



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

SECOND SECTION

**CASE OF ALAJOS KISS v. HUNGARY**

*(Application no. 38832/06)*

JUDGMENT

STRASBOURG

20 May 2010

**FINAL**

*20/08/2010*

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



**In the case of** Alajos Kiss v. Hungary,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Nona Tsotsoria,

Kristina Pardalos, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 29 April 2010,

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

## PROCEDURE

1. The case originated in an application (no. 38832/06) against the Republic of Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Hungarian national, Mr Alajos Kiss (“the applicant”), on 1 September 2006.

2. The applicant was represented by Mr J. Fiala, Legal Officer of the Mental Disability Advocacy Center, a non-governmental organisation with its seat in Budapest. The Hungarian Government (“the Government”) were represented by Mr L. Hölzl, Agent, Ministry of Justice and Law Enforcement.

3. The applicant alleged that his exclusion – required by the Constitution itself – from the electoral register solely on the strength of his placement under partial guardianship amounted to a violation of Article 3 of Protocol No. 1, read alone or in conjunction with Articles 13 and 14 of the Convention.

4. On 26 January 2009 the President of the Second Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

5. 6. The applicant and the Government each filed observations on the merits (Rule 59 § 1 of the Rules of Court). The parties replied in writing to each other's observations. In addition, third-party comments were received from the Harvard Law School Project on Disability, which had been granted leave by the President of the Chamber to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2) on 11 May 2009. The

applicant, but not the respondent Government, replied to those comments (Rule 44 § 5).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1954 and lives in Rózsaszentmárton.

7. In 1991 the applicant was diagnosed with manic depression. On 27 May 2005 he was placed under partial guardianship. Although this measure was based on the Civil Code which deals with the pecuniary and certain personal relations of citizens (see paragraph 12 below), it nevertheless also attracted the application of Article 70(5) of the Constitution (see paragraph 11 below) to the applicant, excluding him from the right to vote. In the underlying court decision it was noted that he took care of himself adequately but sometimes wasted money in an irresponsible fashion and was occasionally aggressive. The applicant did not appeal against this decision.

8. On 13 February 2006 the applicant realised that he had been omitted from the electoral register drawn up in view of the upcoming legislative elections. His complaint to the Electoral Office was to no avail.

9. The applicant further complained to the Pest Central District Court. On 9 March 2006 this court dismissed his case. It observed that, under Article 70(5) of the Constitution, those under guardianship could not participate in elections. This decision was served on the applicant's representative on 25 April 2006.

10. In the meantime, legislative elections took place on 9 and 23 April 2006, in which the applicant could not participate.

### II. RELEVANT DOMESTIC LAW AND THE INTERNATIONAL LEGAL INSTRUMENTS CONSIDERED

11. Article 70(5) of the Hungarian Constitution provides *inter alia* that persons placed under total or partial guardianship do not have a right to vote.

12. The Civil Code provides:

#### Section 1

“(1) This Act regulates the pecuniary and certain personal relations of citizens ...”

### Section 14

“(4) Persons of legal age may be placed under partial guardianship by a court if their faculties necessary to conduct their affairs are – owing to their mental state, unsound mind or pathological addiction – permanently or recurrently diminished to a great extent in general or in relation to certain groups of matters.

(5) If the limitation of discretionary ability is only partial, the person under guardianship may make valid legal statements independently in all matters in relation to which the court did not limit his/her capacity in its decision.

(6) The court may limit the full capacity of a person placed under guardianship in particular in respect of the following groups of matters:

i. requests of social security, social and unemployment benefits and disposition over such benefits or over income deriving from employment ... exceeding the amount defined in paragraph (2) c) of section 14/B;

ii. right of disposition concerning moveable and real property;

iii. making certain legal statements in family law matters, namely:

a) legal statements concerning matrimonial property rights or property rights related to a registered partnership,

b) making statements in relation to the establishment of parentage,

c) defining the name of one's child and its alteration,

d) giving consent to the adoption of one's child;

iv. taking pecuniary decisions in relation to maintenance obligations;

v. making legal statements in relation to residential leases (conclusion and termination of the contract);

vi. inheritance matters;

vii. legal statements concerning placement in an in-house social institution;

viii. disposing of rights related to health services;

ix. determination of place of residence.”

