SUBMISSION FROM THE RUSSIAN JUSTICE INITIATIVE

TO THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE CONCERNING THE CASE of *ISRAILOVA AND OTHERS v RUSSIA* (4571/04)
(Establishment of remains)

24 August 2016

1. In a submission of 25 August 2015,[1] RJI informed the Committee of Ministers on the situation of the applicant in the case *Israilova v Russia,* who at that time had been informed that the remains of her son had been found, but the investigative authorities had refused to provide her with copies of the relevant forensic examinations that would allow the applicant to determine whether the remains found indeed belonged to her son.

2. Currently, according to an expert forensic examination conducted in October 2015, the authorities have determined with close to 100% accuracy that the remains found belong to the applicant's son. **However, the remains have still not been handed over to the applicant for burial.**

3. The present submission provides an update on the applicant's situation in connection with the establishment of the remains of her son and is organized as follows:

    A. Information received by the Government and local investigating authorities and the applicant's submissions on the local level
    B. Commentary on the information available
    C. Questions to the Government

A. Information received by the Government and local investigating authorities and the applicant's submissions on the local level

4. According to information provided by the Government in its latest Action Plan of 26 April 2016:

> *On 3 June 2015, comparison of material of I.T., the mother of the kidnapped Sh.Sh. Israilov with genetic material taken from bone remains found in the forest area near the village of Melchkhi of Gudermesskiy district of the Chechen Republic, proved similarity of the found genotypes with I.T.'s genotype (page 2).*

5. As reported by RJI in its submission of 25 August 2015, the applicant was informed that the criminal investigation into her son's disappearance was suspended on 22 June 2015. Below we list the measures taken by the applicant, counsel for the applicant and investigative bodies after the criminal investigation into her son's disappearance was suspended on 22 June 2015.

[1] Available at: http://www.srji.org/upload/medialibrary/570/israilova-remains-final-25-aug-2015.pdf

6. 18. On 29 July 2015, counsel for the applicant addressed the military investigation department (VSU) based in Khankala, Chechen Republic, in which she requested that the applicant's son's remains be handed over to the applicant for burial. On 7 August 2015, counsel's request was refused.[2]

7. On 21 August 2015, the VSU suspended the investigation into the case of the disappearance of the applicant's son.[3]

8. On 8 October 2015, in response to counsel's appeal, VSU provided additional information on the circumstances of discovering the corpse, as well as the date, the experts who had carried out the molecular-genetic examination, and the results of the examination.

9. The information provided by the investigators was the following: skeletal remains of the corpse of Sh.Sh. Israilov, I.T. Israilova's son, and those of a second unidentified person were found on 5 June 2008 by officers of the Gudermesskiy police department of the Russian Interior Ministry of the Chechen Republic in a forest 2100 meters from the sign "700 km" of "Caucasus" federal highway in the southern direction, on a ridge above the Melchkhi settlement, which is located in the Gudermesskiy district of the Chechen Republic. The molecular-genetic examination No. 52 of 12 March 2015 was carried out at the branch No. 2 of the Federal state fiscal institution (FGKU) of the "Chief State Centre of forensic medical and criminalistics examinations of the Ministry of Defense of the Russian Federation" (111 GGTSSM and KE of the Ministry of Defense of Russian Federation).

10. The investigator, citing the classified nature of the documents, refused to provide copies of all the procedural documents from criminal case № 14/90/0019, of which there were 11 in total from 19 July 2013. Instead, the investigator ordered to provide the applicant's lawyer with unclassified excerpts from the decisions about resumption of the preliminary investigation dated 22.07.2013 and 19.05.2014.[4]

11. On 9 October 2015, the VSU investigator issued a decision to commission a forensic report. It followed from the decision that the investigation had in its possession some skeletal remains of the applicant's son as well as fragments of his clothes and shoes.[5]

