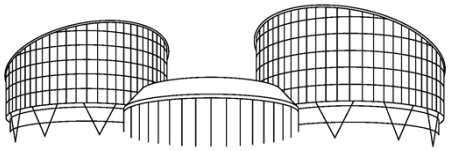

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF MYSLIHAKA AND OTHERS v. ALBANIA

(Applications nos. 68958/17 and 5 others – see appended list)

JUDGMENT

Art 3 P1 • Vote • Statutory voting ban preventing serving prisoners convicted of serious criminal offences from voting in parliamentary elections • Restriction not general or universal • Application of restriction limited to a specific list of offences affecting thus a restricted number of individuals • Application conditional on the nature and gravity of the offence committed and ending when prison sentence served • Given seriousness of offences committed by applicants disenfranchisement justified and proportionate • Discernible and sufficient link between offences committed by applicants and withdrawal of voting rights • Competing interests balanced • Margin of appreciation not overstepped

STRASBOURG

24 October 2023

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

In the case of Myslihaka and Others v. Albania,

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

Pere Pastor Vilanova*, President*,
Jolien Schukking,
Georgios A. Serghides,
Darian Pavli,
Peeter Roosma,
Andreas Zünd,
Oddný Mjöll Arnardóttir*, judges*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the applications (nos. 68958/17, 68965/17, 68970/17, 68976/17, 68985/17 and 68993/17) against the Republic of Albania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by six Albanian nationals, Mr Hyqmet Myslihaka, Mr Imer Ruko, Mr Mehmet Rrapaj, Mr Fatmir Bakalli, Mr Rigels Kushe and Mr Blendi Spaho ("the applicants"), on 14 September 2017;

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

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

Having deliberated in private on 3 October 2023,

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

INTRODUCTION

1. The case concerns the statutory ban on voting in parliamentary elections by persons who have been convicted of a serious criminal offence and who are serving a prison sentence at the time of those elections. The applicants were all serving prison sentences at the time of the 2017 parliamentary elections.

THE FACTS

2. The applicants, whose particulars are set out in the Appendix, were all serving a prison term when the applications were lodged. The applicants were all represented by Ms E. Skëndaj, a lawyer practising in Tirana.

3. The Government were initially represented by their former Agent, Ms B. Lilo, and subsequently by Mr O. Moçka, General State Advocate.

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

5. The first applicant, Mr Myslihaka, was convicted of murder on 14 November 2002 and sentenced to sixteen years' imprisonment by a final decision of the Elbasan District Court. He was arrested on 3 August 2007 and has since served his prison sentence.

6. The second applicant, Mr Ruko, was convicted on 14 April 2014 of the manufacture and sale of narcotic drugs and was sentenced to seven years and six months' imprisonment by a final decision of the Gjirokastra District Court. He was arrested on 15 February 2014 and has served his prison sentence.

7. The third applicant, Mr Rrapaj, was convicted on 12 March 2014 of attempted drug trafficking and sentenced to five years and four months' imprisonment by a final decision of the Tirana Serious Crimes Court. He was arrested on 11 October 2013 and has served his prison sentence.

8. The fourth applicant, Mr Bakalli, was convicted on 3 December 2015 of participation in an organised criminal group and facilitation of illegal border crossing and sentenced to seven years and eight months' imprisonment by a final decision of the Tirana Serious Crimes Court. He was arrested on 17 May 2014 and has served his prison sentence.

9. The fifth applicant, Mr Kushe, was convicted on 27 July 2016 of attempted drug trafficking and sentenced to five years' imprisonment by a final decision of the Tirana Serious Crimes Court. He was arrested on 16 May 2015 and has served his prison sentence.

10. The sixth applicant, Mr Spaho, was convicted on 27 June 2016 of the manufacture and sale of narcotic drugs and sentenced to four years and eight months' imprisonment by a final decision of the Tirana Serious Crimes Court. He was arrested on 3 April 2015 and has served his prison sentence.

