European Human Rights Advocacy Centre Bulletin

NO.21 / SUMMER 2014

EHRAC

Middlesex University London

Contents

Welcome to the Summer 2014 edition of the EHRAC Bulletin!

As we go to press, the very disturbing events in Ukraine, and in Crimea in particular, including the incidents of disappearances (of activists and journalists) and the very real threats faced by minority communities in the region, underline the ongoing need for objective and effective human rights monitoring and enforcement regimes on the European continent. In response to an inter-state case launched in Strasbourg by Ukraine against Russia, the European Court has immediately called on both states to take measures to ensure that the life and health of the civilian population are not put at risk.

Our coverage on the South Caucasus states in this edition of the EHRAC Bulletin includes an article discussing ethnic relations in Azerbaijan (by Graham Donnelly), a piece analysing the high fatality rate within the armed forces in Armenia (Artur Sakunts, Helsinki Citizens' Assembly Vanadzor) and an analysis of the 'crisis of secularism' in Georgia (Lina Ghvinianidze, Human Rights Education and Monitoring Center).

On Russia, Yuri Marchenko (of INTERIGHTS) considers the very difficult challenges which can arise in litigating domestic violence cases in Russia and Katerina Akestoridi (EHRAC intern) outlines the Pussy Riot case in Strasbourg (Alekhina and others v Russia). We also cover the recent work in Russia of the Human Rights Commissioner and the Committee for the Prevention of Torture (CPT).

Prof. Philip Leach, Director, EHRAC

Thanks to the Chechen Regional Public Organization 'Uspokoeniye Dushi' for the cover image, taken at the event '16 Days of Activism' addressing violence against women and girls in the Chechen Republic.

Challenges of litigating domestic violence cases in Russia

There is no reliable official data on the prevalence of domestic violence in Russia. However, the commonly cited figures paint a grim picture: fourteen thousand women die each year at the hands of their husbands or relatives; up to 40 percent of all serious violent crimes are committed within families; violence in some form is experienced in every fourth family.[1] A number of human rights treaty bodies, including most recently the Committee against Torture, expressed serious concerns about the scale of the problem and the Russian state's comprehensive failure to address it.[2]

In the absence of specific domestic violence legislation, victims' access to justice is seriously impaired. Some of the key obstacles are discussed below. However, these obstacles are aggravated by a more general shortcoming. The absence of general policies promoting gender equality and raising public awareness about gender based violence means that gender stereotypes remain entrenched within the criminal justice system and society at large. In some regions, such as the North Caucasus, patterns of discrimination against women are even on the rise.[3] The widely spread, archaic view of domestic violence as a 'private' matter contributes to the poor quality of criminal investigations and is a further reason why many victims are unwilling to report their cases.

Challenge 1: Incomplete criminalisation

The Council of Europe Convention on preventing and combating violence against women and domestic violence ('Istanbul Convention') defines domestic violence as acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current partners, irrespective of whether they share the same residence (Article 3). The Convention requires that domestic violence is criminalised both in its physical and psychological forms.[4] Yet, domestic violence is not specifically criminalised in Russia; nor is it defined anywhere in the Russian legislation.

Most cases of physical violence would fall under the provisions of the Russian Criminal Code which penalise the intentional infliction of moderate or minor bodily injuries (Articles 112, 115 and 116, which attract maximum penalties of three years', four months' and three months' detention, respectively). Threatening behaviour unaccompanied by physical violence can be prosecuted only if it amounts to a threat to kill or cause grievous bodily harm (Article 119). The intimate relationship between the perpetrator and the victims is immaterial for the application of these provisions. Moreover, Article 18, which imposes stricter penalties for repeat offenders, is worded in such a way that it effectively precludes the imposition of a more severe punishment for repeat domestic abusers.

> The absence of general policies promoting gender equality and raising public awareness about gender based violence means that gender stereotypes remain entrenched within the criminal justice system and society at large.

The crime of 'tormenting' (Article 117) is the only provision of the Code that potentially captures the element of repetition in typical patterns of domestic violence, as well as the mental suffering experienced by the victim. 'Tormenting' is defined as the infliction of physical or mental suffering by means of systematic beating or by other violent actions. The victim's 'dependency' is an aggravating circumstance. However, some commentators argue that a Supreme Court ruling dating back to the 1970s interprets this provision so restrictively that it all but precludes its effective application in the context of domestic abuse.[5]

Challenge 2: Onerous procedural burdens

Under Article 20 of the Russian Criminal Procedure Code, the offences which capture some of the most common forms of domestic violence are subject to 'private prosecution'. Such cases can only be opened following a complaint from the victim. They are terminated if the victim and the defendant have 'reconciled'.[6] Furthermore, the onus of presenting evidence, framing charges and securing the conviction of the defendant is placed on the victim, while she may be coping with the psychological, social and economic consequences of the abuse or may remain vulnerable to her abuser's emotional manipulation and threats. These difficulties are exacerbated by a general lack of social and psychological support as well as the unavailability of legal aid and the absence of protection measures, such as emergency barring orders or restraint orders, which could protect the complainant from retaliation or intimidation by the defendant.

A victim of ongoing domestic violence may have to participate in multiple criminal proceedings, sometimes conducted by different police departments or courts. With no criminal law provision to unite individual episodes of the continuous abuse into one set of proceedings, each must be prosecuted separately. This fragmented approach prevents the authorities from examining the victim's situation in its entirety and from taking into account other acts of domestic violence which do not fall directly under any of the existing criminal offences.[7]

Challenge 3: Inaction of the law enforcement authorities

Women who have not been deterred by the above obstacles are faced with an even more difficult problem, namely, the almost complete inaction of the law enforcement officials in charge of their cases. Even the most essential investigatory measures, such as questioning witnesses, are often neglected. In the end, cases can be closed for lack of sufficient evidence that a crime was committed. Although such decisions can be challenged in court, judges will only order the police to conduct further examinations – they will not instruct the police to address any specific failings of the previous investigation. Court appeals are thus often followed by simply another bout of police inactivity. As the length of the proceedings is extended by this unfruitful cycle, some evidence may be irretrievably lost, the police may lose track of some of its key witnesses, and the statute of limitation may intercede to prevent criminal prosecution altogether.

Potential achievements

It is therefore understandable that most victims of domestic violence are discouraged from any

attempt to seek legal redress. It is a challenge for lawyers to find good strategic cases for developing the legal response to domestic violence; and to negotiate the cases through all the hurdles and gaps in the legislation while using human rights arguments before investigators and judges who are not in the habit of heeding them.

Nonetheless, strategic litigation plays an essential role in improving access to criminal justice for victims of domestic violence. Where existing criminal legislation can be used creatively, strategic litigation helps close gaps in protection by improving law enforcement practice. For example, it could help change the interpretation of the crime of 'tormenting' to cover instances of continuous domestic violence which do not result in physical injuries punishable under other criminal law provisions. It could also broaden the interpretation of the notions of a victim's 'dependency' and 'helplessness' so as to enable the ex officio investigation of cases of domestic violence otherwise subject to private prosecution. Alternatively, it may help establish the practice of using procedural measures, such as in camera hearings or videoconferencing, to protect victims from being re-traumatised in court proceedings. Where gaps in protection can only be addressed through new legislation, strategic litigation helps expose these gaps and recognise them as violations of victims' human rights, thus providing an impetus for the adoption of a comprehensive law on domestic violence which has long been overdue.

Notes

1. ANNA National Centre for the Prevention of Violence, 2010. Alternative report to CEDAW [Online]. Available at: http://goo.gl/nA13uV

2. See CEDAW Concluding Observations (2010), paras. 22-25: http://goo.gl/KfO6ix; HRC Concluding Observations, para. 10 (2009): http://goo.gl/4RCKBo; CAT Concluding Observations (2012), para. 14: http://goo.gl/7iZ9IK

3. See, e.g., Amnesty International, 2010. Briefing on the Russian Federation to CEDAW, 46th session [online]. Available at: http://goo.gl/SzCgIr; see also CEDAW Concluding Observations (2010), para. 24.

4. Articles 33-35 of the Istanbul Convention. For the ECtHR's view on the positive obligation to protect against psychological violence, see Hajduova v Slovakia (No. 2660/03) 30/11/10, para. 49.

