Council of Europe, Committee of Ministers
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from: Chegodaev Vladislav Ivanovich

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On № 57534/19 of 12/12/2019

of 12.01.2020

The Complaint

on failure to review the complaint and falsification of the decision of the European Court of Justice by the judge of the European Court of Justice Arnfinn Bardsen with the implementation of imitation of the judge's work.

On 07.01.2020, the second applicant, my mother, received a letter from the European Court of Human Rights on a complaint to the European Court of Human Rights about the violation of our human rights, and subsequently the letter was passed to me. The content of this letter is surprising, since it is not a reasoned decision of the Court on the inadmissibility of the complaint in a criminal case, as set out in article 45, paragraph 1, of the Convention. An example of a well-founded and reasoned decision of the Court on the inadmissibility of the complaint is the Judgment of the European court of justice of 19 April 2016 on the complaint "Kashlan V. Russia"(Kashlan v. Russia, N 60189/15), mentioned by me in section G of my complaint.

The response in the form of an alleged "Judgment" by judge Arnfinn Bardsen cannot be recognized as such, since it does not meet the criteria of a reasoned and justified Judgment of the European Court of Justice. Article 45, §1, of the Convention refers specifically to a reasoned decision of the Court, and not to an offensive and disparaging note. Thus, a certain judge Arnfinn Bardsen falsified the Judgment of the European Court of Justice by unmotivated recognition of the complaint as inadmissible.

At the same time, he could not objectively and rationally recognize my complaint as inadmissible, on the grounds indicated in his reply that the proceedings in the case were incomplete and that domestic remedies had not been exhausted.

He probably meant that the case was not considered in the cassation and Supervisory instances of the national Courts, since it was not indicated in the falsification of the Court's Decision.

However, in section G ("Compliance of the complaint with the conditions of admissibility established by article 35 § 1 of the Convention"), I explained this fact by the Court's case-law, pointing to the Judgment of the European Court of Justice of 19 April 2016 on the complaint "Kashlan V. Russia» (Kashlan v. Russia, N 60189/15), which the Court reasoned and reasonably refused to accept the complaint because the applicant missed the 6-month period from the date of the appeal decision in the criminal case, continuing to challenge the decisions of the courts in the cassation and Supervisory instance, and only after that applying to the European Court of Justice. In this Judgment, the Court recognized **the cassation and Supervisory instances as inadequate means of protection** in criminal proceedings in the Russian Federation, due to the unlimited and incomplete length of time for filing a complaint in a criminal case with these instances.

Thus, if I had filed the complaint, as Arnfinn Bardsen considers prOper, after the case was reviewed by the Supervisory authority of the Russian Federation, then he himself, now legally, would have declared it inadmissible, referring to the said Court Decision on the Kashlan complaint.

In other words, my and any other complaint against the Russian Federation in a criminal case to the European Court of Justice, it turns out, **does not have the slightest chance and hope of success** to be even allowed to be considered by the Court. Arnfinn Bardsen, arbitrarily and in any case, finds such a complaint inadmissible. Arnfinn Bardsen will not allow us to go to Court or to Justice. What then is the meaning of the existence of the European court of Justice, when its judges in its name commit the same arbitrariness, abuse of authority, non-admission to the Court and justice, of which we complain to the European Court of Justice in the Russian Federation? I clearly see in the actions of judge Arnfinn Bardsen the manifestation of a corrupt interest in the interests of the Russian Federation in not allowing complaints to be considered by the Court.

Arnfinn Bardsen makes it **a hopeless enterprise** to apply for the restoration of human rights in the European Court of justice.

Judge Power-Ford emphasized in her concurring opinion to the Grand Chamber of the ECHR ruling of 09.07.13 on the case of «Winter and others V. the United Kingdom» that article 3 of the Convention embodies the "**right to hope**" - an integral aspect of every individual's life. In her opinion, «**to deny hope means to deny an important part of humanity, which in turn is «degrading treatment**»...».

