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La Corte Edu si pronuncia sul caso del sig. XXXXX che non aveva potuto esercitare il diritto di voto durante le elezioni parlamentari del 2017 in Bulgaria, essendogli stato tale diritto automaticamente revocato nel 2000, quando era stato posto sotto tutela parziale per problemi psichiatrici.
Tale decisione era in linea con il divieto costituzionale di esercizio del diritto di voto per i soggetti posti sotto tutela.
La Corte pur riconoscendo che tale previsione possa rispondere al legittimo scopo di consentire la partecipazione alla elezione del Legislatore statale solo a persone capaci di assumere decisioni informate e consapevoli, ha ritenuto irragionevole la restrizione automatica e generalizzata e soprattutto senza distinzione tra i casi di tutela totale o solo parziale e senza garanzia di un attento controllo giurisdizionale individualizzato, volto a verificare le effettive capacità e facoltà delle persone con disturbi intellettivi o psichiatrici che subiscano, per questa ragione, una limitazione dei loro diritti.
Pertanto, i Giudici di Strasburgo hanno concluso che la revoca automatica del diritto di voto al ricorrente per il sol fatto di essere stato posto sotto tutela parziale e senza sostanziale garanzia di un controllo giurisdizionale volto ad una valutazione individuale della sua idoneità ad esercitare il diritto di voto, non fosse proporzionata al legittimo scopo di limitare il diritto di voto in determinate situazioni e circostanze.
Di qui il riconoscimento dell'avvenuta violazione del diritto a libere elezioni (art.3, Protocollo n.1).

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

FOURTH SECTION

(*Application no. 26081/17*)

JUDGMENT
STRASBOURG
15 February 2022

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

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The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:
Tim Eicke, *President*,
Yonko Grozev,
Faris Vehabović,
Iulia Antoanella Motoc,
Gabriele Kucsko-Stadlmayer,
Pere Pastor Vilanova,
Jolien Schukking, *judges*,
and Ilse Freiwirth, *Deputy Section Registrar*,
Having regard to:
the application (no. 26081/17) 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") by a Bulgarian national, Mr Anatoliy Tsvetankov Marinov ("the applicant"), on 30 March 2017;
the decision to give notice of the application to the Bulgarian Government ("the Government");
the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the written comments submitted by Validity Foundation – Mental Disability Advocacy Center, a non-governmental organisation, which had been granted leave to intervene as a third party by the then President of the Fifth Section;
the decision of the President to reject the request for withdrawal from the case of judge Grozev, submitted by the Government;
Having deliberated in private on 25 January 2022,
Delivers the following judgment, which was adopted on that date:

1. The application concerns the applicant's right to vote, which he was unable to exercise during the 2017 parliamentary elections in Bulgaria, as he had been placed under partial guardianship at that time. The applicant complained of a breach of Article 3 of Protocol No. 1 to the Convention.

2. The applicant was born in 1975 and lives in Sofia. He was represented by Mr K. Kanev, the chairman of the Bulgarian Helsinki Committee, a non-governmental organisation based in Sofia. On 15 January 2016 the then President of the Fifth Section gave Mr Kanev leave to represent the applicants in all pending and future cases in which he had been appointed to personally act as their representative (Rule 36 § 4 (a) in fine of the Rules of Court).

