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MEMORIAL - EHRAC BULLETIN:

International Human Rights Advocacy

Editorial

This second edition of the Memorial-EHRAC Bulletin includes a focus on United Nations human rights mechanisms. Since having been appointed in July 2004, Professor Philip Alston, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions has already sought permission from the Russian authorities to make a visit to Chechnya, but his request was refused. The table on pages 8-9 provides contact details of both the UN non-Treaty-based mechanisms (the Working Groups, Special Rapporteurs and Special Representatives) and the Treaty-based mechanisms. We discuss the recent "alternative" reports submitted by Russian NGOs to both the UN Committee against Torture and the Committee on the Elimination of Racial Discrimination. The latest reports from the Russian government are scheduled to be considered by the Committee on the Rights of the Child in September 2005, and by the Committee against Torture in November 2006 (the latest scheduling information in relation to the Treaty-based bodies can be found at: http://www.ohchr.org/tbru/Reporting_schedule.pdf).

Also in this edition, Tatiana Tomaeva (Institute for Religion and Law) considers the right to freedom of religion in the light of the case of *Moscow Branch of The Salvation Army v. Russia*. Drew Holiner (St. Petersburg International Bar) analyses the implications of recent Strasbourg judgments concerning Russia, and Kirill Koroteev (Memorial-EHRAC) discusses the obligation to exhaust effective domestic remedies in the Russian context. Simon Moss (EHRAC) outlines the key aspects of the reports by the Secretary-General of the Council of Europe on Chechnya in 2004. We consider also the recent ground-breaking European Court judgments in *Assanidze v Georgia* and *Ilascu and others v Moldova and Russia*.

Your feedback on this edition and suggestions for future coverage would be welcome.

Philip Leach
Director, EHRAC

Lida Yusupova receives 2004 Martin Ennals Award for Human Rights Defenders

On 7 April 2004 Irene Khan, Secretary General of Amnesty International, presented Lida Yusupova, coordinator of the Grozny office of Memorial, with one of the most prestigious awards of the human rights movement, the Martin Ennals Award for Human Rights Defenders. This significant recognition of Ms. Yusupova's dedication and achievements in her work in Chechnya followed a unanimous decision by the Martin Ennals Award jury comprising members of the ten world's leading human rights non-governmental organisations. The Martin Ennals Award has been awarded annually for the past ten years and previous recipients include Natasa Kandic (Yugoslavia), Asma Jahangir (Pakistan), Alirio Uribe Munoz (Colombia) and Harry Wu (China).

The Chairman of the Martin Ennals Award Jury, Hans Thoolen regarded Lida as "one of the most courageous women in Europe today" and Acting Executive Director of Human Rights Watch Europe and Central Asia Division, Rachel Denber said: "In a place where impunity is assumed, Lida Yusupova is a courageous advocate for justice. She sends a firm message to the Russian government that people expect accountability for human rights violations".

Photos at: **http://martinennalsaward.org/lida**

Links:
www.hrw.org/press/2003/12/chechnya120503.htm
www.martinennalsaward.org

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European Court Tackles Russian Domestic Procedure

An analysis of selected judgments in 2003 and 2004

Drew Holiner, Advocate, St. Petersburg International Bar

Some of the most egregious restrictions and violations of human rights in Russia are often hidden behind a veil of formality. The Russian judicial system is usually consistent in giving recognition to fundamental human rights and freedoms; indeed the 1993 Russian Constitution is a progressive document that in many instances expands on rights found in the European Convention and strengthens the standard of protection to be applied to them. Nevertheless, Russian procedural law, which remains underdeveloped in fundamental areas such as case management, rules of evidence, and interlocutory remedies, all too often leaves the judicial system open to denial of fundamental rights – not as a matter of merit, but through manipulation of procedural lacunae. One of the challenges of the Russian advocate is to lift the veil of formality by exposing these flaws.

This is particularly important in proceedings before the European Court of Human Rights, since the Court is typically concerned with the overall fairness of the proceedings, rather than with 'mere' procedural irregularities along the way. For this reason, a number of recent judgments issued by the European Court on issues of Russian domestic procedure are particularly welcome, in that they show the Court's readiness to scrutinise this area of domestic law and practice. Interestingly, many of these judgments involve no separate issue of a breach of substantive rights.

In *Posokhov v. Russia*[1], the applicant, a customs officer, was convicted of abuse of office and of being an accessory to evasion of customs duties. It appears that the applicant was not detained at any point in the proceedings, and by the time the case came before the Court for a hearing on the merits, the conviction had been quashed and the case dismissed as time-barred without any adverse finding of guilt. Nevertheless, the applicant pursued his case before the European Court under Article 6 of the Convention on the grounds that the two lay judges who had participated in consideration of his case had not yet been officially appointed at the time of the proceedings. Despite the fact that the applicant's conviction was eventually overturned, the Court found a violation of Article 6 on the basis that the composition of the convicting court was unlawful,which had never been acknowledged in the domestic proceedings.

In *Ryabykh v. Russia*[2], the applicant complained that a final domestic judgment awarding her compensation for savings devalued following economic reforms in 1991 had been overturned through the supervisory review procedure. She alleged violations of Article 6 of the Convention and Article 1 of Protocol 1 to the Convention. Here, the substance of the applicant's claim (the loss of savings through devaluation) was not protected under the Convention, and in any event the Government eventually granted compensation to the applicant. Nevertheless, the Court proceeded to examine the case under Article 6 as to the compatibility of the domestic supervisory review procedure with the Convention. Whilst the Court did not declare supervisory review incompatible *per se*, it found that its exercise to quash a final decision on anything less than "substantial and compelling" grounds offended the principal of 'legal certainty' inherent in Article 6. This effectively amounts to a condemnation of the wide discretion available to a court in supervisory review proceedings under domestic law.

In *Smirnova v. Russia*[3], the applicants, twin sisters convicted of fraud, were detained repeatedly as their cases proceeded to trial. The Court found a violation of Article 5(1) and 5(3) of the Convention in that the domestic courts did not offer sufficiently detailed reasons for their repeated detentions, but relied only upon the gravity of the crimes alleged. A violation of Article 6 was also found as to the length of the proceedings, despite the fact that the applicants had repeatedly sought to evade the prosecution. The Court found that this too, was indirectly attributable to the authorities in that the "sparsely reasoned and recurring decisions to detain and release… aroused in [the applicants] a sense of insecurity and mistrust toward justice [and] thereby indirectly urg[ed] them to abscond". Notably, the issues raised were once again essentially procedural[4], as the applicants' guilt was not in dispute before the Court and the periods of detention did not exceed the length of their final sentences.

The case of *Timofeyev v. Russia*[5] reaffirmed the Court's earlier judgment in *Burdov v. Russia*[6]. These cases, which involved failure to enforce judgments in civil proceedings, are of use to the practitioner in that they demonstrate the State cannot evade its obligations under Article 6 by simply enforcing a judgment once it is evident the matter will be heard by the European Court. Belated enforcement must be accompanied by an acknowledgment of the violation and 'just satisfaction' commensurate to the delay.

