



Interregional Non-governmental Organization
“COMMITTEE AGAINST TORTURE”

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**Alternative report on fulfillment of obligations by Russian federation represented
with a limits of UPR review 2012.**

Since November 2009 the Joint Mobile Group (JMG) of Russian human rights organizations has been working in Chechnya.

The Group was created to obtain reliable and trustworthy information about human rights violations in the Chechen Republic and determine the reasons for ineffective investigation of tortures and abductions by Chechen investigative agencies.

JMG lawyers conduct public investigations under applications claiming recent tortures and abductions in that Russian region and represent victims under criminal proceedings in front of state authorities.

By recent we mean tortures and abductions which took place not in the active phase of the counter-terrorist operation, but in 2009 and later. At the same time, in each of these abduction cases major suspects must be Chechen law enforcers.

We submit all gathered evidence, as well as petitions requesting various investigative activities to the Chechen Investigative Administration of the Russian Investigative Committee. However, the Chechen Investigative Administration has repeatedly demonstrated its incapacity to carry out investigations, even with evidence collected by the Joint Mobile Group at its disposal.

The Chechen Interior Ministry personnel openly and persistently disobey investigators' orders and even oppose them, when the latter try to identify law enforcers involved in abductions.

The police refuse to take part in investigative activities; HR departments of the Interior Ministry and its regional offices fail to provide requested information. Systematic non-execution of investigators' orders by Chechen interior agents is a common thing. Moreover, the problem remains, even though the Chechen Investigative Committee heads draw attention of the Chechen Interior Ministry heads to the situation.

Thus, the investigation of instigated criminal proceedings is rather formal and often limited to sending request to various agencies. It usually results in suspension of

the proceedings on the grounds that the investigation is not capable of identifying perpetrators.

Besides, while working with criminal cases, JMG lawyers face numerous violations of different scale and nature.

The abduction problem is the real head ache of Chechen law enforcement authorities. Being aware of how common such crimes are, heads of law enforcement agencies (such as Interior Ministry, Prosecutor's Office, Investigative Committee) have published several interdepartmental decrees to facilitate solution, investigation and prosecutorial supervision of such crimes.

However, we regret to conclude that implementation of these norms, rather progressive in their essence, couldn't be worse.

Moreover, in March 2009 the Investigative Committee Chairman issued a decree establishing the second (now- third) special investigative department under the Chechen Investigative Administration to improve investigation of criminal cases, the procedural aspect of which had been challenged in the European Court of Human Rights. It is exactly this department that deals with the majority of cases supported by the Joint Mobile Group.

However, more than three years later, we have to admit that neither progressive departmental regulations, nor creation of a special investigative department have had any significant effect on the situation.

In its 5th periodic report to the UN Committee Against Torture the Russian Government commented on the situation with investigating abductions and tortures in Chechnya.

Inter alia, the report says that at the present moment the aforementioned second department (now third) is investigating into 206 cases of abductions, murders and disappearances (p. 365). At the same time, it is emphasized in the report that as a result of measures taken one can witness positive dynamics under certain criminal cases, in particular, facts are established with sufficient detail, there is information about alleged perpetrators. It is also mentioned that investigators do not confine themselves to a standard set of investigative activities in course of inquiry into abduction cases (p. 374).

Nevertheless, the reality refutes these statements with all the obviousness.

In fact, as we have noted *supra*, investigators do not perform and quite often do not have an opportunity to perform even standard and evidently necessary investigative steps, while a set of extra investigative activities is a pious hope contained in internal decrees. JMG lawyers cannot recollect a single case when those recommendations were implemented.

As part of their public investigation work, JMG lawyers are constantly appealing against unlawful procedural decisions issued by investigators either in the framework of checking allegations, or already after instigation of criminal proceedings; these appeals normally lead to quashing of illegal decisions.

Quite often unlawful procedural decisions are quashed by investigative authority heads on their own initiative, but only after JMG lawyers appeal to various instances.

This situation is aggravated by the fact that investigative authorities heads do not fully exercise their jurisdiction with regard to procedural control over the legality of criminal proceedings.

According to the Russian Code of Criminal Procedure, heads of investigative bodies have the power to "review the outcome of crime report checks, quash unlawful or unjustified decisions issued by investigators" (clause 2 of part 1, Article 39 of the Russian Code of Criminal Procedure).

Similar powers are laid down in various internal departmental regulations.

It is therefore obvious that heads of corresponding investigative bodies fail to perform their direct obligation by upholding unlawful refusals to instigate criminal proceedings in the context of procedural control.

It is not a rare case that unlawful and unfounded refusals to instigate criminal proceedings stay in force for months and are quashed by heads of investigative authorities only after applicants (or their representatives) appeal to court or other instances.

Such practice cannot but provokes bewilderment and vigorous disapproval. It seems that investigative heads either maliciously refrain from performing their duties with regard to procedural control and supervision, or do not quash unlawful decisions deliberately hoping that the applicant or his representatives, due to their legal illiteracy, will not appeal against them.

We find it absolutely necessary to take measures to eradicate this practice. Heads of investigative authorities ignoring their procedural control functions or committing omissions while executing their jurisdiction should be held disciplinary liable.

Another serious issue which catches the eye when you analyze the described practice is extremely poor commitment of the prosecutor's office to exercise its function of prosecutorial supervision. In the majority of cases unlawful decisions are quashed by investigative officials, although it is the prosecutor's office that should respond, as prescribed by law, to omissions of investigative bodies that fail to disclose procedural violations.

