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**Complementary materials to Lecture on Human Rights and Democracy**

Democracy is (1) a condition for thriving human rights and, if understood as a mere majority rule, (2) a threat to human rights.

In turn, human rights and in particular political rights, such as the right to vote, the right to petition, but also freedom to associate and assemble, as well as freedom of speech and freedom of press, counted within the category of political rights and freedoms, facilitate democratic political processes.

Yet, human rights also limit political process because they impose limitations on the majority decisions by declaring certain laws and policies as incompatible with human rights. It is thus sometimes argued that human rights enshrined in constitutions lead to democratic atrophy because the current majority of the day may not change these initial decisions of the drafters of the constitution in the ordinary political process (in parliaments). Moreover, the growing body of international human rights law means that national legal systems need to comply with international standards of human rights protection which may necessitate constitutional amendments, legislative reforms or changes in the existing practices within state administration.

This conflict between human rights and democracy as cornerstones of liberal democracy is not that harsh if viewed from a different angle. Therefore, one could argue that constitutions establish a certain hierarchy of values which the majority of the day needs to respect. It does not preclude the right of the majority to adopt laws and policies in line with the government political agenda that restrict the exercise of certain constitutional rights and freedoms.

The key aspect of any human right regime is that human rights are subject to limitations (except rare cases of absolute rights – prohibition of torture or inhuman and degrading treatment or punishment, or as some would say, except rights the limitations of which require such compelling justifications that could not be provided in practice). The constitutional (and international) requirements concerning rights limitations are following:

A limitation must further a valid LEGITIMATE AIM and the means adopted to this aim must be NECESSARY AND APPROPRIATE, which corresponds to the principle of proportionality between means and aims. The relationship between adopted means and aims is tested in three questions (though sometimes the proportionality test is used to discern illegitimate motives rather than disproportionality of the means): whether the means are suitable to further the (legislative/policy) aim; whether there are no more restrictive means that serve the same aim equally well; and whether a fair balance has been struck between the protection of individual rights and the realization of public interest or rights of others in conflict with the former. This test is more or less rigorously applied in most cases concerning limitations of human rights.

Since the essence of democracy is the political process which is based on deliberation, it is assumed that an appropriate forum for deliberation is the parliament. In this context, parliaments are representative organs where the majority expresses the will of the sovereign people. In the theory of representation it is assumed that representatives of the people are elected in democratic (free and fair) elections. In fact, elections are nowadays the only democratic devices by which the people (citizens) may directly express their political preferences and indirectly exercise control over incumbent government.

The discussion on the relationship between democracy and human rights needs to start with (1) voting rights and qualifications who is eligible to vote and to stand as a candidate; (2) qualifications of who is excluded by law or in practice from voting.

Below, we look into cases concerning three categories of persons who are excluded from the political process because they are deprived of the right to vote. Their situation is even more problematic because their interests are never sufficiently represented in the parliaments (think whether any political party includes protection of prisoners’ rights or rights of persons with intellectual disabilities in their political (campaign) programs, these groups are rarely if ever considered as important electorate.

1. Prisoners’ voting rights

**CASE OF RAMISHVILI v. GEORGIA** *(Appl. no.* [*48099/08*](https://hudoc.echr.coe.int/eng#{"appno":["48099/08"]})*)* (2018)

the applicant was convicted of conspiracy to commit extortion and sentenced to four years’ imprisonment. Pursuant to Article 5 § 2 of the Electoral Code and Article 28 § 2 of the Constitution, the applicant was debarred, as a convicted prisoner, from participating in any elections. The applicant challenged the constitutionality of the ban under Article 5 § 2 of the Electoral Code in relation to Article 28 of the Constitution. He referred to the case-law of the European Court of Human Rights on prisoners’ voting rights and submitted, among other things, that he would be unable to participate in the parliamentary elections in 2008. On 31 March 2008 the Constitutional Court declared the application inadmissible in view of an identical restriction contained in the Constitution. The Constitutional Court could not invalidate the constitutional provision.

Article 28 § 2 of the Constitution provided “citizens ...who are convicted by a court and detained in a penal institution shall have no right to participate in elections and referenda.” In 2011, this article got a new wording “citizens ...who are convicted by a court and detained in a penal institution, except those convicted of less grave crimes, shall have no right to participate in elections and referenda.”

