

THE CHECHNYA CASES AS AN ILLUSTRATION OF THE WAY THE EUROPEAN COURT INTERPRETED THE PROCEDURAL OBLIGATION UNDER ARTICLE 2 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

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Abstract: This paper explores the European Court of Human Rights' procedural obligations under Article 2 through the lens of three pivotal Chechnya conflict cases. It underscores the Court's insistence on comprehensive investigations into force-related deaths, emphasizing accountability and proactive investigation initiation by state authorities. Highlighted cases illustrate systemic investigation failures, including premature closure, lack of thorough victim and witness identification, and procedural neglect. The paper critiques delayed and inadequate investigation efforts, underscoring the Court's evolving jurisprudence towards more detailed investigative obligations under Article 2, reflecting a balance between upholding the right to life and addressing states' operational challenges.

Keywords: European Court of Human Rights, Article 2, Chechnya conflict, procedural obligations, investigation, accountability, right to life

Field: Social Sciences and Humanities.

1. INTRODUCTION

The Chechnya conflict has led to numerous complaints lodged against Russia (Bindman, 2013: 1954), particularly highlighting the European Court's interpretation of the procedural obligations under Article 2 of the European Convention on Human Rights concerning the duty to investigate the lawful use of lethal force. This paper delves into three significant cases that have been crucial in delineating the extent of this investigative duty. By using the comparative method and pinpointing the most important requirements for an effective investigation, this paper showcases the manner in which these requirements were further developed and explained by the European Court of Human Rights.

2. THE LANDMARK CASE OF ISAYEVA, YUSUPOVA, AND BAZAYEVA V. RUSSIA (2005)

In the landmark case (Heydarli, 2020: 126) of *Isayeva, Yusupova, and Bazayeva v. Russia* (2005), the European Court of Human Rights emphasized the imperative of conducting thorough investigations whenever deaths result from the use of force, to ensure the effective application of domestic laws safeguarding the right to life. The Court delineates that investigations during military actions are necessitated under two scenarios: firstly, when a civilian's death occurs, and secondly, when death unfolds under illegal conditions (Quenivet, 2019: 123). Such investigations are crucial, especially when state agents or entities are involved, because they must be held accountable for any fatalities under their watch. The Court stressed the obligation of the authorities to initiate investigations proactively upon becoming aware of such incidents (Ibidem: 124), without awaiting formal complaints from the victims' relatives or assuming responsibility for the investigation's progress (*Isayeva, Yusupova, and Bazayeva v. Russia*, 2005, para: 209).

This case involved a convoy en route to Grozny which was bombed by Russian forces in October 1999, resulting in the death of Ms. Isayeva's two children and daughter-in-law, injuries to Ms. Isayeva and Ms. Yusupova, and the destruction of Ms. Bazayeva's car. The applicants' account was later corroborated by a criminal investigation that spanned several years, with numerous interruptions and resumptions. In 2004, the domestic investigation concluded that the use of force was legitimate and proportionate, asserting that the aircraft had been targeted by ground rebels.

However, the Court identified significant, unaddressed failures in the investigation, including it being prematurely terminated based solely on the military's initial denial of any flights in the area on the day of the attack. Despite requests, an operational plan for the 29th of October 1999 was not provided, and the

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decision to not initiate a criminal investigation was made without it. Furthermore, there was a lack of effort to obtain supplementary documents that could resolve these discrepancies, including operations record books, mission reports, and other pertinent records from the period surrounding the incident (Ibidem, para: 210)

The investigation failed to probe into the identities and ranks of military personnel involved, particularly the senior officer who allegedly directed the refugees back to Grozny with assurances of safety. (Ibidem, para: 211) This is very important in the light of fact that ensuring accountability of those who are responsible is the ultimate purpose of effective investigation (Heydarli, 2020: 129). Additionally, there was no effort to verify the announced "safe passage" for civilians on October 29th, 1999, or to reconcile this announcement with the military's disregard for such assurances in their operational planning (Isayeva, Yusupova, and Bazayeva v. Russia, 2005, para: 211).

The inquiry also neglected to adequately identify other victims and potential witnesses. It was not until March 2003 that efforts were made to locate the third applicant, and the applicants were neither directly contacted by the investigation nor granted victim status as per national laws. Despite some attempts by the government to locate the first and second applicants, the Court noted the challenging circumstances faced by the applicants, who were forced to flee Grozny and constantly move in search of safety, rendering them unable to provide a permanent address to the authorities. The Court concluded that the personal predicaments of the applicants and the glaring oversights in the domestic investigation process significantly outweighed any negligence on their part to communicate their whereabouts to the authorities (Ibidem, para: 224). At the same time, despite potential challenges in locating civilian witnesses due to displacement or inaccessible locations, the Court mandates that the State must exert maximum effort to find and involve them in investigations (Quenivet, 2019: 127).

