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Compensation in Chechen disappearance cases

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On 27 July 2006, the ECtHR found Russia responsible for the 'disappearance' and presumed death of Khadzhi-Murat Yandiyev, a 25-year-old Chechen. *Bazorkina v Russia* (No. 69481/01) 11/12/06 was a landmark case not only because it was the first Chechen disappearance case to be decided by the ECtHR, but also as it provided a guide as to how much the ECtHR would grant in terms of compensation in similar cases. The €35,000 awarded in non-pecuniary damages to Khadzhi-Murat's mother became the benchmark for compensation in Chechen disappearance cases for the next few years. In early 2010 the amount of non-pecuniary damages awarded underwent its first major increase when it was almost doubled to €60,000-€65,000.

Before the increase, the ECtHR had been, to some extent, consistent in awarding €35,000-€40,000 to family members jointly for each disappeared relative about whom they had complained. The ECtHR has not provided any reasons for awarding €35,000 in some cases and €40,000 in others, or

even why it has sometimes awarded less, such as €20,000 in *Khalitova and Others v Russia* (No. 33264/04) 6/11/09.

In cases where the applicants are, for example, the parents of two brothers or a wife and mother of a husband and son who have disappeared, the ECtHR's compensation has normally reflected the fact that the applicant(s) have lost two (or more) relatives. Hence the size of the award can be €70,000 (pre-2010) or €120,000 (post-2010) or even more, as in the case of *Dolsayev and Others v Russia* (No. 10700/05) 5/6/09 in which the applicants lost four sons and were awarded €140,000.

In *Ilyasova v Russia* (No. 26966/06) 10/6/10 and *Batayev and Others v Russia* (Nos. 11354/05 & 32953/06) 17/6/10 the ECtHR recognised that some of the applicants had lost two relatives and accordingly awarded these families twice the amount awarded to those who had lost one relative. However, in *Khutsayev and Others v Russia* (No. 16622/05) 27/5/10, the ECtHR deviated from this general pattern. One of the applicants in this case was a mother who had lost two sons yet she was awarded the same damages as the other applicants in the case who had lost only one relative.

The ECtHR has held that an applicant can only claim for themselves and not on behalf of other relatives who are not party to the application. In *Ayubov v Russia* (No. 7654/02) 5/6/09, the applicant (the mother of the disappeared) tried to claim on behalf of her daughter-in-law. The ECtHR ruled that it could only consider the part of the claim that related to the mother as the daughter-in-law was not party to the application.

A further point of note concerns the amount of compensation awarded in cases where no substantive violation of Art. 2 ECHR (right to life) is found. In these cases the applicants have not proved that State officials were responsible for their relative's disappearance. However, the State is still held liable for procedural violations for not having conducted an effective investigation into the disappearance. In these circumstances, the ECtHR has awarded non-pecuniary (but not pecuniary) compensation, as it has acknowledged that the applicants still suffered from the indifference shown by the authorities towards them (see *Zakriyeva and Others v Russia* (No. 20583/04) 6/7/09 as an example).

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It is more difficult to ascertain a pattern for the amount of pecuniary compensation awarded, as the sums have been varied and the ECtHR has not provided reasons for all the discrepancies. However, it has provided guidance on when it will award pecuniary damages. For example, the ECtHR takes into account the relationship between the applicant and the disappeared, the applicant's age and the evidence of earnings submitted by the applicants.

In the case of *Batayev and Others*, the ECtHR held that non-pecuniary damages in relation to the loss of earnings apply to wives, dependent children and, in some instances, to elderly parents. In *Khalitova* the ECtHR was not persuaded that the applicant's brother would have supported her financially had he been alive and working. In *Gakiyev and Gakiyeva v Russia* (No. 3179/05) 6/11/09 the ECtHR did not award any pecuniary damages on the grounds that the applicants had no legal basis to claim subsistence from their son, as they had not yet reached retirement age. On the date of the judgment the father and mother were aged 57 and 49 years-old respectively.

Rule 60 of the Rules of Court provides that any claim of just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers. In *Umaltov v Russia* (No.8345/05) 8/4/10 the applicants all claimed loss of earnings on the grounds that their sons provided financially for them. However, they failed to provide any documentary evidence of earnings to this effect. As a result, no award was made.

The ECtHR does not necessarily require documentary evidence of earnings where the disappeared relative was unemployed at the time of his or her disappearance. In *Dzhambekova and Others v Russia* (Nos. 27238/03 & 35078/04) 14/9/09 the ECtHR accepted that it is reasonable to assume that the disappeared men would eventually have had some earnings resulting in financial support for their families.

Although it can be seen that there is a pattern to the level of non-pecuniary damages awarded in Chechen disappearance cases, *Varnava and Others v Turkey* (Nos. 16064-66/90 & 16068-73/90) GC 18/9/09 cautions us from assuming that a damages table can be discerned from these cases. *Varnava* involved applicants from Greek Cyprus claiming against the Turkish Government

on behalf of relatives who disappeared during the 1974 invasion of the island. Although not about Chechnya, it does nevertheless provide useful guidance for the compensation mechanism in disappearance cases. The ECtHR observed that there are no express provisions for non-pecuniary or moral damages and that its approach to awarding non-pecuniary damages has evolved on a case-by-case basis. Significantly, the ECtHR stated that disappearance cases do not lend themselves to a process of calculation or precise quantification and that it is not the ECtHR's role to function as a domestic tort mechanism. The intention of non-pecuniary awards is to give recognition to the fact that moral damage occurred as a result of a breach of a fundamental human right and to reflect in the broadest of terms the severity of the damage; they are not intended to give financial comfort or sympathetic enrichment to the applicants.

Despite the ECtHR's above assertion that disappearance cases do not lend themselves to precise quantification, it has nevertheless set a more or less consistent standard in the amount Chechen applicants can expect to receive in non-pecuniary damage should they be successful with their claim.