

**SUBMISSION FROM THE *RUSSIAN JUSTICE INITIATIVE*, THE *EUROPEAN HUMAN RIGHTS ADVOCACY CENTRE*  
AND *HUMAN RIGHTS CENTRE MEMORIAL***  
**TO THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE**  
**CONCERNING STATUTES OF LIMITATION IN THE *KHASHIYEV* GROUP**

**22 NOVEMBER 2011**

A. Introduction

1. This submission is made under Rule 9 of the Committee of Ministers' Rules by the following non-governmental organizations: Russian Justice Initiative, the European Human Rights Advocacy Centre and the Memorial Human Rights Centre, (hereinafter, "The signatory NGOs"). The submission addresses general measures relevant to the execution of the over 150 judgments in the *Khashiyev* group.
2. The signatory NGOs have brought over 85% of the cases in the *Khashiyev* group concerning grave human rights abuses in the North Caucasus (NC) currently on the agenda of the Committee of Ministers. This submission presents our views on the problem of statutes of limitation for prosecution, which we consider a fundamental potential obstacle to meaningful implementation of the majority of judgments in the above group in relation to effective investigations of extra-judicial killings, disappearances and torture. The importance of this issue has been raised in previous submissions to the Committee.<sup>1</sup> In this submission the signatory NGOs provide an analysis of the problem in the following contexts:
  - We draw attention to concrete examples of cases in which criminal prosecutions appear to have been terminated due to the expiry of the limitation period. The signatory NGOs are deeply concerned that these examples signal an emerging practice of the application of statutes of limitations in cases where the perpetrators have been established (Section B);
  - We examine relevant statutory limitation periods as defined by domestic legislation. Under Russian law, crimes into which investigations are currently pending in cases in the *Khashiyev* group carry limitation periods of 10 or 15 years. The Government provides no guarantee that limitation periods will be dis-applied to prosecutions for crimes in this group of cases (Section C);
  - We examine relevant international standards concerning the application of limitation periods to war crimes and crimes against humanity. Customary international law and the case-law of international tribunals do not allow the application of statutes of

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<sup>1</sup> See: See Russian Justice Initiative, Submission on Individual Measures to the Committee of Ministers of 3 November 2010, available at: <https://wcd.coe.int/wcd/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1735462&SecMode=1&DocId=1659198&Usage=2>, paras, 11, 25 and 72-77 and Russian Justice Initiative, "Reply to the Russian Government's submission of 25 February 2011 regarding the execution of the judgments of the European Court of Human rights from North Caucasus, available at: <https://wcd.coe.int/wcd/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1869445&SecMode=1&DocId=1747418&Usage=2>, paras 31-34, last accessed on 11 November 2011.

limitation to domestic prosecutions of “international crimes” such as war crimes and crimes against humanity (Section D);