3. The Government were represented by their Agent, Ms I. Stancheva-Chinova of the Ministry of Justice.
4. The facts of the case, as submitted by the parties, may be summarised as follows.
5. In his initial application, the applicant submitted that in 1999, he had been diagnosed with psychiatric disorders; the Government have not disputed those facts. On the basis of that diagnosis, on 12 May 2000 the Sliven Regional Court had placed him under partial guardianship. That measure had attracted, among other restrictions, the application of Article 42 § 1 of the Constitution (see paragraph 13 below) to the applicant, excluding him from the right to vote. The underlying court decision had held that the applicant's health condition did not allow him to take good care of himself and that he was occasionally aggressive, but that the situation was not too serious.
6. Furthermore, the following facts have been submitted by the Government in their observations, as well as by the applicant in reply, in respect of the present proceedings.
7. On 4 November 2015, the applicant lodged an application with the Ruse Regional Court for the restoration of his legal capacity, through the services of a lawyer authorised by him and his guardian. In the proceedings that followed, on 15 February 2016 the court noted that the application had been lodged by the applicant's guardian and terminated the proceedings on this ground. According to the applicable law, the applicant could only be a respondent in such proceedings; therefore, the guardian should have submitted an address for the applicant, in order that he might be summoned in that capacity. As no such address was submitted to the court, the proceedings could not continue. Following an appeal by the applicant, on 4 May 2016 the Veliko Tarnovo Court of Appeal upheld the first-instance court's decision.
8. On 19 May 2016, the applicant 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, in contravention of the Convention. The Supreme Court of Cassation quashed the decision because the proceedings in question had been terminated, and remitted the case to the Ruse Regional Court for those proceedings to be reopened.
9. On 19 October 2016, Ruse Regional Court terminated the proceedings again, reasoning that the applicant'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.
10. On 24 January 2017, the President of the Republic of Bulgaria scheduled parliamentary elections, to be held on 26 March 2017. The applicant was unable to participate, owing to the fact that he had been declared legally incapable.
11. Between 2014 and February 2017, the applicant's guardian has been changed twice, for logistical reasons.
12. On 17 May 2017, the applicant lodged a fresh application with the Sofia City Court for the restoration of his legal capacity. On 7 December 2017, the Sofia City Court gave a judgment restoring legal capacity to the applicant and lifting his guardianship considering that the applicant was able to manage his own affairs and interests and to realise the consequences of his own acts.

RELEVANT LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW

A. Right to vote of persons deprived of legal capacity

13. Article 42 § 1 of the Bulgarian Constitution provides as follows:

"Every citizen above the age of 18, with the exception of those placed under guardianship (запрещение) or serving a prison sentence, shall be free to elect State and local authorities and vote in referendums."

14. The relevant provisions of the 2014 Election Code read as follows:

Chapter I

List of voters

Article 27

"(1) The names of citizens who have lost their right to vote as at the date of elections or who are dead – as well as the names of persons in respect of whom this code so provides – must be removed from the list of voters. ...
(3) ... [the names of] persons who have had their legal capacity restored to them ... will be added to the list of voters upon presentation of the respective document issued by the [relevant] municipality, region or mayor. ..."

Chapter VII

List of removed persons
Contents of the list

Article 38

"(1) A list of persons (which shall include their permanent addresses) who have been removed from the electoral register is prepared – by the director of the Department for Civil Registration and Administrative Services of the Ministry of Regional Development and Public Works.
(2) The list includes the names, the personal identification number, and the grounds for the removal of persons who:
1. are placed under guardianship ..."

B. Legal incapacitation

15. The relevant provisions related to the legal status of persons placed under partial guardianship and their representation before the courts, as well as to the procedures for placement under partial guardianship and for restoration of legal capacity have been summarised in Stanev v. Bulgaria ([GC] no. 36760/06, §§ 42-47, and 51-52, ECHR 2012). In execution of this latter judgment, the Bulgarian authorities have enacted a number of legislative amendments among which the introduction, on

27 October 2017 under Article 340 (2) of the 2007 Civil Procedure Code, of the right to a direct access to a court for the persons placed under guardianship (запрещение) in order to request the restoration of their legal capacity.

II. INTERNATIONAL and european LEGAL INSTRUMENTS AND COMPARATIVE PRACTICE

16. The relevant international and European material concerning the right to vote of individuals deprived of legal capacity have been summarised in Strøbye and Rosenlind v. Denmark (nos. 25802/18 and 27338/18, §§ 66-71, 2 February 2021) and Caamaño Valle v. Spain (no. 43564/17, §§ 21-28, 11 May 2021).

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

17. The applicant complained that his disenfranchisement on account of his being placed under guardianship had been in violation of his rights under Article 3 of Protocol No. 1 to the Convention, which reads as follows:

Article 3 of Protocol No. 1

"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

1. The parties' submissions

18. The Government raised three preliminary objections, whereas the applicant maintained that the case should be examined on the merits.

19. The Government firstly raised doubts about the validity of the applicant's representation before the Court, arguing that the signature that appeared on the contract for legal services (submitted together with the applicant's claim for just satisfaction) did not appear to be, in their view, identical to the one affixed to his identity card and to a copy of one of the documents annexed to the observations. The Government also considered this contract to be invalid owing to the absence of the signature of the applicant's guardian, as required by the domestic law.

