

Submission by the Russian human rights NGO Public Verdict Foundation within follow-up procedure on the the sixth periodic report of the Russian Federation to the UN Committee against Torture

15. The State party should:

(a) Promptly, effectively and impartially investigate all incidents and allegations of torture and ill-treatment, prosecute all those found to be responsible and report publicly on the outcome of such prosecutions;

(b) Refrain from dismissing complaints of torture and ill-treatment during the pre-investigative verification phase and ensure that investigators immediately open a formal and effective criminal investigation for all allegations of torture and ill-treatment, including in the case of Sergei Magnitsky;

(c) Strengthen the capacity of the subdivision of the Investigative Committee tasked with investigating crimes committed by law enforcement officials, including by ensuring unimpeded access to all places of detention as well as to evidence, and providing sufficient human and financial resources to enable the subdivision to effectively operate in all constituent entities of the State party;

(d) Collect and provide the Committee with disaggregated statistical data on the number of complaints received alleging torture and ill-treatment by law enforcement and other public officials, the number of complaints investigated by the State party and any prosecutions brought.

1. Since the UN Committee against Torture considered the sixth periodic report of the Russian Federation at its sixty-fourth session in July 2018 and adopted its Concluding Observations, no significant or sustainable changes have taken place in any of the areas mentioned in the subparagraphs to paragraph 15 of the Committee's Concluding Observations.
2. In particular, the Shadow Report submitted by the Coalition of Russian human rights NGOs contains a description of the case of Marina Ruzaeva, a woman who was tortured on 2 January 2016 by police officers to force her to give evidence wanted by the police (para. 68 of the Shadow Report). Lawyers of the Public Verdict Foundation have been providing legal assistance to Ruzaeva. Over the last year, no substantial progress has been made in the investigation of Ruzaeva's torture by police officers:

Thus, between July 2018 and July 2019, the criminal proceeding opened into Ruzaeva's torture was dropped three times (on 6 July 2018, 25 November 2018, and 27 January 2019), each time due to "absence of the crime event." Each decision to drop the criminal proceeding was subsequently challenged and overturned by a higher court or by a prosecutor on the ground that such decisions failed to take into account the available evidence, namely that beyond all doubt, Ruzaeva was brought to the police station on a particular day and spent a certain period of time there, and then injuries were found on her body which could have been inflicted under the circumstances she later described in her statement.

After the case was dropped on 6 July 2018, the case file was transferred from the city investigation department to a higher authority, namely the division for particularly important investigations of the Russian Investigative Committee's

Investigation Department in Irkutsk Region, for additional verification. As part of this additional verification, 13 similar complaints were discovered and referred to further inquiry, all of them alleging excessive use of force by the same police officers and the authorities' refusal to open criminal proceedings. Subsequently, however, all refusals to investigate the above 13 episodes were upheld as lawful.

In the case of Ruzaeva, as of this writing, the criminal proceeding into the alleged abuse of authority has been dropped once again. The decision to drop the case is now being appealed in court.

It should be noted that prior complaints against the termination of the criminal proceeding in the Ruzaeva case led to additional inquiries by the supervising authority which found falsification of evidence by the investigator at the verification and preliminary investigation stages. Specifically, it was found that the investigator had forged witness signatures on the protocols formalizing the collection of the victim's clothes which could bear traces of her ill-treatment; it was also found that some items of her clothes had been replaced. On 10 July 2019, the criminal case against the Investigative Committee's investigator charged with falsifying evidence in the police torture proceeding was sent to Usolye-Sibirskoe City Court.

3. Based on observations from our work on torture cases as well as daily media monitoring during the year since the Committee considered Russia's sixth periodic report, we have found that although more criminal investigations have recently been opened into abuse of authority incidents, so far we have not seen any improvement in terms of quality and effectiveness of such investigations. As before, such investigations tend to take too long. The investigative authorities are reluctant to bring prosecutions against the perpetrators, except in cases in which abuse of authority by law enforcement officials has caused death or severe injuries. Criminal proceedings have often been dropped due to absence of corpus delicti in police officers' actions or absence of a crime event. In considering appeals against decisions to drop criminal proceedings, courts tend to side with the investigators.
4. Between July 2018 and July 2019, the Public Verdict Foundation received five complaints from citizens who had suffered torture at the hands of police officers. In all cases, crime reports alleging torture were sent to the investigative authorities. In two cases, decisions were made to institute criminal proceedings, but at the time of this writing, no perpetrators have been identified in the proceedings. In two other cases, a series of refusals to institute criminal proceedings were appealed and quashed, with additional verifications ordered. Eventually, however, the authorities once again refused to prosecute.

