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NOTE VERBALE

The OSCE Office for Democratic Institutions and Human Rights presents its compliments to the Delegations of the OSCE participating States and, in accordance with the second part of paragraph 11 of the Moscow Document of 1991, has the honour to transmit the report of the OSCE Rapporteur appointed by 16 OSCE participating States under the Moscow Mechanism invoked in respect of the Russian Federation.

The OSCE Office for Democratic Institutions and Human Rights avails itself of this opportunity to renew to the Delegations of the OSCE participating States the assurances of its highest consideration.



Warsaw, 13 December 2018

To the Delegations of the
OSCE participating States

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

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Summary

On 1 November 2018 the Moscow Mechanism of the human dimension of OSCE has been invoked by 16 participating States with regard to the Russian Federation. The author of this report has been appointed as a single rapporteur due to the decision of the Russian Federation not to appoint a second expert. The OSCE Office for Democratic Institutions and Human Rights (ODIHR), facilitated the mission in a technical role of serving as a coordinating point between participating States and providing administrative and logistical assistance to the rapporteur.

The mandate of the rapporteur was to report on the facts established by his mission and to give advice on possible solutions to the questions raised by the participating States, which have been identified as “allegations of impunity for reported human rights violations and abuses in Chechnya from January 2017 to the present, including but not limited to, violations and abuses against persons based on their perceived or actual sexual orientation or gender identity, as well as against human rights defenders, lawyers, independent media, civil society organizations and others. Among the reported human rights violations and abuses were: allegations of harassment and persecution; arbitrary or unlawful arrests or detentions; torture; enforced disappearances; and extrajudicial executions”. The relevant period to report on was defined as from January 2017 to the present. According to the rules of the Moscow Mechanism the time for delivering the report was 14 days.

Regarding his methodology the rapporteur had to focus on all sources available outside the Russian Federation after his request to the Mission of the Russian Federation for assistance in his fact-finding in Russia was declined. The rapporteur received a large amount of information through the mailbox opened by ODIHR for his mission. He could also rely on numerous contacts and reports received from all major organizations working on the questions identified, both in the Russian Federation and internationally. He also got hold of the relevant work that had been done in the framework of the United Nations and visited the Council of Europe. He had the opportunity to meet with representatives of the civil society from the Russian Federation and in particular from the Russian LGBT Network, to receive materials from competent human rights organizations from the Russian Federation and to interview a number of victims and witnesses.

As foreseen by the mandate the focus of the report is on “allegations of impunity for reported human rights violations and abuses in Chechnya”. As there is a large number of reports and testimonies available, the main concern had to be not to duplicate that work but to review these allegations for their credibility and to corroborate the evidence provided with own research and to conduct an in-depth analysis and comparison of the material available. The findings indeed do confirm the major allegations and show that there is a problem of total impunity of the security forces. Particular attention is given to the cases of Titiev, who is presently on trial on obviously fabricated evidence and Lapunov, who is the only victim of the purges of LGBTI people who made a formal complaint which, however, was turned down. Also recent raids on alleged drug addicts and teenagers are covered as is the shrinking space for human rights defenders and the media.

Recommendations to the Russian Federation, the Chechen Republic and participating States were formulated, which could lead to improvements of the grave situation with regard to human rights. This was done in a constructive spirit with the aim to support the Russian Federation in better addressing the human rights problems at stake.

Recommendations

A. Recommendations to the Russian Federation

1. In view of the clear evidence of the successive purges against LGBTI persons, open an inquiry into the actions of the government of the Chechen Republic towards LGBTI people in general, as well as a criminal case on the alleged violations of the human rights of Maxim Lapunov in particular;
2. Express a commitment on the highest levels of the executive branch of the Russian Federation to fully investigate the allegations and to bring to justice the alleged perpetrators, including those belonging to the local security forces;
3. Make sure that all Chechen authorities, including law enforcement and security agencies, fully comply with Russia's domestic legislation and international human rights obligations;
4. In view of the shortcomings of the pre-investigation procedure led by the regional Committee on Investigation, assure that the pre-investigation in politically sensitive cases in the Chechen Republic is led by investigators from the federal and not the regional level;
5. Given the overwhelming evidence that there have been grave violations of the rights of LGBTI persons in the Chechen Republic and given the fact that the pre-investigations that have been undertaken so far have not been able to reach convincing results, the Russian Federation should establish a special investigative committee, comprised of experienced federal prosecutors and police investigators in order to undertake an effective, impartial and transparent investigation of the allegations;
6. In the absence of such an effective investigation by the Russian Federation, an independent investigation should take place with international experts having access to all relevant places and the full protection of the authorities;
7. The pre-investigation (pre-check) mechanism needs to be reformed in a way that fully ensures its independence and effectiveness; in the case of investigating alleged human rights violations in Chechnya the Federal Investigative Commission and its investigators should be used;
8. All reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) should be published on a regular basis;
8. Strengthen the institution of the Ombudsman by providing it with the powers to request a pre-check/pre-investigation and its repetition if s/he has reasons to doubt the result in human rights-related cases; the Ombudsman to prepare a special (thematic) report on gross human rights violations in Chechnya to assure accountability and transparency;
9. In the case of alleged human rights violations in Chechnya, trials should be held outside the Chechen Republic in order to ensure the independence of the judiciary; this recommendation should be immediately applied in the case of the trial of Oyub Titiev who also should be released;
10. Decisions of the European Court of Human Rights need to be effectively implemented in due time;
11. In particular, the judgment in the case of *Bayev and Others v. Russia* should be speedily implemented including the repeal of the law prohibiting the promotion of non-traditional sexual relationships among minors because it has contributed to a climate of discrimination and prejudice against LGBTI persons;
12. Open a new pre-investigation/pre-check on the federal level into the case of the 27 persons allegedly killed by Chechen security forces or undertake a special investigation with the inclusion of international experts.

B. Recommendations to the Chechen Republic

1. If combatting terrorism and crime, stay within the rule of law and respect human rights obligations;
2. Rigorously end the climate of impunity by holding to account all perpetrators of human rights violations, including members of the police and other security forces;
3. Ensure independence of the judiciary in Chechnya and provide adequate protection to judges, prosecutors and investigators when under threat;
4. Make sure there is an immediate shut-down of all unofficial detention facilities in Chechnya;
5. Ensure that perpetrators of abuses and human rights violations are brought to justice and provide transparency regarding investigations and/or prosecutions undertaken, including their outcomes;
6. Make sure that victims have effective access to meaningful remedies and accountability mechanisms for violations of human rights;
7. Ensure accessible and effective legal and physical state protection of victims, witnesses and their family members;
8. State protection should be granted in all cases against governmental officials, like the police and other security forces;
9. Terminate the practice of payments of ransoms or bribes by means of an anti-corruption campaign for the security forces;
10. Recognize the existence of people with non-heterosexual orientation in the Chechen Republic, stop any form of harassment and persecution and provide them with adequate protection;
11. Prohibit any form of punitive reprisals against family members of alleged or convicted law offenders;
12. Refrain from randomly detaining teenagers and young people;
13. Provide appropriate training to law enforcement and police officers, which should be organized with the assistance of ODIHR and the Council of Europe on the rule of law and human rights, in particular the right to non-discrimination;
14. Make sure that human rights defenders and their organizations and the media can work without harassment and bring those to justice which are responsible for the attacks on human rights defenders, human rights organizations and the media;
15. Ensure that lawyers can carry out their work freely, without fear of reprisals;
16. Seek close cooperation with civil society, in particular human rights defenders and human rights organizations and protect them against reprisals.

C. Recommendations to OSCE participating States

1. Offer cooperation to the Russian Federation in addressing problems of enforcing the rule of law and the protection of human rights in the Chechen Republic;
2. Grant protection under the Geneva Refugee Convention to refugees from the Chechen Republic, in particular persons with a non-heterosexual orientation (LGBTI) fleeing on grounds of their sexual orientation and gender identity and take special care with regard to the fact that they might be threatened also in their host countries;
3. Take the special security needs of refugees from the Chechen Republic, in particular LGBTI persons, into account by providing them with safe housing, medical and psychological support and new identities where appropriate;

4. Use special caution in cases of extradition of persons from the Chechen Republic, in particular LGBTI persons, taking into account that they are usually not safe in other parts of the Russian Federation;
5. Support the civil society, NGOs and Human Rights Defenders and journalists, who work towards the full implementation of the OSCE human dimension commitments in the Chechen Republic.

I. Introduction

A. Invocation of the Moscow Mechanism

The Moscow Mechanism has been invoked by 16 participating States in respect of the Russian Federation on 1 November 2018 after first using the Vienna Mechanism in August of the same year, but remaining not satisfied with the explanations from the side of the Russian Federation.

According to paragraph 10 the author of this report has been appointed on 5 November 2018 from the resource list by the 16 participating States to serve as OSCE rapporteur. The requested state, i.e. the Russian Federation was informed on 6 November 2018 and given the opportunity to choose an additional rapporteur from the resource list within 6 days. If a second rapporteur is chosen, the Moscow Mechanism foresees that they have to agree on a third person from the resource list, thus establishing the fact-finding group. However, the Russian Federation did not appoint a second rapporteur within the deadline with the result that the first rapporteur was given the task to undertake the mission as a single expert.

The process and mission was facilitated by the OSCE Office for Democratic Institutions and Human Rights (ODIHR), which in accordance with the Moscow Document limited itself to a merely technical role of serving as a coordinating point between participating States and providing administrative and logistical assistance to the rapporteur, sharing civil society contacts of relevance, transmitting information gathered through a mailbox specifically devoted to the mission and receiving the report by the rapporteur, who was solely responsible for its elaboration and contents.

According to the Moscow Document of 1991 “the inviting state will co-operate fully with the mission of experts and facilitate its work. It will grant the mission all the facilities necessary for the independent exercise of its functions. It will, inter alia, allow the mission, for the purpose of carrying out its task, to enter into the territory without delay, to hold discussions and travel freely therein, meet with officials, non-governmental organizations and any group or person from whom it wishes to receive information” [...] The inviting State will comply with any request from a mission of experts to be accompanied by officials of that State if the mission considers this to be necessary to facilitate its work or guarantee its safety.¹

¹ Document of the Moscow Meeting of the Conference on Human Dimension of the CSCE, Moscow, 3 October 1991 (“Moscow 1991”), para. 6.

B. Mandate of the Rapporteur

According to the terms of reference provided by ODIHR the mandate of the rapporteur is to report on the facts established by his mission and to give advice on possible solutions to the questions raised.

The questions raised by the participating States have been identified as “allegations of impunity for reported human rights violations and abuses in Chechnya from January 2017 to the present, including but not limited to, violations and abuses against persons based on their perceived or actual sexual orientation or gender identity, as well as against human rights defenders, lawyers, independent media, civil society organizations and others. Among the reported human rights violations and abuses were: allegations of harassment and persecution; arbitrary or unlawful arrests or detentions; torture; enforced disappearances; and extrajudicial executions” (joint letter by the 16 invoking participating States of 1 November 2018 invoking para. 12 of the Moscow Document and joint letter by the 16 invoking participating States of 5 November 2018 announcing the appointment of a rapporteur). The relevant period to focus on was defined as from January 2017 to the present.

According to paragraph 11 of the Moscow Document the report had to be delivered not later than two weeks after the appointment unless participating States concerned agree otherwise. The date of commencement of the mission was identified by ODIHR as the 13th of November 2018. The report was delivered on 27 November 2018 within the 14 days foreseen, which is an extremely short time for the task.

In order to make best use of the limited time available the rapporteur chose the following methodology.

C. Methodology used by the Rapporteur

The rapporteur received a large amount of information through the mailbox opened by ODIHR for his mission. In addition, he also conducted his own research to identify all sources available. One of his first steps was to write to the Mission of the Russian Federation to the OSCE in Vienna, asking for assistance in order to go to Russia to have meetings with governmental authorities including the Ombudsman of the Russian Federation. Unfortunately, the Russian Mission to the OSCE responded to the rapporteur that because of several reasons given it was not in a position to arrange a visit to the Russian Federation. It explained that it considered the concerns leading to his mandate as “biased and groundless” demonstrating a policy of “double standards” in the use of the OSCE human dimension mechanism, which it also described as “outdated and redundant for the most part” since the discussions of current issues have a regular status in the OSCE Permanent Council’s meetings. It also felt that the Vienna Mechanism should have been continued (see letter of the Mission of the Russian Federation in response to the request of the rapporteur in the Annex).