11. On 17 December 2015, after a consensus reached by the major political parties, the Albanian Parliament, by a three-fifths majority, passed the Decriminalisation Act (Law no. 138/2015), which was aimed at the exclusion of criminal offenders from public office. The Act also barred convicted individuals from voting if, on the date of the election, they were serving a prison sentence imposed by a final court decision for one of the criminal offences set out in that Act (see paragraphs 17-20 below). The restrictions did not apply to remand prisoners. The law provided that the convicted individuals should be informed about the restriction in the same judgment which found them guilty of one of the offences concerned and by which a prison term was imposed on them. Nevertheless, the restriction was valid even if it was not mentioned in the judgment by which they were convicted. The law also applied to prisoners who had already been convicted of one of the criminal offences listed in the law.

12. Before passing the law, the Albanian Parliament asked for the opinion of the Venice Commission. That opinion was given in October 2015 and mainly addressed the right of persons with criminal records to be elected or appointed to public office. It also reiterated that the restriction on the right to

vote of convicted prisoners was in conformity with the Convention as long as it was compatible with the Constitution and clearly provided for by law, followed a legitimate aim and was proportionate (see paragraph 23 below).

13. When the parliamentary elections of 25 June 2017 took place in Albania, all the applicants were serving their prison sentences. The first four applicants had been sentenced before the law entered into force. The fifth and sixth applicants had been convicted after the law came into force but it is unclear whether the suspension of their voting rights was included in the judgments on their convictions. On 3 June 2017 the Peqin Prison confirmed that the first four applicants had not been included on the electoral roll for those elections and on 13 June 2017 the Vaqarr Prison confirmed the same for the last two applicants. According to information provided by the General Directorate of Prisons, the application of Law no. 138/2015 affected 923 prisoners during the 2017 parliamentary elections. According to official statistics the overall number of prisoners with the right to vote that year was 5,379.

14. The applicants did not attempt to bring any action in the domestic courts, arguing that none of the available remedies could be effective in their cases.

LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. Constitution

15. Article 45 § 1 of the Constitution of the Republic of Albania provides that Albanian citizens who have reached the age of eighteen have the right to vote.

16. Article 45 § 3 provides that voting rights may be restricted for Albanian citizens who have been convicted by a court of a criminal offence and are serving a sentence in a penal institution. It provides:

> "3. Citizens sentenced to imprisonment by a final decision for committing a crime are excluded from the right to stand for election, under the rules set out in a law to be approved by three-fifths of all the members of Parliament. In exceptional and justified cases, the law may provide for restrictions on the voting rights of citizens who are serving a prison sentence, or on the rights of citizens to stand for election before a final verdict has been given or when they have been deported for a crime or for a very serious and grave breach of public order."

B. Law no. 138/2015 on ensuring the integrity of persons who are elected, appointed to or exercising public functions

17. The general purpose of the law is set out in section 1(1), which reads as follows:

> "1. The aim of this Law is to ensure public confidence in the proper functioning of elected representatives, independent institutions and institutions of public administration established by law, by impeding the election or nomination or by removing from public office persons who have been convicted [with final effect], are subject to a security measure or have been convicted in a non-final decision for committing any of the crimes provided for by this Law."

18. The law imposes restrictions on the voting rights of persons who have been sentenced to a term of imprisonment, irrespective of its duration, for the commission of specified criminal offences. Section 2(1)(a) and (b) and (4) sets out the list of criminal offences of which conviction entails disenfranchisement, including some of the most severe offences such as: murder, the manufacture and sale of narcotic drugs, drug trafficking, participation in an organised criminal group, and, in general, offences which fall within the categories of: crimes against humanity; crimes against life or health; sexual crimes; crimes against a person's freedom and property; crimes against national sovereignty and constitutional order; terrorist acts; crimes against State authority and public order; crimes against justice; and electoral offences.

19. Under section 4(8), the legal restriction on the right to vote ends when the prison sentence has been served, including where the sentence has been reduced.

