The law exists in vain for those who have neither the courage nor the means to defend it.

Thomas Babington Macaulay

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PUBLIC INQUIRY INTO TORTURE

and other violations of fundamental human rights

Principles, methods and practical recommendations

Nizhny Novgorod, 2014

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According to the recent data one in five citizens of the Russian Federation has faced the problems of arbitrary behavior and rights abuse on the part of police officers, prosecutors, FSB (Federal Security Service of Russia), medical detoxication centres personnel, and teaching staff of educational institutions.

International treaties ratified by Russia and the Constitution of the Russian Federation prohibit the application of torture and any other forms of inhumane and degrading treatment, but today the mechanisms and public agencies for fight against illegal actions against citizens on the part of the State, as well as for the investigation of cases of torture are simply absent in Russia. The Committee Against Torture, founded in 2000, is the biggest Russian non-profit organisation working in the sphere of human rights protection and specialising in the professional study of the problem of torture, in the investigation of complaints about torture and in providing the victims with legal support and medical aid. Currently the Committee is officially a transregional public organisation.

The headquarters of the Committee Against Torture is situated in Nizhny Novgorod, the Committee has a regional presence through branch offices in the Chechen Republic, Mari El, the Republic of Bashkortostan and in the Orenburg region.

Legal work with complaints about torture, inhumane and degrading treatment has been the principal direction of the activities of the Committee. The public inquiry of a victim's complaint, support with litigation and protection of the victim's interests before investigative and prosecutorial bodies, support with obtaining compensation for the damage incurred and, where necessary, the provision of rehabilitative medical treatment measures are the main activities being conducted in the course of such work.

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The present book is devoted to a description of the method of public inquiry into torture and other serious fundamental human rights violations. This method was developed by the transregional public organisation "Committee Against Torture" and is currently adopted by multiple other non-governmental human rights organisations. The first attempt of this method structured presentation has been undertaken in the pages of this book, being a kind of summary of the 10 year long history of work of the Committee and its partners. The method in question can, first of all, be considered as a form of public control, which is to be developed for the investigation of facts of torture and cruel treatment. Nevertheless, it can be successfully applied for the purpose of developing new legal routes for protection from other types of serious fundamental human rights violations (such as murders, unlawful detentions and abductions) and to successfully counteract them.

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INTRODUCTION Torture and cruel treatment by law enforcement officers may be considered as one of the fundamental problems of real life in Russia, even as something which is highly detrimental to domestic law enforcement practice. According to sociologists, on average, one in five Russian citizens will suffer unlawful violence by state representatives at least once in their lifetime1.

This book introduces the reader to methods for public enquiry into torture and other grave violations of fundamental human rights, as established by the inter-regional public organisation «Committee against Torture» (CAT), whose headquarters is located in Nizhny Novgorod. This technique is now applied by the CAT units in several regions of Russia, as well as by other human rights organisations, including for example the «Public Verdict» Fund, and human rights organisations of the inter-regional association «Agora». It can be said that, up to this point,

[1] Sociology of violence. The arbitrariness of law enforcement bodies in eyes of citizens. - Nizhny Novgorod: the Committee against Torture, 2006.

it has received strong recognition in the Russian human rights community. However, this is its first systematic presentation.

The book provides a summary of the ten-year operational experience of the organisation and its partners. The technique outlined in this publication is a form of civilian control, created primarily to investigate cases of torture and cruel treatment. However (and this has been confirmed in practice), it can be successfully used for the development of legal mechanisms for protection against other gross violations of fundamental human rights, such as murder, unlawful arrests and enforced disappearances. To sum it up, the proposed system of approach is aimed at combating violations which constitute a combination of serious and particularly serious crimes.

The method of public enquiry was established during practical activity. The combination of forms and techniques of (empirically selected) public enquiry is a response to both the particular facts with the application of torture (and other gross violations of fundamental human rights) in Russia and to the ways that the authorities typically react to reports on such violations. This is the basis of the practical effectiveness of the proposed set of methods and techniques in the context of Russia. Within it, independent collection of information is combined with legal work; moreover, actual information about instances of abuse of human rights is received and recorded as full evidence using legal means. Further legal support for the case recognises the aims of guaranteeing that the facts of given violation cases are investigated in a manner prescribed by the law, and, subject to the existence of good reason, protection of the victims and prosecution of the perpetrators. Thus, the collection of information and the legal component work hand in hand, repeatedly reinforcing the effect of advocacy. On the one hand, this combination provides justice for citizens who suffer from serious violations of human rights; on the other hand, it establishes the

conditions necessary to prevent such violations and to strengthen mechanisms for detecting and suppressing them.

In the present edition, the authors (lawyers of the CAT) outline the basic principles of public enquiry and the key elements of the process, as well as providing practical advice on its implementation. In addition, the readers are provided with an analysis of the Russian and international legal norms that it is necessary to be aware of to ensure the success of a public enquiry (as it is in many cases), and sample documents.

This publication is designed primarily for the members of human rights organisations fighting against torture, cruel and degrading treatment, and other gross violations of human rights. However, the book can be useful for lawyers and other legal practitioners whose job is to protect and restore the rights of the citizens who suffer from unlawful violence on the part of the State.

The authors express their thanks to the British Embassy, who made this publication possible, and to Olga Shepeleva, a lawyer of the Public Verdict Foundation, who played a significant role in the production of sections of the publication.

PART I
GENERAL PROVISIONS

1.1. DEFINITION AND PURPOSE OF PUBLIC ENQUIRY

Up to this point, the terms «public enquiry» and «non-governmental enquiry» have become used quite widely – both in the mass media and in everyday usage, and even in professional literature. These phrases refer to various forms of social control regardless of their goals and methods: the monitoring of human rights violations and journalistic investigation, and sometimes collection of information in the advocacy or practice of a private detective agency. These definitions apply to virtually any activities of citizen groups trying to obtain information on any issue of public interest.

Without disputing or rejecting the current practice of the use of this term, we need to clarify that, ***for the purposes of this publication,*** what is meant by "public enquiry" (*unless stated otherwise*) is not a kind of civil and human rights activity but a ***specific technique of civilian control, which is specifically focussed on the opposition to torture and some other types of gross violation of fundamental human rights (life, liberty and personal security), taking into account the specifics of these breaches of the law in our country.***

Why do we think this reservation is necessary?

It is obvious that the key to the success of any activity is compliance with the methods applied both with the goal itself and with the conditions under which this goal is achieved. This rule fully applies with human rights work. As there is no universal cure for all diseases, so there are no known effective forms of civilian control «for all occasions» or for all types of violations. There are no methods known to provide the same positive results in the case of protecting the unreasonably persecuted journalist vs. the case

of combating illegal hospitalisation of a person with a mental disorder, or with regard to dealing with violations of prisoners› rights to medical care, or the rights of refugees and displaced people. Not only does the use of inappropriate methods to solve a problem yield no positive effect, but it can, in some cases, lead to the worsening of the victim's situation, as well as discrediting human rights activists themselves.

It is obvious that the main factors to be considered when it comes to selecting human rights work methods are the specific nature of the violation of the rights / freedom and the nature of the response of the State to these violations. In particular, the following factors are important:

- the type of violations;
- the conditions in which they were committed;
- the people who commit such violations most often;
- the people who suffer from these violations most («risk groups»);
- the availability and quality of legal mechanisms for the protection and reinstatement of violated rights;
- the attitude of the State and the society to such violations.

How does the problem of torture manifest itself in Russia, and what is torture in general? In common parlance, torture is recognised as certain severe forms of abuse by one person over another. International documents (their content will be discussed in detail below) provide a similar definition of torture, describing it as the intentional infliction of pain, physical or mental suffering. However, the international law on human rights establishes three more compulsory elements that distinguish torture from other forms of violence. The first is the participation of a public officer in it. The second is the illegality of the actions themselves (for example, use of reasonable force during the arrest of a criminal who actively resists arrest is not considered torture, although it may cause pain). The third is the existence of a specific goal that a torture per-

former seeks to achieve while causing the victim suffering (for example, to obtain a confession of a crime). Torture can manifest itself in direct physical impact, in the threat of its use, in intolerable conditions of custody, etc.

Despite the fact that torture is prohibited by law in Russia and is considered to be an official crime, it is fairly common, and is most often used by law enforcement officials in the context of the maintenance of public order and the investigation of crimes[2]. Unlawful violence may be applied both during the arrest of the alleged criminal or the offender, and in connection with an already detained or imprisoned person. Since torture may result in criminal liability, it is usually committed non-publicly. The non-public nature of torture greatly complicates the effort of human rights organisations to combat this type of violation.

The first problem that arises in this regard is the difficulty of identifying cases of torture. Due to the fact that torture is mostly applied in closed institutions of society, human rights activists have no way of detecting such breaches of law. In fact, the only primary source of information on torture in these circumstances is information which comes from the alleged victims: either directly in the form of statements or indirectly, in the form of media reports, appeals of relatives, etc.

However, not all statements of torture received by human rights organisations may be considered reliable *a priori*. Indeed, it is common occurrence for people to submit applications containing false statements about the use of torture (thus being criminally liable). In such situations, complaints of this nature are used by unscrupulous applicants as a means of protection from prosecution, or in order to cast doubt on the admissibility of certain evidence, or as a way to exert pressure on people conducting the investigation. It is impossible to determine the accuracy of the information contained in each specific application without the involvement of

[2] More information about the application of torture can be obtained from analytical and research materials posted on the CAT site www.pytkam.net in the sections «Analytics and Reports» and «Library of the Committee against Torture».

other sources of information. Thus, the verification of the circumstances mentioned in a statement of torture is a necessary element of the professional work of a human rights activist.

In this regard, there arises the question of at what level evidence should be obtained prior to considering a torture complaint confirmed. It is to be noted that the idea of the standard confirmation of such complaints from human rights activists and government officials varies greatly. However, in any case, human rights activists, who want to make an official response to the problem of torture, do not ignore the statutory standard of proof.

Authorities recognise certain human rights violations (like overcrowding in detention facilities or prolonged non-fulfillment of judicial decisions) relatively easily, for the fact is that examples in both cases are obvious and undeniable. As a rule, state representatives argue only about the seriousness of these problems and their solutions. Torture, as a rule, is denied as a whole. Such a situation is due to at least two factors. Firstly, torture is a felony. This means that any recognition of torture by the authorities raises the question of bringing specific officials to account. Secondly, the hidden, non-obvious nature of torture allows public officials at any level to reject applications of such crimes and relevant supporting data (for example, information on injuries) as insufficient.

Therefore, proof of torture can be established easily only in those rare cases when state law enforcement agencies are extremely interested in it, or when the crime committed is evident and the process of proof is not complicated. In the overwhelming majority of cases, torture is difficult to prove.

All these factors significantly limit the ability of traditional methods of protecting human rights like public disclosure of information about the violation and perpetrators: this information is not confirmed as proven, and facts beyond a reasonable level of doubt will always be only of a conjectural nature. Submission of reports, open letters, press statements, pickets and other public events that sometimes force officials to take at least some steps to address human rights violations, do not work when it comes to the issue of tor-

ture. At best, the application will be considered as unfounded and unconvincing. At worst, it can lead to civil or even criminal liability for defamation and spreading of false information, discrediting law enforcement agencies and their individual representatives.

In fact, any meaningful dialogue with the authorities on the issue of torture is not possible without presenting convincing evidence that unlawful violence does occur. As far as solving this problem is concerned, the third problem manifests itself: the data supporting or refuting torture facts is largely at the disposal and under the control of law enforcement agencies. Officials who commit torture deny facts of unlawful violence and seek to hide its signs using their existing capacities and powers. "Dear Sirs, the citizen has fallen seven times and hit his head against a sewer manhole, which is confirmed by the statements of three police officers – what torture are you talking about?"

Under these circumstances, the only effective way to seek evidence may be a formal investigation. After all, despite the fact that an ordinary citizen or public organisation has a wide enough range of rights in terms of finding and collecting information, they cannot substitute the work of law enforcement agencies – they are not allowed to collect evidence that can later be used in court and prosecute people suspected of having committed a crime. In accordance with Russian legislation, a complaint of torture or any other serious crime cannot immediately become subject to litigation; indictment in a criminal case requires preliminary investigation carried out by a specially authorised body[3] (previously the Office of Public Prosecutions, now the Investigative Committee at the Public Prosecutor's Office of the Russian Federation).

The law provides the investigating authorities the authority they need to obtain data required to confirm or refute the allegations of torture and the prosecution of people suspected in an application. However, the authorities cannot deny facts of torture

[3] Part 1 of Art. 21 of the Code of Criminal Procedure: «The criminal proceedings on behalf of the state on criminal cases of public and private-public prosecution are carried out by the prosecutor and the investigator».

that are established within an official investigation and confirmed by a court verdict. Under these circumstances, it is even more difficult for an officer not to recognise the problem of torture and to avoid taking measures to prevent it. In addition, a formal investigation allows the solving of a number of other important tasks, including providing the victim the chance to obtain compensation and redress for infringed rights.

If the law defines the authorities as responsible for the investigation of the torture, the following question arises: what is the role of human rights organisations in this process? Will it be enough simply to send all incoming complaints to the Investigative Committee at the Office of Public Prosecutions and patiently await the fair response of its staff?

Unfortunately, in practice, the answer to this question would appear to be a purely negative one. And torture in Russia is usually accompanied by such violations of human rights as ineffective investigation of complaints against recourse to torture. The existence of such violations in particular, has repeatedly been recognised by the European Court of Human Rights (ECHR). One of the key documents which states the problem of inefficiency in the investigation of complaints of torture, was the decision on the case «Mikheev against Russia»[4], which CAT engaged in for

[4] European Court of Human Rights. The case of Mikheyev v. Russia (First Section). Application no. 77617/01 by Aleksey Yevgenyevich MIKHEYEV against Russia. JUDGMENT. 26 January 2006. In this decision, the Court, referring to its extensive case-law, describes the criteria for an effective investigation in following way: «Not every investigation should necessarily be successful or get a result coinciding with the position of the applicant; however, it should in principle lead to the establishment of the facts of the case and – if the allegations are proved – to the identification and punishment of those responsible. <...> The investigation of the complaints of ill-treatment must be thorough. This means that public authorities are required in each case to make serious attempts to find out what really had happened, and should not rely on hasty or ill-founded conclusions by the dismissal of the investigation or by making other decisions <...>. The authorities must take all available and appropriate steps to record the evidence in the case, including, among other things, the testimony of witnesses, medical certificates, etc. <...>. Any defect in the investigation, which undermines its ability to establish the cause of the injuries or the identity of the perpetrators, may lead to a breach of this standard. Furthermore, the investigation must be fast. In the cases of complaints of violation of Articles 2 and 3 of the Convention when considering the effectiveness of the formal investigation, the Court often evaluates whether the public authorities timely responded to a complaint of the person <...>. The evaluation is given to the start of the investigation, delays in conducting interrogations <...>, as well as the

many years. Over the past two years the number of judgements of the European Court of Justice concerning ineffectiveness of investigation of torture in Russia has increased significantly[5].

At best, the ineffectiveness of the investigation is shown by the passivity of investigators, who do not take the actions necessary to verify complaints or conduct such activities with a significant delay. At worst, investigations are directly sabotaged – the investigators refuse to interrogate the witnesses, during which the victims indicate that they are direct witnesses to crimes; and the investigators do not want to include important documents exposing officials in the file, and they put pressure on victims and witnesses and otherwise try to protect the alleged perpetrators from the statutory criminal penalties. When officials shield others, the most absurd explanations of seemingly indisputable facts are given; in one case, a claim that a citizen hit a manhole seven times, included in a police report, led to the prosecutor's investigator adopting a resolution on the release form instituting criminal proceedings in the case.

Back in 2001, Igor Kalyapin, the Head of the CAT, stated in an interview:

«In such cases, the Office of Public Prosecutions usually does not act as an investigation body, but rather as a protection body. All the resources and means of the investigator are aimed at closing the case due to lack of evidence. A police officer using torture does not need a lawyer because the prosecutor is the best lawyer for him. Thus, the victims, and we, their representatives, have to make significant efforts to ensure that the case comes to trial. With the tactics used by the Office of Public Prosecutions,

length of time the investigation. <...> Finally, the Court recalls that in order to investigate cases of abuse on the part of the state effectively, the investigation must be independent <...>. Thus, the investigation loses independence when it is produced by the same unit or body to which the suspects of the ill-treatment belong <...>. Independence of the investigation involves not only a lack of hierarchical or official communication, but also a practical independence (par. 107-110).

[5] On the website of the Fund «Public Verdict» www.publicverdict.org in the section «Russia and the European Court» it is possible to see the references, summarizing the content of judgments of the European Court of Human Rights, in which the facts of torture and the ineffectiveness of the investigation are established.

even in cases when there exists indisputable evidence of torture a particular officer is guilty of it, the case is still closed down».[6]

The situation is aggravated by the fact that such sabotage does not normally result in anything negative to the investigator, even if his procedural decisions are ultimately declared illegal and annulled by a higher authority or court. On the contrary, the practices of CAT show that these woeful officials are often encouraged by rapid promotion and all sorts of bonuses and other «nomenclature benefits».

The foregoing suggests that the practice of torture in Russia, as well as impunity for this brutal crime, is not based on isolated unfortunate incidents, but a systemic problem with domestic law enforcement practice. After all, illegal violence by police is a problem that almost all countries have, even the most developed democracies. When it comes to examining the effectiveness of the State under these circumstances, appropriate response of the State to such violence could be thus: the crime shall be investigated, the responsible people shall be punished, and the rights of the victim(s) shall be restored. In the case of Velasquez Rodriguez, the American Court of Human Rights (and after that the European Court of Justice, which has repeatedly referred to the decision) stated: «The illegal act which violates human rights and which initially may not be directly imputed to the State (for example, when the act was committed by an individual or a culprit is not found) can lead to international responsibility of the State, not as a result of the act itself, but in view of the lack of due diligence in the prevention of the violation or in response to it».[7]

Unfortunately, the Russian State has not passed this test.

This book does not intend to disclose the reasons for this phenomenon[8]. It is enough to indicate that, in Russia, it is all

[6] Stanislav Dmitrievsky, «Torture as an attempt to promotion» Novaya Gazeta in Nizhny Novgorod, № 18p (686) June 26 - July 2, 2001, p. 18.

[7] Case Velasquez-Rodriguez v. Honduras, par. 172.