12. On 26 October 2015, counsel for the applicant appealed to VSU and requested to ensure the identification of the fragments of clothing found on the remains. Counsel also requested to provide the applicant with a copy of the molecular-genetic examination no. 124 of 3 June 2015, during the course of which the applicant's DNA sample was compared with those taken from the remains allegedly belonging to her son. Counsel also requested copies of the decision of 6 October 2015 on resumption of the preliminary investigation, the decision on commissioning medical expertise of 9 October 2015 and the expert's conclusion no. 619 of 21 October 2015, and the decision on suspension of the investigation.[6]

13. On 29 October 2015, the VSU investigator partially satisfied counsel's requests, the rest of the request being denied on the basis of confidentiality. Thus counsel was refused a copy of the molecular-genetic examination no. 124 of 3 June 2015, as well as copies of the decisions of 3 June 2015 and 6 October 2015. Instead, counsel was provided with non-classified excerpts from these documents, including extracts from the medical expert's conclusion no. 619 of 21

[2] Attachment 1
[3] Attachment 2
[4] Attachment 3
[5] Attachment 4
[6] Attachment 5

October 2015. The Investigator sanctioned the identification of the clothing found on the remains with the applicant's participation.[7]

14. According to the excerpt provided from the molecular-genetic examination of 3 June 2015:

> The examination was carried out in a military judicial-expert institution; the subject of the examination was the comparison of genotypes obtained from corpses number 1 and number 2 with genotypes from the database available at branch No. 2 of FGKU of the Chief State Centre of forensic medical and criminalistics examinations of the Ministry of Defense of the Russian Federation; as a result of comparing the remains of corpse number 2, there was a match with the applicant's genotype, **therefore allowing to conclude with the probability of up to 99,999992% that these remains belong to her son** (emphasis added).[8]

15. According to the decision of 6 October 2015:

> The decision on suspending the preliminary investigation of 21 September 2015 was premature, due to the fact that the investigator had not taken all investigative measures available in the absence of suspects; at the same time, specific investigative measures that should have been taken by the investigator are not provided in the extract of the decision.[9]

16. According to the decision of 9 October 2015 on the commissioning of medical expertise:

> The investigator required from the experts the following information: the sex and age of corpse number 1, the time and cause of death, the character of bodily injuries on the corpse, the time the injuries occurred, the mechanism of causing the injuries, the severity of damage to health, and evidence of damage characteristic of gunshot and stab wounds on the remains and the clothing.[10]

17. According to the excerpt from the medical expert's conclusion no. 619 of 21 October 2015:

> The examination was conducted by analysing the information contained in the documents, studying special literature, logical analysis and synthesis of the data received. The experts were given 24 bones, including the skull, and clothing (shoes and socks); the study revealed that the remains belonged to a man between 30 – 39 years old, the time of death corresponds to the time that the body has been buried – 5 years. The cause of death can be a blow by an obtuse hard object (objects) that resulted in death from a craniocerebral injury; the mechanism of causing the damage and the parameters of the tool used to cause it are not possible to determine.[11]

18. On 1 August 2016, counsel for the applicant requested VSU to fulfill the decision of 29 October 2015 in the part of conducting identification of the clothing found on the remains with the applicant's participation. There has been no response to this request to date.[12]

B. Commentary on the information available

19. RJI welcomes with a cautious optimism the efforts made by the Russian investigative authorities in identifying the remains of the applicant's son, who disappeared in December 2002.

20. At the same time, we regretfully note the unjustified secrecy of the process and classification of documents that prevent the applicant from receiving the full spectrum of information about

[7] Attachment 7
[8] Attachment 8
[9] Attachment 9
[10] Attachment 10
[11] Attachment 11
[12] Attachment 12

the remains found. Due to classification of documents by the VSU investigator, neither the applicant nor her counsel have access to the full range of documents—of which there are 11 in total—concerning the process of appointing and carrying out the forensic medical examinations in criminal case № 14/90/0019. This situation has been further aggravated by the significant delays in informing the applicant about the steps taken by the investigation.

