



**International Covenant on
Civil and Political Rights**

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

Decision

Communications No. 1521/2006

<u>Submitted by:</u>	Y. D. (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Russian Federation
<u>Date of communication:</u>	17 June 2006 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 27 November 2006 (not issued in document form)
<u>Date of adoption of decision:</u>	25 March 2011

* Made public by the decision of the Human Rights Committee.

<i>Subject matter:</i>	Unlawful dismissal from a job
<i>Procedural issue:</i>	Non-substantiation
<i>Substantive issues:</i>	Right to a fair and public hearing, right to privacy, non-discrimination.
<i>Articles of the Covenant:</i>	2, paragraph 3 (a) and (b); 5; 14; 17 and 26
<i>Article of the Optional Protocol:</i>	2, 3
	[Annex]

Annex

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political rights (one hundredth and first session)

concerning

Communication No. 1521/2006*

Submitted by: Y. D. (not represented by counsel)
Alleged victim: The author
State Party: Russian Federation
Date of communication: 17 June 2006 (initial submission)

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

Meeting on 25 March 2011,

Adopts the following:

Decision on admissibility

1. The author of the communication is Y. D., a Russian national, born in 1962, who claims to be a victim of violation by the Russian Federation of his rights under article 2, paragraph 3 (a) and (b); article 5; article 17 and article 26, of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The author is unrepresented.

The facts as presented by the author

2.1 On 21 August 1995, the author was dismissed from his job at the Ministry of Internal Affairs under section 58, paragraph 1, of the Regulations on the Service in the Internal Affairs Offices of 23 December 1992 (the Regulations). Under this provision, an employee can be dismissed for ‘having committed minor offences incompatible with moral standards required from an employee of the internal affairs offices’. The author claims that under section 19 of the Law “On Militia” adopted on 18 April 1991, a militia (police) officer can be dismissed from the service only on the grounds that are listed in this section. The section, however, does not mention the ground of ‘having committed minor offences incompatible with moral standards required from the employee of the internal affairs offices.’

* The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, 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.

2.2 On 22 December 1995, the author's complaint to the Zaingiraev District Court of the Republic of Buryatia (Russian Federation) was rejected. On an unspecified date thereafter, this decision was upheld by the appeal body of the same court. The author did not appeal the latter ruling under the supervisory review procedure, as he missed the deadline. On 12 July 2005, the Zaingiraev District Court of the Republic of Buryatia rejected the author's request to renew the deadline for an appeal under the supervisory review procedure. The author appealed against this decision, on 23 August 2005, with the Supreme Court of the Republic of Buryatia. On 10 September 2005, the Supreme Court of the Republic of Buryatia upheld the District Court's decision. On 28 November 2005, the Supreme Court of the Republic of Buryatia again refused to review the author's case upon his request to renew the deadline. Similarly, the author's requests were denied by the Chairman of the Supreme Court of the Republic of Buryatia on 20 January 2006, by the Supreme Court of the Russian Federation on 16 March 2006 and by the Deputy Chairman of the Supreme Court of the Russian Federation, on 10 May 2006.

The complaint

3. The author claims that by failing to provide him with an effective remedy through the judicial procedure, the State party violated his rights under article 2, paragraph 3 (a) and (b), of the Covenant. He also claims violation of article 5 as his right to work and protection from unemployment was unlawfully restricted. He invokes article 17 as he was prevented from obtaining further employment because of the record in his work-book which reflects the grounds for his dismissal, and he invokes article 26 as he claims that his dismissal resulted in a violation of his right to equal protection under the law.

State party's observations on admissibility and merits

4.1 On 15 February 2007, the State party explained that the author's lawsuit was rejected by the Zaingiraev District Court of the Republic of Buryatia on 22 December 1995. On 12 July 2005, the same court also denied his request for renewal of the deadline for his appeal under the supervisory review procedure. The latter ruling was upheld by the Supreme Court of the Republic of Buryatia on 19 September 2005. On 28 November 2005, the Supreme Court refused his request to renew the deadline. Similar refusals were issued by the Chairman of the Supreme Court of the Republic of Buryatia on 20 January 2006, by the Supreme Court of the Russian Federation on 16 March 2006 and by the Deputy Chairman of the Supreme Court of the Russian Federation on 10 May 2006. It submits that under the Civil Procedure Code, the Deputy Chairman of the Supreme Court has the same right as the Chairman of the Supreme Court to agree or to disagree with a lower court's decision.

4.2 The Civil Procedure Code does not foresee any further appeal procedures. The appeals under the supervisory review procedure can be filed only within a year after the court's decision is effective. The State party submits that the court correctly assessed that the author missed the deadline for the supervisory review appeal without any valid justification. Moreover, his case file had already been destroyed because its term had expired.

Author's comments on the State party's observations

5.1 On 20 June 2007, the author argued that the supervisory review of a decision that has already entered into force is not an effective remedy. Therefore, he claims that he had exhausted all domestic remedies.

5.2 He adds that the State party violated his right to a fair and public hearing of his case by a competent, independent and impartial court.

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 matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes the author's claim on the allegedly unlawful restriction of his right to work, which, according to him, amounts to a violation of his rights under article 5 of the Covenant. The Committee notes that the right to work is not a right or freedom which is among those protected under the Covenant. Accordingly, the Committee considers that this part of the communication is inadmissible *ratione materiae* under article 3 of the Optional Protocol.

6.4 The Committee also notes that the author invoked articles 2, 14, 17 and 26 of the Covenant as he claimed that the State party violated his right to a fair and public hearing of his case, that he was prevented from obtaining employment because of the record in his work-book reflecting the grounds for his dismissal, and that his dismissal resulted in a violation of his right to equal protection under the law, and he could not obtain an effective remedy in this connection. The Committee notes that the author has failed to provide any further information or explanations with regard to these allegations. Accordingly, it considers that the author has failed to sufficiently substantiate his claims, for purposes of admissibility, and declares this part of the communication inadmissible under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore, decides:

- a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;
- b) That this decision be transmitted to the State party and to the author.

[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.]