

# Association of Russian Lawyers for Human Rights

## The Report for the Committee of Ministers of the Council of Europe about the tortures and the observance of article 3 of the European Convention by the Russian authorities

The monitoring from February to July 2012

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## **1. INTRODUCTION**

The Association of Russian Lawyers for Human Rights conducted monitoring of the observance by the Russian authorities of article 3 of the European Convention guaranteeing to each person that he/she shall not be subjected to tortures, inhuman or dishonoring treatment or punishment, as well as monitoring of obligations undertaken by Russian authorities to implement article 3 of the European Convention due to repeated instructions of the Council of Europe about the necessity to comply with the above article as well as due to decisions of the European Court of Human Rights with regard to the Russian Federation under cases “Mikheyev versus Russia” (European Court decision on complaint No.77617/01 dated 26<sup>th</sup> of January 2006), “Dedovsky and others versus Russia” (European Court decision on complaint No.7178/03 dated 15<sup>th</sup> of May 2008), “Kalashnikov versus Russia” (European Court decision on complaint No.4795/99 dated 15<sup>th</sup> of July 2002), “Fedotov versus Russia” (European Court decision on complaint No.5140/02 dated 25<sup>th</sup> of October 2005), “Ananyev and others versus Russia” (European Court decision on complaint No.42525/07 and No.60800/08 dated 10<sup>th</sup> of January 2012), as well as monitoring of taken measures of general nature on elimination of violations including creation of efficient means of legal protection at the national level, provided by article 13 of the European Convention, and prepared the present report for the Committee of Ministers of the Council of Europe exercising direct control over implementation by national governments of decisions of the European Court of Human Rights.

The monitoring was conducted by the Association of Russian Lawyers for Human Rights from the 15<sup>th</sup> of February to 31<sup>st</sup> of July 2012.

Within the frameworks of monitoring the specialists of the Association of Russian Lawyers for Human Rights received messages from all Russian regions about the facts of inhuman treatment and tortures.

The report represents an independent objective research containing information about observance by the Russian Federation of article 3 of the European Convention together with article 13 of the European Convention.

The present report is based on complaints and applications received by the Association of Russian Lawyers for Human Rights from all Russian regions by the “hot line” telephones: (495)968-30-44 and 923-34-98, by fax (495)916-75-85, by e-mail, mail, courier mail, in the course of personal meetings with the specialists.

On the 15<sup>th</sup> of February 2012 the Association of Russian Lawyers for Human Rights announced commencement of monitoring of information about the facts of inhuman treatment and tortures. The announcement was posted on the web site of the Association of Russian Lawyers for Human Rights [www.rusadvocat.com](http://www.rusadvocat.com), where corresponding section was created. The announcement was repeated many times by mass media, other human rights organizations, on web sites dedicated to protection of prisoners’ rights.

The report authors are independent experts, specialists in their field of activity, and pursue no political aims, do not have any personal preferences or hostile attitude with regard to persons mentioned in the report.

For the period from the 15<sup>th</sup> of February to 31<sup>st</sup> of July 2012, 170 applications about inhuman treatment and torturers were received by the Association of Russian Lawyers for Human Rights.

This report contains detailed description of the performed work results, reasons for violation by Russian authorities of article 3 of the European Convention, system problems of law

enforcement bodies, leading to violation of article 3 of the European Convention, provides specific examples and extracts from applications of citizens, including information about tortures and inhuman treatment.

All received applications were analyzed by the specialists of the Association of Russian Lawyers for Human Rights, complaints with documentary evidences are mentioned in the report.

The report contains recommendations developed by the specialists of the Association of Russian Lawyers for Human Rights for elimination of reasons of violation by the Russian Federation of articles 3 and 13 of the European Convention as well as recommendations on prevention of violations of article 3 of the European Convention by the Russian authorities.

## **2. KEY DEFINITIONS, CONCEPTS AND APPLICABILITY OF ART.3 OF THE EUROPEAN CONVENTION**

Before descriptive part of the report the key definitions and concepts provided for by article 3 of the European Convention and their applicability are to be described.

Torture, according to article 1 of UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment, means any action by which severe pain or suffering, physical or moral, is intentionally caused to any person to obtain from such person or from the third person any information or confession, punish for the action performed by such person or third person or in performance of which such person is suspected as well as to frighten or force a person or third person, or for any reason based on discrimination of any nature, when such pain or suffering are caused by a public officer or any other person acting in official capacity or through such officer's instigation or with such officer's knowledge and silent acceptance.

In this case the key aspect, without which the tortures cannot be qualified as such, is the purpose of the cruel treatment or punishment itself – to get from the person information or confession, other person's actions or inaction – there should be an evidence of availability of a certain purpose for the person applying tortures as well as intensity of applied cruel treatment.

According to the decision of the European Court under case “Ireland versus Great Britain” dated 18<sup>th</sup> of January 1978, the torture means intentional inhuman treatment causing serious and cruel sufferings, which purpose is to obtain information or confession.

Inhuman treatment, according to the decision of the European Court under case “Ireland versus Great Britain” dated 18<sup>th</sup> of January 1978, is the infliction of strong physical and moral sufferings; in this case there may be no purpose, which distinguishes inhuman treatment from tortures.

Degrading treatment, defined in the same decision, is the bad treatment, which purpose is to provoke the sensation of fear, pain and inadequacy in victims, which may humiliate and disgrace them and, probably, break down their physical or moral resistance.

Some authors, e.g. D.J. Harris, M. O'Boyle, E.P. Bates, C.M. Buckley state that article 3 of the European Convention guarantees to everybody absolute freedom from tortures and inhuman and degrading treatment or punishment, i.e. absolute guarantee [page 69, Law of the European Convention on Human Rights, D.J. Harris, M. O'Boyle, E.P. Bates, C.M. Buckley, Oxford University Press Inc., New York, 2009, Second Edition].

Absolute prohibition of tortures, inhuman, degrading treatment or punishment is the fundamental right of the human, in other words, it has no restrictions or exceptions according to

article 15 of the European Convention [page 210, 6.73, Taking a Case to the European Court of Human Rights, Philip Leach, Oxford University Press Inc., New York, 2011, Third Edition].

Any violence considered within article 3 of the European Convention shall meet the minimum level of cruelty, and depends on the total of case circumstances, e.g., duration of cruel treatment, physical or mental effect, in some cases victim's sex, age, state of health [page 210, 6.74, Taking a Case to the European Court of Human Rights, Philip Leach, Oxford University Press Inc., New York, 2011, Third Edition].

However there are conditions when application of violence by policemen, e.g. at the time of detention of a suspect is lawful and does not constitute act of cruel treatment, if a suspect "<...> intentionally resists arrest <...>", in this case "<...> the state bears responsibility for proving that applied force was not excessive and could not be less severe" [page 214, 6.87, Taking a Case to the European Court of Human Rights, Philip Leach, Oxford University Press Inc., New York, 2011, Third Edition].

Inhuman punishment means any corporal punishments, capital punishment, life imprisonment without the possibility to claim for release after certain period of time, punishment inconsistent with the action, e.g. when the period of imprisonment obviously exceeds the period, during which the person constitutes a danger for society. Here one shall follow the principle of proportionality, e.g. no life imprisonment can be sentenced for petty offence [page 91-92, Law of the European Convention on Human Rights, D.J.Harris, M.O'Boyle, E.P.Bates, C.M. Buckley, Oxford University Press Inc., New York, 2009, Second Edition].

### **3. GROUP OF CASES "MIKHEYEV VERSUS RUSSIA": BAD TREATMENT AT THE TIME OF DETENTION AND PERFORMANCE OF INVESTIGATIVE ACTIONS**

This category of cases includes violations of article 3 of the European Convention, committed by the authorities in the course of detention, transportation, performance of investigative actions in case of a person staying during first several hours, and sometimes days, in police departments and other investigation agencies (Russian Federation Investigative Committee (SK RF), Russian Federation Federal Security Service (FSB RF) etc.) within the frameworks of administrative or criminal action.

From the moment of actual detention, i.e. beginning of forced transmittal of a natural person for the purpose of restraint of violations or crime, identification of a violator, detention and other procedural actions, provided for by the Russian Federation Administrative Code (KoAP RF) and the Russian Federation Criminal Procedure Code (UPK RF), a person, as a rule, is accompanied by officers of police, Investigative Committee, operational departments, and the life and health of a detained person are fully controlled by the authorities.

According to the decree of the European Court of Human Rights under case "Mikheyev versus Russia" (Decree of the European Court under complaint No.77617/01 dated 26<sup>th</sup> of January 2006), the European Court set a number of standards provided for by articles 3 and 13 of the European Convention.

The European Court stated that a complaint of bad treatment shall be supported by corresponding evidences (see *mutatis mutandis*, Decree of the European Court under case "Klaas v. Germany" dated 22<sup>nd</sup> of September 1993, Series A N 269, p. 17 - 18, § 30). For evaluation of evidences within the frameworks of article 3 of the European Convention the European Court applies "beyond reasonable doubts" proving standard, where events under consideration are fully

or mostly known only to authorities as, for example, in case with persons being under their control under arrest, if at the time of detention these persons were hurt, there are reasonable suggestions regarding the facts. In such cases the burden of evidence is rested upon the authorities which shall provide satisfactory and convincing explanations (see Decree of the Grand Chamber of the European Court of Human Rights under case “Salman v. Turkey”, complaint No. 21986/93, § 100, ECHR 2000-VII). If authorities do not provide any explanations, the European Court can draw conclusions unfavorable for the defendant state (see Decree of the European Court under case “Orhan v. Turkey” dated 18<sup>th</sup> of June 2002, complaint No. 25656/94, § 274).

In these circumstances the European Court may draw corresponding conclusions about behavior of the Russian Federation authorities and consider the case on the merits based on applicant’s evidences and available materials, despite the fact that materials and information submitted by an applicant do not give a broad picture of all circumstances of the incident if the authorities refuse to provide any essential arguments.

In the above decree the European Court tells about the necessity to carry out efficient investigation by the Russian authorities as for violations of article 3 of the European Convention.

