

**Russian Federation
Minister of Foreign Affairs**

Moscow, 17 February 2006

Dear Mr Secretary General,

I am forwarding to you an explanation in response to your letter of inquiry of 21 November 2005 on the manner in which Russian internal law ensures effective implementation of the Convention on Protection of Human Rights.

May I avail myself of the opportunity to renew the assurances of my highest consideration.

Sergeï LAVROV

**Mr Terry DAVIS
Secretary General
Council of Europe
Strasbourg**

Explanation by the Russian Federation in accordance with Article 52
of the Convention for the Protection of Human Rights and Fundamental Freedoms

The Russian legislation, in accordance with universally recognized principles and norms of international law, acknowledges the priority of human and civil rights and freedoms and guarantees their respect within the territory of the Russian Federation. In particular, according to Article 2 of the Constitution of the Russian Federation, human being, his/her rights and freedoms are the supreme value. Their observance and protection is a direct duty of the State.

The Constitution establishes that everyone has the right to freedom and personal immunity. Arrest, detention and remand in custody are only allowed by court decision. Prior to court decision, detention is not allowed for more than 48 hours (Article 22). Besides, State protection of human and civil rights is guaranteed in the Russian Federation (Article 45).

According to the Constitution, universally recognized principles and norms of international law as well as international treaties of the Russian Federation constitute a part of its legal system. On 5 May 1998, the Russian Federation ratified the Convention for the Protection of Human Rights and Fundamental Freedoms.

The Russian legal system does not envisage a possibility for foreign authorities to exercise any activity linked to criminal procedure in the territory of the Russian Federation, including arrest and detention, which are only allowed by decision of a court of the Russian Federation. Exercise of such activities within the territory of the Russian Federation with regard to persons accused of or suspected in having committed a crime, including if the crime falls under the jurisdiction of a foreign state, is a prerogative of the competent authorities of the Russian Federation. Their cooperation with competent authorities of foreign states, including extradition of a person for the purposes of criminal prosecution or execution of a sentence, mutual legal assistance in criminal matters and transfer of sentenced persons, is regulated by Part 5 of the Code of Criminal Procedure of the Russian Federation (hereinafter referred to as the CCP).

According to the CCP, nobody may be arrested as a suspect without legitimate grounds specified by law. Only a Russian court is entitled to decide to impose detention as a preventive measure (Article 29 CCP). All procedures related to limiting a person's liberty or to deprivation of liberty, must be public and sanctioned by competent judicial authorities.

Violation of the procedure prescribed by law may be regarded as illegal arrest, illegal detention or illegal remand in custody, punishable under Article 301 of the Criminal Code of the Russian Federation (hereinafter referred to as the CC), if committed by persons authorized to exercise criminal prosecution in the Russian territory, or as illegal deprivation of liberty, punishable under Article 127 CC.

Besides, secret transportation of persons may also be regarded as abduction punishable under Article 126 CC (maximal punishment being 20 years of deprivation of liberty).

As regards guarantees in the national legislation of a possibility to undertake efficient investigation, it is to be noted that they are prescribed by the Russian legislation on criminal procedure. Thus, Article 21 CCP obliges a prosecutor, an investigator, or a person or a body entitled to undertake an inquiry, in every case when they reveal signs of a crime, to take measures to identify the event of the crime and the person(s) responsible.

Prosecutors, investigators and inquiring bodies of the Russian Federation cooperate in the field of criminal procedure with and provide legal assistance in criminal matters to competent authorities and officials of foreign states (including undertaking, upon their requests, of procedural actions in the Russian territory in the interests of justice of foreign states) in accordance with international treaties and agreements of the Russian Federation, or on the basis of reciprocity.

In these cases, the Russian legislation on criminal procedure applies. However, in accordance with international treaties and agreements of the Russian Federation, or on the basis of reciprocity, procedural rules of a foreign state may be applied, if this is not contrary to international obligations or legislation of the Russian Federation.

Representatives of a foreign state may be present at the execution of the request if this is prescribed by the international treaty or by a written obligation according to the reciprocity principle.

However, independent investigation or prosecution by competent authorities of foreign states in the territory of the Russian Federation are not allowed, all the more without informing the Russian side. Identification and prevention of such activities by special services and bodies of foreign states as well as individuals, if they are capable of damaging the security of the Russian Federation, are entrusted with the Federal Security Service of Russia (Article 12 of the Federal Law No.40-FZ of 03.04.1995 “On the Federal Security Service”).

Russian penal legislation also contains provisions aimed at prevention of torture and other types of cruel treatment during prosecution and procedural actions. Pursuant to the 1984 UN Convention against torture and other cruel, inhuman or degrading treatment or punishment, Article 117 CC introduces the notion of torture which is in compliance with the said Convention; criminal responsibility is foreseen for compulsion to give testimony, including false testimony, and to evade giving testimony, with the use of violence (Article 302 and 309 CC).

Legislation of the Russian Federation provides for guarantees aimed at prevention of illegal deprivation of liberty of any person. A possibility of a compensation is foreseen for persons who have suffered from such actions.

The Criminal Code of Russia provides for responsibility for the following acts or omissions:

- illegal deprivation of liberty (Article 127);
- illegal placement into a psychiatric clinic (Article 128);
- abuse of official powers (Article 285);
- exceeding official powers (Article 286);
- knowingly prosecuting an innocent person (Article 299);
- illegal arrest, detention or remand in custody (Article 301);
- compulsion to give testimony (Article 302);
- knowingly pronouncing an unjust judgment, decision or other judicial act (Article 305).

The sanctions for the above listed acts or omissions vary from a fine to a deprivation of liberty of up to 10 years.

According to Article 10 CCP, nobody may be arrested as a suspect without legitimate grounds. A court, a prosecutor, an investigator, an official or a body entitled to undertake an inquiry must immediately release any person who has been illegally arrested or deprived of liberty, or placed into a psychiatric or other hospital, or who has been detained for a longer period than prescribed by law.

Chapter 18 CCP foresees reimbursement of material damage, elimination of consequences of moral damage and restoration of rights as regards employment, pensions, housing etc. Damage caused by criminal prosecution (including by illegal deprivation of liberty) is fully compensated by the State, irrespectively of the fault of the body or official entitled to undertake an inquiry, of the investigator, of the prosecutor or of the court.

The Civil Code of the Russian Federation also foresees a possibility to compensate for damages caused by an illegal judgment, by an illegal prosecution or by an illegal pre-trial detention.

It is to be noted that personal inviolability, respect for dignity, protection of human and civil rights and freedoms, guarantees of the right to legal assistance are the basic principles of the criminal procedure. Their implementation is supervised by prosecution services.

The competent Russian authorities do not possess any information on whether, in the period running from 1 January 2002 until the present, any official of the Russian Federation or any other person acting in an official capacity has been involved in any manner – whether by action or omission - in the unacknowledged deprivation of liberty of any individual, or transport of any individual while so deprived of their liberty, including where such deprivation of liberty may have occurred by or at the instigation of any foreign agency.