



Illustration: Natalya Listomirova

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## Persecution of human rights defenders and activists: a submission to the EU Committee of Ministers in relation to Article 18

*Rule 9.2 Submission on the implementation of the general measures in the cases no. 54003/20 «Kogan and others v. Russia» and no. 17912/15 «Kutayev v. Russia» prepared by the NGOs Memorial Human Rights Defence Centre and OVD-Info.*

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## INTRODUCTION

This submission is prepared by the NGOs Memorial Human Rights Defence Centre and OVD-Info.

**Memorial Human Rights Defence Centre** is a non-governmental organization founded in June 2022 by supporters of Memorial Human Rights Centre (dissolved on 29 December 2021) to continue the work of the

latter NGO. Memorial Human Rights Centre was founded in 1993 in Moscow and became one of the first human rights NGOs in modern Russia. It worked with grave human rights violations in (post-)conflict areas, civil and political rights and vulnerable groups. It represented hundreds of victims both domestically and before the European Court of Human Rights.

**OVD-Info** is an independent human rights defense and media project. OVD-Info focuses on the rights to freedom of assembly, association and expression, but its work extends further. OVD-Info works on the ground in Russia and globally aiming at putting an end to political persecution in Russia. For this purpose, it collects data and produces content about political repressions in Russia, coordinates legal aid to those unjustly persecuted, and works towards systemic change in the human rights field.

This submission examines the situation with the implementation of the general measures in the above-mentioned cases and highlights the continuing pattern of systematic persecution of human rights defenders and activists in Russia for political reasons.

## **MAIN FINDINGS OF THE ECTHR IN THE JUDGMENTS «KOGAN AND OTHERS V. RUSSIA» AND «KUTAYEV V. RUSSIA»**

### **1. Kogan and others v. Russia**

The applicants in this case, Ms Kogan (a US citizen) and Mr Avetisyan (a Russian citizen), are human rights defenders who worked for many years with the ECtHR on many cases, mainly concerning the conflict in the Chechen Republic, as well as with the Committee of Ministers on execution of the Court's judgments. The applicants are married.

The ECtHR established a violation of the right to family life of the applicants and their minor children, on account of revocation by Russian authorities of the residence permit of Ms Kogan on some unpronounced «national security grounds», tainted with gross procedural defects (Article 8) which pursued an ulterior purpose of punishing Ms Kogan and Mr Avetisyan for their human rights activities and preventing them from continuing those activities in Russia (Article 18 in conjunction with Article 8).

## **2. Kutayev v. Russia**

The applicant in this case is a Chechen human rights activist, Mr Kutayev, who was unlawfully arrested on suspicion of drug possession after organizing a conference in Grozny in relation to the anniversary of the deportation of the Chechen and Ingush people under Stalin's regime.

The applicant organized a conference on around 23 February, which is the date of the beginning of the deportation and is considered by many Chechens as a tragedy day. The same day is celebrated in Russia as the Defender of the Fatherland Day, an important state holiday. The Chechen President, Mr Kadyrov, disapproved of the selection of the day of the conference as he had previously decreed that 10 May (not 23 February) would commemorate the Day of Remembrance of tragic events in the Chechen history. Mr Kadyrov later publicly recognized that the applicant's arrest was due to the organization of the conference.

The ECtHR established in this case a violation of the applicant's right to liberty by virtue of the unauthorized purpose of punishing the applicant for organizing a conference to commemorate the deportation of the Chechen people on a date other than that set by the Chechen President and for subsequent refusal to attend a meeting with Mr Kadyrov to discuss this (Article 18 in conjunction with Article 5).

The Court recalled the applicant's status as a human rights activist in Chechnya, the date and topic of the conference he organised, the use of torture against him to obtain a confession, the arbitrary nature of his arrest, the direct involvement of high-level officials in the applicant's case, and the general situation of intimidation of human rights defenders in the North Caucasus.