As it could not be expected that a visit could be successfully conducted without the official support of the Russian Federation, the rapporteur had to decide to abandon the originally planned visit and to seek alternative ways to obtain information. He did however make an effort to get relevant views from the side of the Russian Federation by writing to the Ombudsman of the Russian Federation and the director of the international department of the Investigative Committee, as well as the Ministry of Justice. However, he was informed that such communication should go through the Mission and the Ministry of Foreign Affairs,

which was not possible within the limited time available and also not considered promising in view of the negative attitude of the Russian mission to the earlier request of the rapporteur. No response was received to those letters.

He therefore relied on the numerous contacts and reports received from all major organizations working on the questions identified in the Russian Federation and internationally. He also got hold of the relevant work that had been done in the framework of the United Nations, by conventional and special procedures and by other monitoring mechanisms like the Universal Periodic Review.

He had the opportunity to meet with representatives of the civil society from the Russian Federation and in particular the Russian LGBT Network, to receive materials from pertinent human rights organizations from the Russian Federation, like Anti-Discrimination Centre (ADC) Memorial, Russian LGBT Network or Committee against Torture and from international human rights organizations like Human Rights Watch, Human Rights House Foundation in Geneva, Norwegian Helsinki Committee, Freedom House, Amnesty International and media representatives like Elena Milashina from Novaya Gazeta and to interview a number of victims and witnesses, representatives of the organizations mentioned as well as trial monitors, both personally and by electronic means. Because of the fears expressed by the victims and witnesses afraid of being subjected to retaliatory measures, utmost care had to be used not to put them to any danger. For this purpose, safe ways of communication were used and interlocutors were assured anonymity of their personal identity in the report.

The rapporteur also went to Strasbourg to collect all possible evidence available related to human rights in the Chechen Republic from the work of the Council of Europe, which has a long history of monitoring the human rights situation in the Russian Federation as a Member State of the Council of Europe. For this purpose, meetings took place with Mr. Piet De Bruyn, rapporteur of the Parliamentary Assembly and responsible for a recent report on the “Persecution of LGBTI people in the Chechen Republic (Russian Federation)”, adopted with Resolution 2230 (2018) and Recommendation 2230 (2018) on 27 June 2018.² Further meetings were held with the head of the Department on Legal Affairs and Human Rights of the Parliamentary Assembly involved in previous reports on the situation on the Chechen Republic and resolution 2157 (2017) on “Human Rights in the North Caucasus: what follow-up to the Resolution 1738 (2010)”,³ which dealt with “Legal remedies for human rights violations in the North Caucasus Region”.⁴ Furthermore, meetings were held with experts from the European Court of Human Rights, from the Department of Execution of Judgments and from the European Commissioner for Human Rights to collect relevant materials and information.

² See Report “Persecution of LGBTI people in the Chechen Republic (Russian Federation)”, Committee on Equality and Non-Discrimination of the Parliamentary Assembly of the Council of Europe, by rapporteur Mr. Piet De Bruyn, 8 June 2018, Doc. 14572.

³ See Resolution of the Parliamentary Assembly of the Council of Europe 2157 (2017) on “Human Rights in the North Caucasus: what follow-up to Resolution 1738 (2010)”, 25 April 2017; Committee on Legal Affairs and Human Rights, rapporteur Mr. Michael McNamara, 8 June 2016, Doc. 14083. See also motion for a resolution by several members of the Parliamentary Assembly on the continuing need to restore human rights and the rule of law in the North Caucasus region, 30 June 2017, Doc. 14382.

⁴ See Report “Legal Remedies for human rights violations in the North Caucasus region”, Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, rapporteur Mr. Dick Marty, 4 June 2010; and Resolution of the Parliamentary Assembly of the Council of Europe 1738 (2010) on the same topic of 22 June 2010.

The rapporteur was supported in his work by two assistants, one of them a native Russian speaker.

As foreseen by the mandate, the focus of the report is on “allegations of impunity for reported human rights violations and abuses in Chechnya”. As there are a large number of reports available the main concern had to be to review these allegations for their credibility and to corroborate the evidence provided by own research and via a critical analysis of the material available.

As the mandate further requests the rapporteur to give advice on possible solutions to the questions raised, the pertinent legal issues like the functioning of the pre-investigation procedure or the role of the Ombudsman in the Russian Federation were analyzed in order to develop recommendations which could lead to improvements. This was done in a constructive spirit with the aim to support the Russian Federation in better addressing the human rights problems identified.

II. Allegations of Impunity for Human Rights Violations

There have been numerous reports on serious human rights violations in the Chechen Republic in the period under consideration. This report is mainly concerned with the truthfulness of the allegations of violations and whether if proven correct there are effective procedures in the Russian Federation in addressing the violations (effective remedies), in order to avoid impunity.

A. Types of Violations: arbitrary and unlawful arrests and detention, harassment and torture, enforced disappearances, extrajudicial executions

As can be seen from pertinent reports of Russian human rights organizations such as the Russian LGBT Network, Memorial or Committee against Torture and as confirmed by international investigations and existing data banks like from the Council of Europe or the Norwegian Helsinki Committee, there are credible allegations that severe human rights violations have continued to be observed since 2017 in the Chechen Republic. These violations concern a standing practice of arbitrary and unlawful arrest and detention, harassment and torture as well as enforced disappearances and extrajudicial executions. With those major violations come other violations of human rights as in particular violations of freedom of expression, privacy, conscience and non-discrimination.

1. Arbitrary and unlawful arrests and detention

Given the fact that this report is written within the framework of the OSCE, some of the OSCE human dimension commitments, which are violated according to the abovementioned findings, should be reiterated. The OSCE human dimension commitments have been agreed since 1975 by the participating States of the OSCE, including the Russian Federation.

The participating States have committed to ensure that no one will be subjected to **arbitrary arrest** or **arbitrary detention**⁵ and reaffirmed that they will respect the right of everyone to leave any country, including his own.⁶ Also, under the OSCE human dimension commitments, a person arrested or detained on a criminal charge will have the right, to be brought promptly before a judge or other officer authorized by law to exercise this function so that the lawfulness of his arrest or detention can be decided.⁷

In addition, anyone who is arrested or detained has the right, without undue delay, to notify or to require the competent authority to notify appropriate persons of his choice of his arrest, detention, imprisonment and whereabouts⁸ and anyone who has been the victim of an unlawful arrest or detention will have a legally enforceable right to seek compensation.⁹

Regarding the Chechen Republic the evidence of the prevailing practice is overwhelming: all victims report about being taken to a police station, military facility or secluded place like a cellar by the police or its collaborators, often in civilian clothes, where they were held for weeks, often but not always without access to their families, but in all cases without access to a judge or legal assistance, often without food and even water, while they were regularly beaten with plastic tubes or police sticks or cables or treated with electrical shocks in order to force them to make confessions. In some documented cases, victims have not survived this torture; others were executed without trial, in particular if the family did not want to collaborate. The confessions sought related often to the names and details of others, like other LGBTI persons or suspected drug dealers. One way out of this situation was to collaborate with the authorities by providing the information requested or agreeing to collaborate in identifying other individuals; another way out was to commit to pay considerable amounts of money, which had to be paid either by the victim or by his/her relatives, sometime over a longer period of time, which raises also the issue of **corruption**.

Allowing security forces to extort money from citizens, in order for them to end unlawful detention, runs contrary to the commitment to combat corruption, which the Russian Federation made and reaffirmed within the OSCE framework multiple times.¹⁰ Clearly, if security forces are allowed to practice extortion with impunity, this gravely undermines the rule of law and greatly enhances the risk of corruption spreading within the security forces and the executive branch in general.

⁵ Concluding Document of Vienna — The Third Follow-up Meeting, Vienna, 15 January 1989 (“Vienna 1989”) Vienna 1989 (Questions Relating to Security in Europe: Principles), para. 23.1; Document of the Thirteenth Meeting of the Ministerial Council, Ljubljana, 5-6 December 2005 (“Ljubljana 2005”) Ljubljana 2005 (Decisions: Decision No. 12/05 on Upholding Human Rights and the Rule of Law in Criminal Justice Systems).

⁶ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990 (“Copenhagen 1990”), para. 9.5.

⁷ Ibid., para. 5.15.

⁸ Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 3 October 1991 (“Moscow 1991”), para. 23.1 (vi).

⁹ Ibid., para. 23.1 (xi).

¹⁰ Istanbul Document, Istanbul, 19 November 1999 (“Istanbul 1999”) Istanbul 1999 (Charter for European Security: III. Our Common Response), para. 33; Document of the Eleventh Meeting of the Ministerial Council, Maastricht, 1-2 December 2003 (“Maastricht 2003”) Maastricht 2003 (OSCE Strategy Document for the Economic and Environmental Dimension), para. 2.2.7; Document of the Eleventh Meeting of the Ministerial Council, Maastricht, 1-2 December 2003 (“Maastricht 2003”) Maastricht 2003 (OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century), para. 34; Document of the Sixteenth Meeting of the Ministerial Council, Helsinki, 4-5 December 2008 (“Helsinki 2008”) Helsinki 2008 (Decisions: Decision No. 7/08 on Further Strengthening the Rule of Law in the OSCE Area), para. 4.

The available evidence confirms the allegation of a general practice of arbitrary and unlawful arrest and detention. In some cases also a lawful arrest has taken place, like in the case of the second detention of Mr. Titiev, after the first arrest had been unlawful.

Reports of a general practice of humiliation, inhuman treatment and torture in order to obtain confessions are confirmed by victims and witnesses, in particular with regard to certain groups like LGBTI persons, alleged drug users, Islamists and suspected terrorists, including human rights defenders and journalists. The reports on the arrests and detentions are coherent: they are mostly not legal and the time before “legalizing” them is used to obtain confessions. The use of electric shocks is a constant pattern which anybody picked up by the police has to expect.

Cases of kidnapping and enforced disappearances exist in the context of extra-judicial killings and during the illegal detentions after which people might reappear.

2. Enforced disappearances and extrajudicial executions

With regard to extrajudicial executions, Novaya Gazeta and Anti-Discrimination Centre (ADC) Memorial have brought allegations that **27 men** became victims of disappearance and extra-judicial executions in January 2017. This happened against the background of two preventive counter-terrorism operations conducted in early January 2017 in response to the killing of 3 (4) policemen on 17 and 18 December 2016 in several clashes. Further clashes happened in January in the village of Geldagan and the town of Shali which added to the wave of repression. In the course of various raids in different locations in Chechnya more than 200 men were illegally detained on the suspicion of extremism. Repressive measures were also taken against family members of the suspected extremists. Some 40 were charged with various criminal offences, mainly based on Article 208 of the Criminal Code, i.e. participating in armed formation, after their detention had been “legalized” as late as six weeks after their disappearance into detention and after they had made confessions which likely were obtained under torture. None of them received legal aid. Some of them were handed over to relatives.

According to Novaya Gazeta, 27 men were extrajudicially executed in the night of 25 to 26 January 2017 when being held at a police regiment commanded by police colonel Aslan Irashkanov after a spontaneous decision taken in the presence of high representatives of the Ministry of Internal Affairs. Novaya Gazeta gave the list of the 27 names to the Investigative Committee of Russia and the Russian Ombudsman.¹¹ According to investigations by Memorial, another three people involved in the attack had been hospitalized due to their wounds received during their arrest the next day and were later taken out of the hospital and killed, one female allegedly by her own brothers who were law enforcement officers.¹² After three months, when no action from the Investigative Committee could be observed, Novaya Gazeta made the list public.¹³

¹¹ “It was an execution. On the night of 26th of January, dozens of people were shot in Grozny”, Novaya Gazeta, 9 July 2017, available at <https://www.novayagazeta.ru/articles/2017/07/09/73065>.

