

## SECRETARIAT / SECRÉTARIAT

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Meeting: 1514<sup>th</sup> meeting (December 2024) (DH)

Communication from an NGO (Centre de la Protection Internationale) (22/10/2024) concerning the case of KUDESHKINA v. Russia (Application No. 29492/05).

Information made available under Rule 9.2 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 : 1514<sup>e</sup> réunion (décembre 2024) (DH)

Communication d'une ONG (Centre de la Protection Internationale) (22/10/2024) relative à l'affaire KUDESHKINA c. Russie (requête n° 29492/05) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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DGI

22 OCT. 2024

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

**Communication on behalf of the applicant in the case concerning  
Freedom of speech**

*Kudeshkina v. Russia* (Application no [29492/05](#))

**(Rule 9(2) submission to the Committee of Ministers of the Council of Europe)**

**I. Introduction.**

1. Centre de la protection internationale is a human rights organization dedicated to the protection of human rights and freedoms of individuals in Council of Europe countries both directly and by assisting, collaborating with, and supporting the civil society in these countries, especially where it is under pressure and lacks independence to take actions. Centre de la protection internationale handles cases of victims of human rights violations in courts both at the national level in the member states of the Council of Europe and in international bodies (ECHR, UN Committees). During the existence of the Center, its lawyers have handled hundreds of cases before the ECHR and UN Committees, including representing applicants from Russia.

2. Centre de la protection internationale provides this communication regarding observance by the Russian Federation of the judgment in the case *Kudeshkina v. Russia*. These cases concern freedom of speech under Article 8 during operative activities.

1. The Committee of Ministers of the Council of Europe has not yet completed its reviewing of observance of the judgments in this case.

2. The communication analyzes a lack of a comprehensive enforcement by the Russian Federation of the judgment in the case in question and provides proposals on possible measures the Committee of Ministers could take within supervision of the judgment's observance.

3. The above judgment became final on 14 September 2009. The Court found a violation of Article 10 of the Convention for the reasons explained below.

4. Notwithstanding numerous calls of the Committee of Ministers of the Council of Europe (hereafter the Committee) since 2017 to explore urgently all 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; to intensify and to complete rapidly the search for a mutually acceptable solution as well as to erase the consequences of her dismissal from judicial office in violation of her

right to freedom of expression (see CM/Del/Dec(2017)1294/H46-24, CM/Del/Dec(2018)1331/H46-25, CM/Del/Dec(2019)1348/H46-25, CM/Del/Dec(2020)1369/H46-27 ), the respondent Government have taken no individual measures and continue to submit communications claiming that “the Russian authorities continue to study the issue of other possible ways to resolve the applicant’s situation”; however, this work was either significantly complicated due to COVID-19 pandemic (see the Government’s Action plan dated 25 June 2020, document DH-DD(2020)564), or temporarily suspended due to changes planned concerning the activities of the Representative of the Russian Federation at the European Court of Human Rights.” (see the Government’s Action plan dated 31 March 2021, document DH-DD(2021)362). The authorities also disregarded the Committee’s interim resolution decision, where the authorities were urged to “do their utmost to secure an appropriate redress for the applicant as soon as possible to erase the consequences of the violation of her right to freedom of expression” (see Interim Resolution CM/ResDH(2020)203). Thus, their response is okoinsufficient for a full implementation of this judgment for the reasons discussed below.

## **II. Powers of the Committee of Ministers of the Council of Europe for supervising the execution of the judgment of Kudeshkina v. Russia, by the Russian Federation.**

5. On 16 March 2022 the Committee of Ministers of the Council of Europe, in the context of a procedure launched under Article 8 of the Statute of the Council of Europe, adopted Resolution CM/Res(2022)2, by which the Russian Federation ceased to be a member of the Council of Europe as from 16 March 2022. On 22 March 2022 the Court, sitting in plenary session in accordance with Rule 20 § 1, adopted the “Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights”. It stated that the Russian Federation would cease to be a High Contracting Party to the Convention on 16 September 2022<sup>1</sup>.

6. Article 58 of the Convention provides:

*“1. A High Contracting Party may denounce the ... Convention only after the expiry of five years from the date on which it became a party to it and after six months’ notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.*

*2. Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under [the] Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.*

*3. Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to [the] Convention under the same conditions.*

*...”*

7. It appears from the wording of Article 58, and more specifically the second and third paragraphs, that a State which ceases to be a Party to the Convention by virtue of the fact that it has ceased to be a member of the Council of Europe is not released from its obligations

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<sup>1</sup> Grand Chamber, Judgment, 17 January 2023, case Fedotova and others v. Russia, applications nos. 40792/10, 30538/14 and 43439/14), para 12, 13, <https://hudoc.echr.coe.int/eng?i=001-222750>

under the Convention in respect of any act performed by that State before the date on which it ceases to be a Party to the Convention<sup>2</sup>.

8. Taking into account Resolution CM/Res(2022)1 on legal and financial consequences of the suspension of the Russian Federation from its rights of representation in the Council of Europe<sup>3</sup>, Resolution CM/Res(2022)70<sup>4</sup>, the Committee of Ministers of the Council of Europe is fully authorized to continue supervising execution of ECHR judgments by the Russian Federation despite of cessation of the Russian Federation's membership in the bodies of the Council of Europe.

### **III. The government's obligations on addressing irregularities: a comprehensive execution plan for the case**

#### **9. *Scope of the case***

The case concerns the disciplinary penalty imposed on a judge (the applicant) for making critical public statements during an election campaign about the functioning of the judiciary, specifically the influence and manipulation of court proceedings. The domestic authorities, citing these statements, dismissed her from judicial office. The Court found this measure to be an interference with her right to freedom of expression under Article 10 of the Convention. The penalty was considered disproportionately severe, potentially creating a "chilling effect" on judges' willingness to express critical views on matters of public interest. The Court emphasized that the applicant's statements raised important issues about judicial independence and transparency, which should be open to public debate.

