

**Russian NGO Shadow Report on the  
Observance of the Convention against  
Torture and Other Cruel, Inhuman or  
Degrading Treatment or Punishment by  
the Russian Federation for the period from  
2006 to 2012**

October 2012, Moscow

## **Introduction**

This Joint Report on the Observance of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Russian Federation for the period from 2001 to 2005 was prepared jointly by the leading Russian NGOs, including: Public Verdict Foundation, Civic Assistance Committee, Memorial Human Rights Center, Soldiers' Mothers of Saint Petersburg, Independent Psychiatric Association, Interregional Committee against Torture, Human Rights Institute, Russian Justice Initiative (Utrecht), Legal Assistance Astreya (Moscow), Moscow office of the Penal Reform International, International Human Rights Youth Action, Krasnoyarsk Public Committee for Human Rights Protection, Center of Civic Education and Human Rights in Perm region. The Public Verdict Foundation was responsible for coordination of work over the Report.

This Report is submitted to the UN Committee against Torture within the framework of its examination of the Russia's Fifth Periodic Report on implementation of the Convention against Torture. The Report is aimed at comprehensively tackling the issues of observing in Russia the rights enshrined in the Convention and at drawing the Committee experts' attention to the most burning problems in the sphere of these rights realization, which have not been reflected in the Russian Federation Report.

When working on the Report we did not strive to refute the official information and to confront the Russian Federation's official position. Our task was to present to the Committee's experts information both about measures taken and progress reached in prevention of torture and protection of torture survivors and about remained or appeared during the reporting period problems with implementation of the Convention provisions.

Composition of the Report follows the List of issues prior to the submission of the fifth periodic report of the Russian Federation. Each section of the Report elaborates on one of the issues posed by the Committee.

While preparing the Report we used information provided by a whole number of Russian human rights nongovernmental organizations, supervising public commissions of certain regions, data published by state bodies as well as mass media publications. Relevant references to sources of information are given in the text.

## Resume

1. The criminalization of torture as an official crime has not been further developed in accordance with the recommendations of the UN Committee Against Torture prepared as per the results of a review of the previous report of the Russian Federation. Article 117 (torment) of the Criminal Code of the Russian Federation (CC-RF) remains in effect which does not apply to officials, Article 302 (extraction of testimony) of the CC-RF allows you to prosecute an investigator or inquiry officer only in the event they used torture as a means to elicit testimony, as well as Article 286 of the Criminal Code which allows to prosecute various officials for abuse of their authority. In Russian legal practice, torture is most often considered as an abuse of authority aggravated by the use of physical violence (Part 3 of Article 286 of the Criminal Code).
2. The absence of adequate criminalization of torture as an official crime in practice does not reduce the ability to bring torturers to justice, but excludes the possibility of collecting the correct statistical data. The current statistics reflect the number of sentences for violations of particular articles of the Criminal Code, including Article 286 (abuse of authority), and Articles 117 and 302. The reporting under Article 117 cannot estimate the number of complaints, prosecutions and sentences for those who use torture at the direction of or with the consent of a public official. Article 302 is not often used because the scope of this article is very limited. The current record for Article 286 does not reflect the proportion of torture in the total number of abuses of authority. In this connection, to adequately estimate the scale of torture and ill-treatment in the activities of a public office is impossible. In particular, at the moment it is not possible to provide accurate statistics on the number of convictions for torture committed by police officers. The absence of a clear statistical reduces the effectiveness of state mechanisms for the prevention of torture and ill-treatment.
3. During the reporting period (2006-2012) the Russian Federation has adopted a number of measures to introduce prohibition of torture and ill-treatment in legislation, in particular, a direct prohibition of torture was included in the new law "On Police" (Article 5, paragraph 3)
4. The new law "On Police" (Article 14) guarantees detainees' right for the timely notification of relatives about detention. In particular, law "On Police" obliges police officers to inform detainees of his or her right to notify relatives and separately provide detainees with the right to notify relatives of their arrest and information as to their place of detention. The law "On Police" the extends these guarantees not only to those detained on suspicion of crime, but also for those in custody for committing an administrative offense. The law "On Police" sets the time limit for notification of detainees' relatives at 3 hours, but it makes a stipulation with regards to the requirements of the Criminal Procedural Code (CPC-RF). Article 96 of the Code remains in effect and sets a longer period for notification at 12 hours. At the moment it is impossible to say what time limit for notification of relatives will be accepted in practice for detainees suspected of committing a crime. With this, there have been incidents in which a police officer has failed in his duty to follow the terms of notification of relatives of detainees, but to estimate the amount to which these violations are occurring is not at present possible.

5. Arrestees in pre-trial detention may receive short-term visits from relatives and other persons only upon the authorization of the investigator; during the trial stage – pursuant to a court order. The frequency and length of visits is limited to 3 hours twice a month. Laws do not list grounds for which an investigator or a judge may refuse permission to visit arrestee. Consequently, as a rule, the grounds for refusing a meeting remain unknown to the relatives and detainees. The latter fact reduces the ability of relatives and detainees to appeal the refusal of an investigator or to challenge the decision of the court concerning family visits.
6. Current Russian legislation contains various provisions which guarantee access to a lawyer for those detained on suspicion of crime, but in practice, law enforcement officials violate these guarantees. A person, who is actually being detained on such grounds in the premises of police without having access to a lawyer, is, in the explanation of police, not being officially detained, but is participating in an informal conversation with the law enforcement officers. These conversations, as opposed to interrogation of a suspect and an accused, are not regulated by the Criminal Proceedings Code and conducted without a lawyer. However during such conversations detainees sometimes write an acknowledgements of guilt - a written self-incriminatory report about a crime. Russian courts consider such acknowledgement of guilt as evidence of guilt in a crime. In a judgment Pavlenko v. Russia (№ 42371/02 dated April 1, 2010) The European Court of Human Rights (ECHR) found violation of the right to a fair trial , when the detainee was subjected to informal "conversation" without the a lawyer present. In violation of the existing laws, also remains the practice when the administration of the IVS and SIZO (temporary detention facility and remand prisons) require lawyers to provide written permission from the court or the investigating authorities for a meeting with his/her detained client. In accordance with the Procedural Criminal Code (Article 92), the duration of visits by a lawyer or counselor may be limited by the investigator or the inquiry officer during periods when the suspect has to participate in the legal proceedings. Such restrictions may be imposed only if the meeting with a lawyer takes more than two hours. Observers attest that access to a lawyer is impeded due to the lack of adequate and required conditions within the detention centers. Access to lawyers for those serving sentences in prison can also be difficult for the administration of the institution. In practice, human rights organizations site cases of illegal denials of proper visitation on grounds that are not covered by law or the defenders are forced to wait for several hours for appointments with their clients. One particular problem is access to legal assistance for prisoners who have been subjected to violence and or physical pressure while in prison. As a rule, the meetings with them often denied on specious grounds.
7. The existing mechanisms of controls, both state and public, have not yet lead to any significant reduction in the use of torture and ill-treatment. In 2008, a law "On the Public Control over Securing Human Rights in Facilities of Involuntary Confinement, and Assistance to Persons Held in Facilities of Involuntary Confinement" was adopted. This law provides for establishment a Supervising Public Commission (SPC), in every region of the country. SPC powers enable them to visit facilities of involuntary confinement within the region after notification about such a visit to the head of the regional government body or administration of the institution. Complaints that prisoners can make to SPC members are not subject to any form of censorship. SPC members have privileged status and are exempt from screening procedures when visiting facilities of involuntary confinement. At the moment, broad authority of the SPC in practice is not used in full. Although SPCs have relatively free access to facilities of involuntary confinement, in many regions members of the SPCs lack knowledge and skills to monitor and assess the situation with human rights in

closed institutions. In addition, some members of the SPC face refusals to get access to certain institutions, or necessity to undergo searches before entering place of detention, or unwarranted delays in admission to institutions as well as other obstacles.

8. Federal control over detention facilities is exercised by prosecutors. According to the opinion of observers, the prosecutor's investigation into complaints of convicted persons into violations of their rights in most cases is ineffective. Procedures for checking of complaints do not require the participation of the applicant. SPCs' members report that, as a rule, prosecutors prefer to deal with detainees' complaints without meeting the complainant; and often instead of visiting the prison or detention center just send a request for documents to the administration of the prison (i.e. a request is sent to the very authority to which the person is making a complaint or accusation), and decide the complaint basing on those documents. In addition, in cases when supervising authorities visit institutions from where a complaint has been filed, prisoners refused to confirm their claim. And that, in the opinion of SPCs' members, is the result of pressure applied to the prisoner by the administration of the institution. Regional SPCs' members have also reported that in some prisons complaints are censored by the authorities and are not sent.
9. At the same time, human rights organizations indicate cases of torture and ill-treatment occurring within the prison system and are noting an increase in complaints in recent years. A systemic problem is the torture in remand prisons (SIZO) which is primarily due to the active work in prisons of detective officers representing the interests of the investigation. This practice is occurring in all regions of Russia. Effective mechanisms for checking and investigation of torture and ill-treatment complaints are not readily available. For example, at least 40 prisoners on suspicion of involvement in terroristic attack that occurred in Nalchik in 2005 were regularly subjected to abuse during detention, and many of them are often tortured. Many of those detainees have complained to the ECHR, claiming a violation of Article 3, Article 5, Article 6 and Article 13 of the European Convention. In April 2011, in response to claims about renewed systematic ill-treatment submitted to some of those prisoners, the ECHR assigned several complaints priority status. By the middle of 2012, the ECHR communicated to the Government of the Russian Federation no less than five complaints of Nalchik prisoners and recognize some of those complaints partly admissible.
10. A mechanism for considering of convicts' complaints on application of isolation disciplinary measures in correctional institutions (placement in disciplinary isolators, in the cell-type conditions, in common cell-type rooms, etc.) is the same as in the case of complaints of torture and ill-treatment. In general, supervisory bodies follow the established standard of dealing with complaints from closed institutions; that is to say a request for information and documents is made to the institution, the evaluation of these documents and responses tend to deny the facts of violations.
11. The concern evokes in practice the consideration of those torture complaints which convicts of submit to the Investigating Committee. According to the evaluations of the investigators themselves, obtained in the scope of the research, "Opportunities and obstacles to the implementation of standards for effective investigation of torture in the practice of investigative bodies of Russia", carried out by the Public Verdict Foundation, investigators have no effective means to check such complaints or conduct investigation on them. Typically, upon receiving a complaint, an investigator goes to the prison, questions applicant and other inmates, and studies the documentation, that is to say, investigator operates with

the information which is in the possession of the administration, whose actions have been the subject of a complaint, or information provided by individuals who are dependent on administration. As a rule, these kinds of investigations tend to conclude in a failure to bring forward any criminal proceedings. Exceptions include cases when a death occurs in the prison, and the massive protests of prisoners due to ill-treatment by the administration become well known outside of the prison.

12. Health services in detention centers, as well as in prisons are often the subject of complaints by prisoners. An audit conducted by the General Prosecutor's Office, showed that in 2010, for medical care of inmates were allocated only 24% of the required amount of money, almost 60% of the medical equipment had a production date as made in the 1970s and 80s. Health workers depend on the administration of institutions, so when doctors pursue their professional opinion, they risk to undermine their job. SPCs' members and human rights activists cite known cases where access to medical care depends on the administration's decision and not a physician. The existing procedure for the provision of medical care to a serious degree affects the efficiency of its receipt. This is particularly important in cases where the disease has no obvious symptoms. There are cases when ignoring repeated complaints of inmates to poor health led to irreversible consequences and death while in custody (in the report presented this case). The absence of an established coordination between prison and civilian hospitals creates a situation in practice where inmates are forced to wait a long time for transfer to a civilian hospital in order to receive the necessary tests and or to obtain the specialized help from doctors. In regards to recent problems, inadequate medical care has been repeatedly identified by the ECHR ruling made by Russian complainants, particularly *Sakhvadze v. Russia* (15492/09, 10 January 2012), *Vladimir Vasilyev v. Russia*, no. 28370/05, 10 January 2012.
13. In January 2011, the Government of the Russian Federation adopted Resolution № 3 "On medical examination of those suspected or accused of having committed a crime." The Resolution was taken in order to implement Article 110 of the Criminal Procedural Code, in accordance which a preventive measure that the type of detention should be changed to a lighter custody when it is identified that the suspect or accused is suffering from serious illness preventing him from serving his detention. For the nine months of 2011 from all detention centers of Russia only 35 people were released from custody. There are known cases where the courts refused to release a person from custody, despite the fact that the prison doctors confirmed the presence of a disease requiring his release. One such case is presented in the report – The October District Court in the city of Ekaterinburg refused to change the measure of incarceration of an inmate. The inmate later died still in custody.
14. August 9, 2011 by Order of the Russian Ministry of Justice, the approved procedure for a medical examination to be carried out is prior to the transfer of a prisoner to disciplinary department (PKT, EPKT, SHIZO etc.). The order requires health workers to carry out an inspection of inmates as to their physical condition before placing them in a disciplinary department. In the event of serious health problems, the doctor must conclude that the placement of the inmate in solitary confinement will cause irreparable harm to his health. The administration must obey the doctor's opinion. But for now the adoption of the order has not led to positive changes. In their complaints inmates are indicating that, with SHIZO, PKT and EKPT a medical examination is a mere formality.
15. Penal institutions are quite inappropriate for keeping people with disabilities, although

Russian law does not prohibit the use of detention as a preventive measure for people with disabilities, as well as to order imprisonment in correctional institutions. In practice, such inmates are experiencing significant difficulties and effectively denied the opportunity to regularly go walks, attend to matter of their personal hygiene, tec., as their movement within the institution depends on the help of staff or other inmates. ECHR in its judgment *Arutyunyan v. Russia* (№ 48977/09, 10 January 2012) identified that for several times a day it was required to overcome four flights of stairs at the SIZO in which Arutyunyan was detained, confining him to the use of a wheelchair while suffering from obesity and kidney disease and from time to time having to refuse treatments of vital hemodialysis. ECHR found this situation of prolonged confinement to a wheelchair while suffering from a number of serious diseases to be unacceptable, in conditions that are not ideally suited for people dependent on a wheelchair for mobility.

16. Transportation of inmates in Russia remains a serious problem. The cars have poor ventilation and lighting. Inmates do not receive hot food. Prison transfers often last more than two days. In several cases (*Khodoyorov vs. Russia*, *Guliev vs. Russia*, *Idalov vs. Russia*) ECtHR found that the conditions of transport in special prison vans were in violation of Article 3 of Convention. Up to the present time law-enforcement bodies keep to use for transportation of prisoners in vans (0,6-0,8 m<sup>2</sup> space for one person). Russian Supreme Court in its decision of 17 April 2012 refused to recognize the existing rules of transportation in special vans as being inconsistent with standards developed in the case-law of European Court.
17. Over the course of the reporting period in the Russian Federation several reforms were initiated: Interior Ministry (2009), investigative bodies (2007, 2010), the penal system (2007); and although at the moment reforms continue, intermediate results seem to be possible.
18. The aim of reforms to the penal system is a declaration of humane conditions of detention and the abolishment of repressive forms of correctional rehabilitation in favor of a more educational system and the creation of conditions to facilitate an inmate's rehabilitation and reintegration. The concept of the development of the penitentiary system (2010 - 2020) implies that the results of reform will achieve a different standard of detention for inmates. POC members and human rights activists pay particular attention to the fact that, at the moment stated objectives of reform to the penal system is not provided for in the actual practices of the institutions, their financing, training of qualified personnel to work with the inmates, the lack of rehabilitation programs for the period after incarceration and the evaluation system in prisons. In particular, the evaluation system attaches great importance on the timely submission of reports regarding confiscated mobile phones, home-made alcohol and drugs. Thus, prison staff is focused on the control of inmates to ensure that the rules of the institution are followed and not to increase the level of social, psychological and educational work with convicts. There were a large number of ECHR judgments made against Russia, in which the conditions of penal institutions were found in violation of the prohibition of torture and ill-treatment, as well as the use of by ECHR pilot procedures and the pilot judgment *Ananyev and Others v. Russia*, imposes on Russia obligations on the system level to solve the problem with detention conditions. After the pilot judgment Russian prison authorities began to implement measures that would remedy the situation. So, it is committed to solving the problem of ensuring norms on allotted space per detainee and in some regions, it has taken on the task to fully 100% equipped cells with the desired

height partitions to separate the toilet from the rest of the cell. Other problems, in particular the right to file a complaint and get compensation for inadequate detention conditions, reducing the practice of arrest and the use of detention as an exclusive measure are still on the periphery of the authorities' attention. At the time of writing, the Russian Federation has not yet provided an action plan for the implementation of the pilot judgment of Ananyev and Others against Russia.

19. The continuing reform of the Interior Ministry has not led to significant changes in the activities of the police. The measures undertaken in the years 2010 and 2011 (in particular, the adoption of the federal law "On Police", the holding of an extraordinary certification of police, the reorganization and the creation of new public councils at the Ministry of Internal Affairs and its regional offices, departmental orders governing the police evaluation system, salary increases and social services) have not always been linked, pursued different objectives and were not able to lead to a qualitative and sustainable change in the situation. Police evaluation system still direct police officers in achieving indicators in the fight against crime, omitting out of the equation the rights of citizens, detainees and suspects in a criminal matter. The problem of torture was ignored during the reform of the Interior Ministry and has not been any purposeful reform taken which would create in practice conditions for the prevention of torture and or offer guarantees against their use. After it became widely known regarding the of deaths of detainees from the actions of police officers, the Russian authorities were forced to admit that reforms did not achieve its states objectives, and in the early summer of 2012 the leadership of the Interior Ministry was replaced. The new Minister of the Interior Ministry declared the need for a second stage of reforms. Despite the close attention of the society to the Interior Ministry and the police, efforts for the formation of a professional staff, Russian human rights organizations still point to the persistence of torture and ill-treatment in police activities. Of greatest concern is also the ineffective investigation of claims of torture, which creates the conditions for their use with impunity.
20. The reform of the Prosecutor's Office and the Investigative Committee has not yet led to an increase in the quality of investigations into allegations on incidents of torture. From 2007 reforms began of the Prosecutor's Office aimed at the delineation of the functions of Public Prosecutions and the preliminary Investigation Committee. On 1 September 2007, at the Prosecutor's Office an Investigation Committee was allocated where there occurred a division of investigation and supervision between it and the prosecution. Prosecutors lost their right to rescind the decision not to initiate a criminal case, made by an investigator. This led to a substantial weakening of control and participation of the public prosecutor in the investigation of criminal cases and, in particular, cases where there were claims of abuse of power. The second stage of the reform occurred in late 2010, when the Federal Law of 28 December 2010 № 403-FZ "On the Investigation Committee of the Russian Federation", according to which in January 2011, the Investigation Committee (SKR) began operating as an independent state body. In this case, the prosecutor's office received the authority to rescind the rejection of investigators to begin criminal proceedings and to require additional verification. But in the experience of human rights organizations in cases involving claims of torture in 2011-2012 suggests that the possibility of prosecution failures to rescind investigators to initiate criminal proceedings had no significant impact on improving the quality of the investigation. The reason for the ineffectiveness of investigators was related primarily to the ongoing conflict of interest: the Investigation Committee officials are investigating as conventional crimes (murder, rape, etc.), and official misconduct, including

against police and other law enforcement agencies, which in turn exercises operational support for investigators for ordinary criminal cases. As a result, receiving complaint about the misconduct by an employee of such an agency, the investigator of the SKR was actually forced to investigate the case involving a "colleagues", which eliminates the objectivity and independence of the investigation. In 2012, the Coalition of human rights organizations recommended to the head of the Investigative Committee create a unit within the SKR that would specialize exclusively in the investigation of crimes committed by law enforcement officials. The initiative was supported and on April 18, 2012 the head of the SKR signed Order № 20 on the establishment of a special unit to investigate crimes committed by law enforcement officials. According to the order, it allocated 60 investigators across the country and should not only investigate criminal cases, but also to carry out pre-investigative checks on all incoming allegations. In this case, according to the SKR in Russia in 2011, police committed 4,400 crimes. The number of allegations requiring pre-investigative check was many times greater than that. The proposed structure and the number of specialized forces make it impossible to conduct a timely and proper investigation into allegations of torture and ill-treatment. At the moment, creating special units has not changed the practice of investigations into allegations of torture.

21. The vast majority of allegations in cases of torture do not lead to criminal cases or to the implementation of a wide range of measures in investigating cases of torture. The authorities are in most cases limited to pre-investigative check - the stage in which the question to be decided is, whether there are sufficient grounds for criminal prosecution. Using this as the benchmark, the investigator performs a standard and a minimum set of actions attempting to assess the likelihood of a criminal case, which means the probability of achieving the outcome of court conviction. If the investigator finds that through the investigative process the evidentiary basis is not sufficient for a conviction, then it is usually upon deciding this that an investigator will decide not to proceed with a criminal case, finding no reasonable grounds to pursue the matter. The applicant may appeal the investigator's rejection to open a case, and in many instances, supervisors or the courts overturn the decision of the investigator. In this case, an investigator's decision is overturned and the investigator will initiate the additional check, but as a rule are not acting on instructions of a court or supervisor but carrying out another decree on not to institute criminal proceedings. The cycle of check-refuse-withdraw can take several years, which is why so many cases irreversibly lose the opportunity to collect the required evidence. It is with this thorough and timely investigation of allegations of torture is perhaps lies the scope of the criminal case, since only in this case, the investigator has the authority to carry out the full range of investigative actions to search for and collect the evidence. It must be recognized that the current practice of considering allegations of torture and ill-treatment is incompatible with the standards of an effective investigation.
22. Analysis of cases handled by the human rights organizations has shown that most often people are complaining about torture and ill-treatment on the part of the Interior Ministry personnel. Complaints, materials of pre-investigative checks and criminal cases against police officers available to the human rights organizations suggest that police may use torture against detained suspects to obtain information about a crime or confession. In addition, there are cases where torture was used against citizens who were not criminal suspects.
23. In 2011-2012, Russia saw a significant increase in protest activity. Law enforcement

authorities responsible for maintaining public order during public protests, suppressing actions that they see as a violation of public order, often use violence against peaceful demonstrators, disproportionate to their violations. As a general rule, the police uses force indiscriminately, without due consideration of age, sex and physical condition of the person. As a rule, police officers that used unlawful methods to disperse the protesters are not held responsible, and none of the victims receives any compensation for the injuries. Held in administrative detention during public protests or their dispersal are held in inadequate conditions at police stations. The premises of a police station, where the detainees are held are meant for temporary stay, but, in accordance with Russian law, administrative detainees may be detained in a police station for 48 hours. At the same time, the detainees at police stations do not receive food, are provided with no bed linen; the rooms have no toilets, etc. Detention in such premises intended for temporary stay for more than 3 hours should be recognized as non-compliance with the principles of proper treatment.

24. Guarantees of protection against torture provided by the Russian Federation to foreign citizens, regarding whom an extradition request is received, should also be considered unsatisfactory. There are no effective mechanisms for the parties requesting extradition of detained persons to monitor humane treatment of those persons. This is confirmed by the fact that in none of the cases of expulsion and/or extradition reviewed by the ECHR the Russian authorities have submitted information regarding such mechanisms.
25. Appeal of extradition decisions is hampered by the absence of a Russian law rule obliging the Prosecutor General's Office to notify the attorney of the order of extradition of his client. Considering the fact that the person regarding whom an extradition decision was taken is, as a rule, held in custody without the possibility of promptly contacting his lawyer, that circumstance significantly limits their right to protection.
26. The current law "On Refugees" contains no guarantee of non-expulsion of persons who have filed appeals against denials to grant temporary asylum. Government Decree № 363 of April 24, 2012 confirms the right of such persons to legally stay in Russia, which serves as a protection against administrative expulsion. But if the country is requesting extradition of a person who has filed an appeal against denials to grant temporary asylum, that circumstance does not suspend the process of review of extradition request.
27. Russian law regulates the procedures of administrative expulsion (forced or controlled relocation from the Russian Federation implemented in accordance with the Code of Administrative Offences) and deportation (forced expulsion from the country in the event of loss or termination of the legal ground for continued stay or residence in the country). There must be a court decision on administrative expulsion and the expelled person can contact his lawyer and appeal the court's decision. A deportation decision is taken by officials: director of Russian Federal Migration Service or his deputy or the Federal Migration Service's regional department head. Under the Order of the Russian Interior Ministry and the Federal Migration Service No. 758/240 of 12.10.2009, decisions on deportation can also be taken by heads of territorial branches of the Federal Migration Service. This change has led to a sharp increase of the number of deportations (362 deportations in 2010, 656 deportations in 2011, compared to 60 deportations in 2009). No changes were made to Article 18.8 of the Administrative Code which regulates administrative expulsion.
28. The state has failed to consider the recommendation of the UN Committee Against Torture,

passed at the 37th session of the Committee following review of the fourth periodical report of the Russian Federation. The Committee pointed out that “the state should provide additional clarification as to which violations of the rules of stay on its territory may result in the administrative expulsion and clear procedures to support application of those rules.” Over the reported period, the practice was maintained, in accordance with which individuals violating stay rules (even minor violations) were deported from Russia in accordance with administrative expulsion procedures.

29. In recent years, there were more attempts to use the procedure of administrative expulsion during the transfer of persons to the countries which requested their extradition. Expulsion decisions are taken by district courts of general jurisdiction on administrative offense grounds. Courts have declined to examine the arguments about risks of applying torture in the country of destination, assuming that this question does not apply to the administrative case of violation by the foreign national of the rules of stay in the territory of Russia. The fact that the consequences of administrative expulsion and extradition are identical for the applicant is not taken into account. In some cases, such attempts were made under the direct instructions of the General Prosecutor's Office, thus ignoring the risk of unlawful treatment of that person in the country of destination (which was the case during expulsion to Uzbekistan of Rustam Muminov and Hurmatillo Khodjaev). It becomes possible to prevent the transfer of a person to the authorities of the State requesting his extradition only if the European Court of Human Rights applies temporary measures pursuant to Rule 39 of the Court Rules.
30. In 2011-2012, there were more cases of extra-legal transfer of persons to the states which requested that, whose extradition or expulsion was impossible or difficult to implement under any statutory procedures. Such persons have been illegally abducted and moved to the requesting country. The fact that the abducted persons were always taken out of Russia without passing the required immigration and customs clearance procedures eliminates the version of non-involvement of Russian authorities in the implementation of such operations. The human rights organizations possess information on at least 10 persons who were recently stolen and illegally exported to Uzbekistan and Tajikistan. In most cases, they were subjected to torture in the country of destination and were sentenced to long terms of imprisonment on questionable charges.
31. The procedure of extradition to the country of origin of persons regarding which a Russian court has ruled to apply compulsory treatment, has not been put in place by the General Prosecutor's Office. For that reason, psychiatric hospitals hold foreign nationals in the absence of medical indications for psychiatric treatment. Human rights organizations know cases when foreign nationals were held in hospitals for more than 10 years.
32. Despite a number of measures that have been taken by Russia to improve the conditions in psychiatric hospitals, including improvement of the quality of food, replacement of hospital window bars with safety glass, there have been many unresolved issues, which, combined, lead to improper treatment of hospital patients. In particular, many hospitals violate the rules of acceptable per patient space rates (including the Kazan special mental hospital with intensive supervision, the Krasnoyarsk regional neurological and psychiatric hospital No. 1, the Kaliningrad regional psychiatric hospital No. 3, the Moscow psychiatric hospital No.5 which implements compulsory treatment, and others).

33. Over the reported period, some legislative acts were passed (including [Federal Law No. 67-FZ of April 6, 2011](#) N 67-FZ On Amending the Federal Law “On Psychiatric Care and Guarantees of the Rights of Citizens in Therapy” and the Civil Procedure Code of the Russian Federation), which increase guarantees of incapacitated citizens against arbitrary placement in a psychiatric hospital. At present, incapacitated citizens must provide their consent to undergo treatment, or otherwise they have to appeal to court. But in practice, that requirement is violated, and the consent to hospitalization and treatment is falsified or is not requested altogether. The involuntarily hospitalized patients can not appeal the involuntary hospitalization at the moment it occurs. The relevant amendments to the law “On Psychiatric Care and Guarantees of the Rights of Citizens in Therapy” were not passed, although the need to pass them was specified by the ECHR in its Rakevich against Russia judgment. The fact that it is practically impossible to file a complaint while the person is held in the hospital reduce the guarantees against involuntary hospitalization. The group of under aged citizens is still the most vulnerable group. In order to place a minor in a hospital, only a consent of his legal representative is required and there is no legal mechanism to monitor hospital admission of children. In the case of orphans, the legal representative is the boarding school administration, and their interests are not always identical to the child’s interests. Due to the fact that the boarding schools employ under-qualified professionals, the absence of outpatient psychological and psychiatric services and several other reasons, children are put in hospitals if minor issues emerge, and quite often children admitted to a hospital do not need inpatient psychiatric care. Observers working with the institutions for orphans indicate that in most cases children are placed in psychiatric facilities for disciplinary purposes. Such cases have been registered in the Perm, Chelyabinsk and Moscow regions.
34. A patient of a psychiatric hospital may complain about the quality of treatment and conditions of stay, and then appeal to the authorities. But hospital administration censor complaints, treating them as examples of pathological nature. The possibilities of filing a complaint while a patient is staying in the hospital are significantly limited. An independent Service protecting patients’ rights acting separately from health care institutions, which was to be set up under the law “On Psychiatric Care and Guarantees of the Rights of Citizens in Therapy” has not yet been established.
35. Impunity for torture-related practices in the military remains a systemic problem. Russian human rights NGOs continue to record well-founded cases of torture, cruel, inhuman and degrading treatment or punishment in the armed forces. Convictions for torture-related practices which were secured concerned mostly lower-ranking perpetrators who received sentences without actual imprisonment (such as fines or suspended prison sentences). There is no practical provision in the Russian legal system, especially in the military context, for the victim of an act of torture and other forms of ill-treatment to obtain redress and to have a practically enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible. In practice, even basic medical care is not adequate for military survivors of torture. Apart from medical rehabilitation for military torture survivors which is practically unavailable, psychological rehabilitation is completely left out.
36. Human rights organizations have observed widespread practices of unpaid use of soldiers’ involuntary labor by their superiors for private purposes or by “leasing” them to private businesses. This forced labor is unrelated to the military service and is prohibited by Russian laws. Such treatment of the military servicemen constitutes a modern form of slavery and

inhuman and degrading treatment.

37. In 2009-2012 human rights organization have continued to receive complaints of torture and ill-treatment of people detained or arrested by law-enforcement, federal security officers, and Russian military personnel, as well as people unlawfully captured by armed individuals in khaki uniforms who did not reveal their identity. Such reports have been coming from the Republic of Dagestan, the Chechen Republic, the Republic of Ingushetia, the Republic of Northern Ossetia-Alania, and the Kabardino-Balkaria Republic. Generally, people were subjected to torture at police stations, at the headquarters of anti-extremism centers belonging to the Ministry of the Interior, and in illegal custody. Additionally, in 2010-2011 there were regular reports of ill-treatment of detainees at the detention facility of Nalchik (Kabardino-Balkaria). In the majority of such cases, after examining these reports, the investigative bodies refused to initiate criminal cases. In other instances, as a rule, the investigation yielded no results (only two criminal cases involving torture have reached the court).
38. Law-enforcement officers often prevent lawyers from getting access to detainees. Usually this happens during the first days of detainment when the detainee is subjected to torture to coerce him or her to give confessions. Officers of the Ministry of the Interior keep lawyers under pressure. In 2010 in Dagestan there were five documented cases of attacks on or beatings of lawyers. Nobody has been brought to justice for these crimes.
39. Compared to the previous periods, mass illegal detentions, torture, and beatings of citizens during security sweeps in towns and villages have become extremely rare. However, several such incidents have been reported, above all in Dagestan.
40. The Chechen authorities have granted the uniformed forces total impunity; in this regard, Chechnya differs strikingly even from its closest neighbors republics. The submitted Report includes separate section, describing the situation in Chechnya and republics of North Caucasus. The vast majority of abductions and disappearances in Chechnya have not been properly investigated, the perpetrators have not been found, and the investigation has been repeatedly suspended "due to the failure to identify potential perpetrators to prosecute", then formally reopened, and suspended again. Russia's Fifth Periodic Report says that the investigation of serious and particularly serious offences against individuals "are carried out by agency No. 2 of the Chechen Republic investigation department which was set up to deal with particularly important cases as part of joint operational teams and is currently examining 206 cases involving abductions, homicides and disappearances of citizens". The report provides no data on either any completed investigations of this category of cases or on anyone brought to justice. ECtHR has adopted more than two hundred judgments based on applications from people living in the North Caucasus. The applicants submit violations by State agents during the war or during the counterterrorist operation. Nine out of ten applications filed by residents of Chechnya submit violations of Articles 2, 3 and 5 of the ECHR. In virtually all its judgments, the ECtHR found Russia in violation of Article 13 of the ECHR. None of the crimes addressed in the ECtHR's judgments have been effectively investigated, none of the criminal cases went to court, no one has been brought to justice. In cases of enforced disappearances, the fate of the victims has never been established. At present, there is a risk that some of these cases may eventually pass the statute of limitations, as the Criminal Code limits the time for criminal prosecution to 10 or 15 years after the offence, and it pose a bar to accountability for perpetrators. Sometimes Investigative

Committee reopens an investigation, but fails to conduct the steps required by the ECtHR's judgments, i.e. each new investigation suffers from the same shortcomings as the previous one.

41. Since November 2009, a Joint Mobile Group (JMG) of representatives of various Russian human rights organizations has been active in Chechnya. The group works to obtain and verify information on human rights violations in Chechnya, including torture and abductions, and to find out reasons why investigation into such cases is ineffective. The JMG's lawyers have undertaken civic inquiries based on appeals from citizens and have represented victims in criminal proceedings. In carrying out this work, the JMG members have repeatedly found procedural irregularities of various types and at various levels. The investigating authorities are virtually incapable of investigating this type of cases - both due to sabotage from the Chechen Ministry of Interior that systematically fails to comply with instructions received from investigators, and also due to the fact that the top officials of investigating bodies can do nothing to improve the situation. As a rule, the investigators are not particularly diligent in investigating the crimes where the law enforcement personnel may be implicated.

## Articles 1 and 4

### Question 1.

#### **Criminalization of torture**

42. Having considered the Fourth periodic report of the Russian Federation, the Committee noted that the definition of the term “torture” as contained in the annotation to article 117 of the Criminal Code and also referred to in article 302 of the Criminal Code does not fully reflect all elements of the definition in article 1 of the Convention. The Committee recommended that Russia "should take measures to bring its definition of torture into full conformity with article 1 of the Convention, in particular to ensure that police, army, as well as prosecutorial officials, can be prosecuted under article 302 as well as under article 117 of the Criminal Code".
43. It follows from paragraphs 1-7 of the Fifth periodic report that the Committee's recommendation has not been implemented: articles 117 and 302 of the Criminal Code have not been amended since 2003.
44. However, the fact that articles 117 and 302 of the Criminal Code do not fully reflect the definition of torture as contained in article 1 of the Convention does not mean that the Russian law does not allow prosecution of public officials involved in torture. Paragraph 7 of the Fifth periodic report notes that officials involved in torture may face charges under article 286, para 3, of the Criminal Code (excess of authority). Human rights organizations know of hundreds of cases where police and other public officials faced criminal liability for torture. In most such cases, judicial and investigative bodies qualified their actions as those covered by article 286 of the Criminal Code.

#### **Direct application of the Convention by courts**

45. According to para 11 of the Fifth periodic report, there have been no cases in practice in which the provisions of the Convention have been directly applied by a court. This information needs clarification. Indeed, there have been no known cases of courts directly applying article 1 of the Convention with regard to offences committed by public officials. However, in recent years, the Russian courts have been making references to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and to article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and to the judgments of the European Court of Human Rights invoking article 3, in considering claims for compensation of damages caused by torture. For example:

*The Leninsky District Court of Orsk, Orenburg Region, issued a ruling on 19 November 2008 in a lawsuit filed by Mr. N. Nikolayev seeking compensation of non-pecuniary damage caused by ill-treatment and torture at the hands of the Orsk UVD police officers in the course of his detention and a criminal investigation against him. In substantiating its findings, the court referred, inter alia, to the European Convention on*

46. There have been other cases where the Russian courts applied international standards, even though this clearly positive trend is not yet widespread.

## **Question 2**

### **Statistical data concerning the application of the Criminal Code articles applicable to acts of torture**

47. In assessing the statistical data provided in paragraphs 12-22 of the Fifth periodic report, the following circumstances should be taken into account.
48. The Russian authorities keep statistics on reported offences, opened criminal proceedings, and persons convicted and acquitted under the Criminal Code articles. However, the Russian Criminal Code does not contain a single article covering all types of torture committed with the involvement of public officials.
49. Article 117 of the Criminal Code is applied to prosecute private individuals for ill-treatment of others, but it does not apply to acts of torture committed by public officials acting in their official capacity. One cannot rule out that the total number of convictions under article 117 of the Criminal Code includes those involving torture committed by private individuals at the instigation of, or with consent from public officials, but it is impossible to determine their exact number.
50. Article 302 of the Criminal Code does not apply to all public officials, but only to investigators and inquiry officers and only to the use of torture to elicit testimony. Torture committed by investigators and inquiry officers for other purposes, and torture committed by other public officials is not covered by article 302 of the Criminal Code. This fact, in particular, may be the reason for the relatively small number of reported offences and convictions under article 302 of the Criminal Code quoted in the Fifth periodic report.
51. Where torture is not committed with the purpose of obtaining testimony, and where the perpetrator is a public official other than investigator or inquiry officer (e.g. a police officer or a prison guard), courts and investigating bodies prosecute such offences under article 286 of the Criminal Code. Paragraph 13 of the Fifth periodic report quotes statistics of reported offences under article 286 of the Criminal Code. In assessing these statistics, it is important to bear in mind that besides torture, article 286 of the Criminal Code also covers other types of excess of authority which do not involve torture. For this reason, the sum total of official statistics on the number of complaints against excess of authority, the number of criminal proceedings opened into excess of authority, and the number of officials convicted for excess of authority does not allow one to separate complaints, prosecutions and convictions in cases involving torture and to find out the relevant numbers.
52. Consequently, the sum total of statistics under articles 117, 286 and 302 of the Criminal Code does not allow for an accurate assessment of the prevalent use of torture and the effect

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<sup>1</sup> This information has been provided by the Interregional Committee Against Torture.

of measures taken to prevent and suppress it.

## Article 2

### Question 3 a)-f)

53. Paragraphs 23-27 of the Fifth Periodic Report describe guarantees which are provided by the Code of Criminal Procedure to the persons detained on suspicion of committing a crime. Federal Law FZ-3 “On Police” provide additional details concerning the rights of the detainee to inform his/her relatives about the detention. It is important to point out that the guarantees provided by the law are applicable not only to the individuals detained on suspicion of having committed a crime, but also to persons detained on other grounds, in particular, those detained for administrative violation.
54. Duty officers of police stations, who draw up paperwork following an arrest, have an obligation to inform the arrestee's family only if s/he is a minor. If the arrestee is an adult a police officer pursuant to Article 14 (3) of the Federal Law "On the Police" shall inform him/her of the right to have his/her family notified of the arrest. Furthermore, pursuant to Article 14 (7) of the Law "On the Police" the opportunity to make a phone call shall be provided promptly and in any event no later than three hours after the arrest unless otherwise specified in the Code of Criminal Procedure ("the CCP"). However Article 96 of the Code of Criminal Procedure referred to by Part 7, Article 4 of the Law “On Police” stipulates not only the possibility of agreement of the public prosecutor to maintain the fact of detention secret in the interest of the preliminary investigation. The timeframe for notification of the relatives of the detainee, determined by Article 96 of the Code for Criminal Procedure is 12 hours, which is much longer than the timeframe for the obligatory notification set by the Law “On Police”. It is unknown which timeframe for notification about detention of persons suspected of committing a crime will be used in practice.
55. Some examples suggest that the police can not protect the rights of detainees to inform relatives.

*On May 22, 2012 at 22:40 on Kudrinskaya Square in Moscow the police detained Andrey Lukyanov, a scriptwriter and one of the participants of assembly – protest camp OccupyAbay. Detention was made by direct order of an officer of the Ministry of Internal Affairs’ Anti-Extremism Center who confused Andrey Lukyanov with Oleg Vorotnikov, a member of art-group Voyna, who is on an international wanted list due to a charge of disorderly conduct and use of violence against an officer.*

*Lukyanov was with the policy to 14:30 on May 23 2012, that is approximately 14 hours. According to Lukyanov, police officers did not explain to him why he was detained and did not let him notify his wife about the detention. His wife called various police departments but she was everywhere informed that Andrey Lukyanov was not among the detainees<sup>2</sup>.*

56. According to Article 14 (11) of the Law "On the Police", persons who fled detention, who

<sup>2</sup> Interview of Andrey Lukyanov to “Bolshoy Gorod” of May 23, 2012 <http://www.bg.ru/opinion/11052/>

were put on wanted list, and those who avoid an administrative or criminal law penalty as well as compulsory medical treatment or compulsory measures of correctional nature ordered by a court, are not entitled to a phone call, and no notification of their arrest is given. Why the law limited the right of such persons for a phone call to notify relatives is unknown. The Explanatory Memorandum to the Draft Law "On Police" does not contain any clarifications of the issue<sup>3</sup>.

57. According to Article 14 (14) of the Law "On the Police", a record is drawn up following an arrest; such record includes information about date, time and place where it was drawn up, rank, last name and initials of a police officer who has drawn up the record, information about the arrestee, date, time and place of the arrest, grounds and reasons for the arrest; it is also indicated whether family or other close people of the arrestee were informed of the arrest.
58. Neither the Law "On the Police" nor the CCP contain a provision explicitly stating that a police officer should inform an arrestee's relatives of his/her whereabouts. The Code of Administrative Offences ("the CAO") contains a provision regarding informing relatives of an arrestee's whereabouts; Article 27.3 (3) of the CAO provides that upon an arrestee's request information concerning his/her whereabouts is promptly notified to his/her relatives, employer, or school/university as well as his/her defence counsel. Notification of parents or other guardians is a mandatory requirement when an arrestee is a minor (Article 27.3 (4) of the CAO).
59. Members of the SPC who visit police stations report violations of the right to be informed of the reasons for the arrest and of the rights and obligations while under arrest, the right to have one's relatives notified, and violations concerning conditions of detention. For example, in their letter to the head of the Department of Interior of the Central Administrative District of Moscow members of the Moscow's SPC, who on 20 July 2011 visited the police station on Kitay-Gorod, note the following.

*"At 6 pm during the visit 18 persons were detained in a cell measuring 18 sq. m., in which no more than 9 persons can be held. 3 persons were sitting down, and one was lying down on the floor. According to the detainees, they did not receive any explanation as to the reason for their arrest. According to the detainees, the attesting witnesses present during the drawing up of the record of personal search were police officers".*
60. Members of the SPC also note that no information about the right to a telephone call and the right to have one's relatives notified is found on information boards in many police stations. Police officers also do not mention these rights upon arrest. "The registration log of persons brought into the police station" often does not contain information concerning the circumstances, time and place of the commission of the crime for which a person was arrested and brought to a police station.
61. In 2011 a working group on the reform of the Ministry of Interior made up of Russian human rights NGOs carried out a monitoring of compliance with of the Law "On the Police" in a number of Russian regions. In the course of the monitoring 51 persons detained in

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<sup>3</sup> Explanatory note to the Federal Law "On Police" officially published on August 7, 2010 on the webpage of "Rossiyskaya Gazeta" <http://www.rg.ru/2010/08/07/proekt-dok.html>

temporary detention centers in three regions of Russia (the Rostov Region, the Perm Region, and the Mariy El Republic) were interviewed. Arrestees were not always provided with information about their rights (out of 33 arrestees interviewed in the Rostov Region, only 15 were informed of their rights by the police). The right to a phone call was usually afforded, and arrestees availed themselves of it if they wanted.

