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Meeting: 1390th meeting (December 2020) (DH)

Communication from an NGO (European Human Rights Advocacy Centre and Memorial Human Rights Centre) (03/11/2020) concerning the KHASHIYEV and AKAYEVA group of cases v. Russian Federation (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 : 1390^e réunion (décembre 2020) (DH)

Communication d'une ONG (European Human Rights Advocacy Centre and Memorial Human Rights Centre) (03/11/2020) concernant le groupe d'affaires KHASHIYEV et AKAYEVA c. Fédération de 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.



**European Human Rights
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DGI

03 NOV. 2020

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

**Rule 9(2) submission from the European Human Rights Advocacy Centre ['EHRAC'] and
Memorial Human Rights Centre ['MHRC']¹ concerning implementation of the
'Khashiyev and Akayeva group' of cases [57942/00]**

**Humanitarian resolution for enforced and involuntary disappearances
in the North Caucasus**

2 November 2020

Introduction

- 1.1. This submission addresses the urgent need for humanitarian resolution of enforced and involuntary disappearances in the North Caucasus and the importance of independent scientific expertise and assistance in achieving that aim.
- 1.2. It is intended to supplement and update a previous Rule 9(2) submission on this topic made by the same authors which was submitted on 24 October 2019 ['The October 2019 Rule 9(2)'] and distributed to delegations by the Secretariat on 26 November 2019.²
- 1.3. The October 2019 Rule 9(2) submission has yet to be considered. Although intended for consideration at the CM's 1362nd meeting in December 2019, no such consideration took place and instead the relevant CM decision "*agreed to postpone consideration of the Khashiyev and Akayeva group (missing persons) against the Russian Federation to their 1390th meeting (December 2020) at the latest*".³
- 1.4. The December 2019 decision contains no explanation as to the reasons for this postponement and no further information or action plan has been forthcoming from the Russian Federation in the 12 months which have elapsed since the original submission. The families of the disappeared however, have once more been required to wait without information or explanation in their quest to discover the fate of their loved ones.

¹ EHRAC and MHRC communicate this submission as non-governmental organisations under Rule 9(2) of the Rules of the Committee of Ministers ['CM'], for consideration at the CM's 1390th meeting in December 2020

² DH-DD(2019) 1406 1362nd meeting December 2019 (DH) which can be found at [https://hudoc.exec.coe.int/eng#%7B%22EXECIdentifier%22:%7B%22DH-DD\(2019\)1406E%22%7D%7D](https://hudoc.exec.coe.int/eng#%7B%22EXECIdentifier%22:%7B%22DH-DD(2019)1406E%22%7D%7D)

³ 1362nd meeting, 3-5 December 2019 (DH) Adoption of the Order of Business [CM/Del/Dec\(2019\)1362/A1](#).



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- 1.5. The authors place particular reliance upon Annex II of the October 2019 submission in providing to the CM a selection of direct quotations from the applicant families who continue to be affected by the years of inaction in relation to these cases.⁴

2. Summary of the scientific evidence

- 2.1. The October 2019 Rule 9(2) submission contains within it a detailed forensic science report authored by two global experts [‘The Gowland/Thompson Expert Forensic Report’].⁵
- 2.2. The Gowland/Thompson Expert Forensic Report not only sets out what would be required to achieve humanitarian resolution for the families of the disappeared in these cases but also provides answers to the various obstacles that have been previously presented by the Russian Federation as preventing such progress to date.
- 2.3. It concludes as follows:

“overall we see no scientific impediment to the location and identification of those killed and still missing in Chechnya. Success has already been achieved in similar contexts across the world. It is a matter of political will, cooperation, resources and effective management. Progress towards identifying the missing in post-conflict regions is an important step in re-establishing human rights, the rule of law and societal integration”⁶

- 2.4. The authors are clear as to the need for specialist expertise and assistance from international teams if this aim is to be achieved.

3. Central submission

- 3.1 For reasons outlined in October 2019 and supplemented herein, we repeat our central submission that:

- a) the Russian Federation be urged to:

⁴ See Annex II, EHRAC-MHRC Rule 9(2) submission dated 24 October 2020 – Humanitarian resolution (the applicants’ perspective)

⁵ See Annex I, EHRAC-MHRC Rule 9(2) submission dated 24 October 2020, DH-DD(2019) 1406 1362nd meeting December 2019 (DH) which can be found at [https://hudoc.exec.coe.int/eng#%22EXEIdentifier%22:%22DH-DD\(2019\)1406E%22](https://hudoc.exec.coe.int/eng#%22EXEIdentifier%22:%22DH-DD(2019)1406E%22)

⁶ Para 6 Gowland/Thompson report



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- i) seek international assistance from a reputable international body with a mandate and established expertise in the search for persons missing as a result of armed conflict or human rights violations (such as the ICRC, the ICMP, the EAAF⁷) in setting the terms of consultation for a framework of humanitarian resolution in the North Caucasus and for the Russian Federation to provide within its next 'action plan' to the CM, a concrete time-bound strategy for implementation of the same;
 - ii) cooperate with the United Nations Working Group on Enforced and Involuntary Disappearances ['WGEID']⁸ in resolving communicated cases as well as allowing WGEID to make a country visit to Russia in order to consider any assistance which could be offered in addressing these issues by way of conclusions and recommendations at the conclusion of the visit.
- b) The CM/DEJ take steps to liaise with, and/or request the assistance of WGEID in order to share expertise and best practice in the joint aims of humanitarian resolution within the North Caucasus.

