



UNITED NATIONS HUMAN RIGHTS COUNCIL

**16<sup>th</sup> Session of the Working Group on the Universal Periodic Review**

22 April to 3 May 2013

**INTERNATIONAL COMMISSION OF JURISTS (ICJ) SUBMISSION  
TO THE UNIVERSAL PERIODIC REVIEW OF THE RUSSIAN FEDERATION**

Submitted October 2012

*Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council since 1957, and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.*

## **ICJ SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW OF THE RUSSIAN FEDERATION**

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the Human Rights Council's Universal Periodic Review (UPR) of the Russian Federation (Russia). In this submission, the ICJ brings to the attention of the Human Rights Council's Working Group on the UPR (Working Group) and to the Human Rights Council (Council) issues concerning: (1) prevention of torture and ill-treatment and other gross human rights violations; (2) impunity for gross human rights violations; (3) independence of the judiciary; (4) amendments to NGO laws; (5) *non-refoulement*; (6) homosexual propaganda bans; and (7) Russia's engagement with international human rights instruments and mechanisms.

### **Prevention of Torture and Other Gross Human Rights Violations**

2. There are consistent and reliable reports of widespread ill-treatment of detainees by law enforcement personnel.<sup>1</sup> It is indicative of the systemic nature of the problem that cases alleging torture or other ill-treatment make up 15 per cent of all the complaints against Russia before the European Court of Human Rights, which, with Russia's more than a quarter of all the caseload of the Court,<sup>2</sup> means that Russia currently has the greatest number of torture and ill-treatment complaints in absolute terms of any State Party to the European Convention on Human Rights (ECHR).<sup>3</sup> The European Court has found more violations of the prohibition on torture and other forms of ill-treatment by Russia than by any other State Party to the ECHR since 1959.<sup>4</sup>

3. Torture and ill-treatment of detainees is perpetuated by the inadequacy of essential safeguards required by Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), as well as Articles 7, 9 and 10 of the International Covenant on Civil and Political Rights (ICCPR), including prompt access to independent legal assistance, contact with relatives, and judicial review of pre-trial detention.<sup>5</sup> Formal safeguards under Russian law are not always respected in practice and have proven to be insufficient to prevent torture and ill-treatment by officials.<sup>6</sup>

4. The choice of a lawyer is guaranteed by Article 50 of the Criminal Procedure Code (CPC) but in practice, in cases where a person requests a lawyer while being detained, such requests are often denied and further pressure is often placed on detainees to "confess" to guilt.<sup>7</sup> Lawyers have faced harassment and threats as well as obstruction in their attempts to effectively represent their clients, especially in the North Caucasus.<sup>8</sup> Such harassment inhibits lawyers from effectively protecting their clients in detention against ill-treatment, and is contrary to the UN Basic Principles on the Role of Lawyers.<sup>9</sup> Although under Russian law relatives of a detained person must be informed of the detention within 12 hours,<sup>10</sup> this right may be restricted in the interest of the secrecy of the investigation.<sup>11</sup> This facilitates ill-treatment during the first period after apprehension, as during that time individuals can be held and information can be extracted without witnesses or lawyers.<sup>12</sup>

5. Despite safeguards in the CPC to prevent violations of the rights of detained persons,<sup>13</sup> judicial review of detention remains ineffective. In cases of unlawful detention, it is not always possible to obtain a speedy review of detention.<sup>14</sup>

6. Pre-trial detention is authorised by the courts but continues to be the norm, despite alternatives to detention enshrined in law.<sup>15</sup> Overreliance on pre-trial detention creates conditions for ill-treatment of detainees and contributes to poor detention conditions.<sup>16</sup>

### **Impunity for Gross Human Rights Violations**

7. Despite increased stability in the region, practices of arbitrary, including secret, detention, torture and other ill-treatment and enforced disappearances continue to be widespread in Chechnya, as well as elsewhere in the North Caucasus,<sup>17</sup> and are perpetuated by impunity for these crimes.<sup>18</sup> Reliable and consistent reports,<sup>19</sup> as well as repeated judgments of the European Court of Human Rights, testify to delayed and ineffective investigation of human rights violations.<sup>20</sup> There is a pattern of investigations that begin late and are inexplicably delayed and adjourned; of prosecutors' instructions to investigate either ignored, or followed only after long delays, of crucial witnesses not interviewed, or relevant inquiries not made; and of victims and family members not being adequately involved or kept informed of progress.<sup>21</sup> In the last two years, out of 427 complaints to the Investigation Committee of the Chechen Republic related to enforced disappearances, not a single case was transferred to court following an investigation and no suspects faced charges in relation to these alleged crimes.<sup>22</sup>

