

*Ministers' Deputies***Information documents**CM/Inf/DH(2008)33 Addendum 28 November 2008¹

Actions of the security forces in the Chechen Republic of the Russian Federation: general measures to comply with the judgments of the European Court of Human Rights

Second part of the revised Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights

EXECUTIVE SUMMARY

The present document constitutes the second part of the Memorandum CM/Inf/DH(2008)33 prepared in the context of the Committee of Ministers' supervision of the execution of the European Court's judgments relating to the actions of security forces in the Chechen Republic in 1999-2001.

The first part of the Memorandum dealt in particular with issues concerning the legal and regulatory framework governing the use of force in the context of an anti-terrorist operation, measures to increase effectiveness of domestic investigations, the obligation to cooperate with the European Court and awareness raising and training of members of security forces. This part was issued and declassified at the 1035th Human Rights meeting (September 2008).

The present part summarises the information submitted by the Russian authorities, notably in the context of the preparation of the present document, and identifies a non-exhaustive list of outstanding issues which relate to in particular:

1) The limitations of individual rights, notably under Article 8 of the Convention, in the context of an anti-terrorist operation: The Memorandum raises new issues concerning the legal framework allowing the authorities to limit certain individual rights in the context of an anti-terrorist operation in the light of the findings of the European Court and possible remedies available to persons subjected to such limitations.

2) The compensation for victims of violations resulting from and/or related to anti-terrorist operations: the Russian authorities indicated different ways to obtain compensation (criminal, civil and administrative) that are open to victims of such violations. Further clarifications are awaited, notably on the interaction between different ways to obtain compensation indicated by the authorities. At this stage, positive developments of the domestic courts' case-law concerning State civil liability may already be welcomed and more such examples are requested. The existence of special compensation procedures for lost property is also noted with interest.

INTRODUCTION

1. The present document constitutes the second part of the Memorandum CM/Inf/DH(2008)33 prepared in the context of the Committee of Ministers' supervision of the execution of the European Court's judgments relating to the actions of security forces in the Chechen Republic in 1999-2001. The first part was declassified by Ministers' Deputies at their 1035th Human Rights meeting (September 2008).

2. The first part of the Memorandum notably dealt with issues related to the legal and regulatory framework governing the use of force in the context of an anti-terrorist operation, the effective accountability of members of security forces and the obligation to cooperate with the European Court.

3. The present part raises new issues of limitations of individual rights notably under Article 8 of the Convention in the context of anti-terrorist operations and of remedies available to persons being subjected to such limitations (Section I). It further examines the developments in the domestic courts' case-law and administrative practice with regard to compensation for victims of violations resulting from and/or related to such operations (Section II). It notably takes into account the European Court judgments which recently became final and the submissions made by the Russian authorities for the purposes of this update².

4. As regards the general issue of remedies, the European Court's consistent position is that 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 violations, including effective access for the complainant to the investigative procedure³.

5. Therefore the final assessment of different remedies examined below, in particular those aimed at compensation of victims of violations resulting from and/or related to anti-terrorist operations, should be made in the light of the measures to increase the effectiveness of domestic investigation and participation of victims in such investigations which are dealt with within the first part of the Memorandum.

I – Limitations of individual rights in the context of an anti-terrorist operation

1) The legal framework allowing the authorities to limit individual rights in the context of an anti-terrorist operation

6. In a number of the European Court's judgments, the authorities relied on the anti-terror legislation as the basis for interference with the applicants' rights. For instance, in the *Imakayeva* case, a search was carried out in the applicant's house which resulted in the confiscation of certain items. In the *Khamidov* case, federal troops occupied the applicant's premises.

7. In both cases, the Russian authorities referred to different provisions of the former anti-terror law which provided for certain limitations of rights of persons in the context of an anti-terrorist operation.

8. However, these arguments were rejected by the European Court which indicated that the reference to the anti-terror legislation "cannot replace an individual authorisation of a search, delimiting its object and scope, and drawn up in accordance with the relevant legal provisions either beforehand or afterwards"⁴.

