



## Ministers' Deputies

# Information documents

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## Violations of the ECHR in the Chechen Republic: Russia's compliance with the European Court's judgments

Memorandum prepared by the Secretariat of the DGII to assist the Committee of Ministers' supervision of the execution of the European Court's judgments (Article 46 of the ECHR)

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### EXECUTIVE SUMMARY

*The present Memorandum is a first follow-up to the Memorandum (CM/Inf/DH(2006)32 revised) which was prepared to assist the Committee of Ministers in its supervision of the execution by the Russian Federation of the judgments of the European Court relating to the actions of security forces in the Chechen Republic. These judgments found a number of violations of the Convention resulting from and/or relating to the authorities' actions during anti-terrorist operations in 1999-2000 and the continuous shortcomings in domestic remedies in this respect.*

*The Committee of Ministers repeatedly noted that these judgments require significant individual measures to remedy the consequences of the violations found and general measures to prevent new similar violations.*

*As regards individual measures, it is recalled that domestic investigations had been re-opened in 2006 with a view to remedying the shortcomings in domestic investigations observed by the European Court in its judgments. However, no development has been reported since March 2006. Information is therefore urgently requested on their progress and/or outcome*

*As regards general measures, according to the Committee of Ministers' well-established practice in this kind of case, their examination follows three main avenues:*

- 1. Improving the legal and regulatory framework governing the antiterrorist activities of security forces: the recent reforms clarifying the legislative framework are assessed and further changes suggested to take into account the Convention requirements regarding in particular prohibition of torture, the use of force and safeguards against disappearances. However, full compliance with the Convention is also contingent on the quality of the regulatory framework to be established by the authorities.*
- 2. Awareness raising and training of members of the security forces: measures taken so far are welcomed, including the publication and wide dissemination of the previous version of the Memorandum (CM/Inf/DH(2006)32); a number of further steps are suggested.*
- 3. Improvement of domestic remedies: the basic infrastructures lacking at the time of events are now in place; however, numerous outstanding issues remain to be addressed to ensure effective investigations into abuses and compensation of victims for damage arising both from abuses and ineffectiveness of investigation; Current Russian legislation and court practice in this respect is examined and certain solutions are suggested.*

*The authorities are invited to provide the Committee with detailed information on the questions raised.*

### INTRODUCTION

1. Since 2005 a number of judgments of the European Court of Human Rights ("the Court") have found important violations of the European Convention on Human Rights ("the Convention") by Russian security forces during anti-terrorist operations in Chechnya in 1999 and 2000. The judgments relate to:

- the failure to present any justification for the use of lethal force by the state agents in respect of the applicants' relatives and one of the applicant's sons (violation of Article 2)<sup>2</sup>;
- the failure to prepare and execute anti-terrorist operations involving the use of heavy combat weapons with the requisite care for the lives of civilians (violations of Article 2)<sup>3</sup>;
- the failure to carry out an effective criminal investigation into the circumstances surrounding the deaths or alleged deaths of the applicants' relatives or allegations of torture and lack of an effective remedy in these respects (violations of Articles 2, 3 and 13)<sup>4</sup>;
- the state's responsibility for the unacknowledged detention of the applicant's son and his subsequent disappearance and the authorities' failure to provide the applicant with any plausible explanation in this respect for more than 6 years, notably through the criminal investigation not opened until 1 and a half years after the event (violations of Articles 3 and 5)<sup>5</sup>;
- unjustified destruction by the security forces of the property of one of the applicants in the course of a anti-terrorist operation (violation of Article 1 of Protocol No. 1)<sup>6</sup>.

3. Under Article 46 of the Convention, the judgments were transmitted to the Committee of Ministers for supervision of execution, which notably implies the adoption of individual and general measures preventing new similar violations.

4. Pursuant to former Rule 6 of the Committee's Rules for the application of Article 46§2, the applicants provided the Secretariat, through their representatives, with detailed submissions regarding a number of individual measures to be adopted by the authorities, in particular, effective investigations into the events at the origin of the violations and the re-opening of domestic criminal proceedings to ensure the prosecution of those responsible. The applicants' submissions were transmitted to the Russian authorities on 07 October 2005 and taken into account by the Committee.

5. The first version of the present Memorandum (CM/Inf/DH(2006)32), issued on 29 June 2006, examined the measures reported by the Russian authorities in response to the Court's judgments (the action plan presented at the 960th meeting (DH), 28-29 March 2006). It also contained the Secretariat's preliminary assessment, including the list of outstanding issues and proposed avenues for further action to fully comply with the judgments.

6. The present version of the Memorandum contains, in addition, the assessment of the recently amended legal framework for the security forces' antiterrorist activities and suggests its further improvement to meet the Convention requirements regarding in particular the use of force and safeguards against disappearances.

## **I. INDIVIDUAL MEASURES**

7. In accordance with the Committee of Ministers' well-established practice, the respondent state has a continuing obligation to conduct effective investigations inasmuch as procedural violations of Articles 2 or 3 have been found (see notably Interim Resolution ResDH(2005)20 in *McKerr and others v. the United Kingdom*).