European Court noted that the lack of conclusions per se as a result of performed investigation does not prove its inefficiency: an obligation to carry out the investigation “is not an obligation to obtain the result, but an obligation to take measures” (see Decree of the European Court under case “Paul and Audrey Edwards v. United Kingdom”, complaint No. 46477/99, § 71, ECHR 2002-II). Not each investigation shall by all means be successful or end up with the results confirming the facts provided by an applicant; however it should, in principle, lead to identification of the case circumstances and if complaints turn out to be grounded – to identification and punishment of a guilty person (see, mutatis mutandis, Decree of the European Court under case “Mahmut Kaya v. Turkey”, complaint No. 22535/93, § 124, ECHR 2000-III).

Thus, investigation of serious complaints concerning cruel treatment shall be comprehensive, i.e. state agencies shall always attempt to find out what happened and shall not rely upon hasty or ungrounded conclusions and stop investigation or take some decisions based thereon (see Decree of the European Court under case “Assenov and others v. Bulgaria” dated 28<sup>th</sup> of October 1998, Reports 1998-VIII, § 103 and further). They shall take all available and reasonable measures to obtain evidences under the case, including, inter alia, evidences of eyewitnesses, results of forensic medical examination, etc. (see, mutatis mutandis, the above-mentioned Decree of the European Court under case “Salman v. Turkey”, § 106, ECHR 2000-VII; Decree of the Grand Chamber of the European court under case “Tanrikulu v. Turkey”, complaint No. 23763/94, ECHR 1999-IV, § 104 and further; Decree of the European Court under case “Gul v. Turkey” dated 14<sup>th</sup> of December 2000, complaint No. 22676/93, § 89). Any deficiency of investigation making it impossible to identify the origin of injuries or identities of guilty persons may lead to violation of this standard.

In the European Court’s opinion the investigation should be quick.

In cases concerning violation of articles 2 and 3 of the Convention, in which the efficiency of official investigation is of primary importance, the European Court often evaluates whether state agencies reacted to the complaint in a timely manner or not (see Decree of the European Court under case “Labita v. Italy”, complaint No.26772/95, § 133 and further, ECHR 2000-IV). The investigation starting time, delays in questionings (see Decree of the European Court under case “Timurtas v. Turkey”, complaint No. 23531/94, § 89, ECHR 2000-VI; and see

Decree of the European Court under case “Tekin v. Turkey” dated 9<sup>th</sup> of June 1998, Reports 1998-IV, § 67), as well as duration of preliminary investigation (see Decree of the European Court under case “Indelicato v. Italy” dated 18<sup>th</sup> of October 2001, complaint No. 31143/96, § 37) are to be taken into account.

The European Court indicated that in order to consider the investigation of complaint about assumed cruel treatment efficient, it should be independent (see Decree of the European Court under case "Ogur v. Turkey", complaint No. 21954/93, ECHR 1999-III, § 91 - 92; Decree of the European Court under case “Mehmet Emin Yuksel v. Turkey” dated 20<sup>th</sup> of July 2004, complaint No. 40154/98, § 37).

The European Court believes that investigation loses its independency if it is carried out by officers of a department or an agency to which the cruel treatment suspects belong (see Decree of the European Court under case “Gulec v. Turkey” dated 27<sup>th</sup> of July 1998, Reports 1998-IV, § 81 - 82). Investigation independence implies not only the lack of hierarchic or institutional connection but also the practical independence (see, for example, Decree of the European Court under case “Ergi v. Turkey” dated 28<sup>th</sup> of July 1998, Reports 1998-IV, § 83 – 84: in this case the prosecutor investigating murder of the girl as a result of supposed conflict between the security forces and Kurdistan Workers’ Party mainly relies upon information provided by gendarmes who took part in the incident).

The European Court came to the conclusion that if investigation is not adequate or efficient enough, the references of the authorities to unexhaustion of internal remedies, if violation of article 3 of the Convention took place, are rejected.

The European Court indicated many times that authorities must ensure physical inviolability of persons being under arrest. When a person is arrested in good state of health and has some injuries at the time of release, the state is obliged to provide reasonable explanation of such injuries’ origin (see Decree of the European Court under case “Ribitsch v. Austria” dated 4<sup>th</sup> of December 1995, Series A N 336, § 34; see also, *mutatis mutandis*, Decree of the Grand Chamber of the European Court under case “Salman v. Turkey”, complaint No. 21986/93, § 100, ECHR 2000-VII). Otherwise, the use of torture or cruel treatment to an applicant is presumed, and a question of violation of article 3 of the Convention arises.

The European Court indicated that article 13 of the Convention requires that in case of possible violation of one or several rights provided for by the Convention a victim of violation would have access to the mechanism to bring the state representatives and state agencies to responsibility for such violation. The negotiating states have certain limits of discretion as to the way to perform their obligations under the present provision of the Convention. According to general rule, if any remedy *per se* does not meet the requirements of article 13 of the Convention, the total of remedies offered by the national legal system can meet these requirements (see, among other sources, Decree of the Grand Chamber of the European Court under case “Kudla v. Poland”, complaint No. 30210/96, § 157, ECHR 2000-XI; see also Decree of the European Court under case “Conka v. Belgium”, complaint No. N 51564/99, § 75, ECHR 2002-I).

However, the scope of the state obligations under article 13 of the Convention varies depending on the nature of a complaint, and in some situations the Convention requires providing of a certain remedy. So, in cases concerning suspicious deaths or cruel treatment, considering fundamental significance of rights provided for by articles 2 and 3 of the Convention, article 13 of the Convention requires (in addition to payment of compensation, if necessary) to carry out comprehensive and efficient investigation to identify and bring guilty

persons to responsibility (see Decree of the European Court under case “Anguelova v. Bulgaria”, complaint No. 38361/97, § 161 - 162, ECHR 2002-IV; see the above-mentioned Decree of the European Court under case “Assenov and others v. Bulgaria”, § 114 and further; Decree of the European Court under case “Suheyly Aydin v. Turkey” dated 24<sup>th</sup> of May 2005, complaint No. 25660/94, § 208).

The European Court believes that a person may count on compensation for material damage according to the national legislation, and it does not deprive such person of the right to get compensation according to article 41 of the Convention. The European Court may consider the questions even if similar process is continuing at the national level; any other interpretation of article 41 of the Convention would make this provision inefficient (see, *mutatis mutandis*, Decree of the European Court under case “De Wilde, Ooms and Versyp v. Belgium” dated 10<sup>th</sup> of March 1972 (just compensation), Series A, N 14, § 14 and further).

The European Court also points out that there must be obvious casual relationships between the damage claimed by the victim and violation of the Convention provision, and that such damage in some cases may include payment of compensation for lost earnings (see Decree of the European Court under case “Barbera, Messegue and Jabardo v. Spain” dated 13<sup>th</sup> of June 1994 (just compensation), Series A, N 285-C, § 16 - 20).

Or when there is connection between the identified violation and reduction of an applicant’s income and his/her future medical expenses (see Decree of the European Court under case “Berktoy v. Turkey” dated 1<sup>st</sup> of March 2001, complaint No. 22493/93, § 215, where the European Court did not identify the casual relationships between the cruel treatment of the applicant and his psychological problems).

The European Court indicates that careful calculation of amounts required for complete compensation (*restitutio in integrum*) of material damage caused to an applicant can be complicated due to essentially unidentified nature of damage arising out of this violation (see Decree of the European Court under case “Young, James and Webster v. United Kingdom” dated 18<sup>th</sup> of October 1982 (just compensation), Series A, N 55, § 11). Nevertheless, compensation can be awarded despite many factors which cannot be taken into account and connected with calculation of future losses, although an increasing time gap makes the relation between the violation and caused damage less obvious (see Decree of the European Court under case “Orhan v. Turkey” dated 18<sup>th</sup> of June 2002, complaint No. 25656/94, § 426 and further). In such cases one shall make a decision about the amount of just compensation, considering the caused or potential material damage, to be awarded to an applicant, which shall be determined by the European Court at its discretion based on principle of justice (see Decree of the European Court under case “Sunday Times v. United Kingdom” dated 6<sup>th</sup> of November 1980 (just compensation), Series A, N 38, p. 9, § 15; Decree of the European Court under case “Lustig-Prean and Beckett v. United Kingdom”, complaints No. 31417/96 and 32377/96, § 22 - 23, ECHR, 2000).

The specialist of the Association of Russian Lawyers for Human Rights note that violation of article 3 of the European Convention is of mass nature with regard to participants of protest actions and, as a rule, is committed by Russian authorities in the course of detention within administrative cases.

## **Beating of civil activists during actions in defense of article 31 of the Russian Federation Constitution “Freedom of assembly” of Strategy 31<sup>1</sup> in Triumphalnaya square in Moscow**

According to the complaint of Valery Tsaturov on the 31<sup>st</sup> of May 2012 during protest action in Triumphalnaya square in Moscow in defense of article 31 of the Russian Federation Constitution “Freedom of assembly”, article 11 of the European Convention, a civil activist was detained without resistance by the policemen with application of physical strength and put into the passage of a police bus, where he was beaten by policemen.

According to Valery Tsaturov he was hit on the head by the back of hand with simultaneous hits in the stomach. When Valery Tsaturov was about to faint, he was put to other detained persons, who were in the second section of the police bus: room with tinted glass, stuffy, not ventilated, with grating at the exit, with about twenty detained persons. According to the complaint of Valery Tsaturov, after staying in stuffy tight place he addressed the policemen with the request to call ambulance as he felt dizzy and sicken, which was ignored by the policemen. According to Valery Tsaturov, within several hours he had not been receiving medical aid, moreover, despite the faint, nausea, the policemen forbade to open windows in the bus and didn't allow other detained persons to leave the bus. According to Valery Tsaturov, he managed to call ambulance by himself and doctors, who arrived to “Krasnoselskoe” District Department of Internal Affairs (OVD) where the police bus was, examined the activist and hospitalized him with suspected a closed craniocerebral injury and brain concussion to Moscow hospital, therapeutics department. According to the complaint, the doctors of the hospital, despite Valery Tsaturov feeling sick, didn't confirm the brain concussion and a closed craniocerebral injury. As explained by Valery Tsaturov, he had fever, he felt nausea and was occasionally fainting, for examination he was brought on stretchers as he could not stand and walk by himself due to strong headaches, dizziness and nausea, still staying in therapeutics department.

