

## SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS  
SECRETARIAT DU COMITE DES MINISTRES

COMMITTEE  
OF MINISTERS  
COMITÉ  
DES MINISTRES



Contact: Clare Ovey  
Tel: 03 88 41 36 45

Date: 16/12/2016

**DH-DD(2016)1408**

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1280 meeting (7-9 March 2017) (DH)

Communication from the applicant's representative (06/12/2016) in the case of Navalnyy and Ofitserov against Russian Federation (Application No. 46632/13) - "The decision of the Supreme Court in Russian is available with the Secretariat upon request".

Information made available under Rule 9.1 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

\* \* \* \* \*

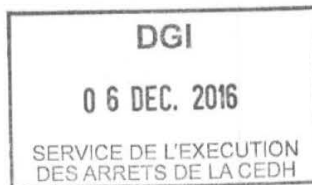
Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1280 réunion (7-9 mars 2017) (DH)

Communication du représentant du requérant (06/12/2016) dans l'affaire Navalnyy et Ofitserov contre Fédération de Russie (Requête n° 46632/13) – La décision de la Cour suprême en russe est disponible sur demande auprès du Secrétariat **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.1 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

---



Council of Europe

DGI - Directorate General of Human Rights and Rule of Law  
Department for the Execution of Judgments of the ECHR  
F-67075 Strasbourg Cedex

***Execution of the Judgment of the European Court of Human Rights  
of 23 February 2016 under Rule 9.1 of the Rules of the Committee of  
Ministers for supervision of the execution of judgments and of friendly  
settlements***

**Re:** Case of Navalnyy and Ofitserov v Russia (nos. 46632/13 and 28671/14)

05 December 2016

Dear Sir,

The first applicant of the case of Navalnyy and Ofitserov v Russia (hereinafter the applicant) informs the Committee of Ministers of the Council of Europe that on 16 November 2016 the Supreme Court of the Russian Federation quashed the judgment of the Leninskiy District Court of Kirov dated 18 July 2013 as well as the judgment of the Kirov Regional Court dated 16 October 2013 and sent the case to the Leninskiy District Court of Kirov for a fresh examination.

On 05 December 2016 the applicant's lawyer requested Leninskiy District Court of Kirov to close the case based on the ruling of the European Court of Human Rights as well as to return the criminal case to the prosecutor for eliminating the obstacles to its proper examination by the court as the charge itself was based on the case of X, which the Court found violating the applicant's rights.

On the same day the first instance court ruled that it would be premature to consider a motion to dismiss the case.

The Committee would recall that the applicant requested the Supreme Court to quash the national courts' judgments at issue and acquit him. However, the Supreme Court was reluctant to consider the applicant's requests. Further, it disregarded the applicant's arguments requesting his acquittal and delivered a formal quashing of the judgments of the first instance court and the court of appeal.

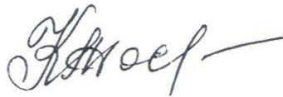
The applicant claims that the aforementioned decision of the Supreme Court is not in compliance with the Court's judgment in the case of Navalnyy and Ofitserov v. Russia, as:

1. The Supreme Court had not quashed the decision of X. that had a prejudicial power for the examination of the applicant's case and the national courts are obliged to consider the findings of the judgment concerning X as established facts and base the examination of the case on the judgment of X.
2. The Supreme Court had sent the case for a new judicial examination of the criminal charge under Article 160.4 of the Criminal Code of the Russian Federation, while the Court ruled that the criminal law was arbitrarily and unforeseeably construed to the detriment of the applicants, leading to a manifestly unreasonable outcome of the trial as the acts described as criminal fell entirely outside the scope of the provision under which the applicants were convicted. This statement was based on the fact that according to the national legislation the incriminated acts were indistinguishable from regular commercial middleman activities and could not be interpreted as criminal. (para.115)
3. Hence, the Supreme Court was reluctant to consider the findings of the Court regarding the nature of charge.
4. The Supreme Court did not turn to the statement of the Court regarding the failure of the national courts to examine the applicant's allegations of political persecution due to his anti-corruption campaign targeting high-ranking officials including the RF President, Deputy Prime Minister and the Chief of the Investigative Committee as well as his aim to become an acting politician at the national level and to stand for elections, which became impossible because of his conviction (paras. 116-117) The applicant emphasizes that there could hardly be any doubts that the fresh examination of the case will end up by the applicant's conviction, which, in its turn, will make the applicant ineligible to stand for the upcoming presidential elections as was done in the case of parliamentary elections of September 2016.

In the light of the aforementioned, the applicant urges the Committee of Ministers to exercise any and all available options to assist the effective execution of this judgment. Having regard to the urgency and the importance of the proper execution of the referred judgment, the applicant requests the Committee to examine this case at the upcoming CM-DH meeting.

We thank you for your time and consideration and rest at your disposal to provide any additional information or answer any questions you might have on this issue.

Sincerely,



Karinna Moskalenko

On Mr. Navalnyy's behalf



Olga Mikhaylova

Enc. The decision of the Supreme Court of the Russian Federation dated 16 November 2016.