

TABLE OF CONTENTS

1. Introduction.....	1
2. Legislative safeguards against torture in police custody and pre-trial detention centres	1
2.1. Positive development	1
2.2. Laws which obstruct access to lawyers and relatives, and facilitate torture and ill-treatment.....	2
2.2.1. Internal regulations of IVS and SIZO	2
2.2.2. The Law on Operative-Search Activity	3
2.2.3. Ministry of Justice order on “PFIRSI”	7
2.3. Additional administrative shortcomings obstructing access to lawyers and relatives and prison visitors, and facilitating torture and ill-treatment	9
2.3.1. Lack of visiting rooms in SIZOs.....	9
2.3.2. Failure to fully cooperate with the CPT in Chechnya.....	9
3. Judicial safeguards against torture in police custody and pre-trial detention centres	10
3.1. Problems in practice of the judicial review of arrest	10
3.2. Failures of the courts to order investigations of allegations that evidence has been obtained through torture	12
4. Reprisals against defence lawyers alleging their client has been tortured or otherwise ill-treated	12
4.1. Defamation suit against Irina Kommissarova	12
5. Other cruel, inhuman or degrading treatment: conditions of detention	13
5.1. Conditions of detention in IVS in Nazran, Ingushetia	13
5.2. Holding suspects together with convicted prisoners in PFIRSI.....	14
6. Appendix – update on cases highlighted in preliminary briefing	15
6.1. Rasul Kudaev	15
6.2. Mekhti Mukhaev and Isa Gamaev	15
6.3. Zelimkhan Murdalov	15
6.4. Police brutality in Bashkortostan December 2004.....	16
6.5. Mikhail Khodorkovskii	17

Russian Federation

Supplementary Briefing to the UN Committee against Torture

1. Introduction

Amnesty International submitted a preliminary briefing to the UN Committee against Torture in April 2006, relating to the organization's concerns on torture and other ill-treatment in places of detention across the Russian Federation (*Russian Federation: Preliminary briefing to the UN Committee against Torture*, AI Index: EUR 46/014/2006). This document provides additional information to supplement the preliminary briefing. It is drawn from ongoing research by Amnesty International, including missions to the North Caucasus (Ingushetia and Kabardino-Balkaria) in June 2006, and to Sverdlovsk region, Rostov-on-Don region, Ivanovo region, and Kaliningrad region in July 2006.

This supplementary briefing highlights the use of laws and practices which obstruct access to lawyers and relatives of suspects and accused persons, and facilitate torture and ill-treatment. The document also sets out other administrative and judicial shortcomings in prevention and investigation of allegations of torture and other ill-treatment, and concerns about conditions of detention. It also updates cases which are included in Amnesty International's preliminary briefing to the UN Committee against Torture.

2. Legislative safeguards against torture in police custody and pre-trial detention centres

CAT Articles 2(1), 11

2.1. Positive development

A new regulation requires the authorities in charge of pre-trial detention centres (SIZOs¹) to be more responsive to signs of torture when a detainee is transferred to SIZO from police custody in a temporary holding cell (IVS²). The Order (Prikaz) of the Ministry of Justice, 14 October 2005, No. 189, "Confirming the Internal Order Regulations for SIZOs in the Criminal Execution System"³, says:

"People whom a SIZO doctor or feldsher⁴ consider in need of urgent medical in-patient treatment after IVS are not accepted in SIZO, unless such medical care is available..." (Article 12).

¹ The acronym is from the full Russian name of the facility, *sledstvennii izolyator*

² The acronym is from the full Russian name of the facility, *izolyator vremennogo sodержaniya*

³ This Order derives from Article 16 of the 1995 Law On Custody for Suspects and People Charged with an Offence.

⁴ A medical or surgical practitioner without full professional qualifications or status.

On entering SIZO from IVS, new inmates undergo a medical examination by the SIZO duty doctor, with a view to ascertaining if there is any need to isolate the person on medical grounds, or if the person is in need of urgent medical assistance. A record of this examination is kept in the medical files. If any suspect or person charged with an offence displays signs of injury, allowing one to suspect illegal treatment, this is noted not only by medical personnel in the medical records, but is also the subject of a Statement (Akt) that is signed by the Assistant Duty officer and the Head of the Guard responsible for transferring them. An investigation is carried out by the operative department, who sends the results to the procuracy, to decide whether to take it further (Article 16). The case of Aslan Umakhanov set out on page 6 highlights the application of this new order.⁵

2.2. Laws which obstruct access to lawyers and relatives, and facilitate torture and ill-treatment

2.2.1. Internal regulations of IVS and SIZO

The Order (Prikaz) of the Ministry of Internal Affairs, 26 January 1996, No. 41, “Internal order regulations of the Ministry of Internal Affairs for Facilities for the Temporary Custody of suspects and accused persons, of 1996”⁶, states that suspects and accused persons have the right to meet with their lawyer (paragraph 6.1). The internal regulations for SIZOs state that the SIZO administration has to provide unhindered access to all participants in a criminal case, including defence lawyers, during working hours (paragraph 155).

