

**Russian NGO Shadow Report  
on the Observance of the Convention against  
Torture and Other Cruel, Inhuman or Degrading  
Treatment or Punishment by the Russian  
Federation for the period from 2012 to 2018**

**June, Moscow 2018**

This Joint Report on the Observance of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Russian Federation for the period from 2012 to 2018 was prepared jointly by the leading Russian NGOs, including: Public Verdict Foundation, Civic Assistance Committee, Memorial Human Rights Center, OVD-info, Soldiers' Mothers of Saint Petersburg, Independent Psychiatric Association, Human Rights Institute, Stichting Justice Initiative, STAKS Expert and Legal Group, Psychologists for civil society, Citizens Commission on Human Rights in Russia, Urals Human Rights Group, Legal Basis Association, Interregional Center of Human Rights, Memorial Anti-Discrimination Center, Social Partnership Foundation, Russia behind the bars, the Foundation "In defense of the rights of prisoners", Movement for Human Rights and experts: Natalya Lutaya, former member of Kaliningrad Public Oversight Commission and Lyudmila Alpern, former member of Moscow Public Oversight Commission.

The Public Verdict Foundation was responsible for coordination of work over the Report, systematizing and editing the Report materials.

This Report is submitted to the UN Committee against Torture within the framework of its examination of the Russia's Sixth Periodic Report on implementation of the Convention against Torture. The Report is aimed at comprehensively tackling the issues of observing in Russia the rights enshrined in the Convention and at drawing the Committee experts' attention to the most burning problems in the sphere of these rights realization, which have not been reflected in the Russian Federation Report.

When working on the Report we did not strive to refute the official information and to confront the Russian Federation's official position. Our task was to present to the Committee's experts information both about measures taken and progress reached in prevention of torture and protection of torture survivors and about remained or appeared during the reporting period problems with implementation of the Convention provisions.

Composition of the Report follows the List of issues prior to the submission of the Sixth periodic report of the Russian Federation. Each section of the Report elaborates on one of the issues posed by the Committee.

While preparing the Report we used information provided by a whole number of Russian human rights nongovernmental organizations, supervising public commissions of certain regions, data published by state bodies as well as mass media publications. Relevant references to sources of information are given in the text.

## Resume

1. The Russian Code of Administrative Offenses grants detainees in administrative proceedings the right to access a lawyer from the moment administrative proceedings are instituted against them. However, no legal aid provisions exist to guarantee low-income individuals access to a qualified lawyer in administrative proceedings. Generally, the Code of Administrative Offenses does not require law enforcement officers to ensure presence of a defense lawyer in administrative proceedings. The only safeguard of access to a lawyer in administrative proceedings is the detainee's right to request officials to notify their lawyer of the detention pursuant to article 27.3 (3) of the Code of Administrative Offences. In practice, however, law enforcement officials can refuse to grant the detainee access to a lawyer. Furthermore, they can deny the lawyer access to a detainee.

2. In terms of access to a lawyer, Russian law provides better guarantees to detained criminal suspects than to administrative detainees. In particular, pursuant to article 50 (4) of the Code of Criminal Procedure (CCP), if a suspect or accused individual does not ensure the presence of a lawyer of their choice within 24 hours of detention, the inquiry officer or investigator must appoint an ex-officio lawyer for them. In this case, the lawyer's services are paid for by the state. In practice, law enforcement officers do not always allow detainees to contact a lawyer and may deny the lawyer hired by the detainee or their family access to the client.

3. In appointing an ex-officio lawyer, the investigator is guided by his/her own agenda of investigating the case rather than by the detainee's needs. According to article 75 of the CCP, statements made by suspects and accused persons are considered admissible only if made in the presence of a lawyer. Therefore, investigators are interested in having a lawyer appointed by the time of their first official interview with the detainee. However, pursuant to article 49 (2) of the CCP, the investigator must conduct an official interview within 24 hours of the onset of detention but does not have to do so earlier. Therefore, as noted by the Council of Europe's Committee to Prevent Torture (CPT) in their report on the visit to Russia in 2012, in practice, a lawyer is not present during the first hours of a person's detention but only appears at the official interview carried out by the investigator. Meanwhile, in the first hours after the apprehension, a suspected person can be questioned by operating officers without an official record or lawyer present.

4. Ex-officio lawyers are paid for their services provided at the pre-trial stage based on an order issued by the investigator or inquiry officer which confirms the amount of services provided. In accordance with the Procedure for Calculating Defense Lawyer Remuneration in Criminal Proceedings, approved by the Ministries of Justice and Finance, the investigator or inquiry officer determines the applicable legal fee rate. This arrangement makes it possible for the prosecution to put pressure on the defense lawyer by delaying the issue of a payment order or manipulating the fee.

5. In the period covered by this report, Russian lawmakers added new legal provisions to guarantee the right of detained criminal suspects to notify family members of their detention. In late 2015, articles 43 and 96 of the CCP were amended by provisions which require the investigator to grant the detainee an opportunity to make one phone call within three hours of their detention. Should the detainee fail or refuse to use this right, the investigator must independently notify family members of the detention regardless of the detainee's request.

6. The Regulation Concerning Detention Conditions of Persons Arrested for Administrative Offenses, Dietary Rations and Healthcare of Such Detainees does not require mandatory medical examination of persons detained on administrative charges. As directed by para 6 of this Regulation, should the law enforcement officers find that a detainee needs medical assistance, they may call an ambulance or

medical specialists from state or municipal healthcare facilities. This means that administrative detainees' access to medical care is at the discretion of the law enforcement officers. The treatment of other types of detainees, including those suspected of criminal offenses, is governed by the Regulation Concerning Detention Conditions, Dietary Rations and Healthcare of Persons Detained at Territorial Divisions of the Ministry of Interior. This Regulation does not provide for mandatory medical examination of detainees either. However, it requires that upon the detainee's request, police officers should make arrangement for medical assistance, i.e. call a physician to the detainee, and if necessary, facilitate admission to a hospital. Police officers are also required to notify a prosecutor and the detainee's family within 3 hours of the detainee's death, serious illness or injury. The absence of a requirement to ensure that a medical examination takes place has led to delayed emergency response and fatalities.

7. The Russian CCP provides for the use of recording technology (including video recording) for a detailed and reliable documentation of investigative actions (article 170 (1.1), article 189 (4) of the CCP). Video recording as well as audio recording can be used at the investigator's discretion. The CCP does not establish specific requirements for video recordings, nor does it contain provisions for mandatory video recording of interrogations or, more broadly, of any investigative actions.

8. In 2006, the Ministry of Justice issued Order No. 279 of 4 September 2006 approving the Instruction for the installation of video surveillance technology in penitentiary facilities. The original Instruction did not specify how long video surveillance recordings should be kept. Ministry of Justice Order No. 94 of 17 June 2013 amended the Instruction by a requirement that footage from CCTV cameras should be kept for 30 days. After that, Russia's FSIN (Federal Penitentiary Service) adopted Guidelines on the use of wearable DVRs by duty staff (FSIN letter No. 08-3698 of 3 February 2014). These Guidelines are not available either at FSIN's website or any legal reference database. The Guidelines have not been registered with the Ministry of Justice. Notably, they were introduced by a letter rather than a formal order. Apparently, this means that the Guidelines are non-binding recommendations. Based on these recommendations, footage from wearable DVRs should be kept for 30 days. In practice, there are usually no problems with requesting video recordings, but once requested, the recordings often turn out to be unusable or unavailable. The absence of clear regulatory requirements concerning the safekeeping of video recordings creates risks of their loss or falsification. Cases of tampering with video evidence, its modification or physical destruction have been reported in various parts of Russia.

9. Numerous cases have been documented of police conducting mass round-ups without wearing identification badges. According to Ombudsman Lukin, during the 21 February and 4 March 2014 protests when some 1,000 people were detained, police officers engaged in the round-ups as well as those who admitted the detainees at police divisions were not wearing identification badges.

10. Criminal or administrative proceedings against a perpetrator are often insufficient for protecting the victim from further violence, including that aimed to force her to withdraw the charges. No programs exist in Russia for domestic violence perpetrators, nor does Russian law provide for a measure such as a restraining order to facilitate domestic violence prevention and victim protection. Very often, victims are left without any protection. "Honour killings" are the most brutal and extreme form of violence against women still practiced in the North Caucasus, mainly in Chechnya, Dagestan and Ingushetia.

11. In 2014, the medical branch of the Russian Federal Service on the Execution of Penalties (FSIN) transitioned to a new mode of operation: medical facilities, previously attached to penitentiary colonies, prisons and SIZO to provide medical assistance to suspects, accused and convicted individuals, operating as part of the penitentiary facility and subordinate to its chief were made autonomous and not directly subordinate to the penitentiary facilities and their administrations. This

has been the first step towards ensuring in practice the independence of medical personnel from the administrations of penitentiary facilities.

12. In February 2018, a new regulation came into force establishing the rules for healthcare provision in penitentiary facilities, namely Ministry of Justice Order No. 285 of 28 December 2017 on Approval of the Procedure for the Provision of Medical Assistance to Persons in Detention or in Penitentiary Facilities (effective as of 20 February 2018). The new regulations explicitly require that the penitentiary system should comply with the same standards as medical providers in the community (para 1).

13. The new rules retain a possibility of healthcare provision to inmates both by medical facilities within the penitentiary system and by healthcare providers in the community. Medical facilities within the penitentiary serve as priority providers and can be complemented by civilian medical services if the required type of medical examination or treatment cannot be provided within the penitentiary system. The principle of exhausting the possibilities of the medical facilities within the penitentiary system means that prisoners can access medical services from independent medical personnel only if the penitentiary cannot provide the required services. In practice, prisoners still face serious barriers to accessing adequate and timely medical assistance.

14. In cases of prisoners reporting abuse by cellmates, the only protection available in practice is to transfer the victim to a locked room or a punishment cell, subjecting them to additional isolation and tougher detention conditions. The design of Russian penitentiary facilities today does not provide for any spaces other than isolation or punishment cells to be used as safe places for victims of abuse. It is noteworthy that the Concept and Program for Prison Reform for the period before 2025 provide for reconstruction and refurbishment of old facilities and construction of new ones but do not prescribe creating separate living premises or security blocks as safe places for prisoners abused by cellmates.

15. Human rights organizations and POCs have been receiving complaints from prisoners and their families alleging torture, beatings, physical and sexual abuse by the so-called "activists" with tacit approval from the colony administration. Later, many prisoners were pressured into withdrawing their complaints, and those who did not refused to participate in the investigation (investigators do not conduct informal interviews), so the needed investigative steps with their participation were not performed and the criminal proceedings were dropped for lack of evidence.

16. Human rights organizations have documented abductions of foreign nationals with the purpose of their illegal extradition to third countries. Cases have been documented in which individuals were effectively extradited to a third party under an expulsion procedure which is easier and faster than extradition to apply based on a court finding of an administrative offense committed by a foreigner. As opposed to individuals subjected to extradition who are entitled to legal safeguards against torture, no such protections exist for those facing expulsion. Following the court ruling, they are placed in a temporary detention center for foreigners and then deported, in most cases despite the fact that their deportation is illegal while their asylum application is pending.

17. At its 37th Session in November 2006, the UN CAT noted in regard of the situation in Russia, "the widespread and broad use of administrative expulsion according to article c18.8 of the Code of Administrative Offences for minor violations of immigration rules." The Committee recommended: "The State party should further clarify the violations of immigration rules which may result in administrative expulsion and establish clear procedures to ensure they are implemented fairly." This recommendation, however, has not been implemented to date.

18. People held in SUVSIGs (Special Facilities for Temporary Detention of Foreigners) have been subjected to prohibited treatment. Human rights defenders and POC members have documented

several cases of mass beatings. Ministry of Internal Affairs and staff from private security companies that provide security at STIDFNs on a permanent basis also frequently and illegally employ penalties and corporal punishments that are not specified in any regulations against detainees who they believe to be “violators of the regime.” These punishments include confinement in a punishment cell, solitary confinement, or the so-called “glass,” handcuffing, and beating with nightsticks.

19. In *Kim v. Russia*, the ECtHR found the conditions of detention at a SUVSIG amounting to inhuman and degrading treatment. The ECHR required Russia to adopt general measures to improve the situation in SUVSIGs. These measures should include amendments to laws that would establish review of lawfulness and the terms of confinement in a SUVSIG and would prevent stateless persons from repeated detentions and being placed there (i.e. an effective procedure must be created for legalizing stateless persons, including former Soviet citizens, who have not been able to obtain legal status for decades).

20. On 23 May 2017, the Russian Constitutional Court ruled on a complaint filed by N.G. Mskhiladze, a stateless person. The ruling prescribes changing the practice of detaining stateless persons in SUVSIGs. The Constitutional Court found unconstitutional articles 31.7 and 31.9 of the Code of Administrative Offenses and held that detaining an individual in a SUVSIG is unlawful if no real possibility exists to carry out the decision on their expulsion, since there is no country they could be expelled to. The Constitutional Court prescribed that the Code of Administrative Offenses should be promptly amended to ensure effective judicial oversight over the duration of detention of persons in SUVSIGs pending expulsion. In addition to this, the Constitutional Court stated that pending this amendment, stateless persons having spent three months in a SUVSIG must be allowed to request a court to check the legality and validity of their further detention in the SUVSIG.

21. The formation of the new composition of the Public Oversight Commissions implies not election, but appointment of the candidates selected by public organizations. The law gives to the Public chamber the function of examining candidates, not evaluating them. The regulations of the Public chamber (item 6 of Art. 62) determines exhaustive grounds which allow to reject the candidate. In October of 2017 the Council of the Public chamber formed the POC in 42 regions of Russia. 635 people were appointed to the POC and 487 candidates were rejected. The Council of the Public chamber of the Russian Federation appointed new composition of the commissions across the country: former employees of the Federal penitentiary service, Prosecutor's office, police, people with no experience of human rights work that directly violates the requirements laid down in the law to candidates to the POC (art. 12).

22. In 2014, the Russian CCP was amended to further extend investigators' powers in the context of crime report verification. Article 144, part 1, of the Code of Criminal Procedure allows the investigator "*to obtain explanations and samples for comparative study, request and obtain documents and items, seize them in the manner prescribed by this Code, appoint a forensic examination, participate in such examinations and obtain expert opinions within a reasonable timeline, inspect the scene, documents, items and corpses, conduct examinations, request documentary checks, audits, inspections of documents, items and corpses, involve experts in such inspections, and issue binding written orders to the inquiry body to conduct operational search activities.*" Thus, investigators' extended powers are not matched by corresponding rights of victims, including victims of torture. At the crime report verification stage, affected individuals do not enjoy the official status in the proceedings which means that they are denied any rights normally granted to victims in a criminal investigation. The investigator, however, can appoint forensic examinations at the verification stage. It is a widespread practice to appoint forensic examinations without notifying the victims and thus deny them any opportunity to inquire about the decision to appoint such an examination, any questions asked of the expert, any findings from the examination, any decisions to conduct another examination, etc. Rather than increase the level of protection granted to citizens, the

new regulations concerning the crime verification stage have the opposite effect of limiting victims' access to the investigation.

23. Other serious consequences are associated with the increasingly common practice of "shifting" the bulk of the investigation to the informal stage. As stated above, many quasi-investigative actions are carried out in the period between the registration of a crime report and the official opening of the criminal case. After the inquiry stage was formalized in 2014, many de-facto investigative actions began to be shifted even further from the preliminary (formal) investigation stage to an earlier stage of operational activities. For example, a search may be conducted under the guise of an examination and an interrogation under the guise of an interview. While this problem existed before, currently the tendency towards conducting investigative actions outside the formal proceedings regulated by the CCP has increased. One of the reasons is that due to excessive procedural supervision from the Investigative Committee and the prosecutor's office over preliminary investigation, many investigators wish to avoid potential sanctions. Paradoxically, the regulation of the inquiry stage undertaken to increase supervision over investigators has led to an opposite effect.

24. A unit for investigation of especially important cases that have been brought before the ECtHR has been established in the Investigative Department of the Chechen Republic. The unit was entrusted with investigating inter alia those events on which the ECtHR has made a pronouncement. The investigators of that unit usually notified victims that the investigation had been resumed and provided them with information about the course of the relevant investigation. However, no effective investigation was in fact carried out. Investigators undertook several formal investigative steps such as sending out new inquiries to various law enforcement authorities, or new questioning of victims and their relatives. Investigators avoided conducting investigative actions involving members of law enforcement authorities who may have been involved in the commission of the crime. After that investigations were once again suspended. We are not aware of a single case investigated by that unit that has advanced to a trial stage. The quality of investigations in cases of enforced disappearances demonstrates that such investigations are mere imitations, and not real investigative work intended to solve the crimes. Human rights organisations are not aware of a single case where officials bore disciplinary responsibility for deficiencies in investigating torture and ill-treatment complaints, or for the refusal to cooperate with such investigations.

25. Against the background of systemic oppression of independent civic activism that has been ongoing across Russia since 2012, in the North Caucasus in 2014-2018 the situation facing human rights activists, lawyers working with them, and journalists covering human rights related issues has visibly worsened. As in other regions of the country, the Ministry of Justice has put human rights organizations working in the North Caucasus on the list of non-governmental organizations performing functions of foreign agents. In particular, the Human Rights Centre "Memorial", the Kadardino-Balkar Republican Human Rights Centre, the Human Rights Centre of the Chechen Republic, the autonomous non-governmental organization "Human Rights Organization "MASHR", the Civic Assistance Committee, the Inter-regional Public Foundation for Peace in the South and in North Caucasus, the Information Agency "Memo.ru" were put on the "foreign agents list".

26. In 2012-2018, the authorities initiated criminal cases on false charges against two human rights defenders and one journalist covering human rights issues. On numerous occasions "unknown persons" attacked human rights defenders, journalists working with them, and lawyers; some of them were severely injured. Offices of human rights organizations were subject to attacks, acts of vandalism, and arsons. There are serious grounds to believe that in 2014 an activist and journalist doing human rights work was killed. In 2018, a systemic attack aiming to push Human Rights Centre "Memorial" out of the North Caucasus has started. On 9 January 2018, Oyub Titiyev, the head of Human Rights Centre "Memorial" branch in Grozniy, was arrested on false charges and accused of illicit purchase and storage of drugs in large quantities. Mr. Titiyev officially stated that the drugs had

been planted by police officers. He was placed in detention. During the night of 17 January 2018, the office of Human Rights Centre "Memorial" Ingushetia branch in Nazran was set on fire.

27. The investigation into the abduction and killing of Natalia Estemirova – the key staff member of the Human Rights Centre "Memorial" – falls short of both domestic requirements of comprehensiveness and completeness of investigation, and international standards of effective investigation. Ms. Estemirova was abducted on 15 June 2009 in Grozniy (Chechen Republic), taken to Ingushetia, and killed on the same day. The crime remains unsolved; no one has been brought to justice. The investigation did not undertake all the measures to inquire into the circumstances of Natalia Estemirova's abduction and killing. They allowed deficiencies that are both unexplainable and irreversible, such as a 24-hour delay in examining the crime scene and failure to conduct essential expert examinations. Specifically, the investigation did not collect biological samples from areas of injuries on Ms. Estamirova's body, which could allow to identify the attackers' DNA; they did not check the hard surfaces of the car for DNA or fingerprints; did not examine elements of plants found on the bottom of the car, and did not take measures to preserve those elements.

28. On 17 and 18 December 2016, a group of young men carried out an armed attack on police officers. Some of the police officers, and the attackers were killed. According to some reports, in December 2016–January 2017, over 200 persons were arrested in Grozniy, Kurchaloy District, and Shali District. On 10 July 2017, Novaya Gazeta (hereinafter—"NG") in its article "It was an execution" published a list of 27 persons who had been arrested and had then disappeared. According to the newspaper's sources in law enforcement agencies, during the night of 25-26 January 2017 those arrested were arbitrarily executed in Grozniy by officers of the Ministry of Interior of Chechnya.

29. While the new administrative procedure for appealing against inadequate conditions of detention is in place, it fails to resolve the situation where the satisfaction of an individual's (detainee's) claim for compensation depends on the finding under a different procedure that the relevant authorities' actions/inaction have been proven unlawful. Although the burden of proof has been shifted to the authority whose actions are challenged, the conditions of detention will be found inadequate only if the actions of such authority are proven unlawful. In addition to this, the procedure under the CAP does not permit simultaneous examination of complaints about the conditions of detention and related claims for compensation.

30. The Action Plan, submitted by Russian government to Committee of Ministers of Council of Europe under its supervision procedure, provides information on the new Draft Law on Amending Certain Legislative Acts of the Russian Federation Regarding the Improvement of the Compensatory Remedy Against Violations Associated with Failure to Ensure Proper Conditions of Detention in Detention Facilities. We welcome these legislative developments and hope that they can support Russia's progress towards a full implementation of all measures aimed at addressing the structural problems indicated in the Court's pilot judgment, such as lifting the requirement of proving the unlawfulness of authorities' actions and allowing simultaneous examination of complaints about inadequate conditions of detention and claims for compensation.

31. Although voluntary surrender procedure is not accompanied by safeguards against pressure and torture, voluntary surrender is traditionally regarded by courts as evidence. On 29 November 2016, the Plenum of the Supreme Court of the Russian Federation delivered an advisory opinion No. 55 "On trial judgment"; it indicated that courts should verify whether upon receipt of a voluntary surrender the person surrendering was informed of the right not incriminate oneself, right to a counsel, right to appeal against actions and decisions of law enforcement agencies, and whether there existed a practical possibility to make use of those rights. If courts would consistently implement this ruling, the level of protection against torture may raise. Currently, as evidenced by the analysis of publicly available trial court judgments and judgments issued pursuant to regular and causational appeals



against trial court judgments, in some cases courts verify whether a suspect was informed of his/her rights prior to accepting voluntary surrender, and discard voluntary surrender obtained without notification of the rights. However, currently this is not a uniform practice.

32. In 2009, the Minister of Defense approved Directive No. 205/2862 of 20 December 2009 which lifted the ban on the use of mobile phones in the army, making it possible for servicemen to promptly report hazing and torture. However, in recent years, there has been a clear tendency to restrict the use of mobile phones in the armed forces. According to the Armed Forces General HQ Instruction No. 317/5/33Sh of 20 March 2015, "the use of mobile phones in high-security premises (areas) may lead to disclosure of state secrets." The Ministry of Defense considers banning smartphones in military units, and this can cause problems with documenting evidence of torture. According to human rights defenders, in many cases, contract servicemen continue to serve following a conviction of using violence against subordinates if sentenced to a fine.

33. Code of Administrative procedure (CAP) has created a new procedure for placing citizens in psychiatric hospitals in involuntary order and has lowered the volume of guarantees: the decision on the possibility of a citizen to participate in court session is taken by medical commission, therefore severely violating citizen's right to protection in court. At the same time, the act "On psychiatric care and guarantees of the rights of citizens in its provision" (act "On psychiatric care") continues to operate in the previous version. It requires mandatory presence of the patient when a case of involuntary hospitalization is considered. With the adoption of a new CAP a conflict of acts appeared.

34. Incapacitated person, if s/he is unable to submit a personal application because of his/her condition, is placed in the PNI by the decision of the guardianship and custody body, adopted on the basis of the conclusion of a medical commission with the participation of a psychiatrist. The current practice of placing people into PNIs contradicts to the position of the Constitutional court. In 2011 the Constitutional court adopted the Decision of January 19, 2011 № 114-O-P on the complaint of Ibragimov A. I. and pointed out that the legal position and conclusions formulated here about the inadmissibility of involuntary hospitalization in a psychiatric hospital without proper judicial control are applicable to the order and procedures for placement of incapacitated citizens into specialized (psychoneurological) institutions as well. The placement of people acknowledged to be incapacitated into psychoneurological institutions (PNI) currently happens without judicial supervision of the decision of bodies of guardianship. The Prosecutor's office does not see in this order violation of the law. If a person wants to file a complaint while being in a PNI, it's almost impossible, because all his contacts, with rare exceptions, are limited by PNI's staff. PNI's administration often prevents its residents to participate in official proceedings initiated by them.

35. The practice of hospitalization of orphans into psychiatric hospitals without medical reasons is still very common. Human rights activists have documented many cases of internment into psychiatric hospitals for punishment. Children in correctional institutions become victims of severe violations of human rights. The prevention of these violations, including violence against children, is not due to the lack of external control and the ineffectiveness of the Prosecutor's office.

36. In 2012, the Investigative Committee adopted an internal *Instruction for Investigating Bodies (Units) of the Russian Investigative Committee on Managing the Receipt, Registration and Verification of Crime Reports (Russian Investigative Committee Order No. 72 of 11 October 2012)*. This instruction allows investigators to register an incoming crime report as a "citizen petition" which does not trigger a mandatory verification procedure under Article 144 of the CCP. This departmental policy effectively undermines the legally required procedure for evidence collection at the crime verification stage, such as inspection of the crime scene, appointment of examinations, collection of samples, etc. In the case of torture reports, this may result in loss of evidence. The said Instruction delegates the decision on whether or not an incoming message should be registered as a crime report

to the receptionist on duty responsible for making records in the Crime Report Logbook. This means that the receptionist is expected to qualify a reported incident or perhaps make a prompt check of a crime report to determine whether it is valid and should be registered as such. The current practice has resulted in a situation where numerous reports of police violence, falsifications and other official crime never make it to the verification stage and are effectively excluded from the scope of the Investigative Committee's oversight. This practice also denies the citizens their right to complain about torture.

37. By Russian law, anyone reporting a crime must be warned of liability for false reporting/false accusation (Article 144 of the CCP RF). This warning is made and documented as the crime report is registered. In conducting verification, the investigator needs to make a judgment on whether the crime report may be a false accusation. A number of verifications have resulted in criminal proceedings against the torture victims charged with false accusations. These charges have been based on the findings collected during the verification of their complaint about torture. A dangerous vicious circle has emerged, when an investigator, having conducted a substandard verification, refuses to initiate criminal proceedings into the incident of torture but instead uses the findings from their verification to prosecute the victim.

38. Excessive and unreasonable use of disciplinary sanctions such as placement in punishment cells is another form of pressure on prisoners to discourage them from reporting torture. Thus, Vakhapov, Nepomnyashchikh and Makarov have been confined to punishment cells without the legally required prior health check-ups and disciplinary hearings. The total duration of their confinement in punishment cells significantly exceeds the 15-day limit.

39. From October 2017 to January 2018, in different regions of Russia eight activists of the anti-fascist movement were arrested by the Federal Security Service (FSB) of Russia on suspicion of involvement in a terrorist community in different regions of the country. Soon after their detention, a majority of them confessed and faced charges; however, it later became known that confessions were obtained by the FSB under torture. Some of the accused men had been activists in the antifascist, environmentalist, and anarchist movements, while the others were not publicly active, but were acquainted with the activists. There is no information suggesting the accused were involved in violent actions against other people or political institutions. After the accused were apprehended by the FSB, they were beaten, tortured, and subjected to prolonged isolation from family members and attorneys.

## Article 2<sup>1</sup>

2. With reference to the previous concluding observations (para 9) of the Committee expressing serious concern at the failure to ensure detainees have certain fundamental legal safeguards, please provide detailed information on the measures taken to prevent acts of torture, and in particular on the availability, from the very outset of their detention, of basic legal safeguards, in law and practice, for persons deprived of their liberty. In particular, please provide updated information on:

(a) What measures guarantee the right to access a qualified lawyer, obtain independent legal aid, contact family members, be informed of the charges against them and request and receive a medical examination by an independent physician promptly upon actual deprivation of liberty. Noting that the Federal Law of Feb 7, 2011 states that “the period of detention shall be counted from the moment of the actual restriction of freedom of movement for the person,” please comment on the Report of the Council of Europe’s Committee to Prevent Torture (CPT) on its 2012 visit which found that in practice safeguards “only become available from the moment of the first official interview by the investigator, i.e., several hours (and sometimes much longer) after the de facto apprehension and initial questioning by operational officers.”<sup>2</sup> Furthermore, please clarify the differences in the rules governing safeguards available to the detainee in a criminal, as opposed to an administrative, case, particularly with regard to whether the individual accused can notify a relative or friend at his/her own initiative and with what delay. Please clarify in what cases such notification remains the responsibility of the investigating officer. Please provide information, including comprehensive statistics, on how often detainees request to notify a relative directly, and to have a medical examination by an independent physician and how often and how promptly it is granted;

### Measures to guarantee detainees' access to qualified legal assistance and their application in practice

40. The Russian Code of Administrative Offenses grants detainees in administrative proceedings the right to access a lawyer from the moment administrative proceedings are instituted against them. However, no legal aid provisions exist to guarantee low-income individuals access to a qualified lawyer in administrative proceedings. Generally, **the Code of Administrative Offenses does not require law enforcement officers to ensure presence of a defense lawyer in administrative proceedings.** The only safeguard of access to a lawyer in administrative proceedings is the detainee's right to request officials to notify their lawyer of the detention pursuant to article 27.3 (3) of the Code of Administrative Offences. In practice, however, law enforcement officials can refuse to grant the detainee access to a lawyer. Furthermore, they can deny the lawyer access to a detainee.

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<sup>1</sup> The issues raised under article 2 could imply also different articles of the Convention, including but not limited to article 16. As General Comment n°2, paragraph 3, states "The obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter “ill-treatment”) under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. (...) In practice, the definitional threshold between ill-treatment and torture is often not clear." See further Chapter V of the same General Comment.

<sup>2</sup> Report to the Russian Government on the visit to the Russian Federation carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 21 May to 4 June 2012, CPT/Inf (2013) 41, Strasbourg, 17 December 2013 at para 32.

*For example, shortly before the March 2018 presidential elections, police officers in Togliatti apprehended two oppositional political activists, Elena Bogatyryova and Dmitri Prikhodko, who were about to post leaflets calling for a boycott of the elections. The officers detained them at the police division until one a.m. and refused their lawyer access the detainees. In Kaluga, police officers detained Evgeni Evsyukov, who was standing in a one-person picket holding a poster which called for a boycott of the elections. Once again, the officers refused access to his lawyer. In Vladivostok, two volunteers of Navalny's headquarters, Sergei Pyatov and Makar Kostyuk, were detained for distributing leaflets. Their lawyers were not allowed to access them; according to police officers, the activists "were able to defend themselves."<sup>3</sup>*

*Roslovtsev was attending a public event in Petrovsky Boulevard, Moscow, on 27 February 2016. At about 4 p.m., Roslovtsev was apprehended and brought to Tverskoy District Police Division. Approximately at 4 p.m. on 27 February 2016, Nikolai Zboroshenko, a lawyer representing Roslovtsev before the European Court of Human Rights, arrived at Tverskoy Police Division but was denied access to Roslovtsev, with reference to an oral instruction from an official at Tverskoy Police Division. Zboroshenko challenged in court the refusal to grant him access to the client, but the court dismissed the complaint.*

*On 17 November 2015, activists N. Trubitsyna and A. Shelkovenkova held a picket outside Moscow's Basmanny District Court in support of Ildar Dadin, an activist sentenced to 2.5 years of prison for "repeated non-compliance with the Law on Meetings." While unfolding a banner saying "Free Ildar!" the activists were apprehended and taken to Krasnoselsky District Police Division in Moscow. Reports of administrative offense under Article 20.2 (2) of the Code of Administrative Offenses (failure to notify a public action) were drawn up in respect of both protesters. They were detained in a holding cell at Krasnoselsky District Police Division. The detainees were not allowed to notify their lawyer of their detention and upcoming court hearing. As a result, the case was heard in absence of a defense lawyer. It was only two days later, on 19 November 2015, that the lawyer was able to visit each of the detainees and appeal the administrative penalties imposed by the court.*

**41. In terms of access to a lawyer, Russian law provides better guarantees to detained criminal suspects than to administrative detainees.** In particular, pursuant to article 50 (4) of the Code of Criminal Procedure (CCP), if a suspect or accused individual does not ensure the presence of a lawyer of their choice within 24 hours of detention, the inquiry officer or investigator must appoint an ex-officio lawyer for them. In this case, the lawyer's services are paid for by the state.

**42. In practice, law enforcement officers do not always allow detainees to contact a lawyer and may deny the lawyer hired by the detainee or their family access to the client.**

*In St. Petersburg, anarchist and activist of the anti-fascist movement Igor Shishkin was accused of involvement in the Set' ("Network") terrorist organization (art. 205.4 (2) of the Criminal Code). On 25 January 2018, at about 5 p.m., he took his dog for a walk and was apprehended by officers of the FSB Office for St. Petersburg and Leningrad Region. He was de facto abducted, and no one was informed of his*

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<sup>3</sup> <https://ovdinfo.org/news/2018/03/17/zaderzhaniya-aktivistov-pered-vyborami-vsya-rossiya>

whereabouts for more than five hours. On 26 January 2018, a lawyer hired by Shishkin's family showed up at the premises of the FSB Office for St. Petersburg and Leningrad Region to find out Shishkin's whereabouts and provide legal assistance to him. The duty officer at the FSB Office refused the lawyer entry to the premises on the ground that it was a high-security facility. The FSB Office refused to provide any information as to Shishkin's whereabouts. The duty officer also refused to give the lawyer any contact phone numbers for the investigator or front office. The lawyer faced a similar situation when trying to gain access to the Investigative Division of the FSB Office for St. Petersburg and Leningrad Region. According to the Investigative Division duty officer, "investigators only go out to visitors whom they have invited. If a lawyer has not been invited, no one will come out to meet with him." On 27 January 2018, Shishkin, showing signs of severe beating on his face and body, was brought to Dzerzhinsky District Court of St. Petersburg. The court ordered his arrest. Between 25 and 27 January 2018, someone fractured Shishkin's lower orbital bone, as confirmed by medics at SIZO No. 3 of St. Petersburg. On 27 January 2018, members of St. Petersburg Public Oversight Committee (POC) visited Shishkin at SIZO No. 3 and documented numerous injuries which they identified as traces of torture (bruises, wounds, burns from electric shocks).<sup>4</sup>

*Dmitry Pchelintsev, Penza, was apprehended on 27 October 2017 in Penza, also in connection with the Set' terrorist organization case. Officers beat Pchelintsev as they apprehended him. At SIZO, Pchelintsev was repeatedly subjected to torture and beatings. On 30 January 2018, Pchelintsev's lawyer Oleg Zaitsev was refused access to his client in SIZO without a legitimate reason. As an explanation, the SIZO chief referred to pressure from the FSB. On 31 January, SIZO staff advised Pchelintsev to write a statement refusing lawyer Zaitsev's services, but Pchelintsev did not comply. On the same day, Zaitsev was granted access to SIZO to meet with Pchelintsev who told the lawyer about the beatings and torture he had experienced between 27 October and 4 December 2017. Interviewed by his lawyer Zaitsev on 6 February 2018, Pchelintsev officially denied his guilt and reported having been tortured.<sup>5</sup> But on 13 February 2018, as Pchelintsev's torture attracted media attention and a press conference with lawyer Zaitsev was announced in Moscow, Pchelintsev was tortured again and withdrew his statement.<sup>6</sup>*

43. Due to physical isolation and potential resistance from the law enforcement staff, many detainees have limited options for finding and hiring a lawyer and are forced to accept an ex-officio lawyer appointed by the investigator. However, **in appointing an ex-officio lawyer, the investigator is guided by his/her own agenda of investigating the case rather than by the detainee's needs.** According to article 75 of the CCP, statements made by suspects and accused persons are considered admissible only if made in the presence of a lawyer. Therefore, investigators are interested in having a lawyer appointed by the time of their first official interview with the detainee. However, pursuant to article 49 (2) of the CCP, the investigator must conduct an official interview within 24 hours of the onset of detention but does not have to do so earlier. Therefore, as noted by the Council of Europe's Committee to Prevent Torture (CPT) in their report on the visit to Russia in 2012, in practice, a lawyer is not present during the first hours of a person's detention but only appears at the official

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<sup>4</sup> Report of St. Petersburg POC, <https://drive.google.com/file/d/1VRrIAZqt3wWcvH-13Fhzxflj575Md4T7/view>

<sup>5</sup> "He felt for a pulse on my neck and monitored my condition." Anti-fascists arrested in Penza report torture by electric shock in SIZO cellars, Mediazona, <https://zona.media/article/2018/02/09/penza-tortures>

<sup>6</sup> Anti-fascist Pchelintsev arrested in Penza case beaten again in SIZO, withdraws statement about torture, <https://zona.media/news/2018/02/15/pchel>

interview carried out by the investigator. Meanwhile, **in the first hours after the apprehension, a suspected person can be questioned by operating officers without an official record or lawyer present.** As the European Court of Human Rights held in *Pavlenko v. Russia*,<sup>7</sup> being questioned in a coercive environment can undermine the detainee's privilege against self-incrimination.

44. In addition to this, **ex-officio lawyers do not always provide good-quality, independent defense.** Cases have been reported of ex-officio lawyers acting in consort with the investigator against their client's interests.

*Stanislav Zimovets faced criminal charges for throwing a stone which hit a police officer in the back during an unsanctioned rally in Moscow on 26 March 2017. Zimovets complained that after his apprehension, he was not allowed to use his own lawyer but was appointed an ex-officio lawyer instead who tried to convince Zimovets to plead guilty and agree to summary proceedings without examining evidence in court.*<sup>8</sup>

45. Formerly, so-called "pocket lawyers" who collaborated with the investigator in exchange for privileged access to public funding were often appointed as ex-officio lawyers. In recent years, **both the legal profession and the lawmakers have taken steps to limit the possibility of investigators to influence the choice of ex-officio lawyers.** Specifically, on 17 April 2017, article 50 of the CCP was amended by a provision whereby an ex-officio lawyer cannot be appointed to a particular defendant at the investigator's discretion but must be selected using an algorithm established by the Federal Chamber of Lawyers. In turn, the Federal Chamber adopted a Procedure for appointing ex-officio lawyers in criminal proceedings.<sup>9</sup> Pursuant to this Procedure, members of the legal profession must distribute ex-officio assignments among them on the basis of a duty schedule or via a scheduler at their Bar Association or by means of a computer program.

46. While these measures contribute to independence of the defense function, **the prosecution has other means whereby it can influence the choice of ex-officio lawyers.** In particular, ex-officio lawyers are paid for their services provided at the pre-trial stage based on an order issued by the investigator or inquiry officer which confirms the amount of services provided. In accordance with the Procedure for Calculating Defense Lawyer Remuneration in Criminal Proceedings, approved by the Ministries of Justice and Finance,<sup>10</sup> the investigator or inquiry officer determines the applicable legal fee rate. This arrangement makes it possible for the prosecution to put pressure on the defense lawyer by delaying the issue of a payment order or manipulating the fee.

