

RUSSIAN FEDERATION

Torture and ill-treatment

Comments on the Second Periodic Report submitted to the United Nations Committee against Torture

Introduction

In November 1996 the United Nations (UN) Committee against Torture in Geneva will examine the Second Periodic Report of the Russian Federation under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture).¹

Amnesty International has received numerous reports of torture and ill-treatment of criminal suspects in police custody and in prisons throughout the Russian Federation, and within the context of the conflict in Chechnya. Ethnic minorities are particularly vulnerable.

This report examines the issues surrounding torture and ill-treatment in Russia, and presents Amnesty International's recommendations. For detailed information on individual cases and Amnesty International's concerns regarding torture in Russia, please see *Russian Federation: Torture and ill-treatment in detention: the police, the prisons, the army*, AI Index: EUR 46/45/96, October 1996.

Legislation facilitating torture (Article 2 of the Convention against Torture)

The Russian Federation is a party to the Convention against Torture, and to the International Covenant on Civil and Political Rights (ICCPR) and its first Optional Protocol.² Both these treaties prohibit the use of torture and other cruel, inhuman or degrading treatment or punishment. The 1993 Russian Constitution provides in Article 21(2) that "no one shall be subjected to torture, violence or other cruel or degrading treatment or punishment. No one may be subjected to medical, scientific or other experiments without voluntary consent."³

Nevertheless, new legislation continued to be enacted by the State Duma or promulgated by the President which facilitates the occurrence of acts of torture and ill-treatment. One example is the Presidential Decree No. 1226 of 14 June 1994, "Urgent measures to defend the population from banditry and other manifestations of organized crime".

The presidential decree, which is still in force, allows law enforcement authorities to detain persons suspected of ties to organized crime for up to 30 days without charge and without access to a

¹ Russia is a successor state of the USSR, which ratified the UN Convention against Torture in 1987. The initial report of the Soviet Union to the Committee against Torture was examined on 15 November 1989, at the Committee's third session.

² Soviet Union acceded to the Optional Protocol formally in July 1991.

³As one of the leading experts and promoters of the Russian legal reform, Sergey Pashin, noted in 1995, "people in a lawless state (which Russia still is) suffer more from arbitrary enforcement of the law and misapplications of proper legal norms than from the enactments of bad laws."

lawyer. This conflicts with Article 22 of the Russian Constitution which stipulates that a person may not be held for more than 48 hours before a court rules on the legality of their detention. It violates Article 9 of the ICCPR. The presidential decree also makes no mention of the right of the accused to access to a defence counsel during the period spent in detention.

Law enforcement authorities employ this decree extensively, especially towards ethnic minorities from the Caucasus. Criminal suspects, detained under the provisions of this decree and denied access to the outside world, are often subjected to torture and ill-treatment by the police, and the officers from the Department on Fighting Organized Crime (RUOP). According to official information,⁴ during the first six months after the introduction of the decree, about 14,000 people had been detained for up to 30 days without being charged. (For more details on individual cases of torture and ill-treatment of suspects detained under the provisions of this decree, see *Russian Federation: Torture and ill-treatment in detention: the police, the prisons, the army*, AI Index: EUR 46/45/96, October 1996.)

In addition to the decree on fighting organized crime No. 1226, on 10 July 1996 the Russian President signed a new decree No 1025, "On Urgent Measures on Strengthening Law and Order and Intensifying the Fight Against Crime in Moscow and Moscow Region".⁵

The decree authorizes the law enforcement officials to detain for up to 30 days people identified as vagrants, beggars or homeless (under the provisions of another Presidential Decree No 1815 of 2 November 1993, "On Measures to Prevent Vagrancy and Begging"⁶) for an identity check.

