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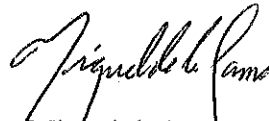
Dear Mr. Golichenko and Ms. Sarang,

I would like to refer to the sixty-sixth session of the Working Group on Arbitrary Detention, during which the Working Group adopted several Opinions on cases of detention submitted to it.

In accordance with paragraph 18 of the Working Group's methods of work, I am sending to you, attached herewith, the text of Opinion No. 8/2013 (Russian Federation) regarding a case submitted by you.

This Opinion will be reflected in the Working Group's annual report to the Human Rights Council.

Yours sincerely,



Miguel de la Lama
Secretary

Working Group on Arbitrary Detention

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Opinions adopted by the Working Group on Arbitrary Detention at its sixty-sixth session, 29 April–3 May 2013

No. 8/2013 (Russian Federation)

Communication addressed to the Government on 1 November 2012

Concerning Denis Matveyev

The Government replied to the communication on 29 December 2012.

The State is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, as established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. According to the source, Denis Matveyev (hereinafter Mr. Matveyev), born 10 December 1977, is head of the civil society organization, "SMERSh," that, inter alia, aims to combat corruption. Mr. Matveyev does not have prior criminal record. He is a civic activist with a college degree, is married and has a child.

4. The source reports that on 16 July 2009, Mr. Matveyev was arrested near the Rayon Park Majdan bus stop in Naberezhnye Chelny by the Federal Drug Control Service (FDCS) of the City of Naberezhnye Chelny. Mr. Matveyev was not presented with an arrest warrant.

5. Mr. Matveyev was placed in the prison at Sviazhsk station in the township of Nizhnie Vyazovie, which is run by the Federal Penitentiary Service. On 18 March 2010, Mr. Matveyev was convicted for having committed offences under articles 30 and 228(1) of the Criminal Code of the Russian Federation and sentenced to seven years' imprisonment by the City Court of Naberezhnye. On 8 June 2010, the Tatarstan Supreme Court reduced the term of imprisonment to six years.

6. The source submits that the non-observance of Mr. Matveyev's right to a fair trial is of such gravity as to render his ongoing detention arbitrary. The source makes the following three arguments to sustain the claim: (a) the court allegedly did not analyse factual and legal elements that would have distinguished entrapment from a legitimate form of investigative activities; (b) the court allegedly did not give the defence the opportunity to comment on or to rebut the evidence presented by the prosecution; and (c) the court allegedly did not give the defence the opportunity to effectively present its legal argument on the case.

7. According to the source, four factual episodes involving Mr. Matveyev motivated the charges pressed against him and his subsequent conviction.

8. Firstly, on 25 June 2009, Mr. Matveyev purchased 0,597 grams of heroin mixture from Ms. Fedorchuk and handed the drugs over to police officer Sharifyanov from Naberezhnye Chelny Train Station Line Police Department. This operation was conducted by policemen belonging to that department.

9. Secondly, on 15 July 2009, Mr. Matveyev purchased 0.560 grams of heroin mixture from Ms. Fedorchuk and handed it over to police agent Garayeva, who voluntarily cooperates with law enforcement agencies. This operation was conducted by staff of Naberezhnye Chelny FDCS.

10. Thirdly, on 16 July 2009, Mr. Matveyev purchased 0.631 grams of heroin mixture from Ms. Fedorchuk and handed it over to police agent Garayeva. This operation was also conducted by the Naberezhnye Chelny FDCS.

