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## Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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**Information from the Russian Federation concerning the list of issues prepared by experts of the Committee against Torture scheduled for consideration at the Committee's thirty-seventh session during the submission by the Russian Federation of its fourth periodic report on implementation of the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

*Reference*: ***G/SO 329/3 (3)***

### Article 1

**1.** In the Russian Federation, dignity of the person is protected by the State and the degradation of persons is not permitted. No one may be subjected to torture, violence or other cruel or degrading treatment or punishment (article 21 of the Constitution of the Russian Federation).

Under article 15, paragraph 4, of the Constitution, universal rules and principles of international law and international treaties of the Russian Federation form part of its legal system. Where an international treaty establishes rules other than those provided by the country's law, the rules of the international treaty shall prevail.

Courts considering cases involving the use of violence have been advised that, when defining the term "torture", recourse must be had to definitions contained in a number of universally accepted instruments of international law, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinunder referred to as the "Convention").

Article 1, paragraph 2, of the Convention provides that the definition of the term "torture" given in the Convention is without prejudice to any international instrument which does or may contain provisions of wider application. In fact, the definition of torture in the Criminal Code of the Russian Federation is in certain respects somewhat broader than that in the Convention. While the Convention relates to torture "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity", the perpetrator of the offence covered by article 117 (Torture) of the Russian Criminal Code may be any person who has attained the age of 16, including officials.

Pursuant to Federal Act No. 162-FZ of 8 December 2003, article 117 of the Criminal Code, which, among other things, sets out penalties for ill-treatment involving the use of torture (para. 2 (c)), was extended with the following observation: "The term 'torture' in the present article and other articles of the present Code shall be taken to cover the infliction of physical or mental suffering for the purpose of coercing the victim to provide testimony or to perform other actions contrary to his or her will and also for the purpose of punishment or for other purposes."

The Russian Code identifies actions which come under the definition of "torture", inflicted by State officials or other persons acting in an official capacity, which incur criminal liability. Thus, under article 302 of the Code, the use of torture as a means of forcing persons to give testimony is categorized as an offence against justice. Pursuant to the stipulations of that article, coercion of a suspect, accused person, victim or witness to give testimony or an expert or specialist to provide certain conclusions or testimony through the use of threats, blackmail or other unlawful actions by the investigator or persons conducting the initial inquiry, or by any other persons acting with the express or tacit consent of the investigator or the person conducting the inquiry and involving the use of violence, harassment or torture, shall be punished by deprivation of liberty for periods of between two and eight years.

## Article 2

**2.** (a) In custodial facilities (which include police cells) treatment and prevention programmes and epidemic control measures are carried out in accordance with public health legislation. The authorities administering such facilities are required to observe health and safety standards to ensure that the health of suspects and accused persons is protected.

Under article 24 of Federal Act No. 103-FZ of 15 July 1995, the Pretrial Detention (Persons Accused and Suspected of the Commission of Offences) Act, if the health of a suspect or accused person deteriorates or such an individual exhibits physical injuries, an examination is conducted promptly by the medical staff of the detention facility.

The procedures for the access of suspects and accused persons to medical care (including psychiatric treatment), the arrangements for their custody in medical facilities and the enlistment of staff of such facilities to attend to their needs are determined by the Ministry of Health, the Ministry of Justice, the Federal Security Service and the Ministry of Internal Affairs.

Under Ministry of Justice Order No. 189 of 14 October 2005 ratifying the internal regulations for remand centres in the Ministry of Justice penal enforcement system, suspects and accused persons may seek medical attention from the medical officer of the remand centre

during the officer's daily round of the cells and, in the event of severe ailments, they may seek help from any employee of the centre. An employee from whom a suspect or accused person seeks help is obliged to take steps to ensure that the necessary medical assistance is provided.

Order No. 475 of 31 December 1999 of the Ministry of Health of the Russian Federation ratified the instructions for the provision of medical and health care to persons detained in temporary holding facilities of the internal affairs authorities.

Pursuant to rule 9 of the instructions, an initial medical check-up is administered to all new detainees during their first few days in the temporary holding facility, with a view to identifying persons suspected of carrying infectious diseases which could pose a risk to those around them and other sick persons needing urgent medical attention. Where complaints are filed by new detainees regarding health problems or other symptoms of illness (or injury), the facility's duty officer (the duty officer or the assistant duty officer assigned by the internal affairs authorities) must at once summon the facility's medical officer or the emergency medical team.

Internal regulations have been developed for custodial facilities which cover, among other things, the provision of medical and health care to suspects and accused persons.

Any suspect or accused person who exhibits physical injuries shall be promptly examined by the medical personnel assigned to the detention facility and the results of the examination are recorded in the prescribed manner. 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 defence lawyer, the medical examination may be conducted by staff from local medical establishments. Should such a request be denied, an appeal may be lodged with the procurator or the court.

In the event of the serious illness or death of suspects or accused persons, the authorities of the custodial facility shall promptly inform their relatives accordingly and shall also inform the procurator, who, acting either on his or her own initiative or pursuant to an application by the relatives of the sick person or the deceased, shall, where there are grounds to justify such action, conduct a check of this event.

If there are no means available in the custodial facility to provide urgent or specialized treatment (for example, involving surgery), the suspect or accused person may be transferred to a treatment facility of the penal enforcement system or to a local medical establishment. Where necessary, the authorities of the custodial facility, acting in response to a duly substantiated application, signed by the director of the relevant medical service, may invite specialists from local medical facilities under the Ministry of Health to provide specialized assistance.

Suspects or accused persons may request medical assistance from staff members of the temporary holding facility during the daily round of their cells. A staff member who receives such a request from a suspect or accused person is obliged to take the appropriate measures.

(b) Under article 96, paragraph 1, of the Code of Criminal Procedure of the Russian Federation, investigators, persons conducting initial inquiries or procurators must notify the immediate family of a suspect within 12 hours of his or her arrest, or contact other relatives of the suspect or allow the suspect to do so.

It is only possible to withhold such notification, with the consent of the procurator, when the exigencies of the initial inquiry necessitate keeping the act of detention secret, but, even in this event, notification may not be withheld in the case of under-age suspects (article 96, paragraph 4, of the Code of Criminal Procedure). In addition, from the moment of being taken into custody, suspects are entitled to the services of a lawyer, who may also inform the suspect's relatives of his or her detention.

When persons convicted to custodial sentences are sent down to serve their sentences, the administrative authorities of the remand centre are obliged, pursuant to article 75, paragraph 2, of the Code of Criminal Procedure, to notify a relative of the convicted person's choice of the facility where the sentence is to be served.

In accordance with rule 9 of the internal regulations for correctional facilities, ratified by order No. 205 of 3 November 2005 of the Ministry of Justice, no later than 10 days from the date of admission of convicted persons to correctional facilities, a notification shall be sent, in writing, by the convicted person to a relative of his or her choice indicating the postal address of the facility, a list of items and food products which convicted persons are not allowed to be brought or to be sent by post in parcels or packages and of the basic rules governing the procedure for correspondence, for the receipt and transmission of money orders, for the granting to convicted persons of passes to leave the correctional facility, for meetings and for telephone conversations.

Under rule 10 of the regulations, relating to the admission to the facility of convicted aliens and stateless persons who, prior to their detention, were permanently resident abroad, such notification shall also be transmitted to embassies or consulates representing the interests of these persons in the Russian Federation.

(c) The applicable criminal procedural law (article 92, paragraph 1, of the Code of Criminal Procedure) obliges the person conducting the investigation, the investigator or the procurator to inform suspects of their rights as provided by article 46 of the Code of Criminal Procedure. A record that the rights have been explained is made in the case file, which must be drawn up no later than three hours following the handover of the suspect to the authorities conducting the initial inquiry, the investigator or the procurator. The general regulations governing the conduct of investigations also stipulate the obligation to explain to witnesses their rights as enumerated in article 56, paragraph 4, of the Code of Criminal Procedure.

Under article 46, paragraph 4 (2), of the Code of Criminal Procedure, where suspects consent to make statements, they must be warned that such statements may be used as evidence in the proceedings, including in the event of their subsequent withdrawal of any such statements.

In respect of accused persons, in article 47, paragraph 6, the Code of Criminal Procedure stipulates that, at the time of their first questioning, the procurator, investigator or person conducting the initial inquiry explains to them the rights accorded under article 47 of the Code. In subsequent questioning, the rights established under article 47, paragraphs 4 (3), (4), (7) and (8), are explained again to the accused persons, if their questioning is being conducted without the participation of a defence lawyer.

Pursuant to article 172, paragraph 5, of the Code of Criminal Procedure, after verification of the identity of accused persons, the investigator reads out to them and to their legal counsel, if the counsel is participating in the criminal proceedings, the charges brought against them. In this process, the investigator explains the essence of the charges that have been brought and also the rights of the accused person provided under article 47 of the Code, a procedure which the accused person, his or her legal counsel and the investigator confirm by affixing their signatures to the charge-sheet, with an indication of the date and time at which the charges were read.

Finally, pursuant to article 11, paragraph 2, of the Criminal Code, where persons who have witness immunity consent to make statements, the person conducting the initial inquiry, the investigator, the procurator and the judge are obliged to warn such persons that their statements may be used as evidence during the criminal proceedings.

Pursuant to the provisions of rule 13 of the internal regulations for remand centres of the correctional system, as ratified by order No. 189 of 14 October 2005 of the Ministry of Justice, suspects and accused persons admitted to remand centres shall be informed of their rights and duties, of the rules governing their remand in custody, of the disciplinary requirements, of the procedure for the submission of requests, reports and complaints and of the possibility of receiving psychological assistance. This information may be provided to suspects and accused persons either in writing or orally.

Thereafter, information of this type is regularly provided to suspects and accused persons by radio, during visits to their cells by staff of the facility and at interviews with suspects and accused persons by the director of the facility or persons acting on his or her behalf. If they so request, suspects and accused persons shall be provided, for their temporary use, copies from the remand centre library of Federal Act No. 103-FZ of 15 July 1995, the Persons Suspected and Accused of the Commission of Offences (Remand in Custody) Act and the centre's internal regulations. Notices setting out the main rights and duties of suspects and accused persons held in remand centres are affixed to the wall of each cell.

(d) Under the Code of Criminal Procedure, suspects and accused persons are entitled to the assistance of a lawyer from the time they are remanded in custody or from the moment criminal proceedings are instituted against them (article 49, paragraphs 3 (2) and (3), of the Code of Criminal Procedure). Such meetings take place in private and are confidential; there is no limit to their frequency or duration.

If the suspects themselves or persons acting on their behalf do not seek the services of a lawyer, the participation of a lawyer is secured by the person conducting the initial inquiry, the investigator or the procurator (article 51 of the Code of Criminal Procedure).

Only suspects themselves have the right to decline the services of a lawyer. The law stipulates that refusal of the services of a lawyer is not binding on the person conducting the initial inquiry, the investigator, the procurator or the courts, nor does it preclude the suspect from seeking the services of a lawyer at a later stage in the proceedings. Several lawyers may be engaged and provision is also made for lawyers to be replaced where necessary (articles 50 and 52 of the Code of Criminal Procedure).

Pursuant to article 18 of the Persons Suspected and Accused of the Commission of Offences (Remand in Custody) Act, suspects and accused persons shall be granted meetings with their legal counsel from the moment they are remanded in custody. These meetings shall take place in private and shall be confidential; there is no limit to their frequency or duration except as provided by the Code of Criminal Procedure. The right of lawyers to meet their clients as often and for as long as they wish is underpinned by the provisions of article 6, paragraph 3 (5), of Federal Act No. 63-FZ, the Work of Lawyers and the Legal Profession in the Russian Federation Act, which grants lawyers that right regardless whether their clients are suspects or accused persons.

Under rule 145 of the internal regulations for remand centres of the penal correction system, ratified by order No. 189 of 14 November 2005 of the Ministry of Justice, meetings between suspects or accused persons and their lawyers shall be held in private without a partition between the participants and with no limitation as to their duration or frequency. The meetings may take place in conditions which enable staff of the remand centres to see the suspect or accused person and the lawyer but without being able to hear what they say. Under rule 147 of the regulations, such meetings may be terminated prematurely in the event of an attempt to hand over to a suspect or accused person any prohibited objects, substances or food products or an attempt by persons present at the meeting to impart information which might hinder efforts to establish the truth in the criminal proceedings or might be conducive to the commission of further offences.

(e) Under article 21, paragraph 2, of the Constitution, no one may be subjected to torture, violence or other cruel, degrading or inhuman treatment or punishment. Pursuant to article 15, paragraph 1, of the Constitution, the Constitution of the Russian Federation shall have supreme legal force, have direct effect and be applicable throughout the Federation. Laws and other legal statutes enacted in the Russian Federation may not be at variance with the Russian Constitution.

This constitutional principle is also reflected in the Russian Code of Criminal Procedure. Article 9 of the Code prohibits the performance of acts or the adoption of decisions, during criminal proceedings, that denigrate the honour of the persons participating in those proceedings or the application of treatment that degrades their human dignity or endangers their life and health, nor may any party to criminal proceedings be subjected to violence, torture or other cruel, inhuman or degrading treatment or punishment.

The eradication from the practice of custodial institutions of torture and other cruel, inhuman or degrading treatment or punishment and of any actions designed to cause physical or mental suffering is an axiomatic principle of law enforcement work.

Since torture is punishable as a criminal offence, Russian law does not provide for any exceptional circumstances justifying the use of torture.

The Criminal Code of the Russian Federation contains a legal rule, in article 42 (Deliberate offences), stipulating that an order given by a superior officer in the armed forces or by a senior employee in the civil service system cannot serve as justification for torture:

"Persons committing deliberate offences in carrying out orders or instructions which they know to be unlawful shall be held criminally liable in the usual manner. Criminal liability may not be incurred by failure to perform orders or instructions known to be unlawful."

In accordance with the requirements of article 37, paragraph 3, of Federal Act No. 53-FZ of 28 March 1998, the Military Conscription and Military Service Act, and also of articles 37-40 of the internal service statutes of the armed forces of the Russian Federation, commanding officers (superiors) are prohibited from giving orders (directives) or instructions which are unconnected with the performance of obligatory military service or intended to breach laws of the Russian Federation.

Commanding officers (superiors) who issue such orders (directives) or instructions shall be prosecuted in accordance with the law of the Russian Federation.

**3.** Federal Act No. 18-FZ of 22 April 2004 amending the Code of Criminal Procedure of the Russian Federation amends and supplements article 100 of the Code of Criminal Procedure. It adds a new paragraph to the article, pursuant to which, in certain circumstances, the period between the application of a measure of restraint against a suspect and the charging of the suspect may be extended to 30 days.

Currently, this article of the Code of Criminal Procedure comprises two paragraphs. The first establishes general rules for the selection of measures of restraint and for their imposition on persons suspected of the commission of an offence. The second sets out exceptional rules enabling suspects to be held for up to 30 days before being charged.

Before a decision is passed on the specific measure of restraint to be applied against a person, the investigator (person conducting the initial inquiry or other relevant person) is obliged to establish precisely which of the circumstances enumerated in article 99 of the Code of Criminal Procedure is attested (and which are not attested) and their exact nature.

The following circumstances are taken into consideration in the legislation:

(a) Seriousness of the offence;

(b) Information about the suspect's character;

(c) Suspect's age;

(d) Suspect's state of health;

(e) Suspect's family status;

(f) Suspect's occupation;

(g) Suspect's fitness to work;

(h) Whether or not the suspect is employed and resident in the place where the initial investigation is being conducted;

(i) Whether or not the suspect has any war wounds, State awards or honorary titles;

(j) Whether or not the suspect has a criminal record (is a repeat offender); the period of time he or she has spent serving sentences in custodial facilities; the period of time he or she has been at liberty since being released from custody;

(k) Suspect's personal particulars (address, employment, hobbies, etc.);

(l) Details from the suspect's life history (for example, the suspect might have been involved in clean-up work following the accident in Chernobyl or the earthquake in Armenia or in combat operations in Chechnya);

(m) Suspect's social and property status.

Under the new Code, remand in custody as a measure of restraint may only be imposed by a court order against a person suspected or accused of the commission of an offence for which the law prescribes punishment of over two years' deprivation of liberty, when there is no possibility of applying another, milder measure of restraint. This measure can only be applied for offences punishable by less than two years' deprivation of liberty in certain exceptional cases, which include:

(a) When the suspect or accused has no place of residence within the Russian Federation;

(b) When his or her identity cannot be established;

(c) When he or she is in breach of a previously imposed measure of restraint;

(d) When he or she has attempted to evade the investigative authorities or the court;

(e) When he or she is likely to continue engaging in criminal activity;

(f) When he or she might threaten a witness or other parties to the criminal proceedings, destroy evidence or in some other manner impede the course of justice.

As for guarantees ensuring compliance with obligations under the Convention in the course of counter-terrorism operations, article 1 of the Federal Counter-Terrorism Act of 6 March 2006 establishes as the legal basis for counter-terrorism activities the Constitution of the Russian Federation, universally recognized principles and rules of international law, international treaties of the Russian Federation, the Federal Act itself and other federal acts, laws and regulations enacted by the President of the Russian Federation, laws and regulations of the Government of the Russian Federation, and also laws and regulations of other federal government authorities enacted pursuant to those laws and regulations. In this way, the act directly invokes the corresponding international obligations of the Russian Federation.

