On Compliance of the Russian Federation with the International Covenant on Civil and Political Rights

Alternative NGO Report

Submitted by Russian NGOs to the Attention of the UN Human Rights Committee in Connection with the Consideration of the Sixth Periodical Report of the Russian Federation

October 2009

Introduction

The Alternative NGO Report On Compliance of the Russian Federation with the International Covenant on Civil and Political Rights (ICCPR) in the period from 2003 to 2008 has been prepared jointly by a coalition of Russian non-governmental organizations, including Center for the Development of Democracy and Human Rights, SOVA Center for Information and Analysis, "Public Verdict" Foundation, "Memorial" Human Rights Center, "Civic Assistance" Committee, Center for International Protection, National Center for Prevention of Violence "Anna", Center for the Defense of Media Rights, and the Inter-Regional Human Rights Group. Materials for the report have been also provided by Lawyers for Constitutional Rights and Freedoms/ JURIX, Moscow Helsinki Group, the Institute for Human Rights, "Right of the Child", "Social Partnership" Foundation, and other Russian NGOs. Center for the Development of Democracy and Human Rights coordinated preparation of the Report.

The Alternative Report is submitted to the UN Human Rights Committee in connection with the consideration by the Committee of the Sixth Periodic Report of the Russian Federation on compliance with the International Covenant on Civil and Political Rights (ICCPR). The Alternative Report is intended to fill certain gaps in the information provided by the Russian Federation to the Human Rights Committee and highlight the most important issues of the observance of civil and political rights in Russia.

The report continues the activities of Russian NGOs aimed at developing their cooperation with the UN treaty bodies and in particular with the Human Rights Committee. In 2003 Russian NGOs submitted to the Human Rights Committee an alternative report in connection with the consideration by the Committee of the Fifth Periodic Report of the Russian Federation. In January 2009 Russian NGOs submitted their recommendations to the Human Rights Committee on the list of issues to be developed by the Committee as part of its review of the Sixth Periodic Report of the Russian Federation.

While working on the Alternative Report we did not seek confrontation with the official position of the Russian Federation and did not try to disprove the official information and conclusions. We do not deny that over the last five years certain positive changes have taken place with regard to the observance of certain rights. At the same time we express our strong concern about deterioration of the situation with a broad spectrum of civil and political rights enshrined in the Covenant and failure by the Russian Federation to implement many of the Concluding Observations and Recommendations by the Human Rights Committee adopted in 2003 as a result of its review of the Fifth Periodic Report of the Russian Federation. Our task was to present a position which differs from the official one in order to allow the Committee members to form a more comprehensive and objective understanding of various problems of observance of civil and political rights in the Russian Federation.

Due to limited resources available to Russian NGOs, the Alternative Report does not cover all the articles of the Covenant, highlighting only the main issues, and contains recommendations on only selected articles. Where appropriate, reference is made to other reports of Russian and international NGOs.

Article 2, part 1 (equality before the law)

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Paragraph 1, Article 19 of the 1993 RF Constitution declares that 'all people are equal before law and in a court of law.' Paragraph 2, Article 19 envisages that:

> *The state shall guarantee the equality of the rights and liberties of a human being and citizen irrespective of sex, race, nationality, language, origin, property status and official position, place of residence, attitude towards religion, convictions, membership in public associations as well as other circumstances. All forms of restriction of civil rights on account of social status, race, nationality, language or religion are banned.*

Under Paragraph 2, Article 17 of the RF Constitution, 'the basic rights and liberties of the human being are inalienable and belong to everyone from birth.' Paragraph 3, Article 55 declares that 'Human rights and civil liberties may be restricted by the federal law only to the extent required for the protection of the fundamentals of the constitutional system, morality, health, rights and lawful interests of other persons, for ensuring the defense of the country and the security of the state.' Under Paragraph 3, Article 62:

> *Foreign citizens and stateless persons enjoy in the Russian Federation the rights of its citizens and bear their duties with the exception of cases stipulated by the federal law or international treaty of the Russian Federation.*

The norms proclaiming the equality of human rights and civil liberties regardless of nationality, color, language, religion, social origin and other circumstance are also found in the sectoral legislation. However, neither the Constitution nor the current legislation provide for a direct ban on discrimination or offers any effective remedies against discrimination and for the reimbursement of damage inflicted.[1]

In practice, public authorities repeatedly violate the principles of inalienability, universality and equality of the basic rights and liberties with regard to large categories of people in discriminatory manner on the following grounds:

1. non-availability of identification papers;
2. place of residence (registration of residence);
3. citizenship;
4. ethnicity.

The non-availability with a person, irrespective of his/her citizenship (including the person whose RF citizenship is not challenged by authorities), of identification papers within the boundaries of the Russian Federation implies his/her inability to exercise in full the rights guaranteed under Articles 9 (1), 12 (1 and 2), 14, 16, 17, 23 (2), 24, 25 of ICCPR. In practice, the only document identifying him/her as citizen of the Russian Federation within the boundaries of the country is a regular domestic passport of a Russian citizen.[2] The person who has got no

[1] Also see the section on Article 26 of ICCPR in this report.

[2] To travel abroad, a Russian citizen must have a traveling passport ("foreign passport" – in literal translation from Russian).

passport is restricted in his/her freedom of movement, in particular, is unable to acquire railway or air tickets, has no right to obtain a passport for traveling abroad and consequently, to leave the country. That person is also deprived of the right to choose a place of residence since he/she is unable to register himself/herself at the place of residence. He/she is also restricted in access to justice as the courts won't accept civil suits, complaints and applications from persons not possessing domestic passports; these persons even won't be allowed to enter a court building. In the absence of a passport, one finds it impossible to register his/her marriage. In the absence of a passport, a citizen may not take part in elections or be employed at a job in civil or municipal service.

In theory, every citizen of the Russian Federation who has reached the age of 14, is not only entitled but obligated to obtain a domestic passport and is free to do that regardless of availability of registration of residence. In practice, however, due to numerous insurmountable conditions of procedure existing within the passport system and also because of the established administrative practice one quite often finds it impossible to obtain a passport in the absence of registration of residence at any point in the territory of the country. For instance, obtaining a passport is often a problem confronting persons recently released from prison who, for whatever reason, have lost their certificate of release. It is important to note that if a citizen has permanent registration anywhere in Russia, he/she, finds himself/herself practically unable to obtain or re-establish a passport at any place in the country other than the place of his/her permanent registration.

The regional statutory acts and law enforcement routine practices lead to differentiation in the scope of rights enjoyed by Russian nationals residing in the same locality with and without residence registration. Meanwhile, many citizens are compelled to reside at a certain place as they, either objectively, i.e., not through a fault of theirs, fail to meet the requirements of the passport system or are arbitrarily denied registration by authorities. The restrictions imposed for reasons of registration are mainly related to social and economic rights (the right to work, to dispose, possess and use property, to social security, medical service), although they also tend to affect civil and political rights – the right of entering into marriage, of inviolability of private and family life, of access to justice, of participation in elections.

Apart from statutory legal distinctions between the rights of the RF citizens and those of aliens, there exist numerous unjustified restrictions targeting foreign nationals, stateless persons and also persons not recognized officially as citizens of the Russian Federation under a variety of arbitrary pretexts. Citizens of the Russian Federation that are in a position of stateless persons, i.e., those actually not recognized as RF citizens, are unable to receive identification papers at all.

There also exist several categories of citizens of the former USSR who cannot be nationals of any other state except the Russian Federation and who, according to the established practice, are denied recognition as Russian nationals. Basically, these are the people who did not have *propiska*, or nowadays residence registration on 6 February 1992, at the time of entry into effect of the 1991 Law 'On Citizenship of the Russian Federation'. For example, residents of Russia who used to live in some region of Russia under temporary registration on 6 February 1992 and who were then residing under temporary registration or without registration altogether were denied new Russian passports issued instead of Soviet IDs in early 2000s. Also, throughout 2000s, the Ministry of the Interior and the Federal Migration Service have being annulling Russian citizenship of dozens hundreds of Russia's residents under formal arbitrary pretexts that

there had been no records of their residence in Russia on 6 February 1992 or evidence of their application to Russian consulates abroad.

Moreover, the authorities are applying arbitrary criteria, not based on law to qualify the stay of a person in the Russian Federation as 'illegal,' which serves as the ground for non-recognition of the basic rights and liberties. The lack of registration of residence or stay, whatever reasons for that may be and whether the elements of guilt is present, is taken as an administrative offence whereas an issue of administrative offence supersedes that of the lawfulness of stay in the territory of the country. Not recognized, contrary to the law, as citizens of the country and treated as 'illegal immigrants,' former Soviet citizens, having infringed no formal legal requirements, find themselves deprived not only of the right to liberty of movement and choice of residence but also of such rights as the right to liberty and inviolability of person, of access to justice, of inviolability of dwelling.

Under the 2002 Federal Law 'On the Legal Status of Foreign Nationals in the Russian Federation,' foreigners residing in the Russian Federation with a temporary residence permission, formally are not allowed to move outside the region specifically allocated to their residence. Citizens of the former USSR holding former USSR passports with no indication therein of their contemporary citizenship, from the mid 90-s have been deprived of the right to cross the state border, i.e., to leave the country.

Persons belonging to some ethnic groups in the country have been subjected to continuous discrimination to the extent of non-recognition of their basic rights and liberties. As a rule, such discrimination is based on denial of registration of residence and control over compliance with the regime of registration. Chechens are continuously subjected to discrimination restriction of rights throughout the country.[3] In 2006, there was the nation-wide campaign of persecutions against Georgian citizens and ethnic Georgians. Since 2005 a wave of demolition of Romani villages and evictions of Roma people swept over the country.

A serious problem is posed by discriminatory treatment practiced by the law enforcement authorities with regard to ethnic minorities, primarily, nationals of Caucasus, Central Asia and also the Roma, which is manifested as arbitrary identification checks, search of living premises and detentions, i.e., infringement upon the rights protected under Paragraph 1, Article 9 and Article 17 of ICCPR.

Article 2, part 3 (right for effective remedy)

3. Each State Party to the present Covenant undertakes:
(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
(c) To ensure that the competent authorities shall enforce such remedies when granted.

Judicial review as a measure of prevention of the abuses

[3]See the section on Article 26 of ICCPR in this report.

Article 125 of the Criminal Procedural Code of the Russian Federation became the most important innovation in the Russian legislation and it allows bringing appeals to a court against any decisions, actions or inaction of investigative authorities, which affect constitutional rights. In the recent years under various pretexts the judicial authorities more and more often refuse the right to lodge such appeals. The most widespread pretext is that the reported violations do not infringe on constitutional rights.

For example, Khasavyurtovskiy court of Dagestan did not discern what particular constitutional rights were infringed upon of the complainants who filed a complaint regarding refusal to open a criminal case after a murder of their six-year old daughter during a "mop-up" operation in their village in Chechnya.

Regarding the case of M. Khodorkovsky the courts of Moscow and Chita multiple times refused to consider complaints, even though the matter was regarding the infringement upon constitutional right for defense. Similar examples of these are multiple.

While justifying these decisions the courts refer to instructions of the Supreme Court of Russia. If in fact these references are wrong, the Supreme Court of the Russian Federation must curb such practice of denial of justice.

Politically motivated cases

A series of trials took place in Russia concerning the so called espionage cases. Journalists, scientists, PhDs were convicted (V. Danilov, V. Moiseev, G. Pasko, A. Babkin, I. Sutyagin and others), who were "exposed" essentially in their contacts with foreigners, even though they did not transfer any classified information. The courts determined their guilt only on the basis of "expert assessments" of the classified nature of the transferred information which were conducted by persons being in subordination vis-à-vis the prosecuting agency, the Federal Security Service.

In these circumstances such sentences do not correspond with the right to a fair trial (Article 14 of the Covenant): independence, impartiality of judges, equality of arms, legal certainty, as well as prohibition of punishment for actions of non-criminal nature (Article 15 of the Covenant). Also their right for distribution of information without unjustified, arbitrary limitations were not observed (Article 19 of the Covenant).

The Yukos case and the Khodorkovsky trial

The cases against Mikhail Khodorkovsky and his company Yukos are amongst the most notorious of the politically motivated cases that have attracted international attention. Khodorkovsky was convicted in 2005 after a trial that was broadly condemned for its fundamental lack of due process. Sentenced to eight years imprisonment he was sent to serve his sentence in Siberia in defiance of the applicable law. Just as he became eligible for parole further charges were brought against him - new charges that, as President Obama has commented, seem no more than "*a repackaging of the old charges"*. The harassment of his lawyers by the State has been a persistent feature of the case: many have faced disbarment and some face criminal proceedings. One, Vasily Aleksanyan, was offered life-saving medical treatment by the Prosecutors only in return for giving evidence against Khodorkovsky.

Yukos itself has been driven to bankruptcy and is now in the hands of the State. Yukos' main asset, Yuganskneftegaz, was sold at considerable under-value at a much-criticised auction to a single bidder. Shortly afterwards Mr Andrei Illarionov, then the Economic Adviser to President Putin, described the sale as "*the scam of the year*"[1].

The Council of Europe has twice now condemned the cases against Khodorkovsky and Yukos. In 2005 the Parliamentary Assembly of the Council of Europe passed a resolution stating that the cases went "*beyond the mere pursuit of criminal justice, and includes elements such as the weakening of an outspoken political opponent, the intimidation of other wealthy individuals and the regaining of control of strategic economic assets*"[2]. In 2009 its Special Rapporteur on "*Allegations of politically-motivated abuses of the criminal justice system in Council of Europe member states*"[3] commented that the case was emblematic of the term "*legal nihilism*" used by President Medvedev when he had described the difficulties within the Russian criminal justice system[4]. In adopting her report the Council of Europe cited the Khodorkovsky case as demonstrating "*the need for the fundamental importance, for the rule of law and the protection of individual liberty, of shielding criminal justice systems throughout Europe from politically-motivated interferences*."

Use of the metal cages in the trial-rooms for all the accused

The use of obligatory metal cages for all defendants can not be justified in those courtrooms which are not permanently used for consideration of grave offences. It could predetermine the finding the defendant guilt as public and sometimes prolonged keeping of an innocent person in a cage (that is of a person whose guilt has not been decided by the court yet) does not comply with the requirements of the Covenant about the use of only such limitations which are absolutely necessary. Such inhuman and degrading treatment of defendants is aggravated by lack of food, insufficient drink and inadequate rest (only 5-6 hours of sleep in the days of court hearings), and in such an exhausted condition they have to defend themselves. It does not comply with the requirements of Article 14 of the Covenant.

Public hearing as a minimum standard of a fair trial

All the decisions of judges about closed door proceedings must be well-grounded. Almost in all politically motivated cases judges decided to close the door under various pretexts. It should be qualified as abuse of power in desire to draw the consideration of cases out of attention and oversight of the public and the media. Consideration of Anna Politkovskaya murder case is one particular example where in order to justify a closed door trial a manufactured pretext was used.

Right to individual petitions – Article 5 of the Optional Protocol to the Covenant

The State party becoming a party to the Optional Protocol has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not. The State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred.

According to the information obtained from the applicants there were not any sufficient measures taken to ensure full compliance with all Views of the Committee under the Optional Protocol: e.g.: *Gridin* v. *Russian Federation*, No. 770/1997; *Lantsova* v. *Russian Federation*, No. 763/1997; *Telitsina* v. *Russian Federation*, No.888/1999; *Smirnova* v. *Russian Federation*, No.

712/1996; *Dugin* v. *Russian Federation*, No. 815/1997; *Zheikov* v. *Russian Federation*, No.889/1999; *Platonov* v. *Russian Federation,* No.1218/2003; and *Babkin* v. *Russian Federation*, No.1310/2004).

Article 2, part 3 (right for effective remedy) in connection with Article 6 (right to life)

Impunity for human rights violations in the course of counter-terrorist operation in the North Caucasus

Up to now no effective investigations has been conducted in criminal cases initiated by the Russian authorities concerning the following facts:

- mass killings and murders of civilians within the territory of the Chechen Republic in the course of counter-terrorist operations during "sweeps" of the village of Novye Andy (February 5, 2000), the village of Al khan-Yurt (December 1999), the village of Mesmer-Yurt (May 21 – June 11, 2002), the village of Tootsie-Yurt (December 30, 2001 – January 3, 2002), the village of Starye Atari (in 2000-2001), cossack village of Borozdinovskaya (July 4, 2005), the village of Zumsoy (January 14-15, 2005), Staropromyslovsky area of the city of Grozny (January – February 2000);

- discovery of mass graves of bodies of people previously detained by representatives of the Army and staff of the Ministry of Internal Affairs (February 21, 2001 in the vicinity of the Russian military base in the village of Shankara in the summer community of March 13, 2001 within the territory of the base in Shankara; September 7, 2002 in the forest belt near the blockhouse of the federal forces situated near the city of Magnitogorsk).

None of the officials or servicemen has been held responsible for mass death in the Chechen Republic of civilians caused by an air rocket attack which hit a refugee convoy near the village of Shamanic-Yurt on August 29, 2999 and during shooting attack of the village of Katy-Yurt on February 4, 2000.

Upon complaints of victims of bomb attack against a refugee convoy (the case of Isabella, Supernova and Bazaar against Russia) and upon a complaint of a victim of shooting attack of the village of Katy-Yurt (case of Isabella against Russia) the European Court of Human Rights made on February 24, 2005 a final decision that Russia is guilty of breach of Article 2 (right to life) and Article 13 (right to effective means of defense) of the European Convention on Human Rights and Fundamental Freedoms. Based on the facts the prosecutions authorities of the Russian Federation initiated criminal cases and determined specific officials responsible for preparation and implementation of these military operations but no one was held accountable.

None of the officers of the law enforcement agencies or the military officers who took part in a "sweep" operation on July 28, 2007 in the village of Ali-Yurt in the Republic of Extinguisher has been held accountable; during this operation dozens of local residents were beaten up badly and suffered injuries.

Up to now none of the criminal cases open in relation to the crimes committed against civilians during the counter-terrorism operations in the North Caucasus which became the matter of contention in the European Court on Human Rights are investigated.

An insignificant number of criminal cases were open during the counter-terrorist operation in the North Caucasus (1999-2007) concerning instances of kidnapping and disappearance of people (Article 126 of the Criminal Code of the Russian Federation) even less of such cases are investigated.

According to the Prosecutor's Office of the Chechen Republic for 2007 during the whole period of the counter-terrorism operation 1952 criminal cases were open concerning kidnapping of 2734 people. During this period only 87 cases were investigated and 31 cases were closed. The remaining cases are still not investigated. The information of human rights organizations permits stating there is a higher number of kidnapped persons from 3 to 5 thousand people. In many instances the facts pointed to complicity of state authorities' representatives in committing these crimes. In the report of human rights commissioner in the Chechen Republic Nukhadjieva "Issues of traceless disappearance of people in the Chechen Republic and search of mechanism for determining whereabouts of persons removed and held by force" (2006) it is stated that in "187 cases there are dates, time of detention, numbers of roadblocks, license number plates of military vehicles, last names, names, patronymics and radio call signs of servicemen, who participated in their arrest, titles of units which conducted the special operations etc."

Up to now no one has been brought to trial for the death of people detained on suspicion of committing crimes and brought to premises which belong to the Ministry of Internal Affairs from :

- death of Bashir Velkhiev in the building of Department of Organized Crime Control of the Ministry of Internal Affairs of the Republic of Extinguisher in Room 17 during the night from July 20th to July 21st, 2004. A criminal case #04560079 was initiated under Article 286 (abuse of office) of the Criminal Code of the Russian Federation;

- death of Murad Bogatyrev on September 8, 2007 in the building of District Office of the Department of the Ministry of Internal Affairs of the city of Malgobek of the Republic of Extinguisher A criminal case # 07540061 was initiated under Article 286 (abuse of office);

- death of Zeitun Gaev on November 17, 2007 in the building of Department of Organized Crime Control of the Ministry of Internal Affairs of the Kabardino-Balkar Republic (city of Nalchik). Gaev was brought there on November 15, but up to his death the police officers denied he was there and did not let the lawyer to see him.

In the North Caucasus according to the reports of human rights organizations and complaints of lawyers concerning the people who were detained or arrested as suspects for committing of crimes under Articles 206 (terrorism), Article 208 (organization of illegal armed group or participation therein), Article 209 (banditry), Article 222 (illegal storage or carrying of weapons or munitions), Article 317 (infringement on life of a law enforcement officer) of the Criminal Code of the RF, after their detention or arrest for a long time the destiny of such people remains unknown to their relatives (up to several days); the lawyers hired by their relatives often have no access to them.

Article 3 (equality of men and women)

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Violence against women is a human rights violation and a form of discrimination which affects the rights of women to the enjoyment of all civil and political rights set forth in the Covenant.

In Russia today the main obstacle to effectively responding to violence perpetuated against women is the absence of a federal public policy that defines the problem as a serious impediment to the observance and achievement of women's rights as human rights. Despite major efforts and many successful practices in the field of the prevention of violence against women in Russia over the last twenty years, no comprehensive strategy to solving the problem has been adopted and measures taken by the Government of Russia on combating violence against women have been insufficient. The National Federal Programme and the National Action Plan on Combating Violence against Women and Assisting Victims of Violence have not been developed or launched.

In the early 90s there was a significant rise not only of public activity in the area of women's rights, but also in that of the state. This was particularly noticeable during the Beijing Conference in 1995, which stimulated the adoption of the Beijing Platform for Action for the advancement of women at both the regional and Federal levels. This led to the establishment of national and regional mechanisms for monitoring the status of women and to the development of effective interaction between public organizations and various government agencies. The same time period also saw the first attempts to adopt legislation on the prevention of domestic violence, which, unfortunately, has not led to a desired result. But gradually, the problem of women's rights in general, as well as that of violence against women, has ceased to be a priority and to be analyzed with adequate gravity.

The administrative reform of the Federal government (as of 2004), accompanied by structural changes and staff changes, has effectively destroyed the previously existing national mechanisms for establishing equal rights for women. To date, virtually all state agencies dealing with gender equality have been liquidated or have ceased functioning.

The National Action Plan for the advancement of women and enhancing their role in society (2001-2005) ended in 2005. In 2004, the Commission on Women in the Russian Federation under the leadership of Deputy Minister of the Russian Federation suspended its work. The Commission on Women, Family and Demographics under the auspices of the President of the Russian Federation in the Federation Council was also eliminated.

To date, the actual work on a wide range of gender issues at the state level is handled by the State Duma Committee on Family, Women and Children and the Ministry of Social Development and Health. The issues of violence are not a priority in their work.

The insufficient action of the State is also beginning to be noticed by the people of Russia: according to a Gallup Poll survey (2008), 73.3 percent of the respondents stated that the State has not taken the necessary measures to combat domestic violence.

Another example demonstrating the non-priority of the problem is the absence of the Russian Federation in a campaign to combat violence against women, conducted by the European Council in 2006 - 2007. To date, Russia is the only member country of the European Council who did not respond to the European Council's questionnaire regarding this campaign.

In 2008 ANNA, the National Center for the Prevention of Violence, formed a National Independent Commission on Women's Human Rights and Violence against Women. Members of the commission include prominent analysts from the regions of Russia entered the Commission, including experts on the issues of gender equality and gender-based violence as well as experienced crisis counselors and advocates on women's rights. The commission monitored women's human rights violations over the course of 2008. For its report, the Commission drew from interviews, expert surveys and information provided by the regional non-governmental organizations as well as conducted analysis of media articles and of survivors' complaints.

Based on the monitoring data, the National Independent Commission found violence against women to be a pervasive phenomenon affecting thousands of Russian women. According to the recent statistics, every hour one Russian woman is murdered by a husband or a partner, and conservative estimates suggest that a rape occurs every thirty minutes. Thousands of women in Russia become victims of human trafficking, hundreds of young women forced into marriages, and dozens of women die as a result of honor killings.

As a result of monitoring, the Commission has revealed serious violations of women's human rights by representatives of the state bodies.

For instance, the Commission has revealed widespread refusals to register women's complaints, as well as, insensitivity and inaction on behalf of law enforcement agencies, which still view domestic and sexual violence as private matters, not criminal offences and women's human rights violations. Prosecutors do not respond to women's complaints in due time. Judges are often insensitive to victims of violence a result of as lack of an awareness of the special nature of violence against women. Health care providers refuse to examine victims of sexual assault and to collect the required evidence.

The State's attitude of non-priority towards issues of violence against women is also reflected in the lack of an adequate number of specialized agencies such as social hostels and shelters where female victims can find refuge. To date, according to our study, in Russia there are only twenty-one such institutions, which are funded, usually, by local budgets. The total number of beds is about **200**, and this includes not only women but also children.

State officials' inaction and insensitivity towards female victims of violence found by the Commission violate the International Covenant on Civil and Political Rights, particularly Article 3. According to the Covenant, the Russian Federation must undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4 (derogation of rights under the state of emergency)

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from Articles 6, 7, 8 (Paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.
3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Regime of the counter-terrorist operation, implementation of which was made possible based on the Federal Law of March 6, 2006 #35-FZ "On counteraction to terrorism" is to a great extent similar to the emergency regime, but, unlike the latter, it does not presuppose either an official announcement or informing the UN Secretary-General, or any other limitations stipulated in the Constitutional Law on Emergency Situations (term of the state of emergency, territory of its implementation, etc.).

Thus, limitation of rights under the regime of a counter-terrorist operation clearly does not correspond with the permission under Article 4 of the Covenant of the partial derogation of rights strictly under the condition of the state of emergency.

Article 6 (right to life)

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

Many of those who were convicted and received death sentence before 1996 and whose sentence was not executed, received life imprisonment by the Decree of the President of the Russian Federation by the way of pardon. This is also relevant for the convicts who committed crimes in the end of the 1980s – beginning of the 1990s, when sentence of life imprisonment did not exist. According to the Criminal Code of the Russian Soviet Federative Socialist Republic, a 15-year imprisonment served as the alternative to the capital punishment and in the case of commutation of death penalty – by imprisonment of up to 20 years. Life imprisonment appeared in the Russian criminal law from January 6, 1993.

Use of life imprisonment in case of commutation for those convicted for crimes committed before January 6, 1993, aggravates the situation of those persons. The law which renders punishment to a more severe one should not have a retroactive force. The examples of this are the cases of the pardoned persons with newly given life sentences, Peter Stakhovzev (convicted

by Irkutsk Regional Court in 1991), Oleg Filatov (Convicted by the Supreme Court of the Udmurt Republic in 1991).

The Situation in the North Caucasus

Terrorism and activities of illegal armed groups present a serious threat for the state institutions of Russia, to life and safety of the Russian citizens. There are no doubts that the state not only has the right but must fight with these phenomena. Such a fight has been going on in the North Caucasus for ten years. In certain periods there is an impression that it is successful.