### **A. State of proceedings in specific cases**

#### *(i) Isayeva, Yusupova and Bazaeva and Isayeva judgments*

8. On 14 November 2005, pursuant to Articles 214 and 413 of the Code of Criminal Procedure and considering Article 46 of the Convention, together with the Committee's Recommendation R (2000) 2 of 19 January 2000 on the re-examination or re-opening of certain cases at domestic level, the Chief Military Prosecutor's office ordered the Military Prosecutor of the Unified Army Group to conduct new investigations under his close supervision.

9. The Government subsequently provided information on a number of procedural steps that had been taken by the Military Prosecutor, notably with a view to checking the proportionality of the lethal force used during the military operation near the villages of Shaami-Yurt and Katyr-Yurt and to determine whether measures had been taken to ensure civilians' safety. The following procedural actions are being carried out in the presence of the military officials who were planning and in charge of operations in 1999-2000:

- gathering of additional information from the territorial law-enforcement agencies in Chechnya and other regions of Russia, from agencies of military command and from bodies of local self-government;
- conducting operational, tactical expert examinations on the basis of the information received.

#### *(ii) Khashiev and Akayeva judgment*

10. On 25 January 2006, the investigations on the *Khashiev and Akayeva* case were also re-opened and assigned to the Prosecutor's office of the Starypromylovsky District of the City of Grozny (Chechen Republic), under the supervision of the General Prosecutor's office.

11. According to the latest information received, 84 other persons affected by the events at issue were granted victim status in the present investigation.

(iii) *Bazorkina judgment*

12. It results from the judgment that the investigation is still underway (§°180 of the judgment). The European Court has pointed out a number of omissions on the part of the authorities, e.g.

- failure to pursue the discovery of bodies in mid-February 2000 near the place where the applicant's son had disappeared;
- failure to identify and to question any servicemen or officers from the army intelligence service and the Federal Security Service who dealt with some of the detainees (§°122 of the judgment).

The Russian authorities have indicated that the shortcomings identified by the European Court do not necessarily result from the failure to take the investigative steps concerned but from the failure to disclose certain documents from the investigation file due to domestic legal restrictions in this regard.

**B. Assessment of the measures taken and further information expected**

13. In February 2006, the Committee welcomed the orders for new investigations to be conducted under the supervision of the Chief Military Prosecutor or Prosecutor General in the *Isayeva, Yusupova and Bazaeva and Isayeva and Khashiev and Akayeva* cases and later took note with interest of the information on procedural steps taken in the cases of *Isayeva, Yusupova and Bazaeva and Isayeva*.

14. In the meantime, the competent authorities were encouraged to make rapid and visible progress in the conduct of the new investigations, thus remedying, to the extent possible, the shortcomings in the earlier investigations impugned by the judgments of the European Court. Some information on the progress of these investigations has been provided for the 997th DH meeting (June 2007<sup>7</sup>). However, more details would be helpful with regard to the procedural steps referred to in §§°9 and 12 above (e.g. operational tactical expert examinations).

15. ***As to the restrictions in Russian law concerning the disclosure of information from the investigation file, the competent Russian authorities should be recalled of their obligation under the Convention to provide all necessary facilities in the establishment of facts to the European Court (Article 38 of the Convention)***<sup>8</sup>. Information is awaited on possible measures to ensure effective compliance with this obligation.

**II. GENERAL MEASURES**

16. It was stressed from outset that these judgments of the Court would appear to require significant general measures to prevent new, similar violations. As regards the type of measures to be considered, reference was notably made to the experience of other member states and of the Committee of Ministers in other cases concerning violations of the Convention by members of security forces (see, in particular, Interim Resolutions DH(99)434, DH(2002)98 and ResDH(2005)43 concerning the action of the security forces in Turkey and Interim Resolution ResDH(2005)20 concerning the action of the security forces in Northern Ireland).

**A. Legal and regulatory framework governing the activities of security forces**

17. The importance of ensuring that the action of security forces be governed by an appropriate legislative and regulatory framework has systematically been emphasised by the Committee of Ministers in similar cases and the measures taken by the respondent states in this area carefully considered (see in addition to the above-mentioned cases, *Makaratzis v. Greece*, judgment of 20°December°2004, Annotated Agenda of 982nd meeting (5-6 December 2006), CM/Del/OJ/DH(2006)982 Volume I).

**1. Current legislative framework for the fight against terrorism**

18. The Russian authorities have indicated to the Committee of Ministers that, since the events described in the judgments, a number of legislative acts were enacted and/or amended. According to the information provided, the actions of the security forces are governed by the following laws:

- New Law "On Suppression of Terrorism" of 6°March°2006 (replacing the old law on the Fight against Terrorism of 25 July 1998 in force at the time of the events);
- Law on the Federal Security Service of 3 April 1995;
- Law on the Status of Military Servicemen of 27 May 1998;
- Law on the Internal Forces of the Ministry of the Interior of 6 February 1997.

19. However, before the Court, the Government relied on six legal acts, without providing their titles (see *Isaeva*, §96 of the judgment). It is assumed that, in addition to the four aforementioned laws, the following two are of relevance in the present context:

- Police Act of 18 April 1991;
- Operational Search Activities Act of 12 August 1995;

20. The legislative changes to these laws, except the last one, were adopted on 27 July 2006. The reform notably aimed to bring them in line with the Council of Europe Convention on the prevention of terrorism and the aforementioned Law "On Suppression of Terrorism". It was recalled that the activities relating to the fight against terrorism must respect the Constitution and human rights.

