

**Reports of human rights organisations
hearings of
International Commission of Jurists**

29-30 January 2007

COUNTER TERROR: RUSSIAN PRACTICE

MOSCOW

2007

Human Rights Center «Memorial»

COUNTER TERROR: RUSSIAN PRACTICE

**Reports of human rights organisations
hearings of International Commission
of Jurists 29-30 January 2007**

**MOSCOW
2007**

Table of contents

Introduction.....	4
«Counterterrorism Operation» by the Russian Federation in the Northern Caucasus throughout 1999-2006.....	6
1. Introduction.....	6
2. Conflict Development Background and History. Chechenization of the Conflict.....	7
3. Legal Framework.....	10
4. The First Stage of the Conflict — Nonselective Use of Force....	15
5. Deliberate Attacks on Peaceful Population.....	21
6. «Special Operations [zachistka]».....	22
7. Inhuman Treatment of Detained, Arrested and Kept in Custody Persons.....	30
7.1. Filtration System.....	30
7.2. Illegal Prisons Today.....	35
7.3. Torture.....	37
8. «Disappearances» of People. Arbitrary Executions.....	38
9. Taking Insurgents' Relatives Hostage, Repressive Acts against Insurgents' Relatives.....	45
10. Impunity of Perpetrators.....	47
Governance as a counter-terrorist operation.....	52
A. The Federal Law on Counteracting Terrorism of 6 March 2006.....	53
B. Amendment of certain Federal Laws pursuant to the Ratification of the Council of Europe Convention on the Prevention of Terrorism and the Adoption of the Federal Law on Counteracting Terrorism (of 27 July 2006).....	57
C. Other Laws (some examples).....	60
D. International Treaties.....	61

Introduction

In this brochure we have tried to briefly outline Russia's experience with «counterterrorism».

It is clear today that terrorism is a very real danger, one which must be combated both within Russia and beyond her borders. There are times, though, when the cure is worse than the disease.

It is generally accepted that the current trend towards the significant and often unjustified curtailment of human rights under the pretext of fighting terrorism followed from the attacks of September 11, 2001. However, Russia proved to be ahead of her time in this process—«counterterrorist operations» began here a full two years earlier. There are few who remember today that Anti-terrorism Law was already needed in August 1999, shortly after Shamil Basaev's invasion of Dagestan (that is, still before the attacks on residential properties in Russian cities). This allowed the government to use the armed forces and restrict citizens' rights without the approval of parliament, still at that point an independent body.

Russia has now gone through eight years of «counterterrorism», including six on a global scale, and the time has come to evaluate the results. They are far from comforting: terrorism has not been vanquished. And indeed, a detailed examination of the techniques of combating terrorism reminds us that «counterterrorism» was in fact used as a pretext for significant restrictions and violations of human rights in many countries long before September 11¹.

¹ One can find examples not only among Latin American dictators but even in Russian history: the «Great Terror» of the 1930's was portrayed in the USSR as a «counterterrorist operation» after the December 1, 1934, murder of Kirov by «enemies of the people».

A set of hearings on January 29-30, 2007, was organized in Moscow by the International Commission of Jurists to bring the results of Russian «counterterrorism» to light¹. At these hearings victims both of terrorist attacks and «counterterrorist operations», witnesses and experts provided testimony, and a number of Russian human rights organizations² presented their own reports.

It appears the «Second Chechen War» is already history, but «counterterrorist operations» continue throughout the Northern Caucasus. Nonetheless the armed resistance is far from defeated—indeed, these very operations only give it new strength. Likewise, we can hardly consider these operations «law-enforcing», as Russian «counterterrorism»—indiscriminate mass bombing and shelling, cruel mopping-up operations, the robbery and disappearance of citizens, torture and the fabrication of judicial proceedings—lies far beyond the bounds of law. It is a different matter that in order to support such actions numerous laws and sub-legislative measures³ have been adopted; now, eight years later, we live in a changed country. Antiterrorist legislation, though in essence emergency legislation, proved an extremely convenient means for everyday governing.

In this brochure we present two small reports. One addresses the «counterterrorist operation» in the Northern Caucasus—the time has come to evaluate the results and draw conclusions. The second gives an analysis of Russian «antiterrorist» legislation.

¹ The Commission had already held similar hearings throughout the world, looking into the experiences of Latin America, the USA, North and West Africa, Great Britain, Southeast Asia and Australia. A report on antiterrorism legislation and legislative practice in the modern world, summarizing these results, is now being prepared.

² The Independent Committee of Legal Experts, the Center for the Development of Democracy and Human Rights, the human rights center «Memorial», Committee Against Tortures (Nizhny Novgorod) and the Moscow Helsinki Group.

³ Few of which one can consider truly lawful.

«Counterterrorism Operation» by the Russian Federation in the Northern Caucasus throughout 1999-2006

Brief overview by the Human Rights Center

«Memorial» and Center «Demos»:

*Submitted to the Eminent Jurists Panel in January 2007
in connection with high level public hearings on terrorism,
counterterrorism and human rights in Russia*

1. Introduction

Terrorism has become a grave threat in modern Russia. To protect the rights and freedoms of its citizens the state has not only the right but also an obligation to put up an effective fight against terrorism. However, the actions undertaken by Russia's authorities in the Chechen Republic and Northern Caucasus since autumn 1999 under the banner of struggle against terrorism cannot be defined as a counterterrorism operation (CTO). The ways the top management and military agencies of the country use force have transformed the CTO into criminal acts resulting in mass victims and outrageous violations of human rights.

It should be noted, though, that throughout the period of 1996-99, the heads of the Chechen Republic of Ichkeria (ChRI) proved to be unable to ensure safety and civil rights on the territory under their administration. They failed to stop brigandage, robbery and hostage taking on the adjacent territories by the gangs based in the Chechnya. Incursion by the armed formations into Dagestan from the territory of Chechnya in August and September 1999 could not but make the leadership of the Russian Federation take measures aimed to ensure citizens' safety and protection of the constitutional order. Such was the

situation that made the use of the armed force lawful; however, force should be used within the limits of the law, selectively and proportionate to the threat.

During all the seven years of confrontation, both parties badly violated human rights and norms of humanitarian law. However, the number of casualties among civilians resulting from the actions by the federal center is considerably higher, while the policy pursued by the federal authorities in the Northern Caucasus erodes Russia's democratic institutes as a whole.

In this report, we are not going to touch upon the line of action of the armed formations fighting the federal party or describe numerous acts of terrorism committed by the adversaries of the Russian Federation in the ChR territory and other regions of Russia. These actions cannot be justified and deserve to be censured.

The report briefly describes the line of actions by Russia's security agencies in the Northern Caucasus with respect to their observance of human rights and norms of humanitarian law. To emphasize, the *internationally recognized* authority of the Russian Federation, i.e. the state that has signed numerous international legal documents and assumed respective obligations, controls these security agencies which are responsible for gross and massive violations of human rights.

2. Background of the Second Chechen War and History of the Conflict Development. «Chechenization» of the Conflict

Initially the ChR conflict was of purely separatist nature. The forces having come to power in the Republic in 1991 on the crest of the anticommunist wave advocated complete separation of the Chechen Republic from Russia.

In 1994, the RF leadership started the first Chechen war under the slogan of «reinstating the constitutional order». After the August 1996 military defeat of Russia, Moscow and Grozny signed a number of agreements.¹ The final solution of the Chechen issue was postponed for several years; the Republic actually became independent.

During 1996-1999, the situation was inevitably approaching a new confrontation. The RF leadership was openly preparing to gain

¹ The Hasavyurt Agreement of August 1996 and Moscow Agreement of May 1997.

revenge. The leadership of the Chechen Republic of Ichkeria (ChRI) failed to cope with the post-war anarchy. Numerous armed gangs made the Chechen Republic their home kidnapping people both in Chechnya and in the adjacent territories of Russia. Fundamentalist Islamic groups created training bases where they trained volunteers in the methods of subversive and terrorist war in the territory of the Chechen Republic.

In summer and autumn of 1999, groups of Muslim fundamentalists raided into the Republic of Dagestan from the territory of the Chechen Republic.¹ There they met with a resounding rebuff of the significant part of the population and the RF military forces. Having routed the armed intruders and forced them to retreat the Russian armies entered into the Chechen Republic. This was the beginning of «the second Chechen war». The Russian authorities called it «counterterrorism operation», the reason for such a definition being a series of terrible acts of terrorism — exploded apartment houses in the Russian cities in September 1999. Despite of the statements made by the Russian leadership that these acts of terrorism had been authored by the terrorist underworld controlled from the Chechen Republic, it remains unclear as to who had organized these explosions.

The period of October 1999 through spring 2000 was the time of the first stage of war when Russia's troops using the armored warfare, aircrafts, heavy artillery and missiles gradually occupied the ChR territory.

By the summer of 2000, the Chechen squadrons were unable to offer open resistance to the Russian troops and started using guerilla tactics. This period was characterized by creation of the «filtration» system and illegal places for holding in custody the detained persons, by the growing activity of «death squads», numerous large-scale «special operations» in towns and villages and, as a whole, by extreme non-selectivity in the federal troops' and security structures' activities.

The year 2003 became a new stage in the conflict — beginning of the «chechenization». The RF authorities declared that with the confrontation being over, the Republic was returning to the RF legal space and the process of political settlement. In fact, the «settlement» became a mere facade for the continuing conflict having changed its forms. The Republican authorities were formed through imitation of elections in

¹ Official leaders of the ChR represented by Mashadov censured this invasion.

the course of «chechenization». In the course of conflict «chechenization» during the last three years, there were formed security structures staffed by local residents, i.e. ethnic Chechens. Along with the local militia, there have been formed specialized Chechen formations delegated the «right» to illegal violence in their fight against insurgents.¹

These are the forces fighting now against insurgents and their underworld. At the beginning, the major part of these formations had no legal status but, by the end of 2006, their overwhelming majority had been already legalized and formally ranked as a subunit of some federal security agency. Many of these groups' members are people with a criminal record; the groups are organized based on the clan principle and consist of former insurgents compelled by force or blackmail to join their former adversaries. Their formal inclusion in the lawful structures has in no way made them act within the law.

During the «chechenization», the large-scale «special operations» in towns and villages were replaced with the «targeted special operations» (kidnappings, actually) organized mainly by the local security structures (in some cases jointly with the federals). The kidnapped people simply «disappear»; they are kept in illegal prisons without any court rulings being coerced to confess to the «committed» crimes. The thus obtained «confessions» are often used for the invention fabrication of criminal cases. Up to 40% of the kidnapped persons «disappear» without any traces; sometimes people find their corpses. The practice

¹ The biggest pro-federalist security structure consisting of ethnic Chechens is subordinated to R. Kadyrov. It consists of numerous units scattered all over Chechnya and united at a certain point of time into the so-called Security Service. («Security Service» in Chechnya no longer officially exists. However, its name remains as a kind of generalized notion for all Kadyrov's units and is rather broadly used by the local residents and «security structures».) Security Service was initially formed for the assurance of security of the Head of the Chechen Administration A. Kadyrov and had no legal status. Within three years, it became a powerful armed formation. Throughout 2004-2005, the majority of the Security Service units became legalized within different structures of the Chechen Ministry of Interior, and namely, many of their members are serving today in the battalions of the Chechen Interior Ministry Internal Forces formed in 2006 named «Sever» [North] and «Yug» [South]. Besides «Kadyrovists» and the groups they control, Chechnya has battalions formed from Chechens named «Vostok» [East] («Yamadyevists» — after the name of their leader Sulim Yamadayev) and «Zapad» [West] («Kakiyevsts» — after the name of their leader Said-Magomed Kakiyev). These battalions are included in the 42nd Motor Rifle Division of the RF Ministry of Defense. Besides ethnic Chechens there also serves a certain percentage of combatants sent from different regions of Russia. Throughout the last two years, the former members of the mentioned structures have taken all the key positions in the Chechen Ministry of Interior.

of taking hostage of insurgents' family members aimed to compel them to surrender has become widely spread.¹

Thus, the forces undertaking the «CTO» gradually switched in their actions from extreme non-selectivity to relative selectivity. However, all these actions are undertaken with gross violations of human rights in the situation of complete legal vacuum.

It is necessary to note another characteristic of the «CTO»: with the level of military opposition in the ChR going down, the armed conflict has started «spilling over» the territory of the Chechen Republic to other republics in the Northern Caucasus.²

3. Legal Framework

The legal framework for evaluating the actions of the parties to the conflict is the international pacts and conventions on human rights; international humanitarian law; Russia's national legislative norms.

The military campaign launched in the Chechen Republic in autumn 1999, as well as the first Chechen military conflict³ was beyond the scope of the law. The issue in question was actually a large-scale abuse of power by the state.

To justify their actions the RF authorities referred to the need to fight against terrorism and used the term «counterterrorism operation». However, when characterizing the events taking place in Chechnya, the officers of the coalition task force in the Northern Caucasus and civil functionaries often used the word «war». This is true, because during the armed hostilities the troops blocked whole regions, stormed towns and villages, used aircrafts, heavy artillery, tanks and missiles.

¹ The details about «chechenization» of the conflict can be found in the reports by the Legal Rights Centers «The Chechen Republic: Consequences of «Chechenization» of the conflict, March 2006»; «In a Climate of Fear: «Political Process» and Parliamentary Elections in Chechnya»; «Torture in Chechnya: normalization of a nightmare», et al.

² You can find this in the Report by the Legal Rights Center of «Memorial» — «Conflict Spill-Over Outside the Chechen Republic in 2004-2005 (Ingushetia and Kabardino — Balkariya)».

³ The first Chechen war campaign of 1994-96 was euphemistically defined as «disarmament of illegal bandit formations» and «restoration of constitutional order» without any legal reasoning provided. On July 31, 1995, the RF Constitutional Court actually recognized the armed conflicts in Chechnya as armed conflicts on non-international nature agreeing that these events fall under the *Second Optional Protocol to the Geneva Conventions*. However, this fact did not entail any specific steps of the RF civil and military authorities.

