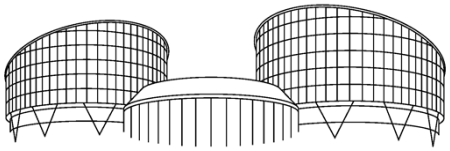

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF STRØBYE AND ROSENLIND v. DENMARK

(Applications nos. 25802/18 and 27338/18)

JUDGMENT

Art 3 P1 • Vote • Disenfranchisement of persons divested of legal capacity affecting only a small group and subject to thorough parliamentary and judicial review • Measure not amounting to automatic blanket restriction affecting all mentally disabled or those under guardianship • Absence of European or international consensus on the matter • Wide margin of appreciation not overstepped • No requirement under Art 3 P1 for a specific and individualised assessment of voting capacity when depriving a person of his or her right to vote • Eventual reduction of restrictions after careful and gradual assessment not to be held against the Government

Art 14 (+ Art 3 P1) • Discrimination • Differential treatment in pursuit of a legitimate aim and proportionate

STRASBOURG

2 February 2021

FINAL

06/09/2021

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

In the case of Strøbye v. Denmark,

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

Marko Bošnjak, *President,*
Jon Fridrik Kjølbro,
Aleš Pejchal,
Valeriu Griţco,
Branko Lubarda,
Pauliine Koskelo,
Saadet Yüksel, *judges,*
and Stanley Naismith, *Section Registrar,*

Having regard to:

the applications (nos. 25802/18 and 27338/18) against the Kingdom of Denmark lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Danish nationals, Mr Tomas Strøbye (the first applicant) and Mr Martin Rosenlind (the second applicant), on 25 May 2018;

the decision to give notice to the Danish Government ("the Government") of the applications;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the comments submitted by the European Network of National Human Rights Institutions (ENNHRI), which was granted leave to intervene by the President of the Section (Article 36 § 2 of the Convention and Rule 44 § 2 of the Rules of Court);

Having deliberated in private on 15 December 2020,

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

INTRODUCTION

1. In 1984 and 2009, respectively, the applicants were deprived of their legal capacity. Consequently, they were not entitled to vote, *inter alia*, in the 2015 parliamentary elections. They brought their case before the domestic courts, maintaining that their disenfranchisement was in contravention of Article 29 of the Danish Constitution, the Convention, and/or the UN Disability Convention. The courts found against them.

2. The applicants complained of a breach of their right to vote under Article 3 of Protocol No. 1 to the Convention, taken alone or read in conjunction with Article 14 of the Convention.

THE FACTS

3. The first applicant was born in 1966. He lives in Frederiksberg. The second applicant was born in 1987. He lives in Greve. The applicants were represented by Mr Christian Dahlager, a lawyer practising in Copenhagen.

4. The Government were represented by their Agent, Mr Michael Braad, from the Ministry of Foreign Affairs, and their Co-Agent, Mrs Nina Holst-Christensen, from the Ministry of Justice.

5. The facts of the case, as submitted by the parties, may be summarised as follows.

6. The first applicant was declared legally incompetent to manage his financial and personal affairs by the Copenhagen City Court (*Københavns Byret*) on 20 March 1984, as the conditions for declaring him legally incompetent under sections 2(1)(i) and 46 of the then applicable Act on Legal Competence (*myndighedsloven*) and part 43 of the Administration of Justice Act (*retsplejeloven*) were found to have been met.

7. In 1996, the Act on Legal Competence was replaced by the Guardianship Act (*værgemålsloven*), which distinguished between (i) persons who under the Act's section 5 were subject to guardianship but remained legally competent, and (ii) persons who were both subject to guardianship under section 5 and had been deprived of their legal capacity under section 6. Only those who had been deprived of their legal capacity under section 6 were to be considered legally incompetent.

8. The second applicant was placed under financial guardianship and deprived of his legal capacity by order of the District Court of Roskilde (*Retten i Roskilde*) on 23 March 2009. The District Court gave the following reasoning:

> "On the basis of the [submitted] medical certificate, it is considered a fact that [the second applicant] is unable to manage his financial affairs because of mental disability, for which reason he requires financial guardianship and requires to be deprived of his legal capacity in order to prevent him from incurring more debt.
>
> Accordingly, the conditions for financial guardianship set out in section 5(1) of the Guardianship Act and the conditions for deprivation of legal capacity set out in section 6(1) of the Guardianship Act have been met. For that reason, an order for financial guardianship and deprivation of legal capacity is granted."

9. Under section 29 of the Constitution, and section 1 of the Danish Act on Parliamentary Elections, persons who were legally incompetent did not have the right to vote in general elections.

10. Consequently, the applicants were not entitled to vote, *inter alia*, in the parliamentary elections that took place on 18 June 2015.

11. By a statutory amendment (Act no. 391 of 27 April 2016), persons who were legally incompetent were given the right to vote in European Parliament elections and in local and regional elections, but not in national parliamentary elections.

12. The applicants, joined by two other persons, instituted proceedings before the Danish courts, claiming that they had wrongfully been denied the right to vote in the parliamentary elections on 18 June 2015. They relied, *inter alia*, on Article 3 of Protocol No. 1 to the Convention, both taken alone and in conjunction with Article 14 of the Convention.

13. The Danish Ministry of Social Affairs and the Interior (*Social- og Indenrigsministeriet*), against whom the above-mentioned proceedings were brought, contested the claims.

14. Before the High Court of Eastern Denmark (*Østre Landsret*), a written statement submitted by the first applicant was read out. According to that statement, as read out by the first applicant's mother:

> "He suffered brain damage after being immunised during his first year [of life]. He currently lives at the Egmont folk high school [*Højskolen*] in Hou. He is able to write with [the help of a third party supporting his] hand and wrote the statement because, unfortunately, he was not able to travel from Jutland to attend the trial hearing. For many years, he has had to share a single vote in general elections with his mother, who is his guardian. They have not always had the same perception of the political landscape. It is humiliating for him not to have the right to cast his own vote, and he would therefore be very pleased if judgment were to be delivered in his favour. According to his papers, he was deemed to be unteachable. However, neuropsychologists and occupational therapists have now been persuaded [that he has some] intellect. He asks for justice."

15. Before the High Court, the second applicant stated:

> "He lives in Greve in his own flat, which is part of a group home. A mentor comes every Wednesday to help him clean, do grocery shopping and read his mail. He is thirty-five years old [sic]. He works on the Glad Foundation reception desk every day from 8 a.m. until usually 2 p.m. or 3 p.m. There are always two employees at work on the reception desk, and on Fridays there are three. He felt sad and disappointed about not being allowed to vote in the general elections in June 2015, when everybody else was allowed to. He feels like an outcast from society. He reads the *Metroexpress* newspaper and is interested in politics. He watches the TV2 news before going to work, and he watches the "TV-Avisen" news on the DR1 channel in the evening. He was deprived of his legal capacity because it is difficult for him to manage his financial affairs. He requested a guardian himself. He asked his mentor to organise the [relevant] paperwork that had to be submitted to the State Administration (*Statsforvaltningen*). Later the case was heard in court."

16. In its judgment of 29 June 2017, the High Court dismissed the claim. The High Court gave the following reasoning:

> "...The provisions of the Constitution [regarding the right to vote] (previously section 35 and section 30, and now section 29) have continuously been construed by the legislature to mean that persons deprived of their legal capacity under section 2 and section 34 of the former Act on Legal Competence and, since the effective date of the Guardianship Act, under section 6 of the Guardianship Act, do not have the right to vote in general elections. This understanding also seems to be supported to a predominant extent in printed legal literature on the subject.

The High Court concurs with this understanding of section 29 of the Constitution and finds, without taking into account the significance of Denmark's international obligations, that there is no basis for a different interpretation of the provision.

...

Accordingly, and since the High Court finds that the provisions of the international conventions acceded to by Denmark and relied upon by the plaintiffs and the intervener do not imply that the very limited number of persons deprived in full of their legal capacity by a court order under section 6 of the Guardianship Act, but who otherwise meet the conditions for suffrage in general elections, also have an absolute and unconditional right to vote in general elections, and since such legal status is not recognised in the judgments of the Court relied upon by the parties and the intervener, the High Court finds for the Ministry of [Social] Affairs and the Interior."

17. The applicants appealed against the judgment to the Supreme Court, which by a judgment of 18 January 2018, upheld the decision of the High Court. The Supreme Court gave the following reasoning:

"The right to vote (claims 1 and 2)

Under section 29 of the Constitution, persons declared 'legally incompetent' do not have the right to vote in general elections. For the reasons given by the High Court, the Supreme Court concurs with the view that persons deprived of their legal capacity under section 6 of the Guardianship Act must be considered legally incompetent within the meaning of the Constitution, for which reason they do not have the right to vote in general elections. Section 1 of the Parliamentary Elections Act is worded accordingly.

