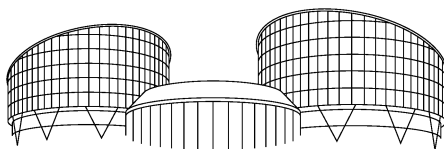


La CEDU su ricorrente torturato da agenti statali ceceni per il suo orientamento sessuale (CEDU, sez. III, sent. 12 settembre 2023, ric. n. 28834/19)

La Corte Edu si pronuncia sul caso riguardante il sequestro del ricorrente - un uomo gay - ed il suo trasferimento alla sede della polizia locale a Grozny, dove era stato, insieme ad altri uomini, brutalmente picchiato e gravemente minacciato dagli agenti di polizia a causa del suo orientamento sessuale. Quanto sopra accadeva nel contesto di una presunta "epurazione" di persone omosessuali, o ritenute tali, nella Repubblica cecena da parte delle autorità locali.

I giudici di Strasburgo hanno ritenuto che il ricorrente avesse fornito un resoconto convincente dei maltrattamenti - qualificati dai medesimi giudici come 'tortura' - subiti da parte degli agenti statali, che il Governo non era riuscito a confutare; che le indagini su tali accuse fossero state gravemente carenti e parziali e che le autorità non avessero tenuto conto di una possibile motivazione omofobica dell'agire degli agenti.

Di qui le riscontrate violazioni del divieto di tortura (art.3), del divieto di discriminazione (art.14, nel combinato disposto con l'art.3) e del diritto alla libertà e alla sicurezza (art. 5 § 1).



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF XXXXX v. RUSSIA

(Application no. 28834/19)

JUDGMENT

STRASBOURG

12 September 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of XXXXX v. Russia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:
Pere Pastor Vilanova, *President*,
Jolien Schukking,

Yonko Grozev,
Georgios A. Serghides,
Peeter Roosma,
Andreas Zünd,
Oddný Mjöll Arnardóttir, *judges*,
and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the application (no. 28834/19) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Maksim Grigoryevich Lapunov (“the applicant”), on 24 May 2019;

the decision to give notice to the Russian Government (“the Government”) of the complaints concerning Articles 3, 5 and 14 of the Convention and to declare the remainder of the application inadmissible;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe), the Advice on Individual Rights in Europe Centre (AIRE Centre), the International Federation for Human Rights (FIDH), the International Commission of Jurists (ICJ), REDRESS, the World Organisation against Torture (OMCT), the Equal Rights Trust, the European Human Rights Advocacy Centre (EHRAC) and Human Rights Watch (HRW), who were granted leave to intervene by the President of the Section;

the decision of the President of the Section to appoint one of the elected judges of the Court to sit as an *ad hoc* judge, applying by analogy Rule 29 § 2 of the Rules of Court (see *Kutayev v. Russia*, no. 17912/15, §§ 5-8, 24 January 2023);

Having deliberated in private on 4 and 11 July 2023,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The case concerns allegations that the applicant was unlawfully detained and tortured by State agents in Chechnya in March 2017 because of his homosexuality, and that there was no effective investigation into the matter.

THE FACTS

2. The applicant was born in 1987 and lived in Sargatskoye, in the Omsk Region, prior to leaving Russia. He currently resides in a different country. He was represented before the Court by Ms O. Sadovskaya (a lawyer practising in Nizhny Novgorod) and Ms V. Lapina (a human rights defender practising in St Petersburg).

3. The Government were initially represented by Mr M. Galperin, former Representative of the Russian Federation to the European Court of Human Rights, and later by his successor in this office, Mr M. Vinogradov.

4. The facts of the case may be summarised as follows.

I. BACKGROUND

5. On 1 April 2017 the Russian newspaper *Novaya Gazeta* published its first report on a campaign of persecution against LGBTI (lesbian, gay, bisexual, transgender and intersex) people in the Chechen Republic which had allegedly been taking place since February that year. *Novaya Gazeta* reported on the abduction, arbitrary detention and torture of men suspected of being gay – actions which had been carried out with the direct involvement of Chechen law-enforcement officials acting on the orders of the highest Chechen authorities. According to reports, the campaign had been personally instigated by Ramzan Kadyrov, the President of Chechnya. The credibility of these allegations was subsequently confirmed by reports and statements from numerous organisations, including the Office of the High Commissioner for Human Rights, the Moscow Mechanism of the Organisation for Security and Cooperation in Europe, the Parliamentary Assembly of the Council of Europe (see paragraphs 67-74 below), as well as many reputable NGOs, including Human Rights Watch, Amnesty International, the Russian LGBT Network, the European Centre for Constitutional and Human Rights, and numerous international media, including *The New York Times*, *The Washington Post*, the BBC and Deutsche Welle. As a result of that campaign, more than 114 LGBTI people and members of their families fled Chechnya.

6. The reports and statements generally acknowledged that the campaign of persecution of persons on the basis of their perceived or actual sexual orientation – in the form of arbitrary and unlawful arrests, detentions, torture, enforced disappearances and extrajudicial executions – had occurred in several “waves” of “purges” between December 2016 and May 2017, and identified a certain pattern as regards such violations.

7. According to these reports, victims suspected of being homosexual were picked up at various locations by security personnel who were often in civilian clothes, and they were taken to police stations, detention facilities or unofficial secret prisons. They were then subjected to severe beatings, often with plastic rods, pipes or cords, as well as to insults and humiliation because of their homosexuality. They were often deprived of food and water, had no access to medical or legal assistance, and their relatives were not informed of their detention. The aim was to force the victims to admit their homosexuality and/or provide the names of other LGBTI persons.

8. While in unrecorded detention, victims were often subjected to daily abuse for up to two weeks, or until they signed a confession, reported others, or otherwise agreed to cooperate with the Chechen authorities. Some of the victims died as a result of the torture. Those who survived the detention and severe beatings were released in a kind of ceremony to “shame them for their sins”: the victims’ sexual orientation was revealed to their relatives, who were encouraged to “get rid of the sick family members” and commit so-called “honour killings”, which are publicly condoned by the President of Chechnya, Ramzan Kadyrov.

9. NGOs have documented dozens of such murders motivated by prejudice in traditional Chechen society, where an LGBTI person is believed to cast a shameful shadow over the entire family and relatives are effectively entitled to kill the person in question on the basis that he or she is a disgrace to the family. Released victims have also been banned from leaving Chechnya and threatened with intimidation to deter them and their families from filing criminal complaints. There have been reported cases of abductions, including detention and forcible transfer to Chechnya of Ms Z.M. from Nizhniy Novgorod, Mr S.M. and Mr I.M. from Nizhniy Novgorod, Mr S.T. from the Krasnodar Region, and others.

10. According to a publication of 25 April 2017 in the newspaper *The Independent*, the UK Minister of State for the Foreign Office stated that Ramzan Kadyrov had announced that all gay men in the Chechen Republic would be exterminated by Ramadan (by 27 May 2017). Shortly afterwards, Mr Kadyrov's spokesman, Mr Alvi Karimov, declared that the reports of an "anti-gay purge" were false, as there were no such men in the Chechen Republic. In a clear reference to "honour killings", he went on to say "If there were such people in Chechnya, the law-enforcement agencies would not have anything to do with them, because their relatives would send them to a place from which there is no return". Similarly, Ms Kheda Saratova, a member of the Human Rights Council, which is an advisory body to the President of the Chechen Republic, claimed that "[in] Chechen society, any person who respects our traditions and culture will hunt down this kind of person without any help from the authorities, and will do everything to ensure that this kind of person does not exist in our society". She also stated that she would not even consider a complaint on the matter.

11. In a television interview on 14 July 2017 for HBO in the United States, President Kadyrov, when asked about the purge of gay men, said "This is nonsense. We don't have such people here. We don't have gays. If there are any, take them to Canada ... To purify our blood, if there are any here, take them ... They are devils. They are for sale, they are not human beings". On 14 May 2018 the Minister of Justice of the Russian Federation, Mr Alexandr Konovalov, claimed at the UN Human Rights Council that there were no LGBT people in Chechnya.

12. Several international human rights organisations, including Amnesty International, Human Rights Watch and Freedom House, as well as the Russian LGBT Network and *Novaya Gazeta*, have called for an effective investigation, but no investigation has been launched. This was the case until the applicant, a man of Russian rather than Chechen ethnicity, lodged a formal complaint alleging that he had been abducted and tortured by Chechen law-enforcement agents because he was gay.

II. THE APPLICANT'S ACCOUNT OF EVENTS

13. The applicant is a homosexual person who is open about his sexual orientation. When he moved to Chechnya in 2015 he did not hide his sexual identity, but he did not mention it unless this was necessary. He had an event-planning business and sold party balloons in the town of Grozny.

