

Applicants' observations regarding the execution of the judgments of the European Court of Human Rights

(Under Rule 9 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements)

Bazorkina versus Russia (69481/01), judgment of the European Court of Human Rights of 27 July 2006

Estamirov and Others versus Russia (60272/00), judgment of the European Court of Human Rights of 12 October 2006

Luluyev and Others versus Russia (69480/01), judgment of the European Court of Human Rights of 9 November 2006

Imakayeva versus Russia (761502), judgment of the European Court of Human Rights of 9 November 2006

Chitayev and Chitayev versus Russia (59334/00), judgment of the European Court of Human Rights of 18 January 2007

Baysayeva versus Russia (74237/01) , judgment of the European Court of Human Rights of 4 May 2007

Akhmadova and Sadulayeva versus Russia (40464/02), judgment of the European Court of Human Rights of 10 May 2007

Goygova versus Russia (74240/01), judgment of the European Court of Human Rights of 4 October 2007

Khamila Isayeva versus Russia (6846/02), judgment of the European Court of Human Rights of 15 November 2007

Khatsiyeva and Others versus Russia (5108/02), judgment of the European Court of Human Rights of 17 January 2008

Aziyevy versus Russia (77626/01), judgment of the European Court of Human Rights of 20 March 2008

Sangariyeva and Others versus Russia (1839/04), judgment of the European Court of Human Rights of 29 May 2008

Gekhayeva and Others versus Russia (1755/04), judgment of the European Court of Human Rights of 29 May 2008

Ibragimov and Others versus Russia (34561/03), judgment of the European Court of Human Rights of 29 May 2008

Utsayeva and Others versus Russia (29133/03), judgment of the European Court of Human Rights of 29 May 2008

Atabayeva and Others versus Russia (26064/02), judgment of the European Court of Human Rights of 12 June 2008

Elmurzayev and Others versus Russia (3019/04), judgment of the European Court of Human Rights of 12 June 2008

Isigova and Others versus Russia (6844/02), judgment of the European Court of Human Rights of 26 June 2008

Akhiyadova versus Russia (32059/02), judgment of the European Court of Human Rights of 3 July 2008

I. Introduction

1. This document sets out the applicants' submission as to the individual measures that are necessary for the respondent Government to take in order to comply with the judgments of the European Court of Human Rights (ECtHR) in the cases *Bazorkina v. Russia* of 27 July 2006, *Estamirov and Others v. Russia* of 12 October 2006, *Luluyev and Others v. Russia* of 9 November 2006, *Imakayeva v. Russia* of 9 November 2006, *Chitayev and Chitayev v. Russia* of 18 January 2007, *Baysayeva v. Russia* of 4 May 2007, *Akhmadova and Sadulayeva v. Russia* of 10 May 2007, *Goygova v. Russia* of 4 October 2007, *Khamila Isayeva v. Russia* of 15 November 2007, *Khatsiyeva and Others v. Russia* of 17 January 2008, *Aziyev v. Russia* of 20 March 2008, *Sangariyeva and Others v. Russia* of 29 May 2008, *Gekhayeva and Others v. Russia* of 29 May 2008, *Ibragimov and Others v. Russia* of 29 May 2008, *Utsayeva and Others v. Russia* of 29 May 2008, *Atabayeva and Others v. Russia* of 12 June 2008, *Elmurzayev and Others v. Russia* of 12 June 2008, *Isigova and Others v. Russia* of 26 June 2008, and *Akhiyadova v. Russia* of 3 July 2008.
2. At the outset the applicants refer to their previous submissions of 2 June 2007 in the cases *Bazorkina v. Russia* and *Estamirov and Others v. Russia*; of 28 September 2007 in the cases *Luluyev and Others v. Russia* and *Imakayeva v. Russia* and of 28 September 2007 in the case *Chitayev and Chitayev v. Russia*.