### **Measures to guarantee detainees' right to contact family members and their application in practice**

47. Three Russian laws stipulate the right to notify family members and other loved ones of one's detention, namely: the CCP, the Code of Administrative Offenses, and the Law on Police. These laws also describe the procedure for exercising this right.

48. Pursuant to article 27.3 (3) of the Code of Administrative Offenses, officials must notify family members of a person detained on administrative charges only if the detainee requests so. If the detainee does not request it, relatives are not notified of their detention. There is an exception: if the

<sup>7</sup> *Pavlenko v. Russia*, No. 42371/02, 01/04/2010.

<sup>8</sup> Anastasia Kurilova. March 26 comes to Strasbourg. First defendant in unsanctioned rally case complains to ECtHR. Kommersant, No. 25 of 12.02.2018, at <https://www.kommersant.ru/doc/3546729>

<sup>9</sup> <http://fparf.ru/documents/detail/43567/>

<sup>10</sup> <https://rg.ru/2012/09/21/advokat-dok.html>

detainee is a minor, officials are required to notify parents or legal guardians regardless of the detainee's wishes.

49. Similar rules established in article 14 of the Law on Police apply not only to detainees in administrative cases but also to persons detained on other grounds. In addition to the possibility of requesting police officers to notify family members of the detention, article 14 also provides for detainee right to make one phone call. The police must grant detainees the opportunity to exercise this right within the first three hours of detention.

**50. In the period covered by this report, Russian lawmakers added new legal provisions to guarantee the right of detained criminal suspects to notify family members of their detention.** In late 2015, articles 43 and 96 of the CCP were amended by provisions which require the investigator to grant the detainee an opportunity to make one phone call within three hours of their detention. Should the detainee fail or refuse to use this right, the investigator must independently notify family members of the detention regardless of the detainee's request.

**51. However, the law provides for several exceptions from the right to notify family of the detention.** First, according to article 96 (4) of the CCP, the investigator or inquiry officer may decide that in the interests of the investigation, the detention should be kept secret and the detainee's family should not be notified. However, **the CCP does not specify under what circumstances the obligation to notify family members may be avoided**, creating a risk of arbitrary denials of this safeguard to detainees.

52. Second, article 14 (11) of the Law on Police specifies that the right to inform family members does not apply to persons on the wanted list or to anyone who has escaped from custody or evaded administrative arrest, imprisonment or involuntary medical or psychiatric treatment. There are doubts as to whether such exceptions are reasonable, especially given that law enforcement officers can mistake a particular detainee for a wanted person.

*Andrei Lukyanov, Moscow, was apprehended by police on 22 May 2012 in Kudrinskaya Square. Without giving any reasons for his apprehension, police officers pushed Lukyanov in a bus, where a man in civilian clothes who did not show a service ID began questioning him. While in the bus, Lukyanov's mobile phone rang. Lukyanov was about to answer, but the man demanded to be given the phone and tried to take it away from Lukyanov using force. A few police officers came to his help. A fight ensued in which Lukyanov was left lying on the floor of the bus, his phone seized by the police. Then the officers started hitting Lukyanov on the head and body. Lukyanov spent 14 hours in police custody. He was not allowed to call his family. Meanwhile, family members were searching for Lukyanov and had no information as to his whereabouts. On 25 May 2012, Lukyanov reported the crime, but the law enforcement authorities refused to open criminal proceedings. The investigating authorities justified the failure to grant Lukyanov the right to notify family and make one phone call by stating that "pursuant to article 14 of the Federal Law on Police, the right to notify family and make one phone call is not granted if the detainee is on the wanted list." [Lukyanov was not on the wanted list but apparently mistaken for another person.] Lukyanov filed a claim for compensation of non-pecuniary harm but was refused on 25 May 2018.*

**53. Even in cases where no legal exceptions apply, detainees sometimes cannot exercise the right to inform family members in practice.**

*According to Dmitry Aleshkovsky apprehended during a public rally in Moscow in late 2014, police detained him for the entire night at Arbat Police Division and refused to allow him to call his family and notify them about his detention.<sup>11</sup>*

54. It is impossible to assess the prevalence of this violation, as the authorities do not specifically monitor compliance with the basic detainee rights, including the right to notify family of the detention. Detainees themselves rarely complain about not being allowed to notify family because they are not sufficiently aware of this right and also because challenging this violation does not affect the outcome of their administrative or criminal case.

55. The practices of documenting notification of family members vary across Russian regions. In Perm Region, the protocol of administrative detention includes a line for documenting the detainee's request to notify family members and whether the request is granted. In Moscow, however, this format of administrative offense protocol is not used.

*N. Vavilova, Perm Region, faced administrative charges under article 20.2 (2) of the Code of Administrative Offenses for non-compliance with the established procedure for organizing a public event. At the time of drawing up the administrative offense report, Vavilova requested to notify family members of her whereabouts, and her request was granted.*

#### **Measures to guarantee that detainees receive a medical examination by an independent physician promptly upon deprivation of liberty and measures to guarantee prompt access to medical care by an independent physician upon detainee request**

56. The Regulation Concerning Detention Conditions of Persons Arrested for Administrative Offenses, Dietary Rations and Healthcare of Such Detainees<sup>12</sup> **does not require mandatory medical examination of persons detained on administrative charges.** As directed by para 6 of this Regulation, should the law enforcement officers find that a detainee needs medical assistance, they may call an ambulance or medical specialists from state or municipal healthcare facilities. This means that administrative detainees' access to medical care is at the discretion of the law enforcement officers.

*According to OVD-Info monitoring, in a few cases during 5 May 2018 protests in Moscow and other cities, police officers promptly called ambulances to detainees who were injured in clashes with Cossacks and during apprehension by police. In other cases, however, detainees did not receive medical care.<sup>13</sup>*

57. The treatment of other types of detainees, including those suspected of criminal offenses, is governed by the Regulation Concerning Detention Conditions, Dietary Rations and Healthcare of Persons Detained at Territorial Divisions of the Ministry of Interior.<sup>14</sup> This Regulation **does not provide for mandatory medical examination of detainees either.** However, it requires that upon the detainee's request, police officers should make arrangement for medical assistance, i.e. call a physician to the detainee, and if necessary, facilitate admission to a hospital. Police officers are also

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<sup>11</sup> <https://ovdinfo.org/express-news/2014/12/31/iz-ovd-arbat-otpustili-zaderzhannyh>

<sup>12</sup> Approved by Government Decree No. 627 of 15 October 2003.

<sup>13</sup> <https://ovdinfo.org/articles/2018/05/08/akcii-protiv-carya-izbitye-zaderzhannye-nesovershennoletnie>

<sup>14</sup> Approved by Government Decree No. 301 of 16 April 2012.



required to notify a prosecutor and the detainee's family within 3 hours of the detainee's death, serious illness or injury.

58. The absence of a requirement to ensure that a medical examination takes place has led to delayed emergency response and fatalities.

*S. Filatov, Moscow, was apprehended by police at around 9 p.m. on 12 January 2018 for disorderly behavior ("petty hooliganism"). Approximately at midnight on 13 January 2018, Filatov was placed in a cell for administrative detainees. He was pronounced dead 40 minutes later. It follows from the explanations provided by the police officers that approximately at 20 minutes past midnight, Filatov complained of feeling unwell; an ambulance was called and arrived about 20 minutes later. The ambulance crew entered the cell and found that Filatov had hanged himself. His medical examination at admission was designed only to determine the degree of intoxication. Filatov's postmortem examination revealed injuries which, according to his case materials, could have been sustained after his apprehension while he was under the control of police officers. In addition to this, a forensic examination revealed alcohol (1.5 ‰ blood alcohol content, corresponding to mild intoxication) and phenobarbital in his system. The latter, a prescription drug popular among drug users for its soothing effect, had been taken, according to the forensic experts, shortly before Filatov's death. According to the experts, alcohol could have enhanced the action of phenobarbital, causing an overdose, often associated with hallucinations, mental confusion and similar symptoms. In this condition, perhaps exacerbated by pressure and violence at the hands of police, the detainee could have hung himself. (Two requests to open a criminal investigation have been denied.)*

**59. A medical examination capable of diagnosing and documenting injuries is mandatory only when a criminal suspect is admitted to IVS or SIZO.** This is required by paras 5 and 124 of the Internal Regulations of the Ministry of Interior Temporary Detention Facilities (IVS) for Suspects and Accused Persons and para 16 of the Internal Regulations of Pre-Trial Detention Facilities (SIZO) of the Penal System.<sup>15</sup> If injuries are diagnosed at admission to IVS, police officials must initiate an internal inquiry and based on its findings, if appropriate, institute criminal proceedings. If a detainee is diagnosed, at admission to SIZO, with injuries likely to have been caused by illegal actions, a prosecutor must be notified of this finding. **However, detainees are not always admitted to IVS or SIZO in the first few hours or even days following their de facto apprehension.**

(b) Whether the State party ensures that all persons deprived of their liberty are registered promptly following their apprehension, and that lawyers and family members of detained persons have full access to the information in the registers;

60. The fact of a person's detention is documented in a protocol of detention, entries made in the logbook of admissions to a police division, and also in the Register of detainees.

61. In criminal proceedings, pursuant to article 92 of the CCP, a protocol of detention is not drawn up immediately after the de-facto apprehension but within three hours of the moment the detainee is brought before an inquiry body or an investigator. In administrative proceedings, the Code of Administrative Offenses does not establish any timelines for drawing up a protocol of detention. In

<sup>15</sup>Approved by Ministry of Justice Order No. 189 of 14 October 2005.

practice, protocols are drawn up after the detainee is brought to the police division. The police officers are required to provide a copy of the protocol to the detainee. The detainee's lawyer can obtain a copy of the protocol upon request. The detainee's family members do not have this right.

62. When a person apprehended on suspicion of a crime or on other grounds is brought to a police division, the duty officer registers him or her in the Logbook of persons brought to the front office of the police division. The Logbook entry includes the detainee's personal information, date and time of admission, details of the officer who has brought them, and the number on the protocol of detention. Access to the Logbook is given to the officers of the police division and to prosecutors who oversee their operation. Courts and bodies of inquiry and investigation may request copies of the Logbook as evidence, e.g. evidence in an alleged torture case. Lawyers cannot access the Logbook but can request specific information from the Logbook, rather than its entire content, pursuant to article 6.1 of the Law on the Practice of Law and the Legal Profession in the Russian Federation. Such requests from lawyers are processed within 30 days. Detainees' family members cannot access these records.

63. In addition to this, the Ministry of Interior maintains a Register of detainees pursuant to Ministry of Interior Order No. 408 of 25 May 2011 approving the Procedure for Creating and Maintaining a Register of Detained Persons. The Register contains records such as the detainees' personal information, reasons for detention, number of the protocol of detention, and details of the police officer who has drawn up the protocol. The MoI Information Support Units enter this data from copies of protocols of detention provided to them by police divisions and other territorial units. Police divisions provide paper-based copies of protocols once every ten days, and Information Support Units process them within ten days of receipt. Where available, IT systems are used, and then detainee data gets processed and entered promptly. Pursuant to MoI Order No. 408 of 25 May 2011, "information from the Register can be provided upon request to officers of MoI territorial units in connection with criminal cases under investigation, administrative proceedings, and in connection with duly registered applications and reports concerning incidents which the police force is competent to address." Lawyers do not have direct access to the Register but can file a request for specific information from the Register. Detainees' family members cannot access the Register.

64. Prosecutors have full and prompt access to both the Logbooks and the Register. Upon presentation of their service ID, a prosecutor can freely enter the offices and premises of law enforcement bodies and access their documents and materials (article 22 (1) of the Federal Law on Prosecution Authorities).

65. Thus, detainees are not registered promptly following their apprehension; their registration occurs when they are brought to an investigator, inquiry officer or the front office of a police division. There may be a long waiting time between one's de facto apprehension and being brought to the investigator or a police division.

66. For example, apprehended participants of peaceful protests are often held for a long time in "avtozaks" (vans for transportation of detainees) parked outside police divisions. Pursuant to the Code of Administrative Offenses, the period of administrative detention officially starts at the moment one is brought to a police division – rather than at the moment of their de facto apprehension – and the police therefore feel free to hold detainees in "avtozaks" at their discretion. In addition to this, the police tend to disregard the Administrative Code's requirement that detainees must be brought to the nearest police division.

*According to OVD-info, four activists detained in Moscow at an anti-fascist march in the memory of lawyer Stanislav Markelov and journalist Anastasia Baburova killed*

*by neo-Nazi were illegally held in an avtozak outside Presnensky Police Division before they were brought inside and protocols of detention were drawn up.<sup>16</sup>*

*According to media reports, protesters detained in St. Petersburg during "He's Not Our Tsar" rally were taken to Police Division No. 16 and held in an avtozak for more than five hours. The detainees, about 14 people, were not allowed to use the toilet: the young men had to use plastic bottles instead.<sup>17</sup>*

67. Crime suspects are often detained on administrative charges at first, making it possible to count the time of detention from the moment of admission to a police division and also to avoid granting the detainee all the procedural guarantees provided by the CCP in criminal proceedings. In such cases, the detention is not thoroughly documented and its de facto time is not indicated in the documents.

***Mardiros Demerchyan**, resident of the village of Veseloye (Sochi, Krasnodar Region) was employed as an electrician at a Sochi Winter Olympic site at the material time in June 2013. He had not been paid his wage for several months. Demerchyan's employer asked him to come to the construction site on 12 June 2013, promising to settle the dispute. Demerchyan left home at 10 a.m. Once at the site, he was apprehended by police and taken to a warehouse which belonged to Blinovo Police Division. There, Demerchyan was tortured: beaten with boxing gloves and raped with a crowbar. According to the protocol of detention, Demerchyan was brought to the police division at 4:50 p.m. on 12 June. The detainee's whereabouts before that time were not documented. A protocol of administrative offense was drawn up stating that Demerchyan had committed an administrative offense earlier on that day, at 11:50 p.m. at the construction site. The protocol of administrative offense indicated the date but not the exact time when it was drawn up. According to the logbook, Demerchyan was brought to the police division at 14.40 p.m. and released at 10.00 a.m. on the next day. Demerchyan had to be taken in an ambulance from the police division to the hospital.*

68. Failure to properly document a detention and grant the detainee their appropriate status in the proceedings deprives them of all procedural rights. When investigating a crime, police officers often de facto hold people as suspects and interrogate them but instead of following the CCP-established procedures for detention of criminal suspects, use various pretexts to get people to come to the police premises informally.

***Marina Ruzaeva**, resident of Usolye-Sibirskoe, homemaker and mother of two, was invited to visit the local police division to assist with identifying a potential perpetrator by a photograph. At 6 p.m. on 2 January 2016, police officers came to Ruzaeva's home and asked her to come with them to Usolsky Police Division, allegedly to help identify a suspect. Ruzaeva's husband who was at home at the time did not mind her going with the police to assist them in uncovering a crime. After Ruzaeva was absent for more than four hours, her husband went out to look for her. At first, the police offered him misleading information by saying that Ruzaeva had been taken back home, although she was still on their premises. Her husband went back home, did not find her there, and came back to the police division, where one of the officers told him that Ruzaeva was giving a statement and would be free in 15 minutes. When Ruzaeva*

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<sup>16</sup> See <https://ovdinfo.org/express-news/2018/01/19/zaderzhannyh-na-antifashistskom-marshe-do-sih-por-derzhat-v-avtozake>

<sup>17</sup> See <https://www.zaks.ru/new/archive/view/176576>

*was finally released, she told her husband that the police had tortured her trying to force her to give evidence.*

*Resident of Magnitogorsk Salima Mukhamedyanova and her husband were apprehended in the winter of 2016 after a conflict with a neighbor in their communal apartment. The couple were detained twice: the first time, they were promptly released after a protocol of administrative offense was drawn. But once they came back home, Mukhamedyanova and her husband were immediately apprehended again. The second time, the police did not register their detention, although they have not denied Mukhamedyanova and her husband's detention. According to Mukhamedyanova, during the second incident of detention, she was first beaten by a policeman and then raped by another one. Mukhamedyanova filed a crime report, but the criminal proceedings against the police officers were eventually dropped; instead, charges were brought against the woman for "deliberately false denunciation." On 10 April 2018, Mukhamedyanova was sentenced to a fine of 20,000 rubles. The verdict has been appealed.*

*Sergei Nemchenko, Stavropol Territory, police driver, was summoned to a Criminal Investigations Division at about 3 p.m. on 4 March 2011. Police officers investigating a murder asked him to testify against an innocent person. Nemchenko refused to "help" them. Following his refusal, the police detained him for more than 24 hours until 5 p.m. on 5 March 2011. They kept him from sleeping and pressured him in other ways. At 2 a.m. on 5 March, he was questioned as a witness, and by 3.30 p.m. he signed a confession. No procedural documents were drawn up to register his detention. Nemchenko reported unlawful detention and torture, but no one was prosecuted. Moreover, on 22 November 2012, Georgievsky City Court found Nemchenko guilty of deliberately causing severe harm resulting in the victim's death (article 111 (4) of the Criminal Code) and sentenced him to six years of imprisonment in a strict-regime penitentiary colony.*

(d) Whether video surveillance is installed in all areas of custody facilities where detainees may be present, and whether video recordings are made of all interrogations. Please clarify whether recordings are kept in secure facilities and made available to investigators, detainees and their lawyers. Please provide information on the number of police stations and other detention facilities in which interrogations are routinely audiotaped or videotaped, and the number of cases for which such recordings are not maintained;

69. The Russian CCP provides for the use of recording technology (including video recording) for a detailed and reliable documentation of investigative actions (article 170 (1.1), article 189 (4) of the CCP). Video recording as well as audio recording can be used at the investigator's discretion.

70. The CCP does not establish specific requirements for video recordings, nor does it contain provisions for mandatory video recording of interrogations or, more broadly, of any investigative actions.

71. However, such matters are addressed in some departmental regulations, such as the Ministry of Interior (MoI) Administrative Regulations concerning road traffic control (approved by MoI Order No. 664 of 23 August 2017). According to the Regulations, police officers using video recording must notify citizens of its use; police officers are also required, whenever possible, to operate in a way that

allows their actions to be recorded by video surveillance systems or by the officers' wearable DVRs. The Regulations do not contain any other rules for video surveillance and recording. While the Regulations generally do not establish timelines for keeping video recordings, such indications are provided in following cases:

- when a video recording is attached to a protocol (as required e.g. when the protocol is drawn up in the absence of lay witnesses). In such cases, video recordings must be kept for as long as the protocol is kept (p. 40 of the Administrative Regulations);
- when administrative enforcement actions are taken against foreign citizens enjoying immunity. Then video surveillance records "must be kept secure." The Regulations do not specify for how long such records must be kept (p. 56 of the Administrative Regulations)

72. In addition to this, sources such as Garant Legal Information Database and MoI's *Politsia Rossii* magazine have referred to Instruction No.1/1523 of 22 February 2013 concerning the use of DVRs, issued by the Ministry of Interior (or, according to other reports, by the Main Directorate for Road Safety). This Instruction cannot be found in any of the legal reference databases or other public sources, including the MoI website.

73. In 2006, the Ministry of Justice issued Order No. 279 of 4 September 2006 approving the Instruction for the installation of video surveillance technology in penitentiary facilities. The original Instruction did not specify how long video surveillance recordings should be kept. Ministry of Justice Order No. 94 of 17 June 2013 amended the Instruction by a requirement that footage from CCTV cameras should be kept for 30 days.<sup>18</sup> After that, Russia's FSIN (Federal Penitentiary Service) adopted Guidelines on the use of wearable DVRs by duty staff (FSIN letter No. 08-3698 of 3 February 2014). These Guidelines are not available either at FSIN's website or any legal reference database. The Guidelines have not been registered with the Ministry of Justice. Notably, they were introduced by a letter rather than a formal order. Apparently, this means that the Guidelines are non-binding recommendations. Based on these recommendations, footage from wearable DVRs should be kept for 30 days.

74. To sum up, the Ministry of Justice requires that CCTV camera recordings must be kept for 30 days and FSIN guidelines recommend keeping the footage from prison staff wearable DVRs for 30 days. Based on FSIN responses to NGOs concerning specific cases, 30 days appears to be the standard duration of keeping video surveillance recordings; however, FSIN's responses do not refer to any specific regulatory document establishing this timeline.

75. No other federal-level regulations concerning the use of video surveillance are publicly available. A nearly total absence of this type of regulations in the public domain suggests that either this matter is regulated by unpublished classified documents or it is not formally regulated at all.

76. No specific provisions have been adopted to regulate access to video surveillance recordings for citizens (including detainees), their lawyers and investigators. In practice, such access is regulated by general procedures established by the CCP (for investigators), the Federal Law on the Practice of Law and the Legal Profession (for lawyers) and the Law on the Procedure for Considering Appeals from Citizens (for citizens/detainees).

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<sup>18</sup>The current version of the Instruction attached to Ministry of Justice Order No. 94 of 17 June 2013 on amending Ministry of Justice Order No. 279 of 4 September 2006 approving the Instruction for the installation of video surveillance technology in penitentiary facilities. See GARANT.RU at <http://www.garant.ru/products/ipo/prime/doc/70331164/#ixzz5Hd3k2iZd>

77. An investigator can obtain a video recording either in the course of a search or seizure, or upon request. In the latter case, the investigator must file a written request for certain materials or information to be provided, but the law does not specify any timelines for providing them. In practice, both options usually rely on cooperation from the authority whose video recordings are requested.

78. A citizen can request a video recording by submitting a written application to the relevant organization (usually the one that has produced the recording).

79. Article 6.1 of the Federal Law on the Practice of Law and the Legal Profession sets a 30-day deadline for responding to a lawyer's query (including a request for a copy of a video recording). The same deadline for responding to a citizen's application is established by article 12 of the Law on the Procedure for Considering Appeals from Citizens. In its responses to NGOs concerning specific cases, FSIN usually refers to a 30-day period of keeping video recordings, which corresponds to the timelines established for considering lawyers' queries and citizens' applications.

80. This timeline for keeping video recordings cannot be accepted as satisfactory under any circumstances. There is a problem with keeping video recording for the exact same period as a lawyer or detainee request is processed. Even if a request for video surveillance footage is filed immediately after the incident, the recording can legally be destroyed at the same time the request is granted. Should the importance of video evidence become clear later on in the course of the investigation, the likelihood of obtaining it is even less.

81. In practice, **there are usually no problems with requesting video recordings, but once requested, the recordings often turn out to be unusable or unavailable.**

82. However, on a few occasions, citizens, their lawyers and representatives, as well as POC members, have been denied their requests for video recordings.

*Thus, POC members in Krasnoyarsk Region were not allowed to view a video recording under the pretext that it contained confidential information.<sup>19</sup>*

83. Most commonly, refusals to make video recordings available are explained by technical problems leading to unavailability or absence of the recording in question. According to regional POCs, typical reasons given by law enforcement authorities are as follows: 1) they do not have sufficient storage capacity for keeping the recordings for 30 days as recommended by FSIN; 2) old recordings cannot be saved as they get automatically overwritten by new ones; 3) extracting the required video archive manually is impossible because the video surveillance system is fully automated and any interference can cause it to break down; 4) a technical malfunction has destroyed the required footage.

84. Investigators conducting inquiries into reports alleging use of unlawful interrogation methods have also faced problems accessing video recordings.

*In March 2018, the Investigative Committee's Investigation Department in Sverdlovsk District of Krasnoyarsk carried out an inquiry into an inmate's report of being subjected to physical violence. Despite a prompt request from POC to the penitentiary colony administration to preserve the relevant video recording, the administration responded to the investigator that the video archive could not be saved because their server did not have enough space.*

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<sup>19</sup> Official responses from FSIN Head Office for Krasnoyarsk Region to POC members' request.

85. The absence of clear regulatory requirements concerning the safekeeping of video recordings creates risks of their loss or falsification. Cases of tampering with video evidence, its modification or physical destruction have been reported in various parts of Russia.

*Salima Mukhamedyanova, Magnitogorsk (Chelyabinsk Region), was detained together with her husband on the night of 26 to 27 January and taken to Leninsky Police Division in Magnitogorsk. According to Mukhamedyanova, at some point she was escorted from her cell to another room where a policeman hit and kicked her multiple times and then raped her. Then the same policeman led Mukhamedyanova back to her cell where she was detained until later in the morning of 27 January 2016. Mukhamedyanova filed a crime report, but the authorities repeatedly refused to open criminal proceedings. Instead, charges were brought against Mukhamedyanova for filing "a deliberately false denunciation" against the police. As part of the investigation, video evidence was requested from the surveillance cameras installed at the police division. It turned out that the relevant parts of the video footage were lacking. The video recording presented by the police shows Mukhamedyanova and her husband being locked up in a cell, but then the video is interrupted, and at the next moment, Mukhamedyanova and her husband are no longer in the cell. There were similar gaps in all video recordings provided. On 10 April 2018, a court found Mukhamedyanova guilty of a false denunciation and sentenced her to pay a fine.*

*According to official reports from a POC in Krasnoyarsk Region, during their June 2017 visit to penitentiary colony IK-27, they observed an inmate with multiple bluish and purple bruises on the buttocks, back and hips. At POC members' request, the injuries were documented using a prison staff's wearable DVR. But the video eventually provided was not usable due to black and white static noise.<sup>20</sup>*

86. Inadequate storage can cause video archives to be destroyed.

*Murat Borlakov, Karachaevo-Cherkessia, was detained by police on 3 February 2014 in connection with an earlier conflict with the local police chief and brought to Ust-Dzhegutinsky Police Division where he was beaten for an hour and then left in the office to die. Scared of facing the consequences, the police officers took steps to cover up the murder: called an ambulance, blocked all windows and doors in the office and declared "the Fortress Plan" (a special regime for dealing with an armed attack). A subsequent expert examination found that all video surveillance recordings had been deliberately destroyed (according to the experts, the disc had been "mechanically damaged", i.e. smashed). Criminal charges brought against the police officers resulted in their acquittal, which was quashed in 2017 and the case reopened.*

87. Sometimes video surveillance recording is not used for documenting the actual events but rather for producing and fabricating evidence in support of the suspected perpetrators.

*An inmate was severely beaten at penitentiary colony No. 33 in Khakassia on 2 September 2016. The prison staff had to call an ambulance to him. While waiting for the ambulance, another inmate was placed in the same cell and acted as if he was hitting the injured inmate in front of the surveillance camera, as it was later revealed. Two weeks after the incident, on 15 September, criminal proceedings were instituted. An expert examination was ordered, and the expert was provided with medical*

<sup>20</sup> Report of Krasnoyarsk Region POC at <http://онк24.рф/upload/iblock/135/Otchet-ONK-KK-2017.pdf>

*records and a CD with a video recording showing the victim apparently being beaten by a cellmate. However, the expert opinion of 12 October 2016 stated that the victim's injuries could not have been inflicted under the circumstances presented on the video.*<sup>21</sup>

88. Video surveillance equipment is not always installed properly in premises where detainees may be present. Sometimes, the manner in which surveillance cameras are installed allows blind spots, and this fact can be used to pressure detainees or manipulate the findings of an investigation.

*In December 2016, in Krasnoyarsk Region, detainee A. Kashtymov was taken from SIZO-1 in Krasnoyarsk to the city hospital where he died nine days later. A cellmate was charged with causing the victims' death by inflicting a blunt head injury leading to cerebral hemorrhage. According to the prosecution, the beating was the result of a personal conflict, but the video surveillance recordings indicate that the victim had been under pressure, in particular that he had been transferred to another cell in late afternoon without a valid reason and immediately surrounded by the four cellmates, including the one charged with killing the victim, who started making active movements with their heads and bodies towards the victim's face. The victim had been forced to write a statement which he handed to his cellmate. The victim spent an hour together with the cellmate in the blind spot of the cell. After leaving the blind spot, the victim is seen washing some (perhaps his own) clothes. The official investigation insists that the incident was an interpersonal conflict between cellmates.*<sup>22</sup>

89. According to POC members, many SIZOs housed in old buildings have cells with extensive blind spots, sometimes taking up from one-third to the entire cell area.

(e) Whether there is effective monitoring of whether police wear identification badges when detaining people, including how many police have been disciplined or punished for not wearing required identification. In this regard, please comment on Human Rights Ombudsman Lukin's statement on 4 March 2014 that many police failed to wear identification badges during the post-Sochi protests [21 February to 4 March 2014] during which there were allegedly over 1,000 detentions, fines, and administrative actions, and his observation that other persons engaged in the round-up or arbitrary detention of persons also remained unidentified. Please provide information on the number of citations, administrative fines or detentions, or criminal detentions that took place during this period, the number that were challenged and their results.

90. According to para 2 of the Regulation on the Police Service Identification Badge approved by the Ministry of Interior Order No. 868 of 22 July 2011, police identification badges are the MoI service insignia which must be worn by police officer on duty in public places. The same Order lists the types of such badges, including those of a patrol officer, district police officer, road patrol officer, as well as the general police officer badge (para 3 of the Order).

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<sup>21</sup> Report of Krasnoyarsk Region POC at <http://onk24.rf/news/obshchestvennaya-nablyudatel'naya-komissiya-krasnoyarskogo-kraya-obespokoena-za-zhizn-i-zdorove-osuzh/>

<sup>22</sup> See: <http://onk24.pф/news/v-bolnitse-skonchalsya-zaklyuchenny-perevedenny-iz-sizo-1-krasnoyarska/>



91. Officers on duty in public places must wear identification badges on the left side of the chest (para 8 of the Order). The Order does not contain any other requirements concerning the wearing of identification badges.

92. More details are provided in the Rules for Wearing Uniforms, Service Identification Badges and Insignia by Police Officers, approved by MoI Order No. 575 of 26 July 2013. The Rules regulate the position of badges and the methods of attaching them to uniforms but do not indicate when wearing a badge is required. There is a general rule that wearing a badge is required while on duty in public places; however, the term "public places" is not specified.

93. It follows from MoI internal orders that wearing identification badges is required when policing public events (protests) and detaining people during public events. It is worth noting that district police chiefs, as well as the Ministry of Interior, establish the procedures which police officers must follow when policing mass events<sup>23</sup> (para 81 of the Police Patrol and Checkpoint Service Statute). The Statute sets out the requirement for police patrol officers to wear uniforms when policing public events, which includes wearing a service badge pursuant to Order No. 575 of 26 July 2013.

94. The requirement to wear an identification badge does not apply to officers who are permitted to carry out their duties wearing civilian clothes, and the law allows detention by plainclothes police. This provides formal grounds for round-ups of peaceful protesters by unidentified police.

*Jacqueline Yakovleva was apprehended on 24 February 2014 outside Zamoskvoretsky District Court in Moscow. She refused to get into the avtozak (police van) voluntarily as she was not sure that the unidentified people who were not wearing uniforms or badges were police officers. The officers had approached her from behind and failed to introduce themselves.*<sup>24</sup>

95. There have been persistent reports of uniformed police on duty without identification badges. According to OVD-info, an organization that has been monitoring police conduct during protests since 2012, at least 21 cases have been documented of round-ups and searches by police officers not wearing identification. Most of such incidents occurred during public protests.

*According to Reporters without Borders, police officers used force against Alexei Alexeyev, a correspondent of Chernika news website, during an anti-corruption protest in Petrozavodsk on 20 March 2017. The officers did not wear identification badges.*<sup>25</sup>

*According to Vladimir Fedorov who was detained in St. Petersburg on 12 June 2017, the police officers who rounded him up had their badges covered and refused to give their names and positions.*<sup>26</sup>

96. At least three cases were documented in which police officers not wearing badges refused requests from detainees to show their identification.

<sup>23</sup> Procedures to be followed by police patrol units during mass events and in emergencies are set out in orders issued by the police chiefs of the respective districts and by the federal Ministry of Interior. MoI Order of 29 January 2008 No. 80, Operational Procedures of Patrol and Checkpoint Police Service Units, as amended on 10 March 2009, 13 January 2010, 22 July 2011, 11 March 2012, 24 February 2014, and 12 February 2015.

<sup>24</sup> <https://ovdinfo.org/stories/2014/03/03/nenarushiteli-petuhi-i-fotografy>

<sup>25</sup> <https://rsf.org/fr/actualites/manifestations-anticorruption-en-russie-une-quinzaine-de-journalistes-arbitrairement-interpelles>

<sup>26</sup> <https://ovdinfo.org/stories/2017/07/03/kak-eto-bylo-rasskazy-zaderzhannyh-na-den-rossii-chast-3>

*On 15 January 2015, police used force in apprehending **Ildar Dadin** in Moscow. The police officer refused to give Dadin his badge number.<sup>27</sup>*

***Ivan Kolobanov**, Ukhta (Komi Republic), was detained on 5 March 2017 during a picket against a local law limiting the kindergarten fee subsidy paid to parents. Kolobanov was filming the picket from a drone. A policeman who commanded to apprehend Kolobanov refused to show his badge, explaining that he was the "leader" of the police unit and the round-up was carried out under the command of Federal Security Service (FSB) staff.*

97. Russian laws and regulations do not provide explicit instructions for specific situations of policing in public places. In particular, the law does not explicitly require that officers wear badges when conducting a search. At least three cases have been documented in which police officers participating in a search were not wearing badges.

*On 25 October 2017, **Petr Stekanov**, one of the organizers of the March against Hatred in St. Petersburg, witnessed a search at a community center and saw "five police officers and an investigator who were hiding their badges for some reason." According to Stekanov, the law enforcement officials refused to explain to him why they had forced entry into the center and on what grounds they were conducting the search.<sup>28</sup>*

*In two other documented cases, searches were conducted in January and March 2018 in regional headquarters of **Alexei Navalny's** supporters.<sup>29</sup>*

98. Numerous cases have been documented of police conducting mass round-ups without wearing identification badges. According to Ombudsman Lukin, during the 21 February and 4 March 2014 protests when some 1,000 people were detained, police officers engaged in the round-ups as well as those who admitted the detainees at police divisions were not wearing identification badges.

*According to OVD-info, in at least 9 round-ups on 21 and 24 February 2014, the detainees reported that the police officers were not wearing identification. The failure to wear identification badges by police officers has been submitted to the European Court of Human Rights as part of the application **Karelskiy and Others v. Russia**, and communicated.<sup>30</sup>*

4. Please provide updated information on any steps taken to provide a definition of domestic violence in legislation and to ensure that all reported cases of violence against women are registered by the police (para 14). What measures are taken to ensure victims of domestic violence and other forms of violence against women are provided with protection? With regard to the concerns expressed by the Committee in its previous concluding observations about persistent reports concerning acts of violence against women in the northern Caucasus, including so-called "honour killings" and bride-kidnapping, please provide information on the

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<sup>27</sup> <https://openrussia.org/post/view/2178/>

<sup>28</sup> <https://ovdinfo.org/express-news/2016/10/27/v-sankt-peterburge-by-l-zaderzhan-zayavitel-shestviya-protiv-nenavisti>

<sup>29</sup> <https://ovdinfo.org/express-news/2018/01/19/policiya-prishla-s-obyskom-v-shtab-navalnogo-v-tyumeni>;

<https://ovdinfo.org/express-news/2018/03/07/v-peterburgskiy-shtab-navalnogo-s-obyskom-prishla-policiya>

<sup>30</sup> See <http://hudoc.echr.coe.int/eng?i=001-164852>

number of complaints received and the outcome of investigations into allegations on such violence against women and on the number and outcome of resulting prosecutions. Please provide information on measures taken to ensure that police officers refusing to register complaints of violence against women, including “honour killings” or bride-kidnappings or trafficking are held accountable.

99. Russian law does not distinguish domestic violence from other types of violence, nor does it provide a definition of domestic violence.

100. Just as other types of violent offenses, domestic violence entails either criminal or administrative proceedings. Domestic violence with grave consequences, such as death or severe injuries, is subject to public prosecution by law enforcement agencies and courts. The treatment of such cases is no different from that of serious violent crimes committed outside the family context. However, if domestic violence has not yet led to severe or fatal consequences, it is far more difficult for a victim to secure protection.

101. Domestic violence can be prosecuted under article 117 of the Criminal Code (inflicting pain) which criminalizes systematic infliction of suffering. Cases under article 117 of the Criminal Code are subject to public prosecution, which means that the law enforcement authorities rather than the victim are responsible for collecting evidence and bringing the perpetrators to justice. According to the Russian Supreme Court's Judicial Department, in 2017, a total of 1,673 persons were convicted and sentenced under article 117, of whom 451 persons were sentenced to prison terms.<sup>31</sup> A review of sentencing under article 117 published in the Rospravosudie database<sup>32</sup> suggests that most cases involve domestic violence against wives, ex-wives, cohabiting female partners or elderly parents. However, the relatively small number of convictions under this article reflects the fact that it may be difficult to prove a systematic nature of domestic violence. The law enforcement authorities do not keep separate records of domestic violence reports and therefore consider each complaint individually without making a connection with other similar episodes. The absence of victim assistance programs makes it difficult to consistently document each episode of domestic violence and eventually to prove its systematic nature in court.

102. An isolated episode of domestic violence which does not result in serious bodily injuries is qualified as battery in the Russian legislation. Before mid-2016, battery was subject to private prosecution, meaning that domestic violence victims needed to prosecute the perpetrator, initiate a case in court and collect evidence. Only a limited number of victims were able to cope with this task. For example, in 2015, the rates of acquittals under articles 115 (causing minor harm to health) and 116 (battery) of the Criminal Code – both subject to private prosecution – were higher than the average acquittal rate for all offenses in the Criminal Code.<sup>33</sup>

*For example, Ms Gershman, a resident of Moscow, was battered by her husband and repeatedly brought the battery to the magistrate court. Every time, the magistrate court acquitted the abuser with reference to the applicant's failure to prove the circumstances in which she sustained her injuries or her husband's intent of causing her harm. Unable to find protection within Russia, Gershman took her case to the ECtHR.<sup>34</sup>*

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<sup>31</sup> See [http://www.cdep.ru/userimages/sudebnaya\\_statistika/2017/k4-svod-2017.xls](http://www.cdep.ru/userimages/sudebnaya_statistika/2017/k4-svod-2017.xls)

<sup>32</sup> See <https://rospravosudie.com/>

<sup>33</sup> See <http://www.cdep.ru/index.php?id=79&item=3418>

<sup>34</sup> The information provided by Stichting Justice Initiative.

103. On 21 June 2016, battery was decriminalized, with some exceptions, such as the battery committed in respect of "close persons" and family members – the latter were treated as offenses subject to private-public prosecution, i.e. criminal proceedings were instituted based on a victim's complaint but the law enforcement authorities, rather than the victim, were responsible for prosecution and evidence-collection. These amendments created more opportunities for victims of domestic violence to seek protection in the criminal justice system. However, the conservative part of Russian society, including a few politicians, opposed the amendments arguing that they would enable the state's arbitrary interference in the family life. Opponents of the amendments collected several hundred thousand signatures under their petition, and on 27 January 2017, the State Duma removed the exception and decriminalized beating of family members and "close persons."

