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 2001 to 2006

November 2006, Moscow

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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: DEMOS Research Center, Public Verdict Foundation, Civic Assistance Committee, Memorial Human Rights Center, All-Russian Movement "For Human Rights", "Social Partnership Foundation", Union of Soldiers' Mothers Committees of Russia, Nizhniy Novgorod Committee against Torture, Krasnoyarsk Public Committee for Human Rights Protection, Perm regional human rights defender center, Kazan Human Rights Center, Yorshkar-Ola organization "Man and Law", Memorial Human Rights Commission of Komi Republic, the Public Interest Law Initiative, Mordovian Republican Human Rights Center, Public Problems Research Institute «United Europe», Tver Memorial Society, Krasnodar Organization "Mothers in Defense of the Rights of Those Arrested, Under Investigation and Convicted", Association of human rights organizations of Sverdlovsk region, Chita Human Rights Center. The Public Verdict Foundation was responsible for general coordination; Demos Research Center was responsible for legal editing of the report.

This Report is submitted to the UN Committee against Torture within the framework of its examination of the Russia's Fourth 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. We recognize that for several recent years some positive changes have taken place in the Russian Federation, primary in the penitentiary system. Our task was to present the position of nongovernmental organizations on the situation with torture and other cruel, inhuman or degrading treatment in the most critical areas (police, military forces and penitentiary) in the Russian Federation so that the Committee experts could have the most comprehensive and objective opinion in this sphere. In particular, problem of impunity of tortures, conflicting functions of prosecution authorities that results in ineffective control over observation of human rights in the course of investigation of torture cases, absence of adequate system of compensation to victims of torture causes a great deal of concern among Russian human rights NGOs.

Information concerning new measures and implementation of the Convention's articles are included in corresponding articles of the Report. Situation with observance of the Convention in Caucasus region is presented in separate section since this region is very special.

While preparing the Report we used materials of the monitoring of the situation with torture carried out in 2005 in 16 regions of the country and at the federal level, as well as the data provided by a whole number of Russian human rights nongovernmental organizations, and relevant reference to these data are given in the text. The absence of reference to the information source means that the data were presented by one of the organizations-authors of the Report. For additional information you can contact Public Verdict Foundation at ntaubina@publicverdict.org and DEMOS Research Center at shepeleva@demos-center.ru.

Summary[1]

1. While acknowledging that during the reporting period some positive changes connected with Russian penal system did take place on the territory of the Russian Federation, Russian NGOs are very concerned with the cases of torture and other cases of abusive treatment in the most critical sectors of the country (police, army, penal institutions). In particular, the report gives a detailed analysis of the problems with impunity for using torture, conflicts with functions of prosecutor's office and absence of adequate system of rehabilitation and compensation for torture victims. Taking into consideration specific situation in the Caucasian region, the authors decided to put the analysis of the situation regarding the use of torture in that region in a separate section.

2. Having considered the Third Periodic Report of the Russian Federation, the Committee against Torture recommended the Russian authorities to immediately include into internal legislature the definition of the term "torture", registered in the Article 1 of the Convention against Torture. The committee also recommended adding classification to the internal legislation to allow torture and other types of inhuman, cruel and humiliating punishment to be considered as crimes. It must be noted, that during the reported period, the Russian authorities have made several amendments to the legislature in order to ban torture. These measures however were not enough to fully carry out the recommendations of the Committee. The definition of the term "torture and cruel and humiliating treatment" adopted on December 8, 2003 in the annotation to the article 117 of the Russian Criminal Code does not mention the presence of an official. Moreover, the norm that regulates the definition of the torture is included into a section that deals with crimes against life and health of an individual, but not into a section dealing with the crimes, committed by the officials at work. That means that this article can only be used, if the torture was carried out by an individual and not by an official. Moreover, the definition of torture, registered in national Criminal Code does not fully comply with the norms of the Convention against torture. It should be mentioned that the definition of a notion "cruel and humiliating treatment" cannot be found either in the Criminal Code of the Russian Federation or in other national legal acts.

3. As a result, competent state institutions, which are in possession of the statistics on the use of Article 286 "Abuse of official authority", do not have data on torture and cruel and humiliating treatment. That prevents the authorities from adequately estimating the amount of torture cases and does not allow the state to plan efficient preventive measures.

4. In reported period the legal framework, dealing with arrest and custody procedures and rights of detainees and accused, was subjected to changes and can guarantee the prevention of torture and inhuman treatment of these individuals. The adoption of the new legal norms did not have any practical impact on the position of the suspects, detainees and accused. Despite the fact that the new laws had been adopted, the competent institutions did not promote the introduction of institutional changes, which are necessary to execute these laws. They also did not provide necessary material resources for judges and police officials. Besides, some clauses, regulating the work of the police officers, were not amended or changed in order to make them comply with proclaimed aims of human rights protection. As a result, the suspects, detainees and accused still suffer from different violations of human rights, including bad treatment and even tortures.

5. Legislature (including the law "On Police") is not precise enough in formulating the proportionality for the use of physical force, special means and firearms, which in practice lead to the situation, when the police officers can use excess force in order to prevent minor violations of public peace, even when the detainee is not maintaining resistance and not trying to make an escape. In some cases police officers use physical force even against children and elderly people, people, who due to natural reasons, are unable to maintain serious resistance or pose a threat for the life or health of police officers. Human rights organizations in Russian are especially concerned about the use of mass violence in 2004 –2006 in (particularly in Blagoveshenks city, the village of Rozhdesveno in Twer Region, the village of Ivanovskoe in Stavropol region and in Lazarev district of the city of Sotchi). It must be noted, that all the above operations were carried

[1] This section of the Report was drawn by the Public Verdict Foundation

out without any visible reasons. In the mentioned towns no cases of mass public peace disturbances or emergencies were registered, which means there was no need to carry out special operations in addition to usual day-to-day activities of the police force. All the above situations resulted in the fact that the local population started to fear and distrust the police force, due to the excess and non-selective violence on their part.

6. Analyzing public attitude to torture and ill-treatment one shall take into account that sociological surveys identify that majority of Russians (81%) consider that they are not protected from arbitrariness of the law enforcement agents[2]. Survey initiated by the Nizhniy Novgorod Committee against Torture and implemented by the Sociology Institute of the Russian Academy of Sciences found out that during the year 2004 following number of respondents had been subjected to ill-treatment by police: 3,39% of respondents in Sankt-Petersbourg, 4,66% in Pskov Region, 3,40% in Nizhniy Novgorod Region, 4,63% in Komi Republic, and 4,54% in Chita Region. For all regions where survey had been conducted average percentage of respondents mentioned that in the year 2004 they had been subjected to ill-treatment was 4,12%. In addition some of the surveyed individuals mentioned that in order to exercise pressure on them (to punish, to threaten or to extract information or confession) torture had been applied to third persons: relatives, friends or colleagues. In different regions following number of surveyed underline this problem: 1,5% of respondents in Sankt-Petersbourg, 1,2% in Pskov Region, 0,2% in Nizhniy Novgorod Region, 1,0% in Komi Republic, and 3,3% in Chita Region. The same survey had also found that 64,3% of respondents suggest that torture is used in Russia (27,9% believed that torture applied systematically) in Sankt-Petersbourg; in Pskov Region 56,0% suggest that torture is used (26,5% that torture applied systematically); in Nizhniy Novgorod Region 64,4% suggest that torture is used (35,4% believe that torture applied systematically); in Komi Republic 72,7% suggest that torture is used (30,9% believe that torture applied systematically); in Chita Region 54,6% suggest that torture is used (20,8% believe that torture applied systematically).

7. It must be mentioned that since the Third Periodic Report of the Russian Federation was considered, the number of investigations carried out as a response to complains about tortures and inhuman treatment, has increased. In comparison with the previous reporting period, the number of police force employees, held liable for these offenses, has also increased. These changes can be explained by the fact, that the victims of torture and cruel treatment are trying to seek justice and with the help of lawyers, working in human rights organizations persistently demand investigations from relevant authorities. Those changes, however, cannot be viewed as a definite progress achieved by Russia in carrying out its responsibilities to conduct efficient and fair investigation on torture cases. Now, just like in previous reporting year, the prosecutor's offices do not show imitative in starting investigations on torture cases. It is very rare for the prosecutor's office to independently initiate the examinations and investigations, even if they possess the data that the torture had been administered. More often, the issue of investigation the information about torture arises when the victims or their representatives come to the prosecutors' office independently, to file a complain. Prosecutors often do not meet the time deadlines, while investigating torture cases; they postpone the necessary investigative activities without any plausible reason, which leads to delays in investigations. Thus, the prosecutors fail to comply with the time limits stated in the legislature. According to the analysis of the decisions, made by prosecutors on the basis of investigations of torture complains, the prosecutor's office employees very often start the investigation process while being completely sure that the complain is a lie. The data, that proves, that torture very likely did take place (such as physical injuries, for example) can be ignored. It very often happens, that the prosecutor's office does not consider the witness testimonies, believing them not to be unreliable, if the witness is not a police employee. At the same time, prosecutors can be quite uncritical with the testimonies of the police officers, even those officers that are named by the victim as participants in torture. The victims have to wait for the decision for years, appealing against illegal and unwarranted denials in investigations or decisions to close the investigation. This so-called "ping-pong" practice, when a torture

[2] See "Index of Arbitrariness of law enforcement agencies: estimations of sociologists and comments of human rights activists". Public Verdict Foundation and Levada-Center. Moscow, 2005

complaint is moved from one institution to the other never reaching a final decision, can mainly be blamed on the fact, that the investigation officers, who do not comply with the principles of efficient investigations, do not suffer any punishment. The prosecutor's office employees, guilty in carrying out many illegal verdicts that derogate from victims' rights usually are not held liable.

8. The reason why investigations on torture complaints prove to be inefficient lay in the fact that the prosecutor's office is not a fully independent organization. In practice, the conflict between the function of criminal prosecution and function of supervision of preliminary investigation and investigation is usually solved in favor of strengthening the position of prosecution, rather than investigation of suspects' complaint on torture and other violations. The survey carried out in 10 region of Russia[3] showed that the prosecutor's office employees see their main task in prosecuting criminals. While naming their priorities in supervising legality of investigation procedures, the majority believes that they lay in providing inventory of the crimes, rather than fight the violation of accused and suspects' rights.

9. Thus, one may say that the recommendations of the Committee against Torture of the UN to ensure that the fair, immediate and complete investigations of numerous statements of torture administration were not fully implemented by the Russian Federation government. Same holds true of legal prosecution or punishment of those found guilty. No measure were taken to increase the independency of the investigations. (For detailed description, see Article 12, items 12.20-12.45)

10. There is no comprehensive official statistics of investigations of complaints about tortures in police institutions, and the same situation can be seen with the complaints about tortures in penal institutions. Very few human rights organizations in the Russian regions managed to get some information from Prosecutor's office regarding torture administration in the penal institutions. Human rights organizations in different regions of Russia noted some specific cases when the penal institutions officials were held liable for cruelty to detainees and other official malfeasances, but these cases are rare and unique, and they are considerably less of them than the cases when police officials were held liable for tortures. While analyzing the cases that come to the attentions of human rights organizations one can come to a conclusion, that the inspections and investigations of torture cases in penal institutions have the same disadvantages as the torture cases in police. The inspections are not scrupulous enough; their results look prejudged and unconvincing. Moreover the penal institutions detainees have much less opportunities to appeal against unwarranted verdicts of Prosecutor or to demand scrupulous investigation, than the victims of torture from police officers. The prisoner is under permanent control of the penal institution officials, who can block him from filing a complaint or exert pressure on the complainant. The reasons for low efficiency of investigations and inspections of prisoners' complaints can be explained by a number of factors. One problem is that the medical staff of penal institutions is made up not from independent civilian doctors, but from UFSIN officers, who are subordinate to the director of the penal institution. In such conditions, it is hard to expect timely and scrupulous record of all injuries. Lack of medical evidence in turn, may seriously hinder the prosecutors' attempts in investigating the torture cases in penal institutions. The other problem is that in the conditions of the closed penal institutions, the prosecutors may experience difficulties in obtaining witness testimonies. There were cases when the witnesses and even the complainants take back their testimonies. Together with these objective factors, that hinder the work of the prosecutors, the human rights organizations also notice certain bias in prosecutors' attitude to torture cases in penal institutions. One may get an impression, that the prosecutors believe that since the prisoners are criminals their testimonies are false by definition and it does not make sense to ensure their well being (For detailed description, please see Article 12, items 12.46-12.52).

[3] Survey has been carried out by DEMOS Center and its partner organizations in Republics of Adygeya, Tatarstan, Komi, Altaiski krai, Krasnoyarski krai, Sverdlovskaya, Voronezhskaya, Nizhegorodskaya, Tverskaya and Permskaya regions.

11. Solders' Mothers Committees testify, that in the majority of cases investigations of military personnel complaints about tortures and cruel treatment in military units are given superficial attention by military prosecutors or military investigators. The investigators and prosecutors cannot function independently and there may be pressure from the Command personnel. The army command personnel do not wish for the military crimes to go public. On the basis of the analysis of the certain cases, the Solders' Mothers Committees point out the most widely practices of concealing the torture and cruel treatment: the recorded injuries are explained as the victims own fault due to personal lack of caution, falsification of the investigation materials, pressure on victims and witnesses to make them false swear about the details of the incident. Torture cases concerning drafted personnel are more often investigated and send to court, while the cases involving military officers administering torture are usually closed during the preliminary investigations due to the lack of corpus delicti. The Command personnel that do not take measure to prevent tortures, are only held liable when these torture cases became widely known to public and got a serious public response (For detailed description please see Article 12, items 12.53-12.57).

12. In 2002 the UN Committee against Torture, having considered the Third Periodic Report of the Russian Federation on observing the Convention against torture, has recommended among other things, to ensure the protection of individuals who filed complaints about torture administration and their witnesses from prosecution. Every individual who had suffered torture is legally entitled to file a complaint at any time and to any state law-enforcement facility. They are also entitled to see the investigation materials and to appeal against the verdict, including appealing to higher courts. In practice, however, the situation is such that the representatives of the state very often act contrary to the law and hinder the individual from filing a complaint. Human rights organizations have investigated incidents like this. In particular there were cases when the prosecutors had violated the procedure of filing a complaint: they applied direct physical countermeasure to the complainant by illegally taking them to custody or by discrediting them. People who are currently situated in penal institutions usually do not have difficulties in filing a complaint about torture or cruel treatment that had taken place before the prisoner had been brought to the penal institution. In practice the difficulties arise, however, when the prisoner attempts to file a complaint against the administration of this particular penal institution, its officials or administration. According to human rights organizations that regularly visit the penal institutions in Twer and Perm regions and in the Republic of Komi and the Republic of Tatarstan, the prisoners do not have a real opportunity to file a complaint about torture or cruel treatment on the part of the administration, despite the fact that the law prohibits censorship of the prisoners letters addressed to prosecutors, higher institutions of penal institutions or human rights commissioner. As a rule, in penal institutions, all complaints and statements addressed to higher institutions are subjected to inspection. As a rule, these complaints are delivered unofficially (via relatives, lawyers, released prisoners and so on). The prosecutors do not conceal identity of complainants and witnesses. As a result, very often this information can reach the suspects in administering torture, who are employed with law-enforcement institutions or their colleagues. Thus, an individual who filed a complaint about torture and their witnesses become victims of prosecution on the part of officials involving in torture and their colleagues. Similar incidents have been recorded in Mari-El Republic and in the Republic of Tatarstan, in Chita, Nizhny Novgorov and other Russian regions. People who suffered torture while being imprisoned in penal institutions are in more vulnerable situation than those victims, who are free. In practice the protection of prisoners, complaining about torture and cruel treatment is not given serious attention. According to Committee of Soldiers' Mothers, only one from thousand of military personnel, who had faced cruel treatment in the army use their right to file a complaint. The main reason is fear of revenge on the part of soldiers or officers that the complaint was filed against (For detailed description please see Article 13)

13. In items 121-121 of the Forth Periodic Report of the Russian Federation, the procedure of rehabilitation, set in Article 133 of the RF Criminal Code, is described as a mean of providing information about implementing Article 14 of the Convention. It must be noted, however, that the provided norm has almost nothing in common with what the modern world today understands under the rehabilitation of torture victims. Under rehabilitation, the Russian law understands the

procedure of restoration the freedoms and rights of the individuals who suffered illegal or unwarranted criminal prosecution. This procedure presupposed compensation of property damage, consequences of moral damage and restoration of labor, pension or other rights, that had been violated by unwarranted legal actions. The law, however, do not list the fact of torture administration among the reasons or rehabilitation. That means, that even if the fact of torture is proved in court, it will not automatically mean that the rehabilitation procedure, underlined in Criminal Code will apply to the victim. As for medical, physiological and social rehabilitation of the victims of torture, the state institutions of Russia do not provide and do not finance such an aid. Some efforts to provide medial, social and psychological rehabilitation of torture victims are made by civil organizations on the financing from charities and the UN Voluntary Fund for Victims of Torture (Please see Article 14, items 14.1-14.6 for detailed description).

14. In cases when the fact of torture and the specific officials guilty in torture administering were not stated in the court sentence, the torture victim formally has the right to file a compensation claim. In this case, however, the victim must look for evidence, supporting the claim, the quilt of the officials and the causal connection between the torture and the moral harm, suffered by the victim. Moreover, if the previous investigation showed lack of corpus delicti, the torture victim will have to overturn this decision. It is highly unlikely that in such legal situation the court will reach a verdict to pay compensation. According to the data, collected by human rights organizations in 11 Russian regions (Mariy-El, Komi, Bashkorkostan and Tatarstan Republics and in Krasnodar, Perm, Nizhniy Novgorod, Chita, Orenburg, Sverdlovsk and Twer regions) no cases had been recorded, when a victim filed a compensation claim while no individual was charged with crime of administering torture. This means that victim's opportunity to be awarded compensation is almost directly influenced from how efficient the prosecutor's office is in investigation the torture complaint. Inefficient and prolonged investigation seriously hinders the victim's access to compensation. While analyzing court decisions on awarding compensation to the victims of torture and cruel treatment, one may notice that during the recent years the amount of compensation awarded for moral harm and moral damage has increased. On the one hand, the fact that the amount of compensational payments has increased means, that the courts have come to realize that torture is one of the most serious violations in human rights and freedoms. On the other hand, the observed increased may be explained by inflation processes and increase of population life level. According to the data, colleted by Public Verdict Foundation, during 2004-2005 the amount of compensation payments to individuals subjected to torture or to their representatives (in case of death of a victim) varied from 7 thousand to 280 thousand rubles, depending on nature and gravity of damage. The practice of determining the amount is different from court to court. It must also be mentioned, that torture victims, who won the compensation cases face many serious difficulties in acquiring their compensation payments. It can be said without doubts, that the practice of implementing court decisions on such lawsuits does not comply with Article 14 of the Convention against Torture (Please see Article 14, items 14.7-14.21 for more details).

15. The relevant authorities of the Russian Federation acknowledged the seriousness of the problem, dealing with living conditions in detention facilities. During the last 4 years they have introduced a number of measures aimed at improving the situation. It must be noted, that the efforts on decreasing the number of detainees, repairing the old facilities, building the new ones and increase of budget expenses for detainees needs have brought considerable results. Taking all this into account, it must be mentioned, however, that according to the information from relatives of detainees, their lawyers, visitors, human rights organizations and detainees, the living conditions in many detention facilities do not comply with principles of humanity and humiliate human dignity. Despite the efforts of the authorities to decrease the number of detainees and to build new detention facilities, the problem of overcrowded penal institutions was not solved completely. The authorities themselves are aware of this problem. The Attorney General of the Russian Federation in his report on prosecutors' activity stated that in Buryatia, Chuvashia and Tuva republics, in Nizhny Novgorod, Moscow and Chita regions, in Moscow and St. Petersburg as well as in some other Russian regions some detention facilities and wards are overpopulated by 1,5-2 times. It is also important to mention that all the projects on construction new buildings of detention facilities and repairing the old ones are designed in accordance with the sanitary norm,

stated in the current law[4], where it is stated that a norm should be 4 square meters per person. The European Committee for the Prevention of Torture states, however, that the sanitary norm in detention facilities should be no less than 6 square meters per person. The norm adopted in Russian legislature is non-acceptable because the detainee spends the whole day in the ward, with the exception of an hour and half that they spend outside. The terms of imprisonment in detention facility often exceed one year. There are still problems with complying with sanitary and hygienic norms in detentions facilities: very often detainees do not have bed sheets, sufficient food or adequate medical treatment (For details please see Article 16, items 16.2-16.11).

16. The representatives of civil organizations, who visit penal institutions, notice some positive changes in improvement of living conditions of prisoners. However, they also register a big number of problems and stress the necessity to continue to work to make the living conditions of the prisoners (cells, wards, sanitary and hygienic units, labor conditions, level of medical treatment and quality of food) comply with humanity principles. Human rights organizations report, that in many labor colonies the lavatories are situated in purpose-built constructions situated far from the living quarters. The equipment in the lavatories often does not allow the prisoners to satisfy their hygienic needs. The norm that requires to have at least one water tap per 10 people are often violated. In some labor colonies there were not enough taps from the very beginning, and in some colonies they got broken and had never been repaired. Despite the fact that more adequate norms regarding the food ration were introduced, the quality of food still leaves a lot to be desired. According to prisoners' reports they are not able to survive without additional food products that they receive from home or buy with their own money in the shops of penal institutions. Human rights organizations receive complaints about anti-sanitary conditions and occupational traumatism in penal institutions. In a number of regions the level of medical aid is still considerable below standards, existing outside prisons. Due to the lack of medical staff the prisoners are not able to receive medical aid in time. According to the data from Social Partnership Foundation, there are no special conditions for prisoners with specific physical disabilities or illnesses (in particular, handicapped or HIV-positive prisoners) (For details please see article 16, items 16.12-16.50).

17. If the problem of bad living conditions in detention facilities was long acknowledged by relative authorities and some measures were taken to improve the situation, the living conditions in temporary isolation wards (IVS) have only recently come into the light. It is party connected with the fact, that until 2005 no independent observer was admitted to IVS. According to the descriptions, provided by competent officials and human rights activists, the living conditions in IVS are far from being humane and in some cases are much worse than the living conditions in detention facilities. (For details please see Article 16, items 16.51-16.55).

18. The living conditions in centers for deportees are very tough: humiliating treatment (bodily search before placing to the Center, prohibition to have writing equipment, prohibition to make phone calls or write letters), lack of sleeping places, absence of bed sheets and no washing facilities. 12 rubles per day are allocated for food for one person. The food is not only scarce but of bad quality and there is not enough tableware. The detainees often eat, using a piece of bread instead of a spoon or drinking out of their bowls like animals. Some detainees do not even have mattresses (For details please see Article 16, items 16.56-16.69).

19. The practice of working with drafted military personnel and their parents, who come to Committees of Soldiers' Mothers for help and the research conducted in 2001 – 2003 by Human Rights Watch confirmed that in real food ration of soldiers does not even comply with those scarce food ration that is registered by the normative acts. The lack of food that is especially hard for first-year draftsmen, together with other reasons leads to deterioration of the personnel general health. Because medical aid is not always available, some insignificant health problems develop into serious diseases, because they had not been treated in due time. Complaints about poor quality of food, bad living conditions and absence of medical treatment are registered in almost all military districts and in all arms of the armed forces. There is another problem, which makes

[4] Article 23 of the law «On Custodial Sentences…»

life difficult for sick soldiers in the army: the decision to transfer to the reserve takes unreasonably long time, while his medical documents travel from one medical institution to another. The procedure takes from one to three months and all that time the sick soldier is forced to stay on the territory of his military unit, where experiences jealousy and hostility from his fellow draftsmen (For details please see Article 16, items 16.70-16.87).

20. Analysis of the practice of obtaining a refugee status or acquiring temporary or political shelter allows to state that Russia does not comply with its international duties and cannot guarantee foreign citizens protection from being send back to the country, where they maybe facing torture and cruel treatment. Individuals seeking international protection face the real threat of being deported to the country of their origin, where they quite reasonably fear they will be subjected to prosecution and torture. The procedure of deportation does not presuppose considering a question of a threat of tortures in the country, where the individual is being deported. There are many cases when law-enforcing officers deported individuals to the CIS countries despite the fact, that the Deportation Request had political motives and there was real danger that once in the country, the individual will be subjected to torture or even executed. This concerns first and for most those countries, whose regimes are far from being democratic, like Turkmenistan and Uzbekistan. It is more important for the Russian authorities to maintain friendly and economically beneficial relationship between Russia and the mentioned countries, then to observe human rights regulations (For details please see article 3).

21. The present report contains a separate section, where torture and cruel treatment incidents in Chechnya and Northern Caucasus are analyzed in details. The analyses deals with legal framework of "anti-terrorist operation" in Chechen Republic and illegal nature of actions of law-enforcement structures, which is one of the reasons civilian population of Chechnya are still subjected to torture.

22. Extensive military actions in the Chechen republic were taking place since fall of 1999 until March 2000. Until 2003 extensive "mopping up operations" were conducted. They were carried out by joint forces of military and police forces. During these operations a lot of illegal actions was conducted. Detainees were sent to "temporary filter centers", located near the town, where a military unit was stationed. In these centers people were beaten and cruelly tortured. There are known cases when the detainees just "disappeared" after "mopping up operations" or after being brought to "temporary filter centers". Locals later discovered the bodies of some of «disappeared» people. The use of violence during arrest, convoy and imprisonment of a detainee and using physical force during interrogation and investigation became a norm for law-enforcement officers, penal system officials and investigators.

23. Gradually, while control was established over greater territory of Chechnya and a network of informers had been created, the federal forces changed their tactics. They gave up the practice of massive "mopping ups" and started "targeted special operations". Armed people in camouflage uniform and in masks would drive up to a house in armored vehicles with painted license plates usually during nighttime. They would detain people and take them with them. The selectivity did not mean less cruelty: detained or rather kidnapped individuals were as a rule never seen again.

24. Another very important modern tendency is "chechenization" of the conflict. In 2003 – 2005 in Chechnya special law-enforcement structures were formed, consisting of ethnic Chechens. Apart from police forces, special units to fight militants were formed. These units were given the "right" to use illegal violence. People who fall into their hand usually "disappear": they are kept in illegal prisons, without being registered as prisoners or detainees, where they are tortured to get "confessions". These confessions are later used to create false criminal cases. In half of all reported cases, kidnapped people either disappears without a trace, or their bodies are later found.

25. The problem with people "disappearance" is still very acute in Chechnya today. In the majority of cases, the disappeared people are not kidnapped by the militants but by the law-enforcement structures, generally locals. Today one can see a decrease in the number of disappearances recorded by the human rights organizations, but this decrease is not as considerable as the

officials report it is. Party this decrease is connected with peculiarity of "chechenization" of the conflict and presence of latent violence in Chechnya that is not recorded by either human rights organizations or by law-enforcement structures.

26. It is usually impossible to find those responsible in kidnappings, and neither prosecutors nor human rights activists manage to succeed. There is selective impunity at work when the crimes against civilians are investigated. If the crime was committed by a militant, the sentence is always severe, no matter how serious the crime actually was. What concerns the crimes, committed by representatives of federal and pro-federal forces, everything is different. Official statistics is falsified. The investigations of majority of cases, where representatives of federal forces are involved get suspended due to "impossibility to find individuals, charged with a crime". Very little number of cases actually makes it to court rooms. Overwhelming majority of accused receive only nominal punishments for serious crimes (For more details see items NC.30-NC.50)

27. The attempts to overcome "legal impunity" by using court mechanism as a rule are not very successful. The courts that officially started to function in Chechnya from the beginning of 2001, work in banco only since 2004. Even today, however, court system does not provide justice, since the courts are dependent and are sometimes involved in falsification of criminal cases. In the situation of "conflicting interests", the prosecutors, whose function it is to conduct investigation as well we supervise the investigators, are not interested in investigating falsification of criminal cases and use of torture to obtain confessions (For more details please see items NC.51-NC.57). Lack of activity on the part of prosecutors and its passiveness during investigation procedures does not enable the victims to get compensation. The only efficient mechanism in this situation is European Court of Human rights. In the Russian Federation report (item 120) stated that both the plaintiffs and witnesses are protected by the state. The real life shows completely different pictures though. Both plaintiffs and witnesses are subjected to serious pressure to make them withdraw their lawsuit from official institutions. This pressure can come in different forms, including even murder or "disappearance" and the complainants to European Court of Human Rights have already encountered it (For more details pleas see items NC.59-NC.62).

28. It is asserted in the Forth Periodic Report (item 45) that both intergovernmental groups and NGOs had free access to the region, including penal institutions, in order to conduct monitoring. It is true that since the beginning of the armed conflict in Chechnya, seven visits of European Committee for the Prevention of Torture (CPT) to Russia and to Northern Caucasus had been conducted. There are strong grounds to assert that the resulting reports contained evidence of serious violations by the Russian Federation of its obligations to prevent and prosecute torture. These reports, however, may only be published if the inspected side agrees, and the Russian side refuses to allow the publication. During the second Chechen war the European Committee was so unsatisfied with the situation in Chechnya and lack of cooperation from the Russian side, that it used the extreme and exceptional measure twice: making public statements "about Chechen Republic of the Russian Federation" (first statement in June 2001 and second statement in July 2003). The representatives of international humanitarian organizations continue their work in Russia and in North Caucasus. However according to the data from Memorial activists in "2004 International Red Cross Committee (ICRS) uncounted problems, that hinder their activities (visiting detention facilities and other penal institutions) as a result of which ICRC had to temporary stop visiting the prisoners".

29. According to the report of the Russian Federation, detention facilities had been established and started to function in Chechnya in the city of Grozny (SIZO-1) and in the village of Chenokozovo of Naursky region, where together with the detention facility a labor colony started to function. In Chechen regions the regional departments of internal affairs (ROVD) have their own temporary isolator wards (IVS). Recently human rights activists did not receive complaints about cruel treatment in SIZO-1. Being kept in custody in IVS does not guarantee personal safety and absence of torture and cruel treatment. There are cases of deaths that occurred right on the territory of ROVD. These incidents had not been properly investigated. Apart from SIZO and IVS that are legally registered, there are "quasi-legal" and illegal (secret) prisons existing on the territory of Chechnya. Confinement facilities at the premises of operational search bureaus (ORB)

can be attributed to the first type. The most well known of them is situated in ORB No. 2 of Northern Caucasus operative department of Main administration of Ministry for Internal Affairs in South Federal District, on the territory of former premises of RUBOP in Staropromyslovky district. This structure consists of primarily ethnic Chechens, but there are also a considerable number of policemen who come from other parts of Russia. The aim of ORB is to carry out operational and search activities, rather then conduct investigative actions. It is against the law to keep detainees and prisoners on the premises of ORB. Since the ORB-2 was established in 2002, however, suspects and accused were always kept in custody on its premises. The idea behind ORB existence was to create the conditions to exert pressure (including torture) on arrested and detained people, in order to make them sign "necessary" testimonies. This practice is spreading in 2005 in some Chechen regions the branches of ORB-2 were opened with their own illegal premises for detaining suspects and accused (For more details see items NC.74-NC.96).

30. The problem of illegal (secret) prisons, which is connected with "chechenization" of the conflict and with the fact that Chechen law-enforcement structures are using hostages as a tool for fighting militants is very acute today. Although the initiative of Attorney General regarding "taking counter-hostages", which he voiced on the meeting of State Duma on October 20, 2004 was not approved and was not registered in the legislature, it can be seen as a de facto encouragement of "hostage practice" used in Chechnya – encouragement on the part of a governmental official who is responsible for maintaining legal order in the country. Chechen police officers use the practice of take the relatives of illegal militants hostage in order to force the later to surrender.

31. Armed conflict on Northern Caucasus was not limited to Chechen Republic. In 1999 the military operations started in the Republic of Dagestan. Starting from 2002 the conflict is gradually spreading to the Russian regions around Chechnya. Today the extremists activities and "anti-terrorist operation" in various forms take place on the territories of most North Caucasian Republics – Dagestan, Ingushetia, Northern Osetia, Kabardino-Balkaria, Karachaevo-Cherkessia and to the territory of Stavropol Region. That means that "anti-terrorist" practices, connected with kidnapping and illegal detaining of individuals, use of torture and other cruel and humiliating treatment, are spreading to the territory of the whole Northern Caucasus. This triggers the further escalation of the conflict (in items NC.106-NC.126 detailed information about the situation in two regions – Ingushetia and Kabardino-Balkaria can be found).

Article 2[5]

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

Measures taken to improve the conditions in detention facilities

2.1. It is necessary to mention that during the last 5 years, the Russian authorities continued to take measures in order to improve the conditions for individuals held in detention facilities (SIZO). These measures aimed at decreasing the total number of individuals, kept in custody and on improving material conditions. In general, these measure had an overall positive effect.

2.2. Unfortunately, the Russian Federation Periodic Report does not list all the measures, taken by competent authorities in order to improve the situation in SIZOs. The present report does not, in particular, mention data on programs, aimed at renovating old premises of detention facilities and constructing new ones. There measures and their effect are described in the **Article 16** (section **Conditions of detention in pre-trial detention centers,** items 16.1-16.3) of the Russian non-governmental organizations report on observing the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Russian Federation. It must be noted, that the Federal Service of Punishment Execution developed a Federal Target Program for constructing and renovating SIZOs in 2007-2016. Implementation of this program will help to further improve living conditions in SIZOs.

2.3. One of the measures that the state came up with in order to solve the problem of overcrowded SIZOs was the creation of Premises Functioning as Detention Facility (PFRS). In the decree No. 212 issued by the Minister of Justice from June 30, 1999, a list of penal institutions on the premises of which PFRS must be established was approved. On the basis of this decree, individuals arrested on criminal charges may, during the preliminary investigation, be kept not in SIZO, but be sent to the facilities, where prisoners are kept. According to Federal Service of Punishment Execution of the Russian Federation there are 157 PFRS functioning on the territory of Russia as of October 1, 2006. The limit for detainees allowed to be kept in PFRS is different from institution to institution varying from 25 to 350 people.

2.4. According to many human rights organizations, creation of PFRS will be able to considerably change the situation with SIZO overpopulation. Besides, being kept in PFRS may create additional problems both detainees and law-enforcement officers. The problem is that the majority of penal institutions in Russia are situated in a considerable distance (sometimes more than 100 km) from cities and towns. Prosecutor's offices, lawyers' offices and human rights organizations are usually situated within the city limits. This creates additional difficulties for lawyers, representing their clients who are kept in PFRS. Moreover in a remote places, where PFRS are located the efficiency of prosecutors' control is considerably lower than in regional (republican) centers where SIZOs are located. The opportunity of public control is almost equal to zero. All these circumstances increase the risk of torture and cruel treatment and may allow for other violations of human rights to take place in PFRS (the additional information on this problem can be found in **the Article 11,** items 11.73-11.83 of the Russian NGOs report). Besides, since the penal institutions, where PFRS are created are usually situated far from the city, where the investigation is conducted, that means that the convoy of the arrested individuals will take considerably more time, which will create additional incontinences for both detainees and convoy patrol services.

2.5. Items 47-56 of the Periodic Report of the Russian Federation mention the introduction of new Code of Criminal Procedure, which presupposes legal process of solving question of arrest before trial for accused and suspects. It also describes court practices on the administering arrest in 2002

[5] This section of the Report was drawn by the Demos Center and the Public Verdict Foundation

– 2003. In addition to this information the **Article 11** (section **Use of arrest**, items 11.31-11.40) of the Russian NGOs Report on observing the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Russian Federation describes the court practices in 2004-2005. It must be noted that the Ministry of Justice and Federal Service of Punishment Execution are not satisfied with court practices regarding arrests. According to Ju. I Kalinin, the director of the Federal Service of Punishment Executions "…we take people to custody way to much. Last year (2005) 65 thousand people were freed in the courtroom, out of this number 2000 were freed because there was no corpus delicti. That means that they were kept in detention facility for nothing! And nobody was held responsible for this. As for the rest, they were given some administrative punishments, not custodial sentences. That means, that these people were posing no threat to the public well being, and there was no necessity to keep them in custody[6]". It must be also mentioned that in 2005 and 2006, European Court on Human Rights passed seven decisions, stated that the Russian legal practice regarding the issue of arrest was not complying with the European Convention. Unfortunately, competent authorities have not yet proposed any measures to change the arrest practice.

Measures to improve the situation in penal institutions and protection of prisoners' human rights

2.6. Measures taken by the Russian authorities in order to improve the living conditions in penal institutions and measures taken to protect the rights and freedoms of the prisoners are listed in items 131-141 of the Periodic Report of the Russian Federation. The data on this question can also be found in the **Article 16** (items 16.12-16.50) of the Russian NGOs report. In general it can be said, that the measures taken to improve the situation in penal institutions were mainly connected with improving the material and living conditions (repairing the premises, larger budget for food). This cannot be considered enough. In his estimation of the situation with penal institutions, the Russian minister of Justice Yuri Chaika said the following on March 17, 2006:

> "In order to make criminal punishments more humane, we have introduced a new measure – custodial restraint. We have increased an amount of ward area, added 8 thousand additional places. The food ration norms were increased and the amount of licensed medical units is now 70 % of the norm".

2.7. Although the financing is considerably increased, the penal system is still a problem, mainly because the rights of the individuals taken to custody are not observed. In many respects the situation with the rights of the detained individuals is going back to the outdated methods.

2.8. The question with the observance of rights of detainees concerning their rights of decent living conditions, medical aids, labor conditions and providing other social guarantees.

2.9. In some penal facilities the environment in living quarters is not safe. People died when the building of a detention facility collapsed in Kapotnya. Only by lucky chance, human casualties were avoided during the fire in IK-5 in Stavropol Region. In penal institutions the mortality rate has increased 12 % and occupational traumatism is now three times higher.

2.10. There are recorded cases when some amateur organizations were granted the authority on providing supervision, discipline and order in penal facilities, which led to physical pressure and moral humiliation of other convicts, thus provoking acts of mass disobedience. For example, such actions in colonies in Kursk, Samara and Omsk regions received extensive negative publicity not only in Russia but also abroad.

2.11. The stuff redundancy among convicts working on paid jobs is continuing (26 people were made redundant during one year) – today every third convict does not work.

2.12. The objective reflections of system malfunctioning are the complaints from convicts. They provide a lot of food for thoughts: the number of complaints, that the Ministry of Justice received

[6] Rossiiskaya Gazeta, July 28, 2006. № 164.

has increased 12 times, comparing with the previous year. Out of this amount, the number of justified complaints has increased by 4,3 times, meaning that there were 87 % more officials working in penal system, who were held responsible. Every third complaint was sent illegally, concealed from the penal institutions administration.

2.13. The main reason for the current situation is that the supervisors of the Service are preaching the "autonomy" of the Service and aim at total elimination of human rights protection system in penal institutions, breaking free from Ministry coordination and supervision»[7].

2.14. As a measure to overcome a current situation, the minister of Justice proposed to introduce punishments, which are alternative to custodial sentences. He also called for increasing the efforts in implementing the requirements outlined in the international human rights documents[8].

2.15. It must be noted, that some steps has been already taken in order to introduce punishments alternative to custodial sentences. Mass media sources inform, that in October 2006 in four regions of the Russian Federation there will be implemented an experiment on introducing digital control for the individuals, found guilty in minor crimes.

2.16. The regular inspections of penal institutions, made by independent experts may act as an additional measures to ensure that the convicts' rights are not violated. It must be mentioned that during a reported year Russian authorities continued their cooperation with European Committee for Torture Prevention, which regularly visits penal institutions situated on the territory of the Russian Federation. However, during the reported period no additional steps to develop international cooperation in this sphere have been taken. Particularly, the measures to prepare signing and ratification of the Additional Protocol for Convention Against Torture and other inhuman and depredating treatments or punishments were not taken. Moreover, in October 2006 the Russian Federation has postponed for indefinite period the visit of special speaker from the UNN, whose visit was previously scheduled for 9-20 October.

2.17. Item 9-10 of the Periodic report of the Russian Federation tells about measures taken to create a system of independent inspection of penal institutions on the national level. In particular, it talks about creating Public Council at the Ministry of Justice. It also mentions considering a draft law on public control for custodial institutions. Unfortunately, these important initiatives did not get any further development.

Measures taken to improve the situation in temporary isolation wards of the Russian Ministry for Internal Affairs and other custodial places

2.18. Item 156-157 of the Periodic Report of the Russian Federation illustrates bad living conditions in temporary isolation wards (IVS) of Russian Ministry for Internal Affairs and contains proposals as to how to improve them.

2.19. In 2006 mass media published the information that in some region (in particular in Altay region and in Archangelsk region) new premises for isolation wards were built. These new buildings were made in accordance with sanitary requirements and principles of humane treatment of prisoners. It was also reported that Ministry for Internal Affairs of the Russian Federation prepared a project of a target program, according to which during 2007-2009 the system of IVS must be made to comply with international standards.

Measures taken to prevent torture and cruel and depredating treatment in work of police and other law-enforcement institutions

[7] For a full report of the minister of justice please go to the ministry web page http://www.minjust.ru/news/detail.php?ID=914

[8] see above

2.20. The newly introduced legal measures, aimed at protecting the rights of suspects and accused must be attributed to positive progress. All the new introductions in this sphere are fully described in items 4-6, 47-64 and in 75-83 of the Periodic Report of the Russian Federation. In practice, however, the above legal innovations are not implemented fully and this creates conditions for administering tortures as a mean of investigation.

2.21. The full implementation of the guarantees from torture, outlined in the Russian legislature, requires major changes in the work of law-enforcement institutions. However, no systematic preventive measures are taken, as the authorities do not acknowledge the fact, that tortures are used in order to investigate crimes. Only in August 2005, in his Open Letter the Minister for Internal Affairs addressed his subordinates and pointed out that any illegal, cruel or humiliating treatment was unacceptable. Although one cannot deny the importance of this document, that requires the police officers to give up inhuman methods of solving their tasks, it alone is not enough to prevent tortures.

2.22. While discussing an issue of measures taken to punish individuals, participating in administering torture, one must note, that during 2005-2006 the number of court sentences, accusing police officers in using torture or mistreating prisoners. Despite all this, methods of investigation the torture complaints do not always comply with the Convention standards. The detailed analysis of issues connected with torture cases investigation and the subsequent liability of those found guilty may be found in **Article 12** of the Report of the Russian non-governmental organizations.

Measures taken to prevent cruel treatment in the armed forces

2.23. It must be mentioned, that in 2006 the Russian authorities paid a close attention to the problem of violence in the armed forces. Defense Ministry started to publish data on deaths in the army and its causes. On February 14, 2006 in Defense Committee at the State Duma of the Russian Federation held a meeting to discuss this problem. Defense Ministry reported, that they are currently working on developing an action plan to prevent “hazing” in the army. Among the proposed measures the following ones are named: to cut down the draft service term from two years to one year; to increase the share of contract members of the army to 60-70 % from the total number of the military personnel, while decreasing the number of draftees till 30 %; changes in disciplinary system in the army. It is hard to predict now whether these measures will prove efficient.

2.24. It must also be said that on October 8, 2006 the Defense Minister of the Russian Federation signed a decree forbidding the military commanders to engage the military personnel in carrying out duties, which are not connected with their military service duties. The decree states, that in recent times there have been many cases, both in the army and in the navy, when some commanders engaged the military personnel in the activities, which are not connected with their direct military duties. This is a violation of the federal laws “On Military Servicemen Status” and “On Military duty and Military Service”. According to the minister, this faulty practice leads to accidents, connected with injuries or casualties. With his decree the minister did not just banned this practice, but also demanded from the military institutions to investigate all cases when the military personnel was engaged in carrying out different activities. If among these activities, those not connected with military service are found, the cases should be thoroughly investigated and the guilty ones should be held liable.

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Article 3[9]

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Asylum provisions and protection from torture in Russia

3.1. The Russian legislation provides for three forms of granting asylum. Whatever the form of granting asylum to a foreigner or a stateless person, it guarantees against his/her administrative expulsion, deportation and extradition to the country of his/her citizenship or former residence. The same applies to persons with pending asylum applications.

3.2. The main ground for granting asylum is the danger of persecution based on association with a certain group. Besides, asylum must be granted in cases where the asylum seeker risks being subjected to abuse, torture and other forms of ill-treatment dangerous to his/her life and health.

Political Asylum: policies and practices

3.3. The RF President's Decree of 21 June 1997 endorsing the ***Regulation on the Procedure for Granting Political Asylum in the Russian Federation*** regulates the procedure for granting asylum to political activists targeted for personal persecution in their country of citizenship.

3.4. By the said Decree, political asylum cannot be granted to persons from countries "with well-developed and stable democratic institutions in the sphere of human rights protection" (the Decree, Part 1, section 5, par.5). Each year, the Foreign Ministry of the Russian Federation compiles a list of such countries (the Decree, Part 2, section 8, par.2).

3.5. A political asylum application is filed with the respective territorial division of the Russian Federal Migration Service (FMS); the local FMS office, following a determination of whether the applicant's grounds for seeking asylum are sufficient, forwards the application to the Russian FMS head office. The FMS head office, in turn, seeks opinions from the Foreign Ministry, the Ministry of Interior, and the Federal Security Service, which it then forwards, together with its own opinion, to the Presidential Commission on Citizenship. Based on these opinions, the Commission prepares recommendations to the President who makes his own determination on each application (the Decree, sections 10, 11).

3.6. Applicants whose political asylum applications are granted and members of their families are issued Russian residence permits (the Decree, Part 3, section 16).

3.7. Applying through a representative is not allowed. Official decisions can be appealed under civil law, but the President's determination cannot be appealed. Applicants can seek the services of a lawyer or any kind of advice while preparing and filing an application, and while it is processed.

3.8. However, over the past decade, no more than 10 people have received political asylum in Russia. The Decree described above is virtually never applied, because it addresses uncommon cases of seeking asylum. We know of asylum claims by former top leaders of the USSR republics, following a change of regime in their home countries; however, due to political considerations,

[9] This section of the Report was drawn by the Civic Assistance Committee and the Memorial Human Rights Center. All data for this section of the Report was collected by the Civic Assistance Committee and the Memorial Human Rights Center while visiting accommodation centers for asylum-seekers, detention centers for migrants, and from interviewing people who access the services of the Civic Assistance Committee and the Memorial Human Rights Center's Migration and Law Network.

the Russian authorities avoid openly showing support for former leaders of the CIS countries, concerned about maintaining good relations with their successors – the current leaders.

Thus, former president of Azerbaijan Ayaz Mutalibov was granted political asylum in Russia only after a second change of political regime in his home country since he left it.

Refugee status and temporary asylum: rules and regulations

3.9. A procedure for granting refugee status is regulated by the Federal Law "On Refugees" adopted on 19 February 1993. The definition of refugee in the Russian law is almost identical to that of the 1951 UN Convention relating to the Status of Refugees. A refugee is defined as

"an individual who is not a citizen of the Russian Federation, and who, because of a well-founded fear of persecution on account of race, religion, nationality, ethnicity, membership in a particular social group, or political opinion is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it" (the Law, Art.1, par.1).

3.10. An application for refugee status is filed with a territorial office of the Federal Migration Service (FMS) that decides whether to grant or deny an application (the Law, Art. 7, part 3). Applications go through two stages of processing: first a decision whether a claim is admissible and can be considered on the merits, and then a determination on the merits. There is a possibility to appeal the actions of authorities in a superior agency or in court at either or both stages (the Law, Art.10, part 2). A refugee status is granted for three years, and then extended for each consecutive year, provided that the grounds continue to apply (the Law, Art. 7. par. 9).

3.11. Art.12 of the Law "On Refugees" allows granting temporary asylum to persons who can be recognized as refugees or **"do not have sufficient grounds to be recognized as refugees… but cannot be expelled (deported) from the Russian territory for humanitarian reasons"** (the Law, Art.12, Part 2, par. 2). Procedures for granting temporary asylum are regulated by the Government Decree "On Granting Temporary Asylum in the Russian Federation" of 9 April 2001, № 274.

3.12. A decision can be made to grant temporary asylum if there are reasons for recognizing someone as a refugee or "humanitarian reasons necessitating a temporary stay of this person in Russia (such as health reasons), until such reasons are resolved or the person's legal status changes" (Decree № 274, par.7). This definition of humanitarian reasons specifying only one option is clearly insufficient. Humanitarian reasons might include external circumstances as well, such as a civil war, post-war devastation, or oppressive political regime which uses torture and summary executions, in the asylum-seeker's country of origin. However, the Instruction issued by the Ministry of the Federation (which at that time was competent to regulate migration issues) on 01.08.2001 №11/3 – 5768 substantially narrowed the options by limiting humanitarian considerations to the asylum-seeker's illness.

3.13. So temporary asylum is granted under Decree № 274 only to those asylum seekers whose circumstances entitle them to refugee status, but who have not received it yet.

Practices of granting refugee status and temporary asylum in Russia

3.14. Our analysis of asylum granting practices in Russia leads us to a conclusion that Russia fails to comply with its international obligations in this sphere and to guarantee foreigners and stateless persons' protection from being sent back to countries where they are likely to be exposed to torture and ill-treatment.

3.15. The three tables below are based on the Federal Migration Service data and clearly show the current trends of granting refugee status and temporary asylum in the RF.

Table 1. Total number of people recognized as refugees and registered by the FMS as of the year end

Year	1997	1998	1999	2000	2001	2002	2003	2004	2005
Refugees	239359	128360	79727	26065	17902	13790	8725	614	456
including in NO-Alanya	28086	26210	24124	19650	15150	11534	6688	29	

Table 2. Number of applications

Year	2001	2002	2003	2004	2005
Refugee/temp. asylum	1684/ 822	876/ 789	737/ 756	910/ 819	960/ 890

Table 3. Satisfied applications

Year	2001	2002	2003	2004	2005
Refugee/temp. asylum	137/ 389	45/ 850	107/ 358	122/ 252	21/ 184

3.16. The rapid drop in the number of registered refugees (**Table 1**) is partially due to their acquisition of the Russian citizenship. However, most of them were simply taken off the records in 1997-98, because they failed to apply for repetitive status determination procedure required by the amended Law "On Refugees" - for the simple reason that no one had warned them of the need to do so. The immigration authorities themselves hesitated for a long time what to do with those refugees who had not applied for status determination, and would extend their certificates, which were later declared "being of unascertained form". Thus, about 100,000 former USSR citizens residing in Russia were transformed into illegal immigrants with all implications, including potentially being expelled to their country of origin, where their property has been seized, and where they may currently face life threat.

3.17. After 1997, there has been a clearly observable tendency to deny asylum and refugee claims. An absolute majority of refugees (26,065) who obtained new certificates after 1997 were Ossetians from the South Ossetia, formally a part of Georgia. They were granted refugee status in the Republic of North Ossetia (NO) – Alanya, a subject of the Russian Federation.

3.18. The number of formally registered applications (**Table 2**) does not correspond to the actual number of asylum seekers and refugees in the RF, due to the fact that access to application procedure is limited.

3.19. Thus, authorities in Moscow routinely delay by 2-3 years admitting applications from asylum seekers and refugees. Authorities explain it by the fact that most applicants file their claims in Moscow. This is largely true, because Moscow is the central node of transportation in Russia. However, encouraging asylum seekers and refugees to file their claims in other regions, and providing them with temporary accommodation locally while their claims are processed, would have relieved the workload of Moscow immigration authorities.

3.20. Formerly an asylum or refugee applicant in Moscow would be only given a note stating the date and time of their scheduled interview, but without an official address of the immigration office or the issuing officer's signature. In 2005, immigration authorities started issuing certificates printed on their stationary, indicating the time of interview scheduled for 2008 and even 2009. These certificates are not considered a formal document certifying a foreigner's legal stay in Russia; they are not accepted by police for the purpose of residence registration.

3.21. Nevertheless, even these certificates are better than no record of applying to immigration authorities whatsoever, as was the case in previous years. Holding a certificate, some asylum seekers or refugees have been able to use them to appeal immigration authorities' refusal to accept an application. However, the option of appeal is only available to those outside holding centers who can access a lawyer; those in holding centers for illegal migrants have limited contact with the outside world. Detainees in such centers are often denied a pen and paper, in particular when they wish to file a complaint.

3.22. Chances for an applicant to end up in a holding center illegal migrants are extremely high, because it can take up six months and even longer before a court may consider the complaint, while all this time an immigrant is forced to live without papers certifying his/her legal stay in Russia.

3.23. Lacking proof of their legal stay in Russia and registration with the police, asylum seekers, as well as refugees arbitrarily taken off the records, are exposed to police stops and detentions on a daily basis, and suffer frequently from extortions and ill-treatment by law enforcement officers. Police would often take them directly to court, where the judge would immediately order administrative expulsion and detention pending its enforcement.

3.24. In majority of the Russian regions refugees and asylum seekers have problems with access to the application procedure. In some regions, local immigration offices refuse to deal with foreigners - i.e. refuse to accept claims. Only 11 of the Russian Federation subjects host registered refugees, and 27 host foreigners granted temporary asylum. As a rule, refusals to accept an application are made verbally, and as long as they are not documented, they cannot be appealed. The reasons are two-fold: firstly, due to continuous reorganizations of the Federal Migration Service, it has lost some of well-trained human resources, and secondly, it is consistent with the overall asylum policy. This policy is clearly reflected in the statistics above which demonstrate how small the number of people granted asylum in Russia really is – especially given the fact that Russia is the main destination of former USSR citizens fleeing totalitarian regimes in their countries of origin.

3.25. The refugee status determination procedure rarely involves a lawyer acting on behalf of the applicant, because advocate's services are expensive and NGOs lack the capacity to offer legal assistance to asylum seekers at early stages of the process. Besides, applicants are not informed by the immigration authority of the possibility to involve a third party in the proceedings. Asylum seekers are required to produce compelling evidence of being personally targeted for persecution - instead of the authority checking the evidence offered by the applicant; general references to the situation in the country of origin are rarely accepted as sufficient for granting asylum.

3.26. The FMS has arrived at an unfounded conclusion that there can be no such thing as a refugee fleeing from a CIS country. This finding is expressed in its instruction of 19.06.2002 № 20/1372:

"In considering asylum claims, it should be taken into account that recently the political and economic situation in CIS countries has stabilized, causing a major change in the circumstances surrounding their citizens' migration out of the country. Constitutions and other legislation of these countries prohibit persecution on the grounds of race or ethnicity, religion, language, membership in a particular social group, or political opinion. Their citizens' migration to Russia is mostly caused by economic or other reasons."

3.27. Indeed, many immigrants from CIS countries move to Russia driven by economic need. That said, it is unacceptable for the FMS to label all immigrants from those countries automatically as economic migrants and to deny their reasons to seek asylum or refugee status. It is known that in some CIS countries (Uzbekistan, Turkmenistan), authorities routinely use torture and summary executions. However, immigration policy makers in Russia choose to ignore it.

3.28. A vivid example is the situation of Uzbeks who are denied asylum claims, although it is obviously dangerous for them to return to their home country.

3.29. According to UNHCR, at least 100,000 Afghan nationals have been staying in Russia for years, without being granted asylum. Afghans live in Russia illegally, and authorities are continuously trying to expel them. On 29 January 2003, speaking at a session of the Interdepartmental Commission on Migration Policies (currently dismissed), the FMS presented a report "On ways to settle the problems related to the stay of migrants from Afghanistan in Russia." The report says,

"The present-day Afghan society is characterized by a high level of political tolerance," therefore **"most Afghans have no grounds for asylum, because there are no reasons why they should fear persecution by current Afghan authorities for their former activities."**

3.30. Obviously, this statement is not supported by evidence. It would be premature to allege the existence of civil society with any democratic features in Afghanistan. The current government does not have the entire territory under control, and it cannot guarantee safety for all ethnicities populating the country. Therefore, UNHCR still refrains from advising Afghans to repatriate, but only helps those who insist on doing so. Besides, most Afghans now in the RF had not fled the Taliban, but the Northern Alliance that overthrew Nadjibulla's regime in 1997.

3.31. It follows from the above that policies and practices of granting political and temporary asylum, as well as refugee status in Russia are generally ineffective and fail to protect asylum seekers from ill-treatment and from being sent back to a country where they would face imminent danger to life or health. Thus, policies and practices of granting asylum in Russia cannot be described as effective and protecting asylum seekers from being deported to countries where they may face torture and death. Similarly, asylum seekers in Russia are not protected from ill-treatment and from conditions amounting to torture.

Expulsion and deportation. Compliance with the protection against torture principle

3.32. For want of a well-functioning procedure for granting temporary and political asylum, as well as refugee status, persons in need of international protection face a real danger of being sent back to their country of origin, where they have a well-founded fear of being subjected to persecution and torture. However, the procedure for expulsion and deportation does not address the danger of torture in the country where an individual will be expelled or deported.

3.33. There are two relevant concepts in the Russia law: administrative expulsion and deportation.

3.34. Deportation is defined as forcefully expelling a foreigner (stateless person) from the Russian Federation following termination of legal grounds for the individual's further stay (residence) in Russia (the last paragraph, part 1, Art. 2 of the Federal Law "On the Legal Status of Foreigners in the RF"). Deportation is possible only under the following circumstances:

- a foreigner (stateless person) has his permitted period of stay in the RF reduced;
- a foreigner (stateless person) has his temporary residence permit revoked;
- a foreigner (stateless person) has his residence permit revoked (Art. 31 of the Federal Law on the Legal Status of Foreigners in the RF),
- in addition, it applies to anyone formerly granted temporary asylum or refugee status and then stripped of this status (Art.13 of the Law on Refugees).

