

**Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
UA RUS 3/2021

17 February 2021

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 42/22, 45/3, 44/5, 43/4, 41/18 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **alleged arbitrary arrest and detention of Salekh Magamadov (20 years old) and Ismail Isayev (17 years old), as well as their subsequent transfer to the Chechen Republic.**

We would also recall our letters sent on 13 April 2017 (RUS 4/2017)<sup>1</sup> and 11 February 2019 (RUS 1/2019),<sup>2</sup> concerning allegations of unlawful detention, torture, sexual abuse, and extrajudicial killings of people based on sexual orientation in the Chechen Republic. We note the connection of the instant case with the serious context and patterns identified therein, and we, therefore, regret that to date we have not received a reply that relates to the substance of the cited letters.

According to the information received:

In April 2020, Salekh Magamadov and Ismail Isayev, who are siblings, were allegedly detained arbitrarily by the Chechen police at the Special Patrol Regiment #6. The allegation before us is that they were tortured for moderating an independent youth Telegram channel Osal Nakh 95 that contained many posts critical of the Chechen authorities, and because of their perceived sexual orientation and/or gender identity. They were released, allegedly after recording "apology videos" published online.

Since June 2020, Salekh Magamadov and Ismail Isayev were living in a shelter in the city of Nizhny Novgorod, Western Russia.

<sup>1</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23080>

<sup>2</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24319>

In the morning of 4 February 2021, Ismail Isayev called his mother and told her that people who claimed to be law enforcement officers from the Criminal Investigation Department were knocking on the door and asking if anyone had witnessed a robbery. On that occasion, those persons allegedly checked Salekh Magamadov and Ismail Isayev's residence, recorded their personal data, and left their shelter.

At approximately 3 pm on the same date, Ismail Isayev called the Russian LGBT Network's emergency assistance coordinator and the social worker in charge of their shelter, who heard unknown people shouting in the background. About 30 minutes later, their lawyer arrived on site, where he found visible traces of a scuffle. Salekh Magamadov's phone was found, but Ismail Isayev's phone and tablet were missing. Their neighbours reported that they noticed people in black uniforms in the building a few hours earlier on the same date and stated that Salekh Magamadov and Ismail Isayev were taken by the men in black uniforms, who are believed to be members of the Nizhny Novgorod special purpose police unit (OMON).

The lawyer called the emergency police assistance and reported the event. In the absence of confirmation of detention by the Regional Police Precinct, the lawyer dialled an emergency number and called the police squad. Police officers who arrived on site made some telephone calls and informed the lawyer that Salekh Magamadov and Ismail Isayev had been detained by the OMON team of Nizhny Novgorod and had subsequently been handed over to the Chechen police. He also learned that they were being transferred to Gudermes in the Chechen Republic. The police officers allegedly did not disclose the reasons for the detention or who ordered their arrest. Therefore, the lawyer submitted a complaint about enforced disappearance (including enforced disappearance of a minor) to the Investigation Department of the Investigative Committee in the Nizhniy Novgorod Region. He also filed a complaint to the Head Office of the Ministry of Interior in the Nizhny Novgorod Region and submitted an appeal to the Prosecutor's Office in Nizhny Novgorod.

On 5 February 2021, the lawyer went to Gudermes and enquired about the whereabouts of Salekh Magamadov and Ismail Isayev to the Gudermes Police Precinct. The police allegedly did not provide information about the grounds of the arrest and detention and refused to disclose their location.

On 6 February 2021 at approximately 3 pm, Salekh Magamadov and Ismail Isayev were brought to the police precinct in Gudermes. They appeared at the police precinct immediately after Ismail Isayev's mother submitted a claim concerning a minor's abduction. During their stay at the precinct, their lawyer as well as their father had a chance to briefly see them. Salekh Magamadov and Ismail Isayev had reportedly looked tired and scared and had allegedly been pressured to decline legal representation for the last 48 hours. During interrogation, they were reportedly asked to provide information about who

they had met with.

Immediately upon leaving the police station in Gudermes on 6 February, other law enforcement officers again arrested Salekh Magamadov and Ismail Isayev, forcing them into a car. Their lawyer and their father, who were with them at the time of arrest, were not given any explanation as to the reasons for their arrest. The police drove them to Sernovodskoe (in the Chechen Republic). Their lawyer and their father, who followed the car, arrived at the site a few minutes after. They were not allowed into the premises and were denied access to Salekh Magamadov and Ismail Isayev. The lawyer, therefore, filed a complaint to access his clients. At the same time, the Deputy Minister of the Ministry for Internal Affairs of Chechnya arrived on site. Together with other law enforcement officers, he allegedly intimidated and threatened the father of the detainees, in order to pressure him to refuse the legal services of their lawyer.