[8] In 2001, the head of the CAT in an interview to «Novaya Gazeta» described these reasons as follows: «The effectiveness of work of law enforcement bodies is measured by the percentage of criminal cases solved. In addition, since the 30s, when confession was announced

about the inefficiency of the official investigation, which in most cases is the main obstacle to establishing the facts of torture and the fair denial of unfounded complaints of being tortured. As such, an ineffective investigation is the main challenge for any Russian human rights organisation that aims to combat torture and other gross violations of fundamental human rights. Counteraction to ineffective investigations is a prerequisite and the main responsibility in the process of restoring the rights of the victims and punishing the perpetrators, as well as in the prevention of torture in general.

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the queen of evidence, interrogation under torture has become almost an official part of the investigative process. Why shall one collect evidence when it is easier to hit in the face? So many policemen are accustomed to work in such a way. And over the last decade, the situation has only worsened. Professional staff retired from the bodies to be replaced by half-educated people and hackworkers. And requirements to them increased – because the crime rate has increased. And when this half-educated person at the same time is conducting twenty cases, and the chief requires report of caught foes, and bonuses, promotion depend on this ... You understand what a temptation it is. If the prosecution will fight against torture seriously, it may have a lot of headaches. What if indeed torture stops! Most officers do not know how else to investigate a case. Consequently, the level of crime detection will fall. The public prosecutor's office will be responsible for that... Secondly, working conditions are associated with the Stalin's tradition. In Soviet times there was even a term – «law enforcement triangle». It included prosecutors, police and courts. These bodies, have always worked closely together and cooperate now. Prosecutors and policemen are usually in the same building. Between employees there are close personal and professional working relationships. Thirdly, the public prosecutor's office performs a lot of functions based on common sense and world experience, which it cannot implement in good faith at the same time even theoretically. The public prosecutor's office supervises the legality, it is also independently carries out a preliminary investigation of the entire category of criminal cases, supports the public prosecution in court. At the same time the public prosecutor's office does not have an investigative unit. The prosecutor's office has no operational staff, and the investigator, investigating any criminal case, has constantly to go to the police with individual orders. It is clear that the investigator knows the police operatives, with which he actually investigated dozens of cases together. Those are his friends, colleagues ... <...> The own security service effectively solves cases, when a policemen make «classic» criminal offenses. If a police officer takes a bribe, if he robs, if he is engaged in banditry on the roads, the development and the investigation are carried out in good faith. But when a police officer is prosecuted for the fact that he was hitting someone during questioning, the whole, roughly speaking, cop society stands on the head, «What do you mean? And how shall we work then?» Because they did not believe that torture is a crime. Very often, in informal conversations with operatives it can be heard: «How am I not going to beat a suspect? He then will not confess». (Stanislav Dmitrievsky, «Torture as an attempt to promotion» Novaya Gazeta in Nizhny Novgorod, № 18p (686) June 26 - July 2, 2001, p. 18) For 10 years, the situation has changed somewhat, particularly a preliminary investigation has been withdrawn from the authority of the prosecution and transferred to the Investigation Committee. But in general, most of these reasons of the torture investigation ineffectiveness can be called relevant now.

To summarise what has been said: the purpose of the public enquiry into torture and other grave violations of fundamental human rights is the indisputable establishment of the fact that such breaches of law exist.

In practice, this means that it is up to human rights organisations to achieve the appropriate judicial solution: either the domestic court verdict in criminal cases against guilty officers or, if it is currently not possible for reasons beyond the control of human rights activists (usually because of insurmountable opposition on the part of the State representatives), the decision of a competent international court, which in this case is the ECHR. It will be recalled that, in accordance with the decision of the Plenum of the Supreme Court of the Russian Federation, the resolutions of the European Court in the case of the Russian Federation that are finally adopted «are binding for all State authorities of the Russian Federation».[9]

The solution to this problem is usually complicated by two major obstacles: (1) the objective complexity of effective investigation of torture, and (2) the subjective reluctance of State authorities of the Russian Federation to carry out such an investigation.

These obstacles, based on the experience of the authors, can be effectively overcome by a human rights organisation using the proposed methods. It is to be noted from the outset that this path is not a bed of roses, and no quick triumph can be promised – but we are convinced that the final result – even if it doesn't include the transformation of the situation as a whole (after all, it is primarily a question of the political will of the government leadership – or rather, lack of it) – will at least ensure effective protection of the rights of individual victims and the appropriate punishment of the criminals.

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[9] Resolution of the Plenum of the Supreme Court dated October 10, 2003, № 5 «On application by the courts of general jurisdiction of the universally recognized principles and norms of the international law and the international treaties of the Russian Federation», paragraph 11.

1.2. DEVELOPMENT OF THE METHOD OF PUBLIC ENQUIRY

All the rather abstract propositions mentioned above are made more clear and specific when practical examples are inferred. The algorithm of action proposed in this edition was not modelled in the minds of armchair legal theorists. It formed from the daily work of members of human rights organisations, improving through trial and error (sometimes through much pain on the part of those involved), and it is still developing in current practice. In this regard, we believe it would be useful to dwell on the history of the formation of this technique a little longer.

In Nizhny Novgorod, the systematic work on combating torture began in the second half of the 1990s, within the framework of the oldest regional human rights organisation, the Nizhny Novgorod Society for Human Rights (NSHR)[10]. It was a time when Russia's human rights community was learning a new path: the systematic monitoring of the human rights situation with enthusiasm, based mostly on territorial but also on chronological and thematic principles. The results of the monitoring programs are the relevant reports. Typically, these reports highlight the situation in a particular area for a given period, for instance «On the Observance of Human Rights in the Nizhny Novgorod Region in 1996». Since 1998, the such activities were co-ordinated by the Moscow Helsinki Group (MHG). Its experts developed a common standard, on which the compilation of the relevant reports for each region was based. By 2000, the monitoring programme of the MHG covered all regions of the Russian Federation, including the battle actions in Chechnya[11]. It allowed the Group to produce the Russia-wide final report at the end of each year. According to the instructions of the MHG, the report writers had to highlight issues of observance

[10] Nizhny Novgorod Society for Human Rights (NSHR) has existed since 1990

[11] See the texts of the reports on the website of the Moscow Helsinki Group http://www.mhg.ru/publications/13E00E5

of the rights of various groups and the typical violations of the same in the relevant sections[12].

This programme had a very significant potential and it undoubtedly had a positive impact on the situation. The reports helped to lobby laws (after all, back then Parliament was «a place for discussion»,[13] and human rights defenders had not been declared enemies of the State – rather, «jackals who beg for scraps at foreign embassies») which improved domestic legislation, for example in the field of the humanisation of the penitentiary system, reformation of the criminal procedure law, the judiciary system, etc.

However, at the same time there was noted significant drawbacks with the monitoring of such practices. Firstly, the technique applied did not include any scientific or statistical methods of analysis of the documented violations. As a result, the assessment of the scale of one problem or another was totally subjective, and often depended on the «specialisation» of the authors. Nevertheless, the most important issue is that this kind of monitoring did not provide any criteria for the evaluation of the reliability of information, or «criticism of sources» on the basis of which the report had been written. In many cases, allegations of violations were taken from the media; in such cases, as a rule, the accuracy of each press report was not checked. It often referred to complaints received by public organisations. Of course, editors of nationwide reports understood that it was difficult to say anything with certainty when using such source information. As a result, general statements about the existence of the practice of certain disorders, which did not bind anyone to anything, appeared in these reports as follows:

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[12] For example, in the section: «The right to personal integrity and fair trial» it was offered to cover the following types of violations: «The deprivation of life by the court sentence. Political and other murders committed in the non-judicial procedure. Disappearances of people. Freedom from slavery. Torture and other cruel, inhuman or degrading treatment or punishment. Arbitrary arrests and detentions. Denial of fair public trial. Denial of the possibility of obtaining guaranteed non-judicial protection. Arbitrary interference with privacy, violation of the privacy of the home and his correspondence», etc.

[13] «Parliament is not a place for discussion» – a phrase belonging to the Speaker of the Fourth State Duma, Boris Gryzlov. (Levchenko B.V. Not a place for discussion // Gazeta.Ru, 15 November 2007

«Human rights organisations from all regions have reported a deluge of citizen complaints about police arbitrariness: rudeness, humiliation and violence during arrest and detention; during the investigative actions of examining bodies, the patrol and inspection service, and special forces. These facts are stated in other sources as well, such as the report of the Commissioner for Human Rights of the Republic of Bashkortostan. The problem is complicated by the fact that evidencing these facts is almost impossible. The victims often do not seek protection from the relevant agencies. A substantial proportion of the population suffers from lack of confidence in the police and other law enforcement agencies and is afraid to contact them».[14]

Activists of the Nizhny Novgorod Human Rights Society are already aware of the flaws in this approach. Therefore, in Nizhny Novgorod, an attempt was made to prepare specialised thematic messages with a deeper level of study of the selected issues. One of them was the «Report on the use of torture in the Nizhny Novgorod region», presented in December 1997, which covered events since 1991[15]. The report was prepared by the Information and Analysis Centre of the organisation (IAC NSHR). The authors analyzed the statistical data available for them, separately considered the typical situations where representatives of the State most often used illegal violence, and attempted to identify the most frequently used methods of torture and to clarify the causes of sustained torture practices. On February 18, 1998, this report was approved by the Commission of Human Rights under the administration of the Nizhny Novgorod region as a Special Report of the Commission, and it was widely received in the mass media, including the leading regional periodicals[16].

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[14] Report on the observance of human rights in the Russian Federation in 1998 Section 1. The right to personal integrity and a fair trial. Torture and other cruel, inhuman or degrading treatment or punishment. http://www.mhg.ru/publications/36B71DA

[15] Kalyapin I.A., Shimomolos S.M. Report on the use of torture in Nizhny Novgorod region. Nizhny Novgorod, 1998 http://www.uic.unn.ru/hrnnov/rus/nnshr/analyst/torture.htm

[16] See, for example: V. Kiselev. The use of torture in Nizhny Novgorod region. Nizhny Novgorod worker dated 16.12.2007

However, the main goal which was set by authors – to draw the attention of the Office of Public Prosecutions to the systematic lawlessness and encourage it to take action to prevent and detect such crimes – has not been achieved by the report.

On the contrary, the reaction of the Office of Public Prosecutions (at the time, it had the authority to investigate crimes committed by officials of the Ministry of Internal Affairs) was very aggressive – the employees of the Office of Public Prosecutions categorically denied all information on illegal violence by the police. In a letter to the NSHR, the assistant attorney of the Nizhny Novgorod region, Nikolaev, said:

«Public prosecution bodies have not established the «facts» of the so-called «torture» events in the Nizhny Novgorod region,» – the authors of the report misled citizens and provided inadequate information, which was distributed by criminals in order to avoid criminal liability and was denied during the prosecutorial investigation.

Alas, this response could make us indignant (and, of course, it did), but at that time it could not be refuted in essence. Formally, the assistant attorney was right, the stated facts were checked, and based on the results, the criminal allegations were rejected.

It should be said that, in some of these conflicts, government agencies took an even tougher stance against journalists and human rights activists whose allegations of torture were not supported by appropriate evidence. The most famous case is that of Elena Maglevannaya, Volgograd journalist, who published in the network media several pieces of evidence of brutal tortures allegedly used against convicted Zubayr Zubayrayev. During the lawsuit for the protection of business reputation of the Chief Administration of the Service for the Execution of Sentences in Volgograd region, on May 13, 2009 Kirov District Court of Volgograd decided to demand compensation for moral damage from Maglevannaya in the amount of 200,000 rubles. In support of its decision, the High Court and the Court of Appeal stated the fact that «during the custody <...> five cases of injury of the convicted

Zubayrayev Z.I. were registered in the message registration book of crimes, each of which was inspected. According to the results of the inspection, there was issued orders to reject the institution of prosecution, due to absence of a criminal act».[17]

But, to return to Nizhny Novgorod: from the story of the report on torture and on the prosecution response to it, the employees of the IAC NSHR made a very important conclusion in 1998: it is possible to monitor and create the most honest analytical texts, and to overwhelm prosecutors with tens and even hundreds of statements of victims and medical certificates of beatings; it is possible to demonstrate that different people, at different times, and independently of each other, speak of identical methods of torture used in the same territorial departments of the police, rehabilitation centres, investigative isolation wards or colonies; and to appeal to the press and public opinion; finally, it is possible to make loud statements in various high commissions on human rights (both national and international) – absolutely nothing will be changed. The position of the Office of Public Prosecutions and public authorities will be a tough one: the «so-called tortures» known in the notorious Stalin era do not exist and cannot exist in the Russia of today; as there was no – there could be no – «sex in the USSR».[18] Thus, in reality, the torture conveyor will continue to run smoothly. This attitude of the authorities will remain unchanged until the facts of tortures are established in legal way i.e. by a court verdict against the officials in issue.

In order to get such a sentence (sentences), more indisputable evidence is necessary; the mere statements of the victims

[17] The cassational ruling of the Judicial Division for Civil Cases of the Volgograd Regional Court dated 14 August, 2009, on not changing Decision of the Kirov District Court on 13 May 2009 on the case of Elena Ilinichna Maglevannaya. http://master-sudtyajb.narod.ru/maglevannaya/opredelenie.html

[18] «There is no sex in the USSR» – the catch phrase, the source of which was the statement of one of the Soviet participants (Chairman of the Committee of Soviet Women, Ludmila Nikolaevna Ivanova) of teleconference Leningrad—Boston («Women talk to women»), recorded on June 28, and went on the air on July 17, 1986. http://www.youtube.com/watch?v=vmoOG7CbYmM It is widely used in journalism when showing partiality and mythologization of certain statements or representations.

and certificates from hospitals are not enough. Since prosecutors are clearly not interested in finding and recording evidence, it is up to human rights activists to identify and fix them.

In fact, this conclusion was the driving force behind a new approach – one that we now call the public enquiry into torture. It was the starting point in the development of the method itself, and most importantly it determined (if we may say so) the philosophy of our future activities.

Members of the IAC NSHR involved in the work under the guidance of Igor Kalyapin soon realised that the specifics of this area require the creation of a specialised public association. In August 2000, a new regional public organisation «Committee against Torture» was registered in the Nizhny Novgorod region.

The methods of its work, in brief, resulted in the following. For each case of a complaint of alleged torture that was received by the human rights activists, not only was a notice of offence handed to the prosecutor, but an accurate individual check was also carried out. What happened here is that human rights defenders, using the opportunities afforded by the law to any citizen of the Russian Federation, together with the applicants themselves, sought and interviewed the witnesses of unlawful violence and the doctors who provided first aid to the victims, requested documents, and ensured the performance of forensic medical examinations, obtaining expertise, etc. The information provided by witnesses (with their consent) was carefully recorded in the form of detailed explanations signed by them, with both audio and video recordings.

If, as a consequence of this, it became clear that the collected evidence confirmed the applicant›s statement about unlawful violence on the part of the State representatives, and it could be successfully used in court, the case was finally «accepted for processing». It was only after the facts (stated by the victim and confirmed by information) were made public (in the respective reports, press conferences, etc.) that the stage of «legal support» began – that is the more important thing. The victim received a

lawyer – someone to represent them – at the expense of the organisation. This lawyer familiarised himself with the material of inspections and appealed the illegal decision of the investigator. The lawyer attached documents obtained by human rights activists and witnesses' explanations to materials of the prosecutor›s investigation and then the criminal case. At the request of the lawyer, the investigator (even if he did not want to) was officially forced to question the witnesses indicated by the victim during criminal proceedings. The lawyer was present during these interrogations for the purpose of preventing possible illegal pressure by the investigators. The lawyer familiarised himself with the materials of the pre-investigation checks and criminal cases, and appealed against the illegal decisions of the investigator. In turn, «the lawyer» who was involved in many things at once,[19] had a team of jurists: preparing complaints, petitions, etc. Much later, in 2007, the Committee, through the court, became able to achieve recognition of the victim's right to have a representative who does not have lawyer status (this will be discussed below)[20]. In the present day, lawyers are employed by the CAT only in cases when the victim of torture is a suspect or convicted in a criminal case at the same time and is in custody.

The most difficult task in the described activity was not the collection of evidence proving tortures but the daily activities of «obliging» the investigating authorities to conduct an effective investigation. At the human rights conference, the Head of CAT, Igor Kalyapin, was ironically called «an expert on torture, a fighter with the prosecution» off-stage, without reason. There was indeed a real legal war with the Office of Public Prosecutions at times; initially the investigators were (and still are) literally forced to initiate

[19] In most cases, the interests of the applicants were represented in these cases one of the founders of the Committee against Torture, the lawyer of the Nizhny Novgorod Regional Board, Yuri Anatolievich Sidorov. On March 20, 2008, by Decision of the Federal Chamber of Lawyers of the Russian Federation № 4 Yuri Sidorov was awarded with the professional medal «For merits in protecting the rights and freedoms of citizens», I degree.

[20] Resolution of the Federal Judge of the Sovetsky District Court of the city of Nizhny Novgorod, Bondarenko V.E., dated April 10, 2007, on the complaint of Utukin D.I.

criminal proceedings, and then to bring each of them to court. For example, in the case of Mikheev on complaints of the Committee lawyers alone, the higher courts and the courts of various levels annulled 3 illegal decisions not to initiate criminal proceedings, 3 decisions to suspend the criminal case and 20 (sic!) decisions to terminate it. The criminal case of the torture of Sankin was dismissed by the investigator 10 times and suspended 3 times, and all of these decisions were also annulled on the basis of complaints of the CAT. That is the picture, in almost all cases of public enquiry!

However, this work attained the first really serious legal victory in 2001, in the form ofthe sentence at the Nizhny Novgorod regional court (entered into force on 10.07.2001) of a detective officer of the Criminal Investigations Department of the Regional Department of Internal Affairs in Nizhny Novgorod (Alexey Gennadievich Ivanov), when he was found guilty under paragraph «a» Part 3 Article 286 of the Criminal Code of the RF. The court found that Ivanov applied torture to minor Maxim Podsvirov for the purpose of forcing the latter to slander his own brother for committing a crime which he had actually not committed. The human rights activists (at first in the framework of the activities of the IAC NSHR, then the CAT) had been working on the case two and a half years – since January 1999.