According to the complaint of Valery Tsaturov, he had to change hospital with the help of his relatives to a medical establishment of another Russian Federation subject, where a week later the brain concussion and closed craniocerebral injury was diagnosed and corresponding treatment was prescribed.

Despite the application of Valery Tsaturov to authorities as for beating by the policemen and non-delivery of medical aid, Russian authorities refuse to acknowledge the fact of beating and non-delivery of medical aid. Complaint of Valery Tsaturov is in the European Court of Human Rights.

Beating of political activists by policemen during “Strategy 31” actions in Triumphalnaya square in Moscow is confirmed by the civil activist **Sergey Konstantinov** who uses sports and motorcycle protection under the clothes and protecting head with sports helmet for personal safety during actions.

## **Beating of peaceful citizens during protest action on the 6<sup>th</sup> of May 2012 in Bolotnaya square in Moscow**

Currently we are still receiving complaints about the beating by policemen of peaceful citizens, journalists during protest action in Bolotnaya square on the 6<sup>th</sup> of May 2012. There are invalids, women, elderly people who were detained by policemen with acts of force. However, the citizens are afraid of telling this in public due to the threat of being arrested and accused of

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<sup>1</sup> **Strategy 31** – All-Russian civil movement in defense of freedom of assemblies in Russia (translator's note).

organization and participation in disorders in Bolotnaya square on the 6<sup>th</sup> of May 2012 in Moscow. Also the citizens inform that they see themselves and their friends in bulletins distributed by policemen, confirming their presence in Bolotnaya square: such bulletins contain splitting into scenes of pictures and video materials with poorly visible faces of suspects, but the mass nature of the bulletins distribution proves that detention of peaceful citizens will last long.

The specialists of the Association of Russian Lawyers for Human Rights note that most complaints about tortures, cruel, degrading treatment and punishment were received from Primorsky Kray.

### **“Primorskie Partisany”<sup>2</sup>**

#### **1. Alexey Nikitin**

One of the defendants under “primorskie partisany” case Alexey Nikitin applied to the Association of Russian Lawyers for Human Rights in connection with the gross violation of his rights and freedoms. From the application the specialists learned about tortures applied to Alexey Nikitin.

Alexey Nikitin’s application contains information that from 29<sup>th</sup> to 31<sup>st</sup> of July 2010 he underwent tortures after applying to police with regard to “protection” by corrupted representatives of law enforcement agencies of distribution of drugs in Kirovsky district of Primorsky Kray, corruption in the district, photo and video materials about luxury houses and cars of employees of law enforcement agencies.

The application describes first three days after detention, which Alexey Nikitin spent with law enforcement officials in ORC-4 premise. According to the complaint, in order to make him refuse from application to police, one put gas mask on Alexey Nikitin’s head, who suffers from asthma, inserted dusters in the gas mask hose and put them on fire: Alexey Nikitin inhaled the combustion products within many hours. Among tortures Alexey Nikitin named beating, rupture of muscles during forced leg-split, putting a plastic bag on the head. At the same time the blows and traumas were recorded by doctors according to application. Alexey Nikitin also informed that he had three hours a day to recover himself: during this time he was chained to the radiator by wristbands.

According to application after delivery to detention facility, humiliation didn’t stop: the prisoner was in a separate cell, in basement with no natural light. Alexey Nikitin was tortured: one watered him from the hose when he was in a punishment cell, filling the basement covered with fungus with water to the ankle level. Alexey Nikitin informed about the low temperature in the cell, sewerage wastes. Alexey Nikitin also informed that he was blackmailed by the beating of his pregnant wife to obtain required evidences; they put him on his knees on the window sill of detention facility threatening to throw out of the window and represent it as a suicide. In his application Alexey Nikitin explained that cruelty towards him was based on his political activity. As it became known from the application the tortures followed the application and collected evidences that corrupted representatives of law enforcement agencies protected the growing of hemp in Kirovsky district of Primorsky Kray and controlled distribution of hard drugs among population.

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<sup>2</sup> **Primorskie Partisany** - unofficial name of a group of 6 persons accused of bad crimes in Primorsky Kray, in particular, against officers of law enforcement agencies in February – June 2010 (translator’s note).

In his application Alexey Nikitin informed that after seizure of all computers during searches, photos, video and audio materials conforming his words and words of other activists disappeared. Alexey Nikitin informed that the purpose of tortures and keeping him in humiliating conditions was the refusal from his application, beliefs and judgments as well as the attempt to make him take the blame for uncommitted crimes. As it turned out later, the evidences obtained under tortures disappeared from Alexey Nikitin's case papers, and Mass Media informed that three volumes of his criminal case disappeared from the building of Primorsky territory court.

Alexey Nikitin's application with attached medical examination report about beating when staying in ORC-4, as informed by Nikitin, were sent for checking to the officers who tortured Alexey Nikitin and repeatedly applied tortures to the prisoner. Several requests from Alexey Nikitin to detention facility management not to deliver him to ORC-4 were not answered.

One submitted to the Association of Russian Lawyers for Human Rights the copies of medical examination report containing information about beating, detention facility refusals containing information about beating, refusals of the Investigative Committee to initiate the criminal case on the ground that officers of ORC-4 didn't confess the crime, consequently, the evidence of application of tortures by the officers of ORC-4 with relation to Alexey Nikitin was not confirmed.

There are several refusals with regard to Alexey Nikitin's case with similar formulations.

## **2. Alexander Kovtun**

The Association of Russian Lawyers for Human Rights received a complaint of "primorsky partisan" Alexander Kovtun informing about tortures during investigation. According to the application the tortures towards Alexander Kovtun to obtain confessionary statements lasted for two months: in ORC-4 he was tortured by current, putting the plastic bag on the head, putting wristbands on his hands. As explained by Alexander Kovtun, one was trying to obtain confessionary statements with regard to all unsolved crimes, from missing people to murders under unknown circumstances. As for tortures towards Alexander Kovtun there were so-called "checkups", where the prisoner was delivered to an investigator chained with wristbands to the officers who beat him.

One submitted to the Association of Russian Lawyers for Human Rights the copy of medical examination report of Alexander Kovtun's brother, Vadim Kovtun, also arrested under "primorskies partisansy" case. According to Vadim Kovtun's application he was also tortured, the traumas, including brain concussion, were recorded in medical examination report.

In connection with tortures the Association of Russian Lawyers for Human Rights applied to the Human Rights Commissioner in the Russian Federation Vladimir Lukin to carry out inspection as for received complaints of the prisoners about tortures. In this regard in June 2012 Primorsky Kray was visited by the delegation of the Human Rights Commissioner establishment, which conducted face-to-face meetings with prisoners informing about tortures in ORC-4.

## **OTHER COMPLAINTS ABOUT TORTURES IN PRIMORSKY KRAY**

1. **Fedor Sobolev** in his application to the Association of Russian Lawyers for Human Rights informed that after detention at the beginning of April 2010 he was repeatedly tortured in ORC-4, where he was beaten, tortured with plastic bag, gas mask with lit cigarettes inserted in the hose, he was sunk in the tray, underwent "stretching" with 32-kilogram weights tied to each leg.

At the end of April 2010 Fedor Sobolev wrote an acknowledgment of guilt, demanded by ORC officers, and accused his own brother Viktor Sobolev, who refused to take blame for murder which he didn't commit and for that reason was repeatedly tortured. All complaints about tortures submitted to government agencies, as informed by Sobolev, were returned to Vladivostok, and for that reason he was tortured again. In Sobolev's application there is information that there are own lawyers in ORC-4 attending the tortures and signing criminal cases.

2. **Viktor Sobolev** in his application to the Association of Russian Lawyers for Human Rights informed that he was tortured in ORC-4 in order to sign confessionary statements against himself and his brother. According to the complaint, Viktor Sobolev was beaten by clubs, hands in boxing gloves, kicked, one put plastic bag on his head and closed mouth with the hand so that he could not nibble the bag. According to Viktor Sobolev, as soon as he fainted he was watered, beaten and tortured with current; one repeatedly put the gas mask on his head with lit cigarettes inserted in the hose, sunk in the water tray. As explained in the complaint the tortures continued till Viktor Sobolev signed confessionary statements.

3. The application of life-term prisoner **Alexander Bondarenko** accused of the murder of three persons also contains information about tortures in ORC-4 for the purpose of obtainment of confessionary statements.

4. The prisoner of detention facility **Evgeny Matsenko** informed about tortures to obtain confessionary statements in August 2010 in ORC-4. In his complaint Matsenko informed that during tortures one put plastic bag, gas mask on his head with the hands fixed by wristbands behind his back thus depriving him of the opportunity to breath, filled bucket with water and dipped him upside down.

5. According to application of **Andrey Pushcherenko** detained in 2010, he was also tortured in ORC-4 where within 10 days he was beaten, tortured with plastic bag, dipped in the tray. Andrey Pushcherenko also informed that he signed all required papers as soon as his pregnant wife was delivered to ORC and one threatened that she would undergo the same tortures.

6. Among received applications there is information that tortures in ORC-4 are still continuing: **Zarudny Yury** is delivered to ORC every day for the purpose of obtainment of the required evidences.

7. The Association of Russian Lawyers for Human Rights received the application of Olga Zueva in connection with tortures towards her son **Ivan Zuev**. According to the complaint Ivan Zuev underwent criminal prosecution, at the investigation stage Ivan Zuev was beaten by the officers of law enforcement agencies, underwent moral coercion in order to obtain confessionary statements. Olga Zueva also informed that Ivan Zuev suffers from tuberculosis, has inoperable tuberculoma in the left lung. Despite the state of health, as informed by Olga Zueva, her son was tortured till he signed the required statements. Traumas resulted from tortures, according to Olga Zueva, are recorded in the medical examination report.