9. The European Court further noted that "while vesting wide powers in State agents within the zone of the counter-terrorist operation, the legal provisions in question, however, did not define with sufficient clarity the scope of those powers and the manner of their exercise so as to afford an individual adequate protection against arbitrariness"⁵.

10. Finally, the European Court concluded that "the provisions of this Act are not to be construed so as to create an exemption to any kind of limitations of personal rights for an indefinite period of time and without clear boundaries to the security forces' actions"⁶.

Secretariat's assessment

11. The Secretariat notes that the new Federal Law No 35-FZ "On Suppression of Terrorism" came into force on 6 March 2006 and replaced the old law on the Fight against Terrorism of 25 July 1998 in force at the material time. It would appear that this new Law contains basically the same provisions as regards the limitations of rights of persons in the context of an anti-terrorist operation, which do not expressly refer to a possibility of carrying out searches, of seizing items or of temporarily occupying residential premises.

12. *Information is thus awaited on the circumstances in which searches in and occupation of residential premises as well as other limitations of personal rights may be carried out within the context of an anti-terrorist operation, in particular on the legal basis for such measures, the authority in charge and the safeguards available to persons being subjected to such measures.*

13. It is recalled that similar issues have been raised in the first part of the present Memorandum with regard to the apprehension of persons and identity checks allowed in the context of an anti-terrorist operation (see CM/Inf/DH(2008)33, §35).

2) General remedies available to persons subjected to limitations of their rights

Information provided by the Russian authorities

14. In the previous version of the Memorandum⁷, the Russian authorities referred to the Law on Complaints to Courts against Actions and Decisions Violating the Rights and Freedoms of Citizens (as revised by the Federal Law of 14 December 1995) as a general remedy available to persons subjected to limitations of their rights during an anti-terrorist operation.

15. According to this Law, any citizen has the right to file a complaint with a court when he/she considers that his/her rights have been infringed by unlawful actions or decisions of State agencies, bodies of local self-government as well as institutions, enterprises or their associations or officials or State employees.

16. Complaints may be filed either directly with a court or a higher State agency which has the obligation to review the complaint within a month. If the complaint is rejected by the latter or if there has been no response from it, the person concerned has the right to bring the matter before a court.

Secretariat's assessment

17. In the *Chitayev and Chitayev* judgment, the European Court found that the remedy referred to above by the Russian authorities was a remedy to be exhausted by way of either challenging the lawfulness of searches and seizures or by appealing against the alleged failure of the law-enforcement bodies to respond to their complaints⁸.

18. However, it is to be noted that in this particular case the search and seizure of the applicants' house was carried out within the framework of an investigation opened against them. In other cases, searches and seizures were carried out in the applicants' homes outside the framework of any pending criminal proceedings opened against them and in the absence of a search warrant, an individualized decision or any other details in this respect⁹.

19. In these circumstances, it remains unclear whether this remedy could be effectively used when the authorities deny that such a measure has ever been taken¹⁰. It remains also unclear how a person whose house has been occupied may challenge such occupation in court in the absence of an individualised decision or order indicating the grounds and conditions for this measure. *Clarifications in this respect are awaited together with possible examples of relevant judicial practice.*

20. 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"¹¹.

II – Improving compensation for victims of violations resulting from and/or related to anti-terrorist operations

Information provided by the Russian authorities

21. The Russian authorities indicated that Russian law contains a number of remedies aimed at the compensation of pecuniary and non-pecuniary damage sustained by individuals as a result of the fight against terrorism in the Chechen Republic.

1) Compensation through judicial proceedings

22. The Russian authorities indicated that victims of illegal and criminal acts may, according to Russian law, seek compensation either through criminal or civil proceedings.

a) compensation through criminal proceedings

23. The victims of abuses may first claim pecuniary and non-pecuniary damage in the framework of criminal proceedings. The Russian authorities provided several examples and statistics in which domestic courts granted civil claims brought by victims against servicemen and other representatives of the State administration and local government in the framework of criminal proceedings. In particular, in two examples, victims were respectively awarded compensation for pecuniary and non-pecuniary damage of the total amount of RUR 5,472,319 (EUR 158,519) and RUR 1,500,000 (EUR 43,451).

