



Information Documents

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Twenty-fourth 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 November to 4 December 2002

1. This is the 24th 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.
2. The experts visited the Gudermes and Naur Districts and went several times to Grozny. They also had meetings in Znamenskoye with local Heads of Administration. During their visits they met with a series of authorities (see appendix).
3. The experts also started carrying out weekly visits to Chechen villages to meet with the local population and the relevant authorities. They have visited so far the Mekenskaya village in Naur District and the Lakha Niovrie village in Nadterechniy District. All these meetings and visits were organized with the active assistance of the staff of the Special Representative's Office.

I. SECURITY SITUATION

4. The security situation has clearly worsened since the hostage taking in Moscow in late October 2002. The experts could witness that military movements within the Chechen Republic have remained intensive.

II. POLITICAL SITUATION

5. Reactions to the draft "Agreement on a Social Entente" initiated/promoted by the Special Representative, Mr Sultygov, seem to be contrasted. Some interlocutors feel that its effects will be of small importance whereas others are convinced that it provides a forum for discussion on the future Constitution. According to the Head of Administration of the Staropromyslovskiy district, in order to be effective such an agreement would have to be signed by influential individuals from all sides.

III. HUMAN RIGHTS

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

6. Controls at checkpoints within the Chechen Republic have been reinforced. The number of the special operations and targeted measures has increased. However, a number of representatives of the Chechen authorities and most of the population feel that these measures are partly contributing to the climate of uncertainty and insecurity in the Chechen Republic.
7. The number of authorities that take part in the fight against terrorism and other forms of criminality is very confusing for the Chechen population. Co-ordination between the Chechen civil authorities, the police, security and military forces is also described as very difficult. Mr Mausur Khamidov, Chechen Vice-Minister for security forces, indicated that the effective implementation of Decree No. 76 issued by the Head of the Chechen Administration is far from being guaranteed in this respect. Particular emphasis is put on the military bodies' reluctance to co-operate with the Chechen police. It has even been mentioned to the experts that the federal forces may prevent the Chechen police from protecting the population, especially at night. The findings of the Expert Group set up at the request of the Ministers' Deputies and tasked with examining the 1998 Federal Law on the Suppression of Terrorism confirm that the law may lead to such a situation. However, there are also good examples of co-operation between bodies involved in the protection of citizens against terrorism and criminality in general. Co-ordination mechanisms have been set up in some districts. The level of co-operation highly depends on the quality of personal relations established between heads of the relevant bodies.
8. Representatives of the police, security and military bodies underline that they would fail to protect the population against terrorism if no action, in particular economic and social measures, is taken to bring the life of the Chechen population back to normal.

b. *Lawfulness of anti-terrorist measures*

9. Representatives of the various bodies fighting against terrorism emphasized that the Russian law provides them with a broad margin of manoeuvre. In this respect, there is a general feeling among the local population and the legal professionals that anti-terrorist actions are not often conducted within the framework of the respect for the rule of law and that the protection of human rights is far from being a priority for the bodies

concerned. The findings of the above-mentioned Expert Group (para. 7) confirm that the Law on the Suppression of Terrorism does not provide sufficient borders and limits to counter terrorist actions, in particular concerning responsibilities and human rights.

c. Prohibition of arbitrariness

10. According to Russian law, arbitrary behaviours and disproportionate use of force by the Chechen police may result in disciplinary sanctions, including dismissal, and criminal investigations. FSB and military representatives also indicated that a similar department exists within their respective organ. However, there are few cases of disciplinary sanctions against servicemen and policemen. A number of members of the temporary Chechen police should have returned back to their original place of work in other parts of the Russian Federation while the contract of some servicemen has not been renewed since provisions of the contract had been violated. It is not stated what is the nature of those violations.
11. According to information from the Office and also received from the local population, arbitrariness seems to be due mainly to the lack of effective accountability mechanisms and to the dilution of responsibilities among the various security bodies operating in the Chechen Republic. The number of security bodies may contribute to the climate of impunity with respect to crimes allegedly committed by members of the federal structures.
12. The above-mentioned co-ordination mechanisms could be used to exert a collective supervision of alleged human rights violations committed by members of the police, security and military authorities. In this connection, interlocutors from the law-enforcement agencies, including prosecutors, agreed that Council of Europe legal texts would be useful and could serve as guidelines.

d. Arrest and custody

13. Some Chechen judges point to the fact that arrests should be authorized by the judiciary since the entry into force of the new Code of Criminal Procedure in July 2002: arrests are requested by prosecutors only on the basis of in-depth investigations and clear evidence of the involvement of a detainee in illegal activities. This is a step forward as it contributes to the reduction of the number of legally detained persons. However, the lack of judges may sometimes affect the full examination of requests for arrest.

14. Various authorities have informed the experts and by the local population that illegal arrests are frequently carried out by masked members of the federal forces, especially at night and early in the morning. These interventions are generally performed by federal bodies having jurisdiction in other Chechen districts than those in which reside the arrestees. Some representatives of the military authorities have acknowledged the existence of such cases in the Chechen Republic. Relatives are rarely informed of the arrest, the reasons for the arrest and the place where the person is held.