A. Abduction of the applicant's acquaintance and subsequent events

14. On 6 March 2017 the applicant was with an acquaintance, Mr E.Ts., in the applicant's flat. At 10 p.m. Mr E.Ts. received a message via a social network and left. A minute later the applicant heard a scream from the street and then spoke with a neighbour, who said that unknown persons had forced Mr E.Ts. into a black Lada Priora car escorted by another similar car. The applicant telephoned Mr E.Ts., but he did not answer. Immediately thereafter the applicant reported the incident to a local police station.

15. At 12.30 a.m. on 7 March 2017 an investigator from the Leninskiy district police station arrived at the applicant's flat and questioned him about the details of the above-mentioned incident.

16. On 12 March 2017 Mr E.Ts.'s brother told the applicant that Mr E.Ts. had been arrested and then released from detention with traces of beatings, and that the applicant was to cease all contact with him.

B. The applicant's abduction, ill-treatment and release

17. On 16 March 2017 the applicant was selling balloons on the street in the vicinity of Grand Park in Grozny, a shopping area with many street vendors monitored by CCTV cameras. At about 9 p.m. a police officer, M.B. (the applicant does not know his full name, but knows that it starts with "B"), approached the applicant and dragged him to a grey VAZ-model car parked nearby. Officer I. took the applicant, who was screaming and asking for explanations, by the other arm. The men said that they would "explain everything" at a police station. Around fifty street vendors (including some of the applicant's acquaintances) intervened, asking the men to release the applicant, but to no avail. Two other persons came out of Officer M.B.'s car and forced the applicant inside. The car's door handles had been removed, so the applicant could not escape.

18. Having heard the commotion, four police officers arrived at the scene. One of the abductors showed them his service identity card. The officers recorded the applicant's personal details and the car's registration plates and left.

19. In the meantime, the abductors seized the applicant's phone and told him that he was suspected of murder. Ten minutes later they arrived at a building located behind gates bearing signs for the Ministry of the Interior (the Chechen police headquarters). Having placed a hood over the applicant's head, the four men escorted him to an office, where the hood was removed. In that office there was a man whose own portrait was on the wall next to a portrait of the Chechen President, Ramzan Kadyrov. According to the applicant, he could identify that man, who, he believes, held a senior position in the Chechen police.

20. The man in the office took the applicant's mobile phone and read his personal messages. He asked the applicant if he knew the reasons for his arrest and then read out several messages sent by the applicant to a man, the content of which suggested that the applicant was a homosexual. The men standing in the room accused the applicant of having come to Chechnya "to seduce Chechen boys" and ordered him to give up the contact details of his sexual partners, expressing particular interest in the gay men who were of Chechen ethnicity. When the applicant refused to provide the information, the interrogator told Officers M.B. and I. to beat him up.

21. Officers M.B. and I. took the applicant to another office, where they insulted him, referring to his sexual orientation, and forced him to make a phone call to a homosexual acquaintance and

arrange a meeting. The applicant telephoned Mr T. Then, together with Officers M.B. and I., he was driven to Mr T.'s residence to meet him there. Mr T. was immediately detained and taken, along with the applicant, to the basement floor of the same police building. The floor had several cells. The applicant and Mr T. were put in neighbouring cells.

22. The floor of the applicant's cell was covered in blood. Pieces of cardboard served as a bed and a blanket; a bucket was used as a toilet. On one of the days which followed the applicant saw Mr T. being beaten up with a piece of PVC water pipe.

23. The night after he was first detained, on several occasions the applicant was visited by different men who insulted him for being gay, shouted at him, hit him in the face, and threatened him with sexual abuse.

24. The next day, two of the applicant's guards, armed with PVC water pipes, beat him up, saying that they were punishing him for his homosexuality and for having sexual intercourse with Chechens. One of the perpetrators tried to abuse him sexually, but the applicant resisted. The perpetrators struck dozens of blows with the PVC water pipes, particularly on the applicant's buttocks and hands, causing him to bleed and his blood to stain the cell wall.

25. After the beatings the applicant was confronted with Mr T., and both of them were forced to describe the details of the sexual intercourse between them that had taken place at Mr T.'s residence. The applicant also witnessed Mr T. being beaten. It was their last meeting; on approximately the fourth day of his detention the applicant heard from the guards that Mr T. would be handed over to his parents to be "sent to France". The applicant later found out that this expression meant that a person would be killed, and assumed that Mr T. had been killed.

26. On the second or third day of his detention the applicant was forced to clean up cells in the basement. At that time he met Mr A.K., another prisoner, who told him that he had also been apprehended for being a homosexual. In 2018 the applicant learned that a criminal case into Mr A.K.'s murder had been opened in 2017 in Grozny (see paragraph 59 below). The applicant also met Mr A., who had been detained on suspicion of killing a police officer. They discovered that they both knew the same person. Mr A. asked the applicant to pass information about his detention in that basement to his parents.

27. On 27 March 2017 Officer M.B. came to the applicant's cell and said that the applicant would go to his flat, pack his belongings and leave Chechnya. The guards put a bag over the applicant's head and took him to his flat. However, they could not enter as the lock had been changed. They then returned the applicant to his cell. Several hours later they took the applicant to his flat again and opened the door. The applicant had ten minutes to pack. Thereafter, he was returned to his cell again.

28. The next day, 28 March 2017, the applicant was taken to the office of the man who had previously ordered Officers I. and M.B. to extract information from him (see paragraphs 19-20 above). That man threatened the applicant and his family with reprisals if the applicant complained about his detention and ill-treatment. He then put a gun in the applicant's hand so that it would have his fingerprints on it, and forced the applicant to put his signatures on some documents that the applicant could not read and on various blank sheets of paper. He was then forced to read out his personal details and information about his sexual orientation while being filmed on a mobile phone camera by Officer M.B., and to give information about his friends'

addresses. One of the investigators present in the room, Mr S., was subsequently put in charge of the inquiry into the applicant's disappearance (see paragraph 31 below).

29. The applicant was then taken to a train station, where he was given a ticket to Pyatigorsk in the neighbouring region. Instead of departing, the applicant visited Berkat Market, where he told Ms Kh. and Ms K. about his ill-treatment and showed them his injuries. He also met with Mr A.'s parents and told them about their son's detention (see paragraph 26 above). On the same day he took a bus to Krasnodar and then to Sochi, as he was afraid to return to the home of his relatives. The applicant did not contact any medical authorities to have his injuries recorded, because he was afraid that the doctors would report the incident to the police and that the people who had abducted him in Chechnya would learn about this. Shortly after his release from detention he took several photos of his injuries with a mobile phone camera and sent them to several people. According to statements collected by the NGO the Committee against Torture on 21 June 2017, which were submitted to the Court by the applicant, several people saw haematomas on his body after his release from detention, including Ms Kh., Ms K. and Ms Yu.

30. On 10 April 2017 the applicant arrived in Perm and moved into the house of a relative in the Perm Region.

C. Search for the applicant

31. On 23 March 2017 the applicant's sister reported his disappearance to the Chechen police. Mr S. was the investigator in charge of the search for the applicant (see paragraphs 28 and 40). According to the investigator, on 25 March 2017 the applicant's whereabouts were established. The applicant was taken from his flat to the headquarters of the Chechen police to give written explanations, in which he stated that his mobile phone had been out of order, he was busy with work and therefore he had not called his family. On the basis of that explanation, on 17 April 2017 the investigator issued a decision not to open a criminal case into the alleged disappearance.

III. INQUIRY INTO THE APPLICANT'S ILL-TREATMENT

32. On 1 June 2017 the applicant asked the Committee against Torture to assist him in initiating a criminal investigation into his abduction, unlawful detention and ill-treatment between 16 and 28 March 2017. The Committee against Torture conducted an independent enquiry and questioned numerous witnesses, including Ms Kh. and the applicant's aunt Ms Yu., both of whom confirmed that the applicant had told them about his abduction and ill-treatment and had shown them his injuries. On 29 August 2017 the applicant had a personal meeting with the High Commissioner for Human Rights of the Russian Federation, Ms T. Moskalkova, who then asked Investigative Committee to investigate the incident. On the same date, 29 August 2017, the applicant lodged a similar request in that regard.

33. Investigators from the unit for very important cases of the Russian Investigative Committee in the North Caucasus Region ("the investigators") were instructed to carry out a pre-investigation inquiry into the applicant's allegations. At the outset, the investigators requested the assistance of the Chechen police in carrying out operational-search activities and taking other steps to assist the investigation. Thus, the investigative actions in Chechnya – including identifying and interviewing

the witnesses, inspecting the crime scene and collecting other evidence – were carried out with the participation of members of the Chechen police force.

