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# Actions of the security forces in the Chechen Republic of the Russian Federation: general measures to comply with the judgments of the European Court of Human Rights

First part of the revised Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights

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### **EXECUTIVE SUMMARY**

*The present Memorandum was prepared to assist the Committee of Ministers in its supervision of the general measures adopted and envisaged by the Russian authorities following a number of judgments of the European Court finding violations of the Convention resulting from and/or relating to the authorities' actions during anti-terrorist operations between 1999 and 2001 in the Chechen Republic of the Russian Federation.*

*The present document summarises, in addition to the information submitted by the Russian authorities, other information available in the Council of Europe relevant to the execution of these judgments. It also identifies a non-exhaustive list of outstanding issues which relate to in particular:*

*1) The legal and regulatory framework governing the antiterrorist activities of security forces: The Memorandum welcomes the setting up of clear rules on the use of force by security forces while inviting the authorities to provide further clarifications on effective prevention and investigation of arbitrary use of force. The Memorandum further contains an analysis of the measures referred to by the authorities in order to prevent torture, ill-treatment and disappearances, in particular as regards the safeguards relating to police custody.*

*2) The effective accountability of members of the security forces for abuses committed in the course of anti-terrorist operations: the measures which have been taken since the events at issue by the relevant authorities to ensure the effectiveness and adequacy of the investigation are analysed from the standpoint of the Convention. Additional questions are raised, in particular in the light of the recent reform setting up an Investigating Committee with the Prokuratura of the Russian Federation. Specific consideration is given to the issues related to the victims' involvement in criminal proceedings.*

*3) The obligation to cooperate with the European Court: it is noted that notwithstanding the efforts made to provide the Court with all necessary facilities in the establishment of facts, further measures are needed to ensure a coherent approach in all cases in which the Court requires the necessary information.*

*4) Awareness raising and training of members of the security forces: the Memorandum summarises the extensive information provided by the Russian authorities in this respect. Efforts made so far are welcomed and the authorities are invited to pursue them.*

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<sup>1</sup> This document was classified restricted at the date of issue. It was declassified at the 1035th meeting of the Ministers' Deputies (18 September 2008) (see CM/Del/Dec(2008)1035 Decisions adopted at the meeting).

*Issues related to compensation, unlawful search and seizure and other possible remedies in respect of violations found by the Court will be dealt with in the second part of the present document to be issued for the next 1043rd Human Rights meeting (2-4 December 2008).*

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## INTRODUCTION

1. Since 2005, a number of judgments of the European Court of Human Rights (“the European Court”) have found violations of Articles 2, 3, 5, 6 and 8 of the European Convention on Human Rights (“the Convention”) and of Article 1 of Protocol No 1, notably in respect of disappearances, unlawful killings, unacknowledged detentions, torture and ill-treatment and destruction of property attributable to members of the Russian security forces, as well as in respect of the inadequacy of official investigations conducted by the authorities. All these cases also highlighted the general problem of the lack of effective domestic remedies intended to provide adequate redress for such violations.

2. The problems raised in these cases are related to the events which took place in the context of the fight against terrorism in 1999-2001 in the Chechen Republic. According to the Committee of Ministers’ long-standing position, while every State has a duty to fight terrorism, the means used must be in conformity with its obligations under the Convention. Compliance by security forces with the Convention requirements contributes to strengthening the State’s authority and legitimacy and, consequently, its long-term effectiveness in the fight against terrorism.

3. Under Article 46 of the Convention, the findings of violations by the European Court impose a legal obligation on relevant state authorities to adopt, beyond individual measures to provide redress to the applicants, general measures aimed at preventing similar violations. The adoption of such measures is supervised by the Committee of Ministers.

4. It is recalled that the situation in the Chechen Republic has already been monitored for years by a number of bodies of the Council of Europe, e.g. the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinunder the “CPT”), the Commissioner for Human Rights (hereinunder the “Commissioner”) and the Secretary General of the Council of Europe as well as by other international organisations, e.g. the Committee against Torture of the United Nations (hereinunder the “CAT”).

5. The present version of the Memorandum summarises all information provided so far by the Russian authorities in response to the questions raised in the Memorandum adopted by the Committee of Ministers at its 997th Human Rights meeting (June 2006). It also contains a non-exhaustive list of new issues raised by the European Court’s judgments which have become final since then<sup>2</sup> as well as a preliminary assessment of the measures taken or envisaged to comply with the judgments, taking into account other information available to the Secretariat.

I – Legal and regulatory framework governing the actions of the security forces in the context of anti-terrorist operations

6. The current legislative framework designed to fight terrorism has been described in the Memorandum CM/Inf/DH(2007)32rev2 (§§ 18-37). This description is still valid.

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<sup>2</sup> The issues related to violations of Articles 8, 13 and Article 1 of Protocol 1 will be examined in a separate document to be issued for the 1043rd Human Rights meeting (2-4 December 2008).

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

### *Information provided by the Russian authorities*

#### 1) Absolute necessity test

7. The Russian authorities underlined that the new Federal Law “On the Suppression of Terrorism” of 6 March 2006 expressly provides that **anti-terrorist measures shall be proportionate to the degree of the terrorist threat** (Article 2 § 13).

8. In addition to the general list of situations set out in particular laws (see §§ 21-37 of the previous version of the Memorandum) in which members of the security forces may use firearms, physical force and special means, the Russian authorities have indicated that the current Russian legislation now provides that **arms, combat equipment and special means shall be used** by servicemen taking part in anti-terrorist operations in a manner **strictly proportionate to the situation, only in cases of imminent risk of death or serious harm, and as a last resort**. They relied on, in particular, Government Decree No. 352 of 6 June 2007 approving the Rules of use by the Armed Forces of arms, combat equipment and special means in the course of anti-terrorist operations.

9. These Rules provide, in particular, that the servicemen of the Armed Forces shall use arms, according to the Military Rules and other normative acts. The Rules list situations in which arms may be used in the course of anti-terrorist operations, e.g. for the protection of civilians against an attack, for the release of hostages, for the apprehension of persons who have attacked or are in the process of attacking servicemen, **if it is not possible to prevent these events from occurring by any other means**.

10. The Rules forbid the use special means against women with obvious signs of pregnancy, children and persons with obvious signs of disability, unless these persons resist apprehension with the use of arms, or attack threatening the life and health of other persons.

11. The Rules further provide that **servicemen shall give a warning of their intent to use arms, with sufficient time for the warning to be observed, unless to do so would unduly place the servicemen at risk, would create a risk of death or serious harm to other persons, or would be impossible**.

12. Finally, according to these Rules, **the servicemen are under an obligation** to provide a person, who is injured as a result of the use of arms by them, with paramedical aid and **to report to their superiors the fact that arms have been used. The commanders of military units shall immediately inform the prosecutors** of each case of death or bodily injury caused by the use of arms.

13. The same rules are applicable to the use of combat equipment and special means (for more details see the full text of the Rules in Appendix I).

14. The Russian authorities also referred to the existence of a number of instructions and regulations which were adopted to improve the activities of the security forces when carrying out anti-terrorist operations, in particular in the Northern Caucasus Region.

## 2) Effective prevention and investigation of arbitrary use of force

15. The Russian authorities referred to the criminal legislation which concerns the excessive use of force in the course of an apprehension of a suspect.

16. Article 38 of the Russian Criminal Code defines the notion of “exceeding the measures necessary to apprehend an offender”, i.e. the obvious inconsistency [of the measures used] with the character and the level of public danger of the offence allegedly committed by the apprehended person and with the circumstances of the apprehension where clearly excessive harm which is not required by the situation is intentionally caused to the apprehended person. Such actions are subject to criminal liability.

17. For example, according to Article 108 §2 of the Criminal Code, a murder committed in the circumstances of exceeding the measures necessary for apprehension a person who committed a criminal offence is a felony. Under Article 114 §2 of the same Code, an intentional infliction of very serious or serious harm to the health of a person in the same circumstances is a felony.

### **Secretariat’s assessment**

#### 1) Absolute necessity test

18. The Secretariat notes that the legal and regulatory framework governing the use of force in the course of anti-terrorist operations has been changed completely since the events described in the judgments. The Secretariat further notes that **the Rules governing the use of force in the context of anti-terrorist operations** adopted by the Government Decree on 6 June 2007 **are largely based on the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials** regularly referred to by the European Court in its judgments<sup>3</sup>.

19. Finally, the Secretariat notes that the Russian authorities referred to the existence of a high number of regulations and instructions adopted since the events at issue for each type of security force involved in anti-terrorist operations and in particular for those taking part in such operations in the Northern Caucasus Region. They also indicated that the study of the rules and international standards concerning the use of force was a recurrent subject of training and awareness-raising measures of the various security forces (see Appendix III).

20. Although the training and awareness-raising measures are important, they should be supplemented by appropriate instructions and guidelines. These instructions should translate the general principles provided by the Constitution and international treaties into concrete obligations for each member of the security forces.

21. Thus, in order to enable the assessment of whether current legal and regulatory framework is in full compliance with the Convention’s requirements concerning the use of force, *additional information is awaited on similar rules and regulations on the use of arms, combat weapons and special means by all types of security forces which may be involved in anti-terrorist operations. Information would be useful on how these rules and regulations ensure that the force is used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm.*

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<sup>3</sup> These principles were adopted on 7 September 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and are usually referred to by the European Court, see e.g. *Kakoulli v. Turkey*, judgment of 22 November 2005, final on 22 February 2005, §§77-79 and *Nachova and others v. Bulgaria*, judgment (GC) of 6 July 2005, §§71-74.

22. *Information is in particular awaited on how the obligation to plan and to execute anti-terrorist operations with the requisite care for the lives of civilians is assessed and reviewed in accordance with the current legal and regulatory framework. For instance, the Secretariat notes the existence of Instruction No. 2 of 26 August 2003 of the Regional Operational Headquarters on the execution of antiterrorist operations<sup>4</sup>. It would be useful to know whether similar instructions exist and whether they contain provisions relevant to the issues raised.*

## **2) Effective prevention and investigation of arbitrary use of force**

23. The Secretariat notes the existence in Russian criminal legislation of provisions ensuring officials' liability for the use of excessive force during an apprehension. It appears that in other cases of the use of excessive force, servicemen will also be subject to criminal sanctions.

