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Meeting: 1501st meeting (June 2024) (DH)

Communication from NGOs (International Partnership for Human Rights, European Prison Litigation Network, State Capture: Research and Action) (29/04/2024) concerning the groups of cases Tomov and Others and VLASOV v. Russia (Applications No. 18255/10, 78146/01).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1501^e réunion (juin 2024) (DH)

Communication d'ONG (International Partnership for Human Rights, European Prison Litigation Network, State Capture: Research and Action) (29/04/2024) relative aux groupes d'affaires Tomov et autres et VLASOV c. Russie (requêtes n° 18255/10, 78146/01) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

Submission pursuant to Rule 9 (2) of the Rules of the Committee of Ministers for the Supervision of the Execution of Judgments and of the Terms of Friendly Settlements

**Group of cases Vlasov v. Russia (no. 78146/01),
case Polyakova and Others v. Russia (no. 35090/09)**

DGI

29 AVR. 2024

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

DISAPPEARING EN ROUTE: A LEGAL BLACK HOLE IN RUSSIA'S PRISONER TRANSFER SYSTEM

* * *

Submitting Organisations:

International Partnership for Human Rights

European Prison Litigation Network

State Capture: Research and Action

29 April 2024

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I. Introduction

A. Submitting organisations

International Partnership for Human Rights (IPHR) is a non-profit organization with its headquarters in Brussels. It was founded in 2008 with a mandate to empower local civil society groups and assist them in making their concerns heard at the international level. IPHR works together with human rights groups from different countries on project development and implementation, research, documentation, and advocacy. Its team members have wide experience in international human rights work and cooperate with human rights groups from across Europe, Central Asia and North America, helping to prepare publications and conduct advocacy activities.

European Prison Litigation Network (EPLN) was founded in 2013 and currently brings together 30 national NGOs and bar associations from 18 Council of Europe Member States active in the area of the protection of prisoners' rights. EPLN defends and promotes prisoners' fundamental rights across the continent and advocates for a reduction in the use of imprisonment. It researches and analyses changes in legislation and their impact on prisoners' rights and life in prison and seeks to give voice to prisoners and their advocates. EPLN holds participatory status with the Council of Europe.

State Capture: Research and Action is a non-profit foundation registered in the Netherlands (Stichting). Its focus is on investigating and countering state capture and associated activities across the globe. We envision a global society where states exist to serve their people, and where elites are unable to bend laws and institutions to serve their own advantage. We convene and support investigators, civil society, data analysts, policy experts, and legal professionals to conduct research, undertake policy advocacy and initiate legal proceedings to promote a deeper understanding of state capture and use available legal avenues to counter it.

B. Findings of the ECtHR in the case of Polyakova and Others v. Russia and the purpose of the report

The present report is submitted to the Committee of Ministers of the Council of Europe pursuant to Rule 9 (2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, in relation to the forthcoming examination of the *Vlasov v. Russia* group of cases at the 1501st meeting of the Ministers' Deputies.

In the case of *Polyakova and Others v. Russia* (no. 35090/09 and 3 others, 7 March 2017), which is a part of the *Vlasov v. Russia* group of cases,¹ the European Court of Human Rights (the "Court") found a violation of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention") on account of the lack of an effective opportunity for prisoners and their loved ones to maintain family and social ties during imprisonment in remote prison facilities.

The Court has noted that the domestic law of the Russian Federation (specifically, Article 73 of the Russia's Criminal Executive Code) vests "extensive discretionary powers with the Federal Penitentiary Service (the "FSIN") as regards the geographical distribution of prisoners in the Russian Federation and their allocation to penal facilities (paras. 94, 96 and 97), and that "the scope of such discretion conferred is not defined with

1 HUDOC Exec, *Polyakova and Others*, <https://hudoc.exec.coe.int/?i=004-47523>.

sufficient clarity to give the individual adequate protection against arbitrary interference [with the right to respect for family life] (para. 99).

The Court further noted the absence of “any safeguard mechanisms that could counterbalance the FSIN’s extensive discretion in the field of allocation of prisoners or any mechanisms to weigh the competing individual and public interests and assess the proportionality of the relevant restriction the rights of the persons concerned” (paras. 99 and 101). The Court reached a similar conclusion in respect of the domestic law governing transfers of prisoners between penal facilities after their initial allocations (paras. 102-107). Finally, the Court found that the domestic law does not provide for effective judicial review of the proportionality of the FSIN’s decisions on prisoners’ allocation to penal facilities and their subsequent transfer between facilities (paras. 115 and 116).

The Court concluded, that “the Russian domestic legal system did not afford adequate legal protection against possible abuses in the field of geographical distribution of prisoners” and that the relevant provisions (namely, Articles 73 §§ 2 and 4 and 81 of the Criminal Executive Code) do not satisfy the “quality of law” requirement.

The Submitting Organisations believe that the comprehensive analysis of the issues outlined by the Court in *Polyakova* and the monitoring of the current state of the domestic law and practice requires an examination of the fate of prisoners during transfers, given that (i) the system of long-distance prisoner transfer is closely linked to the geography of Russian prisons and the procedure for allocating prisoners to penal facilities, and (ii) taking into account that transfers often interrupt contact between prisoners and their families and lawyers, amounting to the situations of enforced disappearance.

The Submitting Organisations therefore submit the present report to the Committee of Ministers, together with proposals on recommendations on the measures to be taken by the Russian authorities, in order to assist the Committee of Ministers in developing an up-to-date and informed position on the current state of the implementation of the judgments of the European Court of Human Rights in the respective area.

The use of enforced disappearances to repress political opposition and dissident voices in the Russian Federation is well documented.² Less documented is a bureaucratic tool that makes many of these enforced disappearances possible – the legal framework (or “legal black hole”) of Russia’s prisoner transfer system.

An examination of the enforced disappearance of political prisoners during prisoner transfers, when they are most vulnerable, sheds light on the way in which the Kremlin co-opts public institutions and legal loopholes to repress dissent and consolidate power. This report analyses Russia’s relevant legal framework, some notable cases, and relevant international legal obligations to bring this issue to the fore. It is hoped that this report will serve as evidence for future human rights cases, reports, and calls for legal and political reform in Russia.

C. Executive summary

Documentation and analysis of enforced disappearances in Russia has largely ignored the role of prisoner transfers in enabling disappearances. This is in part due to how many enforced disappearances also occur outside of prisoner transfers, and in part due to a poor understanding of Russia’s secretive prisoner transfer system. Often dismissed as an administrative deficiency, disappearances during transfers serve as another tool of repression against those inside and outside the prison system – a form of intimidation and display of absolute power over the lives and welfare of inmates.

² See, U.S. Department of State, 2022 Country Reports on Human Rights Practices: Russia, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/russia/>.

Civil society has recorded enforced disappearances in the Russian Federation since its establishment in 1991, seeing a steep incline in 2022 following Russia's full-scale invasion of Ukraine.³ In its 2023 Annual Report, the U.N. Working Group on Enforced or Involuntary Disappearances (hereinafter "WGEID" or "Working Group") revealed that there were 1,721 outstanding cases at the end of the 2023 reporting period,⁴ up from 916 in the year prior.⁵ The Working Group has clarified that "the actual number of cases appears to be significantly higher than the number reported",⁶ whether due to lack of capacity or access.

The treatment of Ukrainian civilians and prisoners of war since the full-scale invasion of Ukraine in February 2022, and related abuses against Russian political prisoners and critics – most notably opposition leader and anti-corruption activist Alexei Navalny – has brought Russia's brutal prison system back into the international limelight. One of the key tools at the authorities' disposal is the possibility, under current legal frameworks, to keep convicted prisoners incommunicado during prison transfers which can last for several weeks or even months – effectively creating a "legal black hole" in Russia's prisoner transfer system that has enabled their prolonged enforced disappearance (according to the criteria formulated in the practice of the U.N. Working Group on Enforced or Involuntary Disappearances).⁷

This structural problem is deeply rooted in Russian prison history and is reflected in the flawed legal and regulatory framework. Specifically, Russia has not legislated for the crime of enforced disappearance, and its laws do not provide prisoners with any safeguards against enforced disappearance during transfers. Specifically, Russian law only requires authorities to notify a relative of the convicted person's choosing within 10 days of their arrival at a penal institution after a prisoner transfer, which Russian authorities frequently flout.⁸ At the same time, Russian law neither places a legal limitation on the length of the transfer nor an obligation to inform relatives or lawyers of the prisoner's fate or whereabouts during the transfer. Nor is there any legal right for prisoners to contact their relatives or lawyers during the transfer. In practice,

3 UN Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, UN Doc A/HRC/54/22, 8 August 2023, p. 40, <https://www.ohchr.org/en/documents/reports/ahrc5422-enforced-or-involuntary-disappearance-report-working-group-enforced-or> [hereinafter "UN HRC report, August 2023"]; see e.g., Oleg Orlov and Alexander Cherkasov, Enforced Disappearances in Chechnya, Russia, Crude Accountability (2023), p. 10, https://crudeaccountability.org/wp-content/uploads/Enforced_Disappearances_Chechnya.pdf.

4 UN HRC report, August 2023, *supra* note 3, at p. 10.

5 UN Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, UN Doc A/HRC/51/31, 12 August 2022, p. 10, <https://www.ohchr.org/en/documents/reports/ahrc5131-report-working-group-enforced-or-involuntary-disappearances> [hereinafter "UN HRC report, August 2022"].

6 *Id.*, at para. 68.

7 See generally UN OHCHR, Enforced Disappearances, Fact Sheet No. 6, Rev. 4 (2023), <https://reliefweb.int/report/world/enforced-disappearances-fact-sheet-no6-rev-4> [hereinafter "Fact Sheet No. 6"]; Amnesty International, Submission to the Council of Europe Committee of Ministers on Tomov and Others v. Russia (No. 18255/10), 31 January 2020, <https://www.amnesty.eu/wp-content/uploads/2020/02/AI-B1980-AI-Rule9-Tomov-and-others-v.Russia-.pdf> [hereinafter "AI Submission to CoE"].

8 Criminal Executive Code of the Russian Federation, art. 17 (as amended by Federal Law dated December 28, 2013 N 432-FZ), https://www.consultant.ru/document/cons_doc_LAW_12940/ [hereinafter "the Russian Criminal Executive Code"].

Regarding the rejected amendments to the Russian Criminal Executive Code, obliging the prison authorities to notify relatives about all cases of prisoner transfer (including transfers between correctional facilities), see (in Russian): *Вопрос об уведомлении родственников в достаточной мере урегулирован». Или нет?* ("The issue of notifying relatives has been sufficiently addressed." Or is it?), OVD-Info (9 January 2017), <https://ovd.info/articles/2017/01/09/vopros-ob-uedomlenii-rodstvennikov-v-dostatochnoy-mere-uregulirovan-ili-net>; *Предупреждать родственников заключенных об их переводе излишне, считает правительство* (It is unnecessary to warn relatives of prisoners about their transfer, says the government), Vedomosti (15 November 2015), <https://www.vedomosti.ru/politics/articles/2015/11/15/616899-zaklyuchennih-perevode>.

this allows the authorities to hold prisoners incommunicado for an indefinite period – effectively placing prisoners outside the protection of the law. This prisoner transfer system fails to comply with basic human rights – including the right to personal security, the right to due process, freedom from torture and inhuman treatment, and ultimately, the right to life – which are all enshrined in binding international legal instruments, customary international law, and Russian Constitution.

