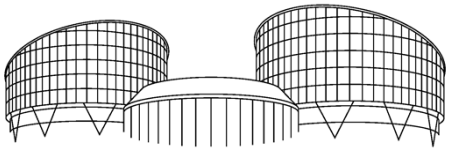

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF MIRONESCU v. ROMANIA

(Application no. 17504/18)

JUDGMENT

Art 3 P1 • Vote • Unjustified restriction on voting rights of applicant serving his prison sentence outside the electoral constituency of his place of residence • Strong European consensus

STRASBOURG

30 November 2021

FINAL

28/02/2022

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

In the case of Mironescu v. Romania,

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

Yonko Grozev, *President,*
Iulia Antoanella Motoc,
Branko Lubarda,
Stéphanie Mourou-Vikström,
Georges Ravarani,
Jolien Schukking,
Péter Paczolay, *judges,*
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 17504/18) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mr Ioan-Dumitru Mironescu ("the applicant"), on 23 March 2018;

the decision to give notice of the application to the Romanian Government ("the Government");

the parties' observations;

Having deliberated in private on 22 September 2020 and 9 November 2021,

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

INTRODUCTION

1. The application concerns the applicant's inability to vote in legislative elections, despite his right not being restricted by court order, for the sole reason that, on the date of the elections, he was serving a sentence in a prison situated outside the electoral constituency of his place of residence.

THE FACTS

2. The applicant was born in 1973 in Piatra Neamţ, and has his place of residence in the same city. He is currently detained in Iaşi Prison. He is represented before the Court by Mr A. Hărătău, a lawyer practising in Bucharest.

3. The Government were represented by their Agent, most recently Ms O.F. Ezer of the Ministry of Foreign Affairs.

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

5. In a final decision of 5 February 2016 the High Court of Cassation and Justice convicted the applicant of involvement in organised crime and sentenced him to fifteen years in prison. His right to vote was not restricted.

On 13 February 2013 he started serving his prison sentence. He was transferred several times, and spent time in prisons in Iaşi, Vaslui, and Găeşti, each belonging to a different electoral constituency.

6. According to the Government, in November 2016 the applicant requested to change his domicile from Bucharest (where he had been residing since July 2012) to Piatra Neamţ. On 8 December 2016, in accordance with the relevant legislative requirements (see Article 28 § 1 (a) and (b) of the Population Records Act, quoted in paragraph 18 below), he produced a statement by the owner of a house in Piatra Neamţ confirming that he would be allowed to live there. On 9 December 2016 the administrative authorities issued him with a new identity card for his new address.

7. It appears from the information submitted by the applicant that his long-term partner also lived in Piatra Neamţ, at a different address.

8. On 11 December 2016, while he was held in Iaşi Prison, the applicant was prevented from voting in the legislative elections as his address was not in the territory of the Iaşi Prison electoral constituency (see paragraphs 11 and 13 below).

9. On 12 December 2016 he lodged a complaint with the post-sentencing judge, alleging a violation of his right to vote. On 21 December 2016 his complaint was forwarded to the prosecutor's office attached to the Iaşi District Court ("the prosecutor's office"). On 8 May 2017 the latter decided not to start an investigation as the matter complained of did not involve a criminal offence.

10. The applicant objected, and in a final interlocutory judgment of 23 November 2017 the Iaşi District Court upheld the prosecutor's order.

RELEVANT LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW

A. Electoral law and its implementation

11. The relevant provisions of Law no. 208/2015 on the elections for the Senate and Chamber of Deputies and on the organisation and functioning of the Permanent Electoral Authority ("the Legislative Elections Act") read as follows:

Article 4

"Electoral constituencies shall be formed for the elections, one for each of the [forty-one] counties, one in Bucharest and one for Romanian nationals domiciled or resident abroad. The total number of electoral constituencies shall be [forty-three]."

Article 42

"1. No later than [forty-five] days before the date of the elections, a voter registered on the electoral roll with his or her address of domicile may ask the mayor of the territorial and administrative division where he or she has his or her place of residence, by post or in person, by means of a written request ..., to register his residential address on the electoral roll ..."

Article 51

"2. The president of the electoral bureau of the polling station shall record in supplementary electoral registers, used in the polling stations in the country and abroad, the following persons:

...

