



## Submission to the Committee of Ministers under Rule 9(2) concerning individual and general measures in the *Khanamirova v Russia* group

### Introduction

1. This submission concerns the need to adopt **urgent individual measures** in three cases in the group *Khanamirova v Russia*, concerning the violation of the applicants' right to family life, namely their inability to enforce domestic judgments granting them custody over their children. We furthermore demonstrate the need to indicate **general measures** in order to remedy the systemic failings of the authorities to enforce custody decisions, particularly—but not exclusively—in cases from the North Caucasus region. We urge the Committee to consider general measures as soon as possible, because cases in this group will only continue to grow: in addition to 4 judgments handed down by the European Court of Human Rights between 2016 and 2019 from the North Caucasus region,<sup>1</sup> there are at least **5 cases pending judgment**, of which 4 have been communicated, including *Tapayeva and others v Russia* (No. 24757/18) in which the Court communicated the applicants' arguments alleging a violation of Article 14 (**non-discrimination**) in respect of the non-enforcement of the custody decision in the applicant's favour.<sup>2</sup>
2. The applicants are only too fully aware of the **time-sensitive** nature of their cases, which with each passing day, month and year, make it less likely that they will ever be reunited with their children, despite custody rulings in their favour. The Government's obligation to re-unite mother and child is not absolute, and there is indeed no one solution to such delicate cases, especially given the passage of time and other complicating factors. **The applicants remind that the Government is obligated, nevertheless, to make a good-faith effort to re-unite them with their children, which includes the opportunity to re-establish contact with their children in a non-traumatic setting.**
3. Unfortunately, despite the existence of systemic problems giving rise to violations in this group of cases, some of which have been recognized by the Government, as well as the need for urgent individual measures in several cases, the *Khanamirova* group has not been on the Committee's agenda for several years. The authorities have furthermore neglected to

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<sup>1</sup> *Yusupova v Russia* (66157/14); *Elita Magomadova v Russia* (77546/14); *Muruzehva v Russia*; *Zelikha Magomadova v Russia* (58724/14). Earlier judgments in this group include *Khanamirova v Russia* (21353/10); *Vorozhba v Russia* (57960/11); *Pakhomova v Russia* (No.22935/11); *Zelenyvy v Russia* (59913/11); *Y.U. v Russia* (41354/10), adding up to 9 judgments in the group.

<sup>2</sup> Communicated on 22 October 2018. <http://hudoc.echr.coe.int/eng?i=001-187791>

submit Action plans or reports in these cases. **We request the Committee to include this group of cases in its agenda for regular review at least once every 6 months.**

4. This submission has **3 sections:**

**I. Background to the problems in the *Khanamirova* group;**

**II. A description of the measures taken by the authorities to enforce custody decisions following ECtHR judgments in 3 cases and questions to the authorities;**

**III. Proposals concerning General Measures**

## **I. Background and context of the *Khanamirova* group**

5. The majority of cases in the *Khanamirova* group concern the non-enforcement of decisions granting applicants custody over their children, but may also concern violations caused by the terms and consequences of judicial decisions relating to family life (see the *Zelikhha Magomadova* case below). Since 2012, individual measures have been examined by the Committee in three judgments in this group: ***Khanamirova v Russia*, *Pakhomova v Russia*, and *Y.U. v Russia*. In these three cases, the Government undertook prompt and appropriate individual measures to restore, at least partially, the applicants' rights.**
6. For example, in its Action Plan in the *Khanamirova* case, the Government reported on measures such as the assignment of a professional child specialist and a meeting between the bailiffs, the guardianship authority, the applicant and the child's father.<sup>3</sup> Three months later, the Government reported that as a result of a series of meetings arranged by the bailiffs with the input of a paediatric psychologist and the guardianship authorities, the child had been handed over to his mother in a peaceful and non-coercive manner.<sup>4</sup>
7. In its Action report in the *Pakhomova* case, the Government submitted that "taking into consideration the findings of the European Court, the bailiffs and police took measures to improve inter-departmental cooperation," which eventually led to the return of the child to his mother in June 2014, less than six months from the entry into force of the ECtHR judgment.<sup>5</sup>
8. In its first Action report on *Y.U. v Russia*, the Government reported that regular meetings were to be held between the applicant and her son in the presence of a psychologist in order to re-establish contact between them.<sup>6</sup> In a second Action report, the Government submitted that despite the regular meetings between the applicant and her son, a second attempt to enforce the judgment resulted in severe resistance from the latter. An act was drawn up on the inability to enforce the judgment. The child's father then applied to suspend enforcement proceedings and to determine the child's place of residence with

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<sup>3</sup> See DD(2012)161, Communication from the Russian Federation concerning *Khanamirova v Russia*, 10 February 2012, page 2.

