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Torture in Russia: Main Problems and Measures Needed to Improve State Response to Torture

Torture, cruel or degrading treatment or punishment are prohibited by Article 21 of the Russian Constitution. But Russia's criminalization of torture as official misconduct does not meet international standards. Torture in Russia is outlawed by Article 117 of the Criminal Code (CC RF) which is not specifically applicable to officials, and by Article 302 of the CC RF which has a narrow effect in that it can be enforced against an investigating officer only if they use torture to obtain testimony. Article 286 of the CC RF is often used to hold law enforcement officials accountable for torture. Its provisions apply to abuse of office, and its part three mentions the use of violence or special devices as aggravating circumstances. In Russian law enforcement practice, torture is usually treated as abuse of office involving physical violence (Article 286, part 3, of the CC RF).

If torture has caused moderate or serious harm to health or death of the victim, law enforcement officers may face additional charges under Article 105 (murder), Article 111 (causing serious harm to health), and Article 112 (causing moderate harm to health). The absence of a dedicated article in the CC RF addressing torture as an official crime prevents the collection of accurate and transparent statistics which, in turn, hinders both a realistic assessment of the problem by the government and meaningful efforts to design measures capable of preventing torture and ill-treatment.

Nevertheless, the current legal framework still makes it possible to bring police and other law enforcement officers to justice for using torture. The biggest problem, however, is not the law but its enforcement. Most reports of torture do not result in criminal cases being initiated and investigations launched, and even where such reports are registered and proceedings opened, they often fall short of effective investigation standards.

The Investigative Committee is the government agency with a mandate to respond to, and investigate reported incidents of torture. This agency is responsible for investigating ordinary crimes as well as official misconduct. In the case of ordinary crimes, the Investigative Committee's officers rely on cooperation with the police, since the latter provide operational support of their investigative work. Indeed, the Investigative Committee's staff have to rely on police support even in dealing with official misconduct cases. In practice, this creates an institutional barrier to effective, good-quality investigations, because the Committee's investigators are expected to respond to torture complaints by prosecuting and bringing to justice their own colleagues and assistants in the police force.

Compliance with Effective Investigation Standards

This assessment of the effectiveness of investigations into reports of torture is based on actual cases in which Russian human rights NGOs have been providing assistance to victims. Rather than trying to cover all relevant issues, this overview focuses on those which are the most serious and urgent at the moment.

It is a well-established practice in Russia that the bulk of investigative work is carried out before a criminal case is officially instituted, namely at the stage of verification of a crime report. This stage which starts after a crime report is registered and precedes the official investigation is designed to check whether or not there are any signs of a crime committed. But in reality, this early stage is where the actual investigation takes place.

In order to understand the reason why conducting a criminal investigation outside the framework of officially instituted proceedings has become a common practice in Russia, one should look at criteria by which investigators' performance is assessed by their superiors. One of the criteria is that investigators must avoid at all costs instituting criminal proceedings unless the case has prospects of being supported by sound evidence and eventually leading to conviction in court. Therefore, investigators seek to avoid risks and make sure there is sufficient and reliable evidence before they institute official proceedings. In addition to this, at the verification stage, investigators are not bound by the Code of Criminal Procedure (CCP) provisions applicable to a criminal



investigation. This means that neither the individuals in respect of whom the verification is conducted, nor those who have reported a crime enjoy any procedural guarantees, while the investigator has no obligations towards them other than to notify them of the verification results.

In 2014, the Russian CCP was amended to further extend investigators' powers in the context of crime report verification. Article 144, part 1, of the Code of Criminal Procedure allows the investigator "*to obtain explanations and samples for comparative study, request and obtain documents and items, seize them in the manner prescribed by this Code, appoint a forensic examination, participate in such examinations and obtain expert opinions within a reasonable timeline, inspect the scene, documents, items and corpses, conduct examinations, request documentary checks, audits, inspections of documents, items and corpses, involve experts in such inspections, and issue binding written orders to the inquiry body to conduct operational search activities.*"

Although the amended CCP allows investigators to appoint and conduct expert examinations and inspect the scene at the verification stage, conducting the full scope of investigative procedures is only possible once a criminal case has been officially instituted. Most importantly, victims, witnesses and suspects in the proceedings enjoy the full spectrum of their procedural rights only after the criminal investigation is formally launched. This imbalance between the increased scope of investigators' powers at the pre-investigative stage vs. no increase in the rights of individuals reporting a crime can limit the guarantees of individual rights under the amended CCP.

