



Rule 9(2) submission to the Committee of Ministers' of the Council of Europe concerning implementation of the 'Khashiyev & Akayeva group' of cases.

19th February 2015

1. Introduction

1.1 This submission is communicated by the European Human Rights Advocacy Centre ['EHRAC'] and Memorial Human Rights Centre ['Memorial HRC'] as non-governmental organisations under Rule 9(2) of the Rules of the Committee of Ministers.

1.2 The submission addresses long-standing issues relevant to the execution of the more than 200 judgments now contained within the 'Khashiyev & Akayeva group'. The majority of the judgments in question relate to offences and violations which occurred during the years 2000-2006 within the context of the Chechen conflict and which reflect the various practices which characterised that conflict, including cases of aerial bombardment (where the court has made clear findings as to the disproportionate use of lethal force); extra-judicial killings; enforced disappearances and torture. The majority of the cases within this group involve violations of the right to life under Article 2 of the Convention.

1.3 For monitoring purposes, the two key defining features of this group of cases are:

- a) the involvement of Russian security forces in the commission of the relevant violations found by the court;
- and
- b) the absence of any effective domestic criminal investigation into the underlying crimes revealed either before or after the Court's judgments.



1.4 Supervision by the Committee of Ministers commenced in 2005 when the first three ECtHR cases arising out of the Chechen conflict were handed down. Since that date, the number of cases which continue to fall within the grouping has increased steadily. By contrast, little progress has been made in addressing the overriding culture of impunity for crimes committed by security forces within the region or the systemic nature of their actions over now more than 15 years.

1.5 In a number of strident judgments since 2005, the Court has identified clear steps towards implementation to be taken by the Russian Government, either in respect of individual cases or on a systemic level. These steps include (but are far from limited to) the creation of a single and sufficiently high-level body in charge of solving disappearances within the region.

1.6 Now ten years after the first judgments, it is difficult to discern any area in which successful implementation has been achieved by the Russian Government, or indeed even commenced. In many instances, the Russian Government has clearly expressed its intention to disregard the Court's recommendations on specific points, stating *inter alia* that there is "no need" for the recommended steps.¹ Furthermore, the Government contends that in respect of a significant number of cases within the group, a statute of limitations will become applicable imminently this year and in some instances this week.

2. January 2015 submission by the Russian Federation

2.1 The 'Khashiyev & Akayeva group' of cases was last considered by the Committee of Ministers ['CoM'] in September 2014, following which, the Deputies,

¹ DD-DH(2015)23 Communication from the Russian Federation concerning the Khashiyev group of cases against Russian Federation (Application No. 57942/00) dated 8 January 2015.



“noted with grave concern that the information provided does not attest to any improvement in the capacity of the present system of criminal investigations to handle the problem of the persons reported as missing despite the efforts deployed and that the problems revealed by the Court’s judgments thus remain unresolved”

and

“...insisted that the Russian authorities take, without delay and with due regard to the indications given by the Court and the Committee, the measures necessary to create a single and high level body mandated with the search for persons reported as missing as a result of counterterrorist operations in the North Caucasus...”

2.2 The Russian Government submission reveals that since that date, once again, no steps have been taken to comply with the CoM decision in relation to the creation of a single high level body. Neither is there any evidence that meaningful progress has been made towards the effective investigation of any of the other cases within the group.

2.3 In a 25 page document dated 8 January 2015, the Russian Government provides a quantity of general information (the majority of which has already been provided in previous briefings) which trumpets the purported efficiency of their current domestic provisions, but fails to genuinely engage with any of the underlying issues identified by the Court as being necessary for implementation.

2.4 The text portion of the document is accompanied by an appendix containing a form of “case progression” table which provides details including the status of criminal investigations, the date at which any statute of limitations would apply, and the use of amnesty provisions.²

² DD-DH(2015)23 Communication from the Russian Federation concerning the Khashiyev group of cases against Russian Federation (Application No. 57942/00) dated 8 January 2015



2.5 The impact of continued failures in implementation is clearly demonstrated within the appended table in a number of ways. Perhaps most importantly, it can be seen that:

- a) the Russian Government confirms its contention as to the relevant date of applicability for statute of limitations in relation to the listed cases (at least three expiring in February 2015); and
- b) investigations in all but 8 of the (more than 200) cases listed are currently suspended or terminated.³

2.6 Due to the volume of cases within the current group, it is beyond the scope of this submission to address each of the failures which remain to be addressed on every individual case. Consequently, two representative cases are highlighted below, both of which exemplify the types of issues which remain outstanding in this group of cases as a whole.