Notwithstanding Denmark's international obligations, the Supreme Court cannot allow the appellants' arguments that section 1 of the Parliamentary Elections Act is inapplicable and that they had the right to vote in the 2015 general election. The Supreme Court therefore concurs with the judgment delivered by the High Court in favour of the Ministry of [Social] Affairs and the Interior as regards claims 1 and 2.

Entitlement to compensation (claim 3)

The question is now whether the appellants' rights under, in particular, the European Convention for the Protection of Human Rights and Fundamental Freedoms were violated and, if so, whether the appellants are entitled to compensation.

Under Article 3 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Contracting States 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.

According to the case-law of the European Court of Human Rights, this provision guarantees individuals the right to vote and to stand for election, but this right is not absolute, and the Contracting States must be allowed a margin of appreciation in that sphere – see in this respect, *inter alia*, paragraph 115 of the judgment delivered on 16 March 2006 in *Ždanoka v. Latvia* (application no. 58278/00) and paragraphs 57 and 62 of the judgment delivered on 6 October 2005 in *Hirst v. the United Kingdom (no. 2)*. It furthermore appears from those judgments that restrictions on the right to vote should not automatically adhere to the same criteria as those applied with regard to interference with other Convention rights; that interference must be necessary in a democratic society. However, restrictions on the right to vote must not be arbitrary or disproportionate, or thwart the free expression of the people in the choice of the

legislature. When determining whether a restriction on the right to vote is compatible with the Convention, the European Court of Human Rights takes into account whether the restriction pursues a legitimate aim and whether it is proportionate to that aim.

In the judgment of 20 May 2010 in *Alajos Kiss v. Hungary*, which concerned a provision of the Hungarian Constitution providing that persons placed under total or partial guardianship did not have the right to vote, the European Court of Human Rights was satisfied that the restriction pursued a legitimate aim. That aim was to ensure that only citizens capable of assessing the consequences of their decisions and of making conscious and judicious decisions should participate in public affairs. The European Court of Human Rights found, however, that the Hungarian measure was disproportionate, for which reason it constituted a violation of Article 3 of Protocol No. 1. In making that assessment, the European Court of Human Rights took into account the fact that the Hungarian Constitution did not distinguish between persons under total and persons under partial guardianship, and that there was no evidence that the competing interests had been weighed in order to assess the proportionality of the restriction. It furthermore appears from the judgment that 0.75% of the Hungarian population of voting age had been disenfranchised on account of being under guardianship, that the European Court of Human Rights considered that that was a significant figure, and that it could not be claimed that the restriction on the right to vote was negligible in its effects. The European Court of Human Rights found that the absolute disenfranchisement of all persons under partial guardianship without due consideration being given to [the degree of] their mental disability did not fall within an acceptable margin of appreciation, referring, *inter alia*, to the fact that the margin of appreciation allowed the Contracting States is substantially narrower if disenfranchisement applies to a particularly vulnerable group in society and that weighty reasons are required for such disenfranchisement. When the applicant lost his right to vote as a consequence of the automatic disfranchisement imposed, without access to any remedy, on persons under partial guardianship, he suffered a violation, for which reason the European Court of Human Rights did not 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 line with the requirements of Article 3 of Protocol No. 1. The European Court of Human Rights also said that the treatment of those with intellectual or mental disabilities as a single class constituted a questionable classification and that the curtailment of their rights must be subject to strict scrutiny. The indiscriminate removal of voting rights without an individualised judicial evaluation and solely on the basis of a mental disability necessitating partial guardianship could therefore not be considered to constitute legitimate grounds for restricting the right to vote.

The *Alajos Kiss* judgment is the only judgment on disenfranchisement imposed as a consequence of guardianship, except for the judgments delivered by panels of three judges on 23 September 2014 in *Gajcsi v. Hungary* and on 21 October 2014 in *Harmati v. Hungary*, in which cases the Hungarian government did not dispute the alleged violation of the Convention.

The Supreme Court finds that the purpose of disenfranchising legally incompetent persons under section 29 of the Constitution falls within the framework of a measure deemed to pursue a legitimate aim, as set out by the European Court of Human Rights in *Alajos Kiss*. The question is now whether the requirement of proportionality has been met.

The first condition that must be met in order to deprive a person of his or her legal capacity under section 6 of the Guardianship Act is that the person must be unable to manage his or her own affairs owing to mental unsoundness or mental disability, etc.

(see section 5), and the second condition is that a legal incapacitation order be necessary to prevent the person in question from exposing his or her assets, income or other financial interests to the risk of major loss, or to prevent financial exploitation. Persons subject to guardianship solely under section 5 are legally competent, whereas persons also deprived of their legal capacity under section 6 are legally incompetent. It follows from section 8(1) that a person cannot be deprived of his or her legal capacity if his or her interests can be sufficiently guarded through guardianship under section 5. As opposed to persons who are only subject to guardianship under section 5, persons deprived of their legal capacity under section 6 need more than a guardian to guard their interests; they are often persons who act contrary to their own best interests or risk being exploited by others.

Under section 10, a legal incapacitation order must be quashed if the prescribed conditions are no longer met. The legal incapacitation order in respect of [one of the two additional persons who joined the proceedings] has been quashed, in accordance with that provision, and he is now solely subject to guardianship under section 5 and consequently now has the right to vote in general elections.

Accordingly, strict requirements must be met in order to deprive a person of his or her legal capacity and to maintain in effect such a legal incapacitation order, and such requirements are closely related to the issue of whether the person in question is able to foresee the consequences of his or her decisions and to make conscious and judicious decisions.

The Guardianship Act, which was enacted in 1996, reduced the group of persons declared legally incompetent and consequently disenfranchised in general elections as compared with the group similarly disenfranchised under the former Danish Act on Legal Competence (*myndighedsloven*). In 1990, just under 3,300 persons had been declared legally incompetent, and in December 2017 about 1,850 persons had been deprived of their legal capacity.

Danish Act no. 391 of 27 April 2016 gave persons deprived of their legal capacity the right to vote in European Parliament elections and in local and regional elections. It appears from the preparatory notes to the Act that it was intended to bestow upon this group of individuals the right to vote to the extent possible under the Constitution.

The restriction on the right to vote set out in section 29 of the Constitution therefore reflects an arrangement [*ordning*] that is considerably narrower than the Hungarian measure deemed by the European Court of Human Rights in respect of *Alajos Kiss* to be disproportionate.

The Supreme Court finds that it follows from that judgment that an arrangement imposing a more limited restriction on the right to vote of persons suffering from a mental disability as compared with the then applicable Hungarian measure might be compatible with Article 3 of Protocol No. 1. It cannot be inferred from the judgment that in order for a restriction on the right to vote of persons deprived of their legal capacity to be considered compatible with Article 3 of Protocol No. 1, a specific and individual assessment must always have been made of the relevant person's mental capacity to exercise the right to vote. The Supreme Court observes in this respect, as did the High Court, that a specific and individual assessment of whether a person's mental capacity is sufficient [for that person] to exercise the right to vote may give rise to concern. The case-law of the European Court of Human Rights concerning restrictions on the right to vote and on eligibility to stand for election for reasons other than mental disability also supports the view that a specific and individual assessment is not always required to deprive a person of his or her right to vote – see in this respect paragraphs 112 and 114 of the judgment delivered in *Ždanoka v. Latvia* and

paragraphs 98, 99 and 102 of the judgment delivered on 22 May 2012 in *Scoppola v. Italy (no. 3)*.

The Supreme Court also observes that it follows from the legislation on elections and the constitutions of a number of other European countries that persons deprived of their legal capacity do not have the right to vote [it appears from the transcript that the Supreme Court referred to a report by the European Union Agency for Fundamental Rights of 21 May 2014 "The right to political participation for persons with disabilities: human rights indicators", see paragraph 71 below].

Against this background, the Supreme Court finds no basis for ruling that the arrangement set out in section 29 of the Constitution is contrary to Article 3 of Protocol No. 1 or to Article 14 read in conjunction with Article 3 of Protocol No. 1. The Supreme Court also finds, as was also found by the High Court, that there is no basis for ruling that section 29 of the Constitution is contrary to the Convention on the Rights of Persons with Disabilities.

For this reason alone, the appellants are not entitled to compensation."

18. The Supreme Court judgment attracted renewed focus among politicians on the situation of persons who were both subject to guardianship and had been deprived of their legal capacity, and who did not have the right to vote in general elections. Consequently, several parties that were not government parties at that time introduced private members' bill no. B 71, which sought that fewer persons subject to guardianship should be excluded owing to their disability from the right to vote in general elections. At the first reading of the bill in Parliament, the then Minister of Justice expressed the view that the bill served a commendable purpose, and he promised to examine the possibility of excluding fewer persons subject to guardianship from the right to vote in general elections. After the reading of the bill, a report was published saying that the Parliamentary Committee on Social Affairs, the Interior and Children (*Social-, Indenrigs- og Børneudvalget*) looked forward to discussing with the Government the outcome of the analytical work launched by the Government.

