



# Russia v. Nariman Dzhelyal

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**TRIALWATCH FAIRNESS REPORT**  
A CLOONEY FOUNDATION **FOR** JUSTICE INITIATIVE

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# ABOUT THE AUTHORS



## A. ABOUT THE EXPERT

**Jeffrey Kahn, University Distinguished Professor of Law, SMU Dedman School of Law** teaches and writes on U.S. constitutional law, Russian law, human rights, and national security law. He received his B.A. from Yale, an M.Phil. and D.Phil. from Oxford, and J.D. from the University of Michigan. He has been an O'Brien Research Fellow-in-Residence at McGill University Faculty of Law, Visiting Professor at Washington & Lee University School of Law, and a Fulbright Research Scholar at the University of Oslo Faculty of Law. His most recently filed briefs in human rights cases are at the European Court of Human Rights, as a third-party intervenor in Navalnyy and Ofitserov v. Russia (App. No. 78193/17), and in the Russian Constitutional Court, as an amicus curiae criticizing defenses of Article 20.3.3 of the Russian Federation Code on Administrative Offenses. In 2011, the Council of the President of the Russian Federation for the Development of Civil Society and Human Rights asked him — the one American among eight other experts — to write a report on the second conviction of Mikhail Khodorkovsky and Platon Lebedev. The combined reports of these experts were subsequently cited by the European Court of Human Rights. His scholarship on Russia and the Council of Europe has been published in the European Journal of International Law, Virginia Journal of International Law, Problems of Post-Communism, Post-Soviet Affairs, Review of Central and East European Law, Oxford University Press, and Cambridge University Press, among other places.

## B. ABOUT THE CLOONEY FOUNDATION FOR JUSTICE'S TRIALWATCH INITIATIVE

**TrialWatch** is an initiative of the **Clooney Foundation for Justice**. Its mission is to expose injustice, help to free those unjustly detained and promote the rule of law around the world. TrialWatch monitors criminal trials globally against those who are most vulnerable — including journalists, protesters, women, LGBTQ+ persons and minorities — and advocates for the rights of the unfairly convicted. Over time, TrialWatch will use the data it gathers to publish a Global Justice Index evaluating countries' justice systems.

*The legal assessment and conclusions expressed in this report are those of the authors and not necessarily those of the Clooney Foundation for Justice.*

## EXECUTIVE SUMMARY



### **Professor Jeffrey Kahn, member of the TrialWatch Experts Panel, assigned this trial a grade of “F”:**

To characterize what occurred in this matter as a “trial” or “judicial proceedings” is to libel those concepts. From the initial seizure of the defendant, through the Russian state’s investigation (sometimes marked by torture), to the hearings that preceded conviction, the record is engorged with gross violations of international standards that affected the outcome and resulted in significant harm to the defendant, co-defendants, their families and their communities. Nothing but the outward trappings of bare procedural formalism could be said to bear any but the crudest resemblance to a fair trial under law.

A gas pipeline exploded in Crimea on August 23, 2021, while that part of Ukraine was occupied by the Russian Federation, which claimed to have annexed it, six months prior to Russia’s full-scale invasion of Ukraine.

A Crimean Tatar leader, Nariman Dzhelyal, was on that day participating in an event in Kyiv opposed to this occupation. He was arrested in the dawn hours of September 4 and, after more than eighteen hours mischaracterized as a “witness” for purposes of limiting his rights, declared a “suspect” sometime close to 3:00 a.m. on the morning of September 5. During this time, his property was searched and seized from him, he was subjected to prolonged interrogation without a lawyer, and detained in an unknown location handcuffed and with a bag over his head. Along with two co-defendants (who had been arrested earlier and subjected to torture and other mistreatment), he was subsequently charged with having conspired to sabotage the pipeline by blowing it up with explosives.

At trial, the prosecution presented three anonymous witnesses and the testimony of an absent witness acquired during the investigation stage. The court severely constrained the ability of the defendants’ counsel to question the anonymous witnesses and admitted the absent witness’s testimony despite serious questions about its reliability. The efforts of defense counsel to obtain an effective investigation of the torture and mistreatment that the defendants stated had led them to sign written confessions (later recanted) were thwarted by the court.

Dzhelyal was convicted (along with his co-defendants) and sentenced to seventeen years in prison and a 700,000 ruble fine. This report identifies numerous violations of Dzhelyal’s rights at every stage of the process, from arrest through investigation and trial. The defendant was subjected to abusive treatment at the time of his initial detention and the relevant authorities abdicated their duty to conduct an effective investigation of his complaints. The trial lacked indicia of a fair hearing conducted by an impartial tribunal and its decisions often failed to manifest signs of reasoned judgement.

In this single case, one finds the accumulation of a wide variety of human rights violations that have become systemic in certain cases in the Russian Federation, here extended into occupied territory.

# BACKGROUND INFORMATION

## A. POLITICAL & LEGAL CONTEXT

This case took place against the backdrop of Russia's occupation of Crimea, which has been ongoing since 2014, and its subsequent full-scale invasion of Ukraine in 2022. In this context, the Russian authorities have exported their repression of political dissent to occupied territories in Ukraine. This section briefly sets out the legal tactics Russia has used domestically, and then explains how these intensified during the height of the COVID-19 pandemic and since the February 2022 aggression against Ukraine. It then describes Russia's human rights violations in Crimea and specifically against Crimean Tatars.

### Repression of Political Dissent and Criticism in Russia

Despite guarantees of freedom of thought and expression in the Russian Constitution,<sup>1</sup> Russian authorities have suppressed independent media and political dissent through the introduction of new criminal provisions, amendments to existing laws, and targeted prosecutions. Since 2019, Russia has introduced eight 'fake news' laws, stifling freedom of expression within the country.<sup>2</sup> "Foreign agent" laws, which were introduced in 2012,<sup>3</sup> were expanded in 2020,<sup>4</sup> 2021<sup>5</sup> and 2022,<sup>6</sup> requiring individuals and non-governmental organizations (NGOs) that receive foreign funding or are "under foreign influence" to register as 'foreign agents' or face up to two years in prison.<sup>7</sup>

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<sup>1</sup> Constitution of the Russian Federation, Chapter 2, Art. 29(1) and (5).

<sup>2</sup> See *generally* International Press Institute, "Russia further tightens already repressive 'fake news' and 'discreditation' laws," Mar. 15, 2023, available at: <https://ipi.media/russia-further-tightens-already-repressive-fake-news-and-discreditation-laws/>; Daniel Salaru, "Russia: War censorship laws continue to suffocate independent media," International Press Institute, Jun. 21, 2022, available at: <https://ipi.media/russia-war-censorship-laws-continue-to-suffocate-independent-media/>.

<sup>3</sup> Human Rights Watch, "Russia: Reject Proposed Changes to Rules on Foreign-Funded NGOs," Jul. 13, 2012, available at: <https://www.hrw.org/news/2012/07/13/russia-reject-proposed-changes-rules-foreign-funded-ngos>.

<sup>4</sup> Human Rights Watch, "Russia: New Effort to Stifle Independent Groups," Nov. 12, 2020, available at: <https://www.hrw.org/news/2020/11/12/russia-new-effort-stifle-independent-groups>.

<sup>5</sup> Andrew Roth, "Russia extends 'foreign agents' law to critics of military and security," The Guardian, Oct. 1, 2021, available at: <https://www.theguardian.com/world/2021/oct/01/russia-extends-foreign-agents-law-to-critics-of-military-and-security>.

<sup>6</sup> Human Rights Watch, "Russia: New Restrictions for 'Foreign Agents'," Dec. 1, 2022, available at: <https://www.hrw.org/news/2022/12/01/russia-new-restrictions-foreign-agents>.

<sup>7</sup> U.S. Dep't of State, "2022 Country Reports on Human Rights Practices: Russia," available at: <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/russia/>. The most recent amendment resulted in the closure of the last major independent news outlet in Russia. Victor Jack, "Last major Russian independent news outlet suspends operations," Politico, Mar. 28, 2022, available at: <https://www.politico.eu/article/last-russia-independent-news-outlet-suspends-operations/>. An individual or entity failing to self-register as a "Foreign Agent" faces administrative penalties under Art.19.34(1) of the Code of Administrative Offences of the Russian Federation. However, if an individual or entity is convicted under the Code of Administrative Offences twice in a year they face criminal penalties of up to 2 years imprisonment under Art. 330.1(1) of the Criminal Code of the Russian Federation.



Russia has also invoked ‘undesirable organization’ laws to criminalize dissent. For instance, activist Anastasia Shevchenko was convicted for her alleged participation in the Public Network Movement Open Russia, a civic association advocating for human rights, rule of law, and political change through democratic processes. The organisation had been designated “undesirable” by Russian authorities. Ms. Shevchenko was convicted and sentenced to four years’ imprisonment following a trial monitored by TrialWatch. Her sentence was suspended. In its Fairness Report on the case, TrialWatch found serious violations of her rights at both the pre-trial and trial stages. This included the arbitrary imposition of house arrest for two years prior to and throughout her trial, as well as violations of her rights to freedom of expression, association and peaceful assembly.<sup>8</sup>

Russia has also used laws against extremism and terrorism to silence journalists and critics. In another trial monitored by TrialWatch in 2020, journalist Svetlana Prokopyeva was charged and convicted by a military court for ‘publicly justifying terrorism through the use of mass media and the internet’ based on her personal commentary seeking to explain why a terrorist attack had been perpetrated by a 17-year old student. TrialWatch found serious violations of her right to a fair trial and her right to freedom of speech, concluding that “...a military court tried and convicted a civilian journalist for exploring the possible reasons behind the bombing, and for expressing criticism of the Russian government.”<sup>9</sup>

In January 2022, Russia’s then most prominent opposition figure, Aleksey Navalny, was added to the government’s terrorist-and-extremist registry along with eight notable supporters<sup>10</sup> before being sentenced in August 2023 to 17 years’ imprisonment for allegedly founding an extremist community.<sup>11</sup> This followed prior convictions for fraud, slander and contempt of court. Navalny died on February 16, 2024 in an Arctic penal colony, with several governments holding “Russian authorities fully responsible” for Navalny’s death.<sup>12</sup>

A 2019 U.S. Department of State report on human rights in Russia found that the authorities prosecuted 585 extremism cases in 2019, mostly against individuals exercising their right to free speech.<sup>13</sup> Recent reports published by the SOVA Center for

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<sup>8</sup> Russian Federation vs. Anastasia Shevchenko, TrialWatch Fairness Report, Oct. 2021, available at: <https://cfj.org/reports/russian-federation-vs-anastasia-shevchenko/>.

<sup>9</sup> Russian Federation vs. Svetlana Prokopyeva, TrialWatch Fairness Report, Jan. 2021, 2, available at: <https://cfj.org/wp-content/uploads/2023/07/Svetlana-Prokopyeva-February-2021.pdf>.

<sup>10</sup> Freedom House, “Freedom in the World 2023 (Russia),” available at: <https://freedomhouse.org/country/russia/freedom-world/2023>.

<sup>11</sup> Paul Sonne and Valeriya Safronova, “Jailed Russian Opposition Leader Navalny Receives New Sentence of 19 Years,” N.Y. Times, Aug. 4, 2022, available at: <https://www.nytimes.com/2023/08/04/world/europe/navalny-putin-opposition-verdict.html>.

<sup>12</sup> Andrew Roth, “Western leaders point finger at Putin after Alexei Navalny’s death in jail,” The Guardian, Feb. 17, 2024, available at: <https://www.theguardian.com/world/2024/feb/16/russian-activist-and-putin-critic-alexei-navalny-dies-in-prison>.

<sup>13</sup> U.S. Dep’t of State, “2020 Country Reports on Human Rights Practices: Russia,” available at: <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/russia>.



Information and Analysis have identified another 105 “inappropriate convictions” in 2021<sup>14</sup> and 119 in 2022.<sup>15</sup>

## Recent Events: COVID-19 and the Invasion of Ukraine

Russia’s clampdown on opposition voices has intensified in recent years with COVID-19 and its subsequent full-scale invasion of Ukraine. The authorities implemented social distancing measures at the start of the pandemic,<sup>16</sup> which observers have said were a vehicle for criminalising protests.<sup>17</sup> In Moscow, almost all COVID-19 restrictions were lifted on July 9, 2020, but a blanket ban on mass gatherings persisted and was used to break up protests against a major constitutional referendum.<sup>18</sup>

‘Fake news’ laws have sought to criminalize the publication of ‘unreliable information’ or ‘blatant disrespect online for the state’ since 2019,<sup>19</sup> but on April 1, 2020, Russia introduced new laws criminalising the dissemination of knowingly ‘false’ information “about circumstances that pose a threat to the life and safety of citizens,”<sup>20</sup> in an effort to quell complaints about COVID-19 measures. These laws were used to convict journalist Alexander Pichugin for sarcastic comments on social media criticising Russia’s decision to making an exception to social distancing laws for religious gatherings.<sup>21</sup> TrialWatch

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<sup>14</sup> Maria Kravchenko, “Inappropriate Enforcement of Anti-Extremist Legislation in Russia in 2021,” SOVA Center for Information and Analysis, Apr. 27, 2022, available at: [https://www.sova-center.ru/en/misuse/reports-analyses/2022/04/d46193/?sphrase\\_id=1573575](https://www.sova-center.ru/en/misuse/reports-analyses/2022/04/d46193/?sphrase_id=1573575).

<sup>15</sup> Maria Kravchenko, “Inappropriate Enforcement of Anti-Extremist Legislation in Russia in 2022,” SOVA Center for Information and Analysis, May. 20, 2023, available at: <https://www.sova-center.ru/en/misuse/reports-analyses/2023/05/d47038/>.

<sup>16</sup> These measures were introduced pursuant to Federal Law of April 1, 2020, no. 98-FZ, on the Amendments of Certain Legislative Acts of the Russian Federation Related to the Prevention and Elimination of Emergencies, and added ‘spread of disease dangerous to others’ to the definition of an emergency situation in Federal Law no. 68-FZ, allowing the Russian Federation to address COVID-19. See e.g., Carlos Nunes Silva, “Local Government and the COVID-19 Pandemic: A Global Perspective (2022).”

<sup>17</sup> Human Rights Watch, “Covid-19 Triggers Wave of Free Speech Abuse,” Feb. 11, 2021, available at: <https://www.hrw.org/news/2021/02/11/covid-19-triggers-wave-free-speech-abuse>.

<sup>18</sup> Human Rights Watch, “Most Covid-19 restrictions lifted, but Moscow is not open for protest,” Jul. 22, 2020, available at: <https://www.hrw.org/news/2020/07/22/most-covid-19-restrictions-lifted-moscow-not-open-protest>.

<sup>19</sup> Federal Law of March 18, 2019, no.27-FZ; Federal Law of March 18, 2019, no.31-FZ.

<sup>20</sup> Federal Law of April 1, 2020, no.99-FZ, on a Number of Amendments to the Code of Administrative Offences of the Russian Federation introduced various administrative offences relating to dangerous diseases, most relevantly introducing parts 10.1 and 10.2 within Art. 13.5 of the Code of Administrative Offences of the Russian Federation, which attached potential penalties to disseminating knowingly inaccurate information about circumstances posing a threat to the life and safety of citizens. Federal Law of April 1, 2020, no.100-FZ, on the Amendments to the Criminal Code of the Russian Federation and Arts. 31 and 151 of the Criminal Procedure Code of the Russian Federation mirrored these administrative offences in the criminal code, with Arts. 207.1 and 207.2 of the Criminal Code of the Russian Federation criminalizing the dissemination of knowingly inaccurate information about circumstances posing a threat to the life and safety of citizens.

<sup>21</sup> Clooney Foundation for Justice, Statement on the Conviction of Journalist Alexander Pichugin on ‘Fake News’ Charges in Russia, Nov. 12, 2020, available at: <https://cfj.org/wp-content/uploads/2020/11/Statement-on-the-Conviction-of-Alexander-Pichugin-in-Russia.pdf>.

monitored his trial and found it to be unfair and a violation of his right to freedom of expression.<sup>22</sup>

In February 2022, Russia launched a full-scale invasion of Ukraine. In response to nationwide protests and criticism, on March 4, 2022, the Kremlin again expanded ‘fake news’ laws to criminalise independent war reporting and “spreading false information” about the war.<sup>23</sup> Subsequent amendments made on March 25, 2022 “effectively expand[ed] the ban on criticizing the armed forces to banning criticism of all government actions abroad.”<sup>24</sup> Between February and October 2022, independent rights group OVD-Info reported that over 19,000 individuals were detained for protesting against the war, over 100 individuals were prosecuted under Article 207.3 of the Criminal Code for spreading ‘knowingly false information’ about the war, and over 25 individuals were prosecuted under Article 280.3 of the Criminal Code for discrediting the use of Russian Armed Forces.<sup>25</sup>

Aleksei Gorinov, an opposition municipal councillor in Moscow, became one of the first to be prosecuted under Article 280.3. He was arrested and charged in early 2022 after calling Russia’s invasion of Ukraine “a war” and noting that children in Ukraine were dying during a public session of the local council.<sup>26</sup> On July 8, 2022 he was sentenced to seven years’ imprisonment by the Meshchansky district court in Moscow. This was reduced to six years and 11 months on appeal.<sup>27</sup> In November 2022, the UN Working Group on Arbitrary Detention (UNWGAD) held that Gorinov’s prosecution and ongoing detention for exercising his right to freedom of expression was arbitrary and called on Russia to

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<sup>22</sup> Russian Federation vs. Alexander Pichugin, TrialWatch Fairness Report April 2022, available at: <https://cfj.org/wp-content/uploads/2023/06/ENG-Pichugin-Fairness-Report-April-2022.pdf>.

<sup>23</sup> U.S. Dep’t of State, “2022 Country Reports on Human Rights Practices: Russia,” available at: <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/russia>. Federal Law of March 4, 2022, no.32-FZ, amended the Russian Criminal Code to criminalize the spread of knowingly false information about the Russian Armed Forces (Art.207.3), public actions aimed at discrediting the Russian Armed Forces (Art. 280.3) and calls for sanctions against Russia or its citizens or legal entities (Art. 284.2). Federal Law of March 4, 2022, no.31-FZ, amended the Russian Code of Administrative Offences to attach administrative liability to public actions aimed at discrediting the use of the Russian Armed Forces (Art. 20.3.3) and calls for sanctions (Art. 20.3.4).

<sup>24</sup> *Id.* Federal Law of 25 March, 2022, no.32-FZ, further amended the Russian Criminal Code to criminalize the spread of knowingly false information about the exercise of any Russian state bodies’ powers outside Russia (Art. 207.3), and public actions aimed at discrediting the exercise of Russian bodies’ powers outside Russia (Art. 280.3).

<sup>25</sup> OVD-Info, “Wartime repressions summary. Eight months of war,” Oct. 25, 2022, available at: <https://en.ovdinfo.org/anti-war-repressions-eight-months-war>.

<sup>26</sup> Ivan Nechepureka and Alina Lobzina, “Russia sentences a lawmaker to seven years in prison for denouncing the war,” N.Y. Times, Jul. 8, 2022, available at: <https://www.nytimes.com/2022/07/08/world/europe/russia-aleksei-gorinov-prison.html>, Amnesty International, “Russia: Aleksei Gorinov’s life at risk,” Dec. 12, 2023, available at: <https://www.amnesty.org/en/documents/eur46/7529/2023/en/>.

<sup>27</sup> Submission of Information to Special Procedures Report on Alexey Gorinov, OVD-Info, available at: <https://advocacy.ovd.info/submission-information-special-procedures-report-alexey-gorinov#1>.

release him.<sup>28</sup> To date the UNWGAD's Opinion has not been implemented and Gorinov remains in detention.

On April 17, 2023, prominent opposition figure and journalist Vladimir Kara-Murza was sentenced to 25 years in prison for criticising the war. He was convicted under Article 207.3 of the Criminal Code (as well as for treason and participation in an “undesirable” organization). The Council of Europe labelled his prosecution “a sham trial.”<sup>29</sup>

## Crimea

In 2014, Russia occupied Crimea militarily and announced its purported annexation following what the US Department of State described as a ‘sham referendum’ in violation of Ukraine’s constitution.<sup>30</sup> The United Nations General Assembly has continued to recognize Crimea as part of Ukraine.<sup>31</sup>

A 2017 report by the United Nations Office of the High Commissioner for Human Rights (OHCHR) on the situation of human rights in Crimea documented “grave human rights violations affecting the right to life, liberty and security”<sup>32</sup> of the Ukrainian people. The most recent iteration of this report verified that between July 2022 and June 2023 there were at least 16 convictions of Ukrainian citizens “carried out in disregard of fair trial guarantees.”<sup>33</sup> In the same time period, OHCHR documented 127 prosecutions for “public actions directed at discrediting” and “obstructing” the Russian armed forces, with 126 resulting in convictions.<sup>34</sup> A report by the Secretary General of the Council of Europe noted that while Russia’s aggression in Ukraine “elevated human rights threats across

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<sup>28</sup> United Nations Working Group on Arbitrary Detention, Opinion No. 78/2022 concerning Alexey Gorinov (Russian Federation), UN Doc. A/HRC/WGAD/2022/78, Mar. 17, 2023, available at: <https://www.ohchr.org/sites/default/files/documents/issues/detention-wg/opinions/session95/A-HRC-WGAD-2022-78-AEV.pdf>.

<sup>29</sup> Council of Europe, “Declaration on imprisoned Russian opposition activist Vladimir Kara-Murza,” May 15, 2023, available at: <https://www.coe.int/en/web/portal/-/declaration-on-imprisoned-russian-opposition-activist-vladimir-kara-murza>.

<sup>30</sup> U.S. Dep’t of State, “2021 Country Reports on Human Rights Practices: Ukraine,” available at: <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/ukraine>.

<sup>31</sup> U.N. General Assembly, Resolution 68/262 on the Territorial Integrity of Ukraine, Mar. 27, 2014, available at: <https://undocs.org/en/A/RES/68/262>; U.N. General Assembly, Resolution 76/70 on the Problem of the militarization of the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, as well as parts of the Black Sea and the Sea of Azov, Dec. 9, 2021, available at: <https://undocs.org/en/A/RES/76/70>; U.N. General Assembly, Resolution 76/179 on the Situation of Human Rights in the Temporarily Occupied Autonomous Republic of Crimea and the City of Sevastopol, Ukraine, Dec. 16, 2021, available at: <https://undocs.org/A/76/179>.

<sup>32</sup> Office of the United Nations High Commissioner for Human Rights, Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), Sep. 25, 2017, available at: <https://www.ohchr.org/en/press-releases/2017/09/un-report-details-grave-human-rights-violations-russian-occupied-crimea>.

<sup>33</sup> United Nations Secretary General, Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, May 26, 2023, available at: <https://www.ohchr.org/en/documents/country-reports/ahrc5364-situation-human-rights-temporarily-occupied-autonomous-republic>.

<sup>34</sup> *Id.*

the country to alarming levels,” Crimeans face “a more serious risk of being deprived” of human rights protections.<sup>35</sup>

## Historical Oppression of Crimean Tatars

Crimean Tatars possess a rich legacy as the indigenous people of the Crimean Peninsula. However, their history in the region has been marred by several waves of persecution. In the 18th century, an estimated 100,000 of 300,000 Crimean Tatars left the region for the Ottoman Empire in response to the Russian Empire’s annexation of the area.<sup>36</sup> Following continued targeting in the 19th century, which reportedly caused 193,000 people to leave Crimea,<sup>37</sup> between 1917 and 1933 an estimated 150,000 Crimean Tatars were forced to leave or killed at the hands of the Soviet Union.<sup>38</sup> Notwithstanding this, the minority group continued to make up almost 20% of the peninsula’s population.<sup>39</sup> Then, between May 18 and 20, 1944, after Soviet forces regained control of Crimea from German Nazi forces, an additional 180,000 Crimean Tatars were forcibly deported.<sup>40</sup> Almost 45,000 of these deportees reportedly died from harsh conditions in the two years between 1944 and 1946.<sup>41</sup> Exiled Crimean Tatars were only permitted to return in the late 1980s.<sup>42</sup> In May 2022, Canada recognized the deportation (‘Sürgünlik’) as an act of genocide against Crimean Tatars.<sup>43</sup> Despite facing “complex and multi-faceted” issues complicating their re-integration, as recognised by the Council of Europe in 2000,<sup>44</sup> an estimated 282,000 Crimean Tatars lived in Crimea at the

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<sup>35</sup> Secretary General of the Council of Europe, Human rights situation in the Autonomous Republic of Crimea and the City of Sevastopol, Ukraine, May 4, 2022, available at: <https://rm.coe.int/human-rights-situation-in-the-autonomous-republic-of-crimea/1680a66483>.

<sup>36</sup> Brian Glyn Williams, “The Crimean Tatars: From Soviet Genocide to Putin’s Conquest,” Oxford University Press, Dec. 1, 2015, 10.

<sup>37</sup> *Id.*, 17, 21; Eskender Barliev, “Contributions for the study on Indigenous Peoples’ Rights in the Context of Borders, Migration and Displacement,” Crimean Tatar Resource Center, Feb. 1, 2019, available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/EMRIP/Call/CrimeanTatarResourceCentre.pdf>.

<sup>38</sup> Alan Fisher, “The Crimean Tatars,” Hoover Institution Press, 1978, 145.

<sup>39</sup> Campana Aurélie, “Sürgün: The Crimean Tatars’ Deportation and Exile,” SciencesPo, Jun. 16, 2008, available at: <https://www.sciencespo.fr/mass-violence-war-massacre-resistance/fr/document/suerguen-crimean-tatars-deportation-and-exile.html>.

<sup>40</sup> *Id.* Other sources estimate the figure at around 200,000. See e.g., International Court of Justice, Declaration of Judge Crawford, Apr. 19, 2017, ¶ 2, available at: <https://www.icj-cij.org/public/files/case-related/166/166-20170419-ORD-01-05-EN.pdf>.

<sup>41</sup> Jonathan Otto Pohl, “The Deportation and Fate of the Crimean Tatars,” International Committee for Crimea, Apr. 2000, citing ‘Bugai, Ikh nado deportirovat’, 1992, 264-265, available at: <https://www.iccrimea.org/scholarly/jopohl.html>.

<sup>42</sup> Dunja Mijatovic, “Crimean Tatars’ struggle for human rights,” Council of Europe, Apr. 18, 2023, ¶ 7, available at: <https://rm.coe.int/report-on-crimean-tatars-by-dunja-mijatovic-commissioner-for-human-rig/1680aaeb4b>.

<sup>43</sup> Ukrainian Canadian Congress, “House of Commons recognizes Genocide of Crimean Tatar People,” May 18, 2022, available at: <https://www.ucc.ca/2022/05/18/house-of-commons-recognizes-genocide-of-crimean-tatar-people/>.

<sup>44</sup> Parliamentary Assembly of the Council of Europe, Recommendation 1455 (2000) on the repatriation and integration of the Tatars of Crimea, Jun. 2001, available at: <https://rm.coe.int/16804e913c>.



beginning of 2014.<sup>45</sup> May 18 is now a day of mourning for Crimean Tatars worldwide, marking the first day of the deportation.<sup>46</sup>

## Recent Targeting of Crimean Tatars

Even within the general context of Russia's repressive actions in Crimea, Crimean Tatars face significantly elevated rates of persecution. The Mejlis of the Crimean Tatar People is the highest executive body of the Crimean Tatars and "represent[s] the interests of the Crimean Tatar people [at] all levels."<sup>47</sup> In 2016, the Supreme Court of the Russian Federation labelled the Mejlis an 'extremist organisation,' which resulted in all its activities being banned in Crimea. This is still the case despite a 2017 order by the International Court of Justice ordering Russia to "[r]efrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis."<sup>48</sup> A 2023 report on the situation of Crimean Tatars by the Council of Europe Commissioner for Human Rights found that the Russian Supreme Court's decision was "retaliation for opposing Russia's occupation and illegal annexation of the peninsula."<sup>49</sup>

Nariman Dzhelyal's conviction follows the convictions of a number of Mejlis leaders for their peaceful opposition to Russia's occupation of Crimea.<sup>50</sup> On September 11, 2017, Akhtem Chygoz—deputy chairman of the Mejlis—was sentenced to eight years in prison for organizing "mass riots."<sup>51</sup> The "riots" in question were demonstrations held in Crimea on February 26, 2014, protesting Russia's 2014 invasion of Ukraine, which was still underway. Reportedly, "[a] group of pro-Russia counter-protesters linked to Sergey Aksyonov, whom Russia subsequently installed as Crimea's prime minister, appeared on the scene, and the two sides clashed."<sup>52</sup> Notably, Chygoz was convicted under Russian legislation, despite the riots occurring a day before Russia's military seized the Crimean Parliament and months before the May 25 referendum that ostensibly provided for Crimea to rejoin Russia. In any event, as discussed further below, even following the

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<sup>45</sup> Parliamentary Assembly of the Council of Europe, "Report on the situation of Crimean Tatars," Jun. 4, 2021, available at: <https://pace.coe.int/en/files/29168/html>.

<sup>46</sup> Ukrainian World Congress, "Ukrainian World Congress Expresses Solidarity with Crimean Tatars Commemorating 70<sup>th</sup> Anniversary of Deportation from Crimea," May 18, 2014, available at: <https://www.ukrainianworldcongress.org/ukrainian-world-congress-expresses-solidarity-with-crimean-tatars-commemorating-70th-anniversary-of-deportation-from-crimea/>.

<sup>47</sup> The Provision of *Mejlis* of the Crimean Tatar People (Qirim Tatar Milli Mejlisi), Art. 4.2.

<sup>48</sup> International Court of Justice, *Ukraine v. Russia*, No. 2017/15, Apr. 19, 2017, available at: <https://www.icj-cij.org/sites/default/files/case-related/166/19412.pdf>.

<sup>49</sup> Dunja Mijatovic, "Crimean Tatars' struggle for human rights," Council of Europe, Apr. 18, 2023, ¶ 11, available at: <https://rm.coe.int/report-on-crimean-tatars-by-dunja-mijatovic-commissioner-for-human-rig/1680aaeb4b>.

<sup>50</sup> Human Rights Watch, "Crimea: Crimean Tatar Leader convicted on Spurious Charges," Sept. 27, 2017, available at: <https://www.hrw.org/news/2017/09/28/crimea-crimean-tatar-leader-convicted-spurious-charges>.

<sup>51</sup> Human Rights Watch, "Crimea: Baseless Conviction of Crimean Tatar Leader," Sept. 12, 2017, available at: <https://www.hrw.org/news/2017/09/12/crimea-baseless-conviction-crimean-tatar-leader>.

<sup>52</sup> *Id.*

‘referendum,’ given Crimea’s status as occupied territory, the application of Russian law is incompatible with international humanitarian law.

Human Rights Watch designated Chiygoz’s trial as ‘unfair,’ noting that three of the four witnesses to give detailed direct testimony against him were secret witnesses and that another witness testified that Chiygoz had tried to calm down demonstrators to stop the violence.<sup>53</sup>

On September 27, 2017, Ilmi Umerov—deputy chairman of the Mejlis—was sentenced to two years in a penal colony and banned from involvement in public activities for making “public calls to violate the territorial integrity of the Russian Federation”<sup>54</sup> after he said Crimea should be returned to Ukraine in a live interview.<sup>55</sup> His conviction was described as “ruthless retaliation for saying that his home should be free.”<sup>56</sup> Prior to the convictions, lawyers representing Chiygoz and Umerov were also detained and harassed by Russian authorities.<sup>57</sup>

On June 1, 2021, Refat Chubarov—head of the Mejlis—was convicted and sentenced to six years in prison for “organizing a mass riot” (the same demonstration for which Chiygoz was prosecuted) and for separatism (for maintaining Russia is an aggressor state illegally occupying Ukrainian territory).<sup>58</sup> Chubarov’s trial was held in absentia after he was banned from Crimea and Russia in July 2014.

Russian authorities have also targeted Crimean Tatars for their involvement or alleged involvement in the Islamist movement Hizb ut-Tahrir. While most of Europe has not recognized Hizb ut-Tahrir as a terrorist organization, Russia banned it in 2003. According to Human Rights Watch “[s]ince 2015, Russian authorities in Crimea have charged at least 26 people, most of them Crimean Tatars, with participating in or organizing a terrorist group because of their alleged involvement in Hizb ut-Tahrir.”<sup>59</sup> In November 2019, Emir-Usein Kuku, a human rights defender and Crimean Tatar, and five co-defendants, were found guilty of “organizing the activities of a terrorist organization” and “attempted forcible

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<sup>53</sup> *Id.*

<sup>54</sup> Amnesty International, “Crimean Tatar Leader Sentenced to Prison,” Oct. 13, 2017, available at: <https://www.amnesty.org/en/wp-content/uploads/2021/05/EUR5072712017ENGLISH.pdf>, quoting Criminal Code of the Russian Federation, Art. 280.1.

