



# MEMORIAL - EHRAC BULLETIN:

EUROPEAN HUMAN RIGHTS ADVOCACY CENTRE

# EHRAC

## International Human Rights Advocacy

### Editorial

This is the first edition of the *EHRAC Bulletin* which is produced by the *European Human Rights Advocacy Centre* (EHRAC) in conjunction with *Memorial*.

EHRAC was established in 2003, with a grant from the European Commission, to enhance the capacity of human rights NGOs and lawyers within the Russian Federation in utilising regional and international human rights mechanisms. EHRAC has offices in Moscow and London and supports ten human rights lawyers, fieldworkers and other staff both in Moscow and in other regions of Russia. As well as providing advice and support on using human rights mechanisms, notably the European Court of Human Rights, EHRAC also provides training seminars and disseminates related information and materials, including this *Bulletin*.

The *EHRAC Bulletin* will be published twice a year and is intended to provide NGOs and law-

yers with information about recent developments in the human rights field which have significance for Russia.

This first edition of the *EHRAC Bulletin* highlights a recent report which has been produced by the Russian human rights NGO community as an 'alternative report' to the State's report to the UN Committee on Economic, Social and Cultural Rights. Olga Shepeleva analyses the changes to the Russian Law defining "torture" and Kirill Koroteev considers whether there is a right to alternative civil service under the European Convention on Human Rights. There is also analysis of the first cases from Chechnya which are before the European Court of Human Rights (in which Memorial and EHRAC lawyers are representing the applicants) and the recent statement concerning Chechnya from the Council of Europe Committee on Torture. It also highlights a recent report on the procedures for appointing European Court judges. A Case

Reports section will be a regular feature of the *EHRAC Bulletin*, with commentaries on recent significant human rights cases. This edition focuses on the European Court's judgment in *Nachova v Bulgaria*, concerning discriminatory treatment of members of an ethnic minority by the police.

We would welcome your comments on this and future editions of the *EHRAC Bulletin*, and we also welcome the submission of articles for possible publication. EHRAC and Memorial staff are available to provide advice on human rights cases and to provide further information on training courses – full contact details will be included in each edition of the *EHRAC Bulletin*.

Philip Leach  
Director, EHRAC

## Council of Europe withdraws from Chechnya

Miriam Carrion, Barrister

*Commentary on the Report by the Secretary General on the Presence of Council of Europe Experts in the Chechen Republic and overview of the situation since June 2000. SG/Inf(2004)3, 16 January 2004.*

On 16/01/04 the Secretary General published the final report on the presence of the Council of Europe's experts in Chechnya. It provides an evaluation of the Council of Europe's presence in Chechnya, an overview of the situation since June 2000 as well as a new agreement on future cooperation.

Since June 2000, CoE consultative experts lived in Zamenskoye and worked within the mandate of the Putin-established Office of a Special Representative of the President of the

Russian Federation for ensuring human and civil rights and freedoms in the Chechen Republic. The Office focused specifically on human rights abuses by members of the federal forces and law-enforcement bodies - in particular on extrajudicial killings and disappearances. From June 2000 until August 2003, it registered nearly 10,000 applications on alleged human rights abuses.

Expressed as "a new form of cooperation" which foresees CoE experts' involvement in the implementation of concrete programmes on an "ad hoc" basis, the continued presence of the Council of Europe in Chechnya has ended. According to Mr Yakovenko, Spokesman for Russia's Ministry of Foreign Affairs, the experts will not be stationed in Chechnya, but will be "enlisted at the Russian side's request." ►►

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◀ ◀ A non-exhaustive list of cooperation activities envisaged for 2004 is appended to the agreement.

As the only remaining international organisation, which had staff working and residing in Chechnya, this move will have considerable impact on the monitoring of human rights in the region, in particular in light of the very limited access of international humanitarian organisations to the Republic.

The report does not give a reason for the CoE withdrawal from Chechnya. The dramatic events of Autumn 1999 and the failure of the Russian Federation to comply with its legal obligations under Article 52 of the Convention triggered the setting up of monitoring procedures and the provision of assistance, enabled *inter alia* by the presence of CoE experts in Chechnya. Yet, in his report, the Secretary General states that "it is hard to talk about normalisation as long as the number of disappearances remains on the same – or even higher - level than in 2000" (2,056 complaints of disappearances were lodged with the Office between June 2000 and August 2003). According to the report, "few efforts have been made by all sides to break the vicious circle of violence" and a "prevailing climate of impunity" continues.

Finally, what future awaits those 10,000 applications lodged? The Secretary General acknowledges that much is yet to be achieved considering the relatively small number of investigations finalised. According to the report, the new agreement does not provide immediate procedures for appropriate and effective follow up. In addition, it describes the character of the current Office as "dependent on the personal priorities of the Special Representative." Although the office of Ombudsman is enshrined in the newly adopted Chechen Constitution, at present, there is no intergovernmental or non-governmental organisation to carry out the monitoring of human rights abuses or the required follow up into existing complaints. Since its conception, effective monitoring has been at the core of the Council of Europe's activities. The effect of the abrupt end of the Council of Europe's presence in Chechnya on the confidence of the local population and the extent to which the international community is able to monitor on-going human rights violations in the region is yet to be ascertained. ■

[http://www.coe.int/t/e/SG/Secretary-General/Information/Documents/Chechnya-Russia/SGInf\(2004\)3E.asp](http://www.coe.int/t/e/SG/Secretary-General/Information/Documents/Chechnya-Russia/SGInf(2004)3E.asp)

## Russian law amended to include a definition of "Torture"

Olga Shepeleva  
Expert of the "Demos" Research Center for Civic Society

On December 8, 2003 the President of the Russian Federation (RF) signed the Federal Law "On the Introduction of Changes and Amendments to the Criminal Code of the Russian Federation".

The new law not only significantly changed the content of a number of articles of the Criminal Code but it also affects the very concept of crime, guilt and punishment, bringing it into line with the recent trend towards the mitigation of repressive policy in the area of criminal justice. What we have now is in fact a new Criminal Code.

In addition to broadening the limits of self-defence, revising the notion of repeated crime, abandoning the confiscation of property punishment, reducing the minimum term of imprisonment, limiting the legal grounds for juvenile imprisonment, and making a number of other changes, the new law has introduced into the Criminal Code a definition of "torture".

Article 117 of the Code (ill-treatment) was amended with the following paragraph:

*«For the purposes of this Article and other Articles of the Code, torture shall be defined as infliction of physical and moral suffering aimed at coercing an individual into giving evidence or committing other acts against his will, as a punishment and for other purposes.»*

Changes were made also to Article 302 of the Code (coercion into giving evidence). The new wording of the article reads as follows:

*«Coercion of a suspect, defendant, victim, and witness into giving evidence, or coercion of an expert into giving an opinion under threat, blackmail or other illegal means on the side of the investigator or the person conducting the investigation, as well as with the knowledge or acquiescence of the investigator or the person conducting the investigation.»*

Until the introduction of these changes, Russian law lacked a definition of "torture", even though torture is explicitly prohibited by the Constitution of the RF (Article 21), the Criminal Procedure Code (Article 9) and the Penal Code (Article 12), as well as by a number of legal acts (for

example, Article 5 of the Law "On Police" and Article 4 of the Law "On the Confinement of Suspects and Defendants").

International obligations undertaken by the RF under the Convention Against Torture, the European Convention on Human Rights and the International Covenant on Civil and Political Rights, make the issue of the criminalization of torture rather important. Article 4 of the Convention Against Torture requires the member states to the Convention to consider as a criminal offence torture as such, attempts to apply torture and complicity in torture. Article 1 of the Convention gives a comprehensive definition of what shall constitute the crime of torture.