19. In the light of this report, the Ministry of Justice carried out an analysis of the rules within this field. On 3 October 2018, the Ministry of Justice concluded, on the basis of that analysis, that section 29 of the Constitution did not constitute a bar to an amendment to or repeal of the guardianship rules aimed at allowing some of those persons who had been deprived of their legal capacity to again be allowed to manage their own assets in full or in part. The opinion of the Ministry of Justice was that a person subject to guardianship who was barred only in part from managing his or her assets was not "legally incompetent" within the meaning of the Constitution and could therefore retain the right to vote in general elections.

20. Against that background, the then Minister of Justice introduced a bill to amend the Guardianship Act and the Parliamentary Elections Act; that amendment was passed by Parliament on 20 December 2018 and entered into force on 1 January 2019. The following appears from the explanatory notes to the bill:

"The first purpose of the bill is to introduce the possibility of depriving a person [only] partially of his or her legal capacity, one of the consequences being that such a person will retain the right to vote in general elections.

Therefore, it is the opinion of the Government that, according to the principles of democracy, the group of persons with suffrage in elections to a body elected by the people ought to be as wide as possible. The Government wishes to bestow the right to vote in nationwide elections in Denmark upon as many citizens as possible – [including] persons subject to guardianship – within the framework of the Constitution.

...

It appears from paragraph 2.4 of the report that as long as a group of persons are deprived of the right to manage their assets, it is a consequence of section 29 of the Constitution that those persons are barred from voting in general elections.

It therefore requires an amendment to the Constitution if the deprivation of a person's legal capacity is not to lead to disenfranchisement.

However, section 29 of the Constitution is not a bar to an amendment to or repeal of the guardianship rules to the effect that some of the persons deprived of their legal capacity today would again be allowed to manage their own assets in full or in part.

However, in the opinion of the Ministry of Justice, such an arrangement must not have as a consequence [the scenario] that persons in need of the protection afforded by the deprivation of their legal capacity would be left in a situation in which they risked being exposed to financial exploitation or ... a potential risk of losing their assets.

It is observed that the group of around 1,900 persons who have been deprived of their legal capacity is a particularly vulnerable population group.

It is the opinion of the Ministry of Justice that it would constitute a major impairment of the protection of those persons if the possibility of depriving them of their legal capacity were to be abolished entirely. In such a case, those persons would no longer be prevented from entering into legal transactions and incurring financial commitments, even though they are not able to understand the consequences, thereby exposing their assets to risk. The relevant persons might also risk financial exploitation.

Therefore, the Ministry of Justice cannot recommend the full abolition of the possibility of depriving them of their legal capacity. ..."

21. Accordingly, it was the assessment of the Ministry of Justice that the proposed possibility of the partial deprivation of legal capacity was most compatible with the aim of allowing as many citizens as possible the right to vote while protecting a small group of citizens in need of such protection by depriving them of their legal capacity.

22. In the light of the above, the statutory amendment introduced the possibility of the partial deprivation of legal capacity. Thereby it became possible to limit an order restricting a person's legal incapacity to comprise only particular assets or affairs, such as credit purchase transactions or taking out loans, or to specifying a maximum amount of agreements into which such a person could enter. Persons deprived only partially of their

legal capacity remain legally competent and thus retain the right to vote in general elections. Only persons fully deprived of their legal capacity do not have the right to vote in general elections.

23. The first applicant lodged an application with a district court for a change to his guardianship status following the statutory amendment. On 20 May 2019, the order regarding his legal incapacitation was quashed in its entirety, and he was consequently granted the right to vote in general elections.

24. The second applicant also lodged an application for a change to his guardianship status. He is still subject to guardianship, but by a district court order of 9 November 2019, he was only partially deprived of his legal capacity pursuant to section 6(2)(2) of the Guardianship Act. Consequently, he was granted the right to vote in general elections.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. The Constitution

25. The fundamental rules on the right to vote in general elections are set out in section 29 of the Constitution, which, in so far as relevant, reads as follows:

Section 29

> "(1) Any person who is a Danish national, has a permanent home in the realm and has reached the age to qualify for suffrage, as provided in subsection (2) hereof, shall have the right to vote in general elections unless he or she has been declared legally incompetent. It must be laid down by statute to what extent conviction [of a crime] and public assistance amounting to poor relief within the meaning of the law will lead to disfranchisement."

26. The provision was first introduced in the Constitutional Act, which was enacted on 5 June 1849. The wording of the part of the provision stipulating that persons declared legally incompetent do not have the right to vote was revised in 1915 and 1953.

27. The following overview can be made of the development of the provision.

28. In 1849, section 35 set out:

> "Any man of good repute and Danish nationality has the right to vote in general elections when he attains the age of 30, unless he:-
>
> [...]
>
> (c) is barred from managing his [own] property".

29. In 1915, section 30 set out:

> "Any man or woman of Danish nationality has the right to vote in general elections when he or she has attained the age of 25 and has a permanent home in Denmark, unless he or she:
>
> ...
>
> (c) is barred from managing his or her [own] property owing to bankruptcy or a declaration of legal incompetence."

30. In 1953, as stated above, the first sentence of section 29(1) set out:

> "Any person who is a Danish national, has a permanent home in the realm and has reached the age qualifying [him or her] for suffrage, as provided in subsection (2) hereof, shall have the right to vote in general elections, unless he or she has been declared legally incompetent ..."

31. Section 35 of the first Danish Constitution of June 1849 set out the qualifications for suffrage. The conditions had been extensively discussed by the Constitutional Committee. One of the subjects discussed was whether suffrage was to be conditional on levels of income or assets (the so-called "census requirements"). By contrast with the census requirements, a less controversial issue was that of whether legally incompetent persons were to be barred from voting. A.F. Krieger, the spokesman of the Constitutional Committee, said in this respect (see the Report on the Parliamentary Debate, vol. 2, column 2184f):

> "There is indeed general agreement that legally incompetent persons, children, women and criminals should be barred from voting."

32. The 1915 amendment to the Constitution (see Act no. 161 of 5 June 1915) added the stipulation that whenever a person was barred from managing his or her property it should be "owing to bankruptcy or a declaration of legal incompetence". The preparatory notes to the provision (see the Official Report on Parliamentary Proceedings *(Rigsdagstidende*) 1914-15, column 3937) explained that the wording "owing to bankruptcy or a declaration of legal incompetence" had been added in order to ensure the suffrage of married women. The only reason for the amendment was therefore that women would qualify for suffrage even if they were barred from managing their own property because they had married.

33. The provision was given its current wording by the 1953 amendment to the Constitution (see Act no. 169 of 5 June 1953). As regards the reason for this amendment, according to which it is a condition for suffrage that a person has not been "declared legally incompetent", the preparatory notes read as follows (see in this respect the explanatory notes to section 29 in Report No. 66/1953 issued by the 1946 Commission on the Constitution):

> "There is consensus that bankruptcy should no longer be considered grounds for exclusion. However, it is maintained that a declaration of legal incompetence will continue to lead to disenfranchisement. The bill does not combine this with the requirement that a person declared legally incompetent must have been barred from managing his or her [own] property, as does the current Constitution. Under the Act

> on Legal Competence, such a restriction on the right to manage one's property is always linked to a declaration of legal incompetence."

34. It thus appeared from the preparatory notes that no amendment was contemplated to the condition that a person declared legally incompetent would also become disenfranchised, since a restriction on the right to manage one's own property was an automatic consequence of a declaration of legal incompetence under the former Act on Legal Competence.

35. The procedure for enacting amendments to the Constitution is set out in section 88 of the Constitution, which reads as follows:

> "If Parliament passes a bill on a new constitutional provision and the Government wishes to proceed with the matter, a general election must be called. If the bill is passed without amendment by the Parliament that assembles after the general election, a referendum must be held on whether to approve or reject the bill within six months of its final passage. Detailed rules on the referendum process must be laid down by statute. If a majority of the persons casting a vote in the referendum and at least 40% of the electorate have voted in favour of the bill, as passed by Parliament, and if the bill receives royal assent, it shall form an integral part of the Constitution."

The process of preparing and enacting an amendment to the Constitution is a time-consuming one. Moreover, history has shown that it is difficult to reach the required voter turnout in a referendum on an amendment to the Constitution.

B. The Parliamentary Elections Act

36. Since the enactment of the 1849 Constitution, the conditions for suffrage laid down by the Constitution have been implemented by the enactment of an elections statute. Section 1 of the Parliamentary Elections Act reads as follows:

Section 1

> "Any person who is a Danish national, has attained the age of eighteen and has a permanent home in the realm shall have the right to vote in general elections, unless he or she is legally incompetent."

37. The following overview can be made of the development of the provision.

38. In 1849, section 5 set out:

> "Therefore, no person subjected to guardianship or whose property is subject to insolvency or bankruptcy proceedings shall have the right to vote."

