

**The Duty to Investigate under Article 2 ECHR:
Procedures and Challenges to Implementation in post-conflict Russia and Turkey**

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Abstract

This thesis explores the jurisprudential development of the procedural duty to investigate killings under Article 2 of the European Convention on Human Rights, since its first articulation in *McCann and Others v. The United Kingdom*, and its significance in the context of armed conflict. The main aim is to assess the obstacles to the execution of this duty at the level of the European Court of Human Rights and the Committee of Ministers and to its implementation at the domestic level in conflict-affected areas in Russia and Turkey. The thesis demonstrates that the legal frameworks currently in place display significant shortcomings that, if not adequately and timely remedied, shall continue to impede the European human rights system, as well as deny the remedying effect of ECtHR judgments to relatives of persons killed or disappeared persons during the military operations in Chechnya and South East Turkey.

Introduction

Over the course of the last two decades, the European Court of Human Rights (hereinafter: ECtHR) has progressively expanded its reading of the right to life under Article 2 of the European Convention on Human Rights and Fundamental Freedoms (hereinafter: ECHR). In the landmark judgment of *McCann v the United Kingdom*,¹ the Court established for the first time that, to make the right to life effective in practice, states are under an obligation to conduct an effective investigation into killings allegedly performed by their agents.² A failure to do so may amount to a violation of the then articulated implied procedural limb of Article 2.³ In subsequent judgments, the Court went on to establish the specified institutional and procedural requirements of an effective investigation into killings by agents of the state.⁴ Citing the margin of appreciation and the subsidiary role of the Court, some authors have raised questions into the speed and detail in which the Court continued to specify this essentially implied obligation.⁵

Nevertheless, applicants from conflict-affected areas in Turkey and Russia have successfully invoked this duty in Strasbourg. As a result of the protracted armed

¹ *McCann and Others v. The United Kingdom*, 18984/91 HUDOC (ECtHR (Grand Chamber) 1995).

² *Ibid.*, para. 162.

³ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 1950.

⁴ P. Leach, "Article 2 ECHR (the Right to Life) – Positive Obligations" (European Human Rights Advocacy Center), accessed March 17, 2014, <http://tinyurl.com/o48chde>; Alastair Mowbray, *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights* (Hart Publishing, 2004): 36-37.

⁵ Juliet Chevalier-Watts, "Effective Investigations under Article 2 of the European Convention on Human Rights: Securing the Right to Life or an Onerous Burden on a State?," *European Journal of International Law* 21, no. 3 (2010): 701–21.

Juliet Chevalier-Watts, "The Phenomena of Enforced Disappearances in Turkey and Chechnya: Strasbourg's Noble Cause?," *Human Rights Review* 11, no. 4 (2010): 469–89.

Juliet Chevalier-Watts, "Military Operations and the Right to Life: The Uneasy Bedfellows," *Hum. Rts. & Int'l Legal Discourse* 5 (2011): 207.

conflicts between state security agents and local insurgency units, in Turkey between 1984 and 1999 and in Russia between 1999 and 2009, the local populations suffered a plethora of human rights violations, including enforced disappearances, extrajudicial killings and aerial bombings.⁶

However, the envisaged practical effect that this obligation would have on the right to life in terms of preventing impunity and ensuring accountability, as well as its potential remedial effect for applicants, has remained limited at best. Despite the dynamic interpretation of Article 2, the Court is reluctant to provide remedies beyond monetary compensation, as the execution of its judgments is within the capacity of the Committee of Ministers (the political body of the Council of Europe; hereinafter: CoM) and the relevant member state, respectively.

This makes that a procedure before the European Court of Human Rights does not end once a judgment becomes final. From this point onwards the Court is no longer involved, as it is the responsibility of the Committee of Ministers to oversee the execution of judgments by issuing general and individual measures to be taken by the member state and monitor the progress made in implementing the measures.⁷ Human rights practitioners as well as legal scholars have emphasized the indispensability of implementation of judgments in achieving justice beyond ‘just satisfaction’, in particular with regards to the requirement of an effective investigation.⁸ Advocacy

⁶ Aksoy v. Turkey, 21987/93 HUDOC (ECtHR (Chamber) 1996); Bazorkina v. Russia, 69481/01 HUDOC (ECtHR (First Section) 2006); Isayeva, Yusupova and Bazayeva v. Russia, 57947/00, 57948/00 and 57949/00 HUDOC (ECtHR (First Section) 2005); Kaya v. Turkey, 22729/93 HUDOC (ECtHR (Chamber) 1998); Luluyev and Others v. Russia, 69480/01 HUDOC (ECtHR 2006).

⁷ Committee of Ministers, *Supervision of the Execution of Judgments of the European Court of Human Rights*, Annual Report, 2007, http://www.coe.int/t/dghl/monitoring/execution/Source/Publications/CM_annreport2007_en.pdf.

⁸ J. Buchanan, “*Who Will Tell Me What Happened to My Son?*”: *Russia’s Implementation of European Court of Human Rights Judgments on Chechnya* (Human Rights Watch, 2009); K. Koroteev, “Legal Remedies for Human Rights Violations in the Armed Conflict in Chechnya: The Approach of the European Court of Human Rights in Context,” *Journal of International Humanitarian Legal Studies* 1, no. 2 (2010): 275–303; J. Lapitskaya, “ECHR, Russia, and Chechnya: Two Is Not Company and Three Is Definitely a Crowd,” *NYUJ Int’l L. & Pol.* 43 (2010): 479.

groups have voiced concerns regarding the lack of access to case files, impunity and the approaching statute of limitations that impede the remedial value of ECtHR judgments.⁹

Scholars and advocacy groups alike have begun to raise the issue of non-implementation of ECtHR judgments in Chechnya and Turkey in recent years.¹⁰ Litigation NGOs have recently readjusted their strategies to include monitoring implementation and petitioning the Committee of Ministers.¹¹ However, literature has tended to focus on a political perspective of implementation, the role of NGOs in implementation, and remedies.¹² Little scholarly attention has been devoted to the process of implementing the investigation requirements in particular, as outlined by the Court.

This thesis seeks to fill that gap in the existing literature by examining the effectiveness of the current legal framework for implementation of ECtHR judgments at the level of the current execution supervisory mechanism, as well as in Russia and Turkey respectively with regards to the enforcement of the positive obligation to conduct an effective investigation into enforced disappearance cases under Article 2 ECHR. It will be demonstrated that the legal frameworks currently in place display significant shortcomings that, if not adequately and timely remedied, shall continue to

⁹ Stichting Russian Justice Initiative, “European Court Criticizes Russia for Systemic Non-Investigation of Disappearances in Chechnya and Recommends Measures to Address Continuing Violations,” December 18, 2012, <http://srji.org/en/news/2012/12/115/>.

¹⁰ Vanessa Kogan, “Protecting Human Rights Defenders in the North Caucasus: Reflections on Developments from 2009 to the Present,” *Journal of Human Rights Practice* 5, no. 3 (November 1, 2013): 500–511, doi:10.1093/jhuman/hut015;

L. M. I. Sundstrom, “Advocacy beyond Litigation: Examining Russian NGO Efforts on Implementation of European Court of Human Rights Judgments,” *Communist and Post-Communist Studies*, 2012, <http://www.sciencedirect.com/science/article/pii/S0967067X12000384>;

Freek van der Vet, “Transitional Justice in Chechnya: NGO Political Advocacy for Implementing Chechen Judgments of the European Court of Human Rights,” *Review of Central and East European Law* 38, no. 3–4 (2013): 363–88.

