

Speech of G.O. Matyushkin

at the meeting of the PACE Committee on Legal Affairs and Human Rights Remedies for Human Rights Violation in the North Caucasus

on the theme: "Execution of judgments of the European Court of Human Rights by the Russian Federation on complaints of persons who became victims during the resolution of the crisis and restoration of constitutional order in the Chechen Republic"

For the last four years the European Court of Human Rights has delivered a number of judgments indicating that during the resolution of the crisis in the Chechen Republic the Russian Federation authorities violated rights of citizens provided by the Convention on Human Rights and Fundamental Freedoms.

The analysis of mentioned judgments revealed that along with violations of rights to life, liberty, security of person and property in actual cases, the European Court also found that the investigations carried out by the competent public authorities upon the corresponding violations were ineffective. In this respect, the Court pointed out the impossibility for victims to seek for the compensation of caused damage in Russian courts.

The results of analysis showed that the Russian authorities should take measures to eliminate the found violations of the Convention in three main directions:

- Improvement of legal regulation and organization of the security forces activity within anti-terrorism operations;
- Effective prevention and investigation of violations;
- Development of the effective remedies for the corresponding violations to compensate the pecuniary and non-pecuniary damage to victims.

Performing their obligations under the Convention, the Russian Federation authorities took the respective measures in 2006-2008 in cooperation with the Committee of Ministers of the Council of Europe and its Secretariat. For the past two years these measures have been the subject of consideration at four meetings of the Committee of Ministers; generally they got positive appraisal and were consequently considered while making decisions, as well in the updated version of the Memorandum "Action of security forces in the Chechen Republic of the Russian Federation: general measures to comply with the judgments of the European Court of Human Rights", prepared by the Secretariat and adopted in September and December of 2008 by the Committee of Ministers.

At the same time, the judgments of the Committee of Ministers and the Memorandum pointed out issues and problems that require special attention of the

Russian authorities and immediate solution. For these purposes, the decided to organize bilateral consultations of it's Secretariat of the Committee of Ministers with the Russian competent public authorities.

Thus, in this context, the Memorandum and bilateral consultations constitute the plan of joint activities to execute the judgments of the European Court and to implement provisions of the Convention into the law enforcement by the competent public authorities in the Russian Federation.

The results of the meetings show that they are currently important for both parties. The Secretariat of the Council of Europe had an opportunity to get familiarized with the efforts taken by the Russian authorities to solve the existing problems. As for the Russian authorities these bilateral consultations are considered to be an important impulse to make corrections in the effective legislation and law enforcement practice.

By now, three visits of the Secretariat delegation to the Russian Federation have taken place. Meetings were organized with the competent Russian authorities, such as the General Prosecutor's Office, Main Military Prosecutor's Office, Investigating Committee set up with the Public Prosecutor's Office, Ministry of the Interior and the Supreme Court. Representatives of the local departments from the Chechen Republic were also present at meetings.

The results of the first two rounds of the visit of the Secretariat representatives that took place in February and April of 2009 in Moscow were discussed at the meeting of the Committee of Ministers on June 2 - 5, 2009. Issues on the measures taken by the Russian authorities to provide effective investigation of criminal cases and observance of victims' rights were the subject of the discussion.

The head of the delegation provided the Committee of Ministers with the Interim Report prepared by the Secretariat. Taking it into consideration, the Committee of Ministers took a decision where it positively appraised the constructive and open approach of the Russian authorities to discuss and solve problems raised in the Memorandum, as well as their efforts to execute judgments of the European Court for this group of cases.

The Committee of Ministers welcomed the measures taken by the Russian authorities, indicated the problems that were not solved in full and called on the Russian Federation authorities to continue bilateral consultations.

The next visit of the delegation is due in February 2010, however, already this year, following the results of three organized rounds of consultations, the Secretariat of the Committee of Ministers in cooperation with the Russian competent public authorities are going to prepare the updated version of the Memorandum to be considered at the meeting of the CM in December 2009.

Despite the fact that under Article 46 of the Convention the supervision of the execution of the European Court's judgments should be performed by the

Committee of Ministers, I believe it is possible to inform the participants of this meeting about the measures taken by the Russian authorities to eliminate and prevent violations of the Convention revealed by the European Court in the so-called "Chechen" cases.

The most important is that the Russian authorities managed to implement the provisions of the Convention, case-law of the European Court and the Committee of Ministers into the legal system of the Russian Federation and current activity of the state authorities and their representatives.

It is also important that since the events considered by the European Court the Federal Law "On Suppression of Terrorism" was adopted, the Code of Criminal Procedure of the Russian Federation was amended, as well as a great number of departmental regulations and orders were published. It created additional legal grounds and guarantees to eliminate violations of the Convention revealed by the European Court and prevent them in future.

