

## **Wagner in Syria: Complaint filed with European Court of Human Rights following dismissal of case in Russia**

### **Questions and Answers**

#### **What are the facts behind the case?**

On 30 June 2017, a video recorded by unknown persons was published on the Internet, displaying a nearly two-minute long video showing several men speaking Russian and dressed in military uniforms violently beating an unarmed man. In 2019, new video footage surfaced online showing additional details of the event: in these new videos, the same man was being beaten, tortured, beheaded and his body was subsequently dismembered and set on fire. In early November 2019, the videos went viral on Twitter, and led to a thorough media investigation, in particular by the Russian daily *Novaya Gazeta*, which allowed the identification of the victim, a Syrian national, as well one of the suspects, identified as an alleged member of the Wagner Group, and to locate the place where the murder took place: in the vicinity of the al-Shaer gas facility, in northern Syria.

According to the victim's brother, in March 2017, the victim, Mohammed A. returned to Syria from Lebanon, where he had spent nearly a year to work in the construction field. He was arrested by the Syrian army upon his return and brought to a military base to undergo training in the northern suburb of Damascus. His brother was able to speak with him when he was still at the base. The victim informed his brother that he was going to be deployed in Homs and that he intended to defect from the Syrian army. He was never heard from again.

A complaint was filed on 15 March 2021 with the Investigative Committee (IC) of the Russian Federation in Moscow, pursuant to Article 141 of the Code of Criminal Procedure of the Russian Federation, by Mohammed A.'s brother, Abdullah I. The complaint requested the opening of an investigation into the murder of Mohammed A. and the commission of possible war crimes by the Russian suspect, an alleged member of the Wagner Group identified by *Novaya Gazeta*.

However, despite damning evidence and despite the established involvement of at least one Russian citizen in the murder, the IC refused to open an investigation. Several appeals were then filed with the Basmany District Court and the Moscow City Court, but both courts ruled that the IC's inaction was legal, in that the reality of Mohammed's death had not been established and the reliability of the video footage had not been confirmed.

A previous attempt to compel the opening of a judicial investigation into the death of Mohammed A. had already been made in November 2019 by *Novaya Gazeta*, which had submitted the content of their investigation and the article published on 20 November 2019 to the IC. This complaint had also remained unheeded.

#### **On what legal basis was the complaint filed in Moscow?**

The appeal before the European Court of Human Rights (ECtHR) addresses the violation of articles 2 and 3 of the European Convention on Human Rights (ECHR), which respectively protect the right to life and the right not to be subjected to torture or inhuman or degrading treatment or punishment.

According to these articles and the jurisprudence derived from them, States must protect individuals against any violation of these rights on their national territory but also on the territory of another State if they exercise effective control over it. In the absence of a territorial tie, a State may also be held responsible if State agents act contrary to the rights protected by the Convention.

In their application, the lawyers for FIDH, SCM, and Memorial allege that Russia had effective control over the part of Syrian territory where the events took place in 2017. Indeed, a contract had been concluded between the Syrian government and a Russian company (supported by the government), stipulating that the Russian company

would receive 25% of the revenues from the production of gas and oil of the al-Shaer gas field in exchange for the protection of the field by Russian agents (in this case the Wagner Group).

Thus, this territory, where Mohammed A. was tortured and killed by Russian-speaking individuals, was under the effective control of the Russian government, acting through the private military company Wagner.

Furthermore, a State may be held responsible for the actions of its agents in the territory of another State, even if those agents were not in a situation of complete dependence on that State, as long as they were under its effective control.

This application comes after the exhaustion of all domestic remedies in Russia, in accordance with Article 13 of the European Convention on Human Rights

### **What is the Wagner Group?**

The so-called “Wagner Group,” an informal association of mostly Russian personnel under the “effective control” of the Russian Federation, has been active for several years in combat operations against military units and is known for committing grave human rights violations against civilians, at times with extreme cruelty. Indeed, it has carried out numerous attacks on civilian facilities and infrastructure in several countries, including armed attacks to capture gas and oil fields in Syria and targeting military units in Eastern Ukraine while fighting on behalf of the so-called Donetsk and Luhansk People’s Republics. Moreover, the group has actively participated in hostilities, or contributed to military operations and the training of fighters, in Libya, Sudan, and the Central African Republic. Although Russian law prohibits mercenaries, nor does it regulate private military companies, and despite the denial of the existence of the Group by Russian officials, the number of the group’s members may be up to 2,500 fighters.

The ambiguous legal status of the group under Russian law and the denial of factual links pointing to its complete dependence on the Russian authorities, helps Russia shirk its international responsibility for the international crimes committed by Wagner’s members.

### **Why is this complaint important?**

Syrian activists and victims of the atrocities perpetrated by all parties to the conflict in Syria have been working tirelessly since 2011 to obtain accountability.

Despite the gravity and scale of crimes perpetrated in Syria since the brutal repression of the March 2011 uprising that led to more than eleven years of conflict, there are limited avenues for victims and their families to obtain justice and redress. Syria has not ratified the Rome Statute and, despite attempts to obtain a resolution from the UN Security Council to refer the situation to the International Criminal Court (ICC), Russia and China’s repeated vetoes have prevented the ICC from opening an investigation on Syria.

With the path to the ICC blocked, and no real prospect of independent justice and accountability inside Syria, victims have turned towards other countries – such as Germany, Sweden, France and Spain – to investigate cases based on what is known as *extraterritorial jurisdiction*. Since 2012, Syrian lawyers, individuals and organisations, as well as international human rights organisations, have launched cases in these countries to obtain investigations on torture, crimes against humanity, and/or war crimes charges.

While the first series of complaints aimed to denounce the crimes committed by the Syrian regime, more recent work has focused on building cases against members of non-state armed groups involved in the perpetration of grave human rights violations against the Syrian population.

The responsibility of Russia, through its direct military involvement – as well as by outsourcing violence to the Wagner Group – has never been addressed by any court of law so far.

This first-ever complaint filed in Russian courts by a Syrian victim, with the support of human rights NGOs, was an unprecedented attempt to fill the impunity gap and bring Russian suspects to account. That is why, despite the Russian courts’ failure to act, it is essential to carry on this fight before the ECtHR.

**What happens next?**

First, the ECtHR will have to examine the admissibility of the application. If the application is declared admissible, the Court will communicate it to the Russian Federation's government and invite the parties to find an amicable settlement within 12 weeks.

In the absence of an amicable settlement, the Court will give the Russian Federation's government time to present its observations. The applicants will also be called upon to submit observations and third parties (e.g., NGOs) will be able to make third-party interventions. The Court will then decide whether it is necessary to hold a hearing before rendering its decision.