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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS FROM STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Fourth periodic report of States parties due in 2004

Addendum

RUSSIAN FEDERATION* **

[21 July 2004]

* For the initial report of the Russian Federation, see CAT/C/5/Add.11; for its consideration, see CAT/C/SR.28 and 29 and *Official Records of the General Assembly, Forty-fifth session, Supplement No. 44* (A/45/44), paras. 115-149.

For the second periodic report, see CAT/C/17/Add.15; for its consideration, see CAT/C/SR.264, 265 and 268 and *Official Records of the General Assembly, Fifty-second session, Supplement No. 44* (A/52/44), paras. 31-43.

For the third periodic report, see CAT/C/34/Add.15; for its consideration, see CAT/C/SR.520, 523 and 526 and *Official Records of the General Assembly, Fifty-second session, Supplement No. 44* (A/57/44), paras. 87-96.

** In accordance with the information transmitted to States parties regarding the processing of reports, the present document was not formally edited before being submitted for translation.

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Introduction

1. This report is submitted under article 19, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and was prepared in accordance with the general guidelines concerning the form and contents of periodic reports to be submitted by States parties under article 19, paragraph 1, of the Convention (CAT/C/14/Rev.1).

2. The report covers the period 2000-2004 and contains a description of developments since the submission of the third periodic report in 2001 (CAT/C/34/Add.15). It also takes into consideration the concluding observations adopted by the Committee against Torture in connection with its consideration of the third periodic report (CAT/C/CR/28/4).

I. INFORMATION ON NEW MEASURES AND NEW INFORMATION RELATING TO THE IMPLEMENTATION OF ARTICLES 1-16 OF THE CONVENTION

Article 1

3. Federal Act No. 162-FZ of 8 December 2003, amending and supplementing the Criminal Code of the Russian Federation, adds a note to article 117 of the Code to the effect that the term "torture" shall be understood to mean the causing of physical or mental suffering for the purpose of obtaining a confession or other acts from a person against his or her will, for the purpose of punishment, or for other purposes.

4. On 1 July 2002 the new Code of Criminal Procedure of the Russian Federation entered into force. The most salient new features include:

- Consolidation as an autonomous and fundamental principle of criminal procedure of the ban on the use of force and torture, on actions and decisions that are degrading to persons involved in criminal proceedings and on treatment that degrades their human dignity or endangers their life and health (art. 9);

- Limiting of the time that a criminal suspect can be held in detention to 48 hours (art. 10);

- Giving courts sole competence to take decisions on matters relating to detention and placement in a medical or psychiatric facility for testing or for the taking of coercive measures of a medical nature (art. 29, para. 2);

- Elimination of the rule providing for detention as a preventive measure solely on the grounds of the dangerousness of the crime and consequent restriction of the grounds for application of this measure (art. 97);

- Addition of release under supervision to the list of preventive measures applied to minors (art. 105);

- Introduction of a norm setting a limit on the time an accused person can be held in detention while a case is being investigated and establishing the procedure for extending it (art. 255), a measure that has led to a sharp reduction in the number of persons held in remand centres (over 40,000 persons);

- Enhancing guarantees of security for participants in criminal proceedings, namely through the application of procedural security measures (art. 11, para. 3).

5. Under the Code of Criminal Procedure, detained persons have the right to:

- Have an attorney participate in criminal proceedings from the time they are actually placed in detention as a criminal suspect or when they are placed in detention as a preventive measure (art. 49, para. 3, subpara. (b));

- Notification of their close relatives or, in their absence, of any other relatives by the investigator or procurator no later than 12 hours from the time of detention (art. 96, para. 1).

6. Under article 75 of the Code of Criminal Procedure, evidence that is given by a suspect or defendant during a pretrial investigation in criminal cases when a defence counsel is not present, including when such counsel has been refused, and is not confirmed by the suspect or defendant in court as well as any other evidence obtained by means that violate the law, shall be inadmissible and may not be adduced in support of an accusation.

7. On 1 July 2002 the new Code of Administrative Offences entered into force, under which decisions and acts (or omissions) that degrade human dignity taken while applying measures of administrative coercion are inadmissible (sect. 3, art. 1.6).

8. It should be noted that a set of measures other than procedural measures relating to protection by the State of the life, health and property of victims, witnesses and other participants in court proceedings are contained in a bill introduced by the President of the Russian Federation offering State protection to victims, witnesses and others assisting in criminal proceedings, which was adopted in first reading by the State Duma on 6 June 2003.

9. The State Duma of the Federal Assembly is considering a draft of Federal Act No. 11807-3, on public monitoring of guarantees of human rights of detainees and on cooperation among voluntary associations in the work of penal institutions and organs and detention facilities (the State Duma adopted the bill on first reading on 16 September 2003).

10. In preparation for the introduction of public monitoring, public councils under the Minister of Justice and the heads of most departments dealing with penal matters have been established consisting of representatives of law enforcement bodies. The Council under the Minister of Justice was established in the summer of 2003. Its plan of work and draft regulations are being formulated. Under the regulations, Council members may visit facilities within the penitentiary system in which there may be some difficulty in guaranteeing the rights of detainees. Council members have made frequent visits to various facilities within the system and made recommendations for improving the conditions of detainees.

Article 2

11. Questions relating to the restriction of specific rights and freedoms during a state of emergency have been brought into line with Russia's international obligations by the new Federal Constitutional States of Emergency Act No. 3-FKZ, of 30 May 2001. Under this Act, steps taken during a state of emergency which alter or restrict established human rights and freedoms must be kept within the limits dictated by the severity of the situation. The grounds for introducing a state of emergency include eliminating the conditions that gave rise to its imposition, ensuring the protection of human rights and civil liberties, and preserving the constitutional order of the Russian Federation.

12. Under article 30 of this Act, the arrangements and conditions for the use of physical force, special measures, weapons, military and special technology established by federal acts and other laws and regulations of the Russian Federation are not liable to any change during states of emergency.

13. The unlawful use of physical force, special measures, weapons or military and special technology by persons working in the internal affairs organs, the penitentiary system, federal security organs, military forces of the Ministry of Internal Affairs and the armed forces of the Russian Federation, other troops, military formations and organs, and the exceeding of their authority by officials responsible for implementing the state of emergency regime, including the violation of guarantees of human rights and civil liberties established in the Constitution in force, shall be punishable under the legislation of the Russian Federation.

14. Article 59, paragraph 3, of the Constitution establishes the right of any citizen of the Russian Federation for whom the performance of military service runs counter to his convictions or faith to substitute an alternative civilian service for it; this also applies in other circumstances stipulated in the federal legislation.

15. On 1 January 2004 the Alternative Civilian Service Act No. 113-FZ, entered into force. The Act aligns the provisions of the Constitution, the Education Act, the Military Obligations and Military Service Act and the Labour Code, taking into consideration the interests of citizens and the State and international experience in the area of alternative civilian service.

16. The legislation on alternative civilian service governs matters relating to the exercise by citizens of the Russian Federation of their constitutional right to replace military service with alternative civilian service and the means of doing so, and establishes the status of civilians performing alternative civilian service as well as their rights, obligations and responsibilities.

17. Alternative civilian service is 1.75 times longer than compulsory military service and lasts for 42 months, or 21 months for citizens who are graduates of State or municipal technical colleges or State-accredited private institutions offering comparable preparation (specialization).

18. For citizens performing alternative civilian service in organizations of the armed forces or in other troops or military formations or bodies, the duration of service is 1.5 times longer than military service and totals 36 months, while for citizens who are graduates of State or municipal technical colleges or State-accredited private institutions offering comparable preparation (specialization) it is 18 months.

19. As a rule, citizens perform alternative civilian service outside the territory of the constituent entities of the Russian Federation in which they live.

20. Alternative civilian service is organized by specially authorized federal authorities designated by the President and Government of the Russian Federation in accordance with their respective powers.

21. Presidential Decree No. 793, on matters relating to the organization of alternative civilian service, was issued on 21 July 2003 and entered into force on 1 January 2004.

22. To date there have been 1,321 applications for conversion of military service into alternative civilian service.

23. On 25 August 2003 the Government adopted Decision No. 523, approving a federal programme for the period 2004-2007 by which a number of forces and military units would be staffed by persons serving on a contractual basis. Under this programme it is planned that sergeants and soldiers in combat-ready units will be replaced, in accordance with a set schedule, by persons serving on a contractual basis. It is anticipated that when the programme is fully implemented the duration of compulsory military service will be shortened to 12 months.