The Submitting Organisations assert that enforced disappearances in Russia's prisoner transfer system are not merely an administrative deficiency, but a strategic tool used by the Russian authorities to intimidate and repress political prisoners and their supporters, and, more generally, to maintain the entire prison population in a state of complete submission to the prison administration, in flagrant breach of its domestic and international legal obligations.

II. International crime of enforced disappearance

The U.N. International Convention for the Protection of All Persons Against Enforced Disappearance (hereinafter “ICPPED” or “Convention”) defines enforced disappearance as:

- (1) “...the arrest, detention, abduction or any other form of deprivation of liberty”;
- (2) “by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State”;
- (3) “followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”⁹

An enforced disappearance can, and often does, occur during detention following an arrest that is not itself concealed but acknowledged or communicated.¹⁰ The subsequent concealment of a detainee's whereabouts – including whether they are in custody, their current location, or whether they are alive – gives rise to enforced disappearance.¹¹

The U.N. Working Group on Enforced or Involuntary Disappearances (hereinafter “WGEID” or “Working Group”) has affirmed that there is no minimum length of time required for a concealed detention to constitute an

9 International Convention for the Protection of All Persons from Enforced Disappearance, 23 December 2010, 2716 U.N.T.S. 3, art. 2, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced> [hereinafter “ICPPED”].

10 UN Committee on Enforced Disappearances, *Yrusta v. Argentina*, Decision on Merits, CED/C/10/D/1/2013 (12 April 2016), para. 10.3, <https://juris.ohchr.org/casedetails/2141/en-US>; UN Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, UN Doc A/HRC/7/2, 10 January 2008, para. 26(7), <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F7%2F2&Language=E&DeviceType=Desktop&LangRequested=False> [hereinafter “UN HRC report, 2008”]; Fact Sheet No. 6, *supra* note 7, at p. 8; AI Submission to CoE, *supra* note 7; Association for the Prevention of Torture, Incommunicado, Unacknowledged, and Secret Detention under International Law (2006), p. 10, https://web.archive.org/web/20150103031346/http://www.apt.ch/content/files_res/secret_detention_ap1-1.pdf [hereinafter “APT report”]; Amnesty International, Prisoner Transportation In Russia: Travelling into the Unknown (2017), p. 27, <https://www.amnesty.at/media/1822/prisoner-transportation-in-russia-travelling-to-the-unknown.pdf> [hereinafter “AI report, 2017”].

11 APT report, *supra* note 10, at p. 10; AI report, 2017, *supra* note 10, at p. 27.

enforced disappearance.¹² The Working Group held in *Yrusta v. Argentina* that the concealment of a prisoner's whereabouts for seven days can amount to an enforced disappearance.¹³ The Working Group further emphasized that enforced disappearance is a continuous violation, extending "until the State acknowledges the detention or releases information pertaining to the fate or whereabouts of the individual."¹⁴

The Working Group has clarified that the intent requirement for enforced disappearance does not require that the State intended to place the person outside the protection of the law, but instead that its conduct had this effect or "consequence".¹⁵

Enforced disappearance violates multiple rights under international law, including the right not to be subjected to enforced disappearance,¹⁶ the right to recognition as a person before the law,¹⁷ the right to liberty and security of the person,¹⁸ freedom from torture and other cruel, inhuman or degrading treatment or punishment,¹⁹ the right to be treated with human dignity,²⁰ the right to life,²¹ right to a fair process,²² and the right to an effective remedy.²³ International law further extends victimhood in cases of enforced disappearance to the next of kin of the disappeared. The Working Group has found that, per Article 24 of the ICPPED, the pain and suffering experienced by disappeared prisoners' next of kin results from a violation

- 12 Press Release, Multiple UN Mechanisms, "Every minute counts" — UN experts raise alarm over short-term enforced disappearances International Day of the Victims of Enforced Disappearances (30 Aug. 2016), <https://www.ohchr.org/en/press-releases/2016/08/every-minute-counts-un-experts-raise-alarm-over-short-term-enforced> [hereinafter "UN Press Release, August 2016"].
- 13 *Yrusta v. Argentina*, *supra* note 10, at para. 10.4; *see also* AI report, 2017, *supra* note 10, at pp. 5, 27.
- 14 UN Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, UN Doc A/HRC/16/48, 26 January 2011, para. 39(1), https://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.48_en.pdf [hereinafter "UN report, January 2011"]; *see also* UN Declaration on the Protection of all Persons from Enforced Disappearance art. 17, 18 December 1992, art. 17, <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-protection-all-persons-enforced-disappearance> [hereinafter "Declaration on Enforced Disappearance"].
- 15 UN HRC report, 2008, *supra* note 10, at para. 26(5); AI report, 2017, *supra* note 10, at p. 27; UN Human Rights Council, Report of the Working Group on Enforced or involuntary Disappearances, UN Doc A/HRC/16/48/Add.3, 28 December 2010, paras. 29-32, 62(d), <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F16%2F48%2FAdd.3&Language=E&DeviceType=Desktop&LangRequested=False>.
- 16 ICPPED, *supra* note 9; UN HRC report, August 2022, *supra* note 5, at paras. 70, 81; *see also* Nikolas Kyriakou, *The International Convention for the Protection of All Persons from Enforced Disappearance and its Contributions to International Human Rights Law, with Specific Reference to Extraordinary Rendition*, 13(1) *Melb. J. of Int'l L.* 424-61, 440-41 (2012), https://law.unimelb.edu.au/_data/assets/pdf_file/0010/1687285/Kyriakou.pdf; Goiburú et al. v. Paraguay, Judgment, Inter-Am. Ct. H.R. (22 Sept. 2006), para. 84, https://www.corteidh.or.cr/docs/casos/articulos/seriec_153_ing.pdf; UN Human Rights Committee, *Sedhai v. Nepal*, Decision on Merits, CCPR/C/108/D/1865/2009 (28 October 2013), para. 8.3, <https://juris.ohchr.org/casedetails/1669/en-US>; UN Human Rights Committee, General Comment No. 29: Article 4: Derogations during a State of Emergency, CCPR/C/21/Rev.1/Add.11 (31 August 2001), para. 13(b), <https://www.refworld.org/legal/general/hrc/2001/en/30676> [hereinafter "General Comment No. 29"].
- 17 International Covenant on Civil and Political Rights, 23 March 1976, 999 U.N.T.S. 171, art. 16, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> [hereinafter "ICCPR"].
- 18 ICCPR, *supra* note 17, at art. 9(1).
- 19 ICCPR, *supra* note 17, at art. 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 26 June 1987, 1465 U.N.T.S. 85, preamble, arts. 2, 16, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading> [hereinafter "CAT"].
- 20 ICCPR, *supra* note 17, at art. 10(1); CAT, *supra* note 19, at preamble.
- 21 ICCPR, *supra* note 17, at art. 6(1).
- 22 ICCPR, *supra* note 17, at art. 14; CAT, *supra* note 19, at arts. 12, 15.
- 23 ICCPR, *supra* note 17, at art. 2(3); CAT, *supra* note 19, at art. 14.

of their “right to know the truth” and can even amount to torture and other cruel, inhuman or degrading treatment or punishment for both direct and indirect victims.²⁴

III. Disappearances blessed by law

A review of Russia’s prison system and relevant legal framework demonstrates that enforced disappearances carried out by Russia during prisoner transfers are empowered, facilitated, and ultimately blessed by Russian law.

A. Russia’s prison system

The Federal Penitentiary Service is the Russian Federation’s secretive and elaborate federal law enforcement body derived, with minimal reform, from the Soviet Union’s Gulag prison system.²⁵ The Center for Eastern Studies characterizes the FSIN as a “state within a state”, explaining that it is highly insulated – with separate health care, transportation, education, and trade systems, operates through “widespread corruption”, absent independent supervision or monitoring, and is guided by “informal rules and hierarchies over formal ones”, disregarding Russian and international rule of law.²⁶

As the FSIN’s infrastructure is largely untouched from the Soviet era, the vast majority of prisoners today are detained in penal colonies located in remote areas, often far from prisoners’ homes, with poor and infrequent accessibility. As in the Soviet times, prisoners are often required to perform forced penal labour in harsh conditions to serve economic development.²⁷

While awaiting sentencing, detainees are held in one of 210 remand centers before being transferred to and between Russia’s 690 correctional institutions.²⁸ The types of correctional institutions, from least to most strict, are juvenile colonies, correctional centers, medical correctional institutions, colony settlements, ordinary regime colonies, strict regime colonies, special regime colonies, and prisons (“trauma”).²⁹ During prisoner transfers (“*Etapirovanie*”), secrecy is paramount and standard practice, with FSIN authorities withholding the

24 Declaration on Enforced Disappearance, *supra* note 14, at art. 1(2); UN report, January 2011, *supra* note 14, at pp. 12-17 (see p. 15, para. 4); see also Gudiel Álvarez *et al.* v. Guatemala, Judgment, Inter-Am. Ct. H.R. (19 Aug. 2013), https://www.corteidh.or.cr/docs/casos/articulos/seriec_262_ing.pdf; Kurt v. Austria, (No. 62903/15), Eur. Ct. H.R. (2019), <https://hudoc.echr.coe.int/spa?i=001-194187>; UN Human Rights Committee, Bousroual v. Algeria, Decision on Merits, CCPR/C/86/992/2001 (24 April 2006), <https://juris.ohchr.org/casedetails/1268/en-US>.

25 The mass executions at Sandarmokh are emblematic of Soviet practices of enforced disappearance, see e.g., Irina Galkova, *Traces of the crime. What the Military History Society unearthed at Sandarmokh*, Memorial France (15 September 2020), <https://memorial-france.org/les-traces-du-crime-ce-que-la-societe-dhistoire-militaire-a-exhume-a-sandarmokh/>; *History of the Solovetsky Stage, Sandarmokh Memorial Cemetery*, <https://sand.mapofmemory.org/long/>; Sergei Lebedev, *Sandarmokh, symbol of Russia's historical responsibility in colonial violence against Ukraine*, Desk Russia (16 December 2023), <https://desk-russie.eu/2023/12/16/sandarmokh-symbole-de-la-responsabilite-historique-de-la-russie-dans-la-violence-coloniale-contre-lukraine.html>; Federal Penitentiary Service of the Russian Government, The Russia Government, <http://government.ru/en/departement/100/>; Jan Strzelecki, *Russia behind bars: the peculiarities of the Russian prison system*, Centre for Eastern Studies, OSW Commentary, 2019, <https://www.osw.waw.pl/en/publikacje/osw-commentary/2019-02-07/russia-behind-bars-peculiarities-russian-prison-system> [hereinafter “OSW Commentary”]; AI report, 2017, *supra* note 10, at p. 5.