39. In 1915, section 2 set out:

> 'No person shall have the right to vote if he or she:
>
> ...
>
> (c) is barred from managing his or her property owing to bankruptcy or a declaration of legal incompetence.'

40. In 1953, section 1(1) set out:

> "Any person who is a Danish national, is of the age to qualify for suffrage, as provided for in subsection (2) hereof, and has a permanent home in the realm shall have the right to vote in general elections unless he or she:-
>
> [...]
>
> (b) is barred from managing his or her property owing to a declaration of legal incompetence."

41. In 1965, section 1(1) set out:

> "Any person who is a Danish national, has attained the age of 21 and has a permanent home in the realm shall have the right to vote in general elections unless he or she has been declared legally incompetent."

42. In 1997, section 1 set out:

> "Any person who is a Danish national, has attained the age of 18 and has a permanent home in the realm shall have the right to vote in general elections unless he or she is subject to guardianship combined with deprivation of legal capacity under section 6 of the Guardianship Act."

43. In 2019, section 1, set out:

> "Any person who is a Danish national, has attained the age of 18 and has a permanent home in the realm shall have the right to vote in general elections unless he or she is legally incompetent."

44. The 1849 Elections Act of 16 June 1849 implemented section 35 of the Constitution, under which the right to vote was subject to "the right to manage one's own property". It followed from section 5 of the Elections Act that persons "subject to guardianship" did not have the right to vote. According to A.F. Krieger, the reason for the different wordings used was that the words used in the Constitution could have "a more specific meaning" (see the Report on the Parliamentary Debate, vol. 2, column 3407).

45. In connection with the 1915 amendment to the Constitution, the provision of the Elections Act on suffrage was worded to render it identical with the wording of the constitutional provision on suffrage, as enacted (see Act no. 142 of 10 May 1915).

46. The rules on elections to the *Rigsdagen*, the former parliamentary assembly, were replaced by the Parliamentary Elections Act (Act no. 171 of 31 March 1953) – in connection with the 1953 amendment to the Constitution, by which the *Rigsdagen* was replaced by the *Folketinget* as the Danish parliamentary assembly. By the enactment of the Parliamentary Elections Act, "bankruptcy" was omitted from the provisions regarding disenfranchisement, as bankruptcy should no longer lead to disenfranchisement, according to the findings of the 1946 Commission on the Constitution (see the explanatory notes to section 1 of the Parliamentary Elections Act provided in Report No. 74 of 2 February 1953 of the

Commission on the Elections Act). However, the wording still said that the relevant person must not be "barred from managing his or her [own] property owing to a declaration of legal incompetence".

47. The expression "the right to manage one's [own] property" was removed by a statutory amendment in 1965. Accordingly, this provision was given the same wording as section 29 of the Constitution, the only condition now being that a person must not have been "declared legally incompetent".

48. Section 1(1) of the Parliamentary Elections Act retained this wording, except for amendments to the age qualifying citizens for suffrage, until 1997. In 1997, the provision was reworded to say that persons who were both subject to guardianship and who had been deprived of their legal capacity under section 6 of the Guardianship Act did not have the right to vote. The amendment was made in the light of the enactment of the Guardianship Act. The amendment to the Parliamentary Elections Act took into account the fact that the Committee on the Act on Legal Competence had assessed, in particular, the meaning of the wording of the Constitution in the light of the new Guardianship Act.

49. Section 1 of the Parliamentary Elections Act, as currently worded, came into force on 1 January 2019 (see section 2 of Act no. 1722 of 27 December 2018) to reflect the new possibility to only partially deprive a person of his or her legal capacity. The provision is drafted to the effect that persons declared legally incompetent are disenfranchised, whereas persons deprived only partially of their legal capacity are deemed to be still legally competent and thus have the right to vote in general elections.

C. The Guardianship Act

50. In 1996, the Act on Legal Competence was replaced by the Guardianship Act, which distinguished between (i) persons who under section 5 were subject to guardianship but remained legally competent, and (ii) persons who were subject to guardianship under section 5 and were also deprived of their legal capacity under section 6.

51. The Guardianship Act defined three kinds of guardianship for adults. Guardianship under section 5 was the standard arrangement. It read as follows:

Section 5

"(1) A guardianship order can be made in respect of any person unable to manage his or her own affairs owing to mental unsoundness, including severe dementia, or mental disability or other severe impairment, if necessary.

(2) A guardianship order can be made in respect of any person who is unsuited to manage his or her own financial affairs owing to illness or other severe decline and who makes a request [for such an order] himself or herself – if necessary instead of appointing a surrogate decision-maker for such a vulnerable adult under section 7.

(3) A guardianship order can be restricted to financial matters, including specific assets or affairs. Such an order can also be restricted to personal matters, including specific personal affairs.

(4) Unless otherwise specifically provided, the guardian shall act on behalf of the relevant person in respect of affairs covered by the guardianship order.

(5) Persons subject to guardianship under this provision are legally competent, unless deprived of their legal capacity under section 6."

Accordingly, section 5 of the Guardianship Act allowed for individual guardianship arrangements adapted to individual needs. Persons subject to guardianship under section 5 of the Act could enter into legal transactions on their own, and they had the right to vote in general elections

52. At the relevant time, section 6 of the Guardianship Act was worded as follows:

Section 6

"(1) Persons subject to guardianship over their financial affairs under section 5 can be deprived of their legal capacity, if necessary, to prevent them from exposing their assets, income or other financial interests to the risk of a major loss, or to prevent financial exploitation. The deprivation of a person's legal capacity cannot be restricted to particular assets or affairs.

(2) A person deprived of his or her legal capacity is legally incompetent and does not have the right to enter into legal transactions or to manage his or her assets, unless otherwise provided.

(3) Legal incapacitation orders must be registered (see section 48 of the Registration of Property Act)."

53. Under section 8 of the Guardianship Act, a guardianship order must be granted on the basis of the principle of implementing the least intrusive measure. One implication is that a person cannot be deprived of his or her legal capacity under section 6 if it is possible to safeguard his or her interests to a sufficient extent through guardianship under section 5.

54. From the preparatory notes to the Act, it appeared that it was based on Report No. 1247/1993 on Guardianship issued by the Committee of the Ministry of Justice on the Act on Legal Competence (*Myndighedslovudvalge*t). The report read, in its relevant part, as follows:

"9.2.2. For the purpose of the Committee's considerations of concepts and terminology, it was particularly relevant to assess the wording of the Constitution. It is irrelevant whether a person is only declared legally incompetent to manage his or her financial affairs (see section 2 of the current Act on Legal Competence) or also declared legally incompetent to manage his or her personal affairs, see section 46. A declaration of legal incompetence relied upon as grounds for exclusion from the right to vote in pursuance of section 29 of the Constitution is based on the assumption, as is also the condition of having attained the age of majority, that a certain level of mental skills is a prerequisite for suffrage. According to the preparatory notes, it must be assumed that it is the restriction on a person's right to manage his or her assets (when declared legally incompetent) that gave rise to combining a declaration of legal incompetence with disenfranchisement. It must also be taken into account that the

reason for declaring a person legally incompetent under section 2 of the current Act on Legal Competence must extend beyond limited mental faculties or mental capacity, such as bibulousness, bodily deficiency, illness or another infirmity. Moreover, as mentioned above in parts 2 and 4, by no means everyone with limited mental capacity is declared legally incompetent. Against this background, Max Sørensen [a Danish professor of constitutional law, international law and a judge] mentions that the rational arguments for section 29 of the Constitution are weak and that the provision can only be understood in view of the historical development, as the 1849 Constitution and the 1866 Constitution disenfranchised persons barred from managing their property for the reason that a person who was not deemed able by the legal system to attend to his own financial affairs should not have any influence on the national government either. ...

...

9.4.5. As mentioned in paragraph 9.2 above, section 29 of the Constitution on the right to vote is not deemed to constitute a bar to the Committee's determination of concepts, including the decision not to use the concept of "declared legally incompetent". However, it must be a consequence of the conditions set out in the Constitution that any person deprived of his or her legal capacity, within the meaning contemplated by the Committee (see section 6 of the draft), or barred from controlling his or her personal affairs, according to the wording of the provision drafted by the dissenting Committee members (see section 6a of the draft), must be disenfranchised under the legislation on elections."

55. Subsequent to statutory amendment by Act no. 1722 of 27 December 2018, which entered into force on 1 January 2019, section 6 of the Guardianship Act read as follows:

Section 6

"(1) Persons subject to guardianship over their financial affairs under section 5 can be deprived of their legal capacity, if necessary, to prevent them from exposing their assets, income or other financial interests to the risk of a major loss, or to prevent financial exploitation. The deprivation of a person's legal capacity can be restricted to particular assets or affairs.

(2) A person deprived of his or her legal capacity under the first sentence of subsection (1) is legally incompetent and does not have the right to enter into legal transactions or to manage his or her own assets, unless otherwise provided. A person partially deprived of his or her legal capacity under the second sentence of subsection (1) is legally competent, but does not have the right to enter into legal transactions or to manage his or her assets to the extent provided.