<sup>4</sup> See DD(2012)458, Communication from the Russian Federation concerning *Khanamirova v Russia*, 9 May 2012, page 1.

<sup>5</sup> See DD(2014)1172, communication from the Russian authorities on *Pakhomova v Russia*, 7 October 2014, page 2.

<sup>6</sup> See DD(2013)903, communication from the Russian authorities on *Y.U. v Russia*, 30 August 2013, page 1.

himself. The Government asserted that it “took all possible efforts to enforce the...judgment...in the current situation.”<sup>7</sup> The Committee of Ministers agreed and decided to transfer the case to the standard procedure.<sup>8</sup> In 2017 the applicant informed the CoM that in March 2015 a district court had ruled to determine the child’s place of residence with his father, and that the applicant had last seen her child in August 2015, after which the father refused to comply with the conditions of visitation. The applicant lodged a new application with the ECtHR in 2016.<sup>9</sup>

9. **The Government’s Action Plan on the case *Y. U. v Russia*<sup>10</sup> also indicates that “for the execution of this particular case, the authorities are working on the issue of necessary additional changes in the legislation.” To date, no such changes have been adopted.**
10. As stated in the Introduction, the number of judgments in the *Khanamirova* group has grown since 2018 due to a systematic problem with enforcement of custody decisions in favour of applicants from the North Caucasus (NC) region, and will continue to grow due to similar pending cases.
11. **We draw the Committee’s attention to the fact that non-enforcement of custody decisions is not a problem unique to the NC region and that the problem lies, first and foremost, in systemic legal shortcomings. However, additional elements characteristic of the NC region compound existing legal loopholes, which are exploited to the detriment of applicants from this region. Thus, the most egregious violations of applicants’ right to family life, potentially including facts of gender discrimination, emanate from this region.**
12. In the two sub-sections below, we provide a brief overview of both the general legal context that results in non-enforcement of custody decisions, as well as the context specific to the NC region.

#### General context

13. Systemic problems that exist regardless of regional particularities in the *Khanamirova* group include:
  - Lack of significantly serious measures under Russian law to induce compliance with custody decisions (i.e. no criminal or other sufficiently serious sanctions, such as administrative arrest or a large monetary fine). Currently, debtors may be held liable under administrative law and the maximum penalty is a small (approx. 30 euro) fine.
  - Lack of sanctions under Russian legislation for so-called “family abductions,” i.e. where a child is kidnapped by one of his parents. This kind of abduction is not sanctioned in any way under Russian law. Furthermore, while abductions by family members *other a child’s parent* can be prosecuted under Russian law and occur fairly regularly, criminal cases are not usually instigated in such instances.

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<sup>7</sup> See DD(2014)1308, communication from the Russian authorities on *Y.U. v Russia*, 28 October 2014, page 2.

<sup>8</sup> See Committee of Ministers, Decisions, 1214<sup>th</sup> meeting (4 December 2014), CASE No. 19.

<sup>9</sup> See DD(2017)654 communication from the applicant in *Y.U. v Russia*, 15 June 2017, pages 3-4.

<sup>10</sup> Action Plan (additional) on *Y.U. v. Russia*, application 41354/10 General Measures, §3, URL: [http://hudoc.exec.coe.int/eng?i=DH-DD\(2014\)1308E](http://hudoc.exec.coe.int/eng?i=DH-DD(2014)1308E)

- The lack of vested authority on the part of bailiffs to take operational measures to establish the whereabouts of children who are being hidden by those avoiding enforcement of court decisions. Starting from August 2018, when a new Procedure was introduced from the Ministries of Justice and the Interior, bailiffs have the right to request assistance from the Ministry of Interior in cases where the debtor and/or child's whereabouts cannot be established, yet very often, in practice, bailiffs omit to do this.
- The lack of coordination between the Bailiff's Service and other agencies (Prosecutor's office, Guardianship authorities, etc.), which prevents the development of a strategy for effective enforcement in each individual case.

### North Caucasus context

14. In addition to the lack of sufficiently effective legal mechanisms in Russian law to execute decisions of domestic courts, the problem in the North Caucasus is compounded by regional particularities, namely: **the support by regional authorities of gender-discriminatory practices originating in customary law**, which follow an extreme form of patrilineality. Following the death of a child's biological father, or following divorce, only the paternal side of the family has any claim to children, with no obligation to involve the mother in their upbringing. Especially in the Chechen Republic and Republic of Ingushetia, the majority of mothers who are divorced or widowed are denied custody of their minor children, a role in their children's upbringing, regular or any contact with them. It is not uncommon for mothers not to see their children for years and some lose contact altogether. This denial of the right to family life happens mostly outside the formal legal system, but in the minority of cases that are brought by mothers to the courts, judges and bailiffs routinely fail to effectively uphold mothers' rights. These decisions are not based on mothers' material or psychological fitness as parents or children's best interest, but solely on the mother's sex. They are based on the mother's sex because of deeply ingrained local socio-cultural practices and beliefs, according to which children "belong" only to the father's side of the family.