There are different opinions regarding the legitimacy of use of armed forces (weapons and army) in such situations. From our point of view, the use of armed forces is possible as a matter of principle, but strictly within the law of the Russian Federation.

Russia had no law on the defense emergency at that point¹. When devising the operation in Chechnya, the government might substantiate the bringing of troops to Chechnya, from the point of view of Russia's current law, as use of armed forces and armament for the purpose beyond their intended role. According to the Federal Law (FL) «*On Defense*», the use the RF armed forces in the accomplishment of missions beyond their intended role is allowed by the RF President with issuance of the special decree subject to approval by the Federation Council (FC); no such decree was issued.

Under the RF Constitution, the President can impose the state of emergency in the whole territory of the country or in some of its regions in order to ensure safety of citizens and protect constitutional order.

The RF law «*On the State of Emergency*» was approved in 1991, but was used neither in the first nor in the second Chechen campaign.

At first, those who opposed the imposing of the state of emergency in Chechnya insisted that the use of this law was impossible as, in the first place, it disagreed with the RF Constitution of 1993. Secondly, it did not provide for the participation of the army in the actions aimed to normalize the situation delegating this mission to the internal security troops.

Indeed, the Law «*On the State of Emergency*» of 1991 did not quite address the potential state of emergency that would justify the support participation of the armed forces in the maintenance of the state of emergency. However, by the spring of 2001, the new Federal Law on the State of Emergency was approved with all the norms conforming to the provisions of the Constitution, which makes it possible to use the armed forces for the protection of the constitutional order, rights and liberties of man and citizen. The majority of the reasons justifying the state of emergency, as listed in the new Law, can be found in Chechnya: armed mutiny, acts of terrorism, blocking or occupation of certain regions, preparation of and activity in illegal armed formations. However, the authorities still did not impose the state of emergency in the Republic.

¹ The relevant law on defense emergency (law on state of war) was adopted in 2002 only.

It is obvious that the President's unwillingness to take advantage of the Law *On the State of Emergency* can be explained by the fact that both the former and the current laws rather clearly and consistently outline the *legal aspect* of the state of emergency. The law demands that, in his decrees with regard to the imposing or prolonging of the state of emergency, the President provide a precise list of the temporarily restricted rights and freedoms of citizens and identify the state bodies responsible for the implementation of specific measures in relation to the state of emergency defining the authority limits of these bodies. The presidential decrees is subject to approval by the Federation Council. Finally, the law itself imposes a number of restrictions aimed to avoid arbitrariness in the public officials' activities.

All this made the executive authorities unhappy. This situation resulted in the uncontrolled arbitrariness in Chechnya with the constitutional rights of citizens being limited, which is permissible only in the state of emergency:

- freedom of movement (the restrictions are effective even at present, mainly, in the mountainous regions) was *de facto* cancelled;
- towns, villages and even the whole ChR territory were blockaded. Russian citizens were restricted in their opportunity to get to Chechnya during the time of special operations; people were regularly disallowed to go to and from certain towns and villages (blockading of communities is presently undertaken only in extreme cases, access to the Chechnya territory is practically open for Russian citizens);
- vehicles on the roads are subject to arbitrary checking;
- the curfews were imposed *de facto* by the orders of commandants, while the authorities insisted that there was no curfew but just a kind of «restriction of movement for vehicles and citizens during certain time» (this kind of restrictions has been presently cancelled);
- the vehicles that did not stop on demand were subject to fire for effect without prior warning;
- the prosecutors permanently practice unauthorized searches in people's houses: the people carrying out such actions do not produce any documents and do not introduce themselves;
- offices of commandants having large powers in relation to civilians have been opened and are still functioning in towns and villages.

To justify this arbitrariness, the federal authorities resort to the extralegal and broad interpretation of laws having declared the military conflict a «counterterrorism operation». Such operations were regulated by the RF «Law On Struggle Against Terrorism», which appeared very convenient for the executive authorities as it allowed to restrict the rights of citizens in the «zone under the CTO» and involve the RF armed forces («for the purposes beyond their intended role») to perform the CTO without any parliamentary or other kind of control.

The strict legal analysis shows that under the provisions of the «Law On Struggle Against Terrorism» the actions undertaken in Chechnya could not be qualified as CTO. Thus, art.3 of the Law «On Struggle Against Terrorism» stated that *«The zone where the CTO can be performed can mean a separate locality, or water area, vehicle, building, structure, construction or premise and the territories or water areas adjoining them, within which the specified operation takes place»*. From this statement, it follows that the zone where the CTO is performed is limited, and cannot cover thousands of square kilometers of the territory of one or even several republics at the same time. It is equally true that a CTO is aimed to suppress a specific act of terrorism and is respectively limited in time. Any other interpretation would be arbitrary and loose making senseless the very concept of the act of terrorism as of a specific crime.

Under the «Law On Struggle Against Terrorism», the CTO could be performed only in case the acts of terrorism had already taken place or were under preparation according to the available information.

In spring 2006, a new Russian Federal Law «On Countering Terrorism» was passed and came into force. The new law was basically adapted to the realities of the already implemented CTO in the Northern Caucasus. In particular, the new law did not stipulate for any territorial limitations of the CTO zone.¹

Description of a punishable offense provided in *paragraph I, art. 205² of the RF Criminal Code* and in the «Law On Struggle Against Terrorism» defines terrorism as an action accomplished «for the purpose of violation of public safety, intimidation of the population or rendering influence on decision-making by the government authorities», as well

¹ For details, please see the report «State Governance as an Antiterrorist Operation», submitted by Lev Levinson, expert of the «Human Rights Institute», delivered as a special submission to the Eminent Jurists Panel in January 2007 in connection with the high-level public hearings on terrorism, counterterrorism and human rights in Russia.

² Art. 205 of the RF Criminal Code was amended in July 2006.

as potential threat of such actions intended for the same purposes. The purpose, in this case, is treated as the major constituent element of the act of terrorism. Lack of such an element presupposes absence of the given crime. This is the element that makes terrorism different from similar criminal offences, such as forcible seizure of power, subversive activity, participation in the informal armed formations, etc.¹

Thus, only some of the acts by the armed formations' members resisting the federal forces in Chechnya can be qualified as terrorism. This means that the CTO can be aimed only against the persons committing this kind of crimes. Should the federal forces strictly follow the law, they could perform certain local-scale CTO within one big military operation in the Northern Caucasus. In reality, those resisting the federal forces in the declared large-scale CTO² are no terrorists at all.

Thus, the authorities wrongfully used the «convenient» Law on Struggle against Terrorism intended for the regulation of local and rather limited in space and time operations, which, respectively, did not contain any clearly formulated long-term guarantees of human rights protection in the CTO zone. As a result, the security officials' actions were practically uncontrolled and their arbitrariness was in no way restricted.

The lack of precise legal definition of the situation is, in some cases, to the disadvantage of the security officials. Thus, the commandants' powers are ambiguous. Being formally responsible for the assurance of order in the region, they cannot even have different subunits of the Ministry of Defense (MD) and the Ministry of Interior inform them about the «special operations» they undertake in towns and villages.

The legal nihilism of Russia's authorities resulted in grave consequences.

¹ Thus, the armed rebellion is undertaken not for the purpose of violating public security or for the purpose of population intimidation, but *«for the purpose of overthrowing or forcible change of the constitutional order of the Russian Federation or infringement of the territorial integrity of the Russian Federation»* (art. 279 of the RF Criminal Code).

² Absolute majority of the captured militants are accused under art. 208 of the RF Criminal Code (*Organization of an Illegal Armed Formation or Participation in It*) rather than under art. 205 (*Terrorism — until July 2006, and Terrorist Act — as of July 2006 to the present*).

4. Non-selective use of force

At the first stage of the second Chechen campaign, during the large-scale military conflicts, federal troops everywhere resorted to massive and non-selective bombings and shell attacks. To kill several insurgents, the army oftentimes sacrifices dozens and hundreds of innocent civilians. Like in the first Chechen war, the federal forces used armament, which was obviously not intended for selective targeted killings. Let us take a few examples.

The use of «U-target» assault missiles with cluster warheads stuffed with pellet bombs used in the center of Grozny on October 21, 1999, was widely covered in mass media. One missile exploded in the Central market, which led to numerous casualties. Two other missiles blew up near the maternity hospital and the central post office. About one hundred forty persons died and over two hundred were injured. The overwhelming majority of the killed and wounded people were innocent civilians.¹

On October 27, 1999, the Russian TV reported that the house of the well known Chechen commander and terrorist Shamil Basayev located in Lenin Street in the city of Grozny had been blown up by missile. At the same time, mass media failed to mention that this blow razed the house next to it,² that Basayev was safe, while the subsequent bombing destroyed several neighboring residential quarters.³ It was impossible to establish the number of innocent civilians killed.

Air strikes were aimed against vehicles moving along the roads and any groups of people near the roads. Thus, on October 28, 1999, near the village of Stary-Atagy the funeral procession of the sixty-five-year-old Tamara Chankaeva and her twelve-year-old grand daughter having been killed during the bombardment of Grozny was air-attacked by two planes. One person was killed, five — wounded, the bus — burnt and six cars — damaged.

¹ This case, as well as some other examples of non-selective bomb and missile attacks was described in detail in the Report by the Legal Rights Center of «Memorial» — «Point Strokes. The non-selective use of force by the federal troops in the course of the armed conflict in Chechnya in September — October 1999.»

² Basayev's house was destroyed, four militants were killed, Basayev himself remained safe.

³ There were destroyed not less than five two-storey 12-apartment houses, one five-storey block of apartments and a lot of one-floor private houses; the market and the taxi stand together with the cars were ruined; drivers and passengers were killed.

In none of such cases, none of the responsible military officials was held criminally liable and no one was punished. Four complaints telling about the innocent civilians wounded and killed because of the non-selective actions of the Russian federal forces became matter at issue at the European Court on Human Rights (ECHR). Only after the complaints were communicated to the EHCR, the Russian organs of the Prosecutor's Office initiated criminal cases on these cases, which were later on closed «due to the lack of elements of crime in the cases».

Thus, Medka Isayeva, Zina Yusupova and Libkan Bazayeva submitted to the ECHR their complaints against the actions of Russia's air forces having air-attacked a column of refugees who tried to leave the ChR on October 29, 1999.¹ On September 29, the ministries and departments of the Ministry of Interior in regions and republics received a telephone messages from the decision makers of the federal armed forces «Zapad» [West] with the order to close the administrative borders for the people trying to leave the ChR. Only Ruslan Aushev, President of the Republic of Ingushetia (RI) refused to obey this order. As a result, crowds of people made for the RI running away from the military activities taking place in the ChR. However, on October 22, 1999, federal forces completely blocked the administrative border between the ChR and the RI forbidding civilians to cross the border. On October 26, 1999, the Russian mass media reported that «humanitarian corridor» going via the checkpoint of «Caucuses-1» on the Rostov-Baku highway was to be opened. Thousands of people and hundreds of vehicles agglomerated on October 29 on this highway but the checkpoint never opened that day.² The vehicles turned round and made back for Groznyy. Near the village of Shaami-Yurt the column was suddenly attacked from the air and dozens of people were killed and wounded.

Zara Adamovna Isayeva from the village of Katyr-Yurt also submitted a complaint to the ECHR on the death of her relatives killed during the firing.³ Starting with February 2000, the federal forces' commanders several times reported that at the end of January 2000 they had performed, in absolute secrecy, an operation aimed to get the Chechen

¹ That time Medka Isayeva's two children and daughter-in-law were killed, she herself was wounded. Zina Yusupova was badly wounded. Libkan Bazayeva complained of moral damage and destruction of the property belonging to her family.

² The exit of the people and vehicles from Chechnya was resumed only on November 2, 1999

³ Zara Isayeva lost her son and three nephews during the bombing and gunfire in the village of Katyr-Yurt.

squads out of Grozny. The Chechen commanders had been falsely informed that the insurgents could buy from the Russian soldiers a safe corridor from Grozny to the mountains, the latter paid the money for the corridor but on their supposedly «safe» way, they came across mine-fields where the Chechen groups suffered significant losses.¹ Hundreds of innocent civilians were killed during that operation. The corridor for the supposed exit of the insurgents went via the villages of Alkhan-Kala, Zakan-Yurt, Shaami-Yurt, Katyr-Yurt and Gehi-Chu. As the groups of insurgents were entering these villages, they were blocked by the federal troops, air-bombed and raked with artillery fire. At the same time, no «humanitarian corridors» had been provided to the innocent citizens for them to have a safe way out. On the night of February 3-4, 2000, the insurgents entered the village of Katyr-Yurt, earlier declared by the federals a «safe zone». In the morning of February 4, artillery fire and bombing were brought down onto the village. To villagers had not been given the opportunity to leave the village before the firing and there were no properly organized «humanitarian corridors» for them. By different estimations, from several dozens to over one hundred civilians were killed that morning.

On October 14, 2004, the ECHR held public hearings on the above described cases and on February 24, 2005, it passed decisions in favor of the applicants recognizing Russia guilty of the violation of art. 2 (right to life) and art. 13 (right to effective means of protection) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECPHRFF).²

Regarding the blows brought onto the column of refugees in the village of Shaami-Yurt, the ECHR was ready to recognize that if the planes had been attacked by the illegal armed formations (as the Russian party insisted) the use of the lethal force might have been justifiable. However, even in the case like this, it was obvious that the *«army had used extremely powerful weapon for the achievement of its purposes and all the people being at this moment on the road were exposed to mortal danger. <...> The Court cannot agree that the operation at the village*

¹ Such was the information provided to the correspondents of the 1st and 2nd TV channels of Russian television by the officers responsible for this operation and, first of all, by major-general V. Shamanov, commander of the «Zapad» army group

² Art. 1 of the Protocol to the ECPHRFF (protection of property) was also found violated in the case of L. Bazayeva

of Shaami-Yurt had been planned and performed with due care of the life of civilians».