8. According to application of Galina Sidorova, her husband **Mikhail Buritov** died in September 2010 after tortures suffered in August 2010 in ORC, where one tried to obtain confessionary statements in commitment of serious and high crimes. As informed by Galina Sidorova, Mikhail Buritov was stretched out with his hands tied behind his back, beaten with hands in boxing gloves, tortured by putting plastic bag on the head despite Buritov's statement that he was suffering from tuberculosis. In December 2010, as explained in the complaint of Galina Sidorova, her son, Fedor Buritov, was detained and also underwent tortures in ORC-4: Fedor

Buritov was beaten, one put plastic bag on his head not to let him breathe, he was stretched out, repeatedly threatened to be raped with a broom stick, threatened to be tortured with gas mask with lit cigarettes put in the hose, one exerted moral coercion describing in details the tortures of his father, Mikhail Buritov, in order to obtain the required evidences from the son.

9. According to application of **Grigory Knyazev** he was detained by the policemen in November 2011 and was repeatedly tortured in ORC-4, underwent moral coercion. In his complaint Grigory Knyazev informed that he could not stand the physical and psychological pressure, rape threats, so he signed confessionary statements. After that he tried to commit suicide but was saved by the cell mate. According to the complaint of Grigory Knyazev one threatened with electric current tortures, that his children would be dismissed from educational establishments and his wife fired. According to Grigory Knyazev the investigative experiment in which he was obliged to take part, was carried out under heavy moral coercion. Video shooting was performed by the officers of law enforcement agencies, who interrupted the shooting several times, took Grigory Knyazev to another room and exerted pressure, after that shooting was resumed.

10. According to the complaint of **Vitaly Kondratenko** he was tortured with plastic bag, gas mask for the purpose of obtainment of confessionary statements in ORC. As explained by Kondratenko the traumas – nose fracture and brain concussion – were recorded in the medical examination report.

11. According to the complaint of **Konstantin Sonin**, on the 8<sup>th</sup> of August he was hospitalized for operation on removal of tumor in the bowel, on the same day, according to the complaint, one changed his level of restriction from recognizance not to leave to placement in detention. As explained by Sonin, on the 10<sup>th</sup> of August 2011, the next day after surgical intervention, being under the influence of preparations used for general anesthesia, he was delivered by the officers of law enforcement agencies from recovery room into a passenger car and without medical escort, in a car not suitable for transportation of postoperative patients, was delivered to the place of detention in another subject of the Russian Federation, from Yaroslavl region to Moscow. According to the complaint within two days he didn't receive medical aid, was not accepted in "Lefortovo" detention facility in Moscow, was delivered to "Butirka" detention facility where he was not taken to hospital but was only examined by the doctor and put in ordinary cell.

12. According to complaint of **Alexey Sorokin** residing in Primorsky Krai, he was detained in another subject of the Russian Federation in an ambulance car during hospitalization in critical state due to aggravation of diabetes of the II degree. As informed by Alexey Sorokin the officers of investigative committee took him out of the ambulance car, put in their car and delivered to the airport to the flight from Moscow to Vladivostok for detention in a state close to clinical death.

The specialists of the Association of Russian Lawyers for Human Rights note that situation with tortures at the time of detention is critical in Russia, moreover, there is a tendency for degradation in view of the above cases, tortures are applied not only to politically inactive citizens but to oppositionists. The situation is aggravated by the fact that during detention there are no control mechanisms for the society, governmental authorities and mass media as from technical point of view such control and supervision is difficult to perform. As a rule the detention is carried out within short time, without warning, and in most cases unexpectedly for the detained person.

A common system problem is that exactly at this stage the law enforcement agencies are trying to suppress the will of detained person, exert psychological and physical pressure,

including, as we can see, tortures, cruel, inhuman, degrading treatment and punishments. At this stage the law enforcement agencies are trying to obtain maximum information from the detained person, witnesses, whose evidences, as a rule, determine the outcome of a criminal case.

According to current UPK RF (the code of criminal procedure of the RF) a detained person has the right to a lawyer, including a lawyer appointed by the state if there is no financial opportunity to employ a lawyer. This legislative statement is actively used by the investigators at this stage. Each investigative agency has the association of lawyers employed by the investigators for formal participation as a defender. As a rule such lawyers often try to persuade the clients to give confessional statements, sign service documents, do not pay attention to tortures, cruel, inhuman, degrading treatment and punishment of detained persons, significantly facilitating development of the case. Very often at this stage the employed lawyers are not admitted to their clients on different grounds, and at the same time the investigator appoints the lawyer.

Lately the situation in Russia with admittance of lawyers at this stage has significantly worsened. Apart from lawyers' order, the permission of the investigator in form of corresponding decree on admittance of the lawyer as a defender is required, which significantly restricts and sometimes deprives a detained person of required support. At the same time the lawyer has no access to the client, meetings with the lawyer at this stage shall be approved by the investigator, including the time established for visitors, which is, as a rule, working days, working hours, with frequent breaks. Meetings with relatives at this stage are forbidden. However the investigator has round-the-clock access to the detained person. At the same time the detained person may stay in the premises of investigative agencies for many days. At this stage the detained person may be deprived of meals as he/she is not in the temporary detention facility etc., which leads to mass violations of rights of a detained person at this stage, and leads to tortures, cruel, inhuman, degrading treatment and punishments.

In 2008 the law on social control over observance of human rights in places of detention and on the assistance to persons being in places of detention was adopted. According to the law the social supervisory committees (ONK) shall be established in each subject of the Russian Federation. ONK shall consist of representatives of civil society of noncommercial organizations, human rights defenders etc., who shall, in particular, visit the place of detention and isolation from society; however, committees are established not everywhere, in many subjects, where they are established, their role is of formal nature. The reason is that in view of stiffening of law on noncommercial organizations there is an abrupt reduction of population civil activity and number of nongovernmental organizations. There are subjects where independence of nongovernmental ONK is absent at all. In such subjects it is very difficult to establish social supervisory committees. There are regions where on the initiative and with the support of local authorities one establishes public associations which form a part of supervisory committee, however due to artificiality of establishment of nongovernmental organizations and their complete dependency on local authorities, as a rule, such organizations and ONK are not functioning.

Thus, the initiative on creation of ONK didn't exert significant influence on the situation connected with prevention of tortures towards detained persons.

In Russia at the federal level there is an institute of the Human Rights Commissioner who shall visit the places of detention, however the rights of the Commissioner are limited and he/she has the only right to recommend to the agencies not to commit violation of human rights and

freedoms and has no regulatory powers with regard to officers violating the human rights. Most recommendations of the Commissioner are ignored as they are not binding. Moreover the country scale and scale of violations does not allow the Human Rights Commissioner in Russia to somehow control the situation with violation of rights of detained persons.

At the regional level there are also positions of human rights commissioners, however their powers are also significantly limited. The situation is aggravated by the fact that these institutions administratively fully depend on local authorities, which leads to formal existence of such institutes at the regional level. The human rights commissioners at the regional level are trying not to conflict with local authorities under the threat of being fired.

There is also prosecutor's office acting as a supervisory authority, however its activity is combined with support of prosecution in court, so the prosecutor's office is often not interested in showdown of facts of tortures in the course of investigation.

The situation is aggravated by the very high corruption rate in Russia. The corruption chain includes different criminal, law enforcement structures, executive bodies of different levels: according to annual report of All-Russian Anti-Bribery Public Office CLEAN HANDS "Corruption in Russia" for 2011 the corruption turnover was 52,6% of the Russian GDP, according to World Bank – 49% in 2010.

In fact, at the regional and federal level, there is a corrupt system of power vertical where one of the key roles is played by corrupted representatives of law enforcement agencies. A detained person is trapped by corruption machine as governmental system in Russia is based not on compliance with laws and order, observance of human rights, but includes corruption element. In other words the corruption chain includes administrative bodies, legislative authorities, in conditions of complete political monopoly, and representatives of law enforcement agencies, courts – in such conditions any complaint about violation of human rights, tortures, cruel inhuman, degrading treatment and punishment remains unnoticed due to priority of corruptive interests as compared to observance of laws and human rights. When a person is tortured for the purpose of corporate raid, extraction of bribes, the corruption vehicle acts so that to deprive a person of any opportunity to protect or restore the rights.

The specialists of the Association of Russian Lawyers for Human Rights underline that critical situation with tortures, cruel, inhuman, degrading treatment and punishments is the telling illustration of the fact that there is a tendency of degradation as for observance of human rights and freedoms in Russia and the state is headed not for democracy development but for establishment of political system based on principles contradicting democracy. In conditions of the lack of any political competition, when any civil activity is suppressed, when there are no independent nongovernmental organizations, independent mass media, there is, consequently, no control over state authorities, they became uncontrollable by the society, which leads to the lack of responsibility to the society, to the sense of impunity for the actions.

Situation with tortures will not change until Russia changes policy towards democracy, political competition, and development of civil society institutions.

The specialists of the Association of Russian Lawyers for Human Rights, as an illustration of the situation connected with the selected way of Russia development in terms of observance of article 3 of the European Convention, would like to provide several examples.

1. According to the complaint of the journalist of "Arsenyevskie Vesty" newspaper, Primorsky Kray, **Natalya Fonina**, she deals with journalist investigations of complaints about tortures towards prisoners, cruel, inhuman, degrading treatment and punishments. As explained by

Natalya Fonina, she repeatedly received threats from unknown persons, presenting themselves as officers of ORC-4, at the time of investigation and in the course of legal procedures regarding tortures. In July 2012, according to the complaint of Natalya Fonina, she started to receive calls and text messages to her cell phone with the threats of murder and informing how much time left for her to stay alive: the number of threats increased during the legal procedure under the suit of the Department of the Ministry of Internal Affairs in Primorsky Kray against “Arsenyevskie Vesty” in view of incriminating articles of the journalist.

2. Another spectacular example is the murder of the civil activist **Maksharip Aushev** from Ingushetia, who investigated the facts of tortures and disappearance of people after detention by law enforcement agencies in the North Caucasus. On the 25<sup>th</sup> of October 2009 Aushev was murdered, a month after his interview to “Al Jazeera” channel about tortures in the North Caucasus.