26 OSW Commentary, *supra* note 25, at pp. 5, 9.

27 OSW Commentary, *supra* note 25, at pp. 2-3.

28 OSW Commentary, *supra* note 25, at p. 2; see also AI report, 2017, *supra* note 10, at p. 9.

29 OSW Commentary, *supra* note 25, at p. 3.

route and destination from prisoners, their families, and their lawyers.³⁰ Prisoners are usually transported by windowless FSIN train carriages (*“stolybins”*), that are attached to ordinary passenger trains through complex and indirect routes that can last from two weeks to months.³¹ Between train rides, prisoners are taken by windowless FSIN prison vans to transit prisons, where they are detained in transit cells.³²

Transfer takes place in extreme conditions, with prisoners being crammed into tiny spaces, unable to drink, eat, or relieve themselves. This situation has been judged by the European Court of Human Rights to constitute a systemic violation of the prohibition on inhuman and degrading treatment and punishment.³³ In addition, intimidation, humiliating searches, beatings, verbal and physical abuses are often used on admission to transit prisons.

In a 2017 report on the secrecy of prisoner transportation in Russia, Amnesty International found that “prisoners effectively ‘disappear’ for weeks or even months at a time” as the FSIN secretly transports prisoners “across 6,000 km and 11 time zones”,³⁴ often leaving loved ones in the dark.³⁵

The length and secrecy of transports deprive prisoners of “one of the most important safeguards against torture and other ill-treatment and other abuses”,³⁶ increasing the risk of and opportunity for such abuses in direct contravention of the Russian authorities’ domestic and international obligations.

B. Relevant Russian laws

(I) LEGAL FRAMEWORK ALLOWING INCOMMUNICADO DETENTION DURING POST-CONVICTION TRANSFERS

Similar to Russia’s prison system, Russian laws relevant to prisoner transfers and prison conditions are not merely administratively deficient or negligent but actively enable and facilitate the systematic practice of enforced disappearance of prisoners in transit.

First, the crime of enforced disappearance is not a codified offense under Russian criminal law. Second, Article 17 of Russia’s Criminal Executive Code requires “the administration of the institution or body executing punishment”, such as the FSIN, to send a notification to a relative of the convicted person’s own choosing

30 AI report, 2017, *supra* note 10, at p. 5; OSCE and Penal Reform International, UN Revised Standard Minimum Rules for Treatment of Prisoners, Guidance Document on the Nelson Mandela Rules (2018), paras. 185-86, <https://www.penalreform.org/resource/guidance-document-on-the-nelson-mandela-rules/> [hereinafter “Guidance Document”].

31 AI report, 2017, *supra* note 10, at pp. 17-24; “Victims of Disappearance”: Why is it so easy to lose a prisoner in the Russian prison system?, BBC NEWS (23 December 2023), <https://www.bbc.com/russian/articles/cy9elzq44q7o> [hereinafter “BBC December 2023”].

32 AI report, 2017, *supra* note 10, at pp. 17-24.

33 Tomov and Others v. Russia, (No. 18255/10 and 5 others), Eur. Ct. H.R. (2019), <https://hudoc.echr.coe.int/?i=001-192209>.

34 AI report, 2017, *supra* note 10, at pp. 18, 24.

35 AI report, 2017, *supra* note 10, at p. 25.

36 AI report, 2017, *supra* note 10, at p. 26.; *see also* Guidance Document, *supra* note 30, at para. 130 (“The right to inform family or other points of contact about imprisonment or transfer is a key safeguard against torture and other ill-treatment, *incommunicado* detention and enforced disappearance. The ability to inform family about serious injuries can also act as a preventative measure against ill-treatment in detention.”).

“no later than 10 days from the date of arrival” at the penal institution after a prisoner transfer.³⁷ There is, however, no legal limitation on the length of the transfer, nor an obligation to inform relatives or lawyers of the prisoner’s fate or whereabouts during the transfer. Nor is there any legal right for prisoners to contact their relatives or lawyers during the transfer. In practice, this allows the authorities to hold prisoners incommunicado for an indefinite period – effectively placing prisoners outside the protection of the law. Furthermore, Russian authorities frequently flout even the obligation to notify relatives 10 days after arrival, sometimes exponentially.³⁸

(II) REJECTED LEGISLATIVE AMENDMENTS

On 13 December 2013, a group of members of the Federation Council lodged with the State Duma a draft law supplementing Russia’s Criminal Executive Code with a provision, pursuant to which, in case of transfer from one correctional facility to another, the prison administration must provide inmates with an opportunity to notify by telephone one of their relatives about the transfer destination no later than 10 days before the transfer.³⁹

It was stated in the explanatory note that the lack of provision in the Executive Code concerning the notification of relatives in case of transfer between correctional facilities (as opposed to the 10-day notification rule when convicted persons arrive at the (initial) place where they are meant to serve their sentence – Article 17 of the Code) “paves way to the breaches of the principles of legality and humanism, as well as ... rights and lawful interests of convicted persons.”⁴⁰ It was further noted that the amendments would “contribute to preservation and maintenance of the convicted person’s with his / her family, which would favourably reflect on his [/ her] [re] socialization...”⁴¹

The Government of Russia and the relevant sub-committee of the State Duma refused to support the amendments, finding them “excessive”. In the Government’s view, the post-factum notification of transfer provided for in Article 17 of the Criminal Executive Code, as well as the obligation of a remand prison administration to notify relatives of a convicted person about the place to which she or he is transferred to serve the sentence (Article 75 § 2 of the Code), coupled with Article 92 of the Code, pursuant to which the prison administration might grant a phone call to a prisoner in case of “exceptional person circumstances” – sufficiently guaranteed inmates’ right to notify their relatives of transfer.⁴²

One of the amendments’ authors, Konstantin Dobrynin, polemised with the Government, arguing that the notification problem was not sufficiently covered by the cited provisions and that the Government, in its review, in fact, echoed the position of the FSIN.⁴³

37 The Russian Criminal Executive Code, *supra* note 8, at art. 17.

38 Regarding the rejected amendments to the Russian Criminal Executive Code, obliging the prison authorities to notify relatives about all cases of prisoner transfer (including transfers between correctional facilities), see (in Russian): OVD-Info, “Вопрос об уведомлении родственников в достаточной мере урегулирован». Или нет?” (“The issue of notifying relatives has been sufficiently addressed.” Or is it?), 9 January 2017, <https://ovd.info/articles/2017/01/09/vopros-ob-uvdomlenii-rodstvennikov-v-dostatochnoy-mere-uregulirovan-ili-net>; Vedomosti, “Предупреждать родственников заключенных об их переводе излишне, считает правительство” (It is unnecessary to warn relatives of prisoners about their transfer, says the government), 15 November 2015, <https://www.vedomosti.ru/politics/articles/2015/11/15/616899-zaklyuchennih-perevode>.

39 State Duma Database, Draft Law no. 409808-6, <https://sozd.duma.gov.ru/bill/409808-6>.

40 *Id.*

41 *Id.*

42 *Id.*

43 *Предупреждать родственников заключенных об их переводе излишне, считает правительство* (It is

The draft amendments were rejected by the State Duma in December 2016.⁴⁴

Lawyers, civil society, and even the then-chair of the President's Human Rights Council shared Dobrynin's views and advocated for the adoption of provisions that would regulate the prior notification of the destination of prisoners' transfer.⁴⁵

C. Notable cases

The notable cases below have the following elements in common: they concern dedicated activists calling for reform in Russia, arbitrary detention, politically motivated charges and trials, torture endured in detention causing severe deterioration of health, and prolonged enforced disappearances that occurred during prisoner transfers.

ALEXEI NAVALNY

Alexei Navalny was a high-profile Russian political opposition leader and anti-corruption campaigner. In August 2020, Navalny was poisoned by Russian state security with a chemical nerve agent and taken to a German hospital for treatment. On his return to Russia in January 2021, Navalny was detained by Russian authorities and taken into custody on charges of extremism and terrorism.⁴⁶

On 2 February 2021, the Simonovsky District Court of Moscow substituted Navalny's suspended sentence for a full custodial sentence in a penal colony for 2 years and 8 months.⁴⁷ Three higher courts rejected Navalny's appeals against the decision, including the Supreme Court of the Russian Federation. On 22 March 2022, the Lefortovsky District Court of Moscow sentenced him to a further 9 years to be served in a strict regime penal colony.⁴⁸ His appeals against this decision were also rejected. On 4 August 2023, Moscow City Court sentenced him to a further 19 years to be served in a special regime colony.⁴⁹

unnecessary to warn relatives of prisoners about their transfer, says the government), Vedomosti (15 November 2015), <https://www.vedomosti.ru/politics/articles/2015/11/15/616899-zaklyuchennih-perevode>.

44 State Duma Database, Draft Law no. 409808-6, <https://sozd.duma.gov.ru/bill/409808-6>.

45 *Вопрос об уведомлении родственников в достаточной мере урегулирован». Или нет?* ("The issue of notifying relatives has been sufficiently addressed." Or is it?), OVD-Info (9 January 2017), <https://ovd.info/articles/2017/01/09/vopros-ob-uvdomlenii-rodstvennikov-v-dostatochnoy-mere-uregulirovan-ili-net>; *Предупреждать родственников заключенных об их переводе излишне, считает правительство* (It is unnecessary to warn relatives of prisoners about their transfer, says the government), Vedomosti (15 November 2015), <https://www.vedomosti.ru/politics/articles/2015/11/15/616899-zaklyuchennih-perevode>.

46 European Parliament, Resolution on the arrest of Aleksei Navalny, 2021/2513(RSP), 21 January 2021, https://www.europarl.europa.eu/doceo/document/TA-9-2021-0018_EN.html; Press Release, UN Special Procedures, Russia: UN experts laud courage of Alexei Navalny, call for immediate release (18 Jan. 2021), <https://www.ohchr.org/en/press-releases/2021/01/russia-un-experts-laud-courage-aleksei-navalny-call-immediate-release>.

47 Press Release, Amnesty International, Russia: Aleksei Navalny given prison term while mass detention of his supporters leads to severe overcrowding and cruel and inhuman detention conditions (2 February 2021), <https://www.amnesty.org/en/latest/press-release/2021/02/russia-aleksei-navalny-given-prison-term-while-mass-detention-of-his-supporters-leads-to-severe-overcrowding-and-cruel-and-inhuman-detention-conditions/>.

48 "It was not Alexei who was sentenced today, but the whole Russia", Free Russia Foundation (29 March 2022), <https://www.4freerussia.org/it-was-not-aleksei-who-was-sentenced-today-but-the-whole-russia/>.

49 Dasha Litvinova and Edith M. Lederer, *Kremlin critic Navalny convicted of extremism and sentenced to 19 years in prison*, AP News (4 August 2023), <https://apnews.com/article/russia-navalny-opposition-crackdown-prison-term-b42769d2ba1beb99954279fbb93815d4>.