62. To assess the degree of prevalence of violation of rights of the detainees for notification of relatives is impossible. It is unknown if the authorities of the Russian Federation undertake measures to control and ensure respect of the right of detainees to notify relatives about the detention.
63. Short-term visits from relatives and other persons during the investigation stage are provided upon the authorization of the investigator; during the trial stage – pursuant to a court order. Maximum length of such visits is 3 hours, and they can be provided not more often than twice a month. Such visits are governed by paragraph 139 of the Internal Regulations of Remand Centers. The grounds and the conditions for providing an opportunity to visit a detainee are not set out; thus, in practice detainees' families are dependent upon a fundamentally arbitrary decision of an investigator or a judge.
64. Article 395 of the CCP expressly states that before the enforcement of the trial judgment, the judge in the criminal case or the president of the court at the request of relatives of a convicted detainee provide them with an opportunity to visit him/her. Such request shall be submitted by the relatives within three days after the pronouncement of the judgment to the court, which pronounced it. According to Article 75 of the Penal Code, persons sentenced to imprisonment are sent to serve their sentence within 10 days after the administration of the remand center receives a notice that the trial judgment has entered into force. During that period a convicted person is entitled to a short visit from his family or other persons. Since the CCP does not specify the procedure for receiving such requests from convicts' relatives or the time period within which the requests shall be examined, in practice, it is very difficult to urgently receive an authorization for a visit, even in emergency cases.
65. The CCP provides that the number and the length of contacts with a defense counsel may be limited, "where it is necessary to conduct procedural actions with the participation of the suspect, the duration of a meeting exceeding two hours may be limited by the inquiry officer or the investigator with obligatory preliminary notification of the suspect and his/her defense counsel about it. In any case the duration of the meeting may not be less than 2 hours" (Article 92 (4) of the CCP).
66. According to the Code of Administrative Offences, an arrestee should be brought to a police station promptly (Article 27.2 of the CAO); however, no time period is indicated. After being brought to a police station an arrestee is entitled to urgently notify a lawyer of his/her arrest. This is spelled out in Article 27.3 of the CAO. An arrestee is also entitled to make a phone call to his/her family to inform them that s/he needs a lawyer. Such notification is made no later than 3 hours after the arrest. The right to legal assistance is guaranteed from the moment of the arrest.<sup>4</sup>
67. An arrestee suspected of the commission of a criminal offence shall be interrogated within 24 hours after the actual arrest (Article 46 of the CCP). Upon his/her request, the suspect is

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<sup>4</sup> Article 14 (5) of the Federal Law "On the Police" No. 3 of 7 February 2011.

provided with an opportunity to have a private and confidential meeting with a defense counsel before the interrogation. An arrest record shall be drawn up within 3 hours after the suspect is brought before an inquiry officer or an investigator; such record shall include a note that the suspect was informed of his/her rights, stipulated in Article 46 of the Code, including the right to legal assistance from the moment of the actual arrest/detention on remand, etc.

68. Even though the current Russian legislation contains various norms guaranteeing access of persons detained on a suspicion of committing a crime to a lawyer, in practice such guarantees are often infringed on by law-enforcement officers. The lawyers' community points out a series of issues with ensuring the right of the detainees for access to a lawyer.
69. In some cases law enforcement officers refuse to let lawyers meet with a person physically present in a law-enforcement premises on the basis that the person is not detained and the officers are "just talking to him/her".

*In Primorky Krai, officers of the Lineyny Department of Internal Affairs introduced a new policy to detained the suspects "as guests" and obstructing access of lawyers by inflicting injuries. Valery Verbulsky, a lawyer from Dalnerechensk encountered such situation.*

*On May 19, 2010 his client was detained in a train on suspicion of committing a theft. But in the Department militia officers refused to question the young man in the presence of the lawyers, saying that he was there "as a guest". When a witness appeared who opposed the version of the militia officers regarding the incident, a field investigator in the presence of Verbulsky started to ask him personal questions unrelated to the incident and insult him. When an attempt to leave the room was made, the militia officer tried to physically preclude this and started to strangle the lawyer<sup>5</sup>.*

70. It is important to note that as a part of such "talks" with the de facto detained persons the law-enforcement officers are able to obtain from them the so called "acknowledgement of guilt", that is confessions of a crime. In contrast with an interrogation of a suspect and an accused which in compliance with the Code for Criminal Procedure are to be held in presence of a lawyer, it is possible to accept acknowledgement of guilt without a lawyer. Courts view acknowledgement of guilt as a proof of guilt in committing a crime. European Court for Human Rights ruled that the Russian practice of procedural "talks" with the detained and arrested persons in absence of the lawyer and obtaining in the course of such talks acknowledgement of guilt to be a violation of right for fair trial<sup>6</sup>. Committee of Ministers of the Council of Europe so far did not received from the Russian authorities the information of general measures implemented or planned to be implemented to fulfill this ruling of the European Court<sup>7</sup>.
71. Lawyers also report that in some cases they are unable to meet their clients as law-enforcement officers conceal information about location of detainees from their lawyers<sup>8</sup>. Also administrations of some temporary detention facilities and pretrial detention centers

<sup>5</sup> See press-release of the Chamber of Lawyers of Primorsky Krai of August 27, 2008.

<sup>6</sup> Ruling of the European Court for Human Rights in PAVLENKO v. RUSSIA, # 42371/02 of April 1, 2010

<sup>7</sup> Information on the page of the Council of Europe devoted to implementation of Rulings of the European Court for Human Rights [http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases\\_en.asp?CaseTitleOrNumber=Pavlenko&StateCode=&HideClones=&SectionCode=&OrderBy=Violation](http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=Pavlenko&StateCode=&HideClones=&SectionCode=&OrderBy=Violation)

refuse meetings with their clients if the lawyer does not have a written permission for such meeting issued by investigative agencies or courts. These demands are made regardless of the fact that the current legislation does not require any permissions for a meeting of a lawyer with their detained client<sup>9</sup>.

72. The Federal Law No. 103 "On the detention of suspects and accused of criminal offences" establishes that a suspect is entitled to visits from his/her defense counsel. However, the law does not specify how this right shall be enforced. In practice, suspects' right to visits from a defense counsel is not fully enforced, especially in overcrowded remand centers. There is a waiting list for visits from defense counsel; remand centers often do not have a sufficient number of rooms for such visits. For example, this problem is being solved in a remand center in Saint-Petersburg by increasing the number of rooms for meetings with defense counsel. This decision was taken by the Department of the Federal Penal Service (FSIN) in Saint-Petersburg and the Leningrad Region in March 2010 after the President of the Saint-Petersburg Bar Chamber sent a letter to the Head of the FSIN<sup>10</sup>.
73. We consider it necessary to add a new provision to the Law No. 103 stipulating that administration of remand centers has a duty to ensure that persons under investigation and on trial have an opportunity to hold meetings and to work with documents to prepare for court hearings.
74. It should be noted that the CCP provides that relatives of an accused or other persons named by an accused may be granted the status of defense counsel along with a lawyer. In practice, such defense counsel face numerous problems because judges sometimes interpret this provision as allowing them to decline a relative's or another close person's motion to obtain such a status; judges may refer, for example, to the fact that the accused already has a defense counsel who is a lawyer. In practice, there are also situations when a relative acting as a defense counsel faces problems in attempting to enforce his/her right to have an unlimited number of meetings with a detainee.
75. Before 2009 the Department on Respecting Human Rights was a part of the Directorate for Management and Inspection of the FSIN. In the summer of 2009, after the Head of the FSIN was replaced, the Department was dissolved and no longer exists. The control over respecting the rights and lawful interests of persons sentenced to imprisonment, and persons detained on remand is now partially carried out by the Legal Directorate of the FSIN<sup>11</sup>, which:

*ensures compliance with international treaties concerning human rights ratified by the Russian Federation, is responsible for cooperation with international human rights organizations, which exercise control over the respect for rights, freedoms and lawful interests of detainees and convicted persons, with the Ombudsman of the Russian Federation, as well as with international human rights NGOs promoting respect for rights, freedoms and lawful interests of persons sentenced to imprisonment and persons detained on remand, coordinates and controls the performance by subdivisions of the*

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<sup>8</sup> Report of the Federal Lawyers' Chamber of the Russian Federation "About the issues of the administration of justice and criminal justice in the Russian Federation with regard to respect of human rights and civil liberties

[http://www.fparf.ru/doklad/pravosud\\_ugolov\\_usti.htm](http://www.fparf.ru/doklad/pravosud_ugolov_usti.htm)[http://www.fparf.ru/doklad/pravosud\\_ugolov\\_usti.htm](http://www.fparf.ru/doklad/pravosud_ugolov_usti.htm)

<sup>9</sup> Ibid

<sup>10</sup> [Fontanka.ru](http://fontanka.ru)

<sup>11</sup> <http://fsin.su/structure/regulation>

*FSIN of their functions in relation to the legal regulation of activities of penal facilities and organs, as well as to the respect for rights and lawful interests of detainees and convicted persons.*

76. To the best our knowledge, the Directorate does not carry out independent inspections to monitor the respect for rights and lawful interests of persons sentenced to imprisonment and persons detained on remand. However, officers of the Directorate may accompany the Ombudsman of the Russian Federation and his representatives, as well as delegations of international bodies during their visits to prisons.
77. There is no aggregate statistics of regional ombudsmen's visits to penal institutions. The number of visits is directly dependant on the activeness of a particular regional ombudsman and his/her interest in and commitment to improving the situation in penal institutions of the region. Moreover, as a rule, visits to penal institutions are connected with complaints received by regional ombudsmen from prisoners. One positive example is the work carried out by Tatyana Morgolina, the Perm Regional Ombudsman. In 2008-2010, a comprehensive inspection of all remand centers of the region was carried out due to her efforts and cooperation with human rights activists of the region; as a result conditions of detention were significantly improved. Another example is the work of the Chelyabinsk Regional Ombudsman<sup>12</sup>, who regularly visits penal institutions of the region in response to complaints from prisoners. The latter example is also remarkable because the Ombudsman blogs about the problems faced and solutions achieved.
78. At present regional ombudsmen exist in 66 regions of the Russian Federation. In other four regions (Mariy El and Tyva Republics, the Tyumen Region, and the Chukotka Autonomous Region) the regional laws on ombudsmen have been adopted, but no one has yet been appointed to this position. In general, the promotion of the institution of ombudsman in the Russian regions should be considered successful. The activities of all the ombudsmen in the Russian regions are governed by regional laws. The Federal Constitutional Law "On the Ombudsman in the Russian Federation" served as a model for most of the regional laws.
79. Their activities are funded by regional budgets; the funds are often insufficient. Due to the lack of funds ombudsmen are often unable to visit penal institutions, most of which are located rather far from the capital of the regions. In many regions the funding is allocated in a "manual manner", only after an order of the head of the regional administration; to a large extent this undermines the basic principle of the institution of ombudsman – its independence from the executive authorities.
80. The Public Council on the Problems of Operation of the Penal System is a standing consultative organ within the structure of the Federal Penal Service. The Council holds meetings, which are the main form of its operation, at least once every six months. Each regional directorate within the penal system has its own public council.
81. The main goal of the Council is to ensure public participation in solving problems facing the penal system and in protecting the rights and lawful interests of staff of the penal system and its veterans, as well as convicted persons and persons suspected and accused of having committed a crime and detained in remand centers. Members of the central and regional

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<sup>12</sup> <http://sevastyanov-a.livejournal.com/70099.html>; <http://sevastyanov-a.livejournal.com/69130.html>; <http://sevastyanov-a.livejournal.com/?skip=20>

public councils may hold meetings and visit local penal institutions. However, such visits are not carried out on a regular basis and do not aim to monitor the level of human rights enforcement and of the respect for the rule of law.

82. In most cases during such visits to penal facilities the councils organize various events for the convicts, such as sports competitions, chess tournaments with the participation of famous chess players, concerts, meetings with writers, etc. There are, however, rare exceptions. For example, members of the Public Council of the Irkutsk Region carry out much work with complaints from convicted persons. It became possible among other things due to a special Instruction on visiting penal institutions adopted by the FSIN in 2011<sup>13</sup>. The Instruction granted member of the Council with the right to examine any premises of a facility, to conduct personal meetings with convicts and staff, to obtain information, and to discuss the results with the administration. Some public councils help convicted persons to prepare for the release, informing them of the center for rehabilitation for persons with undefined place of residence, discussing the benefits of receiving education, etc.
83. In June 2008 the Federal Law No. 76-FZ "On the Public Control over Securing Human Rights in Facilities of Involuntary Confinement, and Assistance to Persons Held in Facilities of Involuntary Confinement" came into force in the Russian Federation; in the past 4 years it has been amended on several occasions<sup>14</sup>. The Law governs the following types of closed institutions:
- facilities for serving administrative detention and administrative arrest;
  - facilities for serving disciplinary arrest;
  - facilities for detention of suspects and accused on remand;
  - penal institutions;
  - disciplinary military units, military custody;
  - centers for temporary detention of juvenile offenders within the framework of the Ministry of Interior;
  - closed educational facilities.
84. The Law provides that a supervising public commission (SPC) shall be created in each region of the Russian Federation; such commissions shall exercise its powers within the territory of one region of the Russian Federation.
85. The key tasks of supervising public commissions are the following.
- 1) ensuring the control of the public over the respect for human rights in places of involuntary confinement;
  - 2) preparing decisions in the form of statements, proposals, and submissions as a result of performing the public control;
  - 3) assistance to establishing cooperation between NGOs, authorities of involuntary confinement facilities, regional, local and other authorities.
86. The Federal Law No. 76 provides that no less than two members of a SPC may visit

<sup>13</sup> Regulation "On visiting penitentiary system of the Irkutsk region," FSIN Irkutsk Region, 2011

<sup>14</sup> Amendments made by the following laws № 132-FZ dated 01.07.2010, №378-FZ dated 03.12.2011, №411-FZ dated 06.12.2011.

involuntary confinement facilities without a special permission after notifying the authorities of a facility or a territorial authority, and given that they abide by internal rules and regulations. One exception is facilities and premises ensuring security and guarding the convicts, for visiting which an authorisation of the head of the involuntary confinement facility is required. SPC members are entitled to meet with and interview detainees and prisoners; in remand centers such interviews may take place in the reach of the staff's sight and audibility, and in prisons and colonies – in the reach of sight, but not audibility.

87. Convicts may complain to a SPC orally and in writing; such complaints shall not be subject to censorship. SPCs are entitled to obtain from facilities' authorities information and documents necessary to carry out the control, including to examine a convict's medical record with his/her consent. SPCs may forward the conclusions of their inspections as well as queries not only to penal facilities and authorities, but also to executive authorities of the region as well as to prosecutors' offices. A member of a public monitoring commission cannot carry out inspections in an involuntary confinement facility where his/her relative is detained, and also if s\he has a status of a victim, a witness, acts as a defense counsel, or otherwise takes part in a criminal case in which a person detained in an involuntary confinement faculty is involved. SPCs' members are not compensated for their work.
88. According to the Law No. 76-FZ the SPC is formed by the Public Chamber of the Russian Federation. Candidates can be nominated by NGOs. Each organization can nominate no more than two candidates; it shall have human rights protection as one of the goals in its articles of association, and shall exist no less than 5 years. The decision to appoint or to dismiss a particular candidate is taken by the Council of the Public Chamber.
89. SPCs do not possess legal personality, and, therefore, cannot receive funding. The work of SPCs was supposed to be funded by NGOs which delegated their staff members to the commissions. In practice this lead to the situation where most SPCs are underfunded, which reduces the effectiveness of their work, especially in larger regions, where the number of facilities under monitoring may exceed 100.
90. According to the amendment introduced into the Law No. 76-FZ in December 2011, state authorities may provide financial, pecuniary, consultative, informational and other types of assistances to public monitoring commissions, and the Public Chamber may provide practical help to commissions, including the provision of necessary documents and education.
91. Since the Law No. 76-FZ came into force, SPCs' members visited involuntary confinement facilities over five thousand times, received and examined over 10 thousand letters, complaints and applications, sent over 1800 conclusions as a result of their inspections to various state organs. There are currently 78 SPCs in Russia involving about 745 persons. Most members of these commissions do not have sufficient experience with involuntary confinement facilities and require significant support and education. In some regions there are not enough public activists wishing to work for SPCs. This is mainly due to the insignificant number of activists involved in the protection of human rights in confinement facilities in the regions. Other factors influencing the situation are the excessive workload of human rights NGOs, lack of funding, including funding for travelling to facilities of involuntary confinement, and human rights defenders' skepticism, which has been taking shape for years and is understandable. During 4 years of SPCs' existence the number of

participants of the public monitoring has increased only due to the creation of new regional commissions.

92. Another problem concerns the qualitative composition of SPCs, which has undergone significant changes throughout almost the whole country in the past 4 years – the number of representatives of human rights organizations has decreased (now about a quarter of commissions' members) and the number of representatives of organizations supported by the authorities, as well as former law enforcement officers have increased.
93. NGOs consider that this threatens the independence of the monitoring. The following factors contribute to this process:
- insufficient number of human rights organizations in the regions;
  - unwillingness to create a real functioning public control system;
  - vulnerable position of human rights organizations in the face of regional authorities and quasi-state organizations, such as regional public chambers, which de facto influence the elections to SPCs by recommending loyal NGOs and not recommending those which have an independent standpoint (de jure such recommendations are not binding);
  - activeness of (pseudo) civil associations created by former law enforcement and military officers (veterans) which act in support of local law enforcement agencies and in agreement with them and send their candidates to SPCs aiming at "cooperation" (as they understand it), but not control.
94. Even though public control over involuntary confinement facilities is governed by federal law, members of monitoring commissions often face serious problems. Active members of SPCs with a well-pronounced human rights stance are sometimes refused access to facilities<sup>15</sup>, notwithstanding that visits require only notification, but not authorization of facilities' administration or territorial authorities. For example, SPCs' members sometimes have to wait for an hour or longer before they are allowed into a facility; the reason given may be the absence of the head of the prison or officer who could accompany the visitors during the visit. On several occasions members of the SPC of the Sverdlovsk region were not allowed into a facility where convicts were on a hunger strike. On several occasions SPCs' members were not allowed into a prison without being subjected to a personal search, notwithstanding that SPCs' members have privileges along with ombudsmen, prosecutors, and other officials, including the President of the Russian Federation. Moreover, the personal search was carried out with violations, for example participation of attesting witnesses was not ensured (or it was proposed that prison staff or convicts, who are partial and not independent from the prison authorities, would be attesting witnesses), no report was drawn up.
95. The work of SPCs' members significantly varies from one region to another; this is due not only to varying level of recourses and professionalism of the members, but also because the task of public control is understood differently by SPCs' members, as well as by prison authorities. The authorities of the vast majority of prisons are not prepared for meaningful cooperation, for uncovering and solving problems; rather they view SPCs as a threat that

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<sup>15</sup> Members of SPCs of the Sverdlovsk Region, the Rostov Region, the Nizhiny Novgorod Region, and Moscow were denied access to facilities under various pretexts (untimely or "incorrect" notification, demand to conduct a personal search of the visitors, etc.).

their omissions or even violations would become known.

96. It should be specially noted that according to the Federal Law, SPCs' members may be held liable for disclosure of information regarding the investigation and for violations of the regime. In 2010 two administrative cases were opened against SPCs' members by prison authorities because of the use of technical equipment during meetings with convicts. The law is insufficiently clear on use of equipment; for example, the use of "cinematographic, photo and video recording as well as personal interviews are carried out with written consent of the convicts" (Article 24 (4) of the Penal Code), but the SPCs' members right to bring such equipment to the territory of a facility is not mentioned in the Law "On the Public Control" or other pieces of legislation. At the same time, it is stated that SPCs' members shall comply with the legislation and lawful requirements of prison authorities.

*The case the Sverdlovsk Regional SPC's member, Aleksey Sokolov, who was sentenced to 3 years of a maximum security prison, became infamous. As a representative of the Sverdlovsk Regional Public Monitoring Commission and a number of human rights organizations in the region, he has for a long time been active in the protection of constitutional rights and freedoms of citizens of the Russian Federation by providing legal assistance, conducting investigations into cases of torture and cruel treatment, the results of which were made public. Aleksey Sokolov became famous all over the country for his film "Factory of torture..." based on documentary footage of prison staff beating convicts. Aleksey was charged under Article 162 (4)(b) of the Criminal Code (robbery) and sentenced to 3 years of imprisonment. According to human rights activists, the criminal case against Sokolov was fabricated and was a revenge of law enforcement authorities for his human rights activism.*

97. In general, taking into account the current system and the deficient legislation SPCs cannot be considered an independent system of public control.

### **Question 3 g)**

98. Soldiers' Mothers of St. Petersburg continue to record well-founded cases of torture, cruel, inhuman and degrading treatment or punishment in the armed forces. These practices constitute violations of articles 1 and 16 of the Convention. Below are only some of the examples documented by our organization.

*In December 2009, Soldiers' Mothers of St. Petersburg were contacted by the mother of Mr Egor SHAFRANOV who had been beaten up by his fellow soldiers in the very first night of his stay at military unit no. 22558 located in the village of Novoseltsy, Novgorod Region. On 9 April 2010, the deputy military prosecutor of St. Petersburg wrote to Soldiers' Mothers of St. Petersburg in connection with the case of Mr Shafranov. The military prosecutor confirmed that Mr Shafranov had to leave military unit no. 22558 due to continuing ill-treatment there. When he returned, he complained about ill-treatment. The military investigators initiated criminal proceedings against a certain Z. who was accused of beating Mr Shafranov at night. Mr Shafranov, due to the pressure from Soldiers' Mothers of St. Petersburg, was demobilized.*

*In October 2010, Soldiers' Mothers of St. Petersburg were contacted by Mr Alexander POLYAKOV who alleged hazing at military unit no. 20697 (military intelligence) in St. Petersburg. He gave a written statement explaining in detail how he had been beaten up and ill-treated by senior military servicemen in July-September 2010. He was sent to the hospital but, fearing that he might be returned to military unit no. 20967, had to leave it. Mr Polyakov's statement together with accompanying documentation was forwarded by Soldiers' Mothers of St. Petersburg to the military prosecutors. In November 2010, due to the pressure from Soldiers' Mothers of St. Petersburg, Mr Polyakov was demobilized.*

*In August 2010, Soldiers' Mothers of St. Petersburg were contacted by Mr Egor KHOKHLOV who had to leave military unit no. 02511 in Kamenka, Leningrad Region. According to his written statement, he was beaten up by his fellow soldiers who also forced him to run around wearing a gas mask. He referred to his assailants by name and explained that the beatings were part of an extortion campaign rampant in the military unit.*

*In June 2011, Soldiers' Mothers of St. Petersburg learnt about the situation of Mr Sergei DEVYATILOV who had been transferred to the emergency unit of the military hospital allegedly following his severe beatings at military unit no. 20506, that is aboard a military vessel near Murmansk. On 21 July 2011, military prosecutors from Murmansk wrote to the chairperson of Soldiers' Mothers of St. Petersburg in connection with the case of Mr Devyatilov, informing them that criminal proceedings involving charges of aggravated and violent abuse of office were initiated against another sailor from the same vessel.*

*In September 2011, Soldiers' Mothers of St. Petersburg were contacted by Mr Evgeniy RADEEV who related the following about his service at military unit no. 73845 in Toksovo, Leningrad Region. Since the beginning of August 2011, Mr Radeev was being harassed by a certain soldier Z. who insisted that Mr Radeev would be at his service. On 10 August 2011, Z. severely beat Mr Radeev up for his failure to serve him a cup of tea. Similar incidents occurred on 12-14 August 2011 when Z. found imagined violations of discipline allegedly committed by Mr Radeev and severely beat him as an immediate consequence of this perceived disobedience. Z. also demanded that Mr Radeev regularly give him money and buy cigarettes for him. The same happened during the rest of August 2011 and in the beginning of September 2011. Z. also intentionally tore Mr Radeev's uniform, forcing Mr Radeev to urgently repair it to avoid being disciplined for the loss of his uniform. Beatings became harsher with the use of fists and legs, Mr Radeev had to leave the military unit. His detailed testimony was forwarded by Soldiers' Mothers of St. Petersburg to justice colonel Kiryanov, head of the military office of the Russian investigative committee in St. Petersburg.*

99. The dynamics of violence in the Russian army is on the decline, the number of such cases is

not decreasing.

100. Most of the soldiers who had fallen victim to violent hazing explained that beatings were due to their refusal to hand over their money and/or valuable personal belongings (such as cell phones) to older servicemen. As such, these acts were usually part of widespread extortion which is endemic in the Russian army. Similar patterns of beatings are reported (beatings with fists through victim's hands placed on his head to avoid bruising). In some cases beatings serve as retaliation to soldiers who failed to obey or were perceived as failing to obey the informal "rules of the game" pursuant to which "younger" soldiers (who have served less time) should submit to power and are frequently left at the mercy of the "older" ones (who have served for longer).
101. In our experience, in most instances of beatings in the army and other types of violent hazing, elements of coercion and intimidation inflicted by those who are of higher military rank or who are perceived as being more senior are present. Hence these cases should be classified as torture within the meaning of article 1 of the Convention.
102. Impunity for torture-related practices is a systemic problem which is in direct contradiction of article 12 of the Convention.
103. Although article 117 of the Russian Criminal Code now refers to torture (although this definition is not in full compliance with article 1 of the Convention), in over fifty cases of attempts to investigate and prosecute torture-related practices which Soldiers' Mothers of St. Petersburg followed up in 2009-2011, no one was convicted under this provision.
104. Convictions for torture-related practices which were secured concerned mostly lower-ranking perpetrators who received sentences without actual imprisonment (such as fines or suspended prison sentences). Therefore, the Criminal Code's provision on torture is not effectively applied by the military investigators. An important overview of some investigation attempts can be found in chapter 2 "Impunity" of "The Black Book" by Andzej Belovranin published in St. Petersburg in 2011 with support of the Nordic Council of Ministers and in co-operation with Soldiers' Mothers of St. Petersburg.

*For example, in 2009 Mr Artyom DOGA complained about the beatings by Sergeant K. at the military unit in Sapyorny Village (Leningrad Region). Mr Doga testified as follows: "I was hit in the neck every day for the smallest fault, even for placing my boots crookedly... On 26 May [2009] I was hit in the head with a bolt carrier from a machine gun by Sergeant K. because he asked me for a rag and I did not have one. I was also hit in the back with a stick for crawling poorly... On 3 June 2009, Sergeant K. hit me in the kidneys. On that day he also threatened to kill me".*

*Mr Doga was also beaten up by others, as he testified: "On 2 June [2009] I received several blows from E.M. namely in the chest and face and my head was hit against a cupboard because I avoided a blow to the neck and wanted to defend myself... From contract soldier L. I received several blows to the neck which practically left me unconscious. This happened because I didn't bring beer back from the car because when I reached the car the beer was not there. In the morning of 3 June 2009 I was*

*beaten up for dressing too slowly: I was hit in the kidneys and the neck...". Unable to tolerate beatings and harassment any further, Mr Doga chose to leave the military unit.*

*However, on 25 June 2009, military investigator justice Lieutenant Danilov refused to initiate criminal proceedings with the following reasoning: "Over the course of the preliminary examination [Mr Doga's] allegations remained unsubstantiated. L. explained that from the very beginning of his service [Mr Doga] showed himself to be against everything, complained all the time that the physical exercises in the reconnaissance platoon were more difficult than in others... although he was placed in that platoon at his own request... On 3 June 2009, Mr Doga had cuts on his face and neck at morning call. When asked about the origins of the cuts Mr Doga answered [according to L.] that he had cut himself while shaving... [According to K.] physical violence was never used against Doga. However, he always complained that he did not like serving in the army".*

*The military investigator attempted to portray Mr Doga as a lazy soldier who was unwilling to serve and whose injuries, bruises and abrasions were caused by "careless shaving". Most of the witnesses questioned by the investigator were those who, according to Mr Doga, participated in the beatings. No face-to-face confrontation was arranged by the investigator.*

*Mr Doga filed complaints against the 25 June 2009 decision of the military investigator citing violations of articles 3 and 13 of the European Convention on Human Rights. He also contended that no true cause of his injuries had been established, and that the witnesses' testimonies had many contradictions.*

*On 8 August 2009, the investigator's superiors from the Leningradsky Military District responded as follows: "Study of the preliminary examination file led to the conclusion that the 25 June 2009 decision taken by military investigator Danilov was legitimate and justified, and there is no reason to forward the case to another investigator". No further explanation was given.*

*Meanwhile, Mr Doga was demobilized for medical reasons, with assistance rendered by Soldiers' Mothers of St. Petersburg. He no longer had the strength to continue fighting for his rights. In his opinion, fighting with military prosecutors was futile and consumed too much of his strength. Thus, he chose not to lodge any further complaints, such as challenging investigator Danilov's decision before the military courts.*

105. The case of Mr Konstantin PANENKOV who was serving in the village Cheryoha (Pskov Region) is also indicative. Despite the fact that Panenkov's father was a former military

officer, the family was also unable to obtain justice and get redress for the aggrieved soldier.

*Mr Panenkov was drafted in November 2008 and, according to him, from the very beginning of his service experienced beatings and abuse. But it became much worse after his return from summer break – Mr Panenkov was late as he had been in a hospital.*

*In the harsh conditions of hazing in the Russian Army, the weak and “guilty” are selected and thrown to the bottom of the bullying hierarchy. Hospitalization, even for a good reason, is considered as an attempt to dodge duty, this is seen as one of the worst “sins” because everyone wishes to spend less time in the barracks than other recruits.*

*Mr Panenkov describes the start of his ordeal in the following terms: “On 10 August 2009, the battalion was located at the training grounds near Strugi Krasnye Village [in Pskov Region]... The company commander senior lieutenant G. approached me, grabbed me by the neck with his left hand for no reason, bent me forward, and then punched me no less than three times in the face with his right hand. I bled profusely as a result of the blows I received from G. All company soldiers witnessed that incident. I received no medical assistance”. This abuse by a superior gave subordinates “permission” to do the same.*

*From the rest of Mr Panenkov’s testimony: “[On 15 August 2009] Sergeant S., who was displeased that I was sitting while on duty, wearing military boots, kicked my right side with his right foot ... I explained to S. that I was ill after which he pulled me to my feet and struck my left ear with his right hand and as a result I could not hear with that ear for a whole day and I had an awful headache”, “Sergeant M. struck me once on the right side of the head with his right hand causing me to be thrown against the wall. M. did not stop. He approached me and began to choke me. At the same time he threatened to kill me, I felt severely threatened by M. I was very frightened and began to lose consciousness, I was unable to breathe and everything became dark”.*

*On 31 August 2009, the military investigator justice Lieutenant Maslov decided not to institute criminal proceedings into the beatings “due to lack of evidence of the crime”.*

*Mr Panenkov’s father, with assistance of Soldiers’ Mothers of St. Petersburg, successfully appealed this unlawful decision. On 5 October 2009, the investigator’s decision not to institute criminal proceedings was quashed as illegal and unsubstantiated by military high-ranking superior. However, no investigation ensued and no assailant of Mr Panenkov was brought to justice.*

106. The case of Mr Andrei SEMENOV illustrates the evident conclusion that impunity is never without consequences.

*Drafted in June 2009, from the day of his arrival to military unit no. 53609 stationed in the Vladimir Region, Mr Semenov was subjected to extortion and terrible beatings. His older brother Alexander testified: "Having arrived to see my brother taking his oath of duty I noticed that something had happened to him. After a long conversation he told me he needed money to give to the sergeants. On 21 June [2009] I went to Sergeant S. and promised to transfer money. He promised to use force [against my brother] if I failed to do this. [In the barracks] I saw how the sergeants demanded money and threatened to harm anyone who told their family or friends what was happening in the [unit]. They did not care from where or how the soldiers got the money, even if they had to steal it. They were required to give the money to the sergeants".*

*Mr Semenov's family petitioned the military prosecutor's office in St. Petersburg. The case was handled by Mr Tomei, a military investigator, who despite the family's requests and his own previous guarantees, forced Mr Semenov to sign a commitment to return to the Vladimir Region, supposedly to another military unit. When Semenov's family arrived to see the investigator, the latter began to curse them to an extent that the ambulance was called to help Semenov's mother. The details of the case were made public by Soldiers' Mothers of St. Petersburg upon request of the Semenov family.*

*Mr Tomei sued for defamation. On 1 April 2010, his claim was allowed in part by the Kuybyshevskiy District Court of St. Petersburg. Soldiers' Mothers of St. Petersburg were ordered to pay compensation to the military investigator. On 22 June 2010, the District Court's judgment was upheld on appeal by the St. Petersburg City Court.*

*As to the investigation into Mr Semenov's case itself, it was forwarded to another investigator justice, Major Shevchuk, who questioned those whom Mr Semenov had accused of beatings and immediately "established" that "Semenov's testimony was based on his fantasies". Mr Shevchuk also indicated the following in his order: "Furthermore, Mr Semenov's actions reveal criminal elements under article 306 of the Russian Criminal Code [deliberately false report of crime] but considering that Semenov's actions did not have any negative consequences... it is not necessary to launch a criminal case against him".*

107. Thus, the message was clear – those assisting victims will pay damages, and the victim himself was threatened with prosecution for merely reporting a crime committed against him to the authorities.
108. According to the Committee's jurisprudence, "an investigation in itself is not sufficient to demonstrate the State party's conformity with its obligations [under article 12 of the Convention]" (Keremedchiev v. Bulgaria, no. 257/2004, § 9.4, Decision of 11 November 2008, CAT/C/41/D/257/2004). In the cases of hazing in the Russian army most often no investigation takes place, and if it is conducted, its sole purpose usually is to exonerate those responsible and to threaten victims, their families and civil society groups helping them. The majority of those case do not progress to the trial stage, and those trials which take place normally involve low-level perpetrators, very often retired junior officers. Protection of

witnesses and victims in the army is almost non-functioning, the footnote to article 337 of the Russian Criminal Code is very rarely applied in practice.

### Slavery and involuntary labor in the military context

109. Soldiers' Mothers of St. Petersburg have observed widespread practices of unpaid use of soldiers' involuntary labor by their superiors for private purposes. In our submission, such treatment of the military servicemen constitutes inhuman and degrading treatment, in violation of article 16 of the Convention.

*In 2011, the Kostroma garrison military prosecutor's office confirmed unlawful use of soldiers' labor by the commander of the 307<sup>th</sup> military hospital. However, the unlawful practices of de facto servitude of soldiers continued there.*

110. Often the soldiers are used for jobs even outside their military units. The widely known case of Anton Kuznetsov was reported several years ago by Tagesspiegel.

111. Another case, that of Mr Andrei POPOV, is likewise indicative.

*He was drafted into the army from Ershov, Saratov Region in 2000 and subsequently disappeared. In 2011 Mr Popov returned to Ershov and recalled how he had been sold into slavery in Dagestan. He had to work on construction sites and in vegetable gardens there. Instead of helping the victim and ensuring his full rehabilitation, military authorities initiated criminal proceedings against Mr Popov. He was accused of desertion.*

*Mr Popov was forced to accept the charges leveled against him and withdraw his previous testimony about being a de facto slave in Dagestan. According to local civil society activists including Ms Lidiya Sviridova, chairperson of the Saratov branch of the Soldiers' Mothers Union, he changed his testimony after undergoing persistent pressure on the part of the State agents. He was also allegedly promised to be given lighter sentence. Nevertheless, Mr Popov was sentenced to two years' imprisonment.*

*When Ms Sviridova attempted to conduct her own fact finding in Dagestan, he suffered a grave injury under suspicious circumstances. Following her appearance on television outlining Mr Popov's case, Ms Sviridova was accused of extremism.*

*In 2011, another similar case became known. Mr Albert ZIAMBETOV, of the Orenburg Region, served in the same military unit in Saratov Region as Mr Popov. According to him, he was kidnapped and spent five years in Dagestan. He was looking after sheep in one of the distant villages in the Caucasian mountains.*

112. Unfortunately, the military authorities' widespread attitude is to cover up the cases of de facto slavery in the army rather than to investigate them.

113. One of the rare but indicative exceptions is the case of Mr Nikita SIBIN.

*On 24 October 2011, the Balashikha Garrison Military Court convicted chief warrant officer Akulshina of exceeding her official powers. The military court found that in June 2011 Akulshina had “given” Mr Sibin and another soldier to former officer K. who used them to guard his land plot and to help him in the vegetable gardens and in the pigsty. However, the sentence imposed by the court was a meagre fine of 15,000 Russian roubles (less than 300 Euros). Mr Sibin himself received no compensation and/or rehabilitation. He was not recognised as a victim in the criminal proceedings against Ms Akulshina having given testimony only as a witness.*

114. De facto servitude and slavery of the soldiers in the modern Russian army is an absolutely abhorrent phenomenon. It shows that soldiers are considered not as human beings but rather as a commodity.

#### Involuntary psychiatric treatment of the military servicemen

115. Phenomenon of so-called “punitive psychiatry” was sadly common in the Soviet Union. It was widely used to silence dissidents and all those who dared to speak out against the system. Naturally, only insane individuals could have done that. Unfortunately, this abuse of psychiatric services continued after the dismemberment of the Soviet Union and was on several occasions condemned by the European Court of Human Rights and the Constitutional Court of the Russian Federation. Soldiers’ Mothers of St. Petersburg with great concern and regret note the spreading of this type of human rights violations in the military sphere. In our opinion, baseless involuntary placement in a psychiatric hospital constitutes a form of inhuman treatment and, sometimes, punishment.
116. The recent case of Mr Dmitriy SMIRNOV is, in our opinion, indicative. Mr Smirnov contacted Soldiers’ Mothers of St. Petersburg in May 2012.

*Mr Smirnov was drafted into the Russian army in November 2011 and served in military unit no. 35600 in the town of Ostrov (Pskov Region). He was first placed in psychiatric ward no. 22 of the 442<sup>nd</sup> circuit military hospital in St. Petersburg on 10 April 2012 and spent 22 days there, until 3 May 2012. He was initially released in order to be demobilized but on 11 May 2012 was again returned to the same hospital, under the supervision of Dr Dmitriy Puzatkin. No details of her son’s treatment were revealed to Mr Smirnov’s mother. When she visited him on 16 May 2012, Mr Smirnov was unable to recognize her, as he was apparently heavily medicated. The military medics refused to provide Mrs Smirnova with details of her son’s diagnosis.*

*On 21 May 2012 the mother of Mr Smirnov applied to the military prosecutor’s office. She argued that the military psychiatrists had had no legal grounds for involuntary hospitalization of her son.*

*On 25 May 2012, Soldiers’ Mothers of St. Petersburg wrote to the Federal Ombudsperson in order to attract his attention to the case of Mr Smirnov. They asked him to verify whether lawful grounds existed for Mr Smirnov’s involuntary placement in a psychiatric ward of the military hospital.*

*Following these complaints and letters of support, the 442<sup>nd</sup> circuit military hospital refused entry to Mr Smirnov's mother. She is now prevented from visiting her son and is unaware of the details of his treatment. She fears that the medication he receives may be detrimental to his mental health. Moreover, she was allegedly threatened by the military psychiatrists who let her understand that her son would not receive good treatment in reprisal for her complaints against them.*

*On 28 May 2012 information was received that the military psychiatrists would baselessly diagnose Mr Smirnov with schizophrenia. This diagnosis will make him unfit for meaningful work and a disabled person for life. His mother still does not have access to Mr Smirnov's medical documents in order to be able to obtain a second medical opinion as to the true gravity of his mental condition.*

*The civil society groups in St. Petersburg, with the permission of Mr Smirnov's mother, made the case public and called for wider attention to what is occurring in military psychiatry. Complex examination of the functioning of the psychiatric ward at the 442<sup>nd</sup> military hospital was called for. On 1 June 2012, Soldiers' Mothers of St. Petersburg received a written explanation from the military prosecutor of military unit no. 56680 in Vladimir. From this explanation it follows that there was no court decision justifying Mr Smirnov's repeated placement in a psychiatric hospital and he was placed there simply because military psychiatrists found his behavior at some point of time abnormal.*

117. Placement of military servicemen in psychiatric hospitals should be voluntary or, as in the case of civilians, pursuant to a court decision. The aforementioned case is not unique.

#### Lack of redress and rehabilitation for victims of torture in the army

118. There is no practical provision in the Russian legal system, especially in the military context, for the victim of an act of torture and other forms of ill-treatment to obtain redress and to have a practically enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible, in violation of article 14 of the Convention. In practice, even basic medical care is not adequate for military survivors of torture.

*In 2009 Soldiers' Mothers of St. Petersburg were following the case of Mr Roman KAZAKOV. On 19 September 2009, Mr Kazakov was found in a locked military vehicle at the garage of the military unit in Kamenka (Leningrad Region). He was hospitalized as he was seriously poisoned by carbon monoxide and numerous bruises and injuries were found on his body. He was in coma for six months. Meanwhile, no meaningful investigation was conducted into the incident. Mr Kazakov has now regained conscience and together with his family is trying his best to rebuild his life.*

*The Ministry of Defense, however, refuses to provide requisite medical assistance although Mr Kazakov badly needs costly medical rehabilitation in order to ensure restoration of all brain functions.*

*In 2010 Mr Roman SHEMAKIN was badly beaten by other soldiers in a military unit stationed in the Moscow Region. In spite of ensuring that medical assistance is rendered to him, his superiors allegedly dressed him in civilian clothes and dropped his body in a nearby drain. They left him to die. Another fellow soldier saved Shemakin's life by clandestinely calling the civilian ambulance service and letting them know the situation.*

*Mr Shemakin suffered open head injury with heavy brain contusion and numerous tear-contused wounds of the head. He lost four teeth, and his right hand was broken. In addition, his trachea was badly damaged. In spite of all these grave injuries, the military authorities initially refused to properly treat the former soldier in a medical hospital or pay for his treatment in a civilian one. The term for which Mr Shemakin's medical treatment was covered by the Ministry of Defense was extended only after the intervention of Soldiers' Mothers of St. Petersburg on his behalf.*

119. Apart from medical rehabilitation for military torture survivors which is practically unavailable, psychological rehabilitation is completely left out. However, it is widely accepted that as full rehabilitation of torture survivors as possible pursuant to article 14 of the Convention should comprise of medical and psychological care as well as legal and social services. Rehabilitation should include both restoration of normal functions and acquisition of new skills required by the changed circumstances of a survivor in the aftermath of torture or other forms of ill-treatment. There are no sufficient staff resources, the social stereotypes prevail which are based on the military "prison-like aesthetics".

### **Article 3**

#### **Question 4.**

120. The effective Law on Refugees does not provide any guarantees against the return of persons while they appeal denial of temporary asylum in Russia, although one of the most important criteria for granting temporary asylum is a serious risk that the applicant may face treatment contrary to Article 3 of the Convention in his/her country of origin. The RF Government's Decree of 23 April 2012 No 363 confirms the right of such persons to stay legally in Russia, which protects them from administrative expulsion; if, however, the authorities of the country of origin request extradition of the asylum-seeker, there is no guarantee that s/he won't be returned before exhausting his/her right to appeal the denial of temporary asylum. Specifically, the Plenary of the RF Supreme Court has stated that its Resolution No 11 of 14 July 2012 – namely that the entry into force of a decision to extradite does not allow actual transfer of the person to the requesting state before a final decision on his/her application for temporary asylum - applies only to judicial proceedings

on extradition appeals, but this provision is not binding on the Prosecutor General's Office and the Federal Penitentiary Service responsible for the implementation of extradition decisions, and the law does not prohibit them from surrendering the person to the requesting State.

121. The RF Government's Decree [No 1002](#) of 14 December 2009 expands the list of agencies authorized to make decisions on undesirability of a foreigner's stay in Russia, entailing deportation ([Article 25.10 of the Federal Law of 15 August 1996 No 114-FZ on the Procedures of Exit from and Entry into the Russian Federation](#)). The procedure for adopting such decisions does not give the person in question a possibility to present his/her arguments about the risk of being subjected in the destination country to treatment contrary to Article 3 of the Convention. Presenting such arguments at the appeal stage after the decision has been adopted is very difficult, because:
- a) the national legislation does not contain specific rules on how to appeal decisions on undesirability of a foreigner's stay in Russia;
  - b) by general rules of appeal against decisions of public authorities and officials in civil proceedings (Chapter 25, RF Code of Civil Procedure), filing a court appeal does not suspend execution of the challenged ruling - this matter is left to the judge's discretion (Part 4, Article 254 of the RF CPC);
  - c) the court must consider an appeal within 10 days (Part 1 Article 257 of the RF CPC);
  - d) a person whose stay in Russia is found undesirable must leave the Russian territory before a deadline which is established by the decision-making authority and rarely exceeds a few days considered sufficient for exiting the country.
122. Hence it is obvious that a person fearing a return to his/her country of origin where he risks being subjected to prohibited treatment does not have an effective remedy to suspend deportation until the remedy is exhausted.
123. Decisions to extradite people at the request of foreign governments are the responsibility of the Prosecutor General's Office. In recent years, the Prosecutor General's Office has refused a few extradition requests, but there is no evidence that such decisions had taken into account a risk of ill-treatment contrary to Article 3 of the Convention, because by law the Prosecutor General's Office does not have to disclose to the applicant the reasons why his extradition is refused.
124. Appealing against extradition decisions is difficult, since the national legislation does not obligate the Prosecutor General's Office to notify the applicant's attorney of their decision to extradite his client. Given that the foreigner with respect to whom the decision to extradite is taken is usually unfamiliar with the relevant provisions of the Russian law and is held in custody with limited possibility of promptly contacting his attorney, these circumstances substantially limit his right to defense. Exercising this right is even more difficult for applicants who do not speak Russian, since they are usually served the notice of extradition in absence of an interpreter. Thus, it became possible to extend the deadline for appeal against the decision to extradite Nabi Sultanov to Uzbekistan where he faced a serious risk of being subjected to prohibited treatment only after the matter was considered by the

Supreme Court following an urgent appeal to the Russian Government by the UN Special Rapporteur on the Independence of Judges and Lawyers.

