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In partnership with
Memorial Human Rights Centre (MHRC) and Georgian Young Lawyers' Association (GYLA)

Editorial

At a time when Russia chairs the G8 Group of most-industrialised nations and as it also takes on the role of Chair of the Committee of Ministers of the Council of Europe, there is likely to be particular scrutiny of its human rights standing in the coming months. As Amnesty International publishes its latest report on Russia, highlighting racially motivated attacks and discrimination (*Russian Federation: Violent racism out of control*, 4 May 2006), this fifth edition of the Bulletin includes a focus on the European Court's approach to discrimination. Professor Kevin Boyle (University of Essex) reflects on the Court's recent more expansive approach, arguing that there will be greater opportunities to mount effective challenges to systematic discrimination, and Dina Vedernikova (Memorial/EHRAC) analyses Strasbourg's consideration of cases of ethnic and national discrimination, with special reference to Russia.

Also in this edition: Professor Bill Bowring (EHRAC) critically assesses the recent changes in Russian law relating to NGOs; Dokka Itslaev (Memorial/EHRAC) discusses the authorities' failure to disclose important case documents in the course of proceedings in the Chechen courts; Kirill Koroteev (Memorial/EHRAC) analyses the steps taken to reform supervisory review in civil proceedings (arguing that they do not go far enough) and Irina Ananieva (Memorial/EHRAC) highlights the problems faced by families following the death of conscripts in the military.

This edition of the Bulletin marks the launch of EHRAC's work in Georgia - a new collaborative human rights litigation project with the Georgian Young Lawyers' Association and also with the NGO Article 42. An article co-written by lawyers from both organizations (Manana Kobakhidze, Sophio Japaridze and Ketevan Mekhuzla) assesses the ongoing threat to judicial independence in Georgia.

Philip Leach
Director, EHRAC

Article 14 Bites At Last

Kevin Boyle, Professor of Law, University of Essex*

Introduction
One of the anomalies of the long and inspiring jurisprudence of the European Convention on Human Rights has been its relative neglect of equality and non-discrimination as important drivers of effective human rights protection. The Convention in its Preamble declares its source as the Universal Declaration of Human Rights. Yet what was truly revolutionary about that document was the fundamental emphasis it placed on equality in respect of all rights and freedoms. Equality and universality are inseparable dimensions of international human rights. But there was no such statement in the European Convention and its inclusion of the non-discrimination principle in Article 14, perhaps because the drafting of that article has operated so as to subordinate and marginalise equality.[1]

However, over the last few years a new approach is emerging in which concern over systematic discrimination and exclusion is moving in from the margins of the Convention's jurisprudence. The landmark judgments in the *Nachova* cases in particular represent a significant shift in the approach to Article 14 by the European Court of Human Rights (discussed below). The coming into force of Protocol 12, the free-standing equality provision in 2005, should reinforce the new approach.

Mention of Protocol 12 should remind us that the broader human rights mission of the Council of Europe has played a role in the Court's new responsiveness to discrimination and the plight of minorities. In particular the work of the European Commission on Racism and Intolerance in Europe (ECRI) has identified the restraints that the Court's interpretation of Article 14 has placed on the use of the Convention by victims of racial discrimination and xenophobia. ECRI promoted the idea of a new Protocol on Equality, now Protocol 12, and has campaigned for its ratification by all states. The European Commission has led the most far reaching legislative efforts to eradicate racism in Europe, (Article 13 of the Treaty of Amsterdam followed by the Racial Equality Directive[2]) which has surely influenced

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the Court.[3] Against this background a crucial role has been played by strategic litigation supported by NGOs in encouraging a new determination by the European Court to confront racial and ethnic discrimination. A leading example is the litigation by the European Roma Rights Centre (ERRC).

Article 14 jurisprudence

The Court's thinking on the meaning and scope of Article 14 was first set out in the "Belgian Linguistics" case in 1968. A crucial step for the potential effectiveness of the Article was the confirmation in that case that Article 14 might be violated even where there was no violation of a substantive right, if there was discrimination involved. The Court gave the well-known example that Article 6 alone does not compel States to institute a system of appeal courts. However there would be a violation read in conjunction with Article 14, if it debarred certain persons from these remedies without a legitimate reason while making them available to others in respect of the same type of actions.[4]

The Court went on to declare that Article 14 should be thought of as if it were an integral part of each right and freedom protected under the Convention. In subsequent cases, however, where the Court found a violation of the substantive article it often ignored the claim under Article 14, examples including *Smith and Grady* and *Lustig-Prean and Beckett.*[5] As Philip Leach has noted, the Court has found that Article 14 did not give rise to a separate issue, although the cases concerned an overtly discriminatory policy.[6] It is arguable that had the Court taken its earlier doctrine more seriously, there might have been less need for the new Protocol 12.

New approaches and the role of individual judges

The rethinking of equality under the Convention is an interesting example of the influence over time of the dissenting or separate opinions of individual judges. Thus, in his separate opinion in *Brannigan and McBride v. UK*, Judge Matscher argued the non-derogable nature of Article 14.[7] In the *Ireland v. UK* judgment, he had argued for the necessity to give broad conceptual scope to the wording of Article 14.[8]

Judge Costa's dissenting opinion over the Court's narrow approach to Article 14 in *Cyprus v. Turkey* provides another example. He noted that the finding of one violation of the Convention did not release the Court "from the obligation to examine whether there have been others, save in exceptional circumstances where all the various complaints arise out of exactly the same set of facts".[9]

South East Turkey Cases

In the many individual applications brought against Turkey from the mid-1990s over the situation in South-East Turkey the Court found numerous and serious violations, yet it applied its existing policy on Article 14 and routinely held it unnecessary to consider also the claims of the Kurdish applicants to be victims of ethnic discrimination.[10] The Court declared the allegations to be "unsubstantiated", even when the applicants referred to the findings of UN bodies.[11]

Nevertheless, the persistence in pleading Article 14 as a 'fundamental aspect' of the Turkish cases did eventually lead some judges to respond. In one Chamber judgment two judges, Mularoni and Loucaides, found violations of Article 14 in conjunction with Article 8 and Protocol No. 1 on the ground of ethnic origin, arising from the deliberate burning down of the applicant's home by Turkish security forces.[12] Judge Mularoni, in three recent Turkish judgments delivered on the same day by the Second Chamber, called for a separate examination of the applicant's complaint under Article 14 of the Convention on the basis of the sheer number of similar applications resulting in findings of Convention violations.[13] He commented that the majority approach "…is tantamount to considering that the prohibition on discrimination in this type of case is not an important issue".

Nachova v. Bulgaria

Nachova and Others v. Bulgaria[14] has become the landmark decision on discrimination litigation. In earlier and similar cases on the treatment of Roma brought against Bulgaria,[15] the Court failed to take up the Article 14 issue, as in the Turkish cases.[16] Apparently affected by Judge Bonello's dissenting opinion in *Anguelova*, the Chamber in *Nachova* not only found a violation of Article 14, read together with Article 2, but established that there is a procedural obligation under Article 14 to investigate possible racist motives in violent incidents. The Grand Chamber upheld this reasoning but it 'overturned' the Chamber on the question of the reversal of the burden of proof, from applicant to state, with respect to racist motivation. The authorities' failure to carry out an effective investigation did not of itself justify shifting the burden of proof on the issue of discrimination to the government. The Chamber judgment in that respect was not convincing and the principle that the state is obliged to address racist motivation in any investigation remains.[17]

With the new possibilities under Article 14 and expanded ratifications of Protocol 12, there are now more opportunities to tackle systematic discrimination. The breadth of the application of the principle of non-discrimination under Protocol 12 will be wide, extending the jurisdiction of the Court to all rights provided under domestic law and covering any act or omission of the public authorities. The Protocol also incorporates the principle that States may take affirmative action to promote full and effective equality in appropriate circumstances. Lawyers should be ready to identify lack of equality and non-discrimination in every relevant case, and put effort into pleading that dimension. The opportunities that exist for the future to strengthen the equality jurisdiction of the Convention are good news for minorities in Europe.

