Welcome to the Winter 2015 edition of the Bulletin

In December 1994, the Russian army began military operations in Chechnya, the start of what would become a long-standing conflict and the source of many human rights violations. Twenty one years later, the European Court of Human Rights has issued over 300 judgments concerning human rights abuses at the hands of State servicemen in the North Caucasus, but little has been done to bring perpetrators to justice. In her article commemorating the fifteenth anniversary since the massacre in the Chechen town of Novye Aldy, Mariat Imaeva (PhD Candidate, Dublin City University) explores the systemic failures in the investigation into the events of February 2000. Questions of why operations in the North Caucasus have led to such egregious human rights abuses were raised by the UN Human Rights Committee’s recent Concluding Observations on the Russian Federation’s seventh report on its implementation of the International Covenant on Civil and Political Rights, which EHRAC Lawyer Kate Levine and our former intern Giada Girelli discuss in their article.

Following the June 2015 landmark judgments in Sargsyan v Azerbaijan and Chiragov and others v Armenia concerning the right to return of refugees and internally displaced people who were victims of the Nagorno-Karabakh conflict, EHRAC Director Philip Leach analyses how these judgments should now be implemented. Implementation of judgments remains critical to ensuring the effectiveness of the European Court mechanism, and one which the Parliamentary Assembly of the Council of Europe recently examined in depth; EHRAC Consultant Ramute Remezaite summarises their findings in her article. Alexandra Ivakhnik (Office of the High Commissioner for Human Rights) also focuses on the implementation of a Council of Europe mechanism, discussing the application of the Convention on Action against Trafficking in Human Beings in Azerbaijan.

Two years have passed since the protests on Independence Square in Kyiv began. In March 2015, the International Advisory Panel, set up by the Council of Europe, published its report on whether investigations into the violence during the protests complied with the European Convention on Human Rights; Nadia Volkova (Ukrainian Helsinki Human Rights Union) summarises their findings. Russia’s annexation of Crimea in March 2014 seems to have been tacitly accepted by the international community; an article by Graham Donnelly (PhD Researcher, University of Glasgow) argues that the lack of criticism has allowed Crimean Tatars’ voice to be silenced.

Sabrina Vashisht
PR and Development Officer
Thawing the frozen conflict?

The European Court’s Nagorno-Karabakh judgments

Professor Philip Leach, EHRAC Director

This article was first published on the European Journal of International Law Talk! blog on 6 July 2015.1

Last September, Erik Fribergh, the Registrar of the European Court of Human Rights, told Government representatives on the Steering Committee for Human Rights (CDDH) that “the Court is...not equipped to deal with large scale abuses of human rights. It cannot settle war-like conflicts between States.”2 Yet, as Fribergh noted, the Court is increasingly being called on to adjudicate on such situations. Through the two Grand Chamber judgments delivered on 16 June (Sargsyan v Azerbaijan3 and Chiragov v Armenia4) the European Court entered into the terrain of international conflict resolution?

Both judgments upheld the European Convention rights of families displaced by the Nagorno-Karabakh conflict in the early 1990s, a conflict that created hundreds of thousands of refugees and internally-displaced persons (IDPs) on both sides, and which has remained unresolved in the ensuing decades. Peace negotiations have been held under the auspices of the OSCE ‘Minsk Group’ (co-chaired by France, Russia and the United States), but as the judgments make clear, settlement negotiations have repeatedly failed, due to the uncompromising attitudes of both Governments. The cases are legally important, given the Court’s position on the jurisdictional reach of the European Convention on Human Rights. They are politically significant too – in emphasising the importance of the two states establishing a property claims mechanism, and giving the parties to the cases 12 months to come back with proposals on redress, the Court has arguably given significant fresh impetus to the resolution of the ‘frozen conflict’.

To recap, Minas Sargsyan and his family, ethnic Armenians, lived in the village of Gulistan just north of the Nagorno-Karabakh region, but within Azerbaijan. In June 1992 the village was heavily bombed by Azerbaijani forces, and the villagers fled for their lives. The Sargsyans resettled as refugees in Armenia. The applicants in the Chiragov case were Azerbaijani Kurds living in the Lachin region which came under repeated attack and they too fled, in May 1992, shortly before the town of Lachin was captured by forces of Armenian ethnicity. They were subsequently not able to return to the region and therefore lived as IDPs elsewhere in Azerbaijan. In both cases the applicants’ complaints about the loss of their homes, land and property were upheld, with the Court finding continuing violations of their rights under Article 1 of Protocol 1, Article 8 and Article 13 of the Convention. These judgments need to be read together with the separate admissibility decisions published in December 2011.5

More than 20 years have gone by since the ceasefire agreement in May 1994 [...] without a political solution being yet in sight.

The potential impact of the judgments

What impact, if any, will these judgments have on future negotiations over the Nagorno-Karabakh conflict? It was a central feature of both judgments that the Court made resoundingly clear its view of the inadequacy of both states’ stances towards the settlement negotiations. For example, in Sargsyan, it underlined that:

“...it is the responsibility of the two States involved in the conflict to find a political settlement of the conflict... Comprehensive solutions to such questions as the return of refugees to their former places of residence, re-possession of their property and/or payment of compensation can only be achieved through a peace agreement. Indeed, prior to their accession to the Council of Europe, Armenia and Azerbaijan gave undertakings to resolve the Nagorno Karabakh conflict through peaceful means...Although negotiations have been conducted in the framework of the OSCE Minsk Group, more than twenty years have gone by since the ceasefire agreement in May 1994...without a political solution being yet in sight. As recently as June 2013 the Presidents of the Co-Chair countries of the Minsk Group...have expressed their ‘deep regret that, rather than trying to find a solution based upon mutual interests, the parties have continued to seek one-sided advantage in the negotiation process...’” (Sargsyan, para. 216)

The jurisdictional circumstances of each case were quite different. The Chiragov case concerned the extra-territorial reach of the Convention (did Armenia have jurisdiction over events occurring within the territory of Nagorno-Karabakh?), whereas in Sargsyan the more novel question was whether Azerbaijan was still considered to exercise jurisdiction over a part of its own territory over which it claimed to have lost control.

In the Sargsyan case, the location and status of the village of Gulistan, where the Sargsyan family had lived, was highly contested – notably as to its proximity to the two states’ military positions. On the available evidence, the Court found that it was not established that Azerbaijani forces were (or had been) present in Gulistan; however, there was also no evidence that the “Nagorno-Karabakh Republic” had positions or troops in the village. The Grand Chamber therefore concluded that as the village was situated in the internationally recognised territory of Azerbaijan, a presumption of jurisdiction applied (see Assanidze v Georgia (No.71503/01) 08.04.04 and Ilasçu v Moldova and Russia (48787/99) 08.07.04). A limitation of a state’s responsibility had only previously been accepted in respect of areas where another state or separatist regime exercised effective control, and the Court rejected the Azerbaijani Government’s argument that this should be extended to disputed zones, or “areas which are rendered inaccessible by the circumstances”.

References

As Gulistan was situated in an area of military activity, the Court found that it was justifiable on grounds of safety to refuse the former villagers access to it. Nevertheless, in such a situation, the State still had a “duty to take ‘alternative measures’ in order to secure property rights”, which were a key pillar of the negotiations:

“The right of all internally displaced persons and refugees to return to their former places of residence is one of the elements contained in the 2007 Madrid Basic Principles which have been elaborated in the framework of the OSCE Minsk Group...and form the basis of the peace negotiations.” (Sargsyan, para. 236)

The mere fact that peace negotiations were on-going did not absolve the two Governments from taking other measures, especially when negotiations had been pending for such a long time, without leading to tangible results. In both cases, the Court directed the Governments’ attention towards international standards on property rights (notably the UN Pinheiro Principles’), concluding:

“...it would appear particularly important to establish a property claims mechanism, which should be easily accessible and provide procedures operating with flexible evidentiary standards, allowing the applicant and others in his situation to have their property rights restored and to obtain compensation for the loss of their enjoyment.” (Sargsyan, para. 238, Chiragov, para. 199)

How likely is it that these decisions will lead to real change on the ground? There is a positive precedent in the context of another long-standing and intense political dispute – property claims in northern Cyprus.