8. It is also problematic that, where charges are brought regarding allegations of torture, they will often be for lesser crimes than the crime of torture.<sup>23</sup> The offence may instead be prosecuted under Article 286 CPC (abuse of power), Article 111-113 (international infliction of injuries), Article 302 (coercion to give testimony) or other provisions,<sup>24</sup> which carry lesser sentences.

### **Independence of the Judiciary**

9. The right to a fair trial and to an effective remedy for violations of human rights continues to be hampered by a weak judiciary that is vulnerable to undue influence from both private and public interests. An ICJ research mission and report of 2010 found a need for a systemic programme of judicial reform to address the structural problems in the judiciary, including through reforms regarding judicial appointments, promotions and dismissal, and the appointment and powers of court presidents. It found that the extensive powers of court presidents frequently serve as a conduit for executive or other influence in both civil and criminal cases.<sup>25</sup> Such attempts to influence the judiciary are a serious threat to its independence and its ability to provide a fair hearing in accordance with international human rights standards.

10. The ICJ is particularly concerned at aspects of the standards and system for judicial discipline, which results in the dismissal of between 40-50 judges each year. An ICJ mission in 2012 which addressed this issue heard that disciplinary sanctions are applied inconsistently and according to uncertain criteria, leaving room for abuse and arbitrariness.<sup>26</sup>

### **New Amendments Governing NGO Activities**

11. The newly adopted amendments to the law on NGOs raise serious concerns as to potential interference in the legitimate exercise of the right to freedom of association, under Article 22 ICCPR. Under the law "any Russian non-profit organisation" which receives money or other property from foreign or international sources or from Russian organisations which receive such money or other property, should register as a "foreign agent" if they carry out "political activity in the Russian Federation".<sup>27</sup>

12. The law defines "political activity" as participation in "organisation and conduct of political actions in order to influence decision-making by public authorities aimed at changing their public policy, as well as in the shaping of public opinion for the above purposes". Despite some broad exemptions from the law, including activities in the area of science, culture, art, "defense of citizens", or "volunteering", the regular operation of many organisations may be considered by the relevant bodies as "shaping public opinion". This therefore encompasses almost any NGO receiving money or property from "foreign sources", including from, for example, UN bodies.

13. The vagueness of the new amendments creates a regime of legal uncertainty and unpredictability and potentially allows for its arbitrary application. The law is also likely to have a chilling effect on the freedom of association of NGOs. In particular, the stipulation that an organisation is considered as taking part in political activities "despite the goals and objectives indicated in its founding documents" is highly worrying. In these circumstances, it is left to the discretion of the authorities to decide whether an organisation acts as a foreign agent. Furthermore, the law does not define a minimum threshold of money or property for its application, nor does it specify who should verify whether money received is indeed "foreign" or "international".

14. The same law amends the Criminal Code establishing a new offence of the creation of an organisation whose activities are connected with "incitement to refusal to carry out citizen's obligations or carrying out other illegal activities".<sup>28</sup> The ICJ is concerned that this amendment is unduly vague and that the application of the term "citizen's obligations" is neither foreseeable nor predictable, in contravention of Russia's obligations under Article 22 ICCPR.