4. Supplementary information

The UN Working Group on Enforced and Involuntary Disappearances ['WGEID']

4.1 This submission and the October 2019 Rule 9(2) submission take the unprecedented step of urging cooperation not only between the Russian Federation and WGEID but also the CM and/or the Department for the Execution of Judgments of the Council of Europe ['DEJ'] and WGEID. This is due both to the established need for international expertise to resolve these cases (which have been under the supervision of the CM since 2003) that WGEID is able to provide and by reason of the joint cases and aims shared by the two bodies.

⁷ International Committee of the Red Cross; International Commission on Missing Persons and the Argentine Forensic Anthropology Team

⁸ The UN Working Group on Enforced and Involuntary Disappearances was founded in 1980 by the Commission of Human Rights to "examine questions relevant to enforced or involuntary disappearances of persons". One of the primary tasks of WGEID is assisting families to determine the fate or whereabouts of family members who are reportedly disappeared within a humanitarian capacity as well as monitoring the progress of States in fulfilling their obligations deriving from the Declaration on the Protection of All Persons from Enforced Disappearances and providing assistance to Governments in its implementation as well as recommending different ways of overcoming obstacles to the realization of its provisions.

<https://www.ohchr.org/en/issues/disappearances/pages/disappearancesindex.aspx>

EHRAC, Memorial HRC and Russian Justice Initiative submitted a General Allegation to WGEID in January 2018 in relation to the systemic problems faced by the families of the disappeared in the North Caucasus and in particular the families whom we represent within the Khashiyev group of cases.



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- 4.2 The UN WGEID consists of five members appointed by the Human Rights Council “to serve in their individual capacities, to examine questions relevant to enforced or involuntary disappearances of persons”.⁹ One of its primary tasks is to pursue humanitarian resolution, i.e. to assist families in determining the fate or whereabouts of their disappeared family members as requested by the applicants in these cases.¹⁰
- 4.3 In addition, the Working Group has also been entrusted to monitor States’ compliance with their obligations deriving from the Declaration on the Protection of all Persons from Enforced Disappearances and to provide Governments, with assistance in its implementation. The Working Group reminds States of their obligations not only in the context of clarifying individual cases but also in taking action of a more general nature, including to prevent, investigate, punish and eradicate enforced disappearances. It recommends ways of overcoming obstacles to the realization of the Declaration and discusses with representatives of States, non-governmental organizations, families and other relevant stakeholders how to solve specific problems in the light of the Declaration.
- 4.4 The Working Group undertakes country visits at the invitation of a Government but may also solicit an invitation based on factors such as the number, credibility and gravity of the reports received and the potential impact which the visit may have on the overall human rights situation. The Working Group solicited such an invitation from the Russian Federation both in 2006 and in 2019 but remains as yet, without a positive response.¹¹
- 4.5 At the time of the publication of the Working Group 2020 Annual Report, it reported 849 outstanding cases from the Russian Federation.¹² Of those 849 cases, at least 33 are cases shared with the CM (those same cases having been submitted by EHRAC and MHRC to WGEID some years after judgment and supervision of these cases by the CM).
- 4.6 As such, both the CM and WGEID have a common interest in achieving humanitarian resolution for these particular cases as well as addressing the systemic issues which they raise. In light of WGEID’s specific expertise in this subject area and its ability to advise and assist, we urge both the CM and the

⁹ Resolution 20 of the Commission on Human Rights 20 (XXXVI) of 29 February 1980 which can be accessed at https://www.ohchr.org/Documents/Issues/Disappearances/E-CN.4-RES-1980-20_XXXVI.pdf

¹⁰ Methods of work of the Working Group on Enforced or Involuntary Disappearances which can be accessed at <https://www.ohchr.org/EN/Issues/Disappearances/Pages/MethodsWork.aspx>

¹¹ Working Group 2020 Annual Report which can be accessed at <https://undocs.org/A/HRC/45/13>

¹² Working Group 2020 Annual Report which can be accessed at <https://undocs.org/A/HRC/45/13>



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Russian Federation to make use this expertise in order to make progress in achieving humanitarian for the families affected by these cases.

- 4.7 We submit, in particular, that a positive response from the Russian Federation to WGEID's request dated 23 January 2019 to conduct a country visit¹³ would assist in providing objective expert input towards achieving humanitarian resolution.

The case of Lapunov

- 4.8 We further submit that in light of the many years of supervision which have elapsed without achieving implementation of these cases, it is important to remember the impact of the consequent impunity not only upon those families who are directly affected by the specific cases in question but also upon those within the region who continue to suffer as victims of such violations.
- 4.9 On 14 November 2019, the European Court of Human Rights communicated the case of Maksim Grigoryevich Lapunov v Russia (Application no. 28834/19) to the Respondent Government. This case relates to the alleged arbitrary detention and torture of the applicant as part of a purge in February and March 2017 against members of the lesbian, gay, bisexual and transgender (LGBT) community by Chechen authorities in which dozens of gay men were detained, forcibly disappeared and tortured.
- 4.10 On 26 June 2020, EHRAC together with Human Rights Watch ['HRW'] submitted a third party intervention ['TPI'] before the Court in which we argued that the recent use of arbitrary detention, torture and enforced disappearance against members of the LGBT community could not justly be considered in isolation. To the contrary, we submitted that those crimes must be viewed within the context of the two previous decades of such violations within the region and the ongoing and systemic failure to effectively investigate the same.¹⁴ That is to say, the same issues raised by this group of cases before the CM.
- 4.11 We submit that the ongoing lack of effective investigation into any of the crimes contained within the judgments in this group continues to promote and encourage the repetition of such criminal methods within the region upon a constantly widening target group. This in turns adds yet another

¹³ The Working Group Annual Report 2020 records that a request to conduct a country visit was extended to the Russian Federation on both 2 November 2006 and 23 January 2019

¹⁴ A copy of this intervention can be found at: <https://ehrac.org.uk/news/ehrac-and-hrw-intervene-in-chechnya-lgbti-crackdown-case/>



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layer of urgency to the need, as a bare minimum, for progress to be made towards humanitarian resolution in the manner outlined within the Gowland/Thompson report.