20. Section 12 regulates the procedure to be followed when a person is excluded from the electoral roll. Even though the exclusion should be mentioned in the judgment convicting the person concerned of one of the criminal offences listed in section 2 and sentencing him or her to a prison term, it is applicable even if it is not explicitly mentioned in such a judgment. Section 12(2) reads as follows:

> "2. With the aim of notifying convicted individuals of the restriction on their voting rights, the decision on conviction should include the suspension [of voting rights] as part of its findings, as outlined in this section. The omission of this restriction from the judgment shall not render the suspension invalid. In any case, the civil registration service shall ensure that everyone is notified of the implementation and conclusion of the restriction."

C. Decision of the Constitutional Court

21. On 31 January 2017 the Albanian Helsinki Committee lodged a complaint against Law no. 138/2015 with the Constitutional Court, contending that it was in violation of the Constitution and Article 3 of Protocol No. 1 to the Convention. It argued that the list of offences for which the restriction on the right to vote was imposed was arbitrary and that it violated the right to be treated equally with other convicted prisoners whose voting rights were not restricted. Furthermore, it argued that there was no clear definition of the public interest purportedly protected by the law.

22. On 5 June 2017 the Constitutional Court dismissed that complaint, finding that Law no. 138/2015 did not violate the Constitution or the Convention. The Constitutional Court held that the restrictions on the right to vote pursued a legitimate aim and were not disproportionate. The legitimate aim of the law was to ensure public confidence in the functioning of public institutions. In addition, the restriction aimed to protect the system of democratic values, reinforce crime prevention, increase civic responsibility and respect for the law, and protect public institutions from illegal influence.

II. RELEVANT INTERNATIONAL DOCUMENTS

23. The relevant parts of the Venice Commission's opinion no. 807/2015 (Report on exclusion of offenders from Parliament, adopted at its 104th Plenary Session on 23-24 October 2015) read as follows:

> "16. At least the principles and values discussed in ECtHR case-law on the right to vote have to be observed. ...
>
> 23. The Code of Good Practice in Electoral Matters drafted by the Venice Commission provides for somewhat more detailed standards [CDL-AD (2002) 23, § I.1.1.d.v]:
>
> '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.'
>
> ...
>
> 139. Legality is the first principle of the *Rule of Law* and implies that the law must be followed, by individuals and by the authorities. The exercise of political power by people who seriously infringed the law puts at risk the implementation of this principle, which is on its turn a prerequisite for democracy, and may therefore endanger the democratic nature of the state: a person who is not eager to recognise the standards of conduct in democratic society, may be unwilling to obey the constitutional or international standards on democracy and the Rule of Law."

THE LAW

I. JOINDER OF THE APPLICATIONS

24. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment pursuant to Rule 42 § 1 of the Rules of Court.

II. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL No. 1 TO THE CONVENTION

25. All the applicants complained that their disenfranchisement on the grounds that they were convicted prisoners violated their right to vote and, in particular, that they had been unable to vote in the Albanian parliamentary elections held on 25 June 2017. They relied on Article 3 of Protocol No. 1, which provides:

> "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. Victim status

26. The Government invited the Court to reject the applications on the grounds that the applicants could no longer claim to be victims of the alleged violation for the purposes of Article 34 of the Convention in relation to the facts of which they complained, since all of them had served their prison sentences and there was no longer any restriction on their right to vote.

27. The applicants contested the Government's argument, asserting that they had been excluded from voting in the 2017 parliamentary elections and that they continued to be victims since no remedies were available and no redress had been afforded to them.

28. In response to the Government's objections, the Court reiterates that in order to lodge an application under Article 34 of the Convention, an individual must be able to show that he or she was "directly affected" by the measure complained of (see *İlhan v. Turkey* [GC], no. 22277/93 § 52, ECHR 2000-VII; *Burden v. the United Kingdom* [GC], no. 13378/05, § 33, ECHR 2008; and *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 96, ECHR 2014).

29. An applicant may lose his or her victim status if two conditions are met: first, the authorities should acknowledge the alleged violations either expressly or in substance and, second, they should afford redress (see *Guisset v. France*, no. 33933/96, § 66, ECHR 2000-IX).