II. Individual measures

3. The cases covered by this submission entail three types of different but interrelated grave human rights violations, namely disappearances, extra-judicial executions and torture/ill-treatment. There are several measures that the respondent Government needs to undertake to address the effects of the violations that the applicants have experienced. The ECtHR has in all cases put particular emphasis on the failure on the part of the domestic authorities to effectively investigate the disappearances, killings and torture/ill-treatment. In order to be effective, the investigation should be capable of leading to the identification and punishment of those responsible. The applicants also submit that the respondent Government should properly inform them about developments in the criminal investigations. In disappearance cases it is moreover crucial that the Government establishes the whereabouts of the bodies of the applicants close relatives.

A. Measures to hold perpetrators accountable and restore the applicants' right to participate in the investigations

4. At the outset the applicants would like to inform the Secretariat about actions undertaken on their part. Following the delivery of the judgments, the applicants' representatives have in each case submitted letters to the investigative, prosecutorial and, where relevant, military authorities informing them of the content of the respective judgment. The letters described in detail why the ECtHR had found that the criminal investigation had been ineffective in the particular case. The applicants' representatives further requested that the authorities undertake various investigative steps needed according to the circumstances of each case to remedy the violations established by the ECtHR, and to inform them of any measures taken. A Russian translation of the respective judgment prepared by the Russian Justice Initiative (RJI) was attached to each letter. A schematic overview of the submitted letters and an example of such a letter are annexed to the present submission (see attachments 17-18). All the letters sent by RJI to the authorities may be submitted upon request of the Secretariat.
5. The applicants note that in most cases RJI have not yet received replies to their letters.

In the following, an overview of the responses already received by the RJI is provided.

Summary of correspondence

i. Bazorkina v. Russia

6. In reply to RJI's letter of 11 January 2008, the Office of the General Military Prosecutor on 28 January 2008 informed RJI that its letter concerning the above case was referred to the Office of the Military Prosecutor of the United Group Alliance (hereinafter UGA) which was obliged to inform the applicant and her representatives of the results of its consideration (see *attachment, no. 1*).
7. On 24 March 2008 the Office of the Military Prosecutor of the UGA informed RJI that the criminal case into the disappearance of Mr. Yandiyev was suspended due to the failure to establish the perpetrators. It also stated that all Convention violations found by the ECtHR had been remedied. No details were however given in the latter respect (see *attachment 2*).
8. On 20 February 2009 RJI sent another letter to the UGA Military Investigative Department and the Office of the General Military Prosecutor, requesting an update on specific actions undertaken by the authorities.
9. On 20 March 2009 the Office of the General Military Prosecutor informed RJI that its letter had again been forwarded to the Office of the Military Prosecutor of the UGA which was obliged to inform the applicants and their representative of the results of its consideration (see *attachment, 3*). The applicants' representatives have since not obtained any further information.

ii. Chitayev and Chitayev v. Russia

10. On 18 June 2007 RJI informed the Office of the Prosecutor of the Chechen Republic and the Achkhoy-Martan District Department of Interior (ROVD) about the judgment of the ECtHR in the above case. No replies followed.
11. By letter of 3 October 2008 the Achkhoy-Martan Investigative Committee asked RJI to provide them with medical documents confirming the fact that the Chitayev brothers had been ill-treated (see *attachment 4*).
12. On 20 February 2009 RJI provided the investigator with the requested documents. The letter also contained a detailed description of the ECtHR judgment and requests for specific measures to be undertaken. RJI has not yet received a reply to its letter.

iii. Aziyev v. Russia

13. In reply to RJI's letter of 11 January 2008 two letters were received. In a letter of 13 November 2008, the Office of the General Prosecutor of the Russian Federation informed RJI that its request had been forwarded to the Office of the Prosecutor of the Chechen Republic (see *attachment, 5*). By letter of 19 December 2008 the Office of the Prosecutor of the Chechen Republic informed the applicants that a number of investigative measures had been undertaken in the criminal case. Most of them concerned requests for information sent out to various authorities. One of the requests forwarded to the Ministry of Interior of the Mari El Republic concerned the identity of persons who had served at the checkpoint in Grozny on the night when the Aziyev brothers were abducted. No substantive reply was however given to that request with reference to the decree of the RF Ministry of Interior of 25 August 2007 No. 750-dsp (restricted), which allegedly prohibits disclosure of identities of persons participating in counter-terrorist operations (see *attachment 6*).