Characteristically, the court then sentenced Ivanov to 6 years' imprisonment – but this was suspended! It was only later that the employees of the Committee were able to achieve the imposition of sentences related to actual imprisonment, and this way turn this approach to the usual judicial practice in the Nizhny Novgorod region. The first such judgement was the sentence at Pochinkovo District Court of the Nizhny Novgorod region dated 2 February 2004 (entered into force on 30.03.2004) of the former Head of Criminal Police of the Directorate of Internal Affairs in Bolsheboldino, Colonel Ivan Aleksandrovich Chetvertakov. The court found Chetvertakov guilty, under paragraph «a» Part 3 Article 286 of the Criminal Code of the Russian Federation, of beating Alexander Dolgashev on February 2, 2003, and sentenced

him to three years' imprisonment under the general penalty regime of the colony and deprived him of the right to hold public office for a period of 2 years.

However, although this did not happen in all cases, the lawyers of the Committee could easily break through the resistance of the prosecution imposed on the criminals. In the aforementioned Mikheev case (in many respects it is typical, even classic, for there are references to it in almost every chapter in this edition), «the prosecutor ping-pong» (when the case is initiated, and then dismissed, and then, after complaints from the representative of the victim, it is initiated once again, and then it is dismissed again; and so dozens of times) lasted for seven years – 5 years in the case of Sankin. In cases when the domestic remedies for violations of human rights were clearly ineffective or were exhausted, the CAT addressed complaints to the ECHR.

On January 26, 2006, the European Court issued its decision on the case «Mikheev vs. Russia»[21]. This is the first decision of the ECHR recognised with the complaint of the CAT which immediately became an important precedent. Firstly, this decision was also the first European Court's decision in the case against the Russian Federation in which it acknowledged that Russia was culpable of the use of torture[22]. Secondly, an unprecedented large compensation was granted to the victim from the Russian affairs body – 250,000 Euros (to date it is paid in full by Russia). Thirdly, in this case the Court developed certain approaches, which were later used in other solutions.

Appeals of the lawyers of the CAT in Strasbourg encouraged the Russian authorities to take certain measures on individual cases to enhance the effectiveness of the investigation within the State. After December 2004, when the complaint with the

[21] European Court of Human Rights. The case of Mikheyev v. Russia (First Section). Application no. 77617/01 by Aleksey Yevgenyevich MIKHEYEV against Russia. JUDGMENT. 26 January 2006.

[22] Previously, for example, in the case of Kalashnikov v. Russia (Decision of 15 July 2002), the Court established the responsibility of the Russian authorities for violation of article 3 of the Convention in relation to the «degrading treatment» (par. 102).

Mikheev case was announced by the Court of the Russian Federation, the General Prosecutor of the Russian Federation gave instructions, and it was as soon as in April the following year that the Office of Public Prosecutions of the Nizhny Novgorod region brought charges against two police officers, who had subjected Alexei Mikheev to electric shock during interrogations. On November 30, 2005, the Leninsky District Court of Nizhny Novgorod city sentenced an officer of Leninsky Regional Internal Affairs Directorate, Igor Aleksandorvich Somov, and the former member of the same Regional Internal Affairs Directorate, Nikolai Alexandrovich Kosterin, to 4 years of imprisonment in the general penalty regime of the colony. In the case of the complaint of Sankin against Russia after its announcement[23], the Russian authorities also chose to reopen the criminal case once again dismissed over time[24], to bring those police officers guilty for torture to criminal liability[25] and to pay compensation to the victim in the amount of more than three million rubles[26].

[23] European Court of Human Rights (First Section). The complaint no. 77783/01 Sankin against Russia. ECHR-LE4.1R SVA/es Notice of communications to the lawyer Yuri Sidorov on October 6, 2004.

[24] On November 15, 2004, «the case of Sankin» was resumed by the deputy prosecutor of Nizhny Novgorod region, and the First Deputy Prosecutor General of the Russian Federation establishes the deadline for the investigation – until March 15, 2005.

[25] On December 22, 2005, the Sormovsky District Court of Nizhny Novgorod found officers of Sormovsky District Department of Internal Affairs, Ageev D.L. and Guganov A.Yu., guilty of acts beyond their authority, with violence and serious consequences (Article 286, part 3, p. «a, b, c» of the Criminal Code of the RF), as well as intentional malicious damage, dangerous to human life (Article 111, Part 3, p. «a» of the Criminal Code of the RF) in respect of Sankin S.Yu. The court sentenced each of the convicts to 5.5 years of imprisonment in a strict regime colony. On March 17, 2006, the Judicial Division for Criminal Cases of the Nizhny Novgorod Regional Court considered the appeal of the convicted and decided to reduce the punishment of the policemen to three years and six months of imprisonment in a strict regime colony for each. The sentence came into force.

[26] On June 17, 2008, the Sormovsky District Court sustained a civil claim of the lawyer of the Committee against Torture, Yuri Sidorov, filed on behalf of Sergey Sankin who had become disabled as a result of torture.
The judge Lydia Kleptsova decided, that the defendant on the suit – the Ministry of Finance of Nizhny Novgorod region – must pay the claimant flat 1,137,000 roubles as compensation for damage to health, 2 million roubles as compensation for moral damage. In addition, every month, until April, 2009, Sergey Sankin will be paid 17 000 roubles. At the end of October 2008 Sankin received compensation in the amount determined by the court.

Thus it turned out that the proceeding in the ECHR is not only a means for establishing the international legal responsibility of the State with regard to violation of human rights, but it is also a good tool in the fight against impunity in the country. When the future decision of Strasbourg is hanging over the Russian authorities like the sword of Damocles, they usually begin to execute their constitutional duty more faithfully to protect the rights of citizens. Unfortunately, this facility is not universal – when it comes to involving parties in crimes of highly positioned or influential people, the Russian authorities, as a rule, prefer to invoke the disgracing decision of the international court, but not to surrender «their mates». We see this situation in the ensemble of «Chechen cases», which refers to the participation of high-ranking officers in crimes against the civilian population. It is clearly shown in the cases of Maslova and Nalbandov: employees of the Nizhny Novgorod Office of Public Prosecutions who had raped and beaten a minor witness for long hours, chose not to proceed with prosecution for a period of 10 years (until the period of limitation expired), because they were the offspring of families that make up the elite of the Nizhny Novgorod legal (including judicial) community. The Russian government preferred to lose before the European Court and payment of compensation to the victims in the amount of 80,000 Euros.

Staff members of the Committee had to deal not only with cases of violation of liberty rights, personal security and protection from torture, but also the right to life. In 2004, relatives of Alexander Shkurin applied to the CAT – Alexander had been beaten to death by police officers, who forced him to confess to stealing a pig. On March 30, 2007, the investigator of the Internal Affairs Department of Arzamas district, Alexey Nikolaevich Bikhtyarev, and detective officers from the same Internal Affairs Department, Alexander Vladimirovich Shalnov and Nikolai Aleksandrovich Arzhatkin, were sentenced by the Nizhny Novgorod Regional Court to 12, 17 and 6.5 years of imprisonment respectively in the strict regime colony. A lot of cases of killings and forced dis-

appearances of people are investigated by the employees of the CAT in the Chechen Republic in particular, where the representatives of the State committed and continue to commit widespread and systematic violations of fundamental human rights and international humanitarian law.

Since 2001, according to the method of the Committee and with its supporting human rights defenders of the Orenburg region: Bashkortostan, the Republic of Mari-El and the Chechen Republic begin to conduct public enquiries.Representative offices were opened in these regions and later the regional offices of the CAT (the Committee Against Torture) were re-registered as an interregional public organisation.

The Joint Mobile Groups (JMG) were established for public investigations of situations of mass or systematic violations at the initiative of the Committee Against Torture. Typically, they include representatives of different regions and different human rights organisations on the spot for a few months, via the method of social investigation. This method was tested for the first time in Blagoveshchensk, the Republic of Bashkortostan, where, in December 2004, during the «clean-up operation» of the city, the police illegally detained and severely beat hundreds of young people. Despite the fierce opposition of the Republican authorities, there was instituted criminal proceedings against 8 police officers, including the Chief of the Public District Security Police[27], the commander of the operational company of the special police squad[28], the Chief of the emergency response centre of the Minis-

[27] Mirzin Oleg Sabitovich – Deputy Head of the Public Security Police of the District Department of Internal Affairs in Blagoveshchensk district and the city of Blagoveshchensk of the Bashkir Republic, was sentenced by the Blagoveshchensk district court of the Bashkir Republic 05.03.2010 acc. to Part 3. Art. 285 of the Criminal Code to 4 years of imprisonment on probation, with deprivation of the right to hold positions of soldiers and officers in the system of state authorities – the police for a period of 3 years.

[28] Oleg Mikhailovich Sokolov – the commander of the operational company of special police squad of the Ministry of Internal Affairs in the Bashkir Republic, was sentenced by the Blagoveshchensk district court of the Bashkir Republic 05.03.2010, acc. to p. «c» Part 3. Art. 286 of the Criminal Code to 4 years and 6 months of imprisonment on probation, with deprivation of the right to hold positions of soldiers and officers in the system of state authorities – the police for a period of 3 years.

try of Internal Affairs of the Bashkortostan Republic[29], the chief of one of the police departments and several ordinary perpetrators[30]. However, with one exception, the sentences selected by the court did not recognise real deprivation of liberty. The JMG had a very successful experience in the Lazarev district of Sochi, where, on the night of 18/19 July 2006 in the village of Nizhnee Makopse, dozens of special police squad officers of the Main Internal Affairs Directorate of the Krasnodar region committed a «clean-up operation» of the children›s camp «Druzhba», with mass illegal detention and brutal beating of men and boys. The investigation of the Sochi episode was one of the few exceptions when the human rights activists managed to establish good co-operation with the prosecutors. However, there were other difficulties known with

[29] Ramazanov Ildar Ilgizovich – the Deputy Chief of the District Department of Internal Affairs of the Ministry of Internal Affairs of the Bashkir Republic. He was sentenced by the Blagoveshchensk district court of the Bashkir Republic 05.03.2010, acc. to p. «c» Part 3. Art. 286 of the Criminal Code to 5 years and 6 months of imprisonment on probation, with deprivation of the right to hold positions of soldiers and officers in the system of state authorities – the police for a period of 3 years.

[30] Litvinov Vadim Faridovich – the police sergeant of the District Department of Internal Affairs of the city of Oktyabrsk. He was sentenced by the Oktyabrsk City Court on 22.07.2009, acc. to p. «a» Part 3. Art. 286 of the Criminal Code to 3 years of imprisonment on probation, with the probationary period of 2 years. Gilvanov Aidar Nurlygayanovich – the detective officer of Criminal Investigations Department of the District Department of Internal Affairs in the district and the city of Blagoveshchensk. He was sentenced by the Blagoveshchensk District Court 17.06.2008 acc. to Part 1 of Art. 286 of the Criminal Code, p. «a, b» of Part 3 of Art. 286 of the Criminal Code to 4 years of imprisonment in a general regime colony. Hamatdinov Vil Aftahovich – the head of the police station in the village of Udelno-Duvaney of the District Department of Internal Affairs in the district and the city of Blagoveshchensk. He was sentenced by the Blagoveshchensk District Court 17.06.2008 acc. to p. «a» Part 3 of Art. 286 of the Criminal Code to 3 years 2 months of imprisonment on probation, with the probationary period of 2 years. Shapeev Oleg Maratovich the head of the District Department of Internal Affairs in the district and the city of Blagoveshchensk. He was sentenced by the Blagoveshchensk District Court 17.06.2008 acc. to Part 1 of Art. 286 of the Criminal Code to 1 year of imprisonment on probation, with the probationary period of 1 year. Fomin Sergey Alexandrovich – the policeman-dog handler of the temporary holding facility of the Blagoveshchensk Main Borough Internal Affairs Department. He was sentenced by the Blagoveshchensk District Court on 20.05.2008, acc. to pp. «a, b» Part 3 of Art. 286 of the Criminal Code to 3 years of imprisonment, with the probationary period of 1 year. Golovin Yuri Vasilievich – the sergeant-major of the combat service support of the Blagoveshchensk Main Borough Internal Affairs Department. He was sentenced by the Blagoveshchensk District Court on 08.04.2008, acc. to pp. «a, b» Part 3 of Art. 286 of the Criminal Code to 3 years of imprisonment, with the probationary period of 1 year.

the large-scale nature of the crime committed against people who had come to this place for short holiday weeks. Participants of the JMG had to serve as the operational support on a *de facto* basis – they had to quickly identify, find and deliver victims and witnesses to the Office of Public Prosecutions for questioning, many of whom were to go home within the next few days. Then, the Committee against Torture organised the transfer of these people in the trial from the various regions of Russia, including Siberia and the Far East. about the case included about 30 victims, five of whom were minors. On October 15, 2008, the Lazarev district court in Sochi sentenced eight special police squad officers, including the Chief of Detachment Staff, Mikhail Vladimirovich Pruidze, to various terms of imprisonment[31].

[31] Pruidze Mikhail Vladimirivich – the assistant staff officer of the special police squad of Krasnodar Territory (in Sochi), sentenced acc. to Part 1 of Art. 286 of the Criminal Code to 2 years and 6 months imprisonment in a penal colony settlement. Korolev Alexey Vladimirivich – the chief inspector of the information and documentation group of the special police squad of the Main Internal Affairs Directorate in Krasnodar Territory (in Sochi), sentenced acc. to p. «a» of Part 3 of Art. 286 of the Criminal Code to 3 years of imprisonment, with deprivation of the right to hold positions in the civil service and in the bodies of local government for a period of two years, in a general regime colony. Ozhgihin Maxim Igorevich – the fighting policeman of the special police squad of the Main Internal Affairs Directorate in Krasnodar Territory (in Sochi), sentenced acc. to p. «a» of Part 3 of Art. 286, Part 4 of Art. 33 pp. «a», «b» of Part 3 of Art. 286, Part 1 of Art. 116, Art. 119 of the Criminal Code to 5 years of imprisonment, with deprivation of the right to hold positions in the civil service and local government for a period of two years and six months, with a fine of 30,000 rubles, in a general regime colony. Zubenko Vladimir Viktorovich – the fighting policeman of the special police squad of the Main Internal Affairs Directorate in Krasnodar Territory (in Sochi), sentenced acc. to p. «a» of Part 3 of Art. 286 of the Criminal Code to 3 years and 6 months of imprisonment, with deprivation of the right to hold positions in the civil service and local government for a period of two years, in a general regime colony. Igor Pimenov Dzhimovich – the fighting policeman of the special police squad of the Main Internal Affairs Directorate in Krasnodar Territory (in Sochi), sentenced acc. to p. «a», «b» of Part 3 of Art. 286 of the Criminal Code to 4 years and 6 months of imprisonment with deprivation of the right to hold positions in the civil service and local government for a period of two years, in a general regime colony. Zabeyvorota Vladimir Anatolievich – the policeman-driver of the special police squad of the Main Internal Affairs Directorate in Krasnodar Territory (in Sochi), sentenced acc. to p. «a» of Part 3 of Art. 286 of the Criminal Code to 3 years of imprisonment, with deprivation of the right to hold positions in the civil service and local government for a period two years, in a general regime colony. Petrenko Alexei Borisovich – the policeman-sniper of the special police squad of the Main Internal Affairs Directorate in Krasnodar Territory (in Sochi), sentenced acc. to pp. «a», «b» of Part 3 of Art. 286 of the Criminal Code to 3 years and 6 months of imprisonment, with deprivation of the right to hold positions in the civil service and local government for a period of two years, in a general regime colony. Ezersky Alexander Yurievich - Junior Inspector-snip-

Since the Autumn of 2009 the Joint Mobile Group has worked shifts in the Chechen Republic; there are always three employees from the various regions of the Russian Federation there.

All these years, the public enquiry procedure continued to improve, and it has improved ever since. In recent years, court decisions on claims for compensation for moral damages to prosecution investigations have become the know-how of the Committee – this includes unsubstantiated orders on the termination or suspension of criminal cases as well as other illegal solutions. Work with regulatory authorities database has also been improved: in many cases it has brought disciplinary action to investigators responsible for sabotaging torture investigations (including deprivation of bonuses that offenders cherish highly).

At this time, the CAT employs about 30 people. Besides the main activities (public investigations), the Committee provides medical care and rehabilitation to victims of torture, prepares analytical materials (including for inter-parliamentary and inter-governmental organisations), and conducts public campaigns. The Committee includes the Investigative Department (ID), the Department of International Legal Protection, the Department of Coordination of Territorial Units, the Department of Rehabilitation Programmes and the Press Office. In addition, from time to time, the Committee has to organise the protection of victims and witnesses. For example, in the case of Maslova and Nalbandov, the first applicant repeatedly received threats from former employees of the Office of Public Prosecutions, who had sexual abused and tortured her. With this, the CAT organised her long-term residence outside the Nizhny Novgorod region, and ensured the necessary level of confidentiality of its communications with the victim.

In the modern day, the victims and witnesses are protected the same way. For example: the case of Umarpashaev, who for

er of the special police squad of the Main Internal Affairs Directorate in Krasnodar Territory (in Sochi), sentenced acc. to p. «a» of Part 3 of Art. 286 and p. «a» of Part 3 of Art. 286 of the Criminal Code to 3 years and 6 months of imprisonment, with deprivation of the right to hold positions in the civil service and local government for a period of two years and six months, in a general regime colony.

nearly four months was illegally detained in the Grozny Special Police Force base and was subjected to ill-treatment there. The staff of the Committee took representatives of the family of Umarpashaev in Nizhny Novgorod and involved them in the State witness protection program.

The professional legal approach to the task of protecting the rights and legitimate interests of citizens requires the appropriate methods of workflow and rules of labour discipline – the work of each department and employee is regulated by job descriptions, with accounting of messages about violations of human rights, and in each case, the record keeping methods are similar to the record keeping methods of criminal cases applied by State investigation and inquest bodies.

At the time of the writing of this section, the Committee has carried out an inspection of 1,303 complaints of human rights violations, established 104 facts of torture and cruel treatment and achieved conviction of 72 officers for criminal offences, and mustered compensation to victims in the total amount of 18,904,740 rubles (of which so far 17,182,981 is paid) in national and international courts. With the appeals of the lawyers of the Committee, 347 illegal decisions of the investigating authorities and other government agencies were annulled. In the ECHR, 56 complaints recognising the liability of the Russian Federation for torture and cruel treatment and payment of compensation to victims were filed, of which three such sentences were ordered to be adopted and executed; a number of cases are still in the process of deliberation and consideration by the Court. In the production of the Committee there are currently more than 200 cases of public enquiry.

To this point, the problem of torture and similar methods used by arbitrary law enforcement agencies was to be widely recognised by regional and Federal authorities; in the agenda of international meetings, the problem of torture in Russia is not at the bottom of the priority list. Of course, there is a huge distance between the recognition of the problem based on words and its solution in deed, and this simple truth becomes particularly urgent

when it comes to authoritarian regimes. However, as a principle, the treatment is impossible without the proper diagnosis of the disease. The diagnosis has been established, and we are confident that the public enquiries held by the CAT and its partners have greatly contributed to the achievement of this important result.