13. Act no. C of 1997 on Election Procedure provides as follows:

#### **Registration of citizens of legal age without the right to vote**

### Section 17

“(1) In order to establish the right to vote, the organs listed under points a)-c) keep informed the central agency, managing the register of citizens' personal data and

addresses, of the changes occurring in the data, specified in paragraph (2), of ... citizens of legal age without the right to vote, as follows:

a) the office of guardians ... on placement under guardianship limiting or excluding legal capacity, and on the termination of guardianship, ...

(2) The communication described under paragraph (1) includes the citizen's:

a) first and last name (for women, also maiden name),

b) personal identification number,

c) the reason for exclusion from the exercise of voting rights, its beginning date and expected end date.”

14. The United Nations Convention on the Rights of Persons with Disabilities (the “CRPD”), which was ratified by Hungary on 20 July 2007, provides as follows:

#### **Article 1 - Purpose**

... “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others.”

#### **Article 12 - Equal recognition before the law**

“1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests. ...”

#### **Article 29 - Participation in political and public life**

“States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:

a. Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:

i. Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;

ii. Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;

iii. Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;

b. Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:

i. Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;

ii. Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.”

15. The Council of Europe Recommendation R(99)4 of the Committee of Ministers to Member States on Principles Concerning the Legal Protection of Incapable Adults (adopted on 23 February 1999) (“Recommendation R(99)4”) provides as follows:

**Principle 3 – Maximum preservation of capacity**

“... 2. In particular, a measure of protection should not automatically deprive the person concerned of the right to vote, or to make a will, or to consent or refuse consent to any intervention in the health field, or to make other decisions of a personal character at any time when his or her capacity permits him or her to do so.”

16. Opinion no. 190/2002 of the European Commission for Democracy through Law (Venice Commission) on the Code of Good Practice in Electoral Matters (“Opinion no. 190/2002”) provides as follows:

**I.1. Universal suffrage – 1.1. Rule and exceptions**

**d. Deprivation of the right to vote and to be elected:**

“i. provision may be made for depriving individuals of their right to vote and to be elected, but only subject to the following cumulative conditions:

ii. it must be provided for by law;

iii. the proportionality principle must be observed; conditions for depriving individuals of the right to stand for election may be less strict than for disenfranchising them;

iv. The deprivation must be based on mental incapacity or a criminal conviction for a serious offence.

v. Furthermore, the withdrawal of political rights or finding of mental incapacity may only be imposed by express decision of a court of law.”

17. The Council of Europe Recommendation R(2006)5 of the Committee of Ministers to Member States on the Council of Europe Action Plan to Promote the Rights and Full Participation of People with Disabilities in Society: Improving the Quality of Life of People with Disabilities in Europe 2006-2015 (adopted on 5 April 2006) (“Recommendation R(2006)5”) provides as follows:

**3.1. Action line No.1: Participation in political and public life**

**3.1.3. Specific actions by member states**

“... iii. to ensure that no person with a disability is excluded from the right to vote or to stand for election on the basis of her/his disability; ...”

## THE LAW

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

18. The applicant complained that the disenfranchisement, imposed on him because he was under partial guardianship for manic depression, constituted an unjustified deprivation of his right to vote, which was not susceptible to any remedy since it was prescribed by the Constitution, and which was discriminatory in nature. He relied on Article 3 of Protocol No. 1, read alone or in conjunction with Articles 13 and 14 of the Convention.

19. The Government contested those arguments.

20. The Court considers that the application falls to be examined under Article 3 of Protocol No. 1 (see, *mutatis mutandis*, *Hirst v. the United Kingdom* (no. 2), no. 74025/01, §§ 53 and 54, 30 March 2004) which provides as relevant:

“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**

21. The Government submitted that the application should be rejected for non-exhaustion of domestic remedies, since the applicant had not appealed against his placement under guardianship (see paragraph 7 above).

22. The applicant submitted that he had accepted the necessity of his placement under partial guardianship in view of his mental ailment; therefore, he had not appealed against the District Court's decision. The purpose of the present application was solely to challenge the fact that as a person placed under guardianship he had automatically lost his right to vote. To challenging his guardianship was not an effective remedy to this problem; guardianship proceedings are not concerned as such with one's right to vote. Only a full restoration of the applicant's legal capacity would restore his right to vote, which however was neither possible (since he suffers from a mental disability) nor desirable (since he would lose the legal protection provided by guardianship).

