

The brothers Chitayev in trouble: Human rights abuses in Chechnya

Chitayev and Chitayev v Russia European Court of Human Rights Application 59334/00 18 Jan 2007

Allegations of widespread human rights abuses perpetrated by Russian forces and Chechen rebel groups during the military conflict in Chechnya have long been rife. Russian behaviour in Chechnya came under international scrutiny when the European Court of Human Rights found Russia responsible for serious human rights abuses in Chechnya in the case of *Chitayev and Chitayev v Russia* in 2007. The European Court of Human Rights provided victims and their

⁵⁹Dugard n 5 above at 64 comments that the term 'international agreement' is synonymous with the more commonly used term 'treaty'. These terms refer to 'legally binding, enforceable agreements'. He comments further that terminology is not a determinant factor as to the character of an international agreement. What is, though, is that the agreement be between states, in writing and that the states intend it to be governed by international law.

⁶⁰See Dugard n 5 above at 58 and further.

⁶¹The concept of self-executing treaties is a recognised principle in the law of treaties of the United States. See eg Vázquez 'The four doctrines of self-executing treaties' (1995) 89 *AJIL* 695. He defines a self-executing treaty as a treaty that 'may be enforced in the courts without prior legislation by Congress...' (*ibid*).

⁶²Dugard (n 5 above) at 62.

⁶³Coleman G and Erasmus G 'Regional dispute resolution: The SADC Tribunal's first test'. See http://www.icoh2009.co.za/unique/tralac/pdf20080205_hotseat.pdf accessed on 2008-12-13.

family members, access to justice which they were denied under their national jurisdiction.¹ The *Chitayev* case was the first case relating to torture in Chechnya to be heard by the European Court of Human Rights.

An application was brought to the European Court of Human Rights against the Russian Federation by two Russian nationals, the brothers Arbi and Adam Chitayev, under article 34² of the Convention for the Protection of Human Rights and Fundamental Freedoms³ (the Convention). Arbi and Adam Chitayev, two Russian nationals, based their application on their unlawful arrest and detention, torture and inhuman and degrading treatment at the hands of Russian authorities, unlawful searches of their house and seizure of property, and the absence of effective investigation into the events. They relied on articles 3 (prohibition of torture), 5 (right to liberty and security), 8 (right to respect for private life and home), and 13 (right to an effective remedy) of the Convention, and article 1 of Protocol No 1 (protection of property) to the Convention.

Facts

The case should be viewed against the background of hostilities in Chechnya between Chechen rebels and the Russian military which started in 1999. The city of Grozny, where the first applicant lived at the time, was the target of wide-scale military attacks. Fearing further attacks, the applicants moved with their families and valuables to their parents' house in the town of Achkhoy-Martan. On 15 January 2000 officers from the Temporary Office of the Interior of the District (Achkhoy-Martan VOVD) searched the house for firearms and took a cordless telephone set with them which included batteries and an antenna. The telephone was returned after a request from the applicants' father to the district military prosecutor. On 12 April 2000 several officers from the Office

¹According to Human Rights Watch more than 2000 cases from Chechnya were pending before the European Court of Human Rights as from May 2007. See *Justice for Chechnya* www.hrw.org accessed on 29 August 2008.

²Article 34 deals with individual applications: 'The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.'

³Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol 11 with Protocols 1, 4, 6, 7, 12 and 13. The text of the Convention had been amended according to the provisions of Protocol 3 (ETS 45), which entered into force on 21 September 1970, of Protocol 5 (ETS 55), which entered into force on 20 December 1971, and of Protocol 8 (ETS 118), which entered into force on 1 January 1990, and comprised also the text of Protocol 2 (ETS 44) which, in accordance with article 5, par 3 thereof, had been an integral part of the Convention since its entry into force on 21 September 1970. All provisions which had been amended or added by these Protocols are replaced by Protocol 11 (ETS 155), as from the date of its entry into force on 1 November 1998.

