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

Communication from the applicant (04/11/2021) in the MIKHEYEV group v. Russian Federation (Application No. 77617/01).

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 (04/11/2021) relative au groupe d'affaires MIKHEYEV c. Fédération de Russie (requête n° 77617/01) **[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.



Communication to the Committee of Ministers 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 in the *Mikheyev* group

Introduction

1. The submission has been prepared by the Russian **NGO Committee Against Torture** (Russia, Nizhniy Novgorod City, Osharskaya Street, 96b). It relates to the need to adopt the individual measures in 3 cases of *the Mikheyev group*, concerning the violation of the applicants' rights under Article 3 of the Convention, namely failure of the authorities to conduct effective investigation of ill-treatment and punish those responsible. The absence of effective investigations, as it is required by Article 3 of the Convention is **a system problem** for Russia. Unfortunately, efforts of the authorities to resolve it are insufficient, and the number of cases in this group will continue to grow. At least 20 cases related to ill-treatment in the police custody have already been communicated by the ECtHR to the Government of Russia, where the applicants were represented by lawyers of NGO Committee Against Torture.

2. Taking into account the absolute character of the right guaranteed by Article 3 of the Convention, **the authorities must immediately respond to the allegations of torture and open a full-fledged criminal investigation without conducting a pre-investigation inquiry**. In many cases even after the ECtHR established violation of procedural aspect of Article 3 of the Convention, the Russian authorities refuse to effectively investigate ill-treatment in the police. The victims of ill-treatment lose faith that perpetrators will be punished over time. Ultimately, indifference of the authorities to the cases of torture leads to the expiration of time-limit for criminal responsibility, and tortures remain unpunished.

3. We would like to recall that the issue of torture in the police custody and its effective investigation exist **since 2006**, and there is no big progress to resolve it. The Russian authorities did not to submit the Action plans or Reports in 3 cases below as well as in other many cases of *the Mikheyev group*¹. In this regard **we urge the Committee of Ministers to include this group of cases in its agenda for regular review once a year**.

Individual measures in three judgments

4. The Government did not submit Action plans or Report in the cases presented below.

¹ See Committee of Ministers, Decisions, 1362nd meeting, 3-5 December 2019, H46-26 Mikheyev group v. Russian Federation (Application № 77617/01). URL: [http://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2019\)1362/H46-26E](http://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2019)1362/H46-26E)

Prytkov v. Russia (№ 72165/14), judgment Ishevskiy and Others v. Russia of 04 February 2020

Background

5. The applicant was tortured on 19 May 2010 by the officers of Police Department № 2 in Orenburg. A criminal case into his well-founded allegations was opened only on 16 November 2011. The applicant lodged his application before the ECtHR on 07 November 2014. Since November 2011 and during the proceedings before the ECtHR the criminal case on the applicant's torture repeatedly unlawfully terminated and then resumed. On 11 March 2019 the investigator finally terminated the criminal case because of absence a crime event². The national courts upheld this decision on 22 July 2019³ and 26 September 2019⁴ respectively. In finding a violation of the applicant's rights under Article 3 of the Convention, the ECtHR established that the applicant was tortured and that the Russian authorities did not carry out effective investigation into his complaint.

Actions of the Russian authorities after the ECtHR judgment was delivered

6. The criminal case on the applicant's torture was not re-opened. On 11 June 2020 **the Supreme Court of Russia dismissed the relevant request due the decisions of the national courts of 22 July 2019 and 26 September 2019 were not a subject of examination in the case of Prytkov v. Russia⁵.**

7. Meanwhile, **on 18 May 2020** the ten-year statutory time-limit for criminal responsibility of the applicant's torture expired.

8. In response to the request of the applicant's representative to re-open a criminal case and conduct effective investigation into his ill-treatment, on 20 July 2020 a representative of the Investigation Department in Orenburg region Mr. Sivayev rejected it⁶. He criticized the ECtHR judgment and declared its conclusions concerning violation of the applicant's rights under substantive and procedural aspects of Article 3 of the Convention unsubstantiated. He also reiterated the conclusions of the Supreme Court of Russia.

