

(Translated from Russian)

Note verbale dated 24 March 2021 from the Permanent Mission of the Russian Federation to the United Nations Office and Other International Organizations in Geneva to the Office of the United Nations High Commissioner for Human Rights

Permanent Mission of the Russian Federation to the United Nations Office and Other International Organizations in Geneva

No. 1279

The Permanent Mission of the Russian Federation to the United Nations Office and Other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to convey herewith information from the Russian Federation in connection with joint communication AL RUS 10/2020 of 26 January 2021, from the special procedures of the United Nations Human Rights Council.

The Permanent Mission avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Enclosures: As mentioned, 16 pages.

Geneva, 24 March 2021

Office of the United Nations High Commissioner for Human Rights

Geneva

Information from the Russian Federation regarding the joint request from the special procedures mandate holders of the United Nations Human Rights Council on the case of Yuri Alexeevich Dmitriev

Reference: AL RUS 10/2020 of 26 January 2021

1. The Russian Federation, having carefully considered the joint request from five special procedures mandate holders of the United Nations Human Rights Council in relation to Y.A. Dmitriev, a member of the Memorial Human Rights Centre, has the honour to clarify the reasons, circumstances and legal basis for the court decisions taken in respect of Mr. Dmitriev.

On 22 July 2020 the Petrozavodsk municipal court of the Republic of Karelia sentenced Mr. Y.A. Dmitriev, a citizen of the Russian Federation born on 28 January 1956, to 3 years and 6 months of deprivation of liberty, to be served at a strict regime correctional colony. The sentence was pronounced pursuant to article 132 (4) (b) of the Criminal Code of the Russian Federation (hereinafter, the Criminal Code), on violent acts of a sexual nature, with the application of the provisions of article 64, on the application of less severe penalties than those stipulated for a given offence.

The same court decision acquitted Mr. Dmitriev of offences punishable under the following provisions of the Criminal Code: article 135, on indecent assault, as amended by Federal Law No. 73-FZ of 21 July 2004; article 135 (3), as amended by Federal Law No. 377-FZ of 27 December 2009; article 242.2 (2) (c), on the use of a minor for the production of pornographic materials or objects; and article 222 (1), on the illegal acquisition, transfer, sale, storage, transport or carriage of weapons, the basic components thereof, or ammunition, as his actions did not constitute elements of those offences and he recognized the right to his rehabilitation. At the same time, the questions related to procedural costs and material evidence were resolved.

On 29 September 2020, the Supreme Court of the Republic of Karelia, ruling on appeal, overturned the verdict issued on 22 July 2020 by the Petrozavodsk municipal court of the Republic of Karelia, and a new guilty verdict was handed down in this case. Mr. Dmitriev was found guilty of committing an offence under article 132 (4) (b) of the Criminal Code and was sentenced to 13 years of imprisonment, to be served in a strict regime correctional colony, with restriction of liberty for 1 year and 6 months.

In accordance with article 53 (1) of the Criminal Code, on restriction of freedom, the following restrictions have been imposed on Mr. Dmitriev: he is not allowed to leave his place of permanent residence or stay between 10 p.m. and 6 a.m.; he is not allowed to travel outside the territory of the respective municipality; and he is not allowed to change his place of residence or stay without the consent of the specialized State body that supervises the serving of sentences of deprivation of liberty. In addition, he is obliged to report for registration twice a month to the specialized State body that supervises the serving of sentences of deprivation of liberty.

The criminal case with regard to Mr. Dmitriev's acquittal on charges brought under the following provisions of the Criminal Code was sent for retrial, to the same court and at the stage of judicial proceedings, with a different composition: article 135 (as amended by Federal Law No. 73-FZ of 21 July 2004), article 135 (3) (as amended by Federal Law No. 377-FZ of 27 December 2009), article 242.2 (2) (c) and article 222.

The Supreme Court of the Republic of Karelia handed down a decision on appeal on 29 September 2020, finding Mr. Dmitriev guilty of committing acts of a sexual nature making use of the helpless state of a victim under 14 years of age. It has been established that the offence in question was committed between 1 March 2012 and 13 December 2016 in the city of Petrozavodsk of the Republic of Karelia, under the circumstances set out in the decision on appeal.

