

# CONFRONTING THE CIRCLE OF INJUSTICE

THREATS AND PRESSURE FACED BY  
LAWYERS IN THE NORTH CAUCASUS

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Cover photo: Lawyer Sapiyat Magomedova with the files relating to her case against the police who assaulted her in Khasavyurt, Dagestan, Russian Federation. June 2012.

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## INTRODUCTION

Human rights are under severe threat in the North Caucasus, a region in the Russia Federation comprising six republics – Chechnya, Dagestan, Ingushetia, Kabardino-Balkaria, Karachaevo-Cherkessia and North Ossetia – as well as Stavropol Krai (Region)<sup>1</sup>. The day-to-day lives of many people in the North Caucasus, as well as the wider political, economic and social context in this region of the Russian Federation, are very much defined by the threat which armed groups pose to security and the response from the Russian authorities. With regularly reported attacks against law enforcement officials, members of local administrations, prominent figures and members of the general public, the Russian authorities are faced with the need, and in fact have an obligation, to ensure that the local population can enjoy security. However, any efforts to combat the threat posed by armed groups, and in particular to identify and bring to justice those responsible for any alleged crimes, must observe the rule of law and fully respect human rights.

For years, Amnesty International has been receiving regular reports of human rights violations in the North Caucasus committed by members of law enforcement agencies in the context of the fight against armed groups. The organization has researched and documented numerous cases of human rights violations in the region, which include torture and other ill-treatment, as well as enforced disappearances and extrajudicial executions.<sup>2</sup> Such violations are frequently characterised also by the lack of adequate response on the part of the Russian authorities. More often than not in such cases, the alleged violations are not investigated promptly, thoroughly, effectively, independently and impartially as required by international law.<sup>3</sup> Other institutions too, have expressed concerns about the authorities' failure to investigate and the problem of impunity in the region. In relation to the cases of a number of "human rights activists, lawyers and journalists", the PACE expressed "its bewilderment and anguish at the fact that to date none of these cases has been elucidated by the investigating system" and insisted that the authorities "bring to trial in accordance with the law all culprits of human rights violations, including members of the security forces, and to clear up the many crimes which have gone unpunished".<sup>4</sup>

Often, the very incidence of specific violations is denied by the authorities, even though Amnesty International, as well as other organizations, have been able to extensively document such incidents. While investigators face significant obstacles to effectively investigating such incidents – including the secrecy surrounding security operations in the region, and the difficulty finding independent witnesses because of the danger such witnesses face – Amnesty International has also documented many investigations that have lacked the requisite independence and impartiality, particularly when carried out, as most investigations are, by local officials who often are institutionally or personally linked to those implicated in the incidents themselves.<sup>5</sup> On many occasions, the investigators claim they are unable to identify the perpetrators, and suspend or close the relevant criminal case. There are also occasions when the involvement of law enforcement officials in a particular incident is not in doubt, but the allegation that their actions amounted to a human rights violation is brushed aside as unfounded. However, in many cases it is difficult not to conclude that the investigation lacked the will to make the necessary inquiries, consider all available evidence impartially, and bring criminal charges against suspected perpetrators.<sup>6</sup> As a result, impunity for human rights violations prevails. The failure is not just in one or two cases but in many of the cases where security forces are implicated; it is a failure of systemic proportions. While legal remedies are available to victims in theory (the victim can take the investigative authorities to court for failing to investigate their complaint and demand investigation), they are often denied in practice, as the investigations – in cases where criminal investigations are opened – usually come to nothing and no-one is brought to justice for the many cases of enforced disappearance, torture and other ill-treatment, and alleged extrajudicial killings in the region.<sup>7</sup>

These failures have increased the breakdown in the rule of law, which also has another important side to it. Whereas in many cases victims of human rights violations by law enforcement officials are denied justice and access to an effective remedy, those accused of crimes related to activities of armed groups, or just general crimes, in the region also suffer violations of their rights as they are processed through the criminal justice system. All of those accused have the right to a fair trial and associated rights, such as the right to access to a lawyer and legal assistance and representation by a lawyer of their own choice.<sup>8</sup> These rights too, as Amnesty International has uncovered in discussions with lawyers in the course of its research for this report, are frequently violated in the North Caucasus.

Suspects in criminal investigations, particularly those accused of membership of an armed group and associated crimes such as illegal possession of weapons, are commonly held in custody for the duration of the investigation<sup>9</sup> and trial. In such a situation, as documented by Amnesty International, a person is vulnerable to a range of violations and abuses from the criminal investigation and justice system, such as the use of torture for interrogation purposes and of forced confessions as 'evidence' during a trial, or denial of equality of arms in court.<sup>10</sup>

Russian law prohibits the use of torture, although the definition is not entirely in line with the UN Convention against Torture.<sup>11</sup> However, the law does include some safeguards against torture, and in respect of their procedural rights.<sup>12</sup> Among the safeguards existing under Russian law to prevent, or rectify, such violations is every person's entitlement to have a professional lawyer as their legal counsel during the investigation and court trial.<sup>13</sup> The defendant can retract their written testimony in court, unless it has been countersigned by a lawyer present during their interrogation. The lawyer is often the only contact a detainee has with the outside world before court trial who is not a member of the criminal justice system (as the detainee can be denied access to their family during the investigative period by the investigator<sup>14</sup> – and in practice is denied in most or all cases involving allegations of armed group membership), and it falls to the lawyer to document and protest human rights violations, procedural infringements and to defend the suspect. In terms of the suspect's fate, a lot depends on the diligence and professionalism of the lawyer, who is usually the only minimal assurance of the suspect/defendant's rights in a criminal justice system that seems bent towards conviction of suspects that, according to many lawyers interviewed by Amnesty International, frequently doesn't respect a defendant's procedural rights – including the legal requirement that court trial is an adversarial process in which equality of arms is fully respected.<sup>15</sup>

It is widely recognised (as explained below) that the Russian criminal justice system and its powerful machinery is predicated on delivering as many prosecutions and convictions as it can.<sup>16</sup> Many lawyers in the North Caucasus told Amnesty International that members of the criminal justice system – investigators, prosecutors, police and intelligence services, and in most cases also the judiciary – perceive lawyers not as an important safeguard and component of the system, but as an obstacle. In the context of this system, lawyers in the North Caucasus have to carry out their work in the face of an array of pressures, threats and harassment which is the central theme of this report. This critically undermines their ability to fulfil their professional obligations and defend the rights of their clients, and even their independence.

#### **BEATING OF LAWYER SAPIYAT MAGOMEDOVA BY POLICE**

**Dagestani lawyer Sapiyat Magomedova came to a police station to visit her recently detained client, but was denied entry and brutally beaten. Her attempts to see her assailants prosecuted resulted in criminal charges being brought against her, and later the entire investigation was dropped.**

Sapiyat Magomedova is a criminal defence lawyer from Khasavyurt, in Dagestan, known for her work on cases involving human rights violations allegedly committed by members of law enforcement agencies. On 17 June 2010, she came to Khasavyurt town police station to visit her recently detained client. She presented her lawyer's ID to the duty officer at the entry checkpoint and was let in through the metal gate. According to Sapiyat, inside the courtyard she was stopped by a group of police officers whose superior was shouting from inside the building to "throw her out" and "never let her back in again". Two policemen grabbed her by the hands and shoulders, and pushed her through the checkpoint and into the street. When Sapiyat turned back, two policemen forcefully threw her out of the checkpoint and onto the ground, and she fell on her face.<sup>17</sup> When Sapiyat got up trying to recover from her fall she demanded to know the policemen's names and promised that they would be held responsible for their actions. Apparently, this enraged them. Sapiyat said that one of them grabbed her hair and threatened to "take her to join her client"; three police officers dragged her back inside the police compound, and in the course of dragging her hit her head against the bars of the metal gate, and she briefly passed out. Inside the compound, she alleged that one officer twisted her thumb and then the whole wrist of her right hand while some others whom she could not see were punching her from behind. Sapiyat believes that she was being beaten by five or six officers. When the beating stopped another lawyer, who was inside the police station at the time, called an ambulance. When it arrived, apparently the police turned the ambulance away. The other lawyer called the ambulance again, and helped Sapiyat walk out of the station into the street. As her medical report of 21 June 2010 confirms, she was hospitalized on 18 June with a head injury and several bruises of soft tissues and chest. She spent over a month receiving treatment in Dagestan and in Moscow.

On 18-19 June 2010, Sapiyat Magomedova's written requests were sent to the Prosecutor's Office of Dagestan and the Chair of the Investigative Committee in Moscow to open criminal proceedings against police officials from Khasavyurt. A criminal investigation case into Sapiyat Magomedova's allegations was opened only on 1 July 2010. However, already on the following day, 2 July, another criminal investigation case was also opened based on the police officials' counter-claims that they themselves were victims of an assault and public insult by Sapiyat Magomedova. In the months that followed, Sapiyat received messages in the form of "advice" from some acquaintances that it would be better for her to withdraw her complaints against the police, and that if she pressed ahead she herself would face criminal charges.

Sapiyat Magomedova repeatedly petitioned the authorities in Moscow to refer the two cases to any criminal investigation unit outside Dagestan to ensure impartiality, but all her requests were ignored. In one of these requests, sent to the Chair of the Investigative Committee in Moscow in April 2011, she complained that nine months after the opening of the investigation, not one suspect in the case based on her allegations had been identified, and all Khasavyurt police officials who had been questioned by the investigator still featured in the case as witnesses and none as suspects, even though she could identify several of those who had assaulted her. Sapiyat also tried to challenge, unsuccessfully, the investigation's inaction (including its failure to identify the alleged perpetrators) in a court in Makhachkala, where she filed the relevant complaint on 25 November 2010. The court failed to consider it within five days and rule on the admissibility of the complaint, as mandated by Russian law.<sup>18</sup> The court considered it on 24 December 2010 only and refused the complaint in substance. On 11 January 2011, Sapiyat appealed against its decision to the Judicial Chamber of the Supreme Court of Dagestan which, on 28 February 2011 ruled to refuse her appeal.

Meanwhile, on 30 September 2010, a judge approved travel restrictions issued against Sapiyat Magomedova by the investigator who argued that there was "sufficient information to assume that the suspect Magomedova S.A. will hide from the investigation, [that she] may continue to engage in criminal activities, threaten witnesses or other parties to the criminal proceedings or in some other way impede the proceedings in the criminal case". However, the judge's decision did not specify what evidence the court had received to accept this claim by the investigator and, according to Sapiyat, no such "information" was presented in court. These restrictions meant she could not leave Dagestan, which she regarded as a form of pressure.

It was only on 15 July 2011 that four police officials from Khasavyurt were charged with abuse of authority (Art. 286 of the

Criminal Code). However, on 27 July 2011, Sapiyat Magomedova herself was also charged under Articles 318(1) ("The use of violence against a government official", punishable by up to five years in prison) and 319 ("Insulting a government official") of the Criminal Code. On 22 September and 7 October 2011, the cases against Sapiyat Magomedova and against the police officials, respectively, were sent to court. Both were returned by the judge to the investigator on the grounds that both related to the same set of events but gave contradictory accounts of what had taken place, which, according to the judge, prevented the court from holding an investigation into what had happened. The Supreme Court then upheld these decisions. A senior local investigator then, in turn, ruled to close both cases on 28 December 2011. He argued that while both sets of charges were based on claims by the respective alleged victims, all opportunities to establish the truth had been exhausted and the existing contradictions in the two accounts of the same event were "irresolvable". However, the claim that all means to investigate this event have been exhausted appears very questionable considering the investigation's consistent failure to examine thoroughly and effectively the statements and evidence which Sapiyat Magomedova was either able to present (e.g., copies of the police's logbook suggesting that the counterclaim by the police against her had been issued three days later and backdated), or tried to insist on being examined (such as the footage which the police's CCTV cameras should have captured at the scene, which Sapiyat repeatedly and unsuccessfully demanded from the investigator to see and comment on), as is evident from the complaints repeatedly filed by Sapiyat during the protracted investigation period. Instead, the criminal proceedings against the policemen and against her were closed as part of the same procedure. Notably, Sapiyat Magomedova was not informed of the above decision of 28 December 2011, and found out about it by chance only in March 2012. At the time of writing she is planning to appeal, although she holds out little hope for any kind of positive or fair outcome.

The story of Sapiyat Magomedova – an alleged assault by police and the inadequacy of the subsequent investigation – highlights the failure of authorities to protect lawyers in the region, and the difficulties faced by Sapiyat and her colleagues in the North Caucasus in carrying out their professional duties. The state is responsible for ensuring lawyers are free to carry out these activities. Safeguards should include effectively and impartially investigating every reported incident and holding those responsible accountable, which has not happened in this case. Further, the actions of the police in this case deprived the suspect of the right to access to a lawyer of their own choice.<sup>19</sup>

This is not an isolated case. Sapiyat Magomedova's case is different from many others because of the courage and persistence she has shown in talking openly of her case in the face of resistance and pressure from the system, and the international exposure her case has had. In other respects however it is, sadly, not unique. During the same year, 2010, in Dagestan alone at least two other female lawyers reported to the authorities and the media physical violence and intimidation to which they were subjected by police while going about their professional duties as lawyers. On 2 July, Jamilya Tagirova was allegedly punched in the face by a police investigator inside his office (details below), while on 7 October Zinfira Mirzayeva was allegedly forced inside a car by two policemen when she tried to take photos of a supposed crime scene (a paddock from which some sheep had been stolen), delivered to a police station and held there and threatened by police that she would be charged with taking photos in preparation of a terrorist act. On a separate occasion, according to the Russian NGO Memorial, their male colleague Sergei Kvasov was beaten unconscious with wooden clubs and metal rods by some unknown masked individuals.<sup>20</sup> In at least two of these three incidents criminal investigations were opened but to the best of Amnesty International's knowledge no-one has been charged in connection with any of these incidents.

Unlike Sapiyat Magomedova's story, cases of other courageous criminal lawyers in the North Caucasus who have taken on the powerful, repressive system are much less known. For those who face torture and are being denied their right to a fair trial, denied their basic human rights, these lawyers represent hope and the last line of defence – while themselves, in many respects, remaining defenceless.



This report attempts to shed light on this situation. Urgent action is needed to address it. The Russian authorities must fully observe and respect the rights of all persons, including lawyers, in the North Caucasus and to ensure that lawyers are protected and free to perform their professional duties without fear. They must also ensure that all perpetrators of violence and other abuses in relation to lawyers are brought to justice, as well as to ensure that suspects are guaranteed their fair trial rights, including the right to legal assistance by lawyers of their own choice. The importance of these issues cannot be underestimated. As the Basic Principles on the Role of Lawyers<sup>21</sup> point out the “adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession”.<sup>22</sup>

## METHODOLOGY

This publication draws primarily on the findings of a research mission undertaken by Amnesty International to the six North Caucasus republics – Chechnya, Dagestan, Ingushetia, Kabardino-Balkaria, Karachaevo-Cherkessia and North Ossetia – in June 2012. The mission findings have been supplemented with desk research and are informed by Amnesty International’s ongoing monitoring of, and campaigning on, human rights violations in the North Caucasus. The organization is regularly in touch with lawyers across the region in the course of its work.

During the above-mentioned mission, Amnesty International delegates spoke with 30 lawyers representing between them all six republics and working, or having worked, on a range of criminal cases. In every instance, the lawyers interviewed had worked on cases where clients had been charged with membership of armed groups and related crimes, such as illegal possession of arms and terrorism. Some interviewees only agreed to talk under the condition of confidentiality, and Amnesty International respects their choice. The authors recognise the very serious and real risks associated with identifying the individuals interviewed for this report: unlike Amnesty International researchers who merely visit the region, they continue to live and work there, and through their professional activities as criminal defence lawyers face risks on an almost daily basis. Notably, in a region where lawyers represent a relatively small community, often details of the cases which they have shared with Amnesty International would be sufficient to identify them personally, particularly by members of the powerful law enforcement agencies whose members are often implicated in these cases, and which possess significant intelligence-gathering capacity which would enable them to identify the particular lawyers. This report seeks to explain the respective risks in detail and, where its authors deem necessary for the safety of the interviewees, avoids revealing identifying details. The authors recognise that this may mean some cases contain fewer details than is customary for an Amnesty International report but have had to place the safety of the individuals first. Where more information is already publicly available, the level of detail cited in such cases is greater, which is often possible with some of the older cases, where the safety concerns for the individuals have sometimes waned.

Some cases in this report are more recent than others, and one case documented by Amnesty International directly and cited in greater detail goes as far back in time as 2007. With regard to this and all other cited cases, the problems they highlight remain very topical in the North Caucasus – as some of the more recent presented cases demonstrate and mutually reinforce. This is true both in terms of the pressures to which criminal defence lawyers in the region are exposed in connection with their professional activities and regarding the authorities’ failing to deal with the relevant incidents adequately by, in particular, failing to investigate them thoroughly, effectively, independently and impartially and bring perpetrators to justice, and to provide lawyers with an environment that is conducive to performing their professional duties “without intimidation, hindrance, harassment or improper interference”.<sup>23</sup>

Amnesty International delegates also attended parts of two separate court hearings in the course of the mission: In Karabulak, Ingushetia (the case of Guliyev and Nalguiev - some of the charges in this case with two former police officials as suspects relate to the abduction and torture of Zelimkhan Chitigov in April 2010<sup>24</sup>); and in Nalchik, Kabardino-Balkaria (the case against alleged participants in an armed group attack on government buildings in the republic on 13 October 2005 - the so-called "Nalchik case" in relation to alleged participants in the coordinated attack by more than a hundred armed men on law enforcement agencies).<sup>25</sup>

Amnesty International is grateful to those who shared their insights, personal stories and experiences.

## CHAPTER 1. THE LEGAL FRAMEWORK AND THE ROLE OF LAWYERS IN PROTECTING HUMAN RIGHTS IN RUSSIA

### THE LEGAL PROFESSION IN THE RUSSIAN CRIMINAL JUSTICE SYSTEM

Russian law provides for a special status for some legal professionals, specifically those classified as *advokats*. This status is reserved for lawyers who are members of Bar Associations (*advokatskaya palata*), and is subject to fulfilment of a number of conditions.<sup>26</sup> The status of an *advokat* entitles the holder to certain rights and privileges reserved exclusively for *advokats*, but also imposes on them a number of obligations, such as a prohibition on working as an employee (except as an academic) – i.e., that they must either be self-employed on their own or as a member of a law firm.<sup>27</sup> All of the lawyers interviewed for, and discussed in this report, are *advokats*.<sup>28</sup>

The Bar Association, under Russian law, is a non-state non-commercial organization which comprises its member lawyers and represents them collectively vis-à-vis the state. It is responsible for ensuring that its members uphold professional standards and code of practice, and for making provision for free legal assistance to all persons in the Russian Federation (discussed later). There is a Bar Association in every one of the 83 administrative territorial units ('subjects') comprising the Russian Federation. In the North Caucasus context, these are the six republics – Chechnya, Dagestan, Ingushetia, Kabardino-Balkaria, Karachaevo-Cherkessia and North Ossetia – and the Stavropol Krai (Region). Each of these has a Bar Association. There is also the Federal Bar Association (FBA). The FBA consists of the corporate membership of all Bar Associations in the Russian Federation. Collectively, members of all Bar Associations in Russia constitute an independent, self-regulating professional community, the *advokatura*. The FBA's role is that of their collective representation and advocacy in relations with the state.

The legal profession, *advokatura*, its membership and the legal activities of its member *advokats* are strictly regulated, by law – in particular the Federal Law "On *Advokats'* practice and *Advokatura*" – and also by the Code of Professional Ethics of the Lawyer (CPEL, a document adopted by an all-Russia congress of lawyers). These include a legal obligation "to defend the client's legitimate rights honestly, prudently and diligently, by any means which are not prohibited under the law of the Russian Federation".<sup>29</sup> The client may choose to decline the *advokat's* services or involve another *advokat* at any point. By contrast, an *advokat* is bound by professional duty in relation to the client and may not end this relationship by their own choosing.

Irrespective of which Bar in Russia the *advokat* is a member of, they may practice law anywhere in the country and enjoy the same rights and privileges. These include immunity from house and office searches, and an *advokat* cannot be subjected to covert surveillance, except by a prior special court decision.<sup>30</sup> An *advokat* can assume the role of a legal counsel on behalf of a criminal suspect, including when contracted by others on the suspect's behalf, or when requested by the investigator or the judge and paid for by the state (also known as *ex officio* lawyer; hereafter termed 'state-appointed' in this report). In carrying out this role, the *advokat* may have any number of direct and confidential meetings with the client held in custody.<sup>31</sup> Whether contracted privately or assigned by the state, the *advokat* serves as a legal advisor and representative of a client (*doveritel*) in the course of the investigation and court proceedings on the understanding he/she acts only on direct instructions from the client and in the client's best interests.<sup>32</sup>

An *advokat* cannot be subjected to a personal search when entering a place of custody without well-founded reasons which the penitentiary staff have to present on demand.<sup>33</sup> Most importantly, an *advokat's* work and relationship with the client and the state authorities are predicated on the principle known as *advokatskaya taina* (lawyer's confidentiality), which underlies all the above privileges.<sup>34</sup>

According to this, an *advokat* is both bound and protected by this principle, and cannot be questioned by the investigator, court, or anyone else on matters relating to the case which the *advokat* will have learnt by virtue of working on the case. This principle forbids an *advokat* from testifying as witness in the case. Conversely, an *advokat* cannot represent a client in a case where the *advokat* has given testimony as a witness.<sup>35</sup>

Effectively, the law assigns the *advokat* a very special place and role within the criminal justice system: the *advokat* is a direct defender of the rights of the person facing the apparatus of the state which is employed to resolve a crime, identify the perpetrator, bring them to justice in front of a court to rule on the suspect's innocence or guilt. The *advokat* is the link between this system, with all the powers to arrest, detain, interrogate, try and, if found guilty, punish vested in it, and the individual and their rights guaranteed to them by international law and the Russian Constitution, including the prohibition of arbitrary arrest and torture, and the right to a fair trial.<sup>36</sup> The *advokat* plays a crucial role in protecting the rights of a suspect, as has been underlined by international experts<sup>37</sup> – and faces an especially challenging task when different elements of the system collude in violating them.

