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Meeting: 1288th meeting (June 2017) (DH)

Item reference: Action plan (07/04/2017)

Communication from Russian Federation concerning the case of KIM v. Russian Federation (Application No. 44260/13)

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Réunion : 1288^e réunion (juin 2017) (DH)

Référence du point : Plan d'action

Communication de la Fédération de Russie concernant l'affaire KIM c. Fédération de Russie (Requête n° 44260/13) (*anglais uniquement*)

DGI

07 AVR. 2017

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Prepared for the 12__DH meeting
of the CMCE (____ 2017)

**Action plan
of the Russian authorities on prevention of violations of
citizens' rights (*Kim* group of cases)**

***No. 67474/11 "Azimov v. Russia", No. 44260/13 "Kim v. Russia"
No. 34742/13 "Egamberdiyev v. Russia", No. 62892/12 "Akram Karimov v. Russia",
No. 20110/13 "Ismailov v. Russia", No. 50552/13 "Rakhimov v. Russia", No. 66373/13
"Khalikov v. Russia", No. 68900/13 "Eshonkulov v. Russia"***

Violation

The European Court of Human Rights (hereinafter – “the European Court”) delivered several decisions establishing violations of §§ 1 and 4 of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – “the Convention”) due to the applicants’ detention in the temporary detention centers for foreigners (hereinafter - special institutions) based on decisions of national courts that contained no indication as regards the terms of application of the relevant measure (all judgments of the group under review), in the absence of real prospects of the applicant’s actual expulsion (“*Kim v. Russia*”), excessive detention of the applicants in special institutions (“*Azimov v. Russia*”, “*Akram Karimov v. Russia*”, “*Ismailov v. Russia*”, “*Rakhimov v. Russia*”, “*Khalikov v. Russia*”, “*Eshonkulov v. Russia*”), inconsistency of the declared purpose of the applicant’s deprivation of liberty with the actual circumstances (“*Azimov v. Russia*”), and also because the applicants did not have the possibility of challenging the lawfulness of applying the measure in the form of detention in a special institution (all decisions).

Violations have also been found: in the judgments “*Kim v. Russia*”, “*Rakhimov v. Russia*” – of Article 3 of the Convention due to the failure to provide the proper conditions of detention (of R.A. Kim) in a special institution and (of N.N. Rakhimov) in the Department of Internal Affairs, in the judgment “*Eshonkulov v. Russia*” - with regard to § 2 of Article 6 of the Convention due to violation of the applicant’s right to presumption of innocence, in the judgments “*Azimov v. Russia*”, “*Egamberdiyev v. Russia*”, “*Akram Karimov v. Russia*”, “*Ismailov v. Russia*”, “*Rakhimov v. Russia*”, “*Khalikov v. Russia*”, “*Eshonkulov v. Russia*” - it is considered that the movement of applicants from the territory of the Russian Federation will be a violation of Article 3 of the Convention due to the risk of ill-treatment.

Individual Measures:

1. Just satisfaction

Applicant's full name	Amounts awarded		Payment
	Non-pecuniary damage	Legal costs and expenses	
Khamidullo Shukirdzhanovich Ismailov	EUR 5,000	EUR 7,750	In accordance with the decision of the European Court the amount of the compensation awarded was transferred to the account of the applicant's representative U.R. Iminov in full in RUB at the exchange rate on the date of payment (payment order dated 31.07.2015 No. 280364 in the amount of RUB 841,349.55).
Akram Ahmadovich Karimov	EUR 7,500	EUR 8,000	In accordance with the decision of the European Court the amount of the compensation awarded was transferred to the account of the applicant's representative N.V. Ermolayeva in full, including interest for delay of payment, in RUB at the exchange rate on the date of payment (payment order dated 21.05.2015 No. 137300 in the amount of RUB 854,876.67).
Faizullo Yuldashevich Egamberdiyev	EUR 7,500	EUR 5,000	In accordance with the decision of the European Court the amount of the compensation awarded was transferred to the account of the applicant's representative N.V. Yermolayeva in full, including interest for delay of payment, in RUB at the exchange rate on the date of payment (payment order dated 21.05.2015 No. 137298 in the amount of RUB 689,416.70).
Nabi Naimovich Rakhimov	EUR 9,000	EUR 8,000	In accordance with the decision of the European Court the amount of the compensation awarded was transferred to the account of the applicant's representative D.V. Trenina in full in RUB at the exchange rate on the date of payment (payment order dated 01.04.2015 No. 38032 in the amount of RUB 1,056,449.23).
Roman Anatolievich Kim	EUR 30,000	EUR 1,070	In accordance with the decision of the European Court the amount of the compensation awarded was transferred to the account of the applicant's representative O.P. Tseitlina in full, including interest for delay of payment, in RUB at the exchange rate on the date of payment (payment order dated 20.03.2015 No. 17126 in the amount of RUB 2,031,025.16).
Zhavokhir Sobirovich Eshonkulov	EUR 8,500	EUR 5,000	In accordance with the decision of the European Court the amount of the compensation awarded was transferred to the account of the applicant's representative D.V. Trenina in full in RUB at the exchange rate on the date of payment (payment order dated 02.07.2015 No. 222267 in the amount of RUB 842,134.05).
Sokhib Umarovich Khalikov	EUR 7,500	EUR 5,000	In accordance with the decision of the European Court the amount of the compensation awarded was transferred to the account of the applicant's representative D.V. Trenina in full in RUB at the exchange rate on the date of payment (payment order dated 31.07.2015 No. 279518 in the amount of RUB 824,852.50).
Ismon Sharofovich Azimov	EUR 5,000	EUR 6,000	In accordance with the decision of the European Court the amount of the compensation awarded was transferred to the account of the applicant's representative D.V. Trenina in full in RUB at the exchange rate on the date of payment (payment order dated 20.11.2013 No. 1555961 in the amount of RUB 483,495.10).

