

UPDATES FROM THE REGIONAL HUMAN RIGHTS SYSTEMS

EUROPEAN COURT OF HUMAN RIGHTS

The European Court of Human Rights (Court) was established in 1959 by the European Convention for the Protection of Human Rights and Fundamental Freedoms (Convention). The Court enforces the obligations entered into by the Council of Europe's Contracting States. Any Contracting State or individual may allege violations of the Convention by filing a complaint with the Court.

"DISAPPEARANCES" IN CHECHNYA

In 2000 and 2001, large numbers of Chechen civilians were detained as part of the Russian Government's efforts to eliminate rebel forces after the 1999 uprising. The detained civilians were frequently executed, tortured, or simply "disappeared." In recent months, the first cases concerning civilian detention and disappearance in Chechnya from this time were decided by the Court. In the two decisions that follow, the Court recognized the practical difficulties of proof applicants face in cases of institutionalized disappearance, and made important adjustments to the standard of proof for such cases, allowing uncontested circumstantial evidence of government involvement. In both cases, the Court held that the Russian government had violated Articles 2 and 15 of the Convention for the disappearances of the victims and for failing to conduct adequate investigations into the disappearances.

IMAKAYEVA v. RUSSIA

On December 17, 2000, Said-Khuseyn Imakayev, a dentist, was detained at a roadblock on his way home from the market in the Shali district of Chechnya. Witnesses saw him surrounded by a group of military personnel wearing masks and thrown in the back of a military all-terrain vehicle, which then sped off followed by military personnel driving Said-Khuseyn's car. Said-Khuseyn's parents, Said-Magomed Imakayev and Marzet Imakayeva, sought assistance from prosecutors at multiple levels, but the case, treated as a kidnapping, was adjourned and re-opened repeatedly over the next two years, without the Imakayevs receiving any information about their son. The Imakayevs also lodged a

complaint with the ECHR regarding the disappearance.

In an attempt to discourage criminal investigation and application to the ECHR, Said-Khuseyn's father, Said-Magomed, was also taken by government forces. At 6:20 a.m. on June 2, 2002, the Imakayevs awoke to the sound of a loud noise in their courtyard. Twenty servicemen in military uniforms, some of them masked, entered and searched the house without a warrant. The military confiscated some papers and floppy disks and forced Said-Magomed into one of the military vehicles as they left. That was the last time Mrs. Imakayeva saw him. She has received no news of her husband or son since they were detained. The European Court's repeated requests for the details of the investigations were refused by the Russian government on grounds that it would compromise the ongoing investigations and would be contrary to the Suppression of Terrorism Act.

LULUYEV v. RUSSIA

Nura Luluyeva, a nurse and kindergarten teacher, went to the local market with two of her cousins on the morning of June 3, 2000. A group of masked servicemen wearing camouflage and armed with machine guns got out of an armored personnel carrier. They detained several people, mostly women, put sacks over their heads, and forced them into the military vehicle. The local police, called to the scene by a witness, were unable to stop the military abductors, who fired warning shots into the air as they sped away. The deputy chief of the local government was present at the scene, and the servicemen, when questioned by him, said that they were "lawfully carrying out a special operation." Criminal proceedings were initiated by the families of the abducted and, despite the apparent official sanction of the detentions, the cases were treated like those of Said-Khuseyn and Said-Magomed Imakayev, as kidnappings rather than state-sponsored abduction.

On February 24, 2001, a mass grave containing forty-seven bodies was found less than a kilometer from the headquarters of the Russian military forces in Chechnya. Nura Luluyeva's relatives identified the bodies of her and her cousins. The bodies had been

blindfolded and were wearing the same clothes as the day they were detained. A forensic report established that Nura's death was caused by multiple skull fractures, probably caused by a blunt solid object applied with strong force. Until that point, Russian authorities had opened and closed the investigation at least five times, and the investigation is still ongoing, according to Court documents.

