

**SUBMISSION FROM THE RUSSIAN JUSTICE INITIATIVE, THE EUROPEAN HUMAN RIGHTS
ADVOCACY CENTRE AND HUMAN RIGHTS CENTRE MEMORIAL
TO THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE
CONCERNING AMNESTIES AND LIMITATION PERIODS IN CASES FROM THE *KHASHIYEV* GROUP**

14 SEPTEMBER 2012

A. Introduction

1. The present submission is made under Rule 9 (2) of the Committee of Ministers Rules by the following non-governmental organizations: Russian Justice Initiative, the European Human Rights Advocacy Centre and the Memorial Human Rights Centre (hereinafter, “the signatory NGOs”) in the context of *general measures* relevant to the execution of the over 150 judgments in the *Khashiyev* group.
2. The signatory NGOs have brought over 85% of the cases in the *Khashiyev* group concerning grave human rights abuses in the North Caucasus (NC) currently on the agenda of the Committee of Ministers. This submission focuses on **two issues** relevant to the issue of accountability for human rights violations established by the European Court of Human Rights (the Court) in cases from the *Khashiyev* group: the application of **amnesty provisions** and **statutes of limitation** in investigations where perpetrators are known. **The Russian Government on 31 August 2012 submitted a report to the Committee covering these same issues.** In our view, the application of amnesty provisions and statutes of limitation, taken together, will corrode the possibility of legal accountability for crimes committed in the North Caucasus via termination of domestic investigations against suspected perpetrators of torture, extra-judicial killing and disappearances.
3. The present submission has four main sections:
 1. **THE APPLICATION OF AMNESTY LEGISLATION IN CASES FROM THE *KHASHIYEV* GROUP, ANALYZED IN RELATION TO TWO SPECIFIC CASES.** The existence and application of amnesty legislation for crimes committed in the North Caucasus is not a new phenomenon: two separate amnesty laws were passed in 2003 and 2006 by the Russian State Duma. In our experience to date, the domestic authorities have applied amnesty provisions in only a few cases from the *Khashiyev* group. However, in our view, this is due chiefly to the fact that very few perpetrators have actually been established and/or located by the domestic authorities, much less charged with specific crimes. However, in *Sadykov v Russia*— the only case in which a perpetrator has been brought into custody and investigated since the ECtHR judgment entered into force—amnesty provisions were recently applied and the criminal investigation was terminated.
 2. **THE APPLICATION OF STATUTES OF LIMITATION TO CASES FROM THE *KHASHIYEV* GROUP.** Similar to the application of amnesty legislation thus far, to our knowledge, statutes of limitation have been applied in only a handful of investigations. However, as the signatory NGOs have previously pointed out,¹ the application of encroaching limitation periods for the majority of crimes at issue in the *Khashiyev* group remains a serious concern—one echoed by the Committee of Ministers at its December 2011 and June 2012 DH meetings—not least because the almost complete absence of prosecutions carried out by the Russian authorities thus far has made it difficult to assess the authorities’ approach in practice to this issue. At present, we wish to draw the Committee’s attention to **recent correspondence received from the Investigative**

¹ The importance of this issue, including emerging practice of application of statutes of limitation, has been raised in previous submissions to the Committee. See submission by the signatory NGOs of 22 November 2011, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1887611&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

Committee regarding the issue of the application of statutes of limitation to *Khashiyev* group cases, which in our **view expresses the position that statutes of limitation will indeed be applied**. The Russian Government's submission to the Committee of 31 August 2012 also acknowledges the same.

3. AMNESTIES AND LIMITATION PERIODS IN THE CASE-LAW OF THE ECtHR. We present relevant international standards concerning the application of amnesties and prescription periods from the case-law of the European Court of Human Rights, and also relevant commentary on the qualification of torture from the United Nations Committee Against Torture.

4. SUGGESTED QUESTIONS TO THE RUSSIAN DELEGATION.

1. AMNESTY LEGISLATION

4. In the view of the signatory NGOs, the application of amnesty provisions and statutes of limitation are symptomatic of overall investigative ineffectiveness. In fact, as we explain in detail below, **the issue of amnesties should not obscure the larger problem: that the authorities refuse to charge perpetrators with serious crimes**. If and when perpetrators face serious charges, they will likely avoid criminal responsibility due to the application of the prescription period.