3.35. A deportation decision is made by the Director of the Federal Migration Service, upon a submission from a government authority. Such a submission can be made by the Ministry of Interior, the Foreign Ministry, or the Federal Security Service. Technically, it is possible to appeal the decision in court, but practice shows that so far it has been ineffective.

3.36. Deportation decisions are fairly rare, no more than 20 each year, in exceptional individual cases. Administrative expulsion is a practice used much more frequently. In 2005, 15 people were deported; three of them were deported involuntary.

3.37. "Administrative expulsion" means involuntary and monitored transportation of a foreign national (or a stateless person) outside the Russian borders, or monitored departure of a foreign national

(or a stateless person) outside the Russian borders, enforced pursuant to the Code of Administrative Offences.

3.38. Grounds for expulsion can be minimal, because the Code of Administrative Offenses allows expelling an immigrant for any non-compliance with the rules of stay in Russia. The most common reason for expulsion is failure to register one's residence with the local police authority. Non-compliance with this rule is frequent, because foreigners encounter numerous barriers to registration, such as the working hours of registration offices - they accept applications only on certain days of the week and certain hours of the day; the short period of registration, which then needs to be renewed; a requirement to attach documents issued by the housing authority; a requirement of either physical presence or written consent of all permanent residents in the household where the foreigner wishes to register. Besides, the maximum period of registration for anyone entering Russia under a visa-free arrangement is 90 days, and then a migrant must leave Russia. But a foreigner cannot obtain a temporary residence permit within 90 days, because the law allows 6 months for issuing such permits. Therefore, virtually any foreigner can – and does – face expulsion from Russia.

3.39. Russian law does not prohibit deportation or expulsion to a country where an individual may be exposed to the risk of torture.

3.40. Article 18.8. of the Code of Administrative Offences - "Failure of a foreigner or stateless person to comply with the rules of stay in the Russian Federation" – reads as follows:

"Failure of a foreigner or stateless person to comply with the rules of stay in the Russian Federation such as failure to comply with the established registration procedure or the rules of movement and choice of residence in the country, failure to leave the Russian Federation after a certain period of stay, and failure to comply with rules of transit through the territory of the Russian Federation - is punishable by an administrative fine in the amount of five to ten minimum wages, combined with administrative expulsion from Russia, or without such expulsion."

3.41. It is clear from this text that expulsion is an additional sanction to paying a fine, rather than a way to stop the violation.

3.42. Expulsion under the Code of Administrative Offences is enforced through judicial proceedings (Art. 3.10 of the Code).

3.43. As opposed to deportation, since the enactment of the Code of Administrative Offences on 1 July 2002, thousands of expulsion decisions have been made with ease. In 2003, a total of 53.8 thousand foreigners were expelled, in 2004, their number doubled, reaching 103.9 thousand, and in 2005, the number of expelled foreigners remained the same, totaling 75,8 thousand, 16,5 thousand of them were expelled involuntary. There are two factors contributing to this situation: on the one hand, the challenges of the registration procedure described above cause the circle of people potentially facing expulsion to grow beyond any limits. On the other hand, courts approach expulsion formalistically, without looking into specific circumstances of each case.

3.44. The Code of Administrative Offences Art. 18.8 enforcement pattern is extremely simple. Police would stop foreigners in the street for an identity check, and find proof of registration lacking. Notably, identity and registration checks by patrol police in the streets contravene Art. 23.3 of the Code of Administrative Offences, because patrol police are not mentioned among the law enforcement officers authorized to perform such checks. It is rare for precinct police officers to perform checks and deliver non-compliant individuals to court, while it is exactly their responsibility.

3.45. The current practice of granting and checking registration proof encourage almost uncontrollable corruption among police; in fact, taking someone to court for lack of registration is "punishment" for failure to pay a bribe, rather than for non-compliance with the registration rules. It means that

an immigrant refusing to pay a bribe will be taken to court, where the judge will, within minutes, order a fine and expulsion. We could offer numerous examples vividly demonstrating the superficial and merely formalistic manner of expulsion decisions by courts.

Thus, in 2002, Russian authorities expelled brothers Kahaber and Caesar Kobalia, refugees from Sukhumi, who fled to Moscow in 1993 from the Georgian-Abkhazian conflict. Between 1995 and 2000, they were registered at their residence for 5 years, and did not apply for the Georgian citizenship. Caesar entered civil marriage and had a child. They were denied refugee status, although being ethnic Georgians they could not go back to Abkhazia (due to the conflict between Georgia and Abkhazia). Caesar Kobalia was detained in the middle of the day, when he left his workplace for lunch. He was not allowed to phone his family, and they learned about the detention from an acquaintance who coincidentally was in the same court after two days, when the judge was making a decision on Caesar's expulsion. Soon afterwards, Kahaber Kobalia was detained in his home. The Moscow City Court denied their appeal.

3.46. In 2005, similar stories were reported to the Memorial Human Rights Center's Migration and Law Network from all over Russia.

Chinese citizen Lu Tsin Tsai is awaiting deportation. He has been married since 1994 to Russian citizen Yulia Alexandrovna Lu, and they have two children. The family lives in Sovetskaya Gavan, a city in Khabarovsk Krai. Neither the court, nor Mr. Lu's lawyer have been informed of the reasons for denying Mr. Lu temporary residence permit, although the law enforcement authorities claim that such reasons do exist. Nevertheless, the court ruled in favor of deportation.

In May 2002, Uzbek citizens Shavkat Rakhimov and Mariam Karimova, a married couple, came to Penza to settle there permanently. They crossed the Uzbek-Russian border under a visa-free regime, and did not have "immigration certification cards," as these were introduced a year later. But their lack of immigration cards prevented them from obtaining a temporary residence permit in Russia. The family exited Russia, and then entered again, obtaining immigration cards at the border. However, by that time, the temporary residence quota in Penza Oblast had been filled. The couple's residence registration was valid until 23 October 2005, but regardless of this fact, the Lenin District court of Penza, on 3 October 2005, imposed administrative liability under Art.18.8 of the CAO and a fine of 12 minimum wages each, and prescribed expulsion. The Oblast court upheld the ruling.

3.47. Another story which took place in Moscow Oblast is particularly striking.

Tigran Martirosyan, an Armenian citizen, born in 1982, completed general school in Yerevan, Armenia. Since 1999, he lived in Moscow with his father, a Russian citizen, and his mother, an Armenian citizen, and was approaching graduation from the Institute of Economics and Law. Tigran's residence registration in Moscow was valid until 19 October 2004; he applied for a temporary residence permit, so that afterwards he would be eligible for a simplified citizenship acquisition procedure on a number of grounds as the son of a Russian citizen with 1st degree disability, as a graduate of a Russian higher educational establishment, and as a former USSR citizen.

In mid-September 2004, Tigran went to stay at his parents' dacha [summer cottage] in Odintsovo District, 25 minutes' drive from Moscow. On 19 September, he was stopped by police in Odintsovo for residing in Moscow Oblast without registration. On 21 September, the city court in Odintsovo prescribed his expulsion from Russia. The hearing took 5 minutes, and was held without Mr. Martirosyan himself, without his lawyer, and without any study of the circumstances of his case. The family could not reunite for a year. It was only after Tigran's mother contacted lawyers of the Migration and Law Network in end-2005 and was helped that the Moscow Oblast court overruled the judgment of the Odintsovo City Court. However, the Ministry of Interior Database has not been updated to reflect the new judgment, so Tigran cannot come back to Russia to live with his parents. No need to explain that the original cause of the young man's misfortune was his father's refusal to buy him out from the police.

3.48. We can see from the analysis of legal provisions and from the examples above that the vagueness of the Code of Administrative Offences provisions leaves ample room to arbitrary interpretation, breeding corruption and ruining people's lives.

Extradition of suspects, accused and convicted persons from Russia, and compliance with the protection against torture principle

3.49. According to part 1 of Art. 61 of the Russian Constitution, "a citizen of the Russian Federation may not be deported out of Russia or extradited to another state". Therefore, extradition applies only to foreign nationals and stateless persons.

3.50. The Russian Federation ratified the 1957 European Convention on Extradition and its 1978 Second Additional Protocol by the Federal Law of 25 October 1999, N 190-FZ. According to the Convention, "extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence."

3.51. However, problems arise when CIS countries request extradition of their citizens. Such requests are based on the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases signed in 1994. Below, we quote two articles of the Convention defining the obligation to extradite and reasons for denial of extradition.

"Art. 56. Obligation to extradite

1. The Contracting Parties undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, persons in their territory wanted for criminal proceedings or for the carrying out of a sentence.

2. Extradition shall be granted in respect of criminal offences punishable under the laws of the requesting Party and of the requested Party by deprivation of liberty for a maximum period of at least one year or by a more severe penalty.

3. Extradition shall be granted for the carrying out of a sentence in respect of offences punishable under the laws of the requesting Party and of the requested Party, where the person claimed has been convicted to deprivation of liberty for at least six months or to a more severe penalty.

Article 57. Denial of extradition

1. Extradition shall not be granted if

a) the person claimed is a national of the requested Party;

b) at the moment of the claim, criminal proceedings cannot be instituted or the sentence cannot be carried out under the laws of the requested Party by reason of lapse of time or other legitimate reason;

c) final judgment or decision to terminate proceedings has been passed by authorities in the requested Party upon the person claimed in respect of the offence for which extradition is requested;

d) under the laws of the requested Party, proceedings into the offence for which extradition is requested are subject to private prosecution (initiated by the victim).

2. The requested Party may refuse to extradite a person claimed for an offence committed in its territory.

3. If extradition is denied, the requesting Party shall be notified of the grounds for such denial."

3.52. It is clear from this text that there is no provision for a review of the fairness of prosecution or possible political motives of the requesting state. Similarly, the Minsk Convention does not provide a person claimed for extradition with an opportunity to seek asylum in the country requested to extradite him/her. Prior to extradition, by Art.60, "immediately upon receipt of the extradition claim, the requested Party shall place the person claimed under provisional arrest."

3.53. Chapter 54 of the RF Criminal Procedure Code "Extradition for criminal proceedings or for the carrying out of a sentence" sets out procedures for decision-making in respect of an extradition

claim, execution of such decision, possibility of appeal, and circumstances which rule out extradition.

3.54. The following extracts from the Criminal Procedure Code appear particularly significant in this respect.

"Article 462. Execution of a request to extradite a person staying in the territory of the Russian Federation

4. The Prosecutor-General or Deputy Prosecutor-General of the Russian Federation are authorized to make decisions to extradite foreign citizens or stateless persons staying in the territory of the Russian Federation and accused of committing crimes or convicted by courts of foreign states.

5. The Prosecutor-General of the Russian Federation or the Deputy shall notify the person claimed of the decision in writing and explain his/her right to appeal the decision in court under Article 463 of this Code.

6. A decision to extradite shall be effective after ten days of such notification. In the event of appeal, extradition shall not be effected pending a final judgment.

Article 463. Appealing a decision to extradite and a judicial review of its legality and grounds

1. A decision to extradite made by the RF Prosecutor-General or Deputy can be appealed in the Supreme Court of the Republic, territorial or regional court, federal city court, court of autonomous region or autonomous oblast at the claimed person's location, by this person or his/her defense counsel, within ten days of the notification.

2. If the claimed person is in custody, the administration at the place of his/her detention shall immediately forward the appeal to a respective court and notify the prosecutor.

3. The prosecutor shall forward to the court, within ten days, any materials supporting the legality and grounds of the decision to extradite.

4. A three-person court must undertake a review of the legality and grounds for extradition within one month of the appeal, in an open hearing attended by the prosecutor, the person claimed, and the defense counsel, if any.

6. The court shall not consider whether the applicant is guilty, but shall only review the decision to extradite for compliance with Russian laws and international treaties.

7. The judicial review shall result in one of the following rulings:

1) it can find the decision to extradite unlawful or unfounded, and overrule it;

2) it can deny the appeal.

8. If the decision to extradite is overruled, the court simultaneously lifts the injunctive measure used against the applicant [i.e. releases him/her from detention].

9. The judgment granting or denying the appeal can, in turn, be appealed in the RF Supreme court within seven days of the ruling.

Article 464. Denial of Extradition

1. Extradition shall be denied if:

1) a person claimed by a foreign state is a Russian citizen;

2) a person claimed by a foreign state has been granted asylum in the Russian Federation because of the possibility of his/her persecution in the requesting state on account of race, religion, citizenship, nationality, affiliation with a certain social group, or political views.

3.55. It follows from the last paragraph that extradition of anyone granted asylum in Russia is impossible by law. However, this rule is virtually invalidated by the ineffective asylum granting policies and practices. There is no provision whatsoever to prohibit extradition to countries where torture and ill-treatment are widely used.

3.56. By law, the Prosecutor-General's decision to extradite may be appealed in a regional court within 10 days. Then a review of legality and grounds for extradition may take up to one month. The court's decision to grant or deny an appeal can, in turn, be appealed in the Russian Supreme Court. Thus, the law provides a possibility to challenge extradition, allowing ample time to do so.

3.57. Unfortunately, this law is not always enforced. Persons claimed for extradition are placed under provisional arrest and lose contacts with the outside world. Only in rare cases, they can access their lawyer who will explain to them their right to challenge the Prosecutor-General's decision.

3.58. Finding out the number of extraditions from the RF is more difficult than finding out deportation and expulsion data, but we know of numerous cases where Russian law enforcement authorities extradited citizens of CIS states even though they could assume with a fair degree of certainty that the extradition request was politically motivated and there was a real danger that the extradited person may face torture and even execution. It applies to cases of extradition to countries with undemocratic regimes, Turkmenistan and Uzbekistan in the first place. Russia appears to value favorable political and beneficial economic relations with these countries higher than the human rights obligations.

3.59. Moreover, these countries' security services freely operate in Russia, and take part in arrests and detentions of their citizens. This practice has been known since mid-90ies, when many people were extradited to Georgia and Azerbaijan, where they were immediately incarcerated.

In September 2001, Eminbeili Gunduz Aidyn Ogly, a citizen of Azerbaijan facing political persecution in his home country and recognized by UNHCR as a refugee in need of resettlement to a safe third country was taken into custody in the Chief Police Department of St. Petersburg and Leningrad Oblast, where he came to apply for permission to exit Russia. The arrest was triggered by a letter from the acting head of Police Department of Gyandji (Azerbaijan) addressed to the Police Chief of St. Petersburg and requesting to detain Eminbeili, whose arrest was warranted by First Deputy Military Prosecutor Aliev of Azerbaijan. For the first two weeks, Gunduz Eminbeili was not given access to his lawyer, Olga Tseitlina from Migration and Law Network in St. Petersburg. Thanks to her persistency, on 25 October, i.e. 36 days later, Gunduz Eminbeili was released, and his extradition – imminent until the last moment – was cancelled. On 5 November, already in the airport, Russian police made their last attempt to stop the refugee from exiting to Sweden, where he was ultimately granted asylum. In Sweden, Gunduz Eminbeili filed an application with the European Court of Human Rights complaining about unlawful detention.

In October 2002, at the request of Turkmenistan authorities', extradition proceedings were effected against Murad Garabayev, born in 1977, who had by that time acquired Russian citizenship by virtue of marriage to a Russian woman. To invalidate his marriage, a fake divorce certificate was supplied from Turkmenistan. His lawyer, Anna Stavitskaya, immediately applied to the European Court of Human Rights. Under strong pressure of the international community, on 5 December 2002, the Moscow City Court overruled the Russian Prosecutor-General's decision of 2002 October 2002 to extradite Murad Garabayev, a Russian citizen, to law enforcement authorities of Turkmenistan, and released Garabayev from provisional arrest.

3.60. Unfortunately, only a limited number of extradition cases against people persecuted for political reasons end as successfully as the above.

The Alisher Usmanov case is a dramatic example of collaboration between Russia and Uzbekistan. Alisher Usmanov was convicted in Tatarstan to 9 months of prison for possession of ammunitions; there are reasons to believe that the ammunitions had been planted, because original charges against him included extremist activity and membership in Hisb ut-Tahrir party, but he was acquitted on those charges. Usmanov was expected to be released on 29 June 2005, but when his wife came to pick him up from the prison in the morning, she was told that he had been taken away by "friends" who came at five in the morning and insisted that the detainee should be allowed to go with them. In the evening of the same day, Usmanov's family filed a search request with Vakhitovsky District Police Department of Kazan. Usmanov was found much later, in October, when his relatives in Uzbekistan informed Alishers's wife that he was held in detention prison (SIZO) in Namangan, Uzbekistan. The Memorial Human Rights Center published a press release about the incident on 19.10.2000, followed by an immediate response: on 24.10.2005, the Russian RIA Novosti

news agency published the following statement by O. Turakulov, head of Uzbekistan Security Service Public Relations Bureau: "Alisher Usmanov was transported from Kazan to Uzbekistan under a joint plan with the Russian FSB of fighting international terrorism." According to the same statement, "currently Usmanov is an Uzbek citizen, as he was stripped of the Russian citizenship by the Tatarstan Ministry of Interior, upheld by a cassation judgment of the Tatarstan Supreme Court." Shortly before that, the prosecutor's office had responded to the Memorial HR Center's enquiry by assuring that Usmanov could not be extradited as a Russian citizen. On 16 November 2005, a court in Uzbekistan found Alisher Usmanov guilty under Art. 159 part 3 (attempt against the constitutional regime); 242 part 2 (organization of a criminal community); 244-2 (participation in illegal organizations), and 228, parts 2 and 3 (use of a forged ID, in this case – the Russian passport) of the Uzbek Criminal Code and sentenced him to 8 years of prison. It has been reported that Usmanov was ill-treated in custody.

Still another example that cannot be ignored is a story of fourteen Uzbeks detained on 18 June 2005 in Ivanovo, upon request from Uzbekistan, where all the detainees face charges of involvement in the "Andijan events." They were detained by Russian security agents assisted by their Uzbek counterparts. Many of the detainees had lived in Russia for a long time and could not have participated in the said events. However, regardless of the numerous violations during the detention and the extension of their custody, Russian authorities demonstrated an obvious intention of extraditing the Uzbeks to Uzbekistan. The Memorial's Migration and Law Network hired a lawyer to defend the detainees, who was able, although with difficulty, to access them and to take applications for asylum in Russia from 13 Uzbeks. On 13 January 2006 all asylum seekers received refusal, this decision was appealed in the court. One of the detainees – Hatam Hadjimatov, a Russian citizen - was released from detention by court on 11 October, because his extradition was impossible. However, the authorities immediately started proceedings with the purpose of stripping him of Russian citizenship, which was done by the Hanty-Mansi District Court on 27 October 2005. The court invalidated his Russian citizenship, arguing that at the time of obtaining the Russian citizenship he had illegally retained his Uzbek passport. Notably, in 2000, when Hadjimatov acquired Russian citizenship, his Uzbek nationality was no barrier, as by the Law "On Russian Federation Citizenship" effective at the time, the spouse of a Russian national, regardless of nationality, could obtain Russian citizenship by application. Realizing what the outcome would be, Hadjimatov left Russia for Ukraine on 31 October, where he applied for asylum.

Another of the 14 detainees, Mamirjon Tashtemirov was a national of Kyrgyzstan, and the Kyrgyz Embassy protested to the Russian Foreign Ministry about his detention - but to no avail. Possibly, the reason for persistence of the Russian police is very basic: they are paid a good premium for each Uzbek detained and handed over to the Uzbek authorities. It was reported by one of the detainees who accidentally, during interrogation, overheard a side conversation between Uzbek security agents who spoke in Uzbek forgetting that they could be understood.

3.61. This trade in human beings is nothing new, and it is a direct result of the overall degradation of the legal and judicial framework in the country.

3.62. UN High Commissioner for Human Rights Louise Arbour and UN High Commissioner for Refugees Antoniu Gutterish have recognized that there is a practice of torture and summary executions in Uzbekistan. Similarly, Russian authorities have requested the Kyrgyz government not to expel Uzbek refugees from Kyrgyzstan, so we can state that extradition practices in Russia do not comply with the principle of protection from torture.

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Article 4[10]

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.
2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

4.1. Having considered Russia's 3d Periodic Report, the Committee against Torture recommended to the Russian Government that Russia should promptly incorporate into domestic law the definition of torture as contained in article 1 of the Convention and characterize torture and other cruel, inhuman and degrading treatment as specific crimes with appropriate penalties in domestic law.

4.2. Notably, in the reporting period, Russia took some measures to introduce a prohibition of torture in domestic law. These measures, however, proved to be insufficient to ensure full compliance with the Committee's recommendations.

4.3. Banning the use of torture, cruel and degrading punishment in the context of criminal and administrative investigation and proceedings (see pars. 4 and 7, Russia's 4th Periodic Report), no doubt, supports the general prohibition of torture under Art. 21 of the Russian Constitution. However, the said provision, while establishing restrictions and guidelines which competent authorities must follow, fails to define torture, cruel and degrading punishment and to criminalize such acts.

4.4. Over the reporting period, the Russian authorities also engaged in lawmaking to establish criminal liability for torture, cruel and degrading punishment. In response to the Committee's recommendations listed in the Concluding Observations on Russia's 3d Periodic Report, a group of the Federal Duma members drafted and submitted to the Duma's consideration a draft law introducing a new Art. 117-1 "Torture" of the Criminal Code. The proposed Art. 117-1 defined torture as:

"…severe suffering, whether physical or mental, intentionally inflicted on a person for such purposes as obtaining information or forcing him to commit other acts against his will, for punishing him or for other purposes, when such pain or suffering is inflicted by a public official or with his consent or acquiescence by another person."

4.5. Thus, the draft text contained a definition fully consistent with that provided in Art. 1 of the Convention.

4.6. The Duma adopted the draft law in the first reading on 19 March 2003, and its further consideration coincided with the process of amending the Criminal and Criminal Procedure Codes in 2003. It was expected that Art. 117-1 would be incorporated, alongside other amendments, in the Law "On amending the Russian Criminal Code." However, during the final discussion of amendments to the Criminal Code, the Russian Federation Duma Committee for Legislation rejected Art. 117-1 under the pretext that it did not "fit in the structure of the current Criminal Code."

4.7. On 8 December 2003, instead of the rejected Art. 117-1, legislators adopted a note to Art. 117 ("torment"); the text of this note to Art. 117 is quoted in par. 3 of Russia's 4th Periodic Report. Analyzing the definition of torture given in the note, we find that it does not fully correspond to Art. 1 of the Convention.

[10] This section of the Report was drawn by the Krasnoyarsk Public Committee for Human Rights Protection and the DEMOS Research Center. To prepare this section we used officially published legal texts, information received from NGOs (their names mentioned in the text above) and mass media.

4.8. Firstly, the definition of torture given in the note to Art. 117 of the Criminal Code fails to include a key element of torture, cruel and degrading punishment, i.e. direct or indirect involvement of a public official. Moreover, the provision introducing a definition of torture is located in a section of the Code dealing with crimes against life and health, rather than official crime. As a result, it applies only to acts committed by private individuals. Crimes committed by public officials in their official capacity are punished under specific provisions dealing with official crimes, rather than general criminal provisions which currently include Art. 117. This fact is proven by par. 31 of Russia's 4th Periodic Report quoting statistics of prosecutions for official crimes, where you will not find any sentences under Art. 117.

4.9. Secondly, a list of purposes qualifying ill-treatment as torture is narrower in the note to Art. 117 of the Criminal Code than in Art. 1 of the Convention. The Convention mentions such purposes as obtaining information or a confession from the victim or a third person, punishing or intimidating the victim or a third person, and discrimination, whereas the definition in Art. 117 of the Russian Criminal Code does not define ill-treatment of the victim in order to coerce a third person as torture. Moreover, the note to Art. 117 fails to mention purposes such as intimidation or discrimination.

4.10. Not only is the definition of torture in domestic criminal law inconsistent with some of the standards established by the Convention, we also need to note that neither the Criminal Code nor any other domestic act gives a definition of cruel and degrading treatment.

4.11. However, the lack of definitions of torture, cruel and degrading treatment in the criminal law does not mean that criminal prosecution of public officials who use torture is impossible in Russia. They can be prosecuted under Art. 286 and 302 of the Criminal Code.

4.12. Art. 302 of the Code establishes criminal liability for coercion for the purpose of obtaining evidence, including the use of torture. The definition of torture given in the note to Art. 117 of the Criminal Code is used for the purposes of Art. 302.

4.13. The Federal Law of 8 October 2003 also amended the text of Art. 302 of the Criminal Code. In its former version, Art. 302 came close to the definition of torture given in Art. 1 of the Convention, but contained substantial limitations. Firstly, Art. 302 only applied to investigators acting in official capacity, whereas torture can be used by police detectives – also to obtain evidence or confession. In addition, Art. 302 in its old version punished for the use of torture against a specific individual (suspect, accused, victim, witness, expert) with a specific purpose, namely to coerce a suspect, accused, victim or witness into giving evidence or to force a certain opinion from an expert. The use of torture and ill-treatment against persons without a formal status in the proceedings with the purpose of obtaining information about a crime or its traces, and the use of torture for other purposes than those stated in Art. 302, were not punishable.

4.14. The new version of Art. 302 expands the range of subjects liable under Art. 302 through a phrase **"as well as another person, with consent or acquiescence of the investigator."** In this case, it is unclear who is liable for the crime - the agent committing the torture or the investigator consenting to, or encouraging it - or both. Secondly, it remains unclear how authorities should qualify torture committed by a public official, but without the investigator's consent or acquiescence; torture unrelated to obtaining evidence or expert opinion, and torture used by public officials outside the context of criminal investigation. No answers to these questions have emerged from investigatory and judicial practice, as Art. 302 of the Criminal Code has had a very limited application. It can be seen, in particular, from Art. 4 of Russia's 4th Periodic Report lacking statistics of prosecutions under Art. 302.

4.15. Given that torture, cruel and degrading treatment are prohibited by the Russian Constitution and a number of federal laws, public officials who use torture can be prosecuted for abuse of power (Art. 286 of the Criminal Code). In practice, Art. 286 is the one applied most often for criminal prosecution of public authorities guilty of torture.

4.16. However, the criminal law qualification of torture, cruel and degrading punishment as abuse of power hinders the fulfillment of obligations under the Convention. Firstly, the general wording of Art. 286 does not give public officials a clear and unambiguous signal that torture and cruel treatment are prohibited and criminalized. Secondly, Art. 286 of the Code applies to other types of abuse of power, as well as torture. As a result, relevant government authorities that collect statistics on abuse of power in general do not have specific statistics on torture, cruel and degrading punishment. It deprives government of any possibility of assessing the actual incidence of torture and planning effective prevention. In particular, par. 34 of Russia's 4th Periodic Report quotes judicial statistics of prosecutions for abuse of power under part 3 Art. 286 of the Criminal Code (abuse of power involving the use of violence, weapons or methods of restraint, causing serious harm). They fail to indicate, however, in how many cases the perpetrators were prosecuted specifically for torture.

4.17. As noted above, Art. 286 of the Criminal Code, normally applied to punish officials guilty of torture, is also applied in other cases of official abuse of power. It creates a situation where law enforcement authorities and judges perceive torture as something no more dangerous to society than any other type of official abuse of power, not necessarily involving violence. As a result, sentencing for torture, cruel and degrading treatment is just as severe - and at times less severe - than punishment for other types of official misconduct.

For example, on 12 February 2004, the Lefortovo Court in Moscow sentenced Igor Alyamkin, officer of the passport bureau at Nizhegorodsky Police Department of the Moscow City, to seven years of prison. Alyamkin had illegally issued residence registration to Luisa Bakueva, who was later involved in hostage taking in Dubrovka Theatre in the autumn of 2002. The court found that Alyamkin had used his official position against service interests and for his personal benefit (part. 1, Art. 285 of the Criminal Code); had taken a bribe and committed a fraud (Art.290 and 159 of the Criminal Code), and had abused power with grave consequences (part 1, Art. 286 of the Code). The Court sentenced Alyamkin to 7 years of prison.

On the same day of 12 February 2004, the Supreme Court of the Russian Federation upheld a sentence of the Sverdlovsk Oblast Court, whereby two police officers – Andrei Sereda and Andrei Lysov – were sentenced to 2 and 3 years, respectively, for complicity in torturing a detainee, Edouard Smolyaninov, who eventually died. On 5 April, 2004, the third officer involved in the same incident of torture and responsible for the detainee's death – Alexander Pershin – was sentenced to 6 years of prison.

4.18. It is evident from the examples above that Russian courts can punish non-violent official misconduct more severely than torture. The authors of this report believe that the main reason for such imbalance is the legislators' failure to draw a clear boundary between torture and other types of misconduct.

4.19. Par. 35 of Russia's 4th Periodic Report says that in most cases, courts additionally punish perpetrators of official abuse by banning them from certain service positions. Unfortunately, neither the same section of the Government's report, nor any other parts of the report specify what were the main penalties against such perpetrators. NGOs as well as government authorities lack complete data on penalties used against perpetrators of torture, cruel and degrading treatment. However, our analysis of the sentences in torture cases known to NGOs can provide at least some information to fill the gaps in the respective section of Russia's 4th Periodic Report.

Thus, according to the Kazan Human Rights Center, in 2004-2005, courts in Kazan passed 6 sentences against perpetrators of torture, cruel and degrading treatment. Courts sentenced official perpetrators to actual (not probational) prison terms only in 2 out of the six cases. In other cases, probational penalties were used, combined with a ban on certain positions in the law enforcement.

The Chita Human Rights Center reported that in 2004-2005, courts in Chita Regiona passed four sentences for torture and ill-treatment, including three probational sentences and only one actual prison term.

"Mothers in Defense of the Rights of Those Arrested, Under Investigation and Convicted" - an NGO in Krasnodar Krai – report that between 2001 and 2005, courts in Krasnodar Krai sentenced 7 law enforcement officers for torture and ill-treatment (including cases that resulted in the victim's death). Out of the seven officers convicted, only two were sentenced to actual prison terms, while the other five got probational sentences.

According to the Perm Regional Human Rights Defender Center, in 2/3 of the torture cases, courts sentence perpetrators to probational penalties.

4.20. Probational sentences for torture and ill-treatment would have been acceptable if non-violent official misconduct and general criminal offences were punished along the same lines. But in fact, Russia pursues severe sentencing policies, reflected in the size of the country's prison population. Thus, according to the Federal Penitentiary Service, as of early July 2005, Russia's penitentiary institutions held 797.4 thousand inmates, i.e. 570 prisoners per 100 thousand population. In this context, probational sentences for torture and ill-treatment are perceived as too mild to match the threat posed by such crimes.

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Article 10[11]

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.
2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons.

10.1. Since the Periodic Report of Russian Federation gives very general overview on the curricula for the law enforcement employees, we feel that additional information on this matter might be valuable.

10.2. There exist several types of educational programs for the law enforcement officers in Russian Federation:

10.3. ***Professional higher educational establishments: higher educational establishments aimed at training career officers for the Ministry of the Interior, Prosecutor's Office, Federal Penitentiary Unit.***
The curricula of those educational establishments do contain the course on Human Rights. This is an academic discipline, and the syllabus is mostly structured round the international treaties ratified by RF. The principle teaching method is in most cases lecturing, and final evaluation – either examination or pass/fail.

10.4. ***Liberal Arts Schools/Universities: mainly, Law Schools – or the Faculties of Law - the graduates of which are likely to be employed within the law enforcement system as well.***
The curricula of those schools also include the course on Human Rights. As a rule, the teaching methods, number of academic hours and the syllabus is not much different from those of the professional schools. At the same time, a number of higher educational establishments is involved in the development and implementation of more academic courses that touch upon the issue of human rights and freedoms.

10.5. ***Learning Centers at law enforcement agencies***
The main audience of the courses offered by the Learning Centers is mostly comprised of law enforcement interns and well as of the employees undergoing additional vocational training. In 2006 the Human Rights course entered the package of obligatory courses offered by the learning

[11] This part was prepared by the Regional Non-governmental Organization "Man and Law"

centers at Federal Penitentiary Unit. The teaching is usually carried out by guest lecturers from the local higher educational establishments (depending on the region). At Learning Centers of the Ministry of the Interior this course is not offered at all. Some regional Ministry of the Interior branches organize one-time events to increase human rights awareness, usually in cooperation with the human rights protection organizations. The learning centers in Perm and Maryi-El are good illustration to that.

10.6. ***Training programs carried out by intergovernmental and human rights protection organizations within the framework of joint projects aimed at increasing the legal competence in the law enforcement agencies***

10.7. Such cooperation between the law enforcement agencies and intergovernmental structures with national and international human rights protection organizations in order to increase the quality of human rights courses for law enforcement staff is a very positive development.

10.8. The "Police and Human Rights" department of the Council of Europe organizes educational seminars at professional academies in the South of Russia under the umbrella of the *Police and Interethnic Relations* project. The Russian part of this project was launched in 2003.

10.9. The "Climate of Trust" project implemented by the Bay Area Council NGO and San-Francisco Police Department has been running in Russia for several years now. The aim of the program is experience exchange between the employees of judicial and law enforcement systems from California and their colleagues and representatives of public and non-governmental organizations of CIS (primarily Russia). In particular, the project provides with an opportunity to study the practical experience of police work with ethnical minorities and of public control of the activities of the police. The Russian police officers who had completed training and experience exchange mobilities within this program are encouraged to organize educational seminars on the work with ethnical minorities and public control for other employees of their units.

10.10. In 2003-2004 the non-governmental "Man and Law" of the city of Yoshkar-Ola created and tested a course in Human Rights for those employees of penitentiary system who regularly work with minors. The aim of the course was to increase awareness and prevent violations of Article 3 of the European Convention in relation to minors. Both the employees of penitentiary unit and inmate of the colony for minors received printed materials on human rights.

10.11. In 2005-2006 there were implemented other projects that employed the expertise of the human rights protection organizations. For example, regional NGO "Man and Law" is carrying out the "Prevention of Cruelty and Violence at Police Departments through Vocational Legal Training Program for Police Officers" project, which includes extended courses of law and psychology for the officers of Mariy El, Tatarstan and Nizhny Novgorod police departments.

10.12. Another NGO, "Center of Civil Education and Human Rights" implements a project on introducing the courses on human rights to the curricula of Ministry of the Interior Learning Centers. The project is aimed at creating the necessary conditions for acquisition of experience of human rights education practices in the learning centers of Privolzhsky federal district police departments. The study course on Human Rights designed for the heads of learning centers of Provolzhsky federal district police departments is developed and taught within the project.

10.13. Amnesty International (Russian division) carries out seminars on protection of human rights and freedoms at the specialized learning centers for police officers in Voronezh and Samara.

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Article 11[12]

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

11.1. Articles 1, 2, 6 and 11 of the 4th Periodic Report of the Russian Federation describe number of legislatives amendments concerning arrest and detention, detainees' rights and rights of suspects and accused. Mentioned changes in legislation provided legal framework for prevention of torture and ill-treatment. However adoption of new norms have not changed substantially practical situation of suspects, accused and detainees. Introducing new laws competent authorities failed to conduce institutional changes necessary for implementation of these laws and to provide law enforcement services and judges with necessary material recourses. As a result practice of apprehension, arrest and detention as well as treatment of detainees have not changed substantially. In addition some rules regulating work of law enforcement services had not been changed or amended to adjust them to declared goals of human rights protection.

Disproportionate and indiscriminative use of force and firearms in the course of apprehension, suppression of unlawful activities and maintenance of public order

11.2. Articles 12-15 of the Law N 1026-I "On Police" regulate application of physical force, special means and firearms against individuals. Although these provisions provide detailed list of situations when police officers may use such methods and means, they do not explicitly formulate principle of proportionality in the use of force, special means and fire arms. Ombudsman of the Russian Federation criticized uncertainness of this rules in his Special Report "About Compliance of the Russian Federation with Obligations Undertaken with Accession to the Council of Europe".[13] This situation is exacerbated by the fact that programs of study used to train employees of law enforcement agencies do not pay enough attention to personal immunity and prohibition of torture and cruel and degrading treatment. Lacking the skills allowing for successful solution of professional tasks without application of excessive violence, such personnel try to enforce the law and fight delinquency using types of treatment or punishment forbidden by the Convention.

11.3. As a result enforcement staff often uses violence to suppress insignificant violations of the public order.

For example on May 24, 2003 in Krasnokamsk (Perm Region) police officer Gusev in the presence of many passers-by, cruelly beat and kicked under aged Mr. Tuzhilkin who had been driving a motorbike without a license, inflicting injuries to the boy. At the same time, police officer Sazhin forced the motorbike passengers, under aged Agafonov and Bolotov, to drop to the ground and held them down.

Criminal police officers Fatykhov of Alkeevsky District Police Department (Republic of Tatarstan) was convicted for abuse of power, which was an unjustified use of firearms, on October 4, 2003, in chasing two minors - Mr. Shamsutdinov driving a motorbike and his passenger Mr. Kharitdinov, who suffered from bullet wounds of the thorax and stomach, respectively.

[12] This section of the Report was drawn by the DEMOS Research Center. To prepare this section we used information received mass media and NGOs: Public Verdict Foundation, Moscow Helsinki Group, All-Russian Movement "For Human Rights", "Social Partnership Foundation", Nizhniy Novgorod Committee against Torture, Perm Regional Human Rights Defender Center, Kazan Human Rights Center, Yorshkar-Ola organization "Man and Law", Tver Memorial Society and other. We also use data collected by the DEMOS Research Center and its regional partners interviewing police and prosecution officers, advocates and judges in 10 regions of the Russian Federation in the year 2004 -2005.

[13] Text of the report in Russian available at the official Ombudsman's website http://ombudsman.gov.ru/doc/spdoc/0102.shtml

11.4. Apprehensions of those suspected in criminal activities are quite often followed by the use of physical force even when apprehending individual do not resist or try to escape.

For example, on November 14, 2004 in the Bezhetsk Town (Tver Region) police forces conducted special operation to arrest workers of the local market suspected in unlawful hindering from free trade. According to numerous witnesses, police officers in masks and equipped with machine guns suddenly appeared in the territory of the marked and attacked group of men standing near the entrance to the furniture shop. Among those men were not only suspects, but also other people who came to the market for their own business. Despite this fact, police officers without warning through all of them down on the snow and beaten them even nobody of them resist or tried to escape. Police officers kept all those people lying on the snow for about hour and than brought them to the police station.

11.5. In some cases law enforcement officers apply force even to kids or old people who obviously is unable to provide serious resistance or threat to life and health of the law enforcement officers.

On April 13, 2006 in Moscow, police officers came to apartment building to check suspicions about commitment of robbery. In the hall police officers saw 12 years old boy coming out of elevator. According to the boy and to some witnesses police officers asked him what he is doing in the hall. He replied that he is living in this apartment building. Police officers did not believe, catch the boy, beat him up, handcuffed and moved to police station. According to medical documents, the boy received brain concussion and other injuries. Police officers explained to the boy's parents that they tried to protect themselves from his attack.

11.6. Human rights organizations in Russian are specially disturbed with the cases of mass violence occurred in the years 2004 and 2005.

In the period from 10th through 14th December 2004 the special task police unit (OMON) of the Ministry of Internal Affairs of the Republic of Bashkortostan and the Blagoveschensk city and district police department conducted "a complex of operative and preventive measures in order to deter and terminate crime and administrative offenses in the streets and public places in the territory of Blagoveschensk and Blagoveschensk region"[14]. This large-scale operation was carried out within the local self-government territory, an area with a population of 50 thousand people. According to the human rights organizations conducted independent investigation of the events, in the course of this operation police forces apprehended and detained about 1 000 people. During the apprehensions and in the ocurse of detention police staff used force and special means at all times, though in majority of cases the residents of Blagoveschensk did not resist detention. About 200 people had been beaten on the streets but had not been detained. The actions of police during detentions, in using violence and special gear were exclusively non-selective.[15]

11.7. In the year 2005 police forces in other regions of the Russian Federation conducted similar preventative operations but of smaller scale.

Thus on February 5, 2005 police forces conducted "preventative operation" in the village Rozhdestveno of Tver Region. In the course of operation police applied physical force unselectively. Number of juveniles and women had been beaten. Also number of people had been unreasonably detained. As a result of this operation about 20 people suffered from various forms of human rights abuse.

On June 11, 2005 police forces conducted "preventative operation" in village Ivanovskoe of Stavropol Region. In the course of operation police officers in absence of apparent reasons and with the use of physical violence apprehended number of villagers including juveniles. Detainees were brought to the local police station and released after few hours.

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[14] Order by Minister of Internal Affairs, Bashkortostan, dated December 9, 2004 No.792 entitled 'On dispatching MVD OMON police task unit to Blagoveschensk and Blagoveschensk region. *Novaya Gazeta* No.8 dated February 3-6,2005.

[15] Fro detailed description of events please see Report "Special Operation by MVD of Bashkortostan: Events, Facts, Assessments, Findings" available in English at http://www.mhg.ru/files/knigi/bashkor.doc

11.8. Necessary to note, that all the above mentioned operations had been conducted in settlements where were no mass public disorders or other emergency situations required any extraordinary operations. In such situation excessive and non-selective use of force by police provided for raise of fears and distrust to police among members of local communities.

11.9. Competent authorities of the Russian Federation shall pay more attention to planning of any police operations, especially those which may request application of physical force, special means of firearms. Principle of proportionality of the use of force shall be clearly explained to all officers of the law enforcement agencies.

Detainees' rights

11.10. Criminal Procedure Code as well as other legislative amendments entered into force during reporting period introduced various guarantees for those detained in relation to any criminal charges. Unfortunately on practice detainees rarely may enjoy these guarantees. Every day work of the law enforcement bodies had not been reorganized in order to ensure implementation of new legal standards.

11.11. The fact that Russian police are in deep crisis, had been mentioned even by the President of the Russian Federation. Existing system of police performance evaluation does not take into account level of human rights observance, but require local police units and individual officers to show up high rates of solved crimes and so on. At the same time, professional level of police officers are extremely law and local police units suffer from lack of basic recourses necessary to perform their functions.[16]

11.12. On the years 2004-2005 the DEMOS Center together with its partner-NGOs in 10 regions of the Russian Federation conducted series of interviews with the police officers, prosecutors and judges. Analysis of this materials provided clear picture of why police officers violate detainees' rights.

Falsification of reasons for detention

11.13. Various problems impeding normal police work all together led to situation that police officers see a suspect person as the main source of information on the crime. It is from him or her that they try to obtain data about the accomplices, the circumstances in which the crime was committed (and, accordingly, the traces that could be registered as a proof) and the place where the tools of the crime of the property criminally acquired are. During interview former police officer, explained: "It is necessary to get information from the person, to verify it and find the evidences".[17]

11.14. Such information substantially helps the police officers in the process of disclosure and investigation of particular crimes: there is no need to check up several versions of what in particular happened, instead of looking for proofs it is necessary only to carry out the procedures to confirm them and so forth. Getting the information directly from a suspect allows saving time and human and material resources, which is very important for the police officers overburdened with cases and lacking necessary equipment.

11.15. In order to facilitate the process of getting the information from a suspect, the police officers prefer to out his or her to isolation. At the same time, detention of a supposed criminal as a suspect is not always possible or convenient for the police officers. Detention of a person as a suspect implies that the data in support of the necessity of his or her arrest will be prepared and submitted to the court within 48 hours. Here the police officers face several problems at once.

[16] For more details about problems of police in Russian and impact of these problems on human rights situation please see research of the DEMOS Center "Reforming law enforcement: overcoming arbitrary work practices". Text in English available at http://www.demos-center.ru/projects/649C353/71CCE4A/71CCED9

[17] From an interview with a condemned police officer, Tver Region.

First, the police officers often do not have such data prior to detention - they plan to get those data from the detainee himself of herself. Secondly, if a person has been detained as a suspect, but then during the further investigation it is proven he has nothing to do with the crime, the police officers may be punished: "It's useless to hang an extra unlawful arrest on the unit. An unlawful arrest under a criminal case asks for an extra kick form the bosses".[18] Thirdly, due to the excessive workload and lack of technical staff the police officers fail to cope with the registration of materials necessary for arrest within 48 hours stipulated by the law: "Personal examination is needed, as well as interviews with the witnesses. Also the latter are yet to be found, brought in and registered - registered in written form. All that takes time... 48 hours are not enough... As for the detainee, he or she cannot be interrogated between 11 p.m. and 6 a.m. - it's mandatory time for rest and sleep... The material has be completely prepared and copied, brought to the prosecutor for consideration and then submitted to the court... The officer doing inquiry and investigation fits to the time limits with a great effort".[19]

11.16. In order to have an opportunity "to work" with a suspected criminal and simultaneously to avoid the problems with paper registration and a possible responsibility for unlawful detention, police officers register such detainee not as a person suspected of having committed a crime, but as a administrative offender or a person with no definite place of residence. "In order to verify the suspicion of a criminally punishable offence, a person is detained on the basis of administrative charges. Identity is checked up and material is gathered, and if there is ground to affirm that the detainee is possibly guilty, then that person is investigated under a different category".[20] If the detainee's non-complicity in the crime is established, then "they do it with administrative measures only".[21] As seen from the data of interviews with police officers, prosecutors and judges, administrative arrests to facilitate a crime disclosure may be used not only with suspected persons, but with witnesses as well: "It happened that within investigations of criminal cases people were detained administratively. And those included not only the accused ones. I had a case when a bomzh [a person with no definite place of residence] was the suspect and the three witnesses were bomzhi too. Were I to let them go, I would have no witnesses at the trial".[22] In order to subject a suspect to administrative arrest police officers either provoke a person to be rude (that is, hooliganism and disobedience) or simply compile report about administrative offences at odds with the reality. As an example may be cited case registered by the Memorial Human Rights Commission of Komi Republic on May 2003.

Tsigelnik was suspected of having murdered her father. Police officers detained her and put into the reception-distribution ward, motivating that act with the necessity to establish her identity. Tsigelnik spend more than 7 days in the reception-distribution ward, although it was obvious that it would have required little effort to establish her identity, as she was arrested in her mothers' house. During her stay in the reception-distribution ward the police officers held "conversations" with Tsigelnik in an effort to force her to admit herself guilty of having murdered her father.

11.17. Illegal use of administrative penalties in order to ensure a supposed criminal isolation becomes possible because the judicial bodies passing decisions about administrative charges do not study with due attention the circumstances of the cases and do not verify the authenticity of administrative materials submitted by the police. Such facts, been established by the European Court of Human Rights on two torture cases: Mikheyev vs. Russia[23] and Menesheva vs. Russia.[24]

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[18] From an interview with a convicted police officer, Tver Region.
[19] From an interview with a former police officer, The Republic of Adygeya.
[20] From an interview with a neighborhood police officer, Tver Region.
[21] From an interview with a neighborhood police officer, Altai Krai.
[22] From an interview with a judge, The Republic of Tatarstan.
[23] Text of judgments available at http://cmiskp.echr.coe.int/tkp197/view.asp?item=4&portal=hbkm&action=html&highlight=RUSSIA&sessionid=6732051&skin=hudoc-en
[24] Text of judgments available at http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=RUSSIA&sessionid=6732051&skin=hudoc-en

11.18. Besides administrative detentions police officers use other methods in fact depriving a supposed suspect of his or her freedom. For instance, they may summon suspect person as a witness and then keep him as long as they need to obtain information on the crime committed. Such practice may be illustrated by case registered by the Perm Regional Human Rights Defender Center in the city of Perm in January 2004.

The father of underage B. worked with a businessman dealing with disassembly of condemned houses. The tools belonging to the businessman, including chainsaws was usually kept in a barn in the yard of the house B. lived in. B. was responsible for storing the chainsaws in the barn after the end of the working day. One night the chainsaws were stolen from the barn. Police officers suspected B. of the theft, as he had been brought to criminal responsibility previously. The investigator summoned B. to the police station as a witness. As the writ summoned B. to interrogation as a witness, his parents did not go with him. Police kept B. at the station for over 6 hours, beaten him and demanded that he should show the place where he had hidden the stolen chainsaws.

11.19. Surveyed advocates described incidents similar to the case of B.: "My client was detained. The police arrived early in the morning and invited him to go with them. He went and could not be found for a whole day and night. Then we found with great efforts that he was still in a certain RUVD [District Police Station] and that they would not let him go, as he was a witness to a case".[25]

11.20. In some instances a suspect is not even given the status of a witness, but is rather kept at a police station under the pretext of the need to have "conversations" and "operative actions". Such "conversations" are not stipulated by the law, although common sense allows supposing they should be voluntary. But in reality an individual engaged in such conversation finds that he or she is in fact deprived of his or her freedom with no opportunity to break that conversation at his or her own discretion. Within the case study frameworks information was obtained and analyzed about four cases when those suspected of crimes actually lost their freedom under the pretext of having "conversations" with them.

11.21. One can quote an incident that took place in February 2003 in the Republic of Tatarstan as an example:

Underage Nuriev and Petrov were suspected of theft. Police officers summoned them for a conversation. Nuriev and Petrov came to the police station with their mothers who wanted to wait until the end of the conversation. But police officers did not let the mothers stay at the station. Nuriev and Petrov were kept there for more than a whole day and night. Police officers beat them. Throughout all that time the police officers demanded that the adolescents should admit they had stolen a car radio tape-recorder.

Impeding detainees' contacts with lawyers and relatives

11.22. Interviewed advocate from the Republic of Komi said the practice of actual detention under the pretext of "conversation" was widespread in the region: "It's a huge practice of all lawyers. Police come in the evening to a person's home, office, anywhere and take that person for a conversation. The relatives call - dear lawyer, help us, they've taken him to the Babushkina Street, to the Pechyorskaya Street, to the Sovetskaya Street, anywhere. Help us. We come, but the police say - sorry, we are simply having a conversation. We thought together with lawyers how to fight that. Some inform the city prosecutor's office in each case. But, you can hardly inform anybody in the evening, that can be done only the next day, but the next day everything is already done [it's late]. Yet, the person has conversed for two or three hours. What has he conversed about, how has he conversed, what has he said? Lawyers try to insist, but the police reply - well, get out of the room, we just have a conversation. We have already reached a stage when we ask our client aloud if he agrees to stay for a further conversation. He says "no". Then we say - dear officers, you deprive this man of his freedom unlawfully, against his will and that corresponds to the relevant article in

[25] From an interview with an advocate, Krasnoyarsk Krai.

the Criminal Code, so we'll write and demand the action to be brought. Go - we'll examine the things later".

11.23. From the description given by the lawyer it is seen that for the police the reason of detention under the pretext of a conversation is not only avoiding paper-work entailed by a detention and a possible responsibility for mistakes in detention. Substituting the detention and interrogation with "conversations" enables police officers to restrict or rule out the contacts of the criminal suspect with the lawyer and the relatives, thus facilitating the getting of information on the crime.

11.24. The materials of police officers survey show that police officers see the relatives and the advocates as a hindrance to their productive interaction with the detainee. That is the reason why police officers sometimes do not notify parents about their underage children's detention: "If a child is detained under suspicion of a crime committed by him or her, or friends, that child who feels the parents' support might deny everything".[26] Police officers regard the advocate's presence in a similar way: "It seems to me that advocates are such people who will only make obstacles".[27] However, when a person has already been given the status of a suspect, the lawyer's presence at the interrogations becomes mandatory. Police officers find a way out of that situation by holding instead of interrogations the very same "conversations" that do not require the assistance of a lawyer. As an interviewee reported, if a detainee insists on the lawyer's presence, "then an operative conversation takes place and he won't need the lawyer anymore".[28]

11.25. Investigating authorities try to prevent access of advocates to the detained persons not only during the first hours or days of detention. Practicing advocates mention the existence of various methods of opposing the defense. For instance, those include the removal of a detainee from one isolation ward to another, the timing of the investigation action simultaneously with the advocate's participation in a trial on another case, the refusal to give permissions to see the client, the refusal to let the advocate to study the procedure-related materials and so forth. The criminal case of G., T., N.A. and Kh.A. registered and examined by the Tver Memorial Society serves as a practical example of that kind of violations:

> *T. and Kh.A. met with their debtor and had negotiations concerning a postponement of a debt payment. The debtor turned to the police complaining about extortion as regards him. T. and Kh.A. were accused of extortion and robbery. Simultaneously the accusations of extortion and robbery were made against N.A. who accompanied T. and Kh.A. to the place they met the debtor in, although he himself did not participate in the communion, and against G. who at the time of the incident was in another town. All four accused were detained and put in custody. Acknowledgement of their guilt was obtained from them. It is probable that in order to obtain the acknowledgements of their guilt the police officers used violence. Anyway the results of a medical examination confirm they suffered bodily harm during their time in custody. The advocate of Kh.A. personally handed the investigator the warrant of the advocates' bar and submitted his application for an audience with his client and for the examination of the case materials. However, the investigator had interrogated his client same day without the advocate's presence in spite of the fact that the latter was in the premises of police station. Then the investigator ordered that the accused be removed from police station to temporary isolator in nearest town. Yet, he told the lawyers that their clients were kept in Pretrial Detention Center in the capital city of the region. Only ten days after the moment of the detention the lawyers managed to meet clients and get access to the documentation of the criminal case. And they managed to do so only after they had lodged their complaints to the prosecutor's office. While examining the protocols of procedural actions with the participation of T., the lawyers found that the signatures of T. in some of the documents were falsified by means of copying.*

11.26. Necessary to note, that availability of advocate's aid to detainees also restricted by high costs of qualified legal aid, which make it unaffordable for considerable part of the population. Current

[26] From an interview with a neighborhood police officer, The Republic of Komi.
[27] From an interview with a neighborhood police officer, The Republic of Adygeya.
[28] From an interview with a former police officer, The Republic of Adygeya.

law entitles those needed to assistance of *ex officio* lawyers. However system of free legal aid is poorly organized. The Public Interest Law Initiative, together with the Center for Justice Assistance of the INDEM Foundation in the year 2004 conducted research on the system of free legal aid in Russia and listed key problems in organization of state system of legal aid which negatively impact on quality of assistance provided by the *ex officio* lawyers.[29]

11.27. The All Russian Movement "For Human Rights" also considers that existing system of free legal aid makes *ex officio* lawyers depending on investigating authorities, because without their notification finance agencies will not pay honoraria to *ex officio* lawyer. The Movement "For Human Rights" certifies that in absence of strong control of advocates' community over quality of legal aid, such situation provoke *ex officio* advocates to perform defense function only formally and do not resist to attempts of investigating bodies to restrict the rights of detainees.

11.28. The All Russia Movement "For Human Rights" claim that since work with depended *ex officio* advocates is more convenient for the investigating bodies, the last some times exercise pressure upon the suspects or accused to force them to reject counseling of advocates hired by the relatives and to accept *ex officio* advocate selected by the investigator.

11.29. Some times law enforcement bodies interfere unlawfully into activities of independent advocates. The Commission for Protection of the Professional and Social Rights of Advocates of the Federal Bar Association of the Russian Federation informs that such interference may include: crimping of advocates to become secret agents of the law enforcement services, search of advocates' offices, and personal search of advocates after visit to detained client, and surveillance of advocates' telephone conversations.

For example on March 23, 2005 chief of the Criminal Investigation Unit of the Volgorevchensk City Police Department performed personal search and checking of documents and other belongings of advocate Rumyantseva. It happened immediately after the end of Mrs. Rumyantseva consultations with her client taking place in premises of the temporary isolator.

On February 11, 2005 chief of the Investigation Department of the Division of the Federal Service for Control over Drugs Circulation in the Republic of Bashkortostan persuaded advocate Latypov, who just came to him with the writ to defense of Mrs. Gumerova, to became a secret agent. Advocate refused such proposition and after that had been kept in the premises of the Department for about 4 hours.

11.30. Interference to the advocate's functions, impediment of advocates' access to detained clients as well as attempts to influence free choice of the defense lawyer increase risk of ill-treatment of the detainees and therefore shall be eliminated.

Use of arrest

11.31. The new Code of Criminal Procedure did not only place the use of arrest as a 'measure of restraint' under judicial authority, but also imposed restrictions on the use of this measure. Thus, under Art. 97 of the Code, the use of any 'measure of restraint' must be based on a well-founded assumption that a suspect or an accused:

1) may attempt to escape the inquest, preliminary investigation, or trial;

2) may continue to engage in criminal activity; or

3) may attempt to intimidate a witness or any other participants of the criminal proceedings, destroy evidence or in any other way hinder the proceedings.

[29] Summary of the research findings in English available at http://www.pili.org/resources/access/Documents/A2J%20Russian%20Report%20Summary%20-%20English.doc

11.32. By Art. 100 of the Code, a measure of restraint can only be applied in exceptional cases. By Art. 108 part 1 of the Code, detention of a suspect or accused can be used as a measure of restraint only if they are suspected or accused of a crime punishable by more than two years of imprisonment, and where using a milder measure of restraint is unfeasible. A judge ordering detention as a measure of restraint must make a written statement of concrete factual circumstances underlying the decision.

11.33. On 10 October 2003, the Plenary of the Russian Supreme Court adopted Regulation No 5 "On the application, by general jurisdiction courts, of generally recognized principles and standards of international law, and of international treaties Russia is party to." In par. 14 of this Regulation, the Supreme Court established that arrest cannot be applied based only on the seriousness of criminal charges, and explained to courts that it must be based on other circumstances which may warrant isolation of the suspect or accused.