Full and diligent observation of the above rules and principles is one necessary pre-condition for due process. The *advokat* – client relationship is a delicate one, and it is preserved only by virtue of the state fully respecting and observing these rules. It can be easily upset if agents of the state from powerful law enforcement institutions chose not to do so, as demonstrated by the cases in the report.

**For convenience, the term 'lawyer' is used below interchangeably with 'advokat' – on the understanding that it denotes this particular profession, as defined above.**

## LEGAL FRAMEWORK DEFINING RIGHTS OF SUSPECTS TO LEGAL ASSISTANCE AND THE ROLE OF LAWYERS

### International

A person facing criminal charges, particularly when in custody, is vulnerable in a number of ways. International human rights law and standards entitle them to a number of key, fundamental rights intended to shield them from potential abuse by the criminal authorities. Of particular relevance to this report, are those that relate to the provision of legal assistance, and that define the role of lawyers and the obligations of the state in this regard.

Both the International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) provide for a raft of fair trial rights.<sup>38</sup> These guarantees include the right to every person's equality before court<sup>39</sup>, presumption of innocence until proven guilty according to law<sup>40</sup>, the right to defend oneself and the right to legal assistance of one's own choosing,<sup>41</sup> to communicate with counsel in conditions that fully respect the confidentiality of their communications,<sup>42</sup> and the right not to be compelled to testify against oneself or to confess guilt.<sup>43</sup> The right to legal assistance includes a right to free legal assistance, "where the interests of justice so require"<sup>44</sup>. In all cases, a suspect must be granted prompt access to a lawyer.<sup>45</sup> Accused persons have the right to effective representation, and where legal assistance is provided by the state, a lawyer's failure to represent their client effectively may entail the responsibility of the state.<sup>46</sup>

The role of a lawyer is central to the realisation of these rights, and to the protection of all of a suspect's

rights as outlined in the Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. The Basic Principles on the Role of Lawyers (the Basic Principles) provide that governments must “ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference... (b) are able to travel and to consult with their clients freely and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions”.<sup>47</sup> The Basic Principles go on to provide for a number of specific safeguards that states should ensure that, amongst other things:

- where “the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities”;<sup>48</sup>
- lawyers are not be identified with their clients or their clients’ causes as a result of discharging their functions;<sup>49</sup>
- lawyers are not be refused recognition before a court unless the lawyer has been disqualified in accordance with national law and practice and in conformity with the Basic Principles;<sup>50</sup> and
- lawyers enjoy civil and penal immunity for statements made in good faith before a court.<sup>51</sup>

States must also take measures to ensure that lawyers involved in the complaint or in the investigation of human rights violations, as is true for many of the cases documented in this report, are protected against ill-treatment, intimidations or reprisals.<sup>52</sup> As such, the Basic Principles flesh out the principle that should be followed to ensure that lawyers are able to effectively carry out their functions and duties in respect of their clients. The UN Human Rights Committee has also underlined that “lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter.”<sup>53</sup> Similarly, the Committee of Ministers of the Council of Europe emphasized that “[a]ll necessary measures should be taken to respect, protect and promote the freedom of exercise of the profession of lawyer without discrimination and without improper interference from the authorities or the public, in particular in the light of the relevant provisions of the European Convention on Human Rights”.<sup>54</sup> Underpinning these requirements is the principle of independence of lawyers referred to in the preamble of the Basic Principles.

## National

Russian law also contains guarantees of certain key rights, including procedural provisions and legal safeguards intended to ensure enjoyment of these rights.

The Constitution of the Russian Federation states that “international treaties of the Russian Federation are a component part of its legal system. If an international treaty of the Russian Federation stipulates other rules than those stipulated by the law, the rules of the international treaty apply” (Article 15.4); it also guarantees all persons in Russia the rights and freedoms in accordance with the international law (Article 17.1), which are thus directly applicable under Russian law. In addition, Article 19 of the Constitution guarantees everyone equality before the law and court. Everyone has the right to defend their rights and freedoms “by any means that are not forbidden by law” (Article 45). Article 46 of the Constitution guarantees everyone judicial protection of their rights and freedoms, and Article 48 provides for the right to professional legal aid, which, where a suspect is in detention, is guaranteed from the moment the person is apprehended (*s momenta zaderzhaniya*). A person is presumed innocent until proven guilty in accordance with law by the decision of a court; “the defendant is not obliged to prove his/her innocence”, and any doubts regarding a defendant’s guilt are to be interpreted in their favour (Article

49). Article 50 prohibits the use of unlawfully obtained evidence. This includes evidence extracted by torture or other ill-treatment – which are as such expressly prohibited by Article 21.2.

Certain rights are further elaborated, and the relevant procedural rules detailed, in the Code of Criminal Procedure (CCP). The CCP requires that every individual involved in criminal proceedings (i.e., when being placed in custody, presented with charges, facing a judge or being questioned as a witness in a criminal case) should have their procedural rights explained to them (Article 11). Article 16 of the CCP guarantees every criminal suspect and defendant the right to legal defence from the earliest moment in the process.<sup>55</sup> Besides, every criminal suspect has the right to meet and talk to their lawyer confidentially, any number of times and without any time limit, including prior to their first interrogation.<sup>56</sup>

Every witness in a criminal case also has the right to invite a lawyer to be present and advise them during questioning by an investigator or in the course of any other investigative activity the lawyer may be summoned (e.g., for a visit to a crime scene or cross-examination).<sup>57</sup> It is also common for a witness in a criminal case to try and bring a lawyer with them. This is because of the common deficit of trust in the criminal justice system among the general population in Russia and a common fear of being subjected to pressure by the investigator, or being summoned for questioning as a witness and then named a suspect upon arrival<sup>58</sup> – and not having a chance to invite a lawyer of one's own choosing at that moment.

The Russian law guarantees everyone the right to choose their lawyer or invite more than one lawyer,<sup>59</sup> although an individual provided with free legal aid paid for by the state does not have the right to choose a lawyer.

The suspect/defendant also has the right to request the investigation or the court to allow them to refuse the services of the lawyer already involved in the case on their behalf – a request which the investigator or the judge is not obliged to grant however.<sup>60</sup> An individual who has been assigned a lawyer free of charge must do so in writing. The investigation and prosecution have an incentive to ensure a lawyer is present: a defendant in court may decline to confirm a statement they have earlier given, or supposedly have given, to an investigator, and unless it was also counter-signed by a lawyer it will not be admissible in court.<sup>61</sup> In contrast, the defendant's statement signed by a lawyer will normally be accepted by the court, even if the defendant protests that it has been extracted under torture or by other unlawful means.<sup>62</sup>

The CCP envisages that an investigator or the court may assign (*naznachit*) a lawyer to defend the suspect/defendant, in which case the cost is covered by the state (A. 50(5)); there is no strict conditionality regarding the provision of free legal aid to criminal suspects (such as means testing for example), and the option to be provided with a free lawyer is open to all suspects/defendants in criminal cases. There are certain cases in which participation of a lawyer is mandatory (e.g., when the suspect is charged with crimes punishable by 15 years' imprisonment or more), and in such cases when the attendance by the lawyer contracted by the suspect/defendant is not possible within 24 hours from the moment of their detention, the CCP mandates the investigator "to take measures to appoint a [legal] defender" (Article 50). Later, this report explains how these provisions are abused by investigators to prevent the suspect/defendant from having the lawyer of their own choosing attending, or involve a lawyer who fails to act in the suspect's best interests and may even appear to be tacitly collaborating with the investigators, at least in terms of not adequately safeguarding the interests of the client.

## CHAPTER 2. THE ATMOSPHERE OF INTIMIDATION AND HARASSMENT AND ITS IMPACT ON LAWYERS' WORK

*"What now? Nowadays I try not to take part [in criminal cases] – I do not want to wreck my nervous system. Your worth is naught, absolute naught."*

In Karachaevo-Cherkessia explaining his decision to give up criminal defence practice, in an interview with Amnesty International, June 2012

Amnesty International delegates have visited the North Caucasus numerous times over the last decade, including during 2010-2012. Each visit has included meetings with criminal lawyers working as defence counsel on behalf of individuals accused of membership of armed groups and related crimes (such as illegal possession of arms and terrorism). Amnesty International has also on each visit met with legal representatives for those seeking legal redress for their grievances – people who have suffered human rights violations at the hands of law enforcement officials and are looking for protection and demanding effective investigation of alleged enforced disappearances or extrajudicial executions or reparation for unlawful detention and torture or other ill-treatment. In fact, all those who seek to help alleged victims of such violations – lawyers, human rights defenders, investigative journalists – expose themselves to the risk of harassment and intimidation, and sometimes face threats from known or anonymous sources.

### ANONYMOUS DEATH THREATS

**In September 2009, anonymous authors compiled and distributed in Makhachkala, Dagestan, a flier threatening blood vengeance against armed group members and their "accomplices", including four lawyers, as well as human rights defenders and journalists. A journalist on this list was later assassinated in 2011, and his killers never found.**

The flier, distributed in multiple copies, stated that its authors had already identified 250 armed group members, and promised their elimination in retaliation for the deaths of police officers and civilians. The flier also contained names of 16 individuals whom it described as their accomplices (*posobniki*). Among them were four lawyers who acted as defence counsel for people charged with membership of armed groups and related crimes, alongside well-known Dagestani journalists, a prominent human rights defender known for her work against enforced disappearances, and other civil society activists. Amnesty International is aware of other subsequent threats and harassment faced by several people on the list.

One of the people named as an armed groups' "accomplice" in the flier was the founder of the independent weekly newspaper Chernovik (itself the target of continuous harassment by the authorities) and a leading Dagestani journalist known for his publications critical of the authorities, Khadzhimurad Kamalov. He was among the first to speak publicly about this anonymous threat. On 15 December 2011, he was shot outside his office by an armed man wearing a balaclava, and died on the way to hospital.<sup>63</sup> His killer was never found, nor were the authors of the flier.

In many of these cases from the North Caucasus in which Amnesty International tried to document human rights violations in relation to specific victims, it became apparent that their lawyers in particular were also often facing harassment, pressure and intimidation, covert or overt, from unknown individuals or officials associated with different elements of the criminal justice machinery – such as the police, intelligence service (FSB), prosecution and investigative authorities. Some lawyers the organization has spoken to could cite specific incidents as evidence of pressure; others spoke of the general climate of intimidation in which they have to work.

For many, this pressure and intimidation comes in the form of threats which may be direct but can also

be passed anonymously or via acquaintances. Anonymous threats often take a form which is reportedly widely practised in the North Caucasus: vague messages are often passed to the intended recipients, by word of mouth, indirectly – often via their colleagues or relatives, but sometimes also “well-wishing” officials. Often, these are presented as if they were friendly, well-intended warnings. Whilst they are presented as such, lawyers that spoke to Amnesty International said there was no doubt that in essence they are threats intended to discourage and deter lawyers from being too proactive – either on certain specific cases, or more generally.

Several lawyers, in different North Caucasus republics, told Amnesty International that they received such “friendly” warnings, usually from unnamed “well-wishing sources”, via their relatives (but usually not immediate family members) or acquaintances and lawyer colleagues. More than one lawyer in Chechnya spoke about receiving such messages via relatives, but also of direct veiled warnings uttered to them by prosecutors.<sup>64</sup> One lawyer recounted the words of one district prosecutor, pronounced during an informal discussion in the context of a case in which he was defending a man suspected of membership of an armed group: “Don’t you realize what kind of time we live in? You know that driving on the roads here is no longer safe, don’t you?” Other lawyers recounted similar veiled threats, such as: “Are you not worried about your family?”

Many criminal defence lawyers in the North Caucasus interviewed by Amnesty International have also complained that their work can also be extremely taxing psychologically. The most common cause for frustration mentioned was the lack of judicial independence and the failure of the rule of law more generally. Many felt that in the face of flagrant violations of the right to fair trial on the part of different elements of the criminal justice system – the investigation, the prosecution, and the court itself – no regular or creative defence tactics or knowledge of law and proceedings stood a chance.<sup>65</sup>

Several lawyers interviewed by Amnesty International expressed direct and strong concern about the fate of their clients, including their fate in light of the lawyer’s proactive defence position and activities. Some feared that their clients’ situations might get worse, and that threats made by law enforcement officials against their clients might be realized, and they might face (further) torture and other ill-treatment in the lawyer’s absence, as well as possibly harsher sentences and other consequences in the end. As one lawyer explained by means of an example, a client had told her that he was innocent but that he had been threatened that he would pay with his life if he refused to confess, and that even if he were to be acquitted he would be killed during a security operation. “Can you guarantee that I will live if I refuse to confess?” he asked. “Who am I to give him such guarantees?” the lawyer bemoaned.<sup>66</sup>

A number of times and in different North Caucasus republics, Amnesty International has heard stories of lawyers who decided either to concentrate entirely on non-criminal law or abandon the legal career altogether after they developed a disappointment in the system and in its ability to deliver justice and an increasing realization that the rule of law – in the North Caucasus at least – is illusory.

Eva Chanieva, a lawyer working in Kabardino-Balkaria, told Amnesty International about a case in which she had to step in as a defence counsel to replace her colleague, a newly qualified young lawyer.<sup>67</sup> On 20 February 2012, her colleague was contracted to defend a man who had been arrested earlier on that day on suspicions of illegal possession of firearms and illegal substances. The young lawyer first saw her client in the investigator’s office. He was feeling poorly and complained of having been blindfolded and beaten and electrocuted by law enforcement officials (members of an ambulance team which was called on the same day to treat him for his injuries confirmed that he had injuries consistent with these allegations). When the suspect’s questioning began, some armed masked officials entered the room and



remained present throughout the interrogation which lasted several hours. They openly threatened the client telling him what he had to confess to. The lawyer tried to prevent them from interfering with the questioning, unsuccessfully. Her client refused to make any confession and kept insisting that he had been tortured. It was clear that further interrogation was pointless, but the lawyer was too afraid to bring it to a close fearing that if she left he would be subjected to further torture. According to Eva Chanieva, the young lawyer called her several times during that evening. The young lawyer was extremely distressed by the experience of seeing a tortured man and the intimidating masked officials during an interrogation, and felt she could not continue working on this case. "I have had enough. I can't see how I can work on this case again. I have seen enough horror for the coming year", she told Eva Chanieva who stepped in the case the following day to replace her. Following a complaint which Eva Chanieva submitted to the Office of the Prosecutor on behalf of the client, a criminal case was opened on 24 May 2012 into the allegations of torture by members of the Centre for Combating Extremism. However, in accordance with the investigator's decision of 24 December 2012, the case was suspended because the identity of the masked officials could not be established.

In many of Amnesty International's interviews with lawyers who frequently take on cases of clients charged under what is commonly referred to as the "political" and "military" articles of the Criminal Code, and proactively representing their clients, in accordance with their professional duty, they talked of the pressures and even personal risks they are exposed to. As one lawyer from Ingushetia who prefers not to take up "political" and "military" in the republic explained: "There are lawyers, several people, in Ingushetia – I believe they are in danger. Because I know that their attitude, their position [on judicial process] is not shared [by members of the law enforcement system]. There is just one approach here – to put away in prison, to blow up, to abduct..." Then, to explain his point, he added: "If Natasha hadn't been writing she would have been alive".<sup>68</sup> He was speaking of Natalia Estemirova, a human rights defender famous throughout the region for her work which exposed serious human rights violations by law enforcement officials, who was abducted by unknown individuals near her home in Grozny, Chechnya, on 15 July 2009 and found murdered on the same day in the neighbouring Ingushetia, and whose killers have never been found.<sup>69</sup> Natalia Estemirova, amongst others, was mentioned in a resolution of the Parliamentary Assembly of the Council of Europe (PACE) as one of the "human rights activists, lawyers and journalists working in difficult circumstances, and often in peril of their lives, to help victims obtain justice and to denounce abuses."<sup>70</sup>

Such "political" and "military" articles are those relating to terrorism, creation and activities of illegal armed groups, illegal possession and transfer of arms and explosives, and armed attacks against government institutions and officials as well as civilians<sup>71</sup> (in the Chechen Republic, these are also taken to include drugs-related charges), i.e. they are the articles most commonly employed by the authorities in the context of counter-terrorism and national security in the North Caucasus. According to lawyers interviewed by Amnesty International, the pressure is particularly high in such cases on all participants in the criminal proceedings to deliver a guilty verdict. As one lawyer noted, "some judges admit in private conversations, shrugging, that they cannot pass a different decision even though they realize that the case is fabricated. So, *de facto*, they admit that they are unable to pass an objective, independent decision on such cases".<sup>72</sup>

It is in this context that the whole of the law enforcement machinery is involved, including the most secretive elements – the police, including its special units such as the Centre for Combating Extremism, security services, and occasionally the military.<sup>73</sup> Amnesty International has documented numerous human rights violations over the years, including enforced disappearances, unlawful and *incommunicado* detention, extrajudicial executions, and torture and other ill-treatment of criminal suspects.<sup>74</sup> Lawyers

working as defence counsel inevitably come into direct confrontation with the powerful law enforcement agencies operate across the region. As the above quote by the lawyer in Ingushetia who chose not to work on “political” and “military” cases in the republic reveals, these institutions are feared for carrying out human rights violations, including abductions and killings, which, as documented by Amnesty International, they carry out with impunity.<sup>75</sup> Defence lawyers find themselves in an unequal contest, and with the justice system being ineffective as impunity for human rights violations reigns,<sup>76</sup> lawyers are also unprotected and exposed to significant risks. For lawyers working in the North Caucasus on these types of cases, it is not an environment that is conducive to performing one’s professional duties “without intimidation, hindrance, harassment or improper interference”.<sup>77</sup>

Intimidation and pressure on criminal defence lawyers that comes from members of the criminal justice system has been reported not only in the North Caucasus but in other Russian regions as well, including by Amnesty International (for example, in the context of the criminal case against Mikhail Khodorkovsky and Platon Lebedev<sup>78</sup>). The former Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, noted in his report after his mission to the Russian Federation in May 2008 that “[t]here is a tendency to identify defense lawyers with the interests and activities of their clients. In this connection, the Special Rapporteur has also received information on instances where defense counsels have been intimidated by public officials.”<sup>79</sup> Others too, have widely raised this issue, including Russian lawyers themselves. Among the organizations that have raised concern about this issue is the Federal Bar Association.<sup>80</sup> The FBA reports that, across Russia, there are regular incidents of pressure from, and violations by, law enforcement officials in relation to lawyers, and that there has been an increase in these incidents in recent years. It lists searches of lawyers’ offices and seizures of documents without the compulsory prior court sanction as required by Russian law, and summoning of lawyers for questioning as witnesses by investigators in the cases in which they are defending a client. The FBA noted that such summons were happening “as a rule with the purpose of removing a lawyer from the criminal proceedings” or to obtain some evidence against the suspect from their lawyer. The officials who, according to the FBA, are most often behind such incidents are those from the investigative authorities which are part of either the Ministry of the Interior (police investigators), the Investigative Committee (a stand-alone federal agency tasked with investigating serious crimes), or the Federal Security Service (FSB, Russia’s intelligence service). According to the FBA, the number of such reported incidents has grown significantly in recent years.<sup>81</sup>

Among those Russian legal professionals who have raised the same problem as a country-wide issue is Mara Polyakova, the Chair of the Independent Expert Legal Council, who addressed President Dmitry Medvedev and the Presidential Council for Civil Society Development and Human Rights on 1 February 2011.<sup>82</sup> She referred to a recent survey of 1,400 lawyers throughout the Russian Federation, many of whom complained that investigators were increasingly summoning lawyers for questioning as witnesses with the purpose of removing them from the cases on which they worked. She also mentioned that there had been several cases of physical assaults against lawyers by law enforcement officials in 2010 in Dagestan, Irkutsk, Cheliabinsk, Tambov and Kaliningrad Regions, Primorsky Krai and Tyva. Some lawyers complained of unlawful searches of their residential and working premises, including break-ins by members of law enforcement agencies.

As documented below, Amnesty International has received numerous credible reports suggesting frequent incidence in the North Caucasus of all the violations and infringements identified by the FBA and Mara Polyakova as well as others. Cumulatively, they contribute to an environment of hindrance, harassment and improper interference contrary to international standards, that hinders the ability of lawyers in the North Caucasus to properly carry out their professional functions.