24. Federal Act No. 5451-1 of 16 June 1993 reintroduced the institution of jury trials in the Russian Federation. During the initial phase they were introduced in nine regions of the country.

25. In 2002, jury trials accounted for 23 per cent of all cases heard by oblast and other courts at the level of federal constituent entities. A total of 240 cases resulting in a judgement were heard; these cases concerned 471 individuals, of whom 40, or roughly 9 per cent, were acquitted.

26. Starting on 1 January 2003 jury trials were gradually introduced throughout the Russian Federation. Under Federal Act No. 181-FZ of 27 December 2002, introducing amendments to the Federal Act on the entry into force of the Code of Criminal Procedure, courts with juries began to operate in 69 regions of the country. On 1 July 2003 jury trials were introduced in 14 regions of the country, and on 1 January 2004 they were introduced in the remaining constituent entities of the Russian Federation, with the exception of the Chechen Republic, where jury trials are to be introduced as of 1 January 2007.

27. During 2003, jury trials considered and ruled on 496 criminal cases concerning 946 persons, of whom 139 (14.4 per cent) were acquitted. These indicators objectively reflect structural changes in the judicial institutions of the Russian Federation that facilitate citizens' access to justice and fuller enjoyment of the right of everyone to equal treatment before the courts.

Article 3

28. When it ratified the European Convention on Extradition of 13 December 1957 by means of Federal Act No. 190-FZ of 25 October 1999, the Russian Federation entered a reservation (in the annex to Presidential Order No. 458-RP of 3 September 1999) in which it reserved the right to refuse extradition if there were serious grounds for believing that the person whose extradition was requested had been or would be subjected in the requesting State to torture or other cruel, inhuman or degrading treatment or punishment, or that the person had not been or would not be given the minimal guarantees in criminal proceedings provided for in international law.

29. The Federal Refugee Act (No. 4528-I of 19 February 1993) allows persons to obtain temporary refugee status in the territory of the Russian Federation on humanitarian grounds even when there is no basis for considering them refugees on the grounds stipulated in the Act if upon returning to the territory of the State of which they are a national (their former place of residence) they may be subjected to torture or other cruel, inhuman or degrading treatment or punishment as a result of the regular practice in that State of gross, flagrant and massive violations of human rights (including extrajudicial deprivation of life or liberty).

Article 4

30. All reports without exception of the use of physical or mental violence or torture from any person involved in criminal proceedings are regarded as an indication of an offence by an official and are investigated by the procuratorial and judicial bodies; based on the findings of the investigation a decision is taken in accordance with the procedure provided for in articles 144 and 145 of the Code of Criminal Procedure.

31. The competent State organs respond appropriately to complaints of physical or mental violence and to reports of such incidents that appear in the mass media. For example, the Human Rights Commissioner (Ombudsman) of the Russian Federation, acting pursuant to the Federal Constitutional Act on the Human Rights Commissioner, took the step of reviewing the accounts published on 25 February 2004 of a mass hunger strike by convicts and detainees held in correctional and detention facilities operated by the Central Department for Penal Correction of the Ministry of Justice for Saint Petersburg and Leningrad oblast. Taking into account the need to protect the interests of detainees in the penal enforcement system, who have only limited legal means at their disposal to protect their own interests, it was decided that staff of the Commissioner's office would investigate those reports on site. Their findings were discussed in a working meeting with senior staff of the Ministry of Justice of the Russian Federation and transmitted to the Office of the Procurator General. The procuratorial authorities established that convicts and members of their families had been subjected to extortion. On 13 April 2004 the procurator's office in Leningrad oblast initiated criminal proceedings relating to a violation under article 163, paragraph 2 (c), of the Code of Criminal Procedure, and the procurator of Leningrad oblast issued recommendations for the elimination of violations of penal enforcement legislation.

32. Article 286 of the Criminal Code classifies the exceeding of one's official authority as a criminal offence. Under the law, offences in this category are similar to crimes against

State power and against the interests of the State administration and the organs of local self-government (Criminal Code, chap. 30). Article 5 of the Police Act (No. 1026-I of 18 April 1991) prohibits any restriction of civil rights and freedoms, including the use of torture, violence and any other cruel or degrading treatment. Law enforcement officials are given special powers. Their legal orders must be carried out, and in circumstances provided for by law the acts of a representative of authority may be reinforced by coercive measures. A distinguishing feature of such offences is that they undermine citizens' belief in the protection of their rights and interests. For this reason the handling of such offences by the courts is attracting increased attention from both citizens and organizations.

33. The following case may be cited by way of example. On 26 March 2002 the Irkutsk oblast court found a police officer guilty of exceeding his official authority with the use of force and a series of other offences and sentenced him to 15 years' deprivation of liberty and 3 years' deprivation of the right to work as a police officer. During a criminal investigation he and police colleagues convicted in the same case had tortured two suspects who suffered injuries of varying degrees of severity. In a decision dated 19 March 2003 the criminal division of the Supreme Court held that the sentence given to the former police officers was lawful and motivated.

34. According to judicial statistics, 993 persons were convicted in 2000 of exceeding their official authority with the use of force, threats thereof, weapons or special measures, or exceeding their official authority with serious consequences, while 1,070 were convicted of such offences in 2001 and 1,018 in 2002. In 2003, 946 persons were convicted of all the offences enumerated in article 286, paragraph 3, of the Criminal Code (exceeding official authority with the use of force or threat thereof).

35. A review of these cases shows that in virtually all instances the courts imposed additional punishments such as deprivation of the right to perform certain functions related to the exercise of official power in State service. In deciding to impose additional penalties the courts took into account the nature and degree of danger to society of the offences, which tended to generate a public response, and recognized that, in the light of their personality, the guilty parties could not be retained on active duty in law enforcement bodies.

Article 5

36. With regard to the situation in the Chechen Republic, it must be noted that the legal basis for the counter-terrorism operation being conducted there is to be found in Federal Act No. 130-FZ of 25 June 1998, on efforts to combat terrorism. During 2001-2002 the Act was reviewed by legal experts in a joint working group composed of Russian specialists and experts from the European Union, and was recognized as being fully consistent with the requirements of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In addition to this Federal Act, the legal basis for the counter-terrorism operation in the Chechen Republic lies in the ratification by the Russian Federation of the Shanghai Convention on Combating Terrorism, Separatism and Extremism, concluded in Shanghai on 15 June 2001, and the Shanghai Cooperation Organization Agreement on the Regional Anti-terrorist Structure, concluded in Saint Petersburg on 7 June 2002.

37. By Federal Act No. 18-FZ of 22 April 2004, amending the Code of Criminal Procedure, article 100 of the Code was supplemented by a second paragraph stipulating that persons suspected of having committed any of the crimes set out in articles 205 (terrorism), 205.1 (enticement to commit a terrorist crime or otherwise abetting its perpetration), 206 (hostage-taking), 208 (organization of an unlawful armed formation or participation therein), 209 (banditry), 277 (attempt on the life of a statesman or public figure), 278 (forcible seizure or retention of power), 279 (armed rebellion), 281 (sabotage) and 360 (attack on internationally protected persons or facilities) of the Criminal Code in respect of whom a preventive measure has been ordered must be charged no later than 30 hours after the measure is ordered, or if the accused person was being held in custody prior to being placed in pretrial detention, from the time of being taken into custody. If during this time the suspect is not charged, the detention order shall be immediately revoked.

38. The legal regime established by law and applicable in the area where the counter-terrorism operation is being conducted is based on the basic provisions of the European Convention:

- The regime governing the movement of citizens in the area where the counter-terrorism operation is being conducted is consistent with article 2 of Protocol 4 to the Convention, which stipulates that freedom of movement may be restricted in the interests of State security or public peace and to maintain public order, prevent crime, protect health or morals, or protect the rights and freedoms of others;

- The right to detain and surrender to the internal affairs authorities persons who have committed unlawful acts in the area where the counter-terrorism operation is being conducted is consistent with the requirements of article 5 of the European Convention, which stipulates that citizens' rights to liberty and security of person may be restricted in order to ensure the fulfilment of any obligations established by law;

- The regime governing unimpeded access to housing of any form of ownership in order to suppress a terrorist act or prosecute a person suspected of committing a terrorist act is set out in article 8 of the Convention, which stipulates that citizens' right to respect of privacy and family life may be restricted in the interests of State security and public peace, the economic well-being of the country, to prevent unrest and crime, protect health and morals, or protect the rights and freedoms of others;

- Special arrangements for informing the public of terrorist acts are consistent with article 10 of the Convention, which stipulates that the freedom of expression may be restricted in the interests of State security, territorial integrity or public order and to prevent unrest and crime.

