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Communication from a NHRI (28/03/2019) in the case of SVINARENKO AND SLYADNEV v. Russian Federation (Application No. 32541/08).

Information made available under Rule 9.3 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 : 1348^e réunion (juin 2019) (DH)

Communication d'une INDH (28/03/2019) dans l'affaire SVINARENKO ET SLYADNEV c. Fédération de Russie (requête n° 32541/08) (**Anglais uniquement**).

Informations mises à disposition en vertu de la Règle 9.3 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

DGI

28 MARS 2019

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH



THE HIGH COMMISSIONER FOR HUMAN RIGHTS IN THE RUSSIAN FEDERATION

COMMUNICATION

SVINARENKO AND SLYADNEV V. RUSSIA

(Application No. 32541/08 and 43441/08, Judgment of 17 July 2014)

MOSCOW 2019

DGI

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COMMUNICATION

SVINARENKO AND SLYADNEV V. RUSSIA

I. INTRODUCTION

1. This submission is a communication to the Committee of Ministers of the Council of Europe with regard to the issues relating to the execution of *Svinarenko and Slyadnev v. Russia*¹ under Article 46 § 2 of the European Convention on Human Rights and Fundamental Freedoms (hereinafter: European Convention or ECHR).

2. In the *Svinarenko and Slyadnev v. Russia* judgment the European Court of Human Rights found a violation by the Russian authorities of Article 6 § 1 of the European Convention due to excessive length of criminal proceedings against Svinarenko A.S. and Slyadnev V.A., as well as Article 3 of the Convention - on account of the applicants' confinement in a place enclosed on four sides by metal rods with a steel mesh ceiling (metal cage) in a courtroom during the proceedings.

3. The present communication is prepared under Rule 9 of *Rules of the Committee of Ministers for the Supervision of the Execution of Judgments and of the Terms of Friendly Settlements*; its purpose is to assess the state of execution some legal standards established in the judgment at issue, as well as prevention of similar violations in future.

4. This communication will mainly focus on the practice of using metal cages in Russian courts when conducting criminal proceedings in court rooms and placing defendants in these metal cages.

II. ACTIVITIES OF THE COMMISSIONER FOR HUMAN RIGHTS IN PROMOTION AND PROTECTION OF THE RIGHT TO A FAIR TRIAL AND PREVENTION OF ILL-TREATMENT

1) The Legal Mandate of the Commissioner for Human Rights

5. The Commissioner for Human Rights in the Russian Federation (hereinafter: Commissioner for Human Rights or Commissioner) is the National Human Rights Institution (NHRI) of Russia. Legal bases for activities of the Commissioner are established by the Constitution of the Russian Federation (adopted on 12 December 1993) and the Federal Constitutional Law on the Commissioner for Human Rights in the Russian Federation (adopted on 12 February 1997).

¹ Application No. 32541/08 and 43441/08, Judgment of 17 July 2014.

6. The Institution is accredited with 'A' status by the International Coordinating Committee of NHRIs.

7. The Commissioner for Human Rights in the Russian Federation is instituted in accordance with the Constitution of the Russian Federation for the purpose of ensuring guarantees of state protection of the rights and freedoms of citizens and compliance with and respect for them by State agencies, agencies of local self-government, and officials (Article 1 of the Federal Constitutional Law No. 1-FKZ as of 26 February 1997 *On the Commissioner for Human Rights in the Russian Federation*).

8. The Constitutional Law establishes the right of everyone to apply to the Commissioner for Human Rights, and this right cannot be subject for any limitations.

9. Article 2 of the Federal Constitutional Law provides that the Commissioner for Human Rights shall be independent and not accountable to any state agency or state official; only guided by the Constitution, the Constitutional Law, as well as other legal acts and international norms and International agreements.

10. The activities of the Commissioner for Human Rights shall complement existing means (remedies) of defense of the rights and freedoms of citizens and shall not repeal nor entail a revision of the competence of State agencies ensuring the defense and restoration of violated rights and freedoms (Article 3 of the Federal Constitutional Law).

2) Specialized Units at the Office of the Commissioner for Human Rights and their Targeted Cooperation with Stakeholders

11. The Commissioner for Human Rights acts upon; *inter alia*, principles of independence, objectiveness and professionalism. This entails professionally targeted activities of the Commissioner and existence of specialized divisions or experts within their Office.

