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AMNESTY INTERNATIONAL'S SUBMISSION TO THE COUNCIL OF EUROPE COMMITTEE OF MINISTERS ON TOMOV AND OTHERS V. RUSSIA (No.18255/10)

This briefing is submitted in accordance with Rule 9(2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements adopted by the Committee of Ministers on 10 May 2006.

In *Tomov and others v. Russia*,¹ the European Court of Human Rights (the Court) ruled that the Russian government must address systemic problems in the way prisoner transportation is carried out. The Court gave instructions to the Russian authorities to make available within 18 months of its decision a combination of domestic remedies in respect of complaints about conditions of transport.

In view of the 1369th meeting (March 2020) of the Ministers' Deputies on the execution of judgments, Amnesty International seeks to assist the Committee of Ministers in making recommendations on the concrete measures to be taken by Russia to comply with the judgment of the European Court of Human Rights in *Tomov and others v. Russia*.

Amnesty International would like to share with the Committee of Ministers its concerns about the continuing human rights violations during the transportation of prisoners in Russia to and from pre-trial detention to court rooms, and from pre-trial detention to prison colonies. Such practices are in violation of the Russian Federation's obligations under the *European Convention on Human Rights and Fundamental Freedoms* (ECHR), the *UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, the *European Convention on the Prevention of Torture and Inhuman and Degrading Treatment* and, in particular fail to comply with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) *standards on the transport of detainees*² and with the *European Prison Rules*.³ This submission summarizes and

¹ *Tomov and others v. Russia* (No.18255/10), 09/04/2019.

² CPT Factsheet on Transport of Detainees, CPT, 2018.

³ European Prison Rules, Recommendation *Rec(2006)2* of the Committee of Ministers to member states on the European Prison Rules.

updates the annexed briefing by Amnesty International “Prisoner Transportation in Russia: Travelling into the unknown”⁴, published in October 2017.

In the 2017 briefing, Amnesty International identified three main types of human rights violations during prisoner transportation in Russia:

1. **Violations of Article 3 of the ECHR** concerning the actual conditions of transportation which amount to cruel, inhuman or degrading treatment,
2. **Violations of Article 8 ECHR** in that prisoners serve their sentences very often in sites located vast distances away from their homes and families,
3. **Enforced disappearances**, because prisoners are often in transit for weeks or months with no contact with the outside world and their whereabouts are not communicated to third parties, including their relatives and lawyers.

1. CRUEL, INHUMAN OR DEGRADING TREATMENT

The Russian Federal Penitentiary Service transports prisoners across 6,000 km and 11 time zones to its 760 penal institutions. This task is carried out by a dedicated Convoy Unit with over 20,000 staff which belongs to the Federal Penitentiary Service. Together with the Ministry of Internal Affairs, the Federal Penitentiary Service owns a fleet of special train carriages and trucks for transporting prisoners.

Prisoners are transported in specially designed train carriages and prison trucks sometimes spending weeks in transit cells at various stages – or *etap* - on their way to the prison colonies. The prison carriages are hitched to passenger trains and will often take circuitous routes. It is common for journeys to last a month or more. Prisoners are placed in overcrowded train compartments and trucks in conditions that often amount to cruel, inhuman or degrading treatment. These transport conditions do not comply with various CPT standards, namely that compartments or cubicles intended to transport more than one detainee for short journeys/distances should offer no less than 0.4 m² of space per person, and that train carriages used for overnight travel should provide bedding, and adequate sleeping places.

Special train carriages for the transportation of prisoners consist of five larger compartments, and three to four smaller compartments. The larger compartments are 3.5 square metres with six and a half individual sleeping spaces – three bunks on each side and a seventh bunk that bridges the gap between the two middle bunks but which is not full length. The smaller compartments are two square metres and have three bunks on one wall. The internal instructions allow for up to twelve prisoners in the larger compartments, the equivalent of 0.29 square meters per person. The overcrowding is exacerbated by the fact that each prisoner carries their luggage with them, and there is no provision for baggage in the compartments.