3. The attempt to bring to trial the head of public organization “Committee against tortures” **Igor Kalvapin** in view of disclosure of information about tortures, kidnapping and murders in the North Caucasus.

3. Murder of **Natalya Estemirova**, the civil activist investigating the fact of tortures, kidnapping and murders in the North Caucasus.

#### **4. GROUP OF CASES “FEDOTOV V. RUSSIA”: DETENTION CONDITIONS IN IVS**

This category of cases includes the violations of article 3 of the European Convention, committed by the authorities after delivery of the detained person, as a rule, to a police department. In most cases the detained person stays there within the first hours or days after detention within administrative case or criminal prosecution. As a rule a person is delivered to the law enforcement agency and stays in isolated premises, which can be cabinets, temporary detention cells or special cages for temporary detention (grilled space at the entrance to a police department).

The specialists of the Association of Russian Lawyers for Human Rights note that the European Court of Human Rights set standards for temporary detention. So, according to the case “Fedotov v. Russia” (Decree of the European Court dated 25<sup>th</sup> of October 2005 under complaint No.5140/02) the European Court refers to the report of the European Committee for Prevention of Tortures and Inhuman and Degrading Treatment (EKPP):

“Detention in a police department, as a rule, is relatively short... However the basic material requirements shall be met.

All cells in a police department shall have reasonable sizes depending on the number of persons for which such cells are designed, and shall have standard illumination (i.e. sufficient for reading books, excluding sleeping time) and ventilation; availability of natural light in the cell is preferable. Moreover the cells are to be equipped with means for rest (e.g. chair or bench attached to the floor) and persons obliged to spend a night in the cell of a police department must be provided with clean mattresses and blankets.

Persons held in detention in the police department shall have the opportunity, if necessary, to relieve their physical necessities in sanitary and proper conditions as well as the opportunity to have a wash. They shall get meals in proper time, including, at least, one full course (i.e. something more than a sandwich) every day.

The question of the reasonable cell size in a police department (or any other premise for a detained person/prisoner) is quite difficult. At the time of evaluation one shall take into account a

lot of factors. However the delegates of EKPP felt the necessity of stringent standards in this field.

The next criterion (considered rather a desirable level than a minimal standard) is currently used for evaluation of single cells in police departments designed for detention within more than several hours: area – 7 square meters, distance between the walls – 2 meters and more, distance between the floor and ceiling – 2.5 meters”.

EKPP repeated the above conclusions in the 12<sup>th</sup> General Report (CPT/Inf(2002)15, § 47).

Below is a part of the Report addressed to the Russian Federation authorities about the visit of EKPP to the Russian Federation from the 2<sup>nd</sup> to 17<sup>th</sup> of December 2011 (CPT/Inf(2003)30) concerning detention conditions in police departments:

“As well as during previous visits none of the visited Regional Internal Affairs Directorate (RUVD) and District Department of Internal Affairs (OVD) was equipped with premises suitable for overnight detention; despite that fact the delegations found evidences that sometimes people were held in detention in such departments overnight... The cells, examined by the delegates, didn’t suit absolutely for long-term detention: they were dark, poorly ventilated, dirty and usually not equipped with anything, except for a bench. The persons held in detention overnight were not provided with mattresses or blankets. Moreover, the detained persons were not provided with meals, water, and access to the toilet was hindered.

EKPP repeated the recommendation made in the report about the visit in 1999 (see paragraph 27 of the document CPT(2000)7) that material conditions in temporary detention cells and their use in RUVD and OVD shall conform to the Order of Russian Ministry of Internal Affairs (MVD) No. 170/1993 on general conditions and regulations for detention in temporary detention cells. The cells not meeting the requirements of the order shall not be used.

Moreover the Committee repeated its recommendation made in previous reports about visits that temporary detention cells shall not be used for detention for more than three hours”.

The European Court reminded that complaints about cruel treatment shall be based on corresponding evidences. When evaluating the evidences the European Court, as a rule, applies “beyond reasonable doubts” proving standard. Nevertheless such proving shall be supported by the existence of sufficiently solid, clear and consolidated conclusions or similar unquestionable facts (see Decree of the Grand Chamber of the European Court under case *Salman v. Turkey*, complaint No. 21986/93, ECHR 2000 VII, § 100).

European Court reminded that proceedings per complaints about violation of the Convention, as, for example, per present complaint, are not always characterized by strict application of affirmanti incumbit probatio principle, as in some cases only the defendant state has access to information confirming or contesting the violations. Failure to provide by the defendant state of such information without sound reasons for such a behavior may lead to conclusion about the validity of applicant’s evidences (see Decree of the European Court under case “*Ahmet Ozkan and others v. Turkey*” dated 6<sup>th</sup> of April 2004, complaint No. 21689/93, § 426).

The European Court reminded that cruel treatment shall reach minimum level of cruelty to fall within article 3 of the Convention. Evaluation of the level of cruelty is of relative nature and depends on the total of case circumstances such as treatment duration, its physical and psychological consequences and in some cases victim’s sex, age and state of health (see, among other sources, Decree of the Grand Chamber of the European Court under case “*Kudla v.*

Poland”, complaint No. 30210/96, ECHR 2000 XI, § 91, and Decree of the European Court under case “Peers v. Greece”, complaint No.28594/95, ECHR 2001-III, § 67).

Although the purpose of the application shall also be taken into account (in particular, if one intended to humiliate or insult a victim), the lack of such purpose shall not necessarily lead to the conclusion that article 3 of the Convention was not violated (see the above-mentioned Decree of the European Court under case “Peers v. Greece”, § 74).

Moreover, the European Court reminded that if there is an authentic application that someone is treated in violation of article 3 of the Convention, the standard provides for efficient official investigation allowing identification and punishment of guilty persons. Otherwise common legal prohibition of tortures and inhuman or degrading treatment or punishment, despite its fundamental meaning, would turn out to be almost inefficient, and state representatives could in some cases violate the rights of persons being in their power with impunity (see Decree of the European Court under case “Assenov and others v. Bulgaria” dated 28<sup>th</sup> of October 1998, Reports of Judgments and Decisions 1998 VIII, § 102”).

1. According to the complaint of **Oleg Zlotnikov**, on the 30<sup>th</sup> of August 2006 during detention at 4.00 p.m. the applicant underwent pressure on the part of policemen. Under tortures the applicant in the presence of appointed lawyer wrote honest confession of the crime he didn’t commit. As informed by Zlotnikov he was repeatedly tortured, one threatened to apply tortures and falsify the criminal case against immediate relatives, one said that in case of refusal to write honest confession he would be put into so-called “black cell” with criminals and criminals would be told that he was an officer of law enforcement agency, that he would be put in detention facility in Lobnya town of Moscow region, would lose his health and would be severely beaten.

According to the complaint of Oleg Zlotnikov, during first staying in the temporary detention facility (IVS) from the moment of detention, i.e. from 04:00 p.m. on the 30<sup>th</sup> of August 2006 during 10 days he was restricted in meals, water, sleep, toilet use. On the 31<sup>st</sup> of August 2006 he received boiled water in a cup, in the evening he received spoiled food, which Oleg Zlotnikov could not eat. On the 1<sup>st</sup> of September 2006 he received boiled water again in the morning and tainted food in the evening. According to the complaint of Oleg Zlotnikov, within these days no relative was admitted to him and one forbade to bring personal hygiene products, including toilet paper, tooth brush, tooth paste, soap, he was obliged to sleep in the cell without sleeping gear on bear wood. Mattresses, pillow and blanket were not provided on the ground of lack of sleeping gear.

In his complaint Oleg Zlotnikov informed that during staying in IVS he suffered the aggravation of hypertensive disease; in view of the lack of proper food and water he got the gastric ulcer. The detained had never suffered gastric ulcer before. While staying in IVS, according to the complaint, Zlotnikov didn’t receive proper medical aid on prevention of the above diseases, and examination by cardiologist, as recommended by doctors, was not carried out. In the complaint Oleg Zlotnikov informed about the exerted pressure, degrading treatment during staying in IVS, where he was provided with food in plastic red bowl, symbolizing for his cell mates that he supposedly belonged to a group of so-called “offended”, most often homosexuals. In this way the officers of IVS wanted to underline the supposed sexual attribute of the detained person to this kind of prisoners with whom no ordinary prisoner could communicate and who were under real threat of rape. In Oleg Zlotnikov’s opinion he was under continuous threat of being raped by his cell mates. During repeated staying in IVS in October 2006 he was also tortured, as informed by Zlotnikov.

2. According to the complaint of **Semen Zelentsov**, on the 22<sup>nd</sup> of May 2006 he was delivered to regional prosecutor's office in Moscow, where till 3 a.m. of the following day he was examined and after that put into the temporary detention center. As informed by Semen Zelentsov during this time he was allowed to visit toilet only once, he didn't receive any food or water. He stayed in the cell where there was bare wood without mattress and blanket instead of bed. On the following day, according to the complaint, he was delivered to another IVS, where he didn't receive food or water for six hours. In the temporary detention center, as explained in the complaint of Semen Zelentsov, one demanded him to confess a crime he didn't commit. As he refused to do it he underwent tortures and degrading treatment – the head of temporary detention center made him undress with only underwear left on and stay almost naked in the cold premise. Later he was allowed to dress himself and go to the cell. According to the complaint, in the cell Zelentsov was not provided with sleeping gear, he received no food on that day. On the next day he wasn't allowed to visit the toilet and didn't have any food or water, late in the evening he got tea. On the days of questioning, as explained in the complaint, before investigator's arrival Zelentsov was taken into isolated premise, about 1 x 1 m, the so-called "glass", where he stayed for about 2 hours. It was cold there and the premise was next to the smoking area separated with planks with cracks and cigarette smoke was continuously entering the "glass". For the period of staying in IVS, according to the complaint, Zelentsov managed to take a shower only once during five minutes, after that he was taken to the cell, in which the number of prisoners increased. Zelentsov could not sleep as one of the cell mates was constantly screaming. After the transfer to another IVS, according to Semen Zelentsov, one offered him to confess a crime in exchange to good detention conditions in IVS, otherwise he would be put to the cell with Chechens, which actually happened. The prisoner was taken to the cell with 22 beds and 40 prisoners. As informed by Semen Zelentsov, soon he caught a cold and had fever. He was transferred to the cell with 27 prisoners and 14 beds. The prisoners were sleeping by turns. The cell size was 5x6 meters. Zelentsov didn't receive proper medical aid and his chronic disease – psoriasis – aggravated, while one forbade delivering medicines and allowed only after enquiry to clinic. Complaints, applications regarding detention conditions in IVS were useless.