In its 2005 judgment in Xenides-Arestis v Turkey (No. 46347/99) 22.12.05, the Court directed the Turkish government to introduce a mechanism of redress for property claims within three months, which led to the establishment of the Immovable Property Commission (IPC) (which composition included a former Secretary General and Deputy Secretary General of the Council of Europe). Subsequently, in its decision in Demopoulos v Turkey (No. 46113/99) 01.03.10, the Grand Chamber found that the IPC provided an accessible and effective framework of redress.

Elsewhere, the Court made a creative, and ultimately successful, contribution to resolving large-scale property claims in Poland, stretching back to the aftermath of the Second World War (Broniowski v Poland (No. 31443/96) 22.06.04). It has also directed a number of states (albeit with mixed results) to introduce mechanisms to redress mass property claims: examples include Romania9, Albania10 and Italy11. Furthermore, the Court can be increasingly prescriptive in such contexts, for example, directing states to take measures in order to prevent the unlawful occupation of immovable property (Sarica and Dilaver v Turkey, (No. 11765/05) 27.05.10) and stipulating factors to be taken into account in calculating compensation for expropriated property (Yeti v Turkey (No. 40349/05) 06.07.10).

The Nagorno-Karabakh judgments provide an unprecedented opportunity for the international community to seek to ensure that the victims of the conflict – the hundreds of thousands of refugees and IDPs – can now receive redress. In the light of recent reports that the situation between the two states is in fact worsening,12 there is an even greater urgency for the deadlock to be broken. Both states are, and will continue to be, in violation of the European Convention unless and until the two Grand Chamber judgments are implemented. So, will the three co-chairs of the OSCE Minsk Group take this opportunity to exert the requisite diplomatic pressure on the two states? Given the confidential nature of the Minsk process, it is very hard to say how the co-chairs will respond. However, as a result of the judgments, a new player now has a role in the resolution process, namely the Council of Europe, which is in a position to pursue the interests of the individual victims of the conflict, independently of the political machinations inherent in the OSCE Minsk Group negotiations. Using the two Grand Chamber judgments as (legally binding) pressure points, Council of Europe states have a significant and timely opportunity, through the Committee of Ministers’ implementation process, to exert a level of influence which could be decisive.

Notes
1. An extended version of this article can be found here: www.ehrac.org.uk/FSA6v
4. Chiragov and others v Armenia (No. 13216/05) 16.06.15 http://goo.gl/lC9CD
5. The admissibility decision in Sargsyan can be found here: http://goo.gl/8663BM and Chiragov here: http://goo.gl/48SeFh
11. http://goo.gl/FqTuHq

Moscow’s approach to the Crimean Tatars

Silencing of international and local criticism

Graham Donnelly, PhD Researcher, University of Glasgow, Visiting Fellow, European Centre for Minority Issues.

In the Winter 2014 EHRAC Bulletin, the author noted the stark outlook forecast by leading human rights monitors for the Crimean Tatar community under the Kremlin’s rule. However, despite the gravity of such warnings, there remains a serious lack of information emanating from the peninsula and from leading international organisations.

Silencing international and local criticism

According to one legal adviser working with an international organisation in the region, the Russian Federation has successfully intimidated most international organisations into adopting a hands-off approach to Crimea. After the Organisation for Security and Cooperation in Europe’s (OSCE) failure to enter the peninsula when blocked by militia at the administrative boundary line, a collective unspoken acceptance has set in amongst these actors, and a distinct lack of willingness to confront the Russian Federation has taken a firm grip, for fear of provoking Russian anger.

The absence of international monitors has been compounded by the addition of the Ukrainian-Russian collaborative human rights monitor the Crimean Human Rights Field Mission (CHRFM) to the Kremlin’s list of ‘undesirable’ organisations; a move which provoked criticism even within the Russian Federation from the Presidential Council on Human Rights.

This is but the latest in a series of attempts to silence internal criticism of the new regime.

In the wake of the expulsion of leading Crimean Tatars in the aftermath of the annexation of the peninsula, Russian repressions have continued in a familiar manner, with high-profile arrests, the silencing of independent media, restriction of the freedom of movement, exile

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and the creation of a pro-Moscow Crimean Tatar cadre, providing an indigenous voice to extol the virtues of Moscow rule.

In January, for example, four Crimean Tatars – Deputy Chairman of the Crimean Tatar Mejlis,1 Akhtem Chigoz; Eskender Kantemirov; Eskander Ecsender; and Talyat Yunousov – were arrested and remain in detention to date in connection with a clash in front of the Crimean parliament in 26 February 2014, prior to the Russian annexation.

It is not only political opponents that have been silenced. In April, the only Crimean Tatar TV channel ATR was forced to close, having been warned about its ‘extremist activities’. A senior figure at the station told the Guardian newspaper that he was instructed to cease reporting on negative aspects of the regime.3 He refused. The sentence: death by bureaucracy.

After repeated attempts to register the channel, spelling mistakes in the requisite forms, apparently, cost the channel dear. The Crimean Prime Minister described the errors, which made registration impossible, as an attempt by the channel to inflame the situation on the ground.

Despite the closure, ATR opened again in June, though this time in Kiev, with a number of staff remaining on the peninsula. However, these staffers remain without accreditation as journalists by the de facto authorities. ATR broadcasts into Crimea via satellite, and distributes material online. As yet, neither of these avenues has been blocked by Moscow or Simferopol.

Navigating the Future

Whilst Moscow appears, on the surface, immune to Western criticism and the key international organisations appear hamstrung, the Crimean Tatars are not completely without advocates in the world.

In the first instance, both the Council of Europe Commissioner on Human Rights, Nils Muižnieks, and Secretary General, Thorbjørn Jagland, continue to express their concern about the situation facing media freedom in Crimea, with the closure of ATR described by the Commissioner as having sent out a “chilling message to media professionals on the peninsula.”4 The Secretary General, perhaps more diplomatically, offered the Russian Federation the Council of Europe’s ‘soft’ consequences in the form of a delegation publishing a damning critique of the situation on the peninsula, with a wide range of issues, including property rights, media freedom and religious freedom all described in particularly negative terms.5

Whilst the significance of such expert reports may be questioned, it is particularly significant that this ‘unofficial’ report was hand-delivered to President Putin by President Erdoğan of Turkey himself, in what must be the single most high-profile intervention to date by any international figure on behalf of the Crimean Tatars.6

Further illustrating the mutual significance of the relations between the Turkish government and the Crimean Tatars, the Crimean Tatar World Congress met in Ankara in July 2015, as the situation in Crimea precluded the peninsula as the venue for the event. This was followed in early August by President Erdoğan’s meeting with exiles Dzhemilev and Chubarov, where the President committed Turkey to lobbying Moscow on the community’s behalf.7

The role of Turkey here is particularly noteworthy, for it has not joined the list of countries imposing sanctions on Russia. The significance of Turkey as a trade partner and its presumed status as favoured Western partner for the Kremlin, therefore, gives Ankara an added significance for the Crimean Tatars.

However, whilst the Crimean Tatars may be somewhat reassured in the knowledge that they have vocal advocates within leading international institutions and at the heart of the Ankara establishment, this must be cold comfort in the day-to-day reality of life in the new Crimea, where Moscow and Simferopol brook no opposition and are content to ignore their international commitments and the mechanisms designed in the 1990s by the international community to regulate complex inter-ethnic situations. Similarly, the influence of Ankara in the Kremlin shouldn’t be overstated. On the eve of the international gathering in Ankara, two attendees from Crimea were barred from attending. They were suddenly required to appear before an investigative committee to discuss the clashes which saw several of their colleagues imprisoned.10

A Failed International System?

Crimea illustrates the limitations of the institutional and legal response by the international community to the implosion of Yugoslavia.

The system of Recommendations, Charters, Advisory Committees and other soft law mechanisms, which rely upon political pressure to coerce states into applying minimalist standards of ethno-national accommodation, were a construct of their time; a compromise designed with the small, weak states emerging from the break up of Yugoslavia and the Soviet Union in mind.