34. On 28 September 2017 the applicant asked the investigators to allow two people, including the chairman of the Committee against Torture, to represent him in the proceedings. The request was dismissed on 20 October 2017 on the grounds that those people were not advocates. On the same day the applicant also asked to examine Officer M.B.'s mobile phone (see paragraph 28 above), but to no avail.

35. On 29 and 30 September 2017 the applicant was interviewed by the investigators. He provided a detailed account of his abduction, detention and ill-treatment, including the names and appearances of the perpetrators, and stated that he could identify them. He stressed that he had been ill-treated on account of his homosexuality. He also explained that he had not contacted doctors after his release, because he had been afraid that they would give that information to the Chechen police. The applicant said that the injuries had mostly healed – only scars on his legs, palms and ears remained. He further stated that he had photographs of his injuries (see paragraph 29 above) and gave a flash drive containing the photographs to the investigators, without asking for this to be recorded. The applicant also described in detail the area in the basement where he had been detained, stating that despite being blindfolded, he had heard that he had passed some mechanism that whirred and had then approached a large metal door blocking the hallway, behind which the detention cells had been located. He described the cells and where his bloodstains could be found, as well as the office in that building where he had been taken by Officers M.B. and I.

36. After being questioned, the applicant asked the investigators to interview the witnesses to his abduction, the alleged perpetrators, and the persons who had seen his injuries. He also asked them to inspect the Chechen police headquarters in his presence, seize CCTV recordings from cameras installed on the premises, and take other steps. Lastly, he applied for protective measures, primarily against the Chechen police officers. That application was dismissed by the investigators on 29 October 2017 on the grounds that there was no real threat to the applicant's personal security.

37. On 6 October 2017 the applicant was examined by a medical expert, who found, *inter alia*, two scars on the right palm and one on the right wrist which had been caused by strong impact from a blunt object around six to eighteen months before the examination. The expert observed "defined tremors" across the applicant's body at the time of the examination. The applicant explained that his body reacted that way when he recalled the events of March 2017.

38. On 9 October 2017 the applicant's representative asked the investigators to grant him leave to represent the applicant in the proceedings. The request was dismissed on 20 October 2017 on the grounds that no criminal case had been opened yet.

39. On 10 October 2017 the investigators inspected the location of the applicant's alleged arrest near Grand Park in Grozny, and the police headquarters. Neither the applicant nor attesting witnesses or experts were invited to take part in the inspection. The investigators examined eleven rooms on the basement floor; none of them resembled prison cells. On subsequent unspecified dates the investigators inspected several other places where the applicant could have been detained. Neither the applicant nor any other witnesses were present during those

inspections. According to the applicant, the plan of the building submitted to the inquiry by the Chechen police indicated that there were seventeen cells on the basement floor. Six of those cells were not mentioned in the inspection report.

40. On 11 October 2017 the investigators questioned Mr S., whose statement is summarised in paragraph 31 above. Shortly afterwards the investigators identified two police officers who had allegedly established the applicant's whereabouts and taken him to Mr S. Both stated that the applicant had been found in his flat and then taken to Mr S.

41. On 12 October 2017 the investigators asked Grand Park to provide its CCTV recordings from 16 March 2017. Grand Park replied that recordings were kept for twenty-one days, and so the recordings in question had been deleted after that period had elapsed.

42. On 20 October 2017 Mr E.Ts. was interviewed and stated that he had not been detained by the police and had not met the applicant on 6 or 16 March 2017. On various dates in October 2017 all of the alleged witnesses to the applicant's abduction refused to appear or give evidence. All the police officers who had been patrolling the Grand Park area on 16 March 2017 denied witnessing the applicant's abduction.

43. On 20 October 2017 the investigators issued a decision refusing to open a criminal case because the applicant's allegations had not been confirmed by the evidence collected. On the same date that decision was overruled by the investigators' superiors, as not all of the witnesses had been interviewed.

44. On 25 October 2017 the investigators interviewed the medical expert about an object which could have caused the injuries noted in his forensic report (see paragraph 37 above). According to the expert, it might have been a water pipe.

45. When interviewed on 1 November 2017, several Chechen police officers stated that their headquarters were not equipped with either CCTV cameras or detention cells, and they said that neither the applicant nor Mr E.Ts. had been detained there.

46. When interviewed in November 2017, the street vendors working in the vicinity of Grand Park stated that none of them had seen the applicant's abduction, and only some of them had heard about it from third parties. Several of the vendors who initially refused to be interviewed gave their statements to the investigators after being taken to the Chechen police headquarters by police officers. Two vendors, Ms D. and Ms N., stated in general terms that on an unspecified day in 2017 the applicant had suddenly left his workplace, leaving all his belongings and merchandise behind. They had collected his things and had given them back to him some time later.

47. On 10 November 2017 the investigators interviewed Ms Kh., who stated that on 28 March 2017 the applicant had visited her and Ms K. at Berkat Market in Grozny. She had given him some food and they had talked about daily activities. Contrary to the statement she had previously given to the Committee against Torture (see paragraph 32 above), she denied that the applicant had told her about his abduction and ill-treatment or shown her his injuries. On 18 November 2017 the investigators questioned Ms K., who denied having any knowledge of the applicant's abduction and ill-treatment or seeing him on 28 March 2017. When interviewed on 20 November 2017, other vendors, Ms T., and Ms S., confirmed that they had heard about the applicant's abduction and ill-treatment from Ms Kh. and Ms K.

48. On 21 November 2017 the investigators questioned Mr T., who denied knowing the applicant (see paragraph 25 above). He also stated that although he was a student at medical college, he had not attended classes between 16 and 28 March 2017 and had had to take long-term leave to take care of his sick mother. In addition, Mr T. could not recall the address of his own place of residence. Later on the same day the investigators questioned the parents of Mr A. (see paragraphs 26 and 29 above), who stated in general terms that their son had been killed in a clash with law-enforcement officers in March 2017 and his body had not been released to them. In spring 2017 the applicant had contacted them to provide some information about their son, but that information had not been clear or useful to them.

49. On 22 November 2017 the investigators again refused to open a criminal case into the applicant's allegations. Two days later the investigators' superiors overruled that decision and ordered that the inquiry be resumed, as more steps needed to be taken.

50. On 29 November 2017, for the second time, the applicant's lawyer applied for protective measures in respect of the applicant, who had received threats. The lawyer stated that if the request was granted, the applicant could go to Grozny, identify the perpetrators and find traces of his detention in the basement of the police headquarters. The investigators dismissed the request as unsubstantiated on 29 December 2017. That decision was overruled by the investigators' superiors on 5 February 2018, but the investigators refused the request again on 8 February 2018.

51. On 25 December 2017, for the third time, the investigators refused to open a criminal case; on 10 January 2018 the inquiry was resumed, following criticism from the investigators' superiors.

52. On 15 January 2018 the investigators added to the case file a copy of the case file in respect of the investigation into the death of Mr A. (see paragraphs 26, 29 and 48 above). Without taking other steps, on 9 February 2018 they again refused to open a criminal case, but on 19 February 2018 their superiors ordered that the inquiry be resumed.

53. On 15 February 2018 the investigators obtained a statement from Ms Yu. (see paragraph 32 above), who denied that the applicant had told her about his abduction and ill-treatment upon his return from Grozny. The investigators did not ask her whether she had seen his injuries. On 20 February 2018 the investigators questioned a witness who had heard rumours about the applicant's detention from a colleague of the applicant.

54. On 21 March 2018 the investigators issued the fifth decision not to open a criminal case, concluding that the applicant's allegations were not confirmed by the evidence collected. The investigators also found that the applicant was not guilty of deliberate false denunciation, as he had not identified the perpetrators.

IV. APPEAL AGAINST THE REFUSAL TO OPEN A CRIMINAL CASE

55. On an unspecified date the applicant appealed against the above decision to the Yessentuki Town Court ("the Town Court"), stating that the investigators had failed to take basic investigative steps, such as: including the photographs of his injuries in the case file; questioning the witnesses who had seen those injuries; obtaining information about the location of his mobile

phone between 16 and 28 March 2017 from the mobile phone service operators; and questioning the officers who had been on duty at the entrance of the Chechen police headquarters on 16 March 2017. The applicant stressed that important steps such as an identification parade and the cross-examination of witnesses could have been carried out only if a criminal case had been opened.

56. On 22 August 2018 the Town Court dismissed the appeal. It found that the inquiry had been thorough, as all of the required steps had been taken, and its outcome did not support the applicant's allegations. The court also noted that the applicant had left Russia, which prevented the investigators from taking further steps.