15. **The federal authorities, for their part, not only fail to counteract these policies, but rather tacitly support them.**

16. In light of this specific context, cases concerning non-enforcement of custody decisions from the NC region, in addition to the general legal shortcomings listed in para. 12 above, often also have the following characteristics:

- They do not concern custody disputes between two parents, but rather between the mother and the relatives of a deceased or otherwise absent father. In many cases where children are separated from their mother and the father is still alive, the children reside with the father's relatives. For example, in *Muruzheva v Russia*, the father kidnapped the children, although they do not live with him, but rather with his relatives in Ingushetia. A similar situation prevails in the *Yusupova v Russia*, in which the father's whereabouts are still unknown, but the child is residing with his relatives in Chechnya. In the *Zelikha Magomadova* case, the deceased father's relatives succeeded, through fraud, to obtain guardianship over the applicant's children. **These are much more serious violations of**

**the standards of the Russian family code, which provides that a child's biological parents have priority in their upbringing.**

- Women who attempt to gain custody over their children or to enforce custody decisions in their favour often face reprisals from their in-laws in the form of pressure, blackmail, threats, mobilization of clan elders, and even violence.
- Due to the high percentage of children being raised in the households of their father's relatives, there is a higher prevalence of child abuse in this context. In one case from Ingushetia in 2019, a 7-year old girl was so severely abused by her father's relatives that her right hand had to be amputated as a result.<sup>11</sup> The girl's aunt was taken into custody on the suspicion of mistreating the girl, who was in her care.<sup>12</sup> The girl was taken from her biological mother by the relatives of her ex-husband after their divorce.<sup>13</sup> Unfortunately, there are other documented cases of physical and emotional child abuse in this region that occur following separation of children from their mothers.<sup>14</sup>

17. The cases examined in this submission, which have not been executed by the Russian authorities, all originated in the North Caucasus. They reveal systemic legal shortcomings in the area of enforcement of custody decisions, in addition to regional specificities that have put the applicants at a further disadvantage.

## **II. Execution of three judgments requiring urgent individual measures**

18. In contrast to the measures undertaken by the Government and the prompt examination by the Committee in the cases listed in paras. 5-8 above, the Government has not even submitted an Action Plan or Report in the cases below.

### **Muruzheva v. Russia (56987/15), judgment of 15 May 2018, final on 15 August 2018**

#### **Background**

19. The applicant has had no contact for over six years with her son, who following her divorce was kidnapped by her ex-husband. Her son has been held by the applicant's ex-husband's family in Ingushetia, while the father himself resides in Moscow. In finding a violation of the applicant's right to family life, the European Court established that the Russian authorities did not take all reasonable actions in order to execute the decision of the Izmailovsky District Court of Moscow of 25 June 2014, which granted the applicant custody over her children.

#### **Actions of the authorities after the entry into force of the ECtHR judgment**

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<sup>11</sup> See "How Ingush women are fighting for the return of their children, Open Democracy": <https://www.opendemocracy.net/en/odr/how-ingush-women-fighting-for-children-russia/>

<sup>12</sup>See: "Aunt detained over beating of girl in Russia", <https://www.dw.com/en/aunt-detained-over-beating-of-girl-in-russia/a-49496589-0>

<sup>13</sup>See: "Mother of a brutally beaten Ingush girl was deprived of the child by force", <https://www.mk.ru/social/2019/07/08/mat-zhestoko-izbitoy-ingushskoy-devochki-lishili-rebenka-siloy.html> (in Russian)

<sup>14</sup> See for instance: "Domestic violence in the North Caucasus – tradition above the law", Children are often the victims of 'adat', or local customary practices <https://jam-news.net/domestic-violence-in-the-north-caucasus-tradition-above-the-law/>