## “PROSECUTORIAL BIAS” OF RUSSIA’S CRIMINAL JUSTICE SYSTEM

*“Lawyers have to work not only against the prosecution, but to battle with the entire system in order to attain justice and truth”.*

Magamed Abubakarov, in interview with Amnesty International, 8 June 2012, Nalchik, Kabardino-Balkaria

Numerous criminal lawyers told Amnesty International that the distorted perception held by the members of the criminal justice and law enforcement in regard to their role as criminal defence counsel in part stems from the way in which the system is set up: according to the defence lawyers it is set up to deliver guilty verdicts, and an acquittal is perceived as the system’s failure – and is consequently an exception. This problem is much commented on within the professional legal community in Russia. A report on this issue published by the Federal Bar Association in 2009 noted that, according to official statistics, in 2007 courts of first instance had acquitted defendants in just 0.8 per cent of all the judgements passed. Moreover, 37 per cent of acquittals were overturned on appeal.<sup>83</sup> The FBA notes that acquittals are overturned on appeal 18 times as often as guilty verdicts in Russia. This, in the FBA’s view, shows that judges’ perceive acquittals as a “blunder”. “[A] decision overturned on appeal is still regarded [by the system] as a ‘blunder’ in their [judges’] work which may lead to adverse consequences for them,” the FBA’s report concludes. Since the time of the report’s publication, these tendencies have not changed. Moreover, this is a well-known and widely acknowledged problem in Russia. Thus, its current President, then Prime Minister, Vladimir Putin wrote in an article published in February 2012 that “a very pronounced prosecutorial bias in our judicial system” is the system’s “main problem”.<sup>84</sup>

The FBA’s report and Putin’s comment are corroborated by a 2012 report published by the Institute for Law Enforcement at the European University at St. Petersburg, which explains the deeply institutionalized nature of such a “prosecutorial bias”:

*Any situation in which an error of one level of authority is identified by the next one is traditionally regarded as a “blunder”. For instance, acquittal would not be seen as evidence of good work of a judge who detected an error on the part of an investigator and prosecutor, and who did not allow unfair charges to pass (which is why exactly a court trial is needed after the investigation), but as evidence of blunders (or corruption) in the work of law enforcement agencies. There is no provision for the right to a diligent error ... for the prosecution. As a result, the prosecution is forced to seek conviction at all costs ... in some cases even a single “failure” [e.g., for a prosecutor – an acquittal] ... constitutes grounds for disciplinary sanctions, regardless of the overall performance ... Thus, an acquittal in court will be grounds for disciplinary sanctions not only in relation to the state prosecutor, but also for an investigator and an operative officer.<sup>85</sup>*

This analysis has been repeated regularly in interviews which Amnesty International has had with lawyers across the North Caucasus. All of them state that the whole of the criminal justice machinery – law enforcement agencies, investigation and prosecution authorities, and also courts – is currently set up to deliver guilty verdicts and prevent acquittals in so far as possible. This analysis and the prosecution statistics raise questions as to whether each case really has been proved beyond a reasonable doubt and the defendant’s right to presumption of innocence truly been respected.

According to several interviewed lawyers, their informal discussions with prosecutors and judges indicated that only a certain number of such “blunders” as acquittal *per year* are tolerated within the system, after which disciplinary sanctions – or informal reprimands with career-stifling consequences – begin. One

lawyer cited a case in which a prosecutor had unofficially asked him as the defence counsel to not raise objections about some proceedings which would delay the court decision by a month, until the next year. Thus the forthcoming acquittal would “count towards another year” in the prosecutor’s unsatisfactory performance indicators.<sup>86</sup>

Clearly, where a defence lawyer succeeds in obtaining an acquittal or a similar “blunder” occurs (partial acquittal under several key charges or referral of the case for further investigation); by showing errors and weaknesses in the investigation and prosecution, such a lawyer can themselves end up facing serious consequences. These can impact on their career or even their lives more generally, as in the case of Larisa Dorogova for example, below, who after a series of threats has stopped practising law in Kabardino-Balkaria. When lawyers find themselves on the opposing side of powerful law enforcement agencies in sensitive cases, they frequently face extremely serious risks, threats and harassment, or worse, in carrying out their work. Several cases cited in this report illustrate this – they are cases of lawyers who, in the course of their careers, have fought, and sometimes won, difficult legal battles with members of the law enforcement and criminal justice systems, and subsequently, or during the case, are subject to intimidation and pressure. Unsurprisingly, some lawyers in the North Caucasus prefer not to take up some of the most sensitive cases (such as the “political” and “military” cases). Such choices in themselves impact the rights of individuals under investigation and on trial and human rights protection in the region more generally.

#### **ATTEMPTED DISCIPLINARY PROCEEDINGS AGAINST LAWYERS AS A FORM OF PRESSURE**

In the context of the prosecutorial bias in the criminal justice system in Russia, and the power of law enforcement agencies involved in the apprehension of suspects in the North Caucasus<sup>87</sup>, lawyers working diligently on “political” and “military” cases in the North Caucasus find themselves at odds with the criminal justice and law enforcement machinery. They represent an obstacle or inconvenience to its workings – as well as often exposing human rights violations committed by law enforcement officials. Inevitably, they face resistance from different parts of the system. Often, this comes in the form of investigators, prosecutors and sometimes even judges seeking to have disciplinary proceedings initiated against specific lawyers and have them stripped of the right to practise law. While some complaints may be justified, some are not and are taken against lawyers merely carrying out their professional duties, thus contributing to the context of harassment that lawyers in the North Caucasus work in. As the Basic Principles state, lawyers “shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards and ethics.”<sup>88</sup>

As a self-governed professional organization, the Bar Association is the only body which can strip a lawyer of their licence.<sup>89</sup> Accordingly, the relevant complaints are submitted to the Bar Association where the lawyer in question is registered. The Chair of the Bar Association reviews these and either declines the complaint (which, when it comes from law enforcement officials, takes a certain courage) or initiates disciplinary proceedings. In the latter case, a disciplinary panel would consider the case, with the lawyer in question summoned to present their case, and take a decision in accordance with the Code of Professional Ethics. The three disciplinary actions that the Bar Association can apply are a forewarning (*zamechanie*), warning (*preduprezhdenie*) and termination of the status of a lawyer (*prekraschenie statusa advokata*).

In every North Caucasus republic, Amnesty International was told by various criminal defence lawyers that they had complaints about them submitted to the Bar Association by investigators, prosecutors or judges. A lawyer in Chechnya told Amnesty International that some time previously he had received “friendly

advice” from a fellow lawyer not to take part in a specific case. After he refused this and a subsequent informal warning from an official in the Ministry of Justice, the Ministry petitioned the Bar Association to strip him of his licence on the pretext that there was no evidence that this lawyer had had two years of legal practice prior to taking the qualifying examination back in the mid-2000s. The lawyer claimed that there was a written confirmation in his case file, but that it could have been lost. In the post-war Chechnya, the Bar Association was housed in just two or three small rooms; it has subsequently moved to its present building, but some of its files were lost or mixed up.<sup>90</sup> In the event, ultimately no sanctions were issued against the lawyer. Incidentally, many other lawyers in Chechnya were faced with losing their licences too on the same pretext, although reportedly this did not happen, possibly because this would have affected too many lawyers in Chechnya.

Other criminal defence lawyers in neighbouring republics told Amnesty International about similar experiences, which were usually related to them working on some specific “political” or “military” cases.

#### **LAWYER FACING REPEATED ATTEMPTS TO HAVE DISCIPLINARY HEARINGS OPENED AGAINST HIM**

**Batyr Akhilgov, a member of the Bar Association of Ingushetia working on a number of high-profile cases in Ingushetia, North Ossetia and Kabardino-Balkaria, has had complaints filed against him by prosecutors and a judge at the Bar Association on numerous occasions. He was also denied a chance to challenge them.**

Batyr Akhilgov told Amnesty International that soon after one high-profile case involving alleged members of an armed group<sup>91</sup> was over, in which he had been involved as a defence lawyer, the Prosecutor’s Office had sent a complaint about him to the Ministry of Justice of Ingushetia which, in its turn, filed a complaint to the Bar Association. Prosecution officials argued that Batyr Akhilgov had been disrespectful of the prosecution in court, and as evidence attached transcripts of the court hearings. In the transcript, the complainants reportedly underlined some of the phrases and expressions used by the lawyer in his speech, in which he spoke of the failures and fallacies of the prosecution’s position, or drew parallels between the court hearing and court hearings of Stalin’s era. Moreover, although the complaint was based on the court hearing transcripts which the court had provided to the Prosecutor’s Office, Batyr Akhilgov had still not received his copy of the transcripts. The hearing had come to a close in April 2012, but two months later, at the time of the interview with Amnesty International, he was still missing these documents.

Meanwhile, other complaints against him had been submitted to the Bar Association by a judge from Vladikavkaz, in North Ossetia, where Batyr Akhilgov was working on another high-profile case.<sup>92</sup> In the context of that case, the lawyer had filed several complaints to a local court about violations of his client’s rights by the investigation. The judge, in turn, complained to the Bar Association that Batyr Akhilgov had failed to attend court hearings at which his (the lawyer’s) complaints were due to be considered. Under Russian law, these kinds of complaints can be considered even in the complainant’s absence. However, according to Batyr Akhilgov, his failure to attend the hearings was entirely down to the fact that he had not been forewarned about them. The judge had consistently sent him notifications of the forthcoming hearings too late, just two or three days in advance while it took the post service at least a week to deliver them from Vladikavkaz to the lawyer’s hometown, Nazran, in Ingushetia. Furthermore, despite repeated written requests by Batyr Akhilgov to the judge to be provided with copies of the complaints against him, he received none and, consequently, he could not appeal against them unless and until it came to a disciplinary hearing against him.

At the time of writing none of these complaints has led to disciplinary proceedings against the lawyer, because the Bar Association took the view that he did not violate any regulations, law or professional code of conduct, and as such have not affected the lawyer’s ability to practice, Batyr Akhilgov admitted in an interview with Amnesty International that they had taken a lot of his time and in at least this sense were a considerable inconvenience hindering his professional duties.

## CHAPTER 3. PROCEDURAL AND INSTITUTIONAL OBSTRUCTIONS PLACED BETWEEN THE LAWYER AND THE CLIENT

### OBSTRUCTION OF ACCESS TO CLIENTS AND TO COMPLAINTS PROCEDURE

Under Russian law, every person is entitled to have immediate and unimpeded access to a defence lawyer from the moment of *de facto* detention (CCP, Article 49.3(3)), and have unlimited confidential meetings with the lawyer, including prior to the first interrogation (CCP, Article 47.4(9)). International law and standards contain similar guarantees.<sup>93</sup> The need for confidentiality is especially important for those in detention, and as such interviews between a detainee and their legal counsel can be within sight but not hearing of a law enforcement official.<sup>94</sup> Effective use of this right is crucial for the suspect's subsequent defence.

A person in custody is vulnerable to various forms of pressure and abuse, and an effective access to a lawyer makes a huge difference. Zelimkhan Chitigov, a young man who had been abducted by masked policemen from his mother's home in Ingushetia, and held in secret detention blindfolded for four days, during which he was subjected to repeated and prolonged bouts of beating, electrocution, suspension from metal bars and other forms of torture, believes that his life was saved by the arrival of a lawyer. His account (recorded by a journalist and confirmed by Zelimkhan Chitigov to Amnesty International as accurate<sup>95</sup>) also gives an insight into the type of physical abuse and intimidation detainees may come under to force them to refuse their lawyer or to restrict the content of their exchange with the lawyer. This passage relates to his time at the police station in Karabulak where he was brought on the fourth day of his captivity by police from a secret location:

*They took me to another room. There was the head of the criminal investigation ... and one other [officer] in a mask. [They] put down a sheet of white paper, a pen [and demanded]: "Write a statement addressing it to the Head of the Town Police Station that you are refusing the services of a lawyer". "Here!" - it clicked in my head - "if he says 'lawyer' that means there is a chance that I will not get killed". I told him: "I won't write". He started beating me up. Hitting me against the wall - I fall, he picks me up, hits my head against the wall, beats me on the head with this bottle of mineral water. They strangle me with the electric lead from a computer, beat me in the face with it...*

*In the morning they took me to a police investigator. She [the investigator] is sitting there angry, typing, and says: "They will now bring a lawyer..." I felt joy: my father, mother, wife will know that I am alive! "She [the lawyer] is one of them. If you do what she tells you to do you are finished. Don't listen to her, don't tell her you've been tortured. If you say so they will kill you."*

*How was I to know all these things: lawyer, criminal code - I had never come across these things in my life. And so I believe her [the investigator]. A young woman came: "I am a lawyer..." I hid my face in my hands, covered the signs left by handcuffs with my jacket. She started saying something - but I can't hear well, so I keep my silence. "Are you all right?" I nodded my head. I couldn't talk - so I just mumbled.<sup>96</sup>*

Zelimkhan Chitigov says that he was saved from further abuse by the arrival of his lawyer. The Russian human rights organization Civic Assistance Committee reported that "all those who were helping Zelim were receiving threats", and noted a meeting between the same lawyer, Maryam Esmurzieva, and the then head of Karabulak police station who reportedly said to her: "I regret [I] didn't kill him. If you do not want your children to be left orphans, leave this case. Who knows what may happen, a car may run you

over".<sup>97</sup>

Not only should a suspect have access to their lawyer, the lawyer should also be present during any interrogation.<sup>98</sup> This is of paramount importance especially in situations where the practice of torture and other forms of ill-treatment is pervasive, as is the case in the North Caucasus. There are however regular reports from the North Caucasus of persons in detention being pressured by investigators to refuse the services of a lawyer altogether, as in the case of Zelimkhan Chitigov, or of the lawyer of their choice.<sup>99</sup> Indeed, several lawyers told Amnesty International about such cases. When suspects decide to refuse the services of particular lawyers, the lawyer is compelled by law and their professional code of conduct to accept this as the client's chosen position,<sup>100</sup> and also accept that the client will remain secretive about the reason for their decision, although they might explain it to the lawyer privately. In a high-profile case in Nalchik, one of the co-defendants privately apologized to his lawyer about refusing her services and for writing in his written refusal that he had been unsatisfied with her services. "This is untrue, but I wrote this for the sake of surviving – please do not have any hard feelings," were his words according to the lawyer.<sup>101</sup> While the lawyer, if they believe their client has been subjected to coercion, could protest the decision on the basis of acting in the best interests of their client, this is plainly very difficult to do in practice, and could have a detrimental effect on their client in terms of their treatment especially in light of the many documented cases of torture and other ill-treatment in the North Caucasus.

Another common form of abuse of the suspect's rights – and a very common complaint among all lawyers interviewed by Amnesty International in the North Caucasus – is the denial, or *de facto* denial, of access to their clients by investigation officials during the interrogation stage of the investigation. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has repeatedly stressed that "the period immediately following deprivation of liberty is when the risk of intimidation and physical ill-treatment is greatest," and thus why the guarantees of prompt access to a lawyer, family and the outside world are so important.<sup>102</sup> As the CPT has underlined, "consequently, the possibility for persons taken into police custody to have access to a lawyer during that period is a fundamental safeguard against ill-treatment. The existence of that possibility will have a dissuasive effect upon those minded to ill treat detained persons; further, a lawyer is well placed to take appropriate action if ill-treatment actually occurs."<sup>103</sup>

Several lawyers working on "political" and "military" cases reported to Amnesty International that they, and the suspects' families, were frequently and regularly denied knowledge of their clients' whereabouts for a significant period of time after their arrest – lasting between several hours or a day and several days in some cases.<sup>104</sup> Usually, it is during this period – which is often the period the suspect spends in police custody prior to being transferred to a pre-trial detention centre (SIZO), but in many reported cases also during the first days in SIZO as well – that, according to lawyers in the region, the suspect is subjected to the strongest forms of pressure, including physical violence and threats,<sup>105</sup> have their willpower broken, and often sign some statements incriminating themselves or others – which, as explained below in further detail, may be signed by an unscrupulous lawyer (see insert "Lawyer disciplined for assuming the role of legal counsel without the suspect's consent").

A denial of access, or immediate and unlimited access, to the client may continue after the interrogation stage too. For example, one lawyer in Kabardino-Balkaria explained to Amnesty International at great length how much of a constant challenge it is for a lawyer to get access to a client in custody. There is a big pre-trial detention centre - SIZO - in Nalchik effectively serving the whole of the republic (and a second small one in Kamenka), in which there are just five investigation office rooms. These are the only rooms where a lawyer can see their arrested client confidentially. There are currently 56 detainees held in

this SIZO as co-defendants in just one case (the “Nalchik case”), along with suspects and defenders in other cases. Notably, it is the same five office rooms that are reportedly also used by investigators for their investigations when they need to see the suspects held in custody. During the lunchtime break, which is often announced at noon if not earlier, all external visitors such as lawyers are required to leave, and then come back at 2pm and start queuing all over again, and are then asked to leave at 5pm even though officially the working day ends at 6pm, the lawyer complained.

*We are simply forced to violate the rights of our clients... For example, today is the deadline for my client's appeal against the court decision. I want to launch the appeal in his name. But because of [these problems at] the pre-trial detention centre [SIZO] I will have missed it – and later you cannot prove anything. Queuing in the SIZO is not registered in any way – you can never prove that you were even in the queue there. And if you miss the deadline – that's it... I have seen dozens of similarly indignant lawyers... This is affecting human rights. If you complain [about this], the duty officer replies that these are the internal regulations, and all complaints and disagreements should be addressed to the Head of the SIZO – but the same duty officer will not let you go and see him. And later, in court, you will never prove that it was not your fault that you could not be there and missed the deadline.<sup>106</sup>*

Other lawyers interviewed by Amnesty International in Nalchik agreed that there is often a long queue of lawyers who need to see their clients at the SIZO. Lawyers sometimes have to wait for their turn outside the building, in the open air, if the queue is particularly long.

Whether this system is deliberately obstructive of defence lawyers, or merely an unintentional administrative obstacle, it clearly affects the suspects'/defendants' ability to have prompt access to their lawyer, as is their right under international and national law. While some delays to access to lawyer are permitted under international law, it must only be in exceptional circumstances when it is considered indispensable by a judicial or other authority, in order to maintain security and good order. The CPT has stated that any delay in access to counsel must be determined and justified on a case-by-case basis; it opposes systematic delays in access to counsel for certain categories of offences, including under anti-terrorism legislation, underscoring that people suspected of particularly serious offences can be among those most at risk of ill-treatment and most in need of access to a lawyer.<sup>107</sup> The European Court of Human Rights has made similar findings.<sup>108</sup> The lawyers Amnesty International spoke with were mostly lawyers working on so-called “political” and “military” cases, and as such, their clients were those charged with terrorism or related and serious offences.

Numerous other lawyers complained of similar problems, in other North Caucasus republics too. For example, a lawyer in Cherkessk, Karachaevo-Cherkessia, told Amnesty International that she had been denied a meeting with her client when she came to see him in SIZO together with his mother. The investigator told the lawyer that her attorney's warrant (*advokatsky order* – a brief document issued by the respective law firm mandating the lawyer to represent the client, as required by law<sup>109</sup>) was not enough because it was ostensibly “invalid” and she had to also present the contract she had signed with the client's family. The law clearly states that “[n]o-one has the right to demand from the lawyer and their client to present a contract on provision of legal services... for the lawyer to enter the case”.<sup>110</sup> Notably, it was the suspect's mother who had contracted the lawyer, and who was present there and then. Nonetheless, the absence of an actual contract was used as a pretext to unlawfully deny the lawyer access to her client and in the event she was not able to see the client on that day, and had to come back on another day.<sup>111</sup>



Some lawyers have complained that the authorities refused to tell them – as well as the detainee’s family – where their client is held in custody. Such complaints were particularly frequent in – though not confined to – Vladikavkaz, North Ossetia, where there is more than one place of official custody for arrested suspects. As one local lawyer there, himself a former investigator, put it: “they [investigators] are hiding people away – you can neither find your client, nor have them examined. And the investigator tells you: ‘I do not know where he is held – when he is brought in I will let you know’.”<sup>112</sup> Several other lawyers working in the region told Amnesty International that they believed it is often a deliberate tactic employed by the authorities to minimise or prevent contacts between the lawyer and their client during the key interrogation stage, and in some cases it can mean the detainee is effectively held *incommunicado*.<sup>113</sup> Another local lawyer in Vladikavkaz, explained that even he as a local familiar with the authorities and facilities had problems, and felt sorry for lawyers from Ingushetia wrestling with an unfamiliar environment (while many individuals suspected of involvement with armed groups in Ingushetia are held in custody in North Ossetia; their families prefer to hire Ingush lawyers). “It also so happens that I, too, won’t be told where my client is. But I will have some other case in another unit – I will go in [SIZO], walk the floors, and sometimes find him”.<sup>114</sup> A lawyer in Cherkessk, Karachaevo-Cherkessia, mentioned that he too had employed the same tactic to find his client on at least one occasion. By law, neither should have had any need to resort to such tactics.

#### **LAWYERS AND FAMILY REPEATEDLY DENIED INFORMATION ABOUT THE DETAINEE’S WHEREABOUTS**

**Issa Khashagulgov was detained on 25 September 2010 and since then repeatedly transferred between different places of custody, with his family and lawyers denied information about his whereabouts for periods of between several hours and nearly two weeks.** <sup>115</sup>

Issa Khashagulgov, a resident of the Ingushetian town of Karabulak, was detained on 25 September 2010 as a suspect in connection with a suicide bombing in Vladikavkaz in neighbouring North Ossetia on 9 September 2010 which left 19 persons dead and over 160 wounded.<sup>116</sup> However, his family was not informed about his whereabouts until two days later. During this period, the family contacted the police, Prosecutor’s Office and other law enforcement agencies who however refused to confirm that he was in their custody. On 27 September, the FSB informed the media that Issa Khashagulgov was being held at Lefortovo pre-trial detention centre (SIZO) in Moscow. On 12 October 2010, FSB Director Aleksandr Bortnikov announced that Issa Khashagulgov had been identified as the organizer of the bomb attack – an accusation which Issa Khashagulgov has consistently denied, according to his lawyers. On 28 October 2010, Khashagulgov was charged with organizing an illegal armed group and possession of weapons (though not with organizing the bombing).

