

**CHITAYEV AND CHITAYEV versus RUSSIA (№ 59334/00), judgment of the European
Court of Human Rights of 18 January 2007**

**Applicants' proposals regarding the execution of the judgments of the European
Court of Human Rights**

(Under Rule 9 of the Rules of the Committee of Ministers for the supervision
of the execution of judgments and of the terms of friendly settlements)

I. Introduction

1. This document sets out the applicants' submissions as to the measures which it is necessary for the Russian Federation to take in order to comply with the judgment of the European Court of Human Rights in the case *Chitayev and Chitayev v. Russia* of 18 January 2007. The judgment became final on 18 April 2007.

II. Payment of compensation for damage and legal costs

2. The judgment required the Russian Federation to pay the specified sums by way of damages and costs within three months of the judgment becoming final, that is, by 18 July 2007.
3. While the respondent Government has paid the sums specified, it has failed to follow the instructions of the Court. In its judgment, the Court indicated that moral and material damage should be paid to the applicant and legal costs and expenses should be paid to the applicants' representatives directly. The respondent Government paid the entire sum award, including legal costs and expenses, to the applicants. The applicants' representatives have submitted two letters to the representative of the Russian Federation to the ECtHR, requesting an explanation and advice on how to proceed. The representatives have received no answer to their requests.
4. In the absence of a reply from the Government concerning the legal costs and expenses, the applicants cannot, unfortunately, confirm that the respondent Government has fully complied with its obligation to pay compensation in the these cases.

III. Individual measures in *Chitayev and Chitayev v. Russia*

(i) Measures to hold the perpetrators accountable:

5. In its judgment the Court established that the applicants were tortured while in detention at the Achkhoy-Martan VOVD and Chernokozovo SIZO. (violation of Article 3 of the Convention) (paras. 152 & 159)
6. The Court also concluded that "the authorities failed to carry out a thorough and effective investigation" of the Applicants' complaints about the torture. In particular the Court noted that
 - the authorities explicitly refused to provide the Applicants with a copy of the decision of 7 January 2002 to dispense with criminal proceedings (para. 139 & 165);
 - the authorities never addressed the medical documents referred to by the Applicants in support of their allegations (para. 165);
 - the authorities never attempted to carry out a forensic medical examination of the Applicants (para. 165);
 - the authorities never attempted to inspect the scene of the incident or to identify and question officials, who at the material time, worked in the Achkhoy-Martan VOVD and Chernokozovo SIZO (para. 165);
 - the applicants were never granted access to the materials of the investigation (para. 165);
 - the 2nd Applicant retracted a complaint about the torture but he later pointed out that he had been compelled to withdraw the complaint (para. 164).
7. The Applicants therefore submit that the respondent Government should without delay conduct an independent, effective and thorough investigation into the torture of the Applicants, as well as into the pressure exerted on the 2nd Applicant to withdraw his complaint about the torture.
8. In particular the respondent Government should revoke the decision of 7 January 2002 and immediately open a criminal case into the torture of the Applicants. The investigation must also include measures to correct the above-mentioned shortcomings indicated by the Court. The investigation should further establish who worked at the Achkhoy-Martan VOVD and Chernokozovo SIZO when the Applicants were detained there and identify the officials who tortured the Applicants.

9. In its judgment the Court furthermore established that the applicants were held in unacknowledged detention from 12 to 16 April 2000. (violation of Article 5 of the Convention) (paras. 173)
10. The court also concluded that
 - the Applicants were unable to take proceedings to challenge the lawfulness of their detention (violation of Article 5(4) of the Convention) (para. 178);
 - the Applicants' detention between 19 June and 4 October had no basis in domestic law (violation of Article 5(1)c of the Convention) (para. 185);
 - the Applicants were denied the right to trial within a reasonable time (violation of Article 5(3) of the Convention) (para. 190);
 - the Applicants are prevented from seeking compensation for their illegal detention because, among others, the criminal proceedings against them are still pending (violation of Article 5(5) of the Convention) (para. 195).
11. The Applicants therefore submit that the respondent Government should without delay conduct an independent, effective and thorough investigation into the violations of Article 5, in particular open a criminal case in connection with the unacknowledged and unlawful detention of the Applicants.
12. On 18 June 2007 the Applicants' representatives wrote to the Prosecutor of the Chechen Republic, requesting information on the status of the criminal proceedings against the Applicants. The Applicants' representatives annexed an unofficial Russian translation of the Court's judgment of 18 January 2007 to their letter. No answer has been received.
13. On 18 June 2007 the Applicants' representatives wrote to the Head of the Achkhoy-Martan OVD, requesting information on whether the 1st Applicant was still on a wanted list - the 2nd Applicant was removed from the list on 9 September 2005. The Applicants' representatives annexed an unofficial Russian translation of the Court's judgment of 18 January 2007 to their letter. No answer has been received.
14. The Applicants submit that the authorities should inform the Applicants and their representatives on the status of the criminal proceedings against the Applicants which – if still pending – prevent the Applicants from seeking compensation for their illegal detention.