However, both the internal order regulations for IVS and for SIZO include the concept of “quarantine” which in practice is cited as a reason for denying a detainee’s access to their defence lawyer. The internal order regulations do not give a definition of quarantine or the length of time it can be invoked for. The administrations of IVS and SIZO have the responsibility to inform the procuracy, the investigative and judicial organs that quarantine has been invoked, which appears to be the only check of this power (paragraph 149 of the IVS regulations, paragraph 6.28 of the SIZO regulations).

New arrivals at SIZOs are placed under quarantine, during which time they undergo a medical check and are assigned to cells. A defence lawyer in Yekaterinburg told Amnesty International that the duration of quarantine is wholly left to the discretion of the SIZO administration and can, in practice, last anything up to one week, depending on the number of new arrivals. During this time lawyers are not able to visit their client. SIZOs are closed to the public on public holidays, weekends, and after working hours.

⁵ This provision does not apply to detainees who are already held at SIZO but transferred out of SIZO for questioning during the day; instead of receiving an automatic medical check directly on arrival back at the SIZO, they are able to request medical assistance when the medical orderly makes their daily rounds of the cells (Article 129 of the regulations).

⁶ This Order derives from Article 16 of the 1995 Law On Custody for Suspects and People Charged with an Offence.

Amnesty International has received a number of testimonies about ill-treatment of detainees in SIZOs meted out at night time; at weekends; during quarantine; at the start of a public holiday; in transit and on arrival at a new detention place.

Little is known about the treatment of businessman Raviil Khakimov, because he has been deprived of almost all contact with the outside world since his arrest on 30 December 2004. Raviil Khakimov is the founder and Chief Executive of the lorry manufacturing company “DDT” in Yekaterinburg and was arrested along with several members of his company on a series of commercial and criminal charges. He was taken to Yekaterinburg’s investigative isolation prison – SIZO institution IZ 66/1.

Fourteen days’ public holiday for the New Year and Russian Christmas followed his arrest, during which the SIZO was declared closed to visits, including from his two lawyers. The night before it “re-opened” on 12 January 2005, Raviil Khakimov was transported to another SIZO in Novouralsk, about one hour’s drive from Yekaterinburg and held there for some weeks. His lawyers were told – wrongly – by the city procuracy that he had been moved to another isolation cell in Yekaterinburg.

Novouralsk is associated with Russia’s nuclear programme and is a closed city, under the administration of the Federal Security Service (FSB). One of his lawyers – Aleksander Makukha – discovered his whereabouts and applied for an FSB security pass to visit him. He got a pass to see his client for the first time on 19 January 2005, but while he was visiting the prison, the lawyer himself was detained by FSB officers on suspicion of entering Novouralsk illegally. He was taken out of the city and had to find the border guard who had allowed him to enter.

Raviil Khakimov was moved back to Yekaterinburg in February 2005, and transferred to temporary investigative isolation premises in a colony for convicted prisoners, IK-2 (see page 8). On 19 May 2005 Raviil Khakimov was transferred once again, to investigative isolation prison No. 3 in Nizhny Tagil, 110 km north of Yekaterinburg. According to his lawyer, Raviil Khakimov was transported by men wearing masks in a narrow van, unadapted for prisoner transport. He was allegedly held upside down in a narrow space between seating, with his face on the hot metal floor, his feet above him, and a thick cloth bag over his head which impeded his breathing. Weather archives for that day show that the temperature was 81°F (28°C).

2.2.2. The Law on Operative-Search Activity

Federal Law 144 F-Z “On Operative-Search Activity” 1995 (the OSA law) sets out a number of activities that law enforcement agencies are authorized to carry out in order to uncover, prevent, suppress and detect crime and to discover and identify the persons, who are preparing and committing or who have perpetrated crime; as well as to search for wanted or missing persons, and collect information on events or actions posing a threat to the state (Article 2). The activities may be carried out in secrecy (Article 3) and the list of authorized activities includes “questioning” (Article 6).

There is a general obligation to respect human rights while carrying out the activities (Articles 3 and 5), and the law states that redress for violation of rights should be ensured (Article 5). However, it is not clear from the OSA law what specific rights an individual has while being questioned by law enforcement officers under the OSA law. In particular, it is not clear from the law if the individual has the right not to consent to such questioning and the right to counsel during such questioning and, if so, how these rights are ensured in practice. It is also not clear from the OSA law, when individuals are transferred from a SIZO to a police station for questioning, if they have the right to inform their relatives or a third party that they are being transferred and whether the individual has the right to have a medical check before transfer and immediately on return to the SIZO.

