



«ГРАЖДАНСКОЕ СОДЕЙСТВИЕ»

SUBMISSION TO THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE FROM NGOs RUSSIAN JUSTICE INITIATIVE AND CIVIC ASSISTANCE COMMITTEE RE: *TANGIYEV V. RUSSIA* (27610/05)

13 MARCH 2014

1 INTRODUCTION

1. This communication is submitted on behalf of the NGOs Russian Justice Initiative, which represented the applicant before the European Court of Human Rights, and the Civic Assistance Committee¹ (hereinafter the “signatory NGOs”) in the context of individual measures which require the urgent attention of the Committee, **in particular the intimidation and pressure tactics used against the applicant by members of the Federal Security Service (FSB), which pose a security threat to the applicant and his family, and raise serious doubts about the possibility of the applicant receiving a fair re-trial.**

The judgment in the case of *Tangiyev v Russia* was delivered by the European Court of Human Rights on 11 December 2012 and became final on 29 April 2013. The judgment is part of the *Mikheyev* group concerning ill treatment in police custody, but the facts of this case are unique because they concern a finding by the Court of violations of Articles 3 and 6 ECHR in the context of the applicant’s criminal conviction for alleged terrorism crimes in North Caucasus, which was found to be based in significant part on statements made by the applicant under torture. The applicant’s sentence, as well as the investigation into the applicant’s case as a whole, was recognized by the Court as unfair because of the proven use of torture against the applicant.

2. At present the applicant has served ten years of his 22-year prison sentence and is currently located at the high-security prison colony FBU IK-6 in Vladimir region.
3. The current status of the execution of the Court’s judgment, as well as the documented instances of psychological intimidation of the applicant, is detailed below in Sections 2-4. A background to the facts of the case and a summary of the ECtHR judgment is provided in Annexes 1 and 2.

2 DECISION OF THE RUSSIAN SUPREME COURT OF 25 DECEMBER 2013

4. As a result of the ECtHR judgment in *Tangiyev v Russia*, the Presidium of the Supreme Court of Russia was seized of the matter of reviewing the safety of the applicant’s conviction. The Supreme Court held a hearing on this matter on 25 December 2013 and decided to quash the

¹ The Civic Assistance Committee (Комитет Гражданского Содействия) monitors detention conditions throughout Russia for detainees from the North Caucasus (a project funded by the European Commission), as well as discriminatory living conditions for Russian citizens of the North Caucasus in other regions of Russia. See for example, “On the conditions for Chechens in the Russian Federation,” June 2003-May 2004, available at <http://www.memo.ru/hr/refugees/doklad2004/chech04.htm> (in Russian).

applicant's guilty verdict and to send the applicant's case for re-examination by a new formation of the Supreme Court of Chechnya, citing various violations of Article 6(1) of the European Convention. The written decision of the Russian Supreme Court was delivered to counsel on 31 January 2014.² As of the submission of the present communication, the case has not yet been returned to the Supreme Court of Chechnya, and the dates for the re-hearing of the applicant's case have not yet been appointed.³

3 ONGOING INTIMIDATION USED AGAINST THE APPLICANT STARTING FROM NOVEMBER 2013

5. As mentioned above, the applicant is currently serving his sentence at the high-security prison colony FBU IK-6 in Vladimir region. According to information received by the signatory NGOs and submitted to the Russian authorities, the applicant began to be subjected to severe psychological pressure in prison from mid-November 2013, which continues to date.
6. The applicant told his counsel that in mid-November he was visited in prison by a person who introduced himself as FSB officer "Andrey". As later detailed in a submission to the Investigative Committee of the Russian Federation made by the Civic Assistance Committee,⁴ Andrey made the following statements to the applicant during his visit to IK-6 in mid-November:
 - The examination of the applicant's case by the Presidium of the Supreme Court had been delayed because it was hoped that the applicant would waive his right to get his case heard before the Court;
 - The applicant should waive his right to have his case heard by the Supreme Court if the applicant cared both for his own safety as well as the safety of his two children, who reside in Grozny, Chechnya. Otherwise, the applicant could begin experiencing "problems" serving the remaining part of his sentence and could face further ill-treatment. The applicant was then shown a surveillance videotape of his children in Grozny. Andrey told the applicant that he would be back in the first part of December 2013 to hear about the applicant's decision regarding waiving his right to have his case examined by the Presidium of the Supreme Court.
 - Andrey inquired about the applicant's latest meeting with his counsel and the reasons for which the NGO Civic Assistance Committee was representing him, as well as to the sources of income of the NGO.
7. The applicant's description of the content of his conversation with Andrey was recorded by counsel in a report of 5 December 2013. Relying on this report, on 18 December, the Civic Assistance Committee filed a statement to the Investigative Committee of the Russian Federation concerning information about the alleged commission of the crime of exceeding official powers in relation to the applicant by the FSB officer "Andrey".⁵ To date, the Civic Assistance Committee has not received a response from the Investigative Committee to its submission.
8. On 31 January 2014 counsel again visited the applicant in the prison colony, but could not gain access to him for a significant period of time because the FSB officer "Andrey" was also at the colony visiting the applicant. The applicant informed his counsel that Andrey again threatened

² Attach 1: Judgment of the Russian Supreme Court of 25 December 2013.