5. See ANNA Centre, Alternative Report at p. 12.

6. According to the figure cited by the ANNA Centre Report, 9 out of 10 cases are terminated by the 'reconciliation' of the parties.

7. For the ECtHR's criticism of such fragmentation of legal proceedings, see A v Croatia (No. 55164/08) 14.01.10, para. 76.

Yuri Marchenko, Lawyer, INTERIGHTS

High death rate in Armenian armed forces points to serious and systemic violations of right to life and fair trial

A shocking number of deaths have taken place within the Armenian armed forces during the 20-year period the country has officially been at peace. While a very small proportion of these deaths appear to have arisen during armed combat, the majority, as the Helsinki Citizens' Assembly Vanadzor (HCAV) has exposed, are linked to internal violence within the forces. A culture of cover-ups by senior command and inadequate protection, or a lack of action from the legal system means that complaints are not fairly dealt with. However, several relevant cases are now being examined by the European Court of Human Rights (ECtHR) offering some hope that the domestic rulings may be overturned.

A culture of cover-ups by senior command and inadequate protection, or a lack of action from the legal system means that complaints are not fairly dealt with.

The term "suicided" was coined by the *Army in Reality Initiative* to describe suspected homicides disguised as suicides by the military. No official statistics have been published as to the number of deaths in the Armenian military since the 1994 ceasefire with bordering Azerbaijan. Despite the ceasefire commencing 20 years ago, it has only been possible to obtain official information relating to the causes of death of servicemen from RA's Ministry of Defence since 2005, and HCAV has been systematically monitoring these cases from 2010. According to data collected by HCAV, only about one quarter of deaths registered from 2010-13 in the Armenian armed forces resulted from ceasefire violations.[1] In most other cases, deaths relate to domestic issues such as non-statutory relations (i.e. violation of interpersonal/hierarchical relationships stipulated by the code of conduct, e.g. bullying), violence by officers or fellow soldiers, inadequate medical assistance, technology failures (e.g. armaments or other equipment used in army units), and car accidents.

HCAV began working systematically on the issue of human rights in the Armenian armed forces in 2007 and has been specifically addressing instances of death since 2010. In all cases, violations of Articles 2 and 6 of the European Convention on Human Rights (ECHR) were identified by HCAV on the grounds that investigations were conducted in violation of the country's Criminal Procedure Code, and because state departments, namely the "Investigative Service" of the Ministry of Defence and the judiciary, failed to adequately investigate the circumstances of the deaths and bring the perpetrators to account.

HCAV currently represents the victims and relatives in nine military cases against Armenia. Two of these cases are pending before the ECtHR and seven before the domestic courts. Eight cases concern the death of a serviceman and one involves a serviceman who was demobilized for health complications after he was severely beaten by his commanding officer.

In the experience of human rights NGOs, the Armenian investigative bodies pre-judge the outcome of these investigations with the intention of confirming and justifying the suicide verdict. An example is the case of Private Tigran Varyan who was found dead in an artillery battery with a bullet in his head on 29 February 2012.[2] Authorities said he had committed suicide with his own automatic rifle.

The verdict of the Common Court was contested by HCAV on the grounds that alleged violations of the Armenian Code of Criminal Procedure that occurred during the investigation into the death were not addressed. One of the purported violations was that defence witnesses had to give testimony whilst being kept in custody by the military police (in one instance, for three months) without any explanation being given for this during the court examination.

Varyan's family attempted to instigate a criminal case on the grounds of unlawful confinement of the witnesses. The court rejected this move after the prosecutor responded by presenting documents about a disciplinary punishment for undisclosed reasons – this consisted of a 10-day incarceration of the witnesses, imposed by the commander. During the case itself, it emerged that witnesses Senior Sergeant Vagharshak Nazaryan and Private Robert Arakelyan had, in violation of military service rules, been subjected to a 10-day disciplinary penalty for breach of statutory relations, without any specification. Private Hakob Saribekyan, another witness from their military unit, was subjected to the same punishment for failing to carry out his duties. All were sentenced to disciplinary detention in the military police department of Stepanakert.

A discrepancy was later revealed between the witness accounts and those of the crime scene investigators with regards to the state of the body and the place of death. There was also an accusation from two of the witnesses that Varyan's senior officer was the last person to see him alive (and was therefore potentially implicated in his death). The senior lieutenant, however, denied the allegation and this important evidence was not properly examined by the investigator nor by the court. Further to this, the investigative body did not assess the inaction of the commander of the army unit, who had not provided his soldiers with adequate protection from bullying. It also emerged that Varyan, who had a heart problem, had been unlawfully enrolled in duty. This was not addressed by the investigative body.

In addition to the above complaints, and unfortunately for the country's legal integrity, many of the trials regarding crimes in the armed forces are unconstitutional on account of the fact that they are held in the Stepanakert seat of the Syunik Regional Court of Common Jurisdiction against constitutional rules, when they should have been heard in the territory of the Republic of Armenia. All motions to review these cases under proper jurisdiction have been rejected or ignored.[3]

Conclusion

The case of Tigran Varyan exemplifies how Armenia fails to ensure the protection of rights guaranteed under Articles 1, 2, and 6 of the ECHR. In most cases the alleged suicides are not proven by the circumstances of the case; either by the investigative body or by the court, yet there has not been a case when the initial "suicide" verdict was changed despite the evidence to the contrary. While the RA's Court of Cassation may intervene, experience shows that it rarely does, especially in military cases. Therefore, the examination of these cases by the domestic courts cannot yield trustworthy results. In these circumstances the ECtHR can provide the best opportunity for those seeking justice as long as the Armenian Government complies with its rulings.

Notes

1. According to HCAV monitoring data the total number of deaths during 2010-2013 was 164, yet the official number given by the Ministry of Defence was 156, of which 37 resulted from ceasefire violations.
2. http://goo.gl/yyVh83
3. http://goo.gl/OijCWI

Artur Sakunts, Chairman, Helsinki Citizens' Assembly Vanadzor

Illegally apprehended, unlawfully detained

The Arctic 30

In September 2013, thirty individuals of eighteen different nationalities were detained by agents of the Russian Federal Security Service while protesting about oil exploration and drilling at the Russian Gazprom *Prirazlomnaya* drilling platform in the international waters of the exclusive economic zone (EEZ) of the Russian Federation in the Pechora Sea. Their ship, the Arctic Sunrise, was boarded and towed to Murmansk, where the activists were detained in custody for two months under investigation for piracy. In March 2014 they applied to the European Court of Human Rights (ECtHR) complaining that their rights under the European Convention on Human Rights (ECHR) had been violated by the Russian authorities.

The applicants claim that their initial apprehension by the Russian commandos did not comply with international maritime law as applicable in international waters. In particular, they argue that it violated the principle of freedom of navigation in EEZ, as guaranteed by customary international law and the UN Convention on the Law of the Sea (UNCLOS) and therefore contravened Article 5 ECHR

This case presents the ECtHR with an interesting and rare opportunity to examine the interaction between international human rights law and international maritime law.

(right to liberty and security). Furthermore, they argue that their initial detention was not in accordance with Russian law as they were not brought before a Russian judge within forty-eight hours as required by the Russian Constitution (Article 22 § 2) and hence was in violation of Article 5 (1) ECHR. The applicants submit that their two month period of detention on remand pending investigation in Russia contravened Article 5 (1)(c) ECHR, since there were no grounds for reasonable suspicion of piracy as required by Article 227 of the Russian Criminal Code.[1] On October 23 2013 the Russian investigating authorities dropped the charges of piracy and replaced them with aggravated hooliganism, for which the maximum sentence is 7 years. The applicants also claim that their right to freedom of expression under Article 10 of the ECHR had been violated.