11.34. The new Code provides for a range of measures which can be used to control a suspect or an accused person, including, besides custody, release on recognizance (signature), personal guarantee, bail or home arrest. However, measures of restraint alternative to arrest have been generally underused. Specifically, the use of bail is limited due to poverty of most people in Russia. Home arrest is rarely used, because law enforcement officers have limited ability of supervising compliance with the imposed restrictions. Therefore, releasing the suspect/accused on recognizance remains the most common alternative measure of restraint.

11.35. When judges have to choose between arresting a person and releasing him/her on recognizance, the tendency is to order detention, whether well-justified or not. Defence attorneys and human rights lawyers report that very often judges order arrest of first-time and non-violent offenders. Moreover, in many cases they fail to indicate any of the legally established reasons for the use of detention, referring only to the seriousness of charges. The Zalyotin case, registered by the Tver Memorial Society can serve as illustration of this formalistic approach.

> *Mr. Zalyotin was detained on charges of non-violent extortion of a bribe. Most investigative actions were performed on the same day as charges were brought against Zalyotin. Zalyotin had no prior criminal record; besides, he suffered from poor health making his escape highly improbable. Moreover, medical doctors advised against detention in SIZO for fear that it might aggravate Zalyotin's health problems. Nevertheless, the court ordered detention, while offering the following arguments: "Zalyotin is suspected of an official malfeasance, which is considered an especially serious crime, for which imprisonment is the minimum mandatory punishment, therefore, the court has sufficient reasons to believe that being released, the suspect may attempt to escape preliminary investigation. Agencies in charge of preliminary investigation have not completed investigative actions, so the court has reasons to believe that the suspect may hinder the criminal proceedings, intimidate and use pressure against witnesses."30 The court did not offer any other arguments to justify Zalyotin's detention in SIZO.*

11.36. The above example graphically demonstrates that some judges are not sufficiently prepared to apply the new law with regard to the use of alternative measures of restraint. Therefore, they tend to approach the issue of pre-trial detention in a purely formal manner, which, in turn, maintains the excessively high population of remand prisons.

11.37. Another factor which undermines efforts to reduce the number of pre-trial detainees is the failure of the new Code to impose mandatory limits on pre-trial detention during judicial proceedings. It means that even after the investigation and during the entire trial up to the moment of sentencing, the accused can be detained. Detention during trial can be excessively long, because criminal proceedings are often delayed due to courts' overwhelming workloads and also due to problems with getting witnesses to show up in the courtroom. The situation is further aggravated by the fact that whenever a person is detained during the investigation, courts will automatically extend the

[30] Ruling of the Kalinin District Court, Tver Region, of June 15, 2004, ordering pre-trial detention as a restraining measure.

term of detention, without even looking at feasibility of his/her continued custody. Generally, courts extend the term in custody awaiting sentence in a closed hearing, and even in the absence of the prosecutor's motion requesting continuous detention, without listening to the accused or his/her defence attorney.

11.38. This pattern of almost mandatory detention awaiting sentence combined with lengthy trials cause most criminal defendants to spend at least a year in detention centres. Thus, a delegation of the International Helsinki Federation visiting Investigation Isolators (SIZO) No 5 and No 6 in Moscow learned from the SIZO administrations that the average detention time was one year. Moreover, while interviewing detainees in SIZO No 5, the delegation found teenagers who had spent 18 months in detention, and in SIZO No 6 some women-prisoners had been detained for more than two years.[31]

11.39. Excessive use of arrest by judges is demonstrated in a review of SIZO population dynamics in 2003, a year when judicial arrest procedure produced its first tangible effects. Thus in early 2003, remand prison population was 145 thousand, while in June 2003 it reached 156 thousand. A drop in the number of detainees in 2004 was due to the adoption in December 2003 of the Federal Law amending the Russian Criminal Code (Law No 162-FZ). The law enacted 257 amendments, most of them liberalising the criminal legislation, decriminalising certain acts, mitigating criminal sanctions, and limiting the use of incarceration. As an immediate result of the amendments, many criminal investigations were closed, and the accused individuals released, while the inflow of new detainees to SIZOs decreased. As it was mentioned by the Chairman of the Supreme Court of the Russian Federation, in the year 2005 number of pre-trial arrests had been growing. According to him in the year 2005 judges sanctioned 260 000 arrests. In June 2005 about 161 000 detainees had been kept in remand centers of the Ministry of Justice. In December 2005 there was about 164 000 detainees in such institutions.

11.40. It is important to note, however, that statutory restrictions alone will not substantially reduce the overcrowding of SIZOs without a corresponding change in judicial pattern of ordering arrest.

Treatment of prisoners in penitentiary institutions

11.41. Situation of individuals in pre-trial detention facilities as well as in correction institutions described in details in Article 16 of the present Report. Here we would like to draw your attention only to use of disciplinary sanctions and measures of restraint to prisoners.

Disciplinary practices

11.42. Disciplinary measures envisaged by the Federal Law #103-FZ of July 15, 1995 "On Incarceration of Suspects and Accused" include only a reprimand and placement in a punishment cell for up to 15 days (up to 7 days for minors). Incarceration is imposed for offences that are explicitly specified in the Article 40 of the Law. Article 40 also provides for the regime in the punishment cell that amounts by all standards to solitary confinement — all contacts, including correspondence, reading, watching TV and playing games are prohibited, with the exception of the contacts with the lawyer. The prisoner is allowed only a 30-minute out-of-cell walk. Punishments are imposed by the Director of the facility following a procedure that does not envisage any due process guarantees. Detainees have the right to appeal the punishment to the higher administrative authority, the prosecutor or the court although the appeal does not stop the execution of the punishment.

11.43. Apparently detainees rarely challenge disciplinary decisions.

In February 2004 delegation of the International Helsinki Federation visited the Investigation Isolator No 6 in Moscow. The Director of the institution informed the delegation that there had been some 200 cases of disciplinary isolation during 2003 and 238 reprimands. The Director told that there had been no complaints on disciplinary sanctions during the year 2003. The Chief of the Investigation Isolator No 2, visited by the delegation

[31] The mission report can be found at the MHG website http://www.mhg.ru/files/knigi/visiting.doc

of the International Helsinki Federation at the same dates, also could not recall of any appeal lodged against a decision on punishment by a prisoner.

11.44. Absence of fair trial guarantees in the process of disciplinary punishment appointment is extremely disturbing also because conditions in disciplinary isolators some times far from humane.

Delegation of the International Helsinki Federation had chance to see disciplinary cells in some of the Moscow Investigation Isolators. In the Investigation Isolator No 4 were only four punishment cells. On the day of the visit of the delegation there was no detainee placed in a punishment cell. Material conditions in the cells were hygienic. There was sufficient heating, hot water and a toilette facility. There was no access to natural light however, despite the fact that the facility was new. For the daytime bed cloth and mattresses are taken out of the cells, and beds are locked to the wall. The delegation noted that although the conditions of detention in such a cell are probably better than in the average punishment cell in Russia, they nevertheless amount to inhuman punishment.

In the juvenile pre-trial detention facility No 5 delegation also visited the punishment cells. The size of the cells was approximately 2 x 3 m (6 square meters). Cells in both the juvenile unit and the unit for adults were dark with very poor access to natural light. The single window of the cell was small, situated very high. Although the delegation visited the detention center in a sunny day, the windows in the punishment cells did not allow the natural light to penetrate into the cells. There was however no artificial light in the cells. Some light passed through the ventilation window from the corridor but it did not allow reading and writing in the cell. Thus, the juveniles who were punished could spend in these cells 7 days and the adults — 15 days, practically in the dark. The isolation cells were furnished with a bed, which is locked to the wall during the day and a small chair. The design of the chair is such that sitting on it for prolonged periods of time can certainly cause pain. It means that during daytime incarcerated prisoners stand or move around the cell.

11.45. Necessary to note, that the law restricts length of disciplinary detention to maximum 15 days each time, however, law establishes no limits on the total time a detainee may spend in isolation during one year.

11.46. According to the Article 115 of the Penal Code of the Russian Federation, disciplinary measures, which may be applied to the prisoner serving a sentence, include a much wider variety of punishments than in the case of pre-trial detainees. Such measures include putting of male prisoners to conditions of custody akin to solitary confinement for up to one year and of female prisoners — to similar conditions for up to three months. These very severe measures are imposed with almost no due process guarantees by the Director of the correctional facility.

11.47. The Penal Code also provides for such disciplinary measure as short term incarceration (up to 15 days), however as in the case of punishment of pre-trial detainees, there is no any limit on total length of detention in a punishment cell during one year. Thus, in lack of due process guarantees, it becomes possible that prisoners, disliked by the administration of the facility may spend months or even years in solitary confinement with short breaks between different isolations.

11.48. Situation is aggravated by the absence of clear definition of the disciplinary offence. Instead, Penal Code provides a general description of actions that may entail disciplinary penalties against prisoners. In fact, what is discussed is not a list of offences but rather a certain criterion. Thus, Article 115 of the Code mentions **"violations of the set order for serving the sentence."** Regulations also set forth a list of prisoners' duties. Thus, in order to categorize a prisoner's conduct, the committed action is compared against a list of duties in an attempt to conclude whether or not the action constitutes a violation of the set procedures at the confinement facility.

11.49. As a consequence of the lack of a classification of violations, a legal problem arises. Namely, it is impossible to establish a rigid link between the gravity of an offence and the degree of penalty imposed on the prisoner. In particular, it is not quite clear from the laws which violations of a

correction institution regime should entail putting the perpetrator in a punishment cell, and which should only call for a reprimand. Such a situation creates a great risk of unduly severe disciplinary measures being applied to prisoners, in spite of the fact that Article 117 of the Penal Code requires that penitentiaries' administrations consider the circumstances of the offence, personal features of the prisoner, his/her previous conduct, and the gravity of the offence. Notably, these exhaust the list of the administration's responsibilities in relation to application of disciplinary penalty measures.

In February 2004 delegation of the International Helsinki Federation visited Iksha juvenile correction facility in Moscow Region. The delegation inspected the punishment cells and from the conversation with the incarcerated person understood that he was put there by an officer for smoking at an unauthorized place. The delegation was particularly concerned about the use of punishment cells for relatively minor violations of discipline.

Isolation cages

11.50. The Federal Law "On Incarceration of Suspects and Accused" requires isolation of those suspected or accused in relation to one criminal case. In order to fit this requirement administration not only distributes such individuals to separate cells, but also undertakes various measures to prevent communication between inmates from different cells when they are moving inside the remand center's building (for example, when inmates are moving out for investigative actions or participation to the trial, when inmates are taken out of the cells to visit a doctor and so on). With the purpose to prevent such communication administration put prisoners to small cages.

In February 2004 delegation of the International Helsinki Federation visited pre-trial detention facility No 2 in Moscow. There members of delegation observed several cages which looked like a small metal closet. Persons in the closet can't see outside, and can't be seen. Delegation expressed serious concerns about the length during which detainees can be kept in such small cage.

Ensuring precise recording of the time of detention[32]

11.51. It is a common knowledge that one of the key measures to prevent violence and other types of intolerable behavior towards the detained is precise and clear regulation of 1) the maximum time a person can be detained for without/before the court-issued arrest warranty, and 2) procedure of detainment – in particular, of defining the "moment of detention" from which one then starts counting off the exact time a person will spend in detention, and from which the procedural rights of the detained start being applicable (including the right to see the lawyer).

11.52. According to part 2 Article 22 of the Constitution of the Russian Federation and part 1 Article 10 of the Criminal Procedure Code (CPC), a person can not be detained without a court-issued arrest warrant for longer than 48 hours. Part 2 art. 94 of the RF CPC says that if, after 48 hours since the *moment of detention,* the courts has decided against the arrest or the court has not prolonged detention period (acting on paragraph 3 part 2 of Article 108 of RF CPC) the detained must be released. The RF CPC ties other judicially important practices to the *moment of detention:* 1) as of this moment, the suspect has the right for a lawyer (p.3 part 4 art. 46; p.3 part 4 art. 49); 2) within 12 hours since that moment the relatives of the suspect must be informed of the arrest (part 1 art. 96) and in case the detained is the minor the relatives must be informed immediately after the moment of detention (part 3, art. 423); 3) within 24 hours since the actual detention the suspect must be interrogated (part 2, art. 46).

11.53. The Criminal Procedure Code is extremely vague, however, when it comes to defining the *moment of detention.* For example, article 5, which is aimed at defining key concepts of the code, does not list the *moment of detention* among those terms. Instead, it defines two other notions – the *detention of the suspect* (paragraph 11) and the *moment of actual detention* (paragraph 15), from which one can logically conclude that – apparently – the *moment of actual detention* is

[32] This section of the Report was drawn by the Perm Human Rights Center

synonymous to the *moment of detention.* This conclusion, however, is proven shaky, as in various articles and regulations and in relation to different aspects of the arrest and detention procedures the CPC would either mention *moment of detention* (see part 2 art. 94 and part 1 art. 96) or *moment of actual detention* (see part 2 art. 46; p.3 part 3 art. 49), which, according to the rules of legislative practice, means that those are two different concepts. At the same time, as has already been mentioned, the Code only defines one of those notions and does not list the differences between them, which leaves the *ad hoc* decision on the precise meaning of *moment of detention* with a law enforcement authority – and that, taking into account the importance of the issue – should not be the case.

11.54. At the same time, the notion of *moment of actual detention,* which should mean *the actual moment when a person's freedom of movement is restricted due to the suspected violation of law on the part of the person,* is narrowed down in the RF CPC by the new factor: *the freedom of movement should be restricted in due order, set by the RF CPC* (see part 15, article 5). The substance of this particular factor is also unclear, as the norm regulating *due order of restricting physical freedom of movement* is absent. In the end, the notion of the *moment of actual detention* is, too, unclear (despite the definition given in article 5 of the Code), which leads to a multitude of interpretation possibilities when the notion is used – and applied – by practitioners on spot.

11.55. Moreover, the Code regulation regarding the *recording* of the *moment of (actual) capture* time is not satisfactory, either. For example, part 1 of article 92 of the Code reads that after the suspect is brought to the body of inquiry, a custody report shall be complied within 3 hours. Part 2 of article 92 says that a custody report should include date and time of compiling it, the date, time and the place of, and the grounds and the motives for the *detention*. That is, according to the Code, the record should not include the *moment of detention,* instead the record should reflect the *time of detention*. Needless to say that the notion of *time of detention* is not defined and no references are made as to its relation to the notion of *moment of (actual) detention,* which in practice, again, leads to interpretive free-for-all. It would be logical to assume that both notions – *time of detention* and *moment of detention* – have the same meaning. However, in this case we face a series of new questions: 1) how (from which sources) a law enforcement agent completing the record receives data on the *moment of (actual) detention* and should they receive this information at all; 2) who – and how – would record the *time (moment) of detention* before a suspect is delivered to the temporary confinement facility, so that to pass this data over to the law enforcement agent whose responsibility is to draw the detention record. Those questions matter because in reality the suspect's freedom of movement would be restricted by other law enforcement officers than those who have to draw the detention record, and between the time of detention and the time of recording the detention there may pass several hours (not more than 24, as a rule). One has to paragraph out that not only the Code, but its sub-laws that regulate the activities of specific law enforcement units and agents, too, leave those questions unanswered.

11.56. As a result of discrepancies and lack of clarity in the Code and sub-laws, the usual law enforcement practice includes several hours between the moment a person is captured and the moment the detention record is drawn. During this time the rights are neither read nor implemented – including the right to see a lawyer, although this is also the time when intensive and lengthy work is being carried out with the suspect towards the solution of crime. Nobody records the actual time of detention when it is carried out. When the record is drawn, the time that goes there is the actual record-drawing time (not always correct as to the minutes), while in reality several hours might have passed between the record-drawing and the actual detention. Since then, all procedures connected with the moment of detention are timed in accordance with the detention record readings. Such approach allows investigative law enforcement agencies to freely extend the 48-hour detention limit for unwarranted detentions, as well as other limits – the one allowing access to the lawyer, for instance, informing the relatives or carrying out an official interrogation. The above-mentioned practice was developed under the Criminal Procedure Core of the Russian Soviet Federative Socialist Republic and hasn't changed much since the introduction of the new Criminal Procedure Code.

Implementation of the suspect's and the accused right to the lawyer[33]

11.57. Ensuring suspect's timely and unhampered access to qualified legal assistance (defender) is undoubtedly one of the key measures of prevention (elimination) of torture. Here we should note, that in sub-part 3 of part 4 article 46, sub-part 8, part 4 article 47, and articles 49-51 of the Code there are given detailed and complete norms as to the order of implementation and realization of a suspect's right to have a defender. The listed norms imply that the right of a suspect or an accused for the defender has to be realized at any moment when an objective necessity for defense of rights and freedoms of the accused related to the criminal case arises. In particular, a person detained on the suspicion of having committed crime, must be given a possibility to access a defender from the moment of the actual detention (paragraph 3, part 3, article 49; part 15, article 5 of the CPC).

11.58. However, in practice, those norms are interpreted in a very limited way by the law enforcement agencies involved in criminal investigation procedures: it is assumed that the right for the lawyer should only be realized if particular procedural investigative activities are carried out with his participation. Thus reasoning, the law enforcement agencies who carry out crime prosecution, widely apply so-called "talks" – detection measures that are not specified in the RF CPC and are presented as 'informal' and 'voluntary' communication – a talk – between the investigating officer and a suspect or an accused. Since the RF CPC does not mention this kind of practice it is assumed that for the time such practices are carried out there is no need to ensure any procedural rights of the accused or a suspect – including the right for the lawyer.

11.59. In the context of a very interpretative application of the CPC norms in practice, it is particularly the right for the lawyer that almost never gets ensured at once – as of the moment of actual detention. As a rule, the lawyer first appears during the first official interrogation if a suspect or an accused – the interrogation, which, according to part 2 article 46 of the CPC, should be held within 24 hours since the actual moment of detention. The lawyer defending a person who is detained in the pre-trial detention unit (SIZO) or in the temporary confinement facility (IVS) is never made aware by the competent authorities that a "talk" is planned with their client. Neither is the lawyer informed about the fact of the "talk" after it has taken place; whereas during some periods of the preliminary investigation the "talks" – in terms of length and intensity – can surpass the CPC-warranted investigative procedures involving the suspect or the accused.

11.60. In reality, those "talks" are rarely voluntary since nobody ever asks either suspects or the accused if they would want to participate in such a "talk". In fact, an accused or a suspect confined in either IVS or SIZO would be taken out of the cell and brought into a necessary room/office – independent of whether they want it or not - for a "talk" on demand of one law enforcement agent or other. The length of the "talk" depends on a law enforcement who has initiated it in the first place. The informal character of the "talk" means that 1) there is no formal record of the "talk" – neither of the fact or of the contents thereof; 2) there is no regard for any of the procedural rights of the one who is "talked" to (an accused or a suspect) – in particular, the right for the lawyer is not ensured.

11.61. Thus, a "talk" is a measure that allows the law enforcement agents to apply the widest scope of means of influence on a suspect or an accused, including all kinds of physical and psychological influence. The "talk" is usually aimed at the following: 1) receiving from the accused or the suspect information related to the crime under investigation (primarily, the information on how the suspect or accused themselves relate to the crime in question and on any evidence against them, of which the law enforcement agents have been unaware); 2) completing the document written and signed by the accused or the suspect and composed in a free, i.e. not formalized, fashion (the paper can be called "acknowledgement of guilt", "sincere confession", "confession statement", etc.); 3) shaping an understanding that (a) any defense from those who have accusations or suspicions is useless and can only make things worse for the accused or suspect,

[33] This section of the Report was drawn by the Perm Human Rights Center

and (b) during the CPC-warranted investigative procedures one has to agree with the accusations and allegations and acknowledge one's own guilt.

11.62. It should be specifically noted that the "acknowledgement of guilt" or other free-style document received from the accused or the suspect that contains confession of any form related to the crime under investigation is used as an acceptable evidence during the trial even if the accused or the suspect does not confirm the statements made in the document during the official interrogations – carried out in due order and in the presence of the lawyer, including the court examination.

11.63. Such practice of improper (discrete) application of the right for the lawyer that leaves broad possibilities for implementing wide scope of various types of unauthorized treatment – including torture – has been formed under the loop-holes in the previous code and hasn't changed much since the new Code has come into effect. National courts of various levels, Supreme Court included, acknowledge the above-mentioned practice as legal, which stimulates its spread and sustainable popularity among the law-enforcement agents.

Conditions of transportation of SIZO inmates to the courts and their confinement in the court convoy facilities[34]

11.64. The problem of inhumane conditions of transportation raises serious concerns. This issue is most acute in Moscow, since there concentrated many detention units and courts of various jurisdictions – including courts of superior jurisdiction, the distances are long and traffic is problematic. However, as we will show below, the problem is also known in other regions of Russia.

11.65. Individuals who are held in SIZOs and partaking in the trial in any role (defendant, witness) often face hardships that may be considered as inhumane treatment, especially when the trials last for many weeks and months without breaks.

11.66. Because the convoy service, which lacks specialized vehicles (vans), "collects" the inmates of various SIZOs of the city and then delivers them to different courts on one go, the process often takes a lot of time and looks like that:

11.67. The inmates are woken up early in the morning, usually from 4 to 6 a.m., they skip breakfast and are convoyed into the so-called "collection cell", which is often over crowded and under-ventilated. The inmates spend several hours in this "collection cell" (up until 9 or 10 a.m.).

11.68. Then they are placed into special vans ("autozacks") that are equipped – apart from the common space – with small individual cabins (so-called "tumblers"), that can each accommodate one person. We know of at least two instances where two persons were transported in one "tumbler", and the common space is often overcrowded, too (Khudoerov mentions a case when in a van for 10 inmates there were transported 27 people. The trip can last several hours, since one van picks up inmates from different SIZOs and delivers them to different courts. Various sources note, that the vans are cold in winter and hot in summer; accordirng to Elena Liptzer, a lawyer and an expert from the Center for the Assistance to International Protection, her client, Trepashkin, described the transportation procedure this way:

> *In December 2003 almost every day (except for the weekends) after the court I would be transported to SIZO "Butirka" where I was kept in an "autozack" up to 9-11 p.m. transferring from one van to another (there could be more than 10 transfers at a time). During those transfers there mixed the sick and the health, the smoking and not, the convicted and the just arrested, felons and petty thieves, former law enforcement agents and recidivists, and the jailed for life (those last ones – handcuffed). Sometimes they would place men and women into one and the same "autozack". By the end of the day the "autozacks" were literary packed with freezing inmates and then the delivery would start. It was so packed people couldn't move, the air was so full of cigarette smoke it was tangible, the*

[34] This section of the Report was drawn by the Public Interest Law Initiative

consumptives coughed right to your face since they could neither turn or cover their coughs with their hands.

11.69. Once in court, the inmates would be placed into so-called boxes in convoy premises. Those are often overcrowded, too:

In court the inmates are placed in 1.5x1 meter boxes, 3-4 people in each (part 105 page 14, annex 31). In those boxes they could spend the whole day – being unable to move, eat or go to the toilet.[35]

11.70. After the hearing the inmates are delivered back into the SIZO – same long and excruciating trip. As a result, they often get to the cell late at night (about 11 p.m., according to Trepashkin) and thus miss dinner. If the hearing is to continue the next day, the inmate has only some few hours left for sleep.

11.71. Trepashkin was thus transported from the court and back at least 15 times in December 2003; while Starokasomsky, who had filed his application to the ECHR on December 19, 2003, had been subject to this procedure at least 70 times.

11.72. This issue was raised by the European Court for Human Rights during the administration of Khudoyorov v. Russia application on November 8, 2005. The above-described means of transportation of the SIZO inmates to the hearings and back, as well as the conditions of their stay in convoy boxes in courts were acknowledged to be the violation of Article 3 of the Convention. In particular, the Court ruled:

«115. The applicant claims that in the days of the hearings he was transported to the court in the prison van where he was placed in an "individual" 1 square meter section together with other inmates. During the day he did not receive food, was not given the possibility to walk or to take a shower.

116. The Court has never before considered the compliance of the transportation conditions as such with the requirements of Article 3 of the Convention (however, on handcuffing and/or blindfolding the inmates during the transportation, see Öcalan v. Turkey [GC], no. 46221/99, §§ 182-184, ECHR 2005-...; and Raninen v. Finland, judgment of December 16, 1997, Reports 1997-VIII, §§ 56-59). Thus, the Court will rely on the conclusions made by the European Committee for Prevention of Torture (CPT).

117. As for the transportation of inmates, the CPT considered the individual sections of 0.4, 0.5 or even 0.8 square meters to be unsuitable for human transportation irrespective of the travel duration (see CPT/Inf (2004) 36 [Azerbaijan], § 152; CPT/Inf (2004) 12 [Luxemburg], § 19; CPT/Inf (2002) 23 [Ukraine], § 129; CPT/Inf (2001) 22 [Lithuania], § 118; CPT/Inf (98) 13 [Poland], § 68). In the present case the individual sections of 1 square meters would not violate the CPT norms had they been ventilated, heated, equipped with appropriate seating and/or devices to hold on to during the transportation and only used to transport one person at a time (compare w/CPT/Inf (2002) 36 [Slovenia], § 95).

118. The applicant, however, had to stay in an individual section of the van together with another inmate, and the two took turns to sit at each other's knees. The above-mentioned conclusions of the CPT give reason to believe that such practice would not be considered appropriate. Similarly, the Court considers it unacceptable to place two people on the space of one square meter with one available seating place. The Government claims that the trip only took 30 minutes but the applicant says that on the way the van would stop at other SIZOs. Since the inmates remained in the van at that time it would be appropriate to conclude – on the basis of the applicant's claim – that the trip took up to one hour. The Court finds that such organization of the transportation is unacceptable on its own merit despite the length.

[35] The *Starokadomsky v. Russia* ECHR application, courtesy of E.Liptzer.

119. The Court draws attention to the fact that the applicant had to sustain this trip twice a day – to the hearing and from it, and at least 200 times during his 4 years of detention. On those days, he was not getting meals or taken out for a walk. The fact that the defendant was continuously subjected to such treatment during the trial and during the hearings when issues such as prolongation of detention time were considered – that is, when he needed concentration and agility of mind most of all – is also under the jurisdiction of the present Court.

120. The Court concludes that the treatment of the applicant during his transportation to Vladimirsky regional court and back over-reached the minimal violence level, and that the violation of Article 3 of the Convention took place".[36]

Protection of rights of the suspects and the accused when they are confined at PRFS facilities[37]

11.73. One of the measures taken by the state to solve the problem of over-crowded investigatory detention facilities (SIZO) was to create so-called PFRS (in Russian, the abbreviation reads, "premises functioning as investigatory detention facilities"). The Ministry of Justice Order No. 212 of June 30, 1999 set a list of penal institutions, on the premises of which there were to be created PFRS units. On the basis of this Order, the arrested might not go to SIZO, but would instead be transported to the actual penal institutions.

11.74. According to the data received from the FEDERAL PENITENTIARY UNIT, by October 1, 2006 there have been 157 PFRS units in Russia. The maximum number of the arrested that can be detained in one such unit is individually determined and spans from 25 to 350 people.

11.75. It is important to note, that in Russia arrest during the investigation process is a measure of retaliation rather than that of restraint; it is used to get the arrested to confess or write "correct" testimony, as well as to hamper the access of the lawyer to the arrested. Most of the penal institutions (PI) are situated at a considerable distance (sometimes more than 100 kilometers) from major settlements. This creates additional difficulties to the lawyers who defent those suspects and arrested detained in PFRS units.

11.76. Moreover, in the remote areas where the PFRS units are usually located, the efficiency of control rendered by the prosecution's office is much lower than in regional (republic) centers, and the possibility of public control is nonexistent altogether.

11.77. This leads to the situation when there is more risk at PRFS that violent treatment and tortures would be applied to the accused or suspect in order to get a confession or "correct" testimony.

11.78. The biggest number of PFRS (12) is situated in Nizhny Novgorod region. According to the data received by the Nizhny Novgorod regional NGO "Committee against Torture", PFRS are often used as "torture zones", where the sentenced prisoners, with a support from the administration of PFRS and operative officers of police, apply torture to the accused. Moreover, the inmates of SIZO-52/1 of Nizhny Novgorod complain that they are threatened to be transferred to PFRS and tortured.

Thus, Invanov, who has applied for assistance from the "Committee against Torture" in Nizhny Novgorod, in an explanation given to the organization's lawyer, writes that operative officers Ch. and P. warned him during the interrogation that if he doesn't sign the statement of confession in having committed felony, then he will be transferred to colony 62/7 or 62/14 where he will be tortured. Ivanov refused to cooperate and was transferred to colony 62/14 PFRS on July 21, 2004. There Ivanov was regularly subjected to violent treatment from the colony inmates V. and M.. Later, Ivanov was transferred to the unit for the sentenced. There he experienced psychological pressure from the so-called "colony activists". They bashed

[36] Translation: Center of Assistance to International Protection
[37] This part is prepared by the Nizhny Novgorod regional NGO "Committee against Torture"

Ivanov on a regular basis and demanded him to cooperate with the investigative authorities. The statements of Ivanov are confirmed by the witnesses K. and G.

Another applicant – Morev – in an explanation given to the "Committee against Torture" informs that police officers demanded him to write and sign confessions of a number of felonies. When Morev refused to confess, torture was applied. The police officers threatened him that he would be transferred to colony 62/7 and there he would be tortured until he confessed everything. On May 24, 2005 Morev was transported to PFRS unit at 62/7 colony. Once there, Morev was three times visited by an operative officer who would apply psychological pressure to Morev. On the officer's request, Morev was tortured by the convicted S. and L. Tortures of various degree of intensity continued for 20 days. After Morev had signed several confessions he was transferred back to SIZO 52/1 of Nizhny Novgorod.

11.79. Currently the "Committee against Torture" organization is carrying out a public investigation on the three cases when the detained or arrested would be delivered to the PFRS to be tortured for several days at a time. Moreover, the Committee fount four more cases when the officers issued threats to transfer the detainees to PFRS of 62/14 or 62/7 colony, after which the detainees started to confess and give "necessary" testimonies.

11.80. Thus, PFRS are used to torture those who refuse to "confess" or "cooperate". As illustrated above, the very threat of transfer from SIZO to PFRS is used by the law enforcement agent as an efficient psychological pressure measure.

11.81. It is important to underline not only the fact of physical exposure of people under investigation and already placed in colonies, but also their moral and psychological condition – they are fully aware that they are kept with those who have already been convicted.

11.82. In reality, PFRS are not solving the problem of overcrowded SIZOs. Moreover, the PI, on the premises of which the PFRS units are usually organized, are as a rule far from the cities where investigative activities are carried out. Thus, convoying of the detained from PFRS to the place of investigation requires much more time and financing than convoying from SIZO. The money could have been spent on renovation of the current SIZOs and on building new pre-trial detention facilities.

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Article 12[38]

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

12.1. Based on its consideration of Russia's 3d Periodic Report, the Committee noted "the insufficient level of independence and effectiveness of the prosecution authorities, due, as recognized by the State party, to the problems posed by the dual responsibility of prosecutors for prosecution and oversight of the proper conduct of investigations." In view of these findings, the Committee recommended to "ensure prompt, impartial and full investigations into the many allegations of torture reported to the authorities and the prosecution and punishment, as appropriate, of perpetrators."

[38] This section of the Report was drawn by the Public Verdict Foundation and DEMOS Research Center. To prepare this section we used information received mass media and NGOs: "Social Partnership Foundation", Union of Soldiers' Mothers Committees of Russia, Nizhniy Novgorod Committee against Torture, Krasnoyarsk Public Committee for Human Rights Protection, Perm Regional Human Rights Defender Center, Kazan Human Rights Center, Yorshkar-Ola organization "Man and Law", Memorial Human Rights Commission of Komi Republic, Mordovian Republican Human Rights Center, Public Problems Research Institute «United Europe», Tver Memorial Society, Krasnodar Organization "Mothers in Defense of the Rights of Those Arrested, Under Investigation and Convicted", Association of human rights organizations of Sverdlovsk region, Chita Human Rights Center.

12.2. We need to note that since the consideration of the 3d Periodic Report, the number of investigations into the allegations of torture and ill-treatment has increased. Also, there has been an increase, as compared to the previous reporting period, in the number of law enforcement officers prosecuted for these offences. These developments are due primarily to better public awareness and to the active work of human rights group to counteract the impunity of torture; victims of torture and ill-treatment increasingly seek justice and insist on investigations, benefiting from the assistance of human rights lawyers.

12.3. Unfortunately, these developments cannot be regarded as progress made by the Russian Federation in meeting its obligation to conduct prompt and impartial investigations into allegations of torture. Currently, just as in the previous reporting period, prosecutors often fail to initiate investigations into reports and evidence of torture. On the contrary, victims sometimes spend years trying to get the authorities to investigate, challenging unlawful and unfounded refusals to initiate investigation or decisions to close it.

12.4. It has been stated before and can be repeated that the absence of effective investigation into allegations of torture is a problem of law enforcement, rather than that of the law. However, we should note that a number of laws and instructions that establish procedures or crime reporting, fail to take into consideration the specifics of torture, whereas special guidelines on acceptance and proceeding of torture reports are not available in Russia.

12.5. We describe below some key problems associated with the failure to meet the obligation to investigate effectively any allegation of torture.

Responding to evidence of torture

12.6. The Federal Law "On the Prosecution Authorities of the Russian Federation"; the Criminal Procedure Code, and instructions issued by the Prosecutor General of the Russian federation grant prosecutors broad powers to initiate fact-finding with regard to offences – whether those in preparation, in the process of being committed, or already committed - to review reports of offences and to investigate. These norms can apply to torture in the same way as to any other offence.

12.7. A potentially effective mechanism is in place enabling prosecutorial oversight of compliance with applicable legislation in the context of acceptance, registration, and responding to reports of offenses, including reports of torture.[39]

12.8. A procedure is available whereby health professionals in emergency care units and traumatology centers must report evidence of bodily injuries to law enforcement authorities. Under this procedure, all health care establishments, regardless of departmental affiliation and form of ownership, must immediately report to police on duty all admittances of patients with bodily injuries resulting from violence, including unconscious patients with injuries.[40] Potentially, this

[39] Order of the Russian Federation Office of the Prosecutor General, the Russian Federation Ministry of Interior, the Russian Federation Minister for Civil Defense, Emergencies and Disaster Relief, the Russian Federation Ministry of Justice, the Federal Security Service, the Russian Federation Ministry of Economic Development and Trade, and the RF Federal Service of Drug Control of 29 December 2005 N 39/1070/1021/253/780/353/399 On Uniform Reporting of Crimes".
Order of the Russian Federation Office of the Prosecutor General of 5 June 2002 N 39 "On Organization of Prosecutorial Oversight of the Legality of Criminal Prosecution at the Pre-Trial Stage of Proceedings";
Order of the Russian Federation Office of the Prosecutor General of 21 October 2003 N 45 "On Approval of Instruction Regulating the Admission, Registration and Consideration of Crime Reports by RF Prosecutorial Bodies", etc.

[40] The Instruction "On the Procedure of Interaction between Health Care Establishments and Ministry of Interior Bodies in Case of Admission of Patients with Bodily Injuries Caused by Violence"
(approved by Joint Order of the Russian Federation Ministry of Health and the Russian Federation Ministry of Interior on 9 January 1998 N 4/8)

procedure should ensure that evidence of torture, cruel and degrading treatment is effectively reported to the state's competent authorities, but it does not happen.

12.9. As follows from a survey of health professionals by Levada Center[41] commissioned by the Public Verdict Foundation and covering 42 Russian cities[42], most health professionals have had patients injured by law enforcement officers (obviously, some of these injuries were caused by ill-treatment or torture). Thus 77% of ambulance doctors surveyed and 87% of traumatology centers doctors surveyed reported having treated victims of abuse committed by law enforcement agencies. According to medical doctors, at least one victim out of two, or even more, ask them not to report the injuries to law enforcement authorities. It is obvious that victims of ill-treatment by police believe that reporting the injuries to authorities may cause even more harm, rather than help them defend their rights. We can understand the reasons behind the victims' fear. As shown by findings of the same survey of health professionals, out of all members of law enforcement agencies, police are the most frequent perpetrators of ill-treatment, while the reporting procedure requires that health professionals report injuries to the nearby police station. The fact that the victim of police abuse seeks medical assistance is reported to the same police who abused the victim or to their colleagues.

12.10. Equally alarming is the fact that 14% of the medical doctors surveyed reported cases where law enforcement authorities, government bodies or the administration of health care establishments instructed them not to make any records of the injuries or not to report the injuries allegedly caused by law enforcement agents. Human rights groups have also documented facts of pressure against health professionals helping victims of torture or ill-treatment.

The Krasnodar Organization "Mothers in Defense of the Rights of Those Arrested, Under Investigation and Convicted" reports that detainee N, after being beaten by police in a Krasnodar sobering-up station, needed emergency medical assistance: he was bleeding and vomiting. Police called an ambulance and demanded that the medical staff of the ambulance do not make records of the injuries but instead diagnose surrogate alcohol poisoning. N was hospitalized and treated for poisoning. As a result, N did not have the surgery he urgently needed and died of hepatic artery rupture.

12.11. The legally established procedure whereby health professionals must report all evidence of torture to authorities does not ensure that such reporting takes place every time in practice, so it is ineffective.

12.12. Laws and departmental acts establish mandatory procedures of recording bodily injuries, including those suggestive of cruel and inhuman treatment or punishment and torture, at admission into custody of someone arrested for administrative offences or crimes.[43]

12.13. Human rights groups point out that as compared to the previous reporting period, the staff of detention centers – Investigation Isolators of the Ministry of Justice (SIZO) and Temporary Isolators of the Ministry of Interior (IVS) – are more active in identifying and documenting bodily injuries found on detainees brought by police to detention facilities.

For example, in July 2005, the administration of SIZO in Nizhny Novgorod documented bodily injuries sustained by Mr. Salikhov brought to SIZO from a police station. Salikhov reported that the injuries were the result of police torture.

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[41] A prominent Russian sociological research center.

[42] The survey was conducted in November 2004.

[43] The Federal Law of 15 July 1995 N 103-FZ "On Incarceration of Suspects and Accused";
Joint Order of the Russian Federation Ministry of Health and Social Development and the Russian Federation Ministry of Justice of 17 October 2005 N 640/190. "On Medical Assistance to Individuals in Penitentiary Establishments and in Custody"; the "Procedure of Medical Assistance to Individuals in Penitentiary Establishments and in Custody"; Internal Rules of Specialized Institutions for Custody of Individuals under Administrative Arrest (approved by Order of the Ministry of Interior on 6 June 2000, N 605).

12.14. At the same time, according to human rights groups in Perm Krai and Krasnodar Krai, the staff of SIZO and IVS do not always carry out their responsibilities of identifying and documenting injuries of detained and arrested persons.

12.15. By law, the finding of bodily injuries on a detainee admitted to IVS or SIZO should trigger a review to find out the circumstances which caused the injuries. According to official comments received by members of the International Helsinki Federation delegation visiting pre-trial detention facilities in Moscow in February 2004, whenever a medical doctor in SIZO finds bodily injuries on new admittances, s/he must report them to the director of SIZO. Based on this report, the director of SIZO may decide to initiate an internal investigation. The director of SIZO may also decide to forward the findings of the internal investigation to the prosecutor. However, administration of visited detention facilities could not recall cases when they did so. …..

12.16. While noting an improvement in the situation with documenting bodily injuries on detainees admitted to SIZO and IVS, human rights groups in recent years have not heard of any criminal prosecutions based on evidence of bodily injuries reported by SIZO. It is possible that the reason behind it is the ineffective current procedure of reporting bodily injuries. It is true, however, that improved detection of injuries at admittance to IVS and SIZO helps victims of torture and ill-treatment who file complaints with prosecutors.

12.17. It is assumed that a prosecution officer visiting police stations and IVS as part of their oversight function and questioning detainees must respond to an oral complaint or to visible signs of violence. But in practice, they do not always comply with the obligation to respond to oral complaints.

Prosecution officer B. (Naberezhnye Chelny, the Republic of Tatarstan), on 2 September 2003, while carrying out a mandatory prosecutorial review of cells for administrative detainees, received an oral report from unlawfully detained Mr. Shishkin about torture he had been subjected to the day before, and the resulting bodily injuries, including a broken jaw. The prosecution officer referred Shishkin to a medical facility, but failed to take any measures to review the complaint and to document the evidence of torture. As a result, prosecution authorities have so far failed to identify the police officers who inflicted bodily injuries to Shishkin.

12.18. Human rights groups have documented only one case of a prosecution officer reporting torture against a criminal suspect.

On 31 January, 2005, the Bezhetsk Inter-district Prosecution Officer in Tver Oblast received a report from a prosecutor overseeing procedural compliance of the Ministry of Interior and Ministry of Justice officers; the report stated that on 24.11.2004, in the course of a law enforcement operation, members of OMON (special purpose police unit) detained nine citizens, six of whom (A.V.Ratnikov, M.N.Sidorenko, V.N.Terentyev, D.V.Zuyev, V.V.Novikov, and R.V.Kavunets) sustained bodily injuries of various degrees of severity, and their personal belongings and money were seized. Within the legally established timelines, on 10 February 2005, the Bezhetsk Inter-district Prosecution Officer in Tver Region instigated criminal proceedings into abuse of power and intentional infliction of serious harm to health.

12.19. Prosecution bodies also have specialized departments overseeing the legality of the execution of punishments. Staff members of these departments regularly visit pre-trial detention and penitentiary facilities of the Ministry of Justice. During such visits, prosecution officers can detect evidence of torture, cruel and degrading treatment and respond by initiating a review or a full-scale investigation. There is very little public information about the outcomes of such prosecutors' activities. In his 2004 report, the Russian Prosecutor General disclosed some of the gross violations detected by prosecutors inspecting the conditions of detention, including insufficient supply of food to detainees, holding detainees in cold cells, etc. However, the Prosecutor General did not mention any detected facts of violence against detainees. Information that detainees and their families share with human rights groups suggests that prosecutors visiting penitentiary facilities do not always conduct a careful review of the situation in the facility and sometimes fail to make direct contact with the prisoners (see Art. 13 of the Alternative Report for

details). It appears that prosecution officers who fail to make appropriate use of their power to inspect various premises in penitentiary facilities and to obtain first-hand information from prisoners sabotage their own ability to detect signs of torture and other forms of ill-treatment, which are not caused by physical conditions of detention.

Investigation into alleged incidents of torture

12.20. So in a limited number of incidents prosecution bodies initiate reviews and investigations based on evidence of torture. Much more often, however, reviews and investigations are triggered by complaints of torture filed with prosecution authorities by victims or their family members.

12.21. By law, a complaint is processed in two stages: a review and a preliminary investigation. A review is undertaken to determine reasons and grounds for criminal proceedings and a full-fledged investigation. An investigation is launched to collect evidence of the crime and to identify the culprit. It may lead to an indictment – if the investigators find that there has been a crime and collect evidence against specific suspects – or to a decision to close the investigation. The review stage is optional. Where the fact of crime is obvious, investigation must be launched immediately.

12.22. The key principles of investigation provided for in the criminal procedural legislation in force are in general compatible with the international standards of effective investigation. The Criminal Procedure Code provides that prosecution bodies must "**take measures envisaged by this Code to ascertain the occurrence of the offense and expose the person or persons guilty of committing the offense."**[44] It is also provided that the prosecutor and the investigator **must evaluate evidence pursuant to their inner conviction resting upon the aggregate of evidence available in the criminal case, being guided at that by law and conscience**.[45]

12.23. The Criminal Procedure Code sets out the timelines for reviews and investigations in criminal proceedings. Review (inquiry) of a crime report can take up to 3 days, or up to 10 days in exceptional cases.[46] Investigation can take up to 2 months, with a possibility of additional investigation of up to one month. [47] In exceptional cases these deadlines may be extended.[48]

12.24. Unfortunately, official statistics of registered reports of torture, cruel and degrading treatment and investigation of such crimes either do not exist or are not published. In such circumstances, the only way to measure effectiveness of torture investigations is to refer to data provided by NGOs. As an illustration, we can quote data collected by human rights groups on investigations of complaints against police torture in 11 Russian regions: the republics of Marii El, Komi, Bashkortostan, Tatarstan, Krasnodar Krai, Perm Krai, Nizhniy Novgorod Region, Chita Region, Orenburg Region, Sverdlovsk Region and Tver Region.

Out of 76 arguable reports of torture (with medical records and other evidence supporting the applicant's claim) documented by human rights groups in the said regions in 2002, official investigations established the fact of crime and the culprits only in 20 cases. In 2003, official investigations determined the facts of torture in 11 out of 154 cases; in 2004, in 47 out of 199 cases; and in 2005, in 33 out of 114 cases.

12.25. With a reservation that these data are incomplete, we can nevertheless conclude that at the average, investigators find the facts of torture and identify public officials responsible for torture in 30% of all arguable complaints of torture filed. These rates are disproportionally low if compared to the overall rates of investigated crimes. For example, according to the 2005 data provided by the Russian Minister of Interior, 84% of murders and attempted murders and 74% of offences involving serious damage to health were successfully investigated. It appears obvious

[44] Art. 21 of the Criminal Procedure Code
[45] Art. 17 of the Criminal Procedure Code.
[46] Art. 144 of the Criminal Procedure Code.
[47] Art. 162 of the Criminal Procedure Code.
[48] Art. 162 of the Criminal Procedure Code.

that this difference in the rates of investigation cannot be explained only by objective difficulties faced by investigators due to the specifics of such offenses as torture and ill-treatment. Data collected by human rights organizations show that official reviews and investigations of complaints about torture often fall short of required performance standards. We describe below some common examples of the prosecutors' failure to comply with principles of effective investigation.

Non-compliance with the principle of thorough investigation

12.26. In the investigation of torture complaints, evidence collection is one area where failure to act often occurs. The investigator is expected to collect proactively all evidence available. However, in investigating incidents of torture and other ill-treatment, prosecutorial investigators do not always perform the actions necessary for evidence collection.

We can quote an example of investigation into the killing of Mr. Khairullin, in September 2002. He was hospitalized in a coma and with bodily injuries after being held in Tukayevsky Police Station (Naberezhnye Chelny, Tatarstan). For more than three years, investigatory bodies failed to undertake the necessary actions to determine the causes of Khairullin's injuries, characteristics of objects used to inflict the injuries; they have failed to verify allegations supported by evidence that a gas mask was put on Khairulling to suffocate him. No search was conducted in the room where Khairullin was questioned.

On 6 August 2005 in Nizhniy Novgorod, a criminal investigator of the Moskovsky District Prosecution Office refused to open a criminal investigation into a torture complaint brought by Mr. Salikhov. The investigator failed to question the eyewitnesses identified in the application (about 15 people), failed to assess medical records evidencing the applicant's bodily injuries. Mr. Salikhov's representatives challenged the denial of prosecution and a superior prosecutor overruled the denial as unlawful and unfounded.

12.27. Illustrating the lack of proactive response to allegations of torture, we can quote Mr. Anoshin's case in Nizhniy Novgorod.

A prosecutorial investigator in charge of investigating the death of Mr. Anoshin resulting from suffocation in a police station asked the lawyer of Anoshin's widow to provide a list of measures needed to investigate the crime.

12.28. Even in cases where applicants point out the sources of evidence to investigators and request specific investigative actions, investigators do not always conduct such actions or fail to do so in time. Sometimes investigators offer false reasons alleging that it is impossible to question certain individuals or to include certain documents in the case file.

For example, during investigation of complaints brought by Mr. Mikheyev against torture by police (Nizhniy Novgorod), the victim's representatives requested questioning of witness V. who could provide information on Mikheyev's bodily injuries. A prosecutorial investigator granted the request, but refused to question the witness himself. Instead, he delegated the questioning to the same police station where Mikheyev had been tortured. The officer appointed to perform the questioning was O. who allegedly participated in the torture. This police officer reported that he had tried several times to question V., but could not find him at his residence. The investigator did not double-check the information received from police officer O. and decided to drop the investigation. Subsequently, V. told Mikheyev's representative that he had never left his residence, being a wheelchair user due to a disability. Someone who introduced himself as investigator had phoned him once saying that he needed to talk to him. V. agreed to answer the questions, but no one called him back, and the expected questioning never took place.

Unjustified delay of investigation

12.29. The law enables prosecutors for prompt investigation of torture incidents. However, human rights organizations know very few cases where prosecutorial bodies found characteristics of crime in

the actions of people guilty of torture, and immediately initiated criminal prosecution, without being urged to do so by the victims or by human rights groups.

Thus, within 24 hours of receiving information from a medical establishment about student Likhachyov who was admitted to the clinic and subsequently died of bodily injuries characteristic of torture, the prosecutor's office in Yoshkar-Ola determined the circumstances of the torture; the perpetrators – police officers of Zarechny Police Station of Yoshkar-Ola - were promptly detained and taken into custody, faced charges and were arrested within the next 24 hours.

12.30. Examples of prompt prosecutorial response to incidents of torture reported by individual citizens and documented by human rights organizations are also rare.

Police officers Ushkov and Khalitov who tortured under aged teenage orphan Pavlov while in a summer camp were convicted within three months of the incident. Criminal investigation opened against them by prosecutorial bodies was promptly and effectively completed within timelines established by law (the Republic of Tatarstan).

12.31. In some cases documented by human rights groups, prosecution bodies failed to investigate promptly enough.

12.32. As mentioned above, in some cases investigators delay taking necessary investigative actions without a good reason, which delays the entire duration of investigation.

For example, for 18 months that elapsed since the start of investigation into Mr. Mikheyev's (Nizhniy Novgorod) torture complaint, prosecutors refused to identify and question the patients and doctors of the hospital where the victim was given medical assistance. By the time prosecutors carried out these actions following numerous complaints by Mikheyev and his representative against prosecutorial inaction, witnesses had forgotten some of the details.

12.33. Besides, sometimes prosecution officers fail to meet legally established procedural time limits. They take ten, rather than three days to review the grounds of torture complaints. Similarly, prosecutors do not always meet the deadlines established for investigation.

The city prosecutor of Pavlovo, Nizhniy Novgorod Region, on three consecutive occasions – on 4, 12 and 24 February - satisfied the requests of his senior assistant of extending to 10 days the deadline for reviewing a complaint made by Mr. Kanakhin (he reported torture by police). The entire duration of this preliminary review was 31 days, although part 3 art. 144 of the Criminal Procedure Code allows extending the deadline for initial decision based on a crime report only once for 7 days (i.e. up to 10 days total).

12.34. Unjustified delays with investigating torture complaints in some cases are due to unlawful decisions of prosecutorial investigators to drop the investigation.

For example, on 3.07.2005, a prosecutorial investigator of Ingodinsky District, Chita, unlawfully suspended investigation into a torture complaint by under aged Golovin. By that time, the investigation had not had enough time to determine all circumstances of the event, so the reasons and possibilities of continuing the investigation had not terminated. All investigative activity was stopped for a month and a half, before a superior prosecution authorities resumed the investigation. No reasons for the suspension of investigation were provided to the victim's representatives.

Biased evidence assessment, unfounded decisions in torture cases

12.35. Analysis of decisions made by prosecution bodies based on findings of torture investigations shows that prosecutorial officers often assume the complaint to be false. Evidence of torture (such as bodily injuries) is sometimes ignored by investigators.

A prosecutorial investigator in Ingodinsky District, Chita Region, unlawfully refused to open criminal investigation on 7 June 2004 into a complaint by Ms Golovina who reported that her son had been beaten by police. In his decision – which was later overruled by court – the investigator concluded that Ms Golovina's plan was "to defame" the police officers. The reason given for this conclusion was that Golovina complained about the police abuse a

month and a half after her son's arrest (to note, law does not establish any deadline for torture complaints).

On 30 December 2002, an assistant prosecutor in Yoshkar-Ola justified his denial of criminal investigation into Mr. Orlov's torture complaints saying that the victim filed his complaint when he faced criminal charges, so his complaint was just a trick to protect himself from prosecution.

12.36. Besides, in some cases prosecutors refuse to believe witnesses who are not from the police and readily accept any statement made by police officers, including those who are identified by the victim as perpetrators of torture. Sometimes prosecution bodies simply ignore evidence supporting the victim's case. Generally, conclusions made by prosecution bodies based on their investigation of torture complaints do not always offer a convincing and consistent picture of events.

The Prosecution Office of Lazarevsky District, Sochi, justified their decision to deny the victim's complaint and argued their case before the court referring only to the statements of police officers Basik and Fomenko who claimed that the victim had beaten himself up, in their presence, in the police station, causing himself multiple bruises of various body parts, breaking his own nose and ribs.

Investigating Mr. Ochelkov's complaint of being beaten at the police station in Zavolzhye, Nizhniy Novgorod Region, the investigator found that nobody had beaten Ochelkov, but the victim hit his head on a bookshelf. The investigator failed to notice that police officers never mentioned the detainee hitting his head. Besides, the investigator ignored the fact that forensic medical experts examining Ochelkov found, in addition to head injuries, numerous bruises on his arms, legs, and torso. It is obvious that these injuries could not have been caused if the victim had only hit his head once on the bookshelf.

Absence of legal remedies against failure to conduct an effective investigation; throwing the victim back and forth between authorities ('ping pong')

12.37. As described above, reviews and investigations of torture complaints are not adequate and are often delayed without sufficient reason. Moreover, inadequate reviews and investigations often result in unfounded decisions denying a torture complaint without sufficient argumentation or evidence.

12.38. Lack of appropriate investigation or review and an unfounded decision to deny a torture complaint can be challenged in a superior prosecution body or in court. Human rights groups point out that in many cases, superior prosecution instances and courts side with the plaintiff, overrule unlawful decisions and send the case file back for additional review or investigation. Frequently these authorities point out specifically what needs to be done in terms of investigation or review. These instructions are not always complied with, additional review or investigative actions are not carried out in many cases, but it does not prevent investigators from making unfounded decisions once again. The applicant would again challenge the unlawful decision; a court or a superior prosecution authorities would agree with the applicant and send the case back. This vicious circle, or 'ping pong' tactics of throwing the victim back and forth between authorities can last for years without final resolution of a torture complaint.

For example, proceedings on Mr. Issakov's complaint of torture by police of the organized crime department in Nizhniy Novgorod lasted for more than three years. Over this time, a number of decisions were taken and then overruled by a higher authority: a decision to deny prosecution and four decisions to drop the criminal case. The process of challenging the unlawful decisions and having them overruled took more time than the investigative actions.

12.39. This 'ping pong' tactics is facilitated by impunity of investigators who fail to comply with rules of effective investigation. Higher prosecutors do not apply supervisory powers given to them by the Federal Law "On the Prosecution Authorities of the Russian Federation" and the Criminal Procedure Code to suppress violations committed by their subordinate prosecutors and

investigators. Prosecutors overrule obviously unlawful procedural decisions and stop at that; by doing so, they avoid their responsibility under the Federal Law "On the Prosecution Authorities of the Russian Federation" to determine the reasons why an investigator or a subordinate prosecutor fails to carry out their duties and make them liable in case of wrongdoing.

12.40. Usually, there is no liability for prosecutorial officials responsible for many unfounded procedural decisions affecting victims' rights. Although multiple violations of people' rights through denials of effective investigation were documented by human rights groups in the Republic of Marii El, the Komi Republic Bashkortostan, Tatarstan, Krasnodar and Perm Krais, Nizhniy Novgorod Region, Chita Region, Orenburg Region, Sverdlovsk and Tver Regions, there were only a few rare cases of investigators and prosecutors being disciplined for repeated unlawful procedural decisions in torture cases. No official data on the number of times superior prosecution instances have detected wrongdoings by their subordinates, and the types of wrongdoings detected, are available to human rights organizations involved in the preparation of this report.

Impartiality of investigation

12.41. The main reason why investigations of complaints against police torture are often ineffective is the prosecution authorities lack of independence.

12.42. By law, the prosecution authorities have dual responsibility for prosecution and oversight of the proper conduct of investigation, inquest, and operative-search activity.[49] As part of their responsibility for criminal prosecution, prosecutors investigate different types of crimes[50] and act on behalf of the state as public prosecutors in court, including cases investigated by other agencies (e.g. police).[51] By acting as public prosecutor in court, a prosecution official builds his/her case on evidence collected through investigation and operative-search (detective) work. By exposing violations (including torture) committed in the course of investigation and detective work, prosecutors challenge the evidence and so undermine their own case in court.

12.43. The conflict between these two responsibilities: prosecution and oversight of the proper conduct of inquest and investigation is resolved in favor of strengthening the case of prosecution in court, rather than looking into complaints brought by suspects and defendants. Interviews with prosecution officials in 10 Russian regions[52] showed that they consider prosecution of criminals to be their main function. As to oversight of the proper conduct of investigation, inquest and detective work, they tend to believe that their main focus should be proper record-keeping and documentation of offences, rather than protecting suspects and defendants from abuse. A number of respondents – prosecution officials - referred with contempt to people's complaints against police, explaining that suspects and defendants use complaints (including complaints of torture and illegal pressure) as a trick to avoid responsibility for the offence or to vent their anger about being prosecuted.

12.44. This problem, inter alia, causes concerns of the Presidential Human Rights Commission. In an explanatory note accompanying a set of reforms designed to improve governmental, judicial and civil society-based ways to ensure compliance by law enforcement and other uniformed personnel with the rule of law and human rights, the Commission mentions the conflict of interests arising from the dual function of the Prosecution authorities and resulting in impunity of torture and other human rights violations.