EXAMPLE 1

Enforced disappearance cases: *Aslakhanova v Russia* - judgment of 2012

3.1 A high proportion of the cases within the Khashiyev group relate to cases of enforced disappearances. Human rights organisations have estimated the number of cases of disappearance in Chechnya to be between 3,000 -5,000 during the years 1999-2007,⁴ and the systemic nature of the problems characterising these cases was recognised by the Court in the case of *Aslakhanova v Russia* in 2012.⁵

3.2 In passing judgment in *Aslakhanova*, the Court noted it had adopted more than 120 similar judgments in such cases up to September 2012, and that more than 100 similar

³ DD-DH(2015)23 Communication from the Russian Federation concerning the Khashiyev group of cases against Russian Federation (Application No. 57942/00) dated 8 January 2015

⁴ See Human Rights Watch, *The Dirty War in Chechnya: Forced Disappearances, Torture and Summary Executions (2001)*; T.Scovazzi & G.Citroni, *The Struggle against Enforced Disappearance and the 2007 United Nations Convention* (Martin Nijhoffm 2007); *Russian Federation: What justice for Chechnya's disappeared?* (Amnesty International July 2007) EUR 46/026/2007

⁵ Applications nos. 2944/06 and 8300/07, 50184/07, 332/08, 42509/10) dated 18th December 2012



cases had been communicated and more were pending. The Court thus concluded that exceptionally, it felt:

*“...compelled to provide some guidance on certain measures that must be taken, as a matter of urgency, by the Russian authorities to address the issue of the systemic failure to investigate disappearances in the Northern Caucasus.”*⁶

3.3 A selection of the key measures enumerated by the Court in the Aslakhanova judgment are set out below, together with a summary of the Russian Government response.

a) Single high-level body

- Recommendation: In 2012, the Court recommended the creation of a single, sufficiently high-level body in charge of solving disappearances in the region, which would: *“enjoy unrestricted access to all relevant information; would work on the basis of trust and partnership with the relatives of the disappeared and could compile and maintain a unified database of all disappearances.”*⁷ The Court further recommended that steps be taken to ensure that neither the investigation(s) or supervision of investigation(s) be entrusted to persons or structures who could be suspected of being implicated in the events at issue.⁸

- Government response: No steps have been taken by the Russian Government towards creating such a body and neither is there any evidence that steps have been taken to safeguard the independence of the relevant investigations. The consistent Government refrain in respect of the need for a single high-level body has been that there is “no need” for such a body because that which already exists within the Russian Ministry of Internal Affairs is “operating successfully”.⁹ As can be seen from the Government’s own ‘case progression’ table, this

⁶ Aslakhanova judgment paragraph 221 onwards

⁷ See Aslakhanova judgment paragraphs 223-225 onwards

⁸ See Aslakhanova judgment paragraph 235

⁹ DD-DH(2015)23 Communication from the Russian Federation concerning the Khashiyev group of cases against Russian Federation (Application No. 57942/00) dated 8 January 2015, page 1



response stands in stark contrast to the absence of meaningful progress in the criminal investigations of any of the cases within this group.

- **Proposal:** The striking absence of implementation in these cases coupled with the blatant refusal of the Russian Government to address the Court's clear recommendation in respect of the creation of a single high-level body would appear to leave the CoM with no option but to commence the process of infringement proceedings. Importantly however, it should be noted that the creation of such a body would be meaningless in practical terms unless it were to be combined with the political will to effectively investigate the cases concerned. One marker of the existence or otherwise of such political will might be the Government's ongoing attitude to some of the additional practical recommendations made by the Court as set out below.

b) Resources for scientific and forensic work:

- **Recommendation:** The Court noted that the effective investigation of these cases required the allocation of specific and adequate resources to carry out large-scale forensic and scientific work on the ground, including the location and exhumation of presumed burial sites; the collection, storage and identification of remains and, where necessary, systematic matching through up-to-date genetic databanks The Court further commented that *"it would appear reasonable to concentrate the relevant resources within a specialised institution, based in the region where the disappearances have occurred and, possibly, working in close cooperation with, or under the auspices of, the specialist high-level body mentioned above."*¹⁰
- **Government Response:** The Government response does not directly address the need for a forensic laboratory in the Chechen Republic as recommended by the Court but instead simply lists a number of institutions located outside the Chechen Republic which it describes as being *"situated in close proximity to the region"*. More importantly, regardless of the location of these institutions, there

¹⁰ See Aslakhanova judgment paragraph 226



is no evidence that any financial resources have been made available since 2012 for the purpose of the important forensic and scientific work envisaged by the Court.

➤ **Proposal:** In the absence of any evidence that resources have been made available since 2012 for the purpose of any of the specific tasks identified by the Court, it is proposed that the Russian Government be asked to urgently provide (ideally in tabular form):

- a) a list of all presumed burial sites within the region;
- b) the date on which each of the relevant sites was identified;
- c) the proposed date on which exhumation of each of the identified sites will take place and the means by which storage and identification of remains will be safeguarded; and
- d) a time-bound proposal for identifying and exhuming all remaining burial sites.

c) Identification of special operations leading agencies and commanding officers:¹¹

➤ **Recommendation:** In light of the suspected involvement of a number of military and security agencies in the relevant operations, the Court noted that in order for such investigations to be effective, the investigative authority would have to:

- i) identify the leading agencies and commanding officers of special operations aimed at identifying and capturing suspected illegal insurgents in given areas and at given times (even if exceptional security concerns might mean such identification is occasionally only provided by rank and office);
- ii) clarify the procedure for recording and reporting such operations;
- iii) clarify responsibility for detainees within those arrangements;

¹¹ See Aslakhanova judgment paragraph 233



- iv) where applicable, gain access to records of the passage of service vehicles through security roadblocks, including during curfew hours, which the Court noted as being “a recurrent feature of many such abductions.”¹²
- **Government response:** The Government makes no comment in relation to any of these recommendations in its latest submission. Neither has any evidence been provided to indicate that any of the Court’s recommendations in this regard have been followed; nor has any explanation been put forward to explain such a notable absence.
- **Proposal:** In order to confirm the progress (or lack of) in respect of this set of recommendations, it is suggested that the ‘case progression’ table appended to the Government’s January 2015 submission could usefully be added to by way of additional columns serving to include:
- a) identification of the relevant commanding officer(s) in charge of any special operation(s) relevant to each of the cases included within the table;
 - b) identification of the relevant agency and commanding officer with responsibility for detainees within the circumstances of each of the cases; and
 - c) identification of any case in which service vehicles would have passed through any roadblock during curfew hours.

In accordance with the Court’s guidance, it is further suggested that in respect of each case, the following documentation be made available:

¹² See Aslakhanova judgment paragraph 233



- a) an index of documentation generated by the special operation in question with relevance to the dates of the relevant cases; and
- b) an index of the records of the passage of all service vehicles through all relevant roadblocks on the dates of each of the relevant cases.

d) **The adoption of a time-bound general strategy or action plan:**

- **Recommendation:** In *Aslakhanova*, the Court commented that “... *it is of utmost importance that the disappearances which have occurred in the region in the past become the subject of a comprehensive and concentrated effort on the part of the law-enforcement authorities...*” which in view of the clear patterns and similarities in the occurrence of such events, the Court considered to be “*vital... to elucidate a number of the questions that are common to all the cases where it is suspected that the abductions were carried out by State servicemen.*” The Court further noted that the plan “*should also include an evaluation of the adequacy of the existing legal definitions of the criminal acts leading to the specific and widespread phenomenon of disappearances.*”¹³
- **Government response:** There is no indication in the submissions of the Russian Government that any “*time-bound general strategy or action plan*” as recommended by the Court has been considered or agreed. To the contrary, the response of the Russian Government appears to be confined to broad vague generalities, lengthy but unrelated detail and bald denial. Neither is any reference made by the Russian Government to any evaluation of the adequacy of the relevant legal definitions as recommended by the Court.
- **Proposal:** It is proposed that the Russian Government be required to provide such a strategy with a view to addressing each and every aspect of the Court’s recommendations within a fixed time period (of no more than 2 years). The component parts of such a strategy might most helpfully be presented in tabular

