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Committee on Legal Affairs and Human Rights

Legal remedies for human rights violations in the North Caucasus

Supplementary introductory memorandum

Rapporteur: Mr Dick Marty, Switzerland, Alliance of Liberals and Democrats for Europe

I. Introduction

1. Our colleague Rudolf Bindig's 2005 report on the situation of human rights in the Chechen Republic begins as follows: "The human rights situation in the Chechen Republic has unfortunately not improved significantly since the adoption of my last report in October 2004"¹. Mr Bindig also noted in 2005 that violence and brutal counter-terrorist methods were extending beyond the Chechen Republic, throughout the whole North Caucasus region.

2. Since the adoption of the last report by Mr Bindig in January 2006, there has been, according to concurring reports from the very few international observers granted access to the region, an indisputable improvement in the population's material situation, particularly as regards the reconstruction of buildings and infrastructure in the Chechen Republic destroyed during the two periods when the conflict was at its most intense.

3. With regard to the human rights situation, it is essential to verify in situ the extent to which the disturbing reports which continue to reach us from non-governmental organisations working in the field reflect reality.

4. A whole series of judgments of the European Court of Human Rights in 2007 refer to disappearances, acts of torture and unexplained violent deaths in the North Caucasus. These judgments, even though they relate to facts which took place some considerable time ago, lead one to question the effectiveness or indeed the practical possibility of available legal remedies.

5. The motion tabled by Erik Jürgens² on 26 April 2006 therefore quite rightly focused on legal remedies for human rights violations. Unfortunately, this motion has still not been referred for a normal report. It was first of all referred to the Committee for an "information report", for which Paschal

* Document declassified by the Committee on 15 April 2008.

¹ Doc. 10774 revised, Report, *Human rights violations in the Chechen Republic: the Committee of Ministers' responsibility vis-à-vis the Assembly's concerns*, Committee on Legal Affairs and Human Rights, Rapporteur: Mr Rudolf Bindig, 4 January 2006.

² Doc. 10916, *Legal remedies for human rights violations in the North-Caucasus region*, Motion for a resolution, tabled by Mr Jürgens and others, 26 April 2006.

Mooney was appointed rapporteur³. On 12 March 2007, he presented an introductory memorandum⁴ to the Committee, which the latter forwarded to the Russian authorities for comment⁵. The Russian delegation felt that Mr Mooney's memorandum was not sufficiently "objective" and that there had been a radical change in the situation regarding the disappearances⁶.

6. In June 2007 I replaced Mr Mooney as rapporteur⁷. Three weeks later, the Committee authorised me to travel to Moscow and, if appropriate, to the North Caucasus region by the end of 2007⁸. This visit has not yet taken place, primarily because of the various elections that have taken place in Russia. In December 2007, the Committee asked the Bureau to change the terms of reference to a normal report⁹ which would enable the Assembly to express its view in the form of a resolution or recommendation. In March 2008¹⁰, the Committee repeated this request, which was nevertheless once again deferred by the Bureau, pending a forthcoming visit to Russia by the rapporteurs from the Monitoring Committee¹¹.

7. The purpose of this memorandum is to support our Committee's urgent request for a regular report. A brief overview of the situation in the region, as seen in the light of the recent European Court judgments and the latest reports from several renowned NGOs will show that it would be in the interests of all for a rapporteur from the Parliamentary Assembly to deal with this matter and assess the situation in situ with the co-operation of the competent authorities and those defending human rights in the field. It is also in the Assembly's interest to be able to take a position on this issue, which is not the case with a simple information report.

II. The situation in the region

8. The North Caucasus region, which includes, amongst others, the Chechen Republic, Ingushetia, Kabardino-Balkaria, Dagestan and Northern Ossetia, has long been suffering from instability. Geography and history have created in this region a mosaic of different ethnic groups and a clan-based society, which is a source of perpetual tension.

9. Mr Mooney's introductory memorandum mentions a large number of human rights violations and, above all, the climate of impunity prevailing in the region: disappearances not investigated effectively, systematic use of torture and intimidation of victims.