The case of *Rakevich v. Russia*[7] concerned the compatibility of compulsory placement in a mental hospital with the protection against arbitrary deprivation of liberty under Article 5 of the Convention. The Court found that the applicant's detention in a mental hospital was not arbitrary given that the authorities' decision was based on psychiatric evidence that she was mentally ill, and this was later affirmed by the domestic courts. Nevertheless, a violation of Article 5(1) of the Convention was found given that her detention was reviewed by the court only thirty-nine days after her detention, as opposed to within five days as required by domestic law. A further violation of Article 5(4) was established in that the applicant had no procedural route to challenge the detention of her own accord, notwithstanding the fact that the institution itself was under a statutory duty to arrange for judicial sanction of her detention.

Lack of an effective interlocutory remedy was also addressed in *Kormacheva v. Russia*[8]. Here, proceedings in an employment dispute involving the applicant lasted over six years, five of which were post-ratification of the Convention. Despite the existence of formal time-limits for consideration of civil proceedings under domestic law, the applicant could do little more than complain to the judge's superiors when these were not observed. As a result, the Court established not only a violation of the 'reasonable time' requirement in Article 6, but also a breach of Article 13 in that the applicant was unable to obtain preventative or compensatory relief for the delay.

The progression of these cases before the Court has, to a degree, guided Russian legislators in their reform of Russia's administrative, civil, commercial and criminal codes. Notably, the use of lay judges has been done away with in civil and criminal proceedings, and some of the flaws in Russia's supervisory review procedure have been removed. More reform is needed, as well as effective remedies to ensure observance of existing rules. Nevertheless, the Court's approach demonstrates that violations of domestic procedure, even ones that are relatively widespread and which may have not affected the ultimate outcome of the case, will be taken up by the European Court if they raise a legitimate issue under the Convention. In the domestic arena, these recent judgments also give Russian advocates a useful instrument to counteract attempts at manipulation of gaps in procedural rules to thwart their clients' interests.

Endnotes

[1] Judgment of 4 March 2003, Application no. 63486/00.

[2] Judgment of 24 July 2003, Application no. 52854/99.

[3] Judgment of 24 July 2003, Application nos. 46133/99 and 48183/99.

[4] Interestingly, the Court found an ancillary violation of Article 8 in that the retention of the first applicant's passport pending trial was not in accordance with domestic law. The Court found that this constituted an interference with her private life given that "in their everyday life Russian citizens have to prove their identity unusually often, even when performing such mundane tasks as exchanging currency or buying train tickets" (at § 97).

[5] Judgment of 23 October 2003, Application no. 58263/00.

[6] Judgment of 7 May 2002, Application no. 589498/00.

[7] Judgment of 28 October 2003, Application no. 58973/00.

[8] Judgment of 29 January 2004, Application no. 53084/99.

Alternative Report to the UN Committee Against Torture

Russian human rights NGOs collaborated in producing an 'alternative report' to the UN Committee Against Torture (UNCAT) prior to UNCAT's review of the Russian Federation's third periodic report on the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the Torture Convention) at its 28th session in April-May 2002. The Alternative Report was intended to fill the gaps in the government's report and to provide a more comprehensive coverage of the question of Russia's implementation of the Convention, based on the torture casework of the participating organizations and an analysis of trends in Russia from a variety of regions.

The compilers of the Alternative Report noted that since the presentation of the second periodic report, Russia had not made very significant progress in bringing its legislation, and particularly its law-enforcement practice into compliance with the Convention. Nor had Russia heeded some of the recommendations of UNCAT made following its review of the second periodic report. The practice of torture and cruel, inhumane and degrading treatment in Russia was widespread, with little or no remedy available.

The Alternative Report noted four areas where the problem was most acute. First was the use of torture and inhuman treatment by officers of law-enforcement agencies in the course of pre-trial investigations and interrogation as well as in police operations and detective work. The second area highlighted was the inhumane conditions in which prisoners were being detained. This problem was widespread given that there are approximately one million detainees in Russia (among the highest number of detainees per capita in the world). The third area identified was torture and inhuman treatment in the army, including severe 'hazing' (known as *dedovshchina*), and the fourth was torture and other human rights violations occurring in Chechnya.

In view of the continuing occurrence of acts of violence and torture the Alternative Report made ten recommendations as to the legislative, administrative and judicial steps the government should take:

1. The establishment of an independent governmental agency authorized to initiate criminal proceedings into cases involving torture or ill-treatment and to represent the victims in court.

2. Amend the Code of Criminal Procedure to include a definition of the term "torture" similar to that used in the Convention and to pass the legislation necessary to categorise torture as a distinct criminal offence [*See further Olga Shepeleva's article in the first edition of this Bulletin: 'Russian law amended to include a definition of torture'*].

3. The launch of a nationwide anti-torture campaign aimed at the general population as well as a training programme for law-enforcement personnel, court and public officials.

4. The establishment of effective parliamentary oversight of the observance of human rights standards in penitentiary institutions.

5. The establishment of an independent commission to investigate cases of torture and inhuman or degrading treatment or punishment in Chechnya.

6. The instigation of procedures to detect and discharge service personnel and employees of the Ministry who resort to torture or inhumane treatment.

7. The creation of independent units within the Ministry of the Interior to investigate cases where the alleged torturer is a police officer and similarly allowing the Federal Security Service to participate in investigation of cases of torture within the military and prisons.

8. The abolition of the "percentage of solved cases" basis as the chief evaluation criterion of a law-enforcement agency's performance.

9. The restoration of the institution of public defender (a body of lawyers from NGOs or other independent lawyers who can testify on behalf of a defendant).

10. The abolition of criminal law provisions that limit the amount of food an inmate may receive from outside when such limitations lead to torture by starvation.

The full Alternative Report can be found at:

http://www.pili.org/resources/brief_bank/russian_alternative_report_cat.htm

The UNCAT report is at:
http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CAT.C.34.Add.15.En?Opendoc

Freedom of religion and freedom of association in Russia – the case of Moscow Branch of The Salvation Army v. Russia

Tatiana Tomaeva, Institute for Religion and Law

The case of the *Moscow Branch of the Salvation Army v Russia* (No. 72881/01) was declared admissible by the First Section of the European Court on 24 June 2004. The Strasbourg Court ruled that the complaint filed on behalf of this religious organisation raises serious issues of fact and law under Article 9 (freedom of religion), Article 11 (freedom of association) and Article 14 (prohibition of discrimination) of the Convention. The Court, however, decided there was no reason to review the Salvation Army's complaint under Article 6 (right to a fair hearing within a reasonable time)

Since its re-establishment in Russia in 1992, the Salvation Army has been helping the needy and the poor in Moscow and in other areas of the country. In 2000 the Moscow Department of Justice refused to re-register the organisation as required by the new law on religion passed in 1997. The judicial authorities in Moscow confirmed this refusal and, moreover, held that the Salvation Army is a subversive "paramilitary foreign organisation". These decisions seriously undermined the Salvation Army's charitable work in Moscow and resulted in its subsequent liquidation as a legal entity. Despite the fact that this liquidation was barred following the Constitutional Court ruling of 7 February 2002, the Moscow branch has not to date been re-registered and continues to suffer from the negative publicity caused by the actions of the government and the judiciary in Moscow.

