

RUSSIAN FEDERATION

I. INTRODUCTION

1. The legal framework

1.1. The Constitution

The Russian Federation has an estimated population of over 148 million people. It is composed of 82% Russians, 3.8% Tatars, 3% Ukrainians, 1.2% Chuvashs and at least one hundred other ethnic groups. At least 5% of the population come from other independent States within the Commonwealth of Independent States.¹

The Russian Federation succeeded the Soviet Union and came into being on 24 August 1991. It is a democratic federal State subject to the rule of law with a republican government. It consists of 49 *oblasts*, 21 republics, 10 autonomous *okrugs*, 6 *krais*, 2 federal cities and 1 autonomous *oblast* (all of which are hereinafter referred to as subjects of the Federation).² The current Constitution was adopted on 12 December 1993 replacing the Soviet Constitution of 1977.

The Constitution stipulates that basic rights and liberties shall be recognised and guaranteed in the Russian Federation in conformity with the commonly recognised principles and norms of international law.³ The Constitution recognises a number of civil and political as well as economic and social rights.⁴ The Constitution also guarantees the right to petition and the protection of these rights in a court of law.⁵

The courts of general jurisdiction include the Supreme Court and the courts of the republics, *krais* and *oblasts*, the city courts of Moscow and Saint Petersburg, the courts of the autonomous *oblasts* and the autonomous *okrugs*, the district courts and military tribunals.⁶ The Supreme Court is the highest judicial body competent in civil, criminal, administrative and other matters. It provides judicial supervision to the activities of lower courts and provides explanations on judicial practice issues.⁷ There are two other judicial systems, of equal status: the *Arbitrazh* (commercial) courts, headed by the Higher *Arbitrazh* Court, and the Constitutional Court, with constitutional and charter (*ustav*) courts in several of the regions. The Federal Constitutional Court has the power, *inter alia*, to review, upon complaints about the violation of constitutional

¹ See on general background information: Core document forming part of the reports of States Parties: Russian Federation, UN Doc. HRI/CORE/1/Add.52/Rev.1, 27 March 1996.

² Article 1 and 5 of the Constitution.

³ Article 17 (1) of the Constitution.

⁴ The right to equality (Art. 19), the right to life (Art. 20), the prohibition of torture and inhuman treatment (Art. 21), the right to freedom (Art. 22), the right to privacy (Arts. 23, 24), the inviolability of the home (Art. 25), freedom of movement (Art. 27), freedom of conscience and religion (Art. 28), freedom of expression (Art. 29), freedom of association (Art. 30), freedom of assembly (Art. 31), the right to free economic activity (Art. 34), the right to private property (Art. 35), the right to work (Art. 37), the guarantee of social security (Art. 39), the right to a home (Art. 40), the right to health care and medical assistance (Art. 41), the right to a favourable environment (Art.42), the right to education (Art. 43) and freedom of artistic life (Art. 44). The Constitution also provides for several criminal procedural rights (Articles 48, 49, 50, 51,54).

⁵ Articles 33 and 46 of the Constitution.

⁶ Judicial System Act of 1981 as amended in 1992 and 1993. See for an overview Core Document, *supra*, paras.39 et seq.

⁷ Article 126 of the Constitution.

REPARATION FOR TORTURE: RUSSIAN FEDERATION

rights and freedoms of citizens and requests from courts, the constitutionality of the law applied or due to be applied in a specific case.⁸ The independence of the judiciary is guaranteed.⁹

1.2. Incorporation and status of international law in domestic law

The Russian Federation is a party to the following relevant treaties:

- CERD (4 February 1969)
- International Covenant on Civil and Political Rights (16 October 1973)
- CEDAW (23 January 1981)
- CRC (16 August 1990)
- Convention against Torture, ratified 3 March 1987; Declaration relating to Articles 21 and 22 (1 October 1991)
- Optional Protocol to the ICCPR (1 October 1991)
- Refugee Convention (2 February 1993)
- Geneva Conventions (10 May 1994) and both additional protocols (29 September 1989)
- ECHR (5 May 1998)
- CPT (5 May 1998)

Article 15(4) of the Constitution provides: "Universally recognized principles and rules of international law and the international agreements of the Russian Federation shall be an integral part of its legal system. Should other rules than those provided by the law be established by an international agreement of the Russian Federation, the rules of the international agreement shall be applied." Article 17 of the Constitution reads: "Human and civil rights and freedoms shall be recognized and guaranteed in the Russian Federation in accordance with the universally acknowledged principles and rules of international law in conformity with this constitution."

Rules of international law therefore become Russian law by way of direct incorporation without the need for any further transformation. Provisions of officially published international treaties of the Russian Federation that do not require the adoption of domestic legislation for their application, shall be directly effective in the Russian Federation.¹⁰ In other cases, the domestic legislation adopted in order to implement the provisions of an international treaty will be applied.¹¹

Provisions of international treaties binding on the Russian Federation prevail over conflicting domestic law in the actual application of the law. The Constitutional Court of the Russian Federation held that the question as to whether an act of international law is to be applied in a particular case if it was found to be inconsistent with domestic law is in the competence of the courts of general jurisdiction. These courts shall take rules of international law into

⁸ Article 125 (4) of the Constitution.

⁹ Article 120, 121 of the Constitution.

¹⁰ According to Article 5(3) of the Federal law of the Russian Federation on International Treaties of the Russian Federation. Under Article 1 (3) of the Law on International Treaties of the Russian Federation not only treaties concluded by the Russian Federation, but also the treaties to which Russia is a party as a successor of the Soviet Union have effect. However, as can be gathered from Article 15 of that law, only treaties ratified by the Russian Federation have direct effect. The ratification is effectuated in a form of law, adopted by the Federal Assembly.

¹¹ See Decision of the Plenum of the Supreme Court of the Russian Federation No. 8 of 31 October 1995 On Particular Issues of Application of the Constitution of the Russian Federation by Courts when Administering Justice. See for the text as well as for the translation of Russian law, the website of the Garant database: www.garant.ru.

consideration when administering justice.¹² International law takes precedence over domestic legislation.¹³

While the principles relating to the incorporation and status of rules of international law have been recognized by the Constitutional Court, courts and official bodies have not referred to the Convention against Torture in their jurisprudence and work in recent years.¹⁴

2. Practice of torture: Context, Occurrence, Responses

2.1. The practice of torture

Torture was, despite its prohibition under Soviet law, routinely used in criminal investigations and systematically applied against political dissidents in varying degrees throughout the period of Soviet rule in Russia until 1991.

After the demise of the Soviet Union, torture has, since the early 1990s, been widely used by law enforcement agencies, especially as a method of obtaining information in combating rising crime levels.¹⁵ According to estimates, at least every second detainee suffers some form of torture or ill-treatment during criminal investigations and pre-trial detention.¹⁶ Acts of torture have been severe, resulting in numerous serious injuries and deaths.¹⁷

12 The Supreme Court explained the rules on application of the international treaties by the courts as follows: "Courts, when administering justice shall operate taking into consideration that generally recognized principles of and norms of the international law stipulated in international pacts, conventions and other documents (particularly in the Universal Declaration of Human Rights, the International Pact of Civil and Political Rights, the International Pact of Economic, Social and Cultural Rights) and international treaties of the Russian Federation, according to part 4 of Article 15 of the Constitution of the Russian Federation, are a component of its legal system. The same constitutional norm determines that if an international treaty of the Russian Federation stipulates rules other than the ones determined by the law, the rules of the international treaty shall be applied." Decision of the Plenum of the Supreme Court of the Russian Federation No. 8 of 31 October 1995 On Particular Issues of Application of the Constitution of the Russian Federation by Courts when Administering Justice (as translated in Garant database). Published: *Российская газета* [*Rossiyskaya gazeta*] 28 December 1995.

13 See *ibid.* See also Ruling of the Constitutional Court of 8 February 2001 N 78-0: "...in accordance with Article 15 (4) of the Constitution of the Russian Federation generally-recognized principles and norms of international law and international treaties of the Russian Federation, being an integral part of its legal system, takes precedence over a law which establishes other rules than provided for by them, and are subject to direct application by courts of general jurisdiction." Published: Вестник Конституционного Суда Российской Федерации [*Vestnik Konstitucionnogo Suda Rossiyskoy Federacii*] (2001), no. 4.

14 It was noted in the Alternative Report to the UN Committee against Torture submitted by Russian NGOs (HPOO Committee against Torture, Union of Committees of the Mothers of Soldiers of Russia, Memorial, Committee for Civil Rights, Krasnoyarsk Committee on Protection of Human Rights, Moscow Helsinki Group) at the 28th session of CAT, April-May 2002, p.2 that: "During the recent years none of the decisions of the law-enforcement and judicial bodies were neither based on the UN Convention against Torture nor referred to it. The General Prosecutor of the Russian Federation did not issue a single act related to investigation of torture. The term "torture" may be found only in the context of two documents of the General Procuracy." For example, in the Directive of the General Prosecutor of the RSFSR of 17 December 1992 [N 15-к-85/92 On Information-Analytical Maintenance of the Work of the Procuracy Bodies on Uncovering of Intentional Homicide] concerning registration of corpses with traces of torture and homicide committed with the use of torture. Advocates and those involved in the protection of human rights have stated that arguments based on provisions of international treaties ratified by the Russian Federation are not accepted by courts and State bodies. On the contrary, references to international law are taken by the courts and other State bodies skeptically and sometimes with hostility.

15 An analysis of the reasons for the prevalence of torture in modern Russia can be found in Human Rights Watch, *Confessions at Any Cost, Police Torture in Russia*, November 1999, pp. 94-141, also in the manual of HPOO (*abbreviation in Russian*) Committee against Torture, *Fighting Torture in Law-Enforcement Bodies*, 2002, pp. 9-12.

16 According to the Ombudsman O. Mironov, during personal meetings "every second person claimed that police officers subjected him to beatings and humiliation from the moment of detention until transfer to a pre-trial detention." See Letter from Russia's Ombudsman of the Russian Federation, 29 December 1998, in HRW, *Confessions at any cost*, supra, Appendix C. Other sources estimate the percentage of persons being tortured during criminal investigations to be between 50% and 80%. See IHF, Moscow Helsinki Group, *Human Rights in Russian Regions 2000* (report of 2001 on events of 2000), Collection of Reports on the Situation with Human Rights Across the Territory of the Russian Federation, Moscow, 2001.

