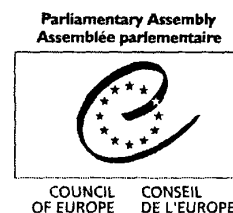


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Honouring of obligations and commitments by the Russian Federation

Report

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Co-rapporteurs: Mr David Atkinson, United Kingdom, European Democrat Group and Mr Rudolf Bindig, Germany, Socialist Group

Summary

The period since the last monitoring report in April 2002 was marked by an effort by the Russian authorities to deal with a number of serious problems which represented – and in some cases continue to represent – a threat to the political stability, economic progress and the normal functioning of democratic institutions in the country. The Parliamentary Assembly fully supports the Russian authorities in their efforts to deal with these problems and to improve the efficiency and the accountability of Russia's political and administrative system. However, the Assembly also believes that the Russian authorities should opt for solutions which are in line with the Council of Europe's legally and politically binding standards and principles.

In the past three years, the Russian Federation has adopted a new criminal procedure code and a law on alternative military service, substantially decreased the number of inmates in penitentiary institutions, signed the European Convention on the Transfer of Sentenced Persons, as well as border treaties with some neighbouring countries. During the same period, however, there has been very little progress regarding other outstanding commitments, including those related to the formal abolition of the death penalty, the withdrawal of Russian troops from Moldova and the obligation to bring to justice those found responsible for human rights violations, notably in relation to events in Chechnya.

The Assembly stresses that the Russian authorities should not only significantly accelerate the pace of compliance with the remaining commitments, but also adjust the direction of some of the recent political, legislative, and administrative reforms. This is particularly important with regard to changes affecting the normal functioning of pluralist democracy which requires the organisation of free and fair elections, guaranteeing appropriate rights to the opposition, accountability of the executive power and the independence of the media.

Against this background, the Assembly resolves to pursue its monitoring of the honouring of obligations and commitments by the Russian Federation until it receives evidence of substantial progress, particularly with regard to the issues mentioned in the resolution.

I. Draft resolution

1. The Russian Federation joined the Council of Europe on 28 February 1996. Upon accession, it committed itself to respect its general obligations under the Statute of the Council of Europe, namely pluralist democracy, respect for the rule of law and for human rights and fundamental freedoms of all persons under its jurisdiction. The Russian Federation also agreed to comply, within set deadlines, with a number of specific commitments listed in the Assembly Opinion No. 193 (1996).

2. In the last 15 years, the Russian Federation has undergone fundamental changes. The Assembly's last monitoring report and Resolution 1277 (2002) adopted in April 2002 welcomed the undoubted progress made by Russia towards the rule of law and democracy, as well as the significant efforts made since accession towards honouring its obligations and commitments.

3. In the past three years, the Russian Federation has adopted a new criminal procedure code and a law on alternative military service, substantially decreased the number of inmates in penitentiary institutions, signed the European Convention on the Transfer of Sentenced Persons, ratified a border treaty with Lithuania and signed one with Estonia. During the same period, however, there has been very little progress regarding other outstanding commitments, including those related to the formal abolition of the death penalty, the withdrawal of Russian troops from Moldova and the obligation to bring to justice those found responsible for human rights violations, notably in relation to events in Chechnya.

4. The period since the last monitoring report was also marked by an effort by the Russian authorities to deal with a number of serious problems which represented – and in some cases continue to represent – a threat to the political stability, economic progress and the normal functioning of democratic institutions in the country. These problems included the persisting terrorist threat linked to the conflict in the North Caucasus, obscure and irregular privatisations which resulted in an oligarchic control over many of Russia's economic assets and resources, as well as allegations of corruption committed by some federal governors who were not accountable either to the federal authorities or to the people who elected them.

5. The Parliamentary Assembly fully supports the Russian authorities in their efforts to deal with these problems, and to improve the efficiency and the accountability of Russia's political and administrative system. It fully recognises the right of the Russian authorities to carry out reforms adapted to the economic, political, administrative and historic realities in Russia. However, the Assembly also believes that the Russian authorities should opt for solutions which are in line with the Council of Europe's legally and politically binding standards and principles.

6. The Assembly considers the package of reforms, introduced by President Putin in the autumn of 2004 with a view to reinforce "the vertical of power", to be a cause for considerable concern as it in many respects undermines the system of checks and balances indispensable for the normal functioning of any democracy. In order for democracy to function properly, the power must not only be vertically reinforced but also horizontally shared.

7. The Assembly is concerned that recent changes to the legislation concerning the elections of the State Duma and the organisation of political parties will severely restrict political competition in Russia. The significantly higher electoral threshold (7%), the prohibition of electoral coalitions and the reduction of the minimum number of parties to be represented in the lower chamber from four to two, as well as new, restrictive rules for parties entitled to contest State Duma elections, will significantly raise the entry barrier to the parliament, in clear favour of the parties already represented in the current State Duma.

8. Similarly, changes providing the President with a decisive influence in the election of regional governors will affect the composition of the upper house of the Russian Parliament – the Council of the Federation - which is responsible for controlling the performance of the federal government and the President. Under the new legislation, half of the Council members will be appointed by the regional governors who are themselves selected – and can be at any time dismissed – by the President himself. Such a situation is clearly not compatible with the basic democratic principle of the separation of power between legislative and executive bodies.

9. The Assembly is concerned that recent proposals to put under control of the executive the appointments, dismissals and disciplinary procedures regarding judges and judicial administration may undermine prospects for an independent and impartial judiciary in the Russian Federation.

10. The recent creation of a "public chamber" entrusted with "the co-ordination of interests" between citizens, non-governmental organisations and public authorities should be critically assessed. It is indeed difficult to understand why a new body had to be set up to fulfil a role normally carried out by a democratically elected pluralist parliament on the one hand and a genuinely independent freely operating civil society on the other.

11. Assembly delegations observed the parliamentary and presidential elections, in December 2003 and March 2004 respectively, and in both cases strongly criticised biased media coverage and the use of administrative resources in favour of the incumbent President and his political allies. The Assembly considers that the lack of pluralism and impartiality with regard to the broadcasting media is an insurmountable obstacle for the conduct of genuinely free and fair elections and for the normal functioning of democracy as a whole.

12. The Assembly therefore urges the Russian authorities to improve the conditions for the normal functioning of pluralist democracy and, in this respect to:

i. strengthen legal, administrative and political conditions in which a democratically elected and genuinely pluralist parliament will be able not only to support but also to control the executive power;

ii. review the recently adopted legislation on the elections of regional governors inasmuch as it affects the composition and the independence of the upper house of the Russian Parliament, in order to ensure full compliance with the principle of the separation of powers;

iii. pursue the objectives behind the setting up of the public chamber by creating proper administrative, fiscal and political conditions for the normal functioning of civil society in Russia;

iv. create conditions for pluralist and impartial broadcasting media by:

a. establishing an independent public service broadcaster and an independent regulatory authority for the broadcasting sector in line with Council of Europe standards;

b. improving the conditions for the normal functioning of private nation-wide broadcasting media, which must be free of state interference;

v. immediately end the harassment and intimidation of members of civil society critical of the authorities and in particular in the journalistic, scientific and environmentalist communities, which are regularly subject to abusive application of defamation and State secret laws.

13. With regard to the rule of law and the protection of human rights, the Assembly urges the Russian authorities to take the following measures:

i. with regard to the abolition of the death penalty, immediately ratify Protocol No. 6 to the European Convention on Human Rights. The Assembly recalls that the original deadline for the respect of this commitment expired in 1999 and that other countries failing to respect this key commitment were exposed to sanctions;

ii. with regard to the conflict in the Chechen Republic, comply with the recommendations contained in Resolution 1403 (2004) and notably bring to justice those found responsible for human rights violations, seek to end the conflict by peaceful means, strictly respect the provisions of international humanitarian law, prosecute any attempt to intimidate and harass human rights activists and applicants to the European Court of Human Rights, implement the recommendations contained in the reports of the European Committee for the prevention of torture and consider their publication;

iii. unconditionally co-operate with the European Court of Human Rights, refrain from hindering in any way the effective exercise of the right of individual petition to the Court and speedily and comprehensively execute its judgments, notably the judgment of *Ilascu and Others*;

- iv. with regard to ill-treatment and deaths in the armed forces outside military conflicts, apply a zero tolerance approach to the continuously endemic problem of hazing, through educational programmes for officers and systematic, credible and transparent investigation and prosecution of abuses;
 - v. with regard to the recently adopted law on alternative military service, revise it in order to change its disproportionate character and bring it in line with European practice;
 - vi. increase efforts to fight religiously, ethnically and racially motivated violence and discrimination, improve in particular the situation of those Meskhetian Turks wishing to stay in the Krasnodar region and investigate and punish all proven cases of harassment and discrimination;
 - vii. guarantee the exclusion of any legal, administrative and fiscal discrimination against so-called non-traditional confessions and bring the federal law on freedom of conscience and religious associations in line with Council of Europe standards;
 - viii. pursue reforms in the field of the judiciary in strict compliance with Council of Europe standards in order to effectively eradicate any doubts on the fairness and independence of the justice system in Russia, raised inter alia in the context of the trials against Yukos executives;
 - ix. continue to reform the Prokuratura in line with relevant European standards and withdraw the reservation made to Article 5 of the European Convention on Human Rights;
 - x. with regard to the law on federal security service:
 - a. revise the law on federal security service in order to bring the scope of its investigative powers and law enforcement prerogatives in line with Council of Europe principles and standards and thus comply with the commitment for which the initial deadline expired in February 1997;
 - b. transfer the responsibility for Lefortovo and all other pre-trial detention centres currently administered by the Federal Security Service to the Ministry of Justice without any further delay;
 - xi. with regard to the European Charter for Regional or Minority Languages, ratify it without further delay and thus comply with the commitment for which the initial deadline expired in February 1997;
 - xii. with regard to the European Social Charter and the European Convention on the transfer of sentenced persons, ratify them as soon as possible.
14. As regards Russia's relations with neighbouring and other states in the region which are also members of the Council of Europe, whilst welcoming the recent agreement on the closure of the remaining Russian military bases in Georgia, the Assembly urges the Russian authorities to take the following measures:
- i. with regard to the withdrawal of the remaining Russian military forces and their equipment from the territory of Moldova, carry out this withdrawal which should have been completed by October 1997 without any further delay;
 - ii. with regard to treating neighbouring and other countries in the region as zones of special influence, constructively contribute to the resolution of open issues and cease with activities, such as the issuing of Russian passports to inhabitants of the Georgian regions of Abkhazia and South Ossetia, which may – directly or indirectly – undermine these countries' sovereignty and territorial integrity;
 - iii. co-operate with the Georgian authorities in order to create conditions for the voluntary return of Meskhetian Turks to the regions from which they were forcefully deported;

iv. with regard to formerly deported persons and their descendants including those from the Baltic states, assist them to return home in accordance with programmes envisaged in Opinion No. 193 (1996) and adopted legislation;

v. with regard to the return of cultural and other property claimed by Council of Europe member states, continue efforts aimed at settling the outstanding issues in direct negotiations with the countries concerned and on mutually beneficial terms, taking into consideration the need to return the cultural property transferred from Russia during the Second World War.

15. The Assembly is encouraged by the recent statements by the Russian delegation promising progress on some outstanding commitments. However, it wishes to stress that the Russian authorities should not only significantly accelerate the pace of compliance with the remaining commitments but also adjust the direction of some of the recent political, legislative and administrative reforms. This is particularly important with regard to changes affecting the normal functioning of pluralist democracy, which requires the organisation of free and fair elections, guaranteeing appropriate rights to the opposition, accountability of the executive power and the independence of the media.

16. Against this background, the Assembly resolves to pursue its monitoring of the honouring of obligations and commitments by the Russian Federation until it receives evidence of substantial progress, particularly with regard to the issues mentioned in this resolution.

II. Draft recommendation

1. Referring to Resolution ... (2005) on the honouring of obligations and commitments by the Russian Federation, the Parliamentary Assembly considers that Russia must continue in the years to come to benefit from the Council of Europe's assistance and co-operation programmes in order to foster pluralist democracy and respect for the rule of law and the protection of human rights.
2. Given Russia's size and diversity, the Assembly considers that the existing co-operation and assistance programmes (including joint programmes with the European Union) are insufficient, be it in terms of scope, funding or personnel, to have a significant impact in all 89 subjects of the Russian Federation, in particular in those areas where Council of Europe expertise and know-how would clearly be beneficial for the necessary current or future reforms.
3. The Assembly therefore recommends that the Committee of Ministers:
 - i. analyse the obstacles encountered by the Russian authorities with regard to the ratification of Council of Europe Conventions as, since accession nine years ago, out of 200 Conventions, the Russian Federation has ratified only 46 Conventions and signed 15 (as of May 2005) and insists in particular on a speedy ratification of Protocols 6, 12, 13 and 14 to the European Convention on Human Rights;
 - ii. encourage the Russian authorities to strengthen co-operation with the Council of Europe in order to ensure full compatibility of Russian legislation and practice with the Organisation's principles and standards, especially with regard to standards guaranteed by the European Convention on Human Rights, as well as full compliance with the decisions of the Strasbourg Court as regards the individual and general measures that may be required and reinforce assistance and co-operation programmes to strengthen federal and regional ombudsmen institutions and the independence of the judiciary;
 - iii. invite the authorities of the Russian Federation to submit for Council of Europe expert evaluation in particular any draft legislation concerning the reform of the prosecutor's office and of the federal security service, the creation of a public broadcasting service, the revision of the laws on religious organisations and alternative military service, etc.;
 - iv. redefine, in consultation with the Russian authorities, the priorities of the existing and future co-operation and assistance programmes to enable Russia to fulfil as soon as possible its outstanding obligations and commitments as listed in Resolution ... (2005);
 - v. allocate to this end significantly more funds to the Organisation's budget devoted to programmes of assistance and co-operation in order to considerably step up the programmes for Russia. This should not be done to the detriment either of the intergovernmental programme of activities or of the co-operation and assistance programmes for other member states.

III. Explanatory memorandum by Mr Atkinson and Mr Bindig

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I. INTRODUCTION

1. The Russian Federation acceded to the Council of Europe on 28 February 1996. The monitoring procedure began on 25 April 1996, initially under Order No. 508 (1995) and, subsequently, under Resolution 1115 (1997). Under the terms of this resolution, the Monitoring Committee is responsible for verifying the fulfilment of the obligations assumed by the member states under the terms of the Council of Europe Statute¹, the European Convention on Human Rights and all other Council of Europe conventions to which they are parties², as well as the honouring of the commitments entered into by the authorities of member states upon their accession to the Council of Europe. The list of Russian Federation's specific commitments which, together with general obligations, constitute the basis for the monitoring procedure is contained in Assembly's Opinion No. 193 (1996) (see Appendix 5).

II. OVERVIEW OF THE RUSSIAN FEDERATION RELATIONS WITH THE COUNCIL OF EUROPE

2. In 1989, the President of the Supreme Soviet of the then USSR Mikhail Gorbachev spoke to the Parliamentary Assembly and launched the notion of the Council of Europe as a "common European house".

3. The Russian parliament (then still the "Supreme Soviet") was granted special guest status in the Assembly by the Bureau on 14 January 1992, after it had taken note that the mandate of the special guest delegation of the USSR Supreme Soviet had come to an end with the dissolution of the Soviet Union. The Russian Federation applied for Council of Europe membership on 7 May 1992.

4. In January 1995, the President of the Russian Federation Yeltsin, Prime Minister Chernomyrdin, the Chairman of the Federation Council Shumeiko, and the Speaker of the State Duma Rybkin signed a letter with an attached memorandum clarifying a number of points raised by the Assembly's co-rapporteurs on accession. These points were later reproduced in the list of formal commitments contained in the Opinion No. 193 (1996)³. In the letter, the highest political leadership of the Russian Federation pledged to "observe in full" the obligations resulting from Council of Europe membership.

5. Against the background of the conflict in the Chechen Republic and the indiscriminate and disproportionate use of force by the Russian military, the Assembly suspended the procedure concerning its statutory opinion on Russia's request for membership on 2 February 1995⁴. The procedure was resumed in September 1995⁵, following the cease fire agreement of 30 July 1995, which ended the hostilities in the first Chechen conflict. On 25 January 1996 the Assembly adopted Opinion No. 193 on Russia's request for membership in the Council of Europe, which paved the way for the country's accession on 28 February 1996. On the same day the Assembly created⁶ an ad hoc Committee on Chechnya to "monitor the situation and to respond to Russia's request for assistance with proposals in line with Council of Europe Framework Convention for the protection of national minorities that might be acceptable to both sides".

6. The following is the third report on Russian Federation's honouring of obligations and commitments, after an information report in June 1998⁷ and a full report⁸ in April 2002. The final

¹ Article 3 of the Council of Europe Statute: "Every member of the Council of Europe must accept the principles of the rule of law and the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter I."

² The list of conventions to which the Russian Federation is a party is annexed to the report (Appendix III).

³ Ernst Muehleemann (Switzerland, LDR) for the Political Affairs Committee, Rudolf Bindig (Germany, SOC) for the opinion by the Committee on Legal Affairs and Human Rights and David Atkinson (United Kingdom, EDG) for the opinion by the Committee on Relations with European Non-Member Countries.

⁴ Resolution 1055(1995), Rapporteurs Muehleemann (Switzerland, LDR) and Bindig (Germany, SOC).

⁵ Resolution 1065 (1995), Rapporteurs *idem* as above.

⁶ Order No. 516 (1996) on the creation of an ad hoc committee on Chechnya.

⁷ Assembly document 8127 (co-rapporteurs Rudolf Bindig, Germany, SOC, and Ernst Muehleemann, Switzerland, LDR).

comments submitted by the Russian Delegation to the revised preliminary draft report appear at Appendix IV to this explanatory memorandum.

7. The requirement to report on a monitored country at least one every two years could not be respected, largely due to the size⁹ of the Russian Federation and the complex structure of its federal and regional authorities¹⁰, but also because of the parliamentary and presidential elections which took place in December 2003 and March 2004 respectively. In the preparation of this report, we visited Khabarovsk (Khabarovsk Krai) and Vladivostok (Primorsky Krai) from 26 October to 1 November 2003, Yekaterinburg (Sverdlovsk Oblast) and Kazan (Republic of Tatarstan) from 9 to 14 October 2004 and Moscow from 1 to 6 November 2004¹¹.

III. PRINCIPAL DEVELOPMENTS SINCE 2002

A. Conflict in the Chechen Republic

8. The Assembly continued to follow closely the developments in the Chechen Republic since the hostilities broke out again following a series of bomb explosions in several Russian cities and Shamil Basayev's incursion in Dagestan in the summer and early autumn of 1999. Several of its Committees have prepared a number of reports¹² dealing with the political, human rights and the humanitarian aspects of the crisis. In 2000 the Assembly suspended the State Duma's delegation voting rights in the Assembly and, after the sanction has been lifted in 2001, created a joint working group on Chechnya composed of representatives of the Assembly and the Russian State Duma.

9. The three most recent reports on the situation in the Chechen Republic were adopted during the October 2004 part-session. Resolution 1404 on the humanitarian situation of the Chechen displaced population¹³ deplored the fact that the security and humanitarian situation in the Chechen Republic remained unsatisfactory, even if there had been some improvements in the situation of the internally displaced persons in Ingushetia.

10. Resolution 1402 (2004) on the political situation in the Chechen Republic¹⁴ condemned the continued and spreading violence in the Chechen Republic and in the nearby regions and notably the tragic hostage-taking by Chechen terrorists in Beslan. The resolution also explored perspectives for a political solution to the conflict and instructed the Political Affairs Committee to create a round table with the participation of political forces from the Chechen Republic and the federal authorities of Russia. The first round table took place in Strasbourg already in March 2005.

11. The report prepared by the Committee on Legal Affairs and Human Rights¹⁵ and Resolution 1403 (2004) described the human rights situation in the Chechen Republic as dramatic. The Assembly concluded that a climate of impunity continued to prevail in the Chechen Republic due to the fact that the Chechen and Federal law enforcement authorities were still either unwilling or unable to hold accountable for their actions the vast majority of perpetrators of serious human rights violations (see details in the relevant section on human rights of the report).

⁸ Assembly document 9396, Resolution 1277 (2002) and Recommendation 1533 (2002), (co-rapporteurs David Atkinson, United Kingdom, EDG, and Rudolf Bindig, Germany, SOC).

⁹ The Russian Federation's territory covers eleven time zones.

¹⁰ The Russian Federation is composed of 89 subjects (constituent entities) of the Federation (21 Republics, 6 Territories or Krays, 49 Regions or Oblasts, 2 cities of federal importance – Moscow and Saint Petersburg, one Autonomous region, 10 Autonomous districts or Okrugs). All subjects are equal in their rights according to Article 5 of the 1993 Constitution. Republics have their constitutions and own legislation, the rest of the subjects have "statutes" and own legislation. The republics are created on an ethnic base and have a right to establish their own official languages. The RF Constitution provides for exclusive competence of the Russian Federation, shared competence of the Federation and its subjects, own competence of the subjects. For the sake of convenience, all subjects of the Federation will be called regions throughout this report.

¹¹ See the programmes of the visits in Appendix I.

¹² See Appendix II.

¹³ Rapporteur Tadeusz Iwiński (Poland, SOC) on behalf of the Committee on Migration, Refugees and Population.

¹⁴ The political situation in the Chechen Republic: measures to increase democratic stability in accordance with Council of Europe standards, Rapporteur Andreas Gross (Switzerland, SOC), on behalf of the Political Affairs Committee.

¹⁵ Rapporteur Rudolf Bindig (Germany, SOC).

12. The conflict in the Chechen Republic, and especially the conduct of Russian Federation security forces, fall within the scope of the monitoring procedure. The findings of other Assembly's Committees, other bodies in the Council of Europe as well as the relevant decisions of the European Court of Human Rights and information provided by the Russian authorities, are mentioned in this monitoring report to evaluate the compliance with two specific commitments and a general obligation to respect human rights and fundamental freedoms under Article 3 of the Statute of the Council of Europe.

13. Paragraph 10 (vii) of Opinion No. 193 on Russia's request for membership of the Council of Europe notes Russia's intention: "to settle international as well as internal disputes by peaceful means (an obligation incumbent upon all members of the Council of Europe), rejecting resolutely any forms of threats of force against its neighbours". The pledge to settle internal disputes by peaceful means is applicable to the situation in Chechnya, yet its respect must be assessed against the threat which the insurgency in the Chechen Republic represents to the public security of the population in Chechnya and elsewhere in the Russian Federation. The second conflict was provoked by a series of terrorist attacks and it would be ludicrous to demand from Russia to respond to such a crisis with peaceful means only.

14. As every Council of Europe member state, Russia has a constitutional obligation to protect its citizens. To do so, it has the right to use all legal means at its disposal, including a proportionate and discriminate use of force, provided that all relevant Council of Europe standards are respected. The compliance with this commitment can therefore be assessed in relation to the efforts invested by the Russian authorities to find a peaceful, political solution to the conflict. Such efforts exist, but they suffer from the continuous impunity for human rights violations, the general lawlessness in the Chechen Republic and the resulting distrust of the local population. In these circumstances, both the constitutional referendum in March 2003 and the presidential elections in August 2004 failed to meet the standards for democratic voting.

15. In the chapter on human rights, the situation in Chechnya will be assessed in relation to the general obligation under Article 3 of the Council of Europe Statute – to accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms. Furthermore, Russia has also accepted a specific commitment to bring to justice those responsible for human rights violations – notably in relation to events in Chechnya.

B. Terrorism

16. Ever since the outbreak of the second conflict in the Chechen Republic, terrorist attacks against Russian citizens have significantly increased. The spat of bombings which prompted the intervention of the Russian forces in September and October 1999 was followed by a series of attacks against military but mostly civilian targets across the Russian Federation, which has caused many hundreds of victims. Some of the most ruthless and tragic terrorist crimes include the hostage taking in the Dubrovka theatre in Moscow in October 2002 where more than 120 hostages were killed, and two suicide bomb attacks on government facilities in Chechnya in December 2002 and May 2003 which together killed more than hundred people. In June and August 2003 two equally deadly suicide bomb attacks were carried out against military personnel in Mozdok near the Chechen border. In July 2003, a suicide attack at a rock festival just outside Moscow killed at least fifteen people while the December 2003 suicide attack in front of the Hotel National in Moscow killed six. More than forty people were killed in a bomb attack on a passenger train in southern Russia in December 2003.

17. There has been a further escalation of terrorism in 2004. In February, a suicide bomber killed some forty people in a Moscow underground train. In May, Chechen President Kadyrov was killed in a bomb blast in Grozny. In August, two passenger aircraft exploded in the air within minutes of each other, killing all eighty-nine passengers and crew. In August at least ten people were killed in an explosion outside Rizhskaya underground station in Moscow.

18. The series of terrorist attacks culminated in September 2004, when hundreds of children, parents, and teachers were held hostage by a Chechen rebel commando in a school in Beslan in North Ossetia. More than 330 were killed, many of them children. Beslan and its innocent victims confronted Europe with horror that it had never expected to experience. An intentional attack on

children celebrating their first day in school marked the new level of ruthlessness in the world terrorists' war against mankind as a whole. We should like to use this opportunity to reiterate our sympathy and support to the families of the victims of Beslan, and to all citizens of the Russian Federation.

19. The above list of recent terrorist acts on the territory of the Russian Federation is not exhaustive, but it illustrates well the magnitude of the threat faced by this country's authorities. Russian citizens are deeply traumatised and they rightfully demand urgent and efficient government action to ensure their protection from terrorist violence. The Russian government therefore needs and deserves full support in its battle against terrorism. Its success or failure in this endeavour will be decisive for the security of not only Russia, but all of Europe and the world.

20. The Assembly and the Council of Europe, but also other European and international bodies should back all anti-terrorist measures which are in compliance with European standards on human rights and fundamental freedoms. In this regard, we would like to reiterate the Assembly's steadfast position that, in the war against terrorism, human rights, the rule of law and democracy are an asset and not an obstacle to efficiency. All measures and reforms adopted so far by the presidential administration and the Russian State Duma in the response to terrorism must be evaluated against this background and we intend to do so later in this report.

C. Recent reforms initiated by President Putin

21. The last elections to the State Duma took place on 7 December 2003 and resulted in a resounding victory for the United Russia party which obtained 300 out of 450 seats, giving the pro-president's party a 66.7% constitutional majority in the parliament¹⁶.

22. President Putin further consolidated his position after the presidential elections on 14 March 2004, which he won with more than 70% of the vote, ahead of the Communist Party candidate Mr Kharitonov who obtained less than 14% of the vote¹⁷.

23. Both elections were observed by Assembly delegations, which concluded that the voting was technically well organised but sharply criticised the media coverage which was strongly biased and favoured the incumbent president and the political forces supporting him¹⁸. We shall return to this issue in the chapter on political pluralism and the functioning of democratic institutions in the Russian Federation.

24. As a result of these parliamentary elections, the pro-presidential majority is dominating the State Duma with an overwhelming margin. This allows the President and his administration to push through far reaching reforms without any significant possibilities for the opposition to contest, slow down, or block these processes. One would hope that one of the first decisions to benefit from this new situation would be the formal abolition of the death penalty which is a long standing unfulfilled commitment of the Russian Federation to the Council of Europe. The earlier excuse of the lack of parliamentary support for such initiative is certainly no longer applicable to the same degree.

25. In the absence, so far, of any move to formally abolish the death penalty, the first major package of reforms presented by the presidential administration was announced in the aftermath of the Beslan tragedy in September 2004. At an enlarged government meeting on 13 September, President Putin announced his intention to fundamentally reorganise the system of executive power in the country and that, consequently, "the Federation and its subjects must jointly take part in forming executive bodies of power in the territories of Russia" as well as that "the higher regional officials of the Russian Federation subjects must be elected by legislative assemblies of the territories at the head of state proposal"¹⁹. On the same occasion, President Putin also announced his intention to

¹⁶ United Russia 300 seats, Communist Party 52, Liberal Democrats 36 seats, Rodina 36 seats, Independents 26 seats.

¹⁷ President Putin 71.31%, Mr Kharitonov (Communist Party) 13.69, Mr Glazyev 4.1%, Ms Khamada (Union of the Right Forces) 3.84%, Mr Malyshkin, (LDPR) 2.02% and Mr Mironov 0.75%, the turnout was 64.39%.

¹⁸ See Assembly document 10032 of 22 January 2004 for the observation of the parliamentary elections and document 10150 of 26 April 2004 for the observation of the presidential elections.

¹⁹ Source: Official Web Portal of the President of Russia (http://president.kremlin.ru/eng/speeches/2004/09/13/0000_typc82912type82913_76667.shtml).

introduce a proportional system of State Duma elections and to set up a "public chamber" as a place for "conducting public examinations of key state decisions, and above all draft laws..." The chief of staff of the Russian Government, Dmitry Kozak, was appointed a Plenipotentiary Presidential Envoy to the Southern Federal District with wide-ranging powers to improve living standards in the region. The President also stressed the need to review the work of Russia's emergency and law-enforcement services, and to prohibit extremist organisations that "hide behind religious, nationalist, or other slogans." In subsequent public statements, the President defended his plan as a necessary measure to reinforce his "vertical power."

Changes to the election of regional governors

26. On 29 September 2004 President Putin submitted to the State Duma a draft law amending the federal laws "On the General Principles of the Organisation of Legislative, Executive Bodies of the Subjects of the Russian Federation" and "On the Basic Guarantees of the Electoral Rights and the Right to Participate in Referendum of the Citizens of the Russian Federation". The Law was adopted by the State Duma in the first reading on 29 October 2004 and in the final reading on 3 December (on 8 December by the Council of the Federation), and signed into Law by the President on 11 December 2004.

27. According to the Law the candidatures for the heads of regional executive bodies are submitted to the regional parliaments by the President of the Russian Federation. If a regional parliament twice refuses to endorse the submitted candidature, the President of the Russian Federation has the right to dissolve the regional parliament and appoint an interim head of the regional executive (or to submit the candidacy third time). A regional assembly may also be dissolved by the President if it fails to remedy contradictions between regional and federal legislation as was ordered by a court²⁰. Furthermore, additional grounds for dismissal of governors by the President before the expiry of their terms of office have been foreseen, e.g. in the cases of "losing President's trust", "improper execution of duties." These provisions can be applied both for those nominated after the enactment of the new procedure and those elected before by direct popular vote²¹.

28. Initially, both President Putin and representatives of his administration have been suggesting that the reform could be *mutatis mutandis* extended to the nomination of candidates for mayors of big cities. However, on 8 April 2005 the State Duma adopted in the final reading (consideration in the Council of the Federation is pending) amendments to the Federal Law on the general principles of organisation of local self-government in the Russian Federation, thereby entitling the authorities of the Subjects of the Federation to define the mode of election of local authority leaders (mayors). After the draft law passed its first reading in March the President of the Congress of Local and Regional Authorities of the Council of Europe Mr Di Stasi pointed out that the Congress considered that such a provision would contravene Article 3 (2) of the European Charter of Local Self-Government, which stipulates that rights in the field of local self-government must be exercised by democratically constituted authorities. The Congress considered that power to elect mayors must go either to the population of the individual local authority or to specific elected bodies representing the local communities. The final version of the draft law should therefore be checked on its compliance with the Charter.

29. Domestic reactions to the changes on the elections of regional heads of executive were mostly positive, including from those most directly concerned. With very few exceptions, most of Russia's regional governors supported the initiative. Many of them even decided to join the pro-presidential United Russia party, in an apparent attempt to enhance their chances to succeed themselves in their post under the new system. Several members of the Duma upper house – the Federation Council – half of which are appointed by regional Governors and half by the regional assemblies also joined United Russia. As a consequence, this party, who already enjoyed a two-thirds majority in the lower house, now also controls the upper house of the Russian parliament.

²⁰ This comes in addition to the already existing powers of the federal authorities (Law No. 106 of 29 July 2000) to sanction their regional counterparts if they fail to comply with the federal laws.

²¹ This provision has already been applied by President Putin, who in March 2005 dismissed the governor of the Koryak autonomous district (okrug) Mr Loginov, previously elected by a direct popular vote.

30. A rare voice of dissent came from the Tatarstan Republic, which enjoys the highest level of the autonomy among Russia's 89 federal subjects. While the President of Tatarstan Mintimer Shaimiyev during our meeting in October supported President Putin's initiative and referred to this reform as a temporary measure which could be reversed in the future, the republic's parliament had some objections to the Russian President's right to dismiss a regional assembly. These objections, which did not go as far as to object to the package as a whole, have been taken partly aboard by the presidential administration and the adopted Law includes, without going into details, some reference to a "reconciliatory procedure" that will take place before the President can use his right to dismiss a regional parliament.

31. There is no Council of Europe obligation saying that a country should accept a federal structure, but the fact is that a properly functioning federal system could democratically counterbalance the central authority and reinforce the functioning of democracy in the Russian Federation, given its huge geographic size and diversity. According to the President and the Bureau of the Council of Europe Congress of Local and Regional Authorities Giovanni de Stasi "appointment of the regional governors by federal authorities, even with the regional assemblies' approval, is contrary to the spirit of federalism"²².

32. In order to evaluate the consequences of the changes of the election of governors on the state of federalism in Russia and the relevance of these measures with regard to the proclaimed objective of the fight against terrorism the Monitoring Committee has asked the Venice Commission to prepare an opinion on the proposed draft law, which had already been adopted by the State Duma on 3 December 2004. The Venice Commission adopted its opinion at a meeting on 4 December 2004²³.

33. In responding to the question about the constitutionality of the draft law, the Venice Commission said that, in its view, the Russian constitution provided a basis for federal interference in the executive branch of the entities. It added that the question to what extent the constitutional basis is sufficient for the very-wide ranging interference by the President provided for in the draft law, would ultimately have to be assessed by the Russian Constitutional Court, if the matter came before it.

34. On the issue of the draft law's compatibility with "European standards applicable in Federal states", the Venice Commission first of all stressed that a centralised state structure is compatible with being a Council of Europe member state and that a move from a federal to a centralised system could therefore not be regarded as a violation of European standards. It added however that, while combinations between federal and centralist elements are possible, such combinations should not contain inconsistencies or dysfunctional elements, which could raise concerns arising from the principle of the rule of law and the separation of powers. In comparing the solutions provided for in the draft law with principles followed in other European federal countries such as Germany, Austria, Switzerland, Belgium, and Spain, the Venice Commission concluded that the principle that the federated entities were autonomous in determining the composition of their executive and legislative powers was clearly disregarded by the new draft law in Russia.

35. The most serious concern expressed by the Venice Commission relates to the consequences of the new law for the upper house of the Russian parliament – the Council of the Federation. This body, whose main task is to monitor and control the performance of the federal government and, in particular, the President, is composed of two representatives from each subject of the Russian Federation: one from the legislative and one from the executive bodies of the state power. Under the new law, half of the deputies of the body responsible to control the President will be appointed by the highest executive officials who were themselves appointed – and can be at any time dismissed – by the President himself! The Venice Commission therefore concludes that the adoption of the draft law necessitates a reform of the composition of the Council of the Federation, in order to preserve the principle of the separation of powers.

²² Council of Europe Press Release of 17 September 2004 (ref 437a04).

²³ Opinion No. 321/2004 (CDL-AD (2004)042)

Changes to the election of the State Duma and registration of parties

36. The changes of the mixed electoral system to a fully proportional one²⁴, also announced by President Putin on 13 September, have been submitted to the State Duma on 8 December, adopted in the first reading on 24 December 2004 and in the second reading – on 15 April 2005. Parliamentary elections in 2007 will therefore be the first conducted on the basis of a fully proportional system, with a new, higher 7% threshold (envisaged in the law adopted in 2002 and also proposed by the new draft law) and with no possibility for election blocs to participate. In such conditions, the prospects of any meaningful and viable opposition to the pro-presidential parties in the parliament will be seriously undermined.

37. Also in December 2004, the State Duma adopted in the final reading and the President signed the amendments to the Law on political parties which increase the number of members a political party must have in order to be registered from 10,000 to 50,000. The Law also requires parties to have branches of at least 500 members in more than half of the Federation's 89 subjects and branches of at least 250 in the rest of them (instead of 100 and 50 members respectively according to the previous wording). In order to be allowed to run in the 2007 Duma elections, political parties have to register the minimum number of members by 1 January 2006. These new requirements clearly benefit the parties currently represented in the State Duma – United Russia, Motherland and the Liberal Democratic Party – who all sponsored the draft law – as well as the opposition Communist Party who has some 500,000 members. In contrast, liberal parties Yabloko and the Union of Right Forces, who had both failed to clear the 5% threshold to enter the State Duma, are facing an uphill battle to qualify for the next elections in 2007²⁵.

38. In February 2005, the Federal Constitutional Court handed down its decision on the constitutionality of the provisions of the Law on political parties (in its previous wording) concerning the requirements to the parties in terms of the number of regional branches and number of members (decision on the appeal of the public organisation "Baltic Republican Party" from Kaliningrad). The Court ruled that "in the current circumstances, when there are serious challenges on behalf of the separatist, nationalist, and terrorist forces, who tend to abuse their constitutional rights and freedoms, and whereas the Russian society did not yet gain lasting experience of democratic life, creation of regional political parties, which aim at defending their regional and local interests, would lead to the destruction of state integrity and unity of the state governance system as a basis of the federal constitution of Russia." The Court also referred to the 'political expediency' as a criterion for the legislature's discretion in fixing the minimum number of parties' members and requirements to their territorial spread.

The creation of a "public chamber"

39. In his 13 September 2004 speech, President Putin voiced a proposal to set up a "public chamber as a place for conducting public examinations of key state decisions and above all draft laws that concern prospects for the country development of national significance"²⁶. The President submitted the relevant draft law on 8 December 2004 proposing to establish a new consultative body comprising 126 non-partisan representatives of all-Russian and regional NGOs. The Chamber's task is to "secure co-ordination of interests" of the citizens, NGOs and public authorities by, *inter alia*, providing expertise on draft federal and regional legislation, other legal acts, and exerting public control over the executive branch's activity. The President of Russia will appoint the first 42 members of the Public Chamber who will then co-opt another 42 members – representatives of nation-wide NGOs and, finally, the 84 members will elect 42 representatives of regional NGOs. The Public Chamber's activity will be funded from the Federal Budget and Chamber's members will receive a budgetary "compensation" for their work. The draft law was passed in the first reading already on 22 December 2004, in the second – on 18 February 2005, and the final reading followed in March. The President signed the Law on 4 April.

²⁴ Proportional representation system with federal party lists competing in the national multi-mandate constituency with no election blocs allowed. The 7% threshold for admitting a party list to the mandates' allocation is preserved (the current law also provides for its application starting from the 2007 election). Also the draft law reduces the minimum number of parties to be represented in the State Duma from four to two.

²⁵ According to media reports, Yabloko claims to have some 85,000 members, while the Union of Right Forces only has 35,000.

²⁶ http://president.kremlin.ru/eng/speeches/2004/09/13/0000_type82912type82913_76667.shtml.

40. It is difficult to understand why a special "public chamber" should be set up to do the task that is normally done by a democratically elected pluralist parliament which is representing society as a whole. Also the principles of its formation and functioning raise some doubts in its independence and credibility. This appears to be an attempt to extend "the vertical of power" to civil society, which is intrinsically horizontal. In order to achieve the objectives behind the creation of the "public chamber" in a more efficient manner and in line with established practices in European democracies, we would advise to create proper conditions for the normal functioning of civil society in the Russian Federation and reinforce the authorities' respect for and readiness to dialogue with its representatives.

The reform's impact on the functioning of democratic institutions

41. The new presidential role in the appointments of regional governments will considerably diminish any influence regional authorities may have in the system of democratic checks and balances of the federal powers and notably the President of the Russian Federation. It is true that, in the past, the autonomous powers have often been abused, but this should be a reason to improve regional autonomy and not to virtually abolish it. Moreover, the consequences for the composition of the Council of the Federation would seriously undermine the principle of separation of powers and consequently the functioning of democratic institutions in Russia. As to the changes of the electoral system, the cumulative effects of the reduction of the number of the parties and the introduction of a fully proportional system will consolidate the position of the governing political forces which overwhelmingly dominate the State Duma. Any chances for an outside challenge to their hold on power will be significantly reduced. While future elections can certainly lead to a redistribution of votes among the four parties presently represented in the State Duma, it is questionable whether such redistribution would be enough to guarantee the normal functioning of political institutions in the country in accordance with Council of Europe principles and standards. A government cannot be democratically accountable if it is virtually protected from the threat of being voted out of office regardless of what it does.

42. The cumulative effect of the package of changes reinforcing the "vertical of power" of the President of the Russian Federation is therefore a reason for concern. While we fully understand and support President Putin's efforts to succeed in the fight against terrorism and to increase the efficiency of Russia's political and administrative system, such efficiency should not be – and does not have to be – achieved at the expense of democracy. For the latter to function properly, power must not only be vertically reinforced, but also horizontally shared.

IV. ECONOMIC AND SOCIAL SITUATION

A. General economic trends²⁷

43. On the economic front, Vladimir Putin's first term of office ended on a positive note with very favourable trends being noted in all macro-economic indicators. Since 1998 the GDP has grown by 40% and industrial production by 45%. Growth remains sustained, at an annual rate of a little over 6% since 1999 and standing at 7% in 2003. The budget and external accounts are in surplus, and public debt is diminishing. The surplus of the state budget stood at 1.4% of the GDP in 2002 and 1.7% in 2003, with the surpluses being transferred to a budgetary stabilisation fund. The current-account trade surplus, due primarily to exports of energy products, has meant that currency reserves could be built up fairly quickly. By making reimbursements ahead of schedule, Russia has managed to reduce its foreign debts significantly; they now stand at below 40% of the GDP. Some of the more tangible signs of the 1998 crisis have now disappeared. There are no longer any wage arrears in the civil service and trade in the form of bartering now represents only 15% of all transactions, instead of two thirds during the crisis.

44. The excellent results in the Russian economy are due to a large extent to the energy sector, as a consequence of an increase in the volume of exports and higher oil prices. Official figures indicate that the oil and gas sectors alone account for 12% of the GDP, almost 40% of tax revenue and about half of all exports. A one dollar increase in the price of a barrel would accordingly represent

²⁷ Source: Information report No. 317 by the Foreign Affairs Committee of the French Senate, 19 May 2004 <http://www.senat.fr/rap/r03-317/r03-317.html>

0.5% of the GDP and about an additional 6% of budgetary income. World Bank experts consider that the energy sector accounts for almost 25% of the GDP, which would indicate even greater reliance by the economy on energy exports and price fluctuations.

45. On the more negative side, many basic infrastructures are in a state of decay and community needs are considerable in the health, housing, transport and environment sectors. In spite of the emergence of a middle class, a large proportion of the population lives a somewhat hand-to-mouth existence. The situation of academics and those in the non-commercial sectors has to a certain extent taken a backward step, and a number of safety nets have disappeared with the demise of the Soviet Union. More than a quarter of the population is living below the poverty threshold²⁸. The deteriorating social conditions – together with the trauma provoked by the terrorist attacks – are the main reason behind the sharp rise in racist and xenophobic incidents. We therefore fully support the government's policy, which considers the fight against poverty as one of its three top priorities.

B. Social benefits reform

46. During our visit in Moscow in November 2004, a number of NGO's expressed great concern over the reform of social benefits: as of 1 January 2005, those who benefited from free transportation, from a reduction in their telephone or television bills or were entitled to medical services in kind will be provided with a monetary allowance. For the Moscow region alone, this will require a budget of 3.5 billion Roubles.

47. Russian citizens went out to the streets to protest against a reform aimed at the liberalisation of the country's economics and a reduction in budget expenditures. The protests began in January and still continue to occur throughout Russia. In mid-February 2005, 284 rallies took place simultaneously in 77 regions with an estimated quarter of million protesters. The Federal Government, nonetheless, survived a confidence vote due to the overwhelming majority that the pro-presidential faction holds in the parliament. At the same time, there was a sharp fall of President Putin's rating – Public Opinion Foundation data showed that in February 2005 42% of the electorate would have voted for Mr Putin compared with 65% during his re-election in March 2004.

C. The end of oligarchs?

48. The Russian government appears set on halting the excesses of runaway capitalism which has benefited the so-called "oligarchs", and above all on exerting a degree of national control over the strategic energy and raw materials sector. The case of Russia's largest oil producer, Yukos, which alone contributes 4% to the Russian economy, is illustrative both in terms of the objectives and the methods used.

49. Resolution 1418 (2005)²⁹, adopted by the Assembly on 25 January 2005, states that the circumstances of the arrest and prosecution of leading Yukos executives suggest that the interest of the State's action in these cases goes beyond the mere pursuit of criminal justice, to include such elements as to weaken an outspoken political opponent, to intimidate other wealthy individuals, and to regain control of strategic economic assets³⁰.

50. The Russian government carried out the sale of Yukos crucial production unit – Yuganskneftegaz, which pumped 60% of Yukos' oil output. The proceeds are supposed to be used to settle the rapidly growing back tax bill (more than 18 billion USD in December 2004). In December 2004, the Yuganskneftegaz was sold to an unknown company for 9 billion USD (twice as little as was

²⁸ This is particularly problematic with regard to children: according to UNICEF figures for 1998, there were around 150,000 homeless street children in Moscow city alone (see http://pangaea.org/street_children/russia/russia.htm). They are estimated today at around 50,000. According to the Federal Ombudsman Mr Lukin the number of homeless children in Russia is growing by 100,000 to 130,000 every year and has reached about 1 million, *Interfax*, 10 December 2004.

²⁹ Resolution 1418 (2005) The circumstances surrounding the arrest and prosecution of leading Yukos executives, Doc.10368, report of the Committee on Legal Affairs and Human Rights, rapporteur: Ms Leutheusser-Schnarrenberger.

