

Individual Measures taken by the Russian Federation in five cases of disappearance, extra-judicial execution, and torture in Chechnya and Ingushetia

Introduction

1. This document overviews measures taken by the authorities of the Russian Federation in execution of the judgments of the European Court of Human Rights (the Court) in cases where the involvement of the Russian military/security forces has been established with high probability:

(i) *Bazorkina v. Russia* (69481/01), judgment: 27 July 2006, final: 11 December 2006;

(ii) *Estamirov and Others v. Russia* (60272/00), judgment: 12 October 2006, final: on 12 January 2007;

(iii) *Isigova and Others v. Russia* (6844/02), judgment: 26 June 2008, final on 1 December 2008;

(iv) *Khadisov and Tsechoyev v. Russia* (21519/02), judgment: 5 February 2009, final: 5 May 2009;

(v) *Akhmadova and Others v. Russia* (3026/03), judgment: 4 December 2008, final: 05 June 2009.

2. This submission will first set out the main facts of the cases and provide an overview of recent correspondence with the Russian authorities regarding individual measures in each case (*Section 1*). It will be demonstrated that the defects in the investigation highlighted by the Court have not been remedied. Moreover, it is evident that even in cases in which the authorities possess clear evidence as to the identity of the perpetrators, they have yet to undertake any visible efforts to bring them to justice.

3. In *Section 2* the applicants will first indicate the status of the domestic investigation to the extent of their knowledge, and then indicate appropriate questions to pose to the Russian delegation during the Committee of Ministers' DH meeting in early June.

4. In his speech at the meeting of the Committee on Legal Affairs and Human Rights on the Execution of Judgments of the Court by the Russian Federation, the Representative of the Russian Federation at the Court pointed out that in accordance with Articles 123-126 of the Russian Criminal Procedure Code (the Russian CPC), victims, as well as other persons whose rights to access to court were violated, have the right to appeal before the prosecutor, the head of the investigating department or a court against the actions, omissions and decisions of bodies of inquiry and preliminary investigation and its officials.¹

5. The applicants submit that the above remedy may be exhausted by either challenging the lawfulness of the decisions or omissions of the investigating authorities or by appealing against the alleged failure of the law-enforcement bodies to respond to victims' complaints. However, it remains unclear whether this remedy could be effectively used when the authorities deny involvement of the military and security forces into crimes committed against the applicants.

¹ See: European Human Rights Advocacy Centre, http://www.londonmet.ac.uk/londonmet/fms/MRSite/Research/HRSJ/EHRAC/Matyushkin%20speech%20execution%20of%20judgments%2011_9_09.pdf, last accessed on 6 May 2010.

6. Indeed, as it will be shown, in present cases where the identities of the perpetrators and detachments involved in the commission of crimes against the applicants' relatives were well reported (*Bazorkina v. Russia, Estamirov and Others v. Russia, Akhmadova and Others v. Russia*) the authorities bluntly denied involvement of the military and security personnel in commission of crimes.

7. In other cases (*Isigova and Others v. Russia; Khadisov and Tsechoyev v. Russia*) after the identities of the detachments and their commanders involved in the crimes against the applicants' relatives were established by the domestic investigation, the investigation was repeatedly suspended on the grounds of a "failure to identify the perpetrators"; furthermore, alleged perpetrators were not made to participate in ongoing investigations.

8. In addition, in none of the above five cases have the authorities charged any members of the military and security personnel involved in crimes eventually examined by the ECtHR.

Section 1

Main facts of the cases² and latest responses of the Russian authorities

(i) *Bazorkina v. Russia (69481/01)*

9. On 2 February 2000, Russian federal troops detained a wounded Khadzhimurat Yandiyev at a hospital in Alkhan-Kala. Video footage of the detention submitted to the prosecutor showed how a Russian General questioned Yandiyev, and then ordered his execution. Yandiyev's mother has been looking for her son ever since. The General questioning Yandiyev was later identified as *Colonel-General Baranov*. Even though *Mr. Baranov* was identified quickly, the prosecutor's office only questioned him four years after the detention, after the ECHR had communicated the case to the Russian government. On 27 July 2006, the ECHR held Russia responsible for the illegal detention, disappearance and murder of Yandiyev.

10. In his letter of 3 April 2009, the Office of the Military Prosecutor of the UGA³, addressing SRJI, Colonel-General Baranov testified on 2 February 2000 that he spoke to Mr. Yandiyev. Yandiyev, at all times during his testimony, spoke in a manner that was indecent and confirmed his involvement with illegal armed groups. After this conversation one of the servicemen took Yandiyev aside, to the adjacent metal fence. Mr. Yandiyev stayed there for an extended period of time. Shortly after, the detained insurgents were transferred to the representatives of the Head Department of the Penitentiary (the HDP)⁴ and were sent to the Chernokozovo's detention centre. Since then Mr. Baranov has not received any information of Yandiyev's whereabouts.

² Please see extended and detailed information on the circumstances of each referred to in present submission in Annex 1.

³ United Group Alliance.

⁴ *Glavnoe Upravlenie Ispolneniya Nakazaniy* (ГУИН).