The next day, on 7 February 2021 at approximately 3 pm, another lawyer of Salekh Magamadov and Ismail Isayev tried to have access to them at a branch of the Ministry of Internal Affairs in Sernovodskoye. He was denied access to his clients, allegedly because it was a weekend and the head of the police was not present. Salekh Magamadov and Ismail Isayev were at the disposition of the Investigative Committee of the Chechen Republic. However, the police did not provide any further details, including the reasons for their arrest and detention and for denying access to their lawyers, and he refused to give access to the case files.

On the same date, the aid of the head of the Chechen Republic and the Minister of Information and press announced that Salekh Magamadov and Ismail Isayev confessed to being complicit with a member of an illegal armed group and the Chechen authorities have since opened a terrorism investigation against them.

Following an Urgent Appeal submitted on 5 February to the European Court for Human rights under Rule 39, the Court ordered, on 8 February 2021, the Russian Federation to take urgent action on Salekh Magamadov and Ismail Isayev and ruled that they should receive access to health professionals, legal counsel, and relatives. However, none of their lawyers or relatives have gained access to their clients, and they have not been informed about their whereabouts. Their lawyers submitted a separate motion regarding the police officer's refusal to accept the complaint in regard to the denial of the access to Salekh Magamadov and Ismail Isayev.

While we will not prejudge the accuracy of the information made available to us, we express our grave concern over these allegations of arbitrary arrests, enforced disappearance, torture, or other cruel, inhuman or degrading treatment or punishment to which Salekh Magamadov and Ismail Isayev have been subjected based on the exercise of their freedom of expression and their perceived sexual orientation or gender identity.

These allegations appear to be in contravention of the rights of every individual to life, liberty and security of person, freedom from torture and other cruel, inhuman or degrading treatment or punishment, physical integrity, right to access to legal counsel, freedom of movement, freedom of expression, privacy, conscience, non-discrimination, and to an effective remedy, as reflected, inter alia, in articles 3, 5, 7, 8, 9, 12, 13, and 19 of the Universal Declaration of Human Rights and codified in articles 2, 6, 7, 9, 10, 12, 14, 17, 18, 19 and 26 of the International Covenant on Civil and Political Rights (ICCPR), to which the State is a party since 16 October 1973, articles 2, 13, 14, 37, and 40 of the Convention on the Rights of the Child, to which the State is a party since 16 August 1990. These rights are of universal nature and apply to everyone, irrespective of sexual orientation or gender identity.

Further, the allegations appear to contravene the Declaration on the Protection of All Persons from Enforced Disappearance, which establishes that no State shall practice, permit or tolerate enforced disappearances (article 2) and that no circumstances whatsoever may be invoked to justify enforced disappearances (article 7). It also proclaims that each State shall ensure the right to be held in an officially recognised place of detention, in conformity with national law, and to be brought before a judicial authority promptly after detention; and accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest (article 10). The Declaration outlines the obligation of States to investigate any acts constituting enforced disappearance (article 13) and that the victim and his/her family shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible (article 19). Moreover, States are obliged to prevent enforced disappearance of children (article 20).

In this regard, we recall that a failure to acknowledge the deprivation of liberty by state agents and refusal to acknowledge detention constitute an enforced disappearance, even if it is of a short duration. We reiterate that procedural safeguards upon arrest and during the first hours of deprivation of liberty are essential to prevent possible violations. These safeguards include immediate registration, judicial oversight of the detention, notification of family members as soon as an individual is deprived of liberty, and the hiring of a defence lawyer of one's choice.

We wish to refer to article 9 of the ICCPR which provides that no one shall be subjected to arbitrary arrest or detention, and that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law. We also recall that persons deprived of their liberty shall have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension. We further recall that incommunicado detention lacks any valid legal basis and is inherently arbitrary as it places the person outside the protection of the law. In addition, deprivation of liberty purely on discriminatory grounds may be arbitrary, including when it is based on, inter alia, political opinion, sexual orientation or any other status that aims towards or can result in ignoring the equality of human beings.

The right to freedom of expression is enshrined in article 19 (2) of the ICCPR. The right is a necessary condition for the full development of the person, for

democracy and human rights (CCPR/C/GC/34, para. 2). The affords particularly strong protection in the general interest, including political speech (see, for instance, *Ibid.*, para. 20). Attacks against a person because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest and torture are incompatible with the Covenant (*Ibid.*, para. 23). We further note that the penalisation of individuals simply for expressing critical opinions about the government or the social system espoused by the government is incompatible with the Covenant (*Ibid.*, para. 42).

The absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment is also codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which the Russian Federation ratified on 3 March 1987. Articles 2 and 16 of CAT requires State party to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction, and article 12 of CAT specifically requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed.

Sexual orientation and gender identity are prohibited grounds of discrimination under international law. The Human Rights Committee found that States have a legal obligation to ensure to everyone the rights recognised by the Covenant without discrimination on the basis of sexual orientation or gender identity. In 2015, the Committee recommended that the Russian Federation strengthen the protection of lesbian, gay, bisexual and transgender (LGBT) individuals from discrimination and violence and ensure the investigation, prosecution and punishment of any act of violence motivated by the victim's sexual orientation or gender identity (CCPR/C/RUS/CO/7, para. 10).

In August 2018, the Committee against Torture expressed concern about the consistent report of violence against LGBT persons, including “anti-gay purge” in Chechnya in March 2017 and recommended that the Russian Federation ensure that those responsible for violent attacks and hate crimes against persons on the basis of their sexual orientation or gender identity, are charged, investigated, prosecuted and, if found responsible, punished (CAT/C/RUS/CO/6, paras. 32 and 33).

The Human Rights Council, through resolutions 17/19, 27/32, 32/2 and 41/18, has expressed grave concern at acts of violence and discrimination committed against individuals because of their sexual orientation and gender identity. The United Nations High Commissioner for Human Rights has emphasised that States have obligations to protect individuals from violence, including torture, on the basis of their sexual orientation or gender identity, including conducting prompt, thorough investigations of incidents of hate-motivated violence against and torture of LGBT persons, holding perpetrators to account, and providing redress to victims (A/HRC/29/23, para. 78).

In this connection, we believe it is pertinent to refer to the last Universal Periodic Review of Russian Federation (A/HRC/39/13), drawing particular attention to the recommendations in paragraphs, inter alia, 147.125–147.128 and 147.129,

which recommended that Russian Federation investigate promptly, thoroughly and impartially instances of violence against LGBT and intersex individuals in Chechnya, as well as provide redress for victims. The Russian Federation accepted these recommendations.

We note that on 14 May 2018, the Minister of Justice of the Russian Federation stated in the same context of the Universal Periodic Review that: “Investigation showed that there were no such incidents and that it was not even possible to find representatives of the LGBT community in Chechnya”. However, we would like to draw your attention to the findings of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity to the effect that negation enables violence and discrimination against LGBT persons and lies at the root of some of the heinous acts against them (A/HRC/38/43, para. 62).

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of Salekh Magamadov and Ismail Isayev in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on the fate and whereabouts of Salekh Magamadov and Ismail Isayev, the legal grounds for the arrest and detention as well as the denial of their access to lawyers, and how these measures are compatible with the Russian Federation’s international human rights obligations.
3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to the reported human rights violations. If no investigation has been initiated, please explain why and how this is compatible with the Russian Federation’s international human rights obligations.
4. Please provide information about any measure taken to protect people from violence and discrimination based on their actual or perceived sexual orientation or gender identity, especially in Chechnya. If no specific actions have been taken, please explain why.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the

accountability of any person responsible of the alleged violations.

In the current context of a global pandemic, we urge the Government of the Russian Federation to prioritise the use of non-custodial measures at all stages of criminal proceedings.<sup>3</sup> Priority should be given to non-custodial measures for suspected offenders and prisoners with low-risk profiles and dependants. Given the heightened risk of contagion between persons in custodial and other detention settings, the Subcommittee on Prevention of Torture urges all States to reduce prison populations and other detention populations wherever possible.<sup>4</sup> Furthermore, the Working Group on Enforced and Involuntary Disappearances and the Committee on Enforced Disappearances produced a set of guidelines on COVID-19 and enforced disappearances in response to new contexts that have arisen during the pandemic.<sup>5</sup>

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

Please accept, Excellency, the assurances of our highest consideration.

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Tae-Ung Baik  
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<sup>3</sup> WHO, "Preparedness, prevention and control of COVID-19 in prisons and places of detention (15 March 2020), [http://www.euro.who.int/\\_data/assets/pdf\\_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1](http://www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1).

<sup>4</sup> Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic (adopted on 25th March 2020), <https://www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf>.

<sup>5</sup> Key Guidelines on COVID-19 and enforced disappearances, [https://www.ohchr.org/Documents/HRBodies/CED/Guidelines\\_COVID-19\\_Enforced\\_Disappearance.pdf](https://www.ohchr.org/Documents/HRBodies/CED/Guidelines_COVID-19_Enforced_Disappearance.pdf).

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