39. While military operations are being carried out and legitimate authorities and constitutional order are being established in the Chechen Republic, the need to ensure public order and security and for respect of fundamental civil rights and freedoms by the law

enforcement authorities in the Republic are of paramount importance. Accordingly, during this phase of counter-terrorism operations it is important that all necessary steps continue to be taken to ensure that military troops and law enforcement officers do not commit any offences that might tarnish the image of the federal authorities.

40. To this end, the leaders of the Regional Operational Command responsible for counter-terrorism operations in the North Caucasus region and the Unified Group of Forces (UGF) in the North Caucasus region, working with law enforcement agencies of the Chechen Republic, coordinate the activities of the entities participating in counter-terrorism operations relating to respect by members of the federal forces for the legislation in force and for human rights and freedoms, as well as implementation of the provisions of the European Convention.

41. The UGF commander and military procurator prepared and issued to their staff members Joint Directive No. 98/111 of 23 April 2003, on implementation of the instruction regarding cooperation among officials and other UGF military personnel with military procuratorial bodies during the conduct of special operations in the Chechen Republic when taking citizens into custody and considering information indicating that a crime has been committed.

42. To prevent offences and violations of civil rights by members of the forces and security services when preparing and carrying out special measures, Regional Operational Command Directive No. 2 of 26 August 2003, on arrangements for carrying out special operations and strategic operations, was adopted and transmitted to the leadership of the forces participating in the counter-terrorism operation.

43. The Office of the Procurator of the Chechen Republic and the UGF military procurator's office monitor general compliance with the law by law enforcement personnel assigned to counter-terrorism operations. In 2003 this monitoring resulted in the opening of five criminal cases involving the use of physical or mental pressure against civilians by internal affairs personnel or federal troops. In addition, local investigators and military procurators' offices conduct joint investigations of offences and violations in which members of the federal forces are reported to have participated.

44. The opening of remand centre No. 1 in Grozny in 2003 made it possible to ease the congestion in remand centres and temporary detention facilities of the Chechen Office of Internal Affairs, thereby improving prison conditions and compliance with legal time limits for detention and bringing these into line with Federal Act No. 103-FZ of 15 July 1995, on pretrial detention of suspects and accused persons.

45. The Assistant Procurator of the Chechen Republic responsible for monitoring compliance with the law and the Deputy Director of the Prison Administration Department of the Ministry of Justice of the Chechen Republic responsible for the protection of human rights within the Chechen prison system monitor respect for the law and human rights in temporary detention centres and remand centres on a monthly basis. International human rights organizations also monitor respect for human rights in detention facilities. Since 2000, representatives of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment have

visited the Chechen Republic six times at the invitation of the Russian Government. Members of the International Committee of the Red Cross (ICRC) may make periodic visits to penitentiaries and detention cells.

46. In particular, the members of ICRC who visited from 11 to 15 November 2003 noted in their report that the conditions of detention in facilities of the Office for the Enforcement of Penalties and the remand centres of the Office of Internal Affairs in the Chechen Republic met international standards and continued to improve.

Article 6

47. The entry into force of the new Code of Criminal Procedure on 1 July 2002 has allowed the courts to give effect to the constitutional provision that stipulates that placement and maintenance in pretrial detention is subject to court authorization. The Supreme Court of the Russian Federation regularly ensures that the courts in all the Federation's constituent entities apply the new criminal procedure legislation, particularly the norms governing the pretrial detention of persons suspected or accused of committing an offence as well as the duration of detention (Code of Criminal Procedure, arts. 108 and 109). The necessary organizational steps are taken to ensure that the courts apply the Code properly.

48. From 1 July to 29 December 2002 the courts considered 94,555 applications for pretrial detention from procurators, investigators or persons conducting initial inquiries and 43,186 cases in which extension of pretrial detention was requested. They rejected 7,930 applications and authorized 82,801. Thus this preventive measure was ordered by the courts in respect of an average of 13,800 persons a month. By way of comparison, it will be noted that during the first six months of 2002, when the Code of Criminal Procedure of the Russian Soviet Federative Socialist Republic (RSFSR) was still in force, 142,698 persons, or an average of 23,783 persons a month, were ordered into pretrial detention by a procurator.

49. These figures show that the change in the rules applicable to pretrial detention in respect of criminal suspects and defendants has led to a significant reduction (42 per cent) in the number of cases in which this measure is applied. An analysis of the causes of this reduction shows that, on the whole, procuratorial bodies have begun to weigh more carefully and objectively the need to apply to the courts for the severest preventive measure, which restricts rights, freedom and the inviolability of the person.

50. In 2003 the federal courts heard 234,149 applications for pretrial detention, of which 211,526 were found admissible. In 10,275 cases enforcement of the decision was postponed by no more than 72 hours at the request of one of the parties so that additional information could be produced to justify or invalidate the choice of this measure. The courts rejected 22,613 such requests.

51. During the same period the courts considered 107,702 applications for extension of pretrial detention, with the following outcome: 104,280 applications were upheld, with enforcement of the decision postponed by 72 hours in 1,458 cases, while 3,422 applications were rejected.

52. Appellate bodies heard 24,676 complaints and requests for judicial review of pretrial detention orders. These accounted for 10.5 per cent of all decisions rendered in 2003. Nearly 87 per cent of the decisions appealed were upheld on appeal, 12 per cent were overturned and in 0.4 per cent of cases the decision was changed.

53. A review of the case law has shown that the courts most often reject an application from a procurator, investigator or person conducting an initial inquiry for the placement of a suspect or accused person in pretrial detention because the request was not sufficiently motivated on the basis of the exhaustive list of grounds set out in article 97 of the Code of Criminal Procedure, and because they also believed that the severity of the offence was not in itself great enough to warrant detention. Thus on 13 February 2003 a municipal court judge in Petropavlosk-Kamchatsk rejected an application by an investigator for pretrial detention of a person suspected of intentional homicide. The judge's decision was based on the fact that criminal proceedings had been initiated solely on the basis of the individual's appearance in court to confess a crime of passion. The judge had further pointed out that there were no grounds for concluding, as the investigator had done, that the suspect should be isolated from society apart from the nature of the offence of which he was suspected.

54. In some cases the rejection of an application for pretrial detention can be based on the fact that the law enforcement bodies violated legal procedure relating to custody.

55. The right of everyone to liberty and safety of person is established in article 22 of the Russian Constitution. Paragraph 2 of this article stipulates that no one may be detained for longer than 48 hours while awaiting a decision by the court as to whether the detention is justified. Violation of this constitutional provision offers incontestable grounds for the immediate release of the detainee under article 93, paragraph 3, of the Code of Criminal Procedure. For example, the municipal court in Volgodonsk in Rostov oblast rejected an application for pretrial detention on the grounds that the application had been considered after the 48-hour deadline had expired: the suspect had been taken into custody by the investigative authorities on 21 April 2003 at 1.05 p.m., but the record of the arrest had not been drawn up until 8 p.m. that day.

56. When deciding to extend pretrial detention, the courts take into consideration not only the seriousness of the offence but also the personality of the accused and other circumstances that may indicate the existence of a threat to the safety of witnesses and victims, the intention of the accused to flee justice or the possibility that he or she might do so, as well as the effectiveness of the bodies that conducted the preliminary inquiry and investigation. The Constitutional Court, while stressing that any decision to place an accused person in pretrial detention must be solidly motivated, has in several decisions (in particular its decision of 10 December 1998 in a case involving the constitutionality of article 335, paragraph 2, of the Code of Criminal Procedure of the RFSFR, its decision of 14 February 2000 in a case dealing with the constitutionality of article 377, paragraphs 3, 4 and 5, of the Code of Criminal Procedure of the Russian Federation, its decision of 25 March 2004 concerning the appeal of V.L. Dmitrienko and its decision of 8 April 2004 concerning the appeal of A.V. Gorsky) held that restricting the right of accused persons to express in court, either in

person or by any other means established by the court, their views on the merits of questions relating to an appeal of a decision to extend the detention period was unacceptable and contrary to the Constitution.