Admissibility – when there are no effective domestic remedies available to address the alleged violation of the Convention rights (in this case the right is guaranteed in Article 3 of Protocol No. 1 to the Convention), the six-month period for lodging the complaint started to run from the date of the elections concerned: an act occurring at a given point in time.

Merits – established case-law: *Hirst v. the United Kingdom (no. 2)* ([GC], no. [74025/01](https://hudoc.echr.coe.int/eng#{"appno":["74025/01"]}), ECHR 2005‑IX) finds a violation when the ban on the prisoners’ voting rights was of an absolute nature and applied to all prisoners serving their sentences in detention, without regard to the gravity of their offenses or the length of their sentence.

Finding of the Court: the Court observes that the ban on the prisoners’ voting rights contained in Article 28 § 2 of the Constitution was of a general, automatic, and indiscriminate character, affecting all persons convicted of a crime irrespective of the length of the sentence and the nature or gravity of their offence (see paragraph 9 above). As a result, the applicant was unable to participate in the parliamentary elections held on 21 May 2008. While the Constitution and the Electoral Code were subsequently amended in 2011 to allow prisoners convicted of less grave crimes to vote (see paragraph 11 above), those amendments did not affect the applicant’s situation in relation to the elections of 21 May 2008.

NOTE: the scope of application of Article 3 of Protocol No. 1 **does not cover** referenda or other elections than parliamentary and local.

The Court also declared inadmissible cases concerning future and forthcoming elections.

In prisoners’ voting rights cases the Court does not award pecuniary damages even if it finds a violation.

**In sum,** the Court holds that “general, automatic and indiscriminate disenfranchisement of all serving prisoners, irrespective of the nature or gravity of their offences, the length of the prison sentence or the prisoner’s individual conduct or circumstances, is incompatible with Article 3 of Protocol No. 1. It is thus possible that disenfranchisement is compatible with the Convention provided that it is construed as an exception, for example, the decision on disenfranchisement is taken by a judge, taking into account the specific circumstances of the case, and there is a link between the offence committed and issues relating to elections and democratic institutions.

However, the Court also accepts that each State has a wide discretion as to how it regulates the ban, both as regards the types of offence that should result in the loss of the vote and as to whether disenfranchisement should be ordered by a judge in an individual case or should result from general application of a law.

Compare also **Krum Kulinski and Asen Sabev v. Bulgaria (2016)** where the Court finds that a ban on voting rights serves a legitimate aim (the rule of law and enhancing civic responsibility) but was disproportionate <file:///C:/Users/Dell/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/Judgment%20Kulinski%20and%20Sabev%20v.%20Bulgaria%20-%20ban%20on%20prisoners'%20voting%20rights%20%20(1).pdf>

1. Voting rights of “persons who moved”

Husted v. Rundolf Institute, 584 [U.S.](https://www.google.com/search?sxsrf=ALeKk010gz-joCoy0bsTm-CInlUalB2K_w:1585327997529&q=U.S.&stick=H4sIAAAAAAAAAONgVuLUz9U3sEw2LzdYxMoSqhesBwDLbL-eFAAAAA&sa=X&ved=2ahUKEwj2p5SBj7voAhUCHHcKHZowDWoQmxMoATAXegQIDhAD&sxsrf=ALeKk010gz-joCoy0bsTm-CInlUalB2K_w:1585327997529) \_\_\_ (more)138 S. Ct. 1833

**Alito’s majority opinion:**

Ohio law that aims to keep the State’s voting lists up to date by removing the names of those who have moved out of the district where they are registered. Ohio uses the failure to vote for two years as a rough way of identifying voters who may have moved, and it then sends a preaddressed, postage prepaid card to these individuals asking them to verify that they still reside at the same address. Voters who do not return this card and fail to vote in any election for four more years are presumed to have moved and are removed from the rolls. **We are asked to decide whether this program complies with federal law.**

**Federal law:**

**National Voter Registration Act (NVRA) of 1993** requires States to “conduct a general program that makes **a reasonable effort** to remove the names” of voters who are ineligible “by reason of” death or change in residence. §20507(a)(4).

NVRA conditions: a State may not remove a registrant’s name on change-of-residence grounds unless either (A) the registrant confirms in writing that he or she has moved or (B) the registrant fails to return a preaddressed, postage prepaid “return card” containing statutorily prescribed content. This card must explain what a registrant who has not moved needs to do in order to stay on the rolls, i.e., either return the card or vote during the period covering the next two general federal elections. §20507(d)(2)(A). And for the benefit of those who have moved, the card must contain “information concerning how the registrant can continue to be eligible to vote.” §20507(d)(2)(B). If the State does not send such a card or otherwise get written notice that the person has moved, it may not remove the registrant on change-of-residence grounds. See §20507(d)(1).