17 See by way of example the case before the Supreme Court of Mordovia, *infra*, III, 3.3.

REPARATION FOR TORTURE: RUSSIAN FEDERATION

Torture is mainly used by officials of law enforcement bodies, i.e. militia (officials of the Ministry of Internal Affairs) and officials of the Ministry of Justice or, in rare cases, of the Prokuratura (*Prosecution or Prosecutor's office*) in order to obtain confessions or other information relevant to the investigation.¹⁸ The militia and the prison administration are known to have used excessive force when taking measures of protection of public order or administering prisons.¹⁹ Torture and inhuman treatment of lower rank military personnel by military personnel of higher rank has also been frequently reported.²⁰

The majority of victims of torture and ill-treatment are persons suspected of having committed a criminal offence. Ethnic minorities, from Russia itself as well as from the former Soviet Union and other migrant workers are reportedly targeted and suffer disproportionately from torture and ill-treatment. There have been a considerable number of reports about rape in custody or by armed forces. Children have also been subjected to torture and ill-treatment in detention and other institutions.²¹ Moreover, conditions of detentions do not generally accord with international standards and have consequently resulted in epidemics and a considerable number of deaths in prisons.²²

Torture has reportedly been used systematically in the Republic of Chechnya as part of the military campaign against the Chechen fighters.²³ In the first armed conflict in Chechnya, which lasted from 1994 to 1996, serious violations of international humanitarian law, including torture, were committed by both the Russian government and the Chechen rebels.²⁴ Both sides had agreed on an end to hostilities and to solving the conflict by peaceful means, but in 1997, the situation in Chechnya deteriorated again, and Chechen forces made armed incursions into neighbouring republics. This eventually led to the resumption of military operations by Russian Federal forces in the late summer of 1999. The ensuing armed conflict, ongoing at the time of writing, has been marked by reports of serious violations of human rights and international humanitarian law, including the killing of civilians in the course of indiscriminate bombings, extra-judicial executions, disappearances and torture, often resulting in serious injuries or death.²⁵

2.2. Domestic Responses

Since 1991, the Russian Federation has taken several steps aimed at protecting human rights and preventing human rights violations. The new Constitution accords primacy to international law and protects a wide range of basic rights. The Russian Federation has also enacted, together with a range of other laws, a new Criminal Code (1997) and Code of Criminal

¹⁸ See for an evaluation of the practice of torture in Russia, the Alternative NGO Report to the Committee against Torture, *supra*; the annual reports "Human Rights in the Regions of Russia", prepared by the Moscow Helsinki Group, and the reports on torture in Russia prepared by Human Rights Watch and Amnesty International.

¹⁹ Alternative Report, *supra*, pp. 38-41.

²⁰ Alternative Report, *supra*, pp. 4-8

²¹ HRW, *Confessions at Any Price*, *supra*, p. 73. See Amnesty International, *The Russian Federation: Denial of Justice*, AI-Index: EUR 46/027/2002, October 2002, pp.27 et seq. See for torture techniques applied in Russia, *ibid.* pp.22 et seq.

²² Alternative Report, *supra*, pp. 34 –38; AI, *Denial of Justice*, p.24. See also decision of the ECHR in *Kalashnikov v. Russia* of 15 July 2002, Application No.47095/99; Report of the UN Special Rapporteur on torture E/CN.4/1995/34/Add.1, 16 November 1994, para.71.

²³ See report of Human Rights Watch, *Welcome to Hell. Arbitrary Detention, Torture and Extortion in Chechnya*, October 2000, as well as updated information provided by Memorial, available at www.memo.ru

²⁴ See for further references AI, *Denial of Justice*, *supra*, p.51.

²⁵ AI, *Denial of Justice*, *supra*, p.59. See also the section on Chechnya in *Human Rights in Russian Regions*, *supra.*, 2000.

Procedure (2002) which have introduced both institutional and procedural safeguards, widely seen as an important first step in the protection against torture. These changes have been supplemented by the ratification of several international human rights treaties.

Several bodies with a mandate to protect human rights have been set up, such as the Presidential Human Rights Commission established by Presidential Decree No.1798 of 1 November 1993 and the Federal Parliamentary Ombudsman in 1996.²⁶ Ombudsmen and Human Rights Commissions have been established in several subjects of the Federation. In 2000, the post of special representative of the President for human and civil rights and freedoms in the Chechen Republic, who is empowered to receive communications and statements from Chechen citizens with a view to realizing their rights and freedoms, was established by presidential decree No.364.²⁷

Despite the official acknowledgement of torture and proposals to introduce measures to combat torture, such as in the Decision of the Presidential Human Rights Chamber of 7 April 1998,²⁸ a letter from Russia's Federal Ombudsman O. Mironov to the Minister of Internal Affairs of 29 December 1998²⁹ and his report of 10 October 2000 "On Human Rights Violation by Personnel of the Ministry of Internal Affairs of the Russian Federation and of the Penitentiary System of the Ministry of Justice of the Russian Federation"³⁰, there has been little follow-up by the Government and authorities to seriously tackle the practice of torture.³¹

2.3. International Responses

Several human rights bodies have in recent years, expressed concerns over reports of widespread torture and ill-treatment against detainees and in particular, women³² and

²⁶ See core report, *supra*, at para. 41. See also The Law on Plenipotentiary for Human Rights (*On Ombudsman*) of 26 February 1997 No. 1-ΦK3.

²⁷ See Third Periodic Report of the Russian Federation, UN Doc. CAT/C/34/Add.15, 15 October 2001, para.120.

²⁸ Decision on gross violations of human rights in the organs of the Ministry of Internal Affairs. The decision reads, *inter alia*: "Torture and cruel, degrading forms of treatment or punishment with respect to citizens in the organs of the Ministry of Internal Affairs during the pretrial stages of criminal justice administration have a massive and systematic character which makes it one of the most serious problems of abuse of power and violations of human rights... The current practice is partially related to the problems and deficiencies of legislation and ministerial normative regulations. Despite the recommendations of the United Nations Committee against Torture, such a dangerous crime as torture has not been criminalized. As a result, official statistics on the number of revealed cases do not exist. The issue of public control over the activities of the law enforcement agencies has also not been solved...Repressive methods (instead of methods directed towards the protection of rights) remain an element of the technology of the law enforcement agencies." The Chamber went on to propose the creation of a working group on torture, cooperation with NGOs, the introduction of safeguards against torture and the amendment of the Criminal Code to criminalise torture. See unofficial translation by Diederik Lohmann, in Human Rights Watch, *Confessions at Any Costs*, *supra*, Appendix E.

²⁹ In his letter, the Ombudsman stated: "Widespread violations by law enforcement officials, such as concealment of crimes, ill-treatment during investigation, various cases of abuse of power are of special concern." He requested the Ministry of Interior to "take appropriate measures to prevent the officials of your ministry from violating constitutional rights and freedoms of the citizens." See translation of this letter and the response from the Ministry of Interior to Russia's Ombudsman of February, 2,1999 in Human Rights Watch, *Confessions at Any Costs*, *supra*, Appendix C and D.

³⁰ Human Rights in the Russian Region, 2000, *supra*. The Ombudsman found that there were numerous cases when law-enforcement personnel caused harm to individuals and violated their rights and freedoms with reliance on force. He proposed several measures designed to protect detainees and persons under investigations, such as setting up specialised health services independent of the Ministry of Justice and the Ministry of the Interior for health care and examination of persons coming to pretrial detention facilities.

³¹ See HRW, *Welcome to Hell*, *supra*, and AI, *Denial of Justice*, *supra*, pp.49 et seq.

³² Fifth report: Russian Federation, UN Doc. CEDAW/C/2002/1/CRP.3/Add.3, (Concluding Observations/Comments) 28 January 2001, para.38. The Committee expressed its concern "about the reports of ill-treatment of women in pre-detention centres and in prisons"... and stated that it is "deeply concerned by the fact that, despite credible evidence that police officials have used violence against women in custody, the Government has not, as a rule, investigated, disciplined or prosecuted offenders."

REPARATION FOR TORTURE: RUSSIAN FEDERATION

children.³³ The Committee against Torture expressed, in 2002, in the same vein as in its concluding observations in 1996,³⁴ its deep concerns over: "Numerous and consistent allegations of widespread torture and other cruel, inhuman or degrading treatment or punishment of detainees committed by law enforcement personnel, commonly with a view to obtaining confessions;" "continuing reports ... of ...torture ...in the armed forces..." and "a persistent pattern of impunity for torture and other ill-treatment benefiting both civil and military officials, a lack of reported decisions by judges to dismiss or return a case for further investigation citing the use of torture to obtain a confession, and the very small number of persons convicted of violations of the Convention."³⁵

The UN Special Rapporteur on Torture also expressed his concern about torture in Russia and conditions in pre-trial detention following a visit in 1994: "The conditions are cruel, inhuman and degrading; they are torturous. To the extent that suspects are confined there to facilitate the investigation by breaking their wills with a view to eliciting confessions and information, they can properly be described as being subjected to torture."³⁶ This Report has been translated into Russian and widely circulated. It has been a key factor in bringing about change.

The European Committee for the Prevention of Torture (CPT) has carried out three country visits to Russia in 1998, 1999 and 2001 and several visits to special designations, particularly Chechnya, but Russia has not authorised the publication of reports. Several cases are currently pending against the Russian Federation before the European Court of Human Rights, alleging a violation of Article 3 of the Convention.³⁷

The widespread use of torture, together with other serious human rights violations and violations of humanitarian law, and the prevailing impunity in Chechnya has been criticised by a number of different bodies, such as the Special Rapporteur on Torture,³⁸ the Commission on Human Rights,³⁹ the High Commissioner for Human Rights,⁴⁰ the CPT,⁴¹ the Council of Europe,⁴² and the Committee against Torture which expressed its particular concerns relating to: "numerous, ongoing reports of severe violations of human rights and the Convention, including

³³ Committee on the Rights of the Child, Concluding Observations following consideration of the reports of State Parties, Russian Federation, Second periodic report, UN Doc. CRC/C/15/Add.110, 10 November 1999, para.28. The Committee voiced its concern about: "allegations of the widespread practice of torture and ill-treatment against children."