104. As of this writing, battery has been decriminalized and reclassified as an administrative offense (article 6.1.1 of the Code of Administrative Offenses) and punishable with a fine of 5,000 to 30,000 rubles or 10 to 15 days of detention or 60 to 120 hours of compulsory work. Since administrative proceedings in such cases are initiated by the law enforcement authorities, a victim's complaint is not required. Commenced by the public authorities, administrative proceedings make it easier to bring batterers to justice. A review of data available from the Supreme Court's Judicial Department, conducted by the Institute for the Rule of Law at the European University at Saint-Petersburg, reveals that the number of punishments handed down for battery has recently increased many-fold. In 2015, almost 16,200 of the 59,500 persons charged with battery got sentenced, while in the first six months of 2017, almost 51,700 persons were sentenced for this type of offense.<sup>35</sup> In most cases, however, courts have punished batterers by a fine. According to experts, a monetary penalty does not have a sufficient impact on the perpetrators but can worsen the victim's situation as fines are paid from the family budget.<sup>36</sup>

105. A person who inflicts battery after having been convicted of the same in the administrative proceedings is liable to criminal prosecution under article 116.1 of the Criminal Code (battery by a person previously convicted of the same in administrative proceedings). Treated as a criminal offense, battery is punishable by a fine, compulsory or correctional labor or detention for up to three months. Cases under article 116.1 of the Criminal Code are subject to private prosecution, i.e. proceedings must be commenced and pursued by the victim. This perhaps is the reason why in 2017, just 296 persons were convicted and sentenced under article 116.1 – less than 1% of the number of administrative sentences for battery.

### Protection of domestic violence victims

106. Criminal or administrative proceedings against a perpetrator are often insufficient for protecting the victim from further violence, including that aimed to force her to withdraw the charges. No programs exist in Russia for domestic violence perpetrators, nor does Russian law provide for a measure such as a restraining order to facilitate domestic violence prevention and victim protection. Very often, victims are left without any protection.

*For example, Alina Kunasheva (Nalchik, Kabardino-Balkaria Republic) was systematically beaten by her husband. In late 2017, she fled to Moscow and filed for divorce. Her husband has been threatening her via relatives, promising to find her*

<sup>35</sup> <http://www.enforce.spb.ru/chronicle/news/7019-irina-chetverikova-ekaterina-khodzhaeva-vedomosti-extra-jus-chem-polezna-dekriminalizatsiya-poboev>

<sup>36</sup> <https://www.vedomosti.ru/opinion/articles/2018/02/06/750032-dekriminalizatsiya-poboev>

*and "rip open her stomach." In January 2018, Alina reported the threats to the police but as of April 2018, she has received no response.<sup>37</sup>*

*Valeriya Volodina from Ulyanovsk was repeatedly beaten by her husband. When she moved away from him and went to Moscow, he tracked her down and damaged the brakes of her car. She has been receiving death threats; her husband has created pages on her behalf in VKontakte social network, posted her nude photos and sent such photos to her son's classmates. The law enforcement authorities have failed to take steps in response to her complaints and refused to open criminal proceedings. Volodina took her case to the ECtHR, and her application has been communicated to the Russian authorities.<sup>38</sup>*

107. Domestic violence victims may require legal and psychological assistance or, in some cases, temporary shelter and help with employment. Counseling and other types of engagement with the perpetrators may be necessary to prevent further episodes of violence. Victims can access crisis centers financed by government or charities and sometimes providing temporary accommodation. However, the capacity of shelters is very limited: according to Stichting Justice Initiative, they have 1,620 places available in total, while the number of women living in Russia's 85 regions is approximately 78,500,000.<sup>39</sup> Psychological and legal assistance offered by state and non-state providers is more accessible, but there is no data as to whether it is sufficient and effective.

### "Honour killings" and bride-kidnapping

108. "Honour killings" are the most brutal and extreme form of violence against women still practiced in the North Caucasus, mainly in Chechnya, Dagestan and Ingushetia. **Stichting Justice Initiative** has documented and analyzed 35 cases of "honour killings" of women over the last five years, of which only 16 ended up in court.

109. What is commonly described in the North Caucasus as "honour killings" are the killings of women by their male relatives in order to "restore the family's honour" after rumors, suspicion or evidence of the woman's "inappropriate" behavior (unfaithfulness, a pre-marital relationship, exchanging letters with or dating a man, etc.) which is contrary to what is prescribed by local customs and traditions. The woman's family – usually the male relatives collectively or a particular man such as her father, brother, uncle or cousin – make the decision to kill her. In most cases, her body is then hidden in a hard-to-reach location, therefore the bodies of many alleged victims of "honour killings" have never been found. Unless the family reports the woman's disappearance or suspected murder, the police will not look for her. Only some of the victims' mothers have reported such incidents, although very rarely as most of them are afraid of public shame, threats and violence.

110. The practice of bride-kidnapping persists in the North Caucasus. Victims rarely receive protection, while their kidnappers often go unpunished.

*Resident of Ingushetia Zaira Bopkhoyeva was kidnapped by a fellow villager who intended to marry her, but his mother insisted that he should take Zaira back home on the same day. On the next day, seven of the young woman's male relatives on her (deceased) father's side drove her to a forest under a false pretext, where they used*

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<sup>37</sup> The information provided by Stichting Justice Initiative.

<sup>38</sup> <http://hudoc.echr.coe.int/eng?i=001-180628>

<sup>39</sup> Stichting Justice Initiative Report "Violence against Women in the Russian Federation," 2016, page. 26 [https://www.srji.org/upload/iblock/909/otchet\\_2016\\_05\\_20\\_o\\_nasilii\\_v\\_otnoshenii\\_zhenshchin.pdf](https://www.srji.org/upload/iblock/909/otchet_2016_05_20_o_nasilii_v_otnoshenii_zhenshchin.pdf)

*violence and threatened her with firearms trying to find out whether she had had an intimate relationship with her kidnapper and had thus "harmed the family's honour." Then they forcibly took her back to the kidnapper's home and told her not to return to her mother's house under threat of death. After a while Zaira was taken from her kidnapper's home to a hospital in a coma with signs of poisoning. To date, she is in a vegetative state with no prospects for recovery. The authorities refused to institute criminal proceedings and conduct a toxicological examination. No one has been prosecuted.*

## Female genital mutilation

111. The torturous practice of female genital mutilation exists in some high-mountainous regions of east Dagestan. According to a study conducted by Stichting Justice Initiative,<sup>40</sup> such operations are mostly performed on girls before the age of three. These operations remove the clitoris completely or partially or damage it by piercing it or making incisions with a knife, scissors, razor blade, needle or other tool. It is usually the mother or other maternal-line relatives who make the decision to perform the operation, motivated by their sense of belonging to the community (among traditionalists) and as a religious initiation rite (in highly religious communities).

112. By some estimates, in Botlikhsky and Tsuntinsky districts of Dagestan where this operation is performed on virtually all girls, approximately 800 children undergo female genital mutilation annually.<sup>41</sup> It is practically impossible to estimate the number of victims of female genital mutilation in other areas.

113. This problem was first brought to the attention of the Russian authorities in 2016 when Stichting Justice Initiative published a report on the practice of female genital mutilation. After the publication, the Prosecutor's Office of the Republic of Dagestan initiated two inquiries but with no results. The victims were probably reluctant to discuss this taboo topic and to testify against their relatives and fellow villagers who perform such operations. The authorities have not taken any further steps to combat this practice.

5. Please provide information on whether a study was undertaken into the causes of suicides in detention (para 18), and statistical data on the investigations of suicides in detention. Please provide information on measures by the Federal Service on the Execution of Penalties to enhance monitoring and detection of at-risk detainees and to take preventive measures regarding the risk of suicide and inter-prisoner violence. Please provide information whether the rules governing medical examination of prisoners have been amended to ensure that examinations are carried out by fully independent medical personnel, that complainants are protected from reprisals, and that their complaints of abuse in detention are thoroughly investigated

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<sup>40</sup> Yu. A. Antonova, S.V. Siradzhudinova. Female Genital Mutilation of Girls in Dagestan (Russian Federation). Report based on the results of a qualitative study on female genital mutilation performed on girls. Stichting Justice Initiative Moscow. 2016. - 61 c. <http://www.srji.org/resources/search/proizvodstvo-kalechashchikh-operatsiy-na-polovykh-organakh-u-devochek-v-respublike-dagestan/>

<sup>41</sup> [https://www.srji.org/about/annual/strategii-protivodeystviya-FGM-proizvodstvo\\_kalechashchikh\\_operatsiy\\_sji/](https://www.srji.org/about/annual/strategii-protivodeystviya-FGM-proizvodstvo_kalechashchikh_operatsiy_sji/)

114. In 2014, the medical branch of the Russian Federal Service on the Execution of Penalties (FSIN) transitioned to a new mode of operation: medical facilities, previously attached to penitentiary colonies, prisons and SIZO to provide medical assistance to suspects, accused and convicted individuals, operating as part of the penitentiary facility and subordinate to its chief were made autonomous and not directly subordinate to the penitentiary facilities and their administrations. This has been the first step towards ensuring in practice the independence of medical personnel from the administrations of penitentiary facilities.

115. In February 2018, a new regulation came into force establishing the rules for healthcare provision in penitentiary facilities, namely Ministry of Justice Order No. 285 of 28 December 2017 on Approval of the Procedure for the Provision of Medical Assistance to Persons in Detention or in Penitentiary Facilities (effective as of 20 February 2018).<sup>42</sup> The new regulations explicitly require that the penitentiary system should comply with the same standards as medical providers in the community (para 1).

116. Para 1 of the Order, with reference to Article 37 (1) of the Law on the Fundamentals of Healthcare in the Russian Federation, requires that medical assistance must be organized and provided in accordance with the procedures for healthcare provision which are binding on all healthcare providers in Russia. Since FSIN's medical facilities must obtain certification based on the general requirements for healthcare providers, the said procedures are binding on them as well.

117. With reference to article 80 of the Law on the Fundamentals of Healthcare, the Order specifies the types of medical assistance which must be provided by medical facilities within the penitentiary system. These include primary (pre-medical and medical) care, including specialist, technology-intensive, emergency, and palliative care.<sup>43</sup>

118. The new rules of retain **a possibility of healthcare provision to inmates both by medical facilities within the penitentiary system and by healthcare providers in the community**. Medical facilities within the penitentiary serve as priority providers and can be complemented by civilian medical services if the required type of medical examination or treatment cannot be provided within the penitentiary system (paras 2 and 9 of Order No. 285).

119. **The principle of exhausting the possibilities of the medical facilities within the penitentiary system means that prisoners can access medical services from independent medical personnel only if the penitentiary cannot provide the required services.** This general principle is found in all relevant regulatory acts.

120. The procedure whereby prisoners can be examined or treated by civilian medical personnel or healthcare providers in the community is detailed in Government Decree No. 1466 of 28 December 2012 on approval of the Rules for healthcare provision to detainees or prisoners by healthcare providers of the state or municipal healthcare system, and for seeking consultations from their medical specialists if medical facilities within the penitentiary are unable to provide the required medical assistance. According to the Rules, before a detainee or prisoner may be transferred to a civilian medical facility or seen by an external medical specialist in a SIZO or prison colony, it must be proven that the required medical assistance cannot be provided within the penitentiary system.

<sup>42</sup> See the Order at <https://rg.ru/2018/02/13/minust-prikaz-285-site-dok.html>

<sup>43</sup> See Article 80 (1) of the Law on the Fundamentals of Healthcare in the Russian Federation, [http://base.garant.ru/12191967/134df926347d32\\_dc82c9551519f33/](http://base.garant.ru/12191967/134df926347d32_dc82c9551519f33/)

121. According to para 3 of the Rules approved by Government Decree No. 1466, there may be two reasons why medical facilities within the penitentiary are unable to provide the required assistance: a) a lack of medical specialists with relevant skills or expertise, medical equipment or conditions needed for providing the required care, or b) a medical emergency in which any delay such as transportation to another facility within the penitentiary system may cause severe deterioration of a patient's condition and threaten his or her life.

122. The Rules approved by Decree No. 1466 cited above set out the procedure whereby a prisoner can receive care from independent medical personnel. The penitentiary facility must have signed an agreement with a healthcare provider in the community. Based on this agreement, the penitentiary facility may request the civilian healthcare provider either to admit a prisoner to their facility for examination or treatment or to send a medical specialist to the penitentiary colony for consultations. The healthcare provider then admits the patient or sends a specialist to the colony or SIZO and after the service is provided, bills the colony or SIZO and gets paid from the FSIN budget.

123. A doctor within a penitentiary facility may decide that a prisoner needs to be seen by a civilian medical specialist and within two hours of examining the patient, file a request with the colony/SIZO chief who must contact the civilian healthcare provider within one day (paras 10-11 of the Rules). This means that **a doctor within the penitentiary system, while not directly subordinate to the prison colony chief, cannot independently, based on his or her own judgment, request a consultation or examination of the patient by a civilian doctor.**

124. Prisoners can request to be seen by medical specialists from independent clinics, pursuant to para 129 of the Penitentiary Facilities Internal Regulations.<sup>44</sup> If a prisoner wants to be seen by a doctor of his choice, in absence of prescriptions from a prison doctor, he can do so at his own expense by filing a request with the colony chief who must consider it within three days (paras 130-131 of the Penitentiary Facilities Internal Regulations). Whether or not to grant the request is at the prison chief's discretion, **there is no explicit requirement that a prisoner's request to be seen by a doctor of his choice must be granted.** The services of an external doctor invited at a prisoner's request must be paid from the prisoner's bank account. A similar procedure is established for detainees at SIZOs (para 3 of Annex 3 to the Pre-trial Detention Facilities Internal Regulations).<sup>45</sup>

125. In practice, the procedure for prisoners seeking independent medical assistance is as follows: 1) the prisoner files an application with the penitentiary facility chief asking to allow a medical specialist to see him; 2) a contract must be signed with an independent healthcare provider for sending a doctor to the colony, SIZO or prison hospital; 3) the doctor must present his or her proof of training (diploma) and current specialist certificate to the colony administration; in addition to this, the medical facility within the penitentiary may require a contract and a payment receipt if the service is provided for a fee. It follows from the above that a prisoner must initiate a significant number of steps to be seen by an independent medical practitioner. Without external assistance from lawyers, relatives or POC members, it can be difficult for prisoners to follow the above procedure, because **being in prison, they cannot choose and contact a civilian healthcare provider, sign a contract with them, deposit sufficient funds to their personal bank account and pay for the service, and obtain the doctor's agreement to see the patient in the penitentiary facility.**

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<sup>44</sup> Ministry of Justice Order No. 295 of 16 December 2016 (version of 28 December 2017) on Approval of the Penitentiary Facilities Internal Regulations at [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_210064/](http://www.consultant.ru/document/cons_doc_LAW_210064/)

<sup>45</sup> Ministry of Justice Order No. 189 of 14 October 2005 (version of 12 May 2017) on Approval of the Pre-trial Detention Facilities Internal Regulations at [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_56436/](http://www.consultant.ru/document/cons_doc_LAW_56436/)



126. Despite steps taken to ensure access to timely and adequate healthcare for prisoners and detainees, further efforts are required to raise the standards of care in the penitentiary and to ensure medical personnel's independence from prison administrations. In practice, prisoners still face serious barriers to accessing adequate and timely medical assistance.

*Sergei Yeliseev, Kaliningrad Region, inmate at Penitentiary Colony FKU IK-13, sustained a fracture of his left arm in 2014, when prison guards used force to suppress a riot at the facility. In 2015, Yeliseev had an operation at a local civilian hospital to insert a metal plate to repair his broken joint. In September 2016, the plate broke and the bones came apart; the patient could not move his arm and urgently needed an examination by a surgeon and proper treatment. According to Yeliseev's report to Kaliningrad Regional POC members, he had been trying for six months, from September 2016 to March 2017, to get the prison administration to arrange for him to be seen by a specialist and receive treatment. Despite the prisoner's continued pain and suffering, medical personnel at the penitentiary colony ignored his deteriorating health, refused to respond to his complaints, and later tried to conceal his true condition. Following an intervention from POC and publications in various Russian media, the prison medics admitted that they had been unable to provide proper care to Yeliseev and referred him to a municipal hospital for surgery.*

127. Civilian hospitals bear an additional burden of extra security measures if they admit a prisoner for inpatient treatment – in particular, they need to arrange for continuous presence of a guard in the ward. In practice, this may cause civilian hospitals to deny admission to patients from the penitentiary system on various pretexts. In addition to this, cases have been reported of civilian medical specialists from clinics which have service agreements with penitentiary facilities to refuse to see and treat patients in prison.

*According to media reports, the Moscow Department of Health failed to respond to numerous requests from SIZO No.6 to send a specialist neurologist and trauma doctor to see a paralyzed female detainee. In 2013, no civilian medics visited the SIZO.<sup>46</sup>*

128. Cases have been documented of civilian doctors refusing to provide proper care to prisoners living with HIV.

*Anna A. is currently serving a sentence at a penitentiary colony for women in Kaliningrad Region. During her pregnancy, Anna was under investigation in a pre-trial detention facility (SIZO). In May 2016, she started having contractions, and the duty doctor at the SIZO called an ambulance to her. After seeing Anna's medical records, the ambulance paramedic refused to examine the woman but peeled down her gloves and threw them away, yelling that the patient "has a whole bunch of infections." The SIZO personnel and guards outside the cell could hear the paramedic yell insults and loudly discuss the patients' diagnoses. The ambulance personnel refused to examine the patient, who was then taken to a civilian maternity clinic and successfully delivered of a baby girl. Recently, the Stanovlenie non-governmental group in Kaliningrad has been providing legal assistance to Anna.*

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<sup>46</sup> <http://www.mk.ru/social/article/2013/12/10/957462-skandal-v-moskovskih-sizo-vrachi-ignoriruyut-zaprosyi-ot-tyuremschikov.html>

129. Ministry of Health Order No. 285 of 28 December 2017 has not removed the barriers to having fully independent medical personnel examine prisoners, because prisoners and their representatives are effectively denied the right and practical possibility to have a doctor of their choice conduct a medical examination. Instead, they first need to prove to the prison administration and local FSIN officials that the penitentiary system is unable to carry out the required examination. Whether or not a prisoner may be seen by a doctor of his or her choice is left to the prison administration's discretion and often used to pressure prisoners into submission.

*In particular, on 21 April 2017, three inmates at FKU IK-1 in Yaroslavl Region – **Vakhapov, Makarov and Nepomnyashchikh** – sustained injuries from prison personnel. According to the inmates, no medical examination had been carried out and no medical assistance had been provided to them before their lawyer arrived at the facility on 24 April 2017. A prison doctor who came to see them did not carry out a proper examination and did not respond to complaints of a possible brain concussion. The prison authorities failed implement the interim measures indicated by the ECtHR at the lawyers' request, in particular the requirement that the inmates should be promptly examined by medical personnel fully independent from the penitentiary service in the presence of their defenders.*

130. For prisoners complaining of torture there is no protection from reprisals, including physical and psychological abuse from penitentiary personnel. The only form of protection which may be considered in this context is their transfer to a safe place.

131. According to article 13 of the Penitentiary Code, in the event of an imminent threat to a prisoner's safety, he or she may ask any official of the penitentiary facility to ensure their personal safety.

132. The prison official is then required to promptly respond to the request. The penitentiary facility's operational department will conduct a check, and the complainant must indicate the persons who have threatened them and report other material circumstances. If the report of the threat is confirmed, the facility chief orders to transfer the prisoner to a safe place or to take other measures to remove the threat to the prisoner's safety.

133. However, this mechanism is ineffective if a threat comes from the penitentiary staff who have access to the complainant at any time of day or night.

134. Investigating bodies are responsible for examining complaints of abuse in detention, and such investigations almost always fall short of being thorough. Supervising prosecutors often fail to find evidence which supports the complainant's statements. Investigating bodies refuse to initiate criminal proceedings even though the standards of effective investigation require that torture complaints must be investigated promptly.

*In particular, the authorities refused six times to initiate criminal proceedings into complaints filed by **Vakhapov, Makarov and Nepomnyashchikh** about torture at the hands of penitentiary staff at FKU IK-1 in Yaroslavl Region on 21 April 2017. This fact per se indicates a lack of thorough investigation. The excessively long pre-investigative checks made it impossible to document and collect the necessary evidence and rendered subsequent medical examinations and other investigative steps useless. For example, the scene was inspected more than four months after the incident.*

135. In cases of **prisoners reporting abuse by cellmates, the only protection available in practice is to transfer the victim to a locked room or a punishment cell**, subjecting them to additional isolation and tougher detention conditions. The design of Russian penitentiary facilities today does not provide for any spaces other than isolation or punishment cells to be used as safe places for victims of abuse. It is noteworthy that the Concept and Program for Prison Reform for the period before 2025<sup>47</sup> provide for reconstruction and refurbishment of old facilities and construction of new ones but do not prescribe creating separate living premises or security blocks as safe places for prisoners abused by cellmates.

136. Human rights organizations and POCs have been receiving complaints from prisoners and their families alleging torture, beatings, physical and sexual abuse by the so-called "activists" with tacit approval from the colony administration. Later, many prisoners were pressured into withdrawing their complaints, and those who did not refused to participate in the investigation (investigators do not conduct informal interviews), so the needed investigative steps with their participation were not performed and the criminal proceedings were dropped for lack of evidence.

*In May 2016, R. Khibiev serving a sentence in IK No. 47 in Sverdlovsk Region told POC members about ill-treatment, such as torture, humiliation and sexual abuse, by "activist" inmates. The investigating bodies delayed taking the necessary steps for three weeks, and then Khibiev refused to participate in the investigation.*

137. If in the event of a prisoner's death, an investigation is mandatory and usually leads to criminal sanctions against the cellmates responsible. However, in most cases, the penitentiary facility officials do not face liability or criminal charges.

*In Penitentiary Colony No. 2 in Yekaterinburg, "activists" beat prisoner Anton Shtern to death on 15 January 2015. On 31 January 2017, the Verkh-Isetsky District Court in Yekaterinburg found inmates Mamontov, Bessonov, Sadov and Agamaliev guilty of extortion and causing severe injuries leading to death (Article 111 (4) (a), (c), Article 163 (2) of the Criminal Code) and handed down appropriate sentences. In July 2017, the verdict came into force, but none of the colony staff were punished.*

### Article 3

7. With reference to the previous concluding observations of the Committee, (para 17), please provide examples of decisions taken on cases relevant to article 3 of the Convention. Please provide information on cases when extradition of a person was refused because of a well-founded risk of torture or ill-treatment. Please also provide information on the number of cases in which extradition was granted, the countries to which individuals were returned, whether appeals mechanisms are in place, the number of persons who have appealed on the basis of article 3, and the outcome of such appeals. Please provide information on the monitoring and follow-up carried out to ensure that guarantees against torture and ill-treatment have been observed.

138. In its answers to the Committee's questions, the Russian Federation provides a few examples in which Russian courts overturned the decisions of the Prosecutor General's Office (PGO) to extradite

<sup>47</sup> Government Decree No. 420 of 6 April 2018 on the Federal Targeted Program for the Development of the Penitentiary System (2018 - 2026) at <http://publication.pravo.gov.ru/Document/View/0001201804130011?index=0&rangeSize=1>

individuals to third countries upon requests from prosecutors' offices of those countries. We can add one more example.

*On 21 November 2017, the ECtHR ruled in a joint case of 12 Syrians<sup>48</sup> detained by the Russian authorities in detention centers for foreigners in St. Petersburg, Makhachkala, Moscow, Murmansk, and Izhevsk between 2013 and 2016 following expulsion decisions.<sup>49</sup> On various dates between 2012 and 2016, the applicants came to Russia for various reasons and did not leave when the period of their stay had expired, due to the armed conflict in Syria. They were held in temporary detention centers for foreigners between 2013 and 2016, admitted on different dates and detained for periods between 5 months to 2 years and 2 months. The applicants complained that their expulsion to Syria, if carried out, would be in breach of their right to life and the prohibition on torture, inhuman and degrading treatment provided for in Articles 2 and 3 of the Convention. In addition to this, applicants M.S.A. and R.K. complained of the detention conditions at the detention centre for foreign nationals in Krasnoye Selo, Leningrad Region. The applicants submitted, in particular, severe overcrowding of the cells so that each detainee had no more than 1.5 square meters of personal space, lack of protein-containing food, arbitrary restrictions on food parcels delivered from the outside, limited access to drinking water, insufficient lighting of the cells, not being allowed to leave their storey of the building, outdoor exercise lasting around 15-20 minutes, and not being able to go outside in winter as they did not have winter clothes. By the time when their application was examined by the ECtHR, all applicants had been released by orders of Russian courts, which led the ECtHR to conclude that the applicants no longer faced the risk of deportation to Syria. Since the Russian Government had not put forward any evidence or argument to the contrary, the ECtHR found that the conditions of detention in the detention center for foreign nationals amounted to inhuman and degrading treatment and awarded between 7,500 and 9,500 euros in compensation to the applicants in respect of whom the Court found the said violations.*

139. But human rights organizations have also documented other types of outcomes, such as abductions of foreign nationals with the purpose of their illegal extradition to third countries.

*Mirsobir Mirsobitovich Khamidkariyev, an Uzbek national who had worked as a film producer in Uzbekistan and after producing a film about corruption, was put on a wanted list on, according to "Migration Right" Network, trumped-up charges of alleged involvement in religious extremism and establishment of a banned extremist organization. Khamidkariyev applied to the Federal Migration Service (FMS) for refugee status but was rejected, similar to most other asylum seekers in Russia. He challenged the decision in court. On 12 May 2014, Zamoskvoretsky District Court of Moscow approved Khamidkariyev's application, quashed the rejection and ordered the Moscow FMS to grant the applicant refugee status. The ruling entered into force on 12 June 2014. However, on 9 June 2014, Khamidkariyev was abducted by unidentified men in a taxi. His lawyer sent inquiries to the FSB, the Federal Migration Service and the border control services of all airports, asking them to stop the asylum seeker Khamidkariyev's involuntary removal from Russia. The lawyer also*

<sup>48</sup> See *M.S.A and Others v. Russia* Application No. 29957/14

<sup>49</sup> The eight Syrians were represented before the Court by lawyers from the Migration and Law Network run by the Memorial Human Rights Center.

*requested the European Court of Human Rights to indicate interim measures under Rule 39 of the Rules of Court to prevent Khamidkariyev's extradition to Uzbekistan. A month later, Khamidkariyev's relatives in Uzbekistan informed his lawyer that Khamidkariyev was in prison in Tashkent facing extremism charges. The lawyer traveled to Tashkent and was allowed to attend the proceedings. He learned from Khamidkariyev that he had been abducted by officers of the Uzbek Ministry of National Security (MNS) assisted by their Russian colleagues. Khamidkariyev was put on a regular, Tashkent-bound airplane, which would not have been possible without the Russian FSB's involvement. Despite the absurdity of charges against him, based on a witness testimony that Khamidkariyev had said that women must wear headscarves – he was sentenced to 8 years of prison. The ECtHR found Russia in violation of Article 3 of the Convention and awarded 19,500 euros to Khamidkariyev. However, he is still held in terrible conditions in prison. A 180 cm tall man, Khamidkariyev weighted a maximum of 50 kg at the beginning of his trial. While Khamidkariyev was serving his sentence, a video was published in which he confesses his guilt and admits to an intention to commit a terror attack. According to human rights defenders, he must have been coerced into making such a statement by torture and ill-treatment.*

140. Cases have been documented in which individuals were effectively extradited to a third party under an expulsion procedure which is easier and faster than extradition to apply based on a court finding of an administrative offense committed by a foreigner. As opposed to individuals subjected to extradition who are entitled to legal safeguards against torture, no such protections exist for those facing expulsion. Following the court ruling, they are placed in a temporary detention center for foreigners and then deported, in most cases despite the fact that their deportation is illegal while their asylum application is pending.

*Saidmaruf Nurovich Saidov, a Tajik national, came to Russia in November 2015. On 7 February 2016, he was charged in absentia in Tajikistan under article 401 (1) of the Criminal Code of Tajikistan (unlawful involvement in armed units, armed conflict or military actions in other countries) and placed on the wanted list. On 14 April 2016, Saidov was apprehended and placed in SIZO No. 4 in Moscow. Although the deadline for appealing the refusal to grant him refugee status had not expired, the Russian Prosecutor General's Office promptly ordered Saidov's extradition to Tajikistan. Saidov appealed this decision to the Moscow City Court, but his appeal was rejected. On 10 April 2017, the Prosecutor of Zamoskvoretsky District in Moscow ordered Saidov to be released, as the maximum permitted period of his detention had expired. However, instead of being released, Saidov was transferred to Yakimanka Police Division and held for 48 hours in a cell for administrative detainees. On 12 April 2017, a judge at Zamoskvoretsky District Court in Moscow found Saidov in violation of immigration rules and ordered a 5000-ruble fine and expulsion from Russia, pending which he was placed in a temporary detention center for foreigners. The judge dismissed the lawyer's argument that Saidov, as an asylum seeker, cannot be deported. On 24 May 2017, the ECtHR indicated interim measures under Rule 39 and instructed the Russian authorities to refrain from expelling Saidov pending examination of his application by the Court (Application No. 35332/17 S.S. versus Russia). Nevertheless, on 26 May 2017, Saidov was removed from the temporary detention center in Moscow and turned over to Tajikistan.*

141. The Russian authorities are known to have used formal pretexts for launching administrative proceedings against foreigners to facilitate their deportation to third countries. Quite often, individuals thus detained – indeed, abducted – have been abused by police.

*Ravshan Erkinovich Rakhimov, an Uzbek national, came to Russia as a migrant worker in 2007 and has lived in Russia permanently since 2013. The Uzbek authorities placed him on the wanted list on 4 December 2014. On 7 February 2017, Rakhimov was detained in Russia upon request from the Uzbek Prosecutor General's Office. Between 9 February and 7 September 2017, Rakhimov was held in SIZO No. 4. Prior to his detention, Rakhimov had repeatedly applied for refugee status in Russia to avoid torture and inappropriate methods of criminal investigation he could face in his country of origin. On 24 July 2017, the Russian Prosecutor General's Office granted the request of the Uzbek PGO to extradite Rakhimov to be prosecuted in Uzbekistan. Rakhimov appealed the Russian PGO's decision. On 7 September 2017, the Moscow City Court granted Rakhimov's appeal and quashed the PGO's decision of 24 July 2017. The court found sufficient reasons to believe that Rakhimov's return to Uzbekistan could place him at an imminent risk of treatment prohibited by Article 3 of the European Convention, therefore he should not be extradited. The court ordered to release Rakhimov from custody in the courtroom. Rakhimov was escorted to a holding room at the Moscow City Court, allegedly for signing some papers, and then disappeared. He was found again on the next day of 8 September 2017 at Yaroslavsky District Police Division of Moscow. Rakhimov's lawyer found his client with a plastered leg and a black eye. On 9 September 2017, police officers of Yaroslavsky District Division handed the detainee over to their colleagues at Losinoostrovsky District Division where once again a protocol of administrative offense was drawn up under article 18.8, part 3.1, of the Code of Administrative Offenses. It was only on 10 September 2017 that Rakhimov's lawyer learned his whereabouts and was allowed to see him, thanks to support from POC members. Rakhimov had bruises on his head and was taken to a hospital for medical assistance. Although Rakhimov was diagnosed with a fracture of the base of the foot and multiple bruises, he was not hospitalized but brought back to the police division. On 11 September 2017, Babushkinsky District Court in Moscow found Rakhimov guilty of an administrative offense and ordered a 5000-ruble fine and expulsion from Russia. The court found Rakhimov in violation of articles 2 and 10 of the Law on the Legal Status of Foreigners in Russia, No. 115-FZ of 25 July 2002, for not having his migration card and passport on him during an identity check on 9 September 2017. The reason why Rakhimov did not have his papers was that the police had not returned them while Rakhimov was transferred between the two police divisions. On 13 September 2017, the ECtHR indicated interim measures under Rule 39 to prevent Rakhimov's expulsion to Uzbekistan pending the Court's examination of his case. On the same day, the Moscow City Prosecutor's Office filed an appeal with the Penal Chamber of the Russian Supreme Court asking to overrule the Moscow City Court's ruling of 7 September 2017 which had cancelled the PGO's decision to extradite Rakhimov to Uzbekistan. On 5 December, the Russian Supreme Court quashed the Moscow City Court's ruling and sent the case back to the Moscow City Court for reconsideration which was scheduled for 15 January 2018. As of this writing, the 11 September 2017 ruling of Babushkinsky District Court ordering Rakhimov's expulsion has become enforceable; this means that he can be deported to Uzbekistan at any time.*

142. Pending one's application for refugee status or temporary asylum, the applicant cannot be extradited to third countries. His or her extradition must be suspended until the final rulings of domestic courts and also if international human rights bodies have indicated interim measures to prevent extradition.

*Khurshedin Bobojonovich Fazylov, a Tajik national, came to Russia in September 2014. On 5 May 2015, the Tajik authorities put his name on the cross-border wanted list. On 15 July 2015, he was detained and placed in SIZO No. 4 in Moscow. Although the deadline for appealing the refusal to grant him refugee status had not expired, the Russian Prosecutor General's Office ordered his extradition to Tajikistan on 5 February 2016 and notified him of the order on 17 February 2016. The decision was appealed to higher instances, up to the Supreme Court. At the extradition hearing, Fazylov's representatives submitted the ECtHR indication of interim measures under Rule 39 to protect Fazylov from deportation and extradition. This had no effect, and on 14 July 2016, the Russian Supreme Court held: "having examined the documents submitted by the defense, the Judicial Board notes that the indication of interim measures by the European Court suspends extradition but does not imply that extradition must be refused altogether; therefore, this rule in and of itself cannot serve as a ground for refusing extradition to the requesting party." On 15 July 2016, Fazylov was deported to Tajikistan. Fazylov's case has been brought to the ECtHR (Application no. 39552/16 K.F. v Russia).*

143. At its 37th Session in November 2006, the UN CAT noted in regard of the situation in Russia, "the widespread and broad use of administrative expulsion according to article c18.8 of the Code of Administrative Offences for minor violations of immigration rules." The Committee recommended: "The State party should further clarify the violations of immigration rules which may result in administrative expulsion and establish clear procedures to ensure they are implemented fairly." This recommendation, however, has not been implemented to date.

144. Individuals whose administrative expulsion has been ordered by a court are held in Special Facilities for Temporary Detention of Foreigners (SUVSIGs). The conditions of detention in SUVSIGs are comparable to those in penitentiary colonies and pre-trial detention centers.

145. Amendments to Federal Law of 10 June 2008 No. 76-FZ "On Public Oversight of the Guarantee of Human Rights in Detention Facilities and on Assistance to Individuals Held in These Facilities" were adopted on 12 February 2015. With the introduction of these amendments PMCs were granted the right to visit SUVSIGS.

146. One of the main problems in SUVSIGs is that the area of cells does not meet sanitary standards. In Saint Petersburg each detainee has less than 2.5m<sup>2</sup> of living space. In accordance with Clause 3(11) of the Rules for Holding Foreign Citizens and Stateless Persons in a SUVSIGs, the sanitary norm for each person in a cell should be (in the case of bunk-beds) 4.5m<sup>2</sup>.<sup>50</sup> Violations of sanitary norms for cell area were also recorded in the Sverdlovsk Oblast SUVSIGs<sup>51</sup>.

147. Complaints about the lack of hot water or the lack of regular access to a shower were received from SITDFNs in Moscow,<sup>52</sup> Kaluga,<sup>53</sup> and Ekaterinburg.<sup>54</sup>

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<sup>50</sup> The Rules for detention (accommodation), in special facilities of the Russian Ministry of Interior or its territorial branches, of foreigners or stateless persons subject to administrative removal from the Russian Federation in the form of involuntary expulsion, deportation or readmission. Approved by Decree No. 1306 of 30 December 2013.

<sup>51</sup> <http://www.prison.org/content/oblaka-19052015>

<sup>52</sup> <http://spb.onk.su/profile/42/blog/868.html>

<sup>53</sup> <http://7x7-journal.ru/post/38364>

<sup>54</sup> <http://www.prison.org/content/oblaka-19052015>

148. No provision is made for special foods for pregnant women, nursing mothers, and people with dietary restrictions caused by health conditions (diabetes, ulcers). There is also no account for the fact that most people in SUVSIGs are Muslim and do not eat pork.

149. Government Resolution No. 1306 of 31.12.2013 directs the administration of SUVSIGs to maintain a well-equipped exercise area, exercise machines, and a well-equipped enclosure for walking, where detainees should walk for a minimum of one hour twice a day. Unfortunately, the majority of SUVSIGs have nothing like this at all. Time for walks in various institutions is set by the warden on the basis of an approximate (typical) daily schedule for specialized institutions, which was approved by the head of the FMS. In the Saint Petersburg SUVSIGs, detainees are allowed to walk no more than two to three times a week for no more than 15 – 20 minutes in a fenced off enclosure under an open sky without any type of covering or awning. Moreover, these enclosures lack any conditions for sports or leisure. According to information from PMCs, foreign nationals held in the Moscow Oblast SUVSIGs are allowed to walk for only 30 minutes per day in an enclosure that does not contain any exercise or leisure equipment and does not have an awning, which prevents detainees from walking in bad weather.<sup>55</sup> These issues are typical for most institutions, specifically for SUVSIGs in Irkutsk,<sup>56</sup> Sverdlovsk,<sup>57</sup> and Kaluga<sup>58</sup> oblasts. The SUVSIGs in Bashkortostan does not have any enclosure for walking, which goes against every rule and regulation.<sup>59</sup>

150. According to regulations of the RF FMS governing standard conditions and procedures for holding foreign citizens and stateless persons in SUVSIGs, elective care shall be provided on the basis of the Rules for providing medical assistance to foreigners and only on a fee basis.<sup>60</sup> Exceptions are made in urgent cases; emergency care is provided free of charge. According to reports from PMC members and detainees themselves, SUVSIGs do not have qualified medical personnel—only feldshers work there. Generally, only the cheapest and most primitive medicines (analgin, aspirin, activated carbon) are used to treat sick people.

151. It is difficult for detainees to send correspondence, including letters to relatives and complaints, appeals and statements to courts, human rights organizations, and law enforcement organizations. Outgoing correspondence is not assigned a reference number, so it is very hard to track.

152. People held in SUVSIGs have been subjected to prohibited treatment. Human rights defenders and POC members have documented several cases of mass beatings.