However events in 2008-2009 – a new spiral of large-scale crisis in Dagestan, Chechnya and Ingushetia – signal a presence of systemic flaws and shortcomings in the selected strategy. It is obvious that long-term efficacy of actions countering terrorism and illegal armed groups are directly related to the methods used by state authorities.

Experience of human rights activists work in the region demonstrates that gross violations of rule of law often made during counter-terrorist operations in the long-term perspective contribute to increase of terrorist activities. Maintenance of peace and stability in the North Caucasus is closely related to observance of human rights in the region.

There is an impression that activities of the law enforcement agencies in these republics sometimes goes outside of any control.

An important role in improvement of the situation with human rights and therefore with the security in the region may be played by human rights organizations. In the meantime in the last two years work conditions of such organizations systematically deteriorated. Activists of these organizations come across various forms of pressure, including shooting attacks, arson, threats, kidnapping, torture and murders of staff members.

Dagestan
In the Republic of Dagestan there is a sharp increase of assault on law enforcement officers and number of kidnappings of people by law enforcement officers. The last event which shocked the Republic is kidnapping and torture of five young people on August 23rd, then murder and burning of the bodies of three of them.

There is an obvious vendetta of the armed underground resistance and law enforcement agencies, as well as persecution of people who are professing islam variations which are not traditional for this region. The last issue has grown to such an extent that in the spring of 2009 the Minister of Internal Affairs of Dagestan, Adilgirey Magomedtagirov, who was heading the Republic's law enforcement agencies up to his murder, was forced to confess that that it is meaningless and counterproductive to “pressure” those who goes to “wrong” mosques.

Ingushetia
In the eight years of Murat Zyazikov's rule the total corruption and completely unchecked tyranny by the law enforcement agencies were turning the society against the state.

After the militant attack in June 2004 the citizens of Ingushetia were ready to mobilize around the authorities to support its activities. But the next four years made the people see the state as an enemy almost as bad as the fundamentalist underground resistance. The total destabilization in the second half of 2008 was a logical result of the developments of the previous years.

Appointment of Yunus-Bek Evkurov as the head of Ingushetia in the fall of 2008 and the immediate course towards restoration of the rule of law were extremely hopeful. But the rising hope for improvement of the situation in the Republic was compromised by the attempt to murder Evkurov in May of 2009 and the resulting events. Now when the President is back and is governing the Republic he is trying in the most difficult circumstances to uphold the initially chosen policy and to strengthen the dialogue with the society, he needs as never before the support of the federal center and understanding of the Russian leadership that stabilization of the situation cannot be immediate but can result only from long-term systematic efforts.

Chechnya

In the spring of 2009 a beginning of a serious destabilization in the Chechen Republic became obvious. The destabilization was rooted in all of the previous activities of the authorities and the law enforcement agencies of the republic.

Until recently it seemed that in this region the actions of local law enforcement aimed at suppression of the armed underground resistance are effective. The human rights activists supported this view: according to the Memorial Human Rights Center the number of kidnappings of people by officers of the law enforcement agencies went down from 187 in 2006 to 35 in 2007 and statistics did not change considerably in 2008 - 42 persons were kidnapped.

Information about constant decrease of intensity of armed clashes and of losses among law enforcement agencies seemed to signify normalization of the situation. Human rights activists reported decrease of instances of unlawful violence by the representatives of the state.

It seemed that in the Chechen Republic peace and stability were installed at the cost of grave violations of human rights in the previous years. However, the recent events signal the opposite.

Not only a series of terrorist acts committed in the summer of 2009 in Chechnya, including use of suicide bombers. Human rights activists already from the end of 2008 were pointing out that there is a steady increase in number of instances of unlawful violence by officers of the law enforcement agencies (first of all of the Ministry of Internal Affairs in the Chechen Republic), and there is a parallel outflow of young people “to the mountains” to the militants is noted.

Law enforcement agencies of the Chechen Republic are infiltrated by people who went through a school of violence while they were within the illegal armed groups, they from the onset deny the very notion of rule of law, they think they have the right to hold any “operations” using any means. From the summer of 2008 a campaign of burning houses of militants' relatives is on. In 2009 there was a considerable increase in kidnappings of people. Human rights activists point out that in a series of instances the people who were subjected to “preventive” violence by representatives the law enforcement agencies left for the mountains.

Often the nihilism in relation to the Russian legislation is demonstrated publicly by the leadership of the region, both the President of the Chechen Republic Ramzan Kadyrov, and Adam Delymkhanov,“oversees” law enforcement bodies, being the Deputy of the State Duma and having no official powers in the Republic, and who is wanted by Interpol.

The regime of essentially individual rule which currently exists in the Republic engenders discontent and opposition. With the absence of any legal (political, public) channels for such discontent, when any open discontent can result in serious repressions for the outspoken person

or his/her relatives, such opposition often unfortunately manifests itself in support to the underground resistance.

Due to the existing situation in the Chechen Republic and due to activities of local authorities the Russian Federation bears serious reputation and image losses.

The world perceives Chechnya not as a constituent entity of the Russian Federation, but as a corrupt criminal enclave, where extreme forms of barbarianism are usual up to public. Responsibility for this is on the leadership of Russian who are not able to control what is going on in the Republic.

This lawlessness spreads outside of the Chechen Republic, the most significant proofs of this are murders of well-known opponents of Ramzan Kadyrov. Murders in Moscow of Movladi Baisarov in 2006 and Ruslan Yamadaev in 20 were perceived by the observers as signals of loss of control over law enforcement bodies of the Chechen Republic by the federal authorities.

In 2009 outside of Russia in Vienna and Dubai Umar Izrailov and Sulim Yamadaev were murdered. Not only the international public opinion but also the police authorities of these countries unequivocally the murder is ascribed to the authorities of the Chechen Republic.
The recent murders of human rights activists in the the Chechen Republic also caused a prompt and harsh reaction from the partners of Russian in the international sphere, they were discussed at the highest level, including personally the President of the Russian Federation.

Number of Kidnapping Cases Documented during the Monitoring Held by Memorial Human Rights Center within the territory of the Chechen Republic from January 2002 up to June 2009

Year	Persons kidnapped	Including:			
		Released by kidnappers or ransomed	Found murdered	Disappeared	"found" in detention facilities
2002	544	91	81	372	-
2003	498	158	52	288	-
2004	450	213	26	203	8
2005	323	155	25	128	15
2006	187	94	11	63	19
2007	35	23	1	9	2
2008	42	21	4	12	5
2009 up to June	74	57	4	12	3

The table does not contain exhaustive numbers, only the number of cases documented by human rights activists (names and surnames, addresses of the victims are known as well as the circumstances).

Prevention of grave crimes against human rights defenders and journalists

Positive obligations of the state regarding the right to life necessarily includes measures aimed at prevention of murders of political and civic activists, journalists, lawyers and other figures of public importance such as a recent murder of Natalia Estemirova and other members of

Memorial Human Rights Center in Chechnya or a double murder of a lawyer Stanislav Markelov and a journalist Anastasiya Baburova. Preventive measures are required, including creation of correct attitude in the society towards the opposition and to people who simply think and write openly expressing their independent opinion, and it is a duty of the state to formulate correct domestic ideological policy without nurturing enmity towards such persons in the society. A different construction of state policy results in direct incitement of radically minded persons to violence and murder.

Lack of effective investigation in cases of murder of journalists and human rights defenders

Positive obligations also include holding not any but a really effective investigation of such crimes, an investigation where all theories are considered, false evidence is not manufactured, inadmissible evidence is not permitted, rights of the affected party are not ignored, their access to investigation is ensured. Nonobservance of these minimal standards of effective investigation leads to these cases falling apart in the court as it happened with cases about murders of Paul Khlebnikov and others and is likely to happen with the case of murder of Anna Politkovskaya. This last case after 3 years of the investigation and the trial (with all accused the been acquitted) recently have been sent to the new preliminary investigation. In another case of the murder of journalist Dmitry Kholodov, nobody has been neither found, no punished.

Up to now there are no concrete measures or even plans to change the situation, no steps taken by the government of the Russian Federation in the sphere of protection of civic activists, journalists and lawyers from murder and threats of violence, to ensure effective investigation of such cases and undertake preventive measures against such cases.

Poisoning and killings of the hostages in the Dubrovka theatre - Nord-Ost case and Beslan case

The Human Rights Committee when it considered the 5th periodic report of the Russian Federation in October 2003 in its concluding observations pointed out, so far as the "Nord-Ost" case is concerned, the following:

> *"While acknowledging the serious nature of the hostage-taking situation, the Committee cannot but be concerned at the outcome of the rescue operation in the Dubrovka theatre in Moscow on 26 October 2002. The Committee […] expresses its concern that there has been no independent and impartial assessment of the circumstances, regarding medical care of the hostages after their liberation and the killing of the hostage-takers.*
>
> *The State party should ensure that the circumstances of the rescue operation in the Dubrovka theatre are subject to an independent, in depth investigation, the results of which are made public, and, if appropriate, prosecutions are initiated and compensation paid to the victims and their families."*

In another similar case – the "Beslan case" – the authorities also failed to save hostages' lives and the investigation was also neither independent nor effective.

The recommendation of the Committee, cited above, is a minimum standard in fulfillment of the positive obligation on right to life, guaranteed by article 6 of the Covenant. However, up to the present time, the Russian Federation has not duly addressed the call of the UN Human Rights Committee.

Article 7 (prohibition of torture)

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Torture by the law enforcement bodies

While acknowledging that during the reporting period some positive changes have taken place on the territory of the Russian Federation, especially concerning legislative measures, Russian NGOs are very concerned with the cases of torture and other cases of abusive treatment in the most critical sectors of the country (police, army, penal institutions) [3].

Having considered the Fourth Periodic Report of the Russian Federation, the UN Committee against Torture recommended the Russian authorities ***"take measures to bring its definition of torture into full conformity with article 1 of the Convention, in particular to ensure that police, army, as well as prosecutorial officials, can be prosecuted under articles 302 as well as 117 of the Criminal Code".*** However, no measures have been taken so far. The definition of the term "torture and cruel and humiliating treatment" adopted on December 8, 2003 in the annotation to the article 117 of the Russian Criminal Code does not mention the presence of an official. Moreover, the norm that regulates the definition of the torture is included into a section that deals with crimes against life and health of an individual, but not into a section dealing with the crimes, committed by the officials at work. That means that this article can only be used, if the torture was carried out by an individual and not by an official. Moreover, the definition of torture, registered in national Criminal Code does not fully comply with the norms of the Convention against torture. It should be mentioned that the definition of a notion "cruel and humiliating treatment" cannot be found either in the Criminal Code of the Russian Federation or in other national legal acts. In practice torture committed by law enforcement officers in the most typical cases are treated as abuse of power in accordance with the article 286 of the Criminal Code of the RF.

As a result, competent state institutions, which are in possession of the statistics on the use of Article 286 "Abuse of power", do not have data on torture and cruel and humiliating treatment. That prevents the authorities from adequately estimating the amount of torture cases and does not allow the state to plan efficient preventive measures.

The only information available in this respect is the data provided by Russian human rights NGOs. For example, in the first half of the year 2009, the Public Verdict Foundation received 30 torture and ill-treatment claims, the similar situation in other human rights NGOs. In total, Russian human rights NGOs received several hundreds of torture claims every year.

Analysis of the court decisions on the cases, executed by the Foundation[4], shows that policemen use physical force both in order to deliver detainees to the police departments (most often – to the alert units' premises and detention cells for administrative offenders) and inside them. Before being sentenced for unlawful use of violence, the significant part of convicts used to be criminal

[3] Detailed information about manifestations of torture and other prohibited forms of treatment are contained in the Alternative Report presented by a coalition of Russian non-governmental organizations to the UN Committee against Torture in November of 2006 (http://www2.ohchr.org/english/bodies/cat/docs/ngos/joint-russian-report-new.pdf) as well as in the follow up information presented by the Russian NGO coalition to the UN CAT in November of 2007 (please see attachment 1).

[4] Analysis "Investigation and judicial decisions on torture cases: An analysis of cases executed by the Public Verdict Foundation and its regional partners. 2004 – 2009" (see attachment).

detectives. Unsatisfactory training system, low level of professionalism, remaining impunity and some other reasons account for this trend. The second place by the number of the convicted for the torture crime are shared by the patrol police service and neighbourhood police, i.e. structures which closely and often interact with citizens. The reasons behind the pattern include insufficient physical and professional training, weak communicative skills, for example, inability to avoid conflicts. It is worth to note that significant part of the convicts for torture are heads of the district police departments and their deputies. As heads of the departments they should give an example to their subordinates of proper behaviour and attitude towards the responsibilities. Instead they violate the laws, thus allowing their subordinates to do the same. Crimes, committed by them are grave from the legal point of view and absolutely intolerable in regards to the harm they inflict on the work of the whole department.

One of the main reasons, pushing up the number of human rights violations by law-enforcement bodies, including use of torture and cruel treatment is the existing police performance assessment system, which takes into consideration only quantitative data (for example, statistics of the registered and detected crimes etc.), and necessity to demonstrate a positive dynamics in each reporting period. This system does not allow assessing the quality of the police' work. More over, it contributes to the replication of unlawful actions, when policemen, in attempt to show necessary quantitative indices, which will affect their promotion and social benefits, commit such illegal actions as unlawful detentions, torture, cruel treatment and falsification of the evidence.

Another reason of why this practice has become so widely spread is insufficient professional training of employees of law enforcement agencies. Lacking the skills allowing for successful solution of professional tasks without application of excessive violence, such personnel try to enforce the law and fight delinquency using torture and other types of treatment or punishment forbidden by Article 7 of ICCPR. This situation is exacerbated by the fact that programs of study used to train employees of law enforcement agencies do not pay enough attention to personal immunity and prohibition of torture and cruel and degrading treatment.
In the reported period the legal framework, dealing with arrest and custody procedures and rights of detainees and accused, was subjected to changes and can guarantee the prevention of torture and inhuman treatment of these individuals. The adoption of the new legal norms did not have any practical impact on the position of the suspects, detainees and accused. Despite the fact that the new laws had been adopted, the competent institutions did not promote the introduction of institutional changes, which are necessary to execute these laws. They also did not provide necessary material resources for judges and police officials. Besides, some clauses, regulating the work of the police officers, were not amended or changed in order to make them comply with proclaimed aims of human rights protection. As a result, the suspects, detainees and accused still suffer from different violations of human rights, including bad treatment and even tortures.

Legislature (including the law "On Police") is not precise enough in formulating the proportionality for the use of physical force, special means and firearms, which in practice lead to the situation, when the police officers can use excess force in order to prevent minor violations of public peace, even when the detainee is not maintaining resistance and not trying to make an escape. In some cases police officers use physical force even against children and elderly people, people, who due to natural reasons, are unable to maintain serious resistance or pose a threat for the life or health of police officers.

Human rights organizations in Russia are especially concerned about the use of mass violence in 2004 –2008 in (particularly in Blagoveshenks city in 2004, the village of Rozhdesveno in Twer

Region in 2005, the village of Ivanovskoe in Stavropol region in 2005, in Lazarev district of the city of Sotchi in 2006, in the city of Dalnegorsk in Primorsky krai in 2007 and village of Shalya in Sverdlovsk region in 2008). It must be noted, that all the above operations were carried out without any visible reasons. In the mentioned towns no cases of mass public peace disturbances or emergencies were registered, which means there was no need to carry out special operations in addition to usual day-to-day activities of the police force. All the above situations resulted in the fact that the local population started to fear and distrust the police force, due to the excess and non-selective violence on their part. Below is the description of one of such cases[5]:

> *On June 9th, 2008 around 1.30 - 2 p.m. about 45 armed people with faces covered under black masks (later it was found out that they were officers of the Directorate for combating organised crime and SWAT of the General Directorate of internal affairs) broke into the car service station (**in the village of Shalya in Sverdlovsk region**)[6] and in a rude manner forced everyone onto a concrete floor. There were about 26 people in the car service at the moment, both station staff and their clients. Five of them were suspects in the robbery case, while the others were there on their own business. Three more persons entered the car service station later and also were detained by policemen. At about 8 p.m. on June 9th, 2008, 13 detained were brought to the premises of the Directorate for Combating Organised Crime for Sverdlovsk oblast. The rest stayed under the guard of the SWAT officers until about 10 p.m. During this time they were lying on a concrete floor, sometimes being forced by the policemen to get onto their knees. Later they were released without any explanations or apologies. Those who were brought to the police premises were kept there until 7 a.m. of June 10th, 2008, after which 7 of them were arrested as suspects in committing the crime specified in the article 91 of the Criminal Procedure Code. The rest were released. Against them the criminal procedure was not initiated. The detention of these people was not registered officially. No explanation of the reasons for detention was given. Summarizing, more than 20 innocent people were arrested during the detention operation. Policemen used physical force, special means (handcuffs) and stun guns against five detained persons. The fact of usage of force against one detained is proved by a medical certificate, against others – by the pleadings of witnesses. None showed resistance to the policemen, neither did the victims use force against them. Personal search did not reveal possession of weapons, weapon-like things, things which can be used as such or other prohibited items. Mobile phones and documents were the only things which were taken by the officers. This circumstance is supported by the fact that the above-mentioned people were not charged with any administrative or criminal offence. Besides, four people were brought to the premises of the Directorate for Combating Organised Crime, where they were kept for more than 8 hours, after which without explanations of the reasons of the detention or its official registering they were released. It is worth noting that at the time of detention these people were neither committing any offence, nor were they suspects or accused or on the wanted list as criminals hiding from law-enforcement bodies. There are significant reasons to consider the rights of five people as having been infringed. According to their pleadings, these people were unlawfully kept in custody for 8 hours, during which they were treated in a humiliating and degrading way, both in physical and verbal form. They spent a lot of time lying on a concrete floor and underwent an unlawful bodily search as a result of which officers took their mobile phones. All without exception were filmed with a video camera.*

It is worth to note that only one from all mentioned cases has been effectively investigated and brought in the court – the case of mass violence in Lazarev district of the city of Sotchi. As result 8 officers of special forces of the Krasnodar krai Directorate of internal affairs were found guilty

[5] More detailed information can be found in the Public Verdict Foundation's reports on the work of the joint mobile groups of Russian human rights NGOs (for examples see attachment).

[6] This and other cases mentioned in this article are executed by the Public Verdict Foundation, whose specialists provide legal, informational and psychological aid to the victims.

under article 286, part 3, section "а, б" of the Criminal Code (abuse of power with using of violence). While all other cases of mass violence are either still in the process of investigation or suspected.

It must be mentioned that during the last five years, the number of investigations carried out as a response to complains about tortures and inhuman treatment, has increased. In comparison with the previous reporting period, the number of police force employees, held liable for these offenses, has also increased. These changes can be explained by the fact, that the victims of torture and cruel treatment are trying to seek justice and with the help of lawyers, working in human rights organizations persistently demand investigations from relevant authorities. Those changes, however, cannot be viewed as a definite progress achieved by Russia in carrying out its responsibilities to conduct efficient and fair investigation on torture cases.

Although some steps towards the fulfillment of recommendations of a number of international human rights bodies concerning the conflict of functions within prosecutor's office have been conducted. For example the new *Federal Law #N 87-FZ 'On Amendments into the Code of Criminal Procedure and into the Federal Law 'On the Prosecutor's Office of Russian Federation''* was adopted and signed on June 5 2007. Under the provisions of the new law, a new structure – Investigative Committee (IC) – is to be introduced into the system of Procuracy of Russian Federation. The Committee will be responsible for carrying out criminal investigations. The new law came into force on September 7, 2007. The creation of the Investigative Committee within the General Prosecutor's Office had a number of aims, the most important of which are: to make it impossible for the Prosecutor General to influence the appointment of the head and deputy heads of the Investigative Committee, to expand the authority of the Head of the Investigative Committee in relation to preventing crime among high level state authorities, to separate the function of criminal investigation from function of supervision of criminal investigation, including investigations of torture cases, to increase the quality of criminal investigation.

However, two years of experience of Russian human rights NGOs obviously demonstrates that the introduction of the Investigative Committee did not make significant changes in the practice of investigation of torture and cruel treatment cases. Now, just like in previous reporting year, the prosecutor's investigative offices do not show initiative in starting investigations on torture cases. It is very rare for the prosecutor's investigators to independently initiate the examinations and investigations, even if they possess the data that the torture had been administered. More often, the issue of investigation the information about torture arises when the victims or their representatives come to the prosecutors' investigators independently, to file a complain. Investigators often do not meet the time deadlines, while investigating torture cases; they postpone the necessary investigative activities without any plausible reason, which leads to delays in investigations and loss of important evidences.

In many cases investigative bodies attached to prosecution offices take unlawful procedural decisions to dismiss criminal complaints which are later cancelled by higher courts or prosecutors. The fact is that there can be several dismiss-cancellation circles before a criminal suit is eventually brought to the court accounts for a loss of crucial evidence.

> ***The case of Loginova E.E****. (Novokuznetsk, Kemerovo oblast) can make a good example of this trend. In September 2008 Loginova E.E. was unlawfully detained and subjected to administrative liability for an offence. During the detention procedure the police officers unlawfully used force against her, thus inflicting bodily injuries. The latter were registered in the note of medico-legal examination. Loginova E.E. submitted a complaint about the actions*

*of the policemen. As a result of the check upon this complaint, the investigator delivered **eleven orders of refusal** to initiate criminal procedures, which later were acknowledged as unlawful and ungrounded and were reversed by both the head of the investigative body and the court. The view of the place of occurrence was conducted only nine months after the event, as a part of the check, which has been going on for already one year. It is obvious that over such a long period of time all evidence had been lost. Despite the medical certificate submitted by the plaintiff, which proved bodily injuries, the investigation did not conduct a special examination, which would have allowed to register the nature of the injuries, their localisation and way of infliction. Instead, the investigators questioned several times a medical expert who was not able to give unambiguous and clear conclusions about how these injuries were inflicted.*

Temporary or final termination of the prejudicial investigation of a case by investigative bodies attached to prosecution offices that are later reversed by the higher investigative body or courts are also common practice for investigation oa torture cases.

*On the 7th of May 2004 Nagatinskaya interdistrict prosecution office of Moscow initiated against unidentified policemen a criminal action on infliction of bodily injury to Noskov on the 21st of March 2004 under the article 286, part 3, paragraph "a" of the Criminal code of the RF. The suspects in the case were Bolkunova E.V., Pukhov K.S., Popov Yu. A., officers of the fourth department of the operational-investigation unit (ORCh) of the Criminal Police (KM) attached to the Department of the crime detection (OUR) of the Directorate of internal affaires (UVD) of the South Administrative District (YuAO) of Moscow. The suspects and the victims were confronted and on the 1 April 2005 the prejudicial inquiry was suspended on the basis of the article 208, part 1, paragraph 1 of the Criminal Procedure Code of the RF. And only almost 2 years later, on the 29th of January 2007 the prejudicial inquiry was renewed. Bolkunova was charged **on the 12th of February 2007, Pukhov and Popov – on the 13th of February 2007, i.e.** all necessary investigation actions were carried out and the guilty were determined **during 2 weeks.** On the 29th of October 2007 Nagatinsky district Court of Moscow found all three guilty in the crime under the article 286, part 3, paragraph "a".*

Analysis of the investigation of the torture and cruel treatment reveals **lack of a due thoroughness**, i.e. that not all necessary and possible measures are taken, witnesses are not interrogated, the evidence of the victim is not taken into consideration (cases described above are good illustration of such practice) while the versions of policemen become a base for investigation theories.

*On 13th of January 2004 at about 1.30 a.m. minors Aplekayev and Darovskikh were at the night club from where they were delivered to the Central UVD of Yoshkar-Ola. At the police premises they were unlawfully beaten with special items (rubber truncheons) by the police officers. **A year later** on the 7th of December 2005 a suit on exceeding official duties by a policeman and beating of Aplekayev and Dorovskikh was initiated under the article 286, part 3, paragraph "a" of the Criminal Code upon approval of the acting deputy Prosecutor of Mariy El. On the 7th of June 2006 the prejudicial inquiry was suspended in accordance with the article 208, part 1, paragraph 1 of the Criminal Procedure Code of the RF. This order **was appealed** to the Prosecutor of Mariy El and **on the 7th of August 2006, i.e. 2 months later,** it was reversed by the acting Prosecutor of the Republic Mariy El as ungrounded and premature because the investigation officer had not taken all necessary measures. Among the latter there were confrontation between victims and witnesses, elimination of essential contradictions in their evidence, checking the evidence of the victims on the spot, interrogation of the duty officer of the police department where the minor victims were delivered and unlawfully kept, i.e. measures that should have been taken on initial stages. **On the 12th of July 2007** the city court of Yoshkar-Ola found a detective guilty in exceeding*

official duties with the usage of force and special items (article 286, part 3 of the criminal Code).

Violation of the principle of the victim's access to the investigation is also quite wide-spread. This principle is violated both at the stage of a preliminary check, when law-enforcement bodies deliver orders of refusal to initiate an action, and when an investigation is already going on. However the nature of the violations in these two cases is different. The article 42 of the RF Criminal Procedure Code specifies the victim's rights during an investigation of the criminal case. For example, the victim is entitled to read protocols of the investigative actions, which involved him, resolutions to conduct expertise and its results, as well as to submit evidence, file a motion etc. Investigative bodies do not prevent the realisation of the right to file evidence, however only pro forma. Petitions of a victim to adduce evidence to the materials of the case, conduct an inquiry etc. are accepted, but in most cases are left unsatisfied. As a rule, the investigator explains the reasons for refusal to satisfy the petition. Often the victim does not agree with the reasoning provided by the investigator, however, there is little chance for him to appeal it, as according to the article 38 of the RF Criminal Procedure Code, an investigator conducts the procedure independently and is entitled to make decisions on the investigative actions on his own.

