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Russian Federation

The list of issues regarding access to fair trial and torture of representatives of ethnic and religious minorities April 27, 2020

Based on field work and monitoring, ADC Memorial and Citizens' Watch witness that ethnic and religious minorities in Russia are often become victims of unfair trials and torture within the counter-terrorism and anti-extremism judicial processes.

The minorities that are disproportionately targeted are Muslims - both migrants from Central Asia, but also living in Russia and Russian-controlled territories (as Crimean Tatars) and non-conventional Christian groups as Jehovah's Witnesses.

Below there is a brief description of the recent judicial processes that illustrates this tendency:

the case of the terroristic attack in Saint-Petersburg in 2017;

the trials of Crimean Tatars residing in Russian-controlled Crimea;

and the typical problematic issues of counter-terrorist and anti-extremist processes.

The authors of this communication ask the Committee to include the issues described below into the List of Issues to be addressed to the Russian Government.

The trial regarding the terrorist attack in Saint-Petersburg metro (2017)

On 3 April 2017, an explosion took place in the Saint-Petersburg metro, which was later acknowledged a terrorist attack, allegedly committed by suicide bomber. As a result, 16 persons died, more than 100 were injured. The suspected perpetrator was named Akbarzhon Dzhaliylov, a Russian citizen who was an ethnic Uzbek born in Kyrgyzstan. According to the prosecution, he was a suicide bomber who died during an attack. In April-May 2017, 11 persons accused in assisting and organizing terrorist attack were arrested in Saint-Petersburg and Moscow: Abror Azimov, Akram Azimov, Muhamadusup Ermatov, Ibrahimdzhon Ermatov, Sodik Ortikov, Dilmurod Muidinov, Azamzhon Mahmudov, Makhamadyusuv Mirzaalimov, Sayfilla Khakimova, Bahrom Ergarshev, and Shokista Karimova. All are Muslims, ethnic Uzbeks or Tajiks, the majority of them are migrants from Uzbekistan, Kyrgyzstan and Tajikistan to Russia, the others are citizens of Russia who have the mentioned ethnic origin. On December 2019, the 1st Western district military court recognized everyone guilty and sentenced the accused to different lengthy terms of imprisonment, from 19 years to life imprisonment. All the accused were also sentenced to different sums of fines, with the total sum of more than 170 000 euros.

All the accused denied their guilt, some stated that they gave their testimonies under torture. Mukhammadyusup Ermatov, Abror Azimov and Akram Azimov reported that they were tortured in a secret prison by the Russian security services prior to their formal arrest. The Azimovs reported torture in 2017, but their request to open a criminal case was refused on August 23, 2017. Ermatov reported torture to members of the Public Oversight Commission (POC) on March 31, 2019. Before meeting with the POC members, he submitted a letter to the Consulate of Kyrgyzstan complaining on torture. On April 2, 2019, after an interview with Ermatov, POC members filed a crime report. But the next day the Investigative Committee issued a ruling on refusal to open a criminal case based on the checking after the letter to consulate written by Ermatov.¹ Makhamadjusuv Mirzaalimov also claimed torture at the trial. During the trial, the court does not investigate or take into account the reports about torture and refused the request of defense to investigate the evidence that would prove torture.²

Moreover, there have been numerous violations of the right to fair trial during the process. The trial was heard by the military court, that excluded possibility of jury hearing the case. Within the process, the court clearly violated the equality of the sides - the defense was not provided with the sufficient time to get familiar with the materials of the criminal case, the requests of the defense were rarely satisfied by the court, while all the prosecutors requests were satisfied. The trial was scheduled every day, despite the protests of the accused and defense. Such a schedule made it more difficult for the defense to prepare for sessions and to work. The interpretation of the process was inaccurate, the number of interpreters were less than the number of accused, and not every accused could hear and understand it. Some evidences were inadmissible. For example, some written testimonies were rejected by the witnesses or could not be confirmed, but the court accepted them. And finally, the presumption of innocence was violated by the prosecution and media before and during the process.³

The human rights organizations stated that the judicial process was very doubtful, and did not satisfy the necessary standard of evidence for such a serious crime.

¹ ADC Memorial, Parallel Information to the Russian Federation's Report on Implementation of the Recommendations Contained in the Concluding Observations of the Committee Against Torture on the Basis of its Review of the Russian Federation's Sixth Periodic Report on its Implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the UN Committee Against Torture, November 2019, https://adcmemorial.org/wp-content/uploads/int_cat_ngs_rus_38638_e.pdf

² The case of the terrorist attack in Saint-Petersburg metro, description of torture: http://3apr2017.tilda.ws/?fbclid=IwAR2AV5pJFmg0HVoh_#torture

³ The more detailed information about the trial could be found here: Citizens' Watch, The terrorist attack in Saint Petersburg Metro, how the process was conducted, 2020 <https://courtmonitoring.org/ru/projects/otchet-y-o-monitoringe/terakt-v-peterburgskom-metro-kak-prohodilo-sudebnoe-razbiratelstvo/>

