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REPORT

by Nils Muižnieks
Commissioner for Human Rights of the Council of Europe

Following his visit to the Russian Federation
from 3 to 12 April 2013

Issues reviewed:

administration of justice and protection of human rights in the justice system in the Russian Federation

Summary

Commissioner Nils Muižnieks and his delegation visited the Russian Federation from 3 to 12 April 2013. In the course of this visit the Commissioner held discussions with state authorities and non-governmental, national and international organisations. He paid particular attention to the ongoing reforms in the justice system, including issues relating to the independence and effectiveness of the judiciary, the observance of the right to a fair trial during judicial proceedings, and prevention of ill-treatment.

The Russian judicial system is complex and particular situations can vary from one region to another. In any given country, the judicial system should be seen in a broader context of democratic institutions, and any deficiencies in the functioning of the other branches of the government may have an impact – sometimes decisive – on the judiciary. Therefore, it is not always possible to attribute the deficiencies in the functioning of the justice system exclusively to the shortcomings in its internal organisation and regulation, or to any improper outside influence on it. Historical and cultural traditions could also play an important role in how both the representatives of the judiciary and the public in general view its role in ensuring access to justice in society.

Efforts have been undertaken by the government to reform the justice system, including through an in-depth revision of the legislative framework. Reforms were also carried out following judgments by the European Court of Human Rights, in particular as concerns the supervisory review procedure, and a remedy has been introduced for lengthy proceedings and for delayed execution of judgments of domestic courts.

However, substantial constitutional, legislative, institutional and practical reforms should continue in order to meet the requirements of the European Convention for Human Rights and to remedy the long-standing, systemic problems in the administration of justice, including those highlighted in the case-law of the European Court of Human Rights. The need for further reforms in the judiciary was on various occasions acknowledged by the Russian authorities, including at the highest political level.

The present report does not provide an exhaustive analysis of issues pertaining to the functioning of the administration of justice in the Russian Federation. Instead, it aims to draw attention to several key shortcomings which were already identified in the judgments of the European Court of Human Rights, and were discussed with various interlocutors in the course of the Commissioner's visits to the country in October 2012 and April 2013. Through the present report, the Commissioner identifies the main issues which he proposes as the basis for his on-going dialogue with the Russian authorities on the justice system.

The present report focuses on the following major issues:

I. Functioning of the judiciary

A strong and well-functioning judicial system, fully integrating the principle of respect for human rights, is an indispensable component of the rule of law, which in turn constitutes the basis of a genuine democracy. The way in which the judicial system ensures protection of citizens and residents against unlawful acts of government is usually seen as a litmus test for its independence and impartiality, in particular its independence from the government. While acknowledging the efforts already undertaken to date, the Commissioner would like to encourage the Russian authorities to develop a comprehensive strategy for further reforms in the judiciary, with a view to promoting its full independence, impartiality and effectiveness, in line with European standards.

The impact of the rulings by the Constitutional Court and decisions of the Supreme Court on the judiciary should be reinforced, including through training of judges. Provided certain conditions are met, the expanded use of jury trials will contribute to increased public confidence in the judicial system and help to

overcome its prosecutorial bias. Special procedures (akin to plea bargaining) in the courts should only be used with due regard given to the principles established by the case-law of the European Court of Human Rights.

The automated case assignment procedure should be introduced as promptly as possible, and should be strictly and systematically followed. Use of modern technologies such as videoconferencing in court procedure should be accompanied by adequate safeguards.

II. Status of judges

The independence of the judiciary – which also implies the independence of each individual judge – should be protected both in law and in practice. Individual judges and the judiciary as a whole need to be independent, impartial and impervious to all external or internal pressure, so that those who appear before a court, as well as the public in general, have confidence that their cases will be decided fairly and in accordance with the law. When carrying out their judicial function, judges must be free of any improper influence, which may take different forms, such as pressure by the executive or the legislature, by individual litigants, powerful economic interests or particular pressure groups, by the media, self-interest or by other judges, most notably senior judges.

It is of utmost importance to ensure that judges are not only independent and impartial, but are also seen as such by members of society. The Commissioner noted with concern that perceptions persist that judges are not shielded from undue pressure, including from within the judiciary. Decisive action is needed on several fronts to remove factors which render judges vulnerable and undermine their independence.

Each judge should be able to decide cases solely on the evidence presented in court by the parties and in accordance with the law. Only relevant facts and law should form the basis of a judge's decision in any given court case. Persons seeking to influence judges in any manner should be subject to sanctions by law.

The Commissioner calls upon the Russian authorities to clarify the procedures and criteria related to the appointment and dismissal of judges, as well as to the application of disciplinary measures. The system for appointment of court presidents should be revised and managed within the judiciary. It is also important to provide quality initial and on-going training for judges, including on the case-law of the European Court of Human Rights.

III. The role of the prosecutor's office and equality of arms

Apart from the independence and the impartiality of the courts, future reform efforts in the judiciary should focus on strengthening the right to a fair trial and on ensuring genuine adversarial proceedings and respect for the presumption of innocence.

The Commissioner recommends that the authorities take resolute action to reform the Prosecutor's Office, with a view to strengthening its capacity to exercise its professional duties freely, independently and impartially. The role of prosecutors in combating impunity and ill-treatment should be further reinforced.

Defence lawyers should operate without impediments and in full confidentiality when providing legal assistance to their clients. Any reports of harassment, intimidation, and other forms of pressure on lawyers should be duly investigated. A comprehensive review of the system of *ex officio* legal assistance should be carried out in co-operation with the bar associations, to ensure that lawyers are in a position to deliver assistance in the best interests of their clients. Lawyers should enjoy free and unimpeded access to their clients in all places of deprivation of liberty.

The Commissioner noted the policy initiatives in the area of juvenile justice and encourages the authorities to pursue their efforts towards reform.

IV. Issues identified by the European Court of Human Rights

The Commissioner welcomes the introduction of an effective remedy for the violation of the right to a fair trial and for non-execution of domestic judgments within a reasonable time, and encourages the authorities to resolve the remaining issues in that field, such as the non-execution of domestic judgments related to in-kind obligations.

Detention on remand must always be exceptional, and each individual case must be properly justified. Whenever possible, the use of alternative non-custodial measures should be encouraged. The introduction of effective remedies against unjustified remand in custody, in parallel with training on the case-law of the European Court of Human Rights for judges, investigators and prosecutors, will help to change attitudes in this area. Health care for persons held on remand and serving a prison sentence should be provided in conditions comparable to those provided in the outside community.

Genuine reconciliation in the North Caucasus cannot be achieved without justice. For all the people in the region to live in peace in a cohesive, pluralist democratic society, there must be a reckoning and coming to terms with the past. The authorities should ensure an effective investigation into past abuses with a view to preventing any new violations. Victims of crimes are entitled to redress and protection should be given to witnesses willing to testify about crimes.

The authorities should ensure scrupulous application of the national legislation in all cases of extradition and punish any infringements of the law, while bringing those responsible to the account. Above all, effective protection should be ensured for persons covered by interim measures ordered by the European Court of Human Rights.

V. The on-going reform of the police and efforts to combat ill-treatment

The Commissioner welcomes the on-going reform of the police and urges the authorities to reinforce the message of “zero-tolerance” of ill-treatment by law enforcement officials. An unequivocal commitment must be demonstrated to combating impunity for such acts, including through the imposition of sentences commensurate to the gravity of the offence. Every effort should be made to remove the existing obstacles to accountability for law enforcement officials, and to ensure that any criminal act committed by them is effectively investigated by the competent authorities, in full compliance with the criteria established by the European Court of Human Rights. The parliamentary mechanisms for ensuring democratic oversight of law-enforcement and security structures should be further strengthened; representatives of civil society institutions, experts and the public in general should play a more prominent role in the corresponding oversight mechanisms.

Performance indicators for law enforcement officials, investigators, prosecutors and judges should make it clear that established innocence or other grounds excluding criminal liability are of the same value as conviction of those guilty.

VI. The role of human rights structures and civil society in the reform process

Independence is essential to the proper functioning of ombudsman institutions and their ability to defend human rights. It should be further reinforced both in law and in practice, including by providing adequate resources for them to operate. It is also crucial to ensure that, in their dealings with human rights institutions, the authorities proceed with full respect for their integrity and independence.

The Commissioner would like to reiterate a long-standing recommendation to ensure safe and favourable conditions for the work of human rights NGOs in the Russian Federation. A regular and open dialogue between the authorities and various civil society organisations will be essential for the success of future reforms.

Despite certain efforts on the part of the government and members of the judiciary to increase its transparency, the judicial system is still perceived by the general public as being rather closed to public scrutiny. Therefore, there is a need to undertake further efforts in this area. At the same time, proper mechanisms should be in place to ensure that judges are shielded from external pressure, in particular in high profile cases which generate intense debate and a high degree of media interest. Civil society input can be a useful factor in developing a constructive culture of debate in society, as well as in increasing the transparency of the judiciary and contributing to building public confidence.

The Commissioner would like to invite the authorities both at federal and regional levels to consider the development of national and regional human rights action plans, in close co-operation with all the relevant stakeholders.

Introduction

1. The present report follows a visit to the Russian Federation by the Council of Europe Commissioner for Human Rights, Mr Nils Muižnieks (hereinafter "the Commissioner"), from 3 to 12 April 2013.[1] The purpose of the visit was to assess the situation of the administration of justice and the level of protection of human rights in the justice system in the Russian Federation. The Commissioner paid particular attention to the on-going reforms in the judiciary, prevention of ill-treatment, and measures to address the structural problems identified in the case-law of the European Court of Human Rights. The visit coincided with a series of nation-wide inspections of non-commercial organisations; therefore, the Commissioner continued to raise with his official interlocutors issues affecting the work of human rights defenders, as a follow-up to his previous visit to Moscow in October 2012.[2]

2. While in the Russian Federation, the Commissioner visited Kazan (Republic of Tatarstan), Moscow and Saint Petersburg. In Kazan, the Commissioner had meetings with the following officials of the Republic of Tatarstan: Mr Rustam Minnikhanov, President; Mr Ildar Khalikov, Prime Minister; Mr Farid Mukhametshin, Chairman of the State Council; Mr Artyom Khokhorin, Minister of the Interior; Mr Pavel Nikolaev, Chief of the Investigation Department of the RF Investigation Committee; and Mr Kafil Amirov, Prosecutor General of the Republic of Tatarstan. The Commissioner also had a meeting with Mr Igor Zubov, Deputy Minister of Interior of the Russian Federation, who was in Kazan during his visit. Furthermore, he had an exchange of views with the Chairman of the Supreme Court of the Republic of Tatarstan, Mr Ilgiz Gilazov, and two Deputy Chairmen of the Supreme Court; as well as Mr Viktor Demidov, Chairman of the Constitutional Court. During his stay in the Republic of Tatarstan, the Commissioner also went to the premises of a local police establishment and a temporary detention facility in Kazan; and the correctional facility ITK-5.

3. In Moscow, the Commissioner held discussions with representatives of the federal authorities, including the Minister of Foreign Affairs, Mr Sergey Lavrov; the Deputy Minister of Justice, Mr Maxim Travnikov; the Prosecutor General, Mr Yury Chaika; the Vice-Chairman of the Investigative Committee, Mr Boris Karnaukhov; the Chairman of the Committee on Civil, Criminal, Arbitral and Procedural Legislation of the State Duma, Mr Pavel Krasheninnikov; and the Deputy Chairman of the Committee on Constitutional Legislation, Legal and Judicial Affairs and Civil Society Development of the Council of the Federation, Mr Alexey Aleksandrov. He also had a meeting in Moscow with the Chairman of the Supreme Court of the Russian Federation, Mr Vyacheslav Lebedev; and in Saint Petersburg with the Chairman of the Constitutional Court of the Russian Federation, Mr Valery Zorkin.

4. Furthermore, the Commissioner had extensive and fruitful discussions with representatives of national and regional human rights structures. In Kazan he had a detailed exchange of views with the Ombudsman for Human Rights of the Republic of Tatarstan, Ms Sariya Saburskaya; as well as the Ombudsman for Children's Rights, Ms Guzel Udachina. In Moscow, he had meetings with the Federal Ombudsman, Mr Vladimir Lukin, and members of the Presidential Council for Civil Society and Human Rights, including its Chairman, Mr Mikhail Fedotov. In Saint Petersburg, he met with the local Ombudsman for Children's Rights, Ms Svetlana Agapitova. The Commissioner also had meetings with civil society representatives in Kazan, Moscow and Saint Petersburg, as well as representatives of the Federal Bar Association in Moscow.

[1] During the visit, the Commissioner was accompanied by Ms Bojana Urumova, Deputy to the Director of his Office, and by Ms Olena Petsun, Adviser.

[2] On this topic, the Commissioner published on 15 July 2013 an Opinion on the legislation of the Russian Federation on non-commercial organisations in light of Council of Europe standards.

5. The Commissioner would like to express his gratitude to the Russian authorities, and in particular the Permanent Representation of the Russian Federation to the Council of Europe, for their valuable assistance in organising this visit. He wishes to thank all of his interlocutors for their willingness to share their knowledge and insights.

General context

6. The reform of the judiciary in line with Council of Europe standards was among the key commitments undertaken by the Russian Federation when joining the Organisation.[3] In a report published in 2004, the first Commissioner, Mr Álvaro Gil-Robles, paid special attention to the situation in the justice sector and police and provided several recommendations for further steps in the reform process. In particular, he urged the government to increase the financial and material resources for the legal professions and the courts; reduce the length of court proceedings; support the reforms of the legal professions; strengthen the independence of the judiciary as a whole and that of individual judges; improve training for judicial personnel; and provide Russian citizens with more comprehensive information about the on-going reforms.

7. In the same report, Commissioner Gil-Robles also urged the authorities to work towards improving conditions of detention in different places of deprivation of liberty, including by improving medical services in pre-trial establishments (*SIZO*) and penal colonies and renovating or rebuilding dilapidated buildings accommodating prisoners. As for the reform of the police, he recommended that the authorities: introduce improved procedures during police custody and detention in short-term detention centres (*IVS*) and systematic medical examinations both when persons are admitted to and are released from prisons and detention centres; pursue alternatives to detention on remand; firmly combat police violence; ensure proper training for the police; increase police salaries; provide the police with the equipment essential for their task; and strive to improve the image of the police in Russian society.[4]

8. The reforms in the justice sector in the Russian Federation have been on-going since 1991. Significant legislative efforts have taken place since then, and have most notably included the adoption of a new Criminal Code (1996); a Civil Code (1996); a Code of Criminal Procedure (2001); an Arbitration Code (2002); a Code of Arbitration Procedure (2002) and a Code of Civil Procedure (2002). Other achievements have included improvements in the material conditions for the work of judges (salary increase, gradual refurbishment of the court premises) and the introduction of modern information technologies in court proceedings. In 2007, an Investigative Committee of the Russian Federation was established as a separate entity within the Prosecutor's Office and since January 2011 it has been operating as an independent structure. In 2008, a new Federal Law was enacted, establishing public monitoring commissions to oversee the human rights situation in places of deprivation of liberty.

9. Several important reforms have been undertaken to address the systemic deficiencies revealed in the judgments of the European Court of Human Rights. To name just a few, April 2010 saw the enactment of the Law on Compensation for Violation of the Right to Trial within a Reasonable Time or the Right to Implement a Judgment within a Reasonable Time. In December 2010, a further law was enacted, introducing appeal courts within the system of the courts of general jurisdiction, with a view to limiting the recourse to the supervisory review procedure (*nadzor*). Since January 2012, the new system has been operational with regard to civil proceedings, and was extended to criminal proceedings in January 2013. Federal Programme "On the development of the Penitentiary System in the Russian Federation for 2007-2016" is also underway, seeking to address deficiencies in detention conditions.

[3] Cf. Opinion No.193 (1996) on Russia's request for membership of the Council of Europe, in particular §§7.iv – 7.vii; 7.ix; 7.x.
[4] Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visits to the Russian Federation (15 to 30 July 2004; 19 to 29 September 2004); § 564.

10. More recent reform initiatives have included the adoption of the new Law on Police, which entered into force in March 2011. Another important piece of draft legislation - the Code of Administrative Procedure (*Kodeks administrativnogo sudoproizvodstva*) – was before the State Duma in April 2013, i.e. at the time of Commissioner Muižnieks's visit to Russia which forms the basis of the present report.

11. In September 2012, the Government of the Russian Federation approved the Concept of the Federal Programme "Development of the judiciary in the Russian Federation for 2013-2020" (as a follow-up to the previous programme "Development of the judiciary for 2007-2012). Furthermore, the Government adopted in April 2013 the Federal Programme "Justice" for the years 2013-2020.