12. Thus, the structure of the Commissioner's Office includes a separate Department for the Protection of Rights in Criminal Proceedings that is composed of three units:

- (i) Unit for the Protection of Human Rights in Places of Deprivation of Liberty;
- (ii) Unit for the Protection of Human Rights during Criminal Prosecution;
- (iii) Unit for the Protection of Victims' Rights.

13. The main task of the mentioned Department is to safeguard and promote human dignity and human rights of persons who face risks of illegal prosecution or ill-treatment during criminal proceedings or have already become victims of violations. The Commissioner fulfils this task through examination of individual complaints, as well as monitoring works conducted by this Department. The final purpose of this activities is to contribute to full promotion and protection of the rights to a

fair trial (e.g. access to court; reasonable time of proceedings; right to a lawyer; presumption of innocence, etc.), as well as prevention of any type of ill-treatment, including degrading treatment and its most severe form of torture.

14. The Commissioner conducts its activities in close cooperation with other competent public authorities, such as Police, Prosecutor's Office, Ministry of Justice, Penitentiary Service, Penitentiary Establishments and other law-enforcement agencies. Close cooperation is also established with the Parliament and the Government at both federal and regional levels; this is to support to implementation of the Commissioner's recommendations concerning legal reforms at institutional level.

15. Prevention of ill-treatment and protection of rights in criminal proceedings requires consolidates activities and cooperation with the Commissioners of Regional of the Russian Federation and the civil society. Namely, a Coordination Board of Regional Commissioners headed by the Federal Commissioner for Human Rights is established by the Commissioner. Another effective mechanism to ensure result-based work is cooperation with civil society. The Commissioner has established an Expert Council which is represented by independent Civil Society actors (NGOs, Lawyers, and Human Rights Activists) and is an advisory body. A specific section created within the Council is responsible for issues related to criminal justice, including ill-treatment, fair trial and deprivation of liberty.

16. These flexible formats allow the Commissioner to fulfill its constitutional mandate of promotion and protection of human rights more effectively through cooperation and exchange of information with all stakeholders, including joint work with them at institutional level.

III. RECOMMENDATIONS OF THE COMMISSIONER ON SVINARENKO AND SLYADNEV CASE IN RELATION TO METAL CAGES

1) The issue of metal cages in the system of criminal justice

17. The practice of placing defendants in metal cages when they appear before courts within criminal proceedings and when remanded in custody was used as a standard security measure in Soviet Union and its Republics. Some of these countries have abandoned this measure in recent years. Nonetheless, some of the former Soviet states, like Russia, continue to retain that practice to some extent.

18. In recent years, a number of cases were examined by the European Court of Human Rights concerning the use of metal cages in courtrooms. According to the case-law of the European Court, the treatment of persons by practice of placing them into metal cages is "stringent" and "humiliating"

and had found a violation of Article 3 (prohibition of degrading treatment). According to Svinarenko and Slyadnev v. Russia judgment, holding a person in a metal cage during court hearing on their case is a degrading treatment for which there could be no justification given the circumstances of the respective case, such as the applicants' personality, the charges against them, their criminal records or their behavior². In the judgment of Karachentsev v. Russia case the European Court also provided that it is objectively degrading to hold someone in a cage, even if the person is not physically present in court (when the cage separates the person from the video equipment used during the court hearing)³. Further, in the Urazov v. Russia judgment the European Court also found violations of Article 6 in terms of principles of equality of arms and of the presumption of innocence⁴.

2) The Svinarenko and Slyadnev case and use of metal cages in Russia

19. In the judgment of Svinarenko and Slyadnev v. Russia case, the European Court held unanimously that there is a violation of Article 3 of the European Convention on the account of confinement in a metal cage in the courtroom during criminal proceedings. Objectively degrading nature of metal cages during a trial is incompatible with the standards of civilized behavior that were the hallmark of a democratic society.

20. In the mentioned judgment the European Court underlined that the means chosen for ensuring the Court's order and security must not involve measures of restraint which by virtue of their level of severity would bring them within the scope of Article 3. The order and security in the courtroom are of great importance and can be seen as indispensable for the proper administration of justice, however, the means chosen for ensuring such order and security must not involve measure of restraint that considers degrading.

21. The European Court found that the applicants must have had objectively justified fears that their exposure in a cage during hearings in their case would convey to their judges, who were to take decisions on the issues concerning their criminal liability and liberty, a negative image of them as being dangerous to the point of requiring such an extreme physical restraint, thus undermining the presumption of innocence. This must have caused them anxiety and distress, given the seriousness of what was at stake for them in the proceedings in question.