COURT FINDINGS

In both cases, the Court held the Russian government responsible for the abductions and presumed deaths of the victims. As a result, Russia was found to have violated Article 2 of the Convention, which states that "Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law." For its failure to conduct a speedy and transparent investigation into the disappearances, and for its failure to provide relief to the families, the government was found to have violated Articles 2 and 13, respectively. Finally, Russia was found to have infringed upon the victims' right to liberty and security, to have treated the victims' families in a degrading fashion, and to have shown a lack of respect for private and family life, violations of Articles 3, 5, and 8. The applicants were awarded a total of approximately 100,000 Euro in pecuniary and non-pecuniary damages.

To reach these findings, the Court made an important adjustment to the burden of proof required to prove State liability for the disappearance of civilians. The Court had long held that, where missing individuals were in government custody, and the government thus had exclusive knowledge about what happened to them while in custody, there would be a strong presumption of government responsibility for any injuries or death sustained by the detainees. Yet the parties bringing the action still had to prove that the missing persons were in government custody or were at least seen to enter a place under government control. It would be difficult to prove such government control in a case where the State refused to provide any information about the disappearance. In the

Imakayeva case, the Court held that circumstantial evidence regarding the involvement of government forces and the government's refusal to rebut would constitute a sufficient "body of evidence that attains the standard of proof 'beyond a reasonable doubt,' and thus makes it possible to hold the state responsible." This precedent will make it easier to bring cases of institutionalized disappearance to the European Court of Human Rights, and to recover for damages suffered by the families of the victims.

INTER-AMERICAN SYSTEM

The Inter-American Human Rights System was created with the adoption of the American Declaration of the Rights and Duties of Man in 1948. In 1959 the Inter-American Commission on Human Rights (Commission) was established as an independent organ of the Organization of American States, and it held its first session one year later. In 1969 the American Convention on Human Rights (American Convention) was adopted. The Convention further defined the role of the Commission and created the Inter-American Court of Human Rights (Inter-American Court or Court). According to the Convention, once the Commission determines a case is admissible and meritorious, it will make recommendations and, in some cases, present the case to the Inter-American Court for adjudication. The Inter-American Court hears these cases, determines liability under relevant regional treaties and agreements, and assesses and awards damages and other forms of reparations to victims of human rights violations.

CLAUDE REYES AND OTHERS V. CHILE

On September 19, 2006 the Court issued a landmark decision in *Claude Reyes and Others v. Chile*, ruling for the first time in its 27-year history on an individual's right of access to government-held information (Article 13 of the American Convention on Human Rights). The Court held Chile in violation of Article 13 by failing to codify into its legal system an individual's right to "seek, receive, and impart information" from the government.

Three environmental activists filed the case due to a growing concern over forestry operations of U.S.-based Trillium Corp. that they alleged would lead to deforestation of the Tierra del Fuego Forest in the Rio Condor Valley. An earlier U.S.-based project of the

company demonstrated Trillium's disregard for environmental protection. Thus, in 1998 the environmental NGO Terram made an official request to the Chilean government for information about governmental oversight of the Trillium logging project and its potential side effects. The Chilean government denied the request, thereby jeopardizing the protection of the Rio Condor Valley from deforestation.

The Court held that in withholding the requested information, the Chilean government violated Article 13 of the American Convention which provides that the activists had a right to "seek, receive, and impart information" by way of their freedom of thought and expression. Additionally, Chile's failure to create the legal infrastructure necessary for enabling citizens to petition the government for information was troubling. The Court suggested that Chile should create a legal administrative process that would ensure timely government response to citizen information requests. The only exception to an Article 13 request would be in the interest of the country's national security.

By interpreting Article 13 to include requests for government-held information, the Court set an important precedent for all other regional human rights systems. The Court recognized that a citizen cannot fully exercise their right under Article 13, as well as other fundamental human rights, without access to government-held information. The Court went so far as to draw a connection between the right to information and the right of democratic participation. Without a State's recognition of the right to information, no real democracy can be achieved and most other "democratic rights" would be greatly hindered.