12. In spite of the above-mentioned achievements and undertakings, the situation in the judicial system continues to pose a complex set of problems which will require additional efforts to identify and implement solutions. In 2012, the European Court of Human Rights (hereinafter referred to as the Court) adopted 134 judgments in respect of the Russian Federation, finding at least one violation in 122 of these. Of those cases, a violation of the right to a fair trial was found in 36; of right to liberty and security – in 64 cases; in relation to inhuman or degrading treatment – in 48 cases; and lack of effective investigation – in 25 cases.[5] In his report for 2012, the Russian Federal Ombudsman indicated that 56.7% of the complaints received by his office were filed in connection with violations of civil rights; 67.1% of those were related to the right to a fair trial.[6] The need for further reforms in the justice system has been recognised by the Russian authorities on several occasions, including at the highest political level.[7]

I. Functioning of the judiciary

1. Organisation of the judicial system

13. According to the Federal Constitutional Law "On the Court System of the Russian Federation", the court system is divided into federal courts, constitutional (charter) courts and justices of the peace.[8] In terms of subject-matter jurisdiction, the system is divided between courts of general jurisdiction and arbitration (commercial) courts. The former consider criminal, administrative and civil cases falling under their territorial jurisdiction.

14. Constitutional courts consider the compliance of the laws of the Russian Federation with the federal Constitution and the compliance of the laws of the federal entities[9] with their respective constitutions (charters). Regional constitutional courts are not subordinate to the Constitutional Court of the Russian Federation.

15. The system of courts of general jurisdiction consists of four layers. The first one - the justices of the peace – consider, as a court of first instance, civil and administrative cases of a relatively lesser complexity and criminal cases involving maximum prison sentences of up to three years. Justices of the peace are appointed by local legislative bodies for a period of five years. District courts act as a higher judicial instance for the justices of the peace. They also act as courts of first instance in more complex cases. The supreme courts of the republics, the regional (*kray*) courts, as well as the courts of cities of federal significance (Moscow and Saint Petersburg), of

[5] Annual report 2012, European Court of Human Rights, page 155 (http://www.echr.coe.int/Documents/Annual_report_2012_ENG.pdf)
[6] Report by the Commissioner for Human Rights of the Russian Federation for 2012, page 11 (available at http://ombudsmanrf.org/)
[7] See, for example, the transcripts from the meeting between the President of the Russian Federation and the members of the Presidential Council on Civil Society and Human Rights of 4 September 2013 (http://www.kremlin.ru/transcripts/19146).
[8] Section 4 of the Law.
[9] The Russian Federation has 83 constituent entities.

autonomous regions (*oblast*) and autonomous districts (*okrug*) act as higher instance courts for district courts. They also act as courts of first instance for the most serious offences. The Supreme Court is a higher instance in relation to the federal courts of general jurisdiction of republics and equal entities.

16. Military jurisdiction includes civil, administrative and criminal cases and is governed by the Criminal Procedure Code and the 1999 Federal Constitutional Law on Military Courts. Military courts have jurisdiction over servicemen and citizens undergoing periodic military training. The Supreme Court is also the final instance in terms of military jurisdiction.

17. As of 1 October 2012, there were 6 801 justices of peace (out of 7 451 justices of peace envisaged by the law. There were 83 supreme courts of the republics and other regional courts and 2198 district (city) courts. In terms of military jurisdiction, there were 12 circuit (or fleet) courts and 105 garrison courts.[10] As of 30 September 2012, there were 22,086 federal judges (and 3,131 vacant places), including 5,027 judges of the supreme courts of the republics and equal entities and 16,331 in the district courts. Further, there were 217 judges in the circuit (or fleet) military courts and 511 in the garrison military courts.[11]

18. Arbitration (commercial) courts are specialised courts which resolve property and commercial disputes. The system of commercial courts has four levels and includes 81 commercial courts at the level of the federal entities, 20 appellate courts, 10 cassation courts, and the Supreme Arbitration Court. In 2010, 3719 judges were working in the commercial courts, including 2732 judges in the courts at the federal entity level; 544 judges in the appellate courts; 387 in the cassation courts and 56 in the Supreme Arbitration Court.[12] There is also a separate court dealing with intellectual property rights, which was established in December 2011 and became operational in January 2013. In June 2013, President Putin announced his proposal to merge the Supreme Arbitration Court with the Supreme Court, which would require amending the Constitution.

2. The role of the Constitutional Court

19. The Constitutional Court, established in 1991, is composed of 19 judges who are appointed by the Federation Council upon nomination by the President. The Court's competencies and procedures are enshrined in the Constitution and the 1994 Federal Constitutional Law on the Constitutional Court. The Court mainly considers the constitutionality of legal acts and disputes between State organs relating to their competencies. In addition, any federal court may request the Constitutional Court to adjudicate on the constitutionality of a law to be applied in a given case, if a federal judge is in doubt whether the law is compliant with the Constitution. The Court is also competent to deal with individual complaints of citizens concerning alleged violations of their constitutional rights and freedoms.

20. Since the Russian Federation's accession to the European Convention on Human Rights, both the Constitutional Court and the Supreme Court (see below) have been playing a leading role in promoting the application in the domestic case-law of the standards enshrined in the Convention, as well as the case-law of the European Court of Human Rights. Most notably, the Constitutional Court has been examining the constitutionality of legislative provisions which in some cases have also been subject to review by the European Court of Human Rights from the point of view of their compatibility with the Convention.

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[10] Report on the activities of the Judicial Department at the Supreme Court of the Russian Federation for the years 2009-2012, pp. 49 and 94-95.
[11] *Ibid*, p.95.
[12] European Commission for the Efficiency of Justice (CEPEJ), Scheme for Evaluating Judicial Systems 2011, submission by the Russian Federation (http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2012/Russian%20Federation_en.pdf)

21. According to the law, the decisions of the Constitutional Court are final and the competent authorities are obliged to ensure their prompt execution. In March 2013, the Ministry of Justice reported the results of its monitoring of the implementation by various state institutions of the decisions of the Constitutional Court.[13] The findings revealed that not all of the decisions were executed in a timely manner; some were awaiting execution for more than ten years, for instance the Decision of 18 February 2000 concerning Section5(2) of the Federal Law on the Prosecutor's Office. The corresponding legislative amendments were submitted to Parliament only in March 2013. In the course of his discussions with the relevant interlocutors, the Commissioner was reassured that cases like this were exceptional and that, as a rule, the decisions of the Constitutional Court were executed without undue delay.

3. The role of the Supreme Court

22. The Supreme Court is the highest judicial authority for civil, criminal, administrative and other cases under the system of general jurisdiction. Apart from its function of judicial review of decisions of lower instance courts, the Supreme Court also gives clarifications on issues of judicial practice and has the right of legislative initiative. The Court's judges are appointed by the Council of the Federation upon the recommendation of the President of the Russian Federation, which in turn is based on a recommendation by the Chairman of the Supreme Court.

23. The Supreme Court plays a unique and fundamental role in ensuring the unified application of the law by all courts of general jurisdiction, i.e. by providing guidelines to the lower courts on the application of the legislation in question, as well as on legally binding European and international standards. In June 2013, the Plenum of the Supreme Court adopted a decision "On the implementation by the courts of general jurisdiction of the ECHR and its Protocols," which provides useful guidelines and clarification as to the application of the Convention standards and execution of the judgments of the European Court of Human Rights.[14] Throughout the present report, numerous references are made to the guidelines issued by the Supreme Court, which are of direct relevance to the on-going reforms in the justice system and to the effective implementation of the relevant case-law of the European Court of Human Rights, for instance in extradition cases, application of non-custodial measures and other matters.

24. What remains to be seen is the extent to which the above-mentioned guidelines and clarifications provided by the Supreme Court are integrated in court practice. For instance, the Supreme Court stated in its decisions concerning the application of regional laws concerning "propaganda of homosexuality"[15] that courts should not interpret such laws in a way which interferes with the right to freedom of assembly, specifically mentioning that the legislation should not justify a decision by local authorities to prohibit the holding of a public event. Despite the Supreme Court's guidance, an analysis of domestic case-law[16] in those regions where "propaganda" laws are systematically applied[17] would suggest that the laws concerned are indeed used to limit the freedoms of assembly and expression of LGBT activists and their organisations.

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[13] The results of the monitoring are available at the Ministry's Web-site: http://minjust.ru/ru/portal_pravoprimeneniya/monitoring

[14] Decision No 21 of 27 June 2013.

[15] For the Commissioner's position on this and similar legislation, see *Report on discrimination on grounds of sexual orientation and gender identity in Europe*, 2011 and *Human Rights Comment "Silencing voices against homophobia violates human rights"*, 21 June 2012. See also *Opinion on the issue of the prohibition of so-called "propaganda of homosexuality" in the light of recent legislation in some member states of the Council of Europe,* CDL-AD(2013)022, Venice Commission, June 2013.

[16] Available at http://mhg-monitoring.org/sites/default/files/files/analiz_pravoprimeneniya_zakon-va_o_zaprete_propagandy_gomoseksualizma.pdf

[17] Mainly in Arkhangelsk oblast; in Saint Petersburg and Kostroma oblast such laws are occasionally applied.

4. Jury trial and special court proceedings

25. According to Article 30 (2) of the Russian Criminal Procedure Code, upon the request of a defendant in a criminal case, the case against him or her can be examined by a judge and twelve jurors. Trial by jury can also proceed in cases initiated in respect of the more serious crimes falling under the responsibility of the courts of general jurisdiction at federal entity level, which are listed in Article 31 (3) of the Russian Criminal Procedure Code. The status of jurors is defined in the Federal Law "On the jury in the federal courts of general jurisdiction in the Russian Federation".[18]

26. Russian juries try approximately 0.05% of all criminal cases (around 600 to 700 cases each year), and the rate of acquittals is such cases is 20%. The percentage of jury trials fell somewhat from 2011 to 2012; in 2012, the number of jury trials amounted to 12% of the totality of cases considered by the regional courts of general jurisdiction[19] (overall, 573 criminal cases), as compared to 14.8% (537 criminal cases) in 2011. In terms of statistics on convictions and acquittals, 818 persons were convicted (compared to 1046 in 2011) and 157 acquitted (182 in 2011).[20]

27. The distinctive features of the Russian system of jury trials are: a lack of jurisdiction over crimes against the state (such as terrorism and extremism); the absence of the unanimity requirement; a three-hour maximum deliberation period; the option to remand a case back to the prosecution for additional investigation; and the Supreme Court's right to overturn a verdict. Juries have no jurisdiction over civil cases or minor crimes. The jury caseload primarily consists of aggravated murder, racketeering, aggravated bribery, and crimes against justice (such as perjury or obstructing a police officer). Certain crimes, including terrorism, espionage, hostage taking, and mass disorder, must be heard by panels of three judges rather than by juries.

28. The relatively high acquittal rates in jury trials (20% compared to less than 1% in cases tried by judges) have resulted in some public criticism. While opinion polls suggest that 30% of citizens trust juries over judges, 21% trust judges more, and the rest either do not have a preference (30%) or consider both forms of judicial proceedings equally trustworthy (19%). Both supporters and opponents of the jury system are not fully satisfied with its current performance. Supporters are disappointed that jury trials are becoming increasingly susceptible to manipulation and takeover by the traditional judicial apparatus and practices. Opponents bemoan the high acquittal rates and what they perceive as excessive unpredictability of the verdicts. On certain occasions juries have been criticised as unprofessional and susceptible to emotional and financial pressure by all parties in the criminal justice process.[21]

29. Since 2008, there has been a gradual limitation of the use of jury trials, which has been criticised by many legal experts in Russia, who see this as an effort to avoid acquittals in criminal cases. Despite some of the shortcomings in the way the system operates, many lawyers and legal experts view jury trials as one of few tools within the judiciary with the potential to improve the functioning of the system. The expanded use of jury trial may effectively contribute to increased public confidence in the judicial system, provided that there is a proper jury selection[22] and that decisions are properly reasoned. An increase in the number of acquittals can be interpreted as a

[18] Federal Law no. 113-FZ of 20 August 2004.
[19] Regional courts are the courts at the federal entity level.
[20] Review of the court statistical date on the activities of the federal courts of general jurisdiction and justices of the peace in 2012, Judicial Department at the Supreme Court of the Russian Federation, page 27 (available at http://www.cdep.ru/index.php?id=80&item=1911).
[21] See "Jury trials in modern Russia", The ISCIP Analyst, Volume XVI, Number 7, 28 November 2010 (available at http://www.bu.edu/phpbin/news-cms/news/?dept=732&id=55374)
[22] The Court found a violation of the right to a fair hearing before a "tribunal established by law" in the cases involving improper selection of jurors (lay judges) in both criminal and civil cases. See, for instance, *Fedotova v Russia*, judgment of 13 April 2006; *Barashkova v. Russia*, judgment of 29 April 2008; *Ilatovskiy v. Russia*, judgment of 9 July 2009 and other cases.

sign that the “pronounced prosecutorial bias” (see paragraph 60 below) of the justice system is finally beginning to shift.

30. The Criminal Procedure Code[23] allows for simplified court proceedings[24] (“special order of the court proceedings") without a full examination of the case in a court hearing, if an accused person agrees with the charges and files a motion requesting examination of the case under this procedure.[25] According to Chapter 40.1, a simplified procedure can also be used in cases where an accused has concluded a pre-trial agreement on co-operation with the investigative and prosecutorial authorities, for instance to testify against others.

31. In 2012, the above-mentioned simplified procedure was used in 999 criminal cases out of approximately 5,000 dealt with by the regional courts.[26] At the same time the district courts used it in 302 800 criminal cases (62.2% of all the criminal cases); and the justices of the peace in 272 800 cases (64.2% of all cases).[27]

32. According to the law, application of the simplified proceedings can only take place with a judge’s consent. The judge should verify that the decision by the person concerned to be subject to simplified proceedings was not taken under coercion and intimidation, and should carefully examine the evidence supporting the charges.[28] In practice, however, there is a general tendency among judges to rely on the evidence presented by the prosecution and to authorise the motion whenever the minimum formal requirements are met.

33. The use of simplified proceedings undoubtedly accelerates the adjudication of criminal cases, thereby alleviating the workload of courts, prosecutors, investigators and lawyers. The argument has also been made that such a procedure could contribute to the reduction of the sentence[29] and time spent in pre-trial detention. However, the context in which the procedure operates could make its application problematic in certain cases. A combination of factors such as very high conviction rates, a stringent sentencing policy and the low public trust in the justice system could influence defendants to plead guilty even if innocent, leading to a distortion of justice. Critics of the procedure have also argued that in a criminal justice system which is characterised by excessive reliance on confessions, the simplified procedure discourages defendants who have grounds to do so from complaining against ill-treatment or excessive use of force by police. Therefore, appropriate and effective safeguards must exist both in law and in practice.

34. As regards the issue of posthumous trials, one of which took place in Moscow in the summer of 2013 where a deceased person – Sergei Magnitsky - was apparently found guilty of tax evasion, a recent judgment of the European Court of Human Rights should be highlighted. In a case where a domestic court found an accused person guilty after his death,[30] the Court found a violation of

[23] Chapter 40 of the CPC.
[24] The simplified proceedings are similar to plea bargaining.
[25] Apart from criminal cases, simplified procedures are also used in civil cases, commercial cases and in cases of administrative offences.
[26] Review of the court statistical data on the activities of the federal courts of general jurisdiction and justices of the peace in 2012, Judicial Department at the Supreme Court of the Russian Federation, pages 28, 32 and 38.
[27] Review of the court statistical data on the activities of the federal courts of general jurisdiction and justices of the peace in 2012, Judicial Department at the Supreme Court of the Russian Federation, page 28.
[28] On 5 December 2006, the Supreme Court issued guidelines on the application by the courts of the special order of the court proceedings (decision N 60).
[29] However, a study “Special proceedings – habitual sentence: application of the special order of the court proceedings (Chapter 40 of the CPC) in the Russian courts”, published by the Institute of the Rule of Law in March 2012, suggests that the use of such proceedings does not always lead to a lower sentence compared to the one the court would order if the case were tried under the usual procedure (available at http://www.enforce.spb.ru/analiticheskie-zapiski/5683-2012-mart).
[30] *Lagardère v. France*, CJ of 12 April 2012. The case concerned a court order for the son of the former chairman and managing director of the companies *Matra* and *Hachette*, to pay damages on account of his father's criminal guilt, which was not established until after the father's death.

Article 6. Referring to its established case-law[31] according to which there is a denial of justice where a person convicted in absentia is unable subsequently to obtain from a court a fresh determination of the merits of the charge, the Court concluded that there was no doubt that this principle applied a fortiori when a person was convicted not in his absence but after his death.

35. In July 2011, the Constitutional Court of the Russian Federation ruled that posthumous trials are only allowed with a view to rehabilitating a person who was accused or convicted of a particular crime at the request of his family.[32]

5. Access to court hearings and the use of information technologies in court proceedings

36. According to the Constitution, court hearings are open to the public. However, a hearing can be held *in camera* in specific cases defined by law.[33] Cases have been reported when access by the public to court proceedings in criminal cases has been hampered.

