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Mikheyev v. Russian Federation (No. 77617/01) group of cases

Summary of the authorities' updated information of December 2014 and assessment thereof

Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights

The opinions expressed in this document are binding on neither the Committee of Ministers nor the European Court

This document contains a summary of the information provided by the Russian authorities on 26 December 2014 (see [DH-DD\(2015\)44](#)) in response to the Committee of Ministers' decision adopted at its 1201st meeting (June 2014) and an assessment thereof.

It is concluded that certain recent measures can be welcomed, such as certain regulatory and legislative changes in respect of safeguards against ill-treatment, as well as the trainings held and practical instructions issued. As regards some other aspects, further information is required, notably concerning the official monitoring of ill-treatment incidents and statistical data. Further, a number of areas have been identified which require further measures, in particular with respect to sending a clear and firm "zero tolerance" message and to ensuring the efficiency of safeguards against ill-treatment in practice, as well as with respect to ensuring the independence of investigations into ill-treatment complaints. Lastly, additional measures are also necessary as regards the problem of the expiration of the limitation periods and as regards the need to overcome the shortcomings identified by the Court in respect of judicial control over investigations and of the use of confessions obtained under duress in trial.

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A. Decision by the Committee of Ministers and information provided in response

The Committee noted that it is necessary to receive statistical data on the impact of the measures taken so far as well as more detailed information with respect to trainings, review of instructions, organisation of official monitoring of incidents of ill-treatment and to the functioning of special units responsible for the investigation of torture and ill-treatment.

a) As regards statistical data, the authorities submitted that in 2013, 530 law enforcement officers were convicted for crimes provided by paragraph 3 of Article 286 of the Criminal Code (abuse of power committed with the use of violence) and in 2014 (by December 2014), 832 law enforcement officers. The authorities gave a number of examples in this respect, where police officers were sentenced to imprisonment ranging from 3 to 7 years coupled with 2 or 3 years' ban to hold positions in the bodies of the Ministry of the Interior. According to the authorities, these examples confirm the efficiency of criminal investigations into torture and ill-treatment.

b) As regards trainings and instructions, the following information was provided:

- on 12 September 2014, the Ministry of the Interior of the Russian Federation issued Order no. 782 concerning the interaction of the Ministry with the Government Agent which, inter alia, compels the subordinate bodies: to ensure execution of the European Court's judgments; to timely and properly conduct check-ups upon the Government Agent's requests; to include the regular study of the European Court's judgments delivered against the Russian Federation (which relates to the Ministry's areas) into the professional training of staff;
- in 2013, the University of St Petersburg together with other academic institutions organised trainings for senior officials of the Ministry of the Interior, which also covered issues concerning safeguards against ill-treatment and torture;
- in 2014, various trainings were organised for heads of temporary detention isolators and escort divisions;
- initial trainings were put in place for newly recruited police officers covering the issues of ill-treatment, use of force, ethics, etc.;
- special in-service training programmes were developed by the Academy of the Investigative Committee, such as "European legal standards of criminal proceedings" and "Investigation of crimes against persons" (including crimes committed by police officers);
- in-service training programmes, in particular by the Academy of the General Prosecutor's office, are also organised for prosecutors, including on issues concerning prosecutors' supervision over the respect of safeguards against ill-treatment.

c) As regards official monitoring of ill-treatment incidents, the Russian authorities submitted that the Ministry of the Interior has put in place a continuing monitoring of the discipline and compliance with the legislation by the staff. This monitoring is conducted by internal security departments of the Interior. According to the authorities, about 70 % of all the crimes committed by police officers are detected by these departments. For instance, over 11 months of 2014, the Chief Internal Security Directorate of the Ministry of the Interior received around 15,100 complaints concerning actions of police officers, 273 of which concerned the use of force by police officers with a view to extracting a confession. The authorities gave a number of examples where such complaints led to the institution of criminal proceedings against the police officers involved. Furthermore, they noted that in the first half of 2014, the Ministry of the Interior forwarded to the territorial subordinate bodies reports concerning the discipline and compliance with the law by the police officers together with the necessary instructions.

The authorities also provided information with regard to the prosecutors' supervision over detention facilities and a number of decisions taken by them to put an end to unlawful arrests and placement in custody.

d) As regards the functioning of special units responsible for the investigation of ill-treatment, the Russian authorities submitted that the special units are provided with the necessary resources allocated from the federal funds of the Investigative Committee. The units operate in the central office of the Investigative Committee as well as in its regional departments in all the federal districts with a total number of 62 employees. These units investigate the most complex and high-

profile cases. In the federal entities where such units were not established, the investigation of ill-treatment is entrusted to the most experienced investigators with the relevant specialisation.

