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**Applicant's representatives' submissions
on implementation of individual measures in the cases of
Pichugin v. Russia
(no. [38623/03](#), judgment of 23 October 2012, final on 18 March 2013), and
Pichugin v. Russia
(no. [38958/07](#), judgment of 6 June 2017, final on the same date)**

Dear Sir / Madam,

The present communication is being submitted by the Human Rights Centre “Memorial” (hereinafter – HRC “Memorial”) in accordance with Rule 9 of the Rules of the Committee of Ministers for the Supervision of Execution of Judgments and of the Terms of Friendly Settlements by the applicants’ legal representatives with regard to individual measures in the cases of *Aleksey Vladimirovich Pichugin v. Russia* (Applications nos. 38623/03, and 38958/07).

HRC “Memorial”, founded in 1993, is a Russian non-governmental organisation that works to promote respect and observance of human rights and fundamental freedoms in the Russian Federation and in other countries. Since 2013, HRC “Memorial” maintains a public list of Russian prisoners who, in our assessment, correspond to the definition of a “political prisoner” established by the Parliamentary Assembly of the Council of Europe in Resolution 1900 (2012) – that is, individuals whose “detention is the result of proceedings which were clearly unfair and this appears to be connected with political motives of the authorities”.¹ Aleksey Pichugin was among the first individuals designated by HRC “Memorial” as a political prisoner and included in this list.²

¹ “The definition of political prisoner”, Parliamentary Assembly of the Council of Europe Resolution 1900 (2012) <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19150&lang=en>

² Current list of Russian political prisoners, Memorial Human Rights Centre <https://memohrc.org/ru/pzk-list>

A. The ECHR's findings in the judgments of *Pichugin v. Russia* (nos. 38623/03, and 38958/07)

Mr. Pichugin, a mid-level security manager at Russia's Yukos Oil Company, was arrested on 19 June 2003 and has remained in detention ever since. His arrest marked the start of the Russian Government's campaign against Yukos and its leaders and resulted in criminal prosecution of more than 60 people.

Mr. Pichugin was imprisoned on the basis of two convictions: the first, on 30 March 2005, to 20 years; the second, on 6 August 2007, to life imprisonment – both times for several counts of attempted murder and murder.

Mr. Pichugin lodged two applications with the European Court of Human Rights complaining, among other things, that the trials against him did not meet the requirements of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Both times the Court ruled in his favour, finding violations of his right to a fair trial under the Convention.

In the first judgment (no. 38623/03, final on 18 March 2013), the Court found violations of Articles 6(1) and 6(3) of the Convention “on account of the lack of a public hearing in the criminal proceedings against the applicant” and “on account of the absence of an adequate and effective opportunity to challenge [the prosecution witness'] statements against him”.³ In the second judgment (no. 38958/07, final on 6 June 2017), the Court found violations of Articles 6(1), 6(2) and 6(3)(d) “on account of unfair taking and examination of evidence by domestic courts”.⁴

In both judgments the Court explicitly stated that “when an applicant has been convicted despite a potential infringement of his rights as guaranteed by Article 6 of the Convention he should, as far as possible, be put in the position in which he would have been had the requirements of that provision not been disregarded, and that the most appropriate form of redress would, in principle, be trial de novo or the reopening of the proceedings, if requested”. The Court further noted that “Article 413 of the Russian Code of Criminal Procedure provides that criminal proceedings may be reopened if the Court finds a violation of the Convention” (no. 38623/03, para. 219, and no. 38958/07, para. 47).

B. Applicant's attempts to receive *restitutio in integrum*

On 23 October 2013 and 8 November 2017, following the entry into force the Court's judgments of *Pichugin v. Russia* (nos. 38623/03, and 38958/07 respectfully) the Supreme Court of the Russian Federation reopened the criminal proceedings in the applicant's cases.

³ CASE OF PICHUGIN v. RUSSIA (Application no. 38623/03), 18 March 2013, <http://hudoc.echr.coe.int/eng?i=001-114074>

⁴ CASE OF PICHUGIN v. RUSSIA (Application no. 38958/07), 6 June 2017, <http://hudoc.echr.coe.int/eng?i=001-174061>

In its decision of 23 October 2013⁵ the Supreme Court concluded that violations of the provisions of Article 6 of the Convention recognised by the ECHR in its judgment of 23 October 2012 in the applicant's case "are not significant and had not tainted the legality, substantiation and fairness" of the national judgments in the first case against the applicant. In its decision of 8 November 2017⁶ the Supreme Court stated that in the second case against the applicant his guilt "had been established on the basis of objective and impartial assessment of the totality of the evidence".