21. There are also concerns about the independence of the experts and investigators. All of the examinations conducted on the remains were carried out in a military medical forensic expert institution. Although individual perpetrators have not been identified, the primary suspects in the applicant's son's disappearance are Russian military officials (see *Israilova and Other* paras 10 – 20; 27, 28). The applicant, as well as her chosen counsel, should be able to exercise their right to participate in examinations appointed by the investigating authorities, to participate in formulating questions, and to participate in selecting the expert institution. The only examination approved by the investigator to be carried out with the applicant's participation (identification of the remains of clothing) has not yet been conducted.

22. RJI notes that in case of a disagreement with the conclusions of the examination, the applicant has the right of appeal, but in order to effectively make use of this right, the applicant and her counsel must have full access to the documents concerning the appointment and performance of the forensic examinations, without any restrictions due to confidentiality. The applicant must also have timely access to such documents.

23. We further note the apparent unwillingness of the authorities to hand over the remains to the applicant for burial, despite the fact that the forensic DNA conclusion found that the remains matched the applicant's genotype.

24. As the applicant's representative we note that a full participation of the applicant and her representative in the expert activities would have enhanced the applicant's trust to the results of the expert activities.

25. Finally, RJI notes that the conclusion of the medical expert concerning the cause of death means that the authorities can no longer plausibly deny the violent nature of the applicant's son's death. This acknowledgement is key to a successful investigation in the applicant's case. RJI has reported on the progress of the investigation in the criminal case four times in the past six years,[13] and reminds that the applicant appealed in 2014 to the Constitutional Court of the Russian Federation due to her inability, over a period of more than three years, to successfully obtain a hearing on the merits in order to challenge lack of access to the case materials as well as investigative shortcomings. The establishment of the remains of the applicant's son should lead to the identification and punishment of the perpetrators.

C. Questions to the Government

26. How are the restrictive aspects of the Federal law on state secrets related to the applicant's right to effective participation in appointing examinations, formulating questions and/or participation in the examinations?

[13] See: Submission of 25 August 2010, available at http://www.srji.org/files/implementation/7%20CoM_Ind_Measures_25%20Aug_2010%20SUBMITTED.pdf (paragraphs 45-47); Submission 10 January 2014, available at http://www.srji.org/upload/medialibrary/ad3/2014-01-classification-rji-and-memo.pdf; Submission of 25 August 2015 (complaint before the Constitutional Court), available at: http://www.srji.org/upload/medialibrary/4d4/israilova-ccrf-final-25-august-2015.pdf; Submission of 25 August 2015 (establishment of remains), available at http://www.srji.org/upload/medialibrary/570/israilova-remains-final-25-aug-2015.pdf.

27. In view of the apparent confidence of the authorities that the remains belong to the applicant's son, why have the remains not been turned over to the applicant for burial?

28. How are the investigating authorities going to identify the perpetrators, taking into account information received by the applicant and her representatives concerning the investigation that:

    - The authorities have failed to identify and question members of the FSB who participated in the kidnapping of the applicant's son, despite a series of conclusions of the investigating authorities that members of the Sverdlovsk region FSB took part in the operation which resulted in her son's disappearance. No one from the territorial department of the Sverdlovsk FSB had been interrogated by the investigating authorities.

    - The investigation requested documents stored in the Central Archive of the Ministry of Internal Affairs, but this request was ignored by the Archive.

    - The identity of particular FSB officers was established as a result of the interrogation of key witnesses, but none of these officers were ever questioned by investigators.[14]

29. When will the investigation carry out the (already sanctioned) identification of the clothing found on the remains with the applicant's participation?

[14] See submission of 25 August 2015, paras. 7-12. http://www.srji.org/upload/medialibrary/4d4/israilova-ccrf-final-25-august-2015.pdf