



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

**COMMENTS BY THE GOVERNMENT OF THE RUSSIAN FEDERATION
TO THE CONCLUDING OBSERVATIONS OF THE HUMAN RIGHTS
COMMITTEE**

[13 January 2005]

Information from the Russian Federation concerning paragraphs 11 and 13 of the concluding observations of the Human Rights Committee in connection with its consideration of the fifth periodic report of the Russian Federation on implementation of the International Covenant on Civil and Political Rights

Paragraph 11

Article 20 of the Constitution of the Russian Federation, proclaims that everyone shall have the right to life and provides that, until its abolition, the death penalty may be established by federal law as an exceptional measure of punishment for particularly serious crimes against life, and that the accused shall have the right to have his or her case heard in a trial by jury.

Pursuant to the Russian Federation's accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms, and its signing of Protocol No. 6 to that Convention, the death penalty is not applied as a measure of criminal punishment.

On 2 February 1999, the Constitutional Court of the Russian Federation, in paragraph 5 of the operative part of its Decision No. 3-II, stated the following.

Until the implementation of a federal act guaranteeing, throughout the territory of the Russian Federation, every person accused of an offence for which federal law establishes the death penalty as an exceptional measure of punishment, the right to have his or her case heard in a trial by jury; the death penalty shall not be chosen as a form of punishment regardless of whether the case is tried by jury, a panel of three professional judges or a court consisting of a judge and two people's assessors. The relevant act was the Federal Act of 18 December 2001 on the implementation of the Code of Criminal Procedure of the Russian Federation, according to which the consideration of cases with the participation of jurors in the Chechen Republic would be introduced as of 1 January 2007.

Thus, until 1 January 2007, the imposition of punishment in the form of the death penalty is excluded.

The legislative abolition of the death penalty is one of the goals of the judicial and legal reforms currently under way in the Russian Federation. Russian leaders, and the President of the Russian Federation himself, Mr. Vladimir Putin, have consistently spoken out against a return to the death penalty. The Russian media have conducted an extensive campaign in favour of abolishing this form of punishment.

Moreover, government departments are currently engaged in intensive preparations for the State Duma's ratification of Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms and the introduction of the relevant amendments and additions to the Criminal Code, Code of Criminal Procedure and the Penal Enforcement Code of the Russian Federation.

Paragraph 13

The observance of human and civil rights in the Chechen Republic is a priority concern of the Government and law enforcement bodies of the Russian Federation. This issue is the subject of systematic and constant study, and comprehensive measures based on the results of the

study are being developed to eliminate any violations of laws that come to light; the activities of all law enforcement bodies in this area are being coordinated, and adequate measures to deal with such violations are being taken.

Monitoring of the implementation of laws by military administrative bodies and military officials, and the pre-trial investigation of criminal cases involving offences committed by members of the armed forces in the course of counter-terrorist operations in the Chechen Republic, are being carried out by a team of procuratorial investigators from five garrison procurator's offices.

In September 2002, the military procurator's office of the Unified Group of Forces (UGF) was established to conduct counter-terrorist operations in the North Caucasus region of the Russian Federation and was provided with the necessary staff.

Military procurators exercise their authority in close cooperation with representatives of federal government and administrative bodies, territorial law enforcement bodies, command headquarters and the local administration. When it is necessary to investigate the involvement of members of the armed forces in the commission of offences, joint investigative groups are established.

The military procuratorial bodies verify all information concerning the commission of offences by members of the armed forces; such information may come from citizens, human rights organizations and non-governmental organizations or the media.

The inhabitants of the Chechen Republic have the opportunity to apply independently to garrison procurators' offices in their vicinity. Moreover, the staff of the military procurator's office in Grozny have arranged for the regular reception of local inhabitants in the procurator's office. Citizens' communications are considered in strict compliance with established procedure.

Procuratorial bodies take particular care to ensure that officials comply with the law when they prepare and carry out special operations. Measures are being taken to prevent damage to citizens' health and personal property, unlawful detention and deprivation of liberty, and the violation of other constitutional rights and freedoms.

When such violations are established, criminal proceedings are instituted; the pre-trial investigation, as well as other stages of the legal proceedings, are conducted in strict compliance with the law in force and in accordance with the principles of openness and the equality of citizens before the law, and without any restrictions on the rights and freedoms of the parties to the proceedings, motivated by the conduct of counter-terrorist measures.

At the request of the President of the Russian Federation, Mr. Vladimir Putin, one special operation to establish the whereabouts and to arrest members of illegal military groups is not conducted without the participation of a procurator.