5. We explain this dynamic in more detail in the following contexts:

- We briefly analyze domestic amnesty legislation and conclude that **the crucial problem is not the terms of the amnesty legislation, but rather the qualification of crimes for which perpetrators are officially charged** (Section B);
- We illustrate the above problem by drawing attention to concrete cases in which criminal investigations have been instigated by the domestic authorities but subsequently terminated due to the application of amnesty provisions **to crimes which would have deserved a more serious qualification** in domestic criminal law if the investigation had been effective (Section C);
- We present further details on the **procedure** for the application of amnesty provisions, which we believe are not applied with due regard for the **rights of victims** (Section D).

B. The Amnesty Legislation in Brief

6. In 2003 and 2006, the Duma adopted Amnesty Acts in respect of federal servicemen and members of the armed separatist movement who *did not commit serious crimes* during the antiterrorist operation in the Southern Federal District. The Explanatory Regulations of 2003 and 2006 provide that amnesties should be applied within 6 months from the date of entry into force of the amnesty *or* applied at any time to acts committed between 12 December 1993 to 6 June 2003 in case of the 2003 legislation, and from 15 December 1999 to 22 September 2006 in the case of the 2006 legislation. In practice, therefore, the legislation provides for the **indefinite application of amnesty provisions** to crimes committed by state agents in the North Caucasus from 1993 to 2006, therefore potentially affecting investigations in the *Khashiyev* group as a whole.

7. Both the 2003 and 2006 legislation explicitly exclude from the ambit of the amnesty persons who committed serious crimes such as, *inter alia*, **murder, intentional infliction of a grave injury, kidnapping, illegal deprivation of liberty, trafficking in human beings, rape, outrages upon bodies of the deceased and their burial places, and genocide**.

8. However, it should be noted that while the 2006 legislation excludes the crime of **excruciation** (*устязание*)² from its ambit, the 2003 legislation *does not exclude it*. Additionally, neither piece of legislation excludes the crime of **exceeding official powers through the use of violence or the threat of its use**³ which may in practice be used to qualify crimes which would fall under the concept of torture as defined in international law. Indeed, this is particularly relevant for the investigation in *Sadykov v Russia*, discussed in more detail below.
9. Nonetheless, the signatory NGOs do not call into question the objectives of the Russian amnesty legislation which excludes from its reach some of the most serious crimes committed during the antiterrorist operation. Presumably, the drafters of the amnesty legislation intended that **prosecutions or other forms of criminal liability** for serious human rights violations committed by rebel groups or federal forces **should not be rendered impossible by the application of amnesty provisions**.
10. In fact, the main threat to accountability vis-à-vis amnesty legislation is not the application of amnesty provisions, but the **qualification** of crimes committed by identified perpetrators. In other words, charges are “down-graded” in order to be covered by the amnesty legislation, even in the face of evidence indicating that the crime deserves a more serious qualification.

B. Practice of application of amnesty in cases from *Khashiyev* group

11. The application of amnesty provisions in the two cases below is only one of a plethora of disturbing investigative actions, which, when considered **as a whole**, eroded the possibilities for legal accountability. In both cases the authorities dropped charges of serious crimes against established perpetrators, charging them instead with less serious crimes covered by amnesty legislation.

Sadykov v. Russia

12. In its report of August 2012, the Government states that in regard to the two perpetrators identified in the case of *Sadykov v Russia* that “the act of amnesty was applied lawfully and was well-founded according to the criteria in the legislation and resolutions of the State Duma.”⁴ The signatory NGOs do not dispute the lawfulness of the application of the amnesty provisions in this case. Rather, we call into question the **deliberate down-grading of charges against suspected perpetrators, which has resulted in impunity for various forms of liability for crimes which amounted to torture in the opinion of the European Court**⁵ and under the international law definition of torture.
13. In 2006 and in 2011 the authorities charged **Mr. Z**, allegedly involved in the cutting off the applicant’s ear, as an accessory⁶ to **intentionally inflicting a grave injury (Article 111 CC)**,⁷ a crime to which amnesty legislation does not apply, as well **exceeding official powers through the use of violence**