20. Furthermore, the Government submitted that the application should be rejected for non-exhaustion of domestic remedies, arguing that the applicant had had the opportunity to seek the judicial termination of his guardianship, but had not – through his own fault and the fault of his legal representative – adequately availed himself of this procedure, which led to the termination of the proceedings (paragraphs 7-9 above).

21. Lastly, the Government pleaded that the application constituted an abuse of the right of individual application within the meaning of Article 35 § 3 (a) of the Convention, as the applicant

had failed to inform the Court of: (1) his attempts to restore his legal capacity through judicial proceedings before the Bulgarian courts, and (2) the existence of proceedings for the appointment of a new guardian for the applicant (paragraphs 7-9 and 12 above).

22. The applicant's representative responded that the applicant had signed the contract in question (together with other documents) in the offices of the Bulgarian Helsinki Committee in person; he therefore argued that he had been validly authorised to represent the applicant.

23. The applicant also argued that the proceedings for the restoration of his legal capacity were irrelevant to the subject matter of his complaint. The purpose of the present application was solely to challenge the legal basis of his being deprived, as a person placed under guardianship, of his right to vote. He also contested the argument that he had abused of his right to lodge an application with the Court, as the information which the Government had asserted had been withheld from the Court (paragraph 21 above) did not in fact relate to the core matter of the present case.

2. The Court's assessment

(a) Regarding the validity of the applicant's representation

24. The Court observes that the applicant signed the "power of attorney" section within the application form and thus authorised Mr K. Kanev to act as his representative before the Court. The applicant did not at a later stage lodge any declaration that he had withdrawn this power of attorney. The Court is therefore satisfied that the application was validly submitted on behalf of the applicant and that the latter wishes Mr Kanev to pursue his complaints. The Court also notes that for the applicant to lodge an application with the Court (whether or not he is represented), the applicant's guardian's consent is not required, even if that is the case under the domestic legal framework (see Stanev v. Bulgaria [GC], no. 36760/06, § 43, ECHR 2012, where it appeared that the applicable law required that a person under partial guardianship may instruct a lawyer provided that the form of authority was signed by the guardian, but for the procedure before the Court such an authority was not required, see also Zehentner v. Austria, no. 20082/02, § 39, 16 July 2009). Therefore, the Court dismisses the first preliminary objection by the Government.

(b) Regarding the exhaustion of domestic remedies

25. The general principles on the rule of exhaustion of domestic remedies have been summarised in Vučković and Others v. Serbia ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014). That rule obliges those seeking to bring a case against the State before an international judicial body to use first the remedies provided by the national legal system, thus dispensing States from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal systems. In order to comply with the rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (ibid., §§ 70 and 71, with further references).

26. The only remedies to be exhausted are those which are effective. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, was one

which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. Once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that special circumstances existed which absolved him or her from this requirement (ibid., § 77; see also Kalashnikov v. Russia (dec.), no. 47095/99, ECHR 2001-XI (extracts), with further references).

27. In the instant case, the Court notes the Government's observation that had the applicant himself conducted the proceedings for the judicial termination of his guardianship he could have secured the restoration of his right to vote (paragraph 20 above). However, the Court observes that the courts that examined the applicant's civil action for the restoration of his civil capacity – namely the Ruse Regional Court and the Veliko Tarnovo Court of Appeal – terminated those proceedings, having deemed that the applicant should have been acting as the respondent (and not as a claimant) in those civil proceedings; in so doing, those courts denied him direct access to a court in respect of that matter (paragraphs 7-9 above). The Court reiterates, in that respect, that it has already ruled that such a situation was in breach of the rights protected under Article 6, and has even indicated to the Bulgarian authorities that they should provide for the necessary general measures to ensure the effective possibility of such access (see, Stanev, cited above, §§ 233-248 and § 258). In the present case, the first attempt, by the applicant, to secure the restoration of his legal capacity took place in 2015 and 2016 (paragraphs 7-9 above), while the legislative amendment allowing for direct access to a court was enacted after that time (in October 2017, see paragraph 15 above). It therefore appears that, although the Supreme Court of Cassation seems to have accepted the applicant's argument that he had a right to direct access to court and enjoined the lower courts to continue the proceedings (paragraph 8 above), the Ruse Regional Court and the Veliko Tarnovo Court of Appeal nevertheless applied the legislation as it stood prior to the Stanev judgment (cited above). It follows that, by refusing to accept the applicant as a claimant in the proceedings for the restoration of his legal capacity, the domestic courts failed to apply the conclusions of the Stanev judgment. In other words, given the fact that the applicant attempted to request the restoration of his legal capacity (even though the applicable legislation still did not offer him direct access to a court), he gave the domestic authorities the opportunity to examine on the merits his legal status, but they refused to do so. Given those circumstances, the Court cannot accept the Government's argument that the applicant was not diligent in his use of the remedy in question.