11. Fourthly, when Mr. Matveyev was arrested on 16 July 2009, he was found in possession of 0.575 grams of heroin mixture.
12. The source states that Mr. Sharifyanov and Ms. Garayeva had asked Mr. Matveyev to help them to purchase narcotics and that they gave him money for that purpose. In the source's view, Mr. Matveyev's intent was to help Mr. Sharifyanov and Ms. Garayeva to buy drugs, not to sell drugs.
13. The materials of the case also imply that the only proof of Mr. Matveyev's unlawful activities is based on the results of a test drug purchase operation. None of the three cases of the test drug purchase are grounded on any additional evidence of Mr. Matveyev's involvement. The drugs for Mr. Sharifyanov and Ms. Garayeva were purchased with their money and at their request. The case contains no evidence to suggest that Mr. Matveyev committed any similar actions in the past.
14. The source submits that the crime was not initiated by Mr. Matveyev, but rather by persons cooperating with law enforcement agencies. The money that Mr. Matveyev received from Mr. Sharifyanov and Ms. Garayeva was used in its entirety to pay for the drugs that were handed over to Mr. Sharifyanov and Ms. Garayeva. Mr. Matveyev did not gain any personal benefit from these transactions.
15. In the source's view, Mr. Sharifyanov's and Ms. Garayeva's actions aimed at inciting Mr. Matveyev to purchase drugs. As it follows from the materials in the case file, Mr. Sharifyanov and Ms. Garayeva played the role of drug users. Aware that drug users could suffer from withdrawal symptoms, Mr. Matveyev helped Mr. Sharifyanov and Ms. Garayeva to buy drugs. Mr. Sharifyanov, Ms. Garayeva and other law enforcement agents were fully aware that they had incited Mr. Matveyev to buy the drugs.
16. According to the source, the case contains no evidence to suggest that Mr. Matveyev would have committed this offence without the involvement of the law enforcement agencies and their agents. The prosecution did not provide any evidence to prove that Mr. Matveyev was involved in any unlawful actions other than those for which he was charged with the participation of law enforcement agents. The actions of law enforcement personnel were apparently based on some abstract "operational information" on Mr. Matveyev's alleged involvement in illegal drug dealing. However, during the court proceedings, no evidence to support the existence of this "operational information" was considered, nor were the sources of this "operational information" quoted.
17. In essence, Mr. Matveyev's actions were provoked by Mr. Sharifyanov, Ms. Garayeva and their supervisors from law enforcement agencies, who deliberately incited Mr. Matveyev to commit an offence. The source points out that the law enforcement agencies used "entrapment" to obtain evidence. After the first episode, all those involved should have been detained. However, the law enforcement agencies did not do this and their agents continued to incite Mr. Matveyev to commit unlawful acts. Based on the materials in the case file (more specifically, reports by Mr. Alekseyev, detective officer at Naberezhnye Chelny Train Station Line Police Department, Mr. Rastsvetayev and other detective officers from the same Police Department), the police knew the names of Mr. Matveyev and Ms. Fedorchuk right after the test drug purchase operation on June 25, 2009. However, Mr. Matveyev and Ms. Fedorchuk were not detained and their actions were not repressed. Furthermore, according to the photo identification protocol of 1 July 2009, Mr. Sharifyanov identified Mr. Matveyev's photograph. In addition, in the course of the court investigation when Mr. Sharifyanov was interrogated in court, he asserted openly that there were no obstacles to detaining Mr. Matveyev and Ms. Fedorchuk on 25 June 2009. However, the police acted in line with customary practice whereby the first test drug purchase operation is used to confirm operational information, while another one targets detaining the suspects.

18. During the court proceedings, Mr. Matveyev's defence lawyer mentioned these circumstances and provided arguments for law enforcement entrapment targeting Mr. Matveyev. However, the court did not assess these circumstances, in either the court hearings or the judgement. The court did not assess relevant factual and legal elements that would have helped it to distinguish entrapment from a legitimate form of investigative activity.

19. The only direct evidence to prove Mr. Matveyev's involvement in receiving and transferring heroin are the testimonies from Ms. Garayeva, Mr. Sharifyanov and Ms. Fedorchuk. Other evidence, including the heroin that was provided after the test purchases, testimonies of witnesses and expert reports, are derivatives of the testimonies by three people mentioned above. They are the only ones that link Mr. Matveyev to voluntarily transferring heroin.