If findings from activities carried out under the OSA law are to be used as evidence in a criminal case, then the activity must meet the standards for the gathering, checking and assessing of evidence set out under the Criminal Procedure Code (Article 11). However if the findings are not to be used as evidence then it does not appear that, according to this law, the findings are invalidated if they are obtained in contravention of Russian law, presumably including findings obtained as a result of torture or cruel, inhuman and degrading treatment. As stated in legal commentary edited by the First Deputy Chair of the Russian Federation Supreme Court: “As to OSA findings obtained in violation of the law, they nevertheless may be used as additional information for the preparation and implementation of investigative actions, because OSA findings are not considered evidence, so there is no conflict with the constitutional provision banning the use of evidence obtained in violation of the federal law.”⁷

Amnesty International is concerned that the law has been used to circumvent safeguards set out in the Criminal Procedure Code for the questioning of individuals in the course of a criminal investigation. In particular, the law appears to have been used to deny suspects and accused persons the right to have their lawyer present during questioning. During such questioning the individual is vulnerable to torture and other ill-treatment. Amnesty International is aware of cases where a detainee who has already been charged with a criminal offence has been transferred out of the SIZO to a police station, for what is termed “investigative activities” or “operative activities” or more simply a “talk”, but what is in fact questioning involving torture. In cases known to Amnesty International, the detainee’s lawyer is not even informed of the transfer, let alone permitted to be present during the questioning. While it is not always clear whether the OSA law has been used as the legal basis for such questioning without the participation of the defence lawyer, Russian non-governmental

⁷“Comments on the RF Criminal Procedure Code”. Edited by the First Deputy Chair of the Russian Federation Supreme Court V. Radchenko – M.: *Yustitsinform*, 2004. Comment to article 89. Cited in Memorandum of third party in the case *Mikheyev v. Russia*, Application No. 77617/01 by Public Verdict Foundation, the “Demos” Center for Information and Research on Public Issues (Demos Center), the Yoshkar-Ola City NGO “Man and Law” (“Man and Law”) and the Kazan Human Rights Centre (KHRC), February 2005.

organizations (NGOs) have collected information about numerous cases where the OSA law was used to facilitate torture.⁸

While the law states that findings obtained during OSA questioning should not be treated as admissible evidence, Amnesty International is aware of one case where a court has failed to exclude immediately a “confession” reportedly written after torture during an operative-search activity questioning. In another case, it appears that the torture of an individual, with the aim of pressuring the individual to give a “confession” during a subsequent formal interrogation session in the presence of a lawyer, was carried out under an OSA procedure.

Transfers of detainees from SIZO to police premises for OSA questioning are carried out formally on the request and with the authorization of the procuracy. Given that it is the procuracy that authorizes the transfer, and given the allegations which are made of torture and ill-treatment during OSA questioning, Amnesty International is concerned that the same office of the procuracy would not meet the necessary requirements of independence and impartiality to investigate effectively complaints of torture during OSA questioning. Moreover, Article 12 of the OSA law states that actions carried out under the law may be secret. It is not clear to Amnesty International if this secrecy applies to all procedures and actions carried out under the OSA law, including questioning of an individual, and if so, how an effective investigation into any allegations that this person was tortured or otherwise ill-treated during this questioning can be achieved.

Furthermore, Article 20 sets out the bodies which have the power of oversight over the application of the procedures and actions carried out under the OSA law, including the Federal Assembly. Amnesty International is not aware of any publicly available reports of the Federal Assembly relating to their oversight of the implementation of this law.

International standards and recommendations for the prevention of torture state that the practice of transferring a detainee out of SIZO to police custody for questioning should be strictly controlled. In particular, the UN Special Rapporteur on torture has stated that: “Those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pre-trial detention which, in any case, should not exceed a period of 48 hours. They should accordingly be transferred to a pre-trial facility under a different authority at once, after which no further unsupervised contact with the interrogators or investigators should be permitted.”⁹ The European Committee for the Prevention of Torture (CPT) has stated that: “Additional

⁸ For example, the Public Verdict Foundation, the Krasnodar Human Rights Center and the Individual and Law NGO produced an analysis of 25 cases of the use of torture during “operative interviews” and the ineffectiveness of prosecutorial investigation of the cases. Twenty one of the cases date from after May 2002, when the UN Committee against Torture considered the Russian Federation’s third periodic report.

⁹ General Recommendations of the Special Rapporteur on torture E/CN.4/2003/68, para. 26, g)

questioning by the police of persons remanded to prison may on occasion be necessary. The CPT is of the opinion that from the standpoint of the prevention of ill-treatment, it would be far preferable for such questioning to take place within the prison establishment concerned rather than on police premises. The return of remand prisoners to police custody for further questioning should only be sought and authorized when it is absolutely unavoidable. It is also axiomatic that in those exceptional circumstances where a remand prisoner is returned to the custody of the police, he/she should enjoy the three rights referred to in paragraphs 40 to 43.”¹⁰

Aslan Umakhanov, an ethnic Chechen lawyer born and brought up in Yekaterinburg, was detained on 29 March 2006 by police in the entrance of his apartment block. The police officers allegedly beat him before driving him to the regional Organized Crime Squad (UBOP), where he was allegedly beaten again. He was then taken to the district procuracy. His brother looked for him for several hours before finding him by chance in the Kirov District Procuracy. His cheek bones were cut and bruised. On 31 March Aslan Umakhanov appeared before Judge Novoselev at Kirov District Court. The area around his eyes was deeply bruised and he asked the judge to look at him because he had been beaten about the face and his torso near the area of his kidneys. The judge reportedly did not stop proceedings or order an investigation, but prolonged his detention by two months. He was sent to the SIZO in Yekaterinburg, which refused to accept him because of the signs he had been ill-treated without a medical report indicating that his injuries pre-dated his arrival at SIZO. He was taken back to the IVS at Frunze Street where a medical record was made of his injuries. The SIZO agreed to admit him once the IVS had formally made a record of his injuries.