¹³ See *Aslakhanova* judgment paragraph 232



form akin to the ‘case progression’ table appended to the January 2015 submission by the Russian Government, so as to provide a proposed completion date for each of the outstanding tasks identified.

e) **Access to case files for victims:**

- **Recommendation:** Noting the difficulties posed for victims in access to case files when an investigation remains adjourned for extended periods, the Court proposed *“setting a rule that victims would have access to the case files where the investigation has been suspended for failure to identify the suspects, with the possibility of exception for specific documents classified confidential or secret.”*¹⁴
- **Government response:** The Russian Government response provides no information in respect of this recommendation and there is no available information that any progress has been made towards instituting such a rule in Russia as recommended by the Court. No explanation has been provided for the failure to act upon this point. Furthermore, also in relation to the information available to victims, although the Government asserts in its submission that *“the practice of meetings with victims for discussion of problems that investigation and criminal investigation officers face and possible ways for their solution has been continued as well as the practice of presenting extended reports on the course and results of investigation to victims”*¹⁵, it is worthy of note that of those 36 applicants with whom it was possible to consult since receipt of the Government’s submission, not one has benefited from the above measures.
- **Proposal:** The Government of Russia be required to make the relevant legislative amendment forthwith. At paragraph 3.3 of the Russian Government’s January 2015 submission, reference is made to a centralized automated missing persons database and informational-search system which was created after the judgment in Aslakhanova and referred to as “Opoznanie”. In the interim period

¹⁴ See Aslakhanova judgment paragraph 236

¹⁵ See paragraph 3.2 of DD-DH(2015)23 Communication from the Russian Federation concerning the Khashiyev group of cases against Russian Federation (Application No. 57942/00) dated 8 January 2015



prior to the enactment of the relevant legislative change in the form recommended by the Court, it is proposed that the Russian Government be asked to make access to “Opoznanie” available to victims and victims’ representatives.

EXAMPLE 2

Isayeva No. 57950/00 24 Feb 2005 and Abuyeva 27065/05 1 Dec 2010

4.1 The cases of Isayeva and Abuyeva both relate to the aerial bombardment of Katyr Yurt village on 4-5 February 2000 resulting in massive civilian casualties. Notably, the Russian Government ‘case progression’ table as annexed to its January 2015 submission incorrectly groups together a different Isayeva case with that of Abuyeva, and to that extent is inaccurate and should be disregarded.¹⁶

4.2 As the Court has effectively considered the same underlying issues in both judgments, these cases provide a clear example of long-standing and specific failures to implement clear recommendations by the Court and therefore offer specific outstanding tasks to be monitored by the CoM.

4.3 The Court’s judgment in 2005 (Isayeva) noted a number of failings in the domestic investigation, including:

- a) a failure to identify a comprehensive picture of victims and witnesses;
- b) no realistic possibility for the applicant to challenge the military experts’ report relied upon or the conclusions of the investigation;
- c) few attempts made to find an explanation for credible allegations that residents were punished for lack of cooperation with the Russian military; and

¹⁶ See page 1, 1st entry of the appended table to DD-DH(2015)23 Communication from the Russian Federation concerning the Khashiyev group of cases against Russian Federation (Application No. 57942/00) dated 8 January 2015 which groups together the case of Isayeva, Yusopova and Bazayeva v Russia with the case of Abuyeva and others v Russia.



d) a lack of reliable information about declaration of safe passage for civilians.

4.4 The domestic criminal investigation was opened and closed three times between 2000 and 2010 without any discernible progress.

4.5 The Court's judgment in 2010 (Abuyeva), in respect of new applicants from the same incident, confirmed its findings in the Isayeva judgment in 2005 and found violations of Article 2 (substantive and procedural) in relation to the 29 additional villagers from Katyr Yurt.