4.12 The text of our TPI is provided at Annex I to this submission for ease of reference.

5. Conclusion

5.1 We welcome the CM decision to consider all of the Khashiyev cases as a group, without sub division from 2021 onwards.

5.2 In addition to the specific requests for this meeting (as set out above at paragraph 3). We urge that within the new timetable of consideration, specific and regular targets are set that will enable meaningful progress towards implementation of these cases.

The European Human Rights Advocacy Centre
Memorial Human Rights Centre

2 November 2020

IN THE EUROPEAN COURT OF HUMAN RIGHTS

No. 28834/19

Maksim Grigoryevich LAPUNOV

V

RUSSIA

WRITTEN SUBMISSIONS ON BEHALF OF THE INTERVENORS

The European Human Rights Advocacy Centre and Human Rights Watch

26 June 2020

Introduction

1. The European Human Rights Advocacy Centre (EHRAC) and Human Rights Watch (HRW) (collectively, “Intervenors”), are jointly filing this submission, subject to the leave of the Court under Rule 44 § 3 of the Rules of Court, granted on March 5, 2020.¹
2. The submission discusses the following:
 - a) Why this case should be considered in light of persistent and systemic failure by Russian authorities to conduct effective investigations in Chechnya required by the procedural obligations in Articles 2, 3 and 5 of the European Convention on Human Rights (hereinafter, the Convention or ECHR);
 - b) The climate of impunity created by the practice of ineffective investigations into serious human rights violations (including arbitrary detention, enforced disappearances, torture and other inhuman treatment) committed by state agents in Chechnya that enables and encourages the perpetuation of such serious violations against an ever-widening circle of victims;
 - c) Russia’s persistent failure to implement judgments of this Court with respect to obligations under Articles 2, 3 and 5 of the Convention and its contribution to the above referenced climate of impunity.

Viewing this case in light of the persistent and systematic failure to conduct effective investigations

3. In this case the Court will be examining a complaint alleging the arbitrary detention and torture of the applicant as part of a purge in February and March 2017 against members of the lesbian, gay, bisexual, and transgender (LGBT) community by the Chechen authorities in which dozens of presumed gay men were detained, forcibly disappeared and tortured.
4. However the persecution of LGBT people in Chechnya did not start in 2017; nor did the waves of arbitrary arrests of presumed gay men in Chechnya in 2017, and more recently in 2019, happen in a vacuum.² Rather these purges followed two decades of serious human rights violations committed by Russian forces, including those of the Chechen Republic, in Chechnya, for which there has been impunity and no accountability. This Court is familiar with the human rights situation in Chechnya, having issued hundreds of judgments in which it has found Russia responsible for very serious human rights violations dating from the late 1990s onwards, as well as a systemic failure to effectively investigate and otherwise provide a remedy for those violations. Indeed, by January 2018 this Court had found Russia responsible for violations of the right to life in over 250 cases from the northern Caucasus between 1999 and 2006, including many disappearance cases.³ The figures continue to rise. This Court will also be aware of the

¹ Taking into account the three months exceptional extensions granted by the Court as a result of the Covid-19 pandemic, the deadline for the submissions is June 26. See <http://hudoc.echr.coe.int/eng-press?i=003-6675775-8879937>.

² As was recognized in the report by the Parliamentary Assembly Council of Europe (PACE – see Doc. 14572 of June 8, 2018) on *Persecution of LGBTI people in the Chechen Republic (Russian Federation)*, “This campaign unfolded against the backdrop of serious, systematic and widespread discrimination and harassment of LGBTI people. The very existence of LGBTI people in the Chechen Republic has been denied by Chechen and Russian public officials.”

³ EHRAC, *Human rights violations by the Russian security forces in the North Caucasus*, July 12, 2017 available at <https://ehrac.org.uk/resources/european-court-judgments-north-caucasus/>.

fact that hundreds of those cases remain under the supervision of the Committee of Minister as a result of Russia's failure to implement the judgments.

5. The serious violations and impunity that occurred at the height of the conflict in Chechnya did not end when the Kremlin appointed Ramzan Kadyrov as head of the Chechen Republic in 2007. Rather under his leadership Chechen authorities have continued to commit widespread and systematic violations of fundamental rights without recourse for victims. Indeed, Kadyrov's administration has conducted a violent and comprehensive crackdown on critics who complain about human rights violations, creating hostile conditions that has made carrying out human rights work in Chechnya virtually impossible.⁴ In Chechnya victims fear to complain about human rights violations and those who are brave enough to do so, struggle to find local representation or assistance as human rights lawyers, defenders and journalists are prevented from doing their work there. There are no witness protection measures available to protect those in fear of the consequences of filing complaints against state agents. If complaints are lodged, they are not effectively investigated by Chechen authorities, and the federal Russian government also fails to step up to fulfil their obligations to end, investigate and remedy the violations.⁵
6. The Intervenors contend that the inquiry in this case, into the nature and scope of the state's obligations under the Convention to take necessary measures to effectively prevent, investigate, prosecute, punish and remedy inhuman or degrading treatment and torture (Article 3) and arbitrary detention (Article 5), as well as which issues under Article 46 the Court may feel compelled to address in this case, necessitate examining this persistent and systematic failure to conduct effective investigations and hold perpetrators to account in Chechnya.

