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Date: 28/11/2019

DH-DD(2019)1423

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Meeting: 1362nd meeting (December 2019) (DH)

Communication from the applicant (28/11/2019) in the case of PICHUGIN (Klyakhin group, 46082/99) v. Russian Federation (Applications No. 38623/03, 38958/07)

Information made available under Rule 9.1 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1362^e réunion (décembre 2019) (DH)

Communication du requérant (28/11/2019) relative à l'affaire PICHUGIN (groupe Klyakhin, 46082/99) c. Fédération de Russie (requête n° 38623/03, 38958/07) (**anglais uniquement**).

Informations mises à disposition en vertu de la Règle 9.1 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

28 NOV. 2019

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

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27 November 2019

The PICHUGIN CASES listed for debate in the 1362nd CMDH meeting (December 2019)

Execution of the Judgments of the Court in the cases of A.V. Pichugin v Russia (Application No 38623/03), final on 19 March 2013 and of A.V. Pichugin (No 2) (No 38958/07), final on 6 June 2017

Two Judgments of the Court held that Mr Pichugin received unfair trials

1. Mr Pichugin was the former head of security at Yukos Oil Company. He was arrested on 19 June 2003 and has been detained ever since. He is the last remaining person targeted in the Russian authorities' crackdown on Yukos Oil Company who is still serving sentence. He is one of the very few applicants before the Court to have had two successive separate trials, both held to be unfair by the Court, resulting in two separate but related violations of Article 6 of the Convention.
2. On 30 March 2005 Mr Pichugin was sentenced to twenty years' imprisonment after the first trial which the Court held was unfair (*Pichugin I v Russia*). The trial was held in private without reason and the defence was not permitted to question the 'decisive' prosecution witness. The Court's judgment of 23 October 2012 found violations of Articles 5 and 6(1) and 6(3), but noted that under Russian law the Article 6 violation might lead to reopening of the proceedings and a fair retrial.
3. Following the Court's judgment the Pichugin case was referred to the RF Supreme Court to determine whether, in the light of the violations found, the case should be reopened and a fair retrial held. Exceptionally, on 23 October 2013, the RF Supreme Court expressly contradicted the Court's judgment, both as to the requirement for a public hearing and the need for the defence to question the decisive prosecution witness. It declined to order a retrial.
4. On 6 August 2007 Mr Pichugin was convicted in a second trial on further charges and sentenced to 21 years, amended on appeal, in the light of his existing (unfair) conviction in the first trial, to life imprisonment. On 6 June 2017 the Court held that the second trial was also unfair in violation of Article 6, both because of the extremely prejudicial comments of the Deputy Federal Prosecutor and the investigator made in the mass media, which asserted guilt and compromised the presumption of innocence, and also because the evidence of a defence witness had been treated differently from, and as less persuasive than, that of a prosecution expert (*Pichugin II v Russia*).

5. Following the Court's second judgment the *Pichugin II* case was similarly referred to the RF Supreme Court to determine whether, in the light of the violations found, the case should be reopened and a fair retrial held. Exceptionally, on 8 November 2017, the RF Supreme Court again expressly contradicted the Court's judgment, both as to the denial of the presumption of innocence and the unfair treatment of the defence witness in the second trial, and declined to order a retrial.
6. As a result, Mr Pichugin has served sixteen years' imprisonment and continues to serve the sentence imposed following the first unfair trial and increased due to the second unfair trial, without any redress or *restitutio in integrum* for the violations established in two judgments of the Court. That is a unique failure to execute two judgments under Article 46 of the Convention.