The absence of special provisions in the Russian criminal law that would classify torture as a crime did not in fact prevent criminal prosecution of the officials who had resorted to this illegal practice. As a rule the infliction of torture was classified as an abuse of power (Article 286 of the Criminal Code) or coercion to give evidence (Article 302 of the Criminal Code). However, the lack of an adequate definition of torture in the criminal law did not allow the law enforcement bodies fully to recognize its social danger and its characteristics as a criminal act, which undoubtedly had a negative impact on the effectiveness of the fight against this offence.

The new wording of Article 117 has undoubtedly strengthened the protection of an individual against torture by private parties. Yet, it has failed to provide a definition of torture that would be in line with the definition given in the UN Convention Against Torture and other international documents. However, according to the international treaties signed by the Russian Federation, it is the involvement of an official in the torture that is the key characteristic distinguishing this grave violation of human rights from other kinds of physical abuse against an individual.

However it is possible that criminal prosecution of torture, committed by officials will be conducted not according to Article 117, but instead according to articles 302 and 286, as had been the case before the introduction of changes to the Criminal Code.

Article 302 in its previous wording was very close to the definition of torture and cruel and degrading treatment given in the corresponding international agreements of the RF, but nevertheless contained a number of serious limitations. Firstly, Article 302 was of limited use since it viewed as an actor only officials ranking as investigators, while in practice torture has been widely used by operatives of the law en-

forcement agencies. Secondly, Article 302 established a punishment for the employment of torture against a particular kind of individual and for a particular purpose (coercing a suspect, defendant, victim or witness into giving evidence or an expert into delivering an opinion). The use of torture and cruel treatment against people who do not have a procedural status for the purposes of getting information about a crime or its details, as well as the employment of torture for the purposes other than those given in Article 302, did not fall under its scope.

In its new wording, Article 302 expanded the category of subjects who could be prosecuted under Article 302 by adding to the previous definition the following clause: “as well as other individuals with the knowledge or acquiescence of the investigator or the person conducting the investigation”. However, it leaves open the following questions: Who could be prosecuted for the offence – the immediate torturer, the investigator, with whose knowledge or acquiescence the torture was used, or both? What are the practical ways of furnishing proof that the investigator did in fact know about the employment of torture by “a third party”? And, finally, how shall we classify torture employed by an official without the knowledge and consent of the investigator or the person conducting the investigation, torture which is not related to obtaining evidence or expert opinion, as well as those incidents of torture that are employed by officials irrespective of a criminal investigation?

It might happen that such cases would be prosecuted, as in the past, under Article 286: “Acts of officials committed explicitly outside of their authority and resulting in a substantial violation of the rights and legal interest of individuals or organizations or legally protected interests of the society or state.” On the one hand, the extremely general wording of this article allows for the prosecution of those acts of torture and cruel and degrading treatment, which go beyond the regulation of Article 302. On the other hand, Article 286 does not give the law enforcement bodies clear instructions for the prosecution of torture. Besides, the application of Article 286 would not allow for adequate registration and evaluation of torture committed by officials.

Some practical ways will obviously be found to resolve the questions remaining after the introduction of changes to the Criminal Code. The future of the fight against torture depends on the interpretation of the aforementioned changes, which, in turn, will be determined by the presence of political will on the side of the Russian authorities. ■

## Jurisprudence of the European Court of Human Rights On Alternative Civilian Service

Kirill Koroteev  
Lawyer, HRC Memorial

The approach of the European Court of Human Rights (the “Court”) to alternative civilian service (ACS) has been developing for a long time, and the process is not yet complete. The jurisprudence of the European Commission of Human Rights (the “Commission”) is therefore important. Art. 4 § 3(b) of the Convention for the Protection of Human Rights and Fundamental Freedoms (the “Convention”) states that, for the purposes of Art. 4, service exacted in place of compulsory military service is not forced or compulsory labour in countries that recognize conscientious objection. For a long time the Commission has taken this norm as *lex specialis* (a specific rule of law which prevails over the general) in relation to Articles 9 and 14 of the Convention and declared complaints relating to ACS inadmissible. Even in 1996, in considering the application *Olcina Portilla v. Spain*, (No. 31474/96, 14.10.96) the Commission insisted that the Convention “does not guarantee as such the right to conscientious objection and the substitution of civilian service for military service<sup>17</sup>”.

However, the Commission has often delivered important judgments in its admissibility decisions. For example, in *Autio v. Finland* (No. 17086/90, 6.12.91) the Commission considered a law which abolished the inquiry procedure, intended to establish the genuineness of an objector’s convictions, but prolonged the term of ACS from 11 to 16 months (compared to 8 months of military service). The applicant complained that such legislation amounted to discrimination on the basis of his convictions, which prevented him from bearing arms. The Commission noted that this application fell within Art. 9 of the Convention (although a state is not obliged to grant ACS) and thus, Art. 14 also applied. The Commission established a link between the length of the ACS and the presence of the inquiry procedure: the extension of the ACS term in comparison to the term of the military service was not disproportionate given that the inquiry procedure had been abolished<sup>2</sup>.

The Court’s Grand Chamber judgment in the case of *Thlimmenos v. Greece* (2000) repre-

sented a turning point. The applicant was convicted and imprisoned for refusing to undertake military service and demanding to be allowed to substitute ACS. After his release he was refused the right to become a chartered accountant as he had been convicted of an offence. The Commission declared the application admissible under both Art. 9 and Art. 14 in conjunction with Art. 9. The Commission’s report, submitted to the Court on the basis of former Art. 31 of the Convention, as well as the partially dissenting opinion of six of its members (C.L.Rozakis, J.Liddy, B.Marxer, M.A.Nowicki, B.Conforti, N.Bratza), are of particular interest.

The majority of the Commission found a violation of Art 14 (taken together with Art. 9) because the consequences of the conviction were disproportionate, given the absence of any link between the conviction and the profession of accountant<sup>3</sup>. The Commission found that the Greek authorities had failed to justify, on an objective and reasonable basis, the equal treatment of people who had committed different crimes in treating the applicant like any other convicted criminal. The majority also found that it was unnecessary to consider whether the conviction was necessary in a democratic society or whether it had been a violation of Art. 9<sup>4</sup>.

It is also necessary to analyze the joint dissenting opinion of six members of the Commission as, in its decision on the merits, the Court followed some of their reasoning. The minority suggested that Art. 9 and Art. 11 of the Convention (freedom of assembly and association) would be applicable in the case of compulsory military service. Because refusal to undertake military service may give rise to criminal responsibility, an objector is forced to join an association with values that are alien to him. The minority opinion held that the freedom to practise one’s religion in public, while refusing to do military service, fell within Art. 9 § 1 of the Convention, subject to limitations of Art. 9 § 2.

The minority thought it necessary to analyze the case from the perspective of Art. 9 of the Convention. In their view, the consequences of the applicant’s conviction amounted to an interference with his freedom to practise his religion. Since the law, excluding convicted criminals from the accountancy profession, pursued the objective of maintaining public order and protecting the rights and freedoms of others, the issue of whether the interference was necessary in the democratic society also had to be considered.

In its judgment on the merits the Court established that the applicant’s complaint fell within the terms of Art. 9. It did not consider the arguments of the Commission regarding interfer-



ence with his freedom to practise his religion on the basis of the consequences of his criminal conviction. The Court found that he objected to military service solely by virtue of his religion. As a consequence, he was treated as any other person convicted of a serious crime, even though his conviction resulted from the exercise of the right to religious freedom guaranteed in Article 9 itself<sup>5</sup>.

The Court noted that “unlike other convictions for criminal offences, a conviction for refusing, on religious or philosophical grounds, to wear military uniform cannot imply any dishonesty or moral turpitude likely to undermine the offender’s ability to exercise [the] profession”<sup>6</sup>. The lack of differential treatment was found to violate Art. 14 taken together with Art. 9 of the Convention. To achieve this conclusion, the Court almost exactly followed the argument of the Commission’s minority (§ 8 of the joint dissenting opinion).