² The crime of excruciation (Art. 117) is often equated with the crime of torture. However, “the use of torture” appears as a mere aggravating circumstance to the crime of excruciation. Currently, Russian law does not criminalize torture per se, for which it has faced criticism. See, for example, Russian Federation Fifth Periodic Report on the Implementation of UNCAT, Submission from TRIAL (Swiss Association against Impunity) to the Committee against Torture, April 2012, available at: [http://www.trial-ch.org/fileadmin/user_upload/documents/CAJ/Rapports_alternatifs/CAT/Russia - CAT - Alternative Report - April 2012_2 .pdf](http://www.trial-ch.org/fileadmin/user_upload/documents/CAJ/Rapports_alternatifs/CAT/Russia_-_CAT_-_Alternative_Report_-_April_2012_2_.pdf).

³ Article 286 (3).

⁴ See Russian Government’s Submission of 31 August 2012, page 3.

⁵ The European Court found that “the applicant was kept in a permanent state of physical pain and anxiety owing to his uncertainty about his fate and to the level of violence to which he was intentionally subjected by agents of the State throughout the period of his detention at the Oktyabrskiy VOVD. It is therefore satisfied that the accumulation of acts of violence inflicted on the applicant and the exceptionally cruel act of amputation of his left ear amounted to torture within the meaning of Article 3 of the Convention. Indeed, the Court would have reached this conclusion on either of these grounds taken separately.” *Sadykov v Russia*, para. 237.

⁶ Art. 33 CC sets out the modes of participation in a crime. Mr. Z. was charged under subparagraph 1 (accomplice liability) and subparagraph 5 (accessory liability).

⁷ The decrees of the investigators containing the charges against the suspect are on file with the applicant’s representative, as part of the majority of the case materials. The suspect’s full name is also indicated in the case materials.

(**Article 286(3)**), a crime covered by the amnesty. As the European Court describes in detail, **Mr. Z.** successfully evaded arrest after being charged in 2006, which the Court characterized as a “remarkable shortcoming” explained only by “extreme unprofessionalism on the part of the investigating authorities and their evident unwillingness to investigate the offences against the applicant and to bring those responsible to justice.”⁸ It should be noted that Russia’s obligation under Article 3 ECHR to investigate acts of torture entails a responsibility not only to bring to justice those actors who directly inflicted the pain and suffering, but also those who bear accessory liability for those acts.

14. After **Mr. Z’s** arrest in September 2011 an investigation into the charge of intentional infliction of a grave injury was dropped on 12 December 2011 on the grounds of the absence of the components of a crime in his actions.⁹ The authorities formally charged **Mr. Z.** under the crime of “exceeding official powers through the use of violence” (Article 286(3) CC), to which the amnesty legislation applies. The criminal proceedings against **Mr. Z.** were subsequently dropped on 15 December 2011 due to the application of the 2006 amnesty act, as reported by the Government in its submission to the Committee of 17 May 2012.¹⁰
15. From examination of the case materials in possession of the applicant’s representatives,¹¹ the dropping of the charges against **Mr. Z.** as an accessory to the intentional infliction of a grave injury is **unjustifiable given the evidence contained in several testimonies from victims and witnesses in the case.** For example, both the applicant as well as his cellmate at the time of the incident testified that **Mr. Z.,** who was serving as security guard at the VOVD, permitted a group of intoxicated men to enter the VOVD and unlocked the door to the applicant’s cell. One of the men was in the possession of a hunting knife, which **Mr. Z.** must have seen, and **said that they had come to get “an ear for a charm.”** **Mr. Z.** told them that “they could do what they wanted with Sadykov” but said not to touch his cellmate, who was an ethnic Russian.
16. This testimony is cited in the decision of 12 December 2011 regarding the dropping of the charge against **Mr. Z** of accessory liability in intentional infliction of a grave injury. **However, the testimony is dismissed as “subjective” and “unreliable” by the investigator, while the testimony of Mr. Z. himself that he did not know of the principal’s criminal intentions is deemed credible.**
17. In the opinion of the applicant’s representatives, this testimony—the content of which by and large had not changed over a period of 10 years of on-and-off interrogations—constituted sufficient evidence to *formally charge Mr. Z* on charges of aiding and abetting the crime of intentional infliction of a grave injury. **Therefore, the case should have—at the very least—been submitted to the court for further examination.**
18. Amnesty provisions in *Sadykov v Russia* were also applied earlier to another suspected perpetrator (one of a significant number of offenders identified by **Mr. Sadykov** and his cellmate) by the name of **Mr. B.**¹²
19. On 16 March 2007, **Mr. B.** was charged with abuse of official powers through use of violence or the threat of its use (Article 286(3) CC), a crime covered by the amnesty act. In March 2007 the criminal investigation into his actions was discontinued but for technical reasons did not enter into force. Recently **Mr. B** requested the court to issue a procedural decision regarding the discontinuance of charges against him due to the application of the amnesty act, which was issued on 21 March 2012.¹³

