

***Stichting Russian Justice Initiative's observations and proposals regarding the execution of the judgments of the European Court of Human Rights on grave human rights violations in the North Caucasus***

(Under Rule 9 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements)

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## Introduction

1. This document sets out Stichting Russian Justice Initiative's (hereinafter RJI) submissions as to the general measures that are necessary for the respondent Government to take in order to comply with the judgments of the European Court of Human Rights (hereinafter the Court) in the cases *Bazorkina v. Russia* of 27 July 2006, *Estamirov and Others v. Russia* of 12 October 2006, *Luluyev and Others v. Russia* of 9 November 2006, *Imakayeva v. Russia* of 9 November 2006, *Chitayev and Chitayev v. Russia* of 18 January 2007, *Baysayeva v. Russia* of 4 May 2007, *Akhmadova and Sadulayeva v. Russia* of 10 May 2007, *Goygova v. Russia* of 4 October 2007, *Medov v. Russia* of 8 November 2007, *Khamila Isayeva v. Russia* of 15 November 2007, *Khatsiyeva and Others v. Russia* of 17 January 2008, *Aziyevy v. Russia* of 20 March 2008, *Sangariyeva v. Russia* of 29 May 2008, *Gekhayeva and Others v. Russia* of 29 May 2008, *Ibragimov and Others v. Russia* of 29 May 2008, *Utsayeva and Others v. Russia* of 29 May 2008, *Atabayeva and Others v. Russia* of 12 June 2008, *Elmurzayev and Others v. Russia* of 12 June 2008, *Isigova and Others v. Russia* of 26 June 2008, *Akhiyadova v. Russia* of 3 July 2008, *Takhayeva and Others v. Russia* of 18 September 2008, *Khalidova and Others v. Russia* of 2 October 2008, *Rasayev and Chankayeva v. Russia* of 2 October 2008, *Lyanova and Aliyeva v. Russia* of 2 October 2008, *Zulpa Akhmatova and Others v. Russia* of 9 October 2008, *Yusupova and Zaurbekov v. Russia* of 9 October 2008, *Magomed Musayev and Others v. Russia* of 23 October 2008, *Tsurova and Others v. Russia* of 6 November 2008, *Khadzhialiyev and Others v. Russia* of 6 November 2008, *Magamadova and Iskhanova v. Russia* of 6 November 2008, *Akhmadov and Others v. Russia* of 14 November 2008, *Ilyasova and Others v. Russia* of 4 December 2008, *Tagirova and Others v. Russia* of 4 December 2008, *Askharova v. Russia* of 4 December 2008, *Akhmadova and Others v. Russia* of 4 December 2008, *Musikhanova and Others v. Russia* of 4 December 2008, *Nasukhanova and Others v. Russia* of 18 December 2008, *Arzu Akhmadova and Others v. Russia* of 8 January 2009, *Zakriyeva and Others v. Russia* of 8 January 2009, *Dangayeva and Taramova v. Russia* of 8 January 2009, *Shakhgiriyeva and Others v. Russia* of 8 January 2009, *Abdurzakova and Abdurzakov v. Russia* of 15 January 2009, *Sambiyev and Pokayeva v. Russia* of 22 January 2009, *Dolsayev and Others v. Russia* of 22 January 2009, *Zaurbekova and Zaurbekova v. Russia* of 22 January 2009, *Khadisov and Tsechoyev v. Russia* of 5 February 2009, and *Idalova and Idalov v. Russia* of 22 January 2009, where RJI is the applicants' legal representative.
2. At the outset RJI refers to its previous submissions of 2 June 2007 in the cases *Bazorkina v. Russia* and *Estamirov and Others v. Russia*; of 28 September 2007 in the cases *Luluyev and Others v. Russia* and *Imakayeva v. Russia*; of 28 September 2007 in the case *Chitayev and Chitayev v. Russia*, and of 4 May 2009 in the cases *Bazorkina v. Russia*, *Estamirov and Others v. Russia*, *Luluyev and Others v. Russia*, *Imakayeva v. Russia*, *Chitayev and Chitayev v. Russia*, *Baysayeva v. Russia*, *Akhmadova and Sadulayeva v. Russia*, *Goygova v. Russia*, *Khamila Isayeva v. Russia*, *Khatsiyeva and Others v. Russia*, *Aziyevy v. Russia*, *Sangariyeva and Others v. Russia*, *Gekhayeva and Others v. Russia*, *Ibragimov and Others v. Russia*, *Utsayeva and Others v. Russia*, *Atabayeva and Others v. Russia*, *Elmurzayev and Others v. Russia*, *Isigova and Others v. Russia*, and *Akhiyadova v. Russia*.
3. The present observations further take account of Ministers' Deputies Information Documents regarding violations of the European Convention of Human Rights in the Chechen Republic.<sup>1</sup>

<sup>1</sup> Ministers' Deputies Information Document CM/Inf/DH(2006)32 revised 2 of 12 June 2007 "Violations of the ECHR in the Chechen Republic: Russia's compliance with the European Court's judgments"; Ministers' Deputies Information Document CM/Inf/DH(2008)33 of 11 September 2008 "Actions of the security forces in the Chechen

4. The above mentioned judgments entail three types of different but interrelated grave human rights violations, namely enforced disappearances, extra-judicial killings and torture, and particularly demonstrate the failure to effectively investigate these crimes. The violations took place within the framework of anti-terrorist operations carried out by Russian federal forces in the North Caucasus. In its judgments, the Court repeatedly found grave violations of Articles 2 and 3 in substantive as well as procedural parts, Articles 5 and 13 of the Convention.
5. At the outset, RJI submits that the circumstances of the cases covered by this submission require similar general measures as outlined in the Ministers' Deputies Information Documents regarding violations of the European Convention of Human Rights in the Chechen Republic and RJI' previous submissions.<sup>2</sup> RJI thus call for a prompt and comprehensive implementation of all general measures outlined in the Memorandums of 12 June 2007, 11 September 2008 and 28 November 2008.
6. RJI further requests the Committee of Ministers to provide them with the Government's reports on actions undertaken to implement general measures. RJI moreover submits that the judgments of the Court and the information provided in the Ministers' Deputies Information Documents point towards the following comments, questions and suggestions for additional general measures to be undertaken by the respondent Government.

## **A) The legal and regulatory framework governing the anti-terrorist activities of security forces**

### **Rules concerning the use of force in the context of anti-terrorist operations**

7. Several of the Court's judgments have highlighted the failure of the Russian authorities in exercising appropriate care when resorting to lethal force (see e.g. *Khatisyeva and Others*, para. 134; *Akhmadov and Others v. Russia*, judgment of 14 November 2008, para. 98) These judgments clearly demonstrated a need for legal reforms and their full implementation in practice.
8. At the outset RJI welcomes the insertion of the absolute necessity test governing the use of force during anti-terrorist operations in the law "On Suppression of Terrorism" of 2006 as well as the 2007 Rules regarding the use of force by armed forces during anti-terrorist operations. However, without any further details about the implementation of

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*Republic of the Chechen Republic of the Russian Federation: general measures to comply with the judgments of the European Court of Human Rights*"; Ministers' Deputies Information Document CM/Inf/DH(2008)33 Addendum of 28 November 2008 "Actions of the security forces in the Chechen Republic of the Chechen Republic of the Russian Federation: general measures to comply with the judgments of the European Court of Human Rights"

- 2 Ministers' Deputies Information Document CM/Inf/DH(2006)32 revised 2 of 12 June 2007 "Violations of the ECHR in the Chechen Republic: Russia's compliance with the European Court's judgments"; Ministers' Deputies Information Document CM/Inf/DH(2008)33 of 11 September 2008 "Actions of the security forces in the Chechen Republic of the Chechen Republic of the Russian Federation: general measures to comply with the judgments of the European Court of Human Rights"; Ministers' Deputies Information Document CM/Inf/DH(2008)33 Addendum of 28 November 2008 "Actions of the security forces in the Chechen Republic of the Chechen Republic of the Russian Federation: general measures to comply with the judgments of the European Court of Human Rights"; Stichting Russian Justice Initiative, Submissions of 2 June 2007 in the cases *Bazorkina v. Russia* and *Estamirov and Others v. Russia*; of 28 September 2007 in the cases *Luluyev and Others v. Russia* and *Imakayeva v. Russia*; and of 28 September 2007 in the case *Chitayev and Chitayev v. Russia*; EHRAC/Memorial, "Applicants' submissions regarding compliance with Court judgments in the first six Chechen cases" of 4 October 2005, available at <http://www.londonmet.ac.uk/research-units/hrsj/affiliated-centres/ehrac/ehrac-litigation/chechnya---ehcr-litigation-and-enforcement/enforcement-of-chechen-judgments.cfm> (last accessed on 5 May 2009).

the legal framework it is not possible to assess its effectiveness in practice.