³⁴ Concluding Observations of the Committee against Torture: Russian Federation; UN Doc. A/52/144, paras.31-43, 14 November 1996, para. 42 (c) and (d).

³⁵ Conclusions and Recommendations of the Committee against Torture: Russian Federation; UN Doc. CAT/C/CR/28/4, 28 May 2002, para.5.

³⁶ Visit by the Special Rapporteur to the Russian Federation, UN Doc. E/CN.4/1995/34/Add.1, 16 November 1994 para.71.

³⁷ See e.g. the judgment in the case Kalashnikov against Russia, Application No.47095/99, 15 July 2002 in which the Court found Russia in violation of Article 3 of the Convention.

³⁸ See Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/43, UN Doc. E/CN.4/2001/66, 25 January 2001, paras. 865-939, in particular para. 939.

³⁹ Situation in the Republic of Chechnya of the Russian Federation; Commission on Human Rights resolution 2000/24, 20 April 2001.

⁴⁰ Situation in the Republic of Chechnya of the Russian Federation; Report of the High Commissioner for Human Rights submitted in accordance with Commission resolution 2001/24; UN Doc. E/CN.4/2002/38, 26 February 2002, which provides an overview of the work of and reactions by other regional and international organizations on Chechnya.

⁴¹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT): Public statement concerning the Chechen Republic of the Russian Federation (made on July 2001), CPT/Inf (2001) 15.

⁴² See statements and resolutions on the website of Council of Europe www.coe.int.

arbitrary detention, torture and ill-treatment, including forced confessions, extra-judicial killings, and forced disappearances, ... Allegations of brutal sexual violence are unusually common."⁴³

II. PROHIBITION OF TORTURE UNDER DOMESTIC LAW

Torture is expressly prohibited in Article 21 (2) of the Constitution: "No one may be subjected to torture, violence, or other cruel or degrading treatment or punishment. No one may be subjected to medical, scientific or other experiments without voluntary consent." The right not to be tortured is non-derogable, pursuant to Article 56 (3) of the Constitution.⁴⁴

Several statutory law provisions prohibit torture, namely Article 9 of the Code of Criminal Procedure,⁴⁵ Article 5 of the Police Act of the Russian Federation Act of 31 March 1999,⁴⁶ Article 4 of the Detention of Suspects and Accused Persons Act of 15 July 1995⁴⁷ and in the Code for the Execution of Criminal Penalties of the Russian Federation.⁴⁸

However, torture has not been defined either in legislation or in jurisprudence. While Article 1 of the Convention against Torture is in principle applicable by operation of Article 15(4) of the Constitution, providing for the direct incorporation of rules of international law,⁴⁹ judges and law-enforcement personnel do not apparently apply the definition of torture as recognised in international law.⁵⁰

III. CRIMINAL ACCOUNTABILITY OF PERPETRATORS OF TORTURE

1. The substantive law: Criminal offences, punishment and disciplinary sanctions

There is no specific criminal offence of torture in the Russian Criminal Code.⁵¹ Acts of torture can possibly be prosecuted and punished according to several criminal offences. While the word

⁴³ Conclusions and Recommendations of the Committee against Torture: Russian Federation; UN Doc. CAT/C/CR/28/4, 28 May 2002, para.7. a). See also Concluding Observations of the Committee against Torture: Russian Federation; UN Doc. A/52/144, paras.31-43, 14 November 1996, para.42 (k).

⁴⁴ See also Article 27 of the State of Emergency Act, 30 March 2001: "the introduction of a state of emergency may not serve as a justification for the use of torture or cruel, inhuman or degrading treatment or punishment ... within the meaning... accepted in the ICCPR."

⁴⁵ Article 9. Respect of the Person's Honour and Dignity:"1. In the course of the criminal court proceedings shall be prohibited the performance of actions and the adoption of decisions, degrading the honour of the participant in the criminal court proceedings, and the treatment, humiliating his human dignity or creating a threat to his life and health; 2. No one of the participants in criminal proceedings shall be subjected to violence or torture and to the other kinds of the cruel or humiliating treatment, degrading his human dignity."

⁴⁶ "The police shall not have recourse to torture, violence or other cruel or degrading treatment."

⁴⁷ "(detention)... shall not be accompanied by torture or other acts intended to cause physical or mental suffering to suspects or accused persons who are under detention."

⁴⁸ Article 4 (3) of the Code provides as a general rule that legislation for and execution of criminal penalties must be based on observance of safeguards against torture, violence and other cruel or degrading treatment of prisoners, and Article 12 contains a prohibition of cruel or degrading treatment of prisoners.

⁴⁹ See also the reference to the definition of torture in Article 27 of the State of Emergency Act, supra.

⁵⁰ However, see Russia's third country report to CAT, supra, para. 8: "...The term "torture" does, however, appear in a number of articles. In such a case, the law-enforcement agent bases himself on the definition of the concept of "torture" contained in the Convention." The CAT has repeatedly called on the Russian Federation to enact the definition, with suitably grave punishments, as part of the Criminal Code. See Concluding Observations, CAT 2002, supra, para.6: "The Committee also expresses its concern about the following: (a) The failure to define torture in domestic law in conformity with article 1 of the Convention. The designation of torture as an aggravating circumstance for some enumerated crimes does not satisfy the requirements of articles 1 and 4 of the Convention."

⁵¹ According to statements by a Russian parliamentarian during the consideration of the State Party Report by the Committee against Torture, various bills for torture have been submitted in the Duma but were rejected, see UN Doc. CAT/C/SR.523, 23 May

REPARATION FOR TORTURE: RUSSIAN FEDERATION

"istyazaniye," used for the offence defined in Article 117 of the Code is translated into English as "torture", the Russian word used to translate "torture" as in the CAT is "pytka". "Istayazaniye" is less serious than "pytka", and is probably better translated as "molestation".⁵² Article 117 (1) of the Criminal Code stipulates that: "The infliction of physical or mental suffering by means of systematic beating or by any other violent actions..." is punishable by deprivation of liberty for a term of up to three years.⁵³ If the same act is, *inter alia*, committed against a person who is in a helpless state or in material or any other dependence on the convicted person or with the use of torment (torture) or by reason of national, racial, or religious hatred or enmity, it shall be punishable by a term of imprisonment of three to seven years.

The offence of compulsion to testify used by an investigator or a person conducting investigations against a defendant, a victim, a witness or an expert by means of threats, blackmail or other illegal actions is punishable by three years, and, if violence, mockery or torture are used as means of compulsion, two to eight years deprivation of liberty.⁵⁴

The intentional infliction of grave injury⁵⁵ is subject to a punishment of two to eight years imprisonment which is increased to a term of three to ten years, if the act is committed with especial cruelty, mockery, or "torture" ("pytka") for the victim, and also in respect of a person who is known to the offender to be helpless or by reason of national, racial, or religious hatred or enmity.⁵⁶ If any of these acts result in the death of the victim by negligence, the punishment will be deprivation of liberty for a term of five to fifteen years.

Intentional infliction of injury of 'average' gravity carries the less serious punishment of a short-term arrest or imprisonment for up to three years and, in aggravating circumstances, up to five years.⁵⁷ Intentional infliction of 'light' injuries is punishable by fine or corrective labour.⁵⁸ Moreover, intentional infliction of injury committed in excess of the requirements of justifiable defence or committed in excess of the measures needed for the detention of a person who has committed a crime, is punishable by a deprivation of liberty of up to one or two years

2002, para.5. In February 2002, The Duma (Russian Parliament) voted against a proposed amendment of the Criminal Code to insert a specific crime of torture, see Alternative Report, *supra*, Article 4.

⁵² See Alternative Report, *supra*, Article 1, according to which the more accurate translation would be torment. The Russian State Report uses the word "pytka" for torture.

⁵³ The punishment is more serious if these acts result in bodily injuries as provided for in Articles 111 and 112 RSFCC, see *infra*.

⁵⁴ Article 302 RSFCC. The article does only apply to police officers if they conduct investigations. See on this point, Alternative Report, *supra*, Article 4. See also Article 309(2) RSFCC which makes compulsion to give or not to give testimony or to give an inaccurate translation an offence punishable by a fine, arrest or a short term of imprisonment.

⁵⁵ Article 111, 1) RSFCC: "Intentional infliction of a grave injury, which is hazardous for human life or which has involved the loss of sight, speech, hearing, or any organ or the loss of the organ's functions, or which has expressed itself in the indelible disfiguring of a human face, and also infliction of other harm which is dangerous to human life or which has involved an injury to a person's health, joined with considerable permanent loss of general ability to work by not less than one third or by the full loss of an occupational capacity for work, which capacity was evident to the guilty person, or which has involved the interruption of pregnancy, mental derangement, or the victim's falling ill to drug addiction or toxicities or toxicosis (sic)."

⁵⁶ Article 111 (2) (b) and (f) RSFCC.

⁵⁷ Article 112 RSFCC: " 1) Intentional infliction of injury of average gravity, which is not hazardous to human life and which has not involved consequences referred to in Article 111 of this Code, but which has caused protracted injury to health or considerable stable loss of general capacity for work by not less than one-third, shall be punishable by arrest for a term of three to six months or by deprivation of liberty for a term of up to three years; 2) The same act committed: ... c) with especial cruelty, mockery or torture for the victim, or against a person who is known by the offender to be helpless; ... f) by reason of national, racial, or religious hatred or enmity; shall be punishable by deprivation of liberty for a term of five years."

⁵⁸ Article 116 RSFCC.

respectively.⁵⁹ The threat of murder or infliction of grave injury to health is punishable, *inter alia*, by up to two years deprivation of liberty.⁶⁰

Murder is punishable by six to fifteen years imprisonment, and, with aggravating circumstances, by imprisonment of eight to twenty years or capital punishment or imprisonment for life.⁶¹ Homicide committed in excess of the requirements of justifiable defence or in excess of the measures needed for the detention of a person who has committed a crime shall be punishable by a deprivation of up to two years or three years respectively.⁶²

Rape is, depending on the circumstances, punishable by a term of imprisonment ranging from three to fifteen years.⁶³ Rape in custody is not considered to be an aggravating circumstance.