3) Complaints addressed to the Commissioner for Human Rights and monitoring of judicial practice

² See Svinarenko and Slyadnev v. Russia, applications no. 32541/08 and 43441/08, 17 July 2014

³ See Karachentsev v. Russia, application no. 23229/11, 17 April 2018

⁴ See Urazov v. Russia, application no. 42147/05, 17 October 2019

22. The Commissioner for Human Rights has received a number of applications from citizens claiming compensation of moral damages for placing them in metal cages. In these applications they insist that due to degrading treatment in courtrooms, damages were caused to their reputation and dignity. According to these applications, their placement in metal cages violates their rights.

23. Monitoring of the judicial practice, as well as regular visits of the Commissioner's Office to detention facilities and prisons has revealed similar cases.

24. It is worth to mention that the Regional Commissioners for Human Rights of the Russian Federation also receive similar complaints.

4) The issue of metal cages in Reports of the Commissioner for Human Rights and the recommendations of the Commissioner

25. The issue of metal cages in courtrooms was directly raised in the 2013 and 2015 Annual Reports of the Commissioner for Human Rights in the Russian Federation. This issue was developed and assessed in further reports and recommendations of the Commissioner in 2016, 2017 and 2018.

26. The reports discuss this issue first of all from the point of protection of dignity of defendants or persons facing charges, as well as prevention of ill-treatment, including degrading treatment. The issue is particularly sensitive, since it concerns courtrooms and persons participating in judicial trials.

27. Thus, pursuant to the 2015 Annual Report, because of the "protective cabins" in the courtrooms which resemble a "cell", the defendant receives negative image. The Commissioner monitored and studied problem given the views of all interested state bodies, whose positions are generally similar and raise the need to replace metal "cells" with a modular structure made of steel frame and durable glass in order to ensure the safety of the trial participants, but within allocated for this purpose budget means⁵.

28. The 2013 Annual Report, the same problem with dignity and degrading treatment of accused persons when they were placed in cages or boxes made from glass. According to the Commissioner's Report, persons placed there were suffering from sun and inexistence of air. This was monitored in the Moscow City Court House⁶.

29. Later, in the Annual Reports of 2016 and 2017 the Commissioner has developed the mentioned positions and highlighted specifically that rights of persons engaged with criminal proceedings must be protected by the State. Another important principle provided by the mentioned documents is that every restrictive or preventive measure imposed against a person must be individually justified and be free of any signs of ill-treatment. Defendants, suspects, accused persons

⁵ See <http://ombudsmanrf.org/www/upload/files/docs/appeals/d2015w.pdf>, p. 48

⁶ <http://ombudsmanrf.org/upload/files/docs/appeals/doclad2013.pdf>.

shall fully and freely enjoy their right to a fair trial and shall be guaranteed by the State to be free from any type of degrading treatment⁷.

30. The Commissioner for Human Rights considers that in relation to the use of metal cages in courtroom it should be taken into account that court trials usually are held publicly (open trials), as well as the mechanism of trying defendants by a jury court. This entails that a large number of trial participants will be present and that hearings will be open to the general public. As stated by the European Court, the applicants' exposure to the public eye in a cage must have undermined their image and must have aroused in them feelings of humiliation, helplessness, fear, anguish and inferiority. They had been subjected to this treatment during the entire jury trial which lasted more than a year, with several hearings held almost every month. Furthermore, the applicants must have had objectively justified fears that their exposure in a cage during court hearings conveyed to their judges a negative image of them as being dangerous, thus undermining the presumption of innocence.

31. With the view of mentioned assessments the Commissioner for Human Rights considers that the State has to use alternative measures to ensure defendants' proper behavior during trials (e.g. to prevent escape or aggressive behavior; protect the defendant against aggression from outside, etc.). Anyway, use of any type of measure must be justified individually, based on concrete case, and all risks must be assessed.

32. Thus, the Commissioner joins the assessment of the European Court of Human Rights provided in the *Svinarenko and Slyadnev v. Russia* judgment: "Regardless of the concrete circumstances in the present case, the Court reiterates that the very essence of the Convention is respect for human dignity and that the object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective. It is therefore of the view that holding a person in a metal cage during a trial constitutes in itself – having regard to its objectively degrading nature which is incompatible with the standards of civilized behavior that are the hallmark of a democratic society – an affront to human dignity in breach of Article 3".

33. The Commissioner for Human Rights notes with interest that on 14 November 2018 several members of the Russian Federation Council and deputies of the State Duma initiated a draft law to make amendments to the Criminal Procedure Code of Russia. According to the draft law, it is prohibited to use of metal cages in courtrooms during criminal proceedings.