2. Information about the current situation of the applicants:

2.1. R.A. Kim, Kh.Sh. Ismailov, A.A. Karimov, F.Yu. Egamberdiyev, N.N. Rakhimov, Zh.S. Eshonkulov, S.U. Khalikov were released from special institutions in which they were detained and are currently at large.

Information on the situation of I.Sh. Azimov was submitted to the Committee of Ministers of the Council of Europe in the framework of the “Garabayev” group of cases (documents DH-DD(2014)58, DH-DD(2014)151, DH-DD(2014)1431).

2.2. The decision of the national court of 19 July 2011 on the administrative expulsion of R.A. Kim is not subject to execution as the statutory duration of its execution has expired¹.

After release, R.A. Kim was not brought to administrative or criminal responsibility, there are no proceedings on administrative expulsion or deportation against him.

The applicant and his representatives did not apply to courts in connection with the entry into force of the decision of the European Court, including on issues relating to the violation of their rights due to application of administrative expulsion procedures.

Currently, there is no threat of application of administrative expulsion procedures against R.A. Kim.

The judgment of the European Court in application “Kim v. Russia” indicates amendments to Article 18.8. of the Code of Administrative Offenses of the Russian Federation, and in this regard concerns are expressed that these amendments create additional risks for the applicant. In this regard, the Russian authorities refer to the previously submitted Action plan in the case “Alim v. Russia” (see document DH-DD(2015)411), which gives detailed comments on the groundlessness of the corresponding fears.

2.3. Individual measures in connection with the European Court’s prohibition of forced transfer from the territory of the Russian Federation of F.Yu. Egamberdiyev, A.A. Karimov, Kh.Sh. Ismailov, N.N. Rakhimov, S.U. Khalikov, Zh.S. Eshonkulov are adopted within the “Garabayev” group of cases (documents DH-DD(2014)58, DH-DD(2014)151, DH-DD(2014)1357, DH-DD(2014)1431, DH-DD(2015)424, DH-DD(2015)861, DH-DD(2016)67, DH-DD(2017)177, DH-DD(2017)177-add).

General Measures:

1. Copies of the judgments of the European Court in the cases “Kim v. Russia”, “Azimov v. Russia”, “Egamberdiyev v. Russia”, “Akram Karimov v. Russia”, “Ismailov v. Russia”, “Rakhimov v. Russia”, “Khalikov v. Russia”, “Eshonkulov v. Russia” are sent to the Constitutional Court, as well as to the competent state authorities (Supreme Court,

¹In accordance with Part 1 of Article 31.9 of the Code of Administrative Offenses of the Russian Federation, the term of limitation for the enforcement of decisions on administrative offense is two years.

Prosecutor General's Office, Federal Bailiff Service, Federal Migration Service (before reorganization), Ministry of Internal Affairs), for taking into account in practice and adoption of general and individual measures within the relevant competence.

The competent state authorities sent copies of the European Court's decisions to their structural divisions and regional offices with the necessary guidance on consideration of *ratio decidendi* of the European Court in practice.

