



United Nations Human Rights Committee
Report

Prepared and submitted by the European Prison Litigation Network for the consideration of the CCPR during its 136th Session (10 October – 4 November 2022) in relation to the eighth periodic report of the Russian Federation

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1. EPLN is an international NGO holding a participatory status with the Council of Europe. It was founded in 2013 by a group of jurists, lawyers, and researchers active in the penitentiary field in different countries. EPLN's aim is to enhance the judicial protection of the fundamental rights of prisoners in the Member States of the Council of Europe.
2. This report is addressing issues nos. 10 and 22 of the list of issues in relation to the eighth periodic report of the Russian Federation (CCPR/C/Rus/Q/8) in the context of prison violence.

Introduction

3. The emergence in 2021 of a collective awareness of the immense social danger posed by the routine use of torture in prisons shortly preceded the outburst of brutality by the Russian troops in Ukraine, a symptom of a society already deeply acclimatized to institutional violence. The unbearable video footage of rape and torture released in October 2021¹ made immediately clear to the public a situation that human rights defenders face on a daily basis, namely human degradation as a way of managing prisons. Echoing the mass of torture cases that have come to light in 2020-2021², it caused such a scandal that the highest authorities were forced to react publicly.
4. At the solemn hearing of the Presidential Council for Human Rights, on 9 December 2021, the results of a joint investigation with the General Prosecutor Office on the widespread use of torture in prisons were presented, leading President Putin to state the need for "systemic measures that would change the situation"³.
5. Following the investigations at the detention facilities in some twenty regions in the first quarter of 2022, the Prosecutor's Office concluded that "the lack of a firm position against the violations of the right to safety and the right to life on the part of the heads of a number of [facilities] and of territorial bodies of the Russian Penitentiary Service in the face of violations has led to the existence of an unlawful practice of treating detainees with violence and degrading [their] human dignity"⁴.

¹In Saratov, the prison hospital management forced the "watchmen" from among the inmates to record torture on video. Part of this material was published in October 2021. <https://zona.media/article/2021/09/03/otb-1>

² In Angarsk colony, inmates were beaten during a peaceful protest and were transferred to other facilities with dedicated "torture detachments" where they were severely beaten half to death and raped by prison staff and prison activists (see the dedicated website https://tayga.info/enciklopediya_pytok). During his annual press conference, President Putin was questioned, by a TV journalist who had investigated the matter, on the number of victims in this case, "a huge number - more than 300 people in Irkutsk alone, raped and tortured" <http://kremlin.ru/events/president/news/67438>.

³ <http://kremlin.ru/events/president/news/67331>

⁴ <https://www.interfax.ru/russia/841772>

At least 98 cases of torture, including those resulting in the victims' death, were documented by the media in the prison system between 2015 and 2020.⁵ High-profile cases in the recent years include the following:

- On 24 November 2012, prisoners in colony No. 6 in the city of Kopeisk, Chelyabinsk region, climbed onto the roof. The essence of their demands boiled down to the termination by the colony administration of extortions and beatings⁶.
- In 2016, opposition activist Ildar Dadin ended up in IK-7 in the Republic of Karelia, where he was systematically beaten and threatened with rape⁷.
- On 20 July 2018, Novaya Gazeta published a recording of the torture of Yevgeny Makarov in IK-1 Yaroslavl. In the video, the staff of the colony is seen beating the prisoner with a truncheon, taking off his pants and shorts, pouring water over him.⁸
- In 2018, a series of scandals shook the Omsk prisons, which have a reputation of being places of torture. An officer of the IK-7 colony was sentenced to two years after Novaya Gazeta published an investigation reporting a series of torture events.⁹ In October 2018, a mass movement took place at IK-6 in Omsk, with inmates complaining of torture.¹⁰
- In April 2020, a movement occurred in Angarsk colony No. 15 due to the beating of a prisoner; about 20 people cut their wrists open in protest¹¹. About 500 prisoners who peacefully protested against violations were transferred to other colonies and many of them were tortured and raped by the prison staff.¹² After a riot in IK-15 in April 2020, Ertine Mongush, a prisoner from Tuva, and seven other people were placed in SIZO-1, where a wire was attached to his legs and he was tortured with electricity. He said that he also heard screams from other cells¹³.

⁵ <https://tochno.st/problems/prisons>

⁶ BBC, 25 November 2012, "Violence in Kopeisk prison spills out", at:

https://www.bbc.com/russian/russia/2012/11/121125_kopeisk_prison

⁷ Meduza, 1 November 2016, "They beat 10–12 people at a time, with their feet" Letter from Ildar Dadin about torture in the colony, at: <https://meduza.io/feature/2016/11/01/izbivali-po-10-12-chelovek-odnovremenno-nogami>

⁸ Novaya Gazeta, "10 minutes in the classroom of educational work", July 20, 2018, at:

<https://novayagazeta.ru/articles/2018/07/20/77222-10-minut-v-klasse-vospitatelnoy-raboty>

⁹ Novaya Gazeta, "Breakdown. Omsk. If torture had categories of cruelty, the pre-trial detention facilities and colonies of the Siberian region would definitely compete for the all-Russian leadership", May 14, 2018, at: <https://novayagazeta.ru/articles/2018/05/13/76435-lomka-omsk>

¹⁰ Novaya Gazeta, "Ombudsperson: Some prisoners reported being tortured in Omsk IK-6", October 11, 2018, at: <https://novayagazeta.ru/news/2018/10/11/145854-ombudsmen-nekotorye-zaklyuchennyye-soobschali-o-pytkah-v-omskoy-ik-6?fromtg=1>

¹¹ Mediazona, "Riot in the Angarsk Colony", April 17, 2020, at: <https://zona.media/chronicle/ik15#30150>

¹² https://tayga.info/enciklopediya_pytok

¹³ Taiga. Info, "Nine criminal cases initiated after torture in Irkutsk colonies and pre-trial detention centers", February 25, 2021, at: <https://tayga.info/164978>

- In 2020, a prisoner from Tuva, Kezhik Ondar, who was in SIZO-1 in the Irkutsk Region, was hospitalized after being tortured with a boiler that exploded in his rectum. Human rights activists claim that the head of SIZO-1, Mokeyev, knew about the torture; moreover, rape with a boiler began to be practiced precisely at his suggestion¹⁴.
- In October 2021, Gulagu.net reported that it received "over 40 GB of videos, documents and photos" detailing cases of torture in prisons¹⁵. A video of torture and rape of prisoners in the tuberculosis prison hospital in the Saratov Region and a video made in Belgorod IK-4, in which the prison officers beat a prisoner¹⁶, were made public.

I. A phenomenon rooted in the approach to prison management and endemic corruption

6. As a result of the work of the Presidential Council for Human Rights and the Prosecutor General's Office, three main causes of the widespread use of torture in Russian prisons were identified: "First, torture is used to extract confessions ... and testimony in criminal cases against third parties. The second reason ... is to extort money. The third reason is to break the will, to intimidate, and to punish for complaints in order to establish a regime in which people obey without question and it becomes impossible for them to assert their rights"¹⁷. Three factors play major role in the continuing systematic use of torture in the Russian prisons:

A. Use of detainees to maintain internal order

7. The internal order overseeing is most often vested with convicts affiliated with prison administration, despite the dissolution of the sinister "order and discipline sections" (ODS) in January 2010¹⁸.
8. A characteristic feature of the atrocities against prisoners is indeed the active recruitment of "enforcers" from among other prisoners by the prison administration and law-enforcement agencies. This practice dates back to the Soviet era, during which the so-called discipline and order sections were used as an instrument for maintaining internal order¹⁹.
9. The abolition of these sections in 2009 was met with universal approval. Despite this, this practice was not actually discontinued. In 2012, the Minister of Justice publicly acknowledged

¹⁴ Ibid

¹⁵ Gulagu.net, "The secret video archive of the Directorate M of the FSB and the FSIN was taken out of Russia", October 5, 2021, at: <https://gulagu-net.ru/news/2021-10-04-958.html>

¹⁶ Novaya Gazeta, "Gulagu.net published new videos of prisoner torture", October 6, 2021, at: <https://novayagazeta.ru/articles/2021/10/06/gulagu-net-opublikoval-novye-video-pytok-zakliuchennykh-news>

¹⁷ <http://kremlin.ru/events/president/news/67331>

¹⁸ приказ Минюста РФ от 31 декабря 2009 г. № 440 «О признании утратившим силу приказа Министерства юстиции Российской Федерации от 8 июня 2005 г. № 79». This issue has been in particularly addressed by the European Court of Human Rights in the case of *Buntov v. Russia* (no. 27026/10, §§ 8-11, 18-19, 153, 5 June 2012)

¹⁹ See Regulation on amateur activity organisation (*Положение о самодеятельных организациях*), approved by the Decree of the Ministry of Internal Affairs of the RSFSR No. 740 of 1961.

that they have continued to be used by prison administrations in other forms²⁰. The ban has not been accompanied by any active policy to eradicate these groups. On the contrary, the administration has continued to rely heavily on ODSs. Almost all vivid cases of torture in prisons in the recent years have involved detachments of prisoners working for the administration²¹.

