

ECCHR!
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Professor Manfred Nowak
United Nations Special Rapporteur on Torture
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
CH-1211 Geneva 10
Switzerland

Formal Communication for Consideration and Action
Re. President Kadyrov of Chechnya

Berlin, June 25, 2009

Dear Professor Nowak,

This communication is submitted to you by the European Center for Constitutional and Human Rights (ECCHR). We submit this communication in order to call your attention to the failure by Austria to act on the criminal complaint filed on June 13, 2008 by us to the Austrian Department of Public Prosecution against Chechnya's current president, Ramzan A. Kadyrov. By failing to investigate the accusations of torture in the ECCHR complaint, and by failing to take the accused, Mr. Kadyrov into custody while he was in Austrian territory, Austria has failed to fulfil its obligation under the UN Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (UNCAT) to exercise its jurisdiction over the crime of torture.

In accordance with the mandate with which the Human Rights Council of the United Nations has entrusted you, we ask you to send a letter to the Austrian government in which you demand Austria to take the following actions:

- (1) to investigate and address the present accusations;**
- (2) to provide all information in its possession relating to the described actions of Austrian authorities;**
- (3) to provide a full response to the allegations; and**
- (4) request that the Austrian government take appropriate measures to ensure that the relevant Austrian authorities give effect to its obligations under the UNCAT in the future.**

I. Background of the ECCHR Complaint

On Friday June 13, 2008 ECCHR (represented by Attorney Mag. Nadja Lorenz from Vienna) filed a criminal complaint against President Ramzan Kadyrov of Chechnya at the Office of the Public Prosecution in Salzburg (Staatsanwaltschaft Salzburg), Austria. ECCHR had received reliable information that Pres. Kadyrov would be visiting Salzburg on June 14, 2008 to watch the football match with Russian participation of the UEFA European Football Championship.

In the criminal complaint, ECCHR accused Mr. Kadyrov of torture and other cruel, inhumane and degrading treatment committed in contravention of § 64 (1) 6¹ of the Austrian criminal code (Strafgesetzbuch "StGB") and in contravention of Article 1, Article 5 and Article 6 of the UNCAT, as well as severe coercion according to §§ 15 ²,

¹ § 64. (1) Die österreichischen Strafgesetze gelten unabhängig von den Strafgesetzen des Tatorts für folgende im Ausland begangene Taten: ...

6. sonstige strafbare Handlungen, zu deren Verfolgung Österreich, auch wenn sie im Ausland begangen worden sind, unabhängig von den Strafgesetzen des Tatorts verpflichtet ist

² § 15. (1) Die Strafdrohungen gegen vorsätzliches Handeln gelten nicht nur für die vollendete Tat, sondern auch für den Versuch und für jede Beteiligung an einem Versuch.

105³ and 106⁴ Austrian StGB. In the complaint, ECCHR concluded that, in light of the accusations levelled and the evidence provided against Pres. Kadyrov, the Public Prosecutor must issue a warrant for the arrest of Pres. Kadyrov during his visit to Austria. The complaint contained and referenced numerous sources of evidence for the accusations made. The main evidence is contained in the testimony of Chechnyan citizen Umar S. Israilov. Mr Israilov has been a rebel fighter in Chechnya who, in 2003 became a bodyguard of Pres. Kadyrov. He testified that, on April 15, 2003, he had been kidnapped and then detained by persons under Kadyrov's command, following which he was forced to become part of Pres. Kadyrov's security service (SB). Mr. Israilov further testified that, during his detention, which lasted until June 2003, he was subjected to torture by Mr. Kadyrov personally and by persons under his command. He also witnessed other detainees being tortured and killed by Pres. Kadyrov and his assistants during the time of his detention and while being part of the security service. Mr Israilov testified that he was beaten with gun butts and pistol grips and tortured with electric wires and a hot metal rod.

In the autumn of 2004 Mr. Israilov fled Chechnya and entered Austria on September 7, 2005 where he was officially granted refugee status after the Federal Asylum Senate (Unabhängiger Bundesasylsenat) found that Mr. Israilov's testimony about his treatment during his captivity in Chechnya was credible.⁵ An expert report from October 14, 2005 submitted to the Bundesasylamt by Austrian Dr. Daniele Risser confirmed that Mr. Israilov's scars and injuries fit the descriptions of mistreatment in his testimony.

After Mr. Israilov left Chechnya, his father Mr. Sharpudi E. Israilov was also kidnapped on November 27, 2004 and, according to his testimony, detained and tortured by Pres. Kadyrov's security service for 10 months. This was apparently done

³ § 105. (1) Wer einen anderen mit Gewalt oder durch gefährliche Drohung zu einer Handlung, Duldung oder Unterlassung nötigt, ist mit Freiheitsstrafe bis zu einem Jahr zu bestrafen.