According to the records submitted by the head of the detention centre 22 in Chernokozovo Yandiyev was not in their custody.

11. In the same letter the Office of the Military Prosecutor of the UGA informed the applicant that she could get acquainted with all materials of the criminal case only after the preliminary investigation is completed.

12. On 13 May 2009 the Office of the General Military Prosecutor informed SRJI that on 14 March 2009 the investigation in the above case was suspended and that the case was referred to the Office of the Military Prosecutor of the UGA.

13. On 1 June 2009 the Office of the Military Prosecutor of the UGA informed SRJI that the case against *Colonel-General Baranov* was dismissed and that the applicant could get acquainted with all materials of the criminal case only after the preliminary investigation is completed.

14. On 28 June 2009 the applicant filed a motion with the Office of the Investigative Committee at the Prosecutor's Office of the Russian Federation, requesting familiarization with the materials of the above case. However, the Investigating Committee refused to grant the full access to the case file.

15. The applicant would draw particular attention to the consistent refusal on the part of investigation to provide her access to the case files. Such refusal is based on interpretation of article 42 of the Russian CPC regarding access to the case files where the investigation has been suspended. The Applicant disputes such an interpretation; while article 42 explicitly grants victims access where the case has been completed, there is no explicit prohibition in the article regarding access to "suspended" cases. Given the frequency of intervening suspension in her case, it is clear that this practice aims to systematically deny the applicant's access to the case files over a prolonged period of time.

(ii) *Estamirov and Others v. Russia* (60272/00)

16. On 5 February 2000, Russian federal troops summarily executed five members of the Estamirov family in the Novye Aldi suburb of Grozny. Among the victims were a one-year-old boy and a woman who was eight months pregnant. The criminal investigation into the killings failed to secure physical evidence at the scene of the crime or conduct full forensic medical examinations of the bodies, and neglected to question witnesses. The applicants argued that the killings of the Estamirov family had been committed on the same day by the same members of the Russian "special forces", *the servicemen of OMON of the Ministry of the Interior from St. Petersburg and Ryazan*, who carried out the "mopping up" operation in Novye Aldy.

17. On 26 May 2009 the Investigative Department of the Chechen Republic informed the SRJI that the criminal case into the killing of five members of the Estamirov family had been suspended due to the failure

to establish the perpetrators. The applicants' representatives are unaware of any further progress made in the domestic investigation.

(iii) Isigova and Others v Russia (6844/02)

18. During a 2 July 2001 sweep operation in Sernovodsk Russian troops detained hundreds of men including Apti Isigov and Zelimkhan Umkhanov. Most men were released the same evening but Isigov and Umkhanov disappeared. The official investigation identified *the commander of the detachment involved in the operation and even the crew of the vehicle* in which Apti and Zelimkhan were taken away. Yet, however, the investigation was repeatedly suspended on grounds of the failure to identify the alleged perpetrator, a fact that the European Court found "appalling".⁵

19. On 10 March 2009 SRJI submitted a letter requesting that the authorities undertake investigative steps to remedy the violations established by the European Court. On 20 April 2009 the Investigative Department of the Chechen Republic forwarded our letter, to its Second Department for Cases of Special Importance (Second Department). SRJI has never received a response from the Second Department.

(iv) Akhmadova and Others v. Russia (3026/03)

20. On 6 March 2002 Russian federal forces detained Musa Akhmadov as he was driving to see his father in the village of Makheti. The soldiers brought Akhmadov to the military base in the village of Khattuni. The next day military servicemen told his relatives that he had been transferred to Khankala military base. Akhmadov's family has not seen or heard from him since. The military prosecutor's office later established that Musa was detained by a group of servicemen at the road block in the vicinity of village Kirov-Yurt, delivered to the headquarters of *the 51-st airborne regiment in the village of Khatuni* and there transferred to the field subdivision of *the FSB⁶ based at the same camp*. Yet, the investigation failed to identify the perpetrators and establish the whereabouts of Akhmadov.

21. On 29 June 2009 the SRJI has informed investigative authorities of the content of the respective judgment and 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. SRJI has never received a response to this letter and is unaware of any further progress made in the domestic investigation.

(v) Khadisov and Tsechoyev v. Russia (21519/02)

⁵ See para 107 of the Court's judgment.

⁶ Federal Security Service, (*Federal'naya Sluzhba Bezopasnosti*) the main domestic security service of the Russian Federation, which is involved in counter-intelligence, internal and border security, counter-terrorism and surveillance the FSB is the main successor agency of the Soviet era KGB.

22. Salambek Khadisov and Islam Tsechoyev, who had never met before, were detained on 23 September 2001 in the Sunhza district of Ingushetia. The next day a local court sanctioned their arrest for 3 days. On the same day they were illegally transferred first to a military base near Nazran, Ingushetia, where they were beaten, and later by helicopter to *Khankala, the main Russian military base in Chechnya*. Upon arrival they were thrown into a pit in the ground. They were held in the pit for 5 days and were only taken out for interrogation. During interrogations they were severely tortured. The two men were subsequently transferred to the Sixth Department of the Organized Crime Unit of the Staropromyslovskiy district of Grozny and finally released on 12 October 2001. Both men were forced to sign statements, upon threat of further torture, that they had not been mistreated during detention.