20. Mr. Sharifyanov, a policeman with Naberezhnye Chelny Train Station Line Police Department, played the role of drug user in the test drug purchase operation on 25 June 2009. According to his explanation, which he also confirmed in court, he received information on Mr. Matveyev's criminal activity from someone named Mr. Bikmukhambetov (Salavat). At the trial, Mr. Sharifyanov said that he had received information on Mr. Matveyev's criminal activity from Salavat. Mr. Matveyev contended that he only called Ms. Fedorchuk at Mr. Bikmukhambetov's request and when she arrived, she talked to Mr. Bikmukhambetov and Mr. Sharifyanov, while Mr. Matveyev stood aside. However, Mr. Bikmukhambetov was never interrogated, at either the trial or the preliminary investigation stage, even though the judge summoned him to the court hearings several times. Mr. Matveyev contends that Mr. Bikmukhambetov was murdered on 23 September 2009 and the law enforcement authorities were aware of this fact but did not inform the court. Mr. Matveyev also contends that Mr. Bikmukhambetov was present at his meeting with Ms. Fedorchuk on 25 June 2009. He also asserted that several photographs, in which Mr. Bikmukhambetov is not present, that are included in the case file are the result of fraud. Testimony as to the validity of these conclusions is the fact that at neither the preliminary investigation stage nor the trial could any of the six policemen involved in the test drug purchase operation on 25 June 2009 say who had taken the photographs. They stated that they could not remember. Another testimony to the credibility of the test purchase operation of 25 June 2009 is the fact that the money apparently used to purchase heroin was never confiscated from Ms. Fedorchuk, even though, according to the materials in the case file, the money belonged to the Government.

21. The verdict does not mention Mr. Bikmukhambetov at all; the court restricted itself to the following statement: "The Court took measures to summon all witnesses mentioned by the defence. The defence's arguments were not confirmed in court, therefore there was no need to summon additional witnesses."

22. Ms. Fedorchuk was targeted in the investigation as a person from whom Mr. Matveyev obtained heroin for Mr. Sharifyanov and Ms. Garayeva. Based on Ms. Fedorchuk's own testimony, she is a drug user. Before she was detained on 16 July 2009, and on that day also, she injected up to one gram (1g) of heroin daily.

23. The source draws attention to the facts regarding Ms. Fedorchuk's connection to Naberezhnye Chelny FDCS, which were established in the acquittal judgement in the case of Mr. Mirzoyev by Naberezhnye Chelny Court, dated 16 February 2010.

24. On 19 July 2009, investigative officer Kashapov (the same officer who investigated the Matveyev case) ordered Ms. Fedorchuk's release while her administrative arrest was still in effect. At the court hearing in the case of Mr. Mirzoyev, Ms. Fedorchuk testified that she had agreed to be involved in the test drug purchase operation in exchange for a promise of her own release. During the proceedings of Mr. Matveyev's case, Ms. Fedorchuk

repeatedly changed her testimonies. During the court hearing on 8 February 2010, FDCS produced a document certifying Ms. Fedorchuk's cooperation with the agency to incriminate Mr. Mirzoyev. Ms. Fedorchuk changed her testimony and said she was selling heroin together with Mr. Matveyev. On 15 March 2010, when the representative of the AIDS Centre submitted motions not to impose a prison term on Ms. Fedorchuk, she asserted that the six grams of heroin that were confiscated during the search on 17 July 2009 was half the amount of heroin she had purchased with her and Mr. Matveyev's money, and that she had given the other six grams to Mr. Matveyev.

25. At the court hearing, Drs. Tkachenko and Grekova testified that a drug-dependent person suffering from withdrawal would say anything, including providing false confessions. The defence presented all these circumstances in detail and in writing. However, the court did not assess them nor present them in its judgement.

26. Ms. Garayeva was targeted in the investigation as a person who voluntarily agreed to cooperate with the law enforcement agencies to incriminate a drug dealer on 15 and 16 July 2009. The source contends that Ms. Garayeva's "voluntary" cooperation with the Naberezhnye Chelny FDCS may have been motivated by her drug dependence. During the court proceedings, although Mr. Matveyev's defence lawyer pointed out these circumstances, the court allegedly did not assess them nor reflect them in its judgement.

