

EUROPEAN HUMAN RIGHTS ADVOCACY CENTRE

EHRAC**BULLETIN**

In partnership with

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



Chechen courts: contradictory decisions on disclosure of case files

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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 law² - 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 (this right too cannot be restricted⁸) 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 Constitution¹¹)". 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.

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