

Recent Developments

CHECHNYA'S LAST HOPE? ENFORCED DISAPPEARANCES AND THE EUROPEAN COURT OF HUMAN RIGHTS

INTRODUCTION: THE CONFLICT IN CHECHNYA

The aftermath of the conflict between the Russian military, its local allies, and separatist elements in Chechnya in the Second Chechen War (1999–present) has confronted Europe with the phenomenon of enforced disappearances¹ on a massive scale. Amnesty International estimates that between 3,000 and 5,000 enforced disappearances have occurred in Chechnya since the Second Chechen War commenced on August 26, 1999.² The Russian army initiated the conflict by attacking the Chechen capital of Grozny in order to depose the separatist regime that had established *de facto* control of the territory following the end of the First Chechen War (1994–1996) on August 31, 1996.³ The hostilities have been marked by exceptional ferocity and frequent incidents of brutality, including a well-documented campaign of state-sponsored assassinations and enforced disappearances.⁴ Alarming, despite the apparent normalization of the situation in Chechnya, such incidents have not entirely ceased.⁵

1. See International Convention for the Protection of All Persons from Enforced Disappearance, G.A. Res. 61/177, U.N. Doc. A/Res/61/177 (Dec. 20, 2006) (defining “enforced disappearance” as “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law”).

2. Precision in this area is rendered difficult due to the widespread displacement and confusion caused by the conflict. A number of NGOs have stated that the volume of cases reported may not reflect the true scale of the problem, due to victims’ fears of possible reprisal by state agents. Amnesty Int’l, *Russian Federation: What Justice for Chechnya’s Disappeared?*, AI Index EUR 46/020/2007, May 2007, available at <http://www.amnesty.org/en/library/info/EUR46/020/2007>.

3. *Turmoil in Russia: Russia Media Report Start of Chechnya Ground Operation, Putin ‘Not Denying’ Escalation* (CNN television broadcast Sept. 29, 1999), <http://www.cnn.com/WORLD/europe/9909/29/russia.chechnya.03/>.

4. See, e.g., Human Rights Watch, *The “Dirty War” in Chechnya: Forced Disappearances, Torture, and Summary Executions* (2001), <http://www.hrw.org/reports/2001/chechnya/RSCH0301.PDF>.

5. See, e.g., Eur. Parliamentary Assembly, *Supplementary Introductory Memorandum: Legal Remedies for Human Rights Violations in the North Caucasus*, AS/Jur (2008) 21 (Apr. 11, 2008), http://assembly.coe.int/CommitteeDocs/2008/20080411_ajdoc21_2008.pdf.

THE APPLICATION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

As a result of Russia's accession to the Council of Europe (the "CoE") on February 28, 1996, and its consequent ratification of the European Convention on Human Rights (the "Convention" or "ECHR") on May 5, 1998, the task of adjudicating upon the wave of enforced disappearance cases emanating from Chechnya has fallen to the European Court of Human Rights (the "Court" or "ECtHR").⁶

The CoE is an association of European states established in 1949 to promote human rights and democratic principles in Europe. The ECHR is the CoE's greatest achievement, an international human rights convention to which all CoE members are required to accede. The ECHR obliges these states to secure the civil and political rights enumerated therein for their citizens. Such rights include life, liberty, privacy, and freedom of expression.⁷ States are also bound to provide effective domestic remedies where a protected right is breached.⁸ Citizens of states who have acceded to the ECHR have the right to petition the ECtHR in Strasbourg if their home state has failed to secure their rights under the Convention.⁹

The Court's mandate is to perform a subsidiary role in the protection of human rights. Citizens who believe their rights have been breached must exhaust any available effective domestic remedy before applying to the ECtHR. Only if all such effective domestic avenues have been exhausted may they then apply to the ECtHR.¹⁰ This system of direct petition is the feature that most distinguishes the ECHR among international human rights instruments, contributing to the Court's evolution into the largest and most prolific international court in the world.