27. In addition, during the court hearings, both Mr. Matveyev and his defence lawyer pointed out the following circumstances:

(a) None of the sachets of heroin involved in the case bore any identifiable fingerprints. This effectively means that it was not possible to establish that Mr. Matveyev actually handled these sachets;

(b) A hole measuring 80 x 130 mm was found in the pocket of Mr. Matveyev's shorts which were sealed and produced in court immediately after they had been unsealed. It would have been impossible to store a sachet of heroin that was allegedly confiscated from this very pocket. The question as to how a small sachet of drugs could be stored in such pocket was not assessed during the court hearing, nor was it reflected in the judgement. The judge only suggested indirectly that Mr. Matveyev could have torn his pockets. However, the judge did not assess the circumstances that after Mr. Kashapov had measured the holes, the shorts were sealed and stored as material evidence until they were unsealed in court;

(c) The expert's report did not find any traces of heroin in the pocket of Mr. Matveyev's shorts. However, hand wipes tested, contained traces of heroin. According to Mr. Matveyev, traces of heroin on his hands would be due to his washing the spoon which Ms. Garayeva used to heat the heroin for injection in his presence;

(d) In his report, Mr. Galliyev, the forensic expert, concluded that all the drugs confiscated in this case came from the same batch. The prosecution used this information to infer that the drugs given to Mr. Sharifyanov and Ms. Garayeva by Mr. Matveyev after the test purchase operation, as well as the drugs confiscated from Ms. Fedorchuk, came from the same batch. However, during the court hearing, Mr. Galliyev explained that "all drugs, in principle, come from the same batch, namely 'Afghanistan'";

(e) In view of the negligibly low purity of the mixture, the condition of the device used to carry out a qualitative analysis of the substance is of paramount importance. At the court hearing, Mr. Matveyev's defence lawyer introduced a motion to obtain a technical certificate for the gas chromatograph to establish its accuracy and the date of the latest fine-tuning. However, the court refused to grant this motion. The court only asked the expert whether the gas chromatograph had been operational and accurate;

(f) Psychiatrists and narcologists, Drs. Tkachenko and Grekova were interrogated as witnesses and testified that in view of the negligible ratio of active substances, if injected, the mixture that was confiscated would not produce any narcotic intoxication, but would rather have a psychological effect on a drug user that could alleviate withdrawal symptoms;

(g) At the trial, the sachets were presented packed and sealed. The judge dismissed the defence's request to unpack the sachets for a more detailed examination, although there were no obstacles to doing so.

28. According to the source, the court did not assess the aforementioned circumstances and they were not taken into account in the judgement. In providing grounds for the judgement, the court formally listed materials in the case file, including the protocols of investigative activities and testimonies by the prosecution witnesses. The defence arguments set out above were not presented in the judgement; the court concluded as follows: it "has no grounds not to trust the testimonies of the [prosecution] witnesses, as they are consistent and in agreement with one another."

29. In the course of the court proceedings, the defence presented facts that testify to the fabrication of the criminal case against Mr. Matveyev due to his human rights activities. Witnesses Mr. Khusayenov and Mr. Kaurov, who were interrogated in court, also confirmed this. The source alleges that the real reason for Mr. Matveyev's detention relates to his appeals to the Federal Security Service of the Russian Federation with respect to police threats to plant heroin on him. Although the defence sought to call Mr. Valitov (Mr. Matveyev's fellow activist who, according to Mr. Matveyev, was also convicted for storing drugs due to his human rights activities) as a witness, the court did not take measures to ensure Mr. Valitov's attendance. The defence had no means to deliver a witness from prison. All the facts that the defence presented to support the connection between the criminal case and Mr. Matveyev's human rights activities were found "unsubstantiated"; according to the court, those facts "are rebutted by the testimony of Ms. Fedorchuk. The court trusts her testimony, as they are also supported by the testimonies of other witnesses and the protocols of investigative activities".

30. According to the source, the materials in the case file do not contain information that would support the finding that there was a preliminary agreement between Mr. Matveyev and Ms. Fedorchuk to deal drugs. As the indictment and verdict show, Mr. Matveyev received drugs from Ms. Fedorchuk only in exchange for money given to him by Mr. Sharifyanov and Ms. Garayeva, in whose interests Mr. Matveyev was acting. The source contends that there is no proof of any preliminary agreement between Mr. Matveyev and Ms. Fedorchuk with regard to dealing drugs, apart from Ms. Fedorchuk's testimony in court.