The Russian Federation, however, is willing to accept the ‘soft’ consequences of its actions. The OSCE High Commissioner on National Minorities continues to be denied access to Crimea, in breach of Russia’s obligations as part of its participation in the OSCE. The Russian Federation was due to submit its State Report to the Council of Europe’s Advisory Committee on the Framework Convention on National Minorities in December 2014. To date the Council of Europe has not received this. Until it does, the Committee cannot subject the Russian Federation to its scrutiny. There is no compulsion in the system. Russia may simply keep Crimea closed from scrutiny and accept that in the short term this may cause some unwelcome criticism.

What now?

How should or could the international community respond? In the normal course of international affairs, international monitoring and criticism is based on the assumption that states fear a negative assessment which wounds their international prestige. However, the situation in Crimea is not in the normal course of events. Russian armour against such criticism appears thick.

Nevertheless, even as the power of such criticism to influence post-annexation realities for the Crimean Tatars seems limited, the Ukrainian crisis will, presumably, come to some resolution one day. The priority for advocates of the Crimean Tatars until then must be to keep the issues facing them alive, such that when the time comes, they have a foundation upon which to establish a firm link between the resolution of the crisis on the one hand and the protection of the rights of Crimean Tatars on the other.

Notes

1. Interview 20 August 2015
3. Crimean Tatar Representative Assembly
Euromaidan

The International Advisory Panel’s verdict

Nadia Volkova, Ukrainian Helsinki Human Rights Union

Overview

‘Maidan’ (also known as ‘Euromaidan’ or ‘Revolution of Dignity’) is the collective name for a wave of national patriotic protests, mostly against corruption, arbitrariness and abuse of power by Ukrainian law enforcement officers and Special Forces, which took place in support of Ukraine’s European integration between 21 November 2013 and 22 February 2014.

Demonstrations and civil unrest began on the night of 21 November 2013 with public protests in Maidan Nezalezhnosti (Independence Square) in Kyiv, as a reaction to the Resolution by the Cabinet of Ministers of Ukraine on the suspension of the preparation process for signing the EU-Ukraine Association Agreement. The scope of the protests expanded, with many calling for the resignation of President Viktor Yanukovych and his government. The protests ultimately led to the 2014 Ukrainian revolution. Many protesters joined because of the violent dispersal of protesters on 30 November and “a will to change life in Ukraine”. By 25 January 2014, the protests had been fuelled by the perception of “widespread government corruption”, “abuse of power”, and “the violation of human rights in Ukraine”.

What began as peaceful protests spiralled out of control on 18 February 2014 and descended into violence when “Berkut” (special forces) used severe tactics to repress protesters: water cannons (when temperatures were well below freezing), tear gas and gun fire (from both protesters and government forces). On 21 February 2014 the violent storming of the Maidan protest camp in Kyiv left 77 dead and over 600 injured (from both sides of the barricades, but mostly protesters). A peace deal was brokered on 21 February 2014 between the opposition (representatives of the protesters) and the old government, resulting in a change of power and the flight of the President Yanukovych and his closest allies.

The International Advisory Panel (IAP)

The IAP was established by the Secretary General of the Council of Europe in April 2014 to ensure that investigations into the violence during the Maidan protests complied with the requirements of the European Convention on Human Rights (the Convention). The IAP report was published on 31 March 2015. In compiling the report, the IAP made a series of detailed requests for information from various Ukrainian authorities and invited NGOs to submit their observations. It also held a series of meetings in Kyiv with the authorities and NGOs between August to December 2014, and took into account developments until 23 February 2015.

The IAP’s analysis

The IAP divided its assessment into investigations of incidents prior to and after 22 February 2014.

The subject of investigations prior to 22 February 2014 included: illegal dispersal of protesters in the early morning of 30 November 2013; the assaults on Ms Chernovol, Mr Havryliuk and Mr Bulatov, kidnapping of Mr Lutsenko and Mr Verbytsky; the subsequent murder of Mr Verbytsky; unlawful arrest and pre-trial detention of hundreds of protesters; and fatal shootings on 22 January 2014. The IAP concluded that although there were many operational obstacles to carrying out effective investigations during the three months of Maidan demonstrations, there was no genuine attempt prior to 22 February 2014 to pursue investigations into the acts of violence committed. This inevitably meant that investigations did not begin promptly which, of itself, constituted a substantial challenge for the investigations which took place thereafter.

Investigations after 22 February 2014 concerned the incidents referred to above, as well as a stand-off between protesters and law enforcement officials between 18 and 21 February 2014, which left many dead and injured.

The IAP evaluated the investigations conducted by the national authorities into each incident against the standards of Articles 2 and 3 of the Convention (including: independence; effectiveness; promptness and reasonable expedition; public scrutiny; and involvement of victims and next-of-kim). The IAP reached the following conclusions:

1. Independence of the investigating bodies

The IAP found that in certain important aspects, the investigations into the Maidan cases lacked practical independence where the investigating body belonged to the same authority as those under investigation. Furthermore it concluded that the appointment of certain officials to senior positions in the Ministry of Interior (MoI) – one of the main investigative bodies – contributed to the lack of appearance of independence and served to undermine public confidence in the readiness of the MoI to effectively investigate the crimes committed during Maidan.

2. Effectiveness of the investigations

The IAP noted the absence of continuity at senior prosecutor level in the Prosecutor General’s Office (PGO), the main authority charged with the investigations of Maidan-related incidents. The IAP found that the appointment of three successive Prosecutors General in the first 12 months was detrimental to the investigations from the standpoint of their overall directions and the credibility of the authorities’ response to the Maidan violence. The IAP also found the allocation of work was incoherent and inefficient, and supervision to have been ineffective. Furthermore, cooperation among the key investigative authorities was found to be ineffective and obstructive. The IAP concluded that the decisions of the district courts failed to comply with the requirements of Articles 2 and 3 ECHR, which in turn undermined the ultimate effectiveness of the Maidan investigations.

3. Promptness and reasonable expedition of the investigations

In addition to the inactivity of the investigative authorities prior to 22 February 2014, the IAP found serious deficiencies in the investigations thereafter, which significantly protracted the investigative response to the violent events in Maidan, thereby rendering those investigations slow and ineffective which have not brought any tangible results to this day.

4. Public scrutiny of the investigations

Ensuring a sufficient degree of public scrutiny is a necessary component of securing accountability for violence perpetrated by the State. The IAP identified the lack of a coordinated communication policy by the three competent investigating bodies to ensure the delivery of consistent and comprehensive information about the investigations. This in turn frustrated the availability of such information and undermined its purpose.

5. Involvement of victims’ relatives

Under Ukrainian law, victims of crime have the right to have access to the casefile, once the pre-trial investigation has ended. Given that the investigations into the crimes committed at Maidan have concluded in so few cases, the IAP found it difficult to draw general conclusions as to the adequacy of the involvement of victims’ relatives. However, the IAP did consider that information provided to the public to date was insufficient to protect the rights and legitimate interests of the victims and relatives.
Conclusion

The IAP’s report draws attention to serious deficiencies, both structural and operational, in the independence and effectiveness of the investigations that had been carried out. Further, the report notes numerous ways in which the investigations do not comply with ECHR standards. In light of the IAPs’ findings, serious challenges facing the investigation authorities prevail. It is nonetheless hoped that the authorities will be guided by the IAP’s conclusions, and progress will be made in the investigations. This in turn would help to restore public confidence in the Ukrainian legal system and bring a close to this tragic chapter in Ukrainian history.

Notes

2. http://goo.gl/9dGECs
3. http://goo.gl/6lqGT0
6. Ibid. §10
7. Maidan activists: Ms Chornovol is a journalist-turned-politician, who was kidnapped and tortured during the operation, including a nine-year-old boy and an 82-year-old woman. At first denying the massacre even took place, the authorities eventually opened a criminal investigation (No. 12011) into the murders and looting of property on 5 March 2000, one month after the events. Between March 2000 and February 2006, the investigation was suspended and re-opened ten times. OMON servicemen were questioned for the first time in October and November 2000, and photograph identification took place only in 2004.