³⁰ Leading Yukos executives as well as companies belonging to the Yukos conglomerate have lodged applications with the European Court of Human Rights. Two of them were given priority: Platon Lebedev v. Russia (no. 4493/04) and Yukos oil Company v. Russia (no. 14902/04).

evaluated by foreign auditors), which then immediately re-sold it to the state controlled oil company Rosneft. The Assembly noted in the Resolution 1418 that the circumstances of this sale raise additional issues related to the protection of property (ECHR, First Protocol, Article 1).

D. Demographic trends

51. Russia's economic prospects are hampered by one major factor: the deteriorating demographic situation. The official results of the October 2002 census point to a total population of 145.2 million, showing for the first time a fall in the population, which stood at 147 million in 1989, within Russia's current borders. According to the Federal statistics office, decline in the population continued and as of 1 December 2004 it fell to 143.5 million people. The United Nations demographic projections based on recent demographic trends estimate a population of just 101.5 million inhabitants by 2050, representing almost 1 million fewer each year. Demographers consider that the improvement in life expectancy came to a halt in the 1960s along with deterioration in indicators. Life expectancy, which in 1964 was 65.1 years for men and 73.6 for women, has constantly fallen since then and in 2001 was 59 years for men and 72.3 for women. The fertility rate stands at present at 1.2 children per woman, i.e. 57% of what is required for generation renewal.

E. HIV/AIDS epidemics and its economic consequences

52. The Russian Federation has the largest number of people living with HIV in the region, estimated at 860,000 (range: 420,000–1.4 million). The picture is uneven; well over half of all reported cases of HIV infection come from just 10 of the 89 regions. Most drug users in Russia are male. But the proportion of females among new HIV cases is growing fast-up from one in four in 2001, to one in three just a year later. The trend is most obvious in parts of Russia where the epidemic is oldest, and this suggests that sexual intercourse has been playing an increasing role in transmission. From 1998 to 2002, HIV infection levels among pregnant women in Russia increased from less than 0.01% to 0.1% – a 10-fold increase. However, in St Petersburg, HIV seroprevalence increased from 0.013% in 1998 to 1.3% in 2002 – a 100-fold increase³¹. In recent times from 22 to 25 million HIV tests have been carried out in Russia per year, 10% on pregnant women.

53. The spread of HIV/AIDS could have calamitous effects on Russia's economy by brutally altering the structure of the population. The gross domestic product growth could decrease by up to 1% due to a higher mortality rate in the work force, while increased health expenditure for people living with AIDS could absorb up to 3% of the GDP. Russia's current population of about 144 million could fall as low as 100 million in a medium-case AIDS epidemic or 97 million by 2045 in a worst case scenario. Without the disease, the population is projected to be 117 million³².

F. The European Social Charter

54. Upon accession to the Council of Europe in 1996, the Russian Federation committed itself to study, with a view to ratification, the Council of Europe's Social Charter. Pending ratification of the Charter, it also pledged to conduct its policy in accordance with the principles of this convention. While we understand the complexity and the important financial consequences of the implementation of the charter, we nevertheless regret the absence of concrete progress in compliance with this commitment. The revised European Social Charter (CETS No. 163) has been signed in 2000 but, as of April 2005, not ratified by the Russian Federation.

V. EXTERNAL RELATIONS

55. The most important developments which marked the Russian Federation in the period since the last monitoring report in 2002 are its role and approach to the global fight against terrorism, the war in Iraq, and finally the enlargements of NATO and the European Union which extended the borders of the two organisations with Russia.

³¹ 2004 Report on the global AIDS epidemic (UNAIDS).

³² UNDP report "Reversing the epidemic - facts and policy options", February 2004.

56. The fight against international terrorism had a double, and to some extent, contradictory effect on Russia's relations with the world. On one hand, the degree of the terrorist threat faced by Russia, and the recognition of the fact that this threat can only be defeated through close and substantial international co-operation, has reinforced Russia's links with relevant international organisations and key international players. There is a general recognition that bringing Russia on board is essential to the success of suppressing terrorism at the global level.

57. On the other hand, the methods used by Russia in the response to terrorism, be it the conduct of its troops in the Chechen Republic, but also the package of reforms initiated by President Putin in the aftermath of the Beslan tragedy, are being increasingly questioned, especially in Europe. This, in return, prompted Russia to become more reluctant to discuss international matters and issues in which its human rights record could be invoked. This has had an impact on Russia's relations with the European Union and the OSCE, which we shall look into in more detail below.

58. In this chapter, we are examining Russia's relations with its key partners in Europe, with a special emphasis on its attitude with regard to the role of European and Euro-Atlantic institutions in the consolidation of democracy and the protection of human rights. We believe that this is directly relevant to the Russian Federation's approach to the Council of Europe, as the continent's most prominent body in the field of democracy, human rights, and the rule of law. Moreover, the foreign relations of the Russian Federation are examined against the background of a number of specific commitments contained in Opinion No. 193 (1996), which are related to its relations with the outside world³³, as well as the general statutory obligation to collaborate sincerely and effectively in the realisation of the aim of the Council of Europe.

A. Relations with other international bodies

Relations with the European Union

59. The legal basis for EU relations with Russia is the Partnership and Cooperation Agreement of 1997, valid for an initial period of ten years. A protocol extending the agreement to ten new EU member states was signed on 27 April 2004. The EU's five years common strategy on Russia covering four priority areas (consolidation of democracy, rule of law and public institutions; integration of Russia into a common European economic and social space; stability and security in Europe and beyond and common challenges on the European continent) just came to term in June 2004. The total amount of EU technical assistance since 1991 amounts to more than 2,6 billion EUR³⁴.

60. At the St.Petersburg Summit in May 2003, the EU and Russia agreed to reinforce their co-operation by creating in the long term four "common spaces" in the framework of the Partnership and Co-operation Agreement. It was decided to create a common economic space, a common space of freedom, security, and justice, a space for co-operation in the field of external security, as well as a space of research and education, including cultural aspects.

61. The six-monthly EU-Russia summit, which took place on 25 November 2004 ended without an agreement on the "four spaces", because of persisting disagreements on the issues concerning justice and external relations. Nevertheless, the EU and Russia agreed to set up a "consultation forum" on human rights and to pursue negotiations with a view to conclude all "four spaces agreements" by the next EU-Russia summit, scheduled for May 2005. The "four spaces agreements" have been signed during the 15th EU-Russia Summit held in Moscow on 10 May 2005..

62. The European Union warmly welcomed the recent Russian ratification of the Kyoto treaty, allowing the key international instrument to fight climate change to enter into force on 16 February 2005. Also, the European Union has agreed to support Russia's candidature for membership in the World Trade Organisation, which may take place by 2006, provided that it is endorsed by other principal WTO members such as the United States and China.

³³ See paragraphs 10 vii, viii, ix, x, xi, xii, xiv, xvi, xxi, xxiv and xxv.

³⁴ This amount includes the financing of joint programmes with the Council of Europe on Russia. Currently, the 8th such programme is being implemented.

63. We hope that the Russian Federation will continue to extend its international cooperation also to prevent and eliminate the ecological effects of natural and technological disasters³⁵, as foreseen in Opinion No. 193 (1996) (§ 10 xxi).

Relations with NATO

64. Russia's relations with NATO are generally being conducted in a co-operative manner. These relations have not been seriously affected by the recent NATO enlargement which included the three Baltic States. The NATO-Russia Council (NRC) was established in May 2002 as the main forum for advancing NATO-Russia relations, in which the 26 Allies and Russia work together as equal partners to identify and pursue opportunities for joint action. The decision to establish the NRC was taken in the wake of the September 2001 terrorist attacks, which reinforced the need for co-ordinated action to respond to common threats. The common goal of "building a lasting and inclusive peace in the Euro-Atlantic Area" was first expressed in the 1997 NATO-Russia Founding Act on Mutual Relations, Cooperation and Security, which provides the formal basis for NATO-Russia relations.

Relations with the OSCE

65. Contrary to NATO, the second Euro-Atlantic organisation is clearly and increasingly involved in the area of democracy and human rights, especially through its role in the observation of elections. This is being progressively contested by the Russian Federation and other OSCE members belonging to the Commonwealth of Independent States (CIS). At a meeting in Moscow in July 2004, Russia initiated the adoption of a statement which reflects its new attitude with regard to the OSCE.

66. This statement alleges that the OSCE has not been able to adapt in the current conditions to the requirements of a changing world and to ensure an effective solution to issues of security and cooperation in the Euro-Atlantic area. The organisation does not sufficiently observe fundamental documents, including the Helsinki Final Act (1975), the Paris Charter for a New Europe (1990) and the European Security Charter (1999). Fundamental Helsinki principles, such as non-intervention in internal affairs and respect for the sovereignty of nations, are frequently ignored.

67. According to the statement, there is a clear misbalance between the three dimensions of security – military and political, economic and ecological, and humanitarian. There is a shift of priorities towards humanitarian problems, which noticeably reduces the OSCE's ability to oppose new challenges and threats. Work in the humanitarian sphere comes down to monitoring the situation in the sphere of human rights and building democratic institutions within the CIS and the former Yugoslavia. While the statement acknowledges the importance of this dimension of OSCE activity, it also expresses a belief that deploying the activity of the Organisation in this way does not correspond to the main principles of the OSCE. It accuses the OSCE of selectively paying more attention to some countries while ignoring the problems in other member countries. This was stated to be a violation of the OSCE mandate, which shows that the Organisation has a practice of double standards and selective approaches, and does not wish to pay attention to the peculiarities and specifics of individual nations.

68. The Russian Government has since made a number of similar statements, most recently during the OSCE Ministerial Council on 7 December 2004 in Sofia, which ended without a political declaration due to disagreements, notably, on Ukraine, Moldova, and Georgia. The Russian authorities including President Putin also strongly disagreed with the conclusions of the international observer mission with OSCE participation on the occasion of a referendum in Belarus on 17 October 2004 and the controversial first and second round of presidential elections in Ukraine in November 2004. From December 2004 until May 2005, Russia blocked the adoption of the OSCE's annual budget for 2005.

³⁵ International cooperation and assistance projects to deal with the problem of nuclear waste and "atomic cemeteries" should be pursued.

Commonwealth of Independent States (CIS)

69. The CIS now has 12 members; Russia, Belarus, Ukraine³⁶ and Moldova; the three republics of the Caucasus, Armenia, Azerbaijan and Georgia; and the five central Asian states of Turkmenistan, Kazakhstan, Uzbekistan, Tajikistan and Kyrgyzstan. The CIS has a total of some 280 million inhabitants, a little over half of whom live in the Russian Federation. 16 million Russians are believed to live in the 11 other member countries of the CIS.

70. Several specific groupings co-exist within the CIS. In the security field, a Collective Security Treaty, also known as the Tashkent Treaty, was signed in May 1992 by seven of the 12 CIS members: Russia, Kazakhstan, Uzbekistan, Tajikistan, Kyrgyzstan, Armenia and Belarus. At the end of 1993, Azerbaijan and Georgia signed up to the treaty, apparently with a view to obtaining Russian assistance in dealing with the respective separatist conflicts in Nagorno-Karabakh and in Abkhazia and South Ossetia. However, they withdrew from the treaty in 1999, at the time of the Kosovo crisis, along with Uzbekistan. The six states currently parties to the CIS Collective Security Treaty agreed in May 2001 to set up joint rapid intervention forces, the largest being based in Bishkek in Kyrgyzstan for deployment in Central Asia. The two other forces involve Russia and Armenia and Russia and Belarus.

71. Lastly, the relations between Belarus and Russia form an exception. The two countries established a community in 1996, which became the "Russo-Belarusian Union" in 1997. This declaration of a merger in a single state is relatively formal in nature and has essentially involved Moscow setting up a military protectorate. On the other hand, economic integration has not progressed very far, as Minsk has retained economic structures inherited from the Soviet Union.

72. The CIS is a loosely structured, variable-geometry organisation that does not involve overly binding arrangements. Through summits of heads of state and other meetings, it does, however, offer a framework for resolving certain bilateral issues. It also allows the Russian Federation to assert its priorities, as it has been illustrated in the chapter on relations with the OSCE above.

B. Withdrawal of Russian troops from Moldova

73. Paragraph 10 ix of the Opinion No. 193 (1996) asks Russia to: "ratify, within six months from the time of accession, the agreement of 21 October 1994 between the Russian and Moldovan Governments, and to continue the withdrawal of the 14th Army and its equipment from the territory of Moldova within a time-limit of three years from the date of signature of the agreement".

74. The conflict between the Moldovan authorities and the Transnistrian separatists in 1992 ended after the intervention of the Russian 14th Army under the command of General Lebed. The July 1992 cease-fire agreement established a tripartite peacekeeping force comprised of Moldovan, Russian, and Transnistrian units. On 21 October 1994, the Moldovan and Russian Prime Ministers signed an agreement on the withdrawal of the 14th Army from the Moldovan territory within three years from the coming into force of the agreement. Regrettably, to this day, the agreement has not been ratified by the Russian State Duma.

75. On the occasion of the OSCE Summit in Istanbul (1999) Russia also assumed commitments according to which troops should have been withdrawn by the end of 2002. At the OSCE Ministerial Council meeting in Porto (2002) this deadline was prolonged until 31 December 2003, "provided necessary conditions are in place".

76. In July 2002, the OSCE, Russian, and Ukrainian mediators approved a document setting forth a blueprint for reuniting Moldova under a federal system. In February 2003, the U.S. and EU imposed visa restrictions against the Transnistrian leadership. In April 2003, the Moldovan Government and the Transnistrian authorities agreed to establish a joint commission to draft a constitution for a reintegrated state, but fundamental disagreements over the division of powers remained, and a settlement proved elusive. In November 2003, following a brief wave of opposition protests, Moldovan President Voronin decided not to sign a Russian-brokered settlement with Transnistria.

³⁶ Ukraine is not a full-scale member of the Commonwealth, since it did not sign nor ratify the CIS Statute.

77. On 8 July 2004, the Grand Chamber of the European Court of Human Rights ruled in the case of *Ilascu and others vs. Moldova and Russia*, with regard to the events that took place in Transnistria (Republic of Moldova) between 1991 and 1992. With regard to the Russian Federation, the Court held: "During the conflict in the Republic of Moldova on 1991 – 1992, forces of the 14th Army stationed in Transnistria (belonging successively to the USSR, the CIS, and Russia) fought with and for the Transnistrian separatist forces. Important amounts of weapons from the arsenal of the 14th Army were deliberately transferred to the separatists who, moreover, were able to get other weapons without any obstacle from the Russian soldiers. Thus, the Russian authorities have contributed both military and politically to the creation of a separatist regime in the region of Transnistria who is part of the territory of the Republic of Moldova".

78. While a number of 14th Army troops have been demobilised and some military equipment and weaponry has been taken out, some 2,000 Russian soldiers are today still on the territory of the Republic of Moldova.

79. The continuous presence of the Russian forces in Transnistria and the failure to ratify the agreement of 21 October 1994 signify that Russia is not complying with the commitment under paragraph 10 ix. The co-rapporteurs take note of the Russian position that the continuation of the withdrawal is hindered by the Moldovan side's refusal to accept the 2002 federal plan for Moldova. However, while they certainly encourage the Moldovan government to reinforce its efforts to find a political solution to the conflict, the Russian authorities cannot use a later political development as a justification for non-compliance with an earlier clear and unconditional commitment to the Assembly.

80. We note with satisfaction that the Russian authorities have already paid to the applicants in the *Ilascu and Others* case the amounts awarded by the Court by way of just satisfaction. We are concerned, however, that the Russian Federation has so far not taken the "necessary measures to put an end to the arbitrary detention of the two applicants still imprisoned in Transnistria and secure their immediate release", as ordered by the Court. The fact that the Russian authorities consider this judgment on the merits of the case "mistaken, biased, and clearly politicised" does not absolve them from the obligation to comply with it according to Article 46 of the Convention³⁷.

C. Fulfilment of obligations under the Treaty on Conventional Armed Forces in Europe (CFE)

81. Paragraph 10 x of Opinion No. 193 (1996) calls upon the Russian Federation to fulfil its obligations under the CFE Treaty.

82. The original CFE Treaty signed in 1990 set equal limits for 30 state parties on key conventional armaments essential for conducting surprise attacks or initiating large-scale offensive operations. The principal accomplishment of the CFE Treaty has been the large-scale reduction or destruction of conventional military equipment during the first 5 years the treaty was in effect. The Russian Federation is largely fulfilling its obligations under the original CFE Treaty, which is the subject of its commitment to the Assembly.

83. At the Istanbul OSCE Summit in November 1999 the CFE States Parties signed the Adaptation Agreement to amend the CFE Treaty to take account of the evolving European geo-strategic environment. Ratification by NATO Allies of the Adapted Treaty is awaiting Russia's compliance with adapted CFE flank provisions and continued fulfilment of its Istanbul summit commitments regarding the presence of Russian forces in Georgia and Moldova³⁸. During the OSCE Ministerial Council held in Sofia on 7 December 2004, Russia issued a separate declaration regarding the position taken by certain states on tying the so called Istanbul commitments to the ratification of the Adaptation Agreement: the Russian Federation declared that "it does not recognise it as legitimate, that the Russian-Georgian and the Russian-Moldovan agreements reached in 1999 bear a bilateral character and do not engender any obligations for Russia towards third countries. Russia also declared that those states that on invalid pleas keep postponing ratification bear the full responsibility for the further fate of the Agreement, a cornerstone of European security".

³⁷ See also Interim Resolution DH(2005) 42 adopted by the Committee of Ministers on 22 April 2005.

³⁸ US State Department Fact Sheet (<http://www.state.gov/t/ac/rls/fs/11243.htm>).

D. "The Near Abroad"

84. Under paragraph 10 xi of the Assembly's Opinion No. 193 (1996), Russia is asked: "to denounce as wrong the concept of two different categories of foreign countries, whereby some are treated as a zone of special influence called the "near abroad".

85. The term "near abroad" (*blizhneye zarubezhiye*) is commonly used in Russia to refer to the fourteen other former Soviet republics. To fulfil its commitment to the Assembly, the Russian Federation should not only denounce as wrong the concept of "near abroad" but effectively cease to treat some countries as zones of their special influence justifying a more "flexible" approach to the respect of their full sovereignty and territorial integrity. The Russian Federation attitude with regard to Moldova, dealt with above, is certainly relevant in this respect. The persisting reluctance to give up the "near abroad" approach was also evident on the occasion of the presidential elections in Ukraine.

86. The concept of "near abroad" also continue to influence the Russian Federation's relations with Georgia, especially with regard to the situation in the breakaway regions of Abkhazia and South Ossetia.

87. The conflict in Abkhazia began with social unrest and the attempts by the local authorities to separate from Georgia. In September 1993, the Abkhaz side, with the help of foreign mercenaries and allegedly also Russian support, occupied Sukhumi and a few days later all of Abkhazia. As a result of the fighting, hundreds of thousands of civilians, mostly Georgians, were displaced. On 14 May 1994 the Georgian and Abkhaz sides signed in Moscow the Agreement on a Ceasefire and Separation of Forces. The parties agreed to the deployment of a peacekeeping force of the Commonwealth of Independent States (CIS) to monitor compliance with the Agreement, with UN monitoring implementation of the agreement and observing the operation of the CIS force.

88. In October 1993 Georgia was forced to end its strong opposition to membership in the CIS³⁹ by becoming a full member and signing a series of security cooperation agreements. The terms of the Georgian-Russian friendship treaty called for the establishment of Russian military bases in Georgia for the Group of Russian Forces in the Transcaucasus (*Gruppa rossiyskikh voysk v. Zakavkaz'e, GRVZ*). In 1995, a Russian-Georgian treaty established twenty-five-year Russian leases of three bases. According to the Russian authorities, both these agreements have never entered into force.

89. The Russian forces also participate in a tri-partite peacekeeping force⁴⁰ in Georgia's breakaway South Ossetian Autonomous Oblast, where they had been since 1992. The peace-keeping forces are directed and controlled by a quadripartite Joint Control Commission, composed of Georgian, Russian, South Ossetian and North Ossetian representatives. Following the Georgian authorities' action to stop black market and contraband activities in this part of Georgia in the spring of 2004, a spat of serious incidents led to a near collapse of the peace-keeping arrangement. A cease fire arrangement is in place since August 2004, but the situation remains tense.

90. We also note that, according to the representative of the OSCE in Georgia⁴¹, the participation of the Russian troops in peace keeping operations both in South Ossetia and in Abkhazia in cooperation with the UN continues to play a role in the maintenance of peace in the region. Yet we call on the Russian authorities to engage in a meaningful dialogue with the Georgian authorities⁴² in which the views of the latter on the future of the Russian military bases in Georgia will be fully taken into account. This is consistent with the assurances they have given upon Russia's accession to the Council of Europe⁴³.

³⁹ Following the incidents in South Ossetia in summer 2004, Georgia is now considering leaving the CIS.

⁴⁰ Georgian, Russian and South-Ossetian.

⁴¹ Ambassador Roy Stephen Reeve in a meeting with the Monitoring Committee in Tbilisi on 25 October 2004

⁴² On 13 August 2004, the Georgian Parliament has adopted a non-binding resolution calling for Russian troops to be replaced with international peacekeepers. According to the Head of the OSCE Mission in Georgia, such arrangement is for the time being unrealistic.

⁴³ "The Russian Federation is complying and will continue to comply with the principles of international law concerning the deployment of Russian troops outside its territory...by virtue of which ...the deployment of Russian military contingents in the territories of the few states where their presence is essential is effected only with the consent of the government of the state concerned" (Appendix to the high level Russian message of 18 January 1995, see Assembly Doc 7443).

91. In the meantime, and in order to comply with its commitments regarding the denunciation of the concept of "near abroad" the Russian Federation should abstain from any acts compromising the neutrality of its troops in South Ossetia and Abkhazia. In order to guarantee the credibility and the efficiency of their peacekeeping role, Russia should cease to support the separatist regimes in Abkhazia and South Ossetia. Its current policy of issuing Russian passports to the population in the two regions is an example of an unhelpful conduct in this respect. Instead of backing separatist regimes, Russia should put its full political and economic weight behind the efforts to find a peaceful political solution which will be consistent with the full respect for the territorial integrity of Georgia.

E. The return of property and cultural property to other Council of Europe member states

92. Upon accession, Russia also committed itself: "to negotiate claims for the return of cultural property to other European countries on an ad hoc basis that differentiates between types of property (archives, works of art, buildings, etc.) and of ownership (public, private or institutional)"⁴⁴. It also accepted to: "settle rapidly all issues related to the return of property claimed by Council of Europe member states, in particular the archives transferred to Moscow in 1945"⁴⁵.

93. In written comments, prepared at the request of the co-rapporteurs, the Estonian delegation to the Parliamentary Assembly stated that the Russian government has made no progress so far with regard to commitments related to the return of cultural property (as well as those related to deportees).

94. The comments of the Latvian delegation state that a Latvian-Russian Intergovernmental Commission had been set up, but that no adequate response had yet been given to requests for the compensation of the losses that were caused to Latvia and its citizens and permanent residents. As to the cultural property, the delegation informed us that Russia had returned part of the archives of the Latvian Ministry of Foreign Affairs and some of the KGB files on Latvian citizens. A permanent agreement between the two state archives also allows researchers from Latvia to access Russian archives and copy relevant documents. However, there are difficulties in accessing documents in the archives of the Russian Foreign Ministry and the KGB.

VI. THE FUNCTIONING OF PLURALIST DEMOCRACY

A. Free and fair elections

95. Two important elections have been held in the Russian Federation since the last full monitoring report in 2002. On 7 December 2003 the elections to the lower house of the Russian parliament – the State Duma – were carried out. On 14 March 2004, the incumbent president Vladimir Putin overwhelmingly won the presidential contest. Both these elections were observed by Assembly delegations, which strongly criticised biased media coverage and the use of administrative resources in favour of President Putin and his political allies.

December 2003 parliamentary elections

96. The international team observing the parliamentary elections welcomed improvements in the conduct of the elections in line with the Assembly recommendations four years ago, but expressed concern at the unfair practices, which benefited one party. In the observers' view the 2003 Duma elections indicated that Russia's progress towards democracy had slowed down. They concluded that multiparty democracy existed in Russia and that the elections could be considered as free⁴⁶, but certainly not fair.

97. The observers agreed with the findings of the pre-electoral mission which considered that although newspapers seemed to provide a wide choice of opinion, the three TV stations with nationwide coverage were all government-controlled and had failed to demonstrate impartiality in political reporting. In the longer perspective, the observer mission considered that this kind of problems could

⁴⁴ Paragraph 10 xii of Opinion 193 (1996).

⁴⁵ Paragraph 10 xiv of Opinion 193 (1996).

⁴⁶ In December 2004, for the first time since 1989, the human rights NGO Freedom House downgraded Russia from "Partly Free" to "Not Free" in its annual survey of global freedom, referring inter alia to the flawed nature of the country's elections.

only be solved through putting in place an independent system of "public service broadcasting" that would be free of State influence and control and not subject to manipulation by other vested interests⁴⁷.

March 2004 presidential election

98. The observers of the presidential election on 14 March 2004 made similar observations with regard to the media coverage of the elections. A joint ODIHR/Assembly press release concluded that the election was generally well administered but lacked elements of genuine democratic contest.

99. The report of the Assembly's Ad hoc Committee⁴⁸, which was a part of the International Election Observation Mission, re-iterated the need for independent public television. It concluded that during the presidential election the state-controlled media had displayed clear bias in favour of the incumbent President in news presentation and coverage of the campaign and that the authorities failed to take adequate corrective action.

100. The report refers to the OSCE/ODIHR monitoring of the media coverage of the election which concluded that the State media failed to meet its legal obligation to provide equal treatment to all candidates. The report also includes the evaluation of the independent media monitors, the presidential election in 2004, as compared to the previous elections in 2000, meant a deplorable step towards further degradation and discrediting elections as an institute of democracy. While in the election campaign 2000 less than one third of the total airtime was allotted to Mr Putin, four years later that share increased by almost 50%⁴⁹.

101. In conclusion, the Ad hoc Committee expressed its main concerns regarding the independence of the media and the absence of the democratic pluralism during the election campaign. The Russian media failed to provide a fair and objective coverage of the election campaign. The major part of the airtime and newspaper pages devoted to elections was accorded to the incumbent President. The refusal of President Putin to participate in open democratic debates, although in conformity with law, was seen by the members of the ad hoc Committee as a step back in the democratic environment in the country. The ad hoc Committee called for the introduction of independent public television in Russia with no further delay⁵⁰.

B. The functioning of the Parliament and its control of the executive

102. Presently, both the lower and the upper chamber of the Russian parliament are under control of the forces supporting President Putin. In the case of the upper house – the Federation Council - this is a recent development, prompted by the decision of a number of members appointed by regional executives and assemblies to join the United Russia's Party. In the case of the lower house – the State Duma – the pro-presidential United Russia enjoys a two third, constitutional majority. Moreover, two out of three remaining parties – Rodina and the Liberal Democrats – regularly vote with United Russia, bringing the total majority to 372 out of 450 seats. In the Federation Council, 87 out of 178 members now belong to the United Russia party.

103. This majority is a result of elections which, in the view of the Assembly observers, have not been fair. It is reasonable to conclude that the will of the electorate had been at least to some extent influenced by the media coverage which was so clearly biased in favour of the forces supporting President Putin. The recently announced reforms, aimed at reinforcing the President's "vertical of power" will further consolidate the electoral gains and the dominant position of the ruling political forces. Any future outside challenger will enter the political contest with a huge handicap. The joining

⁴⁷ Report of the Ad hoc Committee of the Bureau to observe the parliamentary elections in the Russian Federation (7 December 2003), Assembly Doc. 10032 of 22 January 2004.

⁴⁸ Report of the Ad hoc Committee of the Bureau to observe the presidential election in the Russian Federation (14 March 2004), Assembly Doc. 10150 of 26 April 2004.

⁴⁹ Preliminary Report on the monitoring of the Media Coverage of the Presidential Election in Russia 14 March 2004, implemented by the Russian Union of Journalists, financed by the European Union, SIM Spa. GICO Branch.

⁵⁰ In § 9 of Resolution 1277 (2002) the Assembly had stated that... "It would need to be convinced of the establishment of radio and television channels free of influence of the state and regional governments, and of the impartiality of the media in the forthcoming parliamentary and presidential elections".

of the "winning team" of the kind observed in the case of regional governors is likely to continue, not least by independent State Duma members, who are doomed to extinction when the announced fully proportional system will come into force.

104. The Russian parliament, dominated by the pro-government forces, has not only been elected, but also continues to operate in a media environment which is clearly biased in the government's favour. In these circumstances, it is difficult to conclude that the Russian parliament is in a position to exercise effective democratic control over the executive. It goes without saying that such control is a corner stone of the system of check and balances, essential for the normal functioning of democracy in the country.

C. Local and regional democracy

105. The reform of federalism and local self-government which President Putin initiated in 2000 by creating federal districts and reforming the Federation Council continued in 2003 with two federal laws in this area and the work of the commission chaired by Dmitry Kozak. As soon as he took office as President on 7 May 2000, Vladimir Putin carried out an important reorganisation of the federal administration and the Federation's relations with the regions (or subjects of the Federation)⁵¹. He immediately demonstrated his desire to ensure continuity of the federal state by creating 7 federal districts on 13 May (over and above the 89 regions), each bringing together 6 to 18 regions: Centre (Moscow), North-West (St Petersburg), South (Rostov on Don), Volga (Nizhnii Novgorod), Ural (Ekaterinburg), Siberia (Novosibirsk) and the Far East (Khabarovsk) and appointing his plenipotentiaries in them. Their main mission was first to ensure legal unity by encouraging the subjects of the Federation to amend their regional legislation so that it was in conformity with federal legislation. At the same time powers to supervise the constitutionality and legality of measures taken by the subjects of the Federation were increased by the Federal Law of 29 July 2000, amending and supplementing the Law of 6 October 1999 on the general organising principles relating to legislative (representative) and government bodies of subjects of the Federation (Articles 9, 19, 27). The sanctions that it provides are also intended to encourage regional authorities to comply with federal legislation.

106. That same year, doubtless the most important political reform was the change in the composition of the Federation Council. With promulgation of the Law of 5 August 2000, leaders of executives and regional legislative assembly presidents ceased to sit on the Federation Council, which now comprised one person appointed by the leader of the executive and one appointed by the legislative assembly for each subject of the Federation. Governors and leaders of republics took their seats on the Council of State created by Decree No. 1602 of 1 September 2000, a consultative body chaired by the President of the Russian Federation. At least once a month the President convenes a presidium of 7 members appointed from among Council members for 6 months to ensure rotation.

107. The CLRAE report on local and regional democracy⁵² in the Russian Federation⁵³ adopted on 4 May 2004 concluded that: "The process of local self-government reform in Russia seems affected by a number of problems⁵⁴ of varying degrees of seriousness and importance". However, the report also estimated that: "The Russian Federation, faced with problems on this scale, seems both fully aware of the difficulty of the undertaking and resolved to conduct the entire reform process in a responsible way".

⁵¹ The subjects are equal in enjoying the rights arising from shared and own competence. Laws and other legal regulations of the subjects of the Federation shall not contradict federal laws adopted within federal exclusive or shared competence (federal laws have priority in case of contradiction). On the contrary, regulations of the subjects adopted within their own competence have priority over federal legislation.

⁵² On 28 February 1997, the Russian Federation ratified the European Charter of Local Self Government. This was an accession commitment (Opinion 193, § 10 v) which was due to be fulfilled within one year of accession.

⁵³ Source: Report on local and regional democracy in the Russian Federation by the Congress of Local and Regional Authorities of the Council of Europe of 4 May 2004 (Ref CG (11) 5 Part II).

⁵⁴ Although all subjects are equal in their rights, the Constitution does not regulate the regions subordination. On the one hand, districts (okrugs) are included into territories and regions, on the other – subjects of the RF are equal in their rights both in their internal relationships and in the relationships with central authorities. As a result, the leadership of the territories (krays) and regions (oblasts) insist on their priority in economical and political issues, while districts (okrugs) do not consider themselves to be included in the territories and regions in political or legal sense. The existence of such "matreshka" (one in another) structure creates legal collision since a legally independent subject is included in another subject, at the same time both of them are equal in their rights.

108. Our reflections on President Putin's more recent reforms concerning the election of regional governors, as well as the view of the CLRAE President on that issue have been described in the chapter on political developments since 2002 earlier in this report. The composition of the Federation Council, the upper house of Parliament, will have to be revised since half of its members would be indirectly nominated by President Putin when the reform concerning the election of governors enters into force.

D. The pluralism of the media

109. The Constitution of the Russian Federation provides for freedom of speech and of the press; however, government pressure on the media persists, resulting in numerous infringements of these rights. Faced with continuing financial difficulties as well as increased pressure from the Russian government and large private companies with links to the government, many media organisations are seeing their autonomy weakened⁵⁵.

110. While five of the six national, and more than 20% of the 35,000 registered local, newspapers and periodicals remain in private hands; only approximately one-third of the 2,500 television stations are private, the rest are completely or partially owned by the federal and local governments. However, the government indirectly influences most private media companies through partial government ownership of federal and local-level commercial structures, including the gas monopoly Gazprom and the oil company Lukoil, which in turn owned large shares of media companies.

111. During 2003, the Government enhanced its influence over NTV, once owned by Vladimir Gusinskiy but taken over in 2001 by Gazprom Media, the media arm of government-owned gas monopoly Gazprom⁵⁶. In June 2003, TV Spektrum (TVS), renowned for its criticism of government policy and the only remaining nationwide non-state affiliated channel, was taken off the air because of "bad management and financial crisis".

112. Today, of the three national television stations, the State owns Rossiya Channel (RTR) and a majority of First Channel (ORT). The Government owns a 38% controlling stake of Gazprom, which in turn has a controlling ownership stake in the third national television station, the prominent, privately owned NTV⁵⁷. It also maintains ownership of the largest radio stations, Radio Mayak and Radio Rossii and news agencies ITAR-TASS and RIA-Novosti.

113. On 16 September 2004 the OSCE Representative on Freedom of the Media, Miklos Haraszti, presented a report on how the Russian media covered the recent terrorist attacks in Beslan, North Ossetia. Mr Haraszti stressed that the main sources of information for the Russian people were the three nationwide broadcasters and that, unfortunately, they did not provide accurate and up-to-date information. In the end the print media and Internet news sites stepped in, filling the information void as much as they could⁵⁸. The same appears to be true for the state television coverage of the recent protests against the social benefits reform.

114. In June 2004, NTV fired Leonid Parfenov, host of the popular news analysis program *Namedni*, after he publicly protested the station's decision not to broadcast an interview with the widow of Chechen separatist leader Zelimkhan Yandarbiyev. In July, Gazprom Media installed Vladimir Kulistikov, former news director of state owned Rossiya Channel, as head of NTV, and Kulistikov abruptly shut down most of the network's political programs, including the popular *Svoboda*

⁵⁵ US State Department Report on Russia's human rights practices in 2003 (<http://www.state.gov/g/drl/rls/hrprt/2003/27861.htm>).

⁵⁶ In its judgement of 19 May 2004 in the case of *Gusinskiy v. Russia*, the European Court of Human Rights ruled that: "In relation to the applicant's complaint that the true purpose of his detention had been to force him to sell his media business to Gazprom on unfavourable terms,... the Court could not but find that restriction on the applicant's liberty permitted under Article 5 § 1 (c) had been applied not only for the purpose of bringing the applicant before the competent legal authority on reasonable suspicion of having committed an offence, but also for alien reasons". The Court accordingly found a violation of Article 18 of the Convention in conjunction with Article 5. This is unprecedented. The full text of the judgment is accessible at <http://www.echr.coe.int>.

⁵⁷ According to expert estimates, three nation-wide state controlled TV channels had the following shares in the TV audience in September 2004: First Channel (ORT) – 30% (22% in Moscow); Rossiya Channel (RTR) – 18% (same in Moscow); NTV – 13% (15% in Moscow).

⁵⁸ Full report available at <http://www.osce.org>

Slova (Freedom of Speech), the last remaining live discussion format talk show on national television. We share the shock of the Council of Europe Human Rights Commissioner Mr Gil Robles with regard to the closure of all live analytical programmes expressed in his recent report on Russia⁵⁹.

115. In the light of the considerations above, we can only conclude that the pluralism and the independence of media in the Russian Federation are not sufficiently guaranteed and that this has consequences for the normal functioning of democracy in the country.

116. We welcome a recent statement by the Federal Economic Development and Trade Minister who said that the Ministry is preparing a plan to create a genuine public television channel in Russia (by 2008), but we would also like to witness concrete steps in this direction⁶⁰ in the nearest future and in line with the Assembly's Recommendation 1641 (2004).

117. Without prejudice to the need to comply with other important commitments and obligations, we consider that securing pluralism of nation-wide broadcasting media is fundamental. This should be attained preferably through the creation of an independent public broadcaster. Therefore, we call on the Russian government to act quickly and to create such a broadcaster in strict conformity with the relevant Council of Europe standards⁶¹.

118. At the same time, we also call for the creation of adequate conditions for the functioning of privately owned electronic media. This should be done through the creation of an independent regulatory authority for the broadcasting sector in accordance with the Committee of Ministers' Recommendation Rec(2000) 23 of 20 December 2000.

119. We call on the Russian authorities to submit to the Council of Europe experts any legal drafts concerning the creation of the future independent public broadcaster and regulatory authority for the broadcasting sector.

E. Civil society

120. Recognising the essential contribution of civil society to the system of democratic check and balances, the Assembly – in paragraph 9 of Opinion No. 193 (1996), stressed the need to pay particular attention to the support for, and the strengthening of, non-governmental organisations in the field of human rights and to the establishment of a civil society⁶².

121. On the occasion of our visit to Moscow and other regions of the Russian Federation, we have had an opportunity to meet and discuss with numerous representatives of domestic and international non-governmental organisations active in Russia. Our personal impressions is that these organisations are active, committed and have a potential to make an essential contribution to the normal functioning of democracy and the protection of human rights in Russia. They include some internationally known organisations such as "Memorial", the Moscow Helsinki Group and the Committee "Soldiers' Mothers of Russia" – which is reportedly transforming into a political party. Others are less known but they also deserve our full recognition and support.

122. We are, however, concerned about the emerging campaign, conducted by high state officials, which is clearly aimed at discrediting an important part of the Russian civil society. According to the International Federation for Human Rights, on 7 May 2004, during a press-conference on the situation of Russian prisons, the Head of the General Direction of Sentence Enforcement of the Ministry of Justice of the Russian Federation (GUIN) General Kraev said that "according to the information of the Ministry of Justice, NGOs were financed by criminal organisations". In particular, General Kraev

⁵⁹ Report by the Council of Europe Commissioner for Human Rights Mr Alvaro Gil Robles on his visits to the Russian Federation (15 to 30 July 2004, 19-29 September 2004), BCommDH(2005)3, 12 April 2005.

⁶⁰ A bill to turn the state media holding All-Russia State Television and Radio Company (VGTRK) into a public broadcaster entity was submitted to the State Duma in 2003, but was never considered.

⁶¹ As contained in Resolution on the future of public service broadcasting adopted at the 4th European Ministerial Conference on Mass Media Policy in December 1994 and in the Committee of Ministers Recommendation No R (96)10 on the guarantee of the independence of public service broadcasting of 11 September 1996.

⁶² The reference was made in the context of the European Union/Council of Europe joint programme for the strengthening of the federal structure and of human rights protection mechanisms and for legal system reform.

accused some human rights organisations, "criminal authorities", inmates' families and lawyers of destabilizing the activities of the Ministry of Justice by pressuring the administration of the prison system and by disseminating false information in the media⁶³. According to Kraev, there are 163 "so called" human rights organisations financed by oligarchs. A number of non-governmental organisations were explicitly singled out in his speech.

123. A reason for even greater concern is the declaration by President Putin, made on the occasion of his annual speech on the state of the nation in front of the Federation Council on 26 May 2004⁶⁴. In his speech, the Russian president declared: "In our country, there are thousands of public associations and unions that work constructively. But not all of the organisations are oriented towards standing up for people's real interests. For some of them, the priority is to receive financing from influential foreign foundations. Others serve dubious group and commercial interests. And the most serious problems of the country and its citizens remain unnoticed. I must say that when violations of fundamental and basic human rights are concerned, when people's real interests are infringed upon, the voice of such organisations is often not even heard. And this is not surprising: they simply cannot bite the hand that feeds them. Of course, such examples cannot be grounds for us to make accusations against civil groups as a whole. I think that these problems are unavoidable, and of a temporary nature."

124. We certainly hope that the Russian president's policy with regard to civil society will be inspired by the last and not the first part of his statement and that reported administrative, fiscal, and physical harassment of some NGO will no longer occur. It goes without saying that this is an essential precondition for the normal functioning of democracy and the respect of human rights and fundamental freedoms in Russia. The use of the power and the moral authority of the Russian president will be of critical importance also in this respect.

F. The Ombudsman institutions

The Federal Ombudsman

125. The position of Ombudsman is entirely new in Russia, as it was created in 1997, following the Assembly's recommendation⁶⁵, when the State Duma adopted a Federal Constitutional Law "On the Ombudsman in the Russian Federation" establishing a Federal Human Rights Commissioner – or ombudsman.

126. Voted in for a five-year term, the ombudsman is independent of government. The post is financed by parliament, to which the ombudsman reports annually. The ombudsman handles individual complaints against the administration⁶⁶, including complaints that have passed through the courts⁶⁷ but remain unresolved. S/he may initiate proceedings⁶⁸ in the event of violation of the rights of an individual or class of individuals if the violation has an effect of "broad social significance" or if it affects individuals unable to defend their own interests. The Office of the Ombudsman also has an informative function, as it prepares reports for relevant state agencies, and interacts with subjects of the Federation to explain new federal laws.

⁶³ According to the Russian authorities, in July 2004 the Meshchansk inter-district prosecutor's office in the Moscow area refused to bring criminal defamation proceedings at the request of the executive director of the all-Russian public movement "Za prava cheloveka", L.A. Ponomarev, against the first deputy head of the Chief Directorate of Sentence Enforcement of the Ministry of Justice of the Russian Federation, General-Lieutenant V.K. Krayev, on the grounds that the information provided by the applicant could not be corroborated.

⁶⁴ http://president.kremlin.ru/eng/speeches/2004/05/26/1309_type70029_71650.shtml.

⁶⁵ To adopt a new law on the Office of the Commissioner for Human Rights was an accession commitment (Opinion 193, § 7 v).

⁶⁶ In principle, the Federal Ombudsman deals with complaints lodged against acts or omissions by Federal authorities. However he also examines complaints originating from citizens of regions where there is no ombudsman and he can also examine complaints which have been previously dealt with by a regional ombudsman.

⁶⁷ On 1 July 2004, the Constitutional Court ruled that the Federal Ombudsman could not be prevented to attend and observe trial proceedings.

⁶⁸ With information concerning the violation, s/he may file suit, request that the relevant state agency apply administrative sanctions, turn to the court or the Prokuratura to verify that a decision or resolution is being implemented, and share conclusions with competent officials or agencies, or appeal to the Constitutional Court.

127. The post of Ombudsman has generally been a highly political position, and many believe that it is of strictly symbolic value. The first Ombudsman, Sergei Kovalyev, while he was a member of the Duma when the law establishing the post was being considered⁶⁹, felt that the Ombudsman should not have a similar legal mandate as the Prokuratura, but should only advance his or her agenda by the force of "moral authority." Many human rights activists considered Mironov, who was the Federal Ombudsman from 1998 to February 2004, to be less assertive as an Ombudsman than his predecessor, but he has also been criticized as "being a thorn in the government's side" and accused of "unnaturally transmitting Western ideas and practices of human rights activism to Russia."

128. Oleg Mironov was succeeded, as of 13 February 2004, by Mr Vladimir Lukin. We were very pleased to be able to meet our former colleague in the Parliamentary Assembly during our visit to Moscow in November 2004. He told us that his annual report would be issued before the end of the year and that three special reports (on the situation of women, servicemen and the situation in prisons) were under preparation. We were also informed that in the first eight months of his mandate, his office had already received over 20,000 individual complaints, i.e. an average of around 2,500 per month⁷⁰. This seems to be a heavy workload but in a country of 145 million people, it is almost insignificant.

129. We consider it absolutely essential that the human and financial resources of the institution be significantly increased in the very near future because the credibility of the Ombudsman will be affected: a total number of 200 staff members⁷¹ (including technical staff) are not enough to service the population of such a big country as Russia. In Poland for example (population 39 million), the Ombudsman's office employs over 400 people.

130. Six years after the creation of this new institution, the creation of this position has had little practical effect so far on advancing the rule of law and ensuring the observance of human rights. Indeed, some critics of the position have called the position of Ombudsman merely a second General Prosecutor, and a weak one at that. This is not to say that the post should be abandoned – on the contrary, even the educational function of the Ombudsman's publication of documentation describing the state of human rights in Russia is of great value. Ultimately, however, if the Ombudsman's position is not strengthened, there will always need to be an authoritative body such as the Prokuratura to ensure the observance of legality, in the absence of sufficiently developed other mechanisms to hold the state accountable to the law.

The regional ombudsmen

131. According to Article 5 of the Law on a Federal Human Rights Commissioner, the 89 subjects of the Russian Federation may also elect their own ombudsman if they so wish and at their own expense. We note with satisfaction that twenty-nine have done so at the time of preparing this report, in regions as far apart as Kaliningrad on the Baltic coast, Komi in the Arctic Circle and Amur on the Pacific seaboard. This is a very welcome development and we encourage the subjects of the Russian Federation who have not yet created an Ombudsman institution to do so without further delay. The mandates of the existing institutions vary slightly, but all handle individual complaints against the local administration, report to the regional parliament on the way the administration is implementing its laws, and have statutory powers to access documents and enter premises. All make recommendations for improvement.