30. Turning to the present case, the Court notes that there has been no "acknowledgment" of a violation of the applicants' rights by the Albanian courts or institutions with regard to their inability to vote in the 2017 parliamentary elections. The restoration of their voting rights applies to other elections that have taken place or might take place in the future.

31. The applicants therefore cannot be said to have lost their victim status within the meaning of Article 34 of the Convention. The Government's objection should accordingly be dismissed.

2. Exhaustion of domestic remedies

32. In addition, the Government invited the Court to reject the applications on the grounds that the applicants had not exhausted domestic remedies. In the Government's submission, the applicants had had several remedies at their disposal in respect of their complaints. Firstly, they could have lodged a claim with a civil court under the Electoral Code requesting their inclusion on the electoral roll. Secondly, they could have instituted proceedings in the administrative courts. Thirdly, they could have brought an action in the Administrative Court of Appeal against the regulations passed for the implementation of Law no. 138/2015. The Government added lastly that if none of these remedies had proved satisfactory to the applicants, they could have lodged a complaint with the Constitutional Court.

33. In the Government's view, the legal mechanisms listed above constituted effective remedies which allowed the revision of the electoral roll and could have ensured the inclusion of the applicants on that roll.

34. The applicants submitted that the remedies mentioned by the Government were not effective within the meaning of the Convention. More specifically, the right to lodge a constitutional appeal had been rendered ineffective by the reasoning followed by the Constitutional Court in the case brought by the Albanian Helsinki Committee. As to lodging a civil or administrative appeal, the applicants argued that the cases would not have had any prospect of success since the violation of their rights derived from the law and the courts could not give a decision in contradiction with the law.

35. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention is based on the assumption that the domestic system provides an effective remedy in respect of the alleged breach. It is for the Government claiming non-exhaustion to satisfy the Court that an effective remedy was available in theory and in practice at the relevant time; that is to say, that the remedy was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 71-77, 25 March 2014).

36. The Court has accordingly recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion is neither absolute nor

capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. This means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned but also of the general context in which they operate, as well as the personal circumstances of the applicant. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (see *İlhan*, cited above, § 59).

37. In response to the Government's argument that the applicants could have instituted judicial proceedings in the domestic courts, the Court reiterates that domestic remedies must be "effective" in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred (see *A.H. and Others v. Russia*, nos. 6033/13 and 15 others, § 347, 17 January 2017). In the present case the crux of the applicants' complaints concerned their disfranchisement, namely their inability to vote in the 2017 parliamentary elections.

38. The Court notes that none of the applicants had attempted a domestic remedy before complaining to it. Nevertheless, the Government were not able to argue that the ordinary judicial proceedings suggested by them could have been effective. Given that the ban on voting rights for convicted serving prisoners stemmed directly from legislation, including the Constitution, and that the Constitutional Court had already expressed its opinion as to the compliance of that legislation with the Constitution and the Convention, it would be illusory to expect that the applicants would have been able to succeed in pursuing any other remedies. The arguments that the Helsinki Committee presented to the Constitutional Court are the same as those presented by the applicants in their applications to the Court. The Court is therefore not satisfied that, in the specific circumstances of the present case, any of the remedies suggested by the Government was apt to afford the applicants redress for their complaints or offered reasonable prospects of success.

39. The Government's objection as regards the requirement to exhaust domestic remedies should therefore be dismissed.

3. Compliance with the six-month time-limit

40. Furthermore, the Government submitted that the applicants had not observed the six-month time-limit laid down in Article 35 § 1 of the Convention. The applications should have been lodged with the Court within six months from the entry into force on 7 January 2016 of the legal provisions that restricted the applicants' voting rights.

41. The applicants contended that the starting-point of the six-month period for applying to the Court had been 5 June 2017, when the

Constitutional Court had taken its decision, and that their applications had therefore been submitted within the six-month time-limit.