9. In this context, RJI particularly calls for statistical information concerning the use of firearms in anti-terrorist operations (including details of the number of wounded and killed individuals in each operation and the total number of operations carried out). It further calls for details of the notification procedure when there has been a resort to arms. It would also be helpful to obtain statistics over the number of notifications made and especially over the actions taken at the prosecutorial level as a result of those notifications.
10. Considering that several types of security forces (including military forces under the Ministry of Defense, forces of the Russian State Intelligence Department [*Государственное разведывательное управление Генерального штаба Вооруженных Сил России (ГРУ)*]; forces of the federal and local Ministry of Interior, including Internal Troops [*Внутренние войска МВД РФ*] and special forces, as well as Federal Security Service forces) are involved in anti-terrorist operations, RJI is concerned that the Government has only presented the rules governing the military forces and hence submits that the respondent Government should provide a complete and detailed overview of the sets of rules governing the use of force by all different types of security forces.

### **Prevention of torture, ill-treatment, executions and disappearances**

11. At the outset, RJI wishes to underline that the grave human rights violations found in the Court's judgments are not problems of the past. During January to June 2009, the Human Rights Centre "Memorial" documented 74 abductions in Chechnya, 12 of the abducted persons disappeared and 4 were later found killed.<sup>3</sup> These figures indicate a sharp rise in abductions compared to 2008.<sup>4</sup> There are moreover indications that the resort to torture remains common in the region. A 2008 report from the Norwegian Helsinki Committee describes a regional system of torture, forced confessions and fabricated trials.<sup>5</sup>
12. Human rights violations previously associated mostly with Chechnya have recently spread to neighboring republics too. Human Rights Watch in 2008 published an extensive report on human rights abuses committed in Ingushetia by law enforcement and security forces involved in counterinsurgency, including dozens of arbitrary detentions, acts of torture, enforced disappearances, and extra-judicial executions.<sup>6</sup> The Human Rights Centre "Memorial" recently released statistics showing a sharp rise in killings in Ingushetia during the first half of 2009. According to Memorial, 103 persons including 39 civilians were killed in the republic between January and June 2009 compared to only 23 during the same period in 2008.<sup>7</sup>

3 Kavkaz Uzel, "'Memorial': more kidnappings in Chechnya, more murders in Ingushetia", 27 April 2009, available at <http://www.eng.kavkaz-uzel.ru/articles/9958> (last accessed 2 June 2009)

4 Memorial, "Abductions, Disappearances and Killings in 2008 in the Chechen Republic", available under heading "Статистика похищений и убийств" at <http://www.memo.ru/hr/hotpoints/caucas1/index.htm> (last accessed 15 April 2009). Memorial documented 42 abductions during the whole year of 2008, 12 of the abducted persons disappeared and four of them were found killed.

5 Norwegian Helsinki Committee, «Anti-Terrorism Measures and Human Rights in North Caucasus: A Regional System of Torture, Forced Confessions and Fabricated Trials, From March 2007 to April 2008», Report no. 2/2008, available at [http://www.nhc.no/php/files/documents/land/Tsjetsjenia/2008/Report\\_2\\_2008.pdf](http://www.nhc.no/php/files/documents/land/Tsjetsjenia/2008/Report_2_2008.pdf) (last accessed 15 April 2009)

6 Human Rights Watch, «As if they fell from the sky», 24 June 2008, available at <http://www.hrw.org/en/reports/2008/06/24/if-they-fell-sky-0> (last accessed 2 June 2009)

7 Kavkaz Uzel, "'Memorial': more kidnappings in Chechnya, more murders in Ingushetia", 27 April 2009, available at <http://www.eng.kavkaz-uzel.ru/articles/9958> (last accessed 2 June 2009)

13. On 15 July prominent human rights activist Natalia Estemirova, who in her work for Memorial exposed alleged rights abuses by state agents, including the forces of Chechen President Ramzan Kadyrov, was kidnapped on her way to work in Grozny. Her body was later found in Ingushetia with several gunshot wounds. This crime not only serves as an example of a generally deteriorating situation but also illustrate the great risks for those who speak out against human rights abuse. Over the past year, there has been a striking string of murders of human rights defenders involved in human rights work in the region and a complete failure to hold the perpetrators responsible for the killings.<sup>8</sup>
14. The government should take immediate measures to put an end to the pattern of extrajudicial executions of human rights defenders and halt the nearly complete impunity for these crimes.
15. The dire human rights situation in the North Caucasus moreover continues to form part of the agenda of the Parliamentary Assembly of the Council of Europe.<sup>9</sup> The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has since 2000 visited the North Caucasus on eleven occasions. On two of these, the Committee have made public statements reiterating their grave concerns.<sup>10</sup>
16. In its judgments, the Court has repeatedly found violations on account of "unacknowledged detention in complete disregard of the safeguards enshrined in Article 5" and concluded that "this constitutes a particularly grave violation of the right to liberty and security". The Court has further found that "the absence of custody records must be seen as incompatible with the very purpose of Article 5". The systematic resort to unacknowledged detention revealed by these judgments give rise to a strong suspicion that its use has been ordered, or at least tolerated, by high-level officials within the security forces. In light of on-going human rights abuses, it can also be

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- 8 On 31 August 2008, journalist and opposition figure Magomed Yevloyev was killed by a bullet wound to his head inside a police car in Ingushetia. See e.g. Parliamentary Assembly, Council of Europe, «Death of Magomed Yevloyev: North Caucasian situation as alarming as ever», 9 September 2008, <http://assembly.coe.int/ASP/Press/StopPressView.asp?ID=2079> (last accessed 14 August 2009); On 13 January 2009, Umar Israilov, a Chechen who had filed a complaint with the European Court of Human Rights alleging that he had been tortured by Chechnya's president Ramzan Kadyrov, was shot dead in the central Vienna. On 19 January 2009, prominent human rights lawyer Stanislav Markelov, who represented victims of abuse in Chechnya, and journalist Anastasya Babyrova were shot to death in central Moscow. See e.g. Human Rights Watch, «Russia: Investigate murder of prominent rights lawyer», 19 January 2009, <http://www.hrw.org/ru/news/2009/01/19/russia-investigate-murder-prominent-rights-lawyer> (last accessed 14 August 2009); On August 10 2009 Zarema Sadulayeva and Alik Dzhabrailov, both working for the children's charity «Save the Generation» were abducted from their office in Grozny. They were found killed in the trunk of their car on the following day. See e.g. Amnesty International, «Russia must end impunity for murder of human rights activists», 12 August 2009, <http://www.amnesty.org/en/news-and-updates/news/russia-must-end-impunity-murder-human-rights-activists-20091208> (last accessed 14 August 2009)
  - 9 See e.g. Parliamentary Assembly, Committee on Legal Affairs and Human Rights, AS/Jur (2008) 21 of 11 April 2008, "Legal remedies for human rights violations in the North Caucasus", [http://assembly.coe.int/CommitteeDocs/2008/20080411\\_ajdoc21\\_2008.pdf](http://assembly.coe.int/CommitteeDocs/2008/20080411_ajdoc21_2008.pdf) (last accessed 7 May 2009); Parliamentary Assembly, Committee on Legal Affairs and Human Rights, Press release, "Chechnya: PACE committee demands full elucidation of the recent spate of murders" of 27 January 2009, available at <http://assembly.coe.int/ASP/Press/StopPressView.asp?ID=2121> (last accessed 7 May 2009)
  - 10 Committee for the Prevention of Torture, "Public Statement Concerning the Chechen Republic of the Russian Federation," 13 March 2007, available at <http://www.cpt.coe.int/documents/rus/2007-17-inf-eng.htm>, (last accessed 7 May 2009); Committee for the Prevention of Torture, "Public Statement Concerning the Chechen Republic of the Russian Federation," 10 July 2003, available at <http://www.cpt.coe.int/documents/rus/2003-33-inf-eng.pdf> (last accessed 7 May 2009)

assumed that that tolerance is still existing.