132. The ombudsman for Tatarstan, a largely Muslim republic on the Volga River, whom we met in October 2004, has the widest mandate. He must ensure that international standards are applied within the republic and may bring cases before the Constitutional Court of Tatarstan. Mr Kryzhov, who three years ago was appointed Ombudsman of the Moscow oblast (excluding Moscow city), covers

⁶⁹ In 1993, it was decided that pending the adoption of the law establishing the Ombudsman, Sergei Kovalev, who was chairing the Presidential human rights commission, would act as Ombudsman.

⁷⁰ According to Mr Mironov's annual report, presented on 10 February 2004, a total of 36 634 complaints and appeals had been lodged with the institution in 2003. On average, since 1998, the number of complaints increased every year by around 10%, the main topic (48.7%) being related to criminal procedure and penal execution law. In his first Annual Report, released in March 2005, Mr Lukin referred to more than 35,000 submissions filed with the Federal Ombudsman during 2004. See www.ombudsmanrf.ru.

⁷¹ At present, only 177 posts have been filled.

73 municipalities with only 25 staff members, of which 19 have been actually appointed. He has already issued three special reports, one on the situation of children⁷², one on legal education, and one on temporary holding facilities.

133. Until very recently, there was no Ombudsman in the Chechen Republic: we heard with satisfaction that an acting Ombudsman (Mr Khasuyev) was appointed by presidential decree end of October 2004, following a proposal made by the Council of Europe Commissioner on Human Rights⁷³, which was supported *inter alia* by Mr Lukin. We hope that this newly appointed Ombudsman⁷⁴ will be able to contribute significantly to the restoration of the rule of law in the Chechen Republic.

134. Noting with satisfaction that a total of 29 regional ombudsmen already exist, we reiterate our 2002 recommendation that a regional Ombudsman institution be created in all subjects of the Federation. This was also set as one of the priorities for the Federal Ombudsman's activities in 2005, as put down in his 2004 Annual report. We also recommend that the mandate of the regional ombudsmen be harmonised as much as possible and that the relationship between the regional ombudsman institutions and the federal ombudsman be clarified. In regions where no Council of Europe information office exists, we suggest that the regional ombudsman's offices be given material to enable them to provide information and documents on Council of Europe activities.

G. The Presidential Human Rights Commission

135. According to the Russian Constitution, the President is a guarantor of rights and freedoms of people and citizens. To help him cooperate with the government, federal courts, the prosecutor's office, law enforcement bodies, and public organisations, a number of advisory bodies to the president were set up. Formerly, there were ten commissions under the Russian President, including the human rights commission, and eight councils⁷⁵.

136. The presidential human rights commission⁷⁶ comprises 30 members, coming from the main NGOs, who act on a voluntary basis. Ella Pamfilova, a former deputy in the State Duma, has headed the commission since July 2002. We were very impressed by her energy and commitment when we saw her in Moscow in November 2004. Complementing the Ombudsman, this advisory body, which has direct access⁷⁷ to President Putin and the Presidential administration, can certainly play an important role in promoting and protecting human rights and in developing and enhancing public awareness of those rights. We learnt that by presidential decree No. 1417 of 6 November 2004, President Putin had decided to transform the presidential human rights commission into the "presidential council for the promotion of development of civil society institutions and human rights".

137. We hope that in doing so, the Presidential administration has taken into account the so-called "Paris principles" on national institutions for the promotion and protection of human rights⁷⁸ which provide guidelines as to their status and competences. This would enable this new Russian institution

⁷² The situation in orphanages is considered to be problematic.

⁷³ See the "Grozny Declaration", adopted on 24 September 2004 at the conference on "Human rights problems in the Chechen Republic" (CommDH(2004)17).

⁷⁴ This new Ombudsman institution has nothing to do with the "special commission" that was set up in the Chechen Republic in 2000, under President Putin's Special Representative on Human Rights and Freedoms in Chechnya – initially Vladimir Kalamonov and then Abdul-Khakim Sultygov. Several experts from the Council of Europe have been attached to this office, under an agreement reached with the Russian Federation's Foreign Ministry in March 2000. The task of the office was to monitor the human rights situation in the republic, and much of the special commission's time and effort has been spent processing cases of "disappearances" in Chechnya at the hands of Russian federal forces, and forwarding the complaints to the authorities for investigation and prosecution. In January 2004, the special commission was dissolved.

⁷⁵ Councils for the fight against corruption, culture and art, improvement of justice, codification and improvement of civil legislation, science, technologies and education, cooperation with religious associations, physical culture and sports and the heraldic council.

⁷⁶ This Commission was created already in 1993.

⁷⁷ The Commission meets formally every two months, Mrs Pamfilova has a small office in the Presidential administration building and the full commission meets with President Putin once a year.

⁷⁸ See Resolution 48/134 of the General Assembly of the United Nations, adopted on 20 December 1993.

to become a member of the national human rights institutions network of Council of Europe member States, which has been set up pursuant to Committee of Ministers' Resolution (97)11⁷⁹ and to continue its already fruitful cooperation with the Council of Europe Commissioner for human rights.

VII. RULE OF LAW

138. In a country governed by the rule of law, government should be kept out of courts, courts out of government, and law-making distinct from applying the law⁸⁰. If the law proves to be flawed, only Parliament should be able to change it. In all its actions, Government must be bound by rules fixed and announced beforehand. This principle implies that everyone, be they a government minister, judge, official or ordinary member of the public, is subject to the law, that no-one is above the law and that the law is equal for all. Respecting the rule of law means ensuring order, stability, legal security, and the proper execution of court decisions. It is a vital safeguard against arbitrary action at every level.

139. Unless this principle is respected, human rights cannot be fully guaranteed and protected. Establishing the rule of law requires more than the passage of good laws. It requires that all state institutions and sectors of the justice system – including the ministry of justice, the courts, judiciary, prosecutors, lawyers, and the police – implement the laws consistent with their underlying intent and purposes. Ultimate success will only be achieved when the courts and the criminal justice institutions have the confidence of the public that they can successfully prosecute those who commit crimes while in the process protecting individual defendant's rights to a fair trial in accordance with European standards.

140. Upon accession to the Council of Europe, the Russian Federation pledged to accept the statutory obligation to respect the principles of the rule of law and in Opinion No. 193 (1996) (§ 10 xx.) it accepted an "open ended" commitment to pursue legal reform to bring all legislation in line with Council of Europe standards. Opinion No. 193 (1996) also listed a number of fields where specific reforms were needed.

A. Judicial reform

141. The Russian Federation is pursuing its ambitious programme of judicial reform but has decided to adopt a step-by step approach in order to take into account the size of the country, its decentralised territorial organisation, its limited budgetary resources and the need to adapt procedural rules to the functioning of new courts. The general trend is towards greater specialisation of courts, either by setting up new specialised courts or by creating specialised departments within existing courts.

142. Major reforms affecting all areas of Russia's judicial and legal systems have taken place over the last decade, having a significant impact on the laws and institutions responsible for the administration of justice. In the area of criminal law, the reforms have been particularly dramatic as a result of a new Federal criminal procedure code put in place between 1 July 2002 and 1 January 2004. This will require new procedural institutions to be adopted, skills to be developed, and obligations to be fulfilled. However, in its Resolution 1418 (2005), adopted on 25 January 2005, the Assembly, stressing the importance of the independence of the judiciary and independent status of judges in particular, regretted that legislative reforms introduced in the Russian Federation in December 2001 and March 2002 have not protected judges better from undue influence from the executive and have even made them more vulnerable. Recent studies and highly publicised cases have shown that the courts are still highly susceptible to undue influences.

⁷⁹ Resolution (97)11 on cooperation between member states' national institutions for the promotion and protection of human rights and between them and the Council of Europe, adopted by the Committee of Ministers on 30 September 1997.

⁸⁰ See opening speech by Council of Europe's Secretary General at the pan-European conference on "What public prosecution in the XXIst century?", Strasbourg, May 2000.

Magistrates' courts

143. Magistrates' courts, introduced beginning of 1998, deal with criminal cases involving maximum sentences of less than 3 years and some civil cases⁸¹. There were 5,576 justices of the peace throughout the country, although there remained many vacancies in this system. These judges handle a variety of civil cases as well as criminal cases. In those areas where the system of magistrates' courts has been implemented completely, backlogs and delays in trial proceedings decreased significantly, both among those cases referred to magistrates' courts and in the courts of general jurisdiction, because dockets were freed to accept more serious cases more rapidly.

144. Magistrates' courts are in various stages of development according to region, but were functioning nationwide (except in Karelyia and Chechnya). In some regions, magistrates' courts assumed 65% of federal judges' civil cases and up to 25% of their criminal matters, which may have contributed to easing overcrowding in pre-trial detention facilities (see below, in the section on the penitentiary system).

Suppression of courts with lay judges

145. The Criminal Procedure Code, which entered into force on 1 July 2002, repealed the Lay Judges Act of 10 January 2000, but in accordance with the transitional provisions of the new Code, lay judges could sit in criminal cases until 1 January 2004. The appointment procedure for such lay judges was at issue in the case of *Posakhov v. Russia* where the Court found on 4 March 2003 that the applicant's right to a court "established by law" had been violated⁸². In civil cases, according to the Law on the Implementation of the Civil Procedure Code (14 November 2002), lay Judges were abolished as of 1 February 2003.

Jury trials

146. Modern⁸³ Russia decided to re-introduce trial by jury in 1991. Prior to this decision, the 1978 Constitution of the RSFSR as amended, provided for consideration of civil and criminal cases to be carried collectively or individually; in courts of first instance – with participation of jurors, lay judges or by a college of three judges, or by an individual judge. In 1991, after the amendment of the relevant legislation (Criminal Procedure Code, Criminal Code, Law on Judiciary, and Code on Administrative Offences) jury courts were established by law but implemented step-by-step. In 1993 jury courts were created in 9 subjects of the Federation on an experimental basis.

147. The new Criminal Procedures Code that entered into force between 1 July 2002 and 1 January 2004 specified the introduction of jury trials to the rest of the country for crimes punishable by more than 10 years' imprisonment. By the end of 2003, 83 of the 89 regions had implemented jury trials. On 1 January 2004 five of the remaining six regions, including St. Petersburg, were scheduled to implement jury trials, leaving only Chechnya, which is scheduled to begin jury trials on 1 January 2007. The new Criminal Procedure Code includes a formal procedure for pleading guilty and includes incentives such as shorter sentences and shorter trials for certain classes of crimes. In the first 6 months that this provision was implemented, it applied only to crimes punishable by less than 3 years' imprisonment. In that period, 100,400 criminal defendants made use of the new procedure. In July 2003, the Code was amended to simplify the procedure and expand its availability to defendants facing up to 10 years' imprisonment.

⁸¹ See the Federal Law "On Magistrate Judges in the Russian Federation" No. 188-FZ, 17 December 1998 (amended on 19 June and 22 August 2004). This single court judge hears criminal cases but also civil or administrative cases such as divorce cases, division of property between spouses, other marital cases, some labour disputes, cases on the use of land and construction and certain administrative cases as provided by the Code on Administrative Offences.

⁸² As an interim general measure to ensure implementation of the *Posakhov* judgment of the European Court of 4 March 2003 (Res. DH (2004) 46), on 17 April 2003, the Deputy Chairman of the Supreme Court sent to the chairmen of all domestic courts a circular drawing their attention to the Court's findings and drawing their attention to the need to secure compliance with rules on participation of lay judges in criminal trials until 1 January 2004, when the new Code of Criminal Procedure would be fully in force.

⁸³ Jury courts were introduced in Russia in the course of the 1864 judicial reform and functioned until 1917. They were abolished *de jure* only in 1922. From 1864 to 1917 jury courts considered almost 76% of all criminal cases.

148. According to observers, a majority of defence attorneys, defendants⁸⁴, and the public are in favour of jury trials and an adversarial approach to criminal justice. However, trial by jury is available for only a small number of the most serious offences. The remaining criminal cases are tried by professional judges, since the two "peoples assessors" who sat with a judge before the introduction of the reforms have been removed. According to the Supreme Court, there were 496 jury trials involving approximately 1,000 defendants during the year 2003⁸⁵. Approximately 21% of these trials resulted in acquittals (compared to 0.5% of bench trials). As there is no double jeopardy bar to seeking review of acquittals, approximately one-quarter of these acquittals were overturned on appeal⁸⁶.

149. The high percentage of acquittals by jury courts is generally explained by the violations of the procedural legislation in the course of evidence collecting by inquiry bodies and investigators.

150. According to the Federal Ombudsman⁸⁷, Mr Lukin, a number of problems will nevertheless have to be addressed in the near future to make the system of jury courts fully operational. In particular the system of election of the jurors needs to improve. Currently lists of possible jurors are produced on the basis of election rolls. Then a randomised selection is carried out by computer. The law doesn't exclude automatically from possible jurors the heads or deputy heads of legislative or executive bodies, army servicemen, judges, prosecutors, attorneys, officers of law enforcement bodies. Only upon their request can they be relieved of their duty. If no request was made a judge can dismiss them if s/he has grounded doubts on their impartiality.

151. Mr Lukin suggested that the law should ban participation of such persons in the juries and that the system of selection should be reformed to exclude any possibility for arbitrary selection. He proposed to create special Commissions on compiling jurors' lists in each region which would deal with compiling such lists, their updating, verification, sending out summons to jurors, controlling jurors' appearance in the courts, and preparing materials on jurors' responsibility.

Juvenile courts

152. Another proposed reform concerns the introduction of specialised juvenile courts. The Presidential Council for Reforming the Judiciary has submitted a proposal to this effect. According to PGO's data the number of homeless children or children without any parental care equals 3 million. Many of them become criminals. At present, the courts consider the juvenile crimes cases with ordinary, "grown-up" rules. As a result of criminal procedures 23-24% of young criminals receive prison terms. Hence, Russia has one of the highest numbers of imprisoned minors in the world – 17 persons per 100,000 of population or about 25,000 as of the beginning of 2004. Juvenile courts are supposed to view children not as an object of repression but rather a subject of rehabilitation.

B. The functioning of the judiciary

153. According to the Federal constitutional law on the judicial system of the Russian Federation⁸⁸, the judiciary is divided into three branches. The courts of general jurisdiction, including military courts, are subordinated to the Supreme Court⁸⁹. These courts hear civil and criminal cases and include district courts, which serve every urban and rural district, regional courts, and the Supreme Court. Decisions of the lower trial courts can be appealed only to the immediately superior court unless a constitutional issue is involved. The arbitration (commercial) court system under the Supreme Court of

⁸⁴ Jury courts are composed of one professional judge and twelve jurors. It is up to the accused to choose to be tried by jury. However, if a group of persons is accused the jury courts takes over the case if one of the accused files such a motion. Verdicts of the jury courts can be appealed in cassation to the Supreme Court of the Russian Federation.

⁸⁵ In the first three months of 2004, the examination of 146 cases was completed, 138 verdicts were delivered resulting in 233 convictions and 66 acquittals.

⁸⁶ In 2003 the Supreme Court considered 299 appeals against judgments delivered by jury courts (involving 551 persons accused): 'guilty' verdicts against 28 persons and 'not guilty' for 34 persons were quashed.

⁸⁷ Interview to the "Rossiyskaya Gazeta" newspaper, 11 November 2004.

⁸⁸ Law no.1-FKZ, adopted on 21 December 1996, amended on 15 December 2001 and 4 July 2003.

⁸⁹ The Supreme Court (125 members) is the highest judiciary body on civil, criminal and administrative matters. At a lower level there are the supreme courts of the Subjects of the Federation. The third level consists of courts, located in districts and small towns, and which deal with the highest number of cases. A separate system of military courts is subordinated directly under the Supreme Court.

Arbitration⁹⁰ constitutes a second branch of the judicial system. Arbitration courts hear cases involving business disputes between legal entities, and between legal entities and the state. The Constitutional Court⁹¹ (as well as constitutional courts in a number of regions of the Russian Federation) constitutes the third branch.

154. Although all the legal prerequisites for an effective judiciary system are now in place, the judiciary is still today perceived as weak, inefficient, partial, and corrupt. Corruption is the most frequent complaint and is acknowledged by all top officials in the country. Allegations of corruption of course need to be investigated; some of our interlocutors mentioned however that these allegations were possibly also put forward, in particular by the media, in order to discredit a judiciary which in recent years had acquired more prestige and authority.

155. Accusations of "telephone justice" are frequent as well: many judges allegedly prefer to get instructions from the Prokuratura or the appeal court rather than risk having their judgment overturned. This is apparently due to the fact that the appraisal system of judges is based on the number of judgments they deliver which are or are not quashed.

156. It is to be noted in this connection that the judiciary already had a bad reputation in Soviet times, perhaps due to the fact that when a citizen was invoking a "right", he was more often calling upon authority, in most cases the Prokuratura, imploring it to correct injustice and not on an independent tribunal, which would engage in an utilitarian calculus to measure his claim against a hierarchy of competing rights.

157. The general absence of legal culture and the citizens' overall distrust towards the courts is however not only a heritage of Soviet times: it is due also to the poor quality of the judiciary system as a whole. Although their salaries have been significantly raised, most judges in the country have very bad working conditions. The court staff is underpaid, many court buildings are in urgent need of repair, and we have been told that many courts in the country do not receive sufficient funds to pay for telephone or electricity bills. According to Russian Axis⁹², only 1.77% of the 2004 budget appropriations are foreseen for the judiciary whereas 11.68% are spent on law enforcement agencies and ensuring the State's security⁹³.

158. On a more positive note, we were told that the number of case brought before courts of general jurisdiction had increased from one million eight years ago to six million in 2004. This seems to indicate, contrary to what is stated above, that people turn to the courts more often than before, which can be interpreted as a growing sign of confidence in the judiciary. This means however that the judges, who were already ill equipped and overworked⁹⁴, now have more and more cases to deal with and that the average time to decide cases has increased, which in turn lowers the credibility of the judiciary. The fact that the newly adopted legislation, especially in criminal proceedings, provides for strict time limits to be observed is also putting quite a lot of strain on the judiciary. We were told that it was very easy to start disciplinary proceedings against any judge since every single one of them had violated or was likely to violate strict procedural time limits because of his excessive work load.

⁹⁰ The Supreme Court of Arbitration, which is headed by a board of one chairman and four deputy chairmen, is the highest court for the resolution of economic disputes. Courts of arbitration also exist at lower jurisdictional levels.

⁹¹ The nineteen-member Constitutional Court decides whether federal laws, presidential and federal decrees and directives, and regional constitutions, charters, and laws comply with the federal constitution. Treaties between the national government and a regional jurisdiction and between regional jurisdictions are subject to the same oversight. The Constitutional Court also resolves jurisdictional disputes between federal or local organs of power, and it also may be asked to interpret the federal constitution. The Constitutional Court temporarily ceased to exist after Yeltsin dissolved the parliament in October 1993. Although prescribed in the new constitution, the court remained moribund in 1994 because no new law was passed governing its procedures and composition. In 1995 the Federation Council finally approved appointments to the Constitutional Court, and it resumed operation that year.

⁹² See "The judicial system of the Russian Federation: a system-crisis of independence", to be found at www.russianaxis.org.

⁹³ According to the same source, budgetary appropriations for national defence amount to 15.47% of the total: this is twice or sometimes three times more that was is spent on defence in most other European countries.

⁹⁴ We were told that in the Russian Federation as a whole (population 145 million people), the total number of judges in the courts of general jurisdiction is 23,000.

159. Under the constitution, judges of the three highest courts (Constitutional court, Supreme Court and Supreme arbitration court) enjoy life tenure (up to the age of 65, with the exception of the judges of the Constitutional Court) and are appointed by the Federation Council after nomination by the President. The President directly appoints judges of all other federal courts upon submission of the Supreme Court or Supreme arbitration court chairman, as stipulated by the Law on Judges' Status.

160. The chairman and vice-chairman of all Federal courts are appointed⁹⁵ by the President for a renewable term⁹⁶ of six years, upon proposals made by the chairman of the Supreme Court (or the Supreme arbitration court), after consulting the supreme qualification board. This appointment procedure allegedly gives the Presidential administration the means to influence all major court decisions because by definition court chairmen appointed by the executive are more likely to abide either by orders directly received from the Kremlin ("telephone justice") or to try and deliver decisions which would not upset the executive.

161. This suspicion is also nourished by the fact that it's up to the chairman of the court to "allocate responsibilities among his deputies and also among the other judges sitting on the court" (Article 6 § 2 of the Federal law on the status of judges). Moreover, according to the Federal law on the bodies of the judicial community⁹⁷, the chairman of the court can request the (supreme) qualification board to remove a judge for a disciplinary offence.

162. It is of fundamental importance in a state governed by the rule of law that the judiciary enjoys the confidence of the public and that it is seen as an independent and impartial authority, in particular vis-à-vis the executive. In this respect we have been informed of some worrying developments, which might cast a shadow on the independence of the judiciary.

The proposed reform of the Supreme Qualification Board and Supreme Court Judicial Department

163. In September 2004, upon an initiative by its Speaker, Mr Mironov, the Federation Council approved a bill that would give President Putin and the Federation Council the power to hire and fire judges (draft law no. 93807-4 submitted to the State Duma on 30.09.2004). The bill changes the structure and selection process for the Supreme Qualification Board, which up to now played an important role in appointing Federal court judges, including Supreme Court justices. This Board is also the only body that can dismiss judges or lift their immunity.

164. Currently, 18 of the Board's 29 members are elected by secret ballot by the All-Russia Congress of Judges. The Federation Council appoints ten lay members, and the President appoints one member. Under the bill, the Board's membership would decrease to 21 members with 10 members nominated by the President and confirmed by the Federation Council. The Council speaker would appoint ten lay members, and one member would continue to be directly appointed by the President⁹⁸. Along with the transferral of the power to control the Board to the President, the bill also would expand the Board's remit by authorising it to review decisions of the qualification boards in the Federation subjects on dismissal of or disciplinary measures against judges. The bill still faces approval by the lower house, the State Duma, which is controlled by pro-Kremlin parties.

165. The bill is supplemented by an explanatory note which states that the implementation practice of the Law on the Bodies of the Judicial Community showed that the "problem of judges' responsibility before society for accomplishment of their duty is not fully solved". It goes further and states that the bill aims at the "expansion of public control over the assessment of the judge candidates' professional

⁹⁵ See Article 6 of the Federal Law on the status of judges no. 91-Fz of 1 June 1995, as amended lastly on 22 August 2004. According to the previous Law on Judges' Status of 26 June 1992, judges were to enjoy life tenure. This was changed in 2001 and judges appointed after 1995 must now first serve a probationary period of three years before being granted life tenure (with a mandatory retirement age of 65 introduced in 2003).

⁹⁶ But not for more than two consecutive terms.

⁹⁷ Law no. 30-FZ of 14 March 2002, as amended on 22 August 2004.

⁹⁸ The exclusion of the judges' body (Congress of Judges) from the formation of the organ responsible for selection, recruitment, appointment, career progress or termination of office of a judge contradicts the European Charter on the Statute for Judges (paragraph 1.3.) that envisages that such an authority should be independent of the executive and legislative powers and that at least one half of those who sit on it are judges elected by their peers following methods guaranteeing the widest representation of the judiciary.

qualifications, observance by judges of the ethics code, deciding on their recruitment, dismissal, and disciplinary responsibility". It is difficult to understand how the concentration of control powers in the hands of the President can contribute to the improvement of public control and whether limiting the judges' participation in their recruitment and dismissal procedures is an adequate solution to force judges to do their duty.

166. Two former senior judges who were allegedly fired⁹⁹ after refusing to obey informal orders from the executive branch have criticised the bill as bringing the judiciary, which they stated is already under the influence of the executive branch, fully under the Kremlin's control. The Chairman of the Judiciary Council of the Russian Federation Yuri Sidorenko at a 28 October 2004 hearing in the Federation Council also criticised the proposed changes as encroaching on the independence of the judiciary. In its Resolution 1418 (2005), the Assembly expressed its "particular concern" about proposals to increase further the influence of the President's administration over the judges' qualification commission.

167. Another contentious proposal of the Federal Council is to change the appointment of the head of the Judicial Department at the Federal Supreme Court (submitted in September 2004). The Department, which functions on the basis of the Law on the Judicial System and the Law on the Judicial Department, is a federal state body responsible for organisational provision of courts and judges (funding, logistical support, human resources, etc.). So far, the Department's head was appointed and dismissed by the President of the Supreme Court upon assent of the Russian Federation Judges' Council but the bill proposes to transfer this power to the Russian President who will appoint the Department's head "upon submission by the President of the Supreme Court and taking into account the opinion of the Judges' Council". The Judicial Department's (whose official name is Judicial Department at the Supreme Court, *при Верховном Суде Российской Федерации*) autonomy from the executive secures the separation of powers and independence of the judiciary itself. The power to decide on the allocation of funds and resources may become a leverage to control the courts.

168. We strongly urge the Russian authorities to abstain from any reform which would cast doubts on the impartiality and independence of the judiciary. We call on the Russian authorities to make sure that any reform is consistent with European standards and in particular with the European Charter on the statute for judges and Recommendation R (94) 12 on the independence, efficiency and role of judges.

C. The reform of the Prokuratura

169. Upon accession to the Council of Europe, the Russian Federation undertook to "introduce new law(s), in line with Council of Europe standards... on the role, functioning and administration of the Prosecutor's office (Opinion No. 193 (1996), § 7 v). In Resolution 1277 (2002), the Assembly, while noting that some progress had been achieved, stated that it expected the Russian authorities to complete the reform of the PGO's office in accordance with Council of Europe principles and commitments entered into.

170. We must report that since 2002 this reform process has come to a halt and that the Russian authorities for the time being do not appear willing to engage in any meaningful further reform. The reasons for this attitude are twofold: the Russian authorities consider, on the one hand, that the entry into force of the new Criminal Procedure Code in stages between 1 July 2002 and 1 January 2004 aligns the prerogatives of the Prokuratura in criminal cases on the requirements of articles 5 and 6 of the European Convention of Human Rights (ECHR), on the other hand, that the general oversight function remains a necessity in present day Russia and that there are no European standards that would prevent them from keeping an institution that has proven its social worth over the last few centuries.

⁹⁹ Former Moscow City Court judge, Olga Kudeshkina said: "if this terrible bill is approved, it means that we will lose any hope of seeing an independent judiciary system in Russia". Mrs Kudeshkina was disqualified as a judge in 2003 after she refused to rule as the Prokuratura had requested in the case of Pavel Zaitsev, the Interior Ministry investigator who headed a controversial fraud probe connected to the Tri Kita furniture store.

171. In the light of Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe to member states on the role of public prosecution in the criminal justice system, Recommendation 1604 (2003) of the Parliamentary Assembly on the role of the public prosecutor's office in a democratic society governed by the rule of law and the relevant case-law of the European Court of Human Rights, we consider that the current Federal law on the Prosecutor's Office of the Russian Federation¹⁰⁰ still fails to meet European standards, as will be illustrated below.

The independence of the Public Prosecutor's office and its relations with the other state powers

172. Article 129 of the Constitution provides that "the Prosecutor's Office of the Russian Federation shall be a single, centralised system in which lower-level prosecutors are subordinate to higher-level prosecutors and to the Prosecutor-General of the Russian Federation". According to Article 12 of the 1992 Federal law on the Prosecutor's Office, the Prosecutor-General of the Russian Federation is appointed for five years by the Federation Council, upon a proposal by the President. Prosecutors of the regions of the Federation are appointed by the Federal Prosecutor-General, with the permission of the regions¹⁰¹.

173. It is to be noted, however that, although the law provides that the Prosecutor General is dismissed by the President (not the Federation Council); no grounds of dismissal are provided. There is no independent and impartial review of the proceedings to remove the Prosecutor-General, as recommended by Recommendation Rec(2000) 19 of the Committee of Ministers of the Council of Europe. Moreover, the five-year term of office of the Prosecutor-General increases the risk that the Prosecutor General will take decisions according to political expediency and not based on purely legal considerations.

174. Article 7 of the law provides for participation by the Prosecutor-General in meetings of the legislature and the executive bodies, at federal, regional, or local level. We consider it highly undesirable that a Prosecutor-General should have the power to submit legislative proposals to regional assemblies (Article 9 of the law) or participate in parliamentary debates¹⁰². We also find it strange that Prosecutors may participate in all hearings before courts of general jurisdiction and arbitration courts (Article 1 of the 1992 law). We believe that such rights serve to build the prosecutor's power vis-à-vis other state organs and create a sort of super-authority within the state which is very dangerous to the development of a democratic, law-abiding state.

175. All in all, given the sweeping powers afforded to the Prokuratura, it is not surprising that it has often been called the fourth branch of power. This will be illustrated below.

¹⁰⁰ The English text of the Federal law on the Prosecutor's Office No.2201-1 of 17 January 1992, which was reworded on 17 November 1995 and subsequently amended on 10 February and 19 November 1999, 2 January and 27 December 2000, 29 and 30 December 2001, 28 June, 25 July and 5 October 2002, 30 June 2003, and 22 August 2004, can be found at <http://www.venice.coe.int>

¹⁰¹ Subjects of the Federation approve the appointment in various ways. Some require approval by the governor, the regional Duma, or other legislative bodies. Regardless of how the regional Prosecutors are appointed, they are all directly subordinate to the Prosecutor-General of the Russian Federation and can be dismissed by him without prior consultation of regional authorities.

¹⁰² It is to be noted that the Prosecutor General submits an annual report to the President, the Duma and the Federation Council (Article 11 of the law). However there is no obligation to make the report public.

The general oversight function

176. It is to be recalled that the Office of the Prokuratura¹⁰³ was carried over from the Soviet era and institutionalized with little revision in the 1993 Constitution¹⁰⁴ of the Russian Federation. The Prokuratura had two main functions: the prosecution and investigation of crimes and the general supervision (nadzor) of administrative agencies. For over a decade now, the status of the Prokuratura has been very controversial, and there have been a number of propositions for the direction of future reforms.

177. Already near the end of Gorbachev's rule, the Prokuratura was specifically criticized for its broad supervisory powers. Soviet jurists themselves recommended a number of reforms such as removing the prerogative of exercising supervision where no "signal of a violation", i.e. a complaint by a citizen, has been received, halting the practice of prosecutorial warnings and compulsory commands to correct agency conduct which the Prokuratura considered to be illegal, and prohibiting it from directly suspending administrative acts instead of merely notifying the violating agency that it would pursue judicial action against it unless it voluntarily desisted. Such proposals were designed to preserve the actual authority of the Prokuratura to intervene on behalf of aggrieved citizens, while at the same time narrowing the exercise of the function to prevent abuse.

178. To date the Prokuratura maintains its general supervision function, which entails supervision of the executive and legislative branches¹⁰⁵, operational-investigative organs, and administrative agencies. To these ends it may: 1) visit the premises of an agency and request materials and documents related to the violation of the law; 2) bring criminal charges or administrative proceedings against a violator; 3) protest (i.e. request annulment of) a legal act contrary to law; or 4) initiate a civil suit to recover damages incurred as a result of a violation. The Prokuratura also has the power to issue orders to all bodies or persons within the state, including an order to appear before the Prosecutor-General to present explanations in relation to any matter which is the subject of the Prosecutor's supervision or investigation. In general, the scope of instruments with which the prosecutor's office is entrusted is far too broad and it is not specified in what matters and in what proceedings such orders are binding.

179. The wide scope of these powers would appear to be in contradiction with paragraph 12 of Recommendation Rec. (2000) 19 of the Committee of Ministers of the Council of Europe which provides that public prosecutors should not interfere with the competence of the legislative and the executive powers. They also overlap to some extent with the powers afforded to the seven Presidential envoys in the regions and to the 89 Federal inspectors.

180. However, the large majority of our interlocutors, both in Moscow and in the regions, offered some quite compelling arguments for maintaining this dominant position in the supervision of legality. One of the strongest practical arguments is that the judicial system is still simply not developed or experienced enough to handle the increase of cases¹⁰⁶ it would be faced with should the institution be weakened. It was pointed out that the "reformers" (as opposed to the more "conservative" or "gradualist" elements) wish to disenfranchise the Prokuratura of its general supervision function

¹⁰³ From its inception in 1722 by Peter the Great, the Prokuratura dubbed "the tsar's eye", has been the central legal institution responsible for oversight of the execution of state power by government officials. The judicial reforms of 1864 subordinated it to the Ministry of Justice and limited its influence on the judiciary, but the Prokuratura was re-established in 1922. Stalin's Constitution of 1936 further strengthened the Prokuratura by providing that the prosecutors-general were independent of local authorities. Under Nikita Khrushchev, some gestures were made toward making the Prokuratura independent of Party control and conducting other structural reforms but after his deposition by Leonid Brezhnev in 1964 such reforms were abandoned. The late 1970s movement to strengthen "socialist legality" saw the Prokuratura involved in a campaign to combat bribery and corruption, which continued into the 1980s under Andropov and Gorbachev.

¹⁰⁴ The relevant provision on the Prokuratura is Article 129 of the Constitution, which is placed in the Chapter on the judiciary: it provides (§ 5) that the powers, the organisation and procedure of activity of the Procurator's Office of the Russian Federation shall be defined by federal law.

¹⁰⁵ In July 2003, the Federal Constitutional court however revoked the Prokuratura's power to appeal to courts of general jurisdiction in order to declare provisions of regional constitutions (statutes) incompatible with federal laws. The Prokuratura may still challenge before the courts the conformity of regional laws with federal ones.

¹⁰⁶ According to the GPO's statistics for the year 2003, Prosecutors discovered 1, 326,000 violations of legislation and 190,000 unlawful legal acts. After the prosecutors' protests more than 10,000 acts of regional authorities and 108,000 acts of local self-government bodies were revised or revoked. 232,000 actions were brought "in defence of the interests of society or state".

altogether and have this supervision entirely taken over by the judiciary, acting upon individual complaints, as provided for in Articles 46 and 53 of the Constitution. We were told that this would be a positive change in an "ideal world," but that it was too soon to abandon the current system in which the Prokuratura exercises general supervision of government agencies. The best way to reconcile these competing positions on the future of the Prokuratura would be, according to our interlocutors, to allow the parallel processes of judiciary control and prosecutorial supervision to exist at the same time, with the eventual abolishment of the general oversight function of the Prokuratura. To date, there are around 35,000 prosecutors operating in the country compared to 23,000 judges in the courts of general jurisdiction.

181. We strongly urge the Russian authorities to continue the process of reforming the Prosecutor General's Office, in accordance with the European standards mentioned above. In this connection we recall that as regards the non-penal law responsibilities of public prosecutors, Recommendation 1604 (2003) states that it is essential that "powers and responsibilities of prosecutors are limited to the prosecution of criminal offences and a general role in defending public interest through the criminal justice system, with separate, appropriately located and effective bodies established to discharge any other function". These bodies may be courts of general jurisdiction, special administrative courts, on the model of the French or German system, or some other independent body.

The Prokuratura and the protection of human rights

182. Articles 26 to 28 of the 1992 Federal law gave the Prokuratura new responsibilities in the area of supervising and ensuring the rights of Russian citizens. This was considered a major breakthrough as compared to the Soviet system. Specifically it: 1) considers applications and appeals from citizens; 2) consults with victims and explains to them their rights; 3) takes measures to prevent violations; and 4) initiates proceedings against those who violate citizens' rights, and 5) has standing to represent victims who by reason of health, age, etc. cannot help themselves. In our view, these functions clearly overlap to some extent with the functions of the Ombudsman institution, at federal and regional level.

183. As regards standing to represent citizens in civil court procedures, the Prokuratura should be involved only in very exceptional cases of public relevance, such as guardianship, establishment of paternity, invalid marriages or to represent the interests of persons under a disability such as minors or persons with a mental disability. Civil litigation is the responsibility of the parties and civil courts should act only after having been invoked by one of the parties.

184. As regards action taken by the Prokuratura in the field of criminal justice for the benefit of the victim it should not replace or undermine the judiciary's power to sanction the offender and to compensate the victim.

185. As regards complaints brought by citizens against acts of public authorities, it is true that bringing complaints to the attention of the Prokuratura has long been the primary method of challenging the acts of state officials, and that this practice is still very widespread, because it is claimed that people get quick assistance free of charge. This claim is borne out by statistics on the amount of times individuals have turned¹⁰⁷ to this institution for asserting their rights.

186. It is also true that the reforms of the Prokuratura have not been conducted in a systematic fashion, which has led to some contradictory laws and policies. For example, a leading treatise on constitutional law identifies the direct contradictions of a range of laws with Article 46 of Russian Constitution because they authorize only the Prokuratura to pursue claims against relevant agencies, and do not provide for individual citizen action. Successive revisions of the Civil Code and other substantive laws have also complicated the understanding of the role of the Prokuratura.

187. The new Civil Procedure Code (CPC) for example contains provisions that are not entirely consistent with the Law on the Prokuratura, which provides that "where the rights or freedoms of a significant amount of citizens, and the violation, by virtue of the circumstances, has broad social significance, the prosecutor may file a lawsuit in a court of general jurisdiction or a court of arbitration

¹⁰⁷ According to the GPO statistics for 2003 "rights of 409,000 citizens were restored".

in the interests of the victims." However, the Civil Procedure Code allows the prosecutor to file a lawsuit on behalf of a citizen only if he or she is unable to do so because of poor health, age, incompetence to appear in court, or other reason.

188. This and other conflicting provisions demonstrate that the Prokuratura jurisdiction for the supervision of legality in individual cases is gradually reduced. However, there has not been corresponding change in the Prokuratura organic statute, nor has there been a substantial change in the way the institution conducts the supervision of legality.

189. We consider that the fact that the Prokuratura acts as both the representative of the state in court proceedings, as the general guardian of legality, and as an advocate for citizens against the state is incompatible with the principles of the rule of law.

The role of the Prokuratura in criminal proceedings

190. Russia is committed to the protection of all international human rights standards contained in the European Convention on Human Rights. Many of these human rights standards involve the protection of important individual rights during criminal investigations and trials, including the right to silence at all stages in the criminal investigation, the right to have a defence attorney, the right to a public trial, and other rights that guarantee a fair trial. The rule of law in the context of criminal law consists of the protection of these individual human rights combined with the capacity of the state for successful prosecution, thereby promoting public confidence in the judicial system and serving the goals of society.

191. In this context, the fact that the Prokuratura is at the same time responsible for the general supervision of all law enforcement agencies, for investigating crimes, protecting victims or citizens generally (see above), for prosecuting offenders and for maintaining legality in all court procedures is a cause for concern. We have however been assured that in the criminal justice sphere at least the prerogatives of the Prokuratura had been significantly narrowed in order to comply with the requirements of the European Convention of Human Rights. Time will show whether this assertion is correct.

192. The Code of Criminal Procedure was adopted only on 18 December 2001 four years after the new Criminal code came into effect on 1 January 1997. Its entry into force was foreseen in stages between 1 July 2002 and 1 January 2004. The right of the Prokuratura and of other investigative agencies such as the FSB to arrest search or seize without a court order was withdrawn. Everyone arrested must be brought before a judge within 48 hours. These amendments were originally scheduled to enter into force on 1 January 2004 but, following a ruling by the Constitutional court of 14 March 2002¹⁰⁸, the relevant provisions were applied as from 1 July 2002. This reform should enable the Russian authorities to withdraw the reservation made to the European Convention on human rights in respect of article 5 of the Convention concerning the right to liberty and security.

193. The new code also significantly reduced the maximum period of detention on remand: it is now set at a maximum of twelve months, with a possibility of extension to up to eighteen months for the most serious offences. We were told by the Ministry in Justice that adversarial trial proceedings, aimed at shifting responsibility to the prosecutor and defence attorney for presentation of their respective cases, have replaced the old inquisitorial system.

194. Whereas in 2001 the courts acquitted 2608 people, in the second half of 2002, they acquitted 2,758 persons and in 2003 nearly 5,000. Assessments of the effects of the new criminal code on this process were mixed¹⁰⁹. Abuses of the right to a fair trial declined; however, numerous critics argued that the country remained far from having a truly adversarial criminal procedure. The domestic press reported that 9,000 persons, or 0.8% of defendants, were acquitted in 2002, double the number from

¹⁰⁸ To be found (in Russian) on the Court's website at <http://ks.rfnet.ru>.

¹⁰⁹ According to the statistics released in January 2004 by the Office of the Prosecutor General, 2,576,000 crimes were registered in 2003, 1,236,000 individuals were suspects and 711,000 were found guilty. In 22 000 cases the Prosecutor refused to institute criminal proceedings and in 62,000 cases an additional examination was required. The Prokuratura investigated 112,000 cases (including 26,000 murders and 8,000 cases of corruption and bribery).

the previous year; however, figures suggested that the courts were slow in implementing judicial reforms. One legal observer noted that higher courts overturned 40% of the acquittals granted by lower courts, but only 1.05% of the guilty verdicts.

D. Bar associations

195. According to Opinion No. 193 (1996), § 7.vi., Russia undertook to protect the status of the legal profession by law and to establish a professional bar association. With the adoption in May 2002 of the new law on bar associations, which replaced the 1979 law on the bar in the USSR, the bar has for the first time in Russian history become an independent and self regulatory body. We welcome this development.

196. In January 2003, a Federal Russian Bar was established, and the bar undertook the obligation to design a system to provide for the representation of indigent suspects. The Federal bar association is an umbrella organisation for the 88 regional bar associations (Chechnya does not have one) and there are at present 58 000 lawyers in the Russian Federation that can act as counsel for the defence.

197. We were told that the professionalism of the attorneys had considerably improved with the creation of qualification commissions who check qualifications for admittance to the bar and are responsible for disciplinary proceedings¹¹⁰. These qualification commissions comprise 13 members, of which 7 are bar members, 2 representatives of the Ministry of Justice, 2 members elected by a regional legislature and 2 representatives of the judiciary. The Ministry of justice, who issues a certificate to each lawyer having been admitted by the qualification commission, may challenge the qualification commission's decision on admittance to the bar in court. Disciplinary sanctions, also imposed upon request by the Ministry of Justice, may be appealed in court but disciplinary action can only be initiated by the Bar, not by the Prokuratura or the courts.

198. The Criminal Procedure Code and the law on the Federal Defence Bar provide for the appointment of a lawyer free of charge if a suspect cannot afford one; however, this provision often was not effective in practice. Lawyers tried to avoid accepting these cases since the Government did not always pay them. However, the high cost of competent legal representation meant that lower-income defendants often lacked legal representation. There were no defence attorneys in remote areas of the country. There are however public centres that provided legal advice to the general public. These centres usually were run on a part-time basis by lawyers who, while they could not afford to offer trial counsel or actual legal work, offered advice at no cost on legal rights and recourse under the law. In civil cases, the new law now provides that it is up to the regions to finance legal aid schemes but the relevant bylaws have not been passed yet.

E. The penitentiary reform

199. To improve conditions of detention in line with Recommendation No. R(87)3 on European prison rules and, in particular to improve the practically inhuman conditions in many pre-trial detention centres was an accession commitment (See Opinion No. 193 (1996), § 7 ix). We are pleased to report that further significant progress has been made in this regard since Resolution 1277 (2002).

200. In 1996, when the Russian Federation joined the Council of Europe, more than one million people were detained in the Russian penitentiary system, due in particular to the soaring criminality of the 90's, and the conditions of detention were a disgrace. Overcrowding reached 230% and the inmates' sanitary and medical conditions were appalling. Russia ratified the Convention on the Prevention of torture and inhuman or degrading treatment on 5 May 1998 and the CPT has to date carried out 12 visits to the Russian Federation.

201. In November 2002, the Ministry of Justice published in its professional review¹¹¹ the report of the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) on its visit (the third periodical visit of its kind) from 2 to 17 December 2001 to

¹¹⁰ We were told that more than 100 lawyers were dismissed by the qualifications commissions in the last two years.

¹¹¹ Vedomosti UIS, No. 8/2002.

detention facilities in two far eastern regions¹¹² (Khabarovsk and Primorskiy), as well as to a number of militia (police) establishments in Moscow. We consider that this publication will be most useful for aligning, in close co-operation with the CPT, the conditions of pre-trial detention on the Convention requirements. We regret, however, that the Russian authorities have officially authorised publication of this report only on 30 June 2003. We also regret that this publication is to date the only one to which the Russian authorities have agreed.

202. As in 2002, we again call on the Russian authorities a) to implement all recommendations made by the CPT in its various reports and b) to authorise publication¹¹³ of all reports on the CPT's visits to the country, including those on Chechnya.

203. We also urge the Russian Federation to ratify without further delay the European Convention on the transfer of sentenced persons (Opinion No. 193 (1996), § 10 vi). The Convention and the Additional Protocol thereto were signed by Russia on 7 April 2005. The Russian Federation is with Monaco the only Council of Europe member state that has not yet ratified this very important Convention.

Overcrowding

204. Since 1998, after transfer from the Ministry of Interior, the Ministry of Justice's Main Directorate for Execution of Sentences (GUIN) administers the penitentiary system centrally from Moscow. The Ministries of Justice, Health, Defence, and Education all maintain penal facilities. There are five basic forms of custody in the criminal justice system: police temporary detention centres (IVS), pre-trial detention facilities known as investigation isolation facilities (SIZOs), correctional labour colonies¹¹⁴ (ITKs), prisons designated for those who violate ITK rules and educational labour colonies (VTKs) for juveniles. Men were held separately from women, as were juveniles from adults.

205. We were told during our meeting with the Ministry of Justice in November 2004 that the number of inmates had been further reduced and now totalled 769,000¹¹⁵. By 1 January 2005, according to the Russian delegation's comments, the total number of people held in the penitentiary system diminished even further: there are 763,054 inmates, including 140,503 detained on remand and 622,551 convicted. At the same time, in the SIZOs the number of inmates exceeds the capacity level by 14,000 people and in 22 regions SIZOs' spaces do not correspond to the established standard¹¹⁶. Mass amnesties over the past few years had offered immediate relief. The authorities also took longer-term and more systemic measures to reduce the size of the prison population. These included the use of alternative sentencing in some regions and revisions of both the Criminal Code and the Criminal Procedures Code that eliminated incarceration as a penalty for a large number of less serious offences. New amendments to the Criminal Code and to the Codes of Criminal Procedure and of Execution of Sentences were adopted in December 2003 to further improve, *inter alia*, the conditions of detention.