## **CURRENT SITUATION WITH THE IMPLEMENTATION OF THE CASES**

We believe that these judgements raise systemic issues of intimidation of human rights defenders and activists in Russia, the use by authorities of ordinary criminal charges and existing legal mechanisms for the unlawful purposes to put pressure on human rights defenders, punish them and suppress their activities in Russia.

We consider that these systemic problems persist in Russia, as evidenced by the following trends and examples: new ECtHR judgements on Article 18 (1), pressure on human rights defenders working in the North Caucasus (2), cooperating with international organizations (3) or working on historical memory issues (4), the introduction of entry bans to the Russian Federation in connection with activism (5), and the general situation with the repressive laws, practices and the persecution of human rights defenders in Russia (6).

### **1. The new ECtHR judgements on Article 18**

The systemic problems raised in Kogan and Kutayev's judgements have been confirmed by the new ECtHR's judgments on Article 18, which demonstrate a pattern of politically motivated prosecutions in Russia.

On 28 May 2024, the Court adopted its judgment in the case of *Zarema Musayeva and Others v. Russia*. Similar to the

Kutayev case, the Court analyzed the pressure exerted by the Chechen President on the human rights activists and the misuse of the judicial mechanisms for this illegal purpose.

The case concerned Zarema Musayeva, the wife of a former Chechen Supreme Court judge, who was forcibly removed by the police from her home in the Nizhniy Novgorod region of Russia in January 2022 and taken 2,000 km away to Grozny in Chechnya. It also addressed her subsequent detention and the administrative and criminal proceedings brought against her there. Additionally, the case concerned the ill-treatment that Ms Musayeva and her husband and daughter had been subjected to by the Chechen police, amid repeated public death threats by high-level Chechen officials, including President Ramzan Kadyrov, who had promised to «hunt them down» and «cut their heads off».

The Court found that the Russian authorities, whose representatives were the source of the death threats, must have been aware of but had done nothing about the real and immediate risk to the lives of Ms Musayeva, her husband and their daughter. It also found that they had been ill-treated by the Chechen police and that Ms Musayeva's arrest and detention were arbitrary and intended as retaliation against her family, who were involved in human rights work and opposition activities in Chechnya. The hurried administrative proceedings against her, conducted without legal representation and while she was quite obviously unwell, breached fair trial guarantees. The Court also **took into account the overall context** such as the applicants' imminent departure from Russia, their ill-treatment, the direct involvement of senior officials in the case and repeated public statements made by the Chechen President, as well as the general crackdown on human rights defenders and members of the opposition in the region.

On 25 June 2024, the ECtHR delivered its judgment on the case **“Ukraine v. Russia» (re Crimea)**. The case describes

a pattern («administrative practice») of violations of the Convention by Russia in Crimea since February 2014. It also concerns a pattern of persecution of Ukrainians for their political stance and/or pro-Ukrainian activities («Ukrainian political prisoners»), which had occurred predominantly in Crimea, but also in other parts of Ukraine or in Russia since early 2014.

Those human-rights violations were part of a broader campaign of repression that included disappearances, ill-treatment, unlawful detention, impossibility to opt out of Russian citizenship, suppression of Ukrainian media and the Ukrainian language in schools, pre-trial detention in overcrowded conditions, prosecution and conviction on fabricated charges without a fair trial in reprisal for any pro-Ukrainian stance, and transfers from Crimea to prisons in Russia.

**The Court ruled** that it had sufficient evidence — in particular, reports from, intergovernmental and non-governmental organizations, corroborated by witness testimony and other material — to conclude beyond reasonable doubt that the incidents were sufficiently numerous and interconnected to amount to a pattern or system of violations. Moreover, the apparent lack of effective investigation of the incidents and/or the general application of the measures to all people concerned, among other things, proved that such practices were officially tolerated by the Russian authorities.

## **2. Pressure on the human rights defenders working in the North Caucasus**

In the judgements under review, the authorities subjected the applicants to political persecution in connection with their human rights work and activism in the North Caucasus.