The grounds and the usage order of force, arms, military facilities and special means in planning and carrying out of the anti-terrorism operations were adopted at the legislative level and then detailed in the Decree of the Government of the Russian Federation and departmental regulations.

The current Russian legislation now stipulates the requirements that usage of force must be strictly proportionate to situation, only in cases of imminent risk of death or serious harm and as the last resort. Also it provides that if the State authorities intend to use force, than the exposed persons must be provided by a real opportunity to execute firstly the legal demands of mentioned authorities.

The Russian Federation also improved the system of legal and organizational security guarantees from illegal detentions, provisions of registration for detainees and prevention of ill-treatment. The facts of violations are specially considered or correspondingly solved by the Russian Federation authorities.

Thus, the prosecutors of the Chechen Republic, according to the orders and instructions of the General Prosecutor's Office of the Russian Federation, perform daily examinations of lawfulness of persons' detention and their stay in the temporary holding facilities, as well as systematic examinations of the pre-trial detention facilities. In order to eliminate violations of the legislation that provide the order of arrest and detention of persons suspected and accused in temporary holding facilities and pre-trial detention facilities the measures of prosecutors supervision were taken. Within the period from 2007 till July of 2009 prosecutors of the Republic filed 87 requests resulted real measures to eliminate the violations found and 92 guilty officials were brought to disciplinary liability. At the same period, 53 officials of the Republican bodies of the interior were held criminally liable and accuse of crimes connected with their official activities.

Additional measures were taken to improve imprisonment conditions in pre-trial detention facilities and temporary holding facilities. For the last two years the Russian Federation allocated about 225 million roubles from the federal and republican budgets to build and re-build pre-trial detention facilities and temporary holding facilities, also in the framework of the Federal Special Program "Social and Economic Development of the Chechen Republic for 2008-2011". At the same time, in the Republic there is a stable trend (about 15 percent) towards decreasing the number of detained persons.

The measures allowed to improve significantly the imprisonment conditions in pre-trial detention facilities and temporary holding facilities.

In April 2008 after visiting pre-trial detention facility no.1 in Grozny, the Commissioner of Human Rights of the Council of Europe Mr. T. Hammarberg at the press conference characterized the situation in the aforementioned detention facility as favorable.

To execute judgments of the European Court, additional measures were taken, which provide effective investigation of criminal cases concerning unknown disappearance of civilians, inflicting death and ill-treatment.

However, I'd like to focus your attention on the fact that the European Court found ineffective the investigation of certain group of criminal cases in which, owing to a number of reasons, including those connected with carrying out investigations in wartime conditions, it was not possible, at the initial stage, to guarantee the observance of all conventional requirements and in which guilty persons were not detected.

At the same time, during the period from 2001 to 2008 courts of general jurisdiction of the Chechen Republic, the Garrison Military Court in the city of Grozny and the North Caucasian District Military Court examined about 600 criminal cases initiated on the facts of commitment of murders, robberies, criminal negligence, abuse of powers and other crimes and rendered guilty verdicts in those cases in the Chechen Republic. More than 500 participants of illegal armed formations and about 200 military servicemen, employees of the interior bodies and other representatives of the State authorities and local governments were convicted of the above mentioned crimes.

Effective investigation into a number of cases has allowed citizens to bring suits, in the framework of investigation of criminal cases and civil legal proceedings and claim compensation for pecuniary and non-pecuniary damage, which have been subsequently satisfied. In the above mentioned criminal cases the suffered persons were recognized as victims and were granted the rights envisaged in the criminal procedural legislation. According to the court decisions, the victims have received 30 million roubles.

In all criminal cases in respect of which the European Court found the investigation ineffective, it was resumed and additional investigation measures were taken along with special investigation activities.

The Office of the General Prosecutor's and the Public Prosecutor of the Chechen Republic instructed investigators concerning the aforesaid criminal cases. At the same time, taking into account the conclusions of the European Court and the requirements of the criminal procedural legislation, instructions about high-priority (immediate) actions after institution of criminal proceedings of the reviewed category were prepared and disclosed to investigators.

At present, prosecutors carry out supervision over lawfulness and reasonableness of the procedural decisions taken by investigators within the strictly set period of time and procedures, both on their own initiative, and because of complaints from participants in the process, they provide constitutional rights enforcement of civilians and pay special attention to observance of the Convention.

In this respect, the Committee of Ministers of the Council of Europe gave special assessment to the information letter of the Deputy of Prosecutor General of the Russian Federation that urged prosecutors to apply requirements of the Convention supervising the lawfulness of national investigations.

In September 2007, there was founded the Investigating Committee at the Prosecutor's Office of the Russian Federation and its departments in Regions of the Russian Federation, including the Chechen Republic. It helped to avoid disunity, to improve investigation, and also to provide its independence to a greater degree.

