

**BAZORKINA versus RUSSIA (Nº 69481/01), judgment of the European Court of  
Human Rights of 27 July 2006**

**ESTAMIROV and Others versus RUSSIA (Nº 60272/00), judgment of the European  
Court of Human Rights of 12 October 2006**

**Applicants' proposals regarding the execution of the judgment 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)

## **I. Introduction**

1. This document sets out the applicants' submission as to the 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 case *Bazorkina v. Russia* of 27 July 2006 and *Estamirov and Others v. Russia* of 12 October 2006 (further, *Bazorkina* and *Estamirov*). These judgments became final 11 December 2006 and 12 January 2007 respectively.

## **II. Payment of compensation for damage and legal costs**

2. The judgments required the respondent Government to pay the specified sums by way of damages and costs within three months of the judgments becoming final, that is, by 11 March 2007 in the case of *Bazorkina v. Russia* and by 12 April 2007 in the case of *Estamirov and Others v. Russia*.
3. In the *Bazorkina* case, the respondent Government has paid the award specified by the Court. However, the Government has failed to follow the unambiguous instructions of the Court. In its judgment, the Court indicated that moral and material damage should be paid to the applicant and legal costs and expenses should be paid to the applicant's representatives directly. The respondent Government, however, paid the entire sum award, including legal costs and expenses, to the applicants. The applicants' representatives have submitted two letters to the representative of the Russian Federation to the ECtHR, requesting an explanation and advice on how to proceed. The representatives have received no answer to their requests.
4. In the *Estamirov* case, the applicants have jointly received USD 313,803.29. The applicants' representatives have not received any award for legal costs and expenses, even though the Court also in this case ordered legal costs and expenses to be paid directly to the representatives.
5. In the absence of a reply from the Government concerning the legal costs and expenses, the applicants regret to inform the Secretariat that they cannot confirm that the respondent Government has fully complied with its obligation to pay compensation in these cases.

## **III. Individual measures**

6. There are several measures that the respondent Government needs to undertake to address the effects of the violations that the applicants have experienced. In the *Bazorkina* case, it is crucial that the Government establishes the whereabouts of the body of the applicant's son, Kh. Yandiyev. In both cases, one of the most important

remedies is an effective investigation that is capable of leading to the identification and punishment of those responsible. The applicants furthermore submit that the respondent Government should properly inform them about developments in the criminal investigation.

7. The applicants note with great concern that neither they nor their representatives have been informed of any investigatory steps taken after the Court's judgments.

**a) *Bazorkina v. Russia***

***Measures to establish the whereabouts of Yandiyev's body:***

8. In its judgment the Court put particular emphasis on the failure of the respondent Government to investigate the discovery of five dead bodies near Alkhan-Kala in mid-February. The bodies were delivered to the Grozny District temporary department of internal affairs, where they were filmed and photographed by officers from the Grozny District Prosecutor's Office. The bodies later disappeared, however, and the respondent Government submitted no documents, video or photographs related to the discovery of these dead bodies (*Bazorkina*, paras. 86-89).
9. The applicant submits that the respondent Government should take all necessary steps to investigate what happened to the five dead bodies and to establish their identity and whereabouts.
10. Most importantly, the respondent Government should invite the applicant to review information regarding the dead bodies, including photographs and video, for potential identification.
11. In an effort to establish the whereabouts of the applicant's son, the respondent Government should also undertake a systematic effort to identify all unidentified bodies that have been discovered in Chechnya since the disappearance of her son (see also General Measures below, para. 52).

***Measures to hold perpetrators accountable:***

12. In its judgment, the Court pointed to several shortcomings and problematic aspects with the investigation.
  - Several witness testimonies obtained in December 2003 and January 2004, almost four years after the detention, were almost word-for-word identical (*Bazorkina*, para. 58);

- the investigation has not established the identity of officers from the army intelligence service and the Federal Security Service (FSB) who, according to witness testimony, dealt with those suspected of being field commanders (*Bazorkina*, para. 120);
- the investigation failed to pursue information about the discovery of bodies in mid-February (*Bazorkina*, para. 120).