24. In another decision delivered by the garrison military court of Grozny, the court awarded pecuniary and non-pecuniary damage to the plaintiff who had alleged that his daughter had been killed by a serviceman. In this case, the court held that the military unit as a legal entity was liable on the basis of Article 1068 of the Civil Code to pay damages caused to the plaintiff by its employee while on duty.

b) compensation through civil proceedings

25. The victims may also claim damages in the framework of civil proceedings either following the results of a criminal investigation (if a civil claim has not been lodged or examined in the framework of criminal proceedings) or in the absence of any results of such an investigation. According to the statistics provided by the Supreme Court of the Chechen Republic, RUR 27,4 million (EUR 793,708) were awarded for pecuniary damage and RUR 1,9 million (EUR 55,038) were awarded for non-pecuniary damage caused during the resolution of the crisis in the Chechen Republic between 2001 and 2008.

26. In this connection, the Russian authorities underlined that **civil courts have granted damages to victims even when the criminal investigation was unable to identify the specific State officials responsible for the violations.**

27. For example, the Shaliskiy Town Court of the Chechen Republic awarded in 2008 RUR 532,000 (EUR 15,411) for pecuniary and non-pecuniary damage to a plaintiff for destruction of property and death of his wife as a result of artillery bombing in 2002. While the criminal investigation failed to identify State officials responsible and was discontinued for lack of *corpus delicti*, the civil court noted that the artillery bombing was carried out by a military unit, which it then declared responsible for the damage caused to the plaintiff.

2) Special compensation schemes providing for a possibility to obtain direct compensation from the administration

a) special compensation scheme provided by the Law "On Suppression of Terrorism"

28. The Russian authorities further indicated that Article 18 of the Law "On Suppression of Terrorism" provides that compensation of pecuniary damage resulting from terrorist acts and anti-terrorist activities is made by the State according to a procedure to be established by the Government.

b) special compensation schemes for loss of property

29. The Russian authorities also referred to the existence of two special compensation procedures, established by the Rules approved by two Governmental Decrees¹², for persons who have lost their property during the resolution of the crisis in the Chechen Republic.

30. These Rules provide a possibility to obtain, directly from the administration, compensation for pecuniary damage caused to persons as a result of terrorist activities and operations carried out in combating terrorism as from 12 December 1994.

31. The first procedure concerns persons who permanently left the Chechen Republic and the second one concerns persons who are still living on its territory. On 18 October 2008, 38,000 families were compensated for a total amount of RUR 4,05 billion (EUR 117 318 193) under the first procedure, and 49,000 families were compensated for a total amount of RUR 17,2 billion (EUR 498 240 227) under the second procedure.

32. In order to speed up payment of compensation, on 29 July 2004 the Government of the Russian Federation adopted Decree No388 "On additional measures for payment of compensation for lost homes and property to victims of the resolution of the crisis in the Chechen Republic who permanently live on its territory".

33. In addition, the Ministry of Regional Development is working on the improvement of legislation governing State assistance to persons who lost their houses during the resolution of the crisis and permanently left the territory of the Chechen Republic¹³.

34. The Russian authorities underlined that **payments made in the framework of these special procedures do not prevent beneficiaries from bringing civil actions under the Civil Code and the Federal Law "On Suppression of Terrorism"**.

3) Compensation for delays in the investigation

35. Finally, the Russian authorities indicated that the draft constitutional law setting up a domestic remedy in case of excessive length of judicial and enforcement proceedings also applies to the pre-trial stage of criminal proceedings. This draft law was submitted to the Parliament on 30 September 2008 by the Supreme Court of the Russian Federation. Once adopted, it would allow victims of excessively long investigations to obtain appropriate compensation for delays.

