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Meeting: 1208 meeting (23-25 September 2014) (DH)

Item reference: Action plan (17/07/2014)

Communication from the Russian Federation concerning the case of Ageyevy v. Russian Federation
(Application No. 7075/10)

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Réunion : 1208 réunion (23-25 septembre 2014) (DH)

Référence du point : Plan d'action (17/07/2014)

Communication de la Fédération de Russie concernant l'affaire Ageyevy contre Fédération de Russie
(requête n° 7075/10) (**anglais uniquement**).

**Action Plan
on the execution of the judgment
of the European Court of Human Rights
in case № 7075/10 Ageyevy v. Russia
(judgment of 18 April 2013, final of 9 September 2013)**



Violation

In the abovementioned judgement the European Court of Human Rights found a number of violations of the rights of the applicants A.P. Ageyev and L.V. Ageyeva under Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms on account of revocation of the applicants' children adoption by court, deprivation of right to access the children for the applicants, unlawful access to the applicant's adopted son for mass-media, disclosure of private medical information about him and lack of effective investigation into disclosure of confidential information about the adoption, and on account of failure to protect the right of L.V. Ageyeva to honour, dignity and reputation in court proceedings against the publisher.

I. Individual Measures:

1. Just Satisfaction

	Pecuniary Damage	Non-Pecuniary Damage	Costs and expenses	Total
1. Ageyev A.P.	-	1. EUR 25,000	EUR 12,100	EUR 67,100
2. Ageyeva L.V.		2. EUR 30,000		
The amount of compensation awarded by the Court was fully paid on 7 November 2013 in roubles according to the exchange rate at the date of the payment to the bank account of L.V. Ageyeva (payment order no. 1534056 for RUB 2,930,069.12)				

2. The Court found that revocation of adoption by the domestic courts amounted to violation of Article 8 of the Convention and indicated that this measure was "excessively harsh" and disproportionate from the point of the children's best interests.

At present the application of A.P. Ageyev and L.V. Ageyeva to review the court judgment of revocation of adoption of their minor children in view of the new circumstances is pending before the domestic courts. The Court will be additionally informed of the outcome of the proceedings.

3. On 19 May 2010, the administration State educational establishment "Social asylum for children and adolescents" overturned its decision to refuse A.P. Ageyev and L.V. Ageyeva access to their children. The applicants have free access to the children, they visit and contact with them.

4. The Court found a violation on account of failure to conduct an effective investigation into disclosure of confidential information about adoption. It was noted that the criminal proceedings following the applicant's complaint about disclosure of

confidential information about adoption of G. were significantly delayed, the investigation was discontinued though key witnesses (journalists and media representatives, employees of the Custody and Guardianship Agency and Burn Care Hospital) had not been questioned, and once resumed, the investigation did not progress.

Following the above findings of the Court, the criminal proceedings were resumed and additional investigation was initiated.

The investigatory department of the Main Directorate of Investigations of the Moscow Regional Department of the Ministry of the Internal Affairs of the Russian Federation ordered the Investigative Department of the Department of the Interior for the Leninskiy District to take specific investigative actions including questioning of the employees of the Burn Care Hospital where the applicants' son was admitted, employees of the Custody and Guardianship Agency that were informed of adoption, representatives of press and TV media who prepared the publications and TV programme. The investigation and its outcome are supervised.

5. The Court indicated that the domestic courts by the delivering of the decision dismissing the claim of L.V. Ageyeva against the OOO News Media-Rus (the owner of the press sources where the photos of the applicant and allegations of her guilt of ill-treating the child prior to criminal investigation completion were published) seeking to protect her honour, dignity and reputation, did not take into account the presumption of innocence and did not strike a fair balance between the applicant's rights and the defendant's freedom of expression.

The respective court decisions dismissing the claim of L.V. Ageyeva were delivered under the civil proceedings. Pursuant to Civil Procedure Code of the Russian Federation, a final decision of the domestic court may be subject to review in view of the newly discovered circumstances on the application of L.V. Ageyeva or her representative following the Court's decision.