*In one of the cases, **Grigory Kovalchuk** was beaten at a police station in Sochi. Kovalchuk reported the incident to the investigative authorities on 22 June 2018. Three months later, he received a letter in the mail notifying him of a decision, dated 22 July 2018, not to open a criminal proceeding into his report. The refusal to investigate was appealed on 6 October 2018, but the appeal remained without consideration for a long time. Repeated complaints were sent to the Prosecutor's Office of Sochi challenging the investigative authorities' inaction. The most recent complaint was satisfied on 22 February 2019: the prosecutor acknowledged the complaint as substantiated and found undue delays and inaction in the*

authorities' response to Kovalchuk's complaints. In February 2019, Kovalchuk was received by the head of the Investigative Committee's Investigation Department in Krasnodar Region and informed that the refusal to initiate a criminal proceeding into his case had been quashed and an additional verification ordered, including a series of medical examinations to be performed. However, at the time of this writing, i.e. more than five months later, the investigative authorities still have not taken any procedural decisions based on the findings from the verification, citing the absence of results from medical examinations. Since the Russian Code of Criminal Procedure requires that verifications must be completed within 30 days, another complaint was filed with the Prosecutor's Office of Sochi on 2 July 2019, challenging the inaction of the investigative authorities during the pre-investigative verification phase. No response has been received as of this writing.

5. As reported, the video recording showing the torture of Yevgeny Makarov in Yaroslavl penal colony IK-1, published by Novaya Gazeta on 20 July 2018, attracted wide attention. In July and August 2018, the Russian Federal Penitentiary Service and the Prosecutor General's Office announced a major effort to conduct comprehensive inspections into reports of torture in Russian penal colonies and the investigative authorities' response to such reports, and to check the legality of the use of force and riot control devices by prison staff. According to information released during the 18 March 2019 open court hearing on extending the custody of defendants charged with torturing Makarov, such comprehensive inspections in Yaroslavl Region alone resulted in more than 100 criminal proceedings into abuse of authority incidents.
6. However, as Irina Biryukova, lawyer of the Public Verdict Foundation, has since learned from representatives of the investigative authority, these cases are likely to be eventually dropped, since, according to investigators, the guilt of specific officials will be impossible to prove in the absence of video recordings of the crimes and medical records of injuries.
7. In respect of paragraph 15 (c) of the Committee's Concluding Observations, there is no information available to us indicating any changes in the structure, staffing or allocation of additional financial resources to the subdivision of the Investigative Committee tasked with investigating crimes committed by law enforcement officials. Ordinary district-level investigators continue to deal with the vast majority of torture reports by carrying out pre-investigative verifications and, in the event of a criminal proceeding, subsequent criminal investigations. We at the Public Verdict Foundation know of only one case in the last 12 months in which a torture case has been referred to the subdivision of the Investigative Committee for investigation, namely the case of Yevgeny Makarov tortured at IK-1 in Yaroslavl Region.

17. The State party should ensure that the case of Yevgeny Makarov is promptly, impartially and effectively investigated and that the perpetrators, including those with command responsibilities and those who suppressed the video recording, are prosecuted and, if found responsible, punished with appropriate penalties. The State party should also take all the necessary measures to protect Yevgeny Makarov and his lawyer, Irina Biryukova, against reprisals.