¹² See Memorial Press Statement of 13 July 2017. See also Caucasian Knot, “A source in the Ministry of Health of Chechnya: three militants detained in Grozny are dead”, 29 December 2017, available at: <https://www.kavkaz-uzel.eu/articles/295187>.

¹³ “Owners of lives. Who and how is trying to hide the traces of extrajudicial killings in Chechnya. We publish evidence”, Novaya Gazeta, 31 July 2017, available at: <https://www.novayagazeta.ru/articles/2017/07/31/73282>.

The reports published by Novaya Gazeta and Memorial led to a pre-investigation by the Commission of Inquiry for the North Caucasus, which was terminated in April with the reasoning that no credible evidence could be found of the execution of the 27 men, which according to investigators even had not been detained and must have left the country. Novaya Gazeta and Memorial, however, are in the possession of a table with a list of 67 names taken from a source in the Chechen Ministry of Interior, among them the 27 allegedly executed persons. There are also testimonies from witnesses obtained by lawyers, according to which they saw the men being walked out and confirmed that they never returned.¹⁴

In September 2017, the Russian Human Rights Ombudsman personally paid a visit to Chechnya to investigate what happened to the 27 and some additional persons who died as a result of the purge against LGBTI people as well as other human rights issues.¹⁵ She had initially insisted in an investigation. However, she could not prevent the pre-investigation from being closed. She was shown two persons allegedly from the list of the 27 and concluded that at least these two are still alive.¹⁶ However, the investigation of Novaya Gazeta claims that these were the brothers of the missing persons who were presented to the Ombudsman. Novaya Gazeta and Memorial have made a request to the Yessentuki City Court to reopen the pre-investigation.

The UN Committee against Torture which was also seized with the matter “regrets the lack of effective investigations undertaken into past and ongoing human rights violations, including [...] extrajudicial killings, perpetrated by public officials in the northern Caucasus, including the extrajudicial killings of 27 presumed jihadists in Grozny in 2017”.¹⁷

Persecution and disappearances may also result from extraditions of persons from the Russian Federation or other countries to Chechnya. According to several organizations people extradited face a major risk of human rights violations, like torture, disappearance and killing. One recent case concerns a Chechen person, Mr. Azamat Bayduev, who received asylum in Poland, then moved to Belgium and has been extradited to Poland and further to the Russian Federation. After arriving at his home in August 2018 in the Chechen Republic he was abducted by the police and disappeared as reported by Amnesty International which also refers to several other cases.¹⁸ After his case appeared in the media the Chechen Ministry of Interior informed that he had confessed his participation in illegal armed groups in Syria after which allegedly a criminal case was opened against him.¹⁹

3. Torture

The Russian Federation has committed itself in the framework of the participating States of OSCE to “ensure that education and information regarding the prohibition against torture are

¹⁴ Information obtained from the investigation led by Novaya Gazeta and Memorial.

¹⁵ See The Annual 2017 Report on the activity of the High Commissioner for Human Rights in the Russian Federation, available at: http://ombudsmanrf.org:81/upload/files/docs/lib/104441_lite.pdf, p. 249. See in Russian at http://ombudsmanrf.org/upload/files/docs/lib/lite2-doclاد_20.04.18.pdf, p. 270.

¹⁶ See “Tatyana Moskalkova met with Ramzan Kadyrov”, 22 September 2017, at: http://ombudsmanrf.org:81/news/novosti_upolnomochennogo/view/vstrecha_tatjany_moskalkovovj_s_razanom_kadyrovym

¹⁷ Concluding observations on the sixth periodic report of the Russian Federation, Committee against Torture, 28 August 2018, CAT/C/RUS/CO/6, para. 46.

¹⁸ “Chechen refugee forcibly disappeared after being unlawfully deported from Poland”, Amnesty International, Russia, 3 September 2018, available at: <https://www.amnesty.org/en/latest/news/2018/09/russi-chechen-refugee-forcibly-disappeared-after-being-unlawfully-deported-from-poland>.

¹⁹ Information obtained from Amnesty International.

fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment”²⁰ as well as to “keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under their jurisdiction, with a view to preventing any cases of torture”.²¹

After the 64th Session of the UN Committee against Torture (CAT), it expressed its concern on 28 August 2018 that reportedly “during the ‘anti-gay purge’ in March 2017, Chechen police and military officials and others arbitrarily detained and tortured with electric devices men presumed to be gay and encouraged their families to make them victims of honour killings”.²² The Committee also expressed its concern “at reports that Chechen law enforcement officials themselves participated in the pre-investigation into these allegations and that, as stated by the delegation during the dialogue, no facts were established and thus no criminal proceeding was opened”.²³ Consequently, the UN CAT recommended to the Russian Federation to inter alia “impartially and effectively investigate all past and ongoing human rights violations, including [...] torture, in the northern Caucasus”²⁴ and to “[e]nsure that victims of torture, their family members, their lawyers [...] are protected against retaliation by public officials and that claims of such retaliation, including the above-mentioned cases in Chechnya, are investigated with a view to bringing the perpetrators to justice”.²⁵

According to the report from Human Rights Watch to the UN Committee against Torture, there have been multiple cases of torture in the Chechen Republic. For example, there is the case of Khizir Ezhiev, a senior economics lecturer at the Grozny State Oil Technical University, who reportedly was abducted, tortured and killed, after having participated in a group on social media, which was critical of the Republic's leader, Mr. Kadyrov.²⁶

Another case is the reported abduction and torture of Khusein Betelgeriev, a former senior faculty member at the Chechen State University.²⁷

The European Committee for the Prevention of Torture (CPT) was the only body of the Council of Europe which recently was able to visit Chechnya in accordance with the obligations of the Russian Federation. However, as in the past the Russian Federation has not agreed to make its report public as is the case with regard to most other visits. The Russian Ombudsman allegedly claimed that the Committee has not found any confirmation of extrajudicial executions/punishments or torture which prompted a press release from the CPT

²⁰ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990 (“Copenhagen 1990”), para. 16.4.

²¹ Ibid., para. 16.5.

²² CAT/C/RUS/CO/6, para. 32.

²³ Ibid.

²⁴ Ibid., para. 47 (a).

²⁵ Ibid., para. 47 (b).

²⁶ Human Rights Watch Submission to the United Nations Committee against Torture on Russia, July 2018, p. 3, available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fCSS%2fRUS%2f31648&Lang=en.

²⁷ Ibid., pp. 3 and 4.

which clarified that “these reports were misleading and should not be considered as reflecting the CPT’s findings during the visit”.²⁸

The particularity of the situation in the period under observation is that those offences have taken place and seem to continue in the context of the persecution of certain groups of people as described in the following.

B. Victims of Human Rights Violations: Persons with homo- and transsexual orientation (LGBTI), alleged Drug Dealers, Terrorists, Teenagers

1. Persons with homo- and transsexual orientation (LGBTI)

The case of the persecution or purge of people with a non-heterosexual orientation or LGBTI people in early 2017 is particularly well documented.²⁹

It happened in several “waves” or “purges”. The first wave happened from December 2016 to February 2017, while the second wave started in March 2017 and went until May 2017, the month of Ramadan, after which a third wave started, which largely stopped because of the international outcry. However, there are still new cases as recent as September and October 2018. The detentions followed a certain pattern. Persons suspected of being homosexuals were picked up without any particular reason at their homes or work places or on the road by police officers and military personnel. The Special Division of First Responders (SOBR) wearing black uniforms was particularly involved. They were taken to a police station and afterwards to incarceration places, some of them unofficial prisons. The places where this happened are well described. One such location where numerous people were detained was in Argun.

On the way and at the detention place they were humiliated with words like: “You were brought here because you are faggots. You bring shame on your people: you shouldn’t exist.” They were taken to interrogation rooms and beaten with police sticks, plastic tubes and cables, which resulted in severe injuries like broken ribs, jaws and bruises. Some were also treated with electric shocks, usually at the fingers. The purpose was to make them confess that they were gay and to give names of other gays. During the time in detention they usually were not receiving food, in some cases even not water, except if relatives of other inmates brought food, which was shared. In some cases they were not allowed to wash themselves or clean the wounds. No medical assistance is reported. Some had to do certain works like washing the floor or cleaning cars. They were mistreated and tortured on a daily basis mostly for about two weeks or until they made and signed a confession or reported others or expressed their willingness to cooperate. In most cases relatives were not informed and there was no access to legal assistance. Persons who could not stand the torture because of their age or other reasons or could bring shame on the authorities or administration allegedly were killed.

²⁸ “Council of Europe anti-torture Committee visits the Chechen republic of the Russian Federation”, Council of Europe, 7 December 2017, available at: <https://go.coe.int/JjpcG>. The visit took place from 28 November to 4 December 2017.

²⁹ See in particular the report on LGBT Persecution in the North Caucasus by the Russian LGBT Network in cooperation with Elena Milashina (Novaya Gazeta) of July 2017 and the report by Piet De Bruyn for the Parliamentary Assembly of the Council of Europe of 8 June 2018.

Therefore, this treatment has to be qualified as illegal arbitrary detention and torture, combined with inhuman treatment.

In most cases they were released in a kind of ceremony of “shaming their sins” to their relatives, who regularly were told to find “a proper solution” or “to get rid of the sick members of the family”. It was said that they could be killed as terrorists in the forest but it would be better if the parents took care of them. One witness formulated the message of police officers to relatives like this: “Either you kill your kid or we will do it for you.”³⁰ There were cases where the victims were asked to kill themselves. In many cases victims have been forced to marry in order to save the family honor. The report of the Russian LGBT Network based on testimonies of victims speaks of dozens of murders. Instead of protecting their citizens the government reinforces prejudices against people with different sexual orientation who are existing in the traditional society where it is still a taboo to talk about homosexuality and a shame for the family to have gay or lesbian members.

The situation of females with non-heterosexual orientation is also important to mention. They are particularly vulnerable because of the traditional society. It appears that some have also been unlawfully detained and underwent beatings and pressures to produce confessions. In extreme cases they were raped and killed. But the main punishment seems to have been psychological, in cooperation with their male relatives who were put under pressure to wash away the shame from the family. There are documented cases of girls who escaped from Chechnya, but were abducted and brought back by their families with the help of the authorities. In some cases, search warrants were used although the women were already adults. Interestingly, also a kind of Islamic exorcism procedure is reported for which purpose families brought their relatives, particular females, to the Centre for Islamic Medicine in Grozny for a sort of therapy against demons.

When picking up their relatives a kind of ransom was requested from them presented as a symbolic way of buying out the guilt in front of the Chechen people. In other cases the released person was forced to pay to his tormentor over a longer period of time.³¹

According to reports from witnesses even some officials of Chechnya like the spokesperson of the Parliament Magomed Daudov took part in some of the torture sessions.³² This demonstrates that the campaign had happened with the support of the state. Actually, the president of the Chechen Republic is on record as having announced, in February 2017, that all gay men in the Chechen Republic would be exterminated by Ramadan (May 2017).³³ After the campaign, in July 2017 Head of the Chechen Republic of the Russian Federation Kadyrov claimed that there were no gay people in Chechnya, saying “if there are take them to Canada” and that “they are devils. They are for sale, they are not people”.³⁴ The Minister of Justice of the Russian Federation Alexandr Kononov also claimed at the UN Human Rights Council that no LGBT representatives could be found in Chechnya.³⁵

³⁰ Personal interview with victim living outside the Russian Federation.

³¹ Personal interview with a victim.

³² Report “Persecution of LGBTI people in the Chechen Republic (Russian Federation)” by Piet De Bruyn, *supra*, para. 28.,

³³ *Ibid.*, para. 35.

³⁴ *Ibid.*, para. 36.

³⁵ Russian Federation Review – 30th Session of Universal Periodic Review, UN Web TV, 14 May 2018, available at: <http://webtv.un.org/meetings-events/watch/russian-federation-review-30th-session-of-universal-periodic-review/5784600846001/?term=#t=2h47m30s>.