¹¹ Sundstrom, “Advocacy beyond Litigation.”

¹² Koroteev, “Legal Remedies for Human Rights Violations in the Armed Conflict in Chechnya.”; Lapitskaya, “ECHR, Russia, and Chechnya.”; Sundstrom, “Advocacy beyond Litigation.”; Freek van der Vet, “Seeking Life, Finding Justice: Russian NGO Litigation and Chechen Disappearances before the European Court of Human Rights,” *Human Rights Review* 13, no. 3 (September 1, 2012): 303–325.

impede the European human rights system, as well as deny the remedying effect of ECtHR judgments to relatives of killed or disappeared persons.

The first chapter follows the jurisprudential development of the duty to investigate under Article 2. It argues that despite valid concerns into its compatibility with the margin of appreciation in military operations, the significance for this obligation is aggravated in the context of armed conflict. Furthermore, the second chapter explores the Council of Europe mechanisms for implementation of judgments and addresses their shortcomings. In particular, it contrasts the limited approach to remedies of the European Court with the more comprehensive approach adopted by the Inter-American Court of Human Rights. The third and final chapter compares the domestic implementation mechanisms adopted by Russia and Turkey and assesses the challenges that remain with regards to effective investigations.

Chapter I - The duty to investigate under Article 2 European Convention on Human Rights in the context of armed conflict

Article 2 - Right to life

“Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”¹³

Over the years, the European Court of Human Rights has progressively expanded the scope of the right to life under Article 2 ECHR.¹⁴ Originally this provision contained only a substantive aspect, creating a negative obligation for states parties to the Convention to refrain from unlawful and arbitrary killings and outlining three exceptions that under circumstances may serve to justify the use of lethal force. However, in the Court’s case law, the meaning of this provision has increasingly been interpreted to also encompass positive obligations that require action on the part of the state to ensure the effective protection of the right to life. One of these positive obligations, and the focus of this research, was formulated in the landmark Grand Chamber judgment *McCann and Others v The United Kingdom*¹⁵ in the context of a joint Spanish-British counterterrorism operation in Gibraltar resulting in the killing of three suspected IRA members. In its dictum to the case, the Court introduced a procedural aspect to the right to life, placing a positive duty upon the state to conduct an effective investigation into killings as a result of lethal force that is in contravention to the Convention.¹⁶ Although the Court did not find a violation of this

¹³ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*.

¹⁴ Alastair Mowbray, “Duties of Investigation under the European Convention on Human Rights,” *International and Comparative Law Quarterly*, 2002, 437–48.

¹⁵ *McCann and Others v. The United Kingdom*, 18984/91 HUDOC (ECtHR (Grand Chamber) 1995).

¹⁶ Meaning that the use of force is not justified by one or more of the exceptions stipulated under Article 2(2). European Court of Human Rights, “Factsheet - Right to Life” (Council of Europe, June

obligation in the case of *McCann*, it did lay the groundwork for the further development of this obligation in subsequent case law.

The following section examines the evolution of the duty to investigate since its first formulation in *McCann*. It is then followed by an assessment of the suggested justifications and criticisms for the duty to investigate. The final section presents arguments in support of the duty to investigate in the context of armed conflict.

Standards of jurisprudence

The Court in *McCann* phrased the duty to investigate in very general terms, noting that without a “procedure for reviewing the lawfulness of the use of lethal force by State authorities” the prohibition of arbitrary killings by the State would be rendered ineffective in practice.¹⁷ The Court recognized in Article 2 an implied obligation to conduct an effective official investigation when use of force by the state resulted in the loss of life. However, the Court declined to elaborate on the required form of the investigation, and on the conditions under which it should be triggered.¹⁸ Juliet Chevalier-Watts has suggested a reason for this reluctance: the lack of a basis in the Court’s previous case-law, as well as the novelty of an implied obligation of effective investigation may have prompted the Court to observe a wider margin of appreciation and as of yet refrain from further defining and imposing this obligation.¹⁹

Chevalier-Watts further suggests a reflection herein of the Court’s struggle to balance states’ right to conduct military operations and the individual’s right to life.²⁰

2013), http://www.echr.coe.int/Documents/FS_Life_ENG.pdf; Mowbray, “Duties of Investigation under the European Convention on Human Rights,” 437.

¹⁷ Chevalier-Watts, “Effective Investigations under Article 2 of the European Convention on Human Rights,” citing *McCann and Others v. The United Kingdom*, 18984/91 HUDOC (ECtHR (Grand Chamber) 1995), para. 161.

¹⁸ *McCann and Others v. The United Kingdom*, 18984/91 HUDOC (ECtHR (Grand Chamber) 1995), para. 162.

¹⁹ Chevalier-Watts, “Effective Investigations under Article 2 of the European Convention on Human Rights,” 705.

²⁰ Chevalier-Watts, “Military Operations and the Right to Life,” 226.

The first argument presents a very legitimate consideration, as the balancing of the level of scrutiny with the margin of appreciation is indeed a recurring consideration in the Court's case law. However, it is unclear from the author's second argument how exactly military operations may be restricted by an *ex post facto* obligation to conduct an effective investigation into deaths resulting from its use of force.²¹ By contrast, the Court's scrutiny of the planning and control of the military operation, a process that that may involve restrictions on the conduct of such operations, is carried out under the substantive limb of Article 2.

Despite the Court's initial apprehension, in subsequent case law the duty to investigate was progressively expanded. First of all, the situations to which this duty applies were extended. The Court expanded its case law by repeatedly stating that it is not necessary to establish beyond reasonable doubt the involvement of a State agent in a killing to give rise to the duty to investigate.²² The mere knowledge of state authorities of the existence of a killing suffices to trigger this obligation, without a need for a formal complaint by the next of kin.²³ In addition, the Court laid the groundwork for the future scrutiny of investigations into enforced disappearances under Article 2 in *Cyprus v. Turkey*, permitting the procedural obligation to arise when a person was last seen in custody of state agents under life-threatening conditions.²⁴ Secondly, despite explicitly declining in *McCann* to elaborate on "what form [...] an investigation should take and under what conditions it should be

²¹ Douwe Korff, "The Right to Life: A Guide to the Implementation of Article 2 of the European Convention on Human Rights," *Council of Europe-Human Rights Handbook*, no. 8 (2006): 35, <http://tinyurl.com/qc5xjhd>.

²² Mowbray, "Duties of Investigation under the European Convention on Human Rights," citing *Ergi v. Turkey*, 23818/94 HUDOC (ECtHR (Chamber) 1998).

²³ D. Harris, K. O'Boyle, and Colin Warbrick, "Law of the European Convention on Human Rights," *London, Dublin, Edinburgh*, 1995; *Ergi v. Turkey*, 23818/94 HUDOC (ECtHR (Chamber) 1998), para. 82.