[49] Art. 1 of the Law "On the Prosecution Authorities of the Russian Federation"
[50] Art. 31 of the "On the Prosecution Authorities of the Russian Federation"; Art. 151 of the Criminal Procedure Code
[51] Art. 35 of the Law "On the Prosecution Authorities of the Russian Federation"; Art. 37 of the Criminal Procedure Code
[52] The interviews were conducted by the DEMOS Center and its partners in the years 2004 -2005 in 10 regions of the Russian Federation.

12.45. We hold that the Committee's recommendation to ensure prompt, impartial and full investigations into many allegations of torture reported to the authorities and the prosecution and punishment, as appropriate, of perpetrators has not been carried out by the Government in full. No measures have been taken to improve impartiality of investigation.

Investigation of torture in penitentiary institutions

12.46. Abuse of prisoners by administration of penitentiary facilities, as a rule, has nothing to do with facilitating criminal investigation. Therefore, we could assume that prosecutors, not being in a chain-of-command type of relationship with penitentiary institutions, and not depending on the penitentiary for their prosecutorial function, should investigate allegations of torture in penitentiary institutions more effectively than complaints of torture by police.

12.47. Similarly to investigations of torture by police, no country-level official statistics are available on investigation of such complaints against the penitentiary personnel. A very small number of human rights organizations in Russian regions have been able to obtain data from prosecution bodies concerning their response to complaints of torture in penitentiary facilities.

A letter from the Tver Region Prosecution Office in response to an enquiry by the Tver Memorial Society said that in the first six months of 2005, prosecutors received 175 complaints against the penitentiary authorities, only six of which were found arguable. According to the Prosecution Office, annually they receive between 15 and 20 applications from prisoners complaining of ill-treatment by the administration of penitentiary facilities. Nevertheless, the Prosecution Office said that in 2002, 2003, 2004, and 2005, no criminal offenses against prisoners' life and health were committed in penitentiary establishments in Tver Oblast. No criminal investigations were opened, and no cases were referred to court.

12.48. It is possible that all complaints of torture or ill-treatment filed by prisoners in Tver Region were unfounded. However, it is also possible that there has been no effective investigation into prisoners' complaints.

12.49. Human rights organizations across Russia have documented a limited number of criminal prosecutions against penitentiary personnel charged with ill-treatment of prisoners and other official crimes. Such cases, however, are rare and substantially fewer than prosecutions against perpetrators of torture in the police.

12.50. A review of concrete examples of prosecutorial response to complaints of torture in penitentiary establishments would be helpful in providing a more accurate picture of investigation practices. However, human rights organizations often lack access to findings of official reviews and investigations and can only make conclusions from official information provided by prosecution offices and from repeat complaints filed by prisoners.

For example, the Movement for Human Rights reports that on 16 September 2002, personnel of SIZO No 1 in Irkutsk beat 53 prisoners during a search. The Irkutsk Region Prosecution Office immediately announced abuse of power by SIZO personnel. They decided to prosecute. However, on 20 September, i.e. four days into the investigation, the Prosecution Office found that the penitentiary staff "used methods of restraint in accordance with the law." It remains unclear how the prosecutors managed to organize questioning and medical assessment of the 53 victims within such a short time - and if they performed these actions at all.

The Memorial Human Rights Commission of Komi Republic reported that the Komi Republic Prosecution Office refused to undertake any serious investigation into human rights violations in the penitentiary. For example, having investigated an incident of prisoner abuse in OS 34/1 penitentiary facilities on 3 April 2003, the Komi Republic Prosecution Office said that the facts of beating following self-infliction of injuries by prisoners were not confirmed. The prosecutors did admit the use of force, but found it acceptable, even though it involved personnel jumping on the backs of prisoners.

12.51. Based on this and other examples of prosecutorial response to reports of torture and ill-treatment in the penitentiary, we can conclude that reviews and investigation of such reports suffer from the same defects as reviews and investigation of police torture. Such reviews are not careful enough, and their findings appear biased and unconvincing. In addition, for a prisoner to challenge an unfounded prosecutorial decision and to insist on proper investigation is even more difficult than it is for a victim of police abuse. A prisoner is under direct control of the penitentiary personnel who can stop any complaints or use pressure against the applicant (see art. 13 of the Alternative report for details on the possibility for prisoners to file a complaint and on the practice of protecting prisoners who complain against pressure and harassment).

12.52. Reasons for ineffectiveness of reviews and investigations into prisoners' complaints against torture, cruel and degrading treatment are numerous. In particular, medical services in penitentiary establishments are not staffed by independent civilian health professionals, but by personnel of the Federal Penitentiary Service who report to the director of their penitentiary establishment. Under the circumstances, we can hardly expect them to document prisoners' injuries promptly and in full at all times. In turn, lack of medical evidence limits the ability of prosecutors to investigate torture in the penitentiary. It is obvious also that collecting witness statements in prison may be challenging. There have been cases of both witnesses and applicants denying their initial statements after a while.

For example, in July 2002, prisoner P. in a Nizhniy Novgorod SIZO told a prosecutorial officer investigating bodily injuries of under aged prisoner O. that he had used violence against O. following instructions of SIZO staff. A few days later, P. sent a letter from SIZO to the prosecutor denying his earlier statement.

12.52. At the same time, besides objective difficulties negatively affecting prosecutorial investigation of torture in the penitentiary, human rights groups have noticed a certain degree of personal bias in the prosecutors - they tend to assume that as long as prisoners are criminals, their complaints are false a priori, and in any case, it does not make sense to care too much about their wellbeing. This attitude, in particular, is reflected in a newspaper article published in Tver; the article featured prosecutors describing their oversight of penitentiary facilities. The article read:

"It is common now to speak from the high tribune about prisoners' rights. A clique of human rights defenders foam at their mouths to describe the atrocities committed behind the walls of penitentiary institutions - as if it is the biggest imperfection of the Russian reality. The hero of the day is someone who has no respect for the law, who has broken social norms, and [they] keep pushing the idea into our minds of how terrible his situation is…."[53]

Investigation of torture in the armed forces

12.53. According to par. 8, art. 48 of the Law "On the Prosecution Authorities of the Russian Federation", "Officers of the military prosecution have the same status as army servicemen, serve in the Armed Forces of the Russian Federation, the Federal Border Control Service of the Russian Federation, other forces, military formations and bodies, in accordance with the Federal Law "On Military Duty and Military Service", and enjoy the rights and social security guarantees established by the Federal Law "On the Status of Army Servicemen and this Federal Law." According to par. 2, art.49 of the RF Law "On the Prosecution Authorities of the Russian Federation", "The payment of remuneration [to military prosecutors] is made by the RF Ministry of Defense, the Command of the RF Federal Border Control Service, other forces, military formations and bodies." So, military prosecutors are closely related to commanders of military units.

12.54. The Committees of Soldiers' Mothers believe that this relationship undermines the military prosecutors' independence and negatively affects the investigation of torture and ill-treatment in the armed forces. The Soldiers' Mothers Committees argue that in most case, prosecutors and investigators of garrison military prosecution offices conduct superficial investigations into servicemen's complaints of torture and ill-treatment in the units. Their decisions based on such

[53] E. Vinogradova. Vskormlenny v nevole ne vsegda oryol// Gorozhanin – 2005, № 174

complaints – in particular complaints of torture at the hands of the officers – appear to depend on the command of the military unit and the garrison who are interested in covering up crimes committed in their units.

12.55. The Soldiers' Mothers Committees, having analyzed torture incidents in the army, identify three most common ways of concealing torture and ill-treatment of servicemen:

- injuries are reported as accidents;
- investigation findings are falsified;
- victims and witnesses are forced to give false testimony about the incident.

12.56. A graphic illustration of the manner in which military prosecutors investigate and military courts pass judgments is the case of serviceman A. Liventsov who complained to the military prosecution authorities of Nizhniy Novgorod garrison against ill-treatment, amounting to torture, by deputy unit commander Major Merzlyzkov, and filed a suit with the military court of Nizhniy Novgorod garrison for compensation of moral harm.

In end-2001, A. Liventsov and filed a suit with the military court of Nizhniy Novgorod garrison for compensation of moral harm, and at the same time reported the offence to the military prosecutor of Nizhniy Novgorod garrison. He reported that Major Merzlyakov subjected him to forbidden and cruel methods of "training and discipline": "On many occasions, Major Merzlyakov threatened me with physical violence, promised that he would lock me up in a mental hospital, forced me to wear a gas mask and a chemical protection suit and to run around the parade ground for two hours, carrying a backpack with seven clay bricks in it… he would grab me by the collar, pull at it, so that I had difficulty breathing, and hit me on the wall 3 or 4 times… in the end of winter Merzlyakov beat me up. Thereafter, I faced continuous threats and offensive language." Seven times, the military prosecutors refused to prosecute, based on merely formalistic reviews in the unit; all decisions to refuse prosecution contained the same formula: "no evidence suggesting that A. Liventsov was subjected to ill-treatment have been found." When Liventsov's representative accessed the findings of these reviews, he found numerous irregularities: all witness testimonies were collected from Liventsov's fellow-servicemen by Major Merzlyakov, the perpetrator; all their statements were identical to a letter, i.e. dictated to them. A total of 19 complaints against actions and inaction of the military investigator and prosecutor were filed with the [military] court. In the course of the proceedings, part of the evidence somehow disappeared from the case file. After four years of prosecutorial reviews and judicial proceedings, in 2005, Major Merzlyakov retired from the military service, avoiding prosecution for offences that he committed in the army. It became known later that deputy military prosecutor in charge of all investigative actions in Major Merzlyakov's case and the commander of the unit where Merzlyakov served were good friends and neighbors; they lived on the same floor of an apartment block in Nizhniy Novgorod garrison. The garrison court denied Liventsov compensation of moral harm, although Liventsov was traumatized by Merzlyakov's 'discipline' to a degree that he needed psychiatric treatment and was decommissioned for mental health reasons.

12.57. According to the Soldiers' Mothers Committees, the military prosecution authorities use a differential approach to the use of torture by conscripts and by officers. Incidents of torture by conscripts are investigated and find their way to court much more often, while cases of torture by officers are in most cases dropped at the preliminary investigation stage "for absence of corpus delicti." Commanders who do nothing to prevent torture in their units face liability only in high-profile cases with strong public resonance.

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Article 13[54]

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

13.1. In 2002 the UN Committee against Torture having considered the 3d Periodic Report of the Russian Federation recommended specifically to ensure the protection of applicants who submitted their complaints against torture and witnesses thereof against persecution.

The right to file a complaint against torture

13.2. The Russian legislation in force grants the right to victims of torture and also the relatives and representatives thereof to file complaints against torture and cruel and degrading treatment to government agencies. In conformity with the Russian legal system such violations generally are deemed abuse of official duties which is subject to criminal liability, therefore according to the tenor of the effective laws, the authorities must consider complaints against torture as information on committed offences.

13.3. The right to file a complaint to government agencies and the right of a complainant to be protected by law against the abuse of officials, as well as the complainant's access to justice are fixed by the Constitutional norms. It is established that each person shall be entitled to protect his/her rights and freedoms in all forms which are not forbidden by law, including application to court, and use of qualified legal assistance, also without any compensation in instances provided for by law. The rights of victims of offences and abuse of power shall be protected by law. The state guarantees that victims shall have access to justice and shall be entitled to compensation of damage inflicted thereto[55].

13.4. The procedure to exercise the rights of an individual to apply to competent government agencies for seeking protection of the rights infringed upon as the result of an offence, and the obligation of government authorities and officials to provide effective protection thereof is stipulated, in particular, by the effective body of laws, specifically by the Criminal Procedure Code, civil law, civil procedural legislation, i.e. the legal framework determining the status, rights and obligations of a number of government agencies[56], and a number of instructions[57] issued by different Ministries and Departments.

13.5. Investigation of crimes (including torture) committed by employees of law enforcement agencies is within the jurisdiction of the prosecution authorities. The Law «On the Prosecution Authorities of the Russian Federation"[58] and the Criminal Procedure Code of the Russian Federation [59]provides broad powers to check information on offences and conduct investigation. The Law

[54] This section of the Report was drawn by the Public Verdict Foundation and DEMOS Research Center. To prepare this section we used information received mass media and NGOs: "Social Partnership Foundation", Union of Soldiers' Mothers Committees of Russia, Nizhniy Novgorod Committee against Torture, Krasnoyarsk Public Committee for Human Rights Protection, Perm Regional Human Rights Defender Center, Kazan Human Rights Center, Yorshkar-Ola organization "Man and Law", Memorial Human Rights Commission of Komi Republic, Mordovian Republican Human Rights Center, Public Problems Research Institute «United Europe», Tver Memorial Society, Krasnodar Organization "Mothers in Defense of the Rights of Those Arrested, Under Investigation and Convicted", Association of human rights organizations of Sverdlovsk region, Chita Human Rights Center.
[55] Articles 17, 18, 19, 24, 29, 45, 47, 48, 50, 52, 53, 55, 56 of the Constitution of the Russian Federation.
[56] Laws "On Police", "On the Prosecution Authorities of the Russian Federation"
[57] For instance, Order #34 of the Prosecutor General of the Russian Federation, dated June 1997 "On the Organization of Work of Units and Divisions of Prosecution Authorities to Combat Crime".
[58] Federal Law of January 17, 1992, #2202-I "On the Prosecution Authorities of the Russian Federation"
[59] Article 151 of the RF Criminal Procedure Code

prohibits to the prosecutors to resend complaints to an agency or an official whose decisions or actions are complained against. The Law establishes that the prosecution bodies shall be obligated to examine the complaint and take a decision regarding each complaint against the offence, including complaints against torture. In conformity with the R Criminal Procedure Code, the prosecution agencies may initiate a criminal case on the grounds of a complaint against torture, same as on the grounds of other information about an offence. If a complaint fails to provide sufficient information indicating to elements of crime, the prosecution agencies may conduct an inspection. The time for inspection established by law shall be three (3) days. In exceptional cases it may be extended up to 10 days. An inspection conducted upon receipt of a complaint about a committed offence in the course of which the decision is to be taken on whether to initiate a criminal case or not, shall be of a preliminary nature. If in the course of an inspection data is received indicating to elements of crime, the prosecution agencies shall take a decision to initiate a criminal case and start investigation. Otherwise, a decision shall be taken to deny initiation of a criminal case.

13.6. In conformity with the effective legal norms the prosecution bodies must provide a motivated response to an application, complaint or any other claim (including complaints against torture). If the complainant's application or complaint was denied, the procedure for the appeal of the decision taken shall be explained to him/her, as well as the right to apply to court, if the latter is provided by law.

13.7. In order to guarantee the right to file a complaint against offence even in those instances when a specific claimant has difficulties to accede prosecution bodies, regulatory legal acts of ministries and departments establish a procedure in accordance with which a person may file a complaint against torture to any law enforcement agency authorized to investigate offences round-the-clock, irrespective of the jurisdiction of a ministry or department this particular agency is in. Rules have been adopted and agreed upon to ensure timely transfer of a complaint against an offence to the appropriate agency (prosecution body) with the account of the jurisdiction thereof.[60]

13.8. The legislation provides for additional guarantees of the right to file a complaint for individuals who are in pretrial detention facilities and, penitentiaries.

13.9. For instance, pursuant to the effective rules applications and complaints of prisoners addressed to a prosecutor, court or other state power bodies exercising supervision over places of penal service shall not be censored by the administration of the respective penitentiaries. On 8 December 2003 new norms were incorporated into the Penal Code of the Russian Federation and Law "On Incarceration of Suspects and Accused", according to which applications and complaints addressed to the Ombudsman of the Russian Federation, ombudsmen in the constituent subjects of the Russian Federation, the European Court for Human Rights shall not be censored. The above new provisions, undoubtedly, facilitate the process of filing complaints, including complaints filed against torture for the imprisoned.

13.10. At the same time, the procedure of filing complaints to supervisory bodies and human rights organizations, the way it is established, does not allow to fully exclude a possibility to interfere into the process by representatives of administration in form of getting themselves familiarized with the content of the complaint and evading from passing the complaints on to the addressees. Under paragraph 91 of the "Internal Rules of Pretrial Detention Isolators of the penitentiary system"[61], complaints and applications of the prisoners are received by a representative of the facility, and it is the administration of the above institutions that forwards complaints of the inmates to the addressees. Insofar, the inmate does not have any feasible opportunity to check the degree of good faith with which the administration of the institution follows the prohibition to

[60] Order of the Office of the Prosecutor general, the Ministry of Interior, Ministry for Emergency Situations, Ministry of Justice, Federal Security Service and others of 29 December 2005

[61] Approved by Order #189 of the RF Ministry of Justice, 14 October, 2005, #39/1070/1021/253/780/353/399 *On the Single Record of Offences*

censor complaints and exercises the duty thereof to send the complaints to the addressees. The procedure for filing complaints by inmates serving sentences in penitentiaries is regulated in a similar manner.

13.11. Apart from complaints to agencies authorized to exercise supervision over penitentiaries and places of custody, inmates have the right to file their complaints to other government agencies and municipal bodies, as well as send the correspondence thereof to their attorneys. According to the effective rules, such correspondence shall be subject to censorship on the part of the administration of the penitentiary. The administration shall consider such reports and forward thereof to the respective addressee no later than three days from the moment the inmate submitted his application or complaint to the administration. Order of the Ministry of Justice #189 of 14 October 2005 approved the new "Internal Rules of Pretrial Detention Isolators of the penitentiary system". Paragraph 96 of these rules incorporates a norm allowing the administration of pretrial detention facility not to forward the complaint to other agencies, if the administration is able to resolve the issue itself. The range of issues to be resolved by the administration is not determined yet. In general such issues may include all complaints (including complaints against torture and cruel treatment) of inmates against administration of the pretrial detention facility on the whole, or its employees. Hence, the above rule provides a possibility to employees who do not exercise their duties in good faith not to forward complaints of the inmates beyond the confines of the detention center. Paragraph 96 specifies that complaints which may be resolved in the detention facility in question may not be forwarded to the addressee with the consent of the author of the complaint. At the same time, there is an impression that the administration of a detention center, should that be necessary, may easily get a formal consent of the inmate who is fully under the control thereof.

13.12. During the reporting period norms were finalized which are related to the possibility of inmates to get responses to their complaints. For instance, on 8 July 2002 by Order 191 of the Ministry of Justice amendments were introduced to the "Internal Rules of procedure of Correctional Facilities" which established guarantees for the receipt and right of keeping responses to their complaints by the inmates, as well as a mandatory time period was established within which the response should be given to the inmate.

13.13. Apart from the possibility to file a written complaint, inmates in pretrial detention facilities and penitentiaries may personally voice their complaint or transfer thereof to officials of the Ministry of Justice or the prosecution bodies who visit penitentiaries to detect and stop violations of law and rights of the inmates.

13.14. As any other citizens of Russia military servicemen have a possibility to file a complaint to the prosecution bodies against offences committed against them. Moreover, the effective legislation contains a number of additional provisions relating to the filing of complaints by military servicemen.

13.15. For instance, pursuant to Article 116 of Chapter 5 of the Disciplinary Charter, in the event a military serviceman files a complaint to the commander (superior), the commander **"should be tactful and attentive in considering the complaint received. He will be held personally liable for the timely examination of the complaint"**. Moreover, under Article 21 of Law #76-FZ "On the Status of Army Servicemen" of 27 May 1998, the person who has suffered from unlawful actions of his fellow servicemen has the right to apply to court to protect his rights and legitimate interests.

Practical possibility to file a complaint against torture; difficulties which occur

13.16. Human rights organizations are well aware of cases when police agents would hinder victims of abuse to filing complaints. Specifically, there were cases when the right to submit was breached in form of direct physical resistance, unlawful administrative detention, and defamation of an individual attempting to file a complaint against torture or cruel or degrading treatment on the part of police agents. The following examples could be given to illustrate the above.

Vidyakin was cruelly beaten up by a police officer Kashin who used an adjustable spanner while beating the inmate. This happened on the police station in Serov (Sverdlovsk Region, the Urals). The goal of beating up Vidyakin was to prevent him from filing a complaint against policeman Yegorov. When Vidyakin was trying to file an application to a territorial division of the Ministry of Interior stating that he was beaten up by policeman Kashin, the officials obligated by law to transfer his application for the examination of the prosecutor, passed the information about the offence to Kashin's superior and took Vidyakin to him. The result was that Vidyakin actually provided distorted explanations of what in fact happened.

In order to prevent Sazhin who came to the Ministry of Interior division of the Komi Republic to file a complaint against cruel treatment which he suffered the day before from the staff of police when he was unlawfully placed to a sobering-up station, he was illegally detained by policemen and forcefully placed to the reception facility where in custody he was kept without being given any explanations for four hours. He was held administratively liable. Only after that could Sazhin file a complaint to the prosecutor about the violence and abuse of the policemen.

In order to avoid Gorbuyal (from Nizhniy Novgorod) and Kuman'kov (from Kazan) filing complaints against being beaten up by policemen, the police falsely accused them of offending and attacking the staff of the police.

13.17. Despite the existence of special guarantees for filing complaints granted to detainees by law, in real life individuals who are kept in custody and isolated from the outside world either face difficulties when trying to file a complaint, or do not have such a possibility at all.

13.18. Individuals placed in pre-trial detention facilities may have problems both when attempting to file a complaint against torture or cruel treatment on the part of the staff of the facility, and the torture committed by police agents prior to the detainee being transferred from a police temporary isolator to the pre-trial investigation centers of the Ministry of Justice. This is accounted by the fact that the temporary isolators (IVS) and the police are within the jurisdiction of one and the same ministry. Most often an IVS is located on the premises of a police unit, while the staff of the police has access to the detainees placed in those cells. An example which illustrates the situation:

Policeman Lapin (the city of Grozny, Republic of Chechnya) trying to prevent Murdalov whom Lapin had subjected to torture, from filing a complaint, made up a false application in the name of the victim, knowingly stating in it other circumstances under which bodily harm was inflicted to Murdalov, also specified other procedural and professional documents, and drove Murdalov away from the IVS "in a direction unknown". The whereabouts of Murdalov and what actually had happened to him have not been established yet.

13.19. It should be noted that the staff of the prosecution bodies who supervise that the rights of the detainees in the IVS be observed, do not always react to the oral complaints of the detainees in the proper manner.

Shishkin in his application describing rough justice he happened to become victim of on 1 September 2003 beaten up by the staff of Avtozavodsky District police station in the city of Naberezhniye Chelny (the Republic of Tatarstan), specified that after the torture he was placed into a cell. There he overheard a conversation between the policemen who decided that they should rather kill him, so that he would have no chance of filing a complaint against torture. After that, twice aiming to suffocate him pushed a rag into his mouth. In an attempt to save his life Shish kin thought it best to pretend dead. His oral complaint against torture which he voiced on 2 September 2003 to the prosecutor remained without any due response.

13.20. Individuals who are in custody in SIZO (pretrial detention centers of the ministry of Justice) and in penitentiaries do not usually have difficulties when filing complaints against cruel treatment which they had suffered prior to the placement in SIZO. At the same time, such inmates sometimes do face difficulties when attempting to file a complaint against the administration of a penitentiary or the staff thereof. Specifically, human rights organizations have received

information from inmates and their relatives that the staff of the penitentiary administration obstructs the process of filing complaints by the inmates.

The inmates of a correctional facility IK-6 (Marii El) complained that the staff of the administration of the above institution would hinder their attempts to send complaints. Heads of the detachments at times fail to register in special log books applications they received from the inmates and addressed to the government agencies, sometimes the deny receipt of such applications altogether.

In January 2004, Yury Kozlov, an inmate in IK-1 in the residential settlement Bolshiye Peremerki, Tver oblast, attempted to send a complaint against the administration of the facility for failure to provide medical assistance to him at the moment when he had a fit of bronchial asthma. The staff of the facility would not send his complaint to the designed address, while Kozlov was placed to a punishment cell for 15 days. Kozlov had to turn for help to his relatives requesting them to file a complaint in his name.

13.21. In the opinion of human rights organizations who visit penitentiary facilities and the work with the applications of prisoners in Tver and Perm oblast and the Republics of Komi and Tatarstan, the inmates have no feasible possibility to file a complaint against torture or cruel and degrading treatment on the part of the administration, though the law prohibits censorship of letters sent by inmates to the prosecution bodies, higher bodies of the penal system and the Ombudsman. In correction facilities, as a rule, all applications and complaints forwarded to the supervisory bodies are searched and examined. Therefore inmates try to submit complaints via unofficial channels (relatives, defense lawyers, individuals released after having served their sentences).

13.22. At the same time, in some regions the administration of penitentiary facilities takes measures to eliminate obstacles set by certain employees of penitentiaries for inmates to file complaints against violations of law.

In correctional facilities in Krasnodar Krai special post boxes were installed for inmates to be able to send their complaints to the Ombudsman.

13.23. The efficiency of intra-departmental inspections in penitentiaries conducted by the Federal Service for Penalty Execution differs depending on the region of Russia. Specifically, in certain regions the Departments of the Federal Penitentiary Service takes measures to get more information, applications and requests from the inmates.

In the Republic of Marii El assistant for human rights of the Department of the Federal Penitentiary Service jointly with the staff of a human rights organizations "Man and Law" (Chelovek I Zakon) inspects on a monthly basis all penitentiary facilities in the territory of the republic and personally receives inmates which allows to get more information on human rights infringements in the penitentiary system and to react promptly to the complaints of the inmates.

13.24. However in some regions it is possible to asses the quality of the departmental control and supervision with regards to the observance of human rights only on the basis of statistical data.

For instance, upon the request of Mordovian Republican Human Rights Center, the Department of the Federal Penitentiary Service in the Republic of Mordovia provided information on the complaints received from inmates and the results of the examination thereof. Over 9 months of 2005 the Department received 160 applications and complaints from inmates against the actions of the staff of penitentiary system, and over the 9 months of 2004 the respective figure was 116. According to the Department, all the complaints and applications were examined and appropriate inspections were held, which showed that the fact stated in complaints were not confirmed.

13.25. In the opinion of "Social Partnership Foundation", an organization which is member of the Public Council under the Ministry of Justice and which regularly visits penitentiaries, the activity of the prosecution bodies exercising supervision over the legality in execution of penalties and legality in pre-trial investigation detention facilities cannot be assessed as sufficiently high. Regular inspections which the prosecution bodies conduct in penitentiary facilities are mostly aimed at

the assessment of the quality of the documentation formalized by the administration of a penitentiary facility. Insofar, what is really happening with the human rights of the inmates remains without due attention.

The low quality of work of the prosecution bodies in exercising supervision over the observance of rights of inmates was brought to light, in particular, in the course of investigation relating to mass protests in correctional facility OX-30/3 in the town of L'gov in Kursk Region. In the night hours of 27 June 2005 over 200 inmates committed self-mutilation. The motive for the deed the inmates gave was the protest against systemic violations of their rights on the part of the administration of the facility. Some time later 100 more convicts joined in the protest, and the total number of applications to the medical unit of the above facility reached 361 people. The Ombudsman and the representatives of human rights organizations, including "Social Partnership Foundation" were involved in the investigation of the case. According to the reports of the "Social Partnership Foundation" log-books were examined where the staff of the prosecution bodies should be making notes regarding their visits to the isolation cells. There was found just a single entry made by an inspecting prosecutor, while pursuant to the law the isolation cells should be inspected on a monthly basis. The only entry was made in June 2005 and stated that no extraordinary events had occurred, despite the fact that 10 days before the entry was made several dozens inmates inflicts knife cuts to themselves, and had there been due thoroughness, the inspecting prosecutor could not have failed to notice that. In the course of investigation of the protests of the inmates a meeting of the prosecutor was held with the inmates. At the meeting representatives of human rights organizations were also present. At the meeting the inmates complained that a number of inmates beats up others upon the instruction of the administration, they also named those who were culpable. However, the prosecutor would not react to these claims; moreover he was aggressive to those who complained.

The results of a survey conducted by the Tver Memorial Society of former inmates who were held in penitentiary facilities of Tver oblast showed that in the course of planned inspections of penitentiary facilities the prosecutor never visited the sectors where inmates lived and never communicated with them. The inspection visit itself would not last long and would finally end in a dinner with the officers from the administration of a penitentiary.

13.26. At the same time, according to the evidence provided by human rights organizations, in certain regions of the country the work of the prosecution bodies on supervision of observance of the rights of the inmates proves to be efficient.

In particular, Krasnoyarsk Public Committee for Human Rights Protection stated that the work of the Prosecution Office in Krasnoyarsk Krai may be deemed satisfactory. The complaints of the inmates relating to serving their sentences and forwarded to local prosecution office were examined, and upon the results of such examinations appropriate measures were taken by the prosecution bodies.

Similar assessment of the activity of Krasnodar Krai Prosecution Office was given by the Krasnodar Organization "Mothers in Defense of the Rights of Those Arrested, Under Investigation and Convicted".

13.27. The above examples show that the efficiency of mechanisms which provide for the possibility for detainees to file complaints against torture and cruel treatment, and other violations committed against them, primarily depend on the good faith and decency of the individual officials who are charged with supervisory functions in the regions. It seems that the system which would ensure the possibility for the inmates to file complaints should be improved to guarantee protection of inmates irrespective of the personal characteristics and convictions of supervising officials.

13.28. Soldiers who served in the army as conscripts also face problems which hinder the process of filing complaints against torture and cruel treatment. These difficulties, however, differ from those faced by inmates, for instance.

13.29. Specifically, a military serviceman does not always have a possibility to file a complaint to the commander of his own unit, since at times the commanders treat cruelly rank-and file soldiers, or they are fairly tolerant to violence among soldiers, considering that kind of behavior as a way to maintain discipline in a unit.

13.30. Using the opportunity to apply to the prosecution bodies, in the opinion of the Committees of Soldiers' Mothers, is significantly restricted by an extremely low level of legal knowledge of rank and file soldiers, and the fear of pressure and persecution in connection with the complaint filed. It should be noted that soldiers fear not only revenge on the part of those who were directly involved in torture or cruel treatment, but the condemnation of their fellow-mates who did not participate in such treatment. The representatives of the Committee of Soldiers mothers note, that the army sub-culture is such that a young soldier who filed a complaint in conformity both the law and the Disciplinary Charter, will assign a nickname of a fink or whistler, and al his fellow mates start treating him as an outcast which makes the service of the soldier morally absolutely unbearable. In order to illustrate the above said, we can provide extracts from a letter sent on 24 January 2005 to the Committee of Soldiers' Mothers in Nizhniy Novgorod by Vladimir Yeremin, a serviceman of military unit 41684 (the city of Podolsk, Moscow Region);

"After that I informed about what was happening [torture and mockery] the deputy commander for education, Mayor Kozek. A document was drafted, but not at once, only on the next day. Nothing was done in this respect, and the fellow-inmates started mocking at me even to a greater extent than before for the mere fact that I told the commander what had happened, they started saying that I an a fink, whistler… No matter what kind of work we would go to, I was forced to work double. The assault and battery started, and mockery again…"

Examination of complaints against torture and cruel treatment: cases of ungrounded denials

13.31. Since torture and cruel treatment are deemed by the Russian laws as excess of official powers punishable in criminal procedure, a complaint against torture should be regarded as information about an offence. If a complaint *per se* and the materials attached thereto indicate to elements of crime, a decision should be taken to initiate a criminal case and conduct investigation aimed at establishing precisely all the facts of the case. If communication about an offence fails to provide sufficient information, the authorized agencies may conduct a preliminary checking to specify the data about elements of crime. An inspection held upon an application stating the offence in the course of which it is decided whether to initiate a criminal case shall be of a preliminary nature. All controversies and inaccuracies detected in the course of inspection must be checked and verified and eliminated in the process of investigation.

13.32. Meanwhile, according to human rights organizations involved in legal protection of victims of violence on the part of police, the staff of the prosecution bodies refuses to initiate a criminal cases, though in the materials of the preliminary checking indicating to elements of crime (for instance, medical records, confirming inflicted bodily harm while an individual was held in custody). Insofar, the officials refer to insufficient data which would confirm the guilt of certain police agents. At the same time, proceeding from the tenor of the effective criminal procedure laws, the data received in the course of preliminary verification should not prove anybody's culpability or unlawfulness of anybody's actions. The culpability of specific persons should be established in the course of investigation.

13.33. Most often unmotivated decisions to deny initiation of a criminal case are cancelled by superior instances. However, in such situation, investigators and district prosecutors conduct another checking instead of initiating a criminal case. Since the staff of the prosecution bodies chooses not to initiate the case, they deprive themselves of a procedural possibility to recover a clear picture of what had happened and eliminate controversies having arisen at the preliminary checking stage. As a result, the situation when a complaint against torture fails to be legally resolved might sometimes last for years and years.

Sentences were delivered on criminal cases charging police agents Garifullin, Smetanin (Tatarstan), Tchetvertakov (Nizhniy Novgorod Region) with official malfeasance relating to

committing acts of violence and inflicting bodily harm to individuals, the policemen were also charged with crimes against individuals, and the sentences confirmed their culpability. However, before starting investigation of the above cases the prosecution agencies would take unlawful orders to deny initiation of criminal cases on the grounds that no elements of crime had been detected in the actions of law enforcement officials. Had the complainants not appealed the decision to deny initiation of the criminal case, the above police agents would have never faced the court and would avoid liability for torture.

The prosecution office of the city of Syktyvkar of the Komi Republic also refused to start a criminal case on the grounds of complaints filed by Sazhin. The grounds for the denial were "absence of elements of crime" in the actions of police agents. When the above decisions were taken it was explained to Sazhin without any proper grounds, that the use of physical force by policemen in the sobering-up stationwas lawful, and accounted for by the actions of Sazhin himself whose conduct was aggressive and who resisted the policemen. All the above procedural decisions relating to Sazhin's complaints were repealed by the superior prosecution office and the court.

Twice would the investigator of Pervomaisky district of the city of Izhevsk issue an order to deny initiation of a criminal case upon the application of Pasynkov in which the latter wrote about bodily harm inflicted to him by the policemen.

In resolving the complaint of Ochelkov who was subjected to torture in police unit for three years starting with 2002, the Prosecution Office of the city of Balakhna (Nizhniy Novgorod Region) issued nine (9) unlawful orders to deny initiation of a criminal case. Each of the above orders was repealed by the above instance. However, despite the fact, the Prosecution Office of Balakhna would fail to take any measures to initiate a criminal case and conduct a full-fledged investigation and would insist in denying the initiation of a criminal case. At the same time, the text of each previous denial would fully conform with the previous one and would not contain any rational, with the exception of the previously stated arguments which the superior prosecution office had already deemed insufficient and not convincing.

13.34. Similar denials to initiate criminal cases also occur if detainees file complaints against cruel treatment and torture on the part of the administration of penitentiary facilities. Insofar, detainees who have suffered from the actions of the administration of such institutions have a lot fewer possibilities to appeal ungrounded denials to conduct investigation, since they run into a lot more difficulties when attempting to file a complaint.

For instance, according to the data of a human rights organization Public Problems Research Institute «United Europe» operating in Oryol Region, in 2005 an inmate C., who was kept in a pretrial detention facility in Oryol filed an application to the prosecution office requesting to initiate a criminal case on the grounds of being beaten up by the SIZO officer. The Prosecution Office of Oryol Region without examining the application forwarded it to the Department of Federal Penitentiary Service. The application though was not examined there either. Only several months later a decision was taken to deny initiation of a criminal case. At the same time, a criminal case was initiated against the applicant himself.

13.35. There is information that there have been insufficiently grounded denials to initiate criminal cases and conduct full-fledged investigation, but at the same time some regions of Russia send single reports that criminal cases were initiated against employees of penitentiary facilities for unlawfully violent actions with respect to inmates.

For instance, Kazan Human Rights Center communicated that in the Republic of Tatarstan in 2005 a criminal case was initiated against two employees of a correctional institution with strict regime on the grounds of violent actions used against inmates convicted on charges set forth in Article 286 para 3 of the RF Criminal Code

13.36. Single and separate pieces of evidence about criminal cases initiated on the grounds of detainees' complaints and data about unmotivated denial to initiate a criminal case does not make it possible

for us to assess the efficiency and the quality of work of the prosecution offices with regard to complaints of inmates against violence and torture.

Access of applicants to investigation

13.37. The Criminal Procedure Code provides to a victim of an offence (including torture) or the representative thereof a possibility to file a motion requesting to conduct certain investigation actions, the right to participate in investigation actions with the permission of an investigator, the right to provide evidence, the right to be notified about decisions taken with regard to the case, the right to familiarize oneself with the materials of the investigation, etc. [62]. A person who filed a complaint against torture or any other offence shall not be automatically deemed a victim. The status of a victim shall be assigned to the person by the order of the investigator.

13.38. Criminal procedural law granted the right to get familiarized with the materials of investigation exclusively to the participants in the criminal procedure, including the victim. This was done in parallel with the norm which relieved the prosecutor and investigator of the duty to provide any
13.39. clarifications on the merits of the case in charge and materials, and provide clarifications to whoever it may be for familiarization, with the exception of instances and in accordance with procedure provided for by the federal laws[63]. This actually restricted the possibilities of a person who filed a complaint against torture to get familiarized with the materials of investigation, in instances when with respect to the complaint a decision was taken to deny the initiation of a criminal case, and the person who suffered from torture was not deemed a participant in criminal procedure (a victim).

13.40. In this connection the Constitutional Court of the Russian Federation in a number of its rulings[64] has recognized that the tenor attached to the above provisions of the law by law enforcement practices, leads in all cases to refusal by the prosecution bodies to provide materials directly pertaining to the rights and freedoms of an individual without due grounds provided for by law relating to the content of the above materials, and thus hinders judicial verification of the motivated nature of such a refusal.

13.41. The Constitutional Court specifically confirmed the right of an individual to freely get familiarized with materials gathered by the state authorities and the officials thereof, and directly pertaining to the rights and freedoms of the individual, unless provided otherwise by federal law, in order to protect the fundamentals of the constitutional system, morality, health, rights and legitimate interests of other persons, ensuring the defense of the country and the safety of the state. Meanwhile, the legislator shall be obligated to guarantee the proportionality of such a restriction to the goals of its introduction recognized by the constitution. The state shall apply only the necessary measures strictly determined by the above goals, not excessive ones. The exercise of the right to appeal certain procedural decisions presupposes that the person concerned is guaranteed the right to get familiarized with these very decisions. Hence, due to the decisions of the RF Constitutional Court guarantees of access to investigation were enhanced.

13.42. Unfortunately, despite legal guarantees of access to investigation there are cases when employees of the prosecution bodies violated the above provisions of the law. Untimely notification of victims and the representatives thereof about decision taken with respect to complaints, including those against torture, or failure to notify them at all, deprives the victims of the possibility to timely appeal illegal decisions taken with respect to their complaints, hinders their access to justice, and actually is a means to conceal the committed violations of the law.

The lawyer Sidorov, representing Ochelkov who filed complaints against torture in police (the city of Nizhniy Novgorod) in 2002 and 2003, had to appeal to a prosecutor of a superior instance against the actions of the prosecution body staff who failed to notify Sidorov about

[62] Article 42 of the Criminal Procedure Code

[63] para 2 of Article 5 of the Federal Law "On the Prosecution Authorities of the Russian Federation"

[64] Ruling of the Constitutional Court of the Russian Federation of 18 February 2000, #3-P and of 4 November 2004, #430-0

the decisions taken with regard to the above complaint. Similar violations were committed by the prosecution bodies in the same region with respect to the application of Folomkin.

Ensuring security of the victim and witnesses

13.43. The national legislation establishes measures to protect victims and witnesses. If there is sufficient information that the victim, witness or other participants in criminal judicial procedure, or the nearest of kin, relatives or close friends are threatened by homicide, use of violence, destruction or damaging the property thereof, or by other dangerous unlawful deeds, the court, the prosecutor, investigator, inquiry body and inquirer shall, within jurisdiction thereof, take security measures with respect to the above persons, specifically: no data about such individuals will be entered into the records, their telephone and other conversations will be recorded, identification of the above persons shall be conducted in conditions excluding visual observation of the identified by the identifying person, the court session shall be held in camera, questioning in court shall be organized without public disclosure of the real data about the personality of the witness in conditions excluding a possibility of visual observation of the witness by other participants in judicial proceedings, and also personal guards, protection of home and property, issuance of special means of personal security, communication and warning about danger, ensuring confidentiality of information about the person under protection, relocation thereof to another place of residence, change of documents, change of appearance, change of place of work (service) or study, temporary placement to a secure place.[65] Persecution in any form is prohibited of those who are suspected in and accused for applying with proposals, applications or complaints in connection with the infringements of their rights and legitimate interests. The officials working in places of detention and culpable of such persecution shall be held liable in conformity with the law.[66]

13.44. However, no cases were recorded by human rights organizations when protection measures were applied with respect to victims of torture, including minors and women, who applied to the prosecution bodies, even when there were sufficient grounds therefore. Information about the personality of complainants and witnesses is not concealed by the staff of the prosecution bodies. The result of it is that fairly often this information becomes available to the staff of law enforcement organizations who are suspected of torture, or their colleagues. Finally, it so happens that a person who filed a complaint against torture, and witnesses become victims of either persecution or pressure on the part of officials who were involved in torture of their fellow-employees. Such cases were recorded specifically by the Kazan Human Rights Center, in Kazan in the Republic of Tatarstan, Yorshkar-Ola organization "Man and Law" in the Republic of Marii El, Association of human rights organizations of Sverdlovsk Region in Sverdlovsk Region, by the Chita Human Rights Center in Chita Region, by the Nizhniy Novgorod Committee against Torture in Nizhniy Novgorod, and other organizations.

The Tver Memorial Society recorded a case when in the course of investigation a case of torture of Ivan Vasiliev, the employees of the Moscow District Police Department in the city of Tver kept persecuting their victim for several months, exerting psychological pressure upon him, and the doctors of the clinic where Vasiliev was treated. All the above actions, in the opinion of the victim, were aimed to obstruct the normal progress of investigation.

In the course of investigation of the complaints filed by minors Petrov and Nuriyev (the Republic of Tatarstan) against torture committed by policemen, some strangers attacked Nuriyev and demanded that he should not go to court. The policeman who was accused of torture in this case would come accompanied by several men to the house where Petrov lived, and the latter had to hide at his friends' place.

[65] Article 11 of the Criminal Procedure Code and Federal Law #119-FZ "On Government Protection of Victims, Witnesses and Other Participants in Criminal Proceedings", dated 20 August 2004.

[66] The Criminal Procedure Code and Federal Law #103-FZ "On Incarceration of Suspects and Accused", dated 15 July, 1995

According to the minors Abrosimov and Tulovchikov (Republic of Marii El), the trainees of the police unit who also participated in torturing them, attempted to bribe the boys in the course of investigation to prevent them from filing complaints.

On the eve of the day when the decision was taken by the court in the criminal case against policeman Kashin who had beaten up Vidyakin, Kashin's colleagues, who worked in the Serov Police Department (Sverdlovsk Region) would come to the apartment of Vidyakin's parents claiming that they were willing to "question" him.

Repeated threats were voiced of giving short shrift to the mother of a minor Golovin (Chita Region) who filed a complaint against the torture of her son. In her job place law enforcement agencies organized an unscheduled inspection, and the people involved in that inspection made it clear to the employer of Golovina that the reason for inspection is her filing a complaint .

13.45. In the above cases, when pressure was exerted upon the victims of torture Petrov and Nuriyev, Vidyakin and Golovin, such pressure became possible not only due to the fact that no protection measures were taken, but also because of the officials accused of torture and cruel treatment had not been dismissed from their positions and stripped of execution of the duties thereof. In general, single cases are known when officials suspected of torture would be dismissed from service, or placed in custody for the term of investigation.

On 20 May 2004 the City Court of Yoshkar–Ola (the Republic of Marii El) upon the motion of investigation agencies applied a restrictive measure in form of placing under custody two police agents who were involved in cruel treatment and torture of Abrosimov, Tulovchikov and Likhachev.

On 28 October 2003, two local residents, Sergei Stepanov and Igor Gudkov were taken to a local police office of the residential center Vershino-Darasunsky of Tungochensky District of Chita Region. For over 9 hours deputy head of the police unit Oleg Ivanov and a criminal investigation agent Yury Knyazev had been torturing them forcing to admit that the committed one of the non-disclosed offences. Two hours later Stepanov died of serious bodily harm inflicted to him. After the criminal case was initiated, both police agents were taken into custody.

13.46. Persons who suffered from torture or cruel treatment on the part of the employees of penitentiaries find themselves even in a more vulnerable position than victims of torture who enjoy freedom. At the same time, in real life due attention is not paid to the protection of detainees who complain of torture and cruel treatment.

The situation may be illustrated by the case of inmate Knyazev. He is one of the inmates of a correctional institution in the town of L'gov who demanded that a criminal case be initiated against the staff of the administration of the correctional facility where he was regularly beaten up. The prosecution office of Kursk oblast refused to initiate a criminal case upon his claim. After that with the assistance of a defense lawyer he applied to the European Court of Human Rights. The complaint was granted priority status by the European Court under Rule 41 of the Rules of the Court, and prior to 20 January 2006 the Government of the Russian Federation was to provide answers to questions set by the European Court. After the complaint was filed to the European Court the employees of the Department of Federal Penitentiary Service in Kursk region were trying to exert pressure upon Knyazev. According to Knyazev, he was repeatedly beaten up. Knyazev and his lawyer filed applications regarding such beatings to the prosecution bodies, however, the initiation of the case was denied. By beating up Knyazev, the employees of the law enforcement agencies were attempting to force him to revoke his complaint from the European Court and to dismiss his lawyer representing his interests. Knyazev did write such a refusal, however, on August 11, 2005 when his lawyer visited him in the pretrial detention facility of the city of Bryansk, he requested to notify the European Court that it was a forced refusal which was the result of torture and requested to examine his complaint submitted to the European Court.

13.47. It seems that the authorized agencies in the Russian Federation should pay more attention to the protection of victims and witnesses of torture against possible pressure and persecution, particularly in those cases when witnesses and victims are in custody. Today fear of persecution and lack of practical experience in protecting the complainants results in a situation that detainees often do not use their right to file a complaint which is granted to them by law.

13.48. According to the staff of Committees of Soldier's Mothers, only very few out of thousands of military servicemen who were subjected to cruel treatment in the army, enjoy the right to file a complaint, and the main reason for that is that the fear of revenge on the part of soldiers and officers, against whom the complaint was filed.

13.49. Law # 119-FZ of 20 August 2004 "On Government Protection of Victims, Witnesses and Other Participants in Criminal Procedure" offered methods to protect military servicemen – victims and witnesses of offences – against pressure. For instance, Article 13 of the Law establishes the following measures of protection:

1) sending away the protected person to another military unit, other military institution;

2) the transfer of the protected person to a new location of service, including a military unit or military institution of another federal executive power body in which military service is provided for by the Federal law upon agreement between respective officials of federal executive power bodies);

3) sending away or transferring a military servicemen as a conscript who may be threatening a person under protection to another military unit or military institution.

13.50. However in real life, investigation agencies do not always resort to such measures, even if there are requests to do so on the part of victims or witnesses of torture or cruel treatment.

For instance, Yury Nikolayev, a serviceman on active duty, was denied measures of protection. It follows from his application filed to the Committee of Soldiers' Mothers in Nizhniy Novgorod that his fellow serviceman K. inflicted serious bodily damage to him. An investigation was started of the case. While Nikolayev was undergoing treatment in a military hospital, his fellow servicemen came to visit him and threatened to give short thrift to him if K. would be prosecuted in criminal procedure. Nikolayev was transferred to Yaroslavl for further medical treatment. However, upon completion of the treatment course he was obligated to return to military service. In the Office of Military Prosecutor of the city of Yaroslavl, Nikolai wrote an explanatory note and requested not to send him to the military unit where he was subjected to cruel treatment. However, on 14 May 2005, Nikolayev received an order in the prosecution office to return to his former unit.

13.51. We believe that just as in the above cases with inmates the authorized power bodies should be more attentive to the issue of protecting military servicemen and apply more actively measures of protection provided for by the Russian legislation.

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Article 14[67]

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as

[67] This section of the Report was drawn by the Public Verdict Foundation. To prepare this section we used information received mass media and NGOs: Nizhniy Novgorod Committee against Torture, Krasnoyarsk Public Committee for Human Rights Protection, Perm Regional Human Rights Defender Center, Kazan Human Rights Center, Yorshkar-Ola organization "Man and Law", Memorial Human Rights Commission of Komi Republic, Mordovian Republican Human Rights Center, Public Problems Research Institute «United Europe», Tver Memorial Society, Krasnodar Organization "Mothers in Defense of the Rights of Those Arrested, Under Investigation and Convicted", Association of human rights organizations of Sverdlovsk region, Chita Human Rights Center.

full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

Rehabilitation of victims of unlawful criminal prosecution and its correlation with rehabilitation of torture victims

14.1. In par. 121-124 of its 4th Periodic Report, the Russian Government described, as evidence of its compliance with Art. 14 provisions, the rehabilitation procedure under Art. 133 of the Criminal Procedure Code, and provided an example of this rule being applied by a court.

14.2. While admitting the importance of integrating these provisions in the Russian law, we nevertheless need to mention that they have virtually nothing to do with what is understood in the modern world by rehabilitation of torture victims. By rehabilitation, the Russian Criminal Procedure Code means the procedure of restoration of rights and freedoms to someone unlawfully or unjustly subjected to criminal prosecution (criminal charges, conviction, arrest or other restrictions). This procedure provides for compensation of material damage caused by unlawful criminal prosecution and redress of moral harm (including official apologies brought to the victim by the prosecutor on behalf of the state, and sending written messages, within a legally established short timelines, about the person's acquittal to his/her place of work, study or residence), and restoration of labor, pension, housing-related and other rights.[68]

14.3. However, the criminal procedure law does not mention torture as a ground for rehabilitation. It means that even an officially investigated and proven fact of torture does not entitle the victim to rehabilitation provided in the Criminal Procedure Code. A victim of torture can claim compensation of harm as part of rehabilitation only in case s/he suffered from unlawful or unjustified criminal prosecution, as well as torture. But even in this case, victims are not entitled to compensation of harm caused by torture, but to compensation of damage caused by unlawful or unjustified criminal prosecution.

14.4. The fact that the current rehabilitation procedure provided by law does not include compensation and apologies for torture can be illustrated by examples:

On 12 October 2004 and on the following days, Mr. Maininger detained under administrative procedure, was subjected to physical and mental pressure (torture) by police agents in Komsomolsky District Police Department, Togliatti (Samara Region), to force him to confess to murder of Mr. S. Than Maininger had been prosecuted for murder but the court acquitted him. The court also awarded Mr. Maininger monetary compensation to be paid by the Federal Ministry of Finance under the rehabilitation procedure to compensate for the false charges and the year spent in custody in the pre-trial detention, calculated as lost salary income. However, the court did not award any compensation for torture, because it is not provided for in the rehabilitation procedure.

14.5. Besides, experience shows that in cases where victims of torture could, in principle, expect rehabilitation for unlawful criminal prosecution, competent authorities sometimes fail to suggest that they benefit from this procedure.

Teenagers Petrov and Nuriyev were suspected of theft, prosecuted and detained. Later it was determined that Petrov and Nuriyev were prosecuted on the ground of false confession forced under torture. Therefore, on 20.05.2003, the police investigator in Sovetsky District, Kazan, made a decision to drop criminal charges against Petrov and Nuriyev and lifted the measure of restraint. However, the investigator failed to recognize their right to rehabilitation under art. 18 of the Criminal Procedure Code.

14.6. As to programs of medical, psychological and social rehabilitation of torture victims, Russian authorities do not implement or finance them. Some efforts to offer medical, psychological and

[68] par. 34, art. 5 and chapter 18 of the Criminal Procedure Code.

social rehabilitation to torture victims are made by NGOs supported by private donors and the UN Voluntary Fund for Torture Victims.

The right of torture victims to compensation, and access to compensation procedure

14.7. If no criminal proceedings were instigated or conducted against a torture victim, s/he cannot access rehabilitation procedure. Should this be the case, compensation of damage is not regulated by specific legal norms on rehabilitation, but rather, by general legal provisions on liability that arises from causing harm to someone.

14.8. Thus, constitutional norms[69] and federal laws guarantee everyone the right to compensation by the State of any harm caused by unlawful actions of public authorities or officials. Any harm inflicted on a person or personal property must be compensated in full. The court also may obligate the perpetrator to provide pecuniary compensation of moral harm caused to the victim - and moral harm is defined by law as physical or mental suffering. Any harm inflicted on a person by unlawful action or inaction of government authorities or officials must be compensated from the Federal Treasury, the treasury of the RF subject (region), or a municipality.[70] The same general rules are applicable to torture victims.

14.9. The law provides for procedures for compensation claims as part of criminal and civil proceedings. In criminal proceedings, it is possible to claim compensation for the harm caused by the criminal offence. Besides, a compensation claim can be considered by court as part of criminal proceedings.

14.10. So by law, a torture victim can claim compensation as part of criminal proceedings instigated against public officials guilty of torture. This claim can be considered by court in conjunction with the criminal proceedings and adjudicated at the sentencing stage. No statute of limitation applies to the possibility of bringing such a claim and its admission by court. The plaintiff in criminal proceedings does not have to pay stamp duty when bringing his/her claim. Because the right to bring this claim is associated with a crime committed against the plaintiff, the burden of proof lies with the public law enforcement agencies - meaning that the entire base of evidence obtained through official investigation of a crime also supports the claim.[71]

14.11. Bringing a compensation claim as part of criminal proceedings is preferable for victims of torture. In such cases, the state, as well as the victim, is the prosecuting party, so it does not interfere with, and even assists the victim in accessing compensation. However, a torture victim can bring a compensation claim as part of criminal proceedings only if the authorities have investigated the allegation of torture and decided to bring criminal charges against the public officials guilty of torture. If for whatever reason there was no effective investigation of torture allegations, the victim cannot access the procedure of compensation described above.

14.12. As noted above, a victim can also bring a civil claim for compensation. It can be done, inter alia, following the completion of the criminal proceedings, if the civil suit for compensation was not brought during consideration of criminal case. In this case, the State is the responding party in civil proceedings. So a torture victim must independently, without assistance of authorities, prove the circumstances s/he refers to as grounds for his/her claim for compensation. According to established rules of evidence, any circumstances established earlier by an effective court judgment do not have to be proven again and cannot be challenged. The court's judgment in criminal proceedings involving a determination of whether the offence took place and whether it was committed by the person in question is a pre-requisite of any civil proceedings. All other facts need to be proven according to general rules.[72] So if there is a verdict determining the guilt

[69] Provisions 17, 18, 21, 23, 46, 52, and 53 of the Russian Constitution.
[70] Art. 151, 1064, 1069 of the Civil Code.
[71] Art. 44 of the Criminal Procedure Code.
[72] Art. 3, 56, 61, of the Civil Procedure Code.

of a specific official in inflicting torture, the only thing that the torture victim has to prove in civil proceedings is the amount of harm caused.

14.13. Although an effective verdict with regard to specific parties guilty of torture should substantially relieve the burden of proving a civil claim, courts in such cases have not always satisfied the torture victims' claims for compensation.

On 16.12.2004, Privolzhsky Distict Court in Kazan wrongly denied a civil suit brought by Ionov to the Ministry of Finance of Tatarstan for compensation of harm caused by torture. The fact of torture and the specific policeman who perpetrated it were determined by an effective court ruling on criminal case. The court considering the compensation claim said that the Treasury of the Republic of Tatarstan should not be held responsible for the actions of a policeman, because the policeman who used excessive force against the victim exceeded his power under the law. In fact, this was exactly the reason why the government was obligated to compensate for the harm. Subsequently, the denial of Ionov's claim was overruled by a superior court.

14.14. In cases where the fact of torture and the specific perpetrator have not been established in the frame of criminal procedure, a torture victim formally can also seek compensation. However, in this case, the victim faces the challenge of independently collecting evidence of torture, proving the guilt of the public officials and the causal relations between the torture and the material and moral harm caused to him/her. Moreover, if there has been investigation into the torture complaint which failed to determine the fact of crime, the torture victim will have to challenge it. An award of compensation is unlikely in this situation, however. Human rights organizations in 11 RF regions (the republics of Marii El, Komi, Bashkortostan, Tatarstan, Krasnodar and Perm Krais, Nizhni Novgorod, Chita, Orenburg, Sverdlovsk and Tver Regions) have not observed a single case of torture victims seeking compensation in court following a denial of criminal prosecution of specific culprits.

14.15. So, the likelihood of a torture victim being awarded compensation depends almost entirely on an effective investigation of the torture complaint by prosecutorial bodies. The practice of ineffective and lengthy investigation of torture complaints (see Art. 12 and 13 of this Report for details) is an important barrier faced by torture victims in accessing compensations.

The practice of compensation awards in torture cases

14.16. As mentioned before, if a torture victim has been successful in having his/her complaint investigated and the guilt of specific public officials determined by court, then, as a rule, s/he can expect to be awarded compensation either through criminal or through civil proceedings. Analyzing judicial awards of compensation to victims of torture and ill-treatment, we note a tendency in recent years of increasing the amounts of compensation awarded for material damage and moral harm. It is possible that the observed increase in compensation awards shows better awareness of such serious violation of individual rights and liberties as torture. On the other hand, the observed increased may be due to the overall better standards of living in Russia.