206. The new Code of Criminal Procedure, which partly entered into force on 1 July 2002, has also resulted in a large decrease of the number of accused persons detained pending trial, as it vests in courts sole competence to order and prolong pre-trial detention and imposes stricter time-limits on investigation and trial (see Articles 109, 162, 255).

¹¹² We visited SIZO No.1 and correctional institution No.12 in Khabarovsk during our visit to the Russian Far East in November 2003 as well as SIZO No.1 in Vladivostok (Primorskiy region). The conditions there were still far from satisfactory.

¹¹³ According to the Convention, publication of the CPT's reports is not an obligation incumbent on member states. However, since 1989 a "good practice" of states consenting to publication has emerged.

¹¹⁴ Corrective-labor institutions make a significant contribution to the national economy. In the early 1990s, industrial output in the camps reached an estimated US\$100 million, and forest-based camps added about US\$27 million, chiefly from the production of commercial lumber, railroad ties, and summer cabins. We have no recent statistics at our disposal.

¹¹⁵ According to the London-based International Centre for Prison Studies, Russia still has the world's third largest prison population after the USA (2 million inmates) and China (1.5 million). As of January 2005, Russia had a prison population rate of 532 inmates per 100,000 of national population (688 in 1998), the number of establishments totalled 1,025 (760 colonies, 195 pre-trial SIZOs, 8 prisons, and 62 juvenile colonies). With an official capacity of prison system of 960,066 people, current occupancy level is 79%.

¹¹⁶ Statement by the head of the Federal Service for Execution of Sentences, ITAR-TASS, 16 February 2005.

207. Thus, the average number of persons committed to detention on remand per month decreased from 10,000 in 2001 to 3 700 in September-October 2002. As a result, the overall number of pre-trial detainees has decreased from 199,000 in October 2001, to 137,000 in October 2002 and to 131,000 in November 2004, thus reducing significantly the overcrowding of pre-trial detention facilities (SIZOs).

208. The Federal Programme for reforming the Ministry of Justice's penitentiary system for 2002-2006, which was adopted by a decision of the Russian Government of 29 August 2001, provides for the building of new pre-trial detention facilities (SIZOs) for 10,130 places and the renovation of a great number of the existing ones with a view to improving, *inter alia*, the sanitary conditions of detention. In 2002, some 838 new places have been created in Russian SIZOs. In 2003, some 10,000 places were created in the Moscow region, Irkutsk, Krasnoyarsk and other regions. In 2004, 4 new SIZOs have been built and 5,818 new places have been created in the Republic of Khakassia, the Republic of Adygeya, and Tyumen and Volgograd Oblasts.

209. The latest detailed statistics¹¹⁷ of the prison population in the Russian federal entities show an average overcrowding in pre-trial detention in Russia of only 1% above the facilities' normal capacity. As a result of the above measures, the living space per detainee was increased on average to 3,46 m² by 1 January 2003¹¹⁸. A detailed region by-region analysis shows, however, that pre-trial detention centres still remain overcrowded at different levels in 34 regional entities (compared to 57 entities in this situation at the beginning of 2003). In 15 of them the overcrowding is less than 20%, in 16 – between 20 and 50%. In three regions the pre-trial detention (SIZOs) or equivalent facilities remain more severely overcrowded (Tiva Republic, Chita and Kostroma regions).

210. This is a very welcome development and we congratulate the Russian authorities on the progress made in this area. Many penal facilities throughout the country remain however in urgent need of renovation and upgrading. The continuous increase¹¹⁹ in budgetary means allocated to the Penitentiary Department of the Justice Ministry (approximately 20% increase is planned in the draft budget for 2005 (61 billion roubles – 1.7 billion euros) compared to the 2004 budget (48.3 billion roubles – 1.4 billion euros) will need to be pursued over a number of years.

Medical care in prison

211. By law, authorities must provide inmates with adequate space, food, and medical attention; with the dramatic decrease in prison populations, they are increasingly able to meet these standards. However, inmates in the prison system still suffer from inadequate medical care. In 2001, President Putin described the problem of disease in the prison system as a potential "Chernobyl." According to the GUIN, as of 1 July 2003 there were approximately 77,000 tuberculosis-infected persons (i.e. one prisoner out of ten) and 37,000 HIV-infected persons in SIZOs and correction colonies¹²⁰. Public health measures, funded by international aid and by the doubling of government resources for the prison system's medical budget, have effected a limited reversal of the spread of tuberculosis but have not contained the spread of HIV. Detention facilities had tuberculosis infection rates far higher than in the population at large.

¹¹⁷ These statistics (at 1 September 2004) were provided to the Committee of Ministers in the framework of its supervisory function of the execution of the ECHR judgment in the case of Kalashnikov v. Russia, dated 15 October 2002, where the Court held, *inter alia*, that the applicant's detention for five years in Magadan region, in a cell that was designed for eight prisoners but held 24 and without sufficient medical care, was a violation of Article 3 of the Convention. See also Interim Resolution DH (2003)123, adopted on 4 June 2003.

¹¹⁸ This is a major progress when compared to the one square meter afforded previously. According to the Russian delegation's comments, the current average living space constitutes 3.9 sq. m., which is almost in compliance with the European standard of 4 sq. m.

¹¹⁹ We were informed that since 1998, the budget for the penitentiary system had been multiplied by six.

¹²⁰ According to the World Health Organisation 2005 Report on rates of infection of TB, the number of cases registered among Russia's prison population has declined. Since 2001, a decline of notified cases has occurred from more than 24,000 cases to around 16,000 in 2003. However, the number of cases in the general population has increased (12th place in the global rank of annual TB case notification), particularly among children. TB mortality rates remain increasingly high at around 20 per 100,000 population. See http://www.who.int/tb/publications/global_report/en. According to the Russian delegation's comments, the number of people with an active form of tuberculosis held in the penitentiary system was 50,915 as of 1 January 2005. The HIV-infected persons totalled 31,000.

212. In November 2004 we were told by the Ministry of Justice that out of a total prison population of 769,000 people, 600,000 were ill, of which 120,000 were suffering from some forms of mental disorder. This very high proportion can be explained by the harsh conditions of detention but also by the fact that the general public health care in Russia has deteriorated significantly over the past decade. The Ministry hopes to be able in the next few years to significantly improve health care in prison and in particular to be able to devote more funds now not only to the treatment of infectious diseases but also of psychological or psychiatric diseases. According to the International Helsinki Federation¹²¹, it would be most useful to integrate medical services in the institutions of the Ministry of Justice¹²² with the national health care system, however inadequate this national system may be. Doctors and other medical staff should be given independent status and be supervised only by medical authorities to allow the fulfilment of their duties as medical professionals.

Treatment of inmates

213. The Government did not release statistics on the number of detainees and prisoners who were killed or died in custody, or on the number of law enforcement and prison personnel disciplined¹²³. The Moscow Centre for Prison Reform (PCPR) estimated that in earlier years, 10,000 to 11,000 prisoners died annually in penitentiary facilities, 2,500 of them in SIZOs. During 2003 these numbers were estimated to be somewhat lower. Most died as a result of poor sanitary conditions or lack of medical care. Abuse of prisoners by other prisoners exists in other member states of the Council of Europe but continues to be a serious problem also in the Russian Federation. Violence among inmates, including beatings and rape, appears to be quite common. There are elaborate inmate-enforced caste systems in which informers, homosexuals, rapists, prison rape victims, child molesters, and others were considered to be "untouchable" and were treated very harshly, with little or no protection provided by the prison authorities. Finally there continue to be reports on abuse, torture or inhuman or degrading treatment by law enforcement agencies. Those need to be thoroughly investigated and the perpetrators brought to justice.

214. A positive development concerns the increased transparency in the management of penitentiary institutions. Mass media representatives, including foreign journalists are now allowed to visit prisons or colonies. Around 1 500 NGO's all over the country have also gained access and a NGO Council at the Ministry of Justice was set up. A draft federal law No.11807-3 "On Public Control Over Respect of Human Rights in Places of Detention and Public Associations' Assistance to Their Activity" was approved in first reading by the state Duma end of 2003: it provides for "public observation commissions" to be created in each of the Federation subjects. Candidates for membership of these commissions may be submitted by human rights NGO's and have to be approved by the Federal Ombudsman. They must however submit their action plans of control to the regional civil and military prosecutor's offices' prior approval. This provision raises some concern with regard to the independence of these commissions and we hope it will be modified in the course of the second reading.

F. Transfer of Lefortovo pre-trial detention centre to the Ministry of Justice

215. Transfer as soon as possible of responsibility for the prison administration and the execution of judgments to the Ministry of Justice (see Opinion No. 193 (1996), § 7 ix) and the withdrawal of the right of the Federal Security Service to possess and run pre-trial detention centres (Opinion No. 193 (1996), § 10 xvii) were accession commitments. In Resolution 1277 (2002), the Assembly welcomed the transfer of responsibility for the penitentiary system from the Ministry of Interior to the Ministry of justice on 31 December 1998 and encouraged further demilitarisation of the prison administration. It requested that the Lefortovo pre-trial detention centre be transferred¹²⁴ from the FSB to the Ministry of Justice without further delay.

¹²¹ Report on "Places of detention in the Russian Federation", published in October 2004, following a visit by Human Rights NGO's to places of detention in February 2004.

¹²² Under the responsibility of the Ministry of Justice, 37 hospitals and 57 treatment facilities provide treatment for TB patients within the penitentiary system. 2005 WHO Report, http://www.who.int/tb/publications/global_report/en.

¹²³ In 2004, 3,044 people died of illnesses in the GUIN institutions (13% less than in 2003) – data from the Russian authorities' comments to the preliminary draft report. At the same time, according to the comments, no cases of torture in the penitentiary system have been registered.

¹²⁴ Lefortovo pre-trial detention centre had been transferred to the Ministry of Justice in 1993 but was transferred back to the FSB in 1994.

216. We have to report that the specific commitment relating to the Lefortovo pre-trial detention centre has not been fulfilled to date. We were told in November 2004, during our meeting in Moscow with the Deputy Director of the FSB, Mr Ushakov, that the Parliamentary Assembly's recommendations were not binding and that, given the investigative powers afforded to the FSB by the relevant legislation, they absolutely needed a high security detention centre to hold and interrogate suspects. Furthermore, Lefortovo was the best SIZO in the country: with a capacity of around 200 inmates, it was never housing more than 50 "guests" and each inmate had the right to receive from outside 50 kg of extra-food per month. In fact conditions there were so good that many detainees request their transfer¹²⁵ to Lefortovo. We were repeatedly assured that all regulations issued by the Ministry of Justice were followed to the letter and that the Prokuratura inspected Lefortovo regularly.

217. When we asked why Lefortovo could not be managed, like any other SIZO, by the Ministry of Justice, we were told that the normal penitentiary system for detention on remand did not provide sufficient security guarantees and that it was prone to corruption. This is an argument which we find not at all convincing and we therefore reiterate that the Lefortovo pre-trial detention centre and all other detention centres that are still administered or used by the FSB under the Law on the FSB and the Law on the detention of the suspects and accused of committing crimes must be transferred to the Ministry of Justice immediately. However, we have noted with satisfaction that according to the Russian delegation, the President would sign in the near future a presidential decree ordering the transfer of Lefortovo to the Ministry of justice.

G. The revision of the Law on Federal Security Services

218. On accession to the Council of Europe in 1996, the Russian Federation undertook to revise the law on federal security services to bring it into line with Council of Europe principles and standards within ONE year of accession.

219. Again, we regret to report that to date this commitment has not been fulfilled, eight years after accession to the Council of Europe.

220. The current Law on Organs of the Federal Security Service¹²⁶ of 3 April 1995 gave the President direction of the activities of the security service, which has the status of a federal executive organ and outlined the FSB's mission in detail. The FSB regained a number of the functions that had been eliminated in earlier post-KGB reorganisations. Investigative authority was fully restored by the law, although the FSK, one of its predecessors, had already been conducting criminal investigations on the basis of a presidential decree. Russia's fourteen investigative detention prisons and several special troop detachments also returned to the control of the security service. Contrary to what was written in the Assembly's 2002 report, Lefortovo pre-trial detention centre is not the only one that is in use: indeed, since the FSB is a centralised institution with regional departments, it has at its disposal also SIZO's in the regions.

221. To date, the 1995 law has been neither repealed nor substantially modified: it still provides that, apart from the normal activities of a secret service¹²⁷, the FSB also performs law enforcement duties that are traditionally in most member states, if not all, entrusted to specialised departments of the police or the public prosecutor's office. Indeed, the main problem with the FSB is not that it is still authorised to run a number of pre-trial detention centres but that it retains to date a number of specific investigation powers seriously affecting individuals' rights which it should not have.

¹²⁵ We were indeed told by NGO's that in a number of cases, given the disastrous conditions in normal SIZO's, suspects would confess to crimes coming under the jurisdiction of the FSB just to be transferred to Lefortovo.

¹²⁶ Federal Law No. 40-FZ adopted by the State Duma on 22 February 1995 and signed by President B. Yeltsin on 3 April 1995. Following the adoption of the law, a number of presidential decrees (No. 633 of 23 June 1995, No. 806 of 6 July 1998, No. 308 of 11 March 2003 and No. 960 of 11 August 2003) gave details as to the statute and the structure of the FSB. The latest restructuring of the FSB took place on 11 June 2004 by Presidential decree: the 6 existing departments were re-organised into 8 new services (border; counterespionage; economic security; scientific and technical; staff; controlling; analysis and strategic planning; protection of constitutional order and fight against terrorism). The Head of the FSB, who is appointed and removed directly by the President, now has 4 deputies instead of 11.

¹²⁷ In March 2003, President Putin signed a decree disbanding the Federal Agency of Government Communications and information (FAPSI) and the Federal border guard service (FSP) and integrating them into the FSB, thus annulling the decisions taken by Yeltsin in 1992 to dismantle the KGB by setting up several distinct federal agencies.

222. Article 10 of the 1995 law¹²⁸, entitled crime fighting, provides that FSB organs, in accordance with Russian Federation legislation, implement operational-investigative measures to detect, avert, suppress, and expose espionage, terrorist activity, organized crime, corruption, illegal arms and drugs trafficking, smuggling, and other crimes, whose investigation [doznaniye] and preliminary examination [sledstviye] are ascribed by law to their jurisdiction, the activity of illegal armed formations, criminal groups, individuals, and public associations which aim at forcibly changing the Russian Federation constitutional system. The list of offences that can be investigated by the FSB is a very long one and there is a serious risk of overlap with the investigation powers of the Prokuratura.

223. Article 13 d) of the 1995 law authorizes the FSB to use detention centres in accordance with Russian Federation legislation¹²⁹. According to Article 13 h), security police may enter private residences if "there is sufficient reason to suppose that a crime is being or has been perpetrated there... or if pursuing persons suspected of committing a crime." In such cases, related laws require the officer in charge only to inform the procurator within twenty-four hours after entering a residence.

224. Article 23 of the law stipulates that the president, the Federal Assembly (parliament), and the judicial organs monitor the security service. But the only right given deputies of the State Duma in this regard is a vague stipulation that deputies could obtain information regarding the activity of FSB organs in accordance with procedures laid down by legislation. The imprecision of actual oversight functions is compounded by the security law's provision that unpublished "normative acts" would govern much of the FSB's operations. Finally Article 24 of the 1995 law provides that the Russian Federation general prosecutor and prosecutors empowered by him oversee FSB organs' implementation of the laws of the Russian Federation.

225. Although we have no compelling reason to doubt that the thousands of agents working today for the FSB act only in the national interest and in conformity with the law, fully respect fundamental freedoms and are not being used as a means of oppression or undue pressure, as was the case with the KGB, the present set-up of the FSB is clearly contravening European standards and, in particular, the Assembly's Recommendation 1402 (1999) on the control of internal security services in Council of Europe member states. We do not believe, contrary to what was stated by our interlocutors, that the necessity to fight terrorism and organised crime justifies the sweeping powers still afforded to the FSB.

226. We therefore urge the Russian authorities to honour this outstanding commitment without further delay and to revise the 1995 law on the federal security services in line with Council of Europe standards.

H. The Federal Law on State Secrets

227. We would also like to mention the 1993 federal law on state secrets¹³⁰, which classifies fairly broadly defined areas of military life as state secrets. A 1995 presidential decree¹³¹ elaborated in detail on what information would be considered a state secret under the 1993 law. However, the FSB also relied on certain secret or retroactive decrees in a number of cases it brought to trial in recent years mostly under Article 275 of the Criminal Code, which sanctions espionage, treason or disclosure of state secrets by imprisonment up to twenty years. This raises concerns as to the right to a fair trial, as was pointed out by the Supreme Court of the Russian Federation already on 17 April 2000 when it acquitted Alexander Nikitin¹³². However, despite the numerous drafts which have been submitted to the Duma to amend the Federal Law on State Secrets, the 1993 law is still in force.

¹²⁸ The English translation of the law can be found at http://www.fas.org/irp/world/russia/docs/law_950403.htm.

¹²⁹ The relevant provisions are Articles 7 and 8 of the Federal Law "On the detention of suspects and accused of committing crimes".

¹³⁰ Law on State Secrets no. 5485-1 adopted on 21 July 1993 amended on 6 October 1997, 30 June and 11 November 2003, 29 June and 22 August 2004.

¹³¹ Presidential Decree "On Approval of the List of Information Related to State Secrets" no. 1203 of 30 November 1995 (amended on 24 January 1998, 6 June 2001, 10 September 2001 and 29 May 2002). On the basis of the extended list approved by the Decree, the heads of the state bodies (who are authorised for this) approve detailed lists of classified information. The law does not prescribe publication of these detailed lists.

¹³² See the judgment of the European Court of Human Right in the case of Nikitin v. Russia of 20 July 2004, § 16.

228. Article 24 of the law stipulates that the rights of persons who have access to state secrets may be temporarily limited and provides, in particular, that the right to travel abroad may be limited for a period that should be specified in the person's employment contract. To cease to restrict – with immediate effect – international travel of persons aware of state secrets, with the exception of those restrictions generally accepted in Council of Europe member states, was an accession commitment (Opinion No. 193 (1996), § 10 xv). Given that the European Court of Human Rights has recently declared admissible¹³³, without prejudging the merits, an application concerning a five year restriction of international travel on a person after the termination of his work contract, it would seem that the concrete exercise of the right to leave any country, including one's own, is still somewhat problematic in practice.

229. The special Inter-departmental Commission for considering applications linked to restrictions on citizens' right to leave the Russian Federation (IdC) deals with complaints by citizens who have been restricted in their right to leave the country. In 2003 there were 235 applications compared to 202 in 2002. In 40 cases the IdC found no grounds for lifting temporary restrictions on leaving the country and these remained in force. 193 complaints were successful, with the IdC lifting temporary restrictions on leaving the country and giving the corresponding instructions to the passport and visa directorate of the Russian Ministry of Internal Affairs to issue those individuals with international passports. In 2004, the IdC found no grounds for lifting temporary restrictions on leaving the country in 13 cases, 82 complaints were successful. Most of those applying to the Commission were former servicemen from the Russian armed forces and also the Ministry of Internal Affairs' staff. The remainder came from civilians, mostly staff who had been dismissed from the middle and higher echelons of military-industry complex companies or from scientific research institutes and companies.

I. The fight against corruption, money laundering and trafficking

The fight against corruption

230. It has been acknowledged by the highest authorities in the country, including President Putin, that corruption is one of the worst scourges affecting Russian society¹³⁴. According to an opinion poll carried out by TI Russia between January 2002 and January 2003, 75 per cent of respondents consider the law enforcement agencies to be dishonest. A recent opinion poll carried out by the Public Opinion Foundation in October 2004, also showed that two thirds of respondents described judges as "corrupt, on the take, always willing to be bribed".

231. According to a study that was carried out by Transparency International¹³⁵ in the summer of 2002 in 40 regions, the southern part of Russia is seen as more corrupt than the north. Corruption is perceived as a serious problem in the agricultural regions known as the southern belt – stretching from the Rostov oblast to the Volga region. In contrast, northern regions such as Arkhangelsk, Karelia and Yaroslavl oblast tend to be seen as less corrupt. This distinction may reflect the developmental and cultural differences between the more modern, Europeanised regions of northern Russia and the more traditional regions of southern Russia; the stronger family and clan structures that flourish in the Caucasus may facilitate corruption. The eastern part of Russia – such as Khabarovsk Kray and Primorski Kray – is perceived as more corrupt than the west. However, the western area known as the capital region – St Petersburg, Moscow city and Moscow oblast – was assessed as one of the most corrupt regions. Thirdly, counter to popular expectations, the degree of corruption in areas that are rich in natural resources – such as Tyumen oblast and Bashkortostan – was viewed as below average.

232. Nothing much has happened since draft 'anti-corruption policy fundamentals' were submitted to parliament in June 2002 and August 2002 when President Putin signed a decree designed to improve the ethics and integrity of the state bureaucracy. According to the decree, civil servants will be expected to observe the law, serve the public efficiently, avoid conflicts of interest, and remain politically neutral. A number of commentators were sceptical of the effectiveness of this measure and

¹³³ See Application no. 55565/00, *Bartik v. Russia*, admissibility decision of 16 September 2004.

¹³⁴ The Federal Interior Minister said on 16 February 2005 that "the likelihood of receiving a prison sentence for corruption is minimal and the higher the rank of the official involved, the smaller that likelihood is." Only 5 percent of those arrested in bribery cases are high-ranking officials and only one bribe taker in 10 is ever convicted in Russia, ITAR-TASS reported.

¹³⁵ In 2005, Russia rates 90th out of 146 countries on the Transparency International Corruption Perception Index.

demanded tougher action to prosecute senior officials¹³⁶ on corruption charges. A presidential anti-corruption Council was created in late 2003 but to date it has met only once. On 21 May 2004, the Deputy Prosecutor General proposed amendments to the Code of Criminal procedure with a view to simplify the current complicated procedures for the lifting of immunity of judges, parliamentarians and other high officials. His suggestion to reverse the burden of proof as to the legal origin of such persons' income raised an outcry and it seems was not adopted.

233. Corruption, organised crime, and money laundering represent a major challenge to democracy and the rule of law, without which there can be no respect for fundamental human rights. Responses to this challenge must be comprehensive, based on political commitment and sound legislation, and encompass law enforcement, prevention, and public participation. We welcome the decision of the Russian state Duma of April 2004 to set up an anti-corruption Commission, comprising fifteen Deputies and a number of experts, including the Russian representative of Transparency International. This Commission is tasked with elaborating comprehensive draft legislation to fight corruption and will also scrutinise draft legislation in other fields to identify possible risks of corruption. We strongly urge the Russian Federation to ratify as soon as possible the Council of Europe civil and criminal conventions on corruption, as international cooperation and assistance is a pre-requisite for success.

The fight against money-laundering

234. Russia ratified the European Convention on Laundering, search, seizure and confiscation of the proceeds from crime (ETS 141) on 28 May 2001 and participates in the MONEYVAL monitoring process¹³⁷.

235. The main economic or financial crimes which generate large amounts of illegal proceeds are: fraud, illegal entrepreneurship, misappropriation of funds, theft, malfeasance (including bribery), smuggling, counterfeiting, tax evasion, and embezzlement of state funds. The economic loss from such economic crimes was estimated at 51.2 billion RUB in 2001 and 33.9 billion RUB in 2002. Offences committed by organised crime (including drugs-related crimes), offences of corruption and financial/economic crime generate the majority of criminal proceeds, and therefore the largest amount of money laundering.

236. In February 2003 the OECD Financial Action Task Force on Money Laundering struck Russia off its blacklist after a new federal law to amend and supplement an acting law against money laundering entered into force in January 2003¹³⁸. Money laundering is criminalised under Article 174 of the Criminal Code and self or own-funds laundering is addressed in Article 174.1 of the Criminal Code.

237. The second MONEYVAL report on Russia (July 2004) found very significant improvements in the anti-money laundering system in the Russian Federation. The main achievements are the creation of the legislative base to fight money laundering with the passage of Federal Law No. 115, which is fully operational and the setting up of the state system to combat money laundering with the Financial Monitoring Committee of Russia (FMC). The political commitment to improving the anti-money laundering regime is signalled by the allocation of resources to the FMC, which has included provision for large numbers of competent and dedicated personnel, and an impressive IT infrastructure. The FMC is undertaking a major leadership role in developing the co-ordination of the system, both at the

¹³⁶ The interior ministry has however claimed some success in combating corruption. In 2002, it censured 21,000 police officers for criminal or other offences and fired 17,000, including police chiefs in 10 of the country's 89 regions. In June 2003, a joint operation with the FSB and the prosecutor general's office in which they arrested three colonels and three lieutenant-colonels from Moscow's criminal investigations department (MUR), as well as Vladimir Ganayev, a lieutenant-general who headed the security department of the emergency situations ministry with responsibility for certifying all buildings for fire safety. They were accused of leading a gang of renegade police who planted guns, ammunition and drugs in order to blackmail citizens, and of extorting protection money from Moscow casinos, shopping centres and restaurants. See www.transparency.org

¹³⁷ MONEYVAL, via transparent peer evaluation and peer pressure, monitors compliance with the money laundering convention, the EC Directive of 10 June 1991 on the prevention of the use of the financial system for the purpose of money laundering, the 40 recommendations of the OECD Financial Action Task Force (FATF) and the Vienna Convention of 1988. Created in 1997, MONEYVAL has 27 participating states.

¹³⁸ Russia benefits from a Council of Europe technical cooperation programme called MOLI in the amount of 2,5 millions €, funded by the EU, to help with the practical implementation of this law.

working level and at the strategic level. It is building quickly on the anti-money laundering foundations, which were laid by the Central Bank of Russia. The Central Bank continues to remain very active and is currently the second major player in the system.

238. On the repressive side, investigations, prosecutions and convictions for money laundering are being recorded. The focus of the current investigative/prosecutorial effort remains still on what are described as fraud offences. The investigation and prosecution of laundered proceeds arising from offences committed by organised crime and drug traffickers seem not, so far, to have been afforded the same priority. This is to some extent being remedied with the creation of the new State Committee on the Control of Trafficking in Drugs and Psychotropic Substances, which has the potential to be a major player in the future and to focus law enforcement efforts on the financial aspects of drug offences.

The fight against trafficking

239. The law prohibits trafficking in persons; however, trafficking in women and children is a growing problem. There are today no reliable estimates of its scope, but observers believed that trafficking, both national and international, was widespread. Corruption of government officials is allegedly facilitating trafficking. We were told that the trafficking in women holds the second place in the Federation by the scale of the problem in the Sverdlovsk Oblast, where a number of "dating" agencies operate in the absence of any state control.

240. Reports indicate that the rise in trafficking is correlated with the bad socioeconomic situation that affects most of the Russian population. Most single parent families are headed by women, who are now both more dependent on earned income for family support and less likely to find employment than during the Soviet welfare state. According to the Ministry of Labour, 70% of the registered unemployed were women. Law enforcement agencies reported that at least half of trafficked women were unemployed. NGOs reported that many women are desperate to find a better level of support. Children also are at a greater risk of trafficking.

241. In December 2003, amendments to the Criminal Code criminalizing human trafficking and the use of forced labour and expanding criminal liability for recruitment into prostitution, organisation of a prostitution business and the distribution of child pornography were enacted. Pursuant to these articles, if certain aggravating factors are established, trafficking and use of slave labour are each punishable by a maximum of 15 years in prison, recruitment into prostitution is punishable by a maximum of 8 years, organisation of a prostitution business is punishable by a maximum of 10 years, and the manufacture and distribution of child pornography is punishable by a maximum of 8 years. The amendments to the Criminal Code were the culmination of a year-long effort by legislators, anti-trafficking activists, and government and law enforcement officials to enact effective anti-trafficking legislation, which we welcome.

242. At the end of 2003, a draft law "On the Status of Trafficking Victims" was pending before the Duma. This draft law would provide for a system of measures to protect trafficking victims, including the establishment of shelters and support centres. It would also mandate cooperation between government agencies and anti-trafficking NGOs, and define procedures for the social rehabilitation of trafficking victims.

243. The Government did not sponsor so far any official victim protection and assistance programs. However, a broader victim and witness protection law that creates a variety of protection measures was adopted in July 2004 and came into effect on 1 January 2005. The Law on the State Protection of Victims, Witnesses, and Other Participants in Criminal Proceedings applies to all crime cases in which a person's life or physical safety is in danger and would aid law enforcement's efforts to investigate and prosecute cases. According to Article 28 of the Law, to organise state protection the Government is to approve a State programme for ensuring security of victims, witnesses and other participants in criminal proceedings.

244. The Council of Europe European Convention on action against trafficking in human beings is presently being drawn up by the Ad hoc Committee on action against trafficking in human beings. This instrument is expected to be a practical tool of international co-operation, which will be geared towards the protection of victims' rights and the respect for human rights. It will aim at a proper balance

between matters concerning human rights and prosecution. This Convention is not yet finalised but we hope that the Russian authorities will be able to draw on the discussions to finalise the draft laws presently pending in the Duma.

245. We have also been informed that there are serious gaps in the legislation concerning international adoption: according to Deputy Prosecutor General Kolesnikov, over the period between 2001 and 2003, the rate of adoption of Russian children by foreigners grew by 51%. Speaking at a hearing in the Duma on 15 November 2004, he said that unlawful adoption was a serious concern and that it had become a very profitable business: adopting a child in Russia costs up to 50 000 USD. Ratification of the European Convention on the adoption of children (ETS no. 58) would certainly be of assistance. Ambassadors of Council of Europe countries whom we met in Moscow in November also mentioned growing problems as regards enforcement of custody decisions. We note in this respect that Russia has neither signed nor ratified the European Convention on recognition and enforcement of decisions concerning custody of children and on restoration of custody of children (ETS no. 105).

VIII. HUMAN RIGHTS

246. The Federal Ombudsman Mr Lukin, in his first annual report released in March 2005, described the situation with regard to human rights and freedoms in Russia as "non-satisfactory". According to the report, the core human right – the right to life and personal integrity – is not guaranteed in practice. The abuse of refugees and displaced persons' rights continues, the number of citizens' rights violations by police and other law enforcement bodies is increasing, a difficult situation still exists in the penitentiary system, the rights of conscripts are systematically impinged, and there are cases of extremism and xenophobia. The trend of restricting federal and, especially, regional mass media activity persists. Intimidation of journalists is not rare¹³⁹.

A. Cases against Russia before the European Court of Human Rights

247. The Convention entered into force for Russia on 5 May 1998. At the time of drafting of our last report in March 2002, no judgments had been issued by the Court as regards the Russian Federation. In May 2002 the Court issued its first judgment against Russia in the case of Burdov, concerning non execution of a final domestic court decision and on 15 July 2002, it found a violation, *inter alia*, of article 3 of the Convention (prohibition of inhuman and degrading treatment) in the case of Kalashnikov concerning conditions of detention in an overcrowded cell with insufficient medical care.

248. As of mid-April 2005 a total of 44 judgments have been delivered, of which 42 were findings of violations¹⁴⁰. Only during January-April 2005 the Court has delivered 22 judgments in Russian cases. By October 2004 the Court had received slightly over 19,000 complaints¹⁴¹ against Russia. More than 250 complaints were communicated to the Russian Government and the Court has found over 60 complaints admissible. Since January 2002, Russia has been the second country (after Poland) in terms of newly lodged complaints. Geographically, the complaints are coming from all over Russia, not only from big cities.

249. In December 2002 six complaints about human rights violations in Chechnya were declared admissible by the Court. In February 2005 the Court found a violation by Russia of the right to life and the prohibition of torture as well as the right to an effective remedy and the peaceful enjoyment of possessions¹⁴².

250. Other admissible complaints concern issues related to criminal proceedings and detention in the course of criminal proceedings, non-execution of judgments against the state, complaints concerning freedom of the press or registration of political parties. The admissible case of Fadeyeva

¹³⁹ Source: www.ombudsmanrf.ru.

¹⁴⁰ One of the findings of no violation was taken in the case of *Nikitin v. Russia*, where the Court considered that lodging an application for supervisory review of the final judgment acquitting the applicant on espionage charges was not a violation of article 4 of Protocol no. 7 enshrining the principle of *non bis in idem*.

¹⁴¹ Of those, about 9,000 were declared inadmissible and about 6,500 are registered as ready for decision. The number of complaints in relation to the population was 0.3 for every 10,000 people in 2002 and 0.4 in 2003.

¹⁴² Cases of *Isayeva v. Russia* (application no. 57950/00), *Isayeva, Yusupova, and Bazayeva v. Russia* (applications Nos. 57947/00, 57948/00 and 57949/00), and *Khashiyev and Akayeva v. Russia* (applications nos. 57942/00 and 57945/00).

and others v. Russia, in which a hearing took place in July 2004, deals with issues of severe environmental pollution and the right of the applicants to be relocated from the area where they live upon a court order. The case has been declared admissible under Articles 6 and 8 of the Convention.

251. So far, more than 150 complaints have been communicated for written observations to the Russian Government. The largest group – over 50% – concerns situations of non-enforcement of final judicial decisions by state bodies, or where the actions of state-bodies have contributed to the violation. About 30 of the communicated complaints are related to various aspects of criminal procedure and detention in pre-trial centres and in correctional centres after conviction. A number of complaints concern conditions of detention and ill-treatment by the law-enforcement bodies. There are complaints of length of pre-trial detention and length of criminal proceedings. There are also complaints under Article 6 relating to the equality of arms and fair trial. Several complaints raise issues of absence in the cassation hearing of the applicant or his lawyer, while the prosecutor was present. In another case the applicant complains about absence of a lawyer from the first hours of detention and interrogation. In one case, a police provocation served as a basis for conviction of a drug dealer.

252. Several cases were communicated in line of *Brumarescu v. Romania* judgment, where the applicants complain that final court decisions in their favour have been quashed and reversed by the supervisory review procedure ("nadzor"). This procedure, which is used in the Russian legal system both in criminal and civil cases, raises issues under the principle of legal certainty. There are also complaints related to the length of civil proceedings and availability of a remedy against excessive length.

253. A number of communicated cases concern violations of Articles 10 and 11. They were submitted by political parties, religious organisations and trade unions and concern the procedure of registration of these entities and state involvement. A significant number of complaints under Article 10 concern freedom of the press and punitive proceedings brought by public officials against journalists for value judgments.

254. However, the majority of the complaints against Russia so far have been declared inadmissible. A lot of cases were inadmissible *ratione temporis*, as they concern events that took place before 5 May 1998, when Russia ratified the European Convention on Human Rights. Many are inadmissible since they are submitted outside of the six-month time limit. In Russia there exists the system of supervisory review ("nadzor") whereby senior judges on their discretion or upon the prosecutor's initiative can reopen proceedings before higher courts after the final judgment has been delivered. The system of supervisory review has been changed in the domestic legislation in criminal and civil proceedings, but the Court in its decisions reiterated its previous positions that the changes have not been sufficient to consider it as an effective remedy and therefore count for the purposes of the calculation of the six-month time limit.

255. A lot of applications concern social and economic questions: low pensions and benefits, deposits in banks or other financial institutions that went bankrupt or were not index-linked due to inflation, housing issues, etc.

256. Given the binding force of the Court's judgments (Article 46 of the Convention), it is likely that the decisions taken on individual complaints will entail the obligation for Russia to adopt legislative or other measures in order to remedy shortcomings identified by the Court. We will therefore rely in this report and specifically in the chapter on human rights, whenever relevant, on the findings of the European Court of Human Rights.

257. We note with satisfaction that the importance of respecting the European Convention was stressed by the Plenum of the Supreme Court on 10 October 2003, in a decision concerning the application by the courts of common jurisdiction of the principles and norms of international law and international treaties entered into by the Russian Federation. This decision recalls that the Convention as interpreted in the light of the case-law of the European Court is part of the national legal order and its provisions prevail over every other legislative provision.

258. We are therefore deeply concerned with the findings of the European Court of Human Rights in the case of *Shamayev and 12 Others v. Georgia and Russia*. This judgment delivered on 12 April 2005 and which is not yet final¹⁴³, concerned the extradition of a number of alleged Chechens rebels from Georgia to the Russian Federation. As regards the complaints lodged against Russia, the Court found a violation of Article 38 § 1 (a) of the Convention (obligation to furnish all necessary facilities for the adversarial examination of the case) on account of the lack of cooperation by the Russian authorities who refused to allow a fact-finding visit, despite the Court's repeated requests thus denying it access to the applicants detained in Russia. According to the Court, this behaviour unacceptably hindered the establishment of part of the facts in the case. The Court also held that the Russian Federation violated Article 34 (obligation not to hinder the effective exercise of the right of individual petition) as regards the five applicants extradited to Russia on 4 October 2002 and the two applicants arrested by the Russian authorities on 19 February 2004. The lack of cooperation of the Russian authorities, should this judgment become final or be confirmed by the Grand Chamber, will inevitably cast serious doubts as to Russia's willingness to abide in good faith with the commitments entered into upon ratification of the European Convention of Human Rights.

259. Finally, in view of the continuing rise of the workload of the European Court of Human Rights and in order to contribute to the improvement of the efficiency of the Convention's control system for the long term, we call on the Russian authorities to take all necessary steps to sign and ratify Protocol No. 14 to the Convention as speedily as possible, as was recommended by the Declaration of the Committee of Ministers "Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels"¹⁴⁴. This would, inter alia, facilitate the decrease in the high number of pending applications before the Court where the Russian Federation is a respondent state and expedite the processing of new applications.

B. The right to life and the fight against impunity

Impunity climate in Chechnya

260. The Assembly has consistently condemned the gross human rights abuses, the violations of international humanitarian law and the war crimes committed in Chechnya by both sides to the conflict. Since the very beginning of the first conflict in Chechnya in 1994, the Assembly has called for those responsible for these acts to be brought to justice – to little avail. The result is a climate of impunity which encourages further human rights violations, denies justice to the thousands of victims, embittering the population to a point where the Chechen Republic could truly become ungovernable. If a meaningful political process is to develop in the republic, human rights violations must stop and those responsible for abuses must be brought to justice¹⁴⁵.

261. In its Resolution 1403 (2004)¹⁴⁶ the Assembly strongly condemned the numerous violations of human rights in the form of murder, forced disappearance, torture, hostage-taking, rape and arbitrary detention committed by members of different Federal and pro-Russian Chechen security forces during their "special" or "targeted" operations in the Chechen Republic and increasingly, in neighbouring regions¹⁴⁷. The spread of the impunity climate to other regions (not even adjacent to Chechnya) is well illustrated with the events in Blagoveschensk. According to Memorial, whose monitoring covers only about 1/3 of the republic's territory, 396 people were kidnapped in 2004, 24 of them subsequently found dead and 175 went missing¹⁴⁸.

¹⁴³ The judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

¹⁴⁴ Adopted by the Committee of Ministers on 12 May 2004, at its 114th Session.

¹⁴⁵ Resolution 1323 (2003) on the human rights situation in the Chechen Republic, of 2 April 2003

¹⁴⁶ Resolution 1403 (2004) on the human rights situation in the Chechen Republic, of 7 October 2004.

¹⁴⁷ See also the Resolution by the IHF General Assembly on the Human Rights Crisis in the Chechen Republic and Its Threatening Implications, Moscow and Vienna, 15 November 2004.

¹⁴⁸ It is difficult to provide exact statistics of the disappearances and the official data differ as well, e.g. acting Chechnya Ombudsman Mr Khasuyev in October 2004 stated that more than 2,500 people were kidnapped during the last 4 years, Federal Ombudsman Mr Lukin said that only during the first 11 months of 2004 1,700 people disappeared (<http://www.hro.org/war/2005/02/17.php>). See also the reports issued by the International Helsinki Federation in March 2005 and the Human Rights Watch in February 2005.

262. The replacement on the side of the Federal forces of large-scale "mop-ups" by smaller "targeted operations" has been described as a false progress. Whilst fewer persons are affected by such operations, they amount in their view to quasi-legalised "death squad" activities. Because of the much smaller number of potential witnesses, it is also more dangerous for victims' relatives to complain, as informers can be identified and subjected to reprisals much more easily¹⁴⁹.

263. On 24 February 2005 the European Court of Human Rights ruled in three judgments¹⁵⁰ that there had been violations of the right to life and the prohibition of torture as well as the right to an effective remedy and the peaceful enjoyment of possessions (Articles 2, 3 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Article 1 of Protocol 1 to the ECHR) in the six cases from the Chechen Republic. In the case of *Khashiyev and Akayeva v. Russia*, the European Court ruled that the deaths of the relatives of the applicants who had been killed by servicemen were attributable to the State, amounting to a violation of the right to life (Article 2). In the judgment in the case of *Isayeva, Yusupova and Bazayeva v. Russia* and in the separate judgment concerning a sixth case, *Isayeva v. Russia*, the European Court found that the Russian authorities had failed to protect the right to life of the applicants and their relatives, in the planning and execution of military operations. The Court awarded financial compensation to the applicants in all six cases. In total, more than 150 individual complaints from Chechnya were filed with the Court. They also raise the issue of non availability of effective domestic remedies, as no courts or other functioning civilian law-enforcement institutions exist in Chechnya.

264. It is to be recalled that Russia has not lodged a derogation under article 15 of the Convention, which provides for such a possibility "in time of war or other public emergency threatening the life of the nation" and that even if such a derogation had been lodged, § 2 of Article 15 states in any event that "no derogation from article 2 or from articles 3, 4 § 1 and 7 shall be made". This means that, apart from article 5 on which Russia has made a reservation, all other provisions of the Convention are fully applicable in Chechnya.

265. We are extremely concerned about reports that a number of Chechen applicants to the European Court of Human Rights have been subject to reprisals. Such reprisals have ranged from harassment and threats, and in a couple of cases applicants or their close relatives have been killed. It appears that Chechen victims of human rights violations not only have extremely limited access to justice in the Russian Federation, but also that their lives are endangered when they attempt to seek justice through international mechanisms¹⁵¹.

266. A new frightening trend is also that of hostage taking of relatives of suspected terrorists in order to force them to give themselves up by threatening their relatives with torture and murder. Such methods are totally unacceptable criminal acts that must be stamped out by the Federal and Chechen authorities. In this regard we were astounded to learn about the statement of the Russian Federation Prosecutor General Mr Ustinov made during a State Duma's hearing in November 2004 where he

¹⁴⁹ See the selection of individual cases of human rights abuses in Chechnya appended to the PACE Report on the human rights situation in the Chechen Republic, Doc. 10283, 20 September 2004.

¹⁵⁰ The judgments will become final in the circumstances set out in Article 44 § 2 of the Convention.

¹⁵¹ According to Amnesty International, on 10 April 2004 24-year-old Anzor Pokaev, whose father Sharfudin Sambiev and nine other people from Starye Atagi filed an application in July 2003 with the European Court of Human Rights, disappeared. His body was found about 10 kilometres from Starye Atagi the next morning with multiple gunshot wounds. According to a report of the International Helsinki Foundation released on 15 September 2004, other applicants such as Zoura Bitieva (No. 57953/00) was killed and Marzet imakaieva (No. 7615/02) as well as Sharfudin Sambiev (No. 38693/04) were persecuted. The report also mentions that some of the organisations that represent applicants from Chechnya before the ECHR, namely Memorial, European Human Rights Advocacy Centre, and Chechnya Justice Initiative, have reported incidents aimed at some of their clients. In letters to the ECHR they mention 13 cases, with a total of 29 counts of abuse, in which different applicants have been persecuted in connection with their search for justice. All in all, the cases of persecution of ECHR applicants include both verbal and written threats, sometimes against other family members. In one case an applicant lost his job. In two cases, soldiers illegally searched an applicant's house. At least one of the applicants was robbed. In four cases, applicants were beaten. In one case, the applicant went into hiding. In at least two cases the applicants are considering withdrawing their applications to the courts. Two formally withdrew their applications. Most of the threats and beatings were reported in 2003 and 2004. Federal forces are believed to be involved in all of these cases. The organisations representing the applicants claim that notifications about incidents from the ECHR to the Russian authorities have had a positive effect in some cases, easing the pressure on individual applicants and their families.

suggested taking hostages as a possible measure to fight terrorism¹⁵². Russian human rights NGOs demanded from the President to dismiss the Prosecutor General for this proposal which violates a number of international human rights documents.

267. We hope that this statement by the Prosecutor General bears no relation to the abduction in December 2004, allegedly carried out by employees of the power structures under control of the First Deputy Prime Minister of the Chechen government Ramzan Kadyrov (the so-called "kadyrovtsi"), of eight relatives of Aslan Maskhadov.

268. We were also disturbed to learn of a series of attacks on human rights activists in Ingushetia. Amnesty International's research in and on the North Caucasus has found that human rights defenders and activists speaking out about the situation in the region, as well as those investigating such abuses and those who have sought redress with the European Court of Human Rights have themselves increasingly become victims of serious human rights violations. Some have been killed or "disappeared", others have been subjected to torture, including rape. Many more have been subjected to ill-treatment, harassment, and intimidation¹⁵³.

269. We conclude that human rights situation in Chechnya has not improved so far and that Russia has not secured the adherence to the rule of law and the enjoyment within its jurisdiction in Chechnya of human rights and fundamental freedoms, as prescribed by Article 3 of the Council of Europe Statute. Russia has yet to meet its specific commitment to bring to justice those found responsible for human rights violations in relation to events in Chechnya (Opinion No. 193 (1996), § 7.vii.) and to respect strictly the provisions of international humanitarian law, including in cases of armed conflict on its territory (§ 10.xxiv.).

270. We, therefore, strongly urge the Russian authorities to end the impunity for crimes that prevails in Chechnya, to conduct impartial and thorough investigation of all allegations of human rights abuses committed by the federal troops and/or Chechen law enforcement bodies, and to stop the practice of intimidation and harassment of human rights activist working in the area.