57. Chapter 50 of the Code of Criminal Procedure of the Russian Federation provides for a special procedure in criminal cases involving juveniles. The law establishes a series of conditions that make it possible to ensure respect for the rights of minors undergoing criminal prosecution by the State. Specifically, article 423, paragraph 2, of the Code stipulates that in deciding to impose pretrial detention on a minor suspected or accused of committing an offence, the court must consider placing the minor under the supervision of his or her parents, guardian or other persons in the manner provided for in article 105 of the Code.

58. When deciding whether a minor should be placed in pretrial detention, a court carefully considers in each instance all the elements of the case, including information about the suspect's personality and age and other circumstances.

59. For example, the Oktyabrskiy district court in Saratov rejected an application for pretrial detention in respect of a juvenile suspected of robbery. It based its decision on the fact that the minor had been raised in an intact family, had a permanent residence, was enrolled in a vocational school and had fully compensated the victim for the material damage suffered.

60. In general, it should be noted that the amendments made to criminal legislation in recent years have helped to humanize criminal policy relating to juvenile delinquents. Federal Act No. 162-FZ of 8 December 2003 amending and supplementing the Criminal Code confirms this trend: the minimum sentence of deprivation of liberty for minors convicted of a serious or very serious offence has been reduced by half, and in many cases even the maximum penalty has been limited to six years' deprivation of liberty. Provision is now made for the application of compulsory re-education measures rather than criminal penalties in respect of juveniles.

61. Article 9, paragraph 2, of the Code of Criminal Procedure stipulates that none of the parties to a criminal proceeding may be subjected to violence, torture or other cruel or degrading treatment.

62. Article 14 of the new Code (like the earlier RSFSR Code) consolidates one of the fundamental principles of a democratic State governed by the rule of law, that of the presumption of innocence, which is established in article 49 of the Russian Constitution, in article 11 of the Universal Declaration of Human Rights, article 14 of the International Covenant on Civil and Political Rights and article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

63. An accused person can be found guilty only if his or her guilt is established according to a legally established procedure. Any doubts as to guilt that cannot be dispelled act to the benefit of the accused. A guilty verdict cannot be based on suppositions (Code of Criminal Procedure, art. 14).

64. The entry into force of the new Code of Criminal Procedure abolished the institution of recommittal for further investigation. Under article 237 of the Code, a court may refer a case to the procurator, including when a bill of indictment has been improperly established, thereby preventing the court from ruling or issuing another decision on the basis thereof. The procurator is required to remedy the violations in question within five days. As the Constitutional Court recognized in its Decision No. 18-P of 8 December 2003, the provisions of article 237, paragraph 1, of the Code of Criminal Procedure do not remove the authority of the court to refer, at the request of one of the parties or on its own initiative, a case back to the procurator so that the latter may remove the obstacles to the court's consideration of the case any time that a serious violation of the law has been committed during pretrial proceedings and has not been corrected, so long as such referral does not serve to correct the oversights of the initial inquiry or investigation.

65. On 9 February 2003 Federal Act No. 26-FZ amending and supplementing the Rehabilitation of Victims of Repressive Political Measures Act was adopted. The new Act made it possible to confer by law the status of victim of political repression on persons who had been deprived of parental care when minors because their parents (or one of them) had been subjected to repressive measures for political reasons. Previously, the law did not confer this status on such persons, which deprived them of the right to enjoy the social benefits and compensation provided to victims of repression. Adoption of the aforementioned Act has made it possible to restore their rights to more than 120,000 such victims.

Article 7

66. If a person suspected of having committed an offence under article 4 of the Convention is not extradited to the State party in whose territory the offence was committed, the decision to prosecute shall be taken in accordance with the law of the Russian Federation. The procedures set out in the new Code of Criminal Procedure are mandatory for courts and bodies conducting pretrial investigations and preliminary inquiries and for other parties involved in criminal proceedings (Code of Criminal Procedure, art. 1).

Article 8

67. In the light of the reservation entered by the Russian Federation when it ratified the 1957 European Convention on Extradition and the obligations devolving on it under article 1 of the Convention, the Office of the Procurator General of the Russian Federation, upon receipt of an extradition request, shall ascertain the general political situation in the requesting State.

68. In accordance with article 11 of the 1957 European Convention on Extradition, extradition may be refused if the offence referred to in the extradition request is a capital crime in the requesting Party, whereas the requested Party does not provide for or apply this form of punishment.

69. In the light of this provision of the Convention and the commitment to abolish the death penalty which the Russian Federation assumed when it became a member of the Council of Europe, and pursuant to its moratorium on this form of punishment, the Russian Federation,

when dealing with extradition cases involving offences which are not capital crimes under Russian law but which fall into this category under the law of the requesting State, seeks assurances from the latter that the person facing extradition will not subsequently be put to death.

Article 9

70. From 2000 to 2003 the Russian Federation concluded the following international treaties on judicial assistance and legal relations in civil and criminal cases: an agreement between the Russian Federation and Mali on judicial assistance in civil, criminal and family matters (signed on 31 August 2000) and an agreement between the Russian Federation and India on judicial assistance and legal relations in civil and criminal matters (signed on 3 October 2000).

71. The earlier RSFSR Code of Criminal Procedure contained only one provision referring to the possibility of exchanges between courts, procurators, investigators and bodies of inquiry on the one hand and their counterparts in other countries on the other, based on the legislation of the Soviet Union and the RSFSR and the international agreements concluded. The new Code of Criminal Procedure contains a section XVIII on procedures for cooperation between courts, procurators, investigators and bodies conducting initial inquiries on the one hand and the corresponding foreign agencies and officials on the other concerning judicial assistance in criminal cases, extradition of offenders and extradition of convicts to serve their sentence in their own country.

Article 10

72. The Government of the Russian Federation attaches high priority to education and information relating to the prohibition of torture. For example, efforts are being made to improve the quality of training of specialists in the Russian penal correction system and familiarize them with the experience of Western European penitentiary systems.

73. In 2001, on the basis of a decision by the Ministry of Justice, a department was created to deal with questions relating to the humane treatment of detainees, which was to benefit from the experience of other countries in that area. A recommendation was made to include these questions in a programme of work and recruit staff who would be responsible for questions relating to the humane treatment of detainees in territorial penal enforcement administrations.

74. The Russian Federation's international obligations regarding the prevention of torture are also reflected in the training modules on international law and on safeguarding human rights in the work of internal affairs agencies, which are taught in educational establishments of the Ministry of Internal Affairs. In addition, the legal training provided to members of the Ministry of Internal Affairs armed forces includes the study of fundamental principles of international humanitarian law to be applied in situations of armed conflict.

Article 11

75. Under article 96 of the Code of Criminal Procedure, investigators or procurators must notify a close relative of a suspect within 12 hours of his or her arrest, or contact other members of the suspect's family or allow the suspect to do so.

76. In criminal cases involving offences committed by a minor, the minor's legal representatives are required to participate in the proceedings and be present at the initial questioning of the minor as a suspect or defendant.

77. Pursuant to Federal Act No. 103-FZ of 15 July 1995 on pretrial detention of suspects and accused persons, suspects and accused persons may receive visits from:

(1) Their counsel;

(2) Members of their families or other persons entitled to such visits by law.

78. Pursuant to Federal Act No. 161-FZ of 8 December 2003 on harmonization of the Code of Criminal Procedure and other legislative texts with the Federal Act amending and supplementing the Code of Criminal Procedure, article 21, paragraph 2, of Federal Act No. 103-FZ, which deals with modalities for the submission by suspects and accused persons of applications unrelated to the facts of their case (chiefly complaints of unlawful acts committed by administrative officials or other detainees), was amended to read: "Proposals, declarations and appeals addressed to the procurator, the court or other public bodies responsible for supervising facilities for the pretrial detention of suspects and accused persons, to the Human Rights Ombudsman of the Russian Federation or of the constituent entities of the Russian Federation or to the European Court of Human Rights may not be censored and shall be sent to the recipient in a sealed envelope no later than one day after they are submitted."

79. Suspects and accused persons may meet with a lawyer (defence counsel) from the time they are remanded in custody. Such meetings take place in private and are confidential; there is no limit to their frequency or duration, except in situations provided for in the Code of Criminal Procedure.

80. In its decision of 27 June 2000 on its review of the constitutionality of article 47, paragraph 1, and article 51, paragraph 2, of the RSFSR Code of Criminal Procedure, the Constitutional Court found unconstitutional any limitation of the right of any person to have the assistance of counsel during the pretrial phase whenever that person's rights and freedoms were or might be affected by actions or measures taken in connection with a criminal prosecution. That legal opinion was issued taking into account article 39, paragraph 3, of the new Code of Criminal Procedure.