125. A specific feature of the Russian law is that essentially the same concept of deportation is split into two, namely administrative expulsion and deportation per se.
126. Deportation means forced expulsion of a foreigner (stateless person) from the Russian Federation in case of loss or termination of the legal grounds for his/her stay (residence) in Russia (the last paragraph of Part 1, Article 2 of the Federal Law on the Legal Status of Foreign Nationals in the Russian Federation). Deportation is possible only in cases where:
  - a foreigner's (stateless person's) permitted duration of stay in Russia is reduced;
  - a foreigner's (stateless person's) temporary residence permit is revoked;
  - a foreigner's (stateless person's) permanent residency is revoked (Article 31 of the Federal Law on the Legal Status of Foreign Nationals in the Russian Federation);
  - a person previously granted refugee status or asylum is stripped of that status (Article 13 of the RF Law on Refugees).
127. Administrative expulsion means involuntary and supervised removal of a foreign citizen (stateless person) outside Russia or his/her own supervised exit from the country enforced on the basis of the Russian Code of Administrative Offenses. Reasons for such expulsion may be minimal, since the Administrative Code allows expulsion of an immigrant for any violation of immigration rules.
128. These two co-existing different enforcement mechanisms, even though the underlying legal provision and the consequences are the same (a ban from entering Russia for five years) are clearly the result of an error on the part of the lawmakers - evidenced by the fact that the RF Law on Refugees explicitly mentions "expulsion (deportation)" as synonyms - but the confusion is supported by senior officials of the Federal Migration Service since it gives their officers plenty of room for arbitrary discretion.
129. An asylum seeker who is denied asylum may face administrative expulsion or deportation for "violation of immigration rules effective in the Russian Federation" (Article 18.8 of the Code of Administrative Offenses), since s/he cannot file for registration with the immigration authorities without a legal status in Russia.
130. However, the difference lies in the fact that administrative expulsion is ordered by a court, so the person facing expulsion still has a chance to contact his/her attorney and to appeal the ruling. Note that many cases have been reported where administrative expulsion was prompt and denied the subject his/her right to appeal (see ECtHR judgment of 11 December 2008 in Case No 42502/06 Muminov v. Russia).
131. In contrast, a deportation decision is taken by officials, namely by the Director of the Federal Migration Service or by his deputy or by the head of any FMC Regional Office. We wish to emphasize that denial of asylum automatically entails deportation and does not require any review of the circumstances or a judicial decision.

132. Refugees usually await deportation or administrative expulsion in a detention center for foreign nationals. While there, most of them can neither appeal the decision independently nor access the UNHCR, an attorney or an NGO for help with their appeal. Deportation decisions are taken in private and virtually rule out any possibility of appeal. There have been deportations of refugees arriving from China (see ECtHR cases *X v. Russia* and *Y v. Russia* closed by the applicants' request to avoid a threat to their lives in China) and Afghanistan immediately following completion of the appeal proceedings, but most of these cases remain unknown, since the deportation decision is taken and implemented in such a way that the deportees are not able to seek help from the UNHCR or an NGO, nor appeal in a court.
133. In recent years, the Russian authorities have increasingly relied on administrative expulsion in its efforts to transfer persons to states requesting their extradition. Expulsion decisions are taken by courts of general jurisdiction based on a report of administrative violation from the local FMC Office and may be appealed to the regional court of the respective federal subject (region). Courts of both instances refuse to examine arguments concerning the person's risk to be subjected to torture in the country of destination assuming that these arguments are not relevant in cases dealing with a foreigner's violation of immigration rules in Russia. The government claims that such arguments cannot be considered by courts in the administrative proceedings since their duration is very short and "Moreover, the alleged risk of ill-treatment in case of expulsion was not a legally relevant fact and the court examining such a complaint was under no obligation to ascertain it"<sup>16</sup>. They fail to take into account the fact that the consequences of administrative expulsion and extradition are identical for the applicant, since in both cases s/he falls into the hands of the state requesting his/her return. It is important to note that in some cases such attempts were made by explicit instructions from the Prosecutor General's Office, indicating that the latter ignores the risk of the deportee's prohibited treatment in the country of destination<sup>17</sup>. In such cases, only interim measures applied by the European Court of Human Rights under Rule 39 of the Rules of Court have prevented surrender of a person to the state requesting his/her transfer<sup>18</sup>.
134. Russia has not amended Article 18.8 of the Code of Administrative Offences punishing violations of immigration rules by a fine with or without administrative expulsion. The government did not take into account the findings of the Committee against Torture noting at its Thirty-seventh Session in November 2006 "the widespread and broad use of administrative expulsion according to article c18.8 of the Code of Administrative Offences for minor violations of immigration rules".
135. The Committee noted in its recommendations that "*The State party should further clarify the violations of immigration rules which may result in administrative expulsion and establish clear procedures to ensure they are implemented fairly*".
136. However, Russia has failed to make the recommended changes to the Administrative Code, perpetuating the above violations. The situation will persist as long as no changes are made to establish differential criteria governing punishment for violation of immigration rules so that it is clearly determined where administrative expulsion may be enforced, taking into account the severity, scope and nature of any damage inflicted, as well as the offender's guilt

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<sup>16</sup> See *Yakubov v. Russia*, № 7265/10, judgment of 08.11.2011, § 51.

<sup>17</sup> E.g. in cases of deportation to Uzbekistan of Rustam Muminov, Hurmatillo Khodjaev, and others.

<sup>18</sup> See, for instance, *Yakubov v. Russia*, № 7265/10, judgment of 08.11.2011, § 25, 28.

and danger to society. It is unacceptable that such matters are left to the discretion of police and immigration authorities.

137. Order of the Russian Ministry of Interior and the Federal Migration Service of 12 October 2009 N 758/240<sup>19</sup> extends the authority to decide on deportations to the heads of the FMC regional offices. "6. Decisions on deportation of foreign nationals shall be made by the chief (head) of the territorial office of the Russian FMS upon reasoned submission from the chief (head) of a structural unit of the territorial office of the Russian Federal Migration Service or by the director of the Russian Federal Migration Service upon reasoned submission from the chief (head) of the territorial office of the Russian Federal Migration Service". Before this order, deportation decision were made exclusively by the FMS director. This change has led to a sharp increase in the number of deportations which cannot be prevented (362 deportations in 2010 and 656 deportations in 2011 vs. 60 deportations in 2009)<sup>20</sup>.
138. Due to reasons mentioned in para 120 above above, we cannot agree with the government's statement that the national legislation conforms with the international refugee law (Section 156 of the report).
139. In addition, when asked about its departments governing extradition and deportation, the Government failed to provide any information on who makes decisions about undesirability of a foreigner's stay in Russia. We believe that the main reason for withholding information about this ever-increasingly used mechanism is the fact that attempting to appeal such decisions under the national law is a priori ineffective (para 121 above).
140. Paradoxically, courts accept their own helplessness in dealing with appeals against FSB's decisions to declare foreign nationals and stateless persons "undesirable aliens". Thus, during an appeal hearing on a complaint from Dmitry Ivanovich Dubonos, a Ukrainian national, a representative of the FSB Office in Arkhangelsk Region stated, without offering any evidence, that Dubonos was a threat to Russia's security and indicated to the court that "the effective Russian law does not currently authorize the judiciary to review the FSB officials' acts concerning these matters". The court accepted the argument.

## Question 5

141. Diplomatic assurances from the requesting states are almost always mentioned in extradition cases. In all cases, except those described below (para 146 below), courts regard assurances as adequate protection against violations of the applicant's rights under Article 3 of the Convention, arguing that such assurances are sufficient to refute information from independent and authoritative sources about systematic and widespread use of prohibited treatment in the requesting state. The European Court of Human Rights has repeatedly warned against such an approach, including in its judgments concerning Russia<sup>21</sup>.

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<sup>19</sup> <http://www.fms.gov.ru/law/866/details/37127/2/>

<sup>20</sup> [http://www.fms.gov.ru/about/statistics/data/Form 1-RD of 2011 yearly statistics](http://www.fms.gov.ru/about/statistics/data/Form%201-RD%20of%202011%20yearly%20statistics)

<sup>21</sup> See № 2947/06 *Ismoilov and Others v. Russia*, № 8320/04 *Ryabikin v. Russia*, № 42502/06 *Muminov v. Russia*, № 52466/08 *Khodzhayev v. Russia*, № 21055/09 *Khaydarov v. Russia*, № 26876/08 *Kolesnik v. Russia*, № 1248/09 *Yuldashev v. Russia*, № 14049/08 *Abdulazhon Isakov v. Russia*, № 54219/08 *Karimov v. Russia*, № 25404/09 *Gafarov v. Russia*, № 15303/09 *Sultanov v. Russia*, № 12106/09 *Ergashev v. Russia*, № 11209/10 *Rustamov v. Russia*

142. We believe that Russia lacks effective mechanisms for monitoring the requesting party's observance of its own assurances of humane treatment in regard of the extradited person. It is confirmed by the fact that the Russian authorities failed to submit to the European Court any information about such mechanisms in any of the cases concerning the applicants' expulsion and/or extradition. It is also evidenced by Russia's failure to implement the relevant ECtHR's decisions and establish contacts with Rustam Muminov<sup>22</sup> and Abdugani Kamaliyev<sup>23</sup>, unlawfully transferred to Uzbek authorities in 2006 and 2007 respectively.
143. Moreover, absence of effective monitoring of assurances follows directly from the Action Plan/ Action Report submitted by the Russian authorities for a review of Russia's implementation of judgments in the 'Garabayev group of cases'<sup>24</sup> held on 6-8 March 2012 at the 1136th meeting of the Council of Europe Committee of Ministers; the document says that the Russian authorities intend to carry out such monitoring through Russia's diplomatic missions in the requesting states.
144. However, this measure, while it is use to support decisions to extradite, cannot guarantee respect of the individual's rights after his extradition, because:
- firstly, there are no mechanisms to enable the staff of diplomatic missions to take the necessary steps for finding out the actual circumstances of the extradited person (private meeting with the person without prior approval from the authorities, possibility of an independent medical examination, photos and video as needed, etc.);
  - secondly, and most importantly: after extradition, the extraditing state is not interested in obtaining information about ill-treatment of the extradited person, because it means that the extradition has been enforced in violation of Article 3 of the Convention,
145. The Russian law does not contain separate judicial procedures to challenge the requesting party's assurances, therefore arguments about non-observance of such assurances may only be presented as part of court appeals against decisions to extradite.

## Question 6

146. Since late 2010, Russian courts have revoked at least nine decisions of the Prosecutor General's Office to extradite people to Uzbekistan; in seven cases out of nine,<sup>25</sup> the Russian courts referred to the ECtHR position on the issue: the European Court held in nine judgments against Russia adopted between 2008 and 2012 that forced expulsion to Uzbekistan resulted in violation of the applicants' right to be free from ill-treatment.
147. However, the Russian courts did not observe the principle of uniformity of judicial practice

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<sup>22</sup> See *Muminov v. Russia*, № 42502/06, judgment (just satisfaction) of 04.11.2010, § (c) of the operative part.

<sup>23</sup> See *Kamaliyev v. Russia*, № 52812/07, judgment (just satisfaction) of 28.06.2011, § 1 (c) of the operative part

<sup>24</sup> A name given to a group of ECtHR cases against Russia concerning extradition and expulsion of applicants.

<sup>25</sup> Extradition to Uzbekistan cases of Shokirjon Soliev, Jahongir Abidov, Bobirzhon Tuhtamurodov, Rustam Zohidov, Ahmadjon Niyazov, Akmal Nabiyeu, Ebodully Alihonov.

and reversed extradition only in cases where the defense argued politicized criminal prosecution based on the applicant's alleged involvement with religious movements or groups banned in Uzbekistan. Even this approach has not been consistent. The extradition cases of Murodjon Abdulhakov and Yusup Kasymahunov belonging to this category were considered by the Russian courts in both instances in the period under review (in 2010-2011 and in 2012, respectively), but the courts totally ignored evidence presented by the defense about the risk of torture if the applicants were extradited; eventually both extraditions were prevented solely through the application of Rule 39 by the European Court of Human Rights. As to ordinary criminal prosecution - such as in Ismoilzhon Dalimov case - the Russian courts rejected the appeals against the extradition decision, and the applicant was extradited to Uzbekistan, despite substantial risk of torture and not being able to complete his appeal against the immigration authorities' denial of his request for a refugee status.

148. We should note that the positive trend described in para 146 refers only to extraditions to Uzbekistan. No data on reversal of extraditions to other states are available; on the contrary, according to our data, over the same period (2010-2012) Russian courts consistently rejected appeals against extradition decisions, including extraditions to Tajikistan<sup>26</sup> and Belarus<sup>27</sup>, where applicants also faced a serious risk of being subjected to treatment contrary to Article 3 of the Convention,
149. In addition, in respect of persons whose extradition was refused by the RF Prosecutor General's Office active attempts were made (and in some cases succeeded - see ECtHR judgments in cases No 42502/06 Muminov v. Russia and № 52812/07 Kamaliyev v. Russia) to transfer them to the requesting states using administrative expulsion described in para 4.6 above (see also the Court's judgment in case No 32184/07 Dzhurayev v. Russia and Application No 50031/11 Rakhmonov v. Russia). Notably, in this category of cases such steps were taken by direct instructions from the Prosecutor General's Office, and in the Muminov case, by instructions from the RF FSB.
150. Since 2011 it has become common practice to initiate administrative expulsion proceedings along with the extradition procedure against people challenging extradition decisions (see, for example, applications to ECtHR No 27843/11 Niyazov v. Russia and № 67474/11 Azimov v. Russia) and/or against those who had to be released at the end of their maximum permitted period of detention and could not be extradited due to the European Court's interim measures under Rule 39 of the Rules of Court (Application No 77658/11 Latipov v. Russia). In such cases, the ECtHR's interim measures were virtually the only way to prevent the applicant's transfer to the requesting state.
151. There was no effective post-return monitoring of guarantees, we believe, for the reasons described in paras 142-144, but there is evidence that diplomatic assurances were not observed by Uzbek and Tajik authorities against persons transferred to them outside of the established procedure (see details in para 160 below). Thus,
  - the Uzbek authorities requesting extradition of Abdulaziz Boymatov for his criminal prosecution under two articles of the Uzbekistan Criminal Code guaranteed that he would not be prosecuted on other charges without Russia's consent. In December

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<sup>26</sup> For example cases of Savridin Dzhuraev, Sukhrob Koziev, Nuzomkhon Dzhuraev, Ismon Azimov, Farrukh Sidikov, Abdulvosi Lapitov

<sup>27</sup> Foexample cases of Kozhaev, Dubinin, Petrovsky

2006, the Russian Prosecutor General's Office refused Boymatov's extradition, but in April 2007 he was illegally deported to Uzbekistan with cooperation from the Russian authorities, and then sentenced under five articles of the Uzbekistan Criminal Code<sup>28</sup>.

- In 2010, the Prosecutor General's Office granted Tajikistan authorities' request to extradite Savriddin Dzhurayev and Sukhrob Koziev for criminal prosecution under two articles and one article of the Criminal Code, respectively, bearing in mind the guarantees that no other charges would be brought against them without Russia's consent. In 2010, the European Court applied Rule 39 to stop their extradition; however, in 2011 both applicants were abducted in Moscow and illegally deported to Tajikistan, where they were subsequently convicted under seven and eight articles of the Criminal Code, respectively.
152. The Government failed to provide statistics requested by the Committee or any information on post-extradition monitoring mechanisms and/or findings. We believe that this withholding of information confirms absence of such mechanisms and, consequently, of any findings from their application.
153. The Government's arguments that extradition decisions take into account the requesting states' legislative norms and their ratification of international human rights treaties are untenable. These circumstances alone do not guarantee protection from ill-treatment where authoritative independent sources have demonstrated widespread and systematic ill-treatment in the country of destination, as ECHR has repeatedly held in its judgments, in particular those against Russia<sup>29</sup>.
154. What the Government refers to as a review of whether or not there are any obstacles to extradition (para 176 of the 5<sup>th</sup> Russian periodic report to the CAT) is limited to sending inquiries to the Russian FSB and the Russian Foreign Ministry and receiving their responses; extradition case files contain no other materials of such reviews. Meanwhile, it follows from the Prosecutor General's Office Directive No 212/35 of 18 October 2008 (para 1.6.3) regulating prosecutors' actions in extradition cases that inquiries sent to the FSB and the Foreign Ministry are about potential damage that the individual in question may or may not cause to Russia's national interests and national security, but say nothing about the individual's right to be free from prohibited treatment.
155. The Government's claims that the Prosecutor General's Office examines the risk of of Article 3 violations in its review of extradition cases, and on two occasions refused extradition requests on these grounds between 2009 and 2010 (para 177-178 of the 5<sup>th</sup> Russian periodic report to the CAT) are not verifiable for reasons explained above (para 122 above). Meanwhile, in 2010 alone ECtHR applied Rule 39 on 11 occasions to stop extraditions ordered by the RF Prosecutor General's Office; in all these cases Rule 39 was applied to avoid the risk of ill-treatment faced by the applicants in the destination countries.

## Question 7

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<sup>28</sup> See case № 10000737 WGEID

<sup>29</sup> For example, № 42502/06 Muminov v. Russia, № 52466/08 Khodzhayev v. Russia, № 21055/09 Khaydarov v. Russia, № 7265/10 Yakubov v. Russia

156. The following table contains statistics of administrative expulsions and deportations between 2004 and 2012<sup>30</sup>

Year	deportations	expulsions
2004	26	88,260
2005	15	75,756
2006	11	55,800
2007	45	28,050
2008	65	18,808
2009	60	34,016
2010	362	29,199
2011	656	27,929
2012. 1-5	293	9,948

157. The table shows that after the FMS Order of 12 October 2009 N 758/240 (see para 137 above) the number of deportations increased by an order of magnitude. It was to be expected from expanding the number of officials allowed to make decisions on deportation. As noted above, it is impossible to appeal deportation decisions; their execution is much faster than that of expulsion decisions; persons detained for the purpose of deportation are effectively denied access to an attorney. For these reasons, the deportation procedure should be declared illegal, administrative expulsion and deportation should be combined in a single procedure, relevant decisions should be taken by a court, and individuals facing such decisions should be given an opportunity to appeal.
158. No steps are taken to ensure the individual's right under Article 3 of the Convention in the context of administrative expulsion, let alone deportation, for reasons described above (see para 133 above)
159. The Government failed to answer the Committee's question concerning steps to ensure the right of individuals facing expulsion to be free from treatment contrary to Article 3 of the Convention. This fact, in and of itself, confirms that no such steps are taken.

### **Important aspects which are not addressed by the Committee**

160. During the period under review there were a few cases of extralegal transfer of individuals to requesting states, even though extradition or expulsion of such individuals would have been impossible or difficult under any of the legally prescribed procedures; between 2011 and 2012 such cases occurred more often than before. People were abducted and then

<sup>30</sup> [http://www.fms.gov.ru/about/statistics/data/Form 1-RD of 2011\\_yearly\\_statistics](http://www.fms.gov.ru/about/statistics/data/Form 1-RD of 2011_yearly_statistics)

illegally transferred to the requesting state. Thus, in September 2010, Sandzharbek Satvaldiyev, a native of Uzbekistan who took Russian citizenship, was abducted in Moscow<sup>31</sup>. In early 2011, he was found in custody in Uzbekistan and subsequently sentenced to 7.5 years in prison. He was reported to have been tortured during the investigation<sup>32</sup>. Russia did nothing to return its citizen. At least six people were transferred from Russia to Tajikistan and Uzbekistan between August 2011 and March 2012; five of them had filed applications with the ECtHR and were protected from extradition by Rule 39 of the Rules of Court<sup>33</sup>. There are reports that three of the abducted persons stated during their trial in Tajikistan that they had been subjected to torture in an attempt to get them to fake voluntary surrender to the Tajik authorities, to force self-incrimination and testimony against other defendants<sup>34</sup>. The fact that in all instances the abducted individuals were transported by air from Russian airports without the required pre-flight security procedures, such as border and customs control, rules out the Russian authorities' non-involvement in these operations. In total, NGOs have information on at least 10 persons who were recently abducted and illegally transported to Uzbekistan and Tajikistan; in most cases, they were subjected to torture in the country of destination and sentenced to long incarceration on dubious charges.

161. The way applications for refugee status are processed virtually denies the applicant any chance to receive such status:

a) when applicants do not face criminal prosecution in their country of origin, the Russian immigration authorities dismiss their fears as unfounded, because the applicants are not on the international wanted lists; but the authorities ignore the fact that criminal prosecution, while the most extreme and harsh form of persecution, is by no means the only one that forces people to apply for refugee status;

b) if a person applying for refugee status is requested for extradition to the country of origin, the Russian immigration authorities do not examine the merits of charges against him/her assuming these charges are a priori valid, and by doing so evade reviewing the applicant's actual circumstances. The Russian FMS regards such applications for refugee status as attempts to avoid criminal liability for offences the applicant is charged with in his/her country of origin;

c) in 2011, the Russian authorities resumed their practice of denying applicants for refugee status access to the proceedings. Thus, Yusup Kasymahunov, an Uzbek national with well-founded fear of being subjected to torture if extradited to his homeland, was denied refugee status without consideration of his application on the merits and even without an interview; moreover, the Russian FMS did not only endorse this decision of its local immigration authority as lawful and well-justified, but also pointed out that following its entry into force Kasymahunov could no longer file an application for temporary asylum in the Russian Federation (see para 120 above). The applicant therefore was denied an opportunity to use asylum in order to exercise his right under Article 3 of the Convention, which is fundamental and absolute.

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<sup>31</sup> <http://www.memo.ru/d/3164.html>

<sup>32</sup> <http://www.fergananews.com/news.php?id=18002>

<sup>33</sup> See [https://wcd.coe.int/com.instranet.InstraServlet?](https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2078515&SecMode=1&DocId=1884486&Usage=2)

<command=com.instranet.CmdBlobGet&InstranetImage=2078515&SecMode=1&DocId=1884486&Usage=2>

<sup>34</sup> *Savriiddin Dzhurayev v. Russia* (№ 71386/10), *Koziyev v. Russia* (№ 58221/10) and *Shamsiddin Dzhurayev*.

## Article 10

### Question 10

162. Providing information the prohibition of torture and training personnel in skills needed for carrying out their obligations under the Convention are particularly relevant to the correctional and the Ministry of Internal Affairs personnel (the police in the first place). It should be noted that Russia has taken certain steps to inform and train such personnel. Please find below a review of such steps and our opinion on whether they are sufficient for Russia's performance of its obligations under the Convention.

### Training of Correctional Officers

163. It is stated under paragraph 195 of Russia's 5th periodic report that "All programmes of instruction and advanced instruction for staff of the penal correction system cover the universally recognized principles and norms of international law and the provisions of the international treaties of the Russian Federation concerning the safeguarding of human rights. In addition, they are informed without fail of judgments of the European Court of Human Rights relating to the work of correctional facilities and remand centers". This information is true. Heads of correctional facilities interviewed by NGO representatives report that they always warn their subordinates about the inadmissibility of the use of force against prisoners (except for cases specified in the law). We also note an increase in the number of training sessions for correctional officers about human rights and international human rights standards, including standards for the humane treatment of prisoners.

164. However, some experts believe that the steps taken to train correctional officers have been insufficient:

*"I believe that the main problem lies with the human resources. Problems such as ill treatment, medical issues, and denial of visits are all associated with the human resources, with their inadequate education and psychological support. Personnel are poorly qualified. Training is probably one area where little attention is focused today. There are many other institutions, but the concept of human rights may be the one which is not properly studied"<sup>35</sup>.*

165. It is possible that the efforts to inform and train correctional officers in human rights have not produced a required effect due to high turnover of the correctional personnel. According to the Federal Correctional Service, turnover is a serious problem for them<sup>36</sup>. Another reason may be that prison guards do not internalize human rights standards due to a formalistic approach to teaching human rights in their training facilities (more about it below). A possible solution may be to hire external experts from governmental human rights institutions and NGOs to teach human rights to correctional officers. Such attempts have

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<sup>35</sup> Comment from Maria Kannabikh, Chair of the Presidium of the Council of Public Monitoring Commissions, member of the RF Civic Chamber's Commission on citizens' security and interaction with law enforcement and judicial bodies // Tribune of the Civic Chamber, 14 May 2012 at <http://top.oprf.ru/main/7773.html>

<sup>36</sup> Presentation by the Federal Correctional Service Director, Colonel General A. Reimer at an extended meeting of the FSIN Board on 9 February 2012 // [http://xn--h1akkl.xn--p1ai/news/index.php?ELEMENT\\_ID=28904&sphrase\\_id=186817](http://xn--h1akkl.xn--p1ai/news/index.php?ELEMENT_ID=28904&sphrase_id=186817)

been made, and this training is highly appreciated by the participants<sup>37</sup>.

## Police Training

166. Compared to correctional personnel, police officers receive less instruction on international human rights standards, including the prohibition of torture and ill treatment. It is evident, in particular, from the more cautious wording of paragraph 193 of Russia's 5th Periodic Report, which is consistent with the real situation. "Most staff recruited to work in bodies conducting pretrial investigations and initial inquiries are persons with higher and secondary legal education. On taking up employment, staff undergo mandatory training on domestic criminal law, the purposes of which are described as follows: protection against criminal attempts on human and civil rights and freedoms, on property, public order and public security, on the environment and on the constitutional order of the Russian Federation; maintenance of the peace and security of humankind; prevention of crime; conduct of criminal proceedings with a view to protecting the rights and lawful interests of persons and organizations that have fallen victim to crime; and protection of the individual from unlawful or unfounded accusation, conviction or restriction of rights and freedoms". We cannot but welcome the fact that such steps are being taken, but it follows from a simple comparison between paragraphs 195 and 193 of the Report that police officers engaged in inquiry and investigation study the Russian laws, rather than the international standards in the sphere of human rights. The difference in wording is not accidental or merely stylistic, but reflects the real situation with the training of law enforcement officers.
167. The lowest ranks of police and junior police officers are normally trained at the Ministry of Internal Affairs (MIA) Training Centers. Higher qualifications can be obtained from the MIA's higher educational establishments.
168. Training curricula at the MIA's Training Centers provide only limited information on human rights and relevant international standards. Most human rights concepts, including the prohibition of torture, are explained to police cadets as part of the Russian criminal law and criminal procedure courses, therefore these concepts are not studied in depth.
169. The police cadets' training in combat fighting techniques, use of firearms, etc., includes instruction in proportional use of force. In teaching combat fighting techniques, for example, the trainer will focus on developing specific algorithms and skills causing minimal pain to the other person. Police with inadequate mastery of such skills may even be banned from certain types of operation. Trainees are also instructed that the use of physical force, riot control equipment, firearms, etc. is only allowed in specified situations, with an emphasis on "minimizing damage" (the term commonly used instead of "proportionality").
170. Recently, police training centers have been paying increased attention to the specifics of working with minors - a fact that should be noted as progress in the training of police officers. However, the specifics of police work with persons in a state of intoxication have not been addressed so far. The fact that police officers lack proper guidance and well-established skills of handling such people who cannot be expected to respond reasonably has

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<sup>37</sup> See, e.g., a report of a human rights seminar for personnel of juvenile colonies conducted jointly by prison authorities and the "Man and Law" human rights NGO // [info/2012/06/09/%D1%81%D0%BE%D1%82%D1%80%D1%83%D0%B4%D0%BD%D0%B8%D0%BA%D0%B8-%D0%B2%D0%BE%D1%81%D0%BF%D0%B8%D1%82%D0%B0%D1%82%D0%B5%D0%BB%D1%8C%D0%BD%D0%BE%D0%B9-%D0%BA%D0%BE%D0%BB%D0%BE%D0%BD%D0%B8%D0%B8-%D1%81/#more-8058](http://info/2012/06/09/%D1%81%D0%BE%D1%82%D1%80%D1%83%D0%B4%D0%BD%D0%B8%D0%BA%D0%B8-%D0%B2%D0%BE%D1%81%D0%BF%D0%B8%D1%82%D0%B0%D1%82%D0%B5%D0%BB%D1%8C%D0%BD%D0%BE%D0%B9-%D0%BA%D0%BE%D0%BB%D0%BE%D0%BD%D0%B8%D0%B8-%D1%81/#more-8058)

often resulted in abuse of human dignity.

171. As part of their training, the Ministry of Internal Affairs personnel also learn that law enforcement officers have a responsibility to report any known abuse committed by their colleagues. However, there is usually no separate mention of their duty to report suspected torture by colleagues.
172. Higher educational establishments of the Ministry of Internal Affairs provide more opportunities for students to learn about human rights issues. Students may conduct research on human rights and attend periodic conferences which include sessions on human rights. Back in the 1990-ies, the MIA's educational establishments introduced a course in Safeguarding Human Rights in the Operation of Internal Affairs Agencies; the fact that such a course is available is important for law enforcement officers' human rights training, but professional qualifications of the teachers who deliver the course is sometimes inadequate for students to integrate human rights values and to understand that safeguarding human rights is their essential responsibility as a public authority. The course content often depends on the teacher's scientific and philosophical interests and may focus extensively on the theory, not necessarily relevant to real-life police practices.

*For example, the textbook for a lecture course on Safeguarding Human Rights in the Operation of the Internal Affairs Agencies taught at the MIA's Law Institute in Saratov<sup>38</sup> consists of ten lectures totaling 248 pages; most lectures explore theoretical matters, such as Human Rights in the History of Political and Legal Thought, Principles of Human and Civil Rights, A System of Fundamental Human and Civil Rights and Duties, etc. Studying these subjects is certainly important, but there is clearly an imbalance, since only one lecture (Safeguarding Civil, Social, Economic and Political Rights by Internal Affairs Agencies, 30 pages) addresses human rights issues which may arise in everyday police practice. Besides, some of the course lectures, e.g. International Cooperation of the Russian Internal Affairs Agencies (20 pages) and Social and Legal Security of Police Officers (20 pages) - do not seem to be relevant to the course topic.*

173. After completion of basic training, police officers attend regular in-service briefings and classes; they are required to take a refresher course once every five years.
174. Russia's 5th Periodic Report states in paragraph 192 that "Under Order of the Ministry of Internal Affairs ... all the Ministry's subdivisions regularly hold training exercises for staff covering such issues as respect for lawfulness in the performance of official activities, protection of civil rights and freedoms, and organization of prompt, full and thorough investigations of criminal cases". This information is true. Personnel briefings typically include instructions to respect human rights, but these are usually formulated in non-specific terms. Most training sessions are not practice-oriented or interactive, but focus only on delivering certain information to the trainees. This training format does not help police officers understand exactly how they should act taking into account this information.
175. The key limitation of training programs for the Russian law enforcement officers is that human rights aspects are not integrated in personnel training for each specific professional

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<sup>38</sup> Obespechenie prav cheloveka v deiatel'nosti organov vnutrennikh del. Course of Lectures / Andreev S.V., Bainiazov R.S., Mordovets A.S., Pleshakov A.P., and others, ed.: Mordovets A.S. - Saratov. Publisher: Law Institute of the Russian Ministry of Internal Affairs, 2007 - 248 pages.

activity. One of the reasons is that officials at different levels lack a conceptual understanding of policing as a service to society and do not perceive safeguarding human rights as a key responsibility and essential competence for law enforcement officers. Hence the MIA's lack of efforts to integrate human rights in its personnel training programs, often combined with aggressive resistance on behalf of teachers at the MIA's educational establishments to integration of human rights aspects in their course (positivist lawyers do not find a place for human rights in legal studies, while "practitioners" assume from their experience that human rights are not an essential element to be taught as part of police tactics). Yet another source of problems may be the traditional gap between theory and practice in training. The MIA's schools, training centers in particular, are now reforming their curricula to make them practice-oriented, but it is difficult to say to what extent the reformed training modules will integrate human rights-related competences.

## Question 12

176. Access to medical aid for those held in correctional institutions still remains one of the most problematic fields of the penitentiary system and most of all is revealed in:

- Lack among the staff of the correctional institutions of such specialists as oculist, surgeon, endocrinologist, cardiologist, neuropathologist etc. In detention facilities, even in hospital compartments at SIZO, there is no necessary medical equipment, necessary medication, no necessary condition for treatment of serious patients, whose health is in such a poor state that this could threaten their lives. Thus, according to an inspection organized by the General Prosecutor's Office, in 2010 for medical aid of the prisoners only 24 per cent of the needed amount were spent, nearly 60 per cent of the medical equipment in use were fabricated in the years 70-80 of the last century<sup>39</sup>.
- Impossibility for a prisoner to get information about his/her health condition (prescription of the doctor, diagnosis etc.) and about availability of medication needed;
- Difficulties in getting in time medical assistance in case of not so well manifested medical symptoms (headache, hypertension, stomach problems etc.). According to the Exhibit 2 to the Rules of Internal regulation (PVR) of SIZO, a convicted is allowed to his/her disposal only those medicaments prescribed by the SIZO's doctor. If a prisoner's blood pressure has suddenly gone high, he or she has to fill an application form to get medical aid asking to call the doctor. If the situation is not urgent, the doctor may be called only in several days providing the medicaments even later. Correctional institutions get their medicaments irregularly, the medicaments are the cheapest and the least effective. There are some cases when SIZO's doctors refused to confirm prescriptions of some medicaments the convicted had got before his/her incarceration.

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<sup>39</sup> (<http://www.newizv.ru/lenta/2010-08-11/131260-genprokuratura-potrebovala-ot-fsin-uluchshit-medobslužhivanie-zakljuchennyh.html>)

*From the application of the mother of the convicted J. Korenchuk (January of 2010): “... since September of 2008 my son had spoken to me many times about suffering from severe pain in his stomach. At the medical unit he did not get any assistance, they just would give him painkillers. Just when my son began to lose his conscience because of the pain they paid attention to him and brought him for assessment to a hospital, where he died in agony from purulent peritonitis”. In spite of the complain of the mother, the prosecutor`s office refused to initiate a criminal case based on the fact of breach of duty by the assistant of the medical unit which resulted in death of a person<sup>40</sup>.*

- It happens quite often that for providing professional diagnostic and consultative aid to the convicted they have to be transferred to civil hospitals, when they need an appointment paper from the part of the department of Public health. Because of lack of clear coordination in actions between SIZO and the department, sometimes one has to wait for the paper from 30 to 45 days. Leaving SIZO becomes difficult as well because accompaniment by 3-4 convoy guards is needed, but they are almost never enough in the staff, so it becomes impossible to provide in time medical consultations for all those who need it.
177. Deaths of Serguei Magnitsky and Vera Trifonova at SIZO “Matrosskaya Tishina” stirred wide public response and called the attention of the society to the problem of providing good enough medical aid in SIZO for a long time. In January of 2011, as a reaction to the public request and demands of human rights activists, The Government of the Russian Federation issued a Decree of 14.01.2011 “On medical assessment of those suspected and accused in having committed crimes”. This Decrees was issued with the aim of realization of the article 110 of the Code of Criminal Procedure of Russian Federation, according to which such measure of restraint as incarceration should be replaced by a softer one if the suspected or accused person turns out to suffer from a severe disease which would impede his/her incarceration.
178. The Decree defines the procedure of medical assessment of the suspected or accused with the aim to discern if they suffer from a serious illness which would impede his/her incarceration. In the list of this kind of diseases are included tuberculosis, cancer at the fourth stage, AIDS, bad pancreatic diabetes, phlogotic diseases of central nervous system, pathologies of the thyroid body, serious forms of atrophic and degenerate diseases of nervous system and muscles evolving, hypertonia at the third stage, pathologies of red pipes, pathologies of eyes that result in blindness, inveterate heart diseases, diseases of kidneys and urinary tract.
179. Arrival of a statutory act with the aim to sort out the mess in the area of prisonous medicine should be welcomed with great enthusiasm, just to prevent a suspected or accused person to get incarcerated these diseases should be at the last stage, i.e. a person being at death`s door already.
180. Besides, until now this Decree have not influenced the practice of releasing from custody. During nine months of the year 2011 from all detention facilities of Russian Federation only

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<sup>40</sup> From files of the Foundation “In Defense of the Rights of the Convicted”

200 heavily ill men and women were sent for a medical assessment with only 35 among them released from custody<sup>41</sup>. It happens due to several factors. First, SIZO's doctor is directly subordinated to the SIZO's keeper<sup>42</sup>, does not have motivation to be independent from the last in his decisions and even runs the risk to suffer for defending his point of view<sup>43</sup>. Second, the investigating authorities are interested in keeping the prisoner under custody (in this case it becomes easier to bring pressure on him, among other things through his health condition) and bring pressure on SIZO's administration and doctors, so that they do not provide the needed medical aid nor send the prisoner for the assessment. Moreover, according to SPC members, it happens sometimes that even if medical experts confirm that a prisoner suffers from diseases included in the list, courts prolong his/her incarceration.

*14 of June of 2011 at SIZO №5 of Ekaterinburg a critically ill woman prisoner died. According to the president of SPC of Sverdlovsk region, this woman under investigation "suffered from AIDS, chronic gastritis, cystitis, anemia and viral hepatitis. Up to June she had had fever for several weeks already. Medical experts confirmed the fact that she suffered from diseases included in the list of serious diseases mentioned in the Decree of the Russian Government. In spite of all that The Court of the district Oktjabrski of Ekaterinburg prolonged her incarceration at SIZO until 31 of August of 2011"<sup>44</sup>.*

181. The convicted may file a complaint on failure to get medical assistance or on its poor quality to The Public prosecutor's office, to UFSIN and/or to the Court. In most cases official inspection declares that the medical help is provided in necessary scope, the health condition of the prisoner is satisfactory. It happens because the system does not seem to be interested to find its own failures and to fight for improvement. The stability of the condition, even if a bad one, is a sign of vitality of any system.

## Article 11

### Question 14

182. According to the article 22 of the Code of Criminal Procedure of Russian Federation the Prosecutor's Office superintends the loyalty of the administration of institutions and bodies which carry out punishments. According to the article 33 "On the Prosecutor's Office of the Russian Federation", the Prosecutor's Office is vested with wide authority to visit penitentiary institutions at any time, to interrogate the convicted, to study documents and demand explanations from the part of the executives. A prosecutor also has the right to abolish disciplinary sanctions and to absolve prisoners from penalties. Supervising

<sup>41</sup> "Rossijskaja gazeta", 5621 (245) of 01.11.2011, "The prison began its march against death", V. Kulikov, <http://www.rg.ru/2011/11/01/sizo.html>

<sup>42</sup> Now in three regions of Russian Federation as an experiment all medical staff of SIZO and other penitentiary institutions became directly subordinated to the medical administration of the FSIN of the region. FSIN of Russian Federation intends to expand this experience to all the regions. There is no data concerning the results of the experiment, but the doctors themselves do evaluate it positively. Besides, an interdepartmental working group affiliated under auspices of the Department of Justice has been created which studies the possibility of providing medical aid to those held in the penitentiary institutions by medical institutions which do not form part of the system of penitentiary medical care, including private ones, with the use of outsourcing procedures.

<sup>43</sup> An independent review evaluating the efficiency of the measures taken by Russian Federation to ensure acceptable confinement conditions of the convicted held in detention facilities (SIZO). 17 of August of 2011.

<sup>44</sup> "At an Ekaterinburg's SIZO a prisoner has died". "New Region – Ekaterinburg", 09.07.2011.

prosecutors visit colonies on a regular basis.

183. Prosecutor`s inspections responding to prisoners` complaints are not effective in most cases because of several reasons, among them: a) professional deformation of the prosecutors, their preconception, “accusational deviation” against the convicted “criminals” reigns at the procurator`s office, that is why in connection to conflicts between prisoners and executives of a colony procurators tend to support the administration; b) quite often public procurator`s offices and penitentiary institutions share one small territory, their executives are bound with family and other connections and are not ready to reveal the failures of their neighbors; c) the procurators are not interested in finding failures at institutions situated in the area of their responsibility, as this would equal indirect confession of their own “sin”, as normally such a situation does not happen suddenly but is progressing step by step, and the procurators are those whose duty consists in noticing it and bringing it to the end; d) prisoners themselves under the pressure of the administration (most often through prisoners working for the administration) do not confirm their complaints at the time of prosecutor`s inspections. According to Evgeniy Zabarchuk, assistant of the Prosecutor-General, *“complaints of the convicted concerning illegal acts of force, use of special equipment, refusals to accept and consider applications, bad life conditions and medical aid, illegal closure into punitive, abusive practices applied by executives of penitentiary institutions in many cases are examined formally and superficially. Simply speaking, in many cases they just pretend to have checked the reason for the complaint”*<sup>45</sup>.
184. The inspection at penitentiary institutions is also put into practice by regional administrations of FSIN and the Department of the Interior. Efficiency of such a control is limited by departmental interests directed firstly to keep positive image of their bodies and institutions and of this system in general.

#### **Situation with individuals needing psychiatric care**

185. Cruel, inhuman and degrading treatment and torture are not interdicted explicitly by the Russian legislation referring to providing psychiatric care, though a principle of providing assistance in the least restrictive conditions is instituted. According to the Article #5 of the Federal Law “On Psychiatric Care and Guarantees of the Rights of Citizens in Therapy”,
- All those suffering from mental disorders in train of getting psychiatric aid have the right to receive it in the least restrictive conditions, at place of residence if possible.*
186. Involuntary measures in the area of treatment and hospitalizing of citizens is allowed by the legislation, but has to be accompanied by plainly required judicial control. In general, Russian legislation protects the citizens from unjustified application of measures of involuntary character, i.e. involuntary hospitalization, assignment of mandatory psychiatric treatment, quite well.
187. In April of 2011 amendments to the law “On Psychiatric Care and Guarantees of the Rights of Citizens in Therapy” were approved, which extend the rights of legally incapable citizens when admitted to the hospital or psychoneurological nursing home (Federal law of 6 April 2011, N 67-FZ “On amending the Law of Russian Federation “On Psychiatric Care and

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<sup>45</sup> Rossiiskaya Gazeta (Federal number) №5150 of 6 April 2010, interview with Evgeniy Zabarchuk, assistant of the Prosecutor-General <http://www.rg.ru/2010/04/06/zabarchuk.html>

Guarantees of the Rights of Citizens in Therapy” and Civil Procedure Code of Russian Federation”). According to these amendments, legally incapable citizens also have to express their compliance with the treatment, otherwise it’s indispensable to apply to the court.

188. The mechanism of judicial supervision of involuntary hospitalization and treatment up to now is not required in the case of the minors. The high-risk group is constituted in the first place of orphans and children left without parental care who live at orphanages. In these cases according to Russian legislation the administration of the orphanage is considered as the tutor and legal representative of the children, therefore, to put a minor into a psychiatric institution only consent of the administration of the orphanage and conclusion of medical commission are required, no need of judicial supervision.
189. Observance of respecting the rights of the patients of psychiatric institutions, including the prohibition of torture and cruel, inhuman and degrading treatment, is executed by the public prosecutor’s office. In addition, Federal Service on Surveillance in Healthcare and Social Development and Ministry of Public Health, whose area of responsibility includes hospitals, also inspects the quality of psychiatric assistance provided.
190. According to Independent Psychiatric Association of Russia (IPA) inspections by public prosecutor’s officers and by Federal Service on Surveillance in Healthcare and Social Development often are formal, the inspectors do not know what to look at or simply do not want to do this. The public prosecutor’s office has enough authority to initiate inspections and, in case of need, criminal cases if any signs of improper treatment of patients appear. Professional NGO who often monitor psychiatric institutions testify the implication of violence against patients. Though there are no proved cases of violence and tortures.
191. Approved measures of physical impact on patients are measures of constraint (soft wide belts binding the patient to the bed) which are applied to immobilize the patient (i.e. to ensure proper introduction of the medicament during phrenoplegia). The process of application of measures of physical constraint has to be strictly regulated: these measures can be applied only with the prescription of the doctor in charge and under his/her direct supervision. The measures of constraint should be applied during strictly determined required time, the psychiatrist should check the condition of the patient every two hours, and if there is no need in applying these measures any more, they should be removed. Every case of applying of constraint measures should be noted in a special registration form with the time of the prescription, the period of the applying and the medical basis for application of the measures of constraint.