- We argue that Russia has an international obligation to prosecute crimes against humanity and war crimes. The signatory NGOs maintain that many of the crimes into which investigations are pending in the *Khashiyev* group may be qualified as “international crimes” and that Russia has an international obligation to bring prosecutions in these cases regardless of limitation periods prescribed by domestic law (Section E).
3. All of the crimes in cases from the *Khashiyev* group were committed between the years 1999-2006, but the vast majority between 2000-2003. In the majority of cases in this group, a criminal investigation is ongoing or suspended; no perpetrators have yet been successfully prosecuted in any case. The issue of statutes of limitations has become crucial because the majority of crimes into which proceedings have been opened on the domestic level—including abuse of official powers, torture, murder and kidnapping—carry statutes of limitation of a maximum of 10 or 15 years.
  4. On 17 November 2011 the Russian Government submitted to the Committee the “Report on the measures adopted by the Russian authorities, to ensure search for missing persons and on implementation of limitation period for bringing to criminal responsibility” (hereinafter, the Government’s submission of 17.11.2011). The Government asserts in this submission that the “prescription limit for criminal prosecution established by the Russian legislation is not an obstacle for investigation of the category of cases under consideration (page 6).” However, the signatory NGOs submit that the information provided by the Government does not substantiate this assertion. The Government addresses the issue of statutes of limitations in only a cursory manner, and does not indicate the means by which it will ensure the viability of criminal prosecutions for crimes committed as far back as 11-12 years ago, which carry prescription periods of 10 or 15 years under domestic law.
  5. In the opinion of the applicants, many of the crimes at issue in the *Khashiyev* group may be qualified as **war crimes** or **crimes against humanity**. Whether or not statutes of limitation would apply to domestic prosecutions of such crimes in the Russian Federation is unclear, as the Russian Criminal Code does not explicitly provide for the dis-application of limitation periods to those crimes. However, Russia is a party to the **UN Convention on the Non-Applicability of Statutes of Limitation to War Crimes and Crimes Against Humanity**, Article IV of which prohibits limitation periods for these crimes. Therefore, despite the absence of incorporation of this treaty into domestic law, Russia has an international obligation to prosecute these crimes regardless of any limitation periods prescribed by Russian law. As explained in Section D below, Russian law provides for the direct application of international law and the Russian Constitution establishes the primacy of Russia’s international treaty obligations over domestic law.
  6. Nonetheless, the almost complete absence of prosecutions carried out by the Russian authorities in these cases make it impossible to assess the authorities’ approach to the qualification of crimes for the purposes of prosecution. Furthermore, the information thus far provided by the Government

provides no basis on which to conclude that statutes of limitations will be dis-applied even if prosecutions are brought for crimes against humanity or war crimes.<sup>2</sup>

7. Therefore, in the vast majority of cases, criminal investigations are pending into crimes which occurred as far back as twelve years ago and which ostensibly carry statutes of limitation of 10 or 15 years, for which no one has yet been brought to justice. This raises serious concerns for the applicants that the limitation period for the crimes against them or their relatives will run out in the near future, or in certain cases may have already run out, prior to any meaningful conclusion in the investigation. Yet many applicants who have won cases before the European Court still place paramount importance on individual accountability and establishment of the truth around the circumstances of the violations committed against themselves or their family members. Furthermore, the inability to bring prosecutions related to violations examined by the European Court due to the application of limitation periods would jeopardize the effectiveness of the European Convention system of human rights protection because it would provide a legal basis for continuing impunity in the North Caucasus.
8. The signatory NGOs therefore respectfully request the Committee to require that the Russian Government provide *detailed* information regarding its approach to this issue in relation to this group of cases and to remind the Russian Government of its international obligation to investigate these crimes and where warranted, to bring prosecutions.

#### B. An emerging practice of application of statutes of limitation?

9. Over the past year and a half, the representatives of the applicants have been informed that the statutory period for criminal investigation in two cases had expired. In May 2010, the Investigative Committee of Ingushetia informed the applicants in *Khadisov and Tsechoyev v Russia (21519/02)* that the criminal investigation in their case had been terminated because the statute of limitations had run out.<sup>3</sup> More recently the applicants in the case *Akhmadov and Others v. Russia (21586/02)* were informed in March 2011 that the criminal investigation in their case had been closed for the same reason.<sup>4</sup> The applicants in the *Khadisov* case were tortured for five days at Khankala military base in September 2001. A civilian investigation established the identity of the officials in the chain of command that handed over the applicants into federal custody.<sup>5</sup> The *Akhmadov* case concerned the killing of the applicants' relatives from a military helicopter in 2001. Civilian investigators established the servicemen involved in the operation that killed the applicants' relatives, but criminal proceedings were terminated due to a purported amnesty act.<sup>6</sup>

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<sup>2</sup> See below paragraph 20.

<sup>3</sup> See Communication from the representatives of the applicants in the group of cases Khashiyev against the Russian Federation of 3 November 2010, available on:

<https://wcd.coe.int/wcd/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1735462&SecMode=1&DocId=1659198&Usage=2>, para. 25, last accessed on 28 September 2011.