Members of the Charitable Foundation "Nochlezhka", an independent group based in St Petersburg which provides help and assistance to the city's homeless, have registered several cases of physical abuse and other ill-treatment of vagrants by the police.⁷ According to reports in the press and from human rights groups in Moscow, the decree has already been used by law enforcement officials to target ethnic Chechens and persons from the Caucasus residing in Moscow.⁸

The Russian Law on the State of Emergency provides in Article 27 that "the introduction of a state of emergency may not serve as a justification for the use of torture or cruel, inhuman or

⁴See *Militsia* magazine, No. 4, 1995.

⁵In Russian: _____ 1025 _ 10 ____ 1996 " _____

_____", *Rossiyskaya Gazeta*, 16 July 1996.

⁶ In Russian: " _____", 2 November 1993. The provisions of this decree allowed the extension of the period of detention without charge to nine days, in violation of the 48-hour maximum period provided in the Russian Constitution or the 72-hour maximum period permitted by the Code of Criminal Procedure. References to this decree were used extensively by the Russian federal army to legitimize detention in "filtration camps" of Chechen residents during the armed conflict in Chechnya.

⁷Interview with members of "Nochlezhka" and homeless persons, victims of police ill-treatment during a visit by Amnesty International in July 1996.

⁸ The decree of 10 July was not published until 16 July. On 11 and 12 July bombs exploded in the Moscow public transport. Following the incidents Moscow Mayor Yury Luzhkov made public comments broadcast on television, threatening to expel the ethnic Chechen diaspora from the city and linking them to the two explosions. During these few days before the decree was published, the Mayor and other government officials reportedly made statements quoting the decree and its provisions on forcible deportation of persons from the city and claimed allegedly that they will use it extensively. (See "The mysterious Decree...", *Izvestiya*, 16 July 1996.)

degrading treatment or punishment...within the meaning accepted in the International Covenant on Civil and Political Rights”.

Although a state of emergency had not been introduced in the case of the armed conflict in the Chechen Republic, the provisions of Article 2(2) of the Convention against Torture have been undermined and violated by the use of torture and ill-treatment of detainees in "filtration camps", set up by the Russian federal army. (For more information see *Russia: Armed conflict in the Chechen Republic: Seeds of human rights violations sown in peacetime*, AI Index: EUR 46/10/95, April 1995 and *Russian Federation: Brief summary of concerns about human rights violations in the Chechen Republic*, AI Index: EUR 46/20/96, April 1996.)

Forcible return of asylum-seekers (Article 3 of the Convention against Torture)

The Russian Constitution provides for the right of a person to be granted political asylum in the Russian Federation in order to avoid further persecution at home.⁹ In practice, provisions for refugees and asylum-seekers are inadequate. A pattern is emerging where many are at risk of forcible return to countries where they would be in danger of grave violations of their human rights.

In September 1995, for example, Lee Yen Sen was returned to his native North Korea, where he faced ill-treatment by the police. In March 1996 Elgudzha Khutayevich Meskhia, an opponent of the government, was forcibly repatriated to Georgia, where he was at risk of torture and ill-treatment. In April 1996 Rahim Qaziyev, the former Minister of Defence of Azerbaijan, was forcibly returned to the country, where he faced ill-treatment and the death penalty.

In these cases the Russian authorities have justified the violation of the non-*refoulement* principle by referring to other obligations under treaties which fail to provide adequate safeguards for asylum seekers or others against *refoulement* to places where they were at risk of serious human rights violations.

Even though Russia is a party to the international Model Treaty on Extradition,¹⁰ the Russian Government referred to an extradition treaty with North Korea in order to proceed with the extradition of Lee Yen Sen. Similarly, the Russian authorities referred to a treaty on legal assistance with Azerbaijan to justify the extradition of Rahim Qaziyev which was requested by the Azerbaijani Government.

⁹Article 63(1) of the Constitution states: "The Russian Federation shall grant political asylum to foreign citizens and stateless persons in accordance with the universally recognized norms of international law."