<sup>55</sup> *Id.*

<sup>56</sup> Radio Free Europe/Radio Liberty, “Russian Court Convicts Crimean Tatar Leader Umerov of ‘Separatism,’” Sept. 28, 2017, available at: <https://www.rferl.org/a/ukraine-russia-crimea-tatars-umerov-convicted-separatism/28759910.html>.

<sup>57</sup> Human Rights Watch, “Crimea: Defense Lawyers Harassed,” Jan. 30, 2017, available at: <https://www.hrw.org/news/2017/01/30/crimea-defense-lawyers-harassed>.

<sup>58</sup> Halya Coynash, “Crimean Tatar Mejlis leader sentenced to six years for proving Crimea did not ask for Russian annexation,” June 6, 2021, available at: <https://khpg.org/en/1608809153>.

<sup>59</sup> Human Rights Watch, “Crimea: Persecution of Crimean Tatars Intensifies,” Nov. 14, 2017, available at: <https://www.hrw.org/news/2017/11/14/crimea-persecution-crimean-tatars-intensifies>.



seizure of power” for their alleged involvement in Hizb ut-Tahrir.<sup>60</sup> In 2020, a Russian military court convicted seven Crimean Tatars and human rights activists, including human rights defender and journalist Server Mustafayev, and sentenced them to cumulative terms between 13 and 19 years in prison.<sup>61</sup> The men were convicted of “preparation for a forcible seizure of power or forcible retention of power” and “organizing” or “participating” in the activities of a terrorist organization for their alleged involvement in Hizb ut-Tahrir. Their case entailed several rights violations at both the pretrial and trial stage, including “applying Russian criminal law in occupied Crimea and transferring Ukrainian citizens to Russian territory for detention and trial.”<sup>62</sup> TrialWatch monitored the trial of Mustafayev and his co-defendants. The TrialWatch Fairness Report on their case found that the use of anonymous witnesses, without objective justification or counterbalancing procedural safeguards, violated the defendants’ right to cross-examine witnesses and their right to be presumed innocent.<sup>63</sup> After his conviction, TrialWatch took Mustafayev’s case to the UNWGAD, which found Mustafayev’s detention arbitrary, stating that he was targeted “based on national, ethnic or social origin and religion.”<sup>64</sup> The UNWGAD also noted that the court’s conduct in relation to the handling of the anonymous witnesses was not only a denial of the equality of arms principle, in violation of Article 13(3)(e) of the ICCPR, but also a “failure to act in an impartial manner”<sup>65</sup> and called for Mustafayev’s immediate release.

Crimean Tatar lawyers have also been targeted. In 2022, three Crimean Tatar lawyers—Lilia Hemedzhy, Rustem Kyamilev and Nazim Sheikhmambetov—were stripped of their legal licences in a move that a local human rights organization called “a major campaign to silence lawyers who both defense [sic] political prisoners and ensure that the world knows about such persecutions, in which Crimean Tatars are particularly targeted.”<sup>66</sup> Additionally, Emil Kurbedinov, a human rights lawyer, has been targeted several times and was held in administrative detention in both 2017 and 2018 for “public distribution of extremist materials” for the same post – a photo of a Simferopol rally of “Hizb ut-Tahrir.”<sup>67</sup>

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<sup>60</sup> Amnesty International, “Russia/Ukraine: Crimean Tatar human rights defender’s sentence upheld in mockery of international law,” May 26, 2021, available at: <https://www.amnesty.org/en/latest/press-release/2021/05/russiaukraine-crimean-tatar-human-rights-defenders-sentence-upheld-in-mockery-of-international-law/>.

<sup>61</sup> Russian Federation v. Server Mustafayev and Others, TrialWatch Fairness Report, Apr. 2021, available at: <https://humanrightsembassy.org/attachments/article/365/Fairness%20report%20on%20the%20trial%20of%20Server%20Mustafayev%20and%20his%20seven%20co-defendants%20in%20Russian%20Federation.pdf>.

<sup>62</sup> *Id.*, 4.

<sup>63</sup> *Id.*

<sup>64</sup> Human Rights Council Working Group on Arbitrary Detention, Opinion No. 56/2021 concerning Server Mustafayev (Russian Federation), Jan. 13, 2022, ¶ 102, available at: [https://www.ohchr.org/sites/default/files/2022-01/A\\_HRC\\_WGAD\\_56\\_2021\\_Russia\\_AEV.pdf](https://www.ohchr.org/sites/default/files/2022-01/A_HRC_WGAD_56_2021_Russia_AEV.pdf).

<sup>65</sup> *Id.*, ¶ 87.

<sup>66</sup> Halya Coynash, “Russia strips three Crimean Tatar lawyers of their license to prevent them defending political prisoners,” Human Rights in Ukraine, Aug. 5, 2022, available at: <https://khp.org/en/1608810989>.

<sup>67</sup> Front Line Defenders, “Human Rights Defender and Lawyer Emil Kurbedinov Targeted for a Social Media Post,” Feb. 16, 2024, available at: <https://www.frontlinedefenders.org/en/case/human-rights-defender-and-lawyer-emil-kurbedinov-targeted-social-media-post>.

In February 2024, he was targeted again and now faces an administrative penalty for “abuse of freedom of mass information” following a social media post where he shared legal advice on how students could avoid forced conscription by Russian de-facto authorities in Crimea.<sup>68</sup>

Russia’s treatment of Crimean Tatars has affected all aspects of their lives. In 2015, the only TV news channel to broadcast in the language of Crimean Tatars was closed after the Russian Federal Communications Agency rejected multiple applications for a licence.<sup>69</sup> Graduates and parents of current school students interviewed by OHCHR complained of the low hours, low quality or unavailability of instruction in the Crimean Tatar language.<sup>70</sup> Crimean Tatars have also disproportionately been drafted into the Russian army to fight in Ukraine<sup>71</sup> — in one region of Crimea, 46 of 48 draft notices were reportedly served on ethnic Crimean Tatars.<sup>72</sup>

The 2023 Council of Europe Report on the treatment of Crimean Tatars noted “grave and repeated violations of the human rights of Crimean Tatars,” in particular warning that the arrests of Crimean Tatar activists for ‘extremist’ or ‘terrorist’ activity antagonised the general Crimean population against the Crimean Tatar people.<sup>73</sup>

## **Fair Trial and Due Process in Russia and Russian-Occupied Territories in Ukraine**

The right to a fair trial is frequently violated in Russia and Russian-occupied territories in Ukraine. The most recent U.S. Department of State human rights report on Russia noted “judges remained subject to influence from the executive branch ... particularly in high-profile or politically sensitive cases,” with courts acquitting just 0.34% of all defendants in 2020.<sup>74</sup> The latest Bertelsmann Transformation Index report graded Russia 2/10 for separation of powers and 3/10 for an independent judiciary, noting that “judicial independence is heavily impaired by undue government control, high levels of corruption and political trials in which courts follow direct orders from the executive at the national

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<sup>68</sup> *Id.*

<sup>69</sup> Alec Luhn, “Crimea’s independent Tatar TV news channel silenced by ‘red tape,’” *The Guardian*, Apr. 2, 2015, available at: <https://www.theguardian.com/world/2015/apr/01/crimeas-independent-tatar-tv-news-channel-silenced-by-red-tape>.

<sup>70</sup> U.N. Secretary General, Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, July 25, 2022, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/437/31/PDF/N2243731.pdf>.

<sup>71</sup> Lily Hyde, “‘A kind of murder’: Putin’s draft targets Crimea’s Tatars,” *Politico*, Oct. 4, 2022, available at: <https://www.politico.eu/article/murder-putin-draft-target-crimea-tatars/>.

<sup>72</sup> Andrew Kramer, “Russia’s draft is targeting Crimean Tatars and other marginalized groups, according to activists,” *N.Y. Times*, Sept. 26, 2022, available at: <https://www.nytimes.com/2022/09/27/world/europe/russias-draft-sweeps-up-crimean-tatars-and-other-marginalized-groups-activists-say.html>.

<sup>73</sup> Dunja Mijatovic, “Crimean Tatars’ struggle for human rights,” Council of Europe, Apr. 18, 2023, ¶¶ 47-48, available at: <https://rm.coe.int/report-on-crimean-tatars-by-dunja-mijatovic-commissioner-for-human-rig/1680aaeb4b>.

<sup>74</sup> U.S. Dep’t of State, “2022 Country Reports on Human Rights Practices: Russia,” available at: <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/russia>.

and regional levels.”<sup>75</sup> A 2023 Freedom House report found that “‘judges’ career advancement is effectively tied to compliance with Kremlin preferences” and that the President controls the appointment and removal of judges.<sup>76</sup>

These violations have spilled over to Russian-occupied territories of Ukraine. OHCHR has documented several human rights violations committed in the course of criminal proceedings related to the armed conflicts in eastern Ukraine, the Autonomous Republic of Crimea and the city of Sevastopol between April 14, 2014 and April 13, 2020.<sup>77</sup> These violations cover many aspects of the right to a fair trial, with OHCHR noting a number of credible allegations of forced confessions in conflict-related cases and observing that “‘trials’ in territory controlled by the self-proclaimed ‘republics’ were marked by the lack of access to a lawyer of one’s choice, closed ‘hearings’ and lack of independence and impartiality of ‘judges.’”<sup>78</sup> Furthermore, in a number of trials found to be unfair by OHCHR, the convictions were based predominately on testimony provided by anonymous or secret witnesses, with the judges in these cases failing to verify that “the interests of the witnesses in remaining anonymous could justify limiting the rights of the defence to fully cross-examine witnesses.”<sup>79</sup>

Specifically on Crimea, OHCHR has noted convictions of individuals under Russian laws applied to acts committed before the occupation “and despite the obligation for an occupying power to maintain the penal legislation in force in the occupied territory and the prohibition to arrest, prosecute or convict protected persons for acts committed or opinions expressed before the occupation.”<sup>80</sup> Moreover, OHCHR commented on what appear to be spurious charges brought against defendants noting that “arrests and convictions sometimes appeared to pursue the objective of penalizing political dissent and seemed designed to serve as warnings to others.”<sup>81</sup> Another major issue documented was that of defendants charged with terrorism or extremism being pressured into waiving their privately-hired lawyers in exchange for promised leniency.<sup>82</sup>

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<sup>75</sup> Bertelsmann Stiftung, “BTI 2024 Country Report: Russia,” available at: [https://bti-project.org/fileadmin/api/content/en/downloads/reports/country\\_report\\_2024\\_RUS.pdf](https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2024_RUS.pdf).

<sup>76</sup> Freedom House, “Freedom in the World 2023 (Russia),” available at: <https://freedomhouse.org/country/russia/freedom-world/2023>.

<sup>77</sup> Office of the United Nations High Commissioner for Human Rights, “Human Rights in the Administration of Justice in Conflict- Related Criminal Cases in Ukraine April 2014 – April 2020,” available at: <https://ukraine.un.org/sites/default/files/2020-08/Ukraine-admin-justice-conflict-related-cases-en.pdf>

<sup>78</sup> *Id.*, ¶ 13.

<sup>79</sup> *Id.*, ¶ 154.

<sup>80</sup> Office of the United Nations High Commissioner for Human Rights, “Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine 13 September 2017 to 30 June 2018,” at ¶ 19, available at: [https://www.ohchr.org/sites/default/files/Documents/Countries/UA/CrimeaThematicReport10Sept2018\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/UA/CrimeaThematicReport10Sept2018_EN.pdf).

<sup>81</sup> *Id.*, ¶ 20.

<sup>82</sup> *Id.*, ¶ 21.

## Expulsion/Withdrawal from International Bodies

Since its invasion of Ukraine, Russia has been expelled and/or withdrawn from international bodies, reducing the prospects for remedies for human rights violations.

First, on July 14, 2015, the Russian Constitutional Court determined it had the ability to overrule decisions of international courts in limited circumstances.<sup>83</sup> On December 14, 2015, Russia followed up by introducing and adopting a law allowing Russian courts to overrule international court decisions.<sup>84</sup>

On February 25, 2022, Russia was suspended by the Council of Europe because the invasion of the Ukraine “goes against everything [the Council] stand for.”<sup>85</sup> On March 15, Russia gave notice to the Secretary-General of the Council of Europe of its decision to withdraw from the Council of Europe.<sup>86</sup> Subsequently, on March 16, the Council decided that Russia ceased to be a member of the Council of Europe<sup>87</sup> and consequently ceased to be a party to the European Convention of Human Rights (ECHR) under the same conditions.<sup>88</sup> In response, the European Court of Human Rights initially suspended its examination of all applications involving the Russian Federation,<sup>89</sup> before clarifying that it

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<sup>83</sup> Constitutional Court of the Russian Federation, Judgment N.21-P, Jul. 14, 2015, available at: <http://doc.ksrf.ru/decision/KSRFDecision201896.pdf>. The Court subsequently refused to enforce the ECtHR judgment of *OAO Neftyanaya Kompaniya Yukos v. Russia*, No. 14902/04, July 31, 2014 (just compensation), on the basis that the ECtHR did not interpret the ECHR correctly. See Constitutional Court of the Russian Federation, Judgment N.1-P, Jan. 19, 2017, available at: <http://doc.ksrf.ru/decision/KSRFDecision258613.pdf>.

<sup>84</sup> Federal Law of December 14, 2015, no.7-FKZ, Federal Constitutional Law on the Introduction of Amendments to the Federal Constitutional Law ‘On the Constitutional Court of the Russian Federation’, approved by the State Duma on 4 December 2015 and by the Federation Council on 9 December 2015; entered in force on 14 December 2015.

<sup>85</sup> Steven Erlander, “The Council of Europe Suspends Russian for its Attack on Ukraine,” N.Y. Times, Mar. 3, 2022 (“[I]ts invasion of Ukraine ‘goes against everything we stand for and is a violation of our statute and of the European Convention on Human Rights,’ its secretary general, Marija Pejcinovic Buric, said ...”), available at: <https://www.nytimes.com/2022/03/03/world/europe/council-of-europe-russia-suspension.html>.

<sup>86</sup> Council of Europe, The Russian Federation is excluded from the Council of Europe, Mar. 16, 2022, available at: <https://www.coe.int/en/web/portal/-/the-russian-federation-is-excluded-from-the-council-of-europe>.

<sup>87</sup> Council of Europe, Resolution CM/Res (2022)2 on the cessation of the membership of the Russian Federation to the Council of Europe, Mar. 16, 2022, available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680a5da51](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a5da51).

<sup>88</sup> Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, Art. 58(3) (“Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to this Convention under the same conditions.”).

<sup>89</sup> European Court of Human Rights, Press Release, “The European Court of Human Rights Decides to Suspend the Examination of All applications against the Russian Federation,” Mar. 16, 2022, available at: <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-7287047-9930274>.



maintained jurisdiction over violations of the European Convention committed up to September 16, 2022.<sup>90</sup>

## B. CASE HISTORY

### The Crimea Platform

Nariman Dzhelyal is a Crimean Tatar activist, and the First Deputy Speaker of the Mejlis.<sup>91</sup> He has also worked as a teacher and a journalist at the Crimean Tatar newspaper *Avdet*.<sup>92</sup> He has been openly opposed to Russia's occupation and purported annexation of Crimea and often spoke with international organizations and journalists about the treatment of Crimean Tatars by Russian authorities.<sup>93</sup>

On August 23, 2021, Dzhelyal attended the Crimea Platform in Kyiv, Ukraine. The Crimea Platform is an initiative by Ukraine to “increase the effectiveness of international response to the ongoing occupation of Crimea and mounting security threats, respond to growing security threats, increase international pressure on the Kremlin, prevent further human rights violations and protect victims of the occupation regime, and achieve the main goal – de-occupation of Crimea and its peaceful return to Ukraine.”<sup>94</sup> The 2021 platform was attended by various heads of states and government officials including a U.S. Presidential Delegation.<sup>95</sup>

Russian authorities called the Crimea Platform “a Russophobic, artificially created action.”<sup>96</sup> Crimea's Russian-backed deputy prime minister also stated that the Crimea Platform “will, like a boomerang, come back to hit the people who thought it up and who will try to implement it.”<sup>97</sup>

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<sup>90</sup> European Court of Human Rights, Press Release, “Resolution of the European Court of Human Rights on the Consequences of the Cessation of Membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights,” Mar. 22, 2022, available at: [https://echr.coe.int/Documents/Resolution\\_ECHR\\_cessation\\_membership\\_Russia\\_CoE\\_ENG.pdf](https://echr.coe.int/Documents/Resolution_ECHR_cessation_membership_Russia_CoE_ENG.pdf).

<sup>91</sup> Yulia Gorbunova, “The Revolving Door of Persecution in Crimea,” Human Rights Watch, available at: <https://www.hrw.org/news/2021/09/07/revolving-door-persecution-crimea>.

<sup>92</sup> David Axelrod, “The high price of political activism in Crimea,” Open Democracy, available at: <https://www.opendemocracy.net/en/odr/nariman-dzhelyal-arrest-political-activism-crimea/>.

<sup>93</sup> *Id.*

<sup>94</sup> Crimea Platform, “Crimean Platform,” available at: <https://crimea-platform.org/en/about>.

<sup>95</sup> The White House, “President Biden Announces Presidential Delegation to Ukraine to Attend the Crimea Platform Summit and 30<sup>th</sup> Anniversary of Independence,” Aug. 20, 2021, available at: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/20/president-biden-announces-presidential-delegation-to-ukraine-to-attend-the-crimea-platform-summit-and-30th-anniversary-of-independence/>.

<sup>96</sup> David Axelrod, “The high price of political activism in Crimea,” Open Democracy, available at: <https://www.opendemocracy.net/en/odr/nariman-dzhelyal-arrest-political-activism-crimea/>.

<sup>97</sup> *Id.*, RBC, “В Крыму пригрозили бумерангом Киеву из-за идеи «деокупации» Крымаhttps,” Aug. 23, 2021, available at: <https://www.rbc.ru/rbcfreenews/6123387c9a79474045627299>.

Only a few weeks after Dzhelyal returned from the summit, he was arrested and charged in relation to his alleged involvement in an explosion near the village of Perevalnoye of the Dobrovskoye rural settlement of the Simferopol district in Crimea.

## The Explosion

On August 23, 2021, there was an explosion of a gas pipeline near the village of Perevalnoye in Crimea. This pipe supplied gas to the coastal defense unit of the Black Sea Fleet and the military unit stationed near the village. Immediately thereafter, Crimea's Ministry of Internal Affairs reported the damage "may have occurred as a result of the unlawful actions of unidentified persons."<sup>98</sup>

Russian authorities later alleged that Dzhelyal was a key member of a Ukrainian-government-led organized group that conspired to carry out sabotage by destroying the pipeline with an explosive device.<sup>99</sup> However, according to Dzhelyal the Russian authorities brought the case against him due to his participation in the Crimea Platform:

When I attended the 'Crimean Platform' event in Kyiv, despite threats from representatives of the highest Russian authorities and personally from the head of the Republic, Aksenov ... exactly after my return from that event criminal proceedings were initiated against me in bad faith, in a false and deceitful way.<sup>100</sup>

## Arrest

On September 4, 2021, at 7.30 am, the police arrived at Dzhelyal's home and searched his car and property.<sup>101</sup> According to Dzhelyal, without providing him a copy of the search protocol, FSB officers confiscated not only his passport, but also his phone and laptop, for which Dzhelyal "personally entered the password to give the officers access to see what they wanted...."<sup>102</sup> Dzhelyal also testified at trial that he was not informed of his right to counsel at the time of this search.<sup>103</sup> He was then handcuffed and placed in a minibus filled with Russian FSB intelligence personnel. He told his wife "not to worry, that [he would] ... be gone for a while for an hour and a half."<sup>104</sup>

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<sup>98</sup> *Id.* (News agency quoting the original source: <https://tass.ru/proisshestviya/12198225> [the original post is now deleted from the Ministry's website]).

<sup>99</sup> FIDH, "Ukraine/Russian Federation: Arbitrary detention of Nariman Dzhelyal," Sep. 14, 2021, available at: <https://www.fidh.org/en/issues/human-rights-defenders/ukraine-russian-federation-arbitrary-detention-of-nariman-dzhelyal>.

<sup>100</sup> Criminal Case No. 1-5/2022, The Supreme Court of the Republic of Crimea, Protocol of Hearing, 671 [hereinafter, "Hearing Protocol"].

<sup>101</sup> Hearing Protocol, 694.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*, 696.



According to the indictment, at the time of his arrest a criminal case had not been instituted against Dzhelyal, who also testified that the officer in charge of the operation merely informed him that “he would probably be taken to the Simferopol Police Station.”<sup>105</sup> The prosecution later argued that he was initially taken in as a ‘witness’ and not as a ‘suspect.’ According to Dzhelyal’s lawyer, the purpose of making this distinction was to demonstrate that Dzhelyal was not in fact under arrest as a suspect and therefore not entitled to the same procedural rights and protections as a suspect.<sup>106</sup> However, as Dzhelyal’s lawyer argued throughout the trial, this was a mischaracterization because “from the moment the search began in his household ... [Dzhelyal] already needed legal assistance, since his constitutional rights, first of all, the right to freedom and personal integrity were actually limited in connection with the criminal prosecution in order to establish his guilt.”<sup>107</sup>

Arriving on the outskirts of the city, Dzhelyal was ordered to put a bag over his head and was driven to several locations.<sup>108</sup> He was ultimately taken to an unknown location where he was interrogated and made to do a polygraph test.<sup>109</sup> According to Dzhelyal, he was interrogated for hours, while being made to sit handcuffed and with the bag over his head in an uncomfortable position. During this time, he was denied access to legal counsel, and was threatened.<sup>110</sup>

After the polygraph test, around 6pm, he was finally transported to FSB headquarters in Simferopol where he was again interrogated by investigators as a “witness” to the explosion of the gas pipeline. The interrogation lasted until late into the night.<sup>111</sup> Throughout this time he was still denied access to a lawyer and alleged that he was denied access to food.

During his time at FSB headquarters, Dzhelyal was also interrogated with Asan Akhtemov, one of two brothers who would become Dzhelyal’s co-defendants in the trial. The brothers were known to Dzhelyal personally. Asan Akhtemov was a journalist who worked at the Crimean Tatar newspaper *Avdet* (where Dzhelyal had also previously worked). Asan’s brother Aziz Akhtemov was a car mechanic and owned his own business.

Asan and Aziz Akhtemov were arrested on September 3—the day before Dzhelyal. The brothers were held incommunicado following their arrest. They too were ultimately taken to FSB headquarters and questioned without access to lawyers of their choice.<sup>112</sup> In fact,

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<sup>105</sup> *Id.*

<sup>106</sup> *Id.* 1180 (“because, being in the status of a witness, he could not use the set of procedural rights that relate to the status of a suspect”).

<sup>107</sup> *Id.* 1172.

<sup>108</sup> *Id.* 719.

<sup>109</sup> *Id.* 701.

<sup>110</sup> *Id.*, 673-780 [Testimony of Dzhelyal, Jul. 20, 2022].

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*, 642.

on September 4, Aziz's lawyer Shabanova S.E. came to the FSB headquarters seeking her client but was told he was not there.<sup>113</sup> Shabanova and Aziz's family made a complaint to the Ministry of Internal Affairs of the Republic of Crimea demanding to know his whereabouts.<sup>114</sup> The complaint included reference to the fact that he was probably in the FSB building and not allowed to see his lawyer.<sup>115</sup>

During this time the Akhtemov brothers were forced to take on state-appointed lawyers. Aziz later told the court that he had been "beaten up in front of [the state appointed lawyer]" who had told him "it had to be this way, there was nothing [he] could do."<sup>116</sup> According to the testimony of the brothers, Asan's appointed lawyer Glushko "was not present at many investigative actions" but signed documents stating otherwise.<sup>117</sup> It should be noted that in early 2023, following numerous complaints by Asan, the Crimean Bar Association initiated disciplinary proceedings against Glushko in relation to his "representation" of Asan during the time he was held at FSB headquarters.<sup>118</sup>

Asan later testified in court that during this initial investigation he had been subjected to serious ill-treatment including electric shock treatment.<sup>119</sup> Aziz likewise testified in court to the ill-treatment he faced during this time.

By the evening of September 4, Aziz and Asan had been held by the authorities for nearly 48 hours. At 12:30am on September 5, Asan and Aziz were interrogated together (the "Aziz and Asan confrontation"). Aziz's state appointed lawyer Polyansky was present but the brothers allege that Asan's state appointed lawyer Glushko was not there despite signing a protocol stating otherwise.<sup>120</sup> During this confrontation the brothers were allegedly given each other's testimonies and told that any contradictions would be cleaned up. They were then given copies of testimonies to sign.<sup>121</sup>

Later that same day, at around 2am on September 5, Dzhelyal was put in a room with Asan and the two were interrogated together (the "Dzhelyal and Asan confrontation").<sup>122</sup>

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<sup>113</sup> *Id.*, 1085.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*, 642.

<sup>117</sup> *Id.*, 649.

<sup>118</sup> Halya Coynash, "'Lawyer' who collaborated with Russian FSB's torture of Crimean Tatar political prisoners faces disciplinary proceedings," Human Rights in Ukraine, Jan. 31, 2023, available at: <https://khpg.org/en/1608811767>. The Crimean Bar Association, which was established under Russian law and has been criticized by organizations like Amnesty International, did not find any violations in Glushko's actions. See, e.g., Igor Vorotnikov, "Под опекой ФСБ. Как в Крыму адвокат по назначению «не заметил» пыток подзащитного," Mar. 7, 2023, available at: <https://ru.krymr.com/a/krym-advokat-oleg-glushko-delo-ahtema-asanova-pytki-fsb/32306321.html>; cf. Amnesty International, "Russia: Crimean Human Rights Lawyers Disbarred," available at: <https://www.amnesty.org.uk/urgent-actions/crimean-human-rights-lawyers-disbarred>.

<sup>119</sup> Hearing Protocol, 664.

<sup>120</sup> *Id.*, 934.

<sup>121</sup> *Id.*, 592.

<sup>122</sup> *Id.*, 741-742.

It was at this time that Asan confirmed to Dzhelyal that he had been mistreated when Dzhelyal asked him in Crimean Tatar.<sup>123</sup>

Ultimately, both Asan and Aziz gave statements to the authorities implicating themselves and Dzhelyal in the explosion. Aziz later told the court that he had written a confession dictated by the FSB.<sup>124</sup> This “confession” was not written in the presence of a defense lawyer.<sup>125</sup>

Dzhelyal was finally told he was a suspect after 2:40am on the morning of September 5, 2021.<sup>126</sup>

After being told he was a suspect, Dzhelyal was allowed to meet with a lawyer of his choice and was formally charged. Initially he was charged with: (1) sabotage in violation of Article 281(2) of the Russian Criminal Code, which criminalizes the “perpetration of an explosion, arson, or of any other action aimed at the destruction or damage of enterprises, structures, transport infrastructure facilities and transport vehicles, or vital supply facilities for the population, with the aim of subverting the economic security or the defense capacity of the Russian Federation” by an “organized group” and with a view to “causing of considerable property damage or the ensuing of other grave consequences”<sup>127</sup>; and (2) “unlawful acquisition, transfer, sale, storage, transportation, transfer or carrying of explosives or explosive devices” as part of an “organized group” in violation of Article 222.1(4).<sup>128</sup> On November 8, 2021 he was also charged with the “illegal transfer of ... explosive devices” as part of an “organized group” in violation of Article 226.1(3).<sup>129</sup>

### **Verification of Evidence on the Spot**

In the days after their arrest, Asan and Aziz also participated in “on the spot” verifications. Under the Russian Code of Criminal Procedure, on the spot verifications are a procedure during which a person under investigation “reproduces on the spot the situation and the circumstances of the investigated event, points out the objects, the documents and the traces of importance for the criminal case, and demonstrates certain actions.”<sup>130</sup> It is worth noting that the Code also states that “any outside interference with the process ... shall be inadmissible.”<sup>131</sup>

While accounts differ between the authorities and the Akhtemov brothers around the timeline of each of the on the spot verifications, the general contours of what happened are that between September 4 and September 8, 2021, Asan and Aziz were taken to

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<sup>123</sup> *Id.*, 741.

<sup>124</sup> *Id.*, 655.

<sup>125</sup> *Id.*, 108.

<sup>126</sup> *Id.* 742.

<sup>127</sup> Criminal Code of the Russian Federation, Art. 281(2).

<sup>128</sup> Criminal Code of the Russian Federation, Art. 222.1(4).

<sup>129</sup> Criminal Code of the Russian Federation, Art. 226.1(3).

<sup>130</sup> Russian Code of Criminal Procedure, Art. 194(2).

<sup>131</sup> *Id.*

various locations with officers to verify their “confessions.” These locations included the village of Perevalnoye, where the explosion of the gas pipeline took place, and where the brothers were taken purportedly to verify how they had committed the crime. According to Aziz an “officer in a balaclava kept telling [him] what to do and where to point”<sup>132</sup> for the photos that the FSB officers took, which he was then told to sign.<sup>133</sup> Asan also testified in court that on the way to the village of Perevalnoye he was “told that [they] would arrive straight to the place, that [he] would have to tell them how [he] allegedly drove up, point the way, it would all be filmed on camera” but then he got there he couldn’t point the right way as it was his first time there so the officers “repeated the text”<sup>134</sup> to him again.

Asan was also taken to his home where, according to him, the FSB officers fabricated a story that he was forced to repeat on camera about how he received a parcel of cheese and inside the cheese was an explosive device.<sup>135</sup> The FSB officers also conducted an on the spot verification of Asan’s car, which had been moved from his home to Elevatornaya street during the time he was held at FSB headquarters.<sup>136</sup> According to Asan, during this verification he was told “I had to say I was carrying an explosive device in the trunk.”<sup>137</sup>

During these on the spot verifications, Asan and Aziz remained represented by state-appointed counsel although Asan’s lawyer was not present during the verification of his car.<sup>138</sup>

## **Pre-Trial Detention**

On September 6, the Kiev district court of Simferopol ordered the pre-trial detention of Dzhelyal and the Akhtemov brothers.

## **Intervention by the European Court of Human Rights**

On September 6, 2021, a request for interim measures was lodged with the European Court of Human Rights (ECtHR) in relation to Nariman Dzhelyal and Asan Akhtemov. The submission requested that the Court ensure that: Asan Akhtemov and Dzhelyal were provided a medical examination following allegations of torture; they have access to lawyers of their choice; and that the men be released.<sup>139</sup>

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<sup>132</sup> Hearing Protocol, 1267.

<sup>133</sup> *Id.*, 1268.

<sup>134</sup> *Id.*, 590.

<sup>135</sup> *Id.*, 588.

<sup>136</sup> *Id.*, 160.

<sup>137</sup> *Id.*, 591.

<sup>138</sup> *Id.*, 1091.

<sup>139</sup> European Court of Human Rights, *Dzhelyalova and Akhtemov v Russia and Ukraine*, App. No. 44048/21, lodged Sep. 6, 2021, Letter requesting further correspondence.

On September 9, the ECtHR requested that Russia, among other things, provide additional information regarding the medical examinations of the two men and the allegations of ill-treatment, and whether Asan had access to a lawyer of his choice.<sup>140</sup>

Despite these requests, it was not until September 13 and 14, respectively, that Asan and Aziz were able to meet with lawyers of their choice.<sup>141</sup> The two brothers then recanted their “confessions.”<sup>142</sup>

On September 23, the Russian Government replied to the European Court that Asan was provided legal assistance “from the moment of notification of the initiation of a criminal case against [him] and his arrest.”<sup>143</sup> The Russian government presented their version of events in which Asan requested that he be represented by a state-appointed lawyer on September 6, and only requested to meet a lawyer of his choice on September 13.<sup>144</sup>

The Russian government further stated that:

After the investigative actions had been carried out with the suspect Dzhelyalov N.E. (on 6 September 2021) as well as with the accused A.I. Akhmetov (on 14 September 2021) they both filed complaints about ill-treatment following their arrest. Their statements are included into the corresponding reports (protocols) of the investigative measures.

In this connection on 22 September 2021 the investigator of the Investigative Unit of the Regional FSB separated these materials from the criminal case as containing information on possible commission by unidentified officers of the Regional FSB of ill-treatment in respect of A.I. Akhmetov and N.E. Dzhelyalov and the same day sent them to the Military Prosecutor's Office of the Black Sea Fleet for organization of the verification in order provided with Articles 144, 145 CCP RF. The verification has not been completed yet.<sup>145</sup>

However, despite the ECtHR's request, the Russian Government failed to submit the documents containing Dzhelyal's and Asan's complaints as well as any documents concerning the alleged “verification.”

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<sup>140</sup> *Id.* [The ECtHR also requested the Ukrainian Government to provide information on whether the applicants or their relatives made official complaints to Ukrainian authorities and whether Ukrainian Government undertook any steps to assist them. It is unclear whether the Ukrainian Government replied to this request.]