14.17. According to the data available to the Public Verdict Foundation concerning judicial awards in 2004 – 2005 of compensations to 15 torture victims or their families (if the victim died) in Kazan, Nizhniy Novgorod and Yekaterinburg, and in Chita region the awards varied, depending on the nature and seriousness of harm between 7 and 280 thousand rubles. The courts' practice of determination of the compensation amount has been inconsistent.

A compensation of 100,000 rubles to be paid by convicted police officers was awarded to teenage torture victim Pavlov, while under aged victim Petrov in a similar situation was awarded 80,000 rubles to be paid by the regional government (Kazan, the Republic of Tatarstan).

In Marii El Republic, the city court in Yoshkar Ola ordered the local authorities to pay 280,000 rubles to Ms Likhachyova, mother of a young man who died of torture in a police station.

Ms Kabakova (Chita) was awarded 200,000 rubles as compensation for moral harm caused by the beating and the resulting death of her son, to be levied on the police officers. However, in the same city of Chita, another plaintiff, Ms Stepanova was awarded a compensation of moral harm caused by the death of her brother as a result of injuries caused by torture, in half the amount, namely 100,000 rubles. The Chita Human Rights Center observed that the compensation awarded to Stepanova seems insignificant as compared to the compensation of moral harm awarded by court to two police officers for an untrue publication about them in a local newspaper – the policemen were awarded 70,000 rubles each.

Problems with enforcing compensations awarded by courts

14.18. We should note that torture victims awarded compensations of material and moral harm face substantial difficulties with enforcing their payment. There is no doubt that the practice of enforcing judicial awards of this type is not consistent with art. 14 of the Convention.

14.19. It is important to emphasize that problems with enforcing compensations awarded by court are due to defects of the current legislative provisions on execution of judgments.[73] The established legal procedure of obtaining compensations from state or municipal budgets (and compensations to victims of torture, according to current law and jurisprudence, are levied, in the first place, on the government) forces the victim to file all needed paperwork to the government bodies responsible for making the payment from the respective budget. Then the only thing left for the applicants to do is to wait for the payment. S/he cannot access the services of court bailiffs or forcibly execute the judicial award. As a result, applicants, including torture victims, cannot access their awarded compensations within reasonable timelines.

14.20. According to human rights organizations, in 2003-2005, in a number of instances, including awards to torture victims, court bailiffs have argued, with reference to Russian laws, that it is impossible to execute the awards, and sent the writs of execution back to claimants explaining their right to serve the writs to the Russian Ministry of Finance independently.

14.21. In June 2005, the Russian Constitutional Court found that a plaintiff should not be at a disadvantage just because they sue the public authority, rather than a private party, and that government authorities cannot justify a failure to execute a court judgment by saying that they do not have funds budgeted for it. As a result, the Constitutional Court found the current procedure of collecting due compensations unconstitutional and invalid starting on 1 January 2006.[74] We have not had any information concerning a new practice of paying compensations to victims.

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Article 15[75]

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

15.1. The requirements of Article 15 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment imply not only the establishment of a related norm in national laws of the Convention member-state, but also the adoption by said state a set of measures that would ensure maximum adherence to that norm. In particular, the national law

[73] Certain provisions of the federal laws on the 2003, 2004 and 2005 federal budgets, and the RF Government Decree "On the Procedure of Execution, by the RF Ministry of Finance, of Judgments on Claims against the RF Treasury to Compensate for the Harm Caused by Unlawful Actions (Inaction) of Public Authorities or Officials."
[74] The Constitutional Court ruling of 14 July 2005, N 8-P
[75] This section of the Report was drawn by the Perm Human Rights Center

should provide with the mechanisms (procedures) that would *de juro* and *de facto* allow to exclude any statements made as a result of torture from the trial.

15.2. The Constitution of Russian Federation (adopted on December 12, 1993) and the Criminal Procedure Code (adopted on December 18, 2001, took effect on July 1, 2002) both contain an absolute ban on using any statement made as a result of torture as evidence in trial (article 21 and part 2 article 50 of the Constitution; article 9 and article 75 of the CPC). Compliance with this ban is ensured in the following way:

15.3. If – during the trial the side of the prosecution presents material evidence, which can be classified as a confession statement from the defendant, and the side of the defense (defendant and the lawyer) maintains that this evidence was received under torture, the court must investigate the matter and decide about the admissibility of that evidence. According to article 14 of the CPC (presumption of innocence), the prosecutor must present proof to overcome the statement about torture, while the side of the defendant has the right to present proof in favor of that statement.

15.4. At the same time, as stated in article 144 of the CPC, the prosecutor should record the statement about torture and ensure the check up – that is, treat this statement as a communication on a crime. The check up should be carried out by the specifically appointed employee of the prosecutor's office, usually an investigative officer. If there has already been a check up on the similar statement from the accused, no other check up is required. If – during the check up process – the necessary data is collected that points to the fact of torture, there should be issued a court order to launch a criminal case, a pre-trial investigation should start. In the opposite case – a court statement should be issued to deny the request to launch a criminal case. The report on the check up should be presented by the prosecutor to the court so that the latter could consider it and decide about the admissibility of the statement on torture.

15.5. Having considered evidence presented by both sides on the statement on torture, the court must either decide that this statement is well-proven or not proven, and rule whether evidence is inadmissible and thus should be excluded from the trial, or admissible.

15.6. If the torture statement was made by the defense as an application to consider inadmissibility of evidence presented by the prosecution, the court judgment should be issued in the form of motivated ruling to either deny or accept the application. At the same time, regardless of the way the defense presents their torture-related argument, the fact of the argument must be addressed in the analysis of presented evidence included in the final judgment on the case (except for the jury courts, in which case no evidence analysis is needed with the sentence).

15.7. This is how the CPC determines the procedure of court consideration of the in-trial statement (argument) on torture inflicted on the defendant. However, to reveal the real meaning of this procedure as a tool (mechanism) to remove any statements received under torture from the evidence, we need to address the practice.

15.8. In actual practice the procedure in question often possesses the following features.

15.9. According to the investigation done by the Prosecutor's Office in accordance with the article 144 of the CPC it's not infrequent when a decree to ignore the criminal cause is issued, stating that the claim of tortures hasn't been corroborated[76]. It is this very resolution to ignore the cause that is brought into court by the prosecutor as the main evidence of the invalidity of the defendant's claim of tortures. Normally in order to protest the defendant's claim of tortures the prosecutor

[76] There is not a single case known to the drafters of this report when the defendant's claim of tortures was pleaded valid after the investigation done by the prosecutor's office and accordingly a decree for initiation of a criminal cause was issued and the investigation of the tortures on the record started.
It's also noteworthy that there is no information about suchlike cases in the Russian Federation
Periodic Report of the Convention Observance. The main drawbacks of the inspections done by the law enforcement agencies addressing claims of tortures are treated the Article 13 of the Report of Russian Non-governmental Organizations.

also vouches for a witness - an officer of the relevant law enforcement agency that dealt with the defendant during the preliminary inquiry process. Considering that torture is usually implemented at the earliest stages of the investigation while the trial of evidence happens no sooner than in six months after the start of the investigation, these witnesses, when examined in court, normally don't remember any detail of their treatment of the defendant. However, as a rule they claim that they didn't apply any illegal measures/retaliations to the defendant and that their treatment of the defendant was uttermost civil. Such evidence is usually considered sufficient by the court to plead the defendant's claim of tortures invalid and denied by the prosecution, irrespective of the degree of cogency of the evidence given by the defense as a justification of the claim of tortures.

15.10. Avoiding suppositions about what the courts are guided by when they consider defendants' claims of tortures in this way, let's list the facts relative to this procedure:

1) courts do not take into account the initially vulnerable state of the victim of tortures, in particular his or her being in full inspection of the law enforcement officers (including those who implemented tortures) during the period tortures took place and long after it.

2) courts often don't take into account the defendant's lack of access to qualified medical and legal assistance;

3) courts don't consider the defendant's and defense's obviously limited power to prove the fact of tortures;

4) courts ignore the aspect whether the defendant was granted effective means of legal defense after his or her claim of tortures, in particular whether the defendant's right to file a complaint was promptly ensured, whether this complaint was inspected swiftly, scrupulously and objectively and whether the resolution issued after the afore-mentioned inspection was well-founded;

5) courts refuse to consider the defendant's claim in question a admissible evidence when supported by the facts pointing at the high degree probability that the defendant was tortured, always demanding that the defense provide persuasive evidence that allows an unequivocal conclusion that the tortures really took place, meanwhile the court evaluates the evidence of tortures provided by the defense according to the same set of stringent rules that are used to prove the fact of a crime, including the rules for evaluation the evidence consequent to the assumption of innocence principle;

6) all doubt of the fact of tortures subsequent upon the evidence provided by the parties is interpreted by the court against the defendant and his claim of tortures.

15.11. The above-mentioned details of the procedure in question refer equally to all regular courts, courts with trial by the jury included. For that matter it should be noticed that contrary to the statement contained in Article 116 of the Russian Federation Periodic Report on the Convention Implementation, the CPC lacks regulations insuring a more scrupulous investigation the defendant's claim of tortures by the court with the trial by jury as compared to all the other courts. In reality the specific character of the trial by jury in the context of the Russian Federation Criminal Procedure Court's procedure in question is as follows. None of the participants of the court proceedings has the right to claim tortures or suchlike – that is, claims, that discredit the competence of the evidence provided by the parties and inspected by the court - in the presence of the jury. For the time when the defendant's claim of tortures is addressed and the admissibility of the evidence is considered the jury leaves the courtroom, and the above-mentioned questions are treated and decided solely by a professional judge taking the chair in this case, in accordance with procedure described above (Article 334, parts 6&7 of Article 335 of the Russian Federation Criminal Procedure Code).

15.12. Thus it has to be admitted that the procedure of answering the defendant's claims of tortures appearing during the trial of a criminal case, prescribed by the current Russian Federation Criminal Procedure Code and the practice of its application in courts doesn't ensure the de jure and de facto possibility of exclusion from the probation the defendant's claims, issued under torture. In reality this procedure is no more than a formal ceremony in the sense that its result is anticipated by all the participants of the court trial. The result is predetermined by the not unbiased attitude of the Prosecution that supports the official prosecution's position against the

defendant in court and at the same time is responsible for verifying the defendant's claim of tortures.

15.13. The foregoing is applicable not only to the treatment of the defendant's claim of tortures by courts, but also to similar claims of the witnesses.

15.14. It must be mentioned in support of the arguments described above that the drafters of the present do not know of any case when the court trying a criminal case considered the defendant's or witness's claim of tortures valid and in that ground excluded the relevant evidence from probation as inadmissible. Also there is no information about such cases in the Russian Federation Periodic Report on the Implementation of the Convention.

15.15. The obvious inefficiency of the afore-described proceeding could be partially compensated by assigning in the Russian Federation Criminal Procedure Code more stringent and unambiguous norms for defining evidence admissibility that would allow to exclude any doubtful claims of the defendant, made during the preliminary investigation of the criminal cause. For instance, taking into consideration that providing the suspect and the defendant with the timely and unimpaired access to qualified legal assistance (the defendant) is an essential measure of torture prevention, it would be reasonable to supplement the Criminal Procedure Code with a legal proposition of the inadmissibility as evidence of any claim made by the suspect or the defendant during the preliminary investigation of a criminal cause in the absence of a defender, and not corroborated by him or her later in the inquiry at court.

15.16. Paragraph 1 part 2 article 75 of the CPC contains a rule of law, according to which evidence given by the suspect and by the accused in the course of the pre-trial proceedings on the criminal case in the absence of the counsel for the defense, including the cases of the refusal from counsel for the defense, and not confirmed by the suspect and by the accused in the court is referred as inadmissible proof.

15.17. In the actual practice of the law enforcement agencies the said norm is interpreted as restrictive. The literal interpretation and application of the rule of law paragraph 1 part 2 article 75 CPC means that it covers only the suspect's and (or) defendant's statements which are inferred (articles 76 and 77 of the CPC) as the information he has provided at the specific and highly regulated by the present CPC procedure as the interrogation of the suspect and (or) defendant. Accordingly the information (statements), reported (made) by the suspect or defendant in the absence of the defender during any other investigation proceedings, provided by the CPC (view of place occurrence, testimony verification at the place of occurrence, identification line-up), as well as in the result of the so called "interviews" or any other circumstances are not covered by paragraph 1 part 2 article 75 of the CPC but nevertheless can be used in the court proceedings.

15.18. Suchlike interpretation of this rule of law paragraph 1 part 2 article 75 of the Russian Federation Criminal Procedure Code reduces its practical application as a means of excluding the suspect's or defendant's statements received under torture from the process of criminal case probation. So the rule of law in question is rather decorative, as its stringent requirements have a very narrow sphere of application, leaving ample opportunities for various statements (acknowledgement of quilt, clarification, explanation etc.) to be used as admissible evidence during the criminal case proceeding while they don't possess the formal features of the suspect's evidence or the defendant's evidence. The law enforcement offices take advantage of this legitimized possibility in order to make up for the lack of evidence against suspects and suspects and defendants.

15.19. Part 3 article 7, part 1 and paragraph 3 part 2 article 75 of the CPC contain a rule of law, according to which al evidence received through violation of the requirements of the present Code is considered inadmissible. In principle this rule provides additional possibilities for exclusion of doubtful evidence from the probation process of a criminal case, including any statement made by the defendant under torture, even if the fact of torture implementation is not sufficiently proved, but there's a sufficient proof of the violation of any other requirement of the CPC.

15.20. But in actual court proceedings the aforementioned rule is also interpreted as restrictive. Not every violation of the requirements of the CPC is considered sufficient to plead the evidence received through violation of some rights inadmissible. Evidence can be recognized as inadmissible only upon violation of the requirements of the Russian Federation Criminal Code resulting in factual violation of the rights of any participant of the legal procedure during the actual collection of evidence in whose behalf a request to admit the evidence in question as inadmissible is filed[77]. Thereat the burden of proving the aforementioned circumstances is assigned on the [arty that has filed a request to recognize the relevant evidence inadmissible. The dominance of this approach in court practice results in the fact that the initial idea of the necessity to recognize evidence received upon violation of the requirements of the that are enacted as received upon violation of the CPC summarily is fully leveled, and the preserved legal possibilities to recognize the relevant evidence inadmissible turn out to be illusive.

15.21. In these circumstances it is to be admitted that the rule of the CPC about the necessity to recognize all evidence received upon violation of the CPC as inadmissible, by implication of law can not be deemed effective as a means of exclusion of the suspect's, defendant's or witness's statements, received under torture, from the probation process.

15.22. The analysis of the provisions of the CPC and their applications in court proceedings reveal the following:

1) the present Russian criminal court procedure lacks any proceeding which allows objectively and impartially to verify a claim of tortures made by a participant of a criminal lawsuit, to establish the fact of tortures and to recognize the corresponding evidence inadmissible on the basis of the facts that are indicative of high probability of tortures;

2) the present procedure of adjudging claims of tortures is quite formal and ineffective, it doesn't comply with article 15 of the Convention, because within the framework of this procedure the final court decision after the scrutinizing the claim of tortures is fully predetermined by the attitude of the prosecution, which caries out criminal prosecution of the defendant and supports the official prosecution, consequently the stated attitude of the Prosecution to the defendant in the matter of tortures implementation cannot be objective and impartial;

3) the special rules of law of the Russian Federation Criminal Procedure Code which define the admissibility of evidence by the sense assigned to them by the legal procedure, do not add to this procedure sufficient security accreditation for the proper fulfillment of the requirements of article 15 of the Convention.

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Article 16[78]

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined

[77] The evidence of such interpretation and application of this rule about the inadmissibility of the evidence received upon violation of the Russian Federation Criminal Procedure Code in courts, and of the support of this approach by the Supreme court of the Russian Federation can be found in one of the issues of the official edition "The Bulletin of the Supreme Court of the Russian Federation // Bulletin of the Supreme court of the Russian Federation. 2004, № 8, page 27.

[78] This section of the Report was drawn by the DEMOS Research Center. To prepare this section we used information received mass media and NGOs: All-Russian Movement "For Human Rights", "Social Partnership Foundation", Union of Soldiers' Mothers Committees of Russia, Nizhniy Novgorod Committee against Torture, Krasnoyarsk Public Committee for Human Rights Protection, Perm Regional Human Rights Defender Center, Kazan Human Rights Center, Yorshkar-Ola organization "Man and Law", Memorial Human Rights Commission of Komi Republic, Mordovian Republican Human Rights Center, Public Problems Research Institute «United Europe», Krasnodar Organization "Mothers in Defense of the Rights of Those Arrested, Under Investigation and Convicted", Association of human rights organizations of Sverdlovsk region.

in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.
2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

Conditions of detention in pre-trial detention centers (SIZO)

16.1. Having read the 3rd Periodical Report of the Russian Federation, the Committee expressed concern about the terrible conditions in the pre-trial detention centers. The conditions are made even worse by the fact that the cells windows are protected by the metal blinds that prevent the natural light and the fresh air from getting into the cells, making ventilation impossible. The Committee recommended improving the conditions in pre-trial establishments so that they comply with the Convention requirements.

16.2. The authorities of the Russian Federation recognized the problem of inhuman conditions in the pre-trial establishments as the most acute one, and during the last four years have taken a number of measures to improve the situation. It must be noted that the efforts made to reduce the number of people kept in custody before trial, the building of the new pre-trial establishments and the repairs of the old ones together with the increase in budget funding for mentioned purposed have brought notable result. Human rights organization visiting penitentiary institutions noted the improvement of the conditions of detention republics of Komi, Marii El, Mordovia and Tatarstan, in Krasnodar, Krasnoyarsk and Perm Krais and in Irkytsk and Orlov Regions.

The Kazan Human Rights Center reports, for instance, that in the Republic of Tatarstan the metal blinds have been removed from all SIZOs windows, which provides the access of natural lighting and fresh air into the cells.

In Republic of Mordovia during the last 2-3 years the new building of pre-trial detention center (SIZO-13/1) was built. The said establishment has cells that accommodate 2-4 people. The cells provide for no less than 4 square meters per person. The establishment is equipped with adequate medical facilities (photoroentgenograph, dental care instruments, etc). The "Social Partnership Foundation" and the Mordovian Republican Human Rights Center mention that in the said establishment the attitude of staff to the detainees have improved considerably.

The Yorshkar-Ola organization "Man and Law" reports that in the Marii El Republic there are less people in the pre-trial detention facilities that it is possible according to the set capacity limit.

16.3. Taking into consideration all the above, it must be noted however, that the flow of information from the authorities, human rights organizations visiting penitentiary institutions, prisoners, their relatives and advocates, testifies that on many parameters the conditions in pre-trial detention centers still do not fully comply with the principles of humanity and respect to human dignity.

The problem of SIZOs' overcrowding still remains

16.4. Despite all the efforts made that were aimed at reduction of the number of the prisoners and building new pre-trial centers, they remain overcrowded and this problem has not yet been completely solved. The authorities themselves point this problem out. Thus, the Prosecutor General of the Russian Federation in his report on the Prosecution System activity in 2004 mentioned that in republics Buryatia, Chuvashia and Tuva, in Nizhniy Novgorod, Moscow and Chita regions as well as in Moscow and St. Petersburg, some SIZOs and cells are still two times overcrowded.

16.5. It is clear that the further actions must be taken to solve the problem of overcrowded pre-trial establishments. On March 17, 2006, Mr. Kalinin, the Director of the Federal Penitentiary Service in annual report[79], said that Service plans further programs on building new SIZOs and reconstructing the old ones. At the same time Mr. Kalinin reported that in the year 2005 the number of people put in SIZO considerably exceeded the forecasted figures and that by the end of the year the number had increased by 15 thousands people. According to his information, the intensive growth of the number of prisoners in SIZO will continue into 2006 – during January and February of 2006 it increased by 5-6 thousand people. Mr. Kalinin expressed his concern about the existing judicial practice when a person is sent to custody for minor crimes. This shows that in order to improve the situation in SIZOs, the Russian authorities must take measures in order to change the existing practices of arrest.

Bad conditions in SIZOs

16.6. In general, when evaluating the results of programs on renovating of old SIZOs and building new ones, one can call them positive, while keeping in mind that they do not solve all the problems of making the pre-trial institutions comply with the health and dignity requirements. All the projects on building new SIZOs and renovating of old ones are carried out in accordance with the current legal norms that state that a sanitary spatial norm per person should be 4 square meters, while the European Committee against Torture maintains that the area per person in pre-trial establishment should be no less than 6 meters. Moreover, the norm existing in Russia is unacceptable because the prisoner spends 24 hours in the cell, except 1,5 hours when they are out for a walk, and the term that the person spends in SIZO may exceed one year.

16.7. However, even the Russian legal standard was not always taken into consideration when renovating the SIZO premises.

*In February 2004, the delegation of the International Helsinki Federation examined the newly renovated cell in Moscow SIZO No.2 (*Butyrki*). While noting the sufficient natural light availability, good ventilation, heating and new furniture, the delegation also noticed that while the area of the room was about 45-50 square meters, there were 22 bunk beds. The size of the room is obviously not sufficient for such a number of prisoners – it will be about 2 meters per person.[80] Besides, despite the fact that the today's procedure requires separating the toilet from the living area by a partition, the toilet nevertheless was still not isolated from the living space.*

16.8. It must also be mentioned that not all the premises of SIZO have been renovated. In the older quarters where prisoners are also kept one can see dirt, cram, lack of fresh air and natural light. This, in particular, was witnessed by a Human Rights Commissar of the Council of Europe during his visit of the Russian Federation in July and September 2004.[81]

16.9. The problems connected with complying with sanitary standards, providing bed sheets, food, medical care still exist in SIZOs.

According to the data from All-Russian Movement "For Human Rights" in SIZO No. 69/1 of the city of Tver the sanitary norms are systematically broken. At the end of 2004 the representatives of this organization visited the SIZO. During the visit they learnt that the light availability of the cells is so poor, that if the person spends there a long time he or she may go blind. The cells are not ventilated. The air in the cells is thick and heavy because, among other things, the trashcans are not emptied regularly.

According to the Tver Memorial Society, which in 2002 monitored the pen itentiary institutions, SIZO No. 2 in the town of Kashin of the Tver Region occupies the building built in 1640; the main building of SIZO No. 1 of the city of Tver was built in 1812; the building occupied by SIZO No. 3 in the city of Rzhev was built in 1880s. The mentioned premises do not comply with today's standards. The food ration of the prisoners is not balanced in

[79] Published at the official Service website http://www.fsin.su/main.phtml?aid=514
[80] Full English text of the Federation's Report on visiting can be found at http://www.mhg.ru/files/knigi/visiting.doc
[81] See CommDH(2005)2, page 35

carbohydrates and proteins. According to the statements from former prisoners, they mostly ate food sent from home or food bought with their own money. In SIZO No. 1 of the city of Tver there are no showers in the cells of both old and new buildings, and there is no hot water as well. The prisoners are taken to bathhouse once a week. The capacity of the bathhouse is limited and insufficient.

Krasnodar Organization "Mothers in Defense of the Rights of Those Arrested, Under Investigation and Convicted", the prisoners in SIZO in the city of Krasnodar suffer from lice and scabies.

Mordovian Republican Human Rights Center while visiting the pre-trial establishments noted the lack of bed sheets.

16.10. Here is a conditions of pre-trial detention described by Pavel Lyzakov, a journalist and chief editor of *Svobodnoe Slovo* (*Free Word*) who had recently been arrested and had to spend some time in Moscow SIZO No.5.:

«They only give you a mattress and a mug with a small plastic spoon. That's it. You are on your own. At the end of January and the beginning of February there it was awfully cold in the cells. There were 23 people in the cell per 14 sleeping places. We had to take turns sleeping on indescribably dirty mattresses. Lice were in almost every cell. It is possible to get rid of them only by washing your clothes all the time, but the water in the cell tap is ice cold and there is no time to boil it for everybody. The walls in our cell were green once. Now they are multicolored, brown in some places and black from soot in others. In some places the concrete is showing. There were writing on the door dated back from 1984.[82.]

16.11. Anna Stavitskaya, the advocate, reports:

«In Lefortovo *SIZO (Moscow) there is no dentist. He comes to SIZO once a month. He can come, drill the hole and then – just leave. And come back in a month to fill the hole up. My client Igor Sytyagin found himself in such situation. How else can you call such treatment if not torture? In SIZO No. 4 in Medvedkovo (Moscow) there is no doctor who can do fluorography. During six months the prisoners were taken to Matrosskaya Tishina [another Moscow pre-trial detention center] to do fluorography. It is done like this. In five o'clock in the evening of the previous day the prisoners are put in a closet where they spend the whole night, then in the early morning they are taken to Matrosskaya Tishina. The whole procedure takes about 15 minutes, but they are brought back only late at night. This means that they spend more than 24 hours without food. It is very difficult to get to visit a doctor. And if you do, the doctor has the one medicine only – a painkiller".*

Situation in correctional institutions

16.12. Human rights organizations note that the Federal Penitentiary Service efforts on improving the condition in correction institutions have brought evident positive results. However the penitentiary system of Russia is huge. It includes more than 800 correctional facilities where more than 600 000 people are kept. The organizational efforts and financial resources spent by the Federal Penitentiary Service were not enough in order to make the conditions in all correctional facilities comply with principals of dignity retaining. The Prosecutor General of the Russian Federation in his report about the Prosecution system Activity during the year 2004 mentioned that prosecutors discovered bad conditions in correctional institutions and gave specific examples.

16.13. The representatives of NGOs that visit correctional institutions note a certain improvement in the conditions of detention and treatment of prisoners. However they simultaneously state that the big number of problems connected with improving sanitary and hygienic conditions, labor conditions, level of medical treatment and food quality still exists and requires further measures to be taken.

[82] *Pavel Lyzakov*, «Prison of Russia», 17.02.2005, http://control.hro.org/okno/pen/2005/02/17-1.php

Premises of correctional institutions

16.14. Human rights organizations visiting correctional institutions, testify that in some of them repairs have been made during the last couple years.

During the last two years in the correctional institutions of the Tver Region the repairs have been started in the living blocks. In almost all institutions the heating system has been repaired. In most correctional institutions the norms of living space per person are complied with.

In IK-27(male colony of general regime) in Krasnoyarsk Krai a privileged regime zone was opened with rooms that sleep two people, single-tier beds, own canteen in the building, showers. In colony in Kansk in September 2005 the new three-story brick school and a wooden church were opened for use.

16.15. However in a number of institutions premises where the convicts live are kept in a very poor condition.

The "Social Partnership Foundation" reports that in Orel region in female correctional colony (IK-6) 1600 people are kept, while the planned capacity is only 910 people. The space available per person is only 2.2 square meters of the living quarters (the number may very depending on the number of people currently serving penalty). In the colony of the town of L'gov of Kursk Region in 3rd troop there were 60 people living in the room with the area of 40 square meters. Almost everywhere the beds were arranged in two tiers.

The "Social Partnership Foundation" whose staff have the opportunity to visit correctional institutions in different Russian regions note that the punishment cells almost everywhere do not comply with national sanitary requirements. Among other things in those premises the temperatures are usually too low and the humidity is too high (for example in one such cell in the female colony near the town of Tosno in Leningrad Region, women try to protect themselves from cold by stuffing the huge cracks in the window frames with pieces of cloths). There is almost no natural lighting and so on.

Sanitary and hygienic conditions

16.16. The article 11 of the Penal Code of the Russian Federation together with the "Internal Rules of correctional institutions of the penitentiary system" expect the prisoners to keep to sanitary and hygienic rules. However there is no statement in the law that obliges administration of the correctional institutions to provide the necessary conditions for prisoners to maintain the hygiene.

16.17. According to reports of human rights organization it is a common practice when in correctional institutions the toilets are situated on special premises separated from the living quarters. They are however very often insufficiently equipped to ensure the prisoners take care of their natural needs without impediment. The norms demand that there should be at least one tap with running water per ten prisoners, but these norms are not always complied with. In some colonies there was not enough taps from the beginning, in some they were broken from heavy use and since that have not been repaired.

The "Social Partnership Foundation" reports that in L'gov colony in the Kursk Region there were 6-8 taps per troop of 120-150 prisoners, which is two times less the maximum permissive norm.

16.18. It is very seldom that in penitentiary institution the location and design of toilets comply with the decency and minimal comfort standards. Very often they have toilets of so-called "Asian-type". The number of actual "holes" is very often less than prescribed by regulations. The "holes" are located opposite each other and do not have any partitions. The toilets are very often located far from the living quarters and are not heated in wintertime. It is inconvenient and can be rather hazardous for prisoners' health especially in the regions with severe climate.

The "Social Partnership Foundation" reports that in Novooskol juvenile colony for girls, there are toilets in the living building, but they have been locked up for the number of years, and the girls are told to use the old-fashioned toilets outside, even in winter times.

Food rations

16.19. According to the approved norms of prisoners' diet, each month the prisoner is supposed to get: 7,5 kg of bread (white and rye), about 4 kg of different cereals, 1,4 kg of sugar, 3 kg meat and fish, 15 kg of potatoes, 0,5 kg butter. In 2005 the norm for meat consumption was increased to 100 grams per 24 hours.

16.20. Federal Penitentiary Service standards presuppose special norms of diet for those suffering from tuberculosis and other diseases that require following specific diet regulations. However the current norms do not presuppose any specific diet norms for those who follow a specific diet because of religious reasons.

16.21. In general the situation with prisoners' diet have improved during the recent years. In some institutions the improvement in the prisoners' diet comes not only from the increase of funding into penal system but also with the active work of the administration of those institutions.

For instance, the Kazan Human Rights Center reports that in the Republic of Tatarstan the problem of providing prisoners with food has been solved and brought in accordance with norms set by the current legislature. It was achieved because of establishing own farms and gardens in the correctional institutions that enable the institutions to produce their own food.

16.22. However despite the introduction of more adequate dietary norms, the quality of food for prisoners leaves a lot to be desired. According to the statements of some prisoners they would not have been able to survive without additional food, that they receive from home or that they buy with their own money in the shops of penitentiary institutions.

Labor conditions

16.23. Legal norms that regulate the labor of prisoners have been improved and became more in accordance with international standards in this area. However the representatives of human rights organizations note that there are still certain contradictions in those legal norms.

16.24. The Article 103 in the Penal Code of the Russian Federation states **"each prisoner is entitled to work at the places designated by the administration of the correctional institutions"**. It also states **"the work activity of prisoners must not interfere with their main task of correctional institutions – to reclaim the prisoners"**. Having stated all this, the Penal Code does not presuppose that the prisoner may be given a choice of what work to do. The Codex also does not mention that that it is a duty of the administration of the correction institution to organize labor in such a way that prisoners may get useful skill or qualification.

16.25. Part 6 of the Article 103 of the Penal Code states that

"Prisoners are forbidden to stop work in order to resolve any work-related conflicts. A refusal to work or cessation of work is considered to be a malignant violation of a set order of penal execution and may lead to penalties and financial liabilities".

16.26. This means that the right of prisoners to defend their rights to have acceptable work conditions or fair pay is limited by the possibility of penalties that may be applied to them.

16.27. According to article 106 of the Penal Code, the prisoners can work without pay for two hours a week in order to improve of the correctional institution facilities. In all other cases the labor of prisoners must be paid for. Article 105 of the Penal Code states that the wage of a prisoner cannot be less than a minimum wage in the country, if the prisoner keeps up with the norms of labor productivity. These productivity norms are set by the administration of penal institutions itself. In practice it leads to understatement of remuneration of labor. The wages of prisoners are

considerably lower than those on the market. It is in many ways caused by the fact that the manufacturing units of penal institutions are heavily taxed, do not have necessary state support and are forced to compete with commercial structures, despite the fact, that unlike usual commercial structures they perform important social functions – that of social adaptation and training of prisoners.

16.28. In accordance with the article 107 of the Penal Code, the means that prisoners earned are spent on their liability payments (children alimony, damage payments caused by the crime). After this the means for keeping the prisoner in a correctional institution are deducted from the wage. The Codex states the limit of such deductions. However big the deductions are, no less than 25% of the wage, pension or other income must be put to the prisoner's personal account. If the prisoner is a male older than 60, a woman older than 55, a disabled of first of second degree, a mother with children in the children institutions of the correctional establishment, than no less than 50 % of the wage, pension or other income must be put into prisoner's personal account.

16.29. As a result the real income of prisoners from their work is laughingly small in a number of regions and institutions:

Staff members of the Perm Regional Human Rights Defender Center have discovered after their visits to correctional institutions of Perm Region, that the wage of prisoners is less than normative minimum wage (which today is 720 rubles). In some colonies situated in Kungur, for instance, the wage today is still 600 rubles. The prisoners work in metal and wood processing shops and sew clothes and linen for their own needs. Very often, however, such productions are unprofitable, and the directors of colonies are powerless to "stretch" the wage of their charges to the one stated in the legislature. The manufactures are choked by taxes, working on their worn out equipment. It must also be mentioned that the price of a minimum set of food products on average throughout Russia equals 34 rubles 73 kopeck per day, while the federal budget allocated only 27 rubles 29 kopecks in 2005. With such a salary, the prisoners enjoy only mere kopecks for food, cigarettes and personal hygienic needs as 75 % of their salary is deducted to pay for their keep.

16.30. In practice the current taxation system of penal institutions and lack of state support of such manufacturing units does not allow to upgrade their equipment and make the working conditions in accordance with current regulations. Human rights organizations receive complaints of unsanitary working conditions and employment injuries in correctional institutions.

The Perm Regional Human Rights Defender Center registered two complaints about industrial injury. The injuries took place in 2002 and 2004. In both cases, the victims were not examined by a doctor right after the accident, which deprives them of the opportunity to receive compensation stated in the law.

Prisoners in correctional institution YU 323/T-2 in the city of Yelets in 2003-2004 complained about the working conditions: the working space was without windows, the ventilation did not work, the air is polluted by dust, there was not enough oxygen which leads to development of lungs and respiratory systems.

Medical treatment

16.31. The medical aid to prisoners is given first of all by the medical staff of correctional institutions and specialized medical institutions under the jurisdiction of penal system. The Federal Penitentiary Service has been making efforts to provide correctional institutions with medical equipment and medicines that increased the level of medical treatment. The considerable progress was made in the battle with tuberculosis. According to the Federal Penitentiary Service data during the past 5 year the number of people sick with active form of tuberculosis decreases twice – from 100 to 48 thousand people.

16.32. Human rights organizations testify that in Krasnoyarsk and Krasnodar Krais, in the republics of Tartarstan and Mordovia, and Orel Region the situation with medical treatment of prisoners is satisfactory.

According to the data from the Public Problems Research Institute «United Europe», in IK-6 in Orel Region the sickbay is better equipped than the regional center hospital.

16.33. At the same time in a number of regions, the level of medical care provided for prisoners is considerably lower than the standards existing outside correctional institutions.

16.34. The Memorial Human Rights Commission of Komi Republic, which representatives visit penal institutions in the Republic give the following characteristic of the medical treatment of prisoners in their region:

«It is clear after the talks with administrations of colonies, medical personnel and prisoners, that there is a number of problems that are similar for most institutions. First of all, there is a problem of medicine supply, number of specialists and equipment. The amount of medicines supplied to colonies have increased, but according to doctors reports it so happens that a particular type of medicine is supplied in a limited amount. To colony No.22 a large amount of psychiatric medicines was delivered, while there was a shortage of antifungal and anti-allergy medicines. There is a shortage of specialists even in specialized colony hospitals. The main reason for this is low salaries, so the specialists do not want to take the job. For example in the colony hospital No. 18 there is no endocrinologist although there is a vacancy. In colony No. 3, where the prisoners ill with tuberculosis are kept, there is no surgeon. During the last two years new equipment was supplied to the Republic colonies. The problems, however, still remain. For instance in colony No. 22 there is no extra dentist chair, the prisoners infected with AIDs are deprived of dental care".

The Perm Regional Human Rights Defender Center made notice about a vacancy of oncologist in regional hospital of MOB-9 in the city of Solikamsk because of low salary.

16.35. Due to the shortage of medical staff, prisoners cannot always get medical help in time.

The Yorshkar-Ola organization "Man and Law" reports that in IK-6 of Marii El republic, the dentist comes once a week and there are lots of complains from prisoners that he cannot cope with the demand for dentist treatment. The prisoners asked to invite the urologist but this request has not been fulfilled yet.

16.36. It is obvious that most problems connected with medical treatment of detainees stem from under-financing, including under-payment of doctors, which makes the job unattractive for more qualified professionals. Part of the problem is that medical personnel of detention facilities are under direct supervision of penitentiary administration. During the 2002 national monitoring carried out by Moscow Helsinki Group and partner organizations, cases of intervening in the work of medical personnel, which in some instances lead to the refusal from medical assistance, were identified.[83]

16.37. The convicted in Russia have the right to call for civilian doctors. However, the civilian specialist can only be invited with the permission of detention ward administration officers.

The Yorshkar-Ola organization "Man and Law" reports that an inmate of IK-6 facility of Marii El republic, R. Zainutdinov, is trying to ask for independent medical examination, and no such permission has yet been issued.

16.38. Moreover, prisoners are to pay for the services of civilian specialists from their own budgets. Naturally, only a small number of prisoners are able to afford that.

Social adaptation of the convicts

16.39. The penitentiary authorities have been paying much attention to implementing various measures of social adaptation of the convicts - particularly of the underage inmates.

[83] http://www.mhg.ru/english/1EBB5B4

16.40. Thus, the access to education (including higher education) for convicts has improved significantly. At the same time, the penitentiary facilities try to increasingly engage the inmates in cultural and educational activities – various contests, competitions, performances, sport tournaments – which help to develop the creative potential of the detainees.

16.41. Within the penitentiary system there were introduced the psychological office and social workers' office. Both units serve to minimize current internal conflicts within detention facilities and to prevent from further outbreaks. At the same time, according to the Federal Penitentiary Service reports, in 2005 the penitentiary employed the total of 1300 social workers and 2252 psychologists against the total of 600000 inmates, which gave 460 inmates per one social worker and about 230 inmates per one psychologist. It thus seems unlikely that the current number of social workers and psychologists is sufficient to satisfy the existing demand.

16.42. Unfortunately, the significant efforts of penitentiary administration officers to prepare the inmates for the release and for the re-entering normal life lack support from other public authorities. There are no national projects on re-socialization of the released from correction facilities. Individual humanitarian initiatives tend to cover one aspect of a problem at a time (support in obtaining necessary documents, assistance in looking for work and place to live, support in setting up relationships with the relatives, etc.) are far too scarce for the problem of such a scale. The absence of large and efficient projects of social adaptation for the released increases the risk of recurrent offences.

Situation of the vulnerable categories of prisoners

16.43. While the majority of prisoners experience conditions that can hardly be called 'humane', some specific groups of prisoners are even worse off. Among those groups there are disabled and persons with HIV.

16.44. The "Social Partnership Foundation" reports that no specific facilities are arranged at correction facilities for better handling of disabled persons. While penitentiary authorities have gone a long way to ensure better employment possibilities for the inmates, employment of disabled persons is still a large problem.

Table 4. The number of HIV-infected in detention wards is quite high.

As of	Number of HIV-infected	
	Penal correction facilities	Pre-Tiral detention facilities and prisons
January 1st, 2001	7187	7915
January 1st, 2002	21633	12081
January 1st, 2003	30097	6249
January 1st, 2004	28964	6253
January 1st, 2005	25718	5286

16.45. The identification of the HIV-infected is highly efficient in the penitentiary system. Each new detainee is examined for HIV, and in case the virus is found, the new inmate is prescribed vitamins and special diet. However, the sentence is served in regular conditions, no preferential treatment is practiced in relation to HIV-infected inmates.

16.46. The development of HIV into AIDS is also monitored: the examinations are held every six months. If an inmate is diagnosed with AIDS, they receive the status of 'patients'. In case of severe clinical presentations a prisoner can be transferred to prison hospital. In case of the most severe clinical cases it is possible to apply to court and ask for release. The court then takes into account all clinical data and makes a decision. In practice it often happens that court underestimate the severity of disease.

16.47. Antivirus therapy of HIV-infected inmates is not always carried out, because financial authorities do not allocate necessary funds for purchasing specific medicines.

In 2004 Marii El republic allocated part of its budget for arranging special treatment for HIV-infected in prisons and detention centers. The funds, however, have not yet been transferred.

16.48. According to the law, HIV-infected detainees should be serving their sentences together with other, non-infected inmates - a principle, which had not come into practice until 2005. To avoid discrimination of HIV-infected individuals, the penitentiary authorities are now taking measures to ensure that the HIV-infected detainees are not separated from other inmates. Human rights protection organizations confirm that this is true about Marii El republic, in Krasnoyarsk Krai, Krasnodar and Perm Krais. In Komi and Tatarstan republics, however, the authorities prefer to gather transfer all HIV-infected prisoners to one or two facilities.

16.49. The lack of medical equipment also affects the condition in which HIV-infected inmates find themselves. At some facilities, it is impossible to provide them medical assistance due to the lack of syringes, medical gloves, etc.

16.50. In some cases, the situation of HIV-infected in worsened due to the prejudices carried by other inmates and detention officers.

Thus, the members of the Public Board of the Ministry of Justice while acting upon complaints submitted inspected the treatment of HIV-infected inmates of minimum-security colony in Gorny, Smolensk Region. During the inspection the Board members revealed major violations of HIV-infected prisoners' rights. The diet requirements for them were not followed – they had not been receiving milk for more than six months, instead of meat and normal fish they were regularly served blackish slush of small sprat. There was no place for them in the common canteen, so the inmates had to take meals in the dormitory. They were refused dental treatment. It was required of them to provide their own dental instruments and medical gloves. Vitamins were distributed sporadically. Medicines sent by parents were kept from them for months. The chief medical officer, whose professional duty was to assist them, turned out to be their greatest enemy. If any of the HIV-infected inmates hurt themselves, the non-infected prisoners and also penitentiary personnel would scatter away immediately and refuse to provide first aid. HIV-infected inmates were not employed because of the 'risk of injury'; not being able to earn money meant an almost beggarly existence for those infected. Even a minor offence would lead to incarceration for up to six month, repeatedly. Conditions of incarceration in violated existing norms. Cells were barely lit, and there was almost no ventilation. It is clear that such conditions only worsened the status of the HIV-infected and could lead to serious consequences. It needs to be noted, however, that the reaction of the regional Department of the Federal Penitentiary Service was timely and thorough. When the Board members ran the second inspection of this colony (in a year) they found that a lot of improvements took place. The chief medical officer had been fired.

Temporary detention isolators (IVS) of the Ministry of Interior: conditions of detention

16.51. Apart from pre-trial detention centers (SIZO) operating under the supervision of the Federal Penitentiary Service of the Ministry of Justice, those apprehended and awaiting trial can be confined in temporary detention isolators (IVS) run by Ministry of Interior. According to the law, those detainees can be held in IVS for up to 10 days until they are transferred to pre-trial detention centers. After the transfer has been carried out, the suspects and the accused can be sent back to IVS in case investigation procedures or participation in trial are taken out of town where pre-trial detention centers situated. However term of such removal should not last more than a total of 10 days per months.

16.52. While the authorities recognized the problem of poor confinement conditions in SIZO, and relevant relief measures were launched, the IVS confinement conditions have just recently become the focus of public attention. Partly this stems from a fact that no independent inspectors were admitted to IVS up until 2005.

16.53. According to the authorities and human rights activists, the confinement conditions in IVS are far from humane and are sometimes even worse than those in SIZO. Human Rights Ombudsman is Sverdlovsk Region, Tatyana Merzlyakova, writes in her report "On Violation of Rights of Suspects and the Accused Held in Custody at IVS":

Most IVS are situated in converted basements and semi-basements of police department buildings, constructed in the last century or earlier. The inspection has revealed a number of violations of the Federal Law # 103-FZ "On Incarceration of Suspects and Accused" passed on July 15th1995, and of "Internal Rules of Temporary Detention Isolators" (#950, passed on November 22nd, 2005). The following rights were subject to most violation: the right to receive three free meals a day, the right for medical and sanitary treatment, the right for humane confinement conditions, the right for daily walk.

The inspection has showed that only 16 regional IVS provide the inmates with three meals a day, 4 IVS – two meals a day, the remaining 28 IVS only provided one meal a day. Individual beds are only provided in 34 IVS of the region, the inmates of the remaining IVS sleep on timber decks in the cells. Bedding and bedclothes are absent in 20 IVS; 17 IVS provide with mattresses, blankets and bedclothes. Other IVS (with the exception of Artinsky and Ivdelsky police departments, where the inmates have access to both bedding and bedclothes) provide for either bedding or bedclothes. The normative requirements stating that each cell must be equipped with a table, benches, a food cabinet, a lavatory, a running water tap, a barrel with drinking water and a radio-set are not followed. There are none of the aforementioned items in 27 IVS of the region. Such conditions make it impossible for the inmates to prepare for the trial, write an appeal or a letter, let alone have a proper meal. There are no radio-sets in 10 regional IVS; only 23 IVS are equipped with electrical outlets; 8 IVS provide no periodicals and 9 IVS don't stock boarding games. There are no sanitary inspection rooms in 40 IVS and no disinfection plants in 44 IVS; 25 IVS lack infirmaries and medical equipment. This means that almost none of regional IVS has necessary sanitary and medical facilities, which should prevent the spread of contagious diseases.

The inspection of technical facilities of IVS, field trips and inspections showed that 30 IVS fail to arrange daily walks for the inmates (including women and underage inmates) due to either absence of courtyards or improper security arrangements in them. Kushvimsky and Krasnoufimsky IVS are understaffed, and the convoy officers are busy at the trials, so the inmates are denied their daily walks.

Kamensky-Uralsky, Pervouralsk IVS, IVS of Asbestovsky, Achitsky, Kirovgradsky, Krasnoufimsky, Neviansky and Rezhevsky police departments are overcrowded with inmates, which leads to the violation of '4 meters of personal space per inmate' regulation.

16.54. The Memorial Human Rights Commission of Komi Republic reports about the confinement condition at IVS of Korterossky police department of Komi Republic:

The inmates are not provided with individual sleeping places and have to sleep in turns, sleep on the floor or sleep in sitting position. There are no bedclothes or bedding for the existing sleeping places. The inmates do not have any possibility to take any form of washing, as there is no running water – even cold – in the cells. There are no shower-rooms in the building. Walks are scarce due to the lack of convoy personnel. Cells are not equipped with lavatories; the inmates have to relieve themselves into portable barrels, which account for the perpetual heavy smell in the cell. As all cells are overcrowded and there are no walks, the inmates inform that chlorine disinfections are carried out in their presence. The walls and floors of the cells are dirty and covered with soot. As the windowpanes are missing, the windows are boarded on the outside and covered with iron shields on the inside. The only source of light is the 40 watt ceiling lamp. Broken windows and no heating mean that the temperature in the cells never rise higher than 5-10 degrees Centigrade. It is forbidden to wear outer clothing, so inmates are always cold. The infirmary lacks necessary medicines.

16.55. Similar problems were revealed during the visit of 10 IVS of Perm Region by the workers of the Perm Regional Human Rights Defender Center.

Conditions in accommodation and holding centers for immigrants[84]

16.56. Russia has two types of institutions for immigrants: temporary accommodation centers for those whose status is pending, and detention centers where immigrants await expulsion.

Temporary accommodation centers

16.57. There are only three institutions termed ***temporary accommodation centers for immigrants*** and controlled by the Federal Migration Service: "Ocher" (the city of Ocher, Perm Oblast); "Goryachy Klyuch" (the city of Goryachy Kluych, Krasnodar Krai); and "Don" (the city of Sinyavskoye, Neklinovsky District, Rostov Region).

16.58. The centers were set up in 1996 pursuant to the Regulation of the State Sanitary Epidemiological Surveillance Committee of 12 January 1996 (# 1) and intended to provide temporary accommodation to foreigners, stateless persons and refugees for periods ranging between a few days and three months pending their legal status determination or their exit, if in transit.

16.59. Living conditions in the centers are fairly acceptable, but they can only accommodate up to 500 people and they are almost empty anyway, because asylum seekers are not referred to the centers – a trend consistent with the overall policy of denying asylum.

16.60. The three centers currently accommodate a total of 180 people. The "Don" center was empty for a while, and is now being renovated. The only person living there is a Georgian named Maskhulia, with pending appeal against loss of status. "Goryachy Klyuch" does not have residents except a small staff. The remaining 179 whose status is pending live in "Ocher"; 15 of them appeal their loss of temporary asylum. "Ocher" can accommodate more than 300 people, but it is not used to capacity, because immigration authorities are reluctant to refer people, and some refugees refuse to go there, fearing the cold northern climate.

16.61. Most asylum seekers are left to fend for themselves. They are not encouraged to go other regions, so they can spread more evenly across the country. Those who come by air usually stay in Moscow and apply to Moscow and Moscow Region immigration authorities. None of them can legally get employment, access education and health care (except emergencies); they are not entitled to pensions or childcare allowances.

Detention centers for immigrants awaiting expulsion

16.62. By par. 5, art. 32.10 of the Code of Administrative Offences, an immigrant can be taken into custody awaiting expulsion pursuant to a court ruling.

> **"Article 32.10. Procedure for enforcement of rulings on administrative expulsion of foreigners and stateless person outside the Russian borders.**
>
> **5. A foreigner or stateless person awaiting administrative expulsion outside the Russian borders can be held, subject to a judicial order, in specialized facilities provided for by art.27.6 of this Code."**

16.63. As we can see, the law fails to specify the circumstances warranting detention of a person to be expelled, while the duration of custody can be unlimited pending expulsion, which in unacceptable. Some people spend years in detention. Designed as an injunctive measure, it

[84] This section of the Report was drawn by the Civic Assistance Committee and the Memorial Human Rights Center. All data for this section of the Report was collected by the Civic Assistance Committee and the Memorial Human Rights Center while visiting accommodation centers for asylum-seekers, detention centers for migrants, and from interviewing people who access the services of the Civic Assistance Committee and the Memorial Human Rights Center's Migration and Law Network.

amounts to punishment in the form of unlimited incarceration, often far exceeding the 30 days maximum allowed for administrative arrest used as punishment for offences.

16.64. We should also note that the number of judgments prescribing expulsion exceeds by 15-20% the number of people who actually get expelled. Some of those awaiting expulsion who are not arrested bribe themselves out, so their expulsion is not enforced; they stay illegally in Russia, losing all available means of legalizing their presence.

16.65. Over the recent two years, Russian regions have been actively setting up new centers for immigrants awaiting deportation or expulsion. There are no formal laws or regulations defining the legal status of such detention facilities. They are established pursuant to decisions of local executive officials. There have been numerous proposals to amend the Code of Administrative Offences to provide for such centers, but the State Duma has not adopted any yet.

16.66. One such center in the village of Severny near Moscow has been operational for a long while as a place of detention for people awaiting expulsion pursuant to rulings of Moscow Region courts. Living conditions in the center are abhorrent: humiliating treatment (detainees are searched at admission; they are not allowed to possess pens and paper, to make phone calls, to send and receive letters); shortage of sleeping accommodations, no bedding, and no possibility of taking a shower. Only 12 rubles per person per day is budgeted for food; the food is not only scarce, but of very poor quality. There is not enough spoons, so detainees use bread crusts instead of spoons or lap up the food with their tongues.

16.67. In other regions, living conditions in holding centers are even worse, and some detainees even lack mattresses for sleeping.

16.68. As their communication with the outside world is cut off, detainees find it extremely difficult to challenge their detention or complaint about conditions of detention. With rare exceptions, it is only possible in cases known to their families, NGOs or the UNHCR staff who can hire a lawyer to represent the detainee.

16.69. In some cases it has been possible to appeal the unlimited detention and to get the asylum seeker released.

Living Conditions in the Military Service

16.70. Conscripts are at the disposal of the military authorities. The latter are responsible for arranging meals, medical assistance, etc. for the conscripts. According to the Committees of Soldiers' Mothers, few draftees experience living conditions and medical support above the level that can be called 'degrading' and 'inhumane'.

16.71. The diet for the military is set by the Army Disciplinary Charter; by the Order # 400 issued by the Minister of Defense on July 22nd, of 2000; and by the amended Order # 344 "On Setting the Regulations for Ratio Supply of the Armed Forces of Russian Federation in the Time of Piece" issued by the Minister of Defense on October 29th, 2004. Those documents set the normative 60 rubles cost for the daily draftee ratio, of which 70% should be bread, vegetables and cereal. The work with draftees and their parents, who apply to the Committees of Soldiers' Mothers, and the research, carried out by Human Rights Watch in 2001-2003 confirm that the actual ratio of the draftees does not match even the scarce requirements set by the existing regulations. A number of factors occurring within the military units have negative influence on soldiers' ratio. According to the Committees of Soldiers' Mothers, among such factors are stealing food from kitchens and commissary storehouses. Discrimination in military units also results in lack of food, and even in starvation of the draftees of the first year of military service.

From the application to the Nizhniy Novgorod Committee of Soldiers' Mothers, filed on June 6th, 2005 by Anton Koshelev, a draftee of 95105 military unit (stationed in Vyborg): "I had been assigned the extended ratio, but it didn't really matter in this unit. The sergeants were allowed to take the first helping and only after that we were to share what was left. At the

command of the sergeant we should stop eating, leaving half of the helping behind simply because we wouldn't get nearly enough time to finish it. Half a helping per person, that was it."

From the application to the Nizhniy Novgorod Committee of Soldiers' Mothers, filed on November 29th, 2005 by Valery Boytzov, a draftee of 45935 military unit (stationed in St. Petersburg): "Instead of military training there was unloading of KAMAZ trucks. Whenever there was work, there was no food during the day until the evening, so people had to go around hungry until that time."

16.72. Lack of food, which is exceptionally severe during the first year of service, leads, along with the other factors, to the situation that the health of the conscripts seriously deteriorates. Preserving and improving the health of the servicepersons is, according to article 326 of the Army Disciplinary Charter, **"…one of the prior duties of the commanding officer in line of maintaining permanent preparedness of the unit…"** Article 334 of the same Disciplinary Charter imposes it on every serviceperson **"to take care of their own health, not to conceal diseases and to strictly follow the rules of personal and public hygiene…"**

16.73. All those prescriptions are almost impossible to follow for the first-year draftee, as the conditions in which they find themselves are nothing if not impeding. While in the quarters, the newly drafted immediately looses all personal belongings they have taken from home, including the items of personal hygiene – those are taken (openly or otherwise) by the older conscripts. Such displays of discrimination against younger draftees, as restriction of bathing time (during the weekly visit to the bathhouse) also hinder the process of following strict personal hygiene requirements. The tradition in most of the military units is such that older conscripts would go first, and the remaining bathing time – about 10 minutes – has to be shared between 40-50 younger draftees. With only 4-5 bathing stalls, it gives 1 minute of bathing time per person. The applications of draftees and those parents who succeeded in taking their children out of the military unit also mention the presence of lice in underwear and uniform of the soldiers.

From the application to the Nizhniy Novgorod Committee of Soldiers' Mothers, filed on June 23rd, 2005 by Ivan Karavashkin, a draftee of 42710 military unit (stationed in Novocherkassk): "The bedclothes were dirty, the mattresses and pillows torn… We were unable to change foot-wraps – so those remained dirty, too; there were no days off from work. We didn't have time to wash the uniform, wash feet, face, shave…"

16.74. The most widespread disease among the draftees is feet disease, caused by small blisters appearing after wearing uncomfortable boots. Given the impossibility to follow the rules of personal hygiene because of the fear to enrage the older conscripts who would, when bothered, proceed with "education" often executed in the form of severe beating, the small blisters develop into a full-scale disease, which often requires hospital treatment. According to the unwritten rules, a younger soldier can't enter the lavatory in the evening because there are older conscripts there.

16.75. Article 347-349 of Army Disciplinary Charter clearly states that in case a draftee feels ill they must immediately inform their direct supervisor, and to apply for medical assistance to the infirmary when permission is given. It needs to be noted, that according to articles 341-342 of the same Army Disciplinary Charter, the commanding officers in cooperation with the medical officers of the unit must carry out preventive measures and arrange regular medical examinations (no less than two examinations a year). In reality the examinations are either superficial or are not carried out altogether.

16.76. The soldiers, especially the younger draftees, also find too many obstacles on their way should they wish to apply for medical assistance to the infirmary. Because the actual medical help is rendered unavailable, even the smallest of health distortions often develops into severe disease.

The case of sergeant Topkov from 96160 military unit (stationed in Bujnaksk, Dagestan), filed to the Nizhniy Novgorod Committee of Soldiers' Mothers by his mother: "Since august (2001) I have been receiving alarming letters from my son, he's been complaining about pain

in his kidneys. Aleshka lived on painkillers, which helped a bit, but then he was sent to those trenches again and again. The medical officers wouldn't examine him properly, told that he exposed some muscles to cold… in December I came to the unit. I didn't recognize my son at first – he looked so different! I begged the officers to let him to the hospital, but they would insist there was nothing wrong with him. I nearly had to steal my son from the unit, and in the end they satisfied my demand. Once at hospital, my 19 year-old son was diagnosed with "malignant growth", third degree. He was commissioned in April 2002 as an invalid…" Sergeant Topkov died in June 2002.

16.77. The commander officers are of an opinion that those who are complaining about their health are just lazy people wanting to skip some actual service by spending time in infirmary. This is one of the major reasons for the officers to forbid the draftees to call for medical aid. If a soldier succeeded in reaching the infirmary, it doesn't mean that the necessary aid will be provided. As a rule, the medical officers serving in the unit lack the necessary responsibility when it comes to the health of the soldiers, and, too, think that the soldiers just want to leave the quarters by any means to avoid the actual service. Sometimes it leads to severe consequences.