9. The head of the NGO «Committee Against Torture» Mr. Kalyapin lodged a request to the ex-representative at the ECHR Deputy Minister of Justice of Russia Mr. Galperin concerning case of Mr. Prytkov and some other cases and demanded to clarify the reasons for the failure to conduct effective investigation into the applicant's torture, to take measures to prevent inactivity of the investigation authorities in such cases in the future⁷. It was transferred to the Investigation Department of Orenburg region. In response on 20 September 2020 Mr. Sivayev again criticized the conclusions of the ECtHR and made a reference to the position of the Supreme Court of Russia⁸.

² See Annex 1: Decision to terminate a criminal case of 11 March 2019

³ See Annex 2: Decision of Leninskiy district court of Orenburg of 22 July 2019

⁴ See Annex 3: Decision of Orenburg region court of 22 July 2019

⁵ See Annex 4: Decision of the Supreme Court of Russia of 11 June 2020

⁶ See Annex 5: Response of 20 July 2020

⁷ See Annex 6: Appeal of 13 July 2020

⁸ See Annex 7: Response of 20 September 2020

Analysis of the individual measures taken by the Russian authorities in the Prytkov case

10. The Supreme Court of Russia declined to take into account the ECtHR judgment and used formal approach to dismiss the applicant's request to open his criminal case, stating that the decisions of 22 July 2019 and 26 September 2019 were issued after the communication of the application to the Russian Government. **In fact, such an opinion of the Supreme Court of Russia makes for the applicant and persons who are in the same position impossible to resume the criminal proceedings after the ECtHR' judgment, in which was established the procedural violation under Article 3 of the Convention.** According to the Ruling № 21 of 27 June 2013 of the Plenary Supreme Court of Russia a judicial act is revised, if a person continues to suffer from adverse effect of such act and if the award under Article 41 of the Convention, or other means are not connected with the supervision cannot give a redress⁹. The applicant continues to suffer from the failure of the Russian authorities to conduct effective investigation and punish those responsible in his torture. He has no other mechanisms to make the authorities resume his criminal case after the Supreme Court of Russia refused to quash the latest decisions.

11. The criminal responsibility for the applicant's torture became time-barred, as a result of the authorities' inactivity. Although the criminal case was opened in 2011, the police officers could avoid criminal responsibility. There are the serious doubts, whether those who ill-treated the applicant will really be punished and even if so, they, obviously, will get probation.

12. **The case of Prytkov was not implemented by the Russian authorities in full. The behavior of the state agents and the public authorities in the case of his torture shows their reluctance to punish those responsible and the state tolerance to torture practice in Russia. As for Mr. Prytkov, he almost lost the last hope to receive a redress under Article 3 of the Convention at the national level.**

Averkiyev v. Russia (№ 61406/11), judgment Nigmatullin and Others v. Russia of 04 February 2020

Background

13. The applicant was ill-treated on 19 May 2008 by the officers of the Department for Combatting Organised Crimes in Orenburg Region. The criminal case into the applicant's well-founded allegations was not opened. On 31 August 2011 he lodged his application before the ECtHR. The case was communicated to the Government of Russia on 05 September 2018. After that in December 2018 the Prosecutor's office of Orenburg region quashed the refusal to open a criminal case of 05 May 2010 as unlawful, and a pre-investigation inquiry was resumed. By the time the ECtHR found that there had been a violation of the applicant's rights under Article 3 of the Convention, at least 16 refusals had been issued. Each of these refusals was quashed as unlawful, but a pre-investigation inquiry was continued.

Actions of the Russian authorities after the ECtHR judgment was delivered

⁹ See Ruling № 21 of 27 June 2013 by the Plenary Supreme Court, para 17. URL: <https://rg.ru/2013/07/05/konvencia-dok.html>

14. On 17 February 2020 one more refusal to open a criminal case was issued because of absence of «objective data» of ill-treatment of Mr. Averkiyev by the police officers¹⁰. The case file of the applicant's ill-treatment was transferred by the investigator to the Police Department «Orenburgskoe» («МУ МВД России «Оренбургское»). Moreover, the investigator in the refusal of 17 February 2021 stressed that **the investigation cannot be continued because of expiration of the ten-year time-limit for criminal responsibility on the applicant's ill-treatment** and the further quash of the refusals in this case is not allowed by the national legislation.