17. With unacknowledged detention often being a prerequisite for the perpetration of acts of torture and ill-treatment as well as executions and disappearances it is of paramount importance that the respondent Government takes measures to put an immediate end to this practice. Fundamental safeguards such as detailed custody records, access to lawyer, access to an independent doctor and the right to inform a close relative must be fully implemented. Although Russian legislation and regulations entail these safeguards, they are apparently not upheld in practice.<sup>11</sup>
18. It appears that there is a prosecutorial supervisory system in place regarding places of detention. Yet, more information is needed to enable an evaluation of its effectiveness. More specifically, it is submitted that the Committee's assessment would benefit from the following information:
  - Are prosecutors always able to fully access all places of detention? What powers do they have to take action upon suspecting violations of the law?
  - Statistics on initiated investigations and proceedings and their results (divided by year, place of detention, type of violation, and result),
  - Is there a system of disciplinary sanctions for breaches of professional duties by officials responsible for upholding the requisite standards of detention?
  - Statistics on proceedings on disciplinary sanctions and their result.
19. The respondent Government's introduction of a system of mandatory prior notification of the planning of an anti-terrorist operation is a welcome step to reinforce supervision of such operations. More information is however needed in order to evaluate the effectiveness of that system. In particular, the respondent Government should provide further details on the procedure itself, legal status of the rules, describe the roles and powers of the respective authorities involved and furnish the Committee with statistics on the number of notified security operations.
20. In view of the persisting acceptance for unacknowledged detentions among high-level security officials, the respondent Government should further issue a high-level order condemning this practice and accompany the order with the introduction of a zero-tolerance policy in respect of abuses.
21. It is also submitted that the respondent Government should in particular ensure that the regulatory framework and its implementation in practice correspond to at least the following documents:
  - The CPT Standards<sup>12</sup>;
  - The UN Standard Minimum Rules for the Treatment of Prisoners<sup>13</sup>;

11 Norwegian Helsinki Committee, «Anti-Terrorism Measures and Human Rights in North Caucasus: A Regional System of Torture, Forced Confessions and Fabricated Trials, From March 2007 to April 2008», Report no. 2/2008, available at [http://www.nhc.no/php/files/documents/land/Tsjetsjenia/2008/Report\\_2\\_2008.pdf](http://www.nhc.no/php/files/documents/land/Tsjetsjenia/2008/Report_2_2008.pdf) (last accessed 15 April 2009); Human Rights Watch, «As if they fell from the sky», June 2008, available at <http://www.hrw.org/en/reports/2008/06/24/if-they-fell-sky-0> (last accessed 15 April 2009)

12 Council of Europe, The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT/Inf/E (2002) 1 - Rev. 2006, *The CPT Standards, "Substantive sections" of the CPT's General Reports*, available at <http://www.cpt.coe.int/en/documents/eng-standards.pdf> (last accessed 29 May 2009)

13 United Nations, *Standard Minimum Rules for the Treatment of Prisoners*, adopted Aug. 30, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977), available at [http://www.unhcr.ch/html/menu3/b/h\\_comp34.htm](http://www.unhcr.ch/html/menu3/b/h_comp34.htm) (last accessed 29 May 2009)

- The Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)<sup>14</sup>.

## **B) Effective accountability of members of the security forces for abuses committed in the course of anti-terrorist operations**

### **Effective investigations into alleged abuses**

22. The Court has in all judgments covered by this submission found violations of the Convention in respect of serious shortcomings of the domestic investigation compromising its effectiveness. The Court has in particular repeatedly faulted Russia for the following:

- significant delay in launching the investigation despite the applicants requests to do so (*Bazorkina*, para. 121; *Estamirov and Others*, para. 89; *Imakayeva*, para. 133; *Luluyev and Others*, para. 96; *Baysayeva*, para. 126; *Akhmadova and Sadulayeva*, para. 100; *Goygova*, para. 78; *Medov*, para. 120 (no investigation opened); *Khamila Isayeva*, para. 131; *Utsayeva and Others*, para. 177; *Ibragimov*, para. 97; *Sangariyeva and Others*, para. 79; *Gekhayeva and Others*, para. 103; *Atabayeva and Others*, para. 98; *Elmurzayev and Others*, para. 106; *Isigova and Others*, para. 105; *Akhiyadova*, para. 76; *Takhayeva and Others*, para. 90; *Khalidova and Others*, para. 94; *Rasayev and Chankayeva*, para. 72; *Yusupova and Zaurbekova*, para. 62; *Zulpa Akhmatova and Others*, para. 104; *Magomed Musayev and Others*, para. 98; *Tsurova and Others*, para. 123; *Khadzhilaliyev and Others*, para. 103; *Magamadova and Iskhanova*, para. 95; *Ilyasova and Others*, para. 74; *Tagirova and Others*, para. 90; *Askharova*, para. 80; *Akhmadova and Others*, para. 146; *Musikhanova and Others*, para. 71; *Nasukhanova and Others*, para. 112; *Zakriyeva and Others*, para. 82; *Shakhgiriyeve and Others*, para. 177; *Abdurzakova and Abdurzakov*, para. 109; *Dolsayev and Others*, para. 108; *Zaurbekova and Zaurbekova*, para. 82; *Idalova and Idalov*, para. 109; *Khadisov and Tsechoyev*, para. 116)
- the most essential investigatory steps (such as questioning of witnesses, following up on leads, inspecting the crime scene, forensic and ballistic examinations etc.) were taken with inexplicable delays or not at all (*Bazorkina*, para. 121; *Estamirov and Others*, paras. 89-91; *Imakayeva*, para. 133; *Luluyev and Others*, para. 97; *Chitayev and Chitayev*, para. 165; *Baysayeva*, para. 126; *Akhmadova and Sadulayeva*, para. 101; *Goygova*, para. 78; *Khamila Isayeva*, para. 131; *Khatsiyeva and Others*, para. 146; *Aziyevy*, para. 90; *Utsayeva and Others*, para. 178; *Ibragimov*, para. 97; *Sangariyeva and Others*, para. 79; *Gekhayeva and Others*, para. 104; *Atabayeva and Others*, para. 99; *Elmurzayev and Others*, para. 107; *Isigova and Others*, para. 107; *Akhiyadova*, para. 77; *Takhayeva and Others*, para. 92; *Khalidova and Others*, para. 94; *Rasayev and Chankayeva*, para. 76; *Yusupova and Zaurbekova*, para. 63; *Zulpa Akhmatova and Others*, para. 104; *Magomed Musayev and Others*, para. 99; *Tsurova and Others*, para. 125; *Khadzhilaliyev and Others*, para. 104; *Magamadova and Iskhanova*, para. 95; *Akhmadov and Others*, para. 112; *Ilyasova and Others*, para. 75; *Tagirova and Others*, para. 91; *Askharova*, para. 81; *Akhmadova and Others*, para. 146; *Musikhanova and Others*, para. 72; *Nasukhanova and Others*, para. 113; *Arzu Akhmadova and Others*, para. 196; *Zakriyeva and Others*, para. 84; *Dangayeva and Taramova*, para. 95; *Shakhgiriyeve and Others*, paras. 168, 178; *Abdurzakova and Abdurzakov*, para. 109; *Dolsayev and Others*, para. 108; *Zaurbekova and Zaurbekova*,

14 Office of the United Nations High Commissioner for Human Rights, Professional Training Series No. 8/Rev.1 (2004), *The Istanbul Protocol, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, available at <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf> (last accessed 29 May 2009)



