

UPDATES FROM THE REGIONAL HUMAN RIGHTS SYSTEMS

EUROPEAN COURT OF HUMAN RIGHTS

COMPENSATION FOR CHECHEN VICTIMS

In December 1999, the Russian military besieged the city of Grozny in Chechnya and all civilians were required to leave through a supposedly safe “green corridor.” The military warned that anyone remaining after the deadline would be considered a bandit and killed. Many residents were unable to leave Grozny because of continued bombing that threatened the “green corridor,” and because they did not want to desert their homes and belongings. In January and February of 2000, three women, Elena Goncharuk, Kheedi Makhauri, and Petimat Goygova felt the impact of the military’s policy. Ms. Goncharuk and Ms. Makhauri nearly lost their lives, while Ms. Goygova lost her mother and brother. In three decisions on October 4, 2007, the Court held Russia liable, and ordered the country to pay more than 150,000 Euros (US\$212,475) in compensation to the three women.

These cases are by no means the first in which the Court has held Russia liable for atrocities committed by military forces in Chechnya. However, these three cases are significant because the Court found Russia violated the right to life guaranteed by Article 2 of the Convention even though two of the victims survived. Furthermore, the Court criticized Russian authorities for failing to carry out an adequate investigation into the attacks on the women and their families.

GONCHARUK v. RUSSIA

On January 19, 2000, Russian forces began a massive attack on the Staropromyslovsky district of Grozny. To escape the shelling, Elena Goncharuk and five other Chechen civilians took shelter in a cellar only to be discovered by soldiers. The soldiers ordered everyone outside, telling them that the soldiers had orders to kill everyone who remained in the city, because anyone who remained was, by implication, assisting the rebels.

Ms. Goncharuk and the other civilians attempted to explain their presence and show their identity documents to prove that they were residents not bandits, but the soldiers refused to listen to the Chechens’ explanations and ordered them back into the cellar. The soldiers then threw tear-gas grenades into the cellar, and ordered the Chechens to come out one by one. Once the six people emerged, the soldiers shot them. During the shooting, a man who had been helping Ms. Goncharuk fell on her and his body shielded her. When Ms. Goncharuk awoke after losing consciousness, her companions were dead. Ms. Goncharuk survived, but she had a severe chest wound and was bleeding from the mouth.

Ms. Goncharuk escaped Grozny and ended up in a hospital, where she remained until February 7, 2000. Ms. Goncharuk did not directly contact law enforcement officials; however, NGOs notified the authorities about several similar cases including Ms. Goncharuk’s case. The investigators, however, did not fully investigate the incident. They failed to identify potential witnesses or incidents, and, although they knew military personnel were responsible for the attack, they did not attempt to identify which units were active in the area at the time.

MAKHAURI v. RUSSIA

Kheedi Makhauri and Larisa D. went to Grozny on January 21, 2000 to search for some important family documents. In Grozny, after meeting another woman, Nura T., they proceeded to Ms. Makhauri’s house. They found the house in ruins and were unable to locate the documents. As they were leaving, they saw soldiers looting a house, and, fearing for their lives, the women attempted to turn around and walk away. Unfortunately, some of the soldiers saw the women, ordered them to approach, and examined their identity documents. Despite having valid passports with permanent addresses in Grozny, the women did not pass the scrutiny, and soldiers accused them of being rebel informants. The sol-

diers covered the women’s eyes with their own scarves, and led them away.

After walking about fifty meters, the soldiers took the women to the courtyard of a destroyed house. A soldier fired a machine gun into the air, and ordered the women into the entrance of a shed. When Nura T. approached the soldiers to ask for mercy, the soldier shot her, then shot at Larisa D. and Ms. Makhauri. Larisa D. was in front of Ms. Makhauri and was hit by most of the bullets. Ms. Makhauri fell, hit her head and lost consciousness. Ms. Makhauri survived, though her companions did not, and she managed to escape the scene. A subsequent government investigation of the shooting failed to identify the culprits and did not establish the involvement of military forces.

GOYGOVA v. RUSSIA

By January 2000, Petimat Goygova and her children no longer lived in Grozny, but Ms. Goygova’s mother and brother did. After increased violence in the Grozny, Ms. Goygova returned on January 19, 2000 to find out her family’s fate. On January 20, when soldiers finally let Ms. Goygova through the checkpoint, she met a local resident who told her that soldiers had shot a woman who was probably Ms. Goygova’s mother, along with three men, one of whom was probably Ms. Goygova’s brother. When Ms. Goygova reached the scene of the shooting, she found her mother’s body, but could not find her brother. Ms. Goygova repeatedly returned to Grozny to search for her brother, but did not find him until February 10, 2000, when the family of the other two men discovered his body with the two others in a garage close to where Ms. Goygova had found her mother.