According to available statistics, over the period 2000-2004, one person was detained by the military procuratorial authorities on suspicion of terrorism (during the court's consideration of this case, this person's activities were reclassified from article 205, paragraph 2 (c), to article 213, paragraph 1, of the Criminal Code).

**4.** When persons are detained on suspicion of the commission of offences, their details are entered by the law enforcement authorities in special registers, the keeping of which is a mandatory requirement under departmental rules and regulations.

Arrivals and departures of individuals admitted to the temporary holding facilities of the internal affairs authorities are duly logged in special registers, the keeping of which forms one of the duties of the centre's duty officer, as stipulated by the order of 7 March 2006 of the Ministry of Internal Affairs of the Russian Federation ratifying the rules of procedure of temporary holding facilities for suspects and accused persons remanded by the internal affairs authorities, and of escort units for the guarding and transport of suspects and accused persons.

Administrative detention may be applied in exceptional cases when the circumstances of the case, including the offender's character, render the application of other forms of administrative punishment provided in the relevant article inadequate. Criteria for the imposition of administrative detention are provided in specific articles of the Special Section of the Russian Code of Administrative Offences. Administrative detention is ordered by the judge (article 3.9 of the Code of Administrative Offences). The legal argument behind such detention is that the offender must be kept in isolation from society in facilities expressly designed for this purpose. Such facilities include special reception centres run by the internal affairs authorities for the detention of persons subject to administrative detention. The detention regime provides one of the means of achieving the purposes of this form of administrative punishment: it ensures guarding and round-the-clock supervision of the detainees, thereby preventing them from committing further offences. Administrative detention may not be used against pregnant women, mothers with children aged under 14, persons under the age of 18 and persons with category I and II disabilities. These exclusions are made for humanitarian considerations.

Persons who have committed administrative offences may not be isolated from society by being placed in prisons, penal colonies or other forms of correctional colonies.

**5.** During the first few years following the entry into force of the Code of Criminal Procedure of the Russian Federation, which amended the procedure for the imposition of custodial sentences, the number of persons held in pretrial custody dropped by comparison with previous years. Subsequently, however, the number of accused persons held in such custody started to rise every year, largely owing to the increase in reported offences. Thus, while in 2003 189,251 suspects were remanded in custody, in 2005, this figure rose to 222,089.

Further details of the numbers of suspects and accused persons held in pretrial custody are attached.

**6.** Under the Russian Federal Procuratorial Service Act, it is one of the duties of the procuratorial service to oversee compliance with the law in facilities where suspects and accused persons are held in custody: performance of this duty forms an integral part of State measures to strengthen legality and to promote law and order in custodial facilities and to ensure that the conditions in such facilities meet international standards.

Supervision of compliance with the law in detention facilities extends both to ensuring that the detention of persons remanded in custody and held in pretrial detention is legal and to ensuring that the rights and duties of detainees and persons remanded in custody and the procedure and conditions for their detention established by the legislation of the Russian Federation are being duly upheld.

Procurators oversee all facilities used for the custody of persons suspected and accused of the commission of offences, irrespective of the category of persons detained within them.

In overseeing compliance with the law, procurators have the right to visit custodial facilities at any time; to question detainees and persons held in custody; to ensure that orders, instructions and decisions by the administrative authorities of custodial facilities are consistent with the law, to challenge those that are not and to seek explanations from the officials responsible; to set aside disciplinary measures which have been imposed in breach of the law against persons held in custody and to order the release of detainees from punishment cells and from solitary confinement.

Procurators are obliged to release forthwith any person who has been unlawfully detained or who has been remanded in custody for a period exceeding that prescribed by law.

With a view to uncovering cases of the unwarranted detention and conviction of citizens and of violations of the procedure, conditions and legally established periods for remand in custody, by order No. 68 of 26 December 1997 the Procurator-General of the Russian Federation required procurators at all levels to conduct checks of pretrial detention centres at least once every month and to take immediate measures to restore the infringed rights of citizens, to release forthwith persons unlawfully held in detention and to punish those guilty of violating the law.

Procurators monitor compliance with the legal requirements relating to the right of persons suspected and accused of the commission of offences to submit requests and complaints to the central government authorities, to the Human Rights Ombudsman, to local authorities and to voluntary associations.

As has been demonstrated by the procuratorial checks carried out, the main problems relating to remand and detention facilities remain the overcrowding of a number of remand centres, the failure by many establishments to meet the prescribed standards for living conditions and medical and health services and recurrent violations of due process and civil rights.

A system of in-house human rights monitoring in the penal correction system is currently being set in place. This will involve the chief inspectorate of the penal correction system, which conducts both routine and spot checks of penal institutions and authorities in the system; and also a special human rights monitoring division of the Organizations and Inspectorate Branch of the Federal Penal Correction Service of the Russian Federation, which will conduct targeted human rights monitoring in the custodial facilities. A special post of assistant director responsible for observance of human rights in the penal correction system has been created in each local office of the Federal Penal Correction Service in the Russian Federation. Pursuant to paragraph 5 (2) of order No. 213 of 3 September 2003 of the Ministry of Justice, the assistant director's duties shall include direct responsibility for inspecting correctional institutions and remand centres with

a view to identifying possible violations of the rights of accused and convicted persons. Since the assistant director reports directly to the head of each local office in the federal correctional system, their impartiality in the conduct of such checks is assured.

At the same time, monitoring is carried out by the Ministry of Justice itself. The institutions and authorities of the Federal Penal Correction Service of the Russian Federation are also subject to judicial monitoring.

Now that the Russian Federation has ratified a large number of international human rights treaties, its detention facilities are regularly visited by representatives of international human rights organizations.

Since 1998, regular inspections have been made of custodial facilities in the Russian Federation by delegations from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Delegations from the Committee have conducted 14 inspections of detention conditions in facilities where people are isolated from society and which fall under the responsibility of the Ministry of Internal Affairs, the Federal Security Bureau, the Federal Frontier Service, the Ministry of Defence, the Ministry of Health and other institutions of the penal correction system. In the light of the findings of those inspections, the Federal Penal Correction Service is making the necessary efforts to remedy the deficiencies identified.

Amendments have been made to the country's laws and regulations with a view to improving the situation of suspects and accused and convicted persons. In particular, efforts have been made to improve the dietary and living standards in line with the provisions of order No. 85 of 9 June 2005 of the Ministry of Justice, government decision No. 205 on minimum rations and material provisions for persons convicted to deprivation of liberty and on nutritional standards and living conditions for persons suspected and accused of the commission of offences and held in remand centres of the Federal Penal Correction Service and the Federal Security Service of the Russian Federation in times of peace and order No. 125 of 2 August 2005 of the Ministry of Justice, ratifying nutritional standards and living conditions for persons sentenced to deprivation of liberty and also for persons suspected and accused of the commission of offences and held in remand centres of the Federal Penal Correction Service in times of peace.

These provisions establish minimum dietary standards for suspects and accused and convicted persons. They stipulate that convicted persons engaged in heavy labour and work involving hazardous conditions, convicted persons performing labour and measuring more than 1 m 90 in height and minors, pregnant women and women living with their children in remand centres shall receive supplementary rations. Minimum material standards and living conditions have been established for convicted persons, suspects and accused persons. Certain categories of such persons are also entitled to enhanced material standards and living conditions.

Draft federal act No. 11807-3 of 16 September 2003 on public human rights monitoring in custodial institutions of a coercive nature and on efforts by voluntary associations to improve their work was passed by the State Duma at its first reading. Pursuant to government instruction No. P4-9927 of 25 April 2006, draft amendments by the Russian Government to the draft act in question have been submitted to the Government.

The Voluntary Associations and Religious Organizations Committee of the State Duma of the Federal Assembly of the Russian Federation is currently engaged in finalizing the draft act for its second reading.

**7.** In order to improve custodial conditions for women serving sentences in correctional institutions of the penal correction system, over the period 1999-2006 the following amendments and additions have been made to the criminal enforcement laws of the Russian Federation:

- The concept of actual time served has been introduced, in cases where the enforcement of custodial sentences is deferred for pregnant women and women with young children (see article 82 of the Criminal Enforcement Code of the Russian Federation and Federal Act No. 162-FZ of 8 December 2003 amending and supplementing the Criminal Code of the Russian Federation);

- The age limits set for young children when granting deferral of sentences for pregnant women and women with young children has been raised from 8 to 14 (see article 82 of the Criminal Enforcement Code and Federal Act No. 25-FZ of 9 March 2001 amending and supplementing the Criminal Code of the Russian Federation, the Code of Criminal Procedure of the RSFSR, the Criminal Enforcement Code of the Russian Federation and other laws and regulations);

- All restrictions on the receipt by women of parcels, hand-delivered packages and printed matter have been lifted (see article 90 of the Criminal Enforcement Code and Federal Act No. 25-FZ of 9 March 2001);

- The amount of pregnancy and maternity allowances paid to women serving sentences has been set without regard to their performance of compulsory labour or other circumstances (see article 98 of the Criminal Enforcement Code and Federal Act No. 161-FZ bringing the Code of Criminal Procedure of the Russian Federation and other laws and regulations into line with the Federal Act amending and supplementing the Criminal Code of the Russian Federation);

- Standards have been introduced for the provision of specialist medical assistance to pregnant women, women in childbirth and women who have recently given birth serving sentences (see article 100 of the Criminal Enforcement Code and Federal Act No. 161-FZ of 8 December 2003);

- It is now stipulated that women serving sentences who have children aged under three housed in the children's home of the correctional facility and women serving sentences who are exempt from the performance of work for reasons of pregnancy and childbirth may not be placed in punishment cells, solitary confinement or other types of rigorous punishment facilities (article 117 of the Criminal Enforcement Code and Federal Act No. 161-FZ of 8 December 2003);

- Convicted women may not be placed in strict-regime prisons (article 78, paragraph 4, of the Criminal Enforcement Code and Federal Act No. 28-FZ of 1 April 2005 amending the Criminal Enforcement Code of the Russian Federation);

- Provisions have been introduced to defer the serving of sentences by pregnant women sentenced to compulsory labour, to deduction of earnings or to restriction of liberty (articles 42, 49 and 175 of the Criminal Enforcement Code and Federal Act No. 12-FZ of 9 January 2006 amending the Criminal Enforcement Code of the Russian Federation);

- Standards have been introduced for the material welfare of women serving sentences in correctional colonies, prescribing the issuance to such women of leather boots or shoes or pumps. In place of leather boots, shoes and pumps, it is permitted to issue boots with fabric uppers, dress leather ankle-boots or trainers (order No. 85 of 9 June 2005 of the Ministry of Justice).

Procuratorial bodies are continuing their efforts to root out the use of unlawful physical coercive measures against all categories of detainees in remand centres and correctional facilities, including women. When staff members of a procurator's office inspect remand centres and prisons to ensure compliance with the law, they check all allegations raised by persons held in remand and serving sentences or by their defence lawyers or emanating from other sources, concerning the perpetration of abuses by prison staff, including the use of sexual violence against women held in remand and serving sentences. Where cases of action ultra vires, abuse of authority or unlawful use of force are brought to light, criminal proceedings are opened and the perpetrators are prosecuted.

Preventive work is conducted to ensure that no acts of sexual violence are perpetrated in custodial facilities. Persons showing a proclivity to such abusive behaviour are identified, registered as needing special attention and placed under stepped-up supervision. No sexually motivated offences have been registered or complaints of sexual harassment filed in the women's correctional colonies of the Federal Penal Correction Service of the Russian Federation.

**8.** In order to improve human rights work to combat trafficking in persons in the Russian Federation, organizational work has commenced on the creation of special units within the internal affairs authorities to root out abuses of this sort and to combat human rights violations involving the sexual exploitation of women. Such units are being established primarily in the major metropolitan centres (Moscow and St. Petersburg), and also in other large cities.

Following the criminalization in 2003 of trafficking in persons and the use of slave labour (articles 127, paragraphs 1 and 2, of the Criminal Code), there has been a substantial increase in the number of reported instances of trafficking in persons and of their involuntary exploitation. Thus, while only 18 offences falling under article 127, paragraph 1, of the Criminal Code (Trafficking in persons) were brought to light in 2004, in 2005, no fewer than 60 such offences were identified, added to a further 20 offences falling under article 127, paragraph 2, of the Criminal Code (Use of slave labour). Undoubtedly, the real number of offences involving various forms of trafficking in persons and the forced exploitation of persons in the Russian Federation is in fact much higher. Evidence of this can be found in media materials, expert opinions and the writings of analysts and members of non-governmental organizations involved with issues relating to the social rehabilitation of the victims of trafficking. Accordingly, there is every reason to believe that there is high potential for the commission of such offences.

Further evidence of this may be found in the figures relating to reported offences closely related to trafficking in persons (articles 240 of the Criminal Code - Recruitment into prostitution, 241 - Organizing prostitution activities - and a number of other articles).

Thus, in 2005, more than 360 instances of persons being recruited into prostitution or coerced into continuing such activities were reported and 257 victims of such offences were identified. For the purposes of comparison, in 2003, prior to the introduction of the corresponding amendments to article 240 of the Criminal Code, a mere 86 such cases were identified and only 15 victims brought to light.

In 2005, there were 2,164 - and in 2004, 2,433 - recorded offences involving the unlawful circulation of pornographic materials (article 242 of the Criminal Code).

In all, 54 offences involving the preparation and circulation of pornographic materials containing images of persons known to be underage (article 242.1 of the Criminal Code) were brought to light in 2005, some 80 per cent more than in the previous year, and one fourth of these - 13 offences - involved the use of the Internet.

In 2005, more than 1,000 offences involving the organization of prostitution, including the keeping of brothels, were registered (article 241 of the Criminal Code).

Particular concern is caused by the dangerous phenomenon of forced exploitation of minors, in particular, small children, which is on the increase.

Thus, while in 2003 more than 3,800 children were the victims of violent offences of a sexual nature, and 5 of those the victims of sexually motivated murders, in 2005 some 5,000 children were the victims of such assaults and 9 of them were murdered.

The proportion of minors among the victims of all offences measured some 7 per cent in 2005, while more than 11 per cent of the victims of violent offences and nearly half the victims of all sexual offences were minors. In addition, every fourth victim of rape crimes was a minor.

Significant progress has been made over the recent period in the preparation of a federal act to counter trafficking in persons. In particular, two parliamentary hearings have been held over the reporting period to consider the draft act. The act is scheduled for submission to the State Duma for consideration and adoption in the near future, following its finalization in parliamentary commissions.

**9.** Over recent years, a large number of criminal cases involving criminal offences and wrongdoing in such matters as insubordination, breach of the rules of conduct regarding relations between military servicemen, commonly referred to as “non-regulation” behaviour, and the practice of “hazing” (article 335 of the Criminal Code) have been processed by the military courts in the Russian Federation. This is evidence of the active efforts now being made by the military procurators to uncover such offences, to investigate them effectively and to refer them to the courts for prosecution.

In view of the grave social dangers posed by such activities, a considerable number of military servicemen have been subject to criminal prosecution for the commission of these offences. Thus, over the last five years (2001-2005), of 66,224 military servicemen receiving convictions, 21,163 - or 32 per cent - were convicted by military courts for offences in this category. While the rate of convictions of military servicemen has increased overall by 12 per cent, the increase in convictions for offences of this nature is as high as 38 per cent. Offences involving violations of the rules of procedure governing relations between military servicemen at equivalent rank constitute 50 per cent of all offences handled by the military courts.

In 2005, 2,308 military servicemen with command responsibilities - generally speaking, non-commissioned officers (lance-corporals, sergeants and warrant officers) and servicemen performing contractual military service and 2,685 rank and file servicemen who had served more than one year (known as “senior soldiers”) received convictions for offences in this category.

The number of commissioned officers receiving convictions for these offences also rose to 657 (an increase of 102 per cent by comparison with 2001), while convictions under other articles increased by only 32 per cent over 2001 levels.

The penalties provided under article 335 of the Code are fairly severe. Accordingly, the offence of breaching the rules of procedure governing relations between military servicemen at equivalent rank through the use of humiliating or degrading treatment or harassment of the victim or involving violence may incur the punishment of detention in military disciplinary units for periods of up to two years or deprivation of liberty for periods of up to three years; the same acts committed in respect of two or more persons, or by a group of persons, with the use of weapons or involving the infliction of moderate harm to health, is punishable by deprivation of liberty for periods of up to five years; if the said actions involved serious consequences a punishment in the form of deprivation of liberty for up to 10 years may be imposed.

In order to combat crime in the military and to stamp out the practice of hazing, a range of measures is being adopted involving both the preparation of legal regulations and various preventive approaches.