37. In December 2008, a Federal Law on Providing Access to Information about the Activities of Courts in the Russian Federation was adopted. The jurisprudence of the Supreme Court, including its review of judicial practice, is now available online. The decisions of the Constitutional Court are also available online. Information technologies have been promoted vigorously in recent years; between 2008 and 2010, the Russian Federation increased by 135.54% the budget allocated to their use, mainly in the framework of the Federal Program "Development of the judicial system for 2007-2011".[34] Its successor, the Federal Programme "Development of the judicial system for 2013-2020", also focuses on this area, in particular in court records management. Further, the "Justice" (*Pravosudie*) project has inter-connected the electronic databases of the courts.

38. During his visits to the higher-instance courts in Kazan and Moscow, the Commissioner noted with interest that the premises were equipped with the videoconference facilities.[35] The legislation in force allows the use of videoconferencing for interrogation of defendants and witnesses,[36] and provides for the participation of convicts in cassation and supervisory review proceedings by means of videoconferencing.[37] Videoconferencing is also used in commercial proceedings.[38] However, it is important to ensure that procedural safeguards are fully respected. In the case of *Sakhnovskiy v. Russia,*[39] the Court found a breach of Article 6 where sufficient privacy was not ensured in the consultation between the defendant and his lawyer in the cassation hearing conducted by means of video link. While it was not, as such, contrary to the right to a fair trial to use a video link, arrangements had to be made for the applicants to follow the proceedings, to be heard without technical impediments, and to communicate in an effective and confidential manner with their lawyer.

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[31] See *Colozza v. Italy*, judgment of 12 February 1985; *Einhorn v. France*; judgement of 16 October 2001; *Medenica v. Switzerland*, judgment of 12 December 2001.
[32] Decision № 16-P dated 14 July 2011.
[33] Such as when the accused person is a minor, the case involved the disclosure of information of personal character or degrading information about participants in the proceeding and to protect the safety of the participants in the proceedings, their relatives (Article 241 (2) of CPC)
[34] See CEPEJ data (available at http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2012/Rapport_en.pd)
[35] By the end of 2010, videoconferencing facilities were reportedly installed in all of the courts of general jurisdiction at federal entity level.
[36] Articles 240 (4) and 278.1 of the CPC.
[37] Articles 376 (3) and 407 (2) of the CPC.
[38] Since December 2010, videoconferencing facilities are available in 100% of commercial courts.
[39] Grand Chamber judgment of 2 November 2011.

39. An automated system for case allocation has already been introduced in all commercial courts, but is much less common in courts of general jurisdiction, where cases are usually distributed to judges by the chairpersons of the courts.

Conclusions and recommendations

40. The Commissioner underlines that a strong and well-functioning judicial system, fully integrating the respect for human rights, is an indispensable component of the rule of law, which in turn constitutes the basis of a genuine democracy. He welcomes the efforts undertaken by the Russian authorities towards reforming the justice system, including through in-depth revision of the legislative framework. The Commissioner encourages the authorities to develop a comprehensive strategy for further reforms in the judiciary, with a view to promoting its full independence, impartiality and effectiveness, in line with European standards.

41. Further efforts should be made to strengthen the impact of rulings by the Constitutional Court and the guidelines by the Supreme Court on domestic case-law, without undermining the independence of judges of lower-instance courts. The executive and legislative branches of the government should ensure that decisions of the Constitutional Court are executed without delay. The Supreme Court should also regularly review domestic case-law and practice in light of its own guidelines and, whenever necessary, propose changes to the legislation. Detailed coverage of the case-law of the European Court of Human Rights, as well as of the guidelines by the Supreme Court, should form an integral part of the curricula for the initial and on-going training of judges.

42. The expanded use of jury trials will eventually contribute to increased public confidence in the judicial system and help to overcome its prosecutorial bias. As for the system of simplified proceedings, it should be assessed in the context of the functioning of the entire criminal justice system. Resort to such proceedings should be accompanied by appropriate and effective safeguards, and be subject to thorough judicial review. Judges should exercise close control over the application of the procedure and ensure an adequate response to any indication that a decision might have been taken under duress. It is essential that defendants always make their choice regarding such a procedure voluntarily and free from any improper pressure, and have a full understanding that by agreeing to it they waive a number of rights, such as the right to give testimony and the right to trial. Due regard should be given to the principles established by the European Court of Human Rights and the Constitutional Court of the Russian Federation in respect of posthumous trials.

43. Procedures for automated case allocation should be introduced in all courts of general jurisdiction as rapidly as possible, and should be strictly and systematically followed. Additional measures should be considered to increase the transparency of the judicial system, including through open access to court decisions and access by the public to court hearings. The use of videoconferencing in judicial proceedings should be accompanied by adequate procedural safeguards.

II. Status of judges

44. The independence and impartiality of the courts are two fundamental principles enshrined in Article 6, paragraph 1, of the ECHR. When assessing whether a court is independent, it is necessary to consider the manner of appointment of its members and their term of office, the existence of safeguards against outside pressure as well as whether the tribunal is perceived as independent by the public. The individual independence of judges in the exercise of their functions is not less important than institutional independence. European standards prohibit any kind of undue pressure, influence or interference with judges, including that exerted by members of the judiciary themselves.

45. The role of judges, their special status and independence are enshrined in the Russian Constitution[40] and in federal laws. Judges enjoy qualified immunity from administrative or criminal liability, extensive social benefits during their judicial career and beyond, and in many ways are relatively well protected from undue influence or pressure. Nevertheless, various opinion polls carried out in recent years show that judges are not perceived as independent and impartial by the general public.[41] Several of the Commissioner's interlocutors underlined that this was partially due to the attitudes and mind-set of individual judges, most of whom were trained and began their career in a different legal system. Quite often, judges see their role in defending what are perceived to be the best interests of the state, rather than individual human rights. Apart from the aforementioned – subjective - aspect, studies conducted by Russian and international experts point to several key systemic factors which limit the independence of judges, such as the role of the chairperson of the court; the non-transparent and complex, multi-layer system of appointment of judges; the role of the prosecutor in the judicial system; and the caseload of judges.[42]

46. Another issue which was brought to the Commissioner's attention in the context of the topic of independence of the judiciary and of individual judges concerns frequent allegations of "selective application of the law" or "selective justice".[43] In public opinion surveys carried out in 2007 and 2010, to collect data on popular perceptions of "telephone justice", one of the questions asked was: "Do you think that the Russian judicial system has been used for unlawful purposes in the last seven years?" According to the findings of the 2010 survey, only 4% of respondents were convinced that the judicial system was not used for any unlawful purposes (3% in 2007). 23% were of the opinion that "show trials" were conducted to demonstrate to society as a whole the attitude of the authorities to certain actions or phenomena (27% in 2007); 19% that the judicial system is used for political ends, in order to harass and neutralise political opponents (21% in 2007); 19% were convinced that the judicial system was used to undermine business competitors (20% in 2007); and 18% that the judicial system was used to settle personal conflicts and for revenge (16% in 2007). Furthermore, 19% were convinced that the judicial system could be manipulated in a certain way, but that little was known about the specifics in this regard (19% in 2007).[44]

47. At the very least, there is a clear problem with how the law is applied by the courts in concrete cases, which sometimes could be attributed either to regional particularities, or to the perceived issues/interests at stake, or to the status of the individuals involved in a particular case. The popular perception of this phenomenon is that while not each and every court decision is taken by a judge under undue pressure or influence, there are various ways of influencing a judge in a particular case, if necessary. Moreover, the exact form of influence can be tailored to suit the specific situation of a judge.[45] When it comes to high-profile cases or those which have been

[40] Chapter 7 of the Constitution of the Russian Federation.

[41] The findings of the national opinion polls carried out by Levada Centre in 2010-2011 suggest that the public confidence in the judicial system is declining. In 2010, 55% of respondents said they trusted the justices of the peace and 17% had no trust; at the beginning of 2011 the corresponding figures were 49% and 20%. In case of the federal courts of general jurisdiction, initially the figure was 47% for those who trust and 37% for those who do not; later 43% said they had confidence with 38% saying they did not. In the case of arbitration courts, 51% trusted them in spring 2010 against 22% who did not; nine months later the corresponding figures were 44% and 27%. As an average for all the courts, the number of respondents who had confidence declined from 52% to 50,5%, and of those who did not increased from 21,8% to 26,5% (information available at http://forumyuristov.ru/showthread.php?t=1943).

[42] See report by the Institute of the Rule of Law, "How to ensure independence of judges in Russia", July 2012 (available at http://www.enforce.spb.ru/images/analit_zapiski/pm_1207_judge_independence_web.pdf); and two reports by International Commission of Jurists, "The State of the Judiciary in Russia", November 2010 (available at http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/05/Russia-indepjudiciary-report-2010.pdf) and "Securing justice: The disciplinary system for judges in the Russian Federation", December 2012 (available at http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/12/MISSION-RUSSIA-REPORT.pdf)

[43] Other terms used to describe this phenomenon are "Basmannoye-style justice" (*basmannoye pravosudiye*) or "Khamovniki-style justice" (*khamovnicheskoye pravosudiye*)

[44] See "Telephone Justice in Russia", The EU-Russia Centre Review, Issue Eighteen, May 2011 (available at http://www.eu-russiacentre.org/wp-content/uploads/2008/10/EURC_review_XVIII_ENG.pdf) .

[45] *Ibid.*

widely discussed in the media, statements made by representatives of the executive branch of the government or law-enforcement structures may contribute to this widely-spread perception about the way the justice system operates.[46] It is clear that high level officials should exercise utmost prudence when asked for their comments with regard to particular cases which are pending in the courts or could one day be heard in the courts, since any remarks are then interpreted as a signal sent to the judiciary and/or to the competent law-enforcement agencies as to the course of action preferred by the executive.

1. The role of the chairperson of the court

48. Court chairpersons (presidents) are appointed by the President of the Russian Federation[47] for a six-year term renewable once. Until 2009, the Chairman of the Constitutional Court was elected by other judges, but since then a new system has been in place, providing for appointment by the Council of the Federation upon the recommendation of the President of the Russian Federation. Any future reform of the system of selecting presidents of courts should ensure that their election is the prerogative of the judiciary branch. This could be achieved through a system of rotation or combined system of election and rotation among the senior members of the respective court. It is also advisable to shorten the allowed length of tenure and to exclude the possibility for re-election. This would emphasise the principle that the president of the court is "first among equals."

49. Apart from general administrative functions, court presidents play a decisive role in hiring judges, their promotion and remuneration,[48] and may bring judges to disciplinary responsibility. In regional courts, chairpersons decide matters related to reappointment of the justices of the peace. Individual judges have limited powers to defend themselves against unlawful interference into their activities on the part of court presidents.

50. Court presidents also distribute cases among judges taking into account the volume and complexity of the cases, the caseload and the level of qualification of the judges, as well as procedural time limits. The way in which the system operates does not ensure full and unequivocal protection for judges from possible abuse. For instance, the power to assign cases could be abused to create a situation where a judge is overburdened with cases and, therefore, may be subject to disciplinary proceedings for delay.

[46] The case of *Oboronservis*, involving charges of fraud and abuse of office eventually brought against former high-level officials in the Ministry of Defence, could be an illustration of this pattern. Remarks made by President Putin in November 2012 and April 2013 in response to allegations about the involvement and role of a former Minister of Defence in this particular case were largely interpreted by the public opinion as a signal that no criminal prosecution would be opened against this particular former high-level official. Another illustration for the perceived selective application of the laws may be found in the imposition of preventive measures. For instance, in the above-mentioned case of *Oboronservis* the court in Moscow applied a non-custodial preventive measure (house arrest) against the key defendant in the case involving allegations of embezzlement of at least 6 billion roubles of public funds. In contrast, in the case of civil society activist and professor of the Kuban' State University, Mikhail Savva, the local court in Krasnodar ordered his continuous detention pending trial (since 12 April 2013) in a case involving allegations of attempted embezzlement of approximately 330 thousand roubles (in two separate episodes) from public funds. Another illustration for this pattern could concern perceived and/or actual inconsistencies in sentencing. For instance, in a high-profile case, the blogger Alexey Navalny was convicted by the first instance court of embezzling about 16 million roubles (a charge he denies) and given a five-year sentence and a fine of 500 000 roubles. In another case, the former deputy prefect of the northern district of Moscow received a five-year suspended sentence on charges of embezzlement of 376 million roubles and no fine. The widely-discussed case of Ilya Farber and the sentence rendered by the court in his case is yet another illustration of the public perception that the judiciary is not always fulfilling its function of ensuring justice in society and equality before the law.

[47] At the proposal of the President of the Supreme Court of the Russian Federation and based on the recommendation of a relevant qualification commission (see Articles 6-9 of the Federal Law on the Status of Judges in the Russian Federation).

[48] End-of-year bonuses and other payments can sometimes be larger than annual salaries, and court presidents enjoy discretion in making such determinations. The court president could also have a decisive influence in cases related to allocation of housing to judges. Quite often, those additional benefits are taken from budgets of local authorities rather than the federal budget, which in itself can be a factor detrimental to judicial independence.

51. Instances where court presidents "informally" instruct judges of their own or lower-level courts as to the decisions they should take in particular cases are not isolated. In the case of *Baturlova v. Russia*[49], the Court found a violation of Article 6, paragraph 1, on account of lack of independence of the town court. The case concerned a letter which was sent by the president of the regional court to the first-instance court, in which the lower court was explicitly instructed to re-examine a final binding decision on the ground of newly discovered circumstances.[50] In the case of *Igor Kabanov v. Russia,*[51] the Court found a violation of Article 6, paragraph 1, due to lack of impartiality on the part of the judges in the proceedings, which led to termination of the applicant's membership in the Bar Association.

2. Appointment, dismissal and disciplinary proceedings against judges

52. Council of Europe Recommendation No. R(94)12 of the Committee of Ministers to Member States on Independence, Efficiency and Role of Judges provides that "(t)he authority taking the decision on the selections and career of judges should be independent of the government and administration. In order to safeguard its independence, rules should ensure that, for instance, its members are selected by the judiciary and that the authority decides itself on its procedural rules".[52] The Recommendation further provides that "all decisions concerning the professional career of judges should be based on objective criteria, and the selection and career of judges should be based on merit, having regard to qualifications, integrity, ability and efficiency".[53] Moreover, it states that "where the constitutional or legal provisions and traditions allow judges to be appointed by the government, there should be guarantees to ensure that the procedures to appoint judges are transparent and independent in practice and that the decisions will not be influenced by any reasons other than those related to the objective criteria mentioned above". These guarantees could include, for example, "a special independent and competent body to give the government advice which it follows in practice; or the right for an individual to appeal against a decision to an independent authority; or the authority which makes the decision safeguards against undue or improper influences".[54]

53. In the Russian Federation, qualification commissions, composed of experienced judges and legal experts, administer the examinations for judicial positions. However, pursuant to a Federal Law of 15 December 2001, the President of the Russian Federation plays a key role in the appointment procedure for judges and could refuse, without providing reasons for this decision, to appoint a candidate to the position. The selection and appointment procedure, together with judicial promotion procedure appears to lack transparency, clear criteria and rules for selection and accountability.[55]

54. Security of tenure for judges in office is another important safeguard of the independence of judges. Under the Federal Law on the Status of Judges, federal judges are appointed for life, while justices of the peace are appointed for a period of five years, with the possibility of reappointment. The abolishment of the three-year probation period for federal judges in 2009 was an important step towards securing tenure for federal judges.

55. According to Recommendation No. R (94) 12, "the law should provide for appropriate procedures to ensure that the judges in question are given at least all the due process requirements of the

[49] Judgment of 19 April 2011.
[50] See also *Khrykin v Russia*, judgment of 19 April 2011.
[51] Judgment of 3 February 2011.
[52] Adopted by the Committee of Ministers at the 518th meeting of the Ministers' Deputies on 13 October 1994, §2.c
[53] *Ibid*.
[54] *Ibid.*
[55] For more information on this, see "Securing justice: The disciplinary system for judges in the Russian Federation", Report by International Commission of Jurists, December 2012.

Convention […]".[56] In the Russian system, disciplinary proceedings can be initiated by court presidents or by a body of the judicial community.

56. The lack of clear criteria as to the grounds on which a disciplinary procedure against a judge could be initiated appears to be one of the main factors undermining the independence of judges. The statistical data shows that the application of disciplinary proceedings against judges is frequent. In 2004, 73 judges at all levels of the court throughout the country were dismissed and 250 received warnings; in 2005, 93 were dismissed and 322 warned; and in 2007, the respective figures were 77 and 356. Since 2010, however, the number of disciplinary sanctions against judges has been declining. Whereas in 2010, 53 judges were dismissed and 253 received warnings, in 2011 the respective figures were 32 and 199, and 19 and 138 in 2012.[57] There also have been cases of judges who were pressured to resign or who elected to resign under the threat of disciplinary proceedings. Resort to disciplinary sanctions across the country reveals an uneven pattern.

