

RUSSIAN FEDERATION

NGO REPORT

On the implementation of the ICCPR (prior to the adoption of the List of issues)

Russian Research Center for Human Rights

Moscow- December 2008

With the support of :



**SIXTH PERIODIC REPORT OF THE RUSSIAN FEDERATION
ON ACTION TAKEN AND PROGRESS TOWARDS RESPECT FOR THE RIGHTS SET FORTH
IN THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

RUSSIAN FEDERATION

[29 December 2007]

COMMENTARIES AND QUESTIONS

prepared by members of the Russian Research Center for Human Rights

1. UN Human Rights Committee's 'Concluding observations' on Russia's report on observing International Covenant on Civil and Political Rights in 1993-2003.

B. Positive factors

6. The Committee welcomes the Federal Constitutional Law No. 1 of 26 January 1997, which creates the institution and sets out the functions and responsibilities of the Federal Commissioner for Human Rights

In a number of regions of Russia commissioners on human rights (ombudsmen) do not exist until now. Some Governors are opposing this institution.

7. The Committee welcomes the notable achievements in addressing the problem of overcrowding in prisons through increasing resort to alternative forms of punishment, amnesties and reduced use of pre-trial detention.

Prison population continues to grow, both in investigation isolators, and in penal institutions for convicted persons. No actual increase in the use of alternatives to prisons before or after trial is registered. Just opposite – as officially reported in October 2008 90% of juveniles detained in pre-trial centers were those charged for robbery of a mobile phone.

The only amnesty taken place for the reporting period was that devoted to the 60th Victory in the Great Patriotic War and released were less than 300 prisoners.

C. Principal subjects of concern and recommendations

...

11. ... The Committee also notes that the State party envisages legislation to abolish the death penalty. ... The State party should abolish the death penalty de jure before the expiration of the moratorium (article 6) and accede to the Second Optional Protocol.

Death penalty in Russia de jure is not abolished until now, the SOP has not been signed. Judging by the great number and the way how the criminal news are reported by mass media, the atmosphere is created to end of moratorium and restore the death penalty. (On each Moscow commuter trains every day records are played a call to the public to be careful because the “criminal situation has worsened”)

12. While the Committee notes that a number of measures have been taken to prevent the use of excessive force and torture ...

- The State party should ensure that law enforcement officials are prosecuted for acts ...

To request the RF representative to report on the number and results of actual prosecutions for such acts...

.... through further professional training of law enforcement personnel on the rights of suspects and detainees.

To request for the curriculum - number of hours devoted to human rights

15. The Committee welcomes the marked improvement registered since the consideration of the previous report with regard to overcrowding in prisons and the scheduled further reduction of the number of prisoners by more than 150,000.

The reduction was noted during one year and starting from 2004 until now the prison population keeps growing:

763115 persons – 2004

823451 – 2005

871693 – 2006

891738 – 2008, 1 November

So, the growth made up around 130,000 for 4 years.

Albeit, it was not clear whether all serious overcrowding in all places of detention had been resolved.

”As to pre-trial detention centers, for now 12 more regions remain problematic, among those particularly can be noted republic Sakha-Yakutia, Novosibirskaya and Sverdlovskay region and Krasnodarski krai., “where for today, unfortunately, there is lack of space”, says Head of the Department of Investigation Isolators and prisons of Correctional Service of Russia on 30 October 2008.

It is worth to request for the atual space per a person in the worst isolators.

- The State party should continue and reinforce efforts to reform the prison system to meet the requirements of article 10 of the Covenant. The State party should ensure that the problem of overcrowding is completely eliminated and that prisoners' complaints concerning violations of their rights are promptly and thoroughly investigated. Moreover, the Committee encourages the adoption of the draft federal law "On public control over ensuring human rights in places of forced detention and assistance of public associations in their activities", adopted in first reading by the State Duma in September 2003, which would allow for independent oversight of prison conditions.

Only in 2008 the President clearly said that the system needs a reform. A number of ministries were ordered to develop measures to reduce prison population. Some efforts are felt, but have not yet brought fruits.