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* With thanks to Damelya Aitkhozhina (LLM Essex and intern with EHRAC)

1 For the law on Article 14 see Jacobs & White, *European Convention on Human Rights*, 3rd edition (Oxford University Press 2002), and K.Kitching., (Ed) *Non-Discrimination in International Law. A Handbook for Practitioners.* (Interights London 2005)

2 Council Directive 2000/43/EC of 29 June 2000

3 Consider Judge Bonnello's dissenting opinion in *Anguelova v. Bulgaria* 13/06/02

4 *Belgian Linguistics Case* 23/07/68, Series A. para. 9

5 *Smith and Grady v. UK* 27/09/99, *Lustig-Prean and Beckett v. United Kingdom* 27/09/99

6 P.Leach, *Taking a Case to the European Court of Human Rights.* 2nd ed. (Oxford University Press, 2005), p. 346

7 26/05/93

8 *Ireland v. United Kingdom* 18/01/78, Separate opinion para. 2

9 *Cyprus v. Turkey* 10/05/01

10 See among others *Akdeniz v. Turkey* 31/05/05, para. 145; *Süheyla Aydin v. Turkey* 24/05/05, para 218; *Çelikbilek v. Turkey* 31/05/05, para. 113; *Süheyla Aydin v. Turkey,* para.215; *Çelikbilek v. Turkey* 31/05/05, para.112

11 e.g. *Kurt v. Turkey* para. 144

12 *Hasan Ilhan v. Turkey* 09/11/04

13 *Togcu v. Turkey* 31/05/05, *Koku v. Turkey* 31/05/05, *Yasin Ate v. Turkey* 31/05/05

14 26/02/04, 06/07/05

15 *Assenov and others v. Bulgaria* 28/10/98; *Velikova v. Bulgaria* 18/05/00*; Anguelova v. Bulgaria* 13/06/02

16 Leach 2005 p. 346

17 Since Nachova the Court has found discrimination in *Moldovan and Others v. Romania* 12/07/05, the Court persists with its blinkered approach i.e. *Sevgin and Ince v. Turkey*

The European Court's treatment of ethnic or national discrimination

Dina Vedernikova, EHRAC-Memorial Project Lawyer

Article 14 of the European Convention on Human Rights (ECHR) provides for the prohibition of discrimination on any ground, including race, colour, national origin, and association with a national minority.[1] However, despite their importance, the Court has usually avoided dealing with claims of discrimination on such grounds.

In a number of cases it has found violations of substantive articles of the Convention, but found it unnecessary to consider the issue under Article 14 (see for example, *Cyprus v. Turkey*[2] in which discriminatory practices of the army were recognised as violating Article 3; *Arslan v. Turkey*[3], *Okcuoglu v. Turkey*[4], and *Ceylan v. Turkey*[5] concerning violation of Article 10 in respect of the applicants, who were prosecuted on account of their writings).

But the main reason for discrimination claims being rejected as being insufficient, in the Court's view, has been the absence of any evidentiary basis for grounding such allegations (see for example, *Velikova v. Bulgaria*[6], *Hasan Ilhan v. Turkey*[7], *Hugh Jordan v. the United Kingdom*[8], *Tanli v. Turkey*[9]).

This can be explained by the application of the Court's established standard of proof and the objectively justified difficulties in obtaining evidence of the actual occurrence of ethnic or national discrimination. However, an analysis of the Court's recent case-law suggests that it has recognised the specific character of such cases. In *Velikova* and in a similar case, *Anguelova v. Bulgaria*[10], the Court held that, despite the seriousness of the allegations of discrimination, they were not "proved beyond a reasonable doubt". In the *Anguelova* judgment, in his partly dissenting opinion, Judge Bonello argued that the 'beyond reasonable doubt' standard should not be the appropriate standard for proving allegations of discrimination, in particular in respect of cases concerning the deprivation of life or inhuman treatment, and rather that the 'balance of probabilities' standard of proof should be applied. In contrast to *Velikova* and *Anguelova*, in the more recent Grand Chamber judgment of *Nachova v. Bulgaria*[11], which also concerned allegedly discriminative treatment on behalf of the police against people of Roma ethnicity in Bulgaria, the Court used a rather more reassuring formulation:

"In the proceedings before the Court, there are no procedural barriers to the admissibility of evidence or predetermined formulae for its assessment. It adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake."

The question of the standard of proof is closely linked to the distribution of the burden of proof. By invoking Article 14, the onus is on the applicant to establish that he/she has been less favourably treated than others, and that racism was a causal factor of this. The burden then shifts to the government to establish that there was an "objective and reasonable justification" for the discriminatory treatment, i.e. it must show that there was a "legitimate aim" and that the measure in question was "necessary in a democratic society". In the earlier chamber judgment in *Nachova*, the Court had held that the burden of proof shifts to the respondent Government, where "the authorities made no attempt to investigate whether discriminatory attitudes had played a role, despite having evidence before them that should have prompted them to carry out such an investigation". Unfortunately, in the later *Nachova* judgment, the Grand Chamber departed from such a principle and stated that "the question of the authorities' compliance with their procedural obligation is a separate issue". However, the Grand Chamber did not exclude the possibility that in certain cases of alleged discrimination the Court may require the Government to disprove an arguable allegation of discrimination and – if they fail to do so – find a violation of Article 14 of the Convention on that basis.

Although ethnic and national discrimination is a very serious problem in Russia, especially in some of its regions, to date, there is only one European Court judgment on this issue and there have been a number of admissibility decisions in which discrimination claims were found admissible, some of them on grounds of ethnicity.

On 13 December 2005, the Court found a violation of Article 14 in the case of *Timishev v. Russia.*[12] The applicant, Ilyas Yakubovich Timishev, was a Russian national of Chechen ethnic origin. Since 15 August 1996 he had been living in Nalchik, in the Kabardino-Balkaria Republic of Russia, as a forced migrant. On 19 June 1999 Mr Timishev and his driver were travelling by car from Nazran, in the Ingush Republic, to Nalchik. According to the applicant, their car was stopped at the checkpoint on the administrative border between Ingushetia and Kabardino-Balkaria. Officers from the Kabardino-Balkaria State Inspectorate for Road Safety refused him entry, referring to an oral instruction from the Ministry of the Interior of Kabardino-Balkaria not to admit anyone of Chechen ethnic origin. According to the Government, the applicant attempted to jump the queue of cars waiting to pass through the checkpoint and then left, after being refused priority treatment. The applicant complained to a court about the actions of the police officers and claimed compensation for non-pecuniary damage. His claim was dismissed and he appealed unsuccessfully.