In delivering the decision on appeal, the criminal chamber of the Supreme Court of the Republic of Karelia proceeded, inter alia, from the following. Having analysed the entire case file, the chamber considered that Mr. Dmitriev was guilty of committing acts of a sexual nature using the victim's helpless state, contrary to the conclusions of the defence appeal and the defendant's arguments that his actions did not constitute an offence, and that they did not

include the intent to find sexual satisfaction. This conclusion was based on the entire collection of the evidence that was collected and examined.

Moreover, the chamber, like the court of first instance, classified Mr. Dmitriev's actions under article 132 (4) (b) of the Criminal Code as other actions of a sexual nature that make use of the helplessness of a victim under 14 years of age. Such actions are understood to include the satisfaction of sexual needs by means other than those directly specified in part 1 of the above-mentioned article of the Criminal Code.

Mr. Dmitriev's direct intent to commit other acts of a sexual nature with the victim was, according to the chamber, evidenced by the circumstances and the defendant's chosen method of committing the offence, and also by his behaviour before and after the offence was committed. For instance, Mr. Dmitriev's prior acts of viewing pornographic films on his computer, and repeatedly photographing [REDACTED] undoubtedly aroused him.

Mr. Dmitriev exploited the victim's helpless state related to [REDACTED] youth, acting as [REDACTED] foster father and knowing full well that because of [REDACTED] physical and mental condition [REDACTED] could not understand the nature and significance of the actions performed [REDACTED] or resist them, since there was no one else in the apartment apart from them. No third party was able to stop the actions performed by the defendant.

It should be noted that the defendant was aware of the social danger of his actions, foresaw socially dangerous consequences and, nevertheless, wished to commit them, thereby satisfying his sexual needs. At the same time, according to a forensic psychiatric examination, Mr. Dmitriev did not have any mental disorders. At the time of the incriminated act he was capable of full awareness of the actual nature of his actions and was able to control them, without showing any mental or sexual impairment.

In pronouncing the defendant's punishment, the court took into account the nature and degree of public danger of the offence, information about his personality and the circumstances that influenced his degree of responsibility and the impact of the punishment on the correction of the defendant and on the his family's living conditions. Thus, the offence under article 132 (4) of the Criminal Code falls under the category of especially serious offences and is considered especially dangerous to the public. At the same time, Mr. Dmitriev had no previous convictions and had not been held liable for administrative offences; he had no disabilities or serious chronic diseases; he was not included in registries of psychiatric patients or drug users; he was not officially employed, as he was a pensioner; and he was considered favourably at his place of residence. He had in the past actively participated in public life in the Republic of Karelia and other constituent entities of the Russian Federation and had received letters of thanks, certificates and badges of honour from several organizations, foundations and parties.

The chamber agreed with the arguments of the appeal presentation and with the appeal of the victim's representative and [REDACTED] legal representative that the punishment imposed was excessively lenient and that the defendant's admission of guilt should not be considered a mitigating factor. It considered that the court's conclusion in this part of the case did not correspond with the facts, as the defendant, during both the trial in the first instance and the appeal, had not recognized the commission of sexual acts against his foster daughter. At the same time, the chamber considered it possible to recognize the defendant's age as a mitigating circumstance. The court found no grounds for recognizing other circumstances as mitigating. At the same time, in accordance with article 63 (1) (p) of the Criminal Code, on aggravating circumstances for sentencing, the chamber recognized as an aggravating circumstance that the offence was committed against a minor, and by a person legally responsible for the minor's upbringing.

In determining the penalty under paragraph article 132 (4) (b) of the Criminal Code, the chamber took into account these circumstances as a whole, the mitigating and aggravating circumstances, along with information about the defendant's personality, and, given the nature and degree of public danger of the offence, sentenced him to imprisonment based on the fact that it would be impossible for him to be reformed without isolating him from society. There were no grounds for the application of article 73 of the Criminal Code, on conditional sentences. The court also sentenced Mr. Dmitriev to an additional punishment in the form of

restriction of freedom with the imposition of restrictions and obligations, as provided under article 53 of the Criminal Code.

The chamber did not find any reason to apply article 15 (6) of the Criminal Code, on categories of crimes, or circumstances which, by virtue of article 64, could be considered as exceptional, as stated in the appeals presentation and the appeal of the victim's representative, or to apply article 62 (1), on sentencing with mitigating circumstances. However, in connection with the prosecutor's appeal presentation and the appeal of the victim's representative against the excessively mild sentencing, the chamber considered it necessary to strengthen the penalties imposed on Mr. Dmitriev.