57. Disciplinary measures can be taken in case of violation of the Law on the Status of Judges or the Code of Judicial Ethics. In 2008, the Constitutional Court ruled in its decision that disciplinary measures should be applied in those cases, where the infraction is entirely "incompatible with the honour and dignity of judges".[58]

58. However, vague grounds for disciplinary responsibility are reportedly used in order to put pressure on judges. In particular, the requirement to avoid "anything which can undermine the authority of the judiciary"[59] may be – and allegedly is – used to justify abusive dismissals, thus jeopardising the independence and impartiality of judges. At the time of his visit to Russia, the Commissioner was informed that legislative amendments defining concrete criteria for disciplinary proceedings were under consideration in Parliament.[60]

59. In November 2009, the Federal Constitutional Law on Disciplinary Judicial Presence was adopted, and in March 2010 a new body, the Disciplinary Judicial Presence was established. It is a specialised federal court serving as a second instance for decisions of qualification commissions on disciplinary measures against judges. It consists of six judges, three judges of the Supreme Court and three judges of the Supreme Arbitration Court, who are elected by a secret vote.

3. The role of the Prosecutor's Office

60. Chapter 7 of the Constitution mentions the prosecutor's office as part of the judicial branch. The judicial system in the Russian Federation is still characterised by "a pronounced prosecutorial bias" as has been expressly stated on several occasions by President Vladimir Putin.[61] Once a person is charged with a crime, it is highly likely that the person will be found guilty. Throughout the years, the percentage of acquittals in criminal cases has been less than one per cent. In 2012, the rate of acquittals in the cases tried by the courts of general jurisdiction at the level of federal

[56] §VI.3
[57] http://www.msamoylov.ru/kolichestvo-sudey-privlechennyih-k-dists/
[58] Decision by the Constitutional Court №3-П dated 28 February 2008.
[59] Article 3 of the Law on the Status of Judges.
[60] On 10 May 2013, the International Commission of Jurists issued its comments on this draft law, emphasising the need to further revise the definition of disciplinary misconduct, in line with the decision of the Constitutional Court; as well as to make available a range of less severe disciplinary penalties in the law, together with additional safeguards to ensure the independence of disciplinary bodies and fair procedures in disciplinary proceedings. It also welcomed the intention to introduce a limitation period of two years for disciplinary action against judges (available at http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2013/05/Russia-judicialdisciplinelaw-comment-2013-eng.pdf) The corresponding amendments were introduced by the Federal Law N 179-FZ dated 2 July 2013.
[61] See, for example, an article published during his electoral campaign for 2012 presidential election in the Kommersant daily on 6 February 2012 (http://www.kommersant.ru/Doc/1866753); as well as Presidential Address to the Federal Assembly of the Russian Federation on 12 December 2012 (http://www.kremlin.ru/news/17118).

entity even decreased by 10.2% in comparison to 2011.[62] The rate of acquittals in district courts remained at the level of 2011 (0.2%), but declined in absolute numbers (from 1500 to 1200).[63]

61. Prosecutors file appeals against almost all acquittals, in addition to appealing against those court rulings in which defendants are given what prosecutors regard as a lenient sentence. For instance, in 2008, 41% of acquittals and 2.3% of convictions were challenged by prosecutors in courts of appeal; and 44% of acquittals and 18% of convictions were challenged in cassation courts. One third of the acquittals which were challenged on appeal were voided in cassation (compared to only one out of 15 judgments where a person was convicted), and every fifth acquittal was voided on appeal (as compared to one in 10 convictions).[64] The judge who originally rendered a sentence acquitting a person is obliged to defend that position point by point, and may potentially face a disciplinary sanction if the case is quashed by the higher instance court. There have been more than a few cases, when judges were dismissed, at least partly because they had granted what was considered to be an excessive number of acquittals or refusals to apply or prolong pre-trial detention.[65]

62. In the case of *Kudeshkina v. Russia,*[66] the Court found a violation of Article 10 of the Convention. The case concerned a judge who was dismissed in 2003 after she refused to rule favourably on a motion filed by the prosecutor's office and then publicly made critical remarks about the pressure being applied on her in the case concerned. In the case of *Ozerov v Russia,*[67] the Court found a violation of Article 6§1 when, in the absence of a prosecutor, a judge *de facto* assumed the role of the former.

63. The Commissioner wishes to recall that in accordance with the Council of Europe Committee of Ministers' Recommendation (2000)19 on the role of public prosecution in the criminal justice system, "States should take appropriate measures to ensure that the legal status, the competencies and the procedural role of public prosecutors are established by law in a way that there can be no legitimate doubt about the independence and impartiality of the court judges…".[68]

64. According to a study carried out in 2011, 17% of judges were employed as prosecutors before their appointment, and 16% worked as investigators or policemen. Overall, this means that one third of the judges worked in law enforcement institutions before their appointment; this percentage is even higher among judges specialising in criminal cases.[69] This tends to create a conspicuous imbalance in the system and does not favour the holding of genuinely adversarial proceedings.

4. Caseload of judges and reasonable time of proceedings

65. Several of the Commissioner's interlocutors acknowledged the problem of excessive workload of judges. On average, a judge has to clear approximately 30 court cases and other materials per week. That allows 45 minutes to one hour and 20 minutes of working time per case. Additionally, the judge has to be present at court hearings and various meetings and must also take part in professional development programmes.[70] This situation cannot but affect the quality of the decisions and of their reasoning.

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[62] Review of the court statistical date on the activities of the federal courts of general jurisdiction and justices of the peace in 2012, Judicial Department at the Supreme Court of the Russian Federation, page 27
[63] *Ibid*, p.32
[64] See report by the Institute of the Rule of Law, "How to ensure independence of judges in Russia", July 2012, p.20
[65] See "*The State of the Judiciary in Russia",* International Commission of Jurists, November 2010, page 28.
[66] Judgment of 26 February 2009.
[67] Judgment of 18 May 2010.
[68] CM Recommendation Rec(2000)19, §17.
[69] See report by the Institute of the Rule of Law, "How to ensure independence of judges in Russia", July 2012, page 22.
[70] *Ibid*, page 24.

66. Judges are also under pressure to complete proceedings within certain time limits. While the Law on Compensation for Violation of the Right to Trial within a Reasonable Time or the Right to Implement a Judgment within a Reasonable Time enacted in April 2010 has emphasised the application of the principle of "reasonable time limits," both the Criminal Procedure Code and Civil Procedure Code envisage clear procedural time-limits for different proceedings. Therefore, when a question of disciplinary sanction arises, this requirement is usually interpreted in favour of the time-limits prescribed by the procedural Codes rather than the principle of "reasonable time limits".[71]

5. Training of judges on new legislation and application of the case law of the European Court of Human Rights

67. The Russian Academy of Justice (RAJ), together with its 10 regional branches, is providing continuous legal education and training of judges. At the All-Russian Congress of Judges in 2004, a decision was made to institute mandatory continuing professional training for federal judges. In 2011-2012, 1023 newly appointed judges have undergone professional trainings in the RAJ. Moreover, since 2009 and until 1 October 2012, 10 017 judges of the federal courts of general jurisdiction have undertaken further professional development courses at the Academy, in addition to 20 329 persons belonging to the court staff.[72]

68. The Commissioner's interlocutors from the judiciary and civil society indicated that there was an increasing level of knowledge of the case-law of the European Court of Human Rights among judges, which is also reflected in the rulings made by them. This positive trend should be further supported, in particular in those areas where there is a need to enhance the application of the principles established by the Court (for instance, in respect of application of appropriate preventive measures vis-à-vis accused persons). In 2009-2012, at least 376 Russian judges took part in various study tours to the European Court of Human Rights and training programmes on the ECHR organised in partnership with the Council of Europe.[73]

Conclusions and recommendations

69. The Commissioner reiterates that judges should be appropriately qualified and be persons of integrity and professional competence. The system of appointments and promotions of judges should be revised, to ensure that it is based on clear and objective criteria such as individual merit, qualifications, integrity and efficiency. It should be fully shielded from improper political or other partisan influence. Persons seeking to influence judges in any manner should be subject to sanctions by law.

70. Officials from other branches of government should refrain from any actions or statements which may be viewed as an instrument of applying pressure on the work of judicial institutions or casting doubts as to their ability to exercise their duties effectively. Decisions of judges should not be subject to revision beyond the ordinary appeal procedure. Judges should not have reasons to fear dismissal or disciplinary proceedings against them because of the decisions they take.

71. The Commissioner wishes to stress that the individual independence of judges is an important facet of the independence of the judiciary as a whole, and hierarchical judicial organisation should not undermine individual independence. The system for selection of court presidents should be revised and made the prerogative of the judicial branch. Disciplinary actions against judges should be regulated by precise rules and procedures and not be amenable to abuse.

[71] The necessity to adhere to the principle of "reasonable time limits" was also emphasised in a recent decision by the Supreme Court on the implementation of the ECHR (§ 12 of decision N 21 dated 27 June 2013).
[72] Report on the activities of the Judicial Department at the Supreme Court of the Russian Federation for the years 2009-2012, pp. 102-105.
[73] *Ibid.*

72. All judges should receive appropriate remuneration and adequate pension provision, commensurate with their responsibilities and experience. The remuneration system should be consistent across the country. The distribution of all material benefits, housing and any other bonus payments or privileges should be determined based on universally applicable rules and managed by an independent body responsible for judicial administration. The judiciary should be provided with sufficient funding, in order to be able to recruit qualified candidates as support staff to help judges to carry out their functions effectively and avoid overloading.

III. The role of the prosecutor's office and equality of arms

1. The role of the prosecutor's office

73. As was already discussed in the previous Chapter, the prosecutor's office has historically played an important role in the administration of justice. Its standing vis-à-vis the defence in criminal proceedings and the tendency by judges to support the prosecutor's position are two factors contributing to the "pronounced prosecutorial bias" in the judicial system (see paragraph 60 above).

74. The considerable powers of the Prosecutor's Office related to supervising the observance and application of laws[74] is another issue of concern. Recommendation CM/Rec(2012)11 of the Committee of Ministers to member States on the role of public prosecutors outside the criminal justice system[75] states that "in relation to private legal entities, the public prosecutor should only be able to exercise his or her supervisory role in cases where there are reasonable and objective grounds to believe that the private entity in question is in violation of its legal obligation, including those derived from the application of international human rights treaties".[76] It further specifies that "they should exercise their powers independently, transparently and in full accordance with the law".

75. In the Commissioner's view, in the Russian context such a supervisory function, most notably vis-à-vis private legal entities, should be exercised by the court system and national human rights structures, such as federal and regional Ombudsmen. Notwithstanding certain shortcomings described in the present report, those institutions are much better placed to exercise this function in an independent, impartial and transparent manner. For their part, public prosecutors should reinforce their role in preventing torture and ill-treatment in places of deprivation of liberty and combating impunity for such crimes (see Chapter V of the report). In order to ensure effective synergies, supervision over places of deprivation of liberty may be carried out in close co-operation with the public monitoring commissions. Unannounced visits to police stations, *SIZO*, correctional facilities and other prison establishments may be carried out by public prosecutors together with the members of the public commissions or on their own.

76. The Court has generally refused to consider public prosecutors as an independent and impartial tribunal within the meaning of Article 6§1 of the Convention. According to the Court, "the mere fact that the prosecutors acted as guardians of the public interest cannot be regarded as conferring on them a judicial status of independent and impartial actors". It follows from the case-law of the Court that prosecutors should not have, in principle, decision-making powers when taking measures concerning "civil rights and obligations", unless their measures are subject to full judicial review.[77]

[74] Section III Chapter 1 of the Federal Law on the Prosecution Service of the Russian Federation.
[75] Adopted by the Committee of Ministers on 19 September 2012 at the 1151st meeting of the Ministers' Deputies.
[76] §24.
[77] See "The role of public prosecutor outside the criminal law field in the case-law of the European Court of Human Rights", Research Division, European Court of Human Rights, March 2011, p.3

77. Since 2009, the Court has delivered three judgments against Russia concerning the role of public prosecutors in civil proceedings. Most notably, in *Menchinskaya v. Russia,*[78] the Court found a violation of Article 6§1 due to the prosecutor's participation in civil proceedings on the side of the state agency which the applicant was suing. In *Korolev v. Russia*[79], the Court found the same violation due to the public prosecutor's participation in appeal proceedings and the impossibility for the applicant to make comments on the prosecutor's final remarks at the closure of the appeal hearing. In the case of *Mikryukov and others v. Russia,*[80] the Court found a violation of the same Article on account of the submissions made by the public prosecutor on behalf of the respondents in the civil proceedings. In contrast, in *Batsanina v. Russia,*[81] the Court accepted the prosecutor's participation in the proceedings. Although the applicant's opponents (a state-owned organisation and a private person) had both been represented in the proceedings, the Court considered that the prosecutor had acted in the public interest when he brought proceedings against the applicant. Thus, the Court examines on a case-by-case basis whether the prosecutor's participation in given proceedings respected the principle of equality of arms, which requires each party to be given a reasonable opportunity to present their case under conditions that do not place them at a substantial disadvantage vis-à-vis their opponent.

2. The role of lawyers (advocates)

78. Only members of the bar associations (advocates) may appear in criminal proceedings before the court; others can practice law as legal consultants and participate in civil and other proceedings. According to the 2002 Federal Law on Legal Practice and the Bar, each of the federal entities has a single bar association called the Bar Chamber. Only members of such Bar Chambers are recognised as qualified advocates. Each Bar Chamber has a Qualification Board that has the power to decide on admitting candidates to the bar and conducting disciplinary proceedings against lawyers. In addition to the regional Bar Chambers, there is a Federal Bar Chamber with headquarters in Moscow. The Bar Chamber represents its member lawyers collectively vis-à-vis state institutions. Apart from the law cited above, advocates are bound by the provisions of the Codes of Criminal and Civil Procedure and the Code of Ethics.

79. Article 16 of the Criminal Procedure Code guarantees the right of an individual suspected of or charged with a crime to the assistance of a lawyer. According to Article 49, a lawyer should be allowed to participate in the criminal case from the moment when a person is accused of a crime; in respect of an identified person – immediately when a file is opened; or when a person is detained in connection to suspicion in committing a crime or subjected to any other coercive measures. While the provisions of the Code in principle envisage the possibility of early access to legal counsel, in practice there is no comprehensive and meaningful mechanism to ensure that such access is granted to persons detained by the police or facing criminal charges, even if they are informed about this right. Access to a lawyer is usually first ensured only when a protocol of detention is drawn up.

80. As the European Committee for the Prevention of Torture (CPT) has observed, the period immediately following deprivation of liberty is when the risk of intimidation and physical ill-treatment is greatest. Consequently, the possibility for persons taken into police custody to have access to a lawyer during this period of time would constitute a fundamental safeguard against ill-treatment. Furthermore, the lawyer is also well-placed to take appropriate action if ill-treatment actually occurs.[82] In its recent report on the North Caucasus, the CPT recommended that the

[78] Judgment of 15 January 2009.
[79] Judgment of 1 April 2010.
[80] Judgment of 31 July 2012.
[81] Judgment of 26 May 2009.
[82] See *The CPT Standards. "Substantive" Sections of the CPT's General Reports*, 1 January 2004, CPT/Inf/E (2002)1.

state authorities "take resolute steps to ensure that the right of notification of custody is guaranteed in practice as from the outset of deprivation of liberty".[83]

81. The law guarantees the individual's right to choose a lawyer.[84] The Federal Law on Legal Practice and the Bar provides that the procedure of appointment of legal representatives should be established by the regional Bar Chambers, which are also responsible for effective implementation of this provision. However, it seems that this provision is generally not respected and that, in practice, the lawyer is designated by the investigator. Such defence lawyers – known as "pocket lawyers" for their tendency to be quite friendly to the investigation – are present during the interrogation of their clients, but usually make no real effort to defend their rights. .

82. During the trial, the defence is not required to present evidence and is given an opportunity to cross-examine witnesses and to call its own witnesses. In practice, however, these rights are not always fully respected, since judges are under pressure to complete the review of the case within the specified time limits provided by the law (see paragraph 66 above), and on occasion attempt to gain time by refusing to accept motions by the defence on formalistic grounds.

83. Prior to trial, defendants are provided with a copy of their indictment, which describes the charges in detail. They are also given an opportunity to review their criminal file following the completion of the criminal investigation. The law provides for the appointment of a defence lawyer free of charge (see section below). Advocates are allowed to visit their clients in detention, but do not always have a possibility to communicate with them in private;[85] sometimes prison authorities deny them access to their clients.[86]

84. The main problem encountered by Russian criminal defence lawyers is their standing in the proceedings vis-à-vis the prosecutor and the distorted perception as to their role held by members of the criminal justice system and law enforcement. Due to historical and cultural traditions, the criminal justice system as such is set up to deliver guilty verdicts. An acquittal is perceived as the system's failure, and therefore rarely takes place in practice.