Work to prevent offences of this nature is legally underpinned by the following instruments: the Constitution of the Russian Federation, the Procuratorial Service Act, the Defence Act, the Military Conscription and Military Service Act, the Military Servicemen (Status) Act, the Code of Criminal Procedure and the Criminal Code of the Russian Federation, the National Security Outline for the Russian Federation, as ratified by presidential decree No. 24 of 10 January 2000, the Military Doctrine of the Russian Federation, ratified by presidential decree No. 706 of 21 April 2000; the combined military statutes of the armed forces of the Russian Federation, ratified by presidential decree of 14 December 1993; orders and instructions of the Procurator-General, the Deputy Procurator-General and the chief military procurator and a number of other rules and regulations.

One major statutory instrument enacted with a view to stepping up crime prevention is instruction No. 52/20 of 28 August 2001 of the Procurator-General of the Russian Federation, organizing oversight of compliance with the law, so as to prevent criminal activities, pursuant to

which the procuratorial authorities are recommended to take specific steps to prevent criminality, with the aim of ensuring proper implementation of the rules of criminal law, criminal procedural law, criminal enforcement law and other areas of legislation.

The combined statutes of the armed forces of the Russian Federation contain regulations governing crime prevention activities by the military authorities. In particular, the internal service regulations of the armed forces of the Russian Federation, ratified by presidential decree of 14 December 1993, stipulate that regimental commanders are obliged to take steps to prevent offences and untoward incidents and, in the events of their occurrence, to report them to their own commanding officer, and also to notify the military procurator, to institute criminal proceedings and, where the rules set out in the military statutes governing relations between military servicemen have been breached, personally to take part in the investigation of cases. The duties of deputy regimental commanders responsible for re-education work include taking steps to strengthen military discipline and good conduct, to prevent rights violations among military personnel, to uphold safety conditions in military service, to implement measures to ensure healthy moral standards in military communities and to maintain records of all offences, incidents and disciplinary misdemeanours (arts. 90, 91, 97 and 98).

A wide range of organizational and administrative measures are undertaken by the military procuratorial authorities to prevent breaches of the statutory regulations governing military relations. These include planning, analytical work, awareness-raising, discipline in keeping records and filing reports, coordination work and liaison with the law-enforcement authorities, military courts and military command, measures to inform and instruct military servicemen about the law and work with the public and the media.

A system of confidential telephone helplines has been installed and is successfully operating throughout the Russian armed forces, together with other arrangements to ensure the safety of the victims and witnesses of offences who come forward to report those offences. The arrangements are also designed to preclude any use of moral pressure against such victims and witnesses.

In 2005, the number of offences registered by the military procurators involving either breaches of the regulations governing relations between military servicemen or striking with the fist or hand dropped by 6.9 per cent (in all, 3,820 such cases were reported) and 1.4 per cent (2,668 cases), respectively. Some 7,400 servicemen were the victims of these offences, a drop of 12.5 per cent from the 2004 total; there were 62 fatalities. There was a drop too in the number of cases of servicemen being driven to suicide - from 70 in 2004 to 52 in 2005 (a drop of 25.7 per cent). A total of 550 officers were convicted for striking subordinates.

In 2005 the military procurators uncovered 19 cases in which commanding officers had deliberately failed to register breaches of the regulations governing relations between servicemen (i.e., hazing).

An analysis of the situation regarding the preliminary investigation of criminal offences of this nature, including cases in which officers have permitted the striking of servicemen and other breaches of the rules on the use of violence, shows that more than 90 per cent of such criminal offences are referred to the courts for trial. Pursuant to article 158, paragraph 2, of the Code of Criminal Procedure, reports are filed of procuratorial action taken in response to all

criminal offences in this category, with a view to ensuring that legal proceedings are instituted against persons whose actions abetted either the perpetration or the concealment of an offence. In all criminal cases, the courts impose penalties prescribed by law on the culprits.

## Article 3

**10.** Federal Act No. 4528-1 of 19 February 1993, the Refugees Act, sets out the grounds on which persons might be recognized as refugees in the Russian Federation and the procedure for such recognition, and also provides economic, social and legal safeguards protecting the rights and lawful interests of refugees in accordance with the Russian Constitution, universally recognized rules and principles of international law and the international treaties of the Russian Federation.

Under that federal act, persons over the age of 18 who declare their wish to be recognized as refugees are obliged, either in person or through their duly appointed representative, to submit a written application: first, to a diplomatic mission or consular office of the Russian Federation outside the country of which they are nationals, if they have not yet entered the territory of the Russian Federation; second, to an immigration office of the federal migration service and, if no such office is available, to the border control office of the federal security authorities at the border crossing point where, in accordance with the law of the Russian Federation and international treaties of the Russian Federation, they crossed the State frontier into the Russian Federation; third, to the border control authorities of the federal security authorities, to the local office of the federal internal affairs authorities, or, in the event of an involuntary and unlawful crossing of the State frontier, to the local office of the federal migration service either at the frontier crossing point or at another place, within 24 hours of the person's entry into the Russian Federation; and, fourth, to the local office of the federal migration service at the place in the Russian Federation where they are legally resident.

Decisions on the granting of certificates recognizing refugee status or the peremptory rejection of applications for such status are taken on the basis of questionnaires submitted by the applicants and checklists completed during one-on-one interviews, and also in the light of efforts to verify the accuracy of information provided about the given applicants and about their accompanying family members, to ascertain the circumstances of their arrival in the Russian Federation and the basis on which they are resident in the country, following a thorough analysis of the reasons and circumstances set out in the application. Additional interviews may be held, if deemed necessary for the purposes of verifying information submitted by the applicants.

Decisions to award, to refuse or to withdraw refugee status and decisions on the lapsing of such status are taken by government authorities of the federal migration service or its local offices, in the light of a careful scrutiny of applications and consideration of their merits.

The decisions and actions (or omissions) of federal executive authorities, of the executive authorities of the constituent entities of the Russian Federation and of local authorities and officials which relate to compliance with the federal act may be challenged with a higher authority or in the courts.

Responsibility for the expulsion (deportation) of persons from the Russian Federation, in accordance with the Federal Refugees Act, other federal acts and other laws and regulations of the Russian Federation and international treaties, rests with federal executive authorities entrusted with the task of monitoring and oversight in migration matters and their local offices, acting in consultation with the federal executive internal affairs authorities and their local offices.

Persons applying for refugee status, granted or stripped of such status or whose refugee status has lapsed may not be returned against their will to the country of their citizenship (or where previously they were normally resident) if the circumstances giving rise to their justifiable apprehensions of becoming the victims of persecution on the grounds of race, religious belief, citizenship, ethnic background, affiliation to one or other social group or political views remain in place and if they are outside the country of their citizenship and are either unable or unwilling, in the light of those apprehensions, to invoke the protection of that country or, in the case of stateless persons, if they are outside the country of their normal residence and are unable or unwilling to return to that country for those same apprehensions.

**11.** The assumption contained in this question that, under the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 22 February 1993 (hereunder referred to as the “Minsk Convention”), persons who are to be extradited do not have the right, during the period that they are held in detention, to submit applications for asylum, is unfounded.

Pursuant to article 56, paragraph 1, of the Minsk Convention (Obligation of extradition), the contracting parties undertake to extradite certain persons found on their territories to one another upon request for the purpose of criminal prosecution or for the serving of sentences handed down by courts: in other words, the persons so extradited have either been accused or convicted.

Under Russian law, the procedural rights of accused and convicted persons held in custody, including for the purposes of extradition, are governed by the Code of Criminal Procedure of the Russian Federation, in particular, its article 47, on accused persons. This article sets out the rights of accused and convicted persons, including the right to make applications.

Accordingly, persons held in custody in the Russian Federation for the purposes of extradition have the right to submit any application, including applications for asylum.

It also follows from this that, if foreign citizens or stateless persons have been taken into custody, they may at any time (including when held in detention awaiting extradition) submit applications for political asylum.

Article 63 of the Russian Constitution stipulates that persons who are subject to persecution for their political beliefs or to prosecution for actions (or omissions) not recognized as offences in the Russian Federation, may not be extradited from the Russian Federation to other States.

Pursuant to rule 2 of the regulations on the granting of political asylum by the Russian Federation, ratified by presidential decree of 21 June 1997 (as revised in the presidential decree of 1 December 2003), such asylum is granted to persons seeking asylum or protection from persecution or from the real threat that they might be the victims of persecution in the country of their citizenship or of their usual residence for social and political activities and views which do not run counter to democratic principles recognized by the international community and to the rules of international law.

At the same time, rule 5 of the regulations contains the reservation that political asylum is not granted by the Russian Federation if the person seeking such asylum has entered from a country with which the Russian Federation has an agreement waiving the requirement for visas for persons crossing their frontiers (without prejudice to the right of that person to asylum in accordance with the Federal Refugees Act).

Accordingly, citizens of most of the countries which are party to the Minsk Convention (the States members of the Commonwealth of Independent States) are unable to apply for political asylum in the Russian Federation, since their countries have a visa-waiver agreement with the Russian Federation. The citizens of States with which the Russian Federation has such an agreement may, however, if they wish to obtain asylum in the Russian Federation, apply for the status of refugees.

In accordance with articles 1 and 10 of the Federal Refugees Act of 19 February 1993, persons who are not citizens of the Russian Federation and submit applications for the status of refugee or who have been recognized as refugees or whose refugee status has been revoked or lapsed, may not be returned against their will to the territory of the State of their citizenship (or their usual residence) if the circumstances pursuant to which, because of well-founded apprehensions, they are unable or unwilling to return to that State remain in place.

It proceeds from the above that the Russian Constitution, the Code of Criminal Procedure and the regulations on the granting of political asylum by the Russian Federation, ratified by the President of the Russian Federation, accord the right of persons taken into custody for the purposes of extradition to submit applications for asylum.

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stipulates that “No State Party shall expel, return (‘refouler’) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”

The 1993 Minsk Convention contains no such provisions, however. The Convention places no direct prohibition on the extradition of persons to countries in which they might be subjected to torture and to the Code of Criminal Procedure of the Russian Federation. Article 464, paragraph 1, of the Russian Code of Criminal Procedure stipulates, however, that extradition is not permitted if, according to a ruling by a Russian court which has entered into force, there are impediments to such extradition under the law and international treaties of the Russian Federation.

**12.** Following the entry of the Russian Federation into the Council of Europe and its signing of Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty, the death penalty has not been applied in the Russian Federation since 1996.

The Constitutional Court of the Russian Federation, whose rulings have both direct and indirect effect, indicated in its resolution of 2 February 1999 that, pending the entry into force of an appropriate federal act upholding the right of accused persons to the consideration of their cases by jury courts, the death penalty could not be applied, irrespective of whether the case had been considered by a jury court or by a court of another composition.

If communications are received from foreign countries requesting the extradition of persons accused of the commission of offences which, under the law of the requesting country, carry the death penalty, the Office of the Procurator-General of the Russian Federation - the body in the Russian Federation authorized to consider requests for extradition - asks for written assurances from the requesting State that the death penalty will not be applied to the person concerned in the event of his or her extradition.

Following a general rule contained in bilateral and multilateral treaties of the Russian Federation setting out the conditions and procedure for the consideration of extradition requests, when submitting requests for extradition, the requesting State is obliged to attach a certified translation of the full text of the article of criminal law under which the person whose extradition is being requested has been charged or convicted.

After reviewing the text of the article of criminal law submitted by the requesting country, the Office of the Procurator-General of the Russian Federation determines whether or not the punishments provided under the article include the death penalty.

In the event that the death penalty is included among the punishments, in view of the fact that the Russian Federation has placed a moratorium on this form of punishment, the Office of the Procurator-General of the Russian Federation requests the competent authority of the requesting country to submit written assurances that this punishment will not be applied to the person in question in the event of his or her extradition.

If the response from the requesting country does not contain any assurances that the death penalty will not be applied to the person whose extradition is sought, the request is refused.

In addition, article 69 of the Minsk Convention provides for arrangements to monitor the outcome of criminal prosecutions or the enforcement of sentences. This article of the Convention establishes that the contracting parties shall inform one another of the results of criminal proceedings against the person whom they are extraditing and that, if the requesting country should so request, it shall be sent a copy of the final judgement.

**13.** Pursuant to article 18.8 of the Code of Administrative Offences of the Russian Federation, foreign citizens or stateless persons who breach the rules governing visits to (residence in) the Russian Federation, in particular, by violating the established rules for entry into the Russian Federation, or by failing to produce documents confirming their right to be

present (resident) in the Russian Federation, or, in the event of the loss of such documents, by failing to report their loss to the appropriate authorities, or by failure to comply with the established procedure for registration in or travel around the country or for choice of place of residence, or by failing to leave the Russian Federation upon expiry of the established period of stay, and also by failure to comply with the rules for transit travel through the territory of the Russian Federation, shall incur administrative fines measuring between 10 and 15 times the minimum monthly wage with or without the administrative measure of deportation from the territory of the Russian Federation.

Pursuant to article 62 of the Russian Constitution, foreign citizens and stateless persons enjoy rights and bear responsibilities in the Russian Federation on an equal footing with Russian citizens, except as provided for by federal law or an international treaty of the Russian Federation. Article 2.6 of the Code of Administrative Offences stipulates that foreign citizens present in the territory the Russian Federation and stateless persons present in the territory of the Russian Federation shall incur administrative liability on the same basis as citizens of the Russian Federation (special rules apply only to persons enjoying corresponding privileges and immunities). Special rules for the residence and registration of foreign citizens in the territory of the Russian Federation may be set out in an international treaty concluded by the Russian Federation.

In the interests of maintaining law and order and setting in place normal conditions for foreign citizens during their stay in the Russian Federation and for any transit travel across its territory, residence and transit rules are established for them. The primary regulatory instruments governing these matters are Federal Act No. 115-FZ of 25 July 2002, the Foreign Citizens (Legal Situation in the Russian Federation) Act, and No. 114-FZ of 15 August 1996, the Procedure for Entry into and Exit from the Russian Federation Act.

The Foreign Citizens (Legal Situation in the Russian Federation) Act sets out the conditions and procedure for the temporary stay, temporary and permanent residence and registration of foreign citizens and stateless persons in the Russian Federation, and for the travel of such person within the territory of the Federation. In the event that the legal grounds for the continued presence (residence) of foreign citizens in the Russian Federation are either withdrawn or expire, or they refuse voluntarily to leave the country, they shall incur the penalties established under law, including even involuntary expulsion (deportation).

In the event that the residence or temporary stay of a foreign citizen or stateless person in the Russian Federation is curtailed, that person must leave the Russian Federation within a period of three days.

Should a temporary residence permit or alien’s residence card be cancelled, the holder is obliged to leave the country within a period of 15 days.

Proceedings may be instituted against foreign citizens who fail, whether by design or omission, to comply with the requirements of Russian law.

Article 32.10 of the Code of Administrative Offences of the Russian Federation stipulates that an administrative order for the deportation from the Russian Federation of a foreign citizen or stateless person is put into effect either through the official handover of that foreign citizen or stateless person to a representative of the authorities of the foreign State to whose territory the person concerned is to be deported, or through the voluntary departure from the Russian Federation of the person subject to deportation.

Enforcement of a deportation order and its ultimate aim consist in ensuring that a foreign citizen who has breached the law of the Russian Federation is removed from the country. A person against whom an administrative deportation order is passed has the option to choose the country to which he or she would prefer to travel.

**14.** Criminal liability for the use of torture is prescribed under article 117, paragraph 2, and article 302, paragraph 2, of the Criminal Code of the Russian Federation.

Article 302, paragraph 2, of the Criminal Code establishes liability for the application of unlawful coercive measures, including torture, by the investigator or person conducting the initial inquiry, or by any other person with the express or tacit consent of the investigator or person conducting the initial inquiry, to compel a suspect, accused person, victim or witness to testify or an expert or specialist to give evidence or findings. The punishment is deprivation of liberty for a term of between two and eight years.

Russian criminal law contains no specific provision setting out the liability incurred by government or other officials for ordering the use of torture. Acts of this nature may be categorized as offences under paragraphs 2 and 3 of article 286 of the Criminal Code. In certain cases they may also be deemed to constitute incitement to the commission of offences, such as those covered by article 302 of the Criminal Code.

The perpetrators of the offences covered by article 302 of the Criminal Code may be both officials (the investigator or person conducting the initial inquiry), and also other persons performing the acts specified in the article with the express or tacit consent of the investigator or person conducting the initial inquiry.

If this offence has been committed by an official, there is no need for that official's actions also to be categorized under article 286 of the Criminal Code.

If, as a result of actions incurring the liability prescribed in article 302 of the Criminal Code, the victim commits suicide or suffers serious harm to his or her health, the culprit's actions are to be categorized as a combination of the offences covered by article 302 and, as the case may be, 110 or 111 of the Criminal Code.

There is no requirement for such offences also to be categorized under article 117.

The practice of the application of articles 117 and 302 of the Criminal Code in 2005 may be summarized as follows:

| Article of the Criminal Code | Total convictions | Custodial sentences | Suspended sentences | Cases dismissed following reconciliation with victim |
|---|---|---|---|---|
| 117, para. 1 | 1 564 | 577 | 961 | 1 643 |
| 117, para. 2 | 824 | 335 | 481 | 1 |
| 302, para. 1 | none | - | - | - |
| 302, para. 2 | none | - | - | - |

Over the period 2000-2004, the military procuratorial authorities investigated three criminal cases instituted on the basis of evidence of the commission of offences covered by article 302, paragraph 2, and a further three falling under article 117, paragraph 2 (e), of the Criminal Code. Of these, two cases in which two persons had been charged with offences under article 302, paragraph 2, and two cases in which three persons had been charged under article 117, paragraph 2 (e), were referred to the courts. The other cases were dismissed.