### **Transfer of Suspects in Breach of the Obligation of *Non-refoulement***

15. Within the framework of the Shanghai Co-operation Organisation, Russia and other CIS countries, as well as China, share increased co-operation between law enforcement and intelligence services,<sup>29</sup> often in contravention of international human rights obligations, including the absolute prohibition on *refoulement* to face a real risk of torture and ill-treatment. Given the widespread and systematic use of torture and ill-treatment in several States Parties to the Shanghai Convention, the ICJ is concerned at the many extraditions and informal transfers from Russia to other States Parties. Such transfers, which sometimes rely on diplomatic assurances from States where torture and ill-treatment is widespread or systematic, violate the obligation of *non-refoulement*.<sup>30</sup> They include abductions or enforced disappearances and extra-legal transfers.<sup>31</sup> In several cases, suspects whose extradition has been refused have shortly afterwards been abducted and

transferred,<sup>32</sup> or transferred through immigration expulsion orders of dubious legality.<sup>33</sup> On at least one occasion, a transfer has been made in defiance of interim measures prescribed by the European Court of Human Rights.<sup>34</sup> Particularly problematic are returns to Uzbekistan of individuals wanted in connection with the Andijan protests of 2005,<sup>35</sup> given that systematic use of torture continues in Uzbekistan.<sup>36</sup> Reports of the Russian Federation preparing to extradite asylum-seekers continue to arise.<sup>37</sup>

### **Homosexual Propaganda Bans**

16. Laws prohibiting the 'promotion' of homosexuality amongst minors have recently been enacted in many regions in the Russian Federation. The Ryazan region was the first to criminalize public acts that "aimed at promoting homosexuality amongst juveniles" in 2006. Within the last two years, laws have also been adopted in Arkhangelsk, Kostroma, St. Petersburg, Novosibirsk, Samara, and Krasnodar. At the national level, a draft law has been referred to the State Duma, which will consider its adoption in December 2012.

17. The homosexual propaganda bans are all similarly worded and impose significant fines. For example, Section 7-1 of the St. Petersburg Law on Administrative Offenses provides: "Public acts aimed at propagandizing male homosexuality, lesbianism, bisexuality, and transgenderism among minors shall be punished with the administrative fine for citizens in the amount of five thousand rubles; for public officials – fifty thousand rubles; for legal entities – from two hundred thousand to five hundred thousand rubles". The legislative note explains that such public acts are "the targeted yet unregulated conveyance of information by means that make such information publicly accessible and capable of causing harm to the health and the moral and spiritual development of a minor, such as the formation by a minor of a distorted conception of non-traditional unions as being equal to traditional ones".

18. A number of people have already been arrested under these laws. One of the first individuals arrested had held up a sign stating: "Homosexuality is not a perversion. Field hockey and ice ballet are". He was convicted and fined 5,000 Roubles. During a protest on 1 May 2012 in St. Petersburg, the police detained 17 activists for violating the law by holding up rainbow flags.

19. The homosexual propaganda bans are incompatible with the right to freedom of expression, guaranteed by Article 19 ICCPR. First, the bans are so vague that they do not meet the requirement of being provided for by law, by which a law must be formulated with sufficient precision to enable an individual to regulate his or her conduct.<sup>38</sup> What conduct is prohibited and what is permitted is unclear.

20. Second, the propaganda bans fail the test of necessity and proportionality. Although protection of minors is often stated as the justification for the law, in practice the laws may be used to prohibit many statements concerning lesbian, gay, bisexual and transgender (LGBT) human rights and perhaps even assertions of a gay or lesbian identity. There is no support for the proposition that discussion of same-sex relationships or equality is harmful to either minors or the general public. The European Court of Human Rights has resolutely rejected the protection of minors or the general public as a valid reason to uphold a ban on gay prides.<sup>39</sup>

21. Third, by excluding LGBT voices and concerns from the public sphere and suppressing information, ideas and debate about issues of concern to LGBT communities, the bans discriminate on the basis of sexual orientation.<sup>40</sup> They are an impermissible limitation on freedom of expression and they violate the guarantee of non-discrimination in Article 26 ICCPR.<sup>41</sup>

### **International Human Rights Instruments and Mechanisms**

22. The Russian Federation is yet to become party to the Second Optional Protocol (OP) to the ICCPR, the OP to the Covenant on Economic, Social and Cultural Rights (ICESCR), the Third OP to the Convention on the Rights of the Child (CRC), the OP to the CAT (OPCAT), the International Convention for the Protection of All Persons from Enforced Disappearances (ICPED), the International Convention for the Protection of the Rights of All Migrants Workers and Members of Their Families (ICRMW) or the Rome Statute of the International Criminal Court.