85. The European Court of Human Rights has addressed various questions relating to guarantees which should apply in criminal proceedings. The absence of the applicant or his lawyer in the cassation hearing, while the prosecutor was present, was found to be incompatible with the equality of arms principle.[87] Other cases have found a violation due to the failure to secure the possibility to the defendant to rebut statements by prosecution witnesses or to secure the presence of defence witnesses at trial.[88] Several other cases concern the lack of legal assistance at the initial stages of police questioning, and the conduct of searches at lawyers' premises without ensuring the necessary legal safeguards.[89]

86. Incidents of intimidation and pressure on lawyers, including by various public officials and law enforcement officers, are not isolated. According to the law, advocates cannot be questioned by the investigator, court, or anyone else on matters relating to the case of which the advocate has knowledge by virtue of his working on the case. Despite those provisions, incidents involving

[83] Report to the Russian Government on the visit to the North Caucasian region of the Russian Federation carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment (CPT) from 27 April to 6 May 2011, Strasbourg, 24 January 2013, §§32-34.
[84] Article 50 of the Criminal Procedure Code.
[85] Sometimes this is due to the problems with the available space for the meetings, so that several lawyers together with their clients have to share one room.
[86] See, for instance, report by Inter-regional Human Rights Association Agora and "Rosuznik" on the interference in the work of advocates in Russia (available at http://openinform.ru/fs/j_photos/openinform_423.pdf).
[87] See, for instance, *Metelitsa v. Russia*, judgment of 22 June 2006.
[88] See, for instance, *Melnikov v. Russia*, judgment of 14 January 2010; *Khrabrova v. Russia*, judgment of 2 February 2012; *Salikhov v Russia*, judgment of 3 May 2012.
[89] See, for example, *Nechto v. Russia*, judgment of 24 January 2012; *Vanfuli v. Russia*, judgment of 3 November 2011.

searches of lawyers' offices and seizures of documents without court sanction, or summoning of lawyers for questioning as witnesses by investigators in cases where they are defending a client, still occur. Such summons take place either with the purpose of removing a lawyer from the criminal proceedings, or in order to obtain some evidence against the suspect from his own lawyer. Prosecutors and investigators sometimes also send requests to the disciplinary panels of local Bar Chambers, requesting the withdrawal of the advocate's licence on the grounds of perceived violations of the law and/or the Code of Ethics; however, in most cases of this kind, the local Bar Chambers act in favour of their members.

87. Lawyers working in the North Caucasus region of the Russian Federation are particularly vulnerable and often come under attack in connection with their work. Often, they are intimidated, threatened, and are sometimes subjected to physical violence and even killed.[90] A recent case involved the killing of a lawyer by two unknown men near his home in the suburbs of Makhachkala (Dagestan) on 12 July 2013. His killing appears to be related to his work; earlier, he was working for a law firm known for defending persons accused of membership of armed groups.[91] Cases have also been reported of lawyers coming under pressure in relation to representing the interests of their clients in the European Court of Human Rights.

3. Access to legal aid by persons in need

88. The Law on Legal Aid was enacted in November 2011 and entered into force in January 2012. The law introduced "state legal aid bureaus" and other models for delivering public legal service. This law, however, mainly focuses on the provision of legal aid in civil cases.

89. An *ex officio* lawyer is usually appointed by the person carrying out a criminal inquiry or investigation, a prosecutor or a judge either upon the defendant's request or as a mandatory defence (i.e. in those cases where the participation of a lawyer is compulsory under the applicable law).[92] In such cases the absence of a defence lawyer is considered to be a violation of procedural law and a sufficient basis for the judgment to be quashed subsequently by the higher courts. In other cases the competent authority has to appoint a lawyer for the defence if the defendant asks for this or if s/he does not explicitly waive in writing the possibility to have a lawyer appointed.[93] In this case no financial or merit test applies, so even those defendants who in principle can afford to hire a lawyer can still benefit from *ex officio* counsel. In criminal proceedings, legal aid at the expense of the State can be in the form of legal representation and legal advice (including assistance in drafting legal documents).

90. The wording of Article 6 (3) of the ECHR and the European Court's jurisprudence invoke two criteria which have to be met as for there to be an obligation to provide free legal aid in criminal cases. Firstly, state-funded legal aid has to be provided for free when a defendant does not have "sufficient means" to pay for it and, secondly, when legal assistance is essential in the "interests of justice". The last criterion is being considered in view of such circumstances as the severity of the penalty and the complexity of the case in question. Another important issue to be assessed is whether given the perceived complexity of a case, an applicant was able to defend himself or

[90] For information on the situation of the lawyers in the region, see Report "Confronting the circle of injustice: Threats and pressure faced by lawyers in the North Caucasus", Amnesty International, March 2013.
[91] http://www.advocatenvooradvocaten.nl/8202/russia-lawyer-from-dagestan-killed/
[92] According to Article 51 of the Code of Criminal Procedure, there are seven cases requiring an obligatory participation of a defence lawyer: the suspect/accused has not refused the appointment of the defence counsel according to procedure established by Article 52 of the CPC; s/he is a minor or cannot defend him/herself in person because of physical or mental disability; the suspect/accused does not have knowledge of the language in which the proceedings are conducted; the defendant is accused of committing a crime for which s/he can be sentenced for a prison term over 15 years or life imprisonment; the criminal case is tried by a jury; or the accused submitted a motion for his/her case to be tried according to a "special court order proceeding", or in case of trial in absentia. In these cases a person is provided with a lawyer, irrespective of his/her financial situation.
[93] Article 52 of the Criminal Procedure Code.

herself in person. Cases where the possible penalty was imprisonment were consistently regarded by the Court as requiring the participation of a defence lawyer in the interest of justice.[94]

91. Apart from the phenomenon of "pocket lawyers" (see paragraph 81 above), another issue of concern is a system of "advocate on duty", which was adopted in some regions in order to avoid situations where a prosecutor or investigator directly liaise with the advocate of his/her choice. Under this arrangement, contact can be established only with an advocate who is on duty on that particular day.[95] Without clear control mechanisms, however, this system is also prone to abuses. It was observed in some cases that certain lawyers were receiving a much more significant monthly compensation for legal aid services compared to others, who had the same amount of days on duty, leading to allegations that they might have entered into a deal with prosecutors or investigators, and were therefore invited more often than others. Another shortcoming of this system is the lack of continuity in the representation of the defendant. In some regions, where this system is in place, there is no rule requiring that the advocate, once appointed to defend a case, shall continue to act as defence counsel until the trial. This results in a situation that every time when there is a need to carry out any procedural action, a new lawyer on duty is being called in. The same applies to the appearance of lawyers in court, as an advocate "on duty" is regularly present on court premises, in order to appear before the judge whenever necessary. Under this scheme, an advocate on duty can participate in a court hearing without ever having looked into the file or actually meeting his client to discuss the case.[96]

92. In general, the free legal aid system has not been very efficient up to date. Quality public legal services require adequate funding and lawyers often try to avoid accepting free of charge counselling, due to the unattractive remuneration and the need to follow stringent and cumbersome bureaucratic procedures. Furthermore, there are few or no defence lawyers in remote areas of the country. The Federal State Programme "Justice" envisages that the number of advocates in Russia should double in the coming years: from the current 0.05 %of the population to 0.1%. The Ministry of Justice is also monitoring the delivery of free legal aid, with a view to making changes to the way the system currently operates, if necessary.

4. The use of expert opinions in court proceedings

93. Another issue which is raised in the discussions about the situation in the judiciary in Russia concerns the quality of expert opinions requested and/or admitted as evidence by the courts, in particular in relation to cases involving prohibition of "extremist materials".[97] According to Article 13 of the Federal Law on Combating Extremist Activity,[98] information materials shall be declared as extremist by a court decision, upon examination of a submission by the prosecutor or in proceedings in a related administrative, civil or criminal case. The relevant court decision is then sent to the Ministry of Justice, which includes a reference to the materials in question in a Federal List of Extremist Materials, available to the public.

[94] See, for example, *Benham v. UK* (judgment of 10 June 1996); *R.D. v. Poland* (judgment of 18 December 2001).
[95] The prosecutors and investigations in the area are then provided with the time schedule and contacts of advocated on duty.
[96] Cf Elena Burmitskaya,*World's models of legal aid for criminal cases: What can Russia borrow?*, pages 55-56.
[97] According to Article 1.3 of the Federal Law on Combating Extremist Activity, "extremist materials" are "documents intended for publication or information on other media calling for extremist activity to be carried out or substantiating or justifying the necessity of carrying out such activity, including works by leaders of the National Socialist worker party of Germany, the Fascist party of Italy, publications substantiating or justifying ethnic and/or racial superiority or justifying the practice of committing war crimes or other crimes aimed at the full or partial destruction of any ethnic, social, racial, national or religious group".
[98] For more information on the law and its compatibility with the ECHR's standards, see Opinion no. 660/2011 on the Federal Law on Combatting Extremist Activity of the Russian Federation, European Commission for Democracy through Law (Venice Commission), adopted at its 91st Plenary Session (Venice, 15-16 June 2012).

94. Most of the cases of this type are reviewed by the courts in accordance with a special (simplified) court procedure envisaged by the Code of Civil Procedure,[99] which foresees only the participation of the prosecutor in the deliberation, which means that the case is decided in the absence of adversarial proceedings, since there is no possibility for individuals or organisations which may potentially be affected by the court's verdict to have a meaningful role in the proceedings. Furthermore, the full text of the decision (with reasoning) is often not available publicly and the hearing itself may also be closed to the public.

95. Both Russian legal experts[100] and Federal Ombudsman Lukin[101] have repeatedly underlined that cases involving the prohibition of literature should be reviewed under ordinary court procedures and that the use of the simplified procedure is based on an incorrect interpretation of the corresponding legal provisions.[102]

96. The law does not provide any criteria or other indication as to how documents should be classified as extremist; in practice, court decisions are based on prior review by an expert of the material under consideration, therefore leaving these questions at the discretion of the invited expert. Thus, the quality of the expert's opinion becomes a decisive factor in the court's assessment of the case.[103]

97. The lack of clear criteria for expert selection has in some cases led to a situation where individuals without appropriate qualifications were invited to prepare opinions or participate in deliberations. For instance, cases were reported when representatives of "traditional" religious denominations[104] were invited to give testimony in cases involving religious literature used by those who belong to "non-traditional" denominations.

98. The religious community of Jehovah's Witnesses is one of a small number of groups which are the most affected by measures taken under this law. Since September 2009, the courts have added 68 publications by Jehovah's Witnesses[105] to the Federal List of Extremist Materials. These verdicts later led to searches by law enforcement officers of the homes of individual members of this congregation as well as places of worship, followed by criminal investigations and proceedings on charges of keeping "extremist literature".

5. Juvenile justice

99. The introduction of a juvenile justice system in Russia has been a highly debated issue for many years. Some of its opponents believe that it will lead to a situation where children are taken away from their parents under various pretexts; others refer to various shortcomings, perceived or actual, in the way it operates in other countries; yet others invoke historical and cultural traditions for not accepting it.

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[99] Sub-section IV of Section II of the Code of Civil Procedure.

[100] See, for example, the article by A.R. Sutanov, "Court proceedings in the cases concerning limitations on freedoms of expression and beliefs and prohibition of literature under special court proceedings – return of simplified non-democratic and punitive practices?", published in Journal "Legislation and Economy", N 12, 2012, available at http://sutyajnik.ru/documents/4405.pdf

[101] See, for example, Report by the Commissioner for Human Rights in the Russian Federation for 2012, pages 50-51.

[102] On 28 June 2011, the Supreme Court issued its decision N11 on the court practice in criminal cases related to extremism.

[103] Federal Programme "Justice" envisages reform of the system of expert institutions engaged in delivering expert opinions in the court cases.

[104] Orthodox Christianity, Buddhism, Judaism and Islam are usually referred to as "traditional religions" in the Russian Federation.

[105] The extremist charges in such cases are based solely on the fact that Jehovah's Witnesses – like most, if not all religions - proclaim the superiority of their faith.

100. In recent years, the government has introduced elements of a juvenile justice system, including through pilot projects in several regions. In 2010, approximately 10 courts had a specialised panel for dealing with juveniles; many courts have judges specialising in cases involving juveniles. Chapter 50 of the Criminal Procedure Code of the Russian Federation provides for a special procedure in criminal cases against minors. In 2009, a working group on the development and implementation of the mechanisms for juvenile justice was established under the auspices of the Council of Judges of the Russian Federation. In February 2011, the Supreme Court of the Russian Federation adopted the Decision on the practice of courts in applying legislation in relation to the criminal responsibility and punishment in cases involving minors.[106] A Decree of the President of the Russian Federation on the National Action Plan in the Interests of Children for 2012-2017 makes a reference to the term "child-friendly justice".[107]

101. In the criminal justice system, there is a positive tendency towards using alternative sanctions rather than deprivation of liberty in cases involving minors. In 2002, 10 950 minors were serving sentences in penitentiary institutions, whereas the figure for 2012 was 2 289 persons.

Conclusions and recommendations

102. The right to a fair trial, including the principle of equality of arms, the need to ensure adversarial proceedings and respect for the presumption of innocence, as well as the independence and impartiality of the courts, are well-established principles in the case-law of the European Court of Human Rights. In the Commissioner's view, any future reform efforts in the judiciary should focus on strengthening the protection of these rights.

103. The Commissioner notes that the criminal justice system in the Russian Federation is still characterised by imbalance between the defence and the prosecution, not least due to wide discretionary powers still exercised by the Prosecutor's Office with regard to supervising observance of the law. He urges the authorities to consider further systemic measures to ensure genuinely adversarial proceedings, including through comprehensive legal training for lawyers. The Commissioner recommends that the authorities take resolute action to reform the Prosecutor's Office in line with Council of Europe standards.

104. A legal system based on respect for the rule of law needs strong, independent and impartial prosecutors, willing to be resolute in the prosecution of offences committed against human beings even if these crimes have been committed by persons acting in an official capacity. Unless prosecutors are able to exercise their professional duties freely, independently and impartially, the rule of law will be eroded, and with it, effective protection of the rights of the individual. The role of prosecutors in combating impunity and ill-treatment is crucial and should be strengthened. They should be encouraged to investigate and prosecute promptly any allegation of human rights violations in accordance with Section VIII.1 of the Committee of Ministers Guidelines on combating impunity.

105. The Commissioner is concerned by the reports of harassment and other forms of pressure on lawyers. Such pressure seriously impairs defence rights and prevents lawyers from effectively serving the cause of justice. It is crucial that defence lawyers can operate without impediments and in full confidentiality when providing legal assistance to their clients. For their part, lawyers providing state legal aid should be regularly reminded that their duty is to represent to the best of their ability the interests of the persons to whom they have been assigned. To this end, a comprehensive review of the system of *ex officio* legal assistance should be carried out in co-operation with the relevant bar associations.[108]

[106] See Decision № 1 of 1 February 2011 of the Supreme Court of the Russian Federation.
[107] N761 of 1 June 2012.
[108] See Report to the Russian Government on the visit to the North Caucasian region of the Russian Federation carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 April to 6 May 2011, paragraph 34 and Appendix I.

106. Lawyers should have free and unimpeded access to their clients in prison or other places of deprivation of liberty (i.e. police establishments), in order to ensure that the right to defence is fully implemented in practice, as well as to prevent ill-treatment. If necessary, efforts should be made to adapt the arrangements and infrastructure in penitentiary institutions.

107. The Commissioner welcomes the adoption of the legislation related to legal aid, and urges the authorities to reinforce their efforts to improve the quality of service and to ensure that legal aid is systematically provided to all those in need. A thorough reform of the system of expert institutions, both public and private, should be carried out, with a view to ensuring the quality of expert opinions produced at the request of the court and to ensure the independence and impartiality of the invited experts. In the cases related to "extremist materials", the right to adversarial proceedings should be fully respected and the individuals and organisations which are directly or indirectly affected by the eventual verdict should be involved in the proceedings.

108. The Commissioner acknowledges efforts by the authorities to introduce elements of a juvenile justice system in various domains and encourages them to continue public discussions on this topic. In the context of the criminal justice system, the Commissioner would like to once again reiterate the principle that in cases involving juveniles, deprivation of liberty should be imposed only as a measure of last resort and for the shortest possible period of time.

109. The Commissioner believes that the challenges related to the functioning of the judiciary in Russia and overcoming its "pronounced prosecutorial bias" can only be effectively tackled if judges and prosecutors at all levels take account of ECHR standards and fully integrate them in their decisions. Most notably, acquittals should no longer be perceived as the system's failure. This would contribute to the redress of long-standing systemic dysfunctions and to increasing public confidence in the efficient functioning of the justice system.

IV. Issues identified by the European Court of Human Rights

110. At the end of 2012, there were 1211 cases concerning Russia, including 157 leading cases, pending before the Committee of Ministers, under its supervisory procedure for the execution of judgments.[109] The main issues, as identified by the European Court of Human Rights in relation to the functioning of the justice system in the Russian Federation relate to the on-going reform of the supervisory review procedure (*nadzor)*; excessive resort to remand in custody and conditions of detention; access to medical care while in custody; actions of the security forces; cases of extradition and non-enforcement of domestic judicial rulings.