10. The prison-entry stage is very often designed to determine the inclination of prisoners to serve the administration, usually under threat. The newly admitted prisoners are frequently ill-treated and intimidated, the most disobedient are often subjected to sexual torture²² and put under the constant risk of being degraded to the “untouchable” caste²³, the lowest position within the informal prison hierarchy, the “members” of which are reduced to a state of slaves working for other inmates.

B. Investigative missions devolved to the FSIN, conducive to the use of torture

11. Section 13 § 8 of the Federal Law “On operational-search activity” of 12 August 1995 (no. 144-FZ), allows the operative units of the Federal Penitentiary Service (the FSIN) to carry out operative-search measures. The operative inspectors, tasked with prevention of crimes and identification of those responsible, are actually engaged in the constant, routine and systemic concealment of crimes against inmates.
12. The informal merger of the operative services of the FSIN and investigative agencies (investigative units of the Ministry of Internal Affairs, the FSB (the Federal Security Service), the Investigative Committee) contributes significantly to the violence in the Russian prisons. As a result of this actual merger of services that are fundamentally different in nature, the prisons are controlling and manipulating the investigation. That is, prison services’ operatives suppress or eliminate testimonies of prisoners, extract confessions, and force inmates to cooperate (including covert cooperation) with investigative and law-enforcement services.
13. Prisoners who torture and rape other prisoners are called “developers”. They act on the orders of operative units, and are, in fact, a part of the punitive system. Information about the “developers”, their role in the institutionalised practice of torture in the Russian prisons, and their patronage under the administration and operatives has been further revealed in connection with the recent scandals related to torture and rape in Russian prisons²⁴.

²⁰ Speech by Mr Konovalov to the Federation Council, 15/06/2012.

²¹ See infra. See also, for instance, Novaya Gazeta, ““Activists” in the service of the FSIN. How collaborating inmates extort money and beat up other inmates” <https://novayagazeta.ru/articles/2017/10/29/74384-aktivisty-na-sluzhbe-fsin>

²² <https://lenta.ru/articles/2021/10/08/pytki/>

²³ See the ECtHR cases communicated against Russia on this topic: [A.S. \(no. 45049/17\)](#); [A.T. \(no. 35817/13\)](#); [A.M. \(no. 78224/16\)](#); [S.Y. \(no. 41181/16\)](#); [D \(no. 11235/13\)](#); [X \(no. 36463/11\)](#).

²⁴ A former prisoner who participated in the beatings of inmates on the orders of the administration of the SIZO of the Irkutsk region, explained how he was recruited as a developer in an interview he gave to the Taiga project.info: “they threw me [into a cell] with [other developers], they beat me constantly, they forced me to this [cooperation]... They forced me to do this, I refused somewhere, but I am gone, I am a physically undeveloped person, so I had no choice. [One of the developers] constantly waved his genitals, scoffed.” As a

C. The absence of independent medicine in prisons impeding the recording of the cases of violence

14. Another decisive factor of impunity is the subordination of the medical staff of prisons to the FSIN, which in practice results in the absence of recording of torture-related injuries and the systemic failure to alert the external authorities about the situation in the facilities.²⁵
15. Following the high-profile death scandals of Sergei Magnitsky and Vera Trifonova in pre-trial detention, in 2014 the FSIN began to transfer medical staff from the direct supervision of the heads of prisons to the authority of the FSIN regional departments, so that the medics could be less subordinated, but rather guided by the medical regulations and ethics standards. During the review by the UN Committee against Torture, the national delegation underscored the recent reform of the medical service in the penitentiary system.²⁶ However, these organisational changes did not have a concrete effect on the practice of the FSIN medical staff.²⁷
16. A number of cases demonstrate at least passive complicity of health personnel in the use of torture. Videos published on 6 October 2021 by Gulagu.net show inmates of the tuberculosis hospital of Saratov (OTB-1) raping others. The victims said they were raped by "activists" who had formally worked as care-assistants in the institution, extorting money from inmates. In the mass torture case in IK-15 Angarsk in April 2020, according to the prisoners', the head of the medical unit of SIZO-6 did not respond to the allegations of torture and did not treat the injuries, while the victims were abused for having applied to the medical unit. The reform established a new separate medical chain of command within the penal system, but it did not erase the "informal subordination" of doctors to the prison administrations. This is further confirmed by the fact that "all heads of prison medical units, heads of departments in prison hospitals, chief physicians and employers of clinics are law-enforcement officers."²⁸

result of their cooperation, the developers receive privileges that are not available to any of the prisoners. "The operatives brought phones, drugs, alcohol to the developers. They ate like I had never eaten before. They drank whiskey, brandy. There were those who injected, smoked hashish. Plus, they were given long dates - a prisoner once every three months - and with him [the developer] almost every week. I know that the employees themselves called prostitutes and paid them for three days to pleasure those developers who do not have girls" (Taiga. Info "Encyclopedia of violence in the Irkutsk colonies and pre-trial detention centers", at: https://tayga.info/enciklopediya_pytok).

²⁵ See, e.g. *Buntov*, ECtHR, op. cit., §§ 15, 160.

²⁶ Committee against Torture examines Russian Federation's report, 2018, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23412&LangID=E>.

²⁷ According to the sociological research conducted in prisons in 2017-2018: The professional autonomy of doctors, despite enjoying formal independence from the prison administration, is limited by the inability to make many decisions relating to the professional competence independently, something that, in certain cases, makes it impossible for the penal doctors to follow the professional ethical standards. Considering that security is given a clear priority over healthcare in prisons, doctors can work only through a system of 'mutual concessions' with correctional officers and the prison administration (Runova, K. (2019). An Unwarranted Humanism: How Doctors Operate in the Russian Penal System. *The Journal of Social Policy Studies*, 17(3), 345-358. <https://doi.org/10.17323/727-0634-2019-17-3-345-358>).

²⁸ Novaya Gazeta. "Razrabotchiki" (Developers), 11 October 2021: <https://novayagazeta.ru/articles/2021/10/11/razrabotchiki-18>

17. Due to their “informal subordination,” doctors in such cases willingly protect the interests of the prison staff or are put under pressure by the prison authorities to violate ethical norms or even laws and not to report on the cases of torture.²⁹

D. Lack of preventive control: the dismantling of the Public Monitoring Commissions (PMCs)

18. The Prosecutor General admits that one of the reasons behind the cruel treatment of convicts is the insufficient openness of the penitentiary system and the low efficiency of the internal audits³⁰.
19. The shortcomings in the appointment of members of the PMCs and the difficulties faced by them undermine their independence and impartiality.³¹ The authorities are taking no measures to support the PMCs and are removing inconvenient PMCs’ members replacing them with former law-enforcement officers.³²
20. The situation has further worsened due to the fact that any member of a PMC can now be expelled due to their affiliation with an NGO labelled as a “foreign agent” (see Section 10 § 3 of Federal Law no. 76-FZ), and the number of such NGOs is constantly increasing.³³ These NGOs are thus arbitrarily excluded from ensuring public scrutiny of penitentiary facilities.
21. The Constitutional Court of Russia recently approved the practice of administration to interrupt interviews of prisoners by members of PMCs, if they “discuss issues that are not relevant to ensuring the rights of prisoners in places of detention”.³⁴ The confidentiality of such interviews is not ensured, and the prison administration has *de facto* unlimited discretion in determining the issues to be discussed during the interview.³⁵

E. Human Rights Defenders prevented from acting

22. Another factor of impunity is the marked deterioration in the conditions for human rights defenders, without whom no case can be brought to public attention and litigated through to completion.