**a) Law "On Suppression of Terrorism" and the introduction of a special regime for the fight against terrorism**

21. The new Law establishes the main principles of the fight against terrorism and recalls specifically that the activities relating to the fight against terrorism are based on the Constitution of the Russian Federation, the generally recognised principles and standards of international law and the international treaties to which the Russian Federation is a party (Article°1).

22. Unlike the former law, the new one provides the legal and organisational basis for the prevention and fight against terrorism, the minimizing and/or erasing of its consequences as well as the legal basis for the use of the army in the context of a anti-terrorist operation. It introduces a special regime for the latter which is a complex set of special, operational-combat and army measures accompanied by the use of military equipment, arms and special facilities (Article 3).

23. As regards the forces which might be engaged in a anti-terrorist operation, there are many different types, i.e. military units and formations, subdivisions of the federal executive bodies in charge of security, defence, internal affairs, justice, civil defence, protection of the population in emergency situations, etc (Article 15§3).

*(i) command of an anti-terrorist operation*

24. The exclusive command of various forces involved in an anti-terrorist operation is ensured by the head of the operation (Article 15§4) who is a director of the territorial department of the Federal Security Service in the region concerned (Article 6 of the Presidential Decree of 15 February 2006). He also gives the combat orders (Article 13).

25. He is assisted by local Operational Headquarters which ensure the planning of an anti-terrorist operation, prepare the combat orders and ensure the coordination between all security forces involved (Article 14).

26. The planning and conducting of anti-terrorist operations by Operational Headquarters are based on the instructions issued by Federal Operational Headquarter established by the aforementioned Presidential Decree within the National Anti-terrorist Committee.

*(ii) special rules governing the use of force*

27. According to the Law, anti-terrorist measures shall be proportionate to the degree of the terrorist threat (Article 2§13). **As regards the use of force and weapons by the army or other security forces involved**, this use should be in accordance with "normative legal acts" of the Russian Federation (Articles 9§3 and 15§6 respectively) and the combat orders given by the head of the operation (Article 13§2 6)).

*(iii) possible limitations of freedom of movement within the area of an anti-terrorist operation*

28. **Article 11 of the Law notably provides for a general power to apprehend persons without ID-card** and to bring them to the bodies of the Ministry of the Interior, or other competent bodies, in order to ascertain their identity. The law also provides for other limitations of liberty, i.e. a power to remove persons from certain areas and facilities and to temporarily resettle them.

29. No special requirements on registration of detentions for ID checks or of other actions limiting the freedom of movement or residence are provided for in the law.

*(iv) special rules on the accountability of the members of the security forces*

30. Article 22 specifies that depriving of his life a person who has committed an act of terrorism, or causing damage to the legitimate interests of individuals, of society or of the state through actions provided for or allowed by the legislation of the Russian Federation in the course of anti-terrorist activities are lawful.

**b) Federal Security Service Act**

31. According to the amendments of July 2006, the agents of the Federal Security Service may, notably in the context of an anti-terrorist operation:

- undertake operational and combat actions according to the regulations to be established by the federal executive organ in charge of the security (Article°9);
- **as regards the use of force and arms**, the law refers to legal acts of the Russian Federation (Article°14). The reference to the relevant rules of the Police Act (see §°36 below) has been deleted.
- **as regards limitations of the freedom of movement**, the agents are entitled to implement all measures provided for under Article 11 of the Law “On Suppression of Terrorism”, notably to apprehend persons without identification and to bring them to the bodies of the Ministry of the Interior in order to ascertain their identity (see §°28 above).

32. In normal circumstances, their activities, except those that are classified, are subject to supervision by a prosecutor (Article°24). The prosecutors or courts have to take steps in order to restore the rights or freedoms which have been breached by the agents, to compensate the damage caused and to prosecute those responsible. Officials of the Federal Security Service who allow abuse of powers are responsible on the basis of the relevant Russian legislation in force (Article°6).

#### **c) Law On the Status of Military Servicemen**

33. This Law does not contain any provision on the use of firearms or detention but deals with different aspects of the status of military servicemen, i.e. social benefits, political and civil rights, their disciplinary, civil and criminal accountability, etc. On this latter point, the law specifies notably that commanding officers are not responsible for offences committed by their subordinates, unless the commanding officers concealed the offence or omitted to take the necessary measures within the limits of their powers to prevent it or ensure prosecution of those responsible (Article°28).

#### **d) Law on the Internal Forces of the Ministry of the Interior**

34. **As regards the use of force and weapons**, the law provides that firing is authorised only after a warning except if such a warning or any delay in firing would create immediate danger for the life or health of persons, servicemen or other officials of the Ministry of the Interior. A firing has to be reported to the superior officer. The officials concerned shall inform a public prosecutor of any cases of injury or death that resulted from firing. Abuse of the use of force and arms gives rise to the liability provided for by Russian legislation (Article°25).

35. **As regards limitations to freedom of movement**, the members of these forces are entitled to implement all measures provided for by Article 11 of the Law “On Suppression of Terrorism” (see §°28 above).

#### **e) Police Act**

36. **As regards the use of force and arms**, the Police Act contains rules similar to those provided by the Law On the Internal Forces of the Ministry of the Interior (see §°34 above).