At the same time, L.V. Ageyeva (or her legal representative) did not file any complaints with Moscow courts.

II. General Measures:

1. Measures to eliminate violations caused by the adoption revocation

The Court found that the court's decision to reverse adoption by the applicants was disproportionate from the viewpoint of the children's best interests, and it noted that under national law the applicants did not have an opportunity to apply for restoration of their adoptive parental rights (in view of the newly discovered circumstances).

The Russian authorities took a number of measures in order to prevent similar violations in future.

1.1. In view of the Court's findings, the State Duma deputies introduced for examination by the State Duma the draft law that would provide in a judicial

proceeding for restoration of parental authority of former adoptive parents¹. The draft law adoption is scheduled for 2014 and at the moment the draft law is under approval of the State Duma Committee on Family, Women and Children Affairs.

1.2. In June 2013, i.e. after the events examined by the Court (in June 2009), the Plenum of the Supreme Court of the Russian Federation delivered a resolution² which directly provides that any restriction of human rights and freedoms shall not only be based on the federal law, but also to pursue important social and legal aim (for example, protection of public safety, morals, rights and legal interests of other persons), and it shall also be necessary in a democratic society, i.e. shall be proportionate to the important social and legal aim pursued. Failure to comply with any of these restriction criteria shall amount to violation of human rights and freedoms which are subject to judicial protection under the legal procedure.

The judgment in the case of *Ageyevy v. Russia* was forwarded to the Supreme Court of the Russian Federation which communicated the case to the lower courts.

The Russian courts are expected to take into account legal positions of the Court in view of the explanations of the Plenum of the Supreme Court of the Russian Federation in their practical application.

2. Measures to rectify violations on account of prohibition of the applicants access to the children

The Court found the violation of Article 8 of the Convention on account of excessively harsh measure depriving the applicant's of the opportunity to visit their children in the Social asylum for children and adolescents once the children had been removed.

In this regard, it shall be noted that the decision to deprive the applicants of opportunity to visit their children was caused by violations by the employees of the Social asylum who issued the above decision without taken the particular circumstances into account. At the moment the above employees can not be brought to responsibility due to the expiry of the period of limitations for disciplinary liability.

At the same time, it follows from the Court's judgement that prior to its delivery the decision to prohibit access had been quashed and the applicants had been provided with opportunity to visit their children. As noted above, at the moment the applicant have free access to their children in the Social asylum.

The judgment in the case of *Ageyevy v. Russia* was forwarded to the department of social development of Moscow City Mayor's Office which communicated the judgment to the Golyanovo District Custody and Guardianship Agency and Social Asylum for Children and Adolescents along with the necessary recommendations in order to prevent further violations alike.

The above authorities are expected to take the Court's findings into account in their practice.

¹ Draft law no. 390257-6 *On amendments to the Family Code of the Russian Federation with regard to restoration of adoptive parents in parental authority*.

² Plenary Resolution of the Supreme Court of the Russian Federation of 27.06.2013 no. 21 *On Application by Courts of General Jurisdiction of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the Protocols thereto*.

3. Measures to ensure protection of the confidential information on adoption and of the right for private life

The Court found the violation of Article 8 of the Convention on account of taking photos of the applicant's son and his injuries by the employees of the Burn Care Hospital, passing them further onto the State Duma deputy and on account of providing the journalists with the information about the child, giving them access to him and making photo and video of him.

The Court also found the violation of Article 8 of the Convention on account of the fact that L.V. Ageyeva did not succeed in her court proceedings seeking the protection of her honour, dignity and reputation against the press sources that had published the photos of herself and allegations of her guilt of ill-treating the child prior to criminal investigation completion. It is noted that when delivering the national courts' decisions dismissing the applicant's claim to protect the honour, dignity and reputation the principle of presumption of innocence has not been taken into consideration and the fair balance between the defendant's freedom of expression and the applicant's right to protect her reputation was not achieved.