<sup>141</sup> Hearing Protocol, 1183.

<sup>142</sup> *Id.*, 607.

<sup>143</sup> European Court of Human Rights, *Dzhelyalova and Akhmetov v Russia and Ukraine*, App. No. 44048/21, lodged Sep. 6, 2021, Russian Government's submission of Sep. 23, 2021, 2-3.

<sup>144</sup> The Government's submission states that Asan renounced Glushko on September 6; however, it is obvious that this is a clerical error, and it should be Azamatov whom Asan renounced.

<sup>145</sup> European Court of Human Rights, *Dzhelyalova and Akhmetov v Russia and Ukraine*, App. No. 44048/21, lodged Sep. 6, 2021, Russian Government's submission Sept. 23, 2021, 3.



The Russian Government also stated that Dzhelyal and Asan underwent medical examination following their placement in the pretrial detention facility and “had no complaints and there were no injuries detected.”<sup>146</sup> The Government also submitted documents indicating that Dzhelyal and Asan were examined by medical professionals upon being placed in the pretrial detention facility. However, the page indicating whether Asan complained of ill-treatment is partially covered by another document.<sup>147</sup>

Further to submitting a Rule 39 request, applications in respect of the three defendants were lodged with the ECtHR.<sup>148</sup> The applications alleged several violations of the European Convention including: Article 5 (alleging lack of legal grounds and of relevant and sufficient reasons for their detention); Article 14 in conjunction with Articles 3 and 5 (alleging that the Russian authorities did not respect their rights under the Convention because of their origin and that the Russian policy towards Crimean Tatars had a systematic character in Crimea); and Article 3 (alleging that they were abducted and tortured by the Federal Security Service agents and that the investigations into those events were ineffective).<sup>149</sup> This submission is still pending before the ECtHR.<sup>150</sup>

### **Complaints of Ill-Treatment made to the Investigative Committee**

In late 2021, Asan filed a claim with the Main Investigation Department of the Investigative Committee of the Russian Federation in the Republic of Crimea about his ill treatment while in detention.<sup>151</sup>

In late 2021, Nariman also filed a claim with the Military Investigative Committee about his ill treatment while in detention.<sup>152</sup>

### **Trial**

Dzhelyal and the Akhtemov brothers were brought to trial on March 3, 2022. The trial lasted until August 29, 2022. On September 21, 2022, the court delivered its verdict,

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<sup>146</sup> *Id.*, 4.

<sup>147</sup> European Court of Human Rights, *Dzhelyalova and Akhtemov v Russia and Ukraine*, App. No. 44048/21, lodged Sep. 6, 2021, Russian Government’s submission Sept. 23, 2021, Annex 1, 5.

<sup>148</sup> European Court of Human Rights, *Dzhelyalova and Akhtemov v Russia and Ukraine*, App. No. 44048/21, lodged Sep. 6, 2021 [concerning Dzhelyal and Asan], European Court of Human Rights, *Akhtemova and Others v. Russia and Ukraine*, App. No. 47349/21, lodged on Sept. 27, 2021 [concerning Aziz].

<sup>149</sup> European Court of Human Rights, Khayser Mustafa Oglu DZHEMILOV against Russia, App. No. 49522/14, 2 September 2023.

<sup>150</sup> On September 2, 2023, the applications were communicated by the European Court. The ECtHR asked the parties for further information: whether the applicants had been subjected to inhuman or degrading treatment in breach of Article 3 of the Convention and had the investigation by the authorities complied with the requirements of Article 3 of the Convention; had they been deprived of their liberty in breach of Article 5 § 1 and Article 5 § 1 (c) of the Convention; and whether the alleged acts which gave rise to the applicants’ complaints have a basis in “law” within the meaning of the Convention provisions relied on by them.

<sup>151</sup> Hearing Protocol, 1148.

<sup>152</sup> *Id.*, 1176.



finding Dzhelyal and the Akhtemov brothers guilty. The court sentenced Dzhelyal to 17 years in prison and fined him 700,000 rubles. Asan and Aziz were sentenced to 15 and 13 years' imprisonment respectively, and each fined 500, 000 rubles.

## The Prosecution

The Prosecution's theory of the case, which coincided with the Akhtemov brothers' 'confessions,' was that Dzhelyal worked as part of an organized criminal group with a Ukrainian GRU (secret service) agent, Yagyaev-Veliulaev, R.D. ("Riza"), who operated undercover as a bodyguard to the head of the Crimean Mejlis, and Akhmedov O.A. ("Sergei"), a staff member of the Main Directorate of the Interior Ministry "with knowledge of subversion and the necessary material resources."<sup>153</sup> According to the prosecution, Dzhelyal's role, as assigned to him by Riza and Sergei, was to recruit, train, and deploy Crimean Tatars "with a negative attitude to the Russian Federation and the fact of the Republic of Crimean and Sevastopol joining it"<sup>154</sup> to destroy the gas pipeline.<sup>155</sup> The Akhtemov brothers had allegedly been recruited to join this organized criminal group, and were directly responsible for committing the subversive act of exploding the gas pipeline.<sup>156</sup>

According to the prosecution, Dzhelyal was "motivated by political hatred towards the Russian Federation and the fact that the Republic of Crimea and the city of Sevastopol became part of it."<sup>157</sup> To establish that he had "the aim of subverting the economic security or the defense capacity of the Russian Federation"—an element of the offense under Article 281 of the Russian Criminal Code—the prosecution presented evidence from Dzhelyal's mobile phone, seized during the search of his home, which allegedly contained files that demonstrated his "radical views on the grounds of political hatred towards the Russian Federation and the fact of its incorporation of the Republic of Crimea and the city of Sevastopol"<sup>158</sup> as well as testimony from a secret witness who testified to Dzhelyal taking "an anti-Russian stance ... that Crimea's incorporation into the Russian Federation was illegal..."<sup>159</sup>

In seeking to make out damage to "economic security" or "defense capacity," the Prosecution argued that the explosives that the Akhtemov brothers detonated "acting

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<sup>153</sup> Indictment on criminal case No. 12101350034000723. on the charge: Akhtemov Asan Islamovich in committing crimes under Art. 281(2)(a), (b), Art. 281(2), Art. 222.1, Part 3 of Art. 226. 1 of the Criminal Code of the Russian Federation; Akhtemov Aziz Eskenderovich in committing crimes under Art. 281(a) and (b), Art. 281(2), Art. 222.1, Part 4, and Art. 226.1, Part 3 of the Criminal Code of the Russian Federation; Dzhelyalov Nariman Enverovich in committing crimes under a, b of Part 2 of Art. 281, Part 4 of Art. 222.1, Part 3 of Art. 226. 4 of Art. 222.1, Part 3 of Art. 226. 1 of the Criminal Code of the Russian Federation, 4 [hereinafter "Indictment"].

<sup>154</sup> *Id.*

<sup>155</sup> Hearing Protocol, 1115-1116; 1291.

<sup>156</sup> Indictment, 5.

<sup>157</sup> Conviction in the name of the Russia Federation, Case. No., No 1-5/2022 UID 010S0000-01-2022-000029-89, Sep. 21, 2022, 68 [hereinafter "Judgement"].

<sup>158</sup> Indictment, 279.

<sup>159</sup> Hearing Protocol, 217.

jointly and in coordination with the organized criminal group”<sup>160</sup> terminated gas supply to the village of Perevalnoye and the Coast Guard of the Black Sea Fleet of the Russian Defense Ministry, undermined the defense capability of the military unit, and caused property damage to the gas company in the amount of 105,237.25 rubles.

The prosecution presented various witnesses including: employees of the state-owned gas company Krymgazseti, which was also victim and civil plaintiff in the case against the defendants; individuals from the village of Perevalnoye who testified to hearing or responding to the explosion; and some military personnel who testified they had suffered “damages” by the interruption in the supply of gas and by the stress of being “attacked.”<sup>161</sup> One military officer also testified that the interruption in the gas supply:

undermined morale and affected the service in general, because the brigade was on high alert ... it also affected the physical condition, because there were no days off and the work schedule was irregular according to the instructions of the chiefs. The personnel were physically exhausted, which led to a decrease in combat readiness, because some were morally and psychologically ready to carry out any tasks and were normally oriented, while others were frightened.<sup>162</sup>

He also testified that this undermined the integrity of the defense capability of the Russian Federation.<sup>163</sup>

What follows is the narrative that the prosecution presented, mostly through the testimony of three ‘secret witnesses’ and from the ‘confessions’ initially provided by Aziz and Asan. The other sources of evidence were pretrial statements of two other Crimean Tatars, Useinov Sh.A and Odamanov Eldar (the latter subsequently told the court that he had also been subjected to electric shock torture<sup>164</sup>), and a pretrial statement from a driver, Nebiev, who fled Crimea by the time of trial and could not be examined by the defense.

Based on Odamanov’s pretrial statement, the prosecution sought to assert evidence of a Ukrainian government conspiracy to attack Russia in Crimea, into which Dzhelyal was allegedly ultimately recruited. Specifically, the prosecution alleged that Odamanov formed a friendship with Riza and that from 2014 to 2021 Odamanov would take photos and videos of military facilities, vehicles, and military personnel within the territory of the Republic of Crimea and send them to Riza.<sup>165</sup> In 2019, Riza told Odamanov to travel to the Arabat Spit (a sandbar connecting the eastern part of Crimea with the Kherson region) and take photos of several locations including the military checkpoint and the military unit

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<sup>160</sup> *Id.*, 1090.

<sup>161</sup> *Id.*, 297.

<sup>162</sup> *Id.*, 292.

<sup>163</sup> *Id.*, 293.

<sup>164</sup> *Id.*, 355.

<sup>165</sup> Indictment, 46.

located along the Spit.<sup>166</sup> Odamanov travelled to the Arabat Spit with his friend Useinov, whom he paid to drive him there. In early 2021, Riza once again asked Odamanov to go to the Arabat Spit, this time to retrieve “an explosive device” from the water that Riza’s contacts were going to leave.<sup>167</sup> According to Odamanov, Riza revealed that he intended to utilize explosives to attack the gas pipeline. However, Useinov and Odamanov refused to pick up the explosive and Odamanov ended further communication with Riza.<sup>168</sup>

The prosecution alleged that Riza then tasked Dzhelyal with finding other Crimean Tatars who shared his negative attitude toward the Russian Federation and the fact that Crimea was now under Russian control, and who would be willing to take “forceful action on the territory of the Republic of Crimea”<sup>169</sup> to undermine the stability of Russia’s control over this area. The prosecution based these allegations on the testimony of a secret witness who used the pseudonym Byshovets, and the Akhtemov brothers’ confessions, which had been extracted under ill-treatment during the preliminary investigation.

According to the prosecution, sometime between March 1, and April 31, 2021, Dzhelyal first attempted to recruit Byshovets.<sup>170</sup> Byshovets testified that Dzhelyal convinced him to observe and photograph military and civilian infrastructure and to travel to Kherson to receive further training from Riza.<sup>171</sup> However, according to Byshovets’ testimony, he rebuffed any further participation in the conspiracy “because it was a crime and it would cause consequences not only for me, but it would cast a shadow on the entire Crimean Tatar people.”<sup>172</sup>

The prosecution alleged that Dzhelyal then targeted Asan Akhtemov whom he first met in 2016 while Asan was working at the Crimean Tatar newspaper *Avdet* where Dzhelyal had also previously worked.<sup>173</sup> According to Asan’s ‘confession,’ sometime in 2021, Dzhelyal told Asan that his friends from Ukraine were looking for people capable of carrying out various “radical actions (subversion, arson), in order to take revenge on the occupants for the seizure of the Republic of Crimea by the Russian Federation”<sup>174</sup> and asked for his assistance, to which Asan consented.<sup>175</sup> In May 2021, Dzhelyal allegedly called Asan and asked him to go fishing in a certain area and informed him that he had given his number to his Ukrainian friends who would contact him with further details.<sup>176</sup>

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<sup>166</sup> *Id.*

<sup>167</sup> *Id.*, 48.

<sup>168</sup> *Id.*

<sup>169</sup> Hearing Protocol, 116.

<sup>170</sup> Indictment, 5.

<sup>171</sup> Hearing Protocol, 279.

<sup>172</sup> *Id.*, 261.

<sup>173</sup> Indictment, 24; Hearing Protocol, 116.

<sup>174</sup> Indictment, 25.

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

According to Asan's 'confession,' the next day Asan received a call from a man who introduced himself as Riza.<sup>177</sup> Riza asked Asan to go to the Arabat Spit, offered to pay his expenses, and provided instructions on how to navigate the police checkpoints along the route.<sup>178</sup> Allegedly, Riza also informed Asan that, once he was set up in the designated area, he should look for a 20-meter-long white pipe, which he was to remove from the water and bury in the woods. Asan asked his brother, Aziz, to join him.<sup>179</sup>

Asan and Aziz allegedly arrived at the designated place, searched the water for the pipe, but found nothing.<sup>180</sup> Asan informed Riza, who provided new coordinates, and asked them again to search for the pipe. Asan and Aziz drove to the new location but did not get out to search for the pipe and instead messaged Riza that they could not find anything. Allegedly, Riza told them to "go home and forget this day."<sup>181</sup>

The prosecution also argued that in June 2021, Dzhelyal hired Baidachny (a pseudonym for a second secret witness), an alleged delivery and taxi driver who travelled between Kherson and Crimea, to deliver a package to a woman in Kherson.<sup>182</sup> According to testimony provided by Baidachny in court, Dzhelyal called him again in July to pick up another package from Kherson—this one from Riza.<sup>183</sup> When Baidachny met Riza in Kherson, Riza showed him a photo of two men to whom Baidachny was to deliver the package.<sup>184</sup> Baidachny told the court that he was worried about being involved in any criminal activity so he had asked to see what was in the package. According to his testimony, he refused to take the package when he noticed that laundry gel inside the package had something inside it.<sup>185</sup> When he returned to Crimea, he received threatening text messages and decided to leave Crimea for Russia. According to Baidachny, it was not until he saw the news that Dzhelyal had been detained along with the men to whom Riza had asked him to deliver the package that he realized "what was going on and what I could be an accomplice to."<sup>186</sup>

According to the prosecution, Riza then reached out to Asan and Aziz around June/July and asked them to come to Kherson themselves. Asan and Aziz contracted with a private taxi driver, Nebiev, to take them to Kherson under the pretext of visiting the local Ukrainian passport office.<sup>187</sup> It was during this trip, and under the leadership of Sergei and Riza, that the prosecution allege that Asan and Aziz were taught how to handle explosives.<sup>188</sup> Riza and Sergei supposedly took Asan and Aziz to an apartment where they allegedly

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<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*, 26.

<sup>181</sup> *Id.*

<sup>182</sup> Hearing Protocol, 174.

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> Indictment, 35.

<sup>188</sup> *Id.*, 35 [testimony of Aziz given on 4 September 2021]; Hearing Protocol, 1195.

completed intake questionnaires, conducted explosives training, and were informed of the “target.”<sup>189</sup> Accounts provided by Asan and Aziz given during the initial investigation varied but Asan stated that when he initially refused to participate in anything involving explosives Sergei threatened him.<sup>190</sup> Aziz and Asan were then taken to the bus station and given money.<sup>191</sup>

A few days later, according to the pretrial statement of Nebiev (who had fled at the time of trial), Riza contacted Nebiev and asked him to transport some packages from Kherson to Crimea.<sup>192</sup> According to Asan’s confession during the preliminary investigation, he received a call from Sergei around this time, telling him that he had sent Asan a gift for his daughter, which he collected.<sup>193</sup> The gift included a toy, a birthday card, and a bag of sweets.<sup>194</sup> A few days later, Riza allegedly once again contacted Nebiev to transport another package from Kherson to Crimea that included alcohol and a wheel of cheese.<sup>195</sup> Nebiev transported these items to Crimea and delivered them to another driver, Kuralenkov, from whom Asan retrieved the package.<sup>196</sup> There were some discrepancies between the ‘confession’ of Asan during the preliminary investigation and Nebiev’s pre-trial statement, which claimed that Kuralenkov had picked up both packages on behalf of Asan. However, at trial Asan explained that he only said he picked up a package himself during the preliminary investigation because “that was the text” the investigators gave him and “they told [him] there was no need to frame another person.”<sup>197</sup> Asan claimed that in fact he “never picked them [the packages] up; Kuralenkov pick them up both times.”<sup>198</sup>

After Asan received the second package and returned home, he received a call from Sergei telling him that an explosive was concealed within the wheel of cheese. Sergei told him to hide it in his house and then bury it so that other people could dig it up. Asan removed the device and hid it in a breadbox in his garage.<sup>199</sup> Riza also called Asan and gave him the GPS coordinates of the target and stated that Asan and Aziz would receive USD\$1,800 for their work.<sup>200</sup>

On or about August 8, Riza allegedly called Asan and told him to go and take photos of the area that corresponded to the coordinates that he had sent.<sup>201</sup> Asan complied and took pictures of the bridge, field, trees, and gas pipeline that ran through the area. When he arrived home, Asan sent the photos to Riza. Immediately after, Riza sent Asan a photo

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<sup>189</sup> *Id.*

<sup>190</sup> *Id.*, 27 [testimony of Asan given on 4 September 2021].

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*, 49 [testimony of Nebiev].

<sup>193</sup> *Id.*, 28.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*, 49 [testimony of Nebiev].

<sup>196</sup> *Id.*, 7, 28.

<sup>197</sup> Hearing Protocol, 620.

<sup>198</sup> *Id.*

<sup>199</sup> Indictment, 28 [testimony of Asan on 4 September 2021].

<sup>200</sup> *Id.*, 28, 35 [testimony of Aziz on 4 September 2021].

<sup>201</sup> *Id.*, 28.



of the gas pipeline and Sergei called to tell him that the explosive needed to be tied to a specific part of the pipeline.<sup>202</sup> Later that night, Sergei sent Asan a video on how to deploy the explosive. The next day, Sergei called with further instructions and informed him that the rings on the explosive must be disconnected, which would trigger the device to explode within five hours.<sup>203</sup>

A couple of days later, Sergei called Asan and told him not to rush in deploying the explosive but to visit the site a few times to scout the area.<sup>204</sup> Allegedly, on August 22, Asan drove with Aziz to Perevalnoye. At about 9:30 pm, they drove up to the bridge where the gas pipeline was located in one of the cars that Aziz used at his mechanic shop.<sup>205</sup> They got out of the car and went to the pipe. The testimony of Asan and Aziz differ at various points throughout the investigation as to which one of them actually planted the explosive and which one of them was the lookout,<sup>206</sup> however at trial the prosecution alleged that Asan dug a small hole in which he placed the explosive after removing the rings while Aziz was keeping a lookout.<sup>207</sup>

The next day, Sergei informed Asan that the plan had worked and sent Asan screenshots from news sites stating that unknown people had damaged the gas pipeline.<sup>208</sup> He also informed Asan that they should cease all further communication.<sup>209</sup> On September 2, Sergei called and said that the money Asan was promised would not be coming soon as they could not figure out how to transfer it.<sup>210</sup> According to the prosecution, and based on the testimony of the head of a scrap metal yard, Asan took the car used in this operation to the scrap yard to be destroyed towards the end of August.<sup>211</sup>

Between the spring and summer of 2021, the prosecution asserted that several calls between Riza to Dzhelyal were overheard by a witness, Danilov (pseudonym for the third secret witness).<sup>212</sup> One of these calls allegedly took place between 26-27 August during which Danilov overheard Dzhelyal state that “all worked well on the pipe.”<sup>213</sup> Danilov testified that he had known Dzhelyal since 2010-2011.<sup>214</sup> He said he “witnessed a series of conversation between Nariman Dzhelyal and a certain Riza, who I understood was in Ukraine ... Nariman often mentioned a certain Asan and his brother.”<sup>215</sup> According to

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<sup>202</sup> *Id.*, 29.

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*, 30 [testimony of Asan, September 4 2021].

<sup>207</sup> *Id.*, 9.

<sup>208</sup> *Id.*, 30.

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*, 53; Hearing Protocol, 203.

<sup>212</sup> Indictment, 38.

<sup>213</sup> Hearing Protocol, 217.

<sup>214</sup> *Id.*

<sup>215</sup> Indictment, 38, Hearing Protocol, 217.



Danilov, he also heard Dzhelyal say to Riza that “the guys could come to him to talk to him and get instructions”<sup>216</sup> and “that Asan might come fishing at Arabat Spit...”<sup>217</sup>

The prosecution also claimed to have a letter from the automated traffic violation detection center of the State Traffic Safety Inspectorate of the Ministry of Internal Affairs of the Republic of Crimea that proved that the Akhtemov brothers were in the vicinity of the village of Perevalnoye on August 22, 2021.<sup>218</sup>

At trial, the prosecution relied on witness statements. It did not present any of the alleged messages between the Akhtemov brothers, Dzhelyal, or Sergei and Riza.

On this basis, the prosecution argued that “Akhtemov A.I., Akhmedov O.A., Yagyaev-Veliulaev R.D., Akhtemov A.E. and Dzhelyalov N.E., acting jointly and in concert as part of an organized group, each fulfilling their own role in the crime, deliberately committed an explosion, aimed at destroying and damaging the livelihood of the population for the purpose and to undermine economic security and defense capacity of the Russian Federation.”<sup>219</sup>

## The Defense

On the other hand, the Defense argued that the prosecution’s case was entirely fabricated and made little sense on its own merits. This section will first summarize the main defense arguments (including arguments that the testimony of the three secret witnesses were not credible), then provide an in-depth account of the defense’s core contention—that the prosecution’s case was mainly premised on inadmissible confessions produced by torture or through other coercive means, which the authorities and the court refused to investigate—and then finally describe the defense’s arguments regarding procedural flaws in other evidence.

### *Summary of Defense Arguments*

The prosecution relied heavily on the testimony of three secret witnesses who testified respectively to the alleged conspiracy, to the mechanism for delivering the explosives from Kherson to Crimea, and to Dzhelyal’s relationship with Riza and general attitude toward Russia.

Given their importance, the defense made several requests for the disclosure of these witnesses’ identities arguing that the prosecution did not provide evidence sufficient to meet the legal grounds to justify keeping them hidden.<sup>220</sup> The defense argued that under the Code of Criminal Procedure: “an order to preserve the identity of a witness is issued

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<sup>216</sup> *Id.*

<sup>217</sup> *Id.*

<sup>218</sup> Hearing Protocol, 1099.

<sup>219</sup> Indictment, 10.

<sup>220</sup> Hearing Protocol, 1142.

if it is necessary to ensure the safety of the witness. We have not been provided with a single credible document that threatens the safety of these witnesses.”<sup>221</sup>

The defense also argued that the testimony provided by these witnesses was false and noted several credibility issues. For example, despite Baidachny (the alleged delivery driver) claiming he transported parcels from Crimea to other parts of Ukraine, during cross examination he could not name streets and key locations in Kherson<sup>222</sup> and despite claiming he was a Crimean Tatar identified May 18, which Crimean Tatars mark as a day of mourning, as “a little holiday”<sup>223</sup>; Danilov (who testified to Dzhelyal’s relationship with Riza and attitude toward Russia) claimed to have known Dzhelyal before Russia’s occupation of Crimea, but asserted he had seen him in places and at events that Dzhelyal denied attending;<sup>224</sup> and Byshovets (who testified to the early stages of the conspiracy) claimed during the investigation that he had befriended Dzhelyal because they shared pro-Ukrainian views, but appeared to have pro-Russia views during his in-court testimony.<sup>225</sup>

Moreover, the defense claimed that the testimonies were unreliable and because the witnesses’ identities were kept secret the defense was unable to test the testimonies.<sup>226</sup> For instance, the court repeatedly struck out questions the defense sought to pose, which would have challenged the credibility of the anonymous witnesses, on the ground that they might have disclosed their identities. This was despite the fact that many of the questions were directly relevant to the credibility of the witnesses, and did not have any obvious bearing on the witnesses’ personal information, such as whether one of the secret witnesses who claimed to know Dzhelyal could say where Dzhelyal lived.

The defense also challenged pre-trial statements by various other witnesses as having been produced by ill-treatment. Thus, for instance, the prosecution relied on the pre-trial statements of Nebiev, who allegedly drove the Akhmetov brothers to Kherson for explosives training, but had fled by the time of trial. But the defense indicated that the testimony given by Nebiev during the investigation was likely extracted under torture. Asan testified in court that during his confrontation with Nebiev during the investigation “[i]t was also clear from his physical condition that he had also been subjected to physical coercion. He had marks on his wrists and feet, so even in this false testimony that you read, there are significant contradictions about the content of the parcels.”<sup>227</sup>

Likewise, during the cross-examination of prosecution witnesses Useinov and Odamanov (who had allegedly been prior participants in Riza’s conspiracy), it also became clear that the testimony provided by these witnesses and used to indict the three defendants was

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<sup>221</sup> *Id.*, 1162.

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*, 1214.

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*, 284.

<sup>226</sup> *Id.*, 1216.

<sup>227</sup> *Id.*, 620.

extracted using coercive methods. Odamanov stated that authorities “tied me up and questioned me, then they tortured me with electric shocks, then they connected a lie detector.”<sup>228</sup> Useinov also admitted to being handcuffed with a bag over his head for over an hour during his initial interrogation.<sup>229</sup>

Perhaps most importantly, as discussed in greater detail below, throughout the trial the defense also maintained that “all the confessions, minutes of interrogation by Asan and Aziz during the preliminary investigation were written with the use of physical and psychological violence”<sup>230</sup> and without the presence of their lawyers of choice being present.<sup>231</sup> The defense argued that these confessions were inadmissible evidence and objected to the prosecution’s motion to admit the confessions into evidence. However, the court admitted this evidence on the ground that it needed to “verify the circumstances of the case,”<sup>232</sup> on account of the fact that the defendants’ testimonies at trial contradicted those given during the preliminary investigation.<sup>233</sup>

Finally, as regards the letter from the automated traffic violation detection center of the State Traffic Safety Inspectorate of the Ministry of Internal Affairs of the Republic of Crimea, the defense argued that in fact the prosecutor lied and that the letter:

... dated 07.12.2021, according to which Akhtemov A. I. and Akhtemov A. E. on 22.08.2021 in the period from 21 h. 46 min. to 22 h. 40 minutes were in the vicinity of the village of. Perevalnoye, Dobrovsky rural settlement of Simferopol district of the Republic of Crimea. According to this document, the car VAZ 21043 was recorded on the Simferopol-Alushta highway. But it does not indicate that the driver was Aziz Akhtemov or Asan Akhtemov. And according to this letter, this car was not seen in the area of Dachnaya street in Perevalnoye village of Simferopol district. Therefore, to claim that at that time my defendant was in the village of Perevalnoye is unsubstantiated.<sup>234</sup>

As to the legal elements of the crime, the defense argued they had not been established. First the prosecution did not establish intent. The defense argued that the investigating officer’s testimony about Dzhelyal’s alleged “radical hatred” towards the Russian Federation was based on a subjective opinion, as a forensic and linguistic examination was never carried out to identify whether there were any signs of radicalism on the phone that was seized in the search of Dzhelyal’s home. The evidence presented in court included texts of Dzhelyal’s speeches (without any mention of specific phrases or elements that evidenced his alleged ‘radical hatred’), grant applications and reports, screenshots of Signal chats (as with the speeches, without specific identification of

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<sup>228</sup> *Id.*, 355.

<sup>229</sup> *Id.*, 331.

<sup>230</sup> *Id.*, 687.

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*, 686-687.

<sup>233</sup> *Id.*

<sup>234</sup> *Id.*, 1169.

alleged ‘radical messages’), the list of members of the Mejlis, and even Dzhelyal’s Schengen visa. However, the prosecution did not make clear why these documents proved that Dzhelyal had radical views and in fact during examination the investigator testified that he was “guided solely by his beliefs.”<sup>235</sup>

Further, the Defense pointed out that the prescribed motive for the crime did not make sense given the nature of the target. This is because as one local villager testified, gas was not needed during the summer when the alleged attack occurred.<sup>236</sup> Moreover, despite the fact that the prosecutor argued that the gas pipeline supplied gas to the local village, several witnesses, including an employee of the gas company, testified in court that the gas pipeline only serviced the local military unit and not the village itself.<sup>237</sup>

The defense also argued that while the prosecution had presented evidence of damage to the property of Krymgazseti, the gas company that owned the pipe, it had failed to show a causal link between this and the crime charged, namely undermining the economic security and defense capabilities of the Russian Federation.<sup>238</sup> The prosecution had not provided evidence to substantiate the claim that “a short-term gas cut at a military unit in a rural area had affected the defense capabilities of [the entire Russian Federation].”<sup>239</sup> The only evidence of this was testimony from one officer who claimed that the military personnel had low moral after the explosion, which led to the undermining of combat readiness; but this testimony was not confirmed by anything in the case file including requests to the military personnel psychologist.<sup>240</sup>

The Defense also argued that the prosecution had not met its burden in proving that an organized group of which Dzhelyal was a member existed, noting there were “no billings and wiretaps, screenshots of the correspondence between N. Dzhelyal and Riza, or with Asan or Aziz, confirming the qualifying signs of an organized group (stable composition, prior collusion, distribution of roles, the presence of an organizer, etc.).”<sup>241</sup> Further, “[t]he investigation also did not find any evidence in [Aziz’s] inspected phone, which would

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<sup>235</sup> *Id.*, 921.

<sup>236</sup> *Id.*, 63 (“Witness O.N. Miroshnichenko: Not observed. In summer, of course, we do not often use gas, but I did not observe any interruptions.”).

<sup>237</sup> *Id.*, 16 (Representative of the victim Isaev D.I.: This gas pipeline went exactly to the military unit. State prosecutor: Only to the military unit? Representative of the victim Isayev D.I.: Yes, only there...). Protocol, 1138 (“the residents of Perevalnoye village of Dobrovskoye rural settlement of Simferopol district of the Republic of Crimea, witness Seytumerova S.R. (head of the emergency situation, civil defense and countering extremism and terrorism ideology of the Administration of Simferopol district of the Republic of Crimea), witness Piletsky Yu.S. (mechanic of operation and repair of gas equipment of the emergency dispatching service of the State Unitary Enterprise PK Krymgazseti), witness Dorogan O.V. (master of the emergency dispatching service of the State Unitary Enterprise PK “Krymgazseti) and the representative of the State Unitary Enterprise Krymgazseti denied the public prosecution’s claim that the gas supply to the population of the village of Perevalovaya Dobrovka of the Simferopol village was stopped.”).

<sup>238</sup> *Id.*, 1221.

<sup>239</sup> *Id.*, 1140.

<sup>240</sup> *Id.*, 1226.

<sup>241</sup> *Id.*, 1189.

indicate the communication of Aziz about the explosion of the gas pipeline, there are no SMS notifications from either Asan or Nariman Dzhelyal.”<sup>242</sup>

Additionally, according to the defense, the prosecution failed to prove that Dzhelyal “knew for sure about the time, date, how, by whom, where an explosive device would be moved...”<sup>243</sup> nor was there any evidence that Dzhelyal “personally purchased, transported, stored the explosive device that was used in the explosion of the gas pipeline.”<sup>244</sup> The prosecution did not even prove that the ‘Riza’ Dzhelyal admitted to communicating with “back in 2020 about involving local Crimean Tatars in putting up flyers and raising the Ukrainian flag on some day and so on”<sup>245</sup> was the same Riza that they accused of being part of this criminal organized group “because there is no evidence of communication of Nariman Dzhelyal with Yagyaev-Veliulaev R.D. in the materials of the criminal case...”<sup>246</sup>

More broadly, the defense offered alternate explanations of the alleged events based on evidence and testimony, and pointed out logical gaps in the prosecution’s theory. For example, the prosecution argued that Asan and Aziz had travelled to Kherson in July 2021, for the purpose of meeting with Riza and Sergei. This was based on the testimony provided by the brothers following coercive interrogation methods<sup>247</sup> and the testimony given by Nebiev during the initial investigation. However, the brothers recanted their confessions and Nebiev, the prosecution’s only witness on this point, was not present in court and his testimony could not be verified by the defense. During the trial Asan and Aziz explained instead that this trip had been solely made so that the brothers could obtain Ukrainian passports. Asan testified that:

At 4 am on the appointed day we met with Nebiev Erfan in a completely empty minibus, just the driver and the two of us. We arrived at about 8-9 in Kherson, he brought us immediately to the passport office, I took 50 minutes to get my passport, and Aziz filed the documents, we had to wait in line. I went out to Erfan, told him there was a line and we had to wait while the documents were being submitted. Erfan said that he didn't have time, he had other clients, so I said that we would just get home ourselves. He left, we spent about 2 hours with Aziz in line, he filed the documents and then we left the passport office.<sup>248</sup>

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<sup>242</sup> *Id.*, 1169.