(ii) Measures to restore the applicants' right to participate in the investigation:

15. A significant shortcoming of the investigation into the Applicants' complaints of torture was the manner in which the Applicants' complaints have been dealt with by the authorities. In particular the Court noted that the Applicants were not properly informed about the investigation and they were not given access to the materials of the investigation.
16. In this regard the Applicants refer to the UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, stating

“(...) 4. Alleged victims of torture or ill-treatment and their legal representatives shall be informed of, and have access to, any hearing, as well as to all information relevant to the investigation, and shall be entitled to present other evidence.”¹

17. The applicants are deeply concerned that neither they nor their representatives have been informed of any investigate steps taken after the Court's judgment, although the Applicants provided the responsible authorities with a Russian translation of the Court's judgment. (see paras. 12-13 above)

IV. General measures

18. In addition to the general measures proposed by the applicants in earlier Chechen cases and the Secretariat's Memoranda of 29 June 2006 and 12 June 2007 on the violations of the ECHR in the Chechen Republic, the applicants in the case *Chitayev and Chitayev v. Russia* also refer to the Secretariat's Memorandum of 12 February 2007 on detention on remand in the Russian Federation and the various documents of the Committee of Ministers on the actions of the security forces in Turkey. Furthermore the Applicants submit that the judgment in *Chitayev and Chitayev v. Russia* points towards the following general measures to be undertaken by the respondent Government.

General measures concerning torture

a) Introduction

¹ Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, recommended by General Assembly resolution 55/89 of 4 December 2000, available at <<http://www.ohchr.org/english/law/investigation.htm>> (last accessed on 28 September 2007)

19. *Chitayev and Chitayev v. Russia* is the first judgment concerning the practice of torture in Chechnya. A number of other cases concerning torture from Chechnya are currently pending before the Court.
20. Torture and ill-treatment are widespread in Chechnya and has been documented in numerous reports of international organizations and NGOs.
21. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter *CPT*) has made three public statements (in 2001, 2003 and 2007) concerning Chechnya under Article 10(2) of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.
22. The phenomenon of torture and ill-treatment is also not a thing of the past. In its public statement of 13 March 2007 the *CPT* stated

“On two occasions, in July 2001 and July 2003, the *CPT* felt obliged (...) to make a public statement, in view of the failure to improve the situation in light of the Committee's recommendations. Almost four years later, that stage has regrettably been reached once again.”

23. The Committee Against Torture set up under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter *CAT*) repeatedly expressed its concern at the situation in Chechnya and made specific recommendations to improve the situation. (Conclusions and recommendations of the *CAT*, 6 February 2007, UN Doc. CAT/C/RUS/CO/4, para. 24)

b) definition of torture in domestic law

24. Under Russian law, torture [пытки] is defined in an annotation to Article 117 of the Criminal Code of the Russian Federation.
25. However, the *CAT* stated that

“the definition of the term 'torture' as contained in the annotation to article 117 of the Criminal Code does not fully reflect all elements of the definition in Article 1 of the Convention [against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment] which includes the involvement of a public official or other person acting in an official capacity in inflicting, instigating, consenting to or acquiescing to torture. The definition, moreover, does not address acts aimed at coercing a third person as torture.” (Conclusions and recommendations of the *CAT*, 6 February 2007, UN Doc. CAT/C/RUS/CO/4, para. 7)

26. Several other provisions of the Criminal Code of the Russian Federation criminalize: inflicting bodily harm (Articles 111-115), abduction and illegal detention (Articles 126-127), unlawful detention (Article 301), coercion to testify (Article 302), falsifying evidence (Article 303), rendering manifestly unjustified judgment (Article 305), coercion to make false statement (Article 309).
27. However, in connection with Article 302 of the Criminal Code the CAT stated that
28. “[Russia] should take measures to bring its definition of torture into full conformity with article 1 of the Convention [against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment], in particular to ensure that police, army, as well as prosecutorial official, can be prosecuted under article 302 as well as under article 117 of the Criminal Code.” (Conclusions and recommendations of the CAT, 6 February 2007, UN Doc. CAT/C/RUS/CO/4, para. 7)
29. Although Russia assured the CAT that the perpetrator of the crime under Article 117 “may be any person who has attained the age of 16, including officials”² in practice state officials are prosecuted for “exceeding official authority” under Article 286 of the Criminal Code of the Russian Federation.
30. For example, on 30 November 2005 the Leninskiy District Court in Nizhniy-Novgorod sentenced two police officers who tortured A. Mikheyev (see ECtHR judgment *Mikheyev v Russia* of 26 January 2006) to 4 years imprisonment under Article 286(3)a&c.³
31. According to Article 286(3)a “exceeding official authority” which is committed with the use of violence or under the threat of the use of violence, is punishable with a prison sentence of 3 to 10 years and a prohibition to exercise a particular profession for a maximum duration of 3 years. The same sentence is applicable to “exceeding official authority” resulting in serious consequences (Article 286(3)c of the Criminal Code of the Russian Federation).
32. Although the maximum prison sentence for “exceeding official authority” committed with the use of violence or under the threat of the use of violence (Article 286(3)a of the Criminal Code of the Russian Federation) is higher than the maximum prison sentence for torture (Article 117(2)(d) of the Criminal Code of the Russian Federation)(see paras. 34-36 below) qualifying torture committed by state officials as