Criminal prosecution of Crimean Tatars (2014-2020)

Since establishment of the control of Russia over Crimea, around 200 politically motivated criminal cases were initiated against persons living in the peninsula by the Russian authorities.⁴ 60-70% of all accused are Crimean Tatars who represent around 12% of the population of Crimea. Crimean Tatars are indigenous people of Crimea, the majority of them opposed the Russian control over Crimea in 2014. The self-governing body of the Crimean Tatars - Mejlis - was recognized by Russia as an extremist organization, and was forced to move to the mainland of Ukraine. The situation has not changed despite the decision of International Court of Justice on provisional measures in case Ukraine v. Russia to revoke that decision.⁵

The secular Crimean Tatars are accused in extremism, espionage for Ukraine or sabotage, participation in demonstrations and participation in armed groups in the territory of Ukraine. The Crimean Tatars who are practicing Muslims are accused and sentenced for participation in organizations recognized in Russia as terrorist and extremist, or for organization of terroristic and extremists activities. At least 70 Crimean Tatars are accused in participation or organization of activities of Hizb ut-Tahrir, recognized in Russia as terroristic. The activists, local human rights defenders and political leaders of Crimean Tatars are prosecuted within these cases.

The first category of processes, especially on espionage/sabotage, are corresponded by torture, inhumane treatment or pressure and blackmailing by the police in order to receive the confessions and testimonies. The accused under the second category of cases do not face torture by investigation, but they are sentenced to extremely lengthy terms of imprisonment, from 7 to 19 years based on weak evidence of their guilt.

The fair trial guarantees are seriously violated during all the Crimean politically motivated trials. The way of selecting and appointing judges as well as their behavior at the trial undermine the principles of independence and impartiality of judges.⁶ The equality of the sides are also regularly violated in these processes: the defense and accused are regularly denied by the court to question their witnesses, to present or study evidence during the trial, or to involve the alternative experts to take part in the trial, identity of the «secret» witnesses on behalf of prosecution are not disclosed even to the defense lawyers. More than 50-60% of the requests of the defense are regularly declined by the courts, and in fact, the prosecution position is supported by the courts. As a result, the sentences are based on testimonies of «secret» witnesses or wiretapped conversations of the accused. The other important fair trial guarantees as presumption of innocence and public character of the process are systematically violated. Many trials on accusations in terrorism are closed, and no one is allowed to be present during the settings - either the relatives of accused or journalists. According to the author's monitoring and analysis of the situation in Crimea, the prosecution for terrorism and extremism is widely used in Crimea to strengthen Russian control over the society and to harass the opponents of the Russian governmental police, including ethnic and religious groups.⁷

⁴ CrimeaSOS, Encyclopedia of Repressions, 2017 <https://krymsos.com/files/7/2/7277f73-report-ru-new--1---1-.pdf>, Situation Report, Crimea, 2018, <https://krymsos.com/files/6/6/66d5a60-2018-ru.pdf>, Situation Report, Crimea 2019, <https://krymsos.com/files/4/d/4d245ce-ru-2019.pdf>

⁵ ICJ, Ukraine v Russia, Decision on Provisional Measures, 19 April 2017 <https://www.icj-cij.org/files/case-related/166/166-20170419-ORD-01-00-EN.pdf>

⁶ Report, Crimean Process: the violation of fair trial guarantees in politically motivated cases, 2018 <https://bit.ly/2y2hdnz>

⁷ The more detailed information about the trial could be found here: Citizens' Watch, Trial Monitoring in Crimea in 2017-2018, 2019. <https://courtmonitoring.org/en/our-activities/reports-on-the-observance/trial-monitoring-in-crimea-in-2017-2018/>

General problems within counter-terrorism and anti-extremism processes in Russia

Recognition of a number of religious organizations as terrorist or extremist make possible the persecution of the religious groups and ethnic minorities based on the fact of real or suspected involvement in the organizations.

In this way, annually dozens of Muslims are prosecuted for involvement in «Hizb ut-Tahrir» organization. In 2019, at least 92 persons were sentenced to different terms of imprisonment from 7 to 22 years. For the previous years, at least 132 persons were prosecuted. While Hizb ut-Tahrir is a Muslim religious party, it has not been involved in any acts of violence in Russia. In 2003 it was recognized as terrorist and banned by the Supreme Court of Russia. Many human rights organizations recognize ban as disproportionate.⁸

In 2017, Jehovah's Witnesses were recognized as an extremist organization and banned in Russia. Since the ban till the end of 2019, at least 778 searches were conducted in houses of Jehovah's Witnesses affiliates, 313 persons were prosecuted under criminal accusations in 52 regions of Russia. At least 8 persons claimed torture, however, criminal cases were not initiated.⁹

All the cases regarding terrorism are considered by military courts according to article 31 of the Code of Criminal Procedure of the Russian Federation. In Russia military courts try civilians without any exceptional circumstances by the express prescription of the law. Moreover, the guaranties of the military trial are limited in comparison with an ordinary trial for civilians. According to section 2 (3) Article 30 of the Code of Criminal Procedure the accused in terrorism cannot apply for jury trial, their cases can be considered only by professional judges.

