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Meeting: 1236 meeting (22-24 September 2015) (DH)

Item reference: Action plan (10/08/2015)

Communication from the Russian Federation concerning the case of Ananyev and Others against Russian Federation (Application No. 42525/07).

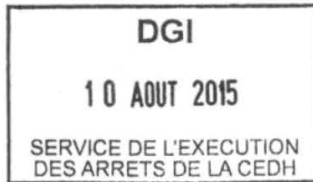
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Réunion : 1236 réunion (22-24 septembre 2015) (DH)

Référence du point : Plan d'action

Communication de la Fédération de Russie concernant l'affaire Ananyev et autres contre Fédération de Russie (Requête n° 42525/07) (**anglais uniquement**)



**ACTION PLAN
for execution of the "pilot" judgment
of the European Court of Human Rights on applications
nos. 42525/07 and 60800/08 *Ananyev and others v. Russia*
(judgement of 10 January 2012, final on 10 April 2012)**

I. Violation

In the judgment *Ananyev and others v. Russia* the European Court of Human Rights found the violation of Articles 3 and 13 of the Convention for Protection of Human Rights and Fundamental Freedoms ("the Convention") in relation to two applicants by the authorities of the Russian Federation, as well as the presence of the structural problem of inhuman and degrading conditions of detention in remand prison and the lack of effective domestic legal remedies from the relevant violations in the Russian Federation.

Within the framework of execution of the "pilot" judgment the Russian authorities took a number of individual and general measures, whereof the Committee of Ministers of the Council of Europe ("the CMCE") was regularly informed, inter alia, on October 10, 2012 (Action Plan, Information Document DH-DD(2012)1009); on 16 November 2012 (report on individual measures, Information Document DH-DD(2012)1072); on 13 February 2013 (report on individual measures, Information Document DH-DD(2013)153); on 14 August 2013 (report on individual measures, Concept of the legislation reforming, Information Document DH-DD(2013)936); on 30 April 2014 r. (report on individual measures, Action Plan, Information Document DH-DD(2014)580).

The present document contains the updated data on individual measures taken under the applications communicated by the European Court and falling within the "pilot" judgement, and on general measures taken, with regard to establishment of effective national legal remedies.

II. Individual measures: (updated information on examination of the applicants' complaints, falling within the effect of the "pilot" judgment)

The European Court informed the Russian authorities of 261 applications falling within the "pilot" judgment, and obliged the authorities to provide the compensation to the applicants, if there are grounds, in view of improper conditions of detention in remand prison or forward objections, in case the application does not fall under the "pilot" judgment.

The authorities of the Russian Federation perform necessary work upon all the communicated cases with the subsequent forwarding of their well-reasoned stance and suggestions to the ECHR under the established procedure. The status of that work is characterized by the following data.

1. The authorities of the Russian Federation acknowledged the violation and forwarded to the European Court the declaration on their commitment to pay the compensation for the inflicted harm to the applicants in 211 applications.

In relation to 192 applicants the ECHR has already accepted the suggestions of Russian authorities and struck the application out of the list of cases, 4 declarations were rejected by the Court and the judgments on applications were delivered.

130 applicants, whose applications had been struck out of the list of cases, had already been paid the sums of compensation, the payments in rest of cases were arranged within terms established by the European Court.

Upon 15 cases the suggestions of the authorities of the Russian Federation are under examination.

2. The Russian authorities sent their stance on 46 applications to the ECHR (with the supporting documents attached), stating that the applicants' complaints were inadmissible, based on the criteria defined in Articles 35 and 37 of the Convention, or that the conditions of detention of the relevant applicants were proper.

The Court had already agreed with the arguments of the authorities regarding 23 of the mentioned applications and struck them out from the list of cases, or acknowledged that there was no violation of the Convention in them. The Court delivered judgments on 4 applications, in which the violation of the conventional provisions was established. The position of the Russian authorities regarding 19 applications is under examination.