At the same time, we can definitely say that the criminal order says: «Your problems **will never be solved** in accordance with the law». § 141 of the judgment of 27.07.06 in the case «Bazorkina V. the Russian Federation»: «**the manner in which her complaints are considered by the authorities of the Russian Federation constitutes inhuman treatment contrary to article 3 of the Convention**». The ECHR repeated the same thing many times, for example, in the Judgments of 05.04.07 on the case «Baisaeva V. the Russian Federation», §142, of 28.10.10 on the case «Sasita Israilova and others V. the Russian Federation», § 123, of 21.06.11 on the case «Makharbieva and others V. the Russian Federation», § 103, of 21.06.11 on the case «Girieva and others V. the Russian Federation», § 104, etc.

Making the **abuse and tyranny** against me and my family, the second and third applicants in this appeal, consideration of admissibility of the complaint, Arnfinn Bardsen **maliciously and arbitrarily deprives us of hope** for the restoration of our human rights violated by the Russian Federation, and gives us the sense of **deprivation of the sense** of appealing to the European Court.

We have scrupulously fulfilled all the conditions of the Convention, both for compliance with the deadline for filing the complaint, and the formal requirements of the Convention, as well as the rules of Court relating to the filing of the complaint and the conditions of its admissibility. Thus, the **Court**, represented by Arnfinn Bardsen, itself **violates our human rights** by its arbitrary decisions and abuse of power, violating **article 3** of the Convention, violating our **right to hope** and committing **inhuman treatment**.

Arnfinn Bardsen mockingly declares the complaint inadmissible, while, according to the court's case-law decision in the case of Kashlan V. Russia, its grounds for denying the admissibility of the complaint **are precisely the conditions for the admissibility of the complaint** and contradict this Court decision.

However, the Court's decision, allegedly signed by Arnfinn Bardsen, cannot really be recognized as such due to the fact that the stroke (paraf), reproduced on the response from the Court, is reproduced by means of printing equipment using computer printing on a printer and cannot be identified as a **handwritten** reproduction of the judge's signature. This image can be applied by anyone who wants to do it, after translating it into an electronic form or using copying equipment.

This circumstance is just one of the episodes of the complaint under consideration, when the courts of the Russian Federation refused to recognize such a scanned image of the signature as a signature and on this basis refused to accept the appeal, and, in particular, this circumstance led to a conflict with the judges of the Russian Federation, which resulted in the initiation of a criminal case against me, according to which the complaint about violation of human rights was submitted to the European Court of Justice, which was denied by Arnfinn Bardsen. In order to recognize such a printed image of a signature as a signature, the Court must make an appropriate decision for the Russian Federation on the complaint we have submitted. And this decision should have an impact on my criminal case.

Thus, I received a communication from the European Court of Justice that has no legal force and does not entail legal consequences, because it was not signed by a judge of this Court. That is, such a message is not an official document of the European Court of Justice and can only be recognized as a draft decision or a leaflet.

Also, the message is addressed only to 2 applicants F. M. Chegodaeva and it`s not addressed to 1 and 3 applicants. That is, in the part of complaints **about violation of human rights of 1 applicant**, which are the main and main appeals to the Court, the complaint **is not considered** for admissibility. The second applicant's complaints are only a small part of the entire complaint and only affect violations of his rights. They are related, but not identical, to the complaints of violations of the rights of 1 applicant. The same applies to complaints of **violation of the rights of 3 applicant**, whose complaints are also **not considered** by the Court for admissibility.

At the same time, it is puzzling that the answer is addressed to the applicant 2, while, scrupulously fulfilling the requirements of the court, I am listed in paragraph 74 of the complaint form as a contact person and the address for correspondence «Chegodaev Vladislav Ivanovich, The Russian Federation, 462411, Orenburg region, Orsk, Stanislavsky st., h.29, ap. 7 ».

Why the Court does not fulfill its own requirements can only be explained by the same arbitrariness of judge Arnfinn Bardsen.