*On 25 February 2015, the attorneys Nadezhda Yermolayeva and D.V. Trenina visited this detention center for foreigners and met with eight clients being held there. During their visit, they were able to confirm information that some of the victims of these beatings were applicants in ECHR cases won against Russia. These included Nabi Rakhimov (application No. 50552/13), Sokhib Khalikov (application No. 66373/13), Javohir Eshonkulov (application No. 68900/13), and Avazbek Nizamov, Khakim Dzhalalbayev, Olim Dzhalalbayev and Rakhmatullo Mukhamedkhodzhayev (applicants in the case Nizamov and Others v. Russia, applications nos. 22636/13, 24034/13, 24334/13, 24528/13). The ECHR found that the rights of all these citizens to freedom and personal security had been violated, and also found that these*

<sup>55</sup> <http://spb.onk.su/profile/42/blog/868.html>

<sup>56</sup> [http://copwatch.ru/otchet-nablyudateley/otchet-nablyudateley\\_45.html](http://copwatch.ru/otchet-nablyudateley/otchet-nablyudateley_45.html)

<sup>57</sup> <http://amigo3.livejournal.com/7557.html>

<sup>58</sup> <http://7x7-journal.ru/post/64160>

<sup>59</sup> [http://sovetonk.ru/news/republic\\_of\\_bashkortostan/bsksuvsig/](http://sovetonk.ru/news/republic_of_bashkortostan/bsksuvsig/)

<sup>60</sup> Russian Government Decree of 6 March 2013 No. 186 on the approval of the Rules for the provision of medical assistance to foreigners in the Russian Federation.



*individuals would be subjected to torture if they were deported to Uzbekistan and that their forcible return to this country was not possible. The witnesses questioned confirmed that the beatings started after a group of several inmates attempted suicide on 17 February. Beginning that day and until 24 February, OMON officers conducted daily midday cell 'checks' during which they beat practically everyone with nightsticks and helmets. This violence was completely random and was not elicited by any actions committed by the inmates, the absolute majority of whom did not participate in the unrest, put up any resistance, or present any danger. They reported that many foreigners suffered grave injuries—their arms were broken and their faces were smashed in. Over the five hours they spent in the block, the attorneys saw people with bandaged arms, people limping in casts being taken to the medical unit<sup>61</sup>.*

153. Violence was also used on a large-scale against foreign nationals and stateless persons in the Ekaterinburg SUVSIG on 14 May 2015.

154. Ministry of Internal Affairs and staff from private security companies that provide security at SUVSIGs on a permanent basis also frequently and illegally employ penalties and corporal punishments that are not specified in any regulations against detainees who they believe to be “violators of the regime.” These punishments include confinement in a punishment cell, solitary confinement, or the so-called “glass,”<sup>62</sup> handcuffing, and beating with nightsticks. Instances of confinement in a punishment cell were recorded in Bashkortostan:

*“During its visit, the PMC discovered a room on the second floor that resembled a so-called ‘concrete bag.’ This cell was almost 6 square meters in size. It held two people. The cell had a concrete floor, and popcorn<sup>63</sup> walls. There was no furniture. The toilet had no flushing mechanism. There was nothing to even sit on. One person was sitting on the floor in his coat, He had given his boots to his cell mate so that the cell mate could sit on them on the floor without freezing his genitals, etc. When they asked what kind of room this was, the commission members were told that it was a punishment cell”<sup>64</sup>.*

155. Effective rules permit separating minors from their parents, with adults placed in SUVSIGs and children in rehabilitation centers — special shelters for migrant children, the so-called “transit institutions.” Infants are detained together with parents in locked up rooms under conditions which are totally unsuitable for children.

*On 7 September 2015, FMS officers arrested Ms. Nabotova and confined her in a SUVSIG. At the time, she was in her 40th week of pregnancy. Two of her young children—8-year-old Sarvarbek and 7-year-old Mahbuba—were also detained and then separated from their mother and sent to the Tranzit orphanage. Two weeks after her arrest, on 20 September, Nabotova was taken to Maternity Hospital No. 16 (one of the few in the city that accepts women in labor who do not have the documents*

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<sup>61</sup> A report on findings from a visit of a Special Facility for Temporary Detention of Foreigners (SUVSIG) in Moscow, at <http://an-babushkin.livejournal.com/264608.html>

<sup>62</sup> The “glass” is a small, windowless room where a person can stand or sit, but not lie down. If several people are placed in the “glass,” they can only stand, sometimes for hours or days. This form of punishment is usually used by the prison administration as a measure of physical coercion against disobedient convicts.

<sup>63</sup> An uneven wall covering scattered with drops of dried plaster. People can scratch themselves on these kinds of walls, so they are unpleasant to lean against.

<sup>64</sup> From a POC report after a visit to the Bashkortostan SUVSIG: [http://sovetonk.ru/news/republic\\_of\\_bashkortostan/bsksuvsig/](http://sovetonk.ru/news/republic_of_bashkortostan/bsksuvsig/)

usually required at a birth), where she gave birth to a son. She and her newborn were returned to the Saint Petersburg SUVSIGs, where they were placed in an “isolation ward” (this was what the sign on the door said), which was most likely meant for holding people with infectious diseases. When questioned by Yu.D. Serov, an attorney assisting ADC Memorial with this case, head of the FMS office for Saint Petersburg and Leningrad Oblast E.V. Dunayeva responded that prior to Nabotova’s return to the SUVSIG after she gave birth, this facility lacked any items or products needed for caring for a child (the Red Cross later provided a crib and care products, while the FMS office bought a changing table) and supplemental nutrition (SUVSIG staff bought dairy products and fresh fruit at their own expense). Dunayeva noted that “current RF laws lack special norms regulating the procedures for holding pregnant women and new mothers” in SUVSIGs, and also that “the SUVSIGs budget does not have a separate line for expenses to support pregnant women and new mothers; this financing comes from general funds.”<sup>65</sup> After almost a month in the SITDFN, Nabotova and her newborn son were deported from Russia on 15 October 2015. Her two young children spent over two months separated from their mother until they were deported in the company of orphanage staff members. Tranzit staff members responded to the attorney’s weekly calls to find out when the children would be returned to their mother by saying that they were waiting for financing to cover the cost of the trip for the children and the staff members traveling with them.

156. In *Kim v. Russia*, the ECtHR found the conditions of detention at a SUVSIG amounting to inhuman and degrading treatment.<sup>66</sup>

*Roman Anatolyevich Kim* — a stateless person and ethnic Korean born in Uzbekistan in 1962 and living in Russia since 1990, where he previously served time in prison. On 9 June 2011, stateless person Roman Anatolyevich Kim was detained in the Sestroretskoe Kurortny district of Saint Petersburg for not having identity documents. Police officers wrote him up for committing the administrative offence stipulated in Article 18.8(1) of the RF Code of Administrative Offences (“violation of regime of stay in the RF”). On 19 July 2011, a court issued a resolution finding Kim guilty of violating his regime of stay in Russia and subjecting him to punishment in the form of a 2,000 ruble fine and expulsion from Russia. Prior to his expulsion (and without any indication of the date of its execution), Kim was placed in a foreign national detention center (FNDC) of the Main Office of the Ministry of Internal Affairs for Saint Petersburg and Leningrad Oblast.<sup>67</sup> The applicant was initially held in a cell of less than 10 square meters, which also held five or six other people. During the last 10 months of his confinement, he was kept in a cell with an area of 18 square meters, which he shared with four and sometimes seven other prisoners. These cells did not have sinks or access to drinking water. The floor had only one toilet and one shower, which were used by approximately 40 people. Until March 2013, the applicant was allowed to spend 20 – 30 minutes two to three times a week in a small yard outside. Also, prisoners were not able to participate in any meaningful activities: there was no access to television, radio, newspapers, or magazines. It was only after Kim had been held in the FNDC for six months that the FMS office sent a query to the embassy of the Republic of Uzbekistan, whose citizen Kim was presumed to be. On 5 February

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<sup>65</sup> E.V. Dunayeva’s response to the attorney of 29.02.2016, outgoing No. 1/z-1001. ADC Memorial archives.

<sup>66</sup> Case of *Kim v. Russia*. 17 July 2014. Application no. 44260/13. <http://hudoc.echr.coe.int/eng?i=001-145584>

<sup>67</sup> On 1 January 2014, Foreign National Detention Centers were transferred to the Department of the Federal Migration Service for Russia and renamed Specialized Institutions for the Temporary Detention of Foreign Citizens (SUVSIG).

*2013, a response was received that it would not be possible to issue Kim a certificate to return to Uzbekistan in light of the fact that he was not a citizen of this country. Even though it was confirmed that Kim could not be expelled, courts for the place of detention and for the place where the initial ruling was issued refused to consider this complaint, which was filed with account for new facts, and Kim continued to be held in the detention center without any legal grounds or any prospect of expulsion until 23 July 2013, i.e. he spent over two years there.*

157. In its judgment in the case *Kim v. Russia* the ECHR required Russia to adopt general measures to improve the situation in SUVSIGs. These measures should include amendments to laws that would establish review of lawfulness and the terms of confinement in a SUVSIG and would prevent stateless persons from repeated detentions and being placed there (i.e. an effective procedure must be created for legalizing stateless persons, including former Soviet citizens, who have not been able to obtain legal status for decades).

158. An administrative ruling must be executed within two years of coming into effect (article 31.9 of the Code of Administrative Offenses). This means that detention pending one's expulsion may last for two years, which in itself is unacceptable. However, stateless persons have been held in SUVSIGs for even longer periods. There is no possibility of determining a country where they should be sent, so some stateless persons, once released, soon find themselves back in detention, time and again.

159. As of early February 2018, according to the Russian Ministry of Interior, a total of 3930 people were held in SUVSIGs, including 263 stateless persons. However, during the same period, the database of the Memorial Human Rights Center's Migration and Law Network included 89 more names of stateless persons held in SUVSIGs in six Russian regions; their names were not on the MoI list. But even the Memorial's list may be incomplete.

160. On 23 May 2017, the Russian Constitutional Court ruled on a complaint filed by N.G. Mskhiladze, a stateless person. The ruling prescribes changing the practice of detaining stateless persons in SUVSIGs. The Constitutional Court found unconstitutional articles 31.7 and 31.9 of the Code of Administrative Offenses and held that detaining an individual in a SUVSIG is unlawful if no real possibility exists to carry out the decision on their expulsion, since there is no country they could be expelled to. The Constitutional Court prescribed that the Code of Administrative Offenses should be promptly amended to ensure effective judicial oversight over the duration of detention of persons in SUVSIGs pending expulsion. In addition to this, the Constitutional Court stated that pending this amendment, stateless persons having spent three months in a SUVSIG must be allowed to request a court to check the legality and validity of their further detention in the SUVSIG.

161. At the time of writing this report, applicable Russian legislation has not been amended in accordance with the ECtHR and Constitutional Court's guidance, although draft amendments to the Code of Administrative Offenses introducing judicial review of the duration and necessity of holding stateless persons and foreigners in SUVSIGs passed their first reading in the State Duma on 21 December 2017<sup>68</sup>.

8. Please provide information whether the State party continues to rely upon diplomatic assurances concerning the extradition and expulsion of persons from its

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<sup>68</sup> See Draft amendments: <http://sozd.parliament.gov.ru/bill/306915-7>

territory to States where they would face a risk of torture. Please also provide the Committee with the number and type of diplomatic assurances received during the reporting period and the countries involved, as well as the existence of removal and post-removal monitoring mechanisms (para 17). Please update the Committee on the current location and status of Mr. Alexey Kalinichenko<sup>69</sup> including any monitoring mechanism.

162. The Russian Federation indicates in its report, "When detainees express fears that they will be subjected to torture in the requesting State and extradition checks are carried out, all the materials gathered in such checks are properly audited by the Office of the Procurator General of the Russian Federation.. In some cases, the risk of ill-treatment is assessed even when the detainees themselves do not express any such apprehensions. This applies to cases where the extradition is requested of an individual whose alleged offence is an ordinary criminal offence, but who is a member of an ethnic group other than that of the ruling elite [non-title nation]. In such circumstances, the competent authorities of the State seeking the extradition are required to give guarantees that the rights under international treaties and domestic legislation of the individuals whose extradition is sought will be duly upheld." (para 143). It is worth noting, however, that in all cases cited by the Russian Federation (paras 127, 132, 136 and 137), the Russian PGO initially granted the extradition requests, but then domestic courts, having considered the circumstances of the cases in question, including the risks for the individuals to be subjected to torture in the country requesting their extradition, and also mindful of the ECtHR case-law, ruled that expulsion was impossible and quashed the PGO's decisions. At the same time, the Russian Federation states in the report that the PGO "has itself refused extradition requests from the competent bodies of Kyrgyzstan, Tajikistan and Uzbekistan, following the annulment of earlier decisions on extradition, since the European Court on Human Rights had found that the extradition of the persons concerned would breach article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950" (para 131); however, the report does not provide any examples to support this statement. Instead, Russia's response indicates that by granting the extradition requests which later had to be reversed by Russian courts, the PGO had not properly verified the risks for extradited or expelled individuals to face torture and ill-treatment in the State requesting their extradition.

### **Articles 2 and 11**

13. With reference to the previous concluding observations of the Committee expressing concern at the inability of some POCs to conduct unannounced visits, please provide information on the conditions governing access of POCs to all places of detention, including pretrial detention centres, administrative detention centres and police lock-ups, and provide a list of detention facilities visited during the reporting period. Please provide details of any concerns reported by POCs about possible violations of legislation detected during visits to places of detention, including obstruction of visits, and indicate what action the authorities have taken in response to information from these bodies regarding possible violations, including investigations and disciplinary measures taken. According to the State party's letter replying to the Committee's Rapporteur on Follow-Up, POC members had been obstructed in Irkutsk and Sverdlovsk "as a result of ignorance" of the Prison service requirements, and disciplinary liability was imposed on 6 staff members of the penitentiary system in 2012. Please clarify the nature, length, and form of those

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<sup>69</sup> See Communication No428/2010, *Kalinichenko v. Morocco*, CAT/C/47/D/428/2010.

disciplinary punishments, and where the six staff are employed today, and at what rank. Please provide statistics on other such incidents during the reporting period.

163. Unannounced visits are restricted according to the act “On public monitoring of human rights in places of detention and on assistance to persons in places of detention”<sup>70</sup> (act “On public oversight”) with the demand of the article 15 part 4 to inform the administration of the institution «about any planned visit». **The act does not state how early before the visit this informing should take place, nor specifies who from the POC`s part should inform the administration.**

164. The article 17 part 1 of the act “On public oversight” specifies the reasons why a POC`s member might be prohibited to make a visit: if this POC`s member is an immediate relative, sustain, affiant, defender or any other person taking part in the procedure of the criminal case of that one located in the place of custody.

165. At the same time the act states that any POC`s member should observe the internal regulation of the institution (art. 16, part 1, point 1). This appropriate demand is often used to create obstacles for visiting the institutions in general and places inside them.

166. In reality, law enforcement departments and their institutions (in the first place, correctional systems — FSIN) got used to the public supervision from the part of POC and do their best to neutralize the activity of the most experienced and independent members of POC. Most often they are illegitimately prohibited to enter the institutions to be supervised, exposed to personal inspection and unreasonable demands concerning taking in equipment to document the violations, refused to provide the papers necessary for inspection.

*For example, in Krasnoyarsk Territory in May 2016 POC`s members were allowed to enter the prison colony one hour after they had informed the administration of GUF SIN about their visit in connection to a complaint received which stated that a prisoner had been beaten. It turned out true, but the prisoner refused to lodge his complaint to the law enforcement agency. Internal Affairs did not allow POC`s members to enter the territory of SUVSIG with the pretext that POC had not informed about their visit three days earlier – which is not stated anywhere. POC`s members were not allowed twice to enter prison colony №31 and detention center 31 with the pretext that there were no officers to accompany them. Besides, often obstacles to access places of detention are created such as long, up to two hours, waiting for the possibility to enter an institution with the excuse of business meetings, lack of free officers to accompany POC, other supervising groups present at the institution, other urgent tasks. As usual, after having entered the institution POC`s members were left closed in a room waiting for 1 – 2,5 hours for the officers to come back.*

*In Chelyabinsk region POC`s members were prohibited many times to take in with them photo and video equipment necessary for documenting any kind of violations and events of the monitoring visit. Administration of penitentiary institutions refer to rules demanding written permit for the equipment signed by the administration of prison colony. The same problem are known in many regions: Saint Petersburg, Sverdlovsk region etc. Refusals to take in the equipment are illegal which was many times confirmed by court<sup>71</sup>.*

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<sup>70</sup> See the actual text of the act “On public oversight” <http://base.garant.ru/12160914/>

<sup>71</sup> <https://www.kommersant.ru/doc/3630963>

167. Another negative factor impeding visits to places of detention is the fact that according to the part 4 article 15 of the act "On public oversight" **the notification of the visit is attributed to the authority of the whole POC, which allows to include in the rules of work of some regional POC the notification to the powers of the Chairman of the Commission.** In some cases (for example, in the Republic of Bashkortostan and Kirov Region) this fact led to a ban on visits by a member of the POC that are not agreed with its leader.

168. On February 12, 2015, amendments were adopted to the Federal law of June 10, 2008 No. 76-FZ "On public monitoring of human rights in places of detention and on assistance to persons in places of detention". With the introduction of these amendments the Public Oversight Commissions received the right to visit SUVSIGs. In many regions at an early stage the POC's members have faced resistance from the SUVSIGs administration for whom independent monitoring became a new practice. According to the network "Migration and law" cases of non-admission and obstruction against POC were noted in St. Petersburg, Kaluga region, Sverdlovsk and Irkutsk region, Krasnoyarsk Territory, Republic of Bashkortostan. Now POC members get the access to SUVSIGs.

169. In accordance with the current legislation, officials can be brought to disciplinary responsibility within 6 months from the date of such actions<sup>72</sup>. When human rights defenders and members of the POC appealed against illegal actions of prison administrations in court, the courts recognized such actions as illegal. However, until the entry into force of court decisions, the term of bringing officials to disciplinary responsibility expired, and similar violations repeated again and again.

*Thus, according to the POC of Sverdlovsk region, the court recognized four times as illegal actions of the prison administration (head Makarikhin S. S.) to ban and restrict the activities of members of the POC of Sverdlovsk region (33A-3057/2016 from 20 October 2015, no.../2015 of 30 October 2015, n.../2016, 17 Feb 2016, No. 2A-3446/2016 from 5 May 2016 no. .../2016 07 Oct 2016).*

14. Please provide information on the appointment of members of POCs (para11) and whether the POCs are independent of regional and federal administrations. Please discuss how the independence and effectiveness of the POCs has been affected by the appointment of new persons to replace initial members of the POCs. Noting the Committee's previous concerns regarding alleged acts against POC members, including Alexei Sokolov, please provide information on measures taken to ensure that POC members are protected from reprisals (para11).

170. Appointment of members of the public oversight commissions (POC) is held every 3 years. The procedure of the formation of commissions implies the appointment of members of the POC from candidates selected by human rights and public organizations (article 10 of the law "On public monitoring of human rights in places of detention and on assistance to persons in places of detention"). In the first stage a social organization is choosing not more than two candidates and, together with the documents, submits to the Public chamber. At the second stage, the Public chamber carries out an administrative check: each candidate and the organization that nominated him / her are checked for compliance with the requirements established by law (paragraph 5 of article 10 of the law "On public control"). Basic requirements are three: the candidate must not have a criminal record and

<sup>72</sup> The procedure for bringing to disciplinary responsibility is defined in article 193 of the Labor code of Russia. See [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_34683/43ed606b7ffbec97c5ef7e6037b56e62094b34d/](http://www.consultant.ru/document/cons_doc_LAW_34683/43ed606b7ffbec97c5ef7e6037b56e62094b34d/)

must be legally capable, s/he must have experience in human rights work and not be a lawyer nor a prosecutor (art. 12). At the third stage, the Council of the Public chamber appoints the members of the PMC from the submitted candidates. In the lists of candidates next to each name is indicated the result of the check on the requirements of the law. The Council of the Public chamber may only rate candidates, provided that their number exceeds the established number of the POC.

171. The formation of the new composition of the POC implies not election, but appointment of the candidates selected by public organizations. The law gives to the Public chamber the function of examining candidates, not evaluating them. The regulations of the Public chamber (item 6 of Art. 62) determines exhaustive grounds which allow to reject the candidate.

*"The candidacy is rejected by the members of the Council of the Public chamber by issuing a zero numerical value (score) in case of non-compliance with the requirements of the Federal law "On public monitoring of human rights in places of detention"; statements and other materials received from the public Association on nomination of a candidate for the public monitoring Commission; a candidate for the public monitoring Commission; a candidate for the public monitoring Committee; a public Association that nominated a candidate for membership in the public monitoring Committee."*

172. In October 2016 expired the term of office of the existing composition of POCs and in 42 regions began the process of formation of new commissions. There was a conflict during this process. The Council of the Public chamber didn't approve almost any of the candidates related to the human rights sector, who have extensive experience in independent monitoring and also make public criticism of the situation in the penitentiary system.

173. In October of 2017 the Council of the Public chamber formed the POC in 42 regions of Russia. 635 people were appointed to the POC and 487 candidates were rejected. The Council of the Public chamber of the Russian Federation appointed new composition of the commissions across the country: former employees of the Federal penitentiary service, Prosecutor's office, police, **people with no experience of human rights work that directly violates the requirements laid down in the law to candidates to the POC (art. 12).**

174. Some of the unassigned candidates initiated formal proceedings, including a collective complaint to the court. During the trial the documents became known which make the readers to conclude that for the approval of the Public chamber were presented not complete lists of candidates created by public organizations, but abbreviated, which means that there was preliminary non-public dropout of candidates<sup>73</sup>. The trials have not yet finished.

175. The law requires that, if there is a sufficient number of candidates who meet the requirements of the Law, the POC should be formed in full and not in a reduced, but "competent" form, when the composition of the Commission is staffed by two-thirds. Everywhere the structure of the commissions was formed in reduced number. When there were sufficient number of candidates for formation of full structures of the Commission.

176. A number of regions have established commissions with very few members (taking into account the number of places of detention, their remoteness from major cities, the length of regions), which

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<sup>73</sup> See the interview with members of POC in the program "Edge of the time" of the radio "Freedom" on December 18, 2017 <https://www.svoboda.org/a/28925022.html>

**does not allow to promote effectively the state policy in the field of human rights and monitoring of closed institutions.**

*Thus, in the POC of the Sakhalin region in the previous convocation worked 14 people - as much as were nominated. 14 candidates were nominated to the new convocation, and only 7 were appointed. At the same time, none of the candidates proposed by human rights activists was approved. Only 20 observers out of possible 40 were elected in the Chelyabinsk region. The POC has been reduced by exactly the number of human rights defenders who have applied to the new composition. In the Primorsky Territory POC in the previous convocation there were 35 people, more than 50 applications were filed, and only 25 people were appointed by the Public chamber of Russia, while in the region there are 26 penal institutions in the FSIN system and 26 places of detention in the Ministry of internal Affairs.*

177. In general, recently the Public chamber has regularly refused to give mandates to experienced and most active members of POC, who do not hide their attitude to the key problems of violation of the rights of detainees and prisoners. The Council of the Chamber, abusing its power and disregarding the opinion of experts independent from the government, chose the path of arbitrary and unjustified reduction of the number of POC members in the most "thirsty" for public control regions of Russia.

178. The conflict caused urgent development of amendments to the legislation on POC. Was adopted Federal act of June 7, 2017 No. 112-FZ "On amendments to article 10 of the Federal act "On public monitoring of human rights in places of detention and on assistance to persons in places of detention" which established the procedure for effectuating additional recruitment to the public oversight commissions.

179. The adoption of these amendments did not change the situation. The commissions remained understaffed, and the candidates-human rights activists, recommended by the Council for human rights and the development of civil society institutions and the Commissioner for human rights were not, mostly, appointed to the POC.

180. In two years the number the largest commissions` members and the number of visits to controlled institutions by the majority of members of the actual POC`s decreased, and the number of appeals to them and their relatives decreased as well. At present, only 10 to 20 per cent of members of each current POC visits places of isolation, especially in the regions with the highest number of prisoners.

*Thus, according to the data on visits to detention facilities of Sverdlovsk region, of 34 members of the PMC only 5 people for each visit make conclusions and appeals to the Supervisory authorities. Another eight from time to time note the fact of the visit in places of detention, just watching what they are shown, or doing charity. The rest (60% of the composition of POC) in 2017 visited institutions of the FSIN one or two times each. In Murmansk region work only four of the seven members of the POC. In Moscow region of 31 people five are active, and there are regions where public control is at zero. In Moscow and St. Petersburg there are not enough visitors to effectuate regular visits to the institutions located in the city<sup>74</sup>.*

181. The preliminary assessment of candidates, which is not related to the verification of candidates for compliance with the requirements of the law, strengthens the monopoly role of the Public chamber

<sup>74</sup> <http://onk-ru.info/> , <http://antipytki.ru/> , <https://an-babushkin.livejournal.com/7>



in the formation of one of the key institutions of public control over the activities of closed institutions, increases the opacity of selection procedures and also leads in practice to significant risks of manipulation of the composition of commissions.

182. It should be noted that, in accordance with the act No. 76-FZ, prevention of torture and abuse in places of detention is only one of many tasks of the PMC, which is not a specialized institution established for this purpose. However, from the practice of their visits to supervised institutions it follows that the state has not done anything over years to create a national mechanism based on combination of public control with measures to strengthen the responsibility and inevitability of punishment of the perpetrators from law enforcement authorities. The dilution of the work of POCs and its substitution with the imitation of effective control weaken the fight against unacceptable level of violence in the law enforcement sphere.

15. Please provide information on measures taken to ensure that the findings and recommendations of POCs are made public in a timely and transparent manner and that all allegations of denial of safeguards or instances of torture or ill-treatment are drawn to the attention of the competent authorities and are promptly, impartially and effectively investigated.

183. According to some information coming from POC, the investigation authorities initiate criminal cases against specific employees of places of detention. Usually such cases are associated with mass beatings of prisoners or deaths of prisoners and those under investigation.

*In Kaliningrad region the local POC appealed in March 2018 to the Prosecutor's office informing about the injuries caused to a prisoner at his arrival to the colony. Authorities are carrying out an investigation against an employee of the Kaliningrad IK-9 about illegal use of physical force against the convict.<sup>75</sup> In Kaliningrad region (Gvardeysk) in the autumn of 2017 prisoners of the IK-7 handed over to the POC members 41 complaints of torture and abuse by the prison staff. Beatings took place in an ordinary room, prisoners' hands were wrung, they were hung by their legs and beaten until they lost consciousness, and no video recordings were made<sup>76</sup>. After POC's appeal to the Prosecutor's office, a criminal case<sup>77</sup> on abuse of authority with application of violence was open (article 286, part 3).*

184. But most often, according to the reports of POCs, formal inspections are carried out, which almost always end with a refusal to initiate criminal cases<sup>78</sup>.

*According to the members of the local POC, in the institutions subordinated to the Federal penitentiary service of Kemerovo region during the years 2015-2016 in two detention centers of the region (SIZO -4 Anzhero-Sunzha and SIZO-1 Kemerovo) facts of beating of prisoners were registered. In November 2015 the first of them did not even conduct any administrative investigation, which was facilitated by non-admission of a lawyer and a POC's member to the victim.*

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<sup>75</sup> [http://www.klg.aif.ru/incidents/v\\_kaliningrade\\_sotrudnika\\_ik\\_obvinili\\_v\\_izbienii\\_osuzhdennogo](http://www.klg.aif.ru/incidents/v_kaliningrade_sotrudnika_ik_obvinili_v_izbienii_osuzhdennogo)

<sup>76</sup> <https://stop-torture.info/zaklyuchennye-ik-7-kaliningradskoj-oblasti-zhaluyutsya-na-pytki-novye-podrobnosti/>

<sup>77</sup> <http://vesti-kaliningrad.ru/vozbuzhdeno-ugolovnoe-delo-na-sotrudnikov-ispravitelnoj-kolonii-7-v-gvardejske/>

<sup>78</sup> <http://www.zashita-zk.org/A5205F2/1417171614.html>

*In November, 2016 detained minors were beaten in solitary confinements of the SIZO-1 of Kemerovo. The members of POC identified officials responsible for that. According to them, minors were beaten with the knowledge and approval of the chief of the operative unit of SIZO-1 I. V. Chereischev his subaltern N. V. Kovin and the head of the Department for educational work I. S. Esin. There was no effective investigation of the event.*

185. In case of many demands of POCs criminal proceedings are not initiated even in cases where a complaint of torture is supported by medical documents confirming injuries received in places of detention.

*Thus, 23.01.2018 **Victor Filinkov** was arrested in St. Petersburg on suspicion of being a member of an unknown and allegedly terrorist organization "Network". Members of POC fixated injuries on the body, many traces of burns with stun gun this detainee (as well as another detainee in the context of this case) received, according to him, when delivered by FSB officers. Internal inspection based on the appeal of POC members began only 27 days later and found no evidence of torture, as a result of which the detainees immediately admitted their guilt<sup>79</sup>.*

*The members of the POC of Sverdlovsk region discovered on June 4, 2017 in the prison colony No. 53 prisoners (**Zharsky A.U., Osintsev M.V., Meksheev. M.U.**) with numerous hematomas on their bodies. Injuries were video recorded by POC's members. According to the convicts, these injuries were result of illegal actions of the prison staff, who beat them in the cells of the EPKT. The prisoners reported that the officers were wearing masks to hide their faces. On this fact Verkhoturksy Investigation Department (Sverdlovsk region) issued a decision to refuse to initiate criminal proceedings even in the presence of bodily injuries recorded on video by POC's members during their meeting with the convicts.*

*In Krasnoyarsk region in all cases of beating (tortures) detected or reported by POCs checks were carried out by investigative bodies, but criminal cases were never initiated, even if the convicted demonstrated injuries. In August 2017 POC of Krasnoyarsk region published on its website a complaint on behalf of 22 convicts about their beating during the years 2014-2017 in the EPKT IK-31 of Krasnoyarsk region (12 written complaints, 10 video messages, photos of injuries of one convict and bruises fixated by POC's members in cases of three prisoners). The results of the inspections have not been reported to either POC nor applicants until now (April 2018).*

186. When deaths of prisoners occur, investigation authorities must initiate criminal proceedings. But often the investigation is conducted without appropriate speed and care. Studies that are assigned in the context of expert analyses make think about falsifications.

*Convicted **Dmitry Kuznetsov** died on 26.11.2016 in IK-6 of Irkutsk because of lack of necessary medical care. Kuznetsov suffered from chronic kidney disease. Members of the local POC received information from other convicts that Kuznetsov had filed complaints. Roszdravnadzor has established severe violations in the area of access to medical care in the colony. According to the statement of human rights activists to the investigative bodies of Irkutsk, only one year later a criminal case was opened in*

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<sup>79</sup> <https://ovdinfo.org/express-news/2018/02/22/sk-nachal-proverku-po-zhalobe-o-pytkah-arestovannogo-antifashista-viktora>

*connection to the failure to provide medical care by negligence to a patient, which caused his death. The appeal to the court about passivity of the investigation, during which the forensic examination did not establish a causal relationship between the actions of medical staff of the IK-6 and the death of Kuznetsov, gives good reason to believe that, according to the conclusions of the assigned re-examination of the commission, the criminal case will be closed. It should be noted that all this happens in spite of an increased attention to this case not only from the part of former members of the local POC from the Siberian human rights center, but also from the Russian Foundation "In defense of the rights of prisoners" which represents the applicants in courts<sup>80</sup>.*

**187. Often the collection of primary information (witnesses' interviews, medical examination and recording of traces of violence, storage and reviewing of video materials) is carried out by employees of those institutions where, according to POCs, occurred the incident under investigation.** However, instead of measures to ensure the safety of victims and witnesses, there is pressure on them and later on they refuse their original statement or they are transferred to a remote facility.

188. A common problem is the use of convicts for effectuating "disciplinary" violence against other convicts. As usual, in the context of criminal cases convicts are brought to responsibility, and the officials responsible for the order in the institution avoid it.

*From April to June 2016 members of the POC of Sverdlovsk region received more than 180 applications from convicts when visiting the correctional colony No. 54, where were described facts of torture, physical and sexual violence from the part of some convicts, who were endowed by the administration of the institution with power and administrative functions. In all the statements the convicts reported that the leader of this "gang" of "convicts-activists" was the Deputy head of the prison colony Zinnatullin R. R., who personally give orders to "lower", i.e. to rape someone, to beat or to create conditions equal to tortures. The staff of Verkhoturskiy Investigative department did not find any crime in the behavior of Zinnatullin R. R., and the Federal penitentiary service of Russia of Sverdlovsk region transferred Zinnatullin R. R. to a higher position in SIZO-3. Criminal proceedings were initiated only against convicted persons. While most of prisoners who alleged tortures and abuse were not even questioned in the framework of the criminal case.*

16. With reference to the previous conclusions of the Committee expressing concern over the death in custody of Sergei Magnitsky, please provide information on the outcome of the investigation into the reported neglect and ill-treatment associated with his death and whether anyone was prosecuted and punished in that case (para11). In particular, please provide information on the following:

(a) The reasons repeated requests for medical care and complaints from Mr. Magnitsky to the law enforcement authorities were rejected, as cited in the Council of Europe's Parliamentary Assembly report 13356, in which its author Mr. Gross states that Mr. Magnitsky's mother provided him with a list of complaints (dated 9 and 11 August 2009, 31 August, 11 September, 14 September, and 12 November) and copies of the replies containing denials and refusals. Has there been an investigation to address the discrepancy between this and the information from

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<sup>80</sup> <http://www.zashita-zk.org/A5205F2/1487595838.html>

Russian officials who told Mr. Gross that Magnitsky did not lodge complaints? If so, please provide information on the findings and any resulting sanctions. Please clarify how a detainee can obtain an independent medical examination, as prescribed by law;

(b) The requirements for maintaining a ledger in places of detention, particularly in view of the report that Valery Borshov, Moscow POC head, expressed concern regarding the accuracy of the ledger of complaints he reviewed when he visited Butyrka Prison the day after Magnitsky's death; and

(c) The current status of persons who were investigated or sanctioned in conjunction with the death of Mr. Magnitsky. According to the State party's reply to the Rapporteur on follow-up, (submitted in October 2013) several officials were disciplined or fired, including PA Karpov and AK Kuznetsov. However, later, the criminal case was dismissed reportedly because the court found that Mr. Magnitsky died of heart failure, and not from pancreatitis or ill-treatment, torture or neglect.

189. On 24 November 2009, the Investigative Committee instituted criminal proceedings into the death of Sergei Magnitsky (case No. 201/366795-10) under articles 124 (refusal to provide medical assistance to a sick person) and 293 (negligence) of the Criminal Code. The POC report was attached to the case file. The official criminal investigation did not disprove the findings in the POC report. The criminal investigation was closed in 2013.

190. It was reported on 18 July 2011 that criminal proceedings had been instituted under article 293 (negligence) against two ex-employees of SIZO No.2 (Butyrka), Larisa Litvinova and Dmitry Kratov.<sup>81</sup> The case against Litvinova was soon dropped as the statute of limitations had run out, and Kratov was acquitted by court.

191. On 19 March 2013, the main criminal case into alleged negligence and failure to provide the required medical assistance was dismissed, and the investigator concluded that Mr. Magnitsky died of heart failure, and not from ill-treatment. In 2014, PACE adopted its Resolution 1966 (2014),<sup>82</sup> in which it draws attention to inconsistencies and contradictions in the official records concerning the case and urges the Russian Federation to conduct an effective investigation. (How a detainee can obtain an independent medical examination, as prescribed by law, please see para 114 – 125 of this Report).

192. On 11 June 2009 and 21 August 2012, representatives and relatives of Mr. Magnitsky filed applications with the ECtHR, alleging, inter alia, torture causing Mr. Magnitsky's death and ineffective investigation into the circumstances of his death. As of this writing, applications nos. 32631/09 and 53799/12 have been communicated to the Russian Government.

193. So the criminal investigation of Mr. Magnitsky's death was dropped in 2013, and no officials have been prosecuted. Disciplinary proceedings were initiated against certain officials, resulting in some of them being fired and others disciplined.

194. The cited PACE Report No. 13356 was released on 27 January 2014. No information is available on whether a new investigation has been opened into the inconsistencies revealed in the PACE report.

195. The requirements for maintaining a ledger of complaints in SIZOs are established by section IX of the Ministry of Justice Order No. 148 of 12 May 2000 on the Approval of Internal Regulations in Pre-Trial Facilities of the Ministry of Justice Penitentiary System. According to para 94 of these

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<sup>81</sup> <https://ria.ru/justice/20110718/403436687.html>

<sup>82</sup> <http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20409&lang=en>

Regulations, complaints are accepted daily. Written complaints addressed to the prosecutor's office, investigating bodies and other authorities supervising SIZOs are not subject to censorship and must be forwarded to the intended recipient in a sealed envelope (para 97). Complaints addressed to the defender, to government bodies which do not supervise SIZOs and to non-governmental organizations are subject to censorship (para 99). Complaints addressed to the Ombudsman are not subject to review and must be forwarded to him within 24 hours (para 98). There are no other regulatory requirements for registering complaints.

*According to the **Social Partnership Foundation**, the quality, thoroughness, consistency and completeness of complaint ledgers has not changed for the better, nor has the quality of documentation and registration of complaints.*

196. The information provided by the State Party concerning officials who have been disciplined is almost entirely true. However, the head of SIZO-2 Lieutenant Colonel of Internal Service Dmitry Komnov, while removed from his position, was soon appointed deputy head of SIZO-4 of in Moscow and later promoted to the position of the head of SIZO-3 in Moscow. Now retired, he is a member of the Moscow POC involved in monitoring prisons and police for compliance with human rights.

197. Neither Doctor Gaus at Matrosskaya Tishina nor investigator Oleg Silchenko have been brought to justice. Instead, Silchenko has been promoted in rank and was awarded the "Best Investigator" badge in 2010.<sup>83</sup> The proceedings against doctors Litvinova and Kratov had been separated from the rest of the case. As of 30 July 2015, Kratov continued working in the same SIZO.<sup>84</sup>

198. No information is available on whether Karpov and Kuznetsov have been disciplined. It is known, however, that Karpov was awarded the "Best Investigator" badge and moved to the Ministry of Interior Investigative Department in 2010, where he worked until his resignation in 2012.<sup>85</sup>

199. Artyom Kuznetsov was promoted in 2010 to the Ministry of Interior Department of Economic Security (currently the Main Directorate for Economic Security and Combating Corruption). By 2012, Kuznetsov resigned from the MoI and became CEO of RT-Medintegrator company; in 2012, his responsibility in the company was to select suppliers for hospitals in three Russian regions and for the Ministry of Interior.<sup>86</sup>

200. According to para 213 of Russia's report, "On 15 February 2013, a working meeting was held between representatives of the Federal Penal Correction Service and Andreas Gross, Rapporteur of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, at which issues relating to the death of the accused, Mr. Magnitsky, were comprehensively reviewed."