(3) Legal incapacitation orders must be registered (see section 48 of the Danish Registration of Property Act [*Tinglysningsloven*])"

56. Owing to the statutory amendment, it became possible to partially deprive persons of their legal capacity – as opposed to the previous legal situation, in which it had been possible only to fully deprive persons of their legal capacity. One of the consequences of the statutory amendment was that persons who were both subject to guardianship and had been partially deprived of their legal capacity were still legally competent and accordingly entitled to vote in general elections.

57. The reason for the statutory amendment was the political desire that emerged following the Supreme Court judgment of 18 January 2018 to bestow the right to vote in general elections upon as many citizens as possible, as far as the Constitution allowed.

58. According to information received from the Agency of Family Law (*Familieretshuset*), which considers applications for the revision of guardianship orders, the Agency had received a total of seventeen applications by 16 September 2019 for changing guardianship orders involving the total deprivation of legal capacity to guardianship orders involving the partial deprivation of legal capacity. Fourteen of those applications have been decided on, and one guardianship order combined with the total deprivation of legal capacity has been changed to an order on guardianship involving the partial deprivation of legal capacity, the consequence being that the relevant person now has the right to vote in general elections. In three cases, the legal incapacitation order has been terminated in its entirety.

D. Concerning the right to vote in European Parliament and local and regional elections

59. Act no. 391 of 27 April 2016 gave persons deprived of their legal capacity (under section 6 of the Guardianship Act) the right to vote in European Parliament elections and in local and regional elections. It appears from the preparatory notes to the Act that it was intended to bestow upon this group of individuals the right to vote to the extent possible under the Constitution. The relevant part of the statutory amendment (Bill no. 130 of 24 February 2016) reads as follows:

> "The Government wishes to bestow the right to vote in nationwide elections in Denmark upon as many citizens as possible within the framework of the Constitution. Accordingly, it is proposed to amend the legislation on elections to allow persons who are [both] subject to guardianship [and have been deprived of] of their legal capacity under section 6 of the Guardianship Act, but who otherwise meet the conditions for suffrage, the right to vote in European Parliament elections and in local and regional elections.
>
> There has been a demand for some time, including from the Danish Institute for Human Rights, for an amendment to the legislation on elections to allow persons [who are both] subject to guardianship and have been deprived of their legal capacity under section 6 of the Guardianship Act the right to vote in all nationwide elections and referendums in Denmark. Under current law, it is a condition for having the right to vote in all nationwide elections and referendums in Denmark that one is not subject to guardianship combined with deprivation of legal capacity under section 6 of the Guardianship Act.
>
> It is the assessment of the Government that the Constitution does not make it possible to bestow the right to vote in general elections upon persons deprived of their legal capacity as a consequence of a guardianship order under section 6 of the Guardianship Act. On the other hand, the Constitution cannot be considered to

constitute a bar to bestowing the right to vote in local and regional elections and in European Parliament elections upon persons [who are both] subject to guardianship [and have been deprived] of their legal capacity under section 6 of the Guardianship Act. Reference is made to the reply of 17 March 2014 from the Ministry of Justice to question no. 644 (general questions) from the Legal Affairs Committee of the Danish Parliament.

It furthermore follows from the Constitution that the parliamentary electorate – that is to say persons having the right to vote in general elections – are the ones who are entitled to vote in constitutional referendums.

In order to bestow upon persons [who are] subject to guardianship [and have been deprived] of their legal capacity under section 6 of the Guardianship Act a more extensive right to vote, it is proposed to bestow upon this group of persons the right to vote in local and regional elections and in European Parliament elections."

60. The following appears from the reply of 17 March 2014 from the Minister for Justice to question no. 644 from the Legal Affairs Committee of the Danish Parliament:

"Question no. 644 (general questions) from the Legal Affairs Committee of the Danish Parliament:

Is the Minister willing to consider amendments to the Guardianship Act or other compensatory measures in view of the 2012 report by the Danish Institute for Human Rights entitled "Autonomy and Guardianship" (*Selvbestemmelse og værgemål*), which points out on page 49 that "Disenfranchisement as a consequence of guardianship is contrary to the Convention on the Rights of Persons with Disabilities and [to] the ECHR"?

Answer:

1. Section 29(1) of the Constitution provides that any person who is a Danish national, has a permanent home in the realm and has attained the age of 18 has the right to vote in general elections unless he or she has been declared legally incompetent.

As appears from the Report of the Committee on the Act on Legal Competence (Report No. 1247/1993), which formed the basis for the relevant Guardianship Act, it must be assumed on the basis of the preparatory notes to section 29(1) of the Constitution that it is the restriction on a person's right to manage his or her own assets (when declared legally incompetent) that gave rise to combining a declaration of legal incompetence with disenfranchisement.

The deprivation of a person's legal capacity under section 6 of the Guardianship Act is effected in cases in which the guardianship order applies to financial affairs. Therefore, it must be a consequence of section 29 of the Constitution that any person deprived of his or her legal capacity under section 6 of the Guardianship Act will become disenfranchised under the legislation on elections (see in this respect also pp. 156-57 of the Report of the Committee on the Act on Legal Competence). Accordingly, the Constitution does not make it possible to bestow the right to vote in general elections upon persons deprived of their legal capacity because they are subject to guardianship under section 6 of the Guardianship Act.

2. However, it is the opinion of the Ministry of Justice that the Constitution cannot be considered to constitute a bar to bestowing the right to vote in elections for local councils, regional councils and the European Parliament upon persons subject to

guardianship under section 6 of the Guardianship Act. Amendments involving such an extension of the right to vote would have to be implemented by statute. This issue falls within the remit of the Ministry of Economic Affairs and the Interior.

3. It is the opinion of the Ministry of Justice that there is no basis for assuming – contrary to the findings in the report of the Danish Institute for Human Rights – that the Danish rules on disenfranchisement of persons subject to guardianship under section 6 of the Guardianship Act are contrary to the European Convention on Human Rights.

In its 2012 report, the Danish Institute for Human Rights refers to the judgment delivered by the European Court of Human Rights on 20 May 2010 in *Alajos Kiss v. Hungary* (application no. 38832/06). However, it is the assessment of the Ministry of Justice that it is not a consequence of *Alajos Kiss* that the Danish rules on suffrage and guardianship cannot be maintained, one reason being that that case concerned the national legislation of Hungary, under which any form of guardianship automatically led to disenfranchisement. This is not the case in Denmark, where only the orders on guardianship under section 6 of the Guardianship Act mentioned above will concurrently lead to disenfranchisement. Moreover, Hungary had more lenient rules for issuing guardianship orders than Denmark.

4. As regards the United Nations Convention on the Rights of Persons with Disabilities, it should be noted that on 20 September 2013, in its communication No. 4/2011, the Committee on the Rights of Persons with Disabilities issued its views (in respect of *Zsolt Bujdosó and five others v. Hungary*) concerning the right to vote of persons with intellectual disabilities.

The Committee on the Rights of Persons with Disabilities said in its communication that it is contrary to the Convention for a State party to exclude persons with intellectual disabilities from suffrage. It would appear that that view applies regardless of whether or not the relevant persons have the mental capacity to vote, as the Committee found that the State party should merely provide specific assistance to such vulnerable persons.

In the opinion of the Ministry of Justice, the views issued by the Committee on the Rights of Persons with Disabilities give rise to essential questions pertaining to section 29 of the Constitution, which, as mentioned above, provides that any person who is a Danish national, has a permanent home in the realm and has attained the age of 18 has the right to vote in general elections unless he or she has been declared legally incompetent.

Unlike judgments delivered by the European Court of Human Rights, views issued by the Committee on the Rights of Persons with Disabilities are, however, not binding on Denmark.

5. Against this background, the Ministry of Justice has not considered any amendment to the Guardianship Act."

E. The historical and political context

61. The statutory basis for the right to vote in general elections and referendums is section 29 of the Constitution. The possibility of amending section 29 of the Constitution has been regularly considered. At the time of the most recent amendment to the Constitution in 1953, the legislature maintained the position that a declaration of legal incompetence should lead

to disenfranchisement. The issue of the franchise of legally incompetent persons was further considered in more detail in connection with the readings and enactment of the Guardianship Act, which came into force in 1996. Most recently, Parliament had a robust debate in 2016 (in respect of a potential amendment to section 29(1) of the Constitution) concerning legally incompetent persons' right to vote during the readings of the bill that ultimately bestowed upon them the right to vote in elections for the European Parliament and in local and regional elections. It appears from the report of that parliamentary debate that the 2016 Parliament did not have a political majority among its members for a constitutional amendment concerning the right to vote under section 29(1) of the Constitution. Only a small minority of twenty-one MPs from two parties (from a total of 179 MPs) expressed a desire to work towards such an amendment to the Constitution. Such a process is time-consuming, and history has shown that it has been difficult to reach the required voter turnout in referendums, despite the political majority in Parliament for other proposed amendments to the Constitution.