As to the blockade and fire attack of the village of Katyr-Yurt, from the ECHR decision it follows that the military operation commanders had not undertaken necessary actions to notify the civilians regarding the forthcoming fire attack of the village and had not provided them with the opportunity to leave the village before the firing, while the operation had been planned in such a manner that human losses were unavoidable. From the materials of the criminal case presented to the Court by the Russian party, it follows that generals V. Shamanov and Ya. Nedobitko were responsible for the planning and direct command of the operation. At present, the military procuracy organs have resumed the investigation of the criminal cases on the facts of civilians' death at the village of Shaami-Yurt and in the village of Katyr-Yurt but until now, no one has been held criminally liable.

Besides the rulings of the ECHR with regard to the RF disproportionate and non-selective use of force and failure to take necessary measures in order to protect innocent civilians, the Court specifically emphasizes that no effective investigation of these tragic cases has been undertaken: «The Court was amazed by the series of serious and inexplicable omissions and inactivity of investigatory bodies».

In the decisions on the «Chechen» cases¹ the ECHR in no way challenged the legitimacy of struggle against informal armed formations and repeatedly stated its understanding of the difficulties inevitably confronted by the state when counteracting the armed separatism: «*The situation that took place in Chechnya at that time demanded that the state undertake exclusive measures to resume its control of the republic and to suppress illegal armed hostilities of the insurgents*».² At the same time, the Court insisted on the necessary protection of the rights and interests of innocent civilians.

Large-scale armed conflicts had stopped by the summer of 2000; however, federal forces continued, although in rarer cases, using non-selective attacks in towns and villages. Here are some of the examples of different years.

¹ Like in the cases of England and Turkey earlier.

² Decisions on the cases of Isayeva, Bazayeva and Yusupova.

On the night of October 10-11, 2001, the village of Duba-Yurt suffered bombardment: six villagers including children were wounded, three houses destroyed, ten houses badly damaged.

On the night of November 8-9, 2001, after the attack by insurgents on the reconnaissance group of the armed forces, residential quarters in the town of Argun were exposed to bombardment and shelling. As a minimum, eight persons died, dozens of people were wounded; many houses were destroyed.

On August 20, 2003, the village of Serzhen-Yurt underwent bombardment. Zulay Akberdayeva, 36-year-old mother of five children, was badly wounded. 19 houses in the village were damaged, one house was destroyed.

On October 2, 2003, at midday, apartment houses in the streets Tsentralnaya and Sadovaya, the village of Makhety underwent firing. Aset Haladovna Suleymanova, 75, was killed; five persons, including children of six and two, were wounded.

On April 8, 2004, the far away farm of Rigakhoy located high in the mountains, Vedensky district, was exposed to air strike; the bomb fell onto the house of Imar-Ali Damayev. Practically the whole family died: wife — Maidat Kudusovna Tsintsayeva, born in 1975; children — Djanacy, 1999, Zharadat, 2000, Umar-Haji, 2002, Zara, 2003, Zura, 2003.¹

The family of Kagermanovs, village of Serzhen-Yurt, Shalinsky district, was killed on June 26, 2004, because of direct hit in their house of the artillery shell: Lema Vakhayevich, 1955, his wife Rashana, 1963, daughters Kheda, 1986, and Zhamilya, 1987.

On December 3, 2004, the small village of Tazen-Kala in the mountains of Vedensky district, suffered artillery firing. Because of the direct hit of shell in the Suleymanovs' house, Saidan Shamsudinovich Suleymanov, 1988, was killed; Said Shamsudinovich Suleymanov, 1982, and Zareta Shamsudinovna Suleymanova, 1986, were wounded; the house was burned to the ground. All the villagers having remained alive left the village afterwards.

Sometimes, the firings of communities were deliberate.

¹ Those guilty were not punished. The military procuracy closed the case on the ground that the house had been destroyed and people killed due to the actuation of the improvised explosive device.

Thus, on January 14, 2005, helicopters bombed and missile-struck the village of Zumsoy and its vicinities in Itum-Kalinsky district before the air landing, although there were no insurgents in the village and no one put up any resistance to the landing troops. The house of old man Akhmud Tamayev was completely ruined, three houses were partially destroyed.

More often, such firings are a result of errors, negligence or drunkenness. The army sometimes pays the victims some money for the caused damage; several military men were put on probation.

On September 27, 2005, at 3.00 a.m. the village of Dzhalka and its vicinity in Gudermes district were exposed to artillery firing four times with short breaks. Ten shells fell within the village boundaries; by good fortune no one was killed; several houses were damaged.

On November 9, 2005, at 3.00 a.m. the village of Sary-Atagy, Groznyy district of the ChR, was exposed to firing. Six villagers were wounded; three houses were damaged.

Recently, villages in mountainous regions of the Republic have also become exposed to firings from the air.

On December 1, 2006, about 13.30 two missiles launched from the battle-plane hit the home house belonging to the family of Gaytemirovs on the farm of Surokh, Shatoysky district; Roza Akhilgova, 1962, Alikhan Gaytamirov, 1990, and Adlan Gaytamirov, 1988, as well as 22-year-old Zalpa Akhilgova were wounded. The employees of the military procuracy assured the head of the family Umar Gaytemirov that before the beginning of 2007 he would be paid 97 thousand rubles as indemnification for the damage of his house and premises. After the New Year, Alikhan and Adlan was promised to be paid 100 thousand rubles as compensation for the caused physical harm, while Roza and Zalpa were not eligible for any compensation because the family, ostensibly, could not receive more than 200 thousand rubles.¹

¹ This statements does not correspond to the reality. The Gaytemirovs are relatives of Imar-al Domayev whose wife and five children were killed on the farm of Rigakhoy on April 8, 2004.

5. Deliberate Attacks on Peaceful Population

Quite often actions of the military could be characterized as demonstration of retaliation aimed against civilians. It could be artillery firing of residential quarters, kidnapping of locals, mass robberies, etc. Actually, one can speak about acts of terror against peaceful population

Here are some examples from different periods of the «CTO».

On November 21, 2000, a military vehicle was mined on the road near village Davydenko: one soldier was killed, two — were wounded. Soon after, soldiers detained the resident of the village of Davydenko Khussey Gaziyeu before the very eyes of the passengers in the regular bus, put a sack on his head, took him into their armored troop carrier and took away in unknown direction. On November 24, Khussey Gaziyeu's corpse was found at the village outskirts. The corpse had its nose cut off and eyes put out; on the neck one could see a deep knife trace, the top of the head was mashed, hands and fingers were broken

On December 11, 2000, near the village of Mesker-Yurt the military column consisting of several dozens of ordinary and armored combat vehicles was exposed to firing. After that, the military opened fire in the direction of the market and the village near the road — several civilians were killed and wounded. The soldiers also detained and took away several dozens of the persons whom they picked at random. Later, several of those arrested persons were found killed.

On March 15, 2001, after the mining of the Russian armored vehicle near the village of Novogroznensky, soldiers perpetrated a massacre in the village and killed eight innocent villagers.

On October 16, 2001, on the road near the village of the Duba-Yurt, field engineers found land mines. After that, the village was exposed to small arms and mortar firing. The firing resulted in wounding of a woman and her five-year-old daughter who later on died in the hospital.

On November 29, 2001, in the town of Urus-Martan a suicide bomber approached a group of soldiers with the commandant of the district and exploded the bomb that she had under her clothes. The commandant and two soldiers were killed. During December 2001, the federal security structures blew up in the towns and villages of the Urus-Martan district several houses belonging to the families of those

whom they suspected of having connections with insurgents. Before exploding the houses, they forced the people out of their homes. Several men from these families were detained and taken away in unknown direction. The corpses of four of those having been taken away were found later with traces violent death.

On January 8, 2002, a Russian soldier was mined on the road between the villages of Chiri-Yurt and Novy-Atagi. The colleagues of the victim randomly picked three residents of the nearby villages of Stary and Novy-Atagi. Next day, the disfigured corpses of two villagers from Stary and Novy-Atagi — Ruslana Shaipova and Mayora Musayeva were found at the outskirts of the village. On January 17, the locals found the third corpse of the 16-year-old villager from Novy-Atagi.

On February 12, 2002, Russian armored vehicle was mined near the village of Tsotsin-Yurt; two soldiers were killed, three — were wounded. The same evening, the peripheral part of the village underwent artillery firing, which resulted in the death of man and woman (Saydali and Lyuba Davletkayevs), another woman (Zareta Davletkayeva) and her two-year-old child were wounded.

On May 14, 2003, an act of terrorism took place in the village of Ilisin-Yurt: some explosive blew up amidst the crowd near the head of the ChR administration. Shakhidat Baymuradova happened to be among those killed. Mass-media hurriedly called her a suicide bomber. However, most likely, she had nothing to do with the explosion. On the night of May 17, in the village of Bachi-Yurt, Kurchaloyevsky district, some unrecognized armed people rushed into the house of the Baymuradovs and shot down two sons, daughter and brother of Shakhidat.

No one has ever been punished for such «acts of retaliation».

Oftentimes, the whole villages were exposed to «special operations» as measure of retaliation.

6. «Special Operations [zachistka]»

The slang word «zachistka» is used both by the representatives of federal forces and by the local residents. It designates an operation when a village or town is blocked and, without any sanction from the public prosecutor or any witnesses, soldiers search houses one after another and detain all suspicious people. Officially «zachistka» is called

a «special operation aimed to check people's residence permits and identify participants of illegal armed formations».

No legislative instruments regulate such special operations. Moreover, continuous searches in people's homes without any sanctions from public prosecutors, arbitrary detentions of people, holding them in the places that are not stipulated by the law directly contravene the RF legislation.

All this is aggravated by frequent cases of violence against local residents — beatings and robberies that take place during such «zachistkas». Quite often «zachistkas» entailed murders of innocent civilians, tortures and «disappearance» of the arrested persons. The examples of such «zachistkas» are numerous.

The «zachistkas» in the village of Alkhan-Yurt (December 1999), Staropromyslovsky district on the city of Groznyy (January-February 2000), village of Novy-Aldy (February 2000) were the most covered by mass media events that took place during the large-scale battle actions.

Thus, in Novy-Aldy and the adjacent district of the city of Groznyy, 56 innocent civilians including old men, women and even a one-year-old baby were shot down on February 5, 2000. The ECHR passed its decision on October 12, 2006, under the complaints of the relatives of the people killed in the district of the city of Groznyy adjacent to Novy-Aldy (the case of «Estamirovs *versus* Russia»). Within this case seven applicants¹ accused the Russian army of the deaths of five relatives found killed in their house in February 2000. Having exhausted domestic remedies, Ruslan Estamirov and others submitted an application to the ECHR. Upon consideration of the case, the Court established that Russian authorities had violated art. 2 (right to life) and art. 13 (right to effective legal protection) of the ECPHRFF. Several villagers from Novy-Aldy were also submitted applications to the ECHR, which were recognized admissible.

Applications by the relatives of the innocent civilians from Staropromyslovsky district arbitrarily executed during the «zachistka» in January 2000 were submitted to the ECHR (the case of «Magomed Hashiyev and Roza Akayeva *versus* Russia»). The corpses of the brother, sister and two nephews of the first applicant, as well as of the brother

¹ Three of them are presently living in the USA under the refugee status, others live in Ingushetia and Moscow.

of the second applicant had been found with traces of gunshot wounds. In spite of the fact that Ingushetia courts established the facts of death of the applicants' relatives in February 2000, the criminal case was not initiated until May 2000. During the proceedings, the investigation was repeatedly closed and renewed.

On February 24, 2005, the Court passed a decision on the case. The RF was found guilty of the violation of art. 2 (right to life), art. 3 (torture ban) and art. 13 (right to effective national protection) of the ECPHRFF.

In the summer of 2000, large-scale battle actions were replaced with guerilla warfare; «zachistkas» started being used more often and, like before, were accompanied with cruelty, violence and robberies.¹

Mass non-selective detentions of local residents became an important distinctive feature of many «zachistkas» throughout 2000-2003. The detained persons were taken to the «temporary filtration points» («FPs», for more details see chapter...), where they were subjected to beatings and tortures. Such was the way used by the federal forces trying to obtain information on the people from the village supporting insurgents and hiding weapons. At the same time, they formed a network of secret informants.

The robberies accompanying these «special actions» became of organized nature — property was sometimes openly taken out of the houses by military trucks.

Local residents repeatedly submitted complaints to the organs of the Prosecutor's Office, commandants, offices of the Ministry of Interior, the RF President, etc. Heads of administrations of numerous Chechen villages and towns also filed complaints regarding the actions by the employees of security agencies during «zachistka».

One cannot say that federal authorities did not respond to this kind of complaints.

On May 24, 2001, Commander of the Coalition Task Force in the Northern Caucasus lieutenant-general V.Moltensky issued order No 145 aimed to restrict the scale of arbitrariness and violence during «zachistkas». Under this order, heads of units and subdivisions of federal forces had to cooperate with the heads of local administrations, commandants, chiefs local police stations and military judges o the

¹ See, for example the report by the Legal Rights Center of «Memorial» titled «Myths and Truth about Tsotsin-Yurt.»

districts when holding special operations in towns and villages. At the beginning of the special operation, these officials had to be invited to the command center of the operation.

In June–July, 2001, in the Kurchaloevsky district village of Sernovodsk and Sunzhensky district village of Assinovskaya «zachistkas» were accompanied with violence against civilians, robberies, beatings, murders and «disappearance» of people, while the provisions of order No 145 were completely ignored.

