



**International Covenant on
Civil and Political Rights**

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Human Rights Committee
One hundredth and first session
14 March - 1 April 2011

Views

Communication No. 1410/2005

<u>Submitted by:</u>	Denis Yevdokimov and Artiom Rezanov (not represented by counsel)
<u>Alleged victims:</u>	The authors
<u>State party:</u>	Russian Federation
<u>Date of communication:</u>	20 March 2004 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 21 June 2005 (not issued in document form)
<u>Date of adoption of Views:</u>	21 March 2011

* Made public by decision of the Human Rights Committee.



<i>Subject matter:</i>	Deprivation of the right to vote
<i>Procedural issue:</i>	None
<i>Substantive issues:</i>	Right to vote, right to effective remedy
<i>Articles of the Covenant:</i>	2, paragraphs 1 and 3, 25
<i>Article of the Optional Protocol:</i>	None

On 21 March 2011 the Human Rights Committee adopted the annexed text as the Committee's Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1410/2005.

[Annex]

Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights (one hundredth and first session)

concerning

Communication No. 1410/2005**

Submitted by: Denis Yevdokimov and Artiom Rezanov (not represented by counsel)

Alleged victim: The authors

State Party: Russian Federation

Date of communication: 20 March 2004 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 21 March 2011

Having concluded its consideration of communication No. 1410/2005, submitted to the Human Rights Committee on behalf of Mr. Denis Yevdokimov and Mr. Artiom Rezanov under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The authors of the communication are Mr. Denis Yevdokimov, born in 1972, and Mr. Artiom Rezanov, born in 1977, both nationals of the Russian Federation who, at the time of submission were serving prison terms in the Russian Federation. The authors claim violations of articles 2, paragraphs 1 and 3, and article 25, of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the Russian Federation on 1 January 1992. The authors are unrepresented.

** The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Ms. Helen Keller, Ms. Zonke Zanele Majodina, Ms. Iulia Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Margo Waterval.

The texts of three individual opinions signed by Committee members Mr. Krister Thelin, Mr. Michael O'Flaherty, Mr. Gerald L. Neuman, Ms. Iulia Motoc and Mr. Fabian Omar Salvioli are appended to the present Views.

The facts as presented by the authors

2.1 On 19 February 2001, the authors were found guilty of various crimes related to the organization of a criminal group dealing with drug trafficking, illegal deprivation of liberty, extortion and abuse of official powers. The conviction was confirmed by the decision of the Collegium of the Supreme Court on criminal cases of 3 October 2001.

2.2 On 7 December 2003, while the authors were already in detention, the Russian Federation held Parliamentary elections and on 14 March 2004, it held presidential elections. The authors submit that they were not allowed to vote during these elections as section 32, paragraph 3, of the Constitution restricts the right of persons deprived of liberty under court sentence to vote and to be elected. They claim that there is no remedy to challenge the provisions of the Constitution domestically.

The complaint

3.1 The authors claim that section 32, paragraph 3, of the Constitution¹ which restricts the right of persons deprived of liberty to vote contradicts article 25 of the Covenant.

3.2 They claim that the said provision of the Constitution is discriminatory on the grounds of social status, and violates their rights under article 2, paragraph 1, of the Covenant.

3.3 The authors invoke article 2, paragraph 3, of the Covenant, as they claim there is no effective remedy to challenge the provision of the Constitution domestically.

State party's observations on admissibility and merits

4.1 On 23 November 2005, the State party indicated that under section 32, paragraph 3, of the Constitution of the Russian Federation, persons deprived of their liberty under court sentence do not have a right to vote or to be elected. The authors' claim that such provision contradicts article 25 of the Covenant is unfounded, as their interpretation of the provision of the Covenant is biased and subjective. It contests that article 25 of the Covenant allows limitations to the right to participate in state affairs directly and through elected representatives. In the present case, the authors are confusing "violation of rights" with "limitations to rights". The latter concerns justified restrictions by the state on its citizens' rights in relevant circumstances.

4.2 The State party refers to article 21, paragraph 1, of the Universal Declaration of Human Rights concerning the right of each person to take part in the government of his country directly or through chosen representatives. It refers to article 29 of the Declaration which stipulates limitations to rights and freedoms such as "determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."