(c) persons who, on election day, are in a different territorial and administrative division to where they have their domicile or residence, and who can prove that their domicile or residence is in the electoral constituency of that polling station;

..."

Article 83

"2. Romanian nationals domiciled in Romania but registered in the electoral register as resident abroad may exercise their right to vote at the polling stations set up abroad ...

...

5. The Romanian military, police, and civilian personnel ... deployed abroad may exercise their right to vote at any polling station set up in the country where they are carrying out their duties. They shall be registered in the supplementary electoral registers by the president of the electoral bureau of the polling station concerned ..."

Article 84

"1. Voters may only vote at the appropriate polling station for their address of domicile or residence, in accordance with [this Act]. If, on election day, voters are in a different territorial and administrative division in the same electoral constituency, they may vote at any polling station within the electoral constituency where they have their domicile or residence."

Article 85

"10. For nationals with the right to vote who, because of illness or invalidity cannot go to the polling station, the president of the electoral constituency may authorise ... a team of at least two members of the electoral bureau [to] visit [them] at their location with a special ballot box ...

11. In the situation described in paragraph 10, the president of the electoral bureau shall draw up a special register ... The persons added to this register shall be deleted from the other electoral registers of that polling station.

12. The voting procedure stipulated in paragraphs 10 and 11 may only be used for persons domiciled in one of the electoral constituencies in the country."

Article 117

"1. Persons deprived of their electoral rights by final court order may not vote, and shall not be taken into account when establishing the total number of voters, for as long as the restriction is in force.

2. The provisions of Article 85 §§ 11 and 12 concerning the special ballot box shall also apply to persons ... deprived of their liberty ... whose right to vote has not been restricted, if this voting method is requested. The procedure whereby this category of voters shall exercise the right to vote shall be decided by the Central Electoral Bureau.

3. Persons may only vote using the procedure stipulated in paragraph 2 if they are registered in the permanent electoral registers of the electoral constituency where the elections are taking place."

12. Under Law no. 288/2015 on postal voting, this method of voting is limited to Romanian nationals living abroad (Article 2 (a)).

13. By decision no. 72D of 21 October 2016, the Central Electoral Bureau decided that in the legislative elections of that year prisoners whose right to vote had not been restricted could vote in prison if their place of residence was in the same electoral constituency as the prison in which they were serving their sentence. The relevant provision reads as follows:

Article 1

"1. Prisoners... whose right to vote has not been restricted and whose domicile or residence is in the same electoral constituency ... as their detention facility, may vote using a special ballot box ..."

14. By decision no. 72 of 21 October 2016, the Central Electoral Bureau regulated the procedure for requesting a special ballot box in prison. Article 1 § 1 of that decision stated that prison governors were required to inform prisoners whose right to vote had not been restricted that they could vote by that method if they had their domicile or residence in the electoral constituency where the prison was situated.

15. By Government Emergency Ordinance no. 26/2020 on the modification of certain laws concerning elections for the Senate and Chamber of Deputies, the territorial restrictions imposed by Articles 51 and 84 of the Legislative Elections Act (see paragraph 11 above) were removed, and persons who on election day were in a different territorial and administrative division to where they had their domicile or residence were allowed to vote in any polling station on national territory or abroad. The Ordinance was only in force from 14 February to 1 May 2020, when the Constitutional Court declared it unconstitutional by decision no. 150/2020. The relevant part of the Constitutional Court's decision reads as follows:

"110. In this context, the [Constitutional Court] finds that the provisions of ... Government Emergency Ordinance no. 26/2020, which eliminate the restrictive condition and allow a voter to cast his vote in any polling station irrespective of the electoral constituency where he has his domicile or residence, remove the legal effects that the law attaches to what it considers to be essential elements of the exercise of the

right to vote ... (domicile or residence); consequently, [the provisions in question] evade the very purpose of electoral constituencies and thus violate the fundamental rights enshrined in Articles 36 and 37 of the Constitution [the right to vote and to be elected]."