20. Enforcement proceedings were resumed in Moscow (where the applicant's ex-husband resides) and in Ingushetia (where the applicant's child resides with his father's relatives). However, the proceedings continued to be ineffective, including by the fact of the failure to inform the applicant of scheduled proceedings. In summary:
21. Between 29 October 2018 and 15 January 2019, a bailiff from the Izmailovsky District bailiff's service in Moscow (IDB) visited the debtor's apartment **5** times, without the debtor ever being present. The bailiff instructed the debtor to come to the IDB **4** times between November 2018 and January 2019, but the debtor never came. Enforcement proceedings were scheduled in Ingushetia in February 2019, of which **neither the applicant nor her representative were informed**. According to a report drawn up by a bailiff from the Sunzehnsky district of Ingushetia, a child psychologist interviewed the applicant's son, who behaved aggressively and expressed a desire to live with his grandmother. In the submitted documents - report and certificate – there is no indication how much time the psychologist spent with the child, or whether the child's paternal relatives, or the father himself, were present during their conversation. No documents were submitted regarding the qualifications of the child psychologist.
22. On 27 February 2019 the bailiff from the Izmailovsky DB telephoned the debtor. The latter promised to bring the child to enforcement proceedings to take place in Moscow during the school spring break. However, the debtor did not appear. 4 April 2019 was the new date set for enforcement proceedings.
23. The case file contains a certificate stating that the applicant's son has been ill since 21 March 2019.
24. The debtor did not appear for the enforcement proceedings appointed for 4 April. There is no information that the applicant's ex-husband was subjected to even an administrative penalty.
25. On 13 August 2019 and 17 January 2020, the applicant's representative sent an appeal to the Izmailovsky DB listing the instances of non-compliance by the debtor with the orders of the bailiffs; he referred to the legislation that provides for administrative and even criminal (following several administrative cases in one year) liability in connection with non-compliance with bailiff instructions, and requested information on whether the debtor was held accountable, and if not for what reason. The applicant's representative requested to be informed of the date of subsequent scheduled enforcement proceedings.
26. The applicant's representative did not receive answer to his motions and neither the applicant nor her representatives were ever informed of further actions in her case.

#### **Analysis of individual measures taken by the authorities in the Muruzheva case**

##### **➤ *The refusal of the authorities to hold the debtor liable under existing legal mechanisms***

27. The Russian authorities have essentially ignored the debtor's blatant evasion of enforcement proceedings by not sanctioning him under the available administrative

penalties provided for by under current Russian legislation.<sup>15</sup> If he had been sanctioned promptly and after each attempt at evasion, it would have been possible to launch a criminal case against him (which is possible after a certain number of administrative penalties in the period of one year).

28. While we argue that the available administrative sanctions are not sufficient to induce compliance (an issue to be addressed under general measures), they should be used at a minimum in the case of non-compliance, especially flagrant non-compliance. That they were not used points to toleration on behalf of the bailiff's service. Further evidence of toleration of the debtor's evasion of enforcement is the certificate about the child's illness, which was never verified, despite the fact that it was used as a pretext to evade execution. Personal verification of all circumstances and a critical approach by the bailiffs is all the more necessary against the backdrop of a pattern of flagrant non-execution.

➤ ***Conducting a series of executive actions in the absence of the applicant and a child psychologist***

29. In violation of established legal norms,<sup>16</sup> a series of executive actions was carried out without the participation of the applicant and a child psychologist: on 25 February, the bailiff visited the place of residence of the applicant's son without her and a psychologist; On 26 February the bailiff interviewed the applicant's son without her; On February 27, the bailiff interviewed the applicant's son without her and a psychologist. In all cases, the maximum negative reaction to the mention of the mother was obtained from the applicant's son.

➤ ***Lack of information on scheduled enforcement proceedings***

30. The Izmailovsky DB ignores the continuing failure to execute the district court's judgment and does not inform the applicant and her representatives about the date of new enforcement actions. The bailiffs do not organize meetings in the format of a mother, son,

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<sup>15</sup> According to Part 2, Art. 105 of the Federal Law of 2 October 2007 "On Enforcement Proceedings": If the debtor fails to comply with the requirements contained in the executive document, without good reason, the bailiff draws up an administrative offense report against the debtor in accordance with the Administrative Offenses Code of the Russian Federation (hereinafter referred to as the Administrative Code) and establishes a new deadline for execution. Furthermore, according to paragraph 1, Art. 17.15 Code of Administrative Offenses: Failure by a debtor to comply with non-proprietary requirements within the period established by the bailiff shall entail the imposition of an administrative fine [...] in the amount of from one thousand to two thousand five hundred rubles. A mandatory condition for bringing a person to administrative responsibility according to the aforementioned norms is a decision by the bailiff to collect an execution fee from the debtor due to non-fulfillment of non-proprietary decisions. An execution fee is a measure of administrative coercion used in connection with the enforcement of a court decision. For the formation of an administrative offense, it is sufficient that the bailiff issued an order for the collection of the execution fee. According to Part 2 of Art 17.15 of Administrative Code the amount of the administrative penalty increases - from two thousand to two thousand five hundred rubles. However, this part of the Administrative Code applies only if the person has previously been subjected to punishment according to part 1 of this same provision.