37. **As regards limitations to freedom of movement**, since the amendments of July 2006, police officers are entitled to implement all measures provided for by Article 11 of the Law “On Suppression of Terrorism” (see §°28 above).

### **2. Assessment of the measures taken and further information expected**

38. The new legislative framework clarifies a number of questions raised by the Court’s judgments. The adoption of the new Law “On Suppression of Terrorism” provides a legal basis for the use of the Army in the fight against terrorism and also clarifies the main responsibilities in the context of the special regime of an anti-terrorist operation. **However, a number of issues still remain to be addressed, mainly relating to the use of force, planning of operations and safeguards against disappearances.**

#### **a) Rules governing the use of force and planning of operations**

39. **As regards the rules governing the use of force**, the Convention requirement is that lethal force may only be used for the purposes mentioned in Article 2 and must be “strictly proportionate”, i.e. to comply with a **test of absolute necessity** (*McCann v. the United Kingdom*, judgment of 27 September 1995).

40. It would appear from this perspective that **the new legal framework governing the use of force remains vague**. While the Law “On Suppression of Terrorism” provides for a general principle of proportionality (Article 1), it does not contain any detailed provisions regarding the use of force, deadly weapons and firearms in the course of anti-terrorist operations. The Law simply refers to the requirements of “other normative legal acts” (see §°27 above), which presumably includes such acts as those enumerated above (see §§°31-37).

41. Although these laws list a number of situations in which the police or members of the internal forces of the Ministry of the Interior may use firearms, **they do not contain** any clear provision indicating that **lethal force should only be used when absolutely necessary and when all other less extreme methods have been exhausted**" (e.g. *Kakouilli v. Turkey*, judgment of 22 November 2005, §§77-79). The law on the Federal Security Service Act as amended does not contain any rules governing the use of arms. In this context, particular attention shall be paid to internal (by-law) regulations or instructions. The Russian authorities indicated that the complementary information in this respect is awaited from the competent authorities.

42. **As regards the planning and conduct of anti-terrorist operations**, the Convention contains the authorities' specific obligation to plan operations **in such a way as to avoid or minimise, to the greatest extent possible, risks of loss of lives, both of the persons to whom the measures are directed and of civilians, and minimise the recourse to lethal force** (*McCann v. United Kingdom*, judgment of 27 September 1995, § 194 and *Ergi v. Turkey*, judgment of 28 July 1998, §§ 79-81). The Convention also **compels the responsible authorities to "exercise the greatest of care in evaluating the information at their disposal before transmitting it to the soldiers** whose use of firearms automatically involve shooting to kill" (*McCann v. the United Kingdom*, §210).

43. It would appear in this respect that the Law "On Suppression of Terrorism" only sets up a general framework for anti-terrorist operations. Thus it only mentions a general possibility for the head of the operation to resettle the population from a particular territory without establishing any criteria for the application of this power (Article 11§3). *More details would thus be useful on how this power is exercised. Information would also be helpful on other ways available in domestic legislation to ensure the compliance with the Convention in the circumstances similar to those described in the Court's judgments.*

44. *In this context,, further information is accordingly expected on the development in the regulatory (by-law) framework of the security forces in the context of a anti-terrorist operation, including instructions governing the use of lethal force in conflict areas, and on any further measures taken or planned with a view to implementing the absolute necessity test enshrined in the Convention. In this respect, it would be particularly useful to receive the regulations for operational and combat activities, which should be issued under the Federal Security Service Act by the federal executive organ in charge of security (see §31 above).*

#### **b) Safeguards against disappearances**

45. The Court has consistently held that the Convention contains a number of very specific requirements which are intended to minimise the risks of disappearances and arbitrary detention (see among many other authorities *Kurt v. Turkey*, judgment of 25 May 1998, §123). The unacknowledged detention of an individual is a complete negation of these guarantees and discloses a most grave violation of Article 5 (among many other authorities, *Timurtas v. Turkey* 13 June 2000, §104).

46. In the *Bazorkina* judgment (§147 *in fine*) the Court notably stressed that the absence of detention records, noting such matters as the date, time and location of detention, the name of the detainee, as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention.

47. **As regards registration of detention, whether for identification purposes or other**, information is *urgently awaited on measures taken and/or planned to ensure compliance with the Convention requirements in the Chechen Republic*. In this context, the authorities' attention is notably drawn to Interim Resolution DH(99)434 concerning the actions of the security forces in Turkey.

48. **As regards the rules applicable to arrest and detention in the circumstances of a anti-terrorist operation, clarifications are requested on the extent to which the safeguards contained in normal criminal legislation with respect to arrest and detention** (the Code of Criminal Procedure and the Code of Administrative Offences), are applicable. In particular, information is awaited on whether the same rules, without any derogation, are applicable if an identity check and subsequent arrest, or any other measure limiting freedom of movement, are carried out by servicemen, members of the internal forces of the Ministry of the Interior or members of other security forces.

49. **As regards the authorities competent to detain persons without an identity card**, information is awaited on whether or not the army may detain for an identity check and which authorities, other than the Ministry of the Interior, may keep persons without identity cards in detention (cf. §28 above).