The Committee invited the Russian authorities to adopt additional measures aimed at delivering, at a high political level, a clear and firm message of “zero tolerance” of torture and ill-treatment, at improving safeguards against such acts and at reinforcing judicial control over investigations.

e) As regards “zero tolerance” message, no information was provided.

f) As regards improving safeguards against ill-treatment, the Russian authorities adopted the following measures:

Between August 2013 and December 2014 amendments were introduced to the “Instruction on duties and rights of the police in the duty unit of territorial body of the Ministry of the Interior of the Russian Federation after delivery of persons”, according to which:

- the duties of operative officers were extended: a duty officer, in addition, must also report (no later than three hours) about serious illness, injury or death of a delivered person to his or her relatives and to the prosecutor;
- the Journal of the detained persons should contain the records concerning not only the persons delivered, but also those who visited the police station by their own will;
- the Journal of detained persons should contain, in addition to the date and time of the expiration of the detention period, the date and time of the release of an unlawfully detained person with a written note containing an apology in this respect;
- concerning the complaints lodged by persons delivered to police stations, a reference was made in the Instruction to the Order of the Ministry of the Interior concerning the examination of applications lodged with the Ministry.

Legislative amendments (Federal Law no. 193-FZ of 28 June 2014) were introduced to the Law on detention and remand of suspects and accused of 15 July 1995 according to which suspects and accused, under the permission of the relevant authority which examines the criminal case, shall be provided with the right to communicate with their representatives (or lawyers) before the European Court and those providing them with legal assistance with respect to lodging an application before the European Court. Meetings of this kind shall be private, without restrictions on their number and duration, and under conditions which will allow an officer of the detention facility to observe, but not to hear.

g) As regards reinforcing judicial control, the authorities indicated that in the first half of 2014, the Supreme Court systematised the European Court’s case-law on cases against the Russian Federation, including those concerning violations of Article 3 on account of torture by law enforcement agents. The Supreme Court also prepared a review of the European Court’s case-law concerning the awarding of just satisfaction in cases of violation of Article 3 (including torture and ill-treatment, poor conditions of detention and lack of adequate medical care for detainees). The authorities further submitted that the increasing use of the remedy available under Article 125 of the Code of Criminal Procedure (CCP) shows the effectiveness of this remedy. They also provided examples of successful use of this remedy.

The Committee urged the Russian authorities to address, without delay, the problem of the expiration of limitation periods, in particular, in the case of serious crimes such as torture committed by state agents.

The Russian authorities did not indicate any measures taken or envisaged to resolve this problem.

The Committee urged the Russian authorities to adopt effective measures to ensure that the domestic courts exclude any evidence found to have been obtained in breach of Article 3 of the Convention.

The Russian authorities submitted that Russian legislation contains sufficient legal guarantees to prevent the use of evidence obtained under duress by courts. With a view to improving the domestic

courts' practice, the Supreme Court plans to conduct, in the second half of 2015, an analysis of their case-law related to evidence obtained under duress by law enforcement agents.

Other information submitted by the Russian authorities:

- measures envisaged by the Investigative Committee to ensure a better consolidation of the practice of investigation of ill-treatment committed by law enforcement agents and statistical reporting of the information concerning ill-treatment complaints;
- measures taken with a view to improving communication of complaints to the Investigative Committee, such as a direct telephone line as well as an online website put in place to communicate with the Chairman of the Investigative Committee;
- information on the publication and dissemination of the Court's judgments by the Supreme Court, the Ministry of the Interior and the General Prosecutor's Office;
- visits of temporary detention facilities and other events organised in the context of monitoring by civil society (such as, all-Russian conferences and interactive video-conference organised by human rights organisations with the participation of state representatives; for full details, see p. 16 of the action plan in document DH-DD(2015)44).

B. Assessment

a) Statistical data

The information submitted by the Russian authorities shows that there is an increase in criminal convictions of police officers for abuse of power associated with the use of violence in 2014 in comparison with 2013. However, this information does not permit to assess the trend of ill-treatment incidents and the impact of the measures taken because it does not contain data for the same periods on the number of ill-treatment complaints received by the Investigative Committee, the number of investigations ordered and the number of decisions not to prosecute and the number which resulted in an acquittal and, in case of convictions, the type of sentences imposed. The authorities are therefore invited to provide this information.

b) Trainings and instructions

The measures taken by the authorities are to be welcomed. The authorities should be encouraged to continue their instructions and training efforts over the years ahead in order to consolidate the practical knowledge and respect for the safeguards against ill-treatment and the relevant Convention standards. In particular, considering the Court's findings in these cases, the trainings should focus on modern methods of investigation and questioning.

