

## TRIAL OBSERVATION NOTE - THE OBSERVATORY - IPHR

### **RUSSIAN FEDERATION: The trial and conviction of human rights defender Oyub Titiev:**

*A travesty of justice and a dire warning to human rights defenders to stop documenting the abysmal human rights situation in Russia's Chechnya*

#### **1. Introduction**

On 18 March 2019, a court in Chechnya, Russia, sentenced human rights defender **Oyub Titiev** to four years in prison on trumped-up charges after an unfair trial. Titiev, who has been in detention since his arrest on 9 January 2018, decided not to appeal. Instead his lawyers focused on obtaining Titiev's conditional release. Titiev's request for early release was approved by a court on 10 June 2019 and on 21 June he was released from prison after 17 months in detention.



*Oyub Titiev upon his release on 21 June 2019*

Oyub Titiev, who has worked for Human Rights Centre “Memorial” since 2001 and became the director of its Grozny office in 2009, was awarded the prestigious Vaclav Havel Human Rights Prize in 2018 for his reporting on systematic human rights violations by local authorities in Chechnya.<sup>1</sup>

<sup>1</sup> See <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=7218&lang=2&cat=37>



Human rights defenders face regular harassment by the authorities in Russia and in Chechnya in particular. Titiev's predecessor, **Natalia Estemirova**, was murdered in July 2009.<sup>2</sup> Since 2014, Memorial and more than 100 human rights NGOs who rely on financial support from donors based outside Russia due to the absence of local funding sources for independent NGOs, have been ostracized as "foreign agents" by the Russian authorities and have become victims of a well-orchestrated smear campaign by state-controlled media.<sup>3</sup>

The United Nations (UN) Special Rapporteurs on the Situation of Human Rights Defenders and on the Promotion and Protection of the Right to Freedom of Opinion and Expression have described the criminal case against Oyub Titiev as a retaliation for his human rights work and have called for his immediate release.<sup>4</sup>

FIDH and the World Organisation Against Torture (OMCT), in the framework of the Observatory for the Protection of Human Rights Defenders, together with the International Partnership for Human Rights (IPHR), attended the last two hearings in the trial, including the announcement of the verdict. During the entire trial Titiev was placed in a metal cage in the middle of the court room, a practice amounting to inhuman and degrading treatment and outlawed under international human rights standards.

## 2. Fabricated criminal charges as a reprisal for human rights work

At 9 a.m. on 9 January 2018 police intercepted Oyub Titiev on his way to work, searched his car and alleged finding a bag with marijuana under the passenger seat of his car. Then they delivered him to the Kurchaloy district police station. When Titiev protested that the police should have searched his car in the presence of two independent witnesses, the police ran the arrest operation again, this time with two witnesses - former police officers - and then brought him to the police station for a second time. Titiev was placed in pre-trial detention - a fact the authorities only acknowledged after repeated phone calls from Russia's human rights ombudsperson. His lawyer was not allowed to see him until 7 p.m. - another violation of Russian law. Titiev was charged with acquisition and possession of marijuana in large amounts (Article 228(2) of the Russian Criminal Code), a crime punishable by 3 to 10 years' imprisonment.

On 17 January 2018, Memorial's office in neighboring Ingushetia was set on fire. On the same day Ramzan Kadyrov gave a speech to police officers which was broadcast on TV, in which he referred to Titiev as a junkie and stated that there was no place in Chechnya for independent human rights organizations. By publicly naming Titiev a drug addict the authorities also violated the presumption of innocence enshrined in the Russian Constitution (Article 49(1)) and international treaties ratified by Russia (for example, Article 6(2) of the ECHR).

Titiev and the Human Rights Centre "Memorial" have always maintained that the criminal charges were completely fabricated and constituted a reprisal for their role in documenting grave human rights violations in Chechnya, including systematic torture in police custody and the severe persecution of LGBTI people.

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<sup>2</sup> See <http://www.omct.org/human-rights-defenders/urgent-interventions/russia/2009/07/d20129/>

<sup>3</sup> See <https://www.fidh.org/en/region/europe-central-asia/russia/15411-russian-federation-court-orders-memorial-human-rights-center-to-register>

<sup>4</sup> See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24276&LangID=E>

### 3. Abysmal human rights situation in Russia's Chechnya

Titiev and Human Rights Centre “Memorial” have long been a thorn in the side of the local authorities for their key role in documenting grave human rights violations in Chechnya. In fact, “Memorial” was the last high-profile human rights NGO with an office in Chechnya. They regularly provided information to a number of international human rights watchdogs, including the Council of Europe, the Organisation for Security and Cooperation in Europe (OSCE) and the UN.