16. Appendix no. 1 to the Legislative Elections Act lists all forty-three electoral constituencies. Forty-one coincide with the forty-one counties on national territory, one covers the territory of Bucharest and one serves Romanian nationals living abroad. The Appendix to Government Decision no. 756/2016 on the organisation and functioning of the National Prison Service lists all the detention facilities on national territory. It appears that twelve counties do not have a detention facility: Buzău, Caraş-Severin, Călăraşi, Covasna, Ilfov, Neamţ, Olt, Sălaj, Sibiu, Suceava, Teleorman, and Vâlcea.

B. On the execution of sentences

17. Law no. 254/2013 on sentencing and the execution of sentences and detention measures ("the Execution of Sentences Act") stipulates the situations in which prisoners may be transferred:

Article 32

"3. The commission for [the execution of sentences] shall meet, as a general rule, once a week."

Article 45

"2. Prisoners may be transferred to another prison in order to correspond to their detention regime or for other valid reasons, by decision of the director general of the National Prison Service on a proposal made by the [commission for the execution of sentences] or at the prisoner's request, with the approval of the [commission]."

Article 76

"1. Prisoners may vote unless they were deprived of their electoral rights by final court order.

2. The prison administration ensures the conditions for the exercise of the right to vote, in accordance with the law."

C. On population records

18. The relevant provisions of Government Emergency Ordinance no. 97/2005 concerning population records, domicile, residence and identity papers of Romanian nationals ("the Population Records Act") read as follows:

Article 15

"3. Requests for a new identity card must be accompanied only by documents providing proof, in accordance with the law, of the address of domicile and, if applicable, the residential address ..."

Article 22

"1. The identity card of a detained person ... shall be kept by the prison administration and be returned to its owner upon release.

...

3. A request for a new identity card made by a [detained] person ... shall be recorded and processed by the population records service for the territorial and administrative division in which the [prison] is situated."

Article 27

"1. Domicile is where a person has his or her principal place of living."

Article 28

1. Proof of address of domicile may be made with the following documents:

(a) a rental agreement drawn up in accordance with the applicable law;

(b) a statement made by the [person's] host, accompanied by one of the documents provided for in sub-paragraph (a) or, where applicable, (d);

(c) for an individual who cannot produce the documents referred to in sub-paragraphs (a) and (b), a statement made by him or her, accompanied by a report by a police officer certifying that the house exists and the individual is actually living at that address;

(d) a document issued by the public administration attesting that the individual or his or her host have an immovable property fit for housing registered in the land registry;

...

2. The host may give his or her statement in accordance with paragraph 1 (b), before a police ... officer, public notary or civil servant from a Romanian diplomatic or consular mission."

Article 30

"Residence is where a person has a secondary place of residence other than his or her place of domicile."

Article 31

"2. A declaration concerning residence ... shall be valid for as long as the person actually lives at the address indicated as his or her place of residence ..."

Article 32

"1. In order to register a place of residence, a person shall complete a request, which he or she shall submit together with a copy of his or her identity card and one of the documents referred to in Article 28."

II. COMPARATIVE LAW MATERIAL

19. The information available to the Court concerning the right to vote of prisoners included a comparative-law survey covering thirty-one member States: Albania, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Croatia, Czech Republic, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Republic of Moldova, Montenegro, the Netherlands, North Macedonia, Poland, Portugal, Serbia, the Slovak Republic, Slovenia, Spain, Switzerland and Ukraine. It appears that in none of the States surveyed would a prisoner be prevented from voting in legislative elections for the sole reason that he or she was serving a sentence in a prison situated outside the electoral constituency of his or her place of residence.

20. The States surveyed have put in place different arrangements to allow prisoners to exercise their right to vote. In broad terms, it appears that twelve member States have a system of registration on specific electoral rolls, corresponding to the constituency where the prison is located, to enable prisoners serving a sentence in a prison situated outside the electoral constituency of their place of residence to exercise their right to vote. In the remaining nineteen member States, there is no such system of registration on specific electoral rolls. However, depending on the circumstances, prisoners can exercise their right to vote using the different voting techniques available to them, such as voting in person inside or outside prison, or voting by proxy or correspondence (post), irrespective of their place of registration.