Enforced disappearances, abductions and arbitrary arrests

10. The problem of disappearances was highlighted in the most recent reports by Mr Bindig. In April 2006, the Ombudsman of the Chechen Republic, Nurdi Sadiyevich Nukhazhiev, published a special report on the problem of missing people in the Chechen Republic and the search for a mechanism to find them¹². A series of judgments by the European Court of Human Rights has confirmed the responsibility of the Russian authorities in cases of enforced disappearances, either directly or for failure to carry out effective investigations¹³.

³ Synopsis No. 2006/89 of the meeting held in Paris on 6 November 2006.

⁴ (Restricted) AS/Jur (2007) 15, Introductory memorandum, *Legal remedies for human rights violations in the North Caucasus*, Rapporteur: Mr Paschal Mooney, 9 March 2007.

⁵ Synopsis AS/Jur No. 2007/02 of the meeting held in Strasbourg on 12 March 2007.

⁶ (Restricted) AS/Jur (2007) 42, Committee on Legal Affairs and Human Rights, *Legal remedies for human rights violations in the North Caucasus*, Observations of the Russian Delegation to the Introductory Memorandum (AS/Jur (2007) 15 of 9 March 2007, Rapporteur: Mr Paschal Mooney, 22 June 2007.

⁷ Synopsis AS/Jur No. 2007/05 of the meeting held in Paris on 7 and 8 June 2007.

⁸ Synopsis AS/Jur No. 2007/06 of the meetings held in Strasbourg from 25 to 28 June 2007.

⁹ Synopsis AS/Jur No. 2007/10 of the meeting held in Venice (Italy) on 13 and 14 December 2007.

¹⁰ Synopsis AS/Jur No. 2008/02 of the meeting held in Paris on 6 and 7 March 2008.

¹¹ In an open letter to the Bureau dated 28 March 2008, Amnesty International (London), Human Rights Watch (New York), the International Federation of Human Rights (Paris), "Memorial" (Moscow) and their local partners expressed their support for the request submitted by the Committee on Legal Affairs and Human Rights.

¹² 21 April 2006 and available in Russian on www.ombu.ru/dokumenty. See also: <http://eng.kavkaz.memo.ru/printnews/engnews/id/1105500.html>

¹³ Cf. the cases of *Baysayeva v. Russia*; *Alkhadzhiyeva v. Russia*; *Magomadov and Magomadov v. Russia*; *Bazorkina v. Russia*; *Chitayev and Chitayev v. Russia*; *Bitiyeva and X v. Russia* (available on the Court's website, www.echr.coe.int)

11. To date, secret detentions – which is what we are talking about when people, even those suspected of “terrorism” are arrested and held *incommunicado*, without access to a lawyer and without their families being informed of what has happened to them – appear to persist despite denials from the republican and federal authorities. Reports by NGOs working in the field continued in 2007 to provide details of abductions and acts of torture committed in the Chechen Republic, although such cases were less numerous than in 2006¹⁴. In contrast, the phenomenon seems to be on the increase in the neighbouring republics of the North Caucasus. The highly symbolic case referred to by Rudolf Bindig¹⁵ of the Ingush prosecutor Mr Ozdoev, “missing” following his return from Moscow where he had blown the whistle on a “death squad” allegedly linked to the local FSB office, has still not been clarified, despite the fact that the President of Ingushetia, Mr Zyazikov, considered as credible the information and evidence gathered by Mr Ozdoev’s father, a retired federal judge, which incriminated the services in question.

Acts of torture, threats and intimidation

12. In a special report on torture published on 6 April 2006, the Ombudsman of the Chechen Republic described torture as a problem that began with counter-terrorist operations in 2000 and was still in need of a solution. He also looked at complaints of torture in the temporary isolation cell (IVS) in Investigation Operations Bureau No 2 (ORB-2) of the Russian Federation’s Ministry of Internal Affairs, a place of detention at which many detainees have complained of ill-treatment¹⁶.

13. It should also be noted that the European Committee for the Prevention of Torture (CPT) has already, on three separate occasions, issued a “public statement” to draw attention to the lack of co-operation from the Russian authorities – on each occasion in relation to the situation in places of detention in the Chechen Republic¹⁷. In my June 2007 report on secret detentions, I referred to the CPT’s eventful visit to Tsenteroy, the native village of the Chechen President Ramzan Kadyrov¹⁸. Unfortunately, the Russian authorities persist in refusing to authorise publication of the CPT’s reports, despite repeated calls from the Assembly.