Police investigating the deaths did not complete the investigation or identify the individuals responsible for the deaths. The investigation also did not establish the exact number of victims, carry out forensic examinations of the bodies, or identify the weapons used. Finally, police failed to

identify the military units stationed in the area at the time of the murders.

THE COURT'S FINDINGS

In all three cases, the applicants alleged violations of Article 2 of the Convention, which states, "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." Referencing previous case law, the Court noted that protecting the right to life implies the need for an effective official investigation in cases of murder. In none of the cases did the Court find that police had conducted an effective investigation. The police did not identify those responsible for the crimes nor did they establish a comprehensive picture of the events surrounding the deaths, and they unaccountably delayed their investigations. The Court held that Russia violated Article 2 by failing to provide an effective official investigation.

Furthermore, the Court analogized the three cases, where people were found dead in an area under the exclusive control of the state, to cases involving detainees where the State is responsible for their well being. Because only the authorities knew what really occurred in all three cases, the Court found that the deaths and attacks were official acts. According to the Court, the fact that the acts were state acts reinforced the Article 2 violation.

The three women also alleged violations of Article 3, which reads, "No one shall be subjected to torture or to inhuman or degrading treatment or punishment." The Court decided that violations of Article 3 mirrored violations of Article 2, and ruling on the cases under Article 3 would not add to the applicants' cases. Therefore, the Court did not examine these violations separately.

Finally, the applicants alleged violations of Article 13, which provides, "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority, notwithstanding that the violation has been committed by persons acting in an official capacity." The Court held that Russia violated Article 13, because, in a case where criminal investigations prove

ineffective, that ineffectiveness undermines any remedy, including civil remedies, available to the applicants.

Citing the violations of Articles 2 and 13, the Court awarded damages to the applicants pursuant to Article 44 § 2 of the Convention. The Court awarded Ms. Goncharuk and Ms. Makhauri €0,000 (US\$70,712), Ms. Goygova €0,000 (US\$56,570) in pecuniary damages. The applicants also received varying amounts of non-pecuniary damages and expenses.

INTER-AMERICAN SYSTEM

ESCUÉ ZAPATA VS. COLOMBIA

The Inter-American Court of Human Rights (the Court) decided the case of Escué Zapata vs. Colombia on July 4, 2007. The Court held that the Republic of Colombia violated Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 11 (Right to Privacy), and 25 (Right to Judicial Protection) of the American Convention on Human Rights (Convention). Petitioners argued that Colombia also violated Articles 21 (Right to Property) and 23 (Right to Participate in Government), but the Court did not consider Article 21 and did not find a violation of Article 23.

Mr. German Escué Zapata was a member of one of Colombia's 87 officially recognized indigenous communities and served for a time as Mayor of Jambaló. On February 1, 1988, members of the Colombian military took Mr. Escué Zapata from his home, bound him, beat him, and arbitrarily executed him by gunfire.

In finding a violation of Articles 4 and 5 of the Convention, the Court relied on Ms. Etelvina Zapata Escué's testimony. Ms. Zapata Escué found her son's body a few hours after he was taken from their home, with marks upon it suggesting he had been submitted to cruel, inhumane, or degrading treatment.

The Court held that Mr. Escué Zapata's detention was "manifestly illegal" under Articles 7.1 and 7.2 of the Convention. In its decision, the Court relied on the fact that no competent authority had issued an arrest warrant for Mr. Escué Zapata. It concluded that his extrajudicial detention was arbitrary and, therefore, a deprivation

of the right to personal liberty and security. The Court also found that Colombia violated Articles 8 and 25 of the Convention by failing to perform an adequate investigation and not providing a competent, independent, and impartial trial.

While Colombia recognized its violation of Articles 4, 5, 7, 8, and 25, it did not admit to a violation of Article 11.2 of the Convention. The state argued that even if the military had entered Mr. Escué Zapata's home against his will and detained him illegally and arbitrarily, there was no indication that the entry had "other consequences."

In disagreeing with the state, the Court looked to Article 23 of Colombia's Constitution which at the time stated that, "[n]o one can be bothered at their listed residence without a written order from a competent authority ... and for a motive previously defined by the law." The Court held that by arbitrarily and violently entering Mr. Escué Zapata's home, the Colombian military violated the rights of Mr. Escué Zapata and members of his family as protected in Article 11.2.

In awarding damages, the Court did not address the issue of how to redress wrongs committed against indigenous communities who view the violation of an individual's rights as a violation of the whole community's rights. The question before the Court was whether, as a community leader, the death of Mr. Escué Zapata deprived the community of its rights to leadership and self-determination. The Court was able to avoid deciding the issue as there was a substantial factual dispute as to whether Mr. Escué Zapata was a community leader at the time of his death. Nevertheless, this is an important question affecting the awarding of reparations that the Court will need to address in the future.