Navalny began serving his sentences on 14 June 2022 at Federal Penal Colony No. 6 of the Department of the Federal Penitentiary Service of the Russian Federation for the Vladimir Region (hereinafter “IK-6”), where he was systematically subjected to inhuman conditions of detention and cruel treatment which cumulatively amounted to torture.⁵⁰

Beginning on 6 December 2023, Navalny had effectively disappeared within the Russian prison system. Prison records indicated that he was no longer detained at IK-6, while prison and other government officials failed to respond to repeated requests for information on his fate and whereabouts or enable contact between Navalny and his family and legal representatives.⁵¹ His lawyers were repeatedly denied oral requests and left unanswered on written requests to enter IK-6, IK-7 special regime colony in Pakino, and IK-2 in Vladimir to locate and confer with Navalny, including in preparation for court hearings. Scheduled court hearings never took place, as on 7 and 8 December the authorities did not connect Navalny to the court session via video link, referring to repair work, and on 12 December could not explain where Navalny was.⁵²

On 12 December 2023, a pro-Kremlin Telegram channel “leaked” unverified information that Navalny may have been taken to Moscow for “investigative actions”. This information was unconfirmed, and his legal representatives were never informed or allowed to participate in any interrogations that may have taken place.⁵³

After over 10 days of no contact or information as to his whereabouts, U.N. Special Rapporteur on the situation of human rights in the Russian Federation Mariana Katzarova (hereinafter “U.N. Special Rapporteur on Russia”) expressed her concern “that the Russian authorities will not disclose Mr. Navalny’s whereabouts and wellbeing for such a prolonged period of time which amounts to enforced disappearance”.⁵⁴ On 18 December 2023, the UN Human Rights Committee issued interim measures, requesting Russia to provide information about the status, whereabouts, and the state of Mr. Navalny’s health.⁵⁵

On 25 December 2023, Navalny was located in the IK-3 penal colony north of the Arctic Circle in the Yamalo-Nenets region of Russia. He was thus held in incommunicado detention and subjected to enforced disappearance by the Russian authorities for 20 days, during which time he was transported over 4,000 km from IK-6 to IK-3. A few weeks later, Navalny’s family confirmed that he died on 16 February 2024 at IK-3.⁵⁶

50 Guy Faulconbridge, *Russian opposition leader Navalny moved to high-security penal colony*, Reuters (14 June 2022), <https://www.reuters.com/world/europe/jailed-kremlin-critic-navalny-transferred-unknown-location-2022-06-14/>.

51 Guy Faulconbridge and Andrew Osborn, *Alexei Navalny is being moved to a new Russian prison - authorities*, Reuters (15 December 2023), <https://www.reuters.com/world/europe/whereabouts-russias-navalny-still-unknown-ally-2023-12-15/>.

52 Niamh Kennedy, Darya Tarasova and Anna Chernova, *Alexey Navalny fails to attend trial after his team loses contact with jailed Russian opposition leader*, CNN (12 December 2023), <https://www.cnn.com/2023/12/12/europe/russia-alexey-navalny-missing-intl/index.html>.

53 *Navalny’s associates say unable to locate him in Moscow detention centers after unconfirmed reports he was transferred there*, Meduza (13 December 2023), <https://meduza.io/en/news/2023/12/13/navalny-s-associates-say-unable-to-locate-him-in-moscow-detention-centers-after-unconfirmed-reports-he-was-transferred-there>.

54 Press Release, UN Special Procedures, Russia: Navalny’s enforced disappearance raises grave concerns – UN expert (18 December 2023), <https://www.ohchr.org/en/press-releases/2023/12/russia-navalnys-enforced-disappearance-raises-grave-concerns-un-expert> [hereinafter “UN Press Release, 18 December 2023”].

55 Maria Pevchikh on X, 18 December 2023, available at: <https://x.com/pevchikh/status/1736737841575493846?s=20>.

56 Emma Burrows and Dasha Litvinova, *Protests, poisoning and prison: The life and death of Russian opposition leader Alexei Navalny*, AP News (1 March 2024), <https://apnews.com/article/russia-navalny-life-timeline-0722708e19e51b10699b2cc73ece0bae>; Lucy Papachristou, *What we know about Alexei Navalny’s death in Arctic prison*, Reuters (19

ALEXEI GORINOV

Alexei Gorinov is a Russian opposition politician and advocate for human rights and freedoms. On 26 April 2022, Gorinov was arbitrarily arrested and detained for “public dissemination of deliberately false information about the use of the armed forces of the Russian Federation”, for calling Russia’s “special military operation” in Ukraine a “war”. In July 2022, he was convicted and sentenced to 7 years’ imprisonment.⁵⁷

On 8 December 2023, Gorinov’s lawyer visited him in Vladimir Region Penal Colony No. 2 (hereinafter “IK-2”). His lawyer recalled that during this visit Gorinov “exhibited severe health issues, including a bluish skin tone, difficulty sitting and speaking, complaints of active-stage bronchitis, fever, constant chills, and breathing difficulties.”⁵⁸ After this visit, Gorinov disappeared for over two weeks, during which his whereabouts were unknown, and all communication with his lawyer and family was prohibited.⁵⁹

On 25 December, he was located at a hospital that he had been transferred to in critical condition resulting from chronic lung disease.⁶⁰ His lawyer was not given notice of this transfer, nor was his family informed of the severity of his health condition.

A few days before he was relocated, the U.N. Special Rapporteur on Russia expressed her concern over “a pattern of enforced disappearances of arbitrarily detained dissident political figures”. She likened the situation of Gorinov with that of Navalny, asserting that both their enforced disappearances and incommunicado detentions “amount[ed] to torture and ill-treatment” and put Gorinov at risk of further human rights violations, including loss of life.⁶¹

VLADIMIR KARA-MURZA

Vladimir Kara-Murza is a Russian-British journalist and political activist who survived two poisoning attempts in Russia in 2015 and 2017, which are widely believed to have been carried out by Russian government agents.⁶²

February 2024), <https://www.reuters.com/world/europe/alexei-navalnys-death-what-do-we-know-2024-02-18/>.

57 See generally UN Human Rights Council, WGAD Opinion No. 78/2022 concerning Alexey Gorinov (Russian Federation), UN Doc A/HRC/WGAD/2022/78, 17 March 2023, <https://www.ohchr.org/sites/default/files/documents/issues/detention-wg/opinions/session95/A-HRC-WGAD-2022-78-AEV.pdf>.

58 Alexei Gorinov’s health condition has deteriorated significantly in the colony, GOVORIT NEMOSKVA (9 DECEMBER 2023), <https://nemoskva.net/en/2023/12/09/u-alekseya-gorinova-v-kolonii-silno-uhudshilos-sostoyanie-zdorovya/>.

59 Press Release, UN Special Procedures, Russia: Pattern of enforced disappearances of imprisoned dissident voices must end, says UN expert (21 December 2023), <https://www.ohchr.org/en/press-releases/2023/12/russia-pattern-enforced-disappearances-imprisoned-dissident-voices-must-end> [hereinafter, “UN Press Release, 21 December 2023”].

60 Ex-deputy Alexey Gorinov was found in a prisoner hospital, RFE/RL (25 December 2023), <https://www.svoboda.org/a/eks-deputat-aleksey-gorinov-nashyolsya-v-tyuremnoy-boljnitse/32746715.html>.

61 UN Press Release, 21 December 2023, *supra* note 54.

62 Press Release, Council of the EU, Human rights violations in Russia: EU lists individuals responsible for Vladimir Kara-Murza’s sentencing and degrading treatment (5 June 2023), <https://www.consilium.europa.eu/en/press/press-releases/2023/06/05/human-rights-violations-in-russia-eu-lists-individuals-responsible-for-vladimir-kara-murza-s-sentencing-and-degrading-treatment/>; Joint Declaration, Council of Europe, Declaration on imprisoned Russian opposition activist Vladimir Kara-Murza (15 May 2023), <https://www.coe.int/en/web/portal/-/declaration-on-imprisoned-russian-opposition-activist-vladimir-kara-murza>; Kara-Murza v. Russia (No. 2513/14), Eur. Ct. H.R. (2023), <https://hudoc.echr.coe.int/eng?i=001-219462>.

These reported poisonings undoubtedly contributed to a severe deterioration of his health in subsequent detention.⁶³

Kara-Murza was arbitrarily arrested and detained on 11 April 2022 upon his return to Russia for “spreading false information, collaborating with an undesirable organization – Free Russia Foundation – and for “treason” in relation to a public speech he made in which he was critical of Russia’s war in Ukraine.⁶⁴

On 17 April 2023, he was sentenced to 25 years’ imprisonment. On 4 September 2023, he was transferred from a pre-trial detention center in Moscow to an undisclosed location. After 17 days of his family and lawyers being unable to contact him or receive information as to his whereabouts, his lawyers located him in Omsk high-security colony IK-6.⁶⁵

On 29 January 2024, Kara-Murza was again transferred from IK-6 to the special regime colony IK-7 in Omsk.⁶⁶

NADEZHDA TOLOKONNIKOVA

Nadezhda Tolokonnikova is a member of Pussy Riot, a Russian feminist activist and performance art group that protests against the Russian regime.⁶⁷

On 3 March 2012, Tolokonnikova was arrested on a charge of “hooliganism on the grounds of religious hatred” for criticizing Vladimir Putin’s relationship with the Russian Orthodox Church during a performance in Moscow’s main Orthodox cathedral. On 17 August, she was convicted and sentenced to two years’ imprisonment.⁶⁸

On 23 September 2013, Tolokonnikova began a hunger strike in protest of her treatment in detention at penal colony IK-14 which included “slave labour conditions” and harsh treatment.⁶⁹ After five days of refusing food, she was transferred to a prison medical ward LPU-21 in Barashevo, where authorities denied her

63 Todd Prince, *Who Is Vladimir Kara-Murza, The Russian Activist Jailed for Condemning the Ukraine War?*, RFE/RL (17 April 2023), <https://www.rferl.org/a/russia-vladimir-kurza-profile/32367146.html>.

64 Natalia Zotova, *Vladimir Kara-Murza was sentenced to 25 years. Why did he anger the authorities so much?*, BBC News (17 April 2023), <https://www.bbc.com/russian/news-65281053>; Prince, *supra* note 63.

65 Zotova, *supra* note 64; Prince, *supra* note 63; BBC December 2023, *supra* note 30; *Russian Dissident Kara-Murza transferred to unknown location, wife says*, Reuters (29 January 2024), <https://www.reuters.com/world/europe/russian-dissident-kara-murza-transferred-unknown-location-wife-says-2024-01-29/>.

66 Mark Trevelyan and Lucy Papachristou, *Russian dissident Kara-Murza moved to isolation cell in new Siberian prison*, Reuters (30 January 2024), <https://www.reuters.com/world/europe/russian-dissident-kara-murza-transferred-punishment-cell-new-prison-media-cites-2024-01-30/>; Dasha Litvinova, *Russian opposition figure Kara-Murza is moved to another prison and returns to solitary confinement*, AP News (30 January 2024), <https://apnews.com/article/russia-crackdown-putin-kara-murza-prison-e0115af6f83d23412f996226e3240b1f>.