Thus, investigators' extended powers are not matched by corresponding rights of victims, including victims of torture. At the crime report verification stage, affected individuals do not enjoy the official status in the proceedings which means that they are denied any rights normally granted to victims in a criminal investigation. The investigator, however, can appoint forensic examinations at the verification stage. It is a widespread practice to appoint forensic examinations without notifying the victims and thus deny them any opportunity to inquire about the decision to appoint such an examination, any questions asked of the expert, any findings from the examination, any decisions to conduct another examination, etc. Rather than increase the level of protection granted to citizens, the new regulations concerning the crime verification stage have the opposite effect of limiting victims' access to the investigation.

Therefore, few complaints brought against the police make it to the stage where a criminal case is instituted. But even if criminal proceedings are instituted, the investigation rarely meets the standard of effectiveness, as the key investigative steps are performed without the required thoroughness and promptness.

The case of Marina Ruzaeva. In 2006, Marina Ruzaeva, a homemaker in Usolye-Sibirskoe, Siberia, was invited to a local police department to help with the investigation of a murder case. On the police premises, Marina was tortured: the perpetrators handcuffed her to a bench, placed a bag over her head and tormented her for five hours, demanding information which they believed could help solve the crime. A criminal case was instituted against the police officers and an investigative experiment was set up, but it was not conducted in a timely manner and its design was flawed and unhelpful. In particular, the subject was a man who was physically much larger than Marina, a small and lean woman. Due to the manner in which it was conducted, the experiment demonstrated that a large man could not be handcuffed to a bench in the position that Marina had described in her testimony given to the investigator. The investigators used the finding from the flawed experiment to doubt Marina's testimony. But it turned out later that a person as small as Marina could be handcuffed to a bench in the described position.

Criminal investigators often fail to undertake even the most obvious investigative steps. In particular, in cases of police torture reports, investigators commonly fail to request police station surveillance camera footage promptly enough or, where no such footage is available, to conduct a proper inquiry or identify potential witnesses.

In **the case of Salima Mukhamedyanova (Chelyabinsk Region)** who complained in the Investigative Committee about beatings and rape at a police station, the victim's husband insisted that the investigator should request the station's surveillance camera footage, but the investigator failed to find and obtain such footage in time.

The principle of independent assessment of evidence is not respected in many investigations, particularly at the verification stage. This is especially true in cases where no evidence is readily available other than mutually exclusive testimonies made by police officers and their victims. The investigators tend to trust police testimony as reliable and dismiss the victim's testimony as either questionable or untrue. Making no effort to collect additional information, investigators usually refuse to open criminal proceedings.

At the verification stage, the investigator usually performs a routine set of actions aimed exclusively at revealing evidence that the investigator would find convincing for the court. In most cases, such evidence can be found more effectively by a full-fledged investigation launched after the institution of criminal proceedings. But

since investigators are afraid to be punished if the case is eventually dropped—and since they depend on police support for other investigations—they usually limit themselves to a minimum set of procedures at the verification stage and deny requests to open criminal proceedings into most reports of torture.

Right to File a Complaint about Torture

A new policy of screening all incoming reports has further undermined the effectiveness of investigations, often reducing them to a mere formality. Even before the 2014 regulations, internal policies allowed investigators to bypass CCP-required verification of incoming crime reports on formal grounds.

In 2012, the Investigative Committee adopted an internal *Instruction for Investigating Bodies (Units) of the Russian Investigative Committee on Managing the Receipt, Registration and Verification of Crime Reports (Russian Investigative Committee Order No. 72 of 11 October 2012)*. This instruction allows investigators to register an incoming crime report as a “citizen petition” which does not trigger a mandatory verification procedure under Article 144 of the CCP. This departmental policy effectively undermines the legally required procedure for evidence collection at the crime verification stage, such as inspection of the crime scene, appointment of examinations, collection of samples, etc. In the case of torture reports, this may result in loss of evidence.

The said Instruction delegates the decision on whether or not an incoming message should be registered as a crime report to the receptionist on duty responsible for making records in the Crime Report Logbook. This means that the receptionist is expected to qualify a reported incident or perhaps make a prompt check of a crime report to determine whether it is valid and should be registered as such. According to paragraph 20 of the Instruction, *"Statements and appeals which do not contain information on circumstances indicating the signs of a crime shall not be recorded in the logbook and do not require procedural verification in the manner provided for in Articles 144, 145 of the CCP. ... Such statements and appeals shall be registered as incoming documents and processed in accordance with the procedure established by Article 124 of the CCP or Federal Law No. 59-FZ of 2 May 2006 on the Procedure for Considering Appeals from Citizens of the Russian Federation, as well as the relevant administrative documents of the Investigative Committee."*

According to the CCP, determining whether an incident contains the signs of a crime is part of the verification stage designed to determine whether or not criminal proceedings should be instituted. This step, however, can take place once a crime report is registered. But the said Instruction pushes this decision to an earlier stage which precedes the registration of an incoming message as a crime report.