Recourse to the European Court of Human Rights

On the basis that domestic remedies for these events would not be effective, five victims of the Aldy massacre lodged three applications with the European Court of Human Rights (ECtHR) in May 2000. One of the applicants, Mr Musayev, had witnessed the killing of nine people on 5 February 2000, seven of whom were his relatives.

Background

In February 2000, after months of intensive bombardment and heavy shelling in the context of the second Russian-Chechen war, Russian armed forces entered Grozny, the capital of Chechnya. On 4 February 2000, a routine passport control and search operation was conducted at homes in Novye Aldy. On that day, many residents were warned of what was to come the next day (5 February); one soldier even left a note urging State service-men “to have mercy” on residents, explaining that they were not fighters. On 5 February 2000 another sweep up operation began. As was later established, the operation was conducted by OMON (a ‘Special Purpose’ unit) of the Ministry of Interior of St. Petersburg, who went from house to house, shooting people at close range, and looting and destroying property. At least 62 civilians were killed during the operation, including a nine-year-old boy and an 82-year-old woman.

At first denying the massacre even took place, the authorities eventually opened a criminal investigation (No. 12011) into the murders and looting of property on 5 March 2000, one month after the events. Between March 2000 and February 2006, the investigation was suspended and re-opened ten times. OMON servicemen were questioned for the first time in October and November 2000, and photograph identification took place only in 2004.

The judgment falls under the Khashiyev and Akayeva group of cases, which largely relate to the wars in Chechnya and their aftermath. Implementation of these judgments is subject to enhanced supervision by the Committee of Ministers (CoM). In its action plans submitted to the CoM, the Russian Government invokes its inability to conduct an effective investigation due to, for example, ‘traditions and canons of Islam which inhibit the exhumation of corpses for forensic examination’. This argument is also frequently cited before the judgments are even issued. In the case of the Aldy massacre, many relatives did not bury the victims on the same or next day as is dictated by Islamic tradition. The burials were postponed in the hope that the authorities would conduct a forensic examination of the bodies, and many were buried as late as in mid-March 2000. However, representatives of the Prosecutor’s Office only came to examine the bodies in April 2000, after they had been buried. Moreover, despite their religious beliefs and the fact that the authorities were strongly encouraging them to deny permission, the residents of Aldy allowed the exhumation and forensic examination to go forward. Ultimately 33 bodies were exhumed and subjected to forensic examination, which confirmed burns and gunshot wounds.

Ballistic examinations were conducted on the numerous cartridges and bullets collected in Aldy. This enabled the identification of the type of weapons used, but the results had to be further analysed by St Petersburg Prosecutor’s Office. The latest information provided by the authorities in March 2012 confirms that this has not happened because the relevant items have been discarded. Thus, vital evidence in the identification of those responsible for the crimes committed has been destroyed. To date, only one OMON officer has been identified as being involved in the killings. He has been on Russia’s wanted list since 2010, but no progress has been made in apprehending him.

Massacre in Novye Aldy

15 years of denial of justice

Mariat Imaeva, PhD Candidate, Dublin City University

“We had been under bombardment for so long; we kept thinking that it would soon be over! Russians would come and all this would be over!”

5 February 2015 marked the 15th anniversary of the massacre in Novye Aldy (a small village located in the suburbs of Grozny, Chechnya) when civilians were killed, and houses were looted and set on fire during a ‘mop up’ operation conducted by the Russian military. The Court’s judgment in Musayev and others v Russia (Nos. 57941/00, 58699/00, 60403/00) 26.07.07 found the Russian State responsible for the murder of the applicants’ relatives, in breach of the right to life. The Court also found a violation of the procedural aspect of the right to life due to the lack of an effective investigation into the killings. The Court stated that “...despite all the evidence available, notwithstanding the domestic and international public outcry caused by the cold-blooded execution of more than 50 civilians, almost six years after the tragic events in Novye Aldy no meaningful result whatsoever has been achieved in the task of identifying and prosecuting the individuals who had committed the crimes....

the astonishing ineffectiveness of the prosecuting authorities in this case can only be qualified as acquiescence to the events.”

Despite being ineffective, the investigation did establish that: OMON servicemen from St Petersburg had conducted the special operation in Aldy on 5 February 2000, a fact confirmed by the testimonies of 20 servicemen; and a complete list of the OMON stationed in Chechnya at the time and their photographs. The investigation did not put forward any alternative version of events to counter allegations that the killings were committed by State servicemen.
Almost six years after the tragic events in Novye Aldy no meaningful result whatsoever has been achieved.

Processing the issue through existing channels is making no headway. Although the formal articulation and acknowledgement of the events is crucial for a historical record, the authority’s current approach is self-evidently unlikely to deliver justice.

Notes
1. Witness to massacre in Aldy. Quote taken from the documentary film “The tragedy of Aldy, 5 February 2000”. The documentary was shot by Viktor Popkov on 9 February 2000. In April of the same year he was machine-gunned by a masked assailant, 50 meters from one of the Russian checkpoints in Chechnya, and later died of injuries in Moscow hospital.
4. Ibid.
5. Musayev and others v Russia (No. 57941/00, 58699/00 and 60403/00) 26/07/2007, §110; http://goo.gl/c06ULs
6. Musayev and others v Russia, §164.
9. Ibid.
10. Musayev and others v Russia, §79.
12. Musayev and others v Russia, §164.

Conclusion
Since 2007 the investigation into the Aldy massacre has been reopened and suspended many times, and is currently suspended. Further, the statute of limitations under Russian law became applicable in relation to the killing of the victims in Musayev on 5 May 2015. The latest report from Russia confirms the possibility of termination of criminal investigations even after the identity of perpetrators has been established. The ECHR judgment in Musayev provided the applicants with moral justice. However, 15 years later and despite the abundance of evidence, the crimes committed in Aldy have not been investigated effectively and those responsible have still not been found and brought to justice. Perhaps this is because “the astonishing ineffectiveness of the prosecuting authorities in this case can only be qualified as acquiescence to the events.”

In relation to Crimea, the Committee was concerned at reports of serious human rights violations in territory which was “under the effective control of” Russia. In particular, the Committee noted alleged abductions, disappearances, arbitrary detention and ill-treatment by the ‘Crimean self-defence’ forces, as well as unlawful restrictions on the media and the work of journalists. The Committee also highlighted the unlawful detention and ‘show trial’ of Crimean film maker, Oleg Sentsov, in Russia, and alleged harassment and discrimination against members of the Crimean Tatar community (including its leaders). The Committee called on Russia to investigate the alleged abuses and effectively prosecute the perpetrators, and ensure respect for the rights to freedom of expression, association and religion. Having noted the pressure on Crimean residents to relinquish their Ukrainian nationality, the Committee exhorted Russia to ensure that those who do so are not subject to discrimination.

LGBT rights
The Committee noted that the legal context provides no express protection to combat discrimination against, physical attacks of, and hate speech directed at LGBT individuals and activists. Meanwhile there has been a failure to implement provisions which may provide a degree of redress. The Committee called on Russia to, inter alia, strengthen its legal framework in this regard, including repealing the ‘anti-LGBT’ laws at state and federal levels.

Women’s rights
With regards to respect for women’s human rights in Russia, the Committee highlighted a 20% increase in reported incidents of domestic violence affecting women and children since 2010, and the under-representation of women in strategic public and political positions. The Committee also bemoaned the lack of progress in adopting a federal law on preventing domestic violence, as well as the general lack of support for victims in law enforcement agencies and shelters. Russia was called upon to take decisive action in the legal and social spheres by, for example, adopting
The implementation crisis

PACE’s efforts to enhance compliance with European Court judgments

Ramute Remezaite, Legal Consultant, EHRAC and PhD Candidate, School of Law, Middlesex University

In June 2015, the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe (PACE) adopted a report on the implementation of judgments of the European Court of Human Rights (ECtHR), prepared by their rapporteur on implementation, Mr Klaas de Vries. The report describes “the scale of outstanding problems related to implementation as alarming”, and calls upon States Parties to the European Convention on Human Rights (ECHR) to promptly implement the ECtHR’s judgments, and for enhanced involvement of other Council of Europe (CoE) bodies in this process. As the report was approved by a large majority of parliamentarians present at the PACE Autumn 2015 session (and deplores the delays in implementation and lack of political will of certain member states), it serves as a yet another reminder for European states to step up their efforts in adhering to their commitments to implement the ECtHR judgments.