31. In the source's view, there is no proof that Ms. Fedorchuk gave Mr. Matveyev heroin to sell. The source submits that Mr. Matveyev did not receive heroin for sale from Ms. Fedorchuk. He bought the drug directly from her using the money he received from Mr. Sharifyanov and Ms. Garayeva.

32. In its Plenum decree of 15 June 2006, "On judicial practice for criminal cases related to narcotic drugs and psychotropic, dangerous and poisonous substances", the Supreme Court of the Russian Federation provides an explanation according to which "actions of a mediator in selling or buying drugs shall be qualified as complicity in selling or buying drugs depending on whose interests (the seller's or the buyer's) the mediator is acting in". Based on the material in the case file, the court should have qualified the actions incriminating Mr. Matveyev as complicity in buying drugs in the interests of the buyer(s) – namely, Mr. Sharifyanov and Ms. Garayeva – under article 33, section 5, and article 228, section 1, of the Criminal Code of the Russian Federation.

33. Mr. Matveyev's defence lawyer pointed out these circumstances in the court hearings, as well as in their written comments. These were allegedly not taken into account by either the first instance court, the appellate court or the court of supervisory instance. As a result, Mr. Matveyev was sentenced to six years in a high security prison.

34. In the light of the foregoing, the source submits that Mr. Matveyev's right to a fair trial, as enshrined, *inter alia*, in articles 10 and 11 of the Universal Declaration of Human Rights, and article 14 of the International Covenant on Civil and Political Rights, has been violated. As a result of alleged violations of the right to a fair trial, the source submits that these are of such gravity as to render Mr. Matveyev's detention arbitrary.

Response from the Government

35. In its response dated 29 December 2012, the Government provided the Working Group with the following information:

36. Criminal proceedings were instituted against Mr. Matveyev on 17 July 2009 for dealing in heroin during a test purchase operation on 16 July 2009. A body search of Mr. Matveyev was conducted and he was detained in accordance with article 91 of the Code of Criminal Procedure. The Naberezhnye Chelny City Court of the Republic of Tatarstan applied a preventive measure against Mr. Matveyev on 18 July 2009, ordering his remand in custody. A higher court upheld the court ruling.

37. The Naberezhnye Chelny City Court sentenced Mr. Matveyev to five years and seven months' imprisonment for drug offences, with due account taken of the amendments made to the sentence. Mr. Matveyev was found guilty, together with another convicted person in this case, Ms. Fedorchuk, of selling heroin to Mr. Sharifyanov and Ms. Garaeva, and keeping a large quantity of the drug for himself, without the intention of selling it.

38. Ms. Fedorchuk did not deny in court that she had conspired with Mr. Matveyev to purchase the drugs for herself and Mr. Matveyev with pooled money.

39. Mr. Matveyev's guilt was corroborated also by the testimony of Mr. Sharifyanov and Ms. Garaeva, who stated that they had purchased heroin from Mr. Matveyev during the test purchase operation, as well as by the log of telephone calls between Mr. Matveyev and the buyers, by the results of the analysis of the type and quality of the seized controlled substance, and by other evidence.

40. The defence's account of the facts, namely that the criminal case had been fabricated by the law enforcement authorities in order to thwart the human rights work of Mr. Matveyev, was not corroborated in court on examination. The court examination included, at the request of the defence, interrogation of Mr. Galimov – who had been engaged in public activities with Mr. Matveyev – about the facts; a statement by Mr. Shcharafutdinov, a Federal Security Service officer, who said that Mr. Matveyev had not expressed any concern that drugs might be planted on him; and a statement by Mr. Akramov, a detective who denied the allegation that he had threatened to plant drugs on Mr. Matveyev because the police department administration was dissatisfied with his activities.

41. Moreover, Ms. Grekova, a substance abuse professional, showed that Mr. Matveyev was in the records of the drug abuse clinic, where he had been sent on at least two previous occasions.