Abuse of official powers⁶⁴ and exceeding official powers⁶⁵ are, depending on the person concerned and the nature of the act, subject to various punishments.

Cruel treatment of prisoners of war or civilians is punishable by deprivation of liberty for a term of up to 20 years⁶⁶ and genocide, by a deprivation of liberty for a term of twelve to twenty years, or by capital punishment or by deprivation of liberty for life.⁶⁷

⁵⁹ Article 114 (1) and (2) RSFCC.

⁶⁰ Article 119 RSFCC.

⁶¹ Article 105 RSFCC. The Supreme Court, in its decision No.1 on judicial practice in murder cases (CCRF, art.105), dated 27 January 1999, interpreted that cruelty, an aggravating factor of murder according to Article 105 (2) (e), "is present, in particular, in cases in which, prior to the taking of the victim's life or in the course of the commission of the murder, use is made of torture or systematic or brutal violence or the victim is mocked, or in which the murder is committed by a means of which the culprit is aware that it will cause the victim particular suffering." Cited in the 3rd CAT report of the Russian Federation, *supra*, para.19.

⁶² Article 108(1) and (2) RSFCC.

⁶³ Article 131 RSFCC.

⁶⁴ Article 285 RSFCC: "Abuse of Official Powers 1. Use by an official of his powers, contrary to the interests of the civil service, if this deed has been committed out of mercenary or any other personal interests and has involved a substantial violation of the rights and lawful interests of individuals or organizations, or the legally-protected interests of the society or the State, shall be punishable by a fine in the amount of 100 to 200 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of one to two months, or by disqualification to hold specified offices or to engage in specified activities for a term of up to five years, or by arrest for a term of four to six months, or by deprivation of liberty for a term of up to four years. 2. The same deed, committed by a person who holds a public office of the Russian Federation or a public office of a subject of the Russian Federation, or by the head of a local self-government body, shall be punishable by fine in the amount of 500 to 800 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of five to eight months, or by deprivation of liberty for a term of up to seven years, with disqualification to hold specified offices or to engage in specified activities for a term of up to three years, or without such disqualification. 3. Deeds provided for in the first or second part of this Article, and entailing grave consequences, shall be punishable by deprivation of liberty for a term of up to 10 years, with disqualification to hold specified offices or to engage in specified activities for a term of up to three years."

⁶⁵ Article 286 RSFCC: "Exceeding Official Powers 1. Commission by an official of actions which transcend the limits of his powers and which involve a substantial violation of the rights and lawful interests of individuals or organizations, or the legally-protected interests of society and the State, shall be punishable by a fine in the amount of 100 to 200 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of one to two months, or by disqualification to hold specified offices or to engage in specified activities for a term of up to five years, or by arrest for a term of four to six months, or by deprivation of liberty for a term of up to four years; 2. The same deed, committed by a person holding a government post of the Russian Federation or a government post of a subject of the Russian Federation, or by the head of a local self-government body, shall be punishable by a fine in the amount of 500 to 800 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of five to eight months, or by deprivation of liberty for a term of up to seven years, with disqualification to hold specified offices or to engage in specified activities for a term of up to three years, or without such disqualification; 3. Deeds stipulated by the first or second part of this Article, if they have been committed: a) with the use of violence or with the threat of its use; b) with the use of arms or special means; c) with the infliction of grave consequences, shall be punishable by deprivation of liberty for three to ten years, with disqualification to hold specified offices or to engage in specified activities for a term of up to three years."

⁶⁶ Article 356 (1) RSFCC.

⁶⁷ Article 357 RSFCC.

REPARATION FOR TORTURE: RUSSIAN FEDERATION

Article 335 of the Criminal Code makes the violation of regulations for mutual relations between servicemen a criminal offence that carries a punishment of military arrest or deprivation of liberty for up to ten years in serious cases. Insult by one serviceman to another, including by superiors against subordinates and vice-versa, during the discharge of their duties is punishable by restriction in military service or military custody of up to one year.⁶⁸

Complicity in deliberate crimes is punishable.⁶⁹ While superior commands cannot be used as a defence, the infliction of harm necessary to detain a person who has committed a crime may be used as a defence since it excludes the criminality of such an act.⁷⁰

Law enforcement personnel are subject to disciplinary sanctions for misconduct or any offences committed ranging from reproof to dismissal⁷¹ and may be imposed by direct superiors and, upon appeal, by "courts of honour."⁷² Courts of honour can confine themselves to the discussion of a case without any further sanctions if the official in question has sincerely repented, apologised to the collective and the victim and provided compensation for the damage caused.⁷³

2. The procedural law

2.1. Immunities

There are no amnesty or immunity laws for public officials. Article 7 of the 1992 Security Act stipulates that officials, while they may not be restricted in their task of maintaining security, citizens' rights and freedoms except in the cases specifically provided for by law, shall bear responsibility in accordance with the law if they exceed their powers in the course of activities to maintain security. However, Article 21 of the 1998 Anti-Terrorism Act provides for some limited immunity for "counterterrorist" operations but arguably this does not extend to acts of torture.⁷⁴

2.2. Statutes of Limitation

⁶⁸ Article 336 RSFCC.

⁶⁹ Articles 32-34 RSFCC.

⁷⁰ Article 38 RSFCC: "The Infliction of Harm on a Detained Person Who Has Committed a Crime

1. The infliction of harm on a person who has committed a crime, during his detention, during his delivery to the authorities and in thwarting the possibility of the commission by him of further offences shall not be deemed a crime, unless it was possible to detain such person and there was an excess of the measures needed for this detention.

2. Clear disproportion between the measures needed for the detention of the person who has committed a crime and the character and the degree of the social danger of the offence perpetrated by the detained person and the circumstances of the detention, when the harm is caused to the infringer without valid reasons, shall be deemed to be excess of the necessary measures. Such excess shall involve criminal responsibility only in cases of the intentional infliction of harm."

⁷¹ Article 38 of the Regulations on Service in Agencies of Internal Affairs of the Russian Federation adopted by the Decree of the Supreme Soviet of the Russian Federation of 21.12.1992, N 2404-I provides for the following types of sanctions: reproof; reprimand; severe reprimand; warning; demotion in position held; demotion in rank; deprivation of medals; dismissal from agencies of internal affairs.

⁷² Articles 39-42 *ibid*.

⁷³ Article 42 *ibid*.

⁷⁴ Russian Federation Federal Law No. 130-FZ, Signed by Russian Federation President B. Yeltsin, 25 July 1998. Article 21: "Exemption from responsibility for causing damage During the conduct of a counterterrorist operation on the basis and within the limits laid down by law unavoidable [vynuzhdennyy] damage may be caused to terrorists' lives, health, and property, and also to other legally protected interests. Servicemen, specialists, and other persons participating in the fight against terrorism are exempted from responsibility for damage caused in the conduct of a counterterrorist operation in accordance with Russian Federation legislation."

The applicable statute of limitations depends on the category of the crime. According to Article 78(1) RSFCC, a person will be released from criminal responsibility after the expiry of two years after the commission of a minor crime,⁷⁵ six years for a crime of average gravity,⁷⁶ ten years for a grave crime⁷⁷ and fifteen years for an especially grave crime.⁷⁸ No period of limitation applies to crimes against the peace and security of mankind.⁷⁹ Accordingly, acts of torture are subject to a statute of limitations of six years, and, if committed under aggravating circumstances or resulting in serious injuries, ten years. If torture results in death, the statute of limitations might extend to fifteen years if it is held to constitute murder in its aggravated form.

2.3. Investigations into torture

2.3.1. Criminal investigations

In general, a complaint against any action or decision infringing citizens' rights may be lodged before a court.⁸⁰ Under the Criminal Procedure Code, any person may make a complaint or inform the police about the commission of a crime, either verbally or in writing.⁸¹ This triggers the initiation of a criminal investigation.⁸² Detainees may make such a complaint pursuant to the Federal Act on Detention of Persons Suspected or Accused of having committed Offences of 21 June 1995.⁸³

As a general rule, the investigative agencies, including investigators ("sledovateli") and police, are authorised to conduct investigations into a criminal case.⁸⁴ Other boards of inquiry are also charged with carrying out investigations in criminal cases against military personnel but for offences of military personnel falling within the competence of the military prokuror (public prosecutor).⁸⁵ The prokuror (prosecutor) supervises the investigator and the boards of inquiry and undertakes criminal prosecutions on behalf of the State.⁸⁶ The Prokuratura (office of the prosecutor) has a special department to supervise police officers' observance of laws in the course of criminal investigations. This department will investigate any applicable crime, such as abuse of official position under Article 286 of the Criminal Code. The police does not have the competence to investigate crimes committed by other police officers.⁸⁷ The crimes of infliction of 'light' injury and battery are prosecuted by way of private prosecution.⁸⁸

⁷⁵ Article 15 (2) RSFCC: Crimes punishable by up to two years deprivation of liberty.

⁷⁶ Article 15(3) RSFCC: Deliberate offences punishable by up to five years deprivation of liberty and negligent crimes punishable by more than two years deprivation of freedom.

⁷⁷ Article 15(4) RSFCC: Intentional acts punishable by up to ten years deprivation of liberty.

⁷⁸ Article 15(5) RSFCC: All intentional acts which carry a penalty in the form of deprivation of liberty for a term exceeding ten years, or a more severe punishment.

⁷⁹ Article 78(5) RSFCC, listing Articles 353, 356, 357 and 358 of the Code.

⁸⁰ Act of the Russian Federation on Complaints to a Court against Actions or Decisions Infringing Citizens' Rights and Freedoms, 27 April 1993.

⁸¹ Article 141 RSFCCP.

⁸² Article 140 RSFCCP.

⁸³ See Articles 17 and 21 of the Act referring to relevant provisions of the RSFCCP.

⁸⁴ Article 38, 39 RSFCCP.

⁸⁵ Article 40 RSFCCP.

⁸⁶ Article 37 RSFCCP. See also Law on Prosecutor's Office in the Russian Federation of 1992.