81. In its decision of 25 October 2001 on its review of the constitutionality of provisions contained in articles 47 and 51 of the RSFSR Code of Criminal Procedure and in article 16, paragraph 2, subparagraph 15, of the Federal Act concerning pretrial detention of suspects and accused persons, the Constitutional Court stressed that the right of any lawyer (defence counsel) to participate in criminal proceedings and to meet in private with his or her client could not be made subject to approval, and that a lawyer could not be removed from proceedings unless he or she had legal grounds for refusal. This legal opinion, according to which the performance by a lawyer of his or her duties as defence counsel in court proceedings could not be left to the

discretion of an official or body in charge of the criminal case, and the application of the provision of article 48, paragraph 2, of the Constitution establishing the right of all suspects or accused persons to have access to a lawyer (defence counsel), including meetings with his or her counsel, could not be subject to authorization by the official or body in question, was developed in another decision of the Constitutional Court handed down on 26 December 2003. In that decision, which dealt with its review of the constitutionality of certain provisions of article 118, paragraphs 1 and 2, of the Code for the Enforcement of Penalties, the legal opinion of the Court concerning access to counsel applied not only to persons remanded in custody or in pretrial detention but extended also to convicts serving prison sentences.

82. Meetings between a suspect or accused person and his or her defence counsel may take place where they may be seen but not heard by detention facility staff.

83. Subject to written permission by an official or the body dealing with the criminal case, a suspect or accused person may receive a maximum of two visits of up to three hours each a month from family members or other persons.

84. Treatment and prevention programmes and measures to combat epidemics are carried out in detention facilities in accordance with public health legislation. The administration of a penitentiary facility is required to observe safety and health standards to ensure that the health of inmates is protected.

85. Under paragraph 16 of Ministry of Justice Order No. 148 of 12 May 2000 establishing internal regulations for remand centres in the Ministry of Justice penal enforcement system, detainees are examined upon entering a facility by an in-house physician (medical assistant) and are given a check-up. The results are recorded on an outpatient chart and, in the event of any physical injuries, a certificate attesting to the presence of such injuries is signed by the assistant on duty, the physician and the head of the police escort team that brought the detainee to the facility. In such cases the situation is checked by the tactical operations department, and if there are indications that an offence has been committed, the results are transmitted to the local procurator, who decides whether a criminal case should be opened.

86. Any suspect or accused person whose health is deteriorating or who has physical injuries is promptly examined by the medical personnel assigned to the detention facility.

87. When the facility director or the person or body dealing with the case so decides or the suspect, accused person or counsel so requests, the certifying examination may be conducted by the staff of another medical establishment. Should such a request be denied, an appeal may be filed with the procurator or the court.

88. The conclusions of the physician regarding the presence of physical injuries discovered during the examination of a suspect, accused person or detained convict are transmitted to the investigative body for further action.

89. Under article 92 of the Code of Criminal Procedure, once a suspect has been delivered to the body conducting the investigation, a report of the arrest must be transmitted within three hours to the investigator or the procurator indicating that the suspect was informed of his or her rights under article 46 of the Code of Criminal Procedure, namely:

- To be informed of the offences he or she is suspected of committing and to receive copies of the decision to open criminal proceedings, the report of the arrest or the decision to place the suspect in pretrial detention;

- To make or refuse to make statements or give depositions regarding the offences of which he or she is suspected of committing. If the suspect agrees to make depositions, he or she must be warned that they may be used as evidence in a criminal proceeding, even if the suspect retracts them at a later time, unless the depositions are found inadmissible under the Code of Criminal Procedure, in which case they have no legal value and cannot be used as the basis of a criminal charge or used as evidence to support other facts;

- To have the services of a defence counsel from the time established by law and to have private and confidential meetings with counsel before the preliminary questioning;

- To produce evidence;

- To submit appeals and challenges;

- To make depositions and give statements in one's mother tongue or in a language that one is proficient in;

- To have the services of an interpreter free of charge;

- To have access to the records of investigative proceedings in which the suspect has participated;

- With the permission of the investigator or person conducting the initial inquiry, to participate in investigative action carried out at the suspect's request or at the request of the suspect's counsel or legal representative;

- To appeal any acts (or omissions) and decisions of the court, the procurator, the investigator and the person conducting the initial inquiry;

- To rely on other ways and means of defence not prohibited by criminal procedural law.

Article 12

90. Under the new Code of Criminal Procedure of the Russian Federation the purpose of judicial proceedings is to: (1) uphold the rights and legitimate interests of individuals and

organizations who are victims of crime; and (2) to protect individuals from illegal and unwarranted accusation, conviction and restriction of rights and freedoms. It should also be noted that besides prosecuting criminals and inflicting just punishment, one aim of criminal proceedings is to refrain from prosecuting the innocent, release them from punishment and rehabilitate anyone who has unwarrantedly been subjected to prosecution.

91. These positions find their fullest expression in the Code of Criminal Procedure of the Russian Federation. For example, article 6 stipulates that the purpose of criminal procedure is to afford protection against illegal and unwarranted accusation, conviction and restriction of rights and freedoms and to guarantee that innocent persons and persons wrongly accused or convicted are promptly and fully rehabilitated. Acts or decisions taken in the course of criminal proceedings that humiliate or degrade individuals or endanger their lives or health are prohibited. No one participating in a trial may be subjected to cruel or degrading treatment of any kind (Code of Criminal Procedure, art. 9).

Article 13

92. In 2003 the procuratorial bodies initiated criminal proceedings in 95 cases allegedly involving members of the federal forces (78 abductions and 17 other offences committed by members of the police; all these cases were heard by procuratorial bodies in the Chechen Republic). During the same year the procuratorial bodies in the Chechen Republic referred 44 cases to the courts, of which 20 involved offences committed against the local population.

93. As preliminary inquiries were unable to demonstrate that members of the armed forces had been involved in the offences in question, the cases were referred to the territorial procuratorial bodies in the Chechen Republic. As a result of investigations conducted during the first 10 months of 2003, four cases were sent to the courts, two were classified under the provisions granting exemption from criminal responsibility without rehabilitation and four others are pending. During the counter-terrorism operations, 18 criminal cases in which 21 police officers were charged were brought before the courts and 328 criminal proceedings were suspended because the presumed authors could not be identified. Of the 47 criminal cases referred to military procurators, 15 were closed owing to the existence of evidence that allowed the accused to be exonerated without being rehabilitated. The military courts heard criminal cases involving 78 individuals (12 officers, 3 soldiers who re-enlisted upon completion of their compulsory service, 30 active soldiers and sergeants and 33 soldiers and sergeants on call-up) accused of committing crimes against residents of the Chechen Republic.

94. In 2003, investigators of the procurator’s office referred to the courts 15 cases involving 25 kidnappings in which 26 accused persons were found guilty of a crime. During the first four months of 2003, four criminal cases were referred to the courts and six persons were prosecuted. During the entire period of the counter-terrorism operations the courts heard 51 cases relating to 78 kidnappings in which 84 persons were prosecuted.

95. The year 2004 saw 66 criminal cases brought against the kidnappers of 95 persons; of these, 36 cases involved the kidnapping of 51 persons in that same year. During the same period

in 2003, 70 criminal cases relating to 116 kidnappings were opened. Of those kidnapped, 70 were released in 2003. During the first four months of 2004 an additional 27 persons were released.

96. It is unfortunate that international organizations remain unaware of the violence perpetrated by illegal armed groups against members of law enforcement bodies and leaders and staff of local administrations and the Republic's organs of self-government, religious leaders and the civilian population. During the counter-terrorism operations 2,722 criminal cases relating to such violations were opened and investigated. Of these, 188 were referred to the courts, 2,105 were suspended because the perpetrators could not be identified and 205 were closed for various reasons, while 224 are pending.

97. In order to detect and investigate violations in a timely manner and prevent members of the armed forces from committing violations directed against the local population during the counter-terrorism operations, the Office of the Procurator of the Chechen Republic drew up instructions in 2002 which were transmitted to municipal and district procurators; these concerned questions having to be resolved as a matter of priority once criminal proceedings were opened in respect of offences committed by UGF personnel and troops during the registration of citizens' permanent or temporary addresses in Chechnya.