42. Mr. Matveyev's assertion that he was only helping Mr. Sharifyanov and Ms. Garaeva to purchase drugs with their money is untenable, as Ms. Fedorchuk flatly stated that they had purchased the heroin with money that she and Mr. Matveyev had in common and, at Mr. Matveyev's request, she had parcelled up the heroin with "receipts" and given him the exact quantities, as requested.

43. The court had no reason to mistrust her testimony as it tallies not only with the testimony of Ms. Garaeva and Mr. Sharifyanov, who stated that they had called Mr. Matveyev, negotiated the sale of heroin and directly paid him money when they received the drugs, but also with other evidence.

44. Mr. Matveyev's assertion that the testimonies of Ms. Fedorchuk and Ms. Garaeva are unreliable because they use drugs is speculation.

45. During the judicial proceedings exhaustive measures were taken to call Mr. Bismukhametov to court as a witness, since Mr. Matveyev had alleged that he was present during the drug handover. However, Mr. Matveyev did not provide the court with his personal information or whereabouts. While the defence identified him as a witness, it did not take any steps on its own to ensure that he would appear before the court.

46. Moreover, the testimonies of Mr. Sharifyanov and Ms. Fedorchuk suggest that Mr. Bismukhametov was not present at the time of the sale of heroin by Mr. Matveyev.

47. With regard to the judgement rendered in Mr. Mirzoev's case, to which Mr. Matveyev refers, the Naberezhnye Chelny City Court did in fact acquit him on 18 July 2009 of selling 4.68 grams of heroin to Ms. Fedorchuk. However, the cassational court's judgement was reversed, and Mr. Mirzoev was subsequently convicted of the offence by that same court, on 12 July 2010, and sentenced to imprisonment. Ms. Fedorchuk's involvement in the test purchase operation in the Mirzoev case does not undermine the witness's credibility in the Matveyev case. She was brought into the police operation after being held for questioning on suspicion of drug dealing, for the purpose of identifying the persons selling her drugs.

48. After examining Mr. Gaptelkhaev and Mr. Zinnurov, who were official witnesses present during the body search of the convicted person (Mr. Matveyev) and who had testified that at the time a hole in Mr. Matveyev's shorts pocket was no bigger than 2 cm, the Court reasonably concluded that it might contain a packet with drugs. Mr. Matveyev's shorts were seized a few days later, which does not rule out the possibility that they were subsequently torn or wilfully damaged by the convicted person himself when they were in his possession.

49. The assertion that the amount of the active ingredient in the drug compound was so negligible as to preclude the criminal prosecution of Mr. Matveyev is irrelevant, as the mass of a narcotic is determined by the overall weight of the compound containing it, in accordance with paragraph 4 of decree No. 14 of 15 June 2006 of the Plenum of the Supreme Court, "On judicial practice for criminal cases related to narcotic drugs, psychotropic, dangerous and poisonous substances.

50. The complainant claims that law enforcement officers had provoked him into dealing in drugs, in violation of the obligations undertaken by the Russian Federation under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. However, the Russian Federation follows the practice of the European Court of Human Rights in such matters. In particular, in its judgement in the case of *Ramanauskas v. Lithuania*,¹ the European Court noted that it was aware of the difficulties inherent in law enforcement authorities' task of detecting and investigating offences; to overcome those difficulties, they were required to make use of undercover agents, informers and covert practices. The challenge is to avoid provocative action and incitement to crime. The European Court held that acts by law enforcement authorities and agents

¹ See European Court of Human Rights, *Ramanauskas v. Lithuania*, application No. 74420/01, judgement of 5 February 2008.

acting on their instructions should be considered unlawful if they exert such an influence as to incite the commission of an offence that would otherwise not have been committed.

51. As the criminal case materials and testimonies of Mr. Miftakhov and Mr. Alekseev indicate, the law enforcement officials conducted the test purchase operation involving Mr. Matveyev on the basis of relevant decisions and only after the Federal Drug Control Service officials had received an operations report that the convicted person was involved in drug trafficking.

52. Neither the law enforcement authorities nor the persons acting as buyers took any action during the operation to coerce the convicted person into committing a drug offence through persuasion, threats, bribery or blackmail.