³ Attachment 2: Letter of 12 February 2014 from the Supreme Court of Chechnya.

⁴ Attachment 3: Submission to the Investigative Committee of the Russian Federation of 18 December 2013.

⁵ Attachment 4: Tangiyev's interview of 5 December 2013.

him, and this time suggested that the applicant should plead guilty to new crimes and sign a confession. If he refused to do so, the applicant would be given a life sentence. The applicant also mentioned that no documents had been given to him confirming the overturning of his conviction by the Supreme Court. The applicant's counsel recorded his questioning of the applicant from 31 January 2014,⁶ in which the applicant indicates that if new documents appear with the applicant's signature confessing to crimes, that these documents should be considered to have been produced as a consequence of physical and psychological intimidation.

4 COMMENTARY ON THE ABOVE DEVELOPMENTS AND THE EXECUTION OF THE JUDGMENT

9. The signatory NGOs submit that the decision of the Presidium of the Supreme Court of the Russian Federation to quash the applicant's conviction in light of the ECtHR's judgment is a positive development in the context of the execution of the Court's judgment in *Tangiyev v Russia*. However, the documented instances of psychological pressure used against the applicant give rise to grave concerns both for the safety and well-being of the applicant and his close relatives, as well as for the possibility to receive a fair hearing of the applicant's case before the Supreme Court of Chechnya. These concerns extend equally to the security of counsel who will be representing the applicant during the re-trial.
10. Even without considering the specific circumstances of the applicant's case, the current level of judicial independence in the Chechen Republic is very low, especially when the courts are called upon to examine instances of human rights violations in which local enforcement officials are complicit. This was most recently illustrated in the striking decision made in November 2013 by a judge of the Supreme Court of Chechnya, Mr Vakhid Abubakarov, to recuse himself from hearing the case against Mr Suleyman Edigov, who was accused before the Supreme Court of Chechnya of crimes under Articles 317 and 222 of the Russian Criminal Code (an attack on the life of a law enforcement official and the illegal harboring of arms). In a rare moment of candour from such a highly placed judicial official in Chechnya, Mr Abubakarov wrote in his decision concerning his recusal that there was clear evidence that the defendant had been kidnapped and tortured to extract confessions to the crimes, but that he was unable to continue to hear the case due to an intimidating phone call he received from the Chechen Ministry of Interior, who "warned him against acquitting the defendant."⁷ Mr Abubakarov reasoned that the call could have been provoked by the fact that the evidence produced at the trial was sufficient to found an indictment of grave crimes committed by law enforcement officials.
11. The circumstances of the present case are strikingly similar to that of the case described above: the applicant is accused of serious crimes (including under Articles 312 and 222 of the Criminal Code) to which he confessed under torture, and despite the strong evidence showing that torture was inflicted against the applicant, it was systematically ignored or dismissed by the local courts. That such tactics of intimidation have already been employed against the applicant at this stage raise additional grave concerns that the trial before the Supreme Court of Chechnya will not be conducted in accordance with fair trial standards.
12. The signatory NGOs also remind the Committee of the history of intimidation of independent lawyers in the Chechen Republic, especially those who represent defendants accused on

⁶ Attachment 5: Tangiyev's interview of 31 January 2014.

⁷ See BBC Russian Service, "Chechnya: The judge who recused himself wants an honest system," 11 November 2013, available at http://www.bbc.co.uk/russian/russia/2013/11/131111_chechnya_judge_abubakarov_interview.shtml (in Russian); Novaya Gazeta, "There is a Judge!", 11 November 2011, available at <http://www.novayagazeta.ru/inquests/60871.html> (in Russian); "Unique action of a Supreme Court judge in a region of impunity," Civil Rights Defenders, 18 November 2013, available at <http://www.civilrightsdefenders.org/news/unique-action-of-a-supreme-court-judge-in-a-region-of-impunity/> (in English).