On 1 September 2000 the applicant's nine-year-old son and seven-year-old daughter were refused admission to their school in Nalchik, which they had attended from September 1998 to May 2000, because the applicant could not produce his migrant's card - a document confirming his residence in Nalchik and his status as a forced migrant from Chechnya. The applicant had had to hand in his migrant's card in exchange for compensation for the property he lost in the Chechen Republic. The headmaster agreed to admit the children informally, but advised the applicant that the children would be immediately suspended if the education department discovered the arrangement. The applicant complained unsuccessfully about the refusal to admit his children to the school.

The applicant complained to the European Court that he was refused permission to enter Kabardino-Balkaria

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because of his Chechen ethnic origin and about the refusal to admit his children to their school. He relied on Article 2 of Protocol No. 4, Article 14 and Article 2 of Protocol No. 1 to the ECHR. As to Article 2 of Protocol No. 4, the Court noted that the applicant's version of events had been corroborated by independent inquiries carried out by the prosecution and police authorities. It found that the traffic police at the checkpoint prevented the applicant from crossing the administrative border between the two Russian regions, Ingushetia and Kabardino-Balkaria. There had therefore been a restriction on the applicant's right to liberty of movement within Russian territory, within the meaning of Article 2(1) of Protocol No. 4.

The inquiries carried out by the prosecutor's office and by the Kabardino-Balkaria Ministry of the Interior established that the restriction at issue had been imposed by an oral order from the deputy head of the public safety police of the Kabardino-Balkaria Ministry of the Interior. The order was not properly formalised or recorded. Furthermore, in the opinion of the prosecutor's office, the order amounted to a violation of the constitutional right to liberty of movement enshrined in Article 27 of the Russian Constitution. Finding that the restriction on the applicant's liberty of movement was not in accordance with the law, the Court held that there had been a violation of Article 2 of Protocol No. 4.

As to Article 14, the Court noted that the senior police officer of Kabardino-Balkaria had ordered traffic police officers not to admit "Chechens". As ethnic origin was not listed anywhere in Russian identity documents, the order barred the passage not only of anyone of Chechen ethnicity, but also those who were merely perceived as belonging to that ethnic group. That was found to represent a clear inequality of treatment regarding the right to liberty of movement on account of one's ethnic origin. Racial discrimination, being a particularly invidious kind of discrimination, required from the authorities special vigilance and a vigorous reaction.

The Government did not offer any justification for the difference in treatment between people of Chechen and non-Chechen ethnic origin in the enjoyment of their right to liberty of movement. In any event, the Court considered that no difference in treatment which was based exclusively or to a decisive extent on a person's ethnic origin was capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures. Thus, the Court concluded that there had been a violation of Article 14 taken in conjunction with Article 2 of Protocol No. 4.

As to Article 2 of Protocol No. 1, the Government confirmed that Russian law did not allow children's right to education to be made conditional on the registration of their parents' residence. The applicant's children were therefore denied the right to education provided for by domestic law. Thus, the Court concluded that there had also been a violation of Article 2 of Protocol No. 1.

In addition to the judgment in *Timishev v. Russia*, the Court has adopted a number of admissibility decisions on cases concerning ethnic discrimination issues in Russia. For example, in *Luluyev v. Russia*[13], the applicant's mother was detained in Chechnya by a group of federal forces, and, as was usual practice in the region, no information was provided to the relatives as to the grounds for the arrest, identity of those who carried it out, or of the place of intended detention. The applicant had not received any information as to his mother's whereabouts until her body was discovered in a mass grave in close proximity (less then one km) to a large military base in Khankala, access to which was restricted almost exclusively to the Russian federal forces. He alleged, *inter alia*, that the above violations occurred because his family was of Chechen origin and they were residents of Chechnya. The Court declared admissible all the complaints raised by the applicant - under Articles 2, 3, 5, 6, 8, 13 and 14.

There are also a number of applications concerning ethnic discrimination that are still pending with the Court at their pre-admissibility stage. In particular, at the end of 2003, the Memorial Human Rights Centre and EHRAC lodged two applications on behalf of 34 applicants, all of whom are Russian nationals of Meskhetian Turk origin. They complain that the responsible local authorities of Krasnodar Krai, where they all presently live, have refused to issue them with a "propiska" (permanent registration by place of residence), to change or issue them with national passports and subjected them to widespread discriminatory treatment because of their ethnic origin.

Thus, in future we can expect further developments in the Court's practice, and successful decisions on the merits, concerning problems of ethnic or national discrimination that will help to some degree to ensure that there are fewer such incidents of unjustifiable discrimination in Russia.

[1] Article 14 prohibits discrimination in respect of the rights and freedom in the ECHR. Protocol No. 12 to the Convention (which came into force on 1 April 2005) introduces a free-standing prohibition of discrimination. Protocol No. 12 has not, however, been ratified by Russia.
[2] *Cyprus v. Turkey* (No. 25781/94), 10/05/01
[3] *Arslan v. Turkey* (No. 23462/94), 08/07/99
[4] *Okcuoglu v. Turkey* (No. 24246/94), 08/07/99
[5] *Ceylan v. Turkey* (No. 23556/94), 08/07/99
[6] *Velikova v. Bulgaria* (No. 41488/98), 18/05/00
[7] *Hasan Ilhan v. Turkey* (No. 22494/93), 09/02/04
[8] *Hugh Jordan v. United Kingdom* (No. 24746/94), 04/05/01
[9] *Tanli v. Turkey* (No. 26129/95), 10/04/01
[10] *Anguelova v. Bulgaria* (No. 38361/97), 13/06/02
[11] *Nachova and Others v. Bulgaria* (No. 43577/98 & 43579/98), 06/07/05
[12] *Timishev v. Russia* (No 55762/00 & 55974/00), 13/12/05
[13] *Luluyev and Others v. Russia* (No. 69480/01), 30/06/05 (Admissibility)

New EHRAC Publication: *European Court Litigation – A Manual*

In February 2006 EHRAC published a Russian language training manual on litigating cases at the European Court of Human Rights. The manual is a practical reference work to European Court litigation with a particular focus on Russian issues. It includes four chapters adapted and translated from Philip Leach's book *Taking a Case to the European Court of Human Rights* (2nd Edition, OUP, 2005) and specially written chapters by Russia specialists on domestic litigation with a view to Strasbourg, admissibility issues in Russian cases and judgments on the merits in Russian cases. An ECHR case study and precedent ECHR pleadings also provide an invaluable training resource.

The publication has already been disseminated widely (5,000 copies have been produced) across the Russian Federation to lawyers, NGOs, human rights ombudsmen, universities and libraries. It can also be downloaded from the EHRAC website: www.londonmet.ac.uk/ehrac and the EHRAC-Memorial website: http://ehracmos.memo.ru. Hard copies are available free of charge to lawyers and NGOs from the EHRAC-Memorial Moscow office. See back page for contact details.

The threat to the independence and activity of Russian NGOs

Prof. Bill Bowring, EHRAC

In the decade from 1992, when a free mass media flourished, together with political pluralism, Russia experienced an explosion of NGO activity. There are now over 300,000 active NGOs in all regions of Russia, at least 2,000 of them devoted to the protection of human rights.

Today there are justified fears of a return to the dark days of the USSR, when any exercise of freedom of association posed a direct threat to the Communist Party and was harshly punished.