Article 63(2) of the Constitution states: "In the Russian Federation persons who are persecuted for their political convictions or for actions (or inaction) not recognized as a crime in the Russian Federation may not be extradited to other states. The extradition of persons accused of a crime, as well as the surrender of convicts to serve sentence in other states, shall be carried out on the basis of federal law or an international treaty of the Russian Federation."

¹⁰Adopted without a vote on 14 December 1990 by the UN General Assembly's resolution 45/116, the Model Treaty on Extradition provides that "if the person whose extradition is requested has been or would be subjected in the requesting state to torture or cruel, inhuman or degrading treatment or punishment or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in Article 14 of the International Covenant on Civil and Political Rights, then the person may not be extradited."

Failure to make all acts of torture offences with appropriate penalties (Article 4 of the Convention)

Under the Convention against Torture, Russia is legally bound to make all acts of torture and ill-treatment offences under national law. The Convention also requires that punishments for torture should reflect “their grave nature” (Article 4). However, Russian law fails to meet these requirements. Russia’s Second Periodic Report to the United Nations Committee against Torture states in point 23: “The criminal law of the Russian Federation contains no norms directly providing for liability for torture.”

Neither the Constitution of the Russian Federation nor legislation provide a definition of the term “torture.” However, the new Russian Criminal Code,¹¹ takes a step in the right direction by introducing, for the first time, the term “torture” as a characteristic of the crime for two offences punishable by law: ill-treatment (Article 117) and coercion to give evidence (Article 302). Nevertheless, the new Criminal Code lays down a more lenient punishment for the offence of “coercion to give evidence” than those provided in the current Criminal Code.¹² In addition, the lack of a new Code on Criminal Procedure is likely to impede the application of the amendments to the new Criminal Code, regarding the crime of torture.

The failure to include any definition of torture in the Russian Constitution or national legislation has hampered the courts in their efforts to apply the Constitutional provisions directly in cases of human rights violations, including cases of torture and ill-treatment because they have not been able to rely on Article 1 of the Convention against Torture.

The provisions of Article 15(4) of the Constitution allow for direct application of the norms of international law if national law conflicts with them, or if laws have not been established. This constitutional principle of international instruments taking precedence over the rules of internal laws, is in practice, rarely exercised by the courts of general jurisdiction. In general, the authorities, especially the law enforcement officials, often lack knowledge and understanding of this principle and continue to refer to local laws, executive decrees and internal normative acts in their day-to-day practice.

¹¹ The Criminal Code of the Russian Federation was adopted by the State Duma on 24 May 1996. A special federal law to this effect stipulates that the new Code comes into force from 1 January 1997.

¹² Article 179(2) of the current Code prescribes a punishment from three to 10 years’ imprisonment, whereas Article 302(2) of the new Code stipulates a punishment for the same offences, with the addition of torture, from two to eight years’ imprisonment.

Prison conditions amounting to torture

An inmate of Butyrka Prison, in Moscow, wrote in a letter in 1995: "Several times I felt so bad that I prayed to God to let me die. I somehow believe that hell cannot be as terrible as this man-made one. God, after all, is merciful, unlike people..."

The conditions in many prisons, particularly for those awaiting trial remain appalling and amount to cruel, inhuman or degrading treatment. Speaking of two such prisons in Moscow the United Nations Special Rapporteur on torture, who visited in July 1994, said: "The senses of smell, touch, taste and sight are repulsively assailed. The conditions are cruel, inhuman and degrading; they are torturous".¹³ Prisons are grossly overcrowded and thousands of prisoners have no individual bed and have to sleep in two or three shifts, often without bedding. Such inhumane overcrowding is the norm in Russian prisons. Food and medical supplies are frequently inadequate. The insanitary conditions mean that illness spreads rapidly; lung, circulatory and skin diseases, especially tuberculosis and scabies, are widespread. Mental illness is also common. Amnesty International is not aware of any effective steps taken by the authorities to correct these conditions or to implement the recommendations of the Special Rapporteur.