50. In the light thereof, information is also requested on **the supervision organised, notably by prosecutors (whether military or other)**, to ensure that different kinds of detention, whether for identification purposes or other, respect the different legal requirements applicable. Information on a special supervision regime in respect of classified operations would also be helpful.

51. **Considering the violation of Article 3 established by the Court in the Bazorkina case**, it would also be helpful to receive information on any new instructions issued regarding the responses to be given by the authorities to relatives inquiring into the fate of persons apprehended in life threatening circumstances.

**c) Protection from torture**

52. Over and above the information requested on the recording of police custody, information would be useful on the existing rules, either legal or regulatory, aimed at preventing torture in the Chechen Republic and ensuring the effective prosecution of those responsible for it.

**d) Supervision of respect of legal framework**

53. The information presented also contains certain indications as to the supervision of the respect of this framework, notably the role of prosecutors (see §§ 18 and seq.). This important aspect would however appear to require further development.

54. It has been noted, with interest, that on 25 July 2001 the Prosecutor General issued Decree n°46 on reinforcing supervision of respect for civil rights during identity check operations in the Chechen Republic and on 27 March 2002, by Order n°80, the Commander of the federal forces in Chechnya established stricter rules for these operations.

55. *Information would be appreciated on whether these rules are still in force and how they are implemented in practice. Otherwise, information would be necessary on how the supervision will be organised according to the new Law "On Suppression of Terrorism". In this context, more details would also be useful about the planned revision of the manual on international humanitarian law for the armed forces (see §63 below).*

56. *More generally, further information on existing supervisory procedures, either within the security forces or by prosecutors and courts, to ensure respect in particular of the principles governing the use of force and relating to the conditions of detention, would be helpful.*

**B. Awareness raising and training**

**1. Information submitted by the authorities**

**a) Publication and dissemination**

57. The three judgments (in Russian translation) have been transmitted to the General Prosecutor's Office, Supreme Court, Ministry of Defence, Ministry of the Interior, Federal Security Service and the Ministry of Justice.

58. The Ministry of Defence posted the judgments on its official website to make them available to the staff of the Armed Forces.

59. The judgments have also been disseminated to all other Prosecutor's offices and Military Prosecutors, including the Prosecutor of the Chechen Republic and the Military Prosecutor of the Joint Group of forces in the North Caucasian region together with a letter encouraging them to use these judgments in their surveillance activities and legal training. These authorities have also been encouraged to subscribe to "The Bulletin of the European Court of Human Rights" and to "Russia's Justice" in order to remain informed of the European Court's case-law.

60. The judgments will also be published in "The Bulletin of the European Court of Human Rights," a journal regularly disseminated to Russian courts.

**b) Training in the Army**

61. Issues related to the activities of the European Court of Human Rights, to the laws of the Russian Federation and to international humanitarian law have been introduced as a part of the servicemen's law-related education.

62. Directive N°D-6 of 1999 of the Minister of Defence had already established mandatory legal minimums for all categories of servicemen and civilian staff, including *inter alia* study of issues related to observance of human rights and freedoms. Systematic briefings, seminars, lectures or round-tables are organised on a weekly or quarterly, mandatory or optional basis with a view to providing all categories of servicemen and civilian staff of the Armed Forces with a legal knowledge to be applied to their day-to-day activities.

63. Video films on law, including those on compliance with the norms of international humanitarian law, textbooks, guidance for servicemen and other materials have been published as methodological support for the aforementioned courses. A Manual on international humanitarian law for the Armed Forces is being revised.

64. Finally, a partnership program between the Ministry of Defence and the delegation of the International Committee of the Red Cross concerning awareness of the rules of international humanitarian law is approved annually.

### ***c) Training of judges and prosecutors***

65. A specific item dedicated to the activities of the European Court of Human Rights has been introduced in the degree course within the Russian Academy of Justice and the Institute of Continuing Legal Education for senior officials of the General Prosecutor's office.

## **2. Assessment of the measures taken and further information expected**

66. ***The publication of the judgments and their wide dissemination*** is a welcome development. According to established practice, the authorities are invited to provide the Secretariat with copies and/or references of the abovementioned publications, notably with the new draft of the revised Manual on international humanitarian law, and with the circular letters by which the judgments were disseminated to various authorities.

67. The practice of circular letters is very important and the dissemination of judgments should systematically be accompanied by detailed comments/instructions issued by higher hierarchical authorities (e.g. Chief Military Command, Supreme Court, General Prosecutor's Office, etc.) to explain to all subordinates the obligations stemming from the judgments and their effects on day-to-day practice. Such measures will also contribute to create a better regulatory framework (see §§18 and seq.).

68. The dissemination of the judgments to courts with an explanatory note from the Supreme Court, remains to be confirmed.

69. ***As regards professional training***, the Committee of Ministers has welcomed the measures taken by the Russian authorities and encouraged them to continue their efforts to mainstream the human rights and international humanitarian law issues into the initial and in-service training of members of security forces, judges and prosecutors. Additional details would be helpful as regards the scope and nature of the courses delivered, the time allocated to them and evaluation of their practical effectiveness.

70. Information would be of particular interest in respect of officers responsible for planning and leading anti-terrorist operations causing a risk of the kind violations raised in the Court's judgments at issue here.