The Court did not consider the question whether the refusal to undertake military service can be a violation of Art. 9 of the Convention, despite the wording of Art. 4 § 3 (b). This question was not put before the Court even though the applicant asked the Court to rule that “the Commission’s case-law, to the effect that the Convention did not guarantee the right to conscientious objection to military service, had to be reviewed in the light of the present-day conditions. Virtually all Contracting States now recognised the right to alternative civilian service”<sup>7</sup>.

Analysis of the Federal Law of 25 July 2002 No. 113-FZ “On Alternative Civil Service”<sup>8</sup>, especially in relation to the possibility of undertaking ACS in military units, without the citizens’ consent, gives grounds to assert that after its coming into force the Court will expand its practice on this problem, in connection with complaints submitted by Russian applicants.

#### Endnotes

1 *Olcina Portilla v L’Espagne* (dec. de la Comm. Eur. D. H.), no. 31474/96, 14.10.96

2 *Autio v Finland* (Eur. Comm. H.R. dec.), no. 17086/90, 6.12.91. In our view, the decision does not imply that, in a case where an objector has proved he has personal convictions, which prevent him from undertaking military service, the term of his ACS cannot exceed the term of military service. However that is a possible interpretation of the decision.

3 Eur. Comm. H.R. the *Thlimmenos v Greece* report of 4 December 1998 p 48

4 *Ibid* pp 48,52

5 *Thlimmenos v. Greece* [GC], judgement of 6 April 2000, Reports 2000-IV, p 42

6 *Ibid.*, p 47

7 *Ibid.*, p 50

8 Russian Federation legislation summary—2002—No. 30.—P.3030

## Council of Europe Committee for the Prevention of Torture issues statement on Chechnya

On 10<sup>th</sup> July 2003, the Committee for the Prevention of Torture (CPT) issued a statement concerning the Chechen Republic. In this statement, the CPT notes primarily the difficulties that the Russian authorities face with regards to restoring the rule of law and achieving lasting reconciliation in the Republic. It recognises the necessity, in the Chechen context, of the need for a strong response from State institutions to combat the brutal acts of combatants opposing federal power structures, but quintessentially reminds the State of the fundamental principle that such necessary actions must never degenerate into acts of torture or ill-treatment.

The CPT notes that some progress has been made since its last statement of 2001. This has included the development of the structures of the civil and military prosecutors’ offices and the introduction of mechanisms for better coordination between them, a progressive transfer of functions to Chechen Internal Affairs structures, the gradual restoration of the court system and the resumption of lawyers’ activities. Hardly any allegations of ill-treatment by staff working in Ministry of Justice establishments were received during its most recent visits.

Nevertheless, major problems remain unabated, including continued resort to torture and ill-treatment by members of law enforcement agencies and federal forces, and the fact that action taken against them is slow and ineffective.

The CPT reported that, in the course of its visits, it has received numerous allegations of severe ill-treatment of detainees by law enforcement agencies, which has in many cases been supported by medical evidence. ORB-2 in Grozny, in which, on occasions, persons are being held for very lengthy periods of time, stands out in terms of the frequency and gravity of the alleged ill-treatment. The CPT remarked, during its visit to ORB-2 in May 2003, that persons detained there were both reluctant to speak and appeared terrified. Information gathered led the CPT to believe, moreover, that they had been expressly warned to remain silent. Russian authorities had not responded adequately to the CPT’s recommendation that a thorough and independent inquiry be carried out into the methods used by ORB-2 staff when

questioning detained persons. In the context of the fear and mistrust currently pervading the Chechen Republic, the request of “a formal, written complaint for action to be taken” was unacceptable.

The CPT has also gathered information pointing to human rights violations during special operations and other targeted activities conducted by federal power structures, involving the ill-treatment of detained persons, and particularly the problem of forced disappearances during “special operations” conducted outside the established formal structures provided for by Order No. 80 of 27<sup>th</sup> March 2002. Serious problems in this area continue, with senior figures in the Chechen Administration suggesting that “disappearances,” in 2003, were still a common occurrence, most cases involving members of federal forces. The CPT stresses that Russian authorities must take steps to ensure that operations by their forces are carried out in accordance with the law and, to this effect, that prosecutors are present both during targeted activities and large-scale special operations.

The CPT also notes that, despite the opening of a large number of cases, action taken to bring to justice those responsible for acts of ill-treatment, illegal detention and disappearances, has been largely unproductive, with a low proportion of cases resulting in judicial proceedings and very few leading to sentences. In this regard, the Russian authorities should provide the relevant federal forces conducting “anti-terrorist operations” in the North Caucasian region with the staff, resources and facilities needed for the effective investigation of cases involving allegations of ill-treatment, illegal detentions and disappearances, combined with the substantial reinforcement of forensic medical services in the Chechen Republic, which were currently too underdeveloped to be capable of dealing with the above problems.

The CPT stresses the importance of issuing a formal statement to the federal forces emanating from the highest political level, that they must respect the rights of persons in their custody and that the ill-treatment of such persons will be the subject of severe sanctions. Such a statement had not yet been issued and hence ought to be issued, without further delay.

Compliance with the fundamental principle that “no-one shall be subjected to torture or to inhuman or degrading treatment or punishment” is an essential prerequisite for rebuilding civil society in the Chechen Republic, and assisting the Russian authorities to abide by it is the basis of the continued cooperation between the CPT and the Russian authorities.

The CPT's statement (*Public statement concerning the Chechen Republic of the Russian Federation, CPT/Inf (2003) 33, 10 July 2003*) is available at: <http://www.cpt.coe.int/documents/rus/2003-33-inf-rus.pdf> ■

## First Chechen cases declared admissible by European Court of Human Rights

*On 19 December 2002 the European Court of Human Rights declared admissible the cases of six applicants alleging violations of their rights under the European Convention on Human Rights, by the Russian military, in Chechnya between 1999 and 2000. The applicants complain that they were killed or injured during the bombing of Grozny in 1999 and 2000. The applicants complain that they were tortured and their property was destroyed during the bombing of Grozny in 1999 and 2000.*

The applicants are all Russian nationals and, were formerly, residents of Chechnya. Five of the applicants were residents of Grozny until 1999 and the sixth was a resident of Katyr-Yurt, Chechnya until 2000.

The cases of Khashiyev Mogamed (No. 57942/00) and Akayeva Rosa (No. 57945/00), concern allegations of torture and extra-judicial executions of the applicants' relatives by members of the Russian armed forces in January 2000.

Khashiyev's brother, sister and two of his sister's sons were found dead in Grozny with numerous gunshot wounds. A criminal investigation, opened in 2000, was suspended and reopened several times but the perpetrators were never identified. Khashiyev complains that his relatives were tortured and murdered by members of the Russian army. Akayeva's brother, who was the Head of the Physics Department at the Grozny Teaching Institute, was found dead in the yard outside the family house, holding his identity card in his hand. His body was riddled with bullets. Rosa Akayeva believes that her brother was the victim of a summary execution by Russian troops. Both applicants complain that the investigation into these deaths was ineffective and that they have had no access to effective remedies at national level.

The cases of Isayeva (No. 57947/00), Yusupova (No. 57948/00) and Basayeva (No. 57949/00) concern allegations of indiscriminate

bombing of civilians leaving Grozny, on 29 October 1999, by Russian military planes. The three applicants were all fleeing Grozny on 29 October 1999 to avoid the fierce fighting there.

Isayeva was waiting at a roadblock with her children, daughter-in-law and other civilians when she saw two Russian military planes in the sky. The driver of her car stopped and the passengers started to get out. Her children Iona (born in 1983) and Said-Magomed (born in 1984) and daughter-in-law Magomedova Asma were the first to get out. She saw them thrown to the side of the road by a blast. A shell hit her right arm and she fainted. When she regained consciousness her relatives had died from shell-wounds. A criminal investigation into the bombardment was opened in May 2000 and was later closed.