Secretariat's assessment

36. The Secretariat notes that the Russian legal system offers different ways to obtain compensation. *More details on the interaction between all these different remedies would be useful.*

1) Compensation through judicial proceedings

a) compensation through criminal proceedings

37. The Secretariat takes note with interest of the examples of conviction of servicemen as well as of other representatives of the State and of their obligation to pay civil damages cited above. The European Court's position is that the combination of criminal, civil and other remedies and, in particular, the prospects offered by criminal proceedings for obtaining redress (prosecution and conviction of those responsible and compensation), are elements which may be taken into account when examining the issue of exhaustion of domestic remedies (*Aytekin v. Turkey*, judgment of 23 September 1998 (no102/1997/886/1098), § 85)¹⁴.

38. The Secretariat considers that these examples would also be relevant for the first part of the Memorandum which examines the issue of effective accountability of members of the security forces (see in particular §§ 127-130). *Therefore the authorities may wish to indicate, when providing comprehensive official statistics requested in § 130, information on the outcome of civil claims lodged by victims in the framework of criminal proceedings.*

39. It is further notes that the examples provided by the Russian authorities mostly concern the criminal proceedings in which perpetrators were identified and subsequently convicted. The cases here at issue concern the situations in which investigative proceedings are still pending or have been discontinued, thus depriving the applicants of their right to compensation¹⁵. It seems that such situations could be dealt with in the framework of civil proceedings.

b) compensation through civil proceedings

40. In the previous version of the Memorandum (CM/Inf/DH(2006)32 revised 2, §§ 92-94), the Secretariat has already noted positive examples of State civil liability for abuses committed by members of the security forces in Chechnya: in two cases plaintiffs received compensations from domestic courts notwithstanding the failings of criminal investigations. However, it was also noted that these examples remained isolated.

41. The fresh information provided by the Russian authorities demonstrates further encouraging developments of the domestic courts' case-law in this direction. In this respect, the Secretariat notes with particular interest the decision of the Shaliskiy Town Court cited above (§§ 26-27). *More such examples are awaited as well as information on possible domestic measures to support such case-law development.*

2) Special compensation schemes providing for a possibility to obtain direct compensation from the administration

a) special compensation scheme provided by the Law "On Suppression of Terrorism"

42. The Secretariat first notes that damage caused to persons taking part in a terrorist act are not subject to compensation (Articles 18§3 and 22). However, it is unclear how the issue whether a person has indeed taken part in a terrorist act is determined. For example, similar law adopted in Turkey excludes from compensation damages caused to persons who were convicted under Anti-terrorism law¹⁶. *Clarifications in this respect are awaited.*

43. The Secretariat further notes that Article 18 of the Law "On Suppression of terrorism" provides that the procedure for compensation of damages resulting from a terrorist act is to be established by the Government of the Russian Federation. In this respect, it is noted that the Russian authorities referred to two Governmental Decrees on compensation for loss of property (§§ 29-33). *Clarifications are awaited on whether there are other Governmental Decrees or regulatory acts providing for compensation by the State of different types of damages adopted under the aforementioned Law.*

44. 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. In the framework of the execution of similar judgments, the Turkish authorities adopted a special Law "On Compensation of Losses Resulting from Terrorism and from Measures Taken against Terrorism", which provided, in addition to the general state liability, for a speedy system of extra-judicial compensation¹⁷. This Law provides in addition to the compensation for loss of property, compensation for death or injury.

b) special compensation schemes for lost property

45. The Secretariat notes with interest the existence of two compensation mechanisms for loss of property. In the absence of judgments of the European Court on this specific issue and without prejudging these mechanisms' conformity with the Convention, it should be noted that the nature of amounts granted and the number of beneficiaries show at the outset that these remedies are frequently used in practice and provide substantial compensation.

46. *Clarifications however would be useful as to whether the persons whose property has been destroyed or damaged as a result of its temporary occupation by security forces can also benefit from one of these mechanisms.*

3) Compensation for delays in investigation

47. The draft constitutional law setting up a new domestic remedy in case of excessive length of investigation and its recent submission to Parliament by the Supreme Court are welcomed developments. *Information is awaited on the progress of this draft law in Parliament and the time-frame for its adoption.*

Note ¹ This document was classified restricted at the date of issue. It was declassified at the 1043rd meeting of the Ministers' Deputies (4 December 2008) (see CM/Del/Dec(2008)1043 Decisions adopted at the meeting).