On 12 April, Aslan Umakhanov was made to kneel in a vehicle and was driven from the SIZO to the UBOP headquarters in Yekaterinburg for questioning, and put in a room with three officials. Amnesty International has copies of documents authorizing and recording the transfer of Aslan Umakhanov from SIZO to UBOP on 12 April. These documents show that the investigator from the Office of the Kirovskii district procurator in charge of the criminal investigation requested and approved of the transfer of Aslan Umakhanov to UBOP for the purposes of “operative-search activities”. At UBOP he was questioned outside the procedure and safeguards against torture set out in the Criminal Procedure Code, in order to force him to sign a “confession”. Prison transport records show that he was absent from the SIZO from 9am to 4pm.

Aslan Umakhanov gave the following account of his treatment, during those hours. He was severely beaten by the officials, sometimes with their fists and sometimes with plastic bottles full of water. At one point the men put a book on his head and then beat his head through the book. When he started shouting, they took a blanket from a cupboard in the office and wrapped it round his head. They also plugged two electric cables into an electric socket in the wall and electrocuted him in the heels and in the area near his kidneys. They also allegedly subjected him to racist abuse. After roughly six hours, he agreed to sign a

¹⁰ Extract from the 12th General Report [CPT/Inf (2002) 15], paragraph 46. The three rights referred to are the rights of access to a lawyer and to a doctor and the right to have the fact of one's detention notified to a relative or another third party of one's choice.

“confession”. Using a rope from the cupboard they tied a 32kg bodybuilding weight to his left hand which dragged his body and head down level with the table. In that position he wrote a confession under their dictation. Later he was made to read it out before a video camera, repeatedly, until they were satisfied.

On return to the SIZO, a routine medical examination recorded contusions and abrasions on both forearms. His lawyer submitted a complaint to the Ordzhonikidze procuracy about the alleged torture of his client, but the procuracy has refused to open a criminal investigation. The lawyer told Amnesty International that he has not received a copy of this decision, only a written notification that such a decision has been taken. The lawyer has lodged an appeal against this decision at the Office of the General Procuracy and at the district court. The first hearing at the district court was set for 6 September but was then postponed and a new date set for 13 October.

Aslan Umakhanov’s lawyer has informed Amnesty International that he petitioned for the “confession” signed on 12 April to be removed from the file of the criminal case, during a preliminary hearing into the charges against his client. He argued that it had been unlawful to carry out operational-search activities with his client at that stage of the criminal investigation, when the case was by this stage under a senior investigator. He also argued that the “confession” in any case could not be used as evidence in the criminal case as it was obtained during a procedure that did not meet the standards for the gathering, checking and assessing of evidence as set out under the Criminal Procedure Code. However, according to the lawyer, the judge rejected the petition finding that it was premature to examine the admissibility of the “confession”.

2.2.3. Ministry of Justice order on “PFIRSI”

Suspects and convicted prisoners may be confined together in premises temporarily functioning as Investigative Isolation Units (known as PFIRSI from the Russian initials). The establishment of PFIRSI is authorized under a 1997 Ministry of Justice Order (Prikaz)¹¹, purportedly to relieve overcrowding in SIZOs. While the introduction of the judicial sanction of arrest in 2002 has reduced the population of SIZOs by approximately 30 per cent, according to Ministry of Justice sources, the decree on PFIRSI nevertheless remains in operation. On transfer to a PFIRSI a suspect is held in quarantine during which time they cannot receive visitors including their lawyer. It is not clear to Amnesty International what quarantine procedure is followed in PFIRSIs. A defence lawyer in Yekaterinburg told Amnesty International that, even once out of quarantine, lawyers experience problems accessing their client, as the head of the prison colony is required to give permission on each separate occasion the lawyer seeks a meeting with their client.

Amnesty International is concerned about allegations that detainees transferred to PFIRSI have been tortured, in particular immediately following arrival while they are in incommunicado detention while in “quarantine”. Transfers of detainees from SIZO to PFIRSI

¹¹ 15 June 1996 N73-FZ.

are carried out formally on the request and with the authorization of the procuracy. Thus the procuracy is not an effective avenue of complaint for individuals who have faced torture in PFIRSI.

Ordinary regime prison colony UShCh 349/2 in the centre of Yekaterinburg is until recently known to have been used as a temporary detention centre where male suspects have been tortured. UShCh 349/2, also known as IK-2, is housed at Malysheva Street 2B at the junction with Repina Street, and shares a common wall with the main Investigation and Isolation prison for Sverdlovsk Region, UShCh 349/1 (also known in abbreviated form as SIZO 1). Both institutions back onto Sverdlovsk Regional Court.

The PFIRSI for suspects under investigation in UShCh 349/2 are housed in the punishment block of the colony, some distance from the main barracks. Amnesty International has information on around 30 male suspects who were moved there between 2004 and 2006 after they had invoked their constitutional right to silence during the investigation of their case¹². Amnesty International collected this information on a six-day visit to Yekaterinburg; the true figure is undoubtedly higher.