c) Official monitoring of ill-treatment incidents by Internal Security departments of the interior and prosecutor's offices

It is noted that these mechanisms for monitoring offences committed by law enforcement agents are important instruments for the prevention and detection of ill-treatment incidents and of unlawful detention in police custody. The authorities are invited to provide information on whether the prosecutor's officers and the Internal Security departments of the interior draw up monthly and/or annual reports in the context of their monitoring and whether such reports are made public. Further, information would also be useful on the follow-up given to the results of the monitoring bodies.

d) Functioning of special units responsible for the investigation of ill-treatment complaints

At the outset, it is recalled that the Committee of Ministers, in previous examinations of this group, has noted with interest the modifications in the legislation and administrative practice made by the Russian authorities since the events described in the European Court's judgments, notably the setting up of the Investigative Committee (see the decision adopted at the 1100th meeting (December 2010). With a

view to further improving the independency of investigations, special investigation units were set up in April 2012 within the Investigative Committee.

It appears, however, that these special investigation units deal only with the most complex and high-profile cases and, in the regions where such units do not exist, the investigation of ill-treatment is entrusted to the most experienced investigators with the relevant specialisation. In this connection, it is to be recalled that in a number of cases in this group, the Court found that the investigation into the applicant's allegations of ill-treatment with a view to extracting a confession was not independent because such allegations were investigated by the same investigator who had opened and conducted the investigation of the criminal case against the applicant. The Court noted that the investigator obviously had a vested interest in obtaining a confession from the applicant and in overlooking the circumstances in which that statement had been obtained (*Aleksandr Sokolov*, § 61, *Kazantsev*, § 53, *Mogilat*, § 63). Notwithstanding the measures already adopted (i.e. the setting up of the Investigative Committee and its specialised units), it is not clear how the above shortcomings identified by the Court have been remedied. Under the new system, it still appears possible that one and the same investigator of the Investigative Committee can deal not only with the criminal case against a person, but also with that person's allegations of ill-treatment, thereby jeopardising the independence of the investigation into the ill-treatment allegations. This is all the more true for the regions in which no special investigation units exist, as well as, where such special units exist, in cases deemed not complex or high-profile.

Accordingly, the Russian authorities are invited to provide information on the measures taken to ensure that the "investigation into ill-treatment is carried out by impartial experts" having regard to the Court's findings.

In this context, it is also noted that in its recent judgement of *Lyapin* (final on 24/10/14), the Court observed that in many ill-treatment cases against the Russian Federation, the authorities never instituted official criminal proceedings and their investigative efforts were limited to a "pre-investigation inquiry", which in accordance with the Code of Criminal Procedure are carried out before the institution of criminal investigation in order to verify the well-foundedness of criminal complaints. In many cases in this group, these pre-investigation inquiries led ultimately to refusals to open criminal proceedings. The Court held that investigative measures such as the questioning of witnesses, confrontations and identification parades can be carried out in the course of a criminal investigation only once a criminal case has been opened. The Court concluded that the investigative authority's refusal to open a criminal investigation into credible allegations of ill-treatment is indicative of the State's failure to comply with its obligation under Article 3 to carry out an effective investigation (see §§ 133-137).

It follows from the above judgment that a mere refusal by an investigating authority to open a preliminary investigation into credible allegations of ill-treatment (even if certain investigative measures were conducted to verify them in the context of a pre-investigation inquiry) may lead to a violation of Article 3. In this context, it follows from the table detailing the overview of the individual measures (see document H/Exec(2015)3) that in a number of cases, following the European Court's judgments, the investigators of the Investigative Committee refused to open criminal proceedings despite the findings of substantive violations of Article 3 by the European Court (see e.g. the cases of *Georgiy Bykov*, *Shanin*). Accordingly, it appears that the problem of refusing to open criminal proceedings into credible allegations of ill-treatment, as identified by the Court in its judgments and most recently again in *Lyapin*, remains to be addressed. It is therefore of utmost importance that measures are taken to ensure that such allegations of ill-treatment are duly investigated within the framework of criminal preliminary investigations (this issue is also relevant for the application of limitations periods, see below).

e) "Zero tolerance" message

No information was provided on this issue. It is recalled that in order to prevent ill-treatment and torture in police custody, it is of utmost importance that the authorities issue and promote strong condemnation of such practice both through messages at a high political level to all members of law enforcement agencies and, where necessary, through additional legislative measures. The authorities are therefore invited again to adopt measures aimed at sending the firmest and clear message on a

high level that ill-treatment by the police and extraction of confession by unlawful means will no longer be tolerated.

f) Improving safeguards against ill-treatment

It is recalled that during the Committee of Ministers' last examination of this group at the 1201st meeting (June 2014), it was noted that even if the main safeguards against ill-treatment and torture are to different degrees anchored in Russian legislation and practice, these safeguards need to be improved. Accordingly, the Committee invited the authorities to take additional measures aimed at improving these safeguards.