²⁴ *Cyprus v. Turkey*, 25781/94 HUDOC (ECtHR (Grand Chamber) 2001). Harris, O'Boyle, and Warbrick, "Law of the European Convention on Human Rights," 39. Mowbray, "Duties of Investigation under the European Convention on Human Rights," 437.

conducted”,²⁵ the elements that in the Court’s view constitute an effective investigation soon thereafter came to be defined and expanded in cases emanating from the conflicts in Northern Ireland and South East Turkey.²⁶

The institutional and procedural requirements for an investigation to be considered effective for the purposes of Article 2 are comprehensively outlined in *Kelly v the United Kingdom*.²⁷ As detailed by Mowbray, these include the strict institutional and practical independence of investigators from the state agents associated with the killing; the undertaking of the necessary investigative steps to secure evidence, such as witness testimony, forensic evidence and autopsy results, that enable the investigation to establish the cause and circumstances of death as well as identifying those responsible; promptness; openness to public scrutiny and involvement of the next of kin.²⁸ According to the Court, these requirements serve to ensure public confidence in the rule of law, prevent the appearance of tolerance of unlawful acts and deter state agents from abuse of power.²⁹

It is arguably remarkable what development the duty to investigate has undergone in the Court’s jurisprudence, given the Court’s initial rejection to provide a definition. In doing so, the Court has also exposed itself to potential criticism by allowing such detailed expansion of a merely implicit obligation. Therefore it is worthwhile to assess the justifications suggested by the Court for the introduction of such an obligation and to identify potential criticisms, before proceeding to assess the significance of a duty to investigate in the context of armed conflict.

²⁵ *McCann and Others v. The United Kingdom*, 18984/91 HUDOC (ECtHR (Grand Chamber) 1995): para. 162.

²⁶ *Hugh Jordan v. the United Kingdom*, 24746/94 HUDOC (ECtHR (Third Section) 2001); *Kaya v. Turkey*, 22729/93 HUDOC (ECtHR 1998).

²⁷ *Kelly and Others v. the United Kingdom*, 30054/96 HUDOC (ECtHR (Third Section) 2001).

²⁸ Mowbray, *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights*, 31-35.

²⁹ Harris, O’Boyle, and Warbrick, “Law of the European Convention on Human Rights,” 39.

Analysis of justifications and criticism

The Court has suggested three justifications for the introduction of a positive procedural obligation under Article 2. First of all, raising a textual argument, it found that the duty to investigate Article 2 violations flows from the combined reading Article 1, of pursuant to which a state is obliged to ‘secure’ Convention rights to all persons within its jurisdiction.³⁰ Secondly, basing itself on the teleological effect of the Convention, the Court has argued that an obligation to investigate gives practical effect to the prohibition on arbitrary deprivation of life, and secures in practice the implementation of domestic laws that protect the right to life.³¹ As such, the duty to investigate ensures that rights are not theoretical, but practical and effective.³² Lastly, according to the Court, the duty to investigate ensures accountability of those responsible for unlawful killings, thus counteracting impunity. In brief: the creation of the duty to investigate fulfills the need for “the practical effectiveness on the domestic level of Article 2’s limitations on the use of lethal force.”³³

Academic authors have brought additional arguments to the fore. Some have suggested that positive obligations are partly justified by the need for effective domestic remedies.³⁴ This is a valid point, given that aside from compensation, particularly grave violations of human rights can beg the need for additional of remedies, such as retribution, deterrence and reconciliatory measures, for all of which

³⁰ Chevalier-Watts, “Effective Investigations under Article 2 of the European Convention on Human Rights.”

³¹ Harris, O’Boyle, and Warbrick, “Law of the European Convention on Human Rights,” 40.

³² Mowbray, *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights*, 29 citing *Ilhan v. Turkey*, 22277/93 HUDOC (ECtHR (Grand Chamber) 2000), para. 91.

³³ Mowbray, *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights*: 29.

³⁴ *Ibid.*, 5, referring to Keir Starmer.

an effective investigation serves as a stepping-stone.³⁵ An ineffective investigation, by contrast, can undermine the opportunity to seek further remedies. However, the remedy argument also points to the overlap between the right to an effective remedy under Article 13 and the remedial value of an effective investigation under Article 2, the boundaries of which have not yet been clearly defined in case law. An effective investigation can also be called for under Article 13, making this requirement under Article 2 appear potentially superfluous.³⁶ According to Harris *et al.*, the Court views Article 13 as calling for a broader range of remedies of which the effective investigation can be one. Then again, the Court is reluctant to examine Article 13 allegations when it finds a procedural breach of Article 2.³⁷ This points to a lack of clarity in the existing case law with regards to the remedial value of an effective investigation, as the Court has also made clear that the requirement to investigate is also implicit in the notion of ‘effective remedy’ under Article 13.³⁸ Whether there is any difference in character between the investigation duties under Articles 2 and 13 remains unclear.

Alistair Mowbray additionally presents an argument from a practical viewpoint, also raised by Harris *et al.*, suggesting that the duty to investigate flows from the pragmatic need to maximize the use of the Court’s scarce resources in light of the current case backlog; a context in which the Court cannot afford time-consuming fact-finding missions and thus places the burden with the state.³⁹ However, this is a speculative explanation, not a legal one, and as such cannot be

³⁵ Types of remedies as identified in Dinah Shelton, *Remedies in International Human Rights Law* (Oxford University Press, 1999): 12.

³⁶ Harris, O’Boyle, and Warbrick, “Law of the European Convention on Human Rights,” 32.

³⁷ *Ibid.*

³⁸ *Aksoy v. Turkey*, 21987/93 HUDOC (ECtHR (Chamber) 1996): para. 98.

³⁹ Mowbray, *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights*: 30. Harris, O’Boyle, and Warbrick, “Law of the European Convention on Human Rights.”

confirmed or justified by developing case law. Nevertheless, it is interesting due to its suggestion that there may be more to the Court's reasoning than judicial considerations; it implies that self-preservation may serve as a motive to create additional positive obligations and place an increasing burden on the state. On the whole, Mowbray seems to welcome the widening approach by the Court when it comes to investigations under Article 2, but does not consider other viewpoints besides the Court's, namely those of the state and the victim or his next of kin.

By contrast, Juliet Chevalier-Watts raises a legitimate question whether the expanding detail in which the Court outlines the effective investigation obligation places not too onerous a burden on a state.⁴⁰ She particularly highlights the high scrutiny of the investigation in cases concerning the armed conflict in Chechnya between 1999 and 2009, where the Court comments on very specific aspects of the investigation under Article 2. For example, it urges the state to take account of the mental state of victims in communicating with them, which has never previously featured in the Court's jurisprudence, and criticizes the results of an investigation, while this obligation has always been described as a duty of means, not results.⁴¹ Nevertheless, she finds that the Court does in fact manage to balance the rights of the state with the right to life of the individual, and that any imbalance arising between these rights can only be justified if settled in favor of the right to life, as this is the most fundamental right underpinning all others, whose value rests on its enforceability.⁴² On the whole, Chevalier-Watts seems to suggest that the Court does in fact manage to find a balance, in spite of scrutinizing military operations that can be construed as being within the sovereign realm of the state. This line of

⁴⁰ Chevalier-Watts, "Effective Investigations under Article 2 of the European Convention on Human Rights."

⁴¹ *Ibid.*, 717; Chevalier-Watts, "Military Operations and the Right to Life," 228.

⁴² Chevalier-Watts, "Military Operations and the Right to Life," 232.

argumentation is convincing, for it takes into account both the viewpoints of the state and the Court before reaching the conclusion that the Court's emphasis on the right to life is indeed justified. This thesis would like to propose additional arguments in support of the duty to investigate that suggest a reversed premise: that the duty to investigate is justified not despite the context of armed conflict, but because of it.