23. The Court notes that the applicant accepted the necessity of his placement under partial guardianship and that, therefore, he did not appeal against it. It observes that the subject matter of the application is not the guardianship measure, but its automatic consequence prescribed in the Constitution (see paragraph 11 above), namely the applicant's disenfranchisement. The Government have not pointed to any remedy capable of redressing this latter issue. It follows that the application cannot be rejected for non-exhaustion of domestic remedies. Moreover, it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

### **B. Merits**

#### *1. The parties' submissions*

##### **a. The Government**

24. The Government submitted that the rights under Article 3 of Protocol No. 1 are not absolute and might be restricted under certain conditions. The Contracting States might specify the conditions of active and passive suffrage in their domestic law and enjoyed a wide margin of appreciation in this respect, although those conditions must not restrict the

rights in question to such an extent that their very substance was affected. The grounds for exclusion from the right to vote (Article 70(5) of the Constitution, see paragraph 11 above) had been incorporated into the Constitution by Act no. 31 of 1989. According to the reasoning of the Act, its purpose had been to regulate the basic rights and obligations in the spirit of international human rights instruments, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

25. In identifying those eligible to vote, the general practice was to set a minimum age requirement, normally that of majority, whereby States automatically excluded from the right to vote all underage citizens (although assessed individually, several minors could be found mature enough to participate in public affairs). The objective was to ensure that only citizens capable of assessing the consequences of their decisions, capable of making conscious and judicious decisions and vested with other rights linked to the age of majority, should participate in public affairs.

26. The exclusion from the right to vote of persons under guardianship pursued the same legitimate aim. These persons, although adults, lacked the capacity to manage their affairs, including the exercise of their right to vote, owing to their mental state, unsound mind or pathological addiction. When assessing whether to place the applicant under guardianship, the District Court factored into its decision the applicant's resultant exclusion from the right to vote, pursuant to the constitutional rule disenfranchising those citizens who were incapable of assessing the consequences of their decisions or of making conscious or judicious decisions.

27. Furthermore, in the Government's view, the prohibition complained of was in compliance with the Venice Commission's Opinion no. 190/2002 (see paragraph 16 above) and cannot therefore be considered disproportionate, all the more so since the applicant's right to vote would be statutorily restored if his placement under guardianship was rescinded at one of the periodical judicial reviews of his condition, or if a motion of the applicant to the same end succeeded in view of his improved mental status.

**b. The applicant**

28. The applicant accepted in principle that the restriction in question pursued a legitimate aim, as suggested by the Government (see paragraphs 25 and 26 above), without subscribing to the view that people under guardianship in general could not make the responsible choices required for participation in elections. However, he argued that States should enjoy a narrow margin of appreciation in the matter, essentially because any exclusion of people with disabilities from public life must be subject to scrutiny as to whether it was compatible with relevant international human rights requirements, particularly where there had been no substantive debate at the domestic level on the appropriateness of the measure. He added that,

with regard to the voting rights of people with disabilities, the historical or political specifics of particular electoral systems played no role.

29. The applicant also submitted that the restriction in question affected 0.75% of the Hungarian population of voting age, which was a substantial group. In reply to the Government's argument in paragraph 25 above, he emphasised that there were important distinctions between minors and people with disabilities, the most significant being that, while an individual assessment of the maturity of all minors would be an unreasonable burden on the authorities, the same could not be said about the fitness to vote of adults under guardianship, whose status was in any event determined in individual judicial proceedings.

30. He further argued that the judicial decision resulting in his placement under guardianship had not been preceded by any particular scrutiny establishing a connection between his mental ailment and his capacity to vote. In his view, there was indeed no such connection, since his condition in no way impeded his capacity to orient himself in political matters. The absence of such scrutiny could be explained by the fact that, in any event, the District Court had no discretion in this regard, the restriction being directly prescribed by the Constitution. This was different from the legislation of several Member States of the Council of Europe including Germany, Austria, Switzerland, France, Italy, Sweden and Spain, where persons under partial guardianship could vote.

31. As regards international law, the applicant submitted, in reply to the Government's argument in paragraph 27 above, that Opinion no. 190/2002 was in fact silent on the issue of whether persons under guardianship could be excluded from the right to vote, but this silence could not be interpreted as permitting a blanket and automatic prohibition on all persons under guardianship. He drew attention to Principle 3.2 of Recommendation R(99)4 (see paragraph 15 above) and Articles 12 and 29 of the CRPD (see paragraph 14 above).