Russia's admission to the CoE and its associated institutions was controversial.¹¹ Some commentators argued that Russia's human rights standards were not, and were unlikely to become, compatible with those of the existing membership.¹²

6. States acceding to the CoE are required by Article 3 of its Statute to ensure respect for and protection of human rights. In practice, this requires accession to the ECHR. All CoE member states have signed and ratified the Convention.

7. European Convention for the Protection of Human Rights and Fundamental Freedoms arts. 1–12, Nov. 4, 1950, 213 U.N.T.S. 222 [hereinafter ECHR].

8. *Id.* at art. 13.

9. Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Restructuring the Control Machinery Established Thereby art. 34, *entered into force* Nov. 1, 1998, Europ. T.S. No. 155 [hereinafter Protocol 11] (amending ECHR).

10. ECHR, *supra* note 7, at art. 35.

11. David Seymour, *The Extension of the European Convention on Human Rights to Central and Eastern Europe: Prospects and Risks*, 8 CONN. J. INT'L L. 243, 244 (1992–93); see also Rudolf Bernhardt et al., *Report on the Conformity of the Legal Order of the Russian Federation with Council of Europe Standards*, 15 HUM. RTS. L.J. 249, 287 (1994).

12. See, e.g., Mark Janis, *Russia and the "Legality" of Strasbourg Law*, 8 EUR. J. INT'L L. 93, 95–96 (1997).

Addressing the Chechnya enforced disappearance cases has presented a unique challenge for the ECtHR. While the Court has traditionally been called upon to interpret the scope of civil and political rights¹³ in Western Europe, the Chechnya cases have forced it to adjudicate upon matters arising from a military conflict in a territory lying beyond what many consider to be Europe's traditional borders.

It is a task that the ECtHR has embraced,¹⁴ to date issuing twenty-eight judgments finding Russia responsible for enforced disappearances of its citizens. This article examines the mode of analysis developed by the ECtHR in its recent case law on this topic and briefly explores to what extent it is necessary or desirable for the Court to reassess its methodology to more effectively address this type of case. To this end, this article considers the first three enforced disappearance judgments handed down against Russia in July 2006 and then analyzes a recent trio of decisions issued by the Court on July 3, 2008.

THE ECtHR'S FIRST THREE JUDGMENTS ON ENFORCED DISAPPEARANCES
IN CHECHNYA: *BAZORKINA V. RUSSIA*, *LULUYEV V. RUSSIA*,
AND *IMAKAYEVA V. RUSSIA*

The Court issued its much-anticipated first judgment on enforced disappearances in Chechnya on July 27, 2006 in *Bazorkina v. Russia*.¹⁵ The case concerned the enforced disappearance of Khadzhi-Murat Yandiyev, a 25-year-old Chechen who was captured by Russian federal forces on February 2, 2000 during the Russian military campaign to regain control of Grozny. A CNN broadcast team embedded with the Russian troops who detained Yandiyev filmed a Russian general ordering his execution.¹⁶ Yandiyev has not been seen since.

Yandiyev's mother (the "applicant"), with the assistance of various NGOs, used all available avenues to locate her son.¹⁷ In a pattern that has become tragically familiar in Chechen enforced disappearance cases, the Russian authorities' responses to the applicant's efforts were opaque and abdicative, typically consisting of a statement that no information was available and that they would refer the enquiry to another agency.¹⁸

13. Paul Mahoney, *Speculating on the Future of the Reformed European Court of Human Rights*, 20 HUM. RTS. L.J. 1, 3 (1999).

14. Russian Justice Initiative, ECHR Cases from the North Caucasus, <http://www.srji.org/en/legal/cases/> (last visited Nov. 16, 2008) (tracking cases filed and decided: 157 cases filed and 44 cases decided at last visit).

15. *Bazorkina v. Russia*, App. no. 69481/01 (Eur. Ct. H.R. Jul. 27, 2006).

16. *CNN International News* (CNN International broadcast Dec. 21, 2005).

17. *Bazorkina*, App. no. 69481/01, ¶¶ 22, 23, 25, 26, 29, 31, 32. The litany of means unsuccessfully employed by the Applicant included applying to prosecutors at local, Russian, and military levels; petitioning the Ministries of the Interior and Justice and other special representatives; personal attendance at detention centers; and lengthy correspondence with the relevant authorities.