The procedure of sending the return card is up for the States to decide.

When a State receives a return card confirming that a registrant has left the district, the State must remove the voter’s name from the rolls. §§20507(d)(1)(A), (3). And if the State receives a card stating that the registrant has not moved, the registrant’s name must be kept on the list. See §20507(d)(2)(A).

The failure to return a card is some evidence—but by no means conclusive proof—that the voter has moved.

Only if the registrant fails to vote during the period of two federal elections and does not otherwise confirm that he or she still lives in the district (e.g., by updating address information online) may the registrant’s name be removed. §20507(d)(2)(A); see §§20507(d)(1)(B), (3).

NVRA has two further conditions: first, state programs must be “uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965.” §20507(b)(1). Second, the NVRA contains what we will call the “Failure-to-Vote Clause.” See §20507(b)(2).

According to Alito’s majority opinion the Failure-to-Vote Clause has two parts: the first part, in its 1993 wording, provides that a state program “shall not result in the removal of the name of any person . . . by reason of the person’s failure to vote.” The second part, added by the **Help America Vote Act of 2002 (HAVA**), 116 Stat. 1666, explains the meaning of that prohibition. This explanation says that “nothing in [the prohibition] may be construed to prohibit a State from using the procedures described in [§§20507](c) and (d) to remove an individual from the official list of eligible voters.” §20507(b)(2).

**HAVA** makes it clear that the statutory phrase “by reason of the person’s failure to vote” in the Failure-to Vote Clause does not categorically preclude the use of nonvoting as part of a test for removal.

**OHIO laws:**

Identification of registrants who moved based on the postal services and the Supplementary Process “identif[ies] electors whose lack of voter activity indicates they may have moved.”

Ohio removes registrants from the rolls only if they “fai[l] to respond” and “continu[e] to be inactive for an additional period of four consecutive years, including two federal general elections.”

Thus, a person remains on the rolls if he or she votes in any election during that period—which in Ohio typically means voting in any of the at least four elections after notice. Combined with the two years of nonvoting before notice is sent, that makes a total of six years of nonvoting before removal.

**Respondent claims** that (1) Ohio removes voters who have not actually moved, thus purging the rolls of eligible voters; (2) Ohio violates the NVRA’s Failure-to-Vote Clause because the failure to vote plays a prominent part in the Ohio removal scheme: Failure to vote for two years triggers the sending of a return card, and if the card is not returned, failure to vote for four more years results in removal.

Ohio’s Supplemental Process follows NVRA’s subsection (d) to the letter. It is undisputed that **Ohio does not remove a registrant solely on change-of-residence grounds unless the registrant is sent and fails to mail back a return card and then fails to vote for an additional four years.**

**Respondent argues (and the Sixth Circuit held) that, even if Ohio’s process complies with subsection (d), it nevertheless violates the Failure-to-Vote Clause—the clause that generally prohibits States from removing people from the rolls “by reason of [a] person’s failure to vote.”** §20507(b)(2); see also §21083(a)(4)(A). Respondents point out that Ohio’s Supplemental Process uses a person’s failure to vote twice: once as the trigger for sending return cards and again as one of the requirements for removal.

For the majority, Ohio removes registrants only if they have failed to vote and have failed to respond to a notice.

It concludes that the Failure-to-Vote Clause, as originally enacted, referred to sole causation. **Ohio’s law is OK because it is based on (1) a failure to vote and (2) a failure to respond.**

**The majority rejects** the interpretation of the respondents who claim that the Failure-to-Vote Clause allows States to consider nonvoting only to the extent that subsection (d) requires— **that is, only after a registrant has failed to mail back a notice.** Any other use of the failure to vote, including as the trigger for mailing a notice, they claim, is proscribed.

**Respondents and the dissent – have a problem with the use of nonvoting for sending the return card.**

Best quotation: “There is no reason to create an exception to a prohibition unless the prohibition would otherwise forbid what the exception allows.”

For the majority, **Ohio simply treats the failure to return a notice and the failure to vote as evidence that a registrant has moved, not as a ground for removal.** And in doing this, Ohio simply follows federal law. Subsection (d), which governs removals “on the ground that the registrant has changed residence,” treats the failure to return a notice and the failure to vote as evidence that this ground is satisfied. §20507(d)(1).

