

# EHRAC

## Bulletin



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

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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 Artiom Rezanov, against the Russian Federation.<sup>1</sup>

The authors of the communication complained that Art. 32(3) of the 1993 Russian Constitution, which restricts the right of per-

sons 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).<sup>2</sup> On 5 July 1991 the USSR Supreme Soviet adopted two Resolutions acceding to OP1 and recognising the jurisdiction of the HRC.<sup>3</sup> 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 ratify the ECHR until 1998.

In the *Yevdokimov & Rezanov* ICCPR case, the Russian government referred in its observations to a number of Strasbourg judgments, but

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not to *Hirst 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 *Hirst* 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,<sup>4</sup> 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 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 concurring opinion, Gerald Neuman (US) and Iulia Motoc (Romania) noted that non-European States Parties to the ICCPR where some categories of convicted prisoners have the right to vote include Bangladesh, Belize, Canada, Ghana, Papua New Guinea, and Trinidad and Tobago, as well as the US states of Maine and Vermont. They also noted the more recent ECHR cases *Frodl v Austria* (No. 20201/04) 8.4.10, regarding convicted prisoners, and *Alajos Kiss v Hungary* (No. 38832/06) 20.5.10, regarding persons with mental disabilities.

The dissenting members of the HRC were Michael O'Flaherty (Ireland) and Krister Thelin (Sweden). They considered that in the circumstances of this case (where the authors were found guilty of abuse of power and of organising a criminal group dealing with drugs, kidnapping and racketeering), the restriction, limited only to the duration of the prison sentence, could not be considered unreasonable or disproportionate.

Although the HRC's Views are not a judgment, Russia was informed unambiguously of its obligation to amend its Constitution and to provide the authors with an effective remedy. The HRC reminded Russia of the fact that, as a State Party to OP1, it has recognised the competence of the HRC to determine whether there has been a violation, and has also under-

taken to ensure to all within its jurisdiction the rights recognised in the ICCPR. The HRC indicated that it wished to receive from Russia, within 180 days, information about the measures taken to give effect to its Views.

In his Russian language blog, Sergey Golubok submits that even though the Views of the HRC are not legally binding, Article 17 of the Russian Constitution requires Russia to protect rights and freedoms "in accordance with" the ICCPR as interpreted by the HRC.<sup>5</sup>

However, Russia's track record is not good. In its 2009 Concluding Observations on Russia's Sixth Report under the ICCPR,<sup>6</sup> 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 & Rezanov v Russian Federation*, CCPR/C/101/D/1410/2005, date of communication 20.03.04.

2 VSND SSSR, 1991 No.17, p.502; see also *Soyerskaya Institsiya* 123.12.91, 17.

3 *Vedomosti SSSR*, 1991 No.29, pp. 842, 843.

4 General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25), 12.7.96. CCPR/C/21/Rev.1/Add.7.

5 Sergey Golubok, 26.6.11. *Zaklyuchennym pazreshili golosovat* (Prisoners have been permitted to vote). Available at: <https://zakon.ru/Blogs/OneBlog/722>.

6 CCPR/C/RUS/CO/6, 24.11.09.