The report highlights the continuing severe problems with implementation of the ECtHR’s judgments, with a few states accounting for a big proportion of the backlog pending before the Committee of Ministers (CM) (the ministerial body responsible for supervision of implementation of the ECtHR’s judgments). As noted in the report, there are 11,000 non-implemented judgments before the CM. The report mainly focuses on nine member states accounting for almost 80% of the backlog: Italy; Turkey; Russia; Ukraine; Romania; Greece; Poland; Hungary; and Bulgaria. In these States, deep-rooted structural problems addressed by the ECtHR have not been solved for over five years and often generate repetitive cases. The issues addressed in these cases often concern lengthy judicial proceedings, unlawful detention on remand, ill-treatment and other severe violations caused by law enforcement officials and security forces (and lack of effective investigation into their actions), poor detention conditions and non-enforcement of domestic judicial decisions. With the exception of Hungary, all of the abovementioned States are among the 11 states with the highest number of cases with judgments under enhanced supervision by the CM.

The report also raises concern over a number of member states where the ECtHR identified particular vulnerability of activists working in or on the North Caucasus. It called on the State to provide protection for these groups, refrain from taking any measures which may interfere with their work, and investigate all reports of attacks.

Freedom of expression and association and peaceful assembly

The Committee highlighted negative trends concerning the rights to freedom of expression, association and peaceful assembly (for example, the re-criminalisation of defamation and the prosecution of members of Pussy Riot band for ‘hooliganism’). Referring to the 2011-2012 election protests, the Committee noted with concern the charges brought against demonstrators resulting in severe sentences. The Committee was also highly critical of the ‘Foreign Agents’ Law introduced in 2012, pursuant to which Russian NGOs receiving foreign funding and engaging in so-called ‘political activities’ (a very broadly defined and interpreted term) must register as ‘foreign agents’ or face potentially crippling fines and/or criminal sanctions. The Committee also noted the detrimental human rights impact of the draft law which would ban ‘undesirable’ organisations (including NGOs) from operating in Russia.

Notes

2. The other issues on which the Committee adopted concluding observations are: implementation of the Committee’s views under the Optional Protocol to the ICCPR; racism and xenophobia; racial profiling; counter-terrorism measures; asylum and non-refoulement; drug users; independence of the judiciary; combating extremism; rights of indigenous peoples; and dissemination of information relating to the ICCPR.
3. Concluding Observations, para 6
4. Ibid, para 6
5. Ibid, para 7
6. Ibid, para 7
7. Ibid, para 23
8. Ibid, para 23
9. Ibid, para 10
10. Ibid, para 11f
11. Ibid, para 11
12. Ibid, para 14
13. Ibid, para 18
15. Concluding Observations, paras 19 and 21f

Legislation prohibiting domestic violence, providing effective training to all agencies dealing with victims, and devising strategies to “combat patriarchal attitudes and stereotypes on the role and the responsibilities of women and men in the family and society”. Of crucial importance is that victims are ensured access to effective remedies and means of protection, including psycho-social care and shelters.

Torture and ill-treatment

The Committee stated its concern at reports of the continued widespread practice of torture and ill-treatment to elicit confessions and other purposes. It noted in particular the case of the suspects in the murder investigation of opposition politician, Boris Nemtsov. The Committee urged Russia to eradicate these practices.

Human rights defenders

Attacks against (and killings of) human rights defenders, lawyers, journalists and members of the opposition, and the slow progress in investigating these crimes (including in high profile cases such as human rights defender, Natalia Estemirova) remain worryingly commonplace in Russia. The Committee underlined the serious structural and/or other complex problems, including Azerbaijan, Georgia, Serbia and the United Kingdom.

Given the backlog facing the CM, and the renewed focus on implementation within the CoE, now is the time to take urgent measures to address the implementation crisis. Although the primary obligation to implement ECtHR judgments lies on member states (which have committed to abide by the ECtHR’s judgments and take all necessary measures to do so), the CM and other CoE bodies must increase their efforts to address continuous non-compliance with judgments in cases where member states fail to do so. The report highlights the failure of the CM to use all available means at its disposal to deal with recalcitrant states, in particular infringement proceedings under Article 46(4) of the ECHR (a provision which all CoE member states unilaterally re-affirmed in the Brussels Declaration adopted at the High-Level Conference of the CM on 27 March 2015). Although entitled to do so, the CM has so far been regrettably reluctant to make use of this tool, which would allow the ECtHR to provide an official determination of
Human trafficking in Azerbaijan

Challenges in implementing the legal framework

Alexandra Ivakhnik, Intern, Office of the High Commissioner for Human Rights

On 1 October 2010, the Council of Europe Convention on Action against Trafficking in Human Beings (‘the Convention’) entered into force in Azerbaijan.1 Four years later the Group of Experts on Action against Trafficking in Human Beings (‘GRETA’) (which is responsible for monitoring the implementation of the Convention) conducted its first study on the situation in Azerbaijan. The study revealed a high level of human trafficking, taking place both internally and across the country’s borders.2 In particular, GRETA emphasised that Azerbaijan remains a country of origin, transit and destination for the trafficking of people for the purpose of sexual exploitation and forced labour.3 Women and children are sent from Azerbaijan to Russia, the United Arab Emirates and Turkey, in order to provide sexual services.4 At the same time, migrant workers coming to Azerbaijan from Afghanistan, India, and the Philippines are often subjected to forced labour.5

Recent legislative developments

In 2005 Azerbaijan criminalized human trafficking, by introducing Article 144-1 in its Criminal Code. The article provides a clear definition of the crime, establishes penalties for its commission and lists aggravating circumstances. The same year the Azerbaijani law ‘On the Fight against Trafficking in Human Beings’ (‘the Law’) entered into force.6 The Law sets out a legal framework for the struggle against human trafficking. In particular, it provides a comprehensive definition of the notion of human trafficking, lists the institutions responsible for preventing and combating trafficking and for protecting victims by ensuring their access to justice and rehabilitation.7 In principle, the Law seeks to fulfil the obligations provided for States Parties to the Convention.

In 2013 Azerbaijan amended Article 144-1 of the Criminal Code, so as to include penalties

Notes

3. Ibid 1, para A4.
4. Enhanced supervision refers to judgments revealing complex/structural problems, pilot judgments, judgments delivered in interstate cases and judgments requiring urgent individual measures are examined in the “enhanced supervision” procedure.
5. Ibid 1, para A6.
8. Ibid 1, para C45.
9. According to the annual report 2014 of the CM, in 2014, 80 contributions from NGOs and National Human Rights Institutions were received and circulated by the Committee of Ministers. In 2013, the figure was 81. In 2012 and 2011, the figure was 47 for each year. See http://gogo.gl/Gz7WVC.
of five to fifteen years imprisonment for the offences of ‘sex trafficking’ and ‘forced labour’. This sanction is more stringent when compared to those envisaged for other serious crimes, such as rape. A broader definition of the offence of ‘exploitation’ was also introduced through the amendments to the article. Further, the notion of ‘cross-border transport’ was removed as a necessary element of the offence of ‘human trafficking’ and was instead added to the list of aggravating factors.

Implementation issues

Implementation of the legal framework for anti-trafficking is focused on the adoption of National Action Plans (‘NAPs’), which contain concrete policy measures directed at combating human trafficking, establish responsible institutions and clarify the provisions of already existing anti-trafficking laws. An updated NAP for 2014-2018 was approved by Presidential Decree on 24 July 2014. The current NAP seeks to address human trafficking for the purpose of labour exploitation, and focuses on the protection of human trafficking victims and witnesses. Although there are high hopes for the current NAP, NGOs have pointed to the fact that previous NAPs have not been properly implemented.

Support for victims

Article 12 of the Convention obliges States parties to provide adequate protection and support to recognised victims of human trafficking. In the case of Azerbaijan, however, this is hampered by certain provisions of national legislation and/or their practical implementation.