**15.** It is not possible to separate the number of convictions for the use of torture from the total number of convictions under article 286, paragraph 3, of the Criminal Code, as this differentiation is not made in the statistics.

## Article 5

**16.** As noted above, the Constitution of the Russian Federation proclaims the equality of all before the law and the courts.

Under article 11, paragraph 1, of the Criminal Code, persons committing offences in the territory of the Russian Federation involving the use of torture (irrespective of the citizenship of the victim) shall be held criminally liable under the applicable articles of the Criminal Code of the Russian Federation. In this way, Russian criminal law protects both its own citizens and foreign citizens, and also stateless persons, from the use of torture.

The criminal liability of the diplomatic representatives of foreign States and of other citizens who enjoy immunity, in the event of their commission of offences in the territory of the Russian Federation, is determined in accordance with the rules of international law (article 11, paragraph 4, of the Criminal Code).

Pursuant to article 12, paragraph 1, of the Criminal Code, citizens of the Russian Federation and stateless persons permanently resident in the Russian Federation who commit offences outside the territory of the Russian Federation involving the use of torture incur criminal liability under the Criminal Code of the Federation if the acts perpetrated by them are deemed to be offences in the State on whose territory they were committed and if the perpetrators have not been convicted therefore in that foreign State.

When such persons are being convicted, their punishment may not be more severe than the most severe punishment prescribed by the law of the foreign State on whose territory the offence was committed.

Foreign citizens and stateless persons not permanently resident in the Russian Federation who have committed offences outside the territory of the Russian Federation may be subject to criminal prosecution provided either of the conditions specified in article 12, paragraph 3, of the Criminal Code are attested, namely:

(a) Where the offence was intended to harm the interests of the Russian Federation;

(b) In cases covered by an international treaty of the Russian Federation (the principle of universal jurisdiction).

Article 2, paragraph 1, of the Code of Criminal Procedure also stipulates that criminal proceedings conducted in the territory of the Russian Federation, regardless where the offence itself was committed, shall follow the rules of the Code of Criminal Procedure of the Russian Federation, unless provided otherwise by an international treaty of the Russian Federation.

Military servicemen of the Russian Federation serving in units deployed outside the territory of the Federation shall be held liable under the Criminal Code of the Russian Federation for offences committed on the territory of a foreign State, unless provided otherwise by an international treaty of the Russian Federation.

## Articles 6, 7, 8 and 9

**17.** Pursuant to article 1 of the Code of Criminal Procedure of the Russian Federation, the procedure for the conduct of criminal proceedings in the Russian Federation is established by that Code, which is based on the Constitution of the Russian Federation.

Universally recognized rules and principles of international law and international treaties of the Russian Federation form an integral part of the country's legal system and regulate its criminal procedure. If an international treaty of the Russian Federation establishes rules which differ from those stipulated in the Russian Code of Criminal Procedure, the rules of the international treaty shall apply.

All pretrial inquiries in criminal matters in the Russian Federation, including those dealing with offences involving use of torture, are conducted in compliance with the Code of Criminal Procedure.

The rules for the extradition of persons for criminal prosecution or the enforcement of sentences, established by the Code of Criminal Procedure, are consistent with the rules of international treaties of the Russian Federation. Over the period from 2005 to mid-2006, there have been no cases of refusal to extradite persons because of the risk of torture being used against them in the requesting country or because of failure to provide assurances that the death penalty will not be applied.

## Article 10

**18.** Provision is made, in the armed forces of the Russian Federation and in ministries and departments in which military service is prescribed, for the conduct of legal training courses and other measures to keep military servicemen informed about the law, in which the provisions of

laws establishing criminal liability for crimes of violence are explained. In addition, the provisions of article 42 of the Criminal Code of the Russian Federation are communicated to every military serviceman, a practice which supports the principle that the orders of a superior officer may not be invoked to justify the use of torture.

In addition, with a view to studying the practice of the European Court of Human Rights and to promote legal awareness among military servicemen, in 2006, information materials on the topic of compliance with the rules of international law in the context of the deployment of combat troops in the Northern Caucasus were prepared and submitted to military procurator's offices at district level and to federal executive oversight bodies in which military service is prescribed under federal law.

In the syllabuses and curricula of training establishments of the Federal Penal Correction Service of the Russian Federation, careful attention is given to the study of the Convention against Torture.

Accordingly, the following topics are included in the syllabuses of a number of training courses:

(a) History of international cooperation in the enforcement of criminal penalties and treatment of prisoners;

(b) Legal regulation of security measures in establishments and bodies responsible for enforcing penalties;

(c) International cooperation in the enforcement of criminal penalties: instruments of international law and standards for the treatment of convicted persons;

(d) Implementation of the rules of international penal law in the work of the Federal Penal Correction Service;

(e) Upholding human rights when organizing the supervision of suspects and of accused and convicted persons remanded in custody;

(f) Instruments of international law and internal regulations governing human rights in the penal correction system (for trainees undergoing remote training courses in the secondary vocational education system);

(g) Upholding the rights of various categories of convicted persons serving custodial sentences;

(h) Specific features of international human rights documents; international cooperation in the area of human rights;

(i) Protection and upholding of individual rights in the work of the penal correction system;

(j) Ensuring legality in the work of institutions and bodies responsible for enforcing criminal penalties.

These topics are also covered under such subjects as: correctional law; organizing the rules and security arrangements in custodial facilities of the correctional system of the Federal Penal Correction Service; and upholding human rights in the work of the penal enforcement system. In addition, various aspects of human rights protection are considered in the study of such traditional academic disciplines as the theory of States and law; criminal and criminal enforcement law; constitutional and procedural law; and also philosophy, sociology, politics and professional ethics.

Under the topic of monitoring the work of institutions and bodies responsible for the enforcement of penalties, additional consideration will be given to issues relating to compliance with the provisions of the Convention against Torture.

In addition, it is planned to run a special module on the Convention and the implementation of its provisions in the work of human rights bodies during the first year of training courses.

During training, further training and retraining courses for employees of the penal enforcement system performing a range of official functions, trainees cover issues relating to human rights protection, compliance with standards of international law relating to the treatment of convicted persons and provisions of the Convention against Torture and to the Standard Minimum Rules for the Treatment of Prisoners.

Problems relating to the treatment of prisoners and protection of their rights are reflected in publications by academic staff of the training establishments of the Federal Penal Correction Service, such as the studies by V.M. Morozov and V.A. Ilyin on compliance with international standards and decisions of the European Court on Human Rights in the work of the Russian criminal correction system; by V.M. Merkuryev on measures to ensure the safety of individuals and of their daily activities; and a study on crime within prisons: its essential features and the problem of its prevention, edited by Y.I. Kalinin, director of the Federal Penal Correction Service.

**19.** Under the Basic Principles of Public Health Legislation, No. 5487-1, of 22 July 1993, and Federal Act No. 128-FZ of 8 August 2001, the Designated Activities (Licensing) Act, all medical staff of establishments in the Russian Federal Penal Correction Service, having completed academic training courses, undergo postgraduate training courses every five years in which they cover aspects of forensic medicine and psychology and receive State certificates in their special field. In addition, paragraphs 38 and 56 of order No. 640/190 of 17 October 2005 of the Ministry of Health and Social Development and the Ministry of Justice of the Russian Federation stipulate that, when information comes to light which gives grounds to believe that harm has been caused to the health of suspects or of accused or convicted persons as a result of unlawful actions, the medical officer carrying out the medical examination submits a written report to that effect to the director of the institution.

The medical staff of temporary holding facilities do not undergo any special training intended, in particular, to develop skills in identifying whether persons exhibit physical or psychological traces of torture.

At the same time, pursuant to rule 124 of the internal regulations for temporary holding facilities of the internal affairs authorities for the detention of suspects and accused persons, when such persons are being admitted to the facility, released from the facility or handed over for transport under escort, these persons undergo compulsory medical examinations to determine their state of health and whether or not they have bodily injuries, the results of which are logged in medical records.

If there is no medical officer, the medical examination is conducted by a specially trained police officer, with a follow-up examination by the medical officer. The entries in journals and official registers recording the results of medical examinations are shown to the suspects and accused persons for them to sign.

## Article 11

**20.** The inspection of facilities and bodies of the criminal penal enforcement system is conducted by duly authorized officials of the Federal Correction Enforcement Service while those of temporary remand facilities are inspected by employees of the corresponding departments.

Pursuant to the Procuratorial System of the Russian Federation Act, the procuratorial authorities have the responsibility to oversee compliance with the law both by those in charge of bodies and facilities responsible for enforcing punishments and other coercive measures ordered by the courts and by the administrative authorities responsible for detention and remand facilities.

In this process, the Office of the Procurator-General of the Russian Federation and local procurators are engaged in constant efforts to ensure respect for the rights and freedoms of citizens held in custody and serving criminal sentences (primarily, their rights to freedom and personal integrity, to health protection, to medical assistance and to welfare support). Staff of the procuratorial system are entitled to visit remand centres and correction institutions at any time to conduct spot checks. During these checks, the procurators make the rounds of the accommodation premises of the institutions in question, question the persons held within them and conduct one-on-one interviews with persons held in remand and with prisoners (where necessary, in private).

Checks of compliance with the law are carried out in the remand centres by duly authorized employees of the procurator’s office at least once every month and in other correctional facilities at least once every quarter.

In addition, pursuant to order No. 3 of 4 February 2004 of the Procurator-General of the Russian Federation, procurators of the constituent entities of the Russian Federation verify compliance with the law in one temporary holding facility or correctional institution every month. If breaches of the law are discovered, a recommendation is made to those in charge of the institutions or bodies concerned regarding the need to take remedial action, objections are lodged about unlawful acts, and persons unjustly incarcerated in punishment facilities are set free. Legal action, including criminal proceedings, is taken against staff of the law enforcement services found responsible for violating the rights of detained and convicted persons.

Inspections are conducted by the Federal Penal Correction Service of local facilities of the criminal enforcement system at least once every five years. In conducting these inspections, staff of the Federal Penal Correction Service are guided by the instructions on the organization of inspections of local facilities of the Federal Penal Correction Service, ratified by the Service's order No. 913 of 20 December 2005. These instructions oblige officials of the Service responsible for inspections to verify no fewer than 50 per cent of all penal enforcement facilities situated in the territory of the given constituent entity of the Russian Federation. Inspections of remand centres, re-education colonies and treatment facilities are obligatory.

**21.** Over the period up to May 2005, the penal enforcement system formed part, in organizational terms, of the structure of the Ministry of Justice. Representatives of the Ministry's Public Board made regular visits to penitentiary establishments of the Federal Penal Correction Service. Members of the Public Board carried out both scheduled visits and visits in response to special requests. In particular, in June 2005, following disturbances in correctional colony No. 2 in the town of Lgov, the facility in question was visited by a delegation of human rights defenders, headed by Mr. V.V. Borshchev, member of the Public Board of the Ministry of Justice.

By presidential decree No. 842 of 4 August 2006 on the procedure for the formation of public boards in federal ministries, federal services and federal agencies which report directly to the President of the Russian Federation, and of federal services and federal agencies which report to those federal ministries, the Federal Penal Correction Service gained the ability to form its own public board and work to that end has now commenced.

If evidence comes to light of the use of torture or cruel or degrading treatment in penitentiary establishments, the establishment administration, or a person duly authorized by the local office of the penal correction system, carries out an official check. The necessary response measures are taken in the light of the results of such checks. The results of the check, including their scope, objectivity and general applicability, are monitored by higher bodies in the criminal enforcement system and the Federal Penal Correction Service.

When evidence of an offence is revealed, the records of the check are handed over to the procuratorial authorities.

**22.** Article 97 of the Code of Criminal Procedure sets out the grounds for the selection of measures of restraint, including remand in custody. The measure is selected where there are sufficient grounds to presume that the accused or suspected person:

(a) Is evading an initial inquiry or preliminary investigation or the court;

(b) Might continue to engage in criminal activity;

(c) Might threaten witnesses or other parties to the criminal proceedings or destroy evidence or in some other manner impede due process in the criminal case.

Over the last three years, there has been a growth in serious and particularly serious offences, leading to an increase in the number of procuratorial representations, recommending remand in custody as the necessary measure of restraint for suspects or accused persons.

At the same time, it should be pointed out that not all recommendations are followed by the courts.

Russian criminal procedural law sets out the grounds on which, by a court order, remand in custody may be chosen as the measure of restraint. Thus, pursuant to article 108, paragraph 3, of the Code of Criminal Procedure, a procurator, or investigator acting with the consent of the procurator, in the decision to lodge an application for remand in custody, sets out the reasons and grounds rendering such a measure necessary for a particular suspect or convicted person. The decision is accompanied by materials substantiating the grounds for the application. If such materials are not submitted or the court deems them insufficient, it is entitled to reject the application and the person in question is released from detention forthwith. If one of the parties applies for an extension of the period of detention on the grounds that it is impossible to assemble all the materials substantiating that party's arguments within the time limit, the court is also entitled to extend the period of custody of the person concerned, until a definitive decision is reached on the choice of remand in custody for a period not exceeding 72 hours as the measure of restraint, provided the grounds for detention themselves are lawful and well-founded (article 108, paragraph 7 (3), of the Code of Criminal Procedure).

On these grounds, some 10 per cent of all applications are rejected by Russian courts.

In addition, decisions to reject applications for, and also decisions on, the remanding in custody of suspects and accused persons may be challenged. Some 10 per cent of such decisions are overturned in cassational review. In this way, some 20 per cent of all decisions ordering remand in custody as the selected measure of restraint are rejected by the courts.

In 2005, the courts considered more than 277,000 applications for the adoption of remand in custody as the measure of restraint and granted 92 per cent of these. The main reason underlying the courts' rejection of the other applications was the lack of sufficient grounds as stipulated by article 97 of the Code of Criminal Procedure for the adoption of that measure of restraint.

Over the period 2002-2004, the military courts rejected 168 applications (4 per cent of the total) submitted with the consent of the military procurators for the adoption of remand in custody as the measure of restraint for suspects or accused persons.

The main reason underlying the courts' refusal to allow this measure of restraint was the failure by the procuratorial and investigative staff, in submitting these applications, to provide sufficient evidence to support the need for remand in custody, rather than another, milder form of legal restraint.

No information is available on refusal by the military courts to apply remand in custody as a measure of restraint in connection with breaches by staff of the military procurator's office of criminal procedural law.

**23.** In order to ensure due process at all stages of criminal proceedings, the provision of Russian criminal procedural law prohibiting the use of evidence obtained in breach of the law is enshrined in a special rule (article 75 of the Code of Criminal Procedure), which categorizes as

inadmissible testimony provided by suspects and accused persons during the initial inquiry in a criminal case in the absence of a defence counsel, including cases where the services of a lawyer were refused, and not corroborated by the suspect or accused person in the court (art. 75, para. 2 (1)).

With a view to strengthening protection of the rights of accused persons and suspects, under the Code of Criminal Procedure the right to declare evidence inadmissible is vested not only in the court, but also in the procurator, investigator and person conducting the initial inquiry, thus ensuring that safeguards of the rights of parties to criminal proceedings are introduced well before the trial itself - from the investigation stage.

The presence of the defence lawyer during the conduct of investigative activities involving the suspects or accused persons, and also of an educational specialist, psychologist and legal representative when the suspects or accused persons are minors, serves to guarantee protection of their rights and to ensure that no torture or other cruel, inhuman or degrading treatment is used against them (article 51, article 425, paragraph 3, and article 426, paragraph 1, of the Code of Criminal Procedure).

In addition, to ensure that no evidence obtained with the use of torture is used in proceedings, the suspects or accused persons are present at the court hearing to determine whether or not they should be remanded in custody, whether their period of custody should be extended, or whether they should be placed in a medical or psychological facility for the conduct of the necessary expert appraisal (article 108, article 47, paragraph 4 (16), and article 29 of the Code of Criminal Procedure).

In such circumstances the suspects or accused persons have the genuine possibility of informing not only the investigator, or person conducting the initial inquiry or the procurator that torture has been used against them either during the initial inquiry or at any other stage of the investigation, but also the court.

Under article 37, paragraph 2 (3), of the Code of Criminal Procedure, the procurator is not only able to participate in the conduct of the preliminary investigation and, where necessary, to provide written instructions, but can also conduct investigative actions personally, including questioning, thereby providing an additional safeguard against the use of torture and cruel treatment during interrogation.

**24.** Over the period 1999-2005, the following numbers of people received convictions under article 126 of the Criminal Code for offences involving abduction: in 1999, 764; in 2000, 705; in 2001, 759; in 2002, 562; in 2003, 531; in 2004, 527; and in 2005, 559.

Information on punishments handed down under article 126 of the Criminal Code can only be provided for the period 2004-2005, since, in previous periods, these figures were not disaggregated in the country’s judicial statistics.

