

**LULUYEV and Others versus RUSSIA (69480/01), judgment of the European Court of Human Rights of 9 November 2006**

**IMAKAYEVA versus RUSSIA (7615/02), judgment of the European Court of Human Rights of 9 November 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 *Luluyev and Others v. Russia* of 9 November 2006 and *Imakayeva v. Russia* of 9 November 2006 (further, Luluyev and Imakayeva). These judgments became final 9 February 2007.

## **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 9 May 2007 in both cases. The applicants inform the Secretariat that the respondent Government has paid the award specified by the Court in its judgments.

## **III. Individual measures**

3. 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 Imakayeva case, it is crucial that the Government establishes the whereabouts of the bodies of Said-Khuseyn and Said-Magomed Imakayev, the applicant's son and husband respectively. 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.
4. 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) LULUYEV and Others v. Russia**

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

5. In its judgment the Court considered that there exists a body of evidence that attains the standard of proof "beyond reasonable doubt", and thus makes it possible to hold the State authorities responsible for Nura Luluyeva's death. (*Luluyev and Others v. Russia*, para. 85).
6. As regards the investigation, the Court indicated several investigative measures that have yet to be conducted:

- after a number of witnesses testified in June and July 2000 that the detained women had been taken away in an APC, this information was not followed up; no attempts to track down the APC were made, even after the witnesses had indicated its hull number in December 2000 (*Luluyev and Others v. Russia*, para. 97);
  - no information has been submitted by the Government as to whether any investigative actions were taken following the discovery of the mass grave, apart from the identification and forensic examination of the bodies (*Luluyev and Others v. Russia*, para. 98).
7. The applicants submit that the respondent Government should without delay conduct an independent, effective and thorough investigation into the circumstances of the abduction and killing of Nura Luluyeva. The investigation must include measures to correct the above-mentioned shortcomings indicated by the Court.
  8. In particular, the respondent Government should investigate which military detachment had had in its possession the APC with hull number 110 (*Luluyev and Others v. Russia*, para. 99).

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

9. An important reason for the Court's finding that the applicants became victims 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 (*Luluyev and Others v. Russia*, para. 117, 118).
10. The applicants are deeply concerned that neither they nor their representatives have been informed of any investigate steps taken after the Court's judgment.
11. The applicants submit that the respondent Government should without delay inform them about any developments in the criminal investigation.

**b) IMAKAYEVA v. Russia**

***Measures to establish the whereabouts of bodies of Said-Khuseyn and Said-Magomed Imakayev:***

12. In an effort to establish the whereabouts of bodies of Said-Khuseyn and Said-Magomed Imakayev, the respondent Government should undertake a systematic effort to identify

all unidentified bodies that have been discovered in Chechnya since the disappearance of her relatives (see also General Measures below, para. 40).

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

13. In its judgment, the Court pointed to several shortcomings and problematic aspects with the investigation:
  - the prosecutor's orders of July 2002 and of October 2005 do not suggest that the investigation had made any progress whatsoever in the task of solving Said-Khuseyn Imakayev's disappearance, while the Government refused to submit other documents from the file or to disclose their contents (*Imakayeva v. Russia*, para. 150);
  - inconsistencies in the various documents regarding the adjournment of the investigation communicated by the different authorities (*Imakayeva v. Russia*, paras. 21, 26, 28);
  - the investigation has not established the identity of servicemen who detained Said-Magomed Imakayev at his home; despite a large number of persons being questioned, none of them had any relevant information about the missing man (*Imakayeva v. Russia*, para. 134).
14. 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 Said-Khuseyn and Said-Magomed Imakayev. The investigation must include measures to correct the above-mentioned shortcomings indicated by the Court.
15. The applicant would also like to point out that the Court in its judgment noted the applicant's reference to the available information about the phenomenon of "disappearances" in Chechnya and agreed that, in the context of the conflict in Chechnya, when a person is detained by unidentified servicemen without any subsequent acknowledgement of detention, this can be regarded as life-threatening (*Imakayeva v. Russia*, para. 141).

***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. In July 2004 the investigation opened into Said-Magomed Imakayev's abduction was closed and the applicant's victim status was withdrawn, thus depriving her of the possibility to have access to the case file and to learn who had detained her husband and why (*Imakayeva v. Russia*, para. 133). Moreover, no information of substance about criminal proceedings was disclosed to the district prosecutor, who was instructed in November 2004 to open a new investigation into Said-Magomed Imakayev's presumed murder without the benefit of acquainting himself with the statements of the servicemen who, it appears, were the last persons to see him alive (*Imakayeva v. Russia*, para. 154). The applicant submits that all the documents from the criminal case no. 29/00/0015-03 (closed in July 2004) should be included in the criminal case no. 36125 (opened on 16 November 2004).

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.