24. *More details are awaited in this respect, in particular, in relation to the obligation to report each occurrence of the use of arms during anti-terrorist operations, i.e. on the nature of the reporting procedure, the existence of a monitoring system for the use of firearms, the person or body responsible for such monitoring, whether a written report is drawn up as a result of such monitoring/verification, the circumstances in which the results of such monitoring give rise to a criminal investigation and the existence of a possibility for judicial review.*

25. *Information is also awaited on whether commanding (superior) officers may be held responsible if their subordinates are resorting, or have resorted, to unlawful use of force and arms, and if they have failed to take all measures in their power to prevent, suppress or report such use. And if so, information would be useful on how their responsibility is engaged, i.e. the authority in charge of the prosecution, etc. Relevant examples would be welcomed.*

26. While responding to the questions mentioned above, the Russian authorities may wish to refer to the United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted on 24 May 1989 by the Economic and Social Council in Resolution 1989/65 and referred to by the European Court in its judgments<sup>5</sup>.

## **B. Prevention of torture, ill-treatment and disappearances**

### **1) Safeguards in police custody**

#### ***Information provided by the Russian authorities***

27. The Russian authorities indicated that according to Article 22 of the Constitution, each person has the right to liberty and personal integrity. Under Article 21 §2 of the Constitution, no one may be subjected to torture, violence or other cruel, degrading or inhuman treatment or punishment.

28. Article 9 of the Code of Criminal Procedure (the "CCP") prohibits the performance of acts or the adoption of decisions, during criminal proceedings that injure the reputation of those participating in the proceedings. The Code also prohibits the use of treatment that degrades the human dignity or endangers the life and health of such persons. Nor may any party to criminal proceedings be subject to violence, torture or other cruel, inhuman or degrading treatment or punishment.

<sup>4</sup> See United Nations Committee against Torture – Consideration of reports from states parties under Article 19 of the Convention – Fourth periodic report of States parties due in 2004 – Addendum – Russian Federation, CAT/C/55/Add.11, §42, p. 10.

<sup>5</sup> See e.g. *Nachova and others v. Bulgaria*, cited above, §75.

29. Article 10 of the CCP establishes the principle of personal integrity. This means that in the absence of lawful grounds set out under the CCP, no one may be arrested on suspicion of having committed an offence or taken into custody. Prior to a judicial decision, a person may be held in custody for a maximum of 48 hours.

**a) *Rights of persons detained under the Code of Criminal Procedure***

30. The legal status, the grounds for arrest and the apprehension procedure as well as the rights and obligations of an apprehended person are determined by the CCP. Article 91 of the CCP provides an exhaustive list of grounds on which an investigative body has the right to apprehend a person on suspicion of having committed an offence punishable by imprisonment. Persons apprehended in breach of the requirements of this Article are to be immediately released.

31. The CCP provides for the following safeguards against unlawful and arbitrary apprehension on suspicion of having committed a criminal offence:

- an apprehension report shall be drawn up within 3 hours from the moment when a suspect was brought to an investigating body;
- a person shall be informed about his/her rights as set out in Article 46 ("Suspect") and Article 47 ("Accused person") CCP;
- a meeting in private of at least 2 hours with a lawyer shall be organised upon the request of an apprehended person prior to the first "interrogation";
- relatives of the person detained shall be notified of the detention by the investigative body within 12 hours;
- the supervising prosecutor must be notified in writing within 12 hours of persons being detained on suspicion of committing crimes (Article 92§3 CCP).

**b) *Regulatory measures to ensure respect for the rights of persons detained under the Code of Criminal Procedure***

32. In order to prevent new violations similar to those found by the European Court in the aforementioned judgments and **to ensure compliance with human rights by organs, officials and internal troops of the Ministry of Interior in the Northern Caucasus Region**, the Ministry adopted the following measures:

- All departments of the Ministry, including in the Chechen Republic, were asked to implement the United Nations Standard Minimum Rules for Treatment of Prisoners while escorting and organising removal of suspects and persons accused of having committed a criminal offence;
- All heads of the departments of the Ministry of Interior, including in the Chechen Republic, were instructed to put an end to the holding persons apprehended on suspicion of having committed a criminal offence in special facilities designed for the detention of persons having committed administrative offences of organs of the Ministry of the Interior.



### **Secretariat's assessment**

33. The Secretariat notes that the only information provided by the Russian authorities relates to the apprehension of persons under the Code of Criminal Procedure. *Clear confirmation from the authorities on whether the provisions of the Code of Criminal Procedure are still applicable in the course of large-scale or targeted antiterrorist operations would be useful.*

34. The Secretariat recalls that in a number of judgments concerning disappearances, the applicants' relatives disappeared in the course of "mopping up" or "sweeping up" operations and/or an identity check carried out by servicemen. In one of the cases, the Russian authorities finally recognised the applicant's husband's detention with a broad reference to the Suppression of Terrorism Act<sup>6</sup>.

35. ***Therefore information on the legal basis under which military, security and police forces may apprehend a person during a large-scale or targeted antiterrorist operation (an exhaustive list of relevant grounds and texts would be welcomed) is of crucial importance.*** In particular, information is awaited on whether an apprehension may be carried out on the basis of the new Suppression of Terrorism Act of 2006. Finally, information is awaited on whether all categories of persons deprived of their liberty for whatever reason (e.g. persons placed in administrative detention) during such operations enjoy rights similar to those of criminal suspects and accused persons.

36. *Information is also awaited on whether persons in custody at military bases enjoy the aforementioned rights.*

#### **1) Safeguards in police custody**

##### **a) Rights of persons detained under the Code of Criminal Procedure**

37. Assuming that persons apprehended in the course of antiterrorist operations on suspicion of having committed a criminal offence enjoy the rights provided by the CCP, the Committee shall now assess whether the provisions referred to by the Russian authorities are in compliance with the Convention requirements.

38. First, it appears that the above-mentioned rights, i.e. the right to notify a close relative, the right to a lawyer, the right to a medical examination, are applicable **only after a person has been formally declared a "suspect", a status which may well be acquired some time after a person has been deprived of liberty.** In particular, *it would be useful to know whether the aforementioned safeguards are also applicable to persons brought to a police station to verify an initial suspicion of a criminal offence or in order to be interrogated as "witnesses".* In this respect, the Secretariat recalls that, in one of the European Court's judgments, the applicant's relatives were taken to temporary headquarters for questioning and subsequently disappeared<sup>7</sup>.

39. ***As regards the right to inform a close relative,*** it is noted that the exercise of this right may be delayed by up to 12 hours and even **withheld, with the consent of the prosecutor, when the initial investigation requires the act of detention to be kept secret** (Article 96 §4 CCP). In such cases, it would appear that the person detained still has access to a lawyer who can inform the family about his/her fate<sup>8</sup>. *Confirmation in this respect is awaited. Information is also awaited on whether a person detained in the circumstances under Article 96§4 has access to a lawyer of his/her choice or to a lawyer provided by the authorities and whether the lawyer can be prevented from notifying the family of the person detained about his/her situation.*

<sup>6</sup> *Imakayeva v. Russia*, § 154.

<sup>7</sup> *Musayeva and others v. Russia*, § 108 and seq.

<sup>8</sup> Information from the Russian Federation concerning the list of issues prepared by experts of the Committee against Torture scheduled for consideration at the Committee's thirty-seventh session during the submission by the Russian Federation of its fourth periodic report on implementation of the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT/C/RUS/Q/4/Add.1, p.4.

40. More generally, it is observed that, in order for this right to be an effective safeguard against disappearances and torture, any possibility of exceptionally delaying the exercise of this right must be clearly circumscribed in law, be subject to appropriate safeguards (e.g. reporting any delay in writing with the underlying reasons and requiring the approval of a prosecutor) and be applied for as quickly as possible.

41. ***As regards access to a lawyer***, it would appear that suspects and those accused of having committed a criminal offence may have access to a lawyer from the moment of their actual apprehension<sup>9</sup>. In their communication to the CAT, the Russian authorities indicated that **“there is no limit to the frequency or duration of the meetings with lawyer, except as provided by the Code of Criminal Procedure”**<sup>10</sup>. *More details on these exceptions are awaited, in particular on whether they are related to the fight against terrorism.*

42. ***As regards access to a doctor***<sup>11</sup>, it would appear that medical examination of apprehended and detained persons is subject to the Internal Regulations pertaining to temporary holding facilities<sup>12</sup>. Pursuant to Rule 124 of the Internal Regulations pertaining to temporary holding facilities, when suspects and accused persons are admitted to the facility, released from the facility or handed over for transport under escort, these persons undergo compulsory medical examinations to determine their state of health and whether or not they are injured. The results of such examinations are recorded in medical records.

43. Suspects and accused persons are asked to sign a form in which the results of medical examinations are recorded. *It is unclear whether the observations of those who undergo the medical examination are noted in writing.*

44. *It is also unclear whether such an examination is conducted out of the hearing of police officers and/or out of their sight, unless the doctor concerned requests otherwise. More generally, information is awaited on how an effective medical examination is ensured in the context of anti-terrorist operations.*

45. In their submission to the CAT, the Russian authorities indicated that the medical staff of temporary holding facilities does not undergo any special training with a view to identifying whether persons exhibit physical or psychological marks of torture. In these circumstances, the fact that **an examination by a doctor from an official forensic establishment, which might be requested by the person detained, his/her lawyer or a medical doctor, is not possible without authorisation from an investigating or judicial authority** gives rise to particular concern<sup>13</sup>. It should be stressed that the requirement of promptness is essential in these kinds of situations in order to secure the appropriate evidence. *Thus, information on the measures taken and/or envisaged in this respect is awaited.*

46. ***As regards information on rights***, *information is awaited on the moment when a person deprived of his/her liberty is informed of his/her rights.*

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<sup>9</sup> Articles 46§3 (3) (“Suspect”), 47§4 (9) (“Accused”), 53§1 (1) (“Powers of defense lawyer”) and 92§4 (“Procedure for the apprehension of a suspect”) of the CCP and Article 18§1 of the Federal Law of 15 July 1995 “On Pre-Trial Detention of Persons Suspected of and Accused of Having Committed Criminal Offences”.

<sup>10</sup> CAT/C/RUS/Q/4/Add.1, p.6.

<sup>11</sup> No information has been provided by the Russian authorities on this issue within the framework of the examination of this group of cases. The assessment below is based on the information provided by the Russian authorities within the framework of the Mikheyev case and on their submission to the UN CAT.