62. Since 1849, the Elections Act has also continuously attracted political attention and has been adapted, reflecting developments in society, to bestow the right to vote in general elections upon as many persons deprived of their legal capacity as possible.

63. Upon its enactment in 1996, the Guardianship Act instantly reduced the size of the group of persons who were deemed to be legally incompetent and consequently disenfranchised in general elections. In 1990, just under 3,300 persons had been declared legally incompetent, and in December 2017 about 1,850 persons had been deprived of their legal capacity. An additional purpose of the 2019 amendments to the Guardianship Act and the Parliamentary Elections Act was to reduce the size of the group of persons disenfranchised owing to the deprivation of their legal capacity as far as the Constitution allowed.

64. It was likewise the purpose of the 2016 amendment, by which the right to vote in elections for the European Parliament and in local and regional elections was bestowed upon persons who had been deprived of their legal capacity, that the right to vote should be bestowed upon this group of persons to the extent possible under the Constitution.

65. The rules governing suffrage for persons deprived of their legal capacity have thus been considered, discussed and adapted on a regular basis in order to grant the right to vote to the greatest extent possible, as far as the Constitution allowed.

RELEVANT INTERNATIONAL AND EUROPEAN MATERIAL

66. The United Nations Convention on the Rights of Persons with Disabilities (the "CRPD"), which was ratified by Denmark on 24 July 2009, 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."

67. Council of Europe Recommendation R(99)4 of the Committee of Ministers to Member States on Principles Concerning the Legal Protection of Incapable Adults (issued 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."

68. Opinion no. 190/2002 of the European Commission for Democracy through Law ("Venice Commission") on the Code of Good Practice in Electoral Matters 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."

69. 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 (issued on 5 April 2006) 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; ..."

70. In its report of 30 October 2014 on Denmark, the United Nations Committee on the Rights of Persons with Disabilities expressed, *inter alia*, the following concern under the heading "Participation in political and public life" ("Article 29):

"The Committee is concerned that under the Constitution, the Parliamentary Elections Act and other electoral laws, and the Guardianship Act (section 6), persons under guardianship are not allowed to vote or to stand for election in parliamentary, municipal, regional or European Parliament elections, or referendums. The Committee is also concerned that election materials are reportedly rarely accessible to blind persons or to persons with learning and intellectual disabilities, that polling stations are often not physically accessible, that ballots may not be accessible to blind persons, and that persons under guardianship may not be able to freely choose the kind of voting assistance that they would wish to use.

The Committee recommends that the State party amend the relevant laws, including the Parliamentary Elections Act and other laws governing municipal, regional and European Parliament elections, so that all persons with disabilities can enjoy the right to vote and stand for election regardless of guardianship or other regimes. It also recommends that the State party ensure, through legislative and other measures, the accessibility of ballots and election materials, and of polling stations, and that it ensure that freely chosen, adequate and necessary assistance is provided in order to facilitate voting by all persons."

71. A report by the European Union Agency for Fundamental Rights of 21 May 2014 on "The right to political participation for persons with disabilities: human rights indicators" stated among other things (pages 40-41):

"Seven out of the 28 EU Member States – Austria, Croatia, Italy, Latvia, the Netherlands, Sweden and the United Kingdom – guarantee the right to vote for all persons with disabilities, including those without legal capacity.

In Croatia, legal reform in December 2012 abolished the exclusion of persons without legal capacity from the right to vote, meaning that people deprived of legal capacity were able to participate in the European Parliament and local elections in 2013. Similarly, amendments to the Latvian Civil Code which came into force in 2013 end the denial of the right to vote for those deprived of legal capacity. The relevant electoral legislation has not yet been amended, however, meaning people deprived of legal capacity can be barred from voting.

A second group of EU Member States have a system whereby an assessment is made of the individual's actual ability to vote. In Hungary, a system where everyone under guardianship was prohibited from voting was changed in 2012; now judges decide whether persons with "limited mental capacities" are allowed to vote. In Slovenia, the legal test for judges deciding whether to restrict the right to vote is whether the person with a disability is capable of understanding the meaning, purpose and effect of elections.

A further 15 EU Member States prohibit people with disabilities who have been deprived of their legal capacity from voting. The Member States are Belgium, Bulgaria, Cyprus, Denmark, Estonia, Germany, Greece, Ireland, Lithuania,

> Luxembourg, Malta, Poland, Portugal, Romania and Slovakia. This exclusion is either set out in the country's constitution or in electoral legislation. The German Federal Election Law is an example of this second approach. Persons for whom a custodian to manage all their affairs is appointed, not just by temporary order, are automatically deprived of their voting rights."

The Court observes that it seems that other European States, including Albania, Moldova, Serbia and Turkey, also had legislation restricting the right to vote in respect of persons who had been deprived of their legal capacity.

THE LAW

I. JOINDER OF THE APPLICATIONS

72. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ARTICLE 3 OF PROTOCOL NO. 1 TO THE CONVENTION

73. The applicants complained that the Supreme Court judgment of 18 January 2018 had breached their right to vote under Article 3 of Protocol No. 1 to the Convention, which reads as follows:

> "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. Submissions by the parties

74. The Government submitted that the complaint should be declared inadmissible as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

75. The applicants disagreed.

2. The Court's assessment

76. The Court notes that the complaint 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. Submissions by the parties

77. The applicants did not dispute that the restriction in question pursued a legitimate aim, but maintained that the disenfranchisement had been unjustified and arbitrary.

78. The State should enjoy a narrow margin of appreciation in this matter, since any exclusion of persons with disabilities from public life had to be subject to close scrutiny; that principle also applied to any assessment of whether such exclusion was compatible with international human rights guarantees.

79. In the present case, the disenfranchisement had been an automatic consequence of the applicants being deprived of their legal competence. There had been no assessment of the applicants' ability to vote.

80. The authorities had been aware that there was no clear and absolute link between a person's ability to organise his or her own finances and that person's political rights. Nevertheless, there had been no proper legal debate at the domestic level regarding the appropriateness of the exclusion.

81. Moreover, the Ministry of Justice had continuously refused to amend the relevant legislation; its sole argument for that refusal had been that that would require an amendment to the Constitution, which would be difficult from a practical point of view. Thus, in 2014, even though the United Nations Committee on the Right of Persons with Disabilities had made critical remarks about the legislation at issue, its report and remarks had not prompted any further considerations on the part of the Ministry of Justice. Likewise in 2016, when persons deprived of their legal capacity had been given the right to vote in elections for the European Parliament and in local and regional elections, they had still been denied the right to vote in general elections, as it had been argued that that would require an amendment to the Constitution. It had not been until after the Supreme Court judgment of 18 January 2018 that a thorough analysis of the legislation had been made by the Ministry of Justice. For the first time there had been a substantive and meaningful debate regarding the disenfranchisement of persons deemed to be legally incompetent, which had led to amendments to the Guardianship Act and the Parliamentary Act, which had entered into force on 1 January 2019.

82. In the applicants' view their case was thus identical to the Court's judgment in *Alajos Kiss v. Hungary* (no. 38832/06, 20 May 2010). They found it of no specific importance that the affected group or person in Denmark was narrower than the affected group of persons in Hungary. The essential point was that their disenfranchisement had been arbitrary and an automatic result of their financial incapacity.

83. The Government submitted that there had been no violation of Article 3 of Protocol No. 1 to the Convention, since the restriction on the right to vote had been proportionate to the legitimate aim pursued.

84. Section 29 of the Constitution, which excluded persons who had been declared legally incompetent from voting (in addition to persons who had not attained the age of majority) had the legitimate aim of ensuring that voters in general elections had the required level of mental skills. In that connection, it had been necessary to link the grounds for exclusion to clear-cut criteria that were objective, clear and predictable.

85. As regards the proportionality of the restriction, the Government referred to the Supreme Court's reasoning in its judgment of 18 January 2018.

86. They emphasised that the present case differed significantly from that of *Alajos Kiss* (cited above). Under the Danish arrangement, only a small group of persons were disenfranchised – namely those who were both subject to guardianship and had been deprived of their legal capacity under section 6 of the Guardianship Act. However, a person could not be deprived of his or her legal capacity if his or her interests could be sufficiently guarded through guardianship under section 5. The deprivation of legal capacity was thus a measure that affected a narrow group of persons, amounting to 0.046% of the Danish population of voting age, whereas 0.75% of the Hungarian population was subject to disenfranchisement. Moreover, the Danish legislature had considered on an ongoing basis the issue of disenfranchisement and had sought to extend the franchise as much as possible, as far as the Constitution allowed – hence, *inter alia*, the most recent amendment to the Constitution in 1953, and the amendment of rules on guardianship in 1996, and again in 2016 and 2019.