In 2004, of the total number of persons (527) convicted under article 126 of the Criminal Code, 0.5 per cent received custodial sentences of under 1 year, 5.8 per cent sentences of between 1 and 3 years, 11.4 per cent sentences of between 3 and 5 years, 35.51 per cent

sentences of between 5 and 8 years, 7.4 per cent sentences of between 8 and 10 years, and 4.3 per cent sentences of between 10 and 15 years. In 32.1 per cent of all cases, the sentences were suspended.

Cases involving offences covered by article 126, paragraphs 1 and 2, of the Criminal Code are referred to the jurisdiction of district courts. In those cases where abduction results in the death or serious injury of the victim (article 126, paragraph 3, of the Criminal Code), the cases are heard by courts of the constituent entities of the Russian Federation.

Over the period from September 1999 to date, the military procuratorial authorities processed 48 criminal cases instituted on the evidence of offences covered by article 126 of the Criminal Code (Abduction). Of these, 35 cases involved offences of this nature committed in the territory of the Northern Caucasus military district, 5 in the Moscow military district, 3 in the Siberian military district, 2 each in the Leningrad and Volga-Ural military districts and 1 in the Far East military district.

In all, 20 criminal cases involving 43 defendants, 24 of them military servicemen, charged with the commission of offences under article 126 of the Criminal Code, were referred to the courts. Of these persons, 30 (21 military servicemen) were found guilty by the courts of abduction and 8 (3 military servicemen) were acquitted. In the case of 1 military serviceman, the court dismissed the case on the basis of article 25 of the Code of Criminal Procedure (following reconciliation of the parties) and in 4 others (including one military serviceman), the cases were suspended in application of article 238, paragraph 1 (1), of the Code of Criminal Procedure.

*Unofficial translation from Russian**

**WRITTEN REPLIES BY THE GOVERNMENT OF THE RUSSIAN FEDERATION TO THE LIST OF ISSUES (CAT/C/RUS/Q/4) RAISED BY THE COMMITTEE AGAINST TORTURE IN CONNECTION WITH THE CONSIDERATION OF THE THIRD PERIODIC REPORT OF THE RUSSIAN FEDERATION (CAT/C/34/Add.15)**

[Received on 23 October 2006]

## PART 2 - REPLIES TO QUESTIONS 26-44

* Owing to time constraints, this part of the translation was not revised for consistency and accuracy. It was made available at short notice to facilitate the work of the Committee.

## Article 12

**26.** Article 42 of the Code of Criminal Procedure sets forth the rights and responsibilities of victims. One of a victim's rights is the right to submit petitions and challenges to the court and trial participants, and to participate with the authorization of the investigator or person conducting the initial inquiry in investigative work carried out at his/her own or legal representative's request. In addition, victims have the right to appeal against action taken by the investigator, person conducting the initial inquiry, procurator or the court and against judgements, rulings and decisions of the court.

Judicial practice shows that victims exercise their right to appeal considerably less often than suspects, persons charged with or convicted of an offence and their defence counsel. The statistics available do not differentiate between complaints from persons convicted of and the victims of an offence. Most often, notwithstanding all the options available, victims file complaints at the pre-trial investigation stage about action taken by the investigator or person conducting the initial inquiry, about rejections of their requests to conduct expert examinations or about refusals to carry out certain investigative actions. They rarely appeal against the sentences handed down, although they do sometimes avail themselves of that right. No complaint of victims being subjected to torture or other irregular or unlawful conduct in the course of investigations has been brought to court.

In 2005, the Federal Penal Correction Service received 15,515 complaints from convicted persons. Some 125 were complaints concerning unlawful conduct by correction system staff; six were corroborated and the guilty parties were subjected to administrative penalties, and one official was dismissed from the administration of the correction system.

In the first half of 2006, the Federal Penal Correction Service received 79 complaints from convicts about violations of the law by staff in penal correction facilities, including 4 complaints of unlawful placement in punishment cells. It also received 13 complaints about unlawful deprivation or granting of rights to convicts by the administration of penal correction facilities and 2 complaints of tardy release from penal correction facilities. Some 180 complaints of unlawful conduct by correction system staff were received, including 15 alleging violations of the rights of convicts in correctional colonies. During the reporting period, 74 complaints about unsatisfactory medical care were received.

**Number and contents of written complaints received by the Federal Penal Correction Service from convicts and persons held in custody**

| | 2003 | 2004 | 2005 | Up to end September 2006 |
|---|---|---|---|---|
| Total number of complaints received | 12 757 | 16 011 | 15 515 | 10 573 |
| On matters relating to serving of sentence | 9 311 | 11 580 | 10 935 | 9 122 |
| Including: | | | | |
| Applications concerning criminal cases | 70 | 729 | 930 | 378 |
| Medical care for convicts and release for health reasons | 1 681<br>224 | 1 777<br>198 | 1 652<br>126 | 1 121<br>71 |
| Transfers to other penal establishments - allowed | 4 904<br>911 | 6 145<br>254 | 6 258<br>401 | 4 640<br>222 |
| Parole or pardon | 757 | 688 | 697 | 341 |
| Monetary transactions with convicts | 212 | 313 | 276 | 168 |
| Failure to provide statutory allowances | 122 | 154 | 102 | 56 |
| Unlawful conduct by staff at penal establishments | 81 | 96 | 125 | 498 |

**27.** When violence, torture or other unauthorized coercive action against suspects or persons charged with an offence, including members of ethnic, racial and religious minorities, or other wrongdoing involving wilful violation of the law of criminal procedure by employees of the internal affairs agencies during pre-trial investigations is established, the supervisory procurators institute criminal proceedings under the relevant articles of the Criminal Code.

The conduct of criminal investigations involving employees of the internal affairs agencies is the exclusive responsibility of investigators from the procurator's office (article 151, section 2, paragraphs 1 (b) and (c), and article 447, section 3, paragraph 7, of the Federal Criminal Code).

**28.** Jury trials were introduced in the Russian Federation in 1993.

In accordance with the Federal Act on the entry into force of the Code of Criminal Procedure of the Russian Federation of 22 November 2001, as set out in version No. 181 - FZ of 27 December 2002, jury trials are gradually being introduced into courts throughout the

Federation. On 1 January 2003, they were introduced in 60 regions, on 1 July 2003 in 14 regions, on 1 January 2004 in 5 regions, and on I January 2007, they will be introduced in the remaining region - the Chechen Republic.

**Review of acquittals by jury courts**

Under Russian legislation (art. 385, sect. 2, of the Code of Criminal Procedure) an acquittal based on a jury's verdict enjoys special protection. It can be quashed on one ground only - that the law of criminal procedure has been breached during consideration of the case, by, for instance:

- Restricting the right of the procurator, victim or victim's legal representative to present evidence;

- Influencing the substance of questions put to or answers given by the jury.

It emerges from judicial practice that the appeal courts assign to the first category violations such as unlawfully rejecting a request by the State prosecutor participating in the proceedings to adduce admissible evidence or to cross-examine investigators and specialists appearing in court. Violations recognized as falling into the second category include: asking the jury inappropriate questions, biased summing-up by the presiding judge, breaching the confidentiality of the jury's discussions and leading the jury.

Acquittals may be set aside only on the recommendation of the procurator or following a complaint by the victims or their legal representative.

In allowing for the possibility of an acquittal based on a jury's verdict being set aside, Russian legislators started from the premise that the purpose of criminal proceedings is twofold: to protect the rights and legitimate interests of individuals and organizations which have suffered crimes, and to protect individuals from unlawful or unjustified accusations, convictions or restrictions on their rights and freedoms.

This conception of the aims and functions of criminal proceedings is in keeping with the universally recognized principles and norms of international law, for justice by its very essence may be recognized as such only when it satisfies the principles of justice and provides effective remedy (art. 8 of the Universal Declaration of Human Rights).

If it transpires that any of the violations described in article 385, paragraph 2, of the Code of Criminal Procedure has occurred, it means that despite being under oath, the jurors were not given the opportunity to decide on the criminal case according to their own beliefs and conscience and were not presented with all the admissible evidence. A judgement handed down on the basis of such a verdict cannot be considered lawful.

It should also be noted that despite its introduction in 2003 in all regions (with the exception of the Chechen Republic), this type of court proceeding is still not widely used.

The number of criminal cases dealt with under this procedure by the competent courts was 496 in 2003, 572 in 2004, 618 in 2005 and 333 in the first half of 2006 (i.e. an average of approximately 12 per cent of the cases brought before courts of this level). Every year

approximately 17 per cent of the people brought before the courts are acquitted on the basis of the jury's verdict (in 2004 - 204 persons, in 2005 - 205), whereas overall every year no more than five per cent of those brought before the courts in the constituent entities of the Russian Federation are acquitted.

An analysis of procuratorial practice and research shows that many acquittals are due, first and foremost, to breaches of the law of criminal procedure during pre-trial investigation, with the result that evidence collected for the prosecution is declared inadmissible. We have no information on any instances where the testimony of the accused or other persons was declared inadmissible evidence by the court because it had been obtained through torture.

Each year, however, on account of breaches of the law of the code of criminal procedure by professional participants in judicial proceedings, the appeal court sets aside a significant number of acquittals pronounced in jury trials. For example, in the first half of 2006, the court acquitted 113 people, but it set aside the judgement in the cases of 35 individuals acquitted -- one third --, but only in the cases of 9 per cent of individuals convicted.

When a judgement is set aside, the case is sent for re-trial by jury, and the newly established panel of jurors has the right to hand down any verdict - a conviction or an acquittal. The jury is not informed of the fact that the previous judgement was set aside or the grounds for that decision, since the law explicitly stipulates (arts. 334 and 335 of the Code of Criminal Procedure) that when a jury is present only the factual circumstances of the criminal case which the jurors determine to have been proven in accordance with their mandate (whether a crime has been shown to have occurred, whether the accused committed it, and whether the accused is guilty) are to be considered. Thus, if an acquittal is set aside on appeal, there is no risk of being held to account twice for the same offence.

The legal system in the Russian Federation, unlike that of most foreign States, allows judicial decisions to be reviewed through a monitoring procedure after they have become enforceable. The European Court of Human Rights has confirmed that this stage of Russian legal proceedings is not incompatible with international norms and principles (judgement of 20 July 2004 in the *Nikitin v. Russia* case). In accordance with article 405 of the Code of Criminal Procedure, however, if the effect would be detrimental to the situation of the person convicted (acquitted), a judicial error cannot be rectified upon review under any circumstances, not even if fundamental errors occurred during the proceedings.

By a decision dated 11 May 2005, the Constitutional Court found article 405 of the Code of Criminal Procedure incompatible with the Constitution insofar as that, by not permitting any change for the worse during review of judicial decisions under the monitoring procedure, it does not allow fundamental errors in the earlier proceedings which had a bearing on the outcome of the case to be rectified.

Hence the Constitutional Court found that, in extreme circumstances, an exemption from the general prohibition against change for the worse can be allowed when a judicial error has undermined the very essence of justice and the sense of the judgement as a judicial act.

To date, appropriate amendments (in the light of this Constitutional Court ruling) have not yet been introduced to the Code of Criminal Procedure.

## Article 13

**29.** In 2004 the procuratorial authorities in the Russian Federation processed 35,861 complaints from convicted prisoners and their representatives about compliance with the law in penal correction institutions and bodies; 37,744 complaints were processed in 2005. Of these, 2,458 (6.9 per cent) were found to be substantiated in 2004, and 2,370 (6.3 per cent) were found to be substantiated in 2005.

Of the total number of communications in 2004, there were 4,104 complaints of illegal duress applied to detainees and convicts by penal correction staff, of which 94 complaints (2.3 per cent) were found to be substantiated. In 2005, a total of 5,167 similar complaints were processed, of which 102 (2.0 per cent) were found to be substantiated.

On the recommendation of procurators, based on the findings both of routine checks and of checks into specific complaints, 3,635 prison staff faced disciplinary action in 2004; 76 were dismissed. That same year 57 prison workers were convicted of work-related offences. In 2005 disciplinary action was taken against 4,850 prison workers (including 72 who were dismissed), and 71 prison workers were convicted of work-related offences.

Figures from military procurators' offices show that during the period 2003-2004, out of 48,050 complaints and communications relating to pre-trial investigations, 597 allegations of unlawful investigation methods were considered and dealt with; eight were upheld. Until 2003 separate records of this type of complaint were not kept.

In 2002 the European Court of Human Rights found 56 complaints from citizens of the Russian Federation to be admissible; it found 25 admissible in 2003, 16 in 2004, 10 in 2005 and 5 in 2006.

The complaints being considered by the Court concern incidents that occurred during the period from 1998 to 2002. Since then the situation with regard to respect for prisoners' rights has improved, and this has been reflected in the smaller numbers of complaints found admissible by the Court.

The Federal Penal Correction Service thoroughly investigates all complainants' allegations and supporting evidence, whether or not the Court has requested clarifications in connection with a specific complaint.

As a result of the Court's review of complaints, the allegations of only 10 complainants (6.6 per cent of all complaints examined by the Court during the period 1998-2006) have been partly upheld.

Complaints partly upheld since 2002 include: the Smirnov sisters (denial of a passport upon release from prison), Klyakhin, Poleshchuk (obstruction of an application to the Court), Labzov (unsatisfactory conditions of detention in No. 2 remand centre in Tsivilsk), Mayzet (unsatisfactory conditions of detention in No. 1 remand centre in Kaliningrad), Romanov (unsatisfactory conditions of detention in No. 2 remand centre in Moscow) Novoselov

(unsatisfactory conditions of detention in No. 3 remand centre in Novorossisk), Abdul-Vakhab Shamaev et al. (obstruction of correspondence with the Court), Khudoerov (unsatisfactory conditions of detention in No. 1 remand centre and prison No. 2 in Vladimir).

In 2005 the regional and local branches of the Federal Penitentiary Service considered a total of 47,033 complaints and communications about conduct by prison staff. Of these, 2,259 communications were substantiated. Some 1,087 communications concerned unlawful placement in punishment cells, of which 79 were substantiated; 182 communications concerned the use of special restraining devices, of which 2 were substantiated; 140 concerned the unlawful use of physical force, none of which were substantiated; 161 concerned failure to guarantee personal safety, with 1 case substantiated; and 3,220 concerned failure to provide medical assistance, of which 20 were substantiated.

During the second [sic] half of 2006 the branches of the Federal Penitentiary Service have considered 127,759 communications from inmates. Some 694 of these have been substantiated, including 39 out of 1,143 relating to unlawful placement in punishment cells. Another 125, none of which have been substantiated, concerned the unlawful use of special restraining devices; 207, none of which have been substantiated, concerned the unlawful use of physical force; 297, of which 6 have been substantiated, concerned the unlawful withholding of food; 201, none of which have been substantiated, concerned failure to guarantee personal safety; and 3,636, of which 29 have been substantiated, concerned failure to provide medical assistance.

**30.** The legislation in force in the Russian Federation guarantees the right of any citizen, including citizens performing military service, to submit to State and law-enforcement authorities applications and communications about imminent or actual violations of their rights. The procedure established for considering and resolving such applications renders it impossible for the officials or organs whose acts are being challenged to take decisions on the matters at issue.

Under the law, information provided by complainants about violations of their rights and legitimate interests and the findings of the checks made on such information must not be divulged. Failure to observe this rule when dealing with complaints or communications and the checks into them renders the culprit liable at law.

Officials and organs authorized to investigate rights violations take particular care to abide strictly by the principle of confidentiality, given that violation of that principle makes it difficult to determine and attribute criminal responsibility.

Military procurators' offices conduct their investigations of crimes and incidents, including conduct unbecoming, in strict accordance with the need to ensure the inevitability of punishment for every violation. To this end, right at the beginning of any investigation into complaints suggesting violent offences against servicemen, decisions are taken and implemented to restrict the freedom of the accused (when there are grounds for doing so) and to shield witnesses and victims from the possibility of suasion by parties having an interest in the outcome of the investigation.

Federal Act No. 119-FZ of 20 August 2004, on State protection of victims, witnesses and other participants in criminal proceedings, stipulates that servicemen who are victims or witnesses shall enjoy the following protective measures, in accordance with the law:

- Secondment to another military unit or facility;

- Transfer to a different posting, including a military unit or military facility subordinate to another federal agency where military service is possible under federal law;

- Secondment or transfer to another military unit or facility of military conscripts who may pose a threat to the protected person.

Responsibility for implementing such security measures is vested in the command of the relevant military unit and the higher command.

The right of accused persons and convicts to security of person is guaranteed in Russian penal law (Federal Act No. 103-FZ of 15 July 1995, on pre-trial detention of suspects and accused persons, art. 17, and the Penal Enforcement Code, arts. 10 and 13).

Russian legislation also provides that the correspondence of suspects, accused persons and convicts with a court, procurator's office, senior penal correction authority or commissioner for human rights (ombudsman) in the Russian Federation or its constituent entities, a public watchdog commission established under Russian legislation, or the European Court of Human Rights shall not be censored (Federal Act No. 103-FZ of 15 July 1995, art. 21, and Penal Enforcement Code, art. 91).