In October 1995 as many as 274,700 people were being held in remand centres throughout Russia. The system was designed to hold only 173,885. In March 1995, some 39,070 people (15,6% of all persons detained) were kept in pre-trial detention centres (SIZO) in violation of the procedure stipulated by law.¹⁴ Some prisoners have waited years in such conditions before their cases have come to trial. In September 1994 a member of the President's legal advisory board estimated that several thousand people had been arrested illegally over the previous two years, that one out of every three persons arrested was denied the right to legal services, and that 70% of detainees were held for terms three to five times longer than necessary while awaiting sentencing.

Lack of training and knowledge regarding prohibition of torture (Article 10 of the Convention against Torture)

In addition to the inadequate implementation of standards and legislation against torture, the situation is aggravated by the fact that personnel of the penitentiary system and the law enforcement agencies are in practice not acquainted with international standards such as the United Nations Standard Minimum Rules on the Treatment of Prisoners. There is also no specific program of education and training regarding the prohibition against torture for all law enforcement officials or others involved in the penitentiary system, as required by Article 10 of the Convention against Torture.¹⁵ Most importantly, the authorities have failed to make known to law enforcement officials and to personnel of the penitentiary system that international norms, such as the Convention against Torture, take

¹³ See "Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1994/37," Commission on Human Rights, 51st session, 16 November 1994. UN Doc. E / CN.4 / 1995 / 34 / Add.1, para. 71.

¹⁴ Official Ministry of Internal Affairs (MVD) sources of information: statement of Yu. Kalinin, head of the MVD's Central Directorate for the Execution of Punishment (GUIN), 20 March 1995.

¹⁵ Article 10 provides: "Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment."

precedence over internal laws, decrees (including Presidential Decrees), institutional instructions and orders.

In addition, the authorities often fail to train law enforcement officials and prison system personnel adequately or at all regarding the rules and provisions of national legislation concerning ill-treatment, such as the federal law, "On the Detention of Persons Suspected or Accused of Having Committed Offences."¹⁶ Reports received in October 1995 pointed out that the law enforcement officials and especially those of the temporary detention centres (IVS) were not acquainted with the provisions of the law. In fact, most of the police officers, did not know about the existence of the law.¹⁷ Three months after the law came into force, high-ranking officials of the MVD had vague and incomplete information about its provisions, as reported by the Russian media. Copies of the law were not available to the courts and the lawyers' collectives; the regional Departments of Internal Affairs (UVD) and the office of the procurators did not know about the existence of the law. The text of the law was not made available to detainees in SIZO. In October 1995, in response to a request from a human rights group to be acquainted with the text of the law, officials from the parliamentary commission dealing specifically with the problems of the penitentiary institutions, reportedly answered that this law had not yet been signed by the President.

Amnesty International is not aware of any concrete plans by the authorities to remedy this situation.

¹⁶The law was adopted by the State Duma on 21 June 1995 and signed by the President on 15 July 1995. It officially came into force on 20 July 1995.

¹⁷Moscow Center for Prison Reform conducted a special monitoring of the implementation of this law and published its findings in the report *In Search of a Solution: Crime, Criminal Policy and Prison Facilities in the Former Soviet Union* in 1996.

Systematic reviews of rules and practices: secret decrees and local lawmaking (Article 11 of the Convention against Torture)

One example of federal lawmaking in accordance with the provisions of Article 11 is the 1995 federal law, "On the Detention of Persons Suspected or Accused of Having Committed Offences". While the law strives to improve the safeguards for detainees and prisoners in Russia,¹⁸ in practice, its provisions are frequently violated and the law enforcement bodies and the prison personnel continue to refer to other decrees and institutional instructions when violating the rights of those detained.