1.3. DEFINITION, KEY PRINCIPLES AND SOME SPECIFICS OF PUBLIC ENQUIRY

From what is said in the previous sections, it is clear that, between public enquiry and other forms of human rights and civic activity, there is a difference in quality. While the latter tends to focus on attracting the attention of the government and society to some human rights abuses, the first is a special tool to establish the facts of these disorders.

1.3.1. Definition of the public enquiry

Now, finally, we can give a detailed definition of the public enquiry.

The public enquiry is a set of actions carried out by citizens (citizen union) that do not have any special rights and powers granted by the State, in order to achieve an effective investigation into complaints of gross violation of human rights and, if there is sufficient evidence, to establish the facts of such violations via the authorised State body i.e. by the court.

The high-priority problem purpose of the public enquiry is to obtain evidence of human rights violations that is acceptable, necessary and sufficient for establishing the facts of it in the course of legal proceedings.

The methods of public enquiry of tortures and other grave violations of fundamental human rights are based on several principles. These principles can be divided into two groups: general and special. While the first group unites the public en-

quiry with other non-governmental enquiries (journalist, lawyer, etc.), the second group, by contrast, defines its uniqueness.

1.3.2. The general principles of the public enquiry

The general principles of the public enquiry include the principle of legality and the principle of voluntary participation in the public enquiry. We mention them briefly, because their content is quite obvious.

a) The principle of legality means that, during the conducting of a public enquiry, the subject shall only use means, rights and tools that are permissible by national legislation and international law32, for any person virtually. These includes, first and foremost, the right to collect, receive and impart information not relevant to the State or other secrets protected by law – a group of rights in connection with sending the report of a crime to the investigating authorities (the victim's right to recognition as a victim, the victim's right to have a representative in the course of the investigation and trial, the right to see investigation materials, the right to appeal against unlawful acts or inactions of officers, the right to a fair trial, etc.), as well as the right to use the mechanisms of international protection.

b) The principle of voluntary participation in the public enquiry applies mainly to people who file complaints of torture and people to whom human rights activists apply for information and assistance (witnesses, experts, etc.). Since the human rights organisations, as opposed to the investigating authorities and the courts, are not delegated with special powers, they have no right to compel or coerce people or organisations to provide them with certain information. Therefore: for example, to obtain explanations of witnesses of torture or a certificate of ambulance departure, the human rights activists have to convince their interlocutors of the importance and necessity of such actions. This usually requires not only legal knowledge, but also the ability to convey

[32] Except in case of recognition of disability.

a certain legal, civil and moral position to people. However, it is important to remember that, for the investigating authorities and other government agencies, response to complaints, appeals and petitions of citizens and human rights organisations submitted in accordance with the law is not a right but a duty.

1.3.3. The special principles of the public enquiry

The special principles of the public enquiry include the principle of the protection of the public interest, the principle of constant commitment, the principle of professionalism, the principle of appeal against all illegal acts, the principle of preferential orientation according to the domestic protection mechanisms, the principle of confidential checks of complaints, and the principle of an integrated approach with the protection of the applicant's rights.

a***) The principle of protection of the public interest***. This principle, according to the authors, is the cornerstone of the philosophy of the public enquiry. The principle is that the organisation, when carrying out an investigation, does not primarily represent the interests of a particular person – the victim of torture or other serious human rights violations – but the public interest. In other words: the human rights organisation, through advocacy of the rights of the individual applicant, defends the interests of the public. In this scheme, the applicant is not a client, not a guarantor and not a «defendant» of the organisation, but rather its ally and equal participant in the struggle for the rights and dignity for himself and for everyone else – «for your and our freedom». In situations where the interests of the applicant (or the applicant›s subjective understanding of his interests) come into conflict with the public interest, the organisation can defend the public interest, even against the will and interests of the applicant. An indispensable obligation imposed by this principle on the social organisation is to provide a warning in good faith to any person applying to it with a statement.

The authors assume that what is said in the previous paragraph may seem, at best, not quite clear, and at worst, it will be understood completely wrong. To clarify it, we use a specific example again.

In the late 1990s, when a group of activists of the NSHR performed the first steps in the formation of a practice that would later be called the public enquiry, a citizen X applied to the group. He alleged that he had been beaten in the police station and asked for help bringing officials to statutory criminal liability. During the inspection of the complaints we managed to collect impressive evidence of culpability of officers: we got affirmative medical documents, determined witnesses who saw him in a state of not being injured at the time when he was delivered to the police station, and others – who saw him with an injured face when he left the police station. Later we managed to receive explanations from a direct beating eyewitnesses. The criminal proceedings were instated, and after a while the officials in question were charged. But the alleged perpetrators became more active: the police officers began to threaten the applicant in order to force the victim to renounce his claims and evidence.

One of the authors of this section was involved in the work on this case. The search and examination of witnesses took a very long time; and then, in the winter, we spent hours doing monitoring activity, in order to identify the people who came to our applicant with threats. It should be added that, at that time, the NSHR did not receive any funding for activities for combating torture: all the above activities were carried out by us *pro bone*, in private time and at our own expense. Still, the success was obvious – we hoped to succeed with the first judgement of conviction in our activity...

Suddenly, everything changed. The alleged criminals were able to «negotiate» with the victim – the cost of his own rejection of evidence (and, we would add, and self-esteem) was a new colour TV, bought for the victim by his torturers of yesterday. Shortly thereafter, the criminal case was dismissed. It turned out

that all of our energy, time, money and enthusiasm had been used by the applicant to improve his own living conditions. To say that we felt fooled means to say nothing!

This story has taught us a lot. Since then, the CAT has had a strict rule: before a CAT worker accepts a complaint from a citizen, it holds a detailed discussion with the alleged victim (or his relatives). The worker explains that, if the Committee finds sufficient evidence of torture, it will do everything possible to restore the rights of the applicant and to bring those responsible to justice. And all of this will be carried out free of charge to the applicant, and, moreover, if necessary, costs for medical and rehabilitation measures or measures to protect witnesses can be reimbursed at the expense of the Committee. At the same time, we expect a certain kind of behaviour from the victim as well. The Committee does not undertake any obligation to help the victim if the victim subsequently wishes to enter into bargaining with the alleged perpetrators or their representatives. Moreover, if the victim later changes his testimony included in the official investigation in favour of the alleged perpetrators (and the Committee at this time will have strong evidence of torture), the Committee reserves the right to pursue prosecution of criminals as well as the victim for perjury and concealment of crimes.

After the practice of this explanation has been stated, the applicant begins his collaboration with the CAT in full awareness of the conditions of such co-operation. This is what we call the «allied relations».

This principle is a very good illustration of the difference between the role of human rights activist and the role of the lawyer – a representative of the victim. The lawyer receives the cash award from his client and acts solely in the interests of the client. In accordance with the law and professional ethics, the lawyer cannot act contrary to the will of the principle, even if the lawyer strongly disagrees with his will. It is obvious that if the victim of torture wishes to collude with the tormentors in exchange for some material or nonmaterial values (such as «netting of debts»,

i.e. the refusal of the investigating authorities to prosecute the victim) and to renounce his claims, the lawyer has no right to act against this decision.

The role of the human rights activist is another matter. The human rights activist does not receive any remuneration from the victim and, protecting the rights of a particular person, acts primarily to protect the public interest – the interest of the society as a whole. In this case, the public interest is to eliminate the practice of torture – and if torture has been used nevertheless, to bring the guilty person to statutory liability. Obviously, if the victim colludes with criminals, this would be acting contrary to the public interest in that they would be helping them to avoid statutory liability. Therefore, a human rights activist is not bound with the will of the applicant. Moreover, based on the principle of public interest, he shall consider the victim a criminal accomplice at this point, and expose his complicity.

As far as such situations are concerned, there are some nuances that need to be clearly realised by any member of a human rights organisation dedicated to combating torture.

First of all, we shall remember that torture, which is usually classified by the court according to art. 286 of the Criminal Code of the Russian Federation, is a serious offence and concerns the procedure of public prosecution. The subject of the crime is not only a particular person who has suffered abuse, but, at the same time, the interests of the society and the State. Therefore, the case of imputation of this crime cannot be terminated in connection with the reconciliation of the parties, as provided by the law in cases of private prosecution and low-level crimes[33].

Thus it shall be realised that pay offered to the victim by the alleged perpetrators in exchange for giving up incriminating evidence, is not a «compensation for moral and material damage,» as yesterday›s tormentors sometimes try to present to the victim, but a direct bribery. This pay is provided to the victim not disinterestedly, but in exchange for the victim chang-

[33] Art. 76 of the Criminal Code, Art. 25 of the Code of Criminal Procedure.

ing their truthful testimony given to the investigation and trial to a false one; this shall constitute a violation of criminal law. It should be noted that Article 307 of the Criminal Code provides criminal penalty for perjury.

Finally, we must remember the essential difference between human rights activity and humanitarian activity. One day, one of the co-authors of this section had to be present during a heated discussion between two well-known Russian human rights activists. Mr. X reproached Mrs. Y for her membership in the Human Rights Council under the President of the Russian Federation thus: «You have an excellent reputation, and your presence in this body legitimises the current political regime, the very form of whose existence is the systematic violation of human rights». «I›m sorry to agree with you», answered Mrs. Y, but my presence in this body gives me the opportunity to apply to the government for the release of illegally detained people, to prevent the deportation of foreign citizens into the territory of states where they are subject to torture, unfair trial and decades of imprisonment for opposition activity. Every a year we save up to a dozen of such people». «The government seizes hundreds of hostages and releases a dozen in exchange for your loyalty. By this way you only strengthen the repressive system, X retorted. «Yes», Y agreed again. «But every human life is precious, and I am ready to sacrifice my reputation for the sake of each of these people».

There is no doubt that the views of the participants of the discussion were diametrically opposed. However, the authors do not take it upon themselves to judge whose position should be considered correct, and whose mistaken. We have a case of antinomy here, as each is right from the viewpoint of a particular system of approaches, and each of these systems deserves unquestionable respect. Mr. X's position is based on the fundamental principles of human rights protection, while Mrs. Y's is based on humanitarian principles, which are no less fundamental.

The protection of human rights and humanitarian work – these involve different kinds of activities, and one should be able

to distinguish them. When Ruslan Aushev entered the school in Beslan and negotiated with the terrorists that they would release babies with their mothers, he was not defending the human rights – he was saving people›s lives: it was a classic humanitarian mission. When Anna Politkovskaya was carrying water in the captured Theatre Centre on Dubrovka, she was not acting as a human rights activist and journalist. In the church practice there is a word – «intercession». Church intercedes with the authority for certain people, for example, it requests the release of prisoners or demands that the number of them be reduced. It is a sacred mission, but it should be in no way confused with the protection of human rights.

At the forefront of human rights activity there is recognised an assertion of principle of the supremacy of law as an unconditional public interest. The main value of humanitarian work is human life as such. In a democratic law-governed state these activities may well be carried out in parallel, not acting in competition with one another. On the contrary, "hominum causa omne jus constitutum est"[34] i.e. the defence of fair law entails the protection of life and the well-being of each individual member of society. Alas, in a climate of systematic violations of human rights in authoritarian regimes, wars and dictatorships, it is much more difficult: the protection of human rights can come into conflict with the protection of the concrete victim of this disorder. Here it is necessary to decide what kind of business you're doing. Based on the practices of the largest international non-governmental organisations, the following examples can be made. Amnesty International is hardly going to bribe a judge to free a man whom it recognised as a prisoner of conscience. Such a decision would undermine the reputation of the respected human rights organisation, and the very principles that it protects. But the practice of the largest humanitarian organisation – the Red Cross – is quite different. Its main activity is saving the lives of victims of war.

If in order to get women and children out of the firing line it is necessary to pay a bribe to a senior officer of the roadblock,

[34] All the law is created for the benefit of men (Latin.).

this will be done. One of the principles of the International Committee of the Red Cross (ICRC) is privacy, which allows access to the victims in order to protect their lives and personal integrity, and lead a more effective dialogue with the authorities – even if these authorities are undeniable war criminals; and even if the demands that they put forward in order to save people are less than fully compatible with the concept of law. An example of this is the Red Cross co-operation with the authorities of Nazi Germany to ease the plight of prisoners of war. International case law confirms that the ICRC has an absolute right to privacy; as the International Tribunal for the Former Yugoslavia ruled, in the case of Simich (27 July 1999), ICRC workers cannot testify before any court or tribunal about any events they witnessed in their work.

It is obvious that such an approach cannot be accepted by a human rights organisation: its duty to testify (before the court, the state and the society) the violation of the law by any government or representatives of armed conflict parties and to seek punishment for the perpetrators. The concealment of information on such violations, as well as on those who commit such violations and assist them, is entirely inconsistent with the mission of the human rights activist. Returning to our subject, assistance to the victim: concealing any information on torture, will be recognised as a form of concealment of what should be an offence in the eyes of the human rights activist.

On the other hand, the final choice of whether it is necessary to reveal the identity of a victim who has refused to provide a truthful testimony, shall be decided pending the consideration of all the circumstances of the case. Of course, in a situation where the victim intends to collude with criminals for the purpose of certain material advantages, the answer to the question about future actions is obvious. However, it is to be remembered that, in some cases, the cost of principle may be human life. We are not talking about a threat to your life or the lives of your colleagues – after all, this is part of the professional risk of the human rights activists. We are talking about the life of your applicant or that of

third parties. Such situations often arise in Chechnya, where there is often pressure exerted on the relatives of the victims, and any threat of them being murdered or ending up missing, or arbitrary detention, may well be the answer as far as defending their rights is concerned.

Therefore, with regard to the question of how to proceed if your applicant changed his testimony in favour of criminals, there is no answer applicable to all cases. You can try to expose his lies before the official investigation. You can simply refuse further co-operation with this person. The only thing the human rights activist can never do is to provide any support to that kind of act of the victim.

b) The principle of constant commitment. If it is true that the applicant is an ally of the human rights organisation, it is also true that the allied relations imply mutual obligations. We have just mentioned that applicants are required to be consistent in the assertion of their rights, even in the face of possible threats and attempted bribery. In response, the human rights organisation undertakes to do everything possible to protect the applicant from unlawful pressure, to restore his rights and to make perpetrators criminally liable. However, the phrase «everything possible» is extremely vague. Each organisation recognises different opportunities, especially with regard to defence: someone may have the means to get a valuable witness to another region or even abroad, while others can only offer him their company in a potential threat (for example, members of the Joint Mobile Group in Chechnya were often forced to spend the night in the houses of victims who faced pressure from the security, defence and law enforcement agencies).

If security opportunities are limited due to resources of the organisation (and the applicant must immediately be notified about these limits), then what is the limit of the obligation «to do everything possible to restore human rights and to bring the perpetrators to justice»? In the CAT, the following rule is adopted:

if the organisation has collected the necessary evidence, and, in accordance with its internal procedure, concluded that torture (or other appropriate violation) has occurred in respect of the applicant, the organisation incurs an obligation not to terminate the proceedings for as long as the organisation exists and until all goals are achieved. This is *the principle of constant commitment* of the organisation vis-à-vis the applicant.

The works with respect to one case may take 5, 7 or 10 years, and such cases are recognised in the practice of the Committee. Sometimes it seems that the case has no prospects, and year after year you spend time, energy and resources to appeal the identical idiotic decisions about the dismissal of the criminal case. But this fact is not a reason to stop working.

The CAT employees were involved in the Mikheev case since 1998. By 2004, it seemed to come in a complete deadlock: the investigator issued negative resolutions every quarter, and counter complaints of the Committee lawyers became the same bothersome and old story. Then, at a meeting in Moscow, a number of partner organisations and even some donors informed the Committee that they considered further proceedings in the case to be an inefficient waste of the resources of the organisation. At the time critics said, «The Office of Public Prosecutions does not want to investigate it; you cannot force it to do that any more than you can chop wood with a penknife. Besides, it becomes more and more difficult to ‹›spin›› this story; reporters are already tired of it. It is better to assign resources to other cases where the investigating authorities behave in a more compliant way, and journalists are ready to add fuel to the fire». The CAT leaders did not agree with this position and continued to work. A year later, the police officers who had tortured the applicant were sentenced to an effective prison term, and then the ECHR collected an unprecedented high compensation amount from Russia in favour of Mikheev.

c) The principle of professionalism hardly needs an expanded commentary. All of the above shows that the public en-

quiry represents not just a kind of human rights activism; it is a professional legal activity, requiring appropriate special training, knowledge and skills. This does not necessarily mean that everyone in the organisation who is engaged in public enquiry must necessarily have a higher legal education (although in practice all the inspectors of the Department of Investigation and members of other legal departments of the Committee have diplomas and practical experience, including in law enforcement bodies; while some of them also teach in the law faculties of higher education institutions). This means that fairly high professional demands are made of every such employee. For example, the CAT has its own system of examination tests when applying for a job, and it does annual evaluations of employees. These tests are designed to check both the overall level of legal culture and the specialised knowledge needed in the implementation of public enquiry.

d) The principle of appeal against all illegal activities arises from the principle of professionalism and the principle of constant obligations to the applicant. It is grounded in the fact that all illegal actions (inactions) that were committed or tolerated by the State authorities during work in connection with the complaint of an applicant must necessarily be appealed within the statutory period; in such a case, all channels must be examined and all effective legal mechanisms must be used: firstly at national level and – in the event of lack of satisfactory results – even at the international level. The current legislation provides a wide range of possibilities for the realisation of this principle – with this, at the citizen's choice, unlawful decisions can be appealed in a higher court, or on a judicial basis. The «choice of weapon» in each case depends on the specific situation, as we outline in detail below.

It should be emphasised that not only should illegal actions within an investigation be appealed, but, in general, any illegal acts committed in connection with the alleged torture and its investigation also should be. For example, illegal actions of people implementing the state witness protection should certainly be appealed.

In the practice of the Committee in the case of Umarpashaev, an official of the Centre for Public Protection under the Ministry of Internal Affairs of the Chechen Republic didn't just neglect the performance of his official duties; he also brought the victim to the suspect, and that created a situation of real danger to the lives of several people and established the conditions for the collapse of the criminal case. Only the quick intervention of the Joint Mobile Group employees made it possible to neutralise the consequences of this outrageous fact to a certain extent.