of the Interior arrived at the Chitayev house while the family was at home. The house was searched without the officers producing any warrants or justification for the search. The officers seized several items of electronic equipment, documents relating to the equipment, as well as some personal documents belonging to the family members. The brothers were asked to accompany the officers to the Achkhoy-Martan VOVD to help deal with paperwork. According to the applicants, once they were in the car the officers informed them that they were under arrest and started beating them. They were taken to the Achkhoy-Martan VOVD and placed in separate cells. Later during the same day, the applicants' house was again searched. According to the records, some thirty servicemen in two cars (which must have taken some doing!), took away all electronic equipment found in the house including a printer, TV sets, and video equipment. Again no official justification for the search was presented.

The government alleged that a passport check was carried out the first time they went to the applicants' home. The government claimed to have collected suspicious objects from the house including radio equipment, a military card of a military serviceman previously kidnapped, and various registration plates for cars and tractors. This led to the further 'inspection' of the house, where the government once again allegedly found suspicious objects.

Allegations of torture

Detention at the Achkhoy-Martan VOVD

The applicants were detained at Achkhoy-Martan VOVD between 12 and 28 April 2000. During this time they were questioned about activities of Chechen rebel fighters and about kidnappings for ransom but denied involvement in any crimes. They were subjected to various forms of torture and ill-treatment during their detention and interrogations. Both applicants were interrogated on the first day of detention. The first applicant was told to sign a confession during his interrogation. When he refused, he was tied to a chair and kicked. The interrogators put a gas mask on his face and released cigarette smoke into it. He lost consciousness and was taken back to his cell. He was taken back for questioning the next day. Wires were applied to his fingertips and the interrogators turned the handle of a device, which they called a 'lie detector', which gave the first applicant electric shocks. During the interrogation of the second applicant, two officers told him to confess that he had been a rebel fighter and that he had been involved in kidnappings. When he refused he was placed against the wall, handcuffed, and his mouth was covered in adhesive tape. One of the interrogators started beating him on his back and genitals while the other interrogator held a machine-gun and threatened to shoot him if he moved. He was beaten for an hour and taken back to his cell. There were no toilets in the cells and detainees were taken out to the toilets one by one. They had to run all the way to the

toilets and were beaten with rifle butts and chased by dogs if they were slow. They weren't allowed enough time in the toilets and some inmates had to use the corridor instead. The cells were damp and unheated and the applicants were constantly suffering from cold.

Detention at the Chernokozovo SIZO

On 28 April 2000 the applicants and some other detainees were taken out of the Achkhoy-Martan VOVD, blindfolded, and put into a vehicle. They were told that they were going to be executed. This was, instead, a transfer to another detention centre known as the Chernokozovo detention centre. The detainees were forced out of the vehicle, ordered to prostrate themselves and beaten and then taken to cells. The applicants claimed that they were not subjected to any medical examination upon arrival at the detention centre, as prescribed by relevant legislation. The government submitted that there was medical examination and treatment of the applicants. At the Chernokozovo detention centre the applicants were once again severely tortured. They were initially questioned every two days, and later about once a week. They were forced to run to the interrogation room with their heads lowered and their hands across their heads, while guards beat them on their backs. The interrogators never drew up any transcripts of the interrogation and put pressure on the applicants to force them to confess. The interrogators kicked the applicants with boots, beat them with rifle butts and mallets on different parts of their bodies, threatened them with a knife pressed against their fingers, put tarpaulin gauntlets on them and then tied their hands to a hook and beat them, squashed their fingers and toes with mallets or a door of a safe, tied their hands and feet together behind their backs, strangled them with adhesive tape or a cellophane bag, and applied electric shocks to the applicants' fingers. The applicants were also beaten when they were taken out for their daily 'exercise'. The applicant's lawyer was only allowed to see them once during their detention here. During the lawyer's visit the applicants were only allowed to speak to him one by one, in the presence of a police officer. The applicants were kept in separate cells except for one occasion, during their detention. The second applicant was held together with five others in a cell designed for three inmates and had to sleep on a mattress on the floor.