4.3 In the Russian Federation, the rights of persons deprived of their liberty by court sentence to vote and to be elected are limited by the Constitution. Criminal punishment is the strictest form of legal responsibility, which amounts to withdrawal and restrictions of rights and freedoms of convicted persons. Under section 55, paragraph 3, of the Constitution the rights and freedoms of persons and citizens can be restricted by federal laws to the extent necessary for the protection of constitutional order, morality, health,

¹ Section 32, paragraph 3, of the Constitution reads as follows: "Citizens who have been found by a court of law to be under special disability, and also citizens placed in detention under a court verdict, shall not have the right to elect or to be elected".

rights and lawful interests of others, and the country's security. Execution of sentences is linked to the temporary restrictions on such rights as right to freedom of movement, freedom of communication, right to privacy, including personal privacy and privacy of correspondence. Withdrawal of such rights and their restrictions are determined by the Constitution, criminal, criminal procedure and other legislation. As such, under section 32, paragraph 3, of the Constitution, persons deprived of liberty under court sentence do not have a right to vote or to be elected. The said provision of the Constitution is established to avoid abuse of rights and freedoms and such a limitation to the right of the persons deprived of their liberty by court sentence does not intervene with the principle of equality.

4.4 The present case does not concern a violation of the right by the state, but the required temporary limitation to the right of a certain category of persons, isolated from the society for acting against the interests of society. Therefore, the limitation under section 32 of the Constitution, is temporary, as the rights are restored upon the completion of the prison term. This provision is therefore in full compliance with the international norms on human rights.

4.5 The State party refers to the decision of the European Court of Human Rights in the case of *Mathieu-Mohin and Clerfayt v. Belgium*, 9267/81 of 2 March 1987, as well as the decision on *Gitonas and others v. Greece*, 18747/91, 19376/92, 19379/92, 28208/95, 27755/95 of 1 July 1997. The European Court concluded that the right to vote and to be elected are not absolute and thus, the legal systems of states can establish proportionate limitations to such rights.

Author's comments on the State party's observations

5.1 On 19 December 2005, the authors argued that the limitation established by the Constitution does not meet the requirements of necessity, does not pursue a legitimate aim and is not based on reasonable grounds.

5.2 They refer to article 29 of the Universal Declaration on Human Rights and claim that granting persons deprived of liberty the right to vote cannot be considered against respect for the rights and freedoms of others, morality, public order and general welfare in a democratic society and it does not undermine the constitutional order and the country's security. Thus, the restriction provided under section 32 of the Constitution does not pursue a legitimate aim, therefore cannot be acceptable in a democratic society. On the same grounds, such a restriction is neither necessary nor can it be justified as required by society.

5.3 The authors argue that such a limitation imposed on the rights of persons deprived of their liberty is not based on reasonable grounds as such persons become more vulnerable and are not in a position to lobby for the adoption of legislative acts in their interest, in particular, the laws improving conditions of detention, laws directed at humanization of punishments, etc. They claim that they cannot influence the decisions by the state agencies which can have negative consequences during their imprisonment and after their release. Thus, they are deprived of the right to attract the attention of authorities to their long standing problems such as overcrowded prisons, torture, degrading treatment etc. They claim that such a limitation is additional to those that they are subjected to due to their status. They are considered as persons of "second category", therefore their opinion does not matter in adopting essential decisions for the society and the state. It causes them additional moral sufferings and affects their human dignity.

5.4 They refer to the Committee's General Comment No. 21 concerning humane treatment of persons deprived of liberty (Article 10), which states that "not only may persons deprived of their liberty not be subjected to treatment that is contrary to article 7, [...] but neither may they be subjected to any hardship or constraint other than that resulting

from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons.”

5.5 They refer to the State party’s observation that the provision of the Constitution is established to avoid abuse of rights and freedoms, and argue that “right to vote” does not empower to abuse this right to the detriment of the rights of others. Such a statement would make sense if persons deprived of liberty had a right to be elected. However, they are contesting only their right to elect and not the right to be elected. The argument by the State party is not relevant and does not explain the reasons for the restriction of their right to vote. The State party does not provide any arguments as to how the convicted persons’ right to vote can affect respect for the rights and freedoms of others and can pose danger to society and the state. Thus, the State party’s statements are unfounded, as no grounds for restrictions of the human rights established under article 29 of the Universal Declaration have been put forward.

5.6 The authors also refer to the State party’s argument that the execution of sentences is linked to the temporary restriction on such rights as right to freedom of movement, freedom of communication, right to privacy etc...”, including the right to vote. They refer to the State party’s argument that such a restriction is “required” and question whether this would mean that the restriction of the convicted person’s right to vote is an integral and essential part of such punishment as deprivation of liberty. They argue that such restriction of the right to vote is neither essential nor natural nor a required condition of life in prison. Such limitation cannot be placed at the same level as restrictions on freedom of movement and others, which are a natural, integral part of the essence of such punishment as deprivation of liberty. Therefore, they claim that the restriction contradicts the principle established in General Comment No. 21, which states “persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment.” They reiterate that forfeiture of the right to vote in the Constitution is neither necessary nor reasonable nor does it pursue a legitimate aim.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement. It notes that the State party has not raised any issues in relation to exhaustion of domestic remedies and considers that there are no obstacles under article 5, paragraph 2 (b) to declare the communication admissible.