57. On 12 September 2018 the applicant challenged the above decision before the Stavropol Regional Court. He stated that he was prepared to participate in the investigation and had repeatedly made requests to participate in the verification procedures, including one in September 2017 (see paragraphs 36 and 50 above), however, all such requests had been refused. He also stated, in particular, that on 3 November 2018 he had accessed his Google account, which contained information about the location of his mobile phone on the day of the abduction. A screenshot attached to the appeal indicated that at 9.13 p.m. on 16 March 2017 his phone had been at Grand Park in Grozny when it had started moving to the Chechen police headquarters. From 10.46 p.m. to 10.51 p.m. his phone had been located at Mr T.'s residence. Later, the phone had moved back to the police headquarters (see paragraphs 21, 22 and 25 above). From 17 to 29 March 2017 the phone had been switched off.

58. On 26 November 2018 the Stavropol Regional Court upheld the Town Court's decision and dismissed the appeal.

V. INQUIRY INTO Mr A.K.'S MURDER

59. On 31 October 2017 the Zavodskoy District Investigative Committee in Grozny opened a criminal case into the murder of Mr A.K. in March 2017 (see paragraph 26 above). An examination of his mobile phone data on 23 January 2018 showed that from 14 to 16 March 2017 Mr A.K.'s phone had been in the vicinity of the Chechen police headquarters. The investigation into the criminal case was suspended and resumed on several occasions; the last suspension was on 23 August 2019. The outcome of the proceedings is unknown.

VI. SUBSEQUENT DEVELOPMENTS

60. At some point in 2017 or 2018 the applicant left Russia.

61. Since 2018 the applicant has taken part in two psychological rehabilitation courses. In his report of 6 November 2020 his counselling psychologist concluded that the traumatic events of March 2017 had caused the applicant to develop an anxiety disorder and post-traumatic stress disorder (PTSD). The psychologist had observed little improvement in the applicant's mental state over the course of the rehabilitation courses.

RELEVANT LEGAL FRAMEWORK AND PUBLIC MATERIAL

I. DOMESTIC LAW

62. The relevant provisions of the Criminal Code, as in force at the material time, read as follows:

Article 66

Aggravated circumstances

“1. Aggravated circumstances are:

...

(e) committing a crime on the grounds of political, ideological, racial, national, or religious hatred, or on the grounds of hostility or hatred towards any social group.”

63. In accordance with the Constitutional Court’s ruling of 23 September 2014 on the constitutionality of Article 6.21 § 1 of the Code of Administrative Offences of Russia, the concept of “a social group” may apply to a group of people on the basis of their sexual orientation.

64. Under Article 73 § 1 (2) of the Code of Criminal Procedure, a criminal motive is one of the elements that must be established during criminal proceedings.

65. For other relevant provisions of domestic law regarding the prohibition of ill-treatment and the procedure for examining a criminal complaint, see *Lyapin v. Russia* (no. 46956/09, §§ 96-102, 24 July 2014).

II. RELEVANT INTERNATIONAL MATERIAL

A. Council of Europe Recommendation CM/Rec(2010)5

66. On 31 March 2010 the Committee of Ministers of the Council of Europe adopted the text of Recommendation CM/Rec(2010)5 to member States on measures to combat discrimination on grounds of sexual orientation or gender identity, the relevant parts of which read as follows:

A. “Hate crimes” and other hate-motivated incidents

“1. Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.

2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.

...

5. Member states should ensure that relevant data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on ‘hate crimes’ and hate-motivated incidents related to sexual orientation or gender identity.”

B. Documents relevant to the persecution of LGBTI people in the Chechen Republic

67. On 13 April 2017 the Office of the United Nations High Commissioner for Human Rights issued a statement by United Nations human rights experts, the relevant parts of which read as follows:

“Men detained in the Russian Republic of Chechnya simply for being perceived to be gay must be immediately released and their abuse and persecution ended ...

...

We call on the authorities to proceed with the immediate release of everyone unlawfully detained in the Republic of Chechnya on the basis of their actual or perceived sexual orientation, to conduct prompt, thorough and impartial investigations into all suspected cases of abduction, unlawful detention, torture and unlawful killing, and to ensure that all those involved in such acts are held to account, and that victims are provided with effective remedy ...

...

We call on Russia to take urgent measures to protect the life, liberty and security of gay and bisexual people in Chechnya and to investigate, prosecute and punish acts of violence motivated by the victim’s sexual orientation ...”

68. On 18 May 2017 the European Parliament adopted a resolution on the implementation of the European Council’s LGBTI Guidelines, particularly in relation to the persecution of (perceived) homosexual men in Chechnya, Russia. The relevant parts of that resolution read as follows:

“The European Parliament, having regard to its previous resolutions on Russia,

...

1. Expresses its deep concern at the reports of arbitrary detention and torture of men perceived to be gay in the Republic of Chechnya in the Russian Federation; calls on the authorities to end this campaign of persecution, to immediately release those who are still illegally detained, to ensure legal and physical protection for victims and the human rights defenders and journalists who have worked on this case, and to allow international human rights organisations to conduct a credible investigation into the alleged crimes;

2. Condemns all statements by the Chechen authorities that condone and incite violence against LGBTI people, including the statement by the Chechen Government spokesperson denying the existence of homosexuals in Chechnya and discrediting the report as ‘lies and absolute disinformation’; deplores the unwillingness of local authorities to investigate and prosecute the serious violations directed specifically at individuals based on their sexual orientation, and reminds the authorities that the rights to freedom of assembly, association and expression are universal rights and apply to all; calls for the immediate release of those who are still illegally detained; urges the Russian authorities to provide legal and physical protection for the victims, as well as for the human rights defenders and journalists who have worked on this case; ...”

69. On 27 June 2018 the Parliamentary Assembly of the Council of Europe (PACE) adopted Resolution 2230 (2018) entitled “Persecution of LGBTI people in the Chechen Republic (Russian Federation)”, the relevant parts of which read as follows:

“7. In the light of these considerations, the Assembly urges the Russian Federation to:

7.1. conduct an impartial and effective investigation into the persecution of LGBTI people in the Chechen Republic and ensure there will be no impunity for the perpetrators;

7.2. allow an independent international investigation by an international human rights organisation, should an investigation at national level not be pursued;

7.3. ensure the legal and physical protection of victims, their family members and witnesses of persecution of LGBTI people in the Chechen Republic;

7.4. implement the judgment of the European Court of Human Rights (the Court) in the case of *Bayev and Others v. Russia* and other relevant judgments, and repeal, as recommended by the Court, the law prohibiting the so-called promotion of non-traditional sexual relationships among minors, which has contributed to reinforcing an overall climate of discrimination and prejudice against LGBTI people;

7.5. ensure the protection of human rights defenders throughout the country, including those working on the promotion and protection of the rights of LGBTI people;

7.6. authorise the publication of the report of the visit made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to the Chechen Republic in December 2017 and implement its recommendations without delay;

7.7. fully implement the recommendations of the European Commission against Racism and Intolerance (ECRI) in the context of its 5th monitoring cycle;

7.8. provide full support to the review process of Committee of Ministers Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity.”

70. On 27 June 2018 the PACE also adopted Recommendation 2138 (2018), the relevant parts of which read as follows:

“2. ... the Assembly recommends that the Committee of Ministers:

2.1. call on the Russian Federation to comply with the recommendations laid down in Assembly Resolution 2230 (2018);

2.2. in the event of the Russian Federation failing to conduct an investigation within a reasonable lapse of time, consider launching a Council of Europe investigation into the campaign of persecution against LGBTI people which took place in 2017 in the Chechen Republic.”

71. The above recommendation was based on the explanatory memorandum by the rapporteur, Mr Piet de Bruyn, the relevant parts of which read as follows:

“... I was shocked to discover that, according to testimonies, Magomed Daudov, Speaker of the Chechen Parliament had played a key role in the anti-LGBTI campaign. Human Rights Watch reported that he watched some of the victims being tortured.

29. High-level Russian officials called for an investigation and regretted that victims would not file complaints. In September 2017, Maxim Lapunov, despite security risks, filed an official complaint. The allegations of persecution could no longer be considered as rumours.

30. Maxim Lapunov is the first and only victim to officially file a complaint and to speak out publicly about the anti-LGBTI campaign. He shared with me his story in person. He is not

Chechen but lived and worked as an events organiser in the Chechen Republic for two years. He told me he was abducted and held in captivity from 16 to 28 March 2017 in a basement, where he was regularly beaten up by Chechen security forces. His captors wanted information about all the gay persons he knew. They read all the messages he had on his phone. Several men, speaking Chechen, entered one after the other the room where he was being detained. Each of them beat him up, with their hands or with plastic tubes. They would let him fall and catch his breath and then recommence the beating. After some time, he was brought to another room, where he was forced to fight with a Chechen man. He was asked to perform sexual favours on this man, which he refused, and was again severely beaten. He lost the sense of time. He told me he did not expect to survive. He was forced to record a testimony acknowledging he was gay, had to give names and addresses of family members and his fingerprints were taken.