In November 2005, Yurii Dzhibladze, Director of the Center for the Development of Democracy and Human Rights, referred to "… the atmosphere of growing hostility towards NGOs, especially human rights and pro-democracy ones, that has been breeding among the political elites here since spring of 2004…". This new policy has been justified by reference to the "war on terror", and by "orange paranoia", and is aimed especially at foreign funding.

In fact, Russian human rights NGOs could not survive without foreign donors. Mikhail Khodorkovsky, the last wealthy Russian to attempt, through his Open Russia foundation, to provide funding for NGOs, is now imprisoned in a labour camp on the other side of Siberia.

The latest manifestation of the Kremlin's policy is the innocuously entitled Federal Law of 10 January 2006 No.18-FZ "On enactment of amendments to some legislative acts of the Russian Federation", which was published in the Russian Gazette on 17 January 2006. It comes into force on the 90th day after publication.

The law amends

- the Federal Law No.3297-1 (14 July 1992) "On closed administrative-territorial formations";
- the Federal Law No.82-FZ (19 May 1995) "On public associations", (LPA);
- the Federal Law No.7-FZ (12 January 1996) "On non-commercial organizations" (LNCO); and
- Part One of the Civil Code of the Russian Federation.

The Russian authorities insist that the new law contains nothing objectionable, and that it has the approval of the Council of Europe (CoE). The draft passed by the State Duma at First Reading was indeed sent to the CoE for an expert opinion, which was published on 1 December 2005.

The law as enacted follows some of the expert's recommendations. But in some respects it is even worse.

The LPA is amended so that registration may be refused if the association "defames the morality, national and religious feelings of the citizen" (Article 21). Article 38 gives powers of "nadzor" (supervisory review) of compliance with Russian laws to the Prosecutor's Office. The prosecutor will have power to intervene at any time, with no limitations. It also gives to "organs taking decisions on registration" wide powers of "control" over PAs. These include the right to demand administrative documents; to obtain tax and other information from other federal bodies; to send representatives to events organised by PAs, and once a year to carry out a full "investigation". There are draconian powers in the case of failure to comply.

The LNCO, as amended, deals with foreign NGOs, which must apply for registration within three months of the decision to found a branch or representation. The list of reasons for refusing include "contradiction of the Constitution or legislation of the RF", and "a threat to the sovereignty, political independence, territorial inviolability, national unity and 'self-being', cultural heritage and national interests of the RF" (Article 13). This is also an invitation to arbitrary interference. Foreign citizens and persons without citizenship may not be founders of NCOs (non-commercial organisations) if they are persons whose presence has been found to be "undesirable" (Article 15). There is a wide range of opportunities for "authorised organs " to interfere with NCOs. For a period and in a form to be decided by the government, NCOs are to provide a "maintained account", on their activities, on their staff, on finances, and in particular on all funds received from foreign sources (Article 32).

How these amended laws will be implemented cannot be predicted. But government attacks on NGOs have already begun.

The campaign launched by the FSB on 23 January 2006 concerning so-called "rocks" and "British spies" was clearly aimed at Russian NGOs. A few days later the Ministry of Justice sought the liquidation of the Russian Research Center on Human Rights, which includes the Union of Soldiers' Mothers' Committees - and a Moscow arbitration court held that the Russian PEN Center owed 2 million roubles in property taxes, and froze its assets.

Most recently, on 3 February 2006 a criminal court in Nizhnii Novgorod imposed a two year suspended sentence on Stanislav Dmitrievsky, Executive Director of the Russian-Chechen Friendship Society (RCFS) and editor of "Pravozashchita" (Human Rights Protection), for "inciting racial hatred". He published two statements by Chechen rebel leaders Aslan Maskhadov and Akhmed Zakaev, widely published elsewhere. Qualified observers say that they contain no trace of incitement. RCFS also faces persecution by the Ministries of Finance and Justice. Grants received from the European Commission and US funds are being treated as pure commercial profit, leading to tax demands and fines.

NEW PUBLICATION

In October 2005 the NGO Sutyajnik (Yekaterinburg, Russia) published a book entitled *Right to Life, Prohibition of Torture and Inhuman or Degrading Treatment or Punishment: European Standards, Russian Legislation and Practice*. This is the fourth volume in the series, International Human Rights Protection, established by Sutyajnik in 2001.

The authors analyse the Russian legislation and practice and European standards, in particular, the provisions of the European Convention on Human Rights enshrining the right to life and the prohibition of torture and inhuman or degrading treatment or punishment. The book also contains reviews of judgments of the European Court, aimed at assisting readers in developing their understanding of European standards and using them in domestic litigation, as well as arguing cases before the European Court.

This book, as well as the previous volumes of the series, are in Russian and available for free online at Sutyajnik's web-site: www.sutyajnik.ru

Human Rights Cases

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

The death of a military conscript—the case of *Perevedentsev v Russia*

Irina Ananieva, EHRAC-Memorial Project Regional Lawyer

As is well known, military service in the Russian Federation is organised on an extraterritorial principle, and the military unit is a type of closed institution. If a crime takes place on the unit's territory, the criminal investigation is conducted by the garrison prosecutor for the unit's location. Examining the circumstances of the crime, the investigator is required to solve the usual problems arising when looking for evidence in a closed institution: overcoming attempts by the leadership of the institution to conceal events, dependence of potential witnesses on the military hierarchy, etc. In the case of the death of a conscripted soldier, it is often extremely difficult for the relatives of the dead soldier to monitor the progress of criminal proceedings. Significant distance and low income do not allow relatives to visit the military prosecutor regularly with appeals or petitions, or to have adequate access to case materials. Unscrupulous investigators willingly use this to alienate relatives completely from involvement in the criminal proceedings, and to protect themselves from appeals against their decisions and actions.

Meanwhile, Articles 2 and 13 of the European Convention on Human Rights require that there is an effective investigation into such an incident. In accordance with the case law of the Court, the state must provide "a sufficient element of publicity of the investigation or of its results in order to provide accountability in practice as well as in theory. The level of publicity of the investigation may vary in different cases. However, in all cases the closest relative of the victim must be involved in the proceedings to a level that is necessary to protect his or her legitimate interests" (see *Güleç v. Turkey* 27/07/98, in which the victim's father was not informed of the decision to refuse to initiate proceedings; *Ogur v. Turkey*, No. 21954/93, ECHR 1999-III, in which the victim's family did not have access to the investigation and to judicial documents; *Gül v. Turkey*, No. 22676/93, 14/12/00 and *Jordan v. United Kingdom*, No. 24746/94, 4/05/01, paragraph 109).

On 25 October 2005, residents of Riazan *oblast*, Vera Ivanovna and Sergei Ivanovich Perevedentsev, appealed to the European Court of Human Rights (assisted by lawyers from *Memorial* and EHRAC). The applicants' son, Mikhail Perevedentsev, was called up for military service in May 2003. He did his service in military unit 52157 (Nizhegorodskaia *oblast*, Volodarskii district, Mulino-1 village). Mikhail wrote regularly to the members of the household about extortion and violence in the military unit. The bewildered parents did not know how to approach such a situation properly and therefore preferred to remain silent.

In the middle of February 2004 they were sent a letter from the military unit saying that on 16 February their son Mikhail was discovered with a noose around his neck, with no sign of life. The Perevedentsevs received no more information from the Nizhegorodskii military authorities and they appealed for help to the Riazan Committee of Soldiers' Mothers. When correspondence began with the unit and garrison prosecutor's office, it appeared that the military prosecutor's office of Mulino garrison had initiated criminal proceedings into Mikhail's death, in accordance with Article 110 of the Russian Criminal Code – incitement to suicide. This is the usual practice for military prosecutors. If the corpse of an ordinary person is found, i.e. not wearing military uniform, the prosecutor's office suspects murder. But if it is the body of a conscripted soldier, the investigator is sure, more often than not, that it is a case of suicide.