<sup>16</sup> According to Art. 79 of the Family Code of Russia: Forced enforcement of decisions related to selecting a child and transferring it to another person (s) must be made with the mandatory participation of the guardianship and custody agency and the participation of the person (s) to whom the child is transferred, and, if necessary, with the participation of a representative of the internal affairs bodies, a child psychologist, doctor, teacher, translator and other specialists.

and a psychologist in order to discuss the transfer of the son of a mother without traumatic consequences for him.

➤ ***Residence of the applicant's son with persons who do not have guardian status***

31. We would remind that, to date, the applicant's son does not even live with his father, but with his father's parents in the Republic of Ingushetia, who do not have guardian status or legal custody, and who prohibit the boy from seeing his mother, in violation of a court order. Once again, we would like to remind the CoM of the danger of violence against a child, as well as the continuing negative influence on the child vis-à-vis his mother, due to the position of the father's relatives. The circumstances of the psychological deformation caused by separation were reinforced by a series of expert conclusions obtained by a child psychologist who examined the applicant's son in September 2017, who concluded that "[the child's] reactions are based on fears of rejection from the environment that is significant to him, in which he currently resides and on which he depends on those surrounding him. This causes his false memories to reach the level of cryptoamnesia (a memory impairment, in which other people's ideas seem to be his own) ..." Thus, as the psychologist explained, the father's relatives inculcated the belief in the child that his mother beat him and did not feed him, such that he himself believed it and was afraid of incurring their wrath if he even so much as looked in his mother's direction.

➤ ***No criminal sanctions for an abduction of a child by a parent***

32. In the present case, the applicant's former husband uses the so-called "active" form of evading execution of the court decision, which is well described in the Russian expert literature, i.e. the debtor does not just refuse to give the child to the bailiffs, but actively hides the child from them. Despite the fact that this constitutes abduction of a person, Russian criminal law includes the presumption that a parent cannot steal his own child. Thus, it is impossible to bring such people to justice: this does not fall under the article on the abduction of a person, and, as mentioned above, there are no strict sanctions for non-execution of the court decision.

➤ ***Comparison with measures taken in other similar cases***

33. We would remind of the execution of the Court's ruling in the case of *Khanamirova v. Russia* and *Y.U.*, in which the applicants had been deprived access to their children for a similar amount of time as the applicant in the *Muruzheva* case. In *Khanamirova*, the authorities of the Russian Federation organized a series of meetings of the separated mother and son, with the participation of a psychologist, in a playful way, which contributed to the restoration of contact between them. As a result, the son was handed over to the mother, the judgment at the national level and the ruling of the ECHR was executed (see above para. 5-6).

34. In *Y.U.*, as the Committee of Ministers acknowledged, the authorities promptly undertook appropriate measures to re-establish contact with the applicant and her son, including by organising meetings between the applicant, her son and a psychologist (see above para. 7) These were not sufficient to enforce the original custody decision, yet **an attempt to re-establish contact between mother and child was made in good faith.**



35. While it bears mentioning that the circumstances of the *Muruzheva* case are complicated by the fact that the applicant's child does not reside with the debtor, but with the debtor's relatives in a remote region (characteristic of cases emanating from the NC region), it still cannot be said that the authorities undertook to re-establish contact between mother and child in good faith. Measures to address complications such as those that exist in the *Muruzheva* case are addressed in the General Measures section.

#### **Questions in the case of Muruzheva v Russia**

36. In view of the above, we propose the following questions to the Russian delegation:

- a. Have the bailiffs organized the transfer of the child to the applicant since March 2019?
- b. Has a plan been developed for the transfer of the son to the applicant?
- c. To what extent, if at all, is the execution experience in the *Khanamirova case* is being taken into account in the present case?
- d. What administrative measures were applied to the debtor, if any?
- e. Where is the child currently located?

#### **Yusupova v. Russia (66157/14), Dec 20, 2016, final on 20 March 2017**

##### **Background**

37. The European Court found a violation of the applicant's right to family life, noting with concern that the decision of the Grozny district court granting her custody over her son, remained unenforced for a significant part of the child's life (four years), which could have consequences for his physical and mental well-being. During this period, the applicant never saw her son and did not communicate with him. The Court found that the authorities did not take with sufficient haste all the reasonable measures necessary in order to execute the decision of the local court of 27 December 2012.

##### **Actions of the authorities after the entry into force of the ECtHR judgment**

38. In February 2019, the applicant requested SJI to assist her with the execution of the ECtHR judgment in her favour. In June 2019 the applicant's representative was acquainted with the case materials in the Inter-district Department of Bailiffs for Special Enforcement Proceedings of the Non-proprietary Nature of the City of Moscow (IDB). The authorities' actions can be summarized as follows:

39. In the period from April-May 2017, the IDB issued several restrictions on the debtor, including a temporary restriction on departure from the Russian Federation. In June 2017 the enforcement materials were transferred to the Office of the Federal Bailiff Service for the Chechen Republic (FBS of Chechnya) on the basis that the vehicle of the applicant's ex-husband was repeatedly spotted being driven in the Republic of Ingushetia. However, in August 2017 the FBS of Chechnya transferred the materials back, with the information that

the applicant's ex-husband's vehicle was being driven by someone else, and that the last established location of the applicant's child was a day care centre in Moscow.

