

Information Documents

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Addendum to the twenty-seventh 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 19 February to 13 May 2003
Additional information provided by the Secretary General

Executive summary

Security: *the post-referendum period is marked by the resurgence of violence after a couple of weeks of relative calm in the Chechen Republic.*

Human rights: *Regular reports about illegal arrests and detentions were documented, which, in a number of cases, have resulted in disappearances and extra-judicial killings.*

Rule of Law: *The Parliamentary Assembly urged the Russian authorities to intensify their efforts to bring to justice those responsible for human rights abuses, and put an end to the climate of impunity in the Chechen Republic.*

Democracy: *On 23 March 2003 a referendum was held in the Chechen Republic on draft Constitution and the draft laws on presidential and parliamentary elections. According to official results, an overwhelming majority of the Chechen population voted in favour of the draft Chechen Constitution. According to the Venice Commission, it can be considered as a first step leading to a further process of devolution of powers to the Republic on the basis of the possibilities offered by the Federal Constitution. Efforts are being undertaken by the authorities in the context of the "post-referendum process"; NGOs nevertheless maintain that the situation remains unsatisfactory.*

Humanitarian situation: *There are still reports about the forcible return of Chechen displaced persons from Ingushetia to the Chechen Republic. The Ingush authorities have undertaken active measures to address a number of humanitarian and human rights issues. As concerns Mr Arjan Erkel, Head of the Médecins sans frontières Mission in the Northern Caucasus, who was abducted in Dagestan in August 2002, the Russian authorities were called once again to use all their powers to help secure a positive outcome to this case.*

Introductory remarks

1. The present document provides additional information on the situation of democracy, human rights and the rule of law in the Chechen Republic, Russian Federation, for the period from 20 February to 12 May 2003 (see decision of the Ministers' Deputies of 10 October 2000, CM/Del/Dec(2000)725, item 1.7)¹.

I. SECURITY

2. The post-referendum period is marked by the return of violence in the Chechen Republic. Though no major incident was reported for two weeks after the referendum, reports of violent attacks against representatives of law-enforcement agencies, the military and civilians working for the federal and Chechen authorities are now again being recorded. Similarly, it was reported that, various operations were carried out by military, security and police forces on the same scale as before the referendum and these have led to a number of disappearances (see in particular Reuters, 07/04/03, Russian Informational Centre, 10/04/03, Prague Watchdog, 18/04/03 and 23/04/03; see also SG/Inf(2003)23).

3. On 12 May 2003 a truck loaded with explosives rammed into a compound of administrative buildings in Znamenskoye. More than 50 people were killed and several hundred injured. "The act... was directed at stopping the process of bringing about a political settlement to the situation in Chechnya", President Putin told a meeting of top government officials. "We cannot allow anything like this to happen, nor will we" (Ria-Novosti, 12/05/03; for Council of Europe reaction see also SG/Inf (2003)23)

4. The number of checkpoints has been reduced in Grozny and in the northern part of the Chechen Republic (Prague Watchdog, 01/04/03).

II. HUMAN RIGHTS

5. On 2 April 2003, the Parliamentary Assembly (PACE) urged Chechen fighters to immediately stop their terrorist activities and renounce all forms of crime. It also recommended that Russian forces be better controlled and discipline enforced: all relevant military and civilian regulations, constitutional guarantees and international law, including humanitarian law and in particular the relevant provisions of the Geneva Conventions and the protocols thereto, and the European Conventions on Human Rights and on the Prevention of Torture, should be fully respected during and after all operations (PACE [Resolution 1323 \(2003\)](#)).

¹ This information has been collected by the Monitoring Department of the Directorate of Strategic Planning (DSP).

As concerns sources of information, the last sentence of para. 1 of the Committee of Ministers Declaration of 10 November 1994 on compliance with commitments accepted by member States of the Council of Europe reads:

"the Committee of Ministers will take account of all relevant information available from different sources such as the Parliamentary Assembly and the [O]SCE". For more information concerning the Committee of Ministers monitoring procedures, consult documents [Monitor/Inf\(2003\)1](#) and [Addendum](#), also on the Committee of Ministers Web Site: <http://www.coe.int/cm>.