The Russian LGBT Network informed that it has indeed evacuated some 135 LGBT people from Chechnya, about 120 of them to European host countries and Canada. The evacuations were often difficult because the authorities did not allow them to leave and also the families, partly under the pressure of the authorities, tried to restrict their movements. Even to go to other parts of Russia or Moscow proved not to be safe for them as they in some cases were followed and efforts are reported to abduct them to bring them back, sometimes with the collaboration of the authorities of the Russian Federation (FSB).³⁶

Various international human rights organizations like Amnesty International, Human Rights Watch or Freedom House called for an effective investigation to provide justice to the victims and to bring to an end impunity in the Chechen Republic.³⁷

Because of the general intimidation, hardly any victim dared to address a complaint to the Russian authorities, let alone the Chechen ones. According to reports relatives had to sign that they had no complaint about the work of Chechen law enforcement officers and also to pressure related victims to remain silent. However, one victim, Mr. Maxim Lapunov, did try to obtain justice. His case is illustrative for certain shortcomings of the law and practice of the Russian Federation in dealing with such allegations and should therefore be presented in more detail.

On 15 March 2017 **Lapunov**, an ethnic Russian, was abducted on the street while selling balloons. He was held for 12 days in the cellar of a police station, where he was beaten, and tortured. He could also witness others undergoing the same treatment. He was told that he would be killed and believes that the fact that his sister alerted the Ombudsman of the Perm region, saved him. After his release, he escaped to other parts of Russia and to Moscow where he made a formal complaint in September 2017 although he had been threatened with retribution if he complained to the authorities. Before released he had also to sign several blank declaration forms. Although he got some support by Ombudsman Moskalkova, to whom he reported his experience, no formal investigation was opened in his case. Only when the Ombudsman requested the Deputy Head of the Investigative Committee of the Russian Federation to investigate, the main Investigative Committee of the North Caucasus registered his claim and undertook a pre-investigation (pre-check). The pre-investigation ignored several requests of Lapunov like being invited to the inspection of the crime scene, and enabling him to meet the incriminated police officers, and the investigators did not interview key witnesses named by him but decided not to open criminal proceedings. The pre-investigation reportedly faced a lack of cooperation from Chechen authorities. It was not found conclusive also by the Ombudsman. A detailed report by the Russian LGBT Network reveals a number of flaws in the investigation.³⁸ For example, the investigator seems not to have identified the room where Lapunov was held as he did not inspect the whole basement of the building in question.

The request of Lapunov to provide him with state protection because of threats he had received was also refused. In October 2017 he left the Russian Federation for concerns of his safety. When the decision by the investigative committee was appealed to the Yessentuki Court, the Court upheld it on formal grounds, as it does not have the power to review the

³⁶ “They Have Long Arms and They Can Find Me” – Anti-Gay Purge by Local Authorities in Russian’s Chechen Republic, Human Rights Watch, May 2017; Confirmed by other reports and own interviews.

³⁷ “Russia: One year after “gay purge” in Chechnya, still no justice for victims, Amnesty International, 4 April 2018, available at: <https://www.amnesty.org/en/latest/news/2018/04/russia-one-year-after-gay-purge-in-chechnya-still-no-justice-for-victims>.

³⁸ Russian LGBT Network, Pre-investigation No. 221pr-17, Report on the Pre-investigation Data and the Results of an Independent Investigation, 36 pages plus annexes.

content of the investigation. The request of Lapunov was also denied in the second appeal to the Stavropol Regional Court. After this exhaustion of local remedies, the case is expected to be submitted to the European Court of Human Rights. There are also efforts to bring the whole campaign against LGBTI people to the International Criminal Court as a crime against humanity.

In a hearing before the UN Committee against Torture, a representative of the Office of the Prosecutor General claimed that no evidence was established confirming the illegal detention and confinement of Mr. Lapunov.³⁹ On the other hand Mrs. Moskalkova is on record of having opined that there is a basis to open a criminal case.⁴⁰

Having interviewed Mr. Lapunov myself I can confirm his credibility. His story also is nearly identical to similar stories from other victims.

The Lapunov case reveals some major shortcomings of the Russian law and practice. The Ombudsman does not have the power to introduce an investigation or court procedure. The Federal Investigative Committee tends to use its local structures to investigate a case, which might not be as independent and objective as federal structures. The decision on opening a criminal case is not taken by a judge although there is a possibility to appeal it to a Court. There is insufficient protection for the victim or witnesses in particular before the criminal case is opened. The Ombudsman cannot provide state protection. The result of this situation often is impunity for the perpetrators, in particular if security services are involved. A certain solidarity of working for the same ministry plays a role, as well as the lack of proper oversight and of transparency to assure accountability.

In reaction to news on the campaign against LGBTI persons in Chechnya various Russian and international organizations expressed their concerns about the alleged unlawful detentions, torture and extrajudicial killings of men perceived to be gay or bisexual in Chechnya, like a group of five UN special rapporteurs, i.e. the special rapporteurs on extrajudicial, summary and 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 promotion and protection of the right to freedom of opinion and expression.⁴¹

Sexual orientation and gender identity are typical grounds of prohibited discrimination. The UN Human Rights Committee in 2015 recommended the Russian Federation to strengthen its legal framework to better protect LGBT individuals from discrimination and violence and to ensure the investigation, prosecution and punishment of any act of violence motivated by the victim's sexual orientation or gender identity.⁴² The UN Human Rights Council has adopted pertinent resolutions (Resolutions 17/19 and 27/32) and the UN High Commissioner for Human Rights has recommended that States ensure that anti-discrimination legislation includes sexual orientation and gender identity among the prohibited grounds, all of which

³⁹ Summary record of the 1661st meeting, Committee against Torture, 6 August 2018, CAT/C/SR.1661, para. 14.

⁴⁰ "Lonely Witness: A Gay Russian's Stalled Bid for Justice in Chechnya crackdown", Radio Free Europe, 16 October 2018, available at: <https://www.rferl.org/a/lonely-witness-a-gay-russian-s-stalled-bid-for-justice-in-chechnya-crackdown/29546448.html>.

⁴¹ Letter of 13 April 2017.

⁴² Concluding observations on the seventh periodic report of the Russian Federation, Human Rights Committee, 28 April 2018, CCPR/C/RUS/CO/7, para. 10.

has been brought to the attention of the Russian Federation.⁴³ However, in Chechnya human rights defenders are stigmatized by allegedly promoting gay propaganda.

The European Court of Human Rights, in the case of *Bayev and Others v. Russia*, decided in June 2017 that the regional and federal laws related to “propaganda of non-traditional sexual relationships among minors” adopted between 2011 and 2014 did not serve to advance the legitimate aim of the protection of morals and in view of their vagueness were open to abuse in individual cases. By adopting such laws the authorities were reinforcing stigma and prejudice and encouraged homophobia.⁴⁴ It is reported that the laws were a reaction by the regions and federal state against an increasing visibility and rights-based language by Russian LGBT activists.⁴⁵

The European Commissioner for Human Rights issued a Human Rights Comment in August 2017 entitled “The long march against homophobia and transphobia”, in which he also addressed the disturbing news of the events in Chechnya, but more generally explained why LGBTI rights are human rights.⁴⁶

The Parliamentary Assembly of the Council of Europe has adopted Resolution 2230 (2018) on the Persecution of LGBTI people in the Chechen Republic (Russian Federation), which was the result of an in-depth report provided by Rapporteur Piet de Bruyn.⁴⁷ In his report he also finds that there was serious, systematic and widespread ill-treatment and violence against LGBTI people in Chechnya amounting to persecution.⁴⁸

He also addresses the issue of “honor crimes”, committed by families to wash away a so-called “tarnished honor” by taking care of the problem themselves, which in LGBTI cases has led to a number of killings of gay or lesbian relatives. In one case a relative was asked to kill the person right in the police station, which however could be prevented. In another case the person, a woman, was asked to kill herself. In many cases the victims were exposed to psychological and physical violence and/or forcefully married in order to save the family honor. Instead of prohibiting such honor killings, the state is encouraging them and families enjoy full impunity for the perpetration of such crimes.⁴⁹

Resolution 2230 (2018), inter alia, recommends the repeal of the law prohibiting the so-called propaganda of non-traditional sexual relationships among minors. In the context of Chechnya, such laws work like an encouragement for the persecution of LGBTI people. This resolution also calls on Council of Europe member States to grant people fleeing from the Chechen Republic after having been victims of persecution as well as their family members and witnesses asylum according to the Geneva Refugee Convention. As can be derived from reports and interviews those persons have special needs for protection, like safe housing,

⁴³ See Report “Discrimination and violence against individuals based on their sexual orientation and gender identity”, Office of the United Nations High Commissioner for Human Rights, 4 May 2015, A/HRC/29/23, paras. 78 and 79.

⁴⁴ See Case of *Bayev and Others vs. Russia*, No. 67667/09, 44092/12 and 56717/12, Judgement of the European Court of Human Rights, 20 June 2017.

⁴⁵ See Dmitri Bartenev, LGBT rights in Russia and European human rights standards, in: Lauri Malksoe and Wolfgang Benedek (eds.), *Russia and the European Court of Human Rights, The Strasbourg Effect*, Cambridge University Press 2018, 326-351, at 337.

⁴⁶ The report is available at: <https://www.coe.int/en/web/commissioner/-/the-long-march-against-homophobia-and-transphobia>.

⁴⁷ See Council of Europe Doc. 14752 of 8 June 2018 and Recommendation 2138 (2018) on the same topic.

⁴⁸ *Ibid.*, para. 8.

⁴⁹ *Ibid.*, para. 22. Details were obtained from several interviews.

medical and psychiatric support and they might even need a change of their identity in order to live peacefully in their host countries. Good practices can be drawn from countries like Canada, Lithuania, Norway, the Netherlands and others.

In its Recommendation 2138 (2018) on the same topic, the Parliamentary Assembly “considers all forms of persecution, hate speech, discrimination and harassment on any grounds, including sexual orientation and gender identity, should be condemned in the strongest terms and should not go unpunished”. In line with the resolution it requests an investigation by the Russian authorities, in the absence of which the Council of Europe should undertake such investigation.⁵⁰

In this context it should be noted that in the recent Universal Periodic Review of the human rights record of the Russian Federation in June 2018, the latter held again that investigations had revealed that there had been no incidents of discrimination against LGBTI persons.⁵¹ However, the Russian Federation accepted a recommendation by Montenegro to “effectively investigate all cases of violence against LGBTI persons and activists, including the violation of their rights to freedom of expression and assembly, and bring perpetrators to justice” with the following comment: “Everybody is equal before the law and court in the Russian Federation. Any unlawful acts, regardless of the social or other group, the representatives of which it has been perpetrated against, is duly acted upon by the authorities and law enforcement agencies, and the perpetrators are brought to justice.”⁵² Indeed, this is what should be the standard, but as the findings of this report show, this is not the case in the Chechen Republic.

2. Alleged drug dealers and users

In August 2018 a campaign against drug addiction was announced by the Chechen leader for which purpose an operational headquarters was established. After its creation a mass detention of young people took place, during which some 70 people were detained from the Shali district and forced to confess to the use or distribution of illicit drugs as well as to indicate who else possessed them. One victim, Magomed-Ali Mezhidov from the village of Avtury, is known for having made a statement to the office of the prosecutor according to which he was repeatedly tortured with electric shocks in order to give a confession, which he did after a week. His brother experienced torture as well and also signed a confession after which both were accused, one for the possession and the other for selling marihuana.⁵³ There are reports that similar raids took place at different villages leading to abductions of young people and making them confess under torture.

On 7 February 2018 TV channel “Grozny” reported a decrease in drug addicts by 14 % and the Chechen Ministry of Interior announced that since the start of the anti-drug campaign more than 1,000 criminal cases had been initiated,⁵⁴ which speaks for itself.

⁵⁰ Ibid., para. 2.

⁵¹ Report of the Working Group on the Universal Periodic Review, Russian Federation, Human Rights Council, 12 June 2018, A/HRC/39/13, para. 139.

⁵² Response by the Russian Federation to Recommendation 147.123.

⁵³ “Chechen transit: how the republic fights with drug addicts with the help of torture”, Republic, 16 January 2018, available at: <https://republic.ru/posts/88870>.

