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Nalchik: non-investigation of allegations of torture

Tatiana Chernikova, Lawyer, EHRAC-Memorial

On 13 October 2005, an armed attack was carried out against several Russian military and law enforcement agencies in Nalchik, Republic of Kabardino-Balkaria, Russia. 58 individuals have been charged in relation to this attack in one judicial process which is currently in progress in Nalchik. This case illustrates the challenges facing investigations into allegations of torture in Russia.

Almost every defendant in the Nalchik case has submitted complaints to the domestic courts about torture. They allege that they were tortured by representatives of the law enforcement agencies in order that they confess to having participated in the attack and provide testimony against other defendants. These testimonies constitute the main evidence in the case, as the majority of the defendants were not arrested at the scene of the attack and consequently there is no direct evidence that they participated in it.

The defendants complain of the use of electric shocks, sometimes with water; suffocation; beatings with gun butts, fists, batons and heavy objects; and kicking. The defendants were beaten on different parts of the body, including the head, face, shoulders and back. Some of the defendants lost consciousness. The policemen also threatened to kill the defendants or to use force against their relatives. Sometimes the torture lasted many hours and was repeated over a long period of time.

Among the evidence of torture, medical certificates play an important role. These certificates usually attest to such injuries as numerous bruises and abrasions on different parts of the body, including the face, caused by hard blunt objects, and haemorrhages. However, according to the applicants not all the injuries have been recorded on the medical certificates and sometimes even where injuries are recorded, the certificates do not reflect the gravity of the injuries. However, in accordance with the jurisprudence of the ECtHR where injuries are sustained in detention, the authorities are obliged to explain how they occurred. For example, the ECtHR supported this position in the cases *Tomashi v France* (No. 12850/87) 27/8/92 paras. 108-111; *Ribitsch v Austria* (No. 18896/91) 4/12/95 para. 34; and *Selmouni v France* (No. 25803/94) 28/7/99 para. 87.

In addition, the defendants' own evidence about the torture they have suffered is often corroborated by evidence given by other detainees, who witnessed the torture of another prisoner when they were in the same cell or when they were transferred together to various detention centres for interrogation. Sometimes detainees report that they heard beatings taking place and the cries of the victims from their cells.

Other evidence used in this kind of case are statements from the relatives of the victims or their neighbours who witnessed the use of force against the defendants when they were arrested or who the defendants told about the use of torture in detention. These people can also attest that the victims were not injured before they were arrested.

Lawyers at Memorial believe that after arresting the defendants, the authorities did not respect the main safeguards against torture, such as providing the defendants

with immediate access to their lawyers and relatives. For instance, some of the detainees were only provided with the assistance of a lawyer several days after their arrest and the defendants had very few opportunities to see their relatives. The defendants were often taken to pre-trial detention centres where it is reported that the use of torture is frequent, for example, Centre T, a special centre for those charged with terrorism. The authorities also did not record the defendants' arrest correctly. Sometimes this was recorded as being several days after the date on which witnesses state the individual had actually been detained.

The defendants submitted several complaints about torture to the Nalchik Prosecutor's Office. However, the Prosecutor's Office has repeatedly refused to launch a criminal investigation. Some of the applications even specify concrete investigative measures which the defendants expect from the authorities, for example the questioning of the victims, their relatives, other inmates and those policemen suspected of conducting the torture. However, the authorities have not undertaken these measures. Following the rejection of the complaints by the Prosecutor's Office, the defendants submitted complaints to the Nalchik City Court concerning the inaction of the Prosecutor's Office.

The behaviour of the Prosecutor's Office in this regard suggests a deliberate attempt to impede the defendants' right to an effective domestic remedy. On a number of occasions, one day before the court was due to hear the defendants' appeal against the Prosecutor's refusal to launch an investigation, the Office issued a fresh decision abolishing the decision to be appealed. The court then rejected the defendants' complaint on the grounds that the decision which was the subject of the complaint had been already reversed. Several days later the Prosecutor's Office adopted a new decision refusing to launch the criminal investigation. The cycle was then repeated and this is one of the reasons for arguing that domestic remedies are ineffective in the Nalchik cases.

Thus several defendants have submitted applications to the ECtHR alleging violations of Arts. 3 (prohibition of torture) and 13 (right to an effective remedy) ECHR. Lawyers submitting such cases to the ECtHR are faced with the problem of deciding the moment from which domestic remedies became ineffective and consequently from which point the six-month deadline for the submission of an application to the ECtHR is calculated. Currently, some lawyers have submitted applications to the ECtHR dating from the Prosecutor's Office's third refusal to launch an investigation and two City Court decisions. Other lawyers have waited until a fourth refusal from the Prosecutor's Office (and three City Court decisions). The actual number of decisions is of course less relevant than the argument that the consistent practice of the Prosecutor's Office in these cases, as set out above, demonstrates the unavailability in practice of any effective remedy for the applicants.

Another challenge in preparing ECtHR applications in these cases is that the lawyers who were appointed to the defendants immediately after their arrest have been replaced. It is therefore not always possible for the new representatives to easily gain access to relevant information and documents concerning the torture of the defendants at an earlier stage in the proceedings. The lawyers currently representing the defendants in the criminal case are primarily defending them as regards the Nalchik attack and do not always possess full information about their complaints of torture. It is also important to note that only the defendants' current lawyers and their relatives are being given the right to meet with the defendants and not the lawyers who previously made the complaints about torture.

The success of the ECtHR litigation in such cases will depend, *inter alia*, on the ability to access evidence of the use of torture in detention and also to ensure that all necessary complaints are submitted at the domestic level in relation to not only the torture itself, but also the non-investigation of the same. In spite of the difficulties involved in such litigation, it can only be hoped that any attention which such cases obtain will help to ensure that allegations of torture are not left without investigation, even if it is the ECtHR rather than the domestic court system which eventually provides some level of redress.