Other cases

271. There were a number of killings of state officials throughout the country, some of which may have been politically motivated, in connection with either the ongoing strife in Chechnya, or with politics. A prominent Duma Deputy and Liberal Russia party co-chairman, Sergey Yushenkov, was shot dead on 17 April 2003. Yushenkov had been an outspoken critic of the Putin Administration on a number of issues, and was engaged in rivalry for leadership within his own party. The first court hearing on Yushenkov's case was held on December 26. In March 2004 a jury at the Moscow City Court found Mikhail Kadanyev, former leader of the Liberal Russia party and a supporter of President Putin's adversary Boris Berezovskiy, and three associates guilty in organising the assassination.

272. Yuri Shchekochikhin, a Member of the Duma and chief editor of *Novaya Gazeta*, died in July 2003 under mysterious circumstances (the cause of death was described as an 'acute allergic reaction'). He had a long-standing reputation for investigative journalism, particularly for unmasking corruption in the Moscow City Council, the Ministry of Defence, the Prosecutor-General's Office, and the Russian military forces in Chechnya. Along with Yushenkov, he had begun to investigate charges of FSB responsibility for a series of 1999 apartment building bombings at the time of his death¹⁵⁴.

¹⁵² "Detaining terrorists' relatives during a terror attack would certainly help us save people," Ustinov told the State Duma. In his address, he urged parliament to consider the issue as they revise the law on terrorism. In response, Duma speaker Boris Gryzlov said Russia's parliament is prepared to consider an amendment to the existing law on terrorism to allow the possibility of federal forces taking hostages in the case of a terrorist attack. *Moscow News*, <http://www.moscownews.com>

¹⁵³ Amnesty International Report "Russian Federation: The Risk of Speaking Out. Attacks on Human Rights Defenders in the context of the armed conflict in Chechnya", November 2004. www.amnesty.org. Amnesty International has documented reports that several members of the Society of Russian-Chechen Friendship NGO have been targeted by Russian federal and Chechen armed forces in Chechnya on a number of occasions. The head of the Society's information centre in the North Caucasus, Imran Ezhiev, has been detained more than a dozen times in the course of the last five years. Several other members of the Society of Russian-Chechen Friendship have been killed, allegedly by Russian forces, in what appears to be a deliberate campaign to target human rights activists. Criminal investigations into these incidents have been inconclusive and no one has been held responsible. In August 2004 the investigations were closed.

¹⁵⁴ US Department of State Country Reports on Human Rights Practices in 2003 and 2004, <http://www.state.gov/g/drl/rls/hrrpt>.

According to the Russian delegation's comments, the Russian federal centre for forensic expertise at the Ministry of Justice found no indications that the death was caused by violence or chemical poisoning. Therefore, the Moscow city prosecutor's office refused to institute a criminal case in August 2003. The Prosecutor General's Office upheld this decision.

273. Nikolai Girenko – prominent human rights defender, professor of ethnology and expert on racism and discrimination in the Russian Federation – was shot dead on 19 June 2004 in his home in St Petersburg. Nikolai Girenko was well known and widely respected for his work and research on racism and discrimination in the Russian Federation. He was Head of the Minority Rights Commission at the St Petersburg Scientific Union and had conducted several studies for Moscow and St Petersburg authorities on neo-Nazi and skinhead groups in the Russian Federation. He had repeatedly warned that such groups were on the rise. Nikolai Girenko made expert contributions to a number of high-profile investigations and court cases concerning alleged racially motivated attacks and was renowned as the foremost expert on this issue within the Russian Federation¹⁵⁵. Days after the attack an extremist group claimed responsibility for the murder on their web-site. We are disappointed to find out that no major progress in the investigation of this murder has been made as of April 2005 and we therefore call on the Russian authorities to ensure thorough and quick investigation and bring perpetrators to justice.

C. Abolition of the death penalty

274. According to the Opinion No. 193 (1996), § 10.ii., Russia undertook to sign within one year and ratify within three years from the time of accession Protocol No. 6 to the European Convention on Human Rights on the abolition of the death penalty in time of peace, and to put into place a moratorium on executions with effect from the day of accession. To date this fundamental commitment remains unfulfilled as regards ratification of Protocol No. 6.

275. Following the Presidential Decree "On Stage-by-Stage Reduction of Execution of Death Penalty in connection with the Russian Federation Joining the Council of Europe" of 16 May 1996, the official moratorium on execution of death sentences, introduced by President Yeltsin on 2 August 1996, has been respected. On 16 April 1997, Russia signed Protocol no. 6, which under the Vienna Treaty constitutes a legal undertaking. The President then submitted to the State Duma a draft ratification law on 6 August 1999. However, to date, this draft has not been adopted even in the first reading.

276. On 2 February 1999, the Constitutional Court ruled that courts may not hand down death sentences until the jury system is made available throughout the entire country. A December 2001 Law on implementation of the Criminal Procedure Code of the Russian Federation (as amended in 2002) provides for step-by-step introduction of jury courts in the country – from 1 July 2002 (in 9 subjects of the Federation), 1 January 2003 (60 subjects), 1 July 2003 (13 subjects), 1 January 2004 (5 subjects), and from 1 January 2007 – in the Chechen Republic. Thus even if the 1996 moratorium will be lifted, the 1999 Constitutional Court ruling will prevent pronouncement of death sentences at least until 2007¹⁵⁶.

277. In its Resolution 1277 (2002), the Assembly, whilst recognising that the official moratorium on executions introduced by President Yeltsin on 2 August 1996 was respected, nevertheless urged the Russian authorities to abolish the death penalty *de jure* and to conclude the ratification of Protocol

¹⁵⁵ Academic colleagues and fellow human rights defenders believe the murder was connected with his human rights activity, in particular in light of his anti-racism campaigning and work on the "skinhead" movement. Deputy St Petersburg Prosecutor is reported to have said that investigators also believe that his work as a researcher and expert witness in racism trials and investigations is the most likely motive for his murder. However, he also reportedly stated that the killing might have been motivated by hooliganism - a claim frequently made by police in connection with alleged racist attacks.

¹⁵⁶ Article 20(2) of the Constitution stipulates that death penalty, pending its abolition, may be established by the federal law as an exceptional punishment for especially grave crimes against life, and the accused should be granted the right to have his case considered by a jury court. According to the current Criminal Code of the Russian Federation, death penalty is included in the list of possible punishments (Art. 44); death penalty is recognised an exceptional measure of punishment which can be established only for particularly grave crimes attempting on life (Art. 59); five articles of the Code provide for death penalty as possible punishment – aggravated murder; encroachment on life of public or state figure; encroachment on life of person administering justice or conducting investigation; encroachment on life of law enforcement body official; genocide.

No. 6 to the European Convention on Human Rights. Unless the death penalty is banned in law, the non-execution of death sentences will be entirely dependent on the existence of a political will to maintain the *de facto* moratorium on executions in force in the country since 1996.

278. We wish to remind the Russian authorities that abolishing the death penalty is a politically courageous step for politicians to take but that it is also one of those fundamental societal values where political leaders have to lead and not be guided by the latest opinion poll. This does not mean ignoring people's genuine concerns but means being brave enough to recognise that the death penalty is not a panacea for reducing crime, improving the morale of the population, or providing justice. Respect for human rights must never be dependent on the whims of public opinion. Torture, for example, would never be permissible even if there were public support for its use in certain cases. It is the task of politicians and public figures in a democratic society to lead, not follow, or hide behind, public opinion and to take a policy decision when fundamental human rights are at stake¹⁵⁷.

279. The deadline set by the Assembly for the ratification of Protocol No. 6 has expired since 1999 and Russia is to date the only European country that has not abolished the death penalty *de jure*¹⁵⁸.

280. We would like to remind the Russian authorities that the Assembly has always been adamant that ratification of Protocol No. 6 is of utmost importance for every member state of the Council of Europe and that States who refuse to ratify or unduly delay ratification in violation of formal undertakings made at the time of accession will have to bear the consequences of such an attitude. Both the Ukrainian¹⁵⁹ and the Armenian¹⁶⁰ delegations to the Parliamentary Assembly were faced, respectively in 1999 and 2002, with the annulment of their credentials and, in the case of Ukraine, with a recommendation to the Committee of Ministers to suspend it from its right of representation, in conformity with article 8 of the Statute of the Council of Europe.

281. Against these precedents, we would strongly urge the Russian authorities to take advantage of the absolute majority they enjoy in parliament and to ratify Protocol No. 6 without any further delay and at the latest by December 2005.

D. Torture and inhuman or degrading treatment

282. We welcome the December 2003 amendments to the Russian Federation Criminal Code which introduce the definition of "torture" in the criminal legislation¹⁶¹. We hope that this will result in the increase of those charged with the infliction of torture (Article 117 of the Criminal Code) and not excess of power (Art. 286) or coercion to testifying (Article 302), both of which provide for lower penalties.

283. On 10 July 2003, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment issued a Public Statement (CPT/Inf (2003) 33) where noted that there is "continued resort to torture and other forms of ill-treatment by members of the law enforcement agencies and federal forces operating in the Chechen Republic and that the action taken to bring to justice those responsible is slow and – in many cases – ultimately ineffective". The allegations of ill-treatment received by the CPT concerned law enforcement establishments (Departments of Internal Affairs and certain Federal Security Service facilities) throughout the territory of the Chechen Republic and related to both official and unofficial places of detention. In the course of its visits to the Chechen Republic in 2002 and 2003, the CPT has gathered a considerable amount of

¹⁵⁷ "Death is not Justice", The Council of Europe and Death Penalty, October 2001.

¹⁵⁸ After its recent accession to the Council of Europe, Monaco signed the Protocol on 5 October 2004 and ratification is expected soon.

¹⁵⁹ See Resolutions 1179 (1999) adopted on 27 January 1999 and Resolution 1194 (1999) adopted on 24 June 1999 (Doc. 8424, rapporteurs: Mr Kelam and Mrs Severinsen).

¹⁶⁰ See Resolution 1304 (2002) adopted on 26 September 2002 (Doc. 9542, rapporteurs: Mrs Belohorska and Mr Jaskiema).

¹⁶¹ By Federal Law No. 162-FZ of 8 December 2003, Article 117 of the Code (ill-treatment) was supplemented with the following paragraph: "For the purposes of this Article and other Articles of the Code, torture shall be defined as an infliction of physical or moral sufferings aimed at coercing an individual to testify or commit other acts against his will, as a punishment or for other purposes".

information pointing to human rights violations during special operations and other targeted activities conducted by federal power structures, involving ill-treatment of detained persons and forced disappearances.

284. More recently, in October 2004, the International Helsinki Federation for Human Rights released its report on the places of detention in the Russian Federation¹⁶². The IHF delegation observed a variety of conditions of detention in the Ministry of Justice facilities ranging from satisfactory to inhuman. It commended the efforts of the Moscow Penitentiary Department to improve the conditions of detention in the pre-trial detention facilities for juveniles and women. These efforts resulted in a significant improvement of the conditions in these facilities over the past three years. At the same time the delegation found that Russian law and policy need further substantial reforms in order to reach the level of full compliance with international standards for the treatment of prisoners. The conditions of detention of the prisoners sentenced to life imprisonment amounted to inhuman treatment.

285. Russian human rights NGOs and mass media report about numerous cases of tortures and ill treatment inflicted by the Russian law enforcement agencies. They include use of physical and psychological violence during arrest, detention, and interrogation of a suspect¹⁶³. Most recently the Moscow-based Committee for Human Rights presented a report with a list of more than 500 complaints of police brutality from the Moscow region alone over the last two years¹⁶⁴.

286. One of the reasons of the widespread practice of tortures and ill treatment by law enforcement bodies appears to be the need to come up with "good" crime clearance statistics. Therefore the police and other law enforcement officers usually use violence in order to obtain confessions or information on accomplices, etc. The roots of this malpractice can be found in the law enforcement bodies and their employees' activity appraisal system that is based on quantitative data of the proportion of solved crimes to those registered¹⁶⁵. Another reason is a low legal culture and lack of proper education of the employees.

287. According to human rights NGOs¹⁶⁶, ill-treatment by the police is reinforced by the weak system of control, both internal and external. The Ministry of Interior's Service of Internal Security, established in 1995, lacks sufficient staff and resources. It is also subordinated to the same commanders as the police, most of its staff being recruited among the police officers.

288. The prosecutor's office, responsible for exerting oversight over the law enforcement bodies, also seems not to be efficient in dealing with cases of torture and ill-treatment for several reasons. Investigation of ill-treatment complaints is carried out by the prosecutor's office of the district where the alleged ill-treatment was committed. At the same time, prosecutors and police officers of one district usually closely co-operate with each other while investigating crimes, thus establishing close working and personal ties which hampers the impartiality of the prosecutors. Furthermore, local prosecutor's offices often lack necessary technical and human resources to investigate all complaints, including cases of torture. That is why prosecutors often delegate the investigation of such cases to the local police departments where the alleged ill-treatment was reported.

¹⁶² "Places of detention in the Russian Federation", report from the visit of the delegation of human rights NGOs to places of detention in the Russian Federation on 19 and 20 February 2004.

¹⁶³ A recent example of ill-treatment was reported by the Amnesty International's Urgent action issued on 18 November 2004. Fifteen-year-old Victor Knaus has reportedly been beaten and threatened by Russian police in order to force him to confess to the murder of two young boys. Evidence allegedly extracted under duress may be used in the trial against him, which is likely to begin within weeks.

¹⁶⁴ RFE/RL Newline Vol. 8, No 156, Part I, 17 August 2004.

¹⁶⁵ For example, the Ministry of Interior official web site contains regular reports on the number of registered and cleared crimes. During January – October 2004, 2,407,800 crimes were registered and 1,305,100 solved (2% more than during the same period in 2003).

¹⁶⁶ See, for example, the report "Tortures and ill-treatment in the Russian police: roots of unlawful practices" of the DEMOS Research Centre for Civil Society (<http://www.publicverdict.org>).

Police raids in Blagoveschensk

289. We are extremely alarmed by the violent events, which took place in Blagoveschensk (Bashkortostan) from 10 to 14 December 2004. As many as 1,000 people, predominantly men between 14 and 30 years old, were arrested by the police, many were beaten, and there were also reports of torture and rape. Of the more than 400 people, who showed up at local hospitals, the majority had severe bruises, while many had sustained concussions or fractures. According to the official version, the reason for this large-scale operation was an alleged assault on interior employees a few days before the raids. Seven high-ranking city police officers have been reprimanded, and the deputy head of the local police, along with members of the special forces unit (OMON) involved in the raid, have been demoted. Later, 6 junior police officers were charged with "exceeding powers of office with application of force". The Federal Ombudsman and human rights activists called for the dismissal of Bashkir Interior Minister who personally issued the order to deploy the OMON unit in the city.

290. We share the concern expressed by the Sub-Committee on Human Rights of the Assembly's Legal Affairs and Human Rights Committee in its statement of 27 January 2005 which denounced the events in the city of Blagoveshchensk on 10 to 14 December 2004 as a "terrifying example of the spread of the climate of impunity in the Chechen Republic to other regions of the Russian Federation". Such a conclusion originates from the fact that the raids were conducted, along with the local police, by city of Ufa Special Forces (OMON) detachment, which previously was stationed in Chechnya.

291. We therefore, urge the Russian authorities to secure prompt, impartial, and full investigation into all allegations of torture, prosecution, and punishment of those responsible (in particular, with regard to the events in Blagoveschensk) and to improve the control over law enforcement bodies.

292. We also would like to reiterate our call on Russia to authorise publication of all reports on the visits to the country of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and to take all necessary measures to implement the CPT's recommendations.

E. Violence against women

293. In December 2004, the Special Rapporteur on violence against women, its causes and consequences of the United Nations Commission on Human Rights made her statement on the results of her visit to Russia¹⁶⁷. While welcoming the recent ratification by Russia of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the Special Rapporteur noted that violence, particularly in the home, continues to cause injuries and claim the lives of thousands of women annually. Due to the registration system (*propiska*) and the lack of financial means, many women are compelled to share the same housing with a violent partner, even after an official divorce. The situation is further aggravated by the lack of sufficient shelters. Violence against women and sex discrimination are still low on the State agenda. Draft domestic violence bills, presented to the State Duma in 1996 and 1999, were not adopted. The Women's Commission, responsible for mainstreaming a gender perspective into State policies and programmes, was abolished in 2004. Currently, a department within the Ministry of Health and Social Development is the only national machinery in place to address gender based discrimination¹⁶⁸.

294. We, therefore, call on the Russian authorities to address the concerns raised in the reports and approve specific legislation on domestic violence. We would also strongly recommend that the Russian authorities take account of the recommendations expressed in this regard by the Council of Europe Human Rights Commissioner in his April 2005 report on Russia (paragraphs 482-488).

F. Hazing in the army

295. Upon accession to the Council of Europe Russia undertook to reduce, if not eliminate, incidents of ill-treatment and deaths in the armed forces outside military conflicts (Opinion No. 193 (1996), § 10.xix.)

¹⁶⁷ <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/F4314BAD6D4F1D3FC1256F75004E65FF?opendocument>

¹⁶⁸ See also the 2003 report of the World Organisation against Torture (OMCT) submitted to the UN Committee on Economic, Social and Cultural Rights.

296. Ill-treatment of young conscripts (also sometimes referred to as "*dedovschina*", *hazing*¹⁶⁹) remains a major problem of human rights. In a recent report¹⁷⁰ issued in October 2004, Human Rights Watch stated that dozens of conscripts are killed every year as a result of these abuses, and thousands sustain serious – and often permanent – damage to their physical and mental health. Hundreds commit or attempt suicide and thousands desert their units.

297. Although international law requires the Russian authorities to take immediate measures to end these abuses, it has thus far failed to take the appropriate steps. Instead of taking a clear and public stance against the abuses, government officials have largely ignored the issue in their numerous speeches about military reform. The authorities have yet to adopt a clear and comprehensive strategy to deal with the abuses. Instead of vigorously examining the reasons why first-year conscripts flee their units, military officials routinely threaten runaways with prosecution for unauthorised departure from their bases. Military commanders and the military Prokuratura shield perpetrators from justice, rather than investigate reported incidents of abuse. The government's position is all the more puzzling because *dedovshchina* so clearly undermines the military effectiveness of Russia's army.

298. *Dedovshchina* exists in military units throughout the Russian Federation. It establishes an informal hierarchy of conscripts, based on the length of their service, and a corresponding set of rights and duties for each group of the hierarchy. Second-year conscripts, called the "*dedy*" (literally "*grandfathers*"; its singular is "*ded*"), have practically unlimited power with respect to their junior colleagues. While *dedovshchina* may once have served the purpose of initiation, it has in the past twenty years degenerated into a system in which second-year conscripts, once victims of abuse and deprivation themselves, enjoy unlimited power to abuse their juniors without rule, restriction, or fear of punishment. The result is not enhanced *esprit de corps* but lawlessness and gross abuse of human rights.

299. Horror stories about *dedovshchina* motivate tens of thousands of Russian parents every year to try to keep their sons out of the armed forces. As the most affluent families do so successfully¹⁷¹, the armed forces increasingly draw recruits from poor segments of the population, and many of the recruits suffer from malnutrition, ill health, alcohol or drug addiction, or other social ills even before they start to serve. Moreover, as mentioned above, thousands of the young men who are drafted each year run away from their units and hundreds commit suicide.

300. In its response to the HRW report on *hazing*, the Russian Federation Ministry of Defence noted that the "measures taken in the last few years by the bodies of military command, commanders of all levels, and personnel management officers have consolidated the trend in a steady decrease in the number of crimes and accidents in military units. This also fully applies to the problem of violations of statutory rules of service between servicemen. According to the Ministry's statistics, for a number of years the crime rate in the armed forces has been 2-2.5 times lower than overall national level. During 2002, 2003 and 2004, 90% of units experienced no *dedovshchina*, and 80% had no violations whatsoever. The fact that "*hooliganism*" in the barracks does not take place on a massive scale is also proven by the findings of Human Rights Watch's rights-defenders, who found only 100 victims of *dedovshchina* in the 3 years of research, on whose statements they rely on for their report¹⁷²."

¹⁶⁹ The term "ill-treatment" has a broader meaning than *dedovshchina* since the latter includes only *hazing* of the first year conscripts by their second year colleagues. Thus *dedovshchina* doesn't include the bullying of conscripts by officers (about 30% of all crimes committed in the army according to Soldiers' Mothers Committee estimates). We have also paid attention to the fact that official statistics deal with violations, which fall under the so-called "non-statutory relations" *corpus delicti* (Article 335 of the Criminal Code – "Breach of the statutory rules for the relations among servicemen not subordinated one to another"). These statistics also do not reflect *hazing* inflicted by officers as this includes subordination relationships.

¹⁷⁰ Human Rights Watch Report "The wrongs of passage: Inhuman and Degrading Treatment of New Recruits in the Russian Armed Forces", released on 20 October 2004. The report was based on the research during 2002 and 2003 in seven regions across Russia, including Cheliabinsk, Moscow, Novokuznetsk, Novosibirsk, St. Petersburg, Vladivostok, and Volgograd. HRW interviewed more than one hundred conscripts, their parents, officials, lawyers, NGO experts, and former military servicemen. The conscripts served on more than fifty bases in more than twenty-five of Russia's eighty-nine provinces. HRW also extensively studied the archive files of several soldiers' rights groups. In February 2004, HRW had a meeting to discuss their findings with officials of the Ministry of Defence in Moscow.

¹⁷¹ According to different estimates, about half of young men exempted from the military service obtain the exemption by means of bribery (the bribes amount to \$5,000 in some regions).

¹⁷² http://www.mil.ru/releases/2004/10/221209_8456.shtml.

301. Chief Military Prosecutor Alexander Savenkov has reported that 25 conscripts died as a result of abuses associated with hazing during the first half of 2004. A total of 109 servicemen committed suicide during this period, an increase of 38% compared to the same period last year. Savenkov said that 60 of those conscripts who killed themselves had been "driven to suicide" by hazing. Accordingly, an 85 death toll in the armed forces outside military conflicts was reported as official statistics for the first six months of 2004¹⁷³. Taking into account that these statistics reflect only those cases brought to the courts, the real scope of the problem is truly alarming. However, in the Ministry of Defence we were told that the Russian rate of suicides on 100,000 of population is much less than in some European countries.

302. The Military Prokuratura that is in charge of dealing with soldiers' complaints and investigating abuses in the armed forces also reported that 3,200 servicemen were convicted of hazing ('non-statutory relations') in the first nine months of 2004, including 400 officers. About 3,000 servicemen suffered from hazing and 31 died over the same period. In 2003 a total of 3,400 servicemen, including 500 officers, were convicted for hazing; 4,500 servicemen were recognised victims of the hazing ('non-statutory relations'), 38 died¹⁷⁴.

303. The rise in the number of the reported ill-treatment cases is claimed by the Ministry of Defence and Military Prokuratura to be due to increased transparency in dealing with violations in the army. This resulted, according to the officials, in a significant decrease of the so-called latent crime in the army. In the list of measures for combating ill-treatment in the army Ministry of Defence officials mention gradual transformation into voluntary contract-based recruitment, cutting down of the service term to one year (instead of one and half), additional educational and awareness raising campaigns.

304. The Soldiers' Mothers Committee in the Sverdlovsk region reported that the number of ill-treatment cases is not decreasing, and that, as a result, desertion is still common. However, better co-operation was established with the office of the military prosecutor and military units' commanders (e.g. special positions of deputy commanders in charge of educational work were introduced to co-operate with non-governmental organisation and deal with ill-treatment cases). Also the Ministry of Defence decided that conscripts who deserted should not return to the same unit from which they have escaped as they can be subject to harassment.

305. In April 2005, Defence Minister Sergei Ivanov promised to punish those who are guilty, including senior officers after twelve conscript sailors fled the navy base in Lomonosov and filed complaints about hazing alleging that they had been beaten up by older sailors shortly after their arrival.

306. One of the reasons of this widespread phenomenon is the way ill-treatment cases are dealt with after the complaint has been lodged. It appears that such a complaint (except for murder cases), whoever it was lodged with, is first investigated by the commander of the corresponding military unit who is interested in silencing such facts. And this obviously has an impact on the number of cases that reach the military prosecutor's attention.

307. Human rights NGOs also report that ill-treatment of conscripts starts even from the very moment of their drafting when the draftees are kept in the so-called conscription centres waiting for their detachment to the military units. Not much attention was paid so far to the bad conditions in these centres, where draftees are kept in poorly heated premises without proper food. The same concerns the conditions during transport of the conscripts to the military units. In December 2003, after transportation of the conscripts to the Far East town of Magadan, nearly 100 fell ill with pneumonia, one conscript froze to death¹⁷⁵.

¹⁷³ During our visit to Moscow we tried to check this information with the Ministry of Defence and the Military Prosecutor's Office. The representatives of the first said that these statistics were classified in the Ministry of Defence. Deputy Chief Military Prosecutor Mr Arutyunyan in his turn neither confirmed nor refuted the data announced by his superior and promised to provide the co-rapporteurs with exact statistics by the end of our mission (no information was received by the time of drawing up of this report).

¹⁷⁴ Interview of the Chief Military Prosecutor Mr Savenkov to the "ITOGI" magazine, 26.10.2004, http://genproc.gov.ru/ru/news/news_current.shtml?2004/10/507.html.

¹⁷⁵ The acting military commander, who was responsible for the transportation, was given in August 2004 a suspended sentence of 3 years with 2 year probation.

308. We agree with the HRW conclusion that the Russian government cannot wait for the creation of professional armed forces in order to successfully fight abuses linked to ill-treatment of conscripts, and that it does not have to do so. We cannot but repeat the call on the Russian authorities to take without delay all effective measures to address this endemic problem properly, in order to significantly reduce the number of ill-treatment cases.

309. Welcoming the fact that more light was cast on hazing in the army, we believe however that this problem should be dealt with on a federal level as one of the priorities of the army reform. Clear messages of the highest state authorities stating that this is an unacceptable practice and that the government will do its utmost to eradicate it should be issued without delay. A policy of zero tolerance for such abuses should be put in place, with educational programmes for officers, enhanced controlling mechanisms, bringing to justice those responsible for such abuses, etc.

310. The same should also be applied to the practice of "conscript leasing" to private institutions with remuneration paid to the officers, commanders of the military units (see below).

G. Forced labour

311. We were discouraged to learn about the existence of forced labour in the Russian army. Human rights NGOs even use the term 'slavery' to qualify a practice that seems to be widespread (hundreds of cases were mentioned). The commanders or officers of the military units "lease" conscripts to private businesses for various kinds of work or use them as a work force for the construction of their own dwellings. The Union of the Soldiers' Mothers Committee argues that such violations should be qualified and prosecuted under Article 127.2. of the Russian Federation Criminal Code – "Use of slave labour"¹⁷⁶. According to the Committee, in Khabarovsk an officer who denounced such forced labour was sacked and placed in a mental hospital; in Volgograd, the officers filmed how the conscripts were taken out from the unit for usual work assignment.

312. The Ministry of Defence representatives denied the mass character of these abuses admitting that only one such instance had been reported in the city of Samara and that it had been properly investigated. We share the indignation expressed by the Commissioner for Human Rights of the Council of Europe in his recent report on Russia with regard to this "modern-day slavery".

H. Arbitrary or illegal detention

313. The Criminal Procedure Code states that police may detain an individual not more than 24 hours before the case is referred to the prosecutor and gives him 24 hours in which to open or reject the criminal case. At that point, he must decide whether to seek pre-trial detention from the court. The law prohibits pre-trial detention for crimes carrying a sentence of less than 3 years unless the defendant poses a demonstrable flight risk; detention during trial is limited to 6 months, except where particularly grave crimes are involved. The Criminal Procedure Code specifies that within 2 months of a suspect's arrest police should complete their investigation and transfer the file to the prosecutor for arraignment.

314. An individual detained before January 2002 could spend up to 3 years awaiting trial in a SIZO. Today pre-trial detention is limited in most cases to 6 months. Only in a small number of serious crimes and complex investigations can the Prokuratura request an extension of detention for an additional 6 months, and only with the personal approval of the Prosecutor General can they apply to the court for an extension to a maximum of 18 months. During the first 6 months in which the new procedures were in place, no such 18-month extensions were requested and most cases went to trial in the allotted 6 months. According to Chief Justice Lebedev, from January until May 2003, the courts received 37,000 applications for the extension of pre-trial detention; 35,000 were granted. These procedures were generally respected; however, there were still some judges and regions that did not appear to enforce them fully. According to information we received in November 2004, the courts dealt in 2004 with a total number of 630,000 cases involving detention, including 150,000 cases concerning requests for conditional release.

¹⁷⁶ "Use of labour of a person in relation to whom the powers inherent in the right of ownership are exercised if the person due to the reasons not dependant on him cannot refuse performing the work".

315. Most cases of the arbitrary or illegal detention, which have been reported recently, were connected with the persistent impunity climate in Chechnya and adjacent territories, as well as the rights of national minorities (see relevant sections of this report).

316. In another case – *Gusinsky v. Russia* – the Court found a violation of Article 5 of the Convention since the applicant's detention was not "lawful" because by virtue of the Amnesty Act he was exempt from criminal prosecution. The Court also ruled that Mr Gusinsky's detention represented an abuse of power and that by detaining him the authorities intended to force him to sell his media business to Gazprom on unfavourable terms and conditions. Thus the Court held that there has been a violation of Article 18 of the Convention in conjunction with Article 5¹⁷⁷.

317. In this connection we refer to the Assembly's Resolution 1418 (2005), which states that the circumstances surrounding the arrest and prosecution of the leading Yukos executives strongly suggest that there is a clear case of non-conformity with the rule of law and that these executives were – in violation of the principle of equality before the law – arbitrarily singled out by the authorities.

318. We also note that in its October 2003 judgement in the case of *Rakevich v. Russia* the European Court of Human Rights found a violation of Article 5 § 1 (the application for a psychiatric confinement order was considered by district court beyond the time limit established by law); Article 5 § 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms was also held to be violated because the Federal Law on Psychiatric Treatment and Associated Civil Rights Guarantees did not provide the applicant with a direct right to challenge before a judge the lawfulness of her compulsory confinement to a psychiatric hospital.

319. We urge the Russian authorities to reform the relevant legislation (the Code of Civil Procedure and the Federal Law on Psychiatric Treatment and Associated Civil Rights Guarantees) in order to ensure its compliance with Article 5 of the Convention and Recommendation Rec(2004)10 of the Committee of Ministers of the Council of Europe to member states concerning the protection of the human rights and dignity of persons with mental disorder. We were pleased to learn that in the framework of the execution supervision of the Rakevich judgment the first draft new legislation has already been prepared.

I. Fair trial and access to court

Fair trial in criminal proceedings

320. It is probably too early to assess whether the recent amendments to the Criminal Procedure Code have solved all problems relating to the right to a fair trial in criminal proceedings, especially as regards the role of the Prokuratura and the principle of equality of arms enshrined in Article 6 of the Convention.

321. We note however with satisfaction that in June 2003, the Criminal Procedure Code was again amended to permit "witnesses" to bring their own attorneys to interviews conducted by the police. This amendment was designed to address the police practice of interrogating suspects without the presence of counsel under the fiction that they were witnesses, and then after incriminating statements were obtained, declaring the suspects to be defendants. This is a welcome development.

322. Furthermore, the Criminal Procedure Code now limits the duration of detention without access to counsel or family members and renders statements given in the absence of a defence attorney unusable in court; however, there were reports that these reforms were being undermined by the police practice of obtaining "friendly" defence counsel for these interviews and the overall ignorance by defence counsel of these provisions. Despite the Code, courts remained reluctant to exclude evidence allegedly obtained through coercive means.

¹⁷⁷ In the Court's opinion, it is not the purpose of such public-law matters as criminal proceedings and detention on remand to be used as part of commercial bargaining strategies. The fact that Gazprom asked the applicant to sign the "July Agreement" when he was in prison, that a State Minister endorsed such an agreement with his signature and that a State investigating officer later implemented that agreement by dropping the charges strongly suggest that the applicant's prosecution was used to intimidate him. In such circumstances the Court cannot but find that the restriction of the applicant's liberty permitted under Article 5 § 1 (c) was applied not only for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence, but also for other reasons.

323. Judges generally freed suspects whose confessions were taken without lawyers present or who were held in excess of detention limits. The Supreme Court overturned a number of cases in which lower court judges granted permission to detain individuals on what the Supreme Court considered being inadequate grounds.

The Yukos case

324. The case of once the biggest Russian oil company Yukos and its chief executives is a milestone in the Russian rule of law development. The trials conducted against Mr Khodorkovskiy, Mr Lebedev and Mr Pichugin raise serious concerns as to their fairness. In its Resolution 1418 (2005), the Assembly noted the following shortcomings: delays in obtaining the prosecutor's permission to enter into contact with their clients, denial of access of Mr Lebedev's defence lawyers to the courtroom during the hearing deciding on his pre-trial detention, search and seizure of documents in the defence lawyers' offices, summons of lawyers for questioning on their clients' cases and alleged eavesdropping against defence lawyers, unjustified restrictions on the publicity of certain court proceedings, denial of bail, etc.

325. We regret that the Assembly Resolution went unheeded and new allegations of rule of law violations are reported. In particular, we are disturbed by the news that the deputy head of the Yukos legal department Mrs Svitlana Bakhmina, who was arrested in December 2004, is still in detention on remand¹⁷⁸.

The right of the Prokuratura and other officials to lodge an application for supervisory review with the Courts (protest) both in civil and criminal cases

326. Under the current legislation, the Prosecutor and other officials, including the Presidium of the Supreme Court, may lodge an application for supervisory review (*пересмотр в порядке судебного надзора*) of any final and binding judgment delivered by a court either for substantive or formal reasons. In the case of *Ryabykh v. Russia*, the European Court of Human Rights held on 24 July 2003 that a judicial system which entails the risk of final and binding judicial decisions being quashed repeatedly¹⁷⁹ by a higher court on an application made by a State official is in itself incompatible with both the principle of legal certainty and the "right to a court" enshrined in Article 6 § 1 of the Convention. This principle of legal certainty requires, among other things, that where the courts have finally determined an issue, their ruling should not be called into question.

327. Following the entry into force of the new Code of Civil Procedure on 1 February 2003, we note with satisfaction that the time period for lodging an application for supervisory review¹⁸⁰ in civil cases has been limited to one year (Article 376) and that the list of State officials empowered to lodge such an application has been significantly narrowed (Article 377). These developments clearly reveal the Russian authorities' serious efforts to bring the domestic law and practice in compliance with the Convention standards. Further measures are, however necessary to prevent new similar violations. Indeed a relatively large number of state officials can still ask for the quashing of final court judgments on what appears to be basically the same open grounds¹⁸¹ as before, i.e. when there is "a significant breach of the law".

¹⁷⁸ In February 2005, the International Bar Association (IBA) has sent a letter to the Russian Prosecutor General's Office asking it to release Svetlana Bakhmina from custody. On 9 March 2005, the Moscow City Court upheld the decision of Moscow's Basmanny Court to extend the period of custody for the former Yukos employee until 2 May.

¹⁷⁹ In *Ryabykh*, the first judgment was quashed five times.

¹⁸⁰ In response to other judgments raising similar violations, the governments of other member states have either totally withdrawn the possibility of this kind of review (e.g. Romania following the *Brumarescu* judgment of 28 October 1999 – see notably § 61) or have been invited by the Committee of Ministers to pursue reforms so as to achieve this result (e.g. Ukraine – see the Interim Resolution Res. DH(2004)14 concerning the judgment of the European Court of Human Rights of 25 July 2002 in the case of *Sovtransavto Holding* against Ukraine adopted by the Committee of Ministers on 11 February 2004 – see notably § 77).

¹⁸¹ In its judgment of 18 November 2004 in the case of *Pravednaya v. Russia*, the Court stated that "higher courts' power of review should be exercised for correction of judicial mistakes, miscarriages of justice, and not to substitute a review. The review cannot be treated as an appeal in disguise, and the mere possibility of two views on the subject is not a ground for re-examination".

328. As regards the further reforms required, these ought to aim at increasing the capacity of the court system to provide high quality justice within the framework of ordinary proceedings, so as to avoid having recourse to extra-ordinary remedies to achieve this result. Reforms might also consider strengthening the capacity of the Supreme Court and of appellate courts to guarantee a correct and uniform application of the law.

329. In the field of criminal justice the situation was improved by the enactment of the new code for criminal procedure. According to Chapter 48 of the Code, the prosecutor can lodge a motion for a supervisory review and the accused (suspect, convict, acquitted) or victim – a supervisory complaint with regard to a final court judgment (resolution or ruling) without any time limits and on excessively open grounds. However, Article 405 now guarantees that as a result of the supervisory review of a sentence the status of the convict can not be aggravated¹⁸².

330. Along with the supervisory review, the Code envisages the possibility of re-opening the proceedings due to emergence of new or newly discovered circumstances within one-year limit in cases where an acquittal sentence was passed or the case was closed (there are no time-limits if the proceedings are re-opened for the benefit of convict). The latter procedure is generally in line with Article 4 of Protocol no. 7 to the ECHR and Committee of Ministers Recommendation No. R (2000) 2 on the re-examination or re-opening of certain cases at the domestic level following judgments of the European Court of Human Rights.

Length of procedure

331. In many member States of the Council of Europe¹⁸³, excessive length of procedure has been one of the main complaints brought before the Court. The Russian Federation is no exception: a number of judgments have already found Russia in violation of article 6 § 1 of the Convention on this point¹⁸⁴, in particular because under the existing legislation, final judgments could repeatedly be quashed by way of the supervisory review (see above).

Enforcement of judgements

332. Another major problem which the Russian authorities will have to address is the non execution of domestic judgments, which was at issue *inter alia* in the cases of Burdov (May 2002) and Timofeyev (23 October 2004). The Court reiterated in the Timofeyev judgment that "Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants without protecting the implementation of judicial decisions; execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6".

J. Freedom of movement and residence, migration and citizenship

333. One of the Russian accession commitments was to guarantee effective exercise of the rights enshrined in Article 27 of the Constitution¹⁸⁵ and in the law on freedom of movement and choice of place of residence (Opinion No. 193 (1996), § 7.viii.). In its Resolution 1277 (2002), the Assembly, whilst noting that the Russian federal authorities had achieved notable progress in abolishing the remains of the old *propiska* (internal registration) system, regretted that restrictive registration requirements continue to be enforced, often in a discriminatory manner, against ethnic minorities. Therefore, the Assembly reiterated its call made in Recommendation 1544 (2001), urging member

¹⁸² However, on 11 May 2005, the Constitutional Court found Article 405 to be incompatible with the Constitution and Article 4 § 2 of Protocol 7 to the European Convention on Human Rights. It held that this provision was discriminating the rights of victims and did not allow for the rectification of significant breaches committed during the previous proceedings.

¹⁸³ France, Italy, or Portugal, for example.

¹⁸⁴ See for example the cases of Kormacheva (judgment of 29 January 2004), Plaksin (judgment of 29 April 2004), or Yemanokova (judgment of 23 September 2004).

¹⁸⁵ Article 27 § 1: Every person who legally resides in the territory of the Russian Federation shall have the right to freely move and choose his place of residence or domicile. Exceptions shall be established by federal law. § 2: Every person may freely leave the Russian Federation. Citizens of the Russian Federation shall have the right to freely return to the Russian Federation.

states concerned "to undertake a thorough review of national laws and policies with a view to eliminating any provisions which might impede the right to freedom of movement and choice of place of residence within internal borders". In its Recommendation 1667 (2004)¹⁸⁶, the Assembly also noted that the *propiska*, although formally outlawed, can be traced in administrative regulations and practice causing undue hardship to the displaced population.

334. The Federal Law "On Freedom of Movement and Residence within the Russian Federation for the Russian citizens" was adopted in 1993. The law requires compulsory registration of residence and stay, and provides an obligation to live or stay at the place of registration. The law is enforced through administrative (police) control over residence registration.

335. The 1993 Law on freedom of movement stipulates that registration or its absence can not serve as a ground for restricting or conditioning the implementation of citizens' rights and freedoms. However, this provision is sometimes overturned by the practice since the system of registration is closely linked with other public registries: taxation, military draft, police records, etc. Also in order to receive an internal passport one has to prove his/her registration.

336. The detailed procedure for registration is set forth in the regulations approved by the Government¹⁸⁷. The citizens arriving for a temporary stay (more than 10 days) in the dwelling which is not their place of regular residence are obliged to register themselves within 3 days after the arrival¹⁸⁸. They must provide a document which gives legal grounds for stay in this temporary place (rent contract or the declaration of the premise's owner). Similar rules are applied when the place of residence is changed.

337. We note with satisfaction that in August 2004 these regulations were amended and the provisions on possibility of refusal of registration were abolished. However, the regulations do still not clearly state that the registration procedure has a notification character and not of granting permission. Therefore, we urge the Russian authorities to secure that the lack of registration is not restricting the enjoyment of economic, social, and cultural rights.

338. The Federal Ombudsman Mr Lukin in his 2004 Annual report stated that the citizens' right to change their place of residence within the country continues to be infringed. The new procedure of registration by simple notification has mostly a formal character and has not resulted in practice in any significant improvement of the situation. The ombudsman continues to receive complaints on abuses committed by law enforcement agencies, in particular in connection with the imposition of fines for stay without registration. There is also a high risk of corruption and bribery in this field. In some Federation entities, including Moscow, the federal legislation is applied incorrectly while the complaints on the registration are processed; sometimes regional and local legislation contradicts the federal one.

339. In his recent report on Russia, the Council of Europe Commissioner for Human Rights noted that the *propiska*, a legacy from the Soviet era, was replaced with a new formality, registration, which is, in practice, virtually identical. He also referred to information indicating a high degree of corruption among the police linked to the registration procedure.

340. While welcoming the Russian authorities' acknowledgement of the fact that the Federal Law on freedom of movement should be brought in line with the Russian Constitution and European standards, we note that a restrictive draft law "On Registration of Russian Citizens" was submitted recently to the State Duma which *de facto* reinstates the *propiska* system. One of the proposals is to allow regional authorities to establish limitations on entrance. At the same time many regional and local authorities (including those of Moscow City) initiated the proposals to significantly toughen registration rules. We are alarmed by this tendency and urge the respective Russian authorities to ensure strict adherence to the right of freedom of movement and choice of residence.

¹⁸⁶ Recommendation 1667 (2004) Situation of refugees and displaced persons in the Russian Federation and some other CIS countries, Doc. 10118, report of the Committee on Migration, Refugees and Population, rapporteur: Mr Iwiński.

¹⁸⁷ Russian Federation Government Resolution No. 713 of 17 July 1995 as amended in 1996, 1997, 2000, and 2002.

¹⁸⁸ Recently, the registration period was extended to 3 months for all RF citizens after such a privilege was given initially in December 2004 to Ukrainian citizens only.

Internal passports

341. According to NGOs, the internal passport system in Russia is repressive and restrictive and the most frequent victims of this system are migrants and ethnic minorities. Administration officials, especially in housing and immigration departments, abuse the decision making power given to them by the internal passport system to discriminate against members of certain targeted minorities. According to Aleksandr Osipov, an expert on ethnic relations from the Moscow-based Memorial, "the most massive and painful problems of the country are related to the so-called "passport system". It is a classical example of institutional racism, with elements of organised direct discrimination by the state"¹⁸⁹.

342. A Russian citizen holding no passport is impaired in his rights to a degree amounting to an interference with his private life. The law requires that a person who wishes to find employment, receive free medical care, receive mail, marry, vote, use notaries' services, install a telephone line, save money by buying foreign currency or travel by train or aeroplane must be able to produce an internal passport. Furthermore, not having a passport is in itself an administrative offence¹⁹⁰.

343. In the case of *Smirnova v. Russia*, the European Court held on 24 July 2003 that the failure of the Russian authorities to return the internal passport to the applicant after her release from remand custody was a violation of Article 8 of the Convention. The Court found it established that in their everyday life Russian citizens have to prove their identity unusually often, even when performing such mundane tasks as exchanging currency or buying train tickets. The internal passport is also required for more crucial needs, for example, finding employment or receiving medical care. The deprivation of the passport therefore represented a continuing interference with the applicant's private life which in this case had no legal basis in domestic law.

Restrictions on international travel

344. In July 2003 Grigoriy Pasko's¹⁹¹ request for an international passport was refused by the Visas and Registration Department (OVIR) of the Moscow's South-Eastern District. OVIR based its decision to reject Pasko's application on "internal OVIR's instructions." This internal instruction, issued in 1998 and valid only in Moscow, banned providing passports to people released on parole because parole does not represent a "full" release from punishment¹⁹², meaning a person released on parole is restricted from travelling abroad. Mr Pasko unsuccessfully appealed to the Courts and was eventually given an international passport only in June 2004, after having renewed his application.

345. On 12 January 2005, the lower house – the State Duma – approved in the first reading a draft law introducing a number of amendments to the legislation on entering/leaving Russia's territory¹⁹³. Under the draft law, any foreigner, who has engaged in "disrespectful actions against the federal authorities, state symbols or basic spiritual, cultural, public values of Russian society" or who is considered to have damaged Russia's international prestige, can be barred from entering Russia. A decision on whether a foreigner's actions were disrespectful would be taken by the President, the

¹⁸⁹ Aleksander Osipov, "Europe, Russia, Durban", <http://www.hrights.ru/text/b15/Chapter7.htm>

¹⁹⁰ Historically, residence permits were used, both in Tsarist and Soviet times, as a means of restricting movement between countryside and town, and for law enforcement purposes. From 1932 onwards all Soviet citizens aged 16 and above were required to carry an internal passport, which had to bear a stamp (the propiska) stating their place of residence. However, Article 27 of the 1993 Constitution guarantees the right of everyone legally resident in the Russian Federation to move freely and to choose their place of residence. Registration, therefore, should entail informing the police of one's address. It should not give the police the opportunity to deny registration to those legally entitled to register. In practice, in many places, including Moscow and St Petersburg, and the southern regions of Stavropol and Krasnodar, registration procedures require people to seek permission to live at a particular address, rather than just give information of the fact of one's place of residence.