28. The Court also considers it relevant to observe that the essence of the applicant's complaint is not that he was divested of his legal capacity, but that as a person in such a situation, he was barred from participating in any form of election in the country. An opportunity to seek the termination of his guardianship would constitute a solution that would directly address the issue of the applicant's disenfranchisement only in the event that all criteria for the restoration of his legal capacity were present – even if those relevant for the question of the applicant's right to vote would appear to have been fulfilled. That is so because the right to vote in elections is not specifically examined in proceedings to restore a person's legal capacity; rather, it is an automatic consequence of the successful outcome of such proceedings. Accordingly, an unsuccessful attempt at lifting a person's guardianship will lead to continued disenfranchisement, despite the fact that the issue of voting will not even be addressed by the respective court in such proceedings. The Court notes that the

Government have not submitted examples of domestic case-law indicating that even where the domestic courts refused to lift a person's legal incapacity, they nonetheless discussed separately the question of the right to vote and made a decision, where appropriate, whether any restrictions on that person's right to vote should continue to be imposed. It appears that such a possibility would in principle be excluded by the courts on the basis of the relevant constitutional and legal domestic provisions (paragraphs 13-14 above).

29. In view of the foregoing, the Court finds that, in the circumstances of the present case, the proceedings for the termination of guardianship were not an effective remedy. It follows that the application cannot be rejected for non-exhaustion of domestic remedies.

(c) Regarding the abuse of the right of individual petition

30. The Court reiterates that, according to its case-law, an application is an abuse of the right of application if it is knowingly based on untrue facts with a view to deceiving the Court (see, among other authorities, X and Others v. Bulgaria [GC], no. 22457/16, § 145, 2 February 2021). Furthermore, 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 (see Gross v. Switzerland [GC], no. 67810/10, § 28, ECHR 2014). The same applies if important new developments have occurred during the proceedings before the Court and if, 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 Centro Europa 7 S.r.l. and Di Stefano v. Italy [GC], no. 38433/09, § 97, ECHR 2012).

31. Turning to the circumstances of the present case, the Court has no basis to conclude that the applicant intentionally submitted facts which he knew to be false. In addition, the Court considers that while it is true that, in his initial application, the applicant did not provide the information specified by the Government, that information cannot be deemed to be essential for deciding the outcome of the application. The Court gives particular weight to the fact that the applicant's complaint questions the automatic constitutional ban on his right to vote after he was declared legally incapable – regardless of whether or not his legal capacity is restored to him in the future. The Court has already noted that the proceedings for restoring the applicant's legal capacity do not relate sufficiently to the core issue highlighted in the present complaint (paragraphs 27-29 above).

32. Accordingly, the Court rejects the Government's preliminary objection that the applicant's conduct constituted an abuse of the right of application within the meaning of Article 35 § 3 (a) in fine of the Convention.