IV. RULE OF LAW

a. Functioning of the judicial system

15. In the light of Recommendation Rec(94)12 of the Committee of Ministers on the independence, efficiency and role of judges, it can be asserted that the Chechen judiciary still gives rise to a number of concerns.
16. As regards the independence of judges, it was indicated to the experts that non-judicial authorities exerted some pressure on judges, notably through “phone calls”.
17. The lack of judges is still very worrying. For instance, there is presently a single judge for both Naur and Shelkovskiy districts. Urgent measures are required in this respect.
18. Bailiffs attached to each district court in the Chechen Republic ensure the execution of judgements. However, judgements do not seem to be sufficiently carried out, mainly due to the lack of technical equipment and of financial means.
19. The fact that the number of cases examined has increased in some districts compared to last year shows that the Chechen population increasingly trusts the judiciary. Likewise, if complaints with respect to crimes allegedly committed by servicemen are transferred to the military courts, civilian courts may deal with cases relating to crimes allegedly committed by “servicemen under contract”.
20. According to the judges the experts met, training on the case-law of the European Convention on Human Rights remains absolutely necessary, as it would enhance the knowledge of European human rights standards.

b. Protection of witnesses

21. With reference to Committee of Ministers Rec(97)13 concerning intimidation of witnesses and the rights of the defence, it is felt by some judges that further appropriate legislative and practical measures should be taken to ensure that witnesses may testify freely and without intimidation. This will be especially necessary in view of the future processing by Chechen courts of serious cases presently dealt with outside Chechnya.

c. Functioning of the prosecuting bodies

22. Members of Chechen civilian authorities called upon the Council of Europe to invite the Russian authorities to establish the military prosecutor's Office for the Chechen Republic in the city of Grozny rather than in the Khankala military base. This could be seen as a step forward to ensure more independence to the military prosecutors working in Chechnya.

d. Functioning of the police, security and military bodies

23. Representatives of Chechen police and of the military bodies stated that training on European standards would be very useful for their work. Concerning the Chechen permanent police, a Special Police School has been set up in order to train young recruits. The groups of trainers are constituted by members of former Chechen temporary police units, composed of policemen coming from other regions of the Russian Federation. It appears that there is no practical training on the use of force and on limits to its use with regard to established human rights principles. In this respect, the experts were told that the situation in the Chechen Republic makes it very difficult to apply the principle of proportionality. However, some efforts have been made so that the objectives of the police can be pursued in accordance with European norms.

24. In the light of Rec(2001)10 of the Committee of Ministers on the European Code of Police Ethics, it should be noted that the existence of corruption at checkpoints has been confirmed by various representatives of the Chechen police and by many official and private witnesses. Although such cases are said to be difficult to detect, an internal supervisory body within the Chechen police may investigate them. However, the experts were told that the problem of corruption at checkpoints was more acute with respect to servicemen.

e. Bar Association and the profession of lawyer

25. The Chechen Bar Association was established through a federal law adopted in July 2002 with respect to the activities of lawyers. This law sets up a Federal Bar Association, which comprises all bar associations of the subjects (constituent entities) of the Russian Federation. Since the adoption of this law, there is a single bar association in each subject.
26. The experts were told that pressure is frequently exerted on lawyers working in Chechnya. This is particularly the case when lawyers are defending the rights of persons deprived of their liberty. Members of the law-enforcement body detaining their clients often threaten lawyers of arrest. It was indicated to the experts that two lawyers have also disappeared.
27. Access to legal assistance by the Chechen population is far from being satisfactory as there is a tremendous shortage of lawyers in Chechnya. Five districts have no lawyer at all.
28. Chechen lawyers suffer from a lack of technical and financial means. As a result, they are very often unable to represent their clients in court when the hearings are held outside Chechnya.
29. According to the President of the Chechen Bar Association, human rights training for lawyers and also human rights workers in Chechnya would be most welcome.

V. DEMOCRACY

30. The various authorities and citizens of the Chechen Republic feel the urgent need for a Constitution. On 4 December 2002 a draft Constitution was made public by the President of the Constitutional Commission. The referendum on the Chechen Constitution may be held in March or April 2003.
31. Representatives of the Chechen society tend to consider the process leading to the referendum as a step forward on the path to “democratic stability”. The Special Representative’s initiative with respect to an Agreement on a Social Entente might also be seen as a step in this direction as it provides elements for discussion on the type of society, which should emerge after the adoption of the future Constitution.

32. Representatives of the Chechen police have stated that they are ready to ensure security during the referendum, although security could only be effectively ensured at polling stations. Terrorist actions are not excluded.

VI. THE OFFICE OF THE SPECIAL REPRESENTATIVE

33. Two orders aiming at improving the work of the staff members were issued by the acting Head of the Office, Mr Nurdi Nukhazhiev. They deal respectively with rules concerning the reinforcement of working discipline of the staff members and the inventory of the material equipment in the Office.
34. The re-organisation process in the Office continues. The section of complaints' registration was mainly concerned.