201. However, Andreas Gross still had questions after his meeting with FSIN. Therefore, he later met with POC members Borshov and Volkova for further clarifications.

18. Please clarify whether there has been an investigation or anyone has been disciplined following reports from POC members from Chelyabinsk who on 27

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<sup>83</sup> <https://openrussia.org/post/view/8751/>

<sup>84</sup> <https://openrussia.org/post/view/8751/>

<sup>85</sup> <https://openrussia.org/post/view/8751/>

<sup>86</sup> <https://openrussia.org/post/view/8751/>

November 2012 visited Kopeisk Colony #6 following a mass protest, and who reported obstruction and delay at the outset which was, in the end, corrected only by the intervention of Ombudsman Vladimir Lukin. Also, please explain why only 40 complaints were accepted when, according to a POC member, the observers examined copies of hundreds of complaints that had been submitted to the Investigative Committee, ranging from claims about alleged beatings by OMON riot police to claims of systemic abuse. Please explain the criteria for accepting complaints, what happens to those not accepted, and the results of those from the Kopeisk incident.

202. In the end of November- beginning of December 2012 the Presidential Council of Civil society and human rights initiated public investigation in Kopeisk kolony No. 6 to find the causes and consequences of incidents of the protests. It turned out, that the colony's administration did not address to the relevant states' bodies 358 complaints of the prisoners on torture (255 complaints), extortion (161 complaints), violation of labour rights (40 complaints) and on inadequate medical examination (20 complaints).<sup>87</sup>

203. On November 27, 2012 the information that Investigation Committee initiated the criminal investigation under article 286 (excess of authority) on the ground of 41 complaints on extortion by prison stuff appeared in mass media. The investigation was conducted by the investigators of Kopeisk, who, according to human rights defenders, were involved in the extortion of inmates' family members. The Presidential Council of Civil society and human rights in its Report on public investigation the examples of the ineffectiveness of the investigation conducted by local investigators are given as well.

204. On December 5, 2012 the session of the Presidential Council of Civil society and human rights was conducted to discuss the issues of Colony No. 6.<sup>88</sup> This session influenced on the further investigation of the case. On January 15, 2013 the mass media published in information on the deferral of the investigation to the Ural Federal District's investigation committee, which fundamentally raised the independence of the investigation.<sup>89</sup>

205. It should be noted, that the criminal investigation was initiated only against the director of the colony, Mekhanov S.V., who was accused only of extortion. On December 25, 2012 Mekhanov was dismissed from his post. The same day he was charged with an offence.<sup>90</sup> Two prison stuff members, Zyagor and Shegol, were dismissed from their positions as well. Some prison stuff members were brought to disciplinary measures on censure.

206. Within the investigation of the criminal case against Mekhanov the investigation team collected enough incriminating materials on fifteen prison stuff members and Chelyabinsk Federal penal correction service, but they had not been charged.

207. The investigation team managed to charge Mekhanov only for insignificant number of episodes. In December 2014 Mekhanov was sentenced to three years suspended prison term.<sup>91</sup> In April 2015 it appeared that Mekhanov was charged with new offence for extortion. Mekhanov was discharged under the amnesty.<sup>92</sup>

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<sup>87</sup> <http://president-sovet.ru/files/c9/48/c94825654faf186382ae9c971e784b4e.pdf>

<sup>88</sup> [http://uraldem.ru/wp-content/uploads/2017/01/Kopejsk\\_Nurnberg.pdf](http://uraldem.ru/wp-content/uploads/2017/01/Kopejsk_Nurnberg.pdf)

<sup>89</sup> <http://zashita-zk.org/problem/1358231310.html>

<sup>90</sup> <http://zashita-zk.org/problem/1358231310.html>

<sup>91</sup> <https://polit74.ru/comments/detail.php?ID=47455>

<sup>92</sup> [https://www.znak.com/2015-06-08/eks\\_nachalnik\\_skandalno\\_izvestnoy\\_kopeyskoy\\_kolonii\\_popal\\_pod\\_amnistiyu](https://www.znak.com/2015-06-08/eks_nachalnik_skandalno_izvestnoy_kopeyskoy_kolonii_popal_pod_amnistiyu)

Forty complaints that are mentioned in mass media – is the number of those taken for consideration by Prosecution office.

208. According to the information received from Ural Human Rights' group, they personally received about 3000 complaints from inmates, 2869 of which were addressed to the prosecution office, which the latter transferred to the Investigation committee.

209. Before January 2013, when the case was transferred to Ural Federal District's Investigation Committee, local investigators of Kopeisk managed by means of deception to make the inmates to drop their complaints Human rights defenders, particularly, mention, that thousands of complaints were not processed because the prisoners dropped their complaints. The investigators arrived to the colony and called the inmates to the interrogation, and in the presence of that operational staff, on whom the inmate complained for torture and extortion, asked whether the inmate currently has claims to the colony's administration. Further, the prisoner, at the request of the investigators, signed the statement that he had no complaints, not realizing the consequences of the written.

210. Along with this, the inmates were strained: in the beginning of august 2013, the criminal case on organization and participation in mass riot was opened against 17 inmates. This charge is obviously fabricated, as the case files did not have any proves that inmates made mass unrest, damaged prison property or attacked prison stuff. Moreover, from the outset mass media wrote that protests in the colony are peaceful, which was further proved by the Report of Presidential Council of Civil society and human rights mentioned above.

211. Nevertheless, on April 13, 2018 Chelyabinsk regional court convicted 17 prisoners. According to the court's judgement all 17 were found guilty and sentenced to different terms (11 – from 4 years 1 day to 5 years in ordinary, strict and special regime colonies for the organization of mass riots, 5 – from 2 years to 8 months to 3 years 11 months in ordinary and strict regime colonies for participation in mass riots, 1 – to 3.5 years of suspended prison term for participation in mass riots).

20. Please provide information on the provision of financial and human resources to the subdivision of the Investigative Committee, tasked with investigating crimes committed by law enforcement officials (para 8). How many investigators are assigned to address complaints and has this changed over time? Are there territorial limits to the investigations by the Special Subdivision? Please provide information as to whether all complaints submitted to the Special Subdivision are investigated, and if not, whether (and under what conditions) another body is asked to examine them? Please comment on the allegations that only one of 200 cases handled by the Nizhny Novgorod Committee against Torture have been transferred to the Special Subdivision. Does the jurisdiction of the Special Subdivision extend to examining complaints against the Ministry of Interior, Defense or the FSB? Can torture victims apply directly to the Special Subdivision, and what has resulted from any such applications?

212. It is a well-established practice in Russia that the bulk of investigative work is carried out before a criminal case is officially instituted, namely at the stage of verification of a crime report. This stage which starts after a crime report is registered and precedes the official investigation is designed to check whether or not there are any signs of a crime committed. But in reality, this early stage is where the actual investigation takes place.

213. In order to understand the reason why conducting a criminal investigation outside the framework of officially instituted proceedings has become a common practice in Russia, one should look at criteria by which investigators' performance is assessed by their superiors. One of the criteria is that investigators must avoid at all costs instituting criminal proceedings unless the case has prospects of being supported by sound evidence and eventually leading to conviction in court. Therefore, investigators seek to avoid risks and make sure there is sufficient and reliable evidence before they institute official proceedings. In addition to this, at the verification stage, investigators are not bound by the Code of Criminal Procedure (CCP) provisions applicable to a criminal investigation. This means that neither the individuals in respect of whom the verification is conducted, nor those who have reported a crime enjoy any procedural guarantees, while the investigator has no obligations towards them other than notify them of the verification results.

214. In 2014, the Russian CCP was amended to further extend investigators' powers in the context of crime report verification. Article 144, part 1, of the Code of Criminal Procedure allows the investigator "*to obtain explanations and samples for comparative study, request and obtain documents and items, seize them in the manner prescribed by this Code, appoint a forensic examination, participate in such examinations and obtain expert opinions within a reasonable timeline, inspect the scene, documents, items and corpses, conduct examinations, request documentary checks, audits, inspections of documents, items and corpses, involve experts in such inspections, and issue binding written orders to the inquiry body to conduct operational search activities.*"

215. Although the amended CCP allows investigators to appoint and conduct expert examinations and inspect the scene at the verification stage, conducting the full scope of investigative procedures is only possible once a criminal case has been officially instituted. Most importantly, victims, witnesses and suspects in the proceedings enjoy the full spectrum of their procedural rights only after the criminal investigation is formally launched. This imbalance between the increased scope of investigators' powers at the pre-investigative stage vs. no increase in the rights of individuals reporting a crime can limit the guarantees of individual rights under the amended CCP.

216. Thus, investigators' extended powers are not matched by corresponding rights of victims, including victims of torture. At the crime report verification stage, affected individuals do not enjoy the official status in the proceedings which means that they are denied any rights normally granted to victims in a criminal investigation. The investigator, however, can appoint forensic examinations at the verification stage. It is a widespread practice to appoint forensic examinations without notifying the victims and thus deny them any opportunity to inquire about the decision to appoint such an examination, any questions asked of the expert, any findings from the examination, any decisions to conduct another examination, etc. Rather than increase the level of protection granted to citizens, the new regulations concerning the crime verification stage have the opposite effect of limiting victims' access to the investigation.

217. Other serious consequences are associated with the increasingly common practice of "shifting" the bulk of the investigation to the informal stage. As stated above, many quasi-investigative actions are carried out in the period between the registration of a crime report and the official opening of the criminal case. After the inquiry stage was formalized in 2014, many de-facto investigative actions began to be shifted even further from the preliminary (formal) investigation stage to an earlier stage of operational activities. For example, a search may be conducted under the guise of an examination and an interrogation under the guise of an interview. While this problem existed before, currently the tendency towards conducting investigative actions outside the formal proceedings regulated by the CCP has increased. One of the reasons is that due to excessive procedural supervision from the Investigative Committee and the prosecutor's office over preliminary investigation, many



investigators wish to avoid potential sanctions. Paradoxically, **the regulation of the inquiry stage undertaken to increase supervision over investigators has led to an opposite effect.**

218. Therefore, few complaints brought against the police make it to the stage where a criminal case is instituted. But even if criminal proceedings are instituted, the investigation rarely meets the standard of effectiveness, as the key investigative steps are performed without the required thoroughness and promptness. (More details about the observance of standards of effective investigation can be found in paragraphs 74-100 and on Special Subdivision in the paragraphs 62-73 of the Alternative Report of the Interregional Public Organization "Committee against Torture" on Russia's compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2012-2018)).

21. In view of the decision *Dzhabrailov v. Russia* by the European Court of Human Rights concerning the lack of investigations into abductions in Chechnya, please provide data on the number of officials subjected to disciplinary measures for not adequately investigating complaints of torture or ill-treatment or refusing to cooperate in any such investigation (para 8).

**Article 16**

40. Please provide information on the number of unresolved cases of enforced disappearance in the region, and whether family members of disappeared persons are regularly informed of the progress of investigations and any identification of remains (para 13).

219. The ECtHR has delivered two judgments: *Dzhabrailovy v. Russia* (no. 3678/06) in 2010, and *Dzhabrailov and Others v. Russia*. The joint judgment was delivered in 2014 in 12 cases including the case of *Dzhabrailov and Others v. Russia* (no. 8620/09). The judgments concern abductions, lack of investigations into abductions, and impunity for criminals.

220. In paragraph 435 of the Periodic Report, the Russian Federation indicates that "In 2012-2015 investigators of the Chechen Republic Investigative Department of the Investigative Committee of Russia, were investigating two criminal cases concerning enforced disappearances; in the North Ossetia-Alania Investigative Department – 7 criminal cases; in the Dagestan Republic Investigative Department – 17 criminal cases; in the Ingushetia Republic Investigative Department – 3 criminal cases. The investigators were informing relatives of those disappeared of the course and the results of investigations on a regular basis. The number of unsolved criminal cases concerning enforced disappearances in 2012 amounted to 18; in 2018 – 8; in 2014 – 2; in 2015 – 1".

221. The aforementioned statistical data is not complete or accurate. It does not include cases where the investigation was suspended and later resumed. **In all cases where the ECtHR found a violation on account of an enforced disappearance, investigative authorities resumed investigations of the criminal cases.**

222. In 2012-2015, the ECtHR delivered judgments in 112 cases concerning enforced disappearances in the Chechen Republic and the lack of effective investigation thereof; in total those cases concern abductions of 169 persons. Some of the bodies were later discovered, but most people disappeared without trace. Even in cases where investigations were suspended, the investigative authorities resumed them after the ECtHR had delivered the respective judgments. We believe that such serious discrepancies between the real picture and the data provided in Russia's report testifies to the low

level of importance attributed to investigating cases of enforced disappearances, as well as to providing CAT with statistical data.

223. In 2012-2017, the ECtHR delivered judgments in 124 cases concerning enforced disappearances in the North Caucasus (Chechnya, Ingushetia, North Ossetia-Alania, and Dagestan) and the lack of effective investigation thereof. Those judgments concern 126 criminal cases regarding abduction of 195 persons. In all of those judgments the Court held that there had not been an effective investigation into enforced disappearances.

224. A unit for investigation of especially important cases that have been brought before the ECtHR has been established in the Investigative Department of the Chechen Republic. The unit was entrusted with investigating inter alia those events on which the ECtHR has made a pronouncement. The investigators of that unit usually notified victims that the investigation had been resumed and provided them with information about the course of the relevant investigation. However, no effective investigation was in fact carried out. Investigators undertook several formal investigative steps such as sending out new inquiries to various law enforcement authorities, or new questioning of victims and their relatives. Investigators avoided conducting investigative actions involving members of law enforcement authorities who may have been involved in the commission of the crime. After that investigations were once again suspended. **We are not aware of a single case investigated by that unit that has advanced to a trial stage.**

225. The lack of effective investigation into cases of enforced disappearances was often aggravated by the fact that military prosecution and military investigation offices refused to take up investigations and requested that the civil law enforcement first prove that servicemen had been involved in the crimes. Military investigators and prosecutors usually did not regard identifying information (such as information about people being disappeared at checkpoints, or about military units that carried out security ("mopping-up") operations, or about number plates of military vehicles that had taken those abducted away) to be sufficient proof of servicemen's involvement. However, only military investigators and prosecutors could gather undisputable evidence of servicemen's involvement. Investigations in such cases were usually suspended a number of times "due to the impossibility to establish a suspect", then resumed, and suspended again on the same ground.

**226. The quality of investigations in cases of enforced disappearances demonstrates that such investigations are mere imitations, and not real investigative work intended to solve the crimes.**

227. Not a single one of the 126 criminal cases concerning enforced disappearances regarding which the ECtHR delivered judgments in 2012-2017 was solved; no perpetrators were established; the fate of the disappeared remains unknown. In the two cases where the bodies of five victims were found, the murderers were not established. **Human rights organisations are not aware of a single case where officials bore disciplinary responsibility for deficiencies in investigating torture and ill-treatment complaints, or for the refusal to cooperate with such investigations.**

228. The absolute majority of judgments delivered by the ECtHR in 2012-2017 in abduction cases concerned events that occurred in 2000-2009; however, there are a few cases of abductions that took place in 2010-2012. Below are several examples that demonstrate that the practice of investigating such cases has not changed even after the delivery of an ECtHR judgment:

*Ibragim Tsechoyev v. Russia (no. 18011/12, judgment of 21 June 2016). On 22 March 2012, around 9 pm, Abubakar Isayevich Tsechoyev, a local resident, was abducted by unknown armed persons in Ordzhenikidzevskaya (Sleptsovskaya), Sunzhenskiy District, Ingushetia. He was abducted from the main pumping station of Vodokanal State Enterprise, located at Kalinina Street, where he worked as an*

operator. Three of his colleagues—an electrician, a machinist and a guard—witnessed the abduction. According to them, armed persons wearing balaclavas and camouflage uniforms broke into the pumping station building. Three of them attacked Abubakar and started beating him with butts of sub-machine guns. Other employees were tied up and held at gunpoint. The abductors handcuffed Abubakar, carried him out on the street—by that time he was barely conscious—and put him into their vehicle. After that Abubakar Tsechoyev disappeared without trace. In the morning of 23 March 2012, his brother brought complaints about the abduction to the Sunzhenskiy District Department of Interior and to the prosecutor of the Sunzhenskiy District. On 24 March 2012, the Sunzhenskiy District Investigative Department initiated a criminal investigation into the abduction of Abubakar Tsechoyev under Articles 126 § 2 of the Criminal Code (aggravated abduction) and the case file was given no. 12600026. The investigation was ineffective, the fate and the whereabouts of Abubakar Tsechoyev remain unknown. The ECtHR held that the Russian Federation has failed to investigate the crime and was in violation of Articles 2 and 13 of the European Convention on Human Rights (right to life and right to an effective remedy).

*Aliyev and Gadzhiyeva v. Russia*, no. 11059/12, judgment of 12 July 2016. On 21 January 2012, Sirazhudin Aliyev and Gazimagomed Abdullayev were driving in a car in central Makhachkala when they were stopped by armed men in uniforms of the traffic police. The armed men forcibly took them out of the car, handcuffed them, and took them away separately in the direction unknown. Numerous people witnessed the abduction. After that both men disappeared without trace, and their relatives have not seen them again. The Russian authorities do not dispute the circumstances of the abduction, but denied any involvement of law enforcement officers. On 31 January 2012, the Investigative Department of the Leninskiy District of Makhachkala initiated investigation into the abduction of Sirazhudin Aliyev and Gazimagomed Abdullayev under Articles 126 and 162 of the Criminal Code (abduction and highway robbery) and the case was given no. 20150. The investigation was ineffective, the fate and the whereabouts of Sirazhudin Aliyev and Gazimagomed Abdullayev remain unknown. Having examined the case, the ECtHR found that the Russian authorities were in violation of the right to liberty and security and the right to life, because Aliyev and Abdullayev were to be presumed dead. The ECtHR also held that Russia's investigation into the abduction was inadequate. The Court found that the agents of the Russian Federation were in violation of the right to life (Articles 2), the right to liberty and security (Article 5), and the right to an effective remedy (Article 13 of the European Convention on Human Rights). The judgment stated that the authorities bear responsibility for the death of the applicants' relatives and for the absence of an effective investigation into the crime.

229. It should be noted that human rights organisations are working on other cases of enforced disappearances in the North Caucasus, in which the ECtHR has not yet handed down judgments. The authorities' reaction to complaints concerning abductions falls short of the effective investigation standards.

On 22 August 2013, law enforcement officers abducted **Valibagandov Omar Magomedovich**, born 1975, from a hospital in Izberbash, Dagestan, to which he was brought with a gunshot wound. Not until two months later, on 7 November 2013, an investigation into the abduction was initiated, and the criminal case was given no. 305182. The investigation was extremely ineffective. Falsified documents were found in the case file; no measures to identify and punish the officials involved in the falsification were taken. The case was suspended on many occasions, the latest being

*on 24 December 2015. The application to the ECtHR was filed on 6 November 2016. The whereabouts of O.M. Valibagandov remain unknown, and the perpetrators of the crime are still not found.*

*On 24 December 2016, **Khabuyev Khamzan Salaudinovich**, born 1993, was abducted in Prigorodnoye, Groznenskiy District, Chechen Republic. His father, Khabuyev Salaudin Albekovich, informed the investigative authorities of the abduction. On 9 February 2018, over a year later, the Main Investigative Department of the North Caucasus Federal District following a preliminary inquiry no. 97np-17 decided not to open a criminal case due to the absence of the crime. The decision referred to a criminal case no. 11701960005000123 investigated by the Ministry of Interior Department in the Chechen Republic under Article 208(2) of the Criminal Code; in that case Seriyev M.M., Kamidov Sh.A., and Kabuyev Kh.S. were accused of leaving for Syria and joining terrorists. The inquiry into the abduction was ineffective. It took much longer than what was allowed under the Code of Criminal Procedure. The decision not to open a criminal case taken following the inquiry was not communicated to the author of the complaint, and was subsequently set aside by the head of the investigative authority.*

22. Please provide information on measures taken to ensure that all human rights defenders are able to conduct their work related to the prevention of torture and ill-treatment. Also, please provide information on the outcomes of investigations into allegations of intimidation, threats, attacks and killings of such persons, in particular, the killings of Anna Politkovskaya and Natalia Estemirova. Please update the Committee on whether these investigations have addressed those who planned or acquiesced in the murders, as well as those who may have fired weapons. Please comment on the report that Dagestani lawyer Sapiyat Magomedova has continued to receive death threats and that these have not been effectively investigated. (para 12).

230. Against the background of systemic oppression of independent civic activism that has been ongoing across Russia since 2012, in the North Caucasus in 2014-2018 the situation facing human rights activists, lawyers working with them, and journalists covering human rights related issues has visibly worsened.

231. As in other regions of the country, the Ministry of Justice has put human rights organizations working in the North Caucasus on the list of non-governmental organizations performing functions of foreign agents. In particular, the Human Rights Centre "Memorial", the Kadardino-Balkar Republican Human Rights Centre, the Human Rights Centre of the Chechen Republic, the autonomous non-governmental organization "Human Rights Organization "MASHR", the Civic Assistance Committee, the Inter-regional Public Foundation for Peace in the South and in North Caucasus, the Information Agency "Memo.ru" were put on the "foreign agents list".

*In September 2015, the Ministry of Justice of the Russian Federation following a planned review of **MASHR's** activities issued a warning stating that the statute of the organization was not in compliance with the relevant legislation, and drew up an administrative law violation record indicating that MASHR had not submitted an application to be included in the "foreign agents list" notwithstanding that the organization had received foreign funding and, according to the Ministry of Justice, undertook "political activities". In October, MASHR appealed against the results of*

*the review. The court upheld the appeal on formal grounds, but issued a special order indicating that MASHR "could fit the criteria of an organization performing functions of a foreign agent", and ordering the Ministry of Justice to address the infringements of the law in the operations of MASHR.<sup>93</sup> On 6 March 2015, officers of the Main Directorate of the Ministry of Interior in the North Caucasus Federal District searched MASHR's office and the house of its head, **Magomed Mutsolgov**; they seized all computers and documents, including statutory and accounting documents, case files of the organization's staff, reports of human rights organizations, "Dosh" magazine, postcards with greetings inscribed, and business cards. The search and seizure report indicated that the inquiry was carried out following the receipt of information that MASHR had been involved in anti-Russia extremist activities in the interest and at the direction of NGOs from Georgia, USA, and European countries, and that Mutsolgov "had undertaken actions aimed at generating sectarian conflicts on the territory of the North Caucasus Federal District".<sup>94</sup> Later on it was decided not to open a criminal case against MASHR leaders on charges of extremism as it was found that no crime had been committed. On 8 December 2015, the Ministry of Justice included MASHR in the "foreign agents list".<sup>95</sup> In 2016, MASHR was fined with 300,000 rubles five times for non-compliance with the law "On non-profit organizations", because articles written and published by the head of the organization did not indicate that MASHR had been included in the "foreign agents list". Under pressure MASHR had to refuse support from international donors; this inevitably had a significant negative impact on its capability to work. In April 2017, the organization was taken of the "list of foreign agents" because it no longer received funding from abroad.*

232. In 2012-2018, the authorities initiated criminal cases on false charges against two human rights defenders and one journalist covering human rights issues. On numerous occasions "unknown persons" attacked human rights defenders, journalists working with them, and lawyers; some of them were severely injured. Offices of human rights organizations were subject to attacks, acts of vandalism, and arsons. There are serious grounds to believe that in 2014 an activist and journalist doing human rights work was killed. Below are the most blatant examples of pressure.

233. **Dagestan: falsification of a criminal case against Zarema Bagavutdinova.** In 2014, Zarema Bagavutdinova, staff member of "Pravozashchita" organization, was sentenced to five years in prison on false charges in Dagestan.<sup>96</sup> The real reason was her human rights work. According to the prosecution, Ms Bagavutdinova persuaded her friend to join an illegal armed group promising that she would then marry him. In court the prosecution case "fell to pieces". The case was built on testimony of four anonymous witnesses. One of them retracted his initial testimony, and stated that he had given it under pressure. The other witness could not remember at the hearing what he was supposed to testify about. The third anonymous witness could only say that "according to his information, the accused recruited some man from Dagestan to join an illegal armed group", but he could not recall the man's name. He also could not describe what the man or Ms. Bagavutdinova looked like. Ms

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<sup>93</sup> <http://memohrc.org/news/ingushskih-pravozashchitnikov-nazyvayut-agentami-za-kritiku-vlastey>.

<sup>94</sup> <http://memohrc.org/news/ingushetiya-magomeda-mucolgova-obvinyayut-v-antirossiyskoy-deyatelnosti>, <http://www.kavkaz-uzel.ru/articles/272042/>.

<sup>95</sup> <http://memohrc.org/news/ingushetiya-mashr-vklyuchena-v-spisok-inostrannyh-agentov-ee-rukovoditel-zayavil-o>.

<sup>96</sup> <http://memohrc.org/special-projects/delo-bagavutdinovoy>; <http://memohrc.org/news/dagestan-prigovor-politicheskoy-zaklyuchennoy-zareme-bagavutdinovoy-ostavlen-bez-izmeneniy>; <http://memohrc.org/news/zhestokiy-prigovor-pravozashchitnice>; <http://memohrc.org/news/dagestan-politicheskuyu-zaklyuchennuyu-bagavutdinovu-prigovorili-k-pyati-godam-kolonii>; <http://rusplt.ru/society/bagavutdinova-sud-10018.html>.

Bagavutdinova pleaded not guilty both during the investigation and on trial. Human Rights Centre "Memorial" recognized Zarema Bagavutdinova as a prisoner of conscience.

234. **Chechnya: falsification of a criminal case against Zhalaudi Geriyev.** Mr Geriyev is a journalist of "Kavkaz-Uzel", an independent Internet media. He was sentenced to three years in prison under Article 228(2) of the Criminal Code (Illicit storage and transportation of drugs in large quantities without an intention to sell). He has been in detention since 16 April 2016. In the morning of 16 April 2016, Zhalaudi Geriyev registered online for a flight from Grozny to Moscow, and took a regular bus towards the airport. According to eye-witnesses, armed men forced Mr Geriyev from the bus Kurchaly-Grozny near the bus station in Kurchaloy, hit him on the head, and forced him into the back seat of a Lada Priora car. According to Mr Geriyev, in the car his phone and backpack with his passport, laptop, and other personal belongings were taken away. He was then taken to a forest near Tsotsin-Yurt village, his hands were tied up with a wire, and he was beaten and threatened that he would be shot and buried in the forest. The journalist was accused of working against the Chechen authorities, and of his alleged intention to leave for Syria to join terrorists of ISIS, which is banned in Russia; he was also asked questions about his journalistic work. Then another car arrived. The man that got out of the car started torturing the young reporter putting a plastic bag over his head and cutting off access to air so that he almost lost consciousness. That man left taking Zhalaudi Geriyev's backpack with him, and the journalist was taken to a cemetery at the outskirts of Kurchaloy village. There he was forced to confess to storing marijuana. After that Mr Geriyev was brought to the Department of Interior of the Kurchaloy District of the Chechen Republic, where, according to him, threats and beatings continued notwithstanding that by that time he had already signed the testimony that had been required from him. According to the prosecution, in the morning of 16 April 2016 Geriyev was arrested near the Kurchaloy village cemetery where he had allegedly arrived in order to consume his drugs. A bag containing—according to experts—"a drug—cannabis (marijuana) weighting 167,07 grams in dry state" which constituted a large quantity, was seized from the journalist. Having examined the case materials and the course of the trial, Human Rights Centre "Memorial" concluded that the case was fabricated and recognized Zhalaudi Geriyev as a prisoner of conscience.<sup>97</sup>

235. **Kabardino-Balkar Republic: killing of Timur Kushayev.** On 31 Junely 2014, Timur Kushayev, a public activist working with human rights organizations, as well as media outlets covering human rights issues, such as "Kavkaz Uzel", "Dosh", and "Kavkazskaya Politika", disappeared in Kabardio-Balkaria. The next day his body was found on the curb of the road just outside of Nalchik. There were no injuries on the body apart from a bruise around the left eye. Forensic pathologist found a trace of an injection in the underarm area; the tips of the fingers blackened, which could evidence poisoning. On 4 August 2014, investigative authorities of the Kabardino-Balkar Republic initiated a criminal case no. 71/94-14 under Article 105(1) (murder).<sup>98</sup> There has been no effective investigation into the criminal case. The proceedings were suspended and stopped on a number of occasions; motions to conduct investigative activities submitted by the victim's representative were dismissed. The theory that T.Kh.Kushayev was killed by an injection of a rare poison has not been investigated. In 2017, the court twice held that decisions to close the criminal case had been unlawful. Human Rights Centre "Memorial" is currently preparing an application to the ECtHR.

236. **Chechnya: pressure on Joint Mobile Group of Human Rights Defenders.** The Joint Mobile Group of Human Rights Defenders was pushed out of Chechnya by systemic use of violence, acts of

<sup>97</sup> <https://www.politzey.ru/dela-zhurnalistov/7844/geriev-zhalaudi-nasrudinovich>

<sup>98</sup> <http://www.kavkaz-uzel.ru/articles/246809>; <http://echo.msk.ru/blog/shevchenkomax/1371558-echo>;  
<http://newsru.com/crime/04aug2014/timurkuashev-murd.html>;

<http://memohrc.org/bulletins/byulleten-pravozashchitnogo-centra-memorial-situaciya-v-zone-konflikta-na-severnom-kavka-2>.

vandalism of offices, car arsons, attacks on human rights defenders and journalists supporting them, and a public abasement campaign. None of the criminal cases lead to finding perpetrators and a fair punishment for them. More details about the pressure can be found in paragraphs 101-125 of the Alternative Report of the Interregional Public Organization "Committee against Torture" on Russia's compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2012-2018).

**237. Chechnya, Ingushetia, Dagestan: pressure on Human Rights Centre "Memorial".** Human Rights Centre "Memorial" and its staff were subject to attacks and pressure in the North Caucasus on numerous occasions. In 2016, the work of the Committee against Torture and the Joint Mobile Group of Russian Human Rights Organizations led by it in Chechnya had to be stopped. After that Human Rights Centre "Memorial" remained the only independent human rights NGO that continued working on the territory of the republic.

238. On 14 January 2015, the office of Human Rights Centre "Memorial" in Gudermes (Chechen Republic) was attacked.<sup>99</sup> Unknown persons wearing balaclavas broke into the office when two female staff members were working there. The attackers shouted out threats and insults, and threw eggs at the women. After the incident the owner of the property got scared and refused to rent the premises to Human Rights Centre "Memorial".

On 4 February 2015, in Makhachala (Dagestan) near the building of the Supreme Court of Dagestan unknown persons brutally beat Murad Magomedov, a lawyer who worked with Human Rights Centre "Memorial".<sup>100</sup>

239. In 2014-2015, lawyers working with Human Rights Centre "Memorial" in the Kabardino-Balkar Republic suffered from threats and pressure. Specifically, there was an attempt to disbar Eva Chaniyeva, lawyer, for her statements made at a roundtable organized by human rights defenders.

240. In 2018, a systemic attack aiming to push Human Rights Centre "Memorial" out of the North Caucasus has started.

241. It is clear that the initiative of those acts comes from members of the authorities of the Chechen Republic.

242. In late December 2017, the official web-site of the Parliament of the Chechen Republic and media outlets published a statement made by Magomed Daudov, the Head of the Chechen Parliament, on 25 December 2017; in that statement he pointed out that there was a connection between the US sanctions against the Ramzan Kadyrov, the Head of Chechnya, blocking his accounts on social media, and the work of human rights activists; he openly called to persecuting them.<sup>101</sup>

243. On 9 January 2018, **Oyub Titiyev**, the head of Human Rights Centre "Memorial" branch in Groznyi, was arrested on false charges and accused of illicit purchase and storage of drugs in large quantities. Mr. Titiyev officially stated that the drugs had been planted by police officers. He was placed in detention. For almost three weeks following his arrest Mr. Titiyev could not eat hot or solid food because two of his teeth were milled and eight others were removed as he had been preparing for teeth replacement. It was not until 30 January that a dentist was allowed to visit him in detention to

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<sup>99</sup> <http://www.kavkaz-uzel.ru/articles/255563>; <http://www.kavkaz-uzel.ru/articles/255642>.

<sup>100</sup> <http://memohrc.org/news/v-dagestane-izbit-sotrudnik-memoriala-advokat-murad-magomedov>; <http://www.kp.ru/daily/26338.4/3221060>; <http://www.interfax.ru/russia/421994>; [http://dagestan.rusplt.ru/index/izbit\\_advokat\\_pravozashitnogo\\_tsentra\\_Memorial-15478.html](http://dagestan.rusplt.ru/index/izbit_advokat_pravozashitnogo_tsentra_Memorial-15478.html).

<sup>101</sup> <http://www.parlamentchr.ru/press-centre/news/6266-magomed-daudov-prizval-rossijskoe-obshchestvo-dat-reshitelnyj-otpor-vragam-strany>

mount dental prostheses. We believe that the denial to Mr. Titiyev the opportunity to receive the much-needed medical assistance for such a long time constitutes a form of pressure on him and may amount to torture.

244. On 10 January 2018, police officers broke into Mr. Titiyev's house in Kurchaloy. There were only women in the house on that day. Officers acted rudely, demanded to bring Oyub's brother, Yakub, and Oyub's son, Bekhan; they threatened the women that they would get in trouble if they did not comply. Oyub Titiyev's wife and children left Chechen Republic.<sup>102</sup>

245. On 12 January 2018, Petr Zaikin, Oyub Titiyev's counsel, submitted to the Investigative Department of the Chechen Republic a complaint by Oyub Titiyev in which he requested to establish and bring to justice police officers, unknown to him, who had planted drugs in his car on a road between Kurchaloy and Mairtup. On 16 January 2018, an inquiry was initiated. Later investigators repeatedly refused to open a criminal case; those decisions were set aside as unlawful by higher investigative authorities. On 25 April 2018, the investigator issued yet another decision not to open a criminal case; that one was not set aside by a higher investigative authority. The counsel filed a judicial complaint. On 24 May Staropromyslovskiy District Court of Grozniy ignored all the counsel's arguments, dismissed the complaint, and held that the investigator's decision had been lawful.

246. On 19 June, the Russia's President's the Council for Civil Society and Human Rights published a Report<sup>103</sup> prepared by authoritative specialists in law, in which the materials of the inquiry were analyzed. The key findings were that the investigators had purposefully avoided inquiry into circumstances which would inevitably lead them to a conclusion that the criminal case had been falsified, and, consequently, that the decision not to open a criminal case taken following the inquiry had been unfounded, and the inquiry itself had not been in compliance with effective investigation standards. The Human Rights Council submitted the Report to the Prosecutor General's Office asking to examine it and act upon it.

247. During the night of 17 January 2018, the office of Human Rights Centre "Memorial" Ingushetia branch in Nazran was set on fire. A few days before that, Oyub Tityev's lawyer and staff members of Human Rights Centre "Memorial" traveled from Ingushetia to Chechnya a few times using the car of that branch office in connection with the criminal case against Mr Titiyev. The car was followed without an attempt to make the surveillance discreet. A criminal case no. 11801260003000011 was open into arson, but on 17 April 2018 it was suspended on the ground that those responsible had not been established.<sup>104</sup>

248. On 17 January 2018, evening news of the Grozniy TV-channel showed a statement (in Chechen) made by Ramzan Kadyrov, the Head of Chechnya, at a meeting with representatives of the regional Ministry of Interior, and the department of the National Guard (Rosgvardiya). In his speech, Kadyrov referred to independent human rights activists as "public enemies" involved in "dobbing" and discrediting the nation. He stated that there was no place for them in Chechnya, their work would not be successful in the republic, and that their relatives were also responsible for their actions. Kadyrov insisted that human rights work in Chechnya could only be undertaken with the knowledge and permission of the authorities, and with his own personal consent.<sup>105</sup>

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<sup>102</sup> [https://memohrc.org/ru/news\\_old/chechnya-na-zaderzhannogo-pravozashchitnika-pytayutsya-vozdeystvovat-ugrozhaya-ego](https://memohrc.org/ru/news_old/chechnya-na-zaderzhannogo-pravozashchitnika-pytayutsya-vozdeystvovat-ugrozhaya-ego)

<sup>103</sup> <http://president-sovet.ru/presscenter/news/read/4727/>

<sup>104</sup> [https://memohrc.org/ru/news\\_old/podzhog-ofisa-pravozashchitnogo-centra-memorial-v-nazrani](https://memohrc.org/ru/news_old/podzhog-ofisa-pravozashchitnogo-centra-memorial-v-nazrani)

<sup>105</sup> [https://memohrc.org/ru/news\\_old/chechnya-v-syuzhete-na-chgtrk-groznyy-ramzan-kadyrov-dal-chetko-ponyat-za-cto-posadili#sdfootnote1sym](https://memohrc.org/ru/news_old/chechnya-v-syuzhete-na-chgtrk-groznyy-ramzan-kadyrov-dal-chetko-ponyat-za-cto-posadili#sdfootnote1sym)



249. On 22 January 2018, a car of the Dagestan branch office of Human Rights Centre "Memorial" was set on fire in Makhachkala (Dagestan). On 20 January Oyub Titiyev's lawyer who regularly cooperates with Human Rights Centre "Memorial" in Dagestan used that car to travel to Kurchaloy (Chechen Republic) to participate in investigative activities in Oyub Titiyev's case.<sup>106</sup>

250. On 23 January 2018, text messages were sent to the phone number of the Makhachala branch of Human Rights Centre "Memorial" requesting to shut down the office and threatening to burn the office with staff members in it; the messages said that the arson of the car had been a warning. There was also a call that confirmed the text messages.<sup>107</sup>

251. In the morning of 28 March, in Makhachala (Dagestan) **Sirazhutdin Datsiyev**, the head of the Human Rights Centre "Memorial" branch in Dagestan, was subject to an attack. An unknown man wearing a balaclava got out of a car parked on the street near Mr Datsiyev's house, approached him from the back and strongly hit him on the head with some object. The attackers fled. Mr Datsiyev was taken to a hospital with a brain concussion. A criminal case was open into the attack, but the attackers have not been found.

252. The investigation into the abduction and killing of **Natalia Estemirova**—the key staff member of the Human Rights Centre "Memorial"—falls short of both domestic requirements of comprehensiveness and completeness of investigation, and international standards of effective investigation. Ms. Estemirova was abducted on 15 June 2009 in Grozny (Chechen Republic), taken to Ingushetia, and killed on the same day. The crime remains unsolved; no one has been brought to justice. The investigation did not undertake all the measures to inquire into the circumstances of Natalia Estemirova's abduction and killing. They allowed deficiencies that are both unexplainable and irreversible, such as a 24-hour delay in examining the crime scene and failure to conduct essential expert examinations. Specifically, the investigation did not collect biological samples from areas of injuries on Ms. Estemirova's body, which could allow to identify the attackers' DNA; they did not check the hard surfaces of the car for DNA or fingerprints; did not examine elements of plants found on the bottom of the car, and did not take measures to preserve those elements.

