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Meeting: 1514<sup>th</sup> meeting (December 2024) (DH)

Communication from an NGO (Memorial Human Rights Defence Centre) (21/10/2024) concerning the Khashiyev and Akayeva group of cases v. Russia (Application No. 57942/00).

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 : 1514<sup>e</sup> réunion (décembre 2024) (DH)

Communication d'une ONG (Memorial Human Rights Defence Centre) (21/10/2024) relative au groupe d'affaires Khassiyev et Akayeva c. Russie (requête n° 57942/00) **[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.

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## **Rule 9.2 Submission on the implementation of general measures in the group of cases № 57942/00 “Khashiyev v. Russia” prepared by the NGO Memorial Human Rights Defence Centre**

### **I. Introduction**

This submission is prepared by the NGO Memorial Human Rights Defence Centre. This is a non-governmental organization founded in June 2022 by supporters of Memorial Human Rights Centre (dissolved on 29 December 2021) to continue the work of the latter NGO. Memorial Human Rights Centre was founded in 1993 in Moscow and became one of the first human rights NGOs in modern Russia. It worked with grave human rights violations in (post-)conflict areas, civil and political rights and vulnerable groups. It represented hundreds of victims both domestically and before the European Court of Human Rights.

In this submission we will address the legal challenges surrounding the implementation of this group, the ongoing violations of the applicants' rights, as well as the emergence of new enforced disappearances in the North Caucasus region.

### **II. Main findings of the ECtHR and the Committee of Ministers**

This group of cases concerns violations relating to the actions of Russian security forces during anti-terrorist operations in the Northern Caucasus, mostly in the Chechen Republic. The violations include killings or presumed killings notably as a result of indiscriminate

bombings and failures to properly organise safe passages for civilians; unjustified use of force; enforced disappearances; unacknowledged detentions; torture; unlawful search and seizure operations; and destruction of property. It also concerns the mental suffering of the victims' relatives, the lack of effective investigations into the alleged abuses and absence of effective domestic remedies in this respect.

In the *Aslakhanova and Others* judgment, the Court indicated the necessity of creating a single, sufficiently high-level body in charge of resolving disappearances in the region. In the *Abakarova* judgment, the Court highlighted the need for non-judicial mechanisms aimed at drawing lessons from past violations, ensuring the non-repetition of similar occurrences in the future and compliance with international humanitarian law.

The Committee of Ministers adopted numerous decisions on this group. For instance, it deplored the absence of progress and insisted firmly on the urgent need to redouble the efforts to find the missing persons (between 5,000 and 7,700 people), as well as to address the deficiencies in the criminal investigations. The Committee underlined the ongoing suffering of the families of the missing persons and again urged the authorities to create a high-level body with a humanitarian mission to search for them. It also condemned the kidnappings by the state agents which were recently reported.

With regard to the conduct of large-scale military operations, the Committee invited the authorities to provide information on the measures aimed at ensuring strict compliance with the requirements of the Convention and other international standards, including international humanitarian law. The authorities should have drawn lessons from the violations of the past and taken all necessary measures to prevent similar violations in future.<sup>1</sup>

### **III. Current situation with the implementation of the group**

We reaffirm the findings of the submission of the Stichting Justice Initiative and the Memorial Human Rights Defence Centre of 8 November 2023<sup>2</sup> and invite the Committee of Ministers to examine these findings during the current session. We argue that the similar trends as described in that submission continue to occur at the present time.

For instance, legal challenges for the implementation of this group, ongoing violations of the rights of the applicants, and the issue of new enforced disappearances in the North Caucasus region remain pressing.

#### *a. Legal challenges for the implementation of this group*

Russia is **still not a party** to global framework agreements against enforced disappearances, including the International Convention for the Protection of All Persons from Enforced Disappearance (hereinafter - Convention against the Enforced Disappearances).