53. Mr. Matveyev himself could not but understand the implications and significance of his actions. It is clear that he was aware of what he was doing, and he and Ms. Fedorchuk had established an effective and long-standing pattern of dealing in drugs.

54. The police operations were carried out repeatedly because of the special nature of leading investigations into this category of offence and the need to obtain and corroborate evidence that Mr. Matveyev was guilty of criminal acts.

55. In any case, given the changes made to the judgement, all instances of his criminal activities involving dealing in drugs are characterized as a single offence.

56. The European Court has repeatedly pointed out that it is necessary to establish clear and predictable procedure for investigations to ensure that Government bodies act in good faith, and special operations must have a specific goal and be conducted against a particular person.²

57. It should be noted, in the light of the judgement of the European Court of Human Rights in the case of *Khudobin v. Russia*,³ that despite the absence of information on Mr. Matveyev's criminal past, there was very specific information about his involvement in drug trafficking.

58. As for the assertion that the judicial proceedings were unfair, the European Court has already emphasized in its decisions,⁴ that a fair hearing requires the impartiality of the court and observance of specific procedural rules.

59. The judgement rendered in the Matveyev case was the outcome of public and open proceedings, in accordance with the presumption of innocence and the equality of the defence and prosecution. He was given every opportunity to present his case and answer the charges against him, in person and through his lawyer, in courts of first, second and supervisory instances. He has taken advantage of those opportunities, and, on the basis of the adversarial nature of the parties, the court has ruled on the lawfulness of the police operation and given due consideration to the arguments of the defence and the prosecution.

60. Mr. Matveyev's application for a criminal investigation into the falsification of documents by an investigator of the investigating agency of the Naberezhnye Chelny investigative department, a unit of the Investigative Committee attached to the Office of the Procurator of the Russian Federation for the Republic of Tatarstan, was turned down on 5

² See European Court of Human Rights, *Lüdi v. Switzerland*, application No. 12433/86, judgement of 15 June 1992.

³ European Court of Human Rights, *Khudobin v. Russia*, application No. 59696/00, judgement of 26 October 2006.

⁴ See in particular, European Court of Human Rights, *Vanyan v. Russia*, application No. 53203/99, judgement of 15 December 2006

August 2009. The relevant evidence was reviewed by the Office of the Procurator of the Russian Federation. The decision was deemed to be lawful and valid.

61. The detention conditions in the institutions of the penal correction system in which Mr. Matveyev was held met the requirements of Russian legislation.

62. In accordance with article 12 of the Penal Enforcement Code, Mr. Matveyev has the right to submit proposals, applications and complaints to the administration of institutions and high-level Government bodies, including the courts, procuratorial authorities, local authorities, voluntary associations and intergovernmental bodies for the protection of human rights and freedoms. Mr. Matveyev sent 162 communications to various authorities during his stay in State remand centre No. 3 (FKU SIZO-3 UFSIN), and 368 when he was in State penal colony No. 5 (FKU IK-5 UFSIN) of the Russian Federal Penal Enforcement Service Department for the Republic of Tatarstan. No breach of law on the part of officials of remand centre No. 3 and penal colony No. 5 with respect to Mr. Matveyev was tolerated.

63. There is thus no reason to believe that, in the case of Mr. Matveyev, the Russian Federation was in breach of its obligations under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Further comments from the source

64. The source has not provided any further comments.

Discussion

65. In its response of 29 December 2012, the Government relies heavily on the case law of the European Court of Human Rights, which in its view, justify the police agents' actions in the Matveyev case. In particular, the Government contends that authorities and agents acting on their instructions should be considered unlawful only if they exert such an influence as to incite the commission of an offence that would otherwise not have been committed.

66. The Government contends that, in the light of the judgement of the European Court of Human Rights in the case of *Khudobin v. Russia*, despite the absence of information on Mr. Matveyev's criminal past, "there was very specific information on his involvement in drug trafficking." However, at the same time, the Government admits that the "operation involving Mr. Matveyev" was based on an "operations report" that Mr. Matveyev was involved in drug trafficking. Indeed, that "operations report" was not presented at the trial nor reviewed by the judges, nor was it ever disclosed to the defence.