Pursuant to this provision, in July 2001 the Procurator-General of the Russian Federation issued Order No. 46 on strengthening supervision of respect for citizens' rights when checking registration at residential or temporary addresses in the Chechen Republic, which requires procurators to ensure the necessary supervision of every special operation.

On 23 April 2003, the military procurator's office of the Unified Group of Forces, the procurator's office of the Chechen Republic and UGF headquarters issued a joint directive on the implementation of the Instruction on cooperation among officials and other military personnel of the Unified Group of Forces with military procuratorial bodies during the conduct of special operations in the Chechen Republic, in the detention of citizens and the consideration of reports that offences have been committed.

Effective monitoring of the strict implementation of these documents by procuratorial bodies and headquarters made it possible for procurators to participate in practically all the special operations (more than 100) conducted by the federal forces in 2003-2004. Thanks to these measures, there were no reports of serious violations of legislation by units and subdivisions of the federal forces.

Bearing in mind the heightened need to protect the public at large during the conduct of counter-terrorist operations, one priority area is the investigation of offences committed against inhabitants of the Chechen Republic. There have been no instances of refusal on the part of investigators of military procurators' offices to verify reports of violations of the rights of the local population, or to institute criminal proceedings in connection with such incidents.

Since the beginning of counter-terrorist operations, military procuratorial bodies have investigated 225 criminal cases involving offences of this type.

At present, investigations have been completed in 137 criminal cases, 83 of which, involving 107 individuals, have been referred to military courts for consideration, and 54 of which were halted on various grounds.

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

In quite a few cases, criminals have pretended to be members of the militia or representatives of other security agencies in order to mislead law enforcement agencies and discredit the authorities in the eyes of the local population. For objective reasons, such circumstances become known only after the criminals have been arrested and investigations into the criminal case are conducted.

Military procuratorial bodies have referred 46 cases to the appropriate investigative jurisdiction, including to territorial law enforcement agencies, following the determination that members of the armed forces were not involved in the commission of offences. The investigation of 26 criminal cases is continuing.

Cooperation between the Military Division of the Supreme Court of the Russian Federation and the North Caucasus district military court has had positive results in terms of ensuring the prompt consideration of criminal cases involving offences committed by members of the armed forces in the course of counter-terrorist operations.

Military courts have considered criminal proceedings against 94 members of the armed forces who committed offences against inhabitants of the Chechen Republic. Eighty-one individuals, including officers, non-commissioned officers, conscripts, and contracted soldiers and sergeants, were convicted for offences against the local population.

The Human Rights Committee's concern about the provision of the Federal Act on combating terrorism, which exempts all law enforcement and military personnel taking part in special operations from liability for harm caused as a result of their unlawful acts, is groundless.

Article 21 of Federal Act No. 130-FZ on combating terrorism of 25 July 1998 provides that "during the conduct of a counter-terrorist operation on the basis and within the limits laid down by law, unavoidable damage may be caused to terrorists' lives, health and property, and also to other legally protected interests. Servicemen, specialists and other persons participating in measures to combat terrorism are exempted from liability for harm caused in the conduct of a counter-terrorist operation, in accordance with the law of the Russian Federation". This legal provision, which is based on general legal principles, does in fact make it possible to exonerate persons acting in necessary defence or in extreme necessity. At the same time, any legal evaluation of the acts of law enforcement and military personnel is made with reference to the provisions of criminal legislation on the lawful limits of necessary defence and conduct in situations of extreme necessity.

In all aspects of monitoring activity by military procuratorial bodies, close cooperation with territorial procurators, other law enforcement agencies, State legislative and executive bodies and local self-government bodies, and voluntary and human rights organizations has been established and is being maintained.

Owing to the dedication and diligence of the staff of federal government bodies, military procuratorial bodies, the territorial law enforcement agencies of the Chechen Republic, and also the military command of the Unified Group of Forces, it has been possible to restore the confidence of Chechen citizens and many voluntary organizations in the aforementioned bodies, to encourage them to apply to these law enforcement agencies, courts and representatives of federal government bodies with a view to defending the rights of citizens whose rights and legitimate interests have been violated. This has also been reflected by the substantial increase in recent years (in 2003-2004, an almost 1.5-fold increase) in the number of citizens' applications to military procuratorial bodies (which considered some 1,500 applications over this period).

As a result of the measures taken by the military procuratorial bodies together with the command of the Unified Group of Forces, there has been a steady decline in the number of violations and offences committed by servicemen of the Unified Group of Forces against inhabitants of the Chechen Republic in the conduct of counter-terrorist operations in the North Caucasus region of the Russian Federation.
