



October 2016

This Factsheet does not bind the Court and is not exhaustive

## Right to vote

**Article 3** (right to free elections) of **Protocol No. 1** to the [European Convention on Human Rights](#):

*"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."*

Under Article 3 of Protocol No. 1 to the Convention, the citizens of Europe are guaranteed free and democratic elections.

Even though it is limited in scope to the election of the "legislature" and does not afford an unlimited right, European protection of the right to free elections is of great significance. "According to the Preamble to the Convention, fundamental human rights and freedoms are best maintained by 'an effective political democracy'. Since it enshrines a characteristic principle of democracy, Article 3 of Protocol No. 1 is accordingly of prime importance in the Convention system." » ([Mathieu-Mohin and Clerfayt v. Belgium](#), judgment of 2 March 1987, § 47).

The Court makes a distinction between "active" and "passive" electoral rights, namely between the right to participate in an election as a voter and the right to stand as a candidate for election. Such "passive" electoral rights enjoy a lesser degree of protection than the "active" rights.

## Deprivation of voting rights as part of a criminal investigation

### [Labita v. Italy](#)

6 April 2000 (Grand Chamber)

The applicant was arrested in April 1992 on suspicion of being a member of the Mafia, following uncorroborated allegations by a former Mafioso who had decided to cooperate with the authorities. He was held in detention pending trial for approximately two years and seven months. Following his acquittal, preventive measures were imposed on him and he was deprived of his voting rights. He complained, among other things, of the loss of his voting rights as a result of the imposition of the preventive measures.

The Court held that there had been a **violation of Article 3 of Protocol No. 1** to the Convention. It noted in particular that, as someone who was subject to special police supervision because he was suspected of belonging to the Mafia, the applicant had automatically forfeited his civic rights and been struck off the electoral register. The Court had no doubt that temporarily suspending the voting rights of persons against whom there was evidence of Mafia membership pursued a legitimate aim. It observed, however, that although the special police-supervision measure against the applicant had in the instant case been imposed during the course of the trial, it had not been applied until the trial was over and the applicant acquitted on the ground that "he had not committed the offence", the serious evidence of the applicant's guilt having been rebutted during the trial. When his name was removed from the electoral register, therefore, there was no concrete evidence on which a suspicion that the applicant belonged to the Mafia could have been based. The Court could not regard that measure as proportionate.

### **Vito Sante Santoro v. Italy**

1 July 2004

In 1994 a District Court ordered that the applicant be placed under police supervision and made subject to a regime of preventive measures for one year. The court found that numerous criminal complaints had been made against the applicant. On 10 January 1995 until 28 July 1995 the applicant was struck off the electoral register as a result of the special measures and, in December 1995, he was struck off for another year in view of a decision by the police to prolong his special supervision. In December 1996 the Court of Cassation ruled that the order for special supervision of the applicant had ceased to apply in May 1995, one year after the order had been served on him. As a result of the special measures, he was prevented from voting in the regional council (*Consiglio Regionale*) elections of April 1995 and the national parliamentary elections of April 1996. The Court held that there had been a **violation of Article 3 of Protocol No. 1** to the Convention. It noted in particular that more than nine months had elapsed between the date on which the order imposing the preventive measures had been forwarded to the prefect and the date on which the applicant had been disenfranchised. In the Court's view, such a delay was excessive. Had the disenfranchisement been applied in due time and for the statutory period of one year, that measure would have ended before the regional elections and well before the parliamentary elections.

## Impossibility for certain groups or individuals to vote in parliamentary elections

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### **Aziz v. Cyprus**

22 June 2004

The applicant complained that he was refused permission to be registered on the electoral roll, in order to vote in the parliamentary elections of 27 May 2001, because he was a member of the Turkish-Cypriot community. His request was refused on the ground that, under Article 63 of the Constitution, members of the Turkish-Cypriot community could not be registered in the Greek-Cypriot electoral roll.

The Court held that there had been a **violation of Article 3 of Protocol No. 1** to the Convention. It took the view that, on account of the abnormal situation existing in Cyprus since 1963 and the legislative vacuum, the applicant, as a member of the Turkish-Cypriot community living in the Republic of Cyprus, was completely deprived of any opportunity to express his opinion in the choice of the members of the House of Representatives. The very essence of the applicant's right to vote was thus impaired. The Court also held that there had been a **violation of Article 14** (prohibition of discrimination) of the Convention **taken together with Article 3 of Protocol No. 1**, finding a clear inequality of treatment in the enjoyment of the right in question, between the members of the Turkish-Cypriot community and those of the Greek-Cypriot community. The Court reiterated in this respect that States had considerable latitude to establish rules for parliamentary elections, but such rules had to be justified on reasonable and objective grounds. The difference in treatment of which the applicant complained, resulting from the fact that he was a Turkish Cypriot, could not be justified on reasonable and objective grounds, particularly in the light of the fact that Turkish Cypriots in the applicant's situation had been prevented from voting at any parliamentary election.