23. Russia has adhered to treaty body submissions, although these have not all been timely.<sup>42</sup>

24. Russia has not extended a standing invitation to the UN Special Procedures. There are many longstanding invitations for country missions, but no dates have been agreed upon.<sup>43</sup> The Special Rapporteur on torture was refused permission to visit the North Caucasus in 2006 during his visit and no new invitation has been extended.

## Recommendations

25. The ICJ calls upon the Working Group and the Council to recommend to the Government of the Russian Federation to:

### *Concerning prevention of torture and other gross human rights violations*

- i) Ensure that conduct amounting to torture as defined in Article 1 CAT is prosecuted as torture under Article 117 of the Criminal Code, rather than as more minor offences carrying lighter penalties;
- ii) Implement in practice the right to access to an independent lawyer, for a period of time sufficient to provide effective legal advice, immediately following arrest or detention and regularly thereafter;
- iii) Ensure that all detainees enjoy in practice an immediate right to inform a family member or other person of their detention;
- iv) Ensure that judicial review of detention is real and substantial and is sufficient to safeguard detainees against ill-treatment;
- v) Take steps to decrease reliance on pre-trial detention;
- vi) Take effective measures to protect against harassment and threats towards lawyers, in particular in the North Caucasus;

### *Concerning impunity for gross human rights violations*

- vii) Conduct prompt, thorough and effective investigations into acts of torture and other ill-treatment in the North Caucasus and elsewhere in the Russian Federation;
- viii) Take effective measures to prevent and put an end to the practice of and impunity for torture and other ill-treatment by military, security services or other State agents;
- ix) Carry out systematic and structural changes in the law enforcement and justice systems aimed at effectively tackling the problems of impunity for torture and other ill-treatment;

### *Concerning Judicial Independence*

- x) Strengthen the independence of the judiciary including through reforms of the systems of judicial appointment, selection and promotion, and of judicial discipline;

### *Concerning new amendments governing NGO activities*

- xi) Amend the law on NGO activities to make its application foreseeable and predictable and eliminate the possibility of its abuse or arbitrary application;
- xii) Amend the law on NGO activities so as to meet international human rights law standards of prescription by law and so as not to permit undue interference with the legal exercise of the right to freedom of association;

### *Concerning non-refoulement*

- xiii) Scrupulously respect the principle of *non-refoulement*, cease reliance on diplomatic assurances against torture and other ill-treatment and ensure that detentions and transfers comply with national law and procedures as well as international human rights obligations;

### *Concerning homosexual propaganda bans*

- xiv) At the Federal level, reject the draft Amendment to the Code of Administrative Offences on establishing administrative responsibility for the promotion of homosexuality amongst minors;
- xv) Repeal existing regional laws banning homosexual propaganda;
- xvi) Discourage regions that are considering adoption of similar propaganda bans;
- xvii) Adopt comprehensive anti-discrimination legislation that includes sexual orientation and gender identity as protected grounds;

*Concerning international instruments and mechanisms*

- xviii) Become party to the Second OP to the ICCPR, the OP to the ICESCR, the Second OP to the CRC, the ICRMW, the ICPED, and the Rome Statute of the ICC;
- xix) Extend all reasonable cooperation and assistance to facilitate timely and effective country missions in respect of outstanding country mission requests by Special Procedures;
- xx) Present to the Council, a soon as possible after adoption of the outcome document for the UPR of the Russian Federation, a national plan of action for implementation of accepted recommendations and voluntary pledges and commitments; and
- xxi) Present to the Council, two years after adoption of the outcome document, a mid-term progress report on the status of implementation of recommendations and voluntary pledges and commitments.

## ENDNOTES:

<sup>1</sup> European Court of Human Rights Statistics, Violation by Article and by State 1959 – 2011, <http://www.echr.coe.int/ECHR/EN/Header/Reports+and+Statistics/Statistics/Statistical+data>; Amnesty International Report, “The Circle of Injustice, Security Operations and Human Rights Violations in Ingushetia”, 2012, p. 39. Two recent cases include the case of Sergey Nazarov, who died in police custody in March 2012 in the central Russian republic of Tatarstan and who alleged before his death that officers had tortured him, including by sodomizing him with a bottle, see The Investigative Committee of the Russian Federation website: *Kommersant: Tatar human rights activists approved of anti-torture investigations*, [http://en.sledcom.ru/smi/119254/?sphrase\\_id=148255](http://en.sledcom.ru/smi/119254/?sphrase_id=148255); and the case of Sergei Shishkin, who was exposed to severe beating and had his hand and toenails had been pulled out. In June 2012, the European Court ruled in this case and found a violation of Article 3 ECHR: *Buntov v Russia*, ECtHR App No. 27026/10, para 16-23.