<sup>4</sup> See Attachment 1.

<sup>5</sup> For more details, see Communication from the representatives of the applicants in the group of cases Khashiyev against the Russian Federation of 26 May 2010, available on:

<https://wcd.coe.int/wcd/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1619821&SecMode=1&DocId=1582768&Usage=2>, pars 22-23 (17-22 in Annex), last accessed on 28 September 2011; Communication from the representatives of the applicants in the group of cases Khashiyev against the Russian Federation of 3 November 2010:

<https://wcd.coe.int/wcd/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1735462&SecMode=1&DocId=1659198&Usage=2>, paras 15-18, last accessed on 28 September 2011.

<sup>6</sup> *Akhmadov and Others*, paras. 57, 61 and 63.

10. The signatory NGOs are deeply concerned that the two examples above point to an emerging practice of refusals to initiate or resume investigations into human rights abuses or to pursue prosecutions of perpetrators due to the expiry of statutes of limitation in cases from the *Khashiyev* group.

### C. Statutes of limitation in domestic legislation

11. According to Article 78 of the Russian Criminal Code (CC), a 15-year limitation period applies to “especially grave crimes,”<sup>7</sup> defined under Article 15 CC as crimes whose commission carries a penalty in the form of deprivation of liberty for a term exceeding 10 years, or a more severe punishment.<sup>8</sup> A 10-year limitation period applies to “grave crimes,” defined as crimes whose commission carries a penalty in the form of deprivation of liberty for a term of less than 10 years.<sup>9</sup>

12. The vast majority of the violations established by the Court in regard to the actions of federal military and security forces in the NC relate to killings and enforced disappearances (Article 2) and torture (Article 3) of the European Convention on Human Rights (the Convention). It should be noted that the vast majority of domestic investigations opened into enforced disappearances have been opened under various sub-articles of Article 126 CC (kidnapping). Russian legislation does not currently contain any provisions that criminalize the distinct crime of enforced disappearance.

13. Punishments for various offences under the categories of kidnapping and homicide are between 4 and 20 and between 6 and 20 years’ imprisonment respectively,<sup>10</sup> resulting in a limitation period of 10 or 15 years, depending on the specific offence. The punishment for torture is between 3 to 7 years’ imprisonment<sup>11</sup>, resulting in a limitation period of 10 years.

14. According to Article 78 CC statutes of limitation shall not be applied to crimes committed against the peace and security of humankind, including “planning, preparing, unleashing, or waging an aggressive war”<sup>12</sup>, “use of banned means and methods of warfare,”<sup>13</sup> “genocide”<sup>14</sup> and “ecocide”.<sup>15</sup> However, as stated above, the Criminal Code does not explicitly provide for the non-application of statutes of limitations to war crimes and crimes against humanity. Additionally, Article 3(1) CC allows prosecutions only for crimes mentioned in the Code.

15. It should be noted that in the case of crimes previously punishable by capital punishment or currently punishable by life imprisonment (which includes the crimes of murder and kidnapping), the decision of whether to apply the statutory limitation period must be taken by a court.<sup>16</sup> The Government reaffirms this rule on page 7 of its submission of 17.11.2011. In this context it is particularly

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<sup>7</sup> Available in English on: <http://legislationline.org/download/action/download/id/1697/file/0cc1acff8241216090943e97d5b4.htm/preview> (last accessed on 11 November 2011).

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Articles 126 and 105 of the Code. For example, the crime of kidnapping carries a limitation period of 10 years (art. 126 CC) whereas the crime of aggravated kidnapping (art. 126(2) CC) carries a limitation period of 15 years.

<sup>11</sup> Article 117 of the Code.

<sup>12</sup> Art 353 of the Code.

<sup>13</sup> Art 356 of the Code.