Aside from the overcrowding, prisoners suffer other kinds of ill-treatment. Prisoners being transported are not given medication, meaning those with chronic illnesses are particularly at risk during transportation when they can be without their medication for a month or more. In March 2016, Amur Khakulov’s lawyers and his mother fought to delay his transportation from Nalchik in Kabardino-Balkaria to an unknown destination because he was suffering from terminal kidney disease and urgently needed haemodialysis. Despite their efforts, he spent almost a month in transportation and did not receive the essential treatment. On 17 March 2016, the European Court granted interim measures and ordered the Russian authorities to delay the transportation and ensure that Amur Khakulov was given haemodialysis. Tragically, he had already been put on a train on 15 March and was

⁴Amnesty International, “Prisoner Transportation in Russia: Travelling into the unknown”, 2017, Index: EUR 46/6878/2017: <https://www.amnesty.org/en/documents/eur46/6878/2017/en/>

out of contact with the outside world until he reached his final destination in the Kirov region on 12 April 2016. He died in a prison hospital in the Kirov region in October 2016.

Prisoners interviewed by Amnesty International also volunteered information about the problem of access to toilets in transit.⁵ Transit prisoners are allowed access to the toilets every 5-6 hours, and not at all when the train is stationary. Prison carriages are parked for many hours on sidings when prisoners will have no access to toilets.

2. DISTANCE FROM HOME AND FAMILY

According to Article 73 of the Criminal Executive Code of the Russian Federation, convicted prisoners should serve their sentence “in penal institutions within the boundaries of the territorial unit of the Russian Federation in which they had been living or were sentenced.” However, the legislation provides so many exceptions to this rule that in reality, most prisoners are sent very long distances to serve their sentences. Although 12 per cent of prisoners are sent to regions other than the one they are registered in, Russian regions are large, and prisoners may travel hundreds of kilometres within the region they are registered in. This contributes to the length of the journeys they must take, increases the difficulties for family members to visit them, and hampers their reintegration into society after their sentence. For instance, in 2013 the European Court of Human Rights ruled that there had been a violation of Article 8 of the ECHR, because Mikhail Khodorkovsky and Platon Lebedev⁶ were sent so far away from their families that visits were extremely difficult.

2.1 Women

Women are among the prisoners who can be sent to penal colonies away from their home and family. Only 46 of Russia’s 760 penal institutions accommodate women. According to the most recent census carried out in 1999 by the Federal Penitentiary Service, while 12 per cent of all prisoners were incarcerated in a region other than the one they were registered and resided in, the figure for women was 44 per cent.⁷ As a result, women are more likely to be subjected to long journeys to reach the penal colonies.

3. CONTACT WITH THE OUTSIDE WORLD/ ENFORCED DISAPPEARANCES

Most penal colonies are located in sparsely populated parts of Russia, in the far North or far East, and therefore the prisoners are often in transit for weeks and months at a time. All former prisoners interviewed by Amnesty International for the 2017 briefing had experienced journeys of a month or more. Neither the prisoners themselves nor their families or legal representatives were told the end destination when they set out. The prisoners interviewed by Amnesty International were informed by the convoy staff only once they were on the journey. During these long journeys, there is no possibility for prisoners to effectively contact the outside world and no legal obligation on the penitentiary authorities to keep them or a third party informed of their whereabouts. Prisoners effectively ‘disappear’ for weeks or even months at a time.

In 2018, Victor Filinkov, an IT specialist and Yuliy Boyarshinov, a civil society activist, disappeared for over a month between the end of September and the end of October while they were being transported between Penza and St Petersburg – a journey of 1,400km.

According to Article 17 of the Criminal Executive Code of the Russian Federation, the prison administration must send notification to the relatives or legal representative of the prisoner about their arrival at the prison within 10 days of the prisoner’s arrival at that institution. Sometimes, it can take well over the statutory 10 days for families to be informed when the prisoner reaches their final

⁵ See Amnesty International, *Prisoner Transportation in Russia: Travelling into the unknown*, 2017, .p.22.

⁶ *Khodorkovsky and Lebedev v. Russia*, 25 October 2013.

⁷ “*Disciplined mobility and carceral geography: prisoner transport in Russia*,” Dominique Moran, Laura Piacentini and Judith Pallot, *Transactions of the Institute of British Geographers*, Royal Geographical Society, 2011.

destination. Although there is no formal prohibition on correspondence or phone calls during transportation, there is no practical possibility to contact the outside world. According to the Law on the Detention of Suspects and those Accused, those detained in Pre-Trial Investigation Detention Centres (SIZO) have the right to make phone calls “where the technical possibility exists,” and under the control and with the permission of the administration. In many cases this requires the written permission of the director of the SIZO (which is impractical if the prisoner is in transit there for a short time). Human rights defenders who regularly monitor places of detention have pointed out to Amnesty International that there are very few telephones available and these are generally in constant use by the staff. This effectively means that prisoners are deprived of communication with the outside world while they are in transit. Some prisoners may succeed in posting a letter and, in some cases, fellow prisoners will inform the family on their behalf that they are in a certain location (usually using an illegal mobile phone).

