

MEMORANDUM TO THE COMMITTEE OF MINISTERS

APPLICANTS' OBSERVATIONS IN RESPONSE TO THE GOVERNMENT'S OBSERVATIONS ON EXECUTION OF JUDGMENTS IN CASES CONCERNING THE SECURITY FORCES IN THE CHECHEN REPUBLIC

8 September 2008

Introduction

1. These Observations are submitted to the Committee of Ministers/the Ministers' Deputies for consideration at the Ministers' Deputies' 1035th meeting on 16-18 September 2008 (in accordance with Rule 9(1) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, 10 May 2006).
2. The Observations are submitted by the European Human Rights Advocacy Centre (EHRAC) and Memorial on behalf of the Applicants in the following cases: *Khashiyev & Akayeva v Russia*, No. 57942/00 and 57945/00, 24.2.05; *Isayeva v Russia*, No. 57950/00, 24.2.05; and *Isayeva, Yusupova & Bazayeva v Russia*, Nos 57947/00, 57948/00 & 57949/00, 24.2.05. They are to be read in conjunction with the Observations previously submitted to the secretariat, on 4 October 2005. These Observations deal with the question of individual measures. Separate Observations have been filed by the European Human Rights Advocacy Centre (EHRAC) and Memorial pursuant to Rule 9(2).
3. The Observations are primarily intended to respond to the following:
 - (i) Written information provided by the Russian authorities at the 1007th meeting of the Deputies (October 2007), entitled "34 complaints against Russia";¹ and
 - (ii) Information provided orally by the Russian authorities at the 1020th Human Rights meeting (4-6 March 2008), which is summarised in the public version of the Annotated Agenda adopted at that meeting (CM/Del/OJ/DH(2008)1020 Section 4.3 PUBLIC 8 April 2008).

¹ The document (submitted in Russian) was provided to the Applicants' representatives on 31 July 2008.

4. They also take account of Ministers' Deputies Information Document CM/Inf/DH (2006) 32 revised 2, 12 June 2007 (*Violations of the ECHR in the Chechen Republic: Russia's compliance with the European Court's judgments*).
5. The applicants recall that more than 3 years have now elapsed since the first three of the judgments concerning the security forces in Chechnya became final in July 2005 (*Khashiyev & Akayeva, Isayeva and Isayeva, Yusupova & Bazayeva*).

Individual measures

6. It is noted that the Observations of the respondent Government submitted to the October 2007 meeting are silent as to the measures taken for, or the outcomes of, the investigations into the killing and/or 'disappearances' of the applicants' relatives. According to the information provided to the March 2008 meeting, not one of the investigations in respect of the 9 listed cases has led to a prosecution: two have been closed (*Isayeva, Yusupova & Bazayeva; Isayeva*); five have been adjourned (*Khashiyev & Akayeva; Bazorkina; Imakayeva*;² *Estamirov*; and *Luluyev*); and no information has been provided about *Chitayev and Chitayev* or about the investigation into the applicant's son's abduction in the case of *Imakayeva*.
7. The decisions to close the investigations in the cases of *Isayeva, Yusupova & Bazayeva* and *Isayeva* were made under Article 24(2) of the Criminal Procedure Code ('absence of corpus delicti'). The decisions to adjourn the investigations in 5 cases were taken in accordance with Article 208(1)(1) of the Criminal Procedure Code ('failure to identify a person responsible').
8. It is emphasized that neither the applicants nor their representatives have been informed about any of the decisions made in the course of these criminal investigations (in spite of the provisions to that effect in Article 42(2) of the Criminal Procedure Code).
9. It is further noted that only brief, skeletal details about the steps taken in the course of the investigations have been provided by the Russian authorities.

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On 12 October 2007 the decision to adjourn was quashed and the investigation was resumed.

10. In March 2008 the Deputies recalled that “to comply with the requirements of the Convention, such investigations should be effective and should be conducted with reasonable speed and adequate public scrutiny”. However, the applicants submit that it is evident that the respondent Government has manifestly failed to demonstrate either “rapid” or “visible” progress in the conduct of the investigations, as it has been exhorted to do by the Committee of Ministers (Memorandum, 12 June 2007, para. 14). As is clear from many of the 37 European Court judgments to date relating to the actions of the armed forces or the security forces in Chechnya, it is common practice for such domestic investigations to be suspended on numerous occasions and ‘re-opened’ as a matter of routine.³ There is nothing to indicate that any measures taken since the judgments were adopted by the European Court in these 9 cases have made any further progress whatsoever. There is also no sign that the errors and omissions made in the course of the original investigations, and which were identified by the Court, have been eradicated. As has been previously noted by the Committee:

“...the respondent state has a *continuing obligation* to conduct effective investigations inasmuch as procedural violations of Article 2 or 3 have been found...” (Memorandum of 12 June 2007, para.7 – emphasis added)

11. The applicants accordingly submit that it is of vital importance that the respondent Government should be required to provide full disclosure of the case files in each of the cases. The Government itself acknowledges that the domestic law (Article 42 of the Criminal Procedure Code) provides for such disclosure to victims (see the information provided by the Russian authorities at the 1007th meeting of the Deputies (October 2007)). In particular, disclosure should be provided of the following documents which have been expressly referred to by the Government in their previous submissions:

Isayeva, Yusupova & Bazayeva; Isayeva: the plans drawn up for the investigations in both cases;⁴ all documents arising from the “operational tactical expert examinations” which were carried out in respect of the villages of Shaami-Yurt and Katyr-Yurt; the statements taken from 200 witnesses; all documents arising

³ See, e.g., *Musayeva v Russia*, No. 12703/02, 3.7.08, para. 112.

⁴ These were referred to in the Government’s Observations presented in March 2006 (p. 2).

from the “additional examination of the crime scenes, forensic medical examination of the victims and re-enactments of the events”;

Khashiyev & Akayeva: the statements taken from 300 witnesses; ballistic examinations of cartridges; all other “materials on the conducting of these operations”.

12. It is also noted that in *Imakayeva*, the application of Article 42 of the Criminal Procedure Code prevented the applicant from being given access to the case file while the investigation was still pending, and that in any event a decision was taken in July 2004 to withdraw her victim status, thus preventing her from subsequently having access to the case file.⁵
13. Furthermore, it is also submitted that the respondent Government should be required to confirm what particular steps have been taken in order to identify and prosecute the persons named by the Russian authorities as “Ivanov”, “Petrov” and “Sidorov” in the course of the proceedings in *Isayeva, Yusupova & Bazayeva*, and to confirm what steps have been taken in order to prosecute Mr Shamanov and Mr Nedobitko, whose specific roles and responsibilities were referred to by the European Court in the case of *Isayeva* (see further the Applicants’ Observations of 4 October 2005, paras 31 & 36-44).

Conclusion

14. For the above reasons, the Committee of Ministers is invited to find that the respondent Government has failed to date to comply with their obligations under Article 46 of the Convention.
15. The Committee of Ministers is invited to request the following information or documents from the Russian authorities:
 - Further detailed information about the investigations in the cases of *Khashiyev and Akayeva, Isayeva, Yusupova & Bazayeva* and *Isayeva* and the prosecutions of those responsible, in particular, those persons named in the Court’s judgments (see para. 13 above);

⁵ *Imakayeva v Russia*, No. 7615/02, 9.11.06, para. 79.

- All the documents in the domestic criminal case-files in those cases, as identified above.

Submitted on behalf of the Applicants by their representatives: the European Human Rights Advocacy Centre (EHRAC) and Memorial Human Rights Center.