<sup>12</sup> For more details see the notes prepared in the Mikheyev case, Annotated Agenda CM/Del/OJ/DH(2006)976 adopted at the 976th DH meeting of 17-18 October 2006.

<sup>13</sup> CPT Public Statement concerning the Chechen Republic of the Russian Federation made on 13 March 2007, CPT/Inf(2007)17, §52, p. 13.

47. ***As regards custody records***, the European Court stressed in a number of its judgments that the absence of detention records, noting such matters as the date, time and location of detention, the name of the detainee, as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention<sup>14</sup>.

48. It is underlined that **no safeguard against ill-treatment and disappearances is more fundamental than the requirement that the fact of a person's detention be promptly recorded.**

49. In their submission to the CAT, the Russian authorities indicated that arrivals and departures of individuals admitted to the temporary holding facilities were duly logged in special records, the keeping of which forms one of the duties of the centre's duty officer, as provided by the order of 7 March 2006 of the Ministry of Interior<sup>15</sup>. *Information is requested on how compliance with these rules is ensured and on whether there are sanctions for non-compliance with the aforementioned rules. Relevant statistical data would be helpful.*

50. The Secretariat notes that the above information relates to temporary holding facilities. However, it would appear that the apprehended persons may not be immediately transferred to these facilities (they may remain at OVD/ROVD at least for 3 hours for the drawing up of the official record). In this connection, it should be stressed that persons deprived of their liberty must enjoy the rights mentioned above, in particular the right of access to a doctor and to a lawyer, from the very outset of their deprivation of their liberty (that is, from the moment when the persons concerned are obliged to remain with the law enforcement officers). *Therefore information is awaited on how compliance with other rights mentioned above is ensured at police stations.*

**b) Regulatory measures to ensure compliance with the rights of persons detained under the Code of Criminal Procedure**

51. The Secretariat takes note of the initiatives taken by the Ministry of Interior with a view to ensuring compliance with human rights by its organs, officials and internal troops. *More details would be useful on these measures, i.e. the authority which issued these instructions, the organisation of the follow up to these instructions, and the sanctions for non-compliance. The competent Russian authorities' attention is also drawn to the relevant CPT standards and Committee of Ministers' recommendations<sup>16</sup>.*

**2) Supervision of compliance with these rules**

***Information provided by the Russian authorities***

52. **In order to prevent unauthorised apprehensions in the Chechen Republic**, on 23 October 2006 the Operative Headquarters of the Chechen Republic issued a special instruction providing for **a special procedure of mandatory notification of the planning of operational search activities on their territory** to the Ministry of Interior, to the Main Directorate of Interior, and to the Regional Directorates of Interior of the Southern District.

53. The Russian authorities also indicated that the head of the Regional Operative Headquarters, the Commander of the Allied Group of Forces and the Minister of Interior of the Chechen Republic have been instructed to adopt additional measures in order to prevent violations and unlawful limitations of rights and lawful interests of citizens during anti-terrorist operations on the territory of the North Caucasian region of the Russian Federation.

<sup>14</sup> *Bazorkina v. Russia*, § 147 *in fine*.

<sup>15</sup> CAT/C/RUS/Q/4/Add.1, § 4, p.9.

<sup>16</sup> The CPT standards, CPT/Inf/E(2002)1– Rev. 2006 and Recommendation Rec(2001)10 adopted by the Committee of Ministers on 19 September 2001 concerning the European Code of Police Ethics.

54. Finally, according to the Federal Law No.103-FZ of 15 July 1995 on holding in custody of suspects and persons accused of having committed a criminal offence, the supervision of the lawfulness of the detention of apprehended persons as well as of compliance with their rights is ensured by the Prosecutor General and prosecutors. The prosecutors have the right to visit the detainees, to question them, to familiarise themselves with documents justifying their apprehension and with other operative materials in respect of the aforementioned persons.

### ***Secretariat's assessment***

55. It would appear that supervision of compliance with the aforementioned safeguards is organised at two levels. First, an attempt was made to ensure some control over apprehensions during anti-terrorist operations. Secondly, there is also a general monitoring system relating to places of detention.

56. It is recalled that the majority of disappearances described in the judgments have occurred during antiterrorist military operations referred to as "mopping up" or sweeping up" operations (*зачистки*)<sup>17</sup>. It would appear that in order to prevent new similar violations, measures have been taken, first, to introduce **prior notification of the planning of an antiterrorist operation or other operational search activities to competent authorities** and, second, to **ensure due control by prosecutors in the course of such activities**.

57. Such measures have also been advocated by a number of bodies of the Council of Europe, i.e. the Commissioner for Human Rights and the CPT. In order to decide whether the Russian authorities fully comply with their obligations to execute the European Court's judgments, the Committee has to ascertain **the existence of a coherent legislative and regulatory framework ensuring due control by competent authorities over all anti-terrorist operations and operational search activities and the security forces' compliance with it**.

#### ***a) Prosecutors' supervision of compliance by members of the security forces with the legislation in the course of antiterrorist operations***

58. Several steps have already been taken by the Russian authorities with a view to providing prior notification to the local military commanders and prosecutors of antiterrorist operations with the intention of ensuring the presence of a prosecutor during these operations (in particular, Order No. 80 of 27 March 2002 of the Commander of the Allied Group of Forces and Order No. 98/110 of 23 April 2003 of the Commander and the Military Prosecutor of the Allied Group of Forces)<sup>18</sup>.

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<sup>17</sup> See among other judgments in *Akmdova and Sadulayeva v. Russia*, *Baysayeva v. Russia*, *Estamirov and others v. Russia*, *Luluyev and others v. Russia*, *Musayev and others v. Russia*.

<sup>18</sup> For more details see Appendix I.

59. The beneficial effect of these measures in reducing the number of disappearances and other human rights violations in the course of antiterrorist operations was recognised by different monitoring bodies. In the meantime, these monitoring bodies, as well as the Russian authorities themselves<sup>19</sup>, consistently criticised their sporadic application<sup>20</sup>, in particular as far as “targeted activities” are concerned<sup>21</sup>.

60. In this respect, the adoption of the aforementioned instruction of 23 October 2006 is welcomed. *Information is awaited on whether the planning of such activities also has to be notified to the relevant prosecutorial authorities. Moreover, it remains unclear how failure to comply with this obligation is sanctioned.*

61. *Information is awaited on **whether the new anti-terrorist legislation institutionalised this practice and provided for the mandatory participation of a prosecutor in all antiterrorist operations.***

#### **b) Supervision over places of detention**

62. Such supervision, if properly and effectively implemented, may constitute an important guarantee against torture and unacknowledged detention. The Secretariat notes that the legislation as well as the regulations referred to by the Russian authorities<sup>22</sup> were already in force at the time of the events described in the judgments. However, the effectiveness of such supervision in practice was criticised by different monitoring bodies<sup>23</sup>.

63. *Information is thus awaited on the measures to ensure the effectiveness of the prosecutors' supervision and in particular on their powers in the light of the recent reform setting up an Investigating Committee with the Prokuratura<sup>24</sup>.*

64. It is further noted that **such supervision is capable of constituting an effective safeguard against disappearances and ill-treatment only if prosecutors and relevant monitoring bodies are properly informed of and have access to all places where persons are detained.** In this respect, the Secretariat notes with concern that illegal detention centres have existed<sup>25</sup>. *Information is awaited on the steps taken by the Russian authorities to ensure that the possibility to detain a person at places without clear legal status no longer exists.*

#### **c) Role of judges in fighting ill-treatment**

<sup>19</sup> The fact that the existing orders and instructions are not always respected is explicitly acknowledged in Order No. 98/110 of 23 April 2003 by the Commander and Military Prosecutor of the Allied Group of Forces. The same concern was expressed by the Prosecutor of the Chechen Republic, see Twenty-seventh interim report by the Secretary General on the presence of the Council of Europe's experts in the Office of the Special Representative of the President of the Russian Federation for ensuring Human Rights and Civil Rights and Freedoms in the Chechen Republic, SG/Inf(2003)23 of 14 May 2003, §14-15.

<sup>20</sup> CommDH/Rec(2002)1, Concerning certain rights that must be respected during the arrest and detention of persons following “cleansing” operations in the Chechen Republic of the Russian Federation. 30th May 2002 and Public Statement concerning the Chechen Republic made by the CPT on 10 July 2003 CPT/Inf(2003)33, §§6-7.

<sup>21</sup> CPT/Inf(2003)33, §§6-7, p.4.

<sup>22</sup> See in Appendix II Order No. 68 of 26 December 1997 on regular checks of pre-trial detention facilities and Order No. 39 of 5 July 2002 on regular checks of temporary holding facilities.

<sup>23</sup> See e.g. CPT/Inf(2007)17, §23.

<sup>24</sup> As a result of this reform, the power to open criminal proceedings into allegations of crimes was transferred from the prosecutors to the Investigating Committee.

<sup>25</sup> It results from the European Court's judgment that the legal status of the Chernokozovo pre-trial detention centres has been clarified since the events at issue, see *Bitiyeva and X v. Russia*, in particular §118.

65. The Russian authorities indicated that no one can be held in detention beyond 48 hours without a court order. Therefore judges who decide on the application of a preventive measure are well-placed to ensure that any indications of ill-treatment are adequately recorded, reported and investigated at an early stage. *Information is awaited on the measures taken, possibly by the Supreme Court, to ensure that any allegation of ill-treatment be accurately recorded and transmitted to competent authorities for immediate verification.*

66. In this connection, the Secretariat notes that Article 100 of the CCP provides for the possibility, in exceptional circumstances, to hold a person suspected of having committed a criminal offence in detention for up to 10 days without being charged<sup>26</sup>. This period is automatically brought to 30 days for certain offences<sup>27</sup>. *Information is awaited on whether such detentions are subject to any judicial review and on whether the persons deprived of their liberty under this Article enjoy the rights referred to above (§§39-49).*

### **3) Sanctions for abuses**

#### ***Information provided by the Russian authorities***

67. The use of torture is criminalised by Article 117§2 (“Torment”) and Article 302§2 of the Criminal Code of the Russian Federation (the “CC”). The latter Article provides for imprisonment from two to eight years for the use of unlawful coercive measures, including torture, by the person in charge of the investigation, to compel a suspect, an accused person, a victim or a witness to testify.