Once inside the premises at UShCh 349/2 the detainees found themselves under intensive psychological pressure from investigators to sign a “confession”. Such pressure included threats that they would be beaten, raped, or killed and that their relatives would be arrested as hostages until they signed. According to reports from detainees, which Amnesty International has been able to confirm by the number of consistent testimonies received and the corroboration by local lawyers, convicted prisoners were used by investigators to “speed up” the investigation, in exchange for additional visits from their relatives and sometimes early release on parole. In particular convicted prisoners would be allowed free access to the investigatee while in solitary confinement in the punishment block, where beatings and rape of the investigatee by the convicted prisoners were reportedly common. Convicted prisoners were given free access to the suspects’ cells at any hour of the day or night and were evidently aware of the details of their case. Detainees were beaten by groups of up to six convicts, typically with fists, feet, rolled-up wet rags, truncheons and poles. Some of them have described a room where suspects were allegedly raped. They say it is a small room with a metal table, fixed to the floor, and straps to secure the suspect’s wrists and ankles. Rapes were carried out with poles and penises. Convicted prisoners have also staffed the hospital unit in the colony.

Amnesty International has seen evidence of broken fingers, fractured elbows, broken legs, and photographs of extensive grazing, cuts and bruising on detainees’ backs, chests, upper arms, ankles, eyes and feet, which the bearers say were all inflicted on them by convicts in UShCh 349/2. Amnesty International has also seen the scars made by razor slashes that one detainee inflicted on his own stomach, in an unsuccessful effort to be hospitalized and escape further brutalization.

Brutality appears to have been most frequent soon after suspects were transferred to UshCh349/2. As “new arrivals”, they were placed in quarantine and denied access to their defence lawyer. According to former detainees, rape or the threat of rape was the final

¹² Under Article 51 of the Russian Federation Constitution.

pressure that made them comply with investigation demands – either to sign a statement renouncing the services of their defence lawyer; to put their signature to at least one confession; or both.

Prisoners' rights activists in Yekaterinburg claim that after a series of disturbances in UShCh 349/2 in 2006, the use of torture by convicts against suspects has reduced. Amnesty International is not in a position to confirm this, and is concerned by all aspects of the detention of suspects in the colony.

2.3. Additional administrative shortcomings obstructing access to lawyers and relatives and prison visitors, and facilitating torture and ill-treatment

2.3.1. Lack of visiting rooms in SIZOs

Most SIZOs were built more than 100 years ago. The criminal justice system was different and defence lawyers had less of a role than they do today, so there were few facilities for them to talk with clients. Despite changes in the justice system, most facilities remain the same. At a minimum a lawyer has to spend two to three hours queuing in a SIZO to see their client, and sometimes much longer. Only determined lawyers will do this. Administrative instructions on office space and equipment restrict what facilities are available to lawyers visiting detainees¹³. Directors of places of custody can also decide to restrict detainees' access to their lawyer, for example by operating a queuing system, or imposing time limits on meetings.

2.3.2. Failure to fully cooperate with the CPT in Chechnya

In 1998, Russia ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. In doing so, it committed itself to cooperating with the European Committee for the Prevention of Torture (CPT) and granting the CPT access to every place within its jurisdiction where persons are deprived of their liberty by a public authority. While Russia has generally permitted the CPT to visit places where people are deprived of their liberty, Amnesty International is concerned that during its most recent visit in May this year the CPT was initially denied access to the village of Tsenteroi in the Chechen Republic. On 1 May 2006 the CPT interrupted its visit to the North Caucasus after it had been denied access to the village of Tsenteroi. However, the CPT resumed the visit after receiving assurances from the President of Chechnya that it would be able to work without further interference.

¹³ Order (Prikaz) of Ministry of Justice No. 149, of 25 June 2004, "On Confirmation of the Guidelines for Defining Equipment and Technical Means of Security and Inspection of Property in the Criminal Executive System of the Russian Federation Ministry of Justice.

According to reports, Tsenteroi is the site of an unofficial detention place run by members of armed groups under the control of the Prime Minister of Chechnya, Ramzan Kadyrov, where detainees have allegedly been subjected to torture and other ill-treatment.

3. Judicial safeguards against torture in police custody and pre-trial detention centres

CAT Articles 2(1), 11, 12, 13

3.1. Problems in practice of the judicial review of arrest

At face value, the earliest and most effective channel for a detainee to submit a formal allegation that they have been tortured should be the court which sits at first instance, sees the detainee in person, and decides upon extending their detention pre-trial. However there are several reasons why this measure has yet to be effective.

The Code of Criminal Procedure does not specify what judges should do if they are told that evidence has been collected by illegal means. There are no clear directives to stop the case and order an investigation.

The Supreme Court has issued no Guiding Instructions to judges on how to handle these cases. Although the Supreme Court has produced guidelines on the role of international law in domestic judgments¹⁴, and detailed instructions on how to adjudicate libel cases with the right to freedom of expression (Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms) in mind¹⁵, they have produced no equivalent on torture or other ill-treatment. When detainees with visible injuries have asked a judge to look at them and rule on their illegal treatment, judges have prolonged their detention and told them to “make a complaint”.

Police keep unreliable detention records, so that a detainee can spend longer than 48 or even 72 hours in detention before they first see a judge. This has meant some detainees have been ill-treated for longer and visible signs of ill-treatment have had time to fade.

Aleksei Dudin was arrested at his home in Yekaterinburg on 15 March 2004 by officials from the Operative-Search Bureau (ORB) and taken to the Leninskii district police station (ROVD) for questioning about an abduction and murder that had taken place in the city. He was then

¹⁴ Resolution of the Plenary of the Supreme Court of the Russian Federation, 10 October 2003, No. 5, “On application by courts of general jurisdiction of generally recognized principles and norms of international law and international treaties of the Russian Federation”.

¹⁵ Resolution of the Plenary of the Supreme Court of the Russian Federation, 24 February 2005, “On judicial practice on cases of defending honour and dignity of citizens, and also the professional reputation of legal persons”.

admitted to the IVS on Frunze Street. A friend of his was detained at around the same time in connection with the same crime.

Aleksei Dudin told Amnesty International that for two weeks he was transferred daily from the IVS for interrogation by ORB officials and police officers in an office on the third floor at the top of the Leninskii district police station building. He would be taken out of the IVS in the morning and taken back to the IVS in the evening. No lawyer was present at the interrogations. He has described to Amnesty International how during interrogation he was strapped backwards to an upturned chair with his hands and feet cuffed together behind him, so that his feet did not touch the floor; a position that was so painful that he lost consciousness three times. At one point, an investigator threaded a stick through the fingers of his right hand and applied all his weight to it, snapping the bone in his little finger so that it stuck out through his skin. Signs of the fracture are still visible. Aleksei Dudin says that he had electricity applied to his head and his genitals, first by ORB officials using leads attached to a field telephone and then by police officers using tasers. A gas mask was applied to his face, and the air supply was cut off. He was repeatedly punched and kicked in the area around his prostate gland which was exposed because of the position in which he had been strapped. Investigators continually threatened to arrest his brother if he would not “confess” to the crime. Aleksei Dudin has consistently denied involvement.

One morning at the IVS Aleksei Dudin fainted and medical help was summoned. He was found to be suffering from a cracked left elbow, a cracked rib and a fractured little finger on his right hand. He was moved to hospital No. 32 but was asked by IVS officials to sign a statement confirming that the injuries had not been inflicted in the IVS.

Aleksei Dudin should have had access to a lawyer and been able to contact his family from the first moment of his detention, but he was allowed no lawyer for two weeks and his family were allowed to see him only after six months, after his friend reportedly had been forced to “confess” to the crime.

Within two days of his detention, Aleksei Dudin should have been given the opportunity to appear before a judge and complain about his treatment but this did not happen. When the case documentation was made available to him, Aleksei Dudin noticed that the record had been falsified, with the date of detention being noted as 26 March 2004 – 11 days later than it was in reality. When he told a judge what had been happening to him, the judge did not halt proceedings or order an investigation into his claims, but just said, “write a complaint”. Doctors in the prison and in the hospital, who identified his injuries, should have treated them and drawn them to the attention of the procuracy, responsible for monitoring conditions in prison. They did not treat his fractures however, and sent him back speedily into detention.

Aleksei Dudin lodged two criminal accusations against his investigators but both were closed by the procuracy for reasons that were not explained to him.

A Deputy Director of duty officers at a district police station stated that in his experience, no detention order by the police had ever been challenged by a court. He stated that, in comparison, the office of the procuracy appeared more exacting, sending back between six and nine per cent of the criminal files submitted for proceeding with investigation and prosecution, for re-working as inadequate.

Judges who have acquitted defendants are very rare, and may have faced reprisals. This may also discourage them reversing detention orders. Judicial corruption may also play a role. If a procuracy decision is overturned, the reasons are investigated in depth by a unit within the procuracy office, and procurators and militia responsible for the “failure” lose significant financial benefits. Judges might then be vulnerable to reprisal from the procuracy including in the form of the opening by the procuracy of investigations for corruption.

3.2. Failures of the courts to order investigations of allegations that evidence has been obtained through torture

Article 88 (4) of the Criminal Procedure Code states that courts may rule evidence inadmissible at the request of the parties, or at their own initiative. However, the Criminal Procedure Code does not prescribe what they should do if they suspect evidence has been illegally obtained through torture or other ill-treatment. According to the information available to Amnesty International, there appears to be no instruction to the courts to halt the case, or order an immediate and thorough investigation. Similarly Article 235 of the Criminal Procedure Code states that if a lawyer lodges a complaint that evidence was gathered illegally, then the burden of proof falls upon the procurator to show that it was not. Article 215 (7), however, provides no obligation to stop proceedings in the case of torture allegations, if the investigator, procurator or court do not deem it necessary.