In addition to the two Presidential Decrees, there are a whole range of decrees, orders and instructions, which are often marked "secret", regulating the actions of the officials from the ministries with responsibility for security services, such as the MVD, the Federal Security Service (FSB) and the Ministry of Defence. Most of these normative documents have not been published and officials refuse to make them available upon request by Russian human rights groups or individuals.

For example, besides the Correctional Labour Code, which officially regulates the conditions of detention of inmates, there is an internal instruction of MVD, "Internal Regulation Rules of the Correctional Labour Institutions" of 1992, which sets out in detail the rules and limitations concerning the day-to-day life in places of confinement. It is not available to the prisoners, or to human rights groups, which is inconsistent with Rule 35 of the United Nations Standard Minimum Rules for the Treatment of Prisoners.¹⁹

The Presidential Commission for Human Rights in its report on human rights practices in 1993, noted that a special order No. 13 of 15 January 1993 of the MVD reintroduced the reduced norm of nutrition, previously abolished in 1988 ("a torture by hunger") for prisoners serving disciplinary punishments in the so-called punishment isolator (known as ShIZO from its Russian initials), punishment cell ("kartser" in Russian) and in solitary confinement cells. The senior deputy of the Procurator General of the Russian Federation also recognized that this decree was unlawful.²⁰

On the basis of a similar MVD order and in violation of the law, in some prison colonies new special departments were established to punish prisoners "actively opposing prison administration" or who had committed no disciplinary offence but in the opinion of the administration "had negative attitude to the prison authority": these departments were called "local preventive zones" and "inter-regional common cell type premises".

According to information from Russian human rights groups, a secret instruction of the Minister of Internal Affairs recommends and orders that the heads of regional Departments of

¹⁸Article 4 of the law states: "Detention shall be effected in accordance with the principles of legality, equality of all citizens before the law, humanity and respect for human dignity, and in accordance with the Constitution of the Russian Federation, the principles and norms of international law and the international agreements of the Russian Federation, and shall not be accompanied by torture or other actions intended to cause physical or psychological suffering to persons who are suspected or accused of having committed offences and who are in custody."

¹⁹In 1992 an official of the office of the procurator of Kaliningrad motivated the Ministry's refusal to provide copies of the Rules by the following statement: "...MVD orders and instructions are issued for service purposes and are not supposed to be copied in any way or presented to organizations, societies, agencies, which are not involved in the monitoring of the functioning of the correctional labour institutions."

²⁰Statement of Yu. Szherbanenko, senior deputy Procurator General. See Outcoming No. 17/491-94 of 1 July 1994.

Internal Affairs (UVD) facilitate the theoretical and practical training of the special purpose detachments of MVD and the special police units (OMON)²¹ on the premises of the SIZO and the correctional labour colonies. The instruction reportedly allowed *spetsnaz* to perfect their skills on prisoners in order to prepare them to react in situations of emergency and civil disobedience. A number of reports were received about torture and ill-treatment of detainees during such actions. Statements of high-ranking officials confirmed the existence of the “secret instruction”. (For more details see *Russian Federation: Torture and ill-treatment in detention: the police, the prisons, the army*, AI Index: EUR 46/45/96, October 1996.)

Inadequate investigations of reports of torture (Article 12 and Article 13 of the Convention against Torture)

The provisions of Article 12 of the Convention against Torture for a “prompt and impartial investigation” whenever there is reasonable ground to believe that torture and ill-treatment may have occurred, even if there has been no formal complaint, are inadequately implemented in Russian law. The relevant law does not specifically refer to cases of torture.²² In the practice the ineffectiveness of the courts in addressing rights complaints and their limited independence, have persuaded victims of torture and ill-treatment to lodge their complaints more often with the Office of the Procurator. In the absence of alternative non-judicial complaint mechanisms, it is still widely believed in Russia that the procuracy has the power and the influence to ensure that justice has been done; as well as the fact that its services cost much less than those of the courts.