67. In this regard, the Working Group recalls that in other cases involving the Russian Federation, the European Court of Human Rights found that "a mere claim at the trial by the police to the effect that they possessed information concerning the applicant's involvement in drug-dealing, a statement which does not seem to have been scrutinised by the court, cannot be taken into account."⁵

68. The Working Group concurs with the European Court which stated in the *Khudobin v. Russia* case, that the "entrapment defence" put forward by the applicant required appropriate review by the trial court, especially as the case contained certain *prima facie* evidence of entrapment.⁶ Such review by the trial court would be crucial where the

⁵ European Court of Human Rights, *Vanyan v. Russia*, application No. 53203/99, judgement of 15 December 2005, para. 49.

⁶ European Court of Human Rights, *Khudobin v. Russia*, application No. 59696/00, judgement of 26 October 2006, para. 133.

operation (in this case, the test purchase) was not subjected to judicial review or other supervision.⁷

69. The Working Group notes that in the *Vanyan v. Russia* case, the European Court found a violation of the right to a fair trial because “the police had not confined themselves to *investigating* the applicant’s criminal activity in an *essentially passive manner*.”⁸ The European Court also found a violation of the right to a fair trial in the case where the applicant, “tempted by the money,” accepted the request by undercover police officers who offered him money to supply them with heroin.⁹

70. The Working Group concurs with the above approach and considers that in the case under consideration, the undercover police and their agents did not confine themselves to investigating Mr. Matveyev’s alleged criminal activity in a *passive manner*, but rather incited the commission of the offence. There is nothing to suggest that the offence would have been committed had it not been for the intervention of the undercover agents. The conviction of Mr. Matveyev was based mainly on evidence obtained as a result of the police operation.¹⁰

71. The Working Group considers that the non-observance of the international norms relating to the right to a fair trial in the case under consideration, namely as established under article 10 of the Universal Declaration of Human Right and article 14, paragraph 1, of the International Covenant on Civil and Political Rights, is of such gravity as to render the deprivation of liberty of Mr. Matveyev arbitrary.

72. It considers that the deprivation of liberty of Mr. Matveyev falls within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

73. The Government does not refute the fact that Mr. Matveyev is a civic activist and the head of the civil society organization, “SMERSH”, that, *inter alia*, aims to combat corruption.

74. It is noteworthy that the first “test drug purchase operation” involved Mr. Matveyev soon after the local practice of “charging detainees for meals” in police detention facilities had been exposed by Mr. Matveyev, himself, and revoked upon this exposure.

75. On the basis of the information received, the Working Group considers that the Government employed “entrapment” to punish Mr. Matveyev for his human rights activities, in violation of articles 19 and 20 of the Universal Declaration of Human Rights and articles 18 and 19 of the International Covenant on Civil and Political Rights. It considers that the deprivation of liberty of Mr. Matveyev falls within category II of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

Disposition

76. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

⁷ *Ibid.*, para. 135.

⁸ European Court of Human Rights, *Vanyan v. Russia*, para. 49; see also *Teixeira de Castro v. Portugal*, application No. 44/1997/828/1034, judgement of 9 June 1998, para. 38.

⁹ European Court of Human Rights, *Teixeira de Castro v. Portugal*, application No. 44/1997/828/1034, judgement of 9 June 1998.

¹⁰ See European Court of Human Rights, *Vanyan v. Russia*, para. 49.

The deprivation of liberty of Mr. Matveyev is arbitrary, being in contravention of articles 10, 19, and 20 of the Universal Declaration of Human Rights and article 14, paragraph 1, article 18, paragraph 1, and article 19, paragraph 2 of the International Covenant on Civil and Political Rights; it falls within categories II and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

77. Consequent upon the opinion rendered, the Working Group requests the Government of the Russian Federation to take the necessary steps to remedy the situation of Mr. Matveyev and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

78. The Working Group is of the opinion that, taking into account all the circumstances of the case, the adequate remedy would be to release of Mr. Matveyev and to accord him an enforceable right to compensation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

[Adopted on 2 May 2013]