Insofar as "no persons involved in the death of the serviceman have been identified", the prosecutor concluded that the fact of the commission of a crime was absent. On 16 April 2004 the criminal case was halted.

The investigator for the military prosecutor's office refused to give to the parents of the deceased soldier the status of victims. Without this status they were not able to demand case materials or take part in the criminal proceedings. Before March 2005, the question of the Perevedentsevs' right to be acknowledged as victims had been decided in military courts. On 22 March the military court of Moskovskii military region left the decision in the hands of the garrison military court, which acknowledged the parents' right to take part in the proceedings as victims. Here, information from law-enforcement agencies on further progress in the case ended.

The Perevedentsevs renewed their correspondence with Mulino military prosecutor's office and court. Referring to the court's decision, the applicants' lawyer filed a petition with the military prosecutor concerning access to the materials of the criminal case. The applicants requested that a decision be taken, in connection with the court's judgment, to acknowledge them as victims. On 16 June 2005, the assistant garrison prosecutor informed them that he was not able to execute the decision of the military court. However, a month later the Perevedentsevs did in fact receive in the post the long-awaited decision acknowledging them as victims, and those concerning initiation and halting of the criminal case. The long-awaited letter from the garrison prosecutor's office was dated 6 July 2005. In accordance with Art. 42 Russian Criminal Procedure Code, the parents should have received all these documents soon

European Court Statistics

Of 41,510 applications lodged with the European Court during 2005, 21.2% were against Russia. This constituted the highest percentage of applications, most closely followed by Poland with 11.4%, and Romania with 9.2%. In the same year, 5,262 of the 5,372 Russian cases which were the subject of an admissibility ruling by the Court were declared inadmissible or struck off. There were a total of 82,900 cases pending with the Court as of 2 January 2006, a 2% increase from the previous year.

(Source: European Court of Human Rights Survey of Activities 2005 and Statistical tables 2006)

after the initiation of criminal proceedings, i.e. in February 2004. In reality they had been issued 17 months after their son's death.

From the decision to halt criminal proceedings Mikhail's parents finally learned the surnames of the witnesses questioned in the case and the brief conclusions of the two court experts. Nevertheless, for an effective appeal against the decision it was necessary to access the witness testimonies, the full text of the experts' conclusions, and the report of the scene of the incident. The applicants doubted that these people had actually been questioned about the case or that they had been asked all the necessary questions. They also had doubts about the forensic medical and psychiatric examination certificates.

In the same letter of 6 July, the assistant military prosecutor also stated that the materials in the criminal case file until then had been held by the garrison court and that he was not able to grant access to them to interested persons.

The victims again renewed their correspondence with the garrison military court and prosecutor's office, but they were not allowed access to the case materials. They prepared their appeal against the decision of 16 April 2004 concerning the halting of criminal proceedings, making do with the inadequate information contained in the decision itself.

The parents believed that Mikhail Perevedentsev had been murdered, and that his body had been placed in a noose to create the appearance of suicide. To date, the state has not presented to the applicants the information that led them to conclude that he had committed suicide. In the appeal, the lawyer described the shortcomings of the forensic psychiatric examination certificate, made a critical assessment of the questioning of the witnesses, and expressed doubts about the fullness of the inquiry. On 31 January 2006, the Mulino garrison court quashed the investigator's decision to halt criminal proceedings, albeit on formal grounds, in view of the fact that the rights of the victims had been violated. In the court's decision, the lawyer's arguments about the poor quality of expert examination, questioning and investigation were ignored. As before, Mikhail's parents were not shown the materials in the criminal proceedings. There was another lull in the correspondence with the military prosecutor's office.

Over 2 years have passed since the death of Mikhail Perevedentsev. The great amount of time that has passed has, of course, negatively affected the quantity and quality of testimonies accessed. The flagrant alienation of interested persons from involvement in the case engenders mistrust in the state, creates doubt as to the quality of investigation, and lengthens the period of time in which family members experience suffering.

New Online Resource on applying to the European Court

The organisation *Russian Justice Initiative* has developed an online resource centre with information about how to protect your rights in Russia and how to write and send applications to the European Court of Human Rights. The website contains instructions, templates, examples of applications, analytical articles and other information of great use to lawyers preparing applications. The resource centre also hosts a searchable database of decisions by the European Court translated into Russian. Visit the resource centre at http://www.srji.org/resources.

Bitiyeva and Iduyeva-Bisiyeva v. Russia

(nos. 57953/00 and 37392/03)
20/10/2005 ECHR: Admissibility
Torture, Right to Life

Facts

The first applicant lived in the Naurskiy district of Chechnya. She was politically active and participated in anti-war protests.

On 24 January 2000, Russian soldiers entered the first applicant's house to conduct a passport check. The first applicant and her son explained that their passports had been submitted for renewal to the local authority. The soldiers then left.

The next day at about 6 am approximately 20 men in military uniforms, some wearing balaclavas, surrounded the first applicant's house. They jumped over the fence and started knocking on the door with rifle butts. The first applicant's husband opened the door and asked the reason for the visit. Four men, who had been there the previous day, replied that it was a passport check. They spread out throughout the house and ordered the first applicant to go with them to the local police department to find out about her passport. They threatened to use force if the first applicant refused. The first applicant's son was also ordered to go with them.

They were put into a UAZ-52 vehicle and were taken to the Naurskiy District Temporary Department of the Interior (VOVD). They spent about two hours there before being taken to the Chernokozovo detention facility where they were separated.

On arrival in Chernokozovo, the first applicant alleges she was forced to watch about 60 men run naked along a corridor about 50 metres long while soldiers beat them. She was also forced to stand with her face to the wall with her hands raised until the evening when she was taken to a cell. The cell was very small and it contained four metal beds and a toilet. Three to ten women were kept there at different times and sometimes they had to sleep in turns. Once a day they were given four litres of water per cell and one cup of meal for three persons in dirty plates.

During her detention, the first applicant was humiliated constantly as a woman and as a person of Chechen origin and was told by the guards that she would not leave alive, that she would go insane or would kill herself. She was pushed and hit with rifle butts on many occasions. On one occasion, gas was sprayed into the cell causing the detainees to cough.

The first applicant witnessed other detainees being beaten and humiliated by the guards and sometimes she could hear her son's screams when he was beaten in the corridor in front of her cell.

The first applicant was interrogated about four times during her detention. She was asked questions of a general nature about her name and where she was from and whether she was Muslim and whether she prayed. She was also asked questions about the "peace march" to Moscow in which she had participated and about who had financed it.

The first applicant, who suffered from cholecystitis and heart problems, was denied medical help whilst in detention and her condition deteriorated rapidly. The second applicant (her daughter) brought food and medicines to her mother but only a small amount of them reached her. On one occasion the first applicant fainted in the corridor and

Continued on page 8

the guards only allowed other inmates to carry her into the cell after about half an hour.

The first applicant spent 24 days in Chernokozovo before being transferred to a hospital in Naurskaya. According to the second applicant, her mother was unconscious and needed intensive care. The prison officials were reluctant to allow her transfer which only took place after intervention by the prison doctor.