In early April 2011, Khashagulgov’s lawyers in Moscow – who had been able to see him until then – were told that he had been transferred to Vladikavkaz, but were later informed that he was still in Moscow. However, when one of his lawyers tried to see him in Lefortovo SIZO he was reportedly denied a meeting. Khashagulgov’s family approached the Ingushetian authorities for information on his whereabouts but reportedly received no definitive answer. Journalists contacted Vladikavkaz SIZO but were told he was not there.<sup>117</sup> Only on 14 April 2011 did one of Issa Khashagulgov’s lawyers establish that he was in Vladikavkaz SIZO. During both of these periods, the family feared that Issa Khashagulgov was being subjected to torture or other ill-treatment to force him to confess to the crimes. Issa Khashagulgov’s wife told Amnesty International that, according to one of the lawyers who had seen him, on the night of 19 January 2012 he had been taken out of his cell to an unknown location and beaten and threatened with further violence in an attempt to force him to make self-incriminating statements at a forthcoming cross-examination with another co-defendant in the case. Amnesty International has since spoken to one of Issa Khashagulgov’s lawyers, who also said that his client had alleged torture and other ill-treatment, and had also been denied medical examination which he had requested to document his injuries.

On 6, 7 and 8 February 2012, Issa Khashagulgov’s lawyers were repeatedly refused meetings with him while he was transferred from Vladikavkaz SIZO to the Ministry of the Interior’s temporary detention facility (IVS) during the day. The

transfer on all these days took place without the lawyers being notified, and he himself was blocked from notifying his family and lawyer. Besides, the lawyers were refused access to him at the IVS where the duty officer demanded to see the investigator's permission for this (an unlawful request, but reportedly a practice used in other regions of the Russian Federation too<sup>118</sup>). At the time of writing Issa Khashagulgov remained in pre-trial detention.

Such stories are frequently reported to Amnesty International across the North Caucasus, although in most cases the suspect's whereabouts remain unknown typically for between one and three days, while they are in the custody of the law enforcement agency that picked them up, and despite every person's legal entitlement to have immediate and unimpeded access to a defence lawyer from the moment of *de facto* detention.<sup>119</sup> Further, in the Declaration on the Protection of all Persons from Enforced Disappearance and other international standards, information on the detention and whereabouts of a detainee must be made promptly available, and the detainee has a right to inform or have the authorities notify family and friends.<sup>120</sup> It is during this period that the person concerned faces the highest risk of being subjected to torture and other ill-treatment.<sup>121</sup> As Amnesty International documented in its report *Russian Federation: The circle of injustice: Security operations and human rights violations in Ingushetia*,<sup>122</sup> such violations of the detainee's rights are not effectively and impartially investigated, and as such, these practices continue unchecked, with the detainees left without access to any proper remedy. Many detainees are also held for longer in this condition and subjected to enforced disappearance.<sup>123</sup>

Lawyers also reported administrative obstacles that were employed that prevented them from complaining about such practices or tracking down their clients as well as other procedural violations by investigators. In Nalchik, Kabardino-Balkaria, and in Vladikavkaz, North Ossetia, in particular, these included a crude bureaucratic arrangement whereby a group of senior investigators working on a series of high-profile crimes committed by members of armed groups was temporarily posted to the region from another location, Yessentuki in Stavropol Region, but where it nominally continued to be based. Any written document, such as a complaint which the lawyer wanted to submit for the attention of the relevant investigators and their immediate superiors – including those whom the lawyer would see face-to-face on almost a daily basis – would have to be sent by post to Yessentuki because, as the lawyers were told, the investigative group had no clerical/administrative office of its own, and no-one was available to register the received document.<sup>124</sup>

#### STATE-APPOINTED CRIMINAL DEFENCE LAWYERS AND INEFFECTIVE REPRESENTATION OF CLIENTS

*"The main obstacle in the lawyer's work is the state-appointed lawyer who worked [on the case] before him."*

Lawyer Mairan Tsoppoev, in an interview with Amnesty International, Vladikavkaz, North Ossetia, 9 June 2012

Everyone has the right to legal assistance of their own choosing and representation in court proceedings. In Russia, a suspect/defendant can contract a lawyer (or several lawyers) directly, or have this done by others (e.g., the family) on their behalf (CCP, Article 50.1). Professional legal aid can be very costly, and provisions are made in the CCP to ensure that every person in custody and in court can obtain legal aid, irrespective of their means or other circumstances, through the appointment of a professional legal defender for them by the state. The suspect/defendant can be assigned a state-paid lawyer by the investigator during investigation or the judge during a court hearing. According to the FBA, in at least 60 per cent of all criminal cases suspects and defendants are represented by state-appointed lawyers.<sup>125</sup>

According to Russian law, a witness statement that is not done in the presence of a lawyer and counter-signed by that lawyer is not admissible in court if the defendant refuses to confirm it during the trial

(CCP, Article 75.2(1)). This legal provision – an important safeguard to protect the defendant or suspect against torture and other ill-treatment – further underlines the crucial role that defence counsel plays in ensuring respect for a suspect’s fair trial and other rights.

By law, a state-appointed lawyer is obliged to perform their professional duty in the same way as a privately-hired one. In accordance with Article 7.4(1) of the Federal Law "On *Advokats'* practice and *Advokatura*", every lawyer must abide by the Code of Professional Ethics of the Lawyer, while Article 7 states that the lawyer must honestly, prudently (*razumno*) and diligently defend the rights and lawful interests of the client. Articles 8 and 9 of the Code of Professional Ethics of the Lawyer (CPEL) state that every lawyer must perform their professional duties honestly, intelligently, diligently, professionally, in accordance with the professional principles (*printsipialno*) and in due time, and proactively defend the rights, freedoms and interests of their clients by any means which are not prohibited by law, and in accordance with the Russian Constitution, laws and the CPEL.<sup>126</sup> Similarly, the Basic Principles provide that all lawyers must "maintain the honour and dignity of their profession as essential agents of the administration of justice" and must always "loyally respect the interests of their clients", and assist "clients in every appropriate way".<sup>127</sup>

The Law "On *Advokats'* practice and *Advokatura*" also has specific provisions regarding state-appointed lawyers. Article 7.1(2) obliges all lawyers appointed by the court to "follow the requirements of the law regarding compulsory participation of a lawyer as a defender in criminal proceedings". Article 31.3(5) leaves it to the local Bar Association to come up with specific rules and procedures by which lawyers are assigned to work on cases as state-appointed lawyers, and inform the local investigation and judicial authorities accordingly. As lawyers in the North Caucasus explained to Amnesty International interviewers, in practice this means that there is a roster which defines which law firms and lawyers provide their services and in which order. Accordingly, the investigation authorities or the court should contact the Bar Association as and when a state-appointed lawyer is required, which refers this request to a particular legal practice for a lawyer on duty to be assigned to the case.

In practice, this system is not always strictly followed, as Amnesty International was told during numerous interviews with lawyers in North Caucasus republics. It is not unusual that an investigator would approach a specific lawyer directly and invite them to act as a state-appointed lawyer for a particular criminal suspect. It is a concern which is widely shared by criminal defence lawyers in all North Caucasus republics: many of those interviewed by Amnesty International stated that they regularly come across cases in which the investigators initially approach those lawyers whom they trust to be cooperative and to overlook certain procedural and other violations including, in many cases, torture and other ill-treatment.<sup>128</sup>

This problem has been noted by the UN Committee against Torture in its Concluding observations on the fifth periodic report of the Russian Federation in 2012: the Committee noted "numerous cases of persons deprived of their liberty who were denied access to lawyers on improper grounds; including ... reports that ex-officio lawyers do not properly perform their duties and fail to provide basic legal defence for their clients".<sup>129</sup> The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment too, noted this as a recurring problem after its visit to the North Caucasus in May 2011:

*Even during the period as from the drawing up of the protocol of detention, many detained persons were represented by an ex officio lawyer and several persons alleged that they had been prevented from contacting their own lawyer for some time (generally until after a confession/statement had been signed by the detained person). As so many times before, the delegation heard many complaints*

*about the quality of the work of ex officio lawyers and their alleged lack of impartiality; most of the detained persons interviewed by the delegation expressed the view that they were collaborating with the police and/or investigators.*<sup>130</sup>

When the suspect signs a statement against their will which is countersigned by such a lawyer, the prosecution and judges later presume that all the legal requirements have been observed during the investigation, and this “evidence” is treated as admissible in court. By the time the case comes to court, to prove that the testimony has been extracted and torture or other ill-treatment used, is extremely difficult or impossible in such cases given that the lawyer was present. As such, when such allegations are made at a later date, the judge frequently does not address these concerns.<sup>131</sup>

Part of the problem is that many lawyers are not especially keen to participate in criminal proceedings as a state-appointed lawyer, and from the interviews conducted by Amnesty International it appears that many lawyers try to avoid it if they can. It is often perceived as hassle, can disrupt the lawyer’s routine and affect other plans, is not as well paid as private practice, and the paperwork and delay involved in receiving remuneration from the state is also seen as additional hassle.<sup>132</sup> On the other hand, Amnesty International was told that, for some lawyers, particularly for those who do not have stable income from private practice, this comes to be an attractive option providing a regular income. However, stability of this kind of income depends on being regularly appointed to such cases which, in turn, according to lawyers Amnesty International spoke with, is dependent on preserving good relationships with the relevant investigation and other officials. This is particularly dangerous in an environment in which torture and other ill-treatment is extensively practised,<sup>133</sup> only serving to heighten the ease with which such practises are carried out.

Notably, the Code of Criminal Procedure does not make appointment of lawyers by the state conditional on any means-testing or similar criteria (Article 50). According to numerous reports received by Amnesty International from the North Caucasus, this article is used by investigators to circumvent the safeguards against torture that are enshrined in the Russian law. While not all state-appointed lawyers fail to properly represent their clients (and there are many stories across the North Caucasus when such lawyers have provided effective legal defence for their clients, both during the investigation and court hearings), lawyers in the region reported many cases of such behaviour, including in some cases involving suspected complicity in the investigation.

Amnesty International heard numerous complaints about state-appointed lawyers in “political” and “military” criminal cases. “Having a state-appointed lawyer here is the same as having none,” a member of the Joint Mobile Group of Russian NGOs reflected on the current practice in Chechnya.<sup>134</sup> Lawyers themselves speak even more strongly: for them, unscrupulous lawyers who they believe collude with investigators are not only denying the right to legal assistance and effective representation to criminal suspects, but have a detrimental impact on the system as a whole. As a lawyer from Karachaevo-Cherkessia put it, and whose words have been mirrored in many other conversations with lawyers across the region, these are “people who openly harm both the lawyers’ community and the justice system itself.”<sup>135</sup>

Lawyers interviewed by Amnesty International noted that such cases are very common. However, due to their sensitive nature for the individuals still under investigation, specific examples relate to criminal cases from earlier years while, in essence, the situation remained unchanged. Thus, for example, in the case of physical assault and criminal prosecution of lawyer Irina Kodzaeva (see below), her client was allegedly forced by investigators to decline her and other lawyer’s services (purportedly because he was

unhappy that the two lawyers were constantly clashing with the investigators and thereby preventing them from making timely progress in their investigative activities) and accept a state-appointed lawyer instead. According to Irina Kodzaeva, her client complained to her at the time about beatings and death threats he was receiving in custody. In one of her written challenges against her own criminal prosecution (and in which the state-appointed lawyer was one of the witnesses against her), Irina Kodzaeva refers to official documents to put in question whether this lawyer had acted in the client's best interests and diligently performed his duties. Thus, according to one official document co-signed by the state-appointed lawyer, on 28 August 2007 the client and the lawyer had been familiarizing themselves with his criminal case file (a formal documented procedure required by law<sup>136</sup>), and this meeting ended at 1.20pm on that day. According to another official document, the client had not been taken from his detention cell on that day until 2pm and, accordingly, the first document was a record of a procedure that could not have taken place on that day in the client's presence.

The following passage from a decision passed by the North Caucasus District Military Court in 2004 is cited in one of the publications by the Federal Bar Association. It reveals a story of a criminal case heard by Grozny Garrison Military Court in which the lawyer openly opposed the position of his client in court, even asking the Court to sentence him to two years in prison contrary to the defendant's insistence. This is not a unique case, and lawyers from across the North Caucasus repeatedly told Amnesty International that this was a serious problem in the region. They said that there are other cases where guilty verdicts of those individuals whose defence has been undermined by abject failures of unscrupulous defence lawyers are not overturned.

*During the court hearing [no date given], the defendant Z. refused to plead guilty and, in accordance with Article 51 of the Constitution of the Russia Federation, to give testimony regarding the charges against him. However his defence counsel, lawyer G., did not support this position of his client. Furthermore, during the debates, the defence counsel stated that, in spite of Z.'s refusal to plead guilty, his guilt had been fully proven, and asked the court to sentence him to two years in a prison colony. In his final words after the defence counsel's speech, the defendant asked the court not to sentence him to imprisonment.<sup>137</sup>*

In the event, the cited decision by the North Caucasus District Military Court was to refer the case back for a new court trial. It is extremely worrying however that the judge at the initial trial in Grozny did not raise any objections about the defence lawyer's behaviour, which was evidently contrary to Russian law, international standards, and the defendant's fair trial rights. International law requires that a defendant be effectively represented, and the state may be responsible for such a failure, particularly in the case of a state-appointed lawyer.<sup>138</sup>

In one high-profile case from Ingushetia against suspected members of an armed group, one of the suspects, Murat Esmurziev, was arrested in September 2005, and a month later allegedly pressured into signing a request to replace his lawyer hired by the family with a state-appointed one. On the day after his first interrogation in presence of the new lawyer, Murat Esmurziev was hospitalized for an urgent surgical treatment of serious internal injuries.<sup>139</sup> Notably, his complaints at the time were not investigated, and his subsequent complaints in court that he had been tortured dismissed, and he was sentenced to 25 years in prison for crimes which he denied. His appeal against the decision was unsuccessful, and an application made on his behalf is currently awaiting consideration by the European Court of Human Rights.

In some rare cases, there may be disciplinary consequences for lawyers in the North Caucasus who do not

fulfil their professional duties, as in the case below. However, such cases – judging by the interviews conducted by Amnesty International in the North Caucasus – are exceptions rather than rules, and details are available to cite precisely because of the disciplinary action taken, whereas many of the cases Amnesty International was told about were never subject of disciplinary procedures.

**LAWYER DISCIPLINED FOR ASSUMING THE ROLE OF LEGAL COUNSEL WITHOUT THE SUSPECT'S CONSENT**

**In late 2008, the Bar Association of Kabardino-Balkaria was considering disciplinary proceedings against one of its members whom it found to have violated the rules and procedures governing appointment of lawyers by the state.**

The proceedings had been initiated in connection with a complaint received from R.K., a suspect in a criminal case. He claimed that on 6 October 2008, while he was held at a pre-trial detention centre in a neighbouring region, a police official from Nalchik came to interrogate him, together with B.I., a lawyer who was also from Nalchik and had travelled there together with the investigator. R.K. insisted that he had another lawyer, whom he named, and that he would not give any testimony in the absence of his chosen lawyer. Nonetheless, R.K. claimed, he was compelled to sign a protocol prepared by the police in advance because he feared that he may be again subjected to physical violence. The lawyer, according to him, made no protest about this. Instead, she counter-signed the protocol silently and left.

During the disciplinary hearing at the Bar Association, B.I. conceded that she had come to R.K.'s interrogation on request from the investigator, and that she had not been on duty that day. However, she claimed, R.K. did not object to her acting as his defence counsel, nor did he mention that he had another lawyer. The disciplinary panel found B.I. to have violated lawyers' professional ethics and the rules governing appointment of legal defenders by the state. B.I. appealed against this decision, but the review panel too, found her culpable of these offences. The panel noted that while it could not establish whether R.K.'s allegations were entirely true, it noted that R.K. had had an agreement with another lawyer from Kabardino-Balkaria predating this interrogation, of which the investigator had been aware, and that B.I. had not been on duty on that day. The lawyer received a formal reprimand from the Bar Association.

In another North Caucasus republic, Amnesty International was told about a state-appointed lawyer who had been exposed by his former client for having failed to perform his professional duty in relation to the client after being invited to join the case by the investigator, and who was stripped of his licence, also for violating professional ethics and failing in his duties and thereby depriving a person in custody of his right to an effective legal defence. The person concerned also complained to the local Bar Association about his state-appointed lawyer. The complainant was invited to the disciplinary hearing. During the hearing, the lawyer reportedly started arguing with a man who had been brought in as the complainant, and was denying his allegations. Meanwhile, another man stepped forward and revealed that he was the real complainant; it thus transpired that the disciplined lawyer had never met "his client", and counter-signed his testimonies without actually being present during the interrogations.<sup>140</sup>

According to the lawyers interviewed by Amnesty International, these cases in which lawyers are disciplined for failing to effectively represent their client or overlooking violations of the rights of their client, are the exception rather than the rule.

## CHAPTER 4. THREATS, INTIMIDATION AND KILLING OF LAWYERS IN THE NORTH CAUCASUS

### “DON'T YOU KNOW WHAT KIND OF TIMES WE LIVE IN?” THREATS AND INTIMIDATION OF LAWYERS

*“... [I]f I do my work exactly the way I must do it, merely by this alone I already irritate the authorities.”*

Batyr Akhilogov, lawyer from Ingushetia, in an interview with Amnesty International, Nazran, 10 June 2012

As already noted above, defence lawyers in the North Caucasus – and not just there – find themselves confronting a criminal justice system set up to secure convictions of individuals it has identified – including via the use of torture<sup>141</sup> – as perpetrators of crimes. Criminal lawyers in the North Caucasus are clear that by fulfilling their duties fully and diligently they expose themselves to pressure and threats from members of the criminal justice system.

In Amnesty International's experience, criminal defence lawyers in the North Caucasus often do not complain publicly about the threats they receive from, and the pressure they are subjected to by, members of law enforcement agencies. However, it is clear from Amnesty International's research that lawyers are frequently subjected to such threats and pressure in the region. Sometimes these come in the form of anonymous “warnings” as well as covert threats received from law enforcement officials, as explained above (in Chapter 2 “The atmosphere of intimidation and harassment and its impact on lawyers' work”). Such threats are very rarely reported, partly because they are issued anonymously or covertly. However, even when this is not the case, and the threats were direct and personal, many lawyers interviewed by Amnesty International preferred not to talk about specific incidents involving themselves, although most were very assertive about intimidation and threats, both anonymous and direct, as described above, happening routinely in relation to their colleagues. This can also be explained partly by a perception characteristic for the region that it is unbecoming for men to talk about personal fear. As Toma Tsechoeva, a lawyer in Ingushetia who represented Zelimkhan Chitigov (see above) in the trial of two former police officials put it: “It is not in our custom to talk about facing pressure. Men are particularly reluctant to talk about it.”<sup>142</sup>

When the threats are direct and personal however and come from law enforcement officials, lodging an official complaint and insisting of investigation of the relevant allegations and disciplining or prosecution of the officials behind them appears pointless: in the general climate of impunity, an investigation may never be opened in the first place, and when it is, it is unlikely to be effective.<sup>143</sup> Besides, those who are behind them have the power to fulfil their threats, while lawyers will keep on coming up against them in the context of other cases. As one lawyer put it in an interview with Amnesty International: “In Ingushetia, I hesitate to take up cases. Because it is dangerous here... In Ingushetia, to hope that there will be some form of protection [provided] by the leadership – that is unreal.”<sup>144</sup> Another lawyer recounted a recent conversation with someone in court, in the context of a criminal case in North Ossetia when an FSB officer was apparently asking court officials about his contact details: “A well-wisher tells me: be careful. But what precautions can I take if the FSB intends to do something to me?”<sup>145</sup>

There are rare cases when lawyers go public about the direct threats they receive and demand investigation of the respective officials. However, there appears to be little point in complaining to the authorities, as the case of Rustam Matsev demonstrates.

#### LAWYER RUSTAM MATSEV THREATENED BY A SENIOR POLICE OFFICIAL

Rustam Matsev is a lawyer who had been working as defence counsel in a number of cases with individuals accused of membership in armed groups in Nalchik, Kabardino-Balkaria. Many of these cases involved allegations of the use of torture

and other ill-treatment by members of law enforcement agencies in relation to the suspects.

On 31 May 2012, Rustam Matsev came to the pre-trial detention centre in Nalchik to attend an interrogation of his client by a senior local police official. While waiting for his client to be brought in, Rustam Matsev found himself in the same room with the police officer his client was going to face. According to Rustam Matsev, which he later provided to the authorities in full, the officer asked him why he had “taught his client to lie” about his abduction in Pyatigorsk, about the beatings and ill-treatment received from police, and allege that the criminal case against him had been fabricated. Rustam Matsev replied that his client insisted these were true claims. The officer then issued a warning to him personally: “During security operations, while eliminating members of illegal armed groups we block lawyers as well. We will definitely meet again. When you walk, always look back because we are watching you and know everything that you do.” The officer then started asking whether the lawyer smoked or drank alcohol, and some quite inappropriate questions, and in the meantime kept insisting that his client should confess to the crime he had been charged with. Rustam Matsev perceived the officer’s words as a veiled threat against him personally and a warning that a criminal case may be fabricated against him.