68. State officials who order the use of torture may be prosecuted under Article 286 §2 and §3 of the CC for “exceeding official authority” or for abuse of power, punishable by imprisonment from three to ten years and a prohibition on holding a particular post for up to three years. In certain cases, such acts may also be deemed to constitute incitement to the commission of offences, such as those covered by Article 302 of the CC. Article 301 of the Russian CC also penalizes the unlawful apprehension of a person.

69. In addition, Article 40 of the Law on Police No. 1026-1 of 18 April 1991 provides for the criminal responsibility of police officers according to the legislation in force for their unlawful actions or omissions. An instruction on the implementation procedure of Rules of service in the organs of the Interior of the Russian Federation approved by Order No. 1038 of 14 December 1999 of the Ministry of the Interior provides for special rules on the disciplinary accountability of police officers.

#### ***Secretariat’s assessment***

70. In order to assess the real impact of the existing provisions and their deterrent effect, *an overview of the Russian court practice in this area would be most useful. information is also awaited on whether the prison sentences imposed under these provisions, and in particular under Article 286§3, can be converted into fines or be suspended.*

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<sup>26</sup> It should be noted that a reference made to “exceptional circumstances” was criticised by the European Court in its *Gusinskiy v. Russia* judgment of 19 May 2004, final on 10 November 2004. In the absence of any explanation of what should be understood by “exceptional circumstances”, the European Court found that this Article does not meet the quality of law requirement.

<sup>27</sup> See concerns expressed by the Committee against Torture of the United Nations as to the risk of arbitrary detention which may occur under this Article in CAT/C/RUS/CO/4, p. 3.

71. It is also noted that all provisions referred to by the Russian authorities provide for the personal responsibility of members of the security forces. The Committee of Ministers' practice in similar cases shows that the effectiveness of such sanctions in preventing abuses, such as ill-treatment or torture in police custody, is more dissuasive when not only the perpetrators but also other officials whose behaviour during the investigation encourage or make torture and ill-treatment possible are held to account. *Information is thus requested on whether the current legal framework allows the prosecution of commanding (superior) officers, investigators and prosecutors who order, authorise and condone torture and ill-treatment by their acts or omissions.*

72. In addition, the Committee of Ministers' experience in similar cases<sup>28</sup> also shows that **nothing is more effective to counter impunity and to put an end to the long-standing practice of ill-treatment in custody than a formal statement made at the highest political level announcing "a zero-tolerance" policy in respect of such abuses.**

73. In such a statement the law-enforcement officers may be reminded of their obligation to respect the rights of persons in their custody and of their criminal responsibility for the ill-treatment of such persons.

74. ***As regards the admissibility of a confession received following torture in criminal proceedings,*** the Russian CCP contains the following safeguards. Firstly, according to its Article 75 §2 1, the trial court should consider as inadmissible a confession by a suspect or an accused person at the pre-trial stage of criminal proceedings which he/she did not support in court. Exception is only made in cases where the confession was made in the presence of a lawyer.

75. Secondly, no conviction may be based solely on an accused person's confession of guilt, unless the confession is corroborated by all the evidence available in the case (Art. 77 §2 CCP). Otherwise such conviction must be overturned by the appeal court on the ground of violating the law on criminal procedure (Art. 379 §1 2) CCP).

76. *Information would be useful on whether these provisions have an impact on the law enforcement agencies' promotion system, which seems to be based on the number of crimes solved, i.e. cases sent to trial courts, thus creating conditions conducive to the use of torture and ill-treatment with a view to obtaining confessions*<sup>29</sup>.

II – Ensuring effective accountability of members of the security forces for abuses committed when carrying out an anti-terrorist operation

## **A. Measures to ensure effective investigations into alleged abuses**

### **1) Bodies responsible for the investigations**

#### ***Information provided by the Russian authorities***

77. The structure, functioning and powers of the *Prokuratura* of the Russian Federation are established by the Constitution of the Russian Federation, by the Federal law On the *Prokuratura* No. 2202-1 of 17 January 1992, by the CCP and by other federal laws and international treaties.

<sup>28</sup> See e.g. Interim Resolution ResDH(2005)43 concerning the action of the security forces in Turkey.

<sup>29</sup> In this respect, see concerns expressed by the Committee against Torture in its Conclusions and Recommendations, CAT/C/RUS/CO/4 of 6 February 2007, § 9.

78. It should be noted that **as from 7<sup>th</sup> September 2007 the investigations of offences, which previously fell within the jurisdiction of prosecutors, now fall within the jurisdiction of the Investigating Committee set up with the *Prokuratura* of the Russian Federation**<sup>30</sup>. The investigations into offences in which it has been established that members of the armed forces may have been involved<sup>31</sup> fall within the jurisdiction of military investigators depending on the Investigating Committee of the *Prokuratura* for their operational activities and on the Ministry of Defence for financial and social issues<sup>32</sup>.

79. The structure and functioning of the Investigating Committee with the *Prokuratura* of the Russian Federation are also subject to Presidential decrees. This Investigating Committee is notably responsible for carrying out investigations with proper care and without delay. Although the Investigating Committee is formally attached to the *Prokuratura* of the Russian Federation, the Head of the Committee - who is also the First Deputy Prosecutor General - is appointed following the same procedure used for the Prosecutor General himself, i.e. by the Federal Council, Upper Chamber of the Parliament, upon the proposal of the President of the Russian Federation.

80. According to Presidential Decree No. 1004 of 1 August 2007, regional departments of the Investigating Committee have been set up, notably in the Chechen Republic. The oversight of compliance with the Russian legislation and international obligations of the Russian Federation by the aforementioned investigative authorities is ensured by military and civil prosecutors.

### **Secretariat's assessment**

81. It would appear, from the European Court's judgments, that the interaction between different actors in the investigative process caused delays in the investigations. For instance, the European Court noted that "investigation of various episodes was spread between different prosecutors' offices, which were sometimes not even aware of each others' work"<sup>33</sup>.

82. A number of measures were taken by the Russian authorities in order to ensure better coordination between civil and military prosecutors. For instance, **permanent investigative units including detectives from both military and civil prosecutors' offices** were created on 30 November 2002 by Joint Order No.15 of the Prosecutor of the Chechen Republic and the Military Prosecutor of the Allied Group of Forces. Other attempts have been made to ensure a coordinated approach of all competent authorities involved in the investigative process<sup>34</sup>.

83. *Information is awaited on how a coordinated approach is presently ensured in the light of the recent reform setting up the Investigating Committee. The Committee of Ministers may wish to encourage the Russian authorities to seize the opportunity of this reform to further mainstream the relevant Convention requirements into regulations and instructions governing the daily activities of investigators*<sup>35</sup>.

84. Finally, the Secretariat recalls that in order for an investigation to be effective, it is important for the persons responsible for carrying it out to be independent from those implicated in the events. This requirement also concerns the persons responsible for the operational conduct of an investigation. *In this respect, information is awaited on the authorities in charge of the operational conduct of the investigation in each type of security force that may be involved in anti-terrorist operations.*

<sup>30</sup> An Investigating Committee has recently been set up with the *Prokuratura* of the Russian Federation in order to separate the functions of the investigation and of oversight of the investigation and to ensure better independence of the authorities in charge of the investigation.

<sup>31</sup> Order No 33 adopted by the Head of the Investigating Committee with the *Prokuratura* of the Russian Federation on 17 March 2008 «On determining the jurisdiction of specialised investigating organs of the Investigating Committee ».

<sup>32</sup> Article 1 of the Federal Law On the *Prokuratura* of the Russian Federation and Order No. 54 adopted by the Prosecutor General on 9 September 2002 on the delimitation of jurisdiction of territorial prosecutors, military prosecutors and other specialised prosecutors.

<sup>33</sup> *Goncharuk v. Russia*, §69.

<sup>34</sup> For more details see the list of relevant regulations and instructions referred to in Appendix I.

<sup>35</sup> In this respect, the attention of the Russian competent authorities might be drawn to the experience of other countries confronted with similar issues (see, in particular, Interim Resolutions DH(99)434, DH(2002)98 and ResDH(2005)43 concerning the actions of the security forces in Turkey and ResDH(2005)20 and ResDH(2007)73 concerning the actions of the security forces in Northern Ireland).



## 2) Measures to ensure that investigations are prompt and adequate

### ***Information provided by the Russian authorities***

85. The Russian authorities indicated that at the time of the events described in the judgments, the investigations were hampered by the general breakdown of all public institutions in the Chechen Republic. They also indicated that, since then, a number of changes have been introduced<sup>36</sup>.

86. A comprehensive program to prevent kidnappings and to ensure effective investigations into disappearances for the Southern federal district for 2006-2010 was adopted on 29 March 2007. All complaints relating to unlawful detention, unlawful apprehension and exceeding authority by the members of law-enforcement agencies are examined according to the established procedure. Criminal proceedings are launched if there are grounds to prosecute.

### ***Secretariat's assessment***

87. The preliminary analysis of the information provided and of the other information available to the Secretariat reveals a number of outstanding issues mentioned below on which further information and/or measures are needed.

#### ***a) Measures to ensure that investigations are commenced promptly and pursued with reasonable expedition***

88. The Secretariat notes that in all judgments, the European Court criticised the fact that the investigations were opened with an unacceptable delay<sup>37</sup> and were plagued with further inexplicable delays.

- *New rules governing the initiation of criminal proceedings*

89. The Secretariat recalls that prior to the reform setting up the Investigating Committee, the prosecutor had jurisdiction to decide whether or not a criminal investigation should be initiated. In doing so, he could act upon the request of a private person or on the investigative authorities' own motion, where there were reasons to believe that a crime had been committed.

90. It would appear that now the power to initiate a criminal investigation falls under the jurisdiction of the investigators of the Investigating Committee. Prosecutors may quash a decision to open a criminal investigation within 24 hours.

91. However, the prosecutors do not have power to quash a decision not to prosecute taken by an investigator. It appears that in such cases, if a prosecutor considers a decision not to prosecute unlawful, he/she should refer it to the investigator's superior or to a court. It is unclear whether the new legislation provides for particular deadlines within which a decision on the lawfulness of a decision not to prosecute must be taken.

<sup>36</sup> see §74 of the previous version of the Memorandum.