**For the majority, it was rational to assume that a person has moved based on voting inactivity. For the majority, all that matters is that no provision of the NVRA prohibits the legislature from implementing that judgment. Thus, they will not step in the policy making competence of the states.**

Respondents maintained however that Ohio’s procedure is illegal because the State sends out notices without having any “reliable indicator” that the addressee has moved. Brief for Respondents 31. The “[f]ailure to vote for a mere two-year period,” they argue, does not reliably “indicate that a registrant has moved out of the jurisdiction.” Thus, they claim, a State may not send out a return card unless its evidence of change of residence is at least as probative as the information obtained from the Postal Service.

**In conclusion, the majority found that:**

the dissents have a policy disagreement, not just with Ohio, but with Congress. But this case presents a question of statutory interpretation, not a question of policy. We have no authority to second-guess Congress or to decide whether Ohio’s Supplemental Process is the ideal method for keeping its voting rolls up to date. The only question before us is whether it violates federal law. It does not.

**Thomas’ concurring opinion** is based on the federalism argument: The Constitution gives States the authority to set the qualifications for voting in congressional elections, Art. I, §2, cl. 1; Amdt. 17, as well as the authority to set the “Times, Places and Manner” to conduct such elections in the absence of contrary congressional direction, Art. I, §4, cl. 1.

**Breyer’s dissent** holds that the Supplemental Process violates §8, which prohibits a State from removing registrants from the federal voter roll “by reason of the person’s failure to vote.” §20507(b)(2).

**History of state restrictive laws on voters’ eligibility - from literacy tests to the poll tax and from strict residency requirements to “selective purges”.**

Congress enacted the **National Voter Registration Act** “to protect the integrity of the electoral process,” “increase the number of eligible citizens who register to vote in elections for Federal office,” and “ensure that accurate and current voter registration rolls are maintained.” §20501(b). It did **so mindful that “the purpose of our election process is not to test the fortitude and determination of the voter, but to discern the will of the majority.”**

In the dissent’s interpretation, NVRA draws a roadmap to a two-step removal process. At step 1, States first identify registered voters whose addresses may have changed; here, subsection (c) points to one (but not the only) method a State may use to do so. At step 2, subsection (c) explains, States must “confirm the change of address” by using a special notice procedure, which is further described in (d) (the Confirmation Procedure).

It includes the last chance notice to be sent by forwardable card.

For the dissenters, **Ohio’s program is unlawful under §8 in two respects. It first violates subsection (b)’s Failure-to-Vote prohibition because Ohio uses nonvoting in a manner that is expressly prohibited and not otherwise authorized under §8. In addition, even if that were not so, the Supplemental Process also fails to satisfy subsection (a)’s Reasonable Program requirement, since using a registrant’s failure to vote is not a reasonable method for identifying voters whose registrations are likely invalid (because they have changed their addresses).**

§8 says that the function of subsection (d)’s **Confirmation Procedure** is “to confirm the change of address” whenever the State has already “identif[ied] registrants whose addresses may have changed.” §§20507(c)(1)(A), (d)(2). **The function of the Confirmation Procedure is not to make the initial identification of registrants whose addresses may have changed**. As a matter of English usage, you cannot confirm that an event happened without already having some reason to believe at least that it might have happened.

Nonvoting is not a sufficient evidence.

If a person moves, a forward- able mailing will be sent along (i.e., “forwarded”) to that person’s new address; in contrast, a nonforwardable mailing will not be forwarded to the person’s new address but instead will be returned to the sender and marked “undeliverable.” And so a **nonforwardable mailing that is returned to the sender marked “undeliverable” indicates that the intended recipient may have moved**. After all, the Postal Service, as the majority points out, returns mail marked “undeliverable” if the intended recipient has moved—not if the person still lives at his old address. Ante, at 6, and n. 3.

