Why the Treatment of LGBTQ+ Persons in Chechnya Amounts to Crimes Against Humanity

In February 2021, the European Centre for Constitutional and Human Rights (ECCHR) filed a complaint in Germany for crimes committed against Chechens allegedly by Chechen security forces against approximately 150 LGBTQ+ between 2017 and 2020. Allegations include persecution, arbitrary and unlawful arrests, detentions, torture, forced disappearance, and sexual abuse. This piece examines whether the treatment of Chechnya’s LGBTQ+ people comes close to crimes against humanity under international law. The Chechen society is characterized by its conservative and patriarchal values. Strong heteronormative duties and roles attributed to the female and male gender lead to the suppression of any behavior seen to transgress these roles generally and to the repression of LGBTQ+ specifically. The government actively encourages this repression through national and federal laws and ongoing anti-LGBTQ+ propaganda. For example, the Head of State, Ramzan Kadyrov, has described LGBTQ+ people as “persecutors” and “decadent” and demanded that Chechen human rights activists have criticized this situation for years, but in legal terms, Maxim Lapunov, himself a victim of the “gay purge,” was the first to act, filing a criminal complaint against his perpetrators with the Russian authorities. After exhausting local remedies, Lapunov brought his case before the European Court of Human Rights (ECtHR) and claimed violations of Art. 3 (prohibition of torture), Art. 5(1) (right to liberty and security), and Art. 14 (prohibition of discrimination) of the European Convention on Human Rights (ECHR).

Russia’s Obligations under International Law

The pending ECtHR case is a chance to remind Russia of its obligation to ensure and protect human rights all over its territory. However, the dimension of the acts committed in Chechnya and Russia’s failure to fulfill its international obligations go beyond the scope of the ECtHR and human rights law. Due to the systematic and targeted character of the attacks against LGBTQ+ people, they may qualify as crimes against humanity, whose prohibition is a peremptory norm of international law as the ICJ has stated in its Draft Articles on this crime. The International Criminal Court’s Rome Statute (RS) reflects the most recent consensus on its definition.

Article 7(1) RS sets forward acts, which amount to a crime against humanity when the elements of the crime were fulfilled. This means that the act has to be performed “as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack” and that the State’s determination means “the course of conduct involving the multiple commission of acts against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.” The characterization of an attack as widespread refers to the large-scale nature of the attack (ICC, Rumba, para. 163) and systematic refers to the organized nature of acts of violence and discrimination in a conscious repetition of the acts. Therefore, the Chechen state can be part of an overarching widespread or systematic attack (ICC, Blagov, para. 101). Numerous sources have documented attacks against LGBTQ+ persons in Chechnya, including enforced disappearances, torture (imprisonment), and killings, which meet the definition of crimes against humanity in Article 7(1) RS. These various acts also amount to torture, crimes against humanity, and the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or community. The RS criminalizes persecution against any identifiable group or community on political, racial, national, ethnic, cultural, religious, or other grounds, or on account of sex, age, or social status.

The mens rea of Art. 7 RS requires knowledge of the attack. The Chechen government announced killings of LGBTQ+ persons and facilitated a homophobic climate through its anti-LGBTQ+ propaganda. As the persons alleged to have committed the acts are part of Russia’s homophobic inner circle and are heavily involved in anti-gay propaganda and in the crimes committed against LGBTQ+ people, they acted in knowledge of the broader attack. The enumerated accusations thus meet the criteria of crimes against humanity. States, including Russia, have a responsibility to protect their citizens from such severe crimes. However, Russia does not fulfill these obligations. The OSCE, for example, has long been active in this case before the ICC. “In an imperfect system of international criminal justice, with an ICC with limited jurisdiction, Germany attempts to guarantee that Europe is no safe haven for war criminals,” said Wolfgang Katschek, the founder of the ECCHR, which filed a criminal complaint against five alleged perpetrators of crimes against LGBTQ+ in Chechnya in February 2021. Based on the principle of universal jurisdiction, it follows on the heels of its predecessor, the “Al-Khathir Trial,” pending in front of the Higher Regional Court in Koblenz. The principle of universal jurisdiction, according to which serious crimes under international law, including crimes against humanity, affect the international community as a whole, provides for state jurisdiction over persons (including non-nationals), who committed such crimes anywhere in the world, thus enabling courts to hold perpetrators accountable across state borders and prevent impunity. With the implementation of the principle of universal jurisdiction in its domestic legal system, enshrined in the Völkerstrafgesetzbuch, Germany has taken an important step to ensure global justice.

Conclusion

The mens rea in the situation in Chechnya highlights the need for a codification of crimes against humanity in a dedicated convention to ensure the effectiveness of preventing, investigating, and prosecuting such crimes and harmonizing international and national law. Currently, in a world where the ICC is losing its standing in the international community, the enforcement of the responsibility to protect falls to the Security Council depends on the will of a few states, the punishment of such severe crimes is partly dependent on the principle of universal jurisdiction. In such a desperate situation, the principle of universal jurisdiction guarantees that such severe violations of human rights are not brushed aside in this sense, it is now up to the German federal public prosecutor to open investigations regarding the situation in Chechnya and signal to the international community that injustice and impunity are intolerable.