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

19. 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 Memorandum "Violations of the ECHR in the Chechen Republic: Russia's compliance with the European Court's judgments" of 12 June 2007 and the applicants' submissions in the previous cases.<sup>1</sup> The applicants call for a prompt and comprehensive implementation of all general measures outlined in the Memorandum of 12 June 2007.
20. The applicants request the Committee of Ministers to provide them with the Government's reports on their implementation of the plan of action.

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

21. In its judgments (*Bazorkina v. Russia*, judgment of 27 July 2006; *Imakayeva v. Russia; Luluyev and Others v. Russia; 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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<sup>1</sup> "Applicants' submissions regarding compliance with ECtHR judgments in the first six Chechen cases," 4 October 2005, available at

22. 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>2</sup> Human rights organizations have estimated that the real number of disappearances since 1999 is between three and five thousand.
23. 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>3</sup>
24. In addition to the general measures proposed by the applicants in the first three Chechen cases and the Memorandum of 12 June 2007, the applicants in the cases *Luluyev and Others v. Russia* and *Imakayeva v. Russia* submit that the judgments of the EctHR point 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**

25. 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.
26. In *Imakayeva v. Russia*, the Court noted that the detention of the applicant's husband

was not logged in the relevant custody records and there exists no official trace of his questioning, release or subsequent whereabouts. For more than two years the authorities denied that he had ever been detained, before they collected witness statements from unnamed servicemen involved in his apprehension. The Government declined to disclose any information concerning the exact timing and place of Said-Magomed Imakayev's detention, the agency and officials responsible for his apprehension and release and the legal and factual basis. 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

<sup>2</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>3</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).

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 (*Imakayeva v. Russia*, para. 176).

In addition, the Court criticized the respondent Government for not having launched a thorough and prompt investigation upon having learned of Said-Khuseyn and Said-Magomed Imakayev detention in life-threatening circumstances.

27. 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*, para. 170).
28. In several other cases concerning disappearances, the Court has found that the disappeared persons have been held in unacknowledged detention (see para. 21 above).
29. 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>4</sup>
30. 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.
31. 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.
32. The respondent Government should also immediately conduct investigations into allegations of the existence of secret detention centers and undertake immediate measures to close these.

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<sup>4</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).

33. 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**

34. 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.

35. Given the extent of the problem of disappearances in Chechnya, the applicants submit that the judgments in their cases 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.

36. 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. 58 of the Memorandum of 12 June 2007).

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

37. In its judgments the Court points to a number of shortcomings in the investigation conducted into the disappearance of the applicants' relatives. These include:

- the investigation was launched 20 days after Nura Luluyeva's disappearance, despite numerous requests from the applicants (*Luluyev and Others v. Russia*, para. 96);
- despite a large number of persons being questioned, none of them had any relevant information about the missing Said-Magomed Imakayev (*Imakayeva v. Russia*, para. 134);



- the investigation was plagued with unreasonable delays in taking even the most trivial steps (*Luluyev and Others v. Russia*, para. 97);
  - orders by senior prosecutors to carry out concrete investigative steps were not complied with by junior prosecutors or investigators (*Luluyev and Others v. Russia*, para. 99);
  - the investigation was adjourned and reopened at least 8 times (*Luluyev and Others v. Russia*, para. 99);
  - the applicants were not informed about the progress of the investigation (*Luluyev and Others v. Russia*, para. 100; *Imakayeva v. Russia*, paras. 133, 134 150).
38. Similar shortcomings have been noted by the Court in all other cases involving Chechnya (*Khashiyev and Akayeva v. Russia*, *Isayeva v. Russia*, *Isayeva, Yusupova and Bazayeva v. Russia*, *Bazorkina v. Russia*, *Estamirov and Others v. Russia*, *Chitayev and Chitayev v. Russia*, *Baysayeva v. Russia* and *Akhmadova and Sadulayeva v. Russia*).
39. 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*, judgment of 5 April 2007, para. 119)
40. In addition to the general measures envisaged in the Memorandum of 12 June 2007, 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. 74 of the Memorandum of 12 June 2007). 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**

41. In addition to the above-mentioned measures, the applicants submit 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.
42. In both the *Luluyev and Others* case and the *Imakayeva* the respondent Government initially refused to provide the Court with all documents from the criminal investigation

file that the Court deemed necessary to properly examine the applicants' allegations that the investigation had been ineffective. In particular, before the case *Luluyev and Others* was declared admissible, the Government submitted only 17 documents out of 368, having refused to provide the rest on the grounds of confidentiality (*Luluyev and Others*, para. 49). In the case *Imakayeva v. Russia*, the Court has found that the refusal has violated Article 38 of the European Convention on Human Rights (*Imakayeva v. Russia*, paras. 123, 132, 201).

43. 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.

Moscow, Russia

28 September 2007