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Meeting: 1419th meeting (December 2021) (DH)

Item reference: Action Report (19/10/2021)

Communication from the Russian Federation concerning the cases of NAVALNYY AND OFITSEROV v. Russian Federation (Application No. 46632/13) and Navalnyye v. Russian Federation (Application No. 101/15)

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Réunion : 1419^e réunion (décembre 2021) (DH)

Référence du point : Bilan d'action (19/10/2021)

Communication de la Fédération Russie concernant les affaires NAVALNYY ET OFITSEROV c. Russie (requête n° 46632/13) et Navalnyye c. Russie (requête n° 101/15) **(anglais uniquement)**

DGI

19 OCT. 2021

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Prepared
for the 1419th CMCE meeting
(30 November – 2 December 2021)

ACTION REPORT
on execution of the judgments of the European Court of Human Rights
in case nos. 46632/13 and 28671/14 *Navalnyy and Ofitserov v. Russia*
(judgment of 23 February 2016, final on 4 July 2016)
and in case no. 101/15 *Navalnyye v. Russia*
(judgment of 17 October 2017, final on 5 March 2018)

Violation

In the aforementioned judgments the European Court of Human Rights (hereinafter – the European Court, ECHR) found a violation by the Russian authorities of Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) on account of the national courts' failure to comply with the principle of fair trial during the consideration of the criminal case against Navalnyy A.A., Navalnyy O.A., Ofitserov P.Yu.

Individual Measures

1. The amounts of compensation awarded to the applicants have been paid in full, as the Russian authorities previously informed the Committee of Ministers of the Council of Europe in detail (documents DH-DD(2017)865, DH-DD(2017)1326, DH-DD(2021)198 and DH-DD(2021)437).

Other individual measures taken by the Russian authorities are detailed in documents DH-DD(2021)845 (case *Navalnyy and Ofitserov v. Russian Federation*) and DH-DD(2021)843 (case *Navalnyye v. Russian Federation*).

2. Taking into account the recommendations of the Committee of Ministers of the Council of Europe (hereinafter – CMCE), set out in the decision of 16 September 2021, the Russian authorities additionally recall the following.

The case Navalnyy and Ofitserov v Russia.

Now, the application no. 78193/17 *Aleksey Anatolyevich Navalnyy and Petr Yurievich Ofitserov v. Russia* is pending before the European Court concerning the alleged violation by the Russian authorities of the provisions of the Convention on account of a new trial in the applicants' case and their sentencing on 8 February 2017. Thus, the ECHR considered this complaint as a new matter which had not been considered before. The Russian authorities submitted to the European Court a reasoned position on the merits of the applicants' arguments, and all the necessary information. The consideration of the case has not been completed; the decision has not yet been taken by the European Court.

Neither Article 46 of the Convention, nor the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements include the possibility for the CMCE to admit for consideration and assess the final national judicial acts which have not been

reviewed by the European Court and in respect thereof this Court has not identified violations of the Convention. Moreover, the CMCE cannot make appropriate assessments in relation to national judicial acts, complaints about which have already been accepted by the ECHR and are considered by it in essence as a new issue. Otherwise, it directly contradicts to the provisions of the Convention and violates the rights of the Russian Federation as a party to the adversarial proceedings.

In this regard the assessment of the new judicial acts adopted in the applicants' case is outside the CMCE authority.

The case *Navalnyye v. Russia*.

As previously reported in detail, the Supreme Court of the Russian Federation, during the reopened proceedings, assessed in detail all the circumstances of the criminal case in the light of the findings of the ECHR.

Based on the results of the relevant assessment, the Supreme Court did not find any grounds for reversal or changing the previous sentence.

The Convention, the established conventional mechanisms for the execution of the ECHR judgments and the Recommendation of the Committee of Ministers of the Council of Europe of 19 January 2000 No. R (2000) 2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights do not contain requirements for reversal of decisions of national courts in connection with the ECHR judgments.

By virtue of the principle of subsidiarity, which determines the interaction of the ECHR and the national judicial systems of the countries of the Council of Europe, it is the competent authorities of the respondent state decide which measures are most appropriate to achieve *restitutio in integrum*, taking into account the measures available under the national legal system.

These approaches are also consistent with the practice of the CMCE itself, which closed the supervision over the case on application no. 46221/99 *Ocalan v. Turkey*, taking into account the fact that after the judgment of the ECHR, the national court, during the consideration of the applicant's request for revision of the case, came to the conclusion that there is no need to conduct any additional investigations or hearings, and the violations established by the ECHR couldn't change the conviction.

Russian legislation does not provide for an appeal or revision of decisions of the Presidium of the Supreme Court of the Russian Federation.

In accordance with the Constitution of the Russian Federation, Russian courts are independent and obey only the law, other state authorities cannot interfere in the activities of judges and do not have the right to cancel their decisions.