Federal Act No. 161-FZ of 8 December 2003 amends the Penal Enforcement Code with a view to ensuring that the correspondence of suspects, accused persons and convicts with the European Court of Human Rights is uncensored. The administrations of remand centres and correctional institutions receive such correspondence from inmates in a sealed packet and forward it to the addressee without any knowledge of its contents. Correspondence from the European Court of Human Rights addressed to suspects, accused persons or convicts is delivered to them in a sealed packet, thereby also avoiding any censorship.

It must be noted that long before these legislative amendments were introduced, the leadership of the Federal Penitentiary Service was taking steps to implement article 34 of the European Convention on the Protection of Human Rights and Fundamental Freedoms concerning unhindered correspondence between inmates and the European Court of Human Rights. Instructions on this matter have been issued to local organs and institutions of the Federal Penitentiary Service on three occasions.

The most recent instruction from the Federal Penitentiary Service to assistant directors of the regional and local branches of the penal correction system concerning respect for human rights calls for them to make regular visits to the facilities under their supervision with a view to informing suspects, accused persons, convicts and their families of the arrangements and conditions for complaining to the European Court of Human Rights; to provide such individuals,

where necessary, with copies of the Court's complaint forms and instructions on how to fill them in; and to check the preparation of proxies, certified by the head of the facility, authorizing representation of the complainant's interests at the Court.

In view of the foregoing it can be affirmed that there is no need for the Federal Penitentiary Service of the Russian Federation to take any further measures to ensure the safety of persons who have submitted complaints to the European Court of Human Rights or communications to the Committee against Torture.

**31.** The legal basis for the involvement of procurators in the consideration of criminal cases by the courts is to be found in the Constitution of the Russian Federation, international agreements concluded by the Russian Federation, the Procurator's Office Act, the Code of Criminal Procedure, other legislation in force and orders issued by the Procurator-General of the Russian Federation.

The nature of the work of procuratorial entities in pre-trial proceedings means that criminal prosecutions at this stage and the way in which they are conducted are inextricably linked to supervision of respect for the rights and freedoms of the individual.

Compliance with the law is monitored from the time an application or communication about an offence is received until the conclusion of the initial inquiry and preliminary investigation.

One priority requiring immediate attention is the verification of compliance with the law in the receipt, registration and resolution of communications reporting violations of registration procedures, tardy response to reports of crimes, unjustified refusal to entertain such reports, dismissal of applications without verifying their contents and so forth.

The protection of individual rights and freedoms during pre-trial proceedings implies above all the provision of guarantees from unfounded suspicion and criminal charges.

Of particular importance is the institution of criminal proceedings; in this connection, the broadening of the procurator's procedural powers so that he can allow the person conducting an initial inquiry or the preliminary investigator to initiate criminal proceedings has become an additional guarantee of protection for the rights of victims and of anyone who may have been unjustifiably involved in criminal proceedings.

The procedure by which criminal investigative bodies obtain the consent of the procurator when submitting an application for prosecution to the courts also serves to protect the rights of the individual.

During a trial the procurator conducts the criminal prosecution on behalf of the State in both public and semi-public hearings (Code of Criminal Procedure, art. 37, para. 4). The participation of a public prosecutor in the consideration of cases in courts of first instance and appellate courts is compulsory (Code of Criminal Procedure, art. 246, para. 2, and art. 364, para. 3).

It is also established that the procurator supports the public prosecution in court by ensuring its legality and validity (Code of Criminal Procedure, art. 37, para. 4); in other words, he must prosecute only to the extent that is lawful and justified.

In order to carry out his functional obligations to support the public prosecution and ensure the legality and validity of the proceedings in adversarial criminal proceedings, the public prosecutor is authorized to:

1. Present evidence and participate in its examination, submit petitions and challenges, give his opinion on the merits of the charge and on other questions arising during the trial, and make suggestions to the court about the application of criminal law and the punishment to be meted out to the accused (Code of Criminal Procedure, arts. 244 and 246, para. 5);

2. Bring or support a civil claim in connection with a criminal case, if this is required to protect the rights of citizens, the public or the State (Code of Criminal Procedure, art. 246, para. 6);

3. Withdraw the charge if, in the course of the trial, he concludes that the evidence submitted does not confirm the charge brought against the defendant (Code of Criminal Procedure, art. 246, para. 7). Withdrawal of the charge by the public prosecutor during a trial shall entail termination of the criminal case or criminal prosecution on the grounds provided by law;

4. Reduce the charge (Code Criminal Procedure, art. 246, para. 8). In such cases, the opinion of the public prosecutor must also be taken into account;

5. Appeal decisions by justices of the peace that have not yet become enforceable (Code of Criminal Procedure, arts. 354-357);

6. Apply for cassation of decisions by courts of first instance and appeals courts (Code of Criminal Procedure, arts. 354-357);

7. Participate in the review in cassation of criminal cases and submit additional materials to the court of cassation (Code of Criminal Procedure, art. 377);

8. Petition for the review of a judicial decision that has become enforceable through submission of a complaint under the supervisory procedure; participate in court sessions under the supervisory procedure (Code of Criminal Procedure, arts. 402 and 407).

It thus follows from article 6, article 37, paragraph 4, and article 246 of the Code of Criminal Procedure that the role played by the public prosecutor is not only prosecutorial in nature, involving the prosecution of a defendant in a criminal case, but is also one of law enforcement.

The defendant in a criminal case terminated through withdrawal of the charges by the public prosecutor has the right to rehabilitation, i.e. compensation for the material and moral injury suffered and restoration of his or her labour, housing or any other rights (Code of Criminal Procedure, arts. 136-138).

The law-enforcement function of the procurator's office is apparent in the interrelationship between the procurator and the other parties to judicial proceedings.

When there is sufficient evidence to indicate that a victim, witness or other party to criminal proceedings, members of their immediate families and other relatives, or persons close to them have been threatened with murder, violence, destruction of or damage to property or other unlawful and dangerous conduct, the procurator has the right (and is required) to inform the court of the need to arrange security measures for the individuals concerned, as provided for in the Federal Act of 20 August 2004 on the protection of victims, witnesses and other participants in criminal proceedings. Security measures include questioning victims and witnesses without divulging any information about their identities and under conditions which preclude visual observation by other parties to the proceedings of the person being questioned (Code of Criminal Procedure, art. 11, para. 3, art. 277 and art. 278, para. 5), the hearing of a criminal case or part thereof in camera (Code of Criminal Procedure, art. 271, para. 1) and the questioning of victims who are minors in the absence of the defendant (Code of Criminal Procedure, art. 280, para. 6).

Following the conclusion of a trial, if any of the victim's rights have been violated in a way that substantially affects or might affect the legality, validity or fairness of the judgement, the procurator is required to file an appeal or application for review in cassation.

**Procedure for the selection and appointment of judges and jurors.** In accordance with article 118 of the Constitution, only judges may administer justice in the Russian Federation. The judicial system is established by the Constitution and by federal constitutional law. The establishment of special courts is not permitted.

The justices of the Supreme Court are appointed by the Federation Council of the Federal Assembly (parliament), at the recommendation of the President of the Russian Federation (taking into account the opinion of the President of the Supreme Court); the judges of the other federal courts of general jurisdiction are appointed by the President of the Russian Federation, at the recommendation of the President of the Supreme Court (art. 128 of the Constitution).

The judges of the federal courts are appointed for life. A judge may only be suspended or removed from office under the procedure and on the grounds established by federal law (art. 121 of the Constitution).

Since justices of the peace are judges of constituent entities of the Russian Federation, the procedure for their appointment - nomination by a representative body or election by the people - is determined by the legislative body of the constituent entity concerned. The term of office of a justice of the peace is fixed by the relevant constituent entity but may not exceed five years. A justice of the peace may be appointed for a second term of not less than five years.

Once a jury trial has been scheduled, on instructions from the presiding judge, the clerk of the court or the judge's assistant proceeds to the random selection of candidates for jurors from the court's general and reserve lists (art. 326 of the Code of Criminal Procedure).

In conformity with the Federal Jurors in Federal Courts of General Jurisdiction Act of 20 August 2004, lists of candidates for jurors (general and reserve) are compiled every four years by the supreme executive bodies of the constituent entities of the Russian Federation from among citizens residing permanently in those constituent entities. The Act specifies the procedures and time frame for compiling the lists, the requirements made of jurors and the conditions for removing citizens from the general and reserve lists, and deals with issues relating to jurors' subsistence and so forth.

Article 12 of the Act stipulates expressly that the safeguards in place to ensure the independence and inviolability of judges must be extended to jurors during their period of service.

**Safeguards of judges' independence.** The Constitution of the Russian Federation, the Federal Constitutional Act on the Judicial System of 31 December 1996, the Act on the Status of Judges of 26 July 1992, the Federal Act on State protection of judges and officials of law enforcement and inspection agencies of 20 April 1995, the Federal Jurors in Federal Courts of General Jurisdiction Act and the procedural legislation currently in force in the Russian Federation provide the following safeguards to ensure judicial independence:

- Establishment of special procedures for the appointment of judges, and their appointment for life;
- Special procedures for administering justice;
- Prohibition (under threat of prosecution) of interference by any person in the administration of justice by judges;
- Special standards governing the procedures for suspending judges and removing them from office;
- Inviolability of judges;
- Existence of professional judicial bodies;
- Payment to judges by the State of a salary and benefits in keeping with their high status;
- Provision of special State protection for judges and members of their families, as well as for their property.

In the Russian Federation, no law or regulation may be promulgated that abolishes or curtails the autonomy of the courts or the independence of judges (art. 5 of the Federal Constitutional Act on the Judicial System).

**32.** Under the legislation of the Russian Federation, rehabilitation of victims of torture may, on the basis of a judicial decision, include compensation for the material and moral harm caused to them. In accordance with article 11, paragraph 4, of the Code of Criminal Procedure, the harm caused to a person through violation of his or her rights and freedoms by a court or by officials conducting prosecutions is subject to compensation in the conditions and under the procedure established by the Code. Compensation for torture victims is awarded by the court -- on application by the victim, who must file a civil claim -- when it finds the party from whom compensation is sought guilty.

The civil claim may be filed at any time between the institution of criminal proceedings and the conclusion of the hearing of evidence in the court of first instance. The civil claimant is exempt from payment of costs. In order to protect the interests of minors, persons declared to have limited or no legal capacity and persons who for other reasons are unable to protect their own rights and lawful interests, the civil suit may be brought by their legal representatives or by the prosecutor (art. 44, para. 2.3, of the Code of Criminal Procedure).

A person subjected to violence by officials conducting prosecutions may apply for compensation not only for material but also for moral harm; such harm is compensated in monetary form. Article 151 of the Civil Code establishes general principles for the determination by the court of the amount of compensation for moral harm, and the criteria to be taken into account by the court in so doing: the degree of guilt of the perpetrator; the degree of physical and psychological suffering, which is connected with the individual characteristics of the person who sustained the harm; and other relevant factors.

A citizen subjected to cruel treatment also has the right to file a civil claim for compensation for the harm caused. In accordance with article 1064 of the Civil Code, harm caused to a citizen, including loss of life or damage to health, as a result of physical violence, torture or bodily injury, is subject to compensation in full by the person who caused the harm, provided that his or her guilt has been proved under the procedure established by law. Harm (including moral harm) caused as a result of unlawful conviction, unlawful prosecution, unlawful use of detention as a preventive measure or unlawful placement under a restricted residency order, is subject to compensation by the Treasury of the Russian Federation, irrespective of any fault on the part of a body or person conducting initial inquiries, a person carrying out pre-trial investigations, a prosecutor or a court (arts. 1070 and 1100 of the Civil Code, art. 133 of the Code of Criminal Procedure).

The legislation of the Russian Federation provides no other mechanisms for the rehabilitation of victims of torture.

**33.** The Constitutional Court, in its Decision No. 8-P of 14 July 2005, declared article 122, paragraph 1, of the Federal Act on the federal budget for 2003, which bestows on the Government the power to regulate the enforcement of judicial decisions concerning claims against the Russian Federation for compensation for harm caused by unlawful acts (omissions) of government bodies or officials thereof, and paragraphs 3, 5 and 6 of the Rules on the enforcement by the Ministry of Finance of judicial decisions concerning claims against the Treasury of the Russian Federation for compensation for harm caused by unlawful acts (omissions) of government bodies or officials thereof, approved by Government Decision No. 666 of 9 September 2002, to be unconstitutional.

The Court pointed out that the federal legislator, by providing in article 122, paragraph 1, of the Federal Act on the federal budget for 2003 that writs of execution in respect of claims against the Russian Federation should be transmitted to the Ministry of Finance for enforcement by it under the procedure established by the Government and by thus delegating to the Government the power to regulate the procedure for the enforcement of the corresponding judicial decisions, had failed to establish the scope and limits of such regulation. As a result, the federal legislator had allowed the possibility of regulation by the Government of issues that were a matter for the courts.

In addition, the Court indicated that there was no stable legal basis for the inclusion in federal acts on the federal budget for the next year of provisions that sought to establish a mechanism for the enforcement of judicial decisions concerning claims against the Russian Federation or recoveries from funds intended to meet the financial obligations of recipients of federal budget resources and, in particular, to define the federal government body responsible for the enforcement of those decisions; this constituted a violation of the principle of the supremacy of law, an essential element of which is legal certainty.

The legal upshot of the Court's ruling was that these problems were settled by passing federal legislation regulating the enforcement of the relevant judicial decisions: Federal Act No. 197-FZ of 27 December 2005 amending the Code on the Budget, the Code of Civil Procedure, the Code of Arbitral Procedure and the Federal Act on enforcement procedure.

**34.** In accordance with the law on criminal procedure currently in force in the Russian Federation, a conviction may not be based solely on an accused person's confession of guilt, unless the confession is corroborated by all the evidence available in the case (art. 77, para. 2, of the Code of Criminal Procedure). The higher court (on application by the prosecutor or the lodging of a complaint by another party to the judicial proceedings) would declare a conviction based solely on an accused person's confession to be a violation of the law on criminal procedure, and the conviction would be liable to be overturned, based on article 379, para 1.2, of the Code of Criminal Procedure.

Evidence obtained by threats, torture or other violence and evidence obtained in violation of the requirements of the Code of Criminal Procedure is to be declared inadmissible and has no legal force (art. 75, para. 3, of the Code of Criminal Procedure). In accordance with article 381, para. 2.9, of the Code of Criminal Procedure, the basing of a conviction on evidence that has been declared inadmissible by a court is one of the unconditional grounds for the overturning or modification of a judicial decision by a higher court. A statement by a defendant (convicted person) alleging the use of unlawful investigative methods (violence, torture, or other cruel or degrading treatment) must be verified, both during the consideration of the criminal case by the court of first instance and during any proceedings in a higher court.

On the lodging of an appeal in cassation or application for cassational review, the court of cassation verifies that the verdict is lawful, well founded and just (art. 373 of the Code of Criminal Procedure). The existing provisions of the law on criminal procedure oblige the higher court to examine all the convicted person's arguments, including any statement that his or her confession was obtained by torture or through the use of other unlawful investigative methods.

## Article 16

**35.** The Federal Penal Correction Service is working to improve conditions of detention for suspects and accused and convicted persons. For example, between 2002 and 2005, more than 19,700 additional places were created in remand centres (SIZOs).

Since the beginning of the year, 8,430 places have been created to accommodate persons suspected or accused of committing crimes: 4,045 places (48 per cent) under the federal special-purpose programme for the development of the penal correction system for 2002-2006, and 4,385 places (52 per cent) with funding from other sources.

Two new remand centres have been put into operation: one at the Vologda provincial office of the Federal Penal Correction Service (in Cherepovets), adding 419 places, and the other at the Service's central office for Primorye Territory (in Ussuriisk), adding 256 places.

Capacity at 33 existing remand centres operated by 29 regional and local branches of the Federal Penal Correction Service has been increased by 5,706 places.

Sixteen new facilities functioning under the remand centre regime have been established at 13 territorial regional and local branches of the Federal Penal Correction Service, adding 1,356 places, and capacity at five such facilities operated by three branches of the Service has been increased by 693 places.

In addition, before the end of the year, it is planned to create another 6,451 places, including 4,792 places under the federal special-purpose programme for the reform of the penal correction system for 2002-2006, and 1,722 places with funding from other sources.

These efforts are continuing. This year, the Government approved the outline of the federal special-purpose programme for the development of the penal correction system for 2007-2016. It is planned to allocate 54 billion roubles for the implementation of the programme, including 42 billion roubles (78 per cent) for the construction and rehabilitation of remand centres.

The programme provides for the completion of 39 facilities begun under the federal special-purpose programme for the reform of the penal correction system for 2002-2006 and, after 2010, it is planned build 26 new SIZOs that meet European standards (a norm of 7 square metres of living space per person).

Altogether, it is intended to create more than 33,000 additional places under the programme to accommodate suspects and accused persons.

In contrast to previous years, sizeable resources are being allocated for the construction of new SIZOs and the rehabilitation of existing ones. In remand centres, buildings and structures are undergoing capital and routine repairs, and communication systems are being replaced. Today, all persons held in SIZOs are provided with their own cot, bedding and tableware and can take daily exercise.