These actions were broadly covered both in Russia and abroad. On July 25, 2001, the RF Prosecutor General issued order No 46, which recognized the wrong-doing in relation to human rights observance during special operations in its preamble to the text. Farther on, the text of the order repeated the provisions of order No 145 issued by general Moltenskiy and provided additional instructions. The instructions required precise registration of the detained persons fixing precisely who had detained these persons and when, as well as where they had been transferred to; to inform relatives in relation to the grounds for the detention and place the detained persons were held; to *«promptly verify applications and complaints regarding cases of violence used against citizens, seizure or extortion of money»*, etc.

However, the «zachistkas» that followed after the issuance of order No 46 in the villages of Sary-Atagi, Alleroy, Novy-Atagi, Chiri-Yurt, Duba-Yurt, Alkhazurovo and others were nevertheless accompanied by robberies, property destruction, beatings of detained persons and «disappearances» of people. Even if public prosecutors were present during these «zachistkas», local residents knew nothing about it.

At last, in 2002, the employees of the Prosecutor's Office really started attending the «zachistkas». However, the presence of one or several prosecutors during these special operations with dozens and hundreds of security officers involved could not mend the situation dramatically. Those of the public prosecutors who tried to stop the crimes often encountered resistance of the military.

The employees of the military and law enforcement bodies never introduced themselves when entering the houses during the special operations, their faces being masked. The armored personnel carriers that brought these employees either had no license plates or their plates were purposely muddled or painted. Therefore, it was difficult to identify after the «zachistka» who was responsible for the operation.

The legal rights organizations tried to insist that the federal army commanders in Chechnya ensure, at least, the following elementary measures:

- the body sides of all the armored vehicles should necessarily have license plates;
- when holding special operations in towns and villages, the senior officer of each group of federal soldiers should introduce himself when entering a house or premise and produce his documents;
- upon termination of the special operation, the official responsible for the operation should by all means provide to the head of the town or village administration a complete and exhaustive list of names of all the persons detained during the operation with indication of the reason for their detention and the place where these people will be delivered.

Finally, on March 27, 2002, before the discussion of the issue related to Chechnya in the UN Commission for Human Rights, the Coalition Task Force general Moltenskoy issued order No 80 through which he obliged his subordinates to follow the aforementioned elementary norms of the law. However, this order was practically never executed.

Here are just two examples:

«Zachistka» in the village of Mesker-Yurt, Shalinsky district, was held from May 21 through June 11, 2002. Although military judge V.V. Tereshchuk was present in the village from the first day of the operation, the latter was accompanied by robberies. The security service employees blew up the village mayor's office and beat the head of administration Mansur Aliyev when he tried to stand up for his fellow villagers. According to the prosecutor's office, 208 local residents were delivered to the FP. Here, the detained persons were subjected to tortures. Thus, for example, soldiers cut the back of Barzayev Khussein with a knife and applied salt onto the wounds. Ibragim, one of the three brothers Khadjimuradovs, was tortured in the presence of two other brothers, who were later released after severe beatings and tortures.

Eighteen persons from those arrested simply «disappeared». Fragments of the other three blown up bodies were found by the locals near the FP. The Prosecutor's Office admits that the «disappeared ones» were detained by the security officers:¹ *«During the special opera-*

¹ Response of the ChR Prosecutor's Office to the inquiry made by the Legal Rights Center o «Memorial», reference No 15/39-232-02 or 08.10.2002.:

tion of 21.06, 2002, unrecognized persons took away to the FP Ortsuyev Islam Abdulayevich, born in 1980. The latter was taken away from his home at 157 Lenin str., village of Mesker-Yurt in pretence of the need to check the documents and tracklessly disappeared.» Such are the statements used in relation to 21 persons. Criminal cases on the facts of their «disappearance» had been initiated but the investigation was later on suspended due to the *«impossibility to identify the persons to be charged of the crime»*.

On August 16, 2002, Russian armored troop carrier was mined and several soldiers wounded at the outskirts of the village of Tevzeni, Vvedensky district. The «zachistka» started soon after that. Breaking gates and fences armored troop carriers drove into courtyards. The jumping from them soldiers rushed into the houses where they beat people, broke and spoiled furniture, kitchenware and clothes, took away valuables. Military vehicles crushed several dozens of trucks and cars belonging to the villagers. Soldiers detained young and old men including teenagers whom they picked randomly. They took away the school headmaster and two teachers from the teachers' conference. The detained were taken to the outskirts of the village and told to lie down on the ground, face downwards. They were lying this way for many hours. The soldiers beat them with the gun-butts, kicked them and jumped on their backs. Then some of the people were released, but about seventy persons were taken away to the military unit headquarters, where they were held and interrogated for three days. The interrogated men were beaten and tortured with electric current so that they would give the names of those having mined the road. The soldiers attached wires to the earlobes and lower lip. The neighboring villages of Khatuni, Mahkety, Salmentauzen and Elistanzhi were also exposed to «zachistka»: . The military released the detained people only after the women from these villages held a protest action at the Government House in Grozny that turned into mass disorders.

At the beginning of November 2002, the RF President declared that no broad-scale special operations should be any more held in the ChR towns and villages. After that, the number of large-scale «zachistkas» in Chechen towns and villages started gradually going down and decreased sharply after the summer of 2003. Nevertheless, large-scale special operations continued being held, although much rarer than before.

For example, 27 special operations were held in 2005 in the towns and villages of the Urus-Martanovsky district only.

Sometimes, special operations were held only by the ChR Ministry of Interior units, sometimes — jointly with the federal military forces; there were cases when «zachistkas» were performed by the federal forces independently.

Order No 80 was practically never executed in full.

Some of its provisions were observed only in some cases. However, when holding searches of the houses and courtyards, senior officers of militia or military groups practically never introduce or identify themselves. They usually do not present the lists of arrested persons to the heads of local governments.

Unlike the period of 2000, the most outrageous violations of order No 80 have been taking place not during «zachistkas» but in the course of targeted local operations in the towns and villages starting with the first half of 2003 until nowadays.

During the ChR presidential election campaign in July 2004, an attempt was made to reanimate order No 80. The ChR officials repeatedly insisted that the order is equally effective for the troops of the RF Ministry of Defence, the RF Ministry of Interior and for the employees of the ChR Ministry of Interior.

On July 16, the ChR Deputy Minister of Interior, militia colonel Akhmed Dakayev declared that *«Provisions of order No 80 by the Commander of the Coalition Task Force in the Northern Caucasus are coming back into effect. Under this order, all the movements of armored vehicles and military groups about the Republic should be made under the control of commandants of towns and rural districts... The regulation of the special operations procedure is due to the having become more frequent cases of kidnappings in the Republic.»*

Alu Alkhanov, major candidate for presidency, declared that *«the matter in question is not the prohibition against detention of criminals, but the need to do it legally, and, most importantly, providing information as to who has detained this or that person and where this person is at the given moment»*. However, later the ChR officials mainly concentrated on the observance of the instruction that during special operations the employees of the Ministry of Interior should not mask their faces.

In 2004-2006, not only the number of «zachistkas» went down but also the scale of human rights violations during the special operations was usually much lower than before.

Nevertheless, the level of cruelty during some of the «later zachistkas» could be compared with those of the worst times.

On January 14, 2005, in the mountainous village of Zumsoy, Itum-Kalinsky district, federal paratroopers landed from helicopters. Before the landing, the village was exposed to uncontrollable machine gun firing from the air, although there were no insurgents in the village, nobody opened fire or offered any kind of resistance. After this, commandoes made «zachistka» in the village that was accompanied with robberies, property destruction and kidnappings. Soldiers rushed into houses, showered their inhabitants with rough abuse, broke and took away everything they found — money, jewelry, clothes, medicines, TV sets. From some of the houses, they took away all the documents they could find. In some farmsteads they shot horses and turkey cocks; blew up a car and a minibus belonging to Saidamin Khadzhiyev. In the villagers' presence the pillage was loaded into the helicopters. In the evening of January 14, the soldiers kidnapped Shirvani Shakhidovich Nasipov, 1956. In the morning of January 15, Vakhu Makhmudovich Mukhayev, 1955, his 15-year-old son Atabi Vakhayevich and 30 year-old Magomed-Emin Khabilovich Ibishev were taken away from their house. The same day, the soldiers left the village by helicopters taking away the kidnapped persons. The fate of the kidnapped remains unknown. The kidnapped persons' relatives submitted applications to the ECHR that are now at the stage of communication.

The events having taken place in the village of Borozdinovskaya, Shelkovskoy district of Chechnya were broadly covered in mass media. On June 4, 2005, the soldiers from the «Vostok» battalion consisting of ethnic Chechens and formally subordinated to the RF Ministry of Defense held a full-scale «zachistka», which, in fact, was a punitive action held in the village of Borozdinovskaya populated by Dargins that followed the murder of one battalion soldier's father. Two armored troop carriers and not less than fifteen vehicles with armed soldiers drove into the village. They rushed into the houses taking men to the local school. In the schoolyard, the «detained persons» were told to lie down onto the ground, face downwards. Everybody, including old men, teenagers and invalids were kicked and beaten with gun-butts.

The people were held on the ground for more than seven hours despite of the heavy rain. The «zachistka» resulted in four burnt houses, one elderly person burnt (maybe, alive), and 11 persons taken away and «disappeared».

The Prosecutor's Office initiated criminal case No 34/00/0013-05 on the facts of arsons, murders and kidnappings, a special joint investigatory group visited the scene of operation. However, the weapon was seized from soldiers of the «Vostok» battalion to carry out a ballistic examination only several months after the episode. One and a half year later the investigation is not yet completed, the fate of the kidnapped villagers of Borozdinskaya has not been established, nobody has been held criminally liable for kidnappings, murders and tortures. One officer of the battalion, Mukhadi Aziyev, was put on probation in October 2005 «for abuse of power» as he had permitted his soldiers enter the village. What these soldiers were doing in the village, who of them killed and set on fire the houses taking away the people has not been established in the course of investigation.

Some time after these events, the commander of the «Vostok» battalion Sulim Yamadayev was awarded with the honorable Russian medal of «Hero of Russia».

7. Inhuman Treatment of Detained, Arrested and Kept in Custody Persons

In this relation, both parties to the conflict violated and continue violating human rights and norms of the humanitarian law.

Estimating the actions of the federal party in this respect, we should speak about the system of mass violence created in the Chechen Republic.

7.1. Filtration System

From February 2000, mass media started reporting about the situation in the «filtration points» (FPs) created by the federal forces in the Chechnya territory. According to the people released therefrom the detained persons were held in the FPs in intolerable conditions being exposed to tortures and cruel treatment. Most often, such information used to come from the Chernokozovo FP in Naursky district

of Chechnya. This former maximum-security penitentiary facility was turned into the largest of the effective filtration camps. However, Chernokozovo is not the only facility of this kind but just one of the elements in the whole system.

The key task of the «filtration system» was to identify and isolate participants of armed formations resisting federal forces and their supporters. However, it is obvious that the same system was aimed to resolve broader issues — it was used for creation of the network of informers recruited from among the local population and, along with other actions by the federal forces, for terror, suppression and intimidation of all the people disloyal to the regime in Chechnya.

The major characteristic of the «filtration system» was its non-selectivity. Lack of systematized data on the participants of armed formations resulted in mass detentions of innocent people, while their confession of the crime could be the only accusatory evidence against them. Obtainment of the confession was possible only through intimidation, beatings and tortures.

The word-combination «filtration point» (FP) appeared during the first Chechen war of 1994-1996 as the official name of the places for holding the detained persons in the ChR territory, although their legal status was not certain and creation — illegal.

In contrast to this, during the second Chechen war (the so-called «CTO») some of the «filtration system» facilities got legitimate statuses of investigative isolators (SIZO) subordinated to the RF Ministry of Justice and temporary detention isolators (IVS) subordinated to the RF Ministry of Interior.

The Chernokozovo FP was created at the end of 1999 and, at the beginning, it had the status of «temporary reception center for the persons detained on the grounds of vagrancy and begging».¹ The status of «reception center» was convenient for the Ministry of Interior as such facilities, unlike the SIZO, are fully subordinated to militia, while the people delivered there without any charges can be held for much longer periods than in the IVS. The people delivered to the Chernokozovo «reception center» were anyone but vagabonds; those were all kinds of «suspicious persons» including the persons detained during «zachistka» in their own homes. In the winter of 2000, journalist Andrey Babitsky

¹ Order of the RF Minister of Interior V. Rushaylo No 1077 from 22.12. 1999.

was delivered there and became a witness of the atrocities taking place there.

FPs were created during 2000-2002 at the outskirts of the towns and villages in the course of numerous «zachistkas», where the employees of the Ministry of Defense, Ministry of Interior and internal security structures delivered the detained persons. There, they «checked» tens and even hundreds of local residents as to their belonging to the illegal armed formations. Based on the results of this check, the detained persons had to be either released or transferred to other penitentiary facilities. The group of soldiers performing the «zachistka» usually set up a camp at the outskirts of the town or village, while the FP was located nearby, in the open field or in the abandoned premises.¹ As one of the basic characteristics of «zachistkas» in the period of 2000-2003 was mass nature and non-selectivity of detentions, the number of detained people exceeded the capacity of the «regular» detention places and majority of these people were soon released, as a rule. Nevertheless, practically all those held in the FPs were exposed to beatings and tortures, while some of them «disappeared» during numerous special operations. Tortures with electric current using field phone wire were widely spread.