31. Intimidations continued after his release. He was warned not to tell anyone what had happened and that the Chechen diaspora would find him if he did. He fled the Chechen Republic and joined his family in the Ural region, but he and his family members received threats from Chechnya. He then went to Moscow and he asked the Russian LGBT Network for support. He was provided with medical support, food, housing, psychological help and, in the end, assistance to leave the country.

32. Mr Lapunov told me that he met with Ms Moskalkova, Commissioner for Human Rights of the Russian Federation, in August 2017. She took his statement and sent it to the federal investigative authorities. He met several times with investigators, in the presence of his lawyers. He asked the Russian authorities for State protection but did not receive a reply. He has now left the Russian Federation since he feared for his safety ...”

72. In the relevant parts of its report on the Russian Federation adopted on 4 December 2018 (CRI(2019)2), the European Commission against Racism and Intolerance (ECRI) noted:

“109. Sexual orientation and gender identity are not explicitly enumerated as prohibited grounds in the relevant provisions of the Criminal Code, such as Articles 282, 136 and 63 (see the section above on legislation). These Articles include a reference to ‘any social group’ in their list of grounds and the Constitutional Court of the Russian Federation, in 2014, found that this term can apply to a group of individuals with a specific sexual orientation. However, this interpretation does not seem to be reflected in regular court practice and ECRI is not aware of any further case law in this respect. The UN expressed its concern about the fact that Article 63 on aggravating circumstances does not appear to have ever been applied to cases involving violence against LGBT persons, in spite of a high number of such incidents (see also the section above on violence). While the authorities informed ECRI that they do not see a need to name sexual orientation and gender identity expressly in the list of grounds of the above-mentioned Articles, ECRI always advocates for explicitly mentioning these grounds in order to avoid any legal uncertainty and to convey to the general public the clear message that these groups benefit from the protection afforded by these Articles.

...

111. ECRI recommends that the authorities amend all existing legislation in order to include explicitly the grounds of sexual orientation and gender identity in the list of protected grounds, in particular in Articles 282, 136 and 63 of the Criminal Code ...”

73. On 13 December 2018 the Organization for Security and Co-operation in Europe (OSCE) issued a report entitled “Rapporteur’s Report under the Moscow Mechanism on alleged Human Rights Violations and Impunity in the Chechen Republic of the Russian Federation” (by Professor Dr Wolfgang Benedek), the relevant parts of which read as follows:

“... Because of the general intimidation, hardly any victim dared to address a complaint to the Russian authorities, let alone the Chechen ones. According to reports relatives had to sign that they had no complaint about the work of Chechen law enforcement officers and also to pressure related victims to remain silent. However, one victim, Mr. Maxim Lapunov, did try to obtain justice. His case is illustrative for certain shortcomings of the law and practice of the Russian Federation in dealing with such allegations and should therefore be presented in more detail.

On 15 March 2017 Lapunov, an ethnic Russian, was abducted on the street while selling balloons. He was held for 12 days in the cellar of a police station, where he was beaten, and tortured. He could also witness others undergoing the same treatment. He was told that he would be killed and believes that the fact that his sister alerted the Ombudsman of the Perm region, saved him. After his release, he escaped to other parts of Russia and to Moscow where he made a formal complaint in September 2017 although he had been threatened with retribution if he complained to the authorities. Before released he had also to sign several blank declaration forms. Although he got some support by Ombudsman Moskalkova, to whom he reported his experience, no formal investigation was opened in his case. Only when the Ombudsman requested the Deputy Head of the Investigative Committee of the Russian Federation to investigate, the main Investigative Committee of the North Caucasus registered his claim and undertook a pre-investigation (pre-check). The pre-investigation ignored several requests of Lapunov like being invited to the inspection of the crime scene, and enabling him to meet the incriminated police officers, and the investigators did not interview key witnesses named by him but decided not to open criminal proceedings. The pre-investigation reportedly faced a lack of cooperation from Chechen authorities. It was not found conclusive also by the Ombudsman. A detailed report by the Russian LGBT Network reveals a number of flaws in the investigation. For example, the investigator seems not to have identified the room where Lapunov was held as he did not inspect the whole basement of the building in question.

The request of Lapunov to provide him with state protection because of threats he had received was also refused. In October 2017 he left the Russian Federation for concerns of his safety. When the decision by the investigative committee was appealed to the Yessentuki Court, the Court upheld it on formal grounds, as it does not have the power to review the content of the investigation. The request of Lapunov was also denied in the second appeal to the Stavropol Regional Court. After this exhaustion of local remedies, the case is expected to be submitted to the European Court of Human Rights. There are also efforts to bring the whole

campaign against LGBTI people to the International Criminal Court as a crime against humanity.

In a hearing before the UN Committee against Torture, a representative of the Office of the Prosecutor General claimed that no evidence was established confirming the illegal detention and confinement of Mr. Lapunov. On the other hand Mrs. Moskalkova is on record of having opined that there is a basis to open a criminal case.

Having interviewed Mr. Lapunov myself I can confirm his credibility. His story also is nearly identical to similar stories from other victims.

The Lapunov case reveals some major shortcomings of the Russian law and practice. The Ombudsman does not have the power to introduce an investigation or court procedure. The Federal Investigative Committee tends to use its local structures to investigate a case, which might not be as independent and objective as federal structures. The decision on opening a criminal case is not taken by a judge although there is a possibility to appeal it to a Court. There is insufficient protection for the victim or witnesses in particular before the criminal case is opened. The Ombudsman cannot provide state protection. The result of this situation often is impunity for the perpetrators, in particular if security services are involved. A certain solidarity of working for the same ministry plays a role, as well as the lack of proper oversight and of transparency to assure accountability.

...

Confronted with reports of the persecution of gay persons in Chechnya, the Chairperson of the Presidential Council for Civil Society and Human Rights, Mr. Mikhail Fedotov, calls those claims 'monstrous' which 'should be verified thoroughly'. However, there was no proper investigation of the alleged crimes, partly also because only one person, Mr. Lapunov, was courageous enough to bring a formal complaint. He is now abroad as he does not feel safe in the Russian Federation as did many others in the same situation. Consequently, more than 120 have left the Russian Federation, after having fled from the Chechen Republic and many of them have by now received asylum in Western European countries or Canada after the authorities and courts of these countries have found their claims substantiated.

However, the Russian authorities responsible for investigating alleged crimes against LGBTI citizens persecuted in Chechnya appear not to have lived up to their responsibilities.

...

Accordingly, there are several weaknesses in the pre-investigation procedure, which needs to be strengthened as shown by the Lapunov case or the case of the alleged extrajudicial executions. Complainants should be granted effective state protection already at this level, because they might not be able to file their complaints in fear of reprisals, which explains the lack of more cases of LGBTI persons persecuted. According to reports, state protection is very difficult to obtain, which is a problem which needs to be addressed.

...

In view of the repeated appeals and efforts by the international community as well as Russian actors and the still degrading situation of human rights in the Chechen Republic the question imposes itself whether there is a lack of political will or whether the Russian Federation has lost control over the events in Chechnya. Most observers believe that there is a lack of political will

for the sake of stability in the region. Therefore, the main issue is less new legal and procedural reforms but to strengthen the political will to properly use existing institutions and procedures to ensure accountability for human rights violations.

IV. Conclusions

The evidence clearly shows that the allegations of very serious human rights violations in the Chechen Republic of the Russian Federation have been found confirmed. This concerns in particular allegations of harassment and persecution, arbitrary or unlawful arrests or detentions, torture, enforced disappearances and extrajudicial executions. In particular, several waves of violations of human rights and abuses of persons based on their sexual orientation and gender identity in 2017 could be confirmed. New purges were identified affecting alleged drug addicts and even teenagers.

...

In conclusion, in the Chechen Republic the law is *de facto* dictated by the power and the rule of law is not effective. There appears to be a general state of impunity with regard to human rights violations by the security forces.”