This approach leaves plenty of room for arbitrary interpretation. Moreover, by law, qualifying a certain act as a crime must take place during formal criminal proceedings, rather than at an earlier stage when a citizen's application is first accepted. The current practice has resulted in a situation where numerous reports of police violence, falsifications and other official crime never make it to the verification stage and are effectively excluded from the scope of the Investigative Committee's oversight. This practice also denies the citizens their right to complain about torture.

Another approach used by the Investigative Committee to avoid dealing with torture reports is forwarding them to the prosecutor's office for checking such reports by way of supervision. By doing so, the Investigative Committee delegates its statutory responsibility of conducting inquiries into crime reports to another agency which does not have this function. Instead of conducting crime verification under Article 144 of the CCP, the prosecutor's office launches an internal inquiry which does not guarantee prompt and thorough investigative actions. Meanwhile, traces of crimes disappear and perpetrators are given the opportunity to build an alibi, destroy evidence, and even put pressure on torture victims.

Even if a torture report is properly registered, other risks can emerge which undermine the right to complain – in particular, the risk for a torture victim to face criminal charges. Previously, criminal proceedings were often initiated against torture victims for alleged violent resistance to police authority, etc. Currently, in an increasing number of situations, criminal cases have been opened, investigated and sent to courts in which torture victims are charged with "false accusations."

By Russian law, anyone reporting a crime must be warned of liability for false reporting/false accusation (Article 144 of the CCP RF). This warning is made and documented as the crime report is registered. In conducting verification, the investigator needs to make a judgment on whether the crime report may be a false accusation. A number of verifications have resulted in criminal proceedings against the torture victims charged with false accusations. These charges have been based on the findings collected during the verification of their complaint about torture. A dangerous vicious circle has emerged, when an investigator, having conducted a substandard verification, refuses to initiate criminal proceedings into the incident of torture but instead uses the findings from their verification to prosecute the victim. The Public Verdict Foundation has recently been working on two cases of torture victims accused of false reporting, and there are more.

The case of Mardiros Demerchyan. In 2013, Mardiros Demerchyan was tortured and sexually abused on police premises. He had to be taken from the police station to a hospital in an ambulance. There are medical records in the case file confirming his injuries. However, no criminal proceedings were instituted against the police officers. Instead, criminal charges were brought against Demerchyan for false accusation. At the moment, the case against Demerchyan has reached court, but the policemen have not been brought to justice.

The case of Salima Mukhamedyanova. In 2016, Salima Mukhamedyanova was taken from her apartment and brought to a police station, allegedly for an administrative offense. On the police premises, the woman was beaten and raped. A criminal investigation was opened into the police officers, but after three expert examinations resulting in contradictory findings, the rape charges brought against the police were dropped. Instead, criminal charges of false accusation were brought against Salima, and the trial began on 23 November 2017.

The current practice of prosecuting victims of torture is a real threat to effective exercise of the right to file a complaint. Moreover, this practice can discourage victims of torture from reporting this dangerous crime and thus may contribute to its latency.

Victims who are currently in prison and choose to file a torture complaint face the greatest risks. Like other victims, they can face "false accusation" charges without any effective investigation into their complaint of torture. But even more often, complaining prisoners are subjected to physical violence.

Evgeny Makarov, prisoner at Colony IK-1 in Yaroslavl Region, was repeatedly beaten after filing a torture complaint together with two other prisoners (Ruslan Vakhapov and Ivan Nepomnyashchikh). His injuries and traces of beatings on his body were documented by PVF lawyer Irina Biryukova, and a report was filed with the supervising authorities — the Investigative Committee, the Prosecutor's Office, the Federal Penitentiary Service Office in Yaroslavl Region, and others – but no proper investigation has been conducted. The European Court of Human Rights has indicated interim measures in regard of Vakhapov, Makarov and Nepomnyashchikh as an urgent protection mechanism applied in exceptional cases such as torture. This is the second time that the Court has indicated interim measures in respect of Makarov; the other incident was on 15 December 2017.

Excessive and unreasonable use of disciplinary sanctions such as placement in punishment cells is another form of pressure on prisoners to discourage them from reporting torture. Thus, Vakhapov, Nepomnyashchikh and Makarov have been confined to punishment cells without the legally required prior health check-ups and disciplinary hearings. The total duration of their confinement in punishment cells significantly exceeds the 15-day limit.