*Monitoring of psychiatric hospitals realized by IPA together with the Ombudsman of Moscow in April-July of 2011 revealed that not always measures of physical constraint are applied according to the prescribed procedure and under supervision of the doctor in charge. For example, in Moscow Psychiatric hospital # 5 at the time of the visit (April 2011) there was no registration form for application of physical measures of constraint, the fact that reduces possibilities for state and independent supervision and evaluation. Besides, IPA testifies that sometimes for restraining an agitated patient other patients are used instead of specially trained medical assistants who would use attenuated methods of fixation.*

## Obstacles for patients in making complaints

192. Administrations of psychiatric institutions provide to the patients the possibility for making complaints, but in many cases do not send them. Without participation of the administration a patient of a psychiatric hospital cannot make a complaint.

*The Ombudsman of Moscow region indicates in his report from 2011 that the administrations of hospitals of Moscow region oppose to the patients` sending their complaints by post or expressing them by phone.*

193. Administrations of the hospitals censor the complaints. According to IPA, doctors of the hospitals often consider complaints as a sample of pathologic production adding it to the case record. In some psychiatric institutions commissions have been organized who examine patients` complaints addressed to the authorities and make the decision if this or that complaint deserves to be sent.

*The Ombudsman of Moscow region indicates in his report from 2011 that at the hospital # 3 "Noginskaya CRB" applications of the patients are passed for examination to a commission specially organized in the hospital. This information is also confirmed by IPA of Russia.*

194. Mostly complaints concerning quality of life and treatment at the hospitals come from patients` families or after he or she left the institution.

195. The patients of the hospitals do not receive enough information about their rights and possibilities of legal aid when entering an institution. Specifically, the Ombudsman of Moscow region indicates in his report from 2011:

*the list of rights of the patients who undergo psychiatric and narcological treatment, addresses and phone numbers of the Ombudsman, of public prosecution office and halls of justice are not put in easily accessible places for providing information.*

196. Involuntary hospitalized patients cannot lodge a complaint against their involuntary hospitalizing immediately after it takes place. According to Article #33 of the "On Psychiatric Care and Guarantees of the Rights of Citizens in Therapy", only the hospital itself has the right to lodge in the court request for involuntary hospitalization. The patient needs to wait until the court makes the decision with regard to his involuntary hospitalization. Respective amendments to the law "On Psychiatric Care and Guarantees of the Rights of Citizens in Therapy" have not been approved yet, even if their relevance was marked by the European Court of Human Rights in case "Rakevich vs Russia". Impossibility in practice to make an official complaint when being at a hospital decreases guarantees of protection against involuntary hospitalization.

197. As a guarantee of proper treatment of the patients of psychiatric institution a Service for protection of the patients` rights must be created. According to the law "On Psychiatric Care and Guarantees of the Rights of Citizens in Therapy" (art. #38) the Service would have to analyze the patients` complaints being independent from the health care system. But until now, during a period of 19 years, such a service has not been organized.

## Key problems increasing risks of cruel treatment and torture

198. Voluntary informed consent to hospitalization to a psychiatric institution and treatment often can be falsified: patients sign the consent paper as the result of getting wrong information, being deceived or intimidated. In many psychiatric institutions the per cent of cases of involuntary hospitalization is very low (1-5 per cent, 0 in Chechen Republic).

*According to IPA of Russia, S. P. has been transferred to the psychiatric hospital of Pavlovo-Posad (Moscow region) from the psychoneurological center, where she came complaining about his husband being aggressive. At the hospital she did not want to sign the consent paper, but after being said that in this case she would remain at the institution for half a year, agreed.*

*E. K. has been transferred to the psychiatric hospital of Moscow region on the 21 of December of 2011 from the police office, where she turned out to be as a result of a conflict with her husband. E. K. did not sign the consent paper, but remained at the institution without legal judgment. E. K. could leave the hospital as soon as she signed the paper.*

199. The procedure of judicial examination of complaints concerning involuntary hospitalization is quite formal: in fact, the courts do not examine the cases fundamentally, at big hospitals 5-6 judgments are pronounced in half an hour; quite often the patient does not have any legal representative. This fact is a flagrant violation of the law “On Psychiatric Care and Guarantees of the Rights of Citizens in Therapy” (art. #34) which states that

*“It’s plainly required the participation in the analysis of the complaint concerning involuntary hospitalization of a legal representative of the person whose case is being analyzed”.*

200. Attorneys who sometimes come to the hospitals to the sessions of the court together with judges represent the patients’ interests formally. Real absence of work in the interests of the grantors – patients who have been admitted into hospital involuntarily – is noticed everywhere.

*Bar association of Saint Petersburg led a special investigation concerning professional behavior of attorneys during judicial examinations concerning involuntary hospitalization. The association considered the behavior as violating the law “On the Bar” as well as the professional ethics of attorneys and developed recommendations about the rules of behavior of attorneys at hearings dedicated to involuntary admission to psychiatric institutions.*

201. Falsification of consent papers of legally incapable citizens is widespread. In case if a legally incapable citizen refuses to accept treatment, it’s up to the court to permit his or her involuntary hospitalization (law of 6 April 2011, #67-FZ). In fact the consent of a legally incapable person is falsified or is just not requested.

*The Ombudsman of Moscow region indicates in his report from 2011 that some cases have made known when hospitalization of legally incompetent citizens was based only on the guardian’s request without any attempt to know the patient’s opinion.*

### **Excessive and unjustified implication of psychiatry**

202. Psychiatric departments for children quite often admit children from orphanages with behavioral problems. In many cases it's possible to work on correcting the behavior at the orphanage itself, but at the orphanage there is no possibility to provide outpatient psychiatric aid, so when the smallest problems appear, the administration send the child to the hospital. An average period of treatment in the hospital for a child is half a year.
203. The administration of an orphanage is considered as the tutor and legal representative of orphan children. As usual, children do not have other legal representatives. There is no judicial control over the process of admitting minors into hospitals.
204. Quite often hospitalized children do not need any psychiatric assistance. Experts working with institutions for orphans testify that mostly children are put into psychiatric institutions as a disciplinary measure. Such cases have been recorded in Perm region, Chelyabinsk region, Moscow region.

*In 2010 in Chelyabinsk region public prosecution officers found that 40 children residents of correction foster school were put into the clinical psychoneurological hospital # 1 of Chelyabinsk region. Inspections organized by the Ministry of Public Health as a reaction to the public prosecution office's recommendation did not reveal any violations of the law in train of providing psychiatric assistance. This conclusion was supported also by an independent commission organized by the Ombudsman of Chelyabinsk region. From the other side, according IPA, whose experts were part of the commission, hospitalizing children resulted an excessive measure based on the only fact that the children obtained psychiatric diagnoses. The question of effectuating psychocorrection of the behavior remained out of consideration. In the meantime Russian legislation and Mental Health Action Plan for Europe (Russian Federation joined in 2005) demands psychiatric assistance to be provided out of the hospital, hospitalization to be regarded just as a measure of last resort applied in case of need.*

205. Underdevelopment of the outpatient service in Russia, lack of essential specialists in orphanages or their poor qualification, underdevelopment of different forms of psychiatric aid create a situation when teenagers with behavioral problems are put into hospitals where the treatment consists mostly of giving medicaments. Children who do not need psychiatric assistance are put into hospitals for a long term.
206. Besides, the information concerning diagnosis and hospitalization of orphans is not protected as required and becoming public.

*Thus, IPA indicates that the diagnosis and the fact itself of admitting children to a psychiatric institution became public at the orphanage. Exposure of this information creates risks of additional stigmatization.*

207. Still exists a problem of excessive duration of mandatory treatment which could be recognized as torture. The duration of mandatory treatment quite often is determined not on the base of medical, but social factors. Patients are not sent out from hospital if they do not have any place to go, if they are in conflict with their family etc. Foreign citizens officially cannot be sent for treatment to their place of residence, so they are kept at hospitals for years.

*Thus, at the Psychiatric hospital # 5 (Moscow) 18 foreign citizens are kept, some of them – for more than 10 years.*

208. General Prosecutor's office of Russian Federation that responds for transferring foreign citizens for treatment to their place of residence up to now has not elaborated the mechanism of this tradition. In 2011 Russian Ministry of Justice came forward with an initiative of formalizing the mechanism of the tradition issuing a draft law "On tradition and acceptance by Russian Federation for providing mandatory treatment of mental patients in whose cases there is a court decision about applying mandatory measures of medical character that has entered into legal force". Regulatory enactment has not passed yet, and foreign citizens still undergo treatment at Russian psychiatric hospitals, often just because of social factors (no place to go).

209. Those who have committed a criminally punishable act waiting for a decision about applying in view of their criminal incapacity mandatory medical measures or about their prolongation, alteration or cancellation, have the right to take personal part in hearings (decree of the Constitutional Court of Russian Federation of 20.11.2007 # 13-P). This has also been explained thoroughly in the Decree of Plenary assembly of the Supreme Court of Russian Federation of 7 april 2011 # 6.

*According to IPA, at the psychiatric hospital # 5 of Moscow the patients are under pressure to refuse themselves to assist court sessions.*

210. Judicial control over cancellation of the mandatory treatment, its alteration or its prescription does not work in full measure.

*At the psychiatric hospital # 23 from the end of 2000 until July of 2011 (more than 10 years in total) was kept S. of 75 years old. He addressed a complaint to the Ombudsman of Moscow region during his visit to the hospital. It turned out that starting from 1983 S. lived in one shared accommodation with his doctor in charge. According to the applicant, the doctor kept him under treatment at the institution to make her living conditions better. Neither inspectors nor judicial authorities prevented this situation.*

211. When prescribing mandatory treatment is usual for the court to decide in favor of applying involuntary measures, usually just repeating what psychiatric experts have recommended. But it is up to the court to choose the form of mandatory treatment. According to the article 433 of the Code of Criminal Procedure,

*"Mandatory medical measures are prescribed in the case when the mental disorder of the person is connected with danger for him/herself or for other people or with possibility of other substantial injure".*

212. Though there are many cases when opinion letters of experts do not say anything about danger coming from the person of interest nor about possibility of injury. Nevertheless the experts recommend mandatory treatment and the court follows these recommendations. The article 443 of CCP reads:

*"If someone is not dangerous in connection with his or her psychic condition or his/her trespass is not very serious, the court terminates the case and declines application of mandatory medical treatment".*

213. But it's extremely difficult to make the court not to prescribe mandatory treatment in case of small offence if experts have recommended it.
214. Unjustified deprivation of citizens' freedom is the practice of organizing expert examination in the institutions. If it's impossible to tell exactly the psychiatric diagnosis of the person of interest, experts refuse to say if he or she understood the character and social danger of his/her action in the moment of committing the incriminated act. That is why experts recommend to the court to demand an examination in a hospital. Thus it often happens that people who have committed an inconsiderable offence, not deprived of liberty, turn out to be isolated for a month at a psychiatric institution.
215. In addition to the replies to the Committee's questions, we consider it necessary to highlight the following in regard to the honoring by the Russian Federation of its obligations under Article 11 of the Convention.

**Conditions of detention of persons arrested following the commission of an administrative offence and of those serving an administrative penalty**

216. According to the legislation in force in the Russian Federation, a number of minor offences related to the breach of peace are classified as so-called "administrative offences". The rules of procedure in relation to prosecuting administrative offences are simplified as compared to those of criminal procedure. The most common penalty for an administrative offence is a fine. However, in some cases the offender may be subjected to a penalty of incarceration for up to 15 days (the so-called "administrative arrest"). The police are authorized to detain persons who committed or are suspected of having committed an administrative offence in order to draw up the case file and to ensure their appearance before a court (the so-called "administrative detention").
217. Persons subjected to administrative detention can be held for up to 48 hours in police stations or special reception centers within the framework of the Ministry of Interior ("the MVD"). Persons found guilty of administrative offences also serve their sentences of administrative arrest in such reception centers. The conditions of detention of such persons are governed by the Regulations on the conditions of detention of persons detained for the commission of an administrative offence, on the nutritional standards, and procedures related to medical assistance to such persons, adopted by the Decree of the Government of the Russian Federation no. 627 of 15 October 2003 (including the amendments made on 1 February 2005 and 26 January 2011).
218. In practice, persons subjected to administrative detention and arrest are detained in substandard conditions. The conditions of detention in police stations are particularly poor. Persons detained in police states are not provided with drinking water or hot food, even upon request. In some cases police officers allow the detainees' relatives and friends to bring water and food for them. However, this is not always allowed. According to some detainees and their families, in some cases police officers refuse to pass on food brought by relatives in order to exert psychological pressure on detainees:

*"The police refuse to release Lesha Gaskarov, Egor Lavrentyev and Artem Naumov. [They] refuse to pass on food and water. The police officers say that the guys are not released and the parcels are not accepted pursuant to the order of Oleg Mosyagin, the*

*head of the OVD [i.e. the police station]. The guys have already spent twenty-four hours in the OVD.*"<sup>46</sup>

219. Some detainees report that they were not provided with individual sleeping places or bedding. Detainees sleep in cells with bars instead of walls (the so-called "monkey cage" or "obezyannik") or in rooms for staff meetings (the so-called "assembly halls"), which are not equipped for sleeping. There is usually less than 2 sq. m. of space per person, the rooms are often overcrowded. Those detained in police stations are usually allowed free access to the toilet, however, in some cases access to the toilet was restricted for lengthy periods of time, or detainees were allowed to visit the toilet only after numerous requests and had to be accompanied, which excluded the possibility to use the toilet in privacy of an individual toilet room:

*"They put [us] into the "obezyannik" and called out for interrogation one by one. Taking us out of the cage they pushed us, called us "prostitutes", "whores", and "fagots". They constantly repeated their threats to lock us in jail. When I asked to use the toilet, the duty officer shouted, 'Buzz off!'. They wouldn't even let the girl go. Tanya was crying. The interrogations were over in the evening. They made it clear to the last person interrogated that they would let us go if we paid them 530 roubles each. Of course, we agreed. A lieutenant took the money and left to pass it on to someone. We were not given any receipts. They only made us sign some papers, gave us our things and pushed us out... I don't remember what those papers were; my only thought was about leaving as soon as possible. I realised that if I requested explanations, they would not let us go. I don't consider myself an offender, and even if I am, does the fact that we allegedly committed "hooliganism" justify treating us like dirt? Irrespective of what we have done, such treatment is not justified!"*<sup>47</sup>

220. Even though persons subjected to administrative detention spend a relatively short time period (up to 48 hours) in police stations, such conditions are nevertheless contrary to the principle of respect for human dignity.
221. The conditions of detention in reception centers for persons serving a sentence of administrative arrest are better. In most cases detainees receive hot food and drinking water. Detainees are usually provided with bedding. If there is no bedding, detainees' relatives can bring it for them. As a rule access to shower is allowed in reception centers once in three, five or seven days depending on the region. Outdoor time is provided every day. Visits from family are not foreseen by the legislation. Contacts with a lawyer are usually not limited.<sup>48</sup>
222. There are cases of denial of access to medical care for prolonged periods of time and cases of inadequate medical assistance, including, lack of necessary medications. In the case described below a person, who was evidently injured was brought to a hospital, but was not provided with adequate medical assistance.

<sup>46</sup> "OVD refuses to release the detainees, and to pass on food and water" //FreeZhuk.Org, 12 May 2012, <http://freezhuk.org/news/2012-05-12-ovd-otkazyvaetsya-otpuskat-zaderzhannyx-peredavat-edu-i-vodu/>

<sup>47</sup> "Protesters arrested in the fountain of GUM: in the police station we were beaten, not allowed to use the toilet, and called "prostitutes"//«Komsomolskaya pravda», 26 March 2012, <http://www.kp.ru/daily/25856.5/2824764/?cp=3>

<sup>48</sup> In this Chapter we refer to the results of a study conducted by Nikolay Zboroshenko, an activist of the Youth Human Rights Movement and the Team for Legal Security of Activists "Legal Team". The study is based on the surveys conducted in 2011-2012 with persons subjected to administrative detention or administrative arrest in 25 police stations in five regions of Russia, as well as in three reception centers for persons serving a penalty of administrative arrest in three regions of Russia.

*"OMON officers participated in dispersing the protest rally. The police detained about a hundred of protestors, including Ernest Mezak, a board member of the Komi Human Rights Commission "Memorial", and Pavel Safronov, volunteer for the "Memorial", as well as a number of journalists. After Mezak along with other detainees was brought to the detention center, he was transferred to the hospital, as he felt unwell in the reception center. At the hospital he was diagnosed with "soft tissue bruise on the head", and was returned to the reception center.*

*During the night of 10-11 December Ernest Mezak, board member of the \ Komi human rights commission "Memorial", detained in the reception center had a fever. He was brought to the hospital for the second time, and then again returned to the detention center. It was only in the morning of 11 December that Mezak's wife was allowed to bring warm clothes for him. Moreover, members of the Public Monitoring Commission were not allowed to inspect the reception center."<sup>49</sup>*

223. Detainees can submit complaints about poor conditions of detention or lack of medical assistance to the administration of reception centers; this, however, is not likely to improve their situation immediately. It is also possible to send a complaint to supervisory authorities through the administration of remand centers. However, forwarding such complaints to the relevant authorities takes much time, and the complaints are usually examined after the applicant is released. There is no information about cases where a detainee applied for and received compensation for poor conditions of detention in the course of administrative detention or serving a sentence of administrative arrest. It is the unlawfulness of the arrest, and not the conditions of detention that are usually complained against.

## Articles 12 and 13

### Question 15

#### **Information on the complaints alleging torture by police, and on the investigation of such complaints**

224. Information provided in paras 220-221 of the Fifth periodic report on the number of complaints alleging the use of torture and on the number of officers prosecuted or convicted for the use of torture relate only to the staff of prisons controlled by the Federal Penal Correctional Service (FSIN). The periodic report does not provide statistics on the personnel of other departments.
225. A review of cases in which the Russian human rights organization have provided legal assistance to victims of torture reveals that most complaints are about the use of torture by the Ministry of Interior personnel.
226. The Ministry of Interior control the IVS (temporary detention facilities) for persons who are suspected or accused of crimes, for those detained on administrative charges, and also police departments where individuals arrested on administrative charges and suspected of criminal offences are initially held.

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<sup>49</sup> Statement of the Joint Headquarters of Human Rights Organizations made after monitoring of violations taken place on 10-11 December 2011 // 13 December 2011, <http://publicverdict.ru/topics/news/9898.html>

227. Complaints from individuals, findings of internal departmental reviews and criminal case files against police officers which are available to human rights organizations reveal that police may use and have used torture against detained suspects in order to elicit evidence or confession:

*On 18 February 2011 at about 3:30 p.m. police officers of the Western Administrative District of Moscow detained Ye. Shestakov on suspicion of several robberies. A video from surveillance cameras outside the shopping center where Shestakov was detained shows that he offered no resistance and the police did not use force while apprehending him.*

*The officers took the suspect to a local police station and then, according to Shestakov, several officers put him on a chair and beat him with a rubber baton on the face, head, feet and back. Then they put him on the floor and started kicking him. Then Shestakov was taken in a car to a multi-story building, which by his description was similar to Department of Interior (UVD) of the Western District of Moscow. Shestakov alleges that while he was in an office on the 11th floor of the building, police officers continued to beat him and demanded a confession of the robberies. After he repeatedly refused to confess, the officers hung Shestakov head down out of the window while holding him by the legs. Shestakov lost consciousness twice during the torture, and the police threw cold water on him to bring him back. Unable to bear the torture, Shestakov signed several confessions<sup>50</sup>.*

228. However, there have been incidents of police using torture against people who were not suspected of committing any offence:

*On 14 December 2010, a resident of the village of Kalaborka, Stavropol Region, asked the local police to discipline her son Vladimir Merekha to discourage his drinking. Police officers of Predgorny District ROVD detained V. Merekha near his home and took him to the local police station. Once there, the police beat him. Merekha faked death to avoid further violence. The officers held a burning lighter to Merekha's finger and ear to check if he was alive, but he continued to play dead. Then the officers began to discuss how they would hide his body. Hearing this, Merekha got scared and showed signs of life. Then the officers leaned Merekha over the table, stomach down, lowered his trousers and underpants, and pushed a mop handle into his rectum. Then they shoved him into the trunk of a car and drove him to ROVD (the district police station). The officer on duty at ROVD called an ambulance. Merekha was diagnosed with multiple injuries of varying severity, hospitalized and had surgery for rupture of the rectum<sup>51</sup>.*

229. It is not possible for human rights organizations to collect comprehensive national statistics on the number of complaints alleging torture by police, and on the number of prosecutions and convictions of the Ministry of Interior personnel for the use of torture. Firstly, human rights organizations that provide legal assistance to victims of torture do not operate in all regions of the country. Secondly, where such organizations operate, some of the complaints alleging torture do not reach them for a variety of reasons.

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<sup>50</sup> Materials available to the Public Verdict Foundation.

<sup>51</sup> Materials available to the Public Verdict Foundation.

230. However, statistical data available to human rights organizations provides a general idea of the ratio between the number of complaints filed and the number of prosecutions and convictions based on such complaints.

*For example, between January 2007 and May 2012, the Public Verdict Foundation received 107 valid complaints alleging torture<sup>52</sup>, most of which concerned violence by police. The same complaints were also filed with the investigating authorities. Criminal proceedings were opened and investigations carried out only in 23 cases. In 15 cases, criminal proceedings were instituted only after repeated complaints from the victims and their lawyers. In 78 cases, despite appeals to courts and supervisory bodies, the victims were unable to get the authorities to open criminal proceedings<sup>53</sup>.*

231. Human rights organization continue to record from year to year facts concerning tortures and cruel treatment inside the penitentiary system making a note that during last several years the number of complaints has increased. Tortures and cruel treatment at SIZO became a systematic problem which is connected at the first place with energetic efforts at SIZO of special agents representing investigation`s interests.

*Chelyabinsk region: this region is well known with the events of the year 2008 when at colony №1 because of violent acts of the administration 4 prisoners died. Thanks to cooperative judicial and informative actions of human rights activists those guilty in the tragedy were brought to account: the head of the regional GUF SIN was dismissed, against 18 executives criminal cases were opened. But already with the new head of this GUF SIN in November of 2011 at three colonies (IK-1, IK-10, IK-15) prisoners initiated acts of protest (hunger-strike, self-injury) against being beaten regularly, against humiliation, bad life condition, bad food etc<sup>54</sup>.*

*SIZO №1 is well known in Irkutsk and through regions nearby. All the prisoners who are said that they will be transferred to SIZO №1 are filled with genuine terror, because at this SIZO have become almost legal all kinds of tortures to make them confess having committed a crime. Those accused and under investigation held at SIZO 1 after having passed through “non-traditional methods of investigation” (electric shock, sexual abuse, beating) confess having committed any crimes, that is why Irkutsk region is now between the five regions with the highest per cent of the gravest cases solved<sup>55</sup>.*

*Thanks to the joint efforts of human rights activists and attorneys a documentary “SIZO of Irkutsk. Territory of tortures” which was shown in February of 2011 at Public Consultations. Following the results of the Consultations Ludmila Alexeeva and Lev Ponomariov directed an application to Vladimir Lukin, ombudsman of Russian Federation, asking him to help with the investigation of deaths at SIZO-1. Responding to this application, Lukin directed to the Investigation Department of Irkutsk region a demand to study many murders that had taken place at SIZO-1. From the Investigation Department of Irkutsk region a sardonical response has been received telling detailed*

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<sup>52</sup> Complaints were received from 36 Russian regions, including Moscow, St. Petersburg, Chita, Orenburg, Kemerovo, Kirov, Voronezh, Irkutsk, Nizhny Novgorod, Ryazan, Ulyanovsk, Moscow, Kaluga, Sverdlovsk, Lipetsk, Chelyabinsk, Volgograd, Leningrad, Kostroma, Penza, Pskov, Astrakhan and Orel Oblasts, the Republics of Bashkortostan, Udmurtia, Mari-El, Chuvash, Komi, Khakassia, Karachay-Cherkessia, and Krasnodar, Primorye, Stavropol, Kamchatka, Ussuri, Altai Krai.

<sup>53</sup> Materials available to the Public Verdict Foundation.

<sup>54</sup> From files of the Foundation “In Defense of the Rights of the Convicted”

<sup>55</sup> Report of the Foundation “In Defense of the Rights of the Convicted” of 24 February 2012

*stories about prisoners torturing themselves, beating their heads against walls, floor, beds, all that resulting in their deaths. Considering such a reply improper, human rights activists applied again to Vladimir Lukin asking him to demand from investigating authorities a real investigation of the prisoners' murders.*

232. Experience of human rights organizations shows that in Russia up to now there is no effective mechanism of inspections and investigations based on complaints of the convicted on tortures and cruel treatment. Human rights organizations do not know any one case when investigation authorities or prosecutors would initiate a primary investigation on the base of complaints of prisoners on tortures and cruel treatment themselves.
233. It's indicated in the Law that for juridical aid the convicted get possibility to meet their attorneys or other people with the right to provide juridical assistance without limiting the number of the meeting, with the duration up to four hours. In spite of this in the experience of human rights organizations there are cases of disallowance of such kind of meetings based on reasons not marked in the law, or an attorney has to wait for a meeting with his/her their clients for five hours or even more. A special problem consists in providing juridical assistance to those prisoners who have survived abuse at penitentiary institutions. As usual, meeting with them are not allowed on the base of invented reasons.

*V. Gladkov, representing interests of a prisoner on the base of a letter of trust, was not allowed illegally, several times, to meet his client by S. Matveev, head of IK-10 (Chelyabinsk region). The actions of S. Matveev were studied at a court of Moscow and acknowledged illegal in November of 2009. In spite of the opinion of the court, the head of IK-10 continued to prohibit meetings. Officers of the court emitted three decrees about imposing on the head of the colony fines with total sum of 60 000 rubles for not having obeyed to the court judgment, but he never paid it – one year passed and it became outlawed. As a result of many complaints V. Gladkov finally was allowed to meet his trustee, though only in the presence of police officers. S. Matveev is still the head of IK-10<sup>56</sup>.*

234. The article 91 of the Correctional Code of Russian Federation says that the correspondence of a prisoner with the authorities, with ombudsmen of Russian Federation and of the region, with supervising public commissions (SPCs) and ECtHR has not to be subject to censorship. Yet according to regional SPC, human rights organizations engaged in active correspondence with the prisoners (Centre for Contribution to reforming Criminal Justice, Russian Movement for Human Rights, Foundation "In Defense of the Rights of the Convicted), at some dozens of penitentiary institutions prisoners' complaints to the authorities are looked through by censors and never come to the addressees.
235. These prisoners especially are subject to sanctions, quite often with invented reasons – they are put into ShIZO, transferred to cells, put under prison's condition.
236. In September of 2011 the Safety Committee of State Duma began considering the state draft of a law on prohibiting collective hunger strikes as sign of protest and collective self-injuries of prisoners and on acknowledging them as criminally punishable acts. Human rights organizations consider this initiative inhuman, as for the moment for prisoners this is the only one method of peaceful protest against violence at penitentiary institutions. For

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<sup>56</sup> From files of the Foundation "In Defense of the Rights of the Convicted"

preventing this draft of law to pass human rights activists, public men, writers, scholars addressed to the deputies a petition not to approve the draft. Now the approval of this draft of law is suspended.

### Question 16

237. According to para 223 of the Fifth periodic report, timely investigation of complaints alleging torture and eventual prosecution of the perpetrators is ensured by the Code of Criminal Procedure that establishes time frames for investigations, time frames for suspending such investigations and time frames within which the courts must begin hearing criminal cases. Indeed, investigative and judicial bodies comply with the procedural timeframes; however, the requirements referred to in paragraph 223 of the Fifth periodic report only apply to criminal proceedings that have been instituted.
238. The Russian Code of Criminal Procedure provides for two phases of processing crime reports, including allegations of torture. Phase one is a pre-investigative check, where the investigator checks whether a complaint is manifestly unfounded and whether sufficient grounds exist for opening criminal proceedings and conducting a full investigation. The investigator must make a decision on the basis of the initial check within 3 days of the crime report; the deadline may be extended to 10 days based on a reasoned request from the investigator. It may be further extended to 30 days if document checks or audits are required. Based on the pre-investigative check findings, the investigator may either decide to open criminal proceedings or refuse to prosecute.
239. A review by human rights organizations reveals that the investigating authorities often extend the check phase for allegations of torture to 10 days. In many cases, their checks are not comprehensive or thorough - investigators do not always question the victims, they fail to identify and question all potential witnesses, etc. Even though such checks into complaints alleging torture are often lacking, the investigative bodies often refuse to open criminal proceedings and to conduct further investigation on the basis of the check findings. Situations where criminal proceedings are opened immediately into a torture complaint are extremely rare.
240. When torture victims and their lawyers appeal a refusal to initiate criminal proceedings, supervisory authorities and courts often override such refusals as unfounded and usually instruct the investigators as to what steps must be taken and what kind of information must be collected through further (additional) check.
241. However, even during further checks, the investigators often fail to comply with the instructions of their superiors, fail to take the requisite steps, and once again refuse to prosecute. In many cases the refusal is challenged and overruled once again, and the complaint is sent back for yet another check.
242. Situations where repeated checks are held into one and the same torture complaint are common. In some cases, after repeated refusals to institute criminal proceedings and a series of pre-investigative checks, the investigating bodies finally open criminal investigations into allegations of torture and bring the cases to court. However, numerous of refusals to prosecute, subsequent appeals, and repeated additional checks may take years.

*On 5 April 2006 E. Omelchenko was stopped by security guards when attempting to walk out of a supermarket without paying for a few food items. The police called by the supermarket security guards took Omelchenko to Presnensky District police department (OVD) of Moscow. Once there, the OVD officers started beating the detainee until he lost consciousness. On the next day, the police took Omelchenko to a medical facility for establishing the level of his alcohol intoxication. Omelchenko told the examining physician that he had been beaten by the police, and the physician found and documented injuries to his face and head. While in the police car on the way back from the clinic to the OVD, the officers beat Omelchenko once again, kicking him and using batons. Once at the OVD, Omelchenko felt worse, and the police called an ambulance. On the way to the hospital Omelchenko said he felt better, refused hospitalisation and went home. On the next day, his health deteriorated and he visited a trauma clinic, and from there he was taken in an ambulance to the Botkin City Hospital. He was hospitalised at the Botkin Hospital for treatment between 7 and 17 April 2006.*

*Omelchenko's mother complained to the prosecutor's office. On 7 May 2007, her request to institute criminal proceedings against the police was denied due to "absence of corpus delicti" in their actions. The victim appealed, and on 20 July 2007 the refusal to open criminal proceedings was quashed as unfounded.*

*After 7 days, on 27 July 2007, a new refusal to prosecute was issued, which was eventually quashed as well.*

*Since December 2007 to present, the circle of refusal-appeal-reopening of the pre-investigative check was repeated five more times. Moreover, during one round in 2008, when yet another refusal to prosecute was quashed, the applicants were unable for a long time to obtain information from the investigating authorities on measures taken to comply with the court ruling. In response to one of their appeals, the chief of the investigative department orally explained that the findings of the pre-investigative check had been lost, and therefore it was impossible to comply with the court ruling. Following complaints to the Prosecutor General of the Russian Federation and to the Chairman of the Investigative Committee, the materials of the pre-investigative check into Omelchenko's complaint were found.*

*Thus, a series of pre-investigative checks into Omelchenko's complaint have occurred over more than 4 years, and even though every refusal to prosecute has been quashed, criminal proceedings have not been opened yet<sup>57</sup>.*

243. A situation where the investigating authorities engage in numerous repeated checks instead of opening criminal proceedings and properly investigating the allegations is unacceptable and inconsistent with the principles of effective investigation of torture.
244. Firstly, the investigator's authority at the pre-investigative check phase is limited compared to the investigation phase. During the check phase, the investigator cannot conduct identification parades, confrontations, searches, seizures, cannot apply preventive measures in regard of suspected offenders and cannot provide victims and witnesses protection. All of the above becomes possible only after a criminal case is instituted.

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<sup>57</sup> Materials available to the Public Verdict Foundation.

245. Secondly, the Code of Criminal Procedure does not regulate the rights and safeguards available to individuals involved in the pre-investigative check. This is not conducive to safeguarding the rights of officials facing a torture complaint, and it also limits the applicant's ability to participate in the investigation of alleged torture. In particular, investigators often refer to the absence of relevant provisions in the Code when they deny the applicants' request to view and copy the pre-investigative check materials. If the victim appeals to court, he or she is usually allowed access to the check materials, since this right has been upheld in a number of judgments of the Russian Constitutional Court<sup>58</sup>. But the appeal takes time, and the applicant is finally allowed access the check materials after a long delay, which, in turn, unduly prevents him or her from submitting a well-substantiated appeal against the unjustified refusal to institute criminal proceedings.

*On 11 September 2008, an investigator at the Dzerzhinsky interdistrict office of the Investigative Committee Department in Nizhny Novgorod Region, based on the results of a pre-investigative check, refused to open criminal proceedings into S. Lyapin's complaint about torture at the hands of police officers at Volodarsky District OVD in Nizhny Novgorod Region.*

*On 19 September 2008 the victim's representatives filed a request to view the materials of the check, but on 22 September 2008 their request was denied, and they appealed to court. On 9 October 2008, Dzerzhinsky City Court of Nizhny Novgorod Region denied the appeal, but on 9 December 2008, Nizhniy Novgorod Regional Court quashed the Dzerzhinsky City Court's ruling as unlawful. After re-examination of the appeal on 29 December 2008, Dzerzhinsky City Court found unlawful the investigator's refusal to allow access to the pre-investigative check materials.*

*Once the court's decision came into force, the victim's representatives once again requested to view the check materials, but on 19 January 2009 their request was denied once again; the reason given was that the Code of Criminal Procedure did not provide for viewing the file. The victim's representatives appealed to Dzerzhinsky City Court complaining that the Dzerzhinsky Interdistrict Investigation Unit of the Investigative Committee failed to comply with the court ruling.*

*It was only on 16 February 2009 that the ruling of Dzerzhinsky City Court was enforced, and the applicants were granted access to the check file. Thus, viewing the pre-investigative check materials became possible five month after the check was completed<sup>59</sup>.*

246. In paras 224-228, the Fifth periodic report describes the procedures available under the Code of Criminal Procedure for appeal against unlawful decisions, actions or inaction of the investigators.
247. It is known from the practice of human rights organizations that courts and prosecutors often decide in favour of the victims of torture and against investigators responsible for delayed notification of the pre-investigative check findings, denial of access to the check materials, refusals to institute criminal proceedings, etc. However, the fact that the courts quash such

<sup>58</sup> Judgment of the Constitutional Court of 18 February 2000, № 3-P, and Determination of the Constitutional Court of 6 July 2000, № 191-O.

<sup>59</sup> Materials available to the Interregional Committee Against Torture.

decisions and actions of the investigators does not necessarily result in more effective investigation into specific allegations of torture.

248. The Lyapin case described above shows that in some cases, the investigating authorities comply with court rulings after a long delay. The Omelchenko case described above shows that even though a court or a supervisory authority may repeatedly quash the investigator's refusal to open criminal proceedings, it does not always cause the investigator to conduct a full criminal investigation or at least a more careful pre-investigative check.
249. One of the reasons for the investigators' non-compliance or improper compliance with court rulings and with directives from supervisory bodies regarding pre-investigative checks into torture complaints is a lack of accountability for investigators responsible for such violations.

*In the above example of E. Omelchenko, the investigators repeatedly refused to open criminal proceedings, and such refusals were repeatedly overturned as unfounded by supervisory authorities and courts. In particular, during one of the "refusal - appeal - reconsideration" round, the investigators failed for six months to implement a court's decision concerning the criminal proceedings. Omelchenko's representative complained to the Chief of the Investigative Committee's Department in Moscow requesting an internal departmental review. As a result, the refusal to initiate criminal proceedings was quashed, but the chief of the investigating department failed to find sufficient grounds for an internal review<sup>60</sup>.*

#### **Question 17**

250. In its para 233, the Fifth periodic report provides data on number of penal correction officers prosecuted for acts of violence against members of ethnic, racial or religious minorities. Unfortunately, the Fifth periodic report does not provide statistics on other agencies' personnel brought to justice for such offenses.
251. The Russian human rights organizations have observed that the ethnic, racial and religious composition of applicants seeking assistance from human rights organizations in cases of alleged torture is consistent with the ethnic, racial and religious make-up of the region concerned. Known appeals to human rights organizations do not indicate a massive practice of torture with the purpose of discrimination on racial, ethnic and religious grounds. However, one cannot rule out a possibility that ethnic and other minority groups are less likely to complain.

#### **Question 18**

252. Federal law of 15 July of 1995 № 103-FZ "On incarceration of those suspected and accused in having committed crimes" contains several articles (articles 38 and 39) describing disciplinary penalties and the way they are applied to the suspected and accused prisoners. According to this law, to a prisoner who has not obeyed to established requirements may be applied such penalties as reproof, placement to isolation ward or solitary confinement. Penalties for violation of the established order of incarceration are imposed by the keeper of the penitentiary institution or his assistant. One violation may not be punished with more

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<sup>60</sup> Materials available to the Public Verdict Foundation.

than one penalty. Before imposing the penalty the guilty prisoner has to be demanded for a written explanation. In case of refusal to write the explanation corresponding formal note has to be composed.

253. A prisoner has to be held at isolation ward alone. At isolation ward he or she is provided with a personal sleeping place and bedroom accessories only during sleeping time at established hours. During his/her stay at isolation ward a prisoner is not allowed to write letters, buy food and living essentials, receive packages and deliveries, play table games, watch TV.
254. Penalties imposed on the convicted to the imprisonment are determined in the Correctional Code of Russian Federation, among them are in particular: reproof, disciplinary fine, placement to punishment isolation cell, transferal to ward-type rooms, to solitary cells or to common ward-type rooms.
255. During the period of disciplinary penalties at SIZO, ShIZO or ward-type rooms of penitentiary institutions the prisoner is subject to limitations concerning his/her meetings with the family.
256. Those measures in fact deprive the convicted from long meetings with close relatives, as the meetings have to be agreed with the administration of the institution beforehand. If on the appointed day of the meeting the convicted is at punishment isolation cell the meeting for him/her is not allowed. It's very difficult to reschedule the meeting for another day, nobody informs beforehand the family of the convicted that there will not be a meeting.
257. In spite of the fact that the law determines clearly disciplinary measures and their imposition on those suspected, accused and convicted, administrations of penitentiary institutions understand legislative intents quite often in their special way using them as a way of pressure on prisoners. As an illustration will serve an abstract from a member of SPC of Sverdlovsk region's report:

*“... the acting head of the operating unit of IK-52 Zhirokhov illegally issued an enormous quantity of decrees on placement into punishment isolation cells. The convicted Batukhtin with the aid of local human rights activists applied to the court and won the case! After that application several other prisoners from the same colony applied with the same question to the court. After that Batukhtin became a target for punitive activities from the part of the administration of IK-52, and now decrees on him punished with 15 days and nights at punishment isolation cell go one after another”.*

258. Functioning of mechanisms of reaction from the part of supervising institutions to the complaints on illegal placement into disciplinary cells (ShIZO, PKT, EPKT) is similar to the way of reaction from the part of the authorities to complaints on tortures. Inspections of supervising institutions find failures very seldom, even when they are quite obvious. Prisoners complain quite often about inappropriate condition of staying at ShIZO and PKT (humidity, moistness, low temperatures). As usual, after inspections the supervising institutions declare that facts from the complaint have not been confirmed. In those rare cases when the facts of inappropriate life conditions are acknowledged the public prosecutor's office/FSIN demand to correct a violation of rules (i.e. to make reparations) warning the administration of the colony that similar violations will not be tolerated in the

future.

## Question 19

259. According to the Foundation “In defense of the rights of prisoners” from the beginning of 2010 till February 2011 they received more than 200 complaints of psychological and physical abuse against inmates in penal colonies, prisons and pre-trial detention centers (SIZO). Most complaints of abuse came from correctional facilities of Kemerovo Region, Chelyabinsk region, Bryansk region, Vladimir region, Kirov region, Saratov region, Tver region, Samara region, Ulyanovsk region, Omsk region, Mordovia, Udmurtia, Bashkiria, the Yamal-Nenets Autonomous District, Krasnoyarsk territory. Yet there are several prisons, penal colonies and pre-trial detention centers that have no record of torture complaints, which does not always mean there is no abuse but says more about the secured nature of the institution where prisoners are precluded from filing abuse complaints.

260. Publicly available official statistics of the Prosecutor General’s Office, the Investigative Committee of the RF, the Federal Penitentiary Service and courts do not separate cases of torture and abuse from the total amount of complaints, inspections and preliminary investigations. For example according to the web-site of the Federal Penitentiary Service:

*In 2011 416 (in 2010 – 356, in 2009 – 270) criminal cases were initiated against employees of penal enforcement institutions (in 2010 – 372, in 2009 – 287), 261 of them were corruption cases (in 2010 – 192, in 2009 – 110). 121 cases were taken to court (2010 – 141, 2009 – 109). Statistical analysis shows that corruption acts committed by employees of penal enforcement bodies fall under the following articles of the Criminal Code of the RF: article 285 (Abuse of official powers) – 35 employees (in 2010 – 31); article 286 (Exceeding official powers) – 44 employees (in 2010 – 39); article 290 (Bribe-taking) – 103 employees (in 2010 – 92).<sup>61</sup>*

261. Data on the number of convicted officials (as well as other employees) of the penal system show only convictions breakdown by articles of the Criminal Code of the RF. It does not give an opportunity to estimate how many convictions are connected with the use of torture, physical or moral coercion, as for instance abuse of power or exceeding official power can come to bribe-taking or providing inmates with prohibited items (mobile phones, alcohol, drugs etc.).

262. Article 110 “Incitement to Suicide” is virtually not being applied, though it is not infrequent for inmates to attempt suicide or self injury because of the abuse and torture at the hands of the correctional facility personnel. Yet this article is applied extremely rarely:

*In 2008 in Nizhniy Novgorod region an employee of the Correctional Colony No. 16 of the Federal Penitentiary Service, was charged under article 286 paragraph 3 point “a” of the Criminal Code of the RF (“Exceeding official powers with the use of violence”) and under article 110 of the Criminal Code of the RF (“Incitement to suicide”). Mr. Martynov was sentenced to 4,5 years of imprisonment in a general regime correctional colony. Judicial investigation determined that the colony’s employee Martynov had been cruelly beating inmate Karlov in order to force him to join section for discipline and order of the colony. As a result Mr. Karlov not able to endure further abuse, attempted*

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<sup>61</sup> Official site of FSIN (Federal Penitentiary Service of the RF), <http://fsin.su>

*to commit suicide jumping from the roof of the barrack*<sup>62</sup>.

263. Cases of bringing employees of the Penal Enforcement System to justice for torture and physical abuse are very rare. Usually criminal charges are filed if the case receives wide publicity.

#### **Question 20**

264. In 2007, Russia launched a prosecutorial reform aimed at delineation of functions between prosecutorial oversight and preliminary investigation. Traditionally in Russia, the Prosecutor's Office (Procuracy) performed three functions in criminal proceedings: independent investigation, supervision over investigation, including the investigation carried out by prosecutorial bodies, and prosecution in court.
265. On 1 September 2007, the Investigative Committee was formed as an autonomous structure within the Procuracy, and the above functions were divided between the IC and the Procuracy. Prosecutors lost the authority to quash the investigator's refusal to initiate criminal proceedings. This led to substantial weakening of prosecutorial oversight and the prosecutor's participation in the investigation of criminal cases, in particular those related to excess of authority. Human rights organizations and lawyers consistently faced situations where their appeals to the prosecutor's office to supervise a preliminary investigation did not bring results.
266. The second stage of the reform took place in late 2010, with the adoption of the Federal Law of 28 December 2010 No 403-FZ on the Investigative Committee of the Russian Federation, whereby the Investigative Committee began to operate as an independent public authority in the sphere of criminal justice after January 2011. At the same time, the Procuracy was granted new powers to quash the investigators' refusals to initiate criminal proceedings and to require further pre-investigative checks.
267. The experience of human rights organizations in assisting victims of torture between 2011 and 2012 suggests, however, that the prosecutorial power to quash the refusals to initiate criminal proceedings did not have a significant impact on the quality of preliminary investigation. Even in cases where prosecutors quashed the refusals to initiate proceedings, further pre-investigative checks were as formalistic as the previous ones, and resulted in repeated refusals to open criminal proceedings.
268. In March 2012, a coalition of human rights organizations approached the head of the Investigative Committee with a proposal to set up a separate division within the IC to focus exclusively on investigating offences committed by law enforcement officials.
269. The initiators of the appeal identified the following obstacles to timely, comprehensive and impartial checks and investigations of this category of offences:
- Conflict of interest: the Investigative Committee officials investigate ordinary criminal offences such as homicide, rape, etc., as well as official misconduct, including that committed by police and other law enforcement agents who provide operational support for the investigation of ordinary crimes. It means that in dealing

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<sup>62</sup> From the archive of the Foundation "In defense of the rights of prisoners"

with official misconduct, the investigator has to investigate a case against a "colleague", which affects the impartiality of the investigation.