The legal status of such FPs within effective Russian legislation is absolutely unclear. The current normative acts regulating the activity of detention facilities, places where the persons are held in custody or other forms of forcible restriction of citizens' physical freedom contain no such concept as «FP».²

¹ The «filtration point» in the town of Argun was located in the quarry, in the village of Stary-Atagi — in the poultry farm, in the village of Chiri-Yurt — in the ruins of the cement factory

² The word combination of «filtration point» that the representatives of the federal forces in Chechnya used can be also found in the responses of the Prosecutor's Office with no such phrase to be found in the Russian legislation. In 2005, the public learnt about the text of the so-called «Instructions on Planning and Preparation of Forces and Armament of Russia's Ministry of Interior and Internal Security Agencies Attached to It for the Operations in the States of Emergency», Annex No 1 to the Order of Russia's Ministry of Interior from September 10, 2002 No 870. the order itself bears a stamp «for service use» and was not published anywhere. The «Instructions...» prescribed creating FPs when holding special operations. The publication of the secret document proposing creation of the non-envisaged by the law detention places caused a scandal. As a result, through the order of the Minister of Interior, the text of «Instructions...» was modified and now contains no mentioning of the FPs. However, one cannot be sure that this definition is not used in other documents of the Ministry of Interior and the Federal Security Service that are not accessible for the public

Besides temporary FPs, there also existed regular, long-term facilities, one of them named by the military «Titanic», which was located between the villages of Alleroy and Tsentoroy, wherefrom people used to «disappear» as well. Thus, the cousins of Alsultanovs — Magomed-Emin Soipovich and Khan-Ali-Imaliyevich detained by the federal forces in the village of Alleroy on August 17, 2001, during «zachistka» were delivered to «Titanic». The ChR prosecutor V.Chernov saw them there during the inspection visit. Later on, the Alsultanovs «disappeared». The relatives of the detained persons applied to different official structures, the ChR Public Prosecutor's Office initiated a criminal case. It was established that *«the brothers Alsultanovs had been transferred to the filtration point under the responsibility of the employee from the Federal Security Service Office for the Chechen Republic S. Baryshev who, in his turn, transferred the detained persons to the military officers so that they would take them to the IVS in Kurchaloyevsky Department of the Ministry of Interior. However, the brothers Alsultanovs have not been transferred to the IVS of the Kurchaloyevsky Department of the Ministry of Interior and their whereabouts at present are unknown; the investigation of the case on the Alsultanovs' disappearance is undertaken by the ChR military procuracy»*.¹ The fate of the disappeared persons has not been yet established.

Some people from the temporary and regular FPs were released, while those whom the military found necessary «to continue working with» were either transferred to the official detention facilities, i.e. IVSs created within the district Temporary Departments of the Ministry of Interior (VOVD),² and SIZO or to illegal prisons. However, as it was already mentioned before, some of the people died in the FPs.

Besides, from the very beginning of the holding of «CTO» in Chechnya illegal prisons started being created at the places of deployment of military units or special units of the Ministry of Interior. The prisoners kept there were not officially registered anywhere neither as the detained, nor as the arrested. The most widely known place like this was located at the military base in the village of Khankala. The majority

¹ Response by the Deputy Prosecutor of the Argun Inter-District Prosecutor's Office R. Tishin No 117 from February 12, 2002, to the inquiry by the Legal Rights Center of «Memorial» and the RF State Duma Deputies.

² «VOVD» is a structure within the RF Ministry of Interior performing, actually the functions of District Departments of the Ministry of Interior (ROVD) in the ChR territory. The VOVd officers are militiamen sent to work in Chechnya from different regions of Russia.

of the people kept there were held in the holes dug in the ground or in the trucks and railway cars intended for the transportation of prisoners. Russia's central TV channels repeatedly broadcasted programs showing how the persons detained on suspicion of participation in the illegal armed formations were delivered to Khankala, although under the norms of the Russian legislation the persons suspected of having committed crimes of terrorist nature or of participation in the illegal armed formations should be transferred to the organs of the Prosecutor's Office or FSB rather than delivered to the place where the military unit is deployed.

Employees of the Prosecutor's Office and of the Chechen Civil Administration, as well as of the Office of the Special Representative of the President of the RF for ensuring human and civil rights and freedoms in the Republic of Chechnya knew about the continued functioning of illegal prisons in Khankala.

The situation in such «filtration facilities» could change both for the better and for the worse.

In the late winter of 2000, after the publicizing of evidence related to tortures and beatings of the people kept in Chernokozovo «reception center» and protests by the international public, the Russian authorities quickly changed the status of this FP turning it into SIZO. After that, life conditions there improved notably although the use of tortures continued. During the period of 2000-2002, the temporary isolator functioning within the Ministry of Interior Departments in Urus-Martan and Oktabsky district of the city of Grozny became especially ill-famed. The detained and arrested persons there were regularly exposed to torture; some of these people «disappeared».

Later, when Russian and foreign public focused its attention on the events taking place in the temporary isolators, violence, cruelty, tortures and arbitrary executions were transferred to the informal detention places (for example, in Khankala) or to the quasi-legal places of close custody.¹

The exact number of the people having passed through the filtration system is impossible to be identified — those are thousands of citizens.

¹ First of all, within the Bureau No 2 for Operative Investigation in the city of Grozny, see below

When asked about the number of detentions and arrests, the official structures usually give as statistics to the press and public the number of persons having gone through the SIZO in Chernokozovo and now in Groznyy — these are about ten thousand.

However, the real number of the persons detained and arrested in Chechnya is many times as high. According to the communiqués, during the first years of the «CTO», the units of the Chechen Ministry of Interior used to detain 1.1-1.2 thousand persons a month. If we add here the number of people detained by other security agencies, the overall number of the persons officially detained during the «CTO», even by minimal estimations, made about 20 thousand a year.

However, during each «zachistka» the majority of the people having been delivered to the temporary FPs were not registered. Only some of those who, for some reason, interested the «competent bodies» during the «filtration» became officially registered as detained persons.

Here should be also added the people held in the territory of military units' deployment.

Thus, by the most modest estimations, the overall number of those having passed through the «filtration system» reaches 200 thousand. For Chechnya, with its population at present being less than one million, it is an enormous number illustrative of the state terror scale.

7.2. Illegal Prisons Today

From the end of 2003, the number of mass «zachistkas» in Chechnya essentially reduced and practically no new FPs were created respectively. During the last few years, the detained and kidnapped persons are by far rarer delivered to the military base in Khankala. However, new illegal detention places are being created to replace the old habitual ones. The hostages are held in illegal prisons in the places of deployment of the Chechen pro-federal security structures.

One of places where the detained and kidnapped persons are illegally held is located in the village of Tsentoroy where the Chechnya Prime Minister Ramzan Kadyrov and his family are living. At present, this place is as notoriously famed in Chechnya, as was the military base of Khankala two years ago. It was here that on May 1, 2006, the delegation of the European Committee for the Prevention of Tortures and Inhuman or Degrading Treatment or Punishment was disallowed. According to the information of the Legal Rights Center of «Memorial»,

the Center of «Demos» and the International Helsinki Federation, all the people held in the illegal prison had been relocated therefrom one day before, many of them had been released. On May 2, the European delegation could drive in Tsentoroy without any obstacles.

Apparently, it was here that the relatives of the President of the Chechen Republic of Ichkeria A. Mashadov had been held for half a year. They were forcibly taken away from their homes *in unknown direction* on December 3 and 28, 2004. Both the circumstances of this kidnapping and the evidence of the witnesses specified that the kidnappers were the «Kadyrovists». With significant delay and after scandalous publicity, the Public Prosecutor's Office initiated a criminal case on the fact of kidnapping. However, for more than six months there was no news regarding the fate of the kidnapped persons. On May 31, 2005, almost three months after Maskhadov's death, all the kidnapped relatives were released. According to the released persons, all this time they had been held all together in the concrete cell without any furniture, its floor space being three by three meters. Under the ceiling, there was a small grilled window. They had not been accused of anything or interrogated being allowed to leave the cell only to go to the bathroom. The kidnapped people noticed that the place where they had been held was located on rather big fenced territory. There were many armed people speaking mainly Chechen. On May 30, there came a person in civilian clothing to their cell and announced that they were free. The same day, for the first time in the course of five months, they were allowed to take a bath. Next morning, the kidnapped, with their eyes blindfolded, were taken home. On July 27, 2005, the Deputy Prosecutor General of the Russian Federation N.I. Shepel declared,¹ that «*Maskhadov's relatives were set free as a result of a special operation*». At the same time, he said that «the kidnappers had not been identified». The investigation of the criminal case on the fact of kidnapping of seven relatives of Maskhadov was suspended due to «*the impossibility to identify the persons to be held liable as accused of the kidnapping*».

There is a lot of evidence by the people saying that they themselves or their relatives were held in the illegal prison in Tsentsaroy and that the people there are exposed to tortures and beatings.

¹ At the conference devoted to the issue of «Strengthening of Law Enforcement Bodies for Maintaining Law and Order in the Chechen Republic» held in Kislovodsk on the initiative of the CE's Commissar on Human Rights.

Illegal prisons exist in other places as well. Usually, these are the places where the of security structures units are deployed. At present, these are most often the structures referred to the so-called «Kadyrovists».¹

The quasi-legal detention place in the city of Grozny, the so-called temporary isolator within the Bureau No 2 for Operative Investigation (ORB-2) should be noted separately. This is the detention facility for the suspects and persons on remand whose employees are holding operative work, inquest and investigation, although under the Russian legislation norms the temporary isolators can exist only within militia's operating authority. In fact, this temporary isolator has become a specialized place where the persons on remand are transferred from SIZO to obtain by force the evidence needed by the investigators.²

7.3. Torture

Methods of cruel, inhuman and degrading treatment and torture are practiced everywhere in the ChR both when detaining suspects and when holding them in detention facilities, as well as during interrogations. Not only the detained but also their relatives, friends and even mere strangers who simply happen to be near them become objects for cruel treatment during apprehensions and arrests. Constant «disappearances» of the people detained by the employees of different security agencies, torture of the people who «disappear» in this manner, as well as the deeply rooted in the Republic and directly connected with these most serious violations of human rights corruption create a specific atmosphere of impunity and lawlessness on all the levels of society and authority. As a result, Chechnya is in the shroud of terror and fear.³

¹ See the details in, for example, in the report by the Legal Rights Center of «Memorial» and the International Federation for Human Rights, «Torture in Chechnya: 'Normalization' of a Nightmare») from 2006.

² For details, see the chapter «Issues of Tortures and Inhuman Treatment in Chechnya and Northern Caucasus» prepared by the Legal Rights Center of «Memorial» and Center of «Demos» to be found in the Russia's NGOs' Alternative Report on the RF Compliance with the UN Convention against Torture presented at the 37 session of the UN Committee against Torture in autumn 2006 (<http://www.demos-center.ru/projects/6EE9B30/doklad>).

³ For details see the Report «Torture in Chechnya: 'Normalization' of a Nightmare» prepared by the Legal Rights Center of «Memorial» and the International Federation for Human Rights, as well as the chapter of «Issues of Tortures and Inhuman Treatment in Chechnya and Northern Caucasus» prepared by the Legal Rights Center of «Memorial» and Center of «Demos» to

8. «Disappearances» of People. Arbitrary Executions

People in Chechnya «disappeared» and continue «disappearing». In most cases, they are kidnapped not by gangsters or terrorists but by those who perform «CTO».

From the first days of the military operation in Chechnya, the relatives of the persons detained by soldiers or employees of the Ministry of Interior or of the RF FSB [Federal Security Service] for a long time could find out nothing as to the reason for the detention, the place where they were held or whether had been charged, etc. The same practice is nowadays used by different pro-Moscow Chechen formations created in the process of conflict «chechenization».

On the website of the Legal Rights Center of «Memorial», one can find information about approximately 1250 civilians missing after detention by the employees of the federal security structures during «the second Chechen war», i.e. since autumn of 1999. This overall number includes the corpses of more than 100 persons having been found and identified, while the rest continue being registered as «missing».

The Legal Rights Center of «Memorial» has data on about 1650 cases in relation to the people having «disappeared» throughout the whole period of «the second Chechen war».¹ The «Memorial» has entered into correspondence with the organs of the Prosecutor's Office in relation to the majority of these cases. Criminal cases have been initiated; however, according to the available data, in the majority of cases the proceedings have been suspended «*due to the non-identification of the persons liable to be accused*».

Only for the period of 2002 through September 2006, i.e. the period when the federal forces switched from large-scale «zachistkas» to the «targeted operations» and to the conflict «chechenization» the Legal Center of «Memorial» has collected information on 1976 kidnapped ChR citizens (see the table). There are more or less detailed data on all to these facts including the last, first and middle names of the kidnapped persons, permanent address, kidnapping circumstances,

be found in the Russia's NGOs' Alternative Report on the RF compliance with the UN Convention against Torture presented at the 37 session of the UN Committee against Torture in autumn of 2006.

¹ We also include here the cases when the corpses of the «disappeared» people were found later.

etc. It should be noted that these data are obviously incomplete and to obtain general picture these figures should be, probably, multiplied by two-four times.¹

Based on the extrapolation of these data and analysis of the communiques, the Center of «Memorial» insists that throughout the whole period of the holding of «CTO», the number of the persons «having disappeared» through kidnapping, illegal detentions, and apprehensions is, **for sure, within three to five thousand**. Unfortunately, it is meanwhile impossible to get a more exact figure.

At the same time, we can state the decreasing dynamics in the number of kidnappings fixed by the Center of «Memorial»: 539 — in 2002; 497 — in 2003; 448 — in 2004; 320 — in 2005 and 172 — in 2006.²

Kidnappings in the ChR territory according to the data of the Human Rights Center «Memorial»

Year	Kid-napped	Including those released or ransomed	Including those foundkilled	Including those who disappeared	Including those under examination
2002	539	90	81	368	
2003	497	157	52	288	
2004	448	213	24	203	8
2005	320	154	24	127	15
2006	172	86	9	60	17
Total:	1976	700	190	1046	40

¹ The Legal Rights Center of «Memorial» could monitor only a limited part, i.e. from one fourth to one third of the Republic's territory. However, even in the monitored districts it is very unlikely that the registration of data was exhaustive. During the last few years, the monitored territory expanded, but in the situation of terror, people oftentimes refuse to provide data, which increases the kidnappings latency. Thus, in order to obtain a realistic picture, the number we have should be multiplied, according to different assessments, by two to four times.