He later filed a complaint with the authorities. Four months later, Rustam Matsev received an official decision, signed by a senior member of the local Investigative Committee and dated 22 September 2012, not to open a criminal case into his allegations. The investigator accepted the police official’s claims that he had not made any threatening remarks, and stated that Rustam Matsev had “incorrectly taken [the police officer’s] words [and] regarded them as a threat whereas [the officer], in a joking manner, tried to learn more about Matsev’s personality”.

In the context of the situation and the frequently alleged surveillance of lawyers in the North Caucasus, Rustam Matsev’s perception of the comments as threatening does not seem like an exaggeration of what the official meant to convey to him. Several lawyers interviewed by Amnesty International in the region believed that they were being closely watched by secret operatives, and some claimed that they were sure that their telephone calls were routinely intercepted. At least two lawyers in Ingushetia assured the Amnesty International that on a number of occasions, when travelling by car, they could see they were being followed by unfamiliar cars, particularly when travelling on business concerning clients who were in custody as suspected members of armed groups.<sup>146</sup> These two were not alone: many lawyers, human rights defenders and others in the region are of the view that they are under covert surveillance.

As international standards make clear, the Russian government must “ensure that lawyers... are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.”<sup>147</sup> This is clearly not the case for many defence lawyers working in the region. One lawyer told Amnesty International about what was effectively a security operation launched against him and his family by law enforcement officials in the form of house search during which they were held at gunpoint. The case dates back to 2008, and the lawyer is still trying to prove this operation was unlawful and have those responsible disciplined, but his attempts already appear a lost cause.

#### **UNLAWFUL HOME AND OFFICE SEARCH OF A LAWYER IN KHASAVYURT DURING SECURITY OPERATION**

**In July 2008, the house of the lawyer Adilgeri Omarov and his wife, a federal judge, as well as his office nearby, were unlawfully searched by armed security officials during a security operation. Years later, after many legal battles, he is still struggling to bring those responsible to justice and receive reparation.**

At 5.45am on 7 July 2008, some 50 camouflaged armed men, driving in three armoured personnel carriers and two military personnel-carrying lorries arrived in front of the house of lawyer Adilgeri Omarov in a quiet street in Khasavyurt, Dagestan. The 63 year-old lawyer heard someone banging on the street gate with a sledgehammer, and opened it to let the security officials in who immediately pushed him to the ground and handcuffed him with his hands behind his back. When he tried to explain that he was a lawyer and by law his house could not be entered and searched without a court’s authorization he was



told to shut his mouth and keep quiet. His wife, a federal judge herself and thereby also protected by similar immunity from search, also protested in vain. Their two sons were told to lie on the ground faces down, and her elderly mother, a woman in her 80s, held at gunpoint, during most of the search which lasted over two hours. Nothing illegal was found, although the search discovered a hunting rifle which was licensed to the lawyer's wife's late father, though the licence had expired two years previously; it was confiscated. During the search, Adilgeri Omarov's wife, still in her nightdress and denied a chance to change, was led at gunpoint in front of the neighbours to a another house on the same street where her husband's legal firm's office was, to collect his reading glasses; while inside the office the security officials searched it as well. After the search was over, the woman felt unwell, and an ambulance had to be called. The paramedics diagnosed her with arterial hypertension. The next day she felt unwell at work, and had to be hospitalized.

The FSB officer in charge of the search produced a written authorization from his FSB senior to conduct an urgent search, and insisted on seeing a man who did not live at that address, and only halted the search after it became exceedingly clear that no such man was to be found there. He consistently ignored the lawyer's and the judge's protests about the unlawfulness of this operation, was rude, and at one point said that they should feel lucky that no blood had been spilt in the event.

On 8 July 2008, the court of Sovetsky district in Makhachkala considered a complaint about the search, and ruled that it had been unlawful. This decision was upheld by the Criminal Cases Judicial Panel of the Supreme Court of Dagestan on 4 August 2008. A protest by the Deputy Prosecutor of Dagestan against the court decision was considered, and rejected by a judge of the Supreme Court of Dagestan on 17 October 2008.

Notwithstanding, the authorities refused to investigate the FSB officials responsible for this security operation and the unlawful search. In a decision dated 20 October 2008, the military investigator who was looking into the relevant complaints took the view that the officers conducting the search of the house had been unaware that it was the home of a lawyer and a judge, and refused to open an investigation into the relevant allegations. Just a few days later, on the afternoon of 25 October 2008, some 15-20 armed camouflaged men – some in face masks – arrived in the same street and took positions in front of the lawyer's house and near its windows. They promptly left without taking any action, but after their presence was noted by the family inside the house who saw this as an act of intimidation. They also found out from some friends that after the search and around the time of this incident, some law enforcement officials had been questioning informally their neighbours and acquaintances and trying to acquire some compromising information about the lawyer's family.

From this point, their case took a new turn. The Chair of the Supreme Court of Dagestan considered the protest by the Deputy Prosecutor of Dagestan and overruled the court decision of 8 July 2008 ruling the search unlawful, and referred the case to the Supreme Court's Presidium. The Deputy Prosecutor argued that those conducting the search had reasons to believe that the lawyer's house was some else's home, and that neither Adilgeri Omarov nor his wife had made it clear to the officers conducting the search that they were a lawyer and a judge. The lawyer argued that these statements – based on testimonies of the officers who had conducted the search – were manifestly false, and offered evidence in support of his account, including a witness, a police expert who had been summoned during the search. However, his arguments were dismissed and evidence he presented not examined in all subsequent court decisions which agreed with the Deputy Prosecutor's position.

On 20 November 2008, the Presidium ruled to overturn the court decision of 8 July 2008 which recognised the search unlawful. Adilgeri Omarov went to court with a new complaint about the unlawful search. The lawyer, and another lawyer representing him on this case, were in court on 23 January 2009 and were told by the judge's assistant that the judge had already taken a decision on his complaint earlier in the day and left for home. Later, Adilgeri Omarov received the judge's decision dated 26 January 2009 (which therefore, he argues, is fabricated because no such court hearing had taken place on that day) and recognizing the search as lawful. This decision was upheld on appeal on 10 March 2009, and the lawyer's further complaint rejected on 20 April 2009.

These latest decisions repeatedly reiterated the statements made by the FSB officer in charge of the search and “witnesses” from among the officials conducting it that the lawyer and his wife did not make it known to them until the end of the search that they were a lawyer and a judge – and that once they did so the search was immediately halted. All statements to the contrary by the lawyer, his wife and members of their family, as well as another witness who had been summoned during the search as an expert, were ignored. Other arguments and evidence presented by the lawyer presented in his numerous complaints were similarly ignored. At the time of writing, the lawyer is still trying to achieve justice in this case – to have the search recognised as unlawful and those responsible for it disciplined.

Apart from the direct violation of the national law which is supposed to provide protection against such violations, this case demonstrates the problem of lack of legal remedies for victims of human rights violations suffered at the hands of law enforcement officials.<sup>148</sup> The very lawyers who represent those victims face the same problems – effective legal remedies and the protection of the law are not available to them either. Being a lawyer and knowing the law and the procedures, clearly, is not an advantage that can make a difference when powerful security officials are involved.

### THREATS AGAINST FAMILY MEMBERS

*“On threats in the case... Yes, there were threats, I cannot deny this. It wasn’t just pressure... I’ll be frank, even that pressure wouldn’t have stopped me... But I have just one brother, a younger brother. And if something happens to him I will not forgive myself, and no-one will forgive me.”*

A lawyer in one of the North Caucasus republics on his decision to stop working on a case after direct threats were issued against his brother, in an interview with Amnesty International, June 2012, on condition of anonymity

In spite of the context and atmosphere in which they work, Amnesty International spoke to many lawyers in the North Caucasus who continued to work on criminal cases and to defend those who stand accused of the most sensitive – “political” and “military” – crimes, diligently and without compromising on their professional ethics and principles. They do so with courage and an acceptance that routine threats are inevitably involved in this work.

### LAWYER IN NALCHIK RECEIVES DEATH THREATS, IS DENIED INFORMATION ABOUT POLICE INQUIRY INTO A SUSPICIOUS CAR ACCIDENT IN WHICH HE WAS BADLY INJURED

**In December 2011, a lawyer in Nalchik was badly injured in a suspicious car accident involving police. Before and after this incident, he received death threats. Police have refused to open an investigation into the incident and failed to inform the lawyer about the outcome of their inquiry despite his protestations.**

Magamed Abubakarov is a criminal defence lawyer from Chechnya who has been working in Kabardino-Balkaria in recent years, including on a number of high-profile cases. He also participated as legal counsel in several cases on behalf of victims of alleged abductions by law enforcement officials and of individuals suspected of armed group membership who claimed that the charges against them were fabricated, including by means of torture and other ill-treatment. In the context of such cases, he has actively protested against such violations and has sought to bring their perpetrators to justice, via the legal remedies available under Russian law and via applications to the European Court of Human Rights on behalf of his clients. He has also cooperated with several human rights organizations, including the Russian Human Rights Centre Memorial, for many years.

Magamed Abubakarov is very outspoken, in Russia and internationally, about human rights in the North Caucasus, as well as harassment, pressure and threats to which lawyers in the region in connection are subjected with their work, including those

to which he himself has been subjected on several occasions.<sup>149</sup> Most recently, starting from 6 February 2013 and during the week that followed, Magamed Abubakarov received several threatening messages from a mobile number which he did not recognise. The sender was demanding to know where Magamed Abubakarov was and telling him that he would be “unable to hide”. Magamed tried to call back and texted the sender offering to meet, but his calls and messages were ignored. After Magamed Abubakarov reported the threats and the phone number from which they came to the police, he received a message which, in highly abusive language, stated: “the time to ... [talk] is over. ... [you will be talking] in a mortuary”. On 22 February 2013, a police investigator opened a criminal investigation into these threats under Article 119 of the Criminal Code (“death threats”). At the time of writing the outcome of the investigation remains unknown.

Magamed Abubakarov told Amnesty International about several other instances of receiving threats in the past, as well as a suspicious car accident which he had in 2011. On the night of 15 December, Magamed Abubakarov was driving alone when he was ordered to stop by a police patrol car in which there were several armed police officers, most of them masked. They checked Magamed Abubakarov’s papers and then ordered him to step out of the car, at gunpoint, and open the car boot. Magamed went to the back of the car to open the boot and as soon as he did so another car drove into him from behind at high speed. Magamed Abubakarov was the only person injured in this incident. One of his legs was crushed and the other fractured, and he spent several months recovering in hospital. Magamed Abubakarov initially thought this was an accident, although he could not rule out ill intention. The driver responsible for the accident left him his phone number, but after a while – when Magamed was out of hospital – stopped answering his calls.

Magamed Abubakarov told Amnesty International that the first time a police official came to talk to him about the incident was in mid-February 2012, but he has never been officially informed of any outcome of the police inquiry into this incident. When he met a police official who was looking into it he found out that no criminal case into the incident had been opened, purportedly because the driver of the car that hit him had not violated any traffic rules. Magamed Abubakarov requested to see the materials of the police inquiry into the incident but was refused. He then filed a written petition with the Prosecutor’s Office in Nalchik about this refusal, but has not received any reply even though Russian law obliges every official agency to reply in writing to such requests within a period of time which has long passed. According to the lawyer, he regards this reaction from the authorities as inadequate and their continual failure, in spite of his protests, to keep him informed about the outcome of the police inquiry into the incident as suspicious, particularly given that it cannot be ruled out that this was not an accident and taking into account the past and the recent death threats he has received.

Many of the interviews which Amnesty International held with criminal defence lawyers in the North Caucasus have indicated that those in the region who choose this career and perform their respective professional duties diligently are always conscious of a degree of personal risk involved, for reasons explained above. Many, judging by their professional records, have displayed admirable courage, and have come to accept these risks as part of their work. However, every lawyer has a point of particular vulnerability – their families – where personal courage makes no difference. Amnesty International’s research revealed that the family members of lawyers who take on “political” or “security” cases have also been vulnerable to threats.

#### **HARASSMENT OF A LAWYER AND THREATS RECEIVED BY HER SON**

**In 2008, Larisa Dorogova, a lawyer working on a high-profile case in Kabardino-Balkaria, complained of numerous instances of harassment and threats received by her son from unknown men, which the authorities have failed to investigate.**

In 2008, media repeatedly reported on several separate incidents and forms of pressure and harassment to which Larisa Dorogova, a lawyer from Kabardino-Balkaria, was subjected. At the time, she was involved as a lawyer in a high-profile case relating to a coordinated attack by more than a hundred armed men on law enforcement agencies in Nalchik on 13 October

2005. Larisa Dorogova issued an open letter addressed to the President of Kabardino-Balkaria, dated 13 May 2008, in which she asked for protection. She complained that she had been the target of a campaign of harassment by the prosecution authorities in connection with her work, and had repeatedly received anonymous threatening emails and letters since February 2008.<sup>150</sup> One of the letters she received in March 2008 had an AK assault rifle cartridge enclosed. The letter's anonymous sender included several citations from the Qur'an and stated that those who sent it had taken a decision to kill her. In her comments for the media the lawyer indicated that she believed members of the authorities were behind it: "Muslims have no reason to kill me. ... These letters are, on the one hand, an attempt to intimidate me, and on the other – if anything happens to me, there will be someone to put the blame on".<sup>151</sup>

On 21 March 2008, according to Larisa Dorogova, the Prosecutor's Office issued a complaint against her and requested that she was stripped of her lawyer's licence "for being negligent about her professional duties" and allegedly swearing and threatening staff at the SIZO (the complaint was later recalled after criminal investigation authorities checked the allegations of her threats against SIZO staff and refused to open a criminal case). In the same open letter of 13 May 2008 she also complained about her and her son being followed by unknown men. She also complained that on 9 May 2008, four unknown men stopped her 17 year-old son near their home, forced him inside a car without number plates and held him for seven hours during which they took him to a forest and drove him around the city. They asked him questions about his mother's work, people she met and her plans, and warned him that they could find him anytime. Larisa Dorogova filed complaints about this incident with the authorities, including the FSB and the republic's President, but the investigative authorities refused to open a criminal case in connection with this incident ostensibly because her son was returned back to the family.<sup>152</sup> Dorogova said that her son moved out of the republic as the family were concerned about his safety while the authorities neither investigated the incident nor responded to her plea for protection.

Larisa Dorogova gave several media interviews in which she linked the threats against her and her son with her professional activities.<sup>153</sup> According to Dorogova, no protection measures have been instituted after her appeals for protection to the republic's President.

In the above case, the lawyer decided to go public about this incident involving her son, and filed official complaints. This is not the only case of threats issued in relation to a lawyer's family member that has been reported to Amnesty International, as the quote above demonstrates; however, the organization was asked by the people that it spoke with not to reveal the details of other cases or details by which those concerned might be identified, because of serious security concerns. Amnesty International recognises that the risks faced by the individuals concerned are real.

#### **WHEN WORDS BECOME ACTIONS: PHYSICAL VIOLENCE AGAINST LAWYERS**

The year 2010 will be remembered in Dagestan as the year in which four lawyers were physically assaulted. A male lawyer Sergei Kvasov was assaulted in the centre of Dagestani capital Makhachkala on 9 April by unknown individuals who arrived in two cars with tinted glass windows.<sup>154</sup> Two of his attackers were masked. Kvasov sustained serious head and other injuries, and had to be hospitalized and undergo two surgeries. A criminal investigation into this attack was opened, however this crime has never been resolved – no perpetrators have been identified nor have any criminal charges been tabled against anyone.

The other three victims were women, Sapiyat Magomedova (see above, in the Introduction), Jamilya Tagirova and Zinfira Mirzaeva.<sup>155</sup> All three suffered attacks from police officials on duty and all attacks happened while the lawyers were going about their professional business on behalf of their clients. However, there are concerns regarding the manner, efficacy and thoroughness of the investigations.

#### **ALLEGED BEATING OF A LAWYER BY POLICE INVESTIGATOR IN MAKHACHKALA**

**Jamilya Tagirova alleged that she was repeatedly punched in the face by a police investigator on 2 July 2010 after**

**she insisted on documenting irregularities during a cross-examination of her client.**

According to Jamilya Tagirova, an advokat from Dagestan, on 2 July 2010 she was assaulted by a police investigator inside Sovetskiy ROVD police station in the Dagestani capital Makhachkala. After a cross-examination of her client and his alleged victim, she made a written comment in the protocol that it did not fully reflect the victim's statements. She said that the investigator had insisted that the victim wrote objections to her comment and told him exactly what he should write. The lawyer then wrote down a further objection that the alleged victim was forced to write it by the investigator.

According to Jamilya Tagirova, the investigator punched her in the face with his fist, then grabbed her by the neck with one hand and continued beating her with the other. Amnesty International has seen a copy of the report issued by a medical forensic expert on 5 July 2010 which confirmed injuries to Jamilya Tagirova's face and neck which corresponded with the nature and the timing of her alleged beating. Amnesty International has also seen photos of Jamilya Tagirova taken after the incident which show injuries on her lip and neck and which also correspond with the injuries described in the medical forensic report.<sup>156</sup> Amnesty International wrote to the Russian authorities twice and urged them to carry out a prompt, thorough, effective, independent and impartial investigation into the allegations of the beating of Jamilya Tagirova by the police investigator at the Sovetskiy ROVD police station of Makhachkala. In reply to its first letter, it received an answer from the Head of Procedural Control Department of the Investigative Committee in Dagestan, dated 10 December 2010, who informed the organization that a criminal case had been opened in relation to the investigator on allegations of abuse of power (under Article 286 of the CCP). Amnesty International sent a letter in reply requesting to hear about the outcome of this case but has not received any further information. As far as Amnesty International is aware, the police official against whom Tagirova made the allegations has not been disciplined or prosecuted, and the case is closed.

Amnesty International has repeatedly raised concerns about these attacks, and the failure by the Russian authorities to ensure that lawyers are properly protected by the law, and appropriate sanctions meted out to those who attack lawyers. Thus, for example, on 7 October 2010 the organization issued an Urgent Action in support of Sapiyat Magomedova who was facing criminal charges in connection with her complaints against the police (based on the counter-claim made against her by her assaulters alleging that she herself had assaulted and publicly insulted them).<sup>157</sup> Lawyers in Dagestan responded by collectively going on strike on 1 November 2010 in protest against the continuous abuses suffered by their colleagues from police that went unpunished. This was the first time that Dagestani lawyers had undertaken concerted action in support of their own rights. However, in spite of this and numerous subsequent efforts by Sapiyat Magomedova to find justice, the case against her assaulters was ultimately closed (see above, in the Introduction). Moreover, while Sapiyat Magomedova indicated that five or six officers had been involved in an assault on her, just four were identified as suspects several months later only, and just two remained suspects at the time when the case was closed – with the charges against the other two dropped earlier and of which she had not been informed. Furthermore, Sapiyat Magomedova herself had a criminal case brought against her which was closed by the same decision which closed the case against the police officers by means of explaining that the two cases were mutually contradictory and as such neither one could be resolved.

These are not isolated cases in the region. Nor are they a new phenomenon. Other similar attacks have happened in other republics in the region over the years. Thus, one lawyer in Karachaevo-Cherkessia told Amnesty International that in June 2004 he was assaulted by police officials when he came to a police station to see his client who was held in custody at the time. He heard police officials threatening his client about giving a "wrong statement" in front of the lawyer. According to the lawyer, when he objected to this, three or four police officers responded by attempting to physically restrain him, pushing him onto the floor, and tried to hold his hands behind his back, but he forced himself out of their grip. The lawyer later filed an official complaint about this incident with the Prosecutor's Office, but received only formal

replies denying the incident had taken place.<sup>158</sup>

Moreover, it transpired from Amnesty International's interviews with lawyers across the North Caucasus that most lawyers who had experienced physical force being used against them by police or other security officials, and particularly men who had suffered no serious injuries, have never reported such incidents. Apart from complaints being perceived as "unmanly", they thought that complaining to the authorities would only create more problems – for them and their clients – but resolve none. Their scepticism regarding making a complaint has some basis. Of the cases that Amnesty International has documented, none was resolved by delivering justice to the victim, as the case of Irina Kodzaeva demonstrates.

#### **PHYSICAL ASSAULT AND CRIMINAL PROSECUTION OF IRINA KODZAEVA**

**Irina Kodzaeva, a criminal lawyer in Vladikavkaz, North Ossetia, was assaulted by a criminal investigator and faced criminal prosecution herself in connection with this episode.**

On 27 August 2007 Irina Kodzaeva tried to see her client in detention who had previously repeatedly complained of torture and other ill-treatment by investigators, of being pressured by his interrogators to plead guilty and to decline her as his lawyer.

Irina Kodzaeva had been officially informed that her client would be interrogated on 28 August 2008, but learnt on 27 August that the investigators were already questioning him, without his lawyer present. She went to the investigation team's temporary offices, but was denied entry to the room where her client was being interrogated. She was told that he had refused her services, and that the relevant notification had been sent to her by post. Irina declined to believe this and demanded to see him in person, but was refused entry, and spent almost an hour in the doorway in spite of the investigation team's demands that she leave and their attempts to force her to leave. She warned them about the unlawfulness of their actions and the legal consequences. Finally, she alleged that one of the investigators came up to her, hit her in the face and pushed her out of the doorway, and then shut the door leaving Irina outside and in tears.