² Information from the Russian Federation concerning the list of issues prepared by experts of the Committee against Torture scheduled for consideration at the Committee’s thirty-seventh session during the submission by the Russian Federation of its fourth periodic report on implementation of the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 18 October 2006, UN Doc. CAT/C/RUS/Q/4/Add.1, page 2

³ Judgment available at <<http://www.pytkam.net/web/files/mikheev/00000011.pdf>> (last accessed on 24 September 2007)

"exceeding official authority" creates an opportunity for the perpetrators to avoid the stigma attached to a conviction for torture and enables the authorities to mask the phenomenon of torture behind crime statistics on more general, neutral sounding categories of crimes like "exceeding official authority."

33. The Applicants submit that there should be a *separate provision* in the Criminal Code of the Russian Federation punishing torture committed by state officials. That provision should refer to "torture" [пытки] and should include all elements of the definition of torture in Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

c) tougher sentences

34. Under Article 117(2)(d) of the Criminal Code of the Russian Federation "torture" [пытки] is punishable by a prison sentence of 3 to 7 years.

35. Under Article 286(3)a of the Criminal Code of the Russian Federation "exceeding official authority" committed with the use of violence or under the threat of the use of violence, is punishable with a prison sentence of 3 to 10 years and a prohibition to exercise a particular profession for a maximum duration of 3 years.

36. In practice torture is not effectively investigated and state officials are rarely prosecuted for torture. Moreover, in the rare case where state officials are prosecuted, the courts impose a penalty significantly below the maximum sentence. For example, the police officers who tortured A. Mikheyev, who jumped from the window of the police office to avoid further torture, leaving him completely paralyzed, received a 4-year prison sentence. (see para. 30 above)

37. Article 4(2) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stipulates that

"[e]ach State Party shall make th[e] offend[e] [of torture] punishable by appropriate penalties which take into account their grave nature.»

38. Leading commentaries on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment emphasize that torture should carry severe custodial penalties.⁴

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C. Ingelse, The UN Committee against Torture: An Assessment, 2001, 340; L Wendland, *A Handbook on State Obligations under the Convention against Torture*, 2002, 37-37.

39. Domestic law in different countries provides severe custodial sentences for torture. In the United Kingdom torture is punishable with life imprisonment (section 134 of the 1988 Criminal Justice Act)
40. The Committee of Ministers has expressed its concern at the light custodial sentences for torture in the Turkish Criminal Code (Interim Resolution ResDH(2002)98). In this context the Committee of Ministers welcomed amendments to the Turkish Criminal Code increasing the penalty for torture from 5 to 8 years' imprisonment (*id.*) but at the same time urged Turkey to establish sufficiently deterring minimum prison sentences for persons found guilty of grave abuses such as torture and ill-treatment. (*id.*)
41. The Applicants submit that both the minimum and maximum prison sentences for torture should be significantly increased. The Applicants also submit that the prohibition to exercise a profession in law enforcement for a maximum duration of 3 years should be transformed into a life-long prohibition.

d) abolish the statute of limitations for torture

42. In accordance with Article 78(1) of the Criminal Code of the Russian Federation, the statute of limitations for Articles 117(2)d and 286(3)a&c is 10 years. This 10-year period runs from the day the crime was committed until the day of a final judgment (Article 78(2)). However, according to 78(3) this period is suspended as long as the perpetrator is hiding from the investigation or the court.
43. The CAT repeatedly stated that there should be no statute of limitation for torture.
44. In 1998 the Human Rights Committee welcomed the information that in Ecuador "torture, enforced disappearances and extrajudicial executions have no statute of limitations." (Concluding Observations/Comments, 18 August 1998, UN Doc. CCPR/C/79/Add.92)
45. In 2003 the CAT recommended to Turkey to "repeal the statute of limitations for crimes involving torture." Similar to the provisions of the Russian Criminal Code, the statutory limit for prosecuting torture in Turkish law is 10 years. (Conclusions and recommendations of the CAT, 27 March 2003, UN Doc. CAT/C/CR/30/5, para. 7; Summary record of the 1st part of the 557th meeting, UN Doc. CAT/C/SR.557, para. 25)
46. In 2007 the CAT stated that

"[t]aking into account the grave nature of acts of torture, the Committee is of the view that acts of torture cannot be subject to any statute of limitations."