<sup>14</sup> Art 357 of the Code.

<sup>15</sup> Art 358 of the Code.

<sup>16</sup> Article 78(4) of the Code.

important to note first that this provision does not apply to criminal investigations pending into charges of charges of torture. Secondly, in a significant number of cases in the *Khashiyev* group, investigations are pending on charges *other than* the substantive crimes of murder or kidnapping; rather, they may be pending on charges of “abuse of official powers.” This latter group of offences is not punishable by maximum sentences, and thus the decision to apply the limitation period may be taken by the investigative authorities during the preliminary investigation. Last but not least, it the signatory NGOs note that the decision whether or not to apply the statute of limitations to prosecutions for crimes punishable by capital punishment or life imprisonment **is taken on a discretionary basis by a domestic court**. In such cases, therefore, there is no guarantee that statutes of limitations will be dis-applied to prosecutions for such crimes.

16. On page 7 of the submission of 17.11.2011, the Government refers to the departmental regulatory act of the Investigative Committee (no. 2 of 15.01.2011), which stipulates that criminal cases may be terminated only “after the identification of persons to be brought to responsibility as accused, if the named persons do not object to his decision.”
17. This approach is consistent with rulings by the Russian Constitutional Court from 1996 and 2006, which found that a decision to terminate a criminal investigation due to the expiry of the limitation period is only lawful when the suspect or accused consents to termination on such grounds. If the accused does not consent, judicial proceedings should be commenced during which the accused shall have the opportunity to present a defense and his guilt or innocence determined. In case of a determination of guilt, the court will issue a guilty verdict with a waiver of the sentence imposed for the crime.<sup>17</sup>
18. This ruling has relevance for the investigations pending in the *Khashiyev* group because there are a significant number of cases in which the perpetrators are known or could be identified, but the investigation is continually suspended for a failure to identify the perpetrators. **This raises the possibility that investigations may be purposefully stalled until the expiry of the limitation period, upon which the suspect will consent to termination of the criminal case. Alternatively, in the rare case in which a suspect would withhold consent, any determination of guilt would not lead to a serving of punishment. In either scenario, impunity of key suspects is obtained.**
19. Otherwise, as stated above, domestic courts are afforded a wide margin of discretion as to whether to apply statutes of limitations to prosecutions of crimes punishable by capital punishment or life imprisonment.
20. Furthermore, the information provided by the Government in their submission of 17.11.2011 gives rise to the concern that even if prosecutions are sought on the basis of more serious crimes, identified perpetrators would be immune to prosecutions: on page 7 of the submission, the Government states that according to Art. 10 of the Criminal Code, “even in the case of increase of time limits for criminal prosecution, the newly set time limits cannot be applied to the persons, who committed crimes during the settlement of the crisis and restoration of constitutional order in the Chechen Republic.” This statement implies that limitation periods would nonetheless apply to war crimes or

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<sup>17</sup> See: Decision of the Constitutional Court of 28 October 1996, N 18-II; of 2 November 2006, N 488-O; of 15 January 2008, N – O-O. See also Decision of the Constitutional Court of 2 November 2006, N 488-O, reiterated in decision of 15 January 2008, N – O-O. Available in Russian only through the web site of the CCR. <http://www.ksrf.ru/Decision/Pages/default.aspx>

crimes against humanity, which as the signatory NGOs argue below, would be contrary to customary international law standards as well as Russia's international treaty obligations.