In the 2005 ruling of Isayeva, Yusupova, and Bazayeva v. Russia (2005), the European Court of Human Rights set forth comprehensive criteria to assess violations of the right to life. It mandated proactive action by state authorities upon awareness of such matters, insisted on the independence and effectiveness of investigations, required prompt and thorough inquiries to uphold public trust and legal adherence, and emphasized the necessity for public oversight and family involvement to ensure accountability and protect the interests of the bereaved (Williams, 2020: 308).

Moreover, the Court unanimously ruled that the investigative efforts into the attack on the refugee convoy on October 29, 1999, were insufficient, rendering any civil remedies ineffective under these conditions.

3. ISSAYEVA V. RUSSIA CASE (2005)

In the Issayeva v. Russia case (2005) the focus shifts to the indiscriminate bombing of Katyr-Yurt village, where the applicant resided. During the February 2000 attack, the applicant lost her son and three nieces. A criminal investigation was initiated in September 2002 but concluded in 2004. Although it confirmed the applicant's narrative, the investigation deemed the military action justified, citing the presence of a large terrorist group in the village that refused to surrender.

The Court critically assessed the delayed initiation of the investigation into the February 4-7th 2000 attack, noting the absence of a valid explanation for the procrastination. Namely, although NGO Memorial submitted a detailed and well-documented application on behalf of the applicant in March 2000, asserting that the attack on Katyr-Yurt led to significant civilian casualties, the complaint was dismissed in April 2000 on the grounds of supposedly insufficient evidence of a crime. It was only after a significant delay that the investigation was eventually initiated in September 2000 (Issayeva v. Russia, 2005, paras: 216-217).

While acknowledging the considerable efforts by military investigators to document the attack accurately (Ibidem, para: 218), the Court highlighted significant shortcomings in the investigation. Notably, there was a lack of evidence regarding any "safe passage" assurances for civilians either before or during the operation in Katyr-Yurt. The investigation failed to identify any official accountable for announcing the corridor or ensuring the safety of civilians utilizing it. Additionally, there was no explanation provided for the apparent disconnect between the announcement of a "safe exit" for civilians and the military's minimal regard for this guarantee when planning and conducting their operation (Ibidem, para: 219).

The investigation also inadequately pursued claims that villagers were prevented from leaving as a "punishment" for insufficient cooperation with military forces (Ibidem, para: 220). Furthermore, the investigation failed to identify additional victims and witnesses, and procedural rights were neglected when notifying applicants about the termination of the investigation and the revocation of victim status (Ibidem, para: 222).

The Court raised concerns about the 2002 military experts' report conclusions on the legality and

proportionality of the military actions, finding them contentious and not reflective of the investigative findings. The investigation's closure, based on these conclusions, left the applicant without viable means to contest the findings or seek accountability for the violations of the right to life identified (*Ibidem*, para: 233).

Thus, the Court concluded that the authorities had failed to investigate the assault effectively (*Glas*, 219: 240) and that the investigative shortcomings regarding the February 4-7th 2000 assault on Katyr-Yurt constituted a failure to conduct a thorough inquiry as mandated by Article 2 of the European Convention on Human Rights, signifying a breach by Russia of its obligations under the Convention.

4. KHASHIEV AND AKAYEVA V. RUSSIA CASE (2005)

In the *Khashiev and Akayeva v. Russia* case (2005), the applicants contended that Russian military forces extrajudicially executed their family members, civilians residing in Grozny, in January 2000 (*Bowring*, 2018: 18). The initiation of a criminal probe was delayed by four months and, despite being reopened multiple times, failed to pinpoint the culprits.

The European Court of Human Rights acknowledged the security challenges in Chechnya but maintained that prompt investigatory actions are crucial for upholding public trust in the legal system and preventing any insinuation of complicity or acquiescence in unlawful deeds (*Khashiev and Akayeva v. Russia*, 2005, para: 155). Evaluating the investigation's adherence to Article 2 of the Convention, the Court highlighted not only the significant delay in launching the probe (approximately three months following the receipt of detailed and grave allegations regarding the deaths of several individuals), but also noted a pattern of inaction (*Ibidem*, paras: 157-158). Investigators did not seek out the 205th brigade, which was frequently mentioned by witnesses, to investigate their potential involvement in the killings (*Ibidem*, para: 158). Essential steps such as acquiring the military operation plan in the relevant district of Grozny (*Ibidem*) or promptly identifying and questioning other victims and witnesses were neglected (*Ibidem*, para: 159). The investigation's limited scope, evidenced by only two statements taken from locals, a lack of detailed district maps, and failure to compile a list of Grozny's winter residents, was criticized (*Ibidem*, paras. 161 - 162).