(2) Die Tat ist nicht rechtswidrig, wenn die Anwendung der Gewalt oder Drohung als Mittel zu dem angestrebten Zweck nicht den guten Sitten widerstreitet.

⁴ § 106. (1) Wer eine Nötigung begeht, indem er...

2. die genötigte oder eine andere Person, gegen die sich die Gewalt oder gefährliche Drohung richtet, durch diese Mittel längere Zeit hindurch in einen qualvollen Zustand versetzt...ist mit Freiheitsstrafe von sechs Monaten bis zu fünf Jahren zu bestrafen.

⁵ Number of the Federal Asylum Senate 308.921-C1/6E-III/07/07

to try to force his son, Mr. Israilov, then living in Vienna, to return to Chechnya.

Mr Israilov described in his testimony that, starting on May 31, 2008, he was repeatedly contacted by phone and personally in Vienna by a man called Artur Kurmakaev who later stated that he was sent by Pres. Kadyrov to threaten Israilov's family's well-being so as to force his return to Chechnya, and to pressure Mr Israilov into withdrawing a complaint that he has filed with the European Court of Human Rights against Russia. Mr. Israilov's father Sharpudi Israilov's testimony was also included in the complaint as further evidence that Pres. Kadyrov had personally tortured detainees and was responsible for torture acts committed by his security service.

In the complaint, ECCHR further cited numerous additional reliable sources (including the Human Rights Report of the U.S. State Department, Human Rights Watch World Report 2008, Amnesty International Report 2008, a report by International Crisis Group and by Freedom House⁶) describing Pres. Kadyrov's involvement in human rights violations in Chechnya and torture in particular.

II. Austrian authorities' failure to consider and act upon the ECCHR Complaint

On June 13, 2008, Attorney Lorenz, the lawyer acting for ECCHR, submitted the complaint against Pres. Kadyrov at the Office of the Public Prosecutor in Salzburg. As was discovered later, the Salzburg Office declared itself incompetent in the matter stating as a reason that, on June 11, 2008, the "Landesamt für Verfassungsschutz und Terrorismusbekämpfung" (LVT) had also filed a complaint against Pres. Kadyrov and others for severe coercion (§§ 15, 105 and 106 StGB) of Mr. Israilov with the Office of the Public Prosecutor in Vienna. ECCHR however, was not officially notified of this other complaint. The Office in Salzburg did not forward the new complaint to the appropriate office in Vienna as it was obliged to do under § 25 (6) of the Austrian criminal procedural rules (Strafprozessordnung, StPO)⁷. Attorney Lorenz tried to file

⁶ ECCHR complaint p.11, 12, 13. Please add full references to the original reports here.

⁷§ 25 (6) StPO: Eine örtlich unzuständige Staatsanwaltschaft hat bei ihr einlangende Anzeigen, Berichte und Rechtshilfeersuchen an die zuständige weiterzuleiten.

the complaint with the prosecution office in Vienna herself on Saturday June 14, 2008, by both submitting the complaint in person and sending it by fax. She was told by public prosecutor Dr. Herrmann however that the Office of the Public Prosecution that complaints could only be accepted during office hours and not on weekends. She was told to contact police in an emergency case.⁸ Later, after Pres. Kadyrov had left Austria, the Att. Lorenz was told informally by the prosecutor in charge Mag. Walzi that the issuance of an arrest warrant for Pres. Kadyrov was refused on the ground of lack of evidence. The case however is still pending and under investigation.

In July 2008 Mr. Israilov began to fear for his personal security as there were indications that he was being monitored. He feared that a politically motivated murder was planned against him. When Att. Lorenz applied for protection for him on July 8, 2008,⁹ the police – after having discussed the issue with the state prosecutor- refused to comply with this request as they did not believe that there was an actual threat to Mr. Israilov.¹⁰ On January 13, 2009, Mr. Israilov was shot dead on the street in Vienna.¹¹

On February 24, 2009, Mr. Israilov's wife, children and father filed a complaint with the "Unabhängiger Verwaltungssenat" (UVS) in Vienna against the Sicherheitsdirektion Wien, Landesamt für Verfassungsschutz und Terrorismusbekämpfung – LVT and Bundeministerium für Inneres, Bundesamt für Verfassungsschutz und Terrorismusbekämpfung – BVT for the violation of Article 2, 3 and 8 of the European Convention on Human Rights, claiming authorities had failed to provide Mr. Israilov with adequate protection.