The application on behalf of the Salvation Army was filed with the European Court of Human Rights in May 2001. During the

three subsequent years, various institutions of the Council of Europe tried to convince the Russian government to settle the case. Both the Council of Europe and its Parliamentary Assembly (PACE) issued resolutions, expressing their "surprise and puzzlement" over the decision to ban the operations of the Salvation Army in Moscow, and recommended "to ensure that the Salvation Army enjoys the same rights as it has in other member states of the Council of Europe, including the right to be registered in Moscow" (*Report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe*, Monitoring Committee, doc. 9396, 26 March 2002). Another resolution adopted by PACE explicitly calls for an "internal disciplinary inquiry by the Federal Ministry of Justice into the workings of its Moscow department", in relation to the case of the Salvation Army (Resolution 1278 (2002) on Russia's law on religion, adopted by the Parliamentary Assembly of the Council of Europe on 23 April 2002).

However, not only did the Russian government fail to re-register the Salvation Army in Moscow, but also some of the governmental agencies and ministries – including the Federal Security Service and the Federal Ministry of Education – persisted in spreading negative publicity, falsely accusing the organisation of all sorts of "subversive paramilitary activity" and aiming to undermine the Russian political regime. These allegations even found their way into school textbooks and curricula. Thus, in 2002, the Moscow Education Committee and Mayor of Moscow approved a textbook on the "Basic Knowledge of Security and Safety", aimed at the students of secondary and vocational schools. The study aid contains a chapter entitled "Terrorism as the most dangerous threat of our days", which includes information on "pseudo-religious" organizations. The Salvation Army is mentioned, among others, as being, "in fact, a paramilitary formation".

Vladimir Ryakhovsky and Anatoly Pchelintsev of the Slavic Centre for Law and Justice and the Institute for Religion and Law (Moscow), who represent the Salvation Army in the Strasbourg proceedings, believe that the hearing of this case in the European Court is particularly important, in view of the fact that the situation of religious freedom over the last few years in Russia has greatly deteriorated.

The case of the Salvation Army will be the first case from Russia that raises the issue of religious freedom to be heard by the European Court of Human Rights.

Human Rights Cases

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

In the first half of 2004, two important decisions were handed down by the Grand Chamber of the European Court of Human Rights concerning violations of human rights in Ajaria (Georgia) and Transdniestria (Moldova). These judgments set important precedents on State responsibility and positive obligations in areas of territorial and jurisdictional dispute. They are of particular significance given the accession of new Member States to the Council of Europe from the Balkans and Caucasus regions, where regional conflicts continue to simmer.

Continuing unlawful detention in Ajaria: Assanidze v. Georgia (No. 71503/01), 8/4/04, (ECHR: Judgment)

Summary

The applicant, a Georgian national, was convicted of various crimes in the Ajarian Autonomous Republic. He was later acquitted of some crimes, and granted a pardon by the President of Georgia with respect to the others, but the Ajarian authorities refused to release him. The applicant complained under Articles 5 and 6 that his imprisonment was illegitimate due to irregularities during the criminal trial and the subsequent refusal to release him following the pardon and acquittal. He further complained under Article 2 of Protocol 4 to the Convention that the imprisonment was an unlawful restriction on his freedom of movement.

Facts

The applicant, a former mayor of the city of Batumi, was arrested in 1993 and charged with illegal financial dealings leading to economic losses of the Batumi Tobacco Company ('BTC'). In 1994 he was sentenced to eight years in prison, but was later granted a pardon by the President of Georgia. The BTC challenged the pardon at the Ajarian High Court, which declared the pardon void. The High Court's decision, however, was overturned on appeal by the Supreme Court of Georgia. Meanwhile, additional criminal charges were brought before the Ajarian High Court accusing the applicant of being an accessory to murder and kidnapping. He was subsequently convicted and sentenced to twelve years in prison. In 2001 the applicant was acquitted of these charges as well, following an appeal to the Supreme Court of Georgia. Nevertheless, the Ajarian authorities continued to refuse to release him, despite the efforts of the President, Prosecutor General, Ombudsman, Ministry of Justice and Parliament of Georgia.

Judgment

The Court found that the facts out of which the allegations of violations arose were within the "jurisdiction" of Georgia within the meaning of Article 1 of the Convention and that, even though those matters were directly imputable to the local authorities of the Ajarian Autonomous Republic, it was solely the responsibility of the Georgian State that was engaged under the Convention. On the merits, the Court found that the applicant's continued imprisonment despite a presidential pardon for the first offence and his acquittal for the second offence, amounted to arbitrary detention in violation of Articles 5 and 6 of the Convention. No separate issue was found to arise under Article 2 of Protocol 4 to the Convention. The applicant was awarded €155,000 in respect of pecuniary and non-pecuniary damages, as well as costs and expenses.

In a landmark development, the Court unanimously ordered the applicant's release – the first time the Court has asserted jurisdiction to issue a mandatory order other than to grant compensation through an award of damages or return of property.

Unlawful detention in the "Moldavian Republic of Transdniestria": Ilaşcu and Others v. Moldova and Russia No. 48787/99), 8/7/04, (ECHR: Judgment)

Summary

The applicants, all Moldovan nationals at the material time, were convicted on charges of terrorism by the separatist regime of the "Moldavian Republic of Transdniestria". The applicants complained under Articles 5 and 6 of the Convention that the Transdniestrian judiciary was not "established by law" and therefore that their convictions and imprisonment were illegitimate. The applicants further complained under Articles 3 and 8 of the Convention, as well as Article 1 of Protocol 1 to the Convention, that they were sub-

jected to degrading treatment, refused visits with their families, and their personal property was unlawfully confiscated. Finally, the first applicant (Mr Ilaşcu) complained that the death sentence handed down by the Transdniestrian courts was a violation of Article 2 of the Convention. The applicants claimed that Russia had effective control over the region through its support for the separatist regime, and therefore bore primary responsibility for the violations complained of, whereas Moldova was necessarily complicit due to its failure to take effective steps to secure their release.