*Abuses in the fight against terrorism, extrajudicial killings*¹⁹

14. Local human rights organisations fear that extrajudicial methods of combating “terrorism” are being exported from the Chechen Republic to other constituent entities of the Russian Federation²⁰. The “Memorial” centre for human rights is fearful that public summary executions will gain ground in other regions of the North Caucasus. The risk could be even greater because of local traditions of exacting revenge and defending family honour²¹.

¹⁴ (Restricted) AS/Jur (2007) 42, Committee on Legal Affairs and Human Rights, *Legal remedies for human rights violations in the North Caucasus*, Observations of the Russian Delegation to the Introductory Memorandum (AS/Jur (2007) 15 of 9 March 2007, Rapporteur: Mr Paschal Mooney, 22 June 2007.

¹⁵ Doc. 10774 revised of 4 January 2006, “*Human rights violations in the Chechen Republic: the Committee of Ministers’ responsibility vis-à-vis the Assembly’s concerns*”.

¹⁶ It was given official status as an IVS under Ministry of Internal Affairs Prikaz No. 709 dated 13 November 2004, shortly after the first Commissioner for Human Rights of the Council of Europe, Mr Alvaro Gil-Robles, had visited it.

¹⁷ The CPT’s most recent visit to the North Caucasus was in March 2008.

¹⁸ Doc. 11302 rev. of 11 June 2007, “*Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report*”.

¹⁹ The European Court of Human Rights judgments in the cases of *Bitieva v. Russia* and *Musayev v. Russia* found violations of Article 2 of the ECHR (right to live) in relation to extrajudicial killings.

²⁰ Recommendation 1733 (2006) and Doc. 10774, PACE, *Human rights violations in the Chechen Republic: the Committee of Ministers’ responsibility vis-à-vis the Assembly’s concerns*; IHF Report: “*Ingushetia/North Ossetia/Kabardino-Balkaria: the spread of Chechnya-type human rights violations*”, 2 June 2005; Memorial report: “*Aggravation of the situation in Ingushetia, winter 2007*”, 15 February 2007; IHF open letter: “*disappearances and other forms of persecution of ethnic Ingush in the Prigorodny district (North Ossetia-Alania)*”, 26 January 2007; In this context, see also “*In a Climate of Fear*”, 2006.

²¹ Doc. 10774 revised of 4 January 2006, *Human rights violations in the Chechen Republic: the Committee of Ministers’ responsibility vis-à-vis the Assembly’s concerns*.

Other recent developments

15. In March 2007 President Alkhanov resigned and was succeeded by Ramzan Kadyrov.

16. New information from various NGOs has reached us since then. According to this information, the human rights situation remains tense in the Chechen Republic, even though there have been some positive developments, and has worsened in the neighbouring republics of the North Caucasus²².

17. NGOs have looked at the results of the investigations, prosecutions and convictions of state agents accused of serious human rights violations committed in the North Caucasus in the course of the second Chechen conflict and have concluded that the Russian authorities are a long way from having fulfilled their obligations under international law²³. A further problem according to the NGOs is the inefficacy of investigations, with the result that state agents are only very rarely convicted²⁴. In addition, again according to the NGOs, the judgments of the European Court of Human Rights are enforced only selectively²⁵.

18. Conversely, in the Chechen Republic, NGOs have noted that the number of recorded enforced disappearances and abductions fell significantly in 2007, although they believe that the real number is much higher than what is indicated by officially-filed complaints. The fact that victims of violations are often intimidated or fear reprisals may clearly distort the figures²⁶. Christos Pourgourides, in his report on the duty of member states to co-operate with the European Court of Human Rights, refers to many cases in which victims' family members have suffered reprisals, including murder, in order to dissuade them from bringing their case before the Court²⁷. Amnesty International continues to receive information that people who have brought cases before the Russian courts or the European Court of Human Rights have allegedly been the victims of reprisals.