Note ² The Russian authorities' additional submissions of 7 November 2008 and of 21 November 2008.

Note ³ See § 237 in *Isayeva, Yusupova and Bazaeva* (application No. 57947/00, judgment of 24/02/2005, final on 06/07/2005), § 183 in *Khashiyev and Akayeva* (application No. 57942/00, judgment of 24/02/2005, final on 06/07/2005) and § 227 in *Isayeva* (application No. 57950/00, judgment of 24/02/2005, final on 06/07/2005).

Note ⁴ *Imakayeva* judgment (application No. 7615/02, judgment of 09/11/2006, final on 09/02/2007) cited above, § 188.

Note ⁵ *Khamidov* judgment (application No. 72118/01, judgment of 15/11/2007, final on 02/06/2008) cited above, § 143.

Note ⁶ *Imakayeva* judgment cited above, § 188.

Note ⁷ CM/Inf/DH(2006)32 revised 2, § 83, p. 12.

Note ⁸ See also *Popov and Vorobyev v. Russia* (partial decision) cited above, No 1606/02, 2 March 2006.

Note ⁹ See *Imakayeva* judgment cited above, §189.

Note ¹⁰ In the *Imakayeva* case cited above, the European Court noted that various state authorities denied for over two years after the events at issue that such an operation had taken place at all.

Note ¹¹ *Khashiyev and Akayeva* judgment cited above, § 182.

Note ¹² Government Decree of 30 April 1997 No. 510 on the Rules of payment of compensation to persons who permanently left the Chechen Republic for houses and/or property lost as a result of the resolution of the crisis in the Chechen Republic

and Government Decree of 4 July 2003 No. 404 on the Rules of payment of compensation to persons who are still living in the Chechen Republic for houses and property lost as a result of the resolution of the crisis in the Chechen Republic.

Note ¹³ This work is carried out on the basis of the Order of the President of the Russian Federation of 15 June 2007 No. Пп-1094 and the minutes of the meeting of 15 July 2008 involving the Head of the Government of the Russian Federation (point 4 of the minutes N°АЖ-П11-3 Опр).

Note ¹⁴ Also referred to in the Committee of Ministers' Interim Resolution DH(99)434 on action of the security forces in Turkey : measures of a general character, p.8.

Note ¹⁵ See among many others: § 239 in *Isayeva, Yusupova and Bazaeva* judgment cited above; § 185 in *Khashiyev and Akayeva* judgment cited above; § 195 in *Imakayeva* judgment cited above; § 163 in *Bazorkina* judgment (application No. 69481/01, judgment of 27/07/2006, final on 11/12/2006); § 117 in *Kukayev* judgment (application No. 29361/02, judgment of 15/11/2007, final on 02/06/2008); § 164 in *Khamila Isayeva* judgment (application No. 6846/02, judgment of 15/11/2007, final on 02/06/2008); § 157 in *Baysayeva* judgment (application No. 74237/01, judgment of 05/04/2007, final on 24/09/2007); § 164 in *Khatsiyeva and others* judgment (application No. 5108/02, judgment of 17/01/2008, final on 07/07/2008); § 120 in *Estamirov and others* judgment (application No. 60272/00, judgment of 12/10/2006, final on 12/01/2007); § 127 in *Akhmadova and Sadulayeva* judgment (application No. 40464/02, judgment of 10/05/2007, final on 12/11/2007); § 158 in *Bitiyeva and X* judgment (application No. 57953/00, judgment of 21/06/2007, final on 30/01/2008).

Note ¹⁶ See Interim Resolution CM/Res/DH(2008)69 on the actions of the security forces in Turkey: progress achieved and outstanding issues adopted by the Committee of Ministers on 18 September 2008, p. 13.

Note ¹⁷ See for more details Interim Resolutions [ResDH\(2005\)43](#) and CM/ResDH(2008)69.

Related Documents

Meetings

[1043DH meeting of the Ministers' Deputies](#) / 02 December 2008

Other documents

[CM/Inf/DH\(2008\)33E](#) / 11 September 2008 