74. On 9 January 2019, at its 1333rd meeting, the Committee of Ministers adopted a reply to Recommendation 2138 (2018) of 27 June 2018 (CM/AS(2018)Rec2138-prov3), the relevant parts of which read as follows:

“4. The Committee of Ministers notes with concern that hate crimes targeting LGBTI persons continue to be committed in Council of Europe member States. It points out that, in accordance with the requirements of the European Convention on Human Rights as interpreted by the Court, States have an obligation to carry out effective investigations and to take account of possible grounds of discrimination so that when such crimes are detected they do not go unpunished. States also have a positive obligation to protect the right to life of all persons placed under their jurisdiction and their right not to be subject to treatment in breach of Article 3 of the European Convention on Human Rights.

5. According to information provided by the Secretary General following his visit to the Russian Federation on 20 and 21 June 2018, the investigation into allegations of persecution of LGBTI persons in the Chechen Republic is still under way. The Committee of Ministers calls on the Russian Federation to carry out an immediate and transparent investigation into the reports of persecution of LGBTI persons in order to bring to justice those responsible and to ensure the safety of the LGBTI persons in the North Caucasus, as well as human rights defenders, journalists and other media workers reporting such violations and abuses.”

75. On 25 January 2022 the PACE adopted Resolution 2417 (2022) entitled “Combating rising hate against LGBTI people in Europe”, the relevant parts of which read as follows:

“3. The Assembly ... condemns with particular force the extensive and often virulent attacks on the rights of LGBTI people that have been occurring for several years in, among other countries, Hungary, Poland, the Russian Federation, Turkey and the United Kingdom.

...

15. Having regard to the egregious human rights violations committed against LGBTI people in the Chechen Republic (Russian Federation), which the Assembly condemned in its Resolution 2230 (2018) and Recommendation 2138 (2018) ‘Persecution of LGBTI people in the Chechen Republic (Russian Federation)’ but which continue to occur and to have a devastating impact today, the Assembly urges:

15.1 the authorities of the Russian Federation to implement fully and immediately Assembly Resolution 2230 (2018) and redouble its efforts to prosecute and punish the perpetrators of these acts and provide reparation, including compensation, to victims, in order to put an end to the persecution of LGBTI people in the Chechen Republic and ensure that there is no impunity for the perpetrators of such human rights violations.”

THE LAW

I. JURISDICTION

76. The Court observes that the facts giving rise to the alleged violations of the Convention occurred prior to 16 September 2022, the date on which the Russian Federation ceased to be a party to the Convention. The Court therefore decides that it has jurisdiction to examine the present application (see *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, §§ 68-73, 17 January 2023).

II. ALLEGED VIOLATION OF ARTICLE 3 AND OF ARTICLE 14 TAKEN IN CONJUNCTION WITH ARTICLE 3 OF THE CONVENTION

77. The applicant complained he had been subjected to ill-treatment by Chechen law-enforcement officers on account of his sexual orientation, in breach of Articles 3 and 14 of the Convention, and that no effective investigation into his complaint had been carried out. The relevant parts of the Articles read as follows:

Article 3

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Article 14

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground ...”

A. Admissibility

78. According to the Government, the application was inadmissible, as the applicant had failed to display due diligence in complaining to the domestic authorities, and had complained almost six months after the alleged ill-treatment had taken place.

79. The applicant submitted that he had not lodged his formal complaint until several months after the alleged ill-treatment owing to his vulnerability and fear of retribution from the Chechen authorities.

80. According to the Court, the obligation of diligence implies that applicants must contact the domestic authorities promptly concerning progress in the investigation – which implies the need to apply to them with diligence, since any delay risks compromising the effectiveness of the investigation – and that they must lodge their application with the Court as soon as they become aware or should have become aware that the investigation is not effective (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 264, ECHR 2014 (extracts)).

81. The obligation to apply promptly to the authorities must be assessed in the light of the circumstances of a particular case, having regard to its complexity and the nature of the alleged human rights violations at stake. The Court has held that a delay in lodging a complaint is not decisive where the applicant was in a particularly vulnerable situation, and where it was reasonable for him to wait for developments that could have resolved crucial factual or legal issues (see *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 142, ECHR 2012). The Court has also acknowledged that the psychological effects of ill-treatment inflicted by State agents may undermine victims' capacity to complain about treatment inflicted on them and may thus constitute a significant impediment to their right to redress. Such factors may have the effect of rendering the victim incapable of taking the necessary steps to bring proceedings against the perpetrator without delay (see *Mocanu and Others*, cited above, § 274, and *Mafalani v. Croatia*, no. 32325/13, § 82, 9 July 2015).

82. In the present case, the applicant was allegedly ill-treated between 16 and 28 March 2017. Although the official ill-treatment complaint was lodged with the authorities on 29 August 2017, the documents submitted show that the applicant had been preparing his case with the Committee against Torture and the High Commissioner for Human Rights of the Russian Federation since 1 June 2017 at least (see paragraph 32 above).

83. The applicant explained his initial reluctance to lodge an official complaint with reference to his vulnerability and fear of reprisals. According to him, the man whom he believed to be in a senior position in the Chechen police had personally threatened him and his family with reprisals if he complained (see paragraph 28 above). The delay was also explained by the sense of powerlessness he felt as a result of the repression of LGBTI persons by Chechen officials, and the consistent failure of the investigating authorities to respond promptly to those allegations and in a manner which would reassure the applicant and encourage him to come forward (see paragraphs 10-11, 71 and 73 above).

84. The Court notes that although international organisations and NGOs have reported massive human rights violations against LGBTI persons in Chechnya (see paragraphs 67-74 above), no other victim of the alleged "anti-gay purge" has lodged a formal complaint. Having regard to the exceptional circumstances of the case, the Court can only conclude that it was not unreasonable for the applicant to fear for his safety and seek the assistance of the Committee against Torture and the High Commissioner for Human Rights of the Russian Federation before finding the courage to lodge an official complaint. In the light of the foregoing, the Court considers that the applicant's vulnerability and his feeling of powerlessness constitute a plausible

and acceptable explanation for his delay in lodging a criminal complaint within the domestic legal system.

85. Having lodged his complaint with the competent authorities, the applicant could have legitimately expected that the investigation would be effective and could reasonably have awaited its outcome, as long as there was a realistic possibility that it was moving forward (see, *mutatis mutandis*, *Palić v. Bosnia and Herzegovina*, no. 4704/04, § 52, 15 February 2011). The applicant lodged his application with the Court on 24 May 2019, within six months from the final domestic decision in his case – the judgment of 26 November 2018 (see paragraph 58 above).

86. In the light of the foregoing, the Court considers that the application was lodged with the requisite diligence and in compliance with the six-month time-limit set out in Article 35 § 1 of the Convention. It therefore dismisses the Government's objection. Since this complaint is not inadmissible on any other grounds, it must be declared admissible.

87. Article 14 complaint is linked to the one under Article 3, and must, likewise, be declared admissible (see *Makhashevy v. Russia*, no. 20546/07, § 133, 31 July 2012).

B. Merits

1. The parties' submissions

(a) The applicant

88. The applicant maintained his complaint of ill-treatment by Chechen law-enforcement officers on account of his sexual orientation. He submitted that he had not reported his injuries to medical facilities for fear that the medical staff there would report them to the police and that would become known to the Chechen authorities (see paragraphs 28 and 35 above). He had taken photographs of his injuries shortly after his release and had shown them to several witnesses. He had given the investigators a flash drive containing photographs of his injuries at a time when he had no legal counsel and had therefore failed to document this act. Contrary to the Government's submission, the forensic medical examination had revealed injuries which could have been inflicted in the manner described by him (see paragraphs 37 and 44 above).

89. The applicant further submitted that the investigation into his allegations had been deficient. Despite his repeated requests, the investigators had refused to grant him protection to visit Chechnya and indicate the location of the facilities where he had been ill-treated. Instead, the investigators had inspected the premises in his absence and without any other witnesses present and had failed to locate and inspect the part of the basement where he had been detained. The investigators had failed to interview witnesses who could confirm his injuries and address inconsistencies in the statements of several other witnesses (see paragraphs 46-48 above). Furthermore, the investigators had relied on the Chechen police for the inquiry, compromising its independence, and had failed to investigate the discriminatory motive for the ill-treatment.

(b) The Government

90. The Government denied that the applicant had been ill-treated. In particular, his alleged injuries had not been recorded at any medical establishment and the applicant had not asked the investigators to have his photographs examined by an expert. The applicant's forensic medical

examination had not confirmed the alleged injuries either. The applicant had provided no explanation for not contacting law-enforcement authorities outside Chechnya for several months after the alleged ill-treatment.

91. Furthermore, the investigation into the applicant's allegations had been prompt and effective. The pre-investigation inquiry had comprised interviews with the applicant and about seventy witnesses, including those identified by him, an inspection of the premises where his ill-treatment had allegedly taken place, and a forensic medical examination. The allegations had been thoroughly examined and found to be unsubstantiated.