⁸⁷ See Article 151 RSFCCP.

⁸⁸ Article 20 RSFCCP.

REPARATION FOR TORTURE: RUSSIAN FEDERATION

As a general rule, criminal cases are prosecuted by the state. Exceptionally, they are subject to private prosecution, such as with the crime of infliction of light injuries and battery, or to a 'private-public prosecution,' which is initiated only upon a complaint by the victim, such as with the crime of rape.⁸⁹

Investigative bodies are obliged to conduct a preliminary investigation into any complaint or information received regarding a crime within three to ten days.⁹⁰ As a result of this first consideration of the complaint, the investigating body may either institute a criminal case or refuse to do so.⁹¹ An investigation, which commences with the passing of a resolution by the investigative body with the approval of the prokuror or by the prokuror him/herself⁹², will be instituted if there are sufficient indications that a crime has been committed.⁹³ Conversely, a criminal case can, according to law, not be instituted or, subject to termination if, *inter alia*, no crime has been committed or no evidence is available.⁹⁴ A resolution to this effect will be issued and the applicant will be informed about the decision and his or her right to appeal.⁹⁵ Such an appeal can be made to the prokuror.⁹⁶ The prokuror is obliged to decide on the complaint within three, or at the most, ten days after receipt.⁹⁷ The victim has a further right to appeal against the decision of the prokuror before a court. The court can declare the decision to be illegal and order the investigative body to take the necessary action.⁹⁸

Investigative bodies, as well as the prokuror and the court, have the right to terminate a criminal case at any stage upon an application by the victim if there has been a reconciliation between the victim and the accused and the latter has recompensed the damage. This possibility is, however, only available in respect of a person who is subject to a criminal prosecution for the first time or for minor crimes.⁹⁹

If a criminal case is instituted, an investigation will be completed within two months.¹⁰⁰ In the course of the investigation, the suspect may be kept on remand if there are sufficient grounds to believe that he/she may attempt to flee the jurisdiction, commit further crimes or tamper with the evidence.¹⁰¹ It is obligatory to appoint an expert to establish the causes of death and/or the nature and the extent of the damage inflicted upon the victim's health.¹⁰²

⁸⁹ Article 20 RSFCCP.

⁹⁰ Article 144 RSFCCP.

⁹¹ Article 145 RSFCCP.

⁹² Article 146 RSFCCP.

⁹³ Article 21 RSFCCP.

⁹⁴ Articles 24(1) and 27 RSFCCP.

⁹⁵ Article 148 RSFCCP.

⁹⁶ The right to lodge a petition is set out in Articles 119 RSFCCP et seq. and the right to lodge an appeal in Article 123 RSFCCP.

⁹⁷ Article 124 RSFCCP.

⁹⁸ Article 125 RSFCCP.

⁹⁹ Article 25 RSFCCP.

¹⁰⁰ Article 162 RSFCCP. See Chapters 21 and 22 on the preliminary investigation.

¹⁰¹ Chapter 13, Articles 97 et seq.

¹⁰² Article 196 RSFCCP. See also Articles 178-180 RSFCCP relating to the examination of the body and the inspection of traces of a crime on the body of the victim.

On the completion of the criminal investigation, the case can either be terminated or charges need to be brought. An investigation can only be closed on the grounds outlined above and on the basis of a resolution by the investigative body.¹⁰³ Such a resolution can be disregarded by the prokuror who may resume criminal proceedings.¹⁰⁴ The victim may also appeal against such a decision.¹⁰⁵ If the investigative body comes to the conclusion that there is sufficient evidence to establish the guilt of the suspect, he/she will forward a file to the prokuror.¹⁰⁶ The latter may, on the basis of the evidence, indict the suspect, terminate proceedings or request the investigative body to carry out further investigations.¹⁰⁷

A victim¹⁰⁸ and his or her legal representative have the right to take part in the criminal prosecution and, in respect of certain crimes subject to private prosecution, to put forward and support the prosecution.¹⁰⁹ To this end, victims have been accorded a number of procedural rights under the new (2002) Criminal Procedure Code. For instance, they have the right to, *inter alia*, know about the charges brought against the accused, furnish evidence, submit evidence, enter petitions, have a representative, take part in investigative actions, get acquainted with materials of the criminal case after the end of the investigations, be notified of decisions relating to the institution and discontinuance of the case, participate in the judicial proceedings and to lodge complaints against the actions and decisions of the investigation bodies, the prokuror and the court.¹¹⁰

The victim also has the right to claim any expenses made in connection with his or her participation in the preliminary investigation and the trial, including expenses for a legal representative.¹¹¹ If the victim dies as a result of the crime, his or her rights shall pass on to the closest relatives.¹¹² A victim may request measures of protection to be taken. These may be ordered by the court or investigating body in case of a threat to the security of the victim.¹¹³

2.3.2. Role of the Ombudsman

The Federal Office of the Ombudsman (Plenipotentiary for Human Rights), established in 1996, has the power to investigate complaints but only after an initial administrative or judicial review of the complaint has resulted in an unsatisfactory response to the victim. The victim must complain to the Ombudsman within one year of the decision of the administrative or judicial review.

In receiving a complaint, the Ombudsman may file a human rights complaint with a court, request the concerned government agency to institute disciplinary action or an administrative or

¹⁰³ Article 213 RSFCCP.

¹⁰⁴ Article 214 RSFCCP.

¹⁰⁵ Article 213 (4) RSFCCP. See supra.

¹⁰⁶ Chapter 30, Articles 215 et seq. RSFCCP.

¹⁰⁷ Chapter 31, Articles 221 et seq. RSFCCP.

¹⁰⁸ Article 42(1) RSFCCP defines a victim as: "a natural person, upon whom a physical, property or moral damage was inflicted by the crime, as well as a legal entity, if his property and business reputation were damaged by the crime. The decision on recognizing a person to be a victim shall be formalized by the resolution of the inquirer, investigator or prosecutor, or of the court. "

¹⁰⁹ Article 22 RSFCCP.

¹¹⁰ Article 42 (2) RSFCCP.

¹¹¹ Article 42 (3) RSFCCP. See also Article 131 of the RSFCCP for further details.

¹¹² Article 42(9) RSFCCP.

¹¹³ Article 11(3) RSFCCP.

REPARATION FOR TORTURE: RUSSIAN FEDERATION

criminal investigation against the responsible official(s), request a court or the Prokuratura to review a court decision and present his/her views to officials who have the right to challenge decisions relating to human rights violations. In 1998, a department for criminal justice that deals with individual torture complaints was created on the initiative of Oleg Mironov, the Human Rights Ombudsman.¹¹⁴

2.4. Trials

A case against an alleged perpetrator of torture is brought by way of an indictment and will normally fall within the jurisdiction of the District Court.¹¹⁵ Criminal cases concerning military personnel are heard by the Garrison Military Court or higher Military Courts.¹¹⁶ Trial proceedings combine adversarial and inquisitorial features whereby the presiding judge plays a predominant role.¹¹⁷ The victim has the right to be present and submit evidence to support the prosecution.¹¹⁸ The judge has discretionary sentencing power and can suspend sentences.¹¹⁹

3. The Practice

3.1. Complaints

No overall statistics on complaints about torture and ill-treatment by law enforcement personnel and the army are available.¹²⁰ Statistics released by the Internal Affairs Agencies and the Prokuratura indicate that there are large numbers of complaints concerning violations of the law by Internal Affairs Agencies, mainly concerning the excessive use of force.¹²¹ However, torture survivors have reportedly refrained from lodging complaints. This is due to coercion to withdraw complaints and/or threats made by police officers to charge victims with offences such as resisting arrest or making unfounded accusations. Complaints about torture have often been met with a hostile reaction by the police or inspection authorities that have in several reported cases failed to register the complaints or not acted upon them. In several instances, complainants were either intimidated or bribed into withdrawing their complaints. In Chechnya, torture survivors and relatives of torture victims have not brought torture to the attention of the

¹¹⁴ See HRW, *Confessions at any cost*, supra.

¹¹⁵ See Article 31 of the RSFCCP for the jurisdiction of the various courts.

¹¹⁶ Article 31(5)–(9) RSFCCP.

¹¹⁷ See Section IX, Chapters 33 et seq. RSFCCP.

¹¹⁸ Articles 22; 42(2); 78; 249 and 277 RSFCCP.

¹¹⁹ See Chapter 39 RSFCCP, in particular Article 302.

¹²⁰ The figures provided by the Department of the Prosecutor General on the complaints about unlawful investigation methods gives an indication of the number of complaints, which came to 4,087 for the period from January to June 2000 alone. See Third State Party Report, supra, para.115. See also the large number of complaints made to the Internal Affairs Agency from 1998-2000, *ibid.*, para.44.

¹²¹ According to a Russian delegate, more than 5,000 officials were prosecuted in 2000 and 2001 for offences involving the use of torture. See *Consideration of Reports submitted by State Parties under Article 19 of the Convention*, Third periodic report of the Russian Federation, UN Doc. CAT/C/SR. 523, 23 May 2002, supra, para. 13. According to non-torture specific information provided for in the third country report to the Committee against Torture by the Russian Federation, supra, para. 44, during the period 1998-2000, citizens submitted 78,219 complaints and communications against actions of their employees to the internal affairs agencies' security units. As a result, 44,839 internal investigations were carried out and subsequent action was taken in respect of 17,193 agency employees, of which 4,598 were dismissed and 1,134 demoted. 10,374 files were submitted to the Prosecutor's service and criminal proceedings were opened in 5,093 of these cases. See *ibid.*, para.51.

authorities out of fear of severe repercussions.¹²² Another group of torture survivors who tend to refrain from bringing complaints are detainees.¹²³

3.2. Investigations

If an investigation is opened, it is often, and this applies to all crimes, delayed by several days if not weeks. The measures taken by the police and prosecution are often cursory. The Prokuratura has apparently limited its investigations to requesting information from the superior of the suspect and, in when a general reply is made that no torture or ill-treatment had been committed, they decide to close the case. Cases have been closed without victims being questioned and sometimes even in spite of available evidence indicating the commission of torture. Investigators have repeatedly refused requests to order a medical examination by a forensic expert from state-run forensic institutes. Detainees have sometimes been only superficially examined by doctors or denied any access to medical treatment until the signs of torture disappeared. While torture survivors outside of detention are free to visit medical doctors, the latter have reportedly been reluctant to state that injuries result from torture and medical reports are not necessarily of such quality as to provide conclusive evidence. In the absence of such evidence, torture survivors find it difficult to challenge the decision of the investigation body or prosecutor to close the investigation for lack of evidence.¹²⁴

The police have shown little willingness to cooperate in investigations against police officers and several reports have highlighted cover-ups and the manipulation of evidence.¹²⁵ Suspects and their colleagues have reportedly threatened and harassed complainants, witnesses, if there happen to be any, and human rights defenders for pursuing the case against them. If medical evidence of torture is available or the victim dies as a result of torture, the usual defences that have been employed are that the use of force was necessary to overcome the resistance of the victim or that any injuries are self-inflicted.