6.3 The Committee concludes that the authors have sufficiently substantiated their claims under article 2, paragraphs 1 and 3, and article 25 of the Convention, for purposes of admissibility, declares the communication admissible and proceeds to its examination on the merits.

Consideration of the merits

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee notes the authors’ claims of violation of article 25 and article 2, paragraph 1 and 3, of the Covenant in that section 32, paragraph 3, of the Constitution

which restricts the right to vote of persons deprived of liberty under court sentence contradicts the Covenant is discriminatory on the grounds of social status and there is no effective domestic remedy to challenge it. The authors contested that disenfranchisement established in the Constitution is not necessary, does not pursue a legitimate aim and is not based on reasonable grounds. Disenfranchisement cannot be put at the same level as restrictions on freedom of movement and others, which are a natural, integral part of the essence of such punishment as deprivation of liberty.

7.3 The Committee also notes the State party's submission that the rights and freedoms of persons and citizens can be restricted by federal laws to the extent necessary for the protection of constitutional order, morality, health, rights and legal interests of others, and the country's security. It argued that the present case raises issues related to required temporary limitation to rights, such as right to freedom of movement, freedom of communication etc., of a certain category of persons, isolated from the society for acting against the interests of the society.

7.4 The Committee recalls its General Comment No. 25 which states that the right to vote and to be elected is not an absolute right, and that the 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 Committee notes that, in the present case, the deprivation of the right to vote is coextensive with any prison sentence and recalls that, according to article 10, paragraph 3 of the Covenant, the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. It also recalls the United Nations Basic Principles for the Treatment of Prisoners. Principle 5 indicates that "except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party (...) the International Covenant on Civil and Political Rights (...)".

7.5 The Committee notes the State party's reference to earlier decisions of the European Court of Human Rights. However, the Committee is also aware of the Court's judgment in the case *Hirst v United Kingdom*², in which the Court affirmed that the principle of proportionality requires sufficient link between the sanction and the conduct and circumstances of the individual concerned. The Committee notes that the State party, whose legislation provides a blanket deprivation of the right to vote to anyone sentenced to a term of imprisonment, did not provide any arguments as to how the restrictions in this particular case would meet the criterion of reasonableness as required by the Covenant. In the circumstances, the Committee concludes there has been a violation of article 25 alone and in conjunction with article 2, paragraph 3, of the Covenant. Having come to this conclusion, the Committee does not need to address the claim regarding the violation of article 2, paragraph 1 of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the State party has violated article 25 alone and in conjunction with article 2, paragraph 3, of the International Covenant on Civil and Political Rights.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to amend its legislation to comply with the Covenant and provide the

² *Hirst v United Kingdom*, application 74025/01, adopted on 6 October 2005, para. 71.

authors with an effective remedy. The State party is also under an obligation to prevent similar violations in the future.

10. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2, of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to its Views. The State party is also requested to publish the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Appendix

Individual opinion by Committee members, Mr. Krister Thelin and Mr. Michael O’Flaherty (dissenting)

The majority has found a violation in the present case. We respectfully disagree. In our view the reasoning and the disposition of the majority from paragraph 7.4 and onward is flawed.

General Comment 25 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 norm which follows from General Comment 25 should be used in interpreting whether a violation of the Covenant has occurred in the case before us, instead of some form of extended proportionality test, as might be inferred from the European Court of Human Rights in the case *Hirst v. United Kingdom* and which seemingly has inspired the majority. In the circumstances of the present case, where the authors were found guilty of abuse of power and of organizing a criminal group dealing with drugs, kidnapping and racketeering, we consider that the restriction, which is limited only to the duration of the prison sentence, cannot be considered unreasonable or disproportionate. In such circumstances, we cannot conclude there has been a violation of article 25 either alone or in conjunction with, article 2, paragraphs 1 and 3, of the Covenant.

[signed] Krister Thelin

[signed] Michael O’Flaherty

[Done in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Individual opinion by Committee members Mr. Gerald L. Neuman and Ms. Iulia Antoanella Motoc (concurring)

We join in the Committee's finding of a violation of Article 25 of the Covenant, and we write separately in the hope of averting any public misunderstanding of what the Committee has done.

Article 25 provides that all citizens have the right to vote at genuine periodic elections by universal and equal suffrage without unreasonable restrictions.