One week before Titiev’s conviction, the Council of Europe’s Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter ‘CPT’) issued a public statement concerning the Chechen Republic and other parts of the North Caucasus region, stating that

**“resort to torture and other forms of ill-treatment by members of law enforcement agencies in the Chechen Republic remains widespread, as does the related practice of unlawful detentions (...)** Further, it remains deeply worrying that (...) the Russian authorities have failed to acknowledge the gravity of the situation.

(...) This speaks not only to a dereliction of duty at the level of the Republic’s authorities, but also to a failure of effective oversight and control at the Federal level. It is clear that the manner in which law enforcement officials in the Chechen Republic deal with persons in their custody must be subject to far closer and more robust supervision.”<sup>5</sup>

In December 2018 an OSCE report found ample evidence of torture, extrajudicial killings, enforced disappearances and other serious human rights violations in Chechnya, in particular targeted against gay men. At the same time the report stated that

“no evidence could be found about cases where law enforcement officers were brought to justice because of the human rights violations or violations of the law committed by them. Accordingly, there is a climate of impunity which is detrimental to any accountability for human rights violations. On the contrary, those from civil society or the media who investigate human rights violations become targets of repression.”<sup>6</sup>

### 4. Unfair trial before the Shali City Court

Oyub Titiev’s lawyers filed a petition to move the trial outside of Chechnya arguing that local judges would be biased due to the pressure put on them by statements by representatives of the executive authorities, including public statements made by Ramzan Kadyrov. The Supreme Court of the Chechen Republic and later the Supreme Court of the Russian Federation rejected his petition.

On 9 July 2018, Titiev’s trial started before judge Madina Zainetdinova of the Shali City Court. At each court hearing Titiev was seated in a metal cage in the middle of the court room, a practice which the European Court of Human Rights has repeatedly condemned as constituting inhuman and degrading treatment.<sup>7</sup>

<sup>5</sup> Available at <https://rm.coe.int/16809371ee> (emphasis in original)

<sup>6</sup> See <https://www.osce.org/odihr/407402?download=true>

<sup>7</sup> Svinarenko and Slyadnev v. Russia [GC], judgement of 17 July 2014.



*Oyub Titiev in the metal cage during court hearings*

The prosecution's key witness Amadi Baskhanov, who had at least one previous conviction for possession of drugs, alleged that on two occasions he had seen Titiev smoking marijuana on the street - a fact this witness remembered one month later when on the day Titiev was arrested (9 January 2019) he saw a picture of Titiev on the phone of another passenger on the bus. On the same day the witness told this to an acquaintance in the police in Grozny, who - still on the same day - himself by chance bumped into several colleagues from the Kurchaloy police. The fact that the prosecution's key witness could subsequently not identify Titiev from an official line-up did not matter because in violation of Russian law, the investigative authorities organized a fresh line-up and Baskhanov now 'recognized' Titiev. However, during cross examination at the trial the witness constantly contradicted himself.

However, during the eight months long trial judge Zainetdinova denied almost every motion filed by Titiev's lawyers challenging the prosecution's fabricated evidence.

The prosecution presented no evidence where, when or from whom Titiev bought or otherwise acquired the drugs. There was also no trace of drugs in blood and urine samples obtained from Titiev. And according to Titiev's lawyers, the substance in the black plastic which police "found" in Titiev's car, was repeatedly mishandled and apparently never properly tested by a forensic expert.

As stated above, Titiev complained that the drugs were planted in his car by the police and that he was actually arrested twice on 9 January 2018. The first time Titiev was detained around 9 a.m. by police in green camouflage uniforms with the letters 'GBR' in Cyrillic (an abbreviation for 'rapid response unit'). The second time he was detained by traffic police around 11 a.m. The authorities contradicted and even went so far as denying the existence of a rapid response unit. More than 50 other police officers

testified that there was no such unit.<sup>8</sup> However, Titiev's lawyers provided the court with copies of news releases from the official website of the police as well as several police officers' social media accounts showing Kurchaloy police in green camouflage uniforms besides armored vehicles with the inscription 'GBR'. Police officer Alikhan Garaev, in charge of the 2<sup>nd</sup> operation to arrest Titiev, deleted such pictures hours after he had testified at the trial.

Titiev's lawyers also requested to review recordings of surveillance cameras at the police station, as well as on private and official buildings along the route between the police station and the two locations where Titiev was arrested. However, it happened that on the morning of 9 January 2018 all of the more than two dozen cameras had malfunctioned. Anticipating this scenario, Titiev's lawyers had made an official request asking if the area suffered a power outage on 9 January - there was none.