14. In a letter of 19 February 2009 the Investigative Committee of the Chechen Republic informed RJI that no violations of Articles 2, 3 and 13 of the Convention had taken place in the case and that the investigation had been and continued to be effective. They also indicated that the victims and witnesses in the case were additionally questioned and that operational-search measures were being conducted. No further specific information was provided (see *attachment 7*).

15. On 7 April 2009 the RJI requested the Minister of the Interior of the Russian Federation, Mr. Nurgaliyev, to provide it with a copy of the decree of 25 August 2007 No. 750-dsp (restricted). The RJI has not yet obtained a reply to its letter.

iv. Estamirov and Others v. Russia

16. In reply to RJI's letter of 11 January 2008, the Office of the Prosecutor of the Chechen Republic on 12 May 2008 informed RJI that the criminal investigation into the case had been resumed. They further claimed that the ECtHR's judgment had been discussed in the office of the prosecutor and that all offices of prosecutors in the Chechen republic as well as the local Ministry of the Interior had been informed of the content of the judgment. However, no information concerning investigative actions undertaken was provided. The applicant's representatives were advised to address the Investigative Committee of the Chechen Republic (see *attachment 8*).

17. On 30 April 2009 RJI forwarded another letter to the Investigative Committee of the Chechen Republic and to the Zavodskoy inter-district investigative department reiterating the content of their letter of 11 January 2008 and specifically asking that the applicants be granted access to the materials of the criminal case file.

v. Imakayeva v. Russia

18. RJI recalls that on 9 July 2004 the criminal investigation into the applicant's husband's disappearance was closed. On 10 July 2004 the Main Military Prosecutor's office communicated this to the applicant and stated that her husband had been detained by military servicemen in accordance with the Federal Laws. After a check he was handed over by the head of the Shali district bureau of the FSB to the head of the Shali administration. On 9 July 2004 the investigator of the Main Military Prosecutor's Office withdrew the applicant's victim status in the criminal case no. 29/00/0015-03 (see *attachemnt 9*). In view of the fact that the investigation had established that the applicant's husband was detained by military servicemen, the applicant had strong grounds to suspect that the materials of the case contained information about the perpetrators of the crime. However, numerous requests of the applicant and her representatives to review the materials of the case no. 29/00/0015-03 were rejected, althoug Article 42 of the Code of Criminal Prosedure expressly granted her such a right (see *Imakayeva*, para. 78-84).

19. On 16 November 2004 a completely new criminal case no. 36125 into the disappearance of the applicant's husband was open by the Shali Prosecutor's Office.

20. In their letter of 7 December 2007 the applicant's representatives' following the judgment of the ECtHR in the above case specifically asked the authorities, among other things, to attach the materials of the closed case no. 29/00/0015-03 to the new criminal case no. 36125. For the period of over five months the letter was forwarded from one authority to another. The first substantive reply was given on 28 April 2008 by the Investigative Committee of the Chechen Republic. It informed RJI that the criminal cases concerning the disappearance of the applicant's relatives were investigated by the Shali inter-district investigative department and advised the applicant to address there to review the case materials. As to joining the materials of two criminal cases (no.

36125 and no. 29/00/0015-03) it was stated that the Investigative Committee was not competent to do so (see attachment 10).

21. On 30 June 2008 RJI forwarded to the Shali inter-district investigative department a document written by one of the military servicemen, who detained the applicant's husband (see *Imakayeva*, para. 45). On 18 November 2008 they informed RJI that it was attached to the case file no. 36125 (see attachment 11).
22. On 30 April 2009 RJI forwarded another letter to the Shali inter-district investigative department and the Investigative Committee of Chechnya reiterating the content of their letter of 7 December 2007 and specifically asking that the applicant shall be granted access to the materials of the criminal case files.

vi. Other cases

23. In reply to RJI's letter of 11 March 2009 the Office of the General Military Prosecutor on 19 March 2009 informed the RJI that its letter concerning the case *Akhmadova and Sadulayeva v. Russia* had been referred to the Office of the Military Prosecutor of the UGA which was obliged to inform the applicants and their representatives of the results of its consideration. Identical letters were later also received in the cases *Khatsiyeva and Others v. Russia*, and *Isigova and Others v. Russia*(see attachments 12-14).
24. On 20 April 2009 the Investigative Department of the Chechen Republic forwarded RJI's letter in the case *Isigova and Others v. Russia* to the Head of the Department of investigation of cases of particular importance no. 2 (see attachment 15).