This case presents the ECtHR with an interesting and rare opportunity to examine the interaction between international human rights law and international maritime law insofar as the legality of apprehensions in

international waters is concerned. The Arctic Sunrise, which is registered in the Netherlands, was apparently outside both Russian territorial waters and the 500m Russian safety zone around the rig, when boarded. Furthermore, the Netherlands, as the flag state of the ship, was not informed about the intention to board. Compliance with UNCLOS will therefore have to be considered by the ECtHR within the framework of compliance with Article 5 (1) ECHR. The outcome of the case may also contribute to the debate on the scope of the ECHR's extraterritorial application. Of course it is also critically important for the applicants themselves who are seeking international recognition that their arrest and subsequent detention was unlawful. In parallel with the case before the ECtHR, an inter-State case has also been brought by the Netherlands against Russia to a specially constituted arbitration panel under UNCLOS. Pending the constitution of that tribunal, the Netherlands successfully obtained an order for provisional measures from the International Tribunal for the Law of the Sea on 22 November 2013, prescribing the release on bail of the *Arctic 30*, and the release of the ship, subject to a bond being posted by the Netherlands.[2] In December 2013 the Arctic 30 were released following approval by the Russian Duma of a mass Amnesty Law to mark the 20th anniversary of Russia's post-Soviet constitution, extended by amendment to include defendants charged with hooliganism. However, at the time of writing, the *Arctic Sunrise* remains under arrest (retained under shipping law) by the Russian security services in the northern port of Murmansk behind the Polar circle. This retention of the ship will be addressed by the UNCLOS arbitral tribunal.

It is anticipated that following the communication of these applications[3] by the ECtHR to the Russian authorities, those Council of Europe Member States whose nationals are among the applicants (the United Kingdom, Finland, Sweden, the Netherlands, Poland, Switzerland, Italy, Turkey and Ukraine), as well as the Council of Europe Commissioner for Human Rights, may intervene in the case as third parties.

Notes

1. Article 227 (Piracy) in English http://goo.gl/BvPei9
2. http://goo.gl/H0dDwi
3. 30 separate applications were submitted jointly to the ECtHR

Sergei Golubok, LL.M, Attorney-at-Law, St. Petersburg Bar Association. Sergey is representing the Arctic 30 applicants in the case before the European Court of Human Rights.

Crisis of secularism in Georgia

Guaranteeing freedom of religion has proven to be a systematic problem in Georgia for years, and in 2013 religious conflicts and large-scale expressions of religious intolerance became a particular challenge for the government. This issue can be linked to a new political and social space that emerged after the 2012 parliamentary elections. The State's inability to respond adequately to human rights violations against religious minorities, and the absence of an appropriate approach towards religious discrimination, are clearly weaknesses in the new government.

Despite the constitutional guarantee of equal access and opportunities for all religious groups, discriminatory practices remain part of the national legislative framework.

Guaranteeing freedom of religion in Georgia remains a significant challenge as disproportionate and discriminatory practices are still entrenched in legislation. This has caused further discrimination against smaller minority groups and the strengthening of the dominant religious group (i.e. the Georgian Orthodox Church). As a result, the Orthodox Church's current influence on social and political processes poses a major threat to the democratic development of the country.

Despite the constitutional guarantee of equal access and opportunities for all religious groups, discriminatory practices remain part of the national legislative framework. The Orthodox Church itself receives tax benefits and enjoys a privileged position in the field of education. Moreover, the Church received direct funding from the State budget amounting to 25 million GEL (10.5 million EUR) in 2013. The same amount has also been budgeted for 2014. In addition, discriminatory practices when issuing construction permits for religious buildings create an even bigger barrier to religious minority groups.[1]

Another major problem over the past few years has been the lack of objective, timely and effective investigations into crimes motivated by religious intolerance. This was acknowledged in several reports by the Public Defender's Office,[2] as were the practices of proselytism and indoctrination in public schools.

This number of problems regarding freedom of religion displays systematic shortcomings in government policy and reveals the existing discriminatory approach towards minority religious organisations.

In the first year after the 2012 parliamentary elections the new government was faced with

several very specific challenges. During this time, three large-scale religious conflicts broke out in several regions of Georgia. These took place in the villages of Nigvziani, Tsitskaro and Samtatskaro. In the first conflict the local Muslim (ethnic Georgian) community was prevented by Christians, who make up the majority of the local population, from converting a community-purchased building into a prayer house. In spite of the violence, threats and numerous interruptions of prayers by local Christians, the police did not intervene or detain the respective offenders. According to official records from the Ministry of Interior, most of these cases have not been investigated at all. Cases in which an investigation was launched were soon dropped.[3]

The passive role that the government played in terms of preventing crime, and its inability to respond adequately to the first conflict, were among the contributing factors that sparked conflicts in the other two regions, where the intensity and extent of human rights violations were even greater. The government failed to fulfil its positive obligations during all three conflicts, giving rise to violations of the right to freedom of thought, conscience and religion under Article 9 of the European Convention on Human Rights (ECHR).

The events in the village of Chela that unfolded in August 2013 are a further example of religious intolerance in Georgia. The government illegally dismantled the minaret of the village mosque, using disproportionate police force against Muslim representatives who were protesting against the demolition.[4]

The government's role in the minaret incident show that the State not only failed to protect the rights of a religious minority group, but actually violated those rights itself. It is clear that in this particular case the government did not shy away from the use of disproportionate force, while in previous religious conflicts it had played a completely passive role. This could be read as an expression of loyalty towards the dominant religious group, which evidently increases the risk of further violations of minority groups' rights.

A higher number of demonstrations against Jehovah's Witnesses were also reported in 2013, and the Jewish community's celebrations were disrupted during the festival of Hanukkah. Two people tore down posters announcing the Jewish holiday and damaged a stage that had been prepared for the event.[5]

An assessment of the freedom of religion in the country shows that there is a continuous trend of human rights violations.[6] Moreover, the number, severity and intensity of such incidents clearly increased during 2013.

When analyzing these circumstances and events it is important to take the broader context into account: namely, that the State has became weaker, while a religious authority has increased in influence. This indicates a crisis of secularism, since the State has not been able to fulfill its duties as a neutral actor. In addition, high-ranking political officials have openly demonstrated their loyalty to the dominant religious group, which in turn questions the ideological neutrality of the State. The existing environment creates an increasing asymmetry between the different religious groups. This is not only manifested by society's non-acceptance of other religious groups, but it also preserves the existing inequality between the majority and minority groups.

The events that took place during 2013 not only exposed the existing problems facing the freedom of religion, but also depict an increasing tendency towards intolerance and the growing role the Orthodox Church plays in it. These tendencies demonstrate the necessity for robust government policy based on a human rights approach.

Freedom of religion and the need for a secular state policy remain an acute challenge in Georgia. Should the government remain unable to formulate an adequate response to these issues, this will affirm its hesitance to embrace the liberal values that reflect a commitment to the protection and promotion of human rights in Georgia.

Notes

1. Annual Report of Public Defender of Georgia, 2012. The Situation of Human Rights and Freedom in Georgia, pg. 297, [Online] Available at: http://goo.gl/sivViD [accessed 7 March 2014]
2. Ibid pg. 294-296
3. Mikheladze, T. 2013. Crisis of Secularism and Loyalty towards the dominant group; [Online] Available at: http://goo.gl/elPjU7 [accessed 25 February 2014]
4. Hammarberg, T. 2013. Georgia in Transition, Report on the human rights dimension: background, steps taken and remaining challenges, [Online] Available at: http://goo.gl/ 6cWAvj [accessed 25 February 2014]
5. Democracy and Freedom Watch, http://goo.gl/saFoua [accessed 07 March 2014]
6. Hammarberg, T. 2013. Georgia in Transition, Report on the human rights dimension: background, steps taken and remaining challenges, [Online] Available at: http://goo.gl/jTpRBp [accessed 25 February 2014].

Lina Ghvinianidze, Program Director, Human Rights Education and Monitoring Center, Tbilisi, Georgia

Alekhina and others v Russia

(No. 38004/12) 02.12.2013

ECHR: Admissibility decision

The applicants, Mariya Vladimirovna Alekhina, Nadezhda Andreyevna Tolokonnikova and Yekaterina Stanislavovna Samutsevich, are the founders of a feminist punk rock group 'Pussy Riot' formed in 2011 in Moscow. Aspiring to be a critical response to the quasi-authoritarian regime of the President of the Russian Federation Vladimir Putin, and its policies, including its restrictive stance on women's issues, minority rights and political protests, Pussy Riot has been thrown into the spotlight, not only in its capacity as an activist art project promoting social change, but also as an example of the challenges facing the protection of civil liberties within Russia.