¹⁹¹ Pasko was arrested in 1997 and acquitted of treason but found guilty on lesser charges at his first trial, in 1999. He was convicted of treason and sentenced to four years in prison in December 2001. On 23 January 2003, he was released on parole after serving 2/3 of his sentence.

¹⁹² According to Article 13.4 of the Federal Law On the Procedure for Exit and Entry from/into the Russian Federation, a person can be limited in his/her right to leave the country if he/she did not serve his/her sentence or was not released from punishment. According to Article 79 of the Russian Criminal Code, release on parole is one of the types of release from punishment.

¹⁹³ Draft Law No. 111764-4 "On Insertion of Amendments to the Federal Law "On Entry into the Russian Federation and Exit from the Russian Federation" and the Federal Law "On the Legal Status of Foreigners in the Russian Federation", submitted by MP Mr Pligin, Chairman of the State Duma Committee on Constitutional Legislation and State Building. The second reading will take place in spring 2005.

parliament, the government or a court. We invite the Russian authorities to check these draft amendments against Russia's international obligations and in particular freedom of movement standards.

Lack of legal status

346. We have also been informed that between 600,000 and 1, 4 million people live on the territory of the Russian Federation without any legal status. Apart from illegal migration, the problem concerns deprivation of legal status of a large number of former Soviet citizens who previously resided legally in the Russian Federation and have been considered illegal migrants since the entry into force in 2002 of the Federal Laws on Russian Citizenship and on the Legal Status of Foreign Citizens in the Russian Federation. Thus citizens of the former USSR who didn't obtain Russian citizenship run into unsolvable problems when trying to receive a residence permit and may be deported. From 2005, when Soviet passports will no longer be valid as identity certifying documents, these persons will find themselves in a complete legal vacuum.

347. Many former Soviet nationals live in the country under a temporary registration or even without registration. It is not their fault – they cannot objectively comply with the passport system requirements or were arbitrarily denied registration.

*Asylum seekers*¹⁹⁴

348. The Advisory Committee to the Framework Convention for the Protection of National Minorities in its 2002 opinion expressed concern about the long delay in the processing of asylum claims, in particular in Moscow and the Moscow region, where asylum seekers may have to wait for more than two years before being able formally to initiate the application procedure. It was also concerned that the Migration Service in Moscow reportedly has not allowed unaccompanied children to lodge asylum claims unless they have a legal guardian. We hope this problem will be properly addressed by the Federal Migration Service and regional authorities and have taken note that according to the Russian authorities a draft new federal law on refugees has been under preparation since 2002.

K. Freedom of conscience and religion

349. Besides being committed by virtue of the Statute of the Council of Europe to ensure enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms including freedom of conscience and religion (Article 9 of the ECHR), the Russian Federation also assumed the following commitments: a) to introduce new laws in line with the Council of Europe standards:... on freedom of religion; b) to return without delay the property of religious institutions.

350. The liberal legislation on freedom of religion, adopted in the beginning of the 90's, promoted broad plurality of confessions and religious organisations throughout the Federation¹⁹⁵. However, the 1997 Federal Law on freedom of conscience and religious associations bears signs of unequal treatment of the various confessions by recognising "the special role of Orthodoxy in the history of Russia", by "respecting Christianity, Islam, Buddhism, Judaism, and other religions, constituting an integral part of the historical heritage of the peoples of Russia"¹⁹⁶. Being included in the Preamble of the Law and having no direct binding force, these provisions, nevertheless, inspire a discrimination of those confessions that are not mentioned. Hence, federal and regional authorities seem to offer a preferential treatment to the Russian Orthodox Church. We heard allegations that minority religious

¹⁹⁴ The Russian Federation continued to be the leading country of origin of asylum applicants in the industrialized countries in 2004 (30,100 applicants), and the majority of asylum-seekers from the Russian Federation are believed to originate from Chechnya, said the Office of the United Nations High Commissioner for Refugees (UNHCR) in its report published on 1 March 2005.

¹⁹⁵ According to the Ministry of Justice (1 May 2004), 21674 religious organisations and representations of foreign religious organisations from more than 63 different confessions were registered in the Russian Federation.

¹⁹⁶ The Russian Constitution proclaims that the Russian Federation shall be a secular state, and that no religion shall be established as a state or compulsory one. Religious associations shall be separated from the state and shall be equal before the law (Article 14). Every person shall be guaranteed the right to freedom of conscience, freedom of religion, including the right to profess, either alone or in community with others, any or no religion, to freely choose, have and disseminate religious or other convictions and to act according to them (Article 28).

communities must secure permission from the local Orthodox Church before being allowed to build a house of worship or that local authorities seek the advice of the Orthodox Church before dealing with such religious groups.

351. We were distressed to hear during our fact-finding missions reports about numerous cases of religiously motivated violence – physical violence, intimidation, other forms of attacks against the representatives of "non-traditional" confessions and their places of worship¹⁹⁷. In most cases the local and regional authorities turned a blind eye to these attacks and did not prosecute their authors.

352. Foreign religious leaders and missionaries have experienced difficulty gaining entry visas or maintaining residence in Russia¹⁹⁸. Since the beginning of 2002, a Catholic Bishop and several priests have been expelled from Russia, including those who had lived in Russia for years. In addition to the denials or revocations of visas for Catholic priests, there were reportedly numerous other cases in which foreign religious workers were denied visas to enter or re-enter the country, including members of the Protestant Christian, Buddhist, and Muslim faiths. In the Krasnodar and Kaliningrad regions priest and nuns can obtain only 3 month visas. In late 2003, a court in Tatarstan denied a new residence permit to a Baptist missionary on the basis of the assessment of local security officials that his activities were "extremist". The Buddhist community of Kalmykia for several years has been appealing to the Russian Foreign Affairs Ministry to reverse previous visa denials and allow its spiritual leader, the Dalai Lama, to visit Russia. We welcome the fact that the Dalai Lama was allowed in November 2004 to visit Kalmykiya.

353. A July 2002 Law "On the Legal Status of Foreign Citizens in the Russian Federation", which transferred much of the responsibility for visa affairs from the Ministry of Foreign Affairs to the Ministry of Interior, appears to have disrupted the visa regime for religious and other foreign workers, contributing to the sharp decrease in the issuance of long-term visas and causing hardship for many groups. The FSB has asserted itself into matters dealing with visas and religion, particularly where groups it views as "dangerous cults and sects" are concerned. For example, an FSB official who acted as the official representative of the country at the meeting on 16 June 2004 of the Organisation for Security and Co-operation in Europe (OSCE) on the Relationship between Racist, Xenophobic, and anti-Semitic Propaganda on the Internet and Hate Crimes presented an official statement that labelled members of Jehovah's Witnesses and Hare Krishna's as examples of xenophobic cults that propagated "fanatical devotion and rejection of other religions" on their Web sites¹⁹⁹.

354. During 2004 mass media reported numerous cases of illegal personal data collecting by regional departments of the Ministry of Justice. For instance, in Chelyabinsk, Samara, and Yaroslavl the Justice Departments sent a questionnaire to religious organisations which included a requirement to attach a list of parishioners. Such practice existed during Soviet rule when churches, mosques, and synagogues had to present personal information about parishioners to the responsible agencies but disappeared with the breakdown of the USSR. The practice of collecting personal data of the parishioners in regions of Russia should be stopped; the central department of the Ministry of Justice should advise its regional offices on the inadmissibility of such requirements.

355. Another frequently cited major problem with enjoyment of freedom of religion is the allocation of land for the construction of places of worship for some religious communities. This especially concerns minority confessions, in particular Jehovah's Witnesses, which encountered problems in Yekaterinburg, Kazan, Dalnegorsk, Adler, and St. Petersburg. Another case of difficulties in obtaining

¹⁹⁷ Among them: violent disruption of the gathering by the law enforcement bodies and the burning down of the house of the Evangelical Christian Baptists in the town of Lyubuchany, Moscow region, in August and September 2004; numerous attacks on the church of Evangelical Christians-Baptists "Arch" in the town of Balashikha, Moscow region; arsons of the Pentecostal churches in Podolsk, Chekhovo, Tula, Lipetsk, Tyumen, Nizhny Tagil; on the eve of a national conference in January 2004, the "Initiative" Baptist church in Tula was bombed; attack on Hare Krishna church in Rostov-upon-Don. Jewish religious buildings have been subjected to vandalism and arson (attacks on synagogues in Kostroma, Chelyabinsk, Moscow, Vladivostok, and Kaliningrad were reported). Annual Report of the US Commission on International Religious Freedom, May 2004, <http://www.uscifr.gov/countries/publications/currentreport/index.html>.

¹⁹⁸ Problems with obtaining temporary residence permits were for example reported in the Krasnodar region and the Republic of Tatarstan.

¹⁹⁹ International Religious Freedom Report 2004, released by the Bureau of Democracy, Human Rights, and Labour of the US Department of State, <http://www.state.gov/g/drl/rls/irf/2004/35480.htm>

a plot of land was reported by a Jewish community in Yekaterinburg. They claimed that the previously allocated site was later taken away for the construction of the presidential envoy's residence (during our meeting with the presidential envoy, Mr Latyshev neither confirmed nor disputed the allegations).

356. We are alarmed by the recent trend of segregation of religious organisations into traditional and non-traditional groups. Recognising the fact that the federal authorities are trying to secure the unhindered realisation of the freedom of religion, we have to state that regional and local bodies in many cases are reluctant to protect the rights of religious communities and fail to address properly the cases of freedom of religion violations.

357. At the same time, the State Duma hasn't supported so far the initiatives to formally grant special status to the so-called traditional religious organisations²⁰⁰, notwithstanding the 26 March 2004 Presidential statement in favour of drafting a bill on state support "to the spiritual leaders of traditional religious confessions," the ITAR-Tass news agency reported.

The Salvation Army and Jehovah's Witnesses cases

358. In its Resolution 1277 (2002), the Assembly regretted the problems of the Salvation Army²⁰¹ and Jehovah's Witnesses in Moscow, but welcomed the decision of the Russian authorities to ensure that the problem of local discrimination and harassment of these religious communities be brought to an end. However, we have to report that to date both organisations continue to face legal and/or practical obstacles in conducting their activities in some regions of the Federation.

359. In February 2003, the Taganskiy District Court of Moscow quashed its own September 2001 decision ordering liquidation of the Moscow branch of the Salvation Army following a ruling by the Constitutional Court of 7 February 2002²⁰². As the ruling of the Constitutional Court concerned only the liquidation procedure, the decisions on refusal to re-register taken in 2000 remain in force. The Moscow branch of the Salvation Army is to date *de facto* deprived of its legal status, since the time limit for re-registration has expired.

360. The Moscow branch of the Salvation Army has lodged an application with the European Court of Human Rights on 18 May 2001, which was declared admissible in June 2004²⁰³. In its application, the Moscow branch of the Salvation Army complained under Articles 9 and 11 of the Convention that the refusal to grant legal entity status severely curtails its ability to manifest its religion in worship and practice. The applicant submits that the classification of the Salvation Army as a paramilitary organisation and the assumption that its members would inevitably break Russian law are not founded on any factual proof and represent an impermissible judgement about the legitimacy of the applicant's religion.

361. Jehovah's Witnesses. On 26 March 2004, the Golovinskiy District Court of Moscow passed a ruling banning activity of Jehovah's Witnesses organisation in the Russian capital under a provision of the 1997 Law that allows courts to ban religious groups believed to incite hatred or intolerant

²⁰⁰ The last relevant draft law was submitted in April 2004.

²⁰¹ In August 1992, the Salvation Army was created and registered as a religious organisation having legal entity status. In 1999, it was refused re-registration as required by the 1997 Law on Freedom of Conscience and Religious Associations. In July 2000, the Presnenskiy District Court of Moscow upheld the refusal by the Moscow Justice Department of the Moscow branch of the Salvation Army re-registration. In the Presnenskiy court's ruling, the Salvation Army was referred to as a "paramilitary organisation." In November 2000, the Moscow City Court upheld the judgement of 5 July 2000. In September 2001, the Taganskiy District Court issued a decision ordering liquidation of the Moscow branch of the Salvation Army upon the request from the Ministry of Justice which is required to seek the liquidation of groups failing to re-register according to the 1997 Law. The Moscow City Court upheld the decision in December 2001.

²⁰² The Constitutional Court of the Russian Federation held that re-registration of a religious organisation could not be made conditional on the fulfilment of requirements that were introduced by the 1997 Law and had not legally existed at the time of the founding of the organisation. A court could only decide on liquidation of an organisation that failed to bring its documents in compliance with the Law, if it was duly established that the organisation had ceased its functioning or engaged in unlawful activities. The Court also emphasised that a court decision on liquidation of an organisation that failed to obtain re-registration was to be reasoned beyond a reference to such formal indications for liquidation as the failure to re-register or the failure to provide information on its continuing functioning. The Court finally held that the branch's case was to be reheard in the part differing from the interpretation of the Law given by the Constitutional Court.

²⁰³ Moscow branch of the Salvation Army v. Russia, Application No. 72881/01.

behaviour²⁰⁴. This was confirmed on appeal by the Moscow City Court on 16 June 2004. Notwithstanding the fact that the national office of the organisation was registered before, Moscow courts have found the community guilty of forcing families to disintegrate, infringing rights and freedoms of the citizen, encouraging suicide or the refusal on religious grounds of medical aid to the critically ill, and inciting citizens to refuse to fulfil their civil obligations established by law. The Jehovah's Witnesses became the first national religious organisation to have a local branch banned under the 1997 law. The organisation lodged an application with the European Court of Human Rights the examination of which is pending.

362. Many local congregations of Jehovah's Witnesses throughout the country reported that the rental contracts on their buildings were either being cancelled or that they faced that risk by landlords. Members of Jehovah's Witnesses reported an increase in these denials after court decisions to ban all religious activity by the group in Moscow, first on 26 March and then on 16 June, were publicised. Some landlords misunderstood the ruling and believed they were compelled by law to cancel rental contracts with the group. In Sochi, in June, members of Jehovah's Witnesses were denied access to a meeting venue after the FSB pressured the landlord; the decision to deny access was later reversed and the meeting took place.

363. We've been also disappointed to learn that this organisation is being prosecuted not only in Moscow city but also in some other regions we visited, in particular in Yekaterinburg where the congress of Jehovah's Witnesses was disrupted last summer by representatives of the local authorities. The Jehovah's Witnesses' local conventions have been also disrupted in Moscow, Vladimir, Khabarovsk, Stavropol Kray, Nizhny Novgorod, Pyatigorsk, Sochi, and Chelyabinsk²⁰⁵.

364. We call on the Russian authorities of all levels to ensure equal treatment for all faiths under the law. We refer to the Assembly's recommendation to the Russian authorities expressed in Resolution 1278 (2002)²⁰⁶ that the law on religion be more uniformly applied throughout the Russian Federation, ending unjustified regional and local discrimination against certain religious communities and local officials' preferential treatment of the Russian Orthodox Church, and in particular their insisting in certain districts that religious organisations obtain prior agreement for their activities from the Russian Orthodox Church.

Legal framework on freedom of conscience and religious associations

365. One of the Russian Federation's commitments was to introduce new laws in line with Council of Europe standards, in particular on freedom of religion (Opinion No. 193 (1996), § 7.v.). The Federal Law "On Freedom of Conscience and Religious Associations" entered into force on 1 October 1997 replacing a 1990 law on the same subject. This new legislation has been criticised both at home and abroad on the grounds that it disregards the principle of equality of religions. The Law's preamble specially mentions Orthodoxy, Christianity, Islam, Buddhism, and Judaism. In practice administrative bodies and the courts, interpreting the act as a whole from the point of view of its preamble, quite often treat the "non-traditional religious organisations" as "totalitarian sects"²⁰⁷.

²⁰⁴ Proceedings were first launched to ban the Jehovah's Witnesses in Moscow in 1998. The Prokuratura of Moscow's Northern Circuit banned the local organisation of Jehovah's Witnesses on the grounds that it was a threat to society, a basis for banning a religious organisation under the 1997 law. Unlike liquidation, which involves "only" the loss of legal status, a ban prohibits the activities of an entire religious community. In 2001, a Moscow court ruled against the ban, but a higher court subsequently ordered a new hearing in the case and the second trial began in November 2002. The prosecution offered testimony from religious experts describing the Jehovah's Witnesses as "a totalitarian sect" that "tries to control people's consciousness."

²⁰⁵ In September 2004 the European Court of Human Rights declared admissible, without prejudging the merits, the 102 applicants' complaint about a disruption of Jehovah's Witnesses religious meeting and unfair hearing on their complaint in the town of Chelyabinsk in March 2000: see Kuznetsov and others v. Russia, Application No. 184/02.

²⁰⁶ Assembly's Resolution 1278 (2002), Russia's law on religion, adopted on 23 April 2002, paragraph 6. Doc. 9393, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr McNamara.

²⁰⁷ Special Report of the Russian Federation Ombudsman "On Implementation by Russia of its Obligations Undertaken When Joining the Council of Europe", 20 May 2002, <http://www.ombudsmanrf.ru/doc/spdoc/0102.shtml>.

366. The law then goes on to draw a distinction between "religious organisations", according to whether or not they existed before 1982, and a third category, called "religious groups". Religious organisations that existed for less than fifteen years, and religious groups are subject to legal and tax disadvantages and their activities are restricted²⁰⁸.

367. The intent appears to have been to discriminate against members of foreign and less well-known religions by making it difficult for them to establish religious organisations. For example, many officials in law enforcement bodies and the legislative branches speak of the need to protect the "spiritual security" of the country by discouraging the growth of "sects" and "cults," usually understood to include Protestant and newer religious movements. The 1997 law is very complex, with many ambiguous provisions; and it creates various categories of religious communities with differing levels of legal status and privileges. Most significantly, the law distinguishes between religious "groups" and "organisations." A religious "group" is not registered and consequently does not have the legal status of a legal person; it may not open a bank account, own property, issue invitations to foreign guests, publish literature, or conduct worship services in prisons and state-owned hospitals and among the armed forces. It does not enjoy tax benefits or the right to proselytise. Individual members of the group may buy property for the group's use, invite personal guests to engage in religious instruction, and import religious material. In this way, groups theoretically are permitted to rent public spaces and hold services; however, in practice members of unregistered groups sometimes encounter significant difficulty in exercising these rights.

368. The 1997 law provides that a group that has existed for 15 years and has at least ten Russian members may register as a "local religious organisation." It acquires the status of a legal entity and receives certain legal advantages. "Centralised" religious organisation can be formed only from no fewer than three local religious organisations of the same confession. Thus, the 1997 law provides for a very complicated procedure to establish a new non-local religious organisation which can operate on more than one "territory" (the law also doesn't define clearly the administrative entities included in such "local territory"). Taking into account the significant discrepancy in rights attached to religious groups and organisations, this provision can be viewed as discriminating against minority or new beliefs.

369. Moreover, to be allowed to include in its name words "Russia", "Russian", and their derivatives the centralised religious organisation's structures have to operate on the territory of the Russian Federation on a legal basis for a period of no fewer than fifty years at the time of the application to the registration agency for state registration.

370. Some of these concerns have been addressed, notably through the decisions of the Constitutional Court of the Russian Federation of 23 November 1999, 13 April 2000, and 7 February 2002. Although the Court has already restricted the application of the so-called "fifteen-year rule", which initially severely limited the rights of religious groups that could not prove their existence on Russian territory for at least fifteen years before the new law entered into force, the total abolition of this rule would be considered as an important improvement of the legislative basis²⁰⁹.

371. Although the Law provides that foreign citizens and persons without citizenship who legally reside on the territory of the Russian Federation enjoy the right to freedom of conscience and freedom of religious profession on a equal basis with citizens of the Russian Federation (Article 3), it also stipulates that only citizens and other persons "permanently and legally residing on the territory of the Russian federation" can associate into a religious organisations (be founders or members of such organisations). This provision can be viewed as contradictory to Article 28 of the Russian Constitution and Article 9 of the European Convention of Human Rights since the Russian legislation provides for special procedure for obtaining permanent residence.

372. The Russian Federation Ombudsman in his Special Report "On Implementation by Russia of its Obligations Undertaken When Joining the Council of Europe" released in May 2002, also noted that Article 3 (2) of the Law provided for the possibility of restricting freedom of religion if necessary to protect state security, whereas Article 9 of the ECHR contains no such restriction.

²⁰⁸ Report by the Assembly's Monitoring Committee on the honouring of obligations and commitments by the Russian Federation (Doc. 9396 (2002)).

²⁰⁹ Assembly's Resolution 1278 (2002), paragraph 2.

373. A Law "On Counteracting Extremist Activities" was adopted in July 2002 with the goal of reducing religious and ethnic intolerance and limiting the activities of ultra-right-wing organisations. The legislation prohibits advocating in public speech the superiority of any group based on religion, race, nationality, language, or other attributes. Critics charged that the legislation could prompt a dangerous expansion of police power and that the Government had already demonstrated a lack of political will in implementing existing legislation²¹⁰. Some observers expressed particular concern about the effect of the legislation on religious freedom. In 2003, authorities in Samara subsequently made use of the anti-extremism legislation to cancel the registration of a Buddhist community and the Church of the Last Covenant, and to refuse registration to communities of Scientologists and the Unification Church. At the same time, in the vast majority of crimes targeting Jewish organisations and property, officials generally ignore the anti-Semitic motivation of the crimes and prosecute criminals under the much more lenient charge of "hooliganism".

374. Therefore, we urge the Russian authorities to revise the 1997 Law on freedom of conscience and religious associations, in particular, in order to eliminate the discriminatory provisions hindering registration of new religious organisations; simplify the registration procedures; grant more rights to unregistered religious groups; bring other provisions of the law into line with the Russian Constitution and European Convention for the Protection of Human Rights and Fundamental Freedoms as interpreted in the case law of the European Court of Human Rights.

375. Russia also undertook to return without delay the property of religious institutions (Opinion No. 193 (1996), § 10.xiii.). We note that the restitution of religious property seized by the Soviet government remains an issue. Most properties used for religious services, including churches, synagogues, and mosques, have been returned. But, for instance, the Jewish community is still seeking the return of a number of synagogues, religious scrolls, and cultural and religious artefacts. In Kazan, the former cathedral of the Roman Catholic Church has not been returned because it's now a laboratory of an aviation institute.

376. The Russian Orthodox Church appears to have had greater success reclaiming pre-revolutionary property than other groups, although it still has disputed property despite its preferential treatment. The St. Petersburg Russian Orthodox Old Believers' Community has not been able to get its church returned, which was confiscated by Soviet authorities in 1922. Roman Catholics continue to pursue legal avenues towards restoration of the Saint Peter and Saint Paul Cathedral in Moscow. The office of an oil company currently occupies the cathedral, and the Catholic parish is meeting in a former disco hall because it does not expect the company to vacate the premises.

377. In this regard, we welcome the adoption by the Russian parliament of the law²¹¹ granting the religious organisations a free of charge right of ownership on the plots of state or municipal land occupied by the religious constructions (if the relevant construction is owned by the organisation) or gratuitous long-term possession. We hope that this law will be implemented without any discrimination to the different religious organisations and will relieve them from the need to pay for or purchase land on which their buildings are already located.

378. Therefore, we urge the Russian authorities to solve remaining problems with the return of property to the religious institutions without further delay.

L. Alternative military service

379. Another commitment of the Russian Federation was to adopt a law on alternative military service, as foreseen in Article 59 of the constitution (Opinion No. 193 (1996), § 10.xviii.). This law was adopted in July 2002 and took effect on 1 January 2004. Two supplements to the law were issued in March 2004 – the first one listed 722 organisations to which draftees may be assigned for alternative service, and the second listed 283 activities that draftees were permitted to perform. In May 2004 the Russian Government approved the by-laws regarding the implementation of the law on alternative

²¹⁰ Such as Article 282 of the Criminal Code which deals with incitement to national, racial, or religious hatred.

²¹¹ Federal Law No.123-FZ "On Insertion of the Amendments to the Land Code of the Russian Federation, Federal Law "On Implementation of the Land Code", and Federal Law "On Return of Agricultural Lands", signed by the President on 3 October 2004.

civilian service performance. In July 2003 the President adopted a decree defining the special state bodies authorised to organise alternative civil service – Ministry of Labour and Social Development (in March 2004 this function was transferred to the Federal Service of Labour and Employment) and Ministry of Defence.

380. The Law is often criticised for a number of its provisions. The term of alternative civil service is 1.75 times longer than the regular military service (42 months or 21 months for university graduates). But if served in the "organisations of the Armed Forces" the term of service is cut down to that of 1.5 times of the ordinary military service; conscripts who opt for alternative service have to absolve it outside the territory of the Russian Federation subject where they currently reside, thus loosening their family and social ties.

381. We consider that the new law is not compatible with European standards and can't be regarded as an effective one. Unfortunately, the new law reflects in most of its provisions the position of the Ministry of Defence of the Russian Federation, which formally took the stand of supporting the introduction of alternative civil service, while in fact setting obstacles in its way²¹².

382. Thus the Law in practice denies the right of alternative service to the majority of young men willing to choose it. Alternative military service as provided by the Law serves as a punishment for those who choose to exercise their religious or moral convictions²¹³. That is why the law is prohibitive and mostly ineffective - only a small number of those drafted opted for alternative service during 2004 (not more than 1%)²¹⁴.

383. In our view, it is also unusual that those who choose alternative civil service are often required to perform their 3 and a half years working in industry or other economic units. The aim of alternative civil service should not be to provide companies, even public ones, with cheap workforces but to give those opposed to military service the possibility to serve society as a whole, through work carried out in the non-profit public sector, for example in hospitals, schools, retirement homes and the like.

384. In this regard, we should notice that Russia's commitment concerning the law on alternative civil service was not fulfilled as it implies not only the mere adoption of a law but also its compliance and implementation in line with European standards. A law which de-facto hinders and discourages those who refuse to bear arms for religious or other reasons of conscience from choosing non-military service cannot be considered as satisfactory. Thus we urge Russian authorities to revise the law in line with applicable European standards.

M. Freedom of expression²¹⁵

385. In recent years, Russia is witnessing a shrinking of freedom of expression. Several show cases of closure or takeover of media outlets (takeover of NTV channel, closure of TVS channel, shutting of several independent analytical programs on national television, etc.) promoted an atmosphere of self-censorship among the journalistic community.

Physical violence

386. An increase of physical violence against journalists has also been reported. According to the International Federation of Journalists, twelve journalists and media staff workers have been killed in the Russian Federation in 2003, three more than a year before²¹⁶. On 9 July 2004, Paul Khlebnikov,

²¹² Special Report of the Russian Federation Ombudsman "On Implementation by Russia of its Obligations Undertaken When Joining the Council of Europe", May 20, 2002, <http://www.ombudsmanrf.ru/doc/spdoc/0102.shtml>.

²¹³ This is also confirmed in the Concluding observations of the United Nations Human Rights Committee (6 November 2003, CCPR/CO/79/RUS) which was "concerned that the Alternative Civilian Service Act ... appears to be punitive in nature by prescribing civil service of a length 1.7 times that of normal military service". Furthermore, "the law does not appear to guarantee that the tasks to be performed by conscientious objectors are compatible with their convictions."

²¹⁴ From 176,393 people called up according to the presidential decree for autumn 2004 conscription only 1,530 young people (0.8%) applied for alternative service. Moreover, almost 500 of them failed to convince conscription commissions that they had chosen alternative service for their beliefs. In the Moscow region, only 5 young men had applied by October 2004.

²¹⁵ See also "Pluralism of the media" in this report's Chapter "Functioning of pluralist democracy".

²¹⁶ Six of them died in accidents.

editor-in-chief of the Russian edition of Forbes, was shot dead as he was leaving his office building in Moscow. In May, the magazine had published a list of the 100 wealthiest people in Russia, many of whom said they were unhappy about the publication. No significant progress in the investigation of this murder was made so far.

Harassment and intimidation

387. The OSCE Representative on Freedom of the Media's in his "Report on Russian media coverage of the Beslan tragedy" noted several worrying cases of harassment of journalists: Anna Politkovskaya, a correspondent from *Novaya Gazeta*, was prevented from coming to Beslan as she was allegedly poisoned on the board of the plane flying to Rostov-on-Don; Andrey Babitskiy, the correspondent for *Radio Liberty*, was detained at Moscow's airport on 2 September on his way to cover the siege after being arrested²¹⁷ for "hooliganism"; Nana Lezhava, a reporter with Georgian Rustavi-2 TV channel and her cameraman were detained on 4 September for not having the proper documents to work in the region. They were taken to an FSB building in the nearby city of Vladikavkaz, where Lezhava said she underwent a "forced gynaecological inspection."

388. On 3 September, during and after the storming of the school, tapes with content of the storming were confiscated from TV crews from ZDF (Germany), ARD (Germany), APTV (USA), and *Rustavi-2* (Georgia); on 7 September, North-Ossetian security services expelled the crew (correspondent Zurab Dvali and his cameraman) from the Georgian TV channel Mze from Beslan without any explanation. On 6 September 2004, the editor-in-chief of the Russian daily *Izvestia* Raf Shakirov was fired by the paper's owner after the newspaper's coverage of the Beslan events²¹⁸.

Libel lawsuits

389. We are concerned by the current defamation legislation and its application by the Russian judiciary and executive powers. Journalists are often prosecuted through libel suits (approximately 8-10,000 lawsuits a year). As reported by the Centre for Journalism in Extreme Situations, the number of prosecutions of journalists has increased significantly as from 2000. 49 criminal cases were opened in 2002 and, on average, 30-35 criminal proceedings were instituted against journalists in 2003-2004.

390. In October 2004, *Kommersant*, one of the few printed outlets still critical of the Russian government, was sentenced inter alia to pay more than EUR 8 million of "reputational damage" as claimed by Alfa Bank for the damage caused to its business reputation by an article published in *Kommersant* about "serious problems" encountered by the bank during last summer's financial crisis. Since the judgement amounted in total to about 70% of the newspaper's assets, it had to obtain a bank loan to pay it out²¹⁹. This judgement was upheld by the Arbitration Appellate Court in December 2004. We believe that imposition of excessive and unproportional pecuniary damages should be discouraged inasmuch as large financial penalties inhibit the free flow of information and have a "chilling effect" on the freedom of expression.

²¹⁷ He was jailed for five days after two young men picked a fight with him at the airport. The two later told the daily *Moskovskiy Komsomolets* that they had been hired by the Federal Security Service (FSB) to start the fight.

²¹⁸ Moscow News, 06.09.2004, <http://mosnews.com/news/2004/09/06/daily.shtml>. Speaking to Radio Free Europe, Shakirov explained that the newspaper's owner, Prof-Media company, was displeased with how the *Izvestia* covered the tragedy. Investors found the Saturday issue "too emotional and poster-style," he said.

²¹⁹ In November 2004, the World Association of Newspapers and the World Editors Forum have protested to Russian authorities against an excessive libel judgement. "We would like to draw your attention to the belief widely held among the global press that the award of such massive damages, which are almost 10 times higher than any sum previously awarded, might appear to be politically motivated and intended to intimidate critical media," the Paris-based WAN and WEF said in a letter to Chairman of Russia's High Arbitration Court.

391. Furthermore, the Russian Criminal Code still mentions libel as a criminal offence²²⁰. This seems to be in contradiction with the practice in other European states and raises serious doubts as to its compatibility with Article 10 of the European Convention on Human Rights²²¹. During the 18 February 2005 Tripartite meeting of the High-level representatives of the Council of Europe/OSCE/UN, it was noted that decriminalisation of defamation was considered an effective means to enhance freedom of expression and information if, in parallel, the level of pecuniary sanctions for libel and defamation was also monitored.

392. Also the legislation concerned should not grant any special protection against criticism to public officials²²². Article 298 of the Criminal Code, however, provides for some of the harshest penalties available if the defamation involves a judge, prosecutor, investigator, police, or court officer. Finally, the possibility of filing lawsuits against media and journalists by public authorities should be abolished as the latter *per se* can not possess any dignity, honour, or reputation.

393. Therefore, we urge the Russian authorities to reform its defamation legislation, *inter alia*: to decriminalise libel, to rescind additional defamation protection for public officials, to introduce a clear ban on public bodies to institute civil proceedings in order to protect their "reputation" (without hindrance to the right of public officials to litigate in their private capacity), to clearly establish that no one should be liable under defamation law for the expression of an opinion ('value judgements'), to prioritise non-pecuniary forms of redress over pecuniary remedies, and to enhance protection of journalists' sources of information²²³.

'Spy Mania'

394. Throughout the past eight years, the Federal Security Service (FSB) has pressed often dubious espionage charges against about a dozen scientists, journalists, and environmentalists²²⁴. Each of the defendants had worked with foreign contacts on issues that, in Soviet times, were under the exclusive control of the FSB's predecessor, the KGB – nuclear waste dumping, environmental degradation, Russia's military preparedness, military technology, and the like – but that became topics of broader public debate during the *glasnost* era. Leading human rights campaigners, who have coined the term "spy mania" (in Russian: *shpionomania*) to describe the series of espionage cases, believe the FSB has intentionally pressed false charges against these individuals to restore what it sees as its exclusive dominion, and to impose new limitations on freedom of expression on these topics²²⁵.

²²⁰ In August 2003, a Chelyabinsk district court sentenced German Galkin, editor-in-chief of Vecherniy Chelyabinsk daily and director of Vecherniy Chelyabinsk publishing house, to a 1 year term in a hard labour camp as a result of a libel suit filed in 2002 by two vice-governors of Chelyabinsk region. According to Glasnost Defence Foundation, Galkin was the first journalist in the post Soviet era to be jailed for libel. In November 2003, the Chelyabinsk regional court upheld the sentence but suspended it, and Galkin was released after 3 months in prison. On 30 March 2004, the same court rejected Galkin's appeal for his full acquittal.

²²¹ See among many others the judgments of the Court in the cases of *Castells v. Spain* and *Colombani and Others v. France*. The leading freedom of expression organisation Article 19 also upholds the abolishment of all criminal defamation laws and replacement thereof, where necessary, with appropriate civil defamation laws, since in many countries "criminal defamation laws are abused by the powerful to limit criticism and to stifle public debate".

²²² See, *inter alia*, *Oberschlick v. Austria*.

²²³ In line with the Council of Europe Committee of Ministers Recommendation No. R (2000) 7 on the right of journalists not to disclose their sources of information and ECHR case-law (e.g. *Goodwin v. the United Kingdom*, *De Haes and Gijssels v. Belgium*).

²²⁴ In May 1998, the FSB arrested Valentin Danilov, director of a research centre at Krasnoyarsk State Technical University, and charged him with espionage. The arrest also on charges of espionage of Valentin Moiseev, a Russian diplomat and Korea expert, followed two months later. In July 1999, the FSB found a secret map of a submarine base during a search at the apartment of Vladimir Stiffer, a scientist who had for forty years worked on nuclear pollution problems in the Sea of Japan, and accused him of intending to disclose it to a foreign organisation. In August 2000, FSB officers charged Valeriy Kovalchuk with illegal export of military technology. In August 2003, a court in Vladivostok found Vladimir Shchurov guilty of disclosing state secrets. The court gave Shchurov a two year suspended sentence and immediately relieved him of the sentence under a general amnesty. In February 2003, the Moscow City Court found Anatolii Babkin guilty but sentenced him to an eight-year suspended prison term with five years of probation.

²²⁵ "Russia's 'Spy Mania': A Study of the Case of Igor Sutiagin" Human Rights Watch Briefing Paper, October 2003. The United Nations Human Rights Committee in its November 2003 Concluding observations on the Russian Federation report submitted under Article 40 of the International Covenant on Civil and Political Rights also expressed its concern that journalists, researchers and environmental activists have been tried and convicted on treason charges, essentially for having disseminated information of legitimate public interest, and that in some cases where the charges were not proven, the courts have referred the matter back to prosecutors instead of dismissing the charges.

395. The Grigoriy Pasko case. The Assembly in its Resolution 1354 (2003)²²⁶ recalled that democracy is based on freedom of the press and freedom of expression. These freedoms must not be curtailed by intimidation and prosecution of critical journalists such as Mr Pasko. The Assembly found that the most important conclusion to be drawn from Mr Pasko's case was that the definition of what constitutes a state secret must be clarified and, first and foremost, made public. It is unacceptable, states the Resolution, that whilst the (public) Federal Law on State Secrets contains some three dozen broadly drafted items, their detailed wording is contained in a secret decree by the Minister of Defence (Decree No. 55:96) which mentions some 700 instances of such secrets.

396. This gives the security services wide latitude in prosecuting treason cases, thus providing a formidable instrument of intimidation against journalists such as Mr Pasko and researchers such as Mr Nikitin, who was finally acquitted in September 2000 after having been prosecuted for more than four years on the basis of Decree No. 55:96²²⁷.

397. On 23 January 2003, Mr Pasko was released on parole as he had served 2/3 of his 4-year sentence²²⁸. In December 2002 he filed an application to the European Court of Human Rights complaining that the Russian authorities violated several of his rights under the European Convention on Human Rights throughout the proceedings taken against him. The examination of this application is pending. Besides Mr Pasko's meandering in the Russian military courts system for more than five years, he was then refused travelling abroad by the Moscow Visas and Registration Department that rejected his request for an international passport in June 2003²²⁹.

398. The Igor Sutiagin case. Igor Sutiagin was arrested on 29 October 1999, and subsequently charged with thirty-eight counts of high treason. Russia's Federal Security Service (FSB) accused him of collecting materials on a variety of issues relating to Russia's weapons systems and other military issues, and passing them on to U.S. military intelligence officers.

399. In December 2001, a regional court in Kaluga sent the case back to the FSB for further investigation. During the additional investigation, the FSB ordered a new expert assessment of all thirty-eight counts of the previous indictment. In July 2002, the experts from various Ministry of Defence departments concluded that only five of the thirty-eight materials did indeed contain classified information and that it could not have been obtained from the publicly available documents examined. On the basis of this expert assessment the FSB issued a new indictment charging Igor Sutiagin with five counts of high treason under article 275 of the Criminal Code. In September 2003, the case returned to the Moscow City Court. After the hearings started in November 2003 before a jury court as was requested by Sutiagin, in February 2004 the previous judge was replaced with a new one – Marina Komarova, a judge without previous jury trial experience who had earlier convicted diplomat Valentin Moiseev of treason in a trial that failed to meet international standards²³⁰.

400. On 15 March 2004, a new trial began, chaired by Judge Komarova. The old jury was dismissed and a new panel was formed. On 5 April 2004, the Moscow City Court found Igor Sutiagin guilty of high treason in a closed trial. Two days later, the court sentenced him to the longest prison term for high treason since Soviet times – fifteen years in a strict regime colony. Defence lawyers allege that FSB's representatives were co-opted into the jury²³¹. On 17 August 2004, the Russian Federation Supreme Court upheld the verdict.

²²⁶ Resolution 1354 (2003) Conviction of Grigoriy Pasko, Doc. 9926, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Bindig.

²²⁷ Assembly's Resolution 1354 (2003) of 25 November 2003.

²²⁸ Mr Pasko has worked as a military journalist and published a number of highly critical articles about environmental pollution. He was arrested on espionage charges on 20 November 1997. In 1999 Amnesty International concluded that Mr Pasko was held solely for the peaceful exercise of his right to freedom of expression, and recognised him a prisoner of conscience.

²²⁹ More details in the part on freedom of movement.

²³⁰ In its 2002 World Report, Human Rights Watch stated: "The espionage conviction of former diplomat Valentin Moiseev also raised fair trial concerns. The Moscow City Court found Moiseev guilty after erratic court proceedings in which three different judges started hearing the case before being removed from it without clear explanation. A fourth judge eventually sentenced Moiseev to a four-and-a-half-year prison term in August 2001."

²³¹ One of the jurors in the Sutiagin's panel was Mr Grigory Yakimishen who was also included in the list of candidate jurors of the Moscow District Military Court. Mr Yakimishen was a press secretary of the RF Embassy in Poland and was involved in the

401. In February 2004 a motion for resolution was presented to the Parliamentary Assembly on the case of Igor Sutiagin that notes that proceedings against him have been fraught with many of the same irregularities that occurred in the Pasko case, including the use of secret decrees and the failure of the Federal Security Service to verify the defendant's assertion that he only used open sources in his work. The debate on the Sutiagin case in the Parliamentary Assembly is due in 2005.

402. The Valentin Danilov case. In 2000, the Federal Security Service (FSB) accused Danilov of selling the results of his research on the influence of electromagnetic waves on satellites to a Chinese company. In 2001, the university where Danilov had been conducting his research pressed new charges against him, accusing him of embezzling funds the university had received from the Chinese for the Danilov-led project. Danilov was arrested on 16 February 2001, spent a year and a half in custody, and was then released under condition not to leave the local area. During the first trial the court twice returned the case to the prosecutor's office to correct the indictment. The trial ended in December 2003 with Danilov's acquittal by a jury. However, in June 2004, the Supreme Court reversed the acquittal, citing "serious procedural violations which essentially influenced the jurors' decision", and sent the case back to Krasnoyarsk for retrial by another jury.

403. The second trial began on 14 September 2004 and was closed for the media. On 5 November the jury found Danilov guilty of embezzlement and agreed that the physicist had passed information on his researches to China (the jury did not decide on the nature of the information passed to the Chinese company, thus leaving it for the single judge's consideration). On 10 November the judge ruled to arrest him in the court's hall. The same day a separate trial began where the judge had to decide whether the information passed by Danilov to the Chinese was classified at the time.

404. On 24 November 2004, the Krasnoyarsk Territory court sentenced Danilov to 14 years in a maximum security labour camp for high treason and gross misappropriation of funds²³². The defence lawyers have indicated that they will launch an appeal in the Russian Supreme Court and bring an application to the European Court on Human Rights.

405. We are also disturbed by the possible emergence of a new 'spy' case – that of 66-year old physicist Oscar Kaibyshev, Head of the National Academy Science Institute of Metals Superplasticity, who was charged in February 2005 by the prosecutors with illegally exporting to South Korea dual-use technologies that can be used both for civilian and military purposes. The scientist and his American partners claim that the technology is not a secret one. Kaibyshev could be sentenced to at least 10 years in prison if convicted of the most serious charges. We, therefore, urge the Russian authorities to secure an impartial investigation of the case and conduct a fair and open trial.

Anti-Terrorism Law

406. We are concerned by the adoption in the first reading (17 December 2004) of the draft law on countering terrorism. This draft provides for the introduction of a regime of terror alert, in addition to an emergency situation regime and a regime of counter-terrorist operations enforceable under the current anti-terrorism legislation. The bill gives Russian authorities the power to impose a 60-day security restriction measure solely on suspicion that a terror attack is being planned without having any confirmation. During this period authorities can introduce emergency measures including banning public demonstrations, tapping phones, conducting spot street checks, restricting movement of people, etc. The draft law also proposes restraints on media activity that could block photographs and television footage of graphic scenes of violence and restrict journalists' reporting at the scene of attacks. Moreover, if adopted the law will include in the notion of terrorist activity "informational or other assistance to the planning, preparing or realisation of the terrorist attack", "propaganda of terrorism ideas, spreading of information which calls for carrying out terrorist activity or such that substantiates or justifies the necessity of such activity". Thus the journalists who inform about terrorist attacks can be charged with terrorism themselves²³³.

"spy" scandal with the Polish prime-minister Jozef Oleksy in 1996. Polish press then wrote about Mr Yakimishen as an agent of the Russian Foreign Intelligence Service (Moscow News, 27 October – 2 November 2004, p. 4).

²³² As of 1 March 2005, three months after the judgement was announced, the Court did not give the written sentence and minutes of the court hearing to the defenders because of their classified character.

²³³ Recently the *Kommersant* newspaper received a warning from the federal authorities for publishing an interview with Chechen rebels' leader Aslan Maskhadov (three such warnings lead to the closure of the newspaper).

407. We therefore urge the Russian authorities to revise the draft law before final adoption and check its provisions against Council of Europe standards of freedom of expression²³⁴, Article 10 case-law of the European Court of Human Rights and Article 56 of the Russian Federation Constitution, which allows imposition of restrictions on human rights and freedoms only under a state of emergency.

N. Freedom of assembly and association

408. On 19 June 2004, the Federal Law "On Discussions, Meetings, Demonstrations, Processions, and Pickets" was adopted. The Observatory for the Protection of Human Rights Defenders²³⁵ expressed its concern about this law that "severely restricts the rights of civil society to peaceful public demonstration". "The law creates significant obstacles to the planning and execution of peaceful, legal demonstrations. Requirements for receiving authorisation for a demonstration now include, *inter alia*, that local authorities must be notified about the event ten days in advance, including the provision of an hour-by-hour program of the event, and that the organisers must demonstrate that they will be responsible for general security concerning the event.

409. Additionally, there are considerable restrictions on permissible time and place for demonstrations. No public gatherings may be held after 11:00 pm, thereby banning all long-term demonstrations. A number of places are listed in which events are not allowed, including "close to the president's residence, court rooms, and prisons." In fact, local officials have the legal authority to decide and/or change the location of the demonstration, giving the co-ordinators as little as three days notice. Though considerably revised from its original form, having removed the ban on any demonstration of which the "aim and form would go against commonly accepted moral norms," the current law still significantly impedes the right to peaceful assembly."

410. We are also concerned by the numerous reports about impediments to the right of religious organisations to freely hold peaceful meetings and associate into public organisations (see respective section of this report).

O. Protection of minorities, xenophobia, and racial intolerance

Legal framework for protection of national minorities

411. Upon accession to the Council of Europe Russia undertook, *inter alia*, to introduce new laws in line with the Council of Europe standards ... for the protection of national minorities (Opinion No. 193 (1996), § 7.v.); to sign and ratify within a year from the time of accession the European Framework Convention for the Protection of National Minorities; to conduct its policy towards minorities on the principles set forth in Assembly Recommendation 1201 (1993), and to incorporate these principles into the legal and administrative system and practice of the country (10.iv.); to sign and ratify within a year from the time of accession ... the European Charter for Regional or Minority Languages (10.v.).