87. The Government reiterated that disenfranchisement as an automatic legal consequence could be in accordance with Article 3 of Protocol No. 1, provided that it was proportionate, and not of a general, automatic and indiscriminate nature (see, *inter alia*, *Scoppola v. Italy (no. 3)*, no. 126/05, § 102, 18 January 2011). The Danish rules setting out the conditions for depriving a person of his or her legal capacity were very strict and closely related to the issue of whether the person in question was able to foresee the consequences of his or her decisions and to make conscious and judicious decisions. Such decisions had to be made by a court. Moreover, under the relevant Danish legislation there were objective, clear and predictable criteria for qualifying for suffrage, and the circumstances automatically giving rise to disenfranchisement were detailed in the law.

88. As regards the applicants' submissions that there was no difference between the right to vote in general elections and the right to vote in elections for the European Parliament, the Government recalled that the legislature had seriously considered that matter during the readings of the bill by which the right to vote in European Parliament elections had been

granted in 2016. At that time the right to vote had been extended to the greatest extent possible, without having to resort to an amendment to the Constitution.

89. Lastly, the Government pointed to the fact that other European countries had made exceptions for persons without legal capacity with regard to the right to vote, and that Contracting States should be allowed a wide margin of appreciation in determining what procedures should be followed in order to assess mentally disabled persons' fitness to vote.

2. Submissions by the third party

90. The European Network of National Human Rights Institutions, a Belgium-based NGO, submitted, *inter alia*, that recent changes in legislation, jurisprudence and practices across the Contracting Member states showed that there was a consensus, and common values, emerging around the principle that the voting rights of persons with disabilities should be guaranteed – including those of persons who were subject to a restriction or removal of their legal capacity. That consensus could equally be inferred from various resolutions, opinions, statements and recommendations from international and regional human rights bodies, which had repeatedly emphasised that the automatic link between the right to vote and one's legal capacity disproportionately infringed upon the political rights of persons with disabilities.

3. The Court's assessment

(a) General principles

91. The Court refers to its relevant case-law, as outlined in the judgment of *Hirst v. the United Kingdom* (no. 2) [GC], no. 74025/01, ECHR 2005-IX:

> "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)."

92. In addition to the principle above about the margin of appreciation being wide in this area, the Court recalls 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 incompetent, is of particular importance, including to the operation of the relevant margin of appreciation (see, among others, *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 108, ECHR 2013 (extracts), and *Correia de Matos v. Portugal* [GC], no. 56402/12, §§ 117 and 129, 4 April 2018).

93. Another factor which has impact on the scope of the 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).

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

94. In the present case the applicants had been declared legally incompetent. Consequently, they were disenfranchised and prevented from

voting in general elections. Their right to vote had thus been restricted by law. The Court will proceed to determine whether this measure pursued a legitimate aim in a proportionate manner, having regard to the principles identified above.

(i) Lawfulness

95. Unlike other provisions of the Convention, such as Article 5, Articles 8 to 11, or Article 1 of Protocol No. 1, the text of Article 3 of Protocol No. 1 does not contain an express reference to the "lawfulness" of any measures taken by the State. However, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention and its Protocols (see, among many other authorities, *Amuur v. France*, 25 June 1996, § 50, *Reports of Judgments and Decisions* 1996-III, and *Abil v. Azerbaijan (no. 2)*, no. 8513/11, § 66, 5 December 2019).

96. In the present case, it is not in dispute between the parties that the applicants' disenfranchisement was lawful. It was prescribed by section 29 of the Constitution and section 1 of the Danish Act on Parliamentary Elections. The Court finds no reason to hold otherwise (see, for example, *a contrario*, *Seyidzade v. Azerbaijan*, no. 37700/05, §§ 31-40, 3 December 2009.

(ii) Legitimate aim

97. The Court points out that Article 3 of Protocol No. 1 does not (as do other provisions of the Convention) specify or limit the aims that a restriction must pursue; a wide range of purposes may therefore be compatible with Article 3. The Government submitted that the measure complained of had pursued the legitimate aim of ensuring that voters in general elections had the required level of mental skills. The applicants accepted that view, and the Court sees no reason to hold otherwise (see also *Alajos Kiss*, cited above, § 38, in which the Court accepted "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").

(iii) Proportionality

98. From the outset, it should be noted that at time of the parliamentary elections that took place on 18 June 2015 (in which the applicants could not vote), persons who were subject to guardianship under section 5 the Guardianship Act were deemed to be legally competent. Accordingly, they could vote in general elections.

99. Only persons covered by section 5 and who had also been declared legally incompetent under section 6 of the Guardianship Act were excluded from voting in general elections.

100. In order for a person to be declared legally incompetent under section 6, two conditions had to be fulfilled. The first condition was that the person in question had to be unable to manage his or her own affairs owing to reasons, such as mental unsoundness or mental disability, set out under section 5, and the second condition was that a legal incapacitation order was necessary to prevent the relevant person from exposing his or her assets, income or other financial interests to the risk of a major loss, or to prevent financial exploitation. It followed from section 8(1) of the Act that a person could not be deprived of his or her legal capacity if his or her interests could be sufficiently safeguarded through guardianship under section 5. Under section 10, a legal incapacitation order had to be quashed if the prescribed conditions were no longer met. Domestic law thus required an assessment of proportionality and proscribed an obligation to implement the least intrusive measure, in other words, the principle of proportionality applied to the imposition, content and lifting of the measures.

101. As regards the quality of the parliamentary review, having regard, *inter alia*, to the historical and political context, the Guardianship Act and its preparatory notes (see paragraphs 50-54 and 61-63 above), and the reply of 17 March 2014 from the Minister for Justice to question no. 644 from the Legal Affairs Committee of the Danish Parliament (see paragraph 60 above), the Court finds it established that the review of the necessity of the general measure at issue, namely the disenfranchisement imposed as a consequence of declaring a person legally incompetent, and its compliance with section 29 of the Constitution, was indeed thorough.

102. It also notes that the number of persons who had been declared legally incompetent was rather low, and the disenfranchisement in question therefore affected a small group of persons, amounting to 0.046% of the Danish population of voting age.

103. The Court will proceed to examine the quality of the judicial review, and will have particular regard to the Supreme Court's reasoning.

104. In its judgment of 18 January 2018, the Supreme Court (see paragraph 17 above) explicitly took into account the applicable principles under Article 3 of Protocol No. 1 and the relevant Convention case-law.

105. The Supreme Court observed that "strict requirements must be met in order to deprive a person of his or her legal capacity and to maintain in effect such a legal incapacitation order, and such requirements are closely related to the issue of whether the person in question is able to foresee the consequences of his or her decisions and to make conscious and judicious decisions".

106. The Supreme Court found that the purpose of disenfranchising legally incompetent persons under section 29 of the Constitution pursued a legitimate aim, as set out by the Court in *Alajos Kiss* (cited above).

107. The Supreme Court also found that such disenfranchisement had been proportionate. In that respect it gave weight to the fact, as stated above, that the requirements for declaring a person legally incompetent were strict, that the restriction on the right to vote set out in section 29 of the Constitution therefore affected a low number of persons, and that the legislature had intended to afford the right to vote to the extent possible under the Constitution, notably when passing the Guardianship Act in 1996, and when passing Act no. 391 of 27 April 2016, which had given persons deprived of their legal capacity the right to vote in elections for the European Parliament and in local and regional elections. The case thus differed significantly from the situation in *Alajos Kiss* (cited above). Moreover, the Supreme Court considered that it could not be inferred from the Court's case-law that in order for a restriction on the right to vote in respect of persons deprived of their legal capacity to be considered compatible with Article 3 of Protocol No. 1, a specific and individual assessment always had to be made of the relevant person's mental capacity to exercise the right to vote. It observed in that respect, as did the High Court, that a specific and individual assessment of whether a person's mental capacity was sufficient to exercise the right to vote might give rise to concern.

108. Lastly, the Supreme Court observed that other European countries also had legislation restricting the right to vote in respect of persons who had been deprived of their legal capacity.

109. Against this background, the Supreme Court found no violation of Article 3 of Protocol No. 1 (or of Article 14 of the Convention).

110. The Court notes from the above that the Supreme Court thoroughly examined the proportionality and justification of the limitation of the applicants' voting rights, and performed a balancing of interests, in the light of the Court's case-law, including *Alajos Kiss* (cited above). The quality of the judicial review of the disputed general measure and its application in the present case therefore militate in favour of a wide margin of appreciation.

111. A further factor of relevance to the scope of the margin of appreciation is the existence or not of common ground between the national laws of the Contracting States. Relying on the report by the European Union Agency for Fundamental Rights of 21 May 2014 on "The right to political participation for persons with disabilities: human rights indicators", the Supreme Court noted that other European countries also had legislation restricting the right to vote in respect of persons who had been deprived of their legal capacity. At the time, besides Denmark, it concerned Belgium, Bulgaria, Cyprus, Estonia, Germany, Greece, Ireland, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania and Slovakia (see

paragraph 71 above). The Court observes that it also seems to be the case in other European States, including Albania, Moldova, Serbia and Turkey. Accordingly, it cannot be concluded that there was common ground between the national laws of the Contracting States to uncouple disenfranchisement from deprivation of legal capacity.