Observations of the applicants and their representatives

25. In light of the above the applicants and their representatives note with great concern that the authorities tend to limit themselves to formalistic replies and in most cases do not at all describe steps taken in course of the investigation. This is especially disturbing in light of the judgments covered by this submission where the ECtHR found violations of Article 2 (procedural part) and 3 of the Convention precisely because of the lack of information on the progress of the investigation provided to the applicants and the manner in which their complaints were dealt with by the authorities.
26. In the absence of any information on specific investigative measures undertaken after the entry into force of the judgments, the applicants and their representatives are unable to evaluate the effectiveness of the investigations.
27. In the case *Aziyev v. Russia* the applicants particularly call on the respondent Government to provide the RJI with a copy of the Instruction No. 750-dsp of 25 August 2007. They underline that this instruction apparently impedes the effectiveness of the investigation in that case. Moreover, the applicants bring to the attention of the Secretariat that the investigative authorities de facto refused to recognize the ECtHR judgment (see paragraph 14 above).
28. In the case *Imakayeva v. Russia* the applicant calls on the authorities to provide the Shali inter-district investigative department with the materials of the closed case no. 29/00/0015-03. She insists that the investigation into the disappearance of her husband would greatly benefit from it. Cooperation between the military prosecution and the investigative authorities should be secured.
29. The applicants further wish to draw particular attention to the fact that even in cases

where the authorities possess evidence with regard to the identity of the perpetrators, they have yet to undertake any visible efforts to bring them to justice.

30. In *Bazorkina v. Russia* video footage of the detention submitted to the prosecutor showed that Colonel-General Alexander Baranov questioned Khadzi-Murat Yandihev, and then ordered his execution. The Court in its judgment established that there can be no doubt that the order of General Baranov to execute the applicant's son had put him in a life-threatening situation (*Bazorkina*, para. 110). It appears that no investigation with regards to General Baranov's responsibility for the death of Yandihev was ever launched. On the contrary, the Office of the Military Prosecutor of the UGA in March 2008 informed RJI that the criminal case into the disappearance of Mr. Yandihev had been suspended due to the failure to establish the perpetrators (see also para. 14 above).
31. In *Baysayeva v. Russia* a videotape showed Russian police force units (OMON) detaining Shakhid Baysayev (*Baysayeva*, para. 128) Yet, as far as the applicants and their representatives are aware, the investigative authorities have neither identified the police officers who detained Baysayev nor taken any concrete steps to do so.
32. In *Isigova and Others v. Russia*, the criminal investigation identified the commander of the detachment that had detained Apti Isigov and Zelimkhan Umkhanov. Still, the criminal investigation was repeatedly suspended because of "failure to identify the perpetrators", something that the Court found appalling (*Isigova*, para. 109). The applicants and their representatives are not aware of any further steps taken within the investigation following the ECtHR judgment.
33. In *Khatsiyeva v. Russia*, the investigation eventually established the identity of the federal pilots who participated in the attack that killed the applicants' relatives but yet failed to establish the identity of their superiors (*Khatsiyeva*, para. 147). The applicants and their representatives underline that the investigation in the case had been closed and, to their knowledge, no further steps have been taken after the ECtHR judgment.
34. In *Akhiyadova v. Russia*, the prosecutor established that servicemen of the 45th regiment had been involved in the abduction of Magomed and Kharon Khumaidov but later suspended the investigation because of the impossibility to identify the perpetrators (*Akhiyadova*, para. 20). As far as the applicants and their representatives are aware, no further investigative steps have been taken following the ECtHR judgment.
35. In *Atabayeva and others v. Russia*, the first applicant was told that the "sweeping" operation of 3 May 2001 had been conducted by the Samara special police unit (*Atabayeva*, para. 21). However, it appears that this information was not investigated by the authorities.
36. In light of the above the applicants cannot but express their great concern over the respondent Government's failure to take measures to bring the perpetrators to justice and again call on the authorities to conduct effective, objective and thorough investigations in compliance with the judgments of the ECtHR in all cases covered by this submission.
37. The applicants moreover submit that the respondent Government should without delay inform them about any developments in the criminal investigations.