From the application to the Nizhniy Novgorod Committee of Soldiers' Mothers, filed on January 11th, 2005 by the mother of Mikhail Krilyshkov, a draftee of 71523 military unit (stationed in Dimitrov, Moscow Region): "In the evening of December 15th, 2004 my son was hit on the back of his head. He was in his quarters. He lost consciousness and when came to his senses, found himself on the floor. He has no recollection of how much time he has been unconscious. He got to the toilet, where he vomited several times. In the morning he addressed the infirmary. He got a reply that he should use the upcoming one year and a half to be 'treated' and refused to provide any help". After the interference from the Committee, the draftee has been sent to a psychoneurological hospital and commissioned.

16.78. Many servicepersons, especially those who had chronic disease at the moment of draft, don't have faith in medical services at the unit and ask their parents to send them necessary medicine. In their letters the draftees often complain about the impossibility to receive medical aid at their military units.

16.79. Complaints about poor living conditions, bad food and lack of medical assistance are registered by the Committees of Soldiers' Mothers in almost every military districts in all types of combat arms.

16.80. There is one more problem, which intensifies the already poor situation of the diseased soldiers – a long travel of medical papers necessary for commissioning through various offices. The procedure of approval of decision of the lower committee by the higher committee, the procedure of pre-term release of draftees on the account of poor health can take up from one to three months. All this time the soldier remains in the unit being an object of jealousy and dislike of other draftees.

16.81. The servicepersons facing unbearable living condition or those denied of medical help have the right to file a complaint in accordance with article 10, part V of Disciplinary Regulations of the Armed Forces of Russian Federation, approved by the Presidential Order # 2140 on December 12th 1993, and amended on June 3rd 2002. "Every serviceman has the right to file a complaint, either by himself or by delegating this task to others, about the illegal actions of the commanders or other servicemen, about the violations of normative rights and privileges, as well as about the lack of satisfaction with the existing ratio". The commanders' responsibility to consider such a complaint is set by article 116 of the Internal Regulations: "The commander must be sensitive and responsive towards any incoming proposals, claims or complaints. He is personally responsible for their timely consideration, and for taking necessary follow-up measures.

16.82. The commander must consider the proposal, claim or complained within three days, and if the proposal, complaint or claim is found true to the situation, he must take immediate measures to satisfy it. He must then use the information to study the situation in his unit".

16.83. Apart from that, the servicepersons, being the citizens of Russian Federation, have the right, according to article 4 of Federal Law # 4866-1 "On Applying to Court about Actions and Decisions Violating the Rights and Freedoms of a Citizens" approved on April 27th, 1993 and amended in Federal Law # 197-FZ on December 14th, 199514.12.1995г. to apply to court: "A serviceman has the right to apply to a military court with a complaint about the actions (decisions) of the commanders or other servicemen, if such actions (decisions) are violating his rights and freedoms".

16.84. A serviceperson also has the right to appeal to Prosecutor's office and ask the Prosecutor to launch prosecution in case violation of rights or for criminal investigation in case of physical harm.

16.85. However, the draftees report that almost no one complains about poor living and medical conditions, and there are several reasons for that. First, from the very first day the soldiers are instilled the idea that they must carry all burdens of the service, among which are the poor living conditions – both in field and in the quarters. Second, guided by false understanding of service burdens, co-servicemen – soldiers and officers – practice negative attitude towards those who do file complaints. Third, soldiers only dare to file a complaint to the higher echelons when the leave the military units, because otherwise they are likely to face 'sorting out' (often followed by manhandling) performed by officers and fellow draftees.

16.86. Even if the complaint has been taken into consideration by a higher military unit or even by the Prosecutor's office, this does not guarantee impartial investigation and statutory decisions. The claim is automatically forwarded to the commander of the unit for investigation, i.e. to the officer who is personally interested in hiding own inability to provide for normal service conditions in his own unit.

16.87. In the situation of non-responsibility and 'collective cover-up', the possibility of appealing to higher instances, while supported by laws and regulations, does not constitute an efficient mechanism of fighting for humane living conditions and adequate medical treatment during the conscription period.

Detoxification Centers[85]

16.88. Medical detoxification centers in the Russian Federation are the relic of the Soviet Union. According to the information from the Ministry of the Interior, there are more than 1000 detoxification centers in Russia. Their status is regulated by the Order of the Presidium of the Supreme Soviet of the RSFSR issued on May 16, 1985 "On Measures of Intensifying Fight against Alcoholism and Home Distillery of Alcohol", which is still in effect and should be applicable. According to this Order, it is possible to place a person to a medical detoxification center if they are found in a moderately or heavily drunk condition in a public area, have lost their ability to walk or are likely to inflict harm on self or others.

16.89. The functions of the detoxification centers is regulated by the Order No. 106 issued by the Ministry of the Interior of the USSR on May 30, 1985, "On approving the Provisions for medical detoxification center at the premises of city police department, and On medical assistance for the detoxification center inmates". In its six paragraphs the Order formulates the grounds for bringing a person to the detoxification center.

16.90. In order to decide whether the person should be placed to the detoxification center it is enough for a police officer to see the person drunk and identify that they either are swearing; are in a public place and their appearance is unkempt; are showing rude gestures; are shouting obscenities; or are not able to walk straight. Neither of the existing normative acts, however, defines "obscene shouting" or "rude gestures". The person can also be sent to the detoxification

[85] This part is prepared by the Memorial Human Rights Commission of Komi Republic

center if they do not perform the above-mentioned actions, but are in condition of medium or hard alcoholic intoxication (medium intoxication – 50-100 grams of pure alcohol: 1.5 liters of wine or 150-300 milligrams of vodka or brandy). While only a person with medical training can determine the degree of intoxication by carrying out a chemical analysis of blood (as required by the Ministry of Healthcare Order of September 2, 1988), the decision on whether or not to deliver the offender to the detoxification center is made by the officer before necessary medical tests will have been carried out.

16.91. Identification of the drunk and their transportation to the detoxification centers is carried out by the patrol service of the Ministry of the Interior (PPS). The PPS officers patrol the streets and send everyone who – according to their subjective viewpoint – qualifies as being "drunk enough". Since the basis of this decision is very subjective, the violations of the legal norms are frequent:

In Stavropol two old pensioners were detained by the squad of extradepartmental guards and delivered to the detoxification center. The analysis showed there has been no alcohol in their blood. The officers refused to deliver the pensioners back and proposed that they sign a paper that they have no claims against the squad. In reality, that was a report of misdemeanor – being intoxicated in public. The pensioners refused to sign anything, and later filed a complaint to the head of the Stavropol region police HQ, A.Saprunov. There answer said that an internal investigation had been carried out on the fact of the complaint and the actions of the police officers had been proven correct and accurate. As it turned out later, due to the re-attachment if the detoxification center to the Stavropol police department, the former had been working without a license for carrying out medical activities for a month by the time the two pensioners were delivered there.86.

The Russian Human Rights Ombudsman was addressed by the lawyer N. who complained on the actions of the road police officers and Voykovsky police department of Moscow (incoming ref. No. N-358). The lawyer and his colleague, P., were driving back from work in a car belonging to P., who was behind the steering wheel. The road police officers stopped the car, and without any reason confiscated P.'s driving license and other related documents. When N. refused to sign the misdemeanor report, he was taken to the Voykovsky police department and then to the detoxification center, where he was subjected to torture, violence and bodily damage.87.

16.92. In the law "On police forces" such department as medical detoxification center is not listed. In 1992 the Government (ruling of 09/17/1992 No. 723) decided to transfer those to the jurisdiction of the Ministry of Healthcare, and the "sobriety houses" received their official name – "medical detoxification centers". However, even today (i.e. 14 years since the Government ruling) the units are still controlled by the police forces. On December 7, 2000 the Government temporarily assigned the medical detoxification facilities the status of "police structure of public security".

16.93. The medical detoxification facilities are financed from the regional and municipal budgets (the Order of the Ministry of the Interior No. 246 of April 6, 2005). The stay in each of those facilities is fee-paying, and the amount of fee is determined by the local authorities. As of the beginning of 2006, the fee ranges from 100 (Vladivostok) to 400 (Vologda) rubles. The circular letter issued by the Ministry of Finance indicates that those payments should be deposited to regional or municipal budget, but in reality they stay in police and investigatory departments.

16.94. Often the detoxification centers are situated in police departments, just as the temporary confinement units. Thus, the centers are equipped with security systems that would fit a prison better than a medical establishment. People delivered to the detoxification center are placed to cells with heavy doors and barred windows. More often than not the detoxification centers are located in cellars or basements. For example, the detoxification center of Oktyabrsky district of Novosibirsk is located in the cellar of the building erected in the end of the 19-th century. The

[86] I.Bosenko, *Stavropolskaya Pravda* issue of June 17, 2003: "Thanks for not beating me up!"; issue of June 24, 2003: "Illegal 'sobriety house'?"
[87] The annual report of the RF Human Rights Ombudsman, 2003

detoxification center of Ezhvinsky district of Syktyvkar is also located in the cellar. The conditions of stay hardly comply with the notion of respect to the human dignity: people who get there either receive dirty bed linen or don't receive it at all, restroom access is restricted, and neither food nor drink are provided.88.

16.95. Since 2002 there have been registered a lot of instances of violence in the detoxification centers in Russia. Here are some examples:

During his stay in the medical detoxification center at Vakhitovsky regional police department of Kazan, the student of Kazan State University, S., was beaten by the police officers. S. received a cerebral trauma and suffered a memory loss. The applicant had to sustain long medical treatment and was not able to continue studying, after the interference of the Tatar Ombudsman for Human Rights, the court assigned a financial penalty in favor of S. to compensate for the moral and physical damage.89.

A.V. Kozlov, who was delivered to the detoxification center in Beloretzk district police department, was so severely beaten by the police officers that he became handicapped. Kozlov, according to the medical statement given by the detoxification center practitioner, was sober – and didn't have to be brought to the detoxification center in the first place. Another detained – A.P. Lezhnin – was subjected to inhumane treatment in the same detoxification center, and two days after leaving the unit he died of traumas inflicted on his person90.

16.96. The other common practice of the detoxification centers is to hold the violent clients tied to their beds. Despite the general rule that such ties should be soft so that they would not damage a person, the police officers use the belts that are extremely traumatic. Sometimes they also use specific methods of securing a person to the bed – including putting the person face-down on the mattress and twisting legs and arms to tie them together and secure to the bed.

For example, A.A. Moiseeva who had been delivered to a detoxification center in Khabarovsk first behaved calmly but started to beat on the door and scream as soon as she was placed to the infirmary. She did not react when she was requested to behave herself. To calm her down and to eliminate the possibility of self-damage it was decided to tie Moiseeva down. In the morning, she was let out, her arms and shoulders bruised and bleeding, the traumas were recorded by the medical examination.[91].

In Syktyvkar, Maksim S. was placed to the detoxification unit without cause. That was later proven in the court. Maksim expressed his indignation regarding the fact of his being brought to the detoxification center, by way of an answer, the police officers put him face down on the bed, secured there and kept in this position for about two hours.92.

Prevention of cruel and degrading treatment of inmates in psychiatric institutions of Russia[93]

16.97. The rules and standards which regulate organization and provision of psychiatric help in Russia were outlined by a special Law "On Psychiatric Care and Guarantees of the Rights of Citizens in Therapy", that was adopted in 1992.

16.98. This Law stipulates the principle of providing psychiatric help in the least restrictive conditions for patients (Article #5 of the Law). The implementation of this principle, in fact, meets some

[88] IHG Report "Human Rights in the Regions of Russia", 2002.
[89] R.G.Vagizov, *Annual activity report of Tatar Human Rights Ombudsman for 2002*, Kazan 2003, page 65.
[90] IHG Report "Human Rights in the Regions of Russia (Bashkortostan)", 2003
[91] *Tikhookeanskaya Zvezda*, issue 01/30/03
[92] Report by "Memorial" group on human rights protection in Komi in 2004
[93] This chapter was prepared by "Demos" Center with support from the Independent Psychiatry Association of Russia (IPA) and from Independent Expertise Bureau "Versiya". The materials were submitted by IPA of Russia, Moscow Helsinki Group and IEB "Versiya".

obstacles and difficulties due to various factors, including: underdeveloped state of services for outpatients; lack of financial support for psychiatry and consequent difficulties in hiring competent and well-qualified staff to work in psychiatric hospitals; insufficient state of development of not drug-based forms of treatment; persisting idea that people suffering from mental health issues should be put into specialized institutions and kept isolated.

16.99. The Government of Russian Federation announced that de-institutionalization shall be one of the directions for development of psychiatric service. This process has just been started. Nowadays the number of places for inpatients ("beds") in psychiatric hospitals of Russia is gradually diminishing (now there are 166 000 beds instead of 192 000 beds in 2003). Some times psychiatric wards are transformed into day care centers for people with mental health problems, there are several cases of creating psychiatric wards in hospitals for somatic diseases.

16.100. However, relocation of funding within psychiatry did not take place: the hospitals for inpatients still receive more funding than the outpatient services. The outpatient services develop very slowly, social services for people with mental health issues are almost non-existent. Thus, psychiatric hospitals continue to be the main place to receive psychiatric care. In practice it is easier to receive psychiatric help by becoming an inpatient, than by using outpatient services.

16.101. The process of cutting down the number of "beds" for inpatients has not brought severe negative consequences yet, excluding the cases when the entire hospital that has no alternatives in the region, is closed down. That happened in the Rostov region, when the hospital was closed because of the intolerable conditions of life of the patients.

16.102. The inpatient psychiatric services in Russia are usually located in large specialized hospitals designed for treating many patients at the same time. This kind of living arrangements (a large multi-storied building, many wards for different types of disorders, but each ward hosting 80 inpatients on average) is called "barracks".

16.103. The outpatient psychiatric services in Russia are located in polyclinics and dispensaries. The provision for outpatient services there is unsatisfactory, mainly because institutions providing outpatient services often have enough mental health professionals.

16.104. Besides the fact that the outpatient services are underdeveloped leads to over-crowdedness of many inpatient hospitals and contradicts the principle of provision of the psychiatric help in the least restrictive conditions, another implication of that are the lengthy periods of confinement of the patients in hospitals.

> *The monitoring shows that the psychiatrists in hospitals deliberately delay the release of patients from hospital, knowing that the patients would not be able to complete their treatment in the frame of the outpatient service system. The ex-inpatient is not able to receive adequate treatment via outpatient services, s/he needs to pay for the medication that was provided free of charge in the hospital. These expenses are unaffordable for many of the ex-inpatients.*

16.105. The average time of hospitalization in most clinics is 35-40 days and that is more than enough for defining the optimal course of treatment. But in some hospitals the time of the patients' stay and treatment is unduly long. The monitoring shows that

> *In the Republican Neuro-Psychiatric Dispensary of Kalmykia that has also an inpatient ward, the average length of inpatient treatment is 358 days. In the Troitsk Psychiatric Clinic (Buryatia Republic) the average length of inpatient treatment is 338 days, in Vladimir Regional Psychiatric Clinic #4 it is 135 days.*

16.106. The unduly long time of inpatient treatment is also connected with underdeveloped state of social services. The psychiatrists in the hospitals don't discharge a patient if s/he has no close community of social support and/or has no accommodation. In such cases the hospital should

send the patient to live at a psychoneurological hostel – an institution that combines the services of hostel and hospital or at a "social hostel" – they should be built in each region, according to the Article 16 of the Law. The "social hostels" are designed for those patients who lost their social support community, but are able to care about themselves.

16.107. In fact, there are not enough places in the psychoneurological hostels, and the patients need to wait very long time to be transferred from hospitals into those institutions, and the social hostels had been built only in four regions: Saint-Petersburg city, Leningrad Region, Bashkortostan Republic, Sverdlovsk Region. Besides that, the underdeveloped state of social services closes the opportunity for the former inpatients to live on their own under supervision of a guardian. The only option that is left for the inpatients is to wait for a place in a psychoneurological hostels and in the meanwhile stay at psychiatric hospitals.

For example, the lack of places in the psychoneurological hostel is the main reason of the unduly long inpatient treatment in Republican Neuro-Psychiatric Dispensary of Kalmykia. 40% of the inpatient stayed in the hospital only because of that; they did not require intensive treatment.

16.108. Excessive length of inpatient treatment and underdeveloped state of outpatient services create a situation when in most hospitals there are some patients who stay there when there is no medical requirement for that. This practice is also violating Russian laws; in particular, the second part of the Article 5 of the Law "On Psychiatric Care" requires "*confinement to psychiatric hospital only during time necessary for assessment and treatment*". At the same time one should keep in mind that inpatient treatment still is the form of help that is the most accessible for people with mental health issues.

16.109. Many psychiatric hospitals were built during Soviet times, and their architecture reflects the ideas of that time about what psychiatry and psychiatric services are. Priority in building and organization of living arrangements in those hospitals was given to the isolation of patients and possibility of direct surveillance and control over them. The hospitals are built in a way that severely restricts free movement of patients, also within their ward.

The monitoring showed that all the outer doors of the wards, and also the doors of all the offices and special rooms in the ward are locked with special keys, and in many hospitals the patients cannot enter any room on their own, including the patients lounge. The "open doors regime" existed only in several sanatorium wards, where people with borderline disorders are treated.

16.110. The Decree # 92 of the Ministry of Health of the Russian Federation issued on the 11th of April, 1995, requires to dismantle the bars on the windows of psychiatric wards and to replace ordinary glass in windowpanes by non-breakable glass.

Only in 30 hospitals out of 93 assessed the bars on windows were dismantled. In all the rest of hospitals it is impossible to do because of lack of funding for dismantling the bars and installing non-breakable glass. Some psychiatrists and nurses at hospitals told that they did not approve of the re-equipment of windows, because they were afraid of not being able to ensure patients' safety, because lack of bars could lead to increasing escapes from hospitals and/or suicides.

16.111. Monitoring confirmed that the attitude of maximal limitation of the patients' autonomous activity because of the safety reasons is still present in Russian psychiatric services. That leads to restrictions that sometimes are unfounded.

In the Kaliningrad City Psychiatric Clinic, Regional Psychiatric Clinic (Kirov Region), Ukhta City Psychiatric Clinic (Republic of Komi), Regional Psychiatric Clinic # 2 in Chita Region, Regional psychiatric hospital named after Karamzin in Ulyanovsk Region the

patients are not allowed to open windows in the rooms to let fresh air in, it is done by the staff.

16.112. The reasons of safety are also used to justify the limitations and restrictions put on the patients' self-presentation and image. These restrictions are applied not to individual patients but to the totality of patients in the ward or hospital.

For example, during the monitoring it became known that in some hospitals all the male inpatients admitted, no matter whether they have suicidal intentions or not, undergo their beards and moustache being shaven off. This is justified by saying that "they will not be able to take care of them on their own anyway". Also all the male patients are forbidden to wear trousers and belted dressing gowns, and that is justified as one of the "suicide prevention measures" too.

16.113. An additional factor of the inpatients' stigmatization is the fact that the yards and gardens for walks are surrounded by high fences. The wish to fulfill the safety requirements excessively restricts the interaction of the patients in the hospitals. Monitoring showed that sometimes it comes to the situation when

In Regional Psychiatric Clinic # 2 in Chita Region the patients "go for a walk" onto balconies surrounded by bars.

16.114. In many hospitals the patients were prohibited to go for a walk on their own. When there aren't enough nurses at the hospital, the patients are not able to execute their rights for walks. *Such situation was discovered in Moscow Regional Psychiatric Clinic # 2.*

16.115. The Law "On Psychiatric Care provides State guarantees for psychiatric help for people suffering from mental health issues, on the bases of lawfulness, humanity and fulfilling the human and citizen rights (Article 1 of the Law). But at the same time there are no provisions in the Law that ensure fulfillment of basic vital needs of patients, including provision of medication.

16.116. The acting Law does not state any minimal amount of funding/care/treatment that must be provided. Regulations which shall specify legislative provisions contains only a recommendation for the regions of Russia to take responsibility for maintenance of regional psychiatric clinics that comprise the majority of psychiatric hospitals in Russia.

16.117. In reality this leads to a situation when conditions of hospitalization (including observance of the of the patients' right for a decent environment and adequate treatment) can differ vastly in various regions depending on how well-off the region is.

16.118. The majority of hospitals receive the minimal funding possible, that does not allow developing the psychiatric practice in accordance to modern concepts and standards. The only financial demands more or less covered are those that are connected with providing necessary medication.

16.119. However, the rehabilitation programs are funded in extremely rare cases. That is why

In most psychiatric clinics rehabilitation programs do not exist and the patients are not able to exercise their right to obtain comprehensive treatment.

16.120. The lack of funding does not allow the hospitals to create a benign socio-therapeutic environment in the wards. The rules for equipment of rooms, wards and general territory of hospitals etc. were stated in a special Decree issued by the Ministry of Health on the 11th of April, 1995. Monitoring showed that these rules are not followed in most cases.

Wards are mostly overcrowded; patients have limited access to fresh air and natural light; there are no decorations in dormitories and other rooms in the hospitals; food is bland and lacks diversity; there is almost no privacy for patients, the rooms where patients are

supposed to meet with their relatives or with priests, are badly designed with regard to that purpose; the yards and gardens of the hospitals are in bad shape etc.

16.121. The living space for each patient in many hospitals is not sufficient and does not reach the standards of hygiene and sanitation commission that is 7 sq.m. per person. Monitoring showed that in some hospitals the living space of patients is 3 sq.m. per person or less.

For example, in the Krasnoyarsk Territorial Psychiatric Clinic in the men's ward the living space constituted only 1,5 – 2,5 sq.m. per person. In Bryanskaya regional psychiatric hospital the living space is 1,8 sq.m. per person, in Altay Republican hospital – 1,5 sq.m.

16.122. Such over-crowdedness reduces the effects of treatment and violates the rights of the patients to have decent environment.

16.123. Many hospitals work in the conditions when they have to provide services to twice as many people as the hospital was designed for. For example in Perm clinic designed for 600 people provides services for 1100.

According to the data of the monitoring, in Altay Republican Clinic psychiatrists had to resort to early discharge of patients to be able to admit new patients requiring urgent psychiatric care. Moreover, in such cases in the children's ward they had to put two children in each bed.

16.124. Because of the over-crowdedness and shortage of living space, in some hospitals the patients with locomotion disabilities cannot use their wheelchairs in the wards and thus are confined to their beds, lack communication and have no opportunity to develop their social skills.

16.125. In many of the hospitals the environment is very bleak and formal; there are no necessary decorations in dormitories and wards that should have been creating a homely atmosphere.

The monitoring showed that in Voronezh Regional Psychiatric Clinic, in Kotelnicheskaya Psychiatric Clinic (Kirov Region), in Regional Psychiatric Clinic named after Bekhterev (Kirov Region), in Regional Psychiatric Clinic named after Karamzin in Ulyanovsk Region etc. there are no decorations at all in dormitories and wards.

16.126. Rooms and facilities in hospitals do not correspond not only to the modern concepts and standards of organization of space in psychiatric clinics; they also do not correspond to the standards of dignified human existence. It is blatantly obvious with regard to provision of hygiene and fulfillment of basic bodily needs.

During the time of the monitoring, in the women's ward of the Republican Neuro-Psychiatric Dispensary of the Repubic of Khakassia, there was only one lavatory with three toilet bowls for 220 women. In Regional Psychiatric Clinic named after Bekhterev (Kirov Region) there was 1 toilet bowl for 125 people. Amongst all the clinics that were assessed during the monitoring, nowhere there were lavatories in dormitories.

16.127. The situation is the worst for the patients that receive treatment in hospitals where there is no regular water supply and no sewerage system.

In the Neuro-Psychiatric Dispensary of the Kalmykia at the time of the monitoring there were no water supply facilities in the building. Water was brought up by water-carriers, and to provide the opportunity for patients to shower, water was heated once in 10 days. In the Republican Psychiatric Clinic of the Republic of Karelia there is no access to cold water.
In the Krasnoyarsk Territorial Psychiatric Clinic # 3, in the Rostov City Psychiatric Clinic (Rostov Region), in Yaroslavl Regional Psychiatric Clinic "Afonino" there were cesspools built on the premises of the hospitals.

16.128. Thus we can say that in Russia there still are hospitals where the conditions and facilities for hygiene do not correspond to the standards of human dignity.

16.129. Bleak environment in dormitories and wards, almost total lack of comfy furniture, minimal decoration of rooms and wards, combined to over-crowdedness, lack of hygiene facilities etc. are not contributing to creation of psychologically comfortable environment and do not correspond to the standards of the necessary quality of the socio-therapeutic environment in the hospital wards.

16.130. The Law "On Psychiatric Care" adopted in 1992 for the first time in Russia introduced the legislative mechanism covering the problems of involuntary treatment with regard to people with mental health issues. Thus on the legislative level there were provided protection from the deliberate deprivation of liberty and the guarantees of security of a person. Article 29 of the Law defines the foundations for involuntary hospitalization:

> *"A person suffering from mental disorder can committed to psychiatric hospital without his or her consent or without the consent of his or her legal representative before the court makes the corresponding decision if assessment or treatment of this person are possible only in hospital conditions and if the mental disorder is severe and leads to:*
> *direct danger that the person causes for him- of herself and other people, or*
> *helplessness of the person, that means inability to satisfy the basic vital needs autonomously, on their own, or*
> *significant harm to the person's health due to worsening of mental state, if this person is left without psychiatric help".*

16.131. All the three foundations correspond to internationally accepted standards with regard to involuntary application of psychiatric measures.

16.132. For the legislative mechanism of the control over involuntary hospitalization to become practically applicable, there should be unbiased and independent analysis of cases of involuntary hospitalization by courts; they should exist objective medical assessment of the mental and somatic state of the person committed to the hospital; and there should be guarantees of timely court hearings on the cases of involuntary hospitalization.

16.133. All-Russian monitoring of psychiatric hospitals conducted in 2003-2004, showed that the practice of court hearings of the cases of involuntary hospitalization does not give reason to claim that the courts make independent decisions. Usually the courts rely on the opinions of psychiatrists presented in the conclusion of their consilium on assessment of the state of the person committed to hospital. Instead of evaluating whether the foundations listed in the law are present, the courts try to evaluate the mental state of the person committed to hospital. That is why frequently the courts in fact don't do detailed analysis of the cases of involuntary hospitalization and their role is limited to the formal support and giving legal power to the position of the psychiatrists.

16.134. The lack of scrupulous analysis of the cases of involuntary hospitalization is shown indirectly by the fact that often only minimal time is spent on analysis of each case during hearing at the court.

> *According to the data from the Independent Psychiatric Association of Russia, court hearing on one case might take 3-5 minutes. Thus, in 2005 in Moscow at the Psychiatric Hospital named after Gilyarovsky the court hearing with regard to several involuntary hospitalizations took place during a conference. The head of ward, who was a chairing the event, simply asked the participants to break for about 20 minutes - that was all the time that she needed to spent at the court hearings about six cases of involuntary hospitalization.*

16.135. The Law "On Psychiatric Care" (article 32) demands that the person committed to hospital involuntarily should be assessed by a consilium of psychiatrists during 48 hours since admittance to hospital, the conclusion of the commission should be transferred to the court during 24 hours, and the court must have a hearing with regard to this case in no more than five days since the documents arrived from the hospital. In addition to that the court automatically sanctions the

commitment of the person to the hospital for these five days necessary to achieve the court's decision (Article 33).

16.136. In fact, the courts don't always follow the time limits for the hearings with regard to the cases of involuntary hospitalization.

The monitoring showed that in 10 hospitals out of 93 assessed, the court hearings with regard to the cases of involuntary hospitalization was delayed for several days and sometimes weeks. That happened in Astrakhan Region, Krasnodar Territory, Krasnoyarsk Territory, Moscow Region, Penza Region, Perm Territory, Republic of Karelia, Khabarovsk Territory, Chita Region.

16.137. In absence of the court's decision about involuntary hospitalization the patient has no real opportunity to appeal his commitment to hospital. The object of appellation - the court's decision - does not exist. According to Article 33 of the Law, only the hospital itself has the right to lodge in the court request for involuntary hospitalization. The patient has no real opportunity to address the court since the moment when s/he is brought to the hospital. The patient needs to wait until the court makes the decision with regard to his involuntary hospitalization.

T. Rakevich, who was involuntarily hospitalized, (Yekaterinburg, Sverdlovskaya region) waited for the decision of the district Court during 39 days. During all that time she stayed at the hospital and received treatment. At the time of the court's decision the course of her treatment was already finished. After receiving the court's decision with regard to her involuntary hospitalization, Ms. Rakevich did not agree with it and appealed this decision in the national court. The national court did not cancel the first decision of the court. Then she appealed to the European Court of human rights. In 2003 European Court made a decision in favor of Ms. Rakevich. The European Court in particular pointed at the fact that there didn't exist an independent legal mechanism that would provide the applicant with access to the court independently of the willingness of the hospitalization establishment (article 5 para. 4 of the European Convention for Human Rights and Fundamental Freedoms). The applicant was not able to appeal her hospitalization since she was admitted to the hospital. She was able to apply to the court only after receiving the court's decision with regard to her involuntary hospitalization.

16.138. The opportunities of timely appellation of the decision about involuntary hospitalization are limited because of the still widespread practice when the copies of the court's decision are not given to the patient and his legal representative after their petition.

16.139. The unbiased and independent character the court hearings is also violated by the fact that the participants of the process required by law are not always present during the court hearings. Article 34 of the Law "On Psychiatric Care" demands that "*presence of prosecutor, representative of the psychiatric hospital that is petitioning for hospitalization, and representative of the person whose case is being analyzed at the hearing, is mandatory*".

16.140. The monitoring showed that in many regions the court sessions may happen without the mandatory participation of the patient and his or her legal representatives.

For example, the requirement for mandatory presence of the citizen (patient) at the court hearing dedicated to his involuntary hospitalization, is not fulfilled in Bobrovo-Dvorskaya Psychiatric Clinic (Belgorod Region), Kaliningrad City Psychiatric Clinic (Kaliningrad Region), Regional Psychiatric Clinic in Nikolskoye village (Kostroma Region), Krasnoyarsk Territorial Psychiatric Clinic (Krasnoyarsk Territory), Krasnodarsk Territorial Psychiatric Clinic (Krasnodarsk Territory), Moscow Regional Psychiatric Clinic (Moscow Region), Regional Psychiatric Clinic (Orenburg Region), Perm Territorial Psychiatric Clinic (Perm Territory), Vladivostok City Psychiatric Clinic (Primorsky Territory), Saint-Petersburg Pychiatric Clinic named after Kaschenko (Saint-Petersburg), Regional Psychiatric Clinic # 1 and Municipal Psychiatric Clinic (Smolensk Region), Troitskaya Psychiatric Clinic (Buryatia

Republic), Republican Neuro-Psychiatric Dispensary (Republic of Kalmykia), Republican Neuro-Psychiatric Dispensary (Republic of Kabardino-Balkaria), Regional Psychiatric Clinic # 1 named after Litvinov and # 2 (Tver Region), Regional Psychiatric Clinic # 1 named after Karamzin (Ulyanovsk Region), Khabarovsk Territorial Psychiatric Clinic #2 (Khabarovsk Territory).

Mr. T was committed to Moscow City Psychiatric Clinic # 4 named after Gannushkin against his will in December, 2005. Treatment with neuroleptic drugs was started straightaway, although Mr. T has not given consent for hospitalization and treatment. The court hearing with regard to the case of Mr. T took place in time, but in absence of Mr. T. Human rights organizations intervened and the Independent psychiatric association of Russia performed another assessment of Mr. T's mental state. The results of this assessment by IPA showed that Mr. T is not suffering from a mental disorder and thus does not require psychiatric treatment. After the intervention of the human rights organizations, Mr. T was transferred to another hospital and discharged on the next day.

16.141. In Russia there still exists the practice when people suffering from mental health disorders are committed to psychiatric hospitals with only formal correspondence to legal procedure. In this case the court acts not as a mechanism of control and protection of persons from an arbitrary deprivation of liberty and from abuse, but as a tool for isolating people with mental health issues.

16.142. Amendments to the Law "On Psychiatric Care and Guarantees of the Rights of Citizens in Therapy" are developed in Russia. If these amendments are accepted the guarantees of liberty and security of person will be significantly diminished.

16.143. In particular, these amendments can lead to the situation when the patients of psychiatric institutions may be deprived of liberty for undefined length of time, including the cases when they never committed any actions, dangerous for society, for which deprivation of liberty is a legally justified punishment.

First, the amendments imply that the judicial review of involuntary hospitalization may be delayed for 10 days if the consilium of psychiatrists concludes that the disorder is of short-term nature. That means that legal procedure would be initiated after the patient spends 10 days in the hospital. If after 10 days the psychiatrists decide that the patient still could not be discharged, then the legal procedure for involuntary hospitalization will be started. Thus a patient who did not consent to treatment at the time of his admittance to hospital might be treated against his will during at least 16 days, and the power to make this decision lies in the hands of the psychiatrists.

Second, the amendments imply, that the legal procedure of hospitalization is completely cancelled, if the person with mental disorders needs treatment but is unable to consent to it consciously, although the foundations for involuntary hospitalization are not present and the person is not officially considered incapable.

Third, the prohibition of testing drugs and methods of treatment on patients suffering from severe mental disorders, who are not undergoing treatment enforced by law (as in "sentenced to psychiatric treatment by criminal Court"), is cancelled. Only the consent of the Ethics Committee for Protection of the Citizens' Health is needed. The patient's consent is not required.

Fourth, the necessity of the psychiatrist's permission for using physical restraint and isolation during involuntary hospitalization, is cancelled.

Fifth, the rights of public organizations to oversee the fulfilling of the rights of the patients are limited. The amendments imply that only "the establishments of prevention and treatment" have the rights to protect the interests of the patients, including participation in

court proceedings. Here the phrasing should be "only the institutions of prevention and treatment and public organizations".

16.144. The consideration of these amendments in the State Duma of the Russian Federation was delayed twice in 2001 and in 2003. The authors of these amendments avoid participating in public discussion and protest against including significant proportion of representatives of human rights activists into the committee that is working on their amendments.

16.145. The acting Law "On Psychiatric Care" is the one in the edition of 1992, and according to that of the patients that were committed to the hospital without their consent have the same amount of rights as the patients that gave their consent to be hospitalized.

16.146. The patients still are insufficiently informed about their rights. In the majority of hospitals the information about the patients' rights is presented in oral form, and after that the fact of presentation is registered in the medical documentation. There is no comprehensive informing of patients about their rights.

During the monitoring it was shown that only in one hospital out from 93 assessed, the information about patients' rights was presented to those admitted to the hospital in written form.

16.147. The Law "On Psychiatric Care" (Article 11) requires written consent from all the patients admitted voluntary. For that the law requires that the staff and psychiatrists at the hospital should *"present to the person suffering from mental disorder, in understandable form and taking into account the mental state of the person, the information about his mental disorder, about the goals and methods of recommended treatment (including alternative methods), and also the information about feelings of pain, probable risks, side-effects and expected results of the treatment"*. The law states that treatment is allowed to be performed without written consent of the patient in the case if the patient was sentenced to enforced treatment by the criminal court and in cases of involuntary hospitalization. But the law does not exempt the psychiatrists from providing any person with information about his disorder, about the chosen scheme of treatment etc. That means that no matter how the person was admitted into hospital, the psychiatrists must provide the person with comprehensive accessible information, as it is required by the Article 5 paragraph 2 of the Law: *"all people suffering from mental disorders... have the right to: receive information about their rights, and also - in accessible, understandable form and taking into account their mental state - information about the mental disorders they are suffering from and about the applied methods of treatment"*.

16.148. In fact, this requirement is not always fulfilled by psychiatrists in general, and it is usually not fulfilled with regard to the involuntarily hospitalized patients.

According to the information of the IPA, the human rights organization that focuses upon the rights of persons suffering from mental disorders and undertakes constant consultation of people, many ex-inpatients who were hospitalized without their consent, after being discharged from the hospital are not able to name the drugs that were used to treat them there.

16.149. In Russia still it is the problem of falsification of consent to be committed to the hospital. According to the law, admittance to hospital and treatment are performed with the person's consent. Involuntary measures are allowed only according to the court's decision.

16.150. Article 11 of the Law "On Psychiatric Care" demands from the physicians and staff to provide information in understandable, comprehensive and precise form, and after that the person that was admitted to hospital either gives or does not give his or her consent to treatment. It is evident that patients that are unable to perceive reality adequately must be hospitalized without their consent and the legal procedure of committing to treatment must be started. But instead of that there still exists the practice when people admitted into hospital are driven into confusion,

deceived and made to give consent to treatment. This practice formally frees the hospital from the obligation to initiate legal procedure of involuntary hospitalization, thus making the work of psychiatrists and hospital somehow easier.

16.151. The monitoring undertaken in 2003 showed that in 60 hospitals out on the 93 assessed the percentage of patients that according to the registries had given their informed consent to treatment comprises up to 95-97%, and that means that in these hospitals only 3-5% patients are being treated without their consent. These figures are obviously artificially decreased, because psychiatric practice at international level tells that normal percentage of patients treated without their consent comprises about 15%.

For example, in Prokhladnensk District Psychiatric Clinic (Republic of Kabardino-Balkaria), Regional Psychiatric Clinic # 1 named after Karamzin (Ulyanovsk Region), Regional Psychiatric Clinic (Pskov Region), Krasnoyarsk Territorial Psychiatric Clinic (Krasnoyarsk Territory) at the time of the monitoring 100% of patients were receiving treatment voluntarily, after giving informed consent.

16.152. One hundred percent of informed consent of patients indicates the practice of falsification of the patients' consent to treatment and of ignoring the patients' refusal of the treatment. That makes the fundamental principle of modern psychiatric practice – active participation of the person in his/her own treatment and non-patronizing attitude towards the person - null and void.

16.153. Long time spent in hospital contributes to strengthening the effect of institutionalization and leads to further social disadaptation of the person.

16.154. Institutionalization and isolation of patients and staff of the psychiatric hospitals increase because of insufficient civilian control over the work of psychiatric hospitals.

The monitoring of 2003 confirmed the assumption of the human rights activists that it would be more difficult to perform an independent observation in psychiatric hospitals than in the penitentiary institutions, there would be more obstacles for access. In some regions even the letter from the Ministry of Health of the Russian Federation, supporting the conducting of monitoring of psychiatric hospitals, did not help the human rights activists to obtain permission of the hospitals' administration to perform independent observation. The monitoring conducted in 2003-2004 confirmed that psychiatry is the most closed area for civilian control.

16.155. Lack of constant contact with external world, underdeveloped state of volunteer work at psychiatric hospitals, refusal of external independent control over the work of psychiatric hospitals, combined with the fact that the majority of psychiatric hospitals is located in rural areas far from settlements, indicates that the competent authorities are not willing to diminish the negative consequences of institutionalization.

16.156. The established practice of limitation of contact with the external world, refusal of their development in the majority of hospitals, lack of integration into the local community also lead to the situation, when the contacts with the external do not help to prevent abuse and degrading treatment.

16.157. One of the guarantees for protection against abuse and for defending the patients' rights should have been the Service for Protection of the Patients' Rights, independent from the health protection establishments. The creation of such a service is required by the Article 38 of the Law "On Psychiatric Care and Guarantees of the Rights of Citizens in Therapy". This Law has been in action since 1992, but the Service has not been yet created.

16.158. It is necessary to mention that the decision of the European Court with regard to the case of T. Rakevich stimulated the Russian authorities to start working on a draft law about introducing addenda and amendments into Russian legislation, which would entitle the person that is

committed to psychiatric hospital without his or her consent to appeal to the court with a complaint about unjustified hospitalization.

16.159. To fulfill the demand of the Government of the Russian Federation from July, 5th, 2005, № АЖ-П12-3326, the Ministry for Health Promotion and Social Development developed a draft law that should define the order of civilian legal proceedings with regard to the cases about appellation of the decisions to commit people to psychiatric hospitals without their consent.

16.160. This draft law outlines the addenda and amendments to be included into the Civil Procedure Code of the Russian Federation and into the Law "On Psychiatric Care and Guarantees of the Rights of Citizens in Therapy".

16.161. It is suggested there that the articles 306-1 and 306-2 should be added to the Civil Procedure Code of the Russian Federation:

"Article 306-1. Procedure of appeal about involuntary commitment of a citizen to a psychiatric hospital or about extension of the treatment period of a citizen suffering from mental disorder(s).
An appeal by a citizen about his/her involuntary commitment to a psychiatric hospital, or an appeal by the citizen's representative about the citizen's involuntary commitment of a citizen to a psychiatric hospital, or an appeal about extension of the involuntary treatment period of a citizen suffering from mental disorder(s) could be submitted at any time without restrictions, including 'immediately', to the court in the district where the hospital is located.

Article 306-2. Examination of the complaint by a citizen about his/her involuntary commitment to a psychiatric hospital, or about extension of the involuntary treatment period of a citizen suffering from mental disorder(s).
1. A complaint by a citizen about his/her involuntary commitment to a psychiatric hospital, or about extension of the involuntary treatment period of a citizen suffering from mental disorder(s), should be examined by the judge during 5 days after the appeal in accordance to the order prescribed for the appeals about involuntary commitment to psychiatric hospitals.
2. After thoroughly considering the citizen's complaint about his/her involuntary commitment to a psychiatric hospital, or about extension of the involuntary treatment period of a citizen suffering from mental disorder(s), the judge makes a decision either to satisfy the appeal or to dismiss it. The court's decision to satisfy the citizen's complaint is a valid reason to discharge him/her from the psychiatric hospital and should be executed immediately".

16.162. It is suggested that second paragraph should be added to the Article 29 of the Law "On Psychiatric Care and Guarantees of the Rights of Citizens in Therapy":

"An appeal by a citizen about his/her involuntary commitment to a psychiatric hospital, or an appeal by the citizen's representative about the citizen's involuntary commitment of a citizen to a psychiatric hospital, or an appeal about extension of the involuntary treatment period of a citizen suffering from mental disorder(s) could be submitted at any time without restrictions, including 'immediately', to the court in the district where the hospital is located."

16.163. This draft law already passed the first stage of discussion in all the departments and bodies involved (the Supreme Court, the Ministry for Justice of the Russian Federation, the Ministry for Health Promotion and Social Development, the Ombudsman's Office in the Russian Federation), however, it provoked lots of reclamations and dissent. The draft law could be possible brought to the State Duma of the Russian Federation not earlier than in 2007.

16.164. Nowadays the patients of the psychiatric hospitals have the right to submit a complaint about the actions or inactions of the hospital. In accordance to the article 37 of the Law "On Psychiatric Care and Guarantees of the Rights of Citizens in Therapy" *"all the patients that are being assessed or treated at a psychiatric hospital, have the right to: ...submit uncensored appeals,*

complaints to the constituted and executive authorities, to the prosecutor's office, to the court and to the lawyer."

16.165. But in fact a person is able to submit a complaint only after being discharged from the hospital. The monitoring showed that psychiatrists do not fulfill the prohibition to censor the patients' complaints; according to the opinion of the Chief medical officers of the hospitals, it is meaningless to send off a confused and messily written complaint of a patient.

During the interview conducted with Chief medical officers and Heads of wards as a part of the monitoring of inpatient psychiatric services, showed that in some hospitals all the correspondence sent by patients is being censored. For example, at the Republican Psychiatric Clinic in Karelia the monitors were told that psychiatrists "add the ludicrous complaints addressed to authorities to the patient's personal file", and at the Republican Psychiatric Clinic in Republic of Komi the monitors were told: "we don't mail rubbish, we try not to burden the post officers with illegible writing".

16.166. Instead of fulfilling their duties which imply that the hospitals administration must *"provide conditions for… transferring the complaints and appeals of the patients to the constituted and executive authorities, to the prosecutor's office, to the court and to the lawyer"* (Article 39 of the Law "On Psychiatric Care and Guarantees of the Rights of Citizens in Therapy"), must help the patient to execute his/her right, the psychiatrists evaluate the "adequacy" of the complaints – the task that lies outside the limits of their authority. Because of this practice many problems remain ignored and unattended, and the patients have no opportunity to execute their right to obtain legal protection.

16.167. The opportunities for submitting an appeal are also restricted by the fact that in the majority of hospitals patients have no access to their individual medical records, and accordingly the patient is not provided with full information regarding his disorder, medical prescriptions, scheme of treatment etc. and has limited possibilities to question various actions performed by psychiatrists and hospital staff. It must be mentioned also that in the majority of hospitals such accountability measures as Physical Restraint Application Log does not exist.

The monitoring conducted in 2003 showed that in 68 hospitals out of 93 examined, the patients are not able to receive their medical case records. Thus people who are suffering from mental disorders have little knowledge about their condition and related issues (dynamics of their state, prescribed medicines, scheme of treatment etc.)

16.168. The Decree of the Ministry of Health "About the measure of physical restraint during provision of psychiatric help" requires the hospital staff to complete the Physical Restraint Application Log in each ward of the hospital. The information recorded in the Log should include: time when this measure was prescribed, duration, justification of its application, name of the psychiatrist who prescribed this, and description of the dynamics of the patient's state during the application of this measure.

The monitoring showed that in the majority of the hospitals such logs do not exist. The logs were present only in 17% of the examined hospitals.

16.169. Thus, the opportunities to control the justifiability, duration and justification of application of physical restraint measures in fact do not exist. At the same time, the patients and their legal representatives/guardians have limited (or none at all) opportunity to question the prescription of the physical restraint measures.

16.170. A clearly defined policy with regard to the measures of restraint does not exist in Russia. Only the Letter of the Chief Psychiatrist of Russia contains certain recommendations about the types of the physical restraint measures. In particular, refusal to use straight jackets is claimed. But this Letter only gives recommendations but has no legal power, and there is no strict prohibition to use straight jackets, - in some hospitals, especially in those that are insufficiently provided with

medication, straight jackets are still being used as one of the measures of physical restraint. The measures of physical restraint are used to compensate the lack of medication, and their application leads to the underdeveloped state of medical and non-violent restraint.

During the time when the monitoring was conducted, straight jackets were used in Sverdlovsk Regional psychiatric hospital # 1, Stavropol Territorial Psychiatric Clinic# 2, Khabarovsk Territorial Psychiatric Clinic and Khabarovsk City Psychiatric Clinic.

16.171. It is necessary to underline that it is practically impossible to stop using the measures of physical restraint completely. However decreasing the amount of application of these measures is possible and depends on the availability of medication and on adequately assigned therapy. At the same tome in certain situations professional application of physical restraint becomes a way of restraint more humane than medication. The principle of providing psychiatric help on the basis of partnership with the patient that is founded upon informed consent of the patient implies that the methods of restraint in cases of agitated and acute states is discussed with the patient beforehand. In the Russian psychiatric hospitals this approach is not applied.

The monitoring showed that in the majority of Russian psychiatric hospitals the "soft bind" is used as a measure of physical restraint. The soft bind consists of straps of fabric which are used to bind the patient to a bed or to a chair. This measure is used in cases when there is a need to make an injection and the patient is agitated, and also in cases of aggression or self-harm.

16.172. During the monitoring it became known that in some hospitals the measures of physical restraint are prescribed not by a psychiatrist but by a nurse, and are performed without necessary control of psychiatrist.

For example, in Sverdlovsk Regional Psychiatric Clinic # 1 the measures of restraint could be ordered by the nurse on duty.

16.173. The training of application of physical restraint measures takes place on the premises of the hospitals themselves. Special training programs were developed in very few hospitals. In the majority of hospitals the staff that directly applies the measures of physical restraint is trained to do so during their work at the hospital.

16.174. One of the main ways of training is the transmission of experience from nurses to the younger medical staff - "assistants". Constant work with the younger medical staff is a necessary part of treatment process. Fulfillment of the requirement for respectful and humane, non abusive attitude and depends on many ways of the professional skills of younger medical staff.

During the monitoring it was found out that in many hospitals is around a regular monthly or weekly training is for younger medical staff dedicated to application of physical restraint measures, to the particularities of work with people who are suffering from mental health disorders; although high turnover of younger medical staff renders these efforts almost useless.

16.175. The problem of the younger medical staff is the most acute one. For the reasons of safety people younger then 18 years old and also people suffering from mental health issues and chronic alcoholism are not allowed to work with people with mental disorders.

The monitoring showed that these requirements were not always fulfilled. In the best case the selection of younger medical staff was conducted on the basis of documents from neuro-psychiatric and narcological dispensaries that confirmed that the person had no prohibitions for this kind of work (for example in the psychiatric hospital # 13 in Moscow), in the worst cases the younger medical staff positions were filled with people who had been sentenced by the (criminal) court, and with people were suffered from alcoholism. As a result there are

situations when the younger medical staff of psychiatric hospitals becomes a source of danger for the patients.

16.176. Low salary, lack of prestige of the profession, hard conditions of work are the factors that do not allow to hire better qualified specialists on the positions of younger medical staff. The conditions and opportunities for careful selection of candidates in reality are absent. Moreover, hire turnover rate does not permit developing professional skills in younger medical staff, and due to that the level of qualification of younger medical staff is low.

According to the data of the IPA the cases of aggression in Russian psychiatric hospitals are not rare. This situation is a predictable consequence of an acute lack of younger medical staff and of hiring people without careful selection.

16.177. Psychiatric hospitals in Russia constantly suffer from staff shortage. And it should be noted that it is difficult to hire not only younger medical staff but also to hire specialists on rehabilitation, psychology, psychotherapy and social work and even psychiatrists.

During the monitoring it was found out that in the majority of hospitals there are not enough qualified specialists. In all the regions only 70-75% of the posts of psychiatrics were filled. This leads to the situation when all the psychiatrists have work overload and receive salary depending on the number of posts they are occupying.

16.178. Due to low salary per post, constant work overload becomes the way to pay the doctors a reasonable amount of money.

The results of the monitoring conducted in 2003 showed that usually one psychiatrist works with about 40 patients, and the current standards say that one psychiatrist should work with 25 patients.

16.179. It is obvious that with such kind of work overload per psychiatrist it is very difficult to build treatment upon the individual approach to the patient, to develop detailed individual plans of treatment, to make corrections of the scheme of treatment timely etc. usually the patient is admitted into hospital, his acute state is relieved and the achieved progress is stabilized by the use of medication.

16.180. Modern psychiatry disposed of the ideas of taking control over patients; it demands development of non-medication measures of treatment. Therapy directed at raising the level of social activity of the patients is mandatory. To achieve this, pharmaceutical therapy should be supported by social therapy, rehabilitation, art therapy, special education programs for the patients of children wards.

16.181. In the majority of psychiatric hospitals there are no social workers, no rehabilitologists, no psychotherapists and no psychologists. These are the kinds of specialists that bring psychiatric help to the modern level, ending psychological component and social component to the medical component.

For example, according to the results of the monitoring, in Bryanskaya regional psychiatric hospital # 3 out from 10 existing posts of psychotherapist and 10 existing posts of psychologists all the two were occupied; in Permskaya regional psychiatric hospital there were not enough psychologists, in Chukotsky regional psychoneurological hostel there were no social workers nor rehabilitologists at all.

In some wards classrooms and playrooms for children are not equipped well enough - there are not enough textbooks and materials for all the children staying at the hospital. Moreover, in some wards there are no special teachers. Because of that, children's rights to access education and right to development are violated.

16.182. Thus, medication still is the basic measure of treatment. *The programs of art therapy were developed and applied only in 34 hospitals out of 93 assessed.*

16.183. Due to economic difficulties, many labor treatment enterprises created at the premises of the hospitals during the Soviet times, were closed, and so the opportunities for labor therapy are limited. It should be noticed that this kind of non-medication therapy is a significant component of social rehabilitation.

> *The monitoring showed that in many hospitals the patients' work was exploited and considered an adequate substitution for labor therapy. Patients are used to perform cleaning courtyards and gardens of the hospital, to bring food from the kitchen, to do laundry, to perform reparation works, to clean wards and toilets.*

16.184. In fact, patients' work is exploited and used to compensate the lack of younger staff, and that is seen as an adequate substitution for the problems of social rehabilitation.

16.185. In the hospitals where still exist workshops for crafts or vegetable gardens and cattle, the patients received ridiculous salaries for their work; the salary is incomparable with a payment for the same work performed outside of the hospital.

> *For example, in 2003 the patients of Moscow Regional Psychiatric hospital # 2 received 5-7 rubles per month (0,30$), in the Saint-Petersburg Psychiatric Clinic named after Kaschenko the patients received 200 rubles per month (7 $).*

16.186. It is obvious that such financial compensation could not the equivalent to the effort spent and is not comparable to the average salary for the same work.

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The Problem of Torture and Cruel and Degrading Treatment in Chechnya and the Northern Caucasus[94]

The legal framework for the "counterterrorist operation" in the Chechen Republic

NC.1. In the very first paragraph of Russia's Periodic Report dealing with the armed conflict in the North Caucasus (par. 36), the State describes the legal framework for the "counterterrorist operation" by referring, in addition to Federal Law No 130-FZ of 25 July 1998 "On Combating Terrorism," to the documents of the Shanghai Cooperation Organization (SCO): ***the Shanghai Convention on Combating Terrorism, Separatism, and Extremism***[95], and the ***Agreement of States Parties to the Shanghai Cooperation Organization Concerning a Regional Counterterrorist Structure***[96].

NC.2. The reference to SCO documents is surprising, as this organization is guided by values which are strikingly different from those of the UN and European systems; for SCO the interests of the states prevail over human rights - which are declared to be part of the state's internal affairs. What we see here is an obvious conflict between the two legal concepts regulating the use of force by the state and human rights restrictions. However, upon a closer look at the situation, we see that the Russian Government is right in referring to SCO agreements, as its actions in the

[94]This section of the Report was drawn by the Memorial Human Rights Center and the DEMOS Research Center. To prepare this section we used official statements, information received from NGOs and mass media. Substantial part of the materials had been collected and documented by the offices of the Memorial Human Rights Center in the Northern Caucasus.

[95] Signed in Shanghai on 15 June 2001.

[96] Signed in St. Petersburg on 7 June 2002.

armed conflict zone were consistently incompatible with the international human rights conventions.

NC.3. Starting from the early days of the Second Chechen War, the Russian Government has denied an armed conflict in the North Caucasus, thus preventing the application of the international humanitarian law. As a result, Additional Protocol II of 1977 to the Geneva Conventions was intentionally not applied to protect the local population.

NC.4. The Federal Law against Terrorism contravenes the Convention by containing no ban on the use of torture. Moreover, art. 21 of the said Law relieves government agents of responsibility for causing harm to citizens. The Law fails to provide any legal remedies to the public nor any guarantees of fair criminal procedure. Thus, art. 24 provides for closed judicial hearings, without public access.

NC.5. Russia's report mentions that the Council of Europe reviewed the Law against Terrorism for potential conflicts with the international human rights conventions, but failed to find any. However, it is not true: in fact, the Council of Europe recommended substantial changes in the said law, but the recommendations were not honored.

NC.6. Any claims that the treatment of civilians in the conflict zone was consistent with the requirements of the European Convention for Human Rights (including restrictions of freedom and integrity of the person, freedom of movement, respect for private and family life, and freedom of expression) made in par. 38 of Russia's report are unfounded, because Russia had not followed the established derogation procedure and had not declared a state of emergency. Reference to the Law against Terrorism, originally designed for local, short-term security operations, to justify long-term (more than six years) and large scale (tens of thousands of square kilometers) restrictions of human rights is arbitrary, reflecting an excessively broad interpretation of the law. While the said law defines a counterterrorist operation as local and limited in scale, it was used to justify large-scale military operations involving powerful weapons, and random attacks in the North Caucasus.[97]

NC.7. In fact, the use of the federal armed forces in the Chechen Republic is unlawful, because the Federal Law against Terrorism does not allow using the army in internal conflicts.[98] The unlawful actions of uniformed forces are the cause of persistent and massive use of torture against civilians in Chechnya.[99]

NC.8. On 6 March 2006, the Russian President signed into force a new federal law – Law No 35-FZ "On Opposing Terrorism"; earlier, on 15 February, he had signed Decree No 116 "On Measures to Oppose Terrorism." Combined, these acts grant authorities even more power to use force, restrict human rights and civil liberties, and avoid accountability.

Torture, cruel and degrading treatment as methods of "counterterrorist operations" (ranging from "sweep" to "targeted" operations)

NC.9. Large-scale fighting in the Chechen Republic took place between autumn 1999 and March 2000, and then broad "sweep operations" continued, such as "ID checks" by combined

[97] A legal regime in Russia allowing temporary limitation of rights and liberties is the state of emergency; its introduction, according to the corresponding Law of 1991, is subject to the endorsement of the Upper House of the Russian Parliament. While the state of emergency exists de-facto in the conflict zone and surrounding territories, it has never been formally introduced, to avoid parliamentary control. Instead, in August 1999, authorities declared that the federal troops were conducting a "counterterrorist operation" in accordance with the Law on Combating Terrorism.

[98] By art.10, par. 2, 3 of the Federal Law on Defense of 31 May 1996 (№61-FZ), the Decree of 15 September 1999 (№4293-H-GD) "On the situation in the Republic of Dagestan, on priority measures to ensure national security in the RF, and to combat terrorism," use of the Armed Forces is subject to the RF President's order. In such case, by art. 87 of the Constitution, the Russian President was obligated to declare the state of emergency.