112. Nor does the Court discern any common ground at the international and European level in this respect.

It recalls, on the one hand, that Article 29 of the United Nations Convention on the Rights of Persons with Disabilities sets out that States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others. Moreover, in its report of 30 October 2014 on Denmark, the United Nation Committee on the Rights of Persons with Disabilities expressed concern that persons who were deprived of their legal capacity under section 6 of the Guardianship Act were not allowed, at the time, to vote or to stand for election in parliamentary, municipal, regional or European Parliament elections, or referendums (see paragraphs 66 and 70 above).

On the other hand, the Court observes that the Venice Commission in its Opinion no. 190/2002 had a more cautious approach, accepting that under certain cumulative conditions, provision may be made for depriving individuals of their right to vote (see paragraph 68 above).

113. The Court notes the applicants' submission that the margin of appreciation should have been narrow, presumably narrower than that applied by the Supreme Court. The Court agrees that although the margin of appreciation is generally wide under Article 3 of Protocol No. 1 (see, for example, *Ždanoka v. Latvia* [GC], no. 58278/00, §§ 105-106, ECHR 2006-IV), it is substantially narrower when a restriction on fundamental rights applies to a particularly vulnerable group in society, such as the mentally disabled (see *Alajos Kiss*, cited above, §§ 41 and 42). In the present case, however, the Court reiterates that the mentally disabled were not in general subject to disenfranchisement; nor were persons under guardianship by virtue of section 5 of the Guardianship Act – as stated above, only those persons covered by section 5, who, after an individualised judicial evaluation, had also been found legally incompetent by a court under section 6 of the Guardianship Act, were subject to disenfranchisement. The Court therefore agrees with the Government and the Supreme Court, that the legislation at issue significantly differed from the legislation examined in *Alajos Kiss* (cited above), where all persons, whether under full or partial guardianship, were subject to an automatic, blanket restriction in respect of suffrage. In the Court's view, there is therefore no basis for finding that the Supreme Court in its judgment of 18 January 2018 overstepped the margin of appreciation afforded to it.

114. It is correct, though, as pointed out by the applicants, that apart from the individualised judicial evaluation of their legal capacity under

section 6 of the Guardianship Act, domestic law did not require a separate individualised assessment of their voting capacity. The Court reiterates in this respect that under Article 3 of Protocol No. 1 to the Convention, it is not a requirement for depriving a person of his or her right to vote that a specific and individual assessment of their voting capacity has been carried out (see, for example, in the context of prisoners' voting rights, *Hirst v. the United Kingdom (no. 2)* [GC], cited above, § 62). Moreover, as pointed out above, there is a lack of European consensus, including as to whether to detach disenfranchisement from deprivation of legal capacity (see paragraphs 71 and 111 above). In this context, the Court also notes that a general measure may, in some situations, be found to be a more feasible means of achieving a legitimate aim than a provision requiring a case-by-case examination, a choice that, in principle, is left to the legislature in the Member State, subject to European supervision (see, *inter alia*, *Correia de Matos v. Portugal*, cited above, § 129, *Animal Defenders International v. the United Kingdom* [GC], cited above, § 108).

115. Lastly, the applicants alleged that there had never been a true legal debate at the domestic level about the appropriateness of the disenfranchisement of persons who had been deprived of their legal capacity. It also appears that they alleged that the only reason why the legislation, under which they were disenfranchised, had not been amended was that the Ministry of Justice had found that an amendment to the Constitution would be impractical. The Court reiterates from the outset that in cases arising from individual petitions its task is not to review the relevant legislation or an impugned practice in the abstract. Instead, it must confine itself, as far as possible, without losing sight of the general context, to examining the issues raised by the case before it (see, for example, *Donohoe v. Ireland*, no. 19165/08, § 73, 12 December 2013; *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, §§ 69-70, 20 October 2011; *Taxquet v. Belgium* [GC], no. 926/05, § 83 *in fine*, ECHR 2010; and *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, no. 40825/98, § 90, 31 July 2008).

116. Nevertheless, having regard anew to the historical and political context, the Court does consider it a fact that the legislator constantly sought to allow as many persons as possible to be able to vote while at the same time aiming to protect the small group of persons who were in need of guardianship combined with a deprivation of their legal capacity. The restrictions on the right to vote of persons deprived of their legal capacity were thus gradually reduced in 1996 when the Guardianship Act entered into force, and in 2016, when persons deprived of their legal capacity were given the right to vote in elections for the European Parliament and in local and regional elections.

117. Moreover, after the parliamentary elections that took place on 18 June 2015 (in which the applicants could not vote), an Act that entered

into force on 1 January 2019 provided for the possibility of depriving a person "only" partially of his or her legal capacity, with the intended consequence that such a person would retain the right to vote in general elections. Consequently, the applicants are now eligible to vote in general elections.

118. It is correct, as pointed out by the applicants, that until the amendment of the legislation on 1 January 2019, the legislators considered that one of the main obstacles for providing persons deprived of their legal capacity with the right to vote in general elections was Article 29 of the Constitution. The Court can also endorse the applicants' view that objectively seen it is difficult to justify that although in 2016 they were granted the right to vote in European Parliament elections, they were nevertheless still considered ineligible to vote in general elections, and in local and regional elections.

119. The Court recalls, however, that with each legal amendment, including the one leading to the right to vote in European Parliament elections in 2016, the issue of disenfranchisement was carefully assessed by the legislature in its laudable effort throughout many years to limit the restrictions on the right to vote. The fact that the development obtained required thorough legal reflection and time, cannot, in the Court's view, be held against the Government to negate the justification and proportionality of the restriction at issue. The Court also takes account of the changing perspective in society, which makes it difficult to criticise that the legislation only changed gradually (see, *mutatis mutandis*, *Petrovic v. Austria*, 27 March 1998, § 4, *Reports of Judgments and Decisions* 1998-II).

120. The Court is therefore satisfied that the above elements significantly differed from the situation in *Alajos Kiss* (cited above, § 41), where the Court observed that there was no evidence that the legislature had ever sought to weigh the competing interests or to assess the proportionality of the restriction in question.

121. Having regard to the above, the Court concludes that there has been no violation of Article 3 of Protocol No. 1 to the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14 READ IN CONJUNCTION WITH ARTICLE 3 OF PROTOCOL No. 1 TO THE CONVENTION

122. The applicants also complained that the Supreme Court judgment of 18 January 2018 had breached their right under Article 14, read in conjunction with Article 3 of Protocol No. 1 to the Convention. Article 14 of the Convention reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language,

religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. Admissibility

1. Submissions by the parties

123. The Government submitted that the application should be declared inadmissible as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

124. The applicants disagreed.

2. The Court's assessment

125. The Court notes that this complaint 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. Submissions by the parties

126. The parties referred notably to their submissions under Article 3 of Protocol No. 1 to the Convention.

2. The Court's assessment

(a) General principles

127. The Court reiterates that Article 14 complements the other substantive provisions of the Convention and the Protocols thereto. It has no independent existence, since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. The application of Article 14 does not necessarily presuppose the violation of one of the substantive rights guaranteed by the Convention. The prohibition on discrimination in Article 14 thus extends beyond the enjoyment of the rights and freedoms that the Convention and Protocols require each State to guarantee (see, *inter alia*, *Biao v. Denmark* [GC], no. 38590/10, § 88, 24 May 2016).

128. According to established case-law, a difference in the treatment of persons in relevantly similar situations is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see, *inter alia*, *Molla Sali v. Greece* [GC], no. 20452/14, § 135, 19 December 2018; *Fábián v. Hungary* [GC], no. 78117/13, § 113, 5 September 2017; and *Fabris v. France* [GC], no. 16574/08, § 56, ECHR 2013 (extracts)).

129. The Contracting States enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a difference in treatment (see, for example, *Molla Sali* (cited above) § 136; *Fábián,* cited above*,* § 114; and *Hämäläinen v. Finland* [GC], no. 37359/09, § 108, ECHR 2014). The scope of this margin will vary according to the circumstances, the subject-matter and the background (see, *inter alia*, *Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 61, ECHR 2010).

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

130. Referring to the reasoning set out under its examination of Article 3 of Protocol No. 1 to the Convention, the Court is satisfied that the difference in the treatment of the applicants, who had been deprived of their legal capacity at the relevant time, pursued a legitimate aim, and that there was a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

131. Accordingly, there has been no violation of Article 14 read in conjunction with Article 3 of Protocol No. 1 to the Convention of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been no violation of Article 3 of Protocol No. 1 to the Convention;

4. *Holds* that there is no violation of Article 14 read in conjunction with Article 3 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 2 February 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Marko Bošnjak
Registrar	President