<sup>243</sup> *Id.*, 1127.

<sup>244</sup> *Id.*, 1128.

<sup>245</sup> *Id.*, 1219.

<sup>246</sup> *Id.*

<sup>247</sup> *See infra.*

<sup>248</sup> *Id.*, 594.



Aziz even submitted into evidence a certificate he obtained from the passport office.<sup>249</sup>

While the prosecution also alleged that Aziz had taken the car allegedly used to transport the explosives to the scrap yard to dispose of the evidence,<sup>250</sup> the defense disputed this. The defense called several witnesses who testified that the car was old and not roadworthy, and that Aziz had bought it simply as a work car.<sup>251</sup> Even the owner of the scrapyard, who was called by the prosecution, stated that the car was "...in a very bad condition, the bottom was all rusty, it was already dangerous to use."<sup>252</sup>

Furthermore, the defense also pointed out flaws with the prosecution's argument that the brothers would blow up a pipeline for so little compensation, "[w]itnesses for both defense and prosecution testified that both brothers had permanent jobs so to commit a crime for an amount of only US\$900 which is not a large amount does not make sense."<sup>253</sup> Furthermore, while according to Odamanov's testimony, Riza compensated him for carrying out smaller errands, in the case of the brothers the prosecution sought to argue that "the brothers allegedly went to the Arabat Spit for free and they were not given anything for the explosion of the gas pipeline, although they could have been given it immediately, while they were on the territory of Ukraine..."<sup>254</sup>

In sum, the defense alleged that the entire case was fabricated by the authorities resulting in a number of inconsistencies and process violations throughout the investigation, detailed below, all in an attempt to arrest Dzhelyal because he was "an active participant and representative of the public national movement of the Crimean Tatars."<sup>255</sup> According to the defense, the gas pipeline explosion provided the authorities with the opportunity they needed to do this.

[T]he investigating body "modeled the version" by artificially inflating the charge, giving it elements of "organized criminal group", "smuggling of explosives", "sabotage", and for greater severity of the alleged act, "the purpose - undermining the economic security and defense capacity of the Russian Federation."<sup>256</sup>

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<sup>249</sup> *Id.*, 1274 ("As for my trip to Kherson, somewhere in June, in July, Asan told me that he wanted to go to Kherson to get a passport. I also wanted to apply for a passport when I was 25 years old. And we agreed to go together. And the proof of that is my certificate, which I really got from the passport office, which was examined in the trial and for which I went to Kherson.").

<sup>250</sup> *Id.*, 1104.

<sup>251</sup> See, e.g., Hearing Protocol, 436 (testimony of Witness Aleshin N.D. "it drove for a while, then the wheels almost began to fall off, there was no point in welding it, you had to spend a lot of money, but the car was not worth it."; Protocol, 466 Witness A.K. Ablyamitov "It was rotten, unfit for use, it worked in sporadic intervals."; Protocol, 555 Witness Ismailov K.A. "rear beam was torn off".).

<sup>252</sup> *Id.*, 207.

<sup>253</sup> *Id.*, 1198.

<sup>254</sup> *Id.*

<sup>255</sup> *Id.*, 1130.

<sup>256</sup> *Id.*

The defense argued that the authorities had only targeted Aziz and Asan as accomplices because they had left Crimea for Kherson to get passports at a convenient time before the date of the gas pipeline explosion, helping with the narrative of the fabricated story.<sup>257</sup>

## Treatment and Torture Allegations

Over the course of thirty-five hearings, the court heard detailed accounts of the ill-treatment and torture used to extract confessions from the defendants, as well as testimony from witness Odamanov Eldar, a Crimean Tartar who was also held incommunicado by the FSB and testified to being tortured.

### *Dzhelyal*

The ill-treatment by the authorities started immediately following Dzhelyal's arrest. Dzhelyal described that moment during his testimony: "[y]ou can imagine my psychological state, it was increased multifold by my knowledge of how it happened to other people repeatedly abducted by the officers of certain Russian services ... I myself made reports on torture by the FSB, you can imagine my psychological state when they put a bag on my head and took me on a drive."<sup>258</sup> According to Dzhelyal, he complied with the demands of the FSB officers as he realized that failure to do so would lead to physical violence.<sup>259</sup>

He was taken to an unknown location where he was forced out of the car still wearing the bag over his head and in handcuffs.<sup>260</sup> He was then taken into a building where he was forced to sit on a chair "as on a horse, hands forward on the backrest, it is a very uncomfortable position to sit for a long time, because the hands are suspended all the time, there is nowhere for the back to rest"<sup>261</sup> and it was in this position that the authorities began to interrogate him. When Dzhelyal said that he wanted a defense counsel, he was told "rudely and bluntly ... [that] 'there would be no defense counsel.'"<sup>262</sup>

Dzhelyal recounted that there were two people who initially interrogated him but that he suspected there were others in the room because when the main interrogators left the room other people would start talking to him.<sup>263</sup> Dzhelyal noted that on one occasion, they started saying "nasty things" about Crimean Tatars, "that it was right that you [Crimean Tatars] were expelled, and if I had my will, I would still deport you all...".<sup>264</sup> On another occasion, as an interrogator was leaving, they said, "[l]et him get on his feet and stand,

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<sup>257</sup> *Id.*

<sup>258</sup> *Id.*, 698-699.

<sup>259</sup> *Id.*, 700.

<sup>260</sup> *Id.*

<sup>261</sup> *Id.*, 699.

<sup>262</sup> *Id.*, 700.

<sup>263</sup> *Id.*

<sup>264</sup> *Id.*, 722.

he is always writing about torture, let him try what torture is.”<sup>265</sup> Someone lifted Dzhelyal to his feet, and he stood for 25-30 minutes until the interrogator returned.

Verbal threats were also used against Dzhelyal throughout this period. For example, during the interrogation, Dzhelyal was allegedly told, “[y]ou are a smart guy, you realize that if you don't communicate with us in a good way, we will treat you badly.”<sup>266</sup> After the interrogation he was forced to take a polygraph, and was told that if he refused “then the option would not be as good as it is now.”<sup>267</sup> It was only for the polygraph test, around 2 or 3pm, that the bag was finally taken off Dzhelyal’s head and the handcuffs removed. According to him, this was also the first time he was offered any water.<sup>268</sup>

Dzhelyal alleged that he was then forced to sign a consent to “voluntarily” take the polygraph. According to him, when he demanded defense counsel one of the FSB officers interrogating him said:

Nariman, I thought we agreed with you downstairs. I explained to you what will happen if you refuse to take the polygraph. Think again. If you refuse now, if you don't agree to voluntary undergo the polygraph, that's it, the good talk ends here, we're going downstairs, and we'll talk differently.<sup>269</sup>

According to Dzhelyal, the polygraph test took two hours after which he was handcuffed, and the bag was placed over his head again. It bears noting that the results of this polygraph was never presented as evidence during the trial. He was then taken out of the building and put onto a minibus, which drove for around 40-50 minutes before arriving at the FSB building, around 6pm.<sup>270</sup> The bag was then again removed from his head and he was taken inside the building to ‘rest’ on a chair for three hours while under guard.<sup>271</sup> During this time he was not offered food or water.<sup>272</sup>

According to Dzhelyal, the interrogation re-started at around 10 pm with investigator Vlasov. When Dzhelyal said that he needed a defense counsel, Vlasov allegedly replied, “You are not in a position to require a defense counsel now.”<sup>273</sup> Dzhelyal stated in court that, at that point “I was in no condition to ask him what my position was. I was very tired. My thoughts were confused and it was hard to take it all in.”<sup>274</sup> Vlasov took Dzhelyal to investigator Lavrov, who in response to Dzhelyal's request to call a defense counsel “smiled and said that you would call a defense counsel later.”<sup>275</sup>

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<sup>265</sup> *Id.*

<sup>266</sup> *Id.*, 724.

<sup>267</sup> *Id.*, 701.

<sup>268</sup> *Id.*, 726.

<sup>269</sup> *Id.*, 724.

<sup>270</sup> *Id.*, 730.

<sup>271</sup> *Id.*, 732.

<sup>272</sup> *Id.*

<sup>273</sup> *Id.*, 734.

<sup>274</sup> *Id.*

<sup>275</sup> *Id.*

Dzhelyal's interrogation lasted for 30-40 minutes.<sup>276</sup> Three to four hours later, a confrontation with Asan was held. Before the confrontation, Dzhelyal asked Asan whether he had been beaten or electrocuted in Crimean Tatar and Asan answered yes.<sup>277</sup> Later Dzhelyal and Asan were put in 'stakans'<sup>278</sup> next to each other. According to Dzhelyal's testimony:

I asked what happened to them, if they were beaten. [Asan's] voice was so high, it was clear that he did not want to and could not talk. I didn't ask him a lot of questions even though I had a million, the only thing I asked him was if they were beaten and he said yes they were, and I asked him if they were electrocuted and he said that they put wires on his ears. I asked if Aziz was beaten and he said Aziz was also beaten, but not as badly as him, and I did not elaborate on the electric shocks. I remember that Asan, with a lot of tears in his voice, although I didn't ask him about it, said: 'Nariman, you know I wouldn't do this for any money in the world.'<sup>279</sup>

Only after the confrontation was Dzhelyal officially arrested. This was at 2:40 am on September 5.<sup>280</sup> Only at that moment was he allowed to call his defense counsel of choice—Emine Avamileva. When she arrived at the FSB office, Dzhelyal was allowed to call his wife.

Dzhelyal was officially charged as a suspect at 7 am on September 5. All this time he had not been given any food and had only been given water at 2pm on September 4. Only after being charged, a full day after his detention, was he finally allowed to eat food brought in by his friend.<sup>281</sup>

#### *Asan*

Asan testified that at around 11 p.m. on September 3, 2021, people in camouflage, balaclavas, and with automatic guns broke into his home.<sup>282</sup> They woke him up by demanding that he "get up!"<sup>283</sup> Asan's wife and children were all sleeping in the same room. According to Asan, there were about eight people in his room. After he got out of bed they handcuffed him, twisted his hands, took him outside and put him in a car.<sup>284</sup> They then proceeded to blindfold him and then put duct tape over the blindfold and a

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<sup>276</sup> *Id.*

<sup>277</sup> *Id.*, 741.

<sup>278</sup> This literally translates to "a drinking glass." It is a small cubicle, usually ranging in size from 1.5\*1.5 meters to 50\*60 cm, with or without a seat inside. Normally, "stakans" are used for holding prisoners before conveying them. Single-prisoner cubicles used to transport prisoners to and from train stations and also between remand prisons, courts and police wards are also called "stakans." See e.g., European Court of Human Rights, *Tomov and Others v Russia*, App. Nos. 18255/10 and 5 others, Apr. 9, 2019.

<sup>279</sup> Hearing Protocol, 743.

<sup>280</sup> *Id.*, 745.

<sup>281</sup> *Id.*

<sup>282</sup> *Id.*, 636.

<sup>283</sup> *Id.*, 637.

<sup>284</sup> *Id.*, 593.

plastic ski mask over the duct tape before finally putting a bag over his head.<sup>285</sup> He was told that he had “raped some girl.”<sup>286</sup> They then drove him around for about 40-60 minutes.<sup>287</sup>

When they finally arrived at their destination he was taken out of the car and taken to a basement room. According to Asan, he was then “put on a chair, his legs were tied with tape to the legs of the chair and his hands to the backrest.”<sup>288</sup> It was at this point that the threats started and he was allegedly told that if he did not tell them everything there were officers in his house who would plant weapons and drugs and rape his wife.<sup>289</sup> According to Asan, he did not understand what they wanted from him but he said to the investigators that “he agreed to everything just so they did not touch his family.”<sup>290</sup> It was at this point the physical torture begun. As Asan as explained:

Bare wires were hung around his ears, to which an electric current was connected. There were about 8 strong electric shocks, about 10 seconds each, during which [he] was unable to utter words due to spasm of his cheekbones. In addition, there were many less strong electric shocks, during which he was forced to confess, but he answered that he had not raped anyone, as that was what he had been told on the way out of the house.<sup>291</sup>

According to Asan, the electric shocks were only finally reduced when the interrogators told him that “he was a terrorist who had blown up a military unit in the village of Perevalnoye.”<sup>292</sup>

The interrogators then took him outside and proceeded to threaten to take him to a forest where they would kill him if he tried to escape. They then punched him in the back of the neck and told him he had one last chance to confess before taking him back into the building.<sup>293</sup>

According to Asan, a man who introduced himself as a ‘doctor’ took off Asan’s mask and said that he had come from Moscow and that Asan’s brother had confessed to everything.<sup>294</sup> The mask was then put back on Asan’s head and he was taken back to the basement, tied to a chair and told he would be electrocuted Cagain but according to him, “he had no strength and could not bear the pain, he agreed to give the necessary

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<sup>285</sup> *Id.*, 593.

<sup>286</sup> *Id.*, 586.

<sup>287</sup> *Id.*

<sup>288</sup> Casefile, Vol. 10, 252 [Decision on the refusal to initiate a criminal case, The Investigative Committee of the Russian Federation, Dec. 2, 2021, 7].

<sup>289</sup> *Id.*

<sup>290</sup> *Id.*

<sup>291</sup> *Id.*

<sup>292</sup> *Id.*

<sup>293</sup> *Id.*, 8.

<sup>294</sup> *Id.*



testimony.”<sup>295</sup> At this point the mask was finally removed and he was untied and saw multiple people in camouflage in the room with him.<sup>296</sup>

For his first confession he was allegedly given a printed text and told to rewrite it by hand.<sup>297</sup> Someone was also dictating what to write to him. Asan testified in court that if he looked at the printed text, “I got punished for it. I was told to write in my own words, not to rewrite it verbatim.”<sup>298</sup> When questioned by the judge at trial about what that meant, Asan clarified “that bare wires were put over his ears and his hands were tied again.”<sup>299</sup> He was also then forced to repeat his testimony on video with the ‘doctor’ telling him what to say.<sup>300</sup> Asan testified in court that after he was subjected to the electric shock torture “[h]e was moved by the convoy of staff, it was difficult for [him] to breathe and [he] had very serious pain in [his] heart.”<sup>301</sup>

Asan was also subjected to psychological ill-treatment. He was told by the interrogators that his brother Aziz was in the same building and had confessed to everything, and that Dzhelyal had also confessed. He heard screams, which he thought were Aziz's, then he heard a gunshot and silence.<sup>302</sup> Asan stated in court that at that moment “I understood that my little brother was gone, he had been killed. Now I understand that this was psychological pressure.”<sup>303</sup>

After that he was taken to a forest and told to run while two men in camouflage argued over who would kill him.<sup>304</sup> Asan allegedly told them he could not run, as he had no strength left, and that they could shoot him so long as they did not hurt his family.<sup>305</sup>

He was then taken to the investigation department of the FSB. Asan stated that at some point on September 4, he met with an ‘FSB general’ and that prior to this meeting, he underwent a COVID-19 test and received an injection, after which he began to feel well, and the pain caused by torture subsided.<sup>306</sup> He was also given a typed statement, which he was told he had to memorize for the confrontation with Dzhelyal.<sup>307</sup>

He was also forced to take on Glushko, a state-appointed defense lawyer. According to Asan, investigator Vlasov told him that Azamatov (the defense counsel Asan’s family had hired) was standing outside the FSB building and that if Asan chose him as his defense

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<sup>295</sup> *Id.*

<sup>296</sup> *Id.*

<sup>297</sup> *Id.*

<sup>298</sup> Hearing Protocol, 697.

<sup>299</sup> *Id.*, 697.

<sup>300</sup> Casefile, Vol. 10, 253, [Decision on the refusal to initiate a criminal case, The Investigative Committee of the Russian Federation, Dec. 2, 2021].

<sup>301</sup> Hearing Protocol, 923.

<sup>302</sup> Casefile, Vol. 10, 253 [Decision on the refusal to initiate a criminal case, The Investigative Committee of the Russian Federation, Dec. 2, 2021].

<sup>303</sup> *Id.*

<sup>304</sup> *Id.*

<sup>305</sup> *Id.*

<sup>306</sup> Hearing Protocol, 822.

<sup>307</sup> *Id.*

counsel, it would be “very bad”, and they would “repeat what happened in the basement.”<sup>308</sup> Asan then accepted Glushko as his lawyer.

Asan alleged that he told Glushko about the torture and ill-treatment he had endured, to which Glushko replied that the system was like that, and Asan should confess to everything.<sup>309</sup> This behavior did not stop once Asan was in the FSB building and had Glushko as his lawyer. During the trial Asan stated, “this lawyer [Glushko] saw with his own eyes how violence was applied to me, I turned to him when I did not want to sign another bullshit paper. I was taken out into the corridor and beaten, this lawyer was standing next to me and I asked him to do something, and he said that he could not do anything, that was the system.”<sup>310</sup>

According to Asan, he felt he had no choice, as he feared not only for his life but that of his family, and without even reading what was in front of him signed all the protocols provided to him. He also memorized the statements he was given to record videos of his confession. He recalled that four videos were recorded: one with his confessions given while he was in the basement; the second with confessions given in the FSB office; the third with the “FSB general” (on this video he was captured together with Aziz); and a fourth video, although it is unclear when or with whom this fourth video was recorded.<sup>311</sup>

Asan also had a confrontation with Dzhelyal. According to Asan:

They [the FSB officers] had prepared me for this confrontation for a long time, maybe a whole day, they made me learn the text, but when they brought Nariman, he was also without a lawyer, I do not remember if my lawyer was there. They also threatened me that if I said even one word that they didn't want me to say Nariman would go to his defender and I would be thrown into that basement, but it didn't work, I still couldn't learn the text.<sup>312</sup>

Asan only provided an abbreviated version of what he had been told to memorize.<sup>313</sup>

At the pre-trial hearing on September 6, 2021, Asan was once again forced to denounce his lawyer of choice and appoint Glushko.<sup>314</sup> It was not until September 13 that Asan was finally able to access his lawyer of choice, Azamatov, at which point he renounced his confession. In mid-December 2021 investigator Lavrov allegedly came to see Asan several times and threatened him because Asan had withdrawn his confession and refused to keep his state-appointed lawyer.<sup>315</sup> According to Asan, on another occasion

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<sup>308</sup> *Id.*, 660.

<sup>309</sup> *Id.*, 588.

<sup>310</sup> *Id.*

<sup>311</sup> *Id.*, 661.

<sup>312</sup> *Id.*, 592.

<sup>313</sup> *Id.*; The protocol of confrontation Asan Akhtemov and Nariman Dzhelyal, 2.

<sup>314</sup> Petition denouncing all lawyers but Glushko, Sep. 6, 2021.

<sup>315</sup> Petition renouncing Glushko, Sep. 13, 2021.

during a conversation with investigator Lavrov, his defense lawyer Azamatov asked if he knew that Asan had been tortured, to which Lavrov did not deny the allegations but instead replied, "[w]ell, he wasn't tortured that much."<sup>316</sup>

Asan claimed that "after these unauthorized measures [he] was kept in quarantine in the pre-trial detention facility for two months ... For two months they did not do a medical examination, waiting for the traces of the torture that was done to [him] to disappear."<sup>317</sup> Asan, alleged that as a result of the torture, he suffered burns on the inside of his lips and on his tongue. For 12 days he "couldn't go to the toilet, couldn't sleep, woke up because of flashes, [he] thought there was a bright light."<sup>318</sup> During his first days in pre-trial detention he was threatened by FSB officers that if he tried to seek medical help 'they would take him back.'<sup>319</sup> He further applied for a medical examination several times while being held in pre-trial detention, but it was not carried out. Six months later, Asan, who still had pain in his ribs, was examined at the medical unit and diagnosed with intercostal neuralgia.<sup>320</sup>

#### Aziz

According to Aziz's account of his arrest, at around 1 am on September 4, 2021, 10-12 men in camouflage, with automatic rifles and masks, entered his home.<sup>321</sup> He was there with his wife and young daughter. He was told to give them all his devices and money and told to sign documents about the search.<sup>322</sup> After conducting a search, the men told Aziz that he had to come with them as a witness in a case; they then handcuffed him and put him in a car without a license plate and put a bag over his head.<sup>323</sup> Aziz described his mental state as one of panic: "I was worried about my life at every moment."<sup>324</sup> They drove for a while before they arrived at their destination where Aziz was taken out of the car and forced to go down to a basement.<sup>325</sup> According to Aziz's testimony, "they put [him] behind a chair, tied [his] legs and [his] hands in front of [him] with some tape."<sup>326</sup> He was then told that he had blown up a gas pipe but he did not know what the interrogators were talking about.<sup>327</sup>

From the room he was in Aziz heard someone shouting, "as if in pain"<sup>328</sup> and was told it was his brother. Aziz could hear him shouting, "he had not done anything and did not

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<sup>316</sup> Hearing Protocol, 891.

<sup>317</sup> *Id.*, 608.

<sup>318</sup> *Id.*, 593.

<sup>319</sup> *Id.*, 664.

<sup>320</sup> *Id.*; Medical Unit Lo3 branch of the Federal Financial Institution MS4-91 No 19 of the Federal Penitentiary Service of the Russian Federation, No. 1-5/2022, 21/07/2022.

<sup>321</sup> Hearing Protocol, 633.

<sup>322</sup> *Id.*

<sup>323</sup> *Id.*

<sup>324</sup> *Id.*, 1261.

<sup>325</sup> *Id.*, 633.

<sup>326</sup> *Id.*

<sup>327</sup> *Id.*, 1261.

<sup>328</sup> *Id.*

know anything.”<sup>329</sup> Aziz described that the shouting first made him scared for Asan, and then scared for himself. He then heard a gunshot and silence and “his leg tied to the chair began to twitch from fear.”<sup>330</sup> He was then told that if he resisted the same thing would happen to him.<sup>331</sup> Asan described that at that moment not only did he fear his brother had been killed but he also worried about what would happen to him: “[m]y first thought was how my daughter would grow up without a father, my wife without a husband, and my parents without a son.”<sup>332</sup>

Aziz testified in court that the interrogators repeatedly threatened him that if he did not do as he was told he would be tortured.<sup>333</sup> Indeed, while he still had the bag over his head they repeatedly hit him in the back of the head and neck and he admitted, “I was ready to do whatever they said, as I feared for my life.”<sup>334</sup>

Aziz was told that he would be given a document, and he would have to memorize the text and repeat it on camera. He was then given a typed document and the bag was taken off his head.<sup>335</sup> The interrogators also gave him a drawing of an explosive device and told him that he needed to redraw it, which he did.<sup>336</sup> The bag was then put back over his head and he was handcuffed and taken to the FSB office on Franko Boulevard.<sup>337</sup>

At the FSB office he was taken to a room where a masked man switched on a camera and told Aziz he had to recount everything he had memorized. According to Aziz, he repeatedly forgot the text but was reminded of the correct wording by the interrogator in the room.<sup>338</sup> After that he was taken out of the office, stood against the wall in the corridor for about an hour, and then was taken to a ‘stakan’ where he was kept until morning. Aziz testified that at this point he was “tired and exhausted, very thirsty and sleepy”<sup>339</sup> having been up the entire day.

In the morning, they took him to the office of investigator Vlasov and told him to write a confession. Aziz testified that there was no lawyer present and that Vlasov told him “write what you read in the basement.”<sup>340</sup> However, the investigator was apparently not pleased with what Aziz wrote, allegedly telling him, “you have mixed up everything, here are the papers, read them again.”<sup>341</sup> The second version Aziz wrote satisfied Vlasov and he was told to write three copies.<sup>342</sup> He then asked to make a call but Vlasov denied his request

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<sup>329</sup> *Id.*

<sup>330</sup> *Id.*

<sup>331</sup> *Id.*

<sup>332</sup> *Id.*

<sup>333</sup> *Id.*

<sup>334</sup> *Id.*

<sup>335</sup> *Id.*, 633.

<sup>336</sup> *Id.*

<sup>337</sup> *Id.*

<sup>338</sup> *Id.*

<sup>339</sup> *Id.*, 1264.

<sup>340</sup> *Id.*

<sup>341</sup> *Id.*, 1264.

<sup>342</sup> *Id.*

and stated, “until you sign all the documents that need to be written, I will not let you make a phone call.”<sup>343</sup> Vlasov then brought documents for Aziz to sign. Aziz did this without even reading them because he decided “there was no point in resisting.”<sup>344</sup>

It was during this time that Aziz claimed he overheard a telephone call between Vlasov and someone. Vlasov allegedly told the person on the phone, “[Aziz] was not here and [he] did not know where [Aziz] was.”<sup>345</sup> After this call, Vlasov told Aziz that his lawyer Shabanova was there but he wanted Aziz to renounce her as his lawyer.<sup>346</sup> He then dictated a waiver of agreement that Aziz was forced to write, renouncing Shabanova as his lawyer.<sup>347</sup> Aziz explained that Vlasov was “constantly threatening [him]”<sup>348</sup> and told him he would not be able to call his family until he signed all the documents.<sup>349</sup>

It was not until 3 or 4pm that Aziz was finally able to call his wife to tell her where he was.<sup>350</sup> Following this call, Polyansky, Aziz’s state appointed lawyer entered the room. Aziz testified in court that he was not allowed to have a confidential conversation with Polyansky. However, as they entered the corridor after leaving Vlasov’s office Polyansky told Aziz to “do whatever [Aziz] was told and then there will be no problem.”<sup>351</sup>

Polyansky was present during the filming of one of Aziz’s confessions. The video was shown during the hearing and Aziz noted that “[i]n the video you can clearly see the paper in front of [me] and every time [I] was thinking of what to say [I] peeked into this composed testimony ... At least three times the video shows [me] falling asleep and waking up, or being helped to wake up.”<sup>352</sup> Aziz also testified that Polyansky was “suggesting words that [he] had forgotten”<sup>353</sup> and that and that there was an FSB officer in a balaclava “putting pressure on [Aziz].”<sup>354</sup>

After the video recording of the confession, Aziz was instructed that he would be taken to the scene of the incident and that he had to do what they told him to, or he would be subjected to the same treatment he had endured in the basement.<sup>355</sup> He was then put into a car and through the car window he saw Asan being led out of the FSB building holding his stomach and limping badly.<sup>356</sup> Asan was put into another car. After that, Aziz was taken to the village of Perevalnoye to do an on the spot verification, the details of which are described above.

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<sup>343</sup> *Id.*

<sup>344</sup> *Id.*

<sup>345</sup> *Id.*

<sup>346</sup> *Id.*, 636.

<sup>347</sup> *Id.*, 1264.

<sup>348</sup> *Id.*

<sup>349</sup> *Id.*, 636.

<sup>350</sup> *Id.*

<sup>351</sup> *Id.*, 1266.

<sup>352</sup> *Id.*

<sup>353</sup> *Id.*

<sup>354</sup> *Id.*

<sup>355</sup> *Id.*, 1266.

<sup>356</sup> *Id.*, 635.



After the on the spot verification, Aziz was brought back to the FSB building and put back into the 'stakan' with only a chair. He started to fall asleep but they took him out and led him to Vlasov's office and told him to sign a number of documents.<sup>357</sup> Aziz was then transferred to another office where the 'confrontation' with Asan was held.<sup>358</sup> The confrontation lasted only a few minutes and both brothers were given pre-prepared documents, which they signed.<sup>359</sup>

Aziz wasn't able to remember with detail what happened on September 5 but that afternoon, he and Asan were put in a car and taken to the Bakhchisaray temporary detention center, where Aziz was taken to a cell and left alone.<sup>360</sup> This was the first time since his arrest, over 24 hours earlier, that Aziz was able to drink water and eat.<sup>361</sup>

On September 6, Aziz and Asan were taken out of the temporary detention center and taken to the Kiev District Court for a detention hearing. All the way to the court the officers in balaclavas threatened that there would be lawyers hired by their families in court and if Asan and Aziz agreed to be represented by them, they would "get in trouble again" and "be sent down to the basement again."<sup>362</sup> In court Shabanova approached him but according to Aziz, Vlasov "jumped up from his chair, ran up and started yelling, 'Are you still with her after all?'"<sup>363</sup> Aziz testified that he feared for his life and once again renounced Shabanova as his lawyer and was represented by Polyansky. Polyansky did not provide a defense during the hearing.<sup>364</sup>

#### *Witness Odamanov*

During cross-examination Odamanov also admitted to being subject to electric shocks after being arrested by the authorities and before he was taken to the FSB office to make his confession. He testified in court that, "[t]hey tied me up and questioned me, then they tortured me with electric shocks, then they connected a lie detector..."<sup>365</sup>

#### *III-treatment of other Crimean Tatars During Investigation*

During his testimony in court on July 20, 2022 Dzhelyal also mentioned that two other Crimean Tatars had been detained and interrogated on December 14 and 17, 2021.<sup>366</sup> They were allegedly asked about Dzhelyal. According to Dzhelyal one of them – Nariman Ametov – was also tortured similar to Asan.<sup>367</sup> According to Dzhelyal's in court testimony

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<sup>357</sup> *Id.*, 1216.

<sup>358</sup> *Id.*, 1270.

<sup>359</sup> *Id.*

<sup>360</sup> *Id.*, 1272.

<sup>361</sup> *Id.*, 635.

<sup>362</sup> *Id.*, 1272.

<sup>363</sup> *Id.*

<sup>364</sup> *Id.*

<sup>365</sup> *Id.*, 355.

<sup>366</sup> *Id.*, 744-745.

<sup>367</sup> *Id.*

“it seems that in our case they did not tell them [FSB] what they wanted to know, so they were let go.”<sup>368</sup>

Human Rights organization OVD-Info reported that similar to the co-defendants, Ametov was put in a car with a bag over his head by FSB officers and taken to a basement where he was tied to a chair with tape and was subjected to electric shocks.<sup>369</sup> Similar to Dzhelyal he was also allegedly forced to take a polygraph test.<sup>370</sup> Meanwhile, according to a media interview, the other Crimean Tatar who was detained and interrogated was also handcuffed, blindfolded and taken to a basement at an unknown location. There, he was threatened that a criminal case for sexual abuse of a minor would be fabricated against him if he refused to ‘cooperate’.<sup>371</sup>

### **Attempts to Open a Criminal Case Related to the Torture Allegations**

Both Dzhelyal and Asan reported their torture and ill-treatment and demanded the initiation of a criminal case by the investigative committee.

On November 23, 2021, after conducting a pre-investigation inquiry, the Investigative Committee refused to initiate a criminal case regarding the allegations of torture and illegal deprivation of Dzhelyal's liberty.<sup>372</sup> The Committee referred to submissions of the FSB operatives and investigators refuting the allegations, as well as materials in the criminal case against Dzhelyal.<sup>373</sup> This decision, which was reviewed by TrialWatch, is only three pages long and does not mention at all Dzhelyal's version of events.<sup>374</sup> At trial, Dzhelyal testified that during this pre-investigative inquiry no statement was taken from him.<sup>375</sup>

On December 2, 2021, the Investigative Committee likewise refused to open a criminal case regarding the allegations of torture and illegal deprivation of Asan's liberty. The Committee again cited the submissions of the authorities including, investigators Vlasov, Kitayev, Bushuyev and Panin; FSB operatives, policeman Bondarenko of the Bakhchisaray District Department of Internal Affairs of Russia, and Glushko, as well as

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<sup>368</sup> *Id.*, 745.

<sup>369</sup> OVD-Info, “Житель Старого Крыма рассказал о пытках током после обыска,” Dec. 21, 2021, available at: <https://ovd.info/express-news/2021/12/21/zhitel-starogo-kryma-rasskazal-o-pytках-tokom-posle-obyska>.

<sup>370</sup> *Id.*

<sup>371</sup> Crimean SOS, “«Твоя жизнь поменяется в худшую сторону»: ФСБ угрозами пыталась завербовать крымского татарина Куртумера Чалгозова,” Jan. 4, 2022, available at: <https://krymsos.com/ru/tvoye-zhyttya-zminytsya-u-girshyj-bik-fsb-pogrozamy-namagalasya-zaverbuvaty-krymskogo-tataryna-kurtumera-chalgozova/>.

<sup>372</sup> Casefile Vol. 10, 243-245. [Decision on the refusal to institute criminal proceedings, Military Investigative Department, Investigative Committee of the Russian Federation, Nov. 23, 2021].

<sup>373</sup> *Id.*

<sup>374</sup> *Id.*

<sup>375</sup> Hearing Protocol, 1081.

information from the pre-trial detention center and materials in the criminal case against him.<sup>376</sup>

The decision also referred to a forensic medical examination of Asan.<sup>377</sup> According to the expert(s) of that medical exam “it is not possible to confirm or deny the presence of any injuries and (or) their traces (including in the area of the auricles) on A.I. Akhtemov at the time of his placement in the temporary detention center on 05.09.2021.” However, it is unclear when or by whom this medical examination was conducted as Asan testified in court that he applied for a medical examination multiple times while being held in pre-trial detention and it was not carried out.<sup>378</sup> Furthermore, on September 27 and October 20, 2021, the head of the detention center formally refused to conduct a medical examination of Asan.<sup>379</sup>

It does not appear that beyond taking statements from some of the investigators involved in dealing with Dzhelyal and Asan the Investigative Committee investigated the allegations with the level of scrutiny they merited.