Yusupova lived in the Staraya Sunzha suburb of Grozny. She too left Grozny in a convoy of cars. At around 8 a.m. they reached the same roadblock near the border with Ingushetia. She recalls that there were about 10 cars in front of their car. As their mini-van was nearing Shaami-Yurt, two planes launched rockets. One rocket hit a car immediately in front of theirs. Yusupova thought the driver had been hit, because the car abruptly turned round. She and her relatives started to jump out of the car when she was knocked over by blast. She fainted, and when she regained consciousness, she realised that two of Isayeva's children were dead. Said-Magomed had a wound to the abdomen and Iona's head had been torn away, and one leg was crushed. Yusupova herself was wounded by shells in the neck, arm and hip. The mini-van was not hit, and they used it to leave the scene afterwards.

Basayeva and her family left Grozny in two cars on the road to Nazran, to leave Chechnya. Hundreds of other cars attempted to leave Chechnya by the same route on that day. Russian guards who were staging a roadblock ordered the column of cars containing civilians to turn back to Grozny. Basayeva's vehicle turned around. Progress was very slow because of the number of cars. Two Russian military planes appeared and dropped bombs on the column. In the car behind Mrs Basayeva were her son and two of her husband's nephews, one with his wife.

The three applicants complain that their relatives' right to life and to protection from inhuman and degrading treatment were violated and that the investigations were ineffective, giving them no access to effective remedies at the national level.

The case of Isayeva (No. 57950/00) concerns

allegations of indiscriminate bombing by the Russian military of the village of Katyr-Yurt on 4 February 2000. She and her family had no prior warning. They hid in the cellar of their house until the shelling stopped. Then, with family members and neighbours, Isayeva got into a mini-van and headed out of the village. They had just left their house when Russian planes reappeared, descended and bombed the cars on the road. Her son Isayev Zelimkhan (aged 23) was hit by shells and died within a few minutes. Three other people in the car were also wounded. During the same attack three of the applicant's nieces were killed: Batayeva Zarema (aged 15), Batayeva Kheda (aged 13) and Batayeva Marem (aged 6). The applicant's nephew Batayev Zaur was also wounded and became handicapped as a result. In total, Mrs Isayeva states that over 300 people were killed in the village during the bombing, many of whom were displaced persons from elsewhere in Chechnya.

The Russian government closed their investigation into her case without handing down a decision, in 2000. Isayeva submits that her rights under Articles 2 and 13 of the European Convention have been violated as a result of this attack. ■

### European Convention on Human Rights – Rights ratified by the Russian Federation

Article 1: Obligation to respect human rights.  
Article 2: Right to life.  
Article 3: Prohibition of torture.  
Article 4: Prohibition of slavery & forced labour.  
Article 5: Right to liberty and security.  
Article 6: Right to a fair trial.  
Article 7: No punishment without law.  
Article 8: Right to respect for private & family life.  
Article 9: Freedom of thought, conscience & religion.  
Article 10: Freedom of Expression.  
Article 11: Freedom of assembly and association.  
Article 12: Right to marry.  
Article 13: Right of an effective remedy.  
Article 14: Prohibition of discrimination.

#### Protocol No. 1

Article 1: Protection of property.  
Article 2: Right to education.  
Article 3: Right to free elections.

#### Protocol No. 4

Article 1: Prohibition of imprisonment for debt.  
Article 2: Freedom of Movement.  
Article 3: Prohibition of expulsion of nationals.  
Article 4: Prohibition of collective expulsion of aliens.

#### Protocol No. 7

Article 1: Procedural Safeguards re: Expulsion of Aliens  
Article 2: Rights of Appeal in Criminal Matters  
Article 3: Compensation for Wrongful Conviction  
Article 4: Right not be tried or punished twice  
Article 5: Equality between spouses.

## Human Rights Cases

*This section features selected decisions in recent human rights cases which have wider significance beyond the particular case and cases in which EHRAC/Memorial is representing the applicants*

**Discrimination by police in fatal incident involving ethnic minority: Nachova and Others v Bulgaria (Nos. 43577/98 and 43579/98), 26/02/2004 (ECHR: Judgment)**

### Facts

The case concerns the killing on 19 July 1996 of Mr Angelov and Mr Petkov by a member of the Bulgarian military police who was attempting to arrest them.

The two men, who had been convicted for non-violent offences, had escaped from a penal work site to the home of Mr Angelov's grandmother, in Lesura's Roma district. Five military police, at least two of whom knew of the men, went to the house to make an arrest. When they arrived they saw the two fugitives escaping, unarmed, from the back of the house. Major G., the senior officer, ran round to the back, and was heard to have shouted for the men to stop and fired shots in the air, and then he shot directly at the two men with an automatic rifle. They died on the way to hospital. The applicants alleged that the victims' ethnic origin was a decisive factor in the events; that the senior officer would not have fired an automatic rifle in a populated area had he not been in the Roma part of the village, and that his attitude towards the Roma community was confirmed by the offensive words he had used when addressing one of the neighbours. The criminal investigation concluded that the senior officer had acted in accordance with Bulgarian military police regulations.

### ECHR Judgment

The Court found that the applicants' relatives right to life (Article 2), had been violated, both because of the use of lethal force to effect an arrest of unarmed men, and also because of the failings in the authorities' investigation into the incident. Significantly, the Court also found that the deaths were the result of discriminatory attitudes by the security forces towards people of Roma origin, which violated both the procedural and substantive aspects of the prohibition of discrimination (Article 14). The Court has been generally very reluctant to make findings of Article 14 violations in respect

of the treatment of ethnic minorities, and this decision may signal a welcome move to impose stricter obligations on states. The applicants, who are relatives of the deceased, were awarded a total of €47,000 as pecuniary and non-pecuniary damages.

### The Court's finding of a violation of Article 14

The Court found that the failure of the authorities to pursue lines of inquiry – in particular into possible racist motives – that were clearly warranted in their investigation, were evidence of a procedural violation of Article 14, taken together with Article 2. Certain facts which should have alerted the authorities and led them to be especially vigilant and investigate possible racist motives were not examined. No attention was paid by the investigation to the fact that Major G. had fired an automatic burst in a populated area (a Roma neighbourhood) and that one victim had wounds to his chest, not his back (suggesting he might have turned to surrender). There had also been evidence of racist verbal abuse by law enforcement officers, and any such evidence during an operation involving the use of force against people from an ethnic or other minority was highly relevant to the question of whether or not unlawful, hatred-induced violence had taken place. Such evidence had not been examined.

The Court also found a violation of Article 14, taken together with Article 2 concerning the shootings themselves: having regard to inferences of possible discrimination by Major G., the failure of the authorities to pursue lines of inquiry that were clearly warranted in their investigation, the general context and the fact that this was not the first case against Bulgaria in which Roma had been alleged to be victims of racial violence at the hands of State agents, and as no satisfactory explanation for the events had been provided by the Bulgarian Government.

### Potential ECHR Applicants:

If you think that your human rights have been violated or if you are advising someone in that position, and you would like advice about bringing a case before the European Court of Human Rights, **EHRAC** may be able to assist.

Please contact us by post or email at the addresses on the last page.

## EHRAC / Memorial Cases

**Fadeyeva v Russia (No. 55723/00), 16/10/2003 (ECHR: Admissibility)**

### Summary

The applicant, Ms Nadezhda Mikhaylovna Fadeyeva, lives in a council flat, which is situated within a 'sanitary security zone' around the Severstal steel-plant in the city of Cherepovets. The applicant complained under Articles 2, 3 and 8 of the Convention that the operation of the Severstal steel-plant in close proximity to her home endangers her life and health and the failure to resettle her violates these provisions. Under Article 6 of the Convention the applicant complained that the court proceedings concerning her claims for resettlement were unfair.