Similar violations were numerous in the criminal case, initiated against policemen ***on charges of the murder of Shchiborshch K.V.,*** *committed as a result of exceeding limits of necessary defence. Shchiborshch K.V. suffered from a mental disease and was in need of hospitalisation, however he refused to be hospitalised voluntarily. His father tried to persuade him to go to the hospital voluntarily, however, it didn't bring the wanted result. As the health of Shchiborshch K.V. started deteriorating sharply and hospitalisation was inevitable, the father asked police to help with the hospitalisation. Detention operation involved use of physical force and special means. As a result, right after the delivery to the hospital Shchiborshch K.V. died from numerous bodily injuries. As a part of the investigation into the case, there were conducted three forensic tests by experts of the same specialisation. The conclusions of the experts contained ambiguous information. Besides, the conclusion which became a reason to terminate the criminal case, was later acknowledged by the controlling medical body as conducted with violations of the current legal requirements for such documents. The controlling medical body also stated necessity to involve an expert of a different specialisation, i.e. necessity to conduct a comprehensive expertise. This statement is registered as a separate act. The victim requested to adduce this act to the materials of the criminal case and to conduct a comprehensive forensic expertise. However, the investigator left the request without satisfaction because he found that act as an insufficient reason to conduct a comprehensive expertise. Instead he ordered to conduct an ordinary expertise, which, as it was already noted, was acknowledged by specialists as incapable to return unbiased conclusions.*

At the stage of a preliminary check the violation of the principle of victim's access to the investigation is different and results from a lack of a clear wording of the right of a plaintiff for an insight in the RF Criminal Procedure Code. This often gives grounds for investigative bodies to deny a right of a plaintiff to study the materials, thus not allowing him to draw a sound and well-motivated appeal in case of refusal to initiate criminal proceedings. The article 24 of the RF Constitution obliges state agencies and their officials to guarantee everyone a right to study documents and materials directly affecting their rights and freedoms, if not stated otherwise in a law. Thus, any information, apart from state secrets, confidential data, involving official, professional, commercial etc. activities, must be available to a citizen. Since the limits can be set only by a law, and the article 148 of the RF Criminal Procedure Code (refusal to initiate criminal proceedings) does not contain any restrictions concerning citizens, whose rights and

freedoms are involved when an order of refusal is delivered, the investigative body has to provide a plaintiff with an opportunity to study all relevant information of the check. However, in real life this principle is often neglected.

> ***A case of Kurepin I.V. (Odintsovo, Moscow oblast)*** *starkly illustrates such violations. On October 11, 2006 Kurepin I.V., who was detained on suspicion of committing a crime, was found dead in a detention cell of the Odintsovo Directorate of internal affairs. According to the medical examination, the reason of death was mechanical apnea caused by a strangulation with a soft loop. The mother of Kurepin N.I. found on his body numerous traces of beating and cigarette burns. She filed a request to conduct a check on suspicion of possible torture of her son. Odintsovo municipal prosecution office conducted the check, which gave grounds for more than 5 orders of refusal to initiate criminal proceedings. These resolutions were later found unlawful and ungrounded and reversed. The check registered bodily injuries on the corps (racomas and bruises), however the circumstances in which they were inflicted were never investigated. The representative of Kurepina N.I. filed numerous petitions to get access to the materials of the check, however they were all turned down on different grounds, such as: lack of a relevant provision in the law, on-going check after the reversal of the order of refusal to initiate an action, the materials' being reviewed by the prosecution office etc. Thus the representative of the victim was prevented from preparing a sound and well-motivated complaint about the actions of the investigator, who obviously failed to conduct the investigation effectively.*

It is worth noting that orders that were found by a head of investigative body as premature and groundless are repealed only after appeals of the victims rather than on the initiative of head of investigators themselves. Another thing important to mention is that in the best part of cases investigators are not brought to responsibility (neither discipline, nor criminal) for negligence, lack of necessary measures and unlawful decisions, which lead to impunity and repeated practice of ineffective investigations. The negligence, delays, unlawful decisions make victims wait for years for restoration of their violated rights even when a guilty person is charged with a crime and brought to the court in the framework of the criminal case. From the analysis made by the Public Verdict Foundation[7] it becomes obvious that in the majority of cases executed by the Public Verdict Foundation and its regional partners 1-2 years pass from the report about a crime to a verdict (17 out of 59 cases on which either the decision is already taken or the hearings are held in the court). One should note that in 15 cases victims had to wait for the decision for 6-12 months, in 17 cases – for more than 2 years. Four cases from the last group are completely scandalous because the victims had to wait for the restoration of the justice for more than five, six and seven years.

One of the main reasons why investigations on torture complaints prove to be inefficient lay in the fact that the investigative bodies attached to prosecutor's office are still not a fully independent organization. In the most of cases the investigators are not interested in investigation of torture cases. The reason for their reluctance is that the torture, cruel and degrading treatment are used by police officers in the majority of cases by the criminal detectives. The article 151 of the RF Criminal Procedure Code gives a full list of crimes, preliminary investigation for which is laid onto investigative bodies. For example, investigators of the Investigative committee attached to the RF prosecution office among other responsibilities have to look into the crimes specified by the article 286 of the RF Criminal Code. However, the organisation of the Russian law-enforcement system implies that the operative work on the cases executed by the Investigative committee attached to the RF prosecution office, is laid upon the

[7] Analysis "Investigation and judicial decisions on torture cases: An analysis of cases executed by the Public Verdict Foundation and its regional partners. 2004 – 2009" (see attachment)

criminal investigation department. This paradox means that investigators of the Investigative committee attached to the RF prosecution office have to initiate criminal proceedings for torture cases against their long-term colleagues from the criminal investigation department.

Thus, one may say that the recommendations of the UN Committee against Torture of the UN made after consideration of 4th periodic report of the Russian Federation to ***"ensure prompt, impartial and effective investigations into all allegations of torture and ill-treatment and the prosecution and punishment of those found responsible as well as the protection of complainants and witnesses of torture"*** were not fully implemented by the Russian Federation government.

In cases when the fact of torture and the specific officials guilty in torture administering were not stated in the court sentence, the torture victim formally has the right to file a compensation claim. In this case, however, the victim must look for evidence, supporting the claim, the quilt of the officials and the causal connection between the torture and the moral harm, suffered by the victim. Moreover, if the previous investigation showed lack of corpus delicti, the torture victim will have to overturn this decision. It is highly unlikely that in such legal situation the court will reach a verdict to pay compensation. According to the data, collected by human rights organizations in 11 Russian regions (Mariy-El, Komi, Bashkorkostan and Tatarstan Republics and in Krasnodar, Perm, Nizhniy Novgorod, Chita, Orenburg, Sverdlovsk and Twer regions) no cases had been recorded, when a victim filed a compensation claim while no individual was charged with crime of administering torture. This means that victim's opportunity to be awarded compensation is almost directly influenced from how efficient the investigative body attached to a prosecutor's office is in investigation the torture complaint. Inefficient and prolonged investigation seriously hinders the victim's access to compensation. While analyzing court decisions on awarding compensation to the victims of torture and cruel treatment, one may notice that during the recent years the amount of compensation awarded for moral harm and moral damage has increased. On the one hand, the fact that the amount of compensational payments has increased means, that the courts have come to realize that torture is one of the most serious violations in human rights and freedoms. On the other hand, the observed increased may be explained by inflation processes. According to the data, collected by Public Verdict Foundation, during 2004-2009 the amount of compensation payments to individuals subjected to torture or to their representatives (in case of death of a victim) varied from 7 thousand (230 USD) to 330 thousand rubles (11,000 USD), depending on nature and gravity of damage. The practice of determining the amount is different from court to court. It must also be mentioned, that torture victims, who won the compensation cases face many serious difficulties in acquiring their compensation payments. It can be said without doubts, that the practice of implementing court decisions on such lawsuits does not comply with Article 14 of the Convention against Torture and the Russian authorities did not take needed measures in order to comply with the recommendations of the UN Committee against Torture approved after consideration of 4th periodic report of the RF demanding the Russian Federation ***"revise the current procedure of compensation, to bring it in line with constitutional requirements and obligations under article 14 of the Convention, ensuring that appropriate compensation is provided to victims of torture. The State party should ensure that appropriate medical and psychological assistance is also provided to victims of torture and ill-treatment".***

Torture and inhuman treatment in the military forces

Non-governmental organizations continue to register multiple facts of inhuman treatment and torture of military servicemen by their fellow servicemen and commanding officers which sometimes leads to their death and suicide.

Cutting the conscription term in 2008 was a measure of utmost importance and necessity. However it did not result in decrease of number of such crimes. In many of the military units both contract-based servicemen and conscripted servicemen serve. Often the former treat the newly arrived soldiers as senior conscripts, that is they practice inhuman treatment and torture. As well as some commanding officers of army units use torture and degrading treatment.

According to some reports the level of violence in a number of military units even increased. It is related to the fact that violence is used more and more often with the purpose of extortion or coercion to illegal activities.

The system of investigation of crimes which exists in the army does not contribute to effective fight against violence. According to Article of the Criminal Procedure Code of the Russian Federation, emergency investigation actions are performed by interrogators – officers appointed by commanding officers of military units. Commanding officers for various reasons are often interested in concealing the crimes. Military investigators are not often interested in finding out the truth either.

It is certain that enactment of the Federal Law #119-FZ of August 20, 2004 "On state protection of victims, witnesses and other participants of criminal legal proceedings" deserves positive assessment. However this law is practically unused in the Army. Victims of torture often remain in the same military units where such crimes were perpetrated. Often even transfer of a victim or a witness of such crimes to a different military unit does not protect them from revenge for complaints or bearing witness about the crime.

The above permits to reinstate the recommendation provided in the Alternative Report of Russian non-governmental organizations in 2003: first of all it is necessary to discontinue the institute of military justice and transfer its functions and powers to civil prosecutors, investigatory agencies and courts.

Torture in the penitentiary system

The so called "sections for discipline and order" consisting of inmates under control of the authorities are one of the main sources of violence against other inmates in correctional facilities. Despite numerous complaints these units have not been liquidated.

A practice of persecution of complainants against violence in prisons is widespread. They are often urgently transferred to a different facility so that a public inspector is not able to meet them.

The right for filing a complaint free of censorship to the prosecutor's office and other agencies is often violated under the guise of amicable agreement with the administration.

The number of pardons in the recent years has drastically decreased (12 thousand people were granted a pardon in 2001 and zero - in 2007).

The process of release on parole has become increasingly difficult. In particular, the legislation contains a discrepancy regarding requirements of repentance on the part of the convict. Article 9 of the Correctional Code of the Russian Federation, "Correction of the Convicted", provides a closed list of criteria which does not contain the requirement of repentance. However, the requirement of repentance is contained in the Article 175 of the Correctional Code of the Russian Federation "Procedure of submitting parole application and recommendation for substitution of the unexpired part of sentence with a more lenient sentence". As a result an inmate, who considers the sentence to be unjust or a judicial error, is effectively deprived of the possibility to apply for release on parole.

Article 8 (prohibition of slavery, slave trade and forced labour)

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour.

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include.

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention.

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors.

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community.

(iv) Any work or service which forms part of normal civil obligations.

Forced labor of migrants

In 2007 migration registration of foreign citizens was considerably simplified, a inflow of migrant workers legally arriving into the territory of the Russian Federation increased. However forced labor of migrants remains one of the main forms of exploitation. Hundreds of migrants address public organizations, those who end up in situation when conscientious employers refuse to conclude employment agreements. As the result of absence of such an agreement especially during the recent year the number of cases of refusal to pay salary or its incomplete payment of salary increased. Attempts by the migrants to protect their rights lead to beatings, deprivation of freedom of movement, they also end up in situations when due to lack of financial means and impossibility to leave the territory of the Russian Federation forces a migrant worker to work unlimited amount of time for an employer for food. Corrupt law enforcement agencies side with the employer and take part in suppression of disobedient workers and never defend them.

At the same time the Russian authorities create conditions when work of foreign citizens becomes impossible. In the second quarter of 2009 quotas for employment of foreign citizens were arbitrarily decreased twofold in comparison to the ones declared at the beginning of the year. Therefore the foreign workers who arrived in May 2009 were unable to obtain a work permit. Permits also were not extended to those workers whose permits expired in the first half

of the year, as the results conscientious employers presented with a dilemma: to continue labor relations illegally or fire the employees.

At the same time a few firms are active in the Russian Federation which issue for a fee working permits, obtaining quotas illegally or issuing fake permits. They are also easily provide migration registration for foreign citizens. All owners of such firms claim they have connection with the Federal Migration Service of Russia, advertisements of which are openly handed out in the streets. However foreign workers who obtain permits in such firms are being stopped in the streets and sent to courts where they are sentenced to a fine and administrative expulsion. All attempts to address the Prosecutor's Office or bodies of the Federal Migration Services with a request to check activities of such firms or employment bureaus for foreign workers have not resulted in a success: the inspectors usually claim that it is impossible to find such firms. Therefore the state encourages exploitation and fraud in relation to foreign workers.

Forced and Involuntary Labor in the Armed Forces

Serious concerns remain with illegal involvement of military servicemen to labor unrelated to the duties of the military service.

Among the positive changes related to this issue are: reform in 2006 of a number of military construction units. However conscripted servicemen still perform their military service duty in road construction units of the Federal Special Construction Agency (Spetsstroy of the Russian Federation), which is within the authority of the Ministry of Defense of the Russian Federation, and they are still involved in work on civil construction sites.

An important achievement in the legislation sphere is entering Articles 127^1 "Human trafficking" and 127^2 "Use of slave labor" into the Criminal Code of the RF. Some of the language used in these articles allows to qualify criminal collusion of officers and civilians (entrepreneurs, heads of construction and sales firms etc.) as the result of which the profit from renting out the soldiers goes to their commanding officers. However still there are no cases known of conviction of officers or civilians who use forced labor under these Articles of the Criminal Code.

In 2005 an order of the Minister of Defense # 428 "On prohibition to involve servicemen in performance of work which is not determined by the duties of the military service" was issued. The Russian legislation even before had articles forbidding such work. After this Order a number of the regions (as a rule in those which have active NGOs defending rights of servicemen) military prosecutors take real measures aimed at rooting out illegal use of servicemen labor, and the number of such crimes went down significantly .However, even in such regions full liquidation of such crimes did not come about; they assumed a more covert, that is a more dangerous form. There are also such regions where the long-standing shameful practice of renting out the soldiers by their officers to real slavery. First of all the constituent regions of the Russian Federation in the North Caucasus are meant here.

The bias of military justice explained by its corporate dependence contributes to maintaining this practice. There are cases known when soldiers found at outside work are declared to be in unauthorized absence from their military unit and are prosecuted for criminal offense under Article 337 of the Criminal Code of the Russian Federation (unauthorized absence from military unit).

Article 9 (right for freedom and personal security; prohibition of arbitrary arrest or detention)

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Judicial control over detention of persons pending extradition

It is indicated in pp. 88 and 90 of the Periodic report that the existing Code of Criminal Procedure of the RF establishes a court procedure of taking decisions on custodial placement of persons and judicial supervision of the prolongation of detention terms. Moreover, the definitions of the RF Constitutional Court of 04.04.2006 N 101-O and of 01.03.2007 N 333-O-П stipulate that the norms of the CCP concerning the terms of detention apply to all the cases in the RF CCP domain, including the cases on extradition of persons at the requests of foreign states.

However, in practice it is only in exceptional cases that the Prosecution Office puts a question before the courts on the prolongation of the detention terms of persons in custody pending extradition. At that the courts on the RF territory with an extremely rare exception deny satisfaction of these persons' appeals against illegal detention. In its decisions European Court of Human Rights has repeatedly mentioned that Russian legal system does not provide due judicial control over detention of persons pending extradition.

Article 10 (treatment of persons deprived of their liberty)

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2.(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Treatment of persons of Islamic beliefs

Nutrition norms of prisoners in the penitentiary system do not provide for menu variations depending on the restrictions of use of a number of products in connection with religious beliefs of the prisoners.

Moreover, there are incidents of penalty imposition on Muslim prisoners for praying at the times prescribed by their religion in case these times contradict inner routine regulations in confinement institutions.

Article 12 (liberty of movement and freedom to choose residence)

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (order public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

The right to liberty of movement and freedom to choose one's residence in Russia is laid down by Paragraph 1, Article 27 of the Constitution of Russia, under which everyone lawfully within the territory of the Russian Federation has the right to move freely and choose the place of stay and residence. In the current legislation, this norm is detailed in Federal Law #5242-I of 25 June 1993 "On the Right of Citizens to Liberty of Movement, Choice of the Place of Stay and Residence within the Russian Federation." This law actually being an act on mandatory residence and sojourn registration does not define the right to liberty of movement and contains many gaps. The law largely neglects the question of the premises and territories with regulated access (it only mentions the border-land; closed military townships; closed administrative-territorial units; ecological distress zones; separate territories and populated centers where special conditions and regulations for the life and economic activity of the population have been imposed because of the threat of infectious and mass non-infectious diseases and poisoning of people; territories under the state of emergency or martial law). As a result, institutions and enterprises of various forms of ownership establish arbitrary restrictions and bans on the movement of people within territories they de facto control regardless of the ownership of land plots and structures. Thus, some mining companies arbitrarily ban movement into large territories in Siberia and the Extreme North.

The 1993 law also does not contain adequate guarantees against violation of the right to liberty of movement. It speaks in general terms only about the possibility to appeal to administrative and judicial bodies the actions or omissions violating the legitimate rights but no responsibility is legislatively established for violation of the right to liberty of movement and choice of residence. A person may lodge a suit with a court of justice against the denial of residence registration, but this way is burdensome and time-consuming for most people.

However, the liberty of movement and the freedom to choose residence are restricted by the passport system, which remains basically unchanged since the Soviet time. Russian nationals as well as aliens are legally obliged to get registered by the place of their permanent residence and temporary stay. Under the Russian federal legislation, the registration though being obligatory is

of a notifying character. According to the law, registration is not a legal circumstance that creates rights or duties under the legislation in force; therefore registration or its absence may not constitute either a restriction or precondition for exercising rights and freedoms. Formally, absence of registration constitutes an administrative infringement with no other legal consequences for an individual.

In reality the system of registration functions in a different way, creating conditions for human rights violations. In practice, residence and sojourn registration restricts the right to freedom of movement and choice of place of residence. There are a number of formal and informal restrictions on both types of registration created by direct official prescriptions or by technical limitations. Most often a person fails to get his or her registration because housing owners refuse to grant a documentary consent to their tenant's registration, though letting him/her move in *de facto*. Sometimes authorities deny registration under a number of false pretexts (e.g. insufficient dwelling space, absence of kin ties between the owner and the tenant) or bind it by illegal requirements (eg. to prepay for utilities or to get registered at the military commissariat). In addition there is still a practice of tacit prohibition to register certain population groups.

The system of registration by place of stay can function only on condition of support from an active police control system and severe sanctions for the absence of registration, since there is, in principle, no other motivation but the punishment for a citizen to get a registration. "Controlling the fulfilment of the requirements of the 'passport (registration) regime'" is one of the main objectives of the police, and the respective measures include regular checks of personal identity papers and registration certificates and searching the premises where unregistered persons might live.

In the 2000s the role and importance of the passport system has been undergoing certain changes, which are rather contradictory. On the one hand, the passport system's importance has been decreasing for RF citizens. Previously, former USSR citizens were to get registered on the same grounds as RF citizens and passport system restrictions were basically targeted against those whom RF authorities did not recognize as Russian citizens. In 2002, the federal law on the legal status of foreign citizens was enacted and became the basis for new repressive and restrictive mechanisms. In December 2004, the term within which RF citizens were allowed to stay without registration in places other than their official residence, was extended to 90 days, thus 'passport regime checks' with respect to Russian citizens lost their sense to a major extent. Also in 2003, Article 19.15 of the Code on Administrative Violations was amended to exclude the possibility of interpreting that provision as citizens' obligation to always keep their passports on them. The RF Housing Code adopted in 2004 abolished the linkage between the available registration and right to use housing (which was implied by the former housing law and implemented in practice). On the other hand, in 2003 the federal legislators raised significantly, i.e. several times, the size of penalties for residing or staying without a passport or registration.

Under Paragraph 2, Article 11 of Federal Law "On the Legal Status of Foreign Nationals in the Russian Federation" adopted in 2002, a foreign national temporarily residing in the Russian Federation may not change at his/her wish his/her residence within the region of the Russian Federation where he/she has been allowed to reside temporarily or to choose his/her residence outside this subject of the Russian Federation.

The applicable laws allow restrictions to be imposed on the movement and residence of foreign nationals and stateless persons on separate territories of the country, but fully delegate the right to establish such restrictions to the RF Government. Since 1992, the Russian Federation

Government has periodically updated the list of territories with restricted access but no criteria and conditions have been established for selection of such territories.

Denial of exit to other countries to Uzbek citizens

The RF authorities deny exit to third countries to Uzbek citizens without the so-called Uzbek authorizing stickers in their passports (analogue of exit visas). This denial is motivated by the obligations under the Russian-Uzbek intergovernmental agreement of 30.11.2000, in accordance with which the parties commit to *"let citizens of the Party states out to third states in case they have valid and duly drawn up, in accordance with national legislation of the Party states, documents allowing for crossing the border and will take measures to prevent departure to third countries of persons banned for departure by the relevant authorities of the Parties"*.

Those Uzbek citizens recognized by the UNHCR in need of international protection and those who have secured consent of the third countries to grant asylum, fall under this restriction.

However, persons who have been recognized by the UNHCR as complying with the criteria of the 1951 Convention Relating to the Status of Refugee cannot be forced to apply to the authorities of their country of origin for documents or permissions, even if the RF refused to grant a refugee status to them.

Article 13 (freedom from unlawful expulsion)

> *An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.*

Article 13 of the Covenant forbids arbitrary exile of foreign citizens. However, the in practice there are two exile procedures, that of deportation and expulsion. The first one is implemented without the court ruling at the order of the Federal Migration Service director (by Order of the Russian Ministry of Interior of 26.08.2004 N 533). In such cases a lawyer cannot get access to the person to be deported, and no opportunity of appeal is granted.

There are cases of deportation of Chinese citizens, who were in the process of refugee status determination. For instance, on 28 March 2007 the servicemen of the RF Department of the FMS, Saint-Petersburg and Leningrad region immigration control detained the Chinese citizen Ma Huey and her 8-year-old daughter. The same evening they were deported to China despite the fact that Ma Huey's husband, the girl's father, had a legal right to reside in the RF. On 13 May 2007 a disabled Chinese citizen Gao Chunman married to a RF citizen was brought out of the apartment, detained and deported. Both deportees were seeking asylum in the RF.

At the same time on 2 June 2008 the decision of the European Court of Human Rights delivered on 6 December 2007 in connection with the application # 42086/05 "Liu and Liu v. Russia" came into force, in which the European Court ascertained that legal norms on which the decision on deportation is based do not provide an adequate degree of protection from arbitrary interference.

Article 18.8 of the Code for Administrative Offences stipulates: "Violation of the sojourn regime by a foreign citizen or a stateless person... entails an imposition of an administrative fine in the amount from 20 to 50 minimum wages with or without administrative expulsion outside the RF". There is absence of criteria of application of decisions on expulsion by the courts in article 18.8.

Thus hundreds of persons were subjected to administrative expulsion for minor offences, persons, who had families, underage children and elderly parents in the territory of Russia. The RF Constitutional court (Definition of 2 March 2006 # 55-O) recognized this practice illegal, the Supreme Court cancelled a few decisions. However, many applicants don't have the time to wait for the Supreme Court decision.

Assessing the situation in the RF at the 37th session in November 2006 the UN Committee against Torture mentioned "extensive wide application of administrative expulsion in accordance with article 18.8 of the Code for administrative offences for minor violations of the rules of sojourn in the country". As a recommendation the Committee wrote: "The state should give additional explanations as to what violations of sojourn rules in its territory may entail an administrative expulsion and establish a clear procedure providing for a fair application of these rules". These recommendations have not been fulfilled.

From 2003 to 2008 at least 15 persons were illegally expelled from the RF territory to Central Asian states and China, including 2 persons who were expelled in violation of the ruling of the European Court of Human Rights on suspension of expulsion under Rule 39 of the Rules of the Court. The Court has twice found (in cases Ismoilov and Others v. Russia, no. 2947/06, and Muminov v. Russia, no. 42502/06) Russia guilty of violation of a number of articles of the European Convention of Human Rights, in particular, article 3 corresponding with article 7 of the Covenant, in connection with a threat of tortures applicants are subjected to in case of their expulsion. In the case Ismoilov and Others v. Russia the Court criticised the stand of the Government, in accordance with which the Government has a certain international legal obligation to cooperate in combating terrorism and extradite applicants charged with terrorist activities regardless of a threat of maltreatment in the requesting country (Judgment, 24 April 2008, p. 126).

Nevertheless the RF General Prosecution Office continues to deliver decisions on extradition of persons to countries where they are threatened with tortures, while the courts, up to the Supreme Court of the RF, refuse to satisfy appeals against the given decisions.

Authorities fail to act in order to return the unlawfully evicted:
- to Uzbekistan – R. Muminov *(ECtHR applicant, case #42502/06)*, A.Kamaliev (Tursinov) *(ECtHR applicant, case #52812/07),* A.Boymatov and A. Usmanov*;*
- to Tajikistan - M.Iskandarov *(ECtHR applicant, case #17185/05);*
- to Kazakhstan – S.Baiburin.

No action has been taken also to officials who are guilty in case of eviction of the above mentioned A. Kamaliev (Tursinov) which took place on 05.12.2007 in breach of ECtHR warrant.

Article 14 (right to a fair trial)

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial

tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;

c) To be tried without undue delay;

d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

g) Not to be compelled to testify against himself or to confess guilt.

In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Independence of the judiciary

In Russia judges are appointed by the President of Russia by the consent of the Qualification Collegium. They enjoy life-term tenure, have independent status and retire at 65. But before a judge can be appointed for the life-term period, he or she must serve 3 years on a probation period. Successful probation does not necessarily leads to the appointment – the judge can be removed from the office on the grounds that his powers terminated. Thus, during these 3 years a new judge is dependent in his decision-making, because he is under threat of not being re-appointed. The nomination and confirmation process enables the executive to check on the composition and quality of the judicial corps. The existing procedure of appointment of judges in

Russia is not transparent and puts this process in correlation with the predictability of how the nominee will rule on specific issues in the future. These considerations put under threat the decisional independence of the would-be judges.

Judge with a life-term tenure can be removed from the office for a "wrongdoing, inconsistent with the authority of the judicial power". As far as this notion is broad enough and can be applied selectively, further judicial career depends on the discretion of the qualification collegia of judges, that is why requirements to formation and activities of this body acquires the utmost importance.

There is also a practice, when the governors or mayors require the heads of the courts to report before them. Thus, in 2006 Human Rights Commissioner Vladimir Lukin made a statement, in which he pointed to the violation of the principle of separation of powers and intervention into judicial independence, when Governor of Kemerov Oblast invited the Chairperson of the Kemerov Oblast Court and inquired him about the reasons for "too soft" decisions in criminal cases. In response the Chairman of the court provided statistical evidence, that the level of severe sanctions in Kemerov Oblast is even higher the average for Russia. It goes without saying, that judges must be accountable before people, seek the public confidence, and communicate periodically with other branches of power in order to improve mutual understanding. However, accountability and independence must be balanced, and the principle of separation of powers should not be violated or undermined. The executive must not intrude into judicial decision-making and require certain results.

