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RUSSIA to answer to Strasbourg for imprisonment of historian of Stalin's Terror

By Halya Coynash

Kharkiv Human Rights Protection Group (05.04.2021) – <https://bit.ly/3cT8shp> – Lawyers representing Yury Dmitriev, the world-renowned Russian historian and head of the Karelian branch of Memorial, have applied to the European Court of Human Rights, citing violation of four articles of the European Convention. Dmitriev has been in custody since

December 2016, despite the first charges against him leading to an unprecedented two acquittals, and the charge used to imprison him for 13 years having only emerged after the first acquittal. His case has received international condemnation and is widely seen as linked with his work over decades in uncovering the crimes of the Soviet regime, the mass graves of its victims at Sandarmokh and in naming the perpetrators.

The Memorial Human Rights Centre reported on 30 March 2021 that the application had been lodged by two of its lawyers, Marina Agaltsova and Natalia Sekretaryova. It comes a month and a half after a Russian cassation court ignored evident violations of Dmitriev's right to a fair trial and upheld the Karelia Supreme Court ruling from 29 September 2020, which increased a 3.5 year sentence to 13 years and overturned the second acquittal on the original charge.

Memorial HRC points out how unprecedented that Karelia Supreme Court ruling was. It is almost unheard of for Russian courts to acquit a person, and here it had happened twice. The court almost quadrupled the original sentence on the charge laid only after the first acquittal, and did so under a presiding judge, Alla Rats, whose involvement in previous court rulings involving Dmitriev was just one of the reasons why she should not have been on the panel of judges. Another is the fact that the hearing took place at all, since Dmitriev's lawyer, Viktor Onufriev, was under quarantine and had applied for the hearing to be postponed. In addition, Dmitriev himself had only been able to take part from the SIZO, or remand prison, where he is held, and the video connection was so bad that he could not hear most of the proceedings. When Dmitriev asked for statements to be repeated, Rats threatened to remove him from his own 'trial'. The application will clearly list those and other indications that the court demonstrated bias.

The lawyers assert that there has thus been a violation of four articles of the European Convention on Human Rights

Article 6 – the right to a fair trial

Article 7 – No punishment without law. This states that no one shall be held guilty of any criminal offence because of an act or omission which did not constitute a criminal offence at the time when it was committed, and that a heavier penalty cannot be applied than the one applicable at the time an offence was committed.

Article 8 – the right to respect for private and family life.

At least the last of these, although probably all, are alleged violations both in themselves, and in combination with Article 18.

Article 18 – Limitation on use of restrictions on rights The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

Put most bluntly, charges must not be concocted for political or other motives. It remains to be seen whether the Court in Strasbourg will agree, however everything about the Dmitriev case has demonstrated precisely such a political motivation,

and determination to imprison the renowned historian by whatever means needed.

The case(s)

Yury Dmitriev was arrested on 13 December 2016, following extremely suspect methods used to illicitly enter Dmitriev's home. He was charged with 'preparing pornography involving a minor' (Article 242.2 of Russia's criminal code) and 'depraved actions with respect to a child under the age of 11' (Article 135). This was purely on the basis of a folder hidden away on his computer and never circulated. This contained 114 photos of his foster daughter (the term in Russian is приёмная дочь, however Dmitriev and his children had welcomed the little girl into their family for good). Natasha had come to them from a children's home at the age of three, very thin and in poor health. The authorities had themselves advised him to monitor her development, which Dmitriev did scrupulously, recording the little girl's weight and height. It seems that the nine photos claimed to be 'pornographic' showed the little girl at 3, 5 and 6 naked, but without the weight and height statistics. In fact, there were other compelling grounds for Dmitriev to ensure that the authorities would not be able to take Natasha away from her new family. Taking photographs without clothing also meant that it could clearly be seen that she was not in any way being mistreated. Anybody who has had dealings with Soviet and post-Soviet bureaucracy will know that Dmitriev had extremely good reasons for being so cautious.

The photos were initially considered by a Karelian art historian, Sergei Sergeyevv, to be 'pornographic' The court then asked for an official expert assessment, with this task

given to the so-called Centre for Socio-Cultural Expert Assessments [“Центр социокультурных экспертиз”]. This body gained earlier notoriety for its involvement in the trial of the Pussy Riot punk group and in the ruling prohibiting the Jehovah’s Witnesses as ‘extremist’. The Centre reportedly did not have a licence for such ‘expert assessments’, but this did not stop it from claiming that the above-mentioned nine photos were ‘pornographic’.

Such an unqualified assessment was rejected in court by Dr Lev Shcheglov, the President of the National Institute of Sexology, as well as two other specialists who saw nothing pornographic in the photos and who confirmed that it was common practice in Russia to take photographs for such medical purposes.