67 Mariya Alekhina and Others v. Russia (No. 38004/12), Eur. Ct. H.R. (2018), <https://hudoc.echr.coe.int/fre?i=001-184666>; Anastasia Tsioulcas, *Pussy Riot Prevails Against Russia In European Human Rights Court Ruling*, NPR (17 July 2018), <https://www.npr.org/2018/07/17/629750597/pussy-riot-prevails-against-russia-in-european-human-rights-court-ruling>; *European rights court condemns Russia over Pussy Riot*, Al Jazeera (17 July 2018), <https://www.aljazeera.com/news/2018/7/17/european-rights-court-condemns-russia-over-pussy-riot>.

68 *Pussy Riot: Where is Nadya?*, Amnesty International UK (18 May 2020), <https://www.amnesty.org.uk/pussy-riot-where-nadya>; Mariya Alekhina and Others v. Russia, *supra* note 67.

69 *Russia: Jailed Pussy Riot Member Cites Abuse: Punk Rock Group Performer Alleges Forced Labor, Death Threat*, Human Rights Watch (27 September 2013), <https://www.hrw.org/news/2013/09/27/russia-jailed-pussy-riot-member-cites-abuse>.

access to her lawyers until 10 October. She was returned to IK-14 on 17 October, after which she restarted her hunger strike and was again denied access to her lawyer.⁷⁰

On 20 October 2013, Tolokonnikova was transferred from IK-14 to the transit section of strict regime colony IK-18 in Potma, Mordovia. On 21 October prison authorities announced her transfer but the next day her lawyer was again denied access to her.⁷¹

On 22 October 2013, Tolokonnikova was transferred to an undisclosed location and lost all contact with her lawyers and family.⁷² After over two weeks of incommunicado detention, during which she was secretly transferred approximately 4,000 km, she was located on 12 November 2013 at a prison medical facility in Krasnoyarsk.⁷³ She was eventually released on 23 December 2013 under a new amnesty law.⁷⁴

Her husband believes that her long and secretive transfer between prisons, together with her “complete isolation”, was a form of punishment for the global attention on her case and the public letters she had written to bring light to human rights abuses inside Russia’s prison system.⁷⁵

ANDREI PIVOVAROV

Andrei Pivovarov is a political activist and the former head of Open Russia, an organization that advocated for democracy and human rights in Russia, which was listed as “undesirable” by the Russian government in 2017.⁷⁶ On 31 May 2021, Pivovarov was arbitrarily arrested on charges of “carrying out activities of an undesirable organization” relating to a post he shared on Facebook by United Democrats (a pro-democracy group).⁷⁷ In July 2022, he was sentenced to 4 years’ imprisonment. He was placed in a pre-trial detention facility in Krasnodar.⁷⁸

70 Urgent Appeal, Amnesty International, Russian Federation: Fear for safety of “missing” Pussy Riot member (4 November 2013), <https://www.amnesty.org/en/documents/eur46/050/2013/en/>; Tom Balmforth, *Train to Nowhere: Russian Prison Transfers Are Secretive, Arduous Affairs*, RFE/RL (12 November 2013), <https://www.rferl.org/a/russia-prisoner-transfers-tolokonnikova-greenpeace/25165987.html>; UN OHCHR, Special Procedures of the Human Rights Council, Communication to Russian Federation (5 November 2013), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=17791> [hereinafter UN Special Procedures, November 2013].

71 Balmforth, *supra* note 70; UN Special Procedures, November 2013, *supra* note 70.

72 Balmforth, *supra* note 70; UN Special Procedures, November 2013, *supra* note 70.

73 Balmforth, *supra* note 70; *Pussy Riot: Where is Nadya?*, Amnesty International UK (18 May 2020), <https://www.amnesty.org.uk/pussy-riot-where-nadya>.

74 *Pussy Riot: Russia frees jailed punk band members*, BBC News (23 December 2013), <https://www.bbc.com/news/world-europe-25490067>.

75 Balmforth, *supra* note 70.

76 *Russia, Open Russia movement forced to dissolve while its members face severe reprisals*, Amnesty International (27 May 2021), <https://www.amnesty.org/en/latest/press-release/2021/05/russia-open-russia-movement-forced-to-dissolve-while-its-members-face-severe-reprisals/>.

77 *Russia, Immediately release Open Russia leader detained after being hauled off flight*, Amnesty International (1 June 2021), <https://www.amnesty.org/en/latest/press-release/2021/06/russia-immediately-release-open-russia-leader-detained-after-being-hauled-off-flight/>; Statement, Spokesperson of Diplomatic Service of the EU on the detention of Andrei Pivovarov (1 June 2021), https://www.eeas.europa.eu/eeas/russia-statement-spokesperson-detention-andrei-pivovarov_en.

78 BBC December 2023, *supra* note 31.

After losing his appeal, he was transferred in December 2022 from a pre-trial detention center in Krasnodar to an undisclosed location.⁷⁹

On 18 January 2023, Pivovarov notified his family and lawyer that he was going to be transferred from a pre-trial detention center in St. Petersburg, which is over 2,000 km from Krasnodar, to an undisclosed location. Since this date, his family and lawyer have not been able to contact or locate him for over 30 days.⁸⁰

On 20 February 2023, authorities informed Pivovarov's mother that he had been transferred to strict regime colony IK-7 in Karelia, over 2,000 km from Krasnodar, on 24 Jan 2023.⁸¹

ILDAR DADIN

Ildar Dadin was the first Russian oppositionist convicted of repeated violations of public assembly rules. Article 212.1 of Russia's Criminal Code, the so-called "Dadin Article", was widely criticised both internally and abroad as being incompatible with the freedom of expression and the freedom of peaceful assembly.⁸²

On 5 December 2016 he disappeared from IK-7 Republic of Karelia, where he served his sentence, only to contact his family 37 days later from IK-5 Altay Region (some 4,100 km from Karelia). Dadin was transferred from IK-7 after reporting on torture and beating to which he was subjected. As it later turned out, he spent almost a month a transit detention in Tyumen.⁸³

Several days before Dadin's reappearance, his spouse, Anastasiya Zotova, published an audio record of her telephone conversation with the deputy head of the FSIN, who told her that it was impossible to complete Dadin's transfer before New Year and it was decided to put in a remand prison "for [Dadin] not to meet the New Year on a train". He refused at the time to disclose Dadin's whereabouts, saying that "in two days [Dadin] will reach the [final destination]".⁸⁴ On 8 January 2017, the Deputy Head of the FSIN personally announced Dadin's arrival to the colony in Altay and reported that a "decision had been taken to allow [Dadin] to call [his relatives]".⁸⁵

79 BBC December 2023, *supra* note 31; *Russia: Disclose Whereabouts of Imprisoned Activist Andrei Pivovarov Disappeared One Month Ago*, Amnesty International (17 February 2023), <https://www.amnesty.org/en/latest/news/2023/02/russia-disclose-whereabouts-of-imprisoned-activist-andrei-pivovarovdisappeared-one-month-ago/>.

80 *Russia: Political Prisoner Feared Forcibly Disappeared*, Human Rights Watch (18 February 2023), <https://www.hrw.org/news/2023/02/18/russia-political-prisoner-feared-forcibly-disappeared>.

81 *Missing Kremlin Critic Located in Prison Known for Torture*, The Moscow Times (20 February 2023), <https://www.themoscowtimes.com/2023/02/20/missing-kremlin-critic-located-in-prison-known-for-torture-a80273>.

82 European Parliament resolution of 6 April 2017 on Russia, the arrest of Alexei Navalny and other protestors (2017/2646(RSP)), https://www.europarl.europa.eu/doceo/document/TA-8-2017-0125_EN.html; Report of the OSCE rapporteur appointed by 38 OSCE participating States under the Moscow Mechanism invoked in respect of the Russian Federation p. 98 and 99, 16 September 2022, <https://www.osce.org/files/f/documents/7/5/526720.pdf>.

83 *Ильдар Дадин нашелся в алтайской колонии (Ildar Dadin found in an Altai colony)*, Mediazona (8 January 2017), <https://zona.media/news/2017/08/01/dadin>.

84 *Замглавы ФСИН Максименко пообещал в течение двух дней сообщить местонахождение Дадина (FSIN deputy head Maksimenko promised to report Dadin's whereabouts within two days)*, Mediazona (5 January 2017), https://zona.media/news/2017/04/01/dva_dnia.

85 *Ильдар Дадин нашелся: он прибыл в новую колонию (Ildar Dadin has been found: he has arrived at the new colony)*, MK.ru (8 January 2017), https://www.mk.ru/social/2017/01/08/ildar-dadin-nashelsya-on-pribyl-v-novuyu-koloniyu.html?utm_source=push&utm_term=push_080117.

KOPEYSK (CHELYABINSK REGION) CASE

In 2008, twelve prisoners were severely beaten by prison guards upon arrival at a transit facility at IK-1 Kopeysk (Chelyabinsk Region). Four of them died from injuries. The FSIN officers involved attempted to conceal the crime, falsely reporting a riot at the facility during which they had been allegedly attacked by inmates. To fabricate the evidence, prison officers of IK-1 were ordered to inflict injuries on each other and prepare false reports describing circumstances of riot. However, the examination of the bodies of killed prisoners rebutted the FSIN's version, making it apparent that the inmates were brutally slaughtered, most probably – as part of the intimidation action which “got out of control”.

18 prison officers, including the head of the colony and the head of the Regional FSIN department, who had been aware of the situation from the very beginning and ordered the falsification of reports and evidence, were convicted in 2011.⁸⁶ Most of them, including the superior officers, were ultimately sentenced to suspended terms of 4-5 years' imprisonment.⁸⁷

CASE OF CRIMEAN TATARS

In February, March, and April 2019, Russian occupying authorities in Crimea arrested and detained 26 members of Crimean Solidarity – an association of family members and representatives of Crimean political prisoners and disappeared persons that monitor court proceedings and provide legal assistance and support to detainees and their families. All 26 were accused of being members of Hizb ut-Tahrir, a transnational pan-Islamic organization banned in Russia but not in Ukraine, and charged with terrorism-related offences.⁸⁸

On 28 March 2019, following a brief period of interrogations in Crimea, 23 of the detainees were secretly taken to Simferopol airport and flown to Rostov region in Russia (some 650 km from Simferopol). They were dispersed to various remand prisons across the region. Neither the detainees' families nor their lawyers were informed of the transfers, and they lost all contact with the detainees until they resurfaced in Rostov region for pre-trial hearings.⁸⁹ They were ultimately convicted and sentenced to 12-19 years' imprisonment, including in strict and special regime penal colonies.⁹⁰ This pattern continues to be repeated for other Crimean Tatars subsequently arrested on terrorism charges for criticizing and non-violently protesting the Russian occupation.⁹¹

86 “Убийство в Копейске довели до приговора” (A murder in Kopeysk has been brought to a verdict), Радио Свобода (26 May 2011), <https://www.svoboda.org/a/24205530.html>.

87 “Верховный суд смягчил наказание большинству сотрудников челябинского ГУ ФСИН, осужденных за массовое убийство заключенных в колонии Копейска” (The Supreme Court commuted the sentences of most of the Chelyabinsk FSIN officers convicted of mass murder of prisoners in Kopeysk colony), Ura.news (31 January 2012), <https://ura.news/news/1052139303>.