² The last number is preliminary. Based on the specifics of the monitoring held in ChR, it will inevitably (and maybe considerably) grow up depending on the data obtained for the last year.

Decrease in the number of kidnappings fixed by human rights advocates is due, to a great extent, to the «*chechenization*» of the military conflict and «*latent violence*» prevailing in the ChR, which is not fixed either by human rights advocates or, particularly, by law enforcement bodies. One cannot state for sure how much the total number of kidnappings has changed. However, one thing is clear — the methods of carrying out the «CTO» have definitely changed: The majority of kidnappings are undertaken by the local security agencies that do not necessarily need to kill people in order to achieve their goals. Quite often, the kidnapped persons spend some time, from one to several days, in illegal detention facilities, where they are beaten and tortured in order to force data. On the other hand, relatives of the kidnapped persons independently undertake efforts, oftentimes through ransom, in order to have their kidnapped relatives released. After the ransom of the kidnapped person, usually neither this person nor the family complain anywhere or provide information in relation to kidnapping, being afraid of retribution of the kidnappers who, unlike federal soldiers, are well informed about kinship and weak points of their victims.

During the last few years, the share of the «disappeared» or killed from the overall number of those kidnapped has decreased. Throughout the period of 2001-2002, their number made about 85% of those kidnapped during mass-scale «zachistkas». It is obvious that the major responsibility for these crimes is with the soldiers, militiamen and employees of special security agencies. Throughout the process of «chich-enization» one could note gradual decrease in the percentage of those «disappeared» or killed versus the overall number of the kidnapped making about 50% in 2004-2005 and about 40% at present.

During the last few years there were registered cases when the kidnapped «were found» after a while in SIZO or temporary isolators. They are accused of the crimes related to «terrorism» as provided in art. 205), of the RF Criminal Code, of «participation in illegal armed formations» (art. 208) and of «illegal keeping of weapon» (art. 222). This is probably the way the employees of security agencies try to fulfill the plan on capturing insurgents and disclosing crimes.

People are kidnapped not only in the ChR territory, but also in the territories of adjoining regions.

As opposed to Chechnya, in the neighboring Republic of Ingushetia the number of kidnappings has considerably grown versus 2002

(2002 — 28 kidnappings, 2003 — 52, 2004 — 48, 2005 — 47). At the same time, the circumstances of these crimes make it possible to draw a conclusion regarding participation in them of the representatives of governmental bodies. In the overwhelming majority of cases, the traces of the kidnappers and the kidnapped led to Chechnya.

The events having taken place in the village of Novy-Atagi, Shalinsky district, can serve as a typical example of kidnapping by the security forces in Chechnya.¹ On the night of September 13, and the night of September 14, the employees of security structures kidnapped local residents, and namely: Ruslan Salaudinovich Khalayev, born in 1984, Sharaudin Badrudinovich Khalayev, 1978, Magomed Isayevich Elikhanov, 1985, Aпти Edilov, 18 years old; Magomed-Zmi Aguyev, born in 1987, and Islam Khusainovich Bakalov, 1987. According to the relatives of the kidnapped persons, when detaining them, the security officers behaved roughly, did not introduce themselves and did not explain the reason for taking away the people. Local residents picketed the highway going via the village and demanded release of the kidnapped. The district Prosecutor's Office initiated a criminal case under art. 127 (illegal deprivation of freedom) of the RF Criminal Code. On the night of September 18, the employees of an unknown security agency kidnapped the head of the village administration Abdulla Datsayev. He was taken away to the district center in Shali and released at daybreak, severely beaten. Datsayev invited the parents of Elikhanov and insistently asked them not to picket the road. The next few days, the majority of the kidnapped villagers were released after fiendish tortures, while four of them — Elikhanov, Aguyev and the Khalayevs were transferred by the kidnappers to the Shalinsky District Department of the Ministry of Interior. The fact of illegal deprivation of freedom was obvious, but militia did not take any measures against the kidnappers. Moreover, in the District Department of the Ministry of Interior the officers officially registered the fact of arrest of the «transferred» people as the latter, under tortures, had already confessed their crimes. Several days later, a big group of armed people came to the mosque in the village of Novy-Atagi during the Friday prayer. Aslambek Yasayev, PPSM-2 regiment commander,² who headed the group, declared to the crowd

¹ These events were examined during the joint trip to the Northern Caucasus of the representatives of the Legal Rights Center of «Memorial» and the International Federation for Human Rights.

² One of the «Kaddyrov's» structures.

of villagers that he and his employees would continue holding similar operations and threatened with punishment to those picketing the road as response to the detention of their fellow-villagers. The criminal case on illegal deprivation of freedom «has been under investigation» for more than one year, but nobody has been held liable.

It should be noted that besides kidnappings that are carried out by «Kadyrovists», «Yamadayevis» and other security structures of the Republic, there still take place the facts of kidnappings by federal security officers.

Throughout the period of holding of «CTO», local residents repeatedly found secret burial dumps of the people kidnapped earlier by the state security structures.

Here is just one example.

In February 2001, in the ruins of the garden suburb of «Zdorovye», in the immediate proximity from the main Russian military base of Khankala, there was found a dump of corpses (it cannot be defined otherwise). On February 24, Public Prosecutor's Office began investigation. According to the official data, there were found corpses of 51 persons (according to the informal sources there were even more of them but they remained there, in the dump).

All people, whose corpses were found in the garden suburb of «Zdorovye» became victims of extra-judicial executions: The majority of them had their throats cut, hands tied, control shots made in the heads.

24 corpses were identified by the relatives. All of them had been earlier detained by the representatives of federal forces on the block-posts during «zachistkas» and so on.

Among those killed, for example, there was found the body of Nara Luluyeva and her two cousin sisters. According to the relatives, they had been detained on June 3, 2000 at the market in Grozny by the Russian soldiers who had taken them away in the armored troop carrier and then «disappeared».

The complaint of Nura Luluyeva's relatives («Luluyev and others *versus* Russia») was allowed in the ECHR on November 9, 2006. Under the decision of the Court, the Russian Federation was recognized guilty of violation of the right to life and inefficient investigation of the murder of Nura Luluyeva (art. 2 ECPHRF. Here and below can be found the articles of the Convention), inhuman treatment (art. 3), violation

of the right to freedom and inviolability of the person (art. 5) and the right to effective legal protection (art. 13).

In the burial dumping at the military base of Khankala,¹ there were corpses of the people who had been detained at different periods of times and in different places of the ChR, which proves a regular and organized nature of the actions undertaken by the murderers and kidnappers. We can positively insist that there were and are «death squads» in the ChR — criminal communities existing inside the state security agencies that are protected in their operation by the highest rank military, militia and political officials.

The ECHR has examined another two complaints with regard to the «disappearances» of the persons detained by the Russian state representatives. In both of these cases, Russia was found guilty of human rights violations.

The decision on the case of «Bazorkin *versus* Russia» was passed on July 27, 2006. The Court examined the situation with the «disappearance» of Khadji-Murat Yandiyev, 25, resident of the Chechen Republic, detained on February 1, 2000, after he had left Grozny together with the group of insurgents. After his detention in the village of Alkhan-Kala, Yandiyev was interrogated by general-colonel Aleksandr Baranov who later ordered to «liquidate» Yandiyev. The CNN correspondent filmed the interrogation and the order on the execution; this record was presented to the Court as evidence. From the moment of Yandiyev's interrogation, the latter was registered missing. Despite of numerous attempts by his mother Fatima Bazorkina to find her son and to apply to the Russian law-enforcement structures, the criminal case on the fact of «disappearance» was initiated only in July 2001, almost eighteen months after the events. The video record that the Legal Rights Center of «Memorial» transferred to the organs of the Prosecutor's Office «disappeared» when being sent to the military procuracy in Khankala. Despite of the clear evidence, the case investigation was suspended six times throughout six years with the explanation that it was «impossible to identify the suspects». General-colonel Baranov was first time interrogated in June 2004. Russia's court brought no charges against him. In its decision, the Court established the following: Yandiyev's detention was unlawful (art.5); Russia's authorities are responsible for

¹ The same can be said, by the way, about many other places of burial dumping and mass graves found in Chechnya.

Yandiyev's death (art.2); investigation of the fact of Yandiyev's «disappearance» was inadequate (art.2); Yandiyev's mother's sufferings due to her son's «disappearance» and Russia's authorities failure to take adequate measures in order to establish his fate testify to the exceeding of the minimum threshold of inhuman and degrading treatment (art.3). The Court specified the violation of art.13 providing for the access to the means of legal defense.

The case of «Imakayeva *versus* Russia» is no less indicative. On December 17, 2000, Said-Khuseyn Imakayev «disappeared» from the block-post between the villages of Stary and Novy-Atagi. Some witnesses had seen soldiers making him get into the military vehicle, which immediately drove away. The parents' searches and their application to the official instances regarding the «disappearance» of their son yielded no results. At the beginning of 2002, they submitted an application to the Strasbourg Court, after which Said-Magomed, father of S.-Kh. Imakayev was taken away by the Russian soldiers on the armored troop carrier in unknown direction and also «disappeared» without any traces. In its decision on Imakayev's case, the Court made a number of most important conclusions: Said-Khuseyn Imakayev and Said-Magomed Imakayev had been unlawfully detained by the Russian security structures (art. 5 of the ECPHRFF); Said-Khuseyn and Said-Magomed Imakayevs should be considered dead and Russian authorities bear responsibility for their deaths (art. 2); investigation of the unlawful detention and «disappearance» is inadequate due to a whole number of reasons (the Court specifically noted lack of attempts by the investigation to establish what armored troop-carriers and military subdivisions participated in the detentions); the «disappearance» of the Imakayevs and lack of adequate measures that should have been undertaken by the Russian government to establish their afterlife is an example of inhuman treatment (art. 3); the lack of sanctions and guarantees in the process of search is a violation of the right to respect for private and family life, home and correspondence, while the reference by the authorities to the special powers stipulated by the Law on Struggle against Terrorism appears to be insufficient (art. 8). The decision specifies that the Court was amazed with the irresponsibility or failure to assume direct responsibility by the officials who participated in events. The Court also criticized the Russian authorities for

the failure to cooperate with it, and namely, for the failure to provide requested documents (art. 38).

9. Taking Insurgents' Relatives Hostage, Repressive Acts against Insurgents' Relatives

Such methods of carrying out the «CTO» were used from the end of 2001. However, this practice became of systematic nature with the further development of the conflict «chechenization». In 2004, with participation, support and cover up of the federal center, the earlier practiced sporadic cases of hostage taking, arsons and demolition of houses, murders and other forms of repressive actions in relation to the family members of suspected insurgents became systematic. If in former times, repressive actions in relation to the combatants' families were either revenge or an attempt to obtain from the relatives information about the insurgents offering resistance; now these methods have become tactics to render pressure upon insurgents with the purpose to force them to surrender. The kidnappings described earlier, as well as keeping in illegal prisons of the relatives of Aslan Maskhadov is an element of this widespread practice and such examples are numerous.¹

Prosecutions of insurgents' relatives go beyond hostage taking practice. One of the most known recent cases of this kind is kidnapping and «disappearance» of Elina Ersenoyeva. On August 17, 2006, in the center of Grozny, the employees of unestablished security structures kidnapped a 26-year-old Elina Ersenoyeva, employee of the non-profit-making organization of «Info-Bridge» and string correspondent of the newspaper *Chechenskoye obshchestvo*. About 9 o'clock in the morning, she was at the Pobeda boulevard together with her aunt Rovzan. Some unfamiliar persons in masks and camouflage approached the women. They frogmarched the women into different vehicles, put sacks onto their heads and took them away in unknown direction. After a while, they were taken off the vehicles and, with the sacks still on their heads,

¹ The issue of hostage taking and reprisals in relation to the insurgents' relatives is covered in the Report «Chechnya 2004: «New» Methods of Anti-Terror. Hostage Taking and Repressive Actions against Relatives of Alleged Combatants and Terrorists» prepared by the Legal Rights Center of «Memorial».

pushed into some cellar. Rovzan was soon again put into the vehicle, brought back to Grozny and left in the middle of the street. That day Elina Ersenoyeva called her relatives twice by the cell phone and asked to not raise panic hoping that she would soon be released. However, Elina never came back home, while her phone stopped responding.

Two days before the kidnapping, Elina applied to the International Helsinki Federation and the Center of «Demos» with a request for help. She wrote that local security structures («Kadyrovists», as she specified) had been persecuting her and her family for some time and explained that this pressure was due to the fact that in November 2005 she had married a man who appeared to be an insurgent and who was killed in the summer of 2006. On August 23, it became known that Ersenoyeva was wife of Shamil Basayev (the sources close to Elina say that the marriage was not voluntary). At the end of August 2006, the ChR Prosecutor's Office initiated a criminal case on the fact of Ersenoyeva's kidnapping. Elina's whereabouts and fate have not yet been established.¹ According to informal sources, in the middle of October 2006 she was still alive and was held in one of the «secret» prisons.