412. Russia has ratified the European Framework Convention for the Protection of National Minorities on 21 August 1998²³⁶ and signed the European Charter for Regional or Minority Languages on 10 May 2001; its ratification however is still outstanding and should be finalised without any further delay.

²³⁴ See e.g. Committee of Ministers Declarations on the freedom of expression and information adopted on 29 April 1982 and on freedom of expression and information in the media in the context of the fight against terrorism of 2 March 2005, Guidelines on Human Rights and the Fight against Terrorism adopted on 11 July 2002, etc. In its recent Declaration on freedom of expression and information in the media in the context of the fight against terrorism the CE Committee of Ministers called on public authorities in member states, *inter alia*, not to introduce any new restrictions on freedom of expression and information in the media unless strictly necessary and proportionate in a democratic society and after examining carefully whether existing laws or other measures are not already sufficient; to refrain from adopting measures equating media reporting on terrorism with support for terrorism.

²³⁵ The Observatory for the Protection of Human Rights Defenders is a joint program of the International Federation for Human Rights (FIDH) and the World Organisation against Torture (OMCT) <http://www.omct.org>.

²³⁶ The Russian authorities submitted their first report to the Advisory Committee on the Framework Convention in 2000; the second report was due on 1 December 2004 and was submitted on 26 April 2005.

413. In 1996, Russia adopted the Federal Law on National-Cultural Autonomy. In its September 2002 Opinion on the Russian Federation (ACFC/INF/OP/I(2003)005), the Advisory Committee on the Framework Convention noted that the 1996 law restricts, in its Article 1, the notion of national-cultural autonomy to citizens of the Russian Federation only. Bearing in mind that the law at issue is considered by the authorities of the Russian Federation to be a central normative element in the implementation of the Framework Convention, the Advisory Committee found it important that its personal scope of application was brought in line with the inclusive approach under the Framework Convention so as to ensure that also non-citizens belonging to the minorities concerned can benefit from the said law.

414. In this regard, we have to report that the Russian authorities have not complied with this opinion since the current Law on National Cultural Autonomy (revised on 10 November 2003, 29 July and 22 August 2004) still has this narrow scope of application.

415. The Advisory Committee also pointed to the lack of detailed and comprehensive civil and/or administrative law provisions pertaining to discrimination in a number of pertinent fields, such as education and housing. The Advisory Committee was of the opinion that it would be desirable to develop such legislation in order to protect, in a comprehensive manner, individuals from discrimination by both public authorities and private entities.

416. Another concern with regard to the legal framework, expressed by the Advisory Committee and which has not been addressed yet, is the provision of Article 20 of the Law on Languages of the Russian Federation's Peoples, which stipulates that broadcasts of the «all-Russian» TV and radio programmes are conducted in the Russian language only. This article appears to be overly restrictive as it implies an overall exclusion of the use of the languages of national minorities in nation-wide radio and TV broadcasting. The Advisory Committee concluded that such an *a priori* exclusion is not compatible with Article 9 of the Framework Convention, bearing in mind, *inter alia*, the size of the population concerned and the fact that a large number of persons belonging to national minorities are dispersed and reside within several subjects of the federation.

417. Moreover, in December 2002, the Law on Languages of the Russian Federation's Peoples was supplemented with a provision (paragraph 6, Article 3) requiring the use of an alphabet based on the Cyrillic graphics for the state languages of the Russian Federation and its Republics, unless exceptions are introduced through federal legislation. This, contrary to the Advisory Committee's opinion²³⁷, means that the right of Republics to introduce a state language to be used alongside the Russian language, as provided in Article 68, paragraph 2, of the Russian Federation Constitution, is not considered to entail the right to choose the alphabet for the use of the language at issue.

418. On 16 November 2004, the Russian Constitutional Court ruled that the mandatory use of the Cyrillic graphics was consistent with the Constitution as it complies with the fixed principles of the federal organisation, first of all the principle of state unity, and also with the constitutional provisions that the basics of the federal policy in the cultural and national development field, in particular state language policy, protection of human rights and freedoms, are regulated by federal laws.

419. We, therefore, call on the Russian authorities to take account of the comments mentioned above and to bring the relevant legislation into line with the Council of Europe standards.

420. On 13 September 2004, a new Ministry of Regional Development was established by Presidential decree. "Inter-ethnic relations" and "protection of national minorities' rights" fall, *inter alia*, within the remit of this new Ministry²³⁸. We welcome the fact that a special federal executive body

²³⁷ The Advisory Committee noted that Article 10 of the Framework Convention does not address the issue of a choice of an alphabet separately from the right to use a minority language. Indeed, the Advisory Committee considered it difficult to draw a clear distinction between, and to design separate legal regimes for these two inter-linked concepts. While acknowledging that there is not always consensus within the minorities concerned – such as Tatars – as to which alphabet should be used in the context of their minority language, the Advisory Committee considered that in principle this should be a matter to be decided by those directly concerned and that the federal authorities should refrain from imposing any artificial solutions. Furthermore, the Advisory Committee was of the opinion that in cases where the use of a language does not concern relations with public authorities, the choice of alphabet should as a rule be left to the discretion of the individuals concerned and not be subject to any normative limitations.

²³⁸ As stipulated in the Resolution of the Russian Federation Government No. 501 of 28 September 2004.

dealing with national minorities was re-created²³⁹ and hope that its activity will contribute to the improvement of the situation as regards protection of minorities' rights in the Russian Federation.

Indigenous people

421. Assessing the first Russian report submitted according to the Framework Convention for the Protection of National Minorities, the Advisory Committee noted with deep regret that ensuring full and effective equality has been particularly difficult with respect to persons belonging to many of the numerically small indigenous peoples of the north, who continue to face wide-ranging problems in economic, social, political and cultural life to the extent that the situation is not compatible with Article 4 of the Framework Convention. The Advisory Committee noted that the continuing marginalisation of these minorities has contributed to the deeply disconcerting health situation amongst them. Furthermore, the generally low educational level amongst the group concerned, coupled with the decline in their access to their traditional means of livelihood have led to disproportionately high unemployment.

422. We also refer to the Motion for Resolution tabled with the Assembly in October 2004, on the *Situation of Fenno-Ugric and Samoyed peoples*, which expresses great concern over the fact that the population of the Fenno-Ugric and Samoyed people has diminished considerably over the past few years and the use of their languages had been narrowed in the Russian Federation. According to the federal census data from 2002, the total number of the Fenno-Ugric population has decreased dramatically since the 1989 census, from 3, 3 millions to 2, 7 millions. The number of people speaking Uralic languages has decreased to less than 2 millions.

423. On 22 February 2005, a group of American, British, Swedish, Finnish, Estonian, and Hungarian politicians and public figures appealed to the Russian authorities to stop infringing upon political and cultural rights of the Mari, a 600 thousand strong nation. They urged the Russian government to immediately stop the rising tide of discrimination and persecution of Mari nation in the Republic of Mari El, and to initiate an investigation into the assault on prominent Mari leader Mr. Vladimir Kozlov who was beaten nearly to death earlier that month. The concern over the reports of repression targeting opposition figures, journalists, and indigenous officials in Russia's constituent Mari El Republic was also expressed by the European Commission in March 2005²⁴⁰.

424. We would like to reiterate the Advisory Committee's opinion that the Russian authorities should give increasing attention to their situation, including by taking more effective measures to ensure the implementation of the new legislation concerning their rights²⁴¹.

Racially motivated violence and intolerance

425. Along with the irregularities in the legal framework, human rights NGOs also report frequent abuses of national minorities' rights by law enforcement bodies and a high level of intolerance in society²⁴². Racial profiling by police is frequent - common targets include Roma and those from the Caucasus. Discrimination on grounds of race and ethnicity is widespread in many areas of life, including access to education, health services, and public accommodations as well as to local

²³⁹ In 2002, the Advisory Committee to the framework Convention noted that the Ministry of Federation Affairs, National and Migration Policy has been the main federal body providing public support for the establishment and operation of cultural autonomies and that following the abolition of the said Ministry by a Presidential decree on 16 October 2001 it was unclear which federal body would carry out these tasks.

²⁴⁰ Emma Udwin, a commission spokeswoman, told RFE/RL on 4 March 2005 that the issue was raised by the EU at the human-rights consultations between EU and Russia that took place in Luxembourg on 1 March. The EU side had submitted a formal request, asking Moscow to clarify the situation of two minorities - the Finno-Ugric population and the Meskhetian Turk community. <http://www.rferl.org/featuresarticle/2005/03/19336ee3-aa3b-4e45-8850-0ce0854090ac.html>.

²⁴¹ Federal Laws "On Guaranteeing of the Rights of Numerically Small Indigenous Peoples of the Russian Federation" (adopted on 30 April 1999), "On General Principles of Organisation of Communities of Numerically Small Indigenous Peoples of the North, Siberia, and Far East of the Russian Federation" (20 July 2000).

²⁴² The All-Russian Centre for the Study of Public Opinion (VTsIOM) on 16 November 2004 released the results of a survey (1,601 respondents in 39 regions) that found that 34% of respondents believe that ethnic Russian should have more rights than other peoples in Russia, 49% said they believe everyone in Russia should have equal rights, 11% said Russia should be a state inhabited by Russian people.

residence registration, identity cards and their benefits, and citizenship. We are concerned by the high incidence of violent attacks against ethnic and religious minorities, foreigners, in particular committed by skinheads and neo-Nazis²⁴³.

426. Following the events in Beslan, there have also been reports of increased attacks on Chechens and other North Caucasians by "skinheads" and members of other extremist groups. There have been repeated attacks by "skinheads" against people originating from the Caucasus on the Moscow subway. Caucasian owned cafés have been burned down in Moscow and Yekaterinburg; one of the café's owners was killed. A woman wearing a veil was attacked in Vladivostok by someone shouting, "this is for Beslan". On 26 October 2004, in Moscow a group of youngsters attacked (robbed, stabbed, and beat) two people of Caucasian origin who were hospitalised. On 14 October 2004, during 24 hours Russia (in Moscow region, Chita, St.Petersburg) witnessed a series of attacks on foreigners with three persons (Uzbeki, Chinese, Vietnamese) being killed and one wounded. The Head of Chief Criminal Investigation Department Vladimir Gordienko said that Russian citizens are more often becoming victims of foreigners and that ethnic origin doesn't matter for those who attack non-Russians. Most of these attacks are not properly investigated by law enforcement bodies²⁴⁴.

427. Unfortunately, the label "person of Caucasian nationality" referring to a range of people such as Chechens, Ingushetians, Ossetians, Dagestanis, Georgians, Azeris, etc. is still applied. Apart from "persons of Caucasian nationality" and "Gypsies", Jews, Tajiks and some other people of Central Asian origin are also the target of racist attitudes and actions. While most areas in the Russian Federation have a local pattern of negative stereotyping targeting one group or another and these patterns change over time, the above-listed groups have been disadvantaged throughout the country, and racist attitudes towards them are lasting and deeply entrenched. This worrying phenomenon is also reported by the CE Human Rights Commissioner in his recent report on Russia who refers to a "sense of suspicion, if not outright hatred or contempt, for people originating from the Caucasus".

428. The Presidential Human Rights Commission Chairwoman Ella Pamfilova said that "tolerance" among the federal authorities had never been better, but that the situation with "everyday xenophobia" is "very bad." "It is a problem of an irresponsible society, in which there is not an aversion to such occurrences," she said. "Everyday extremism is widespread, particularly on the level of minor state officials." Pamfilova called on law-enforcement officials – and, above all, prosecutors – to take a tougher and more "fundamental" approach to the issue of extremism²⁴⁵.

429. Lyudmila Alexeyeva, chairwoman of the Moscow Helsinki Group, put forward the opposite view: extremism, she said, is on the rise not because of "some sort of terrible xenophobia" among ordinary Russians, but because it is "encouraged and reinforced from the top, if not from the direction of the president, then as a result of irresponsible statements by many officials on the nationality issue." Alexeyeva cited as an example Krasnodar Governor Alexander Tkachev, who earlier this year promised to drive "aliens and dissenters" out of his region (*New Moscow Times*, September 2004).

Treatment of Roma

430. The European Roma Rights Centre's recent research has revealed that police violence against Roma in Russia is widespread, though rarely reported to the authorities. While police brutality and abuse by national security forces is a general problem in Russian law-enforcement in recent years, and has been a primary concern of international and Russian human rights organisations, Roma along with several other ethnic minorities are particularly vulnerable. Racial-profiling of Roma by the police, the targeting of Roma settlements for abusive police operations and persistent racial stereotyping of Roma as criminals and drug-dealers by law-enforcement officials demonstrate racial bias in the treatment of Roma by state officials. Roma suspects are tortured and ill-treated in police

²⁴³ *Echo of Moscow* radio station reported that according to the Centre for New Sociology there are more than 55,000 skinheads in Russia. According to the Moscow Human Rights Bureau, each month 30-40 pogroms are organised by skinheads; during the last 3-4 years the number of racially motivated attacks has been increasing each year by 30%. The level of intolerance is especially high in the cities of Moscow, St. Petersburg, Voronezh, Volgograd, and Vladimir.

²⁴⁴ Human Rights NGOs claim that ultra-right and neo-Nazi groups have even drawn up a list of "enemies of Russian state" which was published on the web and contains personal data of about 50 antiracist activists, one of them Mr Girenko was killed this year in St. Petersburg (see 'The Right to Life' section). It appears that General Prosecutor's Office failed to react to such facts.

²⁴⁵ *Eurasia Daily Monitor*, The Jamestown Foundation, 27 October 2004.

custody, and in some instances physical abuse has resulted in death of the victims. Roma settlements are raided by the police and special units mandated to fight illegal drug dealing at any time of the day and the night. Abduction of Roma family members and the extortion of money in exchange for their release is a widespread pattern of abuse²⁴⁶.

431. We, therefore, call on the Russian authorities to take urgent measures to combat racially motivated violence, secure effective protection of minorities against any form of harassment and discrimination, and ensure the prosecution of those guilty of such abuses disregarding their social status. We are deeply concerned that law enforcement bodies often refuse to qualify racist attacks as racially motivated and refer to them as actions of "hooligans". This practice should be abandoned as it contributes to the promotion of an impunity climate with regard to racial intolerance and violence²⁴⁷.

Meskhethian Turks

432. Meskhetians are a largely Muslim group who were forcibly relocated from southwest Georgia in 1944 to the republics of Central Asia by the former Soviet regime. In 1989-1990, following ethnic clashes, many Meskhetian Turks were forced to leave Uzbekistan and sought refuge in different parts of Russia. The vast majority of the over 15,000 Meskhetians resident in the Krasnodar Territory (Kray) are being denied their legal rights, including the right to citizenship, due to discriminatory legislation and practices in the Krasnodar territory which are contrary to Federal Law²⁴⁸. Only 4,000 received Russian citizenship (but not in the Krasnodar region), only 1,000 were registered in the Krasnodar territory and, therefore, have obtained a legal status²⁴⁹.

433. In its Resolution 1428 (2005)²⁵⁰, the Assembly noted that the situation of several thousand Meskhetian Turks living today in the Krasnodar region raises major concerns. Since the Meskhetian Turks are refused residence registration and are not recognized as citizens of the Russian Federation, they are deprived of basic civic, political, economic and social rights. "This situation, which lasts to this day, is unacceptable. It is furthermore particularly worrying that the regional administration applies deliberate discriminatory practices against Meskhetian Turks".

434. The US Government opened a migration programme for Meskhetian population. 3,528 Meskhetian families (about 10,250 people) have applied to move to the USA²⁵¹, 1690 families (about 4,950 people) have obtained refugee status, 189 people have already moved to the USA.

435. From September 2004 court bailiffs and officers of the Krasnodar Territory began to demand the pay-off of all administrative fines charged on Meskhetian Turks for violation of passport regime during last several years. Local authorities keep on refusing Meskhetian Turks in registration in Krasnodar Kray, at the same time the police check on the registration and fines for its absence.

436. On 7 October 2004 early morning, in Krasnodar Kray a family of Meskhetian Turks who participate in US migration programme was assaulted. Two armed men intruded their house, beat mother, injured with gun father of the family, children escaped through the window. The assailants wore the armbands with inscription "Cossacks' Patrol."²⁵² According to Novorosiysk Human Rights

²⁴⁶ See European Roma Rights Centre's 36-page statement "Violations of Roma Rights in the Russian Federation", September 23, 2004. <http://www.errc.org>. In October, the EERC statement was joined by the International Helsinki Federation for Human Rights.

²⁴⁷ Article 282 of the Russian Criminal Code provides for responsibility for incitement of ethnic, racial, or religious hatred. But, according to the General Prosecutor's Office, annually in average only 70 criminal cases are instituted by the law enforcement bodies under this *corpus delicti*, out of which 10 cases are brought to the courts and 2-3 are ending with guilty verdicts. The rest of accused are either acquitted or amnestied.

²⁴⁸ The governor of Krasnodar Territory, Alexander Tkachev has spoken out in the regional and national press on several occasions about the dangers posed by non-Slavic minority groups in Krasnodar territory, and the need to encourage such groups to leave. He has often singled out the Meskhetians.

²⁴⁹ Statement by Russian human rights organisations, 26 January 2004.

²⁵⁰ Resolution 1428 (2005) The situation of the deported Meskhetian population, Doc. 10451, report of the Committee on Migration, Refugees and Population, rapporteur: Mrs Vermot-Mangold.

²⁵¹ Report of the NGOs Novorosiysk Human Rights Committee, "Systematic Abuse of Human Rights in the Krasnodar Territory Undermines Russia's International Reputation", January 2005

²⁵² The UN Committee on the elimination of racial discrimination in its Concluding observations on the Russian Federation report (March 2003) expressed its concern at reports that some Cossack organisations have engaged in acts of intimidation and

Committee, during last 15 years none of the cases of attacks against Meskhetian Turks were brought to court. The complaints to federal authorities are forwarded for consideration to regional law enforcement bodies.

437. In some schools in the region Meskhetian children are ethnically segregated into separate classes (e.g. in the Crimean district as reported by the Novorosiysk Human Rights Committee).

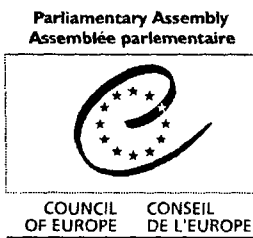
438. We consider, together with the Council of Europe Commissioner for Human Rights Mr Gil Robles, that the Meskhetian community's current situation, caused by the fact that the Krasnodar region authorities continue arbitrarily and unlawfully to refuse to grant Russian citizenship to Meskhetian Turks, is nothing short of a disaster. We call, therefore, on the Russian authorities to give those Meskhetians willing to obtain Russian citizenship and stay in their place of residence such an opportunity; to enhance collaboration with the Georgian authorities in order to secure the transfer to Georgia of the Meskhetian population whom Georgian authorities are able to accommodate²⁵³; to stop the practice of ethnical discrimination and investigate all cases of abuses of the Meskhetians and bring perpetrators to justice. Recommendations contained in the Assembly's Resolution 1428 (2005) should also be taken fully into account.

439. We also urge the Russian authorities to ratify the European Convention on nationality (CETS No. 166), which it has signed on 6 November 1997. In its Recommendation 1667 (2004), the Assembly regretted that Russia has not ratified the European Convention on nationality – yet it has explicit provisions concerning non-discrimination and the prevention of statelessness.

violence against ethnic groups. According to information received by the Committee, these organisations, which function as paramilitary units and are used by local authorities to carry out law-enforcement functions, enjoy special privileges, including State funding. In this regard, the Committee recommended that Russia ensures that no support is provided to organisations which promote racial discrimination and that it prevents Cossack paramilitary units from carrying out law-enforcement functions against ethnic groups.

²⁵³ The Georgian authorities are ready to accept all Meskhetian Turks willing to migrate, however due to difficult economical conditions they cannot provide compact settlement for all migrants, and propose to accommodate them throughout the country.

Appendix 1. Programmes of the co-rapporteurs' visits to the Russian Federation



**COMMITTEE ON THE HONOURING OF OBLIGATIONS AND COMMITMENTS
BY MEMBER STATES OF THE COUNCIL OF EUROPE**

**Programme of the visit by the co-rapporteurs to
Khabarovsk and Vladivostok**

26 October – 1 November 2003

Co-rapporteurs: Mr David ATKINSON (United Kingdom, EDG)
Mr Rudolf BINDIG (Germany, SOC)

Secretariat: Mrs Ivi-Triin ODRATS

Sunday, 26 October 2003

19h35 Arrival of Mr Bindig and Ms Odrats at Moscow Sheremetyevo Airport
20h00 Meeting with **Mr A.F. BECHTOLD** and **Mr M. KUPERMAN**, Chairs of Human rights organisations in Khabarovsk and Yuzhno-Sakhalinsk
20h20 Arrival of Mr Atkinson at Moscow Airport

Monday, 27 October 2003

00h20 Departure to Khabarovsk
15h05 Arrival in Khabarovsk
15h30 Registration at hotel "Parus"
16h00 Briefing on the Programme
20h00 *Dinner*

Tuesday, 28 October 2003

8h30 – 9h15 *Breakfast meeting with Mr O. SUBBOTENKO, Khabarovsk Centre for Public Information*

9h30 – 12h30 **NGO Forum**
9h30 – 10h15 *Workshop # 1: Human rights issues*
10h30 – 11h15 *Workshop # 2: Social issues, rights of children and women*
11h30 – 12h15 *Workshop # 3: Ecological issues*

12h30 – 14h00 Meeting with **Mr A.B. LEVINTAL**, Regional Minister for Economic Development of Khabarovsk Kray (Territory)

14h00 – 14h50 Meeting with mass media representatives on issues of freedom of expression

15h00 – 15h50 Meeting with **Mr S. A. GVOZDEV**, Deputy President of Khabarovsk Kray Court

- 16h00 – 16h50 Meeting with **Mr V.A. GONCHAROV**, Deputy Head the Khabarovsk Kray Internal Affairs Directorate
- 17h00 – 18h00 Meeting with the **representative** of the Russian Federation Ministry of Foreign Affairs in Khabarovsk
- 19h30 – 21h30 *Informal dinner* with **Mr Yuichi KUSUMOTO**, Consul General of Japan

Wednesday, 29 October 2003

- 8h00 – 8h40 *Breakfast*
- 9h00 – 9h50 Meeting with **Mr A.A. PODLASENKO**, Deputy Public Prosecutor of Khabarovsk Kray
- 10h00 – 11h00 Meeting with **Mrs E.V. NAZHEKINA**, Deputy Head of the Chief Directorate of Justice of the Russian Federation Ministry in Khabarovsk Kray
- 11h00 – 12h00 Meeting with **Mr V.A. TREGUBOV**, Deputy Plenipotentiary Representative of the President of the Russian Federation in the Far-Eastern Federal Region
- 12h30 – 14h00 *Lunch*
- 14h00 – 15h30 visit to **SIZO (confinement centre) No. 1**
- 16h00 – 17h30 visit to **Correctional Institution No. 12**
- 18h20 – 19h20 Meeting with **Mr A.A. SHETILOV**, Chairman of the Electoral Commission of Khabarovsk Kray
- 20h00 *Departure by night train to Vladivostok*

Thursday, 30 October 2003

- 8h45 *Arrival in Vladivostok*
Reception by **Mr N.A. KOROLEV**, Deputy Governor of Primorsk Kray
Mr V.V. GORYACHEV, Representative of the Russian Ministry of Foreign Affairs in Vladivostok, and **Mr SOBCHUK**, Speaker of the Legislative Assembly
- 9h15 Registration at Hotel Hyundai
- 10h30 – 11h50 **NGO Forum**
- 12h00 – 12h45 **Administrative Reforms:**
Protocol meeting with **Mr N.A. KOROLEV**, Deputy Governor of Primorsk Kray
- 12h45 – 14h00 *Business lunch* with **Mr N.A. KOROLEV**
- 14h15 – 15h15 Meeting with representatives of the major parties of the Legislative Duma of Primorsk Kray
- 15h30 – 16h15 Meeting with **Mr S.A. SOPTCHUK**, Speaker of the Legislative Duma of Primorsk Kray
- 16h45 – 17h30 **Reform of the Prosecutor's Office:**
Meeting with **Mr VASSILENKO**, Prosecutor of Primorsk Kray

- 18h00 – 19h00 **Freedom of expression:**
Meeting with independent media representatives
- 19h30 *Dinner with Mr BROCKMANN, Honorary Consul of Germany*

Friday, 31 October 2003

- 8h30 *Breakfast at Hotel (possibly working breakfast with representatives of international non-profit organisations in Vladivostok – ISAR, IREX, USAID, Eurasia Foundation)*
- 9h30 – 12h30 **Reform of the Judiciary, freedom of conscience and discrimination against churches and other religious organisations**
President of Primorsk Kray Court; Head of the department responsible for organising the activity of lay magistrates of the Administration of Primorsk Kray, representatives of the Chief Directorate of the Russian Federation Ministry of Justice in Primorsk Kray, the Bar, the Department of public communications and information of the Administration of Primorsk Kray
- 9h50 – 10h30 **Organisation of legislative and presidential elections:**
Mr. S. GNJAZEV, Chair of the Electoral Commission of Primorskyi Kray and Mrs N. VOLOKHNINA, Chair of the Electoral Commission of the city of Vladivostok
- 10h45 – 11h30 **Administrative reforms:**
Heads of administration of the cities of Vladivostok, Artem, Ussurinsk and Nakhodka
- 11h45 – 12h30 Meeting with the Head of Police Forces of Primorsk Kray
- 12h40 – 14h00 *Business lunch with the Speaker and members of the Legislative Assembly of Primorsk Kray*
- 14h30 – 17h00 Visit to **SIZO-1, Primorsk Kray GUIN (confinement centre), Primorsk Kray**
Chief Directorate of Sentence Enforcement of the Russian Federation Ministry of Justice in Primorsk Kray
- 17h30 – 18h30 **Press Conference**
- 19h30 *Dinner*

Saturday, 1 November 2003

- 10h45 Departure from Hotel
- 01h30 Departure to Moscow
- 04h10 Arrival in Moscow
- Meeting with **Mr PASKO**, journalist
- Afternoon Departure of delegation.

Parliamentary Assembly
Assemblée parlementaire



COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

**COMMITTEE ON THE HONOURING OF OBLIGATIONS AND COMMITMENTS
BY MEMBER STATES OF THE COUNCIL OF EUROPE**

**Programme of the visit by the co-rapporteurs to
YEKATERINBURG (Sverdlovsk Oblast) and KAZAN (Republic of Tatarstan)**

9-14 October 2004

Members of the delegation:

Co-rapporteurs: Mr David ATKINSON (United Kingdom, EDG)
Mr Rudolf BINDIG (Germany, SOC)

Secretariat: Mr Matjaz GRUDEN, Secretary to the PACE Monitoring Committee
Mr Dmytro KOTLIAR, Deputy Secretary to the PACE Monitoring Committee

Accompanied by Mr Valeriy GREBENNIKOV, member of the Russian Federation PACE delegation,
First Deputy Chair of the State Duma Committee on Civil, Criminal, Arbitrage and Procedural
Legislation

YEKATERINBURG

9 October, Saturday

- 21.10** Arrival of the delegation in Yekaterinburg by Lufthansa LH3204
Delegation met by Mr Nikolai Voronin (President of the Oblast Duma, lower chamber of the regional legislature), Mrs Tatyana Merzlyakova (Ombudswoman), Mr Viktor Koksharov (Minister of International and External Economic Relations of Sverdlovsk Oblast)
- 21.30-21.50** Transfer to the Premier Hotel. Accommodation at the Hotel.
- 22.00** Dinner with Ombudswoman of Sverdlovsk Oblast **Mrs Tatyana Merzlyakova**

10 October, Sunday

- 9.00** Breakfast
- 10.00-11.00** Meeting with human rights NGOs (Ural Youth History Museum, 32 Karla Libknekhta St.).
- 11.10-12.00** Meeting with the representatives of national minorities (Ural Youth History Museum, 32 Karla Libknekhta St.).
- 12.10-12.50** Meeting with the representatives of religious organisations (Ural Youth History Museum, 32 Karla Libknekhta St.).
- 13.00-14.00** Lunch with the President of the Sverdlovsk Oblast Duma **Mr Nikolai Voronin**
- 14.10-15.00** Meeting with the representatives of mass media (Ural Youth History Museum, 32 Karla Libknekhta St.).
- 15.10-16.00** Meeting with the representatives of political parties (Ural Youth History Museum, 32 Karla Libknekhta St.).
- 16.20-17.20** Meeting with **Mrs Tatyana Merzlyakova**, Ombudswoman in Sverdlovsk Oblast (Residence of Sverdlovsk Oblast Governor, 21/23Gorkogo St.)

- 17.30-17.50 Transfer to juvenile pre-trial detention centre (SIZO № 1) of Yekaterinburg (2 Repina St.)
 17.50-18.50 Visit to **juvenile pre-trial detention centre (SIZO № 1)** of Yekaterinburg
 19.00 Transfer to the hotel.

11 October, Monday

- 08.00-08.45 Breakfast
- 09.00-09.45 Meeting with the Governor of Sverdlovsk Oblast **Mr Eduard Rossel** (residence of Sverdlovsk Oblast Governor, meeting hall, 21/23 Gorkogo St.)
- 10.00-11.00 Meeting with the Presidential Envoy in the Ural Federal District **Mr Petr Latyshev** and Chief Federal Inspector in Sverdlovsk Oblast **Mr Viktor Baidukov** (3 Oktyabrskaya Sq.)
- 11.10-11.50 Short tour of the city, visiting Temple On the Blood (place of tzar family execution)
- 12.00-12.40 Meeting with the Mayor of Yekaterinburg **Mr Arkadiy Chernetskyi** (City Administration, 24a Lenina St.)
- 13.00-13.50 Lunch with Deputy Mayor of Yekaterinburg **Mr Vladimir Kulik**
- 14.00-14.30 Meeting with the Chair of the Sverdlovsk Oblast Government **Mr Aleksei Vorobyev** (Government House, 1 Oktyabrskaya Sq.)
- 14.30-15.00 Meeting with the President of the Chamber of Representatives of Sverdlovsk Oblast Legislative Assembly (upper house) **Mr Yuriy Osintsev**, President of the Oblast Duma of Sverdlovsk Oblast Legislative Assembly (lower house) **Mr Nikolai Voronin**, deputies of Sverdlovsk Oblast Legislative Assembly
- 15.10-15.40 Meeting with the Prosecutor of Sverdlovsk Oblast **Mr Boris Kuznetsov** (Oblast Prosecutor Office, 21 Moskovskaya St.)
- 15.45- 16.45 Meeting with:
- Chair of the Statute Court of Sverdlovsk Oblast (local constitutional court) **Mr Vladimir Zadiora**;
 - First Deputy Chair of the Oblast Court **Mr Aleksey Dementyev**;
 - Chair of the Military Court of Privolzhsk-Ural Command **Mr Valeriy Andreev**;
 - Head of the Chief Department of Internal Affairs in Sverdlovsk Oblast **Mr Vladimir Vorotnikov**;
 - Head of the Migration Department in the Chief Department of Internal Affairs in Sverdlovsk Oblast **Mr Vladimir Nifontov**;
 - Deputy Head of the Chief Department of the Ministry of Justice in Sverdlovsk Oblast **Mr Gennadiy Novoselov**;
 - Head of the Bar of Sverdlovsk Oblast **Mr Vladimir Smirnov**, Head of the Attorneys' Collegium "Sverdlovsk Oblast Guild of Attorneys" **Mrs Natalia Sukhareva**
- (Statute Court of the Sverdlovsk Oblast, 19 Pushkina St.)
- 16.45-17.15 Press-conference
- 17.15-18.00 Return to the hotel. Transfer to the Koltsovo Airport
- 18.40 Departure to Moscow by Ural Airlines U6 266

KAZAN

11 October, Monday

- 23.55 Arrival in Kazan by Siberian Airlines S7 006 from Moscow (International airport of Kazan)
Delegation met by Mr Yuriy Kamaltynov (Deputy Chairman of the State Council), Mr Rashyt Vagisov (Ombudsman)
- 00.00-00.30 Transfer to the Guiseppe Hotel (15/25 Kremlevska St.). Accommodation at the hotel.

12 October, Tuesday

- 8.30 Breakfast
- 9.00-9.50 Meeting with human rights NGOs
(conference-hall of Guiseppe Hotel, 15/25 Kremlevska St.)
- 9.55-10.20 Visit to Petropavlovsk Cathedral
Delegation met by Archbishop of Kazan and Tatarstan
- 10.30-11.50 Meeting with the representatives of national minorities (*Peoples' Friendship House, 23 Ostrovskogo St.*)
- 12.00-12.20 Visit to the Russian Islamic University (9 Gazova St.)
Delegation met by Tatarstan Mufti Gusman-khazrat Iskhakov
- 12.30-13.50 Meeting with the representatives of religious organisations (*National Cultural Centre "Kazan"*)
- 14.00-14.50 Lunch with the Head of Kazan Administration **Mr Kamil Iskhakov** (*National Cultural Centre "Kazan"*)
- 14.50-15.50 Meeting with political parties (*National Cultural Centre "Kazan"*)
- 16.00-16.35 Meeting with Acting Chairman of the Constitutional Court of the Republic of Tatarstan **Mr A.G. Gataulin**
- 16.40-16.55 Visit to the State Grand Concert-Hall named after S.Saidashev
- 17.00-17.40 Meeting with the Bar of the Republic of Tatarstan
- 18.00-19.00 Meeting with mass media (*Republic of Tatarstan Agency of mass communication "Tatmedia", 3 Akademicheskaya St.*)
- 19.30 Dinner with Deputy Chairman of State Council **Mrs Rimma Ratnikova**, Ombudsman of the Republic of Tatarstan **Mr Rashyt Vagisov** (*Bochka Restaurant*)

13 October, Monday

- 8.20 Breakfast
- 9.00-9.55 Meeting with the Prosecutor of the Republic of Tatarstan **Mr Kamil Amirov** and Deputy Military Prosecutor of Kazan Garrison **Mr M.K.Fedorov** (*14 Kremlevska St.*)
- 10.00-10.55 Meeting with the First Deputy Chair of the Supreme Court of the Republic of Tatarstan **Mr Gilasov** and Deputy Chair of Kazan Garrison Military Court **Mr E.E. Safonov** (*12/20 Kremlevska St.*)
- 11.00-11.40 Meeting with the Acting Minister of Internal Affairs of the Republic of Tatarstan **Mr R.Z. Timerzyanov** (*19 Drezhynskogo St.*)
- 11.50-12.40 Visit to the **correction facility 16/2** (*98 Bolshaya St.*)
Delegation met by the Head of the Department of Sentence Execution of the Ministry of Justice in the Republic of Tatarstan Mr Daufit Khamadishin

- 12.50-13.40** Lunch with the Ombudsman of the Republic of Tatarstan **Mr Rashyt Vagisov** (Medved Restaurant)
- 13.50-14.30** Meeting with the Chairman of the State Council of the Republic of Tatarstan **Mr Farid Mukhametshin**, leaders of deputies' factions and groups, chairs of committees (*1 Freedom Sq.*)
- 14.40-15.40** Meeting with the Assistant to the Presidential Envoy in the Privozhsk Federal District **Mr L.V.Gilchenko** and Chief Federal Inspector in the Republic of Tatarstan **Mr Marsel Galimardanov** (61 Karla Marksa St.)
- 15.45-15.55** Visit to Kazan Kremlin, Mosque Kul-Sharif, Annunciation Cathedral, Presidential Palace
- 16.00-17.00** Meeting with the President of the Republic of Tatarstan **Mr Mintimer Shaimiyev** (Kremlin, Presidential residence, meeting hall)
- 17.00-17.30** Press-conference
- 17.30-18.15** Meeting with the Ombudsman of the Republic of Tatarstan **Mr Rashyt Vagisov** (Ombudsman office)
- 18.30-19.00** "Live" interview of the co-rapporteurs to the radio station "Echo of Moscow-Kazan"
- 19.10** Visit to cultural centre Piramida, dinner with Deputy Chairman of State Council **Mrs Rimma Ratnikova**, Ombudsman of the Republic of Tatarstan **Mr Rashyt Vagisov**

14 October, Thursday

- 6.00** Breakfast
- 6.30-7.00** Transfer to the International airport of Kazan
- 7.20** Departure to Moscow by Siberian Airlines S7 005



**COMMITTEE ON THE HONOURING OF OBLIGATIONS AND COMMITMENTS
BY MEMBER STATES OF THE COUNCIL OF EUROPE**

**Programme of the visit by the co-rapporteurs to
MOSCOW (Russian Federation)**

1-7 November 2004

Members of the delegation:

Co-rapporteurs: Mr David ATKINSON (United Kingdom, EDG)
Mr Rudolf BINDIG (Germany, SOC)

Secretariat: Mrs Caroline RAVAUD, Head of the Secretariat of the PACE Monitoring Committee
Mr Dmytro KOTLIAR, Deputy Secretary to the PACE Monitoring Committee

1 November, Monday

- 16.30** Arrival of Mr ATKINSON in Moscow (Domodedovo) by British Airways BA 872
18.05 Arrival of Mrs. RAVAUD and Mr. KOTLYAR in Moscow (Sheremetyevo) by Lufthansa LH 3186
18.50 Arrival of Mr BINDIG in Moscow (Sheremetyevo) by Aeroflot SU 266
19.30 Transfer to the Metropol Hotel. Accommodation at the Hotel.

2 November, Tuesday

- 8.00** Breakfast
8.30-9.30 Meeting with the Human Rights NGOs
10.00-11.30 Meeting with the Deputy Minister of Justice Mr KALININ, Deputy Head of the Chief Department on Punishments Execution Mr FILIMONOV, Head of the Department on the Control over Observance of Law and Human Rights in the Penitentiary System Mr TARAKANOV, Acting Head of the Department on Public and Religious Organisations Mr ZHAFYAROV
12.00-13.00 Meeting with the Deputy Head of the Federal Migration Service Mr YUNOSH
13.30-14.30 Meeting with the Head of the International Military Cooperation Chief Department of the Ministry of Defence Mr GUZHINSKIY, Head of the Chief Department on Educational Work Mr BOGATYRYOV
15.00-16.00 Meeting with the Deputy Head of the Federal Security Service Mr USHAKOV, Deputy Head of the FSB Investigatory Department Mr OLESHKO, Head of the Lefortovo Pre-Trial Detention Centre Mr MAKOV
16.30-17.30 Meeting with Deputy General Prosecutor Mr KEKHLEROV and Deputy General Military Prosecutor Mr ARUTYUNYAN
18.15-19.15 Meeting with the Chairman of the State Duma Committee on Local Self-Government Mr MOKRYI
19.40 Meeting with the Head of the Soldiers Mothers Committees' Union Mrs MELNIKOVA

3 November, Wednesday

- 09.45-11.00** Private meeting of the co-rapporteurs with the aide on foreign issues to the President of the Russian Federation Mr PRIKHODKO
11.30-12.30 Meeting with the Head of the Federal Chamber of Attorneys Mr SEMENYAKO, Head of the Federal Union of Attorneys Mr GALOGANOV, Head of the Guild of Russian Attorneys Mr MIRZOEV

- 12.30-13.00** Lunch
- 13.30-14.30** Meeting in the Government of Moscow City with the Deputy Mayor Mr SHANTSEV
- 15.00-16.00** Meeting with the Chairman of the Supreme Court of the Russian Federation Mr LEBEDEV, Chairman of the Judges' Council Mr SIDORENKO, General Director of the Judicial Department Mr GUSEV
- 16.30-17.30** Meeting with the Chairman of the Constitutional Court of the Russian Federation Mr ZORKIN
- 19.30-21.00** Meeting with the representatives of religious organisations (Institute of Religion and Law)

4 November, Thursday

- 8.00** Breakfast
- 10.15-10.45** Meeting with the Deputy Chairman of the State Duma Mr BOOS
- 11.00-11.45** Meeting with the First Deputy Chairman of the State Duma Committee on Federation Issues and Regional Policy Mr Vladimir ZHYDKIKH
- 12.00-12.45** Meeting with the First Deputy Chairman of the State Duma Committee on International Affairs, member of the Russian Federation Delegation to PACE Mr SLUTSKIY
- 13.00-13.45** Meeting with the First Deputy Chairman of the State Duma Committee on Civil, Criminal, Arbitration and Procedural Law, member of the Russian Federation Delegation to PACE Mr GREBENNIKOV
- 14.00-15.30** Working Lunch with the members of the Russian Federation Delegation to the PACE Mr MARGELOV and Mr GREBENNIKOV
- 16.00-17.00** Meeting with the Chairman of the Federation Council Committee on the Federal Issues and Regional Policy Mr KAZAKOV, members of the Committee Mr VESHNYAKOV and Mr PLOTNIKOV
- 17.10-18.00** Meeting with the Chairman of the Federation Council Committee on the Constitutional Legislation, member of the Russian Federation Delegation to PACE Mr SHARANDIN
- 19.30** Dinner hosted by the Deputy Head of the European Commission's Delegation to Russia Mr Vincent PIKET with EU Ambassadors – Luxembourg Ambassador HE Mr KRIEGER, Deputy Head of Netherlands Mission Mr DE BOER, First Secretary of the British Embassy Mr BOWERS, Counsellor at the Embassy of Germany Mr MEIER-KLODT

5 November, Friday

- 10.00-11.30** Meeting with the First Deputy Chairman of the Moscow Oblast Government Mr PARKHOMENKO, Minister of External Economic Relations Mr KARAKHANOV, Chairpersons of the Moscow Oblast Duma committees Mr TARANENKO and Mr BUSOV
- 12.00-13.00** Meeting with the Deputy Presidential Envoy in the Central Federal District Mr FEDOROV
- 14.00-15.00** Meeting with Chairman of the Human Rights Commission under the President of the Russian Federation Mrs PAMFILOVA
- 15.30-16.30** Meeting with the Russian Federation Ombudsman Mr LUKIN and Ombudsman in Moscow Oblast Mr KRYZHOV
- 17.30** Press-conference ('RIA Novosti' News Agency)

6 November, Saturday

- 9.00-10.45** Meeting with the Media NGOs (Metropol Hotel)
11.00-12.45 Meeting with the Human Rights NGOs (Metropol Hotel)
17.30 Departure of Mr BINDIG (Domodedovo, Swiss Airlines LX 1327)

7 November, Sunday

- 14.35** Departure of Mrs. RAVAUD and Mr. KOTLIAR (Sheremetyevo, Lufthansa LH 3183)
17.40 Departure of Mr ATKINSON (Domodedovo, British Airways BA 873)

Appendix 2. List of the Assembly's documents concerning the Chechen Republic

Doc 7230 Report on Russia's request for membership in the light of the situation in Chechnya (Rapporteur: Mr MÜEHLEMAN, Switzerland, Liberal, Democratic and Reformers Group)

Doc 7231 Opinion on Russia's request for membership in the light of the situation in Chechnya (Rapporteur: Mr BINDIG, Germany, Socialist Group)

Resolution 1055 (1995) Russia's request for membership in the light of the situation in Chechnya (adopted by the Assembly on 2 February 1995, 7th sitting)

Order No 506 (1995) Russia's request for membership in the light of the situation in Chechnya (adopted by the Assembly on 2 February 1995, 7th sitting)

AS/Jur (1995) 22 Report on human rights in Chechnya (Rapporteur: Mr Bindig, Germany, Socialist Group) (Visit of the Sub-Committee on Human Rights to Moscow, Chechnya and surrounding republics from 5 to 11 June 1995)

AS/Pol (1995) 41 Developments in the Russian Federation in relation to the situation in Chechnya (Rapporteur: Mr Muehleman, Switzerland, LDR) - Visit of MM Atkinson, Bindig and Muehleman to Moscow and Grozny from 21 to 24 August 1995

Resolution 1065 (1995) Procedure for an opinion on Russia's request for membership of the Council of Europe (adopted by the Assembly on 26 September 1995, 27th sitting)

Doc 7372 Report (Rapporteur: Mr Muehleman, Switzerland, LDR)

Doc 7384 Opinion (Rapporteur: Mr BINDIG, Germany, Socialist Group) (Conflict in Chechnya) - Appendix I - Report on human rights in Chechnya (AS/Jur (1995) 22)

Order No 516 (1996) Creation of an ad hoc committee on Chechnya - **Doc 7475** (Atkinson) - (adopted by the Assembly on 25 January 1996, 7th sitting)

Resolution 1086 (1996) Developments in the Russian Federation in relation to the situation in Chechnya - **Doc 7531** (Muehleman), **Doc 7532** opinion (Bindig) (adopted by the Assembly on 24 April 1996 (13th sitting))

Order No 520 (1996) Developments in the Russian Federation in relation to the situation in Chechnya - **Doc 7531** (Muehleman), **Doc 7532** opinion (Bindig) (adopted by the Assembly on 24 April 1996 (13th sitting))

AS/Bur/Tch (1996) 2

Doc 7560 Addendum III

Information report on the situation in Chechnya

Meetings of the Ad hoc Committee on Chechnya in Moscow (30-31 May 1996) and in Moscow, Grozny, Urus Martan and Nazran (Ingushetia) (8-10 June 1996)

Doc 7633 Addendum II to the Progress Report

Information report on Chechnya (draft interim report on the visit of the Ad hoc Committee on Chechnya to Moscow from 27 to 29 August 1996)

Resolution 1201 (1999) Conflict in Chechnya **Doc 8585** (Rapporteur: Mr Ernst Muehleman, Switzerland, Democratic and Reformers' Group) (text adopted by the Standing Committee on 4 November 1999)

AS/Inf (1999) 10 Declaration of the Parliamentary Assembly Bureau on the situation in Chechnya (13 December 1999)