- Delayed notification of official misconduct involving the use of violence to the investigating bodies; for example, medical facilities currently report all injuries to the local police, even if the injury has been caused by police abuse. In many instances, upon receipt of such reports, the head of the police department tries either to hide this information from the Investigative Committee or to pressure the victim into withdrawing his or her complaint.
- Absence of detailed guidelines (methodology) for investigating official misconduct involving the use of violence.
- Absence of effective internal oversight within the Investigative Committee over the investigators' performance in this type of cases.
- Restriction of civic oversight over investigations of official misconduct involving the use of violence.

270. Human rights defenders believe that priority measures should address the causes of ineffective investigation listed above. Human rights defenders have suggested more than 20 specific measures<sup>63</sup>.

271. The Investigative Committee accepted the human rights defenders' initiative, and on 18 April 2012 the head of the Investigative Committee signed an order establishing a special subdivision for investigating crimes committed by law enforcement officials<sup>64</sup>.

272. Unfortunately, it is clear from the text of the abovementioned order that the newly established subdivision will not be able to check into reports of misconduct and to conduct preliminary investigation properly and in a timely manner. The entire staff of the new subdivision, with all its departments and offices across the country, will total 60 people, including 12 heads of departments and offices. Meanwhile, according to the Investigative Committee, police officers committed 4.4 thousand offences in 2011<sup>65</sup>. The number of complaints that need to be checked is many times higher. For example, in 2011, the Investigative Committee's offices received 2,070 reports of offences committed by police in one federal subject (Voronezh Region) alone<sup>66</sup>.

273. According to reports from a number of regions (in particular, Krasnoyarsk Region, the Republic of Komi, Nizhny Novgorod Region), nothing has changed in the investigation of police misconduct over the six months since the new subdivision was established. Just one example of their activity is known: their office in the North Caucasus initiated a preliminary check into allegations that Igor Kalyapin, Chairman of the Inter-regional Committee against

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<sup>63</sup> Proposals on measures for combating illegal use of violence by the law enforcement agencies and improving the effectiveness of investigations into misconduct by law enforcement officials [http://publicverdict.ru/articles\\_images/10161\\_56704\\_predlozheniyaskrf.pdf](http://publicverdict.ru/articles_images/10161_56704_predlozheniyaskrf.pdf)

<sup>64</sup> Order No 20 of 18 April 2012 on Additional Measures to Facilitate the Investigation of Crimes Committed by Law Enforcement Officials, <http://sledcom.ru/upload/iblock/a4c/a4cdc6b6dc00679897197909e1682a3d.pdf>

<sup>65</sup> Elizaveta Maetnaya, Ekaterina Kvon, Sadistic Police Detained after Complaints to Bastrykin and Chaika. *Izvestia*, 27 September 2012 <http://izvestia.ru/news/536235#ixzz28QiuiejMT>

<sup>66</sup> Bulletin № 1 of the IC Investigations Department in Voronezh Region [http://www.skprok-vrn.ru/load\\_files/3.PDF](http://www.skprok-vrn.ru/load_files/3.PDF)

### Question 21

274. Paras 255-258 of the Fifth periodic report contain information about the state's victim and witness protection program. It should be noted that by law such protection may be provided only to participants of criminal proceedings. No state protection may be provided during pre-investigative checks into crime reports. As noted above, investigators rarely institute criminal proceedings into torture cases immediately. Often, pre-investigative checks into complaints may take months or even years, during which victims and witnesses of torture are not entitled to state protection.

### Question 22

275. According to human rights organizations and regional Public Observing Commissions there are few complaints filed by women and minors from penal and detention facilities. First of all due to the fact that housing conditions in facilities for these categories of inmates are much better than those for men, and these inmates are treated more humanely. Yet human rights organizations working with prisoners' complaints detect some violations.

*Sergey Zychkov, Deputy head of the Penal Settlement No. 4 of the Department of the Federal Penitentiary Service in Amur region, was taken into custody on suspicion of physical abuse against women inmates. The investigation determined that in 2008 Mr. Zychkov beat three women inmates in punitive isolation ward of the penal settlement No. 4 in Amur region. The investigation of these criminal incidents was initiated after Zychkov's co-workers posted the video from surveillance cameras in the ward on the Internet. The inspection caused by this video posting led to initiation of a criminal case. Ex-employee of the Department of the Federal Penitentiary Service was convicted under article 286 paragraph 3 point "a" of the Criminal Code of the RF (Commission by an official of actions which transcend the limits of his powers and which involve a substantial violation of the rights and lawful interests of individuals with the use of violence). Maximum penalty provided by law is 10 year imprisonment, but Sergey Zychkov received a suspended sentence – three years eight months probation.<sup>67</sup>*

*From the letter of mothers of inmates and former inmates of Aleksinskaya juvenile correctional facility in Tula region: «... in autumn 2011 in colonies of Tula region the group of Federal Penitentiary Service officers consisting of Polyantsev, Afanasyev, Rvachev, Chensky began to wreak havoc... for every minor breach of the colony rules children were beaten, humiliated, threatened with sexual abuse, taken in an unknown direction without explanations (as it turned out later to the Pre-trial Detention Center in Novomoskovsk), where they were beaten. When different commissions came to the colony to investigate these cases, children were so intimidated they couldn't say a word ... our children constantly face threats to get some items inserted into anus, get dipped into a toilet, poured over with urine, touched with genitals on the face or on the buttocks – all this together with beatings and chaining with handcuffs.<sup>68</sup>*

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<sup>67</sup><http://susanin.udm.ru/news>

<sup>68</sup><http://zavolu.info/3018.html>

## Article 14

### Question 23.

276. Paragraphs 261-265 of the Fifth Periodic Report of the Russian Federation describe the legal mechanisms which enable a victim of torture to receive compensation. It is important to note that the rehabilitation mechanism mentioned in paragraphs 261 and 263 does not provide for a compensation of damages caused by torture for the persons wrongly subjected to criminal charges. The rehabilitation mechanism provides for compensation of damages caused by the fact of unfounded criminal prosecution per se, as well as by the use of such measures as detention, attachment of property, dismissal from office etc.
277. The victim can receive compensation for damages caused by torture per se within the framework of the compensation mechanism for damages caused by a crime, described in paragraph 265 of the Fifth Periodic Report of the Russian Federation. However torture victim can recourse to this mechanism solely in such a case when his/her torture complaint led to initiation of criminal proceedings and after investigation the guilty officers appear before court. In such cases torture victim can file a civil complaint which will be considered by court alongside determination of guilt and punishment for officers. The victim is also able to file an action regarding compensation as part of the criminal proceedings after court verdict convicting officers of torture comes into force. In such cases courts often sustain complaints of torture victims and determine a compensation.
278. Analysis of human rights organizations' activities which provide legal assistance to torture victims demonstrates that in the reporting period the compensation amounts appointed by courts in their decisions in torture cases continued to increase. This demonstrates that courts realized that torture is a severe infringement of citizens' rights, leading to serious negative consequence. At the same time in some cases the damages compensation appointed by courts appear to be inadequate.
- In 2009 police officers detained Alexander Voroshilov, a resident of the city of Orenburg, they beat him and tortured him by suffocation in order to obtain confession to a crime. There was an investigation into Voroshilov's complaint. In December 2011 Promyshlenny District Court of the city of Orenburg convicted the officers who tortured Voroshilov of abuse of office. After court decision came into legal force Voroshilov filed an action for damage compensation. On June 28, 2012 Leninsky District Court of the city of Orenburg appointed a compensation in the amount of 20000 rubles (approx 600 USD and exceeds the average monthly salary in the region only by one third)<sup>69</sup>.*
279. Even though the compensation mechanism described above in general works in a satisfactory manner, access of torture victims to this mechanism is limited considerably. As was mentioned above, recourse to this mechanism is only possible when court convicted guilty officers of torture. Without effective investigation of torture complaints it is not possible to bring a case against law-enforcement officers accused of torture to court.
280. It was pointed out before that the Russian authorities so far were unable to establish effective investigation of torture complaints: criminal proceedings are not initiated regarding

<sup>69</sup> Materials of the Interregional Committee Against Torture.

many complaints for years, inspections are held instead of full-scale investigation, these inspections are not considered effective enough even by the national courts and overseeing agencies. Absence of effective investigation precludes torture victims from recourse to the compensation mechanism for damages due to a crime.

281. Theoretically in a situation when effective investigation is absent, torture victim may use compensation mechanism provided by Article 1069 of the Civil Code of the Russian Federation. The Article stipulates for a right to obtain compensation from the state budget for damages caused by unlawful decisions, actions or failure to act by state agencies and officials. In order to receive the compensation the person needs to prove: the fact that damage was inflicted, causal relationship between the damage and actions of state agencies or officials as well as the unlawfulness of such actions. De facto a torture victim needs to provide for court the evidence of torture use by an official. Torture victim who does not have the authority and the resource of investigative agencies essentially lacks a possibility to collect evidence that specific officials used torture. As a result courts as a rule refuse to sustain claims for damages compensation.
282. However in the recent time there are individual cases when courts, regardless of the absence of an effective investigation finding guilt of specific officers, rule for compensation if it is determined that the victim was injured under the control of the state.

*On September 12, 2007 militia officers of the city of Krasnoyarsk detained Marina Sakovich. In the militia department Sakovich was beaten while officers were trying to obtain information about one of her acquaintances. On the morning of September 13 she was transferred to a temporary holding facility. On the next day a medical examination was held which documented multiple bodily injuries in the form of bruises and abrasions. On the same day she was transferred to a hospital where she stayed for treatment till November 6, 2007 with the following diagnosis "closed craneocerebral injury, medium severity degree brain contusion, sixth cranial nerve injury".*

*Investigative authorities held an investigation of battery for over 2 years, constantly refusing to initiate criminal proceedings. Sakovich filed an action with court for moral damages compensation including compensation for the bodily harm caused by law enforcement officers. Zheledorozhny court of the city of Krasnoyarsk in April 2011 partially sustained Sakovich's claim. Court ruled for a 50000 ruble compensation in moral damages for causing harm to health by law enforcement officers to be paid by the Russian Federation, regardless of the fact that specific law enforcement officers were not found guilty for causing bodily harm. Court ruled for the compensation as the state is responsible for life and health of persons under arrest, and bodily harm was inflicted to Sakovich after her arrest<sup>70</sup>.*

283. This court decision cited here as an example complies with the principle of the state responsibility for bodily harm inflicted to persons under the control of state authorities as it was formulated by the European Court of Human Rights. This approach also permits torture victims to get access to compensation even in cases when investigation into their complaints did not result in determination of specific torture perpetrators. This approach should become more widespread in the Russian judicial practice.

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<sup>70</sup> Court decision on the action filed by Sakovich, published on the website of the Moscow Helsinki Group <http://www.mhg.ru/regnews/10C5EB27>

284. It is important to point out one more positive trend in the Russian judicial practice which manifested itself during the reporting period. Namely, there are now court decisions about compensations for people, lodging torture complaints for lack of effective investigation of their complaints:

*On November 29, 2011 Leninsky Regional Court of the city of Ufa ruled for a compensation for Alexander Kamensky of moral damages caused by unfounded delays in investigation of his torture complaint. The amount of compensation is 20000 rubles<sup>71</sup>.*

285. It seems that such practice should become more widespread as it contributes to at least a partial restoration of torture victims' rights; it also stimulates the investigative authorities to hold more detailed investigations of torture complaints.

## Article 16

### Question 26

286. As for the measures directed at improving confinement conditions, it should be noted that over the recent years the situation has slightly improved. First of all it concerns inmates in institutions of confinement.
287. In October 2010 the Government of the Russian Federation adopted the Concept of Russia's Correctional System Development until 2020, approved by the Government on the 14 October 2010 and directed at improving the situation in the penal system. Concept's main goals include:
- Bringing the work efficiency up to European standards of treatment of inmates and current requirements of social development.
  - Improvement of work directed at social and psychological rehabilitation in places of confinement, development of post-penitentiary help system and as a result, decrease in repetition of crime,
  - humanization of confinement conditions, creation of additional guarantees for the protection of inmates' rights and lawful interests
  - reorganization of the correctional system, creation of new types of confinement facilities, shift away from multi-occupancy forms of inmates' housing.
288. Provisions of the Concept received a mixed reaction from human rights activists and experts, some of whom still consider it a wrong move that will result in overall toughening of confinement regime and conditions. In Russia confinement in prison (correctional facility with single occupancy cells) still means maximum-security confinement. The Concept does not answer the question whether it is possible to create prisons with European standards of confinement and treatment of inmates instead of correctional colonies. The Concept does not provide for the budget adequate for such extensive reforms and does not spell out the ideology of these to-be-created institutions, in particular new approaches and programs,

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<sup>71</sup> Materials of the Interregional Committee Against Torture.

personnel training etc. According to Federal Penitentiary Service since 2012 the personnel has been trained by new program that meets requirements of single-occupancy confinement. The content of this program is unknown. Human rights activist point out that at the moment Federal Penal System personnel has no concept of human rights and human dignity, it is not being engrained during training and is not applied in everyday practices used in correctional institutions.

289. Since April 1, 2011 correctional institutions have implemented a new system of incentives for law-abiding behavior, so called system of “social lifts”. According to the official point of view this system is aimed at developing inmates’ conscious intention to return to normal life and become a law-abiding member of society. Such intention shall be rewarded; methods of rewarding include the change of confinement conditions, correctional institution type, and replacement of the unserved part of the sentence with a milder penalty or parole based on evaluation by certain criteria.
290. According to human rights activists and some independent scientists this system based on the loyalty an inmate shows to the correctional institution administration, does not indicate the degree of his socialization, reformation and ability to live in society, but on the contrary contributes to the development of such negative antisocial traits as dissimulation, sneaking, lying etc.
291. According to the Concept by 2017 it is planned to build and put into operation 26 pre-trial detention centers, confinement conditions in which will meet European standards, and to reconstruct the facilities of operating pre-trial detention centers. In 2012 new types of clothing allowance has been developed but not yet approved. They will meet international standards and modern usability characteristics. Provision of new clothing to inmates will be completed by 2015. It is planned to raise the minimum acceptable living space conditions for inmates and improve catering for convicts and detained persons in accordance with the international standards.
292. In pre-trial detention centers of most big cities of the country (Moscow, Saint-Petersburg, Samara, Novosibirsk etc.) the whole set of additional paid services was developed for remand prisoners and their relatives. These services include the possibility to use an online store to purchase food, make an appointment with a hairdresser or a doctor, and arrange a video call via “video communication” system. “Video communication” does not replace short-term visits and is equated to a phone call. Video call can be made via video terminal installed in public places and in correctional system institutions. The duration of the video call is limited to 15 minutes. Number of video calls is unlimited. It is a paid service. The rates are set by regional telecom operators<sup>72</sup>. Besides, the use of Internet communications has allowed courts to exercise judicial proceedings via conference calls, so that a defendant or a convict does not have to stay in a small and unequipped cell in the courthouse.
293. At the moment dismantling of the upper beds of bunk beds is in progress in Temporary Detention Facilities (IVS) of the Ministry of the Interior of the RF and pre-trial detention centers. The process was initiated due to the revision of housing capacity limits of facilities aimed to bring norms of living space per inmate in line with legally fixed ones – not less than 4 square meters per person. It is easier to do it in Temporary detention facilities as inmates can be kept their not longer than for 10 days and the occupancy is variable, while in

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<sup>72</sup> <http://videosvidanie.com/>

Pre-trial detention centers occupancy stays generally at the same level. Dismantling of the upper beds means less housing capacity of cells, more living space, which is certainly a positive trend.

294. The Concept's goal to improve physiological and educational work with inmates in order to prepare them for life in society remains just good intentions. As of the date of the report no significant achievements in this area were noted. Furthermore, in private conversations senior staff members of the Federal Penitentiary Service complain about personnel's low morale and competence.
295. In order to bring the Penal Enforcement System in Russia to the European standards the Concept offers to legislatively formalize the psychological and social work with inmates as a means of their rehabilitation and to bring "the number of personnel of psychological service of the Penal Enforcement System into accordance with practice requirements". Unfortunately the concept of "practice requirements" is not explained, so it is unclear what ratio of psychologists to the number of inmates should be achieved.
296. The Penal Enforcement System is not able to provide any programs and trainings useful for inmates' personal growth, development of their social skills, self-control or addressing their alcohol or drug abuse problems. It is caused not only by lack of resources but also by absence of encouragement of personnel's creativity and humane treatment of inmates. An Inmate is first of all a criminal and the service's top priority is fighting crime.
297. Human right activists have long been proposing to demilitarize the penal system, which should come first of all to the transfer of the personnel to the category of civil servants, and second to giving up the military-style organization of inmates' life – barracks, units, foremen, marching. The fair share of the system's problems comes from the military-style organization of inmates' life and personnel's work. Unfortunately penitentiary service still considers the reform its private matter, it does not engage independent experts to analyze and make adjustments to the ongoing processes, gives nonconstructive feedback on criticism from human rights organizations and does not consider their recommendations.
298. The Program "Development of the penal enforcement system (2007 – 2016)<sup>73</sup>" aims to bring the confinement conditions in pre-trial detention centers and correctional institutions in line with the international standards and first of all provides additional funding for the creation of living space for 3,1 thousand inmates within the period from 2012 to 2016, as well as creation of additional space for confinement of 8,5 thousand suspects and defendants in pre-trial detention centers per year within the period from 2017 to 2020.<sup>74</sup> The Federal Program "Development of the penal enforcement system (2007 – 2016) does not in any way conflict with the Concept and can not be replaced by it. The Program was adopted as a basis for allocating additional budget funds to reconstruct existing pre-trial detention centers and to build new ones. For example in 2010 19 new pre-trial detention centers were opened; in 2011 the following facilities were put into operation: pre-trial detention center for 150 inmates (Kabulak, Ingushetia), the building of Detention Facility-18/2 (Glazov, Udmurtia) was extended; Pre-trial Detention Center No. 5 (Toliatti, Samara region); the works on construction and reconstruction of detention facilities, correctional colonies and penal

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<sup>73</sup> According to the Decree of the Government of the Russian Federation No. 540 of September 5, 2006

<sup>74</sup> Up to 2016 the Program was supposed to be funded from the federal budget in the amount of 77860,1142 with an allowance for price changes for the indicated period, including capital investments - 77860,1142 million RUR.

settlements have been started in 2012.<sup>75</sup>

299. Despite the measures being undertaken, the problem with confinement conditions in places of detention remains relevant.
300. In 2009 members of the Public Oversight Commission did a research on 276<sup>76</sup> temporary detention facilities in 26 regions of the country. The report “On situation in Pre-trial detention centers in Russia”<sup>77</sup> was prepared based on the research results and indicates the following main problems of confinement conditions in temporary detention facilities:
- 23% of inspected Temporary detention facilities do not have lavatories — instead there are buckets placed in dormitories; this creates unbearable conditions – lack of privacy (lavatories are not separated from the living space of dormitories), smell and unsanitary conditions. Most temporary detention facilities in Chechnya have outdoor lavatories: “*Lavatory is outside, during the day inmates are taken there under escort, for the night a bucket is placed in the dormitory*»<sup>78</sup>.
  - Most temporary detention facilities have different kinds of problems with the lighting, in particular the lack of windows, existing windows are darkened with bars, “blinds”, glass blocks; artificial lighting is dim.
  - In 26% of inspected temporary detention facilities inmates do not have opportunity to walk outdoors.
  - Limited access to water, in particular in facilities where cells are not equipped with water supply and lavatories. Not all cells have tanks of water that meet sanitary requirements. In most cases instead of tanks there are buckets of plastic bottles. There are also complaints about the quality of provided water. «*In several temporary detention facilities of Perm region cells are not equipped with sinks and water supply and have water tanks installed. However tap water is used to fill the tanks. In cells that have cold water supply inmates are not provided with drinking water and have to drink tap water*”.<sup>79</sup>
  - Not all temporary detention facilities provide inmates with three meals a day, some of them provide meals for inmates twice or even once a day. In particular such cases were registered in temporary detention facilities in Komi Republic, Chechnya and Altay region.<sup>80</sup>
  - Cells of some temporary detention facilities are not equipped with beds, but have one big floor covering that occupies as a rule more than half of the cell’s area. In most

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<sup>75</sup> <http://fcp.economy.gov.ru/cgi-bin/cis/fcp.cgi/Fcp/ViewFcp/View/2012/224/>

<sup>76</sup> There are about 2000 Temporary Detention Facilities in the country. Every day about 30 thousand inmates, both suspects and defendants are placed in these facilities. The duration of confinement is limited to 10 days.

<sup>77</sup> The Report “On situation in Pre-trial detention centers in Russia”, Moscow Helsinki Group. 2011.

<sup>78</sup> The report based on monitoring of conditions of suspects and defendants confinement in the Temporary Detention Facility of the Ministry of the Interior of Chechen Republic.

<sup>79</sup> Human rights monitoring in temporary detention centers in Perm regions

<sup>80</sup> Report on visiting temporary detention center in the Republic of Komi on December 16, 2010; report on visiting temporary detention center in Chechnya on November 19, 2010; report on visiting of temporary detention center in Altay region on November 19, 2010.

cases inmates are provided with decrepit mattresses and bed clothes. Facilities' administration explains it with a necessity to preserve the bed cloths stock as "they get damaged and useless". During the inspection of the Temporary Detention Facility in Dagestan mountains members of the Public Oversight Commission were told that "bed sheets are in the wash".<sup>81</sup>

- In 15% of inspected temporary detention facilities<sup>82</sup> cells' walls are covered with "shuba"<sup>83</sup> - embossed lime covering that together with high humidity creates favorable environment for mold fungi reproduction<sup>84</sup>. In facilities where the administration took appropriate measures such embossed lime covering was removed. For example, the head of the Central Internal Affairs Directorate (GUVD) of Voronezh region gave an order to remove such wall coverings<sup>85</sup>.

301. It is important to note that above-mentioned problems are also relevant for Pre-trial detention centers.
302. Over the last three years regional Departments of Internal Affairs (UVD) took measures to reduce over-crowding, optimize prisoners' transportation to temporary or pre-trial detention facilities, increase efficiency of transportation to temporary detention facilities, and promptly inform concerned law enforcement authorities and courts about bed availability in temporary detention facilities. The program of stepwise reconstruction of existing and construction of new detention facilities is being carried out, yet such works are few and lack funding. The situation with confinement conditions in temporary detention facilities in Kaluga region, Kostroma region, Pensa and Tula region, Mariy El, Udmurtia and Chuvashia is better than in Altay, Krasnodar and Perm Territories, Voronezh region, Sverdlovsk region, Nizhniy Novgorod region, Komi Republic, Tatarstan, Ingushetia and Chechnya – confinement conditions in 60 to 85% of temporary detention facilities of the latter regions are unacceptable.
303. As for overcrowding problem, it should be noted that over the last 5 years the number of inmates, including those in pre-trial detention centers and prisons, has decreased. According to the Federal Penitentiary Service of Russia<sup>86</sup> as of November 1, 2011 pre-trial detention centers housed 112,3 thousand people. It is 6704 people less than as of January 1, 2011. However the problem is still not fully resolved. Furthermore in 2012 the number of inmates began to increase again and on June 1, 2012 according to official data there were 113,7 thousand people in pre-trial detention centers. Many members of Public Oversight Commissions inspecting pre-trial detention centers report the constant overcrowding of cells, for example in ИЗ-52/1 of Novgorod, ИЗ-22/1 of Banaul, ИЗ-22/2 of Biysk. In ИЗ 66/1 of Ekaterinburg most inmates are housed in overcrowded cells (at the time of inspection on 31.12.2010 this detention center housed 3552 people, and the number of beds was 2255).<sup>87</sup>

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<sup>81</sup> The report based on monitoring conducted in Temporary Detention Facilities of Dagestan Republic.

<sup>82</sup> Data on 40 regional Temporary Detention Facilities.

<sup>83</sup> Wall covering makes it impossible to lean on it without feeling pain

<sup>84</sup> The report based on monitoring conducted in Temporary Detention Facilities of Tatarstan Republic

<sup>85</sup> The report based on monitoring conducted in Temporary Detention Facilities of Voronezh and Rostov regions.

<sup>86</sup> Brief description of the Penal Enforcement System. <http://фсин.рф/structure/inspector/iao/statistika/Kratkaya%20har-ka%20UIS/>

<sup>87</sup> Report on the inspection of Investigative Detention Center No. 1 conducted by the members of Sverdlovsk region Supervising Public Commission V.A. Shaklein and V.A. Bashkov, 31.12.2010

304. Legislative norm of the living space is four square meters per inmate, yet compliance with this standard is not regulated in national legislation. Official regulations do not prescribe to comply with this living space standard. Personnel's direct duties do not include controlling cell occupancy and avoiding overcrowding. Accommodating inmates Pre-trial detention centers' personnel certainly takes into account the number of beds available in the cell, but this number might far exceed the acceptable maximum. For example, most cells in Pre-trial Detention Center "Matrosskaya tishina" are equipped with beds without regard to the cell size. Description of pre-trial Detention Center in Murmansk: «The size of most cells is about 24 square meters. They are equipped with three bunk beds to house 6 people. But almost every such standard 6-bed cell has one or two additional beds, sometimes of nonstandard size».<sup>88</sup>
305. Confinement conditions for Inmates to be transferred to another detention facility are usually worse than for other inmates. As a general rule they are placed in cells that need repair, cold, damp, dirty, often with insects and rats that come out of the toilet bowls (Pre-trial detention center in Nizhniy Novgorod). Due to their short-term stay in a detention center (one or two weeks, a month) inmates in transit are usually not provided with personal hygiene items and essential supplies. During the cold season many inmates complain about low temperature in cells forcing them to constantly wear and even sleep in outdoor clothes.
- «in the detention center in Voronezh, when we entered the cell, it was extremely cold there, we slept with our coats on» (2009), - wrote minors transferred to juvenile correctional colony. «conditions in the cell are terrible, it's dirty, everything is broken» (2010). «Pre-trial detention center No. 1, Krasnodar, I slept on the cold bed frame. Windows were loose, there was a strong draught »<sup>89</sup>*
306. Inmates' complaints virtually from all regions of Russia point out the problem with adequate meals.
307. Meanwhile there are more opportunities to buy food in SIZO. Since the end of 2011 all Moscow SIZOs have online stores. Anyone can order food and pay for it, the order will be delivered to the inmate within two days. In SIZO-1 of Ekaterinburg, besides the online store there is a canteen where inmates can order a hot meal, baked foods, dairy and sausage products. The same system works in Novosibirsk, Krasnoyarsk and several other regions.
308. Receiving parcels can also be problematic due to limitations on most food products for various (to a great degree unjustified)<sup>90</sup> security reasons. The cost of food products in SIZO shops far exceeds their market price and the range of products is scarce. However purchasing food products and cigarettes in SIZO shops has its advantages. According to the instructions cigarettes passed to inmates by relatives are still broken into 3 parts, fruit is cut into 2-4 pieces, dry foods' packages are removed. This does not happen if the products and essential supplies are bought in SIZO shops or online stores.
309. Confinement conditions of arrested suspects and defendants in cells located in court buildings are still inappropriate. Often these are small cells - 2x2 or 2x3, in Moscow City

<sup>88</sup> Federal Public Institution Investigative Detention Center No. 1 of the Federal Penitentiary Service Department in Murmansk region. Data as of July 20, 2011. Member of the Supervising Public Commission I. Paykacheva

<sup>89</sup> From the archive of the Center for Prison Reform

<sup>90</sup> Fruit, vegetables, dairy products are banned, for other products the manufacturer's certificate is required.

Court – 1,8x0,8, that sometimes house two people, which does not comply with the minimal living space of 4 square meters per inmate. The size of cells in the court of Nadymkiy autonomous district is 1,3 square meters<sup>91</sup>. These dumb, isolated and dimly lit rooms are not suitable for people preparing for the trial, and for staying there in general. People spend in such cells from several minutes to several hours. Usually detainees have problems with access to toilet, drinking water and boiling water required for brewing packed meals (if it was provided in SIZO or IVS), some people suffer not being able to smoke. Cells in courts are within the jurisdiction of Justice Department. According to the engineering and construction regulations the size of each cell for defendants should be 4 м2, however this standard is not always observed in practice for example due to separation of cells into parts in order to provide separate confinement for men and women, adults and minors, as well as isolated confinement for people, who are not allowed to communicate with each other. It is allowed to construct cells without natural lighting and use underground floors of buildings.<sup>92</sup> There are still cells for defendants (Moscow City Court) with walls covered with so called “shuba” (embossed lime covering)

310. The situation with disabled persons in penitentiary system of Russia is worth a special mention. Correctional facilities in Russia are not suitable for confinement of individuals with disabilities. There are no regulations on their confinement. The main problem is lack of access ramps and elevators for inmates using wheelchairs, narrow corridors and stairs, lack of sanitary facilities suitable for disabled people, lack of assistants. For most disabled inmates it is extremely difficult to visit eating areas, sanitary facilities (washing rooms), walking areas. According to the law personnel's duties do not include rendering of assistance in moving around the colony's territory, providing with food and administering sanitary needs of such inmates. Solution of these problems is subject to the good will of other inmates, who sometimes help (usually at the expense of their own interests, as for example help in a washing room reduces or takes up all their time for their own hygiene).

*Inmate A. Semikvostov serving his sentence in correctional colony no. 11 in the Mordoviya Republic, has a spinal injury, with his lower extremities paralyzed he is confined to a wheelchair. Mr. Semikvostov is unable to reach the colony canteen unassisted as to do it he has to cross barriers separating colony units, which are metal doors with 20 centimeter high thresholds (with no access ramps). There were times when Mr. Semikvostov did not received food for several days. For the same reasons Semikvostov is not able to use a washing room unassisted, there were periods when he had an opportunity to use a washroom once in two months. The colony is not accommodated to house disabled inmates.*<sup>93</sup>

## Question 27

311. The analysis of complaints to human rights organizations shows that often inmates are transferred to ward-type rooms, joint ward-type facilities, punitive isolation wards and maximum security facilities for contrived reasons, and such transfers are essentially used to put pressure on and intimidate inmates, who disobey the facility administration.

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<sup>91</sup> <http://prokrf.ru/47433>

<sup>92</sup> Regulations on design and construction of regular court buildings CII 31-104-2000\*. [http://www.stroyoffis.ru/sp\\_svodi\\_pravi/sp\\_31\\_104\\_2000/sp\\_31\\_104\\_2000.php](http://www.stroyoffis.ru/sp_svodi_pravi/sp_31_104_2000/sp_31_104_2000.php)

<sup>93</sup> From the archive of the Foundation “In defense of the rights of prisoners”

312. Confinement conditions in these facilities often do not meet basic living standards.

*Punitive isolation ward in the correctional colony No. 3 of Sverdlovsk region (maximum security penal colony): «... in all punitive isolation wards, maximum security punitive isolation wards and ward-type rooms there are no washing sinks. Instead they have open water pipes above lavatory pans... In most cells there are no tables, and if there is one, it is just a 20x40 centimeters stand... solitary confinement punitive isolation wards No. 25 – 29 are 1 meter wide and 3-4 meters long, toilet (a hole in the floor with a water pipe above) right at the entrance, so you have to be careful coming in, furniture consists of one fasten bed. Damp walls, low light, it seems last time the cell was renovated during the soviet times, and its cold. The administration puts in such cells inmates, whom they want to “reward” for disobedience with tuberculosis or at least tonsillitis....»<sup>94</sup>*

313. We would like to specially mention inmates’ complaints about the fact that medical examination preceding transfer to ward-type rooms, joint ward-type facilities, punitive isolation wards is just a formality. On August, 9 2011 the Ministry of Justice of the RF issued an order regulating medical examination procedures for inmates before their transfer to ward-type rooms, joint ward-type facilities, punitive isolation wards etc. The Order obliges medical staff to conduct the examination of inmates’ physical condition before their transfer to disciplinary units. In case of serious health problems the doctor must inform the colony’s administration and make a conclusion that an inmate’s transfer to a solitary confinement cell will cause irreparable harm to his health. The administration in its turn must take doctor’s recommendations into account. But the abovementioned order hasn’t changed the situation. Medical examination and doctor’s opinion regarding the possibility of an inmate’s confinement in ward-type rooms, joint ward-type facilities, punitive isolation wards is still a formality, because members of the medical staff being employed by detention institutions are subordinated to the heads of these institutions and are not independent enough to give an impartial opinion. Inmates’ transfer to ward-type rooms, punitive isolation wards, joint ward-type facilities without regard to their health condition is one of the most widespread violations.

### Question 28

314. Official statistics on the number of deaths in places of detention is officially publicly available, and sometimes representatives of Prosecutor General’s Office or high-rank officers of the Federal Penitentiary Service in their interviews name the figures. For example, on November 2, 2011 in the TV show “Right to know” deputy head of the Federal Penitentiary Service of the RF Aleksey Velichko presented the following statistics: “If we take the data for the first nine months of previous years, in 2009 in prisons 315 people died of natural causes, in 2010 – 253, in the current year – 258”.
315. However, according to the statistics of Prosecutor General’s Office 4 423 people died in correctional facilities of the RF in 2010. This rate is 6% higher than in 2009<sup>95</sup>. In 2009 more than 200<sup>96</sup> seriously ill inmates of pre-trial detention centers of the RF died before trial

<sup>94</sup> From the report of Sverdlovsk region Supervising Public Commission, 2011.

<sup>95</sup> 06.04.2010, "Rossiyskaya gazeta" – Federal issue №5150 (71), <http://www.rg.ru/2010/04/06/zabarchuk.html>

<sup>96</sup> In 2008, 276 inmates died in pre-trial detention centers, in 2009 233 inmates died. For more details: <http://kommersant.ru/doc/1503566>

(according to Pavel Krasheninnikov).<sup>97</sup> Here are some examples:

*Death of 37-year-old Hermitage Capital lawyer Sergey Magnitsky, accused of accessory to tax evasion. According to forensic enquiry the death was caused by heart failure. Members of the Moscow Public Oversight Commission, who investigated the circumstances surrounding Sergey Magnitsky's death, made the following conclusion: «...in the pre-trial detention center "Matrosskaya tishina" Magnitsky was left without the medical care he needed... seriously ill man was left (for 1 hour 18 minutes) to die without medical attention". In their report members of Public Oversight Commission also point out that "Sergey Magnitsky was subjected to psychological and physical pressure. It is unprecedented that within a year in custody he was transferred among three pre-trial detention centers. During his last three months alone, Magnitsky was moved from cell to cell, each new cell being worse than the previous one." Based on ultrasound scan Magnitsky was diagnosed with pancreatitis and cholecystitis, it was recommended to schedule a surgery. However the doctors of the detention center advised to do the surgery after his release in civilian hospital.*<sup>98</sup>

*Vera Trifonova, 53 years old, charged with attempted fraud died on April 30, 2010 in the medical unit of SIZO-1 ("Matrosskaya tishina"). Trifonova was diagnosed with "diabetes, diabetic nephropathy and chronic kidney disease" <sup>99</sup>.*

*Roman Fomkin, 27 years old, computer specialist and sports enthusiast died on December, 15 2011 in SIZO-1 ("Matrosskaya tishina"). Within 4 months of imprisonment he turned into a starved old man with bloody bedsores. Only one week before his death the measure of pretrial restraint for him was changed to recognizance not to leave the city. The fact that within 5 months in pre-trial detention center Roman's weight dropped to 35 kilograms (he was 172 centimeters tall) clearly shows that medical care he received in abovementioned pre-trial detention center was inappropriate.*<sup>100</sup>

316. Speaking of the official prison statistics, it is important to understand that the real situation is even worse. Human right activists have a lot of examples where technically the death can not be included in "prison statistics" (a person died after release), but in fact, the death is a result of imprisonment.
317. During the recent years the Penal Enforcement System has taken additional measures to improve the system of medical care for convicts and detained persons, which can be considered as measures to prevent death in custody. For more details see the answer to question 12. Unfortunately these measures haven't yet had any visible effect, and deaths in places of imprisonment still occur.

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<sup>97</sup> <http://www.newsru.com/russia/20sep2010/noarrest.html>

<sup>98</sup> <http://www.newsru.com/crime/27jul2012/magnitsky.html>

<sup>99</sup> From the report of Moscow Supervising Public Commission

<sup>100</sup> From the archive of the Foundation "In defense of the rights of prisoners"

## The situation in the Chechen Republic

### Legal context: the Federal Law on Combating Terrorism

318. The period covered by the 5th periodic report was marked by a change in the Russian legislation regulating anti-terrorist operations. The former Federal Law No 130 of 25 July 1998 on Combating Terrorism was replaced by the new Federal Law № 35-FZ on Counteraction to Terrorism of 6 March 2006.
319. The new law, just like its predecessor, grants excessive and even extraordinary powers to officials involved in combating terrorism. The counterterrorist operation (CTO) regime may be imposed in any part of the Russian territory without limitation; its boundaries are defined by an obscurely-appointed CTO administrator (the law says nothing specific in this regard) reporting only to the FSB Director or to the head of the FSB's local office. In principle, one cannot rule out (and the law does not rule out) a counter-terrorist operation covering the entire country. The law on Counteraction to Terrorism allows using the State's military power against terrorists without limitation; not only individual military units and detachments, but entire forces of the Russian Army may be deployed by a Presidential decision (Article 9). The law does not provide any time limits for a CTO, and no elected body is authorized to terminate or extend it. Restrictions of individual rights and liberties under the CTO regime are almost identical to those imposed during a state of emergency (SOE), but in contrast to SOE, the CTO regime does not require accountability and is free from parliamentary or international oversight.
320. Amendments to the Law on Counteraction to Terrorism of 27 July 2006 empower the Russian President to make decisions on his sole discretion concerning the use of "special forces to combat terrorist activity against the Russian Federation" outside the Russian borders.
321. According to Article 18 of the Law, "if caused by lawful actions aimed at suppressing a terrorist act, any damage to the health and property of a person participating in a terrorist act and any damage caused by the death of such a person shall not be subject to compensation". Within the meaning of Article 49 of the Russian Constitution, the presumption of innocence must apply to cases when the alleged offender is killed. Should the offender survive, it is up to the court to determine his guilt, but if he is killed, he should not be declared guilty, because it would violate the rights of the alleged terrorist's relatives, including children.

### Termination of a "counterterrorist operation"

322. On 16 April 2009, Chairman of the National Anti-Terrorist Committee (NAC) and Director of the Federal Security Service Alexander Bortnikov lifted the counterterrorist regime enforced on the entire territory of the Chechen Republic. It was announced that all troops temporarily stationed in Chechnya would be withdrawn, and only the 42th Infantry Division of the Defence Ministry and the 46th Operational Brigade of the Ministry of Interior would station in the Republic permanently.
323. The fact that CTO had been lifted did not have any noticeable effect on the daily lives of local people; the federal troops' involvement in efforts to suppress rebel fighters in Chechnya had been declining steadily over a few years. The troops rarely left their bases on

the plains, while the action only continued up in the mountains. The vast majority of checkpoints had been dismantled. Police units continued to be sent to Chechnya from other Russian regions, but far less numerous than before. The functions of combating the rebel fighters and the underground resistance, alongside the "authority" to use illegal violence, had been delegated to the Chechen Republic's security agencies, namely the Ministry of Interior in Chechnya and the Internal Troops battalions manned mostly by "Kadyrovtsy", i.e. devoted Kadyrov's fighters. They acted without any reference to the CTO regime, often in disregard of the Russian law in general. Formally, they are part of the federal law enforcement agencies, but in reality they are under the Chechen President's exclusive command. This factor makes Chechnya fundamentally different from other constituent regions of the Russian Federation.

### **Institutional context: the Chechen Republic**

324. In 2007, "Chechenization" of the conflict in the Chechen Republic was completed with the final establishment of Ramzan Kadyrov's autocratic regime. On 15 February 2007, Chechen President Alu Alkhanov stepped down, and the Russian President promptly accepted his resignation. On 2 March 2007, the Chechen Parliament voted for the presidential candidate Ramzan Kadyrov nominated by V. Putin.
325. The idea of "Chechenization" was introduced around 2003 and included, firstly, the establishment of local authorities - ostensibly elected, but actually appointed by Moscow, and secondly, the formation of local security forces manned by local ethnic Chechens. They were entrusted with combating illegal armed formations (IAFs), essentially by means of terrorising the local communities, groups, families and entire villages suspected of supporting the insurgents. These forces were virtually allowed to operate outside the law. Their knowledge of the local ways and customs, family connections, etc. enabled them to act more selectively and efficiently than the federal security forces.
326. Many former rebel fighters served in those armed units controlled by R. Kadyrov. Wounded, disillusioned or captured, they attempted to take advantage of the amnesty declared by the authorities to return to peaceful life. Instead, they were offered to join the so-called Security Service (SS), and then the "Anti-terrorist Centre" (ATC). Neither of these structures was established by the federal law, and they were essentially illegal armed groups. Refusal to join these units inevitably endangered the life and safety of the former insurgent and his relatives.
327. In 2004 and 2005, many Security Service units were legalised as part of the federal Ministry of Interior's various structures in the Chechen Republic. Former members of Ramzan Kadyrov's Security Service, most of them former insurgents, took key positions in the federal Ministry of Interior's branch in Chechnya. The Ministry of Interior in Chechnya attack units, such as the Second patrol police regiment (PPSM-2) named after Akhmad Kadyrov, and the "Oil Regiment" (a dedicated security regiment of the Ministry of Interior in Chechnya) consist entirely of former Security Service fighters. In 2006, the "Sever" (North) and "Yug" (South) battalions were formed of "Kadyrovtsy" who had served in the ATC; these battalions, even though they were formally part of the 46th Internal Troops brigade of the RF Ministry of Interior, continued to identify themselves as "Kadyrovtsy" subordinate to the head of the Chechen Republic.
328. As a result, the law enforcement bodies in the Chechen Republic are now largely staffed by

people with a history of violence in the ranks of illegal armed groups, by people who regard the rule of law is an alien concept and feel entitled to carry out any type of "operation" using any methods they choose.

329. During "Chechenization", various federal agencies had created a number of local armed forces other than "Kadyrovtsy". The establishment of Kadyrov's autocratic regime was accompanied by elimination of these forces since they were beyond R. Kadyrov's control.
330. In November 2006, the Goretz (Mountaineer) detachment headed by Movladi Baisarov was disbanded, and its commander Baisarov was killed. Back in 2004, Goretz was granted semi-legal status of a "special purpose force" controlled by the FSB's office for the CTO coordination and conduct. In early 2006, Baisarov's detachment lost its status of the FSB's "special purpose force", and in the autumn of the same year, members of the PPSM-2 and the Oil Regiment blocked off the home base of Baisarov's men. Hoping to find support from his patrons in the FSB Headquarters, Baisarov fled to Moscow, and most of his detachment was disarmed.
331. The Ministry of Interior in Chechnya promptly released evidence of Baisarov's crimes, such as abductions and killings of civilians. Notably, Baisarov was accused of crimes which he could not have committed singlehandedly. On 7 October 2006, R. Kadyrov's Press Service reported the discovery of a burial site with remains of ten members of the Musayev family whom Baisarov had abducted on the night of 4 October 2004, and then shot.
332. On 18 November 2006, personnel of the Ministry of Interior in Chechnya shot down Baisarov in Moscow, reportedly while they were "trying to apprehend him".
333. One could welcome the dismantling of "Baisarov's detachment" as well as publicity regarding Baisarov's crimes, if only the perpetrators had been brought to justice as a result. Instead, the leader was summarily killed, while his former subordinates were forgiven and joined the government's security forces. Criminal cases instituted into the atrocities committed by Baisarov and his men (including the abduction and murder of the Musayevs) have never been investigated, and no one has been brought to justice.
334. Two other forces created as part of "Chechenization" were dissolved in the autumn of 2008: "Vostok" (East) and "Zapad" (West) Battalions formed under the Main Intelligence Directorate of the Defense Ministry General Staff and operating outside R. Kadyrov's control.
335. Vostok was commanded by the Yamadayev brothers who had a conflict with Kadyrov. On 24 September - a month prior to Vostok's dissolution - the elder brother Ruslan Yamadayev, former State Duma member, was shot dead in Moscow. Also in September, the Chechen President's press service reported that Vostok's commander Sulim Yamadayev faced criminal charges in a number of cases involving abductions and killings, including the "mop-up operation" in Borozdinovskaya<sup>101</sup>. A few of Yamadayev's former subordinates, promptly joining the Ministry of Internal Affairs in Chechnya, testified against him<sup>102</sup>. According to

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<sup>101</sup>Please refer to paras 403-412 of the Report

<sup>102</sup> See information dated 10 November 2008 on the official site of the Chechen leader and government (<http://chechnya.gov.ru/page.php?r=126&id=4467>) reporting that Sulim Yamadayev had personally ordered the abduction of Yunus and Yusup Arsamakovs, who were then shot dead by Sulim's brother Badrudi Yamadayev. Sulim Yamadayev was charged with the abduction on 23 December 1998 (!) and subsequent killing of Usman Batsiev, and with several episodes related to the "mop-up" of

reports, Yamadayev was on the wanted list<sup>103</sup>, but it did not prevent him from living virtually openly in Moscow and exiting without problems to the United Arab Emirates, where he was killed on 28 March 2009<sup>104</sup>.

