

Press release issued by the Registrar

Chamber judgment¹

[Frodl v. Austria](#) (application no. 20201/04)

**CONVICTED PRISONER SHOULD NOT HAVE BEEN DISENFRANCHISED WITHOUT
SPECIFIC REASONS**

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

Principal facts

The applicant, Helmut Frodl, is an Austrian national who was born in 1957 and is currently detained in Garsten Prison (Austria). Sentenced to life imprisonment for murder in 1993, he was not included in the local electoral register. In October 2002 he filed an objection with the local electoral authority complaining that this exclusion was unlawful. The authority dismissed the objection, referring to the relevant provisions of the National Assembly Election Act, by which a prisoner who serves a term of imprisonment of more than one year for an offence committed with intent is disenfranchised. The district electoral authority dismissed the applicant's appeal against this decision, finding that it was not the task of the electoral authorities to assess whether the law applied was constitutional.

The applicant subsequently requested the Constitutional Court to grant him legal aid to lodge a complaint against the district electoral authority's decision. The request for legal aid was refused in December 2003. The Constitutional Court found that the applicant's complaint lacked any prospect of success, referring to a previous decision of November 2003 in which it had found that the relevant provisions of the National Assembly Election Act were not unconstitutional.

Complaints, procedure and composition of the Court

The applicant complained that his disenfranchisement violated his rights under Article 3 of Protocol No. 1.

The application was lodged with the European Court of Human Rights on 25 May 2004.

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

Judgment was given by a Chamber of seven judges, composed as follows:

Christos **Rozakis** (Greece), **President**,
Anatoly **Kovler** (Russian Federation),
Elisabeth **Steiner** (Austria),
Dean **Spielmann** (Luxembourg),
Sverre Erik **Jebens** (Norway),
Giorgio **Malinverni** (Switzerland),
George **Nicolaou** (Cyprus), **judges**,

and also Søren Nielsen, **Section Registrar**.

Decision of the Court

The Court observed that the case had similarities with another case² in which it had found a violation of Article 3 of Protocol No. 1 on account of the disenfranchisement of a prisoner. In that case, it had set out several criteria which had to be respected by Contracting States to the Convention when imposing restrictions on prisoners' right to vote, namely that disenfranchisement could only be envisaged for a narrowly defined group of offenders serving lengthy terms of imprisonment, that there should be a direct link between the facts on which a conviction is based and the sanction of disenfranchisement, and that such a measure should preferably be imposed by the decision of a judge following judicial proceedings.

In the present case, it followed from the Austrian Government's submissions that the provisions on disenfranchisement of prisoners pursued the aims of preventing crime by punishing the conduct of convicted prisoners and of enhancing civic responsibility and respect for the rule of law. The Court found no reason to regard these aims in themselves as incompatible with the Convention. It further agreed with the Government that the Austrian provisions on disenfranchisement were more narrowly defined than the rules applicable in the case mentioned above.

Nonetheless, the relevant provisions of that Act did not meet all the criteria the Court had set out for a measure of disenfranchisement to be in conformity with the Convention, namely that the decision on disenfranchisement should be taken by a judge, taking into account the specific circumstances of the case, and that there must be a link between the offence committed and issues relating to elections and democratic institutions. These criteria served the purpose to establish disenfranchisement as an exception, even for convicted prisoners. The Court concluded, by six votes to one, that there had been a violation of Article 3 of Protocol No. 1.

The judgment is available only in English. This press release is a document produced by the Registry. It does not bind the Court. The judgments are available on its website (<http://www.echr.coe.int>).

Press contacts

Nina Salomon (tel: + 33 (0)3 90 21 49 79) or
Stefano Piedimonte (tel: + 33 (0)3 90 21 42 04)

² *Hirst v. the United Kingdom (no. 2) [GC] (No. 74025/01, 6 October 2005)*

Tracey Turner-Tretz (tel: + 33 (0)3 88 41 35 30)
Kristina Pencheva-Malinowski (tel: + 33 (0)3 88 41 35 70)
Céline Menu-Lange (tel: + 33 (0)3 90 21 58 77)
Frédéric Dolt (tel: + 33 (0)3 90 21 53 39)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.