In accordance with article 58 (1) (c) of the Criminal Code, on the designation of the type of correctional institution for prisoners sentenced to imprisonment, Mr. Dmitriev should serve the sentence under article 132 (4) (b) in a strict regime penal colony. Taking into account the information on the personality of the defendant, the chamber considered it possible for him to serve part of the sentence without imprisonment, in accordance with article 58 of the Criminal Code.

Taking into account the provisions of article 72 (3.1) (a) of the Criminal Code, on the calculation of sentences and offsetting of penalties, the time of Dmitriev's detention from 13 December 2016 to 27 January 2018 and from 27 June 2018 to 28 September 2020 was counted in the term of imprisonment, with one day in pretrial detention counting for one day of sentence served at a strict regime penal colony.

Moreover, when cancelling the decision of the court because the court of first instance violated the requirements of form and content of sentencing, the chamber considered that the conclusions put forward in the appeal presentation and in the appeal complaint submitted by the victim's representative and [REDACTED] legal representative had merit. These related to the lack of correspondence between the facts of the case and the court's conclusions that the elements of crimes under article 135, article 135 (3), article 242.2 (2) (c) and article 222 (1) of the Criminal Code were absent from Mr. Dmitriev's actions, which resulted in an illegal and unfounded exculpatory judgment being issued in relation to this part of the case.

Specifically, the chamber drew attention to the fact that expert opinion No. 46/KE/17 of 11 December 2017, obtained during the trial, did not contain a response from the art expert to the question about the pornographic nature of certain photographs, while it was specifically within the expert's competence to resolve the issue of the presence of pornographic features in a particular object of study. In this regard, the appellate court, in considering the criminal case, commissioned a second forensic artistic examination, and ensure that it was conducted.

According to the conclusion of the second forensic artistic examination, dated 26 September 2020, the submitted photographs recorded the image of a specific child – [REDACTED] [REDACTED] – as an independent character; the images did not contain any storyline, background or figurative meaning; the intention of the photographer was limited only to the task of showing the [REDACTED] were specifically at the centre of the composition and were the semantic focus of the photographs; the style did not correspond with generally accepted design principles for medical or popular science literature, medical atlases or textbooks, which made it impossible to classify the images as illustrated materials intended for scientific or medical use or for educational purposes; and sexual connotations were captured by the pose, angle and lighting in the depiction of the [REDACTED]. Thus, the nine images that were examined all had the attributes of pornographic images in terms of form, content and visual characteristics.

While acquitting Mr. Dmitriev for unlawful storage of the basic components of firearms under article 222 (1) of the Criminal Code for lack of corpus delicti, the court of first instance referred to the following: – the testimony of the defendant that, having taken part of a gun barrel from children in the street, he had kept it at home, having forgotten about it, and had no intention to use it for its intended purpose; – a report on an inspection of the defendant's apartment, where, among other things, the cut barrel of a smoothbore hunting rifle was found and confiscated on 13 December 2016; – a report of the Licensing and Permits Department according to which Mr. Dmitriev was not issued a weapons permit; – the conclusions of forensic examinations of 17 February 2017, 9 March 2017 and 31 May 2019 that the barrel submitted for examination referred to a basic component of an IZh-5

smoothbore hunting rifle, manufactured industrially, whose design had been modified by shortening the barrel to a residual length of 335 mm, and that this part of the barrel is appropriate for shooting with the use of a rifle known to have been modified accordingly.

Due to the defendant's lack of intention to use the gun barrel for its intended purpose, his lack of ammunition for the weapon component in question and his lack of awareness about the suitability of the weapon to produce a shot, and following a long search for expert institutions to ascertain the facts, the court of first instance had concluded that the incriminated act did not present a public danger owing to its insignificance. It therefore acquitted Mr. Dmitriev for lack of *corpus delicti*.

At the same time, in the chamber's opinion, the court of first instance, contrary to the requirements of the criminal procedure law, failed to consider the following circumstances: – The defendant's testimony that he had been keeping the weapon part in his home for an extended period, since the 1990s, without holding a weapons licence and without handing it over to the police department; – A statement from the licensing and permits office that Mr. Dmitriev holds no weapons licence; and – The expert conclusion that the part in question, as a component of a smoothbore hunting rifle, is capable of producing shots once constituted as an operable weapon.