The context of armed conflict

As already suggested by Chevalier-Watts, the effective investigation requirement merits special attention in the context of violent armed conflict, particularly as applied to the scale in which it took place in Turkey (1984-1999) and Russia (1999-2009).⁴³

The situations in both countries are somewhat similar: Turkey took up arms against an armed insurgency group, the Kurdistan Workers' Party (PKK), that sought autonomy in the Turkish South Eastern flank, while Russia in 1999 set out to regain control over Chechnya, a republic that had *de facto* been independent since the dissolution of the Soviet Union in 1991. Both conflicts were characterized by a high number of right to life violations against the civilian population, including arbitrary executions, enforced disappearances and aerial bombings at the hands of the national armed forces.

Three considerations particularly highlight the special role of the duty to investigate in the context of armed conflict and its significance therein. First of all, the duty to investigate, although not explicit in the Convention, is not some jurisprudential invention of the Court, but finds precedents and support in other human rights instruments.⁴⁴ Before the European Court coined this obligation in 1995 in *McCann*, it was recognized by the Inter-American Court of Human Rights in the

⁴³ Ibid.

⁴⁴ Roe Ariav, "National Investigations of Human Rights Between National and International Law.," *Goettingen Journal of International Law* 4, no. 3 (2012): p. 856.

*Velasquez Rodriquez v Honduras*⁴⁵ case from 1988. Just as the Kurdish and Russian cases now decided by the ECtHR, this was a case in the context of armed conflict. In 1982, the duty to investigate was established in a complaint before the Human Rights Committee with regards to all allegations of violations of the International Covenant on Civil and Political Rights.⁴⁶ It has further been laid down in the Convention against Torture and recognized by the United Nations Committee on the Elimination of Racial Discrimination, the High Commissioner for Human Rights and ECOSOC.⁴⁷ There appears to be a consensus in international human rights law that points towards a duty to investigate, in particular in the context of armed conflict, as the above-mentioned instruments prescribe investigations with regards to torture, enforced disappearances and arbitrary executions; violations that tend to occur in the context of armed conflict.

Secondly, a case can be made for a duty to investigate corresponding to the duty to prosecute war crimes under the Geneva Conventions and the Protocols and Commentary thereto, as has convincingly been argued by Michael N. Schmitt.⁴⁸ However, the enforceability of this is problematic. The applicability of international humanitarian law is often disputed, either due to the uncertainty regarding the existence of an armed conflict in legal terms, as was the case in Turkey, or, in the absence of a body mandated with determining the existence of an armed conflict, due to denial by states of the existence of such a conflict to avoid obligations under international humanitarian law.⁴⁹ As a further complication, neither Turkey nor

⁴⁵ Velásquez-Rodríguez v. Honduras, Series C No. 4 (Inter-Am. Ct. H. R. 1988).

⁴⁶ Ariav, "National Investigations of Human Rights Between National and International Law," 857.

⁴⁷ Idem.

⁴⁸ Michael N. Schmitt, "Investigating Violations of International Law in Armed Conflict," in *Essays on Law and War at the Fault Lines* (Springer, 2012), 587–635, http://link.springer.com/chapter/10.1007/978-90-6704-740-1_12.

⁴⁹ Daniel Moeckli et al., *International Human Rights Law* (Oxford University Press, 2010): 526-527.

Russia is party to any other mechanisms that can enforce this obligation.⁵⁰ Neither has recognized jurisdiction of the International Criminal Court and no ad hoc tribunals are forthcoming. In fact, a non-governmental organization in Russia that published a monograph calling for an international war crimes tribunal was deemed extremist and banned from operating in Russia.⁵¹ In such a context, the ECtHR is arguably the only way to assess the lawfulness of acts committed in armed conflict. By reading the procedural obligation into the convention, the Court has created a sideway to seek accountability for war crimes, even for states that have not recognized tribunals and even if war crimes have not been defined as such. Accordingly, a state can still be held to account even in situations where the rules of international humanitarian law are not found to apply or their application is disputed.⁵² In the context of military operations, ECtHR can thus fulfill this function, albeit through the application of human rights law.

Thirdly, the post-conflict situations in Turkey and Russia may arguably necessitate a process of some form of reconciliation with a past of grave human rights violations, often referred to as transitional justice, to which the European Court has an important contribution to make in terms of providing justice, truth-finding and advancing accountability of perpetrators for which the duty to investigate serves as a stepping-stone.⁵³ There is no consensus in academia whether and how these processes in fact facilitate reconciliation, but an analysis of the academic debate on transitional justice is beyond the scope of this thesis.⁵⁴ This is merely to stress that the duty to investigate deaths as a result of military operations may be informed through a

⁵⁰ Ibid., 529.

⁵¹ “Dmitrievsky Is Suspected of Extremism - HRO.org in English,” accessed July 6, 2013, <http://hro.rightsinrussia.info/archive/anti-extremism/dmitrievsky/suspected>.

⁵² Cordula Droegge, “Interplay between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict, The,” *Isr. L. Rev.* 40 (2007): 350.

⁵³ Definition referred to in Van der Vet, “Transitional Justice in Chechnya,” 369.

⁵⁴ Ibid.

broader set of arguments that reach beyond the discourse on the margin of appreciation and provide additional support for this implied obligation. In a context where governments are reluctant to investigate and to ensure accountability of state agents responsible for unlawful deaths, the Court has an important duty to fulfill and it is thus not at all surprising that the Court heightens the level of scrutiny and attributes less weight to the margin of appreciation.

Conclusion

The procedural duty under Article 2 has undergone a steady evolution since its inception in *McCann*, with the aim of making the right to life practical and effective by seeking accountability of state agents. Despite concerns with regards to the level of detail this duty has attained in relation to the margin of appreciation, its significance in the context of military operations cannot be underestimated. This chapter argues that this duty is justified not despite the context of armed conflict, but precisely because of it. Particularly when the application of international humanitarian law is contested, international tribunals lack jurisdiction and states are reluctant to investigate past abuses, the European Court has a unique role to play in establishing the truth, seeking accountability and offering a remedy to the victims.

Chapter II – The execution of Kurdish and Chechen judgments: translating the duty to investigate into measures

Article 46(2) – Binding force and execution of judgments

“The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.”⁵⁵

In the European Court’s jurisprudence, the duty to investigate has been awarded a pivotal role in safeguarding the right to life and making it practical and effective. This implied duty has been justified through textual, teleological and academic arguments, even when this has been difficult to reconcile with the margin of appreciation. In a post-conflict setting it has an aggravated significance for truth seeking and preventing impunity. However, there are challenges to the implementation of this duty from within and without the Court. Not only has the Court taken a peculiar approach signifying a discrepancy between the value attached to the duty to investigate and its own unwillingness to order specific steps for the execution of judgments, but it is also questionable whether the Committee of Ministers is an effective body to monitor the oversight of the execution of judgments.

This chapter focuses on the Council of Europe’s mechanisms to ensure the execution of the Court’s judgments, with the aim to explore the challenges that arise over the course of the execution process, at the level of the Court and the Committee of Ministers. Following a brief overview, the second section raises questions about the approach of the Court in emphasizing the duty to investigate while refraining from ordering non-monetary remedies such as the reopening of investigations. It further contrasts this approach with that of the Inter-American Court of Human Rights. The

⁵⁵ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*.

following section critically analyzes the Committee of Ministers as an effective body for the supervision of the execution of judgments and highlights its shortcomings when comparing the execution of Kurdish and Chechen case groups.

