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

Communication from the applicant (28/11/2019) in the case of Olisov and Others (Zontov) (Mikheyev group) v. Russian Federation (Application No. 10825/09)

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 Olisov et autres (Zontov) (groupe Mikheyev) c. Fédération de Russie (requête n° 10825/09) (**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.

DGI

28 NOV. 2019

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH



Memorandum of Russian non-governmental organisation
“Committee Against Torture”

regarding the execution of a judgment
of the European Court of Human Rights
on a case “Olisov and others v. Russia” (no. [35192/14](#) - **Mr. Zontov**)

**(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)**

Nizhniy Novogorod
2019

Introduction

1. This memorandum has been prepared by the Russian NGO “**Committee Against Torture**” (Russia, Nizhniy Novgorod City, Osharskaya Street, 96b).
2. This memorandum states the views of the above NGO on **individual measures** that Russia needs to implement in order to execute the judgment of the ECHR concerning ill-treatment in police structure on the case of Mr. Zontov (see **Judgment Olisov and others v. Russia on May 2, 2017, final on November 13, 2017**).
3. The present memorandum focuses on the specific steps, beyond the payment of the sum awarded by the Court as just satisfaction, needed to remedy violations established by the Court in the mentioned case, in particular the failure to conduct an effective investigation into ill-treatment by police.

Summary of the Judgment

4. On 27 August 2011 nine police officers (Shafiev R.R., Ryzhkov I.V., Pivovarov A.I., Ginyatulin A.R., Sardaryan, Melnikov A.B., Khusnutdinov A.Z., Zainutdinov, Saliev A.K.) were ordered to arrest the applicant, who was suspected of having committed the robbery. At about 10 a.m. they stopped the applicant on a street, tied his hands with a belt and took him to the police department (**§44 of the Judgment**).
5. At the police department the police officers, in particular Mr. Ogay, demanded that the applicant confess to having attacked the woman. He punched the applicant twice in the chest, then hit the applicant on his feet with a rubber truncheon for about forty minutes, while the other police officers pinned him down on the floor, holding onto his arms and legs. He was then asked to stand up on his feet but was unable to do so, fell over and was hit by the truncheon on the left side of his torso. His feet were stepped on and he was suffocated with a plastic bag. During the suffocation, which lasted three or four hours, he fainted several times. The applicant wrote a “statement of surrender and confession” as requested (**§45 of the Judgment**).
6. On 28 August 2011 the applicant was placed in the temporary detention facility, where injuries on his body were recorded: bruises on the chest, an abrasion on the face on the left cheek bone, many abrasions on the waist, abrasions on both wrists and scars on the left forearm. On 29 August 2011 the applicant was taken to a traumatology centre, where he was diagnosed with contusion of the left side of his chest and both wrists (**§48-49 of the Judgment**).
7. On 5 September 2011 the applicant lodged a criminal complaint concerning his alleged ill-treatment by the police. The Orenburg town investigative committee carried out a pre-investigation inquiry. The operative police officers stated that as soon as the applicant had seen them he had run away and they had lost sight of him. When running

away the applicant had fallen over several times. The police officers had split into several groups in order to find and stop him. Police officers had caught up with the applicant, knocked him to the ground and handcuffed his hands behind his back. Ryzhkov suggested that any bruises or abrasions on the applicant's body could have been received as a result of his falling over when trying to run away from them. The police officers denied any deliberate use of force against the applicant either during his arrest or afterwards at the police station when they interviewed him (**§55 of the Judgment**).

8. On 5 October 2011 an investigator refused to initiate criminal proceedings pursuant to Article 24 § 1 (2) of the Code of Criminal Procedure for lack of the elements of a crime under Articles 285 and 286 of the Criminal Code (on abuse of powers) in the acts of the police officers. Relying on the police officers' statements, the investigator found that the police officers had acted lawfully in using handcuffs and "blocking" the applicant, a suspect in criminal proceedings, who had tried to escape and resisted his arrest. Subsequently **fourteen more refusals** to open a criminal investigation into the applicant's allegations of ill-treatment were issued by investigators and annulled by their superiors within the investigative committee for being based on incomplete inquiries (**§56 of the Judgment**).

9. On April 16, 2014 the applicant lodged application to the ECtHR.

10. On 2 June 2014 investigator initiated criminal proceedings into the applicant's allegations under Article 286 § 3 (a) of the Criminal Code. He held that it was impossible to resolve the contradictions existing in the case-file material by means of a pre-investigation inquiry, and that it was therefore necessary to open a criminal case and examine the applicant's allegations by way of a criminal investigation, as there was sufficient data to indicate that a crime under Article 286 of the Criminal Code might have been committed (**§60 of the Judgment**).

11. On 3 June 2014 the acting prosecutor annulled the investigator's decision as unlawful and ill-founded, disagreeing with the investigator that there was sufficient data to indicate that a crime could have been committed. The prosecutor stressed that it was possible to implement urgent measures aimed at establishing the circumstances of alleged ill-treatment within the framework of a pre-investigation inquiry, in particular by ordering forensic medical examinations. He noted that the pre-investigation inquiry had established that the applicant had received the injuries during his arrest as a suspect, and that in the final judgment in the applicant's criminal case the applicant's allegations of ill-treatment had been found unsubstantiated and that it was therefore impossible to question that finding (**§61 of the Judgment**).