#### D. Qualification of crimes in international law and relevant international standards regarding statute of limitations

21. Several Council of Europe member states have incorporated the non-application of limitation periods to the crimes of genocide, war crimes, torture and crimes against humanity into their domestic legislation,<sup>18</sup> and several international tribunals have determined that statutes of limitation cannot be applied to national prosecutions for such crimes.<sup>19</sup> This reflects an emerging rule of customary law in relation to the application of statutes of limitations to prosecutions for such crimes *on the domestic level*. In the case of Russia, which has ratified the UN Convention on the Non-Applicability of Statutes of Limitations to War Crimes and Crimes Against Humanity and the Convention Against Torture, its treaty obligations also give rise to the requirement to prosecute war crimes, crimes against humanity, and torture within the Russian Federation.
22. The crime of **enforced disappearance** in international law is qualified as a crime against humanity when it occurs on a widespread and systematic basis.<sup>20</sup> In 2005 Human Rights Watch reported that the practice of enforced disappearances in Chechnya reached the threshold of a crime against humanity.<sup>21</sup> The International Convention for the Protection of All Persons from Enforced Disappearance stipulates that any time limit on the prosecution of the offence of disappearance should be of long duration, proportionate to the seriousness of the offence.<sup>22</sup> Enforced disappearance has also been characterized as a continuous crime that is only complete after the fate of the disappeared person has been clarified.<sup>23</sup>
23. The **prohibition against torture** has the status of a *jus cogens* norm from which no derogation is permitted in any circumstances.<sup>24</sup> The Trial Chamber of the International Tribunal for the Former Yugoslavia held in the *Furundzija* case that as a result of the peremptory nature of the legal prohibition against torture, no statute of limitations apply to that crime vis-à-vis prosecutions on the

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<sup>18</sup> In Belgium prosecution of acts of genocide, crimes against humanity and war crimes are not subject to any statute of limitation. In Finland genocide is not subject to prescription period. In Netherlands statutes of limitations established by the law do not apply to the genocide, torture, crimes against humanity and most war crimes. In Spain the crimes of genocide, crimes against humanity, crimes against protected persons and property during armed conflict are exempt. In the United Kingdom there are no stated limitation periods for crimes subject to universal jurisdiction under United Kingdom law (see: "Legal Remedies for Victims of International Crimes", Redress/FIDH, March 2004, available on:

<http://www.redress.org/downloads/publications/LegalRemediesFinal.pdf>, last accessed on 11 November 2011).

In France the Court of Cassation in the *Barbie* case held that the inapplicability of statutes of limitation to crimes against humanity laid down in French law, derives from principles recognized by all civilized nations (20 Dec. 1985, D. 1986, p.500, JCP 1986, I, 322) (quoted in International Criminal Law, Antonio Cassese, 2003, Oxford University Press, p 319).

<sup>19</sup> *Barrios-Altos v Peru*, Judgment of the Inter-American Court of Human Rights of 14 March 2001 at para. 41 of the judgment. See also discussion of the *Furundzija* case below at para. 18.

<sup>20</sup> Article 7 (1) (i) of the Rome Statute of the International Criminal Court.

<sup>21</sup> Human Rights Watch, "Worse Than a War—Disappearances in Chechnya," March 2005. Available at:

<http://www.hrw.org/legacy/backgrounder/eca/chechnya0305/>.

<sup>22</sup> Article 6 of the UN Convention for the Protection of All Persons from Enforced Disappearance.

<sup>23</sup> See *Cyprus v Turkey*, ECHR Judgment of 10 May 2001, para. 136; see also *Varnava v Turkey*, ECHR Grand Chamber Judgment of 18 September 2009, paras. 148 and 159.

<sup>24</sup> See the General Comment No. 24 on "Issues relating to reservations made upon ratification or accession to the Covenant [on Civil and Political Rights] or the Optional Protocol thereto, or in relation to declarations under Article 41 of the Covenant", issued on 4 Nov. 1994 by the United Nations Human Rights Committee, para. 10 ("the prohibition of torture has the status of a peremptory norm").