The CMDH's response: The *Pichugin* cases have been examined six times but not resolved

7. The CMDH has examined the non-execution of the Pichugin judgments and the exceptional conduct of the RF Supreme Court repeatedly¹. The RF Supreme Court's decisions not to order a fair retrial in the Pichugin cases are inconsistent with that court's practice in other comparable cases where the Court has found violations of the right to a fair trial², where the applicants have been released and where those cases have therefore been resolved by the CMDH.
8. The RF Supreme Court has decided in both the Pichugin cases not to order a retrial despite the Court's findings of violations of the Convention. The respondent Government must find other appropriate means to execute the Court's judgments and provide Mr Pichugin with redress.
9. Under Article 46 of the Convention the CMDH must consider the individual measures which are required in the light of the particular circumstances of the victim of the violations, to ensure compliance with the judgment: see *Ocalan v Turkey* GC (No. 46221/99, judgment of 12 May 2005) at paragraph 210. The Russian authorities are not obliged to order a retrial, but they are obliged to provide redress for the violations and account to the CMDH for their actions taken pursuant to Article 46.
10. Thus at the 1280th meeting on 7 to 10 **March 2017** the CMDH 'deeply regretted that, in the *Pichugin* case, no information had been submitted on the availability of other avenues of redress capable of overcoming the failure of those utilised so far, and strongly urged the authorities to explore further avenues to erase the consequences of the violations found'.
10. At its 1318th meeting on 7 June 2018 the CMDH considered both the *Pichugin I and II Cases* and decided:

¹ The Pichugin cases have been examined as part of the *Klyakhin* Group of cases on the following occasions: 10 December 2015 CM/Del/DH(2015)1243/H46-17 ; 8 June 2016 CM/Del/DH(2016)1259/H46-28; 21 September 2016 DH-DD(2016)871; 10 March 2017 CM/Del/DH(2017)1280/H45-25 ; 21 September 2017 CM/Del/DH(2017)H46-23, when the examination of the *Pichugin II* case was joined to that of *Pichugin I*; and 7 June 2018 CM/Del/DH(2018)1318/H46-20

² See *Romanova* Case CM/Notes/1259/H46-28; *Belashev* Case Action Report of May 2014, para 6

- ‘3. as regards the special issues of individual measures raised in the [...] two *Pichugin* cases,
- reiterated their earlier conclusions that necessary progress had not been achieved with regard to the issue of redress for the violations found in the first two cases;
 - noted the information submitted by the authorities in the second *Pichugin* case that the Supreme Court had reopened the proceedings as provided by Russian law and that the Presidium of the Supreme Court had concluded that the violations found by the European Court had not influenced the outcome of the case, its lawfulness, the reasonableness and fairness of the sentence and did not call for the annulment or reversal of the court decisions in this case and the holding of a new trial;
 - regretted, in view of the outstanding execution issues, the seriousness of the violations established and the gravity of the sanction imposed, the absence of any tangible measure of redress;
4. in view of the absence of convincing remedial action to erase the consequences of the violations found in these three cases, exhorted the authorities to take such action without further delay;’
11. On 28 October 2019 the respondent Government lodged its ‘Revised Action Plan’ (DH-DD(2019)1223) relating to the *Klyakhin* Group of cases with which the *Pichugin* cases are combined. Despite the terms of the CMDH decisions referred to above, that Plan does not even mention the *Pichugin* cases. Indeed, since the CMDH decision of **March 2017**, quite apart from the CMDH’s most recent decision of June 2018, the Russian authorities have not taken any further action in the *Pichugin* cases. They have not proposed any change in Mr *Pichugin*’s circumstances.

Consequences for Mr Pichugin

12. Mr *Pichugin* has submitted two pardon applications to the Presidential Administration, first in November 2015 and then in April 2017. The initiative to seek a pardon, which in Russian law does not involve an acknowledgement of guilt, arose from an unexpected visit on 10 September 2015 to the Orenburg Region Federal Correctional Facility No. 6 in Sol-Iletsk, near the Kazakh border, where Mr *Pichugin* is imprisoned, from Mikhail Aleksandrovich Fedotov, Chairman of the Russian Federation Presidential Council for Civil Society Development and Human Rights. Mr Fedotov recommended that Mr *Pichugin* should seek a pardon and stated that he and the Presidential Council would support such an application. The pardon request was nevertheless rejected in April 2016.
13. In the autumn of 2016 Mr *Pichugin*’s 80 year old mother wrote to the President seeking her son’s pardon, but was informed that a request could only be made by Mr *Pichugin* himself. Therefore on 28 April 2017 Mr *Pichugin* made a further pardon request: it was rejected on 28 October 2017.
15. There is no mechanism for Mr *Pichugin* to address the failure of the Russian authorities to redress these violations of the Convention. As the CMDH has repeatedly recognised, the option of seeking the reopening of the first conviction and the second conviction by means of referring the cases to the RF Supreme Court and for a fair retrial to be held has twice resulted in failure. In response to both the *Pichugin* I and II judgments the RF Supreme Court refused to order a retrial.