18. *Id.* ¶ 25.

The somewhat macabre denouement of the investigation may have been reached with the discovery, prior to the ECtHR's hearing of the case, of five male bodies dressed in camouflage uniforms near the village of Alkhan-Kala, believed to be the intended destination of the armoured personnel carrier in which Yandiyev was last seen alive. The Russian Government notified the Court that the bodies and related evidence were subsequently lost, and no related documents were provided to the ECtHR.¹⁹

As noted above, the applicant attempted to use every means at her disposal at the domestic level to request an investigation. She applied to local, national, and specialist military prosecutors. Because the applicant had exhausted all remedies available to her in Russia without redress, she was entitled to apply to the ECtHR.²⁰

The departure point for the Court's reasoning in *Bazorkina* was its well-established principle that where an individual is held in state custody and suffers an injury or subsequently disappears, it is incumbent upon the state to satisfactorily explain the situation.²¹ Furthermore, where information related to such injury or disappearance lies wholly or substantially within the knowledge of the state, strong presumptions of fact will arise concerning the state's responsibility.²²

The Court addressed two difficulties that are central to many enforced disappearance cases: (1) whether, in the absence of a body, the alleged victim may be presumed dead,²³ and (2) whether the limited evidence adduced is sufficient to support a finding of culpability on the part of the state.²⁴ While the ECtHR is not intended to act as a first instance tribunal of fact, in cases concerning the right to life pursuant to Article 2 of the ECHR, it will apply a particularly thorough scrutiny even if domestic investigations and proceedings have already taken place.²⁵ The Court assumed that function here.

In defining the requisite standard of proof as beyond reasonable doubt, the Court adopted the approach articulated for the first time in *Timurtas v Turkey*,²⁶ a Turkish enforced disappearance case. The Court held that this standard might be satisfied by the coexistence of "sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact,"²⁷ provided these are based on "concrete elements."²⁸

19. *Id.* ¶¶ 86–89.

20. Protocol 11, *supra* note 9, at art. 35.

21. *Bazorkina*, App. no. 69481/01 ¶ 104; *see also* *Avsar v. Turkey*, 2001-VII Eur. Ct. H.R. 83.

22. *See Bazorkina*, App. no. 69481/01 ¶ 105; *see also* *Salman v. Turkey*, 2000-VII Eur. Ct. H.R. 365.

23. *Bazorkina*, App. no. 69481/01 ¶ 110.

24. *Id.* ¶ 104.

25. *Id.* ¶ 107.

26. 2000-VI Eur. Ct. H.R. 303.

27. *Bazorkina*, App. no. 69481/01 ¶ 106.

28. *Id.* ¶ 109 (citing *Timurtas*, 2000-VI Eur. Ct. H.R. ¶ 82–83).

Bringing to a close its analysis and finding a violation of Article 2 of the ECHR, the Court cited four factual elements underpinning its conclusion regarding the central question of state culpability: (1) the Russian Government acknowledged Yandiyev's detention by state agents; (2) overwhelming evidence established that Russian authorities interrogated Yandiyev and ordered his execution; (3) there had been no news of Yandiyev in the years following his disappearance; and (4) the Russian Government did not provide any plausible explanation regarding the whereabouts of Yandiyev post-detention.

Bazorkina is, in one sense, relatively uncontroversial, representing an application of the established approach of the Court regarding a state's responsibility for unexplained injuries or deaths that occur in custody. Because of the videotape showing a Russian general ordering Yandiyev's execution, the ECtHR did not have to address what is often the most problematic aspect of enforced disappearances: proving that the alleged victim was taken into custody or forcibly detained by state agents.

Luluyev v. Russia,²⁹ the ECtHR's second Chechen enforced disappearance judgment, concerned the kidnapping and murder of a mother of four from a market in Grozny.³⁰ While the Russian Government did not acknowledge that state agents detained the victim, it did not dispute that her abduction occurred contemporaneously with, and in the immediate vicinity of, a Russian military "mopping-up" operation.³¹ These extraordinary circumstances were relied upon by the Court to conclude beyond reasonable doubt that the victim had been detained by state agents.³² As the victim's body was subsequently discovered in a mass grave located within one mile of Khankala, the headquarters of the Russian military in Chechnya,³³ the Court proceeded to find a violation of Article 2, deploying similar reasoning to that used in *Bazorkina*. The distinction in this case was that the ECtHR did not have direct concrete evidence that state agents detained the victim.