#### **10. *Nature of violations found by the Court on which information is still awaited on related general measures***

The Court found that the penalty imposed violated Article 10 of the Convention, as the dismissal was not "necessary in a democratic society." The domestic authorities failed to provide sufficient justification for such a severe sanction. The applicant's statements, although critical, addressed significant issues of public concern, including judicial independence and corruption. Furthermore, the disciplinary proceedings lacked important procedural safeguards. The Court concluded that the measure against the applicant was disproportionately severe and discouraged other judges from participating in public debates, which is contrary to the principles of freedom of expression. The Russian authorities' failure to strike the right balance between protecting judicial authority and safeguarding the applicant's freedom of expression constituted a violation of Article 10.

#### **11. *Government's Response and Its Insufficiency***

The Russian Government reported that:

- 1. Payment of Just Satisfaction:** The awarded amount for non-pecuniary damage was paid to the applicant.

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<sup>2</sup> Grand Chamber, Judgment, 17 January 2023, case Fedotova and others v. Russia, applications nos. 40792/10, 30538/14 and 43439/14, para 70, 71 <https://hudoc.echr.coe.int/eng?i=001-222750>

<sup>3</sup> Adopted by the Committee of Ministers on 2 March 2022 at the 1427th meeting of the Ministers' Deputies, para 7, [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680a5b15f](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a5b15f)

<sup>4</sup> Adopted by the Committee of Ministers on 17 March 2022 at the 1429th meeting of the Ministers' Deputies, para 37, 38, [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680a5d7d3](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a5d7d3)

2. **Review of the Case:** The applicant's request for a review of the decision to dismiss her was considered by the Moscow City Court and the Supreme Court, but her claims were dismissed, upholding the decision based on domestic law.
3. **Non-Judicial Resolution Attempts:** The government explored non-judicial solutions, including the applicant's proposal for restoration as a retired judge with associated privileges. However, they concluded that it was not possible to implement these measures due to the legal independence of the Qualification Panel of Judges.
4. **Suspension of Legislative Amendments:** Plans to amend regulations for implementing the Court's judgments were temporarily suspended due to administrative changes.

The response is insufficient because it fails to adequately address the core issue of proportionality and the lack of procedural safeguards identified by the Court. The domestic review process did not result in the applicant's reinstatement or adequate compensation beyond the just satisfaction payment. Furthermore, while non-judicial options were considered, the government's reliance on the procedural independence of the Qualification Panel to reject solutions reflects an unwillingness to fully enforce the judgment. The Committee of Ministers should urge the Russian authorities to implement reforms ensuring that disciplinary measures comply with Article 10 protections and provide effective remedies for individuals affected by such violations<sup>5</sup>

## 12. *Proposals for Execution*

### 1. **Review and Amend Disciplinary Regulations:**

- Amend the Code of Honour for Judges and relevant laws to ensure that disciplinary measures respect judges' rights to freedom of expression, especially when their statements relate to issues of public interest like judicial independence and transparency.
- Establish clear criteria for disciplinary action, distinguishing between personal attacks and constructive criticism on matters of public importance.

### 2. **Introduce Proportionality Assessment Procedures:**

- Implement procedural safeguards to ensure that any disciplinary penalties imposed on judges are proportionate and consider the context and relevance of their statements to the public debate.
- Require independent and impartial review panels to assess whether a "pressing social need" justifies the disciplinary measure, ensuring that the penalty imposed is balanced with the right to freedom of expression.

### 3. **Establish an Independent Appeal Mechanism:**

- Create a mechanism that allows judges subjected to disciplinary action to appeal decisions before an independent and impartial body that is not linked to the same judicial structure involved in the original decision. This would help address potential conflicts of interest and guarantee fair trial standards.

### 4. **Training and Guidance for Judiciary:**

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<sup>5</sup> (DH-DD(2021)362).

- Develop comprehensive training programs for judges and judicial authorities on the balance between maintaining judicial authority and respecting freedom of expression. These programs should emphasize the importance of allowing constructive criticism within the judiciary as a means of ensuring transparency and public trust.

By implementing these proposals, the Russian authorities can align their disciplinary framework with Article 10 of the Convention, ensuring a balance between the protection of judicial authority and the freedom of expression necessary for a democratic society.

#### **IV. Conclusion**

13. This judgment significant deficiencies in the Russian legal framework and practices, particularly in terms of judicial freedom of speech. The judgment underscores how critical it is for judges to have the autonomy to express themselves freely without fear of retaliation or pressure from state authorities. The lack of such freedom severely compromises the independence and integrity of the judiciary, making it susceptible to political influence and manipulation.

14. In today's situation in Russia, where judicial independence is increasingly under threat, ensuring freedom of speech for judges is of utmost importance. Without the ability to speak openly and critically about legal and institutional issues, judges cannot effectively uphold the rule of law or challenge governmental abuses. Properly implementing reforms to protect this freedom is crucial not only for maintaining the integrity of the judicial system but also for building a society where justice is genuinely impartial and decisions are made based on law, not political motives.

15. Such reforms are essential for creating an environment where judges can function as true guardians of justice, strengthening the rule of law, and promoting both domestic and international confidence in Russia's legal system, especially during these challenging times.

16. We further propose that the case is discussed at the CM-DH meeting.

17. We also invite the Committee of Ministers to issue an interim resolution on execution of this judgment, including the proposals listed above.

We rely on your consideration of the above proposals.

Sincerely,



Oxana Preobrazhenskaya  
Acting Director



Karinna Moskalenko  
Senior legal expert