Overview

The primary remedy that the European Court offers is declaratory relief through the establishment of the facts and the finding of a violation. In addition, it can make monetary “just satisfaction” awards under Article 41 of the Convention for pecuniary and non-pecuniary damages suffered by the applicant.⁵⁶ The Court does not oversee the execution of its judgments. A judgment becomes final three months after the ruling if neither of the parties seeks appeal before the Grand Chamber. Pursuant to Article 46(2) ECHR, it is then transferred to the Committee of Ministers; the political body of the Council of Europe that is mandated with the supervision of the execution of judgments and which may suggest general and individual measures to be undertaken by a respondent state to implement the judgment within its jurisdiction.⁵⁷

The implementation of judgments is critical to avoid repetitive complaints before the Court, to ensure a remedy for applicants who have been denied this domestically, and improve the domestic protection of rights guaranteed by the Convention. States are therefore expected to implement general measures in order to prevent repetitive violations in the future by fixing the existing shortcomings in the domestic system that gave rise to a violation in the first place. Additionally, individual measures serve to remedy a violation in a concrete case by providing *restitutio in integrum* to the applicants, as far as this is possible.⁵⁸ However, there are impediments

⁵⁶ Koroteev, “Legal Remedies for Human Rights Violations in the Armed Conflict in Chechnya,” 279; Paul L. McKaskle, “European Court of Human Rights: What It Is, How It Works, and Its Future, The,” *USFL Rev.* 40 (2005): 31.

⁵⁷ Koroteev, “Legal Remedies for Human Rights Violations in the Armed Conflict in Chechnya.”

⁵⁸ *Ibid.*, 299.

to the effective execution of judgments arising on the part of the Court, as well as the Committee of Ministers.

The European Court of Human Rights: limited remedies and instructions

Scholars and human rights practitioners have noted with concern that the remedies ordered by the Court are insufficient in the context of right to life violations in armed conflict.⁵⁹ The European Court does not order new investigations to be undertaken as part of ‘just satisfaction’, while in right to life cases in the context of armed conflict this is arguably the only way to provide a remedy to victims.⁶⁰ According to Koroteev, while the Court usually leaves execution of judgments to the discretion of states and Committee of Ministers, it has occasionally issued orders as part of its judgments to instruct them.⁶¹

However, when it comes to the duty to investigate “the Court has expressly refused to oblige the Government to conduct new investigations in conformity with the Convention requirements,”⁶² arguing that “the investigation had already been undermined at the early stages by the domestic authorities’ failure to take essential investigative measures.”⁶³ The Court further cast its doubts on whether a new investigation could provide *restitutio in integrum*.⁶⁴ These arguments are hardly satisfactory. By refusing to order fresh investigations, the Court negates its own arguments as to the importance of effective investigations under Article 2. It further

⁵⁹ Ibid.; Irum Taqi, “Adjudicating Disappearance Cases in Turkey: An Argument for Adopting the Inter-American Court of Human Rights’ Approach,” *Fordham Int’l LJ* 24 (2000): 940.

⁶⁰ Thomas Antkowiak, “Remedial Approaches to Human Rights Violations: The Inter-American Court of Human Rights and Beyond,” *Columbia Journal of Transnational Law* 46, no. 2 (2008): 355, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1329848;

P. Leach, “The Chechen Conflict: Analysing the Oversight of the European Court of Human Rights,” *European Human Rights Law Review* 6 (2008): 2008–2732.

⁶¹ Koroteev, “Legal Remedies for Human Rights Violations in the Armed Conflict in Chechnya,” 286–287.

⁶² Ibid., 290.

⁶³ Ibid., 290; referring to *Kukayev v. Russia*, 29361/02 HUDOC (ECtHR (Fifth Section) 2007).

⁶⁴ Koroteev, “Legal Remedies for Human Rights Violations in the Armed Conflict in Chechnya,” 290.

validates the approach of the government to investigations: the ineffectiveness of the investigation, following the Court's logic, basically renders a fresh investigation unnecessary, meaning that conducting defective investigations and merely paying compensation to the victims can serve to circumvent accountability. Ineffective investigations will thus lead to a declared violation and the payment of a monetary 'fine'. This approach to remedies is in stark contrast with the gravity attached by the Court to the procedural obligation, which is to ensure that the protections of Article 2 be practical and effective and not merely theoretical.⁶⁵

Moreover, the European Court's approach is often contrasted with that of the Inter-American Court of Human Rights, which employs a broad range of non-monetary measures to remedy violations of the right to life.⁶⁶ Alongside compensation in right to life cases, the Inter-American Court can order a state to start new investigations and prosecutions, issue public apologies, search for the remains of the disappeared and return them to their families and establish symbols in honor of the victims.⁶⁷ While these remedial measures can be compared with the individual measures under the Strasbourg system, the Inter-American Court can also provide for what can be construed as general measures. These have included ordering legislative and policy reform, as well as human rights training for law enforcement and military personnel.⁶⁸

Legal scholars and human rights practitioners have advocated for the Inter-American approach to non-monetary remedies to be adopted by the European Court with regards to both Kurdish and Chechen cases, as it sets high standards for redress

⁶⁵ Mowbray, *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights*: 29.

⁶⁶ Antkowiak, "Remedial Approaches to Human Rights Violations," 355; Irum Taqi, "Adjudicating Disappearance Cases in Turkey: An Argument for Adopting the Inter-American Court of Human Rights' Approach," *Fordham Int'l LJ* 24 (2000): 956.

⁶⁷ Koroteev, "Legal Remedies for Human Rights Violations in the Armed Conflict in Chechnya," 297.

⁶⁸ Antkowiak, "Remedial Approaches to Human Rights Violations," 382-384.

and embraces a victim-oriented approach.⁶⁹ This is not to say that this approach is infallible; as with the European system, its effectiveness depends on the implementation by respondent states. However, it has been observed that the compliance with Inter-American judgments has in general been “relatively consistent,” but at the same time, its orders for effective investigations, and hence prosecution, have lacked compliance.⁷⁰

Therefore, the question remains whether the European approach to the investigation requirement would be more effective if the remedial model of the Inter-American system were applied. Under both systems the obligation to investigate right to life cases is issued in any case: in the Inter-American system by the Court, and in the European system by the Committee of Ministers as an individual measure. Would it make much difference in compliance whether it is the Court or the Committee of Ministers that orders fresh investigations? In any case it would send a strong signal that the victim is central to the Courts considerations and would streamline the Courts declared dedication for the effective investigation duty with its just satisfaction awards. Moreover, it has the potential to make a fundamental difference for the Committee of Minister’s approach to the execution of judgments. Equipped with specific instructions from the Court, it has the judicial backing to require more far-reaching measures from member states than currently is the case. This, in turn, affects the efficiency in implementation and has the potential to decrease repeat violations. However, such an approach by the Court would naturally raise questions as to its subsidiary role and would require it to tread the line between the realms of judicial remedies and policy issues.

⁶⁹ Koroteev, “Legal Remedies for Human Rights Violations in the Armed Conflict in Chechnya.”; Leach, “The Chechen Conflict.”; Taqi, “Adjudicating Disappearance Cases in Turkey.”

⁷⁰ Koroteev, “Legal Remedies for Human Rights Violations in the Armed Conflict in Chechnya,” 298.