<sup>2</sup> Analysis of Statistics 2011, published January 2011, [http://www.echr.coe.int/NR/rdonlyres/11CE0BB3-9386-48DC-B012-AB2C046FEC7C/0/STATS\\_EN\\_2011.PDF](http://www.echr.coe.int/NR/rdonlyres/11CE0BB3-9386-48DC-B012-AB2C046FEC7C/0/STATS_EN_2011.PDF), p. 8.

<sup>3</sup> Statistics on judgments by state, [http://www.echr.coe.int/NR/rdonlyres/E6B7605E-6D3C-4E85-A84D-6DD59C69F212/0/Graphique\\_violation\\_en.pdf](http://www.echr.coe.int/NR/rdonlyres/E6B7605E-6D3C-4E85-A84D-6DD59C69F212/0/Graphique_violation_en.pdf), p. 6.

<sup>4</sup> Overview 1959-2011, [http://www.echr.coe.int/NR/rdonlyres/E58E405A-71CF-4863-91EE-779C34FD18B2/0/APERCU\\_19592011\\_EN.pdf](http://www.echr.coe.int/NR/rdonlyres/E58E405A-71CF-4863-91EE-779C34FD18B2/0/APERCU_19592011_EN.pdf), p. 7.

<sup>5</sup> Committee against Torture, *General Comment no. 2: Implementation of Article 2 by State Parties*, 24 January 2008, UN Doc. CAT/C/GC/2, paragraph 13 (our emphasis). See also, *inter alia*, *Concluding Observations of the Committee against Torture: Hungary*, UN Doc. CAT A/54/44 (1999), paragraph 84; and *Concluding Observations of the Committee against Torture: Cameroon*, 5 February 2004, UN Doc. CAT/C/CR/31/6, paragraph 9(a). Human Rights Committee, *General Comment 20*, Prohibition of torture and cruel treatment or punishment, para.11; *Concluding Observations of the Human Rights Committee: Israel*, UN Doc. CCPR/CO/78/ISR, paragraph 13; *Concluding Observations of the Human Rights Committee: Switzerland*, UN Doc. CCPR/C/79/Add.70, paragraph 26; Views of 27 July 1993, *Communication no. 326/1988, Case of Henry Kalenga vs. Zambia*, UN Doc. CCPR/C/48/D/326/1988, paragraph 6.3.

<sup>6</sup> Amnesty International Report, “The Circle of Injustice, Security Operations and Human Rights Violations in Ingushetia”, 2012, pp. 41-43.

<sup>7</sup> E.g.: *Nechto v Russia*, ECtHR, App. No. 24893/05, para. 105; *Vanfuli v Russia*, ECtHR, App. No. 24885/05, para. 97.

<sup>8</sup> ICJ, Lawyer killed in Dagestan: the ICJ calls for full and independent investigation, 23 January 2012, [http://documents.icj.org/Sagidmagomedov\\_PR\\_ENG.pdf](http://documents.icj.org/Sagidmagomedov_PR_ENG.pdf); Russian Federation: ICJ urges the Russian Authorities to Investigate an Attack against Lawyer, 19 May 2011, <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/06/Russian-Federation-Russian-authorities-investigate-an-attack-against-lawyer-press-release-2011-eng.pdf>; Russian Federation: ICJ Observes hearing in prosecution of Dagestan lawyer, 29 November 2009, <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2010/11/Russia-lawyertrial-news-2010.pdf>; Human Rights Watch, Russia: Protect Human Rights Lawyer, 9 June 2012, <http://www.hrw.org/news/2012/06/09/russia-protect-human-rights-lawyer>.

<sup>9</sup> UN Basic Principles on the Role of Lawyers, Principles 16 and 17. Assessing Damage, Urging Action, Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights, 2009.

<sup>10</sup> RF CPC, article 96.