*para. 83; Idalova and Idalov , para. 110; Khadisov and Tsechoyev, para. 118)*

- notable failure/reluctance to take steps to identify and/or question identified servicemen suspected of involvement in the crimes (*Bazorkina, para. 122; Estamirov and Others, para. 89; Luluyev and Others, para. 99; Baysayeva, para. 128; Akhmadova and Sadulayeva, para. 102; Goygova, para. 78; Khamila Isayeva, para. 131; Khatsiyeva and Others, para. 147; Aziyevy, para. 93; Utsayeva and Others, para. 178; Sangariyeva and Others, para. 80; Elmurzayev and Others, para. 107; Isigova and Others, paras. 107 – 109; Takhayeva and Others, para. 92; Yusupova and Zaurbekova, para. 63; Lyanova and Aliyeva, para. 106; Zulpa Akhmatova and Others, para. 105; Magomed Musayev and Others , para. 101; Tsurova and Others, para. 126; Magamadova and Iskhanova, para. 96; Akhmadov and Others, para. 113; Ilyasova and Others, para. 75; Askharova, para. 83; Akhmadova and Others, para. 147; Musikhanova and Others, para. 72; Nasukhanova and Others, para. 114; Arzu Akhmadova and Others, para. 195; Zakriyeva and Others, para. 86; Dangayeva and Taramova, para. 95; Shakhgiriyeveva and Others, para. 170; Abdurzakova and Abdurzakov, para. 110; Dolsayev and Others, para. 108; Zaurbekova and Zaurbekova, para. 83; Idalova and Idalov , para. 111; Khadisov and Tsechoyev, para. 120)*
- investigation was repeatedly adjourned and reopened with considerable periods of inactivity (*Bazorkina, para. 124; Estamirov and Others, para. 93; Luluyev and Others, para. 99; Baysayeva, para. 129; Akhmadova and Sadulayeva, para. 104; Khamila Isayeva, para. 132; Khatsiyeva and Others, para. 149; Aziyevy, para. 95; Utsayeva and Others, para. 181; Ibragimov, para. 99; Sangariyeva and Others, para. 83; Gekhayeva and Others, para. 107; Elmurzayev and Others, para. 110; Isigova and Others, para. 109; Takhayeva and Others, para. 93; Yusupova and Zaurbekova, para. 65; Rasayev and Chankayeva, para. 75; Lyanova and Aliyeva, para. 106; Magomed Musayev and Others, para. 103; Tsurova and Others, para. 128; Khadzhilaliyev and Others, para. 107; Magamadova and Iskhanova, para. 98; Akhmadov and Others, para. 113; Ilyasova and Others, para. 78; Tagirova and Others, para. 93; Askharova, para. 86; Akhmadova and Others, para. 149; Musikhanova and Others, para. 74; Nasukhanova and Others, para. 117; Arzu Akhmadova and Others, para. 198; Zakriyeva and Others, para. 88; Dangayeva and Taramova, para. 97; Shakhgiriyeveva and Others, para. 173; Abdurzakova and Abdurzakov, para. 112; Sambiyev and Pokayeva, para. 63; Dolsayev and Others, para. 110; Zaurbekova and Zaurbekova, para. 85; Idalova and Idalov, para. 113)*
- orders by senior prosecutors or courts to carry out concrete investigative steps were not complied with by junior prosecutors or investigators (*Bazorkina, para. 123; Estamirov and Others, para. 93; Luluyev and Others, para. 99; Baysayeva, para. 129; Khatsiyeva and Others, para. 149; Aziyevy, para. 95; Sangariyeva and Others, para. 83; Rasayev and Chankayeva, para. 73; Akhmadov and Others, para. 114; Akhmadova and Others, para. 149; Dangayeva and Taramova, para. 95; Khadisov and Tsechoyev, para. 120)*
- the prosecutor/investigator in charge of the case *de facto* lacked the power to undertake investigative steps in respect of state agents and/or lacked access to relevant information available at other state authorities (*Imakayeva, para. 134; Takhayeva and Others, para. 91)*
- the applicants have not been informed about the progress of the investigation (*Bazorkina, para. 124; Estamirov and Others, para. 92; Imakayeva, paras. 134, 150; Luluyev and Others, para. 100; Chitayev and Chitayev, para. 165; Akhmadova and Sadulayeva, para. 104; Goygova, para. 84; Khamila Isayeva, para. 132; Khatsiyeva and Others, para. 148; Aziyevy, para. 94; Utsayeva and Others, para. 180; Ibragimov, para. 98; Sangariyeva and Others, para. 82; Gekhayeva and Others, para. 106;*

*Atabayeva and Others, para. 100; Elmurzayev and Others, para. 109; Isigova and Others, para. 110; Akhiyadova, para. 78; Takhayeva and Others, para. 94; Khalidova and Others, para. 95; Yusupova and Zaurbekova, para. 64; Rasayev and Chankayeva, para. 74; Lyanova and Aliyeva, para. 106; Zulpa Akhmatova and Others, para. 106; Magomed Musayev and Others, para. 102; Tsureva and Others, para. 127; Khadzhilaliyev and Others, para. 106; Magamadova and Iskhanova, para. 97; Akhmadov and Others, para. 115; Ilyasova and Others, para. 77; Tagirova and Others, para. 92; Askharova, para. 85; Akhmadova and Others, para. 148; Musikhanova and Others, para. 73; Nasukhanova and Others, para. 116; Arzu Akhmadova and Others, para. 197; Zakriyeva and Others, para. 87; Dangayeva and Taramova, para. 96; Shakhgiriyeva and Others, paras. 172, 179; Abdurzakova and Abdurzakov, para. 111; Dolsayev and Others, para. 109; Zaurbekova and Zaurbekova, para. 84; Idalova and Idalov, para. 112; Khadisov and Tsechoyev, para. 122)*

23. The Court's findings regarding the respondent Government's failure to effectively investigate grave human rights violations reveal a systematic pattern of unwillingness and inability to carry out criminal investigations capable of leading to the prosecution of those responsible. In this context, it is particularly appalling that even in cases where the authorities possessed evidence with regard to the identity of the perpetrators, they repeatedly failed to undertake the investigative measures needed to bring them to justice (see Applicants' submission regarding individual measures of 4 May 2009, paras. 29 ff.).
24. Most disturbingly, RJI continues to come across investigations marred by the same shortcomings also in more recent cases from the North Caucasus. The authorities' inaction and formalistic responses to applicants' requests following Court judgments in their cases further add to RJI's concerns in this regard (see Applicants' submission regarding individual measures of 4 May 2009, para. 25).
25. Another persisting problem is that of cooperation and exchange of information between different state authorities. For example, it is not uncommon that civilian prosecutors are unable to carry out effective investigations because of denied access to information possessed by military and security authorities. It does not appear that any measures have been taken to rectify this problem.
26. In light of the above, RJI submits that the respondent Government should take immediate steps to carry out effective investigations into all alleged abuses. More specifically, RJI submits that the following measures should also be taken in order for the respondent Government to fulfill its legal obligations under the Convention:
- ensure that all past and current allegations of enforced disappearances, extra-judicial killings and torture/ill-treatment are promptly, thoroughly, independently and impartially investigated;
  - issue a high-level order stating that enforced disappearances, extra-judicial killings and torture/ill-treatment are under no circumstances acceptable and make clear that the authorities (public and military) will prosecute to the fullest extent of the law individuals suspected of violating the norms and standards enumerated in the European Convention on Human Rights and Russian domestic law.

### **Supervision of compliance with these rules**

27. It appears that there is a prosecutorial supervisory system in place aimed at ensuring that domestic investigations are carried out in compliance with Russian law. Yet, the continued shortcomings encountered by RJI in on-going domestic investigations indicate that that supervision is far from effective. Also, as shown in the overview above, the

non-compliance with orders from senior prosecutors and courts to carry out concrete investigative measures is a reoccurring problem in cases already decided by the Court. It is moreover unclear whether the existing supervisory system in practice employs the same standards in respect of public and military prosecutors and investigators.

28. In particular, RJI is unaware of any disciplinary proceedings brought against investigators or prosecutors even though many of the investigatory shortcomings found by the Court are directly attributable to individual prosecutors' or investigators' apparent non-compliance with their professional duties. For example, junior prosecutors' or investigators' disobedience of orders to carry out concrete investigative steps cannot but be regarded as a serious breach of professional duties and should correspondingly carry with it consequences for the individual in question.
29. Domestic courts in the North Caucasus have on several occasions found under the procedure established by Article 125 of the Criminal Procedural Code of the Russian Federation that a prosecutor's or investigator's acts or omissions in a case amounted to a breach of the Code (see e.g. *Meshayeva and Others v. Russia*, judgment of 12 February 2009, paras. 77 and 119; *Dzhambekova and Others v. Russia*, judgment of 12 March 2009, paras. 94 and 289). Still, RJI is not aware of any disciplinary proceedings or other consequences for the prosecutor or investigator in question following such a decision. It is hence submitted that this undermines any potential of Article 125 to work as a safeguard against the investigative authorities' failure to take effective steps to investigate alleged abuses.
30. RJI submits that the respondent Government should strengthen and strictly enforce the system of disciplinary sanctions against government officials who breach their professional duties. It should also ensure that the finding of a breach of the Code under the procedure established by Article 125 is followed by immediate consequences for the responsible professional. It should moreover provide the following information in order to facilitate the Committee of Ministers' assessment in this regard:
- Detailed information on disciplinary proceedings against investigators and prosecutors for non-compliance with their professional duties, including concrete examples and statistics (by year, district, type of breach and disciplinary punishment) from the North Caucasus in particular;
  - Details on the results of the December 2007 check which reviewed 80 case files in which victims had lodged complaints with the Court<sup>15</sup>;
  - Details as to the powers of the prosecutor when an investigator refuses to follow instructions, is there a standardized procedure to be followed in such cases?
  - Details as to the supervision of public and military prosecutors and investigators, what differences are there?
31. Furthermore, in several cases where domestic courts considered domestic investigation to be effective, the Court later made a finding to the contrary (see, *Lyanova and Aliyeva v. Russia*, judgment of 2 October 2008, paras. 71-72 and 109; *Aziyevy v. Russia*, judgment of 20 March 2008, paras. 50-51 and 109). RJI submits that in such situations the judges who deliver decisions in violation of the Convention shall face disciplinary sanctions.