92. With regard to the complaint that the ill-treatment had been motivated by discrimination, the Government stated in general terms that there had been no violation of Article 14 of the Convention.

(c) The third parties

(i) *The European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe), the Advice on Individual Rights in Europe Centre (AIRE Centre), the International Federation for Human Rights (FIDH), the International Commission of Jurists (ICJ) and REDRESS*

93. The organisations submitted that in determining whether the threshold for torture or inhuman or degrading treatment or punishment had been met, it was relevant to consider the real or perceived sexual orientation, gender identity or expression and sex characteristics (SOGIESC) of the victim, and whether he or she belonged to a particularly vulnerable group or one which was discriminated against. Referring to international and regional legal instruments and jurisprudence, they stated that discrimination against LGBTI persons might indicate a specific motive or intention, which was crucial in assessing compliance with Article 3 of the Convention.

94. The organisations further argued that the States parties had a positive obligation under the Convention to protect individuals within their jurisdiction from violence motivated by prejudice and hatred against actual or perceived SOGIESC. In this context, in addition to the obligation to effectively investigate, prosecute, punish and remedy such acts, States had to take all reasonable steps to determine whether hatred or prejudice associated with a protected characteristic might have motivated the alleged violence. Bias in the conduct of investigations and the lack of a nuanced approach in the investigation and prosecution of such crimes resulted in impunity and the recurrence of such violence.

95. With regard to Russia, the organisations outlined widespread discriminatory laws and practices against LGBTI persons, the nature and prevalence of State-sanctioned anti-LGBTI violence, and the failure of the Russian authorities to effectively investigate such acts, including systematic violence against the LGBTI community in Chechnya. The organisations pointed to numerous reported cases of arbitrary detention and ill-treatment of men suspected of being gay in Chechnya in 2017, noting that at least 300 men had been affected by the "purge", at least 100 LGBTI people had been evacuated from Chechnya, and at least 15 had died as a result of torture, "honour killings" carried out by their family members or self-inflicted deaths.

96. The organisations called on States to comply with their heightened duty to effectively investigate the discriminatory element of torture and ill-treatment committed against LGBTI persons. They also called on the Court to recognise the LGBTI community as a particularly vulnerable group and to assert that verbal and physical attacks against LGBTI individuals could reach the minimum threshold of severity under Article 3 of the Convention when the discriminatory motive or intent behind such acts was duly considered.

(ii) The World Organisation against Torture (OMCT)

97. The OMCT outlined both a negative international obligation for States to refrain from torture and a positive obligation to prevent torture within their jurisdiction, particularly in relation to LGBTI persons. Noting that investigations by the Russian authorities into complaints of ill-treatment had consistently fallen below the Convention standards of effective investigation, the OMCT referred to statements by international bodies, including the UN Committee against Torture and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which had expressed grave concern at the Russian authorities' flagrant failure to investigate torture and other serious human rights violations committed by law-enforcement officials against LGBTI persons in Chechnya, including during the so-called "anti-gay purge" in 2017.

(iii) The Equal Rights Trust

98. The Equal Rights Trust commented on the culture of endemic discrimination on the basis of sexual orientation throughout Russia. It noted that bias-motivated ill-treatment of sexual minorities was often rooted in discriminatory social norms around gender and sexuality which made such minorities particularly vulnerable to ill-treatment and required a special response.

99. Referring to the jurisprudence of the Court, the Inter-American Commission on Human Rights and the Committee against Torture, the third party stressed that the State's obligation to conduct a meaningful investigation into a possibly discriminatory motive behind the ill-treatment was "indispensable". The authorities had to do everything reasonable to make reasoned, impartial and objective decisions on the discriminatory motive, and could not omit facts that might indicate that the ill-treatment had been motivated by discrimination on the basis of sexual orientation.

(iv) The European Human Rights Advocacy Centre (EHRAC) and Human Rights Watch (HRW)

100. The organisations submitted that the case should be considered in the light of the persistent and systematic failure of the Russian authorities to conduct effective investigations in Chechnya. They referred to the numerous Court's judgments on human rights violations in Chechnya, and to the hundreds of cases that remained under the supervision of the Committee of Ministers. In this regard, reference was made to *Aslakhanova and Others v. Russia* (nos. 2944/06 and 4 others, 18 December 2012), in which the Court had found a systemic failure to investigate enforced disappearances and had provided clear guidance on urgent measures to be taken. At the time of the submissions, those measures had not yet been taken.

101. The practice described above – ineffective investigations into serious human rights violations, committed by State agents – had created a climate of impunity that allowed and

encouraged such violations against an ever-widening circle of victims. After the “purge” in 2017, unlawful detentions, beatings and humiliations of suspected LGBTI persons had continued in 2018-2019. HRW pointed out that when Chechen residents had complained of abuses, even informally on social media, the authorities had subjected them to public humiliation, forcing the complainants to publicly apologise to the Chechen leadership for their allegedly false statements and to recant their actions. The Chechen authorities had also systematically targeted human rights defenders, forcing them out of Chechnya, and thus further denying victims access to a remedy.

2. *The Court’s assessment*

(a) Alleged violation of the substantive limb of Article 3

(i) Whether the applicant was subjected to ill-treatment by State agents

102. For a summary of the relevant general principles concerning the establishment of facts in cases where facts are disputed by the parties, see *El-Masri* (cited above, §§ 151-53, ECHR-2012), and *Al Nashiri v. Poland* (no. 28761/11, §§ 393-96, 24 July 2014); for the standard of proof under Article 3 of the Convention, see *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 85-90, ECHR 2015), with further references.

103. According to the applicant, between 16 and 28 March 2017 he was unlawfully detained at the Chechen police headquarters and ill-treated by State agents on account of his sexual orientation. According to the Government, his allegations were unfounded (see paragraph 90 above). However, the Government neither advanced any theories explaining those allegations nor provided an alternative plausible account of where the applicant had been during the period in question (compare *S.T. and Y.B. v. Russia*, no. 40125/20, § 84, 19 October 2021).

104. The applicant has on several occasions and in different circumstances given a detailed and consistent account of his abduction and ill-treatment. His statements have been judged credible by numerous interlocutors, including Russian officials, NGO staff and foreign experts (see, for example, paragraphs 32, 35, 71 and 73 above), who all considered that these allegations called for an investigation. The applicant’s sister swiftly raised the alarm about his disappearance and an investigation into that was opened (see paragraph 31 above). The forensic medical examination of the applicant’s injuries conducted on 6 October 2017 found two scars on his hands which were consistent with the allegations that his hands had been beaten with a PVC pipe during his detention (see paragraphs 37 and 44 above). The psychological report on the applicant of 6 November 2020 found that he suffered from PTSD as a result of the traumatic events of March 2017 (see paragraph 61 above). There are other elements lending credibility to the applicant’s account, such as the death of a person whom he saw in detention in life-threatening circumstances (see paragraphs 26 and 59 above), geolocation information about his mobile phone in March 2017, and his own photographs of his injuries which were taken shortly after his release (see paragraphs 29 and 57 above). The applicant’s statements are corroborated by the information collected by the press and public bodies about the so-called “anti-gay purge” of 2017, and identify the same patterns which can be seen in the treatment of other victims (see paragraphs 7-9, 71 and 73 above).

105. The Court must also take into account the general human rights situation in Chechnya (compare with the events described in *A.A. and Others v. Russia* [Committee], no. 37008/19, 14 December 2021, concerning the same period in Chechnya), as well as various reports on the rights of LGBTI persons in the Chechen Republic (see paragraphs 9-12, 71-73 above), referring specifically to the gross human rights violations committed against LGBTI persons in 2017, of which the applicant claimed to have been a victim (see paragraphs 10-11 and 71-73 above).

106. Considering the above, the Court finds that the applicant has made out a prima facie claim that between 16 and 28 March 2017 he was detained by the police in Grozny and ill-treated. The Government's failure to provide convincing explanations capable of refuting these allegations leads the Court to conclude that the Government have failed to discharge their burden of proof to prove the contrary. The Court concludes that the applicant was detained and subjected to ill-treatment by State agents as alleged.

(ii) Legal classification of the treatment

107. As to the legal classification of the treatment, the Court observes that the applicant provided a clear and detailed account of his ill-treatment between 16 and 28 March 2017 when he was held incommunicado in the basement of the Chechen police headquarters solely on account of his homosexuality. He was entirely vulnerable *vis-à-vis* the police officers who beat him up on several occasions by kicking and hitting him, sometimes with PVC pipes. Almost six months after the ill-treatment, the applicant displayed injuries that were recorded in the forensic medical examination (see paragraphs 37 and 44 above), which confirmed that they could have been inflicted on the applicant during the period in question and in circumstances consistent with his explanations.