40. On 14 November 2018, the applicant's representative requested that a list of actions be carried out to establish the whereabouts of the applicant's son, whose whereabouts remained unknown for over five years, and requested to involve law-enforcement officers. In December 2018, the bailiff satisfied the applicant's representative's request in part of obtaining explanations from the relatives and neighbours of the applicant's former husband. The bailiff refused to interview the former partner of the debtor, arguing that she no longer lives at the previously known address; the neighbours do not know where she moved. It was not possible to obtain information from the printouts of telephone calls of the former partner, because mobile operators *only provide such statements in criminal cases*. In March 2018 the bailiff visited the debtor's sister's address in Moscow, but she refused to disclose the debtor's location or any information about the applicant's child.
41. On 16 January 2020, the applicant's representative requested IDB to contact the police in order to locate the whereabouts of the child, a procedure established by a joint Order of the Ministry of Justice and Ministry of Interior issued in August 2018. No response was received.
42. On March 6, 2020, the applicant appealed to the prosecutor's office of the Chechen Republic with a request to organize urgent measures, with the involvement of all authorities, in order to return the child who, as she had learned from a personal investigation, was residing with her ex-husband's relatives in Grozny at a specific address. On 17 March 2020 the applicant, together with the representative of the Prosecutor's Office, her lawyer, psychologist, and the representative of the Juvenile Unit, visited the address. Her husband's relatives confirmed that her son resided with them, but said that they did not know his whereabouts at the present moment.
43. In March 2020 the applicant sent a statement to the prosecutor's office of Leninsky district of the city of Grozny in which she indicated that her son had been living with her husband's relatives, and that since 2013 he was not registered at any medical clinics or educational institutions, that he might be subject to regular physical violence, and that the current conditions threatened his life. She further described that when she attempted to see her son at his current residence, her ex-husband's relatives threatened to kill her.

#### **Analysis of individual measures taken by the authorities in the Yusupova case**

##### ➤ ***Failure of bailiffs to establish the whereabouts of the debtor and the applicant's son***

44. Since the entry into force of the Court's judgment, the authorities have not established the debtor's location. The applicant's son's whereabouts were established as a result of the applicant's own investigation, but this is not reflected in the case materials.

##### ➤ **Interaction of bailiffs with the Interior Ministry bodies in the implementation of the executive search.**

45. Art 65 of the Law "On Enforcement Proceedings" imposes on bailiffs the obligation to search for a debtor, his property or a child. In this regard, the most important issue is the question of the mechanisms that the bailiff should have at his disposal in order to locate the debtor

and the child. According to the Federal Law "On Operational-Search Activity,"<sup>17</sup> the Federal Bailiffs Service is not vested with the authority to conduct search activities. Therefore, in order to carry out an effective executive search, bailiffs should maximize their interaction with the police or other representatives of the Ministry of Interior. Part 10 of Art. 65 of the Law on Enforcement Procedure only gives bailiffs the right to request information from relevant data banks of operational and reference information. Yet, this is not sufficient for the purposes of locating a debtor who has successfully concealed his whereabouts for years. Bailiffs require additional mechanisms to effectively conduct a search, such as cooperation with operative units of the Ministry of Internal Affairs.

46. On 29 August 2018, in order to fill the legislative gap in cooperation between bailiffs and law enforcement agencies, the "Procedure for Assisting Bailiffs in the Course of Enforcement Proceedings," including the implementation of the search for a child, were issued via a joint Order of the Ministry of Justice and the Ministry of Internal Affairs.<sup>18</sup> The Procedure indicates that the police do not simply assist the bailiffs by checking their databases, but are directly involved in tracing children. The condition for the involvement of the Ministry of Internal Affairs in the search should be a request for assistance from the bailiffs.
47. However, despite the existence of this new Procedure, the bailiffs omitted to request the assistance needed. The case files indicated that access to the debtor's sister's apartment on 14 March 2018 was made possible with help from the police. However, after the debtor's sister confirmed that she was in touch with her brother, but refused to name his whereabouts, no further action was taken to locate the debtor, although certainly this would have been the most effective route towards establishing the debtor's whereabouts. The case materials do not indicate that the bailiff made any further requests for assistance to the Ministry of Internal Affairs in the search for the debtor and the applicant's child, even despite the existence of the new Procedure issued in August 2018.
48. In contrast, the applicant draws the attention of the Committee to similar circumstances in the case mentioned above, *Pakhomova v. Russia* (22935/11), in which the Russian authorities, taking into account the facts established by the ECHR, represented by bailiffs and the police, took steps to strengthen interagency cooperation to establish the whereabouts of the debtor and child. As a result of the measures taken (including the interrogation of all persons who might have information about the whereabouts of the debtor, the placement of the debtor in the federal wanted list with restriction of exit from Russia and the purchase of all types of tickets, analysis of information on social networks, visits to premises, etc.) the debtor and child were located. The whole list of actions that led to the return of the child to the mother took less than 6 months from the moment the ECHR ruling came into force. These actions of the police and bailiffs were undertaken even before the adoption of the above-mentioned Procedure allowing for expanded assistance from the Ministry of Interior to bailiffs in the course of enforcement proceedings.