34. The mentioned draft law is already included in the agenda of activities of 2019 of the State Duma. The Committee for State Construction and Legislation of the State Duma is the responsible organ of the Parliament for the draft law⁸.

⁷http://ombudsmanrf.org/www/upload/files/docs/appeals/doc_2016_medium.pdf;
⁸http://ombudsmanrf.org/upload/files/docs/lib/lite2-doclad_20.04.18.pdf.

35. The news about this positive development has been already published on the website of the Russian State Duma and underwent several discussions.

36. Moreover, on 22 February 2019 the Prime-Minister of the Russian Federation held a special discussion dedicated to the use of metal cages in court proceedings. The discussion was conducted with participation of members of the Government and parliamentarians, who have initiated the draft law. At the end of the discussion the Prime-Minister instructed the Minister of Justice, Minister of Interior and the Minister of Finance to develop a special plan of actions to prohibit the use of metal cages and transparent isolation zones (aquariums) in courtrooms. This plan must be developed and submitted to the Prime-Minister by 1 April 2019⁹. This information was also provided to the public at large.

37. The Commissioner for Human Rights highlights that these are positive developments undertaken by the Russian Parliament and the Government. The Commissioner also accepts that the full accomplishment of this task entails huge human, legal and financial resources; however the process must be expedited since it relates to all courtrooms and all participants of criminal investigations that are held in these courtrooms. Everyday people placed in the existing metal cages or glass isolation zones suffer from degrading treatment.

5) Awareness raising activities and education

38. In the Russian Federation educational institutions exist almost within all respective Government Institutions (Ministry of Justice, Ministry of Interior, General Prosecutor's Office, etc.). The mentioned institutions develop educational programmes in the field of ensuring human rights in criminal proceedings, which are presented to people who serve in these institutions. One of the key aims of these educational programmes is to train investigators, prosecutors, judges, lawyers and to inform them on human rights standards and regulations that are necessary to guarantee fair trial safeguards and ensure that everyone is free from any form of ill-treatment and degrading treatment. Several programs provide that metal cages must be abolished and that their existence and their use are violating Article 3 of the European Convention.

39. The Commissioner for Human Rights considers that awareness raising and educational programmes concerned are also important in terms of more effective protection of the human rights in criminal proceedings and especially in the field of preventing ill-treatment. The issue of metal cages (including glass isolation zones) and negative consequences of placing people in these cages must be

⁸ <http://sozd.duma.gov.ru/bill/587542-7>.

⁹ <https://rupres.com/society/medvedev-poruchil-prorabotat-zapret-na-kletki-i-akvariumy-v-zalax-sudebnyx-zasedanij>.

included in educational (training) programs. It is essential that educational programmes have important role in the study of future investigators, prosecutors, judges and other stakeholders.

40. The translated judgment of *Svinarenko and Slyadnev v. Russia* case is also distributed to the relevant members of the Commissioner's Office. Several discussions have been held at the Commissioner's Office aimed at raising awareness about the judgment and the standards set by the European Court.

41. The Commissioner for Human Rights pays also important attention to the training and educational programs of Commissioners of the Regions of the Russian Federation. Their capacity is important in promoting and protecting human rights in Russian Regions. Thus, a special human rights center is established within the Moscow State Law Academy at the initiative of the Commissioner for Human Rights (a co-founder) in 2018. Currently, the curricula and other programs of the center are being drafted. The Center will also have a legal capacity of conducting research activities and supporting the Commissioner in developing recommendations and reports.

42. At the initiative of the Commissioner for Human Rights, a special textbook on human rights and its curricula are being drafted. It is foreseen for students of law faculties and universities. Among special human rights topics, separate sections are dedicated to human rights protection in criminal proceedings, guaranteeing fair trial guarantees and prevention of ill-treatment.

VI. FINAL PROVISIONS

43. The Commissioner for Human Rights intends, within their competence, to continue implementation of constitutional mandate of promoting and protecting human rights in criminal proceedings, including fair trial guarantees and prevention of any form of ill-treatment.

44. In this regard, metal cages must be removed from all courtrooms to ensure that all defendants are treated properly and with respect; to ensure defendants' proper behaviors during trials (e.g. to prevent escape or aggressive behavior; protect the defendant against aggression from outside, etc.) alternative measures must be used. Anyway, use of any preventive measure must be justified individually, based on the concrete case and all risks.