Currently, the authorities continue to prosecute persons on political grounds due to their activities in the region.

In particular, they fabricate criminal cases against activists and lawyers to prevent their activities. Further, we provide several examples of such persecution.

**Martin Kochesoko** is a resident of Nalchik (Kabardino-Balkarian Republic), founder and head of the Circassian public organization «Khabze», co-chairman of the Democratic Congress of the Peoples of Russia. On 2 March 2021, he was sentenced to 3 years of suspended imprisonment with 1 year of probation under part 2 article 228 («Illegal acquisition and possession of drugs on a large scale») of the Criminal Code of Russia (hereinafter — CC). According to Mr. Kochesok, the authorities planted drugs on him and forced him to confess by beating him and threatening him and his family with physical violence. In August 2023, the authorities **designated him as a «foreign agent»**. In 2024, he was included in the **list of terrorists and extremists**. Martin Kochesok left Russia.

Eduard Ataev is a former representative of the «Voice» movement in Dagestan and a former coordinator of the local headquarters of Alexei Navalny. Mr. Ataev was an independent observer of elections at various levels in Dagestan, fought against violations committed by members of precinct election commissions and officials, and repeatedly filed lawsuits about election fraud. The activist criticized local authorities and Russia's invasion of Ukraine and held solo demonstrations in the center of Makhachkala. On 22 November 2023, he was **sentenced to 6,5 years** of imprisonment under part 1 article 221.1 and article 228 of the CC («storage of weapons, explosives and drugs»). At the trial, he stated that during a house search security forces planted drugs on him, the authorities **subjected him to torture** and committed gross violations during the investigation. Mr. Ataev and his lawyers claim that he is a victim of political persecution.

Marat Ashimov is a lawyer, member of the Mordovia Bar Association. Mr. Ashimov defended the rights of Muslim

women to wear headscarves in educational institutions, represented in courts the interests of Muslim cultural centers that were accused of illegal activities in the Moscow region, and sought the reversal of decisions to ban Muslim literature. In one of the recent cases, he defended a **person prosecuted on charges of attacking military personnel** in Chechnya in 2000. On 27 March 2024, the authorities **initiated a criminal case** against Mr. Ashimov under part 3 of article 30 and part 2 of article 159 of the CC («attempted fraud») which can result in a prison sentence of up to 5 years. According to investigators, Mr. Ashimov promised to assist a person with their parole for money. He claims that the case was fabricated to interfere with his professional activities.

In addition to fabricating cases, the authorities also use other forms of pressure. For example, the **authorities persecute** those who organize or **participate in public events** in the region, as well as designate people as «foreign agents». On 24 November 2023, a human rights defender and journalist from Dagestan, Idris Yusupov, was **designated** as a «foreign agent». On 6 June 2024, an administrative **protocol was issued** against him for the non-compliance with the restrictions related to the «foreign agent» status. In addition, the authorities conducted several **searches** at the home of Idris Yusupov.

Moreover, on 4 July 2023, in Grozny (Republic of Chechnya), **armed people attacked** Elena Milashina, a journalist for the independent media outlet Novaya Gazeta, and lawyer Alexander Nemov, who had arrived to participate in the announcement of the verdict in the politically motivated case of Zarema Musaeva. According to the victims, the attackers said it was retaliation for their work in Chechnya. Despite the initiation of criminal cases into the attack, those responsible have not yet been brought to justice.

### **3. Pressure on the human rights defenders working with international organizations**

In *Kogan and others v. Russia*, the authorities revoked the first applicant's residence permit and citizenship because of her human rights work at the Legal Assistance — Astreya, which involved, *inter alia*, appeals to the Court. Currently, Russian authorities continue to persecute human rights defenders and others due to their work with international organizations, including the Council of Europe.