The violations of the right to respect for private and family life found by the Court are individual and resulted from the failure of the employees of the Burn Care Hospital (there the boy was admitted for treatment) to comply with national law. At the same time, Russian legislation provides for sufficient guarantees with regard to respect for private and family life, and a number of additional relevant measures was taken after the events that had been examined by the Court, happened (in 2009).

3.1. In the Russian Federation the integrity of private life, personal (including medical) and family confidentiality³, confidential information about adoption⁴ are properly guaranteed.

Those guilty of unlawful disclosure of this information shall be brought to liability under the legal procedure⁵.

3.2. The employees of the Burn Care Hospital in charge of providing an unauthorised access of the third party to the applicant's son and disclosure of information about him during his stay in the Hospital (even before rendering of above judgment of the Court) were brought to disciplinary responsibility (the principal doctor of the hospital Pr. was reprimanded, the head of the burn care department P. was dismissed for serious breach of his duties).

The copy of the Court's judgment in the case of *Ageyevy v. Russia* was forwarded to the Moscow Mayor's Office (i.e. region where the violation took place) which communicated the judgment to the respective inferior agencies along with the necessary instructions.

The above authorities are expected to take the Court's findings into account in their practice.

³ Article 23 of the Constitution of the Russian Federation, Article 13 of the Federal Law of 21 November 2011 no. 323-FZ *On the Fundamentals of the Protection of Persons' Health in the Russian Federation*.

⁴ Article 139 of the Code of Criminal Procedure of the Russian Federation.

⁵ Articles 137 and 155 of the Criminal Code of the Russian Federation, Articles 13 and 14 of the Code of Administrative Offences.

3.3. In 2010, the Moscow Department of the Ministry of Health issued the instruction *On Fast Responding to Detected Cases of Physical and Mental Violation and Other Exploitation of Children*, where it provided for an extensive list of authorities to which the respective information can be reported, in order to regulate the procedure under which the heads of the health departments and of medical and preventive treatment facilities shall respond to possible cases of ill-treatment against the children.

In November 2010, the Moscow City Interdepartmental Committee on Juveniles and Protection of Their Rights, approved the Rules of Interdepartmental Cooperation aimed at detection of family problems, organization of cooperation with the families that find themselves in dangerous social situation (in a difficult living situation), in order to prevent any further violation of the rights of the children and to ensure relevant coordinated actions by the state authorities.

The Russian Authorities believe that the above measures will allow the mentioned authorities to avoid similar violations in future.

3.4. The following is stated with regard to the violations related to the dismissal of the applicant's claim against the mass media.

- The Russian legislation contains legal provisions providing the effective protection of honour, dignity, reputation, person's image, person's private life. The legislation also provides for liability for unlawful disclosure of the relevant information including cases when the consent to disclose is required or was not received from the person, and also for the distortion or disclosure of defaming information⁶.

The affected persons are entitled to claim compensation of pecuniary and non-pecuniary damages caused before the courts, and to request for rebutment of false information and withdrawal of the materials and tangible mediums (containing this information) from the civil circulation⁷.

- The Ruling of the Plenum of the Supreme Court of the Russian Federation *On Judicial Practice in Cases on Protection of Honour and Dignity and Reputation of Natural and Legal Persons* provides for detailed explanation of the above regulations that the courts shall rely on during examination of the respective cases⁸.

- In Ruling No. 21 of 27 June 2013 *On Application by the Courts of General Jurisdiction of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the Protocols thereto* the Plenum of the Supreme Court of the Russian Federation additionally explained to the courts that :

any restriction of human rights and freedoms must be based not only on law and pursue lawful purpose, but also must be necessary in a democratic society, i.e. be proportional to the legal aim pursued, so non-observation of one of these restriction

⁶ Section 8 of the Civil Code of the Russian Federation (hereinafter referred to as "the CC RF").

⁷ Articles 151, 152, 152.2 of the CC RF.

⁸ Resolution no. 3. of 24 February 2005.

criteria constitutes violation of human rights and freedoms which may be subject to judicial protection under the procedure prescribed by law;

restriction of human rights and freedoms is allowed only when there exist related and sufficient grounds for such restriction, as well as if the balance between legal interests of the person whose rights and freedoms are restricted and the legal interests of other persons, the state and the society is achieved;

if the court establishes the circumstances which favour the need to restrict a person's rights and freedoms such circumstances must be reflected in the judicial acts.

