

Implementation of the first ECHR judgments relating to Chechnya

This brief Note provides a summary of the current position (as at January 2007) in relation to the implementation of the first judgments of the European Court of Human Rights relating to Chechnya.

1. Russia's response to the European Court's judgments in the first Chechen cases¹ has not been swift, or adequate in terms of the actions it has taken, or which it proposes to take. Chamber judgments in those cases were published on 24 February 2005, and they became final on 6 July 2005.² Payment of the damages and costs was made by the Russian Government within the requisite three month time limit, but there has been little progress as to what other steps need to be taken or changes implemented as a result of these judgments. On 4 October 2005 submissions were lodged with the Committee of Ministers on behalf of the applicants, as to the individual and general measures that they considered should follow from the judgments.³ In those submissions, the Committee of Ministers was referred to the Resolution of 10 October 2003 of the Plenum of the Supreme Court of the Russian Federation, which stated as follows (paragraph 11):

“The Convention on Human Rights and Fundamental Freedoms has a mechanism of its own which includes a compulsory jurisdiction of the European Court on Human Rights and a systematic monitoring over the execution of the decisions of the Court by the Committee of Ministers of the Council of Europe. In accordance with paragraph 1 of Article 46 of the Convention these decisions with regard to the Russian Federation adopted finally shall be binding on all State bodies of the Russian Federation including the courts. The implementation of the decisions related to the Russian Federation presumes, if necessary, the obligation on the part of the State to take measures of a private nature aimed at eliminating violation of human rights stipulated by the Convention and the impact of these violations on the applicant as well as measures of a general nature to prevent repetition of such violations. The courts within their scope of competence should act so as to ensure the implementation of obligations of the State stemming from the participation of the Russian Federation in the Convention on Protection of Human Rights and Fundamental Freedoms.”

2. The applicants' submissions made the argument that the cases represented the first opportunity for the Committee of Ministers to begin to monitor the compliance of the Russian Federation vis-à-vis its actions in Chechnya. It was

¹ Khashiyev v Russia (No. 57942/00), Akayeva v Russia (No. 57945/00); Isayeva v Russia (No. 57947/00), Yusupova v Russia (No. 57948/00), Bazayeva v Russia (No. 57949/00); Isayeva v Russia (No. 57950/00), Judgments of February 24 2005.

² As a result of the decision of the panel of judges not to refer the chamber judgments to the Grand Chamber following the request of the Russian Federation pursuant to Article 43 of the European Convention on Human Rights, the judgments became final on 6 July 2005 (Article 44(2)(c)).

³ Available on the EHRAC website at: <http://www.londonmet.ac.uk/research-units/hrsj/ehrac/ehrac-litigation/enforcement-of-chechen-judgments.cfm>. The applicants' submission were sent by the Committee of Ministers to the Russian Government on 7 October 2005.

argued that in the light of the experience in the Turkish cases, the Committee of Ministers should, as a priority from the outset, adopt a very rigorous and comprehensive approach to the question of compliance in respect of Chechnya. It was submitted that such an approach was required by virtue of Article 46(2) of the European Convention, but also that it would make an important contribution to the continuing effectiveness of the Court, a matter which was highlighted in the Heads of State and Government's Warsaw Declaration in May 2005.⁴

3. The applicants' submissions called for the following measures to be taken:

(a) wide dissemination of the judgments.

(b) Investigations and the re-opening of domestic proceedings.

4. It was said that this would require, firstly, an effective *investigation* of the incidents in question, and, secondly, where there is evidence to justify it, effective *prosecution* proceedings.⁵ The applicants recalled that the Committee of Ministers has also emphasized the obligation on states to conduct an investigation "that is effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified".⁶ They also noted the Committee of Ministers' "consistent position" that there is a "continuing obligation to conduct such investigations inasmuch as procedural violations of Article 2 were found".⁷

(c) Changes in legislation, regulations and practice.

5. The applicants' submissions recalled that the Russian Constitutional Court judgment of 31 July 1995⁸ recognized the applicability of Additional Protocol II of the Geneva Conventions (relating to the protection of victims of non-international armed conflicts) with respect to the armed conflict in Chechnya, but noted that the Protocol was not duly respected because insufficient

⁴ See, for example, *Implementation of judgments of the European Court of Human Rights*, Introductory Memorandum, Committee on Legal Affairs and Human Rights, Mr Erik Jurgens, AS/Jur (2005) 35, 20 June 2005, para. 6.

⁵ See, e.g., Interim Resolution ResDH(99)434.

⁶ Interim Resolution ResDH(2005)20, 23 February 2005.

⁷ Interim Resolution ResDH(2005)20, 23 February 2005. See also Interim Resolution ResDH(2005)44, 7 June 2005 (re *Cyprus v Turkey*).