In this connection, the regulatory and legislative changes introduced by the authorities are to be welcomed. It is crucial that their strict application in practice is ensured and properly monitored by the authorities. In particular, in the context of access to a doctor and medical screening, an obligation on the part of police officers to report about an injury of a delivered person within three hours upon delivery to relatives and to the prosecutor is an important amendment, which should be strictly respected by police officers. Additional measures are still required however in respect of a detainee's right to a medical doctor to ensure that this right is unequivocal and not subject to a police officer's discretion.

Similar considerations apply in respect of ensuring that the release of an unlawfully detained person in police custody is duly recorded. At the same time, the question arises as to the consequences of illegal detention, over and above the apology by the police (e.g. disciplinary and/or criminal proceedings, compensation in civil proceedings).

As to access to a lawyer, the legislative amendments introduced concerning the detained person's right to communicate with his or her representative before the European Court is to be welcomed. At the same time, no information was provided on additional measures taken in order to ensure that an arrested person is given immediate access to a lawyer from the moment of the *de facto* apprehension and before initial questioning by police officers.

It is also important to receive information on additional measures taken to ensure that an arrestee is duly informed of his rights (right to remain silent, to notify a third person of detention, the right to access a lawyer and a doctor) in a clear and written manner. In this context, reference is made to the most recent case of *Lyapin* cited above, in which the Court found that the applicant's confession was given after almost twelve hours spent at the hands of the police without being recognised as a suspect in criminal proceedings and without being able to avail himself of the rights pertaining to that status, including access to a lawyer, notification of detention to a third party or access to a doctor. Accordingly, it is necessary that the Russian authorities continue their efforts in taking the above additional measures in order to ensure the efficiency of the safeguards in practice and their compliance by the police taking into account the Court's case-law and the CPT's recommendations.

g) Reinforcing judicial control

The authorities drew the Committee's attention to the, in their view, increasing and successful use of the judicial remedy available under Article 125 of the CPP. However, it is reiterated that the successful exercise of this remedy by the victim is not yet sufficient to ascertain its effectiveness and that, in certain situations, the Court found that this remedy was not effective (see, in this context, the notes prepared for the 1201st meeting (June 2014)). The Russian authorities are therefore strongly encouraged to take measures to ensure that the shortcomings identified by the Court are remedied.

h) Expiration of limitation periods

The Russian authorities noted that once criminal proceedings are instituted, they cannot be terminated on the basis of the expiration of the prescription periods if the perpetrator was not identified. When the perpetrator is identified, criminal proceedings should be terminated, if he or she does not object to this.

However, this does not prevent the institution of disciplinary and/or civil proceedings against the police officer concerned.

In this connection, it is noted that in many cases in this group, criminal investigations have never been formally instituted; rather ill-treatment complaints have been examined in the context of so-called "pre-investigation inquiries". For instance, in certain cases (see for example *Kondratishko and others* and *Ablyazov*), having conducted pre-investigation inquiries, investigators refused to open a criminal investigation for lack of evidence. Thereafter, this decision was quashed and re-taken again on several occasions for additional inquiries which ultimately protracted the investigation. In the end, after the critical date, the investigator refused to open a criminal investigation because of the expiration of the limitation periods.

In this context, it is also stressed that, in accordance with the Court's well-established case-law, criminal investigations into allegations of serious human rights abuses such as ill-treatment and torture must be dealt with promptly to avoid impunity resulting from statutory limitations on crimes.

In view of the above considerations, it is necessary, in the context of general measures, that the authorities reinforce the relevant legislative framework in order to ensure that such abuses by law enforcement agents are examined by investigating and judicial authorities speedily.

i) Use of confessions obtained under duress in trial

The authorities' indication that Russian legislation contains sufficient legal guarantees did not prevent that this violation took place in a number of cases at hand. It is accordingly necessary that measures are taken without delay to address this problem. It is stressed that exclusion by domestic courts of any evidence obtained as a result of ill-treatment may play an important role in discouraging police officers to have recourse to such a practice in order to extract a confession. In this context, the measures envisaged by the Supreme Court with a view to improving the domestic courts' practice in relation to evidence obtained under treatment contrary to Article 3 of the Convention by law enforcement agents appears important. Information is therefore awaited on the outcome, together with information on any additional measures the Supreme Court might wish to take, such as issuing an explanatory ruling by its Plenum.