According to Asan, the authorities deliberately miswrote his statement regarding the alleged torture:

... It was useless. I provided explanations. This happened in the FSB building, my lawyer Refat Yunus was present, as well as the Military Prosecutor. I was speaking about what happened, and the prosecutor was typing the text on his laptop. However, at one point, we misunderstood each other. I turned the laptop around and saw that he was writing what I hadn't said.<sup>380</sup>

On January 26, 2022, the Investigative Committee also refused to initiate criminal proceedings regarding Asan's claim that evidence had been falsified during the on the spot verification on 8 September 2021.<sup>381</sup> This decision again relied solely on the testimonies of the FSB officers and the expert who took part in the inspection, as well as on materials from the criminal case against the defendants.

## **Treatment of Torture Allegations at Trial**

Russian law prescribes that if there are allegations of torture or that other unlawful methods were used during an investigation the courts must “take sufficient and effective measures to verify such a statement by the defendant.”<sup>382</sup> If there are grounds for

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<sup>376</sup> Casefile, Vol. 10, 247.

<sup>377</sup> Casefile, Vol. 10, 252.

<sup>378</sup> Hearing Protocol, 664.

<sup>379</sup> Casefile, Vol. 17, pp. 97, 99.

<sup>380</sup> Hearing Protocol, 665.

<sup>381</sup> Casefile, Vol. 16, pp. 45-47.

<sup>382</sup> Resolution of the Plenum of the Supreme Court of the Russian Federation dated November 29, 2016, No. 55 'On Judicial Verdict,' ¶12.

conducting an inquiry into the defendant's statement, the court must forward this information to the relevant investigative body. However, an inquiry conducted by an investigative body "does not relieve the court of its obligation to assess the materials submitted ... and to reflect its conclusions in the judgement."<sup>383</sup> Thus, the mere fact that the Investigative Committee had refused to initiate criminal proceedings did not relieve the trial court of its obligations to make its own assessment.

During the trial, all three co-defendants described in detail the torture and ill-treatment they experienced by the FSB officers, but the court did not submit this information to the investigative body for further inquiry.

Investigators Kitaev, Panin, Vlasov, Lavrov, Bushuyev, Sherstyukov and four lay witnesses, as well as Glushko, were all called as witnesses during the trial. However, despite the serious allegations of ill-treatment the judges asked them almost no questions. Worse still, it appears the court was dismissive of these serious allegations.

For example, Kitaev, who claimed to have been with Asan when he made his second confession in the presence of Glushko, was asked during cross-examination about Asan's physical state and whether he could hear problems with Asan's speech during their interrogation, to which Kitaev replied in the negative.<sup>384</sup> The defense once again brought this up and asked Kitaev about a video recording of the interrogation between himself and Asan and stated, "we watched the video recording, [Asan's] manner of speech is different from ordinary speech, how can you explain this?"<sup>385</sup> But instead of the court assisting in this inquiry one of the judges interjected and withdrew the question and stated that, "the witness has already answered this question."<sup>386</sup>

The court also seemed to dismiss the allegations that Asan was denied access to his lawyer of choice. For example, investigator Kitaev denied knowing that Asan's family had hired a lawyer for him when he took Asan's confession. Asan refuted this but rather than questioning the witness, one of the judges said to Asan, "[w]hy did you not reflect in the confession your unwillingness to conduct this investigative action in the presence of an appointed lawyer?"<sup>387</sup>

When Asan replied that he could not do so because he had been threatened by investigator Vlasov, the judge failed to address the fact that Asan had been threatened and instead replied, "[i]nvestigator Kitaev took the confession, what does Vlasov have to do with this?"<sup>388</sup>

During the testimony of another investigator, who conducted the on the spot verification with Asan in Perevalnoye, the court once again seemed dismissive of the defense team's

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<sup>383</sup> *Id.*, ¶13.

<sup>384</sup> Hearing Protocol, 774.

<sup>385</sup> *Id.*, 777.

<sup>386</sup> *Id.*

<sup>387</sup> *Id.*, 781.

<sup>388</sup> *Id.*

attempts to get to the bottom of the ill-treatment allegations. For example, when defense counsel repeatedly asked the investigator about whether he knew "...what investigative actions were conducted before yours"<sup>389</sup> or "...where [Asan] was?"<sup>390</sup> the investigator answered in the negative. The court then interrupted this line of questioning stating that "...the witness has already explained that he does not know."<sup>391</sup> When the court did finally make a an attempt to directly ask the investigator about whether he knew "anything about the torture of [Asan]"<sup>392</sup> it seemed to take the investigator's negative response as sufficient, quickly withdrawing Asan's question to the investigator about whether he knew "where [Asan] was on the night of September 3 to 4?"<sup>393</sup> on the grounds that "...the witness has answered it several times."<sup>394</sup> The court did not engage at all with Asan's version of events or question the investigator about the presence of other officers who Asan alleged had threatened him and told him where to point for the photos.

During the testimony of Vlasov, who was part of the investigation team for all three defendants, the court dismissed the defense's attempts to understand the nature of these serious allegations. For example, when one of the defense lawyers asked investigator Vlasov about his reaction at the pre-trial detention hearing and to explain why "in front of [her] and in front of the prosecutor [Vlasov] threatened [Aziz] not to work with [her]"<sup>395</sup> the court did not let Vlasov answer. Instead the court withdrew the question stating that the defense lawyer was "reporting information that the court has not investigated."<sup>396</sup> When the court finally did question Vlasov it changed the line of questioning suddenly and appeared to take the word of the investigator at face value:

Presiding judge: So in court you wrote a renunciation of Shabanova?

Aziz: Yes, because I constantly received threats.

Presiding judge: Did you receive these threats in the presence of investigator Vlasov?

Defendant Akhtemov A.E.: They came from him and did not do anything physically, only psychologically.

Presiding judge: What did Vlasov tell you verbally?

Aziz: "Don't you dare to sign, you will be in trouble." On September 4, I wrote a handwritten petition under dictation.

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<sup>389</sup> *Id.*, 798.

<sup>390</sup> *Id.*

<sup>391</sup> *Id.*

<sup>392</sup> *Id.*, 810.

<sup>393</sup> *Id.*

<sup>394</sup> *Id.*

<sup>395</sup> *Id.*, 825.

<sup>396</sup> *Id.*



Presiding judge: Did you threaten Akhtemov A.E. not to dare sign the agreement with the lawyer on the agreement?

Witness Vlasov V.O.: No.

Presiding officer: Was a lawyer present during all the investigative actions?

Witness Vlasov V.O.: Yes.

Presiding officer: After the videotape had been recorded and the text had been typed, were the participants in the trial familiar with the testimony?

Witness V.O. Vlasov: Yes, we signed the protocol, no comments were received.<sup>397</sup>

The other witnesses who were called and questioned about the torture and ill-treatment were likewise taken at face value, with the court failing to investigate the defendants' allegations in any real way.

During trial, the defence also sought to call additional witnesses. First, Asan's defence counsel made a motion to call Asan's four cellmates as witnesses to describe his state of health on September 8, 2021, when Asan was placed in the pre-trial detention center. The court dismissed the motion.<sup>398</sup>

Second, Asan's lawyers also sought to call witnesses whose account of what had transpired had been credited in the decision not to institute criminal proceedings in relation to Asan's complaint.<sup>399</sup> According to the official account of what had happened to him, at about 11 pm on September 3, 2021, two FSB operatives had gone to Asan's house. Asan voluntarily agreed to drive with one of them – Korovin -- to the FSB headquarters. Having arrived there, Korovin left Asan with another FSB operative, Lyalyatskov.

Lyalyatskov claimed that "if Asan had expressed a desire to leave the FSB building, he would have been taken outside, as there were no grounds for detaining him." At 5.30 am on September 4, according to this account, a third operative, Kazantsev, arrived to where Asan was being held. Asan supposedly expressed his desire to confess and wrote his confession until 6.30 am, then from 6.30 to 10.05 am Kazantsev interviewed Asan.<sup>400</sup> Kazantsev also stated that if Asan had expressed a wish to leave the FSB building, he would have been taken out immediately since, again, "there were no grounds for detaining him." Asan stayed with Kazantsev until around 2 pm when investigator Kitaev arrived in order to conduct investigative actions with Asan.

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<sup>397</sup> *Id.*, 832.

<sup>398</sup> *Id.*, 1001.

<sup>399</sup> Casefile, Vol. 10, 247.

<sup>400</sup> Casefile, Vol. 1, 139-145.

The decision declining to open an investigation also credited the account of police officer Bondarenko who said he had examined Asan at 7 am on September 5, 2021, when the latter was admitted to the temporary detention facility, and saw no bodily injuries on Asan. Bondarenko also stated that Asan did not complain about anything, including tortures from FSB officers.<sup>401</sup>

Asan's defence counsel applied to question FSB operatives Korovin, Lyalyatskov, and Kazantsev, and policeman Bondarenko.<sup>402</sup> The court rejected this request. This meant that the government's official narrative could not be effectively probed.

## **Inconsistences and Process Violations Alleged by the Defense**

The defense noted inconsistencies and alleged multiple process violations that occurred throughout the investigation into the three defendants. What follows is a brief summary.

### *Dzhelyal*

The defense alleged that the investigators delayed classifying Dzhelyal as a suspect in the case until the early morning of September 5, 2021 in a deliberate attempt to deprive him of the rights he would have been afforded under the law as a suspect, including the right to counsel.<sup>403</sup> According to Dzhelyal, the search warrant shown to him on the morning of September 4 stated that he was "reasonably suspected of committing a crime under Part 2 of Art 167 of the Criminal Code"<sup>404</sup> but he was not told of his right to have his lawyer present during the search. Moreover, according to the casefile "already at 12.00-15:00 on 04.09.2021 the investigator had 'interrogated' the witness Danilov... [and had] confessions and testimonies of suspects Asan and Aziz."<sup>405</sup> The defense argued that "in the early morning of 04.09.2021 criminal prosecution of Dzhelyal N.E. took place for the purpose of revealing the facts and circumstances incriminating him, and he should have been immediately provided with an opportunity to seek the assistance of a defense lawyer, which was not done."<sup>406</sup>

### *Asan*

The defense alleged that when Asan was taken from his home on the evening of September 3, 2021 the FSB officers took both sets of keys to his car, confiscated all laptops and phones, and moved his car from his home.<sup>407</sup>

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<sup>401</sup> *Id.*

<sup>402</sup> Casefile, Vol. 17, 22-25.

<sup>403</sup> Hearing Protocol, 1314.

<sup>404</sup> *Id.*, 1283.

<sup>405</sup> *Id.*

<sup>406</sup> *Id.*, 1198.

<sup>407</sup> *Id.*, 1248.

In addition to the allegation that Asan's participation in the on the spot verifications was subject to coercion, the defense claimed that the investigators instructed Asan on what to say:

According to the instructions, Akhtemov had to come into the house and show that he had cut some cheese on the kitchen table with a kitchen knife and took out an explosive device. However, when they came home, there were no keys to the house, so the officers accompanying him walked around the yard, went into the garage, the garage was always open, they could not get into the shed, they saw a table by the front door - a dresser, where they put their shoes, and they thought up a new scenario of how events would develop, saying that now he would have to say that he came home at night and performed the same actions on the table that he was told about earlier.<sup>408</sup>

The defense alleged that video evidence of a sniffer dog taken at Asan's house during the on the spot verification there, which indicated that explosives were kept in an old breadbox owned by Asan, was not accurate. The defense claimed that the video had to be taped 10 times because despite the dog being led to the breadbox the dog would not perform the necessary signal.<sup>409</sup>

The defense also claimed that there were many discrepancies and inconsistencies in the evidence gathered by the investigators during an on the spot verification on September 4 in the village of Perevalnoye (also attended by Aziz). For example, there were contradictions between the confession of Asan provided at the FSB headquarters and what he reportedly said during the inspection in the village of Perevalnoye. In the former confession, Asan is identified as the one who planted the explosive device and Aziz played the role of lookout; but in the latter account Aziz is the one planting the explosive device and Asan is the lookout.<sup>410</sup> There are even discrepancies between the written on the spot confessions and the recorded videos. In the former Aziz claims to have driven over the bridge and turned left and in the latter Asan claims that he turned right before the bridge.<sup>411</sup>

A third on the spot investigation occurred on September 8, when Asan was taken to identify his car. Evidence presented in court indicated that a sniffer dog had signaled it had smelled explosives on a floor mat. Asan claimed authorities had taken him to his car and told him he had to say "I was carrying an explosive device in the trunk."<sup>412</sup> The defense allege that the authorities had first inspected his car on September 4, after his arrest and then moved the car to Elevatornaya Street in Simferopol.<sup>413</sup> This means that

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<sup>408</sup> *Id.* at 1166.

<sup>409</sup> *Id.*

<sup>410</sup> *Id.*, 1268.

<sup>411</sup> *Id.*

<sup>412</sup> *Id.*, 591.

<sup>413</sup> *Id.*, 1168.

by the time the verification occurred on September 8, “the original [evidence] had already been disturbed.”<sup>414</sup> Furthermore, Asan claims that there were multiple attempts at trying to get the dog to signal that it had found explosives before “the dog was led on a leash and a photograph was taken.”<sup>415</sup>

The defense also alleged that Asan was denied access to an independent lawyer and was forced to take on Glushko, the appointed lawyer suggested by the investigators. As detailed above, Glushko was reportedly present during Asan’s torture and failed to act. The defense also claimed that that despite Glushko’s signature on the testimony of confrontation between Asan and Aziz on September 5, 2021, Glushko was in fact not present.<sup>416</sup> Furthermore, the document states the confrontation lasted one and a half hours, but Aziz claimed it was only 5 minutes.<sup>417</sup>

### *Aziz*

The defense alleged that while Aziz was taken at 1am on September 4, 2021, the protocol of his detention was not drawn up until 11:35pm on the night of September 4, meaning he was detained for nearly a day and subjected to investigative actions when his status as a suspect was unclear.<sup>418</sup>

Moreover, as described above, the defense claimed that Aziz was denied access to his independent lawyer and was forced to take on the appointed lawyer Polyansky. His independent lawyer, Shabanova, came to the FSB building on September 4 and September 5, 2021, but was told that Aziz was not there. She notified the Crimean Bar Association and the center for free legal aid that she was his lawyer, filed a statement with the Ministry of Internal Affairs of the Republic of Crimea requesting the location of Aziz, and also filed a report about his abduction with the Simferopol district police department.<sup>419</sup> During this time Aziz alleged he overheard a conversation that Vlasov had claiming “he did not know where [Aziz] was”<sup>420</sup> and that Vlasov then forced Aziz to give up his independent lawyer “and strongly advised him to work with their lawyer, if he wanted to receive the minimum term in court.”<sup>421</sup>

Aziz was then represented by Polyansky, his lawyer by appointment. Polyansky told Aziz to “do everything [he] was told and there would be no problems.”<sup>422</sup>

The defense also pointed out the fact that no lawyer was present during the time at least two confessions were given. The first confession, which was written in an unknown

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<sup>414</sup> *Id.*, 1157.

<sup>415</sup> *Id.*, 1168.

<sup>416</sup> *Id.*, 1270.

<sup>417</sup> *Id.*, 1271.

<sup>418</sup> *Id.*, 1205.

<sup>419</sup> *Id.*, 1205-1205.

<sup>420</sup> *Id.*

<sup>421</sup> *Id.*, 1207.

<sup>422</sup> *Id.*

location, was written without the presence of a lawyer.<sup>423</sup> The second confession, written in Vlasov's office, Aziz claimed was also written without the presence of a lawyer and that Polyansky's signature on that confession was a "gross mistake and violation,"<sup>424</sup> The defense also pointed out discrepancies between the written confession and the video interrogation, including Aziz calling the explosive device "dynamite" in the video but not in his written confession.<sup>425</sup>

The defense also claimed that at no time was Aziz told of his rights, including when he was taken to do the on the spot verification in Perevalnoye on September 4, 2021. Aziz also claims that during this verification he was told by an officer "what to do and where to point."<sup>426</sup>

### *Other Flaws*

The defense also claimed that there were inconsistencies and discrepancies between when and where people stated they were during the investigative actions and what the investigative documents show. For example, during the hearing one of the investigators testified how the explosives expert, who was supposed to participate in the on the spot verification in Perevalnoye, arrived at the site at 7:30pm. But the protocol of this verification states that the explosives expert was already at the site at 6:30pm indicating that the investigative actions conducted by this same expert were conducted simultaneously with both Asan and Aziz in violation of the Criminal Code of Procedure and therefore inadmissible as evidence.<sup>427</sup>

Investigator Kitaev, who testified in court that he drew up Asan's protocol of detention was not in fact named in the case material, which provided the name of a different investigator.<sup>428</sup> Additionally and even more perplexing is the fact that a different investigator simultaneously conducted three separate investigations in different rooms with the defendants on the evening of September 4, 2021. According to documentation, this investigator was conducting an interrogation of Aziz between 9:40pm and 10:15pm while conducting an interrogation of Dzhelyal as a witness between 9:50pm and 10:30pm and also conducting photo identification with Aziz between 10:20pm and 10:35pm.<sup>429</sup>

### **Hearing summaries at Annex A**

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<sup>423</sup> *Id.*, 1263-1264.

<sup>424</sup> *Id.*

<sup>425</sup> *Id.*, 1266.

<sup>426</sup> *Id.*, 1267.

<sup>427</sup> *Id.*, 1314 [Russian Code of Criminal Procedure Art. 194(3) "A simultaneous verification on the spot of the evidence of several persons shall be inadmissible."].

<sup>428</sup> *Id.*, 1256.

<sup>429</sup> *Id.*, 1210.



## METHODOLOGY



### A. THE MONITORING PHASE

The Clooney Foundation for Justice obtained the casefile of the trial including the indictment, judgement, the trial protocol and audio recordings of the trial. This was all used to determine the degree to which the defendant's fair trial rights were respected.

### B. THE ASSESSMENT PHASE

To assess the case's fairness and assign it a grade of F, Professor Jeffrey Kahn, a member of the TrialWatch Expert Panel, reviewed the analysis of the applicable law and asserted violations, considering and cross-checking the judgment, the protocol of the trial and other case materials, as necessary.

# ANALYSIS



## A. APPLICABLE LAW

This report draws upon the International Covenant on Civil and Political Rights (“ICCPR”); jurisprudence from the United Nations Human Rights Committee, tasked with monitoring implementation of the ICCPR; the European Convention on Human Rights (“ECHR” or “European Convention”); the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (“CAT”); the Convention on the Elimination of All Forms of Racial Discrimination (“CERD”); and jurisprudence from the European Court on Human Rights (“ECtHR”), which hears and decides complaints of violations of the ECHR. The USSR acceded to the ICCPR in 1973, the CAT in 1987, and the CERD in 1969.

Russia ratified the ECHR in 1998, subject to certain reservations.<sup>138</sup> Russia was party to the ECHR during the pre-trial proceedings and for the duration of trial. Russia ceased to be a party to the ECHR as of September 16, 2022, five days before the delivery of the verdict in this case.

## B. PRE-TRIAL VIOLATIONS

### Violations of International Humanitarian Law and Punishment without Law

Despite Russia’s illegal purported annexation of the Crimean Peninsula in 2014, the UN General Assembly recognizes the Crimean Peninsula as Ukrainian territory under Russian occupation.<sup>430</sup>

The Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) makes clear that “[t]he penal laws of the occupied territory shall remain in force...”<sup>431</sup> Notwithstanding this, since Russia’s invasion, occupation, and illegal purported annexation it has been applying the entirety of its criminal legislation to the Crimean Peninsula.<sup>432</sup> OHCHR has previously noted that by applying its legislation in the Crimean Peninsula, Russia is acting “contrary to the international humanitarian law obligation to respect the laws of the occupied territory.”<sup>433</sup> This means that by applying its

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<sup>430</sup> United Nations General Assembly, Resolution 68/262: Territorial integrity of Ukraine, U.N. Doc. A/RES/68/262, Apr.1, 2014.

<sup>431</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), Aug. 12, 1949, Art. 64.

<sup>432</sup> UN General Assembly, “Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine Report of the Secretary-General, A/75/334, Sep. 2020, ¶ 8, available at: [https://www.ecoi.net/en/file/local/2039351/A\\_75\\_334\\_E.pdf](https://www.ecoi.net/en/file/local/2039351/A_75_334_E.pdf).

<sup>433</sup> Office of the United Nations High Commissioner for Human Rights, “Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine 13

own laws, specifically the Criminal Code of the Russian Federation, in charging and convicting Dzhelyal, and the Akhtemov brothers, Russia violated Article 64 of the Fourth Geneva Convention.

Article 7(1) of the ECHR and Article 15(1) of the ICCPR also both provide that “[n]o one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.”<sup>434</sup> This right is so fundamental that it is considered non-derogable under any circumstances, including in the context of war. Because Russia could not lawfully apply its own law in Crimea, Dzhelyal and his co-defendants were convicted of conduct that may or may not have been a crime under applicable national law, and thus Russia also violated the right to be free from punishment without law.

### Arbitrary Detention

Both the ECHR and the ICCPR prohibit arrest and detention that is unlawful or arbitrary.<sup>435</sup> These treaties also require that anyone being arrested be informed not only of the reasons for the arrest but also of the charges against them.<sup>436</sup>

Furthermore, as pre-trial detention is the exception and not the rule,<sup>437</sup> both treaties impose strict requirements that courts must meet before imposing it. The requirement that detention not be unlawful requires that arrest or detention occur only “on such grounds and in accordance with such procedures as are established by law,”<sup>438</sup> On the other hand, the requirement that arrest or detention not be arbitrary requires that pretrial detention “must be reasonable and necessary in all the circumstances.”<sup>439</sup> The Human Rights Committee (“HRC”) has made clear that an assessment of pre-trial detention “must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.”<sup>440</sup>

Likewise, the ECtHR has also limited the grounds for pretrial detention to four permissible justifications: to ensure that the accused appears at trial, to prevent attempts to influence the investigation or trial, to prevent further crimes, and to prevent public disorder.<sup>441</sup> Authorities must both establish and demonstrate “convincingly the existence of concrete

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September 2017 to 30 June 2018,” at 1, available at: [https://www.ohchr.org/sites/default/files/Documents/Countries/UA/CrimeaThematicReport10Sept2018\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/UA/CrimeaThematicReport10Sept2018_EN.pdf).

<sup>434</sup> ECHR, Art. 7(1); ICCPR, Art. 15(1).

<sup>435</sup> ICCPR, Art. 9; ECHR, Art. 5.

<sup>436</sup> *Id.*

<sup>437</sup> Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, 2014, ¶ 38 [hereinafter “General Comment No. 35”].

<sup>438</sup> *Id.*

<sup>439</sup> *Id.*, ¶ 12 (citing Human Rights Committee, *Gorji-Dinka v. Cameroon*, App. No. 1134/2002, ¶ 5.1; Human Rights Committee, *Van Alphen v. Netherlands*, App. No. 305/1988, ¶ 5.8).

<sup>440</sup> *Id.*, ¶ 38.

<sup>441</sup> European Court of Human Rights, *Khudobin v. Russia*, App. No. 59696/00, Oct. 26, 2006, ¶ 104.

facts relevant to the grounds for continued detention”<sup>442</sup> before pretrial detention can be imposed.

In *Pichugin v Russia*, the ECtHR found a violation of Article 5(3) in circumstances where Russian authorities failed to “address specific facts or consider alternative “preventive measures””<sup>443</sup> and relied “essentially on the gravity of the charges”<sup>444</sup> to extend an applicant’s detention. In that case the ECtHR noted a pattern emerging, stating that it had “frequently found a violation of Article 5 § 3 of the Convention in Russian cases where the domestic courts extended an applicant’s detention relying essentially on the gravity of the charges and using stereotyped formulae without addressing specific facts or considering alternative preventive measure.”<sup>445</sup>

At trial, the defense argued that Dzhelyal was arrested by authorities in the early hours of September 4, 2021 after his property was searched, despite being labelled a ‘witness’ and not a suspect by authorities.<sup>446</sup> The court dismissed this argument, concluding that despite Dzhelyal’s testimony to the contrary, he ‘voluntarily’ stayed at the FSB headquarters and participated in the investigation.<sup>447</sup>

According to the European Court of Human Rights, to determine whether an individual has actually been deprived of their liberty within the meaning of Article 5 of the Convention, “the starting-point must be his or her specific situation and account must be taken of a whole range of factors such as the type, duration, effects and manner of implementation of the measure in question.”<sup>448</sup> There is both an objective and subjective element to the qualification of whether an individual is ‘detained.’ The objective element includes factors such as the degree of control the authorities have over a person’s movements, the extent they have isolated the person and the availability of social contacts.<sup>449</sup> The subjective element on the other hand focuses on whether the person “has not validly consented to the confinement in question.”<sup>450</sup>

According to Dzhelyal’s testimony, authorities came to his house in the early hours of September 4, 2021 and searched his car and property and also confiscated his passport, phone and laptop, without providing Dzhelyal with a copy of the search protocol.<sup>451</sup> He was then handcuffed and put in a van and driven around to various locations with a bag

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<sup>442</sup> European Court of Human Rights, *Dolgova v. Russia*, App. No. 11886/05, Mar. 2, 2006, ¶ 45.

<sup>443</sup> European Court of Human Rights, *Pichugin v Russia*, App. No. 38623/03, Oct. 23, 2012, ¶ 142.

<sup>444</sup> *Id.*

<sup>445</sup> *Id.*, ¶ 141.

<sup>446</sup> Hearing Protocol, 1180.

<sup>447</sup> Decision on the ill-treatment of Dzhelyal, 1-3; Judgement, 71.

<sup>448</sup> European Court of Human Rights, *De Tommaso v. Italy*, App. No. 43395/09, Feb. 23, 2017, ¶ 80.

<sup>449</sup> European Court of Human Rights, *Guzzardi v. Italy*, 1980, ¶ 95; European Court of Human Rights, *H.L. v. the United Kingdom*, App. No. 39187/98, Feb. 26, 2002, ¶ 45; European Court of Human Rights, *Storck v. Germany*, App. No. 61603/00, Sep. 16, 2005, ¶ 73.

<sup>450</sup> European Court of Human Rights, *Storck v. Germany*, App. No. 61603/00, Sep. 16, 2005, ¶ 74.

<sup>451</sup> Hearing Protocol, 694.

over his head before finally being taken to an unknown location for several hours. While there he was interrogated, threatened, made to sit handcuffed in unconformable positions, forced to take a polygraph test and denied food, water, and the right to counsel.<sup>452</sup> He was finally moved to FSB headquarters in the early evening of September 4, where he continued to be interrogated by authorities together with the Akhtemov brothers. He was held until around 4am on the morning of September 5, 2021, before he was formally charged.<sup>453</sup> Even if Dzhelyal had initially voluntarily agreed to go with the FSB officers, it is hard to comprehend that he voluntarily agreed stay incommunicado at an unknown location for several hours before moving to FSB headquarters to be questioned. Furthermore, according to the court, the interrogation lasted from 9am to 9:50pm, that is almost 13 hours of Dzhelyal being confined and having no contact with his family or a lawyer.<sup>454</sup> Based on the circumstances as described in Dzhelyal's testimony, it is hard to reach the same conclusion as the court and to view the time Dzhelyal was held by authorities as anything but a deprivation of his liberty.

According to Asan's testimony, the authorities broke into his home at around 11 p.m. on September 3, 2021.<sup>455</sup> They handcuffed him, blindfolded him, put him in a car and took him to an unknown location where he was tied to a chair, electrocuted, beaten up, threatened and forced to sign his first confession.<sup>456</sup> He was then taken to the FSB headquarters, where he was forced to write another confession. Even according to the authorities, it was not until 2:10 pm on September 4 that Asan was officially charged. According to FSB operatives, Asan voluntarily agreed to go with them and to stay for 15 hours at the FSB headquarters, and give his first confession, and be questioned by an FSB operative without any contact with his family or lawyer. The FSB operatives also claimed that he could leave the FSB building anytime during these 15 hours. Again, it is hard to comprehend that he voluntarily agreed to stay there during all this time and to consider his confinement as anything but a deprivation of his liberty.

Finally, according to the testimony of Aziz, he too was taken from his home at around 1 am on September 4. Like Asan, he was subjected to ill-treatment, threatened and beaten up by the FSB officers. He was officially charged at 5:27 pm that day.<sup>457</sup> This means he was also held incommunicado for at least 14 hours without officially being charged. As with the others, this was a deprivation of liberty outside of the parameters of law.

Thus by detaining Dzhelyal and the Akhtemov brothers in the conditions described, Russian authorities violated their right to liberty under both the ECHR and ICCPR, as they were not initially detained in compliance with the law.

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<sup>452</sup> *Id.*, 694-701.

<sup>453</sup> *Id.*, 743.

<sup>454</sup> Judgement, 71-72.

<sup>455</sup> Hearing Protocol, 636.

<sup>456</sup> *Id.*; Casefile, Vol. 10, 253, [Decision on the refusal to initiate a criminal case, The Investigative Committee of the Russian Federation, Dec. 2, 2021].

<sup>457</sup> Casefile Vol. 3, p. 37.



In *M.T. v. Uzbekistan*, the UN Human Rights Committee found a violation of Article 9(2) in circumstances where police officers failed to promptly inform an individual of the reason for their arrest, only charging the individual the subsequent day.<sup>458</sup> According to testimony provided in court, and described above, without showing Dzhelyal a copy of the search protocol, authorities searched his house and car.<sup>459</sup> Even after Dzhelyal was told he was being detained by the officer in charge he was not told the reason for his arrest or of the charges against him in violation of Article 9(2) of the ICCPR.<sup>460</sup> At no point during the time Dzhelyal was held in an unknown location and interrogated did the authorities tell him the reason for his arrest or the charges against him, and this failure continued even after he was moved to FSB headquarters in the early evening of September 4. In circumstances similar to *M.T. v. Uzbekistan*, Dzhelyal was only charged the following day after being transferred from the FSB headquarters to a pre-trial detention center.

Furthermore, the attempt by FSB authorities to mischaracterize Dzhelyal as a “witness” rather than a suspect on September 4, 2021, effectively denied him the rights and protections guaranteed by Russian criminal procedural law for those who have been detained, including the right to know promptly the reason for arrest. This conduct by the authorities also violated Dzhelyal’s right to be free from arbitrary detention.

Additionally, there were also issues with the court’s decision to put each of the defendants into pre-trial detention. It was the same judge who heard each of the defendants’ pre-trial detention hearings. Notwithstanding the brevity of each decision – each decision is only two pages long<sup>461</sup> – each of the decisions are almost identical. Like in the case of *Pichugin v. Russia*, the court in each of the defendants’ pre-trial detention hearings not only failed to properly consider alternative measures other than pre-trial detention but relied “essentially on the gravity of the charges”<sup>462</sup> without addressing the specific facts or grounds to justify such detention, simply noting that:

In the light of the materials examined, the totality of all the circumstances, including the gravity of the crime, the suspect's personality, age, state of health, family situation, and the initial stage of the preliminary investigation, the court concludes that the selection of a milder preventive measure against the suspect will not ensure proper procedural conduct on the part of the suspect and will not guarantee effective proceedings at this stage of the preliminary investigation.<sup>463</sup>

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<sup>458</sup> Human Rights Committee, *M.T. v. Uzbekistan*, U.N. Doc. CCPR/C/114/D/2234/2013, Oct. 21, 2015, ¶¶ 2.1, 7.7-7.9.

<sup>459</sup> Hearing Protocol, 694.

<sup>460</sup> *Id.*

<sup>461</sup> Casefile Vol. 1, pp. 238-239 – decision in respect of Asan; Vol. 3, pp. 61-62 – decision in respect of Aziz; Vol. 4, pp. 44-45 – decision in respect of Mr Dzhelyal.

<sup>462</sup> European Court of Human Rights, *Pichugin v Russia*, App. No. 38623/03, Oct. 23, 2012, ¶ 142.

<sup>463</sup> Casefile Vol. 1, pp. 238-239 – decision in respect of Asan; Vol. 3, pp. 61-62 – decision in respect of Aziz; Vol. 4, pp. 44-45 – decision in respect of Mr Dzhelyal.

Therefore, the decisions to detain each of the defendants pending trial were also a violation of their rights to be free from arbitrary detention.