<sup>11</sup> Article 94 (4) CPC

<sup>12</sup> Amnesty International Report, “The Circle of Injustice, Security Operations and Human Rights Violations in Ingushetia”, 2012, p. 43. HRC Memorial, “Ingushetia: An Abducted Local Resident is Being Charged with Carrying Weapons: Relatives claim that his Confession was Obtained by Beatings and Torture” 29 June 2010, <http://www.memo.ru/eng/news/2010/06/29/2906102.html>.

<sup>13</sup> Safeguards include the right of a detained person to be released within 48 hours of arrest unless he or she is remanded in custody or the initial period of detention is extended by a court, (RF CPC, article 94(2)) and a procedure for the judicial review of detention which is under the responsibility of the court and not the prosecution (Article 108 (7) (3) CPC).

<sup>14</sup> *Alikhonov v Russia*, ECtHR, App. no. 35692/1131 July 2012, paras. 60-64.

<sup>15</sup> Preventive measures are enshrined in Chapter 13 (Measures of Restrictions) of the Criminal Procedure Code of the Russian Federation and they include as listed in Article 98 CPC: recognizance not to leave (Article 102 CPC); personal guarantee (Article 103 CPC); surveillance by the command of the military unit (Article 104 CPC); keeping an eye on a minor accused (Article 105 CPC); bail (Article 106 CPC); home arrest (Article 107 CPC); taking into custody (Article 108 CPC).

<sup>16</sup> *Nitsov v Russia*, ECtHR, App. No 35389/04, para 56ff.; *Gushchin v Russia*, ECtHR App.on no. 7480/07; *Markov v Russia*, ECtHR, App. no. 12297/06.

<sup>17</sup> According to the office of Memorial, in 2011 at least 10 persons allegedly disappeared by law enforcement officials. (Memorial, ‘O sobytiyakh na Severnom Kavkaze’, continuously updated, available at <<http://www.memo.ru/hr/hotpoints/caucas1/index.htm>>.) The NGO Mashr also compiles and publishes information annually and keeps a list of reported enforced disappearances, listing 18 cases for 2011 out of

which more than 2/3 were kidnapped and the rest had gone missing without more information. (Mashr, <[http://eng.mashr.org/?page\\_id=7](http://eng.mashr.org/?page_id=7)>=).

<sup>18</sup> Special Rapporteur on Torture, "Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment", doc. A/65/273 of 10 August 2010, para. 35.

<sup>19</sup> Parliamentary Assembly of the Council of Europe, Report by the Committee on Legal Affairs and Human Rights, "Implementation of judgments of the European Court of Human Rights", Doc. 12455, December 20, 2010, para 212; Amnesty International Report, "The Circle of Injustice, Security Operations and Human Rights Violations in Ingushetia", 2012, p. 55. These findings were already reflected at the Moscow hearing of the ICJ Eminent Jurists Panel, where both lawyers and relatives of victims told the Panel that it was common practice for investigations into actions of the military and law-enforcement bodies not to be closed, but rather to be suspended for long periods, so that relatives are unable to obtain a final judgment and so have no possibility of appeal. Where the suspension is found to be unlawful, the investigation typically will be briefly re-opened, and then suspended again. Often from the very beginning, investigations appear to be purposefully conducted with flaws in order for the judge or the juries to find procedural violations leading to a re-investigation. This creates a 'ping ponging' of cases, resulting in never-ceasing processes in which accountability cannot be established. Furthermore, attempts by relatives to access documents relevant to the investigation, such as forensic certificates, are routinely denied, purportedly on grounds of confidentiality. ( Nizhny Novgorod Committee Against Torture, submission to Eminent Jurists Panel; Memorial and European Human Rights Advocacy Centre (EHRAC), Memorandum on Threats to Applicants to the ECtHR in cases from Chechnya, November 2006, Annex III to EHRAC written evidence to Eminent Jurists Panel and conversation with Memorial, June 2009, all available on <https://ejp.icj.org>).

<sup>20</sup> *Chitayev and Chitayev v Russia*, ECtHR, op cit, para.165. *Isayev and Others v Russia*, ECtHR, App No. 43368/04; *Makhashev v Russia*, ECtHR, App. No. 20546/07; *Gushchin v Russia*, ECtHR, App. no. 7480/07; *Markov v Russia*, ECtHR, App. no. 12297/06.