Facts:

On 21 February 2012 the applicants, along with other members of the band, arrived at the Cathedral of Christ the Savior in Moscow and attempted to perform the song *"Punk Prayer – Virgin Mary, Drive Putin Away"* from the Cathedral altar. They were dressed in the group's characteristic attire – brightly colored dresses and balaclavas. The song's lyrics asked the Virgin Mary to "drive away Putin" and contained very critical language, including profanities against the stance of the government and the church on various social and political issues in Russia. The reaction of the Cathedral security guards was immediate, but a video recording of the incident shows the applicants resisting their intervention and continuing to

Pussy Riot has been thrown into the spotlight, not only in its capacity as an activist art project promoting social change, but also as an example of the challenges facing the protection of civil liberties within Russia.

sing and dance on the altar. Eventually, the guards managed to force the band out of the Cathedral. The performance lasted just over a minute.

In March 2012, the applicants were arrested and charged with the aggravated offence of 'hooliganism' as prohibited by Article 213(2) of the Russian Criminal Code and specifically of "gross violation of public order manifested in patent disrespect for society, motivated by religious hatred or animosity and hatred against a particular social group, and committed by co-conspirators". By means of separate detention orders the applicants were placed in custody, the duration of which was extended three times between April and June 2012.

On 17 August 2012, the Court of first instance found the applicants guilty as charged and sentenced them each to two years' imprisonment. The trial court rejected the applicants' claim that their performance had been politically (and not religiously) motivated. It held that their choice of venue and their apparent disregard for the Cathedral's behavioral rules had demonstrated animosity towards the feelings of Orthodox believers, and that the religious feelings of those present in the Cathedral had therefore been offended. In order to justify its findings, the Court relied on the testimony given by a large number of witnesses - the Cathedral employees, churchgoers present during the performance and others who, while not witnesses to the actual performance, had watched the *Punk Prayer* video on the Internet. In addition, the Court drew on the conclusions of an expert report published in May 2012, which asserted that the applicants had committed hooliganism motivated by religious hatred. The Court found the expert report to be "substantiated and indisputable". It also cited statements by representatives of various religions about the insulting nature of the applicants' performance.

Following the applicants' appeals against the conviction, on 10 October 2012 the Moscow City Court upheld the judgment of 17 August 2012 in respect of the first two applicants, but amended it in relation to the third applicant (who had already been pushed away from the stage when the other band members were performing). Given her "role in the criminal offence [and] her attitude towards the events [on 21 February 2012]", the City Court suspended her sentence, giving her two years on probation.

Following the City Court's decision, the Commissioner for Human Rights of the Russian Federation and the defence lawyers of the first and second applicants filed two distinct supervisory appeals to the Supreme Court requesting re-examination of the case as a whole. Providing a similar reasoning in their appeals, both argued for the applicants' acquittal, firstly because their conduct constituted an administrative rather than a criminal offence and secondly because the applicants' conduct lacked the necessary intention to commit the crime of which they had been convicted. In its decision on 11 December 2013 the Supreme Court accepted the second ground of appeal, finding that the lower court did not properly address the issue of the applicants' motivation. In a separate point, the Supreme Court also found that the lower court had failed to consider the possibility of a suspended prison sentence which in the applicants' case was a legal requirement (since both were mothers of young children). As a result, the Supreme Court ruled that the first instance judgment on the applicants' imprisonment had violated the Russian Code of Criminal Procedure, and the case was referred back to the Moscow City Court's criminal division for re-examination.[1] However, prior to the Moscow City Court completing its examination of the case, the first and second of the applicants were finally released on 23 December 2013 under an amnesty signed by President Vladimir Putin to mark the 20th anniversary of the current Russian Constitution, just two months before their scheduled release.

Undoubtedly, the claims of both parties – particularly those of the Russian government – will be highly anticipated apropos the hearing in Strasbourg and so will the ECtHR's ruling. It remains to be seen who will finally win the 'battle'.

Complaints before the European Court of Human Rights (ECtHR):

In February 2013 the applicants filed a complaint with the ECtHR alleging various violations of the European Convention of Human Rights (ECHR) under Article 3 (prohibition of torture and ill-treatment), Article 5 (right to liberty and security), Article 6 (right to a fair trial) and Article 10 (freedom of expression).

In particular, the applicants alleged that there had been a violation of Article 3 ECHR since the conditions of their transport to and from court hearings, as well as the treatment they experienced on the days of the hearings, had been inhuman and degrading. They also complained under the same Article that their confinement in a glass dock in the courtroom, under heavy security and in full view of the public, amounted to humiliating conditions. In connection with Article 5 ECHR, the applicants challenged the grounds of their pre-trial detention. Claiming that there were no valid reasons warranting their remand in custody, the applicants invoked Article 5 (3), which states that: "Everyone arrested or detained under the provisions of this Article […] shall be entitled to trial within a reasonable time or to release pending trial […]". With regard to their complaint under Article 6 ECHR, it was argued that the applicants had been unable to effectively challenge the expert reports ordered by the investigators, the trial court having refused to call 'rebuttal' experts or the experts who had drafted the reports. They also argued that their right to defend themselves effectively had been compromised, given their inability to communicate freely and privately with their lawyers before, during and after the hearings. Finally, they claimed that their right to freedom of expression was violated based on the allegation that their detention and conviction constituted a "gross, unjustifiable and disproportionate interference with their freedom of expression." In relation to Article 10, the first two applicants complained furthermore that their right to express themselves freely had been infringed after video recordings of their performances were declared 'extremist' by a Russian District Court and online access to the recordings was banned.

On 2 December 2013 the applicants' complaint was declared admissible by the ECtHR and the case was communicated to the Russian government.[2] In its communication document the ECtHR addresses seven questions to the parties who will have to provide judges with persuasive arguments regarding the grounds of the applicants' complaints mentioned above.

Undoubtedly, the claims of both parties – particularly those of the Russian government – will be highly anticipated apropos the hearing in Strasbourg and so will the ECtHR's ruling. It remains to be seen who will finally win the 'battle'.

Notes

1. Decision of the Supreme Court of Russian Federation of 10 December 2013, case No. 5-D13-67. Available also at: http://goo.gl/AL4Dmy

2. See Alekhina and others v Russia (No. 38004/12) 2.12.2013 http://goo.gl/PnOcEr

Katerina Akestoridi, EHRAC legal intern

After Sargsyan

Ethnic relations in Azerbaijan

At the time of writing, the European Court of Human Rights (ECtHR) is considering the long anticipated case of *Sargsyan v Azerbaijan* (No. 40167/06) (in which EHRAC and the NGO 'Legal Guide' Armenia act for the applicant); a case which is the direct result of the conflict between Azerbaijan and Armenia in the contested region of Nagorno-Karabakh.

However, it is not only in Strasbourg where the legacy of the conflict continues to be felt. In both Azerbaijan and Armenia, the large pre-war minority populations of Azerbaijanis and Armenians have been reduced to a mere fraction of their pre-war size. This case, and the analogous one of *Chiragov and Others v Armenia* (No. 13216/05), relating as they do to this mass exodus of hundreds of thousands of Armenians and Azerbaijanis, are a timely reminder not only of the horrors of ethnic conflict, especially those which have blighted the post-Soviet world, but also of the lasting legacy which such calamities leave behind.

One of the cornerstones of the post Cold-War international legal order, established to prevent such ethnic conflicts, is the Framework Convention for the Protection of National Minorities (FCNM). Whilst not endowed with the justiciability of, say, the ECHR, the FCNM was provided with some 'teeth' in the form of its monitoring body, the Advisory Committee of the Framework Convention for the Protection of National Minorities (ACFCNM).

In late 2013 the ACFCNM delivered the third of its cyclical Opinions on the implementation of the FCNM by Azerbaijan, and provides, *ipso facto*, a snapshot of the relationship between the majority community (and the Azeri state) and minority communities.[1]

According to the most recent state census (2009), there were 120,000 members of the Armenian minority remaining in Azerbaijan from a pre-war population of over 400,000. Of this 120,000, the vast majority are resident in Nagorno-Karabakh, and, according to government figures, only 306 Armenians live in the remainder of Azerbaijan. However, this figure is highly politicised, as the war and the status of Nagorno-Karabakh still weigh heavily over such issues (various government departments have suggested a more accurate figure of over 30,000).