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15 Ministers' Deputies Information Document CM/Inf/DH(2008)33 of 11 September 2008 "*Actions of the security forces in the Chechen Republic of the Chechen Republic of the Russian Federation: general measures to comply with the judgments of the European Court of Human Rights*", para. 119

## Victim's rights

32. Another related matter concerns information provided to victims in the course of the domestic investigation and victims' rights in the investigation. As already outlined above, the Court has repeatedly faulted the respondent Government for its failure to ensure that investigations are subjected to public scrutiny and that the interests of the next of kin are protected in the proceedings.
33. In this context, RJI finds it especially disturbing that applicants' requests for information following an Court judgment continue to be met with formalistic replies, often without any details as to steps taken in course of the investigation, from the authorities (see Applicants' submission regarding individual measures of 4 May 2009).
34. Although RJI has noted some progress in granting access to criminal case files, a majority of its clients are still denied access (either by way of a formal decision or by the introduction of practical barriers). Several applicants whose cases have already been decided by the Court also continue to be denied access (see Applicants' submission regarding individual measures of 4 May 2009).
35. RJI notes with great concern that access to case materials is generally denied in cases where the evidence against the perpetrators is potentially strong. In this respect, RJI specifically points to the case *Imakayeva v. Russia* in which the authorities withdrew the applicant's victim status in order to deprive her of the opportunity to access the case file and learn who had detained her husband and why (*Imakayeva v. Russia*, para. 133).
36. According to article 42 of the Criminal Procedural Code of the Russian Federation, an individual who has been granted formal victim status in a criminal case has the right to access and study the criminal case file. However, this right does not apply fully until the criminal case in question has been finalized. As already noted above, investigations in the types of cases covered by this submission tend to be repeatedly adjourned and reopened but never finalized. Many victims are consequently *de facto* deprived of their right to access the criminal case file and thus unable to effectively challenge the acts or omissions of the investigating authorities. RJI thus calls for a legislative reform of article 42 that would allow victims to have full access to the materials of suspended cases.
37. In light of the above RJI submits that the respondent Government should immediately take steps to restore and secure victims' right to participation in criminal investigations and ensure that this right is fully respected also in practice. RJI further submits that the respondent Government should provide the Committee with detailed replies to the following questions:
- How is the highest possible transparency and public scrutiny of investigations ensured?
  - What measures are taken to ensure that victims are granted access to criminal case files in practice? How could Article 42 of the Criminal Procedural Code be changed to grant access before a case is finalized?

## Effective punishment of abuses

38. The fact that visible efforts have yet to be taken to bring perpetrators to justice, including in cases where the authorities possess strong evidence with regard to their identity, reveals a disturbing continued unwillingness to break the climate of impunity in the North Caucasus (see Applicants' submission regarding individual measures of 4 May 2009). RJI is only aware of a few cases where servicemen have been convicted and sentenced to imprisonment for crimes committed during anti-terrorist operations in the North Caucasus. The prevailing impunity continues to be brought up as a major cause

for concern by non-governmental organizations.<sup>16</sup> There is an apparent unwillingness to hold superiors responsible for abuses. It appears that investigators in some cases simply refrain from identifying the superiors although this should have been done easily (see e.g. *Khatsiyeva*, para. 147). In others they identify the commander in charge but refrain from taking any measures to hold him accountable (see e.g. *Bazorkina*, para. 110, and *Isigova*, para. 109).

39. Under Russian criminal law (Article 78 of the Criminal Code of the Russian Federation) a person shall be released from criminal responsibility if ten years have expired after the commission of a grave crime and after fifteen years after the commission of an especially grave crime. Under Russian criminal law, abduction (Article 126 of the Criminal Code of the Russian Federation) without aggravating circumstances is a grave crime. The presence of aggravating circumstances (such as abduction by a group of people, abduction with the use of weapons or violence, abduction of two or more persons etc.) makes it an especially grave crime. Murder is always an especially grave crime. For torture and other ill-treatment, the statutory limitation period ranges between six and fifteen years depending on the degree of bodily harm inflicted. Considering that the earliest Chechnya cases decided by the Court concern crimes committed in 1999, it is of utmost importance to ensure effective investigations of these abuses before the expiration of the limitation period.
40. RJI hence submits that the respondent Government should take immediate measures to ensure that perpetrators are brought to justice in order for it to fulfill its legal obligations under the Convention. In its submission of October 2007, the respondent Government referred to 139 cases concerning crimes committed by servicemen during the Chechen conflict heard by national military courts.<sup>17</sup> However, no details were given on the results of the proceedings. RJI for this reason calls on Russian authorities to provide the Committee of Ministers all relevant judgments in full and with detailed statistics (divided by year and district) including:
- the total number of criminal investigations opened,
  - number of investigations that led to indictments,
  - number of court convictions/acquittals,
  - and sentences upon conviction.

### C) The obligation to cooperate with the Court

41. The Court has in a number of cases found that the respondent Government's refusal to furnish the Court with documents from the criminal case file amounted to a breach of Article 38 of the Convention (see e.g. *Imakayeva, Baysayeva, Akhamadova and Sadulayeva, Khamila Isayeva, Aziyevy, Utsayeva and Others, Atabayeva, Akhiyadova and Others, Yusupova and Zaurbekova, Lyanova and Aliyeva, Zulpa Akhmatova and Others, Magomed Musayev and Others*, and *Khadisov and Tsechoyev*). The refusal has in these cases been made with reference to Article 161 of the Criminal Procedural Code of the Russian Federation which sets out a procedure for and limits the disclosure of

16 See e.g. Amnesty International, «No progress in Chechnya without accountability», 17 April 2009, available at <http://www.amnesty.org/en/news-and-updates/news/no-progress-chechnya-without-accountability-20090417> (last accessed 25 May 2009); Norwegian Helsinki Committee, «Anti-Terrorism Measures and Human Rights in North Caucasus: A Regional System of Torture, Forced Confessions and Fabricated Trials, From March 2007 to April 2008», Report no. 2/2008, available at [http://www.nhc.no/php/files/documents/land/Tsjetsjenia/2008/Report\\_2\\_2008.pdf](http://www.nhc.no/php/files/documents/land/Tsjetsjenia/2008/Report_2_2008.pdf) (last accessed 15 April 2009); Human Rights Watch, «As if they fell from the sky», June 2008, available at <http://www.hrw.org/en/reports/2008/06/24/if-they-fell-sky-0> (last accessed 15 April 2009)

17 “34 complaints against Russia”, page 1, available at [http://www.londonmet.ac.uk/londonmet/library/j24270\\_3.pdf](http://www.londonmet.ac.uk/londonmet/library/j24270_3.pdf) (last accessed on 29 May 2009)

documents from a pending investigation file.