42. In other similar applications the Court has concluded that applicants must lodge complaints with it about their inability to vote in specific elections within six months from the dates of the elections (see *McLean and Cole v. the United Kingdom* (dec.), no. 12626/13, §§ 25 and 37, 11 June 2013, and *Dunn v. the United Kingdom* (dec.), nos. 566/10 and 130 others, § 19, 13 May 2014). In the light of the parties' submissions, the Court considers that all the applicants lodged their applications with it on 19 September 2017, within six months from the parliamentary elections which took place on 25 June 2017. The Government's objection about the non-observation of the six-month time-limit should therefore be dismissed.

4. Conclusion

43. The Court concludes that the applications are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

44. The applicants submitted that their disenfranchisement amounted to a violation of their right to free elections. They argued that the legitimate aim of restrictions on the right to stand for election should be different from the aim pursued by restrictions on the right to vote. They argued that the law lacked any legitimate aim when it came to the restrictions on the right to vote. The report accompanying the draft law subsequently passed as Law no. 138/2015 referred only to restrictions on the right to stand in elections. It did not mention what the purpose of the restrictions on the right to vote was, why they were necessary in the Albanian context, how those restrictions would protect the public interest, and whether any other measures had been considered. The applicants argued that the national authorities had also not properly evaluated the restrictions according to the criteria for proportionality.

45. The applicants contended that the restriction on voting rights was similar to an ancillary penalty, since it was applied automatically after the decision on conviction became final.

46. The applicants invited the Court to draw a distinction between the present cases and *Scoppola v. Italy (no. 3)* ([GC], no. 126/05, 22 May 2012). They submitted that in that case the voting ban had only applied to those sentenced to more than three years' imprisonment and to those convicted of certain crimes against the State. By contrast, Law no. 138/2015 provided for

disenfranchisement for a large number of crimes, including minor offences, irrespective of the prison term.

47. The Government pointed out that the Contracting States enjoyed a wide margin of appreciation where the right to vote was concerned (referring to *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, § 61, ECHR 2005-IX) and that the suspension of the applicants' right to vote had pursued the legitimate aims of preventing crime and upholding the rule of law. In the Government's opinion, the right to vote was a public duty that formed part of a person's civic responsibility, and the restrictions therefore pursued a legitimate aim. Influence on decision-making by individuals convicted of one or more of the crimes provided for by law would undermine the formation of a reliable political body which should serve the country's citizens. The Government noted that Law no. 138/2015 had been passed with a three-fifths majority in Parliament, as had the Criminal Code, thus showing a broad consensus in Parliament regarding those provisions.

48. The Government also submitted that the restrictions on the right to vote were not applied in a general, automatic and immediate manner. Furthermore, the conditions for depriving individuals of the right to stand for election were less strict than for disenfranchising them, which was in accordance with the Venice Commission's Code of Good Practice in Electoral Matters and also with its Opinion no. 807/2015 (see paragraph 23 above).

49. The Government invited the Court to draw a distinction between the case of *Hirst* (cited above) and the present case because in the United Kingdom, at the time of the judgment in *Hirst*, the loss of the right to vote had not been based on a policy condition such as serving a prison sentence following conviction for a specified serious criminal offence in a judgment that had become final, but had applied automatically to any individual who was serving a prison sentence or who was in detention on remand and had not been given a final court decision.

50. The Government argued that contrary to what the applicants had maintained, the suspension of their voting rights was not an ancillary penalty since it was not imposed by the courts, but was a legal restriction applied in specific situations. That measure was proportionate because it applied only to a list of specified serious crimes and crimes relating to the abuse of public office or electoral misconduct. As in the Italian legal system, in Albanian law the loss of the right to vote depended on judgments in criminal cases becoming final (compare *Scoppola*, cited above, § 35). The restrictions did not apply to remand prisoners. This showed that the Government had sought to balance the competing interests and had assessed the proportionality of the suspension of convicted prisoners' voting rights and applied the suspension to a list of specified offences.

