



No justification for indiscriminate removal of voting rights from persons placed under guardianship

In today's **Chamber judgment**¹ in the case of [Anatoliy Marinov v. Bulgaria](#) (application no. 26081/17) 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) to the European Convention on Human Rights.

The case concerned Mr Marinov's voting rights, which he was unable to exercise during the 2017 parliamentary elections in Bulgaria. His right to vote had been automatically withdrawn, in line with the Constitution, when he had been placed under partial guardianship owing to psychiatric issues in 2000.

The Court concluded that the indiscriminate removal of Mr Marinov's voting rights – without individual judicial review and solely because he had been placed under partial guardianship – had not been proportionate to the legitimate aim for restricting the right to vote.

Principal facts

The applicant, Anatoliy Tsvetankov Marinov, is a Bulgarian national who was born in 1975 and lives in Sofia.

In 1999 Mr Marinov was diagnosed with psychiatric disorders and was placed under partial guardianship, by virtue of a court decision, the following year. In its decision, the court held that Mr Marinov could not take good care of himself and was occasionally aggressive, but that his diagnosis was not severe. As a result of being placed under partial guardianship, his right to vote was automatically removed due to the Constitutional ban on voting rights for anyone under guardianship.

In November 2015, Mr Marinov, through a lawyer authorised by him and his guardian, applied for his legal capacity to be restored. The court noted that the application had been lodged by his guardian and terminated the proceedings on that ground in February 2016. The court considered that only the applicant could be a respondent in such proceedings; therefore, his guardian should have submitted an address for him, so that he could be summoned in that capacity.

Following an unsuccessful appeal, Mr Marinov lodged a request for leave to appeal with the Supreme Court of Cassation, arguing that he had been denied free and direct access to a court. The Supreme Court of Cassation remitted the case to the Regional Court for the proceedings to be reopened. In October 2016, the Regional Court terminated the proceedings again, reasoning that Mr Marinov's guardian, considered as a claimant, had failed to comply with the court's instructions to specify the respondent in the case and to provide an address at which he could be summoned.

As he was still declared legally incapable, Mr Marinov was unable to participate in the Bulgarian parliamentary elections in March 2017.

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.

A few weeks later, he lodged a fresh application for the restoration of his legal capacity. In December 2017, the Sofia City Court, considering that he was able to manage his own affairs and interests, restored his legal capacity and lifted his guardianship.

Complaints, procedure and composition of the Court

Relying on Article 3 of Protocol No. 1 to the Convention (right to free elections), Mr Marinov complained that his automatic disenfranchisement on account of his being under partial guardianship and without an individual judicial assessment had been disproportionate and had violated his rights. He submitted that the exclusion of disabled people, including those suffering from mental disorders, from the possibility to vote in elections contravened international standards.

The application was lodged with the European Court of Human Rights on 30 March 2017.

Third-party interventions were received from the Validity Foundation – Mental Disability Advocacy Center, a non-governmental organisation.

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

Tim Eicke (the United Kingdom), *President*,
Yonko Grozev (Bulgaria),
Faris Vehabović (Bosnia and Herzegovina),
Iulia Antoanella Motoc (Romania),
Gabriele Kucsko-Stadlmayer (Austria),
Pere Pastor Vilanova (Andorra),
Jolien Schukking (the Netherlands),

and also Ilse Freiwirth, *Deputy Section Registrar*.

Decision of the Court

The Court noted that the essence of the applicant's complaint was not that he had been divested of his legal capacity, but that as such, he had been barred from participating in any form of election in the country.

In the Government's view, the removal of voting rights from those under guardianship ensured that only persons capable of making informed and meaningful decisions could participate in choosing the country's legislature. They put forward that each person's individual situation was assessed by the national courts within the course of the proceedings to place that person under guardianship.

The Court was satisfied that there was a legitimate aim to the measure. However, it noted that the restriction did not distinguish between those under total guardianship and those under partial guardianship. Furthermore, there was nothing to show that the Bulgarian legislature had ever sought to weigh the competing interests or to assess the proportionality of the Constitutional restriction as it stood and thus open the way for the courts to analyse the capacity of a person to exercise the right to vote, independently of a decision to place that person under guardianship. It appeared, moreover, that such a possibility would not be in line with the domestic legal framework.

Mr Marinov had lost his right to vote as the result of an automatic, blanket restriction on the franchise of those under partial guardianship with no individual judicial evaluation of his fitness to vote. The Court reiterated that such blanket treatment of all those with intellectual or psychiatric disabilities was questionable, and the curtailment of their rights must be subject to strict scrutiny. The Court therefore concluded that the indiscriminate removal of Mr Marinov's voting rights – without an individual judicial review and solely on the basis of the fact that his mental disability meant that he had been placed under partial guardianship – could not be considered to be

proportionate to the legitimate aim for restricting the right to vote. There had accordingly been a violation of Article 3 of Protocol No. 1 to the Convention.

Just satisfaction (Article 41)

The Court held that Bulgaria was to pay the applicant 3,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,926 in respect of costs and expenses.

The judgment is available only in English.

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Press contacts

echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

Jane Swift (tel : + 33 3 88 41 29 04)

Tracey Turner-Tretz (tel : + 33 3 88 41 35 30)

Denis Lambert (tel : + 33 3 90 21 41 09)

Inci Ertekin (tel : + 33 3 90 21 55 30)

Neil Connolly (tel : + 33 3 90 21 48 05)

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.