19. In its public statement of 13 March 2007, the CPT emphasised that there were serious defects in many investigations still pending into alleged instances of torture and criticised the reaction of the Russian authorities to the allegations received by the CPT in 2006 regarding illegal detentions in secret centres in the Chechen Republic.

20. The Norwegian Helsinki Committee explains in a recent report that in the Republics of Ingushetia, North Ossetia, Dagestan and Kabardino-Balkaria, counter-terrorist measures conceal serious human rights violations²⁸. I myself was obliged to protest publicly in late 2007 against the abduction, followed by ill-treatment, of the President of Memorial, Oleg Orlov, in Ingushetia²⁹.

21. Although a positive evolution has been noted in the Chechen Republic by the majority of NGOs in respect of new cases, the problem of impunity for serious human rights violations remains³⁰.

²² Amnesty International, *Russian Federation What justice for Chechnya's disappeared?* May 2007, AI Index: 46/020/2007.

²³ Ibid; see also: Human Rights Watch, *Justice for Chechnya. The European Court of Human Rights Rules against Russia*, July 2007.

²⁴ According to AI, only one state agent has been found guilty in a case of enforced disappearance.

²⁵ Eg, the Kalashnikov v. Russia case.

²⁶ Memorial: The situation in the Chechen Republic, May-September 2007.

²⁷ Doc. 11183 of 10 February 2007 "*Member states' duty to co-operate with the European Court of Human Rights*"

²⁸ The Norwegian Helsinki Committee (NHC), "*Anti-Terrorism Measures and Human Rights in the North Caucasus: A regional System of Torture, Forced Confessions and Fabricated Trials, March 2007-Mars 2008*".

The Norwegian Helsinki Committee report was presented by Mr Aage Borchgrevink at the Athens Conference on counter-terrorism and human rights, organised by the Sub-Committee on Crime Problems and the Fight against Terrorism and the Marangopoulos Foundation on 28 and 29 March 2008. The complete text of the report is available from the Committee secretariat, a summary is given in the appendix.

²⁹ PACE press release of 26 November 2007: "*Dick Marty protests abduction of 'Memorial' President Oleg Orlov*" (<http://assembly.coe.int/ASP/Press/StopPressView.asp?ID=1976>)

³⁰ NHC, *ibid* (note 27)

22. In Ingushetia, attacks, including bombings, and the murder of security service agents are alleged to have been carried out between June and October 2007, giving rise to a large-scale “counter-terrorist” operation with reportedly serious repercussions for the civilian population in a blocked-off area³¹.

23. With regard to the investigations in the Republic of Kabardino-Balkaria following the co-ordinated attack on public facilities in Nalchik³², there are numerous complaints of the brutal methods used, targeting indiscriminately a large number of young Muslim men.

24. In Dagestan, a wave of secret disappearances was observed in 2007.

25. In North Ossetia, it would appear that ethnic conflicts are continuing amid a tense atmosphere.

26. To sum up, according to reports published by NGOs working in the field, abductions, secret detentions and torture are still commonplace in this region.

III. Conclusion

27. In the light of all the information I have received, it would appear that the human rights situation is by far the most alarming in the whole of the geographical area covered by the Council of Europe. There is urgent need to identify more clearly the problems that persist in this region shaken by the wars of the past and the ever-present tension. The aim is to ensure respect for human rights and the rule of law and to put an end to the impunity that prevails – which is fully in keeping with the priorities of the Parliamentary Assembly and the Council of Europe as a whole.

28. My concern is devoid of any prima facie judgment. Quite simply, I would like to be given a mandate for a normal report, enabling me to visit the region in the knowledge that I could count on the customary co-operation of the competent authorities, with which I would like to discuss in further detail the Russian comments made on Mr Mooney’s memorandum. Ultimately, it is a matter of obtaining a clearer picture of how the Council of Europe can help improve the situation of the people living in this region.

29. In support of the tireless efforts of the CPT, which recently completed a further visit to the region in late March 2008, I would like to conclude with a quotation from the great Russian writer Leo Tolstoy, “No one who has not sat in prison knows what the State is like”.