This principle should be interpreted broadly enough. In particular, this means that all credible reports of pressure on the victims, applicants and other interested parties by the alleged offenders or third parties should be the subject of a separate application in connection with the crime that is submitted to law enforcement agencies, and the subject of further legal support for this application.

Any unlawful act or decision of the public authorities which is not appealed by human rights activists within the statutory period, is a gross violation of the methods of public enquiry, which undermines its effectiveness.

e) The principle of the preferred orientation to domestic protection mechanisms. The authors of this publication are confident that the strategic goal of the Russian human rights movement is the creation of the law-governed State in Russia, standing guard over human rights and effectively suppressing violations of these rights.

Of course, protecting the rights of people who are to perform the role of the fire brigade can be a noble occupation. However, a doctor who, in his fight against a deadly disease which manifests itself in the human body, who does not set a goal of defeating the disease, is a poor doctor. The same logic applies to social diseases, for example, the habit of unlawful violence by security forces.

Based on this approach, the main efforts of the public enquiry should be designed to make domestic human rights pro-

tection mechanisms work effectively and in accordance with the law. In this scheme, an appeal to international mechanisms is considered: firstly as a major means of «coercion» of national law enforcement and judicial authorities to work effectively (examples of which we have already given in section 1.2), and secondly as indeed a ‹last resort› which should be used only when all possible ways to achieve justice in a country within a reasonable time have been exhausted.

In 1998, the Russian Federation ratified[35] the Convention for the Protection of Human Rights and Fundamental Freedoms. Since then, the Russians have been able to appeal to the ECHR. As we know, human rights organisations have used this right a lot, and to date they have achieved considerable success in this field. The activity mechanism of the European Court dictates that, before a citizen applies to it with a complaint, he must exhaust all effective remedies within his State. For example, if the violation is related to prosecution, the Court finds that an effective mechanism in Russia is the High Court and the Court of Appeal. Accordingly, if you have been subject to an appeal decision which denies the recovery of one of the rights of the Convention to you, you have all the formal grounds required to complain to the European Court.

It would seem that, when talking about the necessity of using all effective national mechanisms, we can break through the door – in fact, this requirement is directly mandated by the Convention; if it is not met your complaint will simply not be accepted. It is no secret, however, that many human rights organisations regard the necessity for such «exhaustion» as merely a burdensome formality. In such circumstances, an appeal to the European Court becomes an end in itself, and an attempt to restore the right of an applicant in the country – an annoying obstacle which should be overcome as soon as possible and at a lower cost. In this scheme it is clear that there is usually there is no place for meticulous legal work with the Russian investiga-

[35] The Federal Law dated 30.09.98 № 54-FZ

tion bodies and courts. Very often, in the pursuit of quick «exhaustion», colleagues complain to Strasbourg about the violation of one of the rights of the Convention (which is usually the most obvious and easily justified), while overlooking other violations (which are often quite serious); violations which could have and should have been the subject of the complaint. Thus, not only is the public interest sacrificed to the short-lived campaign, but the interests of the individual applicant are as well.

The CAT is a categorical opponent of this practice. Before applying to the European Court, it is necessary to make sure that you really have done everything possible within the country in which you are a victim. Of course, it does not mean that you should endlessly bang your head against a wall of prosecutors' indifference – this principle should be implemented wisely, taking into account your limitations under the Convention terms for filing a complaint with the ECHR. It just means that your work with national mechanisms should really be focused on the effective defence of the rights, and not on the reduction of the «exhaustion» time. Even when a complaint is filed to the ECHR, do not shelve the file of the applicant's case and do not idle waiting for a response from Strasbourg. You have to keep fighting in the country (by the way, in the European Court, in the end it will only strengthen your position). Moreover, if your appeal to the ECHR prompted the Russian authorities to rectify the situation fully, there is every reason to give them encouragement for their good behaviour. A good example from the practice of CAT: in the case of Sankin, when the Russian courts regained his rights, the applicant considered himself to be fully satisfied with their decisions and officially stressed that he is considering fulfillment under the international obligations of the Russian Federation following positive changes in the Russian law enforcement and judicial system. After this, at the request of the applicant, the case was dismissed in the European Court pending reconciliation of the parties[36].

[36] European Court of Human Rights (First Section). Application no. 77783/01 by Sergey

You should also understand that an appeal to the international court is really the «heavy artillery»; this sledge-hammer should not be used merely when it's convenient, especially if it's just a matter of cracking nuts. The French have a good proverb: «Do not ask God for what can be made by a simple law». It is not appropriate to get an international body involved if there is a real chance to correct the situation on the spot, or if the problem you intend to solve in this way is not too significant. It is worth remembering that the slowness of European Court decisions on important matters is due to one sole fact: its complaints overload. You should not aggravate this overload without a serious reason.

f) The principle of non-public check on the complaint is that, while checking the applicant's allegations of gross violation of his rights for completeness (with the organisation having not received credible evidence of such a violation), their details are not made public. The CAT has adopted a system of drawing up the final report on the inspection of the complaint. In the report, the inspector of the investigation department who dealt with this inspection answers the question of whether or not there has been any violation of certain rights of the applicant, with detailed reference to the evidence received by him. Each such report shall be subjected to mandatory approval by the head of the organisation. Only after a positive report (i.e. a report in which the facts of the violation are recognised as justified by evidence) is approved by the head can the organisation publicly state this fact, hold a press conference, initiate publication in the mass media, etc.

This principle allows the organisation to maintain a good reputation and its protection against reasonable libel charges or flouting of business reputation. It should be emphasised that, despite the tough rhetoric which the organisation uses against violators of human rights (especially with respect to bodies and

Yuryevich SANKIN against Russia. DECISION 11December 2008.

people responsible for sabotaging investigation efforts), during more than ten years of the CAT's work, NO claims of this kind were filed against it.

In other human rights organisations, there may be used procedures for documenting the results of initial inspection on complaints other than the procedure adopted in the CAT. However, in any case, the ban on public disclosure of information about the alleged abuse until the end of the inspection, must to be strictly observed.

g) The principle of an integrated approach to the protection of the applicant's rights. If the information about alleged violations of human rights is not publicly disclosed prior to the end of the inspection, then, on the contrary, it is necessary to make every effort to establish the appropriate background information after the confirmation. Obviously, when the authorities have to deal with human rights violations which have received wide coverage in mass media and caused significant public reaction, it is much harder to sabotage the investigation. With this, all the facts of such sabotage efforts have to be made public. Well-organised «PR support» (press conferences, the initiation of publications in mass media and broadcasts on television, etc.) can reinforce its effectiveness many times. The same is true for public campaigns (subscription campaigns, petitions, mass sending of postcards to authorities), public events, the preparation of reports, theme conferences, etc. As already mentioned, in some cases a public enquiry should be accompanied by measures to protect victims and witnesses, including medical and psychological rehabilitation of victims and other activities. The principle of the integrated approach lies with the execution of certain activities in parallel with the public enquiry which, although they are not themselves part of the enquiry, are able to increase its effect many times over, thus ensuring the safety of the applicant and contributing to the restoration of his rights.

1.3.4. Important features of the public enquiry method

Moving on to the description of some important features of the public enquiry method: it should be emphasised that we do not mean in any way to diminish the importance of other forms of human rights activity. Yes, the public enquiry (as it is carried out by the CAT and by its partners) is a highly professional activity. This is its indisputable advantage, but also its particular flaw. Like any product of professional activity, the successful public enquiry is so-called «piece goods». It requires not only a thorough special knowledge, but also effort, time and considerable resources, including material ones. Therefore we should not delude ourselves and think that the problem of torture in a country or a particular region can be solved only through public enquiry. After all, the investigation of torture in accordance with the law is a matter of investigating the authorities, and you can never substitute the work of prosecutors. All that you are capable of using our method is providing indisputable proof of malice or feebleness of the official investigation, establishing certain facts of violations and helping individual victims. In general, overcoming gross violations of human rights is a complex problem. If this is true with respect to each individual case, then it is all the more true for the entire event. In this regard, it requires co-operation, co-ordination, and joint actions of various human rights, civil and political organisations, each of which uses its own methods to achieve a common goal. With this, public enquiry is absolutely necessary, but it's not a sufficient part of a wider strategy of fighting against serious human rights violations.

In our discussion of the features of our proposed approach, it should be noted that: we talk about grass, which grows exclusively in the legal field. The possibilities of public enquiry are limited by one essential condition: it can be effectively mustered only when and where there are elements of the law-governed state at the very least. Where there are more of such elements, where they are stronger, where their interaction forms at least the rudiments

of the system – the work is easier. Where the islands of lawfulness drown in the ocean of tyranny, the work is meaningless or almost meaningless. Ultimately, it is about a special legal procedure and, like any legal procedure, it is useless in a legal vacuum. That is why the CAT didn't achieve much success in the Chechen Republic. Before the middle of the 2000's, according to the astute statements of Julia Latynina, there was a separate legal system represented here by every armed man (whose territorial jurisdiction was limited to the firing range of its submachine guns); but now, according to the no less astute statements of Igor Kalyapin, the law has been replaced by a common phrase «Ramzan said» (means Ramzan Kadyrov).

Speaking about the situation in Russia in general, we can say that there are two conflicting trends. On the one hand, the situation with the independence of the court is aggravating rapidly. Just look at the case of Khodorkovsky and Lebedev – shameful administrative and criminal trials of «dissenters» in which the law is violated by judges deliberately and publicly; it shows the high level of the decay of the foundations of the national judicial power. This way we can clearly see that, instead of staying out of politics, over politics, or on the boundary of politics, the law becomes a transmission belt of political will and the business interests of members of the ruling regime. It is the same with mass, gross and systematic violations of international humanitarian law and international law of human rights committed during the armed conflict in North Caucasus. It is almost impossible to muster an equitable decision on such cases at the domestic level. On the other hand, in cases where malfeasances by performers of lower and middle level are tried, and the direct interest of senior officials or military men is not noticeable, the domestic courts often take fair and reasonable decisions. Hundreds of unlawful decisions for dismissal or suspension of criminal proceedings have been cancelled by the courts following complaints by the lawyers of the CAT; after all, it is the courts that passed sentences to officials for torture. Moreover, the in-

creasing professionalism of the judiciary applied by the judges in their decisions based on rules of international law – which is occurring more often during the trial of cases related to the protection of human rights – includes reference to the relevant conventions and precedents of international courts. Sometimes these two trends strikingly co-exist in the head of one judge.

Which of these two factors will be decisive? The authors believe that all remaining islands of judicial independence and positive trends in court practice are largely « hooked by Strasbourg». It is the ECHR that allows for the establishment of the violations which Russian prosecutors and judges do not want to see; it is the practice of the ECHR that furnishes Russian judgements with new progressive ideas and approaches. That is why increasingly repeated statements by senior officials of the Russian Federation about the necessity to withdraw from the jurisdiction of the European Court or the non-obligation of its decisions seem to be so dangerous. It is obvious that, if this trend prevails, all available mechanisms of human rights protection in Russia will be permanently destroyed. Then, perhaps, the public enquiry method in its present form will become useless. So far, this has not happened, but the current situation allows us to use existing legal tools – although far from perfect, they are in a way suitable for use. Eventually, it is better to have a Palaeolithic chop on hand than nothing.

Moving on from the strategic issues to the tacticalones, we note a feature of the public enquiry which is known to be of an «offensive nature». This offensiveness also distinguishes our method from most of the classic types of human rights activity.

It seems that even the phrase «human rights protection» dictates a «defensive approach». To wrest the victim from the hands of the executioners, to achieve the release of a prisoner of conscience, termination of criminal prosecution, cancellation of unjust sentence, compensation for material and moral damage: these are the tasks that human rights activists most often have to solve, and within legal procedures. In these circumstances, the actual culprit is pushed to the sidelines, and all the attention is

focused on the object of the violation. In the words of Agatha Christie, most human rights activists could rightly say: «I am more interested in the victims than the perpetrators, <...> If it is possible to rescue the doomed from the clutches of death at the last moment, I'm elated».[37]

Of course, in the course of the public enquiry the responsive and caring attitude to the victim should always remain. However, our main attention will inevitably focus on the offender. The overriding goal is to gather the necessary evidence, to establish the identity of the perpetrator (or help with the official investigation) and bring him to statutory criminal liability (remember: all violations of human rights which are subject of the public enquiry are at the same time grave – or the gravest – of criminal offences). We are ready to attack; if he is the game, we are the hunters; although he is often very dangerous if exposed by the predator.

This role is unusual and unfamiliar not only for human rights activists, but also for the majority of lawyers who start working with an organisation which deals with public enquiry. After all, they are usually used to «play in defence» as well, playing the role of defender of the accused or the defendant and «disorganising» criminal cases. Here, on the contrary, qualities of an investigator or prosecutor are required from them. All these professional and psychological characteristics must be considered in the formation of the team that is designed to carry out the public enquiry.

There is at least one hidden danger with the classic «defensive instinct» human rights approach: to mix an investigation of the facts of torture with the protection of your applicant from prosecution. After all, as has been pointed out repeatedly, complaints of torture often refer to people suspected (rightly or wrongly) of criminal offences who are sometimes held in custody. Indeed, torture is most frequently used during the investigation of crimes with the intention of forcing a person to testify against himself or other people.

[37] Agatha Christie, Autobiography. Part 9, Ch. 2.

One common scenario is that the human rights activist, having made sure beyond reasonable doubt that tortures have actually been applied against the applicant, concludes (rightly or wrongly) that the person did not commit the crime in question and feels a deep sympathy for him and begins actively protecting him. In such a situation it is necessary to remember two important theses:

- investigation of torture and protection of the person against prosecution are two different types of legal work even if they may be related to each other;
- proclaiming facts of torture against the suspected does not automatically lead to the conclusion that he is innocent (the converse scenario is also true), but suggests that evidence obtained through torture is illegal and should not be acceptable at the trial.

The authors of this study do not recommend that people involved in public enquiry actively participate in the defence of the applicant against criminal charges (officially, at least) such as in a criminal trial. At best, it will divert your attention from the main business; and at worst, it may call your objectivity and the objectivity of the organisation you represent into question. However, of course, if there are reasonable grounds to believe that the case against your applicant is actually fabricated, you have no moral right to simply dismiss this situation. Usually in these cases, the CAT establishes close co-operation with the lawyer – the defender of the accused. Exchange of evidence and information and joint decision-making on certain procedural matters, as a rule, are things that seriously strengthen the position of both collaborators. If you find that the applicant›s defender performs his duties poorly, you can recommend that he change his lawyer, offer the defender to your partners, and even – if the organisation's budget allows it –pay for his services. But both functions as a whole should not be performed by a single person. Even if you feel like you are a team, remember which of you is an advocate, and which is an attacker.

In conclusion of this section we say a few words about who can hold a public enquiry. We have already said that the person carrying out the enquiry requires no special powers. With this, with the application of certain knowledge and skills, this technique can be applied by any group of citizens and even by an individual. At the same time, it should be remembered that, in practice, it is very difficult to oppose the State machine alone (and we have already seen that this usually concerns not co-operation with the investigator, but his opposition to the victim). Even if you don't take into account the risks associated with working alone, remember that you will be competing with a large group of professionals who violate the law during working hours and at public expense. You will have to, alone, during your own time and at your own expense, find and interview witnesses, appeal many illegal decisions made by various people, and go to the courts.

When you look at the picture of prosecutors' «ping-pong», you often wonder whether or not various illegal orders for dismissal of the same criminal case are similar and cancelled by the court on the same grounds. Is the investigator stupid enough to repeat the same offence over and over again, knowing in advance that it is an excellent opportunity to withdraw his inkshed? The truth is that this strategy has a serious practical meaning: the idea is that the truth-seeker, getting the same mocking papers year after year, will finally let it go – how long can the calf butt with the oak? However, what happens in most cases when the system is opposed by an individual (even if they are highly qualified) is that the limit comes when, in the words of the poet, «there is no more strength, no sense to put a bet on this con».[38] The situation is worse if you yourself are a victim, and that is why you are especially vulnerable to bureaucratic rudeness. Do not forget the wise English proverb "a man who is his own lawyer has a fool for a client".

As a result, even with a very limited number of incidents, it appears that public enquiry can be carried out effectively,

[38] Alexander Galich. If you are leaving – leave...

even if it will only be a collective / small one. If there is no organisation dealing with the public enquiry of torture in your region, and you are ready to do this difficult job, it makes sense to contact us to get all the necessary advice and methodological support.

1.4. | LEGAL BASIS OF PUBLIC ENQUIRY

The public enquiry method is based on the use of a combination of legal norms contained in international treaties of the Russian Federation, the Constitution, laws, codes, and subordinate acts as well as court precedents and interpretations of the law that are included in the decisions of international and Russian courts.

In our description of certain phases of the public enquiry, we will refer to many of such documents in detail. Here we will mention only the most important rules of law which are relevant to the entire public enquiry in general, at almost all stages.

1.4.1. The law of the Russian Federation

In accordance with the Constitution of the Russian Federation, *«Everyone has the right to seek, receive, transmit, produce and disseminate information by any lawful means» (Part 4 of Article 29 of the Constitution)*. It is the implementation of this law that is the legal foundation of public enquiry, as one of its main elements is the collection of information. It should be noted that this right is supported by a whole group of international legal instruments to which the Russian Federation belongs.

The determination of the named law is contained in a number of laws. For example, the possibility for a citizen to get information about his health status and appropriate medical documentation is provided in the «Principles of Legislation of the Russian Federation for the Protection of Health of Citizens»

(approved by the Supreme Soviet of the Russian Federation, 22.07.1993 № 5487-1):

«Every citizen has the right to receive all available information about the state of his health in an accessible form, including information on survey results, the presence of the disease, diagnosis and prognosis, treatment methods, risks associated with them, the possible options for medical intervention, their consequences and results of the treatment.

A citizen has the right to familiarise himself directly with medical documentation reflecting the state of his health, and to be consulted in connection with it by other specialists. At the request of a citizen he shall be provided with copies of medical records reflecting the state of his health if this does not affect the interests of third parties» (Article 31 of the Principles).

Under this law, a citizen can receive certificates from the injury care centre, plus results of the forensic medical examination, medical history, information from the ambulance station, etc.

Another form of enforcement of the right to information is to obtain it from other people – eyewitnesses to events. It should be remembered that «*The exercise of the rights and freedoms of a person and citizen shall not violate the rights and freedoms of other people*» *(Part 3 of Article 17 of the Constitution).* With regard to public enquiry in particular, this means that the collection of information should be carried out only in ways that do not violate the rights of other citizens.