⁸ *Sadykov v Russia*, judgment of 7 October 2010, Para. 248.

⁹ A copy of the decision of 12 December 2011 is on file with the applicant’s representatives.

¹⁰ See Russian Government’s Submission of 15 May 2012, part 1, page 6, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1940651&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

¹¹ Russian Justice Initiative, one of the signatory NGOs.

¹² The full name of the suspect is indicated in the case file.

¹³ See Russian Government’s Submission of 15 May 2012, part 1, page 4.

The applicant and his representatives have no information about whether Mr. B. was ever charged with crimes exempt from the amnesty legislation.

20. The information contained in the case file indicates that **Mr. B.** himself committed acts of torture against the applicant: as head of the IVS¹⁴ at the Oktyabrskiy VOVD in Grozny at the time of the applicant's detention, Mr. B. was one of the officers who on 5 March 2000 on the premises of the VOVD severely beat the applicant, cut his hair and forced him to chew and swallow it, and pressed a red-hot nail into his hands.¹⁵ **We consider that the charges against Mr. B. were deliberately down-graded in order to be caught by the amnesty act. In addition to the charge of abuse of power through the use of violence, Mr. B. should have been formally charged with a more serious crime¹⁶ not covered by the amnesty act of 2006.**
21. To the applicant's knowledge, the investigation in the applicant's case is ongoing and no new charges have been brought against **Mr. Z.** or **Mr. B.**

Akhmadov and Others v. Russia

22. The case *Akhmadov and others v Russia* concerns the killing of the applicants' relatives and the subsequent mutilation of their bodies by explosion. The civilian investigators established the identity of the servicemen, including the head of the division, Mr. Sochkov, involved in the operation which resulted in the death of the applicants' relatives. In April and July 2005 criminal proceedings against Mr. Sochkov were terminated on charges of **kidnapping, homicide due to excessive force used during detention, and abuse of dead bodies** on the grounds of an absence of the constituent elements of a crime. Additional charges of **aggravated abuse of power** were also terminated due to the application of the 2003 amnesty legislation.¹⁷
23. On 6 July 2009 the Court's judgment in *Akhmadov v Russia* became final.
24. On 7 July 2011 the Military Investigative Department of the Military Investigative Directorate of the Southern Military District again dropped serious charges against Mr. Sochkov on the grounds of the absence of the components of a crime. Additionally, **a prescription period was applied to the charge of aggravated abuse of power.** On the same day the investigation into the applicants' case was terminated. Most recently, the applicant appealed the decision of the investigator on dropping the charges and applying the prescription period, but no result has been obtained to date.
25. From examination of the case materials, there was evidence enough to charge Mr. Sochkov at least with causing death by negligence, if not with murder per se. The case materials show that the vehicle upon which Mr. Sochkov's unit opened fire posed no threat to the safety of the unit and that the use of lethal force in the circumstances was blatantly disproportionate. In fact, the evidence shows that Mr. Sochkov's unit **opened lethal gunfire on the victims' vehicle from behind, when the victims could not even see the soldiers and had no shown no signs of posing any threat to the safety of the military personnel.**¹⁸

C. The procedure for applying and appealing application of amnesty provisions in domestic law

¹⁴ Temporary detention facility (Изолятор временного содержания).