(Conclusions and recommendations of the CAT, 16 July 2007, UN Doc. CAT/C/DNK/CO/5, para. 11

47. The Committee of Ministers equally expressed its concern at the short statute of limitations for torture in the Turkish Criminal Code (Interim Resolution ResDH(2002)98).
48. The Applicants submit that the respondent Government should repeal the statute of limitations for torture.
49. Concerning Article 78(3) of the Criminal Code of the Russian Federation, suspending the statute of limitations in case the perpetrator is hiding from the investigation or the court, the Applicants would like to draw the Committee of Ministers' attention to Order No. 12 of 5 May 2004 of the Prosecutor-General of the Russian Federation "On the order of closure of criminal cases, suspended in connection with the inability to identify the persons who committed the crimes, upon expiration of the statute of limitations."
50. According to point 1 of this Order, criminal cases, suspended in connection with the inability to identify the persons who committed the crimes, are closed upon expiration of the statute of limitations.
51. The Applicants submit that criminal cases opened into serious human rights violations committed by state officials in Chechnya (extrajudicial killings, enforced disappearances and torture) usually refer to the perpetrators as "unidentified armed men." In most cases the criminal investigation never establishes the identity of the state officials who committed these crimes, although the investigative authorities often possess all the relevant information to identify, at the very least, the division or group to whom the perpetrators belonged. It is submitted that the authorities deliberately fail to identify the perpetrators to foreclose the application of Article 78(3) of the Criminal Code of the Russian Federation and to allow the statute of limitations to expire in accordance with the General Prosecutor's Order of 5 May 2004.
52. The Applicants submit that the respondent Government should take all necessary measures to promptly establish the identity of the perpetrators of serious human rights violations in Chechnya (see also part e) below). The Applicants also submit that the respondent State should repeal Order No. 12 of 5 May 2004 of the Prosecutor-General of the Russian Federation.
53. Finally, the Applicants submit that the respondent Government should take account of the suggestion to prosecute perpetrators of serious human rights abuse in Chechnya

under Articles 353-360 of the Criminal Code of the Russian Federation. Article 78(5) explicitly stipulates that the statute of limitations does not apply to Articles 353-360.

e) prompt and effective investigation into torture

54. The CPT repeatedly expressed its dissatisfaction with the conduct of investigations into allegations of torture (see 3rd Public Statement of the CPT, paras. 21-22, 47-53).
55. The Committee of Ministers and the CPT have repeatedly called upon the Russian authorities to provide detailed statistical information on the investigation and prosecution of torture.
56. The Applicants would like to draw the Committee of Ministers' attention to the fact that in all "Chechen" cases the Court found a violation of Article 2 and/or 3 on account of the ineffectiveness of the investigation into the substantive violations of the Convention.
57. The Applicants submit that the respondent State should take all necessary measures to conduct a prompt and effective investigation, capable of identifying the perpetrators of the serious human rights violations in Chechnya.
58. In relation to the investigations of complaints of torture the respondent State should, without any further delay, fully implement all the recommendations of the Committee of Ministers, the CPT (recommendations contained in 1st, 2nd and 3rd Public Statement) and the CAT (recommendations contained in conclusions and observations on the 3rd and 4th periodic report). The respondent State should furthermore guarantee, both in theory and practice, the standards adopted in the following UN documents:
 - Standard Minimum Rules for the Treatment of Prisoners
 - Basic Principles for the Treatment of Prisoners
 - Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
 - Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
 - Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
 - Code of Conduct for Law Enforcement Officials
 - Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
 - United Nations Rules for the Protection of Juveniles Deprived of the Liberty
 - United Nations Standard Minimum Rules for the Administration of Juvenile Justice

59. The Applicants also draw the committee of Ministers' attention to the general recommendations of the UN Special Rapporteur on Torture. (UN Doc. E/CN.4/2003/68, para. 26) According to these recommendations:

"When a detainee or relative or lawyer lodges a torture complaint, an inquiry should always take place and, unless the allegation is manifestly ill-founded, the public officials involved should be suspended from their duties pending the outcome of the investigation and any subsequent legal or disciplinary proceedings."

28 September 2007

Moscow, Russia