The climate of impunity created by the practice of ineffective investigations into serious violations of Articles 2, 3, and 5 that enables the perpetuation of such serious violations

7. Failure to investigate violations of Articles 2, 3 and 5 and fostering impunity has been a hallmark of Chechnya throughout this century. In hundreds of rulings to date this Court has held Russia responsible for serious human rights violations in Chechnya, including torture, enforced disappearances, and extrajudicial executions, in violation of the Convention including Articles 2, 3 and 5.⁶ In nearly every ruling, the Court called the Russian government to account for failing to properly investigate these crimes. In numerous cases, it also faulted Russia for failing to provide requested case files, which amounts to serious non-cooperation with the court.
8. This Court affirmed this situation of impunity in December 2012, in the case of *Aslakhanova and Others v. Russia*, which concerned the enforced disappearances of eight men in Chechnya between March 2002 and July 2004. This Court noted that by the end of 2012, in more than 120

⁴ Human Rights Watch, *'Lasting Impunity for Violations in Russia's North Caucasus and Human Rights Crisis in Chechnya,'* January 24, 2017 available at <https://www.hrw.org/news/2017/01/24/lasting-impunity-violations-russias-north-caucasus-and-human-rights-crisis-chechnya>. See also the December 2018 report by the OSCE Rapporteur on alleged Human Rights Violations and Impunity in the Chechen Republic of the Russian Federation, Professor Dr. Wolfgang Benedek, who concluded that in addition to a climate of impunity "those from civil society or the media who investigate human rights violations become targets of repression". Report available at https://www.osce.org/files/Moscow%20Mechanism%20Document_ENG.pdf.

⁵ See Human Rights Watch, *'Lasting Impunity for Violations in Russia's North Caucasus and Human Rights Crisis in Chechnya,'* op. cit..

⁶ See EHRAC Database European Court of Human Rights Judgments: North Caucasus Security Cases available at: <http://ehrac.org.uk/wp-content/uploads/2019/07/Judgments-from-the-North-Caucasus-11.07.2019.pdf>

judgments, it had found violations of the same rights in similar cases resulting from enforced disappearances in the Northern Caucasus since 1999 and concluded that the accumulation of these breaches constituted a practice that was “incompatible with the Convention”.⁷ It concluded that the situation in *Aslakhanova* had resulted from a systemic problem of non-investigation of enforced disappearances, in violation of Articles 2, 3, and 5 for which there had been no effective remedy at national level in violation of Article 13.⁸ At the time of its judgment the Court noted that there were more than 100 similar cases communicated to the Russian government and others pending before the Court. Although this Court in *Aslakhanova* gave clear guidance as to measures that “must be taken as a matter of urgency” by the Russian authorities,⁹ twelve years later, those same measures remain outstanding.¹⁰

9. The result of this inaction can be clearly seen. In an action plan submitted by the Russian Government for consideration by the Committee of Ministers of the Council of Europe (‘CM’) in September 2018, data provided as to “the status of investigations” reveals that of the 212 criminal investigations cases included within the submission, 202 cases were described by the Russian authorities as either suspended or discontinued. Of the remaining 10 cases, only 1 was described as “in progress”.¹¹ That this remains the state of affairs after more than a decade of ‘enhanced supervision’ by the CM undermines the integrity of the Convention system as a whole.
10. Furthermore, there is no indication in any action plans submitted by the Russian authorities since 2018 that this situation has been ameliorated. On the contrary, the position taken by the Russian authorities in successive action plans has consistently been that, for a variety of “objective” reasons, it is not possible in these cases to “ensure the observance of all the Convention requirements” by conducting an effective investigation, in spite of its obligation to do so.¹² However, a detailed rebuttal of the Russian government arguments put forward in this regard (as established by the evidence of two specialist forensic scientists) remains without any response from the Russian government or consideration by the CM, eight months after its submission.¹³
11. Earlier this year, in January 2020, this Court again found - in a case involving 11 enforced disappearances that took place between 2005 and 2014 – a pattern of ineffective investigation.¹⁴ In *Saidova and Others v Russia*, this Court reiterated that it had reached the same conclusion in many cases in which it was faced with investigations that were pending for many years without

⁷ Case of *Aslakhanova and Others v Russia*, Application Nos. 2944/06, 8300/07, 50184/07, 332/08 and 42509/10, Judgment of December 18, 2012 paras. 212 and 217.

⁸ *Ibid.* para. 217.

⁹ *Ibid.* para. 221.

¹⁰ For an analysis of the Russian Government response to *Aslakhanova* produced in 2015, see <http://ehrac.org.uk/wp-content/uploads/2015/03/Rule-9-submission-COM-19-Feb-2015-FINAL.pdf>.

¹¹ Communication from the Russian Federation concerning the case of *Khashiyev and Akayeva v. Russian Federation* (Application No. 57942/00), August 28, 2018, DH-DD(2018)798, available at [http://hudoc.exec.coe.int/eng?i=DH-DD\(2018\)798E](http://hudoc.exec.coe.int/eng?i=DH-DD(2018)798E).