APPENDIX

Meetings held between the Council of Europe experts and Russian and Chechen officials working in the Chechen Republic from August to 4 December 2002

Administration and Government of the Chechen republic

Mr Taus DZHABRAILOV, Deputy Head of the Chechen Administration
(September/October 2002)

Mr Mausur KHAMIDOV, Chechen Vice-Minister for security forces (November 2002)

Ms Zinaida USPAYEVA, First Deputy Minister of General and Professional Education of the Chechen Republic (November 2002)

Mr Shaid Akhmetovitch CHAPLUEV, Deputy Minister of General and Professional Education of the Chechen Republic (October 2002)

Mr Saypi UTSIYEV, Deputy Minister of the Ministry of General and Professional Education of the Chechen Republic (November 2002)

Mr Vakha NASUKHANOV, Advisor of the Head of the Chechen Administration for the security forces (November 2002)

Mr Hasan TAIMASKHANOV, Co-ordinator of the Constitutional Commission in the Chechen Republic (September 2002)

Mr Asu Khatuyevich DUDARKAYEV, Head of the Federal Migration Department for Chechnya (October 2002)

Civilian prosecuting bodies

Mr Nicolai Petrovich KOSTYUCHENKO, Prosecutor of the Chechen Republic until November 2002 (October 2002)

Mr Ramzan MAKHMUDOV, Deputy Prosecutor of the Chechen Republic (September 2002)

Mr Pyotr Kirilovich SERKOV, Prosecutor of the Nadterechniy District (November 2002)

Mr Boris MAMUKOV, Prosecutor of the Naur District (November 2002)

Judiciary in the Chechen Republic

Mr ZAURBEKOV, President of the Chechen Supreme Court (November 2002)

Mr Anarbek YANDAROV, President of the Court for the Naur and Shelkovskiy Districts (November 2002)

Bar Association

Mr Abdul Yakub KADYROV, President of the Chechen Bar Association (November 2002)

Civil society

Representatives of the Human Rights Centre “Memorial” (from the Grozny and Nazran Offices)

Pr. Akaev BAKHID, Director of the “Chechnya in 21st century” organisation

Ms ABDUKHADZHIYEVA, Head of the “Heart Hope” organisation (Chechen women and mothers)

Mr Deni YAKHYAEV, Director of the “Coalition” organisation

Educational Institutions

Mr Baudi Dadaevich BAKHMADOV, Dean of the law faculty, University of Grozny (October 2002)

Mr Lechi BACHAYEV, Head of Department of General Secondary Education of the Ministry of General and Professional Education of the Chechen Republic (November 2002)

Mr Abdurakhman KAIMOV, Head of Unit of General Secondary Education of the Ministry of General and Professional Education of the Chechen Republic (November 2002)

Mr Shamil ASABAYEV, Head of the Nadterechniy Department of Education (November 2002)

Grozny - Leninskiy District

Mr Vakha BATALOV, Head of Police Security of the District Police Department (November 2002)

Mr Evgeni Anatolevich IZGAROV, Head of the Operative Group of the District Police Department (November 2002)

Grozny - Ocityabrskiy District

Mr Adlan BETALGERIYEV, Chief of the Chechen police of the Oktyabrskiy District (November 2002)

Grozny - Staropromyslovskiy District

Mr Ramzan Hasanovich SHAPTUKAEV, Head of the District Administration (November 2002)

Mr V. TIZH, Deputy to the District Military Commandant (November 2002)

Mr A.A. BISULTANOV, Head of the District Police department (November 2002)

Mr C.T. ALIKHADZHIEV, Imam (November 2002)

Gudermes District

Mr Akhmed ALBASTOV, Head of Administration (November 2002)

Mr A.S. AKHMADOV, Deputy to the District Military Commandant (November 2002)

Lt-Col. Vasili Nikolaevich ANISHENKO, Commandant of the District Police Department (November 2002)

Mess. A. BELOV and O. V. SOBOLEV, members of the FSB (November 2002)

Mr Magomed ABUBAKAROV, member of the Council of the Southern Federal District (November 2002)

Nadterechniy District

Mr Sultan Mukhadievich AKHMETHANOV, Head of administration of the Nadterechniy District

(November 2002)

Mr Ibragim Aliyevich IDERBIYEV, Deputy Head of local administration of the Nadterechniy District (September 2002)

Shali District

Procuratura of the Chechen Republic of the Shalinskiy District

Local Administration of the Shalinskiy District

Temporary Accommodation Centres

Ms Makal Murtzaliyeva – Head of the Novatorov TAC in Staropromyslovskiy District, Grozny

Mr Ruslan Khomakiyev - Head of the Khmel'nitskovo TAC in Leninskiy District, Grozny

During this period experts also met with Chechen officials and inhabitants of the following Chechen villages: Mekenskaya, Bratskoye, Gvardeyskoye, Rubezhnoye and Lakha Niovrie.

Despite several requests from the experts, meetings could not take place with representatives of the military command and prosecuting bodies at the republican level.