51. The legal provisions in question did not remove the applicants' voting rights definitively but suspended them during their time in prison. After

serving their prison sentences the applicants would be able to cast their vote in other elections in the country.

52. The Government also placed emphasis on the fact that Law no. 138/2015 had gone through a careful and comprehensive approval process. The Venice Commission's opinion on the Law was an important part of the process. A special parliamentary committee had been established in order to draft the Law.

53. Noting that the Court should analyse the specifics of each case and its individual circumstances, the Government's view was that the restriction of the applicants' voting rights had been proportionate and based on a legitimate aim, because they had all been convicted of serious crimes.

2. The Court's assessment

(a) General principles

54. The Court has set out the relevant general principles in *Hirst* (cited above, §§ 56-62 and 69-71) and *Scoppola* (cited above, §§ 81-87). It reiterates, in particular, that Article 3 of Protocol No. 1 to the Convention guarantees subjective rights, including the right to vote and to stand for election (see *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, §§ 46-51, Series A no. 113). Nevertheless, the rights enshrined in Article 3 of Protocol No. 1 are not absolute. There is room for implied limitations and the Contracting States must be afforded a margin of appreciation in this sphere. The Court has repeatedly affirmed that the margin in this area is wide (see *Mathieu-Mohin and Clerfayt*, cited above, § 52; *Matthews v. the United Kingdom* [GC], no. 24833/94, § 63, ECHR 1999-I; and *Labita v. Italy* [GC], no. 26772/95, § 201, ECHR 2000-IV).

55. The severe measure of disenfranchisement must not, however, be resorted to lightly and the principle of proportionality requires a discernible and sufficient link between the sanction and the conduct and circumstances of the individual concerned (see *Hirst*, cited above, § 71). 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 *Hirst*, § 62, and *Scoppola*, § 84, both cited above).

56. With a view to securing the rights guaranteed by Article 3 of Protocol No. 1, the Contracting States may decide either to leave it to the courts to determine the proportionality of a measure restricting convicted prisoners' voting rights, or to incorporate provisions into their laws defining the circumstances in which such a measure should be applied. In the latter case, it will be for the legislature itself to balance the competing interests in order to avoid any general, automatic and indiscriminate restriction (see *Anchugov and Gladkov v. Russia*, nos. 11157/04 and 15162/05, § 107, 4 July 2013, and *Kulinski and Sabev v. Bulgaria*, no. 63849/09, § 37, 21 July 2016).

57. However, it is 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*, cited above, § 52).

(b) Application of these principles to the present case

58. The Court notes that the present applications concern the inability of six Albanian citizens to vote in the parliamentary elections of 2017 while serving prison sentences. The Court must therefore ascertain whether, in the present case, depriving the applicants of the right to vote was compatible with Article 3 of Protocol No. 1. To do this, it must first determine whether there was an interference with the applicants' rights under that provision. If so, it will then have to consider whether that interference pursued one or more legitimate aims and whether the means employed to achieve them were proportionate.

(i) Interference

59. The Court observes that the applicants were deprived of the right to vote by virtue of the relevant provisions of the legislation on parliamentary elections (see paragraph 18 above), which was based on Article 45 § 3 of the Albanian Constitution (see paragraph 16 above). The deprivation constituted an interference with their right to vote enshrined in Article 3 of Protocol No. 1.

60. The Court will therefore determine whether the measure in question pursued a legitimate aim in a proportionate manner having regard to the principles identified above.

(ii) Legitimate aim

61. The Court has already held that the disenfranchisement of convicted prisoners serving prison sentences may be considered to pursue the aims of preventing crime and enhancing civic responsibility and respect for the rule of law (see *Hirst*, cited above, §§ 74 and 75, and *Frodl v. Austria*, no. 20201/04, § 30, 8 April 2010).

62. Unlike other provisions of the Convention, Article 3 of Protocol No. 1 does not specify or limit the aims which a restriction may pursue. A wide range of purposes may therefore be compatible with that provision (see, for example, *Podkolzina v. Latvia*, no. 46726/99, § 34, ECHR 2002-II).