6. PACE also petitioned the Committee of Ministers by virtue of paragraph 1, first indent, of its 1994 Declaration on compliance accepted by member States of the Council of Europe and recommended that paragraph 4 of the Declaration be used with respect to the human rights situation in the Chechen Republic (see PACE [Recommendation 1600 \(2003\)](#); see the text of the [Declaration](#) which can be found in document [Monitor/Inf\(2003\)1](#)).

a. State's obligation to protect everyone against terrorism

7. Five suspects were arrested in connection with the suicide attack on the Chechen Government's building in late December 2002 (Interfax, 26/03/03; in this connection, see [SG/Inf\(2003\)2 Addendum](#), para. 7). On 4 April, after eight construction workers were killed in a bus explosion in Grozny (Oktyabr district), the Secretary General called for the perpetrators to be brought to justice without delay.

8. On 25 April, the Deputy Prosecutor General of the Russian Federation, Mr Sergey Fridinsky, indicated that over 150 people had been found guilty of terrorist activity in the Southern Federal District in 2002- 2003. He noted considerable progress in the eradication of terrorism in the area and added that regional law-enforcement agencies detained a large number of criminals (Interfax, 25/04/03).

9. Further to inspections carried out by the Russian Ministry of the Interior, it appears that corruption at checkpoints may explain their lack of efficiency (Interfax, 13/04/03 and Prague Watchdog, 01/04/03).

b. Lawfulness of anti-terrorist measures

10. Article 53 of the Chechen Constitution, contrary to the corresponding Article 56 of the Federal Constitution, does not contain a list of human rights that may not be restricted in a state of emergency. The Venice Commission expressed the opinion that, if it was decided to incorporate the human rights provisions of the Federal Constitution into the Chechen Constitution, this should be done fully and not selectively (Venice Commission, [doc. CDL-AD\(2003\)2](#), 17/03/03).

c. Prohibition of arbitrariness

11. In Article 17 of the Chechen Constitution, the right to life is qualified by a sentence "No one can be deprived of life arbitrarily". According to the Venice Commission, this reduces protection and might be interpreted as allowing the death penalty or even preventive killings in certain cases (Venice Commission, [doc. CDL-AD\(2003\)2](#), 17/03/03).

d. Arrest and custody

12. According to the Venice Commission, it is particularly regrettable that the reasons justifying the detention of a person are not indicated either in Article 19.2 or Article 45.2 of the Chechen Constitution. In this connection, PACE urged the Russian authorities to implement immediately the recommendations of the Council of Europe Commissioner for Human Rights (Venice Commission, [doc. CDL-AD\(2003\)2](#), 17/03/03; PACE [Resolution 1323 \(2003\)](#); see the Commissioner's Recommendation [CommDH/Rec\(2002\)1](#)).

13. The International Committee of the Red Cross (ICRC) has collected information on people who have disappeared after their alleged arrest and checked if they had been visited or registered by ICRC delegates. When this was not the case (after having obtained detailed information on the circumstances of the arrest with the permission of the relatives) the ICRC has approached the Russian authorities to seek information on the whereabouts of the arrested people. All such contacts have been made on a bilateral and confidential basis (ICRC, 24/04/03).

14. The Chairman of the Chechen Security Council, Mr Rudnik Dudayev, underlined that members of the federal military, security and police forces bear responsibility for many of the illegal arrests and detentions and, in a number of cases, subsequent disappearances. He indicated that servicemen enter populated areas at night and arrest people without identifying themselves and without saying where they are taking them. According to information he has provided, 215 people have been illegally detained or kidnapped in Chechnya since early 2003, 46 of whom were registered after the referendum. In this context, he underlined that orders regulating operations and detention of suspects issued by the Russian Prosecutor General and the military Command are not executed by federal servicemen. He considers that this situation hinders the normalisation of the socio-political situation in Chechnya and undermines the Chechen authorities' efforts to achieve stability (AFP, 24/04/03; in this connection, see *Le Monde*, 12/04/03). According to the International Helsinki Federation (IHF) and other international NGOs all evidence suggests that these are not only individual crimes committed by undisciplined servicemen, but the result of organised criminal groups within the state power structure. According to IHF, these groups function as "death squads" (see in particular [IHF](#), 03/04/03, Society of the Russian-Chechen Friendship (SRCF), 30/04/03).

15. Examples were given that, in the Naur district (northern Chechnya), arrested people are subject to systematic beating while in custody and/or promised a suspended sentence or amnesty if they confess to being members of illegal armed groups. Relatives of detained people can free them if they pay a ransom, the amount of which varies from one to two thousand US dollars. If people cannot afford to pay such sum of money, criminal cases are said to be fabricated against their relatives. They are mainly accused of possessing weapons and drugs. In some cases, the detained people disappear (see SRCF, 30/04/03 and Prague Watchdog, 29/04/03).