³¹ Cf. *“Amnesty International’s concerns relating to human rights in the North Caucasus (Russian Federation)”*, Briefing for Dick Marty, rapporteur for the PACE Committee on Legal Affairs and Human Rights, October 2007

³² In October 2005, 140 people are alleged to have been killed in Nalchik.

APPENDIX

The Norwegian Helsinki Committee

Report no 2/2008 (Extract)

Anti-Terrorism Measures and Human Rights in North Caucasus: A Regional System of Torture, Forced Confessions and Fabricated Trials

March 2007 – April 2008

Summary and conclusions

This report is based on information collected in the North Caucasus region by the following human rights organizations active in the North Caucasus region: Amnesty International, Civic Assistance Committee, Human Rights Watch, International Helsinki Federation for Human Rights, Memorial Human Rights Center, the Norwegian Helsinki Committee, and Stichting Russian Justice Initiative. The aim is to provide an overview of developments in the human rights situation in five republics of the North Caucasus region of the Russian Federation (Kabardino-Balkaria, North Ossetia, Ingushetia, Chechnya and Dagestan) from March 2007 until the present.

While there have been **positive developments in the human rights situation in the North Caucasus region over the last year, notably in the Chechen Republic**, which has seen a decrease in some of the gravest types of human rights abuses, such as enforced disappearances, **the underlying problem of impunity for human rights abuse persists**. Moreover, there is a change in the pattern of human rights abuse taking place in the region.

In April 2007, for the first time since the beginning of the Second Chechen war, no abductions were registered in Chechnya. In Ingushetia, three men went missing in spring-summer 2007 after detention by state agents, but since September Memorial have not registered enforced disappearances in Ingushetia. There have been no enforced disappearances in North Ossetia since July 2007. Dagestan has been an exception, with disappearances on the rise in the summer of 2007. However, human rights reports, protest rallies and news coverage seemingly had an impact and disappearances are on the decline. When two men were abducted on January 30 2008 in Makhachkala, they were later released after protest rallies had been organised by relatives and a local rights group.

The practice of enforced disappearances is being replaced by a regional system of torture, forced confessions and fabricated trials. Suspects are illegally detained, tortured, forced to provide confessions regarding armed activity or related crimes. In court, such suspects are sentenced to long prison term on the basis of evidence extracted under torture. In the prisons conditions for “Caucasian fighters” are harsh. Last year, human rights organizations received hundreds of complaints and documented dozens of³³ cases of severe beatings, torture, denial of medical aid and degrading treatment of North Caucasian prisoners. Several formerly healthy prisoners from Ingushetia and Chechnya, some only recently sentenced for combatant activity, died in prison. **In 2007 and 2008, primarily in Ingushetia, but also in Dagestan, a number of suspects were shot dead while “resisting arrests” or during “special operations”.** In most cases, witnesses claim that the persons did not resist security servicemen and were simply summarily executed.

The report draws upon the European Committee for the Prevention of Torture’s (CPT’s) Public Statement Concerning the Chechen Republic of The Russian Federation of 13 March 2007, Mr. Christos Pourgourides report on “Member states’ duty to cooperate with the European Court of Human Rights” from 9 February 2007, and the subsequent (PACE) Resolution 1571 (2007), adopted on 2 October 2007, as points of departure. This means that the report deals specifically with the following topics:

- 1) Persecution of applicants to the Court, their families and lawyers,
- 2) Ill-treatment in ORB-2,
- 3) Unlawful detentions and unofficial places of detention,
- 4) The climate of impunity,
- 5) Persecution of human rights defenders.

³³ Access to Russian prisons is very restricted. It is next to impossible for human rights groups to access prisoners. ICCR’s mandate for visiting detention facilities in Russia has not being extended since 2004.

Incidents of alleged persecution of applicants have still not been effectively investigated, as called for by the PACE Resolution 1571 (2007), and it seems that the practice of intimidating applicants to the Court (and to domestic courts) continues. The organization Stichting Russian Justice Initiative reports that in some cases prosecutors have forced applicants to sign false statements, while Memorial reports that the family Musaev, who won their case in Strasbourg in July 2007, have been harassed during the fall of 2007 and the winter of 2008. The threats they have received may constitute an attempt at impeding the full execution of the Court decision, which mentions specific federal officers and units in connection with the disappearance of the two brothers Musaev. The mother and brother of the former Guantanamo prisoner Rasul Kudaev's, who has lodged a complaint relating to illegal detention, torture and lack of access to a defence attorney, were illegally detained while law enforcement officers raided their house and confiscated material relating to Kudaev's case and defence.

