



Information Documents

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Twenty-third interim report by the Secretary General on the presence of the Council of Europe's experts in the Office of the Special Representative of the President of the Russian Federation for ensuring Human Rights and Civil Rights and Freedoms in the Chechen Republic

Period from 10 October to 10 November 2002

1. This is the 23rd interim report by the Secretary General on the activities of the three Council of Europe staff members providing consultative expertise to the Office of the Special Representative of the President of the Russian Federation for Ensuring Human and Civil Rights and Freedoms in the Chechen Republic.

I. SECURITY SITUATION

2. In October 2002, more violent attacks were carried out against representatives of the Chechen law-enforcement agencies and officials. On the other hand, an increasing number of large-scale special operations and other measures have taken place following the hostage-taking in Moscow in late October 2002. Security measures have been reinforced at checkpoints. The experts have subsequently been limited in their movements within the Chechen Republic.

II. POLITICAL SITUATION

3. On 13 October 2002, Mr Sultygov met with former deputies of the Chechen Parliament in the branch office in Znamenskoye. The Council of Europe experts were invited to the close of the meeting. A statement on **“Key Principles of a Political Solution to the Situation in the Chechen Republic based on the Social Accord”** drafted by Mr Sultygov was the basic document for the discussion. The statement underlined the need for a dialogue within the Chechen society that would lead to the adoption of the new Constitution of the Chechen Republic. The Public Consultative Council established under the auspices of the Joint Working Group PACE-DUMA was considered to have an important role to play in this process. Moreover, the statement calls for the founding of an “Agreement for a Social Accord” to be signed by all social and political components and citizens of the Chechen Republic.
4. A draft “Agreement for a Social Accord”, which appears as a political platform to unite members of the Chechen society around the referendum on the Chechen Constitution, is being circulated by the Office of the Special Representative to media, authorities and citizens around the Chechen Republic. Every citizen is invited to submit comments and subsequently to take part in the discussions on the Chechen Draft Constitution. According to the latest information, the referendum could take place in March/April 2003.

III. HUMAN RIGHTS

a. The State's obligation to protect everyone against terrorism

5. The federal forces, as well as law-enforcement agencies, have often been considered unable to provide security to civilians, in particular during the night. In addition, information from the Office and from Russian and Chechen NGOs confirms that through abuse of power members of the law-enforcement agencies and federal forces in particular contribute to the climate of insecurity within the Chechen Republic .
6. Decree No. 76 adopted by the Head of the Chechen Administration on 24 October 2002 and which aims at “ensuring legality and law and order on the territory of the Chechen Republic” should mainly be seen as a set of measures to improve co-operation between the competent authorities in the fight against terrorism. One of the major objectives remains the prevention of kidnappings by members of illegal armed groups or other criminals. The Council of Europe experts working in the Office of the Special Representative provided their own observations and recommendations on the draft Decree. A number of them were taken into account.

b. Lawfulness of anti-terrorist measures

7. The NGO “Memorial” highlighted that the anti-terrorist measures mentioned in the 1998 Federal Law on the Suppression of Terrorism make room for broad interference with a large number of human rights without clearly defined restrictions. Moreover, the law does not contain any clear territorial or time limits for the carrying out of special operations. In this connection, “Memorial” representatives underlined that the 1991 Federal Law “On the State of Emergency” should be fully applicable to the Chechen Republic as, according to them, it fully complies with the clarity requirements.

c. Prohibition of arbitrariness

8. According to information from the Office and from NGOs, special operations and other measures continue to generate serious human rights violations of civilians. All males between 20 and 40 years of age are suspected of being potential members of illegal armed groups. Representatives of the Chechen Ministry of Education indicated that students and pupils may also be subject to human rights violations during special operations.
9. The disappearance of people remains the major problem in the Chechen Republic. Measures taken by the federal forces and law-enforcement agencies during special operations and passport control measures result, in many cases, in the disappearance of civilians. The acting head of the Office of the Special Representative acknowledged that the Chechen Administration has no real power in this respect. It also appears that once a

person is allegedly involved in terrorist or illegal activities, very few efforts are made by the relevant bodies to check the veracity of the allegations, to determine the circumstances of his/her disappearance and to collect information on his/her whereabouts. For example, Mr Said-Magomed Imakaev was suspected of carrying out illegal financial activities aiding illegal armed groups, but his whereabouts were unknown.

10. When visiting the Shali district, the experts' attention was drawn to an example of a special operation carried out in Mesker-Yurt in early April 2002. 11,000 servicemen were involved whereas the village has a population of 9,000 inhabitants. The operation resulted in nine people being killed and 18 people going missing. A criminal case has been opened against the commander of the special operation. In addition, according to the Acting Head of Administration of the Shalinskiy District, 34 servicemen have been charged with violations of the law since June 2002.

d. Arrest and custody

11. Information from the Office of the Special Representative and from NGOs indicates that illegal arrests by masked men (increasingly at night) and illegal custody are far from uncommon. Cases have been mentioned, where suspects were held by the federal forces or by the rebels in illegal detention facilities for months. 300 such cases have been examined since July 2002.

e. Absolute prohibition of torture

12. People who had been detained in custody or their relatives complained about inhuman and degrading treatment and torture during their detention. The illegal detention of suspects is said to favour such a situation.

IV. RULE OF LAW

a. The prosecuting bodies

13. In the light of discussions between the experts and civilian prosecutors, including the Prosecutor of the Chechen Republic, and with special reference to the Recommendation of the Commissioner for Human Rights of the Council of Europe of 30 May 2002, access to the military premises by civilian prosecutors has been described as very difficult, if not impossible. Likewise, military prosecutors are said to be almost inaccessible to the population. Prosecutors refer to the federal law on military prokuratura, indicating that the military premises are accessible only to the military prosecuting bodies. A reform process of the military prosecuting bodies in the region is reported to be under way. Military prosecutors should be directly subordinated to the Prosecutor of the Chechen Republic.

14. An investigation into human rights violations allegedly committed by members of federal forces or law-enforcement agencies during special operations is very complicated as no less than 14 different structures empowered to arrest and detain a person may be involved. There is a prevailing feeling among the population that crimes allegedly committed by members of federal structures are left unpunished. It is also widely believed that prosecutors are reluctant to deal with such cases because they fear for their lives. Notwithstanding the Recommendation of the Committee of Ministers R(2000)19 “on the role of public prosecution in the criminal justice system”, Chechen prosecutors are not physically protected.

b. Functioning of the judicial system

15. Chechen courts have been functioning in difficult conditions since the re-establishment of the judiciary in the Republic in late 2000. According to the President of the Chechen Supreme Court, Mr Zaurbekov, serious criminal cases are still dealt with by courts located in neighbouring subjects of the Russian Federation, but the majority of cases are now examined by Chechen courts. The Chechen Supreme Court may also forward certain cases to the Supreme Court of the Russian Federation (in accordance with Section 31 of the Code of Criminal Procedure).

16. In the light of Committee of Ministers Recommendation R(94)12 on the independence, efficiency and role of judges, particular attention should be paid to the proper staffing of courts in the Chechen Republic. As indicated by Mr Zaurbekov, only 26 judges are working in the Republic whereas 75 judges are needed. Pending the setting-up of a Chechen Parliament, which would be entitled to elect judges, an Independent Judicial Commission has been created for this purpose.

17. The issue regarding the safety of judges has raised repeatedly since the judicial system was re-established. Mr Zaurbekov mentioned that special protection units are to be set up by the federal Ministry of the Interior in order to ensure the adequate protection of judges.

c. Protection of witnesses

18. The protection of witnesses is ensured to a certain degree by Sections 11(3) and 56(7) of the new Criminal Procedure Code in force since July 2002. Representatives of Chechen prosecuting bodies, as well as Chechen law professors, agree that provisions of the Criminal Procedure Code would be sufficient if they were adequately implemented. However, the Prosecutor of the Chechen Republic, Mr Kostyuchenko, feels that a special law on witness protection would be needed in the Chechen Republic.

V. EDUCATION

19. Ms Zinaida Uspayeva, First Deputy Minister of General and Professional Education of the Chechen Republic, stressed that in addition to the reconstruction of schools high priority should be given to improving teachers' qualifications. Further to UNESCO's assessment report on education in the Chechen Republic, Council of Europe assistance in the implementation of one of the projects would be most welcome.
20. Effective access to education is a major issue in the Chechen Republic. No accommodation centres are available, which results in pupils and students relying on transport ensured by schools or the university. However, severe restrictions to freedom of movement by the federal forces and alleged human rights violations by servicemen during special operations or at checkpoints may result in a denial of the right to education. These matters have been brought to the attention of the military authorities by the Chechen Ministry of Education, but no corrective action has been taken by the military forces.

VI. HUMANITARIAN SITUATION

21. Three major problems related to the return of internally displaced persons (IDPs) to their homes have been identified: i) the lack of stability and security in the Republic; ii) the lack of compensation for damaged or destroyed property by military action; iii) unemployment. The two latter issues were considered the most urgent issues by the Head of the Federal Migration Department in the Chechen Republic.
22. The general living conditions in the Temporary Accommodation Centres (TACs) visited by the experts could be described as relatively acceptable. However, IDPs accommodated in these centres lack medicines and clothes. New appeals have been made by the Federal Migration Department for increased international humanitarian assistance within the Chechen Republic.
23. The Federal Migration Department is responsible for the registration of IDPs eligible for admission in Temporary Accommodation Centres. However, this registration still lacks transparency and the criteria for the attribution of living quarters are unclear.
24. The delivery of passports to IDPs in the Chechen Republic remains a sensitive issue. Some people call for the setting-up of a special procedure.

VII. THE OFFICE OF THE SPECIAL REPRESENTATIVE

25. Mr Nurdi Sadiyevich Nukhazhiev is the acting Head of the Office of the Special Representative in Grozny. In order to increase the efficiency of the work of the Office, the legal department within the main Office has been divided into a civil law section and a criminal law section.
26. To contribute to the pro-active approach of the Office of the Special Representative, the leaflets containing the information on the existence of the branch office in Znamenskoye with the presence of the Council of Europe experts were made available in public places in the Nadterechniy District. The local newspapers also provided information on the activities of the Office of the Special Representative.