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<sup>1</sup> The summary of the group by the Committee of Ministers, URL: <https://hudoc.exec.coe.int/eng?i=004-9>

<sup>2</sup> Submission of the Stichting Justice Initiative and the Memorial Human Rights Defence Centre of 8 November 2023, URL: [https://hudoc.exec.coe.int/eng?i=DH-DD\(2023\)1414E](https://hudoc.exec.coe.int/eng?i=DH-DD(2023)1414E)

Moreover, Russian legislation maintains the statute of limitation for these crimes. This problem stems from the fact that the Criminal Code of Russia does not define enforced disappearance as a distinct crime. Instead, the authorities classify enforced disappearances as crimes of kidnapping or murder. In this regard, the statute of limitations for the episodes of enforced disappearance is limited to 10-15 years starting from the date the person disappeared and not from the moment when the offense has ceased (as it is for example provided in Article 8 of the Convention against the Enforced Disappearances). Therefore, the continuous nature of the enforced disappearances is disregarded. As a result, the statute of limitations for most of the episodes of enforced disappearances committed during the Russian - Chechen wars has already expired. In any event, due to the widespread and systematic nature of enforced disappearance in Chechnya, these crimes constitute crimes against humanity, as enshrined in Article 5 of the Convention against the Enforced Disappearances. Thus, the statute of limitations should not be applicable to these crimes at all.

The practice persists where authorities suspend an investigation, then resume it and suspend it again, and this can be repeated many times. This is the main strategy of the authorities to delay the investigation process and imitate investigative activities.

The problem also remains that during suspended investigations, applicants and their lawyers do not have an absolute right to access information from criminal records. Only after the investigation is completed does this right become available. Furthermore, the investigators are entitled to classify partly or fully the materials of a criminal case.

The authorities have not established a special mechanism for compensations to the relatives of the disappeared person. The general compensatory mechanisms existing under the Russian law do not properly work due to the ineffective investigation and the failure to find a perpetrator.

The problem of intimidation of lawyers and human rights defenders working in the North Caucasus remains serious and further complicates the provision of the legal help to the applicants.

Finally, the problem of Russia's general refusal to enforce the ECtHR's judgments remains relevant.

#### *b. Ongoing violations of the rights of the applicants*

We notice that the applicants who won their cases at the ECtHR did not receive important information from the authorities concerning the investigative steps adopted to rectify the shortcomings established by the ECtHR. New investigations of those cases are either absent or not effective. For example, despite the applicants' efforts in the Gasanguseynov's case, the authorities failed to carry out a new effective investigation of the case.<sup>3</sup> The situation is

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<sup>3</sup> "The killers of the brothers Gasanguseynov were not found eight years later", Chernovik.net, URL: <https://chernovik-net.turbopages.org/chernovik.net/s/news/ubiy-c-bratev-pastukhov-gasanguseynovykh-ne-nashli-spustya-vosem-let-ugolovnoe-delo-futbolyat>

similar in other cases. This means that the relatives of the victims continue to experience severe mental suffering, and their right to an effective investigation continues to be violated.

### *c. New cases of enforced disappearance*

During the last years, the new enforced disappearances have been committed in the region, including **short-term disappearances** aimed at fabricating criminal cases against the victims with the risk of torture.<sup>4</sup> Sometimes, under the request of the Chechen authorities these enforced disappearances occur in other regions of Russia, and the victims are later transferred to Chechnya.

For example, on 20 May 2023, the former Chechen policeman Yasin Khalidov was detained in the Omsk region and then transferred to Chechnya where he is allegedly not officially held in custody. He was wanted by the Chechen authorities for his desire to leave his job in the police after returning from the war in Ukraine and threatened with the fabrication of a criminal case against him.<sup>5</sup>

On 31 May 2023, a Chechen policeman abducted British citizen Magomed Abubakarov. Mr Abubakarov came to Chechnya to visit his relatives. He was detained in an illegal prison for a month and then released under an obligation to come to the police department. On 4 April 2024, the policemen wounded Mr Abubakarov in his house. The authorities fabricated a criminal case against him.<sup>6</sup>