Under the law of Azerbaijan on the repatriation of foreign nationals, the recognized victims of human trafficking are entitled to a temporary one-year residence permit, which is issued automatically by the responsible State authority at the victim’s request. However, despite being granted permission to remain in Azerbaijan, victims are often denied work permits. In these circumstances, it becomes practically impossible for them to stay after all.

In the absence of an opportunity to provide for themselves, victims of human trafficking are at risk of becoming dependent on shelters (which the State is required to provide under Article 13 of the Law). However, the Ministry of Internal Affairs has so far set up only one shelter in the whole country. Moreover, getting a place in that shelter is conditional upon the victim’s co-operation with the criminal investigation into the trafficking offences, and his or her recognition as an injured party in a criminal case opened by the prosecution authorities. Victims are often referred to rehabilitation centres run by a group of NGOs in Baku. However, the Government does not provide any funding for these centres and as a result some of them are on the verge of closing.

Conclusion

In conclusion, since ratifying the Convention, Azerbaijan has adopted important amendments to its legislation on combating trafficking in human beings. However, there remain significant problems in the enforcement of the domestic law in this area, and the level of support for victims of human trafficking is wholly inadequate. Until these problems are addressed, human trafficking will remain a significant problem in Azerbaijan.

Notes

3. Ibid. §12
7. See Article 1 for the definition of the notion of human trafficking and Articles 5–14 for the information on the institutional framework.
8. While the maximum period of deprivation of liberty envisaged for rape is the same (15 years), the minimum period is lower than that carried by the crime of human trafficking (According to Article 149-1 of the Criminal Code, the crime of rape committed without aggravating factors is punished by imprisonment for a minimum period of 4 years).
9. ‘Exploitation’ is defined as ‘forced labor (services), sexual exploitation, slavery or practices similar to slavery and dependence resulting from such practices, illegal removal of human organs and tissues, illegal biomedical experiment/research on a person, use of a woman as surrogate mother, involvement in illegal as well as in criminal activity’. See Note 1 to Article 144-1 of the Criminal Code.
11. http://goo.gl/sSoCt §19
12. e.g. http://goo.gl/1L4Lpo p.15
15. http://goo.gl/sSoCt §207
17. http://goo.gl/30Xkh §6
18. Ibid. According to Article 81 of the Criminal Code of Azerbaijan, persons convicted of various crimes, including human trafficking, may receive amnesty if the country’s Parliament adopts a decision to that end. Convicted men who are 60 years and older are often covered by these amnesty decisions. For instance, this was the case when in May 2013 the Parliament granted amnesty to 2700 criminals in view of the anniversary of one of the national leaders. http://goo.gl/STw7Aq
21. Ibid. §186
26. Ibid. §133–134
27. Ibid. §135

Migrant workers coming to Azerbaijan from Afghanistan, India and the Philippines are often subjected to forced labour.

Enforcement of the criminal law framework

Despite the efforts of Azerbaijan to improve its national legislation, the problem of human trafficking remains among the most pressing issues in the country. Civil society groups claim that a significant reason for this is ineffective prosecution of trafficking offences due to corruption and the lack of training among low-level staff of law enforcement agencies. For example, on several occasions police officers have been accused of taking bribes from the owners of brothels in exchange for turning to a blind eye to their illegal activities, including sex trafficking. In addition, the Ministry of Internal Affairs has been criticised for using methods of intimidation when interviewing victims of and witnesses to trafficking. Moreover, where prosecution of trafficking offences occurs there is evidence of the courts imposing ‘soft’ punishments, such as delayed or suspended sentences. This is usually justified by the courts by reference to the purportedly difficult economic situation of the perpetrators, many of whom come from the conflict region of Nagorno-Karabakh and/or have children in their care. The managers of brothels are often men of over 60 years old who, even if convicted, can often count on amnesty due to their age. While the perpetrators may walk free from the courtroom, the victims are subjected to verbal abuse and stigmatization by judges. They are treated as ‘prostitutes’, ‘criminals’ or ‘illegal migrants’. Further, in some cases, it is the victim who is charged with a criminal offence, despite the fact that any such offence may have been committed as a direct consequence of the person being trafficked. For instance, the victims of sexual trafficking sometimes receive administrative fines for prostitution. As a result, they refuse to testify against those suspected of being their traffickers, and therefore the crime remains unpunished.
**Kagirov v. Russia**

**ECHR: Judgment Right to life**

(No. 36367/09), 23.04.2015

**Facts**

The applicant, Ziyavdi Kagirov, lives in Zakan-Kurt, in the Chechen Republic. In 2004 the applicant's brother, Rustam Kagirov, was allegedly apprehended and tortured by State agents, who demanded that he confess to involvement in an illegal armed group. On 17 May 2009, Rustam Kagirov was abducted in plain sight by three armed men in black uniforms, who coerced him into a black car. He has not been seen since. The applicant witnessed the abduction, and argued that the perpetrators were State agents. He noted that, for example, the car in which his brother was taken away passed through police checkpoints unhindered, and the officers at the checkpoint had refused to identify the people who were in the car or take any action when the applicant told them that the car was carrying his brother who had just been abducted. The investigation into the disappearance of the applicant's brother was suspended numerous times and at the time of the Court's judgment remained pending (having been opened in June 2009). Ziyavdi Kagirov was represented by EHRAC and Memorial Human Rights Centre.

**Judgment**

The Court found a violation of the procedural limb of Art. 2 ECHR (right to life) because the authorities had failed to carry out an effective criminal investigation into Rustam Kagirov's disappearance. The Court did not however find the State responsible for Mr Kagirov's disappearance, or for the failure to prevent this from happening (in violation of the substantive limb of Art. 2). In reviewing the evidence, the Court noted the difficulties in these circumstances of establishing the State's involvement 'beyond reasonable doubt', and concluded that this had not been shown in this case. In considering whether there was a violation of Art. 3 (prohibition of torture and ill-treatment) in respect of the applicant's suffering as a close relative of someone who had been disappeared and whose fate remained unknown, the Court distinguished the present case from its previous case law where a violation had been found. In light of the findings on the substantive aspect of Art. 2 and considering the effect of the investigation authorities' conduct on the applicant, the Court concluded that there was no violation of Art. 3. Similarly, the Court declined to find a violation of Art. 5 ECHR given its findings on the responsibility of State agents under Art. 2. The applicant was awarded €20,000 in non-pecuniary damages.

**Zhebrailova and Others v Russia**

**ECHR: Judgment Right to life**

(No. 40166/07), 26.03.2015

**Facts**

The case concerned the unlawful abduction and disappearance of Balavdi Zhebrailov. At midnight on 25 April 2005 a group of armed men burst into the home of Balavdi, his parents, and his brother, in the village of Gekhi, Chechnya. They dragged the Zhebrailov brothers into a car in front of their family and drove off. Before leaving, the abductors fired several shots in the air to deter the victims' relatives from interfering. Balavdi's brother, Salavdi, was released some time later on 26 April 2005, having been repeatedly beaten and threatened. Salavdi reported being held and beaten by officers of the 2nd Regiment of the Road Police of the Ministry of the Interior of the Chechen Republic at the premises of the 2nd Regiment. Balavdi has not been seen since his abduction. On his release, Salavdi sought medical assistance for the physical injuries sustained during his abduction, but fled the hospital when he spotted one of his abductors. A criminal investigation into the events of 25-26 April 2005 was opened in June 2005, and suspended five times between then and 2010. As at the date of the Court's judgment, the investigation remained pending.

Salavdi and his parents brought an application to the Court alleging that the State was responsible for the disappearance and presumed death of Balavdi Zhebrailov, which it had failed to effectively investigate (under Art. 2 ECHR). They also complained that they had endured mental suffering as a result of the State's response to Balavdi's disappearance; that Salavdi had been subjected to ill-treatment by his abductors which had not been effectively investigated (Art. 3 ECHR); that the brothers' unacknowledged detention violated their rights to liberty and security (Art. 5 ECHR); and that they had been deprived of effective domestic remedies to redress these violations (Art. 13 ECHR). The applicants were represented by EHRAC and Memorial Human Rights Centre, Moscow.