<sup>37</sup> See among many others, *Luluyev and others v. Russia*: one month after the killings of dozens of civilians, § 160; *Musayeva and others*: two months after the detention of the applicants' relatives and more than one month after the discovery of their remains, § 90; *Musaev and others*: one month after the killings of dozens of civilians, § 160; *Magomadov and Magomadov v. Russia*: two months after the applicants' relative's abduction, § 105

92. In this connection, the Secretariat recalls that an effective investigation should first meet **the requirement of promptness**. Failing this, crucial evidence, in particular, of a medical nature, may be lost. More specifically, conducting a forensic medical examination weeks after the alleged ill-treatment will, in many cases, be of little assistance for the purposes of establishing the truth. Thus in assessing the effectiveness of the aforementioned reform for preventing new similar violations, special attention should be paid to how compliance with the requirement of promptness is ensured. *Information is awaited on the measures taken or envisaged in order to ensure that investigations are opened without delay and conducted with reasonable expedition, in particular in cases of allegations of torture and disappearances.*

93. It would appear that certain steps in this direction have already been taken by the Prosecutor's Office of the Chechen Republic, which in June 2002, sent the municipal and district prosecutors an **instruction concerning the issues to be dealt with as a matter of priority after the criminal proceedings were opened into offences allegedly committed by members of the Unified Group of forces in the course of identity checks** in the Chechen Republic<sup>38</sup>. *Information would be useful on the current status of this instruction in the light of the aforementioned reform and on whether similar measures are taken and/or planned by the Investigating Committee. In particular, information would be useful on whether the Investigating Committee is envisaging providing the investigators with appropriate instructions on the most essential and rapid steps to be taken within the framework of examination of allegations of torture and of other forms of ill-treatment in police custody.*

94. The Secretariat further recalls the Committee of Ministers' position that criminal investigations into allegations of abuse must be dealt with promptly to avoid impunity resulting from statutory limitations on crimes<sup>39</sup>. It would appear that these issues are dealt within an order concerning the organisation of investigations (Order No 6, issued by the Head of the Investigating Committee on 7 September 2007). *More details in this respect are awaited.*

- *Changes aimed at improving the means available to the investigation authorities*

95. Notwithstanding the measures taken, reports of different monitoring bodies show that further efforts are still needed in order, in particular, to provide prosecution services with the staff, resources and facilities necessary for the effective investigation of cases involving allegations of ill-treatment, illegal detention and disappearances<sup>40</sup>. For instance, the CPT has particularly insisted on ensuring the adequate functioning of the Forensic Medical Bureau of the Chechen Republic<sup>41</sup>. *Information is awaited on the measures taken in this respect.*

#### **b) Measures to ensure the adequacy of investigations**

96. It results from the judgments at issue that the investigative authorities failed to identify any military unit or to obtain other information concerning the military operations at the place of the events at the relevant time<sup>42</sup>. In particular, it appears from one of the judgments that the district prosecutor responsible for the new investigation of the applicant's husband's death was denied access to the statements of the servicemen who presumably were the last persons to see him alive<sup>43</sup>. Finally, the European Court pointed out the lack of cooperation by the local office of the Federal Security Service in dealing with prosecutors' requests<sup>44</sup>.

<sup>38</sup> CAT/C/55/Add.11, §97, p. 21.

<sup>39</sup> See e.g. ResDH(2005)43.

<sup>40</sup> CPT/Inf(2003)33, §8, p. 5.

<sup>41</sup> CPT/Inf(2007)17, §55, p. 15.

<sup>42</sup> *Goncharuk v. Russia*, §70; *Musayeva and others v. Russia*, §92; *Musayev and others v. Russia*, § 161; *Khamila Isayeva v. Russia*, § 131; *Kukayev v. Russia*, §97;

<sup>43</sup> *Imakaeyva v. Russia*, §154.

<sup>44</sup> *Magomadov and Magomadov v. Russia*, §107.

97. *The repetitive character of the shortcomings identified by the European Court raises the issue of the powers of the investigative authorities vis-à-vis other law-enforcement agencies. Information is also awaited on whether such authorities have access to classified and military data and, if any, on how access is organised.*

98. **As regards investigations into abductions and disappearances**, more information is expected on the United Register of kidnapped or disappeared persons<sup>45</sup>, in particular on the criteria used to put a person on the list or to strike him/her from it, on persons already included in the Register (dental records, DNA), on who has access to the database and on what sources are being used to compile the list.

99. Information is awaited on the results achieved by an interagency working group created in June 2005 to tackle the issue of missing persons<sup>46</sup>. Clarifications are awaited on whether this working group is the interdepartmental committee to which the Chechen Ombudsman referred to in February 2005 in his exchange of views between the Enlarged Bureau and the Russian and Chechen Ombudsmen<sup>47</sup>. A reference has also been made to a free phone line enabling the public to report any further abductions and the appointment of a public commission to monitor investigations into disappearances<sup>48</sup>. More details in this respect would be useful.

100. It is also unclear whether particular measures have been taken to ensure investigations into all sites of mass graves in the Chechen Republic, in particular, by the newly established Investigating Committee.

### 3) Public scrutiny and access of victims to the investigative procedure

#### **Information provided by the Russian authorities**

##### **a) Victims' rights**

101. The Russian authorities indicated that the rights and obligations of victims are set out by Article 42 of the Code of Criminal procedure. According to this Article, the victims have in particular,

- the right to familiarise themselves with the protocols of procedural actions taken with their participation;
- in certain circumstances, the right to familiarise themselves with the decision ordering an expertise and with its conclusions;
- the right to have full access to the investigation file after the investigation has been completed;
- the right to request certain procedural actions to be taken; and
- the right to challenge before courts the refusals by the investigating bodies to grant the aforementioned requests.

102. The Russian authorities have also indicated that, according to Articles 19 and 123 of the CCP, actions or omissions of investigating bodies may be challenged by participants in criminal proceedings as well as by other persons inasmuch as their interests are affected by the procedural steps undertaken before the court.

<sup>45</sup> See § 38 of the previous version of the Memorandum.

<sup>46</sup> See § 74 of the previous version of the Memorandum.

<sup>47</sup> See Exchange of views between the Enlarged Bureau and Mr Vladimir Lukin, Commissioner on Human Rights (Ombudsman) of the Russian Federation and Mr Lema Khasuev, Commissioner for Human Rights a.i. of the Chechen Republic (Russian Federation), CM/Inf(2005)7 of 3 February 2005.

<sup>48</sup> See Exchange of views between the Enlarged Bureau and Mr Alu Alkhanov, President of the Chechen Republic (Russian Federation), and Mr Vladimir Lukin, Commissioner for Human Rights (Human Rights Ombudsman) of the Russian Federation, CM/Inf/DH(2005)48 of 1 December 2005, §11.1.

103. The CCP also provides the courts with a possibility to examine at the pre-trial stage of criminal proceedings complaints lodged against actions or omissions of the prosecutor and the bodies in charge of the investigation (Article 123 CCP).

**b) Public scrutiny**

104. The Russian authorities indicated that, according to the Federal Constitutional Law of 26 February 1997 No.1-FKZ On the Ombudsman of the Russian Federation, the Ombudsman also has the right, while carrying out a verification into a complaint, to familiarize himself with criminal, civil and administrative cases in which the decisions have become final and with the materials of the cases in which a decision not to prosecute was taken.

**Secretariat's assessment**

**a) Victims' rights**

105. **It should be noted that these provisions were already in force when the European Court delivered its judgments** in which it found violations of the procedural limb of Article 2, Article 3 and Article 13 on account of the authorities' failure to grant to the applicants access to the case-file and to provide them with up-to-date and exhaustive information on the investigation<sup>49</sup>. Therefore it remains to be assessed to what extent these provisions meet the Convention standards with regard to the participation of a victim in criminal proceedings.

106. It would appear that a number of the victims' rights at the pre-trial investigation stage, in particular, their right of access to the materials of the investigation file, were clarified by the decisions of the Constitutional Court which are binding in Russian law. *More details in this respect are awaited.*

107. In this connection, the Secretariat notes with concern the applicants' allegations made in their submissions lodged within the framework of the execution of the relevant cases that they are still not properly informed of the progress of the investigation and do not still have access to the relevant materials even though they were granted victim status in the pending domestic investigations<sup>50</sup>.

108. *Therefore information is awaited on how the relevant findings of the Constitutional Court are translated into daily practice, e.g. on whether appropriate instructions have been issued for the bodies in charge of the investigation. Information is also awaited on the steps which have been taken by the Russian authorities to remedy the shortcomings identified by the Court as regards the information of the persons enjoying victim status.*

109. **As regards cases of disappearances**, the European Court found a violation of Article 3 of the Convention in respect of the close relatives of disappeared persons on account of the authorities' attitude and of the manner in which the applicants' complaints had been dealt with. *Therefore information is awaited on the measures taken or envisaged by the Prosecutor's General Office and/or Investigating Committee to ensure proper communication with the victims' families in these kinds of cases.* In this respect, their attention is drawn to the experience of other countries in resolving similar issues<sup>51</sup>.

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<sup>49</sup> *Kukayev v. Russia*, §§ 107-110.

<sup>50</sup> The applicants' submissions in the *Chitayev and Chitayev v. Russia* case 25 October 2007 and in the *Luluyev and others v. Russia* and *Imakayeva v. Russia* cases of 25 October 2007.

<sup>51</sup> For instance, the United Kingdom created special family liaison officers, whose duty is to keep in contact with a victim's family during the course of an investigation, Interim Resolution ResDH(2005)20 concerning actions of the security forces in Northern Ireland.

110. Finally, **as regards the possibility to challenge the actions or omissions of the investigative authorities, under Article 125** of the CCP, it results from the judgments at issue that the effectiveness of this provision may vary depending on the particular circumstances of each case.

- As regards the possibility to challenge, before a court, the investigating authorities' refusal to open criminal proceedings

111. The European Court accepts, in principle, that this remedy may offer a substantial safeguard against the arbitrary exercise of power by the investigating authorities, given a court's power to annul a refusal to institute criminal proceedings and indicate the defects to be addressed<sup>52</sup>.

112. However, in certain cases here at issue, **the European Court found this remedy to be ineffective given the investigating authorities' failure to provide the applicants with a copy of the decision not to prosecute**<sup>53</sup>. In another case, **the effectiveness of this remedy was hampered by the authorities' decision to withdraw the applicant's status as a victim** in criminal case, thus depriving her of the possibility of familiarising herself with the case file after the completion of the investigation<sup>54</sup>. *Clarifications in this respect are needed.*

113. In the Committee of Ministers' practice, the possibility of judicial review of prosecutors' decisions not to prosecute appears to be an important safeguard to ensure adequate information and public scrutiny<sup>55</sup>.