Facts

In the early 1990's, during the dissolution of the former Soviet Union, political forces in the predominantly Russian-speaking region of Transdniestria opposed steps taken by Moldova toward secession from the USSR and integration with Romania, eventually leading to a declaration of Transdniestrian independence in 1991. The applicants, supporters of Moldovan unification with Romania, actively opposed the separatist regime and in 1992 were convicted by the Transdniestrian authorities of various crimes related to terrorism and sentenced to prison. Whilst in prison, the applicants were subjected to beatings and solitary confinement, as well as deprivation of food and medical treatment. They were also refused regular visits with their families and lawyers. The first applicant spent an extended period on death row and was subjected to mock executions on several occasions. Moldova made various representations to the Russian Federation and to international bodies protesting about the situation in Transdniestria, which included appeals for assistance in obtaining the applicants' release, and in May 2001 the first applicant was expelled to Moldova. Subsequently, Moldova adopted a more diplomatic approach in seeking resolution of its overall conflict with the separatist regime, whilst the other applicants remained in prison.

Judgment

The majority of the Grand Chamber of the Court found that Russia rendered extensive political, military, financial and economic support to Transdniestria amounting to "effective control" over the region and therefore exercised *de facto* "jurisdiction" that came within the meaning of Article 1 of the Convention. Whilst it was accepted that Moldova did not exercise "effective control" over the region, the fact that it enjoyed *de jure* territorial jurisdiction imposed a positive obligation to endeavour, with all legal and diplomatic means available, to secure Convention rights in the territory in question. In assessing the extent of this "jurisdiction", the majority accepted it would necessarily be limited in scope given the lack of *de facto* control, but nevertheless found that the Moldovan authorities' actions were subject to the Court's scrutiny as to whether its positive obligations had been discharged. On the merits, the Court found that the ill-treatment of the first applicant, as well as the conditions in which he was detained while under the threat of execution, constituted a violation of Articles 3 and 5 on the part of Russia only, but that the death sentence handed down by the Transdniestrian courts did not call for a separate examination under Article 2. Further, a majority of the Court found that both Moldova and Russia were in violation of Articles 3 and 5 with respect to the other three applicants, although Moldova only incurred responsibility with respect to those breaches after May 2001. The Court deemed it unnecessary to consider separately the claim under Article 8, whereas it found no violation of Article 1 of Protocol 1 for lack of factual substantiation by the applicants. The claim under Article 6 was declared inadmissible *ratione temporis*. Finally, the Court found that both Moldova and Russia had failed to discharge their obligations under Article 34 of the Convention. In all, the Court awarded the applicants €771,000 in respect of pecuniary and non-pecuniary damage, as well as costs and expenses.

As in *Assanidze* (see above), the Court also held unanimously that both Moldova and Russia were to take all necessary steps to put an end to the arbitrary detention of the applicants still imprisoned and secure their immediate release.

Ineffective investigation of, and prosecution for, rape: M.C. v. Bulgaria, (No. 39272/98), 4/12/03, (ECHR: Judgment)

Facts

The applicant, M.C., a Bulgarian national, alleged that she was raped by two men, A. and P., aged 20 and 21, when she was 14 years old (the age of consent for sexual intercourse in Bulgaria). M.C. claimed that, on 31 July 1995, she went to a disco with the two men and a friend of hers. She then agreed to go on to another disco with the men. On the way back, A. suggested stopping at a reservoir for a swim. M.C. remained in the car. P. came back before the others, allegedly forcing M.C. to have sexual intercourse with him. M.C. maintained that she was left in a very disturbed state. In the early hours of the following morning, she was taken to a private home. She claimed that A. forced her to have sex with him at the house and that she cried continually both during and after the rape. She was later found by her mother and taken to hospital where a medical examination found that her hymen had been torn. Both A. and P. denied rape. A criminal investigation found insufficient evidence that M.C. had been compelled to have sex and proceedings were terminated by the District Prosecutor in March 1997.

M.C. complained that Bulgarian law and practice did not provide effective protection against rape and sexual abuse, as only cases where the victim resists are actively prosecuted. M.C. submitted that Bulgaria has a positive obligation under the European Convention on Human Rights to protect the individual's physical integrity and private life and to provide an effective remedy. She also complained that the authorities had not investigated the events in question effectively. She relied on Article 3 (prohibition of degrading treatment), Article 8 (right to respect for private life), Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination) of the European Convention on Human Rights.

Judgment

The Court observed that it was lack of consent, not force, that was critical in defining rape. Given contemporary standards, Member States had a positive obligation under Articles 3 and 8 of the Convention to penalise and prosecute any non-consensual sexual act, even where the victim had not resisted physically.

The applicant alleged that the authorities' attitude in her case was rooted in defective legislation and reflected a practice of prosecuting rape perpetrators only where there was evidence of significant physical resistance. The Bulgarian Government was unable to provide copies of judgments or legal commentaries clearly disproving the applicant's allegations of such a restrictive approach.

The presence of two irreconcilable versions of the facts called for a context-sensitive assessment of the credibility of the statements made, and for verification of all the surrounding circumstances. Little was done, however, to test the credibility of the version of events put forward by A. and P. Nor were the applicant and her representative able to question witnesses, whom she had accused of perjury. The authorities failed to explore the available possibilities for establishing all the surrounding circumstances and did not assess sufficiently the

credibility of conflicting statements made. The Court considered that the Bulgarian authorities should have explored all the facts and should have decided on the basis of an assessment of all the surrounding circumstances. The investigation and its conclusions should have centred on the issue of non-consent. Without expressing an opinion on the guilt of A. and P. the Court found that the effectiveness of the investigation of the applicant's case and the approach take by the investigator and the prosecutors fell short of Bulgaria's positive obligations under Articles 3 and 8 of the Convention to establish and apply effectively a criminal law system punishing all forms of rape and sexual abuse.

Aerial bombing of Chechen village: Esmukhambetov and others v. Russia (No. 23445/03)

This case concerns the alleged aerial bombing of the village of Kogi in the Shelkovsky district of Chechnya on 12 September 1999, by two Russian military planes, resulting in the destruction of the village and the death of several villagers. The applicants allege that as a result of the attack on their village and the destruction of their houses (and possessions), there have been violations of Articles 3, 8 and 13 of the Convention, together with Article 1 of Protocol 1 to the Convention. Five of the applicants also rely on Articles 2 and 13, in respect of the killing of their relatives.

The case has been brought on behalf of 27 applicants who were formerly residents of the village, and who are currently refugees living in temporary accommodation in nearby villages in Dagestan. The applicants are all Nogaitsi, a Mongolian people, who used to make their living from agriculture. An application was originally lodged with the Court in July 2003. The applicants claim that on the evening of 12 September 1999 two low-flying Russian military planes circled the village and then bombed the village, starting at one end and then returning to bomb the other end. Three bombs hit the garden of the home of the Esmukhambetov family, killing the two children, Elmurat and Eldar Esmukhambetov and their mother, Borambike Dormalayevna Esmukhambetova. Machine gun bullets fired indiscriminately also killed the mother of applicant Mautali Kartakayev, who had been running to the nearby village of Kumli with her son in her arms. Shell fragments also killed the mother of applicant Jamila Abdurakhmanova. Eyewitness accounts describe how the attack was sustained whilst people were running away and that the planes completed bombing 'circles' at least three times. Houses, sheds, properties, cattle, poultry and haystacks were destroyed and burnt down. Immediately after the bombing had stopped, the applicants loaded the bodies of their friends and neighbours onto tractors and left for Kumli village. A week later, the same Russian soldiers who had been seen patrolling the village before the bombing, were seen demolishing houses and shops and collecting unexploded shells and shrapnel.