²⁹ *Ibid.*

³⁰ The Insider “Commission impossible. How the Kremlin destroyed the PMC”, 21 October 2019:

<https://theins.ru/obshestvo/182995>

³¹ http://www.prisonlitigation.org/wp-content/uploads/2021/08/Communication-CoM-CoE_Buntov-1.pdf.

³² For example, in April 2021 the Public Chamber expelled from the PMC of Moscow a human rights activist who actively helped detainees among supporters of Aleksey Navalnyy (Meduza. Marina Litvinovich has been expelled from the PMC (as expected), 2021, <https://meduza.io/episodes/2021/04/07/marinu-litvinovich-kak-i-ozhidalos-vygnali-iz-onk-kogda-to-ona-rabotala-na-putina-a-teper-stala-odnoy-iz-samyh-izvestnyh-pravozaschitnits-v-rossii>).

³³ 70 NGOs are currently on the list of “foreign agents”, <http://unro.minjust.ru/NKOForeignAgent.aspx>

³⁴ See decisions of the Constitutional Court nos. 2167-O and 2168-O of 26/10/2021: in both cases the interviews were interrupted as soon as the use of force against the detainees by the police during their arrests was mentioned.

³⁵ See the relevant recommendations of the European Committee for the Prevention of Torture: CPT Report on the visit to Russia from 21 May to 4 June 2012 (CPT/Inf (2013) 41), § 14, <https://rm.coe.int/1680697bd6>

23. The criminal risks associated with human rights work have been increased by the recent legislative developments. Law No. 538-FZ of 30 December 2020 provides for up to two years' imprisonment and a fine of up to 1 million rubles for publicly disseminating defamation, including through the media or the Internet. The maximum penalty is increased to 5 years' imprisonment and 5 million rubles fine for defamation combined with the accusation of a crime against the inviolability and sexual freedom or a serious or particularly serious crime.³⁶
24. Human rights defenders are exposed to physical risks from prison staff involved in torture. For instance, in July 2018, the lawyer of the Public Verdict Foundation, Irina Biryukova, who handed over to Novaya Gazeta a video of the torture of prisoner Yevgeny Makarov in IK-1 in the Yaroslavl region, had to temporarily leave Russia due to threats against her.³⁷

II. The lack of a political response to impunity

A. The lack of a clear message in prison policy to eradicate torture

(i) In the reform orientations

25. The authorities have proclaimed the need for fundamental decisions on the reform of the prison system. This in turn led to the adoption in 2010 of the Concept for the Development of the Penal System until 2020³⁸ ("the Concept 2010-2020"). The issues of humanization and observance of the rights of prisoners were proposed to be implemented mainly through modernization of prisons, reduction of the prison population and economic incentives for employees of the FSIN. The planned improvements in the material and technical base of the prison economy (construction of new premises, expansion of the personal space, reduction of contacts between prisoners) were not able to change the situation with regard to the protection of prisoners from torture. Furthermore, the proclaimed prison reform did not address the root causes for the use of torture.
26. The Concept has approached the issue of prison violence mainly from the point of view of combating the prison subculture, without actually considering the role of the prison administration in its existence. It notes that the penal system is bogged down by the legacy of the 'thieves' tradition, fostered by barracking, and deplores the fact that the phenomenon is sometimes combated through brutal and illegal actions by prison staff. The Concept 2010-

³⁶ As the Council of Experts on NGO Law have pointed out: "these penalties are not only disproportionate but are also likely to dissuade NGOs from exercising their duty of vigilance and information, particularly in cases involving state officials, judges (...) . As a result, matters of public interest, such as exposures of corruption, the use of torture by (...) prison services (...) could be silenced because of the risk of being subjected to such draconian penalties" (CONF/EXP(2021)1, 19 February 2021 <https://rm.coe.int/expert-council-conf-exp-2021-1-opinion-amendments-to-russian-legislati/1680a17b75>). More broadly, the increase in administrative constraints in relation to the legislation on foreign agents and the reduction of the possibilities of access to foreign funding has led to a drastic reduction in the opportunities for action for the organisations concerned

³⁷ Meduza, "Lawyer Who Released Video of Prisoner Torture Left Russia Due to Threats", July 23, 2018: <https://meduza.io/news/2018/07/23/advokat-obnarodovavshaya-zapis-pytok-zaklyuchennogo-pokinula-rossiyu-iz-za-ugroz>

³⁸ The concept of development of the penitentiary system until 2020, approved by the order of October 14, 2010 No. 1772-p

2020 proposed to address this through the development of alternatives to imprisonment and the development of a custodial regime that would 'isolate criminal leaders and authorities, and thieves in the law' from the rest of the prison population.

27. On 4 December 2012, the first deputy director of the FSIN E. Petrukhin after the uprising in the colony of Kopeisk due to massive torture, acknowledged that "the reform of the FSIN is a failure. It was drafted without taking into account the opinion of the public, the prosecutor's office, the public monitoring commissions. Many shortcomings have not been taken into account".³⁹
28. In April 2021, a new concept of the Correctional System was approved. The main feature of it, similarly to the Concept 2010-2020, is the improvement of the material and technical conditions of detention, with a minimal focus on the measures that could improve the safety of prisoners. Prisoners will supposedly be given more privacy and personal space, number of allowed visits is to be increased, and the prisoners' are to gain access to additional means of communication, including the Internet. It also aims to reduce the prison population by half by 2030.
29. The concept provides for "relocation of penitentiary institutions outside of the cities," which will significantly complicate access to prisoners, both by relatives and by lawyers and human rights activists. The experts further criticise the plan to involve prisoners in the execution of the FSIN contracts, both federal and private.⁴⁰
30. Finally, the concept did not abandon operative work within the prisons. In addition to the sharply increased risk of corruption inherent in the use of prisoners for hard labor, this will greatly exacerbate the situation with regard to the torture of prisoners⁴¹. The Concept plans to expand the interaction between the Ombudsperson, Regional Ombudspersons, civil society institutions and public organizations, including the PMCs, in matters of "control over the observance of the rights of convicts and detainees".⁴² However, no concrete measures are specified in the Concept.

³⁹ <https://www.interfax.ru/russia/279132> He was dismissed a few months later, see <https://www.1obl.ru/news/politika/prezident-otpravil-v-otstavku-pervogo-zamestitelya-direktora-fsin-eduarda-petrukhina/>

⁴⁰ (Lawyer newspaper, "The concept of development of the penitentiary system of Russia until 2030 has been approved", May 18, 2021: <https://www.advgazeta.ru/novosti/utverzhdjena-kontseptsiya-razvitiya-ugolovno-ispolnitelnoy-sistemy-rossii-do-2030-g/>).

⁴¹ Novaya Gazeta, "The reform of the Federal Penitentiary Service will be reduced to the renovation of toilets. External modernization of the prison system does not cancel the Gulag traditions", April 6, 2021: https://www.ng.ru/politics/2021-04-06/1_8121_reform.html

⁴² Concept of the development of the system of execution of sentences until 20230. Approved the Decree of the Government of 29/04/2021 No. 1138-p, Section XX, http://www.consultant.ru/document/cons_doc_LAW_383610/

(ii) Staff management policy

31. The reaction of the President to the October 2021 publication of videos of torture and rape in prisons and the subsequent series of resignations of the superiors of the FSIN (most notably Generals Kalashnikov and Yakunin, the head and deputy head of the FSIN respectively) could be perhaps the strongest evidence of the authorities' concern about the current situation⁴³. However, these steps cannot be interpreted as the beginning of a large-scale fight against torture in the Russian penitentiary system and cannot be equated with a message of zero tolerance of torture.
32. In general, there is no disciplinary policy to eradicate torture within the FSIN. Displacements, and in rare cases dismissals, only occur in relation to high-profile incidents. Even in such cases, the decisions taken are rarely made as an explicit sanctioning for the use of torture or tolerance of it.
33. The functional and structural links of the FSIN with other law-enforcement agencies, and in particular the FSB, influence the repressive orientation of the institution. The FSB has a "M" Directorate in its structure, which oversees the FSIN. It performs the functions of an internal security directorate for Russia's law-enforcement system and has a significant influence on the appointments and dismissals of the FSIN officers.