111. In March 2013, the Ministry of Justice issued a report on the execution of the Court's judgments by various state institutions in the Russian Federation, indicating there was no appropriate legal mechanism obliging the competent authorities to bring the federal legislation and normative acts in line with the Convention's standards and to ensure the proper and timely execution of the Court's judgments.[110] In this regard, Recommendation CM/Rec(2008)2 of the Committee of Ministers to member states on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights[111] can provide useful guidelines.

1. The reform of the supervisory review procedure (*nadzor*)

112. Under both the Code of Civil Procedure and the Code of Criminal Procedure, binding and enforceable judgments are amenable to supervisory review by higher judicial instances at various

[109] See Supervision of the execution of judgments and decisions of the European Court of Human Rights, 6th Annual Report of the Committee of Ministers, 2012, p. 47.
[110] http://www.kommersant.ru/doc/2153984
[111] Adopted by the Committee of Ministers on 6 February 2008 at the 1017th meeting of the Ministers' Deputies.

levels. The supervisory review procedure was repeatedly amended over the past years. Supervisory review may entail a case being sent back to the lowest instance court, thereby leading to further delays in the proceedings. As decisions to quash judgments are quite frequent, the process also frequently generates legal uncertainty. Most of the judgments by the European Court of Human Rights in such cases related to the lack of legal certainty in cases concerning civil proceedings.

113. The above-mentioned issue was found by the European Court of Human Rights to be the second major structural problem in terms of applications lodged and violations found. In 2009, the Court distinguished the supervisory review procedure in the Supreme Arbitration Court from that conducted in the courts of general jurisdiction, finding that the former did not breach the legal certainty requirement and had to be completed before bringing an application to Strasbourg.[112]

114. There is a group of 86 cases mainly concerning the quashing of final domestic judgments through the supervisory review procedure, currently pending before the Committee of Ministers.[113] A comprehensive reform of this procedure commenced in 2002, when a new Code of Civil Procedure was adopted. In 2007 a second reform was carried out, following a ruling on the matter by the Constitutional Court of 5 February 2007. On 12 February 2008 this reform was supplemented by a Decree of the Plenum of the Supreme Court of the Russian Federation, whereby lower courts were provided with guidelines which placed a special emphasis on the need to comply with the Convention requirements and in particular with the principle of legal certainty. Notwithstanding all these changes, the Court found in 2009 that the supervisory review still cannot be regarded as compatible with the ECHR.[114]

115. In December 2010, a third reform was initiated, by introducing appeal courts within the system of courts of general jurisdiction, thus limiting the recourse to the supervisory review procedure. The new arrangements came into force on 1 January 2012 with regard to civil proceedings and on 1 January 2013 with regard to criminal proceedings. As part of the reform, the appeal courts were established in the framework of the regional courts. Following this reform, the majority of court cases are considered by regional court judges, both on appeal and on cassation. As a result, any decision taken at first instance by a district court in a civil case is open to being revisited twice in the same regional court. The new arrangements have been the subject of some criticism; while the law specifies that a judge who decided a particular case cannot then participate in any subsequent proceedings (be it appeal, cassation or supervisory review), Federal Ombudsman Lukin in his report for 2012 mentioned that such a practice still exists in some courts.[115]

116. Furthermore, the two-level cassation for civil proceedings does in fact reproduce the former procedure of supervisory review by the presidia of regional courts and the Civil Chamber of the Supreme Court of the Russian Federation. Therefore, due consideration should be given to a possibility of separation of the appeal and cassation by establishing two distinctly separate courts, with a subsequent possibility for the Supreme Court of the Russian Federation to review the case only once as a final instance. The jurisdiction of the cassation courts may not necessarily coincide with the territorial jurisdiction of the federation entities, which would further strengthen the independence of the judiciary from local authorities, which in the view of several of the Commissioner's interlocutors, was still an issue in Russia. This could become one of the next important steps in the context of future reforms in the judiciary, since the establishment of such courts would certainly require substantial financial resources.

[112] See cases *of OOO Link Oil Spb v. Russia*, judgment of 25 June 2009; and *Kovaleva and others v. Russia*, decision of 25 June 2009.
[113] Ryabykh group of cases (the leading case is *Ryabykh v. Russia*, judgment of 24 July 2003).
[114] *Martynets v. Russia*, judgment of 5 November 2009.
[115] See Report of the Commissioner for human rights in the Russian Federation for 2012, page 148.

2. Excessive resort to remand in custody and conditions of detention

117. The list of "preventive measures" as defined by the Code of Criminal Procedure[116] includes an undertaking not to leave a town or region, "personal surety",[117] bail and deprivation of liberty. Since January 2010, house arrest has been added to the list of available non-custodial measures. The suspect or accused may also be asked to sign an undertaking to appear before the competent authorities.[118]

118. The law also requires from the competent authority to consider whether there are "sufficient grounds to believe" that the accused would abscond during the investigation or trial, re-offend or obstruct the establishment of the truth, when considering the application of a given preventive measure.[119] It must also take into account the gravity of the charges, personal characteristics of the accused, his/her age, state of health and other circumstances.

119. The courts have a legal obligation to explicitly provide reasons for remanding a person in custody and for each subsequent prolongation of detention. In practice, however, the reasons given in such decisions are rarely case-specific, and mostly simply cite the aforementioned provisions of the law. Domestic courts have been reluctant in the past to apply alternative restrictions on personal freedom, such as bans on leaving the country, release on bail or judicial control. According to available data, Russian courts grant more than 90% of the requests to remand in custody as a preventive measure, and close to 100% of requests to prolong the application of this measure. Since 2010, however, the use of non-custodial measures has been slowly increasing, although their share is still negligible in the overall context.[120] Resort to non-custodial measures across the country reveals an uneven pattern.[121]

120. In numerous judgments concerning Russia, the Court found breaches of Article 5§3 for excessive length of detention pending trial[122] and a lack of reasons for continuing detention on remand.[123]

121. The Commissioner recalls Recommendation Rec(2006)13 of the Committee of Ministers on the use of remand in custody, which provides that the use of remand in custody must always be exceptional and justified. It is crucial to safeguard the principle of presumption of innocence and bear in mind that the only justification for imprisoning persons whose guilt has not been established by a court can be to ensure that the investigations are effective (securing all available evidence, preventing collusion and interference with witnesses) or that the persons concerned do not abscond. Where less restrictive alternative measures (such as judicial control, release on bail or bans on leaving the country) could address these concerns, they must be used instead of remand in custody. In any event, remand in custody must be as short as possible and only continue for as long as it is justified.

122. The problem of poor conditions of pre-trial detention was frequently found by the European Court of Human Rights to violate Article 3 of the Convention. Starting with *Kalashnikov v Russia*,[124] the Court has found in a number of cases that conditions of pre-trial detention were degrading due to

[116] Article 98.
[117] Guarantee by another person that the accused will not abscond.
[118] Article 112 of the CPC
[119] Article 97 of the CPC.
[120] In 2012 release on bail was used in relation to 835 persons (see Review of the judicial statistics on the activity of the federal courts of general jurisdiction and justices of the peace, page 60).
[121] On 29 October 2009, the Supreme Court issued Decision N 22 on the use of custodial and non-custodial measures, reiterating the applicable Council of Europe standards. This decision was further revised in 2010 and 2012.
[122] See, for instance, *Vlasov v. Russia,* judgment of 14 February 2006.
[123] See *Panchenko v. Russia*, judgment of 16 March 2004 ; *Rokhlina v. Russia*, judgment of 9 September 2004.
[124] Judgment of 15 July 2002.

a severely overcrowded and insanitary environment and its detrimental effects on applicants' health and well-being. Similar findings were made in approximately 90 cases since then.[125]

123. On 10 January 2012, the Court delivered a pilot judgment in the case of *Ananyev and others v. Russia* addressing in great detail the underlying structural problems, namely the poor conditions of detention in pre-trial establishments (*SIZO*) (Article 3) and a lack of an effective remedy in this respect (Article 13). The Court also recalled that the existence of the structural problems had already been emphasised by the Committee of Ministers and acknowledged by the Russian authorities. While the Court abstained from indicating specific reforms which should be undertaken by the Russian authorities, it underlined that two issues in particular should be addressed: the problem of excessive length of pre-trial detention and possible additional ways of combating overcrowding through provisional arrangements and safeguards against the admission of prisoners in excess of prison capacity. As regards similar cases, the Court held that the Russian authorities must grant redress to all victims of inhuman or degrading conditions of detention in pre-trial establishments (*SIZO*s) within twelve months from the date on which the judgment becomes final or from the date on which their application will have been communicated to the Government under Rule 54 § 2 (b) of the Rules of Court, whichever comes later.

124. On 10 October 2012, the Russian authorities submitted to the Committee of Ministers a detailed action plan on measures required by the *Ananyev* pilot judgment. It focuses on the following measures: 1) a more balanced approach toward the choice of a preventive measure for suspects and persons accused of having committed a criminal offence, including a wider recourse to alternative measures to detention; 2) further improvement of the material conditions of detention; 3) setting up of domestic compensatory and preventive remedies and further improving the existing ones.

125. As regards persons who are currently detained in poor conditions, the Russian authorities indicated that pending the adoption of these reforms, measures are being taken to provide such persons with a possibility to obtain compensation on the basis of existing legal provisions as interpreted in light of the Convention. The Supreme Court is taking measures to encourage further development of this practice. As regards similar applications pending before the Court, the Russian authorities confirmed their readiness to continue efforts aimed at the ad hoc settlement of such applications. Such efforts have already resulted in the striking out of some applications.[126]

126. Other Violations of Article 3 were found by the Court due to poor conditions of transportation of the accused to and from trial and of their detention within court premises between hearings.[127]

127. According to statistics, the prison population has decreased in recent years. In 2006, the Federal Programme "On the development of the Penitentiary System in the Russian Federation for 2007-2016" was adopted. In October 2010, the Government approved the Concept of the Development of the Penitentiary System of the Russian Federation until 2020. As of 1 September 2013, the prison population numbered 681 600.[128]

128. Taking into account a high level of recidivism among former convicts,[129] the Commissioner's interlocutors, including officials in the penitentiary system, underlined the importance of crime prevention measures and measures to ensure successful re-integration of former prisoners in the

[125] The *Kalashnikov* case is a leading case in a group of 71 cases currently under Committee of Ministers' supervision. The pressing need for comprehensive general measures to tackle these problems was highlighted by the Committee of Ministers in its Interim Resolutions on the *Kalashnikov* group of cases, in 2003 and 2010.
[126] See decisions delivered in *Dmitrenko and others v. Russia* (No. 10403/04) and *Tkachenko and others v. Russia* (No. 44888/05)
[127] See, for instance, *Khudoyorov v. Russia*, judgment of 8 November 2005.
[128] The relevant statistical data is available at the website of the Russian penitentiary service.
[129] Around 30% of prisoners are those who have been convicted for the second time, and more than 30% are those who have been convicted for the third and subsequent times.

community. Recommendation Rec (2003)22 of the Committee of Ministers to member states on conditional release (parole) provides useful guidelines on how to prepare sentenced prisoners for release.[130]

3. Access to medical care while in custody

129. The arrest and death in a pre-trial detention centre of Sergei Magnitsky, a lawyer for a UK-based investment advisory firm Hermitage Capital Management, charged with tax evasion and fraud, attracted public and international attention to various systemic deficiencies in the way the justice system operates, including with regard to poor detention conditions and access to medical treatment while in custody.[131] Another emblematic case involved the death in April 2010 of a woman in a pre-trial detention centre in Moscow, after the court refused to change a preventive measure from detention to release on bail, thereby effectively preventing her from obtaining access to qualified medical assistance which could have saved her life.[132]

130. On 7 April 2010 the State Duma enacted Federal Law N 60-FZ on Amendments to Certain Legal Acts of the Russian Federation, which prohibited application of pre-trial detention as a preventive measure to those suspected of or accused of economic crimes. During his meeting with President Putin in March 2013, the Federal Commissioner for the Protection of the Rights of Entrepreneurs Boris Titov informed that while the adoption of the law led to a decline in recourse to pre-trial detention vis-à-vis entrepreneurs, such cases still occur.[133]

131. The Court found in several judgments that a separate serious problem arises in respect of medical treatment of the detainees, concluding that in certain cases the medical assistance provided was so insufficient as to constitute a breach of Article 3.[134]

132. In February 2013 a representative of the Prosecutor General's Office revealed that 4 121 persons died in pre-trial detention centres and prisons in 2012 throughout Russia,[135] mainly due to inadequate medical supplies and the lack of modern-day medical equipment on the premises.[136] The Commissioner regrets that the official investigation into the causes of death of Sergei Magnitsky has neither led to the identification and bringing to account of individuals responsible, nor to the rectification of systemic problems related to medical care delivery. Should the systemic problems have been addressed, the number of deaths in places of deprivation of liberty might have decreased.

133. In February 2004, the government adopted Decree no 54 establishing a list of diseases incompatible with serving a prison sentence. In the Commissioner's view, persons suffering from severe health conditions should be either provided with access to medical treatment in specialised clinics or conditionally released, in order to be able to receive appropriate treatment in the community. On 1 September 2013, President Vladimir Putin instructed Prime Minister Dmitry

[130] Adopted by the Committee of Ministers on 24 September 2003 at the 853rd meeting of the Ministers' Deputies; see in particular Appendix to the Recommendation.
[131] For more information about the circumstances of this case, see Report "Refusing impunity for the killers of Sergei Magnitsky" (provisional version) by the PACE Committee on Legal Affairs and Human Rights.
[132] There were reports that this was done deliberately with the purpose of coercing the woman concerned, who was a private entrepreneur, to confess to fraud.
[133] http://www.kremlin.ru/news/17744
[134] See *Akhmetov v Russia*, judgment of 1 April 2010, *Aleksanyan v. Russia*, judgment of 22 December 2008, *A.B. v Russia*, judgment of 14 October 2010, and *Kozhokar v Russia*, judgment of 16 December 2010.
[135] This figure does not include those prisoners who were released due to grave health condition and died at home.
[136] http://www.trud.ru/article/28-02-2013/1290069_genprokuratura_za_god_v_tjurmax_i_sizo_umerli_chetyre_tysjachi_chelovek.html

Medvedev to take a set of measures aimed at improving access to quality medical assistance for prisoners and detainees.[137]

134. The Commissioner would like to recall Recommendation No. R (98) 7 of the Committee of Ministers concerning the ethical and organisational aspects of health care in prison, which provides that remand prisoners should be entitled to ask for consultation with their own doctor or another outside doctor at their own expense. In addition, he would like to draw attention to Recommendation Rec (2006)2 of the Committee of Minister to member states on the European Prison Rules, which provides that prisoners shall have access to the health services available in the country without discrimination on grounds of their legal situation. The foregoing recommendation also specifies that sick prisoners who require specialist treatment shall be transferred to specialised institutions or to civil hospitals when such treatment is not available in prison.

4. Actions of the security forces

135. The European Court of Human Rights has by now examined more than 200 cases linked to counter-terrorist operations in Chechnya, finding violations resulting from unjustified use of force, disappearances, unacknowledged detentions, torture and ill-treatment, lack of effective investigations into the alleged abuses and absence of an effective domestic remedy, failure to co-operate with the Court, unlawful search, seizure and destruction of property.[138] In its recent judgment in the case of *Aslakhanova and Others v. Russia,*[139] the Court noted that it had regularly found violations of the same rights in more than 120 judgments, resulting from disappearances in the Northern Caucasus since 1999. It concluded that the situation in the case under review had resulted from a systemic problem of non-investigation of such crimes, for which there had been no effective remedy at national level.

136. The Court outlined two types of general measures to be taken by the authorities to address those problems: to alleviate the continuing suffering of the victims' families; and to remedy the structural deficiencies of the criminal proceedings. A corresponding strategy is to be submitted to the Committee of Ministers.

137. In this context, the Commissioner would like to recall the conclusions and recommendations given by his predecessor[140] as regards the lack of effective investigations into human rights violations where law enforcement or other security officials are implicated. To address this serious problem, the recommendation was made that "not only should the investigating, prosecutorial and judicial authorities be sensitised to the important obligations which are incumbent upon them, but they should also be motivated to fulfil those obligations in a conscientious and impartial manner. Obviously, this presupposes that investigating authorities are placed in a position – and have the means and the authority – to secure the full cooperation of the law enforcement and security structures whose members may be implicated in the offences concerned."

138. The Commissioner took note that a representative of the Prosecutor's Office has recently acknowledged that the Ministry of the Interior in the Chechen Republic did not provide effective co-operation and support in the investigation into cases of disappearances dating back to 1990s and 2000s and demanded that such shortcomings be rectified.[141] The Commissioner would like to encourage the Russian authorities to reflect on the underlying reasons for this phenomenon and

[137] http://www.kremlin.ru/assignments/19150
[138] Articles 2,3,5,6,8 and Article 14 of the Protocol No. 1
[139] Chamber judgment of 18 December 2012. The case concerns the disappearances of eight men in Chechnya between March 2002 and July 2004, after having been arrested in a manner resembling a security operation. The Court found violations of Articles 2, 3 and 5.
[140] Cf. the Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to the Russian Federation from 12 to 21 May 2011 (CommDH(2011)21).
[141] http://www.hro.org/node/17325

to ensure that the strategy for the execution of the *Aslakhanova and Others* judgment includes the necessary steps to address all the deficiencies in the investigative proceedings.

