

## SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS  
SECRETARIAT DU COMITE DES MINISTRES



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Meeting: 1259 meeting (7-9 June 2016) (DH)

Item reference: Action report (29/03/2016)

Communication from the Russian Federation concerning the case of Samartsev (Mikheyev group) against Russian Federation (Application No. 44283/06)

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Réunion : 1259 réunion (7-9 juin 2016) (DH)

Référence du point : Bilan d'action

Communication de la Fédération de Russie concernant l'affaire Samartsev (groupe Mikheyev) contre Fédération de Russie (Requête n° 44283/06) (**anglais uniquement**)

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**ACTION REPORT**  
**on execution of the judgment of the European Court of Human Rights**  
**in case no. 44283/06 *Samartsev v. Russia* (judgment of 2 May 2013,**  
**final on 2 August 2013)**

**Violation**

In its judgment in the case *Samartsev v. Russia* the European Court of Human Rights found a violation by the Russian authorities of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms on account of improper conditions of S.A. Samartsev's detention in the temporary detention facility (hereinafter referred to as "the IVS"), ill-treatment by police officers and failure to carry out an effective investigation into applicant's allegations of ill-treatment.

**Individual Measures:**

**1. Just Satisfaction**

Pecuniary Damage	Non-Pecuniary Damage	Legal Costs and Expenses	Total
	EUR 9,000	EUR 1,750	EUR 10,750
The amount was fully and timely paid on 30 September 2013 in roubles (payment order no. 1068543 in the amount of RUB 1,234,879.05).			

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**2.** Currently the applicant is not kept in the temporary detention facility and is serving a prison sentence in the correctional colony according to the court's decision. The applicant is provided with proper conditions of detention in accordance with the international standards.

**3.** The Court noted the following shortcomings with regard to the ineffectiveness of the investigation:

- the applicant, the ambulance doctor (who had established the injuries of S.A. Samartsev), the applicant's defence counsel and co-prisoners (who were in contact with the applicant after the alleged incident) were not questioned in the course of preliminary inquiry;
- a meticulous comparison of the evidence in order to eliminate inconsistencies were not carried out;
- having established that police officers were not involved in causing the applicant's injuries, the investigative bodies failed to provide a plausible explanation of the possible origin of these injuries.

**3.1** On 29 January 2014, pursuant to the judgment of the European Court, the Presidium of the Supreme Court ordered to resume the court proceedings based on S.A. Samartsev's complaint about the actions of police officers, in view of the newly discovered circumstances. Following the above proceedings, all the earlier refusals to

institute criminal proceedings in the applicant's complaint and the courts' judgments to find these procedural decisions lawful, were quashed.

**3.2** At the same time, the Investigation Department of the Investigative Committee for the Republic of Tatarstan instituted criminal proceedings based on S.A. Samartsev complaint about his ill-treatment.

During the investigation, the investigative bodies took a number of additional actions to establish the actual circumstances of the case and rectify the violations that had been found by the Court. In particular, S.A. Samartsev was additionally interviewed as a victim. The investigative bodies also interviewed the ambulance paramedics, who provided first aid to the applicant in the IVS, the applicant's defence counsels, his co-prisoners and other persons, who were indicated by the applicant as witnesses.

The applicant alleged that he had been beaten up in the IVS by police officers, in particular that he had been repeatedly beaten in his stomach, back, head, including with an electric shock baton. He also alleged that he had cut his veins with a blade in order to stop beating.

However, according to the forensic medical examination and situation analysis of 18 September 2013, no traces of physical impact were found on the applicant's back and chest. No traces (redness, burns) evidencing use of an electric shock baton were found on the applicant's body either. According to the above examination, the following injuries were found on the applicant's body: injuries on his forearms (caused by his attempted suicide), scratches on his forehead, cheek bones, and nose, which were not harmful to his health and located in the areas where they could be easily inflicted with the applicant's own hands.

The ambulance paramedics, who provided first aid to the applicant in the IVS, stated that the visual examination showed that the applicant had scratches on his forehead, cheek bones, and nose, and that these injuries were sustained when he fell down on the floor during the epileptic seizure (these findings were confirmed by the applicant himself during the examination).

The applicant's co-prisoners were also interviewed, and they stated that they had never seen the applicant subjected to the physical or psychological abuse by police officers, or any injuries on the applicant's body.

The applicant's defence counsels, P., M., K. and K.L., stated that they had not received any complaints from the applicant about the abuse by police officers. They also stated that they had no information of this kind at their disposal.

The police officers, who were interviewed, stated that they had never subjected S.A. Samartsev to physical or psychological abuse and had never forced him to make any statements. The above statements of police officers were confirmed by the results of their cross-examination with the applicant, and are consistent with other evidence obtained.

The applicant's statements are inconsistent and contradictory. For example, he stated that police officer Z. ordered to torture him. But during cross-examination the applicant changed his statement and said that this police officer was not involved in the incident. Likewise, the applicant was changing his statements in respect of other police officers.

Based on all the evidence received, the investigative bodies held that the applicant's injuries could have been caused by his attempted suicide and actions taken by police officers to restrict his movements when he fell down on the floor with the epileptic seizure. The same is confirmed by statements of witnesses and by other evidence.

On 12 July 2014 the criminal investigation was terminated for lack of *corpus delicti*. The Investigative Committee and the Prosecutor General's Office found this procedural decision lawful; the applicant did not appeal against it to the investigative bodies, prosecutor's office or court.

### **General Measures:**

1. The Russian authorities take actions to prevent torture and other ill-treatment by police officers, and to ensure the effective investigation of any incidents of ill-treatment of detainees, in the context of the execution of the Court's judgments in the *Mikheyev* group of cases.

2. The actions to address the failure to ensure adequate detention conditions in temporary detention facilities are taken in the context of the execution of the pilot judgment in the case *Ananyev and Others v. Russia* and judgments in the *Fedotov* group of cases.

3. The European Court's judgment in the case *Samartsev v. Russia* was forwarded to the Constitutional Court of the Russian Federation and to the competent authorities (the Supreme Court, the Prosecutor General's Office, the Supreme Court of the Republic of Tatarstan, the Federal Penitentiary Service, the Ministry of the Interior of the Russian Federation, the Investigative Committee of the Russian Federation) for practical consideration and application of measures under their jurisdiction to prevent similar violations in future.

These competent state authorities forwarded copies of the Court's judgment to their respective departments and territorial bodies along with the required instructions for practical consideration of the Court's legal positions.

4. The Court's judgment in the case *Samartsev v. Russia* was published in Russian on the official websites of the Investigative Committee and the Ministry of Justice, and it was also published in English in Consultant Plus legal reference system. The information about this judgment was published in Russian in Garant legal reference system.

### **Conclusion:**

The Russian authorities consider that the violations in respect of the applicant have been rectified with the individual measures to the extent possible. The Russian authorities therefore complied with their obligations under Article 46 of the Convention, and the Committee of Ministers of the Council of Europe may discontinue its supervision over this part of the judgment.