16. The Chechen security services continue to arrest Chechen displaced persons in the neighbouring Republic of Ingushetia (Prague Watchdog, 26/04/03; see also

[SG/Inf\(2003\)7 Addendum](#), paras 18 and 38). In response, the Ingush President, Mr Murat Zyazikov, has instructed his Minister of the Interior, Mr Akhmet Pogorov, to draft a report to the federal Minister of the Interior, Mr Boris Gryzlov. In this connection, Mr Zyazikov recalled that it is necessary for arrests to be made only after warrants have been issued so that no one from the Ingush Republic disappears without trace. Mr Pogorov indicated that, in 2002, the Ingush Interior Ministry started 16 criminal proceedings concerning abductions of people from tent camps who were allegedly members of illegal armed groups. In 2003, he expressed his opposition to the issuing of such arrest warrants and the number of disappearances has since decreased in 2003 (Prague Watchdog, 20/04/03).

e. Absolute prohibition of torture

17. The PACE Report on human rights in the Chechen Republic indicated that torture and rape are two very serious human rights violations which – NGO allege – are common in the Chechen Republic. However, it is extremely difficult to document them. Survivors of torture are usually so frightened of reprisals that they do not complain about their treatment in custody, especially not to the official authorities. Many bodies found in Chechnya bear unmistakable signs of some of the worst forms of torture, including the cutting off of ears, fingers and even limbs. In this context, PACE recommended that the Russian Federation authorise the publication of the reports of the CPT without further delay (PACE, [Resolution 1323 \(2003\)](#) and [Report](#), doc. 9732, 13/03/03).

II. RULE OF LAW

18. PACE recommended that, if the efforts to bring to justice those responsible for human rights abuses are not intensified, and the climate of impunity in the Chechen Republic prevails, the Committee of Ministers consider proposing to the international community the setting-up of an *ad hoc* tribunal to try war crimes and crimes against humanity in the Chechen Republic. It also urged the Russian authorities to ratify the Statute of the International Criminal Court without delay. In this context, PACE underlined that the European Court of Human Rights (ECtHR) cannot hope to cope effectively with systematic human rights abuse on the Chechen scale via individual complaints and called on member States to pursue all avenues of accountability with regard to the Russian Federation without further delay, including interstate complaints before the European Court of Human Rights and the exercise of universal jurisdiction for the most serious crimes committed in the Chechen Republic (PACE [Recommendation 1600 \(2003\)](#) and [Resolution 1323 \(2003\)](#)).

a. Functioning of the judicial system

19. PACE recommended that all those suspected of committing abuses be fully investigated and, if found guilty, severely punished in accordance with the law, regardless of their rank and position. In this context, it demanded better co-operation from the Russian authorities with national and international mechanisms of redress, both judicial and non-judicial (PACE [Resolution 1323 \(2003\)](#)).

20. On 21 April, the retrial of Colonel Yuri Budanov began in the North Caucasus Military Court in Rostov-on-Don. The lawyer of the victim's family asked that the military judge be removed and questioned the objectivity of the two "people's representatives" who accompanied the judge during the court session (Moscow Times, 22/04/03).

b. Functioning of the prosecuting bodies

21. PACE asked the Committee of Ministers to press for the immediate implementation of the recommendations of the Commissioner for Human Rights, with particular emphasis on the efficiency of the prosecuting bodies (PACE [Resolution 1323 \(2003\)](#); in this connection, see also documents [CommDH\(2003\)5](#) and [CommDH/Rec\(2002\)1](#)).

22. A new agreement has been reached between the Special Representative of the Russian Federation for ensuring human rights in the Chechen Republic and the military prosecuting bodies in order to redefine the role of the Joint Working Group (JWG) between both institutions (for more details, see PACE Report on human rights in the Chechen Republic, [doc. 9732 Addendum](#) and SG/Inf(2003)23).

c. Functioning of the police, security and military forces

23. According to the Head of the Chechen Administration, Mr Akhmad Kadyrov, command of the anti-terrorist operation should be transferred to the Chechen Ministry of the Interior. He suggested that this would be a step forward in order to know who kidnaps Chechen civilians. In this connection, he indicated that the Chechen police consist of 12,000 people. He believes that federal servicemen should intervene only when required (Interfax, 21/03/04; in this connection, see [SG/Inf\(2003\)2 Addendum](#), para. 8).