It also held that the court of first instance had failed to take into account that the offence under article 222 (1) of the Criminal Code is considered to be completed from the moment of committing specific actions related to the illegal storage of the basic component of the weapon, rather than from the moment when actions are committed with the intention of using it to produce a shot. The conclusion that this act was insignificant because of Mr. Dmitriev's lack of ammunition for this component of the weapon, which excluded the possibility of its use for shooting, and also his lack of knowledge about the suitability of this component for shooting, had no basis in law.

According to the chamber, an analysis of the evidence examined in the case provided grounds to find that the court of first instance's conclusions, which were set out in its decision relating to the relevant part of the accusation, were not in line with the facts of the case. They contained significant contradictions that influenced the court's decision on the guilt or innocence of Mr. Dmitriev, who was acquitted, and also influenced its application of the law. The chamber thus decided that the acquittal of Mr. Dmitriev due to the absence of *corpus delicti* for offences under article 135, article 135 (3), article 242.2 (2) (c) and article 222 (1) of the Criminal Code was in violation of the criminal procedural legislation and therefore could not stand.

Pursuant to article 389.15, on the grounds for reversal or alteration of a legal judgment in the appellate procedure, and article 389.16, on non-compliance of a court's conclusions stated in a sentence, with the facts of a criminal case, of the Russian Code of Criminal Procedure, the conclusion reached by the chamber served as grounds for quashing the judgment and sending the case for a new examination.

On 16 February 2021 the criminal chamber of the third court of cassation of general jurisdiction, meeting in closed session, considered the criminal case brought on a cassation appeal by Mr. Dmitriev, who had been convicted, and by his counsel, against the sentence handed down by the Petrozavodsk municipal court of the Republic of Karelia on 22 July 2020 and the decision on appeal of the chamber for criminal cases of the Supreme Court of the Republic of Karelia, handed down on 29 September 2020. The cassation court upheld the judgment of the chamber for criminal cases of the Supreme Court of the Republic of Karelia of 29 September 2020, with no changes.

During the proceedings, all the necessary procedural guarantees were provided to Mr. Dmitriev, in accordance with the applicable domestic legislation and the international obligations of the Russian Federation.

2. As for the question posed in passing by the special rapporteurs on the measures taken in the Russian Federation to memorialize sites where mass political repression took place during the Soviet era, such measures have been both comprehensive and consistent. The Concept of State policy on the commemoration of victims of political repression, which

was approved by a ruling issued by the Russian Government on 15 August 2015, provides an important basis for this work.

A key area for implementation of this policy is the creation and development of objects commemorating the victims of political repression at the mass graves where they are buried. The Council on the Development of Civil Society and Human Rights under the Office of the President of the Russian Federation effectively coordinates these activities.

The Commission for the Rehabilitation of Victims of Repressive Political Measures under the Office of the President of the Russian Federation concentrates on ensuring observance of Act No. 1761-1 of 18 October 1991, the Rehabilitation of Victims of Repressive Political Measures Act.

A five-page list of the most famous Russian memorials and monuments dedicated to the victims of political repression during the Soviet period is attached.

Regarding the link that the authors of the joint request assume exists between Mr. Dmitriev's case and his research into the mass political repression that took place in Karelia in the 1930s, we should note that such assertions are contrived and unsubstantiated and are supported by no convincing arguments.

The search works of interest to the mandate holders at the Sandarmokh site were carried out from 12 to 21 August 2019 by the Ministry of Defence of the Russian Federation, under the powers established by the current legislation for the federal executive branch to perpetuate the memory of those who perished defending the motherland. The legal basis for such works were an appeal from the First Deputy Head of the Republic of Karelia and Prime Minister of the Government of the Republic of Karelia, A.E. Chepik, and the corresponding decision of the Chief of the General Staff of the Armed Forces of the Russian Federation, dated 7 August 2019.

The works were carried out by the 90th Detached Special Search Battalion, with the participation of members of the Russian Military Historical Society, a national public organization. As a result, the remains of 16 Red Army soldiers, presumably executed in Sandarmokh during the Soviet-Finnish War, were found and handed over for identification to the Investigative Committee of the Russian Federation in the Republic of Karelia.

No official appeals were filed against such works with the Russian Ministry of Defence or the Russian Military Historical Society by citizens of the Russian Federation, including relatives of the victims of the mass political repression of the Soviet period buried at the Sandarmokh site.