A criminal investigation was opened by the Shelkovsky District prosecutor's Office in January 2002, but it appears it has not been provided with any of the documents and evidence from the local military garrison, and the applicants state they have received nothing from the government in respect of accommodation or compensation.

The applicants whose relatives were killed submit that Article 2 of the European Convention has been violated because the bombings were totally disproportionate and unjustified, and also because the State has failed in its positive obligation to ensure an effective system of protection and, in conjunction with Article 13, failed to carry out an adequate and effective investigation into the killings. The other villagers argue that their rights under Article 3 of the Convention have been violated arising from the intense feelings of fear, anguish and distress they suffered during and in the immediate aftermath of the bombing. The applicants also submit that the attacks constituted serious breaches of their right to respect for their private lives and homes, and to the peaceful enjoyment of their possessions, in violation of both Articles 8 and Article 1 of Protocol 1, and that the continuing failure to facilitate the return of the applicants and their families to their homes constitutes separate and ongoing violations of these Articles.

Russian Federation: Council of Europe's response to the situation in the Chechen Republic

Simon Moss, Solicitor

This article summarises the two reports of the Secretary General of the Council of Europe (CoE) on the implementation of co-operation activities with respect to the Chechen Republic for January–March and April-June 2004.

Implementation of Co–operation Activities

In an exchange of letters in December 2003, the Secretary General and the Russian Foreign Minister agreed a new, more targeted programme of co-operation between the CoE and the Russian Federation in Chechnya in 2004. Preparatory talks took place during the first few months of 2004 and in May 2004, the Russian Ministry of Foreign Affairs informed the Council of Europe that Mr. Vladimir Lukin would act as federal coordinator for the programme of activities to be implemented.

The proposed activities discussed for 2004 included a seminar on good practice in electoral matters for the electoral teams of the Presidential candidates and those NGOs observing the electoral process and the supply and installation of equipment and documents for the future Human Rights library in the Grozny State University (financed by a voluntary contribution from Japan). Further activities to follow the elections on 29 August 2004 included a study visit to a CoE member state within the programme 'Human Rights Training of Staff and Law Enforcement Agencies', human rights training for students from the state universities of Nazran and Grozny and a seminar in the field of local self-government.

Potential ECHR Applicants:

If you think your human rights have been violated or of 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.

Overview of the Situation in the Chechen Republic (January – June 2004)

During the year, in spite of the establishment of new political institutions, violence has continued and spread to neighbouring republics and to Moscow. This violence has included attacks against members of the military, police and security forces by illegal armed groups in Chechnya and neighbouring republics, in particular Ingushetia, and acts of terrorism such as the bomb attack in the Moscow Metro in early February 2004.

The assassination of President Kadyrov and others on 9 May 2004 gave a clear indication that peace and security were far from being restored. On 21-22 June, members of illegal armed groups carried out massive attacks in the Republic of Ingushetia reportedly killing more than 80 people. These attacks have resulted in new large-scale

security operations in Chechen towns and villages as well as in Ingushetia and the extensive use of aerial attacks in populated areas.

Democratic Institution Building

In January 2000, the Russian authorities explained that once large scale anti-terrorist operations were complete, they planned to hold elections in a peaceful and democratic atmosphere. The death of President Kadyrov in May brought that process to a temporary halt. Sergei Abramov became acting president and new elections were scheduled for 29 August 2004. Doubts had been raised over the circumstances under which these elections would be held as minimum conditions for holding democratic elections did not yet appear to have been met, notably in terms of security.

By mid-June 2004, more than 10 people had informed the authorities of their intention to run for president. All chairmen of Chechen election committees would be trained in early June 2004 and Council of Europe targeted assistance could also be provided in this context.

Protection of Human Rights

The human rights situation still gave rise to very serious concern. By ratifying the European Convention on Human Rights (ECHR), the Russian Federation accepted a dual commitment. First, this means undertaking to ensure that its domestic legislation and practice complies with the ECHR and relevant case law, and secondly offering effective remedies to anyone who believes that his or her Convention rights have been violated. Nevertheless, most of the issues raised by the Secretary General (exercising his powers under Article 52 of the Convention) in December 1999, remained valid and a significant number of applications to the European Court related to the situation in Chechnya. For example, the Russian authorities had not expressed an intention to amend the 1998 Law on the Suppression of Terrorism in accordance with recommendations made by the Joint Council of Europe/Russian Expert Group.

Alarming reports continued to be made of disproportionate action causing unacceptable and unnecessary suffering to the civilian population including "targeted" security operations, bombings of populated areas, harassment of human rights defenders in Chechnya and Ingushetia, alleged extra-judicial killing and alleged torture in places of detention. In this regard the Secretary General appealed to the Russian authorities to authorise publication of the reports of the Committee for the Prevention of Torture (CPT) relevant to Chechnya. However at the time of publication of the second report no further information had been received. Information about harassment and intimidation of applicants to the European Court of Human Rights remained particularly worrying.

Restoration of the Rule of Law and the Fight Against Impunity

The Russian authorities have made considerable efforts to set up domestic courts, including the Supreme Court of the Chechen Republic. However, serious concerns had been expressed again as regards access to justice for victims of human rights abuses (or their family members). NGOs reported previously that corruption was endemic within the Chechen judicial system.

Excessive length of proceedings was also particularly worrying. According to new reports, in the few instances where complaints have been successfully brought before the courts against federal servicemen who had allegedly committed serious human rights abuses, they received minimum punishment, if they were punished at all.

Prosecutors faced tremendous difficulties in investigating allegations of human rights violations, particularly when the perpetrators could be members of the military, security or police forces.

Reconstruction

According to UN agencies, unemployment and poverty rates were key obstacles to economic and social recovery. Further reconstruction efforts were being made by the Russian and Chechen authorities. Representatives of the Russian Government visited the Chechen Republic on 15 May 2004 in order to identify priorities for the 2004-2006 period in the economic and social fields in particular. However, misappropriation of federal funds and corruption had hampered reconstruction efforts so far.

Internally Displaced Persons

According to UN agencies, over 1,200,000 individuals in the Chechen Republic and Republic of Ingushetia continued to require international humanitarian assistance. Furthermore, IDPs in Ingushetia encouraged by promises made by the authorities to offer compensation for destroyed or lost properties, decided to return to the Chechen Republic during the period April-June 2004. Serious concerns had been reported on pressure exerted on the remaining families in tent camps. According to NGOs, the Russian authorities deliberately created an insecure environment in Ingushetia to convince Chechen IDPs to return to their original place of residence. These organisations also complained that returnees were often not provided with electricity, gas or running water.