On 7 August 2017, **Ruslan Vakhapov**, prisoner at Colony of IK-1 in Yaroslavl Region, was held in a punishment cell for 56 consecutive days with a break for one day when he attended court proceedings via videoconference. Vakhapov was repeatedly placed in a punishment cell for a variety of reasons, among them, not having a duty schedule displayed in a cell where Vakhapov was the only inmate.

Compensations

In recent years, the situation with awards of compensation by domestic courts to victims of torture has improved. While in the early 2000s, the average compensation stood at 40,000 rubles, recently it has increased several-fold: Russian courts have been awarding up to 200,000 rubles in compensation to victims, and between 500,000 to 1 million rubles to relatives of victims who have died as a result of torture.

Rehabilitation Programs

Russia has no government-initiated programs providing rehabilitation services to victims of torture. Rehabilitation includes, as one of its components, monetary compensation for non-pecuniary and pecuniary damages (e.g. costs of medical treatment, legal representation, and other expenses incurred as a result of torture). But in Russia, a victim of torture can apply to a court for compensation only after the law enforcement officers who tortured them have been tried and convicted, and their sentence becomes effective.



Some Russian NGOs offer psychological and/or medical assistance to victims of torture as part of time-limited projects, but NGO capacities and resources are insufficient for meeting the needs of all torture victims.

Some Measures Needed to Improve State Response to Torture

The law enforcement reform is ongoing in Russia. Creating an effective mechanism of torture response should be given priority as part of this reform. In order to be effective, such a mechanism needs to include, in addition to the establishment of a special agency authorized to investigate torture and other official crime, government-supported programs for torture prevention and victim rehabilitation. The process of building a torture prevention program should involve a collective effort of relevant experts from the government, academia and civil society, in particular NGOs specializing on these issues.

Below, we propose a few urgent measures which can be implemented within the current regulatory framework and public administration system.

1. Repeal paragraph 20 of the *Instruction for Investigating Bodies (Units) of the Russian Investigative Committee on Managing the Receipt, Registration and Verification of Crime Reports* (Russian Investigative Committee Order No. 72 of 11 October 2012) whereby the decision as to whether a torture report is valid is delegated to a receptionist registering the complaint. All reports alleging torture must be promptly registered for the investigation to begin in a timely manner.

2. Forego the verification stage and initiate criminal proceedings immediately if torture is reported.

The current CCP makes it possible to forego the verification stage designed to reasonably confirm that a crime may have occurred. By law, criminal proceedings must be instituted immediately without prior verification if dead bodies are found with traces of criminal violence and in cases of fatal incidents such as fires in institutions, catastrophes, etc. The same principle of launching a criminal investigation immediately should apply to any report of torture and to any situation in which criminal investigators learn about incidents of torture from mass media, Public Monitoring Commissions (PMCs) or lay citizens.

According to Russia's obligations before international human rights bodies, investigation into reported torture must begin promptly once such information is brought to the attention of the relevant authorities. Both the U.N. documents, such as the Istanbul Protocol, and those of the European human rights protection mechanisms, such as the ECtHR and the European Committee for the Prevention of Torture, confirm this standard of effective investigation. The need to act promptly to document traces of a crime for its proper investigation, to identify potential witnesses and impose interim measures, including preventive detention, search for witnesses and preservation of evidence, is obvious to the Russian investigative authorities and accepted as a professional performance standard. As far as the crime of torture is concerned, promptness of the investigation is often key to its effectiveness in terms of finding and bringing the perpetrators to justice.

If the applicant 1) has been in custody of a law enforcement agency (detained, transported, held in a police holding cell, pre-trial detention center, prison facility, etc.) and 2) has sustained injuries; or 3) a healthcare provider reports that a patient has signs of torture, the authorities must launch a criminal investigation immediately. In fact, at least one of the above conditions must be met.

2a. Steps must be taken, jointly with the law enforcement and judicial authorities, to promote alternatives to pre-trial detention. Recently, people suspected of official misconduct have been suspended from office and placed under house arrest rather than detained pending trial. This practice is reasonable and avoids having too many suspects held in pre-trial detention.

3. Launching a criminal investigation into every torture report is likely, on one hand, to increase the number of new criminal cases dramatically, and on the other hand, to lead to a number of cases being dropped. It is therefore necessary to reconsider internal performance appraisal criteria for criminal investigators so they feel free to terminate criminal proceedings, where appropriate, without fear of being sanctioned for it.