Violence is the basis of the system functioning and cannot be eliminated because the system is closed by its very nature: generally neither prison administration, nor prisoners want openness and reforms. The active part of prisoners are small and divided in two parts: loyal and used by administration and those opposing the administration (hard core). Between those are common prisoners, not active. All part are interested in preserving status quo. No “civil society” in prison. Complaints are not popular. The system of complaints does not work. Those complaining can find themselves under pressure from any group, or administration can agree with any of the active groups to pressurize a prisoner who complains. Etc.

The newly established Public monitoring commissions are not able to make any change since it is very deeply rooted. And the commissions cannot investigate the complaints that are under the competence of prosecutors. But the latter, along with prison governors, belong to the same regional elite and need to behave themselves.

Actually the law on alternative service doesn't work, since during 2008 not more than 20 persons exercised the right for the alternative service:

-the period of the service wasn't reduced

-mostly people are sent to the areas without infrastructure and have to live in extremely poor conditions
- people who are willing to choose an alternative service should prove the right for it . The only reason is declared as pacifist and religious views, which people should argue somehow. In practice it's hardly possible to be done.

26. The State party should disseminate widely the text of its fifth periodic report and the present concluding observations. In accordance with article 70, paragraph 5, of the Committee's rules of procedure, the State party should provide within one year relevant information on the implementation of the Committee's recommendations in paragraphs 11 and 13 above.

Neither the text of the fifth periodic report nor the concluding observations or any information on the implementation of the Committee's recommendations were published or discussed in the majority of the official public papers.

Comments on the Sixth report regarding articles 7, 9 and 10 of the Covenant

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Comment

With the purpose of torture or cruel, inhuman or degrading treatment or punishment prevention and in accordance with the Russian law «On psychiatric care and citizens' rights guarantees by its rendering» (1993), special Service on in-patients' rights protection (article 38) should have been organized, but up to now it doesn't exist.

Art. 9

Para 90. In accordance with article 9, paragraphs 2 and 3, of the Covenant, the new Code of Criminal Procedure stipulates the judicial procedure...

Comment

The judicial procedure for decisions on imposing detention in custody soon after introduction made rather radical impact on reduction of pre-trial prison population, but very soon it became a formal mechanism on "stamping" of applications of prosecutors and investigators about detention in custody. The decrease gained disappeared as fast.

"Achievements" by October 2008:

According to Valery Telyukh, Head of the Department of Investigation Isolators and prisons of Correctional Service of Russia, "out of 4600 juveniles detained in investigation isolators (SIZO), were placed their for stealing mobile phones" (ITAR-TASS). "Unfortunately, great number of persons come to custody from the courts charged for the crime of small and average gravity for which they can receive sentences of one, maximum two year of imprisonment, or even conditional imprisonment" (Telyukh)

According to paragraph 4 of the Conenant, anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

Comment

Nevertheless the European Court`s on Human Rights recommendations (Tamara Rakevich against Russia, 2003), a person, being set to residential psychiatric facility against the will is up to date deprived of the right for effective legal protection, since it has no right to petition the court on his own authority.

Article 10

Response to paragraph 15 of the concluding observations of the Human Rights Committee on the fifth periodic report of the Russian Federation

93. Improvements in detention conditions for persons suspected or accused of offences, or already convicted, are effected

Comment

Isolators for temporary detention under the Ministry of Internal Affairs, according to quite a number of juvenile prisoners held in juvenile colonies questioned in the period of 2004-2005 did not meet the standards of normality: no regular food provision, no linen, no physical exersice in the yards.

94. The Procurator-General's Office conducts systematic checks on compliance with the law by the staff of institutions and other bodies of the penal correction system. ...

Comments

The Prosecutor's Office is of course a permanent "enemy" in the eyes of prison staff. But prisons have found an antidote, because most of all the prison system is afraid of the Public – the draftlaw about public control has broken a way for 10 years.

About effectiveness of the prosecutors' control better speak numerous complaints of prisoners at pure formal (superficial) way they conduct inspections of prisons.

94....Law enforcement personnel who are guilty of breaching the rights of detainees and convicted persons are disciplined.

Comment

To request to provide details on the number of those disciplined and what kind of punishments these were.