Despite this miniscule (official or unofficial) figure, the ACFCNM report notes that "the unresolved conflict over Nagorno-Karabakh and the continued occupation of parts of Azerbaijan's territory still have a considerable impact on the situation of persons belonging to national minorities and hamper efforts to implement the Framework Convention in Azerbaijan".

This case, and the analogous case of Chiragov and Others v Armenia are timely reminders not only of the horrors of ethnic conflict, especially those which blighted the post-Soviet world, but also of the lasting legacy which such calamities leave behind.

This "impact", as the Committee describes it, includes an atmosphere of deep mistrust from both official and unofficial sources of minority communities in general and Armenians in particular. Armenians and other minorities who seek to express their ethnic identity, as well Azerbaijani minority and human rights defenders who support a more cordial relationship with the country's minority communities, have often been labelled "traitors" and "enemies". Such is the depth of negative sentiment in public discourse that the word 'Armenian', as noted by the ACFCNM and others, may even be regarded as an insult.

This discourse has reached right to the very top in Azerbaijan, as illustrated in the case of the writer Akram Aylisli. In February 2013, the President of Azerbaijan withdrew the writer's civic award: the title of "People's Author." Mr Aylisli's crime? The publication of a novel, 'Stone Dreams', which features descriptions of massacres of Armenians in Azerbaijan in the early 20th century and at the end of the Soviet era. Prior to his being stripped of his title the author's book was debated in Parliament, where extreme political rhetoric among many politicians was matched by members of the public who burned pictures of the author outside the offices of the Writers' Union. It was reported by the Institute for War and Peace Reporting that the leader of the Azerbaijani opposition party offered a 10 Euro reward to the person who cut off the writer's ear.[2]

Whilst the Armenian minority community and those who speak in positive terms about them are reserved a special kind of vitriol, they are by no means the sole recipients of the Azerbaijani state's 'special' attention. In late 2013, Radio Free Europe/Radio Liberty reported on the latest in a series of arrests aimed at the country's Talysh minority (and the country's wider journalistic community).

Hilal Mamedov, the editor of the Talysh language newspaper, the 'Voice of Talysh', was sentenced to 5 years imprisonment for high treason, incitement of ethnic, religious, and racial hatred (and drugs offences, as is often the case with dissenting journalists in the country). The newspaper's previous editor, Novruzali Mamedov, died in prison in 2009, having been convicted of spying for Iran.[3]

Of course, it is not only minority communities in Azerbaijan who face such abuses, as the list of imprisoned journalists, bloggers, human rights activists and oppositionists from among the ethnic majority attests. However, as the ECtHR considers the Sargsyan case, it seems only fitting to reflect on the remaining victims of the conflict, and the great difficulties the peoples of Azerbaijan continue to face in the pursuit of a peaceful and tolerant future, in the shadow of the unresolved Nagorno-Karabakh dispute.

Notes

1. http://goo.gl/hqZZiz
2. http://goo.gl/VjGR3B
3. For a full report see http://goo.gl/ygBW73

Graham Donnelly, PhD Researcher, Department of Central and East European Studies, University of Glasgow, and, Country Coordinator (Ukraine - FSU Team) Amnesty International.

Human Rights Commissioner calls for further reform in Russia

In November 2013 the Council of Europe's Commissioner for Human Rights, Nils Muižnieks, released a hard hitting report based on his visit to the Russian Federation in early April 2013.[1] The report acknowledges the efforts undertaken by the government to reform the justice system and notes advances including the revision of legislation, the ongoing reform of the supervisory review procedure, and the adoption of a remedy for lengthy proceedings and delayed execution of domestic court judgments. However, the report notes that serious concern remains about the proper functioning of the judiciary and recommends that procedures and criteria for appointing, dismissing and sanctioning judges are improved.[2] Further recommendations include that the Russian authorities pursue *"a genuine dialogue with representatives of civil society and human rights structures"*.[3]

Problems with the criminal justice system

According to the report, the Commissioner remains concerned that the Prosecutor's office exercises wide discretionary powers which undermine the principle of equality of arms and genuine adversarial proceedings. The Commissioner noted that the criminal justice system is still set up to deliver guilty verdicts and that acquittals are perceived as a failure of the system. He observed that in the rare cases where acquittals do take place, prosecutors almost always file appeals against them in addition to appealing against those court rulings in which defendants receive what prosecutors regard as a lenient sentence. Further to this, he observed that defence rights are impaired by harassment and other forms of pressure on lawyers who often face impediments in assisting their clients.

Simplified court proceedings

Caution is urged where simplified court proceedings are used, in which a full examination of the case in a court hearing is not required when the defendant agrees with the charges and requests this procedure.[4] While it was acknowledged that this procedure can accelerate the adjudication of criminal cases,[5] concerns were expressed that a combination of factors such as very high conviction rates, a stringent sentencing policy and low public trust in the justice system could influence defendants to plead guilty even if innocent, leading to a distortion of justice. Non-investigation of disappearances and similarly serious crimes in the North Caucasus region remain a problem and the Commissioner expressed his belief that justice is necessary to achieve genuine reconciliation in society, recommending that effective investigations be carried out into past abuses and protection for victims and witnesses be improved.

Extradition of foreigners

In line with recent judgments from the European Court (ECtHR) regarding the extradition of foreigners, Commissioner Muižnieks further recommended that the Russian authorities refrain from extraditing foreigners who could face torture in their receiving country. The report states the Commissioner felt that in addition to failing to examine seriously any evidence of such risk, Russian courts also tend to rely too much on diplomatic assurances given by the state requesting extradition. The Commissioner recommended instead that judges, prosecutors and all relevant officials involved in extradition cases should apply international human rights standards and conduct effective investigation into past and current abductions to ensure accountability and deter any future violations of this kind.[6]

Criminalisation of torture recommended

The report also contained concerns about the long-standing problem of torture and ill-treatment in police custody, and with a view to reversing patterns of impunity, recommends introducing legislative amendments to criminalise torture as a separate crime because it would allow the direct prosecution of police and other officials, and exclude from the investigations those complicit or implicated in cases of ill-treatment.

Human rights actors commended

Finally, the Commissioner highlighted the important role played by the various human rights actors working in the Russian Federation, including the ombudsmen, civil society and the Presidential Council on Human Rights and Civil Society. This had been previously outlined in the Opinion on the legislation of the Russian Federation on non-commercial organisations in light of Council of Europe standards published in July.[7] The Commissioner recommended that their advice and recommendations should be better reflected in the decision making process.[8] Such support is no doubt welcomed by civil society at a time when its ability to act is severely curtailed by the Foreign Agents Law and Homosexual Propaganda legislation.

Notes

1. http://goo.gl/ywT8we, also available in Russian at the same link
2. Between 2002-12 more than 600 judges were dismissed and almost 2500 warned in Russia. Although there has been a decline in sanctions against judges since 2010, the overall pattern shows they are not shielded from undue pressure including from within the judiciary.
3. http://goo.gl/oNZM4q
4. A full examination of the case in a court hearing is not required when the defendant agrees with the charges and requests this procedure.
5. The use of simplified proceedings can accelerate the adjudication of criminal cases and shorten the pre-trial detention and reduce the sentence.
6. http://goo.gl/5D0Xcv
7. http://goo.gl/MCsLW9
8. http://goo.gl/zS2RXK

Elikhanova v Russia; Yandiyev v Russia; Bersanova v Russia

Right to life

(Nos. 47393/10; 34541/06; 43811/06), 10.10.2013 (ECHR: Judgments)

Facts

These were three applications considered in two judgments handed down by the ECtHR on the same day. All three applicants were represented by EHRAC/Memorial.