NGO Alternative Report to the UN Committee on the Elimination of Racial Discrimination (CERD)

An alternative report to CERD was prepared by a group of Russian human rights NGOs, including Memorial, the International League for Human Rights and others. The Alternative Report, endorsed by the Russian NGOs Network against Racism in January 2003, dealt with the period 1996-2001, the same period dealt with by the Russian Federation's 15th, 16th and 17th periodic reports to CERD (delivered as a consolidated report), together with new developments during 2002. It was based on information derived from a broad range of sources including complaints of people who considered themselves victims of racial discrimination, judicial and administrative cases following from these complaints, regular monitoring data, analysis of the domestic legislation and judicial practice, official statistics and mass media publications.

Summary

The Alternative Report welcomed the official report and shared a number of its evaluations and conclusions. In particular it agreed that some positive changes in national legislation had taken place in recent years and that the government had started to combat extreme racist activities in a more active way.

However, the Alternative Report, argued that the judicial mechanisms for combating racial discrimination in Russia are ineffective and that in a number of situations the Russian Federation is egregiously violating its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

Regional authorities often practise the active promotion of, or at least tolerate, blatant racial discrimination or instigation to violence and racial exclusion. The Federal government in practice neglects many opportunities to influence regional authorities in this respect. Although in 2000-

Extra Judicial Mechanisms

This table provides contact details for non-treaty and treaty based UN Mechanisms (compiled by Armelle Rolland)

The following have the same mailing address which is as follows:
United Nations office at Geneva 8-14 Avenue De La Paix, 1211 Geneva 10, Switzerland

Title / Mandates	Expert(s), who examines the communications	Phone Number / Fax / E-mail
Working group on situations (procedure 1503)	Subcommission on Human Rights	Commission/Subcommission team (1503 procedure) c/o support services branch, Office of the High Commissioner/Centre for Human Rights, Fax : + (41 22) 917 90 11 e-mail : 1503 hchr@ohchrorg
Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment	Mr. Theo C. Van Boven (Netherlands)	Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment c/o Office of the High Commissioner/Centre for Human Rights, Fax : + (41 22) 917 00 92 or + (41 22) 917 90 06 e-mail : urgent-action@ohchr.org
Working group on enforced and involuntary disappearances	Mr. Diego Garcia-Sayan Mr. Joel Adebayo Adekanye Mr. Saied Rajaie Khorasani Mr. Darko Gottlicher Mr. Stephen Toope	c/o Office of the High Commissioner/Centre for Human Rights, Cable address : UNATIONS GENEVA telex 289 696 Fax : + (41 22) 917 90 06 e-mail : urgent-action@ohchr.org
Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions	Mr. Philip Alston (Australia)	Special Rapporteur on extrajudicial, summary or arbitrary executions c/o Office of the High Commissioner/ Centre for Human Rights, Fax : + (41 22) 917 00 92 e-mail : webadmin.hchr@unog.ch or
Representative of the Secretary-General on internally displaced persons	Mr. Francis Deng (Sudan)	Representative on internally displaced persons c/o Office of the High Commissioner/Centre for Human Rights, phone number : + (41 22) 917 90 00 e-mail : urgent-action@ohchr.org
Working group on arbitrary detention	Ms Manuela Carmena Castrillo Ms Leila Zerrougui Mr. Seyed Mohammad Hachemi Ms Soledad Villagra Mr. Tamas Ban	Working group on arbitrary detention c/o Office of the High Commissioner/Centre for Human Rights, Fax : + (41 22) 917 01 23 e-mail : webadmin.hchr@unog.ch or urgent-action@ohchr.org
Special Rapporteur of the Commission on Human Rights on violence against women, its causes and consequences	Ms Yakin Erturk (Turkey)	Special Rapporteur on violence against women c/o Office of the High Commissioner/Centre for Human Rights, Fax : + (41 22) 917 00 92 or + (41 22) 917 90 06 e-mail : urgent-action@ohchr.org
Special Rapporteur of the Commission on Human Rights on the human rights of migrants	Ms Gabriella Rodriguez Pizarro (Costa Rica)	Special Rapporteur on the human rights of migrants c/o Office of the High Commissioner/Centre for Human Rights, Fax : + (41 22) 917 90 06 e-mail : urgent-action@ohchr.org
Special Representative of the Secretary -General on the situation of human rights defenders	Ms Hina Jilani (Pakistan)	Special Representative of the Secretary-General on HR defenders c/o Office of the High Commissioner/Centre for Human Rights, Fax : + (41 22) 917 00 06 e-mail : manstett.hchr@unog.ch
Special Rapporteur of the Commission on Human Rights on contempory forms of racism, racial discrimination, xenophobia and related Intolerance.	Mr. Doudou Diene (Senegal)	Special Rapporteur on contemporary forms of Racism c/o OHCHR - UNOG e-mail : urgent-action@ohchr.org
Special Rapporteur of the Commission on Human Rights on the situation of human rights and fundamental freedoms of indigenous people	Mr. Rodolfo Stavenhagen (Mexico)	Special Rapporteur on human rights and fundamental freedoms of indigenous people c/o Office of the High Commissioner/Centre for Human Rights.
Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers	Mr. Leandro Despouy (Argentina)	Special Rapporteur on the independence of judges and lawyers c/o Office of the High Commissioner/Centre for Human Rights.
Special Rapporteur of the Commission on Human Rights on the promotion and protection of the right to freedom of opinion and expression	Mr. Ambeyi Ligabo (Kenya)	Special Rapporteur on the promotion and protection of the right to freedom of opinion and Expression c/o Office of the High Commissioner/Centre for Human Rights.

Table Of Non-Treaty UN Mechanisms

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Special Rapporteur of the Commission on Human Rights on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights	Ms Fatma Zohra Ouhachi-Vesely (Algeria)	Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products…c/o Office of the High Commissioner/Centre for
Special Rapporteur of the Commission on Human Rights on the right to everyone to the enjoyment of the highest attainable standard of physical and mental health	Mr. Paul Hunt (New Zealand)	Special Rapporteur on the right of everyone to enjoyment c/o Office of the High Commissioner/Centre for Human Rights.
Special Rapporteur of the Commission on Human Rights to the right to food	Mr. Jean Ziegler (Switzerland)	Special Rapporteur on the right to food c/o Office of the High Commissioner/Centre for Human Rights.
Special Rapporteur of the Commission on Human Rights on the sale of children, child prostitution and child pornography.	Mr. Juan Miguel Petit (Uruguay)	Special Rapporteur on the sale of children, child prostitution and child pornography c/o Office of the High Commissioner/Centre for Human Rights, Fax : + (41 22) 917 90 06; e-mail : urgent-action@ohchr.org
Independent expert of the Commission on Human Rights to the right to development.	Mr. Arjun Sengupta (India)	Independent expert to the right to development c/o Office of the High Commissioner/Centre for Human Rights, Fax : + (41 22) 917 90 16
Special rapporteur of the Commission on Human Rights on the right to education	Ms Katarina Tomasevski (Croatia)	Special Rapporteur on the right to education c/o Office of the High Commissioner/Centre for Human Rights.