THE LAW

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

21. The applicant complained under Article 10 of the Convention that Iaşi Prison had prevented him from voting in the legislative elections of 2016, even though his right to vote had not been restricted by court order. The Court, which is master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, ECHR 2018), will examine the complaint from the standpoint of Article 3 of Protocol No. 1 to the Convention (see,

mutatis mutandis, *Ždanoka v. Latvia* [GC], no. 58278/00, § 141, ECHR 2006-IV), 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

22. The Government argued that the applicant had abused the right of individual application. They pointed out that just before the elections of 11 December 2016 the applicant had transferred his address of domicile from Bucharest to Piatra Neamţ (see paragraph 6 above), even though there were no prisons in the Piatra Neamţ electoral constituency. If he had maintained his address in Bucharest, or opted to change his address to Iaşi instead, where his prison was situated, he would have been able to vote.

23. The applicant did not specifically comment on this issue.

24. The Court reiterates that under Article 35 § 3 (a) an application may be rejected as an abuse of the right of individual application if, among other reasons, it was knowingly based on untrue facts. The submission of incomplete and thus misleading information may also amount to an abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation has been provided for the failure to disclose that information. The same applies if important new developments have occurred during the proceedings before the Court and where, despite being expressly required to do so by Rule 47 § 7 of the Rules of Court, the applicant has failed to disclose that information to the Court, thereby preventing it from ruling on the case in full knowledge of the facts. However, even in such cases, the applicant's intention to mislead the Court must always be established with sufficient certainty (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014, with further references).

25. Turning to the facts of the present case, the Court cannot find any indication that the applicant acted in bad faith when he changed his domicile to Piatra Neamţ. He was born there (see paragraph 2 above), and his long-term partner lived there at the time (see paragraph 7 above). He had therefore proved that he had sufficient links to the city. Furthermore, there is nothing in the case file to support the conclusion that he chose the timing of his request to derail the electoral process. Nor has the applicant submitted incomplete or misleading information to the Court (see the case-law quoted in paragraph 24 above).

26. For these reasons, the Court dismisses the Government's preliminary objection of abuse of the right of individual application.

27. The Court further notes that the application 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

1. The parties' submissions

(a) The applicant

28. The applicant reiterated that his right to vote had been restricted for the sole reason that he was serving his sentence in a prison outside his electoral constituency.

29. He further argued that the legislation did not clearly establish a procedure that would allow a prisoner in his situation to vote. Under the applicable law, he could not vote by post or special ballot box. He further claimed that the law did not allow prison to be considered his place of residence for the purpose of elections.

(b) The Government

30. The Government pointed out that, under the applicable law, voters could only cast their vote in legislative elections in their own electoral constituency. If on election day they were in a different electoral constituency, they would not be allowed to vote. This rule was justified by the need to ensure that parliamentarians were elected to represent the interests of voters who lived in the respective constituencies.

31. They further explained that prison could not be considered a place of residence for prisoners for the purpose of elections. Postal voting was only open to nationals residing abroad.

32. The Government pointed out that the particular situation in which the applicant had found himself before the 2016 legislative elections was not regulated by law. In this context, they argued that he had had the responsibility to enquire well in advance about the possibility to vote. In their view, he should have rectified the situation in order to be able to vote. He could have postponed his request to change his residence until after the elections and requested to be transferred to a prison in Bucharest in order to be able to vote. Although there were no records of prisoners requesting to be transferred to a prison situated in their electoral constituency for the purpose of voting, the effectiveness of such a request could not be ruled out.

33. Alternatively, the applicant could have changed his address to Iaşi, but had chosen to transfer it to a place where there was no prison (Piatra Neamţ) a few days before election day.

34. The Government thus averred that the situation complained of had not been caused by the authorities' inaction, and that the authorities had

complied with their obligation to allow the applicant to vote in the legislative elections.

2. The Court's assessment

(a) General principles

35. The Court has already held that the rights guaranteed under Article 3 of Protocol No. 1, which include the right to vote, are crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law (see *Ždanoka*, cited above, § 103, with further references). Nonetheless, those rights are not absolute. There is room for implied limitations and Contracting States must be allowed a wide, albeit not all-embracing, margin of appreciation in this sphere (ibid., § 115).