24. In this context, PACE recommended that, in so far as the security situation allows, federal troops be confined to their barracks or withdrawn from the Chechen Republic altogether (PACE [Resolution 1323 \(2003\)](#)).

III. DEMOCRACY

a. The draft Constitution and draft legislation on presidential and parliamentary elections

25. On 17 March, the Venice Commission made public its opinion on the draft Constitution of the Chechen Republic. The Commission assessed the text according to European democratic standards in the context of the specific conflict situation in the Chechen Republic.

26. According to the Commission, the draft gives the impression of a standard text which could be used for any subject of the Federation and not a text tailored to the specific needs of a conflict situation. The analysis of the draft Constitution has shown that it is mainly guided by the intention to emphasise the status of the Chechen Republic as a subject of the Russian Federation on an equal footing with

the other subjects. However, it would appear that the full opportunity to ensure the acceptance of the system by the local population may not have been taken into account. In particular, the powers the Chechen Republic enjoys by virtue of the Federal Constitution are not clearly set out in the draft. The strong concentration of powers in the hands of the President and the relatively weak Parliament may not facilitate the integration of the sceptical or hostile parts of the population into the political system.

27. According to the Venice Commission, this does not mean that the adoption of the draft Constitution cannot contribute to a future settlement. The draft Constitution, if applied, should provide the population of the Chechen Republic with the possibility of exercising constitutional rights. Although regretting that a bigger step was not taken, the Commission considered that this may be a first step leading to a further process of devolution of powers to the Republic on the basis of the possibilities offered by the Federal Constitution (Venice Commission, for more detailed information, see [doc. CDL-AD\(2003\)2](#), 17/03/03).

28. On 2 April, the Venice Commission made public its opinion on the draft parliamentary election legislation. Due to time constraints, the opinion only provides observations on certain provisions. A number of shortcomings have been identified and are listed in document [CDL\(2003\)21fin](#).

b. The holding of the referendum

29. On 26 March, the Chairman of the Chechen Election Commission, Mr Abdul-Kerim Arsakhanov, announced that 95.97% of the eligible voters voted in favour of the draft constitution, 95.4% backed the presidential election law and 96.05% supported the draft law on parliamentary elections. The voter turnout amounted to 89.48% of the registered population. In the PACE Report on the human rights situation in the Chechen Republic, it was recalled that the referendum was not observed by the Council of Europe, the OSCE - although an OSCE technical fact-finding mission was sent to the region - or the EU, mainly for security reasons, and that no assessment of the fairness of the referendum process was available. PACE Rapporteur on human rights in the Chechen Republic, Mr Bindig, indicated that conditions fixed by the Parliamentary Assembly in January 2003 were clearly not met and took note of critical comments made by NGOs. In this connection, the International Helsinki Federation (IHF) considered that the referendum was neither free nor fair and that official results were not credible (Interfax, 27/03/03; PACE Report, [doc. 9732 Addendum](#), 31/03/03 and IHF, 28/03/03).

30. According to the Spokesman of the Russian Ministry of Foreign Affairs, Mr Alexander Yakovenko, separate shortcomings and omissions in balloting were, in the view of international observers, of a technical nature. According to him, these defects were remedied as they arose, and failed to exercise a substantial influence on the expression of the Chechen population's will (Ria-Novosti, 25/03/03).

31. More recently, the Russian NGO “For Human Rights” lodged a complaint with the Supreme Court of the Russian Federation with respect to the unlawfulness of the constitutional referendum (Prima News, 16/04/03).

c. The post-referendum process

32. On 26 March, taking note of the early results of the referendum, the Committee of Ministers hoped that adoption of the Constitution of the Chechen Republic would pave the way for the formation of legitimate bodies of power through democratic and fair elections, restoration of peace, the rule of law and full respect for human rights in the region. On the same day, the Secretary General issued a press release in which he indicated that promises expressed before and during the referendum could be fulfilled, especially those of putting an end to insecurity, impunity, and disappearance of people (see doc. CM/Del/Dec(2003)833, [item 4.2.](#) and press release [No. 158](#)). On 28 March, the Director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR), Ambassador Christian Strohal, indicated that the referendum can only be considered a success if it is followed by a serious effort by all sides to engage in a sustained political process bridging the divide between Moscow and the Chechen people. He added that the violence, human rights violations and impunity that have characterised conditions in Chechnya can end only if the rule of guns is replaced with the rule of law (OSCE/ODHIR, [28/03/03](#); see also UN CERD).