⁵⁴ “Anti-drug campaign in Chechnya affected pharmacy owners”, Caucasian Knot, 17 February 2018, available at: <https://www.kavkaz-uzel.eu/articles/316686/> and interview with Norwegian Helsinki Committee.

The persecution of alleged drug addicts appears to be another example of the use of illegal means to obtain confessions. Nobody appears to have been held responsible for the human rights violations.

3. Terrorists and teenagers – collective punishments

OSCE participating States have committed not to yield to **terrorist** threats, but to combat them by all means in accordance with their international commitments,⁵⁵ which includes all applicable human rights commitments. The fact that the fight against terrorism has to be undertaken in compliance with the Russian Federation's human rights obligations has been reiterated several times.⁵⁶

In the case of the Chechen Republic, as shown by the evidence on extrajudicial executions, but also several reports, these obligations are not respected. One particularity of human rights violations is the practice of collective punishment of families for wrongdoings of their relatives.

In an Open Letter by Human Rights Watch, Amnesty International and Front Line Defenders addressed to the President of the Russian Federation, the three human rights organizations among other issues criticized the practice of collective punishment of families for alleged or real wrongdoings of some members which is prohibited by international human rights law but was encouraged by the Chechen leader himself.⁵⁷ The practice of collective punishment is not new. In the past, Amnesty International has already denounced the practice of punitive burnings of houses of relatives of persons involved in armed attacks.⁵⁸ This goes together with a practice of public humiliation as reported by Human Rights Watch.⁵⁹ The reported ceremonies of handing over illegally arrested LGBTI persons to their families asking them to wash away the shame which in a number of cases resulted in honor killings, confirm this archaic practice.

There is a duty of the state to protect the individual against private violence, more particularly also family (domestic) violence, i.e., against honor killings or punishment. Instead, in Chechnya, the state appears to support the perpetrators rather than the victims.

According to General Comment No. 31 of the Human Rights Committee, there is a positive obligation on State Parties to ensure protection of Covenant rights of individuals against violations by its agents and by private persons or entities. States Parties have to bring

⁵⁵ Document of the Ninth Meeting of the Ministerial Council, Bucharest, 3-4 December 2001 ("Bucharest 2001") Bucharest 2001 (Decision No. 1/01 on Combating Terrorism).

⁵⁶ Document of the Twelfth Meeting of the Ministerial Council, Sofia, 6-7 December 2004 ("Sofia 2004") Sofia 2004 (Ministerial Statement on Preventing and Combating Terrorism); Document of the Fourteenth Meeting of the Ministerial Council, Brussels, 4-5 December 2006 ("Brussels 2006") Brussels 2006 (Ministerial Statement on Supporting and Promoting the International Legal Framework against Terrorism); Document of the Sixteenth Meeting of the Ministerial Council, Helsinki, 4-5 December 2008 ("Helsinki 2008") Helsinki 2008 (Decisions: Decision No. 10/08 on Further Promoting the OSCE's Action in Countering Terrorism).

⁵⁷ Open letter by Human Rights Watch, Amnesty International and Front Line Defenders to the President of the Russian Federation, 28 August 2018, available at: <https://www.hrw.org/news/2018/08/28/open-letter-human-rights-watch-amnesty-international-and-front-line-defenders>.

⁵⁸ "Russia: Burning down homes after Chechnya clashes appears to be collective punishment", Amnesty International, 9 December 2014, available at: <https://www.amnesty.org/en/latest/news/2014/12/russia-burning-down-homes-after-chechnya-clashes-appears-be-collective-punishment-1>.

⁵⁹ Like Walking in a Minefield – Vicious crackdown on Critics in Russia's Chechen Republic, Human Rights Watch, 2016.

perpetrators to justice and to provide redress for the harm caused by private persons and entities. This obligation is relevant when it comes to pressures on families to punish their family members, in several cases by killing them in order to restore the family honor.

On 22 August 2018, after several attacks of young persons, some of them children, against policemen in the Shali district, Head of the Chechen Republic of the Russian Federation Kadyrov stated that “parents are personally responsible for the actions of their children”. Following this statement, mass arrests of adult men belonging to the families of the attackers were carried out.⁶⁰ In the following days also teenagers and young people who were familiar with the attackers were picked up. Altogether some 150-200 people were detained. The interrogations of the young people were called “preventive conversations” necessary to identify instigators and to protect the young people from “destructive ideas”. After the events some family members of the attackers were forced to leave Shali.⁶¹ The picking up of teenagers appears to be a recent new trend, which raises issues of violation of the national and international standards of child protection and illegal detention.

C. Actors affected: Human Rights Defenders, CSOs, Lawyers, Independent Media

This section will analyze the role and the situation of the main non-state actors active in addressing human rights violations and being subjected to restrictions and repression.

1. Human Rights Defenders

With regard to **Human Rights Defenders** and the **civil society**, the OSCE participating states recognized the universal significance of human rights and fundamental freedoms and confirmed the right of the individual to know and act upon his rights and duties in this field.⁶² OSCE participating States have pledged at various occasions to take the necessary action to effectively ensure this right.⁶³ Especially the importance of the civil society has been stressed regularly in the OSCE human dimension framework. The Russian Federation has agreed within the OSCE framework that “[n]on-governmental organizations (NGOs) can perform a vital role in the promotion of human rights, democracy and the rule of law” and that [t]hey are an integral component of a strong civil society.⁶⁴ The OSCE has multiple times reiterated the important role of the civil society in various areas, such as maintaining and strengthening tolerance and non-discrimination,⁶⁵ promoting conditions throughout the OSCE region in which all can fully enjoy their human rights and fundamental freedoms under the protection

⁶⁰ “Residents of Chechnya told about detentions of relatives of attacks on security forces”, Caucasian Knot, 22 August 2018, available at: <http://www.kavkaz-uzel.eu/articles/324479>.

⁶¹ “In Chechnya, adolescents who have attacked police officers will be publicly convicted, their families are being expelled from the republic”, Current Time, 23 August 2018, available at: <https://www.currenttime.tv/a/29458144.html>.

⁶² Final Act of the Conference on Security and Co-operation in Europe, Helsinki, 1 August 1975 (“Helsinki 1975”), 1.(a), Principle VII.

⁶³ Concluding Document of Madrid — The Second Follow-up Meeting, Madrid, 6 September 1983 (“Madrid 1983”) Madrid 1983 (Questions Relating to Security in Europe: Principles).

⁶⁴ Istanbul Document, Istanbul, 19 November 1999 (“Istanbul 1999”) Istanbul 1999 (Charter for European Security: III. Our Common Response), para. 27.

⁶⁵ Document of the Tenth Meeting of the Ministerial Council, Porto, 6-7 December 2002 (“Porto 2002”) Porto 2002 (Decisions: Decision No. 6 on Tolerance and Non-Discrimination).

of effective democratic institutions, due judicial process and the rule of law,⁶⁶ effectively preventing and fighting terrorism,⁶⁷ fighting organized crime⁶⁸ and preventing torture.⁶⁹

According to OSCE documents the freedom of the exercise of the profession of lawyer should be respected, protected and promoted, lawyers should not suffer or be threatened with any sanctions or pressure when acting in accordance with their professional standards and they should have access to their clients, including in particular to persons deprived of their liberty.⁷⁰ The practice of illegal detentions undermines this obligation.

There are credible reports of increasing repression of the Chechen Republic against human rights defenders and their institutions. Most of them had to close their offices or suspend their activities as a result of this state policy. One example is attacks on the Joint Mobile Group headed by Igor Kalyapin, director of the Nizhny Novgorod Committee against Torture in 2016.⁷¹ Those Groups used to travel to Chechnya to collect evidence on human rights violations. The attacks between 2014 and 2016 forced human rights defenders like Kalyapin to suspend or scale down their activities in Chechnya.⁷² Amnesty International reports that none of the violent actions against human rights activists were investigated and no suspects identified.⁷³ As a result the office of Memorial in Grozny became the main focal point for human rights defenders in Chechnya. Human rights activists like Igor Kalyapin, Oyub Titiev from Memorial, Igor Kochetkov from the Russian LGBT Network or Elena Milashina from Novaya Gazeta were decorated with various human rights prizes by international institutions, but they face an increasingly difficult time in their own environment.

Therefore, the **case** of Mr. Oyub Titiev, regional representative and head of the human rights centre of Memorial in Grozny needs to be given particular focus as a case study.

In the case of Mr. Titiev, it appears very likely that evidence has been fabricated in order to stop him from monitoring disappearances and torture in the country in his capacity as the regional representative of Memorial and also to give a signal to other human rights defenders what could happen to them. His predecessor Natalia Estemirova was abducted and killed in 2009 without a perpetrator identified and brought to trial. On 17 January 2018, the office of the Memorial Human Rights Center in Ingushetia, which had supported Titiev's case, was set on fire. Nobody was held accountable for this crime. On 23 January 2018 the representative of Memorial in Dagestan received text messages on the office phone that his team should shut down operations otherwise the office would be burned together with the team members.

⁶⁶ Document of the Eleventh Meeting of the Ministerial Council, Maastricht, 1-2 December 2003 ("Maastricht 2003") Maastricht 2003 (OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century).

⁶⁷ Document of the Twelfth Meeting of the Ministerial Council, Sofia, 6-7 December 2004 ("Sofia 2004") Sofia 2004 (Ministerial Statement on Preventing and Combating Terrorism).

⁶⁸ Document of the Fourteenth Meeting of the Ministerial Council, Brussels, 4-5 December 2006 ("Brussels 2006"), Brussels 2006 (Decisions: Decision No. 5/06 on Organized Crime).

⁶⁹ Document of the Seventeenth Meeting of the Ministerial Council, Athens, 2009 (Ministerial Declaration on the Occasion of the 25th Anniversary of the Adoption of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

⁷⁰ Document of the Fourteenth Meeting of the Ministerial Council, Brussels, 4-5 December 2006 ("Brussels 2006") Brussels 2006 (Brussels Declaration on Criminal Justice Systems).

⁷¹ See at <https://www.frontlinedefenders.org/en/case/case-history-joint-mobile-group>.

⁷² See, for example, the report on the case of Igor Kalyapin, Mediazona, 1 March 2017, available at: <https://zona.media/number/2017/01/03/kalyapin>.

⁷³ "Unfair game: New levels of persecution of human rights defenders in Russia", forthcoming report, Amnesty International.

Accordingly, there appears to have been a coordinated action of intimidation against Memorial.

Mr. Titiev, who is the director of the Memorial Human Rights Center in Chechnya, was detained by the police on 9 January 2018 under the allegation of “illegal acquisition and storage of narcotic drugs on an especially large scale”. The drug allegedly found in his car was marihuana. He remains in custody ever since and faces trial for his alleged crime. He was closely involved with the investigations of Memorial in the alleged extra-judicial killings of 27 residents of the Chechen Republic in January 2017. When detained he did not have access to a lawyer, which was granted only after the Ombudsman of the Russian Federation and the Chair of the Presidential Council on Human Rights intervened in his favor. Those are said to also have intervened to bring his trial to the federal level, away from Grozny, which was not accepted. Also the European Commissioner for Human Rights intervened addressing a letter to the Prosecutor General of the Russian Federation, Mr. Yury Chaika asking for his urgent release, but to no avail.⁷⁴

After having been detained he was put under pressure to make a confession. However, while preparations were made for torture a police officer intervened to stop it for reasons which are still unclear. His medical needs were ignored. Also his family was put under pressure which forced part of them to leave Chechnya. Mr. Titiev immediately made a legal claim that the narcotics have been planted in his car and asked for an investigation which was first refused by the local investigative committee and only granted by the inter-regional unit of the Investigative Department of the Investigative Committee in February while Mr. Titiev was not properly informed of any of those decisions. The pre-investigation did not find sufficient evidence and was discontinued. The Presidential Human Rights Council even issued an expert opinion that concluded “that the verifications undertaken following Mr. Titiev’s counterclaim had been ‘artificially and unlawfully’ circumscribed with the aim of excluding information which would lead to the conclusion that the criminal case against Mr. Titiev had been fabricated”.⁷⁵

There have been various documented efforts to fabricate evidence against Mr. Titiev like false witnesses as well as procedural flaws in the treatment of the case. When investigating the office of Memorial in Grozny, the police allegedly found two cigarettes containing marihuana on the balcony of the office. The balcony is accessible from the outside and it is not credible that a man who does not smoke or drink should leave such cigarettes there.