¹⁵ See *Sadykov v Russia*, para. 13.

¹⁶ For example, under Art. 117 (excruciation); Article 111(intentional infliction of a grave injury); Article 302(2) (coercion to testify through use of torture).

¹⁷ The letter of 9 April 2004 and statement of 21 July 2005 signed by the deputy of the military prosecutor of military unit 20102 indicating that proceedings against Mr. Sochkov have been terminated due to the 2003 amnesty act, are attached to the case file.

¹⁸ For details see Attachment 1, page 7 (a copy of the applicant's complaint under Art 125 of the CCP of 6 July 2012 to the Grozny Garrison Court).

26. In its submission of August 2012, the Government states that “in case of application of the act of amnesty, effective mechanisms, including judicial, for the protection of human rights, exist at national level.”¹⁹
27. However, the signatory NGOs believe that several procedural features of the application of amnesty legislation may compromise victim’s rights and fail to ensure the appropriate level of public scrutiny over the conduct of investigations into serious crimes. These features include the **discretionary application of amnesty provisions and the lack of a requirement to weigh in consideration of the rights of victims**. Although there is no explicit mention of victim’s rights in the current amnesty legislation, the Constitutional Court in a ruling from 2001 articulated the principle that relief from criminal responsibility provided by an amnesty should not undermine the competing constitutional interests and rights of other persons.²⁰

Possibility for challenging application of amnesty legislation

28. The ruling of the Constitutional Court of 5 July 2001 establishes that the amnesty legislation itself can only be challenged in the Constitutional Court.²¹ A decision to apply amnesty provisions in a specific case can be challenged by way of an appeal lodged under Articles 124 or 125 CCP; or, if the decision to apply the amnesty was taken by a judge, by way of appeal to a higher judicial instance. We note in this regard the limited positive effect the Article 125 CCP remedy has had on the outcome of investigations in cases from the *Khashiyev* group.²²

Regulation of the application of the amnesty legislation in domestic law

29. The Explanatory Regulations to the 2003 and 2006 legislation and domestic criminal procedure provide for the application of amnesties by the heads of correctional institutions, supervising prosecutors, investigators and judges, all of whom enjoy a wide margin of appreciation in applying amnesty provisions and in discontinuing investigations after the application of an amnesty.
30. For example, an investigator may refuse to open a criminal investigation, terminate an ongoing investigation, suspend an investigation, or decline to submit a completed investigation for judicial examination at any stage after an amnesty has been declared.²³ A judge may apply amnesty provisions without holding a hearing on the application of the amnesty. If the possibility of applying amnesty provisions is raised at the trial stage, the judge is obliged to bring the trial to conclusion and to issue a decision before applying the amnesty.²⁴
31. The application of amnesty provisions **is obligatory** for law-enforcement and judicial officers when a suspect has requested the application of the amnesty to an eligible criminal charge. If the suspect or accused objects to the application of amnesty provisions, the criminal case shall proceed in the usual manner.²⁵

¹⁹ See Russian Government Submission of 31 August 2012, page 2.

²⁰ Ruling of the Constitutional Court of 5 July 2001, “On examination of constitutionality of the decree of the State Duma of 28 June 2000 № 492-III ГД “On amendments in the decree of State Duma “On amnesty in connection to 55 anniversary of victory in Great Patriotic War of 1941-1945 in connection with the request of Sovetskiy district court of the city of Chelyabinsk and a number of citizens.” N 11-II, para 4.

²¹ Ibid, para 2.3

²² The effectiveness of the Article 125 CCP procedure to address investigative failings in this group of cases has been examined extensively. For example, see Russian Justice Initiative, Submission on 3 Cases, November 2010, available at:

<https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD%282010%29587&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

²³ Art 239 of the CCP.

²⁴ Art 302 of the CCP.

²⁵ Art 27 of the CCP.