A judge depends in his career from the Chairperson of the upper court, who makes a decision about promotion and has a right to initiate a disciplinary case against a judge. The Chairperson of a federal court, in his turn, is appointed for 6 years, and can be reappointed for 6 years more, but his reappointment depends on the federal executive and the upper court. This situation made possible the existence of the notoriously known "Basmannoye justice", which received its name after the Basmannyi District court in Moscow which is too often criticized for biased and arbitrary decisions in favor of the state bodies and the law enforcement.

Chairpersons can be controlled by the local or regional authorities when they need finances to reconstruct the building or obtain housing for judges. In case of confrontation a situation may occur that the court building will not be repaired in time, or the housing the judge is entitled to will be provided with delay. From the other side, regional or local administration can suggest a court to speed up the renovation of the court building by providing additional resources.

Real independence of judiciary from the law enforcement also remains a problem: non-guilty decisions are currently made in less than 1 per cent of judicial cases.

The legislative power has a right to enact laws which will change the judicial status of the currently appointed judges, not for newly appointed in future. Thus, the status of judges who were earlier appointed without any age restrictions was changed with the adoption of the new legislation, which requires them to retire at 65.

The judges depend also on their own judicial corporation: the vertical structure they are built-in practically leaves no freedom for independent decision-making, because the upper courts review the decisions made by lower courts, promote the judges, define the qualification class.

The lower courts depend on upper courts due to threats of numerous reviews in "supervisory instances", which can be initiated under certain circumstances by the upper courts themselves. As far as their decisions can be reversed on unpredictable basis and their career will be put in danger if these reversals happen often, they prefer to use consultations with the upper court before making a decision.

Jury trials have in the Russian Federation a limited jurisdiction, less than 0.5 per cent of all criminal cases. The Federal Law dated 30 December 2008 N 321-FZ "On amending certain laws of the Russian Federation concerning counteraction to terrorism" amends the Russian Code of Criminal Procedures by ending jury trials for certain charges, namely charges under articles 205 (terrorist attack), 206 parts 2-4 (hostage taking), 208 part 1 (organization of an illegal armed formation), 212 part 1 (organization of riots), 275 (high treason), 276 (espionage), 278 (forceful seizure of power or forceful retention of power), 279 (armed mutiny), and 281 (subversion).

In civil litigation and in the overwhelming majority of criminal cases citizens do not take part in administration of justice (contradicting the guarantees of Article 32 of the Constitution of the Russian Federation).

As it follows from number of the judgments of the European Court of Human Rights, excessive length of forensic expertise is one of the problems leading to excessive length of judicial proceedings. This problem was related to lack and a poor state of institutions providing expertise to investigatory and judicial bodies. No effective measures have been taken to stimulate emergence of non-state expert institutions and to develop state bureaus of forensic expertise.

In order to promote real judicial independence the reforms must be made at least in 5 areas: the process of judicial appointments, disciplinary procedure in cases of judicial misconduct, system of court financing, enforceability of court decisions; judicial review system.

Prospects of the judicial reform

Review of the court practice and trends in lawmaking policy suggests that no significant positive changes have taken place in the recent years.

The new President of the Russian Federation started his tenure with statements about such problems of the judicial and law-enforcement systems as legal "nihilism" and corruption. He set up a working group to help improve the situation. However, the composition of this group gives rise to doubt as to its effectiveness, since none of its members has a record as a reformer. None of the authors of the Judicial Reform Concept, universally recognized as an attempt at democratization, was invited to join the group.

The group has not shown its worth, either, when a new law was passed sharply restricting the jurisdiction of jury trials. Crimes like terrorism, betrayal of the motherland (high treason), espionage, mass rioting, i.e. crimes punishable by the most heavy penalties, up to death, have been excluded from the jurisdiction of jury trials. It should be noted that the number of cases tried with a jury stays unreasonably low – less than 600 cases a year. In fact, these trials have shown much less bias, a greater degree of adherence to adversarial principles, and higher requirements to the quality of evidence.

Negative trends such as traditional solidarity of judges with the prosecution and their over-reliance on convictions have continued in ordinary courts.

Looking at the figures cited by the Judicial Department of the Supreme Court of the Russian Federation one can unambiguously conclude that judges continue to acquit suspects very rarely and this practice is encouraged.

For instance, during the first 6 months of 2008, courts handled cases of 863,862 persons, of whom 697,525 (or approximately 80%) were convicted and 7,203 persons (approximately 0.8%) were acquitted; the number of acquittals in general jurisdiction courts was 2,530 (approximately 0.3%).

As a cassation instance, the Supreme Court of the Russian Federation examined 4,672 cases in which convictions were obtained. The court quashed the convictions of 244 convicted persons, amounting to 5% of the total. The court handled 324 cases in which acquittals were secured; 87 acquittals, or 27%, were overturned.

This trend is also manifests in how courts choose arrest as a measure of restraint and decide on an extension of detention, violating in the process Article 5 of the European Convention on Human Rights and Fundamental Freedoms. For instance, during the first 6 months of 2008, district courts handled 118,400 applications for the use of arrest as a measure of restraint, 106,700 of which were granted.

During the first 6 months of 2008, district courts considered 0.8% more applications for extension of detention than during the same previous period. Thus, courts granted 98% of applications for the use of arrest as a measure of restrain and extension of detention. In considering such applications courts ignore the requirement that grounds for the use of arrest as a measure of restraint or extension of detention be presented in specific terms. For instance, in the O.S. Sokolova case, not a single specific piece of evidence was presented by a court in its order to warrant the extension of her detention. A higher court did not overturn the order of the district court's judge in the case of Ms. Sokolova. Such examples are quite abundant.

Courts continue to ignore the requirement expressed among others by the European Court of Human Rights, that grounds for arrest be "updated" when an extension of detention is made.

For instance, in the Sokolova case the court cited the fact that the initial grounds for choosing a measure of restraint for her "have not changed as of today and have not ceased to exist."

There are other various violations of Article 6 of the European Convention on Human Rights (right to a fair hearing). In particular, the requirement for court hearings to be public is violated.

For instance, recently, a trend has emerged for courts to decide to sit in camera citing the need to preserve the secrecy of preliminary investigation or other unsubstantiated grounds. For instance, in the Sokolova case, a court's order said that a public hearing would violate the secrecy of investigation.

In fact, Article 161 of the Code of Criminal Procedure of the Russian Federation (secrecy of investigation) does not apply to court hearings.

As before, we note the persistence of such negative phenomena as rejection by judges of an essential pillar of procedural law, standards for admissibility of evidence, and spread of the practice of presenting non-specific, vague charges, which is a gross violation of the right of the defendant to defense, since he does not know what he is accused of.

Confessions obtained through torture are often used by the prosecution and the court as the main proof of guilt; medical examinations of those alleging torture are not always conducted or are carried out by doctors dependent on officials of detention centers. The Supreme Court provides against informing the jury about torture claims and challenging the reliability of evidence in jury trials; court transcripts are produced by court reporters and edited by judges, who not infrequently distort them in the process to fit the verdict of guilty. Attorneys are not allowed to conduct parallel investigations; they may only request the investigator or the court to undertake investigative actions. These requests are often ignored. The right to defense becomes meaningless; the right to a fair trial is violated.

There are incidents where the right to get acquainted with case files was restricted; rights were violated during the conduct of examinations, etc.; rights of defense lawyers themselves were violated. There were incidents where searches in lawyers' offices were carried out and materials from lawyer's files were seized without authorization of the judge. We are concerned by the incidents where courts gave ungrounded rulings, decisions or verdicts or refused to consider the case on its merits; or cassation and supervision courts considered arguments presented in complaints against court convictions on a proforma basis and superficially.

Directive documents of the Supreme Court of the Russian Federation published in the end 2008 and in 2009 contain provisions that undermine safeguards for the human rights protected by the European Convention. In particular, Resolution of the Plenum of the Supreme Court of the Russian Federation "On the Application by Courts of Rules of the Code of Criminal Procedure of the Russian Federation" regulating proceedings in the court of second instance contains clarification, according to which the appellate court has powers to quash a sentence passed by a magistrate and return the case to the prosecutor to, in effect, help fill the gaps in the prosecution evidence. A similar right is also granted to cassation courts. This is a violation of the principle of separation of functions: adjudication and prosecution.

Resolution of the Plenum of the Supreme Court of the Russian Federation of February 10, 2009 No. 1 "On the Practice of Consideration of Complaints by Courts Under Article 125 of the Code of Criminal Procedure" and Resolution of the Plenum of the Supreme Court of the Russian Federation of December 9, 2008 No. 26 "On Supplementing Resolution of the Plenum of the Supreme Court of the Russian Federation of March 5, 2004 No. 1 "On the Application by Courts of Rules of the Code of Criminal Procedure of the Russian Federation"" gave advisory clarifications, according to which inquiry and investigation bodies may, without a court's decision, request information about possible mental disorder of the individual and about whether he sought mental health services or treatment from a medical center providing such assistance, as well as other information about the individual's mental health protected by the doctor-patient confidentiality.

The said "supplement" clearly contains a recommendation that significantly undermines the safeguards for the protection of private life in the Russian Federation and violates Article 8 of the European Convention on Human Rights.

At the same time, we cannot fail to note certain positive shifts in the practice of the Supreme Court of the Russian Federation. In the past, according to the directives of the Supreme Court of the Russian Federation, a convicted person could be held in custody beyond the period specified by law even if this period was not extended by the court (i.e. without a court decision as proper legal grounds for detaining the person in SIZO (pre-trial detention center). He could be detained for the period during which his criminal cased was being prepared by the court of first instance for referral to the court of second instance; tried in the court of cassation; and then returned back to the court of first instance for reexamination after the sentence was overturned.

This provision was removed by paragraph 28 of the said Resolution of the Plenum of the Supreme Court of the Russian Federation of December 23, 2008. According to the new Resolution, "In taking the decision to extend detention as a measure of restraint, the court of cassation must specify in its findings a specific reasonable period of time for which this measure of restraint could be extended …"

There are also changes in the procedure for recording hearings of the court of cassation. Although the Criminal Procedure Code of the Russian Federation does not require it, in practice, in the late 2008 – early 2009, the Judicial Collegium for Criminal Cases at the Supreme Court of the Russian Federation started to produce transcripts of trials of cases in the cassation procedure. In oblast (regional) / krai (territorial) courts of cassation this practice has not been consistently applied yet.

A very promising decision was taken by the Supreme Court of the Russian Federation: it has found the termination of powers of Judge Guseva from Volgograd on the grounds of her refusal to report to the Court President on a daily basis on the progress in hearing current cases to be in violation of the law. Because in many courts of Russia court presidents present similar demands, the idea of the independence of judges virtually loses sense. We hope that the support the Supreme Court of the Russian Federation has shown to the right of the judge to independence might serve as a precedent-setting ruling for other judges as well.

Pressure on judges

Administration of justice by independent members of the judicial community serves as the main guarantee for exercise of the right for fair trial.

Dismissal of Olga Kudeshkina, judge of the Moscow City Court caused by her public statements regarding absence of independent judiciary (a positive ruling on admissibility of her case has been already made by the European Court for Human Rights) exposes mechanisms for putting pressure to judges and forms of coercing them to deliver certain verdicts. In the meantime after her public statement on this Ms. Kudeshkina was deprived of the status of a Federal Judge. And she is not the only example of such practices.

Federal judge from the Volgograd regional court Marianna Lukianovskaja was recently dismissed after her decision to release the detainee who was previously unlawfully arrested. On 27 of August 2009 the Supreme Court in the final judgment in this case uphold judge's dismissal and decided that the status of this judge will not be restored.

Article 18 (freedom of conscience)

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Freedom of conscience in the context of problems in application of the counter-extremist legislation

Attacks against religious buildings tend to involve more dangerous methods than before – in addition to increased arson attacks, explosives were used in some cases. In 2008, a total of 36 incidents of vandalism were committed against houses of worship and churches, somewhat more than in 2007 (27). Vandals committed 16 attacks against Orthodox churches and chapels, seven attacks against synagogues, six attacks each against Muslim and Protestant buildings, and one attack each against a Jehovah's Witness hall and a pagan temple. In 2008, 42 acts of vandalism in cemeteries were reported in total (as opposed to 34 in 2007), including 32 attacks against Orthodox, six against Jewish, three against Muslim cemeteries, and one attack against an Armenian cemetery.

In February 2008, a Presidential Decree repealed deferrals from military duty for priests (alongside other categories of citizens).

As before, problems faced by religious groups were reported country-wide and ranged from being denied a space for their activities to dealing with other forms of pressure from local authorities.

The authorities continued their scrutiny of religious organizations and closed many of them for missing the reporting deadlines. Sometimes inspections by the controlling authorities have been part of a broader campaign of pressure. For example, in Staryi Oskol, Belgorod region, a Methodist group was closed in 2008 for failing to submit its annual report. The court ordered the community's liquidation in March, and in May a Methodist prayer meeting in a private home was interrupted by FSB agents who broke in saying that the Methodist community was 'an alien body for the city and agents of American interests'.

As well as the Ministry of Justice, the tax authorities have caused problems for religious organizations. By law, a legal entity may be liquidated for failing to submit its annual balance sheet and/or for not using its bank account. This provision – adopted to discourage fly-by-night companies – may be enforced against non-profits, including religious organizations, even though many such groups make very few financial transactions and their bank accounts may be inactive for a year or so, plus they do not have a staff accountant and often forget to file the so-called 'zero balance sheet' with the tax authorities. We do not know how many organizations which

were still in existence, albeit not very active, had their registration revoked; for instance, in 2007 there were hundreds of them.

Some religious organizations faced pressure to obtain proper licenses to deliver education. However, a license is required by law for general education and for the training of priests, whereas giving instruction in one's own faith is a fundamental right of a religious organization and does not require a license. For instance, The Biblical Center of Evangelical Christians (Pentecostals) in the Republic of Chuvashia, liquidated in 2007 for operating without a license to deliver education, filed an application with the European Court of Human Rights in May challenging the legality of the liquidation.

Instances of forced teaching of the foundations of the Orthodox Christianity and Islam in the course of government-run "experiment" on introduction of teaching of the foundations of knowledge of religions in state schools have been documented in several regions.

There has been a growing tendency towards prosecution for blasphemy under the umbrella of combating extremism. The main examples here are two trials on criminal charges against director of Sakharov Center Yuri Samodurov and his colleagues for organizing contemporary art exhibitions, presenting objects playing with religious symbols.

Anti-extremism legislation represents an increasing and serious threat for freedom of conscience for certain religious groups. It used to be mainly Muslim groups, those in opposition to the officially recognized Islamic Councils, which were prosecuted, but in 2008-09 the circle of the victims has widened considerably.

The excessively broad legal definition of extremism makes it possible to interpret any strong criticism of someone's religious (or antireligious) opinions as 'incitement to religious hatred'. Opinions of the state officials regarding the essence of a religion in connection to anti-extremist legislation have started to have a real repressive impact. The very fact of speaking in favor of Wahhabism has been repeatedly used as a reason for criminal charges (e.g., verdict against Imam Said Baiburin in 2008). The legal basis for these accusations was that the book of the founder of Wahhabism had been forbidden in Russia, although it is a moot point to forbid a religious treatise of the 18th century.

There are many Muslim books banned in Russia, which according to most of scholars of religion have nothing to do with violent propaganda. The main examples here are books of a scholar Said Nursi. On 10 April 2008, the Russian Supreme Court found Nurdjular, an organization of Said Nursi's followers, to be extremist. On 7 May 2009, a similar judgment was passed with regard to Tablighi Jamaat, an organization of travelling priests of "pure Islam," even though no one has yet shown any proof - either in Russia or elsewhere - that the organization is linked to violent groups.

There are attempts to close some regional organizations of the Jehovah's Witnesses, to forbid as extremist the "Watchtower" journal and their other traditional publications. Some court decisions have already been adopted. There were even criminal cases initiated in connection to some of the material published by the Jehovah's Witnesses.

There are many other religious groups whose texts the prosecutors' offices demand to ban as extremist, including Falun Gong.

The practice of criminal prosecution just for someone's membership in radical Islamic groups – even in the absence of evidence that such groups are dangerous or that specific defendants have been involved in criminal acts – persists in Russia. We have no evidence to insist that any specific sentence was unfair. The observed pattern, however, causes concern. This relates to Hizb ut-Tahrir but also to some other groups (especially in Dagestan).

The right for conscientious objection to military service

Since the previous Fifth Periodical Report of the Russian Federation has been submitted to the Committee's consideration in 2003, the right for conscientious objection has been institutionalized in Russia. The law on alternative civilian service came into effect in 2004. The objectors have gained the possibility to substitute civilian service for military service, however the law on the civilian service is still far from ideal.

In conclusion observations on the Fifth Periodical Report of the Russian Federation the UN Committee for Human Rights wrote: *"While the Committee welcomes the introduction of the possibility for conscientious objectors to substitute civilian service for military service, it remains concerned that the Alternative Civilian Service Act, which will take effect on 1 January 2004, appears to be punitive in nature by prescribing civil service of a length 1.7 times that of normal military service. Furthermore, the law does not appear to guarantee that the tasks to be performed by conscientious objectors are compatible with their convictions. The State party should reduce the length of civilian service to that of military service and ensure that its terms are compatible with articles 18 and 26 of the Covenant"*.

A reduction of the length of military service and the length of civilian service by half in 2008 has been a very positive step forward. Conscription military service has been reduced from 24 to 12 months and alternative civilian service is reduced from 42 months to 21. For those performing the civilian service in organizations under military jurisdiction the duration of service is reduced from 36 to 18 months. The length of civilian service became shorter than military service was two years ago. Before 2007, as the reduction started step by step, the length of the civilian service was 42 months, being the longest in the world.

Nevertheless, while the length of civilian service is reduced, it has not been changed in relation to the military service and remains 1.75 times that of normal military service as before.

In spite of some positive developments, many issues of the law and its implementation still excite concern, such as:

Deliberate tangled bureaucratic application procedure. Applications should be submitted to military draft commissariats six months before the draft, while the potential civilian serviceman could be still a minor. Many cases reported of the denial of civilian service by formal reasons, such as failure to comply the terms of application. Military draft commissariats often illegally reject to accept applications using deception, misinformation or even threats.

According to the Federal Labor and Employment Service – agency responsible to organize alternative civilian service, the draft commissions approve 78 per cent of applications; other applications are denied of alternative service under different reasons. Many applicants are denied on the ground that they were unable to prove their convictions, however the law does not require to prove one's convictions, but to ground them.

Performance of the alternative civilian service is still possible only in state organizations under federal jurisdiction or of local self-government bodies. There is still no opportunity to perform the civilian service in municipal or non-governmental organizations, which makes considerably more difficult to use the work of alternative servicemen in the social sphere.

Performance is still possible in organizations under military jurisdiction. Usually the decision is to be taken by the Federal Labor and Employment Service without consideration of applicant's wishes. This remains highly relevant, even though their salaries in organizations under military jurisdiction are considerably higher than those in social organizations and the length of the service is shorter. This rule violates freedom of conscience and freedom of choice and often contradicts the convictions of a citizen. As the result, part of the citizens evade performance of the service and become criminally liable.

Many citizens who opted for alternative civil service allocated to positions where salaries are considerably lower than subsistence level (mainly this is the case with hospitals, disabled persons homes and other social service organizations). At the same time the law forbids the persons who are in the alternative civilian service to take up part-time jobs on the side. Thereby the citizens who undergo alternative civilian service are being discriminated in comparison with the military conscripts who are being provided for fully by the state.

An important issue is the hampered access to information on alternative civilian service. Agencies responsible for alternative civilian service, as well as the media, do not provide potential performer with information sufficiently or even hide or distort it. Propaganda campaign in the media mainly initiated by the Ministry of Defense, which is afraid to lose its monopoly for young men, shows the civilian service in negative light. MoD officials in their interviews to the state media often describe civilian service as very special service, assigned only for religious objectors. The service is negatively described in the media comments as "dirty work" in social organizations (which is considered as a most unpopular kind of job), which is "not for real men". Applicants are often shown as "sectarians", "egoists", "cowards" or "deserters evading military service". As a result, the popularity of civilian service decreased strongly in the last years.

According to the law, citizens perform their service, "mainly outside of the subjects of the Russian Federation, where they are permanent residents" – exterritorial rule. This artificial obstacle has only one explanation: Ministry of Defense, which is insisted to introduce this paragraph, is convinced that conditions for civilian servicemen should be not softer than for military ones. This obstacle harms all parties involved in civilian service implementation: performers, employers, authorities.

The same refers for another artificial restriction: performer is not allowed to leave the settlement where his place of work is, without employer's permit.

Mostly those persons integrated in consolidated and experienced groups, can access to alternative civilian service: according to the Federal Labor and Employment Service, 80 percent of citizens are approved for civilian service on religious grounds – most of them are Jehovah's Witnesses and other religious associations. Only 15 percent of persons are approved because of other convictions. Five percent are the representatives of constituted 'numerically small indigenous peoples' of Russia (according to the Federal Labor and Employment Service).

As the result of these shortcomings, the number of civilian service performers has decreased from 1400 applicants in 2004 to 279 in the autumn military draft in 2009.

Article 19 (freedom of expression and information)

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (order public), or of public health or morals.

Situation of media freedom in Russia continues to be of concern. Although the Constitution provides for freedom of speech and freedom of the press, the Russian media does not consider itself free, being very much pressured by authorities, harassed, convicted for practicing profession. Government uses the country's politicized law enforcement and judiciaries to prosecute independent journalists. Over the last couple of years, journalists faced dozens of criminal cases and hundreds of civil defamation cases.

Journalists remained unable to cover the news freely, particularly with regard to contentious topics—like human rights abuses in the North Caucasus, government corruption, organized crime and police torture—and were subject to a variety of abuses.

Murders and physical intimidation of journalists

Unfortunately, physical violence, harassment, intimidation, cases of detention and the failure to solve a number of murder cases as well as subtle restrictions on media freedom continue to diminish the exercise of this fundamental freedom. Cases of journalists who are facing violence in the exercise of their work and the unresolved deaths of several journalists are of a big concern. For the last 10 years about 261 journalists have been murdered in Russia, 5 of them – in 2008. For the 8 months of 2009 5 more journalists were killed: Shafig Amrakhov, editor of the *news agency RIA 51* (*Murmansk*), Anastasia Baburova, the *Novaya gazeta* journalist (Moscow), Vyacheslav Yaroshenko, editor in chief of the newspaper "Corruption and crime" (*Rostov-on-Don*), Natalia Estemirova, journalist and human rights activist (*Chechnya*), and Abdumalik Akhmedilov, "*Khakykat*" newspaper journalist (*Dagestan*).

Out of 163 documented cases of violent death of journalists, only 40 cases were brought to court. In 36 cases, the persons accused were convicted, and in 4 cases – acquitted. Unfortunately, not all court proceedings were the result of satisfactory completion of investigations carried out. At the present moment, about 10 per cent of murders have been detected.

On March 23, 2009 the Committee to Protect Journalists published the *Impunity Index* survey. It features 14 countries, "whose governments have proved unable to solve murders of journalists over and over", says the CPJ survey. Russia comes 9th on this list alongside with Iraq, Sierra Leone, Sri-Lanka, Columbia, the Philippines, Nepal, Pakistan, Mexico, Bangladesh, Brazil and India.

Frequent cases of violence against journalists have established the reputation of the North Caucasus as that of the most dangerous place for press in Russia. Bringing perpetrators to justice and demonstrating that intimidation of journalists is not tolerated is crucial. Journalist safety has a fundamental impact on freedom of expression.

Censorship, media dependence on local authorities

Media are increasingly controlled either by the state, or by state-controlled companies or individuals loyal to the state. Legal regulation has to be introduced to stop spreading of nationalization of the printed media, and monopolization of the main national TV-channels.

Authorities continued to exert significant influence on media outlets and news content through a vast state media empire—State own 2 out of 14 Russian national dailies, over 60% out of all registered regional printed media, 2 main Radio stations, partly or totally owes all 6 national TV channels. That amount of state media allows controlling the flow of information in the country and putting the content in the pro-government direction. Municipal and city mass media enterprises (both newspapers and broadcasters) in their vast majority are registered as municipal enterprises or created like municipal unitary enterprises, which gives a total control of their activity to the state.

Signing information support agreements between local authorities and media outlets, even private ones (depriving journalists of the freedom to cover topics involving criticism of the authorities) has become an established practice. This is a variety of hidden promotion and censorship rolled in one, when published materials only appear to be written by an independent newspaper or an individual journalist, while in fact they have been paid for by the local government and so completely devoid of any critical assessments. Publishing criticisms may make media pay a price by either losing a contract at once or next year. It is a very effective mechanism of censorship, when financial dependence virtually makes media into branches of the administration press-services. Media hardly raises socially important issues like corruption or power abuse. Being dependent on governmental financial support. On the regional level, the once "chilling effect" has all but turned into the "freezing effect" and self-censorship is very strong. The reality is that criticizing the "United Russia" and regional authorities on important issues or "giving the floor" to the opposition and disagreeing with policy of the Kremlin has almost become a taboo.

Defamation Law

Defamation law has been used to shield public figures and powerful individuals from criticism that are legitimate and healthy in a democratic society. High awards for damages and disproportionate sentences (both monetary compensation and prison sentences) are at times imposed.

In some civil defamation cases charges and penalties aim at achieving ends other than protecting someone's reputation, for example to silence public debate on sensitive issues or protect a reputation that does not deserve to be protected. Politically-motivated harassment of outspoken media outlets poses "chilling effect" on media and stops journalists in stimulating public debate on issues of the public concern. Such as in case of weekly *Novye Kolyosa* in Kaliningrad.[8] 16 criminal defamation cases were initiated in a very short period of time against journalists of this

[8] More information could be found on this case on http://www.w.cjes.ru/bulletins/?lang=rus&bid=2141

newspaper starting in 2005. There were all sorts of accusations here – "beaten up policemen", "defamed judges" and "insulted and defamed Commander of the Baltic Navy". The journalists were kept in a preliminary detention cell for over 80 days until let out on bail. In 2007 a District court of the city of Pskov acquitted Oleg Berezovsky on one of the charges – defamation of judges of the Kaliningrad Regional Court. Yet the journalists *were* found guilty on other charges and sentenced to different terms on probation. However, in the same year the Court of Appeal revoked the District court judgement. Then on April 28, 2009 Igor Rudnikov, the editor-in-chief of the *Kaliningradskie Novye Kolyosa* (Kaliningrad's new wheels) newspaper was brought a new accusation against – this time he was charged with violence against three police officers and slander.