terrorism charges, many of whom are torture victims. In their report of March 2013, *Confronting the Circle of Injustice: Threats and Pressure Faced by Lawyers in the North Caucasus*, Amnesty International presents evidence of intimidation tactics against independent lawyers in Chechnya, such as being stripped of their lawyer's license and receiving death threats.⁸ In general, it is widely known that the establishment of the "Joint Mobile Group" of lawyers in Chechnya, made up of non-Chechen advocates who work on a rotational basis from Grozny, was due to the extremely hostile and dangerous climate prevailing in Chechnya for lawyers and human rights defenders in the wake of the murder of Natalia Estemirova in July 2009.⁹ Grave concern over intimidation of lawyers and human rights defenders in the North Caucasus, including in Chechnya, have also been raised many times by the Council of Europe, including by the Rapporteur on the situation of human rights defenders in the Council of Europe.¹⁰

13. In general, given the overall context of widely documented impunity and lack of judicial independence in Chechnya, as well as the difficulties of providing effective legal representation for torture victims, the signatory NGOs are alarmed by the recent instances of intimidation against the applicant in this case, which present a grave security threat for the applicant, his family, and anyone involved in the impending retrial of the applicant's case.
14. Therefore the signatory NGOs urge the member states of the Committee of Ministers:
 - To promptly investigate the claims of alleged intimidation of the applicant as detailed in the submission to the Investigative Committee of the Russian Federation;
 - To draw the attention of their Russian counterparts to the documented instances of intimidation against the applicant and request assurances that the applicant's procedural rights during the re-trial before the Supreme court of Chechnya will be duly observed;
 - To urge the Russian Government to provide security guarantees to the applicant, Mr Tangiyev, as well as his family members, and all those involved in the defense of the applicant during his retrial, including independent lawyers, members of NGOs, as well as judges and prosecutors.

ANNEX 1 - CASE BACKGROUND

15. The applicant Timur Tangiyev was arrested at his home in Grozny on 11 April 2003 and taken to the Staropromyslovsky district police station and thereafter to the Operational Search Bureau No. 2 (ORB-2) of the Ministry of Internal Affairs, where over the course of two months he was subjected to torture on a regular basis, including severe beatings, electrocution, and burns from extinguishing cigarettes on his body, and was forced to sign confessions. In October 2003 the applicant retracted his statements, claiming that he had signed them only to escape further torture, and pled not guilty to the charges against him. Several days afterwards, the applicant was again tortured by electrocution, leading him to attempt suicide. During his trial the applicant alleged that he had been tortured in detention in order to sign a confession by several police officers whose identities were known to him. In May 2004, after an inquiry conducted

⁸ See Amnesty International, EUR 46/003/2013, *Confronting the Circle of Injustice: Threats and Pressure Faced by Lawyers in the North Caucasus*, 21 March 2013, pages 21 and 39, available at: <http://www.amnesty.org/en/library/info/EUR46/003/2013/en>.

⁹ See for example, the New York Times, "Monitoring Rights in the Chechen Region, One Month at a Time," 24 September 2011, available at <http://www.nytimes.com/2011/09/25/world/europe/in-chechnya-human-rights-workers-from-a-far-put-in-tours-of-duty.html> (last accessed 7 February 2014).

¹⁰ See Council of Europe Parliamentary Assembly, Committee on Legal Affairs and Human Rights, "The situation of human rights defenders in Council of Europe member States," 11 June 2012, available at: <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=18750&lang=EN> (last accessed on 7 February 2014).

by the Prosecutor's Office, the applicants' allegations of torture and forced confession were dismissed for lack of evidence and were labeled as an attempt to mislead the court and evade criminal responsibility. On 5 October 2004 the Supreme Court of the Republic of Chechnya convicted the applicant to 24 years of imprisonment based in the large part on the applicant's statements obtained under torture. On appeal the Supreme Court of the Russian Federation upheld the decision, reducing the applicant's sentence by several months, and concluding that there was no convincing evidence of the applicant's torture or ill-treatment.

ANNEX 2 – MAIN FINDINGS OF THE JUDGMENT OF THE ECtHR OF 11 DECEMBER 2012

16. The European Court found that the applicant had been subjected to treatment amounting to torture, which had been carried out in the goal of “debasement of the applicant, driving him into submission and making him confess to criminal offences.” The Court also found that the authorities had not carried out an effective investigation of the applicant's allegations of torture, citing unexplainable delays and the failure to question witnesses and medical personnel. The ECtHR also found that the national courts' decision to allow evidence produced under torture at the applicant's trial rendered the criminal proceedings against him unfair, leading to a violation of Article 6(1) of the European Convention.