Thus, the Supreme Court of the Russian Federation decided not to amend the previous judgments against the applicant.

Mr. Pichugin's requests for a pardon submitted on 27 November 2015 and on 4 May 2017 to the attention of the President of the Russian Federation in accordance with the Russian Constitution were rejected.⁷

On 10 March 2020, Aleksey Pichugin submitted his third request for a pardon to the attention of the President of the Russian Federation, specifically referencing judgments by the European Court of Human Rights and the Committee of Ministers' recommendation for his pardon.⁸ As of the time of this communication, the response is still pending. To this day, Mr. Pichugin remains incarcerated in the maximum-security "Black Dolphin" penal colony in the Orenburg Region.

C. The Committee of Ministers' decisions on the implementation of judgments in the applicant's case

The Committee of Ministers of the Council of Europe has examined the Russian Government's failure to implement the Court's judgments with regard to Mr. Pichugin on multiple occasions, noting that "the failure of the reopening procedure before the Supreme Court... makes all the more obvious the need for alternative measures of redress".⁹ During their most recent examination of the Pichugin case at the 1362nd meeting in December 2019, the Ministers' Deputies "called... on the Russian Federation to consider adopting

⁵ Decision of the Supreme Court of the Russian Federation of 23 October 2013, http://vsrf.ru/stor_pdf.php?id=567426

⁶ Decision of the Supreme Court of the Russian Federation of 8 November 2017, http://vsrf.ru/stor_pdf.php?id=1597468

⁷ *Vedomosti*, 9 June 2016

<https://www.vedomosti.ru/politics/articles/2016/06/09/644878-pichugin-putinu-hodataistvo>

Vedomosti, 21 July 2017

<https://www.vedomosti.ru/business/news/2017/07/21/725239-otkloneno-proshenie-pomilovanii-pichugina>

⁸ *Novaya Gazeta*, 30 March 2020

https://novayagazeta.ru/news/2020/03/30/160256-prigovorenyy-k-pozhiznennomu-sroku-sotrudnik-yukosa-aleksey-pichugin-vnov-napisal-zayavlenie-o-pomilovanii?fbclid=IwAR1f53QmJBfHwVFFfRC0W3Yv7yvNjOmCxhyGfYm4KuzigYW_2kcEx4YBDdc

⁹ Committee of Ministers of the Council of Europe, Ministers' Deputies, 1318th meeting, 5-7 June 2018 (DH), H46-20 Klyakhin group v. Russian Federation (Application No. 46082/99)

https://search.coe.int/cm/pages/result_details.aspx?objectid=090000168089e16f

measures as soon as possible to ensure his release and in this context noted anew the possibilities offered by a pardon".¹⁰

D. The Opinion of the UN Working Group on Arbitrary Detention on the applicant's case

In addition to judgments by the European Court of Human Rights and decisions by the Committee of Ministers, on 23 November 2018 the United Nations Working Group on Arbitrary Detention adopted Opinion No. 89/2018 with regard to Mr. Pichugin, in which it held his deprivation of liberty to be "arbitrary" and requested that the Russian Government "release Mr. Pichugin immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law".¹¹

E. Applicant's representatives' proposals for implementation of individual measures

Article 46 of the Convention obligates Council of Europe member states "to abide by the final judgment of the Court in any case to which they are parties" and gives the Committee of Ministers the prerogative to supervise executions of the Court's judgments and take measures against member states that fail to fulfil their obligations. We find the Russian Government's persistent failure to implement the Court's judgments with regard to Aleksey Pichugin and provide redress for violations in the form of his release, as requested by the Committee of Ministers, to be in contradiction both with Russia's obligations under the Convention and with past practice in other comparable cases.

Given this inexcusable situation, we respectfully ask the Committee of Ministers, in accordance with Article 46, paragraph 4 of the Convention, to refer to the Court the question whether the Russian Federation has failed to fulfil its obligations in the case of Aleksey Pichugin.

Yours faithfully,

Tatiana Glushkova,
the applicant's legal representative

¹⁰ Committee of Ministers of the Council of Europe, Ministers' Deputies, 1362nd meeting, 3-5 December 2019 (DH), H46-25 Klyakhin group v. Russian Federation (Application No. 46082/99) https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168098f9a2&fbclid=IwAR0WBtvURt4Wd0ylqyuoVU9srxdlpZZ9prwEw8_XIjL8LdJBv-ysV8w9qzA

¹¹ Opinion No. 89/2018 concerning Alexey Pichugin (Russian Federation) adopted at the 83rd session of the United Nations Working Group on Arbitrary Detention, 23 November 2018 https://www.ohchr.org/documents/issues/detention/opinions/session83/a_hrc_wgad_2018_89.pdf