253. Below is another illustrative example of enforced disappearances in the Chechen Republic and the lack of an adequate investigation into such events.

254. On 17 and 18 December 2016, a group of young men carried out an armed attack on police officers. Some of the police officers, and the attackers were killed. According to some reports, in December 2016–January 2017, over 200 persons were arrested in Grozny, Kurchaloy District, and Shali District.

255. On 10 July 2017, Novaya Gazeta (hereinafter—"NG") in its article "It was an execution"<sup>108</sup> published a list of 27 persons who had been arrested and had then disappeared. According to the newspaper's sources in law enforcement agencies, during the night of 25-26 January 2017 those arrested were arbitrarily executed in Grozny by officers of the Ministry of Interior of Chechnya. The fact that those disappeared had been arrested by officers of the Ministry of Interior of Chechnya before their disappearance, the newspaper published pictures of mugshots of those arrested (a standard document prepared by the Ministry of Interior for operative operations containing brief information and photographs of those arrested), as well as pictures of the structure of the illegal armed

<sup>106</sup> [https://memohrc.org/ru/news\\_old/v-mahachkale-podozhgli-avtomobil-memoriala-na-kotorom-advokat-ezdil-v-chechnyu](https://memohrc.org/ru/news_old/v-mahachkale-podozhgli-avtomobil-memoriala-na-kotorom-advokat-ezdil-v-chechnyu)

<sup>107</sup> [https://memohrc.org/ru/news\\_old/dagestan-sotrudnikam-memoriala-v-mahachkale-ugrozhayut](https://memohrc.org/ru/news_old/dagestan-sotrudnikam-memoriala-v-mahachkale-ugrozhayut)

<sup>108</sup> <https://www.novayagazeta.ru/articles/2017/07/09/73065-eto-by-la-kazn-v-noch-na-26-yanvarya-v-groznom-rasstrelyany-desyatki-lyudey>

group with photos of alleged participants of the armed group, also prepared by the Ministry of Interior. It can be observed on those pictures that the mugshots were made soon after the arrests—some of the persons were handcuffed, faces of some of them bear signs of beatings. These documents prove that those persons have been arrested by State agents before they disappeared.

256. According to the testimony collected by Human Rights Centre Memorial from relatives and neighbors of the persons from the "hit list", at least 25 of the 27 persons were arrested by Chechen law enforcement agents in December 2016 and January 2017. Most of them were taken away from their homes in plain view of their relatives by officers of the Ministry of Interior in Chechnya.

257. In 2017, following the complaints from the relatives of the disappeared and the publications in the NG, the Main Investigative Department of the Investigative Committee in the North-Caucasus Federal District began a preliminary inquiry. Following that inquiry the investigators on eight occasions decided not to open a criminal case; higher investigative authorities set these decisions aside as unfounded and unlawful. The latest decision not to open a criminal case was issued on 9 February 2018. The analysis of some of the inquiry materials available to Human Rights Centre "Memorial" shows that the investigators purposefully failed to undertake certain inquiry activities and took steps to suppress evidence. The investigators' conclusions were to a large extent based on testimony of law enforcement officers, who stated that 22 persons from the "hit list" left Russia for Middle East to take part in the conflict. That is how the Ministry of Interior of Chechnya explained the disappearances. That version clearly contradicts testimony of witnesses who saw the arrests of persons from the "hit list". This testimony is also a part of the inquiry case file.

258. Currently a number of human rights organizations are preparing a judicial complaint requesting to set aside the decision not to open a criminal case in view of incomplete and biased inquiry.

259. *Annex*: List of the disappeared (according to Novaya Gazeta):

- 1) **Abubakarov Adam Dzhabrailovich** born 05.05.1995, resided в Shali, Ivanovskaya Street, 48;
- 2) **Abdulkerimov Saydramazan (Sayd-Ramazan) Ramazanovich** born 25.03.1990, resided in Kurchaloy, Dokhutayeva Street, 18;
- 3) **Abdulmezhidov Adam Isayevich** born 27.05.1987, resided in Avtury, Shali District, Goncharniy lane, 7;
- 4) **Abumuslimov Apti Khasanovich** born 06.02.1989, resided in Shali, Shkolnaya Street, 16;
- 5) **Alimkhanov Islam Aliyevich** born 07.06.1998, resided in Grozniy, Saikhanova Street, 130a;
- 6) **Bergayev Ismail Shadidovich** born 19.08.1998, resided in Grozniy, Alekseyeva (Oktyabrskaya) Street, 244/31;
- 7) **Dasayev Adam Ilyasovich** born 16.06.1988, resided in Shali, Melnichnaya Street;
- 8) **Dzhabayev Zelimkhan Khizarovich** born 18.12.1993, resided in Grozniy, Stariy residence, building 40, app. 1;
- 9) **Ilyasov Adam Khuseynovich** born 22.09.1997, resided in Grozniy, Kriova Street, 222;
- 10) **Lugayev Rizvan Saytkhamzatovich** born 13.09.1987, resided in Shali, Artelnaya Street, Shalinskiy lane, 4;
- 11) **Malikov Rizvan Agdanovich** born 01.06.1992, resided in Grozniy, Stariy residence, building 22, app. 1;
- 12) **Muskiyev Makhma Turpilaylovich** born 19.07.1990, resided in Tsotsi-Yurt, Novaya Street, 10;
- 13) **Muskhanov Timerlan Akhmedovich** born 28.04.1986, Shali, Chicherina Street, 2;
- 14) **Ozdiyev Usman Vakhayevich** born 24.12.1990, resided in Shali, Kutuzova Street, 12;
- 15) **Rashidov Doku Ibragimovich** born 30.05.1995;
- 16) **Seriyev Magomed Musayevich** born 23.02.1993, resided in Belgatoy, Shali District, Murigov Street, 7;
- 17) **Soltakhmanov Ismail Ezer-Aliyevich** born 30.03.1994, resided in Mairtup, Kurchaloy District, Nuradilova Street, 28;
- 18) **Suleymanov Magomed Arbiyevich** born 03.01.1987, resided in Shali, Kavkaz residence, 8, app. 4;
- 19) **Tuchayev Akhmed Ramzanovich** born 23.02.1982, resided in Shali, Shkolniy lane, 30;
- 20) **Khabuyev Khamzan**

**Saludinovich** born 14.02.1993, resided in Prigorodnoye, Groznenskiy District, Lesnaya Street, 7; **21) Khakimov Alvi Aslambekovich** born 16.11.1992, resided in Nikolayevskaya village, Naurskiy District, Komsomolskaya Street 44; **22) Khamidov Shamil Akhmedovich** born 14.11.1986, registered in Prigorodnoye village, Groznenskiy District, Zarechnaya Street, 31; **23). Tsikmayev Ayub Sultanovich** born 02.04.1984, resided in Germenchuk, Shali District, Molodyezhnaya Street, 21; **24) Shepiyev Muslim Isayevich** born 28.11.1989, resided in Shali, Groznenskaya Street, 39; **25) . Eskarbiyev Saykhan Vakhamsoltovich** born 23.05.1992, resided in Shelkovskoy District; **26) Yusupov Sakhab Isayevich** born 19.01.1990; **27) Yusupov Shamkhan Shaykovich (Sheykhovich)**, 17.06.1988, resided in Kurchaloy, Sovetskaya Street, 11.

23. Please provide information on the measures taken to ensure that no individual or human rights group to which he/she belongs is subjected to reprisals or prosecution for monitoring incidents, and communicating with, or for providing information to, the Committee against Torture under its procedures or to other human rights treaty bodies or United Nations human rights organs in accordance with their mandates. (para 12). Please discuss measures directed against human rights defender Natalia Taubina of the Public Verdict Foundation, who participated in the Committee's review of Russia in 2012. Also, please clarify the status of the administrative case brought against journalist Lena Klimova who wrote about and assisted communications among LGBT teenagers and LGBT leaders, and the sentencing of environmental rights defender Evgeny Vitishko to a penal colony in 2014.

24. With reference to the letters of the Chairperson and the Rapporteur on reprisals, sent on 17 and 28 May 2013 on behalf of the Committee to the State party, please provide information on measures taken to apply article 13 of the Convention and para 12 (b) of the previous concluding observations of the Committee, to ensure that civil society organizations, the Anti-Discrimination Centre "Memorial" and its leadership and the Foundation for Assistance in the Protection of Citizen's Rights and Freedoms "Public Verdict" and its leadership, in particular, are not subjected to any reprisals as a result of their legitimate activities, including providing information to the Committee against Torture.

### Public Verdict Foundation

260. In March 2013, the Prosecutor's Office of Moscow initiated a check into the Public Verdict Foundation's operation. Based on its results, a citation was issued on 8 May 2013 to the Public Verdict Foundation, stating that the Foundation was receiving foreign funding and engaging in political activity, and therefore was required to submit an application to the Russian Ministry of Justice to be included in the register of NGOs performing the functions of foreign agents (hereinafter, the "foreign agents" register). The Moscow Prosecutor's Office pointed out several areas of the Foundation's work which it regarded as political activity. The Prosecutor's Office indicated, inter alia: *"With financial support from the National Endowment for Democracy (USA), [the Foundation] prepared the Report on the Observance of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Russian Federation for the period from 2006 to 2012 ... As stated in the application for funding, evidence of positive assessment of this project included the publication of the report on the website of the UN Committee against Torture and the reflection of "concerns" expressed by non-profit organizations involved in preparing the report in the Committee's*

*Concluding Observations on the periodic report of the Russian Federation. This report is also publicly available at the Foundation's website.*"<sup>109</sup> The Prosecutor's Office noted in its citation that the Foundation had not applied to be included in the foreign agents register and by failing to do so, was in violation of the federal legislation. The Foundation was thus required to rectify the violation and inform the prosecutor's office within thirty days of the steps taken.

261. In June 2013, the Public Verdict Foundation challenged in court both the legality of the check and the citation from the Moscow Prosecutor's Office. In the course of the proceedings, the Foundation motioned for including in the case file the letter from Claudio Grossman, Chairperson of the Committee against Torture, and George Tugushi, the Committee's Rapporteur on Reprisals, to the Russian Ambassador to the UN in Geneva Alexey Borodavkin, seeking clarification concerning steps that Russia had been taking under Article 13 of the Convention and paragraph 12 (b) of the Concluding Observations on Russia's Fifth Periodic Report to ensure that civil society organizations in general and the Public Verdict Foundation and its leaders, in particular, would not face reprisals as a result of their legitimate activities, including providing information to the Committee against Torture. While the court added the said letter to the case file, it was not properly taken into account either in the first-instance proceedings or later in the appeal proceedings. The court ruled that the check carried out by the Moscow Prosecutor's Office was legitimate and the citation was legally well-founded.

262. On 5 June 2014, amendments to Federal Law on Non-profit Organizations No. 7-FZ of 12 January 1996 came into force, granting the Ministry of Justice the power to enter organizations in the "foreign agents" register at its own discretion. On 21 July 2014, the Ministry of Justice entered the Foundation in the register pursuant to the citation of the Moscow Prosecutor's Office discussed above. It is noteworthy that at the time the Ministry of Justice made this move, the Foundation was still in the process of appealing the citation. This means that by entering the Foundation in the register on the basis of the citation still in the process of appeal pending the final court ruling, the Ministry of Justice denied the Foundation its right to legal defense.

263. Between 2013 and 2017, the Foundation was involved in three court proceedings. The process of challenging the citation of the Moscow Prosecutor's Office at the domestic level ended on 30 November 2015 with the Russian Supreme Court's judgment which upheld the legal assessment of the case made by the first and appellate instance courts and denied the request to refer the case to a court of cassation. The citation of the Moscow Prosecutor's Office to the Foundation was thus confirmed as legitimate at the domestic level.

264. On 23 July 2014, the Public Verdict Foundation challenged in court the decision to enter it involuntarily in the "foreign agents" register. The first and appellate instance courts upheld the Ministry of Justice decision. These proceedings ended at the domestic level on 26 April 2016 when a single judge of the Russian Supreme Court upheld the legal assessment of the case made by the first and appellate instance courts and denied the request to refer the case to a court of cassation.

265. On 20 November 2015, the Foundation received a letter from the Roskomnadzor Office for the Central Federal District No. 39274-17/17 of 10 November 2015 stating that Roskomnadzor was "establishing the fact of dissemination" of informational materials by the Foundation without marking them with a "foreign agent" label, which is an administrative offense under article 19.34 (2) of the Russian Code of Administrative Offences. On 25 March 2016, Tverskoy District Court in Moscow ruled that the Foundation had committed an administrative offense and imposed a 400,000-ruble fine.

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<sup>109</sup> Citation of the violation of the Federal Law issued by the Moscow City Prosecutor's Office on 8 May 2013, No. 27-29-2013, page 4.

The court dismissed the Foundation's arguments, both procedural concerning the legally established timelines, and on the merits of the case. The Foundation appealed this decision to the Moscow City Court, which on 26 September 2017 quashed the first instance court's ruling and dropped the administrative proceedings against the Foundation.

266. The Public Verdict Foundation's review of how the "foreign agents" law was applied over the first four years after its adoption states, inter alia, that *"in no known instance of being forcibly included by MoJ in the foreign agents registry have NGOs publicly accepted the Ministry's actions as legitimate. Instead, NGOs have declared being prepared to dissolve rather than accept the stigmatizing and misleading label of 'foreign agent' imposed on them. The vast majority of organisations entered in the registry against their will have challenged or are planning to challenge this decision in court. However, in no known case to date has a Russian court overturned the Ministry's decision to forcibly enter an NGO in the foreign agents registry."*

267. The review also indicates that at the time the report was drafted (21 November 2016), *"We know of at least 126 cases of administrative proceedings initiated against NGOs for failure to register voluntarily as 'foreign agents'; of these, 17 were opened against NGO heads and 109 against NGOs as entities. The total amount of fines imposed on NGOs for failure to register voluntarily as 'foreign agents' currently exceeds 20 million rubles (this amount includes both the penalties under effective court judgments and those imposed by first-instance courts and not yet final)."*

268. As for the legal requirement for NGOs included in the register to place a "foreign agent" label on their publications, the report says, *"Out review of this practice suggests that the legal provision on 'foreign agent' labelling has been interpreted arbitrarily both by executive authorities and courts; thus, it is not only used to further stigmatize NGOs, but also serves as a weapon of their destruction... While in some cases one report of administrative violation covered several unlabelled publications, in certain other cases separate reports were issued for each publication (as in the cases of the Committee against Torture, Golos Association, Memorial Human Rights Centre, and others)... Roskomnadzor has filed reports against NGOs branded as 'foreign agents' even for unlabeled publications posted by other organisations on other websites (in particular, in the cases of the Memorial Human Rights Centre and Golos Association) or posted by NGO leaders on their own social media blogs (in particular, in the case of Man and Law NGO). In certain instances, reports have been filed against NGOs for publications which in fact contained a reference to the organisation being included in the 'foreign agents' registry (in particular, the Public Verdict Foundation). In Krasnodar, a local alumni organisation placed the 'foreign agent' label on their publications immediately after receiving a letter from Roskomnadzor concerning potential charges against them; although the organisation had officially corrected the violation before the report was filed, Roskomnadzor took the case to court anyway... Courts tend to ignore NGOs' arguments and side with Roskomnadzor, exercising their discretion only in determining the amount of the fine ... As of November 21, 2016, there were 49 known cases of administrative proceedings pending, including five cases against NGO heads and the rest against NGOs as entities. In total, NGOs are required to pay 7.6 million rubles pursuant to 26 judgments which have come into force. Another 1.9 million rubles worth of fines have been imposed by 9 first instance court judgments, which are currently being appealed."*

#### **Anti-Discrimination Center "Memorial"**

269. In trying to force the Anti-Discrimination Center (ADC) "Memorial" to register as a "foreign agent," the prosecutor's office cited the Center's foreign funding and its work to prepare and release "Roma, Migrants, Activists: Victims of Police Abuse," a shadow report presented to the UN CAT at its 49th session on 8-12 November 2012 as part of the call for shadow reports to provide background for the committee's review of Russia's periodic report. This was a case of retroactive enforcement,

since the "foreign agents" law became effective as of 21 November 2012, after the end of the CAT's 49th session.

270. After more than a year of court proceedings, the St. Petersburg City Court made a final ruling in the ADC "Memorial" case on 8 April 2014; upholding the first-instance court's decision, it ordered the ADC "Memorial" to voluntarily apply for entry in the "foreign agents" register. The court found the report presented by the ADC "Memorial" at the UN CAT's 49th session to contain recommendations "concerning amendment and repeal of effective laws, ratification of international legal instruments, adopting concrete measures to protect foreign nationals, including migrant workers, from abuse by government and security agencies"; recommendations "to international bodies to insist that the Russian Federation ratify binding treaties, including those pertaining to juvenile justice and empowering the LGBT community"; the court also found the report to contain arguments "which legitimize politically motivated actions by political activists, including the organization of mass riots to make political demands." The court concluded this to be "political action pursued with the purpose of shaping public opinion for changing the state's policy."

271. The ADC "Memorial" was then forced to dissolve, since applying for registration in the "foreign agents" registry was incompatible with its principles, goals and objectives due to the discriminatory nature of the term "foreign agent." On 11 April 2014, the Russian Ministry of Justice confirmed the dissolution of the ADC "Memorial" as a legal entity.

272. In July 2014, the ADC "Memorial" took the case to the European Court of Human Rights submitting violations of three articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms: Article 10, the right to freedom of expression (ADC "Memorial" asserts its right to criticize the activities of the police and other state bodies, to publish recommendations for changes to legislation, and to participate in the activities of international bodies which protect human rights); Article 11, the right to freedom of assembly and association (the "foreign agent" status will inevitably cause a negative attitude towards any NGO thus labeled, and state bodies and other actors will refuse to engage with them); and Article 14, prohibition of discrimination.

273. The enforcement of repressive legislation against this organization for its legitimate engagement with an official procedure of the UN treaty body resulted in its forced self-dissolution due to refusal to carry out its work in the status of a "foreign agent." This has adversely affected the situation of vulnerable, highly-discriminated groups previously supported and defended by the ADC "Memorial": their ability to advocate for their rights at the national and international levels has been severely undermined.

#### **Article 14**

28. With reference to the previous concluding observations of the Committee, please provide information on steps taken to amend the State party's legislation to address the right of torture victims to redress, including compensation. Please also provide information about measures taken in this regard, including allocation of financial and other resources for the effective functioning of rehabilitation programmes (para 20).

274. In April 2017, the Russian Federation submitted yet another Action Plan for the execution of the European Court's pilot judgment in *Ananyev and others v. Russia* and the judgments in the Kalashnikov group of cases<sup>110</sup>.

### **The Code of Administrative Procedure**

275. The Action Plan describes in detail the possibilities for challenging inadequate conditions of detention in remand prisons pending trial and in penitentiary institutions by relying on provisions of the Code of Administrative Procedure adopted in 2015 (Federal Law No. 21-FZ of 8 March 2015, hereinafter, CAP). Indeed, the procedure established by CAP has certain advantages over the procedure available under the Code of Civil Procedure (hereinafter, CCP). Notably, the CAP provisions strengthen the role of courts, introduce instruments for holding the authorities accountable (such as fines for failure to appear in court, possibility of being brought to court, etc.), shift the burden of proof to the authorities whose actions are challenged, and include provisional measures. We welcome these reforms, generally aimed at strengthening the role of judicial proceedings for the benefit of individuals, including detainees.

276. In order to use the CAP provisions for challenging the conditions of detention, detainees need to know that in the CAP terminology, inadequate conditions are understood as actions or omission of a State authority or official, and that appealing against the conditions of detention means challenging certain acts or inaction of authorities responsible for ensuring proper conditions of detention. Individuals cannot make a claim for compensation under the CAP. In practice, this means that a detainee first needs to successfully appeal an authority's action or inaction under the CAP and only then make a claim for compensation of pecuniary and/or non-pecuniary damage under a different procedure stipulated by the CCP.

277. So, while the new administrative procedure for appealing against inadequate conditions of detention is in place, it fails to resolve the situation where the satisfaction of an individual's (detainee's) claim for compensation depends on the finding under a different procedure that the relevant authorities' actions/inaction have been proven unlawful. Although the burden of proof has been shifted to the authority whose actions are challenged, the conditions of detention will be found inadequate only if the actions of such authority are proven unlawful. In addition to this, the procedure under the CAP does not permit simultaneous examination of complaints about the conditions of detention and related claims for compensation.

### **Potential barriers to using new procedure for appealing conditions of detention**

278. The timeline for filing a complaint with a domestic court under the CAP has been established at three months following the action (inaction) in question. However, it is well known from the Public Verdict Foundation and other human rights groups' practice that many detainees take longer than three months to seek help. This is due to a number of reasons. Notably, an individual may need extra time to decide to challenge the actions of officials in a situation where he or she is under control of such officials, restricted in his/her freedom and vulnerable to pressure. Detainees' correspondence is subject to censorship and letters may get delayed in the mail. Considering that little effort has been made to explain the newly available remedy to the group of people most likely to be interested in using it, i.e. detainees, making them aware of the three-month deadline is an extremely important

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<sup>110</sup> See Communication from the Russian Federation concerning the cases of KALASHNIKOV and ANANYEV AND OTHERS v. Russian Federation (Applications No. 47095/99, 42525/07), Action plan (19/04/2017)

factor. Even if detainees are informed of the timelines for filing complaints, the deadline itself is too tight and can be a major limitation diminishing the effectiveness of the new remedy.

279. Another important limitation of the CAP procedure is the requirement that the plaintiff's representative must have confirmed legal education and training. Plaintiffs in this category of cases are not provided with free legal aid from the State. For detainees with limited financial means, finding a lawyer representative can be a major problem.

### **Draft Law on Compensation for Inadequate Conditions of Detention**

280. The Action Plan provides information on the new Draft Law on Amending Certain Legislative Acts of the Russian Federation Regarding the Improvement of the Compensatory Remedy Against Violations Associated with Failure to Ensure Proper Conditions of Detention in Detention Facilities. We welcome these legislative developments and hope that they can support Russia's progress towards a full implementation of all measures aimed at addressing the structural problems indicated in the Court's pilot judgment, such as lifting the requirement of proving the unlawfulness of authorities' actions and allowing simultaneous examination of complaints about inadequate conditions of detention and claims for compensation.

#### **Article 15**

29. With reference to the previous concluding observations of the Committee (para 10), please inform the Committee of the measures taken to combat the practice of torture to extract confessions, and ensure that, in practice, forced confessions are not used as evidence in any proceedings. Please provide information whether judges ask all defendants in criminal cases whether or not they were tortured or ill-treated in custody and order independent medical examinations whenever necessary, particularly whenever the sole evidence of a defendant's guilt is a confession. Please provide information on the number of cases in which decisions were based on confessions, and the number in which confessions were deemed inadmissible on the grounds that they were obtained through torture, and indicate whether any officials have been prosecuted and punished for extracting such confessions, and if so, where they are presently employed.

281. The Russian government in its responses to the Committee's question describes procedural guarantees intended to prevent the use of torture in the course of questioning of suspects and accused: mandatory record-keeping, informing of the rights, right to a counsel, a rule that evidence given in absence of a lawyer and retracted by the accused in court shall automatically be held inadmissible.

282. In many cases law enforcement officers try to circumvent these guarantees. In particular, there have been complaints that suspects are questioned in absence of a lawyer and are being pressured to confess, and a counsel appointed by the State signs the questioning record after the confession is made. In some cases suspects are subjected to violence before questioning and are threatened that they will be tortured again if they do not give self-incriminating evidence when questioned with the participation of a State-appointed counsel.

*For instance, during the night of 7 March 2015, unknown men stopped V.T. Nurmukhamitov and his friends, and requested their identity documents. The men did not identify themselves as police officers. Mr Nurmukhamitov tried to find out what the men wanted, but they behaved aggressively. Fearing for their lives, Mr Nurmukhamitov and his friends attempted to flee, but Nurmukhamitov was caught, severely beaten, and taken to a police station. He was tortured and requested to*



*confess to a number of crimes. Police officers warned him that if he retracted his testimony during an upcoming questioning session with the participation of a lawyer, he would be sent to jail for 15 years. Fearing such a long prison term, Mr Nurmukhamitov gave self-incriminating testimony. After that Mr Nurmukhamitov was placed in detention, and then sentenced to 8 years in prison. His complaints about torture were never examined.*

283. The practice becomes possible due to the defects in the organization of State-appointed counsel's work, as described in paras 43-46 of this Report, this system does not motivate State-appointed counsel to verify whether their clients have been subjected to torture; it also lays groundwork for collusion between investigators and counsel acting in bad faith.

284. The problem is aggravated by the fact that Russian courts do not give priority to testimony given in court over testimony given during the investigation.<sup>111</sup> For that reason courts often regard confessions given at pre-trial stage as stronger evidence than a non-guilty plea given in court. Moreover, courts consider a signature of a counsel on a questioning record to be a sufficient confirmation that there has been no torture. In trial judgments found in public databases,<sup>112</sup> we can see indications that the accused "was questioned with the participation of his counsel, which itself excludes the possibility of violence against him or violations of procedural law".

285. For this reason, if there was no effective investigation into the complaints about the use of torture to obtain confession (for details on problems with effective investigation see paras 212 – 218 of this Report), and the case file contains other evidence incriminating the accused, his confession given at the pre-trial stage, will most probably be used as evidence in the trial judgment.

286. In addition to questioning, there is another form of obtaining testimony and responses to questions from a suspect or an accused—a voluntary surrender. Under Article 142 of the Code of Criminal Procedure a voluntary surrender is a voluntary statement by a person that s/he has committed a crime; such surrender may serve as a basis for opening a criminal case. It can be given both orally and in writing. Notwithstanding the fact that a voluntary surrender essentially contains suspects' testimony, procedural law does not require that it should only be given in presence of a counsel. For this reason, law enforcement officers often suggest that apprehended suspects sign a voluntary surrender. In some cases those arrested are subjected to torture and cruel treatment to extract a voluntary surrender.

287. Although voluntary surrender procedure is not accompanied by safeguards against pressure and torture, voluntary surrender is traditionally regarded by courts as evidence. On 29 November 2016, the Plenum of the Supreme Court of the Russian Federation delivered an advisory opinion No. 55 "On trial judgment"; it indicated that courts should verify whether upon receipt of a voluntary surrender the person surrendering was informed of the right not incriminate oneself, right to a counsel, right to appeal against actions and decisions of law enforcement agencies, and whether there existed a practical possibility to make use of those rights. If courts would consistently implement this ruling, the level of protection against torture may raise. Currently, as evidenced by the analysis of publicly available trial court judgments and judgments issued pursuant to regular and causational appeals against trial court judgments, in some cases courts verify whether a suspect was informed of his/her rights prior to accepting voluntary surrender, and discard voluntary surrender obtained without notification of the rights. However, currently this is not a uniform practice.

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<sup>111</sup> <https://www.advgazeta.ru/mneniya/o-problemakh-pravoprimeneniya-i-zashchity-prav-advokatov/>

<sup>112</sup> <https://rospravosudie.com/> and <http://sudact.ru/>

## Article 16

30. Please update the Committee regarding changes in law and practice regarding conditions of detention, including any information on the status of preparation of a plan to carry these out as requested by the European Court of Human rights in its pilot judgment *Ananyev v. Russia*<sup>113</sup> in which it cited such conditions and related legal and administrative safeguards as amounting to a 'recurrent structural problem' in most of the 90 cases already decided by the Court.

288. It needs to be noted that in recent years, Russia has made some improvements with regard to conditions of detention. However, certain problems persist.

289. Today, Russia's FSIN (federal penitentiary) system operates facilities of varying age and extent of wear and tear. Alongside recently constructed or completely renovated buildings (such as SIZO-2 in Nizhny Novgorod, SIZO-6 in Angarsk, Irkutsk Region, and the Federal Prison in Saratov Region) which generally meet the minimum standards for detention facilities, the FSIN continues to use buildings constructed in the 19th centuries (Krasnoyarsk Territory), the 18th century (in Kaluga Region), and the early 20th century (in Nizhny Novgorod, Sverdlovsk and Irkutsk Regions). At 70% to 90% of depreciation, these facilities are beyond repair. Problems affecting most of these prisons include pervasive, overgrown mould, damp walls, leakages and lack of proper heating in the cold season. For example, detainees at SIZO-1 in Nizhny Novgorod use a hot water tank for heating their cell in winter. These facilities are not suitable for accommodating people and must be closed.

## Cell toilets

290. According to Public Oversight Commissions (POC), toilets in most facilities which were constructed in Soviet times are not properly equipped. There is no sewage installation in IK-56 (Black Berkut, Ivdel, Sverdlovsk Region), so outhouse toilets have to be used, and inmates confined to their cells have to use a bucket as toilet. Sewage installations at IK-11 (Bozoy, Irkutsk Region) are so old and worn-out that they often breaks down, and then the female prisoners are forced to use an outhouse toilet. It needs to be noted that in Irkutsk Region, winter temperatures can be as low as minus 30-40 degrees Celsius.

291. In addition to this, cell toilets do not offer privacy, since their shielding is inadequate. Many cells have a single partition separating the toilet from the living area. According to FSIN Order no. 512, the partition must be one meter high; therefore it provides shielding only from one side, leaving the rest uncovered. Most toilets are equipped with steel Genoa bowls mounted on platforms raised by one or two steps (since obsolete sewage systems rely on natural drainage). Taking into account the height of the platform and the one-meter partition, the person using the toilet is in full view. Inmates often construct their own screens out of plywood, cardboard, hanging sheets or rags to shield the toilet. Such cells have been found in the remand prison in Ivanovo, in the administrative detention centre in Kaluga Region, in the punishment cells of SIZO-1, IK-13, IK-9 and IK-8 in Kaliningrad Region, in Novosibirsk Region, Irkutsk region, Sverdlovsk Region, and others.

292. Only new remand facilities built as part of federal programmes are equipped with fully standards-compliant toilets, providing proper shielding and odour control. However, odour control is

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<sup>113</sup> See European Court for Human Rights, *Ananyev and Others v. Russia*, (Applications nos. 42525/07 and 60800/08), judgment, 10 January 2012.

impossible in older buildings, where cell toilets are separated from the living space only by single partitions. Obsolete sewage systems and poor flushing (usually via a pipe connected to the sink) lead to unbearable odour, which inmates try to control by blocking sewage pipes with old clothes, empty plastic bottles, etc. Thus, toilets in the cells of SIZO-1 in Nizhny Novgorod Region are always clogged, and inmates use improvised stoppers (such as milk cartons filled with garbage) to cover the drains. In two units of correctional treatment facility LIU-23 in Sosva, Sverdlovsk Region, toilets do not flush, and inmates have to use a bucket of water for manual flushing. In the punishment cells of the same facility, thin water pipes connected to the sink are used for toilet flushing; the water pressure in them is too weak for effective flushing, leaving the waste stuck in the toilet bowl; inmates have to stuff rugs into the toilet to keep the odour and rats out (findings from the POC visit of 29 April 2017). A similar situation was found in IK-26 in Tavda, Sverdlovsk Region. Generally, odour problems resulting from poorly functioning sewerage systems, irregular water supply and obsolete and worn-out sanitary equipment are common problems.

293. Some institutions do not have toilets and washing facilities installed inside cells. In particular, this situation was observed in the temporary holding centre for foreigners in Kaluga and in Sverdlovsk Region.

### **Bath days**

294. According to the new rules (Ministry of Justice Order No. 295), bath days should be provided to prisoners twice a week. But remand prisons and penitentiary colonies in most regions are not yet capable of meeting this requirement. Even in summer, certain penitentiary facilities allow prisoners to have a bath only once a week and sometimes once in 10 days. This is the situation in LIU-23, IK-53 and IK-56 in Sverdlovsk Region.

295. Certain facilities lack sinks in cells (such as the SUVSIG in Kaluga Region, IK-3 in Krasnoturynsk, Sverdlovsk Region; punishment cells in IK-13 in Kaliningrad Region). In some cases, a hose is installed above the toilet instead of a sink, and inmates have to wash themselves over the Genoa bowl (i.e. over the toilet). This situation was observed in some cells of the special regime wing in IK-13 in Kaliningrad Region, in remand facilities and punishment cells in Nizhny Novgorod Region, in IK-3 in Krasnoturynsk, Sverdlovsk Region, and others.

296. Worn-out pipes and sanitary installations in some facilities cause problems with water supply and also with the quality of water, including drinking water. Water supply interruptions have been reported in IK-53 in Verkhoturys, Sverdlovsk Region, and in SIZO-1, IK-5 and IK-7 in Nizhny Novgorod Region. Drinking water is not available in the punishment cells of IK-7, IK-9 and IK-13 in Kaliningrad Region, and the quality of drinking water does not meet the sanitary standards in the SUVSIG in Kaluga Region.

### **Availability of toiletries and detergents**

297. In most cases, the prison administration controls access to detergent products and personal hygiene articles. This is the case in Sverdlovsk, Irkutsk and Kaliningrad Regions, and some others. In particular, the prison authorities in IK-9 and IK-13 in Kaliningrad Region do not always provide detergents to inmates. According to observers, prison administrations often refuse to issue detergent products to detainees, even those which have been brought by their families (SIZO-1 in Novosibirsk Region). Many facilities in Irkutsk Region provide detergent products inconsistently, and inmates in penitentiary colonies and settlements have to purchase detergents at their own expense. Detainees at the SUVSIG in Kaluga Region have to clean their own cells, yet cleaning supplies are dispensed to them irregularly, water supply interruptions are common, and cells do not have toilets and sinks. Prisoners as well as their families are generally dissatisfied with the quality of toiletries available.

### **Access to natural light and fresh air. Cell windows**

298. Although new insulated windows have been installed in a centralised manner in prison facilities, in some institutions they still do not provide access to fresh air. Notably, in Nizhny Novgorod Region, following the installation of new plastic windows, the prison authorities removed the window handles, and the inmates now cannot open the windows independently to let fresh air in. Similarly, the new plastic windows in the SUVSIG in Kaluga Region are kept shut tightly, and the detainees cannot open them.

299. Cells which have not been refurbished still have old windows installed. In particular, in SIZO-1 in Novosibirsk, cell windows have four layers of netting: one on the inside and three on the outside, blocking access to natural light. In SIZO-1 in Kaluga, many cells, including those accommodating women and children, provide virtually no access to natural light. Making this situation even worse, the detainees have limited access to natural light even during outdoor exercise, as the exercise yard located on the roof of SIZO-1 is a windowless concrete bunker aired through small crevices between the wall and the ceiling, which are very narrow to prevent detainee escapes.

300. Window openings are often disproportionately small for the cell area, limiting access to both natural light and air. Notably, cell windows in the IVS (temporary detention ward) in Zalari, Irkutsk Region, measure 20 by 20 cm (vs. 90 by 60 cm required by regulations), and in the IVS in Usolye-Sibirskoe, Irkutsk Region, windows in some cells measure 50 by 50 cm and in some others 30 by 50 cm. Many temporary detention wards at police stations in Kaliningrad Region have smaller window openings than required, as do certain penitentiary facilities, such as the special regime wing of IK-18 in Kaliningrad Region.

301. At some facilities, window shields and blinds have not yet been removed. Punishment cells in IK-9 in Kaliningrad Region have shields/blinds blocking the windows. Windows in punishment/confinement cells of penitentiary facilities in Nizhny Novgorod Region usually have metal bars, and in some cases shields on the windows are too wide, contrary to requirements, and block access to natural light.

302. Shockingly, cells without any windows continue to be used. This has been observed in police temporary detention wards in Nizhny Novgorod Region; moreover, forced-air ventilation in many such cells is out of order. In Kaluga Region, both the IVS in Obninsk and the detention ward of the FSB Office in Kaluga have only windowless accommodation.

### **Individual sleeping places**

303. Detention facilities make various efforts to provide each prisoner with an individual sleeping place. Where they cannot fit in more beds due to lack of space in the cell, prison authorities find other solutions. Notably, in the remand prison in Ivanovo, an additional tier of bunk beds has been installed in a few cells. In some institutions, folding beds are placed in aisles. In some others, no extra beds are available and prisoners are issued mattresses and bedding to spread on the floor in the aisle. This situation was observed in IK-19 in Irkutsk Region, where decking was installed instead of beds, and in SIZO-1 in Yekaterinburg. POC' inspections found many cells in remand facilities where detainees had to sleep on the floor, spreading their mattresses and bedding in the aisles. In IK-3 in Krasnoturynsk, Sverdlovsk Region, many cells are narrow, leaving no passage between beds when people sleep on the floor; one can only step on the table or on the toilet.

304. Facilities for holding foreigners must be designed to hold 2 to 6 people in one cell at any given time. Cells of the SUVSIG in Nizhny Novgorod Region hold 10 to 12 persons each, of whom six sleep in beds and the others on mattresses spread on the floor.

305. Sleeping accommodations in some facilities are located too close to the toilet. Notably, sleeping places in some cells at the facility for administrative detainees in Kaluga and in punishment cells of IK-7 in Kaliningrad Region are installed at 50 cm from the toilet. A similar situation was observed in Nizhny Novgorod Region in some cells, including punishment cells, of SIZO-1 and SIZO-3, and in a few cells at the SUVSIG. In some punishment cells of IK-20 and IK-7, folding iron beds, when lowered, lean on the partition separating the toilet from the living area and thus block access to the toilet; prisoners cannot use the toilet at night-time, as only prison staff can control the raising and lowering of folding beds. Some inmates told PMC members that they usually asked prison staff not to lower one of the beds to allow access to the toilet, and took turns sleeping on the other bed.

### **Bedding**

306. The quality of bedding is mostly unsatisfactory: worn-out sheets, unusable mattresses and substandard pillows and blankets. At some institutions, laundry is washed at temperatures below the sanitary requirements. In particular, this was observed in Kaluga Region. Bedding at the temporary detention ward in Zalari, Irkutsk Region, was visually dirty, pillows and mattresses full of dust and lumpy from wear and sanitation. Bedding and mattresses at IK-7, IK-6, IK-1 and IK-17 in Nizhny Novgorod Region were very old and looked dirty even after proper sanitation.

307. As before, there is still a problem with making sufficient bedding available to all detainees. In particular, some detainees in SIZO-1 and SIZO-3 in Nizhny Novgorod Region do not have their own, individually issued bedding.

