**Alajos Kiss v. Hungary**

**Application No:** 38832/06

**Judgment:** 20.05.2010

**Subject -** Automatic loss of right to vote as a result of partial guardianship order (violation)

**Facts –** The applicant, who had some years earlier been diagnosed with manic depression, was placed under partial guardianship in 2005 after a court found that, while he was able to take care of himself adequately, he was sometimes irresponsible with money and occasionally aggressive. Under section 14 of the Hungarian Civil Code a partial guardianship order enables the court to limit the legal capacity – in particular, as regards financial matters – of persons with “diminished faculties”. However, by virtue of Article 70(5) of the Hungarian Constitution, such an order also entails the automatic loss of the right to vote. The applicant was therefore prevented from voting in legislative elections in April 2006.

**ECtHR's assessment on Article 3 of Protocol No. 1:** The Court accepted that the measure of disenfranchisement pursued a legitimate aim, namely to ensure that only citizens capable of assessing the consequences of their decisions and making conscious and judicious decisions should participate in public affairs. It noted, however, that the restriction did not distinguish between persons under total guardianship and those under partial guardianship and affected a significant number of people. While it accepted that it was for the national legislature to decide on the procedure for assessing the fitness to vote of the mentally disabled, there was no evidence in the applicant’s case that the Hungarian legislature had ever sought to weigh up the competing interests or to assess the proportionality of the restriction. The Court could not accept that an absolute bar on voting by any person under partial guardianship, irrespective of his or her actual faculties, fell within an acceptable margin of appreciation. The State had to have very weighty reasons when applying restrictions on fundamental rights to particularly vulnerable groups in society, such as the mentally disabled, who were at risk of legislative stereotyping, without an individualised evaluation of their capacities and needs. The applicant had lost his right to vote as a result of the imposition of an automatic, blanket restriction. It was questionable to treat people with intellectual or mental disabilities as a single class and the curtailment of their rights had to be subject to strict scrutiny. Accordingly, the indiscriminate removal of voting rights without an individualised judicial evaluation, solely on the grounds of mental disability necessitating partial guardianship, could not be considered compatible with the legitimate grounds for restricting the right to vote.

**Conclusion:** violation (unanimously).