15. The complaints of the applicant's representative to head of Investigation Department Mr. Sivayev¹¹ and the head of Investigation Department of the Orenburg region Mr. Zuderman¹², in which he demanded to open a criminal case, were rejected as unsubstantiated¹³. On 23 October 2020 the applicant's representative lodged a complaint to Mr. Zuderman, in which he asked him to clarify his subordinate staff the content and principles described in the case of *Averkiyev v. Russia*, open a criminal case and quash the decision of 17 February 2020¹⁴. In response on 03 December 2020 **Mr. Zuderman stated that the application of Mr. Averkiyev was examined by the ECtHR too long (from 2011 to 2020), so it does not correspond the ECtHR's practice concerning the criteria of effective investigation**¹⁵.

16. The applicant's representative appealed against the decision of 17 February 2020 to the national courts, demanded to eliminate the shortcomings in the investigation and referring to the ECtHR's judgment to conduct effective investigation on the applicant's ill-treatment¹⁶. On 30 November 2020 the first-instance court declared the investigator's decision lawful and ignored the argument of the applicant's representative concerning the ECtHR's judgment¹⁷. On 27 January 2021 the Orenburg region court upheld the decision and stated that due to the time-limit for criminal responsibility expired, the investigator could issue the refusal¹⁸. As the ECtHR's judgment, in the court opinion, **the applicant no longer was affected by the consequences of his rights' violation, as he received his award**. The court of cassation appeal¹⁹ and the Supreme Court of Russia²⁰ dismissed the appeals of the applicant's representative as unsubstantiated on 25 June 2021 and 03 August 2021 respectively.

Analysis of the individual measures taken by the Russian authorities in the Averkiyev case

¹⁰ See Annex 8: Refusal to open a criminal case of 17 February 2020

¹¹ See Annex 9: Appeal of 15 April 2020

¹² See Annex 10: Appeal of 15 May 2020

¹³ See Annex 11: Response of 05 May 2020, Annex 12: Response of 23 June 2020

¹⁴ See Annex 13: Appeal of 23 October 2020

¹⁵ See Annex 14: Response of 03 December 2020

¹⁶ See Annex 15: Appeal of 22 October 2020

¹⁷ See Annex 16: Decision of Promyshlenniy district court of Orenburg of 30 November 2020

¹⁸ See Annex 17: Appeal of 07 December 2020, Annex 18: Decision of Orenburg region court of 27 January 2021

¹⁹ See Annex 19: Appeal of 24 March 2021, Annex 20: Decision of a cassation appeal court of 25 June 2021

²⁰ See Annex 21: Decision of the Supreme Court of 03 August 2021

17. Although the applicant and his representatives welcome the actions of the Russian authorities after the communication of the case in 2018 in the ECtHR, by which the decision of 05 May 2010 was quashed, a lot of shortcomings were not eliminated. Even after the ECtHR established that the applicant was ill-treated by the police officers and pre-investigative check lacked the standards of Article 3 of the Convention, a criminal case not only was not opened, but the investigator even concluded that the police officers were not involved in his ill-treatment. It was still done as result of a pre-investigative inquiry which is not considered a full-fledged investigation under Article 3 of the Convention.

18. One of the reasons for completion of the investigation was also expiration of the ten-year time-limit for criminal responsibility. Such a position was approved by the national courts, and further investigation is impossible now. In fact, because of inactivity of the authorities the perpetrators in the applicant's ill-treatment will never really be punished. In contrast to the position of the national courts, a mere payment of compensation is not a sufficient redress, and the national authorities, in fact, are unable to fulfil its positive obligations under Article 3 of the Convention. As in the case of Mr. Prytkov, Mr. Averkiyev has no other mechanism to influence the authorities and make them punish those responsible.

19. **The case of Mr. Averkiyev was not implemented by the Russian authorities in full. The responses of Mr. Zuderman and other state agents, a transfer of the applicant's case file to the police department as well as the position of the national courts that declared the decision of 17 February lawful, demonstrate the total indifference of the authorities to the applicant's ill-treatment and to the ECHR judgments.**

Bogdanov v. Russia (№ 68644/14), judgment Botov and Others v. Russia of 04 February 2020

Background

20. On 22 October 2011 the officers of Police Department № 3 in Orenburg ill-treated the applicant. On 15 October 2014 the applicant lodged his application before the ECtHR. Since 2011 and during the proceedings before the ECtHR the investigation authorities issued at least 7 refusals to open a criminal case into his well-founded allegations of ill-treatment. Some of them were issued after the case was communicated to the Russian authorities. The latest refusal was issued on 10 October 2017²¹. The ECtHR established that the applicant was subjected inhuman and degrading treatment and that no effective investigation into his complaint was carried out by the Russian authorities.