Two complaints were sent to the European Court of Justice. However, the court's letter does not indicate which of the complaints in question and it is impossible to identify the complaint for which this Court response was provided. On some indirect grounds, it is possible to make assumptions about the relation of the response to one of the complaints, but should the Court rely on our guesses about the belonging of the response, and not directly indicate which complaint the response belongs to? It is very likely to make an erroneous assumption in guesses.

The complaint was not considered at all by judge, Arnfinn Bardsen. This is an unsubscription aimed at refusal in court and unjustified receipt of money for allegedly working as a judge. There are clear signs of corruption and fraud with **imitation** of the judge's work.

In summary, I consider the second applicant's letter of the Court received on 07.01.2020 to be **a mockery** of us and our human rights, **inhuman** treatment, **corruption** by judge, Arnfinn Bardsen, and **an insult**, **already repeated**, to us by the Court.

I ask the distinguished Cabinet of Ministers of the Council of Europe to take measures against judge Arnfinn Bardsen and the European court of Justice to correct this situation, to stop the court's mockery of Us and inhuman treatment of us, to stop the violation of our human rights by a Court that claims to be a defender of human rights, to stop blocking our complaints from being considered by the Court in a corrupt way, to stop blocking **access to the Court and to justice**, to stop **insulting** us, the applicants, by the Court.

With respect to the Cabinet of Ministers of the Council of Europe,

V. I. Chegodaev

EUROPEAN COURT OF HUMAN RIGHTS
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Получено 07.01.2020г.

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ECHR-LRus11.00R 12/12/2019

VM/ASU/cs

Жалоба № 57534/19
Chegodayev v. Russia

Европейский Суд по правам человека, заседая в составе единоличного судьи, объявил Вашу жалобу неприемлемой.

В приложении направляем решение, принятое Судом.

Это решение является окончательным и не может быть обжаловано ни в Комитете, ни в Палате, ни в Большой Палате Суда. Следовательно, Суд не будет продолжать переписку по этой жалобе. В соответствии с правилами хранения документов Суда, досье по данной жалобе будет уничтожено по истечении одного года после даты вынесения вышеуказанного решения.

Данное решение составлено на одном из официальных языков Суда (английском или французском); перевод на другие языки отсутствует.

Секретариат Европейского Суда по правам человека

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EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

DECISION

CASE OF CHEGODAYEV v. RUSSIA

(Application no. 57534/19)

introduced on 30 October 2019

The European Court of Human Rights, sitting on 5 December 2019 in a single-judge formation pursuant to Articles 24 § 2 and 27 of the Convention, has examined the application as submitted.

The Court finds that domestic remedies have not been exhausted as required by Article 35 § 1 of the Convention, since the proceedings giving rise to the issues under the Convention are still pending.

The Court *declares* the application inadmissible.

Arnfinn Bårdsen
Judge

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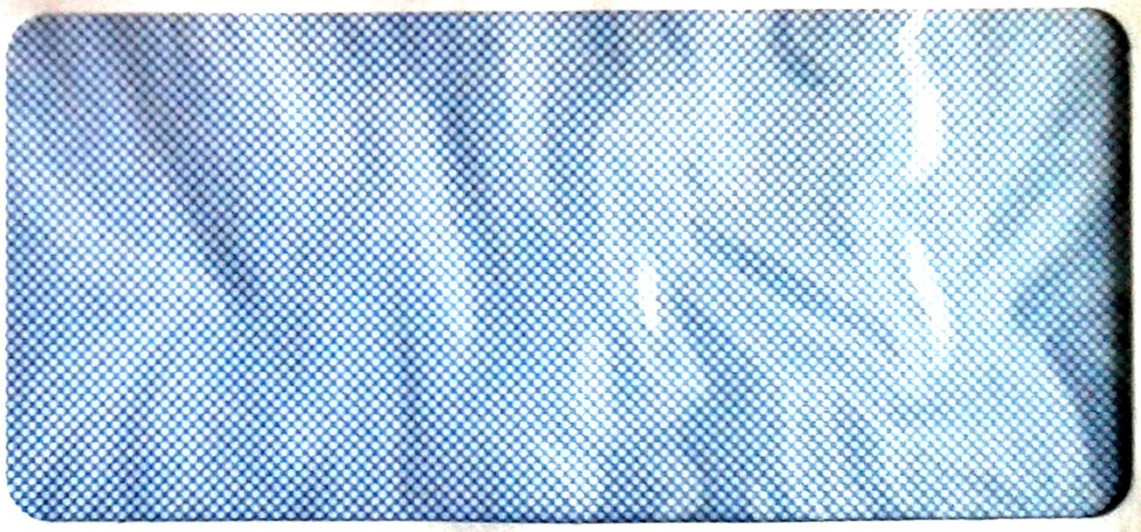

