is that, as convicted prisoners serving their sentences, they were subjected to a blanket ban on voting in two legislative elections for the Bulgarian Parliament held respectively on 4 April 2021 and 11 July 2021, contrary to Article 3 of Protocol No. 1 to the Convention; they also claimed an award for the non-pecuniary damage they had sustained as well as for their legal costs and expenses.

2. I voted in favour of points 1 and 2 of the operative provisions of the judgment, regarding, respectively, the admissibility of the applications and the finding of a violation of Article 3 of Protocol No. 1, but against points 3 and 4 of the said provisions, regarding the decision not to make a monetary award in respect of non-pecuniary damage or to award legal costs and expenses, respectively.

A. My dissent as to the decision not to award the applicants any amount in respect of non-pecuniary damage

3. Regarding the applicants' claim for non-pecuniary damage, the judgment only states that they "made claims for non-pecuniary damage" (see paragraph 20 of the judgment), without referring to what the applicants specifically argued in their observations on just satisfaction, the relevant part of which reads as follows:

> "The applicants claim non-pecuniary damage for two violations of Article 3 of Protocol No. 1 of the Convention in the amount of *3,000 euros (three thousand euros)* for each applicant. The applicants base their claim on the recent judgment in the case *Anatoliy Marinov v. Bulgaria* (no. 26081/17, judgment of 15 February 2022). In that case the applicant was deprived of the right to vote in parliamentary elections on the basis of the same provisions of the Constitution and the Election Code as the applicants in the present case. He was awarded 3,000 euros in respect of non-pecuniary damage, the same amount the applicants claim in the present case."

The present judgment, however, without being consistent with the *Anatoliy* judgment, which has become final, makes the following statement:

> "21. The Court has found violations of Article 3 of Protocol No. 1 in a number of cases concerning prohibitions on prisoners' right to vote in various countries (see paragraph 15 above, as well as *Firth and Others v. the United Kingdom*, nos. 47784/09 and 9 others, § 18, 12 August 2014, with further references). In the vast majority of these cases, the Court expressly declined to make any award of damages. Similarly, in the present case the Court concludes that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage sustained by the applicants."

Also in point 3 of the operative provisions of its judgment, the Court holds "that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants".

4. It is my submission that Article 41 of the Convention, as worded, cannot be interpreted as meaning that "[the] finding [of] a violation of a

Convention provision" can in itself constitute sufficient "just satisfaction for the injured party". This is because "the finding of a violation" is one of the prerequisites "for affording just satisfaction" and the Court cannot treat them as being on a par (see, similarly, paragraph 7 of the joint partly dissenting opinion that I wrote with Judge Felici in *Grzęda v. Poland* [GC], no. 43572/18, 15 March 2022).

5. Article 41 of the Convention sets out the following three requirements or criteria which must be met cumulatively for the Court to award just satisfaction, including, of course, satisfaction for non-pecuniary damage (the numbering is mine): (a) the Court finds that there has been a violation of the Convention or the Protocols thereto; (b) the internal law of the High Contracting Party concerned allows only partial reparation to be made; and (c) the Court considers it necessary to afford just satisfaction.

6. The Court in the present case confines itself to the first requirement of Article 41, namely, the finding of a violation, and it regrettably considers, without any justification or explanation, that the fulfilment of this requirement in itself constitutes sufficient just satisfaction for non-pecuniary damage. What the Court is engaging in here is a circular argument: the finding of a violation, which is a *sine qua non* for just satisfaction, becomes the just satisfaction itself. In my opinion, such an interpretation and application of Article 41 has no foundation either in the wording or in the purpose of that provision.

7. Thus, since Article 41 provides that three requirements must be satisfied in order for the Court to afford just satisfaction, there is a logical fallacy in deciding that the existence of one of them in itself constitutes sufficient satisfaction.

8. To my regret, point 3 of the operative provisions reflects a failure to see that the purpose of Article 41, albeit related, is not the same as the purpose of the substantive provisions of the Convention securing human rights, such as Article 3 of Protocol No. 1, which the judgment finds to have been violated in the present case. If their purpose were the same, then Article 41 would be rendered futile, which would lead to absurd results.