Now new unique mechanisms of solving and investigating crimes committed within the period of anti-terrorism operations in the Chechen Republic are created. Particularly, there were formed investigation teams and the Special Investigation Unit. These facts were specially mentioned by the Committee of Ministers in its decision.

The prosecutors supervision and judicial control over observance of the legislation and rights of persons injured during pre-investigative examinations and investigations of criminal cases are applied nowadays more actively and effectively. Operational examination of lawfulness and reasonableness of procedural decisions was organized.

A number of training events, seminars and conferences were organized, including international courses, qualification courses and professional training of investigators, considering the case-law of the European Court.

In June 2009 in the framework of activities carried out together with the Secretariat of the Committee of Ministers there was a training visit of the Russian investigators to Strasburg, including those who work in the Chechen Republic; that visit included meetings with counsels of the European Court and the judge from Russia, officials of executive departments of the Committee of Ministers in the Council of Europe. The results of the visit were appreciated by both parties.

Thus, the Russian authorities take all possible efforts to eliminate violations of the Convention revealed by the European Court and restore the violated rights of applicants in cases where effective investigation was significantly complicated by objective reasons.

We already have some positive examples. Thus, for the case *Salatkhanovs v. Russia* the authorities of the Russian Federation submitted to the European Court documents confirming completion of the investigation, detection, committal for trial and indictment of the person guilty for inflicting death to the applicants' relative. Having examined the submitted materials, the Court found that detection and punishment of the guilty person shows effectiveness of the investigation and enables the applicants to seek for compensation of the caused damage in the national court. The fact that the applicants first filed and then abandoned the corresponding claim was construed by the European Court as a refusal of the right to compensation and the court considered that the applicants are no longer victims in the meaning of the Convention.

Separately I'd like to clarify the issues concerning the improvement of remedies in Russia in respect of the violations of the Convention and development of new remedies.

In accordance with Articles 123-126 of the Criminal Procedural Code of the Russian Federation, victims, as well as other persons whose rights to access to court were violated, have the right to appeal before the prosecutor, the head of the investigating body or a court against the actions, omission and decisions of bodies of inquiry and preliminary investigation and its officials.

To clarify the most problematic and frequent issues of applying Article 125 of the Criminal Procedural Code of the Russian Federation on February 10, 2009 the Decree of the Plenum of the Supreme Court of the Russian Federation was issued. During the bilateral consultations the Supreme Court of the Russian Federation and the Prosecutor General's Office of the Russian Federation provided the delegation of the Secretariat of the Committee of Ministers of the Council of Europe with the statistic information and numerous examples of effective application of Article 125 of the Criminal Procedural Code of the Russian Federation, including those in the Chechen Republic.

Now, those persons who suffered because of the resolution of the crisis in the Chechen Republic, together with filing complaints against the guilty persons under the criminal and civil proceedings have the opportunity (regardless of finding guilty persons and results of the investigations of the certain criminal cases) to receive compensation of the lost houses and properties in accordance with the Decrees of the Government of the Russian Federation of April 30, 1997 no. 510 and of July 4, 2003 no. 404. Altogether, under the aforesaid Decrees, the compensations were paid to

about 100 thousand families to the extent of 24.6 billion roubles as of September 2009.

At present, Ministry of Justice of the Russian Federation prepared the draft of the Federal Law "On Compensation of Damage Caused during of the Anti-terrorism Operations to a Person or Property by the Terrorist Acts or Anti-terrorism Measures". The draft aims the improving of the remedies existing in the Russian Federation that provide compensation for victims of other damage, in the first place, non-pecuniary damage caused by the anti-terrorism operations in cases when the investigation did not find the guilty persons. The mentioned draft is now getting through the procedure of approval in the competent public authorities and its adaptation.

There is another important issue.

The public authorities including the authorities carrying out examinations of claims about crimes and investigation of criminal cases now take effort to become more open for the civil society, to apply information and materials provided by public organizations. In this respect, the agreement of April 15, 2009 between the investigating department of the Investigating Committee in the Chechen Republic and the Human Rights Commissioner of the Chechen Republic may be noted.

During the bilateral consultations, representatives of the Russian law-enforcement bodies with a great interest familiarized themselves with the experience of other countries in interaction and interchange of information with families of victims.

In May of the current year it has already found its implementation in the information letter of the Deputy Prosecutor General of the Russian Federation to subordinate public prosecutors.

The visit of representatives of the Investigating Committee in the Chechen Republic to the United Kingdom for exchange of corresponding experience with a group of historic investigations organized in the Northern Ireland is planed for October of the current year.

In conclusion I'd like to say that the Russian authorities are not only open to constructive dialogue, but also take all possible efforts to make this dialogue bring positive results, and let eliminate violations of the Convention revealed by the European Court most effectively and prevent them in future.

Thank you for your attention!