In *Imakayeva v. Russia*,³⁴ the ECtHR for the first time wrestled with the difficulties that the videotape in *Bazorkina* and the state acknowledgement of the mopping-up operation in *Luluyev* had allowed it to avoid: a disappearance where circumstantial evidence strongly indicated that state agents were responsible, but where no compelling direct proof was available.

The Court found a violation of Article 2 of the ECHR by applying the principles regarding factual inferences enunciated in *Bazorkina*. Adopting

29. App. no. 69480/01 (Eur. Ct. H.R. Nov. 9, 2006).

30. HUMAN RIGHTS WATCH, RUSSIA/CHECHNYA BURYING THE EVIDENCE: THE BOTCHED INVESTIGATION INTO A MASS GRAVE IN CHECHNYA (2001), <http://www.hrw.org/reports/2001/chechnya2/chechnya2.pdf>.

31. See *Luluyev*, App. no. 69480/01 ¶ 81.

32. See *id.* ¶ 82.

33. See *id.* ¶ 28.

34. App. no. 7615/02 (Eur. Ct. H.R. Nov. 9, 2006).

an approach that would prove crucial to its subsequent jurisprudence, the Court placed great emphasis on the fact that the Russian government did not provide a copy of the relevant criminal investigation file.³⁵ The Court reasoned that this allowed it to draw inferences regarding the validity of the applicant's allegations. Notably, the Court also stated explicitly for the first time that "in the context of the conflict in Chechnya, when a person is detained by unidentified servicemen without any subsequent acknowledgment of detention, this can be regarded as life-threatening."³⁶

In 2007, the ECtHR held against Russia in seven cases concerning enforced disappearances in Chechnya.³⁷ To date in 2008, the Court has found violations of Article 2 of the ECHR in a further twenty-two cases bringing the total number of enforced disappearance judgments issued against Russia by the Court to thirty-two. While many of these judgments have, to a greater or lesser extent, adopted the principles established in the three cases discussed above, the Court's jurisprudence in the field has continued to evolve in its approach to determining what circumstances will justify a conclusion that state agents are responsible for an enforced disappearance.

JULY 2008: *UMAROV V. RUSSIA*, *MUSAYEVA V. RUSSIA*, AND
AKHIYADOVA V. RUSSIA

The Court's evolving approach is well illustrated by the trio of enforced disappearance judgments issued on July 3, 2008 finding breaches of Article 2 of the ECHR: *Umarov v Russia*,³⁸ *Musayeva v Russia*,³⁹ and *Akhiyadova v Russia*.⁴⁰ The facts in these cases were similar, all of the victims were forcibly taken or kidnapped from their homes by unidentified, and disguised, groups of armed men. In each case, a number of witnesses provided evidence that the responsible parties used the equipment, bore the appearance, and applied the tactics of Russian military operatives. In each instance, as in *Imakayeva*, the Russian Government refused to provide the ECtHR with a copy of the relevant criminal case file.

The Court's analysis in these cases may be distilled as follows: (1) if the applicant makes out a prima facie case concerning the state's responsibility for a detention and the Court is prevented from reaching a definitive conclusion concerning the issue because the state fails to provide the relevant

35. See *id.* ¶ 124.

36. *Id.* ¶ 141.

37. See *Baysayeva v. Russia*, App. no. 74237/01 (Eur. Ct. H.R. May. 10, 2007); *Akhmadova v. Russia*, App. no. 40464/02 (Eur. Ct. H.R. Apr. 5, 2007); *Alikhadzhiyeva v. Russia*, App. no. 68007/01 (Eur. Ct. H.R. Jul. 5, 2007); *Magomadov v. Russia*, App. no. 68004/01 (Eur. Ct. H.R. Jul. 12, 2007); *Masayeva v. Russia*, App. no. 74239/01 (Eur. Ct. H.R. Jul. 26, 2007); *Isayeva v. Russia*, App. no. 6846/02 (Eur. Ct. H.R. Nov. 15, 2007); *Kukuyeva v. Russia*, App. no. 29361/02, (Eur. Ct. H.R. Nov. 15, 2007).