In mid-March 2000 the first applicant was visited in hospital by the Naurskiy District Prosecutor who told her that she had been cleared of all charges. A certificate was issued by the head of the Naurskiy VOVD confirming this.

The second applicant submits that after her release from hospital, the first applicant remained very weak and spent about a month in bed. She had lost significant weight and her arms and head trembled.

On 21 May 2003, at around 3.30 am, a group of men entered the applicant's house armed with AK-7,62 guns whilst others, armed with grenade launchers and machine guns, spread out in the streets around the house.

After a few minutes, the neighbours heard muffled shots. The first applicant's other son, E, discovered the bodies of the first applicant, the first applicant's husband and the first applicant's son, who had previously been imprisoned. He ran into the yard screaming for help and the neighbours responded, one going to call the local police. Two hours later the police arrived and photographed the scene. The second applicant submits that there was no request to perform autopsies or to delay the burial of the bodies.

The first applicant, before she was killed, complained that her treatment in prison amounted to inhuman and degrading treatment and torture, in violation of Article 3 of the Convention. She also complained that the relevant authorities had failed to effectively investigate the allegations of ill-treatment.

The second applicant alleges:

- a violation of Article 2 on account of the killing of the first applicant and other members of her family;
- no effective investigation was carried out into the killings by the relevant authorities;
- she has no effective remedies against the violations, in violation of Article 13 of the Convention.
- Russia has breached its obligations under Article 34 of the Convention not to hinder the right of individual petition by intimidating the first applicant, by questioning her about the details of her complaint to Strasbourg despite her vulnerable situation, and by killing her.

Decision

The European Court found on 20 October 2005 that the application raised complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits. As a result the Court unanimously declared the application admissible.

NGO Register: Link up with us!

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

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

Chechen courts: contradictory decisions on disclosure of case files

Dokka Itslaev, EHRAC-Memorial Project Regional Lawyer

Egregious human rights violations in Chechnya, including "disappearances" and murders, are aggravated by the apparent impunity for such crimes. A majority of the criminal cases, in which state officials are often alleged to have been involved, are "investigated" for years, as public prosecutors continually suspend the conduct of preliminary inquiries. The circumstances of the commission of the crime are accordingly never effectively investigated. No single criminal case in the Urus-Martan district of Chechnya relating to a "disappearance" has thus been fully investigated and brought to court since the spring of 2000, although over 200 crimes of this type have been committed in the district.

Comprehensive and reliable information on the conduct of investigations would at least enable a close relative of the victim to monitor the progress of the investigation, and to pursue their legal rights further, if necessary. However, under Article 42 of the Russian Code of Criminal Procedure, the victim is only entitled to the disclosure of all the case materials at the end of preliminary investigations.[1] As a result, investigators have until recently systematically denied victims access to relevant case materials.

An analysis of this article of the Criminal Procedure Code shows that it conflicts with the provisions of the Russian Federal Constitution according to which state officials are obliged to provide everyone with access to any documents and materials directly affecting their rights and liberties, unless otherwise stipulated under the law[2] - under which everyone has the right to seek, obtain, transfer, produce and disseminate information by any lawful means (excluding information constituting a state secret).[3] These provisions of law were further clarified by the Plenum of the Supreme Court of the RF in its Decision No.10 of 25 October 1996 which stated that: "Every citizen has the right to receive, and officials and public servants are obliged to grant him/her access to, documents and materials directly affecting his/her rights and liberties, unless there are restrictions established by federal law on the information contained in these documents and materials". For the victim at the preliminary investigation phase of a criminal case, this arguably means that access can only be denied to those materials that contain information amounting to a state secret, unless the refusal is evidently temporary (and the right can therefore be enjoyed after the end of an effective preliminary investigation, as reasoned for example by the Supreme Court of the Chechen Republic in one of its cassational rulings).

However, the Russian Constitution also provides that the decisions and actions (or omissions) of state organs and officials may be subject to appeals in court;[4] and that this right cannot be restricted under any circumstances.[5] The Code of Criminal Procedure further establishes the victim's right to appeal against decisions made in the criminal case by an investigator or public prosecutor.[6] Thus, the victim has the right to appeal against an investigator's decision to suspend the conduct of a preliminary investigation. However, the victim is effectively stopped from doing so if s/he has no access to the materials and is given no explanation about the progress of the investigation or of the grounds on which the decision has been taken to suspend the preliminary investigation. This was established by the Constitutional Court of the Russian Federation in its decision of 14 January 2003. The inability to obtain access

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to case materials and copy them also effectively denies victims their right to legal assistance by qualified counsel,[7] (this right too cannot be restricted[8]) and puts them in a particularly unenviable position if they are illiterate and/or do not speak Russian (as is often the case in Chechnya).

As regards access to criminal case materials, victims have also relied on relevant decisions of the European Court of Human Rights. The European Court has held that, for the purposes of Article 13 of the Convention, the notion of an effective remedy requires a thorough and effective investigation which is capable of exposing and punishing those responsible for a "disappearance". In particular, the Court has held that the notion includes "effective access by relatives to information on the investigatory procedure",[9] and "…there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the victim's next-of-kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests".[10]

From the beginning of 2004, tens of appeals by victims seeking access to materials in criminal cases concerning the disappearance of their relatives were filed with courts in the Chechen Republic (1st and 2nd instance). Invariably, the courts found in favour of the public prosecutor by holding that under Article 42 of the Code of Criminal Procedure the victim may not be granted access to the case materials or take copies of them before the end of the preliminary investigation. Over the course of more than eighteen months, the courts failed to give reasons justifying their decisions or to make any reference to the relevant case law of the European Court or to the Russian Constitution. In some of these cases, the victims have since applied to the European Court of Human Rights.

The situation changed, however, on 1 August 2005. The court, considering an appeal filed with the Urus-Martan Town Court by "R.B." (the mother of a person who "disappeared" following the detention of a resident of Urus-Martan), found in her favour and ordered the public prosecutor's office to grant her access to the case materials relating to the abduction of her son, even though the preliminary investigation had not been completed. However, it never became clear what forced the Chechen Court to change its position on this issue. Perhaps the communication, by this time, of the "R.B." case to the Russian government by the European Court played a decisive role. By May 2006 several similar appeals had been won, and the close relatives of victims of "violent" disappearances had been given access to case materials.

However, the public prosecutor's office interpreted the court's decision in its own way. The investigator allowed "R.B." access to the case materials, but categorically prohibited her from taking any extracts from the file or any copies, referring to the absence in the court order of any reference to the victim's right to take copies of the case materials, to which s/he had been given access. Investigators also intervened in two other cases. In one case, the victim 'I.S.' was given access to the case materials concerning the abduction of his son, but was unable to take advantage of the opportunity presented, because he was illiterate.

The decisions of the investigators are arguably unlawful, especially in view of the Russian Federal Constitutional Court's decision of 27 June 2000: "On examining the constitutionality of the provisions of Article 47(1) and Article 51(2) of the Russian Federal Criminal Procedure Code in connection with the appeal of citizen V.I. Maslov". In that decision, the Court held that "the restriction of the right of the defendant to copy from materials, to which he has had access before the end of the investigation, any information in any volume does not have a rational basis, and cannot be justified by the interests of the investigation or other constitutionally significant purposes, allowing proportionate restrictions of rights and liberties (as laid out in the Russian Federal Constitution[11])". The right of access to case materials therefore undoubtedly includes the right to take extracts or make copies.