Other means of reparation available to victims

32. The application of amnesty provisions does not exempt a perpetrator from other forms of responsibility, such as administrative and civil liability.²⁶ Compensation may be sought for the harm inflicted through civil law procedures.²⁷ We would immediately note in this regard, however, that this remedy does not satisfy the obligation to provide redress in the form of an effective investigation.
33. The signatory NGOs submit that, in light of investigative dynamics in the majority of cases in the *Khashiyev* group, the discretionary power conferred upon investigators and judges to apply amnesty provisions without any consideration of the rights of the victim vis-à-vis the investigation as a whole, **puts victims at a disadvantage.**

2. THE APPLICATION OF STATUTES OF LIMITATION TO CASES FROM THE *KHASHIYEV* GROUP: RECENT CORRESPONDENCE AND THE GOVERNMENT'S SUBMISSION OF AUGUST 2012

34. On 17 May 2012, the signatory NGOs addressed a letter²⁸ to the Head of the Investigating Committee, Mr. Aleksandr Bastrykin, requesting an answer to the following questions concerning the issue of the application of statutes of limitation:
- a. Will the existing legal provisions concerning limitation periods be applied to cases from the *Khashiyev* group?
 - b. In the case of the expiry of the limitation period in cases from the *Khashiyev* group based on existing legislation, will prosecutions continue to be sought against those responsible for crimes committed against the applicants on the basis of the having committed crimes against humanity or war crimes?
 - c. When does the limitation period begin running in cases of enforced disappearances?
 - d. To inform the undersigned organizations in their capacity as representatives of the applicants of all cases from the *Khashiyev* group in which cases limitation periods have been applied.
35. In early July we received a response²⁹ from the Investigative Committee, from which we inferred that no exceptions to the application of limitation periods will be made in cases from the *Khashiyev* group. In addition to information provided by the Government August 2012 submission, the letter also states the following:
- a. In order for prescription periods *not* to apply, crimes will have to be qualified as those explicitly listed in Article 78 CC, such as **genocide, ecocide, and planning or waging an aggressive war**, to which statutes of limitation do not apply under domestic law. The letter makes no mention of the International Convention on the Non-Applicability of Statutes of Limitation for War Crimes and Crimes Against Humanity, to which Russia is a party.³⁰ The letter also does not provide an answer to the question posed concerning the pursuance of prosecutions on the basis of crimes against humanity or war crimes.
 - b. The expiry of the limitation period is a **compulsory ground for annulling criminal responsibility.**

²⁶ See for instance Explanatory Resolution of Duma of 24 1997.

²⁷ See for instance Explanatory Resolution of Duma of 19 April 2006.

²⁸ See Attachment 2. Joint submission of Russian Justice Initiative, the Memorial Human Rights Centre and Centre for International Protection.

²⁹ See Attachment 3. Response from the Investigative Committee of 26 June 2012.

³⁰ See submission by the signatory NGOs of 22 November 2011, *supra n. 1*, at paras. 26-30.

- c. The letter also states that thus far, no prescription periods have been applied to charges concerning disappearances, kidnapping and deprivation of liberty. The letter does not provide an answer to our question concerning limitation periods in disappearance cases.

36. The Government's submission of August 2012 also plainly states "in case of identification of the perpetrator of the crime the expiration of the statute of limitation period can serve as the basis for release of the person from criminal responsibility..."³¹

37. The stated approach to the issue of prescription periods in the letter of the Investigative Committee as well as in the Government's most recent submission indicates that **the application of limitation periods will function in practice like an amnesty, only for serious crimes**: even if perpetrators are found and their guilt established for serious crimes under domestic law (murder, kidnapping, causing death by negligence, etc.), prosecutions and/or criminal investigations will be discontinued due to the application of limitation periods.

3. CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS AND OTHER RELEVANT INTERNATIONAL STANDARDS

38. As we note from the outset, current amnesty legislation excludes serious crimes from its ambit. However, although perpetrators in cases from the *Khashiyev* group will not be amnestied for the crimes of torture or disappearances per se, there is a real possibility that amnesties in criminal investigations will be used, in combination with other tactics such as the application of limitation periods, to avoid the establishment of accountability and to discontinue criminal investigations into such serious crimes.