98. From June to September 2002 procurators in the Chechen Republic created and regularly updated an electronic database containing information on criminal cases involving kidnappings and kidnapping-related homicides reported throughout the duration of the counter-terrorism operations. This work was carried out in close collaboration with senior administrative personnel and the Government of the Chechen Republic as well as human rights organizations and voluntary associations.

99. In addition, on 9 September 2002, the Procurator General of the Russian Federation issued Order No. 802k establishing the UGF military procuratorate for counter-terrorism operations in the North Caucasus region, which was tasked with ensuring that military officers upheld the Constitution and applied the law. Subsequently, in order to organize this activity properly, the Military Procurator General issued Order No. 301 of 20 November 2002, on enhancing procuratorial monitoring of respect for human rights and civil liberties during the counter-terrorism operation in the North Caucasus. Under this Order, the UGF military procurator was required to cooperate with the Office of the Procurator General for the southern federal area, the Procurator of the Chechen Republic, municipal and district procurators, the leaders of the Regional Military Staff for counter-terrorism operations, the UGF military staff and troops of the Ministry of Internal Affairs in verifying whether the laws protecting human rights and civil liberties were being observed.

100. On 30 November 2002 the Office of the Procurator General of the Chechen Republic held an interministerial coordination meeting in Khankala to discuss problems of coordination among the various civilian and military procurators' offices in the Chechen Republic in the investigation of criminal cases brought against military personnel who had committed offences against civilians.

101. At this meeting concrete decisions were taken to overcome the problems of communication between law enforcement bodies in organizing investigations of such offences. In particular, on 30 November 2002 the Office of the Procurator General of the Chechen Republic and the UGF military procurator's office jointly issued Order No. 15 establishing joint investigative units, which set out the procedures and methods for mutual assistance during preliminary investigations in cases of unlawful detention or kidnapping of civilians. In implementation of this Order, permanent investigation units composed of investigators and criminal procurators from the military and territorial procuratorates were established in all districts of the Republic.

102. On 3 February 2003 the Procurator of the Chechen Republic, the UGF military procurator, the Chechen Minister of Internal Affairs, the UGF commander and the leaders of other administrative bodies concerned jointly issued Order No. 8 adopting an instruction for mutual judicial assistance among law enforcement bodies in the North Caucasus region in the investigation of serious violent crimes involving attempts on the life and physical integrity of permanent or temporary residents of the Chechen Republic.

103. Investigators of the local procurator's offices open criminal cases and investigate them jointly with military procurators. When it is determined that an offence has been committed by a member of the military, the case is referred for further investigation to the organs of the military procuratorate in the place where the incident occurred. Implementation of the Order is the personal responsibility of the municipal and district procurators of the Chechen Republic and the garrison military procurators.

104. On 19 April 2003 the heads of law enforcement agencies, the UGF command and the leaders of detachments, units and other military formations in the North Caucasus region held a coordination meeting to consider protection of the rights and legitimate interests of civilians in the Chechen Republic. As a result of this meeting, and pursuant to Joint Order No. 98/110 promulgated on 23 April 2003 by the UGF command and military procurator, the Instruction concerning collaboration between UGF officials and troops and military procurators during the special counter-terrorism operations in the Chechen Republic when remanding citizens in custody and admitting evidence of the commission of an offence, adopted by means of Order No. 34 issued by the UGF command on 1 February 2003, was amended and supplemented. Pursuant to this Instruction, all special operations must be conducted in the presence of members of the procuratorate, who work in collaboration with representatives of the administration, the clergy, officials of the internal affairs bodies and other officials in the places where operations are deployed. When local residents are remanded in custody during a special operation, those in charge of the operation must ensure that representatives of the local administration, clergy and procurator's offices enjoy unimpeded access to the facilities where such persons are detained.

105. To foster much-needed cooperation between law enforcement bodies and human rights organizations, the Deputy Procurator General of the Russian Federation, Sergei Fridinskiy, in his Instruction No. 46/2-10627-03 of 6 November 2003, proposed that the acting procurator for the Chechen Republic and the UGF military procurator should hold monthly working meetings with a representative of the "Memorial" Human Rights Centre in the Chechen Republic at which they would exchange and verify information.

106. As a result of the measures taken, monitoring and investigation of violations of the human rights and freedoms of civilians in the Chechen Republic have increased significantly.

107. The necessary steps were taken to organize monitoring of the special operations conducted in the Chechen Republic, ensure respect of the social and legal guarantees enjoyed by UGF personnel and ensure that UGF subdivisions scrupulously upheld the legislation in force and respected the rights and legitimate interests of civilians during the operations (Order No. 46-2001 of the Procurator General of the Russian Federation and No. 301-2002 of the Military Procurator General). Corresponding instructions establishing modalities for the application of special measures were also adopted by the UGF command.

108. Procuratorial staff check for compliance with the law in verification of the registration of permanent and temporary residents in the Chechen Republic.

109. The internal organization and activities of the military procuratorate are covered by the general legislative provisions of the Federal Act on the Office of the Procurator of the Russian Federation.

110. Within the limits of their authority, the Military Procurator General and his subordinate procurators enjoy powers established by the aforementioned Federal Act, which they exercise independently of the military command and administration, in accordance with federal legislation.

111. Under article 1 of the aforementioned Federal Act and Order No. 54 of the Procurator General of the Russian Federation establishing the competence of territorial procurators and military and other specialized procuratorates, promulgated on 9 September 2002, military procurators are required to oversee compliance with the Constitution, the law and comparable legal texts and to ensure that the rights of military personnel, their families and other citizens are respected by administration leaders and officials and the military units, institutions, organizations, enterprises and other paramilitary divisions of the Russian armed forces as well as by other troops and military formations established under federal legislation.

112. Monitoring of respect for human rights and civil liberties by military administrative bodies and military officials of the armed forces of the Russian Federation participating in counter-terrorism operations in the Chechen Republic are a priority for the military procurator's offices.

113. All information concerning the commission of offences by members of the armed forces, particularly that coming from ordinary citizens, human rights organizations and non-governmental organizations (NGOs) or published in the media, is checked. Measures are taken to prevent damage to citizens' health and personal property, unlawful detention and deprivation of liberty, and the violation of other constitutional rights and freedoms. When such violations are established, criminal proceedings are instituted.

114. Since the counter-terrorism operations began, the military procurator's office has opened 191 criminal cases concerning offences committed by military personnel against

Chechen civilians: 56 cases of homicide (Criminal Code, art. 105); 1 case of homicide with the use of excessive force (art. 108); 3 cases of physical injury inflicted through carelessness or negligence (art. 118); 9 cases of acts of hooliganism (art. 213); 36 cases of theft (arts. 158-162); 6 cases of violation of firearms regulations (art. 349); 19 cases of failure to abide by regulations governing the use of military, special or transport vehicles (art. 350); 23 cases of kidnapping (art. 126); 3 cases of rape (art. 131); 15 cases of acts leading to the death of civilians; and 24 cases involving other offences. A total of 69 cases involving 92 persons were referred to the courts for consideration on the merits and 44 were closed on various legal grounds. In 19 cases the investigations were suspended. As for pending cases, investigations are currently under way.

115. To date, a total of 74 soldiers, including 12 officers, have been found guilty by the military courts of offences committed against residents of the Chechen Republic.

116. Under Federal Act No. 121-FZ of 8 October 2002 establishing a military court in the Grozny garrison and abolishing the military court in the Norilsk garrison, a military court was established at Grozny; the court is now in operation, within the limits of the powers conferred on it.

117. Practice shows that in most cases the investigation of offences in the Chechen Republic, particularly offences committed against the local population, is hampered by the difficult operational situation in the region, ethnic customs and religious traditions (burial of the deceased shortly after death, refusal to allow the forensic examination of corpses, movement of victims and witnesses to other parts of the country, and so forth).

118. Since the counter-terrorism campaign began on 1 January 2004, military procurators' offices have investigated 23 criminal cases involving 67 kidnappings. In one case proceedings were terminated; nine cases were referred to local procuratorial bodies for further investigation; in six cases the investigations have been suspended; and in seven cases investigations are continuing. There have been no reports of cases involving the torture by military personnel of residents of the Chechen Republic. During the period under review, UGF military procurators referred to the courts a total of 245 criminal cases involving violations of the armed forces' regulations on relations between hierarchically equal personnel (Criminal Code, art. 335).