3.1 Lack of public scrutiny

The fact that there is no information about the whereabouts of a prisoner during transfer from one penal institution to another not only causes distress to relatives, but also puts prisoners at greater risk. The ability to communicate with the outside world and the obligation on authorities to keep third parties informed of the whereabouts of prisoners, is one of the most important safeguards against torture and other ill-treatment and other abuses. Furthermore, public scrutiny of detention facilities is one of the most effective ways to prevent torture and other ill-treatment of detainees. Yet, public oversight of detention facilities during transportation presents significant challenges for public oversight bodies in any country. The Russian Public Monitoring Commissions which regularly visit prison colonies and remand prisons rarely access train carriages because of the secrecy surrounding their location, and the difficulty of locating the vehicles.

4. CONCLUSIONS AND RECOMMENDATIONS

The violations identified by Amnesty International in its 2017 briefing are ongoing and the organization continues to receive reports of conditions amounting to cruel, inhuman and degrading treatment during transportation as well as excessively long journeys to far distant prison colonies. Prisoners continue to be transported in secret without essential safeguards against torture such as ensuring that information on prisoner’s whereabouts is accessible to lawyers, and that their health during transfers is safeguarded, that they are not transported in overcrowded conditions, and that transfers are limited in time and take the shortest possible routes.

The Parliamentary Assembly of the Council of Europe, in its *Resolution* (Resolution 2266) *on Protecting Human Rights during Transfers of Prisoners* adopted on 1 March 2019, recommends that states must ensure essential safeguards against torture such as ensuring that information on prisoner’s whereabouts is accessible to lawyers, and that their health during transfers is safeguarded. They must ensure that prisoners are not transported in overcrowded conditions, that transfers are limited in time and take the shortest possible routes, and that communication with the outside world is only restricted in exceptional circumstances. Moreover, the resolution urges states to allow prisoners to inform their families immediately of their transfer to another institution. The Parliamentary Assembly also adopted a *Recommendation on Protecting Human Rights during Transfers of Prisoners* (Recommendation 2147),⁸ which called on the Committee of Ministers to take concrete steps to enhance the protection of human rights during transfers of prisoners, in particular by including appropriately detailed provisions in its work on revising the European Prison Rules. The approved text of the revised and updated European Prison Rules, as adopted by the European Committee on Crime Problems (CDPC) during its 77th plenary meeting in December 2019, takes into account much of the concerns submitted by Amnesty in its report and by the Parliamentary Assembly.

⁸ *Protecting human rights during transfers of prisoners*, Parliamentary Assembly of the Council of Europe Recommendation 2147, March 2019.

In the light of the above, in the implementation of *Tomov and others v. Russia*, the Russian authorities must implement the following measures as a matter of priority to improve conditions during transfer and bring them into line with Council of Europe human rights standards:

Cruel, Inhuman and degrading treatment

- Introduce a maximum reasonable travel time of seven days for prisoner transport and ensure compliance;
- Amend Point 167 of the Joint Order of the Ministry of Justice and the Ministry of Interior dated 24 May 2006 concerning the transportation of prisoners in accordance with the standards of the European Committee for the Prevention of Torture to ensure that no more than six prisoners may be transported in a large compartment and three prisoners in the small compartment on trains;
- Ensure, with immediate effect, that the conditions during prisoner transportation do not amount to cruel, inhuman or degrading treatment, including sanitary conditions such as access to clean water, toilet facilities, ventilation, and natural light in line with CPT standards.

Distance from home and family

- Uphold the principle that wherever possible prisoners should be sent to serve their sentence in the same region as their home and family, and review Article 73 of the Criminal Executive Code to reduce the number of grounds according to which a prisoner can be sent to serve their sentence away from the region where they reside or where they were sentenced;
- Invest in the construction of more penal institutions closer to the highly populated regions of Russia;
- Increase the number of spaces in penal colonies available to women and ensure that women prisoners are able to serve their sentences close to their homes and families.

Contact with the outside world/ Lack of public scrutiny

- Make the necessary legal amendments to ensure that the family or legal representatives are informed about plans to move a prisoner and their intended destination before they are moved, as well as their whereabouts at every stage of the journey. In particular, amend Article 17 of the Criminal Executive Code to ensure that the administration of the place of detention must inform the family or legal representative of the prisoner about their whereabouts immediately upon arrival at the place of detention;
- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance.