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**RECOMMENDATION
OF THE COMMISSIONER FOR HUMAN RIGHTS
CONCERNING
certain rights that must be guaranteed during the
arrest and detention of persons following
"cleansing" operations in the Chechen Republic
of the Russian Federation**

I. The problem of the continuing violence in the Chechen Republic of the Russian Federation is a source of major concern within the international community. In the last six months a number of international organisations present on the spot and Russian and international NGOs actively involved in fostering respect for human rights in Chechnya have noted, in parallel, that a positive trend is emerging in the Chechen Republic, particularly as regards economic and social reconstruction efforts undertaken by the federal and local authorities. However, all the organisations present in Chechnya maintain that the climate of anxiety over security subsists, aggravating tension and affecting, above all, the civilian population. This atmosphere of tension is said to stem from both the action of separatist fighters and the reprisals of the federal forces.

Since the end of the active military phase of the "anti-terrorist operation" in Chechnya was announced, most of the problems complained of by the civilian population appear to result from the operations of federal forces in Chechen towns and villages. These actions, carried out to check the registration of inhabitants in their places of domicile and residence, more commonly called "cleansing operations" ("*zachistki*" in Russian), are intended, according to the Russian authorities, to identify and arrest fighters hiding in the midst of the civilian population.

These operations, which are legion, have, from the outset, caused considerable suffering to the civilian population, who regard them as seriously undermining security. Some of these operations have resulted in substantial unjustified acts of violence by soldiers against the civilian population. Acts of this nature, reported by the NGOs and also by the victims themselves, have prompted increasing concern on the part of the Commissioner, who has alerted the Russian federal authorities, the military command in Chechnya and the Prosecutor General of the Russian Federation on several occasions. The Commissioner has repeatedly pointed out that strict respect for human rights and serious efforts to curtail the climate of impunity are the only means of securing civil rest in Chechnya. The participants in the seminar organised by the Commissioner in November 2001 reiterated that there will be no peace without justice in Chechnya.

For their part, the federal authorities have made substantial efforts to respond to calls from the international community and NGOs, by adopting enforceable texts aimed at halting illegal acts by soldiers. These include, in particular, Decree no. 46 of the Prosecutor General "on reinforcing supervision of respect for civil rights during operations to check citizens' registration of place of domicile (*propiska* cards) in relation to their current whereabouts within the Chechen Republic" of 25 July 2001, which provides *inter alia* that prosecutors must be present during such operations, and Order no. 80 of General Moltenskoi, Commander of the federal forces in Chechnya, laying down new, stricter rules of procedure for "cleansing" operations, dated 27 March 2002. The latter text undeniably provides a response to the conclusions of the seminar organised by the Commissioner in Strasbourg in November 2001. These documents demonstrate the authorities' concern to respond to criticism from the local population over the numerous human rights violations committed during *zachistki*.

Nevertheless, the Commissioner continues to receive alarming information from Chechnya. It seems that, despite the adoption of the new texts mentioned above, the situation remains fraught. The Commissioner is particularly concerned over complaints from the civilian population that many individuals held during cleansing operations,

which are still carried out on a regular basis, have gone missing. According to numerous witness statements, it has often been the case during such operations that a number of people, both men and women, many of them young, have been put on military trucks and taken to unknown destinations. According to these statements, these are often military bases and regimental outposts within the Chechen Republic. It is true that some such individuals have been released once their identity has been checked. However, in a significant number of cases, the corpses of detainees have been found while others have disappeared and their families have been unable to trace them.

The Commissioner decided to follow up this worrying information by writing personally to the Prosecutor General of the Russian Federation on 5 February 2002 (taking him up on his proposal at a meeting in Moscow on 14 September 2001), expressing his concern and requesting information on the action taken by the organs of the *Prokuratura* in this respect. In April 2002, at the request of the Prosecutor General of the Russian Federation, the Commissioner received a reply from the Deputy Prosecutor General of the Russian Federation with responsibility for the Southern Federal District.

The Deputy Prosecutor General's reply reveals that human rights violations were indeed committed and recorded during recent cleansing operations despite the efforts of the organs of the *Prokuratura* to prevent them. In particular, some of the individuals arrested were still considered as missing and criminal investigations had been opened in order to locate them. It appears that the efforts of the *Prokuratura* have had little impact, as the investigations opened have not produced the desired results. The Deputy Prosecutor General's letter mentions the case of the cleansing operation in Tsotsin Yurt on 30 December 2001, during which no less than five individuals were arrested and taken away by soldiers, no further news of their fates and whereabouts being heard. By 25 March 2002, the date of the Deputy Prosecutor General's reply, criminal investigations nos. 75013, 75014 and 75015 opened by the *Prokuratura* concerning those disappearances had made no progress.

The fact that many individuals are still missing seriously affects the situation in Chechnya, undermining the civilian population's trust in the federal authorities. The continuing disappearances engender a strong feeling of fear, vulnerability and uneasiness among civilians vis-à-vis the federal forces.

Most of the missing persons were seen for the last time in the hands of soldiers, which incurs the liability of the State. Under the established precedents of the European Court of Human Rights (see for example the judgment in *Timurtas v. Turkey* of 13 June 2000 or more recently in *Bilgin v. Turkey* of 17 July 2001), a person who goes missing following arrest by the law enforcement agencies and who was last seen in their custody may be considered, in certain circumstances, as dead, with the State bearing responsibility for their death. Disappearances of this kind consequently constitute a grave violation of human rights.

II. In view of the above, it should be stressed that any individual arrested, whatever offences they may be accused of, must enjoy all the rights granted to every Russian citizen by the Russian Federation Constitution (hereinafter the "Constitution"). It is vital that all constitutional guarantees be applied to the persons arrested, wherever they are arrested and detained, including on military bases.

Three questions need to be considered: what are the rights of the persons arrested and transferred to the territory of military bases? Who is competent to ensure that the constitutional rights of the persons arrested are respected? Are the rights of the individuals detained respected in practice and what can be done to improve respect for their rights?

1. What are the rights of the persons arrested and transferred to the territory of military bases?

Under Article 22 of the Constitution, the arrest or imprisonment of any person may take place only on the basis of a court decision, and preventive detention may not exceed 48 hours. Under Article 108-3 of Russia's new Code of Criminal Procedure, it is the prosecutor who must seek a decision from the court to place a suspect in detention.

Once arrested, the individual in question must go before the prosecutor within 48 hours or be released. It is clear, furthermore, that, if the individual is a civilian, he or she must be brought before a civilian prosecutor, even if they are held by the army. Military prosecutors are competent only for cases involving servicemen suspected of breaking the law.

The persons arrested by soldiers during "cleansing" operations are clearly civilians or in any case individuals not serving in the regular Russian army. In such cases, military prosecutors are not competent, even if the detainees are held inside military bases, where military prosecutors have a priority right of access.

Therefore, once arrested, any civilian, wherever he or she is held, is entitled to be brought before a civilian prosecutor within 48 hours of their arrest, even if detained at a military base. That is their constitutional right.

2. Who is competent to ensure that the constitutional rights of the persons arrested are respected?

Article 1 of Constitutional Federal Law no. 168-FZ of 17 November 1995 "On the *Prokuratura* of the Russian Federation" (hereinafter the "Law") stipulates that one of the functions of the *Prokuratura* is to safeguard human rights and confers upon prosecutors the functions of supervising respect of human rights and freedoms throughout Russian territory including, therefore, Chechnya.

It is clear, then, that the prosecutor is recognised by the legislator as the prime guarantor of the respect for human rights, particularly those of individuals held in custody. The prosecutor is competent to ensure that civil rights are respected. If they are not, the prosecutor must intervene, according to the Law, to ensure the respect for rights and curtail the violations discovered. This is one of the main prerogatives conferred upon the *Prokuratura* and highlights the importance and unique role of that institution within the Russian judicial system.

Article 22 empowers prosecutors to fulfil their task by granting them a right of access to any establishment or the premises of any state authority.

It is, therefore, first and foremost the responsibility of civilian prosecutors to ensure the respect for the human rights of any civilian arrested during "cleansing" operations and held for more than 48 hours, whatever their place of detention.

3. Given the situation, what can be done to improve respect for the rights of the persons arrested?

It appears that, so far, the civilian prosecutors working in Chechnya have not succeeded in exercising their powers on the territory of military bases. In the light of the information received from the Deputy Prosecutor General and numerous witness statements, it seems that even though, there appears to be no text prohibiting access for civilian prosecutors to military bases, they do not enter those premises to exercise the powers conferred on them by Article 22 of the Law. It would also seem that civilian prosecutors are not given any information on the number of civilians arrested by the armed forces, their exact places of detention or the charges against them.

Furthermore, military prosecutors are not competent to deal with the cases of civilians held on military bases, as their competence is limited to servicemen alone. Indeed, Article 47 of the Law expressly states that the military prosecutor is competent to supervise the lawfulness of the detention of servicemen in places of detention on regimental territory, expressly limiting the prerogatives of military prosecutors and thereby emphasising that civilians do not fall within their remit.

Consequently, this is a difficult situation which is worrying on several counts. Persons detained in military bases are deprived of access to justice unless they are handed over to the civilian authorities. The constitutional rule providing guarantees for access to justice for the citizens of the Russian Federation is not being complied with here. Moreover, in affecting the right to liberty, this situation constitutes a grave violation of Article 5 of the ECHR. It must be pointed out that both the Russian Federation Constitution and the ECHR apply in full and unreservedly to the territory of Chechnya, which is not subject to any special regime.

In sum, a person arrested and then detained in a place apparently inaccessible to civilian prosecutors and falling outside the remit of military prosecutors is subject to arbitrary treatment and in a situation tantamount to a flagrant denial of justice.

Such a situation is inadmissible and should be rectified to guarantee access to justice for any person arrested and detained so as to ensure effective respect for human rights.

As we know, under Articles 21 and 22 of the Law there may be no obstacles to free access of civilian prosecutors to any public or private establishment, even a military base. However, the rarity with which civilian prosecutors enter establishments subject to military regulations, results in a malfunctioning of the judicial system.

It is necessary, therefore, to act swiftly to this problem. It seems that in such a situation it is for the Prosecutor General of the Russian Federation to take appropriate measures to ensure that the entire civilian population living in the Chechen Republic may enjoy their constitutional rights. Furthermore, Article 17 of the Law confers on the Prosecutor General the functions of directing and coordinating the activities of the entire

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Prokuratura system in Russia, granting him substantial regulatory powers and designating him as the person chiefly responsible for the implementation of the *Prokuratura's* functions on the territory of Russia (article 17-4).

In view of the foregoing,

The Commissioner for Human Rights, acting in accordance with Committee of Ministers Resolution (99) 50 on the Council of Europe Commissioner for Human Rights adopted on 7 May 1999 (hereinafter the Resolution);

Recalling the recommendations made in the report of his visit to the Russian Federation, including Chechnya, from 25 February to 4 March 2001, and notably the recommendation on combating impunity and relaunching the judicial system;

Recalling the conclusions of the Seminar concerning the "protection of and respect for human rights as the basis for the democratic reconstruction of the Republic of Chechnya" organised by the Commissioner in Strasbourg on 26-27 November 2001;

Taking account of the relevant provisions of the Russian Federation Constitution, the new Code of Criminal Procedure and Constitutional Federal Law no. 168-FZ of 17 November 1995 "On the *Prokuratura* of the Russian Federation";

Taking account of Decree no. 46 of the Prosecutor General "on reinforcing supervision of respect for civil rights during operations to check citizens' registration of their place of domicile (*propiska* cards) in relation to their current whereabouts within the Chechen Republic" of 25 July 2001, and Order no. 80 of General Moltenskoï, Commander of the federal forces in Chechnya, laying down new, stricter rules of procedure for "cleansing" operations, dated 27 March 2002, and noting that these texts are still not adequately complied with.

Recalling his letter of 5 February 2002 to the Prosecutor General of the Russian Federation, Mr Ustinov, and the reply from the Deputy Prosecutor General of the Russian Federation with responsibility for the Southern Federal District, made at Mr Ustinov's request;

Taking into consideration various information and witness statements provided by the representatives of non-governmental organisations actively involved in fostering respect for human rights in Chechnya;

Recalling the established precedents of the European Court of Human Rights, which presume that the State is liable for persons who have gone missing and were last seen in the custody of the public authorities;

Convinced of the importance of the *Prokuratura's* role in protecting human rights on the territory of the Russian Federation and, in particular, the Chechen Republic, aware of the progress and efforts made by public prosecutors to afford justice to those who need it in Chechnya and elsewhere, and encouraging the work of the *Prokuratura* to guarantee respect for constitutional rights and freedoms to all citizens of the Russian Federation;

Considering that Article 3.e. of Resolution (99) 50 states that the Commissioner for Human Rights shall "identify possible shortcomings in the law and practice of member States concerning the compliance with human rights as embodied in the instruments of the Council of Europe, promote the effective implementation of these standards by member States and assist them, with their agreement, in their efforts to remedy such shortcomings";

Having regard to Article 8.1. of Resolution (99) 50,

issues the following recommendations:

1. That the authorities take all necessary steps to ensure that, during operations to check citizens' registration of their place of domicile (*propiska* cards) in relation to their current whereabouts within the Chechen Republic, so-called "cleansing" operations undertaken by the armed forces, the provisions of Decree no. 46 of the Prosecutor General of the Russian Federation and Order no. 80 of General Moltenskoï are effectively applied and that any breaches thereof be severely sanctioned,
2. That, in order to ensure that citizens actually enjoy the constitutional rights guaranteed in the event of their arrest and detention by soldiers or on the territory of a military base, the Prosecutor General take action to secure effective access by civilian prosecutors to all places where civilian detainees might be held, including military bases, in accordance with Article 22 of Constitutional Federal Law no. 168-FZ of 17 November 1995 "On the *Prokuratura* of the Russian Federation";
3. That, in order to implement the foregoing recommendations and strengthen effective respect for human rights, the Prosecutor General might envisage, on the basis of his regulatory powers, setting up specific machinery for cooperation and coordination between civilian and military prosecutors in Chechnya. This might entail, for example, joint inspection teams, comprising a civilian prosecutor and a military prosecutor, who would make a joint inspection visit to a military base with a view to meeting detainees and, where applicable, exercising their respective prerogatives to institute legal proceedings in respect of the civilian detainees and, if necessary, prosecute for any violations committed by servicemen when arresting civilians.
4. That the material and human resources available to the civilian *Prokuratura* be reinforced so that it may duly exercise its supervisory and investigative functions.
5. That the necessary steps be taken so that the families of detainees and, where applicable, non-governmental organisations actively involved in fostering respect for human rights in Chechnya are informed of the fate of persons arrested and/or detained during operations to check citizens' registration of their place of domicile (*propiska* cards) in relation to their current whereabouts within the Chechen Republic.

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Council of Europe Commissioner for Human Rights

Strasbourg, 30 May 2002