During closing arguments on 11 March 2019, monitored by representatives from the Observatory and IPHR, the prosecution requested a four-year prison sentence and a 100,000 Russian Rubles fine (approx. 1,350 Euro). The defense as well as Titiev in his last word repeated that the criminal case against him was fabricated and aimed at punishing him for his human rights work, and accordingly requested a full acquittal. The 11 March 2019 hearing was attended by approx. 45 people, including relatives, colleagues, foreign diplomats and journalists. Apart from the fact that Titiev was seated in a metal cage (see above), the hearing was conducted in an orderly manner, although it was strictly forbidden to take pictures of the judge, prosecutors or court personnel.



*Announcement of the verdict on 18 March (Titiev stands in the metal cage)*

On 18 March 2019 - after a marathon 9.5 hours hearing without a single break, during which Titiev stood the entire time in the metal cage in the middle of the court room - Judge Zainetdinova found Titiev guilty as charged and sentenced him to four years as requested by the prosecutor but without imposing a fine. The judge ordered Titiev to serve his sentence in an open type prison colony and requalified the category of his crime, from serious to moderate, creating the possibility for Titiev to apply for early release in May 2019, upon serving a third of his sentence.

<sup>8</sup> All police officers testified in open court except for the key police officers directly involved in the fabrication of the criminal charges against Titiev, who were heard behind closed doors "for their security.". See [https://memohrc.org/ru/news\\_old/presledovanie-oyuba-titieva-hronika](https://memohrc.org/ru/news_old/presledovanie-oyuba-titieva-hronika)

A representative from the Observatory and IPHR monitored the announcement of the judgment on 18 March. More than 150 people, including relatives, friends, colleagues, foreign diplomats and many journalists, turned up well before the official starting time (10 a.m.) but court bailiffs initially only allowed relatives of Titiev to enter the court building and then started processing other visitors very slowly and thoroughly checking their bags.



*Outside Shali City Court on 18 March 2019*

More than half of the 150 people who had turned up in the morning were still outside the court building when judge Zainetdinova started reading the judgment at 10:20 a.m. Although diplomats and some journalists were subsequently allowed to enter the court room, around 50 people, including the Observatory and IPHR representative, were refused entry by court bailiffs, who alleged the court room was full.<sup>9</sup> Despite this, one “Memorial” staff member texted from the court room that there were still empty seats. The Observatory and IPHR representative was eventually allowed to enter in the afternoon. Judge Zainetdinova finished her uninterrupted reading of the judgment at around 7:45 p.m.

<sup>9</sup> A court bailiff reprimanded the Observatory and IPHR representative for observing the trial through a window - which is absurd since the announcement of the judgment is per se open to the public.



## 5. Conclusion and recommendations

Oyub Titiev's conviction after an unfair trial constitutes a mockery of justice, intended to punish an outstanding human rights defender and to drive out the last major independent human rights NGO from Chechnya. Titiev's case also delivers a dire warning to other human rights defenders in Russia either to remain silent or face the consequences.

On 23 August 2018 Kadyrov threatened that human rights defenders will no longer be able to work in or visit Chechnya after Titiev's trial is over, publicly stating that Chechnya will be forbidden for them, in the same way as for terrorists.<sup>10</sup>

The Observatory for the Protection of Human Rights Defenders and IPHR are deeply concerned by this and other statements by representatives of the executive authorities of the Chechen Republic.

In view of these elements, our organisations formulate the following recommendations:

- Take all necessary steps to overturn Titiev's conviction and provide him with adequate compensation for any time in detention;
- Stop any kind of harassment against Human Rights Centre "Memorial" and ensure they can pursue their vital and legitimate human rights work in a conducive environment;
- The highest central authorities in Russia should unequivocally condemn the statements by the local executive authorities in Chechnya;
- Ensure that human rights defenders, journalists and lawyers in Chechnya and elsewhere in Russia are protected from intimidation or violence as a result of their activities;
- Ensure the prompt, impartial and thorough investigation of all allegations of harassment, torture or ill-treatment of human rights defenders, and prosecute and punish the perpetrators with appropriate penalties.
- Fully cooperate with international human rights watchdogs, including the Council of Europe, the OSCE and UN mechanisms.

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*The Observatory for the Protection of Human Rights Defenders (the Observatory) was created in 1997 by OMCT and FIDH. The objective of this programme is to intervene to prevent or remedy situations of repression against human rights defenders. OMCT and FIDH are both members of [ProtectDefenders.eu](http://ProtectDefenders.eu), the European Union Human Rights Defenders Mechanism implemented by international civil society.*

*IPHR is an independent, non-governmental organization founded in 2008. Based in Brussels, IPHR works closely together with civil society groups from different countries to raise human rights concerns at the international level and promote respect for the rights of vulnerable communities.*

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<sup>10</sup> See <http://www.omct.org/statements/2018/09/d25246/>