⁸ Постановление Конституционного Суда Российской Федерации от 31.07.2005 г. № 10-П по делу о проверке конституционности Указа Президента Российской Федерации от 30 ноября 1994 года № 2137 «О мероприятиях по восстановлению конституционной законности и правопорядка на территории Чеченской Республики», Указа Президента Российской Федерации от 9 декабря 1994 года № 2166 «О мерах по пресечению деятельности незаконных вооруженных формирований на территории Чеченской Республики и в зоне осетино-ингушского конфликта», постановления Правительства Российской Федерации от 9 декабря 1994 года № 1360 «Об обеспечении государственной безопасности и территориальной целостности Российской Федерации, законности, прав и свобод граждан, разоружения незаконных вооруженных формирований на территории Чеченской Республики и прилегающих к ней регионов Северного Кавказа», Указа Президента Российской Федерации от 2 ноября 1993 года № 1833 «Об основных положениях военной доктрины Российской Федерации».

measures had been taken for the national implementation of its provisions. The Constitutional Court held, inter alia, that:

“The Federal Assembly of the Russian Federation shall regularize the legislation on the use of the armed forces of the Russian Federation, as well as the regulation of other matters which can arise in extraordinary situations or during conflicts, including those resulting from the Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the protection of the victims of non-international armed conflicts”.

6. The applicants submitted that the terms of Additional Protocol II should be translated into military law and practice, through the Rules of Engagement (applying to each branch of the armed forces), and through appropriate amendments to all other relevant legislation, for example on states of emergency.
7. The applicants also called for the overhaul of the Army Field Manual and the Internal Troops Field Manual (and the equivalent manuals for other branches of the armed forces) to ensure compliance, inter alia, with the European Convention on Human Rights, and in particular the principle of proportionality.⁹

(d) Training of the armed forces, security forces, law enforcement agencies, prosecutors and judges as to respect for the standards set down by the European Convention on Human Rights.

8. The applicants finally advocated a wide-ranging review and overhaul of the human rights training of public officials.¹⁰
9. The Russian Government’s Official Statement to the Committee of Ministers on these cases was lodged with the Committee of Ministers on 29 March 2006.¹¹ The Government’s submissions stated that the decisions to discontinue the criminal cases related to the case of *Isayeva, Yusupova and Bazayeva* and that of *Isayeva v Russia* had been quashed on 14 November 2005 (pursuant to Articles 214 and 413 of the Criminal Procedure Code, and in the light of Article 46 of the European Convention and Committee of Ministers’ Recommendation R(2000)2 on the re-opening of cases at the domestic level). Investigations into those cases were said to be continuing, including the questioning of military officials who were involved in the planning and conduct of operations in 1999-2000, in order to check the proportionality of the use of force and to enquire about measures taken to ensure the safety of civilians. Furthermore, the decision to suspend the criminal proceedings

⁹ A similar requirement has been laid down in respect of the proportionality of restrictions on freedom of expression in Turkish law: see *Implementation of judgments of the European Court of Human Rights – Court judgments pending before the Committee of Ministers for control of execution for more than five years or otherwise raising important issues*, Working Paper, Committee on Legal Affairs and Human Rights, Mr Erik Jurgens, AS/Jur (2005) 32, 9 June 2005, p. 31.

¹⁰ See e.g. Interim Resolution ResDH(2005)43, 7 June 2005.

¹¹ Available on the EHRAC website at: <http://www.londonmet.ac.uk/research-units/hrsj/ehrac/ehrac-litigation/enforcement-of-chechen-judgments.cfm>

related to the case of *Khashiyev and Akayeva* had been quashed and the investigations in that case were said to be continuing.

10. The Government's Official Statement also described measures of dissemination of the judgments (to Ministries and other Government agencies, the Supreme Court and to all prosecutors in the constituent regions of Russia), noting that translations had been posted on the Ministry of Defence website and that translations would be published in *The Bulletin of the European Court of Human Rights – Russian Edition*. The Government also described in some detail the human rights training that is given to those serving in the armed forces, although it was not apparent whether any changes had been introduced in the light of the European Court's judgments in the first Chechen cases.
11. Moreover, the Government's Official Statement made two further intriguing statements, but with no additional details: firstly, that a revised manual on international humanitarian law for the armed forces was "in the phase of its completion", and, secondly, that a procedure to pay compensation as a result of ineffective investigations into human rights violations committed in the course of anti-terrorist operations in the North Caucasus was "being worked out".
12. In response to information received from the Government about the Chechen cases, the Committee of Ministers has welcomed the new impetus which has apparently been given to the domestic investigations, whilst urging "rapid and visible progress in their conduct".¹² On 29 June 2006 the secretariat of the Committee of Ministers produced a Memorandum about the execution of the three Chechen judgments which acknowledged that the cases "would appear to require important and individual and general measures".¹³ This Memorandum identified three key areas for the adoption of general measures:
 - Improving the legal and regulatory framework governing the activities of the security forces;
 - Awareness raising and training of members of the security forces; and
 - Improvement of domestic remedies in cases of abuses.
13. As to the legal framework, the Memorandum suggested that there needed to be an assessment as to whether the four laws referred to by the Government as governing the actions of the security forces¹⁴ were capable of preventing further similar violations of the Convention. It also sought information about the regulatory (by-law) framework of the army in the context of similar