Bakhrom Khamroyev is a human rights defender and a former member of the Memorial Human Rights Centre. On 21 February 2022, the Moscow Investigation Department of the Federal Security Service opened a **criminal case against Mr. Khamroyev**. He was arrested and charged with «propaganda of terrorism with the use of mass media or information and telecommunication networks, including the Internet» (article 205.2-2 of the CC) and «organizing activity of a terrorist organization» (article 205.5-1 of the CC). All charges relate to allegations of involvement with Hizb-ut-Tahrir, a group designated as a terrorist organization under the Russian law.

The charges on organizing activity of a terrorist organization were based on, among other things, Mr. Khamroyev's legal work, including the preparation of materials to the Court for alleged Hizb-ut-Tahrir participants. These charges were later dropped, but only because there was no evidence that the people he helped in fact participated in Hizb-ut-Tahrir. On 23 May 2023, he was sentenced to 14 years of imprisonment under article 205.2-2 and article 205.5-2 («participating in the activities of an organization recognized as terrorist») of the CC. On 10 October 2023, the Military Appellate Court reduced the sentence by three months, now amounting to 13 years and 9 months.

Even though the charges related to his work with the Court were dropped, this case sets a disturbing precedent providing

the authorities the tools to strengthen the repression against human rights defenders working on sensitive and politically motivated criminal cases at the international level.

Another example of such a persecution is a forcible dissolution of the Russian NGO «Man and Law» ordered by court on 21 August 2023. In the decision, the court referred, inter alia, to violations of the territorial scope of activities of the organization. Specifically the ECOSOC consultative status granted to the organization in December 2022, with the aim to enable the organization's access and interaction with UN bodies and processes, was «viewed negatively».

Furthermore, on 30 November 2023, the Supreme Court of Russia designated the so-called «LGBT movement» as an extremist organization. When describing the activity of «LGBT movement», the Supreme Court noted the preparation of reports by the NGOs to the UN Human Rights Committee on LGBTQ rights in Russia. This decision creates a chilling effect on any human rights work related to LGBTQ rights, as well as poses a threat to LGBTQ community in Russia and their activities.

Therefore, Russian authorities continue to prosecute individuals and entities on the basis of their cooperation with international organizations, which does not constitute a legal aim for the restriction of any right.

#### **4. Pressure on activists working on the issue of historical memory**

In Kutayev's judgment, the human rights activist was prosecuted for his activities related to historic memory. This is not the only case in Russia.

In March 2023, the Investigative Committee opened a criminal investigation against International Memorial's staff for «rehabilitation of Nazism.» On 21 May 2023,

several **searches were conducted** in the office and homes of the Memorial staff. Investigators claim that the organization's database of victims of Soviet political repressions contains, among millions records, some Nazi Germany collaborators. According to the investigation, the researchers were acting in bad faith, as they had to verify information on each and every name in the database. Ironically, when the researchers tried to access the archival documents related to the contested names, the authorities denied. The investigation is still ongoing.

In addition, Russian authorities continue to imprison Yuriy Dmitriyev, the former head of the Karelia Regional Branch of Memorial and a renowned researcher who uncovered and documented mass graves of victims of Stalin's Great Terror in Karelia. He was convicted on false charges of sexually assaulting a minor in violation of many fair trial guarantees. His conviction was upheld by both the appeal and cassation courts on 15 March 2022 and 17 January 2023, respectively. On 15 December 2023, the ECtHR **communicated** his case to the authorities under Article 18 due to the facts showing that his prosecution can be due to his activities related to the preservation of the historical memory.

Therefore, Russian authorities continue to unlawfully prosecute human rights defenders working on the issue of historical memory to prevent their activities.

## **5. Introduction of entry bans to the Russian Federation in connection with activism**

In Kogan's judgment, the Court found a violation in the revocation of the applicant's residence permit because of her human rights activities. The issues considered by the Court in this judgment are still relevant. The Russian authorities widely use unjustified revocation of residence permits and entry bans on undisclosed national security grounds in their treatment of activists. The examination of such decisions

by domestic courts is purely formal, and their cancellation becomes possible only on rare occasions. The grounds for cancellation are usually not the merits of the case, but procedural errors. The following case studies will illustrate these assertions.