32. The applicant further rejected as outdated the Government's approach according to which all persons with intellectual and psycho-social disability, placed under guardianship, were incapable of independent decision-making. In his view, modern legislation accepted that the decision-making capacity of people with intellectual or mental disabilities should be recognised as much as possible, especially in the field of the right to vote. This approach was reflected in trends in international law, such as the CRPD (see paragraph 14 above). If one were to accept that a blanket and automatic prohibition on the right to vote of people under guardianship was justified because they were, based on their legal status, unable to make conscious and judicious decisions and were unfit to vote, then a large class of citizens would be deprived of the protection provided by Article 3 of Protocol No. 1, without due consideration given to their individual circumstances. This was incompatible with the Court's case-law on the

matter (see *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, ECHR 2005-IX).

33. Lastly, the applicant submitted that the impugned restriction could be replaced by a less restrictive alternative, such as allowing the courts to address this particular issue in guardianship proceedings or establishing a separate procedure with a view to assessing the fitness to vote of a person under guardianship.

**c. The third party**

34. The intervener emphasised that the prohibition in question was not only at variance with Recommendation R(2006)5 (see paragraph 17 above), but was also not in compliance with Articles 12 and 29 of the CRPD (see paragraph 14 above), which was the first legally binding instrument in international law guaranteeing the comprehensive protection of the rights of persons with disabilities. This convention, signed by the European Community on 30 March 2007, represented the practice of European States which should be considered when interpreting Article 3 of Protocol No. 1.

**d. The applicant's comments on the third-party intervention**

35. The applicant agreed with the intervener that the rights under the Convention of those with disabilities should be interpreted in the light of the CRPD (see paragraph 14 above). He considered himself mentally disabled and, as such, should benefit from the protection afforded by the CRPD. The restriction imposed on him is incompatible with the CRPD's spirit and text, in particular its Articles 12 and 29.

*2. The Court's assessment*

**a. General principles**

36. The Court refers to its case-law in the matter, as outlined in the judgment of *Hirst v. the United Kingdom (no. 2)* [GC], (op.cit.):

“57. [T]he Court has established that [Article 3 of Protocol No. 1] guarantees individual rights, including the right to vote and to stand for election (see *Mathieu-Mohin and Clerfayt v. Belgium*, judgment of 2 March 1987, Series A no. 113, pp. 22-23, §§ 46-51). ...

58. The ... rights guaranteed under Article 3 of Protocol No. 1 are crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law ...

59. ... [T]he right to vote is not a privilege. In the twenty-first century, the presumption in a democratic State must be in favour of inclusion. ... Universal suffrage has become the basic principle (see *Mathieu-Mohin and Clerfayt*, cited above, p. 23, § 51, citing *X v. Germany*, no. 2728/66, Commission decision of 6 October 1967, Collection 25, pp. 38-41).

60. Nonetheless, the rights bestowed by Article 3 of Protocol No. 1 are not absolute. There is room for implied limitations and Contracting States must be allowed a margin of appreciation in this sphere.

61. ... The Court reaffirms that the margin in this area is wide (see *Mathieu-Mohin and Clerfayt*, cited above, p. 23, § 52, and, more recently, *Matthews v. the United Kingdom* [GC], no. 24833/94, § 63, ECHR 1999-I; see also *Labita v. Italy* [GC], no. 26772/95, § 201, ECHR 2000-IV, and *Podkolzina v. Latvia*, no. 46726/99, § 33, ECHR 2002-II). ...

62. 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 (see *Mathieu-Mohin and Clerfayt*, p. 23, § 52). In particular, any conditions imposed 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. For example, the imposition of a minimum age may be envisaged with a view to ensuring the maturity of those participating in the electoral process or, 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 1999-VI, and *Melnychenko v. Ukraine*, no. 17707/02, § 56, ECHR 2004-X). Any departure from the principle of universal suffrage risks undermining the democratic validity of the legislature thus elected and the laws it promulgates. Exclusion of any groups or categories of the general population must accordingly be reconcilable with the underlying purposes of Article 3 of Protocol No. 1 (see, *mutatis mutandis*, *Aziz v. Cyprus*, no. 69949/01, § 28, ECHR 2004-V)."

#### **b. Application of those principles to the present case**

37. The Court will therefore determine whether the measure in question pursued a legitimate aim in a proportionate manner having regard to the principles identified above.

##### *(i) Legitimate aim*

38. The Court points out that Article 3 of Protocol No. 1 does not, like other provisions of the Convention, specify or limit the aims which a restriction must pursue and that a wide range of purposes may therefore be compatible with Article 3. The Government submitted that the measure complained of pursued the legitimate aim of ensuring that only citizens capable of assessing the consequences of their decisions and making conscious and judicious decisions should participate in public affairs (see paragraphs 25 and 26 above). The applicant accepted this view (see paragraph 28 above) and the Court sees no reason to hold otherwise. It is therefore satisfied that the measure pursued a legitimate aim.