**Tagayeva and Others v Russia**

**ECHR: Admissibility Right to Life**

(No. 26562/07), 06.09.15

**Facts**

On 1 September 2004, the first day of the new school term (known in Russia as the Day of Knowledge), a group of at least 32...
heavily-armed Chechen Separatists targeted School No.1 in Beslan, North Ossetia. More than 1100 people (including 800 children) were taken hostage in the school gymnasium, which was wired with explosive devices. During the three-day siege the separatists killed 16 adult male hostages and, after the first day, refused hostages access to food or water. At 1pm on 3 September 2004 there was a major explosion in the gym, shortly followed by two more, the causes of which are contested between the parties. The Russian forces then stormed the school and in the ensuing fierce fighting, and devastating fire that took hold of the gymnasium, 331 people died, 186 of whom were children.

EHRAC and Memorial HRC (Moscow) are representing more than 350 former hostages and relatives of deceased hostages. The applicants argue that the actions and omissions of the Russian Government violated their right to life under Art. 2 ECHR. In particular they argue that Russia knew of a real and immediate threat to life on 1 September 2004 and failed to take adequate or any operative preventive measures; that there were significant failings in the command and control of the security and rescue operations; that the Russian forces deployed lethal force that was indiscriminate and disproportionate, causing civilian fatalities; and that basic and unconscionable failings of the investigation into the large scale loss of life precluded accountability for the use of force and cause of death of 331 people. Some applicants had also raised violations of Arts. 3, 6, 8, 10 and 13 ECHR. Following a Chamber hearing on 14 October 2014, the European Court delivered its decision on admissibility on 2 July 2015.

Admissibility Decision

In its Decision of 2 July, the Court joined the seven applications relating to the hostage-taking, and declared admissible the entirety of the applicants’ arguments on the right to life and right to an effective remedy under the Convention.

The Court rejected the argument by the Government that certain groups of applications should be dismissed for non-exhaustion and failure to comply with 6 month limit and held that the ‘restricted group’ principle applied (see Abuya v Russia (No. 27065/05) 02.12.10). The Court also rejected the Government’s argument that payment of compensation was sufficient to deprive an applicant of victim status, on the basis that violations of Art. 2 require an investigation and accountability. The complaints of 51 applicants who were close relatives of victims, who themselves were in a position to bring a complaint and did not intend to were struck out. This did not apply to applicants who brought complaints for child victims who have since come of age and confirmed their intention to continue the complaint either in their own right or through their relative/guardian. Claims under Arts. 3, 6, 8 and 10 ECHR were held to be inadmissible.

Comment

At the hearing in October 2014, EHRAC spoke to Ella Kesayeva, Chair of a local NGO, Voice of Beslan, who lost four relatives in the siege. She has campaigned tirelessly for 10 years for an impartial investigation and she emphasised the importance of the ECtHR’s judgment:

“We do not need compensation, we need the [Court’s] decision. Our children will never return. Beslan remains unresolved and our future is uncertain... The decision of the European Court is necessary for people to have hope, to set a precedent for the future.”

The admissibility decision is a decisive step in the process of seeking a successful judgment from the ECtHR, which will hopefully go some way to achieving redress for the victims and survivors of the Beslan tragedy.

Abdurakhanova and Abdulgami- dova v. Russia

ECHR: Judgment Right to life

(No. 41437/10), 22.09.2015

Facts

The applicants are the mother and the wife of Mr Abdurakhmanov. On 25 June 2010 a group of officers from the Sovetskiy district department of the interior arrived at the first applicant’s house in Makhachkala, Dagestan, with an arrest warrant for Mr Abdurakhmanov, according to which he was suspected, amongst other things, of involvement in terrorist activities. One hour later a group of men (one of whom identified himself as a police officer) abducted Mr Abdurakhmanov from outside the house of a relative whom he was visiting with his wife in Kaspysk. In broad daylight and in the presence of a number of witnesses, including neighbours and the applicants’ relatives, the abductors fired shots at Mr Abdurakhmanov’s feet and dragged him into a car. The police arrived at the scene shortly afterwards and removed the cartridges left by the abductors. Mr Abdurakhmanov has not been seen since and is presumed to be dead. After numerous requests by the applicants, an investigation into Mr Abdurakhmanov’s abduction was opened on 28 July 2010 and suspended on 28 September 2010. As at the date of the Court’s judgment, the investigation was pending. The first applicant’s request for an investigation into the actions of the officers who had presented her with the arrest warrant was rejected. The applicants were represented before the European Court by EHRAC and Memorial Human Rights Centre, Moscow.

Judgment

The Court found that the applicants had made out a prima facie case, on the basis of the evidence submitted, that Mr Abdurakhmanov had been abducted by State agents, and could be presumed dead. In the absence of any explanation of his whereabouts or justification for his abduction from the State, the Court found a violation of the substantive limb of the right to life (Art. 2 ECHR). In light of the many failures of the authorities in relation to the investigation into the events of 25 June 2010, the Court found a violation of the procedural limb of Art. 2. The Court pointed to the overall conduct of the proceedings, including the suspension of the investigation just two months after it was initiated, the failure of the authorities to take basic steps to investigate the abduction of Mr Abdurakhmanov despite the substantial evidence implicating law-enforcement officers, and the unnecessary delays in the investigation.

The ECtHR also found violations of Art. 3 ECHR (prohibition against torture and ill-treatment), Art. 5 ECHR (right to liberty and security of person), and Art. 13 ECHR (right to an effective remedy). The Court’s finding of an Art. 3 violation was based on the applicants’ intense suffering as a result of their inability to ascertain the fate of Mr Abdurakhmanov and the manner to which the authorities’ (wholly inadequate) response to the complaint. The Court awarded the applicants €60,000 jointly in non-pecuniary damages.

Comment

The ECtHR has found on many occasions that a situation of enforced disappearance gives rise to a violation of Art. 3 in respect of the close relatives of the victim. The essence of such a violation does not lie mainly in the fact of the ‘disappearance’ of the family member, but rather concerns the authorities’ reactions and attitudes to the situation when it is brought to their attention (see Orhan v. Turkey, no. 25655/94, § 358, 18 June 2002, and Imakayeva v. Russia, no. 7615/02, § 164, ECHR 2006-XIII (extracts)).
Helsinki Committee of Armenia v Armenia

ECRH: Judgment
Right to freedom of assembly
(No. 59109/08), 31.03.15

Facts

On 12 May 2007, a witness (L.G.) in a murder investigation died while attempting to escape a Yerevan police station by jumping out of a second story window. This event provoked a public outcry among Armenian human rights groups and civil society. The Helsinki Committee of Armenia, a human rights NGO, decided to hold a march on 12 May 2008 to mark the first anniversary of L.G.’s death. Mass protests following the Presidential election of 19 February 2008 had resulted in violence between the authorities and supporters of the opposition, in which at least 10 people were killed. On 1 March 2008, a state of emergency was declared for 20 days, during which time all public gatherings were banned. In light of these events, the Mayor of Yerevan refused to approve the Helsinki Committee’s request of 6 May 2008 for permission to hold the march on 12 May 2008. The Mayor considered that any further public demonstrations would pose a threat to public safety because not all of the alleged perpetrators of violence in the February 2008 protests had been apprehended and the weapons used had not been confiscated. The Mayor’s decision was posted to the Helsinki Committee on 12 May 2008, and was received on 13 May 2008. On the day of the planned march, the police prevented the event from going ahead. The Helsinki Committee argued that the Mayor’s ban of the march was an unlawful violation of their right to freedom of assembly (Art. 11 ECHR).