36. It is however for the Court to determine in the last resort whether the requirements of Article 3 of Protocol No. 1 have been complied with; it has to satisfy itself that the conditions do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate. In particular, any such conditions must not thwart the free expression of the people in the choice of the legislature – in other words, they must reflect, or not run counter to, the concern to maintain the integrity and effectiveness of an electoral procedure aimed at identifying the will of the people through universal suffrage (see *Ždanoka*, cited above, § 104).

37. The Court has considered that exclusion of any groups or categories of the general population must be reconcilable with the underlying purposes of Article 3 of Protocol No. 1. In particular, the Court has found that domestic legislation imposing a minimum age or residence requirements for the exercise of the right to vote is, in principle, compatible with Article 3 of Protocol No. 1 (ibid., § 105). In particular, it considered that in some circumstances, eligibility may be geared to criteria, such as residence, to identify those with sufficiently continuous or close links to, or a stake in, the country concerned (see *Hilbe v. Liechtenstein* (dec.), no. 31981/96, ECHR 1991-VI, and *Melnychenko v. Ukraine* (dec.), no. 17707/02, § 56, ECHR 2004-X).

(b) Application of those principles to the facts of the case

38. The Court notes that the applicant was unable to vote in legislative elections while serving a prison sentence. While his right to vote was not restricted by the court which convicted and sentenced him (see paragraph 5 above), it was, in practice, removed in so far as the Legislative Elections Act only permitted voting in the electoral constituency where the voter's place of residence was situated (see paragraph 11 above). As the applicant was serving his sentence in a prison situated outside his electoral district on

the date of the elections, he was deprived of the ability to cast his vote (see paragraph 8 above). The Court thus concludes that his right to vote enshrined in Article 3 of Protocol No. 1 was restricted.

39. Furthermore, the Court accepts that an electoral system which, such as that in place in Romania, imposes a territorial link between the voters and their elected representatives pursues a legitimate aim compatible with the principle of the rule of law and the general objectives of the Convention (see *Ždanoka*, cited above, § 115 (b), *Benkaddour v. France* (dec.), no. 51685/99, 18 November 2003, and the case-law cited in paragraph 37 above).

40. It thus remains to be ascertained whether there has been arbitrariness or a lack of proportionality, and whether the restriction has interfered with the free expression of the opinion of the people (see *Ždanoka*, cited above, § 115 (c)).

41. In this connection, the Court observes that, while States are afforded a wide margin of appreciation in organising and running their electoral systems (ibid., § 103), the situation is not the same when an individual or group has been deprived of the right to vote. Such a situation must pass a more stringent proportionality test in order to ensure the integrity and effectiveness of an electoral procedure aimed at identifying the will of the people through universal suffrage (see, *mutatis mutandis*, *Labita v. Italy* [GC], no. 26772/95, §§ 201-03, ECHR 2000-IV, *Vito Sante Santoro v. Italy*, no. 36681/97, §§ 54 and 58-59, ECHR 2004-VI, and the case-law quoted in paragraph 36 above).

42. In assessing the present case, the Court must also bear in mind that, by virtue of being deprived of his liberty, the applicant was not in control of his whereabouts and could not freely comply with the territorial requirements of electoral law (contrast, for instance, *Shindler v. the United Kingdom*, no. 19840/09, § 108, 7 May 2013, in which the Court noted that disenfranchised non-residents could have their right to vote restored if and when they returned to live in their country of origin).

43. Moreover, the Court cannot but note that in none of the thirty-one member States surveyed would a prisoner be prevented from voting in legislative elections for the sole reason that he or she was serving a sentence in a detention facility situated outside the electoral constituency of their place of residence (paragraph 19 above). It can thus be inferred that there is a strong European consensus that prisoners in the applicant's situation be allowed to exercise their right to vote. In this regard, the Court reiterates that one of the relevant factors in determining the scope of the authorities' margin of appreciation may be the existence or non-existence of common ground between, or even trends in, the laws of the Contracting States (see *Shindler*, cited above, § 102, with further references).

44. Consequently, the Court will also have regard to the existent common ground in the laws of the Contracting States in assessing whether

the respondent State has provided relevant and sufficient reasons to justify the restriction imposed on the applicant's right to vote (ibid., § 102; see also *Sitaropoulos and Giakoumopoulos v. Greece* [GC], no. 42202/07, §§ 64-66, ECHR 2012).