88 *Undetermined Facts, Secret Witnesses: Russia Hands Harsh Prison Terms to Crimean Tatars After ‘Illegitimate’ Trials*, RFE/RL (19 January 2023), <https://www.rferl.org/a/crimea-tatars-harsh-prison-sentences-illegitimate-trials/32230605.html> [hereinafter “RFE/RL January 2023”].

89 International Partnership for Human Rights, *Fighting Terrorism or Terrorising Activism: Persecution of civic activists in Crimea* (2019), paras. 1-8, 69, <https://www.iphronline.org/wp-content/uploads/2019/05/Crimea-report-new-full-lr.pdf>; Halya Coynash, *Russia brings terror to more Crimean Tatar families*, Human Rights in Ukraine (15 February 2019), <http://khpg.org/en/index.php?id=1550186548>; RFE/RL January 2023, *supra* note 88.

90 RFE/RL January 2023, *supra* 88; Halya Coynash, *Russia passes 19-year sentences against Crimean Tatar journalist and activists for defending human rights*, Human Rights in Ukraine (11 March 2022), <https://khpg.org/en/1608810179>; *Four Crimean Tatars Sentenced to Long Prison Terms for Ties to Islamic Group Banned in Russia*, RFE/RL (31 May 2023), <https://www.rferl.org/a/russia-sentences-crimean-tatars-ukraine-islamic-group/32437435.html>.

91 See Yulia Gorbunova, *Russian Authorities Arrest Crimean Tatar Lawyer While Representing His Clients*, Human Rights

UKRAINIAN CIVILIANS

In July 2022, the United Nations Human Rights Office (hereinafter “OHCHR”) expressed concern about arbitrary detentions and enforced disappearances of Ukrainian journalists, activists and other civilians by Russian authorities. The OHCHR reported at least 407 cases of arbitrary detention and enforced disappearance of Ukrainian civilians on territory occupied by Russian forces.⁹² According to the OHCHR, “In the vast majority of these cases, the responsible authority refused to provide information to relatives about the grounds for arrest or the place of detention, or deliberately concealed the fate of the victims, effectively placing them outside the protection of the law, which may amount to enforced disappearance”.⁹³ The OHCHR goes on to note that after several weeks of arbitrary detention without charge or trial, an unknown number of victims were transferred into penal colonies on the territory of the Russian Federation.⁹⁴

The case of Serhiy Tsyhipa is emblematic of this pattern. Tsyhipa is an activist, blogger and vocal opponent of Russia’s invasion of Ukraine.⁹⁵ He was very active on social media, where he frequently shared anti-war sentiments.⁹⁶

On the morning of 12 March 2022, Tsyhipa disappeared from Nova Kakhovka, Ukraine, after leaving his home to bring medication to his mother-in-law. Later that day, his friend and Ukrainian reporter Oleh Baturin also went missing. Baturin recalls receiving a message from Tsyhipa’s phone asking to meet him at a bus station. Upon arrival, Baturin saw a white minivan with Ukrainian license plates, with people inside who did not look like Tsyhipa. Baturin turned away to leave, heard someone exit the minivan and run toward him, and was then abducted. After eight days of arbitrary detention, Baturin was released and confirmed that he heard Tsyhipa’s voice, among other prisoners’, in detention at the Kherson Region State Administration building.⁹⁷

Watch (26 October 2021), <https://www.hrw.org/news/2021/10/26/russian-authorities-arrest-crimean-tatar-lawyer-while-representing-his-clients>; *In the occupied Crimea, 89 people are being persecuted in the so-called Hizb ut-Tahrir case*, Crimean Tatar Resource Center (15 June 2022), <https://ctrcenter.org/en/analytics/295-v-okkupirovannom-krymu-89-chelovek-presleduyutsya-po-delu-hizb-ut-tahrir-krc-2>; *Russian-Imposed Authorities Detain Crimean Tatars Who Came to Support Jailed Activists*, RFE/RL (25 January 2023), <https://www.rferl.org/a/crimean-tatars-detained-simferopol-ukraine/32239479.html>; Council of Europe Commissioner for Human Rights, *Crimean Tatars’ struggle for human rights* (2023), <https://rm.coe.int/report-on-crimean-tatars-by-dunja-mijatovic-commissioner-for-human-rig/1680aaeb4b>; *In two years, the Russian Federation transferred at least 55 political prisoners from Crimea*, CrimeaSOS (19 January 2024), <https://krymsos.com/en/krymsos-za-dva-roky-rf-etapuvala-shhonajmenshe-55-politvyazniv-z-krymu/>.

92 UN OHCHR, Report on the Human Rights Situation in Ukraine: 1 February to 31 July 2022 (2022), para. 41, <https://www.ohchr.org/en/documents/country-reports/report-human-rights-situation-ukraine-1-february-31-july-2022>.

93 UN OHCHR, Situation of Human Rights in Ukraine in the Context of the Armed Attack by the Russian Federation (2022), para. 82, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-06-29/2022-06-UkraineArmedAttack-EN.pdf>.

94 *Id.*, at para. 83; see generally American Bar Association and Center for Civil Liberties, *Disappearing Human Rights Defenders: Russia’s Human Rights Violations and International Crimes in Ukraine* (2022), https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/chr-hrd-disappearances-ukraine.pdf.

95 Oleksandr Yankovskiy, Volodymyr Mykhaylov, and Yevhenia Tokar, *In A Ukrainian Region Occupied by Russian Forces, People Are Disappearing. Locals Fear It’s About To Get Worse*, RFE/RL (16 March 2022), <https://www.rferl.org/a/ukraineinvasion-kherson-disappearances-russia-kidnapping/31756418.html>.

96 See Sergiy Tyshipa, Facebook, <https://www.facebook.com/tsyhipa?fref=mentions> (last accessed 21 March 2024).

97 *Journalist and public figure Serhii Tsygipa disappeared in the occupied Kherson region*, ZMÍNA (13 March 2022), <https://zmina.info/news/na-hersonshhyni-znyk-aktyvist-sergij-czygipa>; *Russia is disappearing vast numbers of Ukrainians: Thousands have vanished into exile, prison or death*, The Economist (7 July 2022), <https://www>.

Tsyhipa's family first learned that he was alive on 23 April 2022, when Russian authorities posted a propaganda video in which he appeared exhausted and in pain. In the video, he said he had been in Russia for several weeks and reiterated Russian propaganda seemingly under duress.⁹⁸ Tsyhipa's whereabouts were confirmed through unofficial sources for the first time in October 2022. He had been taken to Russian-occupied Crimea and held in pre-trial detention center No. 1 in Simferopol. At this point, he was still denied a lawyer of his choice and contact with family.⁹⁹ It was not until November 2022 that Russian authorities officially confirmed Tsyhipa was in their custody in Simferopol and the charges against him. In December 2022, he was transferred to pre-trial detention center No. 2 in Simferopol.¹⁰⁰

On 6 October 2023, Tsyhipa was convicted on espionage charges, falsely found to have voluntarily traveled to Simferopol to confess, and sentenced to 13 years' imprisonment in a strict regime penal colony. His sentence was upheld on appeal in February 2024.¹⁰¹

The pre-trial detention centers in Russian-occupied Crimea in which Tsyhipa was held are used to detain Ukrainian civilians who have been abducted since Russia's full-scale invasion in February 2022. Like, Tsyhipa, many of these abductees are held in prolonged and arbitrary pre-trial detention with their family members and lawyers left in the dark. They are eventually charged with crimes such as terrorism, sabotage, and espionage, convicted after non-impartial or independent trials, and then transferred to Russian penal colonies.¹⁰²

Another vivid case of disappearance en route was brought to light by Reporters Without Borders. The UNIAN correspondent, Dmytro Khyliuk, was apprehended by the Russian military servicemen, together with his father, outside his parents' home in a village north of Kyiv on 3 March 2022. Khyliuk's father was released eight days later, while Dmytro was retained in custody. In September 2022, Khyliuk's parents received a handwritten note from him, dated April 2022, in which he reassured his parents that he was alive.

None of the requests from parents, lawyers, and human rights activists to the Russian authorities about Khyliuk's whereabouts yielded any results, with authorities denying any criminal proceedings against Khyliuk. Nevertheless, according to the civilian captives and prisoners of war, eventually released from the Russian captivity, Khyliuk was first detained at the Hostomel airport, which had been occupied by the Russian forces early in the invasion. He was then transferred to remand prison (SIZO) no. 2 in Novozybkov, Bryansk Region.¹⁰³

economist.com/europe/2022/07/07/russia-is-disappearing-vast-numbers-of-ukrainians; *Occupiers Sentence Journalist Serhiy Tsyhipa to 13 Years in Prison*, Institute of Mass Information (6 October 2023), <https://imi.org.ua/en/news/occupiers-sentence-journalist-serhiy-tsyhipa-to-13-years-in-prison-i55960>; *Journalist and Activist Serhiy Tsyhipa Was Sentenced to 13 Years in Penal Colony*, Crimean Human Rights Group (21 November 2023), <https://crimeahrg.org/en/journalist-and-activist-serhiy-tsyhipa-was-sentenced-to-13-years-in-penal-colony/>.

98 Halya Coynash, *Abducted and tortured Ukrainian writer and journalist Serhiy Tsyhipa sentenced to 13 years on surreal charges*, Human Rights in Ukraine (9 October 2023), <https://khpg.org/en/1608812891> [hereinafter "Coynash, 9 October 2023"]; OMCT Statements, *Ukraine: killings, kidnappings and torture of civilians in territories under Russian Control* (6 May 2022), <https://www.omct.org/en/resources/statements/ukraine-killings-kidnappings-and-torture-of-civilians-in-territories-under-russian-control/>.

99 Coynash, 9 October 2023, *supra* note 98.

100 Coynash, 9 October 2023, *supra* note 98.

101 Coynash, 9 October 2023, *supra* note 98.

102 Halya Coynash, *Russia opens third prison in occupied Crimea to hold political prisoners and civilian hostages abducted from mainland Ukraine*, Human Rights in Ukraine (20 October 2023), <https://khpg.org/en/1608812933>.

103 "Disappearance" of Ukrainian journalist Dmytro Khyliuk in Russia: investigation of a State lie, Reporters Without Borders (2 May 2023), <https://rsf.org/en/disappearance-ukrainian-journalist-dmytro-khyliuk-russia-investigation-state-lie>.