12. On 30 July 2014 investigator refused to open a criminal case. His decision was annulled on 18 August 2014. Subsequently one more decision refusing to open a criminal case – of 2 October 2014 – was also annulled on 16 March 2015 by an acting

head of the procedural supervision department of the Orenburg regional investigative committee.

13. On march 18,2015 the Court communicated application of Mr. Zontov.

14. On 26 March 2015 investigator once more refused to open a criminal case. In this decision, as in the previous decisions, it was found that the police officers had acted lawfully in using handcuffs and physical force, in particular for the purposes of “blocking” the applicant, who had actively resisted arrest. The applicant had received the injuries when trying to escape and resisting arrest. The injuries on his wrists had been caused by the lawful use of handcuffs (**§64 of the Judgment**). This decision was annulled on 21 May 2015 by an acting head of the procedural supervision department of the Orenburg regional investigative committee.

15. On 22 May 2015 the acting district prosecutor pointed to flagrant violations of the criminal procedural law, in particular the reasonable time requirement for examination of reports about crimes. He noted that, due to the lack of supervision and the acquiescence of the investigative committee management, the investigative committee had failed to conduct a thorough and objective inquiry for more than four years – thereby violating the applicant’s rights – and that this constituted a serious disciplinary offence.

16. On 1 July 2015 investigator again refused to open a criminal case (**see Annex 1**) based on the same reasons. On 17 July 2015 this decision was annulled (**see Annex 2**).

17. On 20 July 2015 investigator refused to open a criminal case (**see Annex 3**), the applicant claimed to the district court which found this decision lawful (**see Annex 4**). The applicant appealed this decision, on 15 June 2016 the appeal court agreed with the district court that refusal of 20 July 2015 is lawful (**see Annex 5**).

18. On 7 April 2017 the applicant claimed to the Supreme court (**see Annex 6**), by its judgement of 16 April 2015 the Supreme court found refusal to open criminal case of 20 July 2015 lawful and well-motivated (**see Annex 7**).

19. At the same time, on **May 2, 2017** the European Court of Human Rights held that there had been a violation of Article 3 of the Convention under its substantive and procedural limbs on account of the ill-treatment of Mr. Zontov and the failure to effectively investigate the ill-treatment of the applicant. The Court further held that the acts of violence to which the applicant was subjected during the police interviews, given their severity and the aim of obtaining confessions, **amounted to torture**.

20. After that, on 7 December 2017 the applicant filed a request to the Supreme Court (**see Annex 8**). On **23 May 2018** (**see Annex 10**) the Supreme Court quashed the decision of the district court and the regional court decision **and obliged the respective authorities to redress the violations**. In its decision the Supreme Court inter alia

reiterated that the European Court of Human Rights had found a violation of Article 3 of the Convention in both its material and procedural aspects on account of the abduction and ill-treatment of Mr. Zontov and the failure to effectively investigate his complaints.

21. On **May 17, 2018** the refusal to open a criminal case of 20 July 2015 was annulled by the head of the investigative department (see **Annex 11**). But on 16 June 2018 investigator again refused to open a criminal case (see **Annex 12**). On 28 June 2018 this decision was annulled (see **Annex 13**).

22. On **July, 2018** investigator again refused to open a criminal case (see **Annex 14**). On 27 July 2018 this decision was annulled (see **Annex 15**).

23. At the same time, having received the decision of the Supreme court, the lawyers of the Committee against torture again appealed (see **Annex 16**) to the district court of Orenburg the four years ago decision of the Prosecutor (see **par. 11 above**) by which the prosecutor annulled the investigator's decision to open criminal case as unlawful and ill-founded.

24. During consideration of this complaint on August 7, 2018 (see **Annex 18**) it became clear that on August 2, 2018 (see **Annex 17**) the Deputy Prosecutor of the Orenburg region Andrey Vyazikov initiatively cancelled the decision of Prosecutor that allowed the Investigative Committee to resume work on criminal case.

25. Despite the fact that the case was transferred to the first Department for investigation of particularly important cases, its investigation was conducted superficially and formally and on March 4, 2019 (see **Annex 21**) the case was dismissed. On 25 June 2019 this decision was annulled (see **Annex 22**).

26. After 1,5 months, on September 15, 2019 the investigator Azamat Zhamansariev for the second time dismissed criminal case for the same reasons as previous one (see **Annex 23**).

27. In this circumstances the applicant draws the Committee of Ministers' attention to the fact that the Court's judgment of November 13, 2017 Olisov and others v. Russia has still not been implemented in full.