3. According to the complaint of **Irina Kalmykova** on the 5<sup>th</sup> of March 2012 she was detained during the protest action in Lubyanskaya square and delivered to OVD where she was taken to a metal cage with benches and several other people. Two days passed from the moment of detention to release, as informed by Irina Kalmykova in her complaint. During this time she was allowed to visit toilet only two times, she didn't receive any food and drinking water as well as sleeping gear and personal hygiene products. She didn't get proper medical aid despite strong pain in the chest and stroke, which happened a month before.

The specialists of the Association of Russian Lawyers for Human Rights note that according to sanitary standards at the time of delivery to temporary detention facility the detained person shall be provided with drinking water and food, sleeping gear and personal hygiene products, however in practice staying of the prisoner in IVS is as follows: a person is taken not to the temporary detention facility but to metal cages with benches, where a detained person is not considered as put in the temporary detention facility, consequently, such person has no right to food, water, toilet and the reason is that, as a rule, putting in IVS is not required due to the necessity to carry out investigative actions (questioning, physical confrontations, examinations) which can be performed at any time of the day, i.e. day regime of the detained person is violated – the person

is not provided with food, water, one doesn't let the person sleep and restricts the use of toilet. Such primary investigative actions may take several days: the person is always between different establishments, cabinets and has no time to take a rest, visit the toilet. The person is always under pressure, all actions are aimed at suppression of person's will.

There are no efficient remedies at the level of national evidence, social control is impossible due to the lack of developed institutes of civil society, the institute of the Russian Human Rights Commissioner is inefficient.

The specialists of Association of Russian Lawyers for Human Rights recommend to the Russian Federation to secure at legislative level the rights of detained persons from the moment of their actual detention but not from the moment of their delivery to temporary detention facility. Another important aspect is that detention is formalized not from the moment of actual detention (in the street, at home) but from the moment of delivery to a police department. However delivery may take much time, for example, as in case of Alexey Sorokin, Konstantin Sonin, a person may stay in a car not intended for long-term staying of a detained person. There are cases when a person is put in a police bus and driven around Moscow for several hours as if looking for a free OVD, while there can be several dozens of people – they are in isolated space, with no ventilation, with tinted glasses, gratings on windows and entrance. If the outside temperature is high the metal unventilated bus turns into an oven, as informed by the persons detained at Strategy 31 action, and many people faint. As explained by the detained persons, if people complain, require to air the premise, the policemen start beating them.

Procedural implementation of detention takes place in the police department and detention time starts from the moment of delivery to a police department but not from the moment of actual detention.

These actions clearly reflect the state policy aimed not at development of political variety, political competition, institutions of civil society, manifestation of civil activity, and considering the fact that frequent beatings in law enforcement agencies are applied to journalists, bloggers, i.e. mass media, this means limitation of freedom of speech.

Moreover the situation is aggravated by the high rate of corruption in Russia, including political one. The existing joint responsibility of power vertical at all levels prioritizes interests and despotism on the part of officials instead of observance of human rights and freedoms, makes a person the hostage of political system in which the perspective to restore own rights becomes unlikely.

In such conditions it is very difficult to say that Russian authorities will make efforts to comply with article 3 of the European convention as rudiments of civil society institutions capable of controlling and pushing the law enforcement system to observance of human rights and freedoms, to improvement of work considering requirements of the democratic society are liquidated.

#### **5.GROUP OF CASES “KALASHNIKOV VERSUS RUSSIA”, “ANANYEV VERSUS RUSSIA”: DETENTION CONDITIONS IN DETENTION FACILITY**

This category of cases includes violations of article 3 of the European Convention admitted by authorities with regard to persons with the level of restriction in form of placement in detention who are in detention facilities.

The European Court notes that article 3 of the Convention guarantees one of the valuables of democratic society. It forbids tortures and inhuman and degrading treatment and punishment

regardless of any circumstances and victim behavior (see, for example, case *Labita v. Italy* N 26772/95 p.119, ECHR 2000-IV).

The European Court further believes that according to its case law, cruel treatment shall reach minimum level of cruelty to fall within article 3 of the Convention. Evaluation of that minimum is relative and depends on case circumstances such as duration of such treatment, its influence on physical state and mental condition of the person, and in some cases person's sex, age and state of health (see decision under case *Ireland v. United Kingdom* dated January 18, 1987, ser. A N 25, p.65 par. 162).

The European Court considers the treatment as inhuman if, inter alia, it was intentional and caused actual damage to health and aggravated physical and moral suffering of a person. This treatment may also be considered degrading as far as it increases person's fear, pain, helplessness (see, for example, decision under case *Kudla v. Poland* n 30210\96 p. 92, ECHR 2000-XI). When deciding if the treatment is degrading in terms of article 3 of the Convention, the European Court will consider if the purpose of such treatment is to humiliate and insult a person and, as for consequences, if they influenced person's personality in a way incommensurable with art. 3 (see, for example, decision under case *Raninen v. Finland* dated 16<sup>th</sup> of December 1997– VIII p.2821-22 p.55). However the lack of such purposes may not lead to unconditional conclusion about absence of violation of article 3 (see, for example, *Peers v. Greece* 28524\95 p. 74 ECHR – III).

Measures on deprivation of freedom may often include these elements. One may not say that the fact of person's detention entails violation of article 3 of the Convention. Moreover the article cannot be expressly interpreted as providing for general obligation to release a person due to bad state of health or send him/her to the hospital outside the detention facility to provide with special medical treatment.

Nevertheless, according to the article the State shall guarantee person's detention in such conditions that are commensurable with human dignity, so that measure and way of punishment would not lead to person's sufferings which are excessive as compared to set requirements to places of detention, person's health and wellbeing shall be properly protected (see *Kudla v. Poland* n 30210\96 p. 92 - 94, ECHR 2000-XI).

By evaluation of detention conditions one shall take into account the total effect of these conditions as well as applicant's statements about them (see *Dougos v. Greece* 40907\98 p.46 ECHR 2001- II).

The European Court also indicates that the European Committee for the Prevention of Tortures and Inhuman and Degrading Treatment set the standard: 7 square meters per one prisoner (see 2 Report – CPT\inf (92)3 p.43). The European Court considers the presence of insects in cells and absence of measures on their control as violation, as well as detention of sick persons in one and the same cell with healthy persons as violation despite measures on prevention of serious diseases, such as syphilis, tuberculosis. One of the aspects of insanitary conditions is the placement of toilet in the cell, which in fact is not separated from the remaining space of the cell, and prisoners are obliged to ease themselves in each other's sight.

The European Court indicates that despite the fact that the question of availability of purpose of degrading and inhuman treatment is the factor taken into account by the Court, the lack of such purpose may not exclude violation of art. 3 of the Convention (see *Peers v. Greece*).

The Court indicates that conditions of detention, in particular, huge overpopulation of cells and insanitary conditions and their negative influence of the state of health combined with the duration of detention in such conditions represent degrading treatment.

1. According to the complaint of **Alexey Sorokin** he stayed in detention facility for about two years. For that period his general state of health worsened, chronic diseases aggravated, from the moment of detention he got II group of disability, II grade of diabetes, became insulin-dependent. As informed in the complaint of Alexey Sorokin, in detention facility he doesn't receive required medical aid in connection with high BSL, cannot keep special diet required for the type of disease. Due to the impossibility to get proper medical aid he faints, suffers from numbness of limbs, hampered movements. On the 10<sup>th</sup> of July 2012 the relatives of Alexey Sorokin informed that he was transferred from the previous cell to a smaller one, dirty and dark cell with the number of prisoners more than the number of beds and prisoners have to sleep by turns. Alexey Sorokin doesn't have enough sleep and the opportunity to get ready for court sessions, undergoes pressure on the part of cell mates, insults, beatings, threats. As informed by the relatives of Alexey Sorokin the prisoners in the cell are constantly changed, instead of prisoners, being in detention facility for a long time, about ten prisoners accused of high crimes were transferred in the cell and exert physical and psychological pressure on 61-year-old pensioner: Alexey Sorokin's complaints about pressure on the part of cell mates, about the state of health and lack of proper medical aid are not satisfied. According to the complaint the applied level of restriction in form of detention was the last extreme measure, excessive measure, and due to the state of health and on condition of continuous receipt of insulin injections and medical aid the recognizance not to leave or home arrest would be optimal.
2. According to the complaint of **Ruslan Hubaev** for the period of staying in detention facility he was in an overpopulated cell with the number of beds two times less than the number of prisoners. The TV set in the cell was constantly operating and daylight was always on. As explained in the complaint Ruslan Hubaev was almost deprived of the opportunity to get ready for court sessions, proper sleep and rest; he was obliged to sleep alternatively with other prisoners.
3. According to information from the colleagues of the lawyer **Magnitsky Sergey Leonidovich**, the consultant of **Hermitage Capital Management**, who died in detention facility on the 16<sup>th</sup> of November 2009 due to non-delivery of proper medical aid, the prisoner kept a diary, where he described awful conditions in detention facility, indifference of detention facility officers to his diseases and inhuman treatment. In this regard more than 100 complaints about non-delivery of medical aid were submitted, however all complaints were left without answer. On the 16<sup>th</sup> of December 2010 the European Parliament voted for resolution demanding to prohibit entry to EU countries of officials relating to the death of Sergey Magnitsky as well as to freeze assets of officials connected with the death of Sergey Magnitsky. On the 29<sup>th</sup> of September 2010 the USA Congress introduced a bill to prohibit entry to the USA of persons connected with the death of Sergey Magnitsky.