### Facts

The applicant lives in the city of Cherepovets, a major steel-producing centre in the Russian Federation. In order to delimit areas where pollution caused by steel production may be excessive, the authorities have established so-called "sanitary security zones". The applicant lives in a council flat within one of these zones. In 2000 the authorities confirmed that the concentration of certain hazardous substances in the atmosphere within the zone largely exceeded the "maximum permitted limit" ("the MPL") established by the Russian legislation. In 1995 the applicant together with other residents of her apartment block brought an action to the Cherepovets Town Court, seeking resettlement outside the zone. The Town Court found that, in principle, the applicant had the right to be resettled, but, in practice, the local authorities were only obliged to put her on a 'priority waiting list'. On 31 August 1999 the Town Court dismissed the applicant's further action against the municipality and confirmed that she had been put on a 'general waiting list'.

**Decision: admissible under Article 8; inadmissible for the remainder.**

The European Court considered that the applicant did not face any "real and immediate risk" either to her physical integrity or her life, and that any issues raised under Article 2 were more appropriately dealt with under Article 8 of the Convention. The Court also considered that there was no evidence to indicate that the applicant's housing conditions amounted to treatment incompatible with Article 3. The Court observed that the applicants' assertions



throughout the domestic proceedings and the Russian courts' replies did not concern credible assertions of ill-treatment, but solely the question of the lawfulness of her housing status; and therefore, such issues should be dealt with under Article 8 of the Convention. The Court therefore declared the applicant's complaint under Article 8 admissible. In respect of Article 6, the Court observed that the applicant presented no evidence that the domestic proceedings were manifestly unfair with the meaning of the Article.

The Court had decided that there will be an oral hearing on the merits of this case (no date has yet been set).

**Volkova v Russia, (No. 48758/99), 18/11/2003 (ECHR: Admissibility)**

**Summary**

In 1995 the applicant, Lyubov Alekseyevna Volkova, and her family were ordered by the District Prosecutor of the Sovetskiy district of Volgograd to vacate their dormitory home and move to temporary accommodation. Despite a judgment of a local Court confirming the applicant's right to 'comfortable housing', a regional court quashed the judgment and the substantially inferior accommodation in the newly renovated building was ruled to be adequate. The applicant complained about the arbitrary nature of the judicial proceedings under Article 6 and also complained about poor living conditions, discrimination on the basis of social status and lack of effective remedies, invoking Articles 3, 8, 13 and 14 of the Convention and Article 1 of Protocol No. 1.

**Facts**

The applicant lives in Volgograd, Russia. In August 1995 the applicant and her family were evicted from their dormitory and transferred to temporary housing, because the building required urgent structural renovation. The renovations were not finished on time and on 22 June 1999 the Sovetskiy District Court ordered the Sovetskiy district administration to provide the applicant with "comfortable" housing. When the building was completed the applicant refused to accept the accommodation offered, as she believed that the housing in the new building did not correspond to the definition of "comfortable". The bailiff upheld her complaint, but his order was quashed by the Sovetskiy District Court, and on 28 June 2000 the Volgograd Regional Court confirmed this decision. On 17 July 2000 the Presidium of the Volgograd Regional Court quashed the judgment of

the Sovetskiy District Court of 22 June 1999 and remitted the case. On 26 July 2000 the Sovetskiy District Court again considered the case and rejected the applicant's claim, although this decision was quashed by the Supreme Court on 4 March 2002.

**Decision: admissible under Article 6; inadmissible for the remainder**

The Court found that the issue as to whether a procedure permitting a final judgment to be quashed was compatible with Article 6, required an examination of the merits. The applicant's complaint under Article 3 was rejected as no material was submitted to the Court to demonstrate that 'a minimum level of severity' had been attained. The Court also ruled that Article 8 did not guarantee housing of a particular standard and the administration did give the applicant the chance to move; rejecting the complaint under Article 8. The Court also found there was nothing to suggest that the applicant was indeed subject to a difference in treatment from others in a comparable position, rejecting her complaint under Article 14. The complaint about lack of effective remedies under Article 13 was held to be a complaint concerning unfair trial, and was to be reviewed under Article 6.

**Klyakhin v Russia, (No. 46082/99), 14/12/2003 (ECHR: Admissibility)**

**Summary**

The applicant was arrested on suspicion of involvement in a robbery. After a sustained period of detention on remand, he was convicted, but subsequently the conviction was quashed because of procedural irregularities. In spite of this, the applicant was further detained until he was released as a result of an amnesty. The applicant invoked Articles, 5, 6 and 13 of the European Convention complaining that he was denied effective remedies, in respect of violations of the length of criminal proceedings and the lack of procedures to challenge the lawfulness of his detention. Under Articles 8 and 34 the applicant complained that prison authorities interfered with his correspondence to and from the Court.

**Facts**

On 26 August 1997 the applicant was arrested on suspicion of involvement in a robbery and on 5 September 1997 he was officially charged. The applicant denied the government's submission that the Armavir Town Court reviewed his appeals twice, and submitted that a judge ordered his continued detention without giving reasons. On 4 March 1998 a judge of the Town

Court adjourned the hearing because the applicant had not had sufficient access to the case-file. The applicant submitted that he was given insufficient time to review the documentation and was kept handcuffed while accessing it. Hearings were adjourned or cancelled 5 times until the trial resumed on 29 March 1999. The regional court extended the applicant's detention without giving reasons and on 16 August 1999 the applicant was convicted of robbery and sentenced by the Armavir Town Court to five years' imprisonment. On 2 December 1999, the Presidium of the Krasnodar Regional Court quashed the conviction of 16 August 1999 for procedural irregularities and remitted the case to the first instance court. On 17 April 2000 the hearing opened at the Armavir Town Court and on 18 April the Armavir Town Court ordered a medical examination of the applicant in a psychiatric hospital. The applicant appealed against that decision and his continued detention on remand to the Armavir Town Court on 19, 24 and 25 April 2000, as well as 12, 23 and 25 May 2000, but received no reply. After nine requests between February and December 2000, the applicant was allowed additional access to the case file. He submitted that he was allowed about one and a half hours to consider the case-file of about 500 pages. On 18 December the case was further adjourned. On 9 February 2001 the applicant was convicted of attempted robbery, sentenced, and then released from detention, as he had by that time spent three years, five months and thirteen days in detention and was granted an amnesty.

The applicant also claimed that in June 1998 the local administration, where he had been detained on remand, refused to forward his application to the European Court and on 25 March 1999 that he forwarded a letter to the European Court, with attachments, which never reached the Court.

**Decision: admissible under Articles 5, 6, 13, 8 and 34**

The Court found that the question of whether the applicant was denied the right to trial within a reasonable time raised issues of law under Articles 5 and 6. As to the availability of domestic remedies against excessive length, the Court declared the complaint under Article 13 admissible. The Court also found that the government's monitoring of and/or interference with the Court raised separate issues under Articles 13, 8 and 34. ■

## Case Statistics

### ECHR

According to the European Court of Human Rights' Annual Report for 2003, the three leading countries in terms of the number of applications lodged in 2003 were Russia with 5338 applications, followed by Poland (5136) and France (2828). Russian applications amounted to 15 percent of the total number of applications lodged last year. The highest number of applications declared inadmissible or struck off also came from Russia (3207 applications, 18.5 percent of all applications in this category), nearly double the number from Poland, which had the second highest inadmissible applications- 1703 cases. Significantly, in 2003 only 15 Russian applications were declared admissible, which amounts to less than 1 percent of the total number of admissible applications (753). In 2003 the Court pronounced on 5 judgments in Russian cases, two of which had been registered in 1999 and three in 2000. ■

<http://www.echr.coe.int/Eng/InfoNotesAndSurveys.htm>

### UN HRC

As of 16 February 2004, the Human Rights Committee (HRC) has received 1245 individual communications, but only 23 of these came from the Russian Federation. This amounts to less than 1.8 percent of the total amount of communications received by the Committee from some 76 countries so far. Twelve of the cases from Russia are still pending undecided (ten at the pre-admissibility stage and two declared admissible). The HRC has found violations of the ICCPR in only two Russian cases, *Lantsov v Russia*, No. 763/1997, 26/03/ 2002 and *Gridin v Russia* No. 770/1997, 18/07/ 2000.