Irina saw a doctor to document her physical assault, and filed an official complaint demanding investigation into the incident. A month later she learnt that an investigator refused to open investigation into her allegations. She repeatedly tried to challenge his refusal in court. On the first occasion, a court in Vladikavkaz refused to accept her complaint on the grounds that she had to submit it to court in another region, where the investigator's superiors were based. Her legal challenges on subsequent occasions, including in the North Ossetia Supreme Court and in the other region's court, were unsuccessful.

In the meantime, the investigator who hit her had been promoted and transferred to another region of Russia. He also issued a counter-claim against Irina alleging that she had hit him which resulted in a head injury. His claim was investigated, and on 20 May 2008 Irina Kodzaeva was charged under Article 318(2) of the Russian Criminal Code (use of violence against a representative of state authority endangering health; punishable by up to 10 years' imprisonment). The criminal charges approved by a senior federal-level Prosecutor (on 5 June 2008) stated that Irina Kodzaeva "in full knowledge of the social danger of her actions and wishing to cause socially dangerous consequences" had intentionally caused bodily harm to the investigator while he was performing his professional duties, thus causing him "bodily harm in the form of a light craniocerebral injury". The investigator was diagnosed on 28 August on the basis of a verbal complaint in which he described symptoms such as dizziness and vomiting on the day before, and redness on his cheek. Subsequent conclusions by forensic experts relied entirely on this diagnosis to confirm the investigator's injuries as "objective", despite the fact that Irina Kodzaeva had a similar medical report documenting the cause of her injuries. The alleged victim of Irina's blow explained her face injury as him having tried to shield himself from another her blow with an extended hand at which point her face impacted against it.

The evidence against Irina Kodzaeva consists entirely of these basic medical conclusions and testimonies of several witnesses who were all either her alleged victim's direct colleagues (all those who stated that they had seen the lawyer hitting the investigator were members of the same investigation team) or, according to Kodzaeva, did not see the actual incident. Kodzaeva's client, whom she had tried to see, stated that he had indeed declined her services. On a significantly later occasion, already serving a sentence, he was questioned about the same episode again. On that occasion he retracted his initial statement and complained of torture (having been kept blindfolded with a plastic bag, repeatedly severely beaten and threatened with execution) which, according to him, was the reason why he had signed a statement declining Irina Kodzaeva's services; he also stated that the lawyer who was assigned to him by the investigators on the same day only came at the end just to sign the protocol.

Almost two years later, faced with the risk of imprisonment, having lost all her legal battles and having such "irrefutable evidence" against her, Kodzaeva, a mother of two young children, agreed to give up her allegations and recognise the charges against her as founded, and on these conditions to have the case against her closed – the only option, she believes, that was left to her other than being prosecuted and stripped of her lawyer's license. On 16 April 2009, a court in Vladikavkaz ruled to close the case "in connection with reconciliation of the parties".

#### THE ULTIMATE PRICE: LAWYER KILLED IN A SECURITY OPERATION

*"If Natasha [Estemirova]<sup>159</sup> hadn't been writing she would have been alive... But then comes a moment when you stop being afraid. You just realize that it is pointless."*

A lawyer who asked not to be named; in an interview with Amnesty International, Nazran, Ingushetia, June 2012

Given the risks and threats routinely faced by many lawyers in the North Caucasus, there is also an understanding that the consequences of a principled professional position may extend as far as paying the ultimate price: losing one's life.

Amnesty International was told about the following case from the Chechen Republic.<sup>160</sup> Chechnya was the last region in the Russian Federation where trial by jury was introduced, in 2010. This measure immediately raised controversy, after the very first two court hearings involving a jury resulted in acquittals. These outcomes prompted criticism of jury trial as such, and of particular individuals involved. The media at the time widely hailed the very fact that trial by jury had arrived in Chechnya. However, virtually nothing was reported in the media about the authorities' reaction to their outcome, and of the repercussions for their participants, although the latter was widely known in the republic. A rare, if not the only, reference to this episode can be found on the official website of the President of the Russian Federation, in the transcript of a meeting of the then President Dmitry Medvedev with members of the Presidential Council for Civil Society Development and Human Rights:

*... [A]fter four young men had been fully acquitted by jury on 31 May [2011], the leadership of the republic not only went on a rampage about the entire judicial system accusing it of not working, [but also] members of the jury were taken to the forest [by security officials] and told to go looking for those four... The lawyer of one of these acquitted men died after receiving threats. He was an elderly man, and I cannot say whether one [thing] was directly linked to the other, but it is quite possible that all this served as a trigger for some health condition.<sup>161</sup>*

There has been no investigation into the report of unlawful pressure against members of the jury panel. Understandably, none of them has complained about it. Although this episode has not been reported in the media, it is remembered in Chechnya. Privately, many believe that the lawyer's death was in

connection with the trial.

The climate of intimidation, pressure, threats and risks that lawyers in the North Caucasus have to live and work in is particularly underlined by the case of the killing of a lawyer by security officials in January 2012, in the streets of Dagestani capital Makhachkala.

The lawyer, Omar Saidmagomedov, was a member of the law firm (*advokatskaya kollegiya*) Kavkaz in Makhachkala. Lawyers from Kavkaz told Amnesty International that their members had long been facing pressure and intimidation in connection with their professional work. One of them, Konstantin Mudunov, survived an attempt on his life on 19 November 2008: late on that day, an unknown individual came up to him from behind in the street and shot him in the head. Konstantin Mudunov was probably saved by the unexpected arrival of some passers-by who may have deterred the attacker from finishing him off with another shot.<sup>162</sup> The scar on the back of his head is still clearly evident. The perpetrator, however, has never been found, and the crime remains unresolved. Since then, according to the lawyer, members of the law firm Kavkaz have continued to receive threats.

#### **KILLING OF OMAR SAIDMAGOMEDOV BY LAW ENFORCEMENT OFFICIALS**

**Lawyer Omar Saidmagomedov and his relative were killed by security officials on 20 January 2012 in a street of Makhachkala, Dagestan, which the authorities reported as a killing of two members of an armed group. However, Saidmagomedov's colleagues allege that he was extrajudicially executed, and they themselves face harassment in connection with their attempts to uncover the truth about his killing.**

On the evening of 20 January 2012, Omar Saidmagomedov went from the office of his law firm to see his second cousin, Rasul Kurbanov. At around 7.30pm, both men were killed by security officials in front of Rasul Kurbanov's house, reportedly at the moment when Omar Saidmagomedov was leaving. According to a witness, Rasul Kurbanov's father came running out of the house when the shooting started and was also shot at, twice, but escaped killing by hiding behind metal gates. The killing was reported the same evening in the news broadcast on national television. According to the report, based on information provided by the authorities, this had been a security operation during which two armed criminals were killed when law enforcement officials tried to stop them. According to the official information, the two killed men were driving a car and trying to escape, and were also shooting at the security officials who were pursuing them.

Reportedly, eyewitnesses (who preferred to remain unnamed) gave a very different account of this event. According to them, there is evidence that it was instead a deliberate killing of two unarmed men and the subsequent fabrication of evidence against them. Omar Saidmagomedov's colleagues from the law firm Kavkaz issued a statement that "according to a unanimous opinion of the members of the firm, this event is a manifestation of law enforcement agencies' terror in relation to the law firm Kavkaz, the purpose of which is intimidation of the firm's lawyers and obstruction of their diligent work in opposing corruption and abuses in the law enforcement and judicial systems".<sup>163</sup> They offered to represent the parents of the two killed men in an attempt to have the killing effectively investigated, and signed the respective agreements with the families of the two killed men to represent them as legal counsel.

The Investigative Committee opened a criminal investigation into the incident, which was recorded as an attack against law enforcement officials. The parents and Saidmagomedov's colleagues demanded that the event be impartially investigated and the allegations of a deliberate killing of the two men by law enforcement officials were investigated as such, but their demands were ignored. Lawyers representing the families of the deceased protested that the investigation was not investigating the circumstances of the event, but instead was deliberately collecting evidence against Omar Saidmagomedov and Rasul Kurbanov.



The official report of the incident issued by an investigator on the day of the killing, and on the basis of which the relevant criminal case was opened, indicated that FSB officials were specifically trying to apprehend Rasul Kurbanov and Omar Saidmagomedov as suspected members of an armed group, and that the two refused to stop, had to be pursued as they allegedly fled in Saidmagomedov's car, and were killed after they opened fire first. However, another official document issued by the investigation two months later, in answer to the lawyers, was devoid of some key details (for example, an indication that the FSB had been involved, and referred to some unspecified "members of law enforcement agencies"). Crucially, it spoke of "unknown individuals" killed in the course of the operation who "were subsequently identified" as Rasul Kurbanov and Omar Saidmagomedov. Such inconsistencies raise serious questions about the efficacy, impartiality and thoroughness, or otherwise, of the investigation. Furthermore, suspicions arose in later weeks that the families of the deceased were under pressure after the father of Rasul Kurbanov unexpectedly refused the lawyers' services and decided not to pursue the case any further.

Omar Saidmagomedov's colleagues were also actively prevented by the investigation officials from taking up the case and seeking an impartial investigation. In particular, one of them, lawyer Konstantin Mudunov, who had signed a contract to represent Omar's family, sent the attorney's warrant (*advokatsky order*) to the investigator who promptly returned it. Konstantin Mudunov submitted another attorney's warrant, which the investigator similarly refused to accept thus preventing him from working on the case. Konstantin Mudunov appealed this in court, which agreed that this was a violation and ordered that it be rectified. The relevant court's decisions, of 27 March and 4 April 2012, were both ignored by the investigator. Furthermore, the investigator promptly summoned Konstantin Mudunov to testify as witness in the case against Omar Saidmagomedov and, when the lawyer refused, issued a warrant to have Konstantin Mudunov forcibly delivered for questioning. Konstantin Mudunov was thus unlawfully prevented from working on the case on behalf of Omar Saidmagomedov's family and from having access to the case materials which might have enabled him to expose the investigation's inability, or unwillingness, to examine the circumstances of the killing of lawyer Omar Saidmagomedov and his relative thoroughly, effectively, independently and impartially, with the requisite level of public scrutiny, as required by international law<sup>164</sup>.

Prior to his death, Omar Saidmagomedov had acted as defence counsel for several individuals accused of membership of armed groups, and alleged the use of torture and fabrication of criminal evidence by law enforcement agencies in relation to his clients.

The killing of Omar Saidmagomedov has had a chilling effect across the North Caucasus. During meetings in republics as far apart as Dagestan and Kabardino-Balkaria, lawyers were referring to this case as a kind of warning they felt they had been sent by the authorities. A further important signal to the professional legal community in the North Caucasus was the authorities' response – the lack of progress in examining the suspicious circumstances of this case and the evident resistance to investigate the law enforcement officials involved in connection with this killing.

## CONCLUSION

Human rights violations such as enforced disappearances, unlawful killings, torture and other ill-treatment committed by members of law enforcement agencies are regularly reported from the North Caucasus and almost never effectively investigated. These violations, and the Russian authorities' systematic failure to investigate them effectively, produces a circle of injustice and leads to further violations of fundamental human rights. These include the right to a fair trial, which is being denied in a number of ways in the North Caucasus, and elsewhere in the Russian Federation. Among these is *de facto* denial of, or limitation of access to, legal assistance and denial of representation by a lawyer of own choosing for criminal suspects during the investigation or for defendants in court. While these individuals themselves may come under pressure, be subjected to torture and other ill-treatment, and denied access to those acting as their legal counsel, their lawyers too, often face pressure from members of the law enforcement and criminal justice systems – particularly those lawyers in the region who diligently perform their professional duties as legal counsel on behalf of individuals suspected of “political” and “military” crimes (membership of unlawful armed groups, illegal possession of weapons, terrorism, etc.). Lawyers who confront the circle of injustice in the North Caucasus often themselves become its victims.

In the course of researching human rights violations in the North Caucasus in the past, Amnesty International has become aware that criminal defence lawyers in the region do their day-to-day work in an atmosphere of intimidation and harassment. They confront a repressive criminal justice system which, by many accounts and judging by a negligibly small number of acquittals in practice, is strongly biased in favour of delivering convictions. Already by the mere fact of fulfilling their duties fully and diligently – defending their clients' right not to testify against themselves, and to insist on their innocence when they choose to do so – defence lawyers confront the powerful criminal justice system and the law enforcement agencies that work alongside it. Their intimidation comes in various forms, from anonymous threats to “friendly warnings” from law enforcement and justice system officials, from allegedly being routinely subjected to covert surveillance – which many lawyers in the region believe they are – to investigators, prosecutors and sometimes judges filing complaints about them with their respective Bar Associations for reasons that sometimes appear more related to the type of cases they are working on rather than any genuine infringement of the rules. The organization has repeatedly learnt about lawyers in the region who have chosen either not to work on “political” and “military” criminal cases, or change their career altogether as a result of the pressure which they routinely faced. For some, the feeling that with all their knowledge of law they are powerless to protect their clients in custody from torture and other violations and put an end to violations of the right to fair trial, was also a key factor behind such a decision.

Criminal defence lawyers working in the North Caucasus often come across procedural and institutional obstructions which limit or preclude them from meeting with their clients in detention or place other obstacles in the way of them performing their professional duties, as well as making the procedure for complaining against such violations ineffective if not altogether meaningless. Every person taken into custody is entitled to have immediate and unimpeded access to a defence lawyer from the moment of their *de facto* detention, and to have unlimited confidential meetings with the lawyer. In many cases reported to Amnesty International, lawyers were denied access to their clients, particularly during the first hours or even days of custody, under various pretexts. In many cases, the authorities failed to inform the detainees' families and lawyers promptly about the fact of their detention and of their whereabouts. In many cases lawyers were, for a period of time (lasting between several hours and even days in some cases), denied information about the specific detention facility where their client is held. Lawyers were often requested to provide additional documents not required by law, or even a specific written authorization from the investigator, to be admitted to see the client. Facilities for such meetings may be limited and not available when needed. Worse still, such violations are extremely difficult to challenge in

practice. The existing complaints procedure is ineffective and time-consuming, and in some cases lawyers are required to address their complaints to another region altogether. As a result, individuals in detention are denied meetings with their lawyers at crucial moments, thereby significantly increasing the risk of them being subjected to torture and other ill-treatment. Furthermore, in many cases that have been brought to Amnesty International's attention, persons in custody were allegedly forced to refuse services of lawyers of their choice.

Russian law entitles criminal suspects and defendants to free legal assistance, without means testing or any significant limitations. An important entitlement intended to ensure a fair trial, in practice the involvement of a state-appointed lawyer is allegedly widely used by law enforcement officials to circumvent safeguards against the use of torture and other ill-treatment. There are certain rules which regulate the allocation of lawyers to work on cases as state-appointed legal counsel. However, according to lawyers in the North Caucasus, it is quite common for an investigator to bypass this official system and directly invite a particular lawyer to take up a case in this capacity. While every lawyer, whether privately contracted or state-appointed, must perform their professional duties honestly, professionally and diligently, and fully comply with the professional code of conduct, this is not always the case in practice. According to many of the lawyers and other people working in the region with whom Amnesty International spoke, lawyers who are approached directly by investigators to take up certain cases are often those who can be "trusted" to overlook certain procedural and other violations, including in many cases the alleged use of torture and other ill-treatment. Allegations of such practices are worryingly frequent in the North Caucasus. In many of those cases where a detainee was allegedly forced to refuse the services of lawyers of their choice, this was allegedly done specifically to involve a lawyer who would be more "cooperative" with the investigation. Among the consequences of this for the individuals brought to trial for crimes which they deny is that they are unable to retract in court their earlier written statements. They may claim that the statement was extracted unlawfully, but once it is countersigned by a lawyer, such evidence is most likely to be recognised as admissible by the judge. Although there are occasions when lawyers are disciplined by Bar Associations for failing to represent their clients effectively and, in some cases *de facto* colluding with the investigation or prosecution, these are rare and appear an exception to an allegedly very widely used practice which contradicts the right to an effective legal defence.

In the context of the general climate of intimidation, criminal defence lawyers in the North Caucasus sometime also face direct threats from members of law enforcement agencies. In Amnesty International's experience, for the most part they prefer to be discreet about such threats and reluctant to discuss them publicly. However, this research demonstrates that such threats are frequent and real. As demonstrated in Amnesty International's report of June 2012, *Russian Federation: The circle of injustice: Security operations and human rights violations in Ingushetia*, there is almost a complete failure to investigate allegations of wrongdoing by members of law enforcement agencies and security forces. Those lawyers who choose to complain officially about such threats stand little or no chance of having their allegations effectively investigated, the perpetrators identified, and efficient measures taken to ensure that these lawyers "are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference" as the Basic Principles on the Role of Lawyers provide. They are essentially not afforded adequate protection of the law and institutions set up to implement it. Moreover, some lawyers in the region have also experienced threats issued against their family members. Clearly, where the lawyers suspect that members of powerful law enforcement agencies themselves are the source of threats, many lawyers in the region feel they have nowhere to turn for help and protection.

In several cases documented by Amnesty International, and in other cases reported to the organization, such threats have been realized, and lawyers in the North Caucasus were subjected to physical violence in

connection with their professional activity by law enforcement officials. Those lawyers who officially complained about such incidents and particularly actively persevered in their search for justice, had themselves faced criminal proceedings as a result, when the officials about whom they complained issued counterclaims that led to the opening of criminal cases against the lawyers themselves. The outcome of such cases was impunity for the perpetrators and deeply traumatising consequences for the victims.

There was also a case of the killing of a criminal defence lawyer by security officials in 2012 in Dagestan, which had a chilling effect on his colleagues across the North Caucasus. The killing of lawyer Omar Saidmagomedov, as well as his cousin, was reported by the authorities as a security operation against two armed group members. However, according to the evidence collected by his colleagues, this version of events is far from clear, and serious questions have been raised about the subsequent investigation. In the light of threats received by criminal defence lawyers in the North Caucasus before and since this killing it did not, however shocking, come as a surprise: personal risks, as well as risks involving family members, are everyday facts of life for criminal defence lawyers in the region. This killing, and the major shortcomings of the investigation, is a vivid reminder that confronting the circle of injustice in the North Caucasus as criminal defence lawyers may come at a great personal cost.

The Russian authorities are failing in their duty to ensure that criminal justice lawyers in the North Caucasus are able to perform their professional functions without intimidation, hindrance, harassment or improper interference.

The numerous obstacles placed in the way of lawyers diligently seeking to fulfil their professional obligations seriously prejudices the rights of their clients, and, more broadly, undermines the effective and proper administration of justice in the North Caucasus.

## RECOMMENDATIONS

### To the Russian government

1. To fully respect and protect the human rights of lawyers and implement in law, policy and practice protections provided for by international law and standards, in particular by the UN Basic Principles on the Role of Lawyers.
2. Immediately ensure that lawyers in the North Caucasus and throughout the Russian Federation are adequately safeguarded and are able to perform their professional functions without intimidation, hindrance, harassment, reprisals or improper interference.
3. Investigate promptly, thoroughly, effectively, independently, impartially and effectively any credible allegations of lawyers being threatened, intimidated and/or subjected to physical violence, including killings.
4. Review the administration of complaint procedures concerning procedural violations committed by law enforcement and criminal justice officials, including in cases of denial of access or unlawful limitation of communications between the lawyer and the client, and ensure that these violations are remedied and that procedures are upheld in practice.
5. Ensure that complaint procedures against lawyers are not used to undermine their independence or effectiveness.
6. Ensure that detainees are given prompt, regular and unimpeded access to a lawyer of their choice, and notification of the detainee's whereabouts is promptly made available to their family, lawyer or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the detainee.
7. In consultations with the professional legal community, review the existing legislation (including the Federal Law "On *Advokats'* practice and *Advokatura*" and the Code of Criminal Procedure as necessary) to ensure that there are clear, binding rules and procedures that regulate transparently and fairly the process by which lawyers are assigned to work on criminal cases as state-appointed lawyers, and ensure that these rules and procedures are properly enforced, including in cases of breaches by members of the investigative authorities, the judiciary or other officials, or by individual lawyers and legal firms.
8. Use the opportunity of the forthcoming April 2013 visit to the Russian Federation by the Special Rapporteur on the Independence of Judges and Lawyers to fully engage with implementation of the recommendations contained in the previous Special Rapporteur's report published after his mission to the Russian Federation in May 2008, in particular those regarding the judicial reform process, strengthening and developing further the institutional and legal framework, procedural legislation and practice to ensure the independent role of judges and to maintain and strengthen the role of the professional legal community.
9. Implement the recommendations made by Amnesty International to the government in its June 2012 report *Russian Federation: The circle of injustice: Security operations and human rights violations in Ingushetia*.