13. The applicant submits that the respondent Government should without delay conduct an independent, effective and thorough investigation into the circumstances of the illegal detention, disappearance and killing of Yandiyev. The investigation must include measures to correct the above-mentioned shortcomings indicated by the Court.

14. The applicant would also like to point out that the Court in its judgment established that there can be no doubt that the order that General Baranov gave to execute the applicant's son put him in a life-threatening situation (*Bazorkina*, para. 110).

15. The applicant therefore submits that the respondent Government should launch an investigation with regards to General Baranov's responsibility for the death of Yandiyev in light of his behavior, which put Yandiyev in a life-threatening situation. For the duration of the investigation, General Baranov should be suspended from his current position.

***Measures to restore the applicant's right to participate in the investigation:***

16. An important reason for the Court's finding that the applicant was a victim of inhuman treatment contrary to Article 3 was the manner in which her complaints have been dealt with by the authorities. The lack of information about the investigation and the use of form letters in response to her numerous complaints were important considerations in this respect.

17. The applicant is deeply concerned that neither she nor her representatives have been informed of any investigate steps taken after the Court's judgment.

18. The applicant submits that the respondent Government should without delay inform her about any developments in the criminal investigation.

***b) Estamirov and Others v. Russia***

***Measures to hold perpetrators accountable:***

19. In its judgment the Court established that the applicants made a *prima facie* case that their relatives had been killed by Russian soldiers. (*Estamirov*, para. 113).

20. As regards the investigation, the Court indicated several investigative measures that have yet to be conducted:

- the investigation has not identified the military units who carried out the "mopping up" operation on 5 February 2000 (*Estamirov*, para. 90);
- the applicants, with the exception of the 4<sup>th</sup> applicant, were never questioned and none of them was granted victim status (*Estamirov*, para. 92).

21. The Court noted that the authorities failed to provide information about the identification of the cartridges and bullets collected at the site of the crime (*Estamirov*, para. 108).

22. The Court further noted that despite the fact that the applicants systematically referred to the much better documented killings in the nearby Novye Aldy on the same day, the Government dismissed this link without explanation (*Estamirov*, para. 111)

23. The applicant therefore submits that the respondent Government should without delay conduct an independent, effective and thorough investigation into the circumstances of the killing of their relatives. The investigation must include measures to correct the above-mentioned shortcomings indicated by the Court.

24. In particular, the respondent Government should investigate whether there is a link between the killing of the applicants' relatives and the killings in Novye Aldy on the same day.

***Measures to restore the applicants' right to participate in the investigation:***

25. An important reason for the Court's finding that the applicants were a victim of inhuman treatment contrary to Article 3 was the manner in which their complaints have been dealt with by the authorities. The lack of information about the investigation and the use of form letters in response to their numerous complaints were important considerations in this respect.

26. The Court further noted the Government's refusal to provide an update on the criminal investigation after July 2003 on the basis of Article 161 of the Criminal Procedure Code. (*Estamirov*, paras. 102-104).

27. The applicants are deeply concerned that neither they nor their representatives have been informed of any investigate steps taken after the Court's judgment.

28. The applicants submit that the respondent Government should without delay inform them about any developments in the criminal investigation.

#### **IV. General measures**

29. The applicants submit that the circumstances of the current cases are similar to first three Chechen cases (judgments of 24 February 2005) and thus require similar general measures as outlined in the Secretariat's Memorandum of 29 June 2006 and the applicants' submissions in the previous cases.<sup>1</sup>

30. The applicants second the Secretariat's opinion "that it has been generally acknowledged that these cases would appear to require important individual and general measures." The applicants call for a prompt and comprehensive implementation of all general measures outlined in the Secretariat's Memorandum of 29 June 2006.

31. The applicants urge the Committee of Ministers and the Secretariat to closely supervise the implementation of the Government's plan of action.