¹² *Ibid.*

¹³ Communication from an NGO (EHRAC) (25/102019) in the case of *Khashiyev and Akayeva group of cases v. Russian Federation* (Application No. 57942/00), November 26, 2019, DH-DD(2019)1406, available at [http://hudoc.exec.coe.int/eng?i=DH-DD\(2019\)1406E](http://hudoc.exec.coe.int/eng?i=DH-DD(2019)1406E).

¹⁴ *Saidova and Others v. Russia*, Application Nos. 36963/09, 8417/10, 9862/12, 13793/13 and 11499/14, Judgment of January 21, 2020.

bringing about any significant developments as to the identities of the perpetrators.¹⁵ It noted the pattern of ineffective investigation was not limited to enforced disappearances and other serious violations happening during the wars but persisted in the decade after.¹⁶

12. Beyond this Court, other organs of the Council of Europe have also long recognised the persistent failure to conduct effective investigations in the Chechen Republic. For example, successive Council of Europe Commissioners for Human Rights have recognized the endemic problem of ineffective investigations.¹⁷ Likewise the Parliamentary Assembly of the Council of Europe (PACE) has identified the non-investigation of violations committed by the security forces in the Chechen Republic as a major systemic deficiency.¹⁸
13. The inadequacy of official investigations has also been a longstanding matter of record for multiple United Nations organs, including the High Commissioner for Human Rights¹⁹, the Human Rights Committee,²⁰ the Committee Against Torture²¹ and the Working Group on Enforced or Involuntary Disappearances.²² These bodies have also underscored that this situation has persisted for many years. For example in 2009 the Human Rights Committee expressed its concern that the perpetrators of human rights violations in the North Caucasus appeared to enjoy “widespread impunity” due to a “systematic lack of effective investigation and prosecution”.²³ But again in 2018, the Committee Against Torture, condemned “the lack of effective investigations undertaken into past and ongoing human rights violations, including torture, abductions, enforced disappearances and extrajudicial killings, perpetrated by public officials in the northern Caucasus”. The Committee was concerned “that in Chechnya, only two cases of enforced disappearance were investigated between 2012 and 2015, whereas the European Court of Human Rights issued more than 100 judgments on such cases during the same period. The Committee is also concerned about reports of targeted attacks and reprisals against human rights defenders, journalists and lawyers who work on cases of human rights violations and the authorities’ unwillingness to hold perpetrators accountable.”²⁴
14. In 2018, EHRAC, Memorial Human Rights Centre (‘MHRC’) and Stitching Justice Initiative (‘SJI’) submitted a General Allegation to the UN Working Group on Enforced and Involuntary

¹⁵ *Ibid.* para. 268.

¹⁶ *Ibid.* para. 250.

¹⁷ See for example, Council of Europe: Commissioner for Human Rights, *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on His Visit to the Chechen Republic of the Russian Federation, 25-26 February 2006*, 15 March 2006, CommDH(2006)4, available at: <https://www.refworld.org/docid/4421527f4.html>; *Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to the Russian Federation (Chechen Republic and the Republic of Ingushetia), on 2 -11 September 2009*, CommDH (2009)36, 24 November 2009, available <https://www.refworld.org/pdfid/4b0c03fb2.pdf>.

¹⁸ See PACE Resolution 1787 (2011) Implementation of judgments of the ECHR available at <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17953&lang=en>.

¹⁹ During her mission to Russia in February 2011, the UN High Commissioner for Human Rights stated that a lack of accountability and respect for the rule of law had been particularly acute in relation to the North Caucasus. *Human rights chief calls for accountability on her mission to Russia*, 23 February 2011, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/HCMissionToRussia.aspx>.

²⁰ See for example UN Docs. CCPR/C/RUS/CO/6 and CCPR/CO/79/RUS paras. 14 and 13 respectively.

²¹ See for example UN Doc. CAT/C/RUS/CO/4, and UN Docs. CAT/C/RUS/CO/5, CAT/C/RUS/CO/6 paras. 13 and 46 respectively.

²² See for example UN Docs. A/HRC/4/41, and A/HRC/7/2, paras. 354 and 317 respectively.

²³ See CCPR/C/RUS/CO/6, para.14.

²⁴ See CAT/C/RUS/CO/6 para. 46.

Disappearances (WGEID) regarding Russia's persistent failure to investigate hundreds of enforced disappearances from the North Caucasus, which was transmitted to the Government of the Russian Federation on 28 February 2018.²⁵