F-67075 Strasbourg cedex

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 60189/15
Timur Ivanovich KASHLAN
against Russia

The European Court of Human Rights (Third Section), sitting on 19 April 2016 as a Chamber composed of:

Luis López Guerra, *President,*
Helena Jäderblom,
Helen Keller,
Johannes Silvis,
Dmitry Dedov,
Pere Pastor Vilanova,
Alena Poláčková, *judges,*

and Stephen Phillips, *Section Registrar,*

Having regard to the above application lodged on 26 November 2015,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Timur Ivanovich Kashlan, is a Russian national who was born in 1966. He is currently detained in Vyazniki, Vladimir Region.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. On 29 December 2014 the Leninskiy District Court of Vladimir convicted the applicant of hooliganism and sentenced him to three years and six months' imprisonment. The applicant appealed, challenging the assessment of the evidence and raising points of law.

4. On 12 March 2015 the Vladimir Regional Court upheld the lower court's judgment in full, save that it amended the type of penal colony where the sentence was to be served. The applicant lodged a cassation appeal challenging the assessment of the evidence and raising points of law.

5. On 16 April 2015 a single judge of the Vladimir Regional Court ruled the cassation appeal inadmissible and refused to accept it for consideration in cassation. The applicant lodged a second cassation appeal.

6. On 21 July 2015 a single judge of the Supreme Court of the Russian Federation ruled the cassation appeal inadmissible and refused to accept it for consideration in cassation.

7. It appears that no further appeal was lodged by the applicant.

B. Relevant domestic law and practice

8. Title 3, Section XIII of the Code of Criminal Procedure of 2002 ("Procedure for review at second instance") (*Часть 3, Раздел XIII "Производство в суде второй инстанции"*) stipulated in Article 390 § 2 that the decisions taken by the second-instance courts on appeal acquire binding force immediately.

9. On 29 December 2010 Federal Law no. 433-FZ, which entered into force on 1 January 2013, amended the Code by introducing a new Chapter 47.1 ("Cassation procedure") ("*Производство в суде кассационной инстанции*").

10. Article 401.2 ("Right to lodge a cassation appeal") of the Code prescribed a list of persons who were entitled to lodge a cassation appeal against any judicial act. Paragraph 3 of the same Article introduced a one-year time-limit for lodging a cassation appeal against a judicial act which had become final and provided for a possibility to reset that time-limit on certain grounds.

11. The new Article 401.6 provided safeguards against cassation revision of final judgments and decisions where revision could aggravate the situation of a convicted person, an acquitted person, or a person in respect of whom a criminal prosecution had been terminated. First, such revision was possible only within one year after these judgments or decisions had become final. Second, the cassation appeals were further restricted by the substantive criterion allowing a review only if a judgment breached the law "to an extent which distorted the essence and meaning of a judicial decision as an act of administration of justice".

12. On 19 December 2014 the State Duma adopted Federal Law no. 518-FZ, approved by the Council of the Federation on 25 December 2014, and signed by the President on 31 December 2014. The Law amended Article 401.2 of the Code by removing any time bars for lodging cassation appeals. The provisions of Article 401.6 remained in force.