Case of Yevgeny Makarov:

8. The preliminary investigation was completed by 25 June 2019, and charges were brought against 15 employees of penal colony No. 1 in Yaroslavl, including the former chief of the penal colony and his deputy, both charged with organizing the torture of Makarov at their penitentiary facility. A pre-trial agreement was reached with two other employees.
9. The criminal case file currently consists of 43 volumes. The defendants have started familiarizing themselves with the case file.
10. Joined to the case of Makarov were several other criminal proceedings against five more employees of penal colonies Nos. 1 and 8, bringing the total number of officials charged to 20. As far as we currently know, four of these added criminal investigations are nearing completion, and investigative actions are ongoing in the other cases.
11. As mentioned above, in addition to the case of Makarov and four more cases investigated by Investigative Committee's Main Investigative Department and Investigative Department in Yaroslavl Region, the investigative authorities in Yaroslavl Region have initiated numerous other criminal proceedings, but we only have detailed information about cases in which the Public Verdict Foundation's lawyers have been providing assistance:

For example, in Uglich (Yaroslavl Region) a criminal proceeding was initiated into reports of violence against inmates at penal colony IK-3. While 25 inmates have been recognized as victims in the proceeding, no perpetrators have been identified so far. According to the investigative authority, the case has no prospects of success, since no video evidence nor medical records are available to prove the use of violence.

In Rybinsk (Yaroslavl Region), two criminal proceedings were initiated into reports of violence against inmates. The victim in one of them is Ruslan Vakhapov (formerly an inmate of IK-1 in Yaroslavl Region who has filed an application with the ECtHR, together with Yevgeny Makarov and Ivan Nepomnyashchikh, alleging torture in April 2017). In the Vakhapov case, the prosecution was brought against unidentified perpetrators, because none of the prison officials have been identified as suspects. In early July 2019, the Public Verdict Foundation's lawyer representing Vakhapov learned that the investigation had been suspended. The lawyer requested access to the case file, and the request was satisfied. Once the lawyer has fully studied the materials from the official investigation, we will decide whether to appeal the investigative authorities' actions or inaction.

Protection measures for Yevgeny Makarov and Irina Biryukova

12. **On 8 August 2018**, a decision was made to provide state protection to Yevgeny Makarov. The decision tasked the chief of penal colony IK-8 in Yaroslavl Region – where Makarov continued to serve his sentence at the time – with ensuring such protection. The actual protection measures involved placing Makarov in solitary confinement with 24-hour video surveillance for almost two months until his release on 2 October 2018. Following Makarov's release, his protection was entrusted to members of the Federal National Guard Service in Yaroslavl Region

who accompanied Makarov to all investigative actions; in addition to this, Makarov was given an alarm button. These measures proved ineffective, because National Guard members were not able to be near Makarov all the time and to respond promptly to any threat that may arise.

13. Lawyer Irina Biryukova accessed the text of the decision to offer her measures of protection on 13 November 2018. In order to determine the appropriate protection measures, she was interviewed twice by officials responsible for state protection in her residence location and in Yaroslavl Region. Following these interviews, the lawyer was offered relocation to a safe apartment owned by the authority responsible for state protection. She was expected to remain in the safe apartment continuously, being monitored 24 hours a day. This was impossible as it would interfere with Biryukova's practice as a lawyer as well as her obligations to her clients in ongoing proceedings. Therefore, Biryukova was forced to refuse this measure of state protection. No other protection measures were offered to her. While there was no formal refusal to provide state protection, it was not ensured in practice. In effect, state protection exists solely on paper.
14. As a result of the authorities' inaction, the Public Verdict Foundation had to take steps to provide physical protection to lawyer Irina Biryukova, such as signing a contract with a private security firm. A pre-investigative verification stage review of the formal complaint filed with the Investigative Committee on 23 July 2018 concerning the threats received by lawyer Biryukova brought no result.

29. The State party should, as a matter of urgency:

(a) Ensure that human rights organizations can conduct their work and activities freely in the State party;

(b) Take measures to protect human rights defenders, lawyers and journalists from harassment and attacks, investigate all reported instances of such acts, prosecute and punish the perpetrators and guarantee redress, including effective remedies and adequate compensation, to victims and their families;

(c) Ensure that human rights defenders, journalists and lawyers are not subjected to reprisals, including administrative harassment, for their communication with or provision of information to the United Nations treaty bodies, including the Committee, as previously recommended (see CAT/C/RUS/CO/5, para. 12 (b)).