15. This situation has regrettably seen little improvement and in *"Like Walking a Minefield"*, HRW documented the absence of investigations into unlawful, arbitrary detentions and other attacks against critics, including abductions and enforced disappearances, cruel and degrading treatment, death threats, and threats against and physical abuse of their family members in 2015-2016.²⁶ In some of these cases the investigations never took place because authorities further threatened victims with abuses if they dared to complain. Cases documented include unlawful detention, forcibly disappearances, and torture.
16. From 2017-2019, HRW again documented numerous cases of individuals, including critics of the government, suspected Islamic radicals, and suspected gay men, who were detained by Chechen law enforcement officials, held in unofficial detention facilities, and tortured. Before releasing them, their captors told them to keep silent, threatening retaliation against them and their family members. When Chechen residents have complained even informally on social media, Chechen authorities have subjected critics to public humiliations, in which they forced the complainants to publicly apologize to the Chechen leadership for their supposedly false claims and renounce their actions.²⁷
17. As another means of closing down access to a remedy for victims of human rights violations, Chechen authorities have targeted human rights lawyers and other defenders and have succeeded in pushing out of Chechnya all independent human rights organizations. One of the most high profile and brutal examples of targeting of human rights defenders was the killing of Natalia Estemirova, a leading human rights defender with human rights NGO Memorial in Chechnya. Among other things, Estemirova had supported many applicants before this Court. She was found shot dead in Ingushetia on July 15, 2009, and to date there has been no accountability for her killing. Her relatives have an application pending before this Court.²⁸
18. In early 2016 the Joint Mobile Group of Human Rights Defenders (JMG), which provided legal aid to Chechen residents who dared seek justice for torture and enforced disappearances, had to withdraw its team from Chechnya for security reasons after their office was ransacked and burned on two occasions, and JMG's activists were physically attacked numerous times.²⁹ There have been no effective investigations into the numerous complaints filed with the authorities regarding these attacks. In 2019, Memorial had to shut down its office in Chechnya and evacuate

²⁵ General Allegation to the United Nations Working Group on Enforced or Involuntary Disappearances January 2019, available at: <https://ehrac.org.uk/wp-content/uploads/2018/01/GA-WGEID-FINAL-no-annexes-9-Jan-2018-FILED-1.pdf> and WGEID post-session report for the 114th session 5-9 February 2018, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/124/64/PDF/G1812464.pdf?OpenElement>.

²⁶ HRW, *"Like Walking a Minefield": Vicious Crackdown on Critics in Russia's Chechen Republic*, August 31, 2016 available at <https://www.hrw.org/report/2016/08/31/walking-minefield/vicious-crackdown-critics-russias-chechen-republic>.

²⁷ Tanya Lokshina for HRW, *Public humiliation: Chechen leader's simple strategy to control social media* Ramzan Kadyrov is punishing ordinary people who criticise his rule with televised shamings, as well as detentions and abuse, available at <https://www.theguardian.com/world/2016/oct/10/public-humiliation-chechen-leader-ramzan-kadyrov-strategy-control-social-media>.

²⁸ *Svetlana Khusainovna ESTEMIROVA v Russia*, Application No. 42705/11, Communicated on 16 November 16, 2015.

²⁹ See *Like Walking a Minefield*, section on *Chronicle of the Crackdown against the JMG and its Leadership*.

staff following on the arrest of their Chechnya director, Oyub Titiev, who was subsequently unjustly prosecuted and convicted.³⁰ In the months before his arrest, Titiev was gathering information about enforced disappearances, extrajudicial executions and secret detention by security forces in Chechnya.

19. Kadyrov stated shortly after Titiev's arrest that "they [human rights defenders] must know: they will not work in our region". Kadyrov has also repeatedly smeared human rights defenders, both in television broadcasts and on social media, calling them "enemies" and "traitors" and pledging to ban them from Chechnya's territory, in an apparent effort to discourage human rights defenders from working in Chechnya and warning local residents against any contacts with human rights defenders.³¹
20. In February 2019, another human rights lawyer Marina Dubrovina who travelled to Chechnya to represent her client at a court hearing, was violently attacked together with journalist Elena Milashina who works for *Novaya Gazeta* and is the journalist who together with the Russian LGBT Network, exposed the 2017 anti-gay purge.³² The two filed a complaint with law-enforcement authorities about the assault, but there has been no effective investigation.³³ PACE has also unsuccessfully called for an effective investigation into this attack.³⁴

How the climate of impunity enabled the anti-LGBT purges in 2017 and 2019

Anti-Gay Purge of February/March 2017

21. In 2017, the Russian LGBT Network reported that it started to receive requests for assistance from LGBT people living in the Chechen Republic. In its report published at the time, the Network stated it had received requests for help from more than 130 people, most of whom they helped evacuate from Chechnya, including in some cases finding sanctuary outside of Russia.³⁵ Based on conversations with the Network, HRW can confirm that this number has increased over time.
22. LGBT victims' testimonies identified a pattern of persecution; namely: arbitrary arrests, forcing victims into vehicles, threatening and beating them and then holding them in facilities that served as secret prisons. Victims described officials physically and verbally abusing them, in ways that rose to the level of torture including use of electric shock. The authorities deprived victims of

³⁰ See HRW, Russia: Rights Defender Sentenced to Four-Year Prison Term, March 18, 2019 available at <https://www.hrw.org/news/2019/03/18/russia-rights-defender-sentenced-four-year-prison-term>. The Council of Europe Commissioner for Human Rights has condemned Titiev's prosecution, conviction and prison sentence, see <https://www.coe.int/en/web/commissioner/-/commissioner-mijatovic-dismayed-at-verdict-sentencing-oyub-titiev-to-4-years-of-imprisonment>.

³¹ Open Letter by Human Rights Watch, Amnesty International and Front Line Defenders to the President of the Russian Federation, Vladimir Putin, August 28, 2018, available at <https://www.hrw.org/news/2018/08/28/open-letter-human-rights-watch-amnesty-international-and-front-line-defenders>.

³² See Russian LGBT Network in cooperation with Elena Milashina, *They said that I'm not a human, that I am nothing, that I should rather be a terrorist, then a fagot: LGBT Persecution in the North Caucasus: a Report*, 2017, available at http://www.washingtonblade.com/content/files/2017/08/final_chechnya_publish_1.pdf.