However non-delivery of medical aid to persons being in detention facility is widely used in Russia. Despite the resonance of Sergey Magnitsky case, the situation in places of detention hasn't changed.

The specialists of the Association of Russian Lawyers for Human Rights would like to draw attention of the Committee of Ministers of the Council of Europe to the fact that the European Court developed recommendations for mandatory performance by Russian authorities concerning the modification of standards of detention conditions in detention facilities and reflected them in the case “Ananyev and others versus Russia” (Decree of the European Court dated 10<sup>th</sup> of January 2012, complaint No. 42525/07, 60800/08), in particular the Decree states:

“Upon analysis of more than eighty resolutions as for inhuman conditions of detention in Russian detention facilities, which were accepted by the Court in 2002, when the complaint was first mentioned in the resolution under Mr. Kalashnikov’s case, and mentioning that about 250 similar complaints are to be considered, the Court concluded that the problem of inhuman conditions of detention in Russian detention facilities is of structural nature. Although the violations take place in different regions the conditions of detention are similar: prisoners suffer from inhuman and degrading treatment due to acute shortage of space and beds in detention facility, limited access of daylight and fresh air into the cell and impossibility to stay alone when using toilet. The problem arises as a result of poor functioning of Russian penal system and insufficient legal and administrative guarantees against abusive practice, while Russian authorities acknowledge the importance and relevance of the problem. In view of a large number of cases, their recurrence, scale and structural nature of the problem, the Court decided to apply the procedure of pilot decree and give specific instructions in order to help Russian authorities and Committee of Ministers in its implementation. First of all the Court indicated the necessity to plan and implement some measures for improvement of material conditions of detention, which do not require much time and finances, for example, to hang curtains or make walls around toilets, remove dense grating from windows which prevents the entry of daylight, and to increase the number of bathing days. Russian authorities should develop comprehensive approach to solution of the problem of detention facility overpopulation, which would include changes in legal system, instructions to officials and detention facility officers. The Court further noted that the main reason of detention facility overpopulation is the excessive use of detention as a measure of restraint and excessive holding in detention. <...>

<...> The Court decided that to solve the problem, which in turn shall lead to reduction of a number of prisoners in detention facilities, it is necessary to limit the application of detention only by the most serious cases connected with violent crimes and make holding in detention an exceptional but not standard measure. Considering the time required for introduction of these changes the Court recommended a number of temporary measures, which include additional legal guarantees to prevent and reduce overpopulation. In particular, it is necessary to set maximum occupancy rate for each detention facility, which will be not less than Russian standard of four square meters per one person, and reconsider it on a regular basis. The head of detention facility shall have the right to refuse to accept the prisoners if it leads to exceedence of the limit. The prosecutors shall control cases of the prisoners for whom the measure of restraint in form of holding in detention can be canceled ahead of time. Finally, Russian authorities shall develop efficient legal measures to prevent subsequent violations and payment of compensations. First of all the prisoners shall have the opportunity to get prompt and efficient processing of their complaints about inhuman conditions of detention. The complaint can be submitted to the supervising prosecutor, who in this case shall listen to a prisoner and give him the opportunity to comment on the answer of the prison governor with regard to complaint, or to the court of general jurisdiction in order established by chapter 25 of the Civil Procedure Code.

If the court admits certain aspects of holding in detention as illegal, a prisoner shall have the opportunity to get compensation within the same procedure. Moreover one shall ensure enforcement of court decisions. The Court acknowledged that automatic reduction of sentence due to severe conditions of detention in detention facility suggested in the draft law would not be an efficient compensational measure as far as automatism excludes the possibility of individualized evaluation. Instead, every person held in inhuman conditions shall be entitled to monetary compensation. At the same time the former prisoner shall not be obliged to prove the guilt of certain officers, and the lack of financing cannot be considered as the circumstance for releasing authorities from liability or reducing the compensation amount. The amount of compensation shall be commensurable with amounts which the court awarded under similar cases. The Court decided that within six months as of decree final effective date Russian authorities shall develop, with participation of the Committee of Ministers, a binding schedule for introduction of efficient measures of legal protection capable of preventing violations and payment of compensation. Consideration of similar cases will not be suspended”.

## **6. GROUP OF CASES “DEDOVSKY AND OTHERS VERSUS RUSSIA”: DETENTION CONDITIONS IN COLONY**

This category of cases includes violations of article 3 of the European Convention admitted by authorities with regard to convicted persons, serving sentence in places of confinement.

The Decree of the European Court under case “Dedovsky and others versus Russia” per complaint No. 7178/03 dated 15<sup>th</sup> of May 2008, explains violations of article 3 of the Convention with regard to persons being in places of confinement.

Article 3 of the Convention, as mentioned by the European Court in several cases, guarantees one of the most important valuables of democratic society. Even in most difficult circumstances, such as terrorism and crime fighting, the Convention expressly excludes tortures and inhuman or degrading treatment and punishment, regardless of victim’s behavior (see Decree of the European Court dated 20<sup>th</sup> of July 2004 under case “Balogh v. Hungary”, complaint No. 47940/99, §44; and Decree of the Grand Chamber under case “Labita v. Italy”, complaint No. 26772/95, §119, ECHR 2000-IV).

The European Court consistently underlined that suffering and humiliation shall in any case be beyond unavoidable suffering or humiliation peculiar to this form of treatment or punishment. Confinement measures often include this element. According to article 3 of the Convention the state shall ensure holding of a person in detention in conditions which are compatible with respect of his/her human dignity and that the order and way of this measure implementation would not expose the person to feelings and difficulties which intensity exceeds the unavoidable level of suffering peculiar to detention (see Decree of the Grand Chamber under case “Kudla v. Poland, complaint No. 30210/96, §§92-94, ECHR 2000-XI).

In the context of deprivation of freedom the European Court underlines that persons held in detention are in soft position and authorities shall ensure their physical wellbeing (see Decree of the European Court under case “Tarariyeva v. Russia”, complaint No. 4353/03, §73, ECHR 2006-... (extracts)\* (\*Published in the Bulletin of the European Court of Human Rights No. 7/2007); Decree of the European Court dated 4<sup>th</sup> of October 2005 under case “Sarban v. Moldova”, complaint No. 3456/05, §77; and Decree of the European Court under case “Mouisel v. France”, complaint No. 67263/01, §40, ECHR 2002-IX). With regard to a confined person, any use of force which is not necessary due to person’s behavior derogates dignity and, in

principle, violates the right guaranteed by article 3 of the Convention (see Decree of the European Court dated 7<sup>th</sup> of December 2006 under case “Sheydayev v. Russia”, complaint No. 65859/01, §59\* (\*Ibidem No. 7/2007.); Decree of the European Court dated 4<sup>th</sup> of December 1995 under case “Ribitsch v. Austria”, Series A, N 336, §38).

The European Court indicated that statement of cruel treatment shall be supported by sufficient evidences. When evaluating the evidences the European Court applies “beyond reasonable doubts” proving standard. However proving can be based on a total of sufficiently reliable, clear and consistent assumptions or similar uncontradicted factual presumptions (see Decree of the Grand Chamber under case “Salman v. Turkey”, complaint No. 21986/93, §100, ECHR 2000-VII). The European Court understands the potential of violence in correctional facilities and the fact that disobedience of prisoners may quickly turn into upheaval (see Decree of the European Court dated 21<sup>st</sup> of December 2006 under case “Gomi and Others v. Turkey”, complaint No. 35962/97, §77). However, as mentioned before, the use of physical strength that is not absolutely necessary due to the prisoner behavior derogates human dignity and, in principle, is the interference with the right guaranteed by article 3 of the Convention.

The European Court reminds that if a person sets forth provable statement about especially cruel treatment in violation of article 3 of the Convention, this provision combined with the general obligation of the member states established by article 1 of the Convention “to guarantee to each person under their jurisdiction the rights and freedoms specified in... the Convention” indirectly provides for efficient official investigation. Obligation to carry out the investigation “is not an obligation to obtain the result, but an obligation to take measures”. Not each investigation shall be successful and lead to results confirming applicant’s statements; however it shall, in principle, lead to clarification of the case circumstances and, if the complaints turn out to be grounded, to identification and punishment of guilty persons. Thus, the investigation of noteworthy information about cruel treatment shall be comprehensive. That means that authorities must try to find out what happened without hasty or invalid conclusions for the purpose of investigation termination or as the basis of their decisions. They must take all reasonable, available measures to ensure evidences regarding the incident, including, in particular, witness statements, data of forensic medicine, etc. Any deficiency of investigation preventing the identification of trauma reasons or identities of guilty persons may lead to violation of the standard (see, in particular, the above-mentioned Decree of the European Court under case “Mikheyev versus Russian”, §107 and further, and Decree of the European Court dated 28<sup>th</sup> of October 1998 under case “Assenov and Others v. Bulgaria”, Reports 1998-VIII, §102 and further).

The European Court notes, in the first place, that in order to make the investigation of supposed cruel treatment on the part of the state efficient, it shall be immediate and proper (see the above-mentioned Decree of the European Court under case “Mikheyev versus Russian”, §109, with additional references). In general, the European Court underlines that regardless of the number of prisoners hurt in the course of special operation in the place of confinement, the state authorities according to article 3 of the Convention have a positive obligation to carry out immediate and comprehensive medical examination of victims (see Decree of the European Court dated 8<sup>th</sup> of November 2007 under case “Mironov v. Russia”, complaint No. 22625/02, §§57-64\* (\*Published in the Bulletin of the European Court of Human Rights No. 4/2008.)).

The European Court indicated that Convention guarantees rights which are practical and efficient but not theoretical and illusive (see, for example, Decree of the European Court dated 13<sup>th</sup> of May 1980 under case “Artico v. Italy”, Series A, N 37, p. 16, §33). Article 13 of the Convention

guarantees availability at the national level of remedies, ensuring essence of conventional rights and freedoms, regardless of the fact whether they are provided by the legal system of the country or not. The remedy provided by article 13 of the Convention shall be “efficient” in practice as well as in legislation; in particular, its use shall not be unreasonably prevented by the activity or failure to act by the authorities of the defendant state (see Decree of the European Court dated 26<sup>th</sup> of July 2007 under case “Cobzaru v. Romania”, complaint No. 48254/99, §§80-82; Decree of the European Court under case “Anguelova v. Bulgaria”, complaint No. 38361/97, §§161-162, ECHR 2002-IV; and Decree of the European Court dated 24<sup>th</sup> of May 2005 under case “Suheyla Aydyn v. Turkey”, complaint No. 25660/94, §208).