The applicants stated that the prison conditions improved rapidly after a visit from the representatives of the International Committee of the Red Cross (ICRC). The ICRC visited the applicants a total of three times during their detention here, and enabled the applicants to send messages to their families.

Release of the applicants

On 19 September 2000 the applicants were taken back to Achkhoy-Martan VOVD and for the first time informed that they were charged with kidnapping

and participation in an unlawful armed group under articles 126(2) and 208(2) of the Russian Criminal Code. They were released from detention on 5 October subject to an undertaking that they would not leave their place of residence. On the day after their release, the Chitayev relatives took the brothers to the Akchkhoy-Martan hospital. Here, they were examined by several doctors. The first applicant was diagnosed with repeated craniocerebral traumas causing intracranial hypertension, post traumatic stress disorder, chronic bronchitis, chronic two-sided pyelonephritis, asthenoneurotic syndrome, hypochromic anaemia, blunt injuries to the head, body and extremities, and chronic pneumonia in the left lung. The second applicant was diagnosed with repeated craniocerebral traumas resulting in intracranial hypertension, post traumatic stress disorder, numerous blunt injuries to the head, body and extremities, trauma of the left knee-cap, chronic pneumonia in the left lung and chronic left-sided pyelonephritis. Doctors noted that these injuries were apparently sustained during the time of the applicants' detention at Chernokozovo SIZO. The applicants received a letter on 9 October from the prosecutor's office of the Achkhoy-Martan District that the criminal proceedings against them had been discontinued as their involvement in the alleged crimes had not been proven. This letter stated that the applicants were relieved of the obligation not to leave their place of residence and could appeal against this decision within five days.

Remedies sought

During their detention, the applicants' relatives embarked on a long and futile process of applying to various official bodies, orally and in writing, concerning the searches of their house, seizure of property and the arrests. These attempts did not produce much. The family only received letters from various authorities directing their complaints to the district prosecutor's office or the prosecutor's office of the Chechen Republic. The applicants' family also went to Achkhoy-Martan twice to enquire about the whereabouts of the applicants. They were eventually told that the applicants had been detained on suspicion of having kidnapped Russian soldiers for ransom. This suspicion was based on military uniform overcoats found in their house. These were, however, old-style overcoats that the applicant brought home from service in the Soviet army. The family was later assisted by the Memorial Human Rights Centre and was consequently informed that all enquiries should be addressed to the Prosecutor General's Office for the Northern Caucasus, where the criminal investigation against the applicant was being conducted. Various letters were sent to and from the relatives of the applicants concerning the whereabouts of the applicants, and the search and seizure of their property. The prosecutor later mentioned that an internal inquiry into the seizure and destruction of radio equipment and transmitting devices belonging to the applicants had been set in motion.

After their release from detention the brothers filed complaints over the ill treatment afforded to them during their time in detention and for the alleged procedural violations against them. The applicants were warned to drop their case or face a renewed threat of prosecution. They refused. The prosecutor later informed the applicants that it had been decided not to open criminal proceedings in connection with their ill-treatment. On 29 October 2003, a decision discontinuing the criminal proceedings against the applicants was quashed by the republican prosecutor's office and the case forwarded for additional investigation.

The applicants lodged an application⁴ against the Russian Federation with the European Court of Human Rights on 19 July 2000.