(d) Conclusion on the admissibility

33. The Court 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

34. The applicant submitted that his exclusion from the possibility to vote in elections on the basis of a generally applicable legal provision and without an individual judicial assessment had been disproportionate and in violation of his rights under Article 3 of Protocol No. 1 to the Convention.
35. In the applicant's view, his case was similar to the case of Alajos Kiss v. Hungary (no. 38832/06, 20 May 2010) in that he had lost his right to vote as a result of an indiscriminate ban under Article 42 § 1 of the Constitution (see paragraph 13 above). He submitted that there had been no individual assessment of his ability to evaluate the consequences of his actions and to make conscious choices within the context of the election procedure. His disenfranchisement had been based solely on the fact that he had been placed under partial guardianship.
36. The applicant submitted that the proportion of adults placed under guardianship in Bulgaria and therefore affected by the voting restriction at issue was comparable to that in Hungary – estimated at 0.75% of Hungary's voting-age population and discussed in the case of Alajos Kiss (cited above, § 39). He considered those figures to be relevant as they took into consideration not only persons under partial guardianship, but also persons placed under full guardianship – all of who were denied the right to vote. The applicant added that the proportion of persons under partial guardianship in Bulgaria amounted to about 0.014 % of the voting-age population.
37. Lastly, the applicant agreed with the third-party intervener (see paragraph 42 below) that the exclusion of disabled people, including those suffering from mental disorders, from the possibility to vote in elections was in contravention of international standards (see paragraph 16 above). He echoed the observations of the intervener that the Contracting States were gradually implementing reforms aimed at recognising the right of suffrage of all disabled people and that the implementation of such reforms everywhere was only a matter of time.

(b) The Government

38. The Government submitted that the applicant had voluntarily placed himself in a situation where his right to vote was limited under the relevant national legislation; he had done this by failing to comply with the Ruse Regional Court's instructions to identify himself as the defendant in the case before it and to provide an address at which he could be summoned (paragraphs 7-9 above).
39. The Government furthermore emphasised the fact that the right to vote was not absolute and could be subject to a number of restrictions. The restriction on the voting rights of persons under guardianship pursued a legitimate aim – namely to ensure that only persons capable of making informed and meaningful decisions could participate in the choice of the country's legislature.
40. In the Government's view, the limitation imposed on persons under guardianship was proportionate to the pursued aim and within the State's margin of appreciation, as it guaranteed that the electoral process was conducted in a manner that best reflected the voters' will. Although the limitation in question was stipulated by a constitutional provision, its application was not automatic, as each person's individual situation was assessed by the national courts within the course of the proceedings to place that person under guardianship. In addition, the applicant's right

to vote would be statutorily restored in case his placement under guardianship was lifted upon judicial reviews of his condition, in view of his improved mental status.

41. Lastly, the Government explained that persons under partial guardianship in the Republic of Bulgaria accounted for 0.014% of all nationals who were permanently resident on the territory of the country and who would otherwise be able to vote, suggesting that the restriction in issue was linked to a limited group of persons in a very particular situation.

(c) The third-party intervener

42. Validity Foundation – Mental Disability Advocacy Center, an international human rights non-governmental organisation based in Hungary, submitted, inter alia, that the right to vote was universal and that there was a clear international consensus that all people with disabilities should be afforded the same right to political participation as everyone else. This consensus was evident not only from international instruments adopted by authoritative bodies – including the Council of Europe Commissioner for Human Rights, the United Nations' Special Rapporteur on Disability, and the United Nations' Committee on the Rights of Persons with Disabilities – but also from recent reform initiatives implemented in the Contracting States. The intervener concluded that stripping people with disabilities of their right to express their political views damaged the integrity of the electoral system and undermined the legitimacy of public institutions.

2. The Court's assessment

(a) General principles

43. The Court has established that Article 3 of Protocol No. 1 guarantees individual rights, including the right to vote and to stand for election (see, inter alia, Mathieu-Mohin and Clerfayt v. Belgium, 2 March 1987, § 51, Series A no. 113, and Selahattin Demirtaş v. Turkey (no. 2) [GC], no. 14305/17, § 385, 22 December 2020).

44. However, the rights guaranteed under Article 3 of Protocol No. 1 are not absolute. There is room for implied limitations, and the Contracting States have a margin of appreciation in this sphere, which generally is a wide one (see the above-cited cases of Mathieu-Mohin and Clerfayt, § 52, and Selahattin Demirtaş, § 387). At the same time, the Court reiterates that if a restriction on the right to vote applies to a particularly vulnerable group in society that has suffered considerable discrimination, such as the mentally disabled, then the margin of appreciation of the State in question is substantially narrower. The reason for this approach, which questions certain classifications per se, is that such groups have been historically subject to prejudice with lasting consequences, resulting in their social exclusion. Such prejudice may entail legislative stereotyping that prohibits the individualised evaluation of their capacities and needs (see Alajos Kiss, cited above, § 42). The Court emphasises, in that respect, that the quality of the parliamentary and judicial review of the necessity of a general measure, such as the disputed disenfranchisement imposed as a consequence of declaring a person legally incapable, is of particular importance, including to the operation of the relevant margin of appreciation (see Strøbye and Rosenlind v. Denmark, nos. 25802/18 and 27338/18, § 92, 2 February 2021).