139. A federal law on ensuring protection of victims and witnesses was enacted in August 2004. In July 2013, the Government approved a new state programme for the protection of victims, witnesses and other participants in criminal proceedings for 2014-2018. However, in the past there have been reports that it was not always possible to ensure effective protection of witnesses under the state-funded programme, due to a lack of adequate funding. The Commissioner would like to further underline that provision of effective protection and support to witnesses in the context of such proceedings is crucial. Testimonies of witnesses, including victims, are the principal evidence in most conflict-related criminal cases because of the non-existence or unavailability of documentary evidence.

5. Extradition cases

140. The European Court of Human Rights has consistently and repeatedly upheld that Article 3 of the ECHR – which prohibits torture or other inhuman or degrading treatment – entails an absolute prohibition of non-refoulement, i.e. expulsion, extradition, surrender, transfer or other removal from the State's jurisdiction of any individual where there are substantial grounds for believing they face a real risk of torture or ill-treatment in the country to which removal is contemplated.

141. In recent years, the number of requests to the Court for the application of interim measures under Rule 39 has been growing in relation to extradition from the Russian Federation, mainly to Uzbekistan and Tajikistan. In several judgments, the Court found that there were no sufficient guarantees against arbitrariness and no judicial review during detention pending extradition.[142] In most of these cases the Court found that the applicants who claimed that a well-founded risk of torture existed in the country requesting their extradition had not received adequate review of these claims.[143] Apart from failing to examine seriously any evidence of such risk, the domestic courts also tend to rely too much on diplomatic assurances given by the state(s) requesting extradition.[144]

142. Following the Court's judgment in the *Iskandarov v. Russia*[145] case, where it held the Russian Federation responsible on account of the applicant's unexplained abduction and transfer to Tajikistan by unidentified persons, the Court has been confronted with repeated incidents of that kind in other cases pending before it. In its recent judgment in the case of *Savriddin Dzhurayev v. Russia*,[146] the Court again found that the applicant could not have been forcibly transferred to Tajikistan without the involvement of the Russian state officials. The Court in particular concluded that "the findings of the present judgment support the view that the repeated abductions of individuals and their ensuing transfer to the countries of destination by deliberate circumvention of due process – notably in breach of the interim measures indicated by the Court – amount to a flagrant disregard for the rule of law and suggest that certain State authorities have developed a practice in breach of their obligations under the Russian law and the Convention. Such a situation

[142] *Garabayev v. Russia*, judgment of 7 June 2007; *Nasrulloyev v. Russia*, judgment of 11 October 2007; *Muminov v. Russia*, judgment of 11 December 2008.
[143] In the case of *Sharipov v. Russia*, judgment of 11 October 2011, the ECtHR found that the applicant's extradition to Kazakhstan will not violate Article 3 of the ECHR.
[144] For more information, see *Return to Torture: Extradition, Forcible Returns and Removals to Central Asia*, Amnesty International, July 2013.
[145] Judgment of 23 September, 2010.
[146] Judgment of 25 April 2013. The case concerns abduction and secret transfer of a man, whose extradition had been sought by the Tajik authorities and who had been granted temporary asylum in Russia, to his home country, Tajikistan, where he was subsequently prosecuted and sentenced to imprisonment for offences against national security.

has the most serious implications for the Russian domestic legal order, the effectiveness of the Convention system and the authority of the Court".[147]

143. The Court acknowledged certain positive developments in the domestic jurisprudence,[148] but highlighted the need to further improve domestic remedies and to prevent their unlawful circumvention in extradition matters. Furthermore, the Court indicated that the measures to be taken by the authorities should ensure that applicants in respect of whom the Court has indicated interim measures must be granted effective protection by the state, both in law and in practice; and that appropriate procedures and institutional arrangements are in place to ensure effective investigation into every case of breach of the interim measures.

144. The Russian authorities have taken certain steps to prevent the occurrence of incidents of this kind by regularly disseminating instructions indicating that any attempt to remove from the Russian territory persons in respect of whom the Court ordered interim measures should be prevented. The Prosecutor General issued an instruction reinforcing control of residence, with a view to ensure that any attempts of kidnapping and illegal transfer are rapidly reported.

6. Non-enforcement of domestic judicial rulings

145. Non-execution of the domestic court judgements has been a long-standing problem in the Russian Federation, and in January 2009, the European Court of Human Rights delivered its first pilot judgment against Russia on this topic.[149] The address the underlying structural problem, the Court ordered that an effective domestic remedy against such violations be set up and that all similar cases pending before the Court should be settled. In response, a legal reform was adopted in May 2010 introducing a domestic compensatory mechanism (Compensation Act),[150] and redress was offered to almost 1 000 applicants whose cases were adjourned by the Court. The Court found that the new domestic remedy must be used by the applicants before bringing their complaints to Strasbourg and dismissed several hundred new cases for failure to do so. As a result, the number of such cases before the Court decreased significantly in 2011.

146. The length of judicial proceedings was also found unreasonable in a number of judgments, and the Court concluded that there was no effective domestic remedy against unreasonable delays, finding a violation of Article 13. The Compensation Act, however, set up a domestic mechanism to compensate for the excessive length of judicial proceedings, and thus the number of such cases before the Court has therefore radically decreased.

147. There is still a group of some 500 non-enforcement cases pending before the Court, since the Compensation Act is only applicable to monetary obligations arising from domestic judgments, but not to in-kind obligations (such as provision of housing or communal services). The Court therefore launched a new pilot procedure in April 2012 with a view to prompting a resolution of all such cases and of the underlying problem at the domestic level.[151]

[147] *Ibid*, §257.
[148] For example, the Supreme Court's Ruling no 11 of 14 June 2012 underlined, with reference to Article 3 of the ECHR, that extradition should be refused if there were serious reasons to believe that the person might be subjected to torture or inhuman or degrading treatment in the requesting country.
[149] *Burdov No 2 v. Russia,* judgment of 15 January 2009.
[150] The Federal law "On the compensation for the violation of the right to trial within reasonable time and the right to execution of judicial acts within reasonable time" (30 April 2010, no. 68-FZ), which has been in force since 4 May 2010, provides for a mechanism of compensation for the breaches of the two rights of court users: the right to trial within reasonable time, - and the right to execution of judicial acts within reasonable time.
[151] Case of *Gerasimov and others v. Russia* (the case was communicated to the Russian authorities on 10 April 2012).

Conclusions and recommendations

148. The Commissioner welcomes the efforts undertaken by the authorities to address a number of systemic deficiencies revealed in the judgments of the European Court of Human Rights, by providing a remedy for the violation of the right to fair trial and the right to execution of judgments within a reasonable time. He also acknowledges the sustained efforts undertaken since 2002 in addressing the problem of excessive recourse to the supervisory review procedure and the breach of the legal certainty requirement in civil proceedings. He would like to encourage the government to resolve the remaining issues in this field, such as non-execution of domestic judgments related to in-kind obligations.

149. The Commissioner urges the Russian authorities to undertake further efforts to ensure that the competent authorities request and authorise the application of remand only as a measure of last resort. Judges, prosecutors, and investigators should be strongly encouraged to apply and seek non-custodial alternatives to detention, and should receive continuous training and further assistance on the application of the relevant legal norms and standards. Decisions to impose or extend remand in custody should be duly reasoned based on the merits of each individual case. It is also important to ensure a unified application of these norms across the country.

150. The Commissioner recommends that the authorities introduce, in accordance with the case-law of the European Court of Human Rights, effective domestic remedies for unjustified resort to remand in custody. These remedies should make it possible to accelerate the proceedings or challenge the lawfulness of detention with reasonable prospects of success, as well as to obtain adequate compensation for unlawful detentions.

151. Prisoners in need of hospital treatment should be promptly transferred to appropriate medical facilities. Remand prisoners should be entitled to ask for a consultation with their own doctor or another outside doctor at their own expense.[152] If necessary, the applicable rules and procedures should be reviewed and amended. More generally, the principle of equivalence of care should apply in the prison context, i.e. health care in prison establishments should be provided in conditions comparable to those provided to patients in the outside community.

152. With regard to the systemic problem of non-investigation of disappearances and similarly serious crimes in the North Caucasus region, the Commissioner underlines that genuine reconciliation in society cannot be achieved without justice. Justice is not only retributive, in the sense that it is aimed to punish through fair proceedings those who have committed gross human rights violations and serious violations of international humanitarian law. It is also, or above all, preventive, aiming to ensure that all people in the region come to terms with the past, and live in peace in a cohesive, pluralist democratic society. Justice means, moreover, provision of adequate, effective and proportionate reparation to comfort and heal the wounds of all victims of the conflict without any distinction. The protection of witnesses of these crimes is crucial to achieve justice. The authorities are therefore urged to investigate promptly all reported cases of threats and intimidation of witnesses, initiate criminal proceedings in such cases, and fully protect the security of the witnesses concerned.

153. In the cases of extradition, it is important to ensure unequivocal application of the national legislation in force by all state actors and institutions involved. Judges and prosecutors, as well as other relevant officials, should be properly trained and continuously reminded of the need to apply the relevant international and European standards when making decisions in extradition cases. Most notably, they should refrain from relying on diplomatic assurances to extradite or return persons to counties where they are at risk of torture and ill-treatment. The competent authorities should ensure an effective investigation into past and current cases of abduction of persons in violation of Russian legislation, in particular those who were protected by the interim measures ordered by the European Court of Human Rights, and to identify those responsible and bring them

[152] Cf. §17 of CM Recommendation No. R(98)7.

to justice. The state authorities should above all ensure effective protection for persons covered by the interim measures ordered by the Court.

V. The on-going reform of the police and efforts to combat ill-treatment

154. The new Law on Police, which was enacted in February 2011 and entered into force on 1 March 2011,[153] dispensed with the old denomination "*militsiya*" and replaced it with "police". Police officers are now required to introduce themselves when interacting with citizens and must have name tags displayed on their uniform. The law refers to the absolute prohibition of torture and ill-treatment and also provides that police officers are required to intervene to stop any deliberate acts causing pain or suffering to an individual, either physical or mental.[154] Further, the law envisages measures towards increased public involvement in the assessment of police performance, such as regular publication of surveys and public opinion polls and the establishment of regional councils comprised of representatives of various public organisations to advise police management structures.[155]

155. In 2013 a working group under the Ministry of the Interior developed a Roadmap on further reforms of the police force. According to this document, further reforms should focus on improving professionalism of the police force and fighting corruption; increasing openness and building public trust; improving management and optimising use of existing structures and resources; ensuring accessibility of law enforcement assistance; preventing crime and responding adequately to current challenges.

156. The Commissioner considers that, in order to achieve their full potential and have a durable impact, all efforts to reform the police should be undertaken in conjunction with similarly far-reaching reforms in other law-enforcement institutions (such as Prosecutor's Office) and a comprehensive reform of the judiciary, with a view to strengthening its independence and ensuring genuinely adversarial court proceedings. In this context, the Commissioner would like to signal the need for further strengthening of the mechanisms of parliamentary control over all law-enforcement structures and improved public oversight of their activities. This would also contribute to preventing abuses such as those which led to the dismissal in 2012 of several high-level officials in the Ministry of Defence and the Federal Penitentiary Service.[156]

157. The problem of torture and ill-treatment in police custody has been a long-standing one, as witnessed by various reports[157] and the Court's case-law.[158] Physical abuse of suspects by police officers usually occurs within the first few hours or days after arrest. The definition of "torture" under the current legislation (Article 117 of the Criminal Code) does not fully cover all the necessary elements, such as involvement of a public official or other person acting in an official capacity in inflicting, instigating, consenting to or acquiescing to torture. Moreover, this provision is rarely applied in practice and officials suspected of acts of torture are mostly prosecuted under Articles 286 (abuse of power) and 302 (extracting confessions) of the Criminal Code.

158. In the course of 2012, several cases of death in police custody in the Russian Federation were widely discussed in the media and led to increasing public outrage, highlighting the need to

[153] The Law was adopted following public discussion in the Internet and substantial changes were introduced in the final document compared to initial draft.
[154] Article 5(3) of the Law.
[155] Article 9.
[156] http://www.kommersant.ru/doc/2069766; http://www.newsru.com/russia/26jun2012/reimer.html
[157] See, for instance, *Report by the Russian non-governmental organisations on the implementation by the Russian Federation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the period of 2006-2012*, October 2012, Moscow.
[158] See *Mikheyev v. Russia*, judgment of 26 January 2006, *A.A. v. Russia*, judgment of 17 January 2012; *Menesheva v. Russia*, judgement of 9 March 2006, *Maslova and Nalbandov v. Russia*, judgment of 24 January 2008.

effectively address the problem of ill-treatment and torture by police. One of the cases took place in Saint Petersburg in February 2012 and involved the death of a 15-year-old boy. Another one occurred in March 2012, where a person succumbed to the injuries inflicted upon him by police officers in the Police Division No. 9 (former "Dalniy" Police Division) in Kazan (known as "the Dalniy case").

159. During his visit to Kazan and at federal level, the Commissioner discussed measures to prevent ill-treatment by the police and to ensure accountability in any such cases, including measures taken following the Dalniy case. Actions taken by the authorities included dismissals and criminal charges brought against the police officers concerned,[159] renewed investigations of previous allegations of ill-treatment and the introduction of preventive measures, such as cameras in holding cells. Notwithstanding all these efforts, according to the Investigative Committee, the number of cases of ill-treatment by police in Tatarstan doubled in 2012 and the methods used became increasingly elaborate.[160] In his discussions with the competent authorities, the Commissioner underlined that sustained long-term efforts are needed throughout the country in order to prevent similar cases from recurring.

160. In its recently-published report on a visit to the North Caucasus region of the Russian Federation carried out in April-May 2011, the CPT once again reiterated its long-standing recommendation that the competent authorities should "promote a fundamentally different approach to methods of investigation. This must involve more rigorous recruitment procedures, improved professional training for law enforcement officials (in particular operational officers) and the adoption of detailed instructions on the proper questioning of criminal suspects. In the course of the training, it must be made clear that the precise aim of questioning criminal suspects should be to obtain accurate and reliable information in order to discover the truth about matters under investigation, not to secure a confession from someone already presumed to be guilty".[161]

161. In April 2012, a subdivision specialised in investigating crimes committed by representatives of the law enforcement bodies, including police officers and prosecutors, was established inside the Investigative Committee of the Russian Federation. In 2012, 174 criminal cases involving members of the police force were sent to the courts.[162]

162. As part of further efforts to combat impunity, the following options should be considered. Firstly, legislative amendments should be introduced to criminalise torture as an independent crime, while making sure that police and other officials can be prosecuted directly for this crime and that their sentences commensurate with the gravity of the crimes committed.[163] Secondly, further guarantees should be introduced, both in law and in practice, to ensure that cases related to ill-treatment can under no circumstances be sent for investigation to the same officials who have been complicit or otherwise implicated. Thirdly, suitable penalties commensurate to the gravity of the offence should apply, as lenient sanctions for torture and ill-treatment can only engender a climate of impunity. Finally, the ratification of the Optional Protocol to the Convention Against Torture (OPCAT) will also constitute a positive step in this direction.

163. As has been emphasised in the reports by the previous Commissioner,[164] one of the important measures for preventing torture and ill-treatment is through a system of regular visits to places of

[159] The court proceedings are still on-going at the time of drafting of the present report.
[160] http://www.newsru.com/crime/18feb2013/polcrimestattat.html
[161] Report to the Russian Government on the visit to the North Caucasian region of the Russian Federation carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 April to 6 May 2011, paragraph 20 and Appendix I.
[162] http://lenta.ru/news/2013/02/19/policemen/
[163] Cf Concluding Observation by the UN Committee against Torture on the fifth periodic report of the Russian Federation, adopted by the Committee at its forty-ninth session (29 October -23 November 2012), §7.
[164] See, for example, Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to the Russian Federation from 12 to 21 May 2011.

deprivation of liberty by independent experts, such as delegations of the CPT. The reports of this body offer not only a reliable picture of the state of affairs in places which usually do not receive sufficient public scrutiny, but also provide useful guidance on the prevention of ill-treatment and safeguards for persons deprived of their liberty in the context of any policy discussions on such matters. Therefore, the Commissioner welcomes the decision by the Russian authorities to authorise the publication of the CPT report on its visit to the North Caucasus in April-May 2011, and would like to encourage them to continue this practice with regard to all the future reports, as well as to authorise the publication of all the existing reports which at present remain confidential.