23. On 8 February 2010 the SRJI has informed investigative authorities of the content of the respective judgment and 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. SRJI has never received a response to this letter and is unaware of any further progress made in the domestic investigation.

Section II

Status of the domestic investigation and questions of the applicants and their representatives

(i) Bozorkina v. Russia (69481/01)

24. On 1 June 2009 the Office of the Military Prosecutor of the UGA informed SRJI that on 14 March 2009 the investigation in the above case was suspended.

Questions:

1. Given the particularly strong evidence in this case that the victim was last seen in the hands of the military, what steps have been taken to question the servicemen who were under the command of *Colonel-General Baranov* at the time of the victim's detention?

2. What is the status of the investigation into the involvement of *Colonel-General Baranov* in the victim's detention and disappearance?

(ii) Estamirov and Others v. Russia (60272/00)

25. According to the letter of 26 May 2009 from the Investigative Department of the Chechen Republic the criminal case had been suspended due to the failure to establish the perpetrators.

Questions:

1. Have the authorities taken any steps to identify the units which took part in the operation of 5 February 2000 after the decision of the Court became final? What was the result of this enquiry?⁷
2. Have authorities testified or investigated alleged involvement in the crime of the “special forces”, *servicemen of OMON of the Ministry of the Interior from St. Petersburg and Ryazan*, after the decision of the Court became final?⁸ If yes, who was questioned by the authorities and when?⁹

(iii) Isigova and Others v Russia (6844/02)

26. According to the letter of 20 April 2009 from the Investigative Department of the Chechen Republic the case was passed on to the Second Department for Cases of Special Importance (Second Department). No further information on the case has been forthcoming.

Questions:

1. Did the military prosecuting authorities ensure the participation in the investigation of the commanding officers of the sweep operation during which the victims disappeared (Colonels *Berezovsky A.V.* and *Veger E.N.*)¹⁰
2. If not, what hindered their (Colonels *Berezovsky A.V.* and *Veger E.N.*) participation in the investigation of the applicants' case?
3. Lieutenant – *Colonel Galaymin I.K.* who, at the time of events at issue, was involved in the operation, stated that Ministry of the Interior troops had, in breach of orders of the head of the operation *Colonel Berezovsky A.V.*, independently carried out searches and apprehended persons on 2 July 2001 in Sernovodsk. According to his statement given in the course of the investigation by the Chechen Prosecutor's Office, he had informed *Colonel Veger E.V.* of this, but *Colonel Veger* had ignored the information. Were *Mr. Galaymin I.K.* and *Mr. Veger E.V.* ever questioned about the assertions of *Colonel Galaymin I.K.* at any time over the course of the investigation?¹¹

⁷ See para 6 in Annex 1.

⁸ See paras 5 and 6 in Annex 1.

⁹ See paras 5 and 6 in Annex 1.

¹⁰ See para 52 of the Court's judgment.

¹¹ See para 52 of the Court's judgment and para 9 in Annex 1.

5. Was *Mr. Kroshin* questioned after the case was transferred to the UGA Military Prosecutor's Office?¹²

(iv) *Akhmadova and Others v. Russia* (3026/03)

27. According to the letter of 7 September 2007 from the UGA Military Prosecutor's Office the applicants' case was being investigated by the Prosecutor's Office of the Vedensky District of Chechnya, or by the Chechen Prosecutor's Office.

Questions:

1. Have the authorities identified and questioned any of the officers of the field subdivision of the FSB who at one point had custody over the victim prior to his disappearance?¹³
2. What steps have been taken to determine who last saw Mr. Akhmadov alive after his detention, and if so, to question those witnesses?

(v) *Khadisov and Tsechoyev v. Russia* (21519/02)

28. In his letter of 3 October 2008 the Military Investigating Department № 505 informed the applicants that the Department refused to initiate criminal investigation with regard officers of the Ministry of Defense and the Ministry of Interior.

Questions:

1. The European Court established that after their arrest on 23 September 2001 the applicants were escorted to *Khankala* military base.¹⁴ However the investigation failed to establish in whose custody the applicants were being held after their transfer to *Khankala*.¹⁵ Have the authorities identified those persons who had custody over the applicants after their transfer to *Khankala*?
2. In its decision of 26 September 2005 the first deputy prosecutor of Ingushetia specifically stated that it was necessary to question Lieutenant Colonel *Ivaneev A.V.* who gave written confirmation of taking the applicants into his custody. However no information was submitted to the Court in respect of any efforts to question either him or the officers under his command.¹⁶ Have the authorities questioned Lieutenant Colonel *Ivaneev A.V.* since the decision of the Court has become final?

¹² See para 108 of the Court's judgment.

¹³ See para 147 of the Court's judgment and paras 15-17 in Annex 1.

¹⁴ See para 119 of the Court's judgment.

¹⁵ See para 119 of the Court's judgment and paras 20-23 in Annex 1.

¹⁶ See para 119 of the Court's judgment.