There are a number of other disturbing trends with regards to defamation that need to be addressed:

1) Russia retains and applies criminal defamation, which can lead to imprisonment. Art. 129 section 2 of the Criminal Code provides sanctions for libel, made in mass media, including arrest from 3 to 6 months; sec. 3 of art. 129 admits imprisonment up to 3 years as a sanction for libel in combination with imputation in committing serious or less serious crimes (for instance, in bribery or torture). Art. 130 section 2 criminalizes insult to a person, made in mass media. Criminal defamation cases are heard by justices of peace, the majority of whom have questionable legal qualifications and very little understanding of the media law, international standards and Treaties, international standards. These articles are applied to journalists who criticize government, public officials or politicians. We strongly believe that such harsh sanctions are not necessary for the protection of others in the meaning of Art. 19 (3) of the CCPR.

2) Judges and plaintiffs have limited knowledge and rarely use alternative non-pecuniary measures to solve conflicts, such as the right to reply, self-regulatory mechanisms, that unfortunately still have limited trust from the media community.

3) the simultaneous filing of civil and criminal lawsuits for the same incident, and multiple criminal cases against the same media outlet (*like the case of Novye Kolyosa newspaper, when 16 liable cases were brought against journalists of one newspaper just within a few months*), with the sole aim of intimidation.

This has to be seen in the context of non-favorable FOE situation in Russia in general, where journalism is a dangerous profession. The resulting "chilling effect" can discourage even the most motivated journalists.

Violating the rights of reporters providing coverage of protest actions

Possibility to report freely about political demonstrations and public campaign, with no risk for journalists and campaigners to be arrested, is a question closely linked to Freedom of Assembly and Association and require fulfillment by state its obligation, both positive and negative, under ICCPR. Practice of unlawful handling of media during political actions has to be stopped.

Nearly every time an outdoor event of the kind is taking place anywhere in the country, the police arrest reporters covering them. According to the Center for Journalism in Extreme Situations, during a crackdown on opposition demonstrations in April 2008 in Moscow, St. Petersburg, and Samara, over 70 journalists were detained or beaten. The situation has not

changed since then. The authorities' general tendency is to ensure that media information is given at the angle they prefer and with minimum detail as far as protesters' demands are concerned, which is why the police were quick to arrest both the protesters and the reporters working on the spot. In December 2008, while trying to disperse the Dissenters March, OMON (the Russian special police force) arrested more than 100 people. The police were apprehending people without much bothering about their identity on orders to "work harder" they received on the radio. However, many believe, that journalists were selected deliberately to reduce the number of those who might make the OMON's feats known to the public.

As a result, detained were Vyacheslav Melman, a journalist of the *Grani.ru* Internet publication, Egor Skovoroda writing for the *Liberty.ru* website, Sergei Lantukhov with *Life.ru* and Roman Dobrokhotov, recently sacked by the *Govorit Moskva* radio station, who earlier cut short the broadcast of President Dmitry Medvedev's speech in the Kremlin Palace. Also arrested were a photo reporter with the *Kasparov.ru* website, a journalist with the *Komersant* newspaper and the REN-TV channel film crew. All of them were charged with breaching Article 20.2 of Administrative Offence Code ("Violation of established order of arranging for or holding a public gathering, rally, demonstration, march or picket").

In March of 2009 after the "Dissenters March" there were more arrests of journalists, who had attended it in their professional capacity. In particular, detained were Ilya Azar, a journalist with *Gazety.ru*, Timofey Sheviakov, the observer of the *Politonline.ru* internet resource, Andrei Kozenko, a journalist with the *Kommersant* newspaper and Valery Sharifullin, a photo reporter with *ITAR-TASS* Information Agency. Several TVC channel and Associated Press journalists were also reported to have been arrested.

According to the detained, their media IDs did not produce any impression on the police. Specifically, T. Sheviakov said the grounds for his arrest were described as "taking pictures illegally" even though he had no photographic equipment on him. Other reporters were told: "Your task is to watch what is happening while ours is to arrest those who watch", as a *Kommersant* publication said quoting an officer of the Directorate for Combating Organised Crime, who would not introduce himself.[9]

The police, clearly, act on orders from their superiors so we take it as a planned state policy aimed at restricting the freedom of speech and freedom of association.

Hate speech, fighting extremism and justification of terrorism in press

Ever since enacting "The Law on Counteracting Extremist Activities", it has been used to suppress the freedom of expression, dissenting and critical voices in the Russian press. The number of court cases brought under this law has been growing fast. The trend has become particularly strong over the last couple of years.

Another bill of amendments to the Russian legislation was introduced by the "United Russian" deputies in the Federal Duma (December 2008). Besides, there has been a proposal made to add a new article to the Law on Extremism providing a liability for disseminating extremist ideas in the internet. According to it, "court may decide to stop access to a website from the territory of RF" if it has been observed to publicize extremist materials on it.

[9] According to Glasnost Defence Foundation monitoring // http://www.gdf.ru/digest/item/1/605

The most threatening is the tendency of consideration different government related agencies and groups as "social groups" in the meaning of the Art. 282 of the Criminal Code (like "Russia's enforcement agencies", "prosecutors" and even "Government of the region"). So any criticism towards these "these groups" or their representatives could be considered as extremism expression.

The examples are many. Under consideration in the city of Ulan-Ude there is a criminal case involving stirring hatred towards social groups – "Russia's enforcement agencies". The case was brought against several journalists who wrote and spread leaflets saying "February 23 – The Day of Motherland Defenders' Victims!" (Instead of the official "Day of Motherland Defenders"). The two authors – *Nadezhda Nizovkina* and *Tatiana Stetsura*, reporters of the *Svobodnoye Slovo* (Free Word) newspaper and human rights activists well-known in the Buriatia Region – were charged with arousing negative feelings towards the army, the police and prosecutor's office. According to the linguistic expert assessment done by local experts, "the contents of the leaflets are aimed at forming among readers a negative image of the Russian military, police force and employees of prosecutor's offices as well as stirring hatred to these social groups".

The leaflet discussed deportation of peoples from the Caucasus and the Crimea in 1943-1944 in the Stalin times and violations of human rights by members of enforcement agencies in Russia today. In particular, it mentioned colonel Budanov and the newly "famous" police major Yevsyukov, who shot dead several people in a Moscow supermarket. The deportation of peoples causing a huge number of casualties among them has been recognized as genocide by the international community. A regional community in Russia regarded discussing this important social issue and expressing concern about breaching human rights by representatives of law-enforcement agencies and army to be stirring hatred towards such a social group as "members of enforcement agencies".

Case similar to this one concerns blogger from Kemerovo Dmitry Solovyov. Criminal proceeding were brought against him in August 2008 and it is still going on under "hate speech" article of the Criminal Code – art. 282, for incitement to hatred towards quite questionable social group "security service, police officers, prosecutors, as well as NKVD and VCHK (ВЧК)" (*security services in USSR in 1920th-30th*). This could lead to criminal liability in the form of imprisonment for a period of up to 2 years.

Dagestan, case of the *Chernovik* newspaper. One of the crucial cases is a case of independent newspaper *Chernovik* (Rough copy) from Dagestan. Last summer (on July 31, 2008) criminal proceedings were brought against three journalists of the *Chernovik* newspaper: Magomed Magomedov, Timur Mustafayev, Arthur Mamayev and Biyakai Magomedov under Article 282 Part 1 of the RF Criminal Code, for incitement to hatred and derogating of human dignity, which entailed criminal liability in the form of imprisonment for a period of up to 2 years.

The ground was a publication of July 4, 2008, entitled "Terrorists number one", quoting one of separatist leaders, Rappani Khalilov. From the viewpoint of the public prosecutor's office, this article, as well as a series of articles in the same newspaper, justified terrorism. As Maksim Mirzabalayev, the Investigator working on this case, stated: the matter is incitement to hatred "*between representatives of major ethnic group of the RF and representatives of the Caucasian nationality", and by the social group, in this very case, "law-enforcement bodies"* were implied.

10 more publications of this newspaper were added to this article as the investigation was going on. Moreover, a separate investigation involving other 25 materials was started and their

examination is still under way. The examination is being done by the Expert Criminalist Centre of the City Police Headquarters in Krasnodar. Given most of the articles under consideration criticize the police activities, doubts as to impartiality of the experts are inevitable. They have invariably been able to spot "terrorism justification" signs in all the articles they looked into so far.

In addition to that another criminal charge was brought against *Nadira Isayeva*, editor-in-chief of this newspaper, under Article 280 Part 2 of the RF Criminal Code for extremist appeals in media and for committing these actions using with her professional position as editor-in-chief, which provided criminal liability in the form of imprisonment for up to 5 years. Nadira, herself, found expert conclusion ill-grounded and unfair, and explained the behavior of law-enforcement bodies as an intention to prove the newspaper being extremist and to shut it down.

On April 7, 2009 all the journalists were charged with incitement of hatred, including the editor-in-chief of the *Chernovik*, familiarized with the indictment, which they refused to sign, because they read it ex post, which was a violation of procedural norms. Yet, on April, 5, Yuri Tkachev, the public prosecutor of Dagestan, confirmed the indictment under Article 282 of the RF Criminal Code and brought the case to court. In the mean time journalists requested a new linguistic expertise from an independent expertise agency.

This case is an outrageous example of how law wording inaccuracies and political machinery can be used to silence independent and critical voices when the judiciary is not independent. One particularly alarming thing about it is that the approach of building a separate case on each publication critical of the police activities may confront this newspaper with a number of sentences that will cumulatively increase the severity of the punishment and eventually lead to imprisonment of the accused journalists and closure of a newspaper. This is how the journalists, who still have the courage to criticized authorities and law-enforcement bodies, are given to understand that there are issues that they had better avoid or else they might have to pay with their freedom.

There are a raising number of convictions for free expression in the internet. Therefore maintaining freedom of information on the internet is a high profile challenge, particularly baring in mind that for more and more people in Russia internet is the only possibility to express themselves freely on matters of public concern.

Freedom of expression and information in the context of combating extremism

The anti-extremist legislation and the practice of its application represent serious threat to freedom of expression in Russia.

The definition of *extremism* in the Law "On Counteraction to Extremist Activities" does not refer to the meaning attached to this term in common or political usage. This definition gives no indication of general characteristics, but instead describes extremism through certain acts. The list of such acts may be changed at will and has in fact been changed twice already. The list includes several unclear points, like "incitement to social discord". This law is not a criminal law, so extremist activities must not be criminal action. So, there are many situations, when sanctions against media are possible without criminal prosecution of anybody.

Decisions of the law enforcement bodies to initiate a criminal investigation in cases of dissemination of extremist materials or incitement to hatred and to prosecute such crimes, as well

as the court decisions in such cases, have always been based on linguistic and psychological expertise which is made with a purpose to define whether the acts under consideration have characteristics of the above mentioned crimes. While this question requires a specialized expertise, the definition of these crimes does not contain such characteristics as “intent to incite hatred” or “obviously / prima facie” extremist.“ As a result, an ordinary person cannot foresee whether he or she risks committing a crime and regulate his or her behavior accordingly.

Usually a newspaper or other publication may be closed by the court decision for extremist activity after one or several warnings from special governmental agency or from prosecutor's office; therefore, these warnings to media are very important.

Only few newspapers have been actually closed for extremism, and there has been only one case, which we would name obviously unjust, when a newspaper *Pravo-Zashchita (Rights-Defense)* in Nizhny Novgorod was closed for publishing statements of two leaders of Chechen separatists, although in fact these texts as such did not contain anything illegal. Following this decision, an editor-in-chief of this newspaper, a human right activist and leader of Russian-Chechen Friendship Society Stanislav Dmitrievsky was in 2006 sentenced on extremist charges to two years of probation for publishing these texts in the newspaper.

There have been also a few dubious cases. On 6 June 2008, Kuntsevskii Court in Moscow ordered the closure of a web-site *Ingushetia.Ru*, and the judgment came into force after an unsuccessful appeal in Moscow City Court on 12 August, despite of the fact that the grounds for the guilty verdict were very shaky. Moreover, even the domain name was “confiscated” for the first time ever that we know of in the anti-extremist jurisprudence. Nobody was sentenced in the criminal court in relation to this web-site, but Magomed Evloev, the website owner, was later killed by the Ingush police in Nazran on 31 August 2008.

At the same time numerous unlawful warnings for extremism have been issued to the mass media outlets, and most often the editors have failed to successfully appeal them in courts. Most of such cases originate from the lack of understanding by the government officials of the confusing definition of extremism, while sometimes such misunderstanding is quite deliberate. Many of such warnings are quite absurd. For example, an online news agency *Ura.ru* received two warnings not for its news or any other its texts, but for comments of readers on their web-site. The same using of comments, written by third parties, may be found now in the criminal proceedings against several scientists in Bashkortostan, authors of another online publication, *Ufa Gubernskaya (Ufa, the Regional Capital)*. Musician Savva Terentyev received one year of suspended sentence in 2008 for a harsh commentary against police made on the LiveJournal web blog. The court considered his words inciting hatred towards a “social group of policemen”. And that is not the only case of such kind of use of the clause about “inciting hatred towards a social group”. Russian courts have treated “the police,” "the Russian armed forces,” and even “the Government of Marii El Republic” as social groups protected by art. 282 of the Criminal Code.

Expression of criticism towards the law enforcement bodies is increasingly becoming a ground for unlawful persecution of mass media. For example, in 2008, *Chernovik (Draft Version)* newspaper in Dagestan has received an anti-extremist warning, and as a result Nadira Isaeva, the editor in chief, and several journalists were charged with extremism under two articles of the Criminal Code. The only ground for bringing the charges, beside the criticism against brutal methods of the law enforcement officials, was a quotation of one of the militant’s leaders in a series of other quotations on the same subject.

The indeterminate nature of the legal framework as a whole with regards to the wide-ranging anti-extremist campaign becomes an obstacle to the free discussion in the mass media of the problems of xenophobia and discrimination. For example, in 2008, the newspaper *Novaya Gazeta v Sankt-Petersburge (New Newspaper in St. Petersburg)* received a warning for extremism for an article which expressed indignation with the intention of the ultra-right organization Movement Against Illegal Immigration to conduct raids on Georgian citizens residing in Russia. At the same time the actions of the Movement itself did not attract the attention of law enforcement authorities. A year earlier a similar warning was given to the newspaper *Izvestiya* for publishing an article about discriminatory practices in the Republic Yakutiya.

Introduction of a new mechanism of banning of printed and other materials as extremist is another serious problem. As of the end of September 2009 the list of prohibited materials included 431 positions. This mechanism, established by a law "On Counteraction to Extremist Activities", has a number of fundamental shortcomings:

- banning of materials is not based on criminal convictions, and the procedural mechanism is poorly designed;
- there is not standard for description of banned materials, and in many cases the list of banned materials published by the Ministry of Justice is impossible to use in practice (currently, the list includes names of certain folders on some unknown computer and even "a flag with a cross on it" - nevertheless, prosecutors require compliance with the list from hundreds of public institutions, including schools);
- a procedure of appeal by relevant parties is very difficult;
- decisions on prohibition are made by local courts which are obviously lacking necessary resources, including expertise;
- it appears that banning of materials does not lead to effective prevention of re-publication.

Article 20 (prohibition of propaganda of war and hate speech)

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Russian Federation has a well developed legislation against hate crimes and hate speech. Unfortunately, it is integrated in the anti-extremist legislation which is a source of a wide-spread abuse (see materials under Art. 19).

Racist violence continues to be an acute problem, particularly in Moscow. We document steadily growing number of attacks evidencing the emergence of a well-organized network of violent racist groups. These groups increasingly use explosives. At the same time, art. 282.1 of the Criminal Code has been invoked just in a several cases every year, even though investigators have often detected organized gangs committing hate crimes (and many members of such gangs have been tried and convicted). Articles 282.1 and 280 of the Criminal Code are not enforced against gangs which openly promote discrimination and violence.

In 2008, a total of 108 people were killed in racist and neo-Nazi attacks, as compared to 89 in 2007. Between January and September 26 in 2009, we have documented 47 killings. Targets are usually chosen pretty randomly among people looking different from the majority. Most victims are natives of Central Asia: 30 were killed in 2007, 57 in 2008, and 23 in 2009 until now. We

also attach the statistical table of crimes of racist nature and prosecutions of such crimes, according to the data of SOVA Center for Information and Analysis.

Although the level of impunity of racist attacks remains extremely high, it should be noted that since 2008 the number of arrests and convictions for such crimes started to grow, especially in Moscow. As a result we have grounds to believe for the first time in ten years of monitoring that the number of racists attacks will go down in 2009 as compared to 2008. Still, the number of convictions is a small fraction of the actual number of such crimes.

In 2008-2009 a number of cases of cooperation of pro-government youth organizations with radical ultra-right wing groups have been documented. Even the authorities occasionally cooperate with the latter: in particular, in the end of September 2009 a representative of a neo-Nazi organisation "Slavyanskiy Soyuz" ("Slavic Union") was included in the Public Council of the Moscow city police.

Please also consult NGO report to the UN Committee on the Elimination of Racial Discrimination on Compliance of the Russian Federation with the Convention on the Elimination of All Forms of Racial Discrimination (73rd Session, 28 July - 15 August 2008) for more details (in particular, see chapter on Article 4 of CERD).

A campaign of criminal prosecution of persons who committed no acts of violence on charges of complicity with outlawed islamic organizations (for instance "Hizb ut-Tahrir" etc.) does not stop. The persons arrested and convicted within the framework of this campaign face the impossibility to protect themselves by legal means and regard this persecution to be the a consequence of their religious convictions. Such a "war on terror" has already lead to the two following phenomena:

- on the one hand, to a split within the Muslim community, as the people who were not affected by the repressions so far are often ready to use all means to prove their loyalty (including those unacceptable from ethical point of view such as informing against others, etc);
- on the other hand, there is increase of interest, first of all among Muslim youth, to ideas which are the object of the persecution; perception of the persecuted persons as "martyrs for faith"; thus actions of the authorities have effectively lead to forced radicalization of the most active part of the Muslim population.

Article 21 *(*freedom of assembly)

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (order public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 31 of the Russian Constitution guarantees the liberty of peaceful assembly. In 2004 the federal law №54-FZ on freedom of assemblies was passed, according to which one has a right to manifest if the authorities are notified in advance and no permission is needed from them. The authorities can only propose a different time and place and point out to irregularities in the notification but cannot impose any changes or any type of preventive ban of a public action. They are obliged to assist the organizers of a manifestation and guarantee public safety and

order.

Regional legislation may set the procedure for notification, but cannot infringe on the right to assemble or set additional requirements for notification, although not every regional parliament has passed such legislation.

Regulation of assemblies in the Red Square area is left to the president and no procedure yet has been set up, which in practice leads to complete ban of any public manifestations in the Square and adjoining areas.

At the same time, in practice, the freedom to manifest publicly is systematically severely limited. The police in many cases still demand “an official permission” from the protesters and prefer to interfere and arrest before even paying attention to the fact that the organizers followed all the legal requirements. If an action is supposed to raise sensitive issues, the local authorities often refuse to give their “accordance” to it, which means that police interference is imminent. This practice is wide spread, although contrary to the law. Yet, even when the organizers make it to the court, the judges in the majority of cases side with the administration and the police.

Several types of assembly do not even require notification, notably individual picket and a stationary assembly without banners in a “place, specifically suitable for it” (i.e. in a building). Despite those provisions, the authorities on several occasions continued to demand a notification for such events and the police sometimes interfere even if there is just one person with a banner or a flag. In January 2007 in the town of Novorossiysk in Krasnodar region, a tea-party and a discussion over football with German volunteers was interrupted by law enforcement officials with organizers and participants being charged with an “illegal gathering”, because they didn't “notify the authorities”.

The authorities are clearly aimed at tight regulation of assembly, even if the law specifically establishes the contrary.

Despite conclusions of ECHR in the case Oya Ataman v. Turkey, the government chooses to disperse assemblies, organized in presumed violation of notification procedure, even if they remain peaceful in character. There are no legal provisions for spontaneous or impromptu assemblies and they are looked at as «illegal» and mandating dispersal, regardless of their peaceful nature.

Under the pretext of ensuring safety of the participants the authorities tend to hinder the public assemblies. The inability to ensure safety from violent counter protesters was a reason to ban a gay-pride demonstration and two pickets in defense of LGBT rights that were planned to take place on May 27th, 2006. All those bans were upheld in court despite the unambiguous position of the European Court of Human Rights in Plattform "Artze fur das Leben" v. Austria, and United Macedonian Organization Illinden and Ivanov v. Bulgaria, where the Court underlines that possibility of counter protests is not a reason for limitations on freedom of assembly. It is symptomatic also that the violent counter protests that did take place both in 2006 and 2007 gay-pride rallies went unpunished despite a large number of people arrested. The representatives of LGBT are since routinely refused «official approval» of their public events under various pretexts.

The authorities often state that they have no possibility to block the traffic on the route of the manifestation, and thus for safety reasons the manifestation cannot take place. Such was a

pretext on several occasions, for example, during the demonstration against conscript army due to march on one of the central streets of Moscow on March 31, 2007. Yet, the traffic on the supposed route of the demonstration was blocked in advance specifically to prevent the manifestation to take place. The same picture could have been seen on Nov. 7th, 2006 when the police blocked the central streets of Moscow both to the traffic and to the demonstrators from the Communist Party, despite the fact that the impossibility to stop the transport was the official reason not to allow the demonstration. There is clearly little willingness on part of the authorities to cooperate with organizers on issues of ensuring safety and minimizing disturbance to traffic.

When the demonstrators want to march on pedestrian streets, another often cited reason for not allowing it is the reference to the clause of the Constitution that declares that the exercise of one's rights and liberties should not violate the rights and liberties of other persons (pedestirans, city-dwellers, etc.) Such clause has been used to put limits on all kinds of moving processions in Moscow with at least 15 marches being banned in 2007 alone (notably the March in Memory of Slain Journalists on December 17, 2006 or with the March for the Freedom of Marches on April 1, 2007, etc).

Authorities tend to limit moving assemblies and propose to change them to stationary rallies, despite the fact that law doesn't give them those powers. This was the case for Marches of Dissent in 2007 in Moscow (Dec. 16, Apr. 14, June 11, 2007), in St.Petersburg (Mar.3, Apr. 15), in Nizhny Novgorod (Mar. 24), in Voronezh (May 29) and finally in Murmansk (Jun.13).

Authorities do not generally abide by the "within sight and sound" principle and often propose changes in place of manifestation that move them to deserted and isolated areas. In most cases those changes are proposed in imperative manner, and in the absence of negotiation procedures organizers have no say in influencing the final choice and discussing various options. The law states that if the organizers and authorities do not come to an agreement as to proposed changes of time and place, the organizers have no right to hold an assembly. Thus «suggestions» of different time and place are turned into limitations that cannot be contested, since, as noted by the Constitutional Court of Russian Federation in its decision from April 2, 2009 № 484-О-П there is no practical possibility to appeal against them, even if they are clearly unreasonable and void the proposed manifestations of any meaning. This has created a problem of so-called reservations for protests with deserted and isolated areas being routinely suggested as the only possible spots, where assemblies may take place.

The authorities tend to site various conditions as prerequisites for allowing the manifestations to happen, notably decreasing declared numbers or changing topics or proposed slogans. The police limit access to the area of protest to the number of people declared in advance, although the organizers have no obligation to know the exact number of possible participants of their public event. The "estimated number of participants" in the notification is used to actually limit the number of participants even in those cases when free physical space is clearly available in the location set for the public event. Most recently, in July 2009 an organizer of a rally in Moscow in memory of slain human rights defender Natalya Estemirova was fined for having «too many participants» at the assembly. Police cordons are routinely used, regardless of the position of the organizers, to limit an area for the assembly and to make it less accessible for a larger number of people.

The regional and local authorities tend to inspect scrupulously the declared themes of public events to filter out possible confrontational issues. A common practice, yet contrary to the law, is an inspection of proposed slogans or a demand to modify the topic. The groups considered

"oppositional" to the government have much more chance of having their public events banned and thus are much more likely to have problems with the police during their assembles. The "oppositional" or "confrontational" character of the topic for the assembly is determined completely arbitrarily and "sensible" themes that raise questions have ranged from a big governmental business project of a pipeline near Lake Baikal to a simple demand of upholding the Russian Constitution. In 2007 and 2008 several rallies demonstrating images of Putin or criticizing him personally have been dispersed and activists holding such slogans were detained and sentenced to fines. Judgments by the officials on the spot, that the slogans of the assembly do not correspond to the topic cited in the official notification, have more than once resulted in the use of force against participants of peaceful rallies.

In general it is also not known of any cases of officials being held responsible for hindering assemblies (in violation of Article 149 of the Criminal Code of the Russian Federation "hindrance to holding assemblies, meetings, demonstrations, processions, picketing or participation in the above").

The police interference during public assemblies is significant in scale and is often accompanied by unnecessary violence and disproportionate use of force. Heavy police presence is a common feature of any public action.

The law sets a certain procedure for dispersing an action that is perceived as "illegal", which is in most cases ignored. It is not known of any cases, in which the fact of breach of procedure for termination of public events was recognized or in which the representatives of the law enforcement agencies were found guilty of excessive use of violence and other infringements while terminating public events. On April 1, 2006 an action to protest against oil pipeline near Baikal was dispersed within 30 seconds, with disproportionate and unmotivated violence, without any warning being given out to the activists. All protests against the G8 summit in St. Petersburg met with unmotivated police brutality during dispersals. For example, batons were used to disperse an action of anarchist Network against G8 in front of Radission-SAS-Slavyanskaya hotel although no resistance to the police took place and the protest was non-violent. Clearly disproportionate force was used during the dispersal of opposition Marches of Discontent in Moscow on April 14, 2007 and St. Petersburg on Apr. 15, 2007. In St. Petersburg people were attacked by the riot police while exiting the place of the meeting and going to the subway with several ending up in a hospital. Official investigations didn't find anyone responsible.

In Dagestan on April 25, 2006 when three participants of a demonstration of protest against a local mayor were severely wounded and later died from the inflicted wounds The official version is that the police tried to withhold the mob by firing into the air and the wounded were hit by ricochet bullets. The eyewitnesses report that the police shot deliberately. On September 19, 2007 the police have opened fire at the participants of an assembly against forced disappearances in the center of Nazran, Ingushetia. Two participants were wounded. On September 24, 2007 during another meeting of protest against local authorities the police used batons and fired into the air to disperse the protesters. Although cases of use of weapons are fortunately still rare, unmotivated violence is a common trait and dispersal of action by riot police is a common occurrence even at actions where all the legal requirements have been scrupulously followed. The police prefers to act on specific orders to not allow a manifestation and leave the court decide whether it was "illegal".