*national level*; the UN Committee Against Torture has reached a similar conclusion.<sup>25</sup> The crime of torture is also considered a crime against humanity when it forms part of a widespread and systematic practice, and as a war crime when committed during an internal armed conflict.<sup>26</sup>

24. The crime of **murder** is classified as a crime against humanity when committed on a widespread and systematic basis against a civilian population and a war crime when committed in the context of an internal armed conflict.<sup>27</sup> It should also be noted that the crime of murder may be committed in the form of a reckless or indiscriminate military attack on civilians.<sup>28</sup>
25. In the context of internal armed conflicts, war crimes also include intentional attacks against the civilian population or against individual civilians not taking direct part in hostilities<sup>29</sup> as well as indiscriminate attacks against the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life or injury to civilians.<sup>30</sup> It is a rule of customary international law that statutes of limitation do not apply to war crimes committed during internal armed conflicts.<sup>31</sup>
26. The UN Convention of the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, to which Russia is a party, provides in Article IV that no statutes of limitation shall apply to the crimes covered by the Convention.

#### E. Russia's obligations under international treaties and domestic enforcement mechanisms

27. Russia is not a party to the UN Convention on Disappearances. Russia is a party to the United Nation's Convention against Torture<sup>32</sup> and to the International Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.<sup>33</sup> Although there is no explicit provision in the Russian Criminal Code regarding the non-application of statutes of limitation to war crimes and crimes against humanity, several provisions of Russian law allow for the direct application of international treaty requirements, including the Law on International Treaties of the Russian Federation of 15 June 1995, and the Ruling of the Plenum of the Supreme Court of the Russian Federation of 10 October 2003, "On application of customary international law by the courts

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<sup>25</sup> Case no. IT-95-17/1 –T10, Trial Chamber, Judgment, 10 December 1998, available at: <http://www.icty.org/x/cases/furundzija/tjug/en/fur-tj981210e.pdf>, at para. 157. See also Conclusions and recommendations of the Committee against Torture on Denmark, CAT/C/DNK/CO/5, July 16, 2007, para. 11. Available at <http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/89e6367c3ac1ba6fc12567b70027d9fb/954d6ab4db2eb694c1257314002d6dcc?OpenDocument> (last accessed 12 November 2011).

<sup>26</sup> See ICC Statute, Art. 7 (1) (f) and Art. 8 (c) (i).

<sup>27</sup> Ibid., Art. 7(1)(a) and Art. 8 (c) (i).

<sup>28</sup> A reckless attack on civilians has been deemed to satisfy the *mens rea* requirement for murder as it is considered to be a willful attack. See International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v Galic*, (Trial Chamber), December 5, 2003, paras. 54, 345, 410.

<sup>29</sup> See ICC Statute, Art. 8 (2) (e) (i).

<sup>30</sup> Launching an indiscriminate attack is a grave breach of Additional Protocol 1 to the Geneva Conventions in international armed conflicts (see ICTY, *Prosecutor v Tadic*, Interlocutory Appeal on Jurisdiction, available at: <http://www.icty.org/x/cases/tadic/acdec/en/51002.htm>.) However, launching an indiscriminate attack is also recognized under customary international law as a war crime in non-international armed conflicts. See *Customary International Humanitarian Law, Volume 1: Rules*, International Committee of the Red Cross, Henckaerts, Jean-Marie and Doswald-Beck, Louise. Cambridge: Cambridge University Press, 2005. Rule 156. Available at: [http://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule156](http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule156).

<sup>31</sup> See *Customary International Humanitarian Law, Rules*, supra n. 29. Rule 160. Available at: [http://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule160](http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule160).

<sup>32</sup> Ratified by the USSR on 3 Mar 1987.