4.6 In relation to the renewed investigation, the Court found that:

- a) all the major flaws of the investigation indicated in 2005 persisted throughout the second set of proceedings;
- b) no discernable steps had been taken to clarify crucial issues of responsibility for the safety of the civilians' evacuation and the 'reprisal' character of the operation;
- c) no evidence that any additional questions about these aspects of the operation were posed to the military or civilian authorities or to the servicemen involved at ground level;
- d) no one was charged with any crime; and
- e) serious doubts about the independence of the investigation.

4.7 The Court expressed grave dismay that "the respondent Government manifestly disregarded the specific findings of a binding judgment concerning the ineffectiveness of the investigation."¹⁷

4.8 Following the Abuyeva judgment in 2010: the domestic criminal investigation has reopened and closed for the fourth time during which time a new expert report was obtained from within the military (rather than an independent assessment) confirming the legality and proportionality of the force used.

¹⁷ See Abuyeva judgment paragraph 241



4.9 Thereafter, the investigation was reopened once more, but closed on 9 March 2013 following a decision by the domestic courts that (contrary to the findings of the ECtHR and without obtaining an independent review of the use of lethal force as set out by the Court), the use of lethal force in Katyr Yurt was legal; the population were properly informed about the military operation and had the possibility to leave the village.

4.10 A fresh application was made to the ECtHR in September 2014 in the Abuyeva case arguing *inter alia* that the current investigation is ineffective and therefore a violation of Article 2.

Proposals

4.11 14 years after the attacks in February 2000 and 9 years after the Court's first judgment relating to this attack in 2005 (Isayeva), the Russian Government has consistently failed to implement the Court's judgments and specifically to deal with the following key features of the Court's judgment:

- a. conduct an independent review of the use of lethal force upon the residents of Katyr Yurt including the legality of the selection of weapons for the military operation;
- b. make a full list of the victims of the attack or of the items destroyed as well as a full list of witnesses;¹⁸
- c. identify all the victims and witnesses of the attack;¹⁹
- d. ask additional questions posed to the military or civilian authorities or servicemen involved at ground level and in particular to question the soldiers who manned the roadblocks at exits from the village;²⁰

¹⁸ See Isayeva judgment paragraph 222

¹⁹ See Abuyeva judgment paragraph 207

²⁰ See Abuyeva judgment paragraph 210



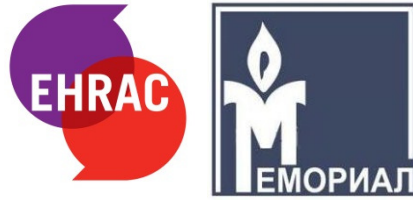
- e. examine the contradictions in the evidence given by different servicemen in relation to the selection of the targets for the attack;
- f. examine the extent of the risk to civilians during the military operation and the adequacy of those steps taken (if any) to safeguard civilian life as well as the measures taken to differentiate between legitimate and illegitimate targets; and
- g. clearly identify crucial facts for the examination of this case such as the number of illegal fighters in the village of Katyr-Yurt and the number of servicemen, the manner in which the population was informed about the operation, the manner in which roadblocks were operating in the exits from the village, the manner in which the targets of the attack had been selected.

4.12 It is submitted that in the context of the above chronology, the CoM would appear to have little option but to commence infringement proceedings.²¹

CONCLUSION

- 5. The response of the Russian Government with regard to the Court's specific recommendations in the above cases demonstrates entrenched patterns of non-implementation and disregard for the rule of law. This recurrent pattern in relation to cases of the utmost gravity over a period of more than ten years now presents a very real danger that no individuals will be held accountable for the grave crimes committed in these cases due to the passage of time and the Government's stance in relation to the potential application of statutes of limitation.
- 6. It is therefore of the utmost importance that the CoM uses all powers available to it in order to ensure full implementation of these cases as quickly as possible (including by use of infringement

²¹ See Request for initiation of infringement proceedings by the Committee of Ministers in relation to the judgment of the European Court of Human Rights in *Isayeva v Russia*, No.57950/00, 24 February 2005 <http://www.ehrac.org.uk/wp-content/uploads/2014/10/EHRAC-Memorial-Infringement-Proceedings-Request-FINAL-25.07.2012.pdf>



proceedings where appropriate) and to ensure that cases are carefully and regularly reviewed (ideally at 3 monthly intervals).

19th February 2015