There is no distinction made between the participants of public events, journalists covering the events, or observers from human rights organizations, recording the proceedings with many cases of police arresting anyone who looks suspicious enough or just comes across a public manifestation. Arrested participants of a public assembly are often charged with misdemeanors they didn't commit on the base of forged or corrupted evidence provided by the policemen, who didn't necessarily participate in the arrests. Specific charges are chosen to allow the police to hold people at the police station for longer periods of time and then to hand out court sentences of up to 15 days in prison.

Preventive measures by the police have also increased. Prior to the assemblies their prospective participants often face police intimidation ranging from being subject to home visits and interrogations to being taken off the train or prevented from getting on the bus, from having passport data copied and fingerprints taken to experiencing preventive arrests and attacks by unidentified men.

For instance, during the G8 summit in St. Petersburg, around 216 cases of people being taken of the train or other vehicles have been reported by human rights organizations. Participants of assemblies are marginalized by being labeled as «extremists» with some being included in special databases, which are later used to track their movements and to employ preventive arrests to stop their participations in manifestations.

Proposals from human rights organizations to introduce systemic measures to address those violations meet little cooperation from the national authorities. For example, the OSCE met no assistance in promoting their Guidelines on freedom of assembly. At the same time, the ECHR case-work on Article 11 is not disseminated among the judges and authorities and violations already stated by the Court (notably in cases Makhmudov v Russia, Barankevitch v. Russia, Kuznetsov v Russia) continue to multiply.

Article 22 (freedom of association)

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Throughout 2005-2009 the situation of non-governmental organizations in Russia has deteriorated. Freedom of association has become increasingly restricted and attacks of the Russian authorities on independent NGOs have intensified through legal and non-legal forms of pressure. Among various manifestations of growing government pressure on independent NGOs and activists there are the following:

- coming into force of the new restrictive NGO legislation in April 2006;

- hostile rhetoric by top government officials against independent NGOs and human rights defenders accusing them in working against national interests, undermining political stability, being involved in "impermissible political activity", being linked to foreign intelligence services and being paid by hostile foreign governments and domestic political opposition;
- increasing use of anti-extremist and counter-terrorist legislation against NGOs and activists;
- attempts to close several leading nation-wide human rights organizations on charges of alleged tax evasion and irregularities in reporting;
- increasing monopolisation of public life by limiting interaction between the state bodies and civil society institutions to artificially created GONGOs and top-down structures such as the Public Chamber and its analogues at the regional level;
- new phenomenon of wide-scale detainment and harassment of NGO activists traveling to conferences and demonstrations;
- growing use of unlawful restriction of the right for peaceful assembly by illegitimately forbidding activists to organize demonstrations and beating, detaining and levying penalties on participants of demonstrations;
- government inaction in response to death threats and violence against and murders of human rights defenders.

Legal Situation of NGOs

According to the *Vestnik of State Registration* as of January 1, 2009 275 863 of active public associations and 656 233 NGOs are registered in Russia. This statistics includes all types of NGOs, including those which can not be listed as organizations of the civil society, for instance, state corporations.

Currently the restrictive NGO legislation which was enacted on April 18, 2006 is still in effect. Despite the work on adopting amendments to the NGO legislation of 2006 that started in the summer of 2009 the society was given a clear signal that non-commercial organizations may be dangerous. The term "NGO" was more often used alongside terrorism, extremism and overthrow of constitutional system, inspections rather then it was told about the actual content of the NGOs activities.

Among the amendments to the legislation in 2009 it is important to point out the decrease of reporting requirements for NGOs which do not receive foreign funding, decrease of the time for processing the registration of NGOs, as well as introduction of the procedure of suspension of registration. Still the unlimited powers of Offices of the Ministries of Justice and other state authorities in the course of NGO inspections as well as the right to initiate closing of the organization in case of multiple failure to submit reports which still remains in the legislation give rise to concerns.

Establishment and registration of NGOs

The size of the state fee due to the registration of NGOs amounts to 2000 rubles, there are no exemptions. Often this serves as a barrier for initiators of NGOs, especially for underprivileged groups of citizens to obtain the status of a legal entity in order to protect the interests of their group.

Human rights NGOs continue to have difficulties related to registration related to their desire to reflect in the Charter their human rights advocacy specialization. On February 15 2008 Directorate of the Federal Registration Service in Saint-Petersburg and the Leningrad region refused registration on the basis of the organizational goal in the Charter is "contributing to observance of human rights by state and municipal authorities" contradicts the current legislation as it does not permit interference of the organization into activities of state authorities.

A series of refusals have a clearly arbitrary and discriminating nature. In 2007 a Tyumen LGBT "Rainbow Home" with the following motivation: "activities of the organization might entail breach of security of the Russian society and stat"; it was accused of propaganda of the unconventional sexual preferences and therefore decrease of the population of the Russian Federation). Judicial bodies of the Russian Federation confirmed the lawfulness of the refusal and NGO took the case to the European Court.

Practice of implementation of legislation in a number of regions differs significantly. In Saint-Petersburg it is impossible to register an NGO using the home address of its head, registration is refused and such practice is supported by courts. In the Rostov region such registration is performed without any complications.

The complexity and inaccuracy of the NGO legislation in a number of cases results in initiation of corruption arrangements. In April 2009 the Prosecutor's Office brought charges against an expert of an department of registration NGO, public and religious associations of Directorate of the Ministry of Justice in the Chelyabinsk region, Sergei Mikurov who is accused of a number of episodes of getting bribes for registration of NGOs.

Still there is no practical application of the notification procedure for registration of trade unions and prohibition for interference of state authorities into their activities established by the Federal Law "On professional unions, their rights and guarantees of their activities".

Refusal to register trade unions became a usual practice. On the basis of formal grounds the Interregional trade union of journalists and media employees was refused registration, courts upheld lawfulness of the refusal and organization brought its case to the European Court.

Authorities justified exclusion of organizations from the Unified Register of Legal Entities by the fact that according to the Russian legislation NGOs may exist without registration even though they are deprived of a number of rights of a legal entity.

Registration of charter modifications, change of address and a head of the organization

Registration of modifications in the Charter of NGO and other modifications still has a permissive character, bureaucratic procrastination during registration paralyze work of NGOs.

On May 8, 2008 Directorate of the Federal Registration System in the Voronezh Region on the basis of unsubstantiated grounds refused registration of the head of ANO DO "Svobodniy Universitet". The refusal was appealed in the Federal Registration Service which found the refusal unlawful. Despite this fact the Voronezh functionaries did not register the new head of the organization up to September 2008.

State oversight over activities of NGOs

On May 1, 2009 amendments into Federal Law of December 26, 2008 came into force # 294-FZ "On protection of rights of legal entities and individual entrepreneurs during implementation of state oversights (inspection) and municipal oversight" which determined that NGOs may not be checked more often once every three years. However the law maintained a possibility for unscheduled inspections which can be held upon complaints of citizens and organizations regarding NGOs without specific limits.

In a number of regions the state oversight over NGOs has a directly open discriminatory nature. So the question: "What NGOs are subject to special oversight?" was answered by the head of the Department of NGOs in the Ministry of Justice in the Primorskiy Region mentioning "religious organization where foreign missionaries work", "public associations united on the national principle", "structural subdivisions of political parties", though there is no special supervision procedure provided for their oversight.

NGOs are subject to inspections not only by the Ministry of Justice, but also tax authorities, prosecution, the Central Internal Affairs Directorate, the Federal Security Service. So in 2008 in Buryatia with the Federal Security Service inspected 15 NGOs, 13 of which were national and cultural autonomies created based on the ethnic principle

The list of documents which can be requested by supervising agencies is not limited in any way. According to the information placed on the official website the NGOs are to submit for inspection of the Ministry of Justice the primary financial documents as well as the documents confirming the ownership right for real property of the non-commercial organization.

On June 26, 2008 the court recognized as lawful the requirements of the the Directorate of the Federal Registration Service in Saint-Petersburg and the Leningrad region to submit for inspection of the activities of the organization "Civil Oversight" all of the outgoing communication. However this court ruling was overturned in the court of cassation.

As a rule no serious breaches of legislation are found in the course of the inspections. Analysis of the statements of the Ministry of Justice in the media allows for a conclusion that oversight is often directed towards finding and even inventing violations and issues in the activities of the NGOs, mainly related to the documents flow of NGOs.

In most cases the inspections result in warnings issued to NGOs. In 2008 Directorate of the Ministry of Justice of the Russian Federation in the Nizhniy Novgorod region 2541 warnings were issued about violations of the RF legislation. According to the current legislation (which in this part was not modified by the modifications of 2009) a single failure to submit reports the Ministry of Justice has the right to go to court with the request to exclude the NGO from the register. It is important to note that the total number of registered NGOs as of May 2009 in the Nizhniy Novgorod region is 4792, and in 2007 there were 5907 of them. Therefore the Ministry of Justice in the Nizhniy Novgorod region has warrant of law to initiate closure of every other NGO in the region.

Such a high number of warnings is indicated in the plan of activities of the Ministry of Justice. According to the Basic index of the activities of the Ministry of Justice of the Russian Federation which are up on its website, the number of warnings, communications concerning violations of the legislation by them, notifications and resolutions about suspension of their activities,

addressed to NGOs planned for 2008 was to amount to 10 000, and the share of such resolutions ruled by the court as unsubstantiated is 0%.

NGO reporting

NGOs continue to submit reports to the Ministry of Justice which partly repeats reports to tax authorities. In 2008 attempts were made to develop new simplified forms but they have not been approved so far.

Termination of NGO activities by the state

According to the *Vestnik of State Registration* as of January 1, 2009 over 2000 NGOs were excluded from the Unified Register of Legal Entities. The *Vestnik* provides the following statistics:

##	**Legal entities which terminated their activities**	**Public Association**	**NGO**
1.	In relation to expulsion from the Unified Register of Legal Entities based on the decision of the registering authority (Federal Tax Service)	40 700	60 659
2.	Due to liquidation	24 112	50 099
3.	Due to other reasons (including those recognized as having terminated their activities by court ruling)	21 897	22 335
TOTAL on the given grounds		**86 709**	**133 093**

Even though the *Vestnik* does not provide the information about the number of organization liquidation of which was initiated by themselves, it is possible to state that the lines 1 and 3 envisage exclusion of the organization from the Unified Register of Legal Entities initiated by the state, bodies of the Federal Tax Service or the Federal Registration Service as well as the Ministry of Justice.

Interregional Human Rights Center (Yekaterinburg), "Right and Freedom" (Samara), "Gorozhane" (Saint-Petersburg) were subject to such extrajudicial closing. On July 15, 2008 Professional Union "Pravo" was excluded from the Unified Regster of Legal Entiteies as well as its primary trade union organization (Voronezh), a number of religious organization in Orenburg and Voronezh. Currently closing of the organizations is contested by them in courts.

On February 4, 2008 All-Russian Public Organziation of refugees and forced migrants "Sodeystvie" was liquidated. The grounds were "failure to provide reports about their activities and failure to notify about location of the permanent executive body". Later the decision was left in force by the cassation court. The court considered that even if the organization submitted data and reports to the tax authorities which are practically similar in content with the reports to the Federal Registration Service, but did not submit for some reason the reports to the Federal Registration Service it is considered to be a gross violation which serves as the basis to liquidate the NGO. The organization brought their case to the European Court on Human Rights.

In Tyumen on formal grounds actively working local branch of the Memorial and Movement "For Human Rights" were liquidated.

The instances of liquidated NGOs implementing educational activities have become more frequent, the grounds being that they have not obtained a license for educational activities. An actively working Regional Public Organization “Center for educational and research programs” in Saint-Petersburg was closed.

According to the Public Chamber of the Russian Federation educational activities are the dominant ones for non-commercial organizations. Almost a half of all NGOs are engaged in it - 46%. Mass liquidation of NGOs performing educational activities in April was a cause for a joint meeting of the Public Chamber Committee for Development of Civil Society and the Public Council at the Federal Registration Service.

Taxation of NGOs

In June 2008 modifications were entered into Governmental Decree of December 24, 2002 “On the list of foreign and international organizations the grants of which are not accounted for the purposes of taxation in the incomes of the Russian grantee organizations”. The list of donors was limited from 101 to 12. The procedure according to which grant-makers are able to get back on the List as of September 2009 is unspecified by the Government.

A series of issues remain unresolved related to taxation of NGOs. Regional Public Organization “Etnika” in the course of a tax inspection received a back tax notification of over 98 thousand rubles,and a social and ecological organization “Planeta Nadezhdy” - 1.3 million rubles. It was possible to reverse the decisions of tax authorities in court but the court proceedings required plenty of effort, financial means and time from the organizations.

Searches in NGOs and criminal prosecution of their leadership

In 2007 Ludmila Kuzmina, a coordinator of the organization “For protection of voters rights “Golos”” was accused of using unlicensed software, searches were held in the offices of the organization, equipment was confiscated, work was paralyzed. Later all charges were lifted.

In 2007 a criminal case was initiated against Manana Aslamazyan, the Foundation “Educated Media” headed by her was searched, equipment was confiscated. Soon the Foundation announced termination of its activities and in July its co-founders took a decision concerning its liquidation. As the result the criminal case against Aslamazyan was stopped. It appears impossible to restore activities of the Foundation.

In 2008 a criminal prosecution began of Irina Malovichko, the head of the UNESCO Club “Dignity of a Child” for allegedly embezzlement and misappropriation of 8000 rubles, searches were held in the organization's premises, equipment, documents and the stamp were confiscated. The prosecution is still on.

On September 16, 2008 officers of the Economic Crime Department of the Central Internal Affairs Directorate of the Nizhniy Novgorod region held a search in the Ecological Center “Dront” where computers and documents were confiscated.

On December 4, 2008 search was held in the “Scientific and Information Center “Memorial”. The pretext was an alleged cooperation of the organization with “extremists”, namely the newspaper *Noviy Peterburg*. During the search hard drives from the Memorial's computers and

documents of the NGO were confiscated; work of the organization was practically paralyzed Further on no charges were filed.

On May 21, 2009 the police attempted to search the apartment of Nadezhda Kutepova, the head of social and ecological organization “Planeta Nadezhd”. Tax claims served as the pretext which were lated relieved through the court.

On July 20, 2009 staff of the Ministry of Internal Affairs held searches in the premises of the Human Rights Association “Agora” and the Kazan Human Rights Center. Approximately 2.5 pages of documents related to activities of the organization for 3.5 years were confiscated. Before that for 3 months there had been a tax inspection of the Directorate of the Federal Tax Service, inspection of the Ministry of Justice and inspection of the Directorate of the Federal Financial Monitoring Service. None of these determined violations in the activities of the NGO. Human rights activists consider that the cause of such persecution is the active work of the NGO aimed at calling to account the high-ranking officials of the Ministry of Internal Affairs of Tatarstan.

Accusations of NGOs and their leadership in extremism, liquidation of organizations

The Russian legislation on counteraction to extremist activities gives quite a wide definition of extremism, including such notions as inciting of social strife or public accusation of a state official in committing an extremist crime.

In the media the Ministry of Justice often indicate that “one of the priorities of their activities is implementation of the Federal Law “On Counteraction to extremist activities” namely prevention of extremism in the activities of NGOs”.

The practice of enforcing the extremism legislation which has been established in the recent years clearly indicates that the law is not directed against manifestations of nationalism and xenophobia (numerous neo-Nazi organizations openly exist and act) but against the so called “social strife”, that is criticism of activities of the authorities (as a social group) by the NGOs.

NGOs are often accused by extremism in an unsubstantiated way by high-ranking officials. In January the head of the Central Internal Affairs Directorate of Saint-Petersburg, Lieutenant General Vladislav Piotrovsky stated that “activization of activities of human rights and public organizations is expected [in the city] through which the foreign interrligence services finance extremism activities”.

According to the head of the Department of Non-commercial organization of the Directorate of the Ministry of Justice in the Primorskiy region, while making the decision about state registration of NGOs “a List of organizations and persons is used, concerning which there is information about their participation in extremism activities”. The use by the Ministry of Justice of this List contradicts the legislation which allows to consider an organization to be extremist only on the basis of a court ruling.

Accusation of leaders of organizations of extremism may entail liquidation and prohibition for activities of NGOs. In May 2009 Prosecutor's Office issued a warning to leaders of the Novorossiysk Human Rights Committee (NHRC), Vadim and Tamara Karastelev and an admonition “about inadmissibility of extremist activities”. The reason was holding of a picket against amendment to legislation on children's right which established a prohibition for an

underage person to be in the streets after 22:00 and the right of the police to detain such a child till arrival of his/her lawful representatives.

On August 7, 2009 the Prosecutor of the city of Novorossiysk took a legal action to court requesting the court to liquidate the NHRC e, to declare to be an extremist organization and to suspend its activities for the period of court hearing. The court ruled that the motto used by the NHRC at the picket: "The freedom is not given, it is taken" is a provoking statement and can be perceived by the underage people as a incitement to actively oppose activities of the authorities. The appeal "to take" freedom signifies the priority of rights of an individual over those of the state. Therefore the motto "The freedom is not given, it is taken" has an extremist character". The final decision on this case is not taken at the time when this report is written.

Eviction of NGOs from premises

On July 2, 2008 amendments to antimonopoly legislation came into force, which prescribes to auction off municipal premises after the current tenants' lease agreement expires. Before these amendments contracts with NGOs were extended automatically, now the premises goes to those who offer more money. A number of organizations already suffered from the new legislation. In March in the Moscow district of Khamovniki a Russian Orthodox Family Center "Nativity" was evicted, in Lipetsk an office of the Red Cross was asked to vacate their premises.

In February 2009 administration of the city of Voronezh announced an auctioning of the House of Human Rights - a municipal building where over 30 regional and interregional NGOs are based. Only a wide public campaign made the city's authorities to remove the building from the auction.

In July 2008 a "Charitable Hospital for Women" based in Dagestan was deprived of their premises by a decision of the Arbitration Court. The organization which has been providing free medical care for 15 years has to "vacate illegally occupied premises" in the downtown of Makhachkala.

Article 23 (protection of the family)

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
The right of men and women of marriageable age to marry and to found a family shall be recognized.

Traditional practices which endanger women's human rights and civil freedoms in Russia are matters of concern of many women's NGOs. Bride abduction and honour killings are serious violations of the Constitution of the Russian Federation and international human rights standards including of the International Covenant on Civil and Political Rights.

There are uncovered facts of violent crimes against women that are part of traditional practice, such as bride abduction for the purpose of forced marriage.

Those crimes rarely come to the attention of the general public or representatives of official power. In many regions of Russia, native customs are the key obstacles preventing women and men from changing their social and cultural models of behavior. Thus, they put gender relations several centuries back.

According to the estimates provided by a representative of the NGO League of Protection of Mothers and Children from Dagestan, 180 cases of bride abduction were reported in Dagestan solely in 2008. Upon closer study, the National Independent Commission on Women's Human Rights and Violence against Women also found out that on the average only in 25 per cent of the cases bride abduction is a role play arranged by a couple as a tribute to the ancient custom.
Bride abduction is common not only in the Northern Caucasus but in other multi-ethnic regions of Russia as well. In some cases young women do not belong to Muslim religion but nevertheless that does not prevent perpetrators from violating those women's human rights.
In the regions where population considers bride abduction to be an ancient custom, not a criminal offense, law enforcement agencies often ignore these crimes.

The report of the National Independent Commission on Women's Human Rights and Violence against Women have drawn public attention to the vulnerable position of women in the Northern Caucasus and to bride abduction practices. However, as a rule, despite of the experts' recommendations, the general public and law enforcement agencies do not appreciate the considerable scale of the problem.

The current law, Article 126 "Abduction" of the Criminal Code of Russia does not protect women as far as bride abduction is concerned. Those crimes against women represent survivals of native customs and thus violate women's human rights and freedoms.

The status of women in Chechnya is not improving. They are under pressure from the local authorities who require that they have their head covered in public spaces and delegates control over their clothing to armed security of government facilities. Women are powerless when it has to do with choice of spouses, representatives of local authorities, President Kadyrov, first of all, openly talk about possibility of marriage with underage girls and encourage polygamy. Under the guise of Islamic tradition relationships and forms of behavior are being introduced by force which oppress women and which are alien to the Chechen traditions.

Murders of women are not investigated; they are justified by saying that the murdered women forgot the "code of conduct of a women from the mountains".

The federal authorities do not take any measures aimed at enforcing the Russian legislation in the Chechen Republic, in addition to this they justify such behavior of local authorities, being satisfied by their declarations about loyalty to the principle of indivisibility of the Russian Federation.

In Russia to date the existing statistical data on crimes against women in domestic violence situations is fragmentary, difficult to obtain, and often simply non-existent. Nevertheless, according to independently-conducted studies and statements made by government agencies' representatives, we can envisage the overall scale of the problem. For example, in an interview, Police Lieutenant General Mikhail Artamoshkin, the Acting Head of the Department for the Protection of Public Order under the auspices of the Russian Ministry of Internal Affairs (2008), cited the following figures[10]:

- violence, in one form or another, is observed in every fourth family;

[10] Interview with Police Lieutenant General M. Artamoshkin, the Acting Head of the Department for the Protection of Public Order under the auspices of the Russian Ministry of Internal Affairs. Published on the Ministry of Internal Affairs webside 01/24/2008. Reference link: http://www.mvd.ru/news/14047/

- two-thirds of homicides are attributable to household / domestic motives;
- each year about 14 thousand women die at the hands of husbands or other relatives;
- up to 40 percent of all serious violent crimes are committed within families.

The data on the percentage of murders committed within the family is confirmed by statistics from other regions. Thus, according to Igor Orlov, the Minister for Public Safety in the Perm Region, **more than 70% of all homicides** occur in the home.[11] Russian women suffer **three times more** abuse in the family than they encounter violence from strangers. [12]

According to the official data from the Russian Ministry of Internal Affairs, as of December 2008 there are 212.7 thousand domestic offenders on file with the police.[13]
The data on committed criminal acts bears witness that increasingly not only women but children fall victim to domestic tyrants. In 2008 alone, the National Independent Commission on Women's Human Rights and Violence against Women came across several cases of child homicide motivated by revenge, like the tragedy that occurred in Tatarstan:

> *On June 3, 2008 in the Republic of Tatarstan 37-year-old Alexander Grigoriev killed his 5-year-old son Alexei with the aim of settling scores with his wife, whom the killer suspected of infidelity. When Grigoriev came home that evening he asked his son why his mother was not at home. The boy replied to his father that while he was away "some man" had come to visit mommy. Wishing to take revenge on his wife, the father decided to* slaughter *his five-year-old son. Grabbing a knife in the kitchen, the man struck his son in the stomach at least four times. The boy died on the scene. Based on the evidence, the office of the Zarechnyi Interdistrict Investigational Department of Tatarstan instigated criminal proceedings under the Russian Criminal Code Article 105 (the intentional homicide of a person known by the killer to be in a helpless state).*

Another trend shown to us by statistics is the increase in the number of crimes pertaining to incidents of violence against women, especially crimes committed within the family: the period of 2002¬2006 alone shows that the total number of "household" crimes increased by one-and-a-half times.[14]

Our study, which was conducted by the Commission in the regions of Russia, also confirms the constant growth of the number of registered offences. Thus, on the territory of the Udmurt Republic in 2008 there were 47% more recorded domestic violence crimes than during the same period of 2007.[15]

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11 T. Semileyskaya. "This year, in the Perm Region more than 370 people have been killed in domestic violence incidents," New Region - Perm, 06. 26.2008

[12] M. Propastina: Sociological study on the relevance of the problem of violence among the women of Magnitogorsk / / Innovations in the prevention of marital problems. Ed. A. Voronkov; Cheliabinsk: 2007

[13] According to the announcement of the press center of Russian Ministry of Internal Affairs "The Russian Ministry of Internal Affairs has held a scheduled session of the Government Commission on the Prevention of Offences" on the Ministry of Internal Affairs website: http://www.mvd.ru/anounce/6022/

[14] Interview with Police Lieutenant General M. Artamoshkin, the Acting Head of the Department for the Protection of Public Order under the auspices of the Russian Ministry of Internal Affairs. Published on the Ministry of Internal Affairs web site 01/24/2008. Reference link: http://www.mvd.ru/news/14047/

[15] This is also confirmed by the data of the Department of Internal Affairs of the Yaroslavl Region (2006): the number of reported domestic violence crimes grew by 27.9%, while the number of murders resulting from the said offences increased by 16%, and the incidents of grievous bodily harm, resulting in the death of the victim by 10.2%. Based on information of the Regnum News Agency: http: // www.regnum.ru/news/economy/606799.html

As shown by the Udmurt data received as a result of the Commission's investigation, there is an increasing usage of arms in domestic crime: 7% of homicides are committed with firearms; 28% with cold weapons; 50% with objects used as weapons. Such methods of murder as drowning in the bathtub, poisoning, and especially strangulation are becoming prevalent.

Meanwhile, while considering the statistics, it is necessary to take into account that not all victims appeal to the police. According to the research data of the "Congenial Home Center," 60-70% of women suffering from domestic abuse do not seek help from the law enforcement authorities.

Under the current legislation the provability of cases of domestic violence (even physical violence, which has ensuing visible evidence) is extremely difficult. In Russia there is no developed legal framework that, taking into account international experience, comprehensively regulates the relations between family members, as there is no specific law on domestic violence, which would set out the functions, rights and responsibilities both of law enforcement agencies, as well as of special services aimed at the conservation and restoration of rights of family members.

In addition, based on existing laws it is possible to render only partial protection to the people affected by violence.

a) First, it is the Constitution of the Russian Federation (dated 12.12.93). Article 19 of the Constitution states that men and women have equal rights and freedoms and equal opportunities for their implementation: (Clause 2 of Article 21) "No one shall be subjected to torment, violence or other cruel or degrading treatment or punishment;" (Clause 1, Article 22) "Everyone has the right to liberty and personal security."

b) The Family Code of the Russian Federation (dated 12.29. 95) is one of the most important laws protecting the rights of women who are subjected to violence, because it regulates the termination of marriage (Articles 16-26), chapters 6-8 govern the rights and responsibilities of the spouses, the legal treatment of their property, and explain the marriage contract.

Under the current Penal Code of the Russian Federation, most crimes related to domestic violence against women should be covered by Article 117 "Torment":
1. Causing physical or mental suffering by systematic beatings or other violent acts, if these did not cause the consequences referred to in articles 111 and 112 of this Code - shall be punished with imprisonment for a term not exceeding three years.