119. In 2003 no complaints of torture or cruel or degrading treatment were brought before the military procurators by members of Russian Federation armed forces deployed in the Chechen Republic or by the local population. Citizens are received in the six UGF military procuratorates in the Chechen Republic daily.

120. Article 11 of the Code of Criminal Procedure stipulates that when there is sufficient evidence to show that the victim, witnesses or other persons involved in criminal proceedings are threatened with murder, acts of violence, the destruction or damaging of their property or other unlawful acts, the court, the procurator, the investigator and the body and individual conducting the initial inquiry shall, within the limits of their powers, take the protective measures provided for in article 166, paragraph 9, of the Code (which provides that, in order to guarantee the safety of the victim, his or her representative, family members and witnesses, the procurator may

decide not to include any information about the identity of such persons in the record of the investigation) as well as article 186, paragraph 2 (which stipulates that in the event of threats, blackmail and other criminal acts directed at the victim, witnesses, family members or other persons close to them, their telephone and other conversations may be monitored and recorded with their written permission or, in the absence of such permission, by a court order); article 193, paragraph 8 (which stipulates that if necessary to ensure the safety of persons required to identify suspects, such identification may, if the procurator so decides, take place in a setting that allows the persons making the identification to observe the suspects while remaining shielded from view. In such cases the witnesses are kept in the same place as the persons making the identification); article 241, paragraph 2, subparagraph 4 (which stipulates that the proceedings may be held in camera if this makes it possible to guarantee the safety of the parties to the proceeding and their family members); and article 278, paragraph 5 (which stipulates that when necessary to ensure the safety of witnesses, their family members and other persons close to them, the court may conduct its questioning without explicitly referring to the identity of the witnesses, who remain shielded from the view of the other participants in the trial).

Article 14

121. Taking into account the constitutional provision concerning the right of every citizen to seek redress from the State for injury sustained as a result of unlawful actions by State bodies or officials, a new article 133, concerning the procedure for seeking compensation in the event of unlawful actions of a court or bodies conducting pretrial proceedings in a criminal case, has been incorporated into the Code of Criminal Procedure. The rules contained therein state on what grounds and in which circumstances the right of redress and the procedure for compensation shall apply.

122. Under article 133 of the Code of Criminal Procedure, the right to rehabilitation includes the right to compensation for loss of or damage to property, reparation of moral injury and reinstatement of labour, pension, housing and other rights. The injury caused by the criminal proceedings is fully reimbursable by the State whether or not there has been culpable behaviour on the part of the body or individual conducting the initial inquiry, the investigator, the procurator or the court.

123. The following may claim the right to reparation of an injury arising from a criminal proceeding:

- Persons who have been sentenced and acquitted;

- Persons on trial against whom criminal proceedings are terminated because the State prosecutor declines to press charges;

- Persons against whom proceedings have been dropped on the grounds set out in article 24, paragraph 1, subparagraphs 1, 2, 5 and 6, and article 27, paragraph 1, subparagraphs 1, 4, 5 and 6, of the Code of Criminal Procedure;

- Convicted persons, if an enforceable court decision against them is wholly or partly set aside, or if the criminal case is terminated for the reasons set out in article 27, paragraph 1, subparagraphs 1 and 2, of the Code of Criminal Procedure;

- Persons who have been subjected to coercive measures of a medical nature, when the court order to apply such measures has been ruled unlawful or unfounded and voided.

124. By way of example, mention should be made of the decision handed down on 22 January 2004 by the Kaluga district court in Kaluga oblast in case No. 2-5098/2003, in which the court considered a complaint submitted by the Human Rights Ombudsman of the Russian Federation requesting that acts committed by State law enforcement bodies and courts be recognized as unlawful. Under 1994 amendments to existing legislation, the decision handed down in respect of V.N. Kondakov was submitted for judicial review to determine whether it was consistent with chapter 30 of the RSFSR Code of Criminal Procedure and whether the classification of acts should have been revised in accordance with article 15-144 of the amended RFSFR Criminal Code. None of the review bodies in Mr. Kondakov's case showed due diligence in reviewing that decision, with the result that Mr. Kondakov was unlawfully detained for 1 year, 9 months and 28 days. The Kaluga district court, having carefully considered the facts of the case, concluded that a serious violation of the norms of international and domestic law had taken place. By its decision of 22 January 2004, the court awarded the victim 30,000 rubles from the State treasury, through the Ministry of Finance, as compensation for the moral injury suffered.

Article 15

125. The Code of Criminal Procedure categorically prohibits the extortion of testimony from accused persons or other parties to proceedings by means of violence, threats or other unlawful measures. Statements obtained by means of violations of the Code by the court, procurator, investigator or body or person conducting the initial inquiry in a criminal proceeding shall be deemed inadmissible.

126. In hearing cases and weighing evidence, courts decide not only on the relevance, sufficiency and reliability of evidence but also on its admissibility. Testimony obtained by criminal means, i.e. through the use of torture or other cruel treatment, has no legal value and cannot be used as evidence. This provision is established in law in article 50 of the Constitution, which states that in the administration of justice no evidence obtained in violation of federal law shall be admissible. Evidence obtained by unlawful means shall be deemed to have no legal value and cannot be used as the basis of an indictment or to substantiate the facts of a case.

127. Under article 88 of the Code of Criminal Procedure, evidence can be deemed inadmissible during a trial as well as during a preliminary investigation. In order to strengthen the guarantees protecting individuals undergoing interrogation, article 173, paragraph 4, of the Code of Criminal Procedure provides that accused persons may, solely at their request, undergo a new interrogation relating to the same charges if they refused to make a statement during the first interrogation. Moreover, article 52 of the Code stipulates that the investigator, the person

conducting the preliminary inquiry and the procurator are not bound by an accused person's refusal to be represented by counsel. In such situations suspects (or accused persons) have a genuine opportunity to report any torture inflicted on them either during pretrial verification or at any other phase of the investigation. An additional guarantee that allows for the elimination of evidence obtained through torture is participation by an accused person or suspect in the court's consideration of the appropriateness of pretrial detention, the extension of such detention or placement in a medical facility or psychiatric hospital for observation (Code of Criminal Procedure, art. 108, art. 47, para. 4, subpara. 16, and art. 29, para. 2).

128. Claims by defendants, victims or witnesses that they have been coerced into giving testimony or by experts that they have been coerced into forming a particular conclusion by means of threats, blackmail, violence, bullying or torture must be verified by a court, as such acts by investigators or other persons conducting an initial inquiry constitute an offence under article 302 of the Criminal Code.

129. As a result of the recent introduction of jurors into Russian courts, investigative bodies now exercise greater care in assembling evidence with a view to seeking an indictment.

130. The objective and unbiased examination of cases by courts using the jury system is greatly facilitated by the application of more rigorous standards regarding the exclusion from proceedings of evidence obtained by unlawful means.

Article 16

131. Procuratorial bodies are continuing their efforts to abolish unlawful physical and psychological coercive measures inflicted on detainees in penal establishments. When staff of a procurator's office inspect remand centres and prisons to ensure compliance with the law, they check all allegations raised by suspects and defendants, their counsel and other sources concerning the existence of violations perpetrated by prison staff and described as torture or cruel or degrading treatment or punishment. In cases of exceeding official powers, abuse of authority or unlawful use of force, criminal proceedings are opened and the alleged perpetrators are prosecuted. However, as only a limited number of such cases lead to a conviction, it cannot really be said that violations of the Convention are widespread in remand centres and prisons.

132. Statistics show that the number of women in pretrial detention has declined by more than half since 1996 (when the population density in remand centres stood at a 15-year high).

133. In recent years the Office of the Procurator General of the Russian Federation has received no substantiated complaints or allegations of violence against women in pretrial detention.

134. A major step in the reform of the prison system by the Ministry of Justice was the establishment, pursuant to the recommendations of the Citizens Forum held in Moscow in 2001, of special services to monitor the human rights of detainees. These services are supposed to focus the activities of institutions within the penal correction system on the practical guaranteeing of the legitimate interests of convicts deprived of their liberty and persons in

pretrial detention. They directly monitor the human rights situation within the prison system and organize follow-up activities that are carried out by Russian and foreign NGOs in detention facilities and prisons.

135. As a result of the promotion of human rights in the penal correction facilities of the Ministry of Justice, the number of substantiated allegations of human rights abuses, including allegations of the unlawful use of special measures and physical violence and the harshest disciplinary measures, such as being placed in punishment cells or disciplinary or special units, has been reduced by one quarter.