Elina Ersenoyeva's mother, Rita (Margarita) Ersenoyeva (born in 1958) took active efforts to find her daughter. Hoping that publicity would help to have her daughter released, Rita willingly met with Russian and western journalists and representatives of legal rights organizations. On October 2, 2006, Rita Ersenoyeva «disappeared» and there are strong reasons to suspect that she had been kidnapped. That day Rita came to see her mother Lipa Barzukayeva, 65, living in the village of Stary-Atagi, Mayskaya Street. There she got a mobile phone call. She said to her mother that it was the call from the «investigator» who had said that if she wanted «to learn good news» about her daughter Elina, she should immediately come to the village administration. 10 minutes later, Rita's mother called her mobile phone but it was disconnected. After several attempts to contact her daughter, Barzukayeva asked a relative to go to the village administration where the latter was told that Rita did not come and nobody had invited her there. Since then, the

¹ For more details about Elina Ersenoyeva's kidnapping see the Open Letter to the ChR Public Prosecutor by the Helsinki Federation, the International Federation for Human Rights and the Center of «Demos» from August 18, 2006 and an Annex to it from August 25, 2006. (<http://www.demos-center.ru/projects/66D650D/7D16046/1160677528> and <http://www.demos-center.ru/projects/66D650D/7D16046/1156516907>).

family has no news from Rita Ersenoyeva and no information as to her whereabouts. Being afraid for their safety, the relatives did not inform the law enforcement bodies about this. When meeting in September with the representatives of the International Helsinki Federation and the Center of «Demos», Rita Ersenoyeva mentioned some Suleyman Bakriyev, employee of the Grozny District Department of the Ministry of Interior who threatened that «she would smart» for her talks with journalists and foreigners. Pressure was, in particular, due to the fact that in September Rita was questioned in connection with her daughter's kidnapping by the members of the European Commission for Prevention of Tortures that visited Chechnya.¹

10. Impunity of Perpetrators

In all the ECHR decisions in relation to the complaints of the ChR citizens, it is specified that no effective investigation was undertaken on the national level in relation to the applicants' complaints.

The situation with investigation of crimes against civilian population in the conflict zone can be called «selective impunity». The crimes committed by insurgents are investigated with severe sentences passed upon the accused, whereas regarding the crimes committed by the state representatives everything is much more complicated.

In the majority of the crimes against innocent civilians known to the Legal Rights Center of «Memorial», the organs of the Public Prosecutor's Office initiated criminal cases although, quite often, such criminal cases were closed despite of the fact that all the constituent elements of the crime were evident.

From the end of 1999, the overall number of criminal cases initiated against the security structures representatives who had supposedly (based on the available facts) committed crimes against civilians was over two thousand. However, only a minor part of these cases were transferred to the military procuracy, while the investigation of their absolute majority has been suspended in the territorial Office of the

¹ See the chapter «Issues of Tortures and Inhuman Treatment in Chechnya and Northern Caucasus» prepared by the Legal Rights Center of «Memorial» and Center of «Demos» to be found in the Russia's NGOs' Alternative Report on the RF Compliance with the UN Convention against Torture presented at the 37 session of the UN Committee against Torture in autumn 2006.

ChR Public Prosecutor *«due to the non-identification of the persons to be held liable as the accused.»*

The official statistics is inconsistent and obviously falsified. In February 2003, the RF Deputy Prosecutor General S.N. Fridinsky reported¹ that *«throughout the period of the holding of CTO, the organs of the ChR Prosecutor's Office had investigated 417 criminal cases on the crimes supposedly committed against local population by the representatives of federal forces»*. This number included 341 cases (82%), the investigation of which had been suspended by that moment *«due to the non-identification of the persons to be held liable...»*. In August 2004, the same Fridinsky answered the identically formulated question,² *«Throughout the whole period of the holding of the CTO in the ChR territory, the organs of the Public Prosecutor's Office had initiated 132 criminal cases based on the facts of crimes committed against local population by the representatives of federal forces,»* including ten criminal cases the investigation of which had been suspended. Finally, in May 2005, the RF Deputy Prosecutor General N.I. Shepel said³ that *«throughout the whole period of the holding of the CTO in the ChR territory, there have been initiated by the organs of ChR Prosecutor's Office 143 criminal cases that were committed, according to the available information by representatives of federal forces»*.

Proceeding from the data collected by the Legal Rights Center of «Memorial», we can state that all the mentioned figures are many times lower and have little to do with reality. However, the ease with which Prosecutor's Office manipulates with these figures is worthy of attention.

The response by Shepel quoted earlier mentioned that throughout the period of 2000 — April of 2005, *«the organs of the ChR Prosecutor's Office initiated 2197 criminal cases on the facts of crimes committed by the members of illegal armed formation against civilians, local authorities and administrations, as well as representatives of federal forces»*.

Lately, when responding to the inquiries in relation to kidnappings made by the Legal Rights Center of «Memorial», the organs of the Prosecutor's Office more and more often say that *«the facts were not proven»*. This is the usual way for things to happen, if the relatives

¹ Response to the inquiry by the RF Duma Deputy S.A. Kovalev.

² Response to the inquiry by the RF Human Rights Commissioner V.P. Lukin.

³ Response to the inquiry by E.A. Pamfilova, Chair of the Civil Society Institutions and Human Rights Council under the President of the Russian Federation.

manage to ransom the person kidnapped by the security structures representatives. Neither the victim of kidnapping, nor its relatives complain to the Prosecutor's Office or, if the application has already been submitted, they take it back.

However, even in case of initiated criminal cases, no specific military officials or representatives of other security agencies are held criminally liable, while the cases, as it has been specified above, are discontinued. For example, investigation of not less than three forth (s) of all criminal cases initiated in relation to the crimes that became known to the Center of «Memorial» have already been suspended.

The cases regarding the «disappearances» of apprehended or arrested persons remain practically always uninvestigated.

We have some data in relation to the total number of federal forces' representatives having been convicted on the charges of crimes against civilians in Chechnya as of the middle of 2005. Throughout the whole period of «the second Chechen war» verdicts have been passed upon 103 military men. Eight of them were found innocent. Thus, for example, four military men from the special troops of the Main Intelligence Service (captain Ulman and others) who admitted having detained civilians were justified.¹ The court has closed the criminal case regarding three military men due to the decriminalization of the performed act. In relation to other twenty military men, the courts have applied amnesty. The amnestied, for example, included one contract soldier who opened fire from hooligan motives killing one woman and wounding another.

Only 27 military men, the majority of them having killed innocent civilians during their off-hours have been convicted by courts to different terms of imprisonment (from one year of labor settlement to eighteen years of maximum-security imprisonment).

The absolute majority of the convicted got «symbolic» punishments: conditional sentences (including for rapes, robberies, extortion, torture of the illegally detained persons, thefts, deliberate destruction of property, etc.), fines (for beating, unlawful apprehension of Prosecutor's Office representatives, etc.), restrictions on the army service.

By the middle of 2005, 34 militiamen were convicted for the crimes against civilians. Due to their being military men, their conviction is of a «symbolic» nature. Only 7 militiamen were convicted to real

¹ As of now, Ulman's case has been transferred for a new (third) examination by the court

terms of imprisonment. The others received conditional imprisonment (including for shooting in the state of intoxication with civilians killed or wounded, for extortion, taking bribes, threats to kill, hooliganism, etc.).

Not a single of the known episodes of mass killings of civilian persons by the federal forces in Staropromyslovsky district of Groznyy, Alkhan-Yurt and Novye Aldy has been fully investigated.

None of the criminal cases on the facts of revealed mass graves has been investigated.

Paragraph 94 of the RF Fourth Periodic Report on the implementation of the Convention against Tortures presented for consideration at the session of the UN Committee against Tortures in November 2006, provides data on the number of investigated and submitted to the courts criminal cases related to kidnappings. It is reported that, *«51 criminal case on 78 episodes have been taken to court throughout the period of holding of the CTO, 84 persons have been convicted»*. These figures are insignificant even against the background of the official and very much understated statistics of «disappearances». Secondly, only two representatives of the federal security structures have been convicted for kidnapping throughout the whole period of the second Chechen war: colonel Yuri Budanov and militiaman from Huntymansiysk Autonomous Okrug Sergey Lapin. At the same time, art. 126 of the RF Criminal Code («kidnapping») was referred to in the verdict to Budanov having kidnapped and cruelly killed Chechen girl Elza Kungayeva in March 2000. Lapin's verdict contains no reference to art. 126, although he was actually convicted for kidnapping in January 2001. Zelimkhan Muralov was tortured in the Oktyabrsky VOVD and then «disappeared». There are no other cases related to kidnapping with any names of security structures' employees mentioned. On the other hand, the figures provided in the report refer to the cases with the accused being the participants of armed formations offering resistance to federal forces and criminal elements.

Impunity is no less obvious in the cases of investigations related to tortures and excess of power. Even in the rare cases when the victim of tortures is ready to openly give evidence and the tortures' names are known, the investigation may be suspended, for example, due to «the

impossibility to establish the location of the suspect», although in most cases they do not even try to abscond.¹

¹ The issue of impunity is more closely addressed in the Report by the Legal Rights Center of «Memorial» and the International Federation for Human Rights «Torture in Chechnya: Normalization of a Nightmare, Report by the Legal Rights Center of «Memorial» «DECEPTIVE JUSTICE: Situation on the Investigation of Crimes against Civilians Committed by Members of the Federal Forces in the Chechen Republic During Military Operations of 1999-2003, as well as the chapter prepared by the Legal Rights Center of «Memorial» and the Center of «Demos» «Issues of Tortures and Inhuman Treatment in Chechnya and Northern Caucasuses» prepared by the Legal Rights Center of «Memorial» and Center of «Demos» to be found in the Russia's NGOs' Alternative Report on the RF Compliance with the UN Convention against Torture presented at the 37 session of the UN Committee against Torture in autumn 2006.

Governance as a counter-terrorist operation

Notes on the Russian legislation
against terrorism

*Submission to the Eminent Jurists Panel in connection
with public hearings on terrorism,
counter-terrorism and human rights in Russia
(Moscow, January 2007)*

Lev Levinson,
Human Rights Institute

Over the past six years, the Russian law has been modified to suit the purpose of fighting terrorism and extremism. As in many other countries, terrorist threats — virtual as well as real — have been used by the authorities to restrict civil and political rights and liberties and to give unlimited power to the law enforcement agencies.

Each terrorist tragedy — be it the Nord-Ost theater hostage-taking crisis, the terrorist attack in Tushino in 2003, the airplane blasts in August 2004 or the Beslan school siege — triggered complaints that laws are ineffective against terrorism, and eventually led to restrictions of democracy and excessive law enforcement power. The most dramatic example is the Beslan school hostage-taking crisis which was followed by a series of radical changes, such as appointment, rather than election, of governors, transfer to the proportional voting to the State Duma, and the establishment of the Public Chamber (which marked the beginning of attack against independent NGOs). None of the consequences is directly related to terrorism. However, political changes following Beslan demonstrated the degree to which anti-terrorist discourse can influence the Russian legislation.

In general, legislation against terrorism includes, in addition to the special Law on Counteracting Terrorism, a number of provisions in the criminal, criminal procedural, administrative law; they are also integrated in many legal acts in various spheres of regulation. In particular, new legislation adopted in 2006 eliminates many democratic safeguards to accommodate uniformed services engaged in fighting terrorism.

There are a number of key «anti-terrorist» laws, including:

A. The Federal Law on Counteracting Terrorism of 6 March 2006

1. The law targets ideologies as well as practices by including them in the definition of terrorism and terrorist activity.

The law defines terrorism not only as «practices of influencing the decisions of government, local self-government or international organizations by terrorizing the population or through other forms of illegal violent action,» but also any «**ideology of violence**» (art. 3).

The definition of terrorist activity, which complements the definition of terrorism, is even broader. The new law includes the following in the definition of such activity: **propaganda of terrorist ideas**; dissemination of materials or information which call to terrorist activity, **justify or support the need for such activity**, and also «**informational** or other types of **aiding and abetting** with regard to planning, preparation or implementation of a terrorist act» (art. 3).

This definition can easily be interpreted to include any «alien» or «offensive» ideology or political agenda (e.g. communist), or dissent (e.g. opposition to the Russian government's policies in the North Caucasus).

«Informational aiding and abetting» liability may potentially hinder communication concerning terror and specific terrorist acts. Broadcasting the demands of terrorists or disclosing the actual number of hostages as opposed to officially quoted numbers can easily be interpreted as terrorist activity making a conscientious reporter criminally liable.

2. The law provides for a special regime of counter-terrorist operations which will facilitate a serious restriction of most civil rights and liberties.

The Russian Constitution (art. 56) provides for certain restrictions of rights and liberties in a state of emergency. The Federal constitutional Law on the State of Emergency establishes a procedure of introducing the state of emergency (a Presidential decree approved by the Federation Council, with notification of the State Duma), liability for citizens and officials in case of non-compliance, and immediate notification of the UN and the Council of Europe Secretary Generals about temporary restrictions imposed on rights and liberties, which constitute derogations from international instruments, the scale of such derogations and the reasons. The introduction of the state of emergency (or the state of war) is subject to numerous restraints and controls. The International Covenant on Civil and Political Rights and the European Convention permit derogations from civil rights and liberties only in time of public emergency which is officially proclaimed.

The counter-terrorist operation regime imposes the same restrictions, but without proclaiming the state of emergency. Moreover, the counter-terrorist operation regime is not limited in time or space, does not require accountability and is free from parliamentary or international controls.

The former 1998 Law on Combating Terrorism also provided for substantial restrictions of civil rights and liberties and for special powers of officials in charge of counter-terrorist operations. While the 1998 law was often criticized, it contained an important clause allowing derogations only «in the area of the counter-terrorist operation,» whereas the 2006 Law on Counteracting Terrorism **does not mention or define «the area of counter-terrorist operation.»**

The difference is crucial. The 1998 law defined «counterterrorist operation zone» as «particular areas of land or water, vehicle, building, structure, installation, or premises and the adjoining territory or waters within which the aforementioned operation is carried out.» This qualification makes temporary restrictions legitimate (e.g. in the firefighting operation, etc.).

However, the 1998 legal definition was too narrow for what the Russian authorities have described for nearly eight years as a «counter-terrorist operation» covering the entire Chechen Republic.

While declaring a state of emergency would have been the only appropriate solution, the Russian authorities preferred to delete the «zone of counter-terrorist operation» from the law and provide for a possibility of counter-terrorist operations in a »territory with a substantial number of residents» (article 12), without any special limits whatsoever. **The area of counter-terrorist operation is determined at the discretion of the official in charge** appointed by some unknown (not mentioned in the law) authority and accountable only to the FSB Chief. This unknown official will decide whether the counterterrorist operation covers one apartment block or half of the Russian territory.

