Prisoners’ voting rights: UN Human Rights Committee asks Russia to amend its Constitution

Prof. Bill Bowring, Chair, EHRAC International Steering Committee

On 21 March 2011 the Human Rights Committee of the United Nations (HRC), the treaty body for the International Covenant on Civil and Political Rights (ICCPR), adopted, by thirteen votes to two, its Views concerning the communication submitted by two prisoners, Denis Yevdokimov and Arsentii Reznov, against the Russian Federation. The authors of the communication complained that Art. 32(3) of the 1993 Russian Constitution, which restricts the right of persons deprived of liberty to vote, contradicts Art. 25 of the ICCPR, which provides that every citizen shall have the right and the opportunity, without unreasonable restrictions, to vote. They also complained under Art. 2(3) of the ICCPR that there was no effective domestic remedy in Russia.

The complaint to the HRC was possible because Russia is bound by the First Optional Protocol to the ICCPR (OP1) – the UK is not. The USSR ratified the ICCPR in 1973. It ratified OP1, which enables individual complaint to the HRC, at the request of the USSR's Committee for Constitutional Supervision (CCS), the predecessor of the Russian Constitutional Court, in the Ratification of the Optional Protocol Case (4 April 1991). On 5 July 1991 the USSR Supreme Soviet adopted two Resolutions according to OP1 and recognising the jurisdiction of the HRC. The Optional Protocol entered into force for the Russian Federation on 1 January 1992, very shortly after the collapse of the USSR. Russia did not notify the ECHR until 1998.

In the Yevdokimov & Reznov ICCPR case, the Russian government referred to its observations on a number of Simbarov judgments, but continued on page 6.

continued from page 5

Prisoners’ voting rights: UN Human Rights Committee asks Russia to amend its Constitution

Note to First v United Kingdom (No. 74025/01) 6.10.05, in which the ECtHR affirmed that the principle of proportionality requires a sufficient link between deprivation of the right to vote and the conduct and circumstances of the individual concerned. The HRC explicitly cited First and noted that Russian legislation provided a blanket deprivation of the right to vote to anyone sentenced to a term of imprisonment. The HRC noted that Russia had not provided any arguments as to how the restrictions in the case of the two prisoners would meet the criterion of reasonableness required by the ICCPR. The HRC recalled its General Comment No. 25, which states that the right to vote and to be elected is not an absolute right, and that restrictions may be imposed on it provided they are not discriminatory or unreasonable. It also states that if conviction for an offence is a basis for suspending the right to vote, the period for such suspension should be proportionate to the offence and the sentence.

The HRC found that Russia had violated Art. 25 of the ICCPR, alone and in conjunction with Article 2(3), and that, in accordance with Art. 2(3)(a), Russia was under an obligation to amend its legislation to comply with the Covenant; provide the authors of the complaint with an effective remedy; and prevent similar violations in the future. The majority of the HRC included the UK’s Prof. Sir Nigel Rodley.

In a concurrent opinion, Gerald Neuman (US) and Iulia Motoc (Romania) noted that non-European States Parties to the ICCPR where the ECHR is not legally binding, Article 17 of the Russian Constitutional Charter requires Russia to protect rights and freedoms "in accordance with" the ICCPR as interpreted by the HRC.

However, Russia's track record is not good. In its 2010 Concluding Observations on Russia's Sixth Report under the ICCPR, the HRC expressed once again its concern at Russia's "restrictive interpretation of, and continuing failure to implement the Views" adopted by it. Such failure "would call into question the state party's commitment to the Optional Protocol."

1 Yevdokimov & Reznov v Russian Federation, ECHR/10171/04/143935/05, date of communication 20.03.04.
3 V. Nester, Russian Human Rights, No 25, pp. 642, 843.
4 General Comment No 19. The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25). 127-76. CCPR/C/21/Rev.1/Add.7.
5 Sergey Golobok, 26/6/11. Tatarskiysnyy parlament dlya gosudarstva (Principles have been presented to parliament). Available at: http://www.moscowtimes.ru/news/38272.
6 CCPR/C/51/CO/9, 24.11.09.