4. The investigating authorities, the Prosecutor's Office, the Ministry of Interior and other law enforcement agencies, jointly with the Ministry of Health, need to draft Guidelines on reporting suspected cases of torture and ill-treatment. Such guidelines should include a requirement for healthcare providers to report suspected torture and ill-treatment cases promptly to the investigating authority responsible for investigating torture.

The current guidelines require healthcare providers to report injuries which may be criminal in origin to the police. But in cases of suspected torture, the requirement should be to send such reports to the investigating agency authorized to investigate official misconduct. This will help ensure that investigations are impartial and any traces of crimes are preserved.

5. The investigating authorities, the Prosecutor's Office, the Ministry of Interior and other law enforcement agencies, jointly with the Ministry of Health, need **to provide appropriate guidance to medical professionals.** Doctors should not be required to determine, based on their judgment alone, whether or not they must report a certain case as suspected torture. Instead, they should follow an established protocol by asking the victim a set of questions based on an approved questionnaire and report the information to the investigating authority. A questionnaire form which healthcare professionals must use in interviewing a suspected torture victim should be codified and attached to the Guidelines.

The said torture victim questionnaire form must be developed jointly by the Ministry of Health, the law enforcement agencies, the Ombudsman, and specialist human rights NGOs. The questionnaire form should be informed by questionnaires, protocols and other guidance provided in the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, also known as the Istanbul Protocol, submitted to the U.N. High Commissioner for Human Rights on 9 August 1999.

6. Ensure in practice greater independence of the investigation at the institutional level. Investigators of police torture reports must be fully supported in their operation by the Ministry of Interior internal security offices and divisions. Relevant criminal cases must be transferred from local investigating authorities to those based in other districts or cities or to higher-level inter-district investigating departments. A formal procedure for case file transfer between different investigating authorities must be developed and binding policies adopted and circulated. This will help avoid a conflict of interest in a situation where suspected torture by local police officers is investigated by a criminal investigator based in the same district and relying heavily on police support for his investigations of common crimes. The current requirement of sending reports of official crime to a separate investigator in the same district is rarely observed in practice due to staff shortage. Sending cases of alleged police torture to neighboring districts/cities or to superior investigating authorities could at least partially resolve this conflict of interest.

7. Criminal investigation into torture reports must be informed by an official protocol designed specifically for this type of cases. Applicable Russian law contains all the rules needed to ensure effective investigation. The investigators only need to use the tools available to them and conduct relevant investigative actions thoroughly and professionally. The existing Guidelines for investigating official crime (Article 286, part 3) must be updated to include a new professional standard of investigation.

An official crime investigation protocol needs to be developed jointly by the law enforcement agencies, the Ombudsman and specialist human rights NGOs based on the Russian CCP and informed by protocols and other practice guidance provided in the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, also known as the Istanbul Protocol, submitted to the U.N. High Commissioner for Human Rights on 9 August 1999.

8. The official legal positions of the Russian Constitutional Court which fill the existing legal gap in the CCP to safeguard the rights of victims at the verification stage must be brought to the attention of the investigating authorities and, jointly with the Russian Supreme Court, to the attention of the judges, so that the relevant safeguards may be enforced in practice. The Constitutional Court has emphasized that an individual's legal status as a victim of a crime *"is established based on their actual circumstances, while any procedural decisions of the inquirer, investigator or judge or any court ruling granting them the victim status in the proceedings serve to formally document the victim's status rather than establish it. As the Russian Constitutional Court has repeatedly emphasized, the protection of constitutionally-guaranteed individual rights and freedoms in criminal proceedings is based on the presence of certain essential characteristics of the individual's actual situation and related need for rights protection, rather than on a formal recognition of their status in criminal proceedings, such as the victim status."*¹

Some Technical Steps:

9. Adopt and enforce the requirement that video footage from surveillance cameras at police stations, prison colonies, pre-trial detention facilities, etc., must be stored for at least 30 days.

10. Allow PMC members prompt access to video footage from surveillance cameras if injuries are found on inmates in places of detention.

¹ Judgment of the Russian Constitutional Court of 6 November 2014, No. 27-P on the Examination of the Constitutionality of Articles 21 and 21.1 of the Russian Law on State Secrets, in connection with the application from O.A. Laptev, and Judgments No. 11-P of 27 June 2000, No. 16-P of 14 July 2011, and No. 14-P of 25 June 2013; as well as Determinations No. 119-O of 22 January 2004, No. 1555-O-O of 17 November 2011, and No. 1258-O of 28 June 2012.