Link: <http://www.unhcr.ch/html/menu2/8/stat2.htm> ■

**The US State Department Annual Report on Human Rights Practises in Russia for 2003 was published on February 25, 2004.**

To access this document see <http://www.state.gov/g/drl/rls/hrrpt/2003/27861.htm>

## Human Rights “Hotspots” and the European Court

Philip Leach<sup>1</sup>  
Director, EHRAC

How to strengthen the European Court to deal with gross human rights violations perpetrated in regions of Europe which have been affected by armed conflict, such as the Balkans, Turkey and Chechnya? That is a question which the Parliamentary Assembly of the Council of Europe (PACE) has been tussling with recently. Their solution is to propose that a new post of 'Public Prosecutor' be created to bring cases to the Court in respect of areas where the European Convention on Human Rights "cannot be implemented"<sup>2</sup>.

PACE has rightly highlighted the fact that in some areas of Europe, where serious human rights violations are being committed, there are obstacles to the application of the European Convention on Human Rights (ECHR), including armed conflict, intervention by one state on the territory of another, and also the effective absence of a state's control over part of its territory. PACE has noted the huge difficulties which applicants face in bringing individual cases to the European Court - difficulties which it acknowledges are "sometimes insurmountable". Despite the existence of an inter-state case process, Council of Europe member states have proved extremely reluctant to challenge other states, even over the most serious human rights violations. Political expediency and the desire to maintain good international relations appear almost always to be trump cards, even though, as PACE states in its recent Recommendation, third party states have a responsibility to act where the state on whose territory the violation occurred has failed to take the necessary steps to investigate the matter and bring proceedings against the alleged perpetrators.

Interestingly, PACE refers specifically to the need to strengthen human rights protection in areas where, following armed conflict, states are engaging in reconstruction efforts, as part of the wider international community, but which are, strictly, not covered by the ECHR. Kosovo is one such example, where allegations of human rights violations having been committed by soldiers from Council of Europe states, acting as part of KFOR<sup>3</sup>, are currently being taken to the European Court. Such situations raise important questions about the extent of a state's responsibility under the ECHR where its offi-

cial acts unlawfully outside its territory<sup>4</sup>.

Thus PACE has proposed a new post of 'Public Prosecutor' to bring 'actio popularis' and envisages that the Council of Europe Commissioner of Human Rights could fulfil this function. However, a Public Prosecutor at the European Court would be something of a misnomer, as the Court does not of course exercise criminal jurisdiction - ECHR proceedings result in a finding as to whether the state in question has breached the Convention, and damages may be awarded to the applicant. That criminal proceedings might subsequently be brought against the alleged individual perpetrators by the prosecuting authority within that state may be a very important part of the remedial process for the individual, but it is strictly incidental to the ECHR proceedings themselves.

Quite separate to the PACE proposal, it has also been suggested that the Commissioner for Human Rights should be given a new power to instigate cases before the Court which raise serious issues of general importance. The Commissioner's remit could cover both systemic problems – an application from the Commissioner might be successful in nipping the problem in the bud – but it might also permit applications to be brought swiftly concerning, for example, gross human rights violations in areas of conflict. This is an important proposal which should be supported as it would strengthen the Court's capacity to deal with gross violation cases and it would potentially fill the void created by the absence of inter-state applications.

Whilst PACE is right to focus on the problem of gross human rights violations in Europe, their particular proposal to create a 'Public Prosecutor', which would require amendment of the Convention, is unlikely to see the light of day. Since the 2001 publication of the *Report of the Evaluation Group to the Committee of Ministers on the European Court of Human Rights*<sup>5</sup>, inter-governmental committees have been debating a series of proposals intended to reform the Court and reduce its backlog of tens of thousands of cases<sup>6</sup>. The creation of a post of Public Prosecutor has not been amongst these proposals, but they do include measures designed to achieve improvements in the Strasbourg enforcement mechanisms. In May 2003 the Committee of Ministers endorsed<sup>7</sup> the approach adopted by the 'Steering Committee for Human Rights', an inter-governmental committee tasked with putting forward detailed proposals for reform.

The Steering Committee's proposals<sup>8</sup> include enabling committees of three judges to decide (in a simplified procedure) on the admissibility



and merits of 'clone' cases (such as length of proceedings cases from various states). A further proposal would involve creating a new admissibility requirement which would allow the Court to reject cases either (a) where the applicant has not suffered "a significant disadvantage" or (b) unless "respect for human rights" requires its consideration on the merits.

These measures are of course primarily intended to reduce the Court's significant backlog of cases. But how might they affect the accessibility of the system for applicants in Europe's most 'troubled' areas (now and in the future)? Speeding up the adjudication of 'clone' cases is to be welcomed and really should have been achieved years ago, before even the backlog of Italian length of proceedings cases became unmanageable. This proposal should allow more time and energy to be devoted to dealing with the most serious and systemic cases.

NGOs across Europe have lobbied forcefully against the second of these proposals as effectively denying, or substantially limiting, the right of access to the Court. Efforts to elicit from the drafting committees what the phrase "a significant disadvantage" is intended to mean have not been successful, and it seems that we will only find out when the Court starts to declare cases inadmissible applying this test. Could the Court throw out cases from 'hotspot' areas on this basis? That will depend upon the exact nature of the case, and the extent of the "disadvantage" which the particular applicant has experienced. This raises many questions, for example, whether any 'right to life' case could ever be declared inadmissible under the proposed "significant disadvantage" test.

Quite apart from these proposals aimed at ameliorating the problem of the excessive volume of cases, various measures have also been put forward to improve ECHR enforcement mechanisms, which are likely to be particularly relevant to situations where it is alleged that gross human rights violations are being perpetrated. One such proposal is for the Committee of Ministers to invite the European Court, by a resolution, to identify in its judgments what it considers to be an underlying "systemic" problem, and to identify what it considers to be the source of the problem. Thus the Court will not go as far as ordering, or even recommending, corrective measures, but this proposal should nevertheless increase the pressure on states to find solutions to systemic problems, and it is also likely to assist the Committee of Ministers in its role of supervising the execution of these judgments.

It is suggested that such a measure, if adopted, must not be interpreted restrictively. It will certainly apply to problems such as delays caused

by inefficiencies in domestic court systems, leading to what are evidently 'clone' cases, in that they deal with precisely the same problem of the excessive length of the domestic proceedings. But it is critical that this provision should also encompass cases arising from territories where the rule of law is no longer effectively implemented and where there is a wide-scale failure to investigate allegations of serious human rights violations. Cases arising from such regions may not be seen strictly as 'clone' cases (in the same way, for example, as the length of proceedings cases), but they do arise from systemic failures by the state. That has been the case in south-east Turkey and arguably continues to be the case in Chechnya. The Committee of Ministers has acknowledged the serious deficiencies in south-east Turkey by producing resolutions highlighting the high numbers of ECHR violations perpetrated by the security forces in south-east Turkey<sup>9</sup> and also those arising from violations of freedom of expression in Turkey<sup>10</sup>. The first ECHR cases arising from the continuing conflict in Chechnya (on which the European Human Rights Advocacy Centre is working, in conjunction with the Russian NGO *Memorial*) were only declared admissible in December 2002, and it is important that this new proposal, if implemented, should also be applied to regions such as Chechnya.