ZAMBRANO VÉLEZ Y OTROS VS. ECUADOR

On July 4, 2007, the Court decided the case of *Zambrano Vélez y Otros vs. Ecuador*, in which it held the Republic of Ecuador responsible for violations of Articles 4 (Right to Life), 8 (Right to a Fair Trial), 25 (Right to Judicial Protection), and 27 (Suspension of Guarantees) of the Convention.

The petition alleged that the Ecuadorian military summarily executed Mr. Wilmer Zambrano Vélez, Mr. Olmedo Caicedo Cobeña, and Mr. José Miguel Caicedo Cobeña on March 6, 1993, in Guayaquil as part of a military operation aimed at capturing criminals, drug traffickers, and terrorists. The military used explosives to blow up the doors to the victims' homes, entered, and shot and killed the victims in front of their families.

The state argued that citizens' rights can be restricted during a state of emergency. The Court disagreed, holding that efforts to maintain public order do not permit states to limit certain basic human rights enshrined in the Convention, such as the right to life guaranteed in Article 4.

In addition to a violation of Article 4, the petition alleged a lack of adequate investigation and prosecution as enshrined in Articles 8, 25, and 27 of the Convention. Ecuador admitted to violating these rights. The Court instructed the state to identify, judge, and punish those responsible for the victims' deaths, and to ensure their families' right to participate in the judicial proceedings.

The Court ordered reparations aimed at preventing future violations of the human rights addressed in this case. First, the Court charged the state with bringing Ecuador's laws and administrative procedures in line with the Convention, as required by Article 2, singling out the National Security Law for reform. Second, the Court ordered the state to implement permanent education programs aimed at teaching members of the military about human rights and the legitimate use of force, especially during a state of emergency. Third, the Court instructed the state to establish training programs on international judicial protection standards for government employees and judges.

CANTORAL HUAMANÍ Y GARCÍA SANTA CRUZ V. PERU

The Court handed down its decision in the case of *Cantoral Huamani y García Santa Cruz v. Peru* on July 10, 2007. The

Court held that Peru had violated Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), and 16 (Freedom of Association) of the Convention, in relation to the victims' individual rights. In addition, the Court held that the state violated Articles 5, 8.1 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the Convention in relation to the victims' families.

Saúl Isaac Cantoral Huamani, then Secretary General of the Peruvian National Federation of Miners, Metal Workers and Iron and Steel Workers (FNTMMSP) and Consuelo Trinidad García Santa Cruz, were kidnapped, tortured, and subjected to extrajudicial execution on February 13, 1989.

Ms. Santa Cruz was the co-founder of the Filomena Tomaira Pacsi Women's Center, an association dedicated to assisting mining families. She met Mr. Cantoral Huamani through her work with the Center.

In 1988, while Mr. Huamani was directing two national mine strikes, the paramilitary group Comando Rodrigo Franco threatened, kidnapped, drugged and interrogated him. In the process of preparing a third national strike, Mr. Cantoral Huamani received a death threat from Comando Rodrigo Franco. Seven days later, his body was found along with that of Ms. García Santa Cruz.

According to the Final Report of the Truth and Reconciliation Commission of Peru, between 1988 and 1989, four union leaders in the Sierra Central were assassinated and according to the FNTMMSP, Ms. Santa Cruz and Mr. Cantoral Huamani were the seventh and eighth mining activists killed between May 1, 1988, and February 13, 1989.

When the facts surrounding human rights violation are not substantial enough to establish a violation, as in this case, the Court often looks to establish a pattern of conduct by the state that could reasonably have led to a human rights violation. If it establishes such a pattern, the Court is

willing to find a violation based on the belief that the state will use all its resources to cover up the violation. In this case, the Court considered the state's attempts to limit social protest through repressive actions against union leaders and the affect of these actions on freedom of association.

The state acknowledged the poor physical and psychological treatment and assassination of Mr. Huamani and Ms. Santa Cruz; however, since the government's investigation has yet to implicate state agents, the state did not admit responsibility for the violation of Articles 4, 5, 7, and 16. While the state admitted partial responsibility for the violation of Articles 8.1 and 25, it claimed that the violations ceased in 2001 with the initiation of an independent and impartial investigation.

The Court ordered a variety of remedies. In the interests of justice, the Court instructed Peru to immediately investigate, judge, and punish the responsible parties. The Court also directed Peru to publicly acknowledge its international responsibility for human rights by having the results of this investigation published in the *Official Daily* and in another nationally circulated newspaper. The Court ordered Peru to award full scholarships and to pay for counseling services for the members of the victims' families. **HRB**

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