## **Torture, Inhuman and Degrading Treatment**

In addition to prohibiting arbitrary arrest and detention, Article 9(1) of the ICCPR encompasses broader guarantees for the physical integrity of an individual. In interpreting the first sentence of Article 9(1) the UN Human Rights Committee has explained that it “protects individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained. For example, officials of States parties violate the right to personal security when they unjustifiably inflict bodily injury.”<sup>464</sup>

Additionally, Article 7 of the ICCPR establishes that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” In recognition of the vulnerability of those in state detention, Article 10 of the ICCPR further states that “[a]ll persons deprived of their liberty should be treated with humanity and with respect for the inherent dignity of the human person.” In this regard, the Committee has noted that detainees should not “be subjected to any hardship or constraint other than that resulting from deprivation of liberty.”<sup>465</sup>

Article 7 must be read in conjunction with Article 2(3) of the ICCPR, under which States Parties are obligated to provide an effective remedy to persons whose Covenant rights are violated.<sup>466</sup> In accordance with Article 2(3), states parties are required to ensure that any allegation of torture or cruel, inhuman, or degrading treatment is promptly investigated by an impartial factfinder.<sup>467</sup>

Like Article 7 of the ICCPR, Article 3 of the ECHR guarantees that “[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment.” The ECtHR’s case law emphasizes that Article 3 is subject to both substantive and procedural violations—i.e., by the treatment itself and/or by the failure of the relevant state party to effectively investigate allegations of mistreatment.<sup>468</sup> To fall within the ambit of Article 3, alleged ill-treatment must meet a minimum level of severity and while this depends on the circumstances of each case, factors the ECtHR will generally consider include the duration of the treatment, its physical or mental effect and in some cases the physical attributes of the victim.<sup>469</sup> The ECtHR will also consider the purpose for inflicting the ill-

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<sup>464</sup> Human Rights Committee, General Comment No. 35, ¶ 9.

<sup>465</sup> Human Rights Committee, General Comment No. 21, U.N. Doc. CCPR/C/21/Rev.1/Add.3, Apr. 10, 1992, ¶ 3.

<sup>466</sup> Human Rights Committee, General Comment No. 20, “Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment),” U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I), Mar. 10, 1992, ¶ 14.

<sup>467</sup> *Id.*

<sup>468</sup> See, e.g., European Court of Human Rights, *Salikhov v. Russia*, App. No. 23880/05, May 3, 2012, ¶¶ 81, 86.

<sup>469</sup> European Court of Human Rights, *Muršić v. Croatia*, App. No. 7334/13, Oct. 20, 2016, ¶ 97.

treatment, the context in which it was inflicted, and whether the victim was in a vulnerable situation.<sup>470</sup>

The ECtHR has also made clear that the distinction between torture, inhuman treatment or degrading treatment or punishment depends on the intensity of the suffering inflicted on the victim as well as the purpose behind it.<sup>471</sup> For example, torture has been interpreted to entail not only a “inhuman treatment causing very serious and cruel suffering”<sup>472</sup> but for a deliberate purpose such as obtaining a confession.<sup>473</sup> What rises to the level of inhuman or degrading treatment or punishment for the purposes of Article 3 is assessed on a case-by-case basis according to the victim’s specific circumstances; the severity, effects, and purpose of the treatment; and the context in which it took place.<sup>474</sup>

With respect to the procedural obligations under Article 3, the ECtHR has emphasized that the Convention “requires by implication that there should be an effective official investigation.”<sup>475</sup> The Court has further clarified that the investigation must be prompt and thorough, should be independent from the executive, and must allow the victim to be able to participate.<sup>476</sup> The ECtHR has found violations of Article 3 in cases where the investigators solely relied on the version of events provided by the authorities without hearing from the victims or other witnesses.<sup>477</sup> The ECtHR has also noted in a number of cases against Russia that its procedure of conducting pre-investigation inquiries into allegations of ill-treatment before deciding whether to launch a proper criminal investigation is not sufficient to comply with the requirements of Article 3 and a substantive investigation is required into credible allegations.<sup>478</sup>

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<sup>470</sup> European Court of Human Rights, *Khlaifia and Others v. Italy*, App. No. 16483/12, Dec. 15, 2016, ¶160.

<sup>471</sup> European Court of Human Rights, *Ireland v. the United Kingdom*, App. No. 5310/71, Jan. 18, 1978, ¶167.

<sup>472</sup> European Court of Human Rights, *Dedovskiy and Others v. Russia*, App. No. 7178/03, May 15, 2008, ¶ 84 (noting that the severe beating of detainees with rubber truncheons constituted torture due to the “retaliatory” nature of the beatings and the resulting “intense mental and physical suffering.”). The Court also found a violation under the procedural limb. See *id.* ¶ 94.

<sup>473</sup> European Court of Human Rights, *Selmouni v. France*, App. No. 25803/94, July 28, 1999, ¶ 97; European Court of Human Rights, *Salman v. Turkey*, App. No. 21986/93, June 27, 2000, ¶ 114; European Court of Human Rights, *Al Nashiri v. Poland*, App. No. 2876/11, July 24, 2014, ¶ 508; European Court of Human Rights, *Petrosyan v. Azerbaijan*, App. No. 32427/16, Nov. 4, 2021, ¶ 68.

<sup>474</sup> See generally European Court of Human Rights, *Bouyid v. Belgium*, App. No. 23380/09, Sep. 28, 2015, ¶ 86.

<sup>475</sup> European Court of Human Rights, *El-Masri v. the former Yugoslav Republic of Macedonia*, App. No. 39630/09, Dec. 13, 2012, ¶182.

<sup>476</sup> *Id.*, 182-185.

<sup>477</sup> European Court of Human Rights, *Virabyan v. Armenia*, App. No. 40094/05, Oct. 2, 2012, ¶¶ 165-167; European Court of Human Rights, *Suleymanov v. Russia*, App. No. 32501/11, Jan. 22, 2013, ¶144.

<sup>478</sup> See generally European Court of Human Rights, *Lyapin v. Russia*, App. No. 46956/09, July 24 2014, ¶¶ 129 and 132-36.; European Court of Human Rights, *Olisov and Others v. Russia*, App. Nos. 10825/09, 12412/14, and 35192/14, Nov. 13, 2017; European Court of Human Rights, *Kleyn and Aleksandrovich v. Russia*, App. No. 40657/04, May 3, 2012, ¶¶ 56-58; European Court of Human Rights, *Buntov v. Russia*, App. No. 27026/10, Jun. 5, 2012, ¶¶ 132-133; European Court of Human Rights, *Savridin Dzhurayev v. Russia*, App. No. 71386/10, ¶ 193; and European Court of Human Rights, *Beresnev v. Russia*, App. No. 37975/02, Apr. 18, 2013, ¶ 98.

The CAT also prohibits “torture and other cruel, inhuman or degrading treatment or punishment”<sup>479</sup> and places an obligation on states to prevent acts of torture.<sup>480</sup> Article 16 of the CAT further requires states parties to prevent cruel, inhuman, or degrading treatment at the hands of public officials and Article 12 imposes an obligation on competent authorities to promptly investigate any allegations of torture, or other acts of cruel, inhuman or degrading treatment or punishment.

Furthermore, the use of statements or confessions obtained as a result of torture or cruel, inhuman or degrading treatment in a criminal proceeding has been found to render those proceedings unfair in violation of the defendant’s right to a fair trial by the ECtHR, the Human Rights Committee, and the Committee Against Torture.<sup>481</sup>

In this case, Dzhelyal, Aziz, Asan, and at least one other witness, Odamanov, made serious allegations of ill-treatment during the investigation stage. Asan testified that he was arrested in the middle of the night, had a bag put over his head and was handcuffed before being taken to an unknown location. He described in graphic detail how he was subjected to electric shocks: “[b]are wires were hung around his ears, to which an electric current was connected. There were about 8 strong electric shocks, about 10 seconds each, during which [he] was unable to utter words due to spasm of his cheekbones.”<sup>482</sup> He was left him in such poor condition that he could not use the toilet for 12 days, suffered insomnia, burns on the inside of his lips, and experienced seizures.<sup>483</sup> Asan also detailed how FSB agents staged a mock execution of his brother<sup>484</sup> and took him out to the woods, stood around him armed with guns, and told him they would kill him.<sup>485</sup> This appears to have been done to elicit a confession.

Likewise, Aziz described a similar arrest in the middle of the night before being taken to an unknown location and subjected to psychological ill-treatment. According to Aziz, the authorities likewise staged a mock execution of his brother Asan, to which Aziz described his reaction: “[my] leg tied to the chair began to twitch from fear.”<sup>486</sup> He was then told that

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<sup>479</sup> Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Preamble.

<sup>480</sup> *Id.*, Art. 2.

<sup>481</sup> See generally European Court of Human Rights, *Gäfgen v. Germany*, App. No. 22978/05, June 1, 2010, ¶ 166; European Court of Human Rights, *Ibrahim and Others v. the United Kingdom*, App. Nos. 50541/08, 50571/08, 50573/08 and 40351/09, Sep. 13, 2016, ¶254; European Court of Human Rights, *El Haski v. Belgium*, App. No. 649/08, Sept. 25, 2012, ¶85; European Court of Human Rights, *Cēsnieks v. Latvia*, App. No. 9278/06, May 11, 2014, ¶¶ 67-70; Human Rights Committee, *Kurbonov v. Tajikistan*, U.N. Doc. CCPR/C/86/D/1208/2003, ¶¶ 6.2 – 6.4; Human Rights Committee, *Shukurova v. Tajikistan*, U.N. Doc. CCPR/C/86/D/1044/2002, ¶¶8.2 – 8.3; Human Rights Committee, *Singarasa v. Sri Lanka*, U.N. Doc. CCPR/C/81/D/1033/2001, ¶ 7.4; Human Rights Committee, *Deolall v. Guyana*, U.N. Doc. CCPR/C/82/D/912/2000, ¶5.1; Human Rights Committee, *Kelly v. Jamaica*, U.N. Doc. CCPR/C/41/D/253/1987, ¶5.5; Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, Aug. 23, 2007; CAT, Art. 15.

<sup>482</sup> Casefile Vol. 10, p. 252.

<sup>483</sup> Hearing Protocol, 593.

<sup>484</sup> Casefile Vol. 10, p. 253.

<sup>485</sup> Casefile Vol. 10, p. 253.

<sup>486</sup> Hearing Protocol, 1261.

if he resisted the same thing would happen to him.<sup>487</sup> Throughout the time he was being investigated Aziz described being beaten and consistently threatened with torture and admitted that “[he] was ready to do whatever they said, as I feared for my life.”<sup>488</sup> Again, this appears to have been done to elicit a confession.

Dzhelyal also testified that his arrest bore similarities to the arrests of the brothers, with authorities putting a bag put over his head, handcuffing him and taking him to an unknown location.<sup>489</sup> While there he described how he was forced to sit on a chair “as on a horse, hands forward on the backrest, it is a very uncomfortable position to sit for a long time, because the hands are suspended all the time, there is nowhere for the back to rest.”<sup>490</sup> According to Dzhelyal, throughout his interrogations he was subjected to threats if he did not comply with the authorities.<sup>491</sup> All three defendants also reported being denied food, water, and sleep for long periods of time.

Moreover, a prosecution witness, Odamanov, also testified about the treatment he received on the night of his arrest. He described how he was handcuffed, a bag was placed over his head, he was connected to a lie detector, and how he received electric shocks from his ears when one of the FSB agents insisted he was lying.<sup>492</sup> According to Odamanov, the pain was so unbearable that he claims he told FSB agents:

I will say that I killed Kennedy, that I planted explosives, but I didn’t do it, so I can’t say further things, nor its color, volume, weight. You tell me what you need, I’ll tell you everything and sign at the end. I think that they decided, since the person says I will sign everything, we need to find out where he is telling the truth, where he is not.<sup>493</sup>

While these allegations were serious enough to, at the very minimum, amount to cruel or inhuman treatment, and especially in the case of Asan met the standard for torture, the defendants were also denied their right to have a prompt and thorough investigation of their allegations.

Despite Asan and Dzhelyal submitting formal applications to the Investigative Committee to initiate a criminal case against the relevant authorities involved in their ill-treatment, the Investigative Committee only conducted a pre-investigation inquiry. As noted, the ECtHR has made clear that this is not sufficient to comply with the requirements of the ECHR.<sup>494</sup> A proper and thorough criminal investigation was required to be undertaken into the allegations including interviewing Asan and Dzhelyal, yet at trial Dzhelyal testified that at

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<sup>487</sup> *Id.*

<sup>488</sup> *Id.*

<sup>489</sup> *Id.*, 698-699.

<sup>490</sup> *Id.*, 699.

<sup>491</sup> *Id.*, 700.

<sup>492</sup> *Id.*, 355.

<sup>493</sup> *Id.*, 1145.

<sup>494</sup> See generally *Olisov and Others v. Russia*, App. Nos. 10825/09, 12412/14, and 35192/14, Nov. 13, 2017.



no point did the Investigative Committee even get a statement from him.<sup>495</sup> Moreover, in the Investigative Committee's decisions to refuse to initiate a criminal case on behalf of Dzhelyal and Asan the Committee completely relied on the version of events offered by the authorities.<sup>496</sup>

Additionally, the trial court violated the defendants' rights to a proper investigation into the allegations. Despite all three defendants specifically telling the court of their mistreatment, and the prosecution calling some of the investigators involved in the defendants' preliminary investigation, the court failed substantively to investigate the defendants' allegations and appears instead to have conducted a cursory investigation, asking few questions of the witnesses, interrupting defense counsel's attempts to cross-examine witnesses, and taking the word of witnesses at face value despite the defendants' serious allegations. For example, when investigator Vlasov was questioned about forcing Aziz to renounce his lawyer of choice the court seemed dismissive of the allegations that Aziz was being threatened by the investigator and quickly changed the line of questioning:

"Presiding judge: So in court you wrote a renunciation of Shabanova?

Aziz: Yes, because I constantly received threats

Presiding judge: Did you receive these threats in the presence of investigator Vlasov?

Defendant Akhtemov A.E.: They came from him and did not do anything physically, only psychologically.

Presiding judge: What did Vlasov tell you verbally?

Aziz: "Don't you dare to sign, you will be in trouble". On September 4, I wrote a handwritten petition under dictation.

Presiding judge: Did you threaten Akhtemov A.E. not to dare sign the agreement with the lawyer on the agreement?

Witness Vlasov V.O.: No.

Presiding officer: Was a lawyer present during all the investigative actions?

Witness Vlasov V.O.: Yes.

Presiding officer: After the videotape has been recorded and the text has been typed, were the participants in the trial familiar with the testimony?

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<sup>495</sup> Hearing Protocol, 1081.

<sup>496</sup> Casefile Vol. 10, 243-245. [Decision on the refusal to institute criminal proceedings, Military Investigative Department, Investigative Committee of the Russian Federation, Nov. 23, 2021]; Casefile, Vol. 10, 252., [Decision on the refusal to initiate a criminal case, The Investigative Committee of the Russian Federation, Dec. 2, 2021].

Witness V.O. Vlasov: Yes, we signed the protocol, no comments were received.<sup>497</sup>

In light of the serious allegations of ill-treatment made throughout the trial by the defendants and at least one of the witnesses, the state had a duty to properly and thoroughly investigate these allegations. On objective application of international standards, by not undertaking this investigation, the rights of the defendants to be free from torture and cruel, inhuman and degrading treatment were violated. Furthermore, by admitting the confessions that the defendants' claim were elicited through ill-treatment the fairness of the defendants' trial was also undermined from the outset.

## Right to Counsel

The right of anyone charged with a criminal offence to access a lawyer of their choosing is a fundamental feature of a fair trial.<sup>498</sup> This right is protected by both the ICCPR and the ECHR.<sup>499</sup> This right extends to individuals from the moment they are arrested or questioned as a suspect, even before they are formally charged.<sup>500</sup> The ECtHR has consistently regarded "early access to a lawyer as a procedural guarantee of the privilege against self-incrimination and a fundamental safeguard against ill-treatment."<sup>501</sup>

The ECtHR has also found that "a person acquires the status of a suspect calling for the application of the Article 6 safeguards not when it is formally assigned to him or her, but when the domestic authorities have plausible reasons for suspecting that person's involvement in a criminal offence."<sup>502</sup> As noted above, Dzhelyal's home was searched by FSB officers in the early hours of September 4, 2021. According to Dzhelyal, the search warrant shown to him on the morning of September 4 stated that he is "reasonably suspected of committing a crime under Part 2 of Art 167 of the Criminal Code"<sup>503</sup> It was at this point that Dzhelyal should have then been told of his right to have a lawyer present. But he was not. Instead he was taken by car, and with a bag over his head, to an unknown location. According to Dzhelyal, from the moment of his detention he was not told of his

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<sup>497</sup> Hearing Protocol, 832.

<sup>498</sup> European Court of Human Rights, *Salduz v. Turkey*, App. No. 36391/02, Nov. 27, 2008, ¶51; European Court of Human Rights, *Ibrahim and Others v. the United Kingdom*, App. Nos. 50541/08, 50571/08, 50573/08 and 40351/09, Sept. 13, 2016, ¶255; European Court of Human Rights, *Simeonovi v. Bulgaria*, App. No. 21980/04, May 12, 2017, ¶112; European Court of Human Rights, *Beuze v. Belgium*, App. No. 71409/10, Nov. 11, 2018, ¶123.

<sup>499</sup> ICCPR, Art. 14(3)(b); ECHR, Art. 6(3)(c).

<sup>500</sup> UN Working Group on Arbitrary Detention, United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court Principle 9, ¶ 12.

<sup>501</sup> European Court of Human Rights, *Truten v. Ukraine*, App. No. 18041/08, June 23, 2016, ¶67; European Court of Human Rights, *Salduz v. Turkey*, App. No. 36391/02, Nov. 27, 2008.

<sup>502</sup> European Court of Human Rights, *Truten v. Ukraine*, App. No. 18041/08, June 23, 2016, ¶66.

<sup>503</sup> Hearing Protocol, 1283.

rights and repeatedly denied access to legal counsel until after he was charged in the early hours of September 5, 2021.<sup>504</sup>

Possibly more egregious than the alleged blatant refusal to allow Dzhelyal access to his legal counsel during the almost 24 hours he was held by the authorities, is the way in which authorities denied the Akhtemov brothers the right to access counsel of their choosing and forced them to take on state-appointed lawyers. According to testimony of Aziz Akhtemov's independently-retained lawyer Shabanova, she was hired by Aziz's family and was at FSB headquarters on September 4 but was denied access to her client and was told he was not there.<sup>505</sup> Meanwhile, both Aziz and Asan claim that investigators forced them to take on state-appointed lawyers - Polyansky and Glushko. Aziz testified that one of the investigators, Vlasov, forced him to give up his independent lawyer "and strongly advised him to work with their lawyer, if he wanted to receive the minimum term in court."<sup>506</sup> According to the testimony of the brothers, these state-appointed lawyers were present during the brothers' ill-treatment and torture. For example, Aziz claims that Polyansky was present while he was being beaten up by investigators and merely said that "it had to be this way, there was nothing [he] could do."<sup>507</sup> Similarly, Glushko, Asan's state appointed lawyer, was, according to Asan, also present during Asan's torture and ignored his appeals to stop the investigators from committing these actions:

I would also like to note that this lawyer [Glushko] saw with his own eyes how violence was applied to me, I turned to him when I did not want to sign another bullshit paper. I was taken out into the corridor and beaten, this lawyer was standing next to me and I asked him to do something, and he said that he could not do anything, that was the system.<sup>508</sup>

Moreover, according to the testimony of the Akhtemov brothers, both Glushko and Polyansky signed documents attesting to the fact that they were present at various interrogations when in fact they were not there. For example, Aziz testified that during the confrontation with Asan, Glushko was not present, yet Glushko's signature is on the documentation.<sup>509</sup> When questioned in court about his whereabouts during this time, Glushko testified he was there but could not specify where this interrogation happened, stating "I don't remember, it's not essential to the case."<sup>510</sup> Similarly, Aziz claimed that his state appointed lawyer Polyansky was not present when he was told to reread a statement drafted by authorities and write it out as his confession, although Polyansky's signature appeared on the confession in what Aziz claimed was a "gross mistake and violation."<sup>511</sup>

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<sup>504</sup> *Id.*, 701.

<sup>505</sup> *Id.*, 1085.

<sup>506</sup> *Id.*, 1207.

<sup>507</sup> *Id.*, 642.

<sup>508</sup> *Id.*, 588.

<sup>509</sup> *Id.*, 1270.

<sup>510</sup> *Id.*, 1108.

<sup>511</sup> *Id.*

Article 14(3) of the ICCPR and Article 6(3)(c) of the ECHR both make clear that the defendant has the right to defend themselves through “legal assistance of [their] own choosing.”<sup>512</sup> The ECtHR has made clear that this right “is generally recognized in international human rights standards as a mechanism for securing an effective defense to the accused.”<sup>513</sup> Notwithstanding this, the right is not absolute and the ECtHR has held that national authorities may override the wishes of the defendant “when there are relevant and sufficient grounds for holding that this is necessary in the interests of justice.”<sup>514</sup> Such grounds include for example where the nature of the proceedings may justify a specialist lawyer.<sup>515</sup> Based on the evidence presented in court, there were no such grounds to justify the authorities disregarding the wishes of the defendants’ family members in their choice of independent defense lawyers. In *Dvorski v. Croatia*, where in similar circumstances the defendant was denied access to the defense lawyer his family had chosen for him (even while that lawyer waited at the police station and asked to see his client), and was instead given a state appointed lawyer, the ECtHR held that “[w]here such grounds are lacking, a restriction on the free choice of defense counsel would entail a violation of Article 6 § 1 together with paragraph 3 (c) if it adversely affected the applicant’s defense, regard being had to the proceedings as a whole.”<sup>516</sup> To assess the latter question, the Court has generally considered a number of factors including, the nature of the proceedings and the application of certain professional requirements; the circumstances surrounding the designation of counsel and the existence of opportunities for challenging this; the effectiveness of counsel’s assistance; whether the accused’s privilege against self-incrimination has been respected; and the trial court’s use of any statements given by the accused at the material time.<sup>517</sup>

In all these respects it is clear that being forced to take on state appointed counsel at this initial stage adversely effected Asan and Aziz’s defense in the proceedings as a whole. First, given the serious nature of the charges against the brothers the alleged conduct of Glushko and Polyansky would breach their professional obligations by seemingly allowing the ill-treatment of their clients by the authorities. In fact, Asan lodged a formal complaint against Glushko, who faced disciplinary proceedings by the Crimean Bar Association for

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<sup>512</sup> ICCPR, Art. 14(3); ECHR Art. 6(3)(c).

<sup>513</sup> European Court of Human Rights, *Dvorski v. Croatia*, App. No. 25703/11, Nov. 28, 2013, ¶78.

<sup>514</sup> European Court of Human Rights, *Meftah and Others v. France*, App. Nos. 32911/96 and 2 others, ¶45; European Court of Human Rights, *Mayzit v. Russia*, App. No. 63378/00, Jan. 20, 2005, ¶66; European Court of Human Rights, *Klimentyev v. Russia*, App. No. 46503/99, Nov. 16, 2006, ¶116; European Court of Human Rights, *Vitan v. Romania*, App. No. 42084/02, Mar. 25, 2008, ¶59; European Court of Human Rights, *Zagorodniy v. Ukraine*, App. No. 27004/06, Nov. 24, 2011, ¶52.

<sup>515</sup> European Court of Human Rights, *Meftah and Others v. France*, App. Nos. 32911/96 and 2 others, ¶47.

<sup>516</sup> European Court of Human Rights, *Dvorski v. Croatia*, App. No. 25703/11, Nov. 28, 2013, ¶79.

<sup>517</sup> European Court of Human Rights, *Meftah and Others v. France*, App. Nos. 32911/96 and 2 others, ¶¶45-48; European Court of Human Rights, *Martin v. Estonia*, App. No. 35985/09, Oct. 7, 2013, ¶¶90-97; European Court of Human Rights, *Croissant v. Germany*, App. No. 13611/88, Sep. 25, 1992, ¶31.

his defense of Asan.<sup>518</sup> Second, on the basis of the facts alleged, the designation of the state-appointed lawyers was irregular and raises concerns, especially in circumstances where the defense lawyer chosen by Aziz's family was right outside the FSB office asking to see her client and being denied access to him. Third and as noted earlier, Aziz and Asan's privilege against self-incrimination was not respected, and, according to the brothers' testimony, in fact the state-appointed lawyers witnessed their ill-treatment, but then apparently did nothing to stop their subsequent confessions. These confessions were used by the trial court in convicting the defendants. Therefore, it is clear that by not respecting Asan and Aziz's choice of counsel and forcing them to take on state-appointed lawyers the overall fairness of their trial was undermined, in a clear violation of Articles 6(3)(c) of the ECHR and 14(3) of the ICCPR.

Moreover, in the context of the allegations of mistreatment, it is questionable whether Aziz's waiver of his right to be represented by Shabanova could even be considered valid.<sup>519</sup>

## C. VIOLATIONS AT TRIAL

### Presumption of Innocence

Both the ICCPR and the ECHR guarantee the right to the presumption of innocence until proven guilty to anyone charged with a criminal offence.<sup>520</sup> This right "imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, [and] ensures that the accused has the benefit of doubt."<sup>521</sup> This means that it is not up to the defendant to prove their innocence but that the prosecutor has the burden of substantiating the charge.<sup>522</sup>

Furthermore, under the principle of *dubio pro reo*, where there is any doubt about the evidence presented, the court must resolve this so as to benefit the accused. In this regard, the ECtHR has held that "dismissing all evidence in the defendant's favor without justification" violates the presumption of innocence.<sup>523</sup> For example in *Navalny v. Russia* the ECtHR found a violation of the principle in circumstances where domestic courts

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<sup>518</sup> Halya Coynash, "'Lawyer' who collaborated with Russian FSB's torture of Crimean Tatar political prisoners faces disciplinary proceedings", Human Rights in Ukraine, Jan. 31, 2023, available at: <https://khpg.org/en/1608811767>. The Crimean Bar Association, which was established under Russian law and is not independent, did not find any violations in Glushko's actions see for example: Igor Vorotnikov, "Под опекой ФСБ. Как в Крыму адвокат по назначению «не заметил» пыток подзащитного," Mar. 7, 2023, available at: <https://ru.krymr.com/a/krym-advokat-oleg-glushko-delo-ahtema-asanova-pytki-fsb/32306321.html>.

<sup>519</sup> European Court of Human Rights, *Turbylev v. Russia*, App. No. 4722/09, Oct. 6, 2015, ¶96.

<sup>520</sup> ICCPR, Art. 14(2); ECHR, Art. 6(2).

<sup>521</sup> Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, Aug. 23, 2007, ¶ 30 [hereinafter, "General Comment No. 32"].

<sup>522</sup> *Id.*

<sup>523</sup> European Court of Human Rights, *Navalny v. Russia*, App. No. 29580/12 & others, Nov. 15, 2018, ¶¶ 83-84.



“based their judgments [against the defendants] exclusively on the versions of events put forward by the police.”<sup>524</sup>

In this case it is clear that rather than addressing the evidentiary gaps or giving the benefit of the doubt to the defense, the court seemed to do exactly the same thing as the court in the Navalny trial: Indeed, the judgment dismisses entirely the defense's version of events by stating:

Arguments of the defendants Akhtemov Al., Akhtemova AE. and Dzhelalova NE. that they did not commit these crimes, but incriminated themselves under physical pressure from FSB officers, the court finds unfounded, since the fact of the use of physical violence against them is refuted by the content of the investigative reports, the testimony of investigators, witnesses in whose presence they gave initial confessions... and is fully consistent with the evidence examined during the trial, and does not contradict it...<sup>525</sup>

This is despite the prosecution seemingly failing to prove through accurate, credible and relevant evidence the elements of the crime alleged. For example, the prosecution sought to argue that Dzhelyal's intent was evidenced by files found in Dzhelyal's mobile phone that demonstrated his “radical views on the grounds of political hatred towards the Russian Federation and the fact of its incorporation into the Republic of Crimea and the city of Sevastopol”<sup>526</sup> as well as the testimony of secret witness Byshovets. This evidence was challenged by the defense. First the defense argued that the interpretation of a “radical view,” as it related to the files on the mobile phone, was not formed after a linguistic assessment of the files but was based solely on the subjective opinion of the investigating officer. This same officer even testified in court that he was “guided solely by his personal and professional beliefs.”<sup>527</sup> And the prosecution never even specified the texts that supposedly evidenced these radical views.

Second, on the testimony of Byshovets, and as detailed below, the defense raised serious questions about the credibility of the witness and noted the gaps in his testimony in court, which were not addressed by the prosecution. The court in its judgement did not engage with the arguments put forward by the defense other than stating that they were “untenable.” The court instead accepted the arguments put forward by the prosecutor, accepting the testimony of Byshovets without question and noting that the protocols of inspection of the items seized from Dzhelyal's home showed information: “about the occupation of Crimea by Russia”; “text by NV Nariman about the rejection of the

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<sup>524</sup> *Id.*

<sup>525</sup> Judgement, 69.

<sup>526</sup> Indictment, 279.

<sup>527</sup> *Id.*

occupation by the Crimean Tatars in Crimea”; and “text [on the] International Platform ‘Crimean Platform.’”<sup>528</sup>

In fact the court placed great emphasis on the fact that Dzhelyal attended the Crimean Platform, stating in its judgement that “despite the fact that the ‘Crimean Platform’ is a pro-Ukrainian project aimed at changing the constitutional system of the Russian Federation in the Republic of Crimea, nevertheless Dzhelyal N.E. expressed his support for this project.”<sup>529</sup> The court’s assessment did not address questions of the reliability, credibility or relevance of the evidence presented or how it proved the element of intent.

Likewise, as to the core factual allegations, the court resolved all doubts about the credibility of the anonymous witnesses in favor of the prosecution. As described in greater detail below, the court radically curtailed defense efforts to cross-examine the witnesses as to their credibility, and rejected requests to disclose the identity of these witnesses. The court then found, in its judgment, that “there was no grounds for disclosure of the true identity of the witnesses who testified”<sup>530</sup> and completely dismissed any arguments about their lack of credibility.

Additionally, as discussed above, the court failed to give the defendants the benefit of the doubt in relation to their allegations that the Akhtemov brothers’ “confessions” were elicited following torture and ill-treatment. As discussed above, rather than engaging in a proper investigation of these serious allegations the court seemed dismissive of them and instead completely relied on the prosecution’s version of events that the confessions were given freely. In fact, in its judgement the court stated that:

The arguments of the defense about the use of illegal methods of investigation by the court were verified... During the investigative actions, Asan and Aziz indicated in detail the circumstances of the explosion of the gas pipeline, and then also the circumstances of the commission of the crime were indicated on the spot. All suspects were provided with the participation of defenders. The defendants gave all their testimony voluntarily, without any coercion or violence.<sup>531</sup>

By repeatedly dismissing the arguments put forward by the defense it would appear the court placed “an extreme and unattainable burden of proof”<sup>532</sup> on the defense to prove Dzhelyal and the Akhtemov brothers’ innocence and resolved any doubt about the evidence in favor of the prosecution and not the defense in violation of the right to be presumed innocent.

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<sup>528</sup> Judgement, 68.

<sup>529</sup> *Id.*

<sup>530</sup> *Id.*, 73.

<sup>531</sup> *Id.*, 52.

<sup>532</sup> European Court of Human Rights, *Navalnyy v. Russia*, App. Nos. 29580/12 & others, November 15, 2018, ¶83 (quoting and endorsing the lower Chamber’s judgment).

## Right to Call and Examine Witnesses

Article 14(3)(e) of the ICCPR entitles defendants “to examine, or have examined, the witnesses against [them] and to obtain the attendance and examination of witnesses on [their] behalf under the same conditions as witnesses against [them].” Similarly, Article 6(3)(d) of the ECHR guarantees everyone charged with a criminal offense the right “to examine or have examined witnesses against [them] and to obtain the attendance and examination of witnesses on [their] behalf under the same conditions as witnesses against [them].”

As stated by the HRC, the right to call and examine witnesses is “important for ensuring an effective defense by the accused and their counsel and thus guarantees the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution.”<sup>533</sup> Likewise, the ECtHR has clarified that “the essential aim of that provision, as indicated by the words ‘under the same conditions’ is to ensure a full ‘equality of arms’ in the matter.”<sup>534</sup>

Although defendants do not have an unlimited right to obtain the attendance of witnesses, they do have the “right to have witnesses admitted that are relevant for the defense, and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings.”<sup>535</sup>

The HRC has held that a court’s excessive curtailment of defense questions can amount to a violation of this right. In *Larranaga v. The Philippines*, the HRC ruled that the presiding court violated Article 14(3)(e) not only by refusing to call proposed defense witnesses without adequate justification but also by cutting short the defense’s cross-examination of a key prosecution witness.<sup>536</sup> The ECtHR has also found a violation of the right to call and examine witnesses where the presiding judge repeatedly struck questions relating to the credibility and reliability of a key witness.<sup>537</sup>

Additionally, in *Al-Khawaja and Tahery and Schatschaschwili v. Germany* the ECtHR established a three step test to determine the compatibility of proceedings in which

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<sup>533</sup> Human Rights Committee, General Comment No. 32, ¶39; Human Rights Committee, *Sirozhiddin Allaberdiev v. Uzbekistan*, U.N. Doc. ICCPR/C/119/D/2555/2015, ¶ 8.8.