### **Overcrowding of cells and units at penitentiary facilities**

308. Despite the authorities' efforts to provide the required personal space to each detainee, the overcrowding problem persists. In particular, in SIZO-1 in Kaluga, a few cells are overcrowded beyond the Russian sanitary norm of 4 m<sup>2</sup> per person. Overcrowding has been reported in IK-9 in Kaliningrad Region – its inmates have repeatedly appealed against their conditions of detention to Russian authorities. In SIZO-1 in Yekaterinburg, 16 people were accommodated in a cell with 10 sleeping places (inspection of 7 February 2017), 12 people in a cell measuring 16.2 m<sup>2</sup>, and two people in a cell measuring 4.3 m<sup>2</sup> (inspection of 13 April 2017).

309. The overcrowding problem also persists in temporary holding centres for foreigners (SUVSIG), observed in particular in Kaluga and Nizhny Novgorod Regions. Moreover, the SUVSIG in Nizhny Novgorod does not have rooms of at least 15 m<sup>2</sup> available for family accommodation. In result, a foreigner was placed in the SUVSIG, while her two minor children were separately accommodated at different orphanages in 2016.

### **Suitability of temporary detention wards at police stations for long-term detention**

310. Still common is the use of unsuitable cells at police stations for prolonged/overnight detention. Specifically, temporary detention wards at all police stations in Irkutsk Region are not designed for overnight detention; in Nizhny Novgorod Region, rooms for detainees are equipped with wooden benches 40 to 70 cm wide, which serve as beds for persons detained overnight; mattresses are generally unavailable, and bedding is rarely available.

311. Cells offering detainees no privacy whatsoever continue to be used. Open-view cells with bars replacing one of the walls are used in Kaluga Region (police stations in Tarussa, Vorotynsk and Dzerzhinsky District of Kondovo), and at police station no. 3 in Kaliningrad (doors of metal bars in two cells). Plexiglas sheets are sometimes used instead of metal bars. Notably, the police station of Arzamas District, Nizhny Novgorod Region, has several cells with walls and doors of Plexiglas. These cells resembling aquariums are poorly ventilated, with no windows or lighting inside (there is only artificial light coming from the corridor).

312. In a number of regions, punishment cells in penitentiary facilities fail to meet the standards for prisoners' accommodation due to insufficient lighting and ventilation, low temperatures in winter, concrete floors, black mould on walls, damp air, toilets lacking separation from the living area, and no sinks. These problems have been reported in Sverdlovsk, Kaliningrad, Nizhny Novgorod and Irkutsk Regions, and in Krasnoyarsk Territory. In particular, in IK-3 in Krasnoturynsk, Sverdlovsk Region, the conditions of detention are unbearable, unhealthy and life-threatening due to overcrowded cells, very low winter temperatures, single-pane windows, no ventilation, concrete floors in some cells, damp walls, black mould, toilets lacking separation from the living area, no sinks, dim light, and insufficient floor space per person.

### **Separating smokers from non-smokers**

313. Separating smokers from non-smokers remains a problem, according to human rights defenders and POC members in Krasnoyarsk Territory and Kaliningrad, Nizhny Novgorod, Sverdlovsk, Kaluga and Irkutsk Regions. While the new Internal Regulations adopted in January 2017 require separate placement of smoking and non-smoking prisoners and prohibit smoking in the cells, compliance with these rules is not universal.

31. Please provide statistical data on the number of deaths in custody, with a breakdown of the causes and details on the investigation of past incidents as well as prosecution and conviction of officials found to be responsible. Please also elaborate on the measures taken to prevent deaths in custody. Please update the Committee on the outcome of investigations and criminal cases on Pavel Drozdov and Sergei Nazarov, both of whom died in detention in 2012 (para 6). In view of the report that officials found that Drozdov died from pancreatic disease and that kicks, handcuffing, and other use of force against him that were seen on video recordings could not have caused his death, please clarify whether any charges or other measures were imposed on officials for ill-treatment or torture? With regard to Nazarov, please comment on the concerns raised by the CPT that, after initial preventive action taken in that case, subsequent steps were delayed or ineffective, with criminal charges dropped in some instances without an interview by the investigator. Also please comment on the CPT finding that “a high level of mistrust” continues among detainees regarding the investigation of complaints. Please comment on the outcome of eight criminal cases against the Dalny department officials that followed. –

314. After the case of torture of a detainee in Dalniy Department of Interior, senior officers of the Ministry of Interior in Tatarstan have been dismissed. The new head of the Ministry of Interior together with the republican department of the Investigative Committee has done much work to hold police officers involved in torture and other crimes accountable. A large number of police officers

were brought to justice.<sup>114</sup> According to human rights defenders, this work has yielded result—there was a decrease in unlawful police violence.<sup>115</sup>

*However, in October 2017 another significant incident related to torture happened in Tatarstan. On 18-19 October three police officers of the Nizhnekamsk Department of Interior requested Ilnaz Pirkin, 22 years old, who confessed to stealing an audio system from a car, to also confess to theft of batteries from 48 cars, which he had not committed. Police used force against him to extract the confession. The man confessed to 48 episodes of theft; after he was released upon the undertaking not to leave town he committed suicide. Before killing himself he made a video on his mobile phone, in which he described the torture. According to him, police officers beat him, and also applied a form of torture called "elephant", where a respirator (gas mask) was put on the victim's head and the access to air was cut off. After that incident, police officers also beat Mr Pirkin's friend and the owner of the car from which Mr Pirkin had stolen so that they confessed to making Ilnaz kill himself.<sup>116</sup>*

315. A criminal case was open into the event. Having examined the activities of the Nizhnekamsk District Department of Interior, the prosecutor's office of Tatarstan found grounds for opening three more criminal cases. Two of them concern unlawful methods of investigation, and another one deals with "concealment of a crime from recording". The Investigative Committee started an inquiry into suicides of other seven persons who have been in contact with Nizhnekamsk police officers over the past years.<sup>117</sup>

316. These events took place in Tatarstan notwithstanding the campaign to hold those involved in torture responsible. It is clear that holding police officers that use torture responsible does not as and of itself eradicate this practice.

32. Please provide information on the efforts taken to prohibit and eliminate hazing [*dedovschina*] in the armed forces and ensure prompt and impartial investigation of all allegations of hazing and deaths in the military. Please also provide information on the number and outcome of investigations of such cases, whether any prosecutions have taken place and with what outcome, as well as what redress for the victims (para 16). In particular, please comment on the report that Chelyabinsk Region human rights ombudsman Aleksey Sevastyanov found a sharp increase in servicemen admitted to psychoneurological hospital No 2. because of suicide attempts, and that investigations were not conducted regarding alleged bullying that may have provoked this. Similarly, please comment on the report that following a separate inspection, 22 servicemen from the Chebarkul tank brigade were admitted to the hospital from January to August as a result of suicide attempts. Please inform the Committee of other measures to prevent *dedovschina* and educate personnel that such action is impermissible and will be punished.

317. Article 335 (violation of statutory rules regulating mutual relations between military servicemen in absence of relations of subordinations between them) of the Russian Criminal Code makes hazing a

<sup>114</sup> <https://inkazan.ru/news/society/11-12-2017/itogi-2017-lyudi-i-sobytiya-artem-hohorin-i-pytki-v-op-nizhnekamska>

<sup>115</sup> <http://chelny-biz.ru/press/206192/>

<sup>116</sup> <https://meduza.io/feature/2017/11/08/pytki-v-politsii-tatarstana-novoe-delo>

<sup>117</sup> <https://meduza.io/feature/2017/11/08/pytki-v-politsii-tatarstana-novoe-delo> and

<https://www.novayagazeta.ru/news/2017/11/02/136652-v-tatarstane-posle-suitsida-zaderzhannogo-arestovali-troih-politseyskih>

criminal offense. Article 286 of the Russian Criminal Code outlaws official crime, including violent crimes committed against subordinates.

318. In 2011, Russia initiated the process of establishing the military police. The Law of 24 January 2014 on Amendments to Certain Legislative Acts of the Russian Federation concerning the Operation of Military Police in the Armed Forces amended a number of laws and regulations to specify the powers granted to military police and rules of its operation. A presidential decree of 25 March 2015 approved the Military Police Statute.

319. The military police has functions and powers previously exercised by commanders of military units. In particular, the military police has the authority to conduct inquiries and transfer servicemen found to be victims of ill-treatment to other units to ensure their safety.

320. In its periodic Report on the implementation by the Russian Federation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Government outlines a number of steps taken to combat torture and hazing in the armed forces, in particular, (1) legal education in the armed forces, (2) establishing the military police, and (3) engaging with non-governmental organizations, including associations of servicemen's parents. However, these measures have not been sufficiently effective.

321. The legal education classes conducted in military units are largely ineffective, mainly because they are offered in the form of lectures attended by hundreds of servicemen at a time, which cannot facilitate learner involvement and retention of the information provided by the commanders.

322. In 2006, pursuant to Minister of Defense Instruction No. 172/2/8996, military units established parent committees. These committees, however, have not been active in preventing violence in the armed forces; instead, their role is limited to attendance of memorial events and celebrations or, at best, assistance to military units with everyday needs. As of this writing, parent committees have only been established at units subordinate to the Ministry of Defense but not other forces, such as the National Guard (Rosgvardia), although a significant part of their personnel are those serving by conscription.

323. According to Russia's official report, inquiries conducted by the military police in 2015 resulted in prosecutions only in 35 cases. However, a total of 2,788 crimes within the armed forces were reported in 2015 in Russia, of which 901 were offenses under article 335 of the Criminal Code (i.e. hazing). However, these statistics do not take into account the offenses under Article 286 of the Criminal Code (abuse of power), despite the fact that most officers suspected of violent crimes against subordinates are prosecuted under this article. Examples cited in this report confirm that in most cases, torture cases are prosecuted under Article 286 of the Criminal Code.

324. In 2009, the Minister of Defense approve Directive No. 205/2862 of 20 December 2009 which lifted the ban on the use of mobile phones in the army, making it possible for servicemen to promptly report hazing and torture. However, in recent years, there has been a **clear tendency to restrict the use of mobile phones in the armed forces**. According to the Armed Forces General HQ Instruction No. 317/5/33Sh of 20 March 2015, "the use of mobile phones in high-security premises (areas) may lead to disclosure of state secrets." The Ministry of Defense considers banning smartphones in military units,<sup>118</sup> and this can cause problems with documenting evidence of torture.

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<sup>118</sup> <https://www.kommersant.ru/doc/3549426>



325. Servicemen cannot leave the territory of their military units without a special permission which is granted by the unit commander based on a waiting list. Therefore, reporting abuse to the law enforcement or accessing an independent healthcare provider for documenting traces of violence is extremely difficult for servicemen. Likewise, it is nearly impossible to secure a witness testimony from the victim's fellow servicemen. This situation makes it easy to hide evidence of hazing and torture.

326. In order to hide evidence of torture, many victims of violence have been committed to psychiatric clinics. The Soldiers' Mothers of St. Petersburg have documented cases of victims admitted to psychiatric wards of military hospitals. Unit commanders use hospitalization to make sure that the victims are isolated and unable to report the crime, so that the perpetrators may avoid responsibility. These types of situations can occur whether or not a crime has been reported and an inquiry is underway, as long as the victim continues to serve in the same military unit where he has been subjected to violence.

*The case of Georgy Kotov. A resident of Staraya Russa, Kotov was drafted into the military on 6 December 2012 and served in military unit No. 07059 located in the village of Galkino, Khabarovsk Region. In a telephone conversation with his mother, Kotov said that an officer had smashed his mobile phone when he saw that Kotov was using it at the wrong time. Kotov also complained that soldiers were not treated as human beings in his military unit but did not provide any details. In early August of 2013, his unit departed for Turgenevsky training ground in Primorsky Krai, and his mother lost contact with him. On 18 August 2013, the unit commander phoned Kotov's mother, telling her that her son together with another servicemen had fled from the unit; according to the commander, the servicemen did not have any reasons to desert, and their motives were unknown. On 26 August 2013, the servicemen voluntarily showed up at the military prosecutor's office of the Ussuri Military District and reported having been repeatedly subjected to physical and psychological violence by fellow servicemen. After questioning, both servicemen were returned to the same unit. On 3 September 2013, the unit commander ordered both servicemen to be admitted to the psychiatric ward of a military hospital, where they were examined and found unfit for military service. An inquiry into their reports of ill-treatment failed to find evidence of a crime. At the same time, an inquiry was started against these servicemen under article 337 (1) of the Criminal Code for "unauthorized desertion of one's unit or place of service." Since both servicemen had been found unfit for military service, criminal proceedings against them were dropped.*

*The case of Alexander Fokin, serviceman of military unit No. 29760 at Vladimirsky Camp in Pskov Region, who was drafted into the military on 9 November 2016 from Vologda. According to his mother, he had to desert his military unit after being consistently subjected to physical and psychological violence by fellow servicemen and the Company commander, Senior Lieutenant Mintyukov. In his home town of Vologda, Fokin showed up at the military prosecutor's office and was assigned to a military unit located in Vologda Region but after a while returned to the same unit and company where he had been ill-treated. Once back in his former unit, Fokin faced psychological pressure from the officers. Only after the Soldiers' Mothers of St. Petersburg intervened in his case, Fokin was transferred to another unit within the same company; however, pressure on him did not stop as the commanders were unable to ensure his safety. After a while, the serviceman was committed to the psychiatric ward of a military hospital. The officers of his military unit misled Fokin by telling him that they were taking him for a medical check-up in connection with his somatic illnesses but instead he was de facto involuntarily hospitalized in a*

*psychiatric ward, where he was examined and found to be fit for military service. By that time, a decision was finally made to transfer him to another military unit where he continued service once discharged from hospital. An inquiry into his report of abuse failed to find evidence of a crime, and Fokin was pressured into withdrawing his complaint against the company commander.*

327. The problem has been made worse by the recently established practice of liquidating independent NGOs, in particular by enforcing the "foreign agents" law against them. This practice interferes with constructive engagement between civil society associations and the military authorities refusing to cooperate with organizations on the "foreign agents" register. This, in turn, prevents timely documentation of evidence of torture in military units.

*The Ministry of Defense Joint Strategic Command of the Western Military District refused to provide information to Soldiers' Mothers of St. Petersburg with reference to their status of "a non-profit organizations performing the functions of a foreign agent."*

328. In a number of cases, investigations have been carried out into reports of ill-treatment and perpetrators have been brought to justice.

*The case of the military unit in Khvoiny. In late May – early June 2015, Sergeant Major Volkhin of military unit No. 03213-3 in Khvoiny, a village outside of St. Petersburg, was drunk and beat several servicemen with an iron coat hanger. A subsequent inquiry found that Volkhin, being under the influence and believing that the servicemen were talking back to him and deliberately delaying the time allocated for taking a bath, decided to punish them. He ordered eight servicemen to line up in front of the company storage room and then called them in one by one and hit each one on the back and arms with a makeshift clothes hanger made of a metal rod. The court found Volkhin guilty of abuse of power involving violence (article 286 (3)(a) of the Criminal Code) and handed down a 3-year suspended sentence with one year of probation and a prohibition of holding command positions in the Armed Forces, other forces and military formations, government and municipal bodies, institutions and corporations for one year.*

329. According to para 75 of the Internal Service Regulations, a military unit commander is responsible for maintaining discipline, internal order and morale of their subordinates. In the military chain of command, each unit commander is responsible for preventing and detecting incidents of hazing among their subordinates. It is common, however, for unit commanders to delegate disciplinary functions to lower levels of command (company or platoon leaders).

*The case of serviceman M. Serviceman M. served in military unit No. 02511 in Kamenka, Leningrad Region, starting in April 2012. From late August to early September 2012, M. was repeatedly abused by the newly appointed Senior Lieutenant Zheludkov who used verbal insults, sleep and food deprivation, beatings and other methods of torture, causing M. to develop a mental disorder in the form of prolonged depression with suicidal tendencies. **Although M. had shared his suicidal thoughts, the unit commanders failed to take effective steps to determine the reasons for M.'s distress and remedy the situation.** It was only due to persistent efforts of M.'s mother and alternative inquiry she had initiated that evidence of ill-treatment was found and eventually criminal charges brought against the company commander. On 11 January 2013, M. was admitted to a military hospital in Kronstadt for treatment of his injuries. On 22 March 2013, upon learning that he would be discharged and returned*

to his unit, the soldier committed suicide. It was only after M.'s fellow servicemen were discharged from the army and shared with M.'s mother via social networks what they knew about the situation that she was able to convince the authorities to prosecute. The court found Zheludkov guilty of abuse of power involving the use or threat of violence, with serious adverse consequences (article 286 (3)(a)(c) of the Criminal Code) and sentenced him to 4.5 years in a penitentiary colony, with a prohibition of holding command and administrative positions in the Armed Forces, other forces and military formations, government and municipal bodies, institutions and corporations for two years. The court also partly satisfied the civil claim for damages brought by the deceased serviceman's mother and awarded her 500,000 rubles to be paid by Zheludkov.

The case of **serviceman Z.** On 29 May 2016, serviceman Z. was found hanging in a noose made of duffel bag straps in the attic of an abandoned building of military unit No. 03213-2. He had just nine days of service left before he would be discharged. In a suicide note found on him, Z. accused an officer of his death. As it was later established by the investigation and the court, between 5 September 2015 and 29 May 2016, Captain Moshnyakov systematically abused and humiliated Z., making the conditions of his service unbearable, and in particular, ordered him on day duty at least 81 times over the period, i.e. much more often than any other serviceman of the same company. **Superior commanders of the military unit did not interfere and avoided addressing the situation or questioning the lawfulness of Moshnyakov's actions.** The court found Moshnyakov guilty of abuse of power involving violence, with serious adverse consequences (article 286 (3)(a)(c) of the Criminal Code) and sentenced him to 4 years in a penitentiary colony, with a prohibition of holding administrative positions in the government and self-government bodies for two years, and stripped him of his army rank of Captain. The deceased serviceman's family was not adequately compensated, as the court rejected the 3,000,000-ruble civil suit brought by Z.'s mother.

**The case of anti-aircraft missile battalion soldiers.** In the course of tactical exercises, during the evening roll call on 14 April 2017, servicemen of the Third Anti-aircraft Missile Battalion of Military Unit No. 92485 in Severodvinsk, Arkhangelsk Region, were ordered by Major Isayev to line up naked (wearing "uniform number zero") for a physical examination. Each naked soldier had to wear a belt with a bayonet-knife and a helmet. As the personnel lined up in the sleeping quarters, Major Isayev ordered soldier G. to thoroughly examine his fellow soldiers' genitals, measure them using a ruler, and check for hickeys and bites. Major Isayev said, "whoever's sexual organ is the longest will be allowed to sleep all day tomorrow." There were other officers present, Lieutenant P. and Major K., but they did not react to the abuse in any way. Major Isayev continued to conduct "physical examinations" on the following few days, focusing on the size of genitals and demanding that the servicemen bring them into "combat position." He forced one of the soldiers "to perform various indecent acts of a sexual nature on fellow soldiers." The servicemen gave another example of abuse perpetrated by Major Isayev: "During tactical exercises on 10 to 13 April 2017, Major Isayev ordered the servicemen to wear steel helmets all the time, even when sleeping or eating." **Once again, there were other officers present but they did not react to the abuse in any way.** The court found Isayev guilty under Article 286 (1) (abuse of power) and Article 286 (1)(3)(a) of the Criminal Code (abuse of power involving the use or threat of violence), sentenced him to 4 years of penitentiary colony and prohibited to hold certain positions for two years.

*The case of servicemen K. and D.* The parents of a serviceman of military unit No. 41450 in Ryazan reported that their son K. attempted suicide on 13 August 2013 by shooting himself in the head with an assault rifle. He survived, but had to have multiple surgeries. The reason for his attempted suicide was that for four months before that, starting in late October 2013, K. and his fellow serviceman D. had suffered physical and psychological abuse from Sergeants Krasilnikov and Shpakov and Junior Sergeant Borovkov. Even after K.'s attempted suicide, the sergeants continued to abuse D. However, **the unit commanders failed to find any evidence of hazing**. It was only in November 2013, when the victim was finally able to respond to his mother's questions by typing the answers on a computer, that the authorities agreed to institute criminal proceedings. After this, D. began to testify as well. The court found Krasilnikov, Shpakov and Borovkov guilty of abuse of power involving the use or threat of violence, with serious adverse consequences (article 286 (3)(a)(c) of the Criminal Code) and sentenced each to 5 years in a penitentiary colony, with a prohibition of holding administrative positions in the Armed Forces, other forces and military formations, in government and municipal bodies, institutions and corporations for one year and six months, and stripped them of the military ranks. The court partly satisfied K.'s 1,208,025-ruble civil claim for compensation by awarding him 900,000 rubles to be paid by the convicted perpetrators.

330. Very often, it takes time and effort to have the authorities to institute criminal proceedings and bring charges against perpetrators. Although such offenses are subject to public prosecution – meaning that the authorities must prosecute regardless of requests from the injured party – very often they wait for a formal crime report before an investigation is opened.

*The case of severe beating of eight servicemen.* On 27 August 2013, a serviceman of military unit No. 89547 in Chebarkul, Chelyabinsk Region, was beaten by Senior Lieutenant Bessarab and had to have his spleen surgically removed as a result of the injuries. It turned out later that eight other servicemen had been abused by the same commander who had beaten them with a belt, punched, hit with elbows and knees, and kicked on various parts of the body. The victim F. was badly injured and had to have his spleen removed as a result of this kind of beating. However, despite repeated episodes of violence, the perpetrator was prosecuted only after the ill-treatment resulted in grave consequences. The court found Bessarab guilty of five offenses under article 286 (3)(a) of the Criminal Code (abuse of power involving violence) and one offense under article 286 (3) (c) (abuse of power with serious adverse consequences) and sentenced him to 4 years in a penitentiary colony, with a prohibition of holding administrative positions in the Armed Forces, other forces and military formations, in government, municipal and local self-government bodies, state and municipal institutions for two years and six months, and stripped him of the military rank of senior lieutenant. The court partly satisfied the victim's 1,000,000-ruble civil claim for compensation by awarding him 500,000 rubles to be paid by the convicted perpetrators. The victim F. was dismissed from military service for health reasons.

*The case of serviceman N.* A serviceman of military unit No. 08275 in Pechenga, Moscow Region, N. was repeatedly subjected to beatings and humiliation by fellow servicemen. Shortly before the last incident, the victim asked to send him a sedative. Soon after he told his mother about the beatings in the army, a photo was posted on his fellow serviceman's page on Vkontakte social network (vk.com) showing the victim tied to a tree, his face painted with a white substance. After the photo was posted, the

*serviceman called his sister and urged her tearfully to discourage their mother from filing a complaint because, he said, this could "make the matters even worse" and cause him "to be beaten to death." Although the photos of hazing were publicly accessible, the authorities did not initiate a criminal investigation until lawyers with the Soldiers' Mothers of St. Petersburg filed a request to prosecute. The investigation ended in December 2017 with charges being brought against one of the victim's fellow servicemen, Sultanov, who was sentenced to a 10,000-ruble fine. The court ignored the fact that the victim's health had deteriorated as a result of the abuse and he had to be admitted to a psychiatric ward of a military hospital, was found unfit for military service, and discharged from the army. This excessively mild punishment of the perpetrators is not consistent with the goal of achieving "zero tolerance" of ill-treatment and torture in the army.*

331. The Soldiers' Mothers of St. Petersburg continue to document cases in which conscription servicemen have been used as an involuntary labor force for private purposes, as well as the use of prohibited types of punishment.

*In March 2014, conscription servicemen informed human rights defenders that in November 2013, Captain Makarov, commander of the joint repair workshop of military unit No. 17646, drove two soldiers to a warehouse run by a commercial company and forced them to do construction work for six days a week for three consecutive weeks. The victims also reported that Captain Makarov had connected civilian facilities to the military unit's electrical grid, regularly ordered soldiers to wash and repair his private car and violated the servicemen's right to rest and leisure. In addition to this, in the summer of 2013, Captain Makarov used to punish soldiers by ordering them to wear chemical protective suits and gas masks and crawl around the field behind the barracks. Another form of punishment was to order soldiers to dig trenches, sometimes at night. Following an investigation, Captain Makarov was only prosecuted for the illegal use of servicemen's labor for private purposes. In June 2014, he was found guilty of abuse of power under article 285 (1) and sentenced to pay a 35,000-ruble fine. According to reports from his victims, Captain Makarov has not been expelled from the Army and continues to serve.*

332. The Committee's Concluding Observations on Russia's fifth periodic report state in para 16, "Where evidence of hazing is found, the State party should ensure prosecution of all incidents and appropriate punishment of the perpetrators, *including exclusion from the armed forces.*"

333. However, this part of the Committee's recommendations has not been implemented. According to domestic legislation, a serviceman who serves under a contract must be expelled from the military only if sentenced to (1) imprisonment; (2) probation (conditional imprisonment) for an intentional offense or (3) withdrawal of the right to hold military positions for a certain period. In the event that a contract serviceman is sentenced to a fine, Russian law allows him to continue military service.

334. According to human rights defenders, **in many cases, contract servicemen continue to serve following a conviction of using violence against subordinates if sentenced to a fine.**

*Senior Lieutenant Basyrov, chief of medical service of military unit No. 02561, was convicted in April 2016 for using violence against servicemen and sentenced to a 30,000-ruble fine but not banned from any positions or occupations.*

*Lieutenant-Colonel Yushin, commander of communication battalion of military unit No. 13821 who acted as the unit commander at the time of the offense was convicted*

*in October 2016 for beating a conscription serviceman and sentenced to a 50,000-ruble fine but not banned from any positions or occupations.*

*Similarly, Senior Lieutenant Mintyukov, commander of the motorized rifle company of the 2nd motorized rifle battalion of military unit No. 29760 (see above), was convicted in April 2017 and sentenced to a 50,000-ruble fine.*

335. At present, as in the past 5 years, Russian courts have not yet established a consistent approach to awarding non-pecuniary damages as redress for victims of hazing in the army.

336. While applicable Russian legislation prescribes compensating non-pecuniary damages, there is no guidance on the procedure of calculating the amount of such compensation. A review of cases involving injuries and deaths of conscription servicemen in the army reveals that Russian courts determine the amounts of compensation due to victims (in the event of damage to health) or their families (in the event of death) at their discretion based on subjective criteria. As a result, the amounts awarded to victims in similar cases can differ by orders of magnitude. In other words, Russian courts lack a uniform approach to assessing the amount of compensation for physical and moral suffering.

337. Resolution No.10 of 20 December 1994 adopted by the Russian Supreme Court's Plenary states, "... the amount of compensation for moral harm shall not depend on the amount of compensation awarded towards pecuniary damages, costs and other material claims"<sup>119</sup> – but this provision has not been followed in practice.

*Compensations of non-pecuniary damages paid to conscription servicemen for an eye injury causing blindness amounted to 500,000 rubles in one case and 200,000 rubles in another case. Compensations awarded for loss of the spleen as a result of beating varied from 250,000 rubles to 70,000 rubles. Compensations of moral damage caused by serious harm to health ranged from 50,000 to 600,000 rubles. Compensations paid to parents who have lost a son to violence or suicide within the army ranged from 1,500,000 rubles awarded to a single parent to 500,000 rubles awarded to each of the two parents to 250,000-3,000,000 rubles awarded to both parents together.*

338. It is noteworthy that Russian courts have established a consistent practice of awarding compensations to servicemen affected by hazing in cases where the guilt or negligence of specific officers or military authorities responsible for protecting the lives and health of servicemen from injury and death has been proven.

339. The Committee's Concluding Observations on Russia's sixth periodic report state in para 16 that the State party should provide redress for victims, including appropriate medical and psychological assistance.

340. According to para 372 of Russia's sixth periodic report, "Depending on their medical status, the victims of violence receive free treatment in medical facilities of the Ministry of Defence until they are fully recovered, with subsequent medical rehabilitation, including at health spas."

341. We can argue, however, that no such rehabilitation program is available for victims of violence. **In fact, medical assistance is provided to victims only as long as they have the status of servicemen.** None of the victims assisted by the Soldiers' Mothers of St. Petersburg has received

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<sup>119</sup> Resolution of the RF Supreme Court Plenary of 20 December 1994 № 10 on Certain Aspects of Applying the Law on Compensation of Moral Damages, para 8.

comprehensive psychological assistance and rehabilitation from the state despite the vital importance of such assistance to victims of violence. As no government-supported rehabilitation program is available for victims of ill-treatment in the armed forces, the Soldiers' Mothers of St. Petersburg, with support from the Fund for Victims of Torture, have been providing psychological as well as legal assistance to victims.

34. Please provide information on the steps taken to ensure effective supervision and monitoring by judicial organs of any placement in institutions of persons with mental disabilities (para 22). Please provide information on the measures taken to ensure effective safeguards for medical staff in such institutions on how to administer non-violent and non-coercive care persons in such institutions, including the right of effective appeal, and through the independent monitoring of conditions, and establishment of a complaints mechanism and right to counsel. Please also provide information regarding training provided to all personnel at such institutions (para 22).

35. Please provide information on the number and outcome of investigations into complaints of violation of the Convention by individuals placed in such institutions including deaths, whether any prosecution have taken place and what redress has been provided to victims (para 22).

342. In 2015 Russia adopted the Code of Administrative procedure (CAP RF) which regulates involuntary placement of patients into a psychiatric hospital. Article 277 of the CAP States that:

*4. A citizen has the right to participate personally in the court session and to express his or her point of view regarding the administrative case of his/her involuntary hospitalization or extension of his/her involuntary hospitalization, if the mental state of the citizen allows him/her to perceive adequately everything that happens in the court session and his/her presence in the court session does not pose a threat to his/her life or health or to the life or health of others.*

343. In fact, **CAP has created a new procedure for placing citizens in psychiatric hospitals in involuntary order and has lowered the volume of guarantees: the decision on the possibility of a citizen to participate in court session is taken by medical commission**, therefore severely violating citizen's right to protection in court.

344. At the same time, the act "On psychiatric care and guarantees of the rights of citizens in its provision" (act "On psychiatric care") continues to operate in the previous version. It requires mandatory presence of the patient when a case of involuntary hospitalization is considered.

345. With the adoption of a new CAP a conflict of acts appeared. But Russian legislation allows to resolve legal conflicts of this kind. The definition of the CC RF of November 8, 2005 № 439-O establishes the principle that requires the application of that normative act which provides a person more rights and guarantees.

“resolution in the process of law enforcement of conflicts between different legal acts should be based on which of these acts provides greater amount of rights and freedoms of citizens and establishes their broader guarantees»<sup>120</sup>.

346. In practice, Russian courts do not follow the same procedure of involuntary hospitalization. In some regions (Samara region, Arkhangelsk region) they still follow the act on psychiatric care, and in others (for example, Lipetsk region) act in accordance with CAP and the courts are held in the absence of the patient, because law enforcement officers prefer to use CAP as the more recent document.

347. Involuntary placement of a person (not only mentally healthy, but also mentally ill) into a psychiatric hospital without reason may lead to criminal punishment (article 128 of the criminal code). However, this article does not work.

*According to the Judicial Department at the Supreme court, in 2017 in Russia 3 people were convicted for illegal placement in a psychiatric hospital, and all three of them were justified in higher courts.*<sup>121</sup>

348. The existing rules are established by the act “On psychiatric care” (article 41) and require personal statements and conclusion of a medical commission with participation of a psychiatrist. The conclusion of a medical Commission should contain information about a person in question suffers from a mental disorder, because this is a justification for being in a specialized institution. If a person is not deprived of legal capacity, the medical commission must assess whether there are reasons for putting before the court a question about recognizing this person incapacitated.

349. Incapacitated person, if s/he is unable to submit a personal application because of his/her condition, is placed in the PNI by the decision of the guardianship and custody body, adopted on the basis of the conclusion of a medical commission with the participation of a psychiatrist.

350. The current practice of placing people into PNIs contradicts to the position of the Constitutional court. In 2011 the Constitutional court adopted the Decision of January 19, 2011 № 114-O-P on the complaint of Ibragimov A. I. and pointed out that the legal position and conclusions formulated here about the inadmissibility of involuntary hospitalization in a psychiatric hospital without proper judicial control **are applicable to the order and procedures for placement of incapacitated citizens into specialized (psychoneurological) institutions as well**<sup>122</sup>.

351. The Constitutional court determined that **the contested provision of part 1 article 41 of the Act on psychiatric care – in its constitutional and legal sense in the system of current legal**

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<sup>120</sup> The definition of the constitutional Court of the Russian Federation dated November 8, 2005 No. 439-O on the complaint of citizens S. V. Borodina, V. N. Burobina, A. V. Bykovsky and others for violation of their constitutional rights by articles 7, 29, 182 and 183 of the Criminal procedure code of the Russian Federation // the Russian newspaper. 31 January 2006 <https://rg.ru/2006/01/31/advokat-tajna-dok.html>

<sup>121</sup> See Summary statistics on the state of criminal record in Russia in 2017. Form 10-a "Report on the number of convicted of all crimes of the Criminal Code of the Russian Federation" <http://www.cdep.ru/index.php?id=79&item=4477>

<sup>122</sup> See: Decision of the Constitutional court of 27 February 2009 № 4-P "on the case of checking the constitutionality of a number of provisions of articles 37, 52, 135, 222, 284, 286 and 379 GPK of the Russian Federation and part 4 of article 28 of the act " On psychiatric care and guarantees of the rights of citizens at its providing" in connection with complaints of citizens Yu. K. Gudkova, P.V. Shtukaturova and M.A. Yashina" – <https://rg.ru/2009/03/18/psihiatra-ks-dok.html>; Ruling of the Constitutional court of Russian Federation dated 05.03.2009 No. 544-O-P "On the complaint of citizen Horoshavtseva Nadezhda Nikolaevna on violation of her constitutional rights by several provisions of the act "On psychiatric care and guarantees of the rights of citizens at its providing" and the civil procedure code of the Russian Federation"– <http://legalacts.ru/doc/opredelenie-konstitutsionnogo-suda-rf-ot-05032009-n-544-o-p-po/>



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**regulation and taking into account previously expressed legal positions of the Constitutional court – does not involve placement of an incapacitated person into a psychoneurological institution on the basis of a decision of a guardianship authority without checking validity of such decision in the appropriate court procedures<sup>123</sup>.**

352. The Federal legislator was instructed to establish a procedure for judicial review of necessity and validity of placement of incapacitated persons into PNIs. However, CAP RF, which entered into action on 15 September 2015, did not provide adequate rules for it.

**353. The placement of people acknowledged to be incapacitated into psychoneurological institutions (PNI) currently happens without judicial supervision of the decision of bodies of guardianship.** The Prosecutor's office does not see in this order violation of the law, disregarding the position of the Constitutional court.

354. According to the initiative group "Psychologists for civil society" providing legal and psychological assistance to residents of PNIs, has recently appeared a practice of hospitalization into psychiatric institutions of people with disabilities and lonely elderly people who are later acknowledged incapacitated and put into PNIs. A person is involuntarily placed into a psychiatric hospital, for example, under item "c" art. 29 of the Act on psychiatric care (the court usually gives its permit for involuntary hospitalization simply on the basis of a medical conclusion, without examining thoroughly the case), then the hospital applies to the court for depriving him/her of legal capacity, and in the same time the documents are being collected to place this person into a PNI. Nobody is interested in the opinion of the person who is to be placed into a PNI. There are also cases when hospitals insisted on placing into PNIs people whose relatives and friends could and wanted take care of them. The only reason for such a behavior might be desire of the administration to fill PNIs with recipients of services. Appeals to law enforcement agencies and to the Prosecutor's office raising the question about legality of such practices are not considered.

*The case of S., a young disabled person from Moscow. After the death of his parents S. has been living alone, has two higher educations, takes care of himself, is not aggressive, for a long time has voluntarily visited a psychiatrist. In 2017 he voluntarily applied for psychiatric help to the psychiatric hospital No. 1, but afterwards he was not able to leave it. Neighbors and friends tried to help him to get out of the hospital, but with no result. The law enforcement agencies involved in this case could not do anything (they called the police, but the police, having received a refusal to release the person from the doctors, just left). Relatives and friends were ready to take care of the person, found for him an alternative doctor, but the doctors refused several times to discharge S. from the hospital. As a result, S. has been in the hospital for almost a year, after which it became known that he was deprived of legal capacity and sent to a PNI. He is currently assisted by a lawyer to restore his rights.*

355. In 2002 Ministry of health of Russian Federation, sent to the heads of health administration institutions of subjects of Russian Federation a letter "On measures of physical restraint in the context providing psychiatric care and rules of patients' fixation for medical indications" dated 26.12.2002 № 2510/12967-02-32. The letter contains "Rules of appointment and application in hospital of fixing of mentally ill patients for medical indications". The rules require that measures of physical restraint

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<sup>123</sup> See: Ruling of the Constitutional court of Russian Federation dated 19.01.2011 № 114-O-P "On the complaint of citizen Azamat Ishmuratovich Ibragimov on the violation of his constitutional rights by the provision of part 1 article 41 of the act "On psychiatric care and guarantees of the rights of citizens at its providing" [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_111320/](http://www.consultant.ru/document/cons_doc_LAW_111320/)

during involuntary hospitalization and stay in psychiatric hospitals should be applied only in extreme cases, when it is impossible to prevent actions of the patient, which are dangerous for him or others, by other means. The use of restraint measures can only be prescribed by a doctor and under constant supervision of medical staff. Measures of physical constraint can be applied only for the minimum necessary period. **The rules prohibit to involve other patients for the application of physical restraint measures.**

356. The rules require that the use of physical restraint measures should be carefully documented. There should be a record in medical documentation and in a special notebook about forms and time of application of measures of physical constraint. The record should contain the reason for the use of physical restraint measures, indication of the time when it was applied, description of changes in the condition of the patient, and the time when the measures of physical restraint were removed. The medical doctor treating the patient is responsible for the thoroughness and completeness of documentation in the journal of application of physical restraint measures and in the patient's medical record.

357. The rules set the deadline for the use of restraint measures – no more than 2 hours, with the obligation to check the patient's condition every 30 minutes.

358. It is important to note that the rules require that **restraint measures should be prescribed only in cases of psychotic or prepsychotic disorders** (paragraph 2 of the Rules).

359. In practice, there are cases when physical restraint measures were used with the involvement of other patients and residents of PNIs, which is explicitly prohibited by the Rules.