The Court noted several tools which were utilized in arriving at this decision, including: declarations by the Organization of American States calling on states to respect the public's right to access information; the UN Convention Against Corruption; the Rio Declaration on the Environment; the Aarhus Convention; and declarations issued by the Council of Europe. In all instances, the burden of proof is placed on the State to provide valid reasons (such as national security) for not providing maximum disclosure of requested information pursuant to Article 13. Additionally, all States Parties to the American Convention bear the duty of training public officials to respond appropriately and

promptly to citizen requests for access to government-held information.

The Court's ruling in this case has regional as well as international significance. Although many states around the globe have already incorporated a legal provision in their constitutions entitling citizens to access government-held information, the Court's decision is anticipated to impact the European Human Rights System. Although 40 states of the 46 members of the Council of Europe currently include a right to access information in their legal system, the implementation of this right has not been efficient, as many requests for information go unanswered or are otherwise denied. The Court's decision may prompt the European Court to broaden its interpretation of the right to access information in all instances, and not only in cases where the lack of information threatens the exercise of other fundamental human rights.

MOIWANA VILLAGE V. SURINAME

On February 8, 2006 the Court decided the case of *Moiwana Village v. Suriname*, twenty years after the November 29, 1986 massacre of the village of N'djuka Maroon and ten years after the petition was filed with the Inter-American Commission on Human Rights. The 1986 massacre left at least 39 men, women, and children dead; surviving villagers escaped into exile. To date, the State has not compensated the survivors of the N'djuka Maroon Massacre for their loss and suffering, and most continue to live impoverished in other parts of the country.

Suriname did not sign the American Convention until a year after the incident at N'djuka Marron, when a democratically-elected government ousted the previous government responsible for the village massacre. Nonetheless, the Court held Suriname in contempt for violations of Articles 1(1) (State respect for the full exercise of protected rights and freedoms), 8 (right to a fair trial), and 25 (right to judicial protection) of the Convention.

Relying on the doctrine of "continuing violation," the Court held Suriname liable for human rights violations that occurred before the country became a States Party to the American Convention on Human Rights. The Court reasoned that a State could be held accountable for failing to properly investigate past human rights abuses on the basis that failure to do so perpetuates present human

continued on page 63

UPDATES FROM THE REGIONAL HUMAN RIGHTS SYSTEMS *(Continued)*

UPDATES FROM THE REGIONAL HUMAN RIGHTS SYSTEMS *continued from page 61*

rights violations. Suriname had failed to fulfill the villagers' right to judicial protection and a fair trial, as the victims remained uncompensated for their losses for nearly two decades. By condemning Suriname *ex post facto*, the Court also employed an innovative but controversial tool for punishing human rights violators.

Suriname argued that the Court had overstepped its power and jurisdiction in applying the "continuing violation" doctrine. Though the Court agreed that it did not have the authority to directly examine the events of the 1986 massacre, the positive duties imposed on the State pursuant to Article 5 (right to

humane treatment) permitted the Court to indirectly examine the massacre by holding Suriname accountable for its failure to carry out its explicit responsibility to investigate the crimes of 1986.

The Court's decision is a triumph for the victims of human rights abuses, but it may also have some unintended consequences for the Inter-American Court system. It may deter countries from becoming members of the American Convention since the Court's use of the doctrine now gives it the power to hold present governments accountable for violations that may have occurred under the reign of previous governments, decades prior.

Though this doctrine may further the protection of individual human rights, the imposition of unfair standards on untainted governments may damage fledging democracies. Thus, the Court must be judicious and cautious in its exercise of this important doctrine. **HRB**

Anna Cabot, a J.D. candidate at the Washington College of Law, covers the European Court of Human Rights for the Human Rights Brief.

Suzanne Shams, a J.D. candidate at the Washington College of Law, covers the Inter-American System for the Human Rights Brief.