Whereas the constitutional state of emergency may be introduced for a maximum of 30 days in the entire country and for a maximum of 60 days in parts of the country, and any extension is subject to a complicated procedure, the law does not limit the «**period of conducting**» a counter-terrorist operation (article 11).

Restrictions of human rights and civil liberties during a counter-terrorist operation are virtually the same as in a state of emergency.

The counter-terrorist regime warrants:

ID checks;

blanket screening of negotiations, letters and other communications, and also «conducting searches of electric communication channels and the mail»;

suspension of companies and enterprises;

cutting individuals or entities from communications, communication networks and devices (i.e. **total information blockade**) — **not allowed even in a state of emergency**;

restrictions on movement of vehicles and pedestrians (i.e. slightly camouflaged curfew);

unhindered access by persons conducting a counter-terrorist operation to private homes and land plots, and to premises of all types of organizations for purposes of fighting terrorism;

checks and searches at the entrance to locations covered by the security regime;

restrictions or ban on the sale of certain goods, including alcohol.

A few items on this list deserve a special mention: **the screening of negotiations** and the «search of networks,» and also **unhindered violations of privacy, i.e. access to private homes.**

The screening of mail, phone conversations, telegraph and other communications may be allowed, according to part 2, art. 23 of the Constitution, only through judicial proceedings with regard to a specific individual or entity. Blanket violations of privacy with regard to an unlimited number of persons cannot be allowed even in a state of emergency.

As to privacy of the home, the new law effectively strips it of any judicial protection, given that a counter-terrorist operation regime can be instantly declared and terminated in any community, at the door of any home or apartment.

On a positive note, art. 11 of the new law requires immediate announcement of a decision to establish a counter-terrorist operation regime, indicating the area, measures and restrictions involved, and also a decision to terminate the regime. Although the format and procedure of such announcements are not specified, the requirement to announce a counter-terrorist operation can serve as partial protection from arbitrariness, because in absence of such announcement the actions of «counter-terrorists» will be illegal.

3. The Russian Army is allowed to fight terrorism in and outside Russia

The use of armed forces to fight terrorism domestically was allowed by the 4 April 2005 amendment of Article 10 of the Federal Law on Defense. The amendment provides for using the Army for purposes other than defense of the country against aggression, i.e. using the army as police.

The Law on Counteracting Terrorism allows using the armed forces against terrorists without any restrictions. In addition to individual units and detachments, the President can mobilize entire **armies** against terrorists (art. 9). In principle, the law does not rule out a counter-terrorist operation covering the entire country.

Military force may also be used «to suppress international terrorist activity outside the Russian Federation (art. 6). Art. 10 legalizes targeting «terrorists and/or their bases» in other countries from the Russian territory, as well as using the Russian armed forces outside Russia.

Subsequent amendments of 27 July 2006 of the Law on Counteracting Terrorism **empower the Russian President to make personal decisions concerning the use of security forces outside Russia to combat terrorist**

activity against the Russian Federation. Whereas the President's decision to use the regular army outside Russia requires the endorsement of the Federation Council, the FSB security forces may be used by the President at his discretion. Notably, security forces will probably fight terrorists without regard to any laws or rules.

4. Officials in charge of counter-terrorist operations are not identified

The law fails to explain how counteraction to terrorism must be organized. It only says that the FSB Chief decides to launch a counter-terrorist operation or delegates the decision to another official. Then someone is appointed in charge of the operation — the law mentions this individual with enormous powers in just a few words: **«a counter-terrorist operation shall be led by the chief of the operation»** (art. 13).

The law reflects the practice: the name of the official responsible for the Beslan counter-terrorist operation is still unknown to the public.

5. Collective liability for family members

According to art. 18 of the Federal Law, **«there shall be no compensation for any damage to the health or property of a person involved in a terrorist act, or for any damage caused by the death of such person, where such damage results from lawful suppression of a terrorist act.»**

In the meaning of article 49 of the Russian Constitution, anyone killed in a security operation must be presumed innocent, while a survivor may be found guilty by court.

Where a suspected terrorist is killed, liability is effectively extended to his/her family, including young children — a phenomenon well-known from the Soviet history.

B. Amendment of certain Federal Laws pursuant to the Ratification of the Council of Europe Convention on the Prevention of Terrorism and the Adoption of the Federal Law on Counteracting Terrorism (of 27 July 2006)

The fight against terrorism is used as a pretext to restrict freedom of expression, privacy, judicial protection, adversarity of parties in court, and division of powers.

1. Amendment of the Federal Law on Mass Media

Mass media are banned from «disseminating materials which contain public calls to terrorist activity or publicly **justify** terrorism, and other extremist materials» (amended art. 4).

The prohibition to «justify» terrorism encourages arbitrary restrictions of the freedom of expression as well as editorial self-censorship. Where is the boundary between national liberation movements and terrorism? Are journalists allowed to justify Hamas and Hezbollah? What about Robespierre with his «revolutionary terror»?

The Council of Europe Convention allegedly underlying the amendment says nothing about «justification of terrorism.» What the Convention recognizes is «public **provocation** to commit a terrorist offence» meaning «the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed.» It is emphasized that the Convention is not intended to affect established principles relating to freedom of expression.

The same art. 4 of the Russian law additionally provides that «procedures for gathering information by journalists in the territory (site) of a counter-terrorist operation shall be determined by the chief of the counterterrorist operation.» In fact, it means censorship, because only sanctioned publications will be allowed.

2. Amendment of the Federal Law on the State Security Service

Counteracting terrorism may require military-style operations — which is understandable were their purpose is to suppress a terrorist attack. However, the Russian law does not rule out **military-style operations undertaken with the purpose of «gathering intelligence on events or actions which create a terrorist threat»** (amended art. 91). It means that any military-style operation can be explained by «gathering intelligence.» The same article contains another expedient provision: military-style operations may be undertaken «**to identify individuals involved in preparation and carrying out of a terrorist attack.**» This provision effectively legalizes the common practice of shelling apartment blocks on suspicion that terrorists may be hiding in an apartment.

The same tradition of taking homes by assault is legitimized in a provision whereby FSB agents do not need a court warrant to enter

private homes «in cases of urgency» — which include, in particular, pursuit of individuals suspected of terrorist involvement. This provision is similar, but not identical, to art. 11 of the Federal Law on Police whereby police may forcefully enter a private home in pursuit of a criminal suspect. The difference is between a criminal suspect and someone «suspected of involvement» — the latter can mean anyone, especially in the absence of distinction between actual perpetrators and those who allegedly «justify» or «encourage» terrorism. Apprehending someone «suspected of involvement» is not the same as apprehending a perpetrator who may be dangerous to other people. Moreover, law enforcement agents hardly need the power to enter private homes without a court warrant — they can keep watch or block exits from the building, and in the meanwhile obtain a judicial warrant if needed.

The law allows using FSB security forces **against terrorists or their bases outside the Russian territory** to suppress any security threat to Russia. Combined with the power to use military vehicles, weapons and other facilities in the fight against terrorists located in other countries (amended art. 13), it may lead to the establishment of special-purpose FSB units effectively invading other countries' territory.

3. Amendment of the Civil Procedure Code

The Criminal Code is amended by art. 2052 «Public calls to terrorist activity or public justification of terrorism» punishable by up to four years of prison (up to five years if mass media are used). The vagueness of the phrase «justification of terrorism» is partially set off by a clarification whereby «public justification of terrorism shall be understood as public statements which recognize the terrorist ideology and practice as legitimate («right»), deserving to be supported and emulated.» There is a risk, however, that politically-motivated enforcement authorities may interpret this provision broadly by hiring philologists and psycholinguists to produce opinions which reveal any «hidden meaning.»

4. Amendment of the Criminal Procedure Code

Art. 247 and others are amended to allow prosecution in absentia in exceptional cases if the defendant is outside Russia or in hiding, provided that the same case involving the same defendant is not tried by a foreign court.

No guidelines are offered as to what makes a case exceptional. It is clear that the judgment will be politically motivated.

Trials in absentia are unconstitutional, because they violate the principle of adversarity (art. 123, part 3), art. 24 — the right to acquaint oneself with materials affecting one's rights and liberties, art. 45 — the right to self-defense, art 47 — the right to a jury trial, art.48 — the right to a defense counsel, the right to know what one is tried for, art. 55 — prohibition to adopt laws that deny or diminish human rights, and art. 56 — prohibition to restrict the right to a jury trial and the right to a defense counsel.

5. Amendment of the Federal Law on Communication

The amendment gives security agents extensive control over means of communication, enabling them to invade privacy and restrict information exchange.

Art. 64 of the law which used to regulate the responsibilities of network operators in the context of search and investigation and allowed restrictions of the users' rights only in defined circumstances, now applies to any type of **state security measures**, meaning that the FSB can establish binding requirements with regard to communication networks and facilities, and operators must cooperate and comply.

C. Other Laws (some examples)

1. Starting in December 2002, the Federal Law on Burial and Funeral Services prohibited handing over the **dead bodies of terrorists** to their families and prescribed their secret burial instead. It was the legislators' reaction to the Dubrovka theater hostage-taking crisis.

This law defined terrorists as individuals «whose criminal prosecution related to their terrorist activity was terminated following their death as a result of such terrorist act being suppressed.» However, one cannot be legally found to be a terrorist outside judicial proceedings.

2. The Federal Law of 22 April 2004 amending the Criminal Procedure Code allowed pre-trial detention of terrorist suspects **for up to 30 days without formal charges**. All other suspects must face charges within 10 days of their detention, while pre-trial custody may only be used in exceptional cases.

There is an important procedural difference between a suspect and an accused in the Russian law. A suspect has the right «to know what s/he is suspected of,» yet it is not necessary to formally document this «knowledge» — if a criminal investigation is triggered by the fact of the crime and not by his/her specific acts, a suspect may only receive a copy of arrest report or a copy of the decision to use detention or any other preventive measures, where the suspected crime does not need to be indicated. In contrast, a document establishing a person's status as accused must describe the alleged offence, indicating its time and place and any other circumstances which have to be proven. Because a suspect is not officially informed of the charges brought against him/her, s/he is often unable to build an adequate defense strategy. By the new law, a suspect can be held in pre-trial detention center (SIZO) for 30 days and interrogated, while no one is obliged to disclose the circumstances of the case to him/her.

A suspect can be someone arrested under article 91 of the Criminal Procedure Code — grounds for his/her arrest may include the finding of «obvious traces of crime» (such as gun shells) on the person or in his/her home. These provisions make it easy to accuse an innocent individual of a terrorist offense: firstly, law enforcement officers «accidentally» find ammunition on a person; secondly, they suspect him of a recent terrorist attack. The court will order custody, and then the police will «work» the person for a month to elicit evidence fitting exactly the circumstances of the crime they need to investigate

D. International Treaties

By art. 15 of the Russian Constitution, if an international treaty of the Russian Federation stipulates other rules than those stipulated by domestic law, the rules of the international treaty shall apply. This constitutional principle applies to **international treaties against terrorism**, including regional treaties among CIS countries and the Shanghai Cooperation Organization (SCO) of Kazakhstan, China, Kyrgyzstan, Russia, Tajikistan and Uzbekistan.

As a result, international policing agreements have priority over Russian domestic laws, even though Russian laws are more legally sound.

In 2004, Russia ratified the CIS Cooperation Agreement on Combating Terrorism.

Central to this agreement is the procedure of filling mutual requests by authorized security bodies of respective states. According to the agreement, «the laws of the State Party filling a request shall apply; however, the laws of the requesting State Party may also apply if it does not contravene basic legal principles or international obligations of the State Party filling the request.» In other words, the Russian law enforcement agencies may be required to act in accordance with Tajik or Belorussian laws.

It follows from the Agreement that «each State Party shall ensure confidentiality of information and documents received from the other State Party if they are of a confidential nature, or if the State Party which provides these documents finds their disclosure undesirable. The degree of confidentiality of such information and documents shall be determined by the State Party providing them.» But «confidential» documents may affect human rights and civil liberties, and by some Russian laws (such as the Law on Detective Operations) must be disclosed to concerned individuals on their request.

It is obvious from Art. 11 of the Agreement that the anti-terrorist rhetoric is used to camouflage efforts to chill the political climate and to give unlimited power to police. While the agreement ostensibly focuses on combating terrorism, data which can be revealed to security agencies also include personal details of **«certain individuals who may pose a threat to state security.»** So the anti-terrorist treaty targets dissidents, as well as terrorists.

Two other instruments were ratified at the same time — the SCO agreement establishing a Regional Anti-Terrorist Structure (RATS) and the Protocol establishing the procedure for joint anti-terrorist operations in the territories of CIS states.

A combination of these two treaties creates an ideal environment for uncontrollable trans-border security operations; security agents are now allowed to apprehend and even kill political opponents labeled as «terrorists» outside their own countries.

RATS is expected to gather and analyze information, to create a database of «terrorists and separatists,» to elaborate strategic plans, to conduct detective and other activities against terrorism, separatism and extremism, to engage in international search of persons suspected of

acts treated as offenses under the Shanghai Convention, and eliminate the channels of financing terrorism and separatism.

Security officers and agents of «democratic» countries such as Uzbekistan enjoy diplomatic immunity under CIS and SCO intergovernmental agreements, also protecting their property and premises. This diplomatic immunity of police and security agents effectively frees them of any external control. Anyone aware of most SCO states parties' practices will agree that these «diplomats» will not stop at kidnapping, unsanctioned arrests, raids and searches, and even extra-judicial executions in other countries.

Human Rights Center Memorial

12, Maly Karetny per., Moscow, 127051, Russia

Tel.: +7(495) 225 3118

Fax: +7(495) 624 2025

E-mail: memhrc@memo.ru

Find more information at <http://www.memo.ru>



**This document has been produced
with the financial support of the UK Global Conflict Prevention Pool**