The victims appealed against these decisions of the investigators denying the right to make copies of criminal case materials to the Chechen courts. In all the cases the courts, including the Supreme Court of Chechnya, found against the victims. The logic of the decisions taken by the courts is incomprehensible, as none of the decisions was justified. It is to be hoped that future decisions of the courts in Chechnya will be more helpful in clarifying the right of the victims to make copies or take extracts of materials to which they have access before the end of a criminal investigation, and in explaining the grounds on which courts' decisions are made. All that remains is to hope that this new problem will also be solved in the future.

PACE resolution on Chechnya

In a resolution adopted on 25 Jan 2006, the Parliamentary Assembly of the Council of Europe (PACE) stated that Chechnya was the most serious human rights issue in any of the Council of Europe's member states. The excessively harsh manner in which the security forces had acted in the region in no way contributed to restoring law and order. On the contrary, it produced more desperation, violence and thus instability. Yet, a fair number of governments, member states, and the Committee of Ministers of Europe had failed to address the massive human rights violations in a regular, serious, and intensive manner. Those violations included crimes against human rights defenders, lawyers, prosecutors, judges, forensic doctors and other law enforcement officials and against applicants to the European Court of Human Rights. It was intolerable, the resolution stated, that reprisals against applicants to the Strasbourg Court took place and remained unpunished. The Assembly was also concerned about reports on administrative and judicial harassment of some non-governmental organisations and reiterated its call on the Russian government to allow NGOs to do their important work by creating conditions for the normal functioning of Russian civil society. The Assembly concluded that the lack of effective reaction by the Council's executive body, the Committee of Ministers, to the massive human rights' violations in Chechnya undermined the credibility of the organisation.

Potential ECHR Applicants:

If you think your human rights have been violated or if you are advising someone in such a position, and you would like advice about bringing a case before the European Court of Human Rights, EHRAC may be able to assist. Please email or write to us; contact information is on the last page.

[1] Article 42(2)(xii) of the Russian Federal Criminal Procedure Code
[2] Article 24(2) of the Russian Federal Constitution
[3] Article 29(4) of the Russian Federal Constitution
[4] Article 46(2) of the Russian Federal Constitution
[5] Article 56(3) of the Russian Federal Constitution
[6] Article 42(2)(xviii), Article 123 of the Russian Federal Criminal Procedure Code
[7] Article 48(1) of the Russian Federal Constitution
[8] See 5 above
[9] *Kurt v. Turkey* (No. 24276/94) 25/05/98, para. 140
[10] *Isayeva v. Russia* (No. 57950/00) 24/02/05, para. 214
[11] Article 55(3) of the Russian Federal Constitution

Supervisory review procedure in civil proceedings: new reforms needed

Kirill Koroteev, EHRAC-Memorial Case Consultant

On 8 February 2006, the Committee of Ministers of the Council of Europe adopted **Interim Resolution ResDH(2006)1**, concerning the cases of *Ryabykh v. Russia* (No. 52854/99) 24/07/03 and *Volkova v. Russia* (No. 48758/99) 05/04/05, in which the European Court of Human Rights found that there had been a violation of Article 6(1) of the European Convention for Human Rights (ECHR) due to the quashing of judicial decisions taken in the applicants' favour, by way of the supervisory review procedure.

The violation of the Convention consisted of the fact that the Presidia of the regional courts, following protests by the Presidents of these courts, quashed judicial decisions that had come into legal force, which in the unanimous opinion of the Strasbourg Court violated the principle of legal certainty. Furthermore, during examination of these cases by the Court in 2001-2002, in Russia a reform of procedural legislation was carried out, which, however, was aimed at making the supervisory review procedure an effective means of legal protection. As we know from the decisions in *Berdzenishvili v. Russia* (No. 31697/03) 29/01/04 and *Denisov v. Russia* (No. 33408/03) 6/5/04, this aim was not achieved. In other words, the reforms sought merely to curtail the discretionary powers of officials in the judiciary system, rather than strengthen the principle of legal certainty.

Thus, the Committee of Ministers examined the reformed supervisory review procedure in order to ensure that Russia complies with its Convention obligations. The Resolution highlights two fundamental problems relating to supervisory review: compliance with the principle of legal certainty and the quality of judicial decisions in first and second instances.

In relation to the principle of legal certainty, the Committee of Ministers noted two changes in the Code of Civil Procedure of the Russian Federation (GPK RF) aimed at strengthening this principle: a limit on those who have the right to lodge a supervisory appeal to parties to the case (Art. 376(1)), and a limit on the time for lodging a supervisory appeal, within a period of one year (Art. 376(2)). However, these measures do not remove the doubt concerning compliance of the supervisory review procedure with the aforementioned principle. So, a series of provisions of the GPK RF (like the former GPK RSFSR [Code of Civil Procedure of the Russian Soviet Federal Socialist Republic]) allow indefinite challenge by way of supervisory review to judicial decisions that have come into force (see Art. 389 of the GPK RF and the challenge to individual decisions of courts with supervisory powers, with which the presidents of the corresponding courts are entitled "not to agree"). Moreover, any violation of material and procedural law can be a basis for quashing a judicial decision that has come into force and is binding for the parties, while deviation from the principle of legal certainty by quashing final judicial decisions is admissible only in exceptional circumstances.

The problem of the supervisory review procedure is indivisible from the problem of the poor quality of judicial decisions of the first and second instances. The Committee of Ministers pointed out that the supervisory review procedure was seen by a significant part of the Russian judicial community as the only real instrument for remedying the numerous judicial errors allowed by courts of first and second instance. At the same time the Committee expressed particular concern that in many cases the court with supervisory authority is the court that previously examined the case at the cassational level: it is unclear why it is impossible to remedy all errors in a single procedure. The Committee emphasized separately that in an effective judicial system judicial errors must be remedied in an ordinary appeal and/or cassational procedure. Therefore, further limiting the supervisory review procedure must be carried out in parallel with improvements in the quality of judicial decisions.

Taking these factors into consideration, the Committee of Ministers called upon the Russian authorities to make it their priority to reform civil proceedings, remedying judicial errors through appeal and/or cassational procedures. During implementation of this reform the Committee suggested to the RF authorities that they curtail use of the supervisory review procedure limiting the grounds for quashing decisions by way of supervisory review only to the most serious violations, taking measures to encourage parties to apply above all to appeal and/or cassational, and not supervisory appeal, procedures, limiting the number of successive supervisory appeals in the same case, etc. The Committee of Ministers suggested that the Russian authorities disseminate the Resolution widely and provide within one year a plan of action for taking further measures.

Attached to the Interim Resolution was information presented to the Committee of Ministers by the Russian government. Apart from the reform of the GPK RF and the publication of the court's decision in the *Ryabykh* case, the Government pointed out that this decision had been applied in the judicial practice of the Russian Constitutional Court (decision No. 113-O of 12/04/05 concerning the appeal by A. Maslov). This claim looks more than dubious, insofar as it is in precisely this decision that the Russian Constitutional Court found that the supervisory review procedure (according to the Administrative Violations Code that has not undergone any reforms in the last 20 years) was *not* in conflict with either the Russian Constitution or the legal findings of the European Court.