In May 2023, Khyliuk was transferred further from Bryansk to Vladimir Region – specifically, to correctional colony no. 7 in the village of Pakino. The report of his journey came from another co-detainee, released later. He recounted their conversation during a 24-hour journey from Novozybkov to Pakino. A few months later, the witness had been transferred to a correctional institution in Mordovia (around 400 km away), from where he was eventually released. Whether Khyliuk was taken with him is unclear; the investigation into his whereabouts is still ongoing.¹⁰⁴

CIVILIAN PRISONERS FROM KHERSON

On 9 November 2022, the Russian authorities announced a retreat of Russian forces from Kherson, which had been under occupation since March 2, 2022.¹⁰⁵ In mid-November 2022, the first reports came from relatives of prisoners convicted by Ukrainian courts before Russia's full-scale invasion of Ukraine who had been serving their sentences in Kherson prisons (correctional colonies and medical prison facilities) that they were transferred to penal facilities in Russia.¹⁰⁶ The transfer of convicts from Kherson followed a similar forcible transfer of prisoners of war and civilians by the Russian forces from other occupied regions of Ukraine.¹⁰⁷

Before the transfer, during several months, starting from March 2022, inmates from correctional colonies nos. 10 (Darivka), 90 (Kherson), 5 (Snihurivka), 7 (Hohla Prystan) – from Kherson and Mykolaiv Regions of Ukraine were transferred to correctional colony no. 7 in Stara Zburivka, approximately 50 kilometers from Kherson.

Two weeks before the Russian retreat from Kherson in November 2022, Russian armed forces and the FSIN began transferring prisoners from Zburivka to the occupied Crimea and Henichesk (Kherson Region). From there, most of the inmates were taken to penal colonies in Russia, including Krasnodar, Volgograd, Vladimir, Rostov, and, allegedly, Sverdlovsk Region, as well as Mordovia Republic.¹⁰⁸

Most of the prisoners were subjected to ill-treatment and tortured in a remand prison in Simferopol on the way to penitentiary facilities in Russia. Prisoners allocated to IK-19 Volgograd Region were severely beaten upon arrival.¹⁰⁹

104 RSF requests proof of life for Ukrainian journalist who is Russian “state hostage” (23 February 2024), <https://rsf.org/en/rsf-requests-proof-life-ukrainian-journalist-who-russian-state-hostage>.

105 Russia Orders Retreat From Kherson, a Serious Reversal in the Ukraine War, NY Times (9 November 2022), <https://www.nytimes.com/2022/11/09/world/europe/ukraine-russia-kherson-retreat.html>; First Ukraine City Falls as Russia Strikes More Civilian Targets, NY Times (2 March 2022), <https://www.nytimes.com/2022/03/02/world/europe/kherson-ukraine-russia.html>.

106 Russia moves Ukrainian Kherson prisoners to penal camps, The Times (30 November 2022), <https://www.thetimes.co.uk/article/russia-moves-ukrainian-kherson-prisoners-to-penal-camps-kf2fw2svh>; “Мама нас куда-то увозят” (Mama, they’re taking us somewhere), Sirena (29 November 2022), <https://telegra.ph/Mama-nas-kuda-to-uvozyat-11-29>.

107 “Russia illegally transfers hostages in the Kherson region: human rights defenders demand a reaction from the world”, ZMINA (21 October 2022), <https://zmina.ua/en/statements-en/russia-illegally-transfers-hostages-in-the-kherson-region-human-rights-defenders-demand-a-reaction-from-the-world/>.

108 “Ukrainian prisoners, potentially numbering in the thousands, taken to Russia”, Meduza (29 November 2022), <https://meduza.io/en/news/2022/11/30/ukrainian-prisoners-potentially-numbering-in-the-thousands-taken-to-russia>; “Что, в Европу захотели? Все, Европа кончилась”: как вторжение России изменило жизнь в украинской колонии. Рассказ заключенного (“What, you want to go to Europe? That’s it, Europe is over”: how Russia’s invasion changed life in a Ukrainian penal colony. A prisoner’s story), Agentstvo (16 February 2023), <https://www.agents.media/koloniya-posle-vtorzheniya/>.

109 The Times, *supra* note 106; Sirena, *supra* note 106.

Prisoners transferred to Russia were not allowed to contact their families or other inmates. In some cases, they were held separately from Russian inmates (or foreign nationals convicted and serving their sentences in Russia). Some of the prisoners, reportedly, were formally allowed to send letters but were unable to pay for the dispatch.¹¹⁰ Relatives, on the other hand, were unable to get confirmations about the transfer from the FSIN. The purpose of the transfer of prisoners from Kherson to Russia remains unclear.

IV. Another tool of repression

These cases of enforced disappearance during prisoner transfers are not an anomaly. Rather, they represent a tool used by the Russian government to intimidate political prisoners and supporters and repress dissident voices. These cases are only increasing, in flagrant violation of both domestic and international law, with impunity. More broadly, the repressive penitentiary system, through the severity of the conditions inflicted and the complete isolation of the prisoners involved, is a means of subjugating the prison population to iron discipline and tyrannical order.

Irina Biryukova, a lawyer who regularly represents arbitrarily detained Russians who are tortured in detention, describes “the very act of transfer” as a “tool of pressure”, as prisoners have even less food, medical treatment, and communication than in prison. She explains that the transfer procedure is uncontrolled, as prisoners can be and often are driven around aimlessly and withheld basic needs like medication, food, and access to the toilet, often to “deliberately worsen the conditions”. Prisoners, according to Biryukova, can be subjected to beatings and torture during transfer. In such cases, transfers can be prolonged until the traces of beatings have disappeared.¹¹¹

For instance, in 2021, Maksim Ivankin, one of the persons convicted in the “Network” case, disappeared for over nine days en route from IK-9 in Chuvashia to a remand prison in Ryazan. On the way, he was taken to two other facilities in different regions – Nizhny Novgorod and a prison hospital at IK-3 in Vladimir, to which he was admitted despite having no complaints about his state of health. As it turned out, the only purpose of his temporary transfer to the hospital was to subject him to severe beatings and torture in order to make him confess to other crimes.¹¹²

As illustrated by the above notable cases, the absence of oversight and accountability during prisoner transfers allows other abuses to occur in addition to enforced disappearance – including other forms of physical and mental torture and cruel, inhuman, and degrading treatment. As the U.N. Special Rapporteur on Russia has warned, “detainees are most vulnerable during transportation”,¹¹³ and that, in reference to Navalny and Gorinov specifically, enforced disappearance during prisoner transfers “put them at risk of further human rights violations, including loss of his life”.¹¹⁴

110 “Украинские правозащитники сообщили о вывозе Россией 2500 заключенных из Херсонской области” (*Ukrainian human rights activists report Russia’s removal of 2,500 prisoners from Kherson Region*), Agentstvo (28 November 2022), <https://www.agents.media/ukrainskie-pravozashhitniki-soobshhili-o-nbsp-vyvoze-rossiej-2500-zaklyuchennyh-iz-nbsp-hersonskoj-oblasti/>.

111 BBC December 2023, *supra* note 31.

112 *Network Case Defendant Maxim Ivankin Claims He Was Tortured into Memorizing Meduza’s Smear and Repeating It as a “Confession”*, The Russian Reader (5 October 2021), <https://therussianreader.com/2021/10/05/maxim-ivankin-torture-confession-meduza/>.

113 UN Press Release, 18 December 2023, *supra* note 54.

114 UN Press Release, 21 December 2023, *supra* note 59; UN Press Release, 18 December 2023, *supra* note 54; see also U.N. Human Rights Council, Resolution adopted by the Human Rights Council, A/HRC/RES/16/23, 12 April 2011, para. 8b, https://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.RES.16.23_en.pdf (“Prolonged

As a “method of repression, terror, and stifling dissent”, according to U.N. Secretary-General António Guterres, enforced disappearance is a particular risk for “lawyers, witnesses, political opposition, and human rights defenders”.¹¹⁵ The more harm that can be done to stifle dissident voices, the harder it will be for others to hear them.

Enforced disappearance is further used as a repressive tool through the distressing impact it has on prisoners’ loved ones. Political prisoners who are arbitrarily detained and persecuted often rely on their loved ones as a “vital lifeline”.¹¹⁶ Depriving loved ones of the knowledge of the whereabouts and conditions of a political prisoner, and a political prisoner the contact and support of their loved ones, can amount to shared psychological torture.¹¹⁷ This tool aims to silence all parties involved and force compliance.

While enforced disappearance as a tool of repression is especially effective against well-known political prisoners in an effort to intimidate and repress their supporters, Russia’s secretive prisoner transfer system also impacts lesser-known political prisoners and dissidents who do not have the world’s attention and support,¹¹⁸ as well as prison population at large. It is thus especially urgent to bring attention to this grave, systematic, and ongoing practice and work toward accountability and legal and political reform in Russia.

V. A violation of Russian Constitutional and Statutory law

The Russian Constitution states that every Russian has “human dignity”, “human rights and freedoms” in accordance with international law,¹¹⁹ explicitly protects the right to life¹²⁰ and freedoms of conscience, ideas, speech, and peaceful assembly,¹²¹ and prohibits torture.¹²²

In addition to the Constitution, Article 13 of the Criminal Executive Code guarantees convicted persons the right to personal security;¹²³ Article 12(2) guarantees them the right not to be subjected to cruel or degrading treatment or punishment; and Article 12(8),¹²⁴ along with Article 14 of the Federal Law on Police,¹²⁵ guarantees them with the rights to legal representation and notification of detention and whereabouts to close relatives

incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person and to ensure that secret places of detention and interrogation are abolished.”).

115 Statement, Secretary-General’s message 2021 (30 August 2021), <https://www.un.org/en/observances/victims-enforced-disappearance/message>.

116 AI Submission to CoE, *supra* note 7, at pp. 3-4; AI report, 2017, *supra* note 10, at p. 11.

117 UN report, January 2011, *supra* note 14, at pp. 12-17 (see p. 15, para. 4).

118 See e.g., BBC December 2023, *supra* note 31.

119 The Constitution of the Russian Federation (entered into force in December 1993, revised in 2020), arts. 17, 19(2), 21(1), <http://www.constitution.ru/en/10003000-01.htm> [hereinafter “Russian Constitution”].

120 Russian Constitution, *supra* note 119, at art. 20(1).

121 Russian Constitution, *supra* note 119, at arts. 28, 29, 31; see also Russian Criminal Executive Code, *supra* note 8, at art. 14. (ensuring freedom of conscience and religion for convicted persons).

122 Russian Constitution, *supra* note 119, at art. 21(2).

123 Russian Criminal Executive Code, *supra* note 8, at art. 13.

124 Russian Criminal Executive Code, *supra* note 8, at art. 12(8).

125 Russian Federation Federal Law on Police, arts. 14(3), (5), (7), (11) (as amended by Federal Law No. 3-FZ of February 7, 2011), <http://visalink-russia.com/russian-federation-federal-law-police.html>.

or persons. Further, Article 73 of the Criminal Executive Code states that convicted prisoners should serve their sentence “in penal institutions within the boundaries of the territorial unit of the Russian Federation in which they had been living or were sentenced”, followed by an extensive list of enumerated exceptions that Russian authorities abuse.¹²⁶ This list includes exceptions for reasons of health or personal security and if there is no appropriate penal institution in the prisoner’s home region, and gives the FSIN discretionary power to choose detention locations for prisoners sentenced for particularly serious crimes.¹²⁷ In practice, the frequent misuse of this law facilitates the arbitrary isolation of political prisoners in detention and, in turn, their forced loss of contact with their families and lawyers.