However, the Procurator’s office is still based on the old Soviet model, and continues to have conflicting responsibilities: on the one hand, it has a supervisory function over the local executive and legislative organs in ensuring that legality is observed (for example by investigating alleged police abuses), and, on the other, it is the public prosecution service, working with the police in sanctioning arrest, presiding over criminal investigations, which are usually conducted by the MVD, and representing the state against the individual in court.

The Code of Criminal Procedure currently in force gives procurators, not the judges, the authority to order arrest of a suspect. Although the Constitution provides for transferring that power to judicial authorities, the President first approved and then later vetoed draft legislation for a new Code of Criminal Procedure implementing this provision, according to reports. In carrying out this task, the procurators cooperate closely with the police and other specialized law enforcement agencies and have the same vested interest in seeing cases through to trial once they have approved formal arrest.

²¹ Special purpose detachments, *spetsnaz*, have been established at the regional departments of corrections since 1989. They were formed to settle conflict situations in prisons. The prisoners call them “prison OMON”. In 1992 by MVD order No. 267 these detachments were assigned an additional task: to carry out preventive measures. For more details see *In Search of a Solution: Crime, Criminal Policy and Prison Facilities in the Former Soviet Union*, report of the Moscow Center for Prison Reform, 1996.

²² Article 2 of the Code of Criminal Procedure provides that the aim of the criminal procedure is “speedy and complete detection of offences, conviction of the offenders and correct application of the law so that every person who has committed an offence is justly punished and no innocent person is prosecuted or convicted.” Article 3 of the Code of Criminal Procedure provides that it is the duty of a court, procurator, investigator or inquiry agency, within the limits of their competence, to institute criminal proceedings whenever indications of an offence are discovered and to take all measures provided for by law to ascertain the occurrence of the offence, identify the offenders and ensure their punishment.

Thus, they often allegedly close their eyes if a police officer uses force against detainees to obtain "results".

Loyalty to colleagues, the importance of local connections, political pressure from local officials and the "back door justice" practices in Russia are factors which often influence whether investigations into torture allegations are carried out, and when they are, with what result. The procurator's office often refuses to open a criminal case and an investigation into allegations of torture and ill-treatment in custody. As a rule, the procurator does not give any explanations of his or her decision to refuse initiation of a criminal investigation. In the rare cases when perpetrators are prosecuted, the punishments are light.²³ Moreover, in the cases where investigations of complaints of torture or ill-treatment have occurred, the investigations have not been prompt, impartial or thorough. (For more details see *Russian Federation: Torture and ill-treatment in detention: the police, the prisons, the army*, AI Index: EUR 46/45/96, October 1996.)

Article 46 of the Constitution provides that "decisions and actions (or inactions) by bodies of state power may be contested in court". Procedures to take such actions were introduced into the Russian legislation through the 1993 federal law on Citizens' Appeals,²⁴ followed by a Supreme Court direction from December 1993 "On the court review of complaints about violations of the rights and freedoms of citizens". After the adoption of this law a massive wave of individual complaints on human rights violations were filed with the courts: there were reportedly 20,000 such complaints in 1994.

In addition, Article 17(7) of the 1995 federal law on detention of persons suspected or accused of having committed offences entitles detainees to submit complaints concerning the legality of their detention and acts prejudicial to their legal rights and interests. Article 18 of this law²⁵ sets out in detail the procedure for submission of complaints by suspects or accused persons in detention.

However, reportedly in majority of the cases of complaint the courts remained unable to provide judicial protection to victims of torture and ill-treatment. Often judges refused to review an individual complaint by a victim of ill-treatment.²⁶

Article 15 (1) of the Constitution provides that "the Constitution of the Russian Federation has supreme legal force and is directly applicable."²⁷ To pursue an individual complaint through the court can in some cases take years because of the bureaucratic red tape and the courts' general overload with cases.

²³While giving statistics in paragraph 64 about employees of internal affairs agencies who were disciplined for violating the law, the Second Periodic Report of the Russian Federation to the Committee against Torture does not provide a clear distinction how many law enforcement officials have been investigated and prosecuted for the use of torture and ill-treatment toward detainees.