[99] Until now, there has been only one case of punishment imposed for the use of torture in Chechnya.

uniformed units, including the army, internal forces, the Ministry of Interior, Federal Security Service (FSB), and the Ministry of Justice forces. They would seal off local communities to conduct blanket searches and massive, random, unlawful detentions. Detainees were then taken to "temporary filtration points" set up nearby in the armed forces' deployment area. There, detainees were usually subjected to massive beatings and cruel torture. Many cases are known where individuals "disappeared" following their detention during a "sweep operation" and transfer to a "filtration point." Bodies of some of those "disappeared" were later on accidently found by local residents. As a rule, a few people would "disappear." The use of force during arrest, escorting, and detention, as well as during questioning and investigation, became a modus operandi for uniformed personnel, penitentiary officers, and investigators.[100] The arrest was usually performed in an extremely brutal manner, involving the use of violence and the threat to use firearms not only against the detainee, but against all other people present, including women and children. Reasons for arrest were arbitrary – it could be ethnicity, age (ability to carry weapons), appearance or even a mark on the shoulder suspected to be left by a gun holster. Whenever locals were detained by the armed forces, primarily intelligence or spetsnaz (special purpose) units, detainees were not guaranteed even the right to life - most were killed after an "intense interrogation," i.e. cruel torture; in many cases, saving their lives was never considered. When detainees were transported to other location, they were usually treated in extremely cruel ways to rule out any possibility of escape (such as transporting bound detainees in trucks stacked over each other, etc.).

NC.10. From the first days of the conflict, torture and beatings were virtually always an integral part of investigation. It was seen as a necessity, because from the onset of the "counterterrorist operation," the law enforcement lacked intelligence on terrorist suspects, and detainees' confessions were usually the only evidence there was against them. It all took place against the backdrop of an active anti-Chechen campaign and a total lack of supervision over the federal forces' conduct. The armed conflict in the Chechen Republic revealed that the federal uniformed forces saw "torture" (including physical torture, cruel and degrading conditions of detention, humiliating treatment, etc.) as a necessary, normal and even desirable practice, rather than something forbidden.

NC.11. With time, as federal forces were taking the Chechen territory under their control and established a network of informants, their tactics changed - they switched from deployment near local communities and blanket "sweeps" to "targeted security operations," where armed, camouflaged and masked people arrived in armored vehicles with painted-over license plates in a local community, broke into specific homes - usually at night - detained and took away some of the occupants. Being more selective did not make them less cruel - the people they detained, or, more precisely, kidnapped, usually disappeared.

NC.12. Another important recent development has been "Chechenization" of the conflict. In 2003-2005, uniformed units made of ethnic Chechens were formed in the Chechen Republic. Alongside regular police, specialized units were set up to combat rebel fighters; these units are granted the power to use unlawful force.[101]

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[100] Presumption of innocence was denied from the very start of the military operation, when troops were given an assignment to fight in the enemy territory; accordingly, all locals were suspected of assisting the "bandit formations" and any detainee was a prisoner of war.

[101] The largest professional uniformed force manned by ethnic Chechens reports to Ramzan Kadyrov. It consists of numerous units scattered over the Chechen territory; earlier, they were integrated in the so-called Security Service (the service per se no longer exists formally in Chechnya, but the term has survived and is now widely used both by local civilians and uniformed personnel to describe all of Kadyrov's units). The Security Service (SS) was originally set up as personal security guard of Akhmat Kadyrov, and did not enjoy any legal status then; after three years, however, it grew into a powerful, well-armed force. In 2004 – 2005, SS units were legalized mostly as parts of various Chechen Ministry of Interior divisions. Former rebel fighters make up a large proportion of SS units - wounded, disillusioned, captured - they had hoped to benefit from the declared amnesties to return to peaceful life; instead, they were recruited to SS units, often through torture and threats of violence against family members. Those who refused, "disappeared,' falling victim to summary executions. This practice continued even after the expiration of the last amnesty. In addition to "Kadyrov men" and their subordinate groups, two ethnic Chechen battalions

NC.13. People detained by these troops "disappear" for the rest of the world; they are kept in secret prisons without any records of their detention; they are tortured to force "confessions" underlying fabricated criminal prosecutions. In about half of the cases the kidnapped people disappeared without trace, or their dead bodies were later found.[102] Starting in 2004, threats of violence and hostage-taking against relatives have been widely used to force rebel fighters to surrender.[103]

Abusive security operations targeting peaceful civilians in 2004-2005

NC.14. Russia's report places a major focus on the efforts by prosecutorial offices to establish the rule of law, and refers to numerous administrative measures, rules and regulations.[104] These formal efforts were designed in the first place to regulate "sweep operations." Indeed, the number of "sweeps" in residential areas has decreased significantly. In 2004, all sweeps were less cruel, with fewer human rights violations. However, the cruelty of certain "sweep operations" in 2005 were comparable with those of the first years of the war. An illustrative example was the operation in Borodzinovskaya, Shelkovsky District, neighboring with the Republic of Dagestan. Until recently, the local community totaled 1118, with 90% ethnic Avars.

On 4 June 2005, in the daytime, servicemen of Vostok special purpose battalion manned mostly by ethnic Chechens, but under the Ministry of Defense command, conducted a security operation in the village of Borodzinovskaya to detain "11 local villagers suspected of assisting rebel fighters."[105]

At 3 p.m., two APCs and at least 15 other vehicles carrying armed men entered the village. The men were wearing gray police uniforms and camouflage. They broke into homes and forced all men to get into the vehicles. The men were brought to the local schoolyard, forced to lie face down on the ground, with clothes covering their heads. All, including elderly, teenagers and disabled people, were kicked and beaten with rifle butts. The villagers were forced to lie face-down on the ground until 10.00 pm, although it was raining heavily. The villagers gathered from the servicemen's words that they were suspected of killing the local forester and attempting at the life of the local head of administration, events that preceded the raid by two days.

11 men were called by name and taken out of the schoolyard, never to be seen again.[106]

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operate in Chechnya; they are Vostok [East] Battalion (aka "Yamadayev men" after their commander Sulim Yamadayev) and Zapad [West] Battalion (aka "Kakyev men" after Said-Magomed Kakyev) and form part of the 42-th Motorized Artillery Division of the RF Ministry of Defense. Besides ethnic Chechens, these battalions include servicemen from various Russian regions. Over the past two years, members of the said forces have been promoted to virtually all key positions in the Chechen Ministry of Interior.

[102] See below in the same section: Summary Table on Abductions in the Chechen Republic.

[103] See in the section: Illegal (Secret) Prisons and Hostage-taking.

[104] P. 41: Joint Order by the Commander of the United Group of Forces (UGF) in the North Caucasus and the Military Prosecutor of the UGF No 98 /110 of 23 April 2003 ; The Instruction on Interactions between Officials and other Servicemen of the UGF with Military Prosecution Offices during Security Operations in the Chechen Republic with Regard to Detaining Citizens and Responding to Reports of Crime; p. 42: Directive of the Regional United Headquarters No 2 of 26 August 2003 on Procedures for Security Operations and Combat Assignments; p. 97: instruction to prosecutors "On issues to be determined in the first place following the instigation of criminal proceedings on complaints against UGF staff and servicemen in the context of residence and registration checks," of June 2002; p. 99: The Chief Military Prosecutor, Order No 301 "On improving prosecutorial supervision over human rights and civil liberties in the context of counterterrorist operation in the North Caucasus" of 20 November 2002. ; p. 101: joint directive by the Chechen Prosecutor's Office and the UGF Military Prosecutor's Office No 15 of 30 November 2002 "On setting up joint investigative teams"; p. 102: joint order No 8 of 3 February 2003 of the Chechen Prosecutor, the UGF Prosecutor, the Chechen Minister of Interior, the UGF Commander and other officials, which formed the basis for the "Instruction on the interaction across law enforcement agencies in the North Caucasus in investigating exceptionally serious violent crimes, involving attempts at the life and health of citizens residing permanently or temporarily in Chechnya"; p. 104: joint order of the UGF Commander and Military Prosecutor No 98/110 of 23 April 2003 amending The Instruction on Interactions between Officials and other Servicemen of the UGF with Military Prosecution Offices during Security Operations, with Regard to Detaining Citizens and Responding to Reports of Crime; approved by the UGF Commander's order No 34 of 1 February 2003.

[105] RIA Novosti news agency, 6.06.2005.

[106] Abakar Abdurakhmanovich Aliev, born in 1982, resident of Borodzinovskaya; Magomed Tubalovich Isayev, born in 1996, resident of Borodzinovskaya; Akhmed Ramazanovich Kurbanaliev, born in 1978, resident of Chatli,

Around 10.00 pm other men were brought to the school gym, where the servicemen beat them again with batons and trampled on their backs. Then the servicemen told the villagers to stay where they were and left.

In Lenin Street, two houses were burnt – No 9 and No 11 – belonging to Nazirbek Magomedov and his son Said. The servicemen also burned the house of Kamil and Zarakhan Magomedovs, and the house of Magomad Magomadov, aged 77. Magomadov's wife and daughter were lead out of the house, and the old man was burnt alive.

After the servicemen left, the villagers found that a few private cars had disappeared, as well as people. None of those who conducted the "security operation" identified themselves, but the villagers recognized one of them, named Khamzat (nicknamed The Beard) who served in Vostok Battalion and was the leader of the local United Russia Party chapter.

On 14 July, local villagers found human remains in the burnt out home of Nazirbek Magomedov. The Chechen Ministry of Interior forces whom the villagers called to the site put the remains in four bags and attempted to drive away, but the villagers shocked by their behavior surrounded them and blocked the way. In response, the police beat father and son Batayevs, threw them in one of the police cars, and drove along the village streets, shooting randomly. On the same day, they tossed Batayevs out of the car on the road to Gudermes District of Chechnya. Following these events, on 16 June, fearing for their safety, 230 Avar families left Borodzinovskaya in an organized manner, crossed the administrative border to the Republic of Dagestan, and set up a tent camp outside the entrance to the city of Kizlyar.

The prosecutor's office launched a criminal investigation into the arson attacks, killings and abductions. An ad-hoc group of investigators went to the scene of the crime and spent a long time in Borodzinovskaya. Given this fact and the active discussion of events in Borodzinovskaya in the press due to the scandal and the exodus of villagers to the neighboring Dagestan, there was hope for some time that this crime would be an exception, and the culprits would be brought to justice. Unfortunately, these hopes were frustrated.

It was proven during the investigation that on that day, servicemen of Vostok Battalion conducted a 'sweep operation' on their own initiative. One of the officers of the battalion was sentenced to a probational term for "abuse of power." At the time of this publication, no one else was punished for the crime. Moreover, soon after the events described above, the commander of Vostok Battalion, Sulim Yamadayev, was awarded the highest Russian military decoration, the Hero of Russia Star. The destiny of the "disappeared" people is still unknown, except that in November 2005 two servicemen of Vostok Battalion, speaking informally to Demos Center staff, said, without identifying themselves, that "[the victims] had long been buried." As of today, virtually nobody has any doubts that the victims had been killed.

NC.15. In the south of the Republic, - a mountainous forest area - where the federal forces have failed to establish control over the territory, the fighting sometimes is similar to that in the early days of the war.

NC.16. In 2005, the security operation by federal forces on 14-16 January in the mountainous village of Zumsoy, Itum-Kalinsky District and surrounding areas, was the cruelest.

During the operation, the village of Zumsoy and its outskirts were shelled with missiles and bombed. On 14 January, helicopter-borne troops landed in the village. Prior to the landing, helicopters fired missiles and shelled the village from machine-guns. These actions of the military were not warranted by the circumstances, as there were no rebel fighters in the village, no one fired or offered any resistance to the forces.

After landing from the helicopters, the troops conducted "a sweep operation" in the village, which involved armed robbery, destruction of property, and kidnappings. Servicemen would

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Tsuntinsky District of Dagestan; Magomed Ramazanovich Kurbanaliev, born in 1982, resident of Chatli, Tsuntinsky District of Dagestan; Akhmed Peizulaevich Magomedov, born in 1977, resident of Malaya Areshevka, Kizlyar District of Dagestan; Martukh Asludinovich Umarov, born in 1987, resident of Borodzinovskaya; Edouard Vyacheslavovich Lachkov, born in 1986, resident of Kizlyar, Dagestan; Akhmed Abdurakhmanovich Magomedov, born in 1979, resident of Borodzinovskaya; Kamil Magomedov, born in 1955, resident of Borodzinovskaya; Shahban Nazirbekovich Magomedov, born in 1965, resident of Borodzinovskaya; Said Nazirbekovich Magomedov, born in 1960, resident of Borodzinovskaya.

break into homes, yelling obscenities at the residents, destroyed or grabbed whatever they could put their hands on, including money, gold jewelry, clothes, medications, TV sets. In some homes, they took away all IDs and other personal papers they could find. Thus in Mukhaevs' home, they took away the passports of the hostess and her daughter, birth certificates of younger children, documents needed for accessing the husband's disability pension, gold jewelry and 250,000 rubles in cash received as compensation for the destroyed house. In some households, the military shot horses and turkeys, and blew up an UAZ car, which belonged to Saidamin Khadzhiev. Then they loaded all the stolen property on helicopters, in front of the villagers.

Late on 14 January, servicemen kidnapped local villager Shirvani Shakhidovich Nasipov, born in 1956. In the morning of 15 January, they kidnapped a number of people from the same household: Vakha Mahmudovich Mukhaev, born in 1955, his 15-year-old sun Atabi Vakhaevich Mukhaev, and 30-year-old Magomed-Emin Khabilovich Ibishev. On the same day, the military left the village in helicopters, taking along the people they kidnapped.

The kidnapped people's destiny is unknown ever since.

The villagers of Zumsoy complained to the military prosecutor, but to no avail. Moreover, on 28 January, servicemen entered the village again and stayed until 2 February. The abuse continued; fortunately for the villagers, they no one was kidnapped this time.

Abductions, disappearances and summary executions during the "anti-terrorist operation"

NC.17. While currently sweep operations" are rare, abductions, "disappearances" and summary executions continue. Now they take place as part or as a result of "targeted security operations" which are not subject to any legal regulation or intentionally unregulated. Attempts to reform investigation and prosecution did not result in practical improvements in terms of preventing or investigating crimes, in particular "disappearances."

NC.18. The problem of "disappearances" in Chechnya remains acute. In most cases, people who "disappear" have been kidnapped by uniformed forces, rather than rebel fighters, and recently most of the uniformed kidnappers are locals. Currently we observe a slight decrease in the number of abductions documented by human rights defenders, but this decrease is not as significant as officials claim it to be. Partially, the decrease is due to "Chechenization" of the conflict, and the high latency of violence in the Chechen territory – avoiding documentation by either human rights defenders or law enforcement authorities.[107]

NC.19. Official data on the number of people who were kidnapped or "disappeared" are contradictory and incomplete.

NC.20. It is true of general statistics as well. In September 2004, during a visit of the Council of Europe Commissioner on Human Rights to Russia, the Office of the RF Prosecutor General informed him that over the past three years [apparently, since autumn 2001] in Chechnya, a total of 1,749 criminal investigations were launched into abductions of about 2,300 victims. On 13 October 2004, the acting Ombudsman in Chechnya, L. Khasuyev said that "over the last four years [apparently, since autumn 2000], more than 2,500 people have been kidnapped in the Republic." On 27 December 2004, A. Arsentyev, Head of the Federal Prosecutor's Office in the Southern Federal District, said that "since the start of the anti-terrorist operation [i.e. since autumn 1999] in Chechnya, a total of 2,437 people were abducted and 347 freed by the law enforcement authorities." In addition, in September 2005, Chechen President A. Alkhanov said that since 2000, a total of 1898 people disappeared.[108] A month later, Head of the Chechen President's Office for Constitutional Rights N. Nukhazhiev announced 2500 disappearances[109]. In February

[107] In November 2005, Memorial surveyed its staff in Chechnya. They found that between May and November 2005, when their staff went to the scene of crimes, victims refused to give information on the abuse they suffered in 30% cases in villages, and in almost 80% cases in the city of Grozny. Very often, all that human rights defenders could do was to document the crime – such as abduction or unlawful detention with subsequent release after a while - without any details.

[108] ITAR-TASS, 2.11.2005

[109] Lenta.ru 10.12.2005

2006, the same N. Nukhazhiev reported a total of 2780 disappearances over the entire period of conflict.[110] However in early 2003, the lists of disappearances maintained by a working group of the Chechen Government contained more than 2800 names - so it almost looks like no one disappeared in Chechnya in three years.

NC.21. The current official statistics look even less convincing.

NC.22. Speaking about abductions in 2004, Chechen President A. Alkhanov said, "In 2003 there were 362 abductions. This year [i.e. 2004], 175 facts were reported. … our measures resulted in 47 persons returned to their homes."[111] Two months before, the figure of 185 abductions was quoted at the meeting of the Collegium of the Chechen Interior Ministry. Shortly before, Chechen Minister of Interior R. Alkhanov said that, "over the outgoing year 2004, abductions in Chechnya dropped by 40%." [112] On 21 January 2005, 168 abductions in 2004 were reported to the Ministry of Interior Collegium, which was supposed to mean that abductions had dropped by half as compared to 2003, where, according to the same official, 440 people were abducted.[113]

NC.23. Official statistics for 2005 and comparisons with 2004 share the same inconsistency.

NC.24. In October 2005, President A. Alkhanov said that "since early [2005], a total of 143 abductions have been reported in the republic; whereas last [2004] year, 128 abductions were reported over a comparable period." [114] Ten days later, he said that "there is a general downward trend for this type of crimes in the republic."[115] A few days later President Alkhanov clarified that in fact, only 65 people were kidnapped in Chechnya in 2005, while most of the 143 had been kidnapped before, but the crimes were officially reported in the current year.[116] In end-December he reiterated, "Abductions are on a downward trend; last year, there were 168 cases, and this year, there are 67 cases."[117] In January, he said, "A total of 77 abductions took place this year, while there were 213 such incidents last year."[118]

NC.25. In view of these contradictory statements we are surprised that par. 98 of Russia's report describes a "computer database created in June – September 2002 and regularly updated, with data on criminal proceedings into abductions and killings over the entire period of the anti-terrorist operation"; this database is presented as a major breakthrough in the investigation of these serious crimes.

NC.26. Data available to human rights defenders on abductions and "disappearances" in Chechnya are far less optimistic - please see below a summary table for 2002 to 2005, provided by Memorial Human Rights Center.:

Table 5. Summary Table on Abductions in the Chechen Republic

Year	**Abducted**	**of them, freed or ransomed**	**of them, found dead**	**of them, disappeared**	**of them, under investigation**
2002	537	90	81	366	
2003	497	157	52	288	
2004	448	206	24	210	8
2005	316	151	23	127	15
Total:	1799	611	180	985	23

[110] Newsru.Com, 22.02.2006
[111] Interview to Strana.ru, January 2005
[112] 27 December 2004, The Chechen Republic website, with reference to ITAR-TASS
[113] ITAR-TASS, 21 January, 2005
[114] RIA Novosti news agency, 7.11.2005.
[115] RIA Novosti news agency, 18.10.2005.
[116] RIA Novosti news agency, 21.10.2005
[117] Komsomolskaya Pravda, 20.12.05
[118] RIA Novosti news agency, 17.01.06

NC.27. More or less detailed data are available to Memorial to support the above statistics, including the victim's name, surname and patronym, residence address, circumstances of abduction, etc. In total, over the "second Chechen war," Memorial has data on about 1600 "disappearances" of people who were detained or abducted (including cases where the body was later found). Memorial monitors the situation on about 25-30% of the Chechen territory, and its data even for these areas may be incomplete. To obtain a realistic estimate, you should multiply the figures above by a factor from two to four, according to different experts.

NC.28. By extrapolating Memorial's findings and analyzing the official data, we can assume that over the entire period of "counterterrorist operation," disappearances of people as a result of abductions, unlawful arrests and detentions were between three thousand and five thousand people. Unfortunately, we do not have more accurate numbers available to us.

NC.29. As a rule, neither the prosecutor's office, no human rights defenders succeed in identifying concrete perteprators in abduction cases. There is one single case where the kidnappers were stopped by local police and forced to show their identification documents. This happened because staff-members of the Chechen Republic brach of FSB were actually abducting people in the neighboring Ingushetia[119] and transporting them to the territory of Chechnya. The case of Adam Medov is unique, in and of itself, because it contains documental evidence of FSB's involvement in kidnapping.

> *On 15 June, 2004, about 2000, habitual resident of Ingushetia Adam Kazbekovich Medov, born in 1980 (registered at 4 Chkalova St., Karabulak; temporarily lived in Nazran, Nasyrkotskaya St.), left home in his car and never came back. On 17 June, in the daytime, at the Ingush Traffic Police (GAI) Post next to Caucasus-I Checkpoint, Ingush police stopped two cars heading to Chechnya: a green Volga GAZ-3110 and a Zhiguli VAZ-21099 for a check. They heard knocks from the Volga trunk, opened the hood and saw a bound man who said: "I am an Ingush! They are trying to take me away!" He was Adam Medov. The other car immediately started and left for Chechnya.*[120]
>
> *The armed people in the Volga car said that they were FSB agents, and police were not allowed to stop them; they offered resistance. The Ingush police stopped the kidnappers. They found another bound man on the floor in the back of the car – Aslan Iznaurovich Kushtonashvili. All were taken to Sunzhensky ROVD. There, Adam Medov testified that on 15 June, in Karabulak, his car was stopped by armed men – four ethnic Chechens and four ethnic Russians. He had a passenger in his car. Both men were taken to the FSB building in Magas, where they were tortured. A.Medov was detained by agents of the FSB Office in Chechnya headed by Subcolonel V.V.Beletsky*[121]*, and including agent A.G. Shurov, Ensign D.A.Panfyorov and Sergeant I.Yu.Minbulatov*[122]*. Sunzhensky District Prosecutor contacted the local department of FSB and was informed that the detained FSB agents were performing their duty and should be released immediately. The prosecutor allowed them to leave for Chechnya taking the two detainees along.*[123]

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[119] Abductions by uniformed personnel spread from Chechnya to Ingushetia. It is a key aspect of the conflict expansion outside Chechnya. See section *The escalation of conflict outside Chechnya* below for details.

[120] Caucasus-I, a major checkpoint, is located next to the Ingush police post. Caucasus-I is controlled by the federal authorities, including the FSB. No vehicle moving to or from Chechnya on this road can pass by it without being checked.

[121] Responses by deputy prosecutor of Sunzhensky District B.M.Bekov to Adam Medov's brother, M.K.Medov No 15-5-04 of 21.06.04, and to member of the People's Assembly of Ingushetia M.D.Ozdoyev No 15-167 o/e-045-04. On 9 July 2004, Sunzhensky District prosecutor G. M-G. Merzhuev, speaking to O.P.Orlov and S.A.Gannushkina, confirmed the above facts and said that agents of the Chechen Department of FSB had documents instructing them to detain the suspects, but the detention was performed with gross violations of the Russian law.

[122] Response by RF Deputy Prosecutor General S.N. Fridinsky No 40/2-2918-04 of 18.08.04 to the enquiry by the RF Ombudsman V.P.Lukin.

[123] According to response by RF Deputy Prosecutor General S.N.Fridinsky No 40/2-2918-04 of 18.08.04 to the Federal Ombudsman, the order to let go the FSB agents together with their detainees was given by acting Minister of Interior of Ingushetia A.S.Kostoyev (killed on 21.06.04)

On 18 June 2004, the Sunzhensky District prosecutor sent enquiries to the Chechen Republic Prosecutor and UGF Military Prosecutor Mokritsky, asking them where Medov and Kushtonoshvili had been taken, where they were at the moment, and what were the charges against them. The response from the military prosecutor's office was that their review failed to find on the lists of FSB agents in Chechnya the names of V.V.Beletsky, A.G. Shurov, D.A.Panfyorov and I.Yu.Minbulatov; the destiny of A.K.Medov remained unknown.[124]

Sunzhensky District Prosecutor's Office opened a criminal investigation in the kidnapping of A.K.Medov, but they were unable to investigate the crime, while military prosecutors rejected the case because from their perspective there was no evidence that the kidnappers were FSB agents. The investigation was suspended "due to inability to identify those responsible," then it was resumed under pressure from relatives and their representatives, and then suspended again. The record of Medov's questioning "disappeared" from Sunzhensky ROVD.[125] *Adam Medov's wife, Zalina Medova, complained to court about the local prosecutor's office that refused to grant her requests, such as to question a number of staff members of Ingush FSB and Ministry of Interior, and the Caucasus-I checkpoint guards; to review the logbooks kept by the checkpoint, etc. The investigator refused to give her information on the progress of the criminal investigation. On 25 January, 2005, the court rejected her complaint; according to the prosecutor's office, "all investigative actions that are necessary have been carried out." The court found that it was lawful for the investigator to deny the victim access to the case file. The court failed to request the case file from the prosecutor's office to verify their reasoning.*

On 16 July 2004, the Memorial Center filed an application with the European Court of Human Rights on behalf of Medov's relatives. On the same day, the Court assigned No 25385/00 to their application. The President of the Court's Chamber decided that the application should be processed as a matter of priority under article 41 of the Rules of the Court.

One of the most outrageous cases is the abduction and "disappearance" of Bulat Chilaev, one of the employees of the humanitarian organization "Civil Assistance". In the morning on Aprip 9, 2006 he was abducted by the members of an unidentified armed formation on his way from the village of Sernovodsk to the Rostov-Baku intercity road. A citizen of Grozny, Aslan Israilov, was detained together with him. All attempts to free Bulat Chilaev on the side of the head of the "Civil Assistance" organization and the member of the Presidential Council on the Development of Civil Society and Human Rights – Svetlana Gannushkina – were in vain. Heads of various enforcement units of the Chechen Republic gladly agreed to help in searching for Chilaev and Israilov, but their enthusiasm evaporated quickly and mysteriously. The criminal investigation was started, and the detective officer had the evidence in his hands from the very beginning. The license plates on one of the abductors' cars was received upon the written request of the commander of Khotin armed formation (issued on September 6, 2004), and in the place of the abduction there had been found an officer tag # F142733, which belonged to an officer from the "Zapad" unit of the 42nd Motorized Rifle Division. However, the prosecutor's office failed to bring this officer for interrogation for several months. When the interrogation finally took place, the officer claimed that he had lost his tag in the woods several days prior to the crime and assumed that the tag had then been deliberately left on the abduction spot by the separatists. The investigators were quite satisfied with this answer.

Impunity of Federal and Local Uniformed Personnel

[124] The Federal Ombudsman received similar responses from RF Deputy Prosecutor General S.N.Fridinsky and First Deputy Head of the FSB Service for the Protection of Constitutional System and Combating Terrorism A.A.Bragin.

[125] Application by Z.A.Medova to the RF Prosecutor General of 15.09.04.

NC.30. As to investigation and prosecution of crimes against civilians in the conflict zone, selective impunity prevails.

NC.31. Sentences are always tough for rebel fighters, regardless of the level of their crime. Things are different concerning crimes by federal or pro-federal uniformed personnel. Official statistics are falsified. Investigations of most crimes suspected to involve uniformed forces are suspended "due to inability to identify those responsible." Only a small proportion of cases find their way to court. Most defendants get merely symbolic sentences for major crimes.

NC.32. Official sentencing statistics, again, are contradictory and apparently falsified.

NC.33. In February 2003, Deputy Prosecutor General S.N.Fridinsky responded to an enquiry by MP S.A.Kovalyov by stating that "over the period of the counterterrorist operation, prosecutorial bodies in the Chechen Republic investigated 417 criminal offenses against the local population, suspected to have been committed by members of federal forces." As of the time of enquiry, 341 of the cases (82%) were suspended "because it had been impossible to identify the culprits."

NC.34. In August 2004, Prosecutor Fridinsky responded to a similar enquiry by the Federal Ombudsman that "over the period of the counterterrorist operation, prosecutorial bodies in the Chechen Republic opened 132 criminal investigations into offenses committed by members of federal forces against the local population," and only ten investigations had been suspended at the time.

NC.35. In May 2005, responding to Chair of the Presidential Council for Civil Society Institutions and Human Rights E.A.Pamfilova, RF Deputy Prosecutor General N.I.Shepel stated that *"over the period of the counterterrorist operation, prosecutorial bodies in the Chechen Republic opened 143 criminal investigations into offenses suspected to have been committed by members of the federal forces."*[126]

NC.36. Russia's Report (p. 94) provides specific statistics on the number of abduction cases, which were investigated and sent to courts ("In 2003, prosecutorial investigators sent to courts for consideration on the merits 15 criminal case files on 25 episodes of abduction; 26 defendants were brought to justice over 4 months of 2004, four criminal case files were forwarded to courts, and six persons brought to justice. In total, over the period of the counter-terrorist operation, 51 criminal files were sent to courts, covering 78 episodes; a total of 84 persons were brought to justice").

NC.37. However, over the entire period of the second Chechen war only two members of the federal forces were convicted for kidnapping: Colonel Yuri Budanov and serviceman Sergey Lapin of Hanty-Mansiisky Special Task Police Force (OMON). Moreover, art. 126 of the Criminal Code ("kidnapping") was only mentioned in the sentence of Yuri Budanov who kidnapped and then brutally killed a Chechen girl, Elsa Kungayeva. The other convict – policeman Sergey Lapin – did not have kidnapping included as part of his indictment, although he was actually convicted for kidnapping Zelimkhan Murdalov who was subjected to extreme torture in the Hanty-Mansiisky OMON deployment camp, and then "disappeared." No other kidnapping case involved uniformed personnel as perpetrators, so the statistics quoted in the report are limited to prosecutions of civilians - local residents, participants of rebel armed units opposing the federal troops, and criminals.

NC.38. Russia's report (p. 95) also mentions the number of criminal proceedings launched by prosecutors into kidnappings and "disappearances": "Over 2004, a total of 66 prosecutions were instigated into kidnappings of 95 people; of them 36 prosecutions into kidnappings 51 persons committed this year [2004]. Over a similar period [i.e. one year, in the context of the report] of last [2003] year a total of 70 criminal proceedings were launched into the kidnappings of 116 persons. Of all people kidnapped in 2003, 70 were released. Over the four months of 2004, out of all people kidnapped, 27 were released."

[126] "Memorial" Human Rights Center's archives.

NC.39. However, even by the incomplete data available to Memorial, a total of 497 people were kidnapped in 2003, 330 of them disappeared or were found dead; in 2004, a total of 448 people were kidnapped, 234 of them disappeared or were killed; moreover, in virtually all documented cases of kidnappings, disappearances and summary executions, Memorial approached prosecutorial offices with enquiries. However, criminal proceedings were only opened in less than one fourth of all abduction cases (and in less than 2/3 of "disappearances" or summary executions).

NC.40. Russia's report (p. 96) expresses a regret that "outside the focus of international organizations remain those crimes that are committed against members of law enforcement bodies, heads and staff members of administrations, local self-government, religious leaders, peaceful population, - by members of illegal armed formations (IAF). Over the period of counterterrorist operation, a total of 2,722 criminal proceedings were opened into these facts." Undoubtedly, this number here and further on stands for the totality of criminal cases registered in the "data-base of criminal cases on abductions and killings for the entire period of the counter-terorrist operation", which is mention in Russia's report.

NC.41. In the context of continued armed conflict in the Chechen Republic, frequent victims of armed separatists' attacks are local residents, primarily both uniformed personnel (accoriding to the monitoring findings of the "Memorial", the number of such individuals killed in 2003 is 72; in 2004 – 105; and in 2005 - 44 persons), and administrative officials (according to the "Memorial", in 2003 – one such individual was killed; in 2004 – seven; in 2005 – eight persons).

NC.42. Thus, it is evident that most of the 2,722 criminal investigations mentioned in Russia's report were launched into crimes against *"peaceful population"* - i.e. Chechen residents who were not part of uniformed forces or administrative bodies. Russia's Report says that 2,105 of the cases have been suspended, because it has been impossible to identify suspects to prosecute. If this is the case, it is unclear why the authors of the official report are convinced that the crimes were committed by rebel fighters. The majority of these prosecutions are under art. 126 of the Criminal Code ("abduction"). Notably, in most cases of abduction, were human rights defenders were able to interview witnesses and clarify the circumstances, both the circumstances and the witnesses pointed to involvement of federal forces or other uniformed forces under their control (the use of armored vehicles, unhindered transit through checkpoints, etc.).

NC.43. Prosecutorial statistics are obviously incomplete. Recently, prosecutors have increasingly responded to Memorial's enquiries about kidnapped people by stating that "the facts have not been confirmed." It usually happens when relatives succeed in buying out the kidnapped person from uniformed personnel: neither the victim, nor the relatives complain in such cases, or withdraw the complaint if it has been filed. Notably, recently police and prosecutors have often discouraged relatives from filing complaints; they usually say that complaining may worsen the fate of the victim and lower chances of his release through informal arrangements.

NC.44. Even in the 188 out of the 2,722 cases, where, according to Russia's report, charges were brought against specific Chechens, with subsequent convictions and sentencing, very often we have reasons to doubt the findings of preliminary and judicial investigations. For example, prosecutors reported successful investigation of the killing, in the night of 29 to 30 November 2002, of Malika Umazheva, former head of administration in Alkhan Kala; members of an IAF were convicted and sentenced for the crime. However, according to Umazheva's relatives, federal servicemen arriving in an APC took her out of the house into the courtyard and killed her there. At the same time, four more APCs were cruising the village. Notably, rebel fighters do not have armored vehicles.

NC.45. Russia has a dual system of criminal investigation: military prosecutors investigate crimes committed by servicemen under the command of the Ministry of Defense, the Ministry of Interior Internal Forces, and the FSB. Crimes committed by civilians or the Ministry of Interior staff

(other than Internal Forces) are investigated by local prosecutorial offices, which are not allowed to investigate crimes by the military. Whenever a local prosecutorial office forwards a criminal case file to a military prosecutor's office, the latter can refuse to accept it and to follow through with the proceedings, without giving any reasons for such refusal. So most cases where investigations were closed or suspended "due to impossibility to identify the suspects" remain the responsibility of local (civilian) prosecutors who are not allowed, by definition, to investigate such cases properly.

NC.46. The meetings, orders, directives and instructions listed in paras 100-104 of Russia's Report, including Joint directive by the Chechen Prosecutor's Office and the UGF Military Prosecutor's Office No 15 of 30 November 2002 "On setting up joint investigative teams" so far have failed to make any difference.

NC.47. Over the entire period of the "second Chechen war" 103 servicemen faced trial for crimes against Chechen civilians as of mid-2005.[127] Eight of them were found not guilty. Thus, for example, the court acquitted four servicemen of GRU Spetsnaz (Captain Ulman and others) prosecuted for shooting detainees - peaceful civilians. With regard to three defendants, the court dropped the case due to decriminalization of the act in question. Twenty more servicemen were amnestied, - including for example, a contract serviceman who opened fire out of pure malice, killing a woman and wounding another one. 27 servicemen, most of whom committed murders of peaceful civilians while off-duty, were sentenced to various prison terms, ranging between one year of settlement colony to 18 years of strict regime prison. The absolute majority, however, received purely symbolic penalties, such as probation (including perpetrators of rape, robbery, extortion, torture of unlawfully detained civilians, theft, deliberate destruction of property, etc.), fines (for beating, unlawful detention of prosecutorial staff, etc.), and internal disciplinary sanctions.

NC.48. As of mid-2005, a total of 34 police officers were convicted for crimes against civilians. Just as the army personnel, most police officers were sentenced to "symbolic" punishments. Only seven received real prison terms, others (including those guilty of drunk shooting and killing or wounding innocent people; extortion, bribes, threats of murder, "hooliganism," etc.) were sentenced to probation.

NC.49. Proceedings are still underway in a high-profile case of massive killings by federal servicemen of peaceful civilians in Staropromyslovsky District of Grozny, in Alkhan-Yurt, and in Novye Aldy. There have been no effective criminal investigations in any of the found massive burial sites.

NC.50. The law enforcement officers seem to harbor no misconceptions as to who abducts people. Thus, the "Analysis of the Current Status of Operational Environment in Relation to People Abductions on the Territory of Oktyabrsky District of the City of Grozny from 1995 to September 2006" (see Annex for quotes) says that 9 people were abducted by the criminal groups, 58 – by the officers of Oktyabrsky temporary department of internal affairs, and 15 – by other military formations.

Ineffectiveness of the judicial system in combating impunity

NC.51. Attempts to overcome the "selective impunity" by judicial remedies have been frustrated in most cases. We will quote an example of criminal investigation into the abduction of two Chechen residents.

On 4 May, 2005, following a petition by the Memorial HR Center staff, a city court in Urus-Martan considered a complaint filed by villagers of Martan-Chu, Urus-Martanovsky District, the Chechen Republic. The villagers, Salamat Meshayeva and Mukhtar Saidayev, complained about inaction of their local prosecutor's office. On 17 December, 2002, about 3 a. m. their immediate relatives, Lema Akhmatovich Meshaev and Bislan Suleimanovich

[127] Response by RF Deputy Prosecutor Genera N.I. Shepel to Chair of the Presidential Council for Civil Society Institutions and Human Rights E.A.Pamfilova.

Saidayev, were kidnapped. The kidnappers arrived in an APC, Ural and UAZ vehicles. The prosecutor's office in Urus-Martan District opened criminal investigation No 34002 under art. 126 of the Criminal Code into the incident. The applicants were recognized as victims in the proceedings. The criminal investigation was suspended on many occasions, because "the suspect was not identified" (par. 1, p. 1, art. 208 of the Criminal Procedure Code). The applicants filed complaints and petitions to prosecutorial offices in Urus-Martan District and the Chechen Republic, urging them to perform a number of investigative actions, which, they argued, would lead to successful investigation; the applicants received no response. On 6 April 2005, they challenged the prosecutorial inaction in Urus-Martan city court. The applicants challenged the suspension of criminal investigation; as victims in the proceedings, they demanded access to the criminal case file. The court ruled that the investigation had not been conducted "in full" - some of the key witnesses were never questioned - and ordered the prosecutors to resume investigation. The court denied the applicants access to the case file and did not allow making any copies of the case materials before the end of preliminary investigation. Lacking access to the case file, the applicants and their legal representatives cannot effectively urge the prosecutors to go ahead with the investigation, and it is likely to be suspended again.

NC.52. The ineffectiveness of Russia's judicial system is manifested in particular in its inability to put an end to the impunity of uniformed personnel committing crimes against civilians. A dramatic example of such failure of the Russian judiciary is the high-profile Ulman case mentioned in the sub-section on *Impunity of Federal and Local Uniformed Personnel* in this section of the report. Four members of the special-task force of the Russian Military Intelligence (GRU), including Captain Eduard Ulman, Captain Alexander Kalagansky, Ensign Vladimir Voyevodin and Major Alexey Perelevsky are charged with murder of six Chechen civilians on 11 January 2002 in the village of Dai, Shatoy district of Chechnya. Two jury trials have acquitted them. However, Ulman, Kalagansky and Voyevodin do not deny killing the civilians, but argue that they had followed Perelevsky's orders. Perelevsky confirms that he gave that order and they're witnesses to that event. However, Perelevsky, in turn, claims that the order was initially radioed to him but a higher-in-command in charge of that special operation, Colonel Plotnikov. Plotnikov, on the other hand, denies this allegation and there is no evidence to prove that the order did come from him.

On 11 January 2002, around 3.00 p.m. Captain Ulman's group came in helicopters and landed outside the Dai village in an operation to set an ambush on a site of possible passage of field commander Khattab. Seeing an UAZ car on the road, which, as Ulman insists, failed to stop when ordered to do so,Ulman ordered to open fire at the car. The shooting killed one passenger – school principal Said Alaskhanov, and wounded two others. The five survivors - Khamzat Tuburov, Abdul-Vakhab Satabaev, Shahban Bakhaev, Zainap Dzhavatkhanova, and Dzhamlail Musaev - were told to get out of the car. The servicemen determined that the "detainees" were peaceful civilians. Then, Ulman radioed to Major Alexei Perelevsky, commander of his operative, to report the situation. According to Ulman, explaining in particular, "I've got one "200th" [military jargon for "killed"] and two "300th" [military jargon for "wounded"]. According to Ulman, the Major's answer to the question of what to do with the Chechens was to kill them, though this answer was not direct but communicated through a strong assertion, "You've got six "200th"[i.e. six bodies as apposed to one]!". Then Ulman gave the order, and Leutenant Alexander Kalagansky and Ensign Vladimir Voyevodin opened fire at the detainees. They loaded the bodies in the car and planted an explosive device under it to fake an accidental explosion. This was also done in compliance with Perelevsky's order, which the Major does not deny. The explosion failed to cause enough damage to the car, so the servicemen set the car on fire. This murder had great resonance, and resulted in criminal charges. In April 2004, a court of jury found the members of the "Ulman group" Major Perelevsky not guilty.
The accused no not deny either the fact of shooting the civilians dead or the fact of giving such and order to their subordinates but refer to the necessity of unreservedly following orders of the higher-in-command officers. Thus, Captain Ulman stresses that he followed Major Perelevsky's order and Perelevsky explains that he was following the order by Colonel

Plotnikov. Plotnikov, though, denies his involvement. To note, he wasn't among the persons on trial as no charges were brought against him. Members of the jury, on the other hand, delivered the non-guilty verdict on the basis of their firm conviction that Perelevsky, Ulman, Kalagansky and Voyevodin were all following the orders and the military who're executing an order cannot be held responsible for its implementation.

The Military Collegium of the Supreme Court overruled the verdict and sent the case back to the North Caucasus Military Court for a re-trial. The acquittal was overruled due to numerous procedural violations during the first trial: for example, the list of jurors was made up on the same day that the jury was formed, right in the courtroom - which is a violation, because by law, lists of jurors must be made in advance.

On 19 May 2005, a new jury unanimously found the defendants not guilty on all counts. The jurors considered it a proven fact that the accused acted as required by their service. The non-guilty verdict also allowed the court to reject the civil claims for damages by victims (the killed persons' relatives) to the military.

This ruling, again, was turned down by the Military Collegium of the Supreme Court. One of the reasons was the victims' demand that the jury must include representatives of the North Caucasus communities, such as people from Kabardino-Balkaria, Ingushetia, and North Ossetia,[128] whereas the court selected only ethnic Russian jurors; as soon as the list of jurors was announced, the victims and their lawyers motioned to challenge the jury composition, but their motion was rejected by the presiding judge.

Notably, experts of the Independent Expert Legal Board, a prominent Russian NGO bringing together a number of imminent practicing lawyers and legal scholars in Russia, having studied the case materials, including the questions that the jurors were asked during the second trial and the judge's instruction to the jurors, came to the following conclusion: either the jurors were manipulated, or the judge was not prepared to accept the responsibility and shifted it to the jury. In fact, the jurors were asked to make a legal assessment of the case, which is inappropriate.

By the close of 2005, preparations for the hearings on the "Ulman case" by yet another – third – jury hearings were already underway. This process wasn't completed, though.

In summer 2006, the Constitutional Court of the Russian Federation examined a complaint by the Chechen President, Alu Alkhanov, who objected to the fact that among the jury members selected from the Southern Federal District of Russia there cannot be a single resident of Chechnya because with no court of jury functioning in Chechnya yet jurors from the republic are not recruited for participation in the work of the Southern Federal District Military Court. The Constitutional Court upheld Alkhanov's complaint and ruled that until the jury recruitment mechanism is established in Chechnya, all cases pertaining to crimes by military servicemen again residents of the Chechen Republic would be heard without jury but by a court made up of three professional judges.

The "Ulman case" is therefore to be tired by a court of three judges but the defense councils of the accused requested to have the hearings postponed. Their request was complied with, Meanwhile, all of the perpetrators continue their service in the Russian military forces, and relatives of those murdered have been denied justice for more than four years.

Falsification of criminal prosecutions and use of torture to force confessions

NC.53. Courts, which formally resumed their functions in the Chechen Republic in early 2001, were not adequately staffed until 2004. But even today, the investigative and judicial systems are unable to ensure access to justice, because courts are not independent, and are often involved in falsifying criminal prosecutions. In turn, prosecutorial bodies with their dual functions of investigating crimes and supervising over investigations are not willing to investigate and expose false prosecutions due to the conflict of interests.

[128] Given the prevalence of anti-Chechen sentiments among ethnic Russians in the Southern Federal District, they had well-founded concerns that a jury made up exclusively of ethnic Russians would not pass a fair verdict in the case of Russian servicemen killing ethnic Chechens.

NC.54. In 2004-2005, many victims of kidnapping did not disappear without trace, but were later found in lawful or quasi-lawful detention centers and subjected to falsified prosecution. Here is a common pattern that we have identified. A person suspected of involvement in IAF is unlawfully detained by uniformed personnel who fail to identify themselves, to notify the detainee of the reasons for arrest or where they are going. The detainee's relatives do not know whether the person has been taken by servicemen or bandits, and where they are taken. The detainee usually "disappears" for a while, up to a few days. During this time, those responsible for his detention try to force a confession, usually by subjecting him to cruel beatings and torture.

NC.55. A defense lawyer appointed by the investigator fails to complain about torture being used against the suspect, to demand medical assistance or forensic assessment of the detainee's health. During this time, the detainee's relatives do not yet know his whereabouts and cannot hire another defense lawyer for him. The detainee is subjected to torture to force a confession of any crime he is suspected of, plus any other undetected crimes, and to get him to disclose anyone he knows to be involved in illegal activity - or to give false testimony against any other suspect. There is evidence that in addition to beatings and torture, psychological pressure is used against the detainee or his relatives, such as threats of sexual violence against the detainee, his wife, other family members, - and such threats are often a strong factor forcing the detainee's "confession." In the atmosphere of physical violence and psychological pressure, the suspect is told that it is better for him to "cooperate" with the investigator and sign everything they are told to sign, so that later the investigator will try to "help" him and make things better for him when the case goes to court.

NC.56. Confessions are usually signed in the presence of the investigator, and then confirmed in the presence of lawyers. Then torture is no longer used, but the suspect is warned in advance that should he deny his testimony later, he will be subjected to even stronger pressure. These threats are usually fulfilled immediately should a suspect deny his testimony at the preliminary investigation stage. Suspects are instructed in details of their made-up crimes, with a special focus on what exactly they should do during investigative actions. Usually, a lawyer hired by the family is given access to the suspect after the latter has signed his "confession." Even thought the lawyer may know about the illegal methods used against the defendant, he does not usually challenge them, fearing for his/her own safety. The defendant's confession of a crime he is charged with becomes the sole evidence of his guilt.

NC.57. Even in cases where the use of violence against the defendant was raised in court, the judge was usually unable to detect the falsification, give an adequate legal assessment of the procedural violations, and pass a fair verdict. It is extremely difficult to document torture in pre-trial detention. This system leaves little chance for fair punishment of the guilty and acquittal of the innocent. Complaints to federal supervisory authorities are usually sent back to local supervisory authorities that cover up the abuse committed by law enforcement and security agencies.

NC.58. Thus, Mehti Mukhayev, born in 1958, resident of the mountainous village of Zumsoy, Itum-Kalinsky District of Chechnya, whose family applied to the European Court of Human Rights, was unlawfully detained and tortured for the purpose of falsified prosecution against him.

Mehti Mukhayev was kidnapped by armed and masked men in the night of 29 to 30 December, 2005, based on testimony of some Issa Gamayev who identified Mukhayev as a rebel fighter, member of an IAF. Later, Memorial received a letter from Issa Gamayev saying that he had testified against Mukhayev under torture. Gamayev sent a similar letter to the Chechen Republic Prosecutor's Office.

Nevertheless, on 8 February, charges were brought against Mukhayev under art. 209 of the Criminal Code for "banditry" with punishments ranging between 8 and 15 years.

On 31 December 2005, Mehti Mukhayev's family found out through unofficial channels that immediately after detention, he was taken to Urus-Martan District, where the local court sentenced him to 15 days of arrest for "petty hooliganism."

Later, Mukhayev was transported to Shatoy ROVD (District Office of Interior). There, he was brutally beaten and tortured for 11 days; he was shown photos of people he did not know and urged to identify them. Mukhaev did not identify anyone. On day twelve, he was transported to Grozny, to ORB-2 (Operative-Search Bureau), where he was treated with increased cruelty. As a result of torture in ORB-2, Muchayev was unconscious for 24 hours. He was threatened with "disappearance," should he refuse to confess to anything.

On 20 January 2006, Mukhayev was allowed to see his lawyer invited as agreed with the Memorial. The defendant could only move with great difficulty, he could not sit for a long time, had difficulty breathing, had impaired hearing, complained of swollen legs, strong headaches, and pains in his kidneys and lungs. He had bruises over the body and an abrasion on his nose. Visible signs of beating were documented in Mukhayev's medical record at admission to pre-trial detention prison in Grozny.

On 30 January, relatives hired a lawyer for Issa Gamayev who had testified against Mukhaev (before that, Gamayev's defense lawyer had been appointed by the investigator according to art. 51 of the Procedural Code). On 1 February, Gamayev and Mukhayev were transferred from the pre-trial prison in Grozny to ORB-2, without informing their lawyers. In ORB-2 Mukhayev was first seen by a medical doctor, and then he was beaten, kicked, hit with a chair - to discourage him from denying his earlier testimony. Gamayev was not beaten, but he was verbally advised not to worsen his situation by denying his earlier testimony,

On 2 February, Mukhayev's whereabouts became known to his lawyer; ORB-2 received phone calls from Amnesty International, the International Helsinki Federation, the Memorial Human Rights Center, expressing concern over his situation. By the end of the same day, Mukhayev and Gamayev were returned to the SIZO, where the medical staff documented that after Mukhayev's stay at ORB-2 there appeared new "bruising of the right scapular region, diameter 6 cm," on his body, and "complaint of aches in the heart area."

On August 17, 2006 Urus-Mortanovsky city court found Mekhti Makhmudovich Mukhaev guilty in part one of Art. 208 of the Penal Code (participation in the bandit formation) and sentenced him to 8 month of prison. On September 13 Mukhaev was released. I.Gamaev was found guilty on same charges and sentenced to a year in prison. Even this – almost acquittal by the Chechen standards – verdict, reached with the help of publicity and involvement of both mass media and human right protection organization, is illegal, decidedly unlawful and is based on the fabricated confessions, which were overthrown during the investigation stage. Thus, the following charges were removed during the trial: banditism (Art. 209 PC), attempted murder of the law enforcement officer (Art. 317), terrorism (Art. 205), homicide (Art. 105), illegal procurement, transfer to third parties, keeping, transportation and bearing of explosives and armaments (Art. 222). The prosecution of both Gamaev and Mukhaev was built on the basis of Gamaev's false confessions procured by torture, all of which had been denied before the trial.

NC.58. Lack of access to justice and inaction of prosecutorial agencies in investigating the use of torture in the Chechen Republic deprive victims of any possibility of receiving compensation. The only effective mechanism is the European Court of Human Rights. In February 2005, the Court made its judgment in the case of Magomed Khashiev whose relatives were killed during a "sweep operation" in Staropromyslovsky District of Grozny in January 2000. In September 2005, he was paid a compensation awarded by the European Court in Strasbourg. The first such compensation paid since the start of the armed conflict in the North Caucasus.

Persecution of applicants to the European Court of Human Rights

NC.59. Russia's report (p.120) says that applicants and witnesses are protected by the state. However, experience shows the exact opposite - applicants and witnesses are often subjected to pressure to discourage them from complaining to authorities, to force them to withdraw their complaints, etc. Applicants to the European Court of Human Rights are also subjected to pressure, face murder or "disappearance."

NC.60. Thus, Zalina Medova, the wife of Adam Medov kidnapped by FSB agents, transported from Ingushetia to Chechnya and "disappeared" in the summer of 2004[129] was "advised" by unidentified people, who approached her allegedly on behalf of FSB, to withdraw her complaint from the court for the sake of her own life and the safety of her family. As a result of this threatening situation, Zalina Medova had to leave the country together with her children.

NC.61. Threats against Zalina Medova are not empty words. Over the recent years in Chechnya, a number of applicants to the European Court of Human Rights and their family members have been killed or "disappeared." A couple of examples can serve as illustration.

On April 2, 2005, around 3.00 a.m., in the village of Duba-Yurt, armed men kidnapped Said-Hussein Magomedovich Elmurzayev and Suleiman Said-Husseinovich Elmurzayev, father and brother of Idris Elmurzayev who "disappeared" and was then found dead; applicants to the European Court of Human Rights in Strasbourg. The kidnappers wore camouflage uniforms, they came in three UAZ-452 vans (nicknamed "tablets"), and spoke Russian without an accent. On 8 May 2005, Said-Hussein Elmurzayev's body was found outside the village of Ilyinskaya in the river Sunzha where it meets with the river Argun. As of this writing the whereabouts of Suleiman Elmurzayev are unknown.

On March 27, 2004, after 2.00 in the morning, in the village of Duba-Yurt, Shali District, members of identified federal uniformed force kidnapped eight local residents from their homes: Sharip Khamidovich Elmurzayev (born in 1971), Idris Said-Husseinovich Elmurzayev (born in 1974), Bai-Ali Abdulaevich Elmurzayev (born in 1968), Issa Imranovich Khadzhimuradov, Hussein Imranovich Khadzhimuradov, Lechi Abuyazidovich Shaipov, Zelimkhan Umievich Osmayaev, and Apti Atsaevich Murtazov. The uniformed personnel came in five UAZ-452 vans (nicknamed "tablets"), a Niva car, a Gazelle minibus, an UAZ-469 car, and two APCs, they were brutal and violent with the detainees and their families. They detained four more people, one of whom was able to escape, and three were tossed out of the car at the outskirts of the village.

The kidnapped men's family members followed the convoy and found that it headed to the south, without being stopped at checkpoints, through the village of Chishki, passing Starye Atagi towards Grozny. A criminal investigation was opened into the kidnapping, but the authorities could not provide any information about the destiny of the kidnapped men. Unofficially, family members obtained an internal document of the prosecutor's office describing an inspection of the military base in Khankala, where all the eight detainees were held (a faxed copy of the memo was provided to the media by Human Rights Watch).

On 9 April 2004, nine dead bodies were found at the northern outskirts of Sergen-Yurt - the eight villagers of Duba-Yurt kidnapped on 27 March, and the body of Abdulla Litayev, also a villager of Duba-Yurt, who had been kidnapped two months before by uniformed personnel. All men were shot in the back of the head, all bodies showed numerous signs of torture.

The victims' relatives asked Stiching Chechnya Justice Initiative, a non-governmental organization, to file an application on their behalf to the European Court of Human Rights. A year later, as was mentioned above, two of the applicants were kidnapped, and at least one killed.

NC.62. Another applicant who was killed had complained to Strasburg about the use of torture.

Zura Bitiyeva, an active participant of anti-war rallies during the first and second Chechen wars, was detained on 25 January 2000 together with her son Idris Iduyev in her home in the village of Kalinovskaya, Naursky District of Chechnya. Bitiyeva was brought "for an ID check" to the "filtration camp" in Chernokozovo (its official status at that moment was that of a temporary detention facility). She spent 24 days there in a small cell holding between 3 and 10 women at any time - all women were beaten and abused. The cell had no heating; detainees were given water and food only once a day. Bitiyeva had a heart condition, but was denied medical assistance; she was taken to a local hospital only when she lost consciousness. Following her release, Bitiyeva was ill for a long time. She applied to the

129 For detailed description of the case, see the section "Abductions, disappearances and summary executions during the "anti-terrorist operation".

European Court in Strasbourg alleging violations under art. 3 (freedom from torture) and art. 5 (right to liberty and security of person) of the European Convention. Starting in 2001, Bitiyeva participated in protests.

On May 21, 2003, around 4.00 in the morning, Zura Bitiyeva, her husband Ramzan Iduyev, their son Idris Iduyev, and Zura's brother Abubakar Bitiyev were shot dead in their home in the village of Kalinovskaya by "unidentified masked men in camouflage," who came in UAZ-452 vehicles without license plates.

Following the killing of Zura Bitiyeva, her application has been upheld by her daughter Luisa Bisiyeva who also complains about violations of art. 2 (the right to life), art. 3 and art 13 (the right to effective remedy) of the European Convention. On 20 October, 2005, the 7-judge Chamber of the European Court of Human Rights found the application admissible. The applicants are represented by lawyers of the Memorial Center and the European Human Rights Advocacy Centre (London).

The European Court pointed out that the Russian Government did not offer any objections as to domestic remedies not being exhausted, and therefore, the application being inadmissible. The Government's remark that considering the application on the merits would be premature, because the criminal investigation has not been completed, was found by the Court to refer to the merits, as Luisa Iduyeva-Bisiyeva complained about the ineffective investigation of the killing. The court unanimously found the application admissible.

Interaction between government authorities and non-governmental and inter-governmental organizations to address the problems of torture, cruel and degrading treatment

NC.63. Russia's Report (p. 105) contains a reference to Deputy Prosecutor General in the Southern Federal District Fridinsky, who issued a memo of 6 November 2003, No 46/2-10627-03, advising the acting Prosecutor of the Chechen Republic and the Military Prosecutor of the UGF to hold monthly working meetings with the representative of Memorial Center in Chechnya to ensure exchange and verification of information. Unfortunately, such meetings were never held in the proposed format, let alone any consistent exchanges. Memorial maintains its contacts with the prosecutor's office in specific cases, and systematically sends enquiries. Prosecutorial offices respond inconsistently, and often give merely formalistic answers.