The Court also observed procedural lapses, like the absence of autopsies, reliance on photographs for forensic reports, and instructions from prosecutors to rectify investigative shortcomings that were never followed (*Ibidem*, para. 163). Since this approach resulted in very limited information, the Court considered that "an earlier and more comprehensive forensic report, including a full autopsy, would have provided substantially more details as to the manner of death" (*Ibidem*).

With the investigation being suspended and resumed multiple times and shuffled between various prosecutors without keeping the applicants informed (*Ibidem*, para. 164), the Court concluded that the investigation lacked promptness, thoroughness, and transparency. This failure to involve family members and ensure public oversight, in the view of the European Court of Human rights, underscored a breach of the effective investigation mandate under Article 2 of the ECHR.

5. CONCLUSIONS

The evolution of the Court's jurisprudence on the procedural dimensions of Article 2 in the context of Chechnya diverges from cases involving targeted actions by Turkish authorities or the Northern Ireland conflict. Unlike the selective targeting in those instances, the Chechnya cases involve civilians caught in indiscriminate military actions, with allegations of punitive measures against non-cooperative civilians (*Isayeva v. Russia*, 2005, para: 220). These investigations were marred by delays and a lack of decisive action, with significant evidence and potential witnesses overlooked, and in some instances, a complete absence of autopsies. All this severely impaired the effectiveness of investigations in question, since they lacked some or all the criteria for an effective investigation (*Quenivet*, 2019: 121): its adequacy, thoroughness, independence, promptness or public scrutiny (*Binienda*, 2020: 35).

This shift in the Court's stance, from a non-prescriptive approach to a more detailed examination of the investigative obligations under Article 2, reflects a response to the severe shortcomings in the investigations. It represents a balance between the imperative of upholding the right to life and the practical challenges faced by states, underlining the necessity of meeting a minimum investigatory standard as determined by the Court (*Maric*, 2019, 198). Therefore, the depth of Court's scrutiny and admonition is justified and burden on the state is well - balanced with the respect to right to life (*Chevalier-Watts*, 2010, 717).

REFERENCES

- Bindman, E. (2013). Russia, Chechnya and Strasbourg: Russian Official and Press Discourse on the 'Chechen Cases' at the European Court of Human Rights. *Europe-Asia Studies*, 65, 1954-1977.
- Binienda, Maria Szonert. (2020). Standards of Investigation under Article of the European Convention on Human Rights and Investigations of Incidents of Historic Significance. *Law and Administration in Post-Soviet Europe*, 7, 34-42.
- Bowring, Bill. (2018). Politics and Pragmatism: The Constitutional Court of the Russian Federation and Its 20 Years of Engagement with the European Convention on Human Rights. *East European Yearbook on Human Rights*, 2018, 5-31.
- Chevalier-Watts, J. (2010). Effective investigations under Article 2 European Convention on Human Rights: Securing the right to life or an onerous burden on the state. *The European Journal of International Law*, 10, 701-721.
- European Court of Human Rights. (2005). Isayeva, Yusupova and Bazayeva v. Russia, Applications Nos. 57947/00, 57948/00 and 57949/00, Judgment. [Judgment]. February 24, 2005.
- European Court of Human Rights. (2005). Isayeva v. Russia, Application No. 57950/00, Judgment. [Judgment]. February 24, 2005.
- European Court of Human Rights. (2005). Khashiev and Akayeva v. Russia, Applications Nos. 57942/00 and 57945/00, Judgment. [Judgment]. February 24, 2005.
- Glas, L. R. (2019). The european court of human rights supervising the execution of its judgments. *Netherlands Quarterly of Human Rights*, 37(3), 228-244.
- Heydarli, Elkhan. (2020). Effective investigation as part of positive obligations of state: in the context of Northern Ireland conflict. *Baku State University Law Review*, 6(2), 124-134.
- Quenivet, Noelle. (2019). The obligation to investigate after potential breach of article echr in an extra-territorial context: mission impossible for the armed forces. *Netherlands Quarterly of Human Rights*, 37(2), 119-138.
- Williams, Andrew. (2020). War crimes allegations and the UK: towards fairer investigative process. *Legal Studies. The Journal of the Society of Legal Scholars.*, 40(2), 301-320.
- Dissertation: Maric, D. (2019). Excessive use of force by the law enforcement officials in the light of Articles 2 and 3 of the European Convention on human rights. Universität Wien.