III. General measures (in part of creation of effective national legal remedies from violations connected with failure to provide proper detention conditions in detention facilities and in penal institutions)

In view of the conclusions and recommendations of the European Court and the CMCE the Russian authorities planned and took measures on creation of effective domestic legal remedies.

Measures for improvement of preventive legal remedy

1. On 8 March 2015 there was adopted Federal Law no. 21-FZ Code of Administrative Procedure of the Russian Federation as well as the number of other laws on amendments to certain legislative acts due to its adopting (Federal Laws nos. 22-FZ¹ and 23-FZ² of 8 March 2015, Federal Constitutional Law no. 1-FKZ³ of 8 March 2015).

The abovementioned laws provide for creation of the significantly improved preventive national remedy from violations connected with failure to provide proper detention conditions in detention facilities and in penal institutions, and correspond to the conclusions stated in the "pilot" judgment of the European Court *Ananyev and*

¹ Federal law no. 22-FZ of 8 March 2015 On Enactment of the Code of Administrative Procedure of the Russian Federation.

² Federal law no. 23-FZ of 8 March 2015 on Amendments to Certain Legislative Acts of the Russian Federation as a Result of the Enactment of the Code of Administrative Procedure of the Russian Federation.

³ Federal Constitutional Law no. 1-FKZ of 8 March 2015 on Amendments to the Federal Constitutional Law "On the Commissioner for Human Rights of the Russian Federation" and the Federal Constitutional Law "On the Russian Federation Military Courts" due to the enactment of the Code of Administrative Procedure of the Russian Federation.

others v. Russian Federation in full. Thus, the Code of Administrative Procedure provides for:

- more active role of the court (in cases provided for by the Code, the court can go beyond the filed claims, on its own initiative request additional information, as well as materials, schedule expert examinations, engage specialists). In their turn, the parties of the process are also entitled to file motions for recovery of information and materials, for conduct of expert examinations, etc.;

- the redistribution of burden of proof (obligation to prove the legality of contested regulations, decisions, actions (omission) of bodies, organizations and officials vested with state or other public authorities, is imposed on the relevant body, organization or official. At that, the abovementioned bodies and organizations and officials are obliged also to confirm the facts, to which they refer to as the grounds for their objections);

- measures, including penalties, for failure to submit the required evidence to the court, as well as for failure to inform of impossibility to submit evidence at all or within the term established by the court;

- participation in case by the body whose officials committed the alleged violations, and/or the body vested with competence to eliminate them, as well as the court's authority to involve the proper respondent or the second respondent to participation in the case (inter alia, in cases of succession at reorganization or closing down of public authority), which would facilitate the objective examination of cases under category concerned and prompt execution of decisions delivered by the court;

- opportunity of the court to apply preventive remedies (for example, to suspend or prohibit performance of certain actions before examination of the case on the merits);

- privileges on payment of state duty and other legal costs;

- institute of acceleration of the administrative case examination and the mechanism of its practical implementation (issue by the court chairman on his own initiative or upon the application from the interested person of the motivated ruling on acceleration of examination of the administrative case, which can indicate actions to be performed for those purposes to accelerate the case examination, and the term within which the court hearing should be held, as well as the opportunity to communicate with the court by e-mail in the established cases, the use of video-conferencing for examination of cases);

- court's control over the development of the court proceedings and some actions of persons participating in them (for example, the court may not approve the agreement on reconciliation, if it is prohibited by law, contradicts with the essence of the administrative case or violates the rights of other persons);

- requirements to the court decision (it should clearly specify, whether the contested decision, action (omission) is acknowledged as violating the regulations, rights and legal interests, who admitted that violation, who should take measures to remedy such violations, within which terms and what measures, who and within which terms should be informed of execution of the court decision);

- binding nature of the court decisions and opportunity to immediately execute the court decisions;
- court's authority to issue special rulings for the purposes of elimination of the revealed breaches of the law.