As mentioned earlier, the accused within the cases on terrorism and extremism often face torture, which is not addressed by courts and prosecutor office. Despite the HRC previous recommendations, the Criminal Code of the Russian Federation has not been amended and does not contain crime of torture. Such crimes are being prosecuted under section 3 Article 286 Abuse of powers. Official court statistics shows decrease of the cases investigated under this article. In 2019 there were 626 cases against 799 cases in 2017. Meanwhile, the media report the significant increase of the number of complaints on torture.¹⁰

The courts in Russia are unwilling to verify the statement of the accused that they have been tortured during the investigation. As has been described above, during the trial on the case of Saint-Petersburg terrorist act some of the accused claimed that they have been tortured during the investigation, however, the court did nothing to verify the allegations. This case is not an exception. The accused in the case of «Set» have been also complaining about torture, but the court ignored their allegations and found them guilty.¹¹

Russia has not ratified the Optional Protocol to Convention against torture and has not designated a national preventive mechanism. However, in 2008 Russia created its own mechanism for torture prevention - Public Oversight Commissions.¹² While POCs are eligible to visit places of detention overseen by the Federal Penitentiary Service and the Ministry of Internal Affairs, they do not fully

⁸ Human Rights Center Memorial, Criminal Prosecution for Terrorism in Russian and Abuses by the government, Hizb ut-Tahrir, 2018 <https://memohrc.org/ru/reports/darya-kostromina-ugolovnye-presledovaniya-za-terrorizm-v-rossii-i-zloupotrebleniya-so-0>

⁹ Information-analytical center «Sova», Unlawful implementation of anti-extremist legislation in Russia in 2019, https://www.sova-center.ru/misuse/publications/2020/02/d42137/#_ftn21

¹⁰ Golos Ameriki, in Russia the number of complaints on torture has increased twice, 11 July 2019, <https://www.golos-ameriki.ru/a/experts-on-torture/4995662.html> (Accessed 19 April March 2020).

¹¹ ADC Memorial, Report on the results of the public monitoring of appeals regarding instances of torture committed by officers of the FSB Directorate for Saint Petersburg and Leningrad Oblast, 2018 <https://adcmemorial.org/en/publications/report-on-the-results-of-the-public-monitoring-of-appeals-regarding-instances-of-torture-committed-by-officers-of-the-fsb-directorate-for-saint-petersburg-and-leningrad-oblast/>

¹² Federal law of 10.06.2008 No. 76-FZ «On public oversight to ensure human rights in places of detention and on assistance to persons held in places of detention». http://www.consultant.ru/document/cons_doc_LAW_77567/ (Accessed 19 April 2020).

meet the Paris Principles due to limited independence¹³ and their powers to prevent torture in places of detention are also limited.

The right to interpreter is often violated when the accused does not know Russian to the extent to understand and participate in the trial. The interpreter is provided by the court decision, and the court on its own assess the level of knowledge of an accused and whether he/she need an interpreter. The court not always provides interpreter even when the accused request¹⁴. Sometimes, the quality of translation is poor.

The new threat for independence of judges is the newly proposed amendments to the Constitution of Russia. The amendments change the current procedure of appointment of judges of the highest courts, including the Constitutional Court of the Russian Federation, and lower courts with exception of magistrate courts and exclude the obligation to consider the opinion of judiciary from the procedure of appointment or preliminary dismissal of judges.¹⁵ Taken into consideration the recommendation of the HRC to strengthen the independence of the judiciary, these amendments strive to the contrary – to weaken the independence of judges.

¹³ See for details, Prevention of torture: Practices, standards and regulations in Russia, Nordic and Baltic countries, Citizens' Watch, 2019, <http://www.citwatch.org/en/publications/publication/35>.

¹⁴ [In Russian]: Report on monitoring of criminal cases, 2017, p.33 (Отчет о мониторинге по уголовным делам, 2017 год, стр. 33, url: <https://courtmonitoring.org/ru/projects/otchet-y-o-monitoringe/otchet-o-monitoringe-po-ugolovnym-delam-2017-god/>); [in Russian] Report on monitoring of court hearings on race hate crimes, 2016, p.34 (Отчет о мониторинге судебных процессов по преступлениям на почве расовой ненависти за 2016 год, стр. 34, <http://www.citwatch.org/publications/publication/106>); [in Russian] The terrorist attack in Saint Petersburg Metro, how the process was conducted, p.16 (Теракт в петербургском метро: как проходило судебное разбирательство, стр. 16 <https://courtmonitoring.org/ru/projects/otchet-y-o-monitoringe/terakt-v-peterburgskom-metro-kak-prohodilo-sudebnoe-razbiratelstvo/>).

¹⁵ Draft Law No. 885214-7, *Op.cit.*, Article 1 section 17