B. Measures to establish the whereabouts of the disappeared

38. The applicants in *Bazorkina v. Russia* of 27 July 2006, *Imakayeva v. Russia* of 9 November 2006, *Baysayeva v. Russia* of 4 May 2007, *Khamila Isayeva v. Russia* of 15 November 2007, *Aziyev and Aziyeva v. Russia* of 20 March 2008, *Sangariyeva and Gaitayev v. Russia* of 29 May 2008, *Gekhayeva and Dugayeva v. Russia* of 29 May 2008, *Ibragimov v. Russia* of 29 May 2008, *Utsayeva and Others v. Russia* of 29 May 2008, *Atabayeva and Others v. Russia* of 12 June 2008, *Elmurzayev and Others v. Russia* of 12 June 2008, *Isigova and Others v. Russia* of 26 June 2008 and *Akhiyadova v. Russia* of 3 July 2008 still live in uncertainty as to the fate and whereabouts of their disappeared loved ones.
39. In *Bazorkina v. Russia* of 27 July 2006 the Court put particular emphasis on the failure of the respondent Government to investigate the discovery of five dead bodies which subsequently disappeared (*Bazorkina*, paras. 86-89, see also the applicant's previous submission of 2 June 2007, paras. 8-9). It does not appear that any further steps have been taken to investigate what happened to those bodies and to establish their identity.
40. In *Baysayeva v. Russia* of 4 May 2007, the Court also emphasized the failure of the respondent Government to investigate the possible burial site of the applicant's husband Shakhid Baysayev (*Baysayeva*, paras. 33-35, 53-55 and 128). As far as the applicant and her representatives are aware, no further steps have been taken to investigate the possible burial site and exhume eventual remains for forensic examination.
41. The applicants submit that the respondent Government should take all necessary steps to investigate what happened to their relatives and establish their whereabouts and keep them informed of any progress in that respect.
42. In an effort to establish the whereabouts of the applicants' relatives, the respondent Government should also undertake a systematic effort to identify all unidentified bodies that have been discovered in Chechnya since their disappearance.

Moscow
4 May 2009

List of Attachments

1. Letter from the Office of the General Military Prosecutor dated 28 January 2008;
2. Letter from the Office of the Military Prosecutor of the UGA dated 24 March 2008;
3. Letter from the General Military Prosecutor Office dated 20 March 2009;
4. Letter from the Achkhoy-Martan Investigative Committee dated 3 October 2008;
5. Letter from the Office of the General Prosecutor of the Russian Federation dated 13 November 2008;
6. Letter from the Office of the Prosecutor of the Chechen Republic dated 19 December 2008;
7. Letter from the Investigative Committee in Chechnya dated 19 February 2009;
8. Letter from the Office of the Prosecutor of the Chechen Republic dated 12 May 2008;
9. Decision of the investigator of the Main Military Prosecutor's Office to withdraw the applicant's victim status in case no. 29/00/0015-03 dated 9 July 2004;
10. Letter from the Investigative Committee in the Chechen Republic dated 28 April 2008;
11. Letter from the Shali inter-district investigative department dated 18 November 2008;
12. Letter from the Office of the General Military Prosecutor dated 19 March 2009;
13. Letter from the Office of the General Military Prosecutor dated 23 March 2009;
14. Letter from the Office of the General Military Prosecutor dated 30 March 2009;
15. Letter from the Investigative Department of the Chechen Republic dated 20 April 2009;
16. Overview of letters sent by the applicants' representatives to the authorities;
17. Example of a letter sent by the applicants' representatives to the authorities (in the case *Bazorkina v. Russia*).