B. Parliament's reluctance to criminalise torture

34. Even though Article 21 of the Constitution prohibits torture and ill-treatment, the Russian Federation has not yet criminalized torture as a separate criminal offence in its Criminal Code (the CC). Initially, torture was defined and prohibited under Article 117 of the CC ("tormenting" / *истязание*) which was not specifically applicable to officials and did not contain all the elements set out in Article 1 § 1 of the UN Convention against torture. Additionally, torture was prohibited as an aggravating circumstance under Article 302 of the CC ("coercion into giving evidence") which has narrow scope as it only applies to the "use of torture to obtain testimony" by investigators and inquirers.
35. Acts of torture or ill-treatment committed by other public officials have been usually prosecuted under Article 286 § 3 of the CC (abuse of office involving physical violence), which, according to the UN Committee against Torture (CAT), "does not correspond to the seriousness of the crime of torture".⁴⁴ Therefore, perpetrators are charged with other crimes which carry lower maximum penalties and do not reflect the grave nature of the crime of torture.

⁴³During his annual press conference, Putin answered a question about the reported facts of torture in the following way: "Torture in Russian colonies is a clear crime, and in assessing them, one must rely on the data of the investigation and an objective investigation", on:

<https://www.rbc.ru/society/23/12/2021/61c45c889a79476bea74cda1>

⁴⁴ p. 8 Committee against Torture, Concluding observations on the sixth periodic report of the Russian Federation, Adopted by the Committee at its sixty-fourth session (23 July-10 August 2018)

36. On 20 December 2021 a draft law on "increasing penalties for torture by public officials" was submitted to the State Duma (draft law no. 42307-8).⁴⁵ Contrary to expectations, it did not introduce a separate offence of torture, thus failing to address a lacune repeatedly emphasised by the CAT⁴⁶ and recently and by a civil society platform⁴⁷. Despite the criticism, the State Duma adopted the amendments on 22 June 2022. The amendments supplemented the Articles of the CC on abuse of power (286) and coercion to testify (302) with paragraphs providing for the use of torture as an aggravating circumstance, repelled the relevant paragraph of Article 117 and reformulated the notion of torture.
37. Article 286 is applicable to all law-enforcement officials (i.e., not only to investigators and inquirers). While adhering more closely to the notion of torture under Article 1 of the respective UN Convention, the new definition, introduced as an annotation to Article 286 of the CC still does not set out all modes of the public officials' involvement in the acts of torture prohibited under the Convention. The amendments failed to criminalise torture by a third party "with the consent or acquiescence" of a public official.
38. By failing to criminalise torture under separate article of the CC and repelling the previously existing aggravating circumstance under Article 117, the legislator made it impossible to hold private individuals accountable for the acts of torture. The amendments set the maximum term of imprisonment for abuse of power with the use of torture to 12 years. Nevertheless, torture still remained subject to statute of limitation under the domestic law (15 years, in accordance with Articles 15 and 78 of the CC) contrary to the international standards.⁴⁸
39. As torture being criminalised not as an autonomous offence but as an (extreme) type of abuse of power, it is unclear how to distinguish between abuse of power involving torture and abuse of power involving the use of violence. It is also unclear, how to define the practices of the Russian officials which are legal or, to the contrary, constitute an "abuse of power", which is a necessary pre-condition for classification of an act as "torture" in accordance with the new amendments. Moreover, since torture is the ultimate version of abuse of power, there are no aggravating characteristics that should increase the liability (e.g. complicity, prior conspiracy, etc.). This means that the sanctions will not correspond to the actual gravity of the crimes. For instance, in the Yaroslavl case there were at least 18 FSIN officers involved in the beating of Mr Makarov. Each of them was charged and convicted of abuse of power separately (not as

⁴⁵ <https://sozd.duma.gov.ru/bill/42307-8>

⁴⁶ Committee against Torture, Concluding observations on the sixth periodic report of the Russian Federation, Adopted by the Committee at its sixty-fourth session (23 July-10 August 2018).

⁴⁷ A gaping hole in the criminal code Torture is endemic in Russia today. Here's what can be done about it. Meduza. January 27, 2022 // <https://meduza.io/en/feature/2022/01/27/a-gaping-hole-in-the-criminal-code>
Statement by Russian human rights activists in connection with the draft law on torture submitted to the State Duma: <https://pytkam.net/zayavlenie-rossijskih-pravozashhitnikov-v-svyazi-s-vnesennym-v-gosudarstvennyu-dumu-zakonoproektom-o-pytkah/>

⁴⁸ See, e.g., paragraph 8 of the Concluding observations on the second periodic report of Japan, adopted by the Committee against torture at its fiftieth session (6-31 May 2013) (CAT/C/JPN/CO/2), 28 June 2013 // http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fJPN%2fCO%2f2&Lang=en.

members of a group).⁴⁹ Moreover, only the actual perpetrators were charged and convicted, even though they testified that the prison authorities had sanctioned the beating of Mr Makarov.⁵⁰

III. Serious procedural deficiencies

40. The rapporteur of the Presidential Council for Human Rights depicted the widespread climate of impunity in the Russian penitentiary system: “there have already been reports of torture in several troubled regions, but the words of the prisoner or detainee are often worthless – zero [i.e., they are not taken into account]. (...) Even when everything was documented and cases were opened, they usually ended up in vain. In some isolated situations, when the case got to a court, only the perpetrators were in the dock and they were given suspended sentences. (...) All torture cases should be investigated by the central office of the Investigative Committee. This is very important because if people at the regional level try to investigate such cases, they usually end up with nothing”.
41. In order to understand the actual situation with tortures, it is essential to collect basic statistical data on the number of people reporting torture, initiated cases, investigations discontinued or suspended, persons accused, cases referred to courts, perpetrators convicted, as well as the dynamics on these and many other relevant indicators. The collection of this data would only be possible when there is a specific article in the Criminal Code prohibiting torture.
42. The Russian authorities submitted to the UN Committee against Torture that it was impossible to collect such data.⁵¹ However, according to the information that they were nevertheless able to submit to the CAT, in 2018, 2,680 criminal complaints registered by the investigative authorities led to 64 criminal proceedings being initiated under Article 286 § 3 of the CC against prison staff. Following investigation of these cases, 44 persons were prosecuted and 22 were convicted. In the same year, 394 prison officers underwent disciplinary proceedings for non-compliance with the procedures and permissible grounds for the use of physical force and non-lethal weapons.⁵²
43. According to the statistical data collected during 2015-2018 by the Russian Investigative Committee, there were 148 criminal cases initiated under Article 286 § 3 of the Criminal Code

⁴⁹ See, Judgment of the Zavolzhskiy District Court of Yaroslavl of 19/11/2021 (criminal case no. 1-60/2020), available at: https://zavolzhsky-jrs.sudrf.ru/modules.php?name=sud_delo&srv_num=1&name_op=doc&number=48848334&delo_id=1540006&new=&text_number=1

⁵⁰ Staff of IK-1 said that tortures were video recorded in order to report to their superiors (Сотрудники ИК-1 рассказали о записи видео пыток для отчета начальству) (10.08.2018), <https://www.rbc.ru/society/10/08/2018/5b6d9eb29a79472f87eb3eb1>