Prosecutors have not taken a vigorous stance against suspects of torture. This has been attributed to their lack of independence.¹²⁶ Only rarely do they request further investigations or medical evidence. Most investigations are closed and appeals by victims against such decisions are often dismissed after several months, forcing victims to turn to the courts to demand a reopening of investigations. Even if investigations are reopened, vital evidence might have been lost.

The judiciary, while generally seen to be independent, has not played an active role in combating torture either. While evidence obtained in violation of the requirements of the Code

¹²² There are no statistics available as to the overall number of complaints. According to a statement by a Russian delegate to the Committee against Torture, the Military Prokuratura's Office had investigated over the period 2000-2001 127 cases involving alleged offences by military personnel, more than 50 of which concerned murder, rape and abduction. In May 2002, 61 cases had been concluded, 44 of which had been referred to the military courts (12 of them concerned murder and one rape) while 22 criminal cases had been dismissed. See UN Doc. CAT/C/SR.523, supra, para.24.

¹²³ According to a survey by a Russian human rights group, out of 23 detainees interviewed, only one dared to complain about the torture.

¹²⁴ This paragraph is based on assessment by Nizhny Novgorod Committee against Torture and findings in AI, Denial of Justice, in particular pp.40 et seq. and 70 et seq. and HRW, Confessions at any cost, supra.

¹²⁵ The events, which took place in Chelyabinsk region in 2000, may serve as an example. A number of officials of the Varnensky department of the Ministry of Internal Affairs were arrested under accusation of frequent usage of torture in order to obtain confessions. As a response, other officials of the department, as an ultimatum to the local department of the Ministry of Internal Affairs and Procuracy, refused to fulfil their duties until the "repressions" towards the arrested officials were terminated. In the course of the investigation, 33 cases of torture by Varnenskaya militia were established, and 19 persons were recognized as victims. See Human Rights in Russian Regions 2000, supra.

¹²⁶ See HRW, Confessions at any cost, supra.

REPARATION FOR TORTURE: RUSSIAN FEDERATION

of Criminal Procedure is inadmissible,¹²⁷ judges rarely exclude confessions even though numerous defendants have raised complaints that their confessions had been obtained by means of torture. When a defendant alleges that he was tortured, a judge is obliged to appoint a prokuratorial inquiry into the allegations before excluding the evidence. Most inquiries end in the formal reply of the prokuror that the allegations could not be confirmed. Consequently, the judge will not exclude the evidence as inadmissible as his/her decision is bound to be overturned by a higher court on appeal by the prokuror.

3.3. Prosecutions: Indictments, convictions, punishments

Against this background, only relatively few perpetrators of torture have been indicted. The indictments have often been the result of media publicity in serious cases and at the insistence of victims and human rights groups. While there have been some convictions in cases of torture committed in the context of routine law-enforcement,¹²⁸ there have been hardly any convictions for the serious human rights violations committed in the course of the armed conflict in Chechnya.¹²⁹ In those cases where there have been convictions, sentences have only rarely exceeded five years of imprisonment, and these cases involved the death of the victim. In other cases of serious torture, sentences of short term to medium term imprisonment were in most cases suspended.¹³⁰

In one remarkable case, the Supreme Court of the Republic of Mordovia, on 12 February 1998, sentenced seven officers to prison terms ranging from three to nine years and six months on the basis of Article 171 (2) of the Criminal Code of the RSFSR¹³¹ for severe torture, resulting in the death of one of the victims, which they had committed during the interrogation of criminal suspects in 1994.¹³² One official was sentenced to one year imprisonment for forgery of official documents and exceeding his authority and office.

¹²⁷ Article 75 RSFCCP. A court has the right to deem the evidence inadmissible upon petition of the parties or on its own initiative according to Article 88 RSFCCP.

¹²⁸ The statistics released by the Office of the Procurator-General recorded the following convictions for the period 1996-1999: 3029 for action ultra vires (Art.286 RSFCC: 895 in 1996, 989 in 1998 and 1 149 in 1999); 27 for unlawful short-term or pre-trial detention (Art.301 RSFCC: 5 in 1996, 4 in 1998 and 18 in 1999), 26 for coercion to give evidence under torture (Art.302 RSFCC: 8 in 1996, 11 in 1998 and 7 in 1999) and 21 for unlawful internment in a psychiatric hospital (Art.128 RSFCC: 16 in 1998 and 5 in 1999), see third country report to Committee against Torture, supra, para.40. No information on sentences imposed was provided. According to the Alternative Report, supra, Article 4, less than 0.5% of complaints to the procurator's office regarding the use of unlawful methods of investigation reached trial.

¹²⁹ According to statistics published in a report of the Council of Europe Joint Working Group on Chechnya in April 2002, there have, throughout the present conflict, been three convictions of members of the Russian security forces for crimes against civilians falling within the competence of the civil procuracy and no conviction for crimes against civilians falling within the competence of the military procuracy. 43 cases, eleven of which concerned murder and two rape, were referred to military courts. See for further reference, AI, Denial of Justice, supra, p.75. In an exceptional (and, concerning its outcome, exemplary) case, Colonel Yuri Budanov, the most senior officer to be tried for crimes against civilians in Chechnya, was initially charged with murder and abduction for dragging the 18-year-old Chechen Elza Kungayeva from her home to his office, assaulting her, strangling her and ordering his subordinates to bury her corpse. According to a postmortem, Elza Kungayeva was also raped for which Budanov was not charged. In the trial in Rostov, which began in early 2000, the Serbsky Institute of Psychiatry in Moscow concluded that Budanov was temporarily insane. Consequently, the murder and abduction charge was also dropped and Budanov was only charged with exceeding his authority. The prosecution demanded a three year sentence for Budanov but recommended that he be made immediately eligible for amnesty for his military deeds. Traynor, I., "Chechen murder show trial limps to an end", in *The Guardian*, 28 June 2000. On 30 December 2002, the case was closed when the court decided to transfer Budanov to the Institute of Psychiatry on the grounds of mental insanity. See Russian Federation: Amnesty International is concerned about the climate of impunity prevailing in the Russian judicial system, AI-Index: EUR 46/002/2003 (Public), January 2003. In February 2003, the Supreme Court overturned the ruling of the lower court that Budanov was not criminally responsible and sent the case back for a retrial, see Officer's retrial, *Guardian*, 1 March 2003.

¹³⁰ According to the Alternative Report, supra, Article 4, the NGOs know of a total of thirty convictions in torture cases (Articles 286 and 302 RSFCC). In more than half of these cases, punishment imposed as a sentence was less than imprisonment.

¹³¹ The old Soviet Code.

¹³² See translation of this case in HRW, *Confessions at any costs*, Appendix F.

In its judgment, the Court did not define torture but held that the concerned acts constituted torture and violated Article 21 of the Constitution. The Court went on to consider and severely criticise the investigations into the acts in question during which most of the suspects were either not suspended or no adequate disciplinary action was taken. It also criticised the initial refusal to call a doctor for one of the detained torture victims and the failure to record complaints with regard to this and other statements. It also highlighted inaccurate statements submitted by the chief of the investigation department and the fact that the criminal investigation department of the Mordovian Ministry of Internal Affairs outright denied that the suspects had committed any of the crimes they were accused of.¹³³ In addition to sentencing the accused, the Court drew the attention of the Ministry of Internal Affairs to the causes and conditions which facilitated commission of crimes and violation of civil rights during so-called “informal questioning” with the aim of preventing such violations in the future. It requested the Ministry of Internal Affairs to take the necessary measures and report back with the results to the Supreme Court of Mordovia.

While this case is one example of a court that has taken a strong stance against torture in not only sentencing the accused but also requesting the authorities to take measures guaranteeing non-repetition, this approach has not been followed in a number of other judgments in which the courts have shown a far more deferential attitude towards the investigative authorities.

IV. CLAIMING REPARATION FOR TORTURE

1. Available Remedies

1.1. Constitution

The Federal Constitution of 1993 contains an express right to a remedy and compensation for the illegal acts of the State. Article 52 stipulates that: “The rights of victims of crimes or abuse of authority shall be safeguarded by the law. The State shall ensure that victims have access to justice and compensation for damage caused.” Such a right is granted in Article 53: “Every person shall have the right to be compensated by the State for damage caused by the illegal acts (or the inactivity) of the authorities or their officials.” It appears that a victim of torture could invoke these provisions when claiming compensation before a court but there are no precedents.¹³⁴

1.2. Administrative Law

There is a decree that sets out the applicable law on compensation for damages caused by wrongful conduct of officials.¹³⁵ The regulations approved by that decree determine the nature

¹³³ One such evaluation of the conduct of the accused reads: “Daev and Sazonov are responsible in the fulfilment of their official duties and strictly observe all legal norms. They have calm natures, are proper in their treatment of civilians, have received positive evaluations and both possess proper restraint and erudition. Dave and Sazonov are respected and admired within the criminal investigations unit of the Ministry of Internal Affairs.”

¹³⁴ According to the third country report of the Russian Federation to the Committee against Torture, *supra*, para.122, the Constitutional Court, in a decision regarding verification of the constitutionality of a number of presidential decrees on measures to re-establish constitutional legality and law and order in the territory of the Chechen Republic stated that victims of any wrongdoing, crime or abuse of authority should be provided with effective remedies and compensation for injury pursuant to Articles 52 and 53 of the Constitution and to the International Covenant on Civil and Political Rights Article 2 (3).