➤ ***No criminal sanctions for an abduction of a child by a parent***

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<sup>17</sup> No. 144-FZ of August 12, 1995

<sup>18</sup> No. 678/565. <https://www.garant.ru/products/ipo/prime/doc/71943332/>

49. In the present case, the applicant's former husband uses the so-called “active” form of evading execution of the court decision, which is well described in the Russian expert literature, i.e. the debtor does not just refuse to give the child to the bailiffs, but actively hides the child from them. Despite the fact that this constitutes abduction of a person, Russian criminal law includes the presumption that a parent cannot steal his own child. Thus, it is impossible to bring such people to justice: this does not fall under the article on the abduction of a person, and, as mentioned above, there are no strict sanctions for non-execution of the court decision.

### **Questions on the *Yusupova* case**

1. Is the absolute lack of information about a minor in all aspects of his social and economic life grounds for immediate intervention and initiation of a search procedure? If so, how is this implemented?
2. How do the police assist bailiffs in cases where a whole complex of operational search measures are needed, as in the situation with the debtor in the *Yusupova* case?
3. What is the reason for the inaction of the Chechen authorities in the applicant's case?

### **Zelikha Magomadova v. Russia (58724/14), the judgment of 8 October 2019, final on 8 January 2020**

#### **Background**

50. This case shows the extent to which discriminatory practices in the North Caucasus region have prevailed in local courts. The applicant’s husband died in 2009, leaving her with six children, who were kidnapped by their late father’s relatives, who succeeded in obtaining formal guardianship over them, although the Supreme Court of Chechnya decided that the applicant should have custody over her children. The decision remained unenforced, as did a subsequent decision granting her contact rights. The children’s uncle then applied three times to the same court with a request to suspend the enforcement proceedings and to strip the mother of her parental rights, on the basis that she was living an ‘amoral’ lifestyle and not participating in the children’s upbringing. During these appeals, the applicant and her lawyer were repeatedly threatened by security officials. Finally, the Chechen Supreme Court stripped the applicant of her parental rights in 2013, an extreme measure that is rarely used in Russian judicial practice. The applicant has had no contact with any of her six children for 11 years.
51. The European Court of Human Rights found in particular that not only had the authorities been idle for years when faced with the applicant’s situation, but they had then shifted responsibility on to the applicant when ultimately depriving her of parental authority. In the Court’s view, the courts’ conclusions in those proceedings, in particular that she had avoided bringing up her children, were **grossly arbitrary and unreasonable**.

#### **Possibility of reviewing the local court decision**

52. Following the entry into force of the ECtHR judgment, the applicant applied for review of the decision stripping her of her parental rights. On 17 March 2020, the Naursky District Court

of the Chechen Republic accepted the application for review and a hearing on the applicant's case for 2 April 2020.

53. On 1 April 2020, the applicant's representative sent a petition to the court to postpone the date of the hearing of the applicant's case in connection with the introduction of a national quarantine in connection with the COVID-19 pandemic.
54. At the time of filing this report, neither the applicant's representative nor the applicant herself had been notified of the new deadline for considering her case. We will keep the Committee of Ministers informed of progress in this matter. We also await submission by the Government of an Action plan in this case.