There is also an ongoing practice of the use of enforced disappearances and killings against women who do not share a traditional lifestyle. For example, on 23 August 2023, Chechen security forces, with the support of St. Petersburg police officers, kidnapped 26-year-old **Seda Suleymanova**, who ran away from home due to fear of an “honor killing.” The woman lived in a religious family, where she was forced to wear a hijab, perform namaz and lead a so-called traditional lifestyle, the principles of which she did not share. With the help of human rights activists, Ms Suleymanova left Chechnya for St. Petersburg. Later her relatives accused her of stealing jewelry worth 150 000 RUB [~1440 EUR], after which security forces from the republic abducted her. Since then, human rights activists and her fiancé have not been able to contact her. On 25 August 2023, her lawyers came to the police station in Grozny city, where the police officers told that Ms Suleymanova was transferred to her relatives. On 30 August 2023, the Chechnya’s human rights ombudsman Mansur Soltaev published a photo of Ms Suleymanova, claiming that she was safe. The photo showed Ms

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<sup>4</sup> Submission in reply to the call for inputs on the notion of short term enforced disappearances of the Memorial Human Rights Defence Centre and of the Stichting Justice Initiative, URL: [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://memorialcenter.org/uploads/Input\\_on\\_short\\_term\\_enforced\\_disappearances\\_in\\_Russia\\_submitted\\_6d6dd6ddfa.pdf](chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://memorialcenter.org/uploads/Input_on_short_term_enforced_disappearances_in_Russia_submitted_6d6dd6ddfa.pdf)

<sup>5</sup> “A month ago, Chechen security forces kidnapped Yasin Khalidov. His fate is unknown”, Memorial Human Rights Defence Centre, 20 June 2023, URL: <https://memorialcenter.org/ru/news/mesyacz-nazad-chechenskie-siloviki-pohitili-yasina-halidova-ego-sudba-nei-zvestna>

<sup>6</sup> “Injury, two operations and new charges: the persecution of a British citizen continues in Chechnya”, Memorial Human Rights Defence Centre, 18 April 2024, URL: <https://memorialcenter.org/news/v-chechne-prodolzhayut-presledovanie-grazhdanina-velikobritanii>

Suleymanova wearing a headscarf and with a bruise visible on her neck. Several days later, Mr Soltaev published a video where Ms Suleymanova was with him. In this video only Mr Soltaev speaks, while Ms Suleymanova keeps silent and lowers her eyes. There are still no updates about her condition, and human rights activists suggest that she may have been killed.<sup>7</sup> Only in the spring of 2024, the Investigative Committee initiated a criminal investigation into her disappearance. This required thousands of statements and an incredible public campaign organized by human rights activists. Unfortunately, this investigation has not brought any results yet.<sup>8</sup>

## IV. Recommendations

We kindly ask the Committee of Ministers to recognize that Russian authorities have failed to implement the general measures in these cases and to indicate the following measures of implementation:

- adopt global framework agreements against enforced disappearances, including ratifying the Convention against the Enforced Disappearances;
- abolish the statute of limitations for crimes of enforced disappearances in Russian legislation and underline the continuing nature of the crimes;
- create a single, sufficiently high-level body dealing with the enforced disappearances in the region;
- end the practice of unjustified suspensions of investigations that hinder progress and render them futile;
- provide the applicants and their lawyers with an absolute right to access all the information from criminal records;
- end the practice of intimidation of lawyers and human rights defenders working in the North Caucasus;
- continue to enforce the ECtHR's judgments, despite the termination of the membership of Russia in the Council of Europe;
- conduct new effective investigations of all enforced disappearances and killings in the region and rectify the shortcomings established by the ECtHR;
- create a special mechanism for compensations to relatives of disappeared persons;
- make a public apology for the committed crimes and adopt other extrajudicial measures of implementation of the cases, such as the provision of financial and psychological support to the relatives of the victims, the construction of memorials, etc.

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<sup>7</sup> "Is Seda Suleymanova alive?" Human rights activists appealed to the Investigative Committee because of an "honor killing", Sever.Realii, 7 February 2024, URL: <https://www.severreal.org/a/zhiva-li-seda-suleymanova-pravozaschitniki-obratilis-v-sk-iz-za-ubiystva-chesti/32808145.html>

<sup>8</sup> "Where is Seda?" Chechen Seda Suleymanova ran away from her relatives. Then they returned her - and she disappeared. Seven months later, the Investigative Committee opened a case. This required thousands of applications.", Meduza, 4 April 2024, URL: <https://meduza.io/feature/2024/04/04/gde-seda>