336. Human rights activists had long reported the involvement of Vostok commanders and fighters in numerous abductions, torture and killings. Affected residents of Borozdinovskaya supported by lawyers from human rights organisations took their cases to the ECtHR.
337. The hastily opened criminal investigations in 2008 into the atrocities committed by the Yamadayevs and their subordinates were part of the power struggle in Chechnya: neither the federal, nor the Chechen authorities have been interested in thorough investigations and punishment of the perpetrators.
338. Yamadayev's former subordinates testified and made statements on the local television that the Yamadayev brothers had personally planned and committed all the crimes, and killed all their victims. The story was similar to that with "investigations" into the crimes committed by M. Baisarov and Goretz fighters.

### **Legal context: Impunity of unlawful violence**

339. The Chechen authorities have granted the uniformed forces total impunity; in this regard, Chechnya differs strikingly even from its closest neighbours.
340. Chechen officials have repeatedly and publicly on the local television expressed their support for extrajudicial executions. Speaking in a mosque in Grozny on 23 May 2009 (the report was broadcast on the same day on the Grozny TV, ITOGI program, at 8 p.m.), said,

*"I swear by Allah! Wahhabis and those with the slightest smell of Wahhabism will be eliminated in Chechnya. I swear by Allah that I will only allow those to live on this land in Chechnya who can bring their children home. They must either bring their bastard children home to be put in jail, or kill them. If we do not kill them, you will suffer evil for these children. I swear by Allah! We will not even arrest them or put them in jail, we will kill them where we find them. And after that will not allow anyone even to say their names".*

341. Extrajudicial killings can never be justified, even in regard of terrorists: by Russian law, suspects should be apprehended and proven guilty, and then a court should prescribe their punishment (mindful of the moratorium on the death penalty). The above statement, however, is a public appeal to destroy, not to apprehend, those who profess a certain branch of Islam, and even those who raise the slightest suspicion of it ("smell of Wahhabism"); it is essentially an appeal to killing the suspects.
342. On 30 August 2010, after a rebel attack on the village of Khosi-Yurt, Ramzan Kadyrov made the following statement (promptly televised on the Wainakh TV channel)

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Borozdinovskaya in the summer of 2005.

<sup>103</sup> <http://lenta.ru/articles/2008/08/07/vostok>

<sup>104</sup> The UAE charged and convicted the caretaker of Kadyrov's racehorses Mahdi Lournia and the Tajik national Maksudzhon Ismatov. Police in Dubai believed that Adam Delimkhanov, Russian State Duma member for Chechnya (earlier, deputy prime minister of Chechnya responsible for the law enforcement), was behind the murder, and declared him on the international wanted list. In July 2012, the UAE government lifted the charges against Delimkhanov. Earlier in Moscow, Sulim Yamadayev's younger brother Isa "made peace" with Kadyrov and withdrew his earlier statement that Kadyrov had orchestrated an attempt on his life.

*"I appeal to the villagers of Khosi-Yurt in particular. Now I have made it so they are forgiven. But next time, father will be responsible his son's acts, otherwise, both will be shot in the head and their brains will be blown out. You gave birth to a child, you must be responsible for him. Both you and me. Father is responsible for his son, mother is responsible for her daughter".*

343. The highest official in a constituent subject of the Russian Federation has publicly pronounced threats of collective punishment and extrajudicial executions.
344. The leader's invitation to disregard the law has been taken up and followed by his subordinates. On 16 June 2009, the Grozny TV channel, in its evening news at 10:07 p.m., televised a meeting between the Grozny city head of administration M. Khuchiyev and the families of illegal armed groups' members. Khuchiyev said,
- "Yesterday, the President spoke about it. Today is the 16th [of June]. Starting today, I'm warning you. From now on, you are responsible for stability in your districts, be it Staropromyslovsky, Leninsky District, Otyabrsky, or Zavodskoy District. For any incident, any crime committed by these devils, their father, mother, brother and sister will be held responsible. This man's relatives who live in this area will be held responsible".*
345. Thus, the practice of hostage-taking, prohibited by international covenants and conventions that Russia is party to, has been introduced in a subject of the Russian Federation by the direction of the head of this subject<sup>105</sup>.
346. On 1 July 2009, A. Delimkhanov, State Duma Member representing Chechnya, said (televised by the Grozny TV channel, 10:30 p.m. news; the video has been posted on many websites<sup>106</sup>, and his statement has been quoted in the media), "We will meet the obligation assigned to us by President Ramzan. Allah willing, we will destroy those devils, those criminals, and those who assist them, and those who support them in their thoughts". They use the word "devil" ("shaitan") to describe the rebel fighters, and what the MP actually said was that people would be killed not even on suspicion of a crime, but for a "thoughtcrime".
347. The "Memorial" Human Rights Centre has forwarded the records of the above public statements to the prosecutor's office, urging them to verify the facts and to open criminal investigations into these public calls to unlawful violence, and also to the Russian President's Administration and personally to Russian President Dmitry Medvedev. The Russian President's Administration forwarded the materials to the Chechen Republic Prosecutor's Office, where the verification of facts still continues to this day.
348. In this context, it comes as no surprise that the law enforcement personnel in Chechnya feel free to kill, abduct and torture people with impunity.

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<sup>105</sup> This type of public statements have been repeated. On 7 April 2010, the Chechen TV (Wainakh TV Channel; the video is posted on the "Memorial" Society's website). Note that the Chechen Ombudsman N. Nukhazhiyev was present at that meeting, but he chose not to respond to what was said.

<sup>106</sup> <http://www.hro.org/node/6340>

## Regarding the questions posed to Russia:

### Question 31

#### **Information on the steps taken to address the CPT's concerns and recommendations.**

349. Para 345 of the Fifth Periodic Report says that "the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited facilities of the penal correction system 19 times, including those located in the North Caucasus region 11 times. Following the visits, the Committee made a number of recommendations of a confidential nature to the Russian authorities".
350. However, in March 2007, the CPT released its third public statement following a visit to the Chechen Republic. The Committee came to a conclusion that *"Resort to torture and other forms of ill-treatment by members of law enforcement agencies and security forces continues, as does the related practice of unlawful detentions. Further, from the information gathered [by the Committee], it is clear that investigations into cases involving allegations of ill-treatment or unlawful detention are still rarely carried out in an effective manner; this can only contribute to a climate of impunity"*.
351. Over the years, the Russian authorities have never agreed to publish the CPT's reports and recommendations, indicating an unwillingness not only to acknowledge the CPT's "inconvenient" findings, but also to correct the situation. The steps that have been taken only imitate relevant activity and create an appearance of efforts to combat torture, ill-treatment and impunity.

#### **On the state bodies entrusted with the investigation of all allegations of torture and other forms of ill-treatment, as well as the results of the investigated cases; on the measures taken to combat and prevent kidnappings, abductions and enforced disappearances of people in the Chechen Republic, including cases attributed to law-enforcement and security forces.**

352. In response to this question, the Fifth Periodic Report of the Russian Federation formally describes the procedure for registration of applications, institution of criminal cases, etc. However, even those numbers which are quoted in the report reveal that in the vast majority of cases, the authorities refuse to initiate criminal proceedings into reports of torture and ill-treatment.
353. Even if criminal cases are opened, they tend to remain unresolved; the following are just two examples.

*Timur Khambulatov was detained on the night of 18 March 2004 and taken from his home in the village of Savelyevskaya, Naursky District, to Naursky police station, where he died a few hours later. Shortly before his death, the police had called an ambulance. Khambulatov told the ambulance team that he had been severely beaten and was not feeling well, and that "something had broken off inside him". A forensic medical examination confirmed multiple injuries on Khambulatov's body, but the forensic expert wrote that the death was caused by a heart failure linked to a pre-existing heart condition. Naursky District prosecutor's office opened a criminal case under Part 3, Article 286 of the Criminal Code (exceeding official authority). However, the*

*perpetrators were not established, and the investigation was suspended "due to failure to identify potential perpetrators to prosecute". The victim's relatives filed an application with the ECtHR under Articles 2 and 3 of the ECHR (Khambulatova v. Russia, № 33488/04). On 3 March 2011, the Court found the Russian authorities responsible for Khambulatov's death, for subjecting him to cruel and inhuman treatment, and for ineffective investigation of the crime. Despite the Court's request, Russia made available only a small portion of the criminal case file. But even these documents are sufficient to conclude that the investigation has been careless. Meanwhile, in his response to an enquiry from "Memorial", V. G. Makeyev, Deputy Head of the 2nd Department for Procedural Supervision of the Investigative Committee's Department in Chechnya denied both the inadequate investigation of the case and the causal relationship between the numerous injuries on Khambulatov's body and his death, and wrote that "there are no grounds for cancellation of the procedural decision to suspend the investigation"<sup>107</sup>.*

*In the evening of 30 November 2008, brothers Akhdan, Alvi and Imam Ilayevs were detained in their home in Pervomaisky village, Groznensky (rural) District of Chechnya, by men in camouflage uniforms, and taken to a local police station near the village of Dolinsky. The women who were in the house at the time were also brought to the police station and heard Akhdan's and Alvi's screams. Soon the women were let go, and then Imam was released; he looked severely beaten and said that he had been tortured by electric shocks. At the same time, the older brother Zurab Ilayev who lived separately was urgently called to his workplace, the 5th Company of the "Oil Regiment", where he had served since 2002. On December 1st, a policeman came to the Ilayevs' home and said that the detainees were suspected of involvement in a subversive attack. On December 2nd, the Chechen Ministry of Interior's press service reported that two rebel fighters had been killed in a security operation in Groznensky (rural) District, and Akhdan's and Alvi's dead bodies were shown on TV, dressed in camouflage (they had been taken from their home dressed in civilian clothes). On December 3d, the Ilayevs' mother identified Alvi's and Akhdan's bodies in the morgue; they had died of gunshot wounds, but their bodies were covered with scratches and bruises.*

*On December 5th, the relatives filed a report with the prosecutor's office and the police of Zurab Ilayev's abduction. On December 10th, they were informed that Zurab's body was the city morgue. His body showed signs of beating and suffocation. He was found on December 8th in a landfill near the Karpinski Hill, two hundred meters away from the "Sever" Battalion base. On 12 December 2008, Zavodskoy Interdistrict Investigation Unit of the Investigative Committee's Department in the Chechen Republic (in the city of Grozny) opened a criminal investigation into the finding of the dead body, Case № 40044 under Part 1, Article 105 (homicide) of the Criminal Code.*

*In response to an inquiry from "Memorial", on 12 January 2009, Acting Deputy Head of the Grozny Interdistrict Investigating Office M. M. Kolimatov wrote that Akhdan and Alvi were killed in an armed confrontation with members of the security forces, and Zurab's whereabouts were unknown. On 6 February 2009, investigator B. R. Vagapov of the Investigative Committee's Unit in Groznensky (rural) district refused to open a criminal investigation into the abduction and murder of Alvi and Akhdan Ilayevs. On 13 February 2009, the Chechen Republic Prosecutor's Office quashed the investigator's*

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<sup>107</sup> Letter from V. G. Makeyev, Deputy Head of the 2nd Department for Procedural Supervision of the Investigative Committee's Department in Chechnya, No 96-216/2-572-12 of 29 June 2012.

*refusal to open criminal proceedings, and the same investigator opened criminal case No 70008 under paras "a" and "g", Part 2, Article 105 (homicide), and paras "b" ad "c", Part 2, Article 158 (theft) of the Criminal Code. In March 2009, cases No 40044 and No 70008 were consolidated, and Zalina Ilayeva was granted victim status in the proceedings. The investigation was repeatedly suspended "due to failure to identify potential perpetrators to prosecute", and then reopened.*

*It is obvious from the accessible part of the case file that the investigation was negligent: each new decision to reopen the investigation repeated, word for word, the same basic steps that had to be taken, and each time the investigators failed to do so. So far, the crime not has been investigated, and no one has been brought to justice.*

354. The vast majority of abductions and disappearances in Chechnya have not been properly investigated, the perpetrators have not been found, and the investigation has been repeatedly suspended "due to the failure to identify potential perpetrators to prosecute", then formally reopened, and suspended again.
355. Russia's Fifth Periodic Report says that the investigation of serious and particularly serious offences against individuals *"are carried out by agency No. 2 of the Chechen Republic investigation department which was set up to deal with particularly important cases as part of joint operational teams and is currently examining 206 cases involving abductions, homicides and disappearances of citizens. The organisational and legal measures taken have had a positive impact on criminal proceedings in a number of cases"*. The report provides no data on either any completed investigations of this category of cases or on anyone brought to justice.
356. The database maintained by the "Memorial" Human Rights Centre contains descriptions of more than three thousand cases of enforced disappearances in Chechnya since October 1999. Their circumstances clearly indicate the involvement of the State's security and law enforcement agents. Criminal proceedings have been opened into most such cases, but only in one of these cases - the disappearance of detainee Zelimkhan Murdalov from Oktyabrsky VOVD in Grozny in January 2001 - charges were brought and the case was referred to court. In 2005, the Supreme Court of the Chechen Republic convicted a police officer from Khanty-Mansi Autonomous District who had been sent to serve in Chechnya. The appellate (cassation) court returned the case to the first instance court, and in the reporting period (2007) it was re-examined by the Chechen Republic Supreme Court, which upheld the conviction. In 2011, the RF Supreme Court upheld the verdict.

### **Question 32**

357. Measures taken in Chechnya to ensure protection of claimants and witnesses are not only inadequate, but sometimes endanger those whom they are meant to protect.
358. In early August 2009, shortly after the abduction and killing of Natalia Estemirova, her former co-worker Ahmet Gisayev of "Memorial" noticed that he was being followed; he faced an imminent danger of abduction and "disappearance". "Memorial" facilitated Gisayev's evacuation from Chechnya and notified the investigator of Estemirova's murder (Gisayev was a witness in the case); the investigator approved of the decision, saying: *"I could certainly obtain a court order to grant witness protection to Gisayev; but who can guarantee that his guards would not be the same people who had followed him?"*

359. This assumption was confirmed a year later in regard of protection provided to Islam Umarpashaev's relatives (see para 389 below for details of the case).
360. Investigator Gairbekov who was in charge of the case realised that the Umarpashaevs risked their lives by staying in Chechnya pending the investigation, and issued a decision to offer them protection; the investigator's decision was forwarded to the State Protection Centre (SPC) of the Ministry of Interior in the Chechen Republic. The SPC officer Atlanbaev entrusted with providing protection to the Umarpashaevs colluded with Commander Tsekayev of the Chechen OMON (where Islam Umarpashaev had been detained after his abduction), and forcibly brought Islam's father and brother to Tsekaev's apartment, where Tsekayev and his subordinates, with Atlanbaev present, kept the victims for several hours forcing them to "withdraw all their applications", including their application to the ECtHR. Currently this episode is being investigated as part of the criminal case opened into Islam Umarpashaev's abduction.

### Questions 33-35

361. **In questions 33, 34, and 35**, the Committee asks to be informed on the investigation of all allegations of torture and other forms of ill-treatment, as well as the results of the investigated cases in the Chechen Republic, on the number of officials brought to justice, and on the progress of the comprehensive program undertaken by the federal government to combat abductions and find disappeared persons for 2006-2010.
362. An important source of information about the situation with the investigation of abductions and the search for missing persons are the European Court judgments where the Court has found Russia in violation of Articles 2 (right to life), 3 (prohibition of torture and ill-treatment), 5 (right to liberty), 13 (right to an effective remedy) of the European Convention.
363. As of this writing, the ECtHR has adopted more than two hundred judgments based on applications from people living in the North Caucasus. The applicants submit violations by State agents during the war or during the counterterrorist operation. Nine out of ten applications filed by residents of Chechnya<sup>108</sup> submit violations of Articles 2, 3 and 5 of the ECHR. In virtually all its judgments, the ECtHR found Russia in violation of Article 13 of the ECHR.
364. Every time the Court's judgment was final, the Russian authorities paid the compensation awarded by the Court, and then did nothing more. None of the crimes addressed in the ECtHR's judgments have been effectively investigated, none of the criminal cases went to court, no one has been brought to justice. In cases of enforced disappearances, the fate of the victims has never been established.
365. At present, there is a risk that some of these cases may eventually pass the statute of limitations, as the Criminal Code limits the time for criminal prosecution to 10 or 15 years after the offence, and if it happens, impunity will prevail.
366. As an example, note the following 39 applications from Chechnya, where lawyers from

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<sup>108</sup> The Council of Europe's Committee of Ministers as a body entrusted with monitoring the implementation of the ECtHR's judgments maintains a list of judgments based on applications from Chechen residents, where the Court has found Russia in violation of the applicants' rights. There are currently 181 judgments in the list, but we should note that in 2012 the ECtHR has adopted another 11 judgments on applications from Chechnya, which have not yet been added to the list.

"Memorial" and the European Human Rights Advocacy Centre represented the applicants as part of a joint project. The applicants submitted crimes by security forces and law enforcement bodies in the course of the armed conflict and the counter-terrorist operation. In its judgments, the ECtHR has found Russia in violation of Articles 2, 3, 5 and 13 of the ECHR.

367. The following 20 cases are about deaths caused by excessive or unjustified use of force, extrajudicial executions, torture and ill-treatment (fatal or not):

*Goncharuk v. Russia*, № 58643/00, *Musayev and others v. Russia*, No 57941/00, 60403/00, 58699/00, *Tangiyeva v. Russia*, № 57935/00, *Khashiyev and Akayeva v. Russia*, № 57942/00, 57945/00, *Isayeva, Yusupova and Bazayeva*, № 57947/00, 57948/00, 57949/00, *Isayeva v. Russia*, 57950/00, *Bitiyeva Iduyeva, Bisiyeva v. Russia*, № 57953/00, 37392/03, *Makhauri v. Russia*, № 58701/00, *Kukayev v. Russia*, № 29361/02, *Umayeva v. Russia*, № 1200/03, *Khalitova v. Russia*, № 39166/04, *Mezhidov v. Russia*, № 67326/01, *Abuyeva and others v. Russia*, № 27065/05, *Amuyeva and others v. Russia*, № 17321/06, *Gisayev v. Russia*, № 14811/04, *Khambulatova v. Russia*, № 33488/04, *Esmukhambetov v. Russia*, № 23445/03, *Albekov, Minkailov and Uspanova v. Russia*, 68216/01, *Alaudinova v. Russia*, № 32297/05, *Isayev and others v. Russia*, № 43368/04.

368. Other 19 cases are about enforced disappearances, where the responsibility of law enforcement bodies for the abductions and/or absence of an effective investigation has been established. The whereabouts of the abducted persons are unknown, and we have serious reasons to believe that they were killed:

*Magomadov v. Russia*, № 68004/01, *Sadulayeva v. Russia*, № 38570/05, *Abayeva and others v. Russia*, № 37542/05, *Alikhadzhiyeva v. Russia*, №68007/01, *Ayubov v. Russia*, № 7654/02, *Kaplanova v. Russia*, № 7653/02, *Lyanova v. Russia*, № 12713/02, *Musayeva v. Russia*, № 12703/02, *Umarov v. Russia*, № 12712/02, *Bersunkayeva v. Russia*, № 27233/03, *Betayev v. Russia*, № 37315/03, *Mutsayeva and Tepsurkayev v. Russia*, № 24297/05, *Magomadova v. Russia*, № 2393/05, *Abdulkadyrova and others v. Russia*, № 27180/03, *Dubayev and Bersnukayeva v. Russia*, № 30613/05, 30615/05, *Khutsayev and others v. Russia*, № 16622/05, *Ilyasova v. Russia*, № 26966/06, *Matayeva and Dadayeva v. Russia*, № 49076/06, *Maayevy and Alikhadzhiyeva v. Russia*, № 7964/07, 37193/08.

369. In *Isayeva, Yusupova and Bazayeva v. Russia* (57947/00, 57948/00, 57949/00), *Abdulkadyrova and others v. Russia* (27180/03), and *Khutsayev and others v. Russia* (16622/05), ECtHR also found a violation of the right to peaceful enjoyment of property (Article 1 of Protocol 1 to the ECHR) caused by destruction of property or by searches of private homes.

370. In each case, an effective investigation into the crimes and violations is necessary for compliance with individual measures required by the judgments of the European Court. In each case, the Court points out specific shortcomings causing the investigation to be found ineffective.

371. Based on the ECtHR's judgments, "Memorial" has sent petitions to the investigating bodies,

containing descriptions of major shortcomings identified by the ECtHR in the investigations, and suggesting specific steps necessary for an effective investigation.

372. Sometimes, the Investigative Committee reopens an investigation, but fails to conduct the steps required by the ECtHR's judgments, i. e. each new investigation suffers from the same shortcomings as the previous one.
373. The Russian authorities lack the political will to investigate crimes committed in the course of the Chechen conflict: in a number of cases, the investigating bodies had gathered material and direct evidence of the military or law enforcement involvement, but the investigations were then suspended and the cases never reached the court.
374. In November 2010, petitions were filed based on the judgments in *Abayeva v. Russia*, *Dubayev and Bersunkayeva v. Russia*, *Ilyasova v. Russia*, and *Bersunkayeva v. Russia*.
375. On 22 November 2010, the Investigative Committee's Department in Chechnya responded in regard of the *Bersunkayeva* case that the investigation had been suspended and there was no reason for reopening it, since all necessary investigative steps had already been taken. On November 26th, a similar response was received in regard of the *Abayeva* case. On December 20th, the response in regard of the *Dubayeva and Bersunkayeva* case said that the criminal case had been suspended due to inability to identify the perpetrator.
376. We regret to say that in none of the above cases the Russian authorities have conducted an effective investigation, and none of the above general measures have been implemented.
377. This clearly illustrates the officially endorsed culture of impunity for crimes committed by security personnel in Russia.
378. The situation in Chechnya has changed substantially since Russia's Fourth Periodic Report.
379. Concerning the investigation of serious crimes against the person, including abductions by the so-called "Kadyrovtsy", i.e. by members of law enforcement agencies under R. Kadyrov's control: a significant proportion of the perpetrators were former rebel fighters; a few of them were convicted and sentenced in late 2006 and in 2007. At that time, Ramzan Kadyrov was establishing his rule in Chechnya, opposed by the federally-controlled Prosecutor's Office and the Second Operational Investigative Bureau (ORB-2). This opposition explains why the prosecutor's office assisted by the ORB-2 had taken several cases of "Kadyrovtsy" criminal gangs to the trial stage.

*On 26 December 2006, fifteen former members (Chapanov, Abuzidovu, Burkhanov Edishevu, Kashtarovu, Soltakhanov, etc.) of the "Anti-terrorist Centre", PPSM-2 and other police units controlled by Kadyrov were tried and convicted in 2004-2006 for having "established a criminal gang" to rob local residents "while on service duty".*

*On 29 October 2007, a court handed down a guilty verdict against Ruslan Asuyev, deputy commander of a company within the "Oil Regiment" and two of his subordinates; their sentences ranged between 13 and 17 years in prison. Asuyev, a Police Lieutenant, had established a criminal gang whose members belonged to the Chechen Ministry of Interior and the "Anti-terrorist Centre" and former employees of the Chechen President's Security Service. This gang abducted and killed people, and*

then planted weapons and "jihad belts" on them to pass them off as "destroyed terrorists". By doing so, members of Asuyev's gang got promoted<sup>109</sup>. On 26 January 2007, two other members of Asuyev's gang - Islam Agayev and Aslan Dzhamulayev from the Anti-terrorist Centre - were tried and convicted. Their verdict stated that the defendants "acting as part of an established armed gang under the guise of an Anti-terrorist Centre's unit, committed banditry by attacking people and later killing them". The band was characterised by "stability of its composition, close relationships among members, strict division of roles" and well-coordinated actions. Agayev was sentenced to 13 years, and Dzhamulayev to 12,5 years.

380. Since then, neither the prosecutor's office, nor the Investigative Committee have ever completed this type of investigations.
381. Since late 2007, the Prosecutor's Office and the Investigative Committee's Department in Chechnya have operated in an environment where they cannot thoroughly investigate such crimes, since the Ministry of Interior agencies in Chechnya ignore them completely and deliberately fail to comply with their instructions. Investigators often tell victims that they won't even attempt to question suspected perpetrators of abductions, since it may bring about serious consequences for the investigator, including a threat to his life and health.
382. In its Memorandum of 27 May 2010, the Council of Europe Department for Supervision of the execution of judgments of the European Court of Human Rights CM/Inf/DH(2010)26 once again pointed out Russia's systematic failure to implement the general measures required by the ECtHR's judgments in regard of the actions of public authorities in Chechnya. The Committee of Ministers has repeatedly noted that in addition to numerous individual measures to restore the victims' rights, these judgments also require general measures to prevent future occurrences of similar violations. However, adequate general measures have not been taken.
383. Since November 2009, a Joint Mobile Group (JMG) of representatives of various Russian human rights organisations has been active in Chechnya. The group works to obtain and verify information on human rights violations in Chechnya, including torture and abductions, and to find out reasons why investigation into such cases is ineffective. The JMG's lawyers have undertaken civic inquiries based on appeals from citizens and have represented victims in criminal proceedings. In carrying out this work, the JMG members have repeatedly found procedural irregularities of various types and at various levels. The investigating authorities are virtually incapable of investigating this type of cases - both due to sabotage from the Chechen Ministry of Interior that systematically fails to comply with instructions received from investigators, and also due to the fact that the top officials of investigating bodies can do nothing to improve the situation. As a rule, the investigators are not particularly diligent in investigating the crimes where the law enforcement personnel may be implicated.
384. Abductions are particularly difficult for the law enforcement bodies in Chechnya to investigate. Senior officials of the Ministry of Interior, the Prosecutor's Office and the Investigative Committee have issued a number of interagency orders concerning detection, investigation and prosecutorial supervision of such cases (*a Joint Order by the Chechen*

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<sup>109</sup> N. Estemirova: Strel'ba na Povyshenie (Shooting for Promotion): In Chechnya, police are convicted who forced civilians to "play" terrorists and then shot them // Novaya Gazeta, 29 December 2007, N. Estemirova: Chechnya is replete with falsified cases on participation in illegal armed formations // Caucasian Knot. 2007, May 29th.

*Prosecutor's Office, the Investigative Committee's Department in Chechnya, and the Chechen Ministry of Interior of 25 March 2008 № 25-15/27/128 on the Procedure for Resolving Complaints and Reports of Disappearances; a Joint Order by the same parties of 5 February 2009 №7-15/10/77 on the organisation of supervision and departmental oversight over the search of missing persons, strengthening the rule of law in the registration and resolution of applications and reports of disappearances, and compliance with the Instruction by the Prosecutor General and the Minister of Interior № 83/36 of 20 November 1998 on the processing of applications, crime reports and other information on incidents related to disappearances, as approved by by the Order of the RF PG's Office and the RF Ministry of Interior of 27 February 2010 №70/122).* But the implementation of these essentially progressive orders has been lacking.

385. In March 2009, the Chairman of the Russian Investigative Committee set up the Second (currently the Third) Division under the Investigative Committee's Department in Chechnya to investigate particularly important cases where the facts of the case have been considered by the ECtHR; this Division currently deals with the majority of cases that the Joint Mobile Group is working on.
  386. After three years it is now clear that neither the adoption of progressive departmental orders, nor the establishment of a new subdivision to deal with the problem have succeeded in improving the situation.
  387. Russia's 5th Periodic Report speaks about investigations into the incidents of torture and abductions in Chechnya. Para 365 of the report indicates that the said Division No 2 (currently No 3) is currently examining 206 particularly important cases; the report further says that "the organizational and legal measures taken have had a positive impact on criminal proceedings in a number of cases: the establishment of the circumstances of the offences has been sufficiently complete, and data has been gathered on the persons involved". Para 374 says that in investigating reported abductions, investigators "are not limited to the standard investigative actions".
  388. In reality though, investigators fail to perform (or are unable to perform) even the standard and clearly essential investigative steps. As to non-standard investigative actions, they are wishful thinking; the Joint Mobile Group does not know of any cases where such recommendations have been implemented.
  389. The JMG's work with abduction cases reveals total helplessness of the investigating authorities in the Chechen Republic. One of the main theories in each of the cases is the involvement of personnel of the Chechen law enforcement bodies after 2009 (not during the "active phase" of the "anti-terrorist operation"!)
- These cases include: the abduction of Abdul-Yazit Denilbekovich Askhabov on the night of 4 to 5 August 2009 from his home by unidentified masked armed men, where the investigators attempted to verify the involvement of PPSM-2 personnel; the detention of Said-Salekh Abdulganievich Ibragimov by members of the "Oil Regiment" on 21 October 2009 and his subsequent disappearance; the abduction and subsequent disappearance of Zarema Ismailovna Gaisanova on 31 October 2009 during a security operation carried out under Ramzan Kadyrov's personal command. The investigating authorities did not respond to complaints from the affected people, and even when they made attempts to investigate - following intervention by human rights defenders and the JMG - the Chechen Ministry of Interior did not cooperate with the

investigation. As a result, there is virtually no possibility now to investigate these crimes effectively.

*The only exception is the abduction of Islam Irisbaevich Umarpashaev by unidentified armed men from his home in Grozny on 11 December 2009. On 2 April 2010, Umarpashaev was released from the place where he had been unlawfully detained. According to Umarpashaev, he was held in the basement of the Chechen OMON (security police) base. While the case was pending at the Investigative Committee's Department in Chechnya, there was virtually no progress of the investigation. However, in January 2011, the case was referred to senior investigator for particularly important cases I. Sobol of the Investigative Committee's Chief Department for the North Caucasus, and the new investigator performed the essential investigative steps, i.e. conducted on-site verification of witness statements and obtained OMON members' photos for identification. He encountered active resistance from the Chechen law enforcement officials who nevertheless have not yet been disciplined for their unlawful conduct. There is some hope for effective investigation in the Umarpashaev case, mainly due to Investigator Sobol's integrity and perseverance.*

390. Refusals to institute criminal proceedings or to allow access to findings of prosecutorial reviews, and other numerous procedural violations affecting the victims' access to justice (and ultimately their right to compensation) are caused by the investigators' negligence in the performance of their duties, and also by the lack of procedural supervision and oversight by senior officials of the investigating bodies and by prosecutors. The head of the investigating body has the authority "to review the materials of inquiry into a crime report or the materials of a criminal case file, and to quash any unlawful or unfounded decisions of the investigator" (para 2, Part 1, Article 39 of the Criminal Procedure Code). The JMG's lawyers have used litigation to overturn unlawful procedural decisions, such as refusals to open criminal investigations, in the context of criminal proceedings and reviews. Senior officials of the investigating bodies quashed such unlawful decisions only after the JMG's lawyers filed complaints with various authorities; they never did it by their own initiative, assuming perhaps that the applicants or victims did not have sufficient legal literacy to appeal. The prosecutors are inactive as well, even though they are now authorized to quash unlawful procedural decisions.
391. It is a systemic practice in Chechnya to deny the victims access to the findings of criminal investigations, including access to the case files of suspended criminal cases. The JMG's lawyers won four of the six litigations on appeals against such denials of access; in one case, the Investigative Committee's senior officials overruled a decision to deny access to the case file. Eventually the investigators started to unlawfully classify certain case materials as secret in order to deny access to them; in doing so, they classified some of the cases which had been accessible before. In doing so, the Investigative Committee's Department in Chechnya violated the law on state secrecy, namely: the officials who classified the materials were not properly authorized to do so, the required procedure for classifying information as secret was not observed, the secrecy was disproportionate and referred to protecting the law enforcement officers' personal data, and entire questioning transcripts were classified, even where only a portion of the transcript was declared secret.
392. The authorities' reaction to information about problems with this type of investigations is worth noting.

393. An analytical report on the results of the JMG's work, prepared in early 2011 by lawyers of the Committee against Torture NGO (CAT NGO), described various procedural violations found in the investigations of abductions in Chechnya. The report was mailed out to various official bodies, both federal and regional. Most recipients forwarded the document to the Investigative Committee and to the Prosecutor General's Office; substantive responses were received only from the Prosecutor's Office in Chechnya and the Investigative Committee's Department in Chechnya. The Head of the 2nd Department for Procedural Supervision partly agreed with the arguments presented in the report and acknowledged systematic failure to respond to the investigators' queries and instructions<sup>110</sup>, while noting that "*The remedial measures taken have helped improve the situation and significantly reduce the incidents of non-responsiveness and formalistic or delayed responses to the investigators' queries and instructions, and facilitate interaction between investigators and operational services*".
394. Deputy Prosecutor of the Chechen Republic N.A. Khabarov admitted the existence of problems<sup>111</sup>: "*the investigating bodies fail to promptly carry out essential investigative steps, and there is a lack of adequate interaction with the operational units in solving crimes. Departmental supervision over criminal investigations by senior officials of the Investigative Committee is virtually absent. No concrete measures have been taken to correct the violations identified by the prosecutorial bodies. Those responsible for the violations and for ineffective investigations have not been disciplined as appropriate. There is evidence that certain investigators of the Investigative Committee's Department in Chechnya have covered up crimes involving abductions ... As a result of delays with opening criminal cases and in absence of assertive and active investigations the perpetrators have escaped justice and the victims' whereabouts have not been established*".
395. Ye. Antipenko, Head of the RF Prosecutor's Office Department for Supervision over Procedural Activity of the Investigative Committee, in response to an enquiry from an MP who had received the appeal, wrote: the possibility of solving these crimes promptly "*was lost at an early stage*", therefore investigating them "*is now particularly difficult*".
396. In June 2011, the CAT NGO wrote another appeal and mailed it out to the same recipients, who once again forwarded them to the Prosecutor's Office and the Investigative Committee. Medvedev, Head of the Department for Supervision over Procedural Activity of the Investigative Committee at the Chechen Republic Prosecutor's Office wrote that in May 2011 "*a coordination meeting of the Chechen law enforcement bodies' senior officials to discuss the situation with registration, resolution and investigation of disappearances and abductions in Chechnya, measures were taken to improve criminal investigation and increase the number of solved crimes of this type, to search for the missing persons, and to improve the mechanism of interaction between the investigators and the inquiry agencies*". Acting Head of the 2nd Department for Procedural Supervision of the Investigative Committee's Department in Chechnya Makeyev, for some reason, referred to the investigation of abductions committed by the federal forces between 2000 and 2005, even though the appeal was clearly about the abductions committed in 2009. Makeyev also referred to "*inadequate operational support of criminal investigations from the Chechen Ministry of Interior local departments, such as failure to carry out the required operative and search activities and to respond to the investigators' enquiries, and a formalistic*

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<sup>110</sup> The official response is available from CAT NGO.

<sup>111</sup> The official response is available from CAT NGO.

*approach to the performance of their duties."*

397. In general, the responses indicate an unwillingness or inability of the Prosecutor General's Office and the Investigative Committee to recognise and solve the problems with inadequate investigation of abductions in Chechnya.
398. Members of the JMG have discussed the lack of effective investigation into abductions with senior law enforcement officials (Minister of Internal Affairs in the Chechen Republic R. Alkhanov, his first deputy A. Yanishevsky, Prosecutor of the Chechen Republic M. Savchin, Deputy Prosecutor S. Shavkuta, Deputy Head of the Investigative Committee's Department in Chechnya S. Pashayev), and with the Chechen leader R. Kadyrov. All of them admitted the problem fully or partially and expressed their willingness to take action to address it, but there has been no improvement of the situation in Chechnya over the entire period that the JMG has worked in the Republic.
399. This helplessness of the investigating authorities in Chechnya is confirmed by the statistics quoted in the 5th Periodic Report. Thus, the report says that in 2008 the law enforcement agencies received 102 allegations of ill-treatment but the investigations into those allegations did not result in any criminal proceedings in 2008 (para 359). In 2009, 127 reports of ill-treatment were received, criminal proceedings instituted in one case, no criminal proceedings in the rest of cases (para 361). Between the time of its establishment and 2009, the Investigative Committee received 151 reports of abductions. Investigations resulted in 71 criminal proceedings being instituted, including 19 in 2008 and 40 in 2009. Four cases were referred to court in 2008, and just one (!) in 2009 (para 376). Between 2007 and 2009, 427 reports of disappearances of citizens in the Chechen Republic were received, 142 criminal proceedings were instituted, none referred to court (para 377).

**Question 39 (40 in Russian language list of issues).**

**The investigation of the abduction of Mokhamadsalakh Masaev by unknown individuals in camouflaged uniforms in the center of Grozny in August 2008.**

400. Concerning the abduction of Mokhmadalakh (Mokhmadalors) Denilovich Masaev, Zavodskoi Interdistrict Investigation Unit (IID) of Grozny, part of the Investigations Department of the Investigative Committee under the RF Prosecutor's Office in Chechnya, opened criminal case no 40027 on 12 September 2008 under part 1 Article 105 (murder) of the Criminal Code; the case was then transferred to Leninsky IIU of ID of IC under RF PO in Chechnya.
401. Later the criminal investigation was repeatedly suspended by the investigator's decision on the grounds specified by para 1, Part 1 of Article 208 of the Criminal Code (failure to identify potential perpetrators to prosecute). These decisions were repeatedly quashed at the request of the district prosecutor as unlawful and unjustified, but after a while, the investigator would always issue another decision to suspend the investigation on the same grounds.
402. At present, neither the whereabouts of M. D. Masayev or his body, nor the perpetrators of the crime have been established.

**The outcome of the criminal investigation launched in respect of the mop-up operation in the**

## village of Borozdinovskaya (Shelkovskoi district of Chechnya)

403. On 27 July 2005, the military prosecutor's office of the United Group Alignment opened a criminal case under Article 286 (exceeding official authority) of the RF Criminal Code into the violent crimes committed on 4 June 2005 in the village of Borozdinovskaya. An ad-hoc joint investigative team traveled to the scene of the crime, but it was only a few months later that the investigators seized weapons from the Vostok battalion for ballistics tests. During the preliminary investigation, the case against Lieutenant Mukhadi Makharbekovich Aziev, commander of a constituent unit (company) of the Vostok battalion, was split from the overall criminal proceedings and made into a separate criminal case.
404. On 4 October 2005, the Grozny Garrison Military Court convicted M. Aziev of exceeding official authority. The court established that Aziev, even though he had been instructed to deploy his unit secretly outside Borozdinovskaya, ordered his subordinates instead to seal off the village and to conduct ID checks using weapons and riot control equipment. By his orders, 87 local residents were detained using violence. These unlawfully detained people (including the 11 men who subsequently disappeared) were herded into a local school building, severely beaten and abused (47 people were beaten). Then Aziev ordered his subordinates to check the detainees' involvement in illegal armed groups and to find out the circumstances T. Akhmadov's murder. "In order to intimidate the detainees into telling the truth" Aziev instructed his men to use violence and riot control equipment; as a result, eight detainees were tortured. Aziev was given an unduly mild three-year suspended sentence.
405. The victims and their lawyers had not been notified of the dates and venue of Aziev's trial. None of the accomplices to the crime - those directly involved in the beatings and torture of the detainees - were brought to justice.
406. Aziev was never charged for the disappearance of 11 men who, as it follows from the judgment, were arrested by his order. According to the United Group Alignment prosecutors, *"there is no objective evidence to support the abduction and murder of the villagers by military servicemen"*<sup>112</sup>. The criminal case against "unknown perpetrators" who murdered one villager and abducted 11 residents of Borozdinovskaya and Kizlyar was made into a separate case (no 34/00/0013-05) under para "g", Part 2 of Article 105 (murder), paras "a, d, g", Part 2 of Article 126 (abduction of a person), Part 2 of Article 167 (intentional destruction or damage of property) of the Russian Criminal Code.
407. Data gathered by human rights organisations suggest the following: 1) Criminals who rampaged Borozdinovskaya on 4 June 2005 were far more numerous than the 33 persons mentioned in the verdict to Aziev. 2) Perpetrators of the crimes described in Aziev's verdict and those responsible for the enforced disappearances, killing, and arson in the village belonged to the same group of servicemen: they acted jointly in a coordinated manner, by the same plan and under the same command. 3) The crimes were perpetrated under the overall command of Mukhadi Aziev's superiors (evidence suggests the involvement of Khamzat Gairbekov, the Vostok battalion's intelligence chief).
408. However, no one has been charged under criminal case no 34/00/0013-05 as of this writing, and the fate of the 11 abducted people has not been established.

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<sup>112</sup> Reply from the UGA prosecutor's office of 21 April 2006 to State Duma MP Gennady Zyuganov

409. A certain hope of progress in the investigation appeared in the late summer and autumn of 2008, solely for political reasons - namely, the rapidly escalating conflict between Ramzan Kadyrov who had already become the president of Chechnya by then, and the Yamadayev brothers. The very existence of the Vostok battalion meant that Kadyrov did not have total control over the Chechen Republic. In August and September 2008, the Chechen president's press service released a statement saying that commander of the Vostok battalion Sulim Yamadayev faced criminal liability in a number of criminal cases involving abductions and killings, including the "mop-up operation" in Borozdinovskaya. A few of Yamadayev's former subordinates, promptly leaving him for the Chechen Ministry of Internal Affairs force, made witness statements supporting the charges against him<sup>113</sup>. S. Yamadayev was reportedly on the wanted list since May 2008, and a spokesman of the RF Prosecutor's Office Investigative Committee confirmed it<sup>114</sup>. This fact, however, this did not prevent S. Yamadayev from living relatively openly in Moscow and from exiting the country without problems to the United Arab Emirates, where he was eventually killed on 28 March 2009.
410. Threats to investigate S. Yamadayev's role in the crimes committed in Borozdinovskaya and elsewhere were clearly not driven by a desire to restore justice. Neither the Russian federal government, nor the Chechen authorities have been interested in a genuine investigation of these crimes and in bringing the perpetrators to justice. The investigation of the Borozdinovskaya mop-up operation has never been completed.
411. On 5 October 2011, the preliminary investigation of the case was suspended under para 2, Part 1, Article 208 of the Criminal Procedure Code (the suspect or the accused has fled from the investigation or his/her location cannot be established for other reasons). However, the search for the persons who have disappeared is underway, according to the Russian government.
412. In 2007, two groups of Borozdinovskaya villagers took their cases to the ECtHR. The case of *Abdurakhmanova and Others v. Russia*, no 2593/08, submitting a violation of Article 3 of the ECHR was communicated by the Court on 11 July 2011. The case of *Adzhigidova and Others v. Russia*, no 40165/07, submitting violations of Articles 2, 3, 5 and 13 of the ECHR and of Article 1, Protocol 1 was communicated by the Court on 29 June 2011. In both cases, the Russian government has submitted a Memorandum, and the applicants' representatives have submitted their comments on the Memorandum. The Court is now expected to adopt judgments in both cases

**The outcome of appeal lodged by the people injured and the relatives of civilians killed in the bombings of Rostov Baku road and the village of Katyr-Yurt in Achkhei-Martan district of Chechnya on 12 February 2000.**

Concerning the investigation into the deaths of civilians killed in the bombings by Russian military planes of a civilian convoy on Rostov Baku road near the village of Shaami-Yurt on 29 October 1999.

413. A criminal investigation was opened into the bombings under Article 286 of the Criminal Code. The proceedings were repeatedly suspended and resumed. The case was closed in 2004, and the military pilots' actions were found lawful and well-justified.

<sup>113</sup> See <http://chechnya.gov.ru/page.php?r=126&id=4467>

<sup>114</sup> <http://lenta.ru/articles/2008/08/07/vostok>

414. On 24 February 2005, in its judgment in *Isayeva, Yusupova and Bazayeva v. Russia* (nos 57947/00, 57948/00 and 57949/00)<sup>115</sup>, the ECtHR found Russia in violation of Articles 2 and 13 of the European Convention (ECHR). The Court found that the Russian authorities had failed to conduct an effective investigation into the bombing of the convoy, and noted a number of serious flaws in the investigation.
415. After the ECtHR judgment, the victims and their representatives filed a petition with the prosecutor's office requesting to reopen the investigation. The Russian military prosecutor's office quashed the decision to drop the criminal case and reopened the investigation. The criminal case was closed again in 2006 "due to the absence of *corpus delicti* in the military pilots' actions".

Concerning the investigation into the deaths of civilians killed by the shelling and bombing of the village of Katyr-Yurt on 4-7 February 2000.