<sup>21</sup> *Makhashev v Russia*, ECtHR, op cit, para 146; *Khashiyev and Akayeva v Russia*, ECtHR, op cit, para.166; *Abuyeva and Others v Russia*, ECtHR, App. No. 27065/05, December 2, 2010, para. 241; *Luluyev v Russia*, ECtHR, op cit, paras.99-100; *Isayeva v Russia*, ECtHR, op cit, paras.221-222; *Estamirov v Russia*, ECtHR, op cit para.89-95; *Khalidova v Russia*, ECtHR, App. No.22877/04, paras.93-98. See also evidence to the ICJ Eminent Jurists Panel, op cit, <https://ejp.icj.org>

<sup>22</sup> Igor Kalyapin: During two years not a single case on disappearances has been transferred to court in Dagestan and Chechnya, 13 July 2012, <http://www.kavkaz-uzel.ru/articles/209670/> [Rus]. A recent publication by Memorial contains disturbing accounts of 384 cases of arrests by law enforcement agents following which persons either disappeared or were found dead and 107 cases of disappearances in the period of 1999-2000 (A.V. Cherkasov, Fate Unknown, <http://www.memo.ru/2012/02/27/kvi.pdf>, Memorial 2012.) See also, *Radio Liberty: Disappearances of People in Chechnya: When will lawlessness stop?*, 13 February 2012, <http://www.svobodanews.ru/content/transcript/24482200.html>.

<sup>23</sup> As defined in a note to Article 117 of the Criminal Code.

<sup>24</sup> E.g. see the Russian Federation Supreme Court decision of 18 July 2012 to resume the Sergei Shishkin case against 10 police officers whose actions were found to be torture by European Court of Human Rights and who were tried under art. 286: Parvo.Ru, Supreme Court resumed a torture case with the punishment softer than soft, <http://pravo.ru/news/view/75213/>. Additionally, in a recent case a police major, Sergey Kuzmenkov, was charged with abuse of office with 3.5 years imprisonment for having tortured a person in prison, this can not be regarded as satisfactory. While he was charged with a criminal offense, he was not dismissed from the police, but even qualified to continue his service in the rank of major. Furthermore, no investigations have identified the other two agents yet who were supposedly involved in torturing the detainee together with Kuzmenkov (Nizhny Novgorod Committee Against Torture Press Release, "Former police major Kuzmenkov is awarded 3.5 years of imprisonment for torturing a Nizhny Novgorod resident", April 28, 2012 <http://pytkam.net/mass-media.news/930/pg2>).

<sup>25</sup> ICJ Report, *The State of the Judiciary in Russia*, 2010, <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/05/Russia-indejudiciary-report-2010.pdf>, p. 27.

<sup>26</sup> Report of an ICJ mission on the judicial disciplinary system, forthcoming 2012.

<sup>27</sup> Federal Law of 20 June 2012 N 121-FZ, art. 2.2.

<sup>28</sup> *Ibid*, art. 3(1)(2).

<sup>29</sup> The Shanghai Convention on Combating Terrorism, Separatism and Extremism of 2001 requires Member States to exchange information, develop joint legal frameworks and share "practical assistance" including through extradition of suspects. See further, Declaration of Heads of Member States of Shanghai Cooperation Organisation, section III, 05.07.2005.

<sup>30</sup> *Gafarov v Russia*, ECtHR, App No 25404/09 , paras 128-140; Article 3 CAT; Article 7 ICCPR, Human Rights Committee General Comment No.20, 10/3/92, para.9.

<sup>31</sup> *Iskandarov v Russia*, ECtHR, App. No 17185/05, where the applicant was unlawfully abducted and transferred to Tajikistan on a plane by Russian State agents without having to go through the regular cross-border controls; Elena Ryabinina, Civic Assistance Committee, Agreements of the SCO as the "legal" basis for the extradition of political refugees, August 2008 <http://www.hro1.org/node/2933>. See also, Assessing Damage, Urging Action, Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights, International Commission of Jurists, 2009, p.82

<sup>32</sup> *Iskandarov v Russia*, op cit;

<sup>33</sup> *Muminov v Russia*, ECtHR, App. No.42502/06, where the applicant was transferred on foot of an expulsion order which subsequent to his expulsion was overturned by an appeal court; ECHR communicated case *Kamaliyev and Kamaliyeva v. Russia*, ECtHR, App. No. 52812/07, Statement of facts, 9/6/2008, where the



applicant was transferred on an expulsion order following a court hearing at which neither the applicant nor his lawyer were present.