136. Throughout the country the occupancy rate in detention facilities has been reduced by more than half as compared with 1996 levels. On average, surface area per detainee in such facilities is currently 1.1 to 1.2 times greater than the norm, which is 4 square metres per detainee. Federal legislation calls for deferred or shortened sentences or revocation of sentences for pregnant women and mothers of children under the age of 14, with the exception of those who have been given sentences of more than five years for serious or particularly serious offences or particularly serious offences against the person. Female convicts serving their sentences in correctional colonies who are pregnant or have young children, except for those serving sentences of more than five years for serious offences or particularly serious offences against the person, may have their sentences deferred until their children have reached the age of 14.

137. The Penal Enforcement Code contains 17 articles on the conditions of women's detention in the penal correction system, of which 11, or 65 per cent, have to do with the protection of mothers and children.

138. According to Ministry of Justice statistics, 4.2 per cent of all suspects and accused persons in pretrial detention suffer from active forms of tuberculosis. These individuals, like those suffering from other infectious diseases, are held separately from healthy detainees.

139. Criminal legislation has been significantly modified by the provisions of Federal Act No. 161-FZ of 8 December 2003, which brought the Code of Criminal Procedure and other legal texts into line with Federal Act amending and supplementing the Criminal Code, rescinding the provision the stipulated that convicts serving prison terms who were placed in punishment cells, special facilities, solitary confinement in special facilities or in isolation cells would receive reduced food rations. Formerly, this provision was in fact one of the causes of the high incidence of tuberculosis.

140. In order to ensure that the detention conditions of persons in pretrial detention facilities meet international standards for the treatment of prisoners (and to follow up the recommendations made by the Committee against Torture when it considered the Russian Federation's previous reports), the metal bars (grilles) were taken off cell windows in nearly all detention facilities in the country in 2002 and 2003. On average, the occupancy rate of such facilities is currently 98.5 per cent, given that the standard living space is 4 square metres per person.

141. Under the law, juvenile suspects and defendants in pretrial detention enjoy better conditions of detention and also larger food rations than adults do. During recreation periods, they are allowed to engage in physical exercise and participate in outdoor sports. Arrangements are made for them to receive general secondary education. Cultural and rehabilitation activities are also organized.

142. The prohibition against cruel treatment of minors is set out in various legislative texts:

- *Article 156 of the Criminal Code*, which deals with the penalties applicable to parents who fail to perform their educational obligations to minors, or who perform them inadequately; this provision applies also to anyone having the same obligations, such as teachers and the staff of schools or educational, medical or other facilities where minors may be placed, if the alleged acts can be likened to cruel treatment of a minor;

- *Article 5.35 of the Federal Code of Administrative Offences* of 23 December 2003, concerning the penalties applicable to parents who fail to perform their educational and maintenance obligations to their children, or who perform them inadequately;

- *Article 8, paragraph 1, of Federal Act No. 120-FZ* of 7 July 2003, on the fundamentals of the system for preventing child abandonment and juvenile delinquency and governing the application of penalties in institutions forming part of that system.

143. Exercising their authority, procurators at all levels decisively punish acts of cruel treatment of children and physical, mental and sexual violence in the family and rehabilitation and educational facilities. Perpetrators of such acts are liable to criminal, administrative and civil prosecution.

144. In 2002 the Office of the Procurator General conducted a thorough review of the manner in which the law was applied in closed-type reform schools. This led to the identification of a series of violations of adolescents' rights and interests, particularly the use of unlawful coercive measures against institutionalized youth.

145. For example, it was noted that in the special school in Chelyabinsk, young persons who violated the regulations were forbidden to go to the cinema, concerts and other cultural outings. The dining hall of the special school at Prosvet, in Kurgan oblast, had a "table of shame" reserved for young inmates guilty of various infractions. Certain inmates were responsible for maintaining discipline, a situation which gave rise to a certain amount of abuse on the part of the "leaders" appointed by the school administration. The school also had an illegal cell in which adolescent inmates who had committed disciplinary infractions were locked up.

146. The administration of the special school at Kurtamysh in Kurgan oblast illegally limited the number of times boarders could receive packages from their parents (to one a month). Social workers told parents that boarders were not allowed to correspond with their friends and acquaintances. Parents could not visit their children until they had been at the school for three months.

147. In the special school at Nyandom in Archangelsk oblast a system of rewards and punishments was established under which young people could be deprived of their holidays and forbidden to watch films or take part in other cultural activities organized on their days off. The inmates on health squad duty were required to check to see whether children had matches, cigarettes or tobacco in their possession.

148. As a result of the school administration's failure to take control of discipline by itself, the main cause of injury to inmates was fighting. The action taken by the procurator in response to this situation put an end to such incidents.

149. Officials who work with children must regularly be certified and take continuing education courses. In September 2002, for example, a nationwide seminar was organized jointly by the Ministry of Internal Affairs and the Office of the Procurator General on the topic of enhancing the efforts of the internal affairs services to prevent child abandonment and juvenile delinquency. Participants studied the legality of the measures taken by internal affairs personnel working in special institutions.

150. Article 8, paragraph 1, subparagraph 4, of the Federal Act on the fundamentals of the system for the prevention of child abandonment and juvenile delinquency contains a provision prohibiting the use of physical or mental violence or anti-pedagogical or humiliating measures and any limitation or banning of contact between minors and their parents or legal guardians, reduction of food rations or deprivation of recreation periods.

151. Under article 41 of the Constitution of the Russian Federation, everyone has the right to health protection and medical care. Officials who cover up incidents or situations capable of endangering life or health are liable to prosecution under federal legislation. In accordance with the fundamentals of federal health legislation (as set out, for example, in Federal Act No. 30-FZ of 2 March 1998), the State shall ensure that the health of all citizens is protected, regardless of sex, race, nationality, language, origin, property and official status, place of residence, attitude toward religion, convictions, membership of public associations, and also of other circumstances.

152. Under article 16 of Federal Act No. 103-FZ of 15 July 1995 on the pretrial detention of suspects and accused persons, arrangements for the medical treatment and health care of persons in pretrial detention facilities are set out in the internal regulations of pretrial detention facilities for suspects and accused persons.

153. Access of suspects and accused persons in pretrial detention facilities to medical care (including psychiatric treatment) is governed by the Ministry of Health and the Ministry of Justice and by the Federal Security Service. Under Federal Act No. 161-FZ of 8 December 2003, if the health of a suspect or accused person deteriorates or such an individual shows physical injuries, an examination is conducted promptly by the medical staff of the detention facility. The results of the examination are duly recorded and transmitted to the detainee in question. At the request of the detainee or the detainee's counsel, a copy of the medical report findings is provided. If the head of the facility or the person or body in charge of the criminal case so decides, or at the request of the suspect, accused person or counsel, the medical examination may be conducted by a physician from another facility. Should such a request be denied, an appeal may be lodged with the procurator or the court.

154. Pursuant to paragraph 16 of the internal regulations of the remand centres of the Ministry of Justice penal correction system, persons sent to such facilities are examined upon arrival by the physician assigned to the facility (or physician's assistant) and undergo a medical check-up. The results of this examination are recorded on a personal outpatient chart, and if any physical injuries are detected, a certificate attesting to their presence is prepared and signed by the staff on duty, the physician and the head of the police escort that brought the suspect to the facility following his or her arrest. In such situations further checking takes place, and if the results of this check confirm the presence of elements indicative of an offence, they are forwarded to the local procurator's office, who decides whether criminal proceedings should be initiated.

155. Persons whose ability to communicate is limited may appeal the relevant decisions in the courts.

156. In the course of inspections conducted by the procuratorial bodies in Kaliningrad oblast in April and May 2003, it was found that in virtually all pretrial and short-term detention facilities in the region there were no exercise yards, food rations had been reduced, the cell ventilation was inadequate or non-existent, detainees were not provided with sheets and blankets, there was no disinfectant and the lighting was poor. For all these reasons, the Internal Affairs Department of Kaliningrad oblast drew up a programme for the construction and renovation of short-term detention units for 2004-2008. A project to furnish those facilities with modern equipment and a project budget estimate were submitted to the oblast administrative authorities so that resources could be included in the regional budget; however, the authorities refused to finance the project.

157. The procurator's office in Sovietsk found that the delivery of food to persons in custody was being illegally restricted. The head of the internal affairs office in Sovietsk was informed of this irregular situation and put an end to it following an inspection.