Actions of the Russian authorities after the ECtHR judgment was delivered

21. On 08 December 2020 the applicant lodged a request to the Supreme Court of Russia for renewal of the proceeding in his ill-treatment. On 07 July 2021 the Supreme Court of Russia granted the request and quashed the national court decisions of 12 May 2014 and 10 July 2014, which rejected the applicant's appeals on the refusal to open a criminal case of 23 January 2014, as well as quashed the national court decisions of 04 December 2015 and 9 February 2016, which

²¹ See Annex 22: Refusal to open a criminal case of 17 October 2017

rejected the applicant's appeals on the refusal to open a criminal case of 22 November 2014²². **The latest decision not to open a criminal case of 10 October 2017 remained in force.**

22. Since in December 2020 the refusal of 10 October 2017 was declared lawful by the Prosecutor's office of Dzerzhinskiy district of Orenburg region²³ as well as by the Investigation Department on the Northern administrative district of Orenburg²⁴, the applicant's representative appealed against the refusal of 10 October 2017 to the first-instance court²⁵. The applicant's representative demanded in his appeal to eliminate the shortcomings in the investigation and to conduct effective investigation on the applicant's ill-treatment following the ECtHR's judgment. The appeal has not been examined yet.

23. **On 22 October 2021** the ten-year statutory time-limit for criminal responsibility on the criminal case of the applicant's ill-treatment expired.

Analysis of individual measures which were taken by the Russian authorities in the Bogdanov case

24. Following the ECHR judgment in the case of Mr. Bogdanov the Russian authorities had an opportunity for almost 1,5 years to open a criminal case and punish those responsible in the applicant's ill-treatment, until the time-limit for criminal responsibility had expired. However, it did not happen because of their inactivity in the case. There is a serious doubt, whether the criminal case will be opened after that. In fact, the police officers who ill-treated the applicant, will never be punished.

25. The pre-investigation check, which was launched in the case, will never replace a full-fledged investigation. For today the Russian authorities refuse to open a criminal case into the applicant's ill-treatment. Although the Supreme Court of Russia quashed some of the national court decisions, the latest refusal not to open a criminal case of 10 October 2017 is still in force after the ECtHR judgment. If the refusal will be upheld by the national courts, the applicant cannot make the authorities resume his ill-treatment case again.

26. **For today, the case of Mr. Bogdanov was not implemented by the Russian authorities in full. The police officers who ill-treated the applicant will never be really punished because the criminal responsibility became time-barred.**

Questions to the Russian authorities in the cases of Mr. Prytkov, Mr. Averkiyev, Mr. Bogdanov

✓ What are the reasons for failure to open a criminal case in the cases of Mr. Averkiyev and Mr. Bogdanov even after the ECtHR judgment?

✓ What are the reasons for failure to re-open a criminal case and transfer it to the national court to punish those responsible in Mr. Prytkov's ill-treatment?

²² See Annex 23: Decision of the Supreme Court of 07 July 2021

²³ See Annex 24: Notification of 03 December 2020

²⁴ See Annex 25: Response of 07 December 2020

²⁵ See Annex 26: Appeal of 30 September 2020

Recommendations on the individual measures in the cases of Mr. Prytkov, Mr. Averkiyev and Mr. Bogdanov

27. Individual measures, which the Russian authorities need to take to comply with its positive obligations under Article 3 of the Convention should at least include the following:

- **complete the criminal case against the police officers who tortured Mr. Prytkov, although the time-limit for criminal responsibility has already expired and take all necessary steps to address the specific shortcomings highlighted in the Court's judgment of February 4, 2020.**

- **open and complete the criminal case against the police officers who ill-treated Mr. Averkiyev and Mr. Bogdanov, although the time-limit for criminal responsibility has already expired and take all necessary steps to address the specific shortcomings stated in the Court's judgments of February 4, 2020.**

The representative of the applicants

Olga Sadoyskaya