42. In its submission of October 2007, the respondent Government justified its refusal by stating that *"the case materials contain information concerning military secrets, which would make it possible to ascertain the distribution of military and special formations and the nature of their operations. Moreover, the documents contain the details and addresses of parties in criminal proceedings"*.<sup>18</sup> In response to those arguments RJI submits that from 16 April 2009 when the counter-terrorism operation in the Chechen Republic officially ended there should be no further practical need to protect information on the location and character of counter-terrorism activities of federal forces in Chechnya. As to personal information of witnesses and other participants of the criminal proceedings, RJI notes that Russian authorities in some cases pending before the Court have submitted documents where addresses and other personal information have been erased. There should consequently not exist any obstacles to presenting full case-files to the Court as of April 2009.
43. According to Decree no. 310 "On the Representative of the Russian Federation before the European Court of Human Rights" the Representative's office *"should request information together with copies of all relevant documents ... necessary for the effective representation of the interests of the Russian Federation before the Court"* from other state organs and authorities who are *"obliged to present the Representative with such information no later than one month after the receipt of such request"*.<sup>19</sup>
44. In this respect, RJI considers that the respondent Government should inform the Committee of its policies regarding the requests for case-file materials in Chechen cases and answer the following questions:
- Whether the full case file is routinely requested by the Representative's office in each case concerning the Chechen conflict? If not, what factors are taken into account by the Representative's office in deciding not to submit a request to the investigative authorities?
  - How many of the Representative's office's requests are not complied with (percentage); including percentage per body/investigative authority?
  - What reasoning is adduced by the prosecution and investigative authorities for non-compliance with the Representative's office's request?
  - What follow up action is taken by the representative office if its request is (partially) not complied with? What legal instruments does the office have to enforce compliance?
45. Would the situation be that the Representative's office is itself usually denied access to case materials, RJI submits that the respondent Government should take measures to enforce the above-cited provision of Decree no. 310 and empower the Representative of the Russian Federation at the Court with a legally binding right to fully access all relevant case materials at public as well as military investigative authorities. It further submits that a system of disciplinary sanctions in respect of state officials who refuse to cooperate with the Representative of the Russian Federation at the Court should be introduced.

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18 "34 complaints against Russia", pages 2-3, available at [http://www.londonmet.ac.uk/londonmet/library/j24270\\_3.pdf](http://www.londonmet.ac.uk/londonmet/library/j24270_3.pdf) (last accessed on 29 May 2009)

19 Decree no. 310 of 20 March 1998 "On the Representative of the Russian Federation before the European Court of Human Rights", point 5 [Указ Президента РФ от 29.03.1998 № 310 «Об Уполномоченном Российской Федерации при Европейском Суде по правам человека – заместителе министра юстиции Российской Федерации»], available at [http://www.minjust.ru/ru/ECJ/legal\\_activity/](http://www.minjust.ru/ru/ECJ/legal_activity/) (last accessed on 29 May 2009)

## D) Awareness raising and training of members of the security forces and other relevant officials

46. RJI at the outset welcomes the trainings conducted by Russian authorities but submits that more details are needed to assess the effectiveness of those trainings. Yet, in view of the formalistic responses, and in some cases even complete denial of Convention violations, that applicants have received from the authorities after a Court judgment, RJI is concerned that trainings have not been as extensive as needed (see Applicants' submission regarding individual measures of 4 May 2009). RJI believes that an assessment of the respondent Government's measures would benefit from replies to the following questions:

- Details as to the trainers/lecturers. What educational/practical background do they have? Are there any particular requirements? For example, is there a "training of the trainers" program in place?
- Details as to the content and length of the trainings. What curricula is used (re. human rights law, international humanitarian law, international criminal law)?
- Are the trainings mandatory or optional?
- How are trainings followed-up and evaluated?
- Which groups of state agents receive training on human rights, including on the European Convention and the violations found against Russia, as part of their initial training?
- Is there a state agency/authority responsible for the oversight, coordination and quality control of trainings?

47. In this context, RJI further calls for the respondent Government to furnish the Committee of Ministers with any relevant documents, such as curricula, methodology, lists of trainers/partner institutions for different state agencies, in full.

48. Another issue calling for attention is the dissemination and official publication of the Court's judgments, including those on Chechnya. The office of the Representative of the Russian Federation before the Court, charged with informing various organs about the judgments of the Court, is also responsible for the translation of judgments. However, as of 21 May 2009, the Representative's Office web-site only included a summary of one judgment on Chechnya (*Magomadov and Magomadov v. Russia*)<sup>20</sup>. It is also unclear which authorities are informed by the Representative's Office about the judgments in Chechen cases and in what form.

49. Furthermore, the judgments in the first Chechnya cases are still not posted on the web-page of the Ministry of Defense notwithstanding the respondent Government's submissions to the contrary.<sup>21</sup> It appears that Russian translations of Court judgments in Chechnya cases are still only made available to the general public through non-governmental organizations.<sup>22</sup>

50. As to the official publication of the Court's judgments, RJI is concerned about the continued lack of a legal framework in this regard –there is currently no binding legal act that would provide for a procedure of translation and publication of judgments, establish the authorities responsible for it and indicate the source of funds allocated for that purpose. To RJI's knowledge, the only attempt to propose a law establishing such a

20 Information concerning the case *Magomadov and Magomadov v. Russia*, available at

<http://www.minjust.ru/ru/ECJ/precedent/index.php?id4=331> (last accessed on 29 May 2009)

21 See RJI's submission in cases *Imakayeva v. Russia* and *Luluyev and others v. Russia* of 28 September 2008, para. 36

22 See e.g. RJI's database containing selected translated judgments, available at <http://www.srji.org/resources/search/> (last accessed on 2 June 2009)

framework was made in December 2001 and was later declined by the Russian State Duma on 23 May 2003<sup>23</sup>. As long as the Court's judgments are not officially published they are not considered as binding legal sources under Russian law. This effectively prevents domestic courts and law enforcement authorities from taking the Court's case-law into account in judgments and decisions.

51. RJI thus calls for the respondent Government to immediately ensure the official translation and widespread publication of the Court's judgments against Russia.

## **E) Limitations of individual rights in the context of anti-terrorist operation**

52. The Court has on several occasions found that searches and seizures conducted in the course of anti-terrorist operations violated Article 8 of the Convention (see e.g. *Imakayeva*, para. 189; *Zaurbekova and Zaurbekova v. Russia*, judgment of 22 January 2009, para. 110). RJI is also noting with great concern that it continues to come across the same kind of arbitrary searches also in recent cases from the North Caucasus.

53. It is therefore submitted that the respondent Government should revise the 2006 "Law on Suppression of Terrorism" and insert appropriate safeguards for the limitation of rights of persons. In particular, the law should in detail prescribe under what circumstances searches can be carried out, how they shall be conducted, by whom and under whose supervision. It is also submitted that the law should introduce a specific remedy for persons whose rights have been infringed by unlawful actions in the course of anti-terrorist operations and set out a compensation scheme for both material and moral damage.

54. In order to put an immediate halt to arbitrary and unlawful searches and ensure the full implementation in practice of the law, the respondent Government should enforce a system of strict supervision, disciplinary punish those in breach of the law, and prosecute servicemen who unlawfully seize objects and valuables for the crime of theft. It should further ensure that forces on the ground and their superiors receive education on how to conduct searches in full compliance with Russian law and the Convention.

## **F) Compensation for victims of violations resulting from and/or related to anti-terrorist operations**

55. It appears that Russian law allows victims of illegal and criminal acts the possibility to seek compensation for pecuniary and non-pecuniary damages in criminal, civil and administrative proceedings. In order to assess the effectiveness in practice of those proceedings further information and statistics are however needed. It is submitted that the respondent Government should in particular provide the following information:

- Details as to the judgments/decisions referred to (year, issuing court/authority, number of plaintiffs, type of damage, date of violation, details of violation, amount awarded per case);
- Similar statistics on cases where compensation has been denied;
- Details on the interaction between different types of proceedings;
- Details on information provided to the general public about the different possibilities to

<sup>23</sup> See Documents concerning the draft law on «Order of publication in the Russian Federation of judgments of the European Court of Human Rights», available at <http://www.rpqi.narod.ru/echr/obracheniya/law.htm> and Human Rights Review, «On the work of the State Duma in May 2003 (14 -23 May)», 12 June 2003, available at <http://www.duma.hro.org/59/13.htm> (last accessed 2 June 2009)



- obtain compensation;
  - Details on the possibility to obtain legal aid as plaintiff in civil proceedings.
56. In this context, RJI further wishes to underline that the possibility to obtain compensation in civil or administrative proceedings could never as such be deemed an effective remedy in the cases at hand. These cases all call for criminal proceedings in the course of which the matter of compensation should be dealt with.
57. RJI welcomes the new draft law on compensation for delays in proceedings submitted by the Supreme Court to the State Duma. The respondent Government should however present a time-frame for its adoption. Additionally, RJI considers that the Committee's assessment would benefit from further information on how the future law would be implemented. In particular, the respondent Government should comment on the following.
58. Under paragraph 5 of Article 8 of the draft law, an application for compensation may be considered inadmissible if it is "manifestly ill-founded and (or) is submitted in abuse of the right of petition to a court". However, neither in the draft law, nor in any other procedural law or practice have the criteria for such an assessment been established. The respondent Government should hence explain what guarantees are or will be in place against arbitrary application of the above provision.
59. RJI welcomes the introduction of criteria for assessing whether proceedings were excessively long (Article 11 of the draft law). However, it should be borne in mind that such an assessment would require special skills closely connected to the ability to give reasoned decisions. Considering that the Court has on many occasions underlined Russian courts' failure to give reasoned decisions, the respondent Government should provide information on how judges would be trained on assessing factual circumstances of a case in light of the law's criteria and on reasoning of their findings. In particular, RJI is interested in the guiding principles of the assessment of ineffectiveness of investigation.
60. Finally, the respondent Government is requested to elaborate on the guarantees ensuring speedy proceedings and timely execution of judgments under the procedure established by the draft law.