²⁴The law came into force on 27 April 1993. The law stipulates that any actions or decisions taken by any state organization or body or by any official without exception may be complained against to a court. It was amended in December 1995.

²⁵Article 18 of the law also prohibits "any kind of persecution of suspects or accused persons for complaining about infringements of their rights and lawful interests. Officials of detention centres guilty of such persecution bear responsibility under the law."

²⁶Although legally empowered by the Constitution itself

to apply its provisions directly, without having to resort to implementing legislation (in some cases in contradiction to the Constitution) to execute the constitutional norms, the courts are often vulnerable to executive orders and authoritative influences, especially outside the big cities.

The detainees' right to request a court evaluation of the legality of detention is in practice rarely exercised, due to the lack of knowledge among the people about their rights. In addition, police often detain people without judicial permission beyond the 48-hour time period and the constitutional right to judicial review of the detention within 48 hours of arrest is ignored in most cases. According to reports, some detainees who had expressed the desire to exercise their right to complain to the court while in detention, were subjected to further ill-treatment by law enforcement officials.

Redress and compensation for victims of torture is rarely provided (Article 14 of the Convention against Torture)

Under Article 14 of the Convention against Torture, all States Parties are required to ensure in their legal systems that a victim of torture is able to obtain redress and that he or she has an enforceable right to fair and adequate compensation, including the means for as full a rehabilitation as possible. The Russian Constitution incorporates only some aspects of this obligation. It provides for full compensation for damage inflicted by the state,²⁸ but there is no specific mention of torture as a form of damage inflicted, nor of a requirement of rehabilitation. Furthermore, there is not yet in place any enabling legislation to regulate such compensation or a mechanism to effect it. The conditions and procedure for awarding compensation for damage caused by improper actions of officials, inquiry or preliminary investigation agencies, a procurator's office or a court are still governed by an old Soviet decree of the Supreme Soviet of the USSR of 18 May 1981, which significantly predates the 1993 Constitution.

Confessions extracted under torture are used as evidence (Article 15 of the Convention against Torture)

Under Russian law evidence obtained through violation of legal proceedings has no legal force.²⁹ It is also a criminal offence for investigators and others to force a person to give testimony and provide evidence by use of threats or other illegal actions, where such actions are combined with the use of force or personal humiliation of the detainee.³⁰ Nevertheless it has been alleged by some prisoners that testimony obtained from them under duress was not excluded as evidence at their trial although they repudiated it in court and that their allegations were not investigated by the court.

Furthermore, Amnesty International continues to receive reports of torture and ill-treatment of detainees in order to obtain false confessions, in some cases leading to the death penalty.

²⁸ Article 52 of the Constitution states: "The rights of victims of crimes and of abuses of office shall be protected by law. The state shall provide the victims with access to justice and compensation for damage sustained." Article 53 of the Constitution provides that "everyone shall have the right to state compensation for damage caused by unlawful actions (or inaction) of state government bodies or their officials."

²⁹ Article 50(2) of the Constitution. Article 20(3) of the Code on Criminal Procedure prohibits soliciting statements from the accused or a suspect by the use of force, threats or other illegal means.

³⁰ Article 171 of the Criminal Code. Such actions are punishable by from three to 10 years' imprisonment.

These reports are particularly worrying in the light of continuing executions in the Russian Federation, despite the existing moratorium on executions imposed on Russia by its membership of the Council of Europe. Recent official statements by the head of the Presidential Clemency Commission claimed that in 30% of the death penalty cases a judicial mistake had been made, and that innocent people were sentenced to death and some later executed.³¹ One such example is the case of Mikhail Yurochko and Evgeny Mednikov and Dmitry Elsakov (For more details see *Russian Federation: Torture and ill-treatment in detention: the police, the prisons, the army*, AI Index: EUR 46/45/96, October 1996.)