71. Information on specific measures taken within the Air Force would be of particular importance, given the latter involvement in the incidents impugned by the Court's judgments.

72. The mainstreaming of the Convention into professional training of the army, judges and prosecutors is a continuous process and the authorities are invited to keep the Committee informed of further steps taken in this respect. In the process of adopting additional measures, they are invited to follow the **Committee's Recommendation Rec(2004)4 of 12 May 2004 on the ECHR and professional training**.

73. ***As regards additional (ad hoc) awareness-raising activities organised in the wake of the Court's judgments***, the authorities are invited to provide a list of the various activities (seminars, conferences, etc) where the issues raised by the judgments have been or will be addressed. It would be particularly important to receive confirmation that the various authorities concerned, such as the Ministry of Defence, the Ministry of Justice, the General Prosecutor's Office and the Federal Courts' service, have included the relevant topic in their awareness-raising activities. Information on any general programs in this respect would be appreciated.

## **C. Effective remedies in case of abuses**

### **1. Information submitted by the authorities**

#### ***a) Effectiveness of criminal investigations***

74. Since the events of the present cases, a number of changes have taken place which should contribute to the prevention of new similar violations:

- the General Prosecutor created on 8 February 2000 the Prosecutor's Office of the Chechen Republic and on 9 September 2002 the Military Prosecutor's Office of the Joint Group of forces in the North Caucasian region. The local department of the Ministry of the Interior created in December 1999 was transformed in 2002 into the Ministry of the Interior of the Chechen Republic;

- according to Ruling n°15 of the Prosecutor of the Chechen Republic of 30 November 2002, interagency investigative groups were created with a view to investigate grave crimes;



- an interagency working group has been created in June 2005, headed by the Deputy Prosecutor of the Chechen Republic and including the heads of law enforcement bodies and of the security forces, to coordinate their action in those cases;
- the United Register of kidnapped or disappeared persons has been also created and is regularly compared with the lists of detained or convicted persons;
- a program providing for a set of measures to prevent kidnappings and to ensure the effective investigation into disappearances, adopted in 2004, was corrected in January 2005 by the prosecutor's office of the Republic in cooperation with the Ministry of Interior of the Republic, the local FSB department and the Prosecutor's Office;
- the new Code of Criminal Procedure entered into force on 1 July 2002, with new rules of investigation.

**b) Sanctions against officials responsible for abuses**

75. According to the statistics provided by the General Prosecutor's Office, since 1999, the time of first anti-terrorist operations in the North Caucasian Region, the Military Prosecutor's Office has opened 245 criminal cases in relation to crimes allegedly committed by servicemen, out of which

- 98 cases concerning 127 servicemen have been transferred to military courts for trial;
- 62 cases have been discontinued for different reasons, notably an amnesty act, for want of *corpus delicti* or following the death of the accused);
- 85 cases are still under investigation.

76. So far no statistics regarding possible convictions has been provided. Military courts have tried criminal cases against 117 servicemen, including 28 officers.

**c) Redress for victims**

77. No specific information has been provided by the authorities on this issue. However some basic principles emerge from the laws referred to by the authorities with regard to the legal framework governing the actions of security forces (see §§ 18 and seq.).

78. The recent Law "On Suppression of Terrorism" contains a number of provisions regarding compensation for damages resulting from terrorist acts and anti-terrorist activities applicable as from 1 January 2007. Prior to its entry into force, these issues were governed by the former Law "On Suppression of Terrorism".

*(i) compensation of victims under the former "Law on Suppression of Terrorism"*

79. The former Law "On Suppression of Terrorism", introduced a limited right to compensation for damages resulting from terrorist acts. Such compensation was to be paid from the budget of a subdivision in which such an act has taken place or, if need be, from the federal budget (Article 17). Nothing was provided by this Law for cases in which the damage was caused by the security forces.

*(ii) compensation under the new scheme provided for by the Law "On Suppression of Terrorism"*

80. The new Law "On Suppression of Terrorism" establishes that, in addition to damage caused by terrorist acts, the state will compensate, according to a specific procedure to be established by the Government, damage which might be caused also by the actions of security forces in the course of the fight against terrorist acts. However, the damage to be compensated is limited to pecuniary damage. Non-pecuniary damage should be compensated by the persons who have caused it (Article 18 §§ 1-2).

81. As under the previous Law, damage caused to individuals (to their health and property) taking part in a terrorist act, including their death, is not subject to compensation (Article 18 §3).

*(iii) other forms of redress*

82. As regards the draft law setting up a specific procedure to allow victims to obtain redress for ineffective investigations, the Russian authorities indicated, on 7 November 2006, that this draft law was considered inappropriate, given the fact that Russian law already contains legal mechanisms allowing victims to obtain redress in such cases.

83. The authorities have in particular relied on Federal Law n°4866-1 "On appealing to court against actions and decisions violating the rights and freedoms of citizens" of 27 April 1993 and the Federal Law "On the order of examination of applications of citizens of the Russian Federation", which entered into force on 2/10/2006.

84. The authorities have also referred to the Code of Criminal procedure without, however, specifying the relevant provisions.

## **2. Assessment of the measures taken and further information expected**

85. The measures reported by the authorities (see § 74 above) should doubtlessly contribute to the establishment of effective remedies in the Chechen Republic, inasmuch as they provide the necessary infrastructure which was deficient at the time of the events impugned by the Court.