The *Elikhanova* case was one of ten applications reviewed within the joined judgment *Gakayeva and others v Russia*. The applicant, Ms Roza Elikhanova, is a Russian national. Mr. Khavazhi Elikhanov, the applicant's son, was arrested by 15 to 20 masked armed servicemen in 2001 when walking along a street with two friends in Urus-Martan, Chechnya. They were taken away in a Ural lorry to the military commander's office. This was witnessed by the applicant, and other relatives and neighbours. One of Khavazhi's friends was later released and the other's body was returned to his family by the military. The applicant and her family had never been able to find Khavazhi or uncover what he was being accused of.

The *Yandiyev* and *Bersanova* cases followed a similar pattern. They were two of three applications reviewed within the joined judgment *Yandiyev and others v Russia*. In both cases the applicants challenged the abduction of their relatives from Ingushetia, Russia, in 2004. Timur Yandiyev, an IT administrator, was stopped by six people in camouflage dress. They threw him to the ground and struck him a number of times on the face. He was then picked up and thrown into a vehicle with tinted windows and missing registration plates. Witnesses contacted the family, who immediately began making appeals to government agencies. Timur's family has never found out his fate.

Adam Bersanov was abducted from his family home by soldiers in Malgobek, Ingushetia. His mother, the applicant, who was with him at the time, was held at gun point by the soldiers. She lost consciousness and awoke to find him gone. She suspected that his disappearance was connected to the fact that he had previously studied Arabic. Despite numerous appeals to various bodies, the investigation only confirmed that a convoy of vehicles had indeed passed through several police posts and that the passengers had shown identification confirming that they were from the FSB (Federal Security Bureau).

Timur Yandiyev, an IT administrator, was stopped by six people in camouflage dress. They threw him to the ground and struck him a number of times on the face. He was then picked up and thrown into a vehicle with tinted windows and missing registration plates.

Judgments

The ECtHR addressed the three applications in two relatively short judgments. It held in all three cases that there had been two violations of Article 2 (right to life) on account of both the victims' presumable deaths and the authorities' failure to conduct effective investigations. This corresponded with identical findings made by the ECtHR in a "whole series" of "numerous cases" concerning disappearances in the region. The ECtHR also found violations of Article 3 (prohibition of torture and/or inhuman or degrading treatment) due to the distress and anguish the applicants suffered, as they were unable to ascertain anything regarding their family members and the manner in which their complaints were investigated. Moreover, the ECtHR held that since all of the victims had been detained without any legal basis, there had been violations of Article 5 (right to liberty). Once again, the ECtHR supported its findings by referencing a number of identical rulings concerning unacknowledged detention and disappearances in the region. The applicants were each awarded 60,000 EUR in non-pecuniary damages, which has become the standard sum awarded by the ECtHR in enforced disappearance cases.

Comment

The ECtHR has an increasing tendency to use its previous judgments for the purpose of summarily rejecting the Russian government's arguments in cases of this type. This reflects its recognition of enforced disappearances as a systemic and pervasive problem in Chechnya and the surrounding regions. This trend further corresponds with the ECtHR's readiness to join large numbers of individual applications into single cases. ECtHR judgments follow an increasingly predictable formula, in an ostensible effort to deliver efficient and accessible justice to the families of persons who have disappeared in the North Caucasus. Future applicants are likely to be able to draw upon this proliferating body of case law to support similar complaints to the ECtHR.

Janowiec & Others v Russia

Right to life

(Nos. 55508/07 and 29520/09), 21.10.13 (ECHR: Judgment)

Facts

The case originated from two applications brought by fifteen Polish nationals in 2007 and 2009 respectively. The applications were brought against the Russian Federation. EHRAC/Memorial and the Essex Transitional Justice Network filed a joint written submission as third-party interveners in the case.

Shortly after the start of the Second World War in 1939 the Soviet Red Army marched into Eastern Poland and took control of territories, declaring that 13.5 million Polish citizens were henceforth Soviet citizens. Approximately 250,000 persons from varying divisions of the Polish security services were detained and disarmed by the Soviet Red Army. Whilst some were released, others

were taken to special prison camps established by the NKVD (a predecessor of the KGB). The number of detainees exceeded 25,000. In the spring of 1940 the Russian government ordered the execution of over 21,000 prisoners held at the Kozelsk camp, a site near Smolensk known as the Katyn forest, and surrounding camps.

The ECtHR's decision centred on two issues: (1) Were the Russian authorities obliged to conduct an effective investigation into the executions under Article 2 of the ECHR even though they had taken place prior to Russia's ratification of the ECHR in 1998?; and (2) Had the Russian authorities' prolonged denial of the facts violated Article 3?

The Issues

The ECtHR's decision centred on two issues: (1) Were the Russian authorities obliged to conduct an effective investigation into the executions under Article 2 of the ECHR even though they had taken place prior to Russia's ratification of the ECHR in 1998?; and (2) Had the Russian authorities' prolonged denial of the facts violated Article 3?

Judgment

Firstly, the Grand Chamber decided that it did not have jurisdiction to determine the Article 2 complaint. The applicants argued that the Russian authorities had not discharged their obligation to carry out an adequate and effective investigation into the deaths. However, there had been a lapse of almost 50 years between the executions (1940) and the commencement of any criminal investigation. Furthermore Russia's ratification of the ECHR did not occur until 1998. In these circumstances the ECtHR had to determine if there was a "genuine connection" between the "triggering events" (the executions) and the date of Russia's ratification of the ECHR. This requirement would only be satisfied if (1) there was a "reasonably short" period of time between the two events; and (2) a "major part" of the investigation was, or should have been, carried out after the ratification date. The ECtHR found that the time between the deaths and the ratification date was excessively long to satisfy this test. Furthermore, the majority of investigative steps had already been taken by the Russian authorities prior to 1998. Applying the criteria from the judgment in *Brecknell v United Kingdom*, (No. 32457/04) 27.11.07, the ECtHR found that the mass murder of Soviet prisoners had the features of a war crime, and might therefore justify exceptional departure from the "genuine connection" requirement in order to protect the "very foundations" of the ECHR. However, there were no elements of the case providing a bridge from the past to the post-ratification period because the length of time between the executions and ratification was so excessive. The exception therefore did not apply to the applicants, and the Grand Chamber found it had no jurisdiction *ratione temporis* to consider the complaint.

Secondly, the Grand Chamber examined the Article 3 claim. The applicants complained that the prolonged denial of historical fact and withholding of information, coupled with inconsistent responses from the Russian authorities, amounted to inhuman or degrading treatment. The ECtHR, however, found that its jurisdiction to examine the applicants' treatment by the authorities only extended to the period starting 5 May 1998, when the ECHR was ratified by Russia. By that date there was "no lingering uncertainty" as to the fate of the Polish prisoners of war. The ECtHR further found that there were no other special circumstances which would have prompted it to find an Article 3 violation. It could not be held that the applicants' suffering had reached a dimension and character distinct from the emotional distress which may be regarded as inevitable for relatives of victims of a serious human rights violation.

Observance of Article 38 – Obligations of the Respondent government

The ECtHR requested the Russian government to produce a copy of a decision relating to the discontinuation of a 2004 criminal investigation into the executions. The Government refused to provide it. The ECtHR found that the Moscow City Court's decision to maintain the classified status of the case materials seventy years after the massacre was not supported by any substantial reasons, and that the state failed to strike a balance between the need to protect information owned by the state, the public interest in a transparent investigation into crimes of a previous totalitarian regime, and the interests of victims' relatives. The Russian government had therefore failed to comply with their obligations under Article 38 of the ECHR.

Chilayev and Dzhabayeva v Russia

Right to life

(No. 27926/06), 31.10.13 (ECHR: Judgment)

Facts

This case originated in four applications brought by the relatives of individuals who disappeared in Chechnya after being apprehended in 2001 and 2006 by armed men believed to have belonged to the Russian authorities. EHRAC/Memorial represented the relatives of the two men who disappeared in the fourth case.

In April 2006 the applicants' respective sons disappeared after being abducted from their car in broad daylight, near a permanent police post, whilst a large-scale security operation was being conducted in the area. The applicants' case was based on witness statements describing the perpetrators and providing registration plate numbers; evidence gathered at the scene, including a military cap and the identification tag of a serviceman of the 'West' battalion; and a trace of one of the missing persons' mobile phones to a location near the battalion's headquarters.