## **G) Additional means of redress**

61. As a systemic problem, human rights abuses committed in Chechnya and its neighboring republics as part of military and anti-terrorism operations call for a complex set of measures to redress past violations. These include the search for missing persons, the location of possible burial sites, as well as the proper exhumation and identification of remains. The creation of a truth commission could be an additional means of redress. By acknowledging and condemning past abuse, these measures would also serve to prevent future violations of the same kind.

## **Establishing the whereabouts of the disappeared**

62. In cases concerning enforced disappearances, the establishment of the fate of the disappeared is often the most important means of redress for the relatives left behind. In the vast majority of cases decided by or pending before the Court, applicants continue to live in uncertainty as to the whereabouts and fate of their loved ones. The importance of being able to bury a family member in accordance with religion and traditions should also not be underestimated.

63. At the outset it should be noted that Russia has no specific legislative framework regarding the search of persons who disappeared during armed conflicts or counter-terrorism operations. There is only general legislation according to which the structures of the Ministry of Internal Affairs of the Russian Federation is responsible for the search for disappeared persons all over Russia. The specifics of functioning of this system in the North Caucasus call for additional comments.
64. First of all, the information concerning persons who disappeared during the Chechen conflict is spread among several authorities. Information is currently in archives of the North Caucasus military district command, Temporary Departments of Interior that functioned in Chechnya throughout the conflict, departments of the FSB, offices of the prosecutor at different levels etc. It appears that no effective coordination exists between various authorities. It also appears that no efforts have been made to compile all information, for example into one comprehensive database, to facilitate the search.<sup>24</sup>
65. Most disturbingly, the search for people who disappeared during the conflict is considered a low-priority task by the authorities. Most of the investigators charged with the search are overloaded with cases and do not even try to obtain additional information from relatives or others who could have provided important leads. Investigators are also not adequately technically equipped and lack special training in searching for victims. No effective supervision mechanisms are in place in this field<sup>25</sup>.
66. There are numerous mass graves, known and unknown, all over Chechnya where unidentified victims of the conflict are buried. According to reports of human rights groups there are currently "dozens known but unopened graves in fields, courtyards, and basements throughout Chechnya"<sup>26</sup>. There is however no system in place for the systematic search for burial sites, the exhumation of remains and the subsequent identification of them<sup>27</sup>.
67. In spite of numerous requests from the international community, Chechnya still lacks a forensic laboratory with facilities necessary for DNA-testing. The Ministry of Health Care and Social Development recently declined the Chechen Ombudsman's demand to create such a laboratory. According to the Minister, Ms. Golikova, the lack of experts in Chechnya make the creation of a laboratory impossible<sup>28</sup>.
68. It is evident that the above-mentioned problems call for the creation of a legislative and organizational framework adjusted to meet the specific needs of the post-conflict environment in Chechnya. This is also something that human rights groups and local Chechen authorities have longed called for. The Ombudsman of the Chechen Republic already in 2007 advised the then-President Vladimir Putin on the need of a coordinating structure – a Commission for the search of disappeared persons<sup>29</sup>, which would ensure

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24 Recommendations on the establishment of system of search for the disappeared in the North Caucasus, available at <http://www.rozysk.org/i/documents> (last accessed on 29 May 2009)

25 Recommendations on the establishment of system of search for the disappeared in the North Caucasus, available at <http://www.rozysk.org/i/documents> (last accessed on 29 May 2009)

26 Radio Free Europe / Radio Liberty, «Identifying Chechnya's dead», 19 November 2008, available at [http://www.rferl.org/content/Identifying\\_Chechen\\_Dead/1350872.html](http://www.rferl.org/content/Identifying_Chechen_Dead/1350872.html) (last accessed on 2 June 2009)

27 NTV News, «There is a search for the disappeared in Grozny», 5 April 2009, available at <http://news.ntv.ru/155679/> (last accessed on 2 June 2009)

28 Human Rights in Russia, «The federal center fears the disclosure of truth?», 7 November 2008, available at <http://www.hro.org/node/3557> (last accessed on 2 June 2009) and President and Government of the Chechen Republic web-page, «The Chechen ombudsman insists on creation of a laboratory for identification of exhumed remains», 31 October 2008, available at <http://chechnya.gov.ru/print.php?r=179&id=115> (last accessed on 2 June 2009)

29 President and Government of the Chechen Republic web-page, «Inter-department Commission on search for the

effective cooperation in the field between various state authorities. This idea was supported by the President of the Chechen Republic<sup>30</sup> who in March 2009 initiated the establishment of a committee on disappeared persons in the Chechen Parliament<sup>31</sup>. Among the main tasks of the committee, as announced, would be the lobbying for the creation of a Commission for the search of disappeared persons at the federal level, which would include representatives of various state agencies. However, from information available in the public domain it appears that federal authorities are opposed to establishing the Committee at the federal level. This again points to the authorities' unwillingness to acknowledge and condemn the grave human rights abuses committed in Chechnya during the conflict.

69. RJI submits that the respondent Government, in order to comply with its obligation to fully execute the Court's judgments, should create and implement a legal framework establishing a coordinated and effective system for the search of the disappeared. The legal framework should in particular:

- establish a federal coordinating body with requisite powers to effectively supervise and execute measures needed to improve the search (including provision of education, disciplinary proceedings);
- create a comprehensive database and a system facilitating the exchange of information between different authorities;
- establish a forensic laboratory in Chechnya, fully equipped with DNA-testing facilities;
- create a framework for the systematic search for burial sites coupled with the exhumation and identification of remains.

70. In this context, it is submitted that the creation of a comprehensive framework law to address all these issues could be a good solution. Such a law could in itself be an important acknowledgment of the systemic problem of disappearances. Going forward, the respondent Government might also find it particularly useful to draw on the Bosnia-Herzegovina "Law on Missing Persons" in as an example.<sup>32</sup> RJI further submits that the respondent Government should provide the Committee with a detailed plan of action regarding the implementation in practice of measures to improve the search of the disappeared.

## Truth commission

71. As a complement to criminal justice, a truth commission implemented in good faith has the potential of serving as a tool in establishing the truth of past crimes, as a means of redress and to ultimately promote peace and reconciliation. In view of the systemic human rights abuses committed in Chechnya, a truth commission could be a suitable means of dealing with the past.

72. On 29 May 2008 the Standing Committee acting on behalf of the Parliamentary Assembly of the Council of Europe unanimously adopted a resolution on the use of truth

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disappeared will be established», 1 June 2007, available at <http://chechnya.gov.ru/page.php?r=126&id=2436> (last accessed on 27 May 2009) and REGNUM, «Ombudsman of Chechnya: the issue of disappearance remains the most painful for the residents of the republic», 9 November 2007, available at <http://www.regnum.ru/news/912257.html> (last accessed on 2 June 2009)

30 President and Government of the Chechen Republic web-page, «Ramzan Kadyrov supported the establishment of the Inter-department Commission for the search of the disappeared in Chechnya», 21 October 2006, available at <http://chechnya.gov.ru/page.php?r=126&id=1658> (last accessed on 2 June 2009)

31 REGNUM, «Committee on search for the disappeared started working in Chechnya», 30 March 2009, available at <http://www.regnum.ru/news/1143633.html> (last accessed on 2 June 2009)

32 Bosnia-Herzegovina, *Law on Missing Persons*, Official Gazette of Bosnia and Herzegovina, No. 50/04; 9 November 2004, available at [http://www.ic-mp.org/wp-content/uploads/2007/11/lawmp\\_en.pdf](http://www.ic-mp.org/wp-content/uploads/2007/11/lawmp_en.pdf) (last accessed 1 June 2009)

commissions. The resolution stated *inter alia* that:

«6. The Parliamentary Assembly considers that truth commissions may be an effective mechanism for addressing past human rights violations, thus bringing reconciliation to a society emerging from a difficult past. If established in accordance with the basic principles of international human rights law, they may also play a useful and complementary role to criminal justice but cannot and should not be seen as an alternative to it. In particular, truth commissions should not grant amnesties for crimes which fall under international law. They should function in a way that respects, protects and promotes human rights. In order to be impartial and independent, they should be established through broad consultations throughout the society, with the participation of civil society organisations and victims.