164. In 2008, public monitoring commissions were established within the Russian Federation with the purpose of monitoring the situation in the places of detention. As has been highlighted by several of the Commissioner's interlocutors, the public monitoring commissions are effectively fulfilling their function only in those regions, where their membership is composed of independent and impartial local activists, who are unaffiliated with local officials and employees in the prison system.[165] Clearly, an essential component of the effective functioning of the commissions is also their possibility to obtain access to all places of detention and to documentation relevant to their work, such as lists of detainees. The Commissioner was informed that - regrettably - cases where members of such commissions were not granted access either to certain places, or persons, or documents were not rare. Preparatory and continuous training of the membership is another key factor for the effectiveness of such a monitoring system. Since 2011, the Council of Europe has been implementing a project providing training to the members of public monitoring commissions, aimed at improving their capacity and knowledge of applicable methodology, which is crucial for fulfilling their mandate.[166]

165. The Court's case-law concerning Russia also reveals certain deficiencies in the way the police and the courts have been dealing with cases involving drug trafficking. In particular, the Court found in a number of cases that the fairness of a trial was irremediably undermined where incitement by the police to commit an offence had served as the basis for a conviction for drug dealing.[167] In 2009 the Grand Chamber confirmed its previous approach that the use of covertly obtained evidence was in violation of Article 8.[168] In *Veselov and Others v. Russia,*[169] where three applicants were targeted in an undercover operation conducted by the police in the form of test purchases of drugs, the Court reiterated that it is incumbent on the domestic authorities to ensure that the manner in which test purchases are conducted excludes the possibility of abuse of power, in particular of entrapment. The conduct of test purchases and of similar covert operations has to be subject to a number of procedural restrictions, for example a requirement of authorisation by a judge or public prosecutor. In this particular case the police had not considered investigative steps other than the test purchases to verify the suspicion that the applicants were drug dealers.

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[165] See in this regard also http://www.kommersant.ru/doc/2204759

[166] Information about this project, which is implemented in partnership with the Office of the Federal Ombudsman of the Russian Federation, is available at http://www.coe.int/t/democracy/migration/russian-pmc_en.asp

[167] See, for instance, *Vanyan v. Russia*, judgment of 15 December 2005 and *Bannikova v. Russia,* judgment of 4 November 2010.

[168] *Bykov v. Russia*, Grand Chamber judgment of 10 March 2009. The Court reiterated that in order for the lawfulness requirement in Article 8 to be satisfied with regard to the interception of communications for the purpose of a police investigation, the law had to give a sufficiently clear indication as to the circumstances in which and the conditions on which the police authorities were empowered to resort to such measures. In the present case it considered that the use of a remote radio-transmitting device to record the conversation between the applicant and another person was virtually identical to telephone tapping, in terms of the nature and degree of the intrusion into the privacy of the individual concerned. It noted in that connection that since the law regulated only the interception of communications by wire and mail services, the legal discretion enjoyed by the police authorities had been too broad and had not been accompanied by adequate safeguards against various possible abuses. As this risk of arbitrariness was inconsistent with the requirement of lawfulness, there had been a violation of Article 8.

[169] Judgment of 2 November 2010.

Conclusions and recommendations

166. The Commissioner welcomes the on-going efforts by the authorities to reform the police and to combat impunity for torture and ill-treatment for such serious human rights violations. He would like to draw the authorities' attention to the Council of Europe Committee of Ministers Guidelines on eradicating impunity for serious human rights violations (2011), the Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police and the relevant standards and recommendations made by the CPT. He stresses the need to develop policies and practice to prevent and combat any institutional culture within law enforcement structures and other authorities (in particular, judicial and prosecutorial authorities) which tends to foster impunity. By prosecuting such crimes and bringing those responsible to justice, the authorities will send a clear message of zero-tolerance of police violence. The authorities are urged to undertake measures to raise awareness among judges, investigators and prosecutors of their duty to thoroughly investigate all allegations of ill-treatment by law enforcement officials, in line with the case-law of the European Court of Human Rights.

167. The Commissioner wishes to recall that, for an investigation into possible ill-treatment to be effective, it should comply with the five following principles: (a) independence: there should be no institutional or hierarchical connections between the investigators and the official complained against and there should be practical independence; (b) adequacy: the investigation should be capable of gathering evidence to determine whether the police behaviour complained of was unlawful and to identify and punish those responsible; (c) promptness: the investigation should be conducted promptly and in an expeditious manner in order to maintain confidence in the rule of law; (d) public scrutiny: procedures and decision-making should be open and transparent in order to ensure accountability; and (e) victim involvement: the complainant should be involved in the complaints process in order to safeguard his or her legitimate interests.

168. The imposition of light sentences, suspended sentences or any other lenient sanctions for torture or ill-treatment can only engender impunity. Such offences should always be prosecuted, including ex officio, and punished by appropriate penalties which take into account their grave nature. Allowing violent criminal acts by the police to go unpunished can greatly undermine public trust in the authorities responsible for upholding the law. The independence of the investigation should be ensured by transferring the investigations away from the units of the law-enforcement officials who are subject to the investigation and from the units investigating and/or prosecuting any criminal case against the victim of the alleged ill-treatment.

169. The Commissioner recommends that the authorities continue to pursue efforts to ensure that law enforcement officials are recruited through a competitive and selective process and are appropriately trained, and that modern methods are used in criminal investigations and proper practices applied in the questioning of criminal suspects. Performance indicators for law enforcement officials, investigators, prosecutors and judges should make it clear that established innocence or other grounds excluding criminal liability are of the same value as conviction of those guilty. "Clear-up" targets for police officers and "conviction" targets for prosecutors and investigators should be abolished.

VI. The role of human rights structures and civil society in the reform process

1. The ombudsman institutions at federal and local levels

170. The Russian Federation has a developed network of human rights institutions, both at federal and local levels. The Constitution of the Russian Federation of 1993 provided for the establishment of the Ombudsman Office at the federal level. The Federal Constitutional Law on the Commissioner for Human Rights came into force in March 1997. According to the law, the Commissioner should be at least 35 years old and have knowledge and experience in protecting human rights. The

Ombudsman is elected by the State Duma, on the nomination of either the President, or the members of the State Duma or the Council of Federation, for a five-year-term, once renewable. The Commissioner submits annual reports to the President of the Russian Federation, the Council of Federation and the State Duma, Government, Constitutional Court, Supreme Court, Supreme Arbitration Court, Prosecutor General and Chairman of the Investigative Committee. The Commissioner may also submit special reports on various human rights issues to the State Duma.

171. In line with the above-mentioned Federal Law, each entity of the federation has a right to appoint its own ombudsman. The first regional Ombudsman was appointed in 1997. As of May 2013, regional ombudsmen were functioning in all federal entities except for six regions.[170] During his meeting with regional Ombudspersons in August 2012, President Putin stated that such an institution should be established in every region.[171] There is also a network of Ombudsmen for Children's Rights, both at federal and local levels.[172] Furthermore, in 2012 the institution of Presidential Commissioner for protection of the rights of entrepreneurs was established. Similar institutions are functioning at the regional level.

172. The effectiveness of such institutions is in many respects linked to the degree of independence they are able to enjoy and to the attitude of the regional or local authorities towards them. In April 2013, the Ombudsman in the Tomsk region was forced to resign in the wake of a vote of no confidence by the local Duma, on the grounds of "not fulfilling her duties". The relevant local law on the regional ombudsman had been amended a few months earlier (December 2012), in order to provide for the possibility to dismiss the post-holder. This regrettable development could undermine the independence and efficient functioning of the ombudsman institution both in this region and in other federal entities.

173. The Commissioner would like to recall that in the report on the visits to the Russian Federation in 2004, his predecessor observed that "the homogeneity and flexibility of the institution will be the key to its success. To this end, a framework law could be passed at the federal level, setting out general principles governing the institution of regional Ombudsman […]".[173] The Commissioner is of the opinion that this observation remains valid in the present context. Discussions are reportedly taking place about possible adoption of either amendments to existing federal legislation, or a separate framework law on the status and powers of the regional ombudsman. On his part, he would like to encourage a speedy adoption of the legislation to this end.

174. The Commissioner took note of certain proposals to initiate amendments to the federal law regulating the appointment of the Ombudsman at the federal level. In this context he would like to draw attention to the Belgrade principles, which provide that "parliaments, during the consideration and adoption of possible amendments to the founding law of a NHRI [National Human Rights Institution], should scrutinise such proposed amendments with a view to ensuring the independence and effective functioning of such institution, and carry out consultation with the members of NHRIs and with other stakeholders such as civil society organisations"[174]. With regard to the civil society participation in the process of appointment of the Ombudsmen, both at regional and federal levels, the Commissioner is of the opinion that the selection process should feature a prior consultation with civil society, which may take the form of a series of public hearings in which civil society actors ask questions of potential candidates and present their preferences to the decision-making body for consideration.

[170] There are no regional Ombudsmen institution in the Republic of Tuva, Novosibirsk oblast, Chukotsky Autonomous Okrug, Vladimir oblast; Kurgan and Magadan oblast (http://ria.ru/magadan/20130529/940143208.html)
[171] http://www.kremlin.ru/news/16260
[172] The institution of the Ombudsman for Children's Rights exists in each federal entity, although its legal status varies.
[173] Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, on his visits to the Russian Federation (15 to 30 July 2004 ; 19 to 29 September 2004), §549.
[174] Belgrade Principles on the relationship between national human rights institutions and parliaments (adopted in February 2012), §4.

175. The Commissioner also discussed with several interlocutors the participation of federal and local human rights structures in the legislative process. On this topic, the Belgrade principles provide that the "NHRI should be consulted by Parliaments on the content and applicability of a proposed new law with respect to ensuring human rights norms and principles are reflected therein"[175] and that "NHRIs should work with the Parliaments to develop effective human rights impact assessment processes of proposed laws and policies".[176] The Commissioner believes that the inclusion of these principles in the legislative process would ultimately contribute to the quality of the end results.

2. Council on Human Rights and Civil Society Development under the President of the Russian Federation and other institutions

176. The Council on Human Rights and Civil Society Development under the President of the Russian Federation was established in 2004, as a successor to the Human Rights Commission under the President of the Russian Federation. Throughout its functioning it has played an important role in promoting reforms in the judiciary, by providing support to new legislative initiatives and constructive input with regard to possible amendments and changes to existing laws. By virtue of its consultative status, the Council is in a strong position to contribute to the public debate on issues which have been discussed in the present report and to draw the attention of the relevant officials to those issues and challenges which need to be addressed. The Chairman of the Council, Mr Mikhail Fedotov, is the Presidential Adviser on human rights.

177. Several of the permanent commissions established within the Council specifically work on issues such as public participation in judicial reform, reforms in the penitentiary, the police and in other domains related to the administration of justice. The Council also prepares regular reports and, on occasion, special reports on high-profile cases. Thus in 2011, the Council prepared a report on the "second Yukos trial," in which Mikhail Khodorkovsky and Platon Lebedev were sentenced to lengthy prison terms.[177] This report was prepared as an expert opinion and was not a legally binding document.[178] In the course of 2012-2013, the premises of some experts who participated in the drafting of this document were searched, several of them were questioned by representatives of the Investigative Committee, and at least one expert left the country in order to avoid such pressure. Reportedly, these actions were driven by the allegations that the experts in question in the past received funding from structures linked to Mikhail Khodorkovsky, with further allegations being made that this could have had an impact on their decision to participate in this exercise and may have influenced the conclusions and findings of the report.

178. The Commissioner would like to stress that, as a matter of principle, experts should be in a position to freely express their opinions on different subjects, without any fears of possible consequences. Any pressure applied on experts because of the opinions they voice or conclusions they reach may have a "chilling effect" on all other persons participating in the debate, making them increasingly reluctant to share their knowledge and experience. The independent public expertise presupposes that invited experts pronounce their opinions, which could then be taken on board by the competent decision-makers making their own choices as to preferred

[175] Principle 27.
[176] Principle 31.
[177] The findings of the reports suggested that serious irregularities occurred at the stage of inquiry.
[178] This initiative has sparked a discussion in the judicial circles, and the Presidium of the Council of Judges has asked for an opinion of the Chairman of the Constitutional Court, Valery Zorkin, on this matter. The latter in his reply published in February 2011, underlined the importance of the transparency of the judicial system and the possibility of the general public to express their reaction to the court decisions after they entered into force, while underlining that such opinions could not and should not be regarded as having any legally binding consequences for the judiciary as a whole, but should contribute to public discussion on the situation in the judiciary and possible ways of improving its functioning.

course of action. Any doubts about their independence and impartiality can be voiced in the course of discussion, but should not be invoked as grounds for prosecution.

3. Civil society involvement in the reform process

179. During his visits to the Russian Federation in October 2012 and April 2013, the Commissioner was told by the authorities at regional and federal levels that they regard civil society organisations as important and valuable partners and appreciate their contribution to decision-making processes in different spheres. Many civil society organisations are members of various consultative and advisory bodies to the federal, regional and local authorities, such as Public Chambers, and advisory and working groups attached to ministries and other governmental institutions. As was already underlined earlier in this report, civil society organisations, mainly those involved in human rights advocacy, play an important role in public monitoring commissions performing a watchdog function in respect of the law enforcement and penal correction systems. At the same time, the Commissioner observed a certain reluctance on the part of state officials to work with civil society institutions as equal partners, in particular in those cases where the latter are openly critical about the policies pursued by the former.

180. A meaningful dialogue with civil society organisations is an important means to promoting constructive reforms in the administration of justice. The Consultative Council of European Judges, in its Opinion no 7 (2005) on justice and society stated that the judiciary can develop with support of social actors "outreach programmes" which would bring students, parents, teachers, community leaders, media and others to the court to learn about the work of the judiciary, which can help share "a correct perception of judges' role in the society".[179] To achieve this, the relevant organisations should be provided with adequate funding. In this regard, the Commissioner welcomes the decision by the Russian authorities to support the activities of human rights organisations and other civil society institutions by making available substantial budgetary funds, to be distributed based on results of competitions.[180]

4. Human rights action plans

181. The Commissioner took note that both federal and local administrations in the places he visited had developed and were implementing different sector-based strategies or action plans targeting specific issues linked to the on-going reforms in the judiciary (such as reforms in the prison system, integration of former convicts and others), and addressing other problems, for instance, to eliminate barriers and ensure accessibility to the physical environment (public buildings and transport) for persons with disabilities.[181]

182. One of the topics the Commissioner discussed with officials at regional and federal levels was the systematic implementation of human rights through action plans designed to address in a coherent manner the human rights challenges in a given country or region. The development of such plans can also be an effective framework for the participation of civil society and human rights structures in the formulation and implementation of human rights policies by the government. In the context of the Russian Federation, such action plans could be initially adopted in selected pilot regions and later extended to all other regions and at federal level. The Commissioner's Recommendation on systemic work for implementing human rights at the national level[182] provides useful guidelines in this regard.

[179] CCJE (2005) OP No. 7, adopted by the CCJE at its 6th meeting (Strasbourg, 23-25 November 2005), §§ 17 and 19.
[180] http://www.kremlin.ru/acts/19242.
[181] In the Republic of Tatarstan, such a programme has been in place since 2011.
[182] CommDH(2009)3, published on 18 February 2009.

Conclusions and recommendations

183. Independence is an essential condition for the ability of ombudsman institutions to defend human rights. In line with the UN Paris Principles on national human rights institutions, independence must be guaranteed by law and be reflected in the method by which office holders are appointed. Ombudspersons should also act independently in practice, by determining their own priorities and exercising their powers as and when they deem necessary. The Commissioner would like to urge the competent authorities to revise the legislation governing the functioning of the ombudsman institutions, most notably at local levels, with a view to ensuring its compliance with the above-mentioned principles.

184. The Commissioner would like to encourage ombudspersons to play a more active role in promoting awareness of and respect for human rights standards in their respective communities and areas of responsibility. They should be provided with adequate resources in order to fulfil their functions effectively, and be properly shielded from any undue influence. Their independence should be fully respected by all the relevant actors, and all communications with human rights institutions must be conducted with full respect for their integrity and independence.

185. The Commissioner reiterates his long-standing recommendation that safe and favourable conditions be ensured for the work of human rights NGOs in the Russian Federation. A regular and open dialogue between the authorities and various civil society organisations and experts on issues related to the effective functioning of the justice system will help to promote the necessary reforms and ensure transparency and public trust in the reform process. Civil society organisations should be encouraged and supported in carrying out their important mission in this domain, including by financial means. The Commissioner urges the authorities to engage in consultations with civil society and human rights institutions whenever any future reform strategies are being prepared.

186. The Commissioner invites the authorities both at federal and regional levels to consider the development of national human rights action plans or strategies, which would address the situation in their respective jurisdictions. The involvement of all stakeholders, including human rights institutions, civil society and representatives of various vulnerable or disadvantaged groups will contribute to the legitimacy of such an exercise, create shared ownership and make implementation more effective.

187. Finally, the Commissioner will continue to follow closely the situation in the Russian Federation and to pursue his constructive dialogue with the Russian authorities on the follow-up given to the recommendations contained in the present report. He stands ready to assist the government, in accordance with his mandate as an independent and impartial institution of the Council of Europe, to further improve the situation in light of the Council of Europe standards related to human rights protection.