Earlier we mentioned the fact that all your information collected during the public enquiry has no value in terms of bringing the perpetrators to justice if it is not transferred to the public authority. Bringing someone to criminal liability is exclusively the function of the state; only the court can find a person guilty in a crime *(Part 1 of Article 49 of the Constitution:* «*Everyone charged with a criminal offence shall be presumed innocent until his guilt is proven in a manner stipulated by the Federal law and established by a valid court judgment*»*).* The proclamation of the guilt or innocence of a person is decided by the court on the

results of the criminal proceedings. Criminal cases arrive at the court via the investigation bodies, which collect evidence.

All the activities of the competent authorities and officials in the criminal proceedings are strictly regulated. The main regulatory instrument in this area is the Criminal Procedure Code of Russia (CPC RF).

In practice, there are situations that are not regulated by the criminal procedural law. Many of these issues, which are related to the implementation of the rights by the parties of the proceedings, are decided by the Constitutional Court of Russia in its Statutes and Judgements. In its decisions, the Constitutional Court is based first and foremost on the provisions of the Constitution *(Part 1 of Art. 15 of the Constitution: «The Constitution of the Russian Federation shall have supreme legal force and direct effect and is applied in the entire territory of the Russian Federation. Laws and other legal acts adopted in the Russian Federation shall not contradict the Constitution of the Russian Federation»),* allowing for their interpretation in relation to the criminal process. In this case, all law enforcers should follow the position of the Constitutional Court of the Russian Federation, expressed in its decisions *(Article 6 of the Federal Constitutional Law dated 21.07.1994 № 1-FKZ «On the Constitutional Court of the Russian Federation»: «The decisions of the Constitutional Court of the Russian Federation shall be binding for the entire territory of the Russian Federation, for all representative, executive and judicial organs of State power, local self-government organs, businesses, institutions, organisations, officials, citizens and their associations»).* In the future, when we consider some issues we will refer to some of the decisions of the Constitutional Court.

The position of the Supreme Court of the Russian Federation is also of great importance in connection with decisions concerning issues of criminal law and criminal procedure law. On the one hand, the system of criminal law of the Russian Federation is not a precedent, not only in the strict sense of the value of the

doctrine of stare decisis[39], but also in terms of any substantial authority recognised with the decisions of higher courts in connection with previously considered cases which have similar factual circumstances. In court sentences in criminal cases in Russia, as a rule, the courts usually do not refer to the previous practices of the superior courts. In general, this situation ipso facto creates the conditions for the uncertainty and unpredictability of justice. On the other hand, this omission is partly compensated by the fact that, in accordance with Art. 19 of the Federal Constitutional Law dated 31 December 1996 «On the Judicial System of the Russian Federation,» the Supreme Court of the Russian Federation, in addition to the functions of settlement of cases in essence, has the right to give explanations on judicial practice. The courts are guided with regard to particular interpretation and application of the law by these decisions. Most experts believe that this is a form of official interpretation of general nature[40].

In this publication, we will also often refer the reader to departmental normative acts – for the most part to the orders of the Prosecutor General and the Head of the Investigative Committee of the Russian Office of Public Prosecutions. Departmental normative acts are subordinate acts by their subordinate status: they shall not be contrary to the laws in any way (and especially if we are talking about the criminal process – the Code of Criminal Procedure). The principal task of such subordinate acts is implementation of the norms of the CPC (for example, the establishment of the procedure of accepting, recording, consideration of applications of the crime, the procedure of the prosecutors' supervision of investigation, etc.).

We will also have to comment much about the Office of Public Prosecutions and the Investigation Committee under the Office of Public Prosecutions – we should say a few words about the structure of these bodies.

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[39] That is the doctrine of the binding force of judicial precedent.

[40] The Criminal Law. The general part. Textbook / V.T. Gaikov [and others] Rostov-on-Don, 2006, p. 59-60.

Up until September 7, 2007, the Office of Public Prosecutions of the Russian Federation combined the functions of investigation and investigation supervision: the Office of Public Prosecutions included investigators who conducted preliminary enquiries and investigated certain types of cases, and the prosecutors monitored the legality of the implementation of inspections and the conduct of the investigation by prosecution investigators and investigators from all other law enforcement agencies (the Ministry of Internal Affairs, the Federal Security Service, the Federal Drug Control Service). In addition, the prosecutors supervised the legality of the enquiry. In mid-2007 a long-awaited reform was made, the goal of which was to divide the functions of investigation and supervision. A new structure was established: the Investigative Committee (IC) under the Office of Public Prosecutions of the Russian Federation. Ever since, it has been IC investigators who have conducted preliminary enquiries and carried out investigations on the types of cases that had previously been considered by investigators of the Office of Public Prosecutions.

The prefix «under the Office of Public Prosecutions» in the title of the new structure could be misleading, for actual subordination of the IC investigators to prosecutors does not exist. Although the head of the IC is a Deputy Prosecutor General *ex officio*, the head of the IC exercises the personnel policy by himself. Article 20.1 of the Federal Law dated 17.01.1992 № 2202-1 «On the Office of Public Prosecutions of the Russian Federation» states:

1. The Investigative Committee under the Office of Public Prosecutions of the Russian Federation is the body of the Office of Public Prosecutions of the Russian Federation which ensures the observance of Federal legislation on criminal proceedings within its scope of authority.

The investigators of the Investigative Committee under the Office of Public Prosecutions of the Russian Federation shall carry out a preliminary investigation of the crimes referred by the criminal procedural legislation of the Russian Federation under its authority.

4. The Chairman of the Investigative Committee under the Office of Public Prosecutions of the Russian Federation shall, within the limits of staff size and the payroll of workers (employees) of the Investigative Committee under the Office of Public Prosecutions of the Russian Federation and its departments, approve the structure and staff list, as well as define the powers of the structural units.

6. Employees of the Investigative Committee under the Office of Public Prosecutions of the Russian Federation shall be appointed and dismissed according to the procedure established by the Chairman of the Investigative Committee under the Office of Public Prosecutions of the Russian Federation.

8. Employees of the Investigative Committee under the Office of Public Prosecutions of the Russian Federation are prosecutors.

The truth is that the Office of Public Prosecution became only the supervisory body, having been deprived of the function of investigation and continuing to supervise the legality of investigation in all the Russian law enforcement agencies, including the IC. The prosecutors also lost a substantial part of the powers they once had in the supervision of investigations.

We will not dwell on the comparative analysis of past and current responsibilities of the prosecutors; from this point attention will be paid mainly to the powers the prosecutors currently have. The main proposition for us is the following: at this time, any crime committed by law enforcement officials is referred to the jurisdiction of the IC. Thus the IC is the specially authorised State organisation, which is responsible for the investigation of torture and other serious human rights violations constituting law enforcement misconduct. It is to this organisation that victims, their representatives and other people should apply with reports of such crimes.

1.4.2. International law

For public enquiry it is also extremely important to adhere to the rules relating to the right of the citizens of the Russian Federation to use international human rights mechanisms.

In accordance with Part 4 of Art. 15 of the Constitution of the Russian Federation, «*generally recognised principles and norms of international law and the international treaties of the Russian Federation constitute an integral part of its legal system. If an international treaty of the Russian Federation stipulates rules other than those stipulated by the law, then the rules of the international treaty are to be applied*».

The most important international documents in the field of Human Rights, in which Russia participates, should include the following:

Universal Declaration of Human Rights, December 10, 1948. Although this document is not formally a legally binding document, many of its norms have now become norms of customary international law;

International Covenant on Civil and Political Rights and its Optional Protocol on 16 December, 1966.

Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November, 1950 (European Convention), as amended by Protocol No. 11

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment dated 10 December, 1984. The document contains the definition of torture and the obligations of countries to fight against such violations.

Declaration on the Protection of All Persons from Enforced Disappearance, adopted by the Resolution 47/133 of the UN General Assembly, December 18, 1992.

International Convention for the Protection of All Persons from Enforced Disappearance, open for signature and ratification of the December 20, 2006.

It is also important to consider a number of regional agreementseven though they are not signed by the Russian Federation – they play an important role in the formation of the universally recognised norms of the international human rights law: the American Charter of Human Rights, the African Charter on Human and Peoples' Rights and the Arab Charter on Human Rights.

International human rights law is closely connected to international humanitarian law, which regulates human rights during armed conflicts. The core of it is the Geneva Conventions of 12 August 1949 and their Additional Protocols. International criminal law sources are of great importance in the development of human rights; especially the Statutes of international courts and tribunals, where certain provisions criminalise a number of violations of human rights as international crimes. It is worth mentioning the case law, expressed in the decisions of international courts, tribunals and commissions, as well as «soft» law sources such as the relevant resolutions of the UN General Assembly, the Committee and the Commission on Human Rights, other bodies of the UN, the OSCE documents on the human scale, etc.

Over the last decade, the most important issue for the Russian Federation international instrument has been the European Convention on Human Rights, which not only imposes an obligation on the State's parties to comply with certain rights, but also provides a special mechanism for protection of the declared rights that are actually in operation: the ECHR, which considers individual complaints of violations of the Convention and adopts binding decisions for the State's parties.

The Convention has been ratified by the Russian Federation via the Federal Law dated 30.09.98 № 54-FZ. It should in particular be noted that, in accordance with paragraph 11 of the Resolution of the Plenum of the Supreme Court on October 10, 2003, No 5 «With the courts' application of general jurisdiction of the universally recognised principles and norms of interna-

tional law and the international treaties of the Russian Federation», the Convention for the Protection of Human Rights and Fundamental Freedoms has its own mechanism, which involves the compulsory jurisdiction of the ECHR and the systematic monitoring of the execution of judgements of the Court by the Committee of Ministers of the Council of Europe. Under paragraph 1 of Article 46 of the Convention, these regulations in respect of the Russian Federation in their finally adopted state are binding for all State authorities of the Russian Federation including the courts».

1.5. | SCHEME OF THE PUBLIC ENQUIRY

Formally, the public enquiry is a set of diverse legal procedures; some of them allow citizens to conduct their own investigation, in parallel to the official one, while others influence the course of the formal investigation. During these events, human rights activists have to interact with a variety of organisations – medical institutions, law enforcement agencies, expert bureaus, the Bar, the Russian and international courts, etc.

In order to conduct this work properly, it is necessary not only to realise its goals, objectives, basic principles and legal grounds, but the basic steps as well. Development of the effective tactics, understanding of the legal and logical interconnections of different procedures, and a properly structured sequence of actions is the earnest of success of your public enquiry.

In the most general terms, the public enquiry consists of three interrelated and mutually interweaved elements: (1) activities aimed at ascertaining legally relevant facts and circumstances, (2) monitoring of the effectiveness of the official investigation, and (3) representation of interests of the victim in the judicial bodies.

A more detailed scheme of the public enquiry can be represented as a set of the following units and their constituent elements:

1. **Inspection of the report of abuse**, which may include:
   - questioning the victim;
   - identification and interrogation of witnesses;
   - obtaining of medical documents and doctors' notes;
   - familiarisation with the materials of the official investigation (if this is possible at this stage);
   - obtaining of other evidence;
   - preparation of the inspection report.

2. **Legal support** usually includes ***(a) monitoring of the progress of the preliminary investigation of the criminal case***, and ***(b) representation of the interests of the victim during the trial of the case based on existing merits at national level.***

2(a) Monitoring of the progress of the preliminary investigation of the criminal case can include:
   - submission of an application for the crime to the investigating authority;
   - continuing of one's own investigation (collecting and securing additional evidence);
   - attaching documents and certificates received by you to the materials of the official investigation;
   - submission of petitions to question the witnesses you have identified in the framework of the official investigation as well as the conduct of other investigative actions (evocation of documents, review of place of occurrence, conduct of examinations, confrontations, etc.);
   - familiarisation with the official investigation materials at the appropriate stages (including all cases of refusal to initiate, dismiss and suspect the criminal case, as well as to complete and bring a charge);
   - appeal against any and all illegal acts and omissions of the body performing an official investigation (to the head of the investigative body, a prosecutor or judicially);

– providing legal assistance to the victim and witnesses during their interrogation by the investigating officer (through an advocate).

2(b) Representation of the interests of the applicant during the trial of the case based on existing merits may include:
– representation of the interests of the victim during the trial of the criminal case against the alleged perpetrators (including cassation and supervisory authorities);
– representation of the interests of the victim in a civil lawsuit against the State authority for compensation for material and moral damage (including cassation and supervisory authorities).

3. Use of international mechanisms for protection usually includes:
– preparing and sending the complaint to the European Court of Human Rights;
– representation of the interests of the applicant before the European Court of Human Rights (including correspondence with the Court, preparation of memoranda, and (if necessary) participation in in-person hearings etc.).
– public monitoring of the execution of judgement by the responding State .

4. Associate events may include:
– measures to ensure the safety of victims, witnesses and their families;
– medical and rehabilitation activities;
– PR support;
– public actions and public campaigns.

Of course, these units and elements cannot be regarded as chronologically sequential. This is just a logic scheme – in practice its component procedures can be assembled with each

other in different ways, depending on the circumstances of the particular case of the public enquiry.

For example, in practice, the stage of abuse reports checking and the stage of legal support usually start at the same time. The application of offence to the investigative body should be submitted as soon as possible – otherwise the potential effectiveness of the formal investigation will be undermined. If you wait until your human rights organisation will complete its own inspection of the complaint, make sure that torture (or another violation) had taken place, and prepare a report, the most important evidence may be lost forever. Remember that an inspection of the complaint by a human rights organisation cannot replace an official investigation! In some cases, it is a review of the place of occurrence «on the heels» that offers the opportunity to gain invaluable clues. For example, during the investigation of the case of Maslova on the entrance canopy, the investigator found condoms which were used by prosecutors during the rape of their victim. Certain samples, which were obtained during the official investigation of the place of occurrence, allowed the conducting of a genetic examination and this allowed the obtaining of clear evidence exposing the criminals. Although the efforts of prosecutors and the court of the case at the national level were disorganised in the past, the results of that examination were the basis of decisions of the ECHR.

One thing that often happens is that, at the time of an application submitted by a human rights organisation, the report of the crime has already been submitted to the police by the victim or her family. For example, the public enquiry into the Mikheev case began almost a year after the first applications of the victim to the investigating authorities – the victim appealed to human rights activists only after many attempts to break through the wall of the prosecutor sabotage.

With this, the only thing you cannot do in any way prior to the end of your own inspection of the complaint is to state the facts of torture publicly. Legal support with the case can also be initiated immediately after the receipt of the complaint.

The third block, which usually begins with the sending of a complaint to the ECHR, can also chronologically overlap with the second one. For example, in the Mikheev case, the complaint was sent to Strasbourg in 2001, three years after the commission of the crime. After repeated dismissals of the criminal proceedings and sabotages of the investigation by the prosecution, the lawyers of the CAT felt that they had used all reasonable means to achieve justice for the victim at the national level (and the European Court agreed with this approach, having recognised the application as admissible). At the same time, the Committee continued the legal support of the criminal case, achieving its renewal each time. In 2006, this led to the conviction of two police officers, who had tortured the victim, and in the same year its decision on the case «Mikheev against Russia» was issued by the ECHR. Thus, in this case, in the period from 2001 to 2006, national level legal support was provided at the same time as international protection mechanisms. A similar situation can be observed in dozens of other cases of public enquiry.

As for the associated events back then: as we have repeatedly noted, PR support cannot be incepted before the completion of the inspection. This is so for obvious reasons, including public campaigns and public actions aimed at protecting the rights of the individual applicant. As for measures to ensure the safety and rehabilitation of the victim, the time of their formal commencement is not regulated: it will be determined exclusively by the circumstances of the particular case and the possibilities of your organisation.

In the following section of this publication we will take a closer look at the efforts of a human rights organisation when it comes to checking violation reports of one or more fundamental human rights. We mostly refer to examples related to the investigation of torture or other cruel treatment.

PART II
CHECKING OF REPORTS OF HUMAN RIGHTS VIOLATIONS

2.1. ONCE AGAIN: ABOUT THE NEEDTO CHECK FACTS

Checking of reports of torture is the first of the key elements of the public enquiry. The need for such checking is required both by the need to monitor the progress of the official investigation and the task of the preservation of evidence of admission of facts of torture within the Russian or the international legal process.

If the human rights organisation does not collect information independently, it will be impossible to assess how well a formal investigation has been performed. The availability of own data allows for a better understanding of which significant evidence has not been identified and preserved by the investigation, and significantly improves the efficiency of legal mechanisms for monitoring the official investigation. An attempt to institute a criminal case or to resume a terminated investigation without the submission of relevant evidence is doomed to failure and will lead only to systematic refusals of government agencies to meet your complaints. But the use of well-documented information will increase the chances of obtaining a procedural decision in favour of the victim.

An independent investigation by a human rights organisation makes sense even in those rare cases when State authorities carry out an effective investigation into torture and other gross violations. By conducting an independent check, human rights activists can deliver tangible assistance to the investigators – an example of this is the work related to the case of the Sochi special police squad. An investigator who launched a challenge

against the «elite unit» of militia (who is currently deprived of operational support of the Ministry of Internal Affairs) could hardly get a tenth of the evidence provided by the participants of the Joint Mobile Group. If the national authorities of the investigation and the court do not intend to use your materials, they can serve as evidence in the framework of international procedures, as in the Maslova and Mikheev cases.

Also, it should not be forgotten that evidence that is not recorded promptly tends to be lost: bodily injuries heal, witnesses forget the circumstances of the incident, documents are destroyed after the expiry of the storage period...at the same time, people conducting a formal investigation (at the very least) do not always gather evidence fairly quickly and with reasonable care.

And it is – for better or worse, they can take deliberate steps to destroy evidence, intimidate witnesses and do other illegal actions aimed at protecting criminals from statutory liability. If the NCO fails to fill in the gaps of the investigation or even (to some extent) to assume some of its functions, important evidence may be lost forever. Although the data documented by the NCO usually cannot be used as evidence in connection with a Russian criminal trial, they can later be attached to the materials of the official investigation (the «technology» of their attachment is described below) or used as full-fledged evidence before the European Court.

Finally, without checking the information of an alleged victim, you risk protecting not the rights of the victim, but his interests, which, as we have said, cannot always be legitimate. Checking complaints makes it possible to concentrate on helping those people who really need it and to avoid the misuse of resources and facilities of the NCO by unscrupulous applicants.