86. According to the Court's well established case-law in cases of this kind, the notion of effective remedy entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and infliction of treatment contrary to Article 3, including effective access for the complainant to the investigative procedure (see § 237 in *Isayeva, Yusupova and Bazaeva*, § 183 in *Khashiyev and Akayeva* and § 227 in *Isayeva* judgments). A number of issues relating to the effectiveness of remedies are also being addressed in the context of the Committee of Ministers' examination of the measures taken by the United Kingdom in the *Mc Kerr* case.

### **a) Effectiveness of criminal investigation**

87. The existence of procedures allowing a thorough and effective investigation into alleged abuses is one of the core requirements highlighted by the present judgments. It remains to be assessed to what extent the current procedures, as amended by the new Code of Criminal Procedure, and their implementation conform to the detailed requirements of the Convention, some of which were violated in the present cases. These requirements notably relate to:

- the nature and scope of investigation required,
- the independence of the investigators bodies,
- the necessary investigative steps to be taken,
- speediness and transparency of investigation,
- access of victims to the investigative procedure, etc.

88. The following questions arise from outset with regard to the existing procedures, as amended by the new Code of Criminal Procedure and subsequent by-laws:

- *What bodies within the security forces are responsible for the investigation of abuses allegedly committed in the course of anti-terrorist operations and what are the guarantees of the investigative authorities' independence and impartiality from the hierarchical, institutional and practical point of view?*
- *What are the investigation powers and means of the General Prosecutors and of the Military Prosecutors vis-à-vis the police, the Armed Forces and the other enforcement bodies involved?*
- *How is the jurisdiction between military prosecutors and other prosecutors determined for the supervision of acts which might be committed by members of the various security forces involved in an anti-terrorist operation, i.e. arrests, use of firearms, etc?*
- *What legal remedies/sanctions (e.g. civil, administrative or criminal) are currently foreseen in Russian law against state's officials, in particular police, investigative bodies or prosecution, who omit to give a prompt and adequate response to allegations of serious crime?*
- *How do the new Code of Criminal Procedure and other rules in force ensure promptness of criminal investigation?*
- *What statute of limitations applies in cases of different abuses (including homicide, kidnapping, destruction of property, etc)?*
- *What are the victims' rights throughout the investigation; in particular do they have whole or partial access to the investigation file and at what stage of the investigation?*
- *Are they entitled to request some particular procedural steps to be taken and is the investigating authority bound by such requests and are refusals subject to judicial review?*
- *What control does the judiciary or other independent bodies exercise over the effectiveness of investigation? What means and remedies are available to the victims under domestic law to challenge before courts prosecutors' decisions not to prosecute?*

89. Clarifications on the above points would be helpful. Examples of investigations brought against members of the security forces and their outcome would be of particular value.

### **b) Sanctions against officials responsible for abuses**

90. Statistics on criminal cases brought against officials before courts constitute a useful indicator of the effectiveness of criminal sanctions against abuses.

91. Up-dates and details in this respect would be appreciated, especially as regards the results of the criminal trials referred to in §§°75-76 above (e.g. number of convictions for abuses per year, facts and legal grounds at their basis, indication of whether the sentence imposed has been or is being effectively served, etc). Specific examples of relevant court decisions would be helpful. Information regarding the applicability of the principle of command responsibility would be useful (i.e. on the scope of responsibility of those simply obeying orders and the scope of responsibility of those giving orders leading to serious human rights' abuses).

**c) Redress for victims**

*(i) compensation of victims – general developments*

92. Certain recent domestic decisions delivered by courts in the regions concerned by terrorism have awarded compensation both for ineffective investigation and for substantial damage resulting from homicides caused by the security forces, based on the state's ordinary civil liability.

93. The following two examples are available in this respect:

- First instance court decision of 8 September 2004, upheld by the Karachaevo-Cherkessya Supreme Court on 19 October 2004: the applicant was awarded **compensation for non-pecuniary damage (10 000 RUR) caused by unlawful failings of the investigation conducted by the Prosecutor's office** into the circumstances of the abduction of the applicant's minor son; The first instance court's decision explicitly refers to the Russian authorities' failure to meet their obligations under the Convention, as set out in *Aksoy and Aydin v. Turkey* judgments of the Court;

- The Nazran Town Court's decision of 26 February 2003, upheld by the Ingushetia Supreme Court on 4 April 2003: the applicant was **granted compensation for pecuniary and non-pecuniary damages (675,000 RUR) caused by the killing of the applicant's relatives in the context of an identity check carried out by the Federal forces**, although the responsible units were not identified in the criminal proceedings.

94. It is particularly encouraging that the first of the aforementioned judgments directly and explicitly implement the Convention requirements and the European Court's case-law, as prescribed by the Plenum of the Supreme Court in its Ruling of 10 October 2003. **The further development of court practice in the direction engaged should be encouraged and the Supreme Court may wish to consider taking appropriate measures to that effect.** Further similar examples from domestic court practice would be appreciated.