Recently, Att. Lorenz was given access to parts of the file concerning the murder of Mr. Israilov which consist of more than 30 folders. Although a thoroughful analyzis of the file still has to be undertaken, there is indication that the facts stated above are

⁸ Amtsvermerk im Journaldienst, StA Dr. Gerd Herrmann Staatsanwaltschaft Wien, June 14 2008.

⁹ Application (Annex E)

¹⁰ Note for the file 501 St 45/08d of LVT on 11.07.2008

¹¹ C.J. Chivers, Slain Exile Detailed Cruelty of the Ruler of Chechnya, New York Times, February 1, 2009; Article: <http://1210.vienna.at/news/om:vienna:bezirk:1210/artikel/israilov-polizeipraesident-raeumt-fehleinschaetzung-ein/cn/news-20090122-03111191>.

confirmed by further evidence.

III. Austria's Violation of the UNCAT

It is clear from the events described above that the responsible Austrian authorities have failed to fulfil Austria's obligations under the UNCAT. The main aim of the UNCAT is the criminalization of torture and the enforcement of the ban of torture through international and domestic criminal law so as to eradicate impunity for the perpetrators.¹² Austria ratified the UNCAT in 1987, and implemented the relevant provisions into the Austrian Criminal Code, StGB. Austria is therefore bound both on the international and domestic levels to comply with and give effect to the operative provisions of UNCAT.

1. Obligation to designate and define torture as a specific crime in national legislation

Article 4 of UNCAT provides:

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

This Article obliges the States Party to define acts of torture as crimes in domestic law and to provide for adequate penalties for those who are convicted of committing torture in their national legislation. Torture is not explicitly named as a crime in the Austrian criminal code. In its reports to the Commission against Torture, Austria however emphasises that it fulfils its Art. 4 obligation as all acts that may be described as torture (as defined in Article 1 UNCAT) are punishable under the Austrian criminal code through other provisions and liable to court sanctions that take

¹² Report of the Special Rapporteur on Torture, Manfred Nowak, A/HRC/4/33, 15 January 2007, available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G07/102/15/PDF/G0710215.pdf?OpenElement> [accessed on 24 March 2009] p. 11

into account the severity of the offence.¹³

2. Obligation to establish jurisdiction

Article 5 of UNCAT provides:

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the victim is a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

The wording of Article 5 (2) clearly indicates that the States Party has a legal obligation to take the necessary legislative, executive and judicial measures to establish jurisdiction over the offence of torture, as defined in Article 1 of the Convention.¹⁴ It is the core of the Convention's system of enforcement to ensure that the torturer cannot find a safe haven anywhere in the World. Article 5 (2) explicitly provides for the obligation of the States Party to enable, through legislative or other means, their courts to exercise jurisdiction when a person suspected of torture is

¹³ UN Committee Against Torture (CAT), *UN Committee against Torture: Addendum to the Third Periodic Reports of States Parties Due in 2000, Austria*, 4 March 2005.CAT/C/34/Add.18.Online. UNHCR Refworld, available at: <http://www.unhcr.org/refworld/docid/42cd70574.html> [accessed 24 March 2009]

¹⁴ Report of the Special Rapporteur on torture, Manfred Nowak, A/HRC/4/33, 15 January 2007, available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G07/102/15/PDF/G0710215.pdf?OpenElement> [accessed on 24 March 2009] p. 12.

present on the territory regardless where the acts have been committed. The only condition for the exercise of jurisdiction is that the suspect must be present on the State's territory.¹⁵

In a previous report you have noted, that:

“With the purpose of avoiding safe havens for perpetrators of torture, the Convention goes beyond the traditional principles of territorial and national jurisdiction (listed in articles 5 (1) (a)-(c)) and applies, for the first time in a human rights treaty, the principle of universal jurisdiction (art. 5 (2))¹ as an international obligation of all States parties without any precondition other than the presence of the alleged torturer.”¹⁶

This provision is given effect through § 64 (1) 6 of the Austrian StGB which provides that Austria's criminal code is applicable to crimes that Austria is obliged to prosecute regardless of where the crime has been committed and regardless of whether the crime is punishable under the laws of the state where the crime took place.

In the case at hand, Pres. Kadyrov, a person suspected of having committed torture on several victims over a period of time, visited Austria during the weekend of June 13 and 14 2008. Austria in this case was obliged to establish its jurisdiction according to § 64 (1) 6 and Article 5 (2) UNCAT, and failed to do so.

¹⁵ Manfred Nowak, Elizabeth McArthur, *The United Nations against Torture, A Commentary*, Oxford University Press 2008.

¹⁶ Report of the Special Rapporteur on torture, Manfred Nowak, A/HRC/4/33, 15 January 2007, available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G07/102/15/PDF/G0710215.pdf?OpenElement> [accessed on 24 March 2009] p. 11.