33. However, one month after the referendum, Russian and Chechen human rights NGOs consider that the situation in the Chechen Republic remains unchanged, despite a return to peaceful life in the first two weeks after the referendum (Prague Watchdog, [23/04/03](#); see also para. 2 above).

34. In the meantime, the Russian and Chechen authorities continue to undertake new steps in the context of the post-referendum process, notably with respect to the future devolution of powers to the Chechen Republic and the adoption of a resolution on amnesty.

- Treaty between the Russian Federation and the Chechen Republic on the division of competences

35. When meeting the Head of the Chechen Administration on 27 March, the President of the Russian Federation singled out the drafting of a power-sharing treaty between the Federation and the Chechen Republic as a priority (President of the Russian Federation’s News Service, 27/03.03). On 26 March, the Secretary General recalled that the Council of Europe stands ready to provide assistance on this matter.

36. On 12 May 2003 President Putin signed an Order establishing a Working Group in charge of presenting to the President before 1 October 2003 proposals on draft of the aforesaid Treaty (President of the Russian Federation’s News Service, 12/03/03).

- Draft law on amnesty

37. On 28 March, the President of the Russian Federation, Mr Vladimir Putin, announced that a law on amnesty should be drafted for members of illegal armed groups. On 17 April, the Russian Deputy Prosecutor General, Mr Sergey Fridinsky, indicated that all participants in the armed conflict in Chechnya since 1993, both those who fought for the Chechen side and the federal side, will be eligible to be amnestied. The amnesty will be valid for convicted persons as well as those under investigation, except those who have committed major crimes, such as murder, terrorism, hostage-taking and abduction. If for some reason people eligible for the amnesty are unable to surrender to the authorities within six months, the period may be extended. According to the Russian Deputy Interior Minister, Mr Vladimir Vasilyev, the announcement of an amnesty will make it possible to integrate a considerable number of people into political life. He thus considers that the amnesty will prompt positive changes (AP, 28/03/03 and Interfax, 17/04/03 and 21/04/03).

38. On 24 April, the Head of the Chechen Administration, Mr Kadyrov, expressed its readiness to take personal responsibility for all matters relating to the upcoming amnesty in the Republic (Ria-Novosti, 23/04/03).

IV. HUMANITARIAN SITUATION

39. According to the PACE Report on the human rights situation in the Chechen Republic, one case of particular concern is that of a Dutch citizen, Mr Arjan Erkel, Head of Mission for the Swiss section of the NGO "Médecins Sans Frontières (MSF)" in the Northern Caucasus. He was abducted by three unknown gunmen on 12 August 2002 in Makhatchkala, the capital of the Federal Republic of Dagestan. More recently, the MSF President, Dr Morten Rostrup, called once again upon the President of the Russian Federation to use all his powers to help secure a positive outcome to this case (see PACE [Report](#), doc. 9732, 13/03/03 and [MSF](#), 12/05/03).

a. Return of displaced persons to the Chechen Republic

40. The United Nations Committee on the Elimination of Racial Discrimination (CERD) expressed its concern about reports that displaced persons have been pressured into leaving camps while conditions of safety are not ensured for their return to Chechnya. The Committee recommended that the Russian authorities take effective measures to ensure that the return of displaced Chechens to Chechnya be voluntary and takes place under conditions of safety and dignity (CERD, doc. [CERD/C/62/CO/7](#), 21/03/03). However, in a Report of April 2003, MSF concluded that the Chechen displaced persons living in tent camps in Ingushetia continue to be subject to forced return in a subtle, but extremely efficient way (see MSF Report, [April 2003](#)).

41. In April, during a meeting with representatives of humanitarian and human rights NGOs, the Ingush President indicated that a Human Rights Commissioner of the Republic of Ingushetia will be set up in the near future. The Head of the Ingush Immigration Service, Mr Mikhail Latyrov, was appointed to look into the cases of displaced persons whose names had been removed from lists allowing them to receive humanitarian aid. The Ingush President assured that Chechen displaced

persons living in tent camps in Ingushetia would not be forcibly repatriated (Prague Watchdog, 20/04/03).

b. Status of forced migrant

42. CERD was also concerned by the fact that Chechens who have sought refuge outside Chechnya in the Russian Federation are denied ‘forced migrant’ status. CERD encouraged the Russian authorities to take effective measures to ensure that no group is discriminated against in the granting of ‘forced migrant’ status (CERD, doc. [CERD/C/62/CO/7](#), 21/03/03).

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