⁵¹ *Мароховская А., Долинина И.*, Кто поднимает Россию на дыбу. Исследование дата-отдела «Новой»: статистика пыток по силовым и гражданским ведомствам, сроки наказания преступникам и размер компенсаций жертвам, <https://novayagazeta.ru/articles/2018/10/08/78095-kto-podnimaet-rossiyu-na-dybu>

⁵² Information received from the Russian Federation on follow-up to the concluding observations (CAT/C/RUS/CO/6/Add.1), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/254/91/PDF/G1925491.pdf?OpenElement>

against the officers of the FSIN, i.e. almost 44 times less than the number of complaints alleging violence in correctional facilities and remand prisons, which was 6,500 during the same period.⁵³

44. In addition, Novaya Gazeta managed to find 58 publicly available courts' judgments from 2011-2017, by which 65 FSIN officers were convicted (i.e. less than 10 each year) for abuse of power with violence (i.e. for torture). The majority of the sentences were suspended: up to 4 years' conditional imprisonment with restriction on holding public office for 1 to 3 years (49.2%) or only conditional imprisonment (3.1%). In a further 4.6 per cent of cases, a pecuniary penalty was imposed. Real prison sentences (with restriction on holding public office) were imposed in 29.23 per cent of cases, and the punishment was actually executed only in a further 6.2 per cent of cases. In the remaining cases, the defendants were acquitted (1.5%), amnestied (1.5%), or the charges were reclassified to another article of the CC (1.5%). By comparison, during this period, sentences for torture were passed against almost 1,000 police officers (i.e. an annual average of around 140) and almost 3,300 members of the military (i.e. an annual average of around 470).⁵⁴ As the Gulagu.net project began publishing numerous videos of torture in Russian prisons in October 2021,⁵⁵ it became apparent that the figures do not demonstrate a decrease of the rate of torture committed by the FSIN officers, but that it actually became much more difficult to bring those responsible to justice, given that the prisoners are fully controlled by the prison administration.
45. Despite the fact that several criminal cases were initiated and resulted in convictions of the FSIN officers⁵⁶, we note with alarm the new trend of sabotaging of criminal charges in cases

⁵³ СКР впервые раскрыл данные по делам о пытках в колониях и СИЗО, 2019, <https://www.rbc.ru/society/02/12/2019/5de12fe99a79475fb2beadb6>.

⁵⁴ Мароховская А., Долинина И., *op. cit.* In 3,1 % of cases information about the sentences was redacted from the publicly available version of the judgments. The following statistical data was also published in the media: in 2019 the Russian courts convicted 641 officials of abuse of power with the use of violence (no specific data in relation to the FSIN officials is provided). Half of the convicted officials got suspended sentences, and more than 30% were sentenced to fines, despite their crimes falling into the category of 'particularly serious' under the domestic classification. The remaining convicted officials were sentenced to imprisonment. In 2019 32 law-enforcement officials were acquitted, or criminal prosecution against them was discontinued on 'rehabilitative grounds' (e.g. due to the absence of the elements of crime or failure to prove the fact of the crime). This number constitutes 4,7 % from the total number of prosecuted law-enforcement officers (in the past years this rate was 4 %, which means that number of acquitted persons is growing). The number of officials brought to criminal responsibility for tortures decreases. Thus, in 2017 there were 867 convicted officials, in 2018 there were 772, in 2019 there were 641. Since 2009 the number of officials convicted under Article 286 of the CC has decreased by almost 2.5 times. see <https://lenta.ru/news/2020/04/15/pitki/>.

⁵⁵ <https://www.youtube.com/watch?v=7bTPW4wrvOk>

⁵⁶ BBC, "Riot against Torture in Kopeysk: Prisoners Convicted, FSIN Officers Not", April 13, 2018, at <https://www.bbc.com/russian/news-43752981>; Federal Penitentiary Service: a preliminary check did not reveal signs of torture on Ildar Dadin, on: <https://www.kommersant.ru/doc/3132270>; Kavkaz realii, "The verdict to the employees of the Ingush Center for Pediatrics came into force", October 25, 2018, on: <https://www.kavkazr.com/a/29564085.html>; Taiga. Info, "Nine criminal cases opened after torture in Irkutsk colonies and pre-trial detention centers", February 21, 2021, on: <https://tayga.info/164978>; Yaroslavl online, "In Yaroslavl, nine employees of the correctional colony who tortured prisoners were sentenced", April 4, 2022, on: <https://76.ru/text/criminal/2022/04/04/70742786/>; Rasmi.ru, "Non-Stop Conveyor: How the Federal Penitentiary Service and the FSB are trying to hush up the torture scandal", December 31, 2021, on: <https://pasmi.ru/archive/335490/>

of torture in prisons, with the obvious goal of exonerating those responsible for the crimes. In the end of 2021, in the Irkutsk region, a victim was arrested in a case of torture involving multiple colonies and detention centers and another prisoner was deprived of the status of a victim in a joint criminal case of mass torture. Human rights defenders and lawyers were subsequently no longer allowed into colonies and isolation wards to see other prisoners who complained of bullying. Human rights activists in the Saratov region reported that in the regional colonies, famous throughout the country for videos of torture and rape of prisoners, more than 300 victims have already retracted their statements⁵⁷.

A. Issues related to the structure of the investigative bodies (organisational aspects)

46. The Investigative Committee is the competent authority for investigating reported incidents of torture. However, it relies on cooperation with the police even in addressing misconduct by public officials. As stressed by the Public Verdict Foundation, “this creates an institutional barrier to effective, good-quality investigations, because the Committee's investigators are expected to respond to torture complaints by prosecuting and bringing to justice their own colleagues and assistants in the police force.”⁵⁸ A similar situation exists with torture in the FSIN system: the investigators of the Investigative Committee depend on cooperation with the administration of remand prisons and the operative departments of the penitentiary facilities.
47. The CAT has put forth that individuals deprived of their liberty should be granted adequate access to an independent complaint mechanism allowing them to file confidential allegations of torture or ill-treatment. Accordingly, a special unit to investigate crimes committed by the law-enforcement officers was founded in 2012 in response to a joint appeal submitted by the leading Russian human rights organizations (Order no. 20 of 18 April 2012).⁵⁹ Those divisions were created within the General Investigative Department of the Investigative Committee, with six staff members, as well as within the Investigative Departments of each federal district (with three staff members in each division) Moscow, Moscow Region, and St Petersburg (with ten staff members in each division). In total, these special units consist of less than 70 investigators across the country (less than 1 investigator for one region of Russia),⁶⁰ i.e. they are obviously understaffed. Moreover, Order no. 20 did not provide for obligatory transfer of cases of this kind to the new special units. Therefore, most complaints and allegations of torture are forwarded to the regional offices of the Investigative Committee, that is to the very same investigators in whose interest law-enforcement officers torture detainees to extort self-incriminating confessions.⁶¹

⁵⁷Siberia. Realii, “They will imprison the victims.” How cases of torture are falling apart in Russia, January 6, 2022, on: <https://www.sibreal.org/a/posadyat-poterpevshih-kak-v-rossii-razvalivayut-dela-o-pytkah/31634371.html>

⁵⁸ CMCE DH-DD(2019)818, Communication from Public Verdict Foundation in the Mikheyev group of cases.

⁵⁹ Смирнов С., Дела о применении пыток сотрудниками правоохранительных органов, переданные правозащитными организациями в Следственный комитет РФ (21.05.2012), <https://hro.org/tortures>

⁶⁰ 0,7 следователя из спецотдела по расследованию пыток в полиции приходится на один регион России (10.11.2014), <https://zona.media/number/2014/11/10/sledstvennyy-komitet-dnya>

⁶¹ https://nvo.ng.ru/politics/2021-02-16/3_8084_violence.html.