2. Unofficial translations of the mentioned decisions of the European Court are published in Russian on official websites of the Supreme Court (on the internal website in the "Vedomstvenniy kontur" ("Departmental affairs") section ("International law" folder), accessible to all Russian courts), the Prosecutor General's Office (in the section "Documents", sub-section "Decisions of the European Court of Human Rights") (for "Azimov v. Russia", "Kim v. Russia", "Rakhimov v. Russia", "Eshonkulov v. Russia"), the automated information retrieval system of the Ministry of the Interior of Russia STRAS Yurist (for "Azimov v. Russia", "Kim v. Russia", "Egamberdiyev v. Russia", "Rakhimov v. Russia"), reference legal systems Consultant Plus and Garant.

3. Since in all the judgments of the group under review the European Court has found violations related to placement of persons in special institutions on the basis of court's decisions which did not specify the terms of detention, as well as to the fact that the applicants had no opportunity to challenge the lawfulness of the application of the appropriate measure, the necessary measures were taken to improve current Russian legislation.

In particular, within the implementation of the Decree of the President of the Russian Federation of 20 May 2011 "On Monitoring of Law Enforcement in the Russian Federation", the competent state authorities have studied the need for legislative reform. Based on the results of the study, the Report on the Results of the Monitoring of Law Enforcement in the Russian Federation for 2015, submitted in August 2016 to the President of the Russian Federation, included proposals to prepare the necessary changes to the legislation in connection with the decisions of the European Court on the group of cases under consideration.

The Order of the Government of the Russian Federation of 26 October 2016 No. 2831-r approved the plan of the legislative activities of the Government of the Russian Federation for 2017. In accordance with p. 26 of this plan, the Ministry of the Interior of the Russian Federation prepares the draft law On Amendments to the Code of Administrative Offenses of the Russian Federation (regarding the setting, extension and suspension of the detention of persons in special institutions for administrative expulsion and deportation, and the procedure for appealing against the relevant decisions).

The drafting of the law is planned for December 2017.

4. In the judgment “Eshonkulov v. Russia” the European Court pointed out that the right of Zh.S. Eshonkulov to the presumption of innocence was violated (p. 2 of Article 6) as the decision on his extradition contained the assertion that he had committed a crime.

It is noted that in accordance with Article 49 of the Constitution of the Russian Federation and Article 14 of the Code of Criminal Procedure of the Russian Federation everyone accused of a crime shall be considered not guilty until his or her guilt has been proven in accordance with the procedure stipulated by federal law and established by a final court sentence.

It is also noted that the violation found by the European Court is of a single nature and is due to the incorrect application of the legislation provisions by a specific employee of the prosecutor’s office. In addition, as reported earlier, including in the action plan DH-DD(2016)67, currently the decision to extradite Zh.S. Eshonkulov has been canceled.

Along with this, as noted above, a copy of the ECHR decision was forwarded to the Prosecutor General’s Office, that instructed inferior prosecutors on the inadmissibility of such violations in the future.

The Russian authorities believe that the measures taken will make it possible to prevent similar violations in the future.

5. Adoption of general measures to ensure proper conditions of detention in special institutions is carried out within the framework of execution of the judgment in application “Adeishvili (Mazmishvili) v. Russia”. A detailed Action plan of the Russian authorities was forwarded earlier (document DH-DD(2016)417)).

6. Adoption of general measures to ensure proper conditions of detention in temporary detention facilities and in internal affairs bodies is carried out within the execution of decisions on the group of cases “Fedotov” and the pilot decision “Ananyev and Others v. Russia”.

7. Adoption of general measures aimed at eliminating the risk of ill-treatment of applicants forcibly transferred from the territory of the Russian Federation is carried out within the execution of judgments in “Garabayev” group of cases.

Conclusions:

1. The Russian authorities believe that the individual measures taken have eliminated as far as possible the violations in respect of R.A. Kim, I.Sh. Azimov, Kh.Sh. Ismailov, A.A. Karimov, F.Yu. Egamberdiyev, N.N. Rakhimov, Zh.S. Eshonkulov, S.U. Khalikov as regards individual measures relating to the aspect of the “Kim” group of cases. Accordingly, the Russian authorities have fulfilled their obligations under Article 46 of the Convention and in this respect the CMCE can close examination of these issues.

With regard to the individual measures in respect of I.Sh. Azimov, Kh.Sh. Ismailov, A.A. Karimov, F.Yu. Egamberdiyev, N.N. Rakhimov, Zh.S. Eshonkulov, S.U. Khalikov,

aimed at eliminating the risk of their forcible removal from the territory of the Russian Federation, the work is carried out within the framework of “Garabayev” group of cases.

2. The work on adoption of general measures continues in the framework of planned activities for the groups of cases mentioned in the present document.