(ii) *Proportionality*

39. The Court notes that the restriction in question does not distinguish between those under total and those under partial guardianship (see paragraph 11 above), and is removed once guardianship is terminated (see the Government's submission in paragraph 27 above, not disputed by the applicant). However, it observes the applicant's assertion in paragraph 29 above, not refuted by the Government, that 0.75% of the Hungarian population of voting age is concerned by disenfranchisement on account of being under guardianship in a manner which is indiscriminate. It finds this to be a significant figure, and it cannot be claimed that the bar is negligible in its effects.

40. The Government argued, relying on the margin of appreciation, that it must be permissible for the legislature to establish rules ensuring that only those who are capable of assessing the consequences of their decisions and making conscious and judicious decisions should participate in public affairs.

41. The Court accepts that this is an area in which, generally, a wide margin of appreciation should be granted to the national legislature in determining whether restrictions on the right to vote can be justified in modern times and, if so, how a fair balance is to be struck. In particular, it should be for the legislature to decide as to what procedure should be tailored to assessing the fitness to vote of mentally disabled persons. The Court observes that there is no evidence that the Hungarian legislature has ever sought to weigh the competing interests or to assess the proportionality of the restriction as it stands.

42. The Court cannot accept, however, that an absolute bar on voting by any person under partial guardianship, irrespective of his or her actual faculties, falls within an acceptable margin of appreciation. Indeed, while the Court reiterates that this margin of appreciation is wide, it is not all-embracing (*Hirst v. the United Kingdom (no. 2) [GC]*, op. cit., § 82). In addition, if a restriction on fundamental rights applies to a particularly vulnerable group in society, who have suffered considerable discrimination in the past, such as the mentally disabled, then the State's margin of appreciation is substantially narrower and it must have very weighty reasons for the restrictions in question (cf. also the example of those suffering different treatment on the ground of their gender - *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 78, Series A no. 94, race - *D.H. and Others v. the Czech Republic [GC]*, no. 57325/00, § 182, ECHR 2007-..., or sexual orientation - *E.B. v. France [GC]*, no. 43546/02, § 94, ECHR 2008-...). The reason for this approach, which questions certain classifications *per se*, is that such groups were historically subject to prejudice with lasting consequences, resulting in their social exclusion. Such prejudice may entail legislative stereotyping which prohibits the

individualised evaluation of their capacities and needs (cf. *Shtukaturov v. Russia*, no. 44009/05, § 95, 27 March 2008).

43. The applicant in the present case lost his right to vote as the result of the imposition of an automatic, blanket restriction on the franchise of those under partial guardianship. He may therefore claim to be a victim of the measure. The Court cannot speculate as to whether the applicant would still have been deprived of the right to vote even if a more limited restriction on the rights of the mentally disabled had been imposed in compliance with the requirements of Article 3 of Protocol No. 1 (see *mutatis mutandis Hirst v. the United Kingdom (no. 2)*, op.cit, §§ 48 to 52).

44. The Court further considers that the treatment as a single class of those with intellectual or mental disabilities is a questionable classification, and the curtailment of their rights must be subject to strict scrutiny. This approach is reflected in other instruments of international law, referred to above (paragraphs 14-17). The Court therefore concludes that an indiscriminate removal of voting rights, without an individualised judicial evaluation and solely based on a mental disability necessitating partial guardianship, cannot be considered compatible with the legitimate grounds for restricting the right to vote.

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

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

47. The Government contested this claim.

48. The Court considers that the applicant must have suffered some non-pecuniary damage and awards him, on an equitable basis, EUR 3,000 under this head.

### B. Costs and expenses

49. The applicant also claimed EUR 7,500 for the costs and expenses incurred before the domestic authorities and the Court. This sum

corresponds to 75 hours of legal work, according to the time-sheet submitted, billable by his representative and charged at an hourly rate of EUR 100.

50. The Government contested this claim.

51. 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 were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 5,000 covering costs under all heads.

### **C. Default interest**

52. The Court considers it appropriate that the default interest 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. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 3 of Protocol No. 1 of the Convention;
3. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Hungarian forints at the rate applicable at the date of settlement:
    - (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
  - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé  
Registrar

Françoise Tulkens  
President