**To the Federal Bar Association and Bar Associations in the North Caucasus**

1. Systematically monitor, collate and report violations of lawyers' rights and professional privileges by members of law enforcement and criminal justice systems in the North Caucasus and throughout the Russian Federation. Encourage reporting by members of all Bar Associations of all violations of lawyers' rights and professional privileges by members of the criminal justice system and any other institutions to their respective Bars and to the Federal Bar Association.
2. Critically engage with the relevant Russian authorities to combat and remedy such violations, and ensure that every member of the legal community in Russia can perform their professional functions without intimidation, hindrance, harassment or improper interference.
3. Facilitate the development and sharing of expertise amongst its members on the most effective means for protection of and redress for violations of lawyers' rights and of the existing procedural rules by members of law enforcement and criminal justice systems.
4. Engage systematically with the relevant Russian authorities to seek a revision of the existing legislation to ensure that there are clear, binding rules and procedures that regulate transparently and fairly the process by which lawyers are assigned to work on criminal cases as state-appointed lawyers.
5. Ensure transparency of the system whereby lawyers are assigned to work on criminal cases as state-appointed lawyers, including for example by employing simple procedures to verify whether a particular lawyer was on duty on a given day thus helping to ensure the assignment roster is managed transparently and fairly.
6. Ensure effective regulation and independence of the legal profession, throughout the Russian Federation, including by developing effective mechanisms for systematically monitoring and detecting breaches of the professional code of conduct by lawyers and failure to fulfil their professional duties honestly, prudently and diligently, including circumvention of the rules and procedures by which lawyers are assigned to work on cases as state-appointed lawyers, ensuring that lawyers effectively represent their clients and addressing the relevant incidents through effective disciplinary proceedings where appropriate.

**To the international community**

**To professional lawyers' associations:**

1. Publicly support measures to ensure the independence and protection of lawyers, particularly in the North Caucasus republics but also throughout the Russian Federation.
2. Advocate with international lawyers' associations, national governments, relevant international and regional organizations and human rights mechanisms to urge them to raise, in their communications with the Russian Government, the issue of intimidation and harassment of, and the lack of protection for, criminal defence lawyers in the North Caucasus and the urgent need to address it, in line with the Russian Federation's international obligations.

**To governments, international and regional organizations and human rights mechanisms:**

3. Facilitate the monitoring and public reporting on criminal justice proceedings and violations of defendants' right to a fair trial, as well as of lawyers' professional and human rights in the North Caucasus, including cases of alleged harassment, threats and violence against lawyers by

members of law enforcement agencies.

4. In bilateral and multilateral meetings with the Russian authorities, raise both the pattern of such violations and individual cases documented in this report and by others, and send a clear message that these contravene Russia's international obligations and that impunity for such violations must stop and that lawyers in the North Caucasus must be protected.

**To the Special Rapporteur on the Independence of Judges and Lawyers:**

5. Use the opportunity of the forthcoming April 2013 visit to the Russian Federation to assess and highlight the situation of lawyers in the North Caucasus and elsewhere in the country in terms of their ability to perform their professional functions without intimidation, hindrance, harassment or improper interference, and critically engage with the Russian authorities both to raise individual cases and patterns of violations, and make recommendations for the Russian Federation to ensure that existing policy and practice is brought fully in line with the Basic Principles on the Role of Lawyers and the Russian Federation's international obligations.
6. Assess the implementation of recommendations arising from the Special Rapporteur's last visit to the Russian Federation in May 2008, and identify shortcomings in the implementation of those recommendations, and ways in which such shortcomings can be remedied.

**To the Parliamentary Assembly of the Council of Europe:**

7. Use the opportunity of the follow-up to the report *Legal remedies for human rights violations in the North-Caucasus region*, Doc. 12276, 4 June 2010, and the PACE Resolution 1738 (2010) *Legal remedies for human rights violations in the North Caucasus region*, and particularly the forthcoming report *Human rights in the North Caucasus: what follow-up to Resolution 1738 (2010)?* to address the concerns raised in this report.

**To the Committee of Ministers of the Council of Europe:**

8. Pursuant to the PACE Recommendation 1922 (2010) on *Legal remedies for human rights violations in the North Caucasus Region*, renew, continue and facilitate the monitoring of the human rights situation in the North Caucasus, with a particular attention paid to violations of defendants' right to a fair trial, as well as of lawyers' professional and human rights.
9. Urge the Russian Federation to implement fully and effectively the Recommendation No. R(2000)21 of the Committee of Ministers to member States on the freedom of exercise of the profession of lawyer (adopted by the Committee of Ministers of 25 October 2000 and the 727th meeting of the Ministers' Deputies).

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<sup>1</sup> There are varying views as to how 'the North Caucasus' should be defined, and some of the debates around this are of a political nature. For the purpose of this report, it is regarded as synonymous with the North Caucasus Federal District (*Severo-Kavkazsky federalny okrug*), an administrative unit as it is officially defined.

<sup>2</sup> For example, see Amnesty International, *Russian Federation: The circle of injustice: Security operations and human*

*rights violations in Ingushetia (Circle of Injustice)*, report, 21 June 2012 (AI Index: EUR 46/012/2012), available at: <http://amnesty.org/en/library/info/EUR46/012/2012/en> (last accessed 8 March 2013)

<sup>3</sup> See for example, UN Convention against Torture, UNTS vol. 1465, p. 85, Article 12, ratified by the Russian Federation on 3 March 1987; *Kurt v Turkey* (ECtHR), application no 24276/94, 25 May 1998, para 124; UN Human Rights Committee, General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, Adopted on 29 March 2004, UN Doc.: CCPR/C/21/Rev.1/Add. 13, para. 15.

<sup>4</sup> Parliamentary Assembly of the Council of Europe, Resolution 1738(2010) 'Legal remedies for human rights violations in the North Caucasus Region', 22 June 2010, paragraphs 10 and 13.1.2, available at <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=17870&lang=en> (last accessed 8 March 2013).

<sup>5</sup> *Circle of Injustice*, particularly pp. 55-66.

<sup>6</sup> For further details on the human rights issues surrounding investigations and the obstacles to impunity, see *Circle of Injustice*, especially pp. 55-68.

<sup>7</sup> *Ibid.* See also Committee on Legal Affairs and Human Rights, *Legal remedies for human rights violations in the North-Caucasus Region*, rapporteur Dick Marty, May 2009, available at [http://www.assembly.coe.int/CommitteeDocs/2010/20100531\\_caucasus\\_E.pdf](http://www.assembly.coe.int/CommitteeDocs/2010/20100531_caucasus_E.pdf) (last accessed 8 March 2013)

<sup>8</sup> See, for example, Article 6, European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), ratified by the Russian Federation on 5 May 1998; Principle 18(1), UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (the Body of Principles), adopted by the UN General Assembly on 9 December 1988, UN Doc. A/RES/43/173; and Principles 1 and 7, Basic Principles on the Role of Lawyers (the Basic Principles), Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>9</sup> Investigation (more precisely 'preliminary investigation' – *predvaritelnoe rassledovanie*) is a stage in the criminal proceedings in Russia which follows the opening of the criminal case (*vozbuzhdenie ugolovnogo dela*) and precedes either the closure or the case (if the alleged crime is not confirmed, or the perpetrator cannot be identified, etc.) or the judicial proceedings (*sudebnoe proizvodstvo*, which include court hearing – *sudebnoe razbiratelstvo*). Under Russian law (Article 150 of the Code of Criminal Procedure), there are two forms of preliminary investigation – *predvaritelnoe sledstvie* and *doznanie*. Both are the same proceeding in essence which aims to establish all the principal facts and circumstances of the crime (the perpetrator(s), their motive, damage caused, etc.) and provide their provisional assessment (hence, 'preliminary', until the court explores these and passes its final judgement), and **for this reason both are referred to as 'investigation' in this report**, in line with the commonly used translation of these terms. The difference between them is that *predvaritelnoe sledstvie* relates to more serious crime and is undertaken by an investigative official with broader authority (*sledovatel*), while *doznanie* usually relates to lesser crimes punishable by up to five years' imprisonment and is conducted by officials with somewhat lesser authority called *doznavatel*. *Doznanie* may be undertaken by members of police and FSB's border protection organs, and some other agencies. *Predvaritelnoe sledstvie* is undertaken by *sledovatel*s from the Investigative Committee (a stand-alone agency which undertakes investigation of serious crime, police, FSB and the Federal Service for Control of Drugs. For the purpose of this report, both *sledovatel* and *doznavatel* are referred to as "investigators" and the agencies they represent as "investigative authorities".

<sup>10</sup> See *Circle of Injustice*, pp. 38-55.

<sup>11</sup> Article 21(2) of the Constitution of the Russian Federation states that "[n]o-one should be subjected to torture, violence, other cruel or degrading treatment or punishment". Article 117 of the Criminal Code uses the term *istязanie* (torture, torment) which it defines as an action intended to inflict physical or mental suffering, and mentions the use of *pytka* (torture) as an aggravating circumstance. The definition of *pytka* is contained in a commentary to this Article



which defines it as “infliction of physical or mental suffering in order to extract testimony or compel other actions contrary to the person’s will, as well as for punishment and other purposes” but makes no reference to the role played by a public official or other person acting in an official capacity in the act of torture, directly or by consent or acquiescence. See further Amnesty International, ‘Russian Federation: Briefing to the UN Committee against Torture’, 15 October 2012, EUR/46/040/2012, (AI CAT Briefing) available at <http://www.amnesty.org/en/library/info/EUR46/040/2012/en> (last accessed 8 March 2013) p. 5.

<sup>12</sup> Thus, the law requires that any detained person is physically examined at the time of admission into an official place of custody (Federal Law ‘On Police’, Article 14(16)), at which point any injuries are documented that may have already been sustained. The detainee is also entitled to be examined by a medical professional on request without any delay (Federal Law ‘On Custody of Persons Suspected of or Charged with Criminal Acts’, Article 24). There is an exhaustive list of which law enforcement agencies are permitted to hold individuals in custody (Federal Law ‘On Custody of Persons Suspected of or Charged with Criminal Acts’, Articles 24 and 7), and these exclude the agencies entrusted with investigating crimes related to membership of armed groups, such as the Centre for Combating Extremism of the Ministry of the Interior, the Investigative Committee and the Federal Security Service (FSB) proper (as opposed to the FSB’s border protection organs which have their own temporary detention facilities. For more on these, see *Circle of Injustice*, pp. 41-55 and AI CAT Briefing, pp. 5-12.

<sup>13</sup> Article 48(2) of the Constitution of the Russian Federation; Articles 47.4(8) and 48.4(3) Code of Criminal Procedure. The details of the respective legal provisions are covered later in this report.

<sup>14</sup> Article 18 of the Federal Law ‘On Custody of Persons Suspected of or Charged with Criminal Acts’.

<sup>15</sup> Article 6, European Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by the Russian Federation on 5 May 1998; *A and Others v United Kingdom* (ECtHR), application no 3455/05, 19 February 2009, para. 204; Article 14(1), International Covenant on Civil and Political Rights (ICCPR), UNTS vol. 999, p. 171 and vol. 1057, p. 407, ratified by the Russian Federation on 16 October 1973; UN Human Rights Committee (HRC), General Comment No. 32, UN Doc. CCPR/C/GC/32 (2007), para 13.

<sup>16</sup> For example, see Federal Bar Association, ‘Obespechenie prav i interesov grazhdan pri osuschestvlenii ugolovno-pravovoi politiki v Rossiyskoy Federatsii’, 7 April 2009, Moscow, published in *Novaya Advokatskaya Gazeta*, No. 9, 2009, available at <http://www.advgazeta.ru/rubrics/9/283> (last accessed on 8 March 2013); Ella Paneyakh et al., *Pravookhranitel'naya deyatelnost v Rossii: struktura, funktsionirovanie, puti reformirovaniya*, October 2012, Institute for the Rule of Law at the European University at St Petersburg, St Petersburg, chapter 2. Available at: [http://komitetgi.ru/upload/uploaded\\_files/irl\\_4-pravookhrana\\_4%20kudrin\\_part\\_1\\_fin.pdf](http://komitetgi.ru/upload/uploaded_files/irl_4-pravookhrana_4%20kudrin_part_1_fin.pdf) (last accessed 8 March 2013).

<sup>17</sup> A colleague of Sapiyat Magomedova took several photos of her and her injuries later on the day. These are available on the Russian Human Rights Centre Memorial’s website at <http://www.memo.ru/2010/06/18/1806101.htm> (last accessed 8 March 2013). The injury caused by falling on her face can be clearly seen.

<sup>18</sup> Article 133, Code of Civil Procedure of the Russian Federation.

<sup>19</sup> Article 6(3)(c) ECHR; Principle 18(1) Body of Principles; Principles 1 and 7 Basic Principles.

<sup>20</sup> Human Rights Centre Memorial, ‘Dagestan: napadeniya na advokatov prodolzhayutsya’, 11 October 2010, available at <http://www.memo.ru/2010/10/11/1110101.htm> (last accessed 8 March 2013)

<sup>21</sup> The Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>22</sup> Principle 16, Basic Principles.

<sup>23</sup> Principle 16, Basic Principles.

<sup>24</sup> Case documented in *Circle of Injustice*, pp. 45-47.

<sup>25</sup> Over the years, Amnesty International has on many occasions raised concerns about human rights violations of defendants in this case, for instance see 'Russian Federation: Detainee denied adequate medical treatment', Urgent Action, 13 December 2011 (Index: EUR 46/046/2011); *Russian Federation: Briefing to the Human Rights Committee*, 1 October 2009 (Index: EUR 46/025/2009); *Russian Federation: Amnesty International Submission to the UN Universal Periodic Review: Fourth session of the UPR Working Group of the Human Rights Council, February 2009*, published 8 September 2008 (Index: EUR 46/026/2008); 'Russian Federation: Medical concern: Rasul Kudaev', 21 August 2007 (Index: EUR 46/035/2007).

<sup>26</sup> To become a member of a Bar Association, the individual needs to have a university-level degree in law, at least two years of work experience in a legal profession or as an intern under a practicing *advokat*, and pass the Bar Association's qualification exam.

<sup>27</sup> Articles 1 and 2, Federal Law "On *Advokats'* practice and *Advokatura*". There are other legal professions (*yuristy*) in Russia, including in-house lawyers for example, who can provide legal assistance on a wide range of issues, including as employees; however, none of them has the same privileges.

<sup>28</sup> For convenience, the term 'lawyer' is used throughout this report interchangeably with '*advokat*' – on the understanding that it denotes this particular profession, as defined in this chapter.

<sup>29</sup> Art. 7(1), Federal Law "On *Advokats'* practice and *Advokatura*".

<sup>30</sup> Article 8, Federal Law "On *Advokats'* practice and *Advokatura*".

<sup>31</sup> Articles 49, 92.4 of the Code of Criminal Procedure of the Russian Federation; Article 6.3(5), Federal Law "On *Advokats'* practice and *Advokatura*".

<sup>32</sup> Articles 6.4(3) and 7.1(1), Federal Law "On *Advokats'* practice and *Advokatura*".

<sup>33</sup> Ruling of the Constitutional Court of the Russian Federation no.428-O-P of 6 March 2008.

<sup>34</sup> The respective rules and limitations are set out in Article 8 of the Federal Law "On *Advokats'* practice and *Advokatura*".

<sup>35</sup> Article 72.1(1) of the Code of Criminal Procedure of the Russian Federation; Article 8.2, Federal Law "On *Advokats'* practice and *Advokatura*"; Article 6.6, Code of Professional Ethics of the Lawyer.

<sup>36</sup> Articles 21.2, 47-51 and 123 of the Constitution of the Russian Federation; Articles 3 and 5 ECHR; Articles 1, 16 CAT; Articles 7 and 9 ICCPR.

<sup>37</sup> The UN Special Rapporteur on the independence of judges and lawyers has stated that "the absence of legal counsel gives rise to the potential for abuse", see Special Rapporteur on the independence of judges and lawyers: United Kingdom, UN Doc. E/CN.4/1998/39/add.4 (1998) §47. See further below in Chapter 3.

<sup>38</sup> Article 14, ICCPR, ratified by the Russian Federation on 16 October 1973; Article 6 ECHR.

<sup>39</sup> Article 14(1) ICCPR.

<sup>40</sup> Article 14(2) ICCPR; Article 6(2) ECHR.

<sup>41</sup> Article 14(3)(d) ICCPR; Article 6(3)(c) ECHR; see also Principle 1 Basic Principles.

<sup>42</sup> Article 14(3)(b) ICCPR; UN Human Rights Committee (HRC), General Comment No. 32, UN Doc. CCPR/C/GC/32 (2007), para 34; Principle 22, Basic Principles.

<sup>43</sup> Article 14(3)(g) ICCPR; see also Principle 6 Basic Principles.

<sup>44</sup> Article 14(3)(d) ICCPR; Article 6(3)(c) ECHR.

<sup>45</sup> HRC, General Comment No. 32, para 34; Principle 7 Basic Principles.

<sup>46</sup> *Artico v Italy*, (ECtHR), application no. 6694/74, para 33; *Imbrioscia v Switzerland* (ECtHR), application no. 13972/88, para 38; *Daud v Portugal* (ECtHR), application no. 22600/93, para 38; HRC, General Comment No. 32, para 38.

<sup>47</sup> Principle 16, Basic Principles.

<sup>48</sup> Principle 17, Basic Principles.

<sup>49</sup> Principle 18, Basic Principles.

<sup>50</sup> Principle 19, Basic Principles.

<sup>51</sup> Principle 20, Basic Principles.

<sup>52</sup> Article 13, Declaration on the Protection of All Persons from Enforced Disappearance, Adopted by General Assembly resolution 47/133 of 18 December 1992; Principle 15, Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions, Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989; Principle 3, Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Recommended by General Assembly resolution 55/89 of 4 December 2000.

<sup>53</sup> HRC, General Comment No. 32, para 34.

<sup>54</sup> Principle I(1), Recommendation No. R(2000)2I of the Committee of Ministers to member States on the freedom of exercise of the profession of lawyer, adopted by the Committee of Ministers of 25 October 2000 and the 727th meeting of the Ministers' Deputies, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=533749&SecMode=1&DocId=370286&Usage=2> (last accessed 8 March 2013).

<sup>55</sup> According to Article 49.3(3), “a defender takes part in a criminal case ... from the moment of de facto arrest (*zaderzhanie*) of a person suspected of committing a crime”. However, in practice this stipulation law enforcement officials often allow access to a lawyer at the moment at which the suspect is placed in the detention cell, and not the prior actual moment when they are taken into custody.

<sup>56</sup> Article 47.4(9) of the Code of Criminal Procedure of the Russian Federation. This may be limited to two hours however in certain cases under Article 92(4).

<sup>57</sup> Articles 50 and 53.1(5), Code of Criminal Procedure of the Russian Federation.

<sup>58</sup> E.g., see Ella Paneyakh et al., *Pravookhranitel'naya deyatel'nost v Rossii: struktura, funktsionirovanie, puti reformirovaniya*, October 2012, Institute for the Rule of Law at the European University at St Petersburg, St Petersburg, pp 144-145. Available at: [http://komitetgi.ru/upload/uploaded\\_files/irl\\_4\\_pravookhrana\\_4%20kudrin\\_part\\_1\\_fin.pdf](http://komitetgi.ru/upload/uploaded_files/irl_4_pravookhrana_4%20kudrin_part_1_fin.pdf) (last accessed 8 March 2013).

<sup>59</sup> Article 50, Code of Criminal Procedure of the Russian Federation.

<sup>60</sup> Article 52, Code of Criminal Procedure of the Russian Federation.

<sup>61</sup> Article 75.2(1), Code of Criminal Procedure of the Russian Federation.

<sup>62</sup> For example, see “The case of the twelve” in *Circle of Injustice*, pp. 51-52.

<sup>63</sup> See Amnesty International, ‘Russia must act to protect journalists in Dagestan’, Press release, 16 December 2011 (Index: PRE01/627/2011).

<sup>64</sup> In interviews with Amnesty International, June 2012, on condition of strict confidentiality.

<sup>65</sup> For more on the issue of ineffectiveness of the existing criminal justice system in the North Caucasus context, see *Circle of Injustice*, particularly chapters “Torture and Other Ill-Treatment” and “Impunity”; see also Amnesty International, *Russian Federation: Briefing to the UN Committee against Torture*, 15 October 2012 (Index: EUR 46/040/2012).

<sup>66</sup> An interview with a lawyer who asked not to reveal their name, Nalchik, June 2012.

<sup>67</sup> In interview with Amnesty International, 8 June 2012, Nalchik, Kabardino-Balkaria.

<sup>68</sup> In an interview with Amnesty International, Nazran, 10 June 2012. The lawyer asked not to be named.

<sup>69</sup> See Amnesty International, ‘Russia must deliver justice for Natalia Estemirova and other murdered activists’, press release, 14 July 2012 (Index: PRE01/343/2012), and Amnesty International, *Russian Federation: Beaten up for speaking out: Attacks on human rights defenders in the Russian Federation*, 5 October 2011 (Index: EUR 46/038/2011), pp. 7-8.

<sup>70</sup> Parliamentary Assembly of the Council of Europe, Resolution 1738(2010) ‘Legal remedies for human rights violations in the North Caucasus Region’, 22 June 2010, Paragraph 10, available at <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=17870&lang=en> (last accessed 8 March 2013).

<sup>71</sup> These include the following Articles of the Criminal Code of the Russian Federation: 205 (Act of terrorism), 205.1 (Assisting terrorist activities), 208 (Organization of or participation in an illegal armed group), 209 (Banditry), 210 (Organization of or participation in a criminal community (criminal organization)), 222 (Illegal purchase, transfer, sale, storage, transportation or carrying of weapons, their main parts, ammunition, explosives and explosive devices), 277 (Attempt on the life of a state or public figure), 278 (Seizure of power or forcible retention of power), 279 (Armed rebellion), 317 (Attempt on the life of a law enforcement officer), 318 (Use of violence against a government official).

<sup>72</sup> Magamed Abubakarov, in interview with Amnesty International, 8 June 2012, Nalchik, Kabardino-Balkaria.

<sup>73</sup> As an example, see *Circle of Injustice*, pp. 16-19, for an analysis of the range and type of law enforcement agencies operating in Ingushetia.

