SECRETARIAT / SECRÉTARIAT

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRÉTARIAT DU COMITÉ DES MINISTRES

COMMITTEE OF MINISTERS
COMITÉ DES MINISTRES

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Contact: John Darcy
Tel: 03 88 41 31 56

Date: 26/11/2019

DH-DD(2019)1407

Meeting: 1362nd meeting (December 2019) (DH)

Communication from a NGO (Stichting Justice Initiative) (25/10/2019) in the case of ISRAILOVA AND OTHERS (KHASHIYEV group) v. Russian Federation (Application No. 4571/04)

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

* * * * * * * * * * * *

Réunion : 1362e réunion (décembre 2019) (DH)

Communication d'une ONG (Stichting Justice Initiative) (25/10/2019) dans l'affaire ISRAILOVA ET AUTRES (groupe KHASHIYEV) c. Fédération de Russie (requête n° 4571/04) **(*anglais uniquement*)**.

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

STICHTING JUSTICE INITIATIVE

SUBMISSION TO THE COMMITTEE OF MINISTERS UNDER RULE 9(2)

-

IMPLEMENTATION OF THE CASE *ISRAILOVA AND OTHERS V RUSSIA* (*KHASHIYEV AND AKAYEVA* GROUP)

-

ESTABLISHMENT OF REMAINS

Summary of the case and the Court's judgment

1. In their application to the Court (no. 4571/04) the applicants complained that their relative ***Mr Sharpuddin Israilov*** had been abducted by state agents and "disappeared" and there had been no effective investigation into his disappearance or effective remedy at domestic level. On 23 April 2009 the ECtHR delivered its judgment on the case *Israilova and others v. Russia (4571/04)* in which it found violations of Articles 2, 3, 5, and 13 in conjunction with Article 2.

Establishing of the Applicant's son remains and failure to hand them to the Applicant's family

2. After the ECtHR decision became final, the investigation in the applicant's case was repeatedly resumed and suspended, without apparent success. In 2015, the applicant was informed that the remains of her son had been identified. From that moment on, the applicant repeatedly demanded that her son's remains be returned, that the results of the examinations carried out in the case be examined, and that fragments of clothing be identified. However her requests were disregarded.

3. The last time the applicant commented on the execution of this case was on August 24, 2016[1]. At that time, the applicant and her representative were awaiting a response to their application, which they filed with the Military Investigative Department for Southern Region based in Grozny (hereinafter – the *MIDSR-Grozny*) to conduct the identification procedure on the clothing found with the remains of her son with the applicant's participation and to hand over the remains.[2]

4. We would draw the Committee's attention to the confusing behavior of the investigating authorities which do not allow us to state with unequivocal certainty that the remains of the applicant's son were indeed "used up" during the expert examinations. Indeed, On 5 August 2015 *the MIDSR-Grozny* declined the counsel's request of 29 July 2015 to hand over the first applicant's son's remains citing that "all remains were used during the operation of the DNA

[1] Submission of RJI of 24 August 2016, on https://www.srji.org/upload/medialibrary/291/israilova-remains-august-2016.pdf
[2] At para 18 or the submission of 24 August 2016

test"[3]. On 9 October 2015, *the MIDSR-Grozny* ordered the commissioning of a *forensic examination* and passed on to the forensic laboratory bone remains, clothing and shoes of the "first corps".[4] On 22 August 2016 the counsel's request was refused. Citing the decision of 5 August 2015, *the MIDSR-Grozny claimed that nothing was left from the remains after the conduct of the commission's forensic examination,* [which it did not specify], and that therefore the decision of the investigative authorities not to hand over the remains to the applicant was lawful.[5]

5. In 2017 and 2018, counsel appealed without any success against the refusal of the investigator to allow counsel to get familiarized with the case materials without a right to make copies due to their classified status. It was argued that the limitation for the injured party to have copies of the criminal case materials does not guarantee effective participation and control over its conduct. On 6 December 2018 the decisions of the Grozny Garrison Court (the *GGC*), which upheld the restriction on the access to the case files, became final. Details of the appeals of the applicant and her representative in 2017 – 2018, as well as answers to them can be found in the Annex and the attachments to this submission.[6]

Comments

6. We would reiterate the conclusions that we set out in our report on this case of 24 August 2016 (paragraphs 19 - 25). Undoubtedly, in the context of the humanitarian part of the judgment in *Aslakhanova* (paras 223 – 228), the most important problem is the participation of the applicant and her representative in the procedures related to establishing of the remains of her son, as well as the issue of the handing out of the remains for subsequent burial. Therefore, unconvincing explanations by the investigating authorities that the remains of the applicant's son were used/expired during the expert examinations, as well as the factual refusal of the investigating authorities to conduct an examination of fragments of clothing with the participation of the applicant, which was earlier sanctioned by the investigation itself, are an insurmountable problem for the restitution of the applicant's rights.

Questions

1. What are the reasons for not conducting an examination of fragments of clothing involving the applicant and when do they foresee the possibility of conducting this test?
2. What is the reason for the inconsistences in the answers from the MIDSR-Grozny regarding whether the remains of the applicant's son were "used up" during the DNA test?

[3] Decision of the MIDSR-Grozny of 29 July 2015
[4] Decision of the MIDSR-Grozny of October 2015
[5] Decision of the MIDSR-Grozny of 22 August 2016
[6] Annex 1.