Mr Klein is a Belarus national who was **found guilty** of participation in an unauthorized public event (protest) that «resulted in interference with the functioning of life support facilities, transport or social infrastructure, communications, pedestrian and (or) vehicle traffic or citizens' access to residential premises or transport or social infrastructure facilities» (part 6.1 of article 20.2 of the Code of Administrative Offences of Russia (hereinafter — CAO)). This offense was imputed after Mr Klein participated in a **peaceful rally** on 31 January 2021 held in support of a prominent opposition member Aleksei Navalny. On 16 February 2021, the Ministry of Internal Affairs issued a decision prohibiting him from entering Russia until 16 February 2061 on the grounds of national security. Mr Klein appealed the decision in court, but even though Mr Klein has been living in Russia for a long time and has stable social and family relations in the country, the court dismissed the claim. According to the court judgment, «analysis of the offense committed by the administrative plaintiff does not allow to attribute it to insignificant.» Mr Klein has left Russia and did not appeal the decision.

Mr Sulaymonov is a Tajikistan national who has been living in Russia since 2008. He is a Russian opposition activist and a supporter of feminism and LGBTQ. In 2021, Mr Sulaymonov worked as an orderly in the covid section of a hospital, where he photographed himself holding a torch as part of a campaign in support of Alexei Navalny. After that, Mr Sulaymonov was **fired**.

In August 2021, Mr Sulaymonov took a job in the election headquarters of the former executive director of Open Russia,

Andrei Pivovarov, who at that time had already been in pre-trial detention for several months on an «undesirable organization» case.

On 4 September 2021, the Ministry of the Internal Affairs refused to register Mr Sulaymonov at his place of residence due to the ban on his entry into the Russian Federation. Mr Sulaymonov learnt about the ban by accident. The **police did not officially inform** him of the ban and the grounds on which it was imposed. Mr Sulaymonov verified this information using the Ministry's official service. Had the police carried out the forced deportation to Tajikistan, Mr Sulaymonov would have **faced persecution** because of his criticism of religion and the local authorities. Fearing that the police would not give him an opportunity to appeal, Mr Sulaymonov decided to make an emergency departure from Russia to a safe country on his own. His wife remained in Russia. At the Moscow airport, FSB officers detained and interrogated Mr Sulaymonov in a special room, but allowed him to leave the country. Mr Sulaymonov's wife made several attempts to appeal against the entry ban, but the Ministry of the Internal Affairs refused to give her any official document that could have been the basis for initiating legal proceedings.

Mr F is a Belarus national who on 31 March 2022 was found guilty of an administrative offense under part 5 of the article. 20.2 of the CAO which penalizes «violation of the established procedure for holding an assembly, rally, demonstration, march or picketing.» The case was opened after Mr F participated in an anti-war assembly held on 24 February 2022, after news spread about the invasion of Ukraine. Mr F was one of **1700 protestors** who **were arrested** that day. On 31 May 2022, the Ministry of Internal Affairs issued a decision prohibiting Mr F from entering the territory of the Russian Federation until 31 May 2062 because of him committing an offense, citing national security grounds as a basis for this measure.

On 26 May 2023, this decision was revoked by the court, which on 22 May 2024 was upheld by the appeal court. The courts based their decisions on the fact that at the time the entry ban was issued, the decision on the administrative offense had not entered into legal force. Other arguments, such as Mr F's deep-rooted social and family ties and his long-term residence in Russia, were not used by the courts to substantiate the decision. At the date of the submission, the entry ban has not been lifted yet.

## **6. General situation with the repressive laws, practices and the prosecution of the human rights defenders in Russia**

The general situation in Russia is very intolerant towards the human rights defenders and activists. Some laws were specifically adopted by the authorities in order to suppress human rights activities and freedom of expression.