The calculation had almost certainly been that people would be so revolted at the charges of child pornography that they would probe no deeper. Within three weeks of his arrest, a major media effort was underway, aimed at sullyng both Dmitriev’s reputation and that of the Memorial Society. Similar methods were deployed in the middle of November 2020, on the eve of the third attempt to convict Dmitriev of the above charges. The use of ‘criminal’ charges to conceal political persecution may have worked in the information blockade seen in Soviet times. It failed here, with prominent figures in Russia and a huge number of people in other countries speaking out in Dmitriev’s defence.

Dmitriev was initially acquitted of the ‘pornography’ charges on 5 April 2018, but found guilty of the minor firearms charge, with it being widely understood that judge Marina Nosova could not throw out all the charges.

The acquittal was immediately challenged by the prosecutor Yelena Askerova (who had demanded a 9-year sentence). On 13 June 2018, the acquittal was revoked by the Karelia Supreme Court, and the case sent back for 're-trial' under a different judge.

On 27 June 2018, Dmitriev was re-arrested, with Russia's Investigative Committee now charging him with 'acts of a sexual nature', also against Natasha, whom he had not seen since his arrest in December 2016.

Having taken the little girl from the only people who had ever loved and cared for her, the prosecution used her age as excuse for holding the trials behind closed doors. It was only learned* on the eve of the second acquittal what the additional charge, the alleged 'acts of a sexual nature', were about. The prosecutor claimed that Dmitriev had on several occasions touched his adopted daughter around her groin. This was in connection with a period when Natasha was 8 years old and began having attacks of enuresis (involuntary urinating). If Dmitriev noticed the tell-tale smell of urine, he would, like any other parent, pat the little girl's knickers around the area of the groin to see if they were wet, and if necessary get her to have a wash. There is confirmation in Natasha's medical records that she was suffering from enuresis, and that she was due to be placed in the Karelia hospital for a proper check-up soon after Dmitriev's first arrest.

The Second Acquittal

On 22 July 2020, judge Alexander Merkov from the Petrozavodsk City Court acquitted Dmitriev for the second time of the 'child pornography' charge and that of 'depraved acts', while acquitting him for the first time of the possession of firearms charge.

By this stage, Dmitriev had been in custody for almost three and a half years. Merkov convicted him of the charge laid after the first acquittal, but only sentenced him to the three and a half years that he had, in any case, spent in detention. This was as close to an acquittal as you can get in Russian political trials, and much lower than the sentence demanded by the prosecutor.

It was these acquittals that the Karelia Supreme Court overturned on 29 September 2020, with a new 'expert assessment' ordered of the photos and that 'case' sent back for a third attempt at a conviction. Since this was upheld by the Third Cassation Court in St. Petersburg on 16 February 2021, this new attempt began on 2 April at the Petrozavodsk City Court.

There has also been a recent attempt to deprive Dmitriev of his chosen lawyer, with the lawyer who refused any part in this actually punished (details here).

Memorial HRC points out that there are documents confirming Natasha's medical issues and the need for particular attention after she was taken from the children's home. There is, for example, a medical document confirming that her weight was

over 30% under what it should have been.

They also note the use of an anonymous denunciation; supposed expert opinions from individuals unqualified to provide such opinions; as well as the psychological pressure brought to bear on a traumatized young girl suddenly taken from the only home she had ever known. As mentioned, the 'evidence' produced by the prosecution was dismissed by a range of real specialists (sexologists; paediatricians and others). The Memorial Human Rights Centre recognized Dmitriev to be a political prisoner in 2017, with that status confirmed following study of the new charges and material backing them in 2019.

Memorial is not alone in considering the imprisonment and charges against Dmitriev to be politically motivated. The 13-year sentence was condemned, among others, by Dunja Mijatović, Council of Europe Commissioner for Human Rights and by the European Union. The latter considers, it wrote, that "Mr Dmitriev's prosecution was triggered by his human rights work and his research on political repression in the Soviet period. <> This is yet another blatant example of unjustified and unacceptable legal pressure on human rights defenders in violation of international commitments." On International Human Rights Day (10 December), Dmitriev was named one of the 15 laureates of the prestigious Franco-German Prize for Human Rights for 2020.

Yury Dmitriev recently turned 65 and has effectively been passed a death sentence, since the conditions in a Russian prison colony are appalling even for men who are much younger and in good health.

He has been involved in researching the history of Stalin's repression in Karelia since around 1988. It is thanks to Dmitriev and his colleagues at Memorial that thousands of Russians, Ukrainians and representatives of other nationalities learned the fate of their parents or grandparents, executed and buried in mass graves at the Sandarmokh Clearing in Karelia. Among them were 1,111 prisoners of the Solovki Labour Camp executed in several nights of killing from 27 October to 4 November 1937, including 289 Ukrainian writers, playwrights, scientists and other members of the intelligentsia.

The current regime's attempts to rewrite history include attempts to claim that at least some of the near nine thousand victims of the Terror whose remains lie at Sandarmokh were, in fact, Soviet soldiers killed by the Finnish army. These attempts have largely coincided with the persecution of Yury Dmitriev and another Karelian historian, Sergei Koltyrin, who died on 2 April 2020 in Russian captivity.

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