4. Reprisals against defence lawyers alleging their client has been tortured or otherwise ill-treated

CAT Articles 12, 13

4.1. Defamation suit against Irina Kommissarova

In January the Ministry of Internal Affairs for Kabardino-Balkaria, under Khachim Shogenov, brought a civil suit against journalist Anna Politkovskaia, the newspaper *Novaia Gazeta* (*The New Newspaper*) and lawyer Irina Kommissarova, for defamation. Anna Politkovskaia had written an article printed in *Novaia Gazeta* on 21 November 2005 alleging that torture was the main method of investigation of the October 2005 armed attack on Nalchik, stating that torture was continuing and citing Irina Kommissarova as one of her sources. The civil suit stated that the allegations made by Irina Kommissarova that Rasul Kudaev had been tortured were untrue and damaging to the Ministry’s professional reputation. The pleadings in the case also claimed that Irina Kommissarova was biased towards “ensuring that individuals (in particular her client), guilty of the armed attack on Nalchik, should escape just punishment.” It was notable that the suit was filed before anyone had been convicted of any crime in relation to the October 2005 armed attack on Nalchik. A court ruled in June 2006 that the suit could not be heard because its signatory lacked the authority to bring the suit. At the end of

September 2006, the Ministry of Internal Affairs (now under a different Minister) had not re-filed the suit.

5. Other cruel, inhuman or degrading treatment: conditions of detention

CAT Article 16

5.1. Conditions of detention in IVS in Nazran, Ingushetia

During a June 2006 visit to Nazran, Amnesty International delegates received reports of harsh conditions of detention in the IVS in Nazran. As there is no SIZO in Nazran, the IVS is used to detain persons pending completion of trial proceedings.

A lawyer with clients held in the IVS told Amnesty International delegates of the poor conditions there. She said that the cells are in the basement, where there is a smell so bad it induces nausea; she also reported that it is damp, and very overcrowded.

She told Amnesty International delegates that one of her clients in the IVS at that time, Unos Vesurov, who was charged with “banditism” (Article 209 of the Criminal Code), had been kept in these conditions so far for a year. He was reportedly suffering from a stomach illness, possibly an ulcer but had not been hospitalized, despite the fact that the IVS did not have the facilities to treat him and that his condition was worsening.

She told Amnesty International that the IVS administration had called first aid attendants to treat him on several occasions when her client had requested first aid and when the IVS administration believed his condition to be especially serious. These first aid attendants who had treated her client in the IVS had reportedly informed the IVS that he should be hospitalized. However, the lawyer has heard unofficially that a decision has been taken that those charged with “banditism” or other crimes classified as “terrorist” are not to be hospitalized. She told Amnesty International that the main hospital in Nazran has rooms with additional security measures such as bars on the windows, and therefore could not see a reason for the failure to transfer her client to hospital for proper medical assistance.

The lawyer said that she had submitted an official request to the head of the IVS for proper medical assistance for her client but had received no answer; she also had received no official answer to two letters asking for medical assistance to the Minister of Internal Affairs of Ingushetia. The lawyer told Amnesty International that she had not officially complained to the procuracy for fear that her client would be transferred to Piatigorsk SIZO, which she believed would have delayed the hearing of her client’s case by several months.

5.2. Holding suspects together with convicted prisoners in PFIRSI

The practice of setting up PFIRSI on the grounds of prison colonies appears not to ensure separate detention of suspects from convicted prisoners. For example, while those held in the PFIRSI on the territory of ordinary regime prison colony UShCH 349/2 in Sverdlovsk oblast had been assigned by a court to investigative detention as a pre-trial measure of restraint, they found themselves in the punishment block of an institution for convicted prisoners. It appears from numerous testimonies of former detainees there that convicted prisoners have access to the cells in which suspects are accommodated (see pages 8-9).

Raviil Khakimov was moved back to Yekaterinburg in February 2005, and transferred to temporary investigative isolation premises in a colony for convicted prisoners: IK-2. This colony is adjacent to the SIZO and part of its punishment block has been given over to housing prisoners who are awaiting trial. Raviil Khakimov's cell is partly underground. Although he was yet to be convicted of any criminal offence by a court, one of his lawyers reported that he was sharing the punitive regime of convicted prisoners undergoing punishment there, with reduced access to exercise, parcels and visits.

Article 10(2)(a) of the ICCPR states: "Accused persons shall, save in exceptional circumstances, be segregated from convicted persons...". The same requirement is stated in the UN Standard Minimum Rules for the Treatment of Prisoners (Rules 8, 85) and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principle 8). The UN Special Rapporteur on torture has stated that, "In accordance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, prisoners should be segregated according to gender, age and seriousness of the crime, alleged/committed; first-time prisoners should be segregated from repeat offenders and pre-trial detainees from convicted prisoners."¹⁶

¹⁶ General Recommendations of the Special Rapporteur on torture (E/CN.4/2003/68, para. 26, J).

6. Appendix – update on cases highlighted in preliminary briefing

6.1. Rasul Kudaev

Former Guantánamo prisoner Rasul Kudaev remained in detention in Nalchik, capital of Kabardino-Balkaria, charged with terrorism-related offences. Concerns about his health and about inadequate health provision remained.

In January the Ministry of Internal Affairs for Kabardino-Balkaria brought a civil suit against Rasul Kudaev's lawyer, Irina Kommissarova, for defamation (see page 12).

6.2. Mekhti Mukhaev and Isa Gamaev

Mekhti Mukhaev was taken to the Central Hospital of the Chechen Republic on 5 June 2006, two days before the start of the trial at the Urus-Martan city court. At the hospital he was diagnosed as suffering from severe heart problems and doctors recommended that he should be admitted to hospital for treatment. However, according to information available to Amnesty International, he was transferred to the court for the hearing on 7 June despite his serious condition, and was not provided with any medical attention in the SIZO.