VI. A flagrant breach of international law

A. International legal instruments, standards, and jurisprudence

The International Convention for the Protection of All Persons Against Enforced Disappearance (hereinafter “ICPPED”) is the preeminent law on enforced disappearance and binding on its signatories.¹²⁸ While Russia is not a State Party to the ICPPED,¹²⁹ the prohibition against enforced disappearance constitutes a *jus cogens* norm from which no derogation is permitted by any state.¹³⁰ The systematic conduct of Russian authorities in the context of prisoner transfers meets the definition of enforced disappearance as set out in Article 2 of the Convention, as agents of the State, such as the FSIN, arrest and detain political prisoners and subsequently conceal their fate and whereabouts, which places them outside the protection of the law.

The Working Group on Enforced or Involuntary Disappearances has determined that an act of enforced disappearance infringes on a number of rights, including those enumerated in the International Covenant on Civil and Political Rights (hereinafter “ICCPR”) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter “CAT”), both to which Russia is a State Party.¹³¹ While neither of these instruments specifically mention “enforced disappearance”, they enshrine the right to recognition as a person before the law (Article 16 ICCPR), the right to liberty and security of the person (Article 9 ICCPR),

126 *Polyakova and Others v. Russia*, (No. 35090/09 and 3 others), Eur. Ct. H.R. (2017), §§ 90-119, <https://hudoc.echr.coe.int/?i=001-171774>.

127 Russian Criminal Executive Code, *supra* note 8, at art. 73.

128 ICPPED, *supra* note 9.

129 See Status of Ratification, International Convention for the Protection of All Persons from Enforced Disappearance, 23 December 2010, 2716 U.N.T.S. 3, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4&clang=_en.

In the framework of the Fourth Cycle Universal Periodic Review of the Russian Federation, five UN States recommended the Russian Federation to ratify the ICPPED. Four other recommendations pertained to the ongoing practice of enforced disappearances and the lack of investigation therein (see, United Nations Human Rights Council, Universal Periodic Review - Russian Federation, <https://www.ohchr.org/en/hr-bodies/upr/ru-index>).

130 UN HRC report, August 2022, *supra* note 5, at paras. 70, 81; see also Kyriakou, *supra* note 16, at 440-41; Goiburú et al. v. Paraguay, *supra* note 16, at para. 84; Sedhai v. Nepal, *supra* note 15, at para. 8.3; General Comment No. 29, *supra* note 16, at para. 13(b).

131 See Status of Ratification, International Covenant on Civil and Political Rights, 23 March 1976, 999 U.N.T.S. 407, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en; and Status of Ratification, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 26 June 1987, 1465 U.N.T.S. 85, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&clang=_en.

the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment (Articles 7 ICCPR; Preamble, Articles 2, 16 CAT),¹³² the right to be treated with human dignity (Article 10(1) ICCPR; Preamble CAT), the right to life (Article 6 ICCPR), fair process including the right to access legal counsel (Article 14 ICCPR; Articles 12, 15 CAT), and the right to an effective remedy (Article 2(3) ICCPR; Article 14 CAT). Enforced disappearances during prisoner transfers constitute a flagrant violation of the above-mentioned rights.

The above-mentioned notable cases illustrate how enforced disappearances compound the severity of the detainees' physical and mental suffering resulting from the inhuman conditions and cruel treatment that they endured in detention. In that context, the pain and suffering associated with incommunicado detention and the denial of access to justice (Article 14 ICCPR; Articles 12, 15 CAT) and effective remedy (Article 2(3) ICCPR; Article 14 CAT) amounts to an act of torture (CAT; Article 7 ICCPR).¹³³ Their effective placement outside the protection of the law (Article 16 ICCPR), exposes them to an increased risk of torture and violation of their right to life (Article 6 ICCPR).

Furthermore, international legal instruments and standard-setting bodies have affirmed that victimhood in cases of enforced disappearance extends to the loved ones of the disappeared. Article 24 of the ICPPED classifies a victim as "the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance".¹³⁴

The pain and suffering often experienced by disappeared prisoners' next of kin results from a violation of their "right to know the truth regarding the circumstances of an enforced disappearance", enshrined in Article 24 of the ICPPED.¹³⁵ The OSCE and Penal Reform International's guidance document on the U.N. Revised Standard Minimum Rules for Treatment of Prisoners identifies the right for family members to be informed and know the truth pertaining to prisoner transfers and whereabouts as a "key safeguard" to "protect against enforced disappearance".¹³⁶

The Working Group on Enforced or Involuntary Disappearances determined that the pain and suffering resulting from a violation of close relatives' right to know the truth can also constitute a violation of their right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment (CAT; Article 7 ICCPR),¹³⁷ as "such restriction [of information] only adds to, and prolongs, the continuous torture

132 While the circumstances of an enforced disappearance make it likely and practicable for other violations to occur, international and regional human rights bodies have also found that enforced disappearance itself can constitute other violations like torture and cruel, inhuman or degrading treatment or punishment (see e.g., UN Human Rights Committee, *Mojica v. Dominican Republic*, Decision on Merits, CCPR/C/51/D/449/1991 (10 August 1994), <https://juris.ohchr.org/casedetails/400/en-US>; Goiburú *et al.* v. Paraguay, *supra* note 16; and Anzualdo Castro v. Peru, Judgment, Inter-Am. Ct. H.R. (22 Sept. 2009), p. 69, https://www.corteidh.or.cr/docs/casos/articulos/seriec_202_ing.pdf).

133 *Id.*

134 See Kyriakou, *supra* note 16, at p. 457; see also Juan Pablo Albán Alencastro, *The Other Victims of Enforced Disappearance*, UN Chronicle (30 August 2022), <https://www.un.org/en/un-chronicle/other-victims-enforced-disappearance/>; UN Commission on Human Rights, Report submitted by Mr. Manfred Nowak, UN Doc E/CN.4/2002/71, 8 January 2002, paras. 77-80, <https://digitallibrary.un.org/record/459055?ln=en&v=pdf>; UN Press Release, August 2016, *supra* note 12; Peacemakers Trust and LWRC, Joint Submission to UN CED and WGEID, Short-term enforced disappearances: "Every Minute Counts", 15 August 2023, <https://www.lwrc.org/enforced-disappearances-every-minute-counts-joint-submission-to-two-un-bodies/>.

135 Kyriakou, *supra* note 16, at p. 34.

136 Guidance Document, *supra* note 30, at para. 186.

137 Declaration on Enforced Disappearance, *supra* note 14, at art. 1(2); UN report, January 2011, *supra* note 14, at pp. 12-17 (see p. 15, para. 4); see also Gudiel Álvarez *et al.* v. Guatemala, *supra* note 22; Kurt v. Austria, *supra* note 23; Bousroual v. Algeria, *supra* note 23.

inflicted upon the relatives”.¹³⁸ The U.N. Human Rights Committee reached the same conclusion in *Bousroual v. Algeria* and again in *Amirov v. Russian Federation*, finding that the “unique nature of the anxiety, anguish and uncertainty for those [close] to the direct victim” is an “inexorable consequence of an enforced disappearance” that amounts to an Article 7 violation of the ICCPR for both the direct and indirect victims.¹³⁹

B. Duty to investigate complaints of enforced disappearance

International law further obligates states to actively investigate alleged acts of enforced disappearance (Articles 3, 12 ICCPED) and torture (Article 12 CAT).

In its 2012 judgment in *Aslakhanova v. Russia*, the Court found systemic issues within Russia's judicial system, specifically identifying its failure to investigate enforced disappearances since 1996.¹⁴⁰ The Court underscored and criticized Russian authorities' routine dismissal of allegations and complaints, denial of information to victims, and failure to implement the Court's urgent recommendations to fulfill its duty to investigate.¹⁴¹ There is no indication that Russia has meaningfully addressed these systemic issues.¹⁴²

The Working Group on Enforced or Involuntary Disappearances expressed concern in August 2022 about the “rampant” impunity for enforced disappearances. It noted that a significant contributing factor, including in the Russian context, is domestic legal frameworks that fail to incorporate and enforce relevant fundamental international law principles.¹⁴³ The Working Group asserted that strengthening these frameworks to comply with binding laws and standards would not only help to combat impunity but also prevent the recurrence of enforced disappearance.¹⁴⁴

VII. Conclusion and recommendations

A review of relevant Russian law, notable cases, and relevant international standards reveals a systematic practice of **enforced disappearance during prisoner transfers in Russia**. What may, at first glance, look like an inadequate legal and administrative framework has been used as a tool of repression of political opposition and criticism of the regime and its war in Ukraine and, beyond that, as a mechanism designed to ruthlessly break moral of the incarcerated population and ensure their complete obedience. The co-opting of legal loopholes and government institutions to intimidate, harass, and torture inmates is in a flagrant breach of both Russian and international law.

138 UN report, January 2011, *supra* note 14, at pp. 12-17 (see p. 15, para. 4).

139 *Bousroual v. Algeria*, *supra* note 24, at paras. 9.2, 9.8; UN Human Rights Committee, *Amirov v. Russian Federation*, Decision on Merits, CCPR/C/95/D/1447/2006 (22 April 2009), para. 11.7, <https://digitallibrary.un.org/record/652891?ln=en&v=pdf>.

140 *Aslakhanova and Others v. Russia* (Nos. 2944/06), Eur. Ct. H.R. paras. 29, 126, 216, 224, 238 (2012), <https://hudoc.echr.coe.int/?i=001-115657>.

141 See generally *Aslakhanova and Others v. Russia*, *supra* note 140.

142 See generally Orlov and Cherkasov, *supra* note 3.

143 UN HRC report, August 2022, *supra* note 4, at para. 82; Also the following legal instruments require domestic implementation: ICCPR, *supra* note 16, at art. 2(2); ICCPED, *supra* note 8, at art. 4; CAT, *supra* note 18, at arts. 2, 4-5.

144 UN HRC report, August 2022, *supra* note 4, at para. 82.

It reveals a need to make concrete changes to Russia's law and policy on prisoner transfers – to guarantee detainees' rights to the full protection of the law and access to their lawyers and loved ones.

In view of the above, the Submitting Organisations respectfully recommend the Committee of Ministers to call on the authorities of the Russian Federation:

- (1) to comply with the prohibition of enforced disappearance as a *jus cogens* norm and to codify enforced disappearance as an offence under Russian law;
- (2) to immediately end the practice of secret prisoner transfers;
- (3) to enact meaningful and lasting reform of its laws and policy on prisoner transfers – namely – require notification of the destination of a prisoner's transfer at least one week prior to the scheduled transfer, enable regular contact between prisoners and their legal representatives or family members throughout the transfer;
- (4) to establish a clear and predictable legal framework that guarantees respect for the right to maintain family ties in the process of assigning prisoners to penal institutions and ensures independent monitoring of prisoner transfers;
- (5) to enhance monitoring, documentation, and public reporting of cases of enforced disappearances in Russia (including disappearances during prison transfers), in particular through the establishment of a comprehensive and publicly accessible database that could serve both as a record of abuses, and as a resource for legal and historical accountability.

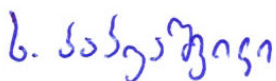
Respectfully submitted.



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