³³ See <https://www.hrw.org/news/2020/02/07/thugs-attack-lawyer-journalist-chechnya>.

³⁴ See <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=7794&lang=2>.

³⁵ See <https://ehrac.org.uk/news/lgbt-persecution-north-caucasus/>.

food and water and the Network's evidence is that at least three people died while being tortured in detention, and 15 people were executed by their relatives having been exposed as gay.³⁶

23. Chechen authorities consistently denied any wrongdoing in 2017 and the Russian authorities remained inactive. Neither the Investigative Committee of the Russian Federation, nor the Prosecutor General's Office initiated an official investigation into these events.
24. In April 2017, five of the special mechanisms of the UN Human Rights Council, sent a letter to Russia raising their concerns about the allegations of unlawful detention, torture and extrajudicial killing of men perceived to be gay or bisexual in Chechnya.³⁷ In 2019 those human rights mandate holders issued a statement regretting that there had been a "... lack of a substantive response to our letter" and noting "with concern that during the last Universal Periodic Review the Russian authorities went as far as saying that 'it was not possible to find representatives of the LGBT community in Chechnya'."³⁸ In August 2018 the UN Committee Against Torture expressed concern that the Russian delegation stated with respect to the 2017 anti-gay purge, "no facts were established and no criminal proceeding was opened".³⁹
25. In November 2018, 16 participating states of the Organization for Security and Co-Operation in Europe (OSCE) invoked the organization's "Moscow Mechanism" and appointed a rapporteur to look into allegations of abuses in Chechnya, including the 2017 anti-gay purge. In his December 2018 report, the rapporteur concluded that Chechen authorities were responsible for very serious human rights violations including harassment and persecution, arbitrary or unlawful arrests or detentions, torture, enforced disappearances and extrajudicial executions, and found "several waves of violations of human rights and abuses of persons based on their sexual orientation and gender identity in 2017 ...". However, "no evidence could be found about cases where law enforcement officers were brought to justice because of the human rights violations or violations of the law committed by them. Accordingly, *there is a climate of impunity which is detrimental to any accountability for human rights violations*. On the contrary, those from civil society or the media who investigate human rights violations become targets of repression," (emphasis added).⁴⁰
26. Against the lengthy backdrop of persistent impunity for serious violations stretching back to the late 1990s, including this impunity for the 2017 anti-gay purge, police in Chechnya carried out a

³⁶ See *They said that I'm not a human, that I am nothing, that I should rather be a terrorist, then a fagot: LGBT Persecution in the North Caucasus: a Report*, 2017, op.cit.. Also see HRW, "They Have Long Arms and They Can Find Me", *Anti-Gay Purge by Local Authorities in Russia's Chechen Republic*, May 26, 2017.

³⁷ See Letter of April 13, 2017 from the Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23080>.

³⁸ See *Chechnya: UN experts urge action after reports of renewed persecution of lesbian, gay and bisexual people*, February 13, 2019, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24162&LangID=E>. See also the Russian delegation before the UN Human Rights Council during the Universal Periodic Review, at <http://webtv.un.org/watch/russian-federation-review-30th-session-of-universal-periodic-review/5784600846001/?term=#player>.

³⁹ See CAT/C/RUS/CO/6 para. 32.

⁴⁰ OSCE Rapporteur's Report under the Moscow Mechanism on alleged Human Rights Violations and Impunity in the Chechen Republic of the Russian Federation by Professor Dr. Wolfgang Benedek, December 21, 2018, available at https://www.osce.org/files/Moscow%20Mechanism%20Document_ENG.pdf.

new round of unlawful detentions, beatings, and humiliation of men they presumed to be gay or bisexual in the winter of 2018-2019. According to Russian LGBT Network at least 20 men suffered in that new wave of persecutions, most of them on the premises of the Grozny Internal Affairs Department compound.

27. HRW interviewed four men who were detained for between 3 and 20 days, between December 2018 and February 2019, at the Grozny Internal Affairs Department compound. Police officials there kicked them, beat them with sticks and polypropylene pipes, and tortured three of the four with electric shocks. One was raped with a stick. The men told HRW that under torture police demanded that they identify other gay men in their social circles. All four said they were denied food and had only limited access to water. Three said the police shaved off their beards and hair or forced inmates to shave each other's heads. The same happened to other detainees that police presumed to be gay. One man said the police handed him over to his family, exposing his sexual orientation and indirectly encouraged his family members to kill him. The men told HRW they filed no official complaints because they feared retaliation against them and their family members.⁴¹
28. Chechen authorities again publicly denied reports of the new wave of persecution.⁴² Russian federal authorities have not carried out an effective investigation into the crime report filed 17 months ago on January 29, 2019 with Russia's chief investigative agency by the Russian LGBT Network. Nor did they provide any substantive response to inquiries about the new violations from the OSCE or UN human rights mechanisms.
29. In September 2019, at the OSCE Human Dimension and Implementation Meeting, 16 delegations made a joint Statement "Regarding reports of ongoing serious human rights violations and in the Chechen Republic of the Russian Federation" noting they had received information about "a new wave of violations and abuses, including allegations of unlawful detentions and torture, against persons based on their actual or perceived sexual orientation or gender identity," that took place earlier that year. They noted the information that "Chechen authorities also tried to prevent victims from fleeing the region or filing complaints, using methods such as destroying or confiscating their identification documents or threatening them or their relatives with criminal proceedings" and that "to date, no official investigation – local or federal – has been opened." They concluded that "Despite the strong calls from international human rights mechanisms, local human rights defenders and the international community as a whole, the climate of impunity described in the Moscow Mechanism Report clearly continues to prevail. The Russian authorities appear to be doing nothing to alter the Report's conclusion that the government "appears to support the perpetrators rather than the victims."⁴³

Failure to implement ECHR decisions

30. As has been noted above, this Court has issued hundreds of judgments to date on cases concerning serious human rights violations in Chechnya. In nearly all cases, the court has held

⁴¹ HRW, *Russia: New Anti-Gay Crackdown in Chechnya, Police Detain, Torture Men in Grozny*, May 8, 2019.