The information on suggested further reforms presented by the Russian Government is unconvincing. The authorities acknowledge, only with reservations, that the reform of the GPK RF did not solve all problems, but in no way indicate their preparedness to continue the reforms. At the same time, new reforms, as follows from the Interim Resolution, are absolutely necessary, not only in civil proceedings, but also in criminal and arbitrational proceedings, and those involving administrative infractions.

New Human Rights Projects in Georgia

In February 2006 EHRAC formalised a partnership with the highly respected NGO, the Georgian Young Lawyers' Association (GYLA). GYLA aims to establish standards of professional ethics, provide legal and civic education, and offer legal aid to vulnerable members of the population. GYLA unites over 800 Georgian lawyers and law students, working through its Tbilisi head office and seven regional offices.

A meeting between GYLA and EHRAC was held in February 2006 to discuss the practicalities of a partnership. The joint project will initially focus on three main areas: litigation at the European Court of Human Rights, for which EHRAC will support GYLA by providing expert legal advice and guidance; the organisation of a training seminar in Tbilisi; and the participation of a GYLA delegate in EHRAC's Legal Skills Development Programme in London and Strasbourg.

EHRAC will also be working on ECHR litigation with the NGO Article 42 of the Constitution. Article 42 provides free legal assistance and representation to the victims of human rights abuses in Georgia.

The Dismissal of Judges in Georgia – the case of Judge Mariamidze

Manana Kobakhidze, LLM and Ketevan Mekhuzla, LLM, Article 42 of the Constitution
Sophio Japaridze, LLM, Georgian Young Lawyers Association, formerly Article 42 of the Constitution

Recently, the Georgian state authorities have been exerting increasing pressure upon judicial power, and representatives of the executive and legislative bodies have been intervening more and more in judicial activity; influencing the outcomes of cases and the execution of justice. There have also been instances of the unlawful removal of judges, and disciplinary proceedings initiated against judges being examined by bodies which are not fully independent of the state. Consequently, there are many violations of domestic law in the course of such disciplinary cases. A striking example is the case of Judge Mariamidze.

Lawyers at the NGO, Article 42 of the Constitution, Lia Mukhashavria, Manana Kobakhidze, Ketevan Mekhuzla and Vanda Jijelava represented Judge Mariamidze before the domestic courts, and have now prepared an application to the European Court of Human Rights.

Following the decision of the Disciplinary Collegium of the Disciplinary Council for the Common Courts' Judges of Georgia, delivered on 27 January 2005, Judge Mariamidze was dismissed from his position as a judge. The decision was unlawful as there were no legal grounds for the initiation of disciplinary proceedings against him.

Judge Mariamidze appealed against the decision to the Disciplinary Council for the Common Courts' Judges of Georgia (the Disciplinary Council). However, the Disciplinary Council did not allow the complaint. Judge Mariamidze then appealed to the Supreme Court of Georgia. The Disciplinary Council, and subsequently the Disciplinary Collegium of the Supreme Court refused the applications which Judge Mariamidze had filed, to allow him, amongst other things, to interrogate witnesses and examine the evidence.

Pursuant to the Law on "The Disciplinary Responsibility and Disciplinary Litigation for the Common Courts' Judges of Georgia" the decision of the Disciplinary Council could only be appealed by way of a cassation appeal to the Disciplinary Collegium of the Supreme Court of Georgia. Therefore, the only authorised body, the Supreme Court of Georgia, could only examine the case on procedural issues and could not deliver a new decision. This law deprived Judge Mariamidze of his right to have his case heard before the court in line with the principles of justice and restricted his right to a fair trial as required by the European Convention. Appealing before the Supreme Court of Georgia for a reversal of the decision of the Disciplinary Council was not an effective measure for legal protection.

A constitutional complaint was submitted to the Constitutional Court of Georgia, seeking the law on "the Disciplinary Responsibility and Disciplinary Litigation for the Common Courts' Judges of Georgia" to be found unconstitutional. The initiation of constitutional cases by Judge Mariamidze led to the enactment of a new law, according to which the Georgian parliament made the following amendments to the Georgian law on "The Disciplinary Responsibility and Disciplinary Litigation for the Common Courts' Judges of Georgia":

The Disciplinary Council for the Common Courts' Judges and The Disciplinary Collegium of the Supreme Court of Georgia were abolished, and a new Disciplinary Chamber of the Supreme Court was created. This is to allow the examination of judges' disciplinary cases not by way of cessation, but by considering the factual circumstances relating to the legal grounds of each case. The Disciplinary Chamber has the right to take a final decision on each disciplinary case. Judicial amendments entered into force on March 15th, 2006.

In the case of Judge Mariamidze the Court pronounced its final judgment on 26 December 2005 and notwithstanding the recent amendments to the disciplinary law, Judge Mariamidze was unable to obtain redress in respect of his infringed rights before the national courts.

An application for submission to the European Court of Human Rights is now being prepared. The application is grounded on alleged violations of Articles 6, 13, and 14 of the European Convention. It will be argued that Judge Mariamidze has been the victim of a clear breach of Articles 6 and 13 as he was denied a fair trial and effective domestic remedies to have his rights redressed.

These restrictions of the Judge's rights occurred, on the one hand, because of the unlawful actions of the members of the Disciplinary Council and the Supreme Court of Georgia and, on the other hand, because of the application of the law on "the Disciplinary Responsibility and Disciplinary Litigation for the Common Courts' Judges of Georgia".

The structure and decision-making processes of the relevant disciplinary bodies (the Disciplinary Collegium, the Disciplinary Council and the Disciplinary Collegium of the Supreme Court) are not, we suggest, in compliance with international standards. As a result, the European Court is the only relevant and effective remedy for someone in his position.

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. Its primary objective is to assist lawyers, individuals and non-governmental organisations (NGOs) within the Russian Federation and Georgia to take cases to the European Court of Human Rights, whilst working to transfer skills and build the capacity of the local human rights community, and raising awareness of the human rights violations in these countries.

EHRAC is currently working on over 85 cases involving more than 530 primary victims and their immediate family members. These cases concern such issues as extrajudicial execution, ethnic discrimination, disappearances, environmental pollution and criminal justice amongst others. In addition to the formal partnerships below, EHRAC works with the Bar Human Rights Committee of England and Wales and co-operates with many NGOs, lawyers and individuals across the former Soviet Union. For more information, please see: www.londonmet.ac.uk/ehrac.

Internship Opportunities

Internship opportunities, legal and general, are available at EHRAC's London and Moscow offices. Depending on individual qualifications and skills, tasks may include assisting with the casework, preparing case summaries, collating and preparing training materials, conducting research, fundraising, writing awareness-raising material, press work and basic administrative duties. EHRAC is, regrettably, unable to afford paid internships, but offers the opportunity to gain valuable experience in human rights and NGO work. To apply, or for more information, please contact us by email.

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EHRAC-Memorial project

EHRAC has been working in partnership with *Memorial* since 2003. *Memorial* is one of Russia's oldest and most respected human rights organizations. The EHRAC-Memorial project is implemented in three main areas: human rights litigation and advocacy; human rights training; and raising awareness and dissemination of information.

EHRAC-GYLA project

In early 2006 EHRAC formalised a partnership with the highly respected NGO, the Georgian Young Lawyers' Association (GYLA). This joint project supports litigation at the European Court of Human Rights and conducts training seminars in Georgia and facilitates the participation of a GYLA delegate in EHRAC's Legal Skills Development Programme in London and Strasbourg.

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