The Death Penalty: executions continue (Article 16 of the Convention against Torture)

Amnesty International regards the death penalty as the ultimate cruel, inhuman and degrading punishment. Like torture, an execution constitutes an extreme physical and mental assault on a person already rendered helpless by government authorities. Russia undertook to impose a moratorium on executions upon becoming a member of the Council of Europe in February 1996. Nevertheless, executions in Russia continue and no effective steps have been taken to inform relevant personnel of the moratorium on executions. Reports indicate that a large number of the prison governors and personnel, local officials and procurators have not yet been informed of the existence of the moratorium and Russia's commitments in this respect given to the Council of Europe on becoming a member state.³² In addition, a top Russian official from the Presidential administration stated publicly in front of Amnesty International's representative that he did not know about the existence of a moratorium on executions.³³ However, officials from the Ministry of Foreign Affairs (MID) claimed that all prison governors were informed about the moratorium and the implications of Russia's membership to the Council of Europe on the question of the death penalty.³⁴

³¹At a press conference in Moscow on 24 September, Anatoly Pristavkin, the chairman of the Presidential Clemency Commission and Valery Borshev, Duma deputy and a representative of the Chamber of Human Rights under the President, reported that 53 executions had been carried out in 1996. They have also claimed that judicial errors had been made in 30 per cent of the death penalty cases.

³²Amnesty International interviewed a number of governors during a visit to Russia in June-July 1996 and had a meeting with a delegation of prison governors to the United Kingdom in July 1996. Letters from relatives of prisoners on death row often refer to statements by prison governors who claimed they had not been given special instructions in regard to the moratorium on executions.

³³The statement was made on 3 July 1996 in Moscow.

³⁴Stated during a meeting with Timuraz Ramishvili, head of the Directorate on Human Rights at MID, 4 October 1996.

Recommendations

Torture and ill-treatment of persons under any circumstances are expressly prohibited under international agreements to which Russia is party, such as the Convention against Torture, and the International Covenant on Civil and Political Rights (ICCPR). Amnesty International recognises the problems that may exist within the prison system, for example those caused by lack of funding for professional staff, training and infrastructure. The organization also recognizes the problems which exist concerning the growing level of crime in the society, and the need to protect citizens' well-being. However, these problems can never be used as an excuse for torture and deliberate ill-treatment. Amnesty International believes that it is clearly within the power of the Russian authorities to take immediate measures to eliminate these illegal practices within its detention and prison system, including during situations of armed conflict.

Amnesty International recommends that the authorities as a matter of priority:

- inform all detainees of their rights, including the right to complain to the authorities against ill-treatment;
- ensure that detainees under interrogation are informed promptly of the charge or charges against them, and that they are allowed prompt and regular access to a lawyer of their own choice, as well as to relatives and a medical practitioner;
- implement prompt and impartial investigations of all complaints of torture or ill-treatment of detainees, as well as when there are reasonable grounds to believe that torture or ill-treatment has occurred even if no complaint has been made;
- as part of such investigations, ensure prompt, impartial and professional medical examinations of persons alleging torture or who may have been tortured;
- bring those responsible for torture or ill-treatment of detainees to justice in the courts;
- ensure that every victim of torture has access to the means of obtaining redress and an enforceable right to fair and adequate compensation, including the means for as full a rehabilitation as possible;
- ensure that information regarding the absolute prohibition against the use of torture and ill-treatment is fully included in the training of law enforcement personnel and other persons who may be involved in the custody, interrogation and treatment of any individual subjected to any form of arrest, detention or imprisonment;
- establish an effective system of independent inspection of all places of detention;

With regard to the death penalty, Amnesty International urges the authorities to:

- commute all pending death sentences and observe the moratorium on executions
- take immediate and concrete steps towards abolition of the death penalty in law, in accordance with the requirements of the Council of Europe.