*In 2015 in in psychiatric hospital No. 15 of Moscow a case of cruelty to children was revealed. One of the patients recorded on a cell phone teenagers-patients tying to beds children-patients of the hospital. After the publication of this information along with the photo in the media investigation authorities initiated an investigation and the IK opened a criminal case. Information about results of the investigation and the verdict are not publicly available yet<sup>124</sup>.*

*According to the initiative group “Psychologists for civil society”, in the PNI №30 of Moscow under the director Alexei Mishin there was a practice when the staff of the institution resorted to the help of patients to restrain physically other patients in acute condition, for example, to bind them (fixation). At the same time, the staff involved patients in bringing bundles, twisting, binding on their own or together with the staff, holding. In the process of fixation patients were beaten, put feet on their chest, shouted at. It was reported that staff allowed the residents to bind patients on their own. Since summer of the 2017, after the dismissal of Mishin, reports of such practices stopped to arrive.*

360. Physical restraint measures are usually used for a short period to make an injection of a sedative. But in practice, there are cases when restraint measures are applied for an unacceptably long time. In particular, examining Korovin's complaint against Russia, the European Court found that the applicant, Ilya Korovin, had been subjected to restraint measures for 24 hours (the events of 2009) in a specialized Kazan psychiatric hospital with intensive care. ECHR found the fact of a patient tied to the bed during 24 hours violation of article 3 of the European Convention.

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<sup>124</sup> See: <https://meduza.io/feature/2015/05/13/vospitatelnaya-psihiatrya>

361. The service for protection of patients' rights has not been established yet, although a draft act has been elaborated speaking about control by NGOs over the observance of patients' rights. The draft act has not yet been submitted for consideration to the State Duma. The act provides for the extension of the protection service of the rights of patients to people with mental disorders living in PNIs.

362. According to the act "On free legal aid in Russian Federation" (came into force in 2012), patients of psychiatric institutions have right to free legal assistance (part 1 of paragraph 7 of article 20), however, hospital administration prevents the realization of this right. The Independent Psychiatric Association of Russia documented cases in Moscow and St. Petersburg when hospital administration did not allow a lawyer to see a patient with the pretext of bad condition of the last, although, according to the law, the right to meet a lawyer cannot be limited.

363. If a person wants to file a complaint while being in a PNI, it's almost impossible, because all his contacts, with rare exceptions, are limited by PNI's staff. PNI's administration often prevents its residents to participate in official proceedings initiated by them.

*In 2017, to the NGO "Civil Commission on human rights" addressed S. from a Magnitogorsk PNI saying that he was being deprived of legal capacity and he could not defend himself. PNI did not consider it necessary to help S in any way to protect his rights. At the same time S. found himself a lawyer, but could not conclude an agreement with him to represent his interests at the court, as PNI took away from S. his passport (with the pretext to keep it in a safe place) and forbade him to pay services of the lawyer from S.'s savings who at that time still was legally capable and had the right to manage his pension. As a result, S. could not cancel the court decision about deprivation of legal capacity, as he was deprived of the opportunity to obtain documents of the case, to make an appeal and file it.*

*In 2014, from PNI No. 5 we were addressed by two men with cases of deprivation of legal capacity in PNIs, legally incapable B and legally incapable K. With our help they initiated an appeal against the court's decision on deprivation of legal capacity. However, as soon as it came to the court and the administration of PNI learned about it, they took away from them means of communication, forbade to go to work and isolated them in "the closed floor" that deprived us from any chances to help them.*

**364. In practice, there is no working mechanism for external/independent control over psychiatric hospitals and PNI.** In 2012 Russia adopted the 212-FZ "On the bases of public control in Russian Federation", but this act declared that public control can be exercised only by Public chamber of Russia and its regions, public councils of municipalities and public councils existing at bodies of power. **Independent public and human rights organizations have been excluded from the subjects of public control, and POC is not entitled to exercise monitoring in psychiatric hospitals and PNI.**

365. The Prosecutor's office exercises control over situation in psychiatric hospitals and PNI. According to the initiative group "Psychologists for civil society", the prosecutors take rather formal part in court sessions, without taking independent position, or, in some cases, take a position against interests of PNI residents.

*For example, when considering in 2017 in Chertanovsky court of Moscow the case about restoring legal capacity of Shv., the Prosecutor's office insisted on refusal to restore his legal capacity, even after receiving a positive psychiatric report from the Center of psychiatric examinations Serbsky.*

366. The general trend concerning the position of the Prosecutor's office is to maintain the reduced legal status of a citizen (incapacity), to hospitalize involuntarily (in cases of hospitalization) or, in the best case, to duplicate the position that follows from the psychiatric examination made in the context of the case. There is almost no evidence that the findings of the examination, indicating the necessity to deprive a person of legal capacity or to hospitalize him or her against his or her will, would be critically evaluated by the Prosecutor involved in the case.

367. As a result of non-execution in Russia of the decision of the European Court of human rights in the case "*Rakevich v. Russia*" (2003), patients are still not provided with the right to initiate a judicial procedure to verify the validity of their involuntary hospitalization.

368. Prior authorization from the administration is required to receive the appointment. In many hospitals telephone calls and meetings with relatives are conducted exclusively in the presence of someone of the staff (nurse or social worker) which violates their confidentiality. Moreover, such rules are introduced into local regulatory acts which are obligatory to observe for a patient. For example, according to the internal regulations for patients undergoing inpatient examination and treatment in The Alatyr psychiatric hospital of Chuvashia (annex to the order of July 4, 2013, № 133)<sup>125</sup>, a patient is allowed to use the phone only during special period of time (from 16 to 17 hours), any conversation takes place only in the presence of medical staff; patients are prohibited to use cell phones and call to cell phones. Such rules do not allow patients to contact institutions and organizations in their working hours, to describe a situation that requires an immediate response.

369. By the judgment of the European Court of human rights of February 27, 2014 in the case of *Koroviny vs. Russia* (complaint No. 31974/11)<sup>126</sup> as inhuman treatment were recognized conditions of compulsory treatment of the patient in specialized Kazan psychiatric hospital with intensive supervision. The European Court found that Russian authorities violated article 3 of the Convention for the protection of human rights and fundamental freedoms (prohibition of torture, inhuman or degrading treatment). It was found that the applicant had been held during one year in wards, where there were from 4 to 12 patients, while the sanitary standards state that the number of patients in one chamber should not exceed 4 people. In this case, one patient had less than 3 m<sup>2</sup> instead of 7 m<sup>2</sup>. There were no toilets in the wards, and patients had to use a common bucket, which was emptied once a day, and therefore the smell of sewage remained in the chamber. The applicant was only allowed to use the shower once every two weeks. Almost all the time, except for short walks in the hospital yard, he had to be in one room with other patients. Tying a patient to a bed during 24 hours has been recognized by the European Court of human rights as violation of article 3 of the Convention on the protection of human rights and fundamental freedoms, and the abandonment by the court without consideration the arguments of the representative of the patient on recognition of such treatment as inhumane — violation of §1 of article 6 of the Convention (right to a fair trial). The European court ordered the respondent state to pay Korovin financial compensation of 15,000 euros.

370. The practice of hospitalization of orphans into psychiatric hospitals without medical reasons is still very common. Human rights activists have documented many cases of internment into psychiatric hospitals for punishment.

*Telitsyn Denis Alexandrovich lived in the Ulyanovsk orphanage "Nest", because of his bad behavior (he stole things, hurt other children) in 2015 he was placed into a center of temporary detention for minor offenders, where the staff organized educational work with him. With good references he was returned back to the*

<sup>125</sup> <http://www.alatyr-pb.med.cap.ru/561949/Page.aspx>

<sup>126</sup> See: The ruling of the ECHR in the case *Korovin against Russia*. <http://hudoc.echr.coe.int/eng?i=001-141202>

*orphanage, but immediately he was sent to the Ulyanovsk regional clinical psychiatric hospital, where he was treated from February 4, 2016 till February 18, 2016 with a diagnosis of "antisocial disorder". The Prosecutor's check showed that the boy had no mental disorders, he was sent to the hospital illegally, the Director of the orphanage was reprimanded for unsatisfactory pedagogical work with children. His mother, who took the child home, is trying to open a criminal case against the hospital, but has to meet many obstacles.*

*In 2015 in Moscow two inmates of the "Center for the promotion of family education "Rainbow"" (former orphanage № 46) — enrolled in the correctional program **G. and M.** — were hospitalized into psychiatric hospital No. 15. There were no developmental disorders in adolescents. They spent in the hospital two months. Soon after his discharge G. addressed his former teacher Yuri Kazadaev, who worked in the children's boarding school № 80. 15-year-old boy showed him pictures he had taken with the camera of his phone: the photo showed half-naked children in diapers tied to beds. Kazadaev called the lawyer Kunal Vennikov. The Investigative committee initiated an inspection, and it showed that the boys had been hospitalized for bad behavior: no one diagnosed them, any doctors examined them. After the inspection the IC opened a criminal case and requested data about hospitalizations of all patients during last ten years<sup>127</sup>. Results of the investigation are still unknown.*

371. Children in correctional institutions become victims of severe violations of human rights. The prevention of these violations, including violence against children, is not due to the lack of external control and the ineffectiveness of the Prosecutor's office. Violations become known, as usual, after children are adopted by foster families.

***Pupils of the Lazurensky** correctional boarding school (Chelyabinsk region), adopted by three families, in February 2018, spoke about the systematic rape in the boarding school, with the participation of teachers of the orphanage. Foster parents of former pupils testified that four teachers and visitors of a boarding school were involved in sexual abuse. On February 2, 2018, the Chelyabinsk Investigative Committee opened a criminal case on sexual violence against people under 14 years old (paragraph "b" of part 4 of article 132 of the criminal code of Russian Federation). A 51-year-old local resident involved in crimes was identified and detained, according to the administration of Investigative Committee of Chelyabinsk region<sup>128</sup>. At the request of the IC investigator, the court chose for him detention as a preventive measure. In mid-February 2018 the criminal case was transferred to the Central office of the Investigative Committee, to the Department of particularly important cases of the 4th Department of the GSU IC RF (located in Yekaterinburg). Four teachers were suspended from work, but in March 2018 returned to their duties at the boarding school<sup>129</sup>. The Director of the boarding school was fired. The Investigative Committee stated that the caregivers of the boarding school are participating in the case of rape only as witnesses. The results of the investigation are unknown, the lawyer complains about ineffectiveness of the investigation, in particular, in March 2018, there was no verification of the testimony of the raped children at the crime scene and no forensic psychiatric examination. Adoptive parents*

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<sup>127</sup> <http://www.interfax.ru/moscow/439553>

<sup>128</sup> Official report of the Investigation Department of Chelyabinsk region: <http://chel.sledcom.ru/news/item/1203710/>

<sup>129</sup> <https://meduza.io/feature/2018/03/15/obvinennyye-v-iznasilovaniyah-chelyabinskije-vospitateli-vernulis-na-rabotu-roditeli-zhaluyutsya-na-davlenie-vlastey>

*are under pressure and express concerns that the children's testimony will be put in doubt. In April 2018, the Ministry of social relations of Chelyabinsk region announced closure of the Lazurnensky boarding school for orphans<sup>130</sup>. In June 2018 the former caregivers reported to the police about slander, accusing in it adoptive parents of the children<sup>131</sup>.*

## **General information on other measures and developments relating to the implementation of the Convention in the State party**

42. Please provide detailed information on any other relevant legislative, administrative, judicial or other measures taken since the consideration of the previous report that implement the provisions of the Convention or the Committee's recommendations. This may include institutional developments, plans or programmes, including resources allocated and statistical data or any other information that the State party considers relevant.

### **Right to File a Complaint about Torture**

372. A new policy of screening all incoming reports has further undermined the effectiveness of investigations, often reducing them to a mere formality. Even before the 2014 regulations, internal policies allowed investigators to bypass CCP-required verification of incoming crime reports on formal grounds.

373. In 2012, the Investigative Committee adopted an internal *Instruction for Investigating Bodies (Units) of the Russian Investigative Committee on Managing the Receipt, Registration and Verification of Crime Reports (Russian Investigative Committee Order No. 72 of 11 October 2012)*. This instruction allows investigators to register an incoming crime report as a "citizen petition" which does not trigger a mandatory verification procedure under Article 144 of the CCP. This departmental policy effectively undermines the legally required procedure for evidence collection at the crime verification stage, such as inspection of the crime scene, appointment of examinations, collection of samples, etc. In the case of torture reports, this may result in loss of evidence.

374. The said Instruction delegates the decision on whether or not an incoming message should be registered as a crime report to the receptionist on duty responsible for making records in the Crime Report Logbook. This means that the receptionist is expected to qualify a reported incident or perhaps make a prompt check of a crime report to determine whether it is valid and should be registered as such. According to paragraph 20 of the Instruction, "*Statements and appeals which do not contain information on circumstances indicating the signs of a crime shall not be recorded in the logbook and do not require procedural verification in the manner provided for in Articles 144, 145 of the CCP. ... Such statements and appeals shall be registered as incoming documents and processed in accordance with the procedure established by Article 124 of the CCP or Federal Law No. 59-FZ of 2 May 2006 on the Procedure for Considering Appeals from Citizens of the Russian Federation, as well as the relevant administrative documents of the Investigative Committee.*"

375. According to the CCP, determining whether an incident contains the signs of a crime is part of the verification stage designed to determine whether or not criminal proceedings should be instituted. This step, however, can take place once a crime report is registered. But the said Instruction pushes this decision to an earlier stage which precedes the registration of an incoming message as a crime report.

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<sup>130</sup> <http://minsoc74.ru/novosti/oficialnyy-kommentariy-ministerstva-socialnyh-otnosheniy-chelyabinskoy-oblasti>

<sup>131</sup> <https://www.kommersant.ru/doc/3661873>

376. This approach leaves plenty of room for arbitrary interpretation. Moreover, by law, qualifying a certain act as a crime must take place during formal criminal proceedings, rather than at an earlier stage when a citizen's application is first accepted. The current practice has resulted in a situation where numerous reports of police violence, falsifications and other official crime never make it to the verification stage and are effectively excluded from the scope of the Investigative Committee's oversight. This practice also denies the citizens their right to complain about torture.

377. Another approach used by the Investigative Committee to avoid dealing with torture reports is forwarding them to the prosecutor's office for checking such reports by way of supervision. By doing so, the Investigative Committee delegates its statutory responsibility of conducting inquiries into crime reports to another agency which does not have this function. Instead of conducting crime verification under Article 144 of the CCP, the prosecutor's office launches an internal inquiry which does not guarantee prompt and thorough investigative actions. Meanwhile, traces of crimes disappear and perpetrators are given the opportunity to build an alibi, destroy evidence, and even put pressure on torture victims.

378. Even if a torture report is properly registered, other risks can emerge which undermine the right to complain – in particular, the risk for a torture victim to face criminal charges. Previously, criminal proceedings were often initiated against torture victims for alleged violent resistance to police authority, etc. Currently, in an increasing number of situations, criminal cases have been opened, investigated and sent to courts in which torture victims are charged with "false accusations."

379. By Russian law, anyone reporting a crime must be warned of liability for false reporting/false accusation (Article 144 of the CCP RF). This warning is made and documented as the crime report is registered. In conducting verification, the investigator needs to make a judgment on whether the crime report may be a false accusation. A number of verifications have resulted in criminal proceedings against the torture victims charged with false accusations. These charges have been based on the findings collected during the verification of their complaint about torture. A dangerous vicious circle has emerged, when an investigator, having conducted a substandard verification, refuses to initiate criminal proceedings into the incident of torture but instead uses the findings from their verification to prosecute the victim. The Public Verdict Foundation has recently been working on two cases of torture victims accused of false reporting, and there are more.

*The case of **Mardiros Demerchyan**. In 2013, Mardiros Demerchyan was tortured and sexually abused on police premises. He had to be taken from the police station to a hospital in an ambulance. There are medical records in the case file confirming his injuries. However, no criminal proceedings were instituted against the police officers. Instead, criminal charges were brought against Demerchyan for false accusation. At the moment, the case against Demerchyan has reached court, but the policemen have not been brought to justice.*

*The case of **Salima Mukhamedyanova**. In 2016, Salima Mukhamedyanova was taken from her apartment and brought to a police station, allegedly for an administrative offense. On the police premises, the woman was beaten and raped. A criminal investigation was opened into the police officers, but after three expert examinations resulting in contradictory findings, the rape charges brought against the police were dropped. Instead, criminal charges of false accusation were brought against Salima, and the trial began on 23 November 2017.*

380. The current practice of prosecuting victims of torture is a real threat to effective exercise of the right to file a complaint. Moreover, this practice can discourage victims of torture from reporting this dangerous crime and thus may contribute to its latency.

381. Victims who are currently in prison and choose to file a torture complaint face the greatest risks. Like other victims, they can face "false accusation" charges without any effective investigation into their complaint of torture.

382. It is not hard to fabricate the guilt in the case of false accusation. Usually the inmate who complained on torture does not have an opportunity to present evidence on torture, as those evidence are usually under the 'control and administration' of prison staff: CCTV footage, documents, witnesses, etc. Moreover, the inmate by himself is subjected to pressure and threats.

383. Usually the criminal charge against the inmate is supported by: prison staff testimonies, inmates' testimonies, who cooperate with prison staff; the data of medical card, which does not contain information on bodily injury; lack of CCTV footage is justified with expiration of retention period, dead battery of dash camera, etc.

*Eduard Gorbunov is the detainee of the Correctional Colony No. 6 (Kirov District). On February 3, 2017, the lawyer N. S. Kruglikova succeeded to meet with the prisoner Gorbunov at the second attempt (On January 17 she was rejected in the meeting with prisoner on spurious grounds). Gorbunov asked to record him on video<sup>132</sup> and reported, that on January 15, 2017 he arrived in the solitary-confinement cells of Colony No. 6, where the director of the colony A.M. Bibik and the staff of operational offices immediately used force against him. Gorbunov was tortured by cold and snow, he was raped by subject in the form of stick. Gorbunov was hit on his head by something heavy, from which he lost consciousness. When he woke up, he found himself in women's clothes: in a wig, bra and nightie. This all was recorded on the video and the colony's staff demanded him to refuse from 'theft rings' traditions'. Than Gorbunov was brought to the camera, where caretaker of the quarantine (the inmate) put the hot glass soldering iron into Gorbunov's rectum. After few days the physician examined him and Gorbunov, fearing to tell the truth, said that he fell down in the bath. Lawyer Kruglikova applied to the investigation bodies and other states' bodies. On March 30, 2017 the decision that a criminal case should not be initiated against prison staff, was issued. On April 7, 2017 the criminal case was opened against Gorbunov under part 2 of Article 306 of Penal Code. On November 14, 2017 Gorbunov Eduard was charged part 2 of Article 306 of Penal Code for two years of imprisonment. Evidence against Gorbunov were prison staff testimonies, administration's trusty prisoner's testimonies; endoscopic examination results, according to which Gorbunov does not have any injuries and which, according to the Foundation "In defense of the rights of detainees" was fabricated; the lack of video recording proving use of violence. On January 11, 2018, the court of appeal confirmed the conviction and Gorbunov was sent to the same Correctional Colony No. 6 to serve his sentence.*

*Sergey Khmelev is the detainee of the Correctional Colony No. 1 in North Osetia-Alania. According to the Khmelev's testimonies, on January 22, 2015 when he served his sentence in Colony no. 17 in Saratov region, he was severely beaten by prison staff. Next day he was transferred to the regional prison hospital. According to the*

<sup>132</sup> <https://www.youtube.com/watch?v=u02p4AL0i-Y>



*conclusions of independent expert, Khmelev's injuries caused ribs fractures, fractures of nose bones with displacement, one of the ribs punctured the lung, which caused hydropneumothorax; general peritonitis developed as he did not receive medical care on time. On April 24, 2015, as soon as Khmelev had an opportunity, he applied to the law-enforcement bodies with the request to order to the responsibility the colony staff. After that the pressure was put on him: he was held in torturing conditions, was not allowed to sleep. These facts were appealed for many times, but the investigation did not find any violations. The decision that a criminal case should not be initiated against prison staff, was issued, but on July 26, 2015 the criminal case against Khmelev was opened under part 2 of Article 306 of Penal Code for false accusation. This decision was appealed to the court. During the investigation Khmelev was forced to revoke his complaints and applications and from lawyer. Under the threat of sexual harassment he was forced to change his primary testimonies saying that it was slander. In the court prison staff, six prisoners, who were forced to testimony against Khmelev, testified in the court as prosecution witnesses. Notably, one of the prisoners, Efimov, informed the court, that while he is prosecution's witness, he will not lie and told about the torture in Colony no. 17. Eight of former prisoners of colony no. 17 testified as defense witnesses. The lawyer asked to deliver to the court six more witnesses, who were former prisoners of colony no. 17, but the request was denied by the court. On September 14, 2016 Kirov District Court of Saratov convicted Khmelev for the crime under part 2 of Article 306 sentenced to 2 years and 6 months imprisonment. On December 28, 2016 the court of appeal confirmed the conviction. Khmelev's defense was carried out by attorney Margarita Rostoshinskaya, who was invited by the Foundation "In defense of the rights of detainees". Throughout the whole trial, the lawyer received threats and the obstacles were created to see Khmelev.*

384. But even more often, complaining prisoners are subjected to physical violence.

*Evgeny Makarov, prisoner at Colony IK-1 in Yaroslavl Region, was repeatedly beaten after filing a torture complaint together with two other prisoners (Ruslan Vakhapov and Ivan Nepomnyashchikh). His injuries and traces of beatings on his body were documented by PVF lawyer Irina Biryukova, and a report was filed with the supervising authorities — the Investigative Committee, the Prosecutor's Office, the Federal Penitentiary Service Office in Yaroslavl Region, and others – but no proper investigation has been conducted. The European Court of Human Rights has indicated interim measures in regard of Vakhapov, Makarov and Nepomnyashchikh as an urgent protection mechanism applied in exceptional cases such as torture. This is the second time that the Court has indicated interim measures in respect of Makarov; the other incident was on 15 December 2017.*

385. Excessive and unreasonable use of disciplinary sanctions such as placement in punishment cells is another form of pressure on prisoners to discourage them from reporting torture. Thus, Vakhapov, Nepomnyashchikh and Makarov have been confined to punishment cells without the legally required prior health check-ups and disciplinary hearings. The total duration of their confinement in punishment cells significantly exceeds the 15-day limit.

*On 7 August 2017, Ruslan Vakhapov, prisoner at Colony of IK-1 in Yaroslavl Region, was held in a punishment cell for 56 consecutive days with a break for one day when he attended court proceedings via videoconference. Vakhapov was repeatedly placed in a punishment cell for a variety of reasons, among them, not having a duty schedule displayed in a cell where Vakhapov was the only inmate.*

## Use of torture by the officers of the Federal Security Service against those who suspected of involvement in terrorism

386. From October 2017 to January 2018, in different regions of Russia eight activists of the anti-fascist movement were arrested by the Federal Security Service (FSB) of Russia on suspicion of involvement in a terrorist community in different regions of the country. Soon after their detention, a majority of them confessed and faced charges; however, it later became known that confessions were obtained by the FSB under torture.

387. Most of the attorneys defending the accused men have been forced to sign nondisclosure agreements concerning the criminal case, so human rights defenders do not know the details of the charges filed and the evidence the prosecution has assembled against the accused, except for information that has been published by the online news and commentary website Republic,<sup>133</sup> shown on an exposé program aired recently on the nationwide TV channel NTV, and made public by prosecutors during the men's custody hearings. The available information suggests accused did not carry out any terrorist attacks or commit any violent acts, but they do stand accused of planning a wide-ranging, unspecified series of actions—attacks on United Russia party offices, police stations, and municipal authorities—with the aim of destabilizing Russia before it hosts the 2018 FIFA World Cup in June and July. Some of the accused men had been activists in the antifascist, environmentalist, and anarchist movements, while the others were not publicly active, but were acquainted with the activists. There is no information suggesting the accused were involved in violent actions against other people or political institutions.

388. After the accused were apprehended by the FSB, they were beaten, tortured, and subjected to prolonged isolation from family members and attorneys, in some cases for several days:

*On 25 January 2018, FSB officers abducted Igor Shishkin while he was walking his dog, took him to an unknown location. Shishkin's whereabouts were unknown for two days. On 27 January 2018, Shishkin, whose body and face showed signs he had been severely beaten, was brought to the Dzerzhinsky District Court in St. Petersburg, which remanded him in custody. In violation of Russian laws on the media, journalists were not admitted to Shishkin's custody hearing, and two journalists were illegally detained by police. Despite the fact Shishkin has refused to sign a complaint stating he was tortured, it is obvious he was tortured. During the period when Shishkin's whereabouts were unknown, i.e., between 25 January and 27 January 2018, persons unknown fractured the lower wall of his eye socket, as diagnosed by the medical personnel in Remand Prison No. 3 in St. Petersburg. On 27 January 2018, members of the St. Petersburg Public Monitoring Commission visited Shishkin there, recording numerous injuries identifiable as signs of torture, i.e., bruises, wounds, and Taser burn.<sup>134</sup> Shishkin looked depressed during the visit. He asked FSB officers for permission before answering the questions posed by Public Monitoring Commission members, and he asked them not to do anything that would make the FSB officers unhappy. Later Shishkin submitted a request for a pre-trial agreement and cooperation with investigation, Shishkin has explained that hematomas were formed as a result of sports training. During the second visit members of the PMC*

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<sup>133</sup> <https://republic.ru/posts/89236?code=d4fb0ca624062bfd203e5a61c7c354af>.

<sup>134</sup> [https://drive.google.com/file/d/1jfPCSiWXWb4GARPiMzk-hO\\_u7XoxzWaS/view](https://drive.google.com/file/d/1jfPCSiWXWb4GARPiMzk-hO_u7XoxzWaS/view) (English translation of the findings of the St. Petersburg Public Observance Commission on the torture of Viktor Filinkov and Igor Shishkin).

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*also found burns on the back of his thigh and on his back. The suspect was unable to explain their origin*<sup>135</sup>.

389. Obviously, the investigative authorities wanted to make them confess during the first hours and days in their custody. In particular, Filinkov wrote about this in the notes he penned in a remand prison and addressed to his wife and the St. Petersburg Public Monitoring Commission for Public Oversight and Provision of Human Rights in Places of Forced Detention and Assistance to People in Places of Forced Detention (hereafter, “St. Petersburg Public Monitoring Commission”). Filinkov claims he was forced to memorize the “correct” answers to the criminal investigator’s questions while being tortured in a vehicle by FSB officers.<sup>136</sup>

*Filinkov was placed in a minivan in handcuffs, and a stocking cap was pulled over his face. FSB officers, in particular, Criminal Investigator Konstantin Bondarev, inflicted a considerable number of blows to his chest, his back, and the back of his neck. They then proceeded to torture Filinkov with a Taser, delivering electrical shocks to his leg, neck, groin, the back of his neck, the parietal region of his head, and his handcuffs. Members of the St. Petersburg Public Monitoring Commission noted bruises, abrasions, and burn marks from the Taser on Filinkov’s body.<sup>137</sup> While they were torturing Filinkov, the FSB officers threatened to subject him to even more painful torture, namely, electric shocks to his genitals, and take him to the woods, strip him naked, and leave him there.*

*More over psychological pressure on Filinkov was continued when he was placed in Remand Prison.<sup>138</sup> On 15 March 2018, Filinkov was transferred to Remand Prison No. 6, located in the village of Gorelovo in Leningrad Region. The prison has been notorious as a “torture chamber” in which wardens make ample use of “cooperative” inmates to put pressure on “recalcitrant” inmates.<sup>139</sup> It is important to mention that on January 31, 2018 Viktor Filinkov filed a complaint to the Investigative Committee against the actions of FSB officers. On March 21 the FSB officers interviewed by investigators have confirmed the use of Taser against Filinkov and explained it by service need.<sup>140</sup> On April 17, 2018 the Investigative Committee refused to open criminal cases for abuse of power with using violence (Art. 286 of the Criminal Code of Russia). Investigators did not find any violations in the actions of the FSB officers, stated that Filinkov’s clothing, which was on him during detention and could have traces of blood, was destroyed, video records of surveillance cameras from Pulkovo airport, where Filinkov was detained, and from the 54th police department in Krasnoselsky district of St. Petersburg were erased.<sup>141</sup>*

390. We have considerably less information about the violence committed against the accused men in Penza and how they were apprehended. The relatives and friends of the accused, who were charged between November 2017 and January 2018, were unable to draw the attention of human rights organizations to the case after the men were apprehended due to the near-total absence of human

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<sup>135</sup> Ibid.

<sup>136</sup> <https://zona.media/article/2018/02/21/filin>.

<sup>137</sup> [https://drive.google.com/file/d/1jfPCSiWXWb4GArPiMzk-hO\\_u7XoxzWaS/view](https://drive.google.com/file/d/1jfPCSiWXWb4GArPiMzk-hO_u7XoxzWaS/view) (English translation of the findings of the St. Petersburg Public Observance Commission regarding the torture of Viktor Filinkov and Igor Shishkin).

<sup>138</sup> <https://memohrc.org/ru/monitorings/kacheli-s-onk-igrayut-protiv-tebya-v-peterburge-v-sizo-k-antifashistu-filinkovu-prihodil>.

<sup>139</sup> <http://novayagazeta.spb.ru/articles/11131>.

<sup>140</sup> FSB of Saint Petersburg acknowledged use of Taser against anarchists, Fontanka.ru, <https://www.fontanka.ru/2018/03/21/004/>

<sup>141</sup> No reasons do not trust. Investigative Committee refused to open criminal case on torture of Filinkov, Mediazona, <https://zona.media/article/2018/04/19/filinein>

rights organizations in Penza. At present, the Public Observation Commission of Penza has no representatives of independent civic organizations, who would've registered and given publicity to torture practices in the pre-trial detention center. FSB officers have demanded the accused and their loved ones stay out of contact with journalists and human rights defenders, and avoid giving information to the media as a condition of the jailed men's safety and freedom from torture. Nevertheless, in February 2018, two defendants from Penza disclosed information about the torture committed against them. This resulted in the resumption of the torture and threats by the FSB investigators, followed by the activists withdrawing their testimonies, which is being video recorded.

*Dmitry Pchelintsev was detained in Penza on 27 October 2017. Pchelintsev was beaten when he was detained. On 28 October 2017, Pchelintsev was subjected to electric shock torture in a solitary confinement cell at the Penza Remand Prison in order to force him to confess. On 29 October 2017, he broke the tank of the toilet in his cell and used the shards to slash his wrists, elbows, and neck, thus forcing the prison guards to summon a doctor and give him medical attention. Afterwards, the FSB ceased torturing Pchelintsev for a time, but on 8 November 2017 he was assaulted by FSB officers dressed in the uniforms of inmates. Their civilian clothes were visible under the uniforms, and they wore balaclavas. The assault occurred with the knowledge of the remand prison's staff. Subsequently, FSB officers regularly visited Pchelintsev in the remand prison, threatening him and his wife, who lives in Penza, with violence. On 30 January 2018, Oleg Zaitsev, Pchelintsev's new defense counsel, was not admitted to the remand prison to meet with his client for any apparent reason. The prison warden indicated Zaitsev had not been admitted due to pressure from the FSB. On 31 January 2018, a remand prison staffer asked Pchelintsev to reject Zaitsev's services in writing, but Pchelintsev refused to do this. On 31 January 2018, Zaitsev was admitted to the remand prison, and Pchelintsev informed him he had been beaten and tortured from 27 October 2017 to 4 December 2017. Pchelintsev officially refused to confess his guilt and talked about how he had been tortured in an interview with Zaitsev on 6 February 2018.<sup>142</sup> But on 13 February 2018, after the media's attention was drawn to Pchelintsev's ordeal, and a press conference in Moscow featuring Zaitsev was announced, the FSB resumed torturing Pchelintsev, and he retracted his previous statements.<sup>143</sup>*

391. Torture and ill-treatment against detainees with the aim to obtain confessions as well as an instrument to suppress their will and to punish for active actions in their defense, is a widespread practice in Russia, unfortunately. Our report contains many examples of such practice. In the case against anti-fascists, we see two new very worrying trends. Foremost, the Russian Criminal Code articles on combating terrorism are used against civil activists. Secondly, the use of torture during the investigation stage committed by FSB officers by itself is a very disturbing situation that causes additional fears of impunity. As of today, human rights defenders are not aware of any case where the special services officers were brought to justice for use of torture, ill-treatment, or for enforced disappearance.

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<sup>142</sup> <https://zona.media/article/2018/02/09/penza-tortures>.

<sup>143</sup> <https://zona.media/news/2018/02/15/pchel>.

## Key Recommendations

392. Reform the system of appointing ex-officio lawyers to ensure their full independence of the investigating bodies and adequate quality of defense provided. In particular, change the remuneration procedures and tariffs.

393. Pursuant to the Russian Supreme Court's position, amend the criminal procedure law to ensure that a person making a confession enjoys the same procedural safeguards as a suspect or accused person during interrogations, and that a confession made in the absence of a lawyer and not confirmed in court should be considered inadmissible evidence.

394. Introduce a legal requirement for a medical examination of all individuals delivered to police premises under administrative proceedings.

395. Repeal paragraph 20 of the Instruction for Investigating Bodies (Units) of the Russian Investigative Committee on Managing the Receipt, Registration and Verification of Crime Reports (Russian Investigative Committee Order No. 72 of 11 October 2012) whereby the decision as to whether a torture report is valid is delegated to a receptionist registering the complaint. All reports alleging torture must be promptly registered for the investigation to begin in a timely manner.

396. Forego the verification stage and initiate criminal proceedings immediately if torture is reported.

397. Criminal investigation into torture reports must be informed by an official protocol designed specifically for this type of cases. Applicable Russian law contains all the rules needed to ensure effective investigation. The investigators only need to use the tools available to them and conduct relevant investigative actions thoroughly and professionally. The existing Guidelines for investigating official crime (Article 286, part 3) must be updated to include a new professional standard of investigation. An official crime investigation protocol needs to be developed jointly by the law enforcement agencies, the Ombudsman and specialist human rights NGOs based on the Russian CCP and informed by protocols and other practice guidance provided in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, also known as the Istanbul Protocol, submitted to the U.N. High Commissioner for Human Rights on 9 August 1999.

380. Revise the current system of appointing members of Public Oversight Committees (POCs) and supporting their work in places of detention; abolish the monopoly of the Public Chamber in appointing POC members and expand the POC mandate and powers in a number of key areas essential for human rights protection. To ensure proper consideration of relevant proposals, resume the work on the draft amendments to Law No. 76-FZ which has been suspended by the State Duma for more than two years.

381. Launch an effective National Preventive Mechanism (NPM) by ratifying the Optional Protocol to the UN Convention against Torture, establishing NPM branches in the federal center and regions, and ensuring adequate mandate and powers for NPM members from the human rights and professional communities.

382. To urge the Russian authorities to comply with their international human rights obligations, in particular the right to freedom of association.

383. To urge the Russian authorities to stop their campaign of pressure and persecution against human rights NGOs and activists engaging in their professional activity on combating torture

384. To ensure, without delay, a favourable environment for the work of human rights NGOs and civil society activists in the country, including by bringing the legislation on non-profit organisations in full compliance with international standards.

385. To ensure proper investigation of all cases of violence against human rights NGOs and activists and to bring perpetrators to justice.

386. Make amendments to applicable legislation to require judicial monitoring of any involuntary placement of persons in psycho-neurological institutions. A judicial review must precede the placement of a person deemed incompetent due to a mental disability in an institution. Guardianship authorities should seek a prior judicial review of such cases by filing an application with a court and attaching a report of medical board findings, a reasoned decision specifying why the incapacitated person needs to be institutionalized, whether permanently or temporarily, and proof that the person's condition makes it impossible for them to express their attitude towards placement in an institution. The incapacitated person's legal guardian – whether an individual or a psychiatric institution – should only be allowed to request a guardianship authority to consider the possibility of placement in an institution.

387. Make amendments to the Administrative Procedure Code to require a person's presence during proceedings to decide on his or her involuntary placement in an institution.

388. Pursuant to the ECtHR judgment in *Kim v. Russia*, the Russian authorities must urgently take general measures to improve the conditions of detention in SUVSIGs and introduce legal mechanisms for regular judicial examination of the duration and lawfulness of detention in SUVSIGs, for release from SUVSIGs, and for issuing identity documents to stateless persons.

389. In accordance with administrative detention rules established by the Code of Administrative Offenses for Russian nationals, pregnant women, mothers of young children, elderly, sick and disabled persons cannot be placed in SUVSIGs. The practices of taking away children from their parents, separation of families and expulsion of children separately from their parents in the course of administrative proceedings must be stopped immediately.

### **North Caucasus**

390. Ensure that all human rights abuses since the beginning of the "counter-terrorism operation" in the Northern Caucasus in 1999 to present, in particular extrajudicial killings, enforced disappearances and torture, are effectively investigated and all those responsible for such abuses, as well as officials who had obstructed prompt investigation of such crimes, are held accountable. For this purpose, ensure effective operation of joint teams of military and civilian investigators before the proper jurisdiction, military or civilian, is determined, and ensure the right to a fair trial for all suspects. Monitor closely the situation in the Chechen Republic, a Russian region where massive and grave human rights abuses have been and continue to be perpetrated.

391. Implement general measures to prevent similar abuses in the future and guarantee the right to effective investigation to all victims. In particular, make changes to the legislation and to law enforcement practices to make sure that applicants may access all materials of the criminal case file from the moment criminal proceedings are instituted – rather than upon completion of the preliminary

investigation; refuse to apply the statute of limitations or suspend investigations in respect of such crimes and regularly publish the statistics of investigations into this type of crimes.

392. Support Russian and international human rights NGOs in their work of monitoring the human rights situation in the Northern Caucasus, documenting cases of torture or ill-treatment and providing legal assistance to victims. Collaborate with these organizations to end the atmosphere of impunity and to improve the human rights situation in the region. Take steps, including state protection measures, to ensure the safety of employees of such organizations, in particular in the Chechen Republic where the authorities have created conditions making it virtually impossible for independent human rights groups to operate.

393. Investigate all incidents of attacks on human rights defenders in the Northern Caucasus. Bring to justice all those who have arranged, condoned or covered up attacks on human rights defenders and activists, as well as officials who have failed to ensure or have obstructed prompt and effective investigation of attacks against human rights defenders, paying special attention to the situation in the Chechen Republic where such attacks have been particularly frequent, demonstrative and cynical.

394. Ensure an impartial and unbiased review of all criminal cases in which human rights defenders, journalists and civil society activists have been convicted based on reportedly falsified evidence. These include, inter alia, the criminal cases of Zarema Bagavutdinova (Dagestan), Ruslan Kutayev (Chechnya) and Jalaudi Geriev (Chechnya).

395. The Russian Investigative Committee must promptly conduct a new review into the statement made by Oyub Titiev, Director of the Memorial Human Rights Center in the Chechen Republic, to the effect that the law enforcement officers had planted drugs on him and falsified evidence to support charges of drug possession. Considering that the previous review by the Investigative Committee's Investigating Department in Chechnya was incomplete, ineffective and inconsistent with applicable Russian law, a new review should be undertaken by the Investigative Committee.