

**Update with regard to the Russian Federation's responses to the Concluding observations on its sixth periodic report to the UN Committee against Torture**

In its Concluding observations on the sixth periodic report of the Russian Federation, the Committee against Torture specified three paragraphs for the follow-up procedure. Those include para. 17, which states, *inter alia*, that “[t]he State party should ensure that the case of Yevgeny Makarov is promptly, impartially and effectively investigated and that the perpetrators, including those with command responsibilities and those who suppressed the video recording, are prosecuted and, if found responsible, punished with appropriate penalties.”

In August 2019, the Public Verdict Foundation sent an update to the Committee against Torture, describing the status of Yevgeny Makarov's case at that point.

Having reviewed the Russian Federation's follow-up report and the Committee's communication on its consideration, the Foundation is hereby respectfully submitting an update on the current status of Yevgeny Makarov's case.

The investigation of unlawful violence (torture) applied to Yevgeny Makarov was completed in the fall of 2019. Charges under Art. 286(3)(a) of the Russian Penal Code (“abusing official powers with the use of violence”) were brought against 15 former officers of the Yaroslavl Oblast Penal Colony No. 1, including former colony warden Dmitry Nikolayev and his first deputy Igit Mikhaylov. The warden and his deputy were also accused of organizing this crime.

One of the defendants, Sergey Yefremov, entered into a plea bargain and actively cooperated with the investigators, which resulted in his case having been detached from the rest and tried separately following a special (simplified) procedure. On 14 January 2020, Mr. Yefremov was sentenced to 4 years in prison. Mr. Yefremov's lawyer appealed against this verdict. On 1 December 2020, the appellate Yaroslavl Oblast Court reduced Yefremov's sentence by 6 months, to 3 years and 6 months, confirming the rest of the verdict. The Public Verdict Foundation's lawyer Irina Biryukova, representing the victim Yevgeny Makarov, appealed against this verdict in cassation. Ms. Biryukova argued that in the light of the unreasonably lenient sentences imposed in the main proceedings that had to be reconsidered (see below), Yefremov's sentence had to be reconsidered as well, and his case had to be tried afresh.

The main court proceedings began in January 2020 and involved 14 former colony officers (guards), including the warden and his deputy. In July 2020, the proceedings against one of the defendants, Ivan Kalashnikov, were suspended due to his serious illness until his recovery.

On 19 November 2020, the court delivered its verdict with respect to 13 former colony officers. 11 of them were sentenced to time in minimum security colony for the periods from 3 years to 4 years and 3 months. Two of the colony officers, namely the warden and his deputy, were acquitted.

The victim's lawyer appealed against this verdict on the following main grounds.

Firstly, the acquittal of the colony warden and his first deputy is unlawful and ungrounded. The investigation materials, including other defendants' testimonies, clearly indicate that not only both the warden and his first deputy were aware of the planned “education work” with Evgeny Makarov but they took action to organize it: they ordered the blocking of the entry checkpoint and keeping the guards from the previous shift at the premises, informing them why they were ordered to stay and that they were expected to report on “education work” done. Neither of them took any action to stop the unlawful use of violence against Evgeny Makarov. All these testimonies, as confirmed by the defendants, were given by them voluntarily, in the presence of their lawyers. However, in the course of the court proceedings they retracted their earlier testimonies, referring to their desire to minimize

potential negative consequences for themselves. The court failed to address this situation critically, was satisfied with the fact that all defendants retracted their testimonies (sometimes repeating each other's words), and acquitted the former warden and his deputy on these grounds. The acquittal made them entitled to legal rehabilitation and compensation of damages for unlawful and ungrounded prosecution.

Secondly, 11 defendants were sentenced to time in minimum security colony for the periods from 3 years to 4 years and 3 months, with a ban on holding official positions in Russian law enforcement agencies for the period of 2 years and 6 months. With the exception of one of the defendants, Mr. Andreyev, who had partially compensated the victim for damages, these sentences cannot be accepted as just and fair. They are manifestly too lenient and are not capable of either potentially reforming the individual defendants or generally preventing similar official offences in the future. Given that the maximum sentence for this crime is 10 years, the sentences imposed treated it, in essence, as an offence of medium severity.

In reaching its verdict, the court failed to take into account a number of both general and individual factors.

The crime committed by the defendants is an act of torture perpetrated by the largest group of individuals (as established in a court of law) in Russia to date. No proceedings have ever concerned a case where more than 10 law enforcement officers had been methodically torturing a human being for an extended period of time, with the process recorded on a video camera. This is a highly defiant and cynical crime, as attested by both the fact of it having been filmed and recorded dialogues between the officers.

The court notes in its verdict that the defendants had impinged upon “the legally protected public interest in the field of correctional service, discredited the agencies and institutions of the penal system which are responsible for ensuring legal order and legality, as well as safety and security of convicts.” This characterization, however, did not result in adequate punishments, which indicates that the court had failed to sufficiently assess the way in which public trust in the law enforcement system had been undermined. The Public Verdict Foundation and the victim's lawyer are convinced that the verdict undermines public trust not only in the Russian law enforcement system but also in Russia's declared goals to counter the practices of torture and cruel treatment.

When published, the video caused enormous public uproar (over 3 million views on the *Novaya Gazeta* YouTube channel<sup>1</sup> as of 27 November 2020). The defendants inflicted damage not only on Yevgeny Makarov personally, as a crime victim, but on the whole law enforcement system of Russia. The court, in imposing a sentence over three times shorter than maximum, only further weakened public trust in state institutions and the penal system by inadequately assessing the dangerous nature of this crime.

During the court hearings, none of the defendants (except for Mr. Andreyev) apologized or showed any signs of remorse and realization of the damage they had inflicted on Mr. Makarov and the public interest. On the contrary, they tried hard to justify their acts referring, among other things, to Mr. Makarov's own conduct (although the court disregarded these attempts). None of them (except for Mr. Andreyev) tried to make up for the damage caused. The defendants treated what happened as a minor embarrassment and cared more about the leaked footage of their acts than about their acts themselves.

In addition, the defendants and their lawyers have, on many occasions, made derogatory statements about the victim, his lawyer, and the Public Verdict Foundation, characterizing the latter as a “foreign agent” and alleging that the Foundation and the lawyer Irina Biryukova had been spreading

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<sup>1</sup> <https://youtu.be/Q6QYXvbkkws>

misinformation attempting to influence the public opinion, as the organization's purpose was allegedly to "create a negative attitude towards the system as a whole."

No one, absolutely no one tried to stop the beating. No one made a slightest attempt to reduce the number of blows or calm down their colleagues. Quite on the contrary, the footage shows shared enthusiasm and mutual encouragement. This kind of conduct indicates that the defendants failed to display even a trace of respect for law and order. It shows that they embraced such treatment of prisoners as normal and even proper. This predisposition, dangerous for the society, makes the terms of imprisonment selected for them by the court clearly inadequate.

Thirdly, after the delivery of the court's verdict we received information suggesting that the court, while preparing the verdict, had breached deliberations room secrecy. The victim's lawyer requested video surveillance records from the court. The records were produced in late December and indicate that the court did indeed breach deliberations room secrecy.

The verdict delivered in Evgeny Makarov's case by the court of first instance is, therefore, unlawful and ungrounded. The case is scheduled to be tried on appeal by the Yaroslavl Oblast Court on 3 March 2021.

The Public Verdict Foundation is prepared to further update the Committee on future developments of the situation.