Conditions in institutions now enable the right of suspects and accused persons to medical care to be respected. The minimum nutrition standards established by the Government are being observed.

Penal correction institutions house persons sentenced to life imprisonment and individuals whose death sentences have been commuted to life imprisonment, as follows:

1,046 inmates, as at 1 January 2002;

1,115 inmates, as at 1 January 2003;

1,203 inmates, as at 1 January 2004;

1,295 inmates, as at 1 January 2005;

1,341 inmates, as at 1 January 2006.

Regional and local branches of the penal correction system holding persons sentenced to life imprisonment are taking the following measures to improve conditions in detention:

In the Republic of Mordova, Perm Territory and Orenburg province, work areas are being fitted out in accordance with technical safety standards, and [convicted] prisoners who are employed are being allowed fixed breaks of 10 minutes per hour during the working day;

In Vologda province, additional exercise yards are being built, and [convicted] prisoners are being given the opportunity to engage in physical exercise there, for which they may dress in sports attire and footwear. The exercise yards are equipped with awnings to provide protection from inclement weather and with benches for sitting;

In Orenburg province, the range of food available has been supplemented with produce from the prison garden;

To improve conditions in detention and provide more spacious accommodation for [convicted] prisoners, work is under way to fit out a second building at the central office of the Federal Penal Correction Service for Perm Territory and a four-storey building with a capacity of 112 at the Orenburg province office of the Service.

In addition, it is planned to examine and adopt the federal special-purpose programme for the development of the penal correction system for 2007-2016 at a meeting of the Government of the Russian Federation to be held on 31 August 2006. Under the programme, more than 54 billion roubles will be allocated over 10 years for the construction and rehabilitation of remand centres and correctional institutions.

**36.** There is currently no overcrowding in penal correction institutions. On 1 January 2006 the penal correction system had 765 correctional colonies, in which 644,729 convicts were serving sentences:

| Type of correctional colony | Maximum capacity | Number of detainees |
|---|---|---|
| Male only | 218 415 | 172 714 |
| Female only | 37 497 | 34 866 |
| Strict regime | 329 600 | 307 271 |
| Special regime, including: | 37 572 | 10 738 |
| Persons sentenced to life imprisonment or death sentences commuted to 25, 20, 15 years' deprivation of liberty | 2 013 | 1 611 |
| Open prisons | 68 947 | 53 020 |
| Secure hospitals | 60 663 | 42 555 |
| Hospitals | 25 686 | 22 137 |
| **Total:** | 780 225 | 644 729 |
| Prisons | 3 798 | 3 060 |
| Remand centres and units functioning as such | 144 056 | 161 069 |
| Rehabilitation colonies | 27 017 | 14 545 |
| Total: | 955 096 | 823 403 |

Overcrowding does, however, occur in remand centres.

On 1 August 2006, there were 155,600 criminal suspects, defendants and convicts being held in remand centres -- an increase of 15,000 or 10 per cent, since 1 January 2005.

The main factor behind the increase in the number of people in custody is the growing number of suspects and defendants ordered detained as a preventive measure by legal bodies. While in 2004, 328,400 people were remanded in custody, in 2005 that figure increased by 52,100, or 16 per cent.

The number of people arrested for minor crimes and petty offences continues to increase. In 2005, 135,900 such people were taken into remand centres: 31,400, or 30 per cent, more than in 2004. This category represents almost 36 per cent of the total intake into remand centres, whereas two years ago it represented less than 24 per cent.

The permissible duration of detention in custody is regulated by the Code of Criminal Procedure.

Under article 109 of the Code, suspects and defendants cannot be held in custody while crimes are investigated for longer than two months. If the pre-trial investigation cannot be concluded within that period, it can be extended to six months.

If a criminal case is particularly complex, pre-trial detention can be further extended to 12 months for persons accused of serious or particularly serious offences.

Pre-trial detention can be extended beyond 12 months up to 18 months only in exceptional circumstances, for persons suspected of committing serious or particularly serious offences, by decision of the justices of the supreme court in a given republic, territory or province, or the court of a city of federal importance, by agreement with the Procurator-General of the Russian Federation or his deputy. No further extension is permitted.

The extension of detention periods for defendants during judicial proceedings is regulated by article 225 of the Code of Criminal Procedure, pursuant to which, the duration of custody from when the case comes before the courts to the handing down of judgement cannot exceed six months. When six months have elapsed since a criminal case came before the courts, the court hearing the case may order an extension of the defendant's detention in custody. Such extension is permitted only in cases relating to serious and particularly serious criminal offences, and each extension may be no longer than three months.

**37.** In the first half of 2006, a total of 2,007 people died in penal correction institutions (in the first half of 2005, the figure was 2,088); of those people, 461 died of tuberculosis (compared with 569 in the first half of 2005), 1,247 died of other illnesses (compared with 1,214 in the first half of 2005), 8 died of injuries sustained in prison workshops (compared with 21 in the first half of 2005), and 291 died of other causes, mainly related to unexpected death (compared to 284 in the first half of 2005).

The death rate among convicted prisoners is one third that of the population of the Russian Federation as a whole. In 2001, the death rate in the country was 1,568.4 per 100,000 people; in the penal system it was 569.3 per 100,000 (65 per cent less); in 2002, the death rate in the country was 1,632.1 per 100,000 people, and in the penal system, 472.6 per 100,000 (71 per cent less); in 2003, the death rate in the country was 1,687.2 per 100,000 people, and in the penal system, 423.3 per 100,000 (74 per cent less); in 2004 the death rate in the country was 1,702.3 per 100,000 people, and in the penal system, 500 per 100,000 (71 per cent less); and in 2005, the death rate in the country was 1,717.6, and in the penal system, 540.3 per 100,000 (69 per cent less). The death rate in the penal correctional system rose by 7.7 per cent in 2005. Over the past two years there has been a significant reduction in the number of persons granted remissions on health grounds, and this has contributed significantly to the increased number of deaths in penal correction institutions. In 2005 only 60.2 per cent of those who appealed to the courts for remission were released, 7.4 per cent less than in 2004, and 12.3 per cent lower than in 2003. The number of remissions refused by the courts is increasing annually by 5-7 per cent.

Order No. 640/190 of the Ministry of Health and Social Development and the Ministry of Justice dated 17 October 2005 on the organization of medical assistance for persons serving sentences in detention institutions and people remanded in custody has entered into force; it guarantees medical assistance to suspects, defendants and convicts in accordance with international standards of diagnosis and treatment. Council of Europe experts approved the draft order at meetings in Strasburg in November 2004, and in Kaliningrad in August 2005.

Statistics on deaths in detention institutions, and causes:

| Indicators | | **Total** | **Remand centre** | **Correctional colony** |
|---|---|---|---|---|
| 2004 | Death from tuberculosis | 872 | 39 | 833 |
| | Death from other illnesses | 2 213 | 216 | 1 997 |
| | Death from injury sustained in prison workshops | 43 | 1 | 42 |
| | Death from other causes | 563 | 135 | 428 |
| 2005 | Death from tuberculosis | 1 023 | 86 | 937 |
| | Death from other illnesses | 2 451 | 295 | 2 156 |
| | Death from injury sustained in prison workshops | 35 | 1 | 34 |
| | Death from other causes | 615 | 165 | 450 |
| First half of 2006 | Death from tuberculosis | 461 | 50 | 411 |
| | Death from other illnesses | 1 247 | 193 | 1 054 |
| | Death from injury sustained in prison workshops | 8 | 0 | 8 |
| | Death from other causes | 291 | 93 | 188 |

**38.** The Criminal Code includes a special chapter (chapter 14) on the administration of criminal justice to minors and punishment of minors for criminal offences, and the Code of Criminal Procedure has a special chapter (chapter 50) on the conduct of criminal proceedings in respect of minors.

Under Russian criminal law, persons 16 years of age can be held criminally responsible. The law also allows younger persons -- those who have reached the age of 14 -- to be held criminally liable for offences specifically listed in article 20, paragraph 2, of the Criminal Code: chiefly offences that are classified as serious or particularly serious, as well as some more widespread types of offence that pose a considerable danger to society (homicide, wilful grievous bodily harm, robbery, theft, robbery with violence, rape, wilful destruction of or damage to property, terrorism and hostage-taking).

Minors can be subjected to compulsory re-education, and instead of undergoing criminal punishment can be sent to special closed educational and rehabilitative institutions.

Minors can only be sentenced to only six of the 12 types of punishment provided for in the Criminal Code, and only for reduced periods.

A specific procedure governing the imposition of custodial sentences on minors is laid down in criminal law.

As a general rule, the maximum custodial sentence that can be handed down to a minor is 10 years, for a single crime or a number of crimes together.

For minors committing offences before the age of 16, sentences may not exceed six years' deprivation of liberty; and only if a crime is classified as particularly serious (murder, terrorism, kidnapping, etc.) can they be sentenced to up to 10 years' deprivation of liberty.

When a serious or particularly serious crime has been committed, the lowest penalty provided for in the Criminal Code is reduced by half.

If a minor previously sentenced to parole commits a further offence that is not classified as particularly serious, the offender may again be sentenced to parole.

A minor's age is taken into account, furthermore, as an attenuating circumstance.

A minor committing a minor crime or petty offence can be absolved of criminal responsibility, if it is recognized that social rehabilitation can be achieved through re-education treatment. The law provides for the following re-education measures:

- Warnings;
- Consignment to the supervision of parents or guardians, or a specialized State body;
- An obligation to make amends for harm caused;
- Restrictions on leisure activities and behavioural constraints.

Under article 92, paragraph 2, of the Criminal Code, a minor sentenced to deprivation of liberty for a serious crime or other major offence can be released from punishment by the court and sent to a special closed re-education institution run by the Department of Education.

Prescription periods for prosecution and enforcement of judgement on minors are half those applicable in the case of adults. Reductions are also applied to expiry periods for criminal records (arts. 94 and 95 of the Criminal Code).

On 1 July 2006, there were 32,809 minors on the rolls of probation offices. Of those 32,809:

- 31,884 were on parole;
- 576 were doing community service;
- 327 were doing punitive work;

- 14 were pregnant or had small children, and their sentences had been deferred;

- 8 were banned from certain activities.

Approximately 10 per cent of this category were girls, and 12 per cent were under the age of 16. A total of 2.5 per cent of the teenagers did not have parents (guardians or custodians), 11 per cent lived in problem families where the parents or legal guardians were not performing their duties and were having an undesirable effect on the children's behaviour.

In 2005, almost 96,000 minors were put on probation. Almost 72,000 (75 per cent) had been convicted of crimes against property: theft, robbery or robbery with violence; 1,700 for disorderly conduct; 2,000 for drug-related crimes; and 64 for homicide.

The Code of Criminal Procedure strictly regulates the possibilities of detaining a juvenile offender. The requirements of article 423 must be strictly applied.

Firstly, the minor's legal representative must be immediately informed of the minor's detention, and before deciding on preventive measures a discussion on the possibility of transferring the minor to the supervision of his or her parents, persons in loco parentis or specialized institutions must take place in every instance; second, minors must be summoned for questioning through their legal representative, questioned in the presence of that legal representative, and not questioned for more than two hours without a break or four hours per day in all; third, in addition to the minor's legal representative, defence counsel must be present during the questioning in accordance with the requirements of the law (art. 51, para. 1.2, of the Code of Criminal Procedure).

Although the legal representative must be informed about court hearings, and may be present at those hearings, failure to appear in due time will not result in the postponement of the criminal case if the court does not consider the legal representative's presence to be necessary. The minor's legal representative may be allowed to participate in the case in the capacity of defence counsel or civil respondent. In such circumstances, he or she is assigned all the rights and responsibilities set out in the Code of Criminal Procedure for such participants in a trial (arts. 53 and 54).

If a minor is a victim or a witness, he or she must also be questioned in the presence of a legal representative and his or her interests may, both in the preliminary inquiry and during judicial hearings, be represented by a professional counsel besides his or her legal representative.

The Russian Federation pays particular attention to protecting the rights and legal interests of minors. In all such matters it strives to comply with the Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") and the United Nations Convention on the Rights of the Child.

By Government Order No. 38-R dated 19 January 2006, the Russian Federation adopted a medium-term programme of socio-economic development for the period 2006-2008, emphasizing the need for a juvenile justice system.

For many years it has been the practice in Russian courts for criminal and civil cases to be heard by different judges, who are specialists in those fields.

On 14 February 2000, the Plenum of the Supreme Court of the Russian Federation adopted resolution No. 7 on judicial practice in criminal cases involving minors, which contains recommendations for the courts of the Russian Federation on coherent judicial practice in the application of the law when considering criminal cases involving minors; resolution No. 5 of the Plenum, adopted on 10 October 2003, deals with the application by courts of general jurisdiction of the generally-accepted principles and norms of international law and international agreements in the Russian Federation, and draws attention to the need to apply these norms scrupulously to minors.

The State Duma of the Federal Assembly has passed in first reading a federal constitutional bill, No. 38948-3, amending the Federal Constitutional Law on the Judicial System by adding an article 26 -1 entitled "Juvenile courts", which proposes the establishment of a system of courts of general jurisdiction to consider criminal cases in which at least one of the parties is a minor.

The Russian Federation already has experience with the functioning of juvenile courts. Courts specializing in criminal and civil cases involving minors exist in Rostov province and in the cities of Taganrog and Shakhty. In August 2006, a juvenile court opened in the city of Angarsk in Irkutsk province. Elements of juvenile justice are being introduced into the work of the Leningrad City Court. The criminal divisions of many province and equivalent courts include specialists in juvenile affairs.

**39.** The legal status of the Chechen Republic is defined by the Constitution of the Russian Federation: article 65 states that the Chechen Republic is a constituent entity of the Federation.

In the interests of more effective operations and coordinated activities by anti-terrorist units fighting kidnappings and searching for missing people, and to step up the detection and investigation of other crimes, an interdepartmental working group including the first deputy military procurator for Combined Forces Group (c) has been set up pursuant to a joint order, No. 12p/61p of 29 June 2005, by the Deputy Minister for Internal Affairs/Chief of the Regional Operations Staff overseeing anti-terrorist operations in the Northern Caucasus Region of the Russian Federation and the Procurator of the Chechen Republic.

In view of its heightened social importance while anti-terrorist operations are being carried out, one priority is to investigate crimes against the inhabitants of the Chechen Republic.

Long practice shows that in most cases the investigation of crimes in the Chechen Republic, particularly crimes committed against local inhabitants, is complicated by the different difficult operating conditions in the region, ethnic customs and religious traditions (rapid burial after death, refusal to allow forensic examination of corpses, transfer of victims and witnesses to other parts of the country etc.).

The military procurators carry out their functions in close cooperation with representatives of the federal authorities, local law-enforcement bodies, the military command and the local administration.

The coordination necessary for better cooperation between the law-enforcement authorities and power structures is being scheduled and carried out.

If it is necessary to ascertain whether members of the armed forces have been involved in an offence against inhabitants of the Chechen Republic, investigative units including detectives from both the military procurator's office and the local law-enforcement authorities are set up.

The procedure for the establishment and operation of such units is laid down in the relevant orders.

The legal underpinnings for anti-terrorist operations are to be found in the Constitution of the Russian Federation, the Federal Anti-Terrorism Act No. 35-FZ of 6 March 2006, other federal acts, the generally established principles and standards of international law, edicts by the President of the Russian Federation, relevant sections of Federal Government resolutions and orders, and other regulatory instructions adopted on the basis of the above.

These are sufficient legal underpinnings: they govern the rights and duties of participants in anti-terrorist operations and accord to the inhabitants of the Chechen Republic the rights provided for by law.

**40.** No incidents of torture or cruel treatment of suspects, accused individuals or convicts held in Russian Federal Penal Enforcement Service facilities have been established.

A criminal investigation into evidence of an offence under article 105, paragraph 2(zh), article 126, paragraphs 2(a), 2(g) and 2(zh), and article 167, paragraph 2, of the Russian Criminal Code was initiated on 6 June 2005 by the procurator's office for Shelkovo district, Chechen Republic, in connection with the events of 4 June 2005 in Borozdinovskaya; the case has been forwarded for further investigation to the investigative department in the office of the military procurator for Combined Forces Group (c).

The requisite expert investigation has been and is being conducted into this case. Federal Security Service and Ministry of Internal Affairs authorities have been assigned to the detective work of identifying the culprits and the missing individuals.

The investigation continues.

**41.** According to reports from municipal, district and interdistrict procurators' offices in the Chechen Republic and information from the procuratorial system in the Republic, the national law-enforcement authorities have received no complaints or applications from citizens, including witnesses to disappearances and torture, for protection because they have been persecuted or threatened. Security measures such as provided for under article 11, paragraph 3, of the Federal Code of Criminal Procedure have not been put into effect for parties to criminal proceedings in the category of interest to the Committee.

The investigative authorities have opted to keep personal data on witnesses confidential in accordance with article 166, paragraph 9, of the Federal Code of Criminal Procedure. This practice is being followed by the procuratorial authorities in the Chechen Republic in the cases of five crime witnesses.