However, observers also reported that the judge presiding over the case gave adequate time to the witnesses of the defense. Among them were elders of his village who testified that he as a practicing Muslim could not be expected to be in possession of drugs and also representatives of human rights organizations who reported about the climate of repression and impunity related to human rights work in Chechnya.⁷⁶

The planting of drugs or other objects in the luggage or cars of persons in order to be able to put them on trial is a common method of police services in certain countries, including the Russian Federation (cases of Kolomiyets Andrei Vladimirovich and Savostin Mihail

⁷⁴ Letter by Mrs. Dunja Mijatovic, European Commissioner for Human Rights, to Mr. Yury Chaika, Prosecutor General of the Russian Federation, 11 July 2018, available at: <https://rm.coe.int/letter-to-mr-yury-chaika-prosecutor-general-of-the-russian-federation-/16808c42e3>.

⁷⁵ See “The Prosecutor General’s Office requested an inspection after studying the expert opinion of the HRC on the case of Oyub Titiev”, 4 July 2018, at <http://www.president-sovet.ru/presscenter/news/read/4761>.

⁷⁶ Interview with observer of Deutsche Bundestag, who attended on 12 November 2018.

Olegovich). In Chechnya two similar cases of fabrication of charges are known, i.e. the Caucasus Knot journalist Zhalaudi Geriev and the human rights activist Ruslan Kutaev. The first was sentenced to three years in prison for the possession of drugs after he had been kidnapped in 2016 and his confession was obtained by torture. On 1 December 2017 the Supreme Court of Russia refused to send his appeal to cassation.⁷⁷ According to Memorial the latter was detained by “MVD” units and sentenced to prison in 2014 after torture on dubious drug charges after a dispute with the Chechen leader just days before his arrest. His complaint of having been tortured was never investigated. He was released after having served his sentence of three years and four months.

The trial of Mr. Titiev is very well documented because of the trial observation by international and Russian monitors. Memorial keeps a detailed record of the events.⁷⁸ International observers and media confirm it. The trial started on 3 July 2018 in Shali close to Grozny and is still ongoing. An analysis of the reports of the trial monitoring so far leaves the impression that the prosecution uses any means to prove that Mr. Titiev is guilty, including false witnesses, false information, threats etc. For example, the main witness for the fact that Titiev smoked marihuana could not remember his face. The Court did not want to hear about a possible connection between the investigation of extrajudicial killings by Titiev and his arrest. Complaints of Mr. Titiev were not followed up “for lack of an objective proof of facts”. Although some efforts of the judge need to be recognized to give attention to the witnesses of the defense the general impression is that a fair trial is not possible under the conditions in Chechnya. However, requests to move the trial out of Chechnya have not been approved, although even the Russian Ombudsman for Human Rights, Tatyana Moskalkova, supported this request.⁷⁹ And the requests of his lawyers to release Mr. Titiev on bail have repeatedly been refused.⁸⁰

The fact that his trial can be monitored by competent human rights organizations, diplomatic representatives, members of parliament and the media has to be considered as positive and as proof that if there is the political will from the Russian Federation to allow for the courts to do their work, this is also possible in Chechnya. However, it is highly disturbing that the Head of the Chechen Republic of the Russian Federation is on record with the statement that human rights advocates would be banned from Chechnya once the trial of Oyub Titiev has ended. He pledged to impose sanctions on human rights activists who were “preventing our people to live in peace”.⁸¹

His statement was criticized by an Open Letter by Human Rights Watch, Amnesty International and Front Line Defenders addressed to the President of the Russian Federation, Vladimir Putin, requesting him to intervene, as because of such statements the climate for human rights workers in Chechnya was particularly hostile. The letter quoted Chechen leader

⁷⁷ See “Key facts about Geriev’s case: from kidnapping to appeal”, Caucasian Knot, 26 March 2018, available at: <https://www.eng.kavkaz-uzel.eu/articles/37713/> and DOSH 20 Digest www.doshdu.ru.

⁷⁸ “Fabricated criminal case against Oyub Titiev and Attacks on Memorial Timeline”, HRC Memorial, 20 July 2018, available at: https://memohrc.org/en/news_old/fabricated-criminal-case-against-oyub-titiev-and-attacks-memorial-timeline.

⁷⁹ See Tatiana Moskalkova’s Interview for the RBC News Agency, 25 July 2018, at http://ombudsmanrf.org:81/news/novosti_upolnomochennogo/view/intervju_tatjany_moskalkovoj_informacionnomu_agentstvu_rbk.

⁸⁰ “Russia: Bail refusal for Chechen prisoner of conscience is latest affront to justice”, Amnesty International, 26 November 2018, available at: https://www.amnesty.org/en/latest/news/2018/11/russia-bail-refusal-for-chechen-prisoner-of-conscience-is-latest-affront-to-justice/?fbclid=IwAR0fpVKSZuo-1ZL5VLvwHdpFm-CAPgcvNIgNXddBC2tmtGu_eRbaFJfph0.

⁸¹ RadioFreeEurope, 25 August 2018, confirmed by Russian sources, available at: <https://www.kavkazr.com/a/kadyrov-menya-ne-ostanovit-zakon/29457962.html>.

Kadyrov saying that “Chechnya will be a forbidden territory for them, like for terrorists, extremists, and others because they’re provocateurs themselves ...”.⁸² As indicated in this letter, such action would violate several human rights obligations to which the Russian Federation has committed itself like the right to association and contravenes the letter and spirit of the UN Human Rights Defenders Declaration of 1998. Already in December 2017 Mr. Magmed Daudov, the speaker of the Chechen Parliament, is on record of having openly called for the persecution of human rights defenders, which might have triggered the detention of Mr. Titiev as a key person for human rights defenders in the Chechen Republic.⁸³

For his outstanding merits in defence of human rights Oyub Titiev was awarded the 2018 Vaclav Havel Human Rights Prize of the Parliamentary Assembly of the Council of Europe.⁸⁴ In addition, in November 2018 he was awarded the German-French prize for human rights and the rule of law.

The use of any means to silence opponents appears confirmed by evidence like a video available on YouTube, in which the Deputy Minister of the Ministry of the Interior (MVD) of the Republic of Chechnya – Chief of Police (Police Major General), Apti Alaudinov, spoke to the heads of police and other law enforcement officers at the district center of the city of Urus-Martan in 2013, about how to deal with those who are against the current Chechen government. He considered himself being personally responsible for eradicating them by any means, including, as he specifies, imprisonment, placing objects (i.e. drugs), or killing. The “ruler” (Head of the Chechen Republic of the Russian Federation) is said to support this.⁸⁵ The authenticity of the video seems to have been put in doubt by Chechen authorities but no investigation appears to have been undertaken.

The problems of Human Rights Defenders in the Chechen Republic have also been highlighted in the recent report of the Parliamentary Assembly on Protecting Human Rights Defenders in Council of Europe member States.⁸⁶ In Resolution 2225 (2018) the Assembly, inter alia, calls on member States to “refrain from any acts of intimidation or reprisal against human rights defenders and protect them against attacks or harassment by non-State actors” and to “conduct effective investigations into all acts of intimidation or reprisal against human rights defenders, and especially cases of assassinations, physical attacks and threats”.⁸⁷

The difficulties of the work of human rights organisations of the civil society in the Russian Federation partly also stem from the law on foreign agents. In a third-party intervention of the European Commissioner for Human Rights to the European Court of Human Rights in 2017, the Commissioner took the position that this law contravenes human rights because it

⁸² Open letter by Human Rights Watch, Amnesty International and Front Line Defenders to the President of the Russian Federation, 28 August 2018, available at: <https://www.hrw.org/news/2018/08/28/open-letter-human-rights-watch-amnesty-international-and-front-line-defenders>.

⁸³ “Magomed Daudov urged Russian society to respond firmly to the enemies of the country”, Official website of the Parliament of the Chechen Republic, 25 December 2017, available at: <http://parlamentchr.ru/press-centre/news/6266-magomed-daudov-prizval-rossijskoe-obshchestvo-dat-reshitelnyj-otpor-vragam-strany>.

⁸⁴ “Vaclav Havel Human Rights Prize 2018 awarded to Oyub Titiev”, Parliamentary Assembly of the Council of Europe, 8 October 2018, available at: <http://assembly.coe.int/nw/xml/News/News-View-en.asp?newsid=7218>.

⁸⁵ The video is available at <https://www.youtube.com/watch?v=W3GJT18PID4>.

⁸⁶ See Report “Protecting human rights defenders in Council of Europe member States”, Committee on Legal Affairs and Human Rights, Parliamentary Assembly of the Council of Europe, rapporteur Mr. Egidijus Vareikis, 6 June 2018, Doc. 14567, para. 20 and Resolution 2225 (2018) as well as Recommendation 2153 (2018).

⁸⁷ Ibid., at paras. 5.2 and 5.5.

interferes with the rights to freedom of association and expression and has a chilling effect on the work of civil society.⁸⁸

2. Restrictions on the work of the media

Independent media have been accepted to be “essential to a free and open society and accountable systems of government and are of particular importance in safeguarding human rights and fundamental freedoms”.⁸⁹ The essential role that the free and independent media can play in democratic societies⁹⁰ has been recognized and reiterated⁹¹ frequently by the OSCE, which also has a focus on the safety of journalists.

The increasing restrictions on the work of the media and the harassment of investigative journalists in Chechnya need particular attention. The practice of intimidation has become a systematic practice when critical reporting is at stake. One example is the threats that have been expressed against the editor-in-chief of the news portal Caucasian Knot, Grigory Shvedov. On 4 January 2017, the speaker of the Chechen Parliament Magomed Dautov posted on Instagram an image of a dog with his tongue tied in an apparent threatening caricature of the editor. There were numerous international reactions like by the OSCE Representative on the Freedom of the Media and the European Commissioner for Human Rights expressing their concern about the pressures against journalists.⁹² A complaint filed by him to the Investigative Committee of the Russian Federation led to no results. Reportedly, the chairman of the Council at the Russian Federation, President for Development of Civil Society and Human Rights, Mihail Fedotov, urged politicians to refrain from such activities since they were criticized by the OSCE Representative on Freedom of the Media, Dunja Mijatović and the European Federation of Journalists.⁹³

The newspaper Novaya Gazeta, which reports on human rights violations in the Chechen Republic, is regularly subject to harassment. No investigations are reported into these incidents creating an atmosphere of lawlessness and fear and lack of protection.

In April 2017, approximately 15,000 people reportedly gathered at the central mosque of the city of Grozny, where the Chechen Islamic religious and public opinion leaders adopted a resolution that strongly condemns the Novaya Gazeta publication on persecution of LGBT in Chechnya. The resolution called for retaliation for “spreading an absolute lie and slander

⁸⁸ “The Russian Federation’s Law on Foreign Agents contravenes human rights”, Council of Europe Commissioner for Human Rights, 13 July 2017, available at: <https://www.coe.int/en/web/commissioner/-/the-russian-federation-s-law-on-foreign-agents-contravenes-human-rights>.

⁸⁹ Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 3 October 1991 (“Moscow 1991”), para. 26.

⁹⁰ Document of the Fourteenth Meeting of the Ministerial Council, Brussels, 4-5 December 2006 (“Brussels 2006”) Brussels 2006 (Decisions: Decision No. 13/06 on Combating Intolerance and Discrimination and Promoting Mutual Respect and Understanding), para. 9.

⁹¹ Document of the Fifteenth Meeting of the Ministerial Council, Madrid, 29-30 November 2007 (“Madrid 2007”) Madrid 2007 (Decisions: Decision No. 10/07 on Tolerance and Non-Discrimination: Promoting Mutual Respect and Understanding), para. 4.

⁹² See “Russian editor threatened by a government official in Chechnya”, European Federation of Journalists, 9 January 2017, available at: <http://europeanjournalists.org/blog/2017/01/09/russian-editor-threatened-by-government-official-in-chechnya>; See also “Editor of Caucasian Knot threatened by Chechen official”, Human Rights House Foundation, 11 January 2017, available at: <https://humanrightshouse.org/articles/editor-of-caucasian-knot-threatened-by-chechen-official>.