- As regards the possibility of challenging the progress of the criminal investigation before a court

114. In this respect, the European Court noted that **the effectiveness of this remedy had been compromised by the delays in granting victim status to the applicants and their limited access to the file**<sup>56</sup>. In another case, the European Court found it highly doubtful that this remedy would have had any prospect of success due to the authorities' failure to take necessary and urgent steps from a very early stage and the applicant's lack of access to the case file<sup>57</sup>.

115. *Information is thus awaited, in the light of the Court's findings above, on the scope of judicial review in such cases under Russian law. Examples of relevant case-law would be useful.*

#### **b) Public scrutiny**

116. *Information would be useful on the responses given by prosecutors and other State officials to the recommendations of the Ombudsmen.*

<sup>52</sup> *Trubnikov v. Russia* (dec.), no 9790/99, 14 October 2003; *Medov v. Russia*: the European Court found that the applicant failed to exhaust this remedy in relation to the prosecutor's refusal to open criminal proceedings into his allegations of torture.

<sup>53</sup> *Chitaevy and Chitayev v. Russia*, §§ 139-140.

<sup>54</sup> *Imakayeva v. Russia*, §84 and §165.

<sup>55</sup> Interim Resolution CM/ResDH(2007)73 concerning action of the security forces in Northern Ireland.

<sup>56</sup> *Estamirov v. Russia*, § 94 ; *Luluyev and others v. Russia*, § 100.

<sup>57</sup> *Kukayev v. Russia*, § 101.

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

### ***Information provided by the Russian authorities***

117. Supervision of proper care and thoroughness of investigations and of their compliance with the rule of law is ensured according to the CCP by the following bodies:

- the prosecutor who is entitled to request the bodies in charge of the investigation to eliminate the violations of federal laws committed in the course of the investigation (Article 37 of the CCP);
- the head of the investigating body who is entitled to check the materials of the investigating file, to quash an investigator's unlawful or unsubstantiated decision (Article 39 of the CCP);
- the head of the body in charge of the preliminary inquiry who is entitled to quash investigators' unsubstantiated decisions concerning the adjournment and to give instructions to the investigator concerning procedural actions to be taken, preventive measures, qualification of the offence and the number of counts in an indictment.

118. In addition to the above-mentioned supervision activities, the Investigating Committee carries out a regular control over procedural activities of its investigating departments.

119. In December 2007, a commission composed of officials of the Investigating Committee and of the Main Investigating Directorate of the Prosecutor's General Office for the Southern Federal District carried out a check in the course of which 80 case files, in which the victims lodged a complaint with the European Court, were reviewed.

120. The Heads of the interdistrict investigative departments (local organs of the Investigating Committee) are taking a number of measures with a view to ensuring proper supervision of the investigations.

121. The lawfulness and merits of all decisions of adjournment or closing of investigation proceedings are subject to review within 7 days by the Investigating Directorate. If an investigation is under the control of the Investigating Committee, such decisions and all related materials must be sent to this Committee for verification.

122. Disciplinary proceedings may be brought in respect of persons who do not comply with their professional duties when carrying out an investigation. The Russian authorities provided the Secretariat with examples of such proceedings.

123. The Russian authorities also indicated that all investigations relating to the breach of citizens' rights are under the control of the heads of the Prosecutor's offices of the North Caucasian region and of the Main Directorate of the Prosecutor General's office in Southern federal district. All materials from the investigation file are studied in due time as well as the lawfulness of the procedural decisions taken and the thoroughness of the measures carried out. The district prosecutors are instructed to notify immediately the Republican Prosecutor's offices of each case of abduction.

### ***Secretariat's assessment***

124. It appears from almost all judgments that the failures of the investigations "were obvious to the supervising prosecutors, who on several occasions criticised the investigation and ordered that certain steps to be taken. However, these instructions were either not followed or were followed with an unacceptable delay"<sup>58</sup>.

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<sup>58</sup> See for instance the following judgments: *Alikhadzhiyeva v. Russia*, §72; *Luluyev and others v. Russia*, §99; *Musayeva and others v. Russia*, §95; *Bazorkina v. Russia*, §123; *Estamirov v. Russia*, §93; *Musayev and others v. Russia*, § 163.

125. In this respect, the Secretariat recalls that, although prosecutors still have the power to supervise the investigators' compliance with the rule of law, they can no longer give binding instructions to the investigators. It would appear that each time a prosecutor identifies a shortcoming in the investigation, he/she should notify the investigator's superior of that shortcoming and/or challenge it before a court. *More details in this respect would be useful.*

126. *Information is also awaited on the existence of disciplinary or other sanctions (e.g. negative impact on future promotion, on payment bonuses, etc) against officials who repeatedly fail to undertake necessary investigative measures, even when they are ordered to do so by their superiors.*

### C. Effective punishment of abuses

#### ***Information provided by the Russian authorities***

127. Since the first anti-terrorist operations, the investigative bodies of the Allied Group of Forces have investigated 271 criminal cases. The investigation was completed in 186 cases, out of which 108 cases concerning 137 persons were sent to trial. The military courts examined criminal cases concerning 130 servicemen who committed offences in respect of inhabitants of the Chechen Republic.

#### ***Secretariat's assessment***

128. These statistics are welcome. The Secretariat also notes with interest that on 28 August 2008, the Supreme Court of the Russian Federation upheld **the conviction of two former officers of the Russian Army to 15 and 17 years of imprisonment for the unlawful killing of civilians during an anti-terrorist operation in the Chechen Republic**<sup>59</sup>. *Other examples of the prosecution of and detailed statistics on the convictions of state officials for abuses committed in the Chechen Republic are awaited.*

129. Notwithstanding these positive developments, it results from the documents of different monitoring bodies of the Council of Europe that torture and ill-treatment by law enforcement agents in the Chechen Republic continue to give rise to serious concerns<sup>60</sup>.

130. It has been noted that the number of prosecutions opened in respect of such offences continues to be extremely small in relation to the number of complaints forwarded to the *Prokuratura*. *The authorities are thus invited to provide comprehensive official statistics of all complaints lodged on account of alleged abuses, of the ensuing investigations and of their results. The Committee may also wish to invite the Russian authorities to intensify their efforts so as to ensure that all allegations are effectively investigated and lead, where necessary, to the prosecution of those responsible.*

### III – Obligation to cooperate with the European Court

#### ***Information provided by the Russian authorities***

131. The Russian authorities indicated that in a number of cases they provided information requested by the European Court. However, in other cases it was not possible to do so under Article 161 of the Russian Code of Criminal Procedure. This article precludes the submission of certain documents from a pending investigation file in order to protect the rights and lawful interests of the participants of the criminal proceedings or to avoiding prejudicing the investigation.

<sup>59</sup> <http://www.lenta.ru/news/2008/08/28/arakcheev/>

<sup>60</sup> In this respect, see First conclusions of the visit of the Commissioner for Human Rights in the Chechen Republic of the Russian Federation CommDH(2007)6 and CPT/Inf(2007)17.

### **Secretariat's assessment**

132. The Secretariat recalls that in a number of cases at issue the European Court found a violation of the Russian authorities' obligation to provide all the necessary facilities in the establishment of facts, that is to say to submit documents from the investigating file, as they did not specify the nature of the documents and the grounds on which they could not be disclosed.

133. In this connection, the European Court has on several occasions reminded the Russian authorities of the possibility to request the application of Rule 33 § 2 of the Rules of Court. This Rule permits a restriction on the principle of the public character of the documents deposited with the Court for legitimate purposes, such as the protection of national security and the private life of the parties, as well as the interests of justice. The Court further observed that **“the provisions of Article 161 of the Code of Criminal procedure, to which the Government refer, do not preclude disclosure of the documents from a pending investigation file, but rather set out a procedure for and the limits of such a disclosure”**<sup>61</sup>.

134. The European Court also recalled that **the Russian authorities submitted information from the investigation files in a number of comparable cases reviewed by the European Court**<sup>62</sup>. **In these cases, the documents have been submitted to the Court without reference to Article 161.**

135. The Secretariat recalls that the obligation to provide all necessary facilities in the establishment of facts to the European Court is enshrined in the Convention. The importance of compliance with this obligation for the proper functioning of the Convention mechanism was also emphasised on several occasions by the Committee of Ministers<sup>63</sup>.

136. The Secretariat notes that Russian criminal legislation and the Convention contain mechanisms which enable the authorities to strike a fair balance between their obligation under the Convention and the protection of other lawful interests.

137. Therefore, while noting the Russian Federation's efforts to comply with the above obligation under the Convention, the Committee of Ministers may wish to invite all authorities concerned **to intensify their efforts in this area and to exploit to the fullest extent possible the legal mechanisms under the Convention and domestic law so as to allow for the submission of the necessary information** in all cases where such information is requested by the Court for the proper establishment of facts.

#### IV – Improving the professional training of members of the security forces

138. A number of training and awareness-raising measures have already been reported by the Russian authorities and are summarised in the previous version of the present Memorandum (§§ 57-65). Additional measures taken are presented in Appendix III to the present version of the Memorandum.

### **Secretariat's assessment**

139. The Secretariat notes that a number of important measures have been and are being taken in order to further mainstream human rights into the initial and in-service professional training of members of the security forces as well as prosecutors and judges. The Secretariat invites the Committee of Ministers to encourage the Russian authorities to pursue their efforts.

<sup>61</sup> See among many others the *Imakayeva v. Russia* judgment, §123.

<sup>62</sup> *Ibid.* The European Court notably referred to the *Mikheyev v. Russia*, *Khashyev and Akayeva v. Russia*, *Magomadov and Magomadov v. Russia* cases.

<sup>63</sup> See Resolutions ResDH(2001)66 and ResDH(2006)45 – States' obligation to co-operate with the European Court of Human Rights.



