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

Item reference: Action report (26/04/2016)

Communication from the Russian Federation concerning the case of Biryuchenko and Others (Klyakhin group) against Russian Federation (Application No. 1253/04)

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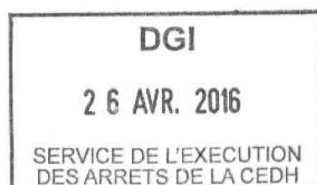
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Réunion : 1259 réunion (7-9 juin 2016) (DH)

Référence du point : Bilan d'action

Communication de la Fédération de Russie concernant l'affaire Biryuchenko et autres (groupe Klyakhin) contre Fédération de Russie (Requête n° 1253/04) (**anglais uniquement**)

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**ACTION REPORT**  
**on the execution of the judgment of the**  
**European Court of Human Rights in case**  
**nos. №№ 1253/04, 25902/05 and 40116/08**  
***Biryuchenko and Others v. Russia***  
**(judgment of 11 December 2014, final on the same date)**

**Violation**

In the judgment *Biryuchenko and Others v. Russia* the European Court found a violation of Article 5 § 1 of the Convention, due to unlawful detention of the applicants in 2002-2005 without relevant judicial acts delivered; Article 5 §§ 3 and 4 of the Convention, due to unreasonably long application of the mentioned measure of restraint with regard to Yu. A. Biryuchenko, G.L. Oynas, undue consideration of appeals lodged by those applicants against the relevant court's decisions; Article 6 § 2 of the Convention, due to violation of the presumption of innocence principle in view of the circumstance that the decisions to extend the term of detention contained reference to the fact that A.A. Leontyev and R.S. Ponomarev have committed a crime.

**Individual Measures:**

**1. Just satisfaction.**

№	Full name of the applicant	Pecuniary damage	Non-pecuniary damage	Legal costs and expenses	Payment
1	Biryuchenko, Yuriy Aleksandrovich		EUR 3.000		The sum in roubles was fully paid on 22 May 2015 at the exchange rate applicable as of the payment date, including interest on the overdue payment (payment order no. 140446 for the amount of 166,796.30 roubles).
2	Oynas, German Leonidovich		EUR 3.000		The sum in roubles was fully paid on 22 May 2015 at the exchange rate applicable as of the payment date, including interest on the overdue payment (payment order no. 139897 for the amount of 166,796.30 roubles).
3	Leontyev, Aleksandr Anatolyevich		EUR 3.000		The sum in roubles was fully paid on 1 April 2015 at the exchange rate applicable as of the payment date, including interest on the overdue payment (payment order no. 38041 for the amount of 186,499.78 roubles).
4	Ponomarev, Roman Sergeyevich		EUR 3.000		The sum in roubles was fully paid on 1 April 2015 at the exchange rate applicable as of the payment date, including interest on the overdue payment (payment order no. 38025 for the amount of 186,499.78 roubles).

**2.** At present the applicants are not detained and are free (Yu. A. Biryuchenko was conditionally sentenced, as it was reflected in paragraph 22 of the judgment; and G.L. Oynas, A.A. Leontyev and R.S. Ponomarev were released on parole).

**3.** Due to violation of Article 5 §§ 3 and 4 of the Convention as well as Article 6 § 2 of the Convention committed by authorities of the Russian Federation and established by the Court, all earlier decisions for extension of the detention with respect to the applicants were found unlawful and quashed by the decision of the

Presidium of the Supreme Court upon the recommendation of the Chairman of the Supreme Court.

### **General Measures:**

1. As for the violation of Article 5 § 1 of the Convention, the European Court noted that within the period from 2002 to 2005 the applicants were detained in the absence of detention orders, since at the material time the national courts interpreted the provisions of the Code of Criminal Procedure of the Russian Federation as allowing detention of an accused without court decision within six month from the date when a court had received the case file.

After the events that became the subject of the Court's consideration, the Russian authorities took a number of additional measures to prevent such type of violations in future, whereof the Committee of Ministers of the Council of Europe was informed in details (document DH-DD(2015)1171). The Committee of Ministers of the Council of Europe considered the measures taken to prevent such violations to be sufficient, and the supervision by the Committee of Ministers of the Council of Europe in this respect was closed by Final Resolution CM/ResDH(2015)249.

2. Implementation of general measures to solve the problem of excessive length of detention, non-compliance with the requirements to the consideration of an appeal against a detention order, as well to prevent similar violations in the future continues within the framework of execution of judgments in the *Klyakhin* group of cases and "pilot" judgment *Ananyev and Others v. Russia*.

3. As to the violation of Article 6 § 2 of the Convention in cases against A.A. Leontyev and R.S. Ponomarev, it was noted by the European Court that the national courts referred to the applicants' guilt in crimes in their decisions to extend the term of detention, i.e. before the sentence is delivered.

It should be noted that the violation mentioned is a specific and isolated case.

Russian legislation contains sufficient guaranties, correspondent to the requirements of the Convention, with regard to the presumption of innocence, and additional measures are taken to prevent the violations established by European Court in the future after the mentioned events.

3.1. According to Russian legislation<sup>1</sup>, "everyone who is accused of committing a crime shall be considered innocent unless his guilt is proved in a way established by the Federal law and determined by a final court sentence."

3.2. Resolution of the Plenum of the Supreme Court of the Russian Federation of 19 December 2013 no. 41 On the Application by the Courts of Preventive Measures in the Form of Detention, House Arrest and Bail expressly states that the court, when verifying the reasonableness of suspicion that a person has committed a crime, can not discuss the issue of the person's guilt<sup>2</sup> in committing the crime, and the decision regarding the detention on remand as the measure of restraint and on extension of term of detention should not contain any phrases regarding the person's guilt<sup>3</sup>.

<sup>1</sup> Article 49 of the Constitution of the Russian Federation, Article 14 of the Criminal Procedural Code of the Russian Federation.

<sup>2</sup> Paragraph 2 of Resolution of the Plenum of the Supreme Court of the Russian Federation of 19 December 2013 no. 41

<sup>3</sup> Paragraph 29 of Resolution of the Plenum of the Supreme Court of the Russian Federation of 19 December 2013 no. 41

4. The European Court's judgement in case *Biryuchenko and Others v. Russia* was forwarded to the Constitutional Court of the Russian Federation and to the competent state authorities (the Supreme Court, the General Prosecutor's Office, the Leningrad Regional Court, Saint-Petersburg City Court, the Federal Penitentiary Service of Russia) for taking into account in practice and adopting measures to prevent similar violations in the future in accordance with the jurisdiction.

The named competent state authorities communicated copies of the European Court's judgment to their structural subdivisions and territorial agencies with necessary instructions to take into account the European Court's legal positions in their practice.

5. The text of the European Court's judgement in *Biryuchenko and others v. Russia* is published in Russian on the official websites of the Ministry of Justice, the General Prosecutor's Office, on the Supreme Court's internal website (accessible to all the courts of general jurisdiction in Russia), and in the "Consultant Plus" legal reference system. The information about this judgment was published in Russian in the "Garant" legal reference system.

#### **Conclusion:**

The Russian authorities believe that the individual measures taken have eliminated violations against the applicant to the maximum possible extent and the general measures (in the part of violation of the principle of the presumption of innocence, established by the European Court, in the form of mentioning the applicants' guilt in crime in the decisions to extent the term of detention on remand, before the judgment was delivered) will prevent similar violations in the future, and, therefore, the Russian authorities have fulfilled their obligations under Article 46 of the Convention and the Committee of Ministers' of the Council of Europe supervision of issue in this part may be ceased.