<sup>534</sup> European Court of Human Rights, *Murtazaliyeva v. Russia*, App. No. 36658/05, Dec. 18, 2018, ¶139.

<sup>535</sup> *Id.*

<sup>536</sup> Human Rights Committee, *Larranaga v. The Philippines*, U.N. Doc. CCPR/C/87/D/1421/2005, ¶7.7.

<sup>537</sup> European Court of Human Rights, *Pichugin v. Russia*, App. No. 38623/03, Oct. 23, 2012, ¶¶172, 210-212. (The Court found that by dismissing “all questions concerning [the witness]’s criminal record, the reasons for not giving testimony inculcating the applicant during his first questionings in 1999 and his motivation for starting to give such evidence in 2003, as well as concerning possible pressure on him from the prosecuting authorities,” the domestic court had violated the applicant’s fair trial rights: namely Articles 6(1) and 6(3)(d) of the Convention.) The Court further observed that in order to properly perform their function, the jurors “needed to be aware of all relevant circumstances affecting the [witness] statement’s accuracy and credibility, including any incentive [the witness] might have had to misrepresent the facts. It was therefore important for the defense to discuss the above issues in the presence of the jury in order to test [the witness]’s reliability and credibility.” *Id.* ¶ 210.

statements made by a witness who had not been present and questioned at the trial were used as evidence with Article 6(1) and 3(d). In such circumstances, the ECtHR has stated that the court must determine: (i) whether there was a good reason for the non-attendance of the witness and, consequently, for the admission of the absent witness's untested statements as evidence; (ii) whether the evidence of the absent witness was the sole or decisive basis for the defendant's conviction; and (iii) whether there were sufficient counterbalancing factors, including strong procedural safeguards, to compensate for the handicaps caused to the defense as a result of the admission of the untested evidence and to ensure that the trial, judged as a whole, was fair. In that case, the ECtHR. made clear that an "...important safeguard countering the handicaps under which the defense labours as a result of the admission of untested witness evidence at the trial is to have given the applicant or defense counsel an opportunity to question the witness during the investigation stage."<sup>538</sup> Furthermore, the court also stated that "[t]he defendant must further be afforded the opportunity to give his own version of the events and to cast doubt on the credibility of the absent witness, pointing out any incoherence or inconsistency with the statements of other witnesses. Where the identity of the witness is known to the defense, the latter is able to identify and investigate any motives the witness may have for lying, and can therefore contest effectively the witness's credibility, albeit to a lesser extent than in a direct confrontation."<sup>539</sup>

In this case, it is clear that the court did not comply with the standards established by the HRC and the ECtHR. During the cross-examination of each of the "secret witnesses" the court intervened numerous times by withdrawing or dismissing the questions put to the witnesses by the defense team on the basis that answering them would reveal the identity of the secret witness. These questions were, however, relevant to defense efforts to show holes in the prosecution's case and did not appear likely to result in disclosure of the witnesses' identity. For example, during the cross-examination of secret witness "Baidanchny," who claimed he was a driver involved in the transportation of cargo and passengers between other parts of Ukraine and Crimea and who testified that he had transported a package for Dzhelyal to a woman, the defense asked Baidanchny to name the places where he usually picked up and dropped off passengers. As the defense argued, this was to establish whether he was truly a driver or merely a government "figurehead."<sup>540</sup> The secret witness responded that this would reveal his personal data to which defense counsel responded "Your honor! Dear Court! How can this declassify his personal data?"<sup>541</sup> Rather than answering the defense counsel's question, providing an explanation, or even asking the defense counsel to re-phrase the question the judges merely stated "given that the witness believes that this may reveal his personal data, this issue is removed."<sup>542</sup> The court dismissed over twenty questions in each of the cross-

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<sup>538</sup> European Court of Human Rights, *Schatschaschwili v. Germany*, App. No. 9154/10, Dec. 15, 2015, ¶130.

<sup>539</sup> *Id.*, ¶131.

<sup>540</sup> Hearing Protocol, 1327.

<sup>541</sup> *Id.*, 197.

<sup>542</sup> *Id.*

examinations of secret witnesses Baidanchny and Danilov, questions that would potentially have cast doubt on the testimony of these witnesses.

Moreover, by using the justification that certain questions “may reveal personal data” the court also thwarted the defense teams attempts at defending Dzhelyal. For instance, when the defense questioned secret witness “Byshovets,” who testified that in May 2021, Mr Dzhelyal approached him to recruit him into targeting certain infrastructure with an explosive, “...where the meeting with Dzhelyal took place in the spring of 2021? Can you remember what Nariman Dzhelyal was wearing? What kind of vehicle did he drive up in?” The court removed the questions on the justification that “they are aimed at declassifying personal data.”<sup>543</sup> The same response was given when the defense asked how the witness communicated with Dzhelyal. The defense was not even allowed to ask whether the witness could tell them Dzhelyal’s phone number, or the location of his house.<sup>544</sup> The defense counsel asked the presiding judge to recuse himself stating:

We all see that he fully support the prosecution, in every way help secret and not secret witnesses to dodge our questions, to give false testimony. I would like to remind you of article 15 of the Code of Criminal Procedure of the Russian Federation, which in paragraph 4 says about the adversarial nature of the parties, that the parties of the prosecution and defense must be equal before the court. This is a specific violation. The questions were unreasonably removed.<sup>545</sup>

The court dismissed the recusal petition.

The court repeatedly denied the defense team the opportunity to question the secret witnesses yet did not interrupt the prosecution in the same way.

Additionally, the defense did not get the opportunity to cross-examine key prosecution witness Nebiev who had allegedly fled following the initial interrogation with authorities. Nebiev was the one who supposedly drove the Akhtemov brothers to Kherson in the summer of 2021.<sup>546</sup> During the initial investigation, the authorities questioned Nebiev and he provided testimony that he had driven the brothers to the passport office but had later seen Asan at McDonald’s in Kherson with Riza (whom he claimed to have met previously at the Mejlis building in Kherson) and two other men.<sup>547</sup> The Akhtemov brothers disputed this narrative of events and argued that Nebiev had driven them directly to the passport office in Kherson and had left them there because he did not have time to wait for them and drive them back home.<sup>548</sup> The court admitted Nebiev’s testimony despite objections

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<sup>543</sup> *Id.*, 268-269.

<sup>544</sup> *Id.*, 283.

<sup>545</sup> *Id.*, 289.

<sup>546</sup> Indictment, 35.

<sup>547</sup> *Id.*, 40.

<sup>548</sup> Hearing Protocol, 594.



from the defense.<sup>549</sup> This was problematic not only because Nebiev was the only witness for the prosecution who could place the Akhmetov brothers as doing anything other than getting passports in Kherson but also because Asan claimed that when he had been interrogated with Nebiev during the initial investigation Nebiev had also shown physical signs of being mistreated.<sup>550</sup>

Applying the three-step test in *Schatschaschwili v. Germany* to these facts it is clear that the court violated the defendants' right to call and examine witnesses by admitting the untested evidence of Nebiev. First, it is unclear what attempts were made by the prosecution or court to secure Nebiev's attendance and whether this meets the threshold for the trial court having made "all reasonable efforts."<sup>551</sup> However, even assuming all reasonable efforts were made, given that the court did rely on Nebiev's evidence to convict the defendants, the court failed to put in place "sufficient counter balancing factors to compensate for the handicaps under which the defense labored." The court allowed the testimony to be read into evidence on the grounds that "the defendant's testimony, which he gave in court, contradicts the testimony he gave during the preliminary investigation" without seemingly taking into account the defense team's inability to test the evidence through cross-examination or putting in place any safeguards to ensure that by admitting the evidence of Nebiev it was not violating the rights of the defendants. In fact it did not seem to take into account the fact that at no point had the defense been able to question the witness because even during the investigation phase Nebiev refused to reply to Asan's and Aziz's defense lawyers' questions such as when and where he (Nebiev) was arrested, who he was arrested by, how many people arrested him, whether he received threats from the FSB agents, and when he was officially considered to be a witness. Furthermore, the court not only failed to engage with Asan's theory that Nebiev had shown signs of mistreatment during his interrogation with Asan but also to take this into consideration when assessing Nebiev's credibility as a witness.

Finally, the defense was denied an opportunity to cross-examine FSB operatives who, according to pre-investigation inquiry based on the complaints of ill-treatment,<sup>552</sup> took Asan from his home to the FSB headquarters, received an initial confession from him and stayed with him until Asan was officially charged.

From these examples, it is clear that the court violated the defendants' rights under Article 14(3)(e) of the ICCPR and Article 6(3)(d) of the ECHR.

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<sup>549</sup> *Id.*, 616.

<sup>550</sup> *Id.*, 620 (According to Asan: "It was also clear from his physical condition that he had also been subjected to physical coercion. He had marks on his wrists and feet...").

<sup>551</sup> European Court of Human Rights, *Schatschaschwili v. Germany*, App. No. 9154/10, Dec. 15, 2015, ¶136.

<sup>552</sup> Casefile, Vol. 10, 253, [Decision on the refusal to initiate a criminal case, The Investigative Committee of the Russian Federation, Dec. 2, 2021].

## Violations in Relation to Anonymous Witnesses

As part of the right to call and examine witnesses under Article 14(3)(e) of the ICCPR and Article 6(3) of the ECHR it is the general rule that “a defendant should know the identity of his accusers so that he is in a position to challenge their probity and credibility and should be able to test the truthfulness and reliability of their evidence by having them orally examined in his presence.”<sup>553</sup> Thus the anonymization of witnesses must be managed prudently by courts to ensure that a defendant’s right to a fair trial is protected. The ECtHR considers three factors to determine the fairness of the trial where anonymous witnesses are involved. First, courts must examine whether there is a “good reason” to keep the identity of witnesses anonymous.<sup>554</sup> In the case of *Vasilyev v. Russia* the ECtHR made clear that while fear for safety might be a good reason, “any subjective fear by the witness will not suffice and the courts must conduct appropriate enquiries to determine, firstly, whether or not there are objective grounds for that fear, and, secondly, whether those objective grounds are supported by evidence.”<sup>555</sup> Second, courts must consider whether the evidence of anonymous witnesses is either the sole or decisive basis of the conviction.<sup>556</sup> Third, courts must consider whether there are sufficient counterbalancing factors, such as strong procedural safeguards, to ensure a fair and proper assessment of the reliability of the evidence provided by the anonymous witnesses.<sup>557</sup> (In this way, the inquiry is substantially similar to the one used to assess the use of evidence from an absent witness.)

In this case and in circumstances similar to those in *Vasilyev*, the three anonymous witnesses Danilov, Baidanchny, and Byshovets all claimed to fear Dzhelyal. However, there was no evidence to suggest that the court made an appropriate assessment to determine whether there were objective grounds for that fear. As defense counsel argued, under the Code of Criminal Procedure “an order to preserve the identity of a witness is issued if it is necessary to ensure the safety of the witness. We have not been provided with a single credible document that threatens the safety of these witnesses.”<sup>558</sup> Dzhelyal’s lawyer added that:

None of the witnesses was able to confirm threats made by anyone in the form of screenshots of text messages or phone numbers from which threats were received. There is no evidence of a real threat to the witnesses in the case file, other than the unconvincing testimony of the witnesses themselves.<sup>559</sup>

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<sup>553</sup> European Court of Human Rights, *Pichugin v. Russia*, App. No. 38623/03, Oct. 23, 2012, ¶195.

<sup>554</sup> European Court of Human Rights, *Asani v. The Former Yugoslav Republic of Macedonia*, App. No. 27962/10, ¶37.

<sup>555</sup> European Court of Human Rights, *Vasilyev and Others v. Russia*, App. No. 38891/08, ¶38.

<sup>556</sup> *Id.*, ¶37.

<sup>557</sup> *Id.*

<sup>558</sup> Hearing Protocol, 1162.

<sup>559</sup> *Id.*, 1218.

In relation to the second factor, it is clear from the judgement that the court relied heavily on the testimonies of the anonymous witnesses in its decision to convict the defendants. For example, the court used the testimony of Baidachny as evidence to establish the “presence of a close connection”<sup>560</sup> between the Akhtemov brothers and Riza for the purpose of finding that the defendants operated as part of an organized group. In addition, the court also used the testimony of Danilov, including the fact that he allegedly overheard Dzhelylov talk to Riza about “Asan and his brother, and that “they did a nice job on the pipe”<sup>561</sup> to come to the conclusion:

that the fact has been proven that Akhmedov O.A., who is a personnel employee of the Central Office of the Main Intelligence Directorate of the Ministry of Defense of Ukraine, created an organized group, which included Dzheyalov N.E., Akhtemov A.I., Akhtemov A.E., and Yagyaev-Veliulaev R.D. attacked, with the aim of committing a specific crime (sabotage), which required careful preparation.<sup>562</sup>

The court also used the testimony of Byshovets “that in the spring of 2021 Dzhelyalov N.E. suggested that he carry out a forceful action in the form of undermining infrastructure facilities on the territory of the Republic of Crimea”<sup>563</sup> as evidence of Dzhelyal’s motive and his “radical views based on political hatred towards the Russian Federation and the fact that the Republic of Crimea and the city of Sevastopol became part of it.”<sup>564</sup>

Finally, the court did not put in place any safeguards or make any mention of the reduced weight of anonymous witness testimony. Moreover, when the defense requested that Baidachny’s identity be disclosed, one of the judges said: “I ask once again, do you have any evidence that this witness will provide false testimony?”<sup>565</sup> Thus, in accepting the evidence of the secret witnesses and curtailing the attempts of the defense team to interrogate the credibility of these witnesses, despite serious concerns about the credibility and reliability of their testimonies, as detailed above, the court violated the rights of the defendants to call and examine witnesses.

## **Right to an Impartial Tribunal**

Article 14(1) of the ICCPR provides that “[a]ll persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him ... everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.” The HRC has explicitly stated that the competence, independence,

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<sup>560</sup> Judgement, 67.

<sup>561</sup> *Id.*

<sup>562</sup> *Id.*

<sup>563</sup> *Id.*, 68.

<sup>564</sup> *Id.* 68.

<sup>565</sup> Hearing Protocol, 171.

and impartiality requirements represent “an absolute right that is not subject to any exception.”<sup>566</sup>

The guarantee of judicial impartiality encompasses both a subjective dimension, meaning that judges must be free from preconceptions, prejudice, or personal bias that might influence their judgments, and that judges must refrain from taking actions that would unfairly advantage one party to the proceedings over another,<sup>567</sup> and an objective dimension, requiring that even in the absence of actual bias, a tribunal must appear to be impartial to a reasonable observer.<sup>568</sup> In *Ashurov v. Tajikistan*, the HRC found an Article 14(1) violation where a judge “asked leading questions to prosecution witnesses, corrected and completed their answers and instructed the court’s secretary to record only those testimonies establishing [the accused’s] guilt.”<sup>569</sup>

Article 6(1) of the ECHR entitles defendants “to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.” In interpreting this right, the ECtHR has emphasized that democratic societies demand courts that “inspire confidence in the public and above all, as far as criminal proceedings are concerned, in the accused.”<sup>570</sup>

Like the HRC, the ECtHR assesses a tribunal’s impartiality along both subjective and objective lines. Under the subjective standard, a judge cannot hold any personal bias or prejudice in adjudicating a case.<sup>571</sup> The ECtHR assumes no bias on the part of an individual judge until there are indications otherwise, such as displays of hostility.<sup>572</sup> The case of *Ramishvili and Kokhreidze v. Georgia* (although it involved pretrial detention proceedings and thereby implicated Article 5(4), not Article 6(1)) provides an instructive example of how subjective bias can manifest itself in the courtroom.

In *Ramishvili and Kokhreidze v. Georgia* the defense claimed when they posed questions “which perplexed the prosecutor, the judge either directly replied instead ... or rephrased the questions in a leading manner, thereby suggesting a suitable answer for the prosecutor.”<sup>573</sup> In such circumstances, the Court concluded that “the judge was obviously aiding the prosecutor during the hearing, by either directly responding to the questions of the defense instead of the latter or rephrasing these questions in a manner more

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<sup>566</sup> Human Rights Committee, General Comment No. 32, ¶19.

<sup>567</sup> *Id.* at ¶21. See also Human Rights Committee, *Ashurov v. Tajikistan*, U.N. Doc. CCPR/C/89/D/1348/2005, ¶¶2.8, 6.6; Human Rights Committee, *Karttunen v. Finland*, U.N. Doc. CCPR/C/46/D/387/1989, ¶7.2.

<sup>568</sup> Human Rights Committee, General Comment No. 32, ¶21.

<sup>569</sup> Human Rights Committee, *Ashurov v. Tajikistan*, U.N. Doc. CCPR/C/89/D/1348/2005, ¶¶2.8, 6.6.

<sup>570</sup> European Court of Human Rights, *Kyprianou v. Cyprus*, App. No. 73797/01, Dec. 15, 2005 ¶118.

<sup>571</sup> European Court of Human Rights, *Nicholas v. Cyprus*, App. No. 63246/10 Jan. 9, 2018, ¶49.

<sup>572</sup> European Court of Human Rights, *Kyprianou v. Cyprus*, App. No. 73797/01, Dec. 15, 2005 ¶¶118-119.

<sup>573</sup> European Court of Human Rights, *Ramishvili and Kokhreidze v. Georgia*, App. No. 1704/06, Jan. 27, 2009, ¶¶ 61, 134, 136.

advantageous to the prosecutor.”<sup>574</sup> The ECtHR consequently found that the judge’s conduct “could not be said ... to be devoid of bias.”<sup>575</sup>

With respect to the objective assessment, the ECtHR seeks to verify the existence of facts that could lead a reasonable observer to question the tribunal’s impartiality.<sup>576</sup> As stated by the Court in *Nicholas v. Cyprus*:

[I]t must be determined whether, quite apart from the judge’s conduct, there are ascertainable facts which may raise doubts as to his or her impartiality. This implies that, in deciding whether in a given case there is a legitimate reason to fear that a particular judge or a body sitting as a bench lacks impartiality, the standpoint of the person concerned is important but not decisive. What is decisive is whether this fear can be held to be objectively justified.<sup>577</sup>

The objective test primarily concerns “hierarchical or other links between the judge and other protagonists in the proceedings or the exercise of different functions within the judicial process by the same person.”<sup>578</sup> The ECtHR has held that although the “mere fact that a judge has already taken pre-trial decisions cannot by itself be regarded as justifying concerns about his impartiality,” the specific “nature and scope” of said decisions can potentially give rise to doubts about impartiality.<sup>579</sup> In particular, “it is necessary to consider whether the link between substantive issues determined at various stages of the proceedings is so close as to cast doubt on the impartiality of the judge participating in the decision-making at these stages.”<sup>580</sup>

In this case, the court’s behavior during the questioning of the prosecution’s three secret witnesses—Byshovets, Danilov, and Baidachny—breached these standards. These witnesses were central to the prosecution’s case and, outside of the defendants’ ‘confessions’, the key evidence that tied Dzhelyal to any of the alleged crimes. The panel of judges violated the defendants’ rights to call and examine witnesses by repeatedly abridging the cross-examination of these key prosecution witnesses on material aspects of their testimonies and striking the defense’s questions. Between the three witnesses, the judges removed over 90 of the defense’s questions that were aimed at examining the witnesses’ potential biases, credibility, or the reliability of their testimony.

On the cross-examination of Byshovets, the presiding judge, removed over 20 of the defense’s questions. These questions included: whether Byshovets could name specific

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<sup>574</sup> *Id.*, ¶134.

<sup>575</sup> *Id.*

<sup>576</sup> European Court of Human Rights, *Kyprianou v. Cyprus*, App. No. 73797/01, Dec. 15, 2005, ¶¶ 118-119.

<sup>577</sup> European Court of Human Rights, *Nicholas v. Cyprus*, App. No. 63246/10, Jan. 9, 2018, ¶52.

<sup>578</sup> *Id.* ¶53.

<sup>579</sup> European Court, *Morel v. France*, App. No. 34130/96, Jun. 6, 2000, ¶45.

<sup>580</sup> European Court, *Toziczka v. Poland*, App. No. 29995/08, Jul. 24, 2012, ¶36.



acts of incitement that Dzhelyal performed; whether his communication with Dzhelyal was in-person or in the presence of others; whether, given that he testified to having a personal relationship with Dzhelyal, Dzhelyal had any children; whether he ever witnessed Dzhelyal in conflict with anyone; what kind of car Dzhelyal was driving when they would meet; and how he communicated with Dzhelyal. The proffered rationale was that these questions either had nothing to do with the charge or were aimed at uncovering the witness's personal data. The judge's obstruction was perceived as so severe that the defense moved that he recuse under article 15 of the Code of Criminal Procedure of the Russian Federation, which requires the parties to be equal before the court.

## Right to a Reasoned Judgement

Article 14(5) of the ICCPR provides for a right to appeal. The HRC has explained that to be able to effectively exercise this right a defendant must have a "duly reasoned" written judgment; otherwise a defendant cannot effectively challenge the judgment before a higher tribunal. Likewise, Article 6 of the ECHR requires that judgments "adequately" explain their reasoning.

In this case, the court failed to provide a duly reasoned judgment, thus violating Dzhelyal's and the Akhtemov brother's right to appeal.

First, the court failed to explain why it rejected the defense's claims that the initial confessions were elicited by ill-treatment and why it allowed these confessions into evidence despite the defense team's submission that they should not be admitted as evidence. In fact, the verdict lacks any analysis on this point at all, with the court summarizing the defendants' allegations that "confessions were made under physical and psychological pressure from FSB officers"<sup>581</sup> without going into the details and instead concluding that:

The preliminary investigation was conducted in accordance with the requirements of the law of criminal procedure, A. I. Akhtemov, Akhtemov A.E. and Dzhelyalov N.E. were explained the provisions of Article 51 of the Constitution of the Russian Federation, as well as the provisions on the use of their testimony as evidence in a criminal case, including in the event of their subsequent refusal to recant it ... on the basis of paragraph 1 part 1 of Article 276 of the CPC RF. Article 276, paragraph 1, of the Code of Criminal Procedure, the court granted the motion of the State prosecutor for the defendants' testimony to be read out ... due to the presence of significant contradictions.<sup>582</sup>

The only action taken by the court to investigate the defendants' statements about their ill-treatment was to allow the prosecutor to call as witnesses various FSB investigators,

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<sup>581</sup> See *generally* Judgement, 14, 15.

<sup>582</sup> *Id.*, 15.

lay witnesses and Glushko, Asan's state-appointed lawyer. In the judgement the court summarizes these witness testimonies and concludes that "the arguments of the defense about the use of unauthorized methods of investigation were verified by the court ... the defendants gave all their testimony voluntarily, without any coercion or violence." However, the court does not explain why it gave more weight to the testimonies of the authorities than to the testimonies of the defendants, especially given that these authorities are the same ones accused of being the perpetrators of the ill-treatment.

Second, the court found that Dzhelyal adhered to "radical views due to his political hostility towards the Russian Federation and the fact of the inclusion of the Republic of Crimea and the city of Sevastopol in it." This assertion was based on:

- (1) texts on Dzhelyal's laptop;<sup>583</sup>
- (2) the fact that Dzhelyal's repeatedly publicly expressed his position that the annexation of Crimea by Russia violates international law;<sup>584</sup>
- (3) Dzhelyal's participation in a discussion at the Crimea Platform";<sup>585</sup> and
- (4) testimonies of anonymous witnesses Byshovets and Danilov.<sup>586</sup>

However, the court never actually specified what exact phrases demonstrated these so called "radical views" and as a result did not provide in its judgement a specific basis from which Dzhelyal could effectively appeal.

Third, the court stated that the alleged actions by the defendants were aimed at "undermining the economic security and defense capability of the Russian Federation."<sup>587</sup> The court based this assertion on testimony provided by one officer in court, and that of two other officers<sup>588</sup> who did not testify in court and whose testimonies could not be examined by the defense.<sup>589</sup> In reaching this conclusion the court failed to provide its own legal analysis on how a short-term gas cut at a military unit in a rural area in summer could affect the economic security and defense capabilities of the entire Russian Federation.

Fourth, the court concluded that the damage of 105,237.25 Russian rubles caused to the State Unitary Enterprise PK Krymgazseti was "significant." This conclusion was again based on the testimony of a witness, the representative of Krymgazseti. However, the court again failed to conduct its own legal analysis, not even taking into account the overall budget of Krymgazseti to justify why this amount was in fact "significant."

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<sup>583</sup> *Id.* 68.; Casefile Vol. 9, 132.

<sup>584</sup> Judgement, 68.

<sup>585</sup> *Id.*

<sup>586</sup> *Id.*, 69.

<sup>587</sup> *Id.*

<sup>588</sup> One officer was involved in the invasion of Ukraine and the second had died.

<sup>589</sup> *Id.*, 35-37.

Fifth, the court found that Mr Dzhelyal involved both Akhtemovs in an organized group with the aim of committing sabotage. However, according to both the prosecution and the judgment, it was only Asan with whom Mr Dzhelyal had contact in respect of introducing him to Riza. Even the prosecution never claimed that Mr Dzhelyal asked Aziz to do anything related to the alleged sabotage, or discussed it with him, or even asked Asan to find someone to help him. Therefore, the court failed to explain how Mr Dzhelyal “involved” Aziz into the alleged “organized group.”

By failing to repeatedly conduct its own legal analysis or provide reasoning as to why it completely dismissed the defense team’s arguments the court violated the defendants’ right to appeal under Article 14(5) of the ICCPR and Article 6 of the ECHR.

## **D. OTHER FAIRNESS CONCERNS**

### **Freedom from Racial Discrimination**

The International Convention on the Elimination of All Forms of Racial Discrimination not only prohibits racial discrimination on grounds including national and ethnic origin but also imposes an obligation on states to ensure the enjoyment of the rights to freedom of religion, freedom of opinion and expression, and association.<sup>590</sup> Likewise, Article 14 of the ECHR states that “[t]he enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as ...race, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”<sup>591</sup>

As noted above, there is a long history of Russian oppression of the Crimean Tatars that spans centuries, and has continued to the present day. Human Rights Watch have reported on the relentless persecution of Crimean Tatars for their vocal opposition to Russia’s illegal purported annexation and occupation of Crimean in 2014.<sup>592</sup> For instance, the Russian state has sought to undermine the political institutions put in place by the Crimean Tatars by declaring the Mejlis, the highest executive body of the Crimean Tatars, an extremist organization in 2016 and banning their activities.<sup>593</sup> Following this, Russia has systematically arrested and in some cases prosecuted Mejlis leaders in what have been labelled unfair trials, including Zair Samedlyayev, Akhtem Chiygoz, Ilmi Umerov, Refat Chubarov, Mustafa Dzhemilev and now Nariman Dzhelyal.<sup>594</sup> Russian authorities have also gone after Crimean Tatar religious movements, including Hizb ut-Tahrir, which

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<sup>590</sup> CERD, Arts. 2, 5(vii)-(ix).

<sup>591</sup> ECHR, Art .14.

<sup>592</sup> Human Rights Watch, “Crimea: Persecution of Crimean Tatars Intensifies,” Nov. 14, 2017, available at: <https://www.hrw.org/news/2017/11/14/crimea-persecution-crimean-tatars-intensifies>.

<sup>593</sup> Human Rights Watch, “Crimean Tatar Elected Body Banned in Russia,” Sep. 29, 2016, available at: <https://www.hrw.org/news/2016/09/29/crimean-tatar-elected-body-banned-russia>.

<sup>594</sup> Council of Europe Commissioner for Human Rights, “Crimean Tatars’ struggle for human rights,” Apr. 18, 2023, available at: <https://rm.coe.int/report-on-crimean-tatars-by-dunja-mijatovic-commissioner-for-human-rig/1680aaeb4b>.

Russia banned as a terrorist organization in 2003.<sup>595</sup> Again this resulted in mass arrests of Crimean Tatars associated with the Islamist movement.<sup>596</sup> Russia has also restricted Crimean Tatar media outlets by refusing to provide broadcasting licenses to TV channels, replacing Crimean radio channels with Russian ones, and blocking access to internet websites belonging to the Mejlis.<sup>597</sup> The media outlets that have been allowed to continue appear to be under constant surveillance, with an independent Crimean Tatar editor in chief recently fined for “disseminating information about a banned organization’ after making a simple reference to the Crimean Tatar Mejlis in one of its publications.”<sup>598</sup> This pattern of targeting has even seemingly resulted in a disproportionate number of Crimean Tatars being drafted into the Russian army in Russia’s war against Ukraine.<sup>599</sup>

In November 2021, the Council of Europe Commissioner for Human Rights made a statement noting a “pattern of persecution targeting Crimean Tatar human rights defenders, activists, leaders, and journalists, as well as many ordinary members of this group” through “arbitrary arrests and detention”, “criminal proceedings devoid of fair trial guarantees” and “extremely severe sentences.”<sup>600</sup> Moreover, the CERD Committee has made recommendations that Russia “repeal any administrative or legislative measures adopted since the State party started to exercise effective control over Crimea that have the purpose or effect of discriminating against any ethnic group or indigenous peoples on grounds prohibited under the Convention, including in relation to nationality and citizenship rights, the registration of religious communities and the operation of Crimean Tatar representative institutions.”<sup>601</sup>

Nariman Dzhelyal is a prominent Crimean Tatar and Mejlis leader. During the investigation Dzhelyal testified how he was taunted by his interrogators about his ethnicity, stating that while he was being held incommunicado, his interrogators started

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<sup>595</sup> Human Rights Watch, “Crimea: Persecution of Crimean Tatars Intensifies,” Nov. 14, 2017, available at: <https://www.hrw.org/news/2017/11/14/crimea-persecution-crimean-tatars-intensifies>.

<sup>596</sup> Russian Federation v. Server Mustafayev and Others, TrialWatch Fairness Report, Apr. 2021, available at: <https://humanrightsembassy.org/attachments/article/365/Fairness%20report%20on%20the%20trial%20of%20Server%20Mustafayev%20and%20his%20seven%20co-defendants%20in%20Russian%20Federation.pdf>.

<sup>597</sup> Council of Europe Commissioner for Human Rights, “Crimean Tatars’ struggle for human rights,” Apr. 18, 2023, at 20, available at: <https://rm.coe.int/report-on-crimean-tatars-by-dunja-mijatovic-commissioner-for-human-rig/1680aaeb4b>.

<sup>598</sup> *Id.*

<sup>599</sup> Andrew Kramer, “Russia’s draft is targeting Crimean Tatars and other marginalized groups, according to activists,” New York Times, Sept. 26, 2022, available at: <https://www.nytimes.com/2022/09/27/world/europe/russias-draft-sweeps-up-crimean-tatars-and-other-marginalized-groups-activists-say.html>.

<sup>600</sup> Dunja Mijatović, “The persecution of Crimean Tatars must stop,” Council of Europe, Nov. 25, 2021, available at: <https://www.coe.int/en/web/commissioner/-/the-persecution-of-crimean-tatars-must-stop>.

<sup>601</sup> Committee on the Elimination of Racial Discrimination, “Concluding observations on the twenty-third and twenty-fourth periodic reports of the Russian Federation,” CERD/C/RUS/CO/23-24, Sep. 20, 2017, available at: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsnLht97JC s%2FgtYiPXQ%2F%2B4iE7ukTT14m%2BecJYUSHmqdz4u6Soz69fKsUApaoBEUr59t4YcZVsGGtqYpu fqZy1NxJFIKWSeQ5UzBkUkdAhGnkSRcg706VCJAr9tKSkOsiag%3D%3D>.

saying “nasty things” about Crimean Tatars, “that it was right that you [Crimean Tatars] were expelled, and if I had my will, I would still deport you all...”.<sup>602</sup> Throughout the trial there was also a lot of emphasis put on his belief that Crimea’s incorporation into the Russian Federation is illegal as evidence of his radical belief and motive to commit the crime alleged. Indeed, he was specifically questioned by the judges in court about his attendance at the Crimean Platform and in what role he spoke there, “[d]id you speak as a journalist, a public activist, or as the deputy chairman of the Mejlis of the Crimean Tatar People?”<sup>603</sup> Even in the judgement the court displays its prejudice against this ethnic group noting that:

During the trial, defendant Dzhelyalov N.E. repeatedly pointed out that he, as a delegate of Kurultai [general assembly of the Mejlis], a public figure and a journalist, always openly expressed his position on the violation by the leadership of the Russian Federation of international legislation on the accession of the Republic of Crimea to the Russian Federation.<sup>604</sup>

The court used these very facts against Dzhelyal, but without a proper assessment of why simply being a member of the Mejlis and holding a view common to Crimean Tatars demonstrates motive.