13. In its judgments N 13-P of 17 July 2002 and N 5-P of 11 May 2005 the Constitutional Court of the Russian Federation stated that the possibility of reviewing a final judgment needed to be restricted by a relatively short time-limit which excluded revision of a final judgment in the long term. Furthermore, the judgments stressed that the need to set a time-limit for revision of a final judicial decision was essential for the principle of legal certainty, and that this approach was consistent with the Convention system. In the judgment of 11 May 2005 the Constitutional Court expressly referred to this Court's judgment *Nikitin v. Russia* (no. 50178/99, §§ 39, 55-56, 20 July 2004) in concluding that the possibility of review of a final judgment of acquittal within one year after its adoption was compliant with the legal certainty requirements under the Convention.

COMPLAINTS

14. The applicant complained under Article 6 of the Convention that the trial in his case had not been fair. In particular, the witnesses testifying against him had not been examined at trial and the domestic courts had erred in the assessment of evidence.

THE LAW

15. Before considering the merits of an applicant's case the Court must first determine whether the applicant complied with Article 35 of the Convention, and specifically with the six-month time-limit established by Article 35 § 1 of the Convention.

16. The six-month rule, while technical in nature, has an important role in the Convention system, establishing the time-limit after which European supervision of a complaint is no longer possible. The fundamental purpose of this rule is to ensure legal certainty, avoid stale complaints, and provide for examination of Convention issues within a reasonable time (see *P.M. v. the United Kingdom* (dec.), no. 6638/03, 24 August 2004, and *Ipek v. Turkey* (dec.), no. 39706/98, 17 November 2000).

17. The applicant lodged his application with the Court on 26 November 2015, that is to say, more than six months after the dismissal of his appeal on 12 March 2015 and less than six months after dismissal of his cassation appeals as inadmissible by a single judge of the Vladimir Regional Court on 16 April 2015 and by a single judge of the Supreme Court of the Russian Federation on 21 July 2015 respectively (see paragraphs 4-6 above). The Court must thus examine whether the application was lodged in time.

18. The Court has previously held that a decision taken by a second-instance criminal court at the regional level under the former cassation procedure in Russia is a final national decision for the purposes of Article 35 of the Convention. Accordingly, that decision has so far been considered as the starting-point for calculation of the six-month time-limit laid down by that Article. Supervisory-review applications to higher courts of general jurisdiction and decisions taken by them on supervisory review have not been considered relevant for the purposes of calculation of that time-limit (see, in particular, *Berdzenishvili v. Russia* (dec.), no. 31697/03, 29 January 2004).

19. The Court notes, however, that the system of review of domestic judgments in criminal proceedings in Russia was modified by Federal Law no. 433-FZ, which entered into force on 1 January 2013 (see paragraph 9 above). That Law introduced an appeal instance at the regional level, and converted the first two levels of supervisory review under the former system into two levels of cassation proceedings. At that time, the criminal appeals system was broadly similar to the civil appeals system, although the time-limits for appealing were somewhat longer.

20. On 31 December 2014 Federal Law no. 518-FZ abolished the one-year time-limit for lodging cassation appeals after a judicial act had become final, as prescribed by Article 401.2 § 3 of the Code. Thus any time-limits for lodging those appeals were removed (see paragraph 12 above).

21. In the present case the cassation appeals were lodged under the new provisions of the Code resulting from the aforementioned laws. The Court thus has to assess whether the cassation procedure so amended constitutes a remedy under Article 35 § 1 of the Convention and is therefore relevant for the calculation of the six-month time-limit.

22. In this regard the Court reiterates that the requirement of exhaustion of domestic remedies is closely interrelated with the six-month rule, which constitutes an element of legal stability (see *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 50, Series A no. 12). Furthermore, it must be stressed that the purpose of Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right – usually through the courts – the violations alleged against them before those allegations are submitted to the Court (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 37, ECHR 1999-I). Effective and available remedies are those which are accessible, capable of providing redress in respect of the applicant's complaints, and offer reasonable prospects of success (see *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports of Judgments and Decisions* 1996‑IV).