The Mayor had not relied on “relevant or sufficient” reason to ban the march

Judgment

The Court found that the Mayor’s decision to ban the march planned for 12 May 2008 constituted an unjustified interference with the Helsinki Committee’s rights under Art. 11 ECHR. In particular, the Mayor had not relied on “relevant or sufficient” reason to ban the march (namely, the fact that not all alleged perpetrators and weapons had been found, and the ongoing investigation into the post-election violence). Further, the Court pointed out that the march for L.G. was supposed to take place over two months after the post-election protests, and a month after the end of the period of emergency. There was also no evidence to suggest that the organisers or participants of the march for L.G. were involved in the post-election violence, or that the march would lead to similar violence. The Court also found a violation of the right to an effective remedy (Art. 13 ECHR). Armenian law requires the authorities to respond to requests for approval of public demonstrations with sufficient time to enable their decisions to be appealed. In this case the Mayor’s office responded to the organisers’ request on the day of the planned event which did not give the Helsinki Committee an opportunity to appeal the decision before the march.

Identoba and others v Georgia

ECRH: Judgment
Prohibition of torture and discrimination
(No. 73235/12), 12.05.15

Facts

The applicants are Identoba, a Georgian NGO advocating for LGBT rights, and 14 Georgian nationals who attended a march in Tbilisi on 17 May 2012 to mark the ‘International Day against Homophobia.’ Anticipating homophobic violence during the march, Identoba requested that the authorities provide protection against any violence. The Ministry of the Interior confirmed that adequate police protection would be forthcoming. On the day however, the marchers (including 13 of the 14 individual applicants) were attacked and threatened by counter-demonstrators from two religious groups. The marchers were threatened with being crushed and burnt to death. They were pushed, punched, grabbed and had their banners torn. They were called “perverts” and “faggots.”

During these attacks, police patrol cars had distanced themselves from the scene, and only reappeared later. Marchers who requested help from the few officers who remained at the scene were told that it was not the officers’ duty to intervene. Certain applicants were detained by police, purportedly so as to ‘protect’ them from the counter-demonstrators. The clashes were recorded by journalists and broadcast on mainstream television channels. The faces of, inter alia, the alleged attackers were clearly visible in the broadcasts. No disciplinary action was taken against the officers who were ostensibly policing the march and criminal investigations launched into injuries sustained by two marchers remained pending as at the date of the Court’s judgment.

Judgment

The Court found Georgia in breach of its positive obligations under Art. 3 ECHR (prohibition of torture) together with Art. 14 (prohibition of discrimination) in respect of 13 of the individual applicants. In particular, the Court considered that the violence and threats perpetrated by the counter-demonstrators rendered the fear, anxiety and vulnerability of these applicants severe enough to satisfy the threshold of ‘degrading treatment’, contrary to Art. 3 taken in conjunction with Art. 14 ECHR. Further, in light of widespread reports of negative attitudes towards sexual minorities in parts of Georgian society and Identoba’s prior request for police protection, the authorities knew, or ought to have known of the risks associated with the march that took place on 17 May 2012. The authorities had failed to fulfil their “compelling positive obligation” to protect the marchers, and had also breached their procedural obligations to investigate the attacks, including the homophobic motives of the perpetrators.

In respect of Identoba and 13 individual applicants, the Court found the State in breach of its positive obligations under Art. 11 ECHR (freedom of assembly) taken together with Art. 14 ECHR for failing to ensure that the march took place peacefully. The applicants were awarded non-pecuniary damages of between €1500 and €4000 each.

Comment

This case raises a systemic issue in Georgia; namely, negative attitudes against members and supporters of the LGBT community, emanating from certain segments of Georgian society. As evidenced in this case, these attitudes manifest in physical violence and threats of violence, as well as hate speech. The prevailing environment for the LGBT
community and activists has been widely reported by the Council of Europe, and national and international NGOs. In its judgment, the Court recognised the specific vulnerability of the LGBT community, and also emphasized the State’s failure to acknowledge the discriminatory motive of the attacks against the marchers in the context of their criminal complaints.

**Lutsenko v Ukraine**

**ECtHR: Judgment Conditions of detention**

**(No. 29334/11), 11.06.15**

**Facts**

On 26 December 2010, Yuriy Lutsenko, former Minister of the Interior of Ukraine and leader of political party, ‘Bloc of Petro Poroshenko’, was arrested. He was remanded in pre-trial detention at the Kyiv Pre-Trial Detention Centre No. 13 until his transfer to Mena colony (Chernihiv Region) on 31 August 2012, after his conviction was upheld on appeal. During this time, Mr Lutsenko went on a hunger strike for 33 days. He was released by Presidential pardon on 7 April 2013.

For a period of time during his pre-trial detention, Mr Lutsenko was kept in a cell measuring 8.58 square metres, and shared with two inmates. He was chronically ill before his arrest and his health worsened during his detention. He contended that there was no proper medical treatment available to him throughout his detention. Mr Lutsenko attended 79 hearings, during which he complained that he was denied adequate rest, food or drink, held in cramped conditions for hours, and taken to court when he was severely ill. At the hearings, he was kept in a metal cage.

**Comment**

The ECtHR has decided several cases on adequacy of medical care in prison. Two key considerations are whether diagnosis and care are prompt and accurate and whether care is regular, systematic and comprehensive (Hummatov v. Azerbaijan (Nos. 9852/03 and 13413/04) 29/11/07). In the present case, the ECtHR found that these criteria were met. Nonetheless, the judgment confirms that the ECtHR may consider a lack of adequate personal space as a sufficient basis for a finding of degrading treatment in the context of detention conditions. Further, the ECtHR’s findings in relation to Mr Lutsenko’s placement in a metal cage will be of relevance to applicants from other Member States where this practice continues (for example, in the recent trials of imprisoned human rights defenders in Azerbaijan).

**Isayeva v Azerbaijan**

**ECtHR: Judgment Right to liberty and security of the person**

**(No. 36229/11), 25.06.15**

**Facts**

In August and September 2009 Ms Isayeva was charged with illegal possession of drugs and fraud respectively. Her conviction for these offences (in May 2010) was quashed in November 2010 and the case was returned to the prosecutor for reinvestigation. Ms Isayeva was not released pending re-trial and was subsequently convicted in May 2012. In August 2012, Ms Isayeva died in prison while the appeal against her conviction was pending. In her application to the Court (which after her death was continued on her behalf by her sister) she alleged that her pre-trial detention was repeatedly prolonged and her appeals were dismissed. Ms Isayeva argued that her rights under Art. 5(1) and 5(3) ECHR had been breached because she was held without a court order between 7 April and 4 May 2011, and in view of the fact that the judicial decisions ordering and extending her pre-trial detention were not based on relevant or sufficient reasons.

**Judgment**

The Court found that Ms Isayeva had been detained unlawfully between 7 April and 4 May 2011 in view of the fact that her detention during these dates was based solely on the fact that an indictment had been filed with a court. In light of these facts, the Court found a violation of Art. 5(1) ECHR. In particular, Ms Isayeva’s detention in these circumstances was incompatible with the principles of legal certainty and protection from arbitrariness.

The Court also found a violation of Art. 5(3) ECHR on the basis that the domestic courts had failed to justify Ms Isayeva’s pre-trial detention from August 2009 until her death with “relevant” and “sufficient” reasons. In particular, the domestic courts had repeatedly referred to the same stereotyped grounds as the basis for Ms Isayeva’s continued detention without addressing the specific facts of her case, and had also relied on grounds that were irrelevant for the purposes of justifying pre-trial detention in compliance with Art. 5(3). Ms Isayeva was awarded €13,000 in non-pecuniary damages.

The domestic courts had failed to justify Ms Isayeva’s pre-trial detention from August 2009 until her death.

The judgment joins a thread of others against Azerbaijan where the Court has found violations of Art. 5 in light of the unlawful use of pre-trial detention (see Zayidov, (No. 11948/08) 20.02.2014; Novruz Ismayilov, (No. 16794/05) 20.02.2014; Allahverdiyev, (No. 49192/08) 06.03.2014; Farhad Aliev, (No 37138/06) 09.11.2010). The issue is one which prevails in Azerbaijan, and continues to be raised at the Court in cases dealing with the pre-trial detention of human rights defenders who were arrested and held as part of the unprecedented clamp down on civil society which started in summer 2014.

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Contact Us

EHRAC, School of Law, Middlesex University, The Burroughs, Hendon, London, NW4 4BT
Tel: +44 (0) 208 411 2826
Fax: +44 (0)203 004 1767
ehrac@mdx.ac.uk
www.ehrac.org.uk

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