39. Therefore, the signatory NGOs would point out that the European Court has stated in several cases that amnesties and prescription periods may run afoul of the state's duty to combat impunity, especially in relation to torture and violations of the right to life.

40. In a series of cases against Turkey, the European Court of Human Rights found that when an agent of the State is accused of crimes that violate Article 3, any ensuing criminal proceedings and sentencing must not be time-barred and the granting of an amnesty or pardon should not be permissible, emphasising that "an amnesty [is] generally incompatible with States' duty to investigate acts of torture and to combat impunity for international crimes."³²

41. In its judgment in the case of *Association of 21 December 1989 and Others v. Romania*, which concerned alleged violations of Article 2 ECHR during the Romanian revolution of 1989, the Court found that **investigation cannot be regarded as effective "when it was concluded by the effect of a time-bar on criminal responsibility, in a situation where it was the authorities themselves that had remained inactive,"**³³ a crucial finding for investigations in *Khashiyev* group cases.

42. The issue of the qualification of the crime of torture deserves a particular discussion regarding Russia's obligations under the UN Convention Against Torture. The three provisions dealing with torture under Russian criminal law³⁴ consider torture merely as an *aggravating circumstance*; as a consequence torture is not regarded as a criminal offence per se. This increases the chance that conduct falling within the concept of torture as defined by the UN Torture Convention will be qualified as a more minor or related crime. **The *Sadykov* case is one example of "down-grading" participation in torture (either as a principal or accessory) in order for the actions to be caught by amnesty legislation.**

³¹ Russian Government's Submission of 31 August 2012, page 5.

³² *Abdulsamet Yaman v. Turkey*, no. 32446/96, para. 55, 2 November 2004; *Serdar Güzel v. Turkey*, no. 39414/06, para. 42, 15 March 2011; *Taylan v. Turkey*, no. 32051/09, 3 July 2012.

³³ See *Association of 21 December 1989 v Romania*, No. 33810/07, Judgment of 24 May 2011, at para. 144.

³⁴ Arts. 117, 286(3) and 302(2) CC.

43. In this regard, the Committee has expressed the consistent view that torture should not be “down-graded” and condemned under the discipline of less serious criminal offences such as “abuse of official powers,” which as it notes, increases the chances of **impunity for torture**.³⁵
44. Under Article 46 ECHR Russia has an obligation to conduct an investigation that is in full compliance with the requirements of the Convention in almost every case in the *Khashiyev* group. In this context, we refer once again to the standards contained in the Committee of Ministers’ “*Guidelines of eradicating impunity for serious human rights violations*”, characterizes the obligation to carry out an effective investigation in cases of serious human rights violations as an absolute duty.³⁶

4. QUESTIONS TO THE RUSSIAN DELEGATION

45. The signatory NGOs urge the Committee to request from the Russian delegation answers to the following questions:
1. What measures are currently being taken to locate other identified perpetrators in the *Sadykov* case?
 2. Given that what amounts to the crime of torture may be qualified in domestic law as a form of aggravated abuse of power, and therefore be caught under the amnesty legislation, have the authorities developed a consistent approach to the qualification of acts of torture under one or another article of the criminal code?
 3. Does application of amnesty legislation for less serious crimes preclude the authorities from further investigating perpetrators for crimes not covered by amnesty legislation?
 4. When deciding on the application of amnesty legislation or of prescription periods, to what extent do law enforcement agencies and the courts take into account the judgments of the ECtHR and the ruling of Constitutional Court of 2001, which prohibits relief from criminal responsibility if it undermines the constitutional interests and rights of other persons?
 5. When does the limitation period begin running in cases of enforced disappearances?

³⁵ See Conclusions and Recommendations of the Committee against Torture, Turkmenistan, CAT/C/TKM/CO/1, 15 June 2011, para. 8. See also Concluding Observations of the Committee Against Torture, Colombia, 4 May 2010, CAT/C/COL/CO/4, para. 10.

³⁶ Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations, of 30 March 2011. Section V. The Duty to Investigate. Available at: <https://wcd.coe.int/ViewDoc.jsp?id=1769177> (last accessed 9 August 2012).