Complaints were filed promptly with a number of law-enforcement and governmental agencies, however the investigations were protracted over a period of three years and were ultimately suspended because of a failure to identify any suspects.

The Government denied responsibility and argued that the applications should be dismissed for failure to exhaust domestic

remedies. With particular regards to the fourth case, it contended that the serviceman's identification tag, which was found at the scene, had been lost during a previous operation in the area and that the perpetrators' registration number, which belonged to the police, and which the applicants had relied upon as having been noted at the scene, had been copied from a government-owned vehicle on another occasion.

perpetrators' vehicles had been allowed to pass through various police checkpoints and they were driven in the direction of several law-enforcement agency buildings immediately after the abduction.

In line with the pattern of previous judgments on disappearances in Chechnya, the ECtHR also held that the authorities' reaction to the disappearances caused the applicants to suffer distress and anguish contrary to Article 3. Unlawful detention had also been established and constituted a grave violation of Article 5. The ineffectiveness of the criminal investigations entailed the absence of any effective domestic remedy, a breach of Article 13.

The applicants were awarded €60,000 each in non-pecuniary damages. They were also awarded €10,000 in pecuniary damages for loss of the victim's earnings.

> The Court was particularly concerned by the fact that the applicants' relatives had been abducted in broad daylight at the same time as a security operation was being carried out in the area.

Judgment

The ECtHR dismissed the Government's admissibility objection on two bases. First, it made a generic statement that the non-investigation of disappearances in Chechnya is a systemic problem. Criminal investigations carried out in that region are therefore deemed to be an ineffective remedy (*Aslakhanova and Others v Russia*, Nos. 2944/06 et al., 18.12.12). It is striking that the ECtHR did not consider the facts of each individual application in this regard. Instead, it applied an automatic presumption that the relevant investigations were inadequate. Second, civil actions to obtain redress cannot be regarded as an effective remedy in claims under Article 2 (*Khashiyev and Akayeva v Russia*, Nos. 57942/00 and 57945/00, 24.02.05).

Violations of Article 2 were found in two respects: a substantive violation of the right to life because the men were presumed dead, and a procedural violation as the investigations had been ineffective. With regards to the 2006 incident, the ECtHR examined the evidence and found Russia's arguments insufficient to discharge its burden of proof that the disappearances were not carried out by state actors. The applicant relied on a number of points which have become important indicators for the ECtHR of state involvement in enforced disappearance cases. The Court was particularly concerned by the fact that the applicants' relatives had been abducted in broad daylight at the same time as a security operation was being carried out in the area. Furthermore, the

Dobriyeva and others v Russia

Right to life

(No. 18407/10), 19.12.2013 (ECHR: Judgment)

Facts

The four applicants were relatives of an assassinated Ingush businessman. They included his widow, Fatima Dzhaniyeva, who moved to St. Petersburg for medical treatment following subsequent unresolved car bomb attacks against other members of the family. The morning after their arrival on 25 December 2009, four relatives of Dzhaniyeva disappeared during a car trip across town. According to several eyewitnesses, the men had been seized by armed, masked men in civilian clothing. A criminal investigation into their disappearance was formally opened on 25 January 2010 but failed to identify the culprits and was suspended in 2011. The applicants claimed that their relatives were detained by officials of the Russian state and that they were denied an effective investigation into their disappearance, in violation of Articles 5 and 2 of the ECHR. They also claimed that the mental suffering caused by the disappearance of their relatives violated their rights under Article 3 and that they were deprived of an effective remedy in breach of Article 13.

Judgment

The ECtHR unanimously held that the applicants had failed to establish a *prima facie* case that the missing men were detained by state officials. In particular, the documents available to the court provided "no solid evidence" of a state security operation having taken place at the material time. Furthermore, the alleged perpetrators arrived in ordinary vehicles, were dressed in civilian clothing and used small hand-guns which could have readily been concealed from law enforcement officials. The ECtHR also noted that the disappearances took place in a location that, unlike the Northern Caucasus region, had not been the subject of previous complaints about systemic enforced disappearances. The burden of disproving the state's involvement had not therefore shifted onto the government. Because it could not be proved that the state was responsible for the detention of the missing men, there had been no violation of the substantive Article 2 right to life. Consequently, the claims under Articles 3, 5 and 13 fell away. However, the judgment pointed to several shortcomings in the investigation, referring specifically to the failure to consider the previous attacks on the wider family and the length of time until any formal enquiries were undertaken. As such, the ECtHR found there had been a violation of the procedural aspect to Article 2 and awarded €15,000 to each applicant non-pecuniary damages.

Comment

The ECtHR has several times in the past considered cases of disappearances in the North Caucasus allegedly attributable to the state (i.e. *Ibragimov and Others v Russia* (No.34561/03) 29.05.08) and has often relied on inferences based on eyewitness evidence of such indicators as the presence of military vehicles and uniformed personnel, as well as behaviour typical of a counter-terrorist operation. The reasoning in this case even took account of the type and size of weaponry used. This was the first such case to deal with allegations outside the North Caucasus and illustrates the difficulty of adducing sufficient evidence outside a military environment so as to shift the burden of proof to the state.

Pitsayeva and Others v. Russia

Right to life

(Application No. 53036/08 et al.) 09.01.2014
(ECHR: Judgment)

Facts

These 20 cases relate to complaints made by the close relatives of 36 individuals who were abducted from their homes in Chechnya, mostly at night under curfew by armed men wearing camouflage uniforms between 2000 and 2006. Criminal cases were opened in all 20 cases, but investigations have been suspended or remain pending without having established the identity of the perpetrators or the fate of the missing relatives. EHRAC, together with its partner NGO based in Moscow, Memorial, acted for the relatives of three of the disappeared persons: Buvaysar Magomadov, Mikhail Borchashvili and Aslan Yusupov.

The applicants claimed that their relatives had been abducted by State servicemen and that the authorities had failed to conduct effective investigations into the matters, constituting violations of the right to life under Article 2 of the ECHR. In addition, they complained that the mental suffering caused to them by the disappearance of their relatives, the unlawfulness of their relatives' detention, and the unavailability of domestic remedies for these violations, breached Articles 3, 5 and 13 of the ECHR, respectively.

Judgment

The ECtHR found violations of the right to life in each case on the basis that the applicants' relatives could be presumed dead following their unacknowledged detention by State agents and, in the absence of any justification put forward by the Russian Government, these deaths could be attributed to the State. Crucial to this finding was the ECtHR's conclusion drawn from the evidence in the cases – namely, that the abductors were *"armed men in uniforms, displaying behaviour characteristic of security operations."* It also appeared that the domestic investigations regarded abduction by servicemen as the only or main plausible explanation.

The ECtHR found violations of the right to life on account of the authorities failing to carry out effective investigations into the deaths. In the case of *Aslakhanova and Others v. Russia* the ECtHR had previously found that a criminal investigation did not constitute an effective remedy in respect of disappearances that had occurred in Russia's Northern Caucasus between 1999 and 2006, and that this situation constituted a systemic problem. Noting the similarity of the facts of this case with other similar cases brought before it, the ECtHR found that the investigations were plagued by many of the same defects and had been pending for many years without any significant developments.

The ECtHR further found violations of the prohibition of torture, inhuman or degrading treatment or punishment under Article 3. It considered that the applicants were victims on account of the *"distress and anguish"* they suffered from being unable to determine the fate of their family members and from the way their complaints had been dealt with by the authorities. In addition, the finding that

Noting the similarity of the facts of this case with other similar cases brought before it, the ECtHR found that the investigations were plagued by many of the same defects and had been pending for many years without any significant developments.

the applicants' relatives had been detained by State agents without any legal grounds or acknowledgement of such detention constituted a *"particularly grave violation"* of the right to liberty and security of persons under Article 5. Finally, the ECtHR found violations of Article 13 in conjunction with Articles 2 and 3 on account of the violations of the applicants' rights to an effective remedy.

The ECtHR awarded the applicants in total over two million Euros in damages, costs and expenses.