### III. Proposals on General measures

55. The Applicants note that the failure of the authorities to fulfil positive obligations in the field of reunification of mothers and children taken away from them by force, including through abduction and kidnapping, is systemic in nature and is largely conditioned by gaps in legislation and the absence of clear instructions for the functioning of bailiffs. Delay in such matters leads to a loss of communication between the mother and the child, especially when children are separated from their mothers at an early age. An applicant acting in good faith and following all procedures recognized as effective, may nevertheless permanently lose contact with her child if the enforcement procedure is protracted or delayed—as has happened or is at risk of happening in the three cases examined in detail in this submission.
56. Execution of decisions is of primary concern for applicants, due to the extremely time-sensitive nature of the issue at hand and the continuing psychological damage caused by forceful separation of mothers from their children. Therefore, the problem should be solved at the systemic level and at the earliest stages of national proceedings.
57. The applicants note that the need for General measures in this sphere is long overdue. In this regard, in the Action Plan on the case *Y. U. v Russia*<sup>19</sup> discussed at the Committee's December 2014 DH Meeting, the government indicated that "for the execution of this particular case, the authorities are working on the issue of necessary additional changes in the legislation," which to date have not been adopted.
58. The applicants propose the following non-exhaustive list of general measures to be indicated to prevent similar violations in the future:
  1. To recommend the courts to indicate the terms of the execution of the court decision as clearly as possible, including by indicating in the decision what measures the bailiffs should take when enforcing the decision, including in the case of a child's physical restraint by the debtor and in case of the child's refusal to return to the parent in whose favour the judgment was passed.
  2. To prescribe in law that in each case bailiffs should develop a set of measures for a successful transfer of a child to the applicant.<sup>20</sup> To develop guidelines and best practice

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<sup>19</sup> Action Plan (additional) on *Y.U. v. Russia*, application 41354/10 General Measures, §3, URL: [http://hudoc.exec.coe.int/eng?i=DH-DD\(2014\)1308E](http://hudoc.exec.coe.int/eng?i=DH-DD(2014)1308E)

<sup>20</sup> See e.g. Action Plan DH-DD(2012)161 10.02.2012 *Khanamirova v. Russia* <https://rm.coe.int/090000168063c4e0>

for the facilitation of transfer of children according to the terms of court decisions which would avoid counterproductive behaviour, such as bailiffs asking children during the enforcement proceedings which parent the child wants to live with, or otherwise questioning or undermining the court's decision.

3. To establish deadlines for the execution of court decisions on a child's place of residence and decisions on order of communication with a child (not exceeding, for example, 6 months).
  4. In cases in which bailiffs violate the deadlines for executing decisions of this category, or in which the court recognizes the bailiffs' actions/inactivity as unlawful – to prescribe sanctions such as removal from the enforcement proceedings, disciplinary measures, supervision of measures taken to eliminate the established violations.
  5. To transfer an enforcement proceeding in which the debtor, contrary to the court decision on the child's place of residence, changed the region or district of the child's residence, to the Federal Bailiff Service, which has jurisdiction throughout the territory of the Russian Federation, for execution.
  6. To considerably increase the amount of the administrative fine for disobedience to a bailiff's lawful requests within the framework of an enforcement proceeding concerning a child custody and access to a child, or to provide for other sanctions such as: administrative arrest up to 3 days as a sanction for a repeated disobedience to a bailiff's lawful requests (Article 17.15 of the Code of Administrative Offenses of the Russian Federation), or criminal liability.
  7. To introduce criminal liability for “family kidnapping,” i.e. for kidnapping by a parent. In ongoing cases in which children are kidnapped by family member other than their parent, in which criminal liability already exists, to instigate criminal cases on these facts.
  8. To create within the framework of the Federal Bailiff Service of Russia specialized Department on implementation of the decisions of this category, which would include also psychologists and which empowers bailiffs working in such departments to use their powers on the whole territory of Russia.
59. In January 2020, the Russian authorities announced their intention to introduce criminal liability for refusing to transfer a child under a court order.<sup>21</sup> This signals the authorities' acknowledgement that, as argued above, current sanctions for failure to execute an enforcement order are insufficient to induce compliance, and is undoubtedly an important step towards recognizing that non-enforcement is a **systemic problem** that must be remedied with new legal mechanisms.
60. According to public sources, a draft bill will be submitted to the State Duma only in December 2020, and the law itself is supposed to be adopted in 2021. In addition, it is not yet clear whether, in addition to non-enforcement of a court decision, the issue of “family

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<sup>21</sup> Tass, “В России введут уголовную ответственность за неисполнение решения суда о передаче ребенка,” 4 January 2020. <https://tass.ru/obschestvo/7466505>

kidnapping” will be addressed as well, which often occur after an applicant has already obtained a custody decision in her favour. Such kidnappings are characterized by several factors, and is often a premeditated crime involving several perpetrators. In connection with the prolonged separation of children from their mothers, it is also not clear how the statute of limitations for these crimes will be calculated. Second, the proposed initiative may not comprehensively address the problems outlined in this submission. For example, it is not clear how, if at all, the initiative to criminalize the refusal to transfer a child solves the issue of the authority of the bailiffs to search for, establish and, most importantly, return children subject to a court order. Therefore, we recommend the Committee to indicate the list of general measures as laid out in paragraph 55 above.