On 17 August 2006 the Urus-Martan city court found Mekhti Mukhaev guilty of "participation in an illegal armed group" (Article 208 part 1) and sentenced him to eight months' imprisonment in an ordinary regime colony. Taking into account the time already spent in detention since 13 January 2006, he was therefore released on 13 September 2006, according to the Memorial Human Rights Centre. Isa Gamaev was found guilty of "participation in an illegal armed group" (Article 208 part 1) and sentenced to one year's imprisonment in an ordinary regime colony, with the time already spent in detention also to be taken into account.

During the court hearings both Mekhti Mukhaev and Isa Gamaev stated that they had been tortured, and identified individual officers from ORB-2 who they say tortured them. However, Amnesty International is not aware of any investigation by the authorities into these allegations.

6.3. Zelimkhan Muralov

In February 2006 a commander and a lower-ranking officer who had served in Chechnya with the combined police troops of the Khanty-Mansiisk Autonomous District were placed on the federal "wanted" list. They had been identified during the 2005 court hearings against their subordinate, officer Sergei Lapin, as having been involved in the torture and "disappearance" of Zelimkhan Muralov. A criminal investigation had been opened against them by the Office of the Procurator of the Chechen Republic in November 2005 for "exceeding official

authority” with aggravating circumstances, and “grievous bodily harm with aggravating circumstances”. Neither man had been arrested at the end of September 2006.

In May, the Ministry of Internal Affairs Operative Group of the Oktiabrskii district in Grozny was disbanded, and its premises, which had previously been a school for deaf children, was left empty. From 2000 to 2003, the school, made up of a three-storey building with basement, and a two-storey sports hall, had been the headquarters of the Oktiabrskii Temporary Department of Internal Affairs, or VOVD. VOVDs were a Ministry of Internal Affairs structure staffed by the police officers drawn from different regions of the Russian Federation, acting in parallel to the local police departments, staffed by Chechens. The Oktiabrskii VOVD was staffed by the combined police troops of the Khanty-Mansiisk Autonomous District from 2000 to 2001. The Oktiabrskii VOVD had operated an IVS. Zelimkhan Murdalov, Alaudin Sadykov, and many others were detained, tortured and in many cases “disappeared” from this VOVD.

Staff from the Memorial Human Rights Centre, journalists, Astemir Murdalov (father of Zelimkhan Murdalov), Alaudin Sadykov and others visited the building and its basement at the end of May 2006, to take photographs and video footage before they were subsequently demolished. Alaudin Sadykov, whose ear was cut off during his time in detention in the VOVD in the spring of 2000, showed Memorial staff and journalists the cells in the basement where he and others had been held and tortured. Memorial Human Rights Centre then released the photographs and texts of prisoner and guard graffiti from the inside of the detention facility uncovered on the site.¹⁷ Some of the photographs showed lines etched into the walls, which seemed to have been made by detainees marking the number of days they had been detained. In one of the photographs Memorial released, the number of lines marked on a wall was clearly well in excess of 10, indicating that the duration of detention had exceeded the maximum period permitted under Russian criminal procedure for detention in an IVS of 10 days. Memorial reported that there were other instances of the number of such lines exceeding 10, and also that graffiti where detainees had apparently written their names and dates indicated that they had been detained there in 2004 and 2005, that is, after the VOVD had officially been closed down in 2003.

6.4. Police brutality in Bashkortostan December 2004

The lawyer representing many of the victims, as well as lawyers acting on behalf of the lower-ranking defendants, appealed against the judge’s decision of 14 March 2006 to divide the criminal case into two. The appeals were on the grounds that it violated Russian criminal procedure. They were also concerned that such a division of the case would result in only the lower-ranking officials being successfully prosecuted, with the more senior defendants evading prosecution. The Supreme Court of Bashkortostan upheld the 14 March ruling on 25 April; the ruling was reconfirmed by the presidium of the Supreme Court of Bashkortostan on

¹⁷ <http://www.memo.ru/2006/06/05/oktayabrs2006.htm>

19 July. At the end of September 2006, a further appeal against the 14 March decision was pending at the Supreme Court of the Russian Federation.

6.5. Mikhail Khodorkovskii

Amnesty International raised concerns with the Russian authorities following reports that the former head of the YUKOS company, Mikhail Khodorkovskii, was placed in a punishment cell (ShIZO) on 24 January 2006 for 15 days, for having had in his cell a copy of publicly available Ministry of Justice decrees relating to prisoner conduct. According to his lawyers this document is not normally restricted material. A response from the Office of the Procurator of Chita region stated that Mikhail Khodorkovskii's appeal against this treatment had been upheld by the Krasnokamensk city court on 18 April, the court finding that the punishment had been illegal.

According to his lawyers, Mikhail Khodorvksii was again placed in a punishment cell on 17 March for seven days, for drinking tea in an unauthorized place (he had missed supper due to a meeting with his lawyers, who had not been permitted to meet with him during working hours of the prison, and he had therefore made some tea in his cell).