In contrast to a nonforwardable notice that is returned undeliverable, which tells the State that a registrant has likely moved, **a forwardable notice that elicits no response whatsoever tells the State close to nothing at all.**  That is because, as I shall discuss, **most people who receive confirmation notices from the State simply do not send back the “return card” attached to that mailing—whether they have moved or not.**

**More often than not, the State fails to receive anything back from the registrant, and the fact that the State hears nothing from the registrant essentially proves nothing at all.**

**As a general matter, the problem these numbers reveal is as follows: Very few registered voters move outside of their county of registration. But many registered voters fail to vote. Most registered voters who fail to vote also fail to respond to the State’s “last chance” notice. And the number of registered voters who both fail to vote and fail to respond to the “last chance” notice exceeds the number of registered voters who move outside of their county each year.**

**Question of reasonability:** a nonreturned confirmation notice (as the numbers show) cannot reasonably indicate a change of address.

Dissent is critical of the majority’s view, according to which failing to respond to that forwardable notice is always a valid cause for removal, even if that notice was sent by reason of the registrant’s initial failure to vote. **The failure to respond to a forwardable notice is an irrelevant factor in terms of what it shows about whether that registrant changed his or her residence.**

**Sotomayor’s dissent:**

Ohio’s Supplemental Process reflects precisely the type of purge system that the NVRA was designed to prevent. Under the Supplemental Process**, Ohio will purge a registrant from the rolls after six years of not voting,** e.g., sitting out one Presidential election and two midterm elections, and after failing to send back one piece of mail**, even though there is no reasonable basis to believe the individual actually moved.**

**Referring to Amicus Curiae briefs:**

Amici also explain at length how low voter turnout rates, language-access problems, mail delivery issues, inflexible work schedules, and transportation issues, among other obstacles, make it more difficult for many minority, low-income, disabled, homeless, and veteran voters to cast a ballot or return a notice, rendering them particularly vulnerable to unwarranted removal under the Supplemental Process.

In conclusion, the Sotomayor’s dissent finds that:

the majority does more than just misconstrue the statutory text. It entirely ignores the history of voter suppression against which the NVRA was enacted and upholds a program that **appears to further the very disenfranchisement of minority and low-income voters that Congress set out to eradicate.** States, though, need not choose to be so unwise. Our democracy rests on the ability of all individuals, regardless of race, income, or status, to exercise their right to vote. The majority of States have found ways to maintain accurate voter rolls without initiating removal processes based solely on an individual’s failure to vote

1. Voting rights of persons with intellectual disabilities

**Communication No. 4/2011 s*ubmitted by :* Zsolt Bujdosó, Jánosné Ildikó Márkus, Viktória Márton, Sándor Mészáros, Gergely Polk and János Szabó (represented by counsel, János Fiala, Disability Rights Center ) before the Committee on the Rights of Persons with Disabilities (2013)**

**Facts:**

All six authors “suffer from intellectual disability”, and were placed under partial or general guardianship pursuant to judicial decisions. As an automatic consequence of their placement under guardianship, the authors’ names were removed from the electoral register, pursuant to article 70, paragraph 5, of the Constitution of the State party that was applicable at the time, which providedthat persons placed under total or partial guardianship did not have the right to vote. Due to this restriction on their legal capacity, the authors were prevented from participating in the Hungarian parliamentary elections held on 11 April 2010 and the municipal elections held on 3 October 2010. They remain disenfranchised to date and cannot therefore participate in elections.

**Complaint:**

The authors submit that, as persons under guardianship, the direct application of article 70, paragraph 5, of the Constitution automatically removed them from the electoral register. The decisions to incapacitate them in this way did not take into consideration their ability to vote, as they were automatically and indiscriminately disenfranchised pursuant to the Constitutional provision, regardless of the nature of their disability, their individual abilities or the scope of the incapacitation measure. The authors argue that they are able to understand politics and participate in elections. They maintain that this automatic ban is unjustified, and that it breaches article 29, read alone and in conjunction with article 12 of the Convention.

They also claim that no effective remedy was available to them.

**Hungary:**

The Fundamental Law of Hungary entered into force on 1 January 2012 repealing article 70, paragraph 5, of the 1949 Constitution of the Republic of Hungary, which automatically excluded from suffrage all persons under guardianship, restricting or excluding their capacity for any civil law election. Contrary to the previous rigid provision, which is now obsolete, the Fundamental Law requires judges to make decisions on suffrage that take into consideration the individual circumstances of each case. Therefore, adults with disabilities are no longer treated as a homogenous group. Under article XXIII, paragraph 6, a person disenfranchised by a court due to his or her intellectual disability, by virtue of a decision made in due consideration of all the relevant information in the case, shall have no suffrage.