32. In order to empower the applicants to exercise their rights under Rule 9 of the Rules of the Committee of Ministers,<sup>2</sup> the applicants request the Committee of Ministers to provide them with the Government's reports on their implementation of the plan of action. In that respect, the applicants respectfully request the Committee of Ministers to declassify the Secretariat's Memorandum of 3 April 2007 as soon as possible.<sup>3</sup>

#### ***General measures concerning disappearances***

33. *Bazorkina v. Russia* is the first judgment in a disappearance case from Chechnya. In subsequent judgments (*Imakayeva v. Russia*, judgment of 9 November 2006; *Luluyev and Others v Russia*, judgment of 9 November 2006; *Baysayeva v. Russia*, judgment of 5 April 2007; *Akhmadova and Sadulayeva v. Russia*, 10 May 2007) the Court has expressed its "great concern" about the number of cases regarding disappearances in Chechnya.

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1 "Applicants' submissions regarding compliance with ECtHR judgments in the first six Chechen cases," 4 October 2005, available at <http://www.londonmet.ac.uk/research-units/hrsj/ehrac/ehrac-litigation/enforcement-of-chechen-judgments.cfm> (last accessed on 25 May 2007).

2 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

3 Violations of the ECHR in the Chechen Republic: Russia's compliance with the European Court's judgments - Memorandum prepared by the Secretariat of the DGII to assist the Committee of Ministers' supervision of the execution of the European Court's judgments (Article 46 of the ECHR); Doc No. CM/Inf/DH(2006)32revE

34. As of 1 March 2007, up to 2,800 persons were listed as abducted, disappeared and missing in Chechnya, according to the Ombudsperson for Human Rights of the Chechen Republic, Nurdi Nukhazhiev.<sup>4</sup> Human rights organizations have estimated that the real number of disappearances since 1999 is between three and five thousand.

35. The phenomenon of disappearances is also not a thing of the past. The Human Rights Centre "Memorial" has documented 187 abductions in 2006, 63 of which have disappeared.<sup>5</sup>

36. In addition to the general measures proposed by the applicants in the first three Chechen cases and the Secretariat's Memorandum of 29 June 2006, the applicant in the case *Bazorkina v. Russia* submits that the judgment in that case points towards the following general measures to be undertaken by the respondent Government.

**a) Improving the legal and regulatory framework governing the activities of security forces**

37. Russian legislation contains a number of provisions regulating detention. The most important are Article 22 of the Constitution of the RF and Articles 92 and 94 of the Criminal Procedure Code. Among other safeguards, a detained person must be registered within three hours of his detention, the prosecutor must be notified in writing about the detention within twelve hours and a judge must sanction the detention beyond 48 hours. The detainee has also the right to receive confidential advice from a lawyer prior to being interrogated.

38. In *Bazorkina*, the Court noted that the detention of the applicant's son

was not logged in the relevant custody records and there exists no official trace of his subsequent whereabouts or fate. In accordance with the Court's practice, this fact in itself must be considered a most serious failing since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention, the name of the detainee as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (*Bazorkina*, para. 147).

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<sup>4</sup> Amnesty International, "Russian Federation: What Justice for Chechnya's Disappeared?" 23 May 2007, available at <http://web.amnesty.org/library/Index/ENGEUR460152007>, (last accessed 1 June 2007).

<sup>5</sup> Memorial, "Abductions, Disappearances and Killings in 2006 in the Chechen Republic," available at <http://www.memo.ru/hr/hotpoints/caucas1/index.htm>, (last accessed 1 June 2007).

In addition, the Court criticized the respondent Government for not having launched a thorough and prompt investigation upon having learned of Yandiyev's detention.