15. The Shadow Report submitted by the Coalition of Russian human rights NGOs describes in paras 230-252 numerous cases of assaults, murders and criminal prosecutions on falsified charges targeting human rights defenders and journalists.
16. Over the past year, none of these cases have been properly addressed by the Russian authorities: none of the incidents of assaults, murders and falsifications of evidence have been effectively investigated, and no perpetrators have been brought to justice.
17. Instead, Oyub Titiyev, head of the "Memorial" Human Rights Center, was convicted on 18 March 2019 on blatantly falsified drug possession charges. His sentence entered into force on 1 April 2019.

18. On 15 July 2019, on the tenth anniversary of the murder of Natalia Estemirova, human rights defender and key member of the "Memorial" Human Rights Center in Grozny, her colleagues from "Memorial" Svetlana Gannushkina and Alexander Cherkasov held solo pickets in Red Square to demand an effective investigation and prosecution of both the hitmen and the masterminds behind her murder. Both picketers were arrested and faced administrative charges of "violating the procedure for holding public events," despite the fact that one-person pickets do not require endorsement of the public authorities by Russian law. On 30 July 2019, a court fined Cherkasov 10,000 rubles (approximately 135 euro) and Gannushkina 150,000 rubles (approximately 2,040 euro).
19. The Shadow Report, in paras 260-265, provides a detailed account of the harassment faced by the Public Verdict Foundation in the context of the "foreign agents law" and the steps taken by the PVF to defend its right to continue its work safely and freely.
20. In May 2019, the PVF received a notice from the Tverskoy District prosecutor's office in Moscow, stating that the head of the NGO should show up at the prosecutor's office and give explanations concerning alleged non-compliance. Although exhaustive explanations have since been provided on two occasions, the prosecutor's office has nevertheless initiated administrative proceedings against the PVF and its head Natalya Taubina under article 19.34 (2) of the Russian Code of Administrative Offenses for publication and distribution of materials without marking them as produced by an NGO "performing the functions of a foreign agent"; the case has been sent to court. As of this writing, court hearings in these two administrative cases have not yet taken place. Should the court find an administrative offense, the NGO will face a fine of up to 500,000 rubles (approximately 6,800 euro), and its head Natalia Taubina will face a fine of up to 300,000 rubles (approximately 4,080 euro).

Recent developments related to paras 15 and 29 of the Concluding observations

21. On 27 July and 3 August 2019, peaceful protests were held in the center of Moscow over the exclusion of independent candidates from upcoming elections to the Moscow City Duma. Thousands of police and Russian National Guard personnel were deployed to disperse the protests.
22. According to OVD-info, 1,373 people were arrested on 27 July and 1,001 on 3 August. Most of the arrests involved blatantly excessive use of force, including riot control devices and martial arts techniques. According to OVD-Info, at least 19 people were beaten on 3 August during arrests and later inside police vans, and at least 90 minors were among the detainees. In addition to this, the police detained at least 14 journalists covering the events and several observers, including Igor Kalyapin, a member of the Presidential Human Rights Council and head of the Russian Committee against Torture, a prominent human rights group regularly contributing to the work of the UN Committee against Torture.
23. Russian and international conventional and social media have published thousands of videos showing the violent suppression of the peaceful protests and blatantly

excessive use of force by law enforcement officials during the arrests of both participants and random bystanders.

24. It should be noted separately that the police and National Guard personnel who dispersed the protests and arrested people on 27 July and 3 August did not wear any identification such as badges or ID numbers; instead, some were wearing balaclavas or had their helmet face shields covered with cling film, as can be seen in publicly available photos and videos.
25. Having analyzed a number of videos showing the 27 July arrests, the Public Verdict Foundation filed a crime report with the Investigative Committee on 1 August 2019 asking them to provide their legal assessment of the police and National Guard's conduct and to bring to justice those responsible for abuse of authority. A similar report of our findings from the videos of arrests during the 3 August protest was sent to the Investigative Committee on 6 August.
26. At of this writing, the PVF has not received any response from the Investigative Committee to either of the reports. Instead, the Investigative Committee instituted criminal proceedings on account of alleged riots on 27 July 2019. Currently, ten people have been charged in the proceedings. In terms of its political nature and lack of supporting evidence, this case may surpass the Bolotnaya Square case which followed the brutal dispersal of a permitted March of millions in Moscow on 6 May 2012.