The State party denies the right to vote to all convicted prisoners for the entire period of their imprisonment. It does not matter how long or short the sentence is, or what the nature of the crime had been. We agree with the Committee that this restriction on the right to vote is not reasonable.

The mere fact that the authors are detained does not justify denial of the right to vote. The Committee has previously pointed out that persons who are detained but have not yet been convicted should enjoy the right to vote.¹ Even as to convicted prisoners, diverse societies have found it feasible to organize voting procedures, such as absentee ballots, for some categories of citizens in prison.²

The Committee does not say that all convicted prisoners must be permitted to vote, or that a particular category of convicted prisoners must be permitted to vote. Article 25 is consistent with a wide range of reasonable approaches to this question.

The Committee does not even take a position on whether the authors of the present communication should be permitted to vote under legislation that the State party adopts in the future. It concludes only that the State party has denied them the right to vote without identifying any reasonable legal basis for its action.

We agree with this conclusion.

[signed] Gerald L. Neuman

[signed] Iulia Antoanella Motoc

[Done in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

¹ General Comment No. 25 (1996) on article 25, para. 14, *Official Records of the General Assembly, Fifty-first Session, Supplement No. 40 (A/51/40)*, Vol. I, annex V, paragraph 14.

² See, e.g., *Roach v. Electoral Commissioner*, [2007] HCA 43, paras. 9-10 (High Court of Australia 2007) (opinion of Gleeson, C.J.); *Minister of Home Affairs v. National Institute for Crime Prevention and the Re-Integration of Offenders*, 2004(5) BCLR 445, paras. 47-51 (Constitutional Ct. of South Africa 2004) (opinion of Chaskalson, C.J.). Other examples of non-European States parties where some categories of convicted prisoners have the right to vote include Bangladesh, Belize, Canada, Ghana, Papua New Guinea, and Trinidad and Tobago; one could also take note of practice in the U.S. states of Maine and Vermont.

Meanwhile, the European Court of Human Rights has continued to develop its own approach to issues of voting rights, in cases such as *Frodl v. Austria*, App. No. 20201/04 (2010) (regarding convicted prisoners), and *Kiss v. Hungary*, App. No. 38832/06 (2010) (regarding persons with mental disabilities).

**Individual opinion of Committee member Mr. Fabián Omar Salvioli
(concurring)**

1. I have gone along with the Committee's decision in the case of *Denis Yevdokimov and Artiom Rezanov v. the Russian Federation* (communication No. 1410/2005); however, I wish to set out some thoughts because, although I do not disagree with the settlement of the case, I consider that the right to vote of persons deprived of their liberty warrants further examination within human rights bodies, including the Committee.

2. The International Covenant on Civil and Political Rights is a human rights instrument. As a general rule, States must guarantee the rights contained within it; restrictions may be placed on any right only when the Covenant expressly so permits. The extent of such restrictions must be as narrow as possible and must meet standards of necessity, proportionality, purpose, non-discrimination and minimum impact.

3. There are three fundamental provisions to consider in the present case, namely article 5, paragraph 1, articles 10 and 25 of the International Covenant on Civil and Political Rights. Article 5, paragraph 1, prohibits States from limiting any rights to a greater extent than is provided for in the Covenant.

4. Article 25 of the Covenant refers to the rights of citizens, which, it expressly states, are to be enjoyed "without unreasonable restrictions". The question, then, is which restrictions can be applied without violating that provision.

5. General comment No. 25, adopted in 1996, expressly indicates that "if conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence". I think that the Committee must revise this opinion and also take into account general comment No. 21, adopted in 1992, on humane treatment of persons deprived of liberty (article 10 of the Covenant), which indicates that such persons "may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty", and that they must "enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment" (para. 3).

6. The human rights system is a whole. Taking a fragmented approach to it may reduce the scope for protection of rights below its maximum. This matters for the "useful effect" of the Covenant that must be guaranteed in every interpretation of it, either by the Committee or by a State party.

7. It is hard to see how deprivation of the right to vote could ever constitute, in the terms of the aforementioned general comment No. 21, a "restriction that is unavoidable in a closed environment". The criminal justice system, and all public policy, must be understood from a human rights perspective; within this context, punishment must never involve measures that are not intended to rehabilitate convicted persons, and I cannot understand how deprivation of the right to vote used as a form of punishment can have a rehabilitative effect.

8. Hence, in the outcome of its consideration of the present communication the Committee could have indicated that the violation of article 25 should be read not only in conjunction with article 2 but also with article 10, paragraph 3, of the International Covenant on Civil and Political Rights.

[signed] Fabián Omar Salvioli

[Done in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