⁴² See <https://www.interfax.ru/russia/652698>

⁴³ See HDIM 2019 Joint Statement Regarding reports of ongoing serious human rights violations and abuses in the Chechen Republic of the Russian Federation, September 27, 2019, available at <https://osce.usmission.gov/moscowmechanismhdim2019/>.

Russia responsible for enforced disappearances, extrajudicial executions, torture, and for failing to properly investigate these crimes. Although monetary compensation has been paid to the victims, Russia has repeatedly failed to meaningfully implement the core of the judgments or taken other essential measures that follow from the rulings: it has failed to ensure effective investigations, hold perpetrators accountable, or prevent similar violations from recurring.

31. The consequence of this persistent failure to implement judgments is a culture of impunity for the most serious human rights violations and a weakening of the Convention system. The CM “Guidelines on Eradicating Impunity For Serious Human Rights Violations” emphasize that “the full and speedy execution of the judgments of the Court is a key factor in combating impunity” and also explicitly state that “[c]ombating impunity requires that there be an effective investigation in cases of serious human rights violations. This duty has an absolute character.”⁴⁴
32. In 2009, HRW undertook research to examine Russia’s implementation of European Court judgments on Chechnya through interviews with applicants and examination of relevant legal documents.⁴⁵ First, and most significantly, no perpetrator in any of the cases researched had been brought to justice, even in cases in which the Court has found that the perpetrators are known, and in some instances even named in its judgments. This has not changed. Other problems include: the state’s failure to inform the aggrieved parties about the investigation; failure to provide access to criminal case files; inexplicable delays in investigation; and legal obstacles preventing investigators from accessing key evidence held by Russian military or security services. These same failures had plagued earlier investigations into abuses in Chechnya and had led the court to find violations related to the investigations.
33. In the large body of judgments, known as the *Khashiyev and Akayeva* group, implementation is still under enhanced supervision for close to 300 cases, and Russian authorities have failed to take adequate steps to provide redress to victims and their relatives beyond the payment of compensation. ⁴⁶ In addition, the investigative authorities have contested several of the European Court’s judgments apparently in order to justify closing investigations and refusing to bring charges against perpetrators. This has occurred even in cases in which those responsible or their superiors are known and named in European Court judgments or could readily be known.⁴⁷
34. Russia has shown resistance to cooperating with the court in other ways. In dozens of judgments on cases from Chechnya, this Court found that Russia’s refusal to share with the court documents from the criminal case files had violated its obligation to “furnish all necessary facilities” to support the court’s examination of a case.

⁴⁴ Eradicating impunity for serious human rights violations: Guidelines adopted by the Committee of Ministers on 30 March 2011 at the 1110th meeting of the Ministers’ Deputies, available at <https://rm.coe.int/1680695d6e>.

⁴⁵ HRW, *Who will tell me what has happened to my son: Russia’s Implementation of European Court of Human Rights Judgments on Chechnya*, September 27, 2009 available at <https://www.hrw.org/report/2009/09/27/who-will-tell-me-what-happened-my-son/russias-implementation-european-court-human>.

⁴⁶ *Khashiyev and Akayeva v Russia*, 57942/00 and 57945/00, February 24, 2005 and <https://rm.coe.int/russian-factsheet/1680764748>.

⁴⁷ See HRW *Update on European Court of Human Rights Judgments against Russia regarding Cases from Chechnya* March 20, 2009 available at <https://www.hrw.org/news/2009/03/20/update-european-court-human-rights-judgments-against-russia-regarding-cases-chechnya#>.

35. Implementation of judgments from this Court is crucial to prevent violations from recurring in Chechnya and in other parts of Russia. It carries perhaps the single most significant potential to produce lasting improvements in the human rights situation in this region. In 2012, EHRAC and Memorial requested the Committee of Ministers to initiate infringement proceedings against Russia in accordance with Article 46(4) of the Convention for failure to implement judgments of the European Court of Human Rights in relation to Chechnya.⁴⁸

Conclusion

36. For the reasons set out above, the Intervenors submit that to meaningfully address what may need to be done for Russia to remedy any failure to meet procedural obligations under Articles 3 and 5 in this case, this Court needs to address the fact that there has been decades of systemic impunity, extending to failure to implement judgments of this Court. If such impunity had been addressed, it is possible the large-scale purge of the kind that took place in 2017 and the follow-up wave of persecutions in 2019 could have been prevented. It is still to be hoped that in addressing this persistent systemic impunity it is not too late to prevent further atrocities in the region at this stage.

⁴⁸ See Communication from an NGO (EHRAC - European Human Rights Advocacy Centre) (30/07/12) in the case of Zara Isayeva against Russian Federation (Application No. 57950/00) - 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 settlement, available at [http://hudoc.exec.coe.int/eng?i=DH-DD\(2012\)730E](http://hudoc.exec.coe.int/eng?i=DH-DD(2012)730E)