RECENT NON-EHRAC HUMAN RIGHTS CASES

Alekseev v Russia

Right to peaceful assembly

(Communication No. 1873/2009) 5.11.13
(UN Human Rights Committee: Views adopted by the Committee)

Facts

Mr. Nikolai Alekseev is a gay rights activist who lives in Moscow. He belongs to a group called 'LGBT Human Rights Project 'GayRussia.Ru'. Between 2006 and 2008 he attempted to organise numerous peaceful assemblies, principally in Moscow, which were all banned by the municipal authorities. In July 2008 he notified the authorities of his intention to hold a protest outside the Iranian embassy about Iran's treatment of homosexuals and minors. The authorities refused to authorise the protest on the ground that it would prompt a "negative reaction in society". He submitted a communication to the UN Human Rights Committee (the Committee) under Article 21 of the Covenant (right to peaceful assembly). This communication ran alongside a catalogue of successful, similar applications made by Mr. Alekseev to the ECtHR (Nos. 4916/07; 25924/08 and 14500/09) 21.10.10.

Decision

The Committee decided the communication was admissible despite the parallel ECtHR applications. This was because each of Mr. Alekseev's complaints related to different individual protests. The Committee therefore examined the merits of his claim. In particular, it considered the State party's reasons for restricting Mr. Alekseev's right to peaceful assembly under Article 21. The Committee assumed (in the government's favour) that authorisation for the protests had been withheld because of fears about the public's likely reaction to the subject matter of the protests. However, the authorities' reasons did not respond to the specific time, location or circumstances of each proposal. They therefore translated into a de facto blanket ban on protests concerning respect for the rights of sexual minorities. The restriction on Mr. Alekseev's right to peaceful assembly could thus not be said to be necessary in a democratic society in the interest of public safety, and violated Article 21 of the Covenant. The Committee's reasoning differed from that of the ECtHR in Mr. Alekseev's parallel cases, which centred on Russia's positive obligation to protect protesters from violent public reaction and counter-protest under Article 11 ECHR (freedom of assembly).

The Committee went on to state in accordance with article 2, paragraph 3 of the Covenant that the State party was under an obligation to provide an effective remedy to Mr. Alekseev, and prevent similar violations in the future. The Committee further sought to be provided, within 180 days, with information about the measures taken to give effect to the Committee's views. This was arguably a more powerful remedy than the non-pecuniary damages awarded by the ECtHR in Mr. Alekseev's other cases.

The Committee for the Prevention of Torture

Latest visit to Russia

Context

The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published a report in December 2013 based on its periodic visit to Russia and the Republics of Bashkortostan, Tatarstan and Udmurtia in May and June 2012, along with the Russian government's responses to the findings.[1] This followed a previous visit to the region in 2008 and a subsequent report in which the CPT expressed concern about police ill-treatment becoming an accepted feature of operational practice.

The 2012 delegation visited detention centres in Moscow, Leningrad and Vladimir regions, as well as in the federal Republics, and spoke to staff and detainees. The report urges the Russian authorities to strengthen efforts to prevent the ill-treatment of detainees by law enforcement officials, and calls for effective investigations into allegations of suspected ill-treatment. Notwithstanding recent internal reforms, the report states *"the frequency and consistency of the allegations suggested that methods of severe ill-treatment/ torture continue to be used on a frequent basis by police and other law enforcement officials, in particular outside Moscow city and Saint Petersburg".*

Outside Moscow and St Petersburg, the delegation found that methods of severe ill-treatment, sometimes amounting to torture, continue to be used frequently.

Details of findings

The current report states that the delegation received few complaints from inmates in Moscow and St Petersburg about the manner in which they were treated by law enforcement officials. They did, however, receive some allegations of recent physical ill-treatment by members of the police and other law enforcement agencies at the time of initial apprehension. Outside Moscow and St Petersburg, the delegation found that methods of severe ill-treatment, sometimes amounting to torture, continue to be used frequently. With regards to this, the delegation heard several accounts of recent physical ill-treatment in the Republic of Udmurtia and numerous allegations of recent physical ill-treatment from the Republics of Bashkortostan and Tatarstan, as well as the Vladimir region. This included a number of graphic and consistent accounts of deliberate and routine physical ill-treatment of newly admitted sentenced prisoners, as well as several credible allegations of physical ill-treatment by staff, including senior officials, of inmates in disciplinary segregation. For example, there were reports of asphyxiation with gas masks, infliction of electric shocks and burns to prisoners' genitals.

Improvements

The report states that inmates at Yagul's Strict-Regime Colony No.1 had noticed a "clear improvement" in the attitude of staff towards them since the CPT's previous visit in 2008. In Russia, the report acknowledges encouraging results with regards to the ongoing efforts of authorities to combat overcrowding and improve material conditions in pre-trial establishments (SIZOs) and recommends they pursue their efforts in this regard. The CPT were pleased to note steps were being taken to move away from the system of large-capacity cells found in current establishments for prisoners towards a system of smaller living units. The authors reiterated their long-standing recommendation that the Russian authorities formally amend the relevant legislation in order to align the minimum standard of living space for sentenced prisoners with that for remand prisoners. The CPT has also called upon the Russian authorities to ensure that efforts aimed at reducing overcrowding and improving material conditions in SIZOs and establishments for sentenced prisoners go hand-in-hand with the introduction of programmes for structured out-of-cell activities.

With regards to prison health-care services, the delegation was informed of a pilot project, the main feature of which was that prison health-care staff were no longer administratively dependent on the directors of the establishments in which they were working. In this context, the CPT report reiterated that a greater involvement of the Ministry of Health in the provision of health-care services in prisons would help to ensure optimal health-care for prisoners.

Government response

In their response, the Russian authorities referred to various issues raised in the CPT's report and provided detailed updates on the legislative and organisational reforms of the law enforcement agencies, the investigative authorities and the prison system. They also informed the CPT of steps which have been taken to prevent further ill-treatment of prisoners and persons in police custody, such as the dissemination of information to law enforcement officials about unacceptable practices and the introduction of video cameras to monitor the treatment of detainees by law enforcement officials.

Notes

1. http://goo.gl/bcMUyd

EHRAC European Human Rights Advocacy Centre

About EHRAC

EHRAC is an independent apolitical organisation that stands alongside victims of human rights abuse in order to secure justice. Working in support of civil society organisations, we bring strategic cases to the European Court to challenge impunity for human rights violations. We raise awareness of violations and means of redress for victims. Each judgment we secure contributes to an objective account of human rights abuse that cannot be refuted.

EHRAC Partnerships

EHRAC works in partnership with many NGOs, lawyers and individuals in Russia and the South Caucasus. Our work focuses on mentoring joint project lawyers to develop their professional skills and independence as litigators. To find out more about the organisations we work with, and how we work in partnership, visit www.mdx.ac.uk/ehrac.

Call for new partners

EHRAC is seeking to develop partnerships with new organisations in the region we work in. If you are litigating at the European Court and would like to discuss potential collaboration opportunities with EHRAC, please contact ehrac@mdx.ac.uk in English, Russian or Armenian.

Internship Opportunities

EHRAC has in-house internship placements available throughout the year. To find out about the type of work our interns do, what opportunities are currently available and how to apply, please visit www.mdx.ac.uk/ehrac/intern.

Contributions

EHRAC would like to thank the following people for their contributions:

Katerina Akestoridi, Giorgi Chitidze, Graham Donnelly, Lina Ghvinianidze, Sergey Golubok, Paul Lennon, Caroline Macpherson, Daniel Mitchelmore, Yuri Marchenko, Awaz Raoof, Michael Redman and Artur Sakunts.

This Bulletin was produced by EHRAC designed by Gerbil Tea and translated into Russian by Tatiana Hansbury.

The EHRAC Bulletin is published biannually. We welcome contributions of articles, information or ideas. Please write to EHRAC by email to propose an article. Material 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.

Donations

EHRAC relies entirely on grants and charitable donations. If you would like to support our work with a donation of any size, please make a cheque payable to EHRAC, Middlesex University, and send it to the address below. Thank you for your support.

Contact Us

EHRAC, School of Law, Middlesex University,
The Burroughs, Hendon, London, NW4 4BT

Tel: +44 (0) 208 411 2826
Fax: +44 (0)208 202 7058

ehrac@mdx.ac.uk
www.mdx.ac.uk/ehrac

Printed on 100% recycled paper