95. *A clarification would be helpful as to the interaction of these developments of the state's ordinary civil liability with the special compensation schemes set up and referred to below (§§ 97-99), in particular in circumstances where it is established that the state has acted outside its lawful authority or omitted to act. Notably, the question of moral damages in such situations is of interest.*

96. In this respect, the authorities' attention has been drawn to the experience of Turkey, which was confronted with similar problems in the context of the anti-terrorist fight in the south-east of the country : development of the administrative court's case-law imposing a strict liability on the state for damages caused in the context of the fight against terrorism and the subsequent adoption of a special Law "On Compensation of Losses Resulting from Terrorism and from Measures Taken against Terrorism", which provided, in addition to this general state liability, for a speedy system of extra-judicial compensation (see for details Interim Resolution ResDH(2005)43). Attention is also drawn to Committee of Ministers' Recommendation Rec(2004)6 which contains a number of elements relevant to the progress of domestic remedies.

*(ii) Special compensation schemes provided for in anti-terror legislation*

97. It remains unclear **whether the compensation scheme set up under the new Law "On Suppression of Terrorism" has totally replaced the former scheme** set up under the Law "On the Fight against Terrorism", or whether both schemes continue to apply in parallel. *In particular, what scheme is today applicable to damages caused before the entry into force of the new scheme under the Law "On Suppression of Terrorism"?*

98. There is presently no **information about the implementing regulations to be issued by the Government** under the Law "On Suppression of Terrorism" and on the scope and extent of judicial involvement in the compensation process. *Such information is essential for an assessment of the new scheme.*

99. Another issue concerns the fact that the new provisions appear to **totally exclude from compensation individuals taking part in a terrorist act**, apparently even where the harm or injury suffered has been unlawfully inflicted. *Further information on this point would be helpful.*

*(iii) Other forms of redress*

100. It is noted at outset that **the remedy provided for by the Law “On appealing to court against actions and decisions violating the rights and freedoms of citizens” is not applicable** to the situations at issue, since its Article 3 excludes from its scope all complaints in relation to the actions or failures to act of the investigating authorities and prosecutors which are subject to the particular appeal procedure provided for by the Russian Code of Criminal procedure, notably its Chapter 16.

101. In the light of the present uncertainty of the development of the state’s civil liability, notably in cases of ineffectiveness of investigations, it could be useful to ensure a clear legal basis for this responsibility.

102. **As regards the possibility of obtaining an acceleration of investigation, the possibility to complain to a higher prosecutor** about the ineffectiveness of an investigation is already provided for by the Law “On Prokuratura” or the Code of Criminal procedure. However, it was used by the applicants in the cases at issue here and **did not prove effective** (see e.g. the *Khashiyev and Akayeva* judgment, §§°66-68 and §°162, the *Isayeva, Yusupova and Bazaeva* judgment, §§°52-53 and the *Bazorkina* judgment, §§°123-124).

103. The Russian authorities also referred to a **possibility for the parties to the proceedings to challenge the progress of the criminal investigation before a judge** (Article 125 of the Code of criminal procedure). The European Court has only mentioned in this respect that delays in granting a victim status to the applicants and their limited access to the file afterwards prevented them from using this remedy (the *Estamirov* judgment of 12 October 2006, §94 and the *Luluyev and others*, judgment of 9 November 2006, §100). The Court also pointed out to **lack of clarity as to the difference between the courts’ powers and those of higher prosecutors referred to in §102**. *Therefore examples of cases in which victims were granted procedural status and could use this remedy would be useful in order to assess its effectiveness.*

104. It is recalled in this respect that the European Court has repeatedly held that “the remedy required by Article 13 must be “effective” in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by acts or omissions by the authorities of the respondent state” (§ 182 of the *Khashiyev and Akayeva* judgment). *Therefore information is expected on measures taken or planned in order to provide for the effective acceleration of investigations.*

Note <sup>1</sup> This document has been classified restricted at the date of issue. It was declassified on 20 June 2007 following the 997th (DH) meeting of the Ministers’ Deputies (05-06 June 2007).

<sup>2</sup> *Khashiyev and Akayeva (57942/00+), judgment of 24 February 2005; Bazorkina (69481/01), judgment of 27 July 2006.*

Note <sup>3</sup> *Isayeva (57950/00), judgment of 24 February 2005; Isayeva, Yusupova and Bazayeva (57947/00+), judgment of 24 February 2005.*

Note <sup>4</sup> *Khashiyev and Akayeva (57942/00+), judgment of 24 February 2005; Isayeva (57950/00), judgment of 24 February; Isayeva, Yusupova and Bazayeva (57947/00+), judgment of 24 February 2005; Bazorkina (69481/01), judgment of 27 July 2006.*

Note <sup>5</sup> *Bazorkina (69481/01), judgment of 27 July 2006.*

Note <sup>6</sup> *Isayeva, Yusupova and Bazayeva (57947/00+), judgment of 24 February 2005.*

Note <sup>7</sup> See in this respect the Annotated Agenda adopted at the 997th DH meeting (...)

Note <sup>8</sup> The European Court has already found a violation of Article 38 of the Convention in the *Imakayeva* judgment (see Section 2 of the Annotated Agenda adopted at the 997th DH meeting).

## Related Documents

### Meetings

[997DH meeting of the Ministers' Deputies / 05 June 2007](#)

### Other documents

[CM/Inf/DH\(2006\)32E / 29 June 2006](#) 