The commentary to the Article indicates that torment is to be defined as causing physical or mental suffering to a victim, including systematic beatings, torture, threats, insults. Other means of violent torment include, for example, deprivation of sleep, food, or water, locking one in a cold room, biting, whipping, and binding. All of these actions, particularly systematic beating, not to mention the threats and insults, are there in virtually every case of domestic violence.

In order for an action to be recognized as torment, it is of essential to establish a systematic character of such actions by the perpetrator. As directed by the Supreme Court of the RSFSR[16],

whose interpretation is systematically followed to this day, in cases of torment three or more criminal acts constitute a systematic character.[17] It is known that domestic violence is also characterized by being systematic. However, the only Article of the Penal Code, which covers the crimes related to domestic violence, remains ineffective. The 2008 study of Russian National Independent Commission on Women's Human Rights and Violence against Women stated that the Commission has not found any case of domestic violence that was being prosecuted under Article 117.

Most of the cases of domestic violence have fallen into the category of private complaint cases (Article 115, 116. Part1, Article 129 and Article 130 of the Penal Code of the Russian Federation).

Such an allocation from the perspective of legislators is justified by the fact that these crimes affect the rights and interests of specific citizens and it depends on them whether they will initiate criminal proceedings against the offenders or not.

However, in practice this has meant that the victims were left virtually without adequate protection from the State.

The problem here is as follows. Article 20 of the Code of Criminal Procedure provides that private complaint cases may be initiated only based on the statement of the injured party and are subject to termination if the parties have reconciled. The case is considered opened when the aggrieved party files a complaint that meets the requirements set forth in Article 318 of the Code of Criminal Procedure of Russia with a magistrate. If the complaint meets the requirements, the magistrate initiates the proceedings and the injured party becomes a private claimant.

Thus, the aggrieved party in cases of private complaint is obliged to perform a dual role. On the one hand, as the victim, she is entitled to have her interests protected by the State. However, this depends solely on her will and is instigated only at her own volition.

On the other hand, she has to act as a prosecutor, to present evidence, to formulate the charges and to seek the conviction of the guilty party. To serve as a prosecutor assumes a knowledge of the prosecution process, the foundations of criminal law, the rules of gathering and presenting evidence. It is obvious that ordinary citizens do not possess such knowledge, and therefore are unable to properly present their case in court. When, in addition to issues raised above, the same question pertains to victims of domestic violence, a great role is played by the factors of posttraumatic stress, to which the victim is subject, as well as to the stage in the cycle of violence during which the complaint is filed. It should be noted that the victim usually continues to live with the abuser in one apartment, which gives him the opportunity to pressure and to intimidate her.

In accordance with Article 86 of the Code of Criminal Procedure of the Russian Federation, victims and their representatives have the right to collect and submit written documents and objects with the aim of attaching them as evidentiary exhibits to the criminal proceedings.

As a result, according to court statistics, the vast majority of cases of private complaint are terminated for two reasons:

[17] Issues of criminal law and procedure in the practice of the Supreme Courts of the USSR and the RSFSR. M., 1980, pp. 102

• failure to fulfill the court's requirements to resolve the shortcomings of the complaint;
• reconciliation of the parties.

Typically, at the stage of filing the complaint the victims are unable to fulfill all the requirements, not only because of legal ignorance, but because of post-traumatic stress disorder as a result of the act of violence.

On the other hand, this happens because the complaints are usually filed immediately after the violence has occurred, while at that time the cycle of violence is passing into the stage of repentance by the abuser and forgiveness (reconciliation) by the victim. The women, feeling guilty and believing the words of the abuser that violence will not happen again, remove the complaint and agree to reconciliation.

As a result, according to experts, 9 cases out of 10 are terminated due to the reconciliation of the parties.[18] Thus, the offenders who have committed domestic violence go unpunished.

The problem is that the Russian justice system considers violence committed in a public place against a stranger, to be a much greater social danger than the same actions committed within a family against relatives. Even in the statistical data of the Russian Ministry of Internal Affairs published on Ministry's website there is a separate statement on crimes committed in public places. However there is no data on crimes committed in the home. Thus, domestic violence is considered not as a crime against society, but as a private matter among family members.

Article 24 (rights of the child)

Every child shall have, without any discrimination as to race, color, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
Every child shall be registered immediately after birth and shall have a name.
Every child has the right to acquire a nationality.

A number of children (“child” is a person below the age of majority 18 years old) in Russia had decreased by 11 million in 15 years and reached 28 million in 2006 (20% of the population). In the same period a number of children who lost care of their biological parents increased annually by 15-20 thousand and reached 750.000 in 2007. About 200.000 Russian orphans permanently live in different Orphanages. More than 120.000 kids annually loose their biological parents; 90% from them are so called “social orphans” whose parents are alive but abandoned their kids or were deprived of parental rights by the Court Decisions due to neglect of their parental duties and violence against children.

Also 200.000 legally non-orphaned children “with limited possibilities of health” and officially registered “disabled children” permanently live in “special (corrective)” Boarding schools and in

[18] The information is provided by Marina Zakharova (Yekaterinburg), LLM, a lawyer of the Bar of the Sverdlovsk Regional Lawyers Guild. This data is also confirmed by R. Iskandyrov, a Senior District Police Station Commissioner in the Kurchatov district of Chelyabinsk: "90% of these cases are terminated for various reasons. This is due both to reconciliation, and to the fact that the victims, in the end, simply do not want to go to the courts and to gather and organize all the documents." Quoted from R.V. Iskandyrov's The significance of co-operation between District Commissioners and public organizations in the prevention of domestic violence / / Innovations in the prevention of marital distress. Ed. Voronkov A. Cheliabinsk: 2007

social internats. Inherited from the former USSR practice of segregation of children with health problems from "normal" children, in the field of education in particular, is still flourishing. Most of these children live with their parents (often single mothers) who meet with enormous difficulties because of poverty and lack of professional support. About 300.000 of essentially disabled children do not learn at all, although the universal right for education is proclaimed by Russian Constitution. They don't learn since there are no educational facilities for it and inclusive education is not practised yet in Russian regular schools and kindergardens. Most terrible is the situation of 29.000 children in the social internats for mentally disabled children. This is a sort of "life sentence" (for survivors) since after 18 years old they are forcibly moved to internats for mentally disabled adults - to the end of their days. Rare inspectorate visits to these places reveal that there are many children or adults capable of the normal life in community, capable to learn, to work, to create a family. They were isolated from the society because of abuse of diagnostics of mental decease and absence of rehabilitation work. This is a quotation from the recently issued Annual, 2007, Report of the Russian Ombudsman for Human Rights Vladimir Lukin: "*Most serious in our country is the problem of observation of rights of children with disabilities. In June 2006 Ombudsman issued Special Report about this problem. Unfortunately Proposals of the Special Report aimed at improving the situation were not implemented and even more – they were not considered at all*" (Governmental "Rossiskaya gazeta", 14.03.2008).

In this Report Russian Ombudsman for Human Rights says about many violations of children's rights: the right of orphaned children for dwelling guaranteed by the Law, rights of abandoned babies permanently living in hospitals, the fundamental right of the child to live and to be brought up in caring family, etc. Special problem is drastic violations of rights of "normal" and unhealthy children permanently living in the institutions. The reason is in the absence of transparency of these "closed societies". Sometimes the country is shocked by the "real life" information from there, but there are no regular tools so far to make these institutions transparent and their administration accountable.

Violence against children

At the Round Table in the Ministry of Internal Affairs of Russia (MVD), on 20 February 2008, dedicated to family violence against children the figure was given that 2500 kids annually die in Russia because of violence of their parents. Other data say that 14.000 Russian women perish annually because of domestic violence. Round Table was chaired by Minister of MVD Rashid Nurgaliev who showed full understanding of the problem. State statistics also says that in average 2800 children under 18 years old commit suicide annually, official reports underline that most of tragic cases resulted because of violence against child at home or in school when the child had nobody to complaint to and did not find any other way out. According to the Research fulfilled in State Duma (Lower Chamber of Russian Parliament) about 2 million children below 14 years old are annually beaten in families, 65% from them are kids below 7 years old. General Prosecution Office Reports describe plenty of cases of the elongated violence towards children with tragic outcomes when authorities were many times informed of the problems in the family but showed terrible passivity. Thus violation of rights of children WITH INACTION of responsible State bodies is the great problem of Russian social system. Another side of the coin is that "The only way of the State reaction to the unfortunate situation in the family remains the withdrawal of the child from the family which results in drastic increase of orphaned children", - the above named Annual, 2007, Report of the Ombudsman, where it is also said: "Today in Russia the crises of the institute of family is observed: its pedagogic and moral basis had

languished, number of children suffering from the cruelty of parents, from the psychological, physical and sexual violence is increasing".

Juvenile justice

Juvenile justice is not introduced in Russia so far although the package of corresponding Federal Laws is "waiting" in State Duma for years, although there is quite a positive pilot experience of the work of Courts for Minors in Rostov Region and elsewhere. Police violence against minors is widely distributed. After humanization of the Criminal Law in 2003 the number of sentences connected with deprivation of freedom of children decreased but still remains high (15-20 thousands per year, which is 20% from the total number of child-sentences, cf. with 2-2.5% in EU countries). Absolutely unacceptable are too long terms of deprivation of freedom given by the Courts (4,1 years in average, children are often sentenced to several years terms even for a small crime like robbing because of hunger). The general number of minors in different places of deprivation of freedom in Russia (in police lock-ups, investigation jails, corrective colonies, temporary isolation centers for minors-delinquents) varies from 30 up to 40 thousand in different years. This is 21-28 minors in confinement to 100 thousands of population of Russia. To compare with other countries the same parameter in Western and Central Europe is from 0 (Italy) up to 5,7 (Greece); in the countries of former communist block - from 0,6 (Slovenia) up to 16,6 (Estonia) and 17 (Belarus); in the USA it is equal to 30. Russia (together with the USA - from the end of XX century) keeps this shameful record by quantity of children contained in places of deprivation of freedom since times of Stalin's GULAG. (Data from the "Alternative Report – 2005" to the UN Committee on the Rights of the Child (CRC) prepared by the Coalition of Russian NGOs - http://www.pravorebenka.narod.ru/eng/docs/altreport_CRC_2005.doc.). And there is no effective probation system in Russia. Hence minors-delinquents sentenced to punishments not connected with deprivation of freedom, or those who already served their terms of isolation are not accompanied as a rule which results in a great percentage of recidivism.

Poverty of families with children

More than 50% of such families have income below the living wage; this results in the lack of nutrition of children. In this situation it would be very important to have hot meals in schools, but this practice is underdeveloped in many Russian regions. This problem, like many other social problems, became especially severe after the Federal Law # 122-FL was passed in 2004, this Law decentralized social responsibility from Federal center to 88 Russian regions which created great geographical disparity in children's welfare.

Article 25 (right for participation in the state governance, electoral rights)

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:
(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

Referendum is one of the main forms of direct citizens' participation in the state governance. The requirements for holding a referendum provided for by the Federal Constitutional Law of June 24, 2004 №5-FKZ "On referendum of the Russian Federation" on the basis of citizens'

initiative are deemed by NGO experts impossible to meet, essentially allowing to hold a referendum only upon initiation by the authorities without a realistic possibility of the grassroots initiative.

Extremely strict requirements to signature sheets (no more than 5% of rejected items and consideration of signatures having slight technical deficiencies to be inauthentic) make registration of candidates through submission of signatures possible only in case of benevolent attitude of the electoral committees to the party submitting the documents. Together with the abolition by the State Duma in January 2009 of registration of parties for the elections on the basis of an electoral deposit, this procedure results in considerable limitation of passive electoral rights, non-admission to the elections of unwanted candidates and limitation of political competition.

Constitution of the Russian Federation (Article 32) established a closed list of limitations on active and passive electoral rights ("Citizens who are declared by the court to be legally incompetent or are held in penitentiary facilities by court decision do not have the right to elect and to be elected"). Deprivation of passive electoral rights of persons who have completed serving their prison terms but have criminal record as well as of persons convicted for extremism crimes to punishments without actual imprisonment, contained in the Russian laws, does not comply with the Russian Constitution and Article 25 of the Covenant, ensuring free elections.

7% electoral threshold at the elections was established in Russia, one of the highest in the world.

Minimum voter turn-out was abolished, that is the minimum number of voters coming to the polls necessary for the elections to be considered valid. This, together with simultaneous abolishment of "none of the above" vote lead to a decrease of level of representation of the elected legislative bodies.

Unequal starting level for participation of political parties in election campaigns (preference for parliamentary parties while registering the party lists and high possibility of registration refusal for other parties) does not allow the principle of equal opportunities to be maintained for all participants of the election process.

The Federal laws of May 18, 2005 #51-FZ and of July 21, 2005 #93-FZ deprived public associations (NGOs) of the right of nominating observers at the elections. At the same time the Ombudsman for Human Rights of the Russian Federation does not have the right to invite international election observers.

"Sets for processing ballots" (KOIB) which were created as government contractual work, have been used multiple times at elections of various levels; these sets are essentially scanners for ballots together with mechanisms for recognition and counting. According to the information of the Central Election Commission, a possibility for switching to completely paperless voting technology is being currently considered on the basis of automatic vote counting using sensor mechanisms. Russian legislation regulates application of the procedure of automatic means for voting and vote counting only in very general terms; a more detailed regulation is left upon the instructions of the Central Election Commission of the Russian Federation. The law also permits to forego control manual vote counts. Therefore, a possibility that such modernization of the procedure would lead to undermining of the principle of transparency of elections is quite serious.

Administrative pressure during elections has been dramatically increasing, including such manifestations as:
- campaigning for candidates by public officials**;**
- sending orders by administrations to enterprises and public offices to make voters vote for a specific party or a candidate;
- use of violence against opposition candidates and independent observers;
- confiscation of parties' campaign materials and preventing their dissemination with the use of fabricated excuses.

Article 26 (ban of discrimination)

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The equal rights provisions are stipulated in the RF Constitution as a general principle lacking sufficient definition. The equal rights provisions of the RF Constitution are reproduced in a whole number of legislative acts. The major problem with these provisions is that it is unclear what kinds of claims one could put forward when he or she find his/her equality of rights violated.

The RF Law 'On Education' of 1992 though secures equal access to education, but does not guarantee equal treatment in teaching. A whole number of important legislative acts do not contain any provisions on equal rights and banning of discrimination. This list includes the 1992 RF Law 'On Protection of Consumer Rights', RF Laws 'On Forced Migrants' and 'On Refugees' (the both of 1993). The important point is that the 2004 RF Housing Code speaks generally only about 'recognizing the equality of participants of relations regulated by housing law' and contains no anti-discrimination provisions.

Though many legislative acts do have provisions asserting the principle of equality, and certain laws directly prohibit discrimination, the legislation does not provide for an overall ban of discrimination and there is no juridical practice of combating discrimination.

The RF has neither an express and overall prohibition of all forms of discrimination nor any specific anti-discriminatory legislation. The RF has no legislative acts containing any definition of direct and indirect discrimination. The RF legislation and even academic publications have no elaborate definitions of such notions as 'equality of rights and freedoms', 'equal access', 'equal opportunities', 'restriction of rights', 'deprivation of rights', 'lawful or unlawful distinction'. Neither does the Russian legislation contain such related notions as 'coercion to discrimination', 'instigation of discrimination', 'segregation' and some other.

The only exception here is Article 136 of the RF Criminal Code, which for the first time tried to define 'discrimination'. In compliance with Part 1 of the article's amended version (Federal Law No. 162-FZ of 8 December 2003) 'discrimination' means 'violations of human and civil rights, freedoms and lawful interests on the grounds of gender, race, nationality [ethnicity], language, origin, property and official status, residence, religion, beliefs, membership of non-governmental associations or any social groups'.

This attempt is less than successful. Rather than define 'discrimination' through its specific forms the lawmakers equate it to such notions as violations of rights, freedoms and lawful interests. Moreover, the lawmakers fail to explain what a 'violation' means in this context.

The 2001 Labour Code (came into force on 1 February 2002) prohibits any form of employment discrimination both at the stage of recruitment and at any subsequent stages of labour relations and provides for preventive and protective mechanisms. However, the Labour Code also fails to define discrimination. Article 3 of the Labour Code does not allow restrictions in 'labour rights and freedoms' or 'granting privileges', thus distinction, which is not essentially a 'restriction of rights' (for example, getting a certain job with a certain employer is not an individual's right) can hardly be recognized a discrimination. The same article says that distinctions, exceptions, preferences, and restrictions of employees' rights, which are based on specific requirements established by federal laws for certain occupations or necessitated by the state's special care for the well-being of individuals in need of social and legal protection, are not considered discrimination.

According to the Labour Code, anyone who considers him/herself a victim of discrimination in recruitment and employment is entitled to take the case to court. Unfortunately, in most cases the ways the claims should be put forward and grounded remain unclear. Until October 2006, one could complain about discrimination to a labour inspectorate, but this opportunity was lifted by the Federal Law No. 90-FZ from 30 June 2006. The Labour Inspectorates (established in 1994 as a federal structure, since 2004 are regional branches of the Federal Service for Labour and Employment) is entitled to supervise the policies of employment and employees' treatment at workplace; labour inspectors may issue orders that are binding on employers, file complaints to public prosecutor's offices or apply to court. However, these instruments and remedies have not been used with regard to discrimination, so one cannot assess their effectiveness as well as the consequences of the elimination of the right to apply to a labour inspectorate on the issues of discrimination.

The Federal Law 'On Advertising' of 2006 prohibits using in commercial advertisements the indecent and offensive images, comparisons and expressions, including in terms of gender, race and ethnicity. The 1995 Federal Law on Advertising contained a similar prohibition. An obvious lacuna in the legislation is the absent ban on discriminatory advertising not related to commercials, for example room-for-rent advertisements. Meanwhile, advertisements with overtly discriminatory criteria, classifying people seeking jobs or dwelling for rent on grounds of ethnicity, are quite common.

Since June 2006, actions similar to discrimination as defined in Article 136 of the Criminal Code have been included in the definition of 'extremist activities', the fight against which is regulated by the Federal Law 'On Counteraction to Extremist Activities'. Extremism is, apart from many other things, a 'violation of human and civil rights, freedoms and lawful interests depending on social position, race, nationality [ethnicity], religion affiliation, language or attitude to religion' (version in force since 12 August 2007). The Law 'On Counteraction to Extremist Activities' basically targets a type of activities totally different from non-violent discrimination and the new provision concerning discrimination obviously does not fit the definition of extremist activities. Since the time that norm was included in the law (summer 2006) it has never been applied in practice.

In Russia most legal provisions covering equality and discrimination are substantive norms, and the legislation clearly lacks sufficient procedural guarantees against discrimination. The Russian

legislation does not contain such notions as subject of proof, standard of proof and burden of proof. The legislation at large including the Labour Code does not envisage the shift of the burden of proof onto the respondent in the cases of discrimination. There are some judicial, criminal and administrative remedies to prevent and eliminate discriminatory practices, but they are inefficient and can be employed in theory rather than in practice.

Fighting discrimination by civil law remedies in court is practically nonexistent, though in theory such opportunities exist in the constitutional provisions on equality, the Labour Code and other laws. Most often people defend in court their specific infringed rights, rather than sue against discriminatory treatment as such. No suits and court judgments are recorded where a certain resolution, demand, action or inaction has been adjudicated unlawful not because it violates or restricts certain rights, but due to its discriminatory nature. Neither are there any suits or judgments related to discriminatory behavior of public and non-public officials exercising discretionary powers or control or supervisory functions.

Article 136 of the Criminal Code 'Violation of Human and Civil Rights and Freedoms' (version of December 2003) envisages criminal liability for discrimination. Part 1 of this article provides for a punishment ranging between a fine of up to 200 thousand rubles and imprisonment of up to 2 years. Part 2 provides for a punishment for the same offence by someone in an official capacity within the range from a fine of 100 thousand rubles to imprisonment of up to 5 years. Since 2003, Part 1 of Article 136 has been subject to private-public prosecution (i.e. a prosecutor opens criminal investigation on the victim's application), and Part 2 is subject to public prosecution.

Article 136 is applied in rare individual cases: full official statistics on its application are not available. The possibility of applying Part 1 of Article 136 in respect of an indefinitely broad range of charges regardless of the degree of public danger hinders its application.

Russia lacks effective administrative anti-discrimination mechanisms, though in theory prosecutors and executive authorities responsible for control and supervision over consumer protection, housing, labour relations, and advertising, may take measures against discriminatory treatment. However, only a few examples of such actions have been reported. The Federal Antimonopoly Service has responded at least thrice to complaints on discriminatory advertising and banned such advertisements. Also at least once the Moscow Government department responsible for control of the city consumer market has responded to a complaint on customers' discrimination in one of the bar chains and made the owners stop such practice.

Not a single Russian law expressly provides for any specific disciplinary liability of public officials for their discriminatory behavior or racist statements. According to Article 18, Part 1 of the Federal Law 'On the Civil State Service of the Russian Federation" of 2004, 'a civil servant must: <…> make no preferences to any civic or religious associations, professional or social groups, organizations and individuals (item 4); <…> demonstrate respect to moral customs and traditions of the peoples of Russian Federation (item 10); take into account cultural and other peculiar features of different ethnic and social groups as well as confessions (item 11); to promote inter-ethnic and inter-confessional harmony (item 12) …'

In theory this provision can be applied in case of government officials' discriminatory behavior or racist statements. However, there is not a vestige of evidence that such possibility has ever been used in the RF. The same situation is true for militarised structures (armed forces, security service, and interior) and municipal bodies.

In the Russian Federation public prosecutors offices did not react to the cases of discrimination unless they entailed violence or incitement of hatred.

There are no special agencies in the Russian Federation, either at the federal or regional level, in charge of prevention and elimination of discrimination. In theory, the Human Rights Ombudsman of the Russian Federation has the competence to examine any complaint on human rights violations in cases when all other available remedies have been exhausted or in cases of mass and consistent violations. Regional human rights ombudsmen have similar competence. The Ombudsman's Office has not demonstrated any specific and sufficient interest to this area so far.

Russia has no special anti-discrimination or equal opportunities programmes.

Meanwhile, the state not only fails to take adequate measures to combat discrimination, but also in many cases itself practises, sponsors or tolerates systematic and mass discrimination.

A nation-wide problem is racial profiling practiced by the law enforcement. It manifests itself in selective and disproportionately frequent detentions of persons belonging to the so-called 'visual' minorities (that is, persons with a distinctive physical appearance, easily identifiable as natives of the Caucasus and Central Asia and as Roma), unlawful and unprovoked use of violence toward detainees and extortion of money. Prejudiced policing also leads to massive allegedly anti-crime campaigns targeting certain ethnic groups; the essence of such campaigns is checking persons of a certain ethnic origin for involvement in criminal activities rather than surveillance of the already known criminal groups. An example of such activities are so-called operations 'Tabor' (the name for a Romani encampment) repeatedly targeting Roma in a number of Russian regions.

Labor migrants, most from Central Asia, are in the mostly difficult position. The restrictive and complicated immigration legislation obstructs their legalization; law enforcement officials and employers subject these people to harsh exploitation comparable with slavery, degrading treatment and violence.

Of deep concern is the fact that discriminatory actions often take place in the form of co-ordinated repressive campaigns targeted at certain ethnic groups or population categories. One should mention the campaign against Georgian citizens and migrants from Georgia in October-November 2006, pressure on Chechens residing outside Chechnya, and mass evictions of Roma people.

In early October 2006, the official authorities in most Russian regions undertook repressive measures against Georgian citizens and ethnic Georgians. Georgian citizens residing or staying in Russia were subjected to wide scale checks. Compliance with the rules of sojourn in the RF and legality of labour activities were announced as the target of such operations. Actually those checks were ethnically selective and effected RF citizens of Georgian origin, ethnic Georgians - third country citizens, stateless persons and refugees from Abkhazia who had come to the RF in 1992-1993. Numerous evidences confirm that those actions targeted exactly migrants of Georgian origin and check-ups were specially organized, since they followed the same pattern in different regions of the country. By mid-November the campaign was basically wound up and the check-up scope decreased down to a previous level. However, the transport and postal connections between the RF and Georgia still have not been resumed (on March 2008).

Chechens in Russia outside Chechnya are subjected to pressure and persecution in many forms. Local authorities often use a variety of means to prevent Chechens from settling in their territories. Housing owners often refuse to give Chechens even temporary registration and prefer either to reject problem-making tenants or let them move in but without any registration. Even if landlords are ready to offer registration to Chechens, they need a very strong motivation, knowledge of laws and energy to make police agencies register a Chechen family in their dwellings. Besides, this procedure is time-consuming. Quite often police officers regularly visit houses with Chechen tenants and offer all sorts of trouble to their owners. Even with housing owners' consent the struggle for registration can last for months or even years. In Moscow the Chechens' registration, even if granted, is arranged as a humiliating ritual, including registration authorization by the police station head, special check for a criminal past, compulsory fingerprinting, taking full-face and side profile photographs. Sometimes getting consent of the Federal Security Service and the military enlistment office is required.

Even if registration is granted, practically all Chechens are recorded in separate files as potential suspects. Similar practices exist in a number of other regions. Chechens are often subject to degrading ID and registration checks. Policemen also regularly visit apartments or houses where Chechens inhabit for examining whether the dwellers were really staying there and to what extend them seemed politically reliable. Chechens are routinely checked outdoors. They are also often subject to administrative arrests under various pretexts, for instance, allegedly for foul language in a public place. Refusals to employ Chechens or illegal dismissals happen fairly regularly. Quite often the initiative does not come from employers, since they are regularly pressurised by law-enforcement and security services, i.e. they are either 'not advised' or expressly prohibited to hire Chechens.

Mass evictions of so-called 'Luli' Gypsies (a group of Roma originating from Central Asia) took place in Moscow, Saint-Petersburg, Arkhangelsk, Vladimir, Nizhny Novgorod, Surgut and other cities. Sometimes the police just destroy temporary Roma encampments, thus forcing them move elsewhere; this happened not once in 2002-2004 near Saint-Petersburg. In 2006 a wave of demolitions of Roma villages swept over the country. Such demolitions took place in Kaliningrad Oblast, Ivanovo, Tyumen, Cheboksary, Tula Oblast, Ekaterinburg and Chudovo in Novgorod Oblast. Houses where people have lived for decades with consent or even on the order of authorities were destroyed, many residents had '*propiska'* (registration by place of residence) in those houses. Evictions were carried out with intentional cruelty, with arson and bulldozers, and whole families with small children were literally kicked out into the street.