9. In paragraph 21 of the judgment, quoted above, the Court without providing any legal explanation, but simply referring, in the abstract and without substantiation, to the "vast majority of cases" in which a similar violation has been found and where a claim for non-pecuniary damage has been denied, states that: "[s]imilarly, in the present case the Court concludes that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage sustained by the applicants". With all due respect, by stating this – as reflected in point 3 of its operative provisions – the judgment erroneously conflates the first and the second requirements of Article 41 of the Convention and actually treats them as one and the same, even though the Court does not expressly refer, when dealing with just satisfaction, to the requirements under that Article. In any event, in paragraph 21 of the judgment

and in point 3 of the operative provisions, only an implicit reference is made to the first requirement of Article 41 (the finding of a violation), entailing *per se* the rejection of the claim for non-pecuniary damage, even though the word "requirement" is again not mentioned by the Court.

10. Consequently, with all due respect, the reason provided for denying a monetary award in paragraph 21 of the judgment does not seem to be a legitimate and valid ground, since it has no legal basis in Article 41 and erroneously conflates the merits of the case and the just satisfaction issue.

11. The failure to award the applicants a sum in respect of non-pecuniary damage for the violation of their right amounts, in my view, to rendering the protection of their rights illusory and fictitious. This runs counter to the Court's case-law to the effect that the protection of human rights must be practical and effective and not theoretical and illusory, as required by the principle of effectiveness which is inherent in the Convention (see *Artico v. Italy*, 13 May 1980, §§ 33 and 47-48, Series A no. 37). For the applicants' right under Article 3 of Protocol No. 1 to be practical and effective and not theoretical and illusory, this substantive Article together with Article 41 of the Convention must be applied by the Court, not only by finding a violation of the Article 3 of Protocol No. 1, but also by awarding the applicant just monetary compensation for non-pecuniary damage under Article 41.

12. As stated above, all three requirements of Article 41 must be met cumulatively. Since the Court holds that there has been a violation of Article 3 of Protocol No. 1 of the Convention, it is clear that the first requirement of Article 41 is met.

13. As regards now the second requirement of Article 41, namely, that "the internal law of the High Contracting Party concerned allows only partial [and therefore not full] reparation to be made", it is clear that it also applies in the present case.

14. Turning now to the third requirement of Article 41, namely, that it is necessary to afford just satisfaction (the necessity requirement), it is obvious that this requirement is also satisfied in the present case, because the applicants suffered distress and anxiety on account of the violation that has been found (and in paragraph 21 the Court accepts that non-pecuniary damage may have been sustained). As to this necessity requirement, no mention is made of it in the judgment. Nor are there any reasons indicated as to why, despite the distress and anxiety caused to the applicants, the discretion of the Court can be exercised in such a manner as not to award any sum for non-pecuniary damage. If the Court wishes to apply this requirement, it should state and explain it clearly, thus conferring transparency, clarity and consistency on its pronouncement.

15. It is my submission (which I am expressing for the first time in a separate opinion) that, though the principal aim of Article 41 is to provide an applicant with just satisfaction – if, of course, the requirements of this provision are fulfilled – an incidental and complementary aim of Article 41

is to make or encourage the member States to fulfil their obligations under the Convention in the cases where failure to do so may lead to persons suffering distress or inconvenience or material damage. Not making a member State pay an award for non-pecuniary damage, when victims of human rights indeed suffer non-pecuniary damage, does not help in the strengthening of the rule of law of that State, with the possible result that similar violations may be repeated in the future. This idea of the incidental aim of Article 41 stems from the fact that the first requirement of this Article is the finding of a violation under the Convention, with which the Court is competent to deal, not only in a theoretical manner of making a declaration of a violation, but also in a practical manner of granting redress.

16. As I have argued above, failure to award the applicants a sum in respect of non-pecuniary damage, for the violation of their right safeguarded by Article 3 of Protocol No. 1, amounts, in my view, to rendering the protection of their said right illusory and fictitious. I would thus award the applicants an amount in respect of non-pecuniary damage, by way of just satisfaction under Article 41 of the Convention. As I am in the minority, however, it is not necessary for me to determine the sum that should have been awarded.

B. My dissent as to the decision not to award any legal costs or expenses and the consequent dismissal of the remainder of the applicants' just satisfaction claim

17. In their observations on just satisfaction, the applicants explained their legal costs and expenses, which amounted to 2,165 euros. The applicants were represented in the proceedings before the Court by the chairman of the Bulgarian Helsinki Committee, a non-governmental organisation based in Sofia (see paragraph 2 of the judgment).

18. I disagree with the majority in dismissing the remainder of the applicants' claim for just satisfaction, namely, their claim covering legal costs and expenses.