<sup>34</sup> *Kamaliyev and Kamaliyeva v. Russia*, ECtHR, App. No. 52812/07; In *Muminov v Russia*, ECtHR, App. No.42502/06, the applicant was removed despite interim measures under Rule 39, but the ECtHR found that there was insufficient information to establish that the authorities knew of the Rule 39 measure before the applicant was removed from the jurisdiction, and therefore found no violation of Article 34 ECHR.

<sup>35</sup> *Sultanov v Russia*, ECtHR, App. No. 15303/09, *Ismoilov v Russia*, ECtHR, App. No. 2947/06; *Ryabikin v Russia*, ECtHR, App. No.8320/04; *Khaydarov v Russia*, ECtHR, App. No. 21055/09.

<sup>36</sup> *Ergashev v Russia*, ECtHR, App. No. 12106/09.

<sup>37</sup> Amnesty International Statement, "Russia: Asylum-Seeker Facing Extradition, Torture: Mamir Nematov", August 3, 2012, <http://amnesty.org/en/library/info/EUR46/032/2012/en>; Amnesty International Statement, "Russian Federation: Uzbek Man Facing Extradition, Torture: Yusup Salimakhunovich Kasymakhunov", July 9, 2012 <http://amnesty.org/en/library/info/EUR46/027/2012/en>.

<sup>38</sup> Human Rights Committee, General Comment 34, *Article 19: Freedoms of opinion and expression*, UN Doc CCPR/C/GC/34 (2011), para 25.

<sup>39</sup> *Alekseyev v Russia* [2010] ECHR 1562.

<sup>40</sup> The Human Rights Committee emphasised that sexual orientation is protected under the ICCPR. See, e.g., *Nicholas Toonen v Australia*, UN Doc CCPR/C/50/D/488/1992 (1994); *Young v Australia*, UN Doc CCPR/C/78/D/941/2000 (2003); and *X v Colombia*, UN Doc CCPR/C/89/D/1361/2005 (2007).

<sup>41</sup> Human Rights Committee, General Comment 34, *Article 19: Freedoms of opinion and expression*, UN Doc CCPR/C/GC/34 (2011), para 26, which provides: "Laws restricting the rights enumerated in article 19, paragraph 2, including the laws referred to in paragraph 24, must not only comply with the strict requirements of article 19, paragraph 3 of the Covenant but must also themselves be compatible with the provisions, aims and objectives of the Covenant. Laws must not violate the non-discrimination provisions of the Covenant. Laws must not provide for penalties that are incompatible with the Covenant, such as corporal punishment".

<sup>42</sup> The second, third and fourth periodic reports due to the Committee Against Torture were submitted between three to four years after the deadline; the fifth periodic report due to the Human Rights Committee was submitted almost four years after the deadline; the combined sixth and seventh periodic reports to the Committee on the Elimination of Discrimination Against Women were submitted over six years past the deadline; the combined twelfth and thirteenth periodic reports to the Committee on the Elimination of all forms of Racial Discrimination were submitted over three years past the deadline - the fifteenth, sixteenth and seventeenth periodic reports to the latter committee were also submitted four years past the deadline; and the fourth periodic report to the Committee on Economic, Cultural and Social Rights was submitted over two years past the deadline.

<sup>43</sup> These include invitations made in response to requests from the Special Rapporteur on extrajudicial, summary or arbitrary executions (request made in 2000, follow up letters in 2003, 2004, 2005 and reminder sent in 2008), the Working Group on arbitrary detention (request made in 2008), the Special Rapporteur on torture (request made in 2010), the Working Group on enforced disappearances (request made in 2010, reminder sent in 2011), the Special Rapporteur on food (request made in 2011), and the Special Rapporteur on human rights and counter-terrorism (request made in 2010).