The court's decision

(i) Exhaustion of local remedies

The court first dealt with the grounds set out in article 35(1) of the Convention that it may only deal with a matter within a period of six months from the final decision in the process of exhaustion. If no local remedies are available the six month period runs from the date of the act complained of. The applicants' complaint about ill treatment and poor detention conditions under article 3 of the Convention was only raised on the 6 November 2002 while it had taken place between April and October of 2000. But the complaint about ill treatment was brought before domestic authorities in October 2001 and the latest reply from those authorities was dated 6 May 2002. The court therefore accepted that the applicants had complied with the six month rule. However, the court noted that the applicants never brought an application to domestic authorities concerning the conditions of their detention. The applicants did not comply with the six month rule in terms of this complaint and the court was unable take cognisance of its merits.⁵

The government submitted that the applicants had not exhausted all local remedies. The applicants pointed out that they could not make use of local remedies as the Chechen legal system was not functioning effectively. They further contended that nothing had come of their family's complaints while they were in prison, and the government failed to adequately investigate most of their complaints. Even when indicating to the prosecutor's office that they would like an investigation into their ill-treatment, their complaints has simply been rejected without proper examination. The court noted that the question of the exhaustion of local remedies was closely linked with the merits of the case and decided to consider the two together.

⁴No 59334/00.

⁵At pars 117-122.

The court considered the governments' submission on the exhaustion of local remedies dealing with the alleged ill-treatment of the applicants. After examining each remedy, it reached the conclusion that none of the remedies indicated by the government would have been effective in the case of the applicants. However, the court found that in terms of the search and seizure of the applicants' property, the applicants had failed to exhaust local remedies. They had not appealed in court against the decision of law enforcement agency not to react to their requests concerning the search and seizure of their property as they should have in accordance with a Federal Law of 1995.⁶

(ii) Allegations of torture

The court then examined the alleged violation of article 3 of the Convention (prohibition of torture).⁷ Where an individual is in good health when taken into custody but is injured at the time of his release, the onus is on a state to provide a plausible explanation of how the injuries were sustained. The court generally applies the standard of proof, 'beyond reasonable doubt', but proof can also follow from the coexistence of strong, clear and concordant inferences, or from similar un rebutted presumptions of fact.⁸ Where the authorities have exclusive knowledge of events, strong presumptions of fact will arise concerning injuries occurring during such a period. The government did not once contest the authenticity of the documents drawn up after the applicants were examined by a doctor, nor did they argue that the injuries were sustained before the applicants' detention. They furthermore did no more than deny the applicants' allegations concerning the certificates issued by the head of the prison that no illicit methods had been used against them. The court did not find the government's arguments convincing and noted that they had offered no plausible explanation as to the origin of the applicants' injuries. Account must be had of the distinction between torture and inhuman or degrading punishment articulated in the Convention. Deliberate inhuman treatment causing very serious and cruel suffering is specifically stigmatised in the Convention suggesting that as regards gravity, it ranks above torture. Any recourse to physical force not made necessary by the conduct of a person diminishes human dignity and is in principle an infringement of article 3 of the Convention. The court found that the acts were committed against the applicants intentionally and were such as to arouse feelings of fear, anguish and inferiority, capable of humiliating them and breaking their resistance. To determine if the pain in this case qualified as 'severe', the court took into account all the circumstances of the case including the duration of the treatment and its physical or mental effects. The applicants were intentionally kept in a permanent state of physical pain and anxiety by agents of the state acting in the course of their duties. The ill-

⁶At pars 133-144.

⁷No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

⁸See pars 148-149.

treatment in this case was serious and cruel and capable of causing 'severe' pain and suffering and it amounted to torture within the meaning of article 3 of the Convention. The court found a breach of article 3 of the Convention.⁹

(iii) The right to liberty and security

The complaint under article 5 of the Convention was considered by the court.¹⁰ The applicants had complaints concerning sub-articles one to five of article 5 of the Convention. They complained that their arrest had been unlawful and not effected by due legal procedure. They further stated that they had not been properly informed of the reasons for their detention and arrest. The applicants also contended that they had been denied a right to be released pending trial. Further, they had been unable to let the unlawfulness of their detention be reviewed by a court, as they had had no contact with their lawyer while in detention. Lastly, they complained that they had been deprived of an opportunity to seek compensation for their detention.