B. Collection of evidence of torture

48. The possibility of using audio and video recording devices in penitentiary institutions has been restricted in the last few years. Since 2019, PMCs can use their own technical equipment only if the facility cannot provide any. Prison officers are entitled to check recordings/photographs and determine their “relevance to the protection of the rights of detainees”.⁶²
49. Moreover, Article 89 § 4 of the Penitentiary Code was recently supplemented with a provision prohibiting legal counsels and representatives of prisoners from bringing into correctional colonies audio or video recording equipment (Federal Law no. 217-FZ of 11 June 2021), which further limited the possibility to independently collect evidence of torture and ill-treatment in penitentiary institutions.⁶³ In relation to remand prisons, a similar prohibition is provided for in Section 18 of Federal Law No. 103-FZ of 15 July 1995.
50. The prison administration has a monopoly on the entire archive, all evidence of torture. There are no mechanisms allowing external supervisory bodies to have access to this video content. Even investigators and prosecutors do not have direct access to this evidence.
51. Timur Rakhmatulin from the NGO “Committee against Torture” considers that “most often torture in the law-enforcement agencies takes place when a person’s relatives do not know about his/her detention. Such information is often concealed by the law-enforcement officers.”⁶⁴ In this respect, the creation of a unified on-line database of detainees could serve as a preventive measure against the use of torture.

C. Pre-investigation inquiry phase

52. In 2018, the CAT had urged the Russian Federation to “refrain from dismissing complaints of torture and ill-treatment during the pre-investigative verification phase and ensure that investigators immediately open a formal and effective criminal investigation for all allegations of torture and ill-treatment.”⁶⁵
53. According to an internal instruction (Order of 11 October 2012 no. 72), investigators can register incoming criminal complaints as “citizen petitions.” Unlike criminal complaints, “citizen petitions” do not trigger a mandatory verification (inquiry) stage. As a result, many

⁶² http://www.prisonlitigation.org/wp-content/uploads/2021/08/Communication-CoM-CoE_Buntov-1.pdf

⁶³ According to a former prosecutor, MP Anatoliy Vyborny, the real purpose of the draft law was to prevent lawyers and human rights defenders from documenting and reporting traces of torture on detainees. (12.05.2021), <https://www.advgazeta.ru/novosti/pod-predlogom-ispolneniya-postanovleniya-espch-zashchitnikam-khotyat-zapretit-pronosit-telefonny-v-ik/>.

⁶⁴ Advgazeta.ru, «Эксперты "АГ" прокомментировали позиции профильных ведомств по рекомендациям СПЧ», 2019, https://www.advgazeta.ru/novosti/eksperty-ag-prokomentirovali-pozitsii-profilnykh-vedomstv-po-rekomendatsiyam-spch/?sphrase_id=181888.

⁶⁵ CAT, Concluding observations on the sixth periodic report of the Russian Federation, 64th session (23 July-10 August 2018).

incoming complaints about torture are not registered as criminal complaints and are thus not verified nor submitted for inquiry by the Investigative Committee.⁶⁶

54. At the pre-investigation stage the victims of torture and their representatives have limited opportunities to participate in the investigation (they are not allowed to study case-files, and can file only certain petitions and requests). Amendments to the Code of Criminal Procedure (the CCP) of 2014 extended the powers of investigators in the context of pre-investigative inquiries. But it is still only after the opening of a criminal case that all possible procedural resources can be employed, and the full list of investigative measures can be implemented. The result of the preliminary checks in cases of torture of prisoners most often used as a ground for the investigator's decision to refuse to open a criminal case⁶⁷.

D. Need for methodological guidelines for the investigations into allegations of torture

55. The problem of superficial decisions on refusal to open a criminal case, or to suspend or discontinue an opened investigation. Such decisions are often delivered to formally avoid the expiry of the time-limits and in view of the lack of evidence. This problem is connected with inadequate procedural supervision, in particular, a delayed review of unjustified decisions by the heads of investigative bodies. Secondly, it is related to the absence of disciplinary proceedings against the officials of the Investigative Committee for the breaches of the procedural law during the pre-trial proceedings. In this regard, the methodological guidelines should be adopted containing an indicative list of the investigative activities to be taken without delay (initial interviewing of victims and witnesses, examination of crime scene, identification and seizure of crime evidence, a forensic examination of the victim, requests for the video surveillance cameras records). The guidelines should be based on the "Istanbul Protocol".

E. Lack of effectiveness of judicial review of investigation under Article 125 of the CCP

56. Under Article 125 of the CCP, victims are able to lodge complaints "against procedural actions, omission, or decisions which affect their constitutional rights and freedoms", including the decisions on refusal to open criminal case. Judges are competent to review the lawfulness of a decision in question without however being able to annul it. Rather, they order investigators to rectify the violations found and can issue an injunction obliging them to comply.
57. When examining complaints about ineffectiveness of investigation, courts are formally precluded from deciding on the matters which could be the subject of further criminal

⁶⁶ *Ibid.* As summarized in 2019 by the Secretariat of the Committee of Ministers of the Council of Europe "full-fledged criminal investigations into complaints of ill-treatment are rarely opened; instead, investigation is often limited to a pre-investigative inquiry. This is partly explained by the fact that instituting criminal proceedings which do not lead to convictions in court has a negative impact on the assessment of investigators' performance by their superiors." CMCE DH 1362nd meeting (December 2019) - Mikheyev group, <https://hudoc.exec.coe.int/eng?i=004-14082>.

⁶⁷ See for example Public Verdict, "The practice of investigating and adjudicating cases of torture and ill-treatment: an analysis of cases handled by Russian human rights organizations", on: <https://publicverdict.org/topics/research/7506.html>

inquiries or proceedings. This means that judges cannot examine questions of fact, assess evidence, or characterise acts alleged in complaints.⁶⁸ The judicial review of complaints is thus mainly formal in nature and does not ensure the right to timely and effective remedies during the pre-trial stage.⁶⁹ Indeed, when considering complaints under Article 125 of the CCP, the judge only checks the formal powers of a law-enforcement officer to take the contested decision, i.e. the formal compliance ('legality') of the latter with the CCP.⁷⁰

58. On 10 February 2009 the Plenary of the Supreme Court adopted the Resolution "On judicial practice of examination of complaints under Article 125 of the CCP". It provides that if a decision contested by an applicant has been quashed by the investigative authorities, then the court shall discontinue the examination of a complaint. The courts and the investigative authorities improperly use this recommendation by swiftly quashing the contested decision in order to discontinue its judicial review on the formal ground (because the decision in question ceases to exist). After the court discontinues the review, the investigator in charge of the case issues a fresh decision not to institute a criminal case, identical to the one previously contested by the victim. This practice essentially forces the applicants to challenge the same decisions on a regular basis.
59. On 28 June 2022, the Resolution was amended. The Supreme Court has stated in particular, that the courts shall nevertheless accept complaints under Article 125 of the CCP for examination on the merits if the contested and subsequently quashed decision had also been quashed earlier and is similar to the previous one. Despite the relevance of the amendments, the professional community is skeptical that their adoption can solve the vicious circle of repeated quashing of the decisions by the investigation bodies and subsequent adopting of entirely similar ones.
60. Another obstacle can be seen in the "countermeasures" which preliminary investigation agencies often take: for example, they do not submit the case-file materials in time for verification; law-enforcement officers also fail to appear when summoned by the court to testify on complaints.⁷¹
61. Statistical reports also suggest the ineffectiveness judicial control over investigation. For instance, in 2019 district courts reviewed 119,775 complaints filed under Article 125 of the CCP, of which only 4.4% were granted.⁷² There is no official data on how many complaints and decisions related to the cases of torture, however, the unproportionally low number of granted complaints is striking.