Table Of Treaty Based UN Mechanisms

Title / Mandates	Expert(s)	Address / Phone Number / Fax / E-Mail
In case of violation of the International Covenant on Civil and Political Rights	Human Rights Committee	Human Rights Committee c/o Office of the High Commissioner/Centre for Human Rights, Fax : + (41 22) 917 90 22; e-mail : tpetitions@ohchr.org
In case of violation of the International Covenant on Economic, Social and Cultural Rights	Committee on Economic, Social and Cultural Rights	Committee on Economic, Social and Cultural Rights c/o Office of the High Commissioner/Centre for Human Rights, e-mail : tb-petitions@ohchr.org
In case of violation of the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Committee against Torture	Committee against Torture c/o Office of the High Commissioner/Centre for Human Rights, Fax : + (41 22) 917 90 22; e-mail : tb-petitions@ohchr.org
In case of violation of the International Convention on the Elimination of all Forms of Racial Discrimination	Committee on the Elimination of Racial Discrimination	Committee on the Elimination of Racial Discrimination c/o Office of the High Commissioner/ Centre for Human Rights, Fax : + (41 22) 917 90 22;
In case of violation of the Convention of the Rights of the Child	Committee on the Rights of the Child	Committee of the Rights of the Child c/o Office of the High Commissioner/Centre for Human Rights, e-mail : tb-petitions@ohchr.org
In case of violation of the International Convention on the elimination of all Forms of Discrimination against Women	Committee on the Elimination of Discrimination against women (also Commission on the Status of women, who examines complaints from individuals and organisations-extrajudicial mechanism)	Committee on the Elimination of Discrimination against Women c/o Division for the Advancement of Women, Department of Economic and Social Affairs United Nations Secretariat 2 United Nations Plaza, DC-2/12th Floor New York, NY 10017, USA. Fax : + (1 212) 963 34 63

-2001 the Federal government conducted a campaign to bring regional laws in to line with the Constitution of the Russian Federation, and many Federal laws were in fact changed, some legislative provisions negatively affecting human rights and leading to racial discrimination remain unamended.

The Report argued that the Russian passport system is one of the major instruments of ethnic discrimination in the public sphere and is the source of the most acute problems in this area. Russian nationals, as well as foreigners, are legally obliged to register their place of permanent (and temporary) residence. Whilst legally the system of registration is merely one of notification, in reality registration is a prerequisite for the enjoyment of civil and human rights. Controlling this passport regime has become one of the main goals of the police. Measures include checking personal identity papers and searching premises where unregistered persons might live. These measures, to a substantial degree, target ethnic minorities originating from Central Asia and the Caucasus, as well as Roma people.

In addition, the state in many cases sponsors or tolerates systematic and massive discrimination itself. This often takes the form of co-ordinated repressive campaigns targeted at certain ethnic or racial groups. Federal and regional authorities as well as their officials take part in these campaigns. In particular there have been campaigns against Chechens across the country and against the Meskhetian Turks residing in Krasnodar Krai.

The Report also identifies official support for the Cossack movement, which is involved in a significant proportion of incidents involving violence and harassment against minorities. Cossack units (acting either independently or with police support) conduct identity checks at private dwellings and in the streets. In spite of the extremist and nationalist sentiments of many of its leaders and rank and file members, the Government has provided various kinds of support and has granted the Cossack movement some official functions and competence.

The Report also notes that the involuntary separation of pupils and classes on ethnic grounds has started recently in Krasnodar Krai. Children of Turks, Armenians, Kurds or Assyrians are placed in classes and courses separately from ethnic Russians. This practice first started in the Krymsk district and within the last two years the division of students into Slavic and non-Slavic classes has been established in the settlement of Nizhnebakanski. This is apparently justified on the basis of differing levels of fluency in Russian but in reality it is compulsory regardless of fluency.

Extreme nationalist organizations produce and disseminate racist, anti-Semitic and anti-Muslim material and some mass media, particularly regional newspapers, publish material blaming certain ethnic groups, mainly natives of the Caucasus and Roma, for deteriorating crime and economic conditions.

The Alternative Report can be found at:
http://www.ilhr.org/ilhr/reports/CERD_Russia_2003.htm

Exhaustion of remedies as a criterion for admissibility of an application to the European Court of Human Rights: the Russian legal system

Kirill Koroteev, Lawyer, Memorial Human Rights Centre

According to Article 35 of the European Convention on Human Rights , an individual application may be submitted to the European Court of Human Rights once effective remedies at the national level have been exhausted. This article considers the effectiveness of the various remedies available in the legal system of the Russian Federation, through the courts of constitutional, general and commercial jurisdiction. It also considers two exceptions from the requirement to exhaust remedies: an infringement of the duty not to hinder the effective exercise of the right of individual petition to the Court (Article 34), and a request for interim measures under Rule 39 of the Rules of Court.

In Russian legal literature it is said that recourse to the Constitutional Court of the Russian Federation is not compulsory for the purpose of exhausting domestic remedies[1]. This conclusion was apparently reached on the basis of the decision on admissibility in the case of *Tumilovich v. Russia*[2]. In that case the Court found that a refusal by the Constitutional Court of the Russian Federation to consider the merits of the complaint of an applicant as being outside its jurisdiction was not among the questions which the Court had to resolve.

However, in the decision on admissibility in the application of *Grišankova and Grišankovs v. Latvia*[3] the Court stated that in cases where national law itself is being challenged (and not specific measures adopted in connection with it or in breach of it), and when the national legal system allows for these rules to be challenged in the Constitutional Court, a constitutional complaint is an effective remedy.

On the other hand, if the applicant is challenging specific actions (or inaction) which violate the Convention, even if they have been adopted in accordance with national law[4], s/he must first instigate civil or administrative proceedings in general or commercial courts before applying to the European Court.

Russian procedural law provides for four judicial phases of a case in the courts of general jurisdiction: first instance, appeal and/or cassation, and supervisory review. It is compulsory to appeal the decision, either by way of cassation or, where possible, by way of appellate proceedings[5].

Before the adoption of the Codes of Civil and Criminal Procedure of the Russian Federation, supervisory review proceedings were not an effective remedy, because an application for review could only be submitted at the discretion of certain officials designated by law[6]. In its decision on the admissibility of the application of *Berdzenishvili v. Russia*[7] the Court found that the new criminal supervisory review proceedings were not an effective remedy either, because the right to submit a supervisory complaint is unlimited in time, which infringes the principle of legal certainty. The reformed procedure of supervisory review in civil cases has been found ineffective in the decision of *Denisov v. Russia* (decision No 33408/03, 6.5.04).: the Court noted that the new supervisory proceedings may last indefinitely because of too many instances authorised to conduct supervisory review.