Measures for improvement of compensatory legal remedy

2. For the purposes of effective compensatory legal remedy creation the Ministry of Justice of Russia is currently developing the draft Federal law On Introduction of Changes to Certain Legal Acts of the Russian Federation (in part of improvement of compensatory legal remedy with regard to violations connected with the failure to provide proper detention conditions in detention facilities and penal institutions).

The draft law provides for fixing in the Federal law of 15 July 1995 no. 103-FZ On Detention of Suspects and Accused in Custody as well as in the Penal Execution Code of the Russian Federation of the right to compensation in a judicial proceedings using treasury funds of the Russian Federation for damage inflicted by improper conditions of detention, regardless of whether there is a fault of state bodies or their officials.

At the same time the draft law provides for introduction of changes to the Code of Administrative Procedure of the Russian Federation for the purpose of legal regulation of peculiarities of filing and examination of administrative complaint on awarding of compensation for violation of detention conditions. In particular, the drafts stipulate that:

- the right to compensation for violation of detention conditions would be exercised by the applicant's filing of the administrative complaint to the court on awarding of the relevant compensation;
- the administrative complaint on awarding of the compensation for violation of detention conditions could be examined separately, as well as combined with the administrative case on contesting of decisions, actions (omissions) of public authorities, officials, state and municipal officials in view of the failure to provide proper detention conditions;
- norms of the Code of Administrative Procedure of the Russian Federation, regulating the preventive legal remedy (mentioned above in the relevant section) will cover the legal relations connected with filing and examination of administrative complaints on awarding of the relevant compensation for violation of conditions of detention in full, as well as with execution of court decisions delivered as a result;
- when considering an administrative complaint for compensation for violation of detention conditions the applicant is not assigned with the burden of proof of causing moral harm. If the national court finds a violation of conditions of detention, than the amount of compensation must be determined taking into account the nature and duration of the violation, concrete circumstances of the violation and its consequences;

- awarding of the compensation for violation of detention conditions will not prevent from compensation for pecuniary damage under Articles 1069 and 1070 of the Civil Code of the Russian Federation⁴. If, when filing the administrative complaint on awarding of the relevant compensation, the applicant claims for the compensation for damage inflicted by violation of detention conditions, the court will have the right to examine those claims and, if there are sufficient grounds, take decision on their granting.

The draft law provides for introduction of amendments to the Budget Code of the Russian Federation for the purposes of legal regulation procedure for execution of the relevant court decisions, with regard to conclusions of the European Court.

As of the moment the abovementioned draft law is being improved with regard to the comments and proposals provided by the competent state authorities, whereafter additional procedure of conciliation will be held. Finalization of the Draft is planned until December 2015.

3. The analysis of the national court practice indicates that many courts, under the legislation in force and with regard to legal stance of the ECHR at examination, take decisions on grating of complaints on improper detention conditions in detention facilities, and award sums of compensation for inflicted damage.

According to the Judicial Department at the Supreme Court of the Russian Federation, in 2014 about 4.5 thousand cases on compensation for pecuniary and non-pecuniary damage in view of improper detention conditions in detention facilities and correctional institutions were examined, of which about 3 thousand were granted (that is about 66%). About 58 million roubles were recovered in favour of applicants under the granted claims (more than twice as much, as in 2013).

The relevant judgments were taken, for example, in Karachay-Cherkess Republic, Republic of Bashkortostan, the Altay Territory, the Zabaykalye Territory, in the Kostroma Region, the Kaliningrad Region, the Oryol Region, the Rostov Region, the Tomsk Region, the Sverdlovsk Region and other regions.

It is expected that the introduction into effect of the Code of Administrative Procedure of the Russian Federation (from September 2015), as well as adoption of measures to improve national compensatory legal remedies and practice, will ensure the effective protection of the rights of Russian citizens in the art of relations and shift the burden of this protection on a national level.

⁴ Damage inflicted by public authorities, local authorities, as well as by officials and damage inflicted by unlawful acts of investigative agencies, preliminary investigation bodies, prosecutor's office and the court respectively.