## Loss of voting rights on account of placement under guardianship

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### Alajos Kiss v. Hungary

20 May 2010

The applicant lost his right to vote because he had been placed under protection on psychiatric grounds. The Hungarian Constitution provided for an automatic and general restriction on the right to vote of persons placed under protection.

The Court held that there had been a **violation of Article 3 of Protocol No. 1** to the Convention. After accepting that the withdrawal of the right to vote pursued a legitimate aim, namely to ensure that only citizens capable of assessing the consequences of their decisions could take part in public affairs, the Court emphasised that it could not accept a blanket ban on the right to vote affecting all persons under protection regardless of their actual mental faculties.

See also: [Gajcsi v. Hungary](#), judgment of 23 September 2014; [Harmati v. Hungary](#), judgment of 21 October 2004.

## Prisoner voting ban

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See the [“Prisoners’ right to vote” factsheet](#).

## Restrictions on voting rights based on a residence criterion and exercise of the right to vote for non-resident citizens

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### Py v. France

11 January 2005

The applicant in this case, a French national from mainland France, was refused the right to vote in elections to the Congress of New Caledonia on the ground that he could not prove at least 10 years of residence in the territory.

The Court held that there had been **no violation of Article 3 of Protocol No. 1** to the Convention. It noted in particular that, according to the French Government, the reason for bringing in a residence condition was to ensure that the consultations would reflect the will of “interested” persons and that the result would not be altered by a massive vote cast by recent arrivals on the territory who had no solid links with it. Furthermore, the restriction on the right to vote was a direct and necessary consequence of establishing Caledonian citizenship. It was possible that the applicant had established links with New Caledonia, but the law could not take account of every individual case. Consequently, the residence condition was justified and pursued a legitimate aim. The history and status of New Caledonia – a transitional phase prior to the acquisition of full sovereignty and part of a process of self-determination – were such that they could be regarded as constituting “local requirements” warranting a restriction as important as the ten-year residence requirement, a condition which had also been instrumental in alleviating the bloody conflict.

### Sitaropoulos and Giakoumopoulos v. Greece

15 March 2012 (Grand Chamber)

The applicants complained that, in the absence of regulation on that point, they could not exercise their voting right in the country where they lived as expatriates (France) even though the Constitution of their country of origin (Greece) provided for that possibility.

The Court held that there had been **no violation of Article 3 of Protocol No. 1** to the Convention, as the disruption to the applicants’ financial, family and professional lives that would have been caused had they had to travel to Greece would not have been disproportionate to the point of impairing the very essence of their voting rights.

The Court notably found that neither the relevant international and regional law nor the varying practices of the Member States in this sphere had revealed any obligation or consensus which would require States to make arrangements for the exercise of voting rights by citizens living abroad.

### **Shindler v. the United Kingdom**

7 May 2013

This case concerned the question whether the right to vote of a British national not resident in the United Kingdom since 1982 had been violated by election laws preventing those resident outside of the United Kingdom for more than 15 years from voting.

The Court held that there had been **no violation of Article 3 of Protocol No. 1** to the Convention. Taking into account the room for manoeuvre (“margin of appreciation”) to be left to the United Kingdom Government in regulating its parliamentary elections, it found that the election law in question had not gone too far in restricting the applicant’s right to free elections. In this case the Court noted that there was a growing awareness at European level of the problems posed by migration in terms of political participation in the countries of origin and residence. However, none of the material examined formed a basis for concluding that, as the law currently stood, States were under an obligation to grant non-residents unrestricted access to the franchise. While there was a clear trend, in the law and practice of the member States, to allow non-residents to vote, and a significant majority of States were in favour of an unrestricted right of access, this was not sufficient to establish the existence of any common approach or consensus in favour of unrestricted voting rights for non-residents.

### **Oran v. Turkey**

8 April 2014

This case concerned a complaint lodged by a university lecturer who had stood as an independent candidate without party affiliations in the parliamentary elections. He complained in particular of the fact that Turkish citizens who had lived abroad for more than six months could only vote for the lists presented by the political parties, and not for independent candidates like himself, in the polling stations set up at customs posts.