...

9. The Assembly considers that the experience of truth commissions may be of particular relevance for the Chechen Republic of the Russian Federation. The society in Chechnya, and in the whole Russian Federation, needs to deal with the legacy of the conflict in this region, to reconstitute the history of abuses committed, and of violence and injustices suffered, by all sides involved. It further needs to provide recognition and redress to victims and to establish institutional and personal responsibilities, so as to ensure that perpetrators are held accountable and to prevent further abuses. A truth commission could be one way of meeting those needs.

10. The Assembly recognises that a decision on the appropriateness of establishing a truth commission belongs to the authorities of the Chechen Republic of the Russian Federation. It notes at the same time that there is a growing interest in this matter as well as a demand for truth and reconciliation at various levels of Chechen society.»<sup>33</sup>

73. In regard of the above, RJI calls on the respondent Government to publicly acknowledge that human rights abuse, and enforced disappearances in particular, constitute a systemic problem in Chechnya which, apart from criminal justice, requires other means of redress capable of informing the victims of the conflict of the fate of their relatives and the location of their remains. The respondent Government, together with Chechen authorities, should particularly initiate a study into the possibility of creating a truth commission shaped to meet the particular needs of the Chechen population.

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33 Council of Europe, Parliamentary Assembly, *Use of experience of the "truth commissions"*, Resolution 1613 (2008), available at <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta08/ERES1613.htm> (last accessed 1 June 2009)

## Summary of required measures

RJI hereby requests the Russian authorities to provide the Committee of Ministers with the following information.

### ***A) The legal and regulatory framework governing the anti-terrorist activities of security forces***

#### **Rules concerning the use of force in the context of anti-terrorist operations:**

- Annual statistical information divided by republic concerning the use of firearms in anti-terrorist operations including details of the number of wounded and killed individuals in each operation and the total number of operations carried out since the beginning of the anti-terrorist operation in the North Caucasus;
- details of the notification procedure in cases where there has been a resort to firearms including statistics over the number of notifications made since the introduction of the procedure and especially over the actions taken at the prosecutorial level as a result of those notifications;
- complete and detailed overview of the sets of rules governing the use of force by all different types of security forces participating in anti-terrorist operations;
- details on the procedure of mandatory prior notification of the planning of an anti-terrorist operation, including the roles and powers of the respective authorities involved and statistics on the number of notified security operations since the introduction of the procedure.

#### **Prevention of torture, ill-treatment, executions and disappearances:**

- Information regarding the practical ability of prosecutors to fully access all places of detention;
- overview of the powers of prosecutors to take action upon suspecting violations of the law in places of detention;
- information on actions taken by various authorities (federal, local) to protect human rights defenders active in the region and ensure that perpetrators of crimes against them are brought to justice;
- statistics on initiated investigations and proceedings concerning violations of human rights in places of detention in the republics of the North Caucasus and their results (divided by year, place of detention, type of violation, and result);
- information on the existence of an effective system of disciplinary sanctions for breaches of professional duties by officials responsible for upholding the requisite standards of detention, including statistics on proceedings held in the republics of the North Caucasus on disciplinary sanctions and their result.

***B) Effective accountability of members of the security forces for abuses committed in the course of anti-terrorist operations***

**Effective investigations into alleged abuses**

- Information on how the government is ensuring that all past and current allegations of enforced disappearances, extra-judicial killings and torture/ill-treatment are promptly, thoroughly, independently and impartially investigated;
- comments on the possible issuance of a high-level order stating that enforced disappearances, extra-judicial killings and torture/ill-treatment are under no circumstances acceptable and make clear that the authorities (public and military) will prosecute to the fullest extent of the law individuals suspected of violating the norms and standards enumerated in the European Convention on Human Rights and Russian domestic law.

**Supervision of compliance with existing rules:**

- Detailed information on disciplinary proceedings against investigators and prosecutors for non-compliance with their professional duties, including concrete examples and statistics (by year, district, type of breach and disciplinary punishment) from the republics of the North Caucasus;
- details on the results of the December 2007 check which reviewed 80 case files in which victims had lodged complaints with the Court (see above, para. 30);
- details as to the powers of the prosecutor when an investigator refuses to follow instructions, including statistical information on actions undertaken by prosecutors in practice;
- details as to the differences in supervision of public and military prosecutors and investigators.

**Victim's rights:**

- Comments on measures taken and/or planned to ensure the highest possible transparency and public scrutiny of criminal investigations;
- comments on measures taken and/or planned to ensure that victims are granted access to criminal case files before the investigation is finalized, including the need to reform Article 42 of the Criminal Procedural Code.

**Effective punishment of abuses:**

- Information on the total number of criminal investigations opened into grave human rights abuses committed by state agents in the North Caucasus since the beginning of the anti-terrorist operation in the North Caucasus, divided by year, republic and result (suspended, closed, led to indictment);
- the total number of cases concerning grave human rights abuses committed by state agents in the North Caucasus since the beginning of the anti-terrorist operation in the North Caucasus heard by/pending before courts, divided by year, court and result (conviction, including data on sentence/acquittal).

***C) The obligation to cooperate with the Court:***

- Information on whether the full criminal case file is routinely requested by the

Representative's office in each case communicated by the Court concerning grave human rights violations that took place in the North Caucasus during the anti-terrorist operation;

- if full case files are not requested, information on the factors taken into account by the Representative's office in deciding not to submit a request to the investigative authorities;
- details on the number of the Representative's office's requests which are not complied with (percentage), including percentage per body/investigative authority;
- information on the reasoning adduced by the prosecution and investigative authorities for non-compliance with the Representative's office's requests;
- information on follow up action taken by the Representative's office in cases where its request is (partially) not complied with, including an overview of binding legal instruments that the Office has at hand to enforce compliance.

***D) Awareness raising and training of members of the security forces and other relevant officials:***

- Details as to the trainers/lecturers including their educational/practical background, particular requirements;
- information as to the existence and content of a "training of the trainers" program;
- details as to the content and length of the trainings provided to various state officials (prosecutors, investigators, servicemen, staff of detention centers etc.) on the law of the Convention including curricula used (human rights law, international humanitarian law, international criminal law);
- information as to whether the trainings are mandatory or optional;
- details on any follow-up activities conducted after the training program;
- information as to which groups of state agents receive training on human rights, including on the European Convention and the violations found against Russia, as part of their initial training;
- details on a state agency/authority responsible for the oversight, coordination and quality control of trainings;
- information on the translation and dissemination of the Court's judgments to state officials as well as to the general public;
- information on the official publication of the Court's judgments and the requirements that have to be fulfilled in order for domestic courts to apply the judgments as a source of law.

***F) Compensation for victims of violations resulting from and/or related to anti-terrorist operations:***

- Details regarding the judgments/decisions referred to by the Russian authorities in its submission to the Committee of Ministers (year, issuing court/authority, number of plaintiffs, type of damage, date of violation, details of violation, amount awarded per case);

- similar statistics on cases where compensation has been denied;
- details on the interaction between different types of proceedings to obtain compensation;
- details on information provided to the general public about the different possibilities to obtain compensation;
- details on the possibility to obtain legal aid as plaintiff in civil proceedings to obtain compensation for human rights abuses;
- information on the Draft law on compensation (for more details see above, paras. 57 ff.)

**G) Additional means of redress**

**Establishing the whereabouts of the disappeared:**

- Information on measures undertaken and/or planned to establish a federal coordinating body with requisite powers to effectively supervise and execute measures needed to improve the search for persons who disappeared in the context of anti-terrorist operations (including provision of education to state officials, disciplinary proceedings);
- details on the work carried out/planned to create a comprehensive database and a system facilitating the exchange of information between different authorities;
- information regarding the opening of a forensic laboratory in Chechnya, equipped with DNA-testing facilities;
- information on the possibility to create a framework for the systematic search for burial sites coupled with the exhumation and identification of remains.

**Truth commission:**

- Comments on the possibility of creating a truth commission shaped to meet the particular needs of the Chechen population in line with the PACE Resolution 1613 (2008), and on any actions taken in this regard.