

PRISONERS' VOTING RIGHTS

European Apprehension of the Statutory Voting Ban for Sentenced Prisoners in Bulgaria

ChatGPT query: Which right can be called the "Cinderella of prisoners' rights" in the case law of the ECtHR?

The right often referred to as the "Cinderella of prisoners' rights" in the context of the European Court of Human Rights (ECtHR) case law is the **right to vote**, protected under **Article 3 of Protocol No. 1** of the European Convention on Human Rights (ECHR).

This characterization reflects the historical neglect and limited attention given to prisoners' voting rights compared to other rights, as well as the gradual recognition and enhancement of this right in the ECtHR's jurisprudence.

Factors determining the impact

- ▶ The initial standards
- ▶ The Member States' legal backgrounds
- ▶ The evolution of the Court's case law
- ▶ The Member States' resistance
- ▶ The CM approach to implementation of judgments

Legal and political developments

- ▶ The Court's approach in *Hirst No.2 v. the UK* of 2005; Code of Good Practice in Electoral Matters of the Venice Commission of 2002; *Frodl v. Austria* of 2010
- ▶ “The principle of proportionality requires a discernible and sufficient link between the sanction and the conduct and circumstances of the individual concerned.”
- ▶ The resistance and the “execution” of *Hirst No.2* by the UK
- ▶ Abandonment of the initial standards in *Scoppola v. Italy No.3* of 2012 and the wide margin of appreciation
- ▶ The Court's dissuasive approach in *Firth v. the UK* of 2014, in *Kalda v. Estonia No.2*, as well as in other cases
- ▶ The CM lenient approach to execution in *Hirst 2*, *Anchugov and Gladkov* and *Söyler*

Legal framework and the ECtHR case law on Bulgaria

- ▶ Article 42, para 2: “Every citizen above the age of 18, with the exception of those deprived of legal capacity or serving a prison sentence, shall be free to elect state and local authorities and vote in referendums.”
- ▶ Repeated in Article 243 of the Election Code
- ▶ Kulinski and Sabev v. Bulgaria, 2016 (Chamber) - violation of Article 3 of Protocol No. 1 because of the general, automatic and indiscriminate restriction of the right to vote in the parliamentary and in the European elections
- ▶ Dimov and Others v. Bulgaria, 2021 (Committee) - violation with respect to 19 applicants
- ▶ Tingarov and Others v. Bulgaria, 2023 (Chamber) - violation with respect to 8 applicants
- ▶ Many pending cases

(Non)execution, Marinov and the Court's approach in Tingarov

- ▶ No developments in execution since 2016, despite the constitutional reform of 2023 and the amendments in the Election Code
- ▶ Kulinski and Sabev group under the enhanced procedure for execution at the CoM but no progress
- ▶ Anatoliy Marinov v. Bulgaria, 2022 - violation of the right to vote of a person deprived of legal capacity; 3,000 euro compensation plus costs
- ▶ The Court's approach in Tingarov - no compensation and no costs; "the lodging of such an application was straightforward and did not require legal assistance"
- ▶ The October 2022 decision of the Constitutional Court
- ▶ Prospects - increasing number of applications against Bulgaria; no action at the national level; unclear messages from the Court and from the CM.

END