2.2. | SOURCES OF INFORMATION ON VIOLATION

The public enquiry begins with the discovery of information that indicates the possible use of torture, cruel treatment or other gross violations of human rights. However, such information is often not apparent and easily accessible. Any independent lawyer or human rights organisation which aims to conduct a public enquiry shall organise the collection of primary data on relevant developments at least during the initial stage of the work.

Based on the practice of the CAT and its partners, the sources of such information may be personal appeals of citizens, complaints and appeals from places of confinement, or data from the mass media, lawyers, the NCO and other bodies. Let us consider these sources of primary information in detail.

Sources of primary information

2.2.1.1. Personal appeal

A direct appeal of a person to a human rights organisation or an independent lawyer is the optimal way to obtain primary information about possible violations of rights and freedoms. The victim can not only provide a report about the alleged facts of torture – they can also bring documents confirming the complaint (which saves the human rights activists the search). And the story of what happened, as a rule, contains the details on which the plan of public enquiry is formed.

In order to receive personal appeals, an organisation or an independent lawyer must organise the reception area where calls and visitors can be accepted, accordingly. However, the mere presence of the reception room is not sufficient. For people to be able to apply to the reception room, they need to know about its existence at the very least; in addition, the organisation having a good reputation among the people would be desirable.

Fame and reputation are won primarily through the provision of help to specific people and by efforts to highlight these activities in mass media. As the practice of the CAT shows, this is the most effective way. Commercial advertising, free classified ads, etc., do not give the right result.

When an organisation is already well known in a particular region, citizens wishing to complain of torture and to protect their rights find it themselves. However, in the initial stages of work, until the organisation has developed a reputation in the eyes of the local population, it is desirable to attract other sources of information proactively.

2.2.1.2. Mass media

Good helpers in the detection of violations of human rights are journalists. Citizens who cannot get justice in law enforcement bodies and the courts often turn to them. Also, the mass media publish information obtained from their own sources.

Monitoring of the mass media for information about possible torture is very effective. Fresh information appears in the news sections of websites and in news television programmes. The CAT has repeatedly checked the materials published in the criminal archives of newspapers or television programmes.

However, the information published in the mass media often does not contain enough information for starting a check. First of all, there are usually no contact details of the victim. Also, it is necessary to understand that nothing obliges journalists to report the information to NCO employees or other third parties. Refusal to provide the information usually requires professional ethics, and can be motivated by both the interests of protecting the source of information that provides information on a confidential basis, and the requirements of the safety of victims and eyewitnesses. In these circumstances the only way to meet the victim is to ask the author of the article or information to transfer your contact information to the victim and to tell him about the help that you can give him.

When contacting with journalists, especially if they are experts in your subject matter (law enforcement, criminal and justice archives, etc.), it is important to establish friendly relations with them. It is necessary to remember that you can be useful to each other.

Both journalists and human rights activists want to obtain reliable information. Journalists, often with good sources of information, do not have the ability or the time to check its accuracy. The NCO employees, by contrast, are often faced with the opposite problem. It is necessary to realise it and to work for mutual benefit. After receiving the information and verifying it, it is first of all necessary to share the results of this check with the correspondent from whom you received the information. Even if you did not have an agreement in this matter, it is just a question of etiquette. This must be done even if information received by you may arouse the interest of a larger publication or TV channel. Otherwise, there is the risk that information will no longer be shared with you.

2.2.1.3. Information from citizens held in pre-trial detentioncentres and places of imprisonment

As the experience of many NCOs shows, persons held in pre-trial detention centres and places of imprisonment are prepared to provide information on violations committed against them by law enforcement officials very willingly, actively and initiatively. But, by using this source, you need to be aware of the nature of the problems that you will inevitably have to face.

Firstly, if you achieve at least a minimal degree of a positive result with even one of the complaints received from places of imprisonment, information about your activities will spread quickly throughout pre-trial detention centres and places of imprisonment, and not only in the region in which your organisation works. This will necessarily entail a lot of appeals. You can be sure that you will not only be able to verify all of this infor-

mation, but your resources will be not enough even to answer everyone who applied.

Secondly, information coming from pre-trial detention centres and places of imprisonment will concern not only violations of interest to you, but also all related ones.

Thirdly, you will inevitably have to deal with obviously false reports of violations: they will be sent to you for the sole purpose of complicating the process of a formal investigation of crimes that are incriminated to the applicant.

In addition, information coming from pre-trial detention centres and places of imprisonment will mostly relate to violations committed a long enough time ago. Accordingly, for most of them it is impossible to carry out a quality check, as the evidence has long been lost, or all instances that can be used within the framework of legal support have been already been submitted by the applicant or his advocate.

2.2.1.4. Details of other human rights NGOs

There is currently a large number of non-governmental organisations (NGOs) registered and actively working in Russia. These include both human rights organisations that specialise in different areas and organisations that represent the interests of different groups of the population. Some of these NGOs are active and some are not; some are famous and some are not so famous; some of them have operated for a long time while others have been created recently.

Obviously, no NGO can provide expert assistance to all persons interested and for the entire spectrum of violated rights. As a rule, a serious organisation chooses a specific course of action which allows enough assistance to be provided to a limited circle of people at a highly professional level.

A person rarely becomes the victim of the same violation of his rights twice. Therefore, he is not an expert on 'third sector' organisations and has no knowledge about the organisation

to bring forth in the event of of certain situations. He often applies to the organisation which he knows of (for example, from newspapers or TV programs), or which was recommended to him by his friends.

It is important that the organisation that a person has turned to can redirect him to where he will actually receive help for a particular situation. It is therefore necessary that NGOs that operate in the same region or in different regions but which have common goals, know each other and have each other's contact information. Such information shall be distributed at various events where representatives of various NGOs are present, as well as on the Internet. The best way to do this is to have your own website.

2.2.1.5. Details of lawyers

Lawyers deal with people who are at risk of the possibility of suffering torture and cruel treatment.

Of course, lawyers can independently take action to restore the rights of the victim of torture. But there are certain circumstances attributed to the role of lawyers who apply to specialised NCOs. Not all victims have the financial means to pay lawyers' fees for representation of their interests in law enforcement and judicial bodies – in the vast majority of cases NCOs do not charge fees for their services. There are other circumstances in connection with lawyers co-operating with NCOs, such as the PR potential of human rights organisations. Not all lawyers have the ability or skills to appropriate the resources of the mass media in the interests of the client. Not all lawyers can, or wish to be, engaged in qualitative collection and preservation of evidence and implementing international legal mechanisms for the protection of human rights.

When interacting with a lawyer – an advocate of a suspect or an accused party – it is necessary to take into account that he has the task of protecting the client from charges. For him, the

NCO is often one of the elements of pressure on the investigation. The task of the NCO is to represent the public interest by protecting the rights of the victims of violations by the State. In this case, the same person will be both accused of committing a crime and the victim of human rights violations.

Information collected by the NCO during the public enquiry on the complaint of the victim of human rights violations, can be very useful for the lawyer when he is performing his procedural protection. For example, using this information he can make an exception by declaring some evidence as having been obtained in a manner which violates the law. For example, if it is established that a person confessed to a crime after being subjected to torture, this acknowledgment may be subsequently recognised by the court as inadmissible evidence. The lawyer, on his part, can provide employees of the human rights organisation with information which he has become aware of during the investigation. If the investigator has not made him sign a pledge of secrecy, the lawyer can assist in interviewing the victim if he is in custody and if he cannot access the employees of the NCO at the time.

2.2.1.6. Other sources of information

Depending on the specifics of each particular region and the capabilities of a particular NGO, sources of primary information about the use of torture and cruel treatment may include:

- tregional Commissioner for Human Rights (Human Rights Commission);
- thospitals or their individual members;
- tlaw enforcement agencies or their individual members;
- treligious organisations and ethnic diasporas;
- tcommercial organisations.

In practice, the CAT has applied to all the above, but there was no interaction on an ongoing basis. We tend not to regard it as an absolute rule, and it is likely thatthese institutions can collaborate more effectively with the NGO in another region.

The CAT also closely co-operates with the Public Committee of Monitoring of Human Rights in places of forced imprisonment and provides assistance to people who are in places of forced imprisonment.

Several members of the CAT themselves are members of the Public monitoring committee and this makes it possible not only to obtain primary information but also to conduct effective checks on the complaints received from the detention facilities.

2.2.2. Methods of data collection

Before turning to basic forms and methods of obtaining information, we should discuss briefly the major differences in the work of law enforcement officers who are endowed with special powers by the State, and law enforcement officers that are not endowed with such powers. However, we shall see that our own absence of such authority is not a significant barrier to obtaining information of interest to us.

The first difference is that, while witnesses and victims may be obligated to give evidence to the investigation authorities (refusal may result in criminal liability), they are not obligated to give evidence to NGO employees. But this usually does not constitute a substantial interference for human rights activists, for an NGO, in contrast to law enforcement bodies, has great confidence in the population, and many people are willing to give oral or written explanations voluntarily. With witnesses on the part of the State, the situation is made more complicated, but there is also a way out. Nothing prevents the victim or his representative from making a formal request to the investigator to question the person. Refusal to grant such a request is illegal and can be successfully appealed.

In the case of the questioning of the said person, one can later read his testimony.

Secondly, citizens and the NCO, in contrast to the investigating authorities, may not access legally protected information.

However, during a public enquiry, this situation is only relatively rarely a significant obstacle. NCOs are very rarely interested in receiving information protected by the Official Secrets Act, but NCOs may be interested in receiving information on investigation secrets or patient confidentiality. In the first case (investigation secrets), access to such information can be received by a lawyer who works with the NCO and who represents the interests of the victim in criminal proceedings (to the extent that is allowed by law and as required by the lawyer to perform his tasks). Access to information of patient confidentiality can be accessed by a person whose state of health it directly refers to – and he also has the right to transfer this information to anyone.

As a rule, under the public enquiry, information on the health of the person complaining of torture is required, and since he is directly interested in the results of such an investigation, one can obtain the necessary medical information from him without problems. Of course, it should be remembered that the disclosure of information relating to investigation secrets or patient confidentiality may cause substantial harm to the interests of citizens and the State and result in negative legal consequences, such as a lawsuit.

Thirdly, NGOs cannot use some specific ways to collect and verify information. For example, they cannot conduct a search or seizure. However, a victim in a criminal case or his representative (lawyer of the NGO) has the right to submit a request for investigation and even to be present during it, as well as to see the results. The investigator's refusal to conduct investigative actions may be appealed to higher authorities, the Office of Public Prosecutions or the court. The victim and his representative may also appeal other actions or inactions of the investigator, and his decisions, and thus legally influence the investigating authorities.

Fourthly, the data collected by citizens and members of the NCO, in contrast to the data obtained by the investigator, will not constitute evidence in the framework of the Russian crimi-

nal procedure law. In accordance with the requirements of the criminal procedure law, collection of evidence is conducted by the person carrying out a preliminary investigation and only in the manner prescribed by the Criminal Procedure Code. However, there are ways to present data of the NCO in evidence. As part of the criminal process, any information collected by citizens can be sent to the investigating authorities and attached to the case materials. Information attached in such a way receives the status of evidence. There is another way: to send a petition to the investigator with the requirement to conduct an investigative action to preserve any information identified by the NCO. For example, it is possible to send an explanation of the witness which has been received by the NCO to the Office of Public Prosecutions, together with a petition for a formal questioning of this person. After he has been questioned, the reported data will become full evidence in a criminal case.

In order for the information received by the NGO to qualify as evidence, it is necessary to make considerable efforts and find very creative solutions – sometimes with elements borrowed from the operational-search activity arsenal. One example is the case of public enquiry of the complaint by Sergey Oleynik, which the CAT dealt with from 2000 to 2006. During the preliminary investigation, conducted by Kiryukov (the investigating prosecutor), two witnesses – Popov and Havroshechkin – testified in favour of police officers who had beaten the applicant. They claimed that they had seen how the police officers had taken some drunken men who had resisted arrest out of a store. In this case, one of the men – Oleinik – accidentally fell and hit his head on a manhole cover. This is how according to their testimony the injuries that the smart hell-raiser attributed to beatings inflicted by the police officers in order to avenge the latter really appeared.

During the investigation, the CAT members received reliable information that the testimonies of the witnesses were false. There was obtained a soundtrack of conversations between Hav-

roshechkin and Popov with their friends, from which it was recognised that they had given false testimonies, but since these testimonies suited the investigator Kiryukov (who gave them already filled-up protocols for signature), they did not see anything wrong with this. Although we knew that the witnesses lied – we had the tapes – they could not be used as evidence in the criminal proceedings. Transfer of these materials to the investigator Kiryukov also made no sense, because his investigation efforts had the actual purpose of shielding the criminals from punishment by stopping the criminal prosecution against them.

On October 25, 2001, Igor Kalyapin, the Head of the CAT, came into the store where Havroshechkin, a false witness, worked as a watchman, and asked him for an interview. The conversation took place in the office assigned by the store owner. All this official entourage was necessary so that Havroshechkin could not at a later point claim that he had been under pressure. During the conversation with Kalyapin, Havroshechkin confessed that he had given false testimony in the Office of Public Prosecutions, including with respect to the time of his duty in the store, which should have been registered in the duty book. He also explained that he had given this testimony under pressure from the district police officer (Major Nelidov). Evidence had been found, but it had yet to be received. Employees of the CAT had no right to cease their duties. Fortunately, by that time the CAT had concluded an agreement in co-operation with the Internal Security Directorate of the Department of the Russian Ministry of Interior in the Volga Federal District. We appealed to the district Internal Security Directorate for assistance. Employees of the Internal Security Directorate took over duties and additionally interviewed Havroshechkin. The resulting documents have been attached to materials of the criminal case no. 522616. The case was referred to the Office of Public Prosecutions of the Nizhny Novgorod region, which brought charges against the police officers and sent the materials to the court.

It should also be emphasised that the materials collected by the NGO may obtain the status of evidence in the context of international procedures for the protection of human rights. For example, the ECHR considers not only the evidence registered by State agencies, as evidence.

The documents and materials collected by the person who sent the complaint or by his representative, will be treated on par with the documents provided by the State. The ECHR itself estimates the effect of certain evidence, regardless of its formal origin, and it may be that the materials provided by the NCO will have more weight than the documentation submitted by the State respondent(s).

Sometimes the Court evaluates all materials of the official investigation critically, indirectly acknowledging their falseness. For example, in the case of Isayev, Yusupov and Bazaev against Russia (2005), which dealt with the shooting of a civilian convoy by military aircraft, the Russian authorities claimed that the pilots had aimed rockets at militants who had fired on the aircraft from the ground. However, no supporting material other than word-for-word matching anonymous explanations of pilots have been provided by the authorities for a long time. However, in four years, during the case there appeared references to inspection certificates of fighting machines by anonymous technicians who had allegedly recorded the presence of bullet holes in the body of the aircraft. With regard to these documents, the Court, having stressed the fact that they were contradicted by other evidence collected in the case, expressed the following:

«Pursuant to the decision [of the Military Office of Public Prosecutions to dismiss the criminal case] on 5 May 2004 with reference to the description of the damage caused to the aircraft by enemy fire, with approval of technicians. These documents were not provided to the Court and the Court reserves the right to question the reliability of the evidence, which appeared four and a half years after the events in question».

On the contrary, the ECHR can attach a very big importance to the evidence collected by the NGO. Thus, in the judgement of the Mikheev case, the Court devoted a special section («Informal enquiry into the events that took place on 10-19 September, 1998») to materials obtained by the CAT.

Thus, the practices of our own organisation and other NGOs show that our existing rights to gather information are sufficient to establish facts of torture, cruel treatment or other serious violations.

Below we will consider some of the methods of collecting information available for NGOs.

2.2.2.1. Questioning of the victim

The most informative source is, of course, the victim. Explanation of the victim is the basis, the core of the evidence base. It is the victim from whom we learn the information that must be proved or disproved during the public enquiry. That is why the questioning of the victim should be taken most seriously. From him you can get the most detailed explanation of what happened.

Before the questioning it is necessary to talk to the victim without keeping a written record of the information, to give him a chance to speak about the key elements of the problem for free. During the conversation it is possible to mark some details to which special attention may be given during the interview. After a description of the problem, it is advisable to find out from the victim what kind of help he hopes to get from you, and what goal he wants to achieve. At the same time it is necessary to explain the principles on which your work is based; in particular, to explain the principle of the protection of the public interest and the principle of constant obligations to the applicant. In addition, it is important to warn him that you will check the validity of his complaint and undertake the obligation to defend his interests in the Russian and international bodies

only if you find information supporting the complaint. This explanation will save you and the applicant from possible future frustration and misunderstanding.

The questioning of the applicant shall be continued only if he agrees with the methods of your NCO. Among other things, his agreement will indicate a lack of concern on his part that the check could establish facts that might disprove the version of events presented by him.

After this it is necessary to explain to him that everything he says will be recorded in writing, and his explanation may be sent to law enforcement agencies and the courts at any point in the future.

It should also be pointed out that the explanation is given on a voluntary basis, meaning that he can refuse to answer some or all of the questions on his own. In CAT, there has now been established the rule according to which the applicant confirms in writing such explanation - the signed statement text is contained in the explanation form.

It would seem that such an explanation is more of a formality, because the victims are almost always willing to tell what they know and to sign everything in writing in the explanation. But it is necessary to take this kind of signed statement from the applicant because it is impossible to predict the future development of the situation and the behaviour of the applicant. In truth, another man's soul is always dark: in the practice of the CAT, there were cases when the applicants subsequently claimed that they had come under pressure from the NCO or that they were deliberately misled by human rights activists. Such cases are especially likely to occur in situations when the appeal to you was initially motivated by a desire to avoid criminal responsibility, using the NCO as a tool to counter-attack the law enforcement agencies. A person may also be driven by selfish motives or motives of revenge. In most cases, when these goals are achieved (or, alternatively, an unscrupulous applicant is aware of inability to achieve them), he loses the desire to continue the work with the

NCO. There are cases where refusal to co-operate with human rights activists is a condition that is put forward by law enforcement agencies in exchange for the termination of the criminal prosecution of your applicant. If a lawyer of an NGO has even the slightest concern that the situation may develop in this way, you should consider the need for fixing the questioning with audio or video equipment. This will allow any accusations against you to be avoided.