*Appendix I***Rules governing the use of arms, combat equipment and special means by the Armed Forces of the Russian Federation in the context of anti-terrorist operations**

*(approved by the Government's Decree of 6 June 2008)*

1. These Rules define how weapons, military equipment and special means may be used by armed forces of the Russian Federation (hereafter "Armed Forces") during antiterrorist operations.
2. Sections and units of the Armed Forces assigned to the group of forces and means gathered for an antiterrorist operation shall use weapons, and military and special means in conformity with the order (instruction) to conduct an antiterrorist operation given by the head of such operation.
3. Chiefs of sections and units of the Armed Forces assigned to the group of forces and means gathered for an antiterrorist operation shall give orders, instructions and signals necessary for the use of weapons, military equipment and special means within the scope of their duties, even as commanding officers.
4. During antiterrorist operations, members of the Armed Forces shall use weapons, military equipment and special means in conformity with the Military Rules, the instructions of Armed Forces and other standards regulating their use.
5. During antiterrorist operations, weapons, military equipment and special means shall be used for the following purposes:
  - a) defend civilians against attacks which may jeopardise their lives or their health, if this cannot be done by other means ;
  - b) free hostages, buildings, facilities, constructions, means of transportation, occupied districts (zones), if they cannot be freed by other means;
  - c) arrest perpetrators of attacks against protected sites, transportation vehicles and servicemen if such perpetrators oppose armed resistance or refuse to comply with regular warnings to surrender their weapons if no other means cannot be used to put an end to such resistance or to seize the weapons;
  - d) repel an attack or eliminate the threat of an attack against protected sites, transportation vehicles and servicemen and put an end to attempts to seize the weapons and military equipment of servicemen;
  - e) put an end to resistance opposed to a member of the Armed Forces fulfilling his or her obligations, if this cannot be done by other means ;
  - f) stop a means of transportation by damaging or destroying it if its driver refuses to stop despite regular warnings by servicemen, if it cannot be stopped by other means;
  - g) warn about the use of a weapon, send a signal or ask for help ;  
and
  - h) arrest persons involved in a terrorist act who are trying to hide, if this cannot be done by other means.
6. Armed Forces may use, as special means, equipment designed to temporarily neutralise perpetrators of terrorist attacks, weaponry, military and special equipment and infrastructures, while trying to reduce as much as possible the number of dead people, irreversible damage to the health of persons, the destruction of equipment and the pollution of the environment.
7. It is forbidden to use special means against obviously pregnant women, obviously handicapped persons and young minors, unless they oppose armed resistance or commit an offense jeopardising the lives and health of other people.

8. When they use weapons, military equipment and special means, members of Armed Forces taking part to an antiterrorist operation shall:

a) warn that they intend to use their weapons, military equipment and special means, while leaving enough time to comply with legal requirements, unless

- any delay in the use of weapons, military equipment and special means directly jeopardises the lives and health of civilians, servicemen and other participants in the antiterrorist operation, or threatens effectively the safety of sites, weapons or protected means of transportation, or
- it is impossible to give such a warning;

b) provide persons who suffered bodily injuries with help before medical intervention; and

c) inform their direct commanding officer of the use of weapons, military equipment and special means.

9. Officers mentioned in section 3 of these Rules shall, as soon as possible, inform departments of the Prokuratura of the Federation of Russia of all injuries or deaths caused by the use of weapons, military equipment and special means during the antiterrorist operation.

*Appendix II*

**List of by-law regulations referred to in the Memorandum**

**I – Measures regarding the use of force**

- Decree of the Government No 352 issued on 6 June 2007 adopting the Rules on the use of arms, combat equipment and special means in the course of anti-terrorist operations.

**II – Measures to prevent torture and disappearances**

- Joint Order No. 1115/475 adopted by the Ministry of Interior of the Russian Federation and of the Ministry of Health and Social Development on 31 December 1999 “On approving the Instruction on the procedure governing medical and sanitary provision for persons held in temporary holding facilities of the Ministry of Interior”;
- Order No 46 adopted by the Prosecutor General on 25 July 2001 “On strengthening the supervision of respect for civil rights during identity check operations in the Chechen Republic” reinforced by the Order n°80 of 27 March 2002 of the Commander of the federal forces in Chechnya<sup>64</sup> and by Order No 301 adopted by the Military Prosecutor General on 20 November 2002 on the the improvement of the prosecutors’ supervision over the security forces’ compliance with human rights in the course of anti-terrorist operations in the Northern Caucasus Region<sup>65</sup>;
- Order No. 170 of the Chief Directorate of the Federal Service for Execution of sentences of the Ministry of Justice of the Russian Federation of 27 July 2002 “Approving the Instruction on the procedure for receiving, registering, recording and dealing with, in penal institutions of the Ministry of Justice of the Russian Federation, any statements, confessions or reports about committed or planned crimes or other incidents”<sup>66</sup>;
- Joint Order No. 98/110 of 23 April 2003 of the Commander of the Unified Group of forces in the North Caucasus Region and the Military Prosecutor of the United Group of forces implementing the Instruction regarding the cooperation of officials and servicemen of the United Group of forces with military prosecutors in the course of antiterrorist operations carried out in the Chechen Republic, in the course of apprehension of citizens and in the course of investigations into offences<sup>67</sup>;
- Order No. 27 adopted by the Prosecutor General of the Russian Federation on 5 August 2003 “On the organisation of the prosecutors’ supervision over compliance with laws when serving sentences and holding suspects and accused persons in pre-trial detention facilities;
- Order No. 950 of the Ministry of Interior of the Russian Federation of 22 November 2005 “On approving the internal regulations of temporary holding facilities of the Ministry of Interior for suspects and accused persons”;
- Joint Order No. 39/1070/1021/253/780/353/399 of the General Prosecutor’s Office of the Russian Federation, the Ministry of the Interior, the Ministry of emergency situations, the Ministry of Justice, the Federal Security Service, the Ministry of economic development and of the Federal Service of control over drugs of 29 December 2005 “On uniform procedure for the registration of offences”;

<sup>64</sup> Cited by the Commissioner for Human Rights of the Council of Europe, 3<sup>rd</sup> Annual Report, January to December 2002, CommDH(2003)7 of 19 June 2003, p. 38.

<sup>65</sup> CAT/C/55/Add.11, § 99, p. 21.

<sup>66</sup> CPT Public Statement of 2007, p. 19.

<sup>67</sup> CAT/C/55/Add.11 of 8 April 2003, § 41, p. 10 and § 104, p. 22.

- A special instruction of 23 October 2006 issued by the Operative Headquarters of the Chechen Republic providing for a special procedure of mandatory notification to the Ministry of the Interior, to the Main Directorate of the Interior, to the Regional Directorates of the Interior of the Southern District of the planning of operational search activities on their territory;
- Interministerial Instruction on the interaction between officials of the organs of the Ministry of the Interior, the FSB and of servicemen of the United group of forces with organs of the Military Prosecutor's office in the course of antiterrorist operations in the Chechen Republic, which provides for the mandatory participation of a military prosecutor in all antiterrorist actions carried out by the United group of forces and for verification of all documents relating to such operations as to the officials' compliance with the legislation;
- Order No. 136 adopted by the Prosecutor General on 6 September 2007 "On the organisation of prosecutorial oversight of procedural activities of the bodies in charge of the investigation".

### III – Measures to ensure effectiveness of the investigations

- Decree No. 802 of 9 September 2002 of the Prosecutor General setting up a Military Prosecutor's Office of the Unified Group of forces responsible for carrying out antiterrorist operations in the North Caucasus Region;
- Order No. 301 of 20 November 2002 of the Military Prosecutor General on the improvement of supervision exercised by the prosecutors over the compliance with human rights in the course of anti-terrorist operations in Northern Caucasus Region. According to this Order, the military prosecutor of the Allied Group of Forces has an obligation to check whether laws protecting human rights are complied with during antiterrorist operations. He must do so in cooperation with the Department of the Prosecutor General Office responsible for Southern Federal District as well as with the Prosecutor of the Chechen Republic, municipal and district prosecutors, and the direction of the Regional Headquarters, Headquarters of the Unified Group of forces and of special forces of the Ministry of Interior<sup>68</sup>.
- Joint Order No. 8 of 3 February 2003 of the Prosecutor of the Chechen Republic, the Military Prosecutor of the Unified Group of forces, the Chechen Ministry of Interior, the Commander of the Unified Group of forces and the representatives of other administrations concerned adopting an instruction on mutual judicial cooperation between bodies responsible for application of laws in the North Caucasus Region concerning investigations into serious allegations of crime against permanent or temporary inhabitants of the Chechen Republic<sup>69</sup>.
- Joint Order No. 15 of 30 November 2002 of the Prosecutor of the Chechen Republic and of the Military Prosecutor of the Allied Group of forces creating investigative units including detectives from both military and civil prosecutors' offices and establishing procedures of mutual aid during the first stage of investigations into illegal detentions and abductions. Pursuant to this Order, such permanent investigative units were created in all districts of the Chechen Republic. On 30 November 2002, the Prosecutor's Office of the Chechen Republic organised an interministerial coordination meeting in Khankala on the collaboration problems between the relevant services of the territorial prosecutor's offices and of the military prosecutor's office of the Republic regarding investigations opened into abuses illegally committed by members of the security forces.

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<sup>68</sup> CAT/C/55/Add.11, §99, p. 21.

<sup>69</sup> *Ibid*, § 102.

- Joint Order No. 39/1070/1021/253/780/353/399 of 29 December 2005 of the General Prosecutor's office of the Russian Federation, the Ministry of the Interior, the Ministry of emergency situations, the Ministry of Justice, the Federal Security Service, the Ministry of economic development and of the federal Service of control over drugs creating uniform procedure for the registration of offences.
- Special instruction of June 2002 of the Prosecutor of the Chechen Republic to the municipal and district prosecutors concerning the issues to be dealt with as a matter of priority after the criminal proceedings were opened into offences allegedly committed by members of the Unified Group of forces in the course of identity checks in the Chechen Republic<sup>70</sup>.

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<sup>70</sup> CAT/C/55/Add.11, § 97, p. 21.

*Appendix III***A. Training within the Ministry of the Interior*****Information provided by the Russian authorities***

- *Dissemination*

The local departments of the Ministry of the Interior were provided with a summary of the applications lodged with the European Court together with an analysis of the kinds of issues raised and the comments of the European Court's judgments as well as the recommendations with a view to eliminating the existing shortcomings in the activities of the organs of the Interior and to preventing similar violations in the future.

- *General training on human rights*

In 2006, a manual on ensuring compliance with human rights in the course of the activities carried out by organs of the Ministry of the Interior was prepared and disseminated for use in the initial and professional training carried out in the establishments falling under the system of the Ministry of the Interior.

A course on guaranteeing lawfulness and ensuring compliance with human rights in the activities of organs of the Interior was included in Legal training and Special training courses. The duration of this course is 34 hours. The course is taught in the framework of professional training of police officers and heads of police departments.