⁹³ See “How Caucasian Knot received death threats in Chechnya and the expressed support worldwide: a chronicle”, Caucasian Knot, 8 November 2017, available at: <https://www.kavkaz-uzel.eu/articles/295863>.

discrediting the honor and dignity of Muslims, residents of Chechnya, Russian citizens”.⁹⁴ In this regard, the Presidential Human Rights Council requested the Investigative Committee to open a criminal case. Anita Soboleva, the Chair of the Standing Committee on Social Rights, reportedly said: ‘The calls for retaliation, which will definitely occur, shall be considered as threats to journalists.’⁹⁵ The Chechen Human Rights Council reportedly explained that retaliation was to be understood as the call for accountability of Novaya Gazeta for casting aspersions.⁹⁶ After continuing threats against Novaya Gazeta the OSCE Representative on the Freedom of the Media, Harlem Désir, in October 2018 deplored the death threats against journalists of Novaya Gazeta and urged Russian authorities to ensure journalists’ safety.⁹⁷

III. Findings – Credibility of Allegations and Reasons for Impunity

A. Credibility of Allegations

The mandate for this report explicitly refers to alleged human rights violations and allegations of impunity. As has been shown when reviewing the allegations of human rights violations on the basis of evidence collected there can hardly be any doubt that those allegations are credible as they have been confirmed by different reliable sources like testimonies of victims and witnesses, lawyers and reports by local and international organizations. The evidence is at least in part also corroborated by the work of competent human rights institutions of the Russian Federation like the Human Rights Ombudsman Tatyana Moskalkova or the Presidential Human Rights Council presided by Mr. Mikhail Fedotov.

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.

B. Shortcomings in the System of Investigation of Human Rights Violations

Confronted with reports of the persecution of gay persons in Chechnya, the Chairperson of the Presidential Council for Civil Society and Human Rights, Mr. Mikhail Fedotov, calls those claims “monstrous” which “should be verified thoroughly”. However, there was no proper investigation of the alleged crimes, partly also because only one person, Mr. Lapunov,

⁹⁴ “Assembly of the Chechen Islamic religious and public opinion leaders adopted a resolution that strongly condemns the Novaya Gazeta slanderous publication”, GroznyInform, 5 April 2017, available at: <http://www.grozny-inform.ru/news/society/83580>.

⁹⁵ “Chechen clergy promised “retaliation” to Novaya Gazeta journalists after they published an article on persecution of LGBT in Chechnya”, 14 April 2017, Meduza, available at: <https://meduza.io/feature/2017/04/14/chechenskoe-duhovenstvo-poobeschalo-vozmezdie-zhurnalistam-novoy-gazety-posle-stati-o-presledovaniyah-geev-glavnoe>.

⁹⁶ Ibid.

⁹⁷ OSCE Representative deplores death threats against Novaya Gazeta journalists, urges Russian authorities to ensure journalists’ safety”, OSCE, 18 October 2018, available at: <https://www.osce.org/representative-on-freedom-of-media/400364>.

was courageous enough to bring a formal complaint. He is now abroad as he does not feel safe in the Russian Federation as did many others in the same situation. Consequently, more than 120 have left the Russian Federation, after having fled from the Chechen Republic and many of them have by now received asylum in Western European countries or Canada after the authorities and courts of these countries have found their claims substantiated.

However, the Russian authorities responsible for investigating alleged crimes against LGBTI citizens persecuted in Chechnya appear not to have lived up to their responsibilities.

Generally, the question is whether the system lives up to the right to an effective remedy. In this context, as could be seen, the pre-investigation or pre-check procedure is of crucial importance.

1. The pre-investigation procedure

The Criminal Procedure Code of the Russian Federation,⁹⁸ specifically Articles 144 and 145, devoted to pre-trial proceedings and ultimately to instituting a criminal case, regulate the procedural aspects of considering the communication of a crime. Article 144 foresees the obligation of the inquirer, the body of inquiry, the investigator and the head of the investigative body to accept and to check up the communication on any prepared or committed crime prior to taking a decision whether a criminal case shall be instituted. This check-up (in Russian «проверка») is also known as “*preliminary/pre-investigative check-up*” (in Russian «*до следственная/предварительная проверка*»), also called pre-investigation which is conducted, amongst others, by the investigative bodies of the Investigative Committee of the Russian Federation.

Upon the completion of the pre-investigation check, one of the three following decisions shall be undertaken within three days from the day when the communication on a crime came in (i.e. was registered). These are: 1) to institute a criminal case, 2) to refuse instituting a criminal case, or 3) to hand over the communication to the corresponding body in accordance with the investigative jurisdiction. Article 144 allows the prolongation to not more than 10 or 30 days in case of substantial grounds, about which the person who communicated a crime shall be informed.

At the stage of conducting a preliminary check-up, the Criminal Code entitles the investigative body to receive explanations, to request and participate in carrying out forensic examinations, to receive medical expert opinions within a reasonable time, to carry out revisions, inspections of the crime scene, to extract documentation, etc. When receiving explanations at the stage of conducting the preliminary check-up, it appears a person cannot be held accountable for providing false information, which is a major weakness of the procedure.

No exact procedure specifying how the listed activities shall be undertaken is provided in Articles 144 and 145. For example, it remains unclear by what means and under which timeframes the obligation to inform a person, who communicated on a crime, shall follow. Moreover, if, for instance, the investigation carries out a forensic examination, the latter does not seem to be entitled to the right to be informed about it, to file a motion requesting the

⁹⁸ The Criminal Procedure Code of the Russian Federation (2001), see at http://www.consultant.ru/document/cons_doc_LAW_34481.

participation of his expert, etc.⁹⁹ In this context, there seems to be no balance between the listed activities to which the investigation is entitled at the stage of the preliminary check, and the rights to which the person, who communicated a crime, is entitled. Therefore, it is necessary to ensure that, while falling within the scope of the Criminal Procedural Code, the listed activities are in line with the guaranteed rights and freedoms of the persons whose interest they may concern. In accordance with Article 2 of the Constitution of the Russian Federation,¹⁰⁰ rights and freedoms shall be the supreme value, and it is the obligation of the State to protect these.

Along with other provisions enshrined in the Criminal Procedure Code of the Russian Federation, Articles 144 and 145 specifically guarantee the rights of persons who submitted a communication on a crime. These include the right to be informed about the prolongation of the preliminary check and the decision ultimately taken, the right to legal assistance, the right to submit a complaint about the act or omission by the investigation, and the right to appeal. Nevertheless, the wording of Article 144 (para. 1.1) remains problematic. In this context, it seems that, at the stage of the preliminary check-up, the obligation to ensure the realization of the rights guaranteed by the Criminal Procedural Code – when undertaking actions and taking procedural decisions – is limited only to those acts and decisions that concern the interests of the person who communicated a crime, his family and close relatives. Notably, in the course of the pre-trial criminal proceedings, the prosecution shall ensure that the preliminary check-up is in full compliance with the Constitution of the Russian Federation, its laws and international agreements, which the Russian Federation has ratified.¹⁰¹

As for the safety guarantees, there is no explicit reference to the right to be granted state protection, which is guaranteed in the Federal Law on State Protection of victims, witnesses and other participants of criminal proceedings.¹⁰² Nevertheless, paras. 2 and 3 of Article 2 of this Federal Law explicitly states that, at the stage prior to the initiation of a criminal case, state protection may be granted, amongst others, to the person who communicated a crime, as well as to his or her close relatives in case of attempts to put him or her under pressure. The head of the investigative body or the investigator with consent of the former, or the head of the body of inquiry, amongst others, are entitled to take a decision on granting state protection (Articles 3 and 18 of the Federal Law).

As for the information received in the course of the preliminary check-up, it may be used as evidence (para. 1.2. of the Criminal Procedural Code) only if there is no violation of Articles 75 (on inadmissible proof) and 89 (on using results of the operational-search activity that are not in line with the Criminal Procedural Code). Therefore, evidence based on a surmise, supposition or hearsay, or on a source that cannot be indicated is considered as inadmissible. It seems, however, that due to the lack of explicitly stated procedural guarantees, the

⁹⁹ See I.A. Popov, On some reasons of the breach of the victim's rights and lawful interests at the stage of the preliminary investigation. *Journal of the Moscow University of the Ministry of Internal Affairs (MVD)*, No. 1 (2018), pp. 80-82, available at: <https://elibrary.ru/item.asp?id=35258114>.

¹⁰⁰ The Constitution of the Russian Federation, see at: https://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Russian%20Federation_Constitution_1993_EN.pdf (in English), and <http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=LAW&n=2875&fld=134&dst=1000000001,0&rnd=0.0579534707694942#04619984515264106> (in Russian).

¹⁰¹ On their official website, the Prosecutor's Office in Tulskaaya oblast explains what rights citizens have at the stage of the pre-investigation check-up in light of Articles 144-145 of the Code of Criminal Procedure of the Russian Federation. See at <http://www.prokuror-tula.ru/prosecutors-office/explanation/central-office/15880>.

¹⁰² The Federal Law of the Russian Federation on State protection of victims, witnesses and other participants of criminal proceedings, see at <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102088392>.

preliminary check-up is vulnerable to manipulations, especially when it comes to gathering and checking the information on a crime communicated. The Criminal Procedural Code also seems to remain silent about the obligation to undertake measures to secure the traces of a crime, except the cases when the decision to hand over the communication to the corresponding body in accordance with the investigative jurisdiction was taken.

Accordingly, there are several weaknesses in the pre-investigation procedure, which needs to be strengthened as shown by the Lapunov case or the case of the alleged extrajudicial executions. Complainants should be granted effective state protection already at this level, because they might not be able to file their complaints in fear of reprisals, which explains the lack of more cases of LGBTI persons persecuted. According to reports, state protection is very difficult to obtain, which is a problem which needs to be addressed.

2. The role of the Ombudsman

In the case of the allegations of human rights violations committed in Chechnya the Ombudsman has been involved in several cases, which raises the question of the competences of this institution and the outcomes of its actions.

The Ombudsman formally carries the denomination “High Commissioner for Human Rights in the Russian Federation”,¹⁰³ but is generally known as the Human Rights Ombudsman in the Russian Federation. Presently, the office is held by Tatyana Moskalkova.

The High Commissioner for Human Rights in the Russian Federation is appointed by the State Duma of the Russian Federation. The independence of the Russia’s Ombudsman from political and any other external influence is guaranteed by several articles of the Federal Constitutional Law. In Chechnya, the Commissioner for Human Rights is appointed by the Chechen Parliament. It seems that the Chechen Ombudsman acting at a regional level enjoys almost identical guarantees and competences to those of the High Commissioner acting at a federal level. However, its factual independence is doubted by observers.

Since the Ombudsman (both at federal and regional levels) is not entitled to override or review the competences of the state bodies, filing a complaint constitutes a legal remedy of subsidiary character only. This means that filing a complaint to the Ombudsman Office cannot substitute other legal remedies for human rights protection in Russia.

The Russian High Commissioner is entitled to consider complaints, which arise from acts or omissions of the state and local authorities, public officials and state servants, after the claimant exhausted administrative and judicial remedies and remains dissatisfied with an appeal outcome.

At the stage of consideration, the High Commissioner may request the assistance of the competent bodies (other than the ones involved in the alleged violation) in investigating the complaint and can send a request to the Regional Ombudsman.¹⁰⁴ While investigating the complaint, the High Commissioner is entitled to have access to any authorities, facilities, etc.,

¹⁰³ See official website of the High Commissioner for Human Rights in the Russian Federation, at <http://eng.ombudsmanrf.org>.