A second proposal concerning the ECHR enforcement mechanism is potentially more far-reaching: that the Convention be amended to enable the Committee of Ministers to take a state before the Grand Chamber of the Court where it refuses to execute a judgment. Under this proposal, the Committee of Ministers would institute separate proceedings which could lead to a Grand Chamber judgment and a financial sanction against the state. This proposal is perhaps resonant of the PACE suggestion to create a public prosecutor, in that at its heart is the notion of member states' collective responsibility for the credibility and efficiency of the ECHR system. Persistent refusal to comply with European Court judgments is rare<sup>11</sup>, but it is anticipated that such a mechanism, if implemented, is likely to be invoked in respect of 'hotspot' areas, where states might seek to avoid their human rights obligations by hiding behind supposed political imperatives. Its main limitation, in comparison with the PACE proposal, is that it could only come into play where an individual had already successfully brought ECHR proceedings, which is likely to be a well nigh impossible task for individuals in some trouble spots, as PACE has acknowledged.

Many of these proposed reforms will require amendments to the Convention, a process which may take several years. In the meantime

it is very important that the Court uses its existing means for investigating cases in circumstances where the state has proved itself unable or unwilling to do so. The Court's fact-finding process is absolutely vital in enabling the Court to adjudicate in a meaningful way on cases from regions where the state has failed to comply with its obligations to investigate allegations of human rights abuses. This aspect of the system, whereby a delegation of European Court judges travels to the state in question to hear witnesses, has been a frequent feature of the cases against Turkey since the 1990s concerning the actions of their security forces.

Francoise Hampson's proposals<sup>12</sup> to establish an additional chamber of the Court dedicated to undertaking fact-finding hearings have not, as yet, been accepted, but it is encouraging that the Court continues to hold fact-finding hearings. For example, a fact-finding hearing took place in Ankara in November 2002, in the 'disappearance' case of *Ipek v Turkey*<sup>13</sup> and four judges took evidence in Nicosia in June 2003, in the right to life case of *Adali v Turkey*<sup>14</sup> from northern Cyprus. In March 2003, a delegation of European Court judges heard evidence in various premises, including a prison, in Moldova. That investigation arose in proceedings brought against both Moldova and Russia<sup>15</sup> concerning applicants who had been prosecuted and convicted of various crimes in the "Moldovan Republic of Transdniestria", a region of Moldova which declared its independence in 1991 but which is not recognised by the international community and where there is a substantial Russian military presence. In that case the Court heard 43 witnesses, including politicians and prison officials from Moldova and Russian army officers, as well as the applicants themselves.

Thus there are some encouraging signs that, as in the Moldovan/Russian case, the Court remains willing to take the steps necessary to adjudicate on cases arising from 'trouble spots'. In the desire to reform the Convention system in order to reduce the current unacceptable backlog of cases, the importance of such cases should not be forgotten. ■

#### Endnotes

- 1 This is an updated version of an article published in the *New Law Journal* on 6 February 2004.
- 2 'Areas where the European Convention on Human Rights cannot be implemented', PACE Recommendation 1606 (2003), June 27, 2003.
- 3 The Kosovo Force – a NATO-led international force responsible for establishing and maintaining security in Kosovo, comprising troops from 30 NATO and non-NATO countries. Serbia and Montenegro ratified the European Convention on Human Rights on 3 March 2004.
- 4 As to a discussion of the position of the UK in Iraq, see,

- e.g. P. Leach & S. Grosz, 'Rights abuses in Iraq may come home to roost', *The Times*, June 10, 2003.
- 5 Council of Europe, Strasbourg, 27 September 2001.
  - 6 At July 31, 2001 there were 18,292 registered applications pending before the Court. More than 30,000 individual applications were lodged in 2002: *Report of the Evaluation Group to the Committee of Ministers on the European Court of Human Rights*, Council of Europe, Strasbourg, 27 September 2001, para. 29; *Guaranteeing the long-term effectiveness of the European Court of Human Rights - Final report containing proposals of the CDDH*, Steering Committee for Human Rights (CDDH), CDDH(2003)006, April 4, 2003, para. 8.
  - 7 *Declaration guaranteeing the long-term effectiveness of the European Court of Human Rights*, 261a(2003), 15 May 2003.
  - 8 *Guaranteeing the long-term effectiveness of the European Court of Human Rights - Final report containing proposals of the CDDH*, Steering Committee for Human Rights (CDDH), CDDH(2003)006, April 4, 2003.
  - 9 See, e.g. 'Actions of the security forces in Turkey: Measures of a general character', Interim Resolution DH (99)434, Committee of Ministers, June 9, 1999;
  - 10 See, e.g. 'Violations of Freedom of Expression in Turkey: Individual Measures', Interim Resolution ResDH(2001) 106, Committee of Ministers, July 23, 2001.
  - 11 See, e.g., Committee of Ministers' Interim Resolution ResDH(2001)80, June 26, 2001 (concerning the judgment in *Loizidou v Turkey*).
  - 12 F. Hampson, 'Study on Human Rights Protection during Situations of Armed Conflict, Internal Disturbances and Tensions', Steering Committee for Human Rights (CDDH), CDDH (2001) 21 rev., October 31, 2001.
  - 13 App. No. 25760/94. European Court press release, November 20, 2002.
  - 14 App. No. 38187/97; European Court press release, June 23, 2003.
  - 15 *Ilascu, Lesco, Ivantoc and Petrov-Popa v Moldova and Russia*, App. No. 48787/99; European Court press release, March 18, 2003.

ber 2003. This article summarizes the Concluding Observations of the Committee published on 12<sup>th</sup> December 2003 in response to that report and also the main submissions of the Alternative Report to the Committee prepared and submitted by a number of leading NGOs.

### Chechnya

The Committee noted the absence of any significant factors or difficulties preventing the effective implementation of the International Covenant on Economic, Social and Cultural Rights in the Russian Federation although it did recognize the difficulties, faced by the government in connection with the on-going military operations in Chechnya. Nevertheless, the Committee expressed deep concern about the poor living conditions in the Chechen republic and noted a regrettable lack of sufficiently detailed information on this subject in the report. The Committee particularly noted the problems of the Chechen people in terms of the provision of basic services, including education and health care.

The Committee expressed concern about delays in paying compensation for houses destroyed during the conflict and for the situation of some 100,000 internally displaced persons from Chechnya living in Ingushetia, emphasizing that the closing down of camps without provision of alternative housing would be a breach of the Covenant.

### Indigenous Communities

The Committee identified a number of concerns regarding the situation of indigenous communities (affecting their right to self-determination) in particular noting that the Law of 2001 On Territories of Traditional Nature Use of Indigenous Numerically Small Peoples of the North, Siberia and the Far East of the Russian Federation, which provides for the demarcation of indigenous territories and protection of indigenous land rights, has still not been implemented.

### Other Violations and Recommendations

The committee raised numerous other issues and expressed concerns over gender inequality, unemployment, people trafficking, domestic violence, street children, the maltreatment of conscripts, a general deterioration in the level and availability of health care, tuberculosis in prisons, rates of HIV infection and infant mortality.

The Committee made recommendations relating to Chechnya including that funds be allocated to reinstate basic services, and that the government

should ensure that a lack of personal identity documents should not be allowed to present an obstacle to the enjoyment of basic economic, social and cultural rights.

Concerning employment, the Committee suggested that programmes to promote employment be targeted to the regions and groups most affected and that steps be taken to integrate persons with disabilities into the workforce, to raise wages and that adequate funds be allocated to preventing accidents in the workplace.

Finally the Committee urged the effective implementation of existing anti-trafficking legislation and that additional measures be taken to deal with the problems of homelessness and tuberculosis.

On the positive side the Committee noted that the Constitutional Court had applied and continued to apply the Covenant in its rulings. It also welcomed the Federal Act which aimed to enhance the position of women in political life, the Labour Code of 2001, which introduced further protection against forced labour and discrimination and the Russian Federation's ratification of ILO Convention 182 on the worst forms of child labour.