38. App. no. 12712/02 (Eur. Ct. H.R. Jul. 3, 2008).

39. App. no. 12703/02 (Eur. Ct. H.R. Jul. 3, 2008).

40. App. no. 32059/02 (Eur. Ct. H.R. Jul. 3, 2008).

criminal case file, then the burden of proof regarding the relevant events will shift to the state; and (2) in the absence of a plausible explanation concerning the apparent disappearance of the victim, the state will be held to have violated Article 2 of the Convention.⁴¹ The Court reasoned that in this type of case, the criminal case file will be the primary source of evidence available to test the validity of the applicant's case. If the state breaches its obligation to cooperate with the ECtHR by refusing to provide this material, the Court will draw negative inferences accordingly.

In each of these cases, the Court also supported its conclusion that the first limb of the test was satisfied by noting that:

[T]he fact that a large group of armed men in uniform, equipped with military vehicles and able to move freely through military roadblocks, proceeded to check identity papers and apprehend several persons at their homes in a town area strongly supports the applicant's allegation that these were State servicemen.⁴²

The ECtHR concluded that cumulatively the following factors are, in the absence of compelling contradictory evidence or explanation, sufficient to attribute responsibility to the state for an unacknowledged detention leading to the death of one of its citizens in breach of Article 2 of the ECHR: (1) limited witness evidence suggesting the involvement of state agents; (2) an inference drawn from the circumstances of the alleged incidents, i.e., from the fact that only state agents would be in a position to engage in the type of conduct being described by the available witness accounts; and (3) an inference drawn from failure by the state to provide the relevant criminal case file.

ANALYSIS OF THE JURISPRUDENCE: GENERAL OBSERVATIONS

In the first three Chechnya enforced disappearance cases brought before it, the Court demonstrated a willingness to find state responsibility on the basis of circumstantial evidence derived from the surrounding facts. This marks a great step forward for the Court: when the ECtHR addressed enforced disappearances in Turkey, it took six years (from 1998 to 2004) and over twenty cases to reach a similar result.⁴³ This has allowed the Court to move swiftly in developing its analysis of the paradigmatic Chechen enforced disappearance case, i.e., when "anonymous" military or paramilitary forces forcibly take a victim into detention.

41. See *Musayeva*, App. no. 12703/02 ¶¶ 100–01; *Umarov*, App. no. 12712/02 ¶¶ 92–93; *Akbiyadova*, App. no. 32059/02 ¶¶ 61–62.

42. *Umarov*, App. no. 12712/02 ¶ 91; see also *Akbiyadova*, App. no. 32059/02 ¶ 60; *Musayeva*, App. no. 12703/02 ¶ 99.

43. See Ole Solvang & Roemer Lemaître, *Article 2 Violations in Disappearance Cases*, EUROPEAN HUMAN RIGHTS ADVOCACY CENTRE BULLETIN, Winter 2007, at 1.

The Chechen cases have also provided important developments regarding qualification for “victim” status for the purpose of bringing a claim pursuant to the ECHR. The Court has held that siblings of the disappeared may be recognized as victims of a breach of Article 3 of the ECHR—which prohibits cruel and inhuman treatment—because of inadequate and mis-handled criminal investigations by state authorities.⁴⁴

ANALYSIS OF THE JURISPRUDENCE: FACTUAL INFERENCES
AND STATE RESPONSIBILITY

Central to the cases discussed above, and to many enforced disappearance cases, is the tribunal’s approach to the factual determination of whether the state is responsible for the initial detention of the alleged victim. The ECtHR’s approach to the standard of proof required to conclude state responsibility has incrementally liberalized. In *Bazorkina*, the ECtHR restated its standard of proof in factual controversies as beyond reasonable doubt. The Court allowed that this standard could be satisfied by “*sufficiently, strong, clear inferences,*” provided these are based on “*concrete facts.*” Nowhere in *Umarov*, *Musayeva*, or *Akbiyadova* does the ECtHR mention the requirement of “*concrete facts.*” The mode of analysis has subtly but profoundly changed. The applicant now must establish only a prima facie case; the burden of proof then shifts to the state to provide evidence refuting its responsibility. This approach fundamentally alters the evidentiary standard the Court applies.