¹³⁵ Decree of the Presidium of the Supreme Soviet of the USSR, 18 May 1981.

REPARATION FOR TORTURE: RUSSIAN FEDERATION

and extent of compensation, which is to be implemented in accordance with an instruction dated 2 March 1991. These legal instruments provide that compensation is payable by the State through its appropriate bodies for damage caused by unlawful criminal prosecution, unlawful detention or unlawful administrative sanction in the form of arrest or corrective labour. The victim's employment, pension and housing rights are restored and compensation is paid for property loss and damage as well as non-property damage, which amounts to 2/3 of the minimum monthly wage (currently about \$15) for each month of illegal imprisonment. However, this law does not cover torture as such.¹³⁶

1.3. Civil Law

Under the Civil Code, any injury to the person is subject to full compensation by the person who inflicted the damage.¹³⁷ Liability is based on fault unless the law provides for strict liability.¹³⁸ The injury inflicted on an individual as a result of the unlawful actions (including inaction) of the state and local self-government bodies or of their officials is subject to redress. The injury will be redressed at the expense of the state treasury of the Russian Federation, the respective subject of the Federation or the respective municipal body, as the case may be.¹³⁹

The law provides for strict State liability for injuries inflicted on an individual as a result of illegal conviction, illegal prosecution, unlawful detention and illegal imposition of an administrative penalty of arrest or corrective labour.¹⁴⁰ Any other injury inflicted on an individual as a result of the illegal actions of investigative bodies is subject to the redress provided for by Article 1069 of the Civil Code, i.e. based on fault. The Russian Federation or authority in question has the right of recourse to the official who acted unlawfully if his or her guilt has been established by a binding court judgment.¹⁴¹

Redress shall be provided in the form of restitution or full compensation, depending on the circumstances.¹⁴² Compensation in cases of injuries to the health of the victim shall cover the cost of treatment, rehabilitation and loss of earnings.¹⁴³ The amount of compensation may be reduced, taking into account the financial circumstances of the perpetrator, with the exception of cases where injury has been inflicted by deliberate actions.¹⁴⁴ The amount of compensation due might also be altered subsequently if there is a change in circumstances.¹⁴⁵ In case of the death of the victim, his or her dependants are entitled to redress.¹⁴⁶ In calculating compensation, lost earnings and income on par with that of the victim are to be taken into account.¹⁴⁷ In addition, the costs of the burial are to be reimbursed.¹⁴⁸

¹³⁶ See Russia's third country report to CAT, *supra*, para.86.

¹³⁷ Article 1064 (1) Civil Code.

¹³⁸ Article 1064 (2) Civil Code.

¹³⁹ Article 1069 Civil Code.

¹⁴⁰ Article 1070 (1) Civil Code.

¹⁴¹ Article 1081 (3) Civil Code.

¹⁴² Article 1082 Civil Code.

¹⁴³ Article 1085 Civil Code. See, for the assessment and estimation of lost earnings, Article 1086 Civil Code and Article 1087 Civil Code for children.

¹⁴⁴ Article 1083 (3) Civil Code.

¹⁴⁵ Articles 1091, 1092 Civil Code.

¹⁴⁶ Article 1088 Civil Code.

¹⁴⁷ Article 1090 Civil Code.

¹⁴⁸ Article 1094 Civil Code.

A Court may award moral damages in cases of a violation of personal rights.¹⁴⁹ Such damages shall be compensated regardless of the guilt of the perpetrator if the injury has been, *inter alia*, inflicted to life or health of an individual by a source of special hazards or the damage has resulted from an illegal conviction, illegal prosecution, unlawful detention or imposition of an administrative penalty.¹⁵⁰ In determining the amount of moral damage, which shall be compensated in monetary form, the nature of physical and moral suffering caused to the victim, the degree of the perpetrators' guilt as well as the requirements of reasonableness and justice shall be taken into account.¹⁵¹ The nature of physical and moral suffering shall be assessed with due account of the actual circumstances under which the moral damage was inflicted and of the victims' particular situation.¹⁵²

A suit against the Russian Federation or the responsible authority has to be brought before the District Court where the authority has its head office.¹⁵³ Plaintiffs seeking damages for bodily injuries or death to the "family breadwinner" may bring the suit to the district court instead of the place of his/her residence.¹⁵⁴ Plaintiffs who are seeking damages for a crime or damages for injuries or death to the "family breadwinner" shall be released from paying court fees.¹⁵⁵ The general time limit for bringing claims is three years from the date when the act occurred that gave rise to the claim.¹⁵⁶ The proceedings are of an adversarial nature.¹⁵⁷ The plaintiff carries the burden to prove injury and damages.¹⁵⁸ In general, the decision is independent of the outcome of any related criminal case. However, a judgment in such a criminal case would have the effect of *res judicata* so that certain facts would not need to be proven.¹⁵⁹ The award of costs follows the event.¹⁶⁰

1.4. Criminal Law

The victim of a crime may seek compensation as part of criminal proceedings. A civil claim has to be filed by the claimant after the institution of the criminal case but before the completion of the preliminary investigation.¹⁶¹ The victim who brings such a claim has several procedural rights. These are designed to enable him or her to pursue the claim in the course of the criminal proceedings and largely mirror the general procedural rights accorded to victims in the

¹⁴⁹ Articles 1099 and 151 Civil Code.

¹⁵⁰ Article 1100 Civil Code.

¹⁵¹ Articles 151 and 1101 Civil Code.

¹⁵² Article 1001 Civil Code.

¹⁵³ Article 28 Civil Procedure Code.

¹⁵⁴ Article 29 (5) Civil Procedure Code.

¹⁵⁵ Article 89 (1), (4) Civil Procedure Code.

¹⁵⁶ Article 196 Civil Code. The court will only take the time limit into account if it is invoked by the defendant as a bar to proceedings, see Article 199 Civil Code.

¹⁵⁷ Article 12 Civil Procedure Code.

¹⁵⁸ See Article 56 Civil Procedure Code and Article 1064 Civil Code. See also Article 61 Civil Procedure Code: Grounds for Release from the Burden of Proof: "Circumstances judicially recognized by the Court as commonly known shall not require proof. Facts determined by Court judgment, which became *res judicata* in one civil case, shall not be proved when hearing other civil cases involving the same parties. A judicial sentence that became *res judicata* in a criminal case shall bind the court hearing a civil case initiated by the person who was awarded the judicial sentence, only with regard to questions of whether these actions took place and whether this person committed these actions." The admissible evidence is evaluated by the Court according to Article 67 Civil Procedure Code.

¹⁵⁹ Article 61 Civil Procedure Code, see text *supra*.

¹⁶⁰ Article 98-102 Civil Procedure Code. This also applies to cases where the losing party has been relieved from paying court fees.

¹⁶¹ Article 44 (1) and (2) RSFCCP. The claimant shall be relieved from the payment of fees for the filing of such claim.

REPARATION FOR TORTURE: RUSSIAN FEDERATION

criminal justice system.¹⁶² The judge has the power, following a petition from the victim or from the prokuror, to rule on measures to be taken in compensating the damage inflicted by the crime.¹⁶³ When handing down the sentence, the court shall decide on the merits of the claim, the beneficiary and the amount of the compensation to be awarded.¹⁶⁴ The execution of such a ruling shall be imposed upon the officers of the law.¹⁶⁵

2. The Practice

A considerable number of torture survivors refrain from taking legal action. The reasons for this include the lack of awareness of rights, the unwillingness to confront the state in court, the lack of resources, fear of retaliation, difficulty in satisfying the burden of proof, and the small amounts of damages awarded.

Even though torture survivors have claimed compensation, there are only few known cases in which they have been awarded compensation or other forms of reparation. A considerable number of cases have failed as courts generally postpone the ruling on a compensation claim pending the outcome of the criminal case. The small number of successful prosecutions weighs heavily against the chances of succeeding with a compensation claim as plaintiffs are not able to satisfy the burden of proof. This applies in particular to Chechnya where there have apparently been no compensation cases lodged. This has been attributed to the lack of access to courts and the passivity of the prosecution in investigating torture claims.¹⁶⁶

There have been about ten successful cases of compensation for torture, according to the survey of the group of NGOs that produced the Alternative Report to the Committee against Torture.¹⁶⁷ In all these cases, the courts ruled that the damage awarded was to be paid by the individual perpetrator and not the state agency.

The amount of compensation awarded has generally been low and the jurisprudence does not provide clear guidance on how the amount of damages awarded is determined. In the cases referred to in the alternative NGO report, the compensation awarded was RUR 5,000 (\$ 150) while a judgment awarding higher damages was reversed by the Judicial Collegium on Civil Cases of the Supreme Court on the grounds of "excessiveness."¹⁶⁸

Considerably higher damages were awarded in the above-mentioned criminal case decided by the Supreme Court of the Republic of Mordovia. The Court held that, as officers of the criminal investigation department had used torture and ill-treatment, the Ministry of Internal Affairs of Mordovia was required to pay compensation: to indemnify the moral damage, i.e. 200,000 Rubles (\$33,333) to the mother of the deceased O.V. Ignonin who had died as a result of torture; 50,000 rubles (\$8,333) to police major N.A. Abramov and 30,000 (\$5,000) rubles each

¹⁶² Article 44 (4) and 250 RSFCCP.

¹⁶³ Article 230 RSFCCP.

¹⁶⁴ Article 299 RSFCCP.

¹⁶⁵ Article 230 RSFCCP.

¹⁶⁶ See Alternative NGO Report, *supra*, Article 14. See also Amnesty International, Russian Federation: Failure to protect and punish human rights violations and impunity in Chechnya, Memorandum by Amnesty International to the Parliamentary Assembly of the Council of Europe on the Conflict in Chechnya, AI-Index: EUR: 46/004/002, January 2002.