The following shall be included in the written statement of the victim:

- data of the informant (last name, first name, date of birth, address of registration, current place of residence, phone numbers and other contact details);
- signed statement by the applicant which states that he gives his explanation voluntarily, he is advised that he does not have to give answers to questions and that he is willing to confirm what he has said before law enforcement and judicial bodies;
- information on the scene (the exact address or reference points that will identify the specific location);
- information on the date or time of the event (if the informant does not remember exactly, he can indicate approximately);
- detailed information about the event and the circumstances (reasons, reasons of the conflict, who applied violence, how what it was expressed, any special tools and other items whether they were used or not);
- details of the persons who were participants in the events or witnesses, the things by which they can be identified (if the names, positions, and similar data are not known, it is necessary to obtain a description of the persons: sex, age, clothing, hair colour, badges of rank if someone was in uniform, names, nicknames, radio calls in which the participants spoke to each other, colour, type and State numbers of automobiles, etc.);

- consequences of the conflict (the presence and nature of the injuries, witnesses who could see these injuries, the victim's subjective evaluation of their own state of health, the victim's subjective evaluation of the suffering that the incident caused them, whether medical assistance has been provided to the victim or not, whether the injuries have been recorded by medical personnel or not);
- legal situation (administrative, criminal prosecution of any of the parties to the conflict, whether the victim has applied to the police or not, the results of the consideration of the appeal).

During the explanation it is also necessary to establish the moment (time) of the receipt of the injury(ies), the time of their registration at a medical institution, and the period of time when the victim was under the control of the public authorities. Furthermore, in the case of non-identification of specific individuals who caused the injury(ies), clearly recorded time under control of the State or time of the infliction of the injury(ies), it will be possible to prove that the responsibility for the infliction of bodily harm lies with the State, which gives the right to claim compensation in the Russian court or the ECHR.

It is essential that the applicant has included his personal signature not only at the beginning (signed statement of the voluntary provision of this data) and at the end of the explanation, but in all its pages.

Attention should be paid to some features of the questioning of the victim:

- If the victim (or the witness) is a minor, we recommend interrogating him in the presence of his parents or legal representatives, who must personally indicate in the explanation that they were present during the questioning. If possible, a child psychologist shall be provided.
- If the person is in a pre-trial prison or place of imprisonment and the questioning is conducted by a lawyer, the lawyer should explain the rules of the questioning and its

purpose, and draw his attention to the circumstances which may be relevant to the investigation. We observe this because lawyers, in the course of their professional activities, are used to collecting evidence in defence of suspects and defendants. In our case, the applicant will be the injured party, and the collection of evidence has its own features, which the lawyer may not know.

- Questioning of an arrested or convicted person under investigation who is serving a sentence in a place of imprisonment can in extreme cases be made by mail. In this case, it is necessary to send a letter with the questionnaire. It is necessary to give a detailed description what of information is required by lawyers for verification in the questionnaire. You can also specify what information should be not described; otherwise you run the risk of receiving an entire autobiography with a detailed list of violations of the law which have ever been committed to the author of the letter.
- If the victim suffered sexual violence, the questioning must necessarily be carried out by a person of the same sex as the victim. Generally, in all cases, especially when the victim suffered serious psychological trauma, the victim should be interviewed in a more comfortable environment for him.

Of course, a separate room must be prepared for the questioning; water and a glass shall be provided, and at the request of the victim the opportunity to smoke shall be provided, etc. Needless to say, the behaviour of the person conducting the questioning should not only be correct, but of a most sensitive nature. You must make it clear to your interlocutor that you not only execute the formal duties of a human rights organisation, but are genuinely interested in the restoration of justice. Situations when your conversation is interrupted by other staff members are unacceptable. It would be very nice if before the questioning you can consult with a psychologist. However, a comfortable environment created for the respondent by you should not in the least affect the quality and completeness of the resulting explanation.

2.2.2.2. Questioning of the witness

Witnesses, as well as victims, are a source of important information. Their value lies not so much in the fact that the witness knows some more information (i.e. the circumstances of the use of unlawful violence are known usually to the victim), but the fact that he can confirm or refute the information provided by the victim.

Information obtained from the so-called disinterested witness is particularly important. The «disinterested» witness means a witness who does not have any personal, related or service relationship with the participants of the incident. It is clear that it is difficult to speak about the absolute accuracy of information you get from close relatives or friends of the victim, or, on the contrary, from colleagues of the suspect. In addition, it is very difficult to convince anyone of the disinterest of such witnesses.

The situation is different when the words of the victim are confirmed or refuted by, for example, explanations of emergency doctors who went to the scene, random citizens who expected public transport at the bus stop, or a pensioner who was looking out the window of her apartment and accidentally saw the moment of violence. Of course, it is difficult to establish and question such witnesses. But it is necessary to try to do it. If successful, you will get evidence which would be extremely difficult to challenge.

When carrying out a public inquiry at the request of a citizen called Chernev, there was established a witness who had been working in the garden near the place where Chernev had been violated during arrest. The police officers claimed that they had been forced to use violence against Chernev owing to the fact that he had resisted arrest. The eyewitness, however, clearly indicated that the victim had offered no resistance, lying on the ground face down, while one of the police officers had hit the victim's head with his hands.

In 2011, a citizen L. applied to the Committee against Torture. He said that criminal investigation officers had taken him to a deserted place and badly beaten him with a traumatic gunshot to the head. During the investigation, the officers claimed that they had not detained L., and that he had received the injuries in other circumstances. An eyewitness (neighbor of L.) found by the Committee staff indicated that these police officers had come to him and asked where L. had lived and what time he had been at home.

But absence of witnesses like those above is not a reason not to question those who may be perceived by the court or by the investigating authorities as interested persons. Despite the fact that the explanation provided by the victim can already make up a fairly complete picture of what happened, it is often the witnesses that can remember those details which the victim simply did not pay attention to or did not remember being in a stressful situation. When analysing the practice of the CAT, one comes to the conclusion that it is witnesses that best describe the appearance of people involved in the incident, remember brands and numbers of cars, remember the exact time of the incident or close to it. They can also point to other witnesses that are not known to the victim.

The questioning of a witness shall also include written records with an indication of all the data of the informant. The documentation is managed according to the same rules that apply to the questioning of the victim.

2.2.2.3. Medical documents and doctors' notes

Medical documents are very important for proving facts of torture or other cruel treatment. It is medical professionals and forensic experts that can fix the injuries.

The time of a visit to a doctor plays a very important role. It will be possible to determine the date and time of the infliction of bodily harm with greater accuracy the earlier the victim seeks

medical help. So if a citizen has appealed to you shortly after the use of torture and has not yet visited the doctor, you need to help him to do it as soon as possible. However, in most cases, the victims themselves visit traumatology centres or polyclinics in their place of residence. Doctors record the time of the visit, visible injuries, and the complaints of the patient. If necessary, they provide first aid and prescribe procedures for diagnosis and treatment, or sent the patient to another medical specialist.

If the patient informs the emergency centre doctor that he has been injured in a violent way, the emergency centre staff are required to report the incident to the police control room of the local police department. This is so-called «message 03». The police control room, having received such a message, should record information and send police officers for checking.

During the registration of a body injury in the emergency centre, doctors pay attention only to the location and type of injury. They do not describe any details of their size or colour. The doctor will also not make any conclusions about the remoteness of occurrence of these injuries. Therefore, the victim should be quickly sent to the bureau of forensic medical examinations, where the injuries will be recorded and evaluated by an expert. The examination is carried out not only by the decision of the investigator, but also at the request of any individual for whom there is a due fee in connection with the matter.

There are cases when the police officers themselves call for an ambulance for a detainee – usually in cases when the detainee's state is quite bad and they are afraid of being responsible for his death. In these cases, the injuries are recorded by doctors directly in the police department, and the police officers can no longer at a later time suggest that the victim was injured after he had been released. We should not forget that the emergency centre doctors will be also witnesses in this situation; notably those disinterested witnesses mentioned above. They can describe not only physical injuries, but also the psychological state of the patient, and distinctive traits and behaviour of the police officers,

as well as describe the information that they received from the patient. As practice shows, the emergency centre doctors are easy enough to persuade to contact the staff of the NGO and to provide explanations at a point the future.

Information on health is a patient confidentiality, and access to it is limited. The law allows the medical facilities and doctors to provide such information only to the person who has been treated, his legal representative (parents of a minor, guardians, close relatives of the deceased), and, if requested, the law enforcement authorities or court. The NGO employees do not belong to any of the above categories. Therefore, it is best to ask the applicant to use the right to information about his health himself.

In order to get a certificate or a medical history extract, a citizen shall appear in the medical institution, present an identity document and make a request in writing or orally.

Denial of such a request will be illegal, and it will be easily recognised as such by any court.

If it is necessary to get the information registered by the paramedic, it can be received at the ambulance station or in the central control station (CCS). At the request of the patient, he must be given a copy of the card of the ambulance call-out. This must indicate not only the diagnosis of the citizen, but also the time and place of treatment and information of the doctors. This information is very important as it helps to establish the time of the injury infliction, as well as witnesses among the medical staff.

2.2.2.4. Formal investigation materials

The study of the materials collected by the investigation authorities is an important part of the public enquiry. After having studied these materials, you can get the information that the NGO cannot collect itself. It may be, for example, the testimony, explanations or reports of law enforcement authorities,

responses to official inquiries, etc. This data will help to draw conclusions about the reliability of allegations of torture, and the quality of the official investigation. The latter is necessary to take timely legal action to correct its deficiencies.

Also, in the event that an appeal to the ECHR is in preparation the data on the measures taken by the investigation authorities may be needed to establish a breach of the positive obligations of the State (lack of an effective investigation). The materials of the official investigation include pre-investigation materials (checks of crime reports carried out pursuant to Art. 144-145 of the Criminal Procedure Code of the RF), materials of the official check, and materials of the criminal case (if it was initiated). The criminal procedure law and internal orders of the Prosecutor General of the Russian Federation provide an opportunity to familiarise oneself with the listed materials.

The right to familiarise oneself with the materials of the criminal case is granted to the victim and his representative. However, familiarisation with the materials is possible only after the pre-investigation check or preliminary investigation has been finished. During the investigation, the victim and his representative(s) have the right to familiarise themselves only with certain documents and obtain copies thereof. These include: the decision to initiate the criminal case, the decision on the recognition of the victim, the decision on the appointment of examinations, victim interrogation reports, and the protocols for other investigative activities involving the victim, or actions undertaken at the request of the victim.

The right to familiarise oneself with the pre-investigation materials is granted to the applicant i.e. the person (or organisation) through whose application this check is carried out.

The materials of the criminal case and materials of the check shall be available for the victim, his representative or the applicant to familiarise themselves with at their request. The law allows the denial of provision of such materials only if they contain information containing State secrets.

In other cases, the denial of provision of such materials is illegal and it can be effectively appealed. The submitted documents must necessarily be copied. Familiarising oneself with the materials using technical copying means (at the expense of the familiarising party) is also prescribed by law, and the denial of such copying would be illegal.

It is best to copy with the help of a digital camera, as this allows copies of a large number of documents to be made quickly and with good quality.

The copied documents should be fully studied for the following purposes:

- identifying data supporting or refuting the applicant's complaint;
- assessing the investigation from the point of view of compliance with Russian legislation and the planning of measures aimed at remedying the identified violations;
- assessing the investigation in terms of the performance criteria set by the ECHR.

2.2.2.5. Other sources of evidence

All information and principles described above can be referred to standard sources of evidence. But each situation to be faced by lawyers is unique. Therefore, we should not limit ourselves to the above list. Searching for sources of evidence should be performed based on the particulars of a particular situation. For example, video surveillance is very frequently conducted in cities right now (at their centres in particular). The cameras are located in public places and places with guarded objects. The information recorded in this manner may be useful in the provision of evidence if an incident has occurred in the field of view of the camera.

It should not be forgotten that the use of violation techniques by law enforcement agencies will only increase the interest of citizens who unwittingly witnessed such an event.

Such an incident can be recorded on a cell phone camera and posted on the Internet.

The sources of evidence may include various material traces. For example, having examined the trace of a car tread, forensic experts can determine not only the make of a car, but also identify it through comparisons. Studies of bullets and cartridge cases left at the scene makes it possible to determine weapons with absolute accuracy (if it is government-issue weapon), including which was used in a given shooting, and through itthe owner.

In 2009, Zainalov Apti was detained in Grozny. He resisted arrest. Police officers used a firearm, giving Zainalov a gunshot wound. After being detained, Zainalov disappeared. The officers who detained him have not been determined. During an examination of the scene, an investigator of the Investigation Committee could not find the bullet. The employees of the Committee against Torture questioned eyewitnesses to the detention of Zaynalov, who indicated the direction of the shot. An inlet opening was found in the wall coverage. The staff of the Committee made a motion to withdraw the bullet and send it off for examination. The petition was granted, but the bullet was highly susceptible to corrosion because the detention of Zaynalov was more than a year ago. If the bullet was suitable for the study, the weapon used in the shot could have been established via the bullet and shell casing repository, and with it the person to whom the weapon was assigned.

Biological traces: blood, saliva, semen, etc. have great evidential significance.

The practice of the Committee includes the case of Vitaly Isakov, an Israeli citizen, in which a case of cruel treatment was proven by the fact that blood stains of the victim were found on the wallpaper in the office of the criminal police and it was taken for examination in the place that he specified.

2.3. ALGORITHM FOR COLLECTION OF EVIDENCE OF TORTURE

As already mentioned above, the qualification of tortures in accordance with international law requires the establishment of a number of legally significant elements or quality features.

Below we give a list of possible sources of evidence for the purpose of checking and confirmation of each of these elements. However, it should be kept in mind that if certain elements of torture are not established, the violation may in certain circumstances be classified as another, less severe form of ill-treatment.

a) Infliction of pain and suffering

The facts of the infliction and extent of pain and suffering are established based on the subjective assessment of the victim, the assessment of the state of the victim on the part of his family and friends, and an objective assessment of medical experts.

Possible sources of evidence for this element can be:

- explanations (testimonies) of the victim;
- explanations (testimonies) of the witnesses (relatives, friends);
- medical documents confirming the presence of injuries or health problems, including a forensic medical examination; which must mention the time and the possible causes of said health problems or injuries;
- results of psychological and psychiatric examinations, which may reveal signs of excessive stress;
- explanations (testimonies) of doctors and other professionals who have assisted the alleged victim.

b) Participation of an official

In order to establish the presence or absence of this element, it is necessary to check whether the victim was under the

control of government officials at the time of violence: whether the victim was in a State institution, whether the victim was detained by law enforcement officials, whether the victim entered into contact with representatives of the State, whether he was aware of the fact that the violence was used by officials or by their instigation, or with their consent or acquiescence.

Possible sources of information can be:

- explanations (testimonies) of the victim;
- explanations (testimonies) of the witnesses;
- materials of the criminal case or pre-investigation check;
- medical documents or testimonial evidence establishing the period of time in which the injuries occurred;
- documents which include the time and date of the applicant's arrest by State representatives (the arrest report, the report of administrative violation, the detainees and delivered persons records, etc.).

c) Presence of a specific goal

In order to establish this element it is necessary to find out the purpose for which the violence was applied to the victim. This can be done by analysing the full body of collected information and taking into account the subjective assessment of the victim.

Possible sources of information can be:

- explanations (testimonies) of the victim;
- explanations (testimonies) of the witnesses;
- explanations (testimonies) of the officials (the materials of the criminal case, pre-investigation check, official check).

g) Illegality of actions

In order to establish this element it is necessary to check whether the victim was detained on suspicion of committing a crime or administrative infraction, whether the victim resisted arrest, whether the victim had weapons or objects on him that could have been perceived as a weapon, and whether the victim

tried to escape. It is also important to understand whether he was drunk or on drugs, whether he posed a risk to the life and health of police officers or other individuals, and whether the victim committed any action that might reasonably have provoked officials to use violence.

Possible sources of information can be:

- explanations (testimonies) of the victim;
- explanations (testimonies) of the witnesses;
- explanations (testimonies) of the officials (the materials of the criminal case, pre-investigation check, official check).

2.4. EVALUATION OF PERFORMANCE OF POSITIVE OBLIGATIONS TO INVESTIGATE VIOLATIONS BY THE STATE

The performance of obligations by the State can be evaluated with information of whether the victim applied with a complaint about the illegal actions of officials, and whether such a complaint was justified (whether the applicant provided at least some evidence of his allegations of human rights violations). It is also necessary to check whether statutory procedures and an investigation of the complaint were conducted.

It is necessary to consider what actions were taken as part of official procedures, in what terms and with what degree of thoroughness. In addition, it is important to take into account whether people responsible for torture were established, whether they have been convicted (and, if so, whether the punishment corresponded to the severity of the offence), and whether compensation was awarded and paid to the victim (and, if so, in what amount and whether it can be considered fair).

Possible sources of information can be:

- explanations (testimonies) of the victim;
- materials of the criminal case / pre-investigation check / official check;

- correspondence of the victim or his representative with the authorities;
- complaints and court decisions.

COMPLETION OF CHECK

Checking on the complaint can be considered complete once the organisation has collected enough evidence (in the technical sense of this term) in order to confirm or refute the allegation regarding the violation, or all sources of evidential information have been exhausted by the organisation in good faith but they were not enough to get the appropriate evidence of the violation.

We have already mentioned the procedure accepted by the CAT according to which an employee (inspector of the Department of Investigation), on the basis of his check, makes a report that contains references to the evidence obtained.

Since assesment of evidences, in any case, is subjective, there is a control mechanism: any report is subject to mandatory approval by the head of the organisation, and can be either approved or sent to the Department of Investigation for improvement.

If a positive report is approved, the full implementation of this material begins (based on the principle of constant commitment, see 1.3.3 (b)), which can be expressed both in legal support during the preliminary investigation and in the representation of the applicant's interests in national and international courts, conduct of campaigns, etc. It should be remembered that the completion of the check does not mean the completion of the collection of evidence – additional evidence may be obtained by the NCO at all stages of the public enquiry (see section 1.5). If a negative report is approved, the work on the case is terminated.

In any case, the applicant shall be notified of the results of the inspection of his complaint.

LIST OF ACRONYMS

CAT	the Committee against Torture
NSHR	the Nizhny Novgorod Society for Human Rights
MHG	the Moscow Helsinki Group
IAC NSHR	the Information and Analysis Centre of the Nizhny Novgorod Society for Human Rights
ECHR	the European Court of Human Rights
JMG	the Joint Mobile Groups
ID	the Investigative Department
ICRC	International Committee of the Red Cross
CPC RF	the Criminal Procedure Code of Russia
IC	the Investigative Committee
UN	the United Nations
OSCE	the Organisation for Security and Co-operation in Europe
NCO	non-commissioned officer
NGO	non-governmental organisation
CCS	the central control station

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PUBLIC INQUIRY INTO TORTURE

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Principles, method and practical recommendations

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