### Alternative NGO Report

The Alternative Report, prepared by a number of leading Russian NGOs, took the view that in spite of the fact that the rights set out in the Covenant were included in the 1993 Constitution of the Russian Federation, both the organs of the state and individual officials violated them on a regular basis. The notion that economic, social and cultural rights were an integral and indivisible part of the overall framework of human rights was widely ignored with civil and political rights being seen as more important (though still widely ignored). Whilst no real progress had been made in observing social, economic and cultural rights in general, in some areas, such as the right to just and favourable conditions of work and an adequate standard of living, as well as the right of vulnerable groups to protection from discrimination, there had been a deterioration of standards in recent years.

The Alternative Report identifies as particularly important the problems of poverty and health. The problem of poverty and the realization of the right to an adequate standard of living remains the most acute issue. Although the Alternative Report does note a progressive tendency for poverty to decrease and income levels to rise, the problem remains immense and the rise is the result of increased prices in the market for hydrocarbons rather than any government action.

## NGO Register: Link up with us!

EHRAC is interested in building links and sharing experiences with a network of NGOs in Russia and ultimately the wider area encompassing states formerly within the Soviet Union.

Through networking and sharing information and resources, it will be possible to reach more people and become yet more effective. If you are interested in our work or are involved in similar areas of activity and would like to develop links with us, please do not hesitate to contact us.

## Economic, Social and Cultural Rights in the Russian Federation

The UN Committee on Economic, Social and Cultural Rights considered the Fourth Periodic Report of the Russian Federation on 28<sup>th</sup> Novem-

The Alternative Report recommends an effective policy in relation to a minimum wage as a key requisite to combating poverty including bringing into force Article 133 of the Labour Code of the Russian Federation providing that the minimum wage cannot be lower than the subsistence level. Similarly the Alternative Report identifies a deterioration in the realization of the right to the highest attainable level of health over recent years and in particular points to massive rises in the incidence of TB and HIV. ■

**The Concluding Observations of the Committee on Economic, Social and Cultural Rights: Russian Federation 12/12/03**

<http://www.unhchr.ch/tbs/doc.nsf/0/5192a0b3c292a7ecc1256e12003abf2d?OpenDocument>

**Joint Report on the Observance of the International Covenant on Economic, Social and Cultural Rights by the Russian Federation**

<http://www.seprava.ru/cgi-bin/library.pl?id=81&action=show>

## Interights Report on Appointing European Court Judges

In May 2003, an eminent group of jurists, brought together by Interights, (including Professor Dr. Tamara Morschakova), analysed the procedure for the appointment of judges to the European Court of Human Rights and reported their findings. They noted the risk that the authority of the court could be undermined by the potential politicization of the appointment procedure currently adopted.

Under the existing system, when a vacancy arises, each member state of the Council of Europe proposes three candidates whose names are submitted to the Committee of Ministers, following superficial examination by the Directorate General of Human Rights. Scrutiny of the list is then delegated to a sub-committee of the Committee of Ministers which, can theoretically reject the list. In practice however the sub-committee generally forwards the list to the Parliamentary Assembly of the Council of Europe unchanged.

A sub-committee of the Parliamentary Assembly then considers the nominees on the basis of their model CVs as submitted and a fifteen-minute interview, before submitting the list to the Parliamentary Assembly, with the candidates ranked in order of preference, for election. The

sub-committee gives no reason for its preference and only limited information is available to them or the Parliamentary Assembly. Members of the assembly themselves are subject to political lobbying and often vote in accordance with the views of their political groupings. In addition to the appointment procedure itself, there were a number of other potential problems identified in the report.

First, states have an absolute discretion in the nomination system which they adopt. No guidance is given on the procedure they should adopt and no supervisory mechanism exists. This can lead to a culture in which appointments are made on the basis of political loyalty rather than merit. The Committee of Ministers is theoretically entitled to reject all three candidates but in practice does not do so.

Second, scrutiny of the list of candidates by the sub-committee is inadequate. The time available for conducting interviews is too limited and the sub-committee members generally lack the appropriate experience. Again the process is open to political influence and there have been cases of lists of candidates being ranked in order of political preference rather than merit.

Third, little information is available to the Parliamentary Assembly on each of the candidates and voting appears to be dictated by political grouping. Lobbying takes place both by states and judicial candidates, thus jeopardising the candidates' future independence.

The report made a number of recommendations to deal with these issues.

- The Council of Europe should devise and distribute a template for national nomination procedures. This would require each state to advertise vacancies in the specialised press, establish an independent body to devise the state's list of nominations and as a general rule to follow the recommendations of that body. The state would then submit an account of its nomination procedure together with its list of candidates to ensure transparency and oversight.
- The nomination procedure should be open to international oversight, in particular the information provided in the candidates' CVs should be verified before the lists are forwarded to the Council of Ministers. The lists and the description of the nomination procedure should then be scrutinized and where those procedures do not meet the minimum standards, the list should be returned.
- The body making recommendations on the

eligibility of candidates to the Parliamentary Assembly (the function currently carried out by the sub-committee of the Parliamentary Assembly) should itself be independent. Alternatively, the existing sub-committee should have available a group of independent judicial assessors who would be involved in the interviewing of candidates and provide reasoned advice to the sub-committee. The sub-committee (or alternative) would then provide reasoned advice to the Parliamentary Assembly. ■

**Interights' report: *Judicial Independence: Law and Practice of Appointments to the European Court of Human Rights, May 2003* is available at:**

<http://www.interights.org/news/English%20Report.pdf>

## EHRAC Human Rights Training

As part of its campaign to build capacity and deepen understanding of the workings of the European Court of Human Rights, EHRAC, together with *Memorial*, hosted a three-day practice-based training session in Moscow in September 2003. The training seminar was geared toward those involved in, or seeking to conduct, litigation before the European Court, and was attended by representatives of Memorial, the Chechnya Justice Initiative, the Moscow Helsinki Group, Dobroe Delo, Sutyajnik and other NGOs from the human rights community across Russia.

The course included sessions on procedural issues, admissibility, drafting applications and evidence, and on substantive law, including the right to life and prohibition of torture and inhuman and degrading treatment.

The seminar was led by trainers with considerable experience of litigation before the European Court of Human Rights: Bill Bowring (Barrister and Professor of Law, London Metropolitan University), Miriam Carrion (Barrister, 36 Bedford Row), Rupert D'Cruz (Barrister, the Chambers of Leolin Price, London), Douwe Korff (Professor of law, London Metropolitan University), Philip Leach (Solicitor and Senior Lecturer in Law, London Metropolitan University) and Jessica Simor Barrister, Matrix Chambers, London). Further human rights training seminars will be run by EHRAC in Russia in 2004 and 2005. ■



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## About EHRAC

The European Human Rights Advocacy Centre (EHRAC) was established in 2003 at London Metropolitan University to assist individuals, lawyers and non-governmental organisations (NGOs) within the Russian Federation to utilise regional and international human rights mechanisms. EHRAC works in partnership with Memorial and other NGOs and lawyers throughout Russia, as well as the Bar Human Rights Committee of England and Wales (BHRC). EHRAC seeks to transfer skills and build capacity in the Russian Federation by conducting internships, carrying out training seminars and disseminating training materials.

## Internship Opportunities

Internship opportunities, legal and general, are available at EHRAC's offices in London and Moscow. Internships will be geared to the abilities and experience of the applicant. EHRAC currently manages over 40 applications to the ECtHR, produces and disseminates educational material, and delivers training. The work will range from assisting with the casework and preparation of training materials, and conducting research, to basic administrative duties and fundraising. EHRAC is, regrettably, unable to afford paid internships but offers the opportunity to gain valuable experience in human rights work and the operation of an NGO. If interested, please contact us by email.

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The EHRAC BULLETIN is published twice a year and we would welcome contributions of articles, information or ideas. Communications regarding proposed articles should be sent to EHRAC by email. Materials in the bulletin can be reproduced without prior permission. However, we would request that acknowledgment is given to EHRAC in any subsequent publication and a copy sent to us.

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