95. The Russian Federal Penal Correction Service is taking steps to strengthen due process of law in penal institutions...

Questions.

1) What measures have been taken and are planned?

2) What are the indicators that the "due process of law in penal insitutions" will be accessed?

3) 3.7 square meters per a person is an average indicator that does reflect a full reality. What is the span?

98. Under Federal Act No. 9 of 5 February 2007 on the Termination of Article 33, Part 2, Paragraph 2 (vi), of the Federal Act on the Pretrial Detention of Suspects and Accused Persons,

...

Comment

If a person of other culture and other language is placed in the environment where other culture and language dominate, then the danger of discrimatioin is obvious. Wouldn't this law create one vulnerable group of prioners in Russia.

100. Pursuant to Federal Act No. 91 of 6 June 2007 on Amendments to Articles 103 and 141 of the Penal Enforcement Code of the Russian Federation

Comment.

Although the Correctional Service has stated many times the opposite, as of December 2008 the practice is still in place that prisoners released from juvenile colonies have their certificates about education, professional education and their work record cards stamped clearly indicating the the Correctional Service institution as a place of issue. The Moscow Center for Prison Reform has recently resistered a case that a young ex-prisoner (girl) was fired from their job because the employer had seen such a stamp. At the time of the current crisis and layoffs, this is an additional negative factor for successful reentry of released prisoner

101. Public monitoring of institutions and establishments of the penal correction system is being extended.....

Comment

However (a) ombudsman can be hardly considered “a representative of the public” and (b) this position exists not in all the regions of Russia.

105. The handling by institutions and establishments of the penal correction system of communications from suspects, accused and convicted persons,...

Comment.

See above a passage about complaints.

106. With a view to implementing administrative reform, Presidential Decree No. 359 of 16 March 2007 on amendments to certain legislative acts...

Comment

Since then the number of those pardoned has not changed, that is practically is equal to zero – as well as during the previous several years.

108. The results of the reform of the penal correction system were highly commended by the European Committee for the Prevention of Torture...

Comments

1) The “definite progress” noted by the CPT as mentioned in the report can be hardly interpreted as “highly commending” of the results of the reform achieved by Russia. To say this means to try to pass the desirable for reality. The results were achieved in improvement of *material* conditions which was the easiest due to the oil highrocketing prices that time. At the same time, that was an excuse and a reason to treat prisoners harsher and for some staff – to hate them.

2) The statement that “no complaints were received from prisoners” is by itself alarming – it can speak about anything including taking “appropriate preventive” measures to block attempts for such complaints (the technics are easy and elaborated during decades).

3) As to the situation in different institutions, in the same period quite a number of disturbance and protest actions of prisoners against forcible joining so called “active organizations of prisoners” took place (info in Rus can be found on <http://www.prison.org/penal/protest.shtml> . Actually, in these few years a number of colonies became a battlefield that prison administrations are trying to take full control over the prisons. It is felt that suppression of hard core criminals and their “order” is a priority for the Main Administration of the Correctional Service.

109. As for the inspection of penal establishments by representatives of other international bodies, these are carried out in accordance with the norms of international law, ...

Comments

So, it sounds like Russia wants to demonstrate non-existing openness of penal institutions at the same time trying to excuse not allowing access for international organizations except CPT to free talks with prisoners.

It would be good to hear the examples – what international bodies and organizations excluding CPT have “inspected” penal institutions, dates, and where their reports can be found.

Also one can ask what is the document that defines the order of conducting talks with prisoners so that to see to what extent the aims of inspection can be reached under such order by any organizations except CPT.

110. The specific conditions for visits to remand centres and correctional institutions by representatives of Russian civil society organizations are set out...

Comments

The Law came into force on the 1st September, but the monitoring commissions have been formed only in 51 regions out of 83, with about 360 monitors totally.

The fact is that among those there is a great number (if not a majority) of representatives of organizations that have nothing to do with prisoners' rights, never visited a prison, no idea of international human rights standards in places of detention. So, at the moment the most of the commissions are not competent.

The Public Chamber has more than once announced that the commissions have already started working, but not all the ministries have worked out special regulations for monitors' visits.