On occasion, the European Court does order non-monetary measures to be taken, but typically this is limited to the pilot judgment procedure and concerns only those violations that have been deemed of a systemic nature by the Court.⁷¹ Human rights organizations have petitioned the Court to declare the non-investigation of enforced disappearances as being of a systemic nature.⁷² Although not a pilot judgment, the Court has taken the unusual approach in *Aslakhanova and Others v Russia*,⁷³ where it stipulated specific measures with regards to investigations and that “a comprehensive and time-bound strategy was to be prepared by Russia and submitted to the Committee of Ministers without delay for the supervision of its implementation.”⁷⁴ Typically, however, the duty to investigate is suggested by the Committee of Ministers as part of the individual measures that a respondent state has to implement following a judgment.

The Committee of Ministers: oversight of general and individual measures

The Committee of Ministers receives a judgment once it has become final. It then invites the respondent state to propose an action plan for the implementation of the judgment, the progress of which is supervised during meetings.⁷⁵ Since 2011, cases are subdivided between a standard procedure and an enhanced procedure. The latter concerns judgments that require urgent individual measures, reveal systemic problems or result from a pilot judgment or an inter-state complaint.⁷⁶ The supervision process

⁷¹ Ibid.

⁷² *Aslakhanova and Others v. Russia*, 2944/06, 8300/07, 50184/07, 332/08, 42509/10 HUDOC (ECtHR (First Section) 2012): para. 160.

⁷³ Ibid.

⁷⁴ Stichting Russian Justice Initiative, “European Court Criticizes Russia for Systemic Non-Investigation of Disappearances in Chechnya and Recommends Measures to Address Continuing Violations.”

⁷⁵ Committee of Ministers, *Supervision of the Execution of Judgments of the European Court of Human Rights*: 16.

⁷⁶ Committee of Ministers, *Procedures and Working Methods*, March 28, 2014: 17, http://www.coe.int/T/CM/iguideCM_en.pdf.

lasts for the duration of the implementation of the judgment and is open for input from applicants and NGOs.

Since the entry into force of Protocol 14⁷⁷ in 2010, the Committee of Ministers has several tools at its disposal to enhance the supervision process.⁷⁸ Under Article 46(3) ECHR the Committee can request an interpretation of a judgment from the Court that can serve to assist the supervision process in determining a suitable solution for the domestic shortcomings that prevented the state from meeting its Convention obligations.⁷⁹ Pursuant to Article 46(4), the Committee can also seek infringement proceedings, meaning that a judgment is referred back to the Court to determine whether a respondent state has complied with its obligations.⁸⁰ Both procedures require a two-thirds majority within the Committee of Ministers. Because the Committee of Ministers is not a judicial body, but rather a diplomatic one, such tools are not frequently employed.

For the purposes of the supervision of their execution cases are grouped geographically and thematically. The Chechen and Kurdish cases concerning ineffective investigations have been bundled in the *Khashiyev and Akayeva* group and the *Aksoy* group, respectively.⁸¹ As of 2012, the former comprises 192 cases and the

Committee of Ministers, "Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights" (Council of Europe), accessed March 30, 2014, http://www.coe.int/t/dghl/monitoring/execution/Presentation/Pres_Exec_en.asp.

⁷⁷ Council of Europe, *Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms*, 2010.

⁷⁸ Antoine Buyse, "ECHR BLOG: Protocol 14 Enters into Force," accessed March 23, 2014, <http://echrblog.blogspot.hu/2010/06/protocol-14-enters-into-force.html>.

⁷⁹ L. F. Zwaak, "The Role of the Council of Europe and Its Committee of Ministers: Analysing the Efficiency of Measures Taken under Article 46 (2) of the ECHR," 2008: 2, <http://igitur-archive.library.uu.nl/law/2009-0304-201629/UUindex.html>.

⁸⁰ Committee of Ministers, *Rules of the Committee of Ministers for the Supervision of the Execution of Judgments and of the Terms of Friendly Settlements*, 2006, <http://wcd.coe.int/ViewDoc.jsp?id=999329&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

⁸¹ Committee of Ministers, *Supervision of the Execution of Judgments of the European Court of Human Rights*, Annual Report, 2012, http://www.coe.int/t/dghl/monitoring/execution/Source/Publications/CM_annreport2012_en.pdf.

latter 85, but individual cases from the groups are closed on a rolling basis by Committee of Ministers resolution.⁸²

The Committee of Ministers solicits action plans on implementation from the respondent states and publishes its findings on implementation progress in an annual report. With regards to the *Aksoy* group a total of four Interim Resolutions were adopted over the period between 1999 and 2008.⁸³ It appears from the latest resolution that the lack of effective investigation and lack of accountability of members of the security forces during the conflict in South East Turkey remains the only outstanding issue with regards to the *Aksoy* group.⁸⁴ More specifically, the Committee urged the Turkish government to “take the necessary legislative measures to remove any ambiguity regarding the fact that the administrative authorisation is no longer required to prosecute not only for torture and ill-treatment, but also any other serious crimes, and to ensure that members of security forces of all ranks could be prosecuted without an administrative authorization.”⁸⁵

The examination of the remaining issues with regards to the *Aksoy* group was closed by this resolution, as the Committee found itself satisfied with the measures adopted to implement requirements such as procedural safeguards, training of security forces and domestic compensation schemes.⁸⁶ However, despite the fact that follow up had to be given to the outstanding issue of investigation and accountability, no particular activity with regards to the *Aksoy* group can be traced since then. The

⁸² Committee of Ministers, *Execution of the Decisions of the European Court of Human Rights in Thirteen Cases against Turkey*, Resolution CM/ResDH(2014)7, 2014, <http://tinyurl.com/m9bm2vr>. Committee of Ministers, *Supervision of the Execution of Judgments of the European Court of Human Rights*, 2012.

⁸³ Committee of Ministers, *Execution of the Judgments of the European Court of Human Rights - Actions of the Security Forces in Turkey: Progress Achieved and Outstanding Issues*, Interim Resolution CM/ResDH(2008)69, 2008, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-88557>.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ibid.

current status of this case group indicates that follow up has yet to be given to the outstanding issues that were identified at the adoption of the latest resolution in 2008.⁸⁷ It is also notable that the resolutions adopted are of a general character and fail to address specific issues or legislation.

On the other hand, the supervision process of the *Khashiyev and Akayeva* group⁸⁸ exhibits more recent activity. The Committee of Ministers adopted an Interim Resolution in December 2011,⁸⁹ in which the importance of effective investigations is much more explicitly stressed than in the resolutions concerning the aforementioned Kurdish cases. The measures indicated in the resolution are much more detailed and specific, as opposed to the Turkish resolutions that relate more to the implementation of general measures. In the 2011 Resolution, reference is made to specific cases within the *Khashiyev and Akayeva* group. Specific aspects of what constitutes an effective investigation are addressed, which reflect more of the requirements that the Court set for effective investigations: besides a general framework for domestic investigations, the Committee also stresses the involvement of the victims in the domestic criminal proceedings, access to case-files and calls for the intensification of the search for disappeared persons. These are elements that are lacking from the 2008 *Aksoy* Resolution, which merely refers to the removal of an administrative barrier for the prosecution of security service personnel for grave crimes.

One possibility for the discrepancy between the treatment of otherwise substantively similar cases could be temporal. The Chechen cases are fresher: the Court decided in all of these only after 2005. The Kurdish cases on the other hand

⁸⁷ Ibid.; Council of Europe, "Pending Cases: Current State of Execution," accessed March 21, 2014, <http://tinyurl.com/p5kzz9t>;

⁸⁸ *Khashiyev and Akayeva v. Russia*, 57942/00 and 57945/00 HUDOC (ECtHR (First Section) 2005).