¹⁶⁷ See *ibid.*

¹⁶⁸ See *ibid.*

to V.V. Abramov and A.A. Derkaev, all of whom had been severely tortured whereby N.A. Abramov had lost consciousness.¹⁶⁹

V. GOVERNMENT REPARATION MEASURES

There is neither a reparation scheme for human rights violations nor a criminal injuries compensation board. On 18 October 1991, the Russian Federation adopted a law on the Rehabilitation of Victims of Political Repression. While this law is not torture specific, some of the measures listed as constituting political repression amount to torture,¹⁷⁰ thus providing some form of reparation to the victims of political repression in Soviet times, many of whom had been subjected to torture and ill-treatment. Children, spouses and parents of victims of political repression have also been included as victims of political repression if they had been affected in specifically circumscribed ways.¹⁷¹ The Act is implemented on the basis of regulations concerning the procedure for granting privileges to rehabilitated person recognised as having undergone political repression, which entitle victims to special medical care, provision of medication and sanatorium or spa treatment as well as priority housing, free public travel and other privileges.¹⁷² The Prokuratura is responsible for examining and deciding upon applications for rehabilitation.

According to the recent report to the Human Rights Committee, the Prokuror General has since 1991 "reviewed over 530,000 criminal cases involving almost 740,000 individuals, and 520,000 citizens have been rehabilitated."¹⁷³

VI. LEGAL REMEDIES IN CASES OF TORTURE COMMITTED IN THIRD COUNTRIES

1. Prosecution of acts of torture committed in third countries

1.1. The Law

1.1.1. Criminal Law

The Russian Criminal Code recognises the "active personality principle"¹⁷⁴, jurisdiction for crimes running counter to the interests of the Russian Federation and jurisdiction for crimes as

¹⁶⁹ The Court commended the courage and fortitude of N.A. Abramov during the period where he was unlawfully held in detention and underwent torture. There is however no explanation or indication in the judgment as to how the Court derived at the amount of compensation awarded.

¹⁷⁰ Article 1 defines political repression as: "various measures of coercion which were employed by the State for political reasons, in the form of deprivation of life or liberty, placement for forcible treatment in psychiatric institutions, expulsion from the country and deprivation of citizenship, eviction of population groups from their places of residence, exile, banishment or assignment to special residence, subjection to forced labour with restriction of freedom or any other deprivation or restriction of the rights and freedoms of persons declared socially dangerous to the State or the political system on class, social, national, religious or other grounds, and which were carried out by decision of the courts and other bodies vested with judicial functions, or administratively by agencies of the executive or by officials or public organizations or their agencies vested with administrative powers."

¹⁷¹ See Article 2 of the 1991 Law and the Acts of 11 October 1995 and 7 June 2002 amending and supplementing the Act of the Russian Federation on rehabilitation of victims of political repression.

¹⁷² Second periodic report of States parties due in 1992: Russian Federation, UN Doc. CAT/C/17/Add.15, 7 February 1996, paras.78-92. According to the Government at that time, economic and financial difficulties have not allowed it to fully implement the act.

¹⁷³ See for more information Consideration of Reports submitted by State Parties under Article 40 of the Covenant, Fifth periodic report, Russian Federation, UN Doc. CCPR/C/RUS/2002/5, 9 December 2002, para.28.

REPARATION FOR TORTURE: RUSSIAN FEDERATION

provided by international agreements.¹⁷⁵ Consequently, the Russian Federation may exercise jurisdiction over Russian nationals and stateless persons residing in Russia, including military personnel, who have incurred criminal responsibility for acts of torture committed abroad provided that torture has been recognised as a crime in the concerned country. It may exercise universal jurisdiction in accordance with Article 5 of the Convention against Torture or the Geneva Conventions and is, by virtue of having ratified the Conventions, obliged to do so if it does not extradite the alleged perpetrator.

The procedure for investigating and prosecuting acts of torture committed abroad follows the one set out in the Criminal Procedure Code or rules provided for in an international treaty should they differ from that Code.¹⁷⁶ As a matter of the applicable norms of international law, diplomatic representatives and other officials enjoying immunity under treaty or customary international law are accorded immunity from criminal proceedings in the Russian Federation. "Procedural actions, stipulated by the present code, with respect to persons enjoying diplomatic immunity, shall therefore be conducted only at the request of the said persons or with their consent, which shall be inquired after through the Ministry of Foreign Affairs of the Russian Federation."¹⁷⁷

1.1.2. Extradition Laws

Extradition may be carried out either on the basis of an international treaty or in accordance with the principle of reciprocity.¹⁷⁸ While the extraditable act, i.e. torture, has to be a crime in the Russian Federation and the law of the requesting State,¹⁷⁹ torture is an extraditable crime by virtue of the operation of Article 8 CAT, which trumps any contradicting provisions of the Code of Criminal Procedure. Extradition will be refused if the person in question is a national of the Russian Federation¹⁸⁰ and on other grounds, e.g. if the statute of limitations for such crime had expired under Russian law or if the person to be extradited is a refugee fleeing from persecution in the state requesting extradition.¹⁸¹ The ultimate decision in extradition cases rests with the Prokuror General.¹⁸²

¹⁷⁴ Article 12(1) RSF Criminal Code: "Citizens of the Russian Federation and stateless persons who permanently reside in the Russian Federation and who have committed crimes outside the boundaries of the Russian Federation shall be brought to criminal responsibility under this Code, if their deeds have been recognized as crimes in the State on whose territory they were committed, and unless these persons have been convicted in the foreign State. In case of conviction of said persons, the punishments may not exceed the upper limit of the sanction provided for by the laws of the foreign State on whose territory the crimes have been committed; (2) Servicemen of the military units of the Russian Federation located beyond the confines of the Russian Federation shall bear criminal responsibility for their crimes committed in the territories of foreign states under this Code, unless otherwise stipulated by international agreements of the Russian Federation."

¹⁷⁵ Article 12(3) RSF Criminal Code: "Foreign nationals and stateless persons who do not reside permanently in the Russian Federation and who have committed their crimes outside the boundaries of the Russian Federation shall be brought to criminal responsibility under this Code in cases, if the crimes run counter to the interests of the Russian Federation, and in cases provided for by international agreement of the Russian Federation, and unless they have been convicted in a foreign state and are brought to criminal responsibility in the territory of the Russian Federation."

¹⁷⁶ Article 1(3) RSFCCP: "The generally recognized principles and norms of international law and the international treaties of the Russian Federation are the component part of the legislation of the Russian Federation, regulating the criminal legal proceedings. If an international treaty of the Russian Federation has laid down the rules, different from those stipulated by the present Code, the rules of the international treaty shall be applied."

¹⁷⁷ Article 3 (2) RSFCCP.

¹⁷⁸ Article 462 (1) RSFCCP. Russia has ratified the European Convention on Extradition, see Federal Law of 25 October 1999 N 190-FZ.

¹⁷⁹ Article 462(2) RSFCCP.

¹⁸⁰ Constitution, Article 13(1) and 464(1) RSFCCP.

¹⁸¹ See Article 464 RSFCCP. According to Article 2 on the Law on Refugees, the status of refugees must not be granted to persons who have committed crimes against peace, military crimes, crimes against humanity or acts contradicting United Nations' principles.

¹⁸² Article 462 RSFCCP.

1.2. The Practice

There are no known cases in which the Russian Federation has exercised universal jurisdiction for serious human rights violations, including torture, committed abroad or has extradited an alleged perpetrator of torture.

2. Claiming reparation for acts of torture committed in third countries

According to the applicable jurisdictional rules of the Code of Civil Procedure,¹⁸³ suits must, as a general rule, be brought to the court where the defendant has his or her place of residence.¹⁸⁴ If the defendant does not reside in the Russian Federation, an action may be filed at the place of residence.¹⁸⁵ The only exception applies to suits in which dependants seek damages in relation to the death of the 'bread winner' which can be tried in Russian courts if the damage occurred in Russia or the plaintiff resides in Russia.¹⁸⁶ A torture survivor may accordingly only be able to seize the jurisdiction of a civil court to hear a case relating to torture committed abroad if the alleged perpetrator of torture either has or had his or her place of residence in the Russian Federation.

Diplomatic representatives of foreign States accredited in the Russian Federation and other persons specified in the respective laws and international agreements of the Russian Federation enjoy diplomatic immunity to the extent provided for by rules of international law or international treaties to which the Russian Federation is a party.¹⁸⁷ Consequently, it would depend on the interpretation of the applicable international law by the Russian courts whether the immunity from civil suit that is accorded to this category of persons also covers acts of torture.

As a general rule, the law of the place where the tort was committed is applicable in determining the merits of the claim. The law of the country where the harmful effects of the tortious act materialised will be applicable if the person who committed the tort foresaw or should have foreseen the consequential harm in that country. Finally, the parties may, after the tort has been committed, agree that the law of the forum shall be the applicable law.¹⁸⁸ A court shall determine, according to the applicable law, the capacity of a person to be liable for the harm caused, the liability of a person who has not committed the tort, grounds of liability, grounds of limitation or release from liability, means of compensation as well as volume and amount of compensation.¹⁸⁹

Foreign States are immune from civil suit. An action might be filed against a foreign State only with the consent of the authorized bodies of the State concerned. Immunity of foreign States might be restricted to the immunity accorded to the Russian Federation in the country in question.¹⁹⁰ A draft Law on State Immunity, which is pending at the time of writing, provides for

¹⁸³ Article 398 stipulates that foreign citizens are entitled to apply to Russian courts and have the same procedural rights as Russian citizens.

¹⁸⁴ Article 28 Code of Civil Procedure.

¹⁸⁵ Article 402 Code of Civil Procedure.

¹⁸⁶ Article 403 Code of Civil Procedure.

¹⁸⁷ Article 401 (3) Code of Civil Procedure.

¹⁸⁸ Article 1219 Civil Code.

¹⁸⁹ Ibid.

¹⁹⁰ Article 401 (2) Civil Procedure Code.

REPARATION FOR TORTURE: RUSSIAN FEDERATION

an exception to State immunity for disputes concerning compensation of personal injury or damage to property only if such was caused in whole or in part in the territory of the Russian Federation.¹⁹¹

There are no known cases in which victims of torture committed abroad have taken legal action before Russian civil courts against the individual perpetrators or the responsible States.

¹⁹¹ Article 12 of Draft Law on State Immunity.