⁶⁸ Д.А. Печегин, «Решение о прекращении уголовного дела: проблемы обжалования в порядке ст. 125 УПК РФ»

⁶⁹ See, <https://www.advgazeta.ru/mneniya/obzhalovanie-resheniy-organov-sledstviya-problemy-effektivnosti/>

⁷⁰ Д.А. Печегин, «Решение о прекращении уголовного дела: проблемы обжалования в порядке ст. 125 УПК РФ», *op. cit.*

⁷¹ Алексей Саратов, «Обжалование решений органов следствия: проблемы эффективности», *advgazeta.ru*, 2021, *op. cit.*

⁷² *Ibid.*

IV. Prisons in the Ukrainian occupied territories by Russia: a tyrannical system

62. This part of the submission covers the situation of persons held in the penitentiary system on the territories of Ukraine occupied by Russia. The so-called “Luhansk and Donetsk People’s Republics” (“LPR/DPR”) remained under the effective authority, or at the very least the decisive influence, of Russia, and there was a continuous link of responsibility for the prison population’s fate. Prisoners held in facilities in areas not controlled by the government since their takeover in 2014 therefore came within the jurisdiction of the Russian Federation.
63. After the beginning of Russia's military aggression in 2014, 28 penitentiary institutions (with total of 16,200 prisoners) were occupied in Luhansk and Donetsk regions and 4 in Crimea (with total of 3,900 prisoners).⁷³ In February 2022, 12 more penitentiary institutions (with total of 3000 prisoners) fell under the control of the Russian authorities and the affiliated forces of the so-called “LPR/DPR”.⁷⁴

A. A system beyond any form of control

64. The prison system in the the so-called “LPR/DPR” has been operating in isolation since it was taken over by armed groups in 2014. OHCHR reported to be repeatedly denied access to detainees and places of deprivation of liberty, which is reflected in multiple periodic reports.⁷⁵ It expressed major concern as it received multiple credible allegations of torture and ill-treatment. The prison population subjected to inhuman treatment as a result of the permanent psychological pressure of being totally subject to the arbitrariness of the *de facto* authorities, which, according to multiple sources, create a permanent climate of terror in detention, without any form of external control and without any hope of escaping from this hell. A parallel should be drawn with the incommunicado detention, since prisoners live in a permanent state of anxiety owing to uncertainty about their fate. The same situation prevails in the prisons newly occupied by Russian forces.

B. Arbitrary detention, massive use of torture risk of killing

65. The tyrannical regime imposed in LNR/DNR prisons has been widely documented. According to the OHCHR, torture and ill-treatment were “broadly used [...] to extract confessions or information, or to otherwise force detainees to cooperate, as well as for punitive purposes, to humiliate and intimidate, or to extort money and property”.⁷⁶

⁷³<https://library.khpg.org/files/docs/1552984145.pdf>

⁷⁴https://helsinki.org.ua/wp-content/uploads/2022/06/first-review_may_2022.pdf

⁷⁵ See Report on the human rights situation in Ukraine, 1 August 2020 – 31 January 2021, OHCHR. <https://www.ohchr.org/Documents/Countries/UA/31stReportUkraine-en.pdf>, § 47, 16 February – 31 July 2020, OHCHR. https://www.ohchr.org/Documents/Countries/UA/30thReportUkraine_EN.pdf, § 54; 16 Nov 2019 to 15 February 2020 https://www.ohchr.org/Documents/Countries/UA/29thReportUkraine_EN.pdf, § 48; from 16 Aug to 15 Nov 2019 https://www.ohchr.org/Documents/Countries/UA/28thReportUkraine_EN.pdf, § 44, etc.

⁷⁶https://www.ohchr.org/sites/default/files/Documents/Countries/UA/UkraineArbDetTorture_EN.pdf, § 66

66. The OHCHR have documented evidence that similar arbitrary detention, torture, and ill-treatment are used by the Russian authorities in penitentiaries in the territories of Ukraine that were occupied after February 24, 2022.⁷⁷
67. According to the OHCHR, “the arbitrary detention of civilians has become widespread in territory controlled by the Russian armed forces and affiliated armed groups”.⁷⁸ As of May, 248 cases were documented with mostly active or former public officials of local authorities or human rights defenders and civil society activists being the victims. They are held in prisons, usually together with the POWs, on the occupied territories, territories controlled by Russian armed forces and affiliated armed groups or territory of the Russian Federation. Such unlawful confinement of civilians is a grave breach of the Fourth Geneva Convention.⁷⁹
68. Russian forces are allegedly using Colony No. 77 (recently renamed to Colony No. 145) in Berdyansk, which has previously been emptied of prisoners in order to transfer them elsewhere, as an internment facility for Ukrainian citizens, including women, who oppose or are perceived to oppose the occupation regime. The illegally detained non-combatants there are reportedly subjected to torture and ill-treatment, such as the use of electric current, mock execution with a gun, or hitting the fingertips.⁸⁰ According to information collected by a Ukrainian NGO, around one thousand residents of the occupied territories of Zaporizhzhya region, in particular residents of Berdyansk, Melitopol and Primorsk, are held there.⁸¹
69. Ukrainian prisoners of war (POWs), as well as persons hors de combat are held in detention facilities, together with Regular prisoners.⁸² Prisoners of war and civilians held in these institutions are also subsequently escorted to Russian penitentiary institutions,⁸³ where they are subjected to torture.⁸⁴ The detention of Ukrainian prisoners of war and civilians in the

⁷⁷<https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-06-29/2022-06-UkraineArmedAttack-EN.pdf>; See also testimonies of Ukrainian human rights defenders: <https://mipl.org.ua/mipl-vdalosya-vstanoviti-22-lokaci%d1%97-utrimannya-ukra%d1%97nciv/>, <https://mipl.org.ua/misto-teroru-shho-vidbuvayetsya-v-okupovanomu-berdyansku-i-jogo-golovnij-kativni-vipravnij-koloni%D1%97-77/> See also HRW, <https://www.hrw.org/uk/news/2022/08/03/ukraine-torture-disappearances-occupied-south>

⁷⁷<https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-06-29/2022-06-UkraineArmedAttack-EN.pdf>

⁷⁸<https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-06-29/2022-06-UkraineArmedAttack-EN.pdf>, para. 81

⁷⁹Fourth Geneva Convention, Articles 42 and 78

⁸⁰https://ria-m.tv/news/294185/v_berdyanskoy_ispravitelnoy_kolonii_orki_obustroili_poligon_dlya_zverstv.html?fbclid=IwAR0_OrXZIAamjoelm_YxBE-3DZChjJu6LmEzYvxlQcbfpgw1u6LHPLfqbpQ

⁸¹<https://mipl.org.ua/misto-teroru-shho-vidbuvayetsya-v-okupovanomu-berdyansku-i-jogo-golovnij-kativni-vipravnij-koloni%D1%97-77/>

⁸²<https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-06-29/2022-06-UkraineArmedAttack-EN.pdf>, para. 81

⁸³<https://www.hrw.org/ru/news/2022/07/15/russia-forcible-disappearances-ukrainian-civilians>

⁸⁴<https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-06-29/2022-06-UkraineArmedAttack-EN.pdf>, para. 106

penal colonies and SIZOs on the occupied territories and in the penitentiaries on the territory of the Russian Federation is in violation of the requirements of the Geneva Conventions.⁸⁵

70. On 29 July, 2022, a massive explosion occurred in one of the barracks at the facility in Olenivka colony, killing 53 people and injuring another 75 people.⁸⁶ Since 29 July, no independent organisation, such as the ICRC or the UN, has gained access to the facility to identify the circumstances surrounding the incident.⁸⁷ Despite mutual accusations of shelling of the colony, the Russian side's version that the prisoners were killed as a result of shelling from the Ukrainian side has been repeatedly questioned due to multiple inconsistencies.⁸⁸ In response to the incident, and following requests from both Governments, the UN Secretary General appointed a fact-finding mission⁸⁹ which is shortly set to deploy to Olenivka. The mission "must be able to conduct its work without any interference and have safe, secure and unfettered access to people, places and evidence," said the UN political and peacebuilding chief, Rosemary A. DiCarlo.⁹⁰
71. Civilians and prisoners of war are not guaranteed the right to a defence and the right to a fair trial.⁹¹ On the territory of the so-called "DPR", prisoners of war are sentenced to death.⁹² In the so-called "LPR", an introduction of death penalty is being discussed.⁹³ On June 16 and 30, the ECtHR has indicated urgent measures to the Russian Government with regard to POWs, Brahim Saadoune, a Moroccan citizen,⁹⁴ and Shaun Pinner and Aiden Aslin, two British citizens,⁹⁵ who joined the Ukrainian Forces and were subsequently captured by the Russian forces in mariupol and were transferred to the territory controlled by the so-called "DPR". The ECtHR has indicated urgent measures to the Government of Russia with regard to their rights under Articles 2 and 3, as the "court" of the so-called "DPR" has sentenced them to death penalty.
72. Reliable sources reported that Russian soldiers who refused to take part in the war against Ukraine are imprisoned in the colonies on the territories controlled by the forces affiliated to