45. Another factor that has had an impact on the scope of States' margin of appreciation is the Court's fundamentally subsidiary role in the Convention protection system. The Contracting Parties, in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in the Convention and the Protocols thereto, and in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the Court. Through their democratic legitimation, the national authorities are, as the Court has held on many occasions, in principle better placed than an international court to evaluate local needs and conditions (see, inter alia, Lekić v. Slovenia [GC], no. 36480/07, § 108, 11 December 2018; and Strøbye and Rosenlind, cited above, § 93).

46. It is for the Court to finally determine whether the requirements of Article 3 of Protocol No. 1 have been complied with. It has to satisfy itself that the limitations imposed on the exercise of the rights under Article 3 of Protocol No. 1 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 the above-cited cases of Mathieu-Mohin and Clerfayt, § 52, and Selahattin Demirtaş, § 387).

47. In addition, any conditions imposed must not thwart the "free expression of the people in their choice of legislature" (see Selahattin Demirtaş, cited above, § 388). 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. Any departure from the principle of universal suffrage risks undermining the democratic validity of the legislature thus elected and the laws that 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, among other authorities, Hirst v. the United Kingdom (no. 2) [GC], no. 74025/01, § 62, ECHR 2005-IX, and Scoppola v. Italy (no. 3) [GC], no. 126/05, § 84, 22 May 2012). More specifically, election results should not be obtained through votes cast in a manner that runs counter to the fairness of elections or the free expression of the will of voters (see Caamaño Valle v. Spain, no. 43564/17, § 57, 11 May 2021).

48. The Court reiterates that the presumption in a democratic State must be in favour of the inclusion of all, and that universal suffrage is the basic principle (see Hirst (no. 2), cited above, § 59; Sitaropoulos and Giakoumopoulos v. Greece [GC], no. 42202/07, § 67, ECHR 2012; and Scoppola (no. 3), cited above, § 82). This does not mean, however, that Article 3 of Protocol No. 1 guarantees to persons with a mental disability an absolute right to exercise their right to vote. Under this provision, such persons are not immune to limitations of their right to vote, provided that the limitations comply with the conditions set out in paragraphs 46-47 above. For the purpose of the interpretation of Article 3 of Protocol No. 1, the Court has recently noted the fact that there is at present no consensus among the States Parties to Protocol No. 1 in the sense of an unconditional right of persons with a mental disability to exercise their right to vote. On the contrary, a majority of these States seems to allow for restrictions based on the mental capacity of the individual concerned (see Caamaño Valle, cited above, § 59).

49. The margin of appreciation left to the States is not unlimited. The Court has already stated that an absolute bar on voting by any person under partial guardianship, irrespective of his or her actual faculties, does not fall within any acceptable margin of appreciation (see Alajos Kiss, cited above,

§ 42). Likewise, the indiscriminate removal of voting rights, without an individualised judicial evaluation and solely on the basis of a mental disability necessitating partial guardianship, cannot be considered compatible with the legitimate grounds for restricting the right to vote (ibid., § 44).
50. By contrast, the Court has accepted as legitimate the aim of "ensuring that only citizens capable of assessing the consequences of their decisions and of making conscious and judicious decisions should participate in public affairs" (ibid., § 38).

(b) Application of the general principles to the present case

51. In the present case, the applicant was placed under partial guardianship owing to his suffering from psychiatric disorders. As a consequence, he was disenfranchised and prevented from voting in parliamentary elections. His right to vote was thus restricted by law, which was not disputed by the parties. The Court will proceed to determine whether the disenfranchisement of the applicant pursued a legitimate aim in a proportionate manner, having regard to the principles identified above.

(i) Legitimate aim

52. The Court points out that Article 3 of Protocol No. 1 does not, like other provisions of the Convention, specify or limit the aims that a restriction must pursue and that a wide range of purposes may therefore be compatible with that provision. The Government submitted that the measure complained of had pursued the legitimate aim of ensuring that only persons capable of making informed and meaningful decisions could participate in the choice of legislature in the country (paragraph 39 above). The applicant did not comment on that point. The Court is satisfied that the impugned measure pursued a legitimate aim (see Alajos Kiss, cited above, § 38).