**42.** The procuratorial authorities in the Chechen Republic have ensured strict compliance with the requirement, under article 108, paragraph 3, of the Federal Code of Criminal Procedure, that detainees must be brought before a judge within 48 hours of their actual apprehension so that it can be decided whether they should be subjected to pre-trial detention, and the requirement, under articles 91 and 92 of the Code, that a record of detention must be filled in within three hours of a suspect's being placed at the disposal of the authorities. Due collaboration has been established between the procuratorial and judicial authorities with a view to ensuring that these deadlines are not breached. Instances of arbitrary detention, without actually going through the detention procedure, to check reports that citizens may have been implicated in crimes no longer occur. All instances of unlawful detention and abduction are checked in accordance with articles 144 and 145 of the Code of Criminal Procedure, and if there is enough information to suggest a crime has occurred, criminal proceedings are initiated.

**43.** On 13 September 2000, the office of the procurator in the Achkhoi-Martan district of Chechnya opened criminal case No. 26045 under article 167, paragraph 2, and article 105, paragraph 2, of the Criminal Code in response to the airborne rocket strike on a road convoy with peaceful civilians between the Achkhoi-Martan and Shaami-Yurt intersections on the federal "Kavkaz" highway which left three dead and three wounded.

On 16 September of that year the same office opened criminal case No. 26047 under article 105, paragraph 2, of the Criminal Code in response to the aerial strafing of Katyr-Yurt in Achkhoi-Martan district which killed and injured peaceful civilians.

It was found that military personnel had been involved in these offences, and the individuals concerned were therefore handed over to the office of the military procurator for further investigation.

The Central Office of the Military Procurator has considered the possibility of taking some general steps in connection with the entry into force of the rulings by the European Court of Human Rights in the cases of Isaeva *v.* Russian Federation and Isaeva, Yusupova and Bazaeva *v.* Russian Federation - complaints by inhabitants of the Chechen Republic that relatives of theirs had died and property of theirs had been destroyed when military units used strike weapons to put down active resistance by members of illegal armed bands in the Shaami-Yurt district of the Chechen Republic in October 1999 and the Katyr-Yurt district in February 2000.

The European Court's rulings have been forwarded to all district and fleet military procurators for use in their supervisory activities, in the investigation of crimes and in their legal work with members of the armed forces.

The criminal investigations into those incidents were halted procedurally in the offices of the military procurator at the pre-trial stage, since the actions of the military personnel concerned did not constitute a crime. The claimants have not appealed against these procedural decisions under article 125 of the Code of Criminal Procedure.

**44.** When mass killings, torture and cruel treatment of the civilian population occur in the Chechen Republic, the procuratorial authorities open criminal proceedings and investigate. If members of the armed forces are found to be implicated in such crimes, the military procuratorial authorities are assigned to conduct further investigations.

The Office of the Procurator-General of the Russian Federation opened criminal investigation No. 49152 under article 105, paragraph 2(a)(homicide), of the Criminal Code, in response to the killing of inhabitants of the village of Alkhan-Yurt, Urus-Martan district. Conduct of the investigation has been assigned to the Urus-Martan district procurator's office.

It has been established during the proceedings on this case that on the night of 8-9 December 1999, unidentified armed individuals broke into homes in the village and, brandishing firearms, stole property. Mr. A. Asuev, Mr. I. Usmanov, Ms. I. Muradova and Mr. A. Sultanov were killed; Mr. A. Golubkin was wounded.

The relatives of the deceased and individuals who suffered damage to property have been recognised as victims in the case.

The preliminary inquiry has been interrupted several times because the culprits have not been identified. It was resumed on 7 August 2006 and the investigator at the district procurator's office has been instructed to conduct further inquiries with a view to identifying the culprits.

Criminal investigation No. 12038 has been opened under article 105, paragraphs 2(a), 2(d), 2(e) and 2(zh), of the Criminal Code into the killings by persons unknown, between 19 and 21 January 2000, of Mr. Kh. Khashiev, Ms. L. Khashieva, Mr. R. Taimaskhanov and others at No. 107, ulitsa Neftyanaya, Grozny. The inquiry is being handled by the Staromyslovsky district procurator's office in Grozny. The investigation has been interrupted several times; the preliminary inquiry was most recently resumed on 20 July 2006.

The investigation has turned up information on other offences committed by parties unknown against inhabitants of the Katayama subdistrict of Staromyslovsky; accordingly, some material, including information on the discovery of 34 corpses, on killings, on the kidnapping of one person and on the disappearance of one inhabitant of the district, has been removed from the file on investigation No. 12038.

The Staromyslovsky district procurator's office has launched criminal investigations into all the information that has been uncovered.

Criminal investigation No. 50080 was opened on 2 July 2003, under article 105, paragraph 2(a), of the Criminal Code, into the killing of Mr. S. Musaev and the discovery in the basement of 154b, ulitsa Pugacheva, Grozny, of the corpses of Sheima and Shamani Inderbiev.

Criminal investigation No. 50082 was opened on 2 July 2003, under article 105, paragraph 2(a), of the Criminal Code, into the killing of Mr. Vaka Sataibaev and ten unidentified persons during the night of 26-27 February 2000.

Criminal investigation No. 50100 was opened on 9 September 2003, under the same article of the Code, into the use by persons unknown of a firearm against Mr. Kh. Makhauri, wounding him.

Criminal investigation No. 50104 was opened on 11 January 2000 under article 126, paragraphs 2(a), 2(g) and 2(zh), of the Criminal Code into the disappearances of Ms. L. Mustrigova, Ms. T. Aslambekova and Mr. S. Shishkhanov. The investigation of these cases has been interrupted and resumed several times.

While special operations were taking place in the village of Novye Aldy and in Chernorechye, in Grozny, on 5 February 2000, 55 inhabitants were shot dead by persons unknown. Those same unknown persons stole property from peaceful citizens. The Grozny procurator's office opened criminal investigation No. 12011 under article 105, paragraphs 2(a), 2(d), 2(e) and 2(zh), of the Russian Criminal Code into this incident on 5 March 2000.

On the strength of the evidence assembled, an order was issued on 3 April 2006 to charge S. G. Babin, a member of the St. Petersburg-Leningrad Province State Department of Internal Affairs special military unit, with offences under article 286, paragraphs 3(a) and 3(b), article 105, paragraph 2(zh), and article 162, paragraph 2, of the Russian Criminal Code. The preliminary inquiry on the case was interrupted on 10 April 2006 because the whereabouts of the accused could not be ascertained.

A series of criminal investigations were opened by the Shalin district procurator's office under article 126, paragraph 2 (kidnapping), of the Criminal Code into the mass kidnappings by persons unknown of inhabitants of the village of Mesker-Yurt in Shalin district.

All these investigations were combined on 6 August 2002 with a single criminal case, No. 59205, opened that day by the office of the procurator for the Chechen Republic under article 105, paragraph 1, of the Russian Criminal Code into the homicide of Mr. A. Saltamirzaev, an inhabitant of Mesker-Yurt.

The investigation of the case has been interrupted and resumed several times because the identity of those who should be brought to justice has not been established. The last interruption on these grounds occurred on 21 June 2006; the legality of the decision is being checked by the office of the procurator for the Chechen Republic.

Progress in the above criminal investigations is being monitored.

## Annex

### Question 5: Numbers of persons held in pre-trial detention facilities

| Republic, territory, province | 1 Jan 2000 | 1 Jan 2001 | 1 Jan 2002 | 1 Jan 2003 | 1 Jan 2004 | 1 Jan 2005 | 1 Jan 2006 |
|---|---|---|---|---|---|---|---|
| **Russian Federation: total persons held** | **152791** | **125932** | **58835** | **34414** | **32904** | **36272** | **42134** |
| Adygei Republic | 0 | 0 | 0 | 0 | 0 | 0 | 60 |
| Altai Republic | 410 | 263 | 68 | 44 | 54 | 71 | 83 |
| Republic of Bashkortostan | 3139 | 2603 | 1395 | 855 | 809 | 1028 | 1160 |
| Republic of Buryatia | 1017 | 928 | 591 | 393 | 320 | 422 | 496 |
| Republic of Dagestan | 1011 | 866 | 650 | 184 | 91 | 87 | 109 |
| Kabardino-Balkar Republic | 287 | 277 | 192 | 74 | 76 | 111 | 130 |
| Republic of Kalmykia | 163 | 163 | 63 | 62 | 45 | 44 | 42 |
| Karachai-Cherkes Republic | 126 | 122 | 157 | 65 | 26 | 35 | 34 |
| Republic of Karelia | 571 | 504 | 265 | 194 | 163 | 217 | 269 |
| Republic of Komi | 2225 | 2079 | 555 | 481 | 419 | 446 | 502 |
| Republic of Mari El | 728 | 637 | 210 | 128 | 121 | 143 | 224 |
| Republic of Mordova | 930 | 618 | 238 | 167 | 141 | 169 | 190 |
| Republic of Sakha, Yakutia | 694 | 571 | 506 | 166 | 137 | 102 | 152 |
| Republic of North Ossetia | 798 | 687 | 189 | 128 | 154 | 159 | 145 |
| Republic of Tatarstan | 2269 | 1962 | 965 | 564 | 566 | 616 | 674 |
| Republic of Tuva | 253 | 311 | 470 | 240 | 196 | 183 | 308 |
| Urdmurt Republic | 2158 | 1519 | 519 | 306 | 408 | 405 | 532 |
| Republic of Khakassia | 0 | 0 | 0 | 0 | 0 | 28 | 36 |
| Chechen Republic | 0 | 0 | 100 | 62 | 95 | 142 | 204 |
| Chuvash Republic | 1064 | 908 | 358 | 250 | 273 | 272 | 345 |

| Republic, territory, province | 1 Jan 2000 | 1 Jan 2001 | 1 Jan 2002 | 1 Jan 2003 | 1 Jan 2004 | 1 Jan 2005 | 1 Jan 2006 |
|---|---|---|---|---|---|---|---|
| Alti Territory | 3658 | 2182 | 855 | 484 | 504 | 717 | 705 |
| Krasnodar Territory | 3329 | 3474 | 1789 | 1047 | 1021 | 1319 | 1287 |
| Krasnoyarsk Territory | 6133 | 5025 | 1686 | 1261 | 1378 | 1055 | 1467 |
| Primorye Territory | 3017 | 2463 | 1132 | 420 | 571 | 690 | 717 |
| Stavropol Territory | 1918 | 1958 | 794 | 468 | 454 | 640 | 573 |
| Khabarovsk Territory | 3125 | 2120 | 857 | 517 | 402 | 435 | 555 |
| Amur province | 1622 | 933 | 787 | 301 | 152 | 152 | 285 |
| Arkhangelsk province | 1277 | 915 | 585 | 398 | 444 | 515 | 483 |
| Astrakhan province | 492 | 480 | 414 | 325 | 224 | 255 | 569 |
| Belgorod province | 650 | 593 | 363 | 165 | 153 | 208 | 212 |
| Bryansk province | 1178 | 877 | 338 | 276 | 313 | 341 | 439 |
| Vladimir province | 1732 | 1225 | 933 | 309 | 363 | 344 | 110 |
| Volgograd province | 2953 | 3122 | 1387 | 740 | 802 | 953 | 870 |
| Vologda province | 1324 | 403 | 568 | 355 | 336 | 413 | 350 |
| Voronezh province | 1560 | 1295 | 532 | 305 | 224 | 272 | 357 |
| Ivanovo province | 1429 | 1109 | 598 | 481 | 588 | 438 | 326 |
| Irkutsk province | 7229 | 6400 | 3065 | 935 | 629 | 591 | 984 |
| Kaliningrad province | 1205 | 1163 | 685 | 359 | 269 | 321 | 267 |
| Kaluga province | 999 | 845 | 491 | 297 | 263 | 380 | 314 |
| Kamchatka province | 255 | 245 | 200 | 123 | 80 | 102 | 77 |
| Kemerovo province | 3723 | 2668 | 1051 | 659 | 419 | 632 | 910 |
| Kirov province | 1295 | 1190 | 530 | 427 | 329 | 414 | 447 |
| Kostroma province | 882 | 701 | 247 | 290 | 266 | 254 | 284 |
| Kurgan province | 1066 | 861 | 560 | 388 | 251 | 264 | 502 |
| Kursk province | 545 | 469 | 382 | 289 | 204 | 284 | 500 |
| Lipetsk province | 808 | 562 | 288 | 170 | 188 | 108 | 238 |
| Magadan province | 96 | 115 | 82 | 56 | 19 | 81 | 68 |

| Republic, territory, province | 1 Jan 2000 | 1 Jan 2001 | 1 Jan 2002 | 1 Jan 2003 | 1 Jan 2004 | 1 Jan 2005 | 1 Jan 2006 |
|---|---|---|---|---|---|---|---|
| Moscow City | 4613 | 4480 | 2914 | 2449 | 2794 | 3036 | 2998 |
| Moscow province | 2302 | 2251 | 1464 | 1144 | 1180 | 1445 | 1792 |
| Murmansk province | 1394 | 1073 | 417 | 300 | 301 | 273 | 405 |
| Nizhny Novgorod province | 3072 | 2768 | 2214 | 652 | 791 | 1093 | 1129 |
| Novgorod province | 706 | 869 | 462 | 333 | 284 | 155 | 253 |
| Novosibirsk province | 4869 | 3991 | 1347 | 835 | 778 | 815 | 1072 |
| Omsk province | 2109 | 1306 | 870 | 548 | 549 | 415 | 476 |
| Orenburg province | 2144 | 2084 | 1129 | 678 | 555 | 605 | 856 |
| Orel province | 361 | 307 | 225 | 183 | 137 | 174 | 205 |
| Penza province | 734 | 624 | 579 | 230 | 242 | 275 | 259 |
| Perm province | 4504 | 3714 | 1725 | 861 | 1086 | 1216 | 1379 |
| Pskov province | 794 | 768 | 429 | 220 | 190 | 184 | 216 |
| Rostov province | 3441 | 2145 | 1175 | 702 | 646 | 798 | 993 |
| Ryazan province | 943 | 713 | 290 | 173 | 175 | 158 | 270 |
| Samara province | 1935 | 1663 | 1322 | 749 | 853 | 928 | 1167 |
| St. Petersburg and Leningrad province | 13578 | 11407 | 3210 | 1220 | 1092 | 1245 | 1592 |
| Saratov province | 2405 | 1784 | 846 | 446 | 358 | 380 | 351 |
| Sakhalin province | 702 | 737 | 113 | 96 | 126 | 122 | 173 |
| Sverdlovsk province | 8620 | 7327 | 2900 | 2183 | 1921 | 1493 | 1662 |
| Smolensk province | 1467 | 1472 | 529 | 307 | 255 | 361 | 423 |
| Tambov province | 367 | 391 | 314 | 195 | 175 | 214 | 238 |
| Tver province | 2257 | 1891 | 473 | 382 | 380 | 459 | 548 |
| Tomsk province | 1858 | 1464 | 361 | 314 | 247 | 261 | 338 |
| Tula province | 2966 | 1880 | 480 | 372 | 285 | 349 | 389 |
| Tyumen province | 3120 | 2231 | 752 | 399 | 431 | 504 | 573 |
| Ulyanovsk province | 1237 | 915 | 507 | 319 | 228 | 433 | 470 |

| Republic, territory, province | 1 Jan 2000 | 1 Jan 2001 | 1 Jan 2002 | 1 Jan 2003 | 1 Jan 2004 | 1 Jan 2005 | 1 Jan 2006 |
|---|---|---|---|---|---|---|---|
| Khanty-Mansi Autonomous Area | 540 | 400 | 93 | 57 | 54 | 37 | 75 |
| Chelyabinsk province | 4742 | 3744 | 1793 | 871 | 972 | 946 | 1180 |
| Chita province | 1654 | 1454 | 844 | 534 | 496 | 564 | 621 |
| Yaroslavl province | 2014 | 1668 | 436 | 454 | 383 | 476 | 440 |

**Numbers of individuals convicted by article of the Federal Criminal Code**

| **Article** | **1 Jan 2003** | **1 Jan 2004** | **1 Jan 2005** | **1 Jan 2006** | **1 July 2006** |
|---|---|---|---|---|---|
| Homicide | 1225 | 1423 | 1407 | 1468 | 1313 |
| Wilful grievous bodily harm | 1772 | 2212 | 2134 | 2271 | 2178 |
| Rape | 820 | 744 | 681 | 785 | 725 |
| Burglary | 2335 | 5335 | 3723 | 4228 | 4004 |
| Robbery | 1135 | 2145 | 2015 | 2305 | 2425 |
| Robbery with violence | 2370 | 2447 | 1925 | 1896 | 1826 |
| Disorderly conduct | 250 | 521 | 136 | 95 | 89 |
| Extorsion | 117 | 136 | 126 | 175 | 211 |
| Unlawful taking of a motorized or other vehicle | 382 | 812 | 716 | 863 | 777 |
| Drug-related offences | 164 | 212 | 92 | 157 | 206 |
| Theft or expropriation of a weapon, ammunition or explosive devices | 84 | 76 | 41 | 48 | 50 |
| Other | 296 | 428 | 411 | 254 | 430 |

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