⁸⁹ Committee of Ministers, *Execution of the Judgments of the European Court of Human Rights in 154 Cases against the Russian Federation Concerning Actions of the Security Forces in the Chechen Republic of the Russian Federation, Interim Resolution CM/ResDH(2011)292*, 2011, https://wcd.coe.int/ViewDoc.jsp?id=1881949&Site=COE#P52_5166.

were decided in the late 1990s and early 2000s. However, in principle a case is supposed to remain on the agenda until its implementation satisfies the Committee, which has not yet been the case with respect to the investigation requirement in the *Aksoy* group, while it has remained under the radar since the last Interim Resolution in 2008.

Another explanation is that during subsequent Committee supervisory meetings, NGOs have provided ample input in the form of submitted communications and memoranda of their monitoring activities of the situation regarding investigations in Chechnya. This input is currently lacking with regards to the *Aksoy* group. It is telling that even the older cases, that do attract the attention of NGOs, such as *Cyprus v. Turkey*,⁹⁰ remain on the agenda of the Committee of Ministers.⁹¹ This observation suggests that the agenda of the supervisory process is, at least in part, driven by NGOs. This is not strange, given that the backlog of cases has also affected the workload of the Committee of Ministers. However, this points to a major weakness in the execution mechanism: the Committee of Ministers has neither the political will, nor the resources to stay on top of all cases that come its way. Cases therefore remain at the discretion of the attention they succeed to generate among civil society.

An additional suggestion is that Turkey is an overall better implementer of measures aimed at remedying the consequences of the armed conflict, and therefore merits less attention than Russia. Indeed, the Turkish government has adopted more legislation and provided trainings for its security personnel, perhaps also incentivized by its policy aimed at accession to the European Union and the corresponding political will to fulfill the requirements thereto, one of which was the implementation of ECtHR judgments. Turkey has also set up compensation schemes and allowed for

⁹⁰ *Cyprus v. Turkey*, 25781/94 HUDOC (ECtHR (Grand Chamber) 2001).

⁹¹ Council of Europe, "Pending Cases: Current State of Execution."

direct effect of the European Convention in its jurisdiction.⁹² These achievements are reflected in Committee resolutions, but scholars have also argued these measures have not necessarily been positive, precisely due to the lack of effective investigations. As one author argues:

*“The technical-bureaucratic nature of the reform demands from the Council of Europe and the EU enabled Turkey to pursue a comprehensive administration of justice reform strategy at the expense of truth telling, punishment of perpetrators, and reconciliation demanded by such human rights violations. (...) Turkey has been extremely successful in devising technical and bureaucratic solutions to the Southeast Turkey cases in the context of EU accession, and the improvements to its legal framework are undoubtedly impressive. (...) This technical intergovernmental engagement has led to the coexistence of successful major nationwide reforms in human rights alongside major indifference to the truth about and acknowledgment of the illegitimate activities of the security forces in Southeast Turkey and the means employed to fight terrorism.”*⁹³

The above explanations for the discrepancy between the supervision of Chechen and Kurdish judgments are hardly satisfactory as they inspire little confidence in the Committee of Ministers as the body in charge supervising execution, even less so in its ability to identify and push for specific measures and oversee domestic implementation. Without the assistance of specialized NGOs, it is forced to rely on reports by the respondent states, which tend to stress achievements rather than

⁹² Committee of Ministers, *Execution of the Judgments of the European Court of Human Rights - Actions of the Security Forces in Turkey: Progress Achieved and Outstanding Issues*.

Dia Anagnostou, *The European Court of Human Rights: Implementing Strasbourg's Judgements on Domestic Policy* (Edinburgh University Press, 2013).

⁹³ Başak Çalı, “The Logics of Supranational Human Rights Litigation, Official Acknowledgment, and Human Rights Reform: The Southeast Turkey Cases before the European Court of Human Rights, 1996–2006,” *Law & Social Inquiry* 35, no. 2 (2010): 5, 29.

remaining shortcomings. But the Court is also not without criticism. Its reluctance to specify remedies leaves execution entirely up to the discretion of the violating state and the Committee of Ministers; an essentially diplomatic and political body.

Conclusion

In conclusion, this research submits that the current execution procedure should be regulated along stricter guidelines. Its current design leaves much discretion to member states and the Committee of Ministers as an essentially political body that is not keen on hard demands. Based on a comparative analysis of the *Aksoy* and *Khashiyev and Akayava* groups, the research also suggests that the execution agenda of the Committee is to a large degree NGO driven. The *Khashiyev and Akayava* group displays a higher degree of activity, while being more scrutinized by NGOs.

The Court has a pivotal role to play in remedying these shortcomings. Nothing within the Convention prevents the Court from issuing implementation instructions, and surely it has done so on several occasions. Alas, for the time being the Court reserves this possibility almost exclusively to pilot judgments, while the experience of the Inter-American Court suggests the issuance of specific instructions can work in practice. Even if this may not provoke effective investigations, it does provide the Committee of Ministers with the judicial backing to take a firmer stand against states, ensure a more systematized supervision, and significantly, to offer better remedies to victims beyond just satisfaction.

Chapter III – The domestic implementation of Kurdish and Chechen judgments: comparative perspectives from Turkey and Russia

Article 46(1) – Binding force and execution of judgments

“The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.”⁹⁴

As members of the Council of Europe, Russia and Turkey are under an obligation to implement the Strasbourg Court’s judgments in their respective jurisdictions under the supervision of the Committee of Ministers. As indicated in the previous chapter, there are difficulties that hamper the effectiveness of the execution of judgments on the level of the Council of Europe institutions. The reluctance of the European Court to order specific measures regarding investigations leaves the execution at the discretion of the Committee of Ministers and the respective state. This chapter seeks to identify the challenges to an effective investigation that arise at the domestic level and, where possible, compare the situations in Russia and Turkey.

Domestic framework for execution

The Turkish and Russian constitutions both contain provisions governing the hierarchy between international and domestic sources of law. Article 90 of the Turkish Constitution provides that ratified international agreements have the force of law and cannot be held unconstitutional.⁹⁵ In 2004, as follow-up to general measures suggested by the Committee of Ministers, Article 90 of the Turkish Constitution⁹⁶ was amended, in order to give establish the hierarchy of laws. Following the amendment,

⁹⁴ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*.

⁹⁵ *Constitution of the Republic of Turkey*, 1982, http://global.tbmm.gov.tr/docs/constitution_en.pdf.