108. The applicant's physical injuries were aggravated by psychological violence. He was forced to disclose the names of homosexual men to the police officers and witnessed the beating of one of them (see paragraphs 21, 22 and 25 above). He was subjected to discriminatory remarks and insults by the perpetrators, who threatened him with rape and sexual abuse. He was also repeatedly forced to give details of his sexual encounters to various individuals, sometimes while being filmed (see paragraphs 25 and 28 above). Prior to his release he was threatened with reprisals, to deter him from pursuing criminal proceedings.

109. The combination of the above factors aroused in the applicant feelings of fear, anguish and inferiority that persisted even after his release, manifesting themselves in "defined tremors" across his body in response to his memories of the events (see paragraph 37 above), persistent anxiety and PTSD (see paragraph 61 above).

110. The Court notes that the treatment to which the applicant was subjected, while entirely under the authorities' control, was not made strictly necessary by his conduct. Thus, having regard to the material before it, the Court finds that the ill-treatment to which the applicant was subjected by State agents between 16 and 28 March 2017 amounted to torture (compare *Abdulkadyrov and Dakhtayev v. Russia*, no. 35061/04, § 70, 10 July 2018). There has accordingly been a violation of the substantive limb of Article 3 the Convention.

(b) Alleged violation of the procedural limb of Article 3

111. Keeping in mind the overall human rights context in Chechnya, and the situation with LGBTI persons in particular, the Court turns to the assessment of whether the investigation into the applicant's ill-treatment by State agents was compatible with the requirements of the procedural obligation under Article 3 of the Convention.

112. The State's procedural obligations under Article 3 of the Convention in cases of violent incidents triggered by suspected discriminatory attitudes require that in their investigation into the matter, State authorities have an additional duty to take all reasonable steps to unmask any bias motive (see *Makhashevy*, cited above, §§ 144-46, and *Sabalić v. Croatia*, no. 50231/13, §§ 93-98, 14 January 2021), since prejudice-motivated crimes cannot be treated on an equal footing with ordinary cases that do not carry such overtones. A failure to make such a distinction may constitute unjustified treatment irreconcilable with Article 14 of the Convention (see *Begheluri v. Georgia*, no. 28490/02, § 173, 7 October 2014).

113. The Court established in *Aslakhanova and Others* (cited above, §§ 219-21) that there had been a systemic failure to investigate unacknowledged detentions and disappearances perpetrated in Chechnya between 1999 and 2006, but also beyond that period. It also adjudicated other cases of disappearances in the region after the *Aslakhanova and Others* judgment (see, among the latest examples, *A.A. and Others v. Russia*, cited above, and *Gasanova and Others v. Russia* [Committee], no. 45900/19, 10 January 2023). In addition, the Committee of Ministers of the Council of Europe has reacted over the years (see, among the latest decisions, CM/Del/Dec(2021)1411/H46-31 and CM/Del/Dec(2022)1436/H46-24), and numerous reports on human rights violations in Chechnya have been prepared by international organisations and NGOs (see, among other authorities, *Kutayev v. Russia*, no. 17912/15, § 100, 24 January 2023). Taking these factors into consideration, the Court recognises that the systemic problem extends not only to cases of disappearances, but more generally to the ineffectiveness of investigations in Chechnya carried out in respect of complaints under Articles 2 and 3 of the Convention involving allegations against State agents.

114. The Court reiterates that in cases of credible allegations of ill-treatment, an inquiry alone is not capable of leading to the punishment of those responsible, and it is incumbent on the authorities to open a criminal case and conduct a fully-fledged criminal investigation (see *Lyapin*, cited above, §§ 129 and 132-36, and *Samesov v. Russia*, no. 57269/14, §§ 57-59, 20 November 2018).

115. Turning to the circumstances of the case at hand, the Court notes that the investigators failed to take important steps to secure evidence of the applicant's abduction and ill-treatment. For instance, they did not identify and question officers who had been on duty at the entrance to the Chechen police headquarters on the days when he had been abducted and released. They also failed to request geolocation information about the applicant's mobile phone, and about the phones of Mr T. and Mr E.Ts., which could have determined their location during the period in question (see paragraph 31 above). In addition, the investigators failed to examine Officer M.B.'s mobile phone, allegedly used to film the applicant (see paragraphs 28 and 34 above). Most importantly, despite the applicant's claim that he could identify the senior official in the Chechen police headquarters (see paragraphs 20, 28 and 35 above), the investigators made no attempt to

identify and question that person. The applicant has been denied protection, despite his numerous requests in that regard.

116. The investigators asked the Chechen police to carry out operational-search activities and otherwise assist in the investigation (see paragraphs 28, 31, 33, 36, 40 and 46 above). The witnesses were questioned at the police headquarters, and the police officers had access to the inquiry and took part in identifying the witnesses and bringing them in for interviews, despite the applicant's allegations that they had been directly involved in his ill-treatment. The lack of independence of the investigation, in the context of the fear of reprisals which was prevalent in Chechnya, was bound to compromise the inquiry's results.

117. The foregoing considerations are sufficient to enable the Court to conclude that the investigation into the applicant's allegations of ill-treatment was ineffective, as it was plagued by serious shortcomings, lacked independence and failed to properly take into account and investigate possible discriminatory motives.

118. There has accordingly been a violation of the procedural limb of Article 3 of the Convention.

(c) Alleged violation of Article 14 in conjunction with Article 3

119. The Court notes that the applicant was subjected to targeted violence solely on account of his sexual orientation (see paragraphs 106 and 107 above), which is an aggravating factor in the national criminal legislation and is characterised as a hate crime in the relevant international material (see paragraphs 62-63 above, and Recommendation CM/Rec(2010)5 cited in paragraph 66 above). The Court, therefore, concludes that the violation of the applicant's rights under the substantive limb of Article 3, as found above, was motivated by homophobic attitudes.

120. In the domestic proceedings in the applicant's case, it does not appear that any reasonable steps were taken to examine the role which homophobic motives might have played in the applicant's ill-treatment. The investigators made no efforts to verify these allegations, other than asking witnesses whether they had been aware of the applicant's sexual orientation and asking the Chechen police officers whether they had ill-treated homosexual men. Given the level of intolerance towards LGBTI persons in Chechen society, which was confirmed by senior government officials (see paragraphs 10-11, 71 and 73 above), the Court doubts that such an approach could have yielded reliable answers. The repeated refusals to open a criminal case further contained no assessment of the possible homophobic motives behind the ill-treatment and provided no explanations as to the conclusion that no such motives had existed (see, *mutatis mutandis*, *Makhashevy*, cited above, § 179, and *Begheluri*, cited above, § 179).

121. In light of the above, the Court concludes that there has been a violation of Article 14 in conjunction with Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLES 5 AND 14 OF THE CONVENTION

122. The applicant complained that he had been unlawfully detained by State agents between 16 and 28 March 2017 on account of his sexual orientation, in violation of Articles 5 and 14 of the Convention, the relevant part of Article 5 reads as follows:

Article 5

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save ... in accordance with a procedure prescribed by law ...

123. Being master of the characterisation to be given in law to the facts of the case (see *Bouyid*, cited above, § 55) the Court will examine the applicant’s allegations solely under Article 5 of the Convention.

A. Admissibility

124. The Government stated that the complaint should be rejected as unfounded.

125. The applicant reiterated his complaint.

126. The Court notes that this complaint relates to the same issues as those examined above under Articles 3 and 14 of the Convention. It should therefore be declared admissible.

B. Merits

127. The Court has found on several occasions that unacknowledged detention is a complete negation of the guarantees contained in Article 5 of the Convention and discloses a particularly grave violation of its provisions (see *S.T. and Y.B. v. Russia*, cited above, § 91).

128. It has been established that between 16 and 28 March 2017 the applicant was detained by State agents (see paragraphs 107 and 110 above). The applicant’s arbitrary detention had no legal grounds and was not officially acknowledged.

129. There has accordingly been a violation of Article 5 of the Convention in respect of the applicant.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

130. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

131. The applicant asked the Court to make an award in respect of non-pecuniary damage at its discretion. He did not submit a claim for costs and expenses.

132. The Government contested that any award should be made.

133. Having regard to the documents in its possession and its case-law, the Court considers it reasonable to award the applicant 52,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that it has jurisdiction to deal with the applicant’s complaints, as they relate to facts that took place before 16 September 2022;

2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 3 under both its substantive and procedural limbs, and of Article 14 in conjunction with Article 3 of the Convention;
4. *Holds* that there has been a violation of Article 5 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 52,000 (fifty-two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 12 September 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Pere Pastor Vilanova
President