16. The inconsistency of the RF Supreme Court in those decisions when compared with other cases in the *Klyakhin* Group³ leads Mr Pichugin to the conclusion that he has been singled out for different treatment. Given that the violations in his second trial compounded those in his first trial, he has no confidence in seeking a retrial, even if there were a mechanism to achieve that which was open to him. On objective criteria, the passage of time since the original trials and the still longer period since the events at issue in them, would in any event make conducting a fair retrial now unrealistic.

New endorsements of the severity of Mr Pichugin's position

17. The severity of Mr Pichugin's position has been highlighted publicly in two ways since the CMDH last examined the case in June 2018.
 - a. First, On 27 May 2019 the United Nations Working Group on Arbitrary Detention (UNWGAD) published its report 89/2018 which was adopted during its 83rd session on 23 November 2018 relating to a complaint lodged by Mr Pichugin concerning his detention (https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session83/A_HRC_WGAD_2018_89.pdf). In the UNWGAD's opinion Mr Pichugin's continuing detention is in contravention of Articles 2, 7, 9, 10, 14 and 26 of the ICCPR and is arbitrary [ibid #83] and taking into account all the circumstances, the appropriate remedy would be to release Mr Pichugin immediately [ibid #85].
 - b. Secondly, also in May 2019 a Report was published entitled *The Kremlin's Political Prisoners*, which was commissioned by the Lantos Foundation, Free Russia, the Human Rights Foundation and the Raoul Wallenberg Centre for Human Rights. The Report was prepared with support from Memorial Human Rights Centre and relates to the cases of 182 individuals detained in Russia for political reasons: <https://www.4freerussia.org/wp-content/uploads/sites/3/2019/04/The-Kremlins-Political-Prisoners-May-2019.pdf>. Mr Pichugin is the first of the 182 individuals whose cases are analysed. He is described as 'the Kremlin's longest serving political prisoner' with the note that Raoul Wallenberg Centre for Human Rights and the Lantos Foundation have both recognised Pichugin as a prisoner of conscience (ibid pps 26-7).
18. Both the UNWGAD conclusions and the Report on the Kremlin's Political Prisoners highlight the necessity to hold the respondent Government to account for the violations of the Convention which remain unaddressed in the Pichugin cases.

The next step

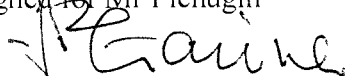
19. It follows that, seven years after the Court's judgment finding violations of Articles 5 and 6, six years after the RF Supreme Court refused to order a retrial in the *Pichugin I* case, and two years

³ *Egorychev v Russia* No 8026/04, judgment of 17 May 2016 at [30] in the RF Government's May 2018 Action Plan concerning the *Klyakhin* Group of cases and *Fedorin v Russia* No 9536/10, judgment of 15 November 2016 at [61] in the May 2018 Action Plan concerning the *Klyakhin* Group of cases

since the RF Supreme Court unprecedentedly again refused to order a retrial in the *Pichugin II* case. Mr Pichugin still awaits an appropriate form of *restitutio in integrum* for the violations of his rights which the Court's two judgments have established.

20. Other comparable cases have been treated differently and the victims of those violations have been released. There is no justification for this difference in treatment which remains unexplained.
21. The respondent Government's failure even to refer to the Pichugin cases in its recent Revised Action Plan in the *Klyakhin cases* is inexcusable. There has been a complete failure to meet the strict obligations under Article 46 to comply with two judgments to which the respondent Government is a party. In the light of the very long sentence which Mr Pichugin has already served of more than fifteen years, the appropriate measure would be his immediate release.

Signed for Mr Pichugin



JP Gardner

(One of Mr Pichugin's representatives)

27 November 2019