39. Several testimonies submitted to the Court by the respondent Government indicate that these omissions might have been of a systematic and deliberate nature. Testimonies indicate that those detainees who were considered "field commanders" or others who were believed to be able to provide valuable information were taken away by officers from the FSB and military intelligence (*Главное разведывательное управление, ГРУ Министерства обороны РФ*) and were not transported to the filtration points with the other detainees (*Bazorkina*, para. 74). There is no record of these detentions.
40. Grave violations of Article 5 of the European Convention on Human Rights and domestic Russian law are not unique to the *Bazorkina* case, however. In the case *Imakayeva v. Russia*, the respondent Government admitted that the FSB had detained the applicant's husband on 2 June 2002. However, the respondent Government produced no records relating to the detention and the Court found that the applicant's husband had been held in unacknowledged detention (*Imakayeva v. Russia*, judgment of 9 November 2006, para. 170).
41. In several other cases concerning disappearances, the Court has found that the disappeared persons have been held in unacknowledged detention (see para. 32 above).
42. The existence of illegal detention centers in Chechnya, also today, has been well documented both by non-governmental organizations and the Council of Europe's own Committee for the Prevention of Torture.<sup>6</sup>
43. The widespread and systematic occurrences of unacknowledged detention in direct contradiction to the European Convention on Human Rights and Russian domestic law give rise to a strong suspicion that the use of unacknowledged detention has been ordered, or at least tolerated, by high-level officials within the security forces.
44. The applicants submit that the respondent Government should conduct an investigation into why there has been – and still is – a widespread and systematic use of unacknowledged detention, what high-level officials have known about this practice, condoned, and possibly ordered it, and hold those responsible to account.

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<sup>6</sup> Committee for the Prevention of Torture, "Public Statement Concerning the Chechen Republic of the Russian Federation," 13 March 2007, available at <http://www.cpt.coe.int/documents/rus/2007-17-inf-eng.htm>, (last accessed 1 June 2007); International Helsinki Federation for Human Rights, "Unofficial Places of Detention in the Chechen Republic," 15 May 2006, available at [http://www.ihf-hr.org/documents/doc\\_summary.php?sec\\_id=58&d\\_id=4249](http://www.ihf-hr.org/documents/doc_summary.php?sec_id=58&d_id=4249), (1 June 2007).



45. The respondent Government should also immediately conduct investigations into allegations of the existence of secret detention centers and undertake immediate measures to close these.

46. In addition, to make its position clear, the respondent Government should issue a high-level order condemning the use of unacknowledged detention and secret detention centers and make it clear that the authorities will prosecute to the fullest extent of the law anybody found guilty of violating the norms and standards enumerated in the European Convention on Human Rights and Russian domestic law. This declaration should be followed up with appropriate action demonstrating the Government's commitment to upholding its own laws.

***b) Awareness raising and training of members of the security forces***

47. The applicants support the measures proposed by the respondent Government with regards to dissemination of important ECtHR judgments and inclusion of norms and standards established by the Court in training of members of the security forces and judges, investigators and prosecutors.

48. Given the extent of the problem of disappearances in Chechnya, the applicant submits that the judgment in the case *Bazorkina v. Russia* and subsequent judgments on disappearances should also be widely distributed. Study of the norms and standards applied in these judgments should be made an integral part of the general education of military servicemen, judges, investigators and prosecutors, as well as preparation for all members of security forces who will be serving in the North Caucasus.

49. The applicants stress that wide distribution of, and easy access to, the norms and standards included in these judgments is crucial in order to increase compliance with them. In this respect, the applicants note with some concern that, despite several thorough searches, they have not been able to locate the judgments in the first three Chechen cases on the Ministry of Defense website. The respondent Government informed the Committee of Ministers that these judgments had been published on the mentioned website (see para. 23 of the Secretariat's Memorandum of 29 June 2006).

***c) Improvement of domestic remedies in cases of abuses***

50. In its judgment the Court points to a number of shortcomings in the investigation conducted into the disappearance of Yandiyev. These include:

- the investigation was launched only one year and five months after the events, despite numerous requests from the applicant;

- key witnesses were questioned with considerable delay;
- orders by senior prosecutors to carry out concrete investigative steps were not complied with by junior prosecutors;
- the investigation was adjourned and reopened at least six times;
- the applicant was not informed about the progress of the investigation.