63. The Court acknowledges that during the process leading to the approval of Law no. 138/2015 the main focus was on the restriction on the right to stand for election. Despite this, the Albanian Parliament requested the

opinion of the Venice Commission, which also provided some guidelines regarding the restriction on the right to vote (see paragraph 23 above). As to the aims served by the interference, the Government presented the same arguments as those in the Constitutional Court's decision (see paragraph 22 above), namely that the restriction on the voting rights served to guarantee public trust in the functioning of elected State bodies. It is a measure aimed at protecting the system of democratic values, crime prevention, increasing civic responsibility and respect for the rule of law, as well as protecting relevant institutions from illegal influence in the selection of officials and policy-making. Having regard to its findings in *Hirst* (cited above, §§ 74-75), the Court finds no reason to regard those aims as untenable or incompatible *per se* with the rights guaranteed by Article 3 of Protocol No. 1 to the Convention.

(iii) Proportionality

64. The applicants were deprived of the right to vote in parliamentary elections because at the time of those elections they were all serving prison sentences imposed on them by final court decisions for one of the criminal offences set out in Law no. 138/2015. The Court has to establish whether the restrictions in question were proportionate to the aims pursued.

65. The Court notes that the Albanian Parliament followed a careful procedure in the approval of the Law and had sought the opinion of the Venice Commission before commencing the drafting process. The Law enjoyed a high degree of support from Parliament, being approved by an outright majority, thus demonstrating a consensus among all political factions.

66. As to the legal framework, it should be noted that in the Albanian system the measure of suspending the right to vote is applied by operation of law once the decision on a person's conviction for one of the offences specified in Law no. 138/2015 has become final, irrespective of the duration of the sentence imposed. In order to notify the convicted individual of the voting restriction, the Law provides for the inclusion of the restriction in the judgment of the court. Nevertheless, the restriction is valid even if it is not mentioned in the judgment (see paragraphs 11 and 20 above).

67. The Court reiterates that the essential criteria for determining the proportionality of a disenfranchisement measure relate primarily to whether the measure is applicable generally, automatically and indiscriminately within the meaning indicated in the Court's case-law. While the intervention of a judge is in principle likely to guarantee the proportionality of restrictions on prisoners' voting rights, such restrictions will not necessarily be automatic, general and indiscriminate simply because they were not ordered by a judge. The Court has already held that, in the absence of a common approach among the member States of the Council of Europe, the Contracting States may, with a view to securing the rights guaranteed by Article 3 of Protocol No. 1, decide

either to leave it to the courts to determine the proportionality of a measure restricting convicted prisoners' voting rights, or to incorporate provisions into their laws defining the circumstances in which such a measure should be applied (see *Scoppola*, cited above, §§ 101 and 102). In the latter case, it will be for the legislature itself to balance the competing interests in order to avoid any general, automatic and indiscriminate restriction (ibid., § 102). Indeed, the circumstances in which the right to vote is forfeited may be set out in detail in the law, making its application conditional on such factors as the nature or the gravity of the offence committed (ibid., § 99).

68. In considering the respondent State's legal provisions that define the circumstances in which individuals may be temporarily deprived of their right to vote, the Court takes into account the legislature's concern to adjust the application of the measure to the particular circumstances of the case at hand. That adjustment includes considering factors such as the gravity of the offence committed and indirectly assessing the conduct of the offender through the determination of the final sentence. In contrast to the situation in *Hirst* (cited above), the restriction in the present case is not general and universal. It is applied only in connection with certain serious offences for which the law provides for severe sentences, such as offences against State institutions or the judicial system, crimes against the person, or organised crime. The law also applies the restriction to any person who commits an electoral offence. Although the law provides for less severe sentences for such offences, their inclusion can be considered proportionate, since they have a direct connection with the electoral process. It must be noted that the duration of the measure is governed by the sentence imposed and thus, by the same token, is connected to the gravity of the offence. The right to vote is restored when the prisoner is released at the end of the sentence, including where the sentence has been reduced (see paragraph 19 above).