19. The majority refused to award the applicants any legal costs and expenses for the following reasons:

> "24. The Court established in its 2016 Chamber judgment in *Kulinski and Sabev*, cited above, that the existing electoral legislation in Bulgaria precluding prisoners from voting was incompatible with Article 3 of Protocol No. 1 to the Convention. This finding was repeated in the case of *Dimov and Others v. Bulgaria* ([Committee], nos. 45660/17 and 13 others, 8 June 2021). Subsequent applicants lodging an application with the Court concerning their ineligibility to vote in an election needed only to complete an application form in which they (i) cited Article 3 of Protocol No. 1; (ii) stated that they had been in post-conviction detention in prison on the date of an identified election to which that provision applies; and (iii) confirmed that they had been otherwise eligible to vote in the election in question (in particular, that they had satisfied the applicable age and nationality requirements). It is clear that the lodging of

such an application was straightforward and did not require legal assistance (compare *Firth and Others*, cited above, § 21).

25. In these circumstances, the legal costs claimed by the present applicants cannot be regarded as reasonably and necessarily incurred (ibid.). The Court therefore declines to make any award in respect of legal costs."

20. I have a fundamental disagreement with the majority, not so much for their failure to award the applicants their legal costs and expenses, which have been actually and necessary incurred and were reasonable as to quantum, but rather with their reasoning for not awarding any legal costs and expenses at all, namely, because "it is clear that the lodging of such an application was straightforward and did not require legal assistance".

21. The right to have a lawyer is not only an extremely important human right in criminal cases which is considered by Article 6 § 3 (c) as a "minimum right" for a fair trial, but it is also a very important and inalienable right in any other case of a civil or administrative nature and should not only be respected but also safeguarded by the Court. If there is a right under the Convention, there is also a right of its holder who alleges a violation to have legal assistance and to seek protection before the Court. Of course, the right to have legal assistance exists irrespective of whether there is a right under the Convention or under domestic law or even if there is no right and a person wishes to have legal advice. The applicants in the present case won their case before the Court having had legal assistance. It is quite uncertain what would have been the result of the case without such assistance. The Court decided the case in a Chamber formation and not in a Committee, which shows that the Court has treated the case as a non-repetitive one.

22. The need for legal assistance, encompassing the right to have a lawyer, should not depend on whether in the view of the Court – and in particular after it has decided a case and found a violation of a Convention provision – the case could be handled easily and without legal assistance. I disagree with making any statement which may be interpreted or taken as discouraging persons to come to the Court with legal assistance. This would not only lead to watering down the inalienable right to have legal assistance but may also make the Court and its case-law in the future poorer, because the enrichment and progressiveness of the case-law depends to a great extent to the assistance and contribution of the applicants' lawyers.

23. Article 19 of the Practice Direction of the Court on "just satisfaction claims", contained in the Rules of the Court, provides that for the Court to assess whether an award in respect of legal costs and expenses is a reasonable one, it "may also take into account whether the violation found falls into the category of 'well-established case-law'". This, however, does not mean that no legal costs or expenses at all can be awarded in a case falling into that category. "Taking into account" the reasonableness of the quantum of legal costs and expenses in an assessment and "and not awarding legal costs and expenses at all" are quite different issues. In any event, the present case does

not fall into “well-established case-law”, and that is why it was allocated to, and decided in, a Chamber rather than a Committee of the Court.

24. Irrespective of whether or not the legal costs of the applicants were awarded, the Court should at least have awarded them their expenses. For example, the postage for their application to the Court cost 5 euros (Exhibit no. 3 to their observations) which they would have had to pay even if they had appeared before the Court without legal representation, if they wanted their application to reach the Court. However, the Court does not even address the expenses part of their claim.

APPENDIX

List of applicants:

Application no. 42286/21

No.	Applicant's Name	Year of birth	Nationality	Place of detention at the relevant time
1.	Georgi Todorov TINGAROV	1981	Bulgarian	Pazardzhik Prison
2.	Nikola Ivanov DOBREVSKI	1966	Bulgarian	Pazardzhik Prison
3.	Iliyan Georgiev DOYCHEV	1992	Bulgarian	Pazardzhik Prison
4.	Lazar Elkov ILIEV	1999	Bulgarian	Pazardzhik Prison
5.	Anton Lozanov KMETSKI	1985	Bulgarian	Pazardzhik Prison
6.	Ivaylo Georgiev MURDZHEV	1979	Bulgarian	Pazardzhik Prison
7.	Georgi Petrov RUDOV	1964	Bulgarian	Pazardzhik Prison
8.	Ivo Plamenov STOYANOV	1978	Bulgarian	Pazardzhik Prison