51. Similar shortcomings have been noted by the Court in all other cases involving Chechnya (*Khashiyeva and Akayeva v. Russia*, *Isayeva v. Russia*, *Isayeva, Yusupova and Bazayeva v. Russia*, *Estamirov and Others v. Russia*, *Imakayeva v. Russia*, *Luluyev and Others v. Russia*, *Chitayev and Chitayev v. Russia*, *Baysayeva v. Russia* and *Akhmadova and Sadulayeva v. Russia*).

52. The Court has repeatedly stated that in a disappearance case the first days and weeks after a detention are "crucial." The inactivity and ineffectiveness of the law-enforcement authorities "significantly contribute[s] to the likelihood of [the] disappearance." (see, among others, *Baysayeva v. Russia*, para. 119)

53. In addition to the general measures envisaged in the Secretariat's Memorandum of 29 June 2006 (para. 38), the applicants submit that the respondent Government should:

- ensure that all past and current allegations of enforced disappearances are promptly, thoroughly, independently and impartially investigated and that, where there is sufficient evidence, anyone suspected of responsibility for such crimes is prosecuted in proceedings which meet international fair trial standards;
- provide more information on the "United Register of kidnapped or disappeared persons" (para. 38 of the Secretariat's Memorandum of 29 June 2006). It is not clear from the Memorandum what criteria are applied to include/strike a person from the list, what information (dental records, DNA) is gathered on the people in the list, who has access to the database (relatives, the International Committee for the Red Cross, general public), and what sources are being used to compile the list. The respondent Government should consider making the names on the list public and include information from non-governmental organizations to ensure that the register is as complete as possible;
- ensure that full and impartial investigations into all sites of mass graves in Chechnya are immediately carried out by forensic experts in line with UN guidelines on the disinterment and analysis of skeletal remains, make available adequate resources for the purpose, including by fully equipping the forensic

laboratory in Grozny; and seek and accept offers of assistance and cooperation from international experts, both in carrying out the work itself, and in training local personnel engaged in the work;

- systematically gather DNA information for people in the “United Register of kidnapped or disappeared persons” and compare information on unidentified bodies with information in this register;
- strengthen and strictly enforce the system of disciplinary sanctions against government officials in the prosecutorial system who repeatedly fail to undertake necessary investigative measures, even when these are ordered by senior prosecutors. A finding by a court that a prosecutor has acted with negligence should automatically reflect negatively on future promotion and payment of bonuses;

**d) Other**

54. In addition to the above-mentioned measures, the applicant submits that given the extensive problem of disappearances in Chechnya, the respondent Government should undertake a series of additional measures. The respondent Government should:

- facilitate the long-standing requests for visits to the Russian Federation, including Chechnya, by the UN Special Procedures, in accordance with their long-established terms of reference for missions, in particular the UN Special Rapporteur on torture, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, and the UN Working Group on Enforced or Involuntary Disappearances by setting dates for them to undertake missions in the near future;
- sign and ratify without delay and without any reservations the International Convention for the Protection of All Persons from Enforced Disappearance, make declarations pursuant to Articles 31 and 32 recognizing the competence of the Committee on Enforced Disappearances to receive communications from individuals and states and enact effective implementing legislation.

55. In both the Bazorkina case and the Estamirov the respondent Government initially refused to provide the Court with documents from the criminal investigation file that the Court deemed necessary to properly examine the applicants' allegations that the investigation had been ineffective. In the Bazorkina case, the Government subsequently provided the investigation file. In the Estamirov case, however, the Government never

submitted the requested documents. In later judgments, the Court has found that this refusal has violated Article 38 of the European Convention on Human Rights.

56. The applicants encourage the Committee of Ministers to engage in a discussion with the respondent Government on this issue to clarify the respondent Government's obligations vis-a-vis the ECtHR. Governments' good faith cooperation with the Court is crucial to facilitate an effective and thorough review of applicants' complaints.

2 June 2007