⁸⁵<https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-06-29/2022-06-UkraineArmedAttack-EN.pdf>, para. 108

⁸⁶<https://www.bbc.com/russian/news-62344091>

⁸⁷<https://euromaidanpress.com/2022/07/31/murder-of-ukrainian-pows-in-olenivka-prison-everything-we-know/>

⁸⁸<https://www.bbc.com/russian/features-62771151>

⁸⁹<https://ukraine.un.org/en/196034-note-correspondents-secretary-general-appoints-members-fact-finding-mission-regarding>

⁹⁰<https://news.un.org/en/story/2022/09/1126191>

⁹¹<https://mipl.org.ua/y-razi-zatrimannya-zaxist-ne-garantuyetsya-yak-pracyuyut-advokati-na-okupovanix-teritoriyax/>

⁹²<https://mipl.org.ua/zvernennya-koalici%d1%97-ukra%d1%97na-5-ranku-do-mizhnarodno%d1%97-spilnoti-shhodo-pozasudovix-strat-vijskovopolonenix/>

⁹³<https://iz.ru/1350456/2022-06-16/v-lnr-obsudiat-vvedenie-smertnoi-kazni>

⁹⁴<https://hudoc.echr.coe.int/eng-press?i=003-7361906-10058158>

⁹⁵<https://hudoc.echr.coe.int/eng-press?i=003-7374152-10078472>

the Russian Federation in Luhansk region.⁹⁶ They are allegedly held in poor conditions⁹⁷ and subjected to torture and psychological pressure.⁹⁸

C. Endangerment of prisoners' lives as a result of fighting

73. Colonies in the occupied territories of Ukraine and near the war zone are regularly subjected to shelling from the Russian armed forces. Thus, according to the information of the Penitentiary Service of Ukraine, as of July 17, 2022, 23 institutions were shelled in the territory controlled by Ukraine.⁹⁹ Around 30 penal institutions that are located in the war zone were damaged during shelling.¹⁰⁰
74. According to reliable sources, in the colonies on the occupied territories, the Russian military deploy headquarters and military equipment.¹⁰¹ Such activities endanger the lives of detainees and other persons currently held in penitentiaries on the occupied territories, which is contrary to the interim measures indicated by the ECtHR on March 1, 2022, to the Russian Government in case Ukraine v. Russia (X) (Application number 11055/22).¹⁰²

On the basis of this report, we invite the Committee within the framework of consideration of the eight periodic report of the Russian Federation to highlight the following aspects:

1. to note that the Russian prison system is faced with endemic use of torture, requiring a coherent and forceful programme to eliminate the factors of institutional violence and to fight impunity
2. to stress that any strategy to combat violence in prisons must be developed in close consultation with civil society
3. to note the adoption on 29 April 2021 of a new Concept for reforming the penitentiary system until 2030, and to share the concerns expressed by the human rights defenders about the absence of measures to (i) stop the use of detainees for the maintenance of internal order and (ii) to strip of the FSIN of its investigative powers
4. to note with concern the introduction in the Concept 2030 of expanded provisions on the use of prison labor, in the absence of any statutory and procedural guarantees for the prisoners
5. to take into account the recent amendments to the Criminal Code related to the criminalization of torture, but to note, with regret, that torture was not criminalized as separate offence, not subject to the statute of limitations

⁹⁶<https://www.pravda.com.ua/news/2022/07/26/7360357/>, <https://meduza.io/news/2022/07/26/14-rossiyskih-soldat-otkazavshih-sya-voevat-pomestili-v-koloniyu-v-luganskoy-oblasti>

⁹⁷<https://www.currenttime.tv/a/31952005.html>

⁹⁸<https://www.dw.com/ru/otkazavshiesya-voevat-rossijskie-soldaty-rasskazali-ob-usloviyah-soderzhaniya-pod-strazhej/a-62580648>

⁹⁹From the response of the Penitentiary Service of Ukraine from 12.07.2022.

¹⁰⁰<https://suspilne.media/248487-blizko-30-misc-nesvobodi-buli-poskodzeni-pid-cas-obstriliv-zvit-pravozahisnikiv/>

¹⁰¹<https://hromadske.radio/news/2022/05/27/na-khersonshchyni-rosiys-ki-okupanty-poselylys-u-kolonii-rozvidka>

¹⁰²<https://hudoc.echr.coe.int/eng-press?i=003-7272764-9905947>

6. to emphasize, that the proper criminalization of torture is an essential step in terms of both punishment and deterrence for this atrocity, as well as for the implementation of measures (investigative, procedural, statistical, infrastructural, etc.) aimed at combating and preventing the acts tortures
7. to take note of the amended recommendations of the Supreme Court concerning the judicial review of the decisions of investigators, and to ask the authorities to provide the jurisprudence on the application of the recommendations

Concerning the situation in prisons on Ukrainian territory under occupation:

8. to make a clear statement about a massive use of torture by the State agents, at their instigation and /or under their direct control in remand prisons and correctional facilities on these territories

We further ask Human Rights Committee to call on the Russian Federation to implement the following recommendations:

1. to supplement the Criminal Code with a provision criminalizing and prohibiting torture as a separate criminal offence
2. to ensure that the definition of torture is in full compliance with the UN Convention against Torture, and that there are no statute of limitation for that crime
3. to ensure independence and impartiality of the PMCs and to assist them in the effective exercise of their activities
4. to ensure that all video recordings made on the territory of the penitentiary institutions are stored on independent servers which excludes any possibility of tampering with them
5. to provide that appointments to management positions within the FSIN should be preceded by a transparent procedure aimed at ensuring the integrity of the candidates
6. to place prison medical service under the authority of the Ministry of Health
7. to ensure that medical examinations are confidential, and that they are recorded and conducted in accordance with the Istanbul Protocol in cases of allegations of torture
8. to set up a special agency for investigating crimes committed by the law-enforcement officials and to provide it with the necessary resources (or, at least, to strengthen the relevant subdivisions of the Investigative Committee)
9. to ensure that investigators immediately open formal criminal investigations in relation to all allegations of torture and ill-treatment
10. to develop methodological guidelines on investigation into allegations of torture and ill-treatment
11. to ensure effective judicial review of investigation under Article 125 of the CCP, in particular:
 - (i) by giving the courts the power to verify investigators' compliance with the methodological guidelines and to issue binding decisions to remedy the shortcomings of the investigation identified by the courts
 - (ii) by extending the framework of judicial review under Article 125 of the CCP in order to enable a comprehensive assessment of the effectiveness of investigation in contrast to the current approach when the courts limit themselves to the examination of single investigator's decision and only to its formal aspects

12. to ensure investigators' responsibility (criminal and disciplinary) for the breaches of the law during the pre-trial proceedings, in particular, for deliberately taking unlawful procedural decisions and their untimely revocation
13. to give the firmest message of zero tolerance of torture, and to ensure that its perpetrators, including public officials, be criminally prosecuted

Concerning the situation in prisons on Ukrainian territory under occupation:

14. immediately cease the use of any form of torture and cruel, inhuman or degrading treatment or punishment against any person detained
15. to prevent execution and to suppress the practice of death sentencing of prisoners of war, civilians, and any other individuals detained by the Russian authorities and by the forces of the so-called "LPR/DPR"
16. to ensure safety and security of persons in the area of active military hostilities including by taking all necessary measures to ensure that prisons and colonies where detainees are being held are not targeted or exposed to shelling or bombardment
17. to ensure that prisoners of war are not interned in remand prisons or penitentiaries
18. to provide the utmost assistance and to allow free unobstructed access to places of detention on the occupied territories to the international independent monitoring bodies including the National Preventing Mechanism of Ukraine, the UN Human Rights Monitoring Mission in Ukraine, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the International Committee of the Red Cross.

Respectfully,
European Prison Litigation Network
12 September 2022