In cases where the applicant is complaining of non-execution of a court decision , it is not compulsory to appeal against the actions of the judicial organ which is supposed to execute the decision if it is not responsible for the non-execution[8].

In its decision on the admissibility of the case of *Trubnikov v. Russia*[9], the Court found that in criminal proceedings, an appeal against the decisions of an investigator from the prosecutor's office was ineffective. However, it noted that although the courts of general jurisdiction had no power to institute a criminal case, the possibility of judicial review of a decision not to take criminal proceedings was an effective remedy.

The European Court also makes a distinction between the exhaustion of domestic remedies under Articles 5 and 6 of the Convention[10]. If, for the purpose of a complaint concerning alleged breaches of the procedural guarantees in Article 6 of the Convention, an appeal against the decision on the merits is obligatory, in order to submit a case under Article 5 it is only necessary to appeal against the procedural decisions on detention in custody (Article 5(1)) and the

extension of periods of detention in custody (Articles 5(3) and (or) (4)). Appeal against the decision on the merits as a whole (although all the previous rulings are appealed together with such decision, including detention in custody and prolongation of periods of detention in custody) is not an effective remedy for the purpose of a complaint under Article 5 of the Convention.

Recourse to a court of arbitration for the protection of one's rights is an effective remedy. For example, in its decision on the case of *Kozlov v. Russia*[11] the Court found that domestic remedies were not exhausted because the applicant had not applied to the court of arbitration, although the court of general jurisdiction had held that it was necessary to apply there.

A commercial court decision on the merits may be challenged by way of appeal, cassation and supervisory review. The first and the second of those are treated as being effective. The new provisions concerning supervisory proceedings have not been considered by the Court, but in its decision on admissibility in *AO "Uralmash" v. Russia*[12], transitional provisions for supervisory review[13] were found extraordinary, and therefore not an effective remedy.

The Court may make a finding of a breach not only of the substantive rights enshrined in Section I of the European Convention (Articles 2-18), but also of Article 34 *in fine* (states' undertaking not to hinder in any way the effective exercise of the right of application to the Court). Such an obligation confers upon the applicant a right distinguishable from the rights set out in Section I of the Convention or its Protocols. In view of the nature of this right, the requirement to exhaust domestic remedies does not apply to it. Given the importance attached to the right of individual petition, the Court has held that it would be unreasonable to require the applicant to make recourse to a normal judicial procedure within the domestic jurisdiction in every event, for example, where prison authorities interfere with an applicant's correspondence with the Court[14]. Accordingly, the requirement to exhaust domestic remedies does not apply to complaints under Article 34 of the Convention.

Moreover, Rule 39 of the Rules of Court provides that "the Chamber or, where appropriate, its President may, at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it". Usually, a decision on interim measures is taken in cases where the applicant is at risk of extradition or deportation, and will amount to a direction to the respondent State that it should not extradite or deport the applicant[15]. Resort to interim measures will normally require the Court to make an immediate decision. Thus the Practice Direction[16] issued by the President of the Court provides that an application and supporting documents may be submitted before a final decision in the national courts, when the applicant and (or) his representative assume that the decision will be unfavourable and may be executed within a very short period; this is done in order to give the Court time to consider a request for interim measures. For Russia, this is highly relevant in cases concerning the administrative deportation from the Russian Federation of foreign citizens, where a decision may be acted upon within a few days of coming into effect.

Thus the Court has resolved most of the problems relating to the exhaustion of remedies in the Russian legal system (besides the issue of effectiveness of supervisory review in the proceedings before the commercial court). However, a significant number of cases fail to meet the criteria for admissibility, which are clearly defined in the Convention and in the jurisprudence of the Court. Either the applicants are not using available remedies, or they pursue ineffective ones, and in so doing they miss the six-month time limit. Mistakes like these significantly increase the number of ill-founded cases which are then rejected by the Court[17].

Footnotes

[1] Mezhdunarodnaia zaschita prav cheloveka s ispolzovniyem nekotorych mezdunarodno-pravovykh mekhanizmov. (International human rights protection through international legal machinery), 2nd edition, edited by *K.A. Moskalenko*. M., 2001, p. 20 (the author of the relevant chapter is M.R. Voskobitova); V. G. *Bessarabov:* Evropeyski Sud po pravam cheloveka (The European Court of Human Rights), M., 2003, p. 74.

[2] *Tumilovich v. Russia* (decision), no. 47033/99, 22.6.99.

[3] *Grišankova and Grišankovs v. Latvia* (decision), no. 36117/02, 13.2.03.

[4] For instance, decisions on the merits of complaints in which the Court found that Russian law did not comply with the Convention (*Ryabykh v. Russia*, judgment of 24 July 2003; *Rakevich v. Russia*, judgment of 28 October 2003).

[5] *Burdov v. Russia*, judgment of 7 May 2002, s. 17.

[6] *Tumilovich v. Russia* (decision), cited above. Strictly speaking, the decision in the *Tumilovich* case only applies to civil proceedings, but there were similar procedures in the Code of Civil Procedure of the RSFSR, and these were recognised as ineffective in a similar case against Ukraine (*Kucherenko v. Ukraine* (decision), no. 41974/98, 4.5.99), to which the Court referred in its judgment on inadmissibility in the *Tumilovich* case.

[7] *Berdzenishvili v. Russia* (decision), 31697/03, 29.1.04.

[8] *Burdov v. Russia*, judgment of 7 May 2002, s. 17.

[9] *Trubnikov v. Russia* (decision), no. 49790/99, 14.10.2003.

[10] See, for instance: *Kalashnikov v. Russia* (decision), no. 47095/99, 18.9.01.

[11] *Kozlov v. Russia* (decision), no. 55129/00, 18.4.02.

[12] *AO "Uralmash" v. Russia* (decision), no. 13338/03, 4.9.03.

[13] Article 10 of the Federal law of 24.07.2002, no. 96-F3 "On the introduction of the Code of Arbitration Procedure of the Russian Federation"// *Collected laws of the Russian Federation*, 2002, no. 30, p. 3013.

[14] *Klyakhin v. Russia* (decision), no. 46082/99, 14.10.03.

[15] However, in the case of *Ocalan v. Turkey*, the measure consisted of requesting the respondent State not to execute the applicant before the Court had finished dealing with the case (*Ocalan v. Turkey*, judgment of 3 March 2003, para. 5). While the case was before the Court Turkey abolished the death sentence, and the applicant was pardoned.

[16] Requests for Interim Measures under Rule 39 of Rules of court, Practice Direction issued by the President of the Court on 5 March 2003.

[17] For instance, in 2003 the Court considered for admissibility 3222 complaints against Russia, but only 15 were ruled admissible (about 0.4%), which is 10 times lower than the average level of 4% of cases being found admissible in 2003 (753 out of 18033). (Survey of the Court's Activities 2003, p.35).

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.

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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 45 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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