<sup>33</sup> Ratified by the USSR on 22 Apr 1969.

of general jurisdiction.”<sup>34</sup> Furthermore, Article 15 (4) of the Russian Constitution recognizes “universally recognized principles and norms of international law as an integral part of Russian law” and establishes the primacy of Russia’s international treaty obligations when they conflict with domestic law.<sup>35</sup>

28. According to Article 46 (1) of the European Convention, the Contracting parties undertake to abide by the final judgments of the European Court of Human Rights in the cases to which they are parties. In cases of disappearance, the Court has concluded that it is a Government’s obligation “to conduct, under a supervision of the Committee of Ministers in the context of the latter’s duties under Art. 46 (2) of the Convention, an investigation that is in full compliance with the requirements of the Convention as defined by the Court in previous similar cases.”<sup>36</sup>
29. The applicants recall the standards set forth in the recently adopted “Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations,” which declare that the duty to conduct an effective investigation in cases of serious human rights violations has “an absolute character.” Furthermore, the Guidelines provide that States have a duty to prosecute where the outcome of an investigation warrants a prosecution, and that prosecuting authorities must take all necessary steps to bring those who have committed serious human rights violations to justice.<sup>37</sup>
30. The applicants point out that despite Russia’s obligations to prosecute crimes against humanity or war crimes, none of the crimes into which investigations are now being carried out in the *Khashiyev* group have been so qualified. Rather, investigations are currently pending into crimes which carry a clear statutory limitation period of between 10-15 years. If the limitation period runs out, seeking prosecutions for war crimes and crimes against humanity will create a significant burden for the prosecutorial authorities because of the introduction of additional evidentiary thresholds required to prove the commission of such crimes. Therefore, seeking prosecutions for war crimes and crimes against humanity will likely be a less viable option than seeking prosecutions for crimes falling within the ambit of the Criminal Code. The applicants also recall that in a significant number of cases in the *Khashiyev* group, strong evidence already exists as to the identity of the perpetrators, who can and should be brought to justice for acts already criminalized under domestic legislation.<sup>38</sup>
31. That no prosecutions have yet resulted in convictions in any case from the *Khashiyev* group speaks to the continuing situation of impunity for human rights violations committed in the North Caucasus. It is crucial to ensure that the application of statute of limitations does not close the window of opportunity to pursue individual accountability for these crimes, yet there is currently reason to doubt that limitation periods will be construed in a way that will allow applicants to continue to seek justice.

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<sup>34</sup> Available in English through the web site of the Russia’s Supreme Court: <http://www.vsrfr.ru/catalog.php?c1=English&c2=Documents&c3=&id=6801> (last accessed on 11 November 2011).

<sup>35</sup> Available in English through the web site of the Russia’s Supreme Court: <http://www.vsrfr.ru/catalog.php?c1=English&c2=Documents> (last accessed on 11 November 2011).

<sup>36</sup> See: *Tahsin Acar v. Turkey* (preliminary objections) [GC], No. 26307/95, 06.05.2003, para. 84, ECHR 2003-VI.

<sup>37</sup> Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations, on 30 March 2011. Section V. The Duty to Investigate. Available on: <https://wcd.coe.int/ViewDoc.jsp?id=1769177&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

<sup>38</sup> See, for example, Russian Justice Initiative, Communication on individual measures of 18 May 2010. See also supra n. 1.



32. The signatory NGOs urge the Committee to request from the Russian delegation an official statement on their approach to the above issue as soon as possible, which includes answers to the following questions:
- a. What is the status of the domestic investigations in the cases *Khadisov and Tsechoyev v Russia (21519/02)* and *Akhmadov and others v Russia (21586/02)*?
  - b. Do the prosecuting authorities intend to apply statutes of limitation stipulated in the Criminal Code to potential prosecutions for crimes committed in cases from the *Khashiyev* group?
  - c. If the statutory period runs out, will the prosecuting authorities seek prosecutions for crimes against humanity or war crimes? In such case, will the authorities ensure that limitation periods do not apply to prosecution of identified suspects?
  - d. When do the authorities consider the limitation period to begin running in the case of an enforced disappearance?
  - e. What criteria are taken into account by domestic courts when deciding whether or not to apply limitation periods for prosecutions brought for crimes punishable by life imprisonment? Specifically, what criteria will be taken into account in cases concerning grave human rights abuses in the North Caucasus currently on the agenda of the Committee of Ministers?