This model has limits, as indicated by the joint partly dissenting opinion of Judge Kovler of Russia and Judge Hajiyev of Azerbaijan in the case of *Tangiyeva v. Russia*.⁴⁵ *Tangiyeva* concerned the unlawful killing of a Chechen citizen at the hands of Russian security forces. While not classifiable as an enforced disappearance because the bodies of the victims were discovered shortly after they were killed, the case raised the same issues and adopted the same mode of analysis as the enforced disappearance judgments in imputing responsibility to the state on the basis of factual inferences. The witness evidence in *Tangiyeva* was limited—there were no eye-witnesses to the killings—and the partially dissenting opinions express an unwillingness to transfer the evidentiary burden to the state unless a higher de minimis level of prima facie evidence is provided:

In this case the applicant was unable to submit persuasive evidence to support her allegations as to the State’s responsibility for the murders. The exact cause and circumstances of the applicant’s relatives’ deaths have never been established . . . we cannot agree with the applicant and apply these conclusions to the facts

44. See, e.g., *Ibragimov v. Russia*, App. no. 34561/03, ¶¶ 105–107 (Eur. Ct. H.R. May 24, 2008).

45. App. no. 57935/00 (Eur. Ct. H.R. Nov. 29, 2008) (Kovler and Hajiyev, JJ., dissenting).

of the present case to an extent which would attribute the responsibility for unlawful acts to the respondent State, without having the benefit of additional evidence to that effect.⁴⁶

On the facts of *Tangiyeva*, this dissent may have been misconceived. At the time of the victims' deaths, the location in question was under the control of the Russian army and had been the scene of other unlawful killings (as established in the Court's own prior case law).⁴⁷ This might validly have been relied upon to support a conclusion of state responsibility. However, the approach of Judges Kovler and Hajiyev may serve to delineate the limits of the analytical framework currently being applied by the Court.

While the importance of investigating and providing justice in enforced disappearance cases cannot be overstated, finding a state responsible for the murder of its own citizens is also a grave matter. Although the Court has repeatedly noted that it is not a criminal tribunal, its findings in enforced disappearance cases are judicial declarations of culpability for one of the most serious categories of international crime.⁴⁸

The emphasis placed by the Court on the failure of the Russian Government to provide copies of the relevant criminal case files is a logical and arguably necessary development. In cases of this type such records are likely to be the best, and sometimes only, evidence available to the Court in adjudicating on the applicant's claims. Failing to provide evidence of this sort where it is available itself constitutes a breach of the ECHR by the responsible state party.⁴⁹ Without drawing some degree of inference from this conduct, it would be practically impossible for the Court to exercise any meaningful review in many enforced disappearance cases.

However, the weight attributed to this factor in the Court's current jurisprudence seems questionable. In applying the two-stage test described above in the July 2008 enforced disappearance judgments, the Court relies on the non-provision of criminal case files to support its conclusion in relation to both the first *and* second limbs of the test—both that the victim was taken into custody by state agents and that he was subsequently killed. Logically, this approach may be sound, but the current corpus of cases may place too much weight on this element relative to other significant factors.⁵⁰ This may raise issues in future cases where a state submits an opaque

46. *Id.*

47. See *Khashiyev and Akayeva v. Russia*, App. nos. 57942/00 and 57945/00, ¶¶ 28–30, 39–42 (Eur. Ct. H.R. Feb. 24, 2005).