Each of these events is driven by local governments' and construction companies' interest in vacating land plots they need for construction. All over the country, real estate titles of the majority of people owning houses and cabins are not properly legalized, often through the fault of authorities. Local governments can actually seize houses and household land plots from the people to satisfy the interests of large developers. Demolition of Roma settlements is usually accompanied by an anti-Roma campaign in press and blatantly racist statements of the local officials.

Some positive changes should be mentioned also. The situation in the zone of the Ossetian-Ingush conflict in North Caucasus has improved significantly; the problem of Ingush internally displaced persons is close to being resolved. The fabrication of criminal cases by planting drugs or ammunition on people belonging to certain minorities has become drastically smaller in scope. One can also hardly assess as a positive shift the virtual disappearance of discrimination in granting the statuses of refugees and forced migrants since the government stopped granting

these statuses. The problem of Meskhetian Turks in Krasnodar Krai has been already resolved since most Turks have emigrated to the USA while most of the remaining in the region have been granted Russian citizenship or other legal status. However, some small ethnic groups in Krasnodar Krai like the Yezidis who were in a position similar to the Meskhetians are still deprived a legal status.

Temporary displaced persons from the Chechen Republic

Situation of the temporary displaced persons (TDPs) from the Chechen Republic remains very hard. In Ingushetia, where in the beginning of the year 2000 most of the TDPs were concentrated, areas of compact settlement are being closed down, people are forced to return to the Chechen Republic. At the same time in Chechnya the former places of temporary accommodation are closed (PTA). The PTAs already two years ago were deprived of their status were taken off the federal funding and transferred to the local authorities as hostels. During the last two years all the TDPs were taken off migration registration on form #7, that is as the ones needing urgent assistance. The TDPs are evicted from hostels without provision of other accommodation, which can be received only for enormous kickbacks which most of the temporary displaced families are not able to afford.

The problem remains with those who left the Chechen Republic and received a piteous compensation (now it is about USD 4000) which is not enough to buy any sort of housing. Governmental decree about readjustment of compensation the amount of which in rubles has not changed since 1997. As the citizens of the Chechen Republic who received the compensation and abandoned their property in the Chechen Republic, predominantly belong to the Russian speaking group; the current situation is to be regarded as discrimination of the Russian population of Chechnya. It is being used actively by nationalistic groups, attracting the Chechen Russians into their membership.

Refugees and persons seeking asylum

During the last two years the number of officially recognized started to increase. Such trend could have been welcome but for the fact that in absolute number their amount remains close to zero. Today there are less than 800 of them are registered in the offices of the Federal Migration Service.

None of the refugee waves managed to integrate fully into the Russian society. In Moscow Armenians are being evicted from hotels and hostels, who escaped from Azerbaijan in 1989-1992, despite the fact that all of them are finally recognized as citizens of the Russian Federation. Georgians who left Abkhazia in 1992-94 have not gained any regularization of stay. Up to now Afghans who ran away from Afghanistan after collapse of the Najibullah regime have not regularization of stay either. New inflows from Afghanistan and Iraq increase the number of illegal aliens seeking asylum. At the same time the Federal Migration Service and the Ministry of Foreign Affairs constantly express their discontent and obstruct relocation of refugees to other countries. Up to the present moment the issue of exit from the Russian Federation of the Uzbekistan citizens who have an entry visa of third countries but have not received an exit permit from the Uzbek authorities.

Article 27 (protection of minorities)

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

The conditions for exercising the rights of persons belonging to minorities have been basically unchanged in the recent years. Non-governmental activities pursuing the goals of preserving and promoting ethnic minorities' identities do not face restrictions other than imposed on all kinds of civil society activities. The government has been reducing its activities in supporting the cultural and language pluralism, but in general the situation has not changed, since governmental support has always been limited. In 2004, the opportunities of so-called national-cultural autonomies (NCA) to obtain governmental funding were restricted by law and only regional governments were entitled to support this type of organizations. In 2006 and 2009, the legislation on local self-government and on NCA was amended, and the opportunities available before 2004 were restored anew. In practice, these changes were merely formal and did not affect the activities of ethnicity-based organizations.

There are some legislative provisions that in formal sense could be treated as a threat to minorities, but in practice they are not implemented to their detriment and it would be premature to say that they would be employed this way. For example, the wordings of the 2005 Federal Law on state language allow restrictions on the use of languages other than Russian in the unofficial public sphere and require mandatory use of the Russian language in all official communications.

The Federal Law No. 74-FZ 'On National-Cultural Autonomy' of 17 June 1996 contains a discriminatory provision. However, it means discrimination only in a formal sense while this provision is not employed in practice.

National-cultural autonomies (NCA)s are civic associations established on ethnic grounds on the basis of the special law for the purposes of developing language, culture and education of the relevant ethnic groups. Meanwhile, 'ordinary' public associations can also engage in the same activities related to language, culture and education, and NCAs' rights are limited compared to 'ordinary' public associations and procedures of their establishment are rather complicated. Until November 2003, the Russian legislation provided for no restrictions in terms of what groups were entitled to initiate the NCA establishment. In compliance with the amendments enacted by Federal Law No.136-FZ "On Amending and Supplementing Articles 1, 3, 5, 6, 7 and 20 of Federal Law 'On National-Cultural Autonomy'" from November 2003, 'autonomies' may be established only on behalf of groups 'being a national minority on a relevant territory', while the law fails to determine neither what a 'minority' is nor the indicators of that 'situation'. Thus, the law introduced a restriction on the NCA establishment, i.e. in respect of enjoyment of the constitutional right to freedom of association, on ethnic ground with no constitutionally meaningful goals. In addition, another amendment to that law passed at the same time prohibited the establishment of multi-ethnic NCAs.

Neverthless, very little was done to bring these restrictions into practice. Most of already existing multi-ethnic and Russian NCAs were not disbanded. Nothing happened to the regional Karachai NCA in the Karachai-Cherkessian Republic, and the Jewish NCA was officially registered in the Jewish Autonomous Oblast while the local Buryat NCA in the Republic of Buryatia was denied registration. Moreover, after 2003 there was established one new multiethnic Dagestani NCA (in

the city of Kaluga) and re-established the Turkic NCAs (for Azeris and Tatars) (in the Yamalo-Nenetsk Autonomous Okrug). Despite the new restrictive provision of the NCA law, several 'autonomies' of local ethnic majorities have emerged (all in Dagestan): the local Nogai NCA in the Nogai district, the local NCAs of Laks in the Lakski and Kulinski districts. In sum, this provision actually is not in force and does not cause real material harm to individuals. It is important as an indicator of the legislators' negligent or incompetent attitude to the issues of discrimination.

Since 2003 the Russian governments is merging ethnicity-based autonomous *okrug*s (districts) which had been constituent units of the federation into larger constituent units. The former *okrug*s are replaced either by territorial administrative units with a "special status" within the new regions or by municipal *raion*s (municipal districts). As a result of five merger processes six autonomous districts lost their status of federal constituent units. In three cases the procedure looks like unification resulting in the emergence of three new units. The Komi-Permiyak autonomous okrug together with Perm *oblast* made up the new Perm *krai*; respectively the Koryak autonomous *okrug* and the Kamchatka *oblast* created the Kamchatka *krai*; Aginski Buriatski autonomous *okrug* and the Chita *oblast* created the new Zabaikalski (Transbaikal) *krai*. In two cases the merger looks as accession to the previously existing regions. The Ust-Orda Buriatski autonomous *okrug* joint the Irkutsk *oblast*; the Evenk and Taimyr (Dolgano-Nenets) autonomous *okrug* became municipal *raion*s of the Krasnoyarsk *krai*.

The federal constitutional law (FCL) on the establishment of Perm *krai* contains no provisions concerning Komi-Permyaks, their culture and language. The other FCLs adopted later included norms concerning ethnicity, culture and language of the former autonomous *okrug*s, but anyway without naming certain groups. All references to the protective policies in ethnocultural and linguistic spheres are of declaratory and generalizing character. The post-merger regional charters differ in content and design of their provisions concerning ethnicities within territories of "special status" as well as their languages and cultures. No regional laws which may concern ethnic and cultural features of the "special status territories", in particular, the laws on culture and education, have been amended after the accessions. No legislative initiatives of this kind have been announced so far.

The municipal charters have very few references to the issues related to language, culture and ethnicity. All these references are declarative, and bear no imperative requirements to the local authorities.

In formal sense, the position of the "special status" territories remains unclear, and there can no way be considered statehoods or intra-regional territorial autonomies. This shift from statehood to some uncertainty is clear-cut and doubtless, and even a more detailed rhetoric concerning "titular" ethnicities cannot compensate this symbolic loss.

Institutionally the losses are more important. First, the new legislation totally avoids the principle of maintains guarantees which existed before the mergers and the idea of compensatory measures. All legal acts and agreements contain just general declarations without any clear depiction of mechanisms, obligations and guarantees.

Secondly, the very status of federation constituent units predetermines the institutions crucial for the maintaining of the "titular" groups' identity and for pursuing policies with regard to culture and language. Among these institutions are regional executive bodies in charge of culture and education with their separate budgets, governmental cultural institutions including a regional

publishing house, regional "national" [i.e. "ethnic"] theater, and an institute for teachers' professional training. All these bodies can hardly be maintained as municipal institutions because of legal and budgetary reasons; and there are no guarantees that the new regional governments would contribute sufficiently to their development.

At the moment, it would be premature to talk about any stable tendencies in policies concerning culture, languages and education at the "special status" territories. However, there is a clear trend of decrease in ethno-cultural activities. There are the plans of closing the Komi-Permyak publishing house in the Perm *krai* alongside the merger of all cultural institutions into one entity. At least, official bodies in charge of the "special status" territories are actually designed to coordinate other departments' activities; they have no separate competence and they are not accountable to the territory' population. As for a regional government, the "special status" territory looks merely as a combination of municipal entities like all other municipal *raion*s.

Since 1997 the primary and secondary school curriculum included three components, namely the federal, the regional ('national [i.e. ethnic] and regional component') and the school component. As a rule, curricula for studying regional history and geography included data on main ethnic groups of that region. In the late 2007, upon the amendments to several laws the principle of component-by-component structure of the curriculum was abolished; the law nowadays acknowledges only the federal, but not regional standard of teaching. This does not preclude teaching of minority cultures and languages in the future, but the format of this teaching still remains unclear.

Broadcasting of the nation-wide (federal) as well as the regional television companies in general does not reflect multiethnic nature of the Russian society. TV companies of the republics within the RF have broadcasting programmes in languages of their 'titular nationalities'. Broadcasting companies of some other regions (Samara, Tyumen, Orenburg Oblasts) broadcast for a limited time (as a rule, a few hours a month) in the languages of the largest national minorities. The 2004 reform of the All-Russian State Television and Radio Broadcasting Company resulted in changes in the broadcasting schedule in favor of the federal center and to reduction of republic stations' broadcasting in regional languages.

Recommendations on Selected Articles

Article 2

1. Acknowledge Russian citizenship of the former Soviet nationals who are entitled to Russian citizenship under Article 13, parts 1 and 2 of the 1991 Citizenship Law (i.e. those who had been resident in the territory of Russian Federation on 6 February 1992 or was born in Russia).

2. Introduce amendments in the 2002 Federal Law "On the Legal Status of Foreign Nationals in the Russian Federation" by removing from the law groundless restrictions and discriminatory provisions and adding transitional provisions laying the basis for legalizing former Soviet citizens who *de facto* resided on the territory of the Russian Federation on the date on which the law entered into force. In particular, ensure that this category of citizens is granted a legal status (residence permit) in accordance with a simplified collective procedure.

3. Take measures to replace the passport system with another system of identification and documentation of the identity, which is not based on one single document certifying the identity and is not tied to the place of residence of a person. Ensure the possibility of exercising the rights and freedoms regardless of whether a person has the main document certifying the identity and registration at the place of residence or stay.

4. Revise the legislation and law enforcement practices which lay the basis for systematic ethnic discrimination, primarily the passport system and the practices of the law enforcement authorities.

Article 7

1. Introduce the internationally recognized definition of torture in the Russian legislation;

2. Work out and to introduce guidelines on the application of international standards of effective investigation of torture and cruel treatment cases;

3. Improve the quality of investigation (by interrogation officers of the Investigation Committee attached to the Prosecution Office of the RF) of criminal cases on torture committed by functionaries, including the necessity to provide quick, thorough and independent investigation;

4. Create conditions favourable for bringing to responsibility both officers guilty for committing a crime and those who did not take measures in order to stop it;

5. Consider the possibility of introducing a new chapter into the Criminal Procedure Code of the Russian Federation regulating the rights of an applicant during preliminary checks;

6. Consider the possibility of creating either in the system of Investigation Committee attached to the Prosecution Office of the RF, or independently, a special department which will specialize only in investigation of cases of abuse of power including torture cases;

7. During investigation of torture cases to pay special attention to the aims of officers using torture;

8. Study in detail the social roots of torture and cruel treatment, to make social portraits of the officials using torture. This data can be taken into account in further elaboration of the measures to increase the efficiency of the work of the law-enforcement bodies and to shape the personnel policy.

9. Work out the state statistical mechanisms of recording torture and cruel treatment cases as a separate type of crime.

10. Create effective public commissions of control over the penitentiary institutions, rather than their imitation, under the 2008 law on public control.

11. Abolish "discipline and order control groups" consisting of prisoners.

12. Ensure thorough investigation of the use of excessive violence and murders in colonies.

13. Introduce a broader use of punishment alternative to imprisonment.

14. Minimize the keeping in custody of persons under investigation.

15. Introduce public supervision over all detention facilities.

16. Bring to account and punish officials responsible for detainees' rights violation.

17. Introduce into practice alternatives to arrest.

18. Improve legislation on the military service with a focus on protection of human rights.

19. Enhance control over investigation of violations in the army; ensure protection of witnesses and victims.

Article 12

1. Give a legislative definition of the liberty of movement and freedom to choose residence; clearly define the limits of this right and exclude the possibility of its arbitrary restriction by public authorities, non-state organizations and private persons; establish responsibility, including criminal responsibility, for encroachment on this right.

2. Revise all laws and other statutory acts which lay the basis for the passport system. In particular, liquidate the institution of mandatory registration at the place of stay, abolish all federal and regional regulations interfering with the exercise of the right to the liberty of movement and freedom to choose residence; abolish all regulations and stop the

practices which make the exercise of rights and performance of obligations conditional on the possession of a passport and registration at the place of residence; abolish administrative responsibility for residence and stay without a passport and registration and, as a first step, abolish the system of plan targets established for the police with regard to the number of persons to be brought to responsibility for committing administrative offences, including "violation of the passport regime."

3. Revise Federal Law "On Legal Status of Foreign Nationals" in order to grant all persons who are legally on the territory of the country the right to the liberty of movement and freedom to choose residence. In particular, abolish arbitrary restrictions on the liberty of movement and freedom to choose residence for persons who have temporary residence permits. Ensure that the list of territories with regulated access for foreign nationals is established only by a federal law.

4. Effectively guarantee the rights of foreign nationals who permanently reside in the Russian Federation.

Article 14

1. Adopt a system of elections and rotation of courts' chairpersons;

2. Provide a clearer definition of legal grounds for dismissal of judges;

3. Increase transparency of proceedings in the qualification boards;

4. Increase public participation in the administration of justice;

5. Provide legislative and other conditions for practical exercise of the rights of the defense for collection and presentation of evidence in criminal proceedings;

6. Cease pressure by prosecutors on the defense lawyers.

Article 18

1. The length of the alternative civilian service should be reduced in relation to that of military service in such term that it would be not punitive and discriminative for conscientious objectors.

2. Performance of civilian service in organizations under military jurisdiction should be voluntary, on consent of performer.

3. Ministry of Defense should be completely removed from management of civilian service, which should be administrated only by civilian authorities (e.g. Federal Labor and Employment Service).

4. The application procedure should be simplified; the rule of the term of six months before the draft for submission of applications to military draft commissariats should be removed;

5. The right to choose the sphere and type of labor activity (from the ones in the list of organizations, professions and positions) can be enforced without changes in the legislation. The law does not prohibit the agency responsible for organizing the alternative civil service (the Federal Labor and Employment Service) to take into consideration citizen's requests concerning a particular place for alternative civil service.

6. The exterritorial rule of performing civilian service should be removed.

7. The restriction to leave the place of work, which violates freedom of movement, should be abolished.

8. The performers should not be assigned in positions with salaries lower than subsistence level.

Article 19

1. Abandon the policy of the state control over mass media;

2. Adopt a law on the right of citizens for free access to information.

3. Decriminalise defamation (abolish articles 129 and 130 of the Criminal Code)

4. Conduct thorough investigations of attacks at and murders of journalists, identify their organisers.

5. Review anti-extremism legislation; define extremism as very dangerous actions involving use of force or instigation to its use.
6. Stop or reconsider the cases on extremism which involved human rights violations.

Article 20

1. Organise effective registration of hate crimes.

2. Intensify counteraction to such crimes and to the organized racist activity.

Article 21

1. Introduce into the legislation a presumption in favour of assembly.

2. Describe by legislative means a reconciliation procedure that would provide the parity of the sides.

3. Ensure the right for free observation and coverage of the assemblies for journalists and human rights activists.

4. Guarantee assemblies from being forcefully conducted beyond the sight and listening distance of their audience.

Article 22

1. NGOs should be permitted to carry out their peaceful work in an enabling and hospitable environment, free from fear of harassment, reprisal, intimidation and discrimination. Relevant laws and administrative measures should protect – not impede – the development of civil society and the peaceful operation of NGOs, and be enforced in an apolitical, fair, transparent and consistent manner.

2. Government, public officials and state-controlled media should refrain from hostile rhetoric against NGOs, accusing them in anti-state activity and their alleged work for hostile foreign interests. Authorities should express tolerance to dissent, make public statements about importance of freedom of association and freedom of expression, and the important role of NGOs for development of a democratic society and rule of law.

3. Government should provide special protection to NGOs and civic activists from violent attacks and death threats from ultra-nationalist, paramilitary and similar radical groups – in the same way as the special protection is provided by the governments to public officials, judges, and members of the journalist profession. Such crimes should be promptly investigated and their perpetrators brought to justice. Authorities should publically state that such crimes will not be tolerated.

4. Public authorities should stop legal and non-legal harassment of NGOs and civic activists and stop using criminal, counter-extremist, anti-terrorist, tax and other laws for discretionary, selective and politically motivated punishment and pressure.

5. Government should actively cooperate with specialised international bodies on protection of human rights defenders, including OSCE/ODIHR Unit on human rights defenders, United Nations Special Rapporteur on human rights defenders and other international agencies.

6. NGOs should be free to pursue their objectives, provided that both the objectives and the means employed are lawful. These can, for instance, include research and advocacy on issues of public policy and legislation, regardless of whether the position taken by an NGO is in accord with stated government policy.

7. Ambiguous and non-legal definitions should be excluded from the NGO legislation and administrative acts. Excessive, duplicative powers of controlling agencies should be abolished while the agencies should be re-oriented to providing assistance to NGOs in implementation of their mission and ensuring freedom of association, rather than searching for violations and punishment.

8. Government should refrain from using the notion of "impermissible political activity" of NGOs as grounds for impeding their work and restricting freedom of associations.

9. NGOs should be free to seek, receive and impart information and ideas, including advocating their opinions to governments and the public within and outside the countries in which they are based.

10. Government should not interfere with NGOs' access to domestic- and foreign-based media.

11. NGOs should be free to maintain contact and cooperate with their own members and other civil society organizations within and outside the countries in which they are based, as well as with governments and international bodies.

12. National law should not unjustifiably restrict the ability of any person, natural or legal, national or non-national, to establish an NGO or join membership-based NGOs. The ability of someone to join a particular NGO should be determined primarily by its statutes, and should not be influenced by any unjustified discrimination.

13. NGOs should be free to seek, receive, and administer material support – financial or in-kind donations – from domestic, foreign, international and multilateral donors, be it an institutional entity or an individual. The mere fact of receiving financial support from abroad should not be used to accuse NGOs in working against national interests.

14. NGOs with legal personality should have the same capacities as are enjoyed by other legal persons and be subject to the same administrative, civil and criminal law obligations and sanctions applicable to them. No discrimination of NGOs as compared to the for-profit entities should be provided for in the law or exercised in practice.

15. National laws should provide associations with the right to freely and legitimately operate without official registration. Activity of non-registered associations and participation in such groups should not be criminalized and a subject to administrative sanctions.

16. The process of acquiring legal personality by NGOs should generally be based on notification of public authorities rather than seeking permission from them. This process should be easy to understand, inexpensive and expeditious. In particular, an NGO should only be required to file its charters and to identify its founders, directors, officers and legal representative and the location of its headquarters.

17. The closure of an NGO should only happen normally due to a voluntary decision of its members. Liquidation of an NGO by government authorities should be used only as an absolutely last resort after every other possible measure of correction of its misconduct has already been used and failed to bring about change.

18. Suspension of an activity of an NGO should be ordered only by a court decision rather than by an order of an administrative body.

19. Reporting by NGOs to regulating authorities should be not burdensome and duplicative of other reports, for example, to tax authorities, should not include ambiguous requirements easy to interpret with discretion, and should not require disclosure of personal data of NGO clients or participants of their events as well as names of those donors that wish to stay anonymous.

20. Inspections and audits of NGOs by regulating authorities should be non-burdensome, non-intrusive, and not lead to paralyzing of the work of an NGO. They should be limited in time, regularity and scope in clearly defined laws or implementing regulations.

Article 25

1. Liberalize legislation on political parties and the system of registering parties and candidates for elections;

2. Change the system of formation of electoral commissions on all levels to ensure their independence from executive power;

3. Restore legislative provisions for domestic and international elections monitoring.

Article 26

1. Introduce amendments in the Russian legislation to ensure prohibition, elimination of and punishment for a wider range of manifestations of discrimination than that provided for at the present time and, in particular, introduce in the legislation the definition of direct and indirect discrimination as well segregation, incitement to discrimination, coercion into discrimination and support of discrimination. Impose a direct ban on discrimination in such fields as housing relations and education of all levels.

2. Amend the 2002 Federal Law 'On Counteraction to Extremist Activities' to avoid abuse of power against freedom of speech and public associations.

3. Introduce amendments in the RF Civil Procedure Code and the 1993 Federal Law "On Appealing in a Court the Actions and Decisions Violating the Rights and Freedoms of Citizens" in order to make it possible to submit complaints to a court against any kind of direct and indirect discrimination and segregation *per se* (even in the absence of a direct violation or restriction of some definite right).

4. Introduce amendments in the procedural legislation to enable public organizations to file suits relating to discrimination and fomenting of enmity, for protection of an indefinite circle of persons.

5. Stop the practices of selective checks and other forms of policing which target certain ethnic groups.

6. Publicly condemn the campaign of persecutions against nationals of Georgia and people of Georgian ethnic origin; bring to responsibility its initiators and perpetrators. Redress the inflicted harm to the victims under a simplified procedure.

7. Safeguard the rights and freedoms of the people belonging to Chechen minority, in particular, the right to freedom of movement and choice of residence, the right to employment and to education. Take urgent measures to address widespread sentiments of hostility and prejudices against ethnic Chechens.

8. Investigate all cases of mass evictions of Roma and termination of Roma settlements; bring to responsibility organisers and perpetrators of these actions; to redress the inflicted harms to the victims. Ensure the official recognition of property rights of Roma to dwellings and plots of land they possess. Take measures for the integration, social and legal support of Romani minority, in particular, in the frame of special governmental programmes or plans of action.

Recommendations on the situation in the North Caucasus

Peace and stability are inseparably linked to human rights issues. A clear illustration of this obvious truth is the situation in the North Caucasus. Peace and stability there (which also includes the respect for the inalienable human rights) in the long run can be achieved only through political reform that ensures formation of the authorities in the subjects of the Federation on the basis of the people's will. This political reform is not possible without an end to the suppression of the opposition and the violation of the freedom of speech. Unreasonable restrictions on holding rallies and demonstrations must be removed. An integral part of such reform must also become a real fight against corruption.

However, it is clear that such policies can be implemented only if there is a political will in the federal government, and they should not be limited to the North Caucasus but should address all regions of Russia. The change of the leadership of Ingushetia is a half-hearted measure. Currently, Russian federal authorities lack this political will.

Therefore, now we can talk about only the first and minimally necessary steps. These minimal steps should be measures aimed at ending the massive and systematic violation of human rights by law enforcement agencies, especially the Ministry of Interior and Federal Security Service of Russia, and removing the climate of impunity for crimes against civilians, which is still prevalent in the North Caucasus.

Such measures should include the following in particular:

1. Carrying out adequate investigation into cases of human rights violations and bringing perpetrators to accountability.

2. Having the Prosecutor General of the Russian Federation conduct a comprehensive review of the activities of enforcement agencies and the prosecutor's office in the region. In particular it is essential to look into all cases relevant to the participation of individuals in illegal armed formations, which have been investigated in those republics, and send those cases in which there is evidence of torture and illegal pressure against defendants for re-investigation and re-trial.

3. Putting an end to the widespread practice of "temporary disappearances" of detained persons. In order to decrease the risk of torture as well to guarantee the legal rights of the family members of the detained, it is essential to ensure that relatives of the detained or arrested are speedily informed on their whereabouts.

4. Instructing members of federal and local enforcement agencies and security services about the absolute necessity of respecting and observing human rights within the framework of their activities as well as about the accountability for following criminal orders of superior instances and employees.

5. Ensuring the compliance of the state counter-terrorism activities, both on the level of normative acts and on the level of practices, to the international human rights standards and the international humanitarian law, including the European Convention for Human rights and Fundamental Freedoms, the Geneva Conventions, and the Council of Europe Guidelines on Human Rights and the Fight against Terrorism.

6. Providing adequate legal and judicial protection and due compensation to victims of human rights violations.

7. Effectively guaranteeing access to places of temporary and pre-trial detention for representatives of international humanitarian organizations, including the ICRC, in order to visit prisoners on conditions acceptable to those organizations.

8. Cooperating with the human rights protection mechanisms and agencies of the Council of Europe and the United Nations, including the special procedures of the UN Human Rights Council and the treaty bodies of the Council of Europe and the UN.

9. Effectively cooperating with the UN Committee against Torture and the Council of Europe Committee for the Prevention of Torture.

10. Extending the necessary assistance to Russian and international human rights organizations in their human rights monitoring work in the North Caucasus. Cooperating with such organization in eliminating the climate of impunity and improving the human rights situation in the region.

11. Fully implementing ECtHR's decisions.

12. Withdrawing from the agreements of the Shanghai Cooperation Organisation against "terrorism", "extremism" and "separatism" which are based on the priority of state interests over human rights and the principle of "non-interference into domestic affairs" in case of human rights violations.