The Court held that there had been **no violation of Article 3 of Protocol No. 1** to the Convention **taken alone or in conjunction with Article 14** (prohibition of discrimination) of the Convention as regards the inability of non-resident voters to vote for independent candidates without a party ticket in the polling stations set up at customs posts, finding that the electoral measures applied by the Turkish authorities during the parliamentary elections had not impaired the very essence of the right to the free expression of the opinion of the people or the applicant’s right to stand for election. The Court noted in particular that domestic practice was far from uniform in the Contracting Parties with regard to voting rights for expatriate nationals and the exercise of those rights. Generally speaking, Article 3 of Protocol No. 1 did not require the Contracting Parties to enable their citizens living abroad to exercise the right to vote. Furthermore, it was clear from the work of the [Venice Commission](#) that a refusal to grant the right to vote to citizens living abroad or the placing of limits on that right did not constitute a restriction of the principle of universal suffrage. It was necessary to balance the various interests at stake, such as the choice made by a State to allow expatriate citizens to exercise the right to vote, the practical and security-related considerations linked to the exercise of that right and the technical means of achieving it.

### **Riza and Others v. Bulgaria**

13 October 2015

The applicants were a Bulgarian political party, a member of that party, and 101 other Bulgarian nationals of Turkish origin and/or of the Muslim faith who had exercised their right to vote in polling stations in Turkey where the results of the Bulgarian general elections in July 2009 were subsequently declared null and void by a judgment of the Constitutional Court. The 101 applicants alleged that the annulment of their ballot papers had constituted a violation of their active electoral rights.

The Court held that there had been a **violation of Article 3 of Protocol No. 1** to the Convention in respect of the voting rights of the 101 applicants, finding that, in view of the *lacunae* in domestic law and the lack of any possibility of holding fresh elections, the impugned judgment of the Constitutional Court, which was based on purely formal arguments, had caused an unjustified breach of their rights to participate in the legislative elections as voters. The Court stated in particular that it did not overlook the fact that the organisation of fresh elections in another sovereign country, even in only a limited number of polling stations, might face major diplomatic or organisational obstacles and entail additional costs. It found, however, that the holding of fresh elections, in a polling station where there had been serious anomalies in the voting process on the part of the electoral board on the day of the election, would have reconciled the legitimate aim behind the annulment of the election results, namely the preservation of the legality of the electoral process, with the rights of the voters and the candidates standing for election to Parliament.

## Suspension of electoral rights during bankruptcy proceedings

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### **Albanese v. Italy**

23 March 2006

In a judgment deposited with the registry in June 1998, the applicant and the three companies in which he had been a partner were declared bankrupt; as a result, the applicant's name was entered in the bankruptcy register. The complex bankruptcy proceedings which followed lasted until October 2004. Under the Italian legislation as it stood at the material time a declaration of personal bankruptcy entailed certain consequences for the person concerned, in particular suspension of the exercise of his or her electoral rights for the duration of the bankruptcy proceedings, subject to a limit of five years from the date of the bankruptcy order. The applicant complained, among other things, of the loss of his right to vote following his bankruptcy.

The Court held that there had been a **violation of Article 3 of Protocol No. 1** to the Convention. It noted that the suspension of the applicant's electoral rights for the duration of the bankruptcy proceedings had constituted clear interference with the exercise of his rights under Article 3 of Protocol No. 1. Such interference was prescribed by law. However, the measure served no purpose other than to belittle persons who had been declared bankrupt, reprimanding them simply for having been declared insolvent irrespective of whether they had committed an offence. It did not therefore pursue a legitimate aim. Furthermore, the Court pointed out that, far from being a privilege, voting was a right protected by the Convention.

See *also*, among others: **Campagnano v. Italy** and **Vitiello v. Italy**, judgments of 23 March 2006; **Bova v. Italy** and **Pantuso v. Italy**, judgments of 24 May 2006; **Chiumiento v. Italy**, **La Frazia v. Italy**, and **Vertucci v. Italy**, judgments of 29 June 2006; **Vincenzo Taiani v. Italy**, judgment of 13 July 2006; **Taiani v. Italy**, judgment of 20 July 2006; **La Fazia v. Italy**, judgment of 16 October 2007.

## Further reading

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See in particular:

- **Guide on Article 3 of Protocol No. 1 to the European Convention on Human Rights – Right to free elections**, European Court of Human Rights Jurisconsult's Directorate, May 2016.

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