48. See HUMAN RIGHTS WATCH, *WORSE THAN A WAR: "DISAPPEARANCES" IN CHECHNYA—A CRIME AGAINST HUMANITY* (2005), <http://www.hrw.org/backgroundter/eca/chechnya0305/chechnya0305.pdf>; see also Rome Statute of the International Criminal Court art. 7, July 17, 1998, 2187 U.N.T.S. 93; Declaration on the Protection of All Persons from Enforced Disappearance, G.A. Res. 47/133, at 1, U.N. Doc. A/RES/47/133 (Feb. 12, 1993).

49. Protocol 11, *supra* note 9, at art. 38.

50. For example, many of the cases involve a fact pattern in which the parties responsible for the unacknowledged detention use means, and exhibit a freedom of action, which would appear *prima facie* only to be available to state agents.

or unrevealing criminal case file to the Court. Given the observations of many non-governmental organizations and other observers concerning the prevalent culture within the Russian military and bureaucracy in Chechnya, it is even possible that this approach could incentivise the provision of falsified or incomplete documentation to the Court.⁵¹

The ECtHR's jurisprudence has recognized that unacknowledged detention by unidentified persons in Chechnya may mean that a victim's life is threatened,⁵² and has expressed concern about the volume and similar fact patterns of the enforced disappearance cases emanating from the region.⁵³ In contrast, however, to certain international human rights tribunals addressing cases in other jurisdictions,⁵⁴ it has not held that enforced disappearances in Chechnya constitute an administrative practice. Such a holding would be problematic from a diplomatic perspective due to its possible implications for Russia's continued CoE membership, but would be amply supported by the available evidence concerning the situation in Chechnya and by the ECtHR's own case law. Moreover, such a finding might better support the Court's increasing dilution of its "beyond reasonable doubt" evidentiary standard and thus resolve some of the conceptual tensions inherent in its current approach.

CONCLUSION

To some, the involvement of the ECtHR in the Chechen enforced disappearance cases confirms the suspicions and scepticism of those who opposed Russia's admission to the CoE. Russia's conduct continues to provoke concern that it is not yet ready to commit to the level of human rights protection sought by other CoE member states.⁵⁵

However, the possibility of application to the ECtHR has inarguably provided a voice and justice, of a sort, to Russian citizens who would otherwise have been afforded neither. There are also tentative indications that Russia has been prompted to implement some military and administrative reforms in response to the Court's jurisprudence—in the form of revisions to manuals of military practice, new requirements for record keeping and registration of detentions, and guidelines for the investigation and prosecution of unlawful killing and enforced disappearance cases.⁵⁶

51. See *Timurtas v. Turkey*, 2000-VI Eur. Ct. H.R. 303.

52. See, e.g., *Elmurzayev v. Russia*, App. no. 3019/04, ¶ 94 (Eur. Ct. H.R. Jun. 12, 2008).

53. See *Betayev and Betayeva v. Russia*, App. no. 37315/03, ¶ 72 (Eur. Ct. H.R. May 29, 2008).

54. See, e.g., *Velasquez Rodriguez Case*, 1988 Inter-Am. Ct. H.R. (ser. C) No. 4 (July 29, 1988).

55. See Eur. Parliamentary Assembly, *The Russian Federation's Non-Ratification of Protocol No. 14 to the European Convention on Human Rights*, AS/Jur (2008) 45 Sep. 5, 2008 (including comments concerning Russia's continued frustration of efforts to implement the proposed reforms of the ECtHR's structure, which are intended to facilitate improvements in efficiency).

56. COUNCIL OF EUROPE, DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS, SUPERVISION OF THE EXECUTION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS: FIRST AN-

The Court's jurisprudence makes clear that the exceptionally egregious human rights violations in Chechnya, such as enforced disappearances, derive more from a military culture of brutality and impunity than from any lack of applicable legislation. Thus, the value of the legislative and administrative reforms introduced by Russia to date can only truly be assessed in the context of what, if any, subsequent impact they have on the military culture and practice that underpinned the grave human rights violations raised in the Chechnya cases. The extent to which the ECtHR is genuinely capable of having a progressive normative influence in this sphere may serve as the ultimate litmus test of the wisdom and merit of the decision to admit Russia to the CoE and ECHR.

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NUAL REPORT, MARCH 2008, *available at* <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=258625&SecMode=1&DocId=1231546&Usage=2>.

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