The European Court previously acknowledged that state authorities bear responsibility for cruel intention with regard to applicants and that investigation of complaints was not adequate and efficient. As indicated by the European Court concerning other Russian cases, in Russian courts for civil cases there is no practice of consideration on the merits of civil requirements in connection with supposed serious crimes in the absence of investigation results (see the above-mentioned Decree dated 24<sup>th</sup> of February 2005 under case “Isayeva v. Russia”, complaint No. 57950/00, §155\* (\*Published in the Bulletin of the European Court of Human Rights No. 12/2005.); and Decree of the European Court dated 24<sup>th</sup> of February 2005 under case “Isayeva and Others v. Russia”, complaints No. 57947/00, 57948/00 and 57949/00, §147).

The European Court believes that for efficient functioning of the system of individual applications provided by article 34 of the Convention, the creation by the state of all necessary conditions for proper and efficient consideration of complaints is very important (see Decree of the Grand Chamber under case “Tanrykulu v. Turkey”, complaint No. 23763/94, §70, ECHR 1999-IV). This obligation requires from member states the creation of all necessary conditions for European Court operation, investigating circumstances of the case or fulfilling its general obligations on consideration of complaints.

Avoidance by the state of provision of information, that is available to it, without satisfactory explanation, may not only condition the conclusion about the validity of applicant’s statements but negatively influence the evaluation of the defendant state compliance with its obligations, arising out of subparagraph “a” of paragraph 1 of article 38 of the Convention (see Decree of the European Court under case “Timurtas v. Turkey”, complaint No. 3531/94, §66, ECHR 2000-VI).

1. According to the complaint of Irina Buntova, her husband, **Vitaly Buntov** in 2010 was severely tortured in the places of confinement. According to the complaint Vitaly Buntov got serious head injury, he was beaten on kidney and got kidney disease, twenty nails were pulled out from the prisoner’s legs and hands, before that torture one inserted needles under the nails of Vitaly Buntov. As explained by Irina Buntova, the pressure and tortures towards her husband are still going on.

## **7. TORTURES, INHUMAN AND DEGRADING TREATMENT WITH APPLICATION OF PUNITIVE PSYCHIATRY**

The specialists of the Association of Russian Lawyers for Human Rights would like to draw attention of the Committee of Ministers of the Council of Europe to the complaints and problems connected with violation of article 3 of the European Convention in connection with the application in Russia of punitive psychiatry used by national authorities of Russia both within administrative cases and within criminal prosecution. At the same time the question is not about detention or arrest by the law enforcement system but about person’s isolation, i.e. actual

confinement in a psychiatric establishment with application of tortures, cruel, inhuman or degrading treatment.

The Specialists note that in general the number of applications with complaints about punitive psychiatry is insignificant and constitutes 0.2% of the total number of complaints.

However specific feature of punitive psychiatry in Russia is that there is no available information about it and it is almost impossible to obtain such information from open, publicly available sources. The reason is the closedness of association of Russian psychiatrists, secrecy of private life which the citizens prefer not to advertise, so most of these violations are unavailable to public.

Most psychiatrists are afraid of speaking in public criticizing modern psychiatry in Russia and prefer to keep corporate silence which became a tradition of modern Russian psychiatry. The main problem is that official representatives of psychiatric society in every possible way avoid provision of information about the activity of their establishments. There is a lack of any control over the activity of psychiatric establishments, doctors and medical personnel; the relatives of those put in psychiatric establishments, civil organizations do not have the opportunity to carry out public control over the activity of such establishments, which leads to information vacuum around punitive psychiatry in Russia, although oppositionists, civil activists, rights defenders, journalists, and bloggers progressively undergo punitive psychiatric.

According to the complaint of **Elena Ukolova** in June 2011 she announced a protest action in form of one-person piquet in the Red Square in Moscow with political requirements.

On the second day of action Elena was delivered by policemen to “Kitay-Gorod” OVD, where police officers under the threat of putting the activist in a psychiatric clinic demanded to stop the action and refuse from political requirements. When Elena Ukolova refused to do it the policemen called the psychiatric ambulance to “Kitay-Gorod” OVD. Elena Ukolova managed to inform the Association of Russian Lawyers for Human Rights about threats to put her in a psychiatric clinic. The specialists of the Association and civil activists, who came to OVD, explained to the doctors that police actions are provocation as Elena Ukolova is trying to restore her rights within several years and that she sent a complaint to the European Court of Human Rights and her political requirements are fair. The attempt to exert pressure on Elena Ukolova to make her refuse from political requirements was prevented; however, this case reflects the reality of application by Russian authorities of punitive psychiatry with regard to civil activists.

The example of application of punitive psychiatry within criminal prosecution is a person detained on suspicion of organization and participation in disorders in Bolotnaya square on the 6<sup>th</sup> of May 2012 **Oleg Arkhipenkoy**, who, according to the lawyer, was forcedly put in a psychiatric clinic at investigation stage, where one injected psychotropic substances after which the suspect could not give evidences, could not tell his name, didn't understand where he was during meetings with the lawyer.

The Chairman of youth group for human rights of Karelia **Maxim Efimov**, a blogger, was obliged to leave Russia because of the threat of forced putting in a psychiatric day-and-night clinic for public criticism of the Russian Orthodox Church.

According to the application of Tula citizen **Valery Grishin** being under recognizance not to leave within the frameworks of investigation, he underwent forced putting in a psychiatric day-and-night clinic. As explained by Grishin on the 6<sup>th</sup> of March 2008 he was put in a psychiatric clinic on the basis of the fact that earlier in 70s and 90s he had head injuries, however the person never applied for psychiatric help and wasn't on file by the psychiatrist. During two-

week staying at the closed establishment, according to Grishin, one took his clothes away, put in a ward with mental patients and let him get up out of bed only at certain time, the light in the ward was always on. Upon expiry of the period Grishin was discharged from the clinic on the 19<sup>th</sup> of March 2008 and was acknowledged mentally sane. Appeal of actions of state authorities didn't have any results.

The Association received the complaint of **Neonila Ilchenko** informing that parents of 20-year-old N, a University student, excellent pupil, without mental diseases, divorced and each of parents continued looking for a partner in life. The girls' father, a famous Moscow lawyer, took the daughter to his one-roomed flat to live together with a young common-law wife. Meanwhile the girl's mother lived with a common-law husband in one of Moscow hostels. As a result, the common-law wife of the father kicked the girl out of the house, and mother refused to accept her. Twenty-year-old N was put in a psychiatric clinic on the mother's initiative, where she underwent drug treatment and beating during winter holidays of 2010. The girl was released from the psychiatric clinic by people who were not her relatives, with the help of rights defenders.

The above examples prove that punitive psychiatry in Russia is used as a mechanism of torture, cruel, inhuman or degrading treatment with regard to different groups of citizens with no efficient investigation and efficient remedies.

## **8. CONCLUSIONS AND RECOMMENDATIONS**

As seen from the report, the situation in Russia with observation of human rights and freedoms, compliance with article 3 of the Convention remains critical. As it is clear from cases in precedent per events which took place in the middle of 90s and from examples relating to present days the situation either hasn't changed at all or worsened; the measures taken at the national level are of declarative nature as well as programs and campaigns on prevention of tortures, inhuman and degrading treatment and punishments, took no effect.

Representatives of law enforcement agencies and intelligence agencies using tortures and inhuman and degrading treatment, more and more feel their impunity and confidence and continue to apply tortures to common citizens and to civil and political activists, journalists, bloggers. All kinds of criticism and public speaking concerning tortures are suppressed.

The specialists of the Association of Russian Lawyers for Human Rights discovered system problems in the course of compliance with article 3 of the Convention.

For all Russian regions the characteristic feature is the absence of civil control over the activity of law enforcement and penal system, suppression of any kind of manifestation of civil activity and lack of independent mass media and political competition pushing the system to structural changes – all of that leads to closedness of state authorities' activity, including penal systems, which favors the growth of abusive practice, influences the application of tortures, inhuman and degrading treatment and punishments.

The specialists of the Association of Russian Lawyers for Human Rights note that most Russian officials consider the principles required in democratic society as theoretical and illusive, including provisions of article 3 of the European Convention, and for that reason these principles are violated and ignored in practice.

All of that causes mass violations of article 3 of the European Convention.

The specialists of the Association of Russian Lawyers for Human Rights acknowledge that one of the priorities of the Council of Europe policy is the observance of subsidiarity

principle, i.e. the states are free to choose the form of establishment in the legal system of the country of efficient remedies, ensuring the essence of conventional rights and freedoms. However member states of the Council of Europe undertook obligations to comply with the principles required in the democratic society. When the state avoids fulfillment of undertaken obligations, the Council of Europe has the right to point at the necessity to follow the above principles.

The specialists of the Association of Russian Lawyers for Human Rights recommend to the Council of Europe to testify concern in view of non-observance by Russia of undertaken obligations within the frameworks of the Convention, and point at the necessity to comply therewith.

As a recommendation, the specialists of the Association of Russian Lawyers for Human Rights suggest the Council of Europe to inform Russia about the necessity to build democratic state, develop civil society, ensure mass media independence, freedom of political competition, transparency of activity of state authorities, improvement of the Human Rights Commissioner institution and expansion of his/her authorities, restriction of state interference with the activity of nongovernmental organizations, mass media, advocacy – without fulfillment of these recommendations it is impossible to achieve practical and efficient securing of conventional rights and freedoms, including compliance with article 3 of the European Convention. Only if these conditions are observed one can speak about efficient reformation of the penal system in Russia: from personnel policy in this field to detention conditions for detained persons and prisoners.