69. As to the applicants in the present case, the Court observes that the matter of their disenfranchisement was not examined by the trial court. There is no mention of the disputed measure in the judgments by which the first four applicants were convicted as they had been convicted before the law at issue entered into force. As for the fifth and sixth applicants in respect of whom judgments on their conviction were given after the law at issue had entered into force, it is not clear whether the restriction on their voting rights was included in those judgments. In any event, in the Albanian system the reference to disfranchisement in a judgment is only for the purpose of informing the convicted person of it. The restriction applies irrespective of whether it was mentioned in a judgment or not, because it stems directly from the legislation.

70. The Court notes that the applicants were all convicted of serious offences: the first applicant was convicted of murder (see paragraph 5 above); the second and sixth applicants were convicted of manufacturing and trading in narcotic drugs (see paragraphs 6 and 10 above); the third and fifth

applicants were convicted of attempted drug trafficking (see paragraphs 7 and 9 above); and the fourth applicant was convicted of participation in an organised criminal group and facilitation of illegal border crossing (see paragraph 8 above). The gravity of these offences is also reflected in the prison terms given to the applicants, ranging from four years and eight months to sixteen years, none of which may be seen as light. There is no doubt that each of these offences constitutes a serious attack on the values of society and on social order and, in the Court's view, the nature and the gravity of these offences justify the restriction on the applicants' voting rights, given its legitimate aim. In the meantime, the applicants have served their respective sentences and their voting rights were restored on their release from prison.

71. The requirement for the application of a restriction on prisoners' right to vote to be conditional on the nature and the gravity of the offence committed is therefore satisfied in the present case.

72. The Court considers that, given the seriousness of the offences committed by them, the restriction of the applicants' right to vote in the 2017 parliamentary elections cannot be seen as disproportionate. It is therefore possible to find a discernible and sufficient link between the offences committed by each of the applicants and the withdrawal of his voting rights.

73. Lastly, the fact that the legal restriction on voting in the 2017 parliamentary elections affected only 923 prisoners, compared to more than 5,300 prisoners enjoying the right to vote, shows that its application is limited. The Court agrees with the Government that the law has managed to balance the competing interests and that the proportionality of the suspension of the right to vote of convicted prisoners has been assured by limiting it to a specific list of offences that affects a restricted number of individuals.

74. Taking the above considerations into account, the Court finds that, in the circumstances of the present case, the restrictions imposed on the applicants' right to vote did not "thwart the free expression of the people in the choice of the legislature" and maintained "the integrity and effectiveness of an electoral procedure aimed at identifying the will of the people through universal suffrage" (see *Hirst*, cited above, § 62). The margin of appreciation afforded to the respondent State in this sphere has therefore not been overstepped.

75. The foregoing considerations are sufficient to enable the Court to conclude that there has been no violation of Article 3 of Protocol No. 1.

FOR THESE REASONS, THE COURT

1. *Decides,* unanimously, to join the applications;

2. *Declares,* unanimously, the applications admissible;

3. *Holds*, by six votes to one, that there has been no violation of Article 3 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 24 October 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Pere Pastor Vilanova President

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of birth	Represented by
1.	68958/17	Myslihaka v. Albania	14/09/2017	Hyqmet MYSLIHAKA 1969	Erida SKËNDAJ
2.	68965/17	Ruko v. Albania	14/09/2017	Imer RUKO 1991	Erida SKËNDAJ
3.	68970/17	Rrapaj v. Albania	14/09/2017	Mehmet RRAPAJ 1994	Erida SKËNDAJ
4.	68976/17	Bakalli v. Albania	14/09/2017	Fatmir BAKALLI 1959	Erida SKËNDAJ
5.	68985/17	Kushe v. Albania	14/09/2017	Rigels KUSHE 1988	Erida SKËNDAJ
6.	68993/17	Spaho v. Albania	14/09/2017	Blendi SPAHO 1976	Erida SKËNDAJ