45. The Court observes that twelve of the forty-two electoral constituencies on Romanian territory do not have a detention facility (see paragraph 16 above). Moreover, it is without doubt that a detention facility may not be regarded as a prisoner's place of residence for the purpose of elections (see paragraphs 29 and 32 above). It follows that any prisoner, who, just like the applicant, has his or her residence in one of the twelve electoral constituencies without a detention facility, would automatically be banned from voting during their detention. Such a situation cannot be construed as being compatible with the provisions of the Convention. The Convention is intended to guarantee rights that are practical and effective and not theoretical and illusory (see, among other authorities, *Del Río Prada v. Spain* [GC], no. 42750/09, § 88, ECHR 2013, and *Dvorski v. Croatia* [GC], no. 25703/11, § 82, 20 October 2015), and States must ensure that voter's particular circumstances are taken into account when organising the electoral system.

46. However, it is not clear if and how this has been done in the present case.

47. While the Government argued that the applicant should have applied to have his place of residence moved to Iaşi (see paragraph 33 above), they did not provide any convincing explanation as to how realistic such action would have been. According to the applicable law, the applicant should have provided a rental agreement, a statement from a host willing to take him in, or a report by a police officer attesting that he actually lived in Iaşi (see Article 28 of the Population Records Act, quoted in paragraph 18 above). The Court is not convinced that a prisoner in the applicant's situation would be able to produce such documents for any address outside the prison. The burden imposed on the applicant thus appears to have been disproportionately high.

48. In the same vein, the Court notes that the possibility for prisoners to request to be transferred to a detention facility situated in the electoral constituency of his or her residence (see the Government's argument summarised in paragraph 32 above) remains purely speculative in so far as the law does not clearly provide for it (see paragraph 17 above). Moreover, the situation in which the applicant found himself – subject of multiple transfers to prisons belonging to different electoral constituencies (see paragraph 5 above) – makes such a request appear unpredictable. In any case, this option remains illusory for the applicant, whose residence is in an electoral constituency which does not have a detention facility (see paragraph 16 above).

49. The Court accepts that the law cannot take account of every individual case and that, in some circumstances, the application of a general rule to an individual case could amount to a breach of the Convention (see *Shindler*, cited above, § 105 with further references). However, it cannot but observe with concern that, in the respondent State, the ability for a prisoner to exercise the right to vote (when not restricted by court) becomes a completely random act entirely outside the control of the person concerned and exclusively in the hands of the authorities.

50. Lastly, without questioning the validity of a territorial restriction as such (see paragraph 37 above), the fact that in the respondent State solutions were found so that non-residents and military and police personnel stationed abroad could vote in a different electoral constituency from that of their domicile or residence (see Article 83 of the Legislative Elections Act, cited in paragraph 11 above), shows that the residence requirement was not essential in the current electoral system.

51. The Court acknowledges that it is not its role to indicate to the respondent Government what would be the best solution to allow prisoners in the applicant's situation to vote. However, it cannot but note that several different arrangements are possible and have already been put in place in the thirty-one of the member States surveyed for the purpose of the present application (see paragraph 20 above). Consequently, the State's task to secure the exercise of the right to vote to prisoners in the applicant's situation does not appear insurmountable.

52. In these circumstances, notwithstanding the margin of appreciation afforded to States in this field and taking into account the European consensus that prisoners in the applicant's situation be allowed to exercise the right to vote, the Court considers that the respondent Government failed to provide relevant and sufficient reasons to demonstrate that the restriction of the applicant's right to vote was proportionate.

53. There has accordingly been a violation of Article 3 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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

55. The applicant claimed 3,500 euros (EUR) in respect of non-pecuniary damage.

56. The Government argued that the amount sought was too high and that the finding of a violation would constitute sufficient just satisfaction.

57. In the particular circumstances of the case, the Court considers that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage sustained by the applicant (see *Firth and Others v. the United Kingdom*, nos. 47784/09 and 9 others, § 18, 12 August 2014, with further references).

B. Costs and expenses

58. The applicant did not make a claim for costs and expenses. Consequently, the Court is not called upon to make any award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

Done in English, and notified in writing on 30 November 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Andrea Tamietti
Registrar

Yonko Grozev
President