By the way, exactly for the above purpose, the prosecutor's office has recently got back its authority to directly quash unlawful procedural decisions. However, it is still not active enough in this field.

In course of their work JMG lawyers quite often witness violations of the victims' right to access to investigation findings. These violations manifest themselves both in refusals to provide the materials of criminal proceedings to the applicant, or in partial provision of documents, and namely, all documents except those classified as confidential in breach of the procedure stipulated by law. It must be separately noted that the investigative personnel repeatedly commits the same violations year after year. Besides, the fact that a certain procedural decision or omission is found unlawful does not guarantee that the same breach will not take place again.

Numerous procedural violations committed by Investigative Committee officials originate both from *mala fide* attitude of investigators towards their responsibilities and from the lack of proper control and supervision on the side of their superiors and prosecutorial workers at the pre-trial investigation stage.

All types of violations described above prompt that investigations carried with regard to allegations of torture and other forms of cruel treatment do not meet the effectiveness criteria. Issuance of unlawful procedural decision, denial of access to materials of checks – these are violations of the victims' right to access to justice.

The reaction of Russian authorities towards reports about problems with investigating into such category of cases is rather illustrative.

At the beginning of 2011 the Committee Against Torture prepared an analytical report describing systematic violations committed in the course of investigation into abductions in Chechnya based on the JMG's practice. The report was turned into an address requesting certain steps to be taken to remedy the situation and submitted to numerous addressees both on the federal and regional (Chechen) levels ranging from the Russian President to heads of major parliamentary fractions, including Investigative Committee and Prosecutor's Office heads.

Basically, all of the addressees merely forwarded our recommendations to the Investigative Committee and Prosecutor General's Office. As a result, responses on the merits were received only from the Chechen Prosecutor's office and Chechen Investigative Administration of the Investigative Committee.

The head of the second procedural control department of the Chechen Investigative Administration agreed with our conclusions in part by acknowledging the problem of systematic non-execution or improper execution of criminal investigator's tasks and orders by the operative staff. At the same time the head of the second

procedural control department claimed that *“measures taken had improved the situation by significantly decreasing the number of instances of non-execution, as well as formal or untimely execution of criminal investigators’ tasks and orders, thus promoting cooperation between investigators and field services”*.

The response signed by deputy Chechen prosecutor N.A. Khabarov differed from other responses by the degree of acknowledgement of existing problems. Thus, deputy prosecutor Khabarov stated the following: *“investigative agencies fail to promptly conduct exigent investigative activities, there is no proper interaction with the field force for the purposes of crime solution. Investigative Committee heads exercise almost no internal control with respect to criminal investigations. No concrete measures are taken to eliminate the violations which the prosecutor’s office points out to them. Those in charge of breaches, ineffective investigation are not held duly responsible. It has been also established that investigators of the Chechen Investigative Administration of the Russian Investigative Committee sometimes conceal crimes of abduction...”*

As a result of delayed instigation of criminal proceedings, investigative apathy and non-persistence, perpetrators escape prosecution and victims are not found.”

In response to one of deputy’s requests provoked by our address, head of the Prosecutorial Administration for supervision of procedural activities of the Russian Investigative Committee Antipenko noted that the possibility of promptly solving crimes at issue was lost *“at the initial stage”*, and therefore, their investigation *“presented extreme difficulty”*.

Having analyzed the responses, in June 2011 CAT lawyers prepared repeated addresses to the same people. The majority of them again simply forwarded the document to prosecutorial bodies and the Investigative Committee.

Head of the Chechen prosecutor’s office department for supervision of procedural activities of the Russian Investigative Committee Medvedev only informed us that in May 2011 *“during the coordination meeting of Chechen law enforcement heads held to discuss the problems of documenting, solving and investigating disappearances and abductions in Chechnya, measures had been taken to increase the effectiveness of criminal investigations, improve the disclosure rate, tracing of abductees and disappeared people, and facilitate interaction between investigators and the operative personnel”*.

Deputy head of the second procedural control department of the Chechen Investigative Administration for some reason referred to the practice of investigation into abduction between 2000 and 2005, i.e. during the active phase of the hostilities, although it had been clearly indicated in our address that we were speaking about abductions committed in 2009 and later.

At the same time Makeyev also mentioned *“poor operative support provided by Interior Ministry departments in Chechnya in the context of criminal investigations, non-execution of investigator’s orders requesting investigative and search activities, as well as formal approach towards performance of duties”*. Further Makeyev pointed to drastic changed with regard to non-execution of investigator’s orders and tasks by the operative personnel.

Upon the whole, the responses we have received, unfortunately, demonstrate that the Prosecutor General’s office and Investigative Committee do not understand or deliberately do not want (cannot) understand and solve the problem of ineffective investigation of abductions in Chechnya.

Apart from preparing reports, JMG lawyers have repeatedly discussed the problem of ineffective investigation both with law enforcement heads (Chechen Interior Minister R.S. Alkhanov, first deputy Chechen Interior Minister A.B. Yanishevsky, Chechen prosecutor M.M. Savchin, deputy Chechen prosecutor S.V. Shavkuta, deputy Chechen Investigative Administration head S.M. Pashayev) and Chechen president R.A.Kadyrov.

All of the aforementioned officials admitted the problem in full or in part and expressed their readiness to take steps for its eradication. However, in practice there

have been no positive developments with regard to investigation of abductions throughout the whole period of JMG's presence in Chechnya.