23. According to the Court's established case-law, an application for supervisory review in criminal proceedings has not been considered a remedy to be exhausted under Article 35 § 1 of the Convention. In *Berdzenishvili*, (cited above) the Court found in particular that a procedure

introducing the possibility to challenge a final and binding judgment for an indefinite time was an extraordinary remedy which generated unacceptable uncertainty and rendered the six-month rule nugatory.

24. In civil proceedings the Court consistently found supervisory review not to provide a remedy which needed exhausting (see *Tumilovich v. Russia* (dec.), no. 47033/99, 22 June 1999; *Denisov v. Russia* (dec.), no. 33408/03, 6 May 2004; and *Martynets v. Russia* (dec.), no. 29612/09, 5 November 2009). However, in respect of the civil procedure reform, which introduced appeal, cassation, and supervisory-review instances, the Court found, in *Abramyan and Others v. Russia* ((dec.), nos. 38951/13 and 59611/13, §§ 76-86, 12 May 2015), that the new cassation review procedure at two separate levels of jurisdiction within six months did not give rise to the uncertainty of the previous supervisory-review procedure. Accordingly, it concluded that the reformed cassation review procedure in civil cases constituted an ordinary remedy to be exhausted prior to lodging an application with it (see *Abramyan and Others*, cited above, § 93).

25. Turning to the present case, the Court will proceed to examine whether the same approach may be adopted in respect of the new cassation procedure in criminal proceedings.

26. It should be highlighted at the outset that while the 2010 amendments introducing the new system of judicial instances for criminal cases were similar to those altering the civil proceedings, they were not identical. Most significantly, the period for lodging cassation appeals was set at one year after a judicial act had become final, with a possibility of resetting the time-limit if there were justified grounds (Article 401.2 of the Code). This period set for review of final judgments was consistent with the conclusions reached by the Constitutional Court in its judgments N 13-P of 17 July 2002 and N 5-P of 11 May 2005 (see paragraph 13 above) and the Court's judgment in the case *Nikitin* (cited above). However, the time-limit for lodging a cassation appeal in criminal cases was twice as long as in civil cases.

27. However, even if the length of the new time-limits in the criminal cassation system in criminal proceedings could have been reconciled with the Convention requirements for an effective remedy through the interpretation and practice of the Russian courts, the amendments introduced to the Code on 31 December 2014 by Federal Law no. 518-FZ make this impossible. By abolishing the time-limit for lodging cassation appeals, final and binding judicial acts will in practice be amenable to appeal for an indefinite time, thus putting the new system in the same situation as the previous supervisory review system, which was found to generate an unacceptable uncertainty in respect of the application of the six-month rule (see *Berdzenishvili*, cited above).

28. It is true that, in the light of the provisions of Article 401.6 of the Code (see paragraph 11 above) any cassation appeal lodged with and

considered by the domestic courts more than one year after a judgment had become final and binding is likely to have been lodged only to the benefit of a convicted person. However, any potentially advantageous effect this legal regime may have for a given individual does not mitigate the negative effect created by the temporal uncertainty mentioned above.

29. In view of the considerations above, the Court comes to the conclusion that the new cassation review procedure under the Code of Criminal Procedure, as amended in 2014 and as applied in the present case, does not constitute an ordinary remedy within the meaning of Article 35 § 1 of the Convention and therefore does not have to be exhausted by the applicants before lodging a complaint with this Court.

30. Accordingly, there were no further remedies for the applicant to exhaust after the Vladimir Regional Court's appeal judgment of 12 March 2015, whereas he did so on 26 November 2015, that is, more than six months later. It follows that this application is inadmissible for non-compliance with the six-month rule set out in Article 35 § 1 of the Convention, and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Done in English and notified in writing on 12 May 2016.

Stephen Phillips
Registrar

Luis López Guerra
President