AS/Bur (2000) 6 Chechnya - Note by Mr Muehleman, Chairman of the ad hoc Committee on Chechnya on the visit to Russia from 15 to 21 December 1999 as Head of the Parliamentary Assembly's ad hoc Committee to observe the parliamentary elections in Russia

Rec 1444 (2000) Conflict in Chechnya **Doc 8630** (Rapporteur: Lord Judd, United Kingdom, Socialist Group) **Doc 8631** Opinion (Rapporteur: Mr Rudolf Bindig, Germany, Socialist Group) (AS/Jur) **Doc 8632** Opinion (Rapporteur: Mr Tadeusz Iwinski, Poland, Socialist Group) (AS/Mig)

Doc 8671 and Addendum Conflict in Chechnya - Reply from the Russian Federation to the Council of Europe's request for further explanations - Letter from the Secretary General of the Council of Europe to the Minister of Foreign Affairs of the Russian Federation, dated 27 January 2000

Doc 8678 Addendum Conflict in Chechnya - Letter from the President of the Parliamentary Assembly to the Chairman of the Committee of Ministers, dated 11 February 2000

Doc 8678 Conflict in Chechnya - Letter from the Chairman of the Committee of Ministers to the President of the Parliamentary Assembly, dated 14 March 2000

Doc 8685 Exchange of correspondence between the Secretary General of the Council of Europe and the Minister for Foreign Affairs of the Russian Federation under Article 52 of the European Convention on Human Rights

Doc 8686 Situation in Chechnya - Implementation of Recommendation 1444 - Letter from the Chairman of the delegation of the Federal Assembly of the Russian Federation to the President of the Parliamentary Assembly, dated 28 March 2000

Rec 1456 Conflict in Chechnya - Implementation by Russia of Recommendation 1444 (2000) **Doc 8697** (Rapporteur: Lord Judd, United Kingdom, Socialist Group), **Doc 8700** opinion (Rapporteur: Mr Rudolf Bindig, Germany, Socialist Group) (AS/Jur) **Doc 8705** opinion (Rapporteur: Mr Reginald Moreels, Belgium, EPP/CD) (AS/Mon) **Doc 8706** opinion (Rapporteur: Mr Tadeusz Iwinski, Poland, Socialist Group) (AS/Mig) **Doc 8707** opinion (Rapporteur: Mr Gyula Hegyi, Hungary, Socialist Group) (AS/Cult)

Doc 8736 Follow-up to Recommendation 1456 (2000) – Implementation by Russia of Recommendation 1444 (2000) – Communication by the President of the Assembly – Statement by the State Duma of the Federal Assembly of the Russian Federation on the position of the Council of Europe Parliamentary Assembly on the situation in the Chechen Republic (Moscow, 12 April 2000)

Doc 8777 Situation in the Republic of Chechnya - implementation of Recommendation 1456 (2000) – Communication by the President of the Assembly

Res 1221 (2000) Conflict in the Chechen Republic – **Doc 8785** Follow-up to Recommendations 1444 (2000) and 1456 (2000) of the Parliamentary Assembly (Rapporteur: Lord Judd, United Kingdom, Socialist Group)

Doc 8788 Opinion on the conflict in the Chechen Republic – Implementation by Russia of Recommendations 1444 and 1456 (2000) (Rapporteur: Mr Rudolf Bindig, Germany, Socialist Group)

Rec 1478 (2000), Res 1227 (2000) Conflict in the Chechen Republic: recent developments (follow-up to Recommendations 1444 (2000) and 1456 (2000) of the Parliamentary Assembly)

Doc 8840 (Rapporteur: Lord Judd, United Kingdom, Socialist Group) **Doc 8843** opinion (Rapporteur: Mr Rudolf Bindig, Germany, Socialist Group)

Doc 8929 Conflict in the Chechen Republic – recent developments (Rapporteur: Lord Judd, United Kingdom, Socialist Group) **Doc 8948** opinion (Rapporteur: Mr Rudolf Bindig, Germany, Socialist Group)

Doc 8944 Humanitarian situation of refugees and internally displaced persons (IDPs) from Chechnya (Rapporteur: Mr Tadeusz Iwinski, Poland, Socialist Group)

Rec 1498 (2001), Res 1240 (2001) Conflict in the Chechen Republic – recent developments
Doc 8929 (Lord Judd), **Doc 8948** opinion (Mr Bindig)

Doc 9038 Progress report on the activities of the joint Working Group on Chechnya comprised of members of the Parliamentary Assembly of the Council of Europe and of the State Duma of the Federal Assembly of the Federation of Russia presented by Lord Judd and Mr Dmitry Rogozin, Co-Chairman of the Joint Working Group on Chechnya

AS/Bur/AH/Chechnya (2001) 02 rev. 1 Confidential Joint Working Group on Chechnya comprised of members of the Parliamentary Assembly of the Council of Europe and of the State Duma of the Federal Assembly of the Federation of Russia - Progress report on the activities of the Joint Working Group on Chechnya

AS/Bur/AH/Chechnya (2001) 03 Strictly Confidential Joint Working Group on Chechnya – List of criminal cases

Doc 9227 Progress report on the activities of the Joint Working Group on Chechnya presented by Lord Judd and Mr Dmitri Rogozin, co-chairmen of the Joint Working Group on Chechnya

Rec 1548 (2002), Res 1270 (2002) Conflict in the Chechen Republic **Doc 9319** (Lord Judd, United Kingdom, Socialist Group) **Doc 9329** opinion (Mr Rudolf Bindig, Germany, Socialist Group), **Doc 9330** opinion (Mr Iwinski, Poland, Socialist Group)

Doc 9415 Addendum I revised Addendum I to the Progress Report – Report on the activities of the Joint Working Group on Chechnya (JWG) made up of members of the Parliamentary Assembly of the Council of Europe and of the State Duma of the Federal Assembly of the Russian Federation presented by Lord Judd and Mr Dmitri Rogozin, co-chairmen of the JWG

Doc 9559 Part I Information document on the conflict in the Chechen Republic – Notes on the visit by the joint Parliamentary Assembly/State Duma Working Group (JWG) to Moscow from 10 to 12 July 2002 (Rapporteur: Lord Judd, United Kingdom, SOC)

Doc 9559 Part II Information document on the conflict in the Chechen Republic – Notes on a visit by the joint Parliamentary Assembly/State Duma Working Group (JWG) to Grozny and Moscow from 3 to 5 September 2002 (Rapporteur: Lord Judd, United Kingdom, SOC)

Rec 1593 (2003), Res 1315 revised (2003), Order 584 (2003) Evaluation of the prospects for a political solution of the conflict in the Chechen Republic – **Doc 9687** (Lord Judd, United Kingdom, Socialist Group), **Doc 9688** opinion (Mr Bindig, Germany, Socialist Group), **Doc 9689** opinion (Mr Iwinski, Poland, Socialist Group)

Doc 9740 Addendum I to the progress report of the Bureau of the Assembly and the Standing Committee (31 January 2003 – 31 March 2003) Draft Constitution of the Chechen Republic

Doc 9740 Addendum II to the progress report of the Bureau of the Assembly and the Standing Committee (31 January 2003 – 31 March 2003) Opinion on the draft Constitution of the Chechen Republic adopted by the Venice Commission at its 54th plenary meeting (Venice, 14-15 March 2003)

Rec 1600 (2003), Res 1323 (2003), Order 586 (2003) Human rights situation in the Chechen Republic **Doc 9732 and Addendum** (Rapporteur: Mr Rudolf Bindig, Germany, Socialist Group)

Rec 1667 (2004) Situation of refugees and displaced persons in the Russian Federation and some other CIS countries **Doc 10118** (Rapporteur: Mr Tadeusz Iwinski, Poland, Socialist Group)

Rec 1678 (2004), Res 1402 (2004) Political situation in the Chechen Republic: measures to increase democratic stability in accordance with Council of Europe standards **Doc 10276** (Rapporteur: Mr Andreas Gross, Switzerland, Socialist Group)

Rec 1679 (2004), Res 1403 (2004) Human rights situation in the Chechen Republic **Doc 10283** (Rapporteur: Mr Rudolf Bindig, German, Socialist Group)

Res 1404 (2004) Humanitarian situation of the Chechen displaced population **Doc 10282** (Rapporteur: Mr Tadeusz Iwinski, Poland, Socialist Group)

Appendix 3. List of conventions to which the Russian Federation is a party



Russia

Treaties signed and ratified or having been the subject of an accession as of 10/05/2005

001	Statute of the Council of Europe		5/5/1949	3/8/1949			
		Ratification or accession: 28/2/1996	Entered into force: 28/2/1996				
002	General Agreement on Privileges and Immunities of the Council of Europe		2/9/1949	10/9/1952			
		Ratification or accession: 28/2/1996	Entered into force: 28/2/1996				
005	Convention for the Protection of Human Rights and Fundamental Freedoms		4/11/1950	3/9/1953			
	Signature: 28/2/1996	Ratification or accession: 5/5/1998	Entered into force: 5/5/1998				
009	Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms		20/3/1952	18/5/1954			
	Signature: 28/2/1996	Ratification or accession: 5/5/1998	Entered into force: 5/5/1998				
010	Protocol to the General Agreement on Privileges and Immunities of the Council of Europe		6/11/1952	11/7/1956			
		Ratification or accession: 28/2/1996	Entered into force: 28/2/1996				
015	European Convention on the Equivalence of Diplomas leading to Admission to Universities		11/12/1953	20/4/1954	X	X	
	Signature: 7/11/1996	Ratification or accession: 17/9/1999	Entered into force: 17/9/1999				
018	European Cultural Convention		19/12/1954	5/5/1955	X		
		Ratification or accession: 21/2/1991	Entered into force: 21/2/1991				
021	European Convention on the Equivalence of Periods of University Study		15/12/1956	18/9/1957	X	X	
	Signature: 7/11/1996	Ratification or accession: 17/9/1999	Entered into force: 17/9/1999				
022	Second Protocol to the General Agreement on Privileges and Immunities of the Council of Europe		15/12/1956	15/12/1956			
	Signature: 28/2/1996	Ratification or accession: 28/2/1996	Entered into force: 28/2/1996				
024	European Convention on Extradition		13/12/1957	18/4/1960	X	X	
	Signature: 7/11/1996	Ratification or accession: 10/12/1999	Entered into force: 9/3/2000				
030	European Convention on Mutual Assistance in Criminal Matters		20/4/1959	12/6/1962	X	X	
	Signature: 7/11/1996	Ratification or accession: 10/12/1999	Entered into force: 9/3/2000				
032	European Convention on the Academic Recognition of University Qualifications		14/12/1959	27/11/1961	X	X	
	Signature: 7/11/1996	Ratification or accession: 17/9/1999	Entered into force: 18/10/1999				
036	Fourth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe		16/12/1961	16/12/1961			
	Signature: 28/2/1996	Ratification or accession: 28/2/1996	Entered into force: 28/2/1996				

044	Protocol No. 2 to the Convention for the Protection of Human Rights and Fundamental Freedoms, conferring upon the European Court of Human Rights competence to give advisory opinions	6/5/1963	21/9/1970			
	Signature: 28/2/1996	Ratification or accession: 5/5/1998	Entered into force: 5/5/1998			
045	Protocol No. 3 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 29, 30 and 34 of the Convention	6/5/1963	21/9/1970			
	Signature: 28/2/1996	Ratification or accession: 5/5/1998	Entered into force: 5/5/1998			
046	Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto	16/9/1963	2/5/1968			
	Signature: 28/2/1996	Ratification or accession: 5/5/1998	Entered into force: 5/5/1998			
049	Protocol to the European Convention on the Equivalence of Diplomas leading to Admission to Universities	3/6/1964	4/7/1964	X	X	
	Signature: 19/2/1998	Ratification or accession: 17/9/1999	Entered into force: 18/10/1999			
055	Protocol No. 5 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 22 and 40 of the Convention	20/1/1966	20/12/1971			
	Signature: 28/2/1996	Ratification or accession: 5/5/1998	Entered into force: 5/5/1998			
062	European Convention on Information on Foreign Law	7/6/1968	17/12/1969	X	X	
		Ratification or accession: 12/2/1991	Entered into force: 13/5/1991			
065	European Convention for the Protection of Animals during International Transport	13/12/1968	20/2/1971	X	X	X
		Ratification or accession: 13/11/1990	Entered into force: 14/5/1991			
066	European Convention on the Protection of the Archaeological Heritage	6/5/1969	20/11/1970	X	X	
		Ratification or accession: 13/11/1990	Entered into force: 14/2/1991			
086	Additional Protocol to the European Convention on Extradition	15/10/1975	20/8/1979	X	X	
	Signature: 7/11/1996	Ratification or accession: 10/12/1999	Entered into force: 9/3/2000			
090	European Convention on the Suppression of Terrorism	27/1/1977	4/8/1978			
	Signature: 7/5/1999	Ratification or accession: 4/11/2000	Entered into force: 5/2/2001			
098	Second Additional Protocol to the European Convention on Extradition	17/3/1978	5/6/1983	X	X	
	Signature: 7/11/1996	Ratification or accession: 10/12/1999	Entered into force: 9/3/2000			
099	Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters	17/3/1978	12/4/1982	X	X	
	Signature: 7/11/1996	Ratification or accession: 10/12/1999	Entered into force: 9/3/2000			
103	Additional Protocol to the European Convention for the Protection of Animals during International Transport	10/5/1979	7/11/1989	X	X	X
		Ratification or accession: 13/11/1990	Entered into force: 14/5/1991			
106	European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities	21/5/1980	22/12/1981	X		
	Signature: 3/11/1999	Ratification or accession: 4/10/2002	Entered into force: 5/1/2003			
117	Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms	22/11/1984	1/11/1988			
	Signature: 28/2/1996	Ratification or accession: 5/5/1998	Entered into force: 1/8/1998			

118	Protocol No. 8 to the Convention for the Protection of Human Rights and Fundamental Freedoms	19/3/1985	1/1/1990			
	Signature: 28/2/1996	Ratification or accession: 5/5/1998	Entered into force: 5/5/1998			
120	European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches	19/8/1985	1/11/1985	X	X	
		Ratification or accession: 12/2/1991	Entered into force: 1/4/1991			
121	Convention for the Protection of the Architectural Heritage of Europe	3/10/1985	1/12/1987	X	X	X
		Ratification or accession: 13/11/1990	Entered into force: 1/3/1991			
122	European Charter of Local Self-Government	15/10/1985	1/9/1988			
	Signature: 28/2/1996	Ratification or accession: 5/5/1998	Entered into force: 1/9/1998			
126	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	26/11/1987	1/2/1989	X	X	
	Signature: 28/2/1996	Ratification or accession: 5/5/1998	Entered into force: 1/9/1998			
135	Anti-Doping Convention	16/11/1989	1/3/1990	X	X	
		Ratification or accession: 12/2/1991	Entered into force: 1/4/1991			
137	Fifth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe	18/6/1990	1/11/1991			
	Signature: 28/2/1996	Ratification or accession: 28/2/1996	Entered into force: 1/6/1996			
138	European Convention on the General Equivalence of Periods of University Study	6/11/1990	1/1/1991	X	X	X
	Signature: 7/11/1996	Ratification or accession: 7/11/1996	Entered into force: 1/1/1997			
140	Protocol No. 9 to the Convention for the Protection of Human Rights and Fundamental Freedoms	6/11/1990	1/10/1994			
	Signature: 28/2/1996	Ratification or accession: 5/5/1998	Entered into force: 1/9/1998			
141	Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime	8/11/1990	1/9/1993	X	X	
	Signature: 7/5/1999	Ratification or accession: 2/8/2001	Entered into force: 1/12/2001			
146	Protocol No. 10 to the Convention for the Protection of Human Rights and Fundamental Freedoms	25/3/1992				
	Signature: 28/2/1996	Ratification or accession: 5/5/1998				
147	European Convention on Cinematographic Co-Production	2/10/1992	1/4/1994	X		X
	Signature: 30/3/1994	Ratification or accession: 30/3/1994	Entered into force: 1/7/1994			
151	Protocol No. 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	4/11/1993	1/3/2002			
	Signature: 28/2/1996	Ratification or accession: 5/5/1998	Entered into force: 1/3/2002			
152	Protocol No. 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	4/11/1993	1/3/2002			
	Signature: 28/2/1996	Ratification or accession: 5/5/1998	Entered into force: 1/3/2002			
155	Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby	11/5/1994	1/11/1998			
	Signature: 28/2/1996	Ratification or accession: 5/5/1998	Entered into force: 1/11/1998			

157	Framework Convention for the Protection of National Minorities		1/2/1995	1/2/1998	X	X	
	Signature: 28/2/1996	Ratification or accession: 21/8/1998	Entered into force: 1/12/1998				
162	Sixth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe		5/3/1996	1/11/1998			
	Signature: 7/5/1999	Ratification or accession: 10/5/2001	Entered into force: 11/6/2001				
165	Convention on the Recognition of Qualifications concerning Higher Education in the European Region		11/4/1997	1/2/1999	X	X	X
	Signature: 7/5/1999	Ratification or accession: 25/5/2000	Entered into force: 1/7/2000				

46 treaties found

Notes: Convention(s) and Agreement(s) opened to the member States of the Council of Europe and, where appropriate, to the: E. - **European** non-member States; N. - **Non-European** non-member States; C. - European Community. See the final provisions of each treaty.

Source: Treaty Office on <http://conventions.coe.int>

Appendix 4: Final comments by the Russian Delegation

Unofficial translation

To: **Mr. David Atkinson**
Mr. Rudolf Bindig

**Members of the PACE Monitoring Committee,
Rapporteurs on Russia**

May 18, 2005

Dear Rapporteurs,

In addition to the previously sent Comments of the Russian Delegation to the Report on Honouring of Obligations and Commitments by the Russian Federation, we would like once again to draw your attention to the information given below, as the revised Draft Report on Russia as of 10 May this year (AS/Mon (2005) 14 Rev.) doesn't take into account comments to the paragraphs related to the *Prokuratura* reform, ratification of some of the Conventions of the Council of Europe or court proceedings regarding high treason or espionage cases, etc.

I. As regards ratification of **the European Charter for Regional or Minority Languages**, the Administration of the President of Russia held a meeting with the Ministry of Foreign Affairs, Ministry of Justice and Ministry of Regional Development of Russia. It was agreed to set up an Inter-Departmental Working Group to coordinate work related to the Charter ratification process. Recommendations and proposals shall be drawn by the results of the work of the Inter-Departmental Working Group and submitted to the Government of Russia.

II. As regards preparation for ratification of **the European Social Charter (revised)** as of 3 May, 1996, an interdepartmental committee was newly established in 2005. In April – May it must finish its discussions of the materials of comparative analysis of compliance of the national legislation with the Charter with regard to the reforms underway in the country.

The set of documents prepared this May shall be sent for approval to the Ministries and Departments concerned, and afterwards shall be submitted for consideration to the Government of Russia (Instruction № АЖ-П12-589 of February 12, 2005) in compliance with the approved procedures.

To prepare the documents, the Interdepartmental Committee proceeds from the understanding that the level of the actual state guarantees to the relevant groups of population is subject to the economic situation of the state. To bring this level up to the standards set out by the Charter, a further economic growth of the country shall be necessary.

The Interdepartmental Committee selected the minimum number of Articles and paragraphs of the Charter and proposed to undertake obligations related to Part I and Articles 1,2 (paragraphs 1, 3-7), 3, 4 (pp. 2-5), 5-11, 12 (p. 1), 14, 15 (pp. 1-2), 16, 17, 18 (p. 4), 19 (pp. 5 and 9), 20-22, 24, 26 (p. 2), 27-29 of Part II of the European Social Charter (revised) as of May 3, 1996. It is envisaged that 19 articles (68 paragraphs) out of 31 articles (98 paragraphs) of the Charter, including 6 Articles (1, 5, 6, 7, 16 and 20) out of 9 mandatory (1, 5, 6, 7, 12, 13, 16, 19 and 20) should be submitted for ratification.

Ministry of Health and Social Development intends to finalize the Charter ratification process in the second half of 2005.

III. **The European Convention on Nationality** is to be ratified by the State Duma during the autumn session of 2005.

IV. As regards guaranteeing the right of citizens to unbiased information as well as taking measures to preserve and reinforce pluralism and independence of **mass media in Russia**, the President of the Russian Federation V. Putin in his Address to the Federal Assembly of the Russian Federation on April 25 this year stated:

"What must be done so that the national television would fully meet the most relevant needs of the Russian civil society and accommodate its interests? We must offer such guarantees that will ensure maximum objectivity of the state broadcasters, their independence of any separate groups and reflect the whole spectrum of public political forces in the country.

I am proposing to enhance the powers of the Public Chamber with regard to public control over the observance of freedom of speech by TV-channels. For this purpose the Chamber may set up a Commission composed of renowned and respected representatives of the professional community who might ensure independence of broadcasting policy as well as recruit highly skilled employees. I am also planning to submit amendments to the corresponding legislation to the State Duma. Besides, I consider it necessary to ensure access of all parliamentary factions to mass media."

These ideas voiced out in the Address are being developed by the State Duma.

V. We would like to draw the attention of the Rapporteurs to the following provisions of the Report related to **the reform of the Prokuratura (pp. 169-194 – draft report as of 10 May, 2005)**.

1. The Law of the Russian Federation № 2202-1 as of 17 January, 1992 "On the Prosecutor's Office of the Russian Federation" that the Draft Report refers to, had been in effect only till 1995 and no provisions of the Law have been applied in Russia for a decade now. The statutory wording changed fundamentally. Complete material revision of the legislation and changes of all its structural units doesn't allow to regard the Federal Law of 1995 only as a revised version of the previous Law of 1992.

2. The Prosecutor General of Russia is appointed and released from his position by the Council of Federation of the Federal Assembly of Russia upon a proposal by the President of Russia. This fully complies with Part 2 of Article 129 of the Constitution of the Russian Federation and virtually is an "independent and unbiased procedure" that ensures compliance with the principles of independence of the Prosecutor's Office. The above is fully consistent with subparagraph «a» of paragraph 5 of **Recommendation R (2000) 19 of the Committee of Ministers of the Council of Europe**.

3. As regards the **involvement of the Prosecutor General in the law-making activities** (see *paragraph 156 of the Draft Report*), the Rapporteurs' fallacious judgment and farfetched concerns are due, in particular, to the fact that they studied inoperative legislation of 1992. Moreover, they ignored Russian legal traditions of integrated development of legal framework, studied one law in isolation from other legal acts, in particular, from the Code of Civil Procedure and Arbitration Procedure Code of Russia. Neither do they take into account the norms of the Russian Constitution that have supremacy on the whole territory of the country.

Pursuant to Article 104 of the Constitution of the Russian Federation, the Prosecutor General of Russia doesn't have the power to initiate legislation, which rules out his direct involvement in passing laws, i.e. in the so-called "parliamentary debates". Pursuant to Article 9 of the Federal Law of 1995 "On the Prosecutor's Office of the Russian Federation", the Prosecutor General "is entitled to submit to the legislative bodies and agencies that have the power to initiate legislation his proposals to amend, supplement, abolish or approve laws and other legal acts". Under the Constitution of the Russian Federation such proposals are not binding. This nonbinding nature of such initiative proposals makes it impossible for the prosecutor "to build the prosecutor's power vis-à-vis other state organs".

The role of the Prosecutor's Office in lawmaking is quite consistent with paragraph 6 of **Recommendation R (2000) 19 of the Council of Ministers of the Council of Europe** that states that prosecutors "must have the right to participate in discussions of issues related to the law, administration of justice, promotion of development and protection of human rights ..., which can't damage their professional status as they perform legal actions".

4. Pursuant to Article 45 of the Civil Procedure Code of Russia and Article 52 of the Arbitration Procedure Code of Russia, the Law strictly regulates and limits the rights of the prosecutor to

participate in the civil and arbitration court procedures (solely in order to protect the rights of citizens who by reason of health, age, disability and for other valid reasons can't go to court themselves and also in the interests of the state) - (see paragraph 174 of the Draft Report).

5. As regards the general oversight functions of the Prosecutor's Office (see paragraphs 176-181 of the Draft Report), we would like to draw the Rapporteurs' attention to the fact that actually the term "general oversight of the Prosecutor's Office" is not to be found in the Federal Law "On the Prosecutor's Office" or other legal acts of the Russian Federation. Current Russian legislation provides for such functions of the Prosecutor's Office that are also related to prosecutor's supervision outside the framework of criminal prosecution.

Similar rather broad functions belong to the prosecutor's offices in other European countries, e.g. in Portugal, Spain, France, Belgium, etc. Current official materials of the prosecutor's offices in different European countries suggest that they don't narrow down their activities to criminal prosecution only. This, *inter alia*, is proven by the official materials of the **3rd International Workshop with participation of experts of the Council of Europe on 22-23 September 2004**. In his speech Expert A. Vandoren, Chair of the Police Monitoring Committee in Brussels (Belgium), emphasized that the Council of Royal Prosecutors approved current functions of the prosecutor's office including "monitoring of judiciary and judicial functions; control of notaries and police, as well as of other employees of the law-enforcement agencies, and there is a trend to enhance the impact of prosecutors' activities on the life of the country".

Currently, there are no any European legal acts, even recommendatory, that would directly point to the necessity or desirability of excluding such functions from the legal systems of European states, as the prosecutor's supervision is aimed, above all, at the protection of human rights and freedoms.

6. As regards the assessment of the results of supervision performed by the Prosecutor's Office, we would like to draw the Rapporteurs' attention to the following. For the period from 2002 till 2004 (*inclusive*), prosecutors detected and protested about 14,5 thousand regulatory legal acts passed by the authorities of the subjects of the Federation and about 163 thousand acts passed by the local self-governance bodies. Out of the latter acts more than 11, 5 thousand were Articles of association of municipal entities. After the Prosecutor's Office stepped in, most regulatory acts were either brought in compliance with the law or terminated.

7. According to paragraphs 178-179, the following aspects stayed unclear.

The Prosecutor's Office of the Russian Federation **doesn't supervise** the Government or the Parliament of the Russian Federation.

When supervising legislative execution, pursuant to Articles 21 and 26 of the Federal Law "On the Prosecutor's Office", the *Prokuratura* bodies **don't substitute other governmental bodies and officials and don't interfere with business activities of organizations**.

The prosecutor's inspection is possible only on the basis of information submitted to the Prosecutor's office about violations of law that necessitates measures to be taken by the Prosecutor (paragraph 2 of Article 21 of the Federal Law "On the Prosecutor's Office").

To ensure the principle of separation of powers and reliable system of human rights protection it is important that the Prosecutor's office doesn't make any final decisions. Today, the *Prokuratura* is a body that induces to restore infringed rights, initiates proceedings, but, unlike courts, doesn't make rulings in the area of criminal, administrative or civil legal relations.

8. It is also unclear what is the basis for the rapporteurs' nonobjective finding that "*the wide scope of these powers would appear to be in contradiction with paragraph 12 of Recommendation Rec. (2000) 19 of the Committee of Ministers of the Council of Europe*" (see paragraph 179 of the Draft Report).

Firstly, the above Recommendations speak "**solely about the role of the Prosecutor's Office in the criminal justice system ...**"

Secondly, the Explanatory Note to the above Recommendations states that "... recommendations are not legally binding, any wording ... must be understood in such a way that only the government can exercise the principle in question".

The constitutionality of the law that vests prosecutors with power to supervise compliance with the Constitution of the Russian Federation and execution of laws has been repeatedly confirmed by the Constitutional Court of Russia (Rulings of the Constitutional Court of the Russian Federation № 6-П of 11.04.2000; № 3-П of 18.02.2000; № 13-П of 18.07.2003).

9. Pursuant to Section 3 of the Federal Law "On the Prosecutor's Office in the Russian Federation", prosecutors must supervise observance of civil rights by the federal Ministries and Departments, authorities of the subjects of the Federation, officials and Heads of different organizations.

Protection of rights and freedoms of citizens is a key area of work of the *Prokuratura* authorities of all levels. In 2004 only, prosecutors detected 650 thousand of legal violations in the social sphere, including 462.9 thousand violations of labour rights of citizens, 40.9 thousand violations of housing rights of citizens. Measures were taken in response to 37 thousand complains from citizens to restore their rights that have been infringed due to unsatisfied judgments. 300 thousand cases of violation of the Law on labour compensation were detected in the same period of time. To correct such violations, more than 11 thousand illegal acts were protested, almost 34 thousand filing petitions were submitted and considered, and consequentially 6.5 thousand guilty officials were brought to disciplinary liability by their heads. Over 155 thousand affirmative defenses were submitted to courts to uphold the constitutional rights of citizens to compensation for labour. In 2004, 1448 criminal cases were initiated with regard to nonpayment of wages (Article 145-1 of the Criminal Code of Russia).

The above statistics prove that prosecutor's public function of supervision of execution of laws is in demand by society.

10. As regards reference of the Rapporteurs to the "European standards", the decade of work within the framework of the Council of Europe convinced Russian specialists that **Europe doesn't have any unified standards that would outline the tasks and powers of the Prosecutor's Office.**

It would be wrong to attempt to pattern the prosecution system of one country on the principles of another. Every system must be compatible with the culture and history of the country, and also be accepted by the society of a country where it is operative. (see the Final Document of Pan-European Conference of the Council of Europe, May 1993, Austria).

The *Prokuratura* bodies must be set up with regard to social and political situation in the country, as well as democratic legal traditions of the state on condition of priority of the rule of law and democracy (see Final Conclusions of the International Conference of the Council of Europe, 1994, Hungary (Budapest)).

The Final Document of the International Workshop of the Council of Europe "Prosecutor's Office in the Constitutional State" (January 1997, Moscow), held within the framework of multilateral meeting of experts of the Council of Europe and representatives of the Prosecutor's Offices of France, Germany, Italy, Spain, Belgium, Switzerland, Netherlands and Russia, stated that "if the constitutional status and competence of the institute of the Prosecutor's Office may differ depending on the country ..., then the most important thing is that this institute would find its place in a democratic society based on the principle of separation of powers and rule of law".

February 2004, the Committee of Ministers of the Council of Europe in response to the PACE Recommendation 1604 (2003) regarding the role of the Prosecutor's Office in a democratic society expressly mentioned the "diversity of models of the Prosecutor's Office in different countries arising from legal traditions and different arrangements of criminal justice system". The same document states, in particular, that "the Committee of Ministers doesn't see any grounds to demand that the jurisdictions that apply the principle of legality should abandon it or that prosecutors should be released from some functions that are not related to the criminal justice system, as it happens in many legal systems".

11. In a modern democratic state, activity of the Prosecutor's Office is characterized by a situation when any decision and action by public authorities, including the Prosecutor's Office, may be challenged in court. This system is able to ensure real protection of human rights and freedoms.

Changes in the status, structure, objectives and mode of work of the Prosecutor's Office should be introduced harmoniously, in compliance with changes in the judicial and legal systems, of which the Prosecutor's Office is an integral part. The Prosecutor's Office in Russia, which might seem untraditional to some representatives of Western Europe, will be objectively justified and demanded by the society until a properly adjusted system of state supervision is introduced and the judicial power is strengthened.

Therefore, legal status, functions and powers of the Prosecutor's Office in Russia as defined in the Russian Federation, do not contradict the universally recognized principles and norms of international law, and are aimed at safeguarding human and civil rights and freedoms, are in line with the modern national legislation, recommendations of the Council of Europe and obligations undertaken by the Russian Federation.

VI. As regards the rights of the persons accused in **criminal cases on high treason and espionage**, we should inform you that the Criminal Code of Russia envisages responsibility for such acts as high treason (Article 275 CC of the RF) and espionage (Article 276 CC of the RF), recognizing them as penal. Pre-trial investigation of this category of cases is conducted in general order according to the provisions of Section VIII of the Criminal Procedure Code of RF (CPC of the RF). Cases of high treason and espionage are tried in courts with the jury (Articles 30 and 31, CPC of the RF). **At the same time in such developed countries as France, Switzerland, Norway and others, judicial procedures are conducted by professional judges only.**

We should also draw your attention to the fact that according to the Russian laws the expert opinion on whether information is a state secret or not, can be based not on the formal attributes, such as a secrecy stamp on a document, but on the essential character of the information the document contains. At that the forensic enquiry is made not only by state forensic experts, but also other experts possessing special knowledge (Article 195 CPC of the RF), which makes it possible for the defense to involve independent experts. For comparison, we must note that in such countries as the United Kingdom, Sweden and Austria the above mentioned type of examination can only be conducted by competent state agencies.

To prove effectiveness of the criminal procedure norms we could offer a criminal case of Mr. A. Nikitin who was charged under Article 64 of the Criminal Code of the RSFSR ("high treason"). Despite the complaint he submitted to the European Court of Human Rights (# 50178/99 "Nikitin vs. Russia), the Court ruled that the Russian Federation violated no laws in the case of A. Nikitin.

VII. As regards **the Lefortovo pre-trial detention centre**, we would like to inform you that a principled agreement has been reached to transfer "Lefortovo" to the Ministry of Justice. At present, a package of legal documents is under preparation. The issue is to be settled in the near future.

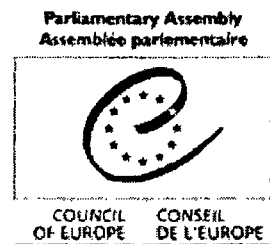
Yours sincerely,

Konstantin KOSACHEV

Chairman
Russian Delegation to the PACE

Appendix 5

Parliamentary Assembly
Assemblée parlementaire



OPINION No. 193 (1996)¹

on Russia's request for membership of the Council of Europe

1. The Russian Federation applied to join the Council of Europe on 7 May 1992. By Resolution (92) 27 of 25 June 1992, the Committee of Ministers asked the Parliamentary Assembly to give an opinion, in accordance with Statutory Resolution (51) 30 A.
2. Special guest status with the Parliamentary Assembly was granted to the Russian Parliament on 14 January 1992.
3. Procedure for an opinion on Russia's request for membership was interrupted on 2 February 1995 because of the conflict in Chechnya. On 27 September 1995, with the adoption of Resolution 1065, procedure was resumed on the grounds that Russia was henceforth committed to finding a political solution and that alleged and documented human rights violations were being investigated.
4. The Assembly has followed the events of December 1995 in Gudermes and the recent events in Pervomayskoye with deep concern. It firmly condemns the taking of hostages as an act of terrorism and a flagrant violation of human rights, which no cause can justify. At the same time, it considers that the Russian authorities did not show sufficient concern for the safety of the hostages. The apparently indiscriminate use of force cost the lives of many innocent people and violated international humanitarian law. The Chechen conflict cannot be resolved by the use of force. There will be no peace in the region, nor an end to terrorist attacks, without a political solution based on negotiation and on European democratic values.
5. The Assembly notes that political, legal and economic reforms have been sustained. The legal system continues to show shortcomings, as noted by Council of Europe legal experts (7 October 1994). Nonetheless, there is progress towards a general awareness of - and respect for - the rule of law.
6. Assurances of continued progress were given to the Council of Europe by the President of the Federation, the Prime Minister, the President of the Duma and the President of the Council of the Federation in their letter of 18 January 1995.
7. On the basis of these assurances and of the following considerations and commitments, the Assembly believes that Russia - in the sense of Article 4 of the Statute - is clearly willing and will be able in the near future to fulfil the provisions for membership of the Council of Europe as set forth in Article 3 ("Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council ..."):
 - i. Russia has been taking part in various activities of the Council of Europe since 1992 - through its participation in intergovernmental "co-operation and assistance" programmes (notably in the fields of legal reform and human rights), and through the participation of its special guest delegation in the work of the Parliamentary Assembly and its committees;
 - ii. "political dialogue" between Russia and the Committee of Ministers has been established since 7 May 1992;

- iii. Russia has acceded to several Council of Europe conventions, including the European Cultural Convention;
- iv. the following legislation is being prepared as a matter of priority, with international consultation, on the basis of Council of Europe principles and standards: a new criminal code and a code of criminal procedure; a new civil code and a code of civil procedure; a law on the functioning and administration of the penitentiary system;
- v. new laws in line with Council of Europe standards will be introduced: on the role, functioning and administration of the Procurator's Office and of the Office of the Commissioner for Human Rights; for the protection of national minorities; on freedom of assembly and on freedom of religion;
- vi. the status of the legal profession will be protected by law: a professional bar association will be established;
- vii. those found responsible for human rights violations will be brought to justice - notably in relation to events in Chechnya;
- viii. effective exercise will be guaranteed of the rights enshrined in Article 27 of the constitution and in the law on freedom of movement and choice of place of residence;
- ix. conditions of detention will be improved in line with Recommendation R (87) 3 on European prison rules: in particular, the practically inhuman conditions in many pre-trial detention centres will be ameliorated without delay;
- x. responsibility for the prison administration and the execution of judgments will be transferred to the Ministry of Justice as soon as possible;
- xi. the state and progress of legislative reform will permit the signature and ratification, within the indicated timetable, of the European conventions listed hereunder in paragraph 10;
- xii. the Russian Federation will assist persons formerly deported from the occupied Baltic states or the descendants of deportees to return home according to special repatriation and compensation programmes which must be worked out.

8. With a view to the fulfilment of these assurances and respect for these commitments, the Assembly resolves to establish - with the close co-operation of Russia's national parliamentary delegation - its own parliamentary "advisory and control" programme under the authority of the committees responsible for the implementation of Order No. 508 (1995) on the honouring of obligations and commitments by member states of the Council of Europe. This programme will complement, and not prejudice, the monitoring procedure under Order No. 508 (1995).

9. As a contribution to long-term assistance and co-operation, the Assembly welcomes the European Union/Council of Europe joint programme for the strengthening of the federal structure and of human rights protection mechanisms and for legal system reform: particular attention should also be paid to support for, and the strengthening of, non-governmental organisations in the field of human rights and to the establishment of a civil society.

10. The Parliamentary Assembly notes that the Russian Federation shares fully its understanding and interpretation of commitments entered into as spelt out in paragraph 7, and intends:

- i. to sign the European Convention on Human Rights at the moment of accession; to ratify the Convention and Protocols Nos. 1, 2, 4, 7 and 11 within a year; to recognise, pending the entry into force of Protocol No. 11, the right of individual application to the European Commission and the compulsory jurisdiction of the European Court (Articles 25 and 46 of the Convention);
- ii. to sign within one year and ratify within three years from the time of accession Protocol No. 6 to the European Convention on Human Rights on the abolition of the death penalty in time of peace, and to put into place a moratorium on executions with effect from the day of accession;
- iii. to sign and ratify within a year from the time of accession the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

- iv. to sign and ratify within a year from the time of accession the European Framework Convention for the Protection of National Minorities; to conduct its policy towards minorities on the principles set forth in Assembly Recommendation 1201 (1993), and to incorporate these principles into the legal and administrative system and practice of the country;
- v. to sign and ratify within a year from the time of accession the European Charter of Local Self-Government and the European Charter for Regional or Minority Languages; to study, with a view to ratification, the Council of Europe's Social Charter; and meanwhile to conduct its policy in accordance with the principles of these conventions;
- vi. to sign and ratify and meanwhile to apply the basic principles of other Council of Europe conventions - notably those on extradition; on mutual assistance in criminal matters; on the transfer of sentenced persons; and on the laundering, search, seizure and confiscation of the proceeds of crime;
- vii. to settle international as well as internal disputes by peaceful means (an obligation incumbent upon all member states of the Council of Europe), rejecting resolutely any forms of threats of force against its neighbours;
- viii. to settle outstanding international border disputes according to the principles of international law, abiding by the existing international treaties;
- ix. to ratify, within six months from the time of accession, the agreement of 21 October 1994 between the Russian and Moldovan Governments, and to continue the withdrawal of the 14th Army and its equipment from the territory of Moldova within a time-limit of three years from the date of signature of the agreement;
- x. to fulfil its obligations under the Treaty on Conventional Armed Forces in Europe (CFE);
- xi. to denounce as wrong the concept of two different categories of foreign countries, whereby some are treated as a zone of special influence called the "near abroad";
- xii. to negotiate claims for the return of cultural property to other European countries on an ad hoc basis that differentiates between types of property (archives, works of art, buildings, etc.) and of ownership (public, private or institutional);
- xiii. to return without delay the property of religious institutions;
- xiv. to settle rapidly all issues related to the return of property claimed by Council of Europe member states, in particular the archives transferred to Moscow in 1945;
- xv. to cease to restrict - with immediate effect - international travel of persons aware of state secrets, with the exception of those restrictions which are generally accepted in Council of Europe member states, and to facilitate the consultation of archives kept in the Russian Federation;
- xvi. to ensure that the application of the CIS Convention on Human Rights does not in any way interfere with the procedure and guarantees of the European Convention on Human Rights;
- xvii. to revise the law on federal security services in order to bring it into line with Council of Europe principles and standards within one year from the time of accession: in particular, the right of the Federal Security Service (FSB) to possess and run pre-trial detention centres should be withdrawn;
- xviii. to adopt a law on alternative military service, as foreseen in Article 59 of the constitution;
- xix. to reduce, if not eliminate, incidents of ill-treatment and deaths in the armed forces outside military conflicts;
- xx. to pursue legal reform with a view to bringing all legislation in line with Council of Europe principles and standards: in particular, Presidential Decree No. 1226 should be revised without delay;
- xxi. to extend its international co-operation to prevent - and eliminate the ecological effects of - natural and technological disasters;

xxii. to sign and ratify within a year from the time of accession the General Agreement on Privileges and Immunities of the Council of Europe and its additional protocols;

xxiii. to co-operate fully in the implementation of Assembly Order No. 508 (1995) on the honouring of obligations and commitments by member states of the Council of Europe, as well as in monitoring processes established by virtue of the Committee of Ministers' Declaration of 10 November 1994 (95th session);

xxiv. to respect strictly the provisions of international humanitarian law, including in cases of armed conflict on its territory;

xxv. to co-operate in good faith with international humanitarian organisations and to enable them to carry on their activities on its territory in conformity with their mandates.

11. The Assembly recommends that the Committee of Ministers - on the basis of the commitments and understandings indicated above:

i. invite the Russian Federation to become a member of the Council of Europe;

ii. allocate eighteen seats to the Russian Federation in the Parliamentary Assembly;

iii. guarantee that the Organisation's means and capabilities, in particular those of the Assembly and of the human rights institutions, are increased to meet the consequences of these decisions, and refrain from using the Russian Federation's accession to reduce the contributions of states which are already members.

1. Assembly debate on 25 January 1996 (6th and 7th Sittings) (see Doc. 7443, report of the Political Affairs Committee, rapporteur: Mr Muehleemann; and Doc. 7463, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Bindig).

Text adopted by the Assembly on 25 January 1996 (7th Sitting).

Reporting committee: Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Reference to committee: Resolution 1115 (1997) of 27 January 1997

Draft resolution adopted by the committee on 1 June 2005 with 21 votes in favour and 1 against, and *draft recommendation* adopted by the committee on 1 June 2005 with 21 votes in favour and 1 abstention.

Members of the committee: Mr György **Frunda** (Chairperson), Mrs Hanne **Severinsen**, Mrs Naira **Shakhtakhtinskaya**, Mr Mikko **Elo** (Vice-Chairpersons), Mr Pedro Agramunt, Mr Bakhtiyar **Aliyev**, Mr René André, Mr Giuseppe Arzilli, Mr David **Atkinson**, Mr Jaume Bartumeu Cassany, Mrs Mertixell Batet, Mrs Gülsün **Bilgehan**, Mr Rudolf **Bindig**, Mrs Mimount Bousakla, Mr Luc **Van den Brande**, Mr Patrick Breen, Mrs Beáta Brestensktá, Mr Milos **Budin**, Mr Mevlüt Çavuşoğlu, Mr Jonas **Čekuolis**, Mr Doros Christodoulides, Mr Boriss Cilevičs, Mr Georges **Colombier**, Mr Joseph Debono Grech, Mr Juris Dobelis, Mrs Josette **Durrieu**, Mr Mátyás Eörsi, Mr Jean-Charles Gardetto, Mr József Gedei, Mr Marcel Glesener, Mr Stef Goris, Mr Andreas **Gross**, Mr Alfred Gusenbauer, Mr Michael Hagberg, Mr Michael **Hancock**, Mr Andres **Herkel**, Mr Serhiy **Holovaty**, Mr Jerzy **Jaskiernia**, Mr Erik Jurgens, Lord **Kilclooney** of Armagh, Mr Evgeni Kirilov, Mr Shavarsh Kocharian, Ms Synnøve Konglevoll, Mr Konstantin Kosachev, Mr André Kvakkestad, Mrs Darja Lavtižar-Bebler, Mrs Sabine Leutheusser-Schnarrenberger, Mr Eduard Lintner, Mr Mikhail **Margelov**, Mr Dick Marty, Mr Frano Matušić, Mr José Medeiros Ferreira, Mr Miloš **Melčák**, Mr Azim **Mollazade**, Mr Zsolt Németh, Mr İbrahim Özal, Mr Theodoros Pangalos, Mrs Eleonora Petrova-Mitevská, Mrs Sólveig Pétursdóttir, Mr Leo Platvoet, Mr Christos Pourgourides, Mr Dumitru Prijmireanu, Mr Anatoliy **Rakhansky**, Mr Dario Rivolta, Mr Armen **Rustamyan**, Mrs Katrin Saks, Mr Kimmo **Sasi**, Mr Adrian Severin, Mr Vitaliy Shybko, Mr Leonid **Slutsky**, Mr Jerzy Smorawiński, Mr Michael Spindelegger, Mrs Maria Stoyanova, Mr Qazim Tepshi, Mrs Elene **Tevdoradze**, Mr Tigran Torosyan, Mr Miltiadis Varvitsiotis, Mrs Birutė Vėsaitė, Mr Rudolf **Vis**, Mr Oldřich Vojtíš, Mrs Renate **Wohlwend**, Mr Marco Zacchera, Mr Emanuelis **Zingeris**.

N.B. The names of those members who were present at the meeting are printed in bold.

Head of the secretariat: Mrs Ravaud

Secretaries to the committee: Mr Gruden, Mrs Teophilova-Permaul, Mr Kotlyar.