(ii) Proportionality

53. The Court notes that the restriction in question does not distinguish between those under total guardianship and those under partial guardianship; Article 42 § 1 of the Constitution concerns citizens "placed under guardianship" in general (see paragraph 13 above). The restriction is removed only once guardianship is lifted (see the Government's submission in paragraph 40 above). It also observes that the parties' submissions contain statistics reflecting the proportion of Bulgaria's voting-age population that has been disenfranchised on account of being under guardianship as a whole (that is to say under either partial guardianship or total guardianship) indicating that the proportion of persons who have been only partially deprived of legal capacity in Bulgaria amounts to 0.014% of the voting-age population (see paragraphs 36 and 41 above). However, the Court does not consider it necessary to take a position on the relevance of this data in view of the fact that, in any event, the impugned restriction appears to be disproportionate to the legitimate aim pursued by the State in this case, in the light of the following observations.
54. The Government argued, referring to the margin of appreciation that they enjoyed, that it must be permissible for the legislature to establish rules ensuring that the electoral process was conducted in such a manner as to best reflect the voters' will (see paragraph 40 above).

55. The Court has already accepted 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 assess the fitness to vote of mentally disabled persons (see Alajos Kiss, cited above, § 41). The Court observes that there is no evidence that the Bulgarian legislature has ever sought to weigh the competing interests or to assess the proportionality of the restriction as it stands (see, mutatis mutandis and in relation to the Hungarian legislature, Alajos Kiss, cited above, § 41) and thus open the way for the courts to conduct a particular analysis of the capacity of the applicant to exercise the right to vote, independently of a decision to place a person under a guardianship. It has been noted above that the Government has failed to prove that domestic judicial practice allows for the possibility of lifting the restriction on a person's right to vote in cases where that person remains deprived of his or her legal capacity. It moreover appears that such possibility would not be in line with the domestic legal framework (see paragraph 27 above).
56. 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 (with no option for an individualised judicial evaluation of his fitness to vote); this placed him in a situation similar to that of the applicant in the case of Alajos Kiss (cited above, and contrast, Strøbye and Rosenlind, §§ 113 and 120, and Caamaño Valle, § 71, both cited above, where the Court noted that there had been no blanket restriction of the right of suffrage and individualised judicial review had taken place). The applicant may therefore claim to be a victim of a measure incompatible with the relevant established principles (see, in particular, paragraph 49 above). 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 – in compliance with the requirements of Article 3 of Protocol No. 1 – been imposed (see Alajos Kiss, cited above, § 43).
57. The Court reiterates that the treatment as a single class of all those with intellectual or psychiatric disabilities is a questionable classification, and the curtailment of their rights must be subject to strict scrutiny (ibid., § 44). The Court therefore concludes that the indiscriminate removal of the voting rights of the applicant – without an individualised judicial review and solely on the basis of the fact that his mental disability necessitated that he be placed under partial guardianship – cannot be considered to be proportionate to the legitimate aim for restricting the right to vote, as advanced by the Government (see paragraph 52 above).
58. There has accordingly been a violation of Article 3 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The applicant claimed 3,000 euros (EUR) in respect of non-pecuniary damage.
61. The Government contested this claim as excessive and unsubstantiated.
62. The Court awards the applicant's claim in respect of non-pecuniary damage in full, plus any tax that may be chargeable.

B. Costs and expenses

63. The applicant also claimed EUR 1,926 for the costs and expenses incurred in the proceedings before the Court. This sum corresponds to twenty-four hours of legal work, according to the time-sheet submitted, billable by his representative and charged at an hourly rate of EUR 80, plus EUR 6 for postage.
64. The Government contested this claim as excessive.
65. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers the sum claimed for costs and expenses reasonable and awards it in full, plus any tax that may be chargeable to the applicant.

C. Default interest

66. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

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

(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 Bulgarian levs 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 1,926 (one thousand, nine hundred and twenty-six 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.

Done in English, and notified in writing on 15 February 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth
Deputy Registrar

Tim Eicke
President