¹⁰⁴ Article 22 of the Federal Constitutional Law on the High Commissioner for Human Rights of the Russian Federation, Article 20 of the Constitutional Law of the Chechen Republic on the Commissioner for Human Rights in the Chechen Republic, see at <http://www.parlamentchr.ru/dokumenty/legislation/2006/149-1-rkz-ot-02-02-06-goda-ob-upolnomochennom-po-pr>.

request and obtain information and explanations, carry out inspections, request expert opinions, familiarize himself or herself with the materials related to the complaint in question, including the cases where no criminal case was opened. In case of finding a violation of the rights of the person who complained, the High Commissioner is entitled to send his or her assessment with the relevant recommendations on the measures that need to be taken by the corresponding authority or public official whose act or omission led to the violation in question.¹⁰⁵

According to Article 29 of the Federal Constitutional Law, the High Commissioner may file an administrative complaint in court and ultimately participate in the court proceedings, or file a motion to other relevant competent bodies for the initiation of disciplinary, administrative or criminal proceedings against the authority or public official whose act or omission led to the alleged violation. Amongst other competences, the High Commissioner may also request the court or prosecution to review the lawfulness of a decision or procedural act that came into force.

In case of gross human rights violations, or violations of great public significance, or if it is necessary to protect those concerned due to their inability to use legal remedies, the Commissioner is entitled to take appropriate measures on her/his own initiative.¹⁰⁶ In this context, Article 32 of the Federal Constitutional Law enables the High Commissioner to present a report to the State Duma of the Russian Federation, as well as to request the initiation by the latter of an ad hoc parliament commission to investigate human rights violations in question. The High Commissioner also publicly presents the annual reports on his or her human rights activities over the year and may prepare thematic human rights reports.¹⁰⁷

This short analysis of the legal situation shows that the Human Rights Ombudsman of the Russian Federation does indeed have far-reaching powers, which, however, seem limited in practice as can be seen from the involvement of the Ombudsman in the cases of alleged gross violations of human rights in Chechnya, where the outcome of her action appears to be very limited. In any case, good efforts have to be acknowledged, but in view of the problems on the ground, an effective remedy can only be provided by a functioning legal procedure. Still, given the fact that Chechnya often is described as a region of exception, where the regular Russian laws are not implemented, the question has to be asked whether this situation of lack of accountability for gross violations of human rights would not qualify for a report to the State Duma according to Article 32 of the Federal Constitutional Law.

C. The Responsibility of the Russian Federation: Lack of Political Will or Lack of Control?

There is the impression that institutions of the Russian Federation that are doing valid work in general, do have difficulties in addressing the situation in Chechnya, which is treated like a special case, an area of exception, where the institutions of the Russian Federation are not effective and a special regime of impunity is tolerated for the sake of stability. This raises the question of the strength of the institutions of the Russian Federation in meeting their responsibility for human rights on the whole territory of the Russian Federation. There is a

¹⁰⁵ Federal Constitutional Law of the Russian Federation, Article 27.

¹⁰⁶ Ibid., Article 21.

¹⁰⁷ Ibid., Article 33.

certain discrepancy between the modernization of the legal and judicial system of the Russian Federation and the tolerance of an allegedly archaic state of affairs on human rights in Chechnya, where serious implementation gaps of Russian Federation laws have to be observed.

One report under preparation in the Committee on Legal Affairs of the Parliamentary Assembly will be on “The continuing need to restore human rights and the rule of law in the Northern Caucasus region”. The rapporteur is Mr. Frank Schwabe, who has already been responsible for the Resolution 2157 (2017) on “Human rights in the Northern Caucasus: what follow-up to Resolution 1738 (2010)?” This resolution is based on a report of Dick Marty, who had also visited the Chechen Republic at the time, which dealt with “Legal remedies for human rights violations in the North Caucasus region” and found the region still to be the most serious and delicate situation with regard to safeguarding human rights and upholding the rule of law in the area covered by the Council of Europe. It made several recommendations to the Russian authorities, like to bring all culprits of human rights violations to trial or to work more closely with human rights organizations on the ground and to protect its staff effectively against reprisals. In Recommendation 2099 (2017) which is related to Resolution 2157 (2017) the Assembly asked the Committee of Ministers to use its compliance mechanism introduced by its Declaration of 1994 to review the human rights situation in the North Caucasus.

In its reply to the Recommendation of 15 November 2018 the Committee of Ministers of the Council of Europe recalls that it has encouraged the Russian authorities to authorize the publication of the reports by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Actually the CPT was the only Council of Europe mechanism which got access to Chechnya in the last year. The Committee also expresses concern about the “reports on abductions, extra-judicial killings, torture and ill-treatment of LGBTI individuals in Chechnya as well as denial, trivialization and condoning of by the Chechen authorities of the attacks”. The Committee of Ministers underlined “the importance of prompt, effective and thorough investigations, so that anyone found guilty of or complicit in such crimes is brought to justice [...]”¹⁰⁸

While this report is limited to the period since the beginning of 2017 it cannot overlook that there is a long history of egregious human rights violations in Chechnya, from the wars in the 90s until today, which can well be followed through the many cases before the European Court of Human Rights.¹⁰⁹ Close observers like Philip Leach see a lack of any significant political will to improve the situation but put their hope on the continuous work of international institutions like the Court of the Council of Europe.¹¹⁰ For example, the general measures recommended for the execution of judgments of the ECtHR could have a positive systemic effect. Complementary to these efforts, the Organization for Security and Co-operation in Europe (OSCE) and its participating States have to play their role in assisting the Russian Federation to overcome the challenges identified.

In view of the repeated appeals and efforts by the international community as well as Russian actors and the still degrading situation of human rights in the Chechen Republic the question

¹⁰⁸ See Committee of Ministers, Human rights in the Northern Caucasus: what follow-up to Resolution 1738 (2010)?, Reply to Recommendation, Doc. 14664 of 15 November 2018.

¹⁰⁹ See for an overview by Philip Leach, Egregious human rights violations in Chechnya: appraising the pursuit of justice, in: Lauri Mälksoo and Wolfgang Benedek (eds.), *Russia and the European Court of Human Rights, The Strasbourg Effect*, Cambridge University Press 2018, 255-294.

¹¹⁰ *Ibid.*, at 291.

imposes itself whether there is a lack of political will or whether the Russian Federation has lost control over the events in Chechnya. Most observers believe that there is a lack of political will for the sake of stability in the region. Therefore, the main issue is less new legal and procedural reforms but to strengthen the political will to properly use existing institutions and procedures to ensure accountability for human rights violations.

IV. Conclusions

The evidence clearly shows that the allegations of very serious human rights violations in the Chechen Republic of the Russian Federation have been found confirmed. This concerns in particular allegations of harassment and persecution, arbitrary or unlawful arrests or detentions, torture, enforced disappearances and extrajudicial executions. In particular, several waves of violations of human rights and abuses of persons based on their sexual orientation and gender identity in 2017 could be confirmed. New purges were identified affecting alleged drug addicts and even teenagers.

There has not only been no progress with regard to the legal situation of effective remedies and consequently to the problem of impunity, but the situation has worsened as the climate of intimidation has increased to the extent that hardly anybody in Chechnya feels free to speak about the human rights problems any more. Human rights organizations and investigative media instead of being protected face various forms of harassment and attacks, which are not investigated. This appears to be in line with a general feeling of lawlessness and the impression that the repressive state apparatus is free to act as it wants, as it is protected by impunity.

These findings are confirmed by the fact that not a single case is known where a member of the state security services has been brought to justice for human rights violations. The pre-investigation procedures in the cases analysed all have ended without establishing a case for a criminal investigation. In violation of state and human rights law, pressures and reprisals are not only directed against victims or witnesses, but also towards their families, which might also become subject to punitive attacks. The harassment in recent years on human rights monitors has been so severe that it has become too risky to continue this work and human rights organizations had to suspend their activities.¹¹¹ The director of the remaining human rights center “Memorial” is subjected to a trial based on obviously fabricated evidence. The Head of the Chechen Republic of the Russian Federation is on record that after this trial Chechnya will be a “forbidden territory” for human rights workers.

Human rights institutions existing on the federal and regional levels appear not effective in dealing with the violations of human rights in Chechnya and therefore need to be strengthened. The independence of the judiciary cannot be assumed which calls for transferring human rights cases to courts outside the Chechen Republic.

In conclusion, in the Chechen Republic the law is de facto dictated by the power and the rule of law is not effective. There appears to be a general state of impunity with regard to human rights violations by the security forces.

¹¹¹ This finding is based on reports of and interviews with several human rights organizations.

In accordance with the mandate, this report presents a number of recommendations, which are structured in recommendations to the Russian Federation, the Chechen Republic and the participating States.

Annex – Response by the Russian Mission at OSCE to request by rapporteur for support

Von: Rus Mission to OSCE <rfosce@yandex.ru>

Datum: Freitag, 16. November 2018 um 16:55

An: Wolfgang Benedek <wolfgang.benedek@uni-graz.at>

Betreff: Re: Moscow Mechanism: Visit to the Russian Federation; Very Urgent!

Dear Professor Benedek,

As underlined in our letter of 9 November 2018 in response to 16 OSCE participating States, which had invoked the OSCE Moscow Mechanism “to look into alleged human rights violations” in the Chechen Republic of the Russian Federation, the Russian side is convinced that the concerns and accusations with regard to the mentioned situation are biased and groundless. Moreover, they clearly demonstrate the policy of “double standards” in the use of the OSCE human dimension mechanisms that can only increase degradation of the OSCE.

We would like to recall that in order to fulfil our commitments in good faith, the Russian side responded promptly and constructively to previous concerns of the invokers under the Vienna Mechanism. As you may know, this, on our initiative, was followed by the subsequent discussion on 7 September with the heads of missions of interested participating States. Furthermore, with the bona fide aim to look into the concerns raised before us, we requested the States involved to provide us in writing with well-documented and credible detailed information regarding names of those 27 individuals, who had been allegedly “extrajudicially executed by the Chechen authorities in Grozny in January 2017”. We asked also to give us dates and circumstances of their detentions and/or disappearances. However, our legitimate and repeated request remains unaddressed.

Finally, the invokers suddenly discontinued engagement within the Vienna Mechanism in order only to inform us about a decision to switch to the Moscow Mechanism. This step only deepened our concern that from their side it was an evident attempt to further politicize and abuse the OSCE Human Dimension Mechanisms.

Let me underscore that the OSCE Human Dimension Mechanisms have become outdated and redundant for the most part, since the OSCE Permanent Council’s meetings, encompassing the discussions on current issues, got a regular status. Not to mention the fact that in the course of those discussions the Russian Federation has been repeatedly and extensively providing all necessary clarifications on the same issues raised by some participating States.

Taking the above-mentioned facts into consideration, and with all due respect to you personally, esteemed Professor Benedek, we are not in a position to arrange your visit to the Russian Federation as an appointed rapporteur under the OSCE Moscow Mechanism.

Sincerely yours,

Vladimir Zheglov,

Deputy Permanent Representative of the Russian Federation to OSCE

15.11.2018, 18:11, "Benedek, Wolfgang (wolfgang.benedek@uni-graz.at)"
<wolfgang.benedek@uni-graz.at>:

em.Univ.-Prof. Dr. Wolfgang Benedek
Graz, Austria

His Excellency
Ambassador Alexander Lukashovich
Permanent Representative of the Russian Federation to OSCE
Vienna

cc Ingibjörg Solrun Gisladdottir
Director, ODIHR

Your excellency,

as You are aware I have been appointed to serve as rapporteur under the Moscow Mechanism in the case of the request of 16 OSCE Participating States on the human rights situation in the Chechen Republic of the Russian Federation.

As the Russian Federation decided not to appoint a second expert I have the obligation to undertake this mission as a single rapporteur. For this purpose, it is of much importance to me to visit the Russian Federation to hear to the views of the competent institutions, like the Ombudsperson and other governmental authorities, but also of civil society organizations.

For this purpose I ask You for Your support to identify relevant institutions and persons to meet and to enable me to speak to them during my visit in order to get an as comprehensive picture as possible. As You also know the mission has to be completed within two weeks and therefore I would ask You to give me Your response as soon as possible, preferably till tomorrow Friday 5 pm. I would also be prepared to come to Vienna to discuss the details of the visit.

I thank You for Your understanding. May I ask You to confirm receipt of this message.

Yours sincerely

Wolfgang Benedek

cc Ingibjörg Solrun Gisladdottir
Director, ODIHR