Methodical guidelines for special training of officials of the Interior were prepared within the framework of the project "Human Rights for police officers" implemented by the Centre of support of young democratic initiatives financed by the European Union through the program "European Initiative in the field of Democracy and Human Rights". These guidelines contain a number of international and domestic provisions on human rights, the knowledge of which is mandatory for police officers. Special attention is paid to the methods by which the theory and the practical resolution of specific cases on how to ensure the respect of human rights in the professional activities of police officers are explained to students.

A compendium entitled "European Court of Human Rights. Selected judgments. Volume I. Police and law-enforcement agencies" is used as an appendix to the aforementioned guidelines.

Other materials are used for the training of high-ranking officers, such as "Human Rights in the Activities of Police Officers. Frequently Asked Questions" and "Human Rights which Need to Be Protected".

Moreover, according to the State education standards for higher professional education on "Law-enforcement activities" and "Legal studies" specialities, a special course on ensuring human rights in the activities of law-enforcement organs (60 hours) is taught at the training centres of the Ministry of the Interior of the Russian Federation. It includes the following topics:

- human rights and freedoms in the modern world;
- human rights and freedoms in Russia;
- law-enforcement organs in the mechanism guaranteeing human rights and freedoms;
- legal grounds for limiting human rights and freedoms in the course of the activities of law-enforcement bodies;
- ensuring the respect of human rights during apprehension and detention, etc.

In the framework of this course, issues of compliance with human rights in the Chechen Republic are also dealt with.

Special attention is paid to the training of officials of the Interior who are sent to the Northern Caucasian region to participate in anti-terrorist (special) operations on compliance with the rule of law and human rights.

- *Special training for officials serving in the Northern Caucasus Region*

For the training of officials at all levels, 10 programs were prepared, each of them including a section on ensuring compliance with and protection of human rights. The following topics are studied within this section:

- historical and ethnical particularities of religious movements in Republics of North Caucasus, the particularities of social relationships with the local population;
- the legal and regulatory framework governing the activities of organs of the Interior in their fight against terrorism, the definition and content of the rule of law in the activities of organs of the Interior;
- criminal and administrative legislation providing for responsibility in special circumstances;
- introduction of limitations of rights, use of force, of special means, of arms and of combat weapons;
- provisions of the Russian Constitution and of the Russian Criminal Code on human rights and the legal responsibility incurred for not complying with them;
- provisions of the Russian Code of Criminal Procedure ensuring the rights and interests of citizens in the course of criminal proceedings.

The following materials were prepared for the officials who are serving in the Northern Caucasus Region:

- Special training programs for particular staff members of the Temporary Operative Group of organs and units of the Ministry of the Interior in the Northern Caucasus Region;
- A Russian-Chechen dictionary containing recommendations on relationships with the local population;
- Recommendations with a description of customs of the local population, rules of behaviour and necessary measures of security;
- Standard training program for officials of the Ministry of the Interior involved in special operations on the territory of the Northern Caucasian Region approved by the Order of the Ministry of the Interior No. 2 of 10 January 2006 "On measures to improve the preparation of the servants of organs of the Interior involved in antiterrorist operations on the territory of the Northern Caucasian Region of the Russian Federation".

- *Training of Internal forces of the Ministry of the Interior*

On 1 February 2007, by an Order No. 36, the Chief Commander of the internal forces of the Ministry of the Interior of the Russian Federation approved a standard educational plan on the organisation and conduct of legal training within the internal forces of the Ministry of the Interior. According to this plan, servicemen at all levels must take a training course on the main provisions of international humanitarian law applicable in armed conflict. The course includes the study of the Hague Convention of 1907, the Geneva Conventions of 1949, the laws of war, the rules on combatants, war prisoners, military subjects, civilians, etc.

Moreover, certain categories of servicemen take courses in which the issues of legal responsibility of servicemen for offences, of the compliance with the rule of law while on duty, circumstances and limits of the use of force, of special means, of arms and special weapons are dealt with.

Servicemen of the internal forces of the Ministry of the Interior also participate in the courses organised by the Ministry of Defence together with the International Committee of the Red Cross on awareness of the rules of international humanitarian law.

- *Special seminars and conferences*

In April-May 2007, the representatives of the Ministries of the Interior of the Russian Federation and of the Chechen Republic took part in the seminars on "Application of the European Convention of Human Rights in the Chechen Republic" organised by the Council of Europe together with the Russian Ombudsmen's Office. The following topics were discussed:

- mechanisms of cooperation between the Ombudsmen of the Russian Federation and law-enforcement and power structures;
- importance of the proper understanding of decisions and use of police ethics in the management of law-enforcement agencies;
- activities of the Chechen Parliament in the protection of human rights;
- main powers of power structures and law-enforcement bodies and human rights: right to a fair hearing, use of force and of arms, law-enforcement officers' behaviour while arresting a person;
- methods of investigation and compliance with human rights and freedoms in the Chechen Republic;
- domestic remedies against ill-treatment: requirements of the European Court in the investigation of similar cases and compensation for damages caused, etc.

The following events were organised during 2007 notably in cooperation with the Council of Europe:

- a Round Table on the implementation of the European Convention of Human Rights in the Chechen Republic (the Ministry of the Interior was represented by the Deputy Head of the Legal Department of the Ministry of the Interior of the Russian Federation and by the Minister of the Interior of the Chechen Republic);
- a working meeting between the representatives of the Ministry of the Interior of the Chechen Republic and of the International Committee of the Red Cross in Grozny on the issues of disappearances, of the identification of remains and of the improvement of databases;
- a conference organised by the Chechen Ombudsmen entitled: "The Human Rights situation in Chechnya: first results of the activities undertaken by the Ombudsmen and future perspectives" in Grozny with the participation of the Commissioner for Human Rights of the Council of Europe, the head of the United Nations Representation in Northern Caucasus, the head of unit for Eastern European countries of the Directorate General of Political Affairs of the Council of Europe;
- a series of working meetings with the participation of the representatives of the Ministries of the Interior of the Russian Federation and of the Chechen Republic, of the Prosecutor of the Chechen Republic, of the President of the Supreme Court of the Chechen Republic, and of the Ombudsman of the Chechen Republic on the issues of compliance with the rights of persons held in pre-trial detention centres and in temporary facilities of the Ministry of the Interior;
- a seminar on the investigation of criminal cases of kidnapping and disappearances in Pyatigorsk with the participation of international, Russian and Chechen NGOs;
- a seminar in Moscow on the measures being taken by the law-enforcement bodies of the Republic to protect citizens from unlawful methods of investigation and from ill-treatment with the participation of the representatives of the offices of the Russian Ombudsman and of the Chechen Ombudsman, of the Prosecutor's General Office, of the Chechen prosecutor's office, of the Federal Bar Association, and of the Directorate General of Human Rights and Legal Affairs of the Council of Europe;
- an international Round Table organised by the Red Cross in Grozny on the search for disappeared persons.



On 9 January 2008, the Ministry of the Interior of the Chechen Republic organised a working meeting between the Deputy Minister of the Russian Ministry of the Interior and the Chechen Ombudsmen on the cooperation situation between the Ministry of the Interior of the Chechen Republic with the Chechen Ombudsmen and NGOs while resolving issues relating to the compliance with human rights on the territory of the Republic. This meeting was also attended by the President of Coordination Council of NGOs of the Chechen Republic, by the First Deputy of the Commander of the Joint Group of forces of the Northern Caucasian region, i.e. the Head of the Temporary Joint Group of organs and units of the Ministry of the Interior of the Russian Federation, and by the Minister of the Interior of the Chechen Republic.

## **B. Training within the Ministry of Defence**

The issues relating to compliance with human rights in the course of antiterrorist operations are dealt with in the program on international humanitarian law.

For this purpose, on 8 August 2001 the Minister of Defence approved the Guidance on international humanitarian law for the Armed Forces of the Russian Federation and issued Order No. 360 on measures to comply with international humanitarian law provisions in the Armed Forces of the Russian Federation.

In order to ensure a unified approach on this issue in 2006, Methodical recommendations on study of international humanitarian law in the course of preparation for combat were prepared.

Standard planning of professional training courses of officers of the Russian Armed forces on armed conflicts created pursuant to Minister of Defence Order No. 69 of 7 February 2000 was amended in order to take into account the European Court's judgments delivered in the *Isayeva, Khashyev and Akaeva* and *Isayeva, Yusupova and Bazaeva* cases. These courses take place at the Educational Centre on in-service training of officers at the Academy of Armed Forces of the Russian Federation.

Similar amendments were made to the plans of in situ seminars on international humanitarian law organised in military districts.

Issues related to the implementation of international humanitarian law norms in Northern Caucasian region in the light of the European Court's judgments are dealt with in the following periodical magazines: Military Legal journal 2006, No 7 and Military industrial page 2006 No 43.

## **A. Training of judges and prosecutors**

### ***Information provided by the Russian authorities***

#### **1) Training of prosecutors**

The judgments of the European Court delivered in these cases were studied at the Institute for scientific research of Problems for the strengthening of lawfulness and the legal order at the General Prosecutor's Office. The judgments were disseminated to the prosecutors in the Chechen Republic.

The judgments were also discussed at the coordination meetings of law-enforcement agencies. As a result, a number of effective measures to eradicate the shortcomings identified were taken.

A special course on compliance with the international law in the context of using the Army for combat purposes in the Northern Caucasus was prepared within the military prosecutor's office. This course was sent to the regional military prosecutor's offices for use in the legal training of prosecutors and investigators.

The study examination of the European Court's judgments gave rise to the organisation of special courses in military prosecutor's offices on the method of investigating offences and incidents relating to the use of air and artillery combat weapons.

## 2) Training of judges

- *Publication and dissemination*

The judgments of the European Court are disseminated to the Regional courts. They are also discussed at regular meetings and seminars of the Judicial Chambers of the Supreme Court of the Russian Federation.

The President of the Supreme Court of the Chechen Republic indicated that these judgments are also disseminated to all judges of the Chechen Republic.

The judgments are also published in the Bulletin of the European Court (Russian edition) and in the compendium "European Court and the Russian Federation. Decisions and Judgments", which are also regularly disseminated to the Russian judiciary.

- *Training*

In 2007 the chair of European humanitarian law holds the following courses:

- current issues of implementation of precedents of the European Court by the domestic courts;
- examination by the European Court of cases against the Russian Federation;
- actual issues of the implementation of the Convention within the legal order of the Russian Federation.