

CM-Public

MINISTERS' DEPUTIES

Notes on the Agenda

CM/Notes/1411/H46-9

16 September 2021

1411th meeting, 14-16 September 2021 (DH)

Human rights

H46-9 Kulinski and Sabev v. Bulgaria (Application No. 63849/09)

Supervision of the execution of the European Court's judgments

Reference document

DH-DD(2021)658

Application	Case	Judgment of	Final on	Indicator for the classification
63489/09	KULINSKI AND SABEV	21/07/2016	21/10/2016	Complex problem
45660/17	DIMOV AND OTHERS ^[1]	08/06/2021	08/06/2021	

Case description

This group of cases concerns the impossibility for the applicants to vote in parliamentary elections or in elections to the European Parliament in 2009, 2013, 2014, 2017 and 2019, because they were serving a prison sentence. The Court considered that the general, automatic and indiscriminate restriction of the right to vote, which applied to all convicted persons who were in detention and was enshrined in Article 42 § 1 of the Bulgarian Constitution, was disproportionate to any legitimate aim pursued (violation of Article 3 of Protocol No. 1).

Status of execution

The authorities provided most recently a revised action plan on 25 June 2021 (DH-DD(2021)658).

Individual measures:

Kulinski and Sabev case: The authorities indicated that Mr Kulinski was released from prison on 30 December 2009 and there were no longer any restrictions of his right to vote. Mr Sabev is serving a sentence of life imprisonment.

Dimov and Others: The authorities have not provided so far information on the current situation of the applicants in this case.

General measures:

- Constitutional and legislative framework concerning voting rights: The current legislative framework is similar to the one examined by the Court in the present judgments. Article 42 § 1 of the Constitution provides that citizens of legal age (18 years and over), except those deprived of legal capacity or serving prison sentences, have the right to elect state and municipal bodies and to take part in referendums. According to Article 149 § 1, the Constitutional Court provides binding interpretations of the Constitution and rules on the constitutionality of the laws and other acts passed by Parliament.

The Criminal Code provides for three types of custodial penalty: imprisonment for a fixed period of up to thirty years, simple-life imprisonment with the possibility of commutation, and whole-life imprisonment without the possibility of commutation; all these custodial penalties give rise to an automatic restriction of the right to vote.

Persons who are detained on remand, but are not serving prison sentence, are entitled to vote. Persons released on parole are entitled to vote.

- Awareness-raising measures: The *Kulinski and Sabev* judgment has been translated, published and disseminated.

- Further steps envisaged by the authorities: The Bulgarian authorities indicated that the concrete steps required in order to prevent future similar violations are to be examined by the relevant authorities. In this respect, the Minister of Justice sent a letter to the President of the 44 National Assembly^[2] and to the Parliamentary Committee on Legal Affairs asking for proposals of possible legislative measures for the execution of these judgments.

Analysis by the Secretariat

- As concerns the individual measures

The Committee could invite the authorities to provide information on the current situation of the applicants in the recent *Dimov and Others case*, in particular as to whether some of them have been released and have thus recovered their right to vote. It should be noted in this regard that, while the authorities have indicated that Mr Kulinski had been released and had recovered his right to vote before the *Kulinski and Sabev* judgment, the recent *Dimov and Others* judgment indicates that he was again serving a sentence in 2019.

Furthermore, the Committee could note that the eligibility to vote of those of the applicants who are still serving a prison sentence or a sentence of life imprisonment would depend on the general measures adopted.

- As concerns the general measures

It should be noted with regret that almost five years after the *Kulinski and Sabev* judgment, the Bulgarian authorities' deliberations on the general measures are still at a very preliminary stage. This conclusion is confirmed by the recent *Dimov and Others* judgment, where the European Court observed that it has not been demonstrated or indeed argued that the relevant domestic legal provisions, or related practice, have been amended in any way, or that the Constitutional Court has interpreted the relevant Constitutional provision in compliance with the Convention requirement that there be no general, automatic and indiscriminate restriction to the right to vote of prisoners effectively serving their sentences.

While the existence of a Constitutional ban on prisoners' right to vote could render the adoption of adequate general measures more challenging, the authorities' deliberations could be facilitated by the wide margin of appreciation in this area. Indeed, according to the Court's case law^[3] States can decide either to leave it to the courts to determine the

proportionality of a measure restricting convicted prisoners' voting rights, or to incorporate provisions into their laws defining the circumstances in which such a measure should be applied, following a balancing exercise by the legislature.

In this context, the Committee could invite the authorities to elaborate concrete proposals to comply with these judgments and to explore all possible avenues within their wide margin of appreciation, such as a flexible interpretation of Article 42 § 1 of the Constitution. The Committee could also invite the authorities to provide information on the progress achieved in this area by 30 September 2022, together with an indicative timetable for the implementation of the necessary general measures.

Financing assured: YES

[1] To be classified at the present meeting.

[2] The 44 National Assembly ended its functions in March 2021.

[3] See, for example, *Scoppola v. Italy (No. 3)*, No. 126/05, § 83; *Greens and M.T. v. United Kingdom*, No. 60041/08, § 114; *Anchugov and Gladkov v. Russian Federation*, No. 11157/04, §§ 95, 103

Related documents

1411th (Human Rights) meeting of the Ministers' Deputies (14... 09/07/2021
www.coe.int/.../1411th-human-rights-meeting-of-the-ministers-deputi...

1411th (Human Rights) meeting of the Ministers' Deputies (14... 09/07/2021
www.coe.int/.../september-2021?p_p_id=101_INSTANCE_FJJuJash2rEF&...

Sign In - Please click here to login and see classified information.