<sup>74</sup> See *Circle of Injustice*; see also Amnesty International, *Russian Federation: Rule without Law: Human Rights Violations in the North Caucasus*, report, 30 June 2009 (Index: EUR 46/012/2009)

<sup>75</sup> See *Circle of Injustice*.

<sup>76</sup> E.g, see *Circle of Injustice*, pp. 55-67.

<sup>77</sup> Principle 16, Basic Principles.

<sup>78</sup> Amnesty International, ‘Russian Federation: Unfair trial concerns cast doubt on the integrity of the conviction of Mikhail Khodorkovsky and Platon Lebedev’, public statement, 27 December 2010 (index: EUR 46/042/2010).

<sup>79</sup> UN Human Rights Council, Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy : addendum: mission to the Russian Federation, 23 March 2009, A/HRC/11/41/Add.2, available at:

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<http://www.unhcr.org/refworld/docid/49f84b842.html> (last accessed 8 March 2013).

Gabriela Knaul, the current Special Rapporteur on the Independence of Judges and Lawyers, is planning expected to visit the Russian Federation in April 2013.

<sup>80</sup> Federal Bar Association, 'Informatsionnaya spravka o sostoyanii advokatury i advokatskoy deyatel'nosti v 2011 godu', available at [http://www.fparf.ru/resh/2012/spravka\\_o\\_sostoyanii.htm](http://www.fparf.ru/resh/2012/spravka_o_sostoyanii.htm) (last accessed 8 March 2013).

<sup>81</sup> Thus, the FBA noted that the number of unlawful interrogations or attempted questionings of lawyers as witnesses in their cases almost doubled in 2011 compared to the year before, from 103 to 195. *Ibid.*

<sup>82</sup> *Prezident Rossii* (official website of the President of the Russian Federation), 'Stenograficheskiy otchet o zasedanii Soveta po razvitiyu grazhdanskogo obschestva i pravam cheloveka', record of a meeting of the Presidential Council for Civil Society Development and Human Rights, 1 February 2011, Yekaterinburg. Available at: <http://www.kremlin.ru/transcripts/10194> (last accessed 8 March 2013).

<sup>83</sup> Federal Bar Association, 'Obespechenie prav i interesov grazhdan pri osushchestvlenii ugolovno-pravovoi politiki v Rossiyskoy Federatsii', 7 April 2009, Moscow, published in *Novaya Advokatskaya Gazeta*, No. 9, 2009, available at <http://www.advgazeta.ru/rubrics/9/283> (last accessed on 8 March 2013).

<sup>84</sup> Vladimir Putin, 'Demokratiya i kachestvo gosudarstva', *Kommersant*, 6 February 2012, available at: <http://www.kommersant.ru/doc/1866753> (last accessed 8 March 2013).

<sup>85</sup> Ella Paneyakh et al., *Pravookhranitel'naya deyatel'nost v Rossii: struktura, funktsionirovanie, puti reformirovaniya*, October 2012, Institute for the Rule of Law at the European University at St Petersburg, St Petersburg, p. 64. Available at: [http://komitetgi.ru/upload/uploaded\\_files/irl\\_4\\_pravookhrana\\_4%20kudrin\\_part\\_1\\_fin.pdf](http://komitetgi.ru/upload/uploaded_files/irl_4_pravookhrana_4%20kudrin_part_1_fin.pdf) (last accessed 8 March 2013).

<sup>86</sup> A lawyer who asked to remain unnamed in interview with Amnesty International, Grozny, Chechnya, 11 June 2012.

<sup>87</sup> See *Circle of Injustice*, particularly pp. 16-19 and pp. 58-63.

<sup>88</sup> Principle 16, Basic Principles.

<sup>89</sup> Article 17, Federal Law "On Advokats' practice and Advokatura".

<sup>90</sup> Interview with Amnesty International, Grozny, June 2012. The lawyer asked not to reveal his name.

<sup>91</sup> For some details, see "Alleged Beating of 11 Detainees in Transit" in *Circle of Injustice*, pp. 53-54.

<sup>92</sup> For details, see the case of Issa Khashagulgov in *Circle of Injustice*, pp. 49-50.

<sup>93</sup> Article 14(3)(b) and (d) ICCPR; Article 6(3)(c) ECHR; see also Principles 1, 2, 5, 7 and 22, Basic Principles; UN Human Rights Committee (HRC), General Comment No. 32, UN Doc. CCPR/C/GC/32 (2007), para 34.

<sup>94</sup> HRC, General Comment No 32, para 34; Principle 8, Basic Principles; Principle 18 (4), Body of Principles.

<sup>95</sup> In interview with Amnesty International, 8 June 2011, Moscow. For more of the case of Zelimkhan Chitigov, see *Circle of Injustice*, pp. 45-47.

<sup>96</sup> Shura Burtin, 'Sto chasov v adu', interview with Zelimkhan Chitigov, *Russkiy Reporter*, N.37 (215), 22-29 September 2011, available at [http://expert.ru/russian\\_reporter/2011/37/](http://expert.ru/russian_reporter/2011/37/) (last accessed 8 March 2013).

<sup>97</sup> Elena Burtina and Svetlana Gannushkina, interview with Zelimkhan Chitigov, 30 January 2011, published in *Caucasian Knot*, 19 January 2012, available at <http://www.kavkaz-uzel.ru/articles/199533/> (last accessed 8 March 2013).

<sup>98</sup> The UN Special Rapporteur on the independence of judges and lawyers has stated that “the absence of legal counsel gives rise to the potential for abuse”, see Special Rapporteur on the independence of judges and lawyers: United Kingdom, UN Doc. E/CN.4/1998/39/add.4 (1998) §47. The UN Human Rights Committee and the Committee against Torture have repeatedly called on states to ensure the right of all detainees, including those suspected of terrorism-related offences, to access to counsel before questioning and to the presence of counsel during questioning. They have recommended guaranteeing these rights in law. See, for example, Concluding Observations of HRC: Ireland, UN Doc. CCPR/C/IRL/CO/3 (2008) §§14; Republic of Korea, UN Doc. CCPR/C/KOR/CO/3, (2006) §14; Netherlands, UN Doc. CCPR/C/NDL/CO/4, (2009) §11; See Concluding Observations of CAT: Turkey, UN Doc. CAT/C/TUR/CO/3 (2010) §11.

<sup>99</sup> For example, see open letter by lawyer Aza Yandieva to President D.A. Medvedev, Prosecutor General Yu.Ya. Chaika and Head of the Investigative Committee A.I. Bastrykin, Ingushetia, 23 April 2011, text available at <http://www.kavkaz-uzel.ru/blogs/342/posts/7578> (last accessed 8 March 2013). According to the lawyer, her client claimed that he was being forced to refuse her services and also told by a law enforcement official that she as his lawyer would be killed by an explosive device planted in her car and that her killing would be blamed on members of armed groups.

<sup>100</sup> Article 7.1(1), Federal Law “On *Advokats'* practice and *Advokatura*”, Article 9.1(2), Code of Professional Ethics of the Lawyer.

<sup>101</sup> A lawyer who asked to remain unnamed in interview with Amnesty International, Nalchik, June 2012.

<sup>102</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT Standards, CPT/Inf/E (2002) 1 - Rev. 2011, December 2011, pp. 8, 84 and 90.

<sup>103</sup> *Ibid.*, p. 8.

<sup>104</sup> For example, see the case of Murat Bedzhiev in Amnesty International, ‘Russian Federation: Briefing to the UN Committee against Torture’, 15 October 2012, EUR/46/040/2012, p. 8.

<sup>105</sup> For example, see the case of Beslan Tsechoev, *Circle of Injustice*, pp. 48-49.

<sup>106</sup> An interview with Amnesty International, Nalchik, Kabardino-Balkaria, 8 June. The lawyer has asked not to name her in the report.

<sup>107</sup> 21st General Report of the CPT, CPT/Inf (2011)28, para 21.

<sup>108</sup> *Salduz v Turkey*, Application no. 36391/02, 27 November 2008, para 54.

<sup>109</sup> Article 6.2, Federal Law “On *Advokats'* practice and *Advokatura*”.

<sup>110</sup> *Ibid.*

<sup>111</sup> An interview with Amnesty International, Cherkessk, Karachaevo-Cherkessia, 16 June 2012. The lawyer asked not to use her name in the publication.

<sup>112</sup> An interview with Amnesty International, law firm “Zaschita”, Vladikavkaz, North Ossetia, 15 June 2012.

<sup>113</sup> For more on *incommunicado* detention, see *Circle of Injustice*, pp. 48-50.

<sup>114</sup> An interview with Amnesty International, Vladikavkaz, North Ossetia, 9 June 2012.

<sup>115</sup> This case is also cited in *Circle of Injustice*, pp. 49-50.

<sup>116</sup> See Amnesty International, ‘Deadly bomb attack in North Ossetia condemned’, 9 September 2010, available at

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<http://www.amnesty.org/en/news-and-updates/deadly-bomb-attack-north-ossetia-condemned-2010-09-09> (last accessed 8 March 2013)

<sup>117</sup> Yekaterina Selezneva, 'Zaderzhannogo po podozreniyu v prichastnosti k teraktu Khashagulgova net ni v Lefortovo, ni v SIZO Vladikavkaza', Caucasian Knot, 13 April 2011, available at <http://www.kavkazuzel.ru/articles/183305/> (last accessed 8 March 2013)

<sup>118</sup> Another lawyer from Ingushetia some of whose clients are held in custody in Moscow complained that there too, the lawyer is asked to produce written permission to see their client in pre-trial detention centre signed by the investigator. An interview with Amnesty International, Nazran, Ingushetia, 10 June 2012. The lawyer asked not to be named.

<sup>119</sup> Article 49.3(3) of the Code of Criminal Procedure.

<sup>120</sup> Article 10, Declaration on the Protection of all Persons from Enforced Disappearance, adopted by General Assembly resolution 47/133 of 18 December 1992, A/RES/47/133; Principle 16(1) Body of Principles.

<sup>121</sup> See European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT Standards, CPT/Inf/E (2002) 1 - Rev. 2011, December 2011, pp. 8, 84 and 90.

<sup>122</sup> AI Index: EUR 46/012/2012.

<sup>123</sup> See discussion of the practices of enforced disappearance, secret and *incommunicado* detention in the region *Circle of Injustice*, pp. 19-30 and 43-50.

<sup>124</sup> An interview with Eva Chanieva, Nalchik, Kabardino-Balkaria, 8 June 2012; an interview with Batyr Akhilgov and Magamed Gagiev, Nazran, Ingushetia, 10 June 2012.

<sup>125</sup> Federal Bar Associations, 'Informatsionnaya spravka o sostoyanii advokatury i advokatskoy deyatel'nosti v 2011 godu', point 3.1, available at [http://www.fparf.ru/resh/2012/spravka\\_o\\_sostoyanii.htm](http://www.fparf.ru/resh/2012/spravka_o_sostoyanii.htm) (last accessed 8 March 2013).

<sup>126</sup> Thus, Article 6 of the CPCL mandates that a lawyer may not "act contrary to the client's lawful interests, [or] provide [the client] with legal assistance ... while being under the influence of external pressure; take a position in the case which is contrary to the client's position, and act against [the client's] will except when the defence lawyer is convinced that the client has incriminated him/herself". Article 10(7) of the Code states that duties of a state-appointed lawyer are the same as of a privately contracted lawyer. A lawyer cannot renege on his/her duties as a defender and, except for some limited specific circumstances defined in law, is expected to provide legal assistance to the client in the course of the criminal justice proceedings up to and including during the hearings in the court of first instance (Art. 13(2) of the Code).

<sup>127</sup> Principles 12, 13 and 15, Basic Principles.

<sup>128</sup> See *Circle of Injustice*, pp. 50-52, including the case cited on p. 51 as an illustration.

<sup>129</sup> Committee against Torture. Concluding observations on the fifth periodic report of the Russian Federation, adopted by the Committee at its forty-ninth session (29 October – 23 November 2012), 11 December 2012, CAT/C/RUS/CO/5.

<sup>130</sup> Report to the Russian Government on the visit to the North Caucasian region of the Russian Federation carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 April to 6 May 2011, Strasbourg, 24 January 2013, CPT/Inf (2013) 1, Paragraph 34.

<sup>131</sup> E.g., see "The case of the twelve" in *Circle of Injustice*, pp. 51-52.

<sup>132</sup> The remuneration itself is also often seen as low: e.g., see Fedor Bogdanovskiy, "'Advokat-obvinitel', "basnya o nezavisimom pravosudii" i novaya stychka VS u Mosgorsuda', *Pravo.ru*, 27 March 2012. Available at:

<http://pravo.ru/review/view/70354/> (last accessed 8 March 2013).

<sup>133</sup> See *Circle of Injustice*, pp. 38-54.

<sup>134</sup> Dmitry Utukin, head of the Joint Mobile Group for Chechnya, interview with Amnesty International, Grozny, 11 June 2012. The Joint Mobile Group for Chechnya is an initiative which brought together human rights defenders from a number of Russian NGOs based outside of Chechnya who have collectively established a permanent presence in Chechnya. The Group's members come to Chechnya on a rotating basis for a period of several weeks each, in order to take up cases of alleged human rights violations by Chechen law enforcement officials. They provide legal support to the victims, monitor investigation of their allegations by the local authorities, interview survivors and witnesses and collect other evidence and, as victim's representatives, use it to challenge the authorities' failure to investigate their cases effectively, identify the perpetrators and prosecute them.

<sup>135</sup> Albert Kochiev, interview with Amnesty International, Cherkessk, Karachaevo-Cherkessia, 16 June 2012.

<sup>136</sup> Article 217 of the Code of Criminal Procedure of the Russian Federation.

<sup>137</sup> Source: decision by the North Caucasus District Military Court, 2004 (no specific date available), cited in: G. K. Sharov, Federal Bar Association, 'Razyasnenie Ekspertno-metodicheskoi komissii Soveta Federalnoy palaty advokatov RF v svyazi so sluchayami nevypolneniya advokatami-zaschitnikami svoikh professionalnykh obyazannostey narushayuschimi prava doveriteley na zaschitu', 23 March 2011. Available at: [http://www.fparf.ru/resh/2011/otkaz\\_ot\\_zachity.htm](http://www.fparf.ru/resh/2011/otkaz_ot_zachity.htm) (last accessed 8 March 2013).

<sup>138</sup> *Artico v Italy*, (ECtHR), application no. 6694/74, para 33; *Imbrioscia v Switzerland* (ECtHR), application no. 13972/88, para 38; *Daud v Portugal* (ECtHR), application no. 22600/93, para 38; HRC, General Comment No. 32, para 38.

<sup>139</sup> For more details on this case, see *Circle of Injustice*, pp. 51-52. See also 'Kratkoe opisanie dela o pytkakh Esmurzieva Murata' in Human Rights Centre Memorial, *Materialy o prestupleniyakh, sovershionnykh sotrudnikami pravookhranitelnykh organov, napravlennye predsedateliu Sledstvennogo komiteta Rossii A.I. Bastrykinu 3 maya 2012 goda*, 4 May 2012, available at <http://www.kavkaz-uzel.ru/articles/206048/?print=true> (last accessed 8 March 2013).

<sup>140</sup> Interview with Amnesty International, on condition of anonymity, June 2012.

<sup>141</sup> See *Circle of Injustice*, pp. 50-52.

<sup>142</sup> Toma Tsechoeva, in an interview with Amnesty International, Nazran, Ingushetia, 10 June 2012.

<sup>143</sup> For more on impunity and the authorities' failure to investigate effectively alleged violations by members of law enforcement agencies, see *Circle of Injustice*, 55- 67.

<sup>144</sup> An interview with Amnesty International, Nazran, 10 June 2012. The lawyer asked not to be named.

<sup>145</sup> In an interview with Amnesty International, June 2012.

<sup>146</sup> In interviews with Amnesty International, Ingushetia, June 2012.

<sup>147</sup> Principle 16, Basic Principles. See also HRC, General Comment no 32, paragraph 34.

<sup>148</sup> The latest very detailed report on this subject, *Circle of Injustice*, was published in June 2012. It looked at the Republic of Ingushetia as the case study, but documented and analysed the mechanisms which sustain human rights violations by law enforcement officials, and impunity for the perpetrators as well as lack of legal remedies for the victims, which equally apply across the North Caucasus. See *Circle of Injustice*, pp. 55-67. The issue of lack of legal remedies for the victims has been continuously raised in subsequent, smaller, public documents Amnesty International



has produced, as well as in correspondence with the Russian authorities.

<sup>149</sup> Both before and after the car accident, Magamed Abubakarov has given many media interviews about human rights violations in the cases on which he worked. See for example his much-quoted interview to the German Section of Amnesty International, 29 June 2009, available at <http://amnesty.org.ru/node/310> (last accessed 8 March 2013).

<sup>150</sup> The text can be found at [http://news.trepashkin.info/2008/04/blog-post\\_30.html](http://news.trepashkin.info/2008/04/blog-post_30.html) (last accessed 8 March 2013).

<sup>151</sup> Luiza Orazava, 'Advokat Larisa Dorogova v Kabardino-Balkarii poluchila ugrozu v vide boevogo patrona', *Caucasian Knot*, 26 March 2008, available at <http://www.kavkaz-uzel.ru/articles/134131/> (last accessed 8 March 2013).

<sup>152</sup> Larisa Dorogova provided further details of this incident in another open letter addressed to the Head of the Investigative Committee A.I. Bastrykin, Minister of the Interior R.G. Nurgaliev and the State Duma, published on 16 November 2010 at <http://www.kavkaz-uzel.ru/blogs/2094/posts/6044> (last accessed 8 March 2013).

<sup>153</sup> For example, see Grigoriy Galiulin, 'Miritsia s nesvobodoi ne zhelayu', interview with Larisa Dorogova, 19 January 2012, available at *Caucasian Knot*, <http://www.kavkaz-uzel.ru/articles/199489/> (last accessed 8 March 2013).

<sup>154</sup> Human Rights Centre Memorial, 'V tsentre Makhachkaly soversheno napadenie na izvestnogo dagestanskogo advokata Sergeya Kvasova', 12 April 2010, available at <http://www.memo.ru/hr/hotpoints/caucas1/msg/2010/04/m203156.htm> (last accessed 8 March 2013).

<sup>155</sup> Human Rights Centre Memorial, 'Dagestan: napadeniya na dagestov prodolzhayutsia', 11 October 2010, available at <http://www.memo.ru/2010/10/11/1110101.htm> (last accessed 8 March 2013).

<sup>156</sup> Amnesty International interviewed Jamilya Tagirova on the phone in July 2010. The case has been reported by the Russian Human Rights Centre Memorial in 'Dagestan: prodolzhayutsia izbieniia advokato', 6 July 2010, available at <http://www.memo.ru/hr/hotpoints/caucas1/msg/2010/07/m211557.htm>. A photo which shows Jamilya Tagirova's injuries is available in Timur Isaev, 'V Dagestane advokat trebuet privilech k ugolovnoi otvetstvennosti izbivshogo ee sledovatelya', 13 July 2010, available at <http://www.kavkaz-uzel.ru/articles/171561/>. (Both links last accessed 8 March 2013).

<sup>157</sup> Amnesty international, 'Russian Federation: Lawyer in Dagestan harassed by authorities: Sapiyat Magomedova', Urgent Action, 7 October 2010, (Index: EUR 46/037/2010); 'Russian Federation: Lawyer in Dagestan still at risk: Sapiyat Magomedova: Further information', Urgent Action update, 5 November 2010 (Index: EUR 46/039/2010).

<sup>158</sup> An interview with Albert Kochiev, 16 June 2012, Cherkessk, Karachaevo-Cherkessia.

<sup>159</sup> Human rights defender Natalia Estemirova who was particularly known for exposing numerous human rights violations by law enforcement officials in Chechnya was abducted by unknown individuals near her home in Grozny on 15 July 2009. Her body with multiple bullet wounds was found on the same day in the neighbouring Ingushetia. Her killers have never been found.

<sup>160</sup> The source of this report chose to remain anonymous, and is unrelated to the source cited next.

<sup>161</sup> Intervention by Svetlana Gannushkina, Chair of the Civic Assistance Committee. The meeting was held on 5 July 2011 in Nalchik, Kabardino-Balkaria, and its transcript is available on the official website of the President of the Russian Federation at <http://state.kremlin.ru/council/18/news/11838> (last accessed 8 March 2013).

<sup>162</sup> Some further details are available in Timur Mustafaev, 'Na advokata Konstantina Mudunova 19 noyabria bylo soversheno pokushenie. On izvesten kak zaschitnik interesov obviniaemykh v dvukh pokusheniyakh na predsedatelya otdeleniya PF RF po RD Amuchi Amutinova', in *Chernovik*, 23 November 2008, available at <http://old.chernovik.net/print.php?new=5643> (last accessed 8 March 2013).

<sup>163</sup> Background information for the Second press-conference of the law firm Kavkaz on the event of the killing of the lawyer Omar Akhmadovich Saidmagomedov on 20 January 2012. Document distributed during the press-conference.

<sup>164</sup> See for example, *Ergi v Turkey* (ECtHR), application no. 23818/94, paras 83-84; *Kaya v Turkey* (ECtHR), No. 22729/93, para 87; *Yasa v Turkey* (ECtHR), application no. 22495/93, paras 102-104; *Ogur v Turkey* (ECtHR), application no. 21954/93, para 93; UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Recommended by the Economic and Social Council in Resolution 1989/65, 24 May 1989, Principle 9.