In pursuance to these constitutional provisions, the law on guardianship was changed and now placement under guardianship is not a ground for exclusion from suffrage. However, a decision must be made on exclusion from suffrage in respect of every person under guardianship. In their rulings on placement under guardianship that restrict or exclude legal capacity, and when reviewing guardianship, the courts decide on exclusion from suffrage. They exclude from suffrage any adult whose discretionary power required for exercising suffrage (a) has been significantly reduced, whether permanently or recurrently, due to his or her mental state, intellectual disability or addiction, or (b) is permanently missing in its entirety, due to his or her mental state or intellectual disability. The courts rely on expert opinions of forensic psychiatrists to decide on exclusion from suffrage.

**Third party interveners:**

The interveners invite the Committee to consider the present case beyond the narrow scope of the violation of the authors’ human rights in the State party, contrary to article 29 of the Convention, and to rule explicitly on the other question raised by this case, namely that subjecting persons with disabilities to individualized assessments of their voting capacity is in itself a violation of article 29 of the Convention. **Assessments of voting capacity rest on the assumption that it is permissible to protect the integrity of the political system from individuals who are unable to formulate a valid political opinion.** According to that argument, individuals who are objectively found to lack the capacity to vote are by definition unable to vote competently. However, **according to the interveners, the legitimacy of that aim is itself questionable,** since **it is not for the State to determine what constitutes a valid political opinion.** While conceding that there are persons with disabilities who are unable to formulate a rational political opinion, the interveners stress that **the inability to cast a “competent” or “rational” vote is by no means specific to persons with disabilities.** Consequently, if there are both persons with disabilities and persons without disabilities who are unable to cast a competent vote, it cannot be maintained that only the former should be subject to assessment of their capacity. **Long-entrenched prejudice against persons with disabilities is the only reason for the current practice, which must be rejected under the Convention.**

**Capacity assessments are not a proportionate means of assessing competence in this context.** Capacity assessments rest on the assumption that it is possible to objectively separate “incapable” voters from the rest. However, that assumption is not well-founded according to psychological experts. There is no scientifically determinable cut-off point between persons who have and those who lack the capacity to vote. Accordingly, incapacity assessments will always result in disenfranchisement of at least some capable voters with disabilities.

CRPD view:

The Committee recalls that article 29 of the Convention requires States parties to ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, including by guaranteeing their right to vote. **Article 29 does not provide for any reasonable restriction or exception for any group of persons with disabilities. Therefore, an exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability, within the meaning of article 2 of the Convention.** The Committee refers to its concluding observations on Tunisia, in which it recommended “the urgent adoption of legislative measures to ensure that persons with disabilities, *including persons who are currently under guardianship or trusteeship*, can exercise their right to vote and participate in public life, on an equal basis with others” (emphasis added). The Committee further refers to its concluding observations on Spain, in which it expressed similar concern over the fact that the right to vote of persons with intellectual or psychosocial disabilities can be restricted if the person concerned has been deprived of his or her legal capacity, or has been placed in an institution.The Committee considers that the same principles apply to the present case. Accordingly, the Committee concludes that article XXIII, paragraph 6, of the Fundamental Law, which allows courts to deprive persons with intellectual disability of their right to vote and to be elected, is in breach of article 29 of the Convention, as is article 26, paragraph 2, of the Transitional Provisions of the Fundamental Law.

It is discriminatory

Accordingly, the Committee is of the view that, by depriving the authors of their right to vote, based on a perceived or actual intellectual disability, the State party has failed to comply with its obligations under article 29 of the Convention, read alone and in conjunction with article 12 of the Convention.

Having found the assessment of individuals’ capacity to be discriminatory in nature, the Committee holds that **this measure cannot be purported to be legitimate. Nor is it proportional to the aim of preserving the integrity of the State party’s political system**. The Committee recalls that, under article 29 of the Convention, the State party is required to adapt its voting procedures, by ensuring that they are “appropriate, accessible and easy to understand and use”, and, where necessary, allowing persons with disabilities, upon their request, assistance in voting. It is by so doing that the State party will ensure that persons with intellectual disabilities cast a competent vote, on an equal basis with others, while guaranteeing voting secrecy.

The Committee therefore finds that the State party has failed to comply with its obligations under article 29, read alone and in conjunction with article 12 of the Convention.

Conclusions:

What is the role of courts and quasi-judicial bodies in protecting voting rights of minorities?

Do you find that the rulings in the above presented cases had in fact favored some specific policies rather than a particular legal interpretation?