NC.64. For example, for more than a year, Memorial was not able to obtain a response to its enquiry about the kidnapping and "disappearance" of 246 people in Urus-Martan between 2000 and 2003. Ultimately, the prosecutor's office responded to a similar enquiry from the Presidential Council for Civil Society Institutions and Human Rights. With regard to 69 persons, it is reported that *"no applications or reports of kidnapping have been filed with the prosecutors and police of Urus-Martan District of Chechnya."* With regard to 172 persons, it is reported that "*the prosecutor's office of Urus-Martan District of Chechnya has reviewed the facts and opened a criminal investigation* [sometimes they give the number], *the investigation led by the Urus-Martan District prosecutor's office was suspended* [a date, often approximate, is given]; *a search file has been opened; persons to be prosecuted have not been identified. Currently, operative and search measures are underway to identify persons involved in the crime."*[130] These responses, seemingly detailed, are, in fact, based on the same template - they only address formal aspects of the prosecution (mentioning in some instances the number and date when the case was suspended). Thus, for example, "a search file has been opened" on Seda Khurikova kidnapped on the night of 28 January 2003, whose body with signs of torture and violent death was found and identified by relatives on 10 February of the same year (the same applies to 31 other "disappearances" whose bodies have been found and did not require any search).

NC.65. Among those of whose "disappearance" the prosecutor's office claims to have no knowledge, there are 12 individuals whose bodies were in fact found, identified and buried. In connection with the murder of three of them – brothers Mukhamed-Ali, Magomed-Salyakh and Khas-

[130] Letter #15-1-812-05 by the Prosecutor's Office of the Chechen Republic dated 27 June 2005 and signed by Deputy Prosecutor of the Chechen Republic A.V. Nikitin (in response to the inquiry #A60-9-542 by E. Pamfilova, Presidential Council for Civil Society Institutions and Human Rights, dated 2 June 2005.

Magomed Elbyev detained by federal servicemen on June 22, 2001, and found dead at dawn the next day – the prosecutor's office of Urus Martan initiated the criminal case #25076. However, the Prosecutor's Office of the Chechen Republic indicate in their letter that they aren't aware of that fact. All in all, the correspondence of the "Memorial" and that of Presidential Council for Civil Society Institutions and Human Rights with relevant prosecutorial agencies evidence not only the stricking lack of effective invesitigation into cases of abductions in the Northern Caucasus but also the prosecutor's office reluctance to report on its work.

NC.66. More broadly, Russia's Report says (p.45), that intergovernmental and non-governmental organizations had free access to the region, including detention prisons, to conduct their monitoring.

NC.67. Indeed, since the beginning of the armed conflict in Chechnya, there have been seven visits of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to the Chechen Republic.

NC.68. There are strong grounds to assert that the resulting reports contained evidence of serious violations by the Russian Federation of its obligations to prevent and prosecute torture. However, these reports could only be published with consent of the inspected party, i.e. Russia, which refused to grant the necessary consent. During the "second Chechen war", CPT was so dissatisfied with the situation in Chechnya and with the lack of cooperation from the Russian government that on two occasions it chose to resort to extraordinary measures – public statements "on the Chechen Republic of the Russian Federation"[131] (first in June 2001 and then in July 2003).[132] To stress, such action of CPT is more than just a strong signal. Notably, in the last 15 years, CPT issued only four public statements all-together, and the very fact that two of them were concerned with Russia indicate a proufound crisis. As concerns the reports on the visits of CPT to Chechnya (and to the other territories of the Russian Federation), they remain unpublished, which greatly hinders the effectiveness of the Committee's work with Russia. Not only CPT iself but also other Council of Europe structures, including the Parliamentary Assembly of the Council of Europe (PACE), have on many occasions requested that Russia should publicize the CPT reports. These requests have not been granted.

NC.69. In Russia, including the North Caucasus, delegations of international humanitarian organizations, including the ICRC, continued their work. However, as members of Memorial were told by staff of the ICRC representative office in Nazran, "in 2004, ICRC encountered problems preventing this type of activity [visits to investigative prisons and other places of detention and arrest] in accordance with standard criteria, adopted by our organization, so ICRC temporarily had to stop visiting the detainees."[133]

NC.70. During the entire second Chechen campaign the UN Special Rapporteur on torture has been requesting invitation from the Russian Government to visit the conflict area. The invitation was received in spring 2006. On March 30, 2006 the Special Rapporteur Manfred Novak announced that the Russian government allowed him to enter the country and visit North Caucasus. On July 6 Novak announced that the visit would take place on October 9-20 and would include the visit of Chechnya, Ingushetia, North Ossetia and Kabardino-Balkaria. Novak confirmed this information of September 20 in his address to the Committee on Human Rights.

NC.71. However, on October 4 the RF government informed that some parts of the program – the unannounced visits to the detained, private talks with the arrested – would contradict the Russian legislations. We will note in brackets, that 1) those procedures are part of the Special

[131] By its mandate, in exceptional cases CPT may overstep the principle of confidentiality in its relations with the member-states of the Council of Europe.

[132] The public statement of CPT dated 23 July 2003 is also noted in this chapter of the report in the section "Places of custody" in connection with ORB-2, North Caucasus Operative Department, Chief Department of the Federal Ministry of Interior in the Southern Federal District of the Russian Federation.

[133] See A *Conveyor of Violence. Human Rights Violations during Counterterrorist Operations in the Republic of Ingushetia* (Memorial: Moscow, September 2005) - http://www.memo.ru/hr/hotpoints/N-Caucas/konnas/index.htm

Rapporteur mandate, and 2) the delegations from the European Committee for the Prevention of Torture regularly visit the region, complete with unannounced visits to the detention units and private talks with the arrested. The Ministry of Foreign Affairs of Russia announced that Novak posed unacceptable requirements and this was the reason for Russia to reconsider the invitation.

NC.72. The refusal – on the part of Russia – to provide the UN Special Rapporteur with the possibility to productively work in the area shows the unwillingness to perform duties on prohibition of torture, violence or inhumane treatment as prescribed by the Convention that looks very challenging on the eve of the evaluation of the next RF Report by the UN Committee against Torture.

NC.73. To date, the European Court on Human Rights found Russia in breach of some of the key article of the European Convention for Human Rights and Fundamental Freedoms (such as the right to life, the ban on torture, the availability of effective domestic remedy, etc.) in connection with eight complaints submitted by residents of the Chechen Republic. While the Russian authorities generally comply with their obligations with regard to paying out to the victims the individual compensations established by the Court, we cannot but stress that the State shows no cooperation with ECtHR on the level of implementation of "general measures", i.e. concrete steps aimed at resolving the identified systemic problems, including the particularly aggravating lack of effective investigation into cases of human rights violations by military and law enforcement officials and the issue of impunity. It should also noted that four high-level Russian military officials are specifically mentioned in the aforesaid ECtHR judgements, namely Alexander Baranov (commander of the Northern-Caucasus Military District), Anatoly Khrulev (commander of the 58th Army), General of the Interior Ministry Troops Yakov Nedobitko, and General in retirement Vladimir Shamanov who is currently preoccupied with his political career. Shamanov and Nedobitko ran a major military operation in the Chechen village of Katyr-Yurt in February 2000, within whose framework grave war crimes and crimes against humanity were perpetrated. Shamanov also headed the "West" Group and Khrulev was in charge of the check-point "Caucasus-1". This check-point failed to be open to traffic despite being official designated as a humanitarian corridor, and a large column of refugees was subjected to aerial bombing, which resulted in significant loss of life and victimization of civilians. General Baranov personally ordered to shoot to death a prisoner Khadzhimurad Yandiev, who then "disappeared". Initially, Russian prosecutorial bodies found to criminal matter in the activities of these four generals. Today, despite the relevant judgments of the European Court, investigation into their actions hasn't been re-opened and not a single one of them has been indicted.

Places of custody

NC.74. As it is rightly noted in Russia's report, investigative prisons have been set up and functioning in Chechnya in the city of Grozny (SIZO-1) and in the village of Chernokozovo, Naurski District, where a strict regime prison colony became operational in 2005, alongside a SIZO. In various districts of Chechnya, ROVD have temporary holding facilities (IVS).

NC.75. Recently, human rights defenders have not received any complaints of cruel treatment form SIZO No 1. On 25 February 2006, the Council of Europe Human Rights Commissioner Alvaro Gil-Robles visited SIZO and the prison colony in Chernokozovo and was satisfied with the conditions of detention. He also spoke with Vakhid Murdashev serving 15 years in Chernokozovo, a close associate of Aslan Maskhadov (see below). The Commissioner was quoted as saying that Murdashev stands firmly by his principles. In less than a week, on 2 March, Murdashev was removed from Chernokozovo by federal servicemen, who took him to an unknown destination by helicopter. His whereabouts are unknown as of this writing. Murdashev's defense counsel, Bai-Ali Elmurzayev expressed concern over [Murdashev's] "life and health."

NC.76. Detainees of IVS – temporary holding centers in police units - are not safe from torture and ill-treatment. There have been reported cases of detainee deaths in ROVDs. Such incidents are not investigated properly.

On March 18, 2004, around 3 a.m., members of the Chechen FSB Department, Naurski District Department of Interior, and the Federal Ministry of Interior internal forces conducted an unlawful search (without a warrant, without any reasons given, and without the required witnesses) in the home of Khambulatovs at 812 Dzerzhinsky St., village of Savyolovskaya (Kirov), Naurski District. They allegedly "found" a homemade explosive device - most likely, planted by the servicemen, as the home owner, Ms A.A.Khambulatova, insists that there could not have been any explosives in their home. Officers of the Chechen FSB arrested Ms. Khambulatova's son, Temur Rezvanovich Khambulatov (born on October 27, 1980). According to a document issued by Chief of the Chechen FSB Department in Narurski District V.Kh. Khumarov (ref. No 16/224 of March 20, 2004), "T.R. Khambulatov, during his transportation to the police station, attempted to snatch the gun from an FSB serviceman and to jump out through the back door of the car. While Khambulatov was pursued and captured, he was hit in his trunk to incapacitate him." Khambulatov was brought to Naurski ROVD and handed over to the police on duty at 4 in the morning, 18 March, 2004. According to a report submitted to Acting Chief of Naurski ROVD Silyarov, ROVD officer V.V.Tereshin, between 6 and 8 in the morning of 18 June, "worked in his office with Mr.Khambulatov." As a result, Khambulatov explained to Tereshin that he had produced and stored an explosive device for the purpose of selling it. Khambulatov's statement attached to the report says that the explosive device had been taken from him by police officers and sealed in his presence, attested by lay witnesses. The statement is signed by what is supposed to be Khambulatov's signature; however, this signature is markedly different from that in Khambulatov's passport.

Tereshin's report to Silyarov further says that immediately after making his statement, Khambulatov dropped to the floor in Tereshin's office. Tereshin called a paramedic, and together they tried for 15-20 minutes to give emergency medical assistance to Khambulatov; as their resuscitation efforts failed, Tereshin reported the incident to his superior. On 18 March, in the daytime, Ms. A.Khambulatova came to Naurski District ROVD to find out whether T.R.Khambulatov was held there. Naurski District Prosecutor Serkov who was in ROVD at the moment informed Ms. Khambulatova that her son had died in ROVD at 9 a.m., on 18 March 2004, and that his body had been transported to Mozdok for a forensic examination. On 19 March 2004, Khambulatova received her son's body. As evidenced by Khambulatova and residents of Savelievskaya village who saw the body, and as seen from photos and video available, Khambulatov's body bears numerous injury marks. In particular, the back of his skull was punctured, both temples had punctures about a finger's width in diameter, his shoulder joints were dislocated, shoulders bore punctured wounds, and there were a number of deep wounds in the area of both knees, ears were torn, fingers were black, and the skin between his toes was punctured. A criminal investigation was opened into Timur Khambulatov's death, but appropriate investigative actions were not performed. The nature of his injuries and the fact that a confession was obtained from Khambulatov, give us strong reasons to believe that he was tortured in Naurski ROVD. In May 2004, Ms. Khambulatova managed to find out, through Naurski District head of administration, about forensic findings produced as part of the investigation that allegedly, Khambulatov had died of cardiac rupture, that he had suffered "minor health damage"; and there was no causality between his injuries and his death. As of today, the investigation is suspended and the culprits remain unpunished.

NC.77. However, in addition to SIZO and IVS established by law, there are 'quazi-legal' and totally illegal (secret) prisons in the Chechen Republic. The first type include holding facilities in operational-search bureaus (ORB). The best known of such prisons is located in ORB-2, North Caucasus Operative Department, Chief Department of the Federal Ministry of Interior in the Southern Federal District (ORB-2),[134] occupying the former building of Staropromyslovsky

[134] Operative-search bureaus (ORB) were set up in 2001 as part of the Federal Ministry of Interior regional departments to replace the dismantled system of Regional Departments to Combat Organized Crime (RUBOP), and

RUBOP. Most officers here are residents of Chechnya, but some police have been brought on temporary missions from other Russian regions.

NC.78. ORB's job is detective work and search, not investigation. Holding detainees and arrested individuals in ORB facilities (i.e. having an IVS) is against the Federal Law on Custody of Suspects and Accused of Crimes, the Law on Police, and the RF Government's Decrees.

NC.79. Nevertheless, since ORB-2 was set up in 2002, it continuously detains suspects and accused. As pointed out in Russia's report, there is a SIZO in Grozny, and ROVD have their holding facilities - IVS - so there is no legitimate reason to transfer people from SIZO to "ORB-2 IVS"; such a transfer can be permitted only where there is a need for daily transportation of suspects and accused between different facilities, where such transportation is impossible. The idea behind ORB-2 is to pressure detainees, i.e. by torturing them, to force confessions or other "needed" evidence.

NC.80. People are regularly transported from SIZO to ORB-2, where they are usually held for more than 10 days - whereas ten days is the maximum allowed period that a detainee under investigation may be held outside SIZO for the purpose of investigative actions. In ORB-2, detainees are interrogated by prosecutorial investigators, and defense lawyers report that ORB-2 officers are always present at interrogations. When asked by lawyers to leave the room, officers rudely decline to do so. Some lawyers have reported being threatened by ORB-2 officers who reminded them of the five cases over the recent years of lawyers being kidnapped. According to defense lawyers, detainees' answers during interrogations sound like repetition of a text learned by heart, while ORB-2 officers closely follow every word said by the interrogated suspects. ORB-2 staff prevent defendants from meeting with their lawyers one-on-one. Brought back from ORB-2 to SIZO, defendants usually tell their lawyers that during interrogations they could not say anything except the version imposed on them by ORB-2 staff under threat of violence; the detainees stayed in ORB-2 following the interrogations, and the officers had every opportunity to pressure them.

NC.81. It would have been much more difficult to conceal the signs of beatings, should the detainees be transported back to SIZO in due time. The reason why people are often detained in ORB-2 for month is to extract the "needed" evidence as well as let the most obvious signs of torture heal on them.

NC.82. ORB-2 is the place where some of the kidnapped people have been brought without records of the detention. These people were subjected to intensive pressure by ORB-2 staff to force confessions. There have been cases of kidnapped people being later "legalized" in ORB-2. A few days or weeks after the incident, kidnapped people emerged in ORB-2 as formally arrested. Police and prosecutors either denied the fact of kidnapping or insisted that the "kidnappers" had freed the victim, and then he was immediately arrested by ORB-2 officers.

NC.83. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment specifically pointed out this unacceptable situation to the Russian authorities: *"One establishment stands out in terms of the frequency and gravity of the alleged ill-treatment, namely ORB-2 in Grozny. ORB-2 has never appeared on any official list of detention facilities provided to CPT. However, persons certainly are being held there, on occasion for very lengthy periods of time. In the course of its visits in 2002, the CPT received a large number of allegations of ill-treatment concerning this establishment which were supported in several cases by clear medical evidence gathered by its delegation. ....in May 2003, further allegations were received,*

RUBOP staff were transferred to ORBs. Formally the main objectives of ORB-2 are to detect, prevent and suppress activity of organized criminal groups, to fight corruption in government authorities, to oppose terrorism and criminal extremism in Chechnya.

once again supported in some cases by medical evidence. When CPT re-visited ORB-2 in May 2003, it was holding 17 persons, some of whom had been there for several months. ... All the on-site observations made at ORB-2, including as regards the general attitude and demeanour of the staff there, left CPT deeply concerned about the fate of persons taken into custody at the ORB. CPT has repeatedly recommended that a thorough, independent inquiry be carried out into the methods used by ORB-2 staff when questioning detained persons; that recommendation has never been addressed in a meaningful manner. .... CPT calls upon the Russian authorities to put a stop to ill-treatment at ORB-2 in Grozny."[135]

NC.84. The CPT's recommendations were ignored.

NC.85. The Chechen Republic Prosecutor's Office was informed of the illegal detention facility in ORB-2: *"The Prosecutor's Office of the Republic has pointed out to the Federal Ministry of Interior the need to introduce internal rules for IVS in ORB-2 (letters to the Chief the Operative and Search Bureau of the North Caucasus Operations Department of the Chief Directorate of the Russian Ministry of Internal Affairs, the Commander of Temporary Operative Group of the Bodies and Divisions of the Russian Ministry of Internal Affairs, the Russian Minister of Internal Affairs, and the Minister for the Chechen Republic Affairs). The most recent letter was sent in February 2003 as a follow-up to the session of the Operative HQ for Counterterrorist Operations in the North Caucasus."*[136]:

NC.86. Instead of immediately suppressing the illegal prisons, prosecutorial offices have on many occasions requested the Ministry of Internal Affairs at least to grant some legal status to the prison by naming it a temporary detention facility (IVS), but the Ministry of Internal Affairs ignored the requests, because formalizing this prison as IVS was illegal as well.

NC.87. Defense lawyers of detainees held in ORB-2 have often complained that ORB staff interfere with their work and deny them private meetings with clients. Prosecutors either ignore lawyers' complaints of torture or delay medical assessments, or respond that "the facts [of torture] have not been confirmed." In June 2004, the Chechen Republic Bar Association advised lawyers against participating in any investigative actions on ORB-2 premises, as it was impossible to carry out the defense councel's duties appropriately. The Chechen Bar Association appealed to the Federal Ombudsman asking to do everything possible to close this illegal place of detention. The Ombudsman, however, avoided active steps in this direction.

NC.88. In September 2004, the Council of Europe Human Rights Commissioner Alvaro Gil-Robles visited ORB-2. At that time, 15 people were held there: *"...I did not receive any complaints of ill-treatment. At the same time, I had the impression that these detainees did not feel they could speak freely…….All the detainees being held in the IVS had been there for more than 10 days, the maximum length of time allowed under the law. Some had been there for four months or longer, considerably exceeding the statutory limits. ...it seemed that they were not allowed exercise and were therefore obliged to spend 24 hours a day in their cells.…The director acknowledged this, citing the requirements of the investigation and special circumstances. Without passing any judgment on the merits of the cases in question, I firmly believe that the law should be upheld and that the statutory procedure should be followed in respect of all detainees, whatever crime they are accused of. It is only in this way that a state governed by the rule of law can take shape*."[137]

NC.89. It was only after this visit in November 2004, that the Ministry of Interior finally legalized this

[135] The CPT Public Statement Concerning the Chechen Republic of the Russian Federation, dated 10 July 2003.

136 Response of Deputy Prosecutor of the Chechen Republic A.B.Nikitin № 17-8-139-03 of 15 October 2003 to the enquiry of the Russian State Duma member V.V.Igrunov.

[137] Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, on his visits to the Russian Federation 15 to 30 July 2004 19 to 29 September 2004 for the attention of the Committee of Ministers and the Parliamentary Assembly, Strasbourg, April 20, 2005.

illegal prison for holding suspects and accused: *"In accordance with the Ministry of Interior Order No 709 (internal) of 3 November 2004, in Operative and Search Bureau-2 of the North Caucasus Operations Department of the Chief Directorate of the Russian Ministry of Internal Affairs in the Southern Federal District (ORB-2 of NCOD of CD of RMIA in SFD) a temporary holding facility has been set up for suspects and accused detained by the Temporary Operative Group of the Ministry of Interior Forces, where, alongside other services, members of ORB-2 of NCOD of CD of RMIA in SFD conduct operative and investigative activities aimed at detecting crimes committed in the territory of the Chechen Republic."*[138]

NC.90. But this "legalization" did not make IVS attached to the ORB legal. Prosecutorial conduct in this situation is notable. Both the prosecutors and ORB-2 are equally interested in this illegal detention facility. Prosecutors in Russia are responsible for conducting investigations and at the same time it must ensure that investigations are conducted legally. In this obvious conflict of interests the prosecutors' choice is predictable - so we can hardly expect them to stand up against the illegal practice.

NC.91. Regrettably, this practice is spreading. In 2005, subdivisions of ORB-2 were opened in a number of other Chechen regions, with illegal holding facilities attached to them.

NC.92. On of these illegal prisons held Dzeitov brothers, Adlan Rukmanovich (born in 1978) and Adam Rukmanovich (born in 1983), residents of the Chechen village of Bamut. Between 1999 and 2003, they lived as refugees in Ingushetia, because Bamut was totally destroyed. In October 2003, Dzeitov brothers moved to the Chechen village of Assinovskaya. In August 2004, Adlan learned that Adam had joined rebel fighters. He found his brother and brought him back home.

Dzeitov brothers were detained on 27 November 2005 in Assinovskaya and brought to ORB-2 Division in Urus-Martan District of Chechnya. There, according to their complaints to the Chechen Republic Prosecutor, they both were tortured; the torturers demanded that they give the names of rebel fighters and confess their involvement in IAF. Both brothers were brutally beaten, in particular, on their kidneys, shoulders, back and head (Adam was hit with a hammer, as well as punched and kicked); they were tortured with electric shock and choked with a plastic bag.

Torturers demanded that Adlan should confess an assault that happened in 2005, while Adlan was away in Kazakhstan, which he could prove, because he had come back a week before the detention and still had his ticket. They did not listen to his explanations and demanded a confession. Adlan lost consciousness when he was electroshocked, but as soon as he came round, the torture continued.

Adam Dzeitov who was tortured in the neighboring room describes his state following the interrogation in the following words: "After a while, they stopped beating me and left me lying on the floor, handcuffed to the radiator. I was virtually unable to move, I felt terrible pain in my head and all over the body. In this state, I spent a day in that room. At times I would lose sight, I could not see anything, but then my eyesight would come back."

On 29 November, the Urus-Martan District Court warranted arrest of Dzeitov brothers - they were charged under part. 2 art. 208 of the Criminal Code (participation in an armed formation other than established by a federal law) and transported to ORB-2 in Grozny, where they were held until transferred to the investigative prison in Grozny (SIZO-1, facility IZ-20/1) on 9 December 2005. Dzeitov brothers were given a medical checkup only after their transfer to SIZO. In response to his enquiry, Dzeitovs' lawyer Zhabrail Abubakarov received a copy of the following document from SIZO-1: "Statement. We, the undersigned, have compiled this statement concerning Adam Rukmanovich Dzeitov, born in 1983, delivered from ORB-2 with the following bodily injuries: hemorrhage in both eyes. Samodurov, Vassilchenko."Adlan's overall condition was documented as satisfactory, but his medical record of January 2006 mentioned scars on the head, "complaints of headaches,

[138] From the response of Head of Department for Supervision over Procedural Compliance by Police, Justice Bodies and the State Committee for Drug Control in the Chechen Republic I.D.Khamidov No 16-39-2000-05 of 17.05.2005, to chief of Memorial's Legal Service in Grozny L.M.Yussupova.

blurred vision, dizziness, and pains in the lumbosacral section of the spine, limited mobility of the lumbar region, etc."
On 14 January, 2006, Adam and Adlan Dzeitovs sent petitions to the Chechen Republic Prosecutor requesting that only Abubakarov should be their defense lawyers and emphasizing that the appearance of any other lawyer in their case would mean that it was done against their will. They made a special request not to be sent to the ORB of Urus-Martan District because of imminent threat of torture. Adam Dzeitov stressed in his petition, "I am very afraid of torture, especially of electric shocks."
Regardless of these complaints and the efforts of their lawyer, in January – February 2006 the Dzeitov brothers were transported to Urus-Martan on a number of occasions. Dzeitov brothers' complaints sent to the Chechen Prosecutor on 8 February 2006 point to the fact that agents Aslan and Akhmed in Urus-Martan ORB threatened them with electric shocks to force confessions.

In march 2006 the court sentenced the Dzeytov brothers to2,5 years of imprisonment. It was only the professional work of the lawyer that allowed to take down the most serious charges.

NC.93. That quasi-legal detention unit was not the only one in Grozny.

NC.94. On May 26, 2006 the operating officers of Oktyabrsky district PD of Grozny left the building of the former boarding school for the deaf children (in reality, in 2000-2003 it was the building of the temporary police department (1) of Ortyabrsky district). The next day the group of construction workers were sent there to demolish the building. On May 29 the news reached the former prisoners, who used to be kept in the cellars of this building, relatives of people who had gone missing there, journalists of the local media and photographers. The building and the cellars were carefully examined and videotaped. In the building and in the adjacent gym, where the offices of investigating officers and other staff used to be, there were found various documents left by the police officers. In the cellars there were found writings on the walls, all inscriptions made by the former prisoners. The walls were scrupulously photographed and videotaped.

NC.95. On May 30 the building was examined by the representatives of administration, prosecutor's office, police, field engineers and FSS. On the same night the inscriptions in the cells were destroyed – someone burned tires in the cellars and the soot covered all the walls. Some of the writings that were now covered were made as late as May 2006

NC.96. The letter of the representative of the RF Prosecutor General Consultant, Sidoruk, addressed to the head of the Federal Duma committee on international relations, Kosachev, acknowledges the existence of the temporary confinement unit in that building from 10/28/2002 to 05/17/2006. However, this place of confinement was as illegal as the confinement unit of ORB-2, and even more so: since nobody knew of its existence, it could be called a "secret prison".

Illegal (secret) prisons and hostage-taking

NC.97. The problem of illegal (secret) prisons is especially acute in Chechnya today. The problem is caused by "Chechenization" of the conflict and the use of hostage taking by Chechen uniformed forces as a method of combating rebel fighters. Thus, an illegal prison in Tzentoroy village, as understood from its inmates, was operative up to spring 2006.

Brothers Khamyskhanov – Salman (1977) and Salaudi (20 y.o.) were kidnapped in the morning of January 11, 2006 from their house in Grozny village of Chernorechje (24 Vyborgskaya street). Unidentified armed camouflaged people, who spoke Chechen, dragged the brothers out of the house, shoved into the car, pulled hats over their faces and started moving in an unknown direction. In less than an hour the car stopped. The brothers were pushed out into some backyard and were beaten. After that they were brought to different cells. Salman recalls, "that was not like the regular prison, more like a shed with some space dividers. Personal

prison of some commander or other. My brother was in the next cell, and I could hear him well, too! If we both stood up and came to the barrier, we could even see each other. They bashed him all day long, morning to night. Very severely. Brought him out to the yard to do that. I could not hear what they were asking of him. There was gas heater in the cell, noisy stuff, that. But I could hear my brother scream he never did it and he didn't know it. And they told me on my very first day, "You know what your brother wanted to do? Wanted to blow up Kadyrov's monument!" Late at night I heard how he was being bandaged, splashed with iodine. In the morning they even brought a doctor. Me and the others – they kicked out to clean the backyard. They had to pick up garbage and I was assigned to pick up my brother's bloody clothes. There was so much blood – the clothes stuck to my hands… trousers, underwear, socks, everything…" In the evening of January 12 Salman Khamyskhanov was once again shoved into a car, his face closed, and kicked him out in the street of Grozny. His brother Salaudi, however, remained in this prison up until April 2006 together with the other six prisoners. Today it is obvious that this prison was located in Tzentoroy. There are reasons to believe that the miraculous release was thanks to the planned visit of the Council of Europe Committee on Prevention of Torture, and Kadyrov's formations decided to get rid of this prison. Salman Khamyskhanov met the representatives of "Memorial" Center and "Demos" Center in September 2006, when he shared the following information, "my brother was still there and we found out that it was in Tzentoroy, and he was being still kept there. To enter the village you have to bypass a block-post, on the both sides of the post are those decorative turrets and the prison is straight and to the right… On the 27th of April my brother – and everybody who was there – was released all of a sudden. And they started to demolish the prison. They chatted about some European Committee and that everything should be clean and clear. My brother gave his phone number to all the other prisoner so they could call and tell they got home all right. Everybody did. I don't know why I was released that quickly and why my brother was kept for so long. They understood right away we had nothing to do with the Kadyrov monument business. Maybe they needed to wait until my brother recovered – he was beaten real hard. And then when the time passed the no longer knew what to do so they kept him… you know, they beat everyone who gets there. Only one old guy they left alone – but he was just a sick old sod, they were probably afraid he would snuff it if they touched him"

NC.98. The problem of illegal prisons is very crucial in the context of using hostages by the enforcement agencies to fight the separatists. Prohibition of hostage-taking is stipulated in a number of international instruments. In particular, the UN Convention against the Taking of Hostages, adopted on 17 December 1979, describes hostage taking as "an offence of grave concern to the international community" and demands that "any person committing an act of hostage taking shall either be prosecuted or extradited."

NC.99. On 20 October 2004, Federal Prosecutor General Vladimir Ustinov addressed a meeting of the State Duma members with a proposal to allow "counter-taking of hostages" and "simplified judicial proceedings" with regard to terrorists. "Detaining the terrorists' relatives at the time of a terrorist attack, certainly, will help us protect and save the people," the prosecutor said. State Duma Speaker Boris Gryzlov said that the Duma was prepared to consider amending the current legislation against terrorism to add a possibility of "counter-taking of hostages." Chechen President Alu Alkhanov, speaking on the Echo of Moscow radio, supported the proposal.[139] Although there was no follow-up to this initiative of the Prosecutor General, and it was never made into law, it can be regarded as de-facto endorsement of the pattern of hostage-taking in Chechnya, moreover – endorsement by an official responsible for supervision over compliance with the national legislation.

NC.100. Hostage taking is used by Chechen uniformed personnel, primarily targeting relatives of rebel fighters (IAF members) to force the latter to surrender.

NC.101. The first known case of a massive hostage taking targeting family members of well-known field commanders dates back to early 2004. Between 29 February and 1 March, about forty

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relatives of field commander Magomed Khambiev were detained, including elderly relatives and women living in different Chechen villages. Massive detentions were performed in the villages of Meskety, Benoi, and Turty-Khutor. In Grozny, first-year medical student of the Chechen State University Aslambek Khambiev (born in 1985) was kidnapped. The hostages were held in IVS of Nozhai-Yurt ROVD, and in illegal prisons in Ramzan Kadyrov's and Sulim Yamadayev's bases. Young men were beaten. They demanded, through intermediaries, that Magomed Khambiev should immediately surrender "voluntarily," which he ultimately did.

NC.102. Hostages are detained in illegal prisons located at deployment camps of Chechen pro-federal uniformed forces. Below, we provide only two of the documented examples.

On 30 November 2004, in the village of Oiskhara (Novogroznensky), Gudermes District of Chechnya, unknown armed men, most probably, "Kadyrov's men" and Shali ROVD officers assigned to them, burned the house of Vakhid Murdashev's (born in 1955) parents at 38, Karl Marx St., and abducted his mother, Asmart Murdasheva (born in 1935), his sister Tamara Murdasheva (born in 1958), and his wife Zoya Dankayeva (born in 1958). Vakhid Murdashev held a high official position in Aslan Maskhadov's administration in the period between the two wars and fought on the side if Ichkeria in the second war.

In the evening of the 30 November, Zoya Dankayeva and Tamara Murdasheva were visiting with Vakhid Murdashev's other sister, Lisa Mushkayeva, and left around 8.30 to spend the night in the house of Vakhid's, Tamara's, and Lisa's mother, Asmart Murdasheva, where Tamara also lived. At 9.10, neighbors came running to Lisa's house, saying that her mother's house was on fire. Some time later, Lisa came to her mother's house and saw that it was on fire, surrounded by men in military uniforms. Some of the men threw grenades in the fire. Explosions were heard. It turned out later that arsonists included members of the Shali ROVD, known for their close relations with the Chechen President's Security Service. No one responded to Lisa's cries "Where is my mother?" One of the arsonists was videofilming the fire.

Lisa Mushkayeva's relatives and friends found out, using their connections in the law enforcement, that her mother, together with her sister and her sister-in-law, were first taken to Kadyrovs' ancestral village of Tsentoroy, Kurchaloy District of Chechnya, and then transported to Gudermes. On 10 January, an unknown man in his forties drove to Lisa Mushkayeva's house in a car. He told Lisa that her family members were in the hands of security services and recommended that for her own safety she should refrain from actively looking for them. When he heard from Lisa that her 70-year old mother had poor tolerance of cold, and her elder sister had thyroid cancer for many years and needed specific medications, the man assured her that the detainees are treated well, and had been given warm camouflage jackets.

Lisa Mushkayeva and other relatives of the kidnapped women were convinced that the kidnapping was perpetrated by "Kadyrov's men" to force Vakhid Murdashev to surrender. Indeed, on 25 April, 2005, six weeks after Vakhid Murdashev was captured in the village of Tolstoy-Yurt in March during the operation to kill Aslan Maskhadov, Asmart Murdasheva, Tamara Murdasheva and Zoya Dankayeva were released. Lisa Mushkayeva described their experience in the following words: "The house, it turns out, was burned in front of them watching! Then they expected to be shot. They were brought to the woods. Lined up. [The kidnappers] jumped their guns. They were videofilming everything. But they did not [shoot]. They threw [the women] in a damp pit. Huge rats were running around. Kept them for three days and nights. No one approached them during those three days and nights. Then they were transported - well, you know where. They were left there in the basement. It was very cold and damp there. They did not see daylight for five months. And they were not allowed to wash themselves. When they returned home, their undershirts came flaking off them. My sister cried all the time [in detention] – she could not stand hearing people screaming from torture in other cells…"

NC.103. Of all such cases, it is the "disappearance" and half-ayear-long stay in a secrete prison of relatives of Aslan Maskhadov (separatist leader, President of the self-proclaimed Chechen Republic of Ichkeria) that had the greatest resonance:

On 3 December, 2004, between 8 and 9 p.m., in the outskirts of Grozny, unknown armed men, most likely, members of the Chechen President's Security Service ("Kadyrov's men") kidnapped five relatives of Aslan Maskhadov: Buchu Alievna Abdulkadyrova (sister, aged 67), Lecha Alievich Maskhadov (brother, aged 68), Lema Alievich Maskhadov (brother, aged 55), Adam Abdul-Karimovich Reshiev (second cousin, aged 54), Ikhvan Vakhaevich Magomadov (nephew, aged 35). On 28 December, under similar circumstances, three other family members were kidnapped: Khadizhat Vakhaevna Satuyeva (niece, aged 40), Usman Ramzanovich Satuyev (son-in-law, aged 47), and Movlid Aguyev (son-in-law, aged 35).[140] *On 3 February, news came that Movlid Aguyev was held in IVS of Nozhay-Yurt ROVD and faced charges under art. 208 of the Criminal Code ("organization of, or participation in an armed formation").*

The destiny of other kidnapped relatives of Aslan Maskhadov had been unknown before their unexpected release on 31 May 2005. Although a criminal investigation was launched into the abductions, following a complaint by K.M.Maskhadova (Lema Maskhadov's wife) of 17.01.05 to Federal Prosecutor General Ustinov, the case was not properly investigated.

The kidnapped persons' family members were generally convinced that their relatives had been kidnapped by the so-called "Kadyrov men" as a way to force Ichkeria President Aslan Maskhadov to surrender, and the "missing" persons were held in Kadyrov's base in Tsentoroy (Kadyrovs' ancestral village in Kurchaloy District of Chechnya).

This assumption was supported by objective evidence. Thus, Petimam Vakhayeva, the daughter of kidnapped Buchu Abdulkadyrova, testified: "I was not at home then. The neighbors later told me [how it had happened]. They came around 9 p.m., in 8 or 9 vehicles, about 30 men. They did not allow the neighbors to go out of their homes. They parked at the crossroads and along the street. They opened the gates and the door themselves. They took mom away…. They drove towards the city, but they were stopped at the checkpoint. Kakyev's men there [members of the Zapad GRU Spetsnaz under the command of Said-Magomed Kakyev] are all from this village. They watch so that no one is kidnapped. They tried to stop [the kidnappers], but [the kidnappers] shot above their heads, then fighting started, and one of "ours" was hit on the head with a rifle butt. They stopped fighting and phoned from the checkpoint to Kakyev himself, and [Kakyev] phoned Kadyrov. And it appears that Ramzan [Kadyrov] said, "This is a security operation by my order. Let them go!" And they let them go…. There is a rumour that mom and other relatives are now held in Khosi-Yurt [Tsentoroy]…"[141] *Also, Kamissa Maskhadova (Lema Maskhadov's wife) made the following statement: "They were around 50 men in total. They came in 10 to 12 vehicles. Unmasked. They spoke Chechen… I say, "Who are you?" They: "We've been sent by Ramzan." I did not want to let him go – what would I do, left alone without my husband? They at first threatened that they would take me as well… Their chief said that [he – i.e. her husband] would be taken to Khosi-Yurt [Tsentoroy]. Female relatives who later went there were told not to come again, otherwise they would be killed right there or taken away as well."*[142]

After the kidnapped persons were released, it turned out that they had been held in a concrete cell (3 by 3 meters) without furniture for the entire period of over six months. There was a small barred window above. No charges were brought against them, they were not questioned, they were taken outside only to use the toilet, and they were given food. Their place of detention was located in a fairly large, fenced territory. There were many armed people there speaking mostly Chechen. On 30 May 2005 a man in civilian clothes came into their cell and announced that they were to be released. On the same day, they were allowed to wash themselves for the first time since their detention. On the next day, the kidnapped people were taken to their respective homes, blindfolded. It is only then that they found out that Aslan Maskhadov himself had been killed more than two months earlier, in March 2005.

[140] See details in *Open Letter of the International Helsinki Federation to President Putin on Kidnappings of Aslan Maskhadov's Relatives.* http://eng.kavkaz.memo.ru/printnews/engnews/id/757471.html.

[141] P. Vakhayeva was interviewed by one of the authors of this report in Grozny on 28 January 2005.

[142] K. Maskhadova was interviewed by one of the authors of this report in Grozny on 28 January 2005.

NC.104. On 27 July 2005, RF Deputy Prosecutor General N.I. Shepel said[143] that *"Maskhadov's relatives have been freed as a result of special operation,"* but stated at the same time that *"the kidnappers have not been identified."* The criminal investigation into the kidnapping of seven of Maskhadov's relatives has been suspended "*due to failure to identify suspects to prosecute."*

NC.105. The problem of persecution of the relatives of the separatists (which had a separate report dedicated to it)[144] is not limited by the hostage-taking. One of the most public cases of late is the forced disappearance of Elina Ersenoeva.

> *On August 17, 2006 in the center of the city of Grozny the unknown officers of law enforcement units abducted a 26 year old Elina Ersenoeva, an employee of the Info-Most NGO and a string correspondent for the* Chechen Society *Newspaper. At about 9 a.m. she was standing in the Pobeda prospect with her aunt, Rovzan. Camouflaged people in masks approached the twp women, forced their hands behind their backs, put bags on their heads and shoved into two different cars. After a trip in an unknown direction, they were hauled out from the cars and led to the cellar. The bags remained on their heads. Rovzan was soon put into the car and delivered back to Grozny, where the abductors left her in the street. During that day Elina twice called here relatives from her cell phone and asked them not to panic hoping that she would soon be released. But she never was and the cell stopped working eventually*
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> *Two days before the abduction Elina addressed the International Helsinki Federation and Russian Center "Demos" with a plea for help. In her letter, Elina wrote how she herself and her family were being pursued by the local law enforcement structures – she pointed to the Kadyrov's. Elina explained that this was connected to the fact that in November 2005 she had married a man who turned out to be a separatist and who was killed in the summer of 2006. On August 23, 2006 it became widely known that Elina Ersenoeva was the wife of Shamil Basaev. The sources close to Elina report that it had been a forced marriage. The Prosecutor's office launched a criminal investigation on the forced disappearance, but the fate and whereabouts of the woman are still unknown.[145] Unofficial sources claim that as of mid-October 2006 Elina was alive and kept in one of the "secret" prisons.*
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> *Elina's mother, Rita (Margarita) Ersenoeva (1959) was actively involved in the search party. In hope that publicity would help to release her daughter Rita would gladly meet Russian and Western journalists and representatives of the human rights protection organization. Rita disappeared on October 2, 2006 in Starye Atagi. There are all reasons to believe she was abducted. похищена. On that day Rita Ersenoeva came to visit her mother – Lipa Barzikaeva (65), who resides in Mayskaya Street in Starye Atagi. There she received a call to her cell phone. She told her mother that the call had been from the "investigating officer", who told that if Rita wanted to learn some good news about her daughter she should immediately come to the building of the village administration. In 10 minutes Lipa tried to call her, but the cell phone had already been switched off. Lipa Barzukaeva tried to call her daughter several times, and then asked a relative to go to the village administration building and check for Rita. The relative was informed that Rita never made it to the village administration, moreover, nobody waited for her there. The family received no information from Rita or about her. Fearing for their life, they did not address the law enforcement agencies. When Rita met the representatives of MHF and "Demos" she mentioned a Suleiman Bakriev, an officer of Grozny PD, who threatened her with "punishment" for her communication with*

[143] Speaking at a conference on Strengthening Law Enforcement Agencies to Support Law and Order in the Chechen Republic held in Kislovodsk on the initiative of the Council of Europe Commissioner on Human Rights.

[144] Chechnya 2004: "New" Methods of "Counter-terrorism". Hostage-taking and Repression against Relatives of Alleged Rebel-fighters. http://www.memo.ru/hr/hotpoints/caucas1/msg/2005/03/m33235.htm .

[145] For more details about forced disappearance of Elina Ersenoeva please see Open Letter of the International Helsinki Federation, International Federation for Human Rights and Demos Center addressed to the Prosecutor of the Chechen Republic and dated of August 18, 2006 and its addendum of August 25, 2006. http://www.demos-center.ru/projects/66D650D/7D16046/1160677528 and http://www.demos-center.ru/projects/66D650D/7D16046/1156516907 .

journalists and foreigners. The pressure was coming from the fact that in September Rita – due to the forced disappearance of her daughter – was visited by the members of the European Committee for Prevention of Torture[146]

The escalation of conflict outside Chechnya

NC.106. From the onset, the armed conflict in the North Caucasus was not limited to the Chechen Republic - in 1999, hostilities started in Dagestan. Since around 2002, there has been a strong tendency of the conflict "spreading" to RF regions neighboring with Chechnya. As of today, some forms of extremist activities and the "counterterrorist operation" have spread to most republics in the North Caucasus - such as Dagestan, Ingushetia, North Ossetia, Kabardino-Balkaria, Karachayevo-Cherkessia - and Stavropol Krai. Accordingly, the entire North Caucasus is affected by the "counterterrorist" practices, involving abductions, arbitrary detentions, torture, cruel and degrading treatment. This, in turn, further fuels the escalation of conflict.

NC.107. Below, we describe the situation in two regions, - Ingushetia and Kabardino-Balkaria. Both situations are typical, except that the conflict in Ingushetia has been "carried over" from Chechnya, while in Kabardino-Balkaria its escalation is due primarily to the local law-enforcement practices.

Ingushetia

NC.108. Since 2002, abductions and disappearances have been reported in Ingushetia - initially affecting mostly refugees from the neighboring Chechnya.[147] Bodies were later discovered in the Chechen territory. In most cases, circumstances suggested involvement of uniformed personnel. "Security" and "sweep" operations began in refugee camps. Federal forces and units started to be deployed in Ingushetia.[148] In 2003, escalation of violence in Ingushetia continued.[149] Disappearances and deaths were reported not only among those "kidnapped by unidentified perpetrators," but also among officially detained or arrested individuals. "Sweep operations" targeted Ingush villages. Rebel fighters became more active as well. In 2004, an increasing number of "disappearances" affected permanent residents of Ingushetia.[150] In many cases, circumstances suggested involvement of federal forces.

NC.109. And finally, the "counterterrorist operation" in its Chechen format was fully established in Ingushetia following the rebel attack on the night of 21 to 22 June 2004. Whereas before the incident, there had been few cases documented by human rights groups where Ingush police

[146] Information about disappearance of Rita Ersenoeva has been submitted by the International Helsinki Federation and Demos Center to the Prosecutor of the Chechen Republic in the form of the open letter (copy of the document has been submitted to the Committee for the prevention of Torture of the Council of Europe). http://www.demos-center.ru/projects/66D650D/7D16046/1160677528 .

[147] In 2002, Memorial documented a total of 28 incidents of kidnapping in Ingushetia (27 residents of Chechnya, 1 resident of Ingushetia). Four were killed, two were released by the kidnappers after interrogation and beating, and sixteen disappeared. Six of the kidnapped were later found in SIZO or IVS, one of them was convicted for involvement in IAF, four acquitted by court, and one is still under investigation.

[148] Internal forces were deployed next to the refugees' tent camps, and the 503d Motorized Artillery Regiment was deployed outside the village of Troitskaya. The military presence was reinforced alongside the entire Caucasus Range, from Dagestan to Karachayevo-Cherkessia.

[149] Memorial has information on 52 incidents of kidnapping in the republic in 2003, 41 of them were residents of Chechnya, 9 residents of Ingushetia, and 2 Armenian nationals. Later, the body of one kidnapped person was found, thirty people disappeared, and twenty one were released after long interrogations and beatings.

[150] Memorial documented a total of 75 kidnappings in 2004: 38 residents of Chechnya and 37 residents of Ingushetia. Later, the body of one kidnapped person was found, 23 people disappeared, 36 were ransomed by relatives or released by kidnappers after lengthy interrogations, usually accompanied by torture. Ten of the kidnapped were later "found" in remand prisons and were under investigation, at least two were convicted, and the others are under investigation or on trial. Memorial does not know the destiny of five kidnapped persons.

was suspected to perpetrate grave violations of human rights, since then, such complaints have been documented on a massive scale.

NC.110. After the Beslan school hostage-taking crisis, military and law enforcement officials, apparently, sought to demonstrate effective war against terrorism in the North Caucasus.

NC.111. The patterns of fabricated criminal prosecutions and the "conveyor of violence" operate in Ingushetia along the same lines as in Chechnya, but with some specifics.[151]

NC.112. A detainee "disappears" sometimes for a few days, later to be "found"[152] in remand prisons, often in the neighboring North Ossetia. Detainees are beaten and tortured to force confessions - such treatment has been reported to be common in facilities of Ingush UBOP and the Ministry of Interior, in Nazran GOVD, in the basement of the FSB building in Magas, in remand prisons in North Ossetia, and in illegal prisons. "The most experienced people insist that one cannot stand these tortures. Sooner or later, everyone will submit," says a lawyer serving this category of suspects. There have been cases where defendants were hospitalized in serious condition. Members of the International Committee of Red Cross (ICRC) do not visit suspects in remand prisons.[153] A lawyer provided by the investigator "helps" in fabricating criminal charges against the suspect. Usually, a lawyer hired by the family is given access to the suspect after the latter has signed his "confession." Even thought the lawyer may know about the illegal methods used against the defendant, he usually does not challenge them, fearing for his/her own safety. The defendant's confession of a crime is usually the only evidence against him. Courts interfere with any attempts by lawyers or defendants to point out to the jury that the confession has been obtained through the use of torture. Even in those instances where the use of violence against the defendant was raised in court, the judge was usually unable to detect the falsification give an adequate legal assessment of the procedural violations, and pass a fair verdict.

NC.113. These methods of "fighting terrorism" are not only illegal; they have consistently destabilized the situation and actually served to strengthen the positions of rebel terrorists. The entire population of the republic immediately learned about the cruelty of investigators and arbitrariness of judges. The terrorist "underground" has broadened its mobilization base through increased outreach to people who have been personally affected or seek revenge for the deaths and suffering of their family members. Still others are motivated to take up arms by their personal protest against violence and abuse perpetrated by uniformed personnel.[154]

NC.114. The latter motive has been a key factor contributing to increased tensions in Kabardino-Balkaria.

Kabardino-Balkaria

NC.115. Since late 1990-ies in Kabardino-Balkaria, tensions arose between the official Moslem clergy (united under the Moslem Spiritual Authority – MSA) and religious communities - Jamaats – outside MSA control, with a total membership of a few thousand believers. At least some of the Jamaats practice Islamic fundamentalism.

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[151] We proceed from our analysis of data on unlawful detentions and abductions, complaints by suspects and defendants, their lawyers and relatives, information and documented evidence of beatings and torture of detainees. See information on individual cases in Memorial Center's report at http://www.memo.ru/hr/hotpoints/N-Caucas/konnas/index.htm *A Conveyor of Violence. Human Rights Violations during Counterterrorist Operations in the Republic of Ingushetia.*

[152] As opposed to the Chechen Republic, where we can regard as relative "progress" the overall decrease in the number of disappearances and killings from 85% of the all kidnapped in 2002 to 50% in 2004.

[153] Staff members of the ICRC office in Nazran explained the following to members of Memorial,"in 2004, ICRC encountered problems preventing this type of activity in accordance with standard criteria adopted by our organization. As a result, ICRC temporarily had to stop visiting detainees."

[154] Many residents of Ingushetia interviewed by Memorial held that the massive raid of fighters in Ingushetia on 21-22 June was, in fact, a response to the violence of law enforcement agencies in Ingushetia in 2003-2004.

NC.116. Simultaneously, due to outside influence - primarily that of the extremist part of the Chechen rebel fighters lead by Shamil Basayev - a terrorist “underground" was growing in Kabardino-Balkaria, guided by the ideology of Islamic political fundamentalism. Terrorists committed a number of attacks in Kabardino-Balkaria. In December 2004, they broke into the local Department of Drug Control, taking a large number of weapons from the Department’s weapons arsenal, killing several officers and setting the building on fire. Some of the stolen weapons were soon handed over to Basayev.

NC.117. It would be wrong to equate the terrorist underground groups and the openly practicing Jamaats, whose leaders have on many occasions condemned violence and terrorism and called for dialogue and cooperation with government. However, the republic’s uniformed forces, especially those under the Ministry of Interior, in their efforts "to fight extremism and terrorism" cracked down on Jamaats membership. Grounds for repression included, in addition to activity deemed extremist, also the wearing of traditional Moslem attire or regular attendance at the mosque. “Combating extremism” transformed into combating Moslem believers; MSA made “lists of Moslem suspects” and filed them with the Ministry of Interior. This practice drove Jamaats to radicalism, and actually facilitated terrorists’ recruitment of fundamentalist believers in their ranks.

NC.118. Since September 2003, a large-scale crackdown was launched. Thus, by the republic’s Ministry of Interior order, all mosques were only open for worship for 15-20 minutes at a time, and some mosques were closed on all days except Fridays. For example, on 14 September 2003 in Naltchik, a total of 60 believers were detained during collective prayers in two mosques, at Musova and Sovetskaya streets. The worshippers were delivered to police stations where they charged with offering resistance to police officers and condemned by court to 10 days of administrative arrest. They were subjected to cruel and degrading treatment while in custody: beaten, made to stand facing the wall for long periods of time, had their beards cut off. Also in September, in Baksan, policemen broke into a mosque during worship, detaining about 15 persons, whom they took to the police station and offered alcohol to drink. When detainees refused to drink, they were taken out to the courtyard, made to lie down on the asphalt, kicked and beaten with rubber batons. Then police cut the detainees’ beards and cropped the hair at the back of their heads in the shape of a cross.

NC.119. The Beslan crisis was followed by another crackdown on Moslem believers. It was at that time that the first death of a detainee was reported in Kabardino-Balkaria. R.D.Tsakoyev detained on 27 September 2004 was delivered to the Department for Combating Organized Crime in Naltchik, and two days later he was found in a life-threatening condition in the outskirts of the city, admitted in emergency care, and died on 4 October. By the official version of the story, Tsakoyev was released from the Department after questioning, in a normal state of health.

NC.120. After the successful attack against the Drug Control Committee’s weapons arsenal in December 2004, persecution of Moslems increased even further. Jamaats were effectively driven underground, and their leaders placed on the wanted suspects list.

NC.121. On 20 June 2005, a policeman brutally beat E.M.Gasyeva who was wearing a Moslem style headdress in public. Criminal charges were brought against the policeman, but later dropped by the prosecutor “for absence of corpus delicti.” The city court in Naltchik overruled the prosecutorial decision to drop criminal prosecution and reopened it. Although the case is obvious, the investigation has not been completed as of this writing, and the policeman who beat the woman continues in service.

NC.122. On 13 October 2005, there was an armed attack against a number of government establishments in Naltchik. By official data, 35 law enforcement officers and 92 attackers were killed in the fighting. Most of the attackers were members either of the terrorist underground or of Jamaats.

NC.123. In the second half of October, authorities convened “meetings of residents and workers’ collectives” in many communities of Kabardino-Balkaria. The meetings were presided over by

local officials of the FSB, prosecutorial offices, and the Ministry of Interior. The meetings adopted resolutions to expel from the republic all family members of people involved in the 13 October attacks, all followers of "unconventional Islam," all migrants from the Chechen Republic, etc. The republic's authorities had to invalidate the scandalous "resolutions" following high-profile protests by human rights defenders.

NC.124. Large-scale detentions followed the assault; many detainees were beaten and tortured. By official data, a total of 80 people have been arrested. We have serious reasons to believe that people are beaten and tortured in custody. Arrested Zaur Psanukayev died - prosecutorial staff claim that he stepped out of UBOP window, although windows there are barred. The arrested individuals' photos available to their families and to journalists, signs of beating can be seen. The arrested persons' lawyers, L. Dorogova and I. Komissarova said that their clients were in serious physical condition as a result of torture and demanded a forensic medical assessment. Both lawyers were then removed from the case by the prosecutor. Also, as is reported by the Russian Justice Initiative,[155] on 23 October 2005 N.N.[156] was detained at his house by twenty to twenty-five heavily armed men. Taking N.N. away, the armed men pushed him with the butt of an automatic weapon and kicked him, as witnessed by N.N.'s mother and brother. In conversations with his lawyer on two separate occasions, N.N. explained that he had been tortured and beaten while in detention in the so-called Sixth Department (the Organized Crime Department of the police) and at pretrial detention center number 1 in Nalchik. The lawyer personally saw marks of beating on his face and during the second meeting N.N. was so weak that he only with difficulty walked on his own. On 3 November 2005 the lawyer wrote to the several governmental institutions, including the prosecutor of the republic, complaining about the treatment of her client. The lawyer was later forcibly removed from the case by the investigator in the case against the will of the lawyer and N.N. The prosecutor refused to open a criminal case into the torture. Russia Justice Initiative appealed the decision to the district court. The court upheld the position of the prosecutor's office. Russian Justice Initiative then addressed the Supreme Court of Kabardino Balkaria, which reversed the decision of the first instance court and sent it back for re-consideration.

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Annex to the section The Problem of Torture and Cruel and Degrading Treatment in Chechnya and the Northern Caucasus

Selected Quotes from "The Analysis of the Operational Situation in Relation to the Human Abductions in Oktyabrsky District of the City of Grozny in the Period from 1995 to September 2006"

"... 1. In the period from 1995 to 2000 most of the crimes committed under the Article 126 of the Penal Code are performed by the members of separatist troops, whose single motif was to receive ransom from the relatives of the abducted, and to receive legal papers for possession of real estate, cars and other property of the kidnapped. At the same time, after such papers were received, the abducted would be killed. The following instances lead to the criminal cases: [list of 9 cases]

...2. In the period from 2000 to 2003 most of the abductions are committed by the military and law enforcement officers: Ministry of Defense, SWAT, etc., including the officers of the Oktyabrsky police department. Such facts are proven by the written testimonies of the witnesses. Some heads of the departments of Oktyabrsky Police Department of the former PD of Khanty-Mansiysk district are now wanted internationally for having committed such crimes…However, one must note that some of the abducted were active separatists on the moment of the abduction and were involved in committing a series of felonies [two examples are given] *... Abductions committed by the officers of Oktyabrsky Police Department* [list of 58 criminal cases]

... As of 2004 and to the present, according to the operational information, most of the abductions in this district are committed by the officers of various law enforcement and military units that are stationed in

[155] Russian Justice Initiative (http://www.srji.org) is a human rights NGO whose activities are strictly focused on bringing cases of human rights violations from Chechnya and other republics of the Northern Caucasus to ECtHR.
[156] The identity of this individual victim is concealed so as not to jeopardize his situation.

Chechnya – namely, FSS, ORB-2, Kadyrov's Security Service and other military forces. The statistics is explained by the fact that officers of those units do not arrange the detention in the proper and formal way, do not introduce themselves at the moment of arrest, do not inform the relatives, neighbors of the detained about the reasons for the detention and further location of the detained. The relatives are worried and do not possess any information as to their family members and so they file abduction or missing papers. The search of those people is difficult due to sometimes open confrontation to the police officers, so – being unable to interrogate the officers of that or other military formation – the policemen are satisfied with the mere statement of facts. The police officers are not allowed on the territory of the military units. Those instances led to the criminal cases: [list of 15 cases]

...This analysis showed that the main reasons for lack of results are:

...3. the use by the military units officers and law enforcement officers of masks and unidentified uniform without rank insignia

4. the free movement of vehicles with stolen number plates or without any number plates at all

5. Unwillingness of the commanding officers of the military to reveal true information as to the instances of their inferiors in target missions, arrests – up to hampering the initial investigative process

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