28. Applicable methods of ECtHR decisions implementation include not only compensation but also other ways of restoration remedies. According to Article 413 (1) of a Criminal Procedure Code of the Russian Federation the court sentence, ruling or resolution, which has come into legal force, may be cancelled and the proceedings on a criminal case may be resumed because of new or newly revealed circumstances. Seen as new circumstances shall be: "a violation of the provisions of the Convention on the Protection of Human Rights and Basic Freedoms, established by the European Court of Human Rights, during the examination of the criminal case by a court of the

Russian Federation, involved in: a) an application of the federal law, not corresponding to the provisions of the Convention on the Protection of Human Rights and Basic Freedoms; b) other violations of the Convention on the Protection of Human Rights and Basic Freedoms". This means that the model of the form of restoration remedies in reviewing criminal cases under new circumstances in the criminal procedure in the Russian Federation highlights that one of conditions of cancellation or modification of enforceable judicial decision is a Judgment of the European Court of Human Rights.

29. The applicant remains deeply concerned about the promptness and effectiveness of the criminal investigation into his ill-treatment and notes that the investigative authorities are refusing to complete a criminal case even after decision of the Supreme Court which obliged the respective authorities to redress the violation of Articles. In its ruling the Supreme Court inter alia reiterated that the European Court of Human Rights had found a violation of Article 3 of the Convention in both its material and procedural aspects on account of the ill-treatment of Mr. Zontov and the failure to effectively investigate his complaints.

30. Bearing in mind the State's procedural obligation to conduct an effective investigation into a substantial violation of Article 3, representatives of the applicant submit that individual measures, which the Russian authorities need to take in this case should include not only compensation but also open and complete the criminal case against the police officers who tortured Mr. Zontov without any undue delay and promptly transfer the case to the national court for trial with a view to finish before criminal liability becomes timebarred.

General observations on the failure to take individual measures required to implement the judgments of the Court

Concerning the investigative authorities' failure to open a criminal case

Considering that the Court found a substantive violation of Article 3 of the Convention on account of the ill-treatment of the applicant in this case, the investigative authorities must open criminal case. Criminal investigation that cannot result in the perpetrators bearing criminal liability because of the expiration of statute of limitations falls short of the Court's standards for an effective investigation.

Delays in initiating a criminal case which are indicated above can make the prosecution of the perpetrators time-barred.

Anyway, the Government submitted in its most recent Action Plan that under the legislation of the Russian Federation the statute of limitations does not preclude further investigation of the criminal case initiated until the guilty persons have been identified. Though upon expiry of the statute of limitations, guilty persons shall be exempt from

criminal responsibility, it does not preclude examination of the issue of professionalism of such persons, while a victim has an additional opportunity to claim compensation for the damage suffered at the expense of a guilty person.” (DH-DD(2015)44, page 7-8, point II. 4.4).

Recommendations

Representatives of the applicant submit that **individual measures**, which the Russian authorities need to take in order to comply with the above-mentioned judgment of the European Court of Human Rights, should *at least* include the following:

- **to open and complete the criminal case against the police officers who tortured Mr. Zontov without any undue delay and promptly transfer the case to the court for trial with a view to finish before criminal liability becomes timebarred;**
- **while conducting the criminal case opened into the ill-treatment of Mr. Zontov take all necessary steps to address the specific shortcomings highlighted in the Judgment Olisov and others v. Russia on May 2, 2017, final on November 13, 2017);**
- to put this case on the list of cases to be discussed by the Committee of Ministers at its nearest session.

Representatives of the applicant,

Ekaterina Vanslova

Olga Sadovskaya

Igor Kalyapin

Attachments

- 1) Refusal of 01/07/2015 — p. 1-13**
- 2) Decision of 17/07/2015 – p. 14**
- 3) Refusal of 20/07/2015 – p. 15-30**
- 4) Judgment of 11/04/2016 – p. 31-36**
- 5) Appellate judgment of 15/06/2016 – p. 37-43**
- 6) Cassational appeal of 07/04/2017 – p. 44-45**
- 7) Decision of the Supreme Court of 16/05/2017 – p. 46-48**
- 8) Request of the applicant to the Supreme Court of 07/12/2017 – p. 49-50**
- 9) Request of the Chairman of the Supreme Court of the Russian Federation to the Supreme Court of 30/03/2017 – p. 51-56**
- 10) Decision of the Supreme Court of 23/05/2018 – p. 57-63**
- 11) Decision of 17/05/2018 – p. 64**
- 12) Refusal of 16/06/2018 – p. 65-80**
- 13) Decision of 28/06/2018 – p. 81**
- 14) Refusal of 27/07/2018 – p. 82-100**
- 15) Decision of 27/07/2018 – p. 101**
- 16) Complaint of 20/07/2018 – p. 102-107**
- 17) Decision of 02/08/2018 – p. 108-109**
- 18) Judgment of 07/08/2018 – p. 110-111**
- 19) Decision of recognising as victim of 09/08/2018 – p. 112-113**
- 20) Expert findings of 17/01/2019 – p. 114-133**
- 21) Decision of closing criminal case of 20/7/2011 – p. 134-158**
- 22) Decision of 25/06/2019 – p. 159-160**
- 23) Refusal of 15/09/2019 – p. 161-189**