3. Obligation to prosecute or extradite

Article 6 of UNCAT provides:

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

...

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

These articles affirm that the States Parties to the UNCAT are not only obliged to establish their jurisdiction but they have to ensure that torture suspects are handed over to the competent authorities for the purpose of prosecution, or that they are extradited. They must take the suspect into custody and conduct proper investigations. The assessment whether to prosecute the suspect depends in part on the domestic rules on evidence.¹⁷ In the ECCHR complaint convincing evidence was provided to the Austrian authorities including the testimonies of two eye-witnesses to torture committed by Pres. Kadyrov and several credible reports from independent sources (see above). These were sufficient to show that Kadyrov committed torture, or at least, to show that there exists a reasonable suspicion that Kadyrov has torture, which must be investigated.

The allegations of torture taking place in Chechnya under the command of Mr. Kadyrov are well-known and have been an issue of general concern for years. The UN Committee against Torture, in its conclusions and recommendations regarding the Russian Federation on February 6, 2007, expressed concern about the situation in Chechnya, specifically regarding human rights violations and torture.¹⁸ In your follow-up to the recommendations made after Special Rapporteur Rodley's visit to the Russian Federation in 1994, you also expressed your concern about the ongoing widespread use of torture in Chechnya.¹⁹

All this taken into consideration, ample evidence has been provided by ECCHR, and exists in the public domain, regarding the occurrence of torture in Chechnya for which Pres. Kadyrov may be personally responsible, in order to trigger Austria's obligations under Articles 6 and 7 of UNCAT. Austrian authorities were obliged to investigate the

¹⁷ <http://se1.isn.ch/serviceengine/FileContent?serviceID=ISN&fileid=53703AD0-D86E-71B3-0994-68002DFB396D&lng=en> p.43, Lene Wendland, A Handbook on State Obligations under the UN Convention against Torture.

¹⁸ UN Committee against Torture (CAT), UN Committee against Torture Conclusions and Recommendations, Russian Federation, 6 February 2007, CAT/C/RUS/CO/4. Online. UNHCR Refworld, available at: <http://www.unhcr.org/refworld/docid/465edff52.html> [accessed 24 March 2009] p.10.

¹⁹ Report of the Special Rapporteur on torture, Manfred Nowak, A/HRC/7/3/Add.2, 18 February 2008 <http://daccessdds.un.org/doc/UNDOC/GEN/G08/106/95/PDF/G0810695.pdf?OpenElement>. [accessed 24 March 2009] p.101.

case, to issue an arrest warrant, to take Pres. Kadyrov into custody upon his arrival in Austria, and, if the allegations were substantiated, to prosecute or extradite Pres. Kadyrov.

As you have stated in a 2007 report:

“The only alternative to prosecuting an alleged torturer present in its territory is for a State to extradite him or her, in accordance with the principle aut dedere aut iudicare provided for in Article 7, to the State where the act of torture allegedly was committed (the territorial State), or to the flag State, or to a State exercising jurisdiction on the basis of the active or passive nationality principle. If none of these States requests an extradition, the State where the alleged torturer is present (the forum State) has no legal alternative than to thoroughly investigate the allegations of torture and, if the evidence found seems to be sufficient, to prosecute the person concerned before its criminal courts.”²⁰

IV. Conclusion and request to the Special Rapporteur


Despite the fact that Pres. Kadyrov is currently not present in Austrian territory we ask you to remind Austria of its obligations under UNCAT, to express your dissatisfaction at Austria’s failure to comply with the Convention on the event of Pres. Kadyrov’s visit, to demand Austria fully investigate the failure by its competent authorities to act on the ECCHR complaint, and to demand Austria ensures future violations of UNCAT are prevented.²¹

²⁰ Report of the Special Rapporteur on torture, Manfred Nowak, A/HRC/4/33, 15 January 2007, available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G07/102/15/PDF/G0710215.pdf?OpenElement> [accessed on 24 March 2009] p. 14.

²¹ Urgent Appeal to Germany to take Almatov, former Uzbek Minister of Internal Affairs into custody (Report of the Special Rapporteur on Torture, Fourth session: summary of cases transmitted to the Governments and replies received, para.75), Joint Allegation Letter to France whose authorities had failed to take former U.S. Minister of Defence Rumsfeld into custody while he remained on French territory (Report of the Special Rapporteur on Torture, Tenth session: summary of cases transmitted to the Governments and replies received, para.73).

We thank you for your consideration and remain at your disposal for further information and communication.

Sincerely,


Wolfgang Kaleck, General Secretary

European Center for Constitutional and Human Rights e.V. (ECCHR)