¹² Ministers' Deputies Decision CM/Del/Dec(2006)955, 22 February 2006. See also Ministers' Deputies Decision CM/Del/Dec(2006)960, 12 April 2006.

¹³ *Violations of the ECHR in the Chechen Republic: Russia's compliance with the European Court's judgments*, CM/Inf/DH(2006)32 29 June 2006. The Memorandum was classified restricted at its date of issue and was only declassified at the 976th (DH) meeting of the Ministers' Deputies on 17-18 October 2006.

¹⁴ The new law "on Counterterrorism" of 6 March 2006; the Law on the Interior Forces of the Ministry of the Interior of 6 February 1997, as recently amended; the Law on the Federal Security Service of 3 April 1995; and the Law on the Status of Military Servicemen of 27 May 1998.

security operations, and about two other legal acts which had been referred to by the Government in the course of the Court proceedings, but without having been named. Finally, it requested further details about the proposed revision of the manual on international humanitarian law for the armed forces.

14. The Memorandum welcomed the dissemination of the judgments, but remarked on the need for there to be detailed comments and instructions accompanying them to explain the extent of the obligations arising from the judgments and the implications for day to day practice. It sought further information about training provided to the armed forces, notably the Air Force, given their involvement in the cases before the European Court.
15. As to the question of effective remedies in cases of abuse, the Memorandum makes it clear that “it remains to be assessed to what extent the current procedures as amended by the new Code of Criminal Procedure and their implementation conform to the detailed requirements of the Convention”. It posed a series of searching questions about the efficacy of investigations, in relation to: where the responsibility to investigate lies, and what are the guarantees for independence and impartiality; what are the respective powers and means of general prosecutors and of military prosecutors vis-à-vis the police and the armed forces; what remedies and sanctions are available in respect of a failure by state officials to respond appropriately to allegations of serious crime; what rights are available to the victim (including rights of access to files and rights of appeal); how promptness of investigations can be ensured; and what statutory limitations apply in respect of different abuses. Furthermore, information as to the applicability of the principle of command responsibility was requested from the Government.
16. The secretariat also requested further information about the procedure proposed to allow victims to seek compensation for ineffective investigations, and indeed advocated a special procedure being established which would provide direct state compensation for damages resulting from anti-terrorist activities in the Chechen Republic.

Conclusion

17. The June 2006 Memorandum from the Committee of Ministers thus indicates that detailed scrutiny is now being undertaken with respect to the implementation of the first Chechen judgments. However, the response of the Russian Government has been far too slow, and insufficient in many respects - and it would appear that the Committee of Ministers’ supervision, under Article 46(2) of the Convention, has allowed it to be so. If commentators like Abdel-Monem were correct to argue that the European Court represents Chechnya’s “last chance”¹⁵, then implementation becomes an even higher priority. The Committee on Legal Affairs and Human Rights (of PACE) has again recently called on the Russian authorities to implement the judgments

¹⁵ T. Abdel-Monem, *The European Court of Human Rights: Chechnya’s Last Chance?* Vermont Law Review Vol. 28 (2003-2004) 236-297.

relating to Chechnya as rapidly as possible.¹⁶ It is to be hoped that lessons can actively and more rapidly be learned from the collective experience in responding to egregious human rights abuses perpetrated by security forces in Northern Ireland and Turkey. The extent and complexity of the problems surrounding implementation in the first Chechen cases demonstrates again the real limitations of the individual rights mechanism of the European Court as a forum for resolving wide-scale, systemic and serious human rights violations of the sort which have occurred in Chechnya.¹⁷

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¹⁶ *Implementation of judgments of the European Court of Human Rights*, PACE Resolution 1516 (2006), 2 October 2006, para. 13.

¹⁷ See also: M. Henry, *Tchéchénie: La Réaction Du Conseil De L'Europe Face à La Russie*, L'Harmattan, 2004. Henry suggests: "...le principal problème rencontré par la Cour réside essentiellement dans l'inadaptation du système prévu par la Convention à des situations de conflit grave avec des violations massives et répétées des droits de l'homme" (at 31).