One such example is the legislation on foreign agents. In the Ecodefence judgment, the ECtHR found that «the creation of the new status severely restricted the ability of the applicant organizations to continue their activities, because of the negative attitude of their target groups and because of the regulatory and legislative restrictions on involving 'foreign agent' organizations in cooperation and monitoring projects. Their registration as 'foreign agents' **restricted their ability** to participate in public life and engage in activities which they had been carrying out prior to the creation of the new category of 'foreign agent'».

Other examples of the repressive legislation include the laws on **fake news about the army** and on **discrediting the army**. These laws were specifically adopted by the authorities to prohibit dissent against the Russian invasion of Ukraine and to restrict human rights activities related to this war.

The repressive legislation is also followed by oppressive practices. For example, in April 2022, Russian authorities **revoked the registration** of 15 foreign NGOs and foundations, forcing them to shut their offices in Russia, including Human Rights Watch and Amnesty International.

The authorities also continued their pressure on Memorial. In June 2022, supporters of the dissolved Memorial Human Rights Centre founded a new organization — Memorial Human Rights Defence Centre. On 1 March 2024, the new organization was **designated** as an «foreign agent» by authorities. The Ministry of Justice stated that the Memorial «disseminated false information aimed at creating a negative image of the Russian Federation, as well as the Armed Forces of the Russian Federation, took part in the creation and dissemination of messages and materials of foreign agents to an unlimited number of people. It opposed the special military operation in Ukraine and supported organizations recognized as extremist by a court decision. The co-chairman and member of the council of a public association [Memorial] are persons included in the **register of foreign agents**. „Moreover, seven persons associated with „Memorial“ were declared „foreign agents“.

The authorities also undertook unlawful, politically motivated criminal prosecutions of persons associated with Memorial. In addition to the cases of Bakhrom Khamroev and of Yuriy Dmitriyev already mentioned before, the following prosecutions took place. In May 2023, Mikhail Kriger, an activist from the Moscow Regional Memorial, was sentenced to 7 years in a penal colony. He was **accused** of calling for extremism for an old Facebook post, though apparently the real reason for his prosecution were his anti-war activities. On 27 February 2024, Oleg Orlov, a former co-chair of Memorial Human Rights Defence Centre, was **sentenced** to 2.5 years of imprisonment for «repeatedly discrediting» the Russian army for an article criticizing the war in Ukraine. The appeal court upheld this decision. On 4

April 2024, Alexander Chernyshov, archivist and former board member of Perm Memorial, was **convicted** and given a 3-year suspended sentence for attempting to «smuggle cultural property», to Germany. The documents seized by the investigators were the ordinary working documents of Perm Memorial. According to the accusation, the documents should have been created while the organization «had been preparing its application for the Nobel Peace Prize» (it should be noted that the laureates do not nominate themselves).

## **RECOMMENDATIONS**

We kindly ask the Committee of Ministers to recognize that the Russian authorities have failed to implement general measures in these cases due to the ongoing systemic practice of prosecuting human rights defenders and activists in Russia on political grounds and the general intolerance of the authorities towards human rights activities in Russia.

We propose to the Committee of Ministers to indicate to the Russian authorities the following general measures for implementation:

- to cease the prosecution of human rights defenders, journalists and activists on political grounds, including by fabricating criminal cases against them, and end repressive actions against their organizations;
- to abolish the repressive laws on «foreign agents», fake news about the army and on discrediting the army;
- to end the prosecution of human rights defenders working in the North Caucasus, cooperating with international organizations and dealing with issues of historical memory;
- to end the revocations of residence permits and introduction of entry bans into the Russian Federation for human rights activities and activism;
- to end the persecution of Memorial and associated persons, including Mikhail Kriger, Oleg Orlov, Alexander Chernyshov, Yuriy Dmitriyev and Bakhrom Khamroyev;
- to adopt an act of amnesty or pardon for political prisoners.

We also recommend that the Committee of Ministers cooperate on this issue with the UN human rights mechanisms, including the Human Rights Committee, the Human Rights Council, special procedures, including the Special Rapporteur on the situation of human rights in the Russian Federation, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the independence of judges and lawyers.