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

Communication from the applicant (25/10/2021) in the case of KUDESHKINA v. Russian Federation (Application No. 29492/05).

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

Communication du requérant (25/10/2021) relative à l'affaire KUDESHKINA c. Fédération de Russie (requête n° 29492/05) **[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.



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**Department for the Execution of Judgments of the ECHR
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25 OCT. 2021

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25 «October» 2021

***Execution of the European Court of Human Rights Judgment in the Case of
Kudeshkina v Russia (no. 29492/05) under Rule 9.1 of the Rules of the
Committee of Ministers for Supervision of the Execution of Judgments and of
Friendly Settlements***

This communication is submitted on behalf of Ms. Kudeshkina, the applicant in the case of *Kudeshkina v Russia* (application no. 29492/05), under Rule 9.1 of the Rules of the Committee of Ministers for supervision of the execution of judgments and of friendly settlements.

On 26 February 2009 the European Court of Human Rights (hereinafter the Court) found a violation of Article 10 on account of the applicant's dismissal from the post of a judge of the Moscow City Court for a comment made to the media on the lack of independence of Moscow courts and the pressure exerted on judges by the executive and other authorities. The judgment became final on 14 September 2009 and has been put under enhanced supervision since 21 September 2017.

Apart from the payment of the just satisfaction awarded by the Court in respect of non-pecuniary damage, no individual measures have been taken to restore as far as possible the situation existing before the breach of the applicant's rights under Article 10 of the Convention. Though the applicant has availed herself of the relevant provisions of national law

and requested the reopening of the applicant's case, she did not succeed in restoration of her violated rights.

The refusals of the national courts to execute the aforementioned decision was brought to the attention of the Court, which in its decision of 17 February 2015 noted that neither domestic courts in their decisions, nor the Government in their submissions gave "any convincing reason why the obligation to comply with the judgment of 26 February 2009 should be limited to payment of the monetary compensation awarded under Article 41". The Court has reiterated that the most efficient, if not the only, means of achieving *restitutio in integrum* is the reopening of a case, irrespective of whether a violation found by the Court concerns a substantive Convention right or the right to a fair hearing. It emphasized that in this case the Russian authorities remain under an obligation to implement appropriate individual measures to restore as far as possible the situation existing before the breach of the applicant's rights under Article 10 of the Convention. (see paras.74-75)

With this communication the applicant submits that the respondent State is blatantly disregarding the requests of the Committee of Ministers of the Council of Europe (hereinafter the Committee) and takes no measures to secure the applicant's rights. In particular, due to the failure of the respondent Government to restore the applicant's rights for more than eight years and the necessity to take urgent individual measures in this case, in 2017 the Committee made a decision to transfer this case from the standard to the enhanced supervision procedure and regularly requests the authorities to do their utmost to secure an appropriate redress for the applicant without any delay and to erase the consequences of the found violation.

The applicant emphasizes that the Government continuously refuse to execute this judgment under different pretexts, including the pandemic situation in Russia and the change of the activities of the Representative of the Russian Federation at the European Court of Human Rights. It is noteworthy that even after the implementation of the planned changes in the structure of the Office of the Representative of the Russian Federation at the European Court of Human Rights, which now operates within the General Prosecutor's Office of the Russian Federation, the authorities failed to take any measures to effectively execute this judgment. The applicant reiterates that she is open to negotiations for finding a mutually acceptable solution, however, the authorities have failed to propose any avenues for the execution of the referred judgment for around **twelve** years.

The applicant also highlights, that this case, being a landmark case for the Russian judicial community, has a chilling effect on the judges, who might have been silenced as the non-execution of this judgment is a clear signal for them.

Taking into consideration the unwillingness of the respondent Government to abide by the Court's judgment in the case of *Kudeshkina v Russia* of 26 February 2009 and the Court's decision in the case of *Kudeshkina v Russia (2)* of 17 February 2015 and the failure to take any individual measures to execute the referred judgment for around twelve years, the applicant respectfully requests the Committee and the Council of Europe member States:

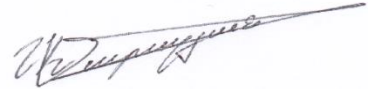
- to examine the applicant's case at each Human Rights meeting of the Committee until the judgment is executed;

- to adopt a more robust interim resolution regarding the failure of the respondent State to execute this judgment in the upcoming DH-CM meeting;
- to instruct the Secretariat to draft a formal notice to be served to the Russian Government under Rule 11 of the Rules of the Committee of Ministers for supervision of the execution of judgments and of friendly settlements.

Sincerely,



Karinna Moskalenko



Anna Maralyan