- The judicial practice being formed in the light of the explanations of the aforementioned plenary rulings of the Supreme Court demonstrates the effectiveness of the existing remedies for the honour, dignity and reputation.

So, by the judgment of Izmaylovskiy District Court of Moscow of 17 October 2012 (upheld by the court of appeal) in favour of X., Sobesednik-Media LLC was charged with RUB 150 thousand on account of the compensation for the non-pecuniary damage in connection with the interference with the plaintiff's private life due to the publication of her photo and personal information in the magazine without her consent.

By the judgment of that court of 23 October 2012 in favour of R., Sobesednik-Media LLC and M. was charged for RUB 50 thousand, each, on account of the compensation for the non-pecuniary damage in connection with the publication of M.'s interview containing the information whereof the part was recognized by the court to be untrue and discrediting R's honour and dignity, in the "Only Stars" magazine, the remaining part of claims were dismissed. In addition, by supplementary decision of 14 January 2013, the aforementioned court obliged Sobesednik-Media LLC to publish a retraction. By the appeal decision of the Judicial Division for Civil Cases of the Moscow City Court of 22 April 2013 the judgment of 23 October 2012 in the part concerning the satisfaction of R's claims was quashed, these claims were satisfied by the new decision, it was decided to charge Sobesednik-Media LLC and M. with the compensation for non-pecuniary damage (in the amount of RUB 50 thousand, each) due to untrue and discrediting R's honour and dignity information, as well as to publish the relevant retraction.

By the judgment of Volzhskiy District Court of Saratov of 29 January 2013 (upheld by the court of appeal) in favour of K. INFOMER LLC was charged with the compensation for the non-pecuniary damage for the publication of untrue information discrediting the honour and dignity of K's dead son in the electronic journal. Simultaneously the court obliged INFOMER LLC to delete the relevant text from the electronic journal.

By the appeal decision of the Judicial Division for Civil Cases of the Saint Petersburg City Court of 12 November 2013 the judgment of Smolninskiy District Court of Saint Petersburg of 15 August 2013 (dismissing the applicants' claims) was quashed, by the new decision in favour of S., V., and K. Information Agency Rosbalt ZAO was charged with the compensation of the non-pecuniary damage due to the publication on the website owned by the Company of the article which contained the information discrediting the plaintiffs' honour and dignity.

The similar court decisions have been lately delivered by the courts of Moscow, Moscow Region, Stavropol Region, the Republic of Mordovia, the Chuvash Republic etc.

4. Measures to communicate and publish the judgment

4.1. Pursuant to the Regulations on Representative of the Russian Federation at the European Court of Humans Rights - the Deputy Minister of Justice of the Russian Federation approved by the Decree of the President of the Russian Federation no. 310 of 29 March 1998, the judgment of the European Court in the case of *Ageyevy v. Russia* was forwarded to the Constitutional Court of the Russian Federation and competent authorities (including the Moscow City Court, the Supreme Court of the Russian Federation, the Ministry of Internal Affairs of the Russian Federation, the Ministry of Education and Science of the Russian Federation, the Federal Education and Science Supervision Service, the Prosecutor General's Office of the Russian Federation, the Moscow Mayor's Office) for taking relevant measures (under the competencies) and preventing similar violations in future.

The abovementioned agencies forwarded the copy of the Court's judgment to the relevant subordinate courts, structural divisions and territorial bodies along with necessary instructions.

4.2. The Russian text of the Court's judgment in the case of *Ageyevy v. Russia* was published in the ConsultantPlus legal reference system.

The Russian summary of the abovementioned judgment was published in the Bulletin of European Court (no. 9/2013, no. 1/2014), in the Garant legal reference system (Review of the Court's judgments and decisions in the cases against Russia for April 2013), and on the website of the Prosecutor General's Office of the Russian Federation.