Understood within the broader context of discrimination against Crimean Tatars this case fits a pattern of discrimination and constitutes a violation of Article 2 of the CERD.

## **Freedom of Opinion and Assembly**

Article 19(1) of the ICCPR provides that everyone has the “right to hold opinions without interference.”<sup>605</sup> Likewise, Article 10 of the ECHR protects the right to hold opinions.

The Human Rights Committee has made clear that there are no exceptions or restrictions to this right and that it includes political opinions.<sup>606</sup> Moreover “[t]he harassment, intimidation or stigmatization of a person, including arrest, detention, trial or imprisonment for reasons of the opinions they may hold, constitutes a violation of article 19, paragraph 1.”<sup>607</sup>

As detailed above, Russian authorities have seemingly systematically targeted Crimean Tatars, in particular Mejlis leaders, for their opinions regarding Russia’s occupation of Crimea. In this case, it was the prosecution’s argument that Dzhelyal held “radical ideas” simply because he was of the opinion that “that Crimea’s incorporation into the Russian

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<sup>602</sup> Hearing Protocol, 722.

<sup>603</sup> *Id.*, 971.

<sup>604</sup> Judgement, 68.

<sup>605</sup> ICCPR, Art. 19(1).

<sup>606</sup> Human Rights Committee, General Comment No. 34, ¶9.

<sup>607</sup> *Id.*; See also *Mpaka-Nsusu v. Zaire*, African Commission on Human and Peoples' Rights, Comm. No. 15/88 (1994).



Federation was illegal...”<sup>608</sup> As Dzhelyal argued, this opinion aligned with the principles of the Crimean Tatar national movement:

...which carried out its activities using exclusively non-violent methods, which is confirmed by the entire set of documents of the national movement, decisions made by the Kurultai of the Crimean Tatar people - its national parliament. The basic document in this series is the Declaration of National Sovereignty of the Crimean Tatar People, adopted on June 22, 1991. According to the declaration, Kurultai declares that political, economic spiritual and cultural revival of the Crimean Tatar people is possible only in its sovereign national state. And it will pursue this goal using all means provided by international law. The relations between Crimean Tatars and national and ethnic groups living in Crimea should be based on mutuality. The first of these is the idea of mutual respect and the recognition of mutual rights.<sup>609</sup>

Notably, the prosecution did not focus on Dzhelyal’s speech, but rather *his ideas*.<sup>610</sup> Mr Dzhelyal, should not have been targeted for simply holding an opinion at odds with that of the Russian authorities.

In addition to protecting the right to freedom of opinion, both the ICCPR and the ECtHR protect the right to freedom of assembly and association through articles 21 and 11 respectively.

The ECtHR has noted the close relationship between the right to freedom of assembly and association and the right to freedom of expression and opinion<sup>611</sup> and made clear that Article 11, must be considered in light of Article 10, where the exercise of the right to freedom of assembly is for the purpose of expressing personal opinions.<sup>612</sup> Freedom of assembly covers both public and private meetings and while the right is not absolute, interference with the right is only permissible where the interference is prescribed by law, pursues a legitimate aim under Article 11(2) and is “necessary in a democratic society” for the achievement of the aim in question.<sup>613</sup>

In this case, there is strong evidence to suggest that Dzhelyal was in fact targeted due to his participation in the Crimea Platform and at the very least his participation in the Platform was held against him as evidence of his so called “motive.” For example, in its judgement the court specifically states:

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<sup>608</sup> Hearing Protocol, 217.

<sup>609</sup> *Id.*, 1295.

<sup>610</sup> Indictment, 5, 57-58.

<sup>611</sup> European Court of Human Rights, *Young, James and Webster v. the United Kingdom*, App. No. 7601/76, Oct. 18, 1982, ¶ 57, European Court of Human Rights, *Vörður Ólafsson v. Iceland*, App. No. 20161/06, July 27, 2010, ¶ 46.

<sup>612</sup> European Court of Human Rights, *Ezelin v. France*, App. No. 11800/85, Apr. 26, 1991, ¶ 37.

<sup>613</sup> European Court of Human Rights, *Vyerentsov v. Ukraine*, App. No. 20372/11, July 11, 2013, ¶ 51.

Dzhelyalov N.E. explained that in 2021 he visited and took part in the discussion during the International Platform “Crimean Platform”, the goal of which is the de-occupation of the Republic of Crimea. Thus, despite the fact that the “Crimean Platform” is a pro-Ukrainian project aimed at changing the constitutional system of the Russian Federation in the Republic of Crimea, nevertheless, Dzhelyalov N.E. expressed his support for this project.

Having his attendance at a conference with likeminded individuals, and in the absence of further reasoning as to why this demonstrates motive, held against him is a restriction on his right to freedom of assembly and one that is unjustified because it does not meet the permissible grounds for restriction as established by the ECtHR and HRC.

### Ulterior Motive

Article 18 of the ECHR states that restrictions permitted by the Convention “shall not be applied for any purpose other than those for which they have been prescribed.” Article 18 can be applied only in conjunction with one or more substantive rights delineated in the ECHR<sup>614</sup> and establishes that such rights cannot be restricted for improper or ulterior purposes, including intimidation and suppression of dissent. Thus, the Convention forbids the use of the criminal justice system for ulterior purposes.

The ECtHR considers many factors in assessing whether criminal proceedings were initiated for ulterior purposes, including: the political context;<sup>615</sup> whether the authorities took action against the defendant despite an “increasing awareness that the practices in question were incompatible with Convention standards”<sup>616</sup>; how the criminal proceedings were conducted<sup>617</sup>; and whether the judgment was reasoned<sup>618</sup>.

In this case, there is evidence that the authorities pursued criminal proceedings against Dzhelyal for the exercise of his rights to freedom of opinion and freedom of peaceful assembly. As noted above, the prosecution’s main argument to prove intent was to focus on Dzhelyal’s opinion as a Crimean Tatar and member of the Mejlis that Russia’s occupation of Crimea was illegal, and label this as “radical.”

The timing of the arrest of the three defendants also came immediately after the Crimea Platform, which Russian authorities called “a Russophobic, artificially created action,”<sup>619</sup> and with Crimea’s putative deputy prime minister stating that the Crimea Platform “will, like a boomerang, come back to hit the people who thought it up and who will try to

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<sup>614</sup> European Court of Human Rights, *Gusinskiy v. Russia*, App. No. 70276/01, May 19, 2004 ¶ 73.

<sup>615</sup> European Court of Human Rights, *Merabishvili v. Georgia*, App. No. 72508/13, Nov. 28, 2017, ¶¶ 320, 322.

<sup>616</sup> European Court of Human Rights, *Navalnyy v. Russia*, App. No. 29580/12, Nov. 15, 2018, ¶ 171.

<sup>617</sup> European Court of Human Rights, *Nastase v. Romania*, App. No. 80563/12, Nov. 18, 2014, ¶ 107.

<sup>618</sup> European Court of Human Rights, *Navalnyy v. Russia*, App. No. 29580/12, Nov. 15, 2018, ¶ 172.

<sup>619</sup> David Axelrod, “The high price of political activism in Crimea”, Open Democracy, available at: <https://www.opendemocracy.net/en/odr/nariman-dzhelyal-arrest-political-activism-crimea/>.

implement it.”<sup>620</sup> Dzhelyal himself said he was questioned by authorities after his arrest as to why he attend the Crimea Platform.<sup>621</sup> Likewise, during interrogations Asan claimed that the FSB officers told him that Dzhelyal, “shouldn’t have gone to the Crimean platform, we’ll put him away for a long time, we warned him.”<sup>622</sup>

As regards the first factor, and as noted above, there is a long history of oppression of Crimean Tatars, which has only increased in recent years with frequent arrests and prosecutions of leaders of the Crimean Tatar representative body, the Mejlis. In regard to the second factor, numerous international bodies, including the Council of Europe Commissioner for Human Rights<sup>623</sup>, the CERD Committee<sup>624</sup>, and the Office of the United Nations High Commissioner for Human Rights<sup>625</sup> have all noted concerns about the treatment and targeting of Crimean Tatars and Mejlis members and its inconsistency with international human rights standards. Finally, in relation to the third and fourth factor and as detailed in this report, the criminal proceedings were marred by violations of the right to a fair trial and ultimately the court’s judgement was not reasoned.

In his closing remarks Dzhelyal noted:

... Why did you go to the “Crimean Platform”? Hearing this phrase, I immediately understood why I was forced to sit, handcuffed, with a bag over my head, surrounded by FSB officers, who were forcing me to confess to participating in the bombing of the gas pipeline. It is quite obvious that my trip to the Crimean Platform summit was just an excuse. If not in September 2021 after my return from Kiev, then in February 2022, after the beginning of Russia’s full- scale invasion of Ukraine, I would have been arrested and subjected to the illegal actions of the Russian security services, which came to my fate....the criminal prosecution of me, the activist of the Crimean Tatar national movement, the delegate of Kurultai and the first deputy of the Mejlis of the Crimean Tatar people is aimed to outlaw, to label the whole system of democratic representative bodies of the Crimean Tatars as terrorist and

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<sup>620</sup> *Id.*

<sup>621</sup> Hearing Protocol, 1332.

<sup>622</sup> Hearing Protocol, 1327.

<sup>623</sup> Dunja Mijatović, The persecution of Crimean Tatars must stop, Council of Europe, Nov. 25, 2021, available at: <https://www.coe.int/en/web/commissioner/-/the-persecution-of-crimean-tatars-must-stop>.

<sup>624</sup> Committee on the Elimination of Racial Discrimination, “Concluding observations on the twenty-third and twenty-fourth periodic reports of the Russian Federation,” CERD/C/RUS/CO/23-24, Sep. 20, 2017, available at:

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsnLht97JCs%2FgtYiPXQ%2F%2B4iE7ukTT14m%2BecJYUSHmqdz4u6Soz69fKsUApaoBEUr59t4YcZVsGGtqqYpufqZy1NxJFIKWSeQ5UzBkUkdAhGnkSRcg706VCJAR9tKSkOsiag%3D%3D>.

<sup>625</sup> Office of the United Nations High Commissioner for Human Rights, “Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine),” available at: [https://www.ohchr.org/sites/default/files/Documents/Countries/UA/Crimea2014\\_2017\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/UA/Crimea2014_2017_EN.pdf).

thus open the way for mass repressions against the indigenous people of Crimea.<sup>626</sup>

When considered with the factors analyzed above, there are strong grounds to conclude that this case meets the standards for finding a violation of Article 18.

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<sup>626</sup> Hearing Protocol, 671.

## CONCLUSION AND GRADE



### **TrialWatch Expert Jeffrey Kahn's Findings:**

Nariman Dzhelyal is a leader in the Crimean Tatar community. He was arrested shortly after returning to Crimea from Kyiv after attending an event to focus attention on the Russian occupation of Crimea. Dzhelyal was accused and convicted of acts made crimes under Russian law (viz. participation in an organized criminal group that acquired and used explosives to destroy a gas pipeline). Imposition of Russian law, administered by that state's officials, against civilians in occupied Ukrainian territory is a violation of international law that overhangs more particular human rights violations in this matter. Given a legal system imposed at the end of an occupying army's gun barrel, it is unsurprising that Dzhelyal is among many other prominent opposition leaders to be subjected to criminal process, a context to this case that is impossible to ignore and that raises suspicions of discrimination and ulterior motives in this prosecution.

Violations of the defendant's rights occurred from the very start. Dzhelyal was arrested at dawn, a bag placed over his head, and taken away for interrogation while his home, car, phone, and computer were searched and his passport seized. This was done under the pretext that he was a "witness" and not a "suspect" in the matter, although this very treatment as well as subsequent actions taken by the authorities in this case render this designation incredible. He was not told why he was detained and treated in this way, nor was he informed of his right to counsel or given access to counsel when he requested the same, or even given a copy of the search protocol. With these procedural violations laid as the foundation for this prosecution, one could hardly expect a law-abiding process to follow in its wake.

The arbitrary detention that resulted from these early violations (accomplished in parallel with the treatment of co-defendants) was extended in the pre-trial stage by court decisions characterized by their brevity, similarity, and desultory application of facts to law.

Dzhelyal was told he was a suspect only after being taken to an unknown location, threatened, repeatedly interrogated and ordered to take a polygraph test while denied access to a lawyer and even denied food. He was confronted during that time by one of two co-defendants, who told him that he had also been mistreated. According to their testimony at trial, both co-defendants were subject to torture and inhuman or degrading treatment after their own arrest by authorities of the Russian state. They had been forced to sign confessions and compelled to agree to be represented by lawyers chosen by the state.

Along with Dzhelyal, both of these co-defendants, as well as another witness, alleged ill-treatment up to and including torture during the investigation stage. In addition to the treatment Dzhelyal described, this included being subject to electric shocks, bound in painful positions, death threats, and a mock execution. The "confessions" extracted by such treatment were later recanted. As if this was not shocking enough, some of this



treatment was reportedly observed by the very lawyers supposedly appointed as defense counsel, who ignored the pleas for help of their clients.

International human rights law that prohibits such treatment also imposes a duty on the state to provide an effective remedy for, including prompt investigation of, allegations of torture, inhuman, or degrading treatment. The record of this case shows a near total abdication of that duty. Relevant evidence was not gathered and the trial court's supervision was perfunctory, both obstructing the efforts of defense counsel (once such lawyers were freely chosen by the defendants) to examine witnesses and unreasonably relying on the state officials' denials.

The trial stage manifested numerous violations of international human rights law. In addition to the unlawfully coerced confessions (admitted into evidence with bare, conclusory reasoning over the defendants' counsels' objections), three key witnesses were central to the prosecution's case. All three testified anonymously and the court rejected efforts by the defense to determine their identity or otherwise effectively test the strength and credibility of their testimony. Another important witness was declared unavailable for trial; the court admitted that witness's testimony procured during the initial investigation instead. This witness had refused to respond to questions put by defense counsel during that investigation and, given at least one defendant's belief that this witness showed signs of physical abuse, the lawfulness of its admissibility is highly questionable. Deep suspicion must be cast on the impartiality of the tribunal to conduct the trial in such a one-sided manner.

This case, from arrest to verdict, is pockmarked with human rights violations that run the gamut of the violations identified (oftentimes as systemic) by the European Court of Human Rights, among other international human rights forums, during Russia's membership in the Council of Europe. Based on their numerosity, severity, and effect on the outcome of the case, as well as the aspersions their accumulation casts on the propriety of the motivation behind them, the lowest possible grade should be assigned to Russia's compliance with international human rights law.

**GRADE:**

**F**

## A N N E X: GRADING METHODOLOGY



Experts should assign a grade of A, B, C, D, or F to the trial reflecting their view of whether and the extent to which the trial complied with relevant international human rights law, taking into account, *inter alia*:

- The severity of the violation(s) that occurred;
- Whether the violation(s) affected the outcome of the trial;
- Whether the charges were brought in whole or in part for improper motives, including political motives, economic motives, discrimination, such as on the basis of “race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,”<sup>627</sup> and retaliation for human rights advocacy (even if the defendant was ultimately acquitted);
- The extent of the harm related to the charges (including but not limited to whether the defendant was unjustly convicted and, if so, the sentence imposed; whether the defendant was kept in unjustified pretrial detention, even if the defendant was ultimately acquitted at trial; whether the defendant was mistreated in connection with the charges or trial; and/or the extent to which the defendant’s reputation was harmed by virtue of the bringing of charges); and
- The compatibility of the law and procedure pursuant to which the defendant was prosecuted with international human rights law.

### Grading Levels

- A: A trial that, based on the monitoring, appeared to comply with international standards.
- B: A trial that appeared to generally comply with relevant human rights standards excepting minor violations, and where the violation(s) had no effect on the outcome and did not result in significant harm.
- C: A trial that did not meet international standards, but where the violation(s) had no effect on the outcome and did not result in significant harm.
- D: A trial characterized by one or more violations of international standards that affected the outcome and/or resulted in significant harm.
- F: A trial that entailed a gross violation of international standards that affected the outcome and/or resulted in significant harm.

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<sup>627</sup> ICCPR, Article 26.

## A N N E X: Hearing Summaries



On March 3, the prosecution read the indictment. The defendants pleaded not guilty.

On March 23, Kuralenkov testified. Kuralenkov stated that in March 2021 he began working as a courier at “Dobry Kukhar” where he met and became friends with Asan who worked there as a senior courier. In mid-July, Asan first asked Kuralenkov to pick up a package for him because he had a conflict with the taxi driver who delivered it. Asan asked Kuralenkov not to tell the driver that he was picking the package for Asan because of this conflict. Asan also told Kuralenkov that the package should contain sweets, a soft toy, and cheese. Kuralenkov made the pick-up and met Asan later in the evening to hand over the package. On July 30, Asan contacted Kuralenkov again to pick up another package from the same driver. Kuralenkov agreed and received a heavy plastic bag. He did not check the entire contents of the bag but noticed that on top of it there was a bottle of alcohol. Kuralenkov delivered the bag to Asan later that day.

During his examination in court, Kuralenkov repeatedly mentioned that FSB officers questioned him at the FSB headquarters “around August 13-15, 2021” despite numerous attempts of the prosecutor to make him say it was September. He also claimed that Nebiev was at the FSB headquarters together with him, and that he was allowed to leave earlier than Nebiev and does not know what happened Nebiev. Kuralenkov also testified that he was never questioned together with Nebiev, i.e. a confrontation between them never happened. However, the case file contains a protocol of confrontation between them.

On April 8, the prosecution presented the first of three anonymous witnesses, an individual with the pseudonym “Baidachny.” “Baidachny” claimed to have been involved in the transportation of cargo and passengers from Crimea to Kherson for the past seven years and to have personally transported several parcels from Dzhelyal to Kherson and at least one parcel intended for Dzhelyal from Kherson. He claimed that in July 2021 Dzhelyal asked him to deliver a parcel from Kherson, adding that he would not pick it up by himself, but someone else would do that for him. The parcel was from Riza whom “Baidachny” previously met while “passing by rallies.” Riza asked “Baidachny” to meet outside Kherson and showed him photos of two men who were to pick up the package. “Baidachny” thought that Dzhelyal and Riza were acting suspiciously and for this reason was worried about being involved in any criminal activity, so he asked to see what was in the package. He noticed that laundry gel inside the package had something inside it and refused to take the package. Riza threatened him with “problems” and with not being able to travel from Crimea to other parts of Ukraine anymore. Baidachny claimed that he started to receive threats via Signal messages and decided to flee Crimea. He did not complain to state officials about the threats. He then learned from the media that Dzhelyal and the Akhtemov brothers were arrested and charged with sabotage.

From the outset, the Defense asserted that this individual was a “legend” made up by the Prosecution and whose testimony was only convincing as long as it stuck to the text of the protocol. During cross-examination “Baidachny’s” evidenced a lack of knowledge of Crimean Tatar cultural and of the transportation profession. For example, “Baidachny” referred to May 18 (the first day of Crimean Tatar deportation and now a day of mourning) as a “holiday.” Further, “Baidachny” was not able to name a single street in Kherson, despite claiming that he had been travelling between Crimea and Kherson twice a week for seven years. Additionally, more than 20 questions, which the defense claimed were aimed at testing the veracity of “Baidachny’s” statements, were removed by the court, claiming that their purpose was to elicit “Baidachny’s” personal data. Among them were the questions: “Could you name the places in Kherson where you usually take passengers to?”; “Where do you drop them off and where do you pick them up again to return to Crimea?” While dismissing the questions by the defense, the presiding judge repeatedly stated that he was doing so “because the witness believes they may disclose his identity.”

There were also numerous discrepancies between the testimony provided by “Baidachny” during the investigation and his testimony in court. For instance, during the investigation he submitted that after refusing to take the parcel from Riza he received a phone call with threats from him, and further met Dzhelyal who told him that he should “keep quiet about his request and about the meeting with his ‘friend’.” In court, “Baidachny” claimed that he received threats via Signal messenger from different phone numbers, and that he never met Dzhelyal in person after refusing to deliver the parcel.

On April 20, the Prosecution presented the second of its anonymous witnesses, an individual given the pseudonym “Danilov.” “Danilov” claimed to have first met Dzhelyal in 2010 when Dzhelyal was engaged in political and journalistic activities on the ATR channel. “Danilov” stated that, as his relationship with Dzhelyal got friendlier, Dzhelyal would conduct his business negotiations on the phone in his presence. On various occasions, “Danilov” recounted conversations, spoken in the Crimean Tatar language, with Riza. On one specific occasion at the end of August 2021, “Danilov” stated that he overheard Dzhelyal saying “... did a nice job on the pipe” while speaking to Riza. However, “Danilov” claimed to not have understood its significance nor contacted the FSB until he heard of Dzhelyal’s detention and the gas pipe explosion.

Similar to “Baidachny”, the Defense claimed that this testimony was wholly fabricated and the court assisted in this fabrication by removing about 20 of the Defense’s questions including questions such as to how the word “pipe” sounds in Crimean Tatar. Further, “Danilov” made several statements that were puzzling for a person who claimed to be familiar with the Crimean Tatars and to even speak the Crimean Tatar language. For example, “Danilov” claimed that “Riza” was an uncommon Crimean Tatar name, an assertion that caused laughter from those present in the court room. The Defense also drew the court’s attention to the signature of “Danilov” on the interview protocol and how it differed from the one on the identification protocol. After overruling repeated objections,

the Defense challenged the entire composition of the court, a challenge which was denied.

On April 27, the Prosecution presented the last of its “secret witnesses,” an individual given the pseudonym “Byshovets.” “Byshovets” claimed to have known Dzhelyal since 2010-11 and to have seen him periodically over the next decade. In May 2021, Dzhelyal allegedly approached “Byshovets” with a “matter of national importance.” “Byshovets” claimed that Dzhelyal attempted to recruit him into targeting certain infrastructure with an explosive. After “Byshovets” told Dzhelyal he would consider this mission, Riza then contacted him, asking him to download the messaging app “Signal” and, subsequently, requesting that he go to a beach called the Arabat Spit to observe the level of law enforcement in this area. According to “Byshovets,” when he refused to go, Dzhelyal confronted him and attempted to persuade him with anti-Russian arguments. Namely, Dzhelyal stated that Russia was not their country, Crimea was forcibly annexed under Catherine the Great, and that the Crimean Tatars’ ancestors were exterminated by Russians. According to “Byshovets” when he repeated that he would not engage in these acts Dzhelyal threatened to “destroy” him if he mentioned this conversation to anyone or turned to law enforcement.

On cross-examination, the court removed over 20 of the Defense’s questions that aimed at attacking the credibility of the witness, the reliability of his testimony, or identifying possible biases the witness harbored. Given the sheer number of disallowed questions, the Defense moved for recusal of the presiding judge stating that the judge had impermissibly favored the prosecution, in violation of Article 15 of the Russian Code of Criminal Procedure, and effectively denied the defendant’s right to a defense. The court denied the Defense’s petition.

On May 24, the Prosecution introduced the protocol of interrogation of Shevket Useinov, and he was examined in court. According to the protocol, Useinov claimed that in 2019 he drove Eldar Odamanov to a beach called the Arabat Spit where Odamanov spoke by telephone to a man named Riza, a man he claimed to know was Ukrainian GRU. Months later, when Odamanov made this same request, Useinov refused because Odamanov had shown him pictures of an explosive device that he was set to pick up there. The Defense objected to this testimony and stated “it became known” that Useinov had experienced torture when he made these original statements.

In court, Useinov denied that physical force had been applied to him but conceded that psychological pressure had been exerted. On cross-examination, Useinov contradicted one key detail of his earlier testimony. Useinov now stated that he did not know Riza was a member of the Ukrainian GRU, but this information was provided to him during the interrogation.

On May 25, Eldar Odamanov testified in court. Odamanov stated that he met Riza at the Mejlis when he worked there as a translator in the mid-2000s. Despite becoming friends, Odamanov stated their friendship ended in the summer of 2021 when Riza suggested he



commit sabotage but Odamanov refused. Odamanov then related that in the summer of 2020 he took a trip, at Riza's request, to the Arabat Spit and took pictures and put-up flyers critical of the governor of Sevastopol. Riza further asked Odamanov to transport a "small item" from Simferopol to Perevalnoye. They discussed it for several weeks, and Odamanov tried to find out what the item was. Eventually, he understood that it was an explosive. In the end, Riza even sent him a word file that contained images and diagrams with the word "explosive." Odamanov showed this to Useinov who refused to drive him there. Subsequently, Odamanov cut off all contact with Riza because he does not stand for violence and violence was inherent in Riza's request.

Odamanov then detailed the treatment he received from FSB agents on the night he was detained. He described how he was handcuffed, how a bag was placed over his head, how he was connected to a lie detector, and how he received electric shocks from his ears when one of the FSB agents insisted he was lying.

On July 8, an expert on explosives testified. He stated that he conducted a technical examination of the explosive and concluded that the damage to the pipe occurred as a result of an explosion or an explosive device.

On July 14 & 18, the prosecution introduced the written and signed confessions of Aziz and Asan Akhtemov, which detailed the brothers' alleged trip to Kherson, their alleged meeting with members of the Ukrainian GRU, their training on an explosive device, and the subsequent placement of this explosive at the gas pipe in the village of Perevalnoye. The defendants objected to this testimony stating that it was not given voluntarily, the written version was *de facto* handed to them to sign, and their agreement to these statements was the product of "physical, psychological violence." Aziz and Asan both then detailed the ill treatment they faced at the hands of the FSB and even stated that some of this ill treatment happened in the presence of their state-appointed counsel. Asan detailed specific physical and psychological attacks he received prior to the recording of his video "confession," in which he was struck several times by FSB agents and had electric shocks applied to him. Asan objected to the introduction of his previous statement because, in reality, it was signed without a lawyer present, despite signatures from the state-appointed lawyer appearing throughout the document.

Aziz then detailed the physical and psychological abuse he faced. During one of his beatings by FSB agents, he was also notified that the screams emanating from another room were those of his brother and he was subjected to a mock execution of his brother.

The prosecutor also attempted to introduce a protocol of confrontation between Nebiev and Asan. Nebiev's testimony appeared to confirm the Akhetmovs' confessions about their participation in the conspiracy. However, the defendants' refused to confirm this testimony in full, stating that Nebiev did take them to Kherson but it was only to pick up passports, submit documents.

On July 20, Nariman Dzhelyal testified. Dzhelyal denied all of the charges against him and drew the court's attention to the numerous accusations of wrongdoing from Russian law enforcement he faced over the years. Specifically, he noted that the current charges were leveled against him only after his participation in the "Crimea Platform" event in Kyiv, prior to which some of the highest Russian authorities in Crimea had attempted to dissuade him from attending. According to Dzhelyal, one of his interrogators even explicitly stated "we didn't touch you while you wrote articles, but why did you go to the Crimea platform?"

Dzhelyal then rebutted the prosecution's main contention: that he worked as a member of a clandestine, Ukrainian-GRU-sponsored conspiracy to recruit individuals to conduct sabotage against the Russian government in Ukraine. He did, however, admit to knowing Riza, Aziz, and Asan. Dzhelyal admitted to first meeting Riza at the Mejlis and then elaborated on the frequency and nature of their interactions. However, he denied that Riza ever suggested or induced him into carrying out illegal actions in Crimea. Dzhelyal also clarified his relationship with the Akhetmova, stating that they were from the same village and he was acquainted with their families.

Dzhelyal also rebutted the prosecution's assertion that his alleged acts were borne of an anti-Russian attitude. He stated that he held no anti-Russian attitude but rather disagreed with certain actions of the leadership of the Russian Federation, namely their occupation and illegal purported annexation of the Crimean Peninsula. He also emphasized that both the right to this opinion and to express it were guaranteed by the Constitution of Ukraine, the Constitution of the Russian Federation, and the European Convention on Human Rights.

Dzhelyal then detailed the events on the day of his arrest and his subsequent interrogation. He described the threats of violence, how FSB officers told him that if he didn't comply "things would get bad for him." He also recounted how his numerous requests for an attorney were repeatedly denied by FSB officers and investigators until the early hours of September 5, when he was officially charged. Dzhelyal's counsel specifically accused investigators of purposefully mischaracterizing Dzhelyal's status as a witness in order to deny him the right to counsel. According to the defense, by September 4, criminal cases were already initiated against Aziz and Asan and it was clear at the moment of Dzhelyal's detention that his status was clearly that of a suspect. The defense further objected to the admission of Dzhelyal's prior testimony given during his initial interrogation, again stating that investigators purposefully misclassified Dzhelyal's status to unlawfully pressure him into giving evidence. The court granted the prosecution's motion to admit Dzhelyal's previous testimony.

On July 21, Slastnikov, an expert in heat and gas supply, testified. Slastnikov concluded that the ignition of the gas from the explosion did not occur because of "flame separation" - the rate of gas release was greater than the spread of the flame.

On July 25, the court investigated the defense's assertion that illegal investigative methods were used. The court called six FSB investigators, four attesting witnesses, and the public defender, Glushko. Each of these witnesses testified that all the investigative methods used

were legal, there was never any physical or psychological abuse, and none of the defendants ever complained of any abuse.

On July 27-28, investigator Vlasov, who carried out the investigative actions against Aziz and Asan, testified. Vlasov stated that Asan was interrogated in the presence of his counsel, Glushko, and that Asan never complained about his physical condition, nor about any physical or psychological pressure. On July 28, the defendants challenged the entire panel of judges because the defense believed that the court impermissibly allowed the prosecution to lead the witnesses and for summarily disregarding the defense's objections. The judges refused to satisfy the motion to challenge the panel.

On August 2, the defense made a request for interrogation via video conferencing of Doroshkevich, a witness present during the verification of the testimony on the spot by Aziz. The court granted a petition to interrogate S.A. Bushuev, a witness who conducted an on-site verification of testimony with the participation of Aziz. Aziz disputed the testimony set out in the protocol of interrogation.

On August 4, Doroshkevich, an investigator who was present during the confirmation on the spot of Asan's and Aziz's confessions testified. Miroshnikov Georgy Sergeevich, an FSB agent present during the investigative actions against Aziz and Asan, also testified that no physical force or psychological pressure was applied. He also testified that both Aziz and Asan appeared in fine physical condition. He also testified that the investigative action lasted from 7pm till 4am on September 3/September 4.

On August 8, R.N. Bobrov, an investigator during the conduct of investigative actions with the participation of Asan, testified. He stated he worked with the cynologist to confirm that there were explosives previously present at Asan's home.

On August 10, witness for the defense Bekirov testified about the arrest of Dzhelyal from his home on September 4, 2021. Witness for the defense Lilya Ibragimovna Gemji testified about the presence of lawyers Shabanova, Azmatov, Avamileva at the FSB building on September 4 – 5, 2021 and about these lawyers not being allowed to enter the building.

On August 11, Dzhelyal challenged the entire court panel of judges "due to the fact that yesterday all motivated motions of the defense were rejected" and stated that he believed "that the panel of judges is interested in the outcome of this case" and "clearly support the prosecution side." The court denied the motion to recuse itself. Glushko testified again. Glushko stated that Asan confessed his involvement in the crimes. Glushko also testified that Asan refused his other lawyers and that he did not notice any injuries to Asan: "[E]verything was normal, I did not notice any violations."

On August 15 Defense witness Zudieva L.R., a journalist, testified about the events of September 4, 2021 as she was present at the FSB building and recorded what was happening. The court considered a number of petitions from the defense including a challenge by Asan against the prosecutor due to the fact that he provides "unreliable

information or his own interpretation of the materials of the case, asks leading questions to the witnesses of the prosecution so that they give testimony that suits the state prosecution.” Most petitions were denied including the challenge against the prosecutor.

On August 17, the prosecution made his closing arguments asking the court to find the defendants guilty and to sentence each of the defendants to 15 years’ imprisonment and a fine of 600, 000 rubles.

Between August 23-29, the defense made its closing argument calling on the court to find the defendants innocent of the crimes charged. Each of the defense lawyers, the defendants’ spouses, and the defendants themselves pointed out the gaping holes in the prosecution’s case. Dzhelyal’s wife noted that “The criminal case against N.E. Dzhelyalov, A.I. Akhtemov and A.E. Akhtemov abounds with so many procedural violations committed during the preliminary investigation, which should have been a reason to terminate criminal prosecution against them long ago.”

On September 21, 2022, the Supreme Court of Crimea convicted Dzhelyal and co-defendants Asan and Aziz Akhtemov. Despite the Prosecution only asking for 15 years in prison, Dzhelyal was sentenced to 17 years in a penal colony and fined of 700,000 rubles. Asan Akhtemov was sentenced to 15 years in a penal colony and 500,000 rubles. Aziz Akhtemov was sentenced to 13 years in a penal colony and fined of 500,000 rubles.