While President Ramzan Kadyrov gained increasing control over the republic's political, law enforcement and security institutions, ORB-2 remained a key security structure under federal control. The rivalry seemed to end in July 2007 when the head of ORB-2 was replaced. The new head, Isa Surguev, promised to work closely with local law enforcement agencies, that is, with units under Kadyrov's control. **Although the ORB-2 in Grozny remains in function (there were reports of insurgents detained there in February 2008), to our knowledge, there have been no reports of ill-treatment since July 2007.** Reports of torture in the ORB-2 in other towns have continued.

Since the fall of 2007 new cases have come to light indicating that **not only are the numerous allegations of illegal places of detention not properly investigated, but the practice of employing such sites seem to continue.** A person interviewed by the NHC, "A", alleged that he was incarcerated illegally at the same compound in Tsenteroy mentioned by the CPT for several months until his release in early 2007. The impression of local monitors, however, is that use of the sites in Tsenteroy for illegal detention and ill-treatment has been scaled down. There is a pattern of detained and abducted people being transported over republican borders in order to be interrogated in official or unofficial places of detention (the latter are seemingly more common in Chechnya than in the neighbouring republics). Persons detained in Ingushetia are frequently taken to detention centers in North Ossetia, while suspects apprehended in Dagestan have been taken to Chechnya.

The Aushev case illustrates the existence of **a regional system of torture, forced confessions and fabricated trials.** Magomed Aushev was detained in Ingushetia in June 2007, brought to Vladikavkaz and tortured at the UBOP into providing a statement. Later he was detained in Grozny and brought to a secret detention facility in the village of Goity in Chechnya, where he was tortured again. After his release, a relative managed to find the building. Evidence in the building pointed to it having been used as a detention facility in cases where Ingush residents had disappeared. No investigation was opened, and the relative was arrested and imprisoned in Nalchik in February 2008.

In some cases, federal and Chechen servicemen have been prosecuted for crimes committed in relation to the counter-terrorist operation. The decisions in the cases against federal servicemen Budanov, Lapin and Ulman have been confirmed, and there have been a few other cases of convictions of servicemen for grave crimes, such as murder. However, **the general picture is one of continued impunity for grave crimes committed by local and federal servicemen.** The Prosecutor's Office in Chechnya have opened a number of cases into allegations of grave human rights abuses (such as enforced disappearances, of which there are at least 3000), but (except for the Lapin case) the investigations have not produced any results. **Two complaints were received by the Grozny procuracy last year (and by the Strasbourg Court) alleging illegal detention, deprivation of liberty and torture committed by high officials in the Chechen administration, including President Ramzan Kadyrov.** There has been no effective response by the Chechen prosecutors to these complaints, underlining another basic problem: **Prosecutors consistently refuse to open cases and/or investigate effectively complaints dealing with abuse of power by local and federal law enforcement, military and security officers whose identity is known.**

In relation to the 26 court decisions from the European Court, it remains unclear whether Russian authorities will execute the decisions in full, i.e. conduct effective investigations and prosecute the many servicemen implicated in crimes described in the Strasbourg decisions. As noted above, pressure against applicants have continued after their cases have been decided in Strasbourg, possibly aimed at impeding the full execution of the Court's decision.

The situation for human rights defenders in the region has been critical from the inception of the counter-terrorist operation, and has deteriorated in 2007 and 2008. Threats, harassment and attacks (including killings) of human rights defenders have been reported across the North Caucasus, with the gravest incidents occurring in Ingushetia and Dagestan. **The abduction and ill-treatment of the head of Memorial's human rights center, Oleg Orlov, and three journalists from the channel REN TV, from a hotel in Ingushetia, in November 2007 sent a message that not even the most senior defenders in Russia are beyond the reach of criminal groups that operate under state protection.** In Dagestan, there were three assassination attempts against human rights defenders and judges in November and December 2007, two of which were successful.