The applicants' submission with regard to when they were detained differed from those of the government. The applicants contended that they were arrested and detained on 12 April, while the government submitted that their arrests were effected on 17 April. The court, in considering the applicants' detention from 12 April, makes it clear that any deprivation of liberty must be effected in conformity with the substantive and procedural rules of national law and be in

⁹At pars 145-166.

¹⁰Art 5 of the Convention reads as follows:

- 1 Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - a the lawful detention of a person after conviction by a competent court;
 - b the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
 - c the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - d the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
 - e the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
 - f the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
- 2 Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
- 3 Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
- 4 Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
- 5 Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

keeping with the purpose of article 5, namely to protect the individual from arbitrary detention. The unacknowledged detention of an individual is a negation of the guarantees contained in article 5.¹¹

The court consequently found that while the detention of the applicants from 12 April to 17 April constituted a violation of article 5 of the Convention, their detention from 17 April to 18 June was lawful and not in violation of article 5(1) of the Convention. However, the court found that the detention between 19 June and 4 October was unlawful and in violation of article 5(1) of the Convention. There were periods during this time when the applicants' detention was not covered by any domestic order. The government was unable to furnish the court with evidence that the detention during this time was not arbitrary, and therefore the court found the detention to be unlawful.¹²

In respect of art 5(5), the court found that the judicial system in Chechnya was not functioning until at least November 2000, and that given the fact that neither of the decisions ordering the discontinuance of criminal proceedings against the applicants was final, and that criminal proceedings were still pending, the applicants had been prevented from seeking compensation for their detention. The court also found that the applicants had been denied an effective domestic remedy in respect of their ill-treatment by the police. This amounted to a violation of article 13.¹³

Compensation

The court awarded the applicants €35 000 each for non-pecuniary damage and €7 629.90, jointly for costs and expenses, payable by the respondent state within three months from the date on which the judgment becomes final.

Concluding remarks

During military conflicts such as the events in Chechnya, the population is particularly exposed to systematic human rights abuses and often do not have access to local remedies, due to the breakdown and political manipulation of the legal system. The ruling of the court in the *Chitayev* case is important in various respects. It underlines the international accountability of states during military operations and the possibility to award compensation to the victims. It also provides an avenue to applicant and family members for meaningful investigation of crimes particularly with regard to torture and disappearances. In the present case, the requirement that local remedies should be exhausted

¹¹See par 172.

¹²At pars 167-187.

¹³At pars 192-196.

before victims can resort to the international court, was interpreted within the context of a national legal system which was not functioning adequately. Although strict compliance with the six months rule was upheld, the court was nevertheless willing to consider the question of exhaustion of local remedies with the merits of the case. In this case the evidence of torture was so strong, given the lack of a plausible explanation for the applicants' injuries, that the court found it to be in violation of the Convention.

In addition to the *Chitayev* case, the European Court of Human Rights found Russia responsible for executions, torture and enforced disappearances¹⁴ in seven other cases.¹⁵ These cases are indicative of the failure by Russia to hold its forces accountable for crimes committed in Chechnya. Since the *Chitayev* decision, alleged Russian violations of human rights have recently come under the spotlight once again with its invasion of Georgia.¹⁶ These cases send out a strong warning to all states to uphold human rights even during times of uncertainty and conflict.

Prof Michele Olivier
University of Pretoria
Marelie Maritz
LLM Student University of Pretoria

¹⁴An estimated 3000-5000 people 'disappeared' in Chechnya at the hands of the security services according to Human Rights Watch. See *Justice for Chechnya* www.hrw.org accessed on 29 August 2008.

¹⁵*Khashiyev and Akayeva v Russia* judgment 24 Feb 2005; *Imakayeva v Russia* judgment 9 Nov 2006; *Isayeva, Yusopova and Bazayeva v Russia*, judgment 24 Feb 2005; *Isayeva v Russia* judgment 24 Feb 2005; *Estamirov v Russia* judgment 12 Oct 2006; *Imakayeva v Russia* judgment 9 Nov 2006; and *Luluyev v Russia* judgment 18 Jan 2007.

¹⁶August 2008.