416. On 27 April 2000, Ms Zara Isayeva filed an application with the ECtHR in connection with the deaths of her relatives. It was only in September 2000 that the Russian prosecutor's office opened a criminal investigation under Article 105 (murder) of the Criminal Code; in 2002, the investigation was closed "due to the absence of *corpus delicti*". On 24 February 2005, the European Court of Human Rights adopted a judgment in *Isayeva v. Russia* (№ 57950/00)<sup>116</sup>. The Court found Russia in violation of Articles 2 and 13 of the ECHR. The Court also found that the Russian authorities had failed to conduct an effective investigation into the bombing of the village of Katyr-Yurt. The Court further found that the failure to carry out an effective investigation into the assault rendered recourse to any other remedies ineffective for the victims.
417. In the months following the ECtHR judgment, the Russian authorities did not take any steps towards conducting a new and effective investigation. Therefore, on 29 July 2005 a new application *Abuyeva and Others v. Russia* (no 27065/05) was filed with the Court by 29 residents of Katyr-Yurt concerning the deaths of their relatives and injuries to some of the applicants and their family members as a result of the military operation.
418. On 14 November 2006, the Russian military prosecutor's office quashed the decision to drop the criminal case, and the investigation resumed. On 14 July 2007, the investigation was again terminated "due to the absence of *corpus delicti* in the actions of the servicemen".
419. On 2 December 2010, The Court's judgment in *Abuyeva and Others v. Russia* confirmed the findings of the earlier *Isayeva v. Russia* judgment and found substantial violations of Articles 2 and 13 of the European Convention.<sup>117</sup>
420. The court noted that the investigation carried out after the *Isayeva* judgment "*has suffered from exactly the same defects as those identified [in 2005] in respect of the first set of proceedings which had been terminated in 2002*". The Court also separately noted the lack of independence of the investigation and the authorities' failure to notify the applicants about the progress of the investigation<sup>118</sup>.

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<sup>115</sup> The judgment became final on 6 July 2005

<sup>116</sup> The judgment became final on 6 July 2005.

<sup>117</sup> The *Abuyeva...* judgment became effective as of 11 April 2011.

<sup>118</sup> *Abuyeva and Others v. Russia* (no 27065/05, Dec. 2, 2010), paragraphs 212-214.

421. The Court "*emphasized*" in connection with the *Isayeva* case that "*the respondent Government manifestly disregarded the specific findings of a binding judgment concerning the ineffectiveness of the investigation*", and that the Court "*considers it inevitable that a new, independent investigation should take place*".
422. On 17 November 2011, the Russian military prosecutor's office quashed the decision to terminate the criminal case, and the investigation resumed. However, to date no effective investigation has been conducted, and no one has been held accountable for the deaths of Katyr-Yurt residents.
423. Persons granted the status of victims in the criminal proceedings into the deaths of Katyr-Yurt residents have been denied access to the case files. On 15 May 2007, a lawyer representing the victims filed a petition with the military prosecutor's office asking to be informed about the progress of the criminal investigation, and requesting access to the case file. The military prosecutor's office denied the request stating that the information in the case was classified. The lawyer then took the case to the Grozny City Military Court arguing that by Russian law, information on emergency situations leading to loss of life cannot be subject to secrecy. On 30 October 2009, the Grozny City Military Court ruled in favour of the applicant, and on 3 December 2009 the ruling was upheld on appeal. On 15 October 2010, the applicant's lawyer once again filed a petition with the military prosecutor's office to access the case file, but on 22 October 2010, the military prosecutor's office responded that the lawyer would be given access to the case file only after the Ministry of Defence decides which of the case materials should be withheld as secret. It means that despite the rulings of domestic courts, the applicants still have problems with accessing the case file, and part of these materials continue to be classified information.
424. On 24 October 2011, "Memorial" presented the case to the Committee of Ministers of the Council of Europe. The Committee communicated this information to the Russian authorities and posted it on the Committee's website at: <https://wcd.coe.int/ViewDoc.jsp?id=1860657&Site=DG4&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679>.
425. Seeing no progress in bringing the perpetrators to justice in these criminal proceedings, on 1 August 2012, "Memorial" and EHRAC filed a request with the CoE Committee of Ministers for the initiation of infringement proceedings under Article 46(4) of the ECHR in relation to the judgment of the European Court of Human Rights in *Isayeva v. Russia*.
426. Currently, the 3d military investigative unit of the military investigations office under the RF Investigative Committee for the Southern Federal District is in charge of the criminal case. On 1 February 2012 investigator V. V. Polyansky once again denied the victims' lawyer access to the case file, citing para 12, Part 2 of Article 42 and Part 3 of Article 45 of the RF Criminal Procedure Code.

**The progress reached to investigate the cases of mass killings and torture or ill-treatment of civilians in Chechnya, in particular those occurring in Alkhan-Yurt, Urus-martan district, in 1999, in Staropromyslovsky district of Grozny and the village of Novye Aldy, Zavodskoi district, in 200 as well as in the village of Mesker-Yurt in Shali district in 2002.**

427. The military prosecutor's office reviewed statements and reports of killings and ill-treatment of civilians in Alkhan-Yurt during a mop-up operation on 1-18 December 1999, but refused

to open a criminal case due to lack of evidence of a crime.

428. In 2000, prosecutors instituted criminal proceedings into the killings and injuries caused to civilians in Staropromyslovsky district of Grozny in January 2000, after the area was taken by the federal forces. Witness statements and other information gathered by human rights organisations suggest that the crimes were committed by federal servicemen. None of the criminal cases opened into the incidents has led to the establishment of the perpetrators.
429. The ECtHR has adopted a number of judgments in cases brought by residents of Staropromyslovsky district who themselves had suffered at the hands of the servicemen or whose relatives had been killed:
- Khashiyev and Akayeva v. Russia* (no 57942/00, 57945/00) of 24 February 2005;
- Goncharuk v. Russia* (58643/00) of 4 October 2007;
- Makhauri v. Russia* (58701/00) of 4 October 2007;
- Goygova v. Russia* (74240/01) of 4 October 2007;
- Tangiyeva v. Russia* (57935/00) of 29 November 2007.
430. In all of the above cases, the Court found Russia in violation of Articles 2 and 13 of the ECHR. The Court further found that the Russian authorities had failed to conduct an effective investigation. There has been no progress in the criminal investigations after the ECtHR judgments.
431. Following the mass executions of civilians on 5 February 2000 during a mop-up operation in the village of Novye Aldy, on 5 March 2000, Grozny city prosecutor's office opened criminal case no 12011 under paras "a, e, f, g", Part 2 of Article 105 of the Criminal Code (murder of one or more persons under aggravating circumstances). On 14 April, criminal caseno 12023 was opened into the killing, in the context of the same events, of four members of the Estamirov family who lived in a house adjacent to the village of Novye Aldy in Podolskaia Street.
432. According to responses received from the prosecutor's office, the preliminary investigation found no evidence to support the conclusion that the killings in Novye Aldy and in Podolskaia Street were committed by the same people, and the prosecutors found no reasons for combining these criminal cases under the same proceedings.
433. Initially, the military prosecutor's office of the North Caucasus Military District (NCMD) reported that the "mop-up operation" in the village of Novye Aldy on 5 and 10 February 2000 was conducted by the OMON forces from St. Petersburg and Ryazan<sup>119</sup>. Later, all official responses to human rights organizations and to the ECtHR said that the "mop-up" of the village was carried out by the St. Petersburg OMON.
434. In both criminal cases, the investigators repeatedly and consistently made decisions to suspend the investigation, citing "failure to identify potential perpetrators to prosecute",

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<sup>119</sup> Response from the North Caucasian Military District military prosecutor's office of 21 April 2000 to a letter from the Memorial Human Rights Centre.

while the prosecutor's office just as consistently quashed these decisions as unlawful and unjustified. Investigators denied access to the case file to persons recognized as victims in these cases and to their representatives on the grounds that the investigation was pending and the case file contained classified documents and confidential information.

435. Members of the Estamirov family and a group of Novye Aldy villagers took their cases to the ECtHR. The Russian authorities refused to provide materials from case files nos 12011 and 12023, on the grounds that the case file contained secret information about the military operations and security measures, and private information such as names and addresses of servicemen who participated in the "anti-terrorist operation" in Chechnya. At the same time, the Russian Government argued in its submissions to the European Court that OMON's involvement in the killings had not been established by the investigation.
436. On 12 October 2006, ECtHR issued a judgment in the case *Estamirov and Others v. Russia* (no 60272/00). The Court found Russia in violation of Articles 2 and 13 of the Convention, noting that the investigation had been suspended three times and reopened four times, and the case was transferred from one investigator to another at least seven times. The court also found that the investigation had been inadequate. A number of essential investigative steps had been seriously delayed, and some others were never taken. The victims' relatives, contrary to normal judicial practice and to the law, were not granted the victim status and thus were "entirely excluded from the proceedings".
437. On 26 July 2007, ECtHR issued a judgment in *Musayev, Labazanova and Magomadov v. Russia* (nos 57941/00, 58699/00, 60403/00). The Court found Russia in violation of Articles 2 and 13 of the ECHR. The Court found that the Russian authorities had failed to conduct an effective investigation into the mass killings in Novye Aldy.
438. No one has been prosecuted under criminal case no 12023 as of this writing. In response to an inquiry from human rights organisations about the progress of the investigation into the massacre in Novye Aldy, the Investigative Committee wrote that only one (!) member of St. Petersburg OMON, S. G. Babin, was found to be implicated in the crime, but he was allegedly hiding from the investigation and thus declared wanted; they have not been able to apprehend him so far, and they have not established anyone else implicated in the massacre.<sup>120</sup> The case is investigated by the Second Division for Particularly Important Cases, IO, IC, RF PO in Chechnya.

Concerning the progress reached in investigating the mass killings and disappearances of civilians during the security (mop-up) operation in the village of Mesker-Yurt between 21 May and 1 June 2002.

439. According to official reports, the security operation involved federal forces of the Ministry of Defence, the Ministry of Internal Affairs Internal Troops, members of the federal police force and the FSB Office in Chechnya.
440. A number of criminal investigations were opened into the killings and disappearances of local residents, including case no 59113 (opened on 7 June 2002 into the killing of Adam,

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<sup>120</sup> Letter no 362-201/2-42-10 of 29 March 2010 signed by Senior Investigator S-Kh. Gayrbekov of the Second Division for Investigations of Particularly Important Cases, Investigations Office, Investigative Committee of the RF Prosecutor's Office in Chechnya.

Abu and Apti Didishevs, Article 105 of the Criminal Code), no 59114 (10 June 2000 into the abduction of S.-M. Abubakarov, Article 126, part 2, para "a" of the CC), no 59127 (23 June 2002 into the disappearance of detainee I. A. Ortsuev, Article 126, Part 2, paras "a, d" of the CC), no 59126 (23 June 2002 into the disappearance of detainee A. A. Gachaev, Article 126, Part 2, paras "a, d" of the CC), no 59125 (23 June 2002 into the disappearance of detainee L. O. Temirkhanov, Article 126, Part 2, paras "a, d" of the CC), no 59134 (22 June 2002 into the disappearance of detainee I. Askhabov, Article 126, Part 2, paras "a, d" of the CC), no 59138 (21 June 2002 into the disappearance of detainee Sh. Mahmudov, Article 126, Part 2, paras "a, d" of the CC), no 59128 (21 June 2002 into the disappearance of detainees Aslan and Anzor Israilovs, Article 126, Part 2, paras "a, d" of the CC), no 59135 (24 June 2002 into the disappearance of detainee A. Dudagov, Article 126, Part 2, paras "a, d" of the CC), no 59129 (23 June 2002 into the disappearance of detainees Sulim and Salambek Magomadovs, Article 126, Part 2, paras "a, d" of the Criminal Code), no 59133 (26 June 2002 into the disappearance of detainee V. Ibragomov, Article 126, Part 2 paras "a, d" of the Criminal Code).

441. As of this writing, the investigation of these cases has been adjourned due to "failure to identify any perpetrators to prosecute".

**The results of the investigation into the severe beating and ill-treatment by the security personnel of a number of households in Ali-Yurt village (Ingushetia) on July 28, 2007.**

442. On the day following the mop-up, many victims filed written complaints with the Ingushetia Republic (IR) Prosecutor's Office. According to the IR Prosecutor N. Turygin<sup>121</sup>, the civilian prosecutors' findings were forwarded to the military prosecutor's office with a recommendation to open a criminal investigation. However, the military prosecutors responded that the involvement of military servicemen in the beatings had not been proven, and sent the materials back to the civilian prosecutors.
443. On 3 September 2007, the Republic of Ingushetia Prosecutor's Office opened criminal case no 07500032 under para "a", Part 3 of Article 286 of the Criminal Code (exceeding official authority with violence). According to the RI Prosecutor, if the investigation fails to identify specific perpetrators involved in the mass beatings of Ali-Yurt residents, then the commander of the security operation should be punished for showing "elements of negligence, as a minimum"<sup>122</sup>. Villagers who dared to complain received threats from some unidentified people.
444. Since the establishment of the Investigative Committee as a separate unit under the RF Prosecutor's Office, the criminal case was transferred to the Nazran Interdistrict Investigations Unit of the IC ID in Ingushetia for preliminary investigation. The investigation has been repeatedly suspended due to "failure to identify a perpetrator to prosecute", reopened and suspended again. So far, the crime not has been investigated; no one has been brought to justice. In 2010, a group of affected Ali-Yurt villagers took the case to the ECtHR submitting violation of Articles 3, 5 and 13 of the ECHR.

**Investigation of cases of enforced disappearances, torture and arbitrary killing taking place in**

<sup>121</sup> In a meeting with the Memorial Human Rights Centre on 30 October in Nazran, on the premises of the RI Prosecutor's Office.

<sup>122</sup> In a meeting with the Memorial Human Rights Centre on 30 October in Nazran, on the premises of the RI Prosecutor's Office.

**Ingushetia. In particular, give information on measures taken to investigate of the abduction of Ibragim Gazdiev (abducted on August 8, 2007), Khusein Mutsolgov (abducted on May 5, 2007), Akhmet Kartoev (abducted on May 22, 2007), and death of Murat Bogatyrev (taken away by the armed personnel and killed in the detention facility on September 7, 2007).**

445. Ibragim Mukhmedovich Gazdiev, born in 1978, resident of Karabulak at 85 Pervomaiskaia St.; abducted on 8 August 2007 about 2 p.m. outside the building of the Karabulak City Administration. Gazdiev's car was blocked by a minibus; armed men in camouflaged uniforms and masks jumped out of the minibus, dragged Gazdiev out of the car and shoved him into the "Gazelle" minibus, while hitting him. One of the abductors got into Gazdiev's car and drove away. Since then, Ibragim Gazdiev's whereabouts remain unknown. On 10 August 2007, the prosecutor's office in Karabulak opened criminal case no 27520024 under Part 1, Article 126 of the Criminal Code (abduction) into Ibragim Gazdiev's abduction; the investigation was repeatedly adjourned and reopened. The last adjournment of the investigation was ordered on 15 September 2010. On 11 July 2011, Ibragim Gazdiev's relatives took their case to the ECtHR.
446. Akhmed Mukhamedovich Kartoev, born in 1977, resident of Nazran at 17 Moskovskaya St., Apt. 90; abducted on 22 May 2007 in Nazran by unidentified security personnel. According to witnesses, the truck driven by Kartoev was blocked by a minibus in Mutaliev Street outside the Office of the Federal Migration Service in Ingushetia. Armed men in camouflaged uniforms and masks jumped out of the minibus, forced Kartoev into their vehicle at gunpoint, and drove away. Kartoev was a graduate of Al-Azhar International Islamic University in Egypt. On 6 June 2007, the prosecutor's office in Nazran opened criminal case no 07560051 under Part 1, Article 126 of the Criminal Code into A. Kartoev's abduction. After two months, the investigation was suspended "due to failure to identify any perpetrators to prosecute". The case was reopened a few months later, after the abducted man's relatives appealed to the Prosecutor General, but then suspended again just two months later. At present the investigation has been adjourned yet again. Akhmed Kartoev's fate and whereabouts remain unknown.
447. Khusein Magomedovich Mutsolgov, born in 1986, villager of Surkhakhi, Nazran District, at 16 Kazansky Lane; abducted on 5 May 2007 by officers of an unidentified federal security force along with his friend Zaurbek Yevloyev. Mutsolgov and Yevloyev were standing in the street outside Yevloyev's home in the village of Nasir-Kort (Ingushetia), when three vehicles approached them; about a dozen armed masked men jumped out, grabbed Khusein and Zaurbek in front of numerous witnesses, taped up their mouths with scotch tape, put black plastic bags on their heads, shoved them into a van and drove away. They hit Mutsolgov several times with rifle butts. Yevloyev later said that the security officers had brought them to an unknown location and held them in the basement of some house. After a while they took Khusein away, and then they put Zaurbek in a car, drove him away, and dumped him in the forest outside Assinovskaya (Chechnya). The authorities opened a criminal case into the abduction. The relatives know nothing about the progress of the investigation, because the authorities have never informed them. The fate and whereabouts of Khusein Mutsolgov remain unknown.
448. Concerning the investigation into the death of Murad Abdul-Kadyrovich Bogatyrev in detention at the Malgobek ROVD (police station) in Ingushetia. He was taken by members of the Ingush Ministry of Interior officers about 5 a.m. on 8 September 2007 from his home

in the village of Verkhnye Achaluki and transported to the Malgobek ROVD. The police conducted a search in and outside his home, but did not find anything illegal. Around 8 a.m., Bogatyrev's relatives standing outside the ROVD building saw Bogatyrev's naked corpse being carried out of the building. The man's wife was told that Murad had died of a heart attack. On 3 October 2007, the Malgobek Investigation Unit of the Investigations Department of the Investigative Committee under the RF Prosecutor's Office in Ingushetia opened criminal case no 07540061 under Part 3, Article 286 of the Criminal Code (exceeding official authority) into Bogatyrev's death.

449. A forensic medical exam found injuries of moderate severity on Bogatyrev's body, and heart failure was stated as the official cause of his death. Bogatyrev had not suffered from any heart disease and had not been on any medication; he had not complained about his health on the eve of his detention. On 4 December 2007, Bogatyrev's widow Eset Husenovna Kulbuzheva was granted the victim status in the criminal case.
450. By a decision dated 31 December 2007, the criminal investigation into case no 07540061 was suspended citing "failure to identify a perpetrator to prosecute". Later the criminal investigation was repeatedly reopened and adjourned again. On 30 September 2010, the investigation was suspended again for "failure to identify any perpetrators to prosecute". On 24 May 2012, the investigation was reopened following an appeal against the investigator's actions.
451. The victim's representative filed numerous petitions and complaints with the RF Prosecutor General's Office, asking to withdraw the criminal case from the investigation department in Malgobek and to transfer it to investigating authorities at the federal level. He complained that the investigators did not inform the victim about the progress of the investigation. These petitions and complaints have been ignored. Currently, the inaction of investigating and supervisory authorities is being appealed in court. On 26 October 2011, Bogatyrev's widow took the case to the ECtHR, submitting violations of Articles 2, 3 and 13 of the ECHR. So far, the crime has not been investigated in Russia, and no one has been brought to justice.

**The alleged ill treatment and abuse of ex-Guantanamo inmates handed over to the Russian authorities in 2004: Gumarov, Ishmuratov and Rasul Kudaev.**

452. Ravil Gumarov and Timur Ishmuratov (residents of the Republic of Tatarstan) are two of the seven Russian ex-Guantanamo inmates handed over to the Russian authorities in February 2004. All ex-Guantanamo inmates handed over to Russia were held for six months in SIZO (pre-trial detention centre) in Pyatigorsk as suspects under Articles 322 (illegal crossing of the state border), 359 (being mercenaries), and 210 (organization of a criminal community). Eventually, charges against them were dropped in June 2004, and the seven men were released. In April 2005, Ravil Gumarov and Timur Ishmuratov were arrested in Tatarstan on falsified charges of terrorism (alleged attempt to blast a natural gas pipeline in Bugulma). There are many reasons to suspect numerous falsifications in the case.
453. According to Gumarov and Ishmuratov, and also to their lawyers, the men were subjected to torture and ill-treatment during the investigation and forced to incriminate themselves. They later withdrew their self-incriminating statements during the trial. An inquiry into their complaints of torture was merely formalistic, and their request to open a criminal investigation was denied. A jury court acquitted them, but the Prosecutor's Office protested,

and the RF Supreme Court sent the case back for retrial.

454. In May 2006, they were convicted by the Supreme Court of Tatarstan under Articles 205 (terrorism) and 222 (illegal trade in arms and ammunition) of the Criminal Code, along with several other Muslims. Gumarov was sentenced to 13 years, and Ishmuradov to 11 years in prison. In November 2006, the RF Supreme Court reduced their sentences, respectively, to 9 years and to 8 years and 1 month. Their sentence has come into force. In April 2012, they were named on the list of political prisoners forwarded by the opposition to the Russian authorities.

#### Mass criminal trial in Nalchik

455. On 13 October 2005 a group of armed rebels launched attacks on several government institutions in Nalchik (Kabardino-Balkaria Republic), including the buildings of the Federal Security Service (FSB) and OMON (special forces), three police stations and also the Nalchik airport. The Russian authorities deployed regular troops and Special Forces units to regain control of the city. In the ensuing hostilities between government forces and the rebels, which lasted until the next day, more than 100 people, including approximately 14 civilians, 90 rebels and dozens of law enforcement officers, were reported to have been killed and over 200 wounded. The investigation was entrusted to a special investigating group of the Prosecutor General's Office of the Russian Federation.
456. By 9 December 2005 the law-enforcement authorities had arrested fifty-nine people on suspicion of participation in the Nalchik raid. 58 of them have been held in pre-trial detention in Nalchik, first awaiting trial, and now awaiting the court's judgment. The trial is still ongoing and is expected to last at least until mid-2013. Between October 2007 and early 2009 over 1000 potential jurors were recruited, but following the introduction in 2008 of amendments to the criminal code which stripped terrorism suspects of the right to trial by jury, the trial officially began in February 2009 without a jury.
457. There were extensive reports of ill-treatment of at least 40 of the detainees during the pre-investigation into the 2005 raid, and many were systematically tortured. Motions filed by detainees or their lawyers to open criminal investigations into alleged torture and ill-treatment have been consistently refused. At least half of the detainees have filed applications with the European Court of Human Rights (ECtHR) claiming violations of Articles 3, 5, 6 and 13 ECHR. In April 2011, amid reports of a renewed systematic campaign of ill-treatment against several detainees, the ECtHR granted priority treatment to several of the applications. By mid-2012 at least 5 applications had been communicated to the Russian Government and had been found partially admissible by the ECtHR.

#### Case of Rasul Kudayev

458. Rasul Kudayev, who was returned to Russia in 2004 from Guantanamo Bay, is among the accused currently on trial in Nalchik. The arrest in October 2005 and subsequent detention of Rasul Kudayev, as well as the ill-treatment and torture he initially endured, is described in detail in Amnesty International's briefing to the UN CAT in 2006.<sup>123</sup> The gravity of Mr

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<sup>123</sup> See Amnesty International, "Russian Federation: Preliminary briefing to the UN Committee against Torture," AI Index EUR 46/014/2006, pages 4-5.

Kudayev's physical condition following his arrest has been confirmed by extensive forensic medical examination records and witness statements.

459. Mr Kudayev's lawyer, his mother, and Mr Kudayev himself have filed multiple complaints about the ill-treatment and lack of medical care to the Prosecutor's Office and several other authorities. However the inquiry into his allegations was marred by delays and overall proved inadequate and ineffective. No criminal investigation was ever opened despite the extensive records of his injuries sustained since his detention; the investigators based their conclusions exclusively on statements of law-enforcement officials and never sought to independently or objectively examine the treatment inflicted upon Mr Kudayev.
460. In 2006 Mr Kudayev filed an application to the European Court of Human Rights claiming violations of inter alia Article 3 (repeated ill-treatment and torture and failure of the authorities to carry out an effective investigation into these allegations) and 13 (the lack of an effective remedy in respect of his complaints of torture) ECHR.
461. On 4 March 2011, in the course of resettling detainees who were being held in the Nalchik remand prison to a new building, Mr Kudayev, together with a few other detainees, was put in a punishment cell supposedly for "breaking the internal rules of the detention center." He was severely beaten up by prison guards soon after being transferred. Subsequently, Mr Kudayev's representatives reported this incident to the European Court of Human Rights and requested that the Court grant priority treatment to the application. This request was granted on 5 May 2011, and on 17 November 2011, the ECHR decided found Mr Kudayev's application partially admissible and communicated questions on the merits of the case to the Russian Government. The admissible complaints included Mr Kudayev's allegations of torture and the lack of an effective remedy to address his grievances. In its response to the Court's questions, the Government argued that the investigation into Mr Kudayev's allegations of torture had been sufficiently independent and effective, and that Mr Kudayev—who was already an invalid at the time of his detention—had been afforded adequate medical care while in custody.

#### **Implementation of the judgments of the European Court of Human Rights concerning torture in the North Caucasus**

462. We wish to bring to the attention of the Committee that none of the 12 judgments<sup>124</sup> handed down by the European Court of Human Rights (ECtHR) since 2007 finding violations of torture<sup>125</sup> in the North Caucasus have been fully implemented by the Russian authorities, insofar as investigation into torture allegations is concerned. While the authorities have paid the court-awarded compensation to the applicants in these cases, they have not carried out an investigation in line with European Convention standards into the applicants' allegations of torture. European Court case-law establishes that an investigation into allegations of treatment contrary to Article 3 ECHR must be effective, independent, and capable of leading to the identification and punishment of the perpetrators.

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<sup>124</sup> See decisions in: *Velkhiyev and Others v. Russia* (34085/06), *Isayev and Others v. Russia* (43368/04), *Ruslan Tsechoyev v. Russia* (39358/05), *Khambulatova v. Russia* (33488/04), *Gisayev v. Russia* (14811/04), *Sadykov v. Russia* (41840/02), *Dzhabrailov and Others v. Russia* (3678/06), *Iriskhanova and Iriskhanov v. Russia* (35869/05), *Khadisov and Tsechoyev v. Russia* (21519/02), *Medov v. Russia* (1573/02), *Musayeva and Others v. Russia* (74239/01), *Chitayev and Chitayev v. Russia* (59334/00).

<sup>125</sup> In the majority of the cases cited above, a violation of torture was found in addition to violations of the right to life.

463. As a party to the UN Convention Against Torture, Russia has an obligation to investigate acts of torture – including participation in and complicity in torture – committed within its jurisdiction.
464. Below we draw the Committee’s attention to three specific investigations in cases decided by the ECtHR which illustrate the Russian Federation’s breach of its obligations both to investigate allegations of torture and to provide redress for victims:
- In *Sadykov v Russia*, amnesty provisions were applied to perpetrators or accessories of torture;
  - In *Chitayev and Chitayev v Russia*, no criminal investigation has been launched into well-documented acts of torture over five years since the ECtHR judgment became final;
  - In *Khadisov and Tsechoyev v Russia*, the criminal investigation remains ineffective despite the strong evidence in the case.

***Sadykov v Russia (41840/02), final on 21 February 2011***

**Factual Background**

465. The applicant, Alaudin Sadykov, a school teacher by profession, was at the time of his detention in March 2000 working in a “burial group” for the Emergencies Ministry and was also fetching and distributing water and supplies for the residents of the Oktyabrskii district of Grozny. During his duties one morning, the applicant was abducted and taken to the Temporary Office of the Interior (VOVD) of the Oktyabrskiy District in Grozny, where he was held for approximately three months. During his detention, the VOVOD officers forced him to chew and swallow his own hair, severely burned the palm of his right hand, broke his nose and ribs, kicked out several of his teeth, and finally, cut off his left ear. Materials from the criminal case file revealed that the identity of the likely perpetrators was known, and that various investigative measures aimed at establishing their involvement had been ordered, yet the investigation had made no progress.
466. The European Court pointed to “remarkable shortcomings” in the course of the investigation which it deemed “absurd” and which highlighted a severe lack of professionalism and the unwillingness of the authorities to bring the perpetrators to justice.<sup>126</sup>
467. The case of *Sadykov* is the only one case from the North Caucasus examined by the ECtHR in which a perpetrator has been brought into custody and investigated since the judgment entered into force. However, in December 2011 and March 2012 **amnesty provisions** were applied to two suspected perpetrators; two others apparently remain at large.
468. **We submit that the application of amnesty provisions in cases of torture contravenes Russia’s international obligations to investigate acts of torture and to combat impunity for international crimes.**

**Background to Amnesty Provisions**

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<sup>126</sup> See *Sadykov v Russia*, *inter alia* paras. 246, 173.

469. Amnesty legislation concerning crimes committed by both state agents and rebel fighters in the North Caucasus was passed in 2003 and 2006. Both pieces of legislation explicitly exclude from the ambit of the amnesty persons who committed serious crimes such as, *inter alia*, **murder, intentional infliction of a grave injury, kidnapping, illegal deprivation of liberty, trafficking in human beings, rape, outrages upon bodies of the deceased and their burial places, and genocide.** However, while the 2006 legislation excludes the crime of **excruciation (истязание)**<sup>127</sup> from its ambit, the 2003 legislation *does not exclude it*.
470. Moreover, neither piece of legislation excludes the crime of **exceeding official powers through the use of violence or the threat of its use**<sup>128</sup> which may in practice be used to qualify crimes which would fall under the concept of torture as defined in international law. Indeed, this is particularly relevant for the investigation in *Sadykov v Russia*, in which acts which would qualify as torture under international law were **down-graded** to less serious crimes in order to be caught by amnesty legislation.

#### Specific application of amnesty provisions in *Sadykov v Russia*

471. In 2006 and in 2011 the authorities charged **Mr. Z.**, allegedly involved in the cutting off the applicant's ear, as an accessory<sup>129</sup> to **intentionally inflicting a grave injury (Article 111 CC)**,<sup>130</sup> a crime to which amnesty legislation does not apply, as well **exceeding official powers through the use of violence (Article 286(3))**, a crime covered by the amnesty. As the European Court describes in detail, **Mr. Z.** successfully evaded arrest after being charged in 2006.<sup>131</sup>
472. On 12 December 2011 the investigation into the charge of intentional infliction of a grave injury was dropped on the grounds of the absence of the components of a crime in **Mr. Z.'s** actions.<sup>132</sup> The authorities formally charged **Mr. Z.** under the crime of "exceeding official powers through the use of violence." The criminal proceedings against **Mr. Z.** were subsequently dropped on 15 December 2011 due to the application of the 2006 amnesty act, as reported by the Government in its submission to the Committee of 17 May 2012.<sup>133</sup>
473. From examination of the case materials in possession of the applicant's representatives,<sup>134</sup> the dropping of the charges against **Mr. Z.** as an accessory to the intentional infliction of a grave injury **is unjustifiable given the evidence contained in several testimonies from victims and witnesses in the case.** For example, both the applicant as well as his cellmate at the time of the incident testified that **Mr. Z.**, who was serving as security guard at the

<sup>127</sup> The crime of excruciation (Art. 117) is often equated with the crime of torture. However, "the use of torture" appears as a mere aggravating circumstance to the crime of excruciation. Currently, Russian law does not criminalize torture per se. On this point see the recent NGO submission to the Committee Against Torture: Russian Federation Fifth Periodic Report on the Implementation of UNCAT, Submission from TRIAL (Swiss Association against Impunity) to the Committee against Torture, April 2012, available at: [http://www.trial-ch.org/fileadmin/user\\_upload/documents/CAJ/Rapports\\_alternatifs/CAT/Russia\\_-\\_CAT\\_-\\_Alternative\\_Report\\_-\\_April\\_2012\\_2\\_.pdf](http://www.trial-ch.org/fileadmin/user_upload/documents/CAJ/Rapports_alternatifs/CAT/Russia_-_CAT_-_Alternative_Report_-_April_2012_2_.pdf).

<sup>128</sup> Article 286 (3) CC.

<sup>129</sup> Art. 33 CC sets out the modes of participation in a crime. Mr. Z. was charged under subparagraph 1 (accomplice liability) and subparagraph 5 (accessory liability).

<sup>130</sup> The decrees of the investigators containing the charges against the suspect are on file with the applicant's representative, as part of the majority of the case materials. The suspect's full name is also indicated in the case materials.

<sup>131</sup> *Sadykov v Russia*, judgment of 7 October 2010, Para. 248.

<sup>132</sup> A copy of the decision of 12 December 2011 is on file with the applicant's representatives.

<sup>133</sup> See Russian Government's Submission of 15 May 2012, part 1, page 6, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1940651&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

<sup>134</sup> Russian Justice Initiative, one of the signatory NGOs.

VOVD, permitted a group of intoxicated men to enter the VOVD and unlocked the door to the applicant's cell. One of the men was in the possession of a hunting knife, which **Mr. Z.** must have seen, and said that they had come to get "an ear for a charm." **Mr. Z.** told them that "they could do what they wanted with Sadykov" but said not to touch his cellmate, who was an ethnic Russian.

474. This testimony is cited in the decision of 12 December 2011 regarding the dropping of the charge against Mr. Z of accessory liability in intentional infliction of a grave injury. **However, the testimony is dismissed as "subjective" and "unreliable" by the investigator, while the testimony of Mr. Z. himself that he did not know of the principal's criminal intentions is deemed credible.**
475. In the opinion of the applicant's representatives, this testimony constituted sufficient evidence to *formally charge* **Mr. Z** on charges of aiding and abetting the crime of intentional infliction of a grave injury. **Therefore, the case should have—at the very least—been submitted to the court for further examination.**
476. Amnesty provisions in *Sadykov v Russia* were also applied earlier to another suspected perpetrator (one of a significant number of offenders identified by Mr. Sadykov and his cellmate) by the name of **Mr. B.**<sup>135</sup>
477. On 16 March 2007, **Mr. B.** was charged with abuse of official powers through use of violence or the threat of its use (Article 286(3) CC), a crime covered by the amnesty act. In March 2007 the criminal investigation into his actions was discontinued but for technical reasons did not enter into force. Recently Mr. B requested the court to issue a procedural decision regarding the discontinuance of charges against him due to the application of the amnesty act, which was issued on 21 March 2012.<sup>136</sup> The applicant and his representatives have no information about whether Mr. B. was ever charged with crimes exempt from the amnesty legislation.
478. The information contained in the case file indicates that **Mr. B.** himself committed acts of torture against the applicant: as head of the IVS<sup>137</sup> at the Oktyabrskiy VOVD in Grozny at the time of the applicant's detention, Mr. B. was one of the officers who on 5 March 2000 on the premises of the VOVD severely beat the applicant, cut his hair and forced him to chew and swallow it, and pressed a red-hot nail into his hands.<sup>138</sup> **We consider that the charges against Mr. B. were deliberately down-graded in order to be caught by the amnesty act. In addition to the charge of abuse of power through the use of violence, Mr. B. should have been formally charged with a more serious crime<sup>139</sup> not covered by the amnesty act of 2006.**
479. To the applicant's knowledge, the investigation in the applicant's case is ongoing and no new charges have been brought against **Mr. Z.** or **Mr. B.**

***Chitayev and Chitayev v Russia (59334/00), final on 18 April 2007***

<sup>135</sup> The full name of the suspect is indicated in the case file.

<sup>136</sup> See Russian Government's Submission of 15 May 2012, part 1, page 4.

<sup>137</sup> Temporary detention facility (Изолятор временного содержания).

<sup>138</sup> See *Sadykov v Russia*, para. 13.

<sup>139</sup> For example, under Art. 117 (excruciation); Article 111(intentional infliction of a grave injury); Article 302(2) (coercion to testify through use of torture).

## Factual Background

480. The two applicants in this case—Arbi and Adam Chitayev—were arrested on 12 April 2000 and taken into detention at the Achkhoy-Martan VOVD. While in custody, they were interrogated about the activities of the Chechen rebel fighters and about kidnappings for ransom, but denied their involvement in any crimes. During the period of their detention at the Achkhoy-Martan VOVD, the applicants were subjected to various forms of torture and ill-treatment. In particular, they were fettered to a chair and beaten; electric shocks were applied to various parts of their bodies, including their fingertips and ears; they were forced to stand for a long time in a stretched position, with their feet and hands spread wide apart; their arms were twisted; they were beaten with rubber truncheons and with plastic bottles filled with water; they were strangled with adhesive tape, with a cellophane bag and a gas mask; dogs were set on them; parts of their skin were torn away with pliers.<sup>140</sup>
481. On 28 April 2000 the applicants were transferred to Chernokozovo, a detention center which had received extensive public criticism for ill-treatment and torture of detainees, including by the European Committee for the Prevention of Torture (CPT).<sup>141</sup> At Chernokozovo the applicants were regularly interrogated and tortured to force them to make false confessions. On 5 October 2000 they were released. On 6 October 2000 the applicants were medically examined and were found to have numerous injuries to their heads and bodies and to be suffering from post-traumatic stress disorder. The doctors noted that the traumas and other medical conditions had apparently been sustained in the Chernokozovo SIZO between April and October 2000. The prosecutor's office refused to bring criminal proceedings in connection with the applicants' allegations of ill-treatment during their detention from 12 April until 5 October 2000.

## Non-implementation of the *Chitayev and Chitayev* judgment

482. Despite post-judgment submissions to the authorities—including the submission of medical documents to the Prosecutor's Office by the applicants' representatives—no criminal investigation has been instigated into the Chitayevs' allegations of torture, over five years after the judgment entered into force. Most recently, on 6 February 2012 the Deputy Head of the Unit of Procedural Control № 2 of the Directorate of the Investigative Committee of the Chechen Republic informed the applicants' representatives that based on the results of the investigative check instigated on 27 December 2001 regarding the alleged ill-treatment and torture of the applicants, as well as the medical documents provided by the applicants' representatives in 2008 documenting the bodily injuries sustained by the applicants during the period of their detention, **there were no grounds on which to initiate a criminal investigation.**

## *Khadisov and Tsechoyev v Russia (21519/02), final on 5 May 2009*

### Factual Background

483. The applicants, Mr. Salambek Khadisov and Mr. Islam Tsechoyev, were detained on 23 September 2001 in the Sunzha district of Ingushetia and taken to a military base near Nazran, Ingushetia. Later they were transferred by helicopter to Khankala, the main Russian

<sup>140</sup> See *Chitayev and Chitayev v Russia*, para.19.

<sup>141</sup> *Ibid.*, para. 96.

military base in Chechnya where they were held for 5 days and interrogated. During the interrogations they were severely tortured. The two men were subsequently transferred to the Sixth Department of the Organized Crime Unit of the Staropromyslovskiy district of Grozny and finally released on 12 October 2001. Under threat of further torture, both men signed statements to the effect that neither had been ill-treated during detention.

484. The Sunzha District Prosecutor's Office during its preliminary investigation established the identities of the commanders involved in the detention of the applicants from their arrest in Ingushetia to their handover to the federal authorities at Khankala.<sup>142</sup>
485. At some point after these facts were established by the preliminary investigation, the case was transferred to military prosecutors, who promptly discontinued the investigation on the grounds of the absence of the elements of a crime. A separate investigation conducted by the prosecutors in Ingushetia was repeatedly suspended on the same grounds.

#### Non-implementation of the *Khadisov and Tsechoyev* judgment

486. Throughout 2010 the applicants in this case made a range of submissions to the investigative authorities with a view to enforcing an effective investigation in their case.<sup>143</sup> While the applicants recently gained access to a portion of the case files, the investigation remains ineffective. In particular, despite the strong evidence in the case as to the identities of the servicemen involved in the applicants' ill-treatment, no one has been held accountable. Furthermore, in 2010 the applicants were at one point notified that the investigation into their case might be closed due to the expiry of the limitation period.

#### **Situation in other regions of North Caucasus**

487. After the Fourth Periodic Report on Russia the situation in the North Caucasus has changed considerably. The intensity of the armed conflict in the Chechen Republic has significantly decreased while the conflict itself has spread over to encompass the area of all North Caucasian republics.
488. Moreover, the conflict participants have changed. On the one hand, the federal center is being contracted not by the separatist the Chechen Republic of Ichkeria but by the Imarat Caucasus<sup>144</sup>, an Islamic fundamentalist union operating across the North Caucasus.
489. That has been a mere description of the situation as it is currently in the region. For a few years now, the most significant attacks by the armed underground were carried out outside

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<sup>142</sup> For details, see Russian Justice Initiative, Submission to the Committee of Ministers of November 2010, at paras. 15-16, available at: <https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD%282010%29587&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

<sup>143</sup> Ibid. at paras. 25-32.

<sup>144</sup> in June 2006 a formal separatist leader, Abdul-Khalim Sulayev, who succeeded to Aslan Maskhadov a year earlier, was killed. In July 2006 an informal leader of the armed underground, Shamil Basayev was killed. A year later, on October 7, 2007, Sadulayev's successor, Doku Umarov, has announced the formation of Imarat Caucasus, thus bringing the separatist project to a close.

Chechnya<sup>145</sup>, and it is the underground's principle not to limit itself to that region<sup>146</sup> (3). Consequently, the counter-terrorist activities in the Central Russian regions have become more active, and against that background there have been reports about disappearances in that area of people originating from North Caucasus.

490. On the other hand, in the Chechen Republic itself, the local authorities have enjoyed a great degree of autonomy with regard to the security operations targeting the armed underground. These are carried out by the Republic's security and law enforcement agencies in a virtually independent way.
491. In the continued conflict in North Caucasus there are two opposing parties, the federal center that, at least in theory, ensures the continuity of the policies, the unity of approaches and methods, the unity of laws and legal provisions issued by the agencies, co-ordination of the actions and accountable command, and the Islamic terrorist underground. However, the situation has developed differently in the different republics which is only natural for mountainous settlement systems which historically have enjoyed ethnic, language and religious variation.
492. The Fourth Periodic Report only accounted for Chechnya<sup>147</sup> (4) but the level of violence there has decreased in 2007—2008. Ingushetia became the leader in terms of violence in 2008. Since 2009 onwards Dagestan has lead the violence rating. In those three republics the conflict became less intensive in 2009—2011 while the intensity grew in Kabardino-Balkaria.
493. The counter-terrorist operations are carried out by the federal law-enforcement and security agencies everywhere except Chechnya (which we cover later), viz.: Interior Ministry's units, Interior Troops units under the Interior Ministry, the Federal Security Service and its border guard, On some occasions armed forces are also involved. Regional directorates that operate under the authority of republican ministries of interior also participate in the operations. Interestingly, though, there has been a minor change in the name of the ministries, with the Genitive (*Ministerstvo Vnutrennikh Del Respubliki Ingushetia*) being replaced by the preposition po (in) (*Ministerstvo vnutrennikh Del po Respublike Ingushetia*) indicating that those are first are foremost under control of the Interior Ministry of the Russian Federation and not under that of the local civil authorities.
494. Thus, the policies, strategy, tactics, methods, and operational command of those operations all orginaze from the same centers which explains their similarity.
495. It is not our aim to describe the situation in each North Caucasian republic separately. We would rather concentrate on the major and most dangerous trends that are typically present in various regions giving examples to substantiate our statements.
496. One of the main methods used by the federal security and law enforcement agencies in the

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<sup>145</sup> The attack on Ingushetia (on the night of June 21-22, 2004); the Beslan terrorist attack (September 1—3, 2004); the fighting in Nal'chik (October 13—14, 2005)

<sup>146</sup> In the subsequent years, Moscow – St. Petersburg trains were blown up several times. There was a terrorist attack in the Moscow metro (March 29, 2010) and the Moscow Domodedovo airport (January 26, 2011).

<sup>147</sup> which is partially due to the lack of human rights organizations resources to monitor the situation in Dagestan where the work went underway as the Chechen conflict became less intensive.

fight against the armed underground is the tactics practiced by “death escadrons”, forced disappearances. These crimes involve abduction of a person by security personnel, illegal detention in secret prisons, torture, extrajudicial execution followed by the hiding or destruction of the dead body.

497. Against the background of the armed conflict in the Chechen Republic, the forced disappearances have become widespread. There are cases whereby people abducted in Dagestan or Ingushetia have been transferred to Chechnya and held there. For instance, only because Magomed Aushev and his brother, also named Magmoed Aushev, were abducted in Ingushetia on 19 September 2007, there emerged information about the secret detention center in the Chechen village of Goity, Urus-Martanovsky District. The illegal prison was run by local security agencies which were part of the Chechen Republic Interior Ministry system. It later emerged that some other abducted or disappeared people from Ingushetia had also been held at the Goity detention center.

498. However, numerous episodes involving forced disappearances and extrajudicial executions in Dagestan, Ingushetia, and Kabardino-Balkaria are only connected to the activities of the law-enforcement and security agencies under federal or local authority that are stationed in the above-mentioned republics.

	Chechnya	Dagestan	Ingushetia
2006	187/63/11		16/2/1
2007	35/9/1		30/4/1
2008	42/12/4		31/7/1
2009	74/13/4 )	18/4/8	13/5/4
2010		17/3	28/11/3
2011		23/8/2	20/11/1

499. Commentary. Table lists data with regards to residents of Chechnya, Dagestan, and Ingushetia, who were abducted between 2006—2011. The following format is used throughout: Abductions / Disappearances / Killings. The source consulted is Memorial Human Rights Center website's “Chronicle of Violence” available at [www.memo.ru](http://www.memo.ru). Up to the year 2009 there have been no systematic monitoring of the Dagestan area, hence the table does not include figures for 2006, 2007, and 2008. After Memorial HRC's Natalia Estemirova was kidnapped in Grozny and killed on 15 July 2009, applications filed with Memorial in Chechnya fell dramatically. That is why there is not enough statistically valid data since then. We can only estimate that, after abduction numbers went down in 2007—2008 in comparison to 2006, frequency of those crimes has risen to the previous level since 2009.

500. In all North Caucasian republics fabrication of criminal cases on charges of terrorism and participation in illegal armed units have become systematic.
501. The use of torture goes unpunished which is made possible by the investigation and court systems functioning as an assembly line which needs no feedback. As seen from the statistics published by the relevant agencies, the agencies within the Russian Federation Investigative Committee's structure (similar to the public prosecutor's agencies or the Investigative Committee under the General Prosecutor's Office earlier) on most occasions accept from the Interior Ministry or FSB agencies those cases which are obviously fabricated and start the proceedings. The public prosecutor's offices endorse charges outlined in those cases and then the courts proclaim the defendants guilty. None of the links in this chain does not concern itself with ensuring that the previous link acted in accordance to the law and had enough evidence to substantiate its charges.
502. This is due to the existing planning system, the requirements to produce a certain number of solved crimes, and demands to improve on figures showing how many crimes were solved. But that is only part of the explanation. The problem is the investigators in their jobs depend on the Interior Ministry's operatives and are consequently disinclined to initiate a conflict by probing into cases of fabrication of evidence or use of torture. The justice system, in its turn, is organized so as to make the judges disinclined to acquit the defendants.
503. All of these could have been prevented by the lawyers. However, more often than not the detainee is offered an attorney who is loyal to the investigation, ready to ignore rights abuses against the defendant and persuade the defendant to make a confession.
504. Another mechanism that could have allowed for the fabricated evidence to be identified and discarded could have been the jury court. Over the last several years, however, the court of jury's jurisdiction has been restricted to exclude charges on some crimes such as terrorism. Moreover, even if the trial is conducted by a court of jury, the jurors have no power to evaluate whether certain evidence is acceptable or not. Instead, the power to evaluate has been vested in the judge. In other words, the jurors are in no position to hear and consider the defendant's complaint of being subjected to torture to obtain evidence.
505. The decision to exempt the cases involving terrorist charges from the court of jury jurisdiction has been taken prior to the trial of the "Case of 58," named after the 58 defendants standing the trial. While it was going on, one of those 58 died. They were all charged with involvement in the attack on the Kabardino-Balkaria's capital, Nal'chik, on 13—14 October 2005. Many observers believe the exemption and the "Trial of 58" are connected. The trial is still going on with many defendants having spent seven years in pre-trial facilities. It also took several years to try those charged with other "group" crimes committed in the Republic of Ingushetia.
506. On the other hand, there have largely been no investigation into the complaints against security and law-enforcement officers or statements of those being subjected to torture, complaints of illegal detention and abductions, of extrajudicial executions, etc.
507. The system of "organized impunity" is an integral part of the "counter-terrorist operation" in the region. Were some of the siloviks, even the rank-and-file ones, tried and found guilty of abductions and torture, it would allow others to decline an illegal order given by the

superior.

508. The European Court of Human Rights has issued a number of judgments into cases submitted by residents of the North Caucasian republics. Among those, the cases originating from Chechnya are prevalent (see the relevant chapter). It can be assumed that the Russian Federation complies with the ECtHR judgments as far as paying awards to the applicants for their moral suffering is concerned. However, other measures, both individual and general, are ignored.
509. Applications from other areas of North Caucasus started to come later, and their number is smaller. Thus, at the time of this writing, the ECtHR has issued judgments into 183 complaints from the residents of Chechnya, compared to 3 from the residents of Dagestan and 10 from the residents of Ingushetia. The information we possess, though, is sufficient to say that in all of those cases no effective investigation has been conducted on the domestic level and the perpetrators were not held accountable.
510. In sharp contrast to the prevailing impunity of the siloviks involved in torture and forced disappearances, there have been two success stories within the past year, in Ingushetia and Dagestan. In the Dagestani case that involved a teenager who was subjected to torture by the police in the village of Khebda, one police officer has been convicted while the two others are facing trial. In the other case Mr. Nal'giev and Mr. Guliev, both high-ranking officers of the Karabulak Interior Department, the town of Karabulak, Ingushetia, are standing trial on charges of torturing Mr. Zelimkhan Chitigov. The judgment is expected soon. Over the last thirteen years' period of the "counter-terrorist" operation in North Caucasus, these are the very first successful trials over the siloviks complacent in torture.
511. Among the positive changes on a regional level the transition to the "soft power" methods needs to be mentioned, initiated by the Dagestan and Ingushetia authorities as far as their limited authority and possibilities allow. The "soft power" approach includes, first, the creation of commissions aimed at the "adaptation" of former fighters. The commissions allow to bring back to legal terrain former members of illegal armed units who are not responsible for committing serious crimes. Up to now, tens of applications have been considered by the commissions. Some of the former fighters, who had surrendered, were convicted while others were not allowed to go free. The practice has enjoyed support among some of the leaders of the National Anti-Terrorist Committee and the Federal Security Service.
512. Another important element has been the legalization of moderate Salafi communities so that their ranks can no longer be used to mobilize members of the terrorist underground. This policy, termed "counter-terrorist operation with a human face," resulted in curtailing the level of violence in Ingushetia committed by fighters in 2009—2011 by 7.5 times.
513. However, both of these processes cannot continue unless they receive support from the federal center where preference for "brutal force" methods prevails, as exemplified by quotes from former President Dmitry Medvedev and President Vladimir Putin. Due to the efforts of both the armed underground and the federal security agencies, there has been a significant rise in the level of violence in Ingushetia and Dagestan in 2012.

## Other issues

### General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention

#### Question 44 (45 in the Russian language list of issues)

##### The reaction of the police to the opposition's public protest

##### *Unjustified and excessive use of force against peaceful protesters*

514. Since 2006 we have witnessed the growth of the opposition's activities in a number of Russian regions, which manifested itself in public protest rallies – "Dissenters' marches", series of rallies called "Strategy-31" (after Article 31 of the Russian Constitution, which guarantees freedom of peaceful assembly), etc. In 2011-2012 the number and the scale of protest rallies has dramatically increased. The growth of the protest was accompanied by the increase in the number of cases of unjustified arrests of protesters, and cases of unjustified or excessive use of force by the police against participants of peaceful protests. In the vast number of cases the violence applied by the police shall be considered cruel and degrading treatment.
515. The Federal Law no. 54-FZ "On assemblies, rallies, demonstrations, marches, and picketing" provides that a notice shall be given to the authorities prior to conducting a public event. However, the organizers of the event are required receive a confirmation in reply to the notification from the authorities. The law does not allow the authorities to prohibit the conduct of a public event. The authorities can only suggest that the organizers change the time and date of the event or its venue. Such changes should be justified and approved by the organizers of the event. Moreover, the authorities should not interfere with the content of the event; for example, they cannot request the organizers to change the purpose of the event.
516. In practice, the notification of the authorities of a public event turned into the requirement to obtain authorization to organize an event. If for one reason or another the authorities disapprove of the event of which they are being notified, they claim, quite often under contrived pretexts, that it is impossible to conduct the event at the venue chosen by the organizers; then they suggest other venues which are evidently inconvenient (such as deserted areas, outskirts of towns etc.), and reject any attempts to discuss alternative venues with the organizers.
517. The police consider participation in public events unauthorized by the local authorities to be an offence, which should be suppressed, and its participants held liable. In some cases the police warn the participants of the "illegality" of the event, and provide them with time to terminate it. However, this is a rare occurrence. Usually the police themselves terminate unauthorized public events without giving a warning; they frequently use force to do so.
518. At the same time, even if an opposition rally is authorized by local authorities, it is still not excluded that force may be used to disperse it. Below is one such example.

*"A day before the President's inauguration of Vladimir Putin, the March of Millions*

*was held in Moscow. On the way to the authorized location of the event – Bolotnaya Square – a conflict arose between the police and the protesters, allegedly because the number of the march's participants was too large as compared with the number stipulated by the organizers in their notification to the authorities. The participants of the march were stopped by a police cordon near a narrow path leading to metal detector frames at the entrance to the square. The square itself was cordoned off by the police forces. After people started a "sit-down strike" mass-scale arrests began. Someone started throwing stones at the police. This was allegedly a provocation by activists of pro-Kremlin groups. In any event, the provocation has reached its goal – clashes with the police ensued. According to the eyewitnesses, law-enforcement officers beat people with truncheons and feet, [applied] electroshock weapons, tore their clothes, and threw them into avtozaks [special vehicles used to transport detainees – editor's note], even those who tried to leave the event."<sup>148</sup>*

519. There are more cases of unjustified use of force by the police against participants of authorized opposition rallies. The following circumstances have in the past served as a pretext for the use of force by the police: the fact that there was more participants of a rally than provisionally declared by the organizers; inconsistency of slogans with the declared goal of a rally; one of the participants holding a mask of Vladimir Putin; chanting slogans during picketing.
520. The use of force to disperse protest rallies and arrests of their participants is often disproportionate to the alleged offences. The manner in which the arrests are carried out often looks as if that the arrestee have committed not an administrative offence without harming anyone or damaging anybody's property, but rather a serious violent crime and as if s/he carries firearms and poses a threat to other people. The police often use special combat moves to arrest participants of rallies, for example, twisting arms, submission holds, such as squeezing out the eyes, neck crank, twisting clothes on the neck to cause suffocation, or they simply beat the protesters. Below are protesters' accounts of the circumstances surrounding their arrests.

*"And that's where the scary part began: without any reason and without even giving a warning a rabid crowd of 8-10 cops [police officers – editor's note], some of them in plain clothes, attacked us and tried to force us into the police station. Of course, we were not going to comply with unlawful requests (but in truth, there were even no requests) of the police officers. Then they started to knock people off their feet and to beat them with their feet. A police officer stroke down Natasha Avdeyeva to the stairs and started to pull her by the hood towards the police station, no paying attention that she was choking. They stroke down Seva Chernozub to the ground and also tried to pull him into the police station. One of the police officers even started to strangle Julia Bashinova, who tried to intervene (this was, by the way, for the second time during that day, and it was the same [officer] – a certain Tikhonov). Trying to protect the girls from beatings, the guys attempted to shield them with their bodies; this only made the cops angrier. When Julia asked not to choke her, Tikhonov replied: "I'll kill you bitch!"! Then the events unfolded like in a bad dream: they hit one of the guys' head against a car parked nearby; threw another guy, Vitaliy Genarov, who's a minor, on the ground and*

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<sup>148</sup> Report of the Supervising Public Commission of Moscow on visiting of OVDs in Moscow after mass arrests on the Bolotnaya square on 6 May 2012 // <http://ovdinfo.org/article/6-maya-zaderzhannykh-izbivali-mnogie-popali-v-bolnitsu-doklad-onk>

*hit his head against the ground.*"<sup>149</sup>

*"Soon they brought in Pozdnyakov, then Nilin, Beylinson brothers, Schepeleva. The cops tried to squeeze out Danila Beylinson's eye. Nilin called the ambulance immediately. It arrived shortly, but it took it a long time to find our van among dozens of OMON minivans round up at the square. When doctors found us, they examined Danya, and took him away, to the 3<sup>rd</sup> hospital: his eye was watering and hurting".*<sup>150</sup>

521. In addition to physical force the police often use truncheons while dispersing protest rallies; gas and electroshock weapons are used less often. In November 2007 while dispersing the "Dissenters' Marches", in addition to the truncheons the police applied special plastic-plated gloves which are used for the offensive.

522. In a number of cases the force was used by the police against protesters indiscriminately, without taking into account their age, sex, or physical condition. According to a statement of the Human Rights Center "Memorial", on 6 May 2012 during clashes between the police and the participants of the March of Millions and the ensuing dispersal of the March

*"the police started beating the protesters with truncheons, and those who fell down – with their feet. They were beating not only the active participants of the clashes, but also elderly persons and women, who were standing quite far away. Indiscriminate use of force was not mere sporadic excessive acts of some of the OMON officers, but rather a policy upheld by the police authorities. Here is one example – an old man in a calm voice tried to persuade a police colonel to stop the beatings, but was himself knocked down to the ground and hit his head so hard the he could not get back up on his feet without assistance".*<sup>151</sup>

523. Sometimes the police use force against persons, who are not taking part in the protest rallies, but who for one reason or another happen to be at the venue. In particular, journalists covering public rallies often face violence. The Glasnost Defense Foundation provides examples of arrests of journalists covering protest rallies and use of force against them.

*"On 6 December 2011 dozens of opposition members were arrested at an unauthorized rally held at the Triumfalnaya square in Moscow. Some journalists got hurt as well – Aleksandr Chenykh, Kommersant's reporter, was beaten during his arrest. OMON officers also broke his phone. Before that the journalist managed to write on Twitter, "They've arrested me, and beating me hard. Taking me to Zamoskvorechye." He reported on the phone that when the arrests started he had been standing near an avtozak holding his press card in his hand and showing it to everyone to avoid any questions from the police. "Nevertheless two fully-equipped [officers] wearing helmets and carrying truncheons approached. Suddenly one of the policemen struck me on the leg and ordered me to get lost. I replied that I was a journalist and that I was at the Triumfalnaya square pursuant to the editor's assignment. "You're nobody here!" said the second officer and hit me again on the legs. Then they took me by the arms, and threw me into an avtozak - not to the part where the detainees are transported, but to*

<sup>149</sup> "Brutalised: one step from dispersal of peaceful protest to shooting" // Hippy.ru, 8 May 2007, <http://www.hippy.ru/forum/viewtopic.php?pid=6752>

<sup>150</sup> "Rally against the elections on the Triumfalnaya square on 4 December 2011" // Echo Moskv, 5 December 2011 r., <http://echo.msk.ru/blog/myslenkov/836195-echo/>

<sup>151</sup> Statement "On the events in Moscow the day before inauguration of the new president" // <http://www.memo.ru/d/3450.html>

*the so called "glass", a small section where the guards stay. I tried to get an explanation from them about why I was being arrested. One of them laughed, "For resisting law enforcement officers." Then they started to beat me on the legs again. It lasted for about a minute and a half, and then I fell down and stayed on the floor. Then one of the policemen stepped with one foot on my chest and with the other one – on my legs, and started to jump on my body. Then the two [officers] who arrested me left the avtozak, closed the door, and the vehicle started moving. I got up, and one of the policemen who stayed in the glass asked why I was arrested. I said, "For no reason, I'm a journalist." He [said], "Show me your press card." I showed it. They had brief discussion, and said, "Get out of here!" and they stopped the van. We were not far from the square, about 600 meters. Before I left, I asked the policemen to tell me the last names of those, who beat me. They only laughed. They said that it would be slander against the police, and I as a journalist could be prosecuted under the criminal law". The journalist was released shortly after his arrest".<sup>152</sup>*

524. In 2011, before the parliamentary elections and the ensuing 2012 presidential elections the suppression of protest activities became significantly harsher. Preventive arrests and detention, violence against activists, prohibition of opposition rallies became common. At the same time the scale of the protest has dramatically increased, which has led to the increase of police brutality.
525. On 5 December 2011, the following day after the elections to the State Duma, an opposition rally in central Moscow gathered around 10,000 persons, which was above all expectations. The rally erupted into a march to the Central Elections Commission, which has led to arrests of about 300 persons, the participants of the march and mere passers-by. On 6 December a civil rally against election fraud organized via social networks took place. Clashes between the OMON and the protestors led to arrests of over 600 persons; many of the arrestees were severely beaten. On 10 and 24 December rallies for fair elections took place, gathering hundreds of thousands of persons. For the first time the rallies in Moscow did not lead to arrests and police brutality; however, in other cities a total of about 500 persons were arrested, and some were beaten during the arrest.
526. At the rally of 5 March 2012, which has taken place at the Pushkinskaya square in Moscow, the participants announced that they intended to stay at the square after the rally until all the resolutions adopted during the previous rallies were enforced. The police scattered the protestors using truncheons. After the rally at the Pushkinskaya square four persons sought medical assistance, two were admitted to a hospital.<sup>153</sup>
527. The dispersal of the March of Millions, which took place in Moscow on 6 May 2012, resulted in 650 arrests. 40 protestors and 4 policemen sought medical assistance; another 29 persons were injured but not hospitalised.<sup>154</sup>

### ***Contacts with arrested protesters***

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<sup>152</sup> Report of the Glasnost Defense Foundation on the monitoring of respect for the rights of mass media, December 2011 // <http://www.gdf.ru/graph/item/1/926>

<sup>153</sup> "OMON acted brutally on the Pushkinskaya square: broken arms and "a thousand" of arrests" // Newsmsk.com, 6 March 2012, [http://newsmask.com/article/06Mar2012/mitingi\\_obzor.html](http://newsmask.com/article/06Mar2012/mitingi_obzor.html)

<sup>154</sup> Report of the Public Monitoring Commission of Moscow on visiting of OVDs in Moscow after mass arrests on the Bolotnaya square on 6 May 2012 // <http://ovdinfo.org/article/6-maya-zaderzhannykh-izbivali-mnogie-popali-v-bolnitsu-doklad-onk>

528. The police do not always treat arrested protesters properly. In particular, detainees are often held in unacceptable conditions:

*"According to the official information, late at night on 6 December over 600 persons were arrested and detained in various OVDs after an unauthorized rally at the Triumfalnaya square in Moscow. Human Rights Watch interviewed four persons arrested at the rally; all of them had to spend the night in overcrowded cells in OVDs, without any food or water, and without an opportunity to contact a lawyer".<sup>155</sup>*

529. Sometimes detainees are being held in police vehicles, and not in police stations, in order to put psychological pressure on them, or in some cases simply due to the lack of space in police stations, or lack of staff to do the paperwork; the vehicles are not suitable to stay in for a long time – there is no air with it's hot, and it gets cold inside when the weather is cold.

*"At 8 am on 11 March 2012 the detainees were brought to the magistrate's court building on Rozhdestvenskaya Street in Nizhniy Novgorod. The buses stopped in front of the court building, and the drivers shut off the engines. The detainees were not allowed to visit a toilet; they were taken to the court for the hearing one-by-one. At the time the temperature in Nizhniy Novgorod was -9 Celsius. We believe that such treatment by the police officers amount to cruel treatment in violation of Article 3 of the European Convention on Human Rights and Fundamental Freedoms. As of this writing (1 pm 11 March 2012) the detainees are still held in buses".<sup>156</sup>*

530. Some protestors reported being subjected to violence by police officers at the police stations, in which they were held.

*"We arrived at the OVD Kitay-gorod and were placed in the obezyannik, in which some guy allegedly detained for hooliganism was hung on the cell bar by his handcuffed hands... Around 4 am, when I was already freaking out because of cold and sleepiness, they let me out to the men's room. On the way back I noticed three absolutely empty cells with plank beds, so I decided to occupy one of them and stay there... A few minutes later two senior lieutenants came in, one of them started to pommel me with a broomstick, thinking that it would make me go to my cell. The other one seeing that his colleague's efforts were fruitless grabbed me by the legs and transported me to the place where I was previously stationed; during this procedure the first officer with overt pleasure sturdily and persistently pressed his both hands on the tender points behind my ears".<sup>157</sup>*

### ***Investigation into cases of unjustified use of force by the police against protesters***

531. Impunity in regard to the forceful dispersal of public rallies causes concern. The use of force by the police against participants of peaceful rallies should always be investigated thoroughly, especially, where there are victims. However, this almost never happens.

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<sup>155</sup> Report of the Human Rights Watch "Russia: Protests Go on Peacefully // 10 December 2011, <http://www.hrw.org/ru/news/2011/12/10>

<sup>156</sup> Report of the Committee Against Torture on the monitoring of the civil rally on 10 March in Nizhniy Novgorod // 11 March 2012, <http://protiv-pytok.livejournal.com/15035.html>

<sup>157</sup> As reported by Sergey Konstantinov, an arrested activist // 25 June 2007, <http://constantin-off.livejournal.com/24730.html>

*"One example is a case of Bashinova<sup>158</sup>, who was choked during arrest; a complaint was submitted to the Moscow prosecutor's office. The city prosecutor's office forwarded this information to the Internal Security Directorate and to the inter-district prosecutor's office. For several years the applicant tried to obtain information about the results of the examination of her complaint; however, only occasionally she received replies that the case file was referred from one department to another. Finally after lengthy communication with the authorities she found out that the Internal Security Directorate could not conduct an investigation in respect of officer Tikhonov, who choked Bashinova, because he had been fired. The inter-district prosecutor's office decided not to open a criminal case referring to the fact that following her arrest the applicant was found guilty of an offence and sentenced to a fine by a court."*

532. There are very few examples of cases where complaints against police brutality were examined by a court. Public attention plays a key role in such cases. It prompts the authorities' reaction to the events, and forces prosecutors' officers to open criminal cases against police officers.

*"Kuybyshevskiy District Court of Saint-Petersburg sentenced a former policeman Vadim Boyko, better known as the "pearl ensign", to three and a half years of imprisonment, suspended sentence, RIA "Novosti" reports. The prosecution requested four years of imprisonment in a medium-security prison for Boyko. The investigative committee charged Boyko with abuse of power connected with the use of force and special equipment under Article 286 (3) of the Criminal Code. The maximum penalty envisaged by this article is 10 years of imprisonment. The prosecutor considered that the guilt of the accused was proven, but noted that there were mitigating circumstances, in particular, the fact that the former policemen had a young child.*

*During the dispersal of a rally held by "Strategy-31" on 31 July 2010 near the Gostinniy Dvor, ensign Boyko, wearing a pearl necklace on his wrist shouted at the protestors: "Who wants some more you fucking ferrets?" Dmitry Semenov, who was standing near him asked, "Why are you swearing?" In return Boyko struck him with a truncheon on the face.<sup>159</sup>*

533. However, most often complaints concerning police brutality are not investigated. On the opposite, law enforcement agencies may initiate criminal prosecution against those complaining. When someone submits a complaint against police brutality, the police officer involved defends himself by submitting a complaint against this person alleging that s/he had attacked him. ... Below is an example of such case.

*"Sergey Mokhnatkin, aged 56, arrested on 31 December 2009 at the Triumfalnaya square during a rally dedicated to Article 31 of the Constitution, was sentenced to two and a half years of imprisonment pursuant to Article 318 (2) of the Criminal Code for resort to force against a public official, a journalist of Grani.ru reports. The judgment was pronounced by the Tverskoy District Court. The prosecution insisted on sentencing the accused to five years of imprisonment. Mokhnatkin is the first person of those*

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<sup>158</sup> "Brutalised: one step from dispersal of peaceful protest to shooting" // Hippy.ru, 8 May 2007, <http://www.hippy.ru/forum/viewtopic.php?pid=6752>

<sup>159</sup> "The 'pearl ensign' sentenced to imprisonment, suspended" // Grani.ru, 26 December 2011, <http://www.grani.ru/Events/Crime/m.194457.html>

*arrested at the Triumfalnaya square, whose sentence of imprisonment was not suspended. However, he insists that he did not take part in the rally, and merely happened to be at the square by chance. He does not belong to any political movement.*

*Mokhnatkin was arrested after he made a remark to policemen, who were hitting a woman. In an avtozak he was chained to a metal bar, and then a police officer attacked him and started to choke him in the presence of nine witnesses. According to the case file, the detainee hit a policeman on the face with his head, and broke the sergeant's nose. According to the witnesses, Mokhnatkin was beaten at the police station again. He spent the New Year's night behind the bars. The court rejected those witnesses' statements.<sup>160</sup>*

### **Introduction of a "curfew" for minors**

534. In the end of 2000s, the authorities began introducing norms prohibiting minors from being in public places unaccompanied by an adult during evening hours and at night, the so-called "curfew". The curfew was aimed at combating child neglect, and at the protection of children against crime, as well as at decreasing the number of crimes and other offences committed by teenagers.
535. For example, in May 2008 the legislature of the Kemerovo Region adopted a local law on curfew hours for persons under 16. In June 2008 the legislators of the Krasnodar Region introduced a curfew for children of 7 to 13 years old from 9 pm to 6 am, and for teenagers of 14-17 years old – from 10 pm to 6 am. In total, by the end of 2008 similar rules were adopted in 15 Russian regions. In some regions human rights activists and prosecutors' offices succeeded in challenging the local legislation on the grounds that introduction of any restrictions on children's freedom is a federal and not regional matter.
536. However, in 2009 the curfew for minors was introduced at the federal level. On 29 April 2009 the President Dmitry Medvedev approved amendments to the Federal Law "On the Basic Guarantees of Children's Rights", according to which minors were prohibited from being in public places from 10 pm to 6 am. Such places, according to the Federal Law, included shops where alcohol or merchandise of sexual nature was being sold. The law also provided regional authorities with powers to designate other places from which unaccompanied teenagers are prohibited at night. In many regions such places include not only night clubs and internet cafes. In some regions minors are not allowed to be out on the street in the evening and at night.
537. Violation of the curfew is an administrative offence, the liability for which is borne by children's and teenagers' parents as well as by the management of shops where the teenagers are found during the police night raids.
538. According to the official information, introduction of the curfew decreased the juvenile crime rate. However, investigative journalists and experts conclude that this measure resulted in the reduction of street crime only, but had no effect on troubled teenagers, who

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<sup>160</sup> "A man arrested on 31 December at the Triumfalnaya square sentenced to two and a half years" // Grani.ru, 9 June 2010, <http://grani.ru/Politics/Russia/activism/strategy31/m.178809.html>

simply moved from the streets to dens.<sup>161</sup> At the same time, the introduction of the curfew increased the risk of minors becoming victims of abuse by the police.

539. Prior to the introduction of the curfew the police could arrest minors only if they committed an offence, such as hooliganism, consuming alcohol in public spaces, breach of peace, etc. The new law provides the police with powers to arrest minors simply because they are found unaccompanied in public places during the evening hours and at night. The more frequent cases of teenagers' arrests lead to the increase in the number of violations of their rights by the police, including violence against minors and threats.

*"On 6 November 2010, in Ekaterinburg officer Aleksey Chabin arrested Aleksey Seredenin, a photographer, his assistant, and two girls, models, who were having a photo shoot on the territory of an abandoned hospital. The police officer claimed that there had been a violation of the curfew, because one of the models, a 16 year-old girl was out in a public place during the night hours. This is how the photographer described the arrest. "They started to intimidate and threaten us. An officer told to one of the girls that he wouldn't let her out of the police station until her parents came to pick her up (her mother went tracking for a week); can you imagine her reaction?... All the attempts to exhort the police officer were fruitless, and the threats only escalated. [He claimed] that we had entered the territory of a strategic facility of the Ministry of Defence, that our photographs confirmed it, and that we would go to jail".*

*The group of young people was brought to the police station at the Sacco and Vanzetti Street, where they were held for an hour and a half. There the 16 year-old girl felt unwell, but was denied medical assistance".<sup>162</sup>*

*In Kuzovatovo township in the Ulyanovsk Region the deputy head of the police and a local police officer were sentenced to imprisonment for abuse of power, and rape of a student, who violated the curfew for minors. On 2 November a note about this case appeared on the web-site of the regional prosecutor's office.*

*According to Lenta.ru, the deputy head of the Kuzovatovo police, Andrey Suslov, aged 35, was sentenced to 6.5 years of imprisonment, and Rinat Ibragimov, a local policeman, aged 29, to 4.5 years of imprisonment. Both policemen were found guilty of abuse of power, and Suslov was also found guilty of rape. The judgment has already entered into force.*

*It was established that on 8 July 2009 at the intersection of Oktyabrskaya and Komintern Street, Suslov and Ibragimov stopped two college students. The policemen stated that minors were not allowed to be at a public place at night. They handcuffed the girls to each other and forced them into a car.*

*Then the policemen took the girls to Syzran and forcefully brought them into a sauna in*

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<sup>161</sup> "Are your children at home?" // Noviy Izvestiya, 16 August 2010 <http://www.newizv.ru/society/2010-08-16/131465-vashi-deti-doma.html>

<sup>162</sup> "A policeman from Ekaterinburg becomes famous for the second time for attacking artists", UralPolit.RU, Expert Information Channel // [http://old.uralpolit.ru/urfo/polit/society/id\\_206311.html](http://old.uralpolit.ru/urfo/polit/society/id_206311.html)

a spa "Oasis". There Suslov raped one of the girls.<sup>163</sup>

#### Question 45 (46 in the list of issues in English)

##### *Abolishment of sobering-up facilities*

540. Medical sobering-up facilities, under the jurisdiction of the police, providing assistance to persons intoxicated by alcohol, were established in the USSR and continued their operation in independent Russia. About a thousand sobering-up facilities operated in the country before 2011.
541. The sobering-up facilities were not effective, and did not meet the aim of providing first aid to heavily intoxicated persons. Many sobering-up facilities did not have a license to provide medical care, and could not receive one due to the poor condition of their premises, lack of necessary equipment and staff qualified in medicine. A person brought to a sobering-up facility could be held there for up to 24 hours without food, and with no visits or parcels from relatives allowed. Thus, in reality sobering-up facilities were places of compulsory detention.<sup>164</sup>
542. Moreover, persons taken to sobering-up facilities and their relatives often complained about various forms of abuse by police officers working there, which included cruel treatment and torture. The sobering-up facilities' regulations allowed a number of manipulations with their "clients", such as "soft restraint". Such methods were borrowed from psychiatric practice where they were commonly used to prevent self- and other-directed aggression. However, applied by policemen with no special medical knowledge or training, the "soft restraint" method often resulted in injury and psychological trauma.

*"On 8 March 2009 a fight erupted near a café in Perm. Aleksandr Samoylov, one of the participants of the fight, was taken by the police to the district sobering-up facility. A few hours later the 33-year-old detainee died of heart failure, as stated by doctors. ... It can be clearly seen on a video recording that the detainee was thrown on the floor, and [a policeman] was pushing his knees against his back. Four policemen sat down on his back and tied 'the patient' brutally, connecting his hands with his feet with ropes. The law enforcement officers cynically called this position "swallow".<sup>165</sup>*

543. It has been reported that police officers working in sobering-up facilities beat up persons who were held there. In some cases it resulted in death.

*"On the night of 3-4 January 2010 Konstantin Popov, a journalist, was brought to the Tomsk medical sobering-up facility. A few hours later he was sent home, but then admitted to a hospital. The journalist underwent an urgent surgery, after which he experienced a clinical death, then went into coma, and died on 20 January without regaining consciousness. According to the results of an investigation, at the sobering-up*

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163 "Police officer found guilty of rape of a minor girl" // <http://www.hro.org/node/9444>

<sup>164</sup> "Sobering-up facilities – illegal! The analysis of the situation for the for the Public Chamber of Russia" // Human Rights Association "Agora", 30 April 2010, [http://openinform.ru/fs/j\\_photos/openinform\\_237.pdf](http://openinform.ru/fs/j_photos/openinform_237.pdf)

<sup>165</sup> "The case concerning death in a sobering-up facility is reopened" // Rossiyskaya Gazeta, 22 March 2012, <http://www.rg.ru/2012/03/22/reg-pfo/perm-delo.html>

*facility the man was subjected to violence which resulted in severe injuries of internal organs. According to preliminary results of an expert examination, the journalist died of cerebral edema.*<sup>166</sup>

*Aleksey Mitayev, a police officer from Tomsk, found guilty in this case and sentenced to 12 years of imprisonment, is now serving his sentence in prison".*

544. Unfortunately, this is not the only case of death following detention in a medical sobering-up facility. In 2010 alone death cases in such facilities in Voronezh, Kemerovo, Kuzbass, Samara, and Ekaterinburg have been reported.
545. In response to the cases of cruel treatment and deaths in sobering-up facilities the authorities decided to abolish the facilities. By 2011 all the medical sobering-up facilities in the country were closed down.
546. On 23 December 2011 the Ministry of Interior of the Russian Federation issued Order no. 1298 adopting the "Regulation on delivering persons found in public places under the influence by alcohol, narcotics or other substances, who have lost ability to move around independently and to orientate, to medical care facilities"<sup>167</sup> According to these regulations upon arresting an intoxicated person police officers shall call an ambulance to deliver him/her to a narcological department of a hospital. A doctor shall examine the arrestee, establish the level of intoxication and decide, whether hospitalisation is advised. If there is no need for hospitalisation, the doctor shall return him/her to the police officers, who will draw up a case file regarding an administrative offence (such as hooliganism, consuming alcohol in public places, or appearing intoxicated in public places).
547. However, the healthcare system was unprepared to provide assistance to heavily intoxicated persons. In particular, the number of narcology departments for acute cases in hospitals is insufficient. As of this writing a narcology department for acute cases operates in only in Tomsk; in 2012 another one will open in Moscow. In absence of such specialised departments medical assistance to intoxicated persons is provided by doctors of other regular hospitals.
548. There are still no regulations concerning treatment of such patients by doctors, and no funds are being allocated. In addition, admission of a heavily intoxicated person to a regular hospital creates a risk for medical staff and other patients.
549. In absence of sobering-up facilities and in view of the fact that healthcare institutions are not prepared to admit intoxicated clients, intoxicated persons most often find themselves on the streets, where they become victims of crime, or commit offences themselves. Following the abolishment of sobering-up facilities, the law enforcement authorities in some regions note an increase in crimes committed under the influence of alcohol.<sup>168</sup>
550. Moreover, cases of cruel treatment of heavily intoxicated patients by staff of healthcare

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<sup>166</sup> "Investigative Committee: the cause of death of a Tomsk journalist was cerebral edema" // Grani.ru, 25 January 2010, <http://grani.ru/Events/Crime/m.173744.html>

<sup>167</sup> Decree of the Ministry of Interior of the Russian Federation of 23 December 2011 no. 1298 Moscow // Rossiyskaya Gazeta, 29 February 2012, <http://www.rg.ru/2012/02/29/pianstvo-dok.html>

<sup>168</sup> "Closing down sobering up facilities has led to the increase of crime rate" // Siberian News Agency, 23 March 2012, <http://nsk.sibnovosti.ru/society/186839-zakrytie-vytrevziteley-v-novosibirskoye-vyzvalo-rost-prestupnosti>

institutions have been reported.

*"A death of a patient under the influence of alcohol brought by an ambulance to the Elisavetinskaya hospital in Saint-Petersburg is being investigated. Following his admission to the hospital, Trofimov, a local resident, was placed in exogenous intoxication unit, where male nurses Igor Volkov and Ivan Zalyubovskiy were supposed to wash and disinfect him, and then bring him to doctors, who would examine a diagnosed chest injury. However, instead of carrying out their duties, the nurses ill-treated the drunken man – they fully undressed him, poked him with a stick, and hit him on the head with their feet. Such treatment led to Trofimov being placed in the intensive care unit, where he died a few days later. According to doctors, the cause of death was a closed head injury. Fontanka.ru made public the recordings of the hospital's surveillance cameras. As seen on the video, Zalyubovskiy and Volkov brought Trofimov into a room on a push cart. Holding the patient by the collar the nurse made him get off the cart. Since Trofimov was so drunk that he could not stand on his feet, he laid down on the floor immediately. On the video, the nurses take turns in poking the man with a stick on the face, and then fully undress him. One of the young men checks his pockets, and takes an object, which looks like a mobile phone. Leaving the room, the nurse kicks the man lying helplessly on the floor with his foot on the head."<sup>169</sup>*

551. It may be concluded that abolishment of sobering-up facilities in Russia is an example of efforts to prevent cruel treatment, which, however, achieved a dubious result.

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<sup>169</sup> "A video concerning a new "doctors' case" is made public: a resident of Saint-Petersburg died after ill-treatment by nurses" // Newsru.com, 25 April 2012, <http://newsru.com/russia/25apr2012/trofimov.html>

## **Recommendations**

### **In order to minimize torture and inhumane treatment in maintaining public order it is necessary to:**

1. Hold a thorough investigation of each police use of force case to peaceful protester while detaining them, taking them to the police precinct and holding them in custody. Police officers guilty in unfounded or excessive use of force are to be held liable and discharged from the law enforcement agencies.
2. It is necessary to create conditions appropriate for providing medical help to persons under influence of alcohol in medical institutions. Staff of such institutions where said patients can be taken should include necessary number of qualified substance abuse professionals, as well as nurses who are able to restrain rowdy behavior of patients under the influence without using excessive violence.

### **In order to prevent torture and inhumane treatment of detainees in administrative violations or on suspicion of committing a crime:**

3. To modify the system of police performance assessment so that it stimulates to officers to pay attention both to the number of crimes and offenses which are registered, closed and submitted to court, and to ensure rights of the victims, witnesses and suspects of committing crimes and offenses. In particular it is necessary to intensify the use of assessment methods independent of the police: public surveys, surveys of crime victims, etc.
4. To hold constant video surveillance in the premises of the Internal Affairs Ministry agencies where detained, questioned and arrested persons might be.
5. The police leadership should take steps to ensure that detainees are informed of their rights. The prosecution office should intensify its monitoring of informing the detainees of their rights, of ensuring the right of detainees to notify their relatives that they were detained, as well as documenting the detention. Police leadership should hold liable police officers who were found by the prosecution office or by public oversight committees to violate detainee rights while documenting detentions.
6. To improve detention conditions of those detained concerning administrative violations in police precincts, to make such conditions comply with Russian and international standards.
7. To stop the practice of permitting lawyers to meet with their clients who are in custody in temporary holding facilities and in pretrial detention center, solely on the basis of written permission from investigative agencies or courts such practice violates legislation of the Russian Federation.
8. To take measures aimed at stopping other violations of the principle of access of a detainee to their lawyer, to hold law-enforcement officers interfering with work of lawyers liable.

9. To modify the criminal procedure legislation to include a ban on using acknowledgement of guilt as evidence which are not confirmed by the suspect or the accused when lawyer is present.

**In order to enhance efficacy of torture and inhuman treatment complaint investigation:**

10. To staff the division of the Investigative Committee recently created to investigate reports of crimes committed by law-enforcement officers with the number of professional investigators which would ensure both effective investigation of criminal cases initiated with regard to actions of law enforcement officers, and to check all reports of crimes committed by law enforcement officers.
11. To institute legislation making it mandatory for medical institutions to pass information about injuries allegedly received by a person while being in police custody or as a result of actions of police officers not to the police, but to a specialized division of the Investigation Committee for investigation into circumstances under which injuries took place.

**In order to prevent torture and inhumane treatment in the military and to ensure rights of servicemen who became victims of torture it is necessary:**

12. To ensure clear orders delivered to all military commanders about absence of any tolerance regarding all cases of hazing in the military.
13. To provide immediate, independent and competent medical examination of all injured servicemen.
14. To prohibit movement of servicemen outside their deployment premises to implement activities unrelated to their duties.
15. To ensure independent, immediate and effective criminal investigation into all cases of inflicted bodily injuries to servicemen and women, especially injuries inflicted under unascertained circumstances, to ensure all investigatory actions are open to public scrutiny, especially by victims' relatives and public organizations, so that effective state support is provided to the injured persons and witnesses, especially when the service person is returned to their deployment.
16. Organize programs for rehabilitation of servicemen. In particular ensure timely, effective and competent medical help to all injured, as well as psychological rehabilitation to torture victims, as well as ensure discharge from the army to such persons and occupation guidance is provided for them and their family members

**In order to enact ban on deportation and extradition to countries where the deported or extradited persons will be at risk of torture**

17. To ensure unhindered access to refugee status determination and provisional asylum within the territory of the Russian Federation. To apply provisions of the Law "On Refugees" and

the UN Convention Relating to the Status of Refugees on exceptions from asylum protection only upon results of consideration of asylum applications.

18. To use effective measures to ensure strict government agencies' compliance with the non-refoulement principle to asylum seekers to the point of exhaustion of legal recourse to appeal negative decisions of migration authorities.
19. To liquidate legislative difference between the administrative expulsion and deportation, setting a court procedure for the use of the unified procedure with a strict compliance with the non-refoulement principle to the moment of the court decision coming into force. To include a requirement about mandatory court study of risks of forbidden treatment of the deported person in the course of making a decision about deportation/administrative expulsion into the national legislation regulating the court procedure.
20. To provide for a specific legislative criteria for applying the main (fine) and additional (deportation outside of the Russian Federation borders) punishment for violation of rules of staying within the territory of the Russian Federation by a foreign citizen.
21. When taking decisions on extradition application to hold assessment of risk of use of forbidden treatment to the extradited person in the state filing the extradition application and as well as the efficacy of such state's diplomatic guarantees based on the comprehensive set of available information, including materials of the UN (Human Rights Council, HRC, CAT), Council of Europe (European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment) and the largest international NGOs (Amnesty International, Human Rights Watch, FIDH, etc.). To take into consideration the ECtHR position regarding the situation in the country of destination reflected in its rulings on cases regarding refoulement to such country.
22. To stop the practice of extraditing persons to requesting states through the procedure of administrative expulsion (deportation).
23. To eliminate conditions on the national level contributing to abduction and illegal extradition to the requesting states through the state border of the Russian Federations of persons whose extradition was requested for criminal prosecution. To ensure effective investigation of such instances and the inevitability of relevant punishment of governmental officials accessory to such instances.

**To prevent torture and inhumane treatment of people with psychiatric disorders it is necessary:**

24. To amend the Federal law on "On public oversight of ensuring human rights in places of forced confinement" investing members of public oversight committee with the right to visit psychiatric wards, including those implementing compulsory treatment mandated by court decisions in relation to punishable offense. Both ordinary and specialized wards have people who are not there voluntarily, that is why psychiatric wards are places of forced confinement.

25. To implement ECtHR ruling in Rakevich vs Russia by amending the law “On psychiatric assistance and guarantees of citizens' rights in the process of providing it” which would give the right to a patient who was hospitalized without his consent to independently contest such hospitalization in court.
26. To create Service for protection of psychiatric word patients independent of health authorities, such services was provided for by the law “On psychiatric assistance and guarantees of citizens' rights in the process of providing it”.
27. To enact court oversight over hospitalization of orphaned children who are in the state residential institutions, similarly to the court oversight over hospitalization of citizens deemed legally incompetent;
28. For General Prosecutor Office to urgently develop documents, regulating transfer of patients-foreign citizens for forced treatment to the country of their citizenship .
29. To avoid situations when psychiatric assistance and hospital stays are used in absence of medical indications (patients staying in hospitals due to “social indications”), it is necessary to increase oversight by regulatory agencies with timely discharge of patients or their transfer to relevant institutions providing social assistance. To undertake governmental measures to develop a system of institutions for people who lost family and social ties.
30. To take measures aimed at development of out-patient psychological assistance including such groups as students of special schools, and further training of educational psychologists working in special residential schools. To fully exclude use of psychiatry with disciplinary purposes with orphaned children in state residential schools.

**In order to ensure implementation of the ECtHR's judgments in the "Chechen" cases, it is necessary to:**

31. Ensure, via effective prosecutorial supervision, that crimes constituting acts of torture committed in the context of the counter-terrorism operation in the North Caucasus are not down-graded to lesser crimes which fall under amnesty provisions;
32. Ensure, via effective prosecutorial supervision, that expiry of limitation periods in cases of torture committed in the North Caucasus do not pose a bar to accountability for identified perpetrators;
33. Ensure that persons declared wanted for crimes amounting to torture are actually placed on the federal wanted list;
34. Ensure that investigators at the local level have the needed resources and the appropriate level of federal supervision and support in order to compel servicemen from various regions of Russia who served in Chechnya during the counter-terrorism operation to cooperate with current investigative activities being carried out in Chechnya.
35. Regularly publish statistics on investigations of this category of crimes;

36. Amend laws and law enforcement practices to allow applicants to view all materials in the criminal case file once the criminal proceedings are opened, rather than wait until completion of the preliminary investigation.
37. Amend laws and law enforcement practices to allow applicants to attend all investigative actions and to access any information and any documents related to the investigation of these cases;
38. Put into practice the provisions of the Russian law which require that information concerning human rights violations cannot be classified as secret;
39. Provide information on the results of the federal government's program to find disappeared persons;
40. Amend the Criminal Code by extending the right to free legal aid not only to the accused, but to the victims as well;
41. Set up a forensic center in the Chechen Republic capable of conducting competent forensic examinations.