⁹⁶ *Ibid.*

Ece Yilmaz, “Domestic Implementation of the Judgments of the European Court of Human Rights at the National Level: Turkey,” *Ankara B. Rev.* 2 (2009): 86.

in case of a conflict between domestic legislation and an international treaty on fundamental rights and freedoms, the latter takes precedence. The Russian Constitution is rather more ambiguous. Although pursuant to Article 15(4) of the Russian Constitution,⁹⁷ international treaties are a component part of the domestic legal system and obligations under international treaties prevail in case of a conflict with provisions of domestic law, the relationship between the Convention and the Russian Constitution is less clear, which has given rise to controversy on occasions when the European Court has criticized constitutional provision.⁹⁸

Nonetheless, both states have undertaken to abide by the rulings of the Court pursuant to Article 46(1) ECHR when they ratified the Convention.⁹⁹ The Committee of Ministers has urged member states to adopt mechanisms for the rapid implementation of the Court's judgments.¹⁰⁰ In Russia the implementation falls within the competence of the Office of the Representative of the Russian Federation at the ECtHR, an administrative unit within the Ministry of Justice.¹⁰¹ The Representative is responsible for ensuring the payment of 'just satisfaction' awards and the interaction among the relevant state bodies and local authorities in the course of implementation of general and individual measures.¹⁰² In Turkey, the Ministry of Justice is also involved in the implementation, albeit shares this competence with the Ministry of Finance, Ministry of the Interior and Ministry of Foreign Affairs, the latter being the

⁹⁷ *The Constitution of the Russian Federation*, n.d., <http://archive.kremlin.ru/eng/articles/ConstIntro01.shtml>.

⁹⁸ William E. Pomeranz, "Uneasy Partners: Russia and the European Court of Human Rights," *Human Rights Brief* 19, no. 3 (2012): 18-19.

⁹⁹ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*.

¹⁰⁰ Committee of Ministers, *Execution of the Judgments of the European Court of Human Rights - Actions of the Security Forces in Turkey: Progress Achieved and Outstanding Issues*.

¹⁰¹ Ministry of Justice of the Russian Federation, *Order of the Ministry of Justice of Russia from 30.06.2009 № 196 "On Approval of the Regulations on the Office of the Representative of the Russian Federation at the European Court of Human Rights - Deputy Minister of Justice of the Russian Federation" (as Amended by the Order of the Ministry of Justice of 10.08.2010 N 191)*, 2009, <http://minjust.ru/node/1387>.

¹⁰² *Ibid.*, paras. 8, 12.

key player.¹⁰³ Similarly to Russia, the relevant branches government bodies are to be notified if their involvement is required for the implementation of judgment.¹⁰⁴

Implementation of the duty to conduct effective investigations

As demonstrated in the previous chapter, both Russia and Turkey have been called upon by the Committee of Ministers to implement measures to facilitate the effective investigation of Article 2 violations in Chechnya and South East Turkey, respectively. In its 2008 Interim Resolution in relation to the *Aksoy* group, the Committee of Ministers urged Turkey to improve the accountability of the security forces.¹⁰⁵ In relation to the *Khashiyev* and *Akayeva* group of Chechen cases, it did the same, albeit in greater detail.¹⁰⁶

The follow-up given to these resolutions has in practice been subject to various challenges.

General framework for effective investigation

An issue that has arisen with regards to investigations in Turkey, as has been highlighted by the Committee of Ministers, is the administrative authorization required to prosecute serious crimes. As of 2003 this requirement has been lifted with regards to allegations of torture and ill-treatment by members of the security forces, following changes to Law No. 4778 on the Prosecution of Civil Servants.¹⁰⁷ However,

¹⁰³ Dilek Kurban, Ozan Erözden, and Haldun Güllalp, "Supranational Rights Litigation, Implementation and the Domestic Impact of Strasbourg Court Jurisprudence: A Case Study of Turkey," *Prepared for the JURISTRAS Project Funded by the European Commission, DG Research, Priority 7* (2008): 11, <http://tinyurl.com/q4ue4sz>

¹⁰⁴ *Ibid.*, 12.

¹⁰⁵ Committee of Ministers, *Execution of the Judgments of the European Court of Human Rights - Actions of the Security Forces in Turkey: Progress Achieved and Outstanding Issues*.

¹⁰⁶ Committee of Ministers, *Execution of the Judgments of the European Court of Human Rights in 154 Cases against the Russian Federation Concerning Actions of the Security Forces in the Chechen Republic of the Russian Federation*.

¹⁰⁷ Committee of Ministers, *Execution of the Judgments of the European Court of Human Rights - Actions of the Security Forces in Turkey: Progress Achieved and Outstanding Issues*.

with regards to other serious crimes, such as those concerning the right to life, this requirement was still standing as of 2008.¹⁰⁸

In 2009, the Russian government set up Special Investigating Unit No 2 within the Investigative Committee for the Chechen Republic.¹⁰⁹ The purpose of this body is to analyze existing criminal case files, collect information on missing persons, possible witnesses and perpetrators, and streamline exchange of information with military prosecutors.¹¹⁰ In practice, the competences of this body remain opaque. As submitted by Russian Justice Initiative, an NGO representing applicants from Chechnya, to the Committee of Ministers meeting in June 2011, it is unclear whether the Special Investigating Unit may initiate criminal proceedings in relation to members of the military or security forces.¹¹¹ It is further unclear how the SUI cooperates with other investigative units working on the same cases.¹¹²

Investigations and prosecutions

Russia has been consistently criticized for its failure to improve the investigations in Chechnya after the issuance of an ECtHR judgment.¹¹³ Although investigations generally have been reopened following a judgment, the same shortcomings have been noted pre- and post-judgment with regards to basic investigative steps. Applicants and their representatives noted the failure to question witnesses, failure to identify military units active in the area where a killing or abduction occurred, and

¹⁰⁸ Ibid.

¹⁰⁹ Van der Vet, "Transitional Justice in Chechnya": 365.

Committee of Ministers, *Execution of the Judgments of the European Court of Human Rights in 154 Cases against the Russian Federation Concerning Actions of the Security Forces in the Chechen Republic of the Russian Federation*.

Department for the Execution of Judgments of the European Court of Human Rights, *Update of the Memorandum CM/Inf/DH(2008)33*, 2010, <http://tinyurl.com/p8gufxu>.

¹¹⁰ Department for the Execution of Judgments of the European Court of Human Rights, *Update of the Memorandum CM/Inf/DH(2008)33*.

¹¹¹ Russian Justice Initiative, "Communication from a NGO in the Case of Khashiyev Group of Cases against Russian Federation" (Secretariat of the Committee of Ministers, May 30, 2011): 18, <https://wcd.coe.int/ViewDoc.jsp?id=1794099&Site=CM>.

¹¹² Ibid., 19.

¹¹³ Buchanan, "Who Will Tell Me What Happened to My Son?"; Leach, "The Chechen Conflict."

failure to follow up on potential suspects explicitly mentioned in ECtHR judgments.¹¹⁴ The cases again follow a similar pattern as previously: repeated reopening of investigations, suspension for failure to identify perpetrators and transferal between investigate bodies.¹¹⁵ Even when identities are known or the investigation does succeed in establishing the identity, no prosecution follows.¹¹⁶ In addition, NGOs found failures on the part of the authorities to inform applicants on the progress of the investigation, and to provide them access to case files, elements that previously prompted the Court to find violations of the procedural aspect of Article 2.¹¹⁷

As noted in the 2008 Interim Resolution, there is no quantitative data available on investigations into right to life cases concerning South East Turkey. In addition, NGO scrutiny of the execution of the *Aksoy* group is low and not as systematized as with regards to *Khashiyev and Akayeva* group of cases. Nevertheless, Human Rights Watch published a report highlighting the obstacles to investigating and prosecuting abuses in South East Turkey following the start of a trial of a retired army colonel and his alleged accomplices for involvement in killings and disappearances in South East Turkey in the early 1990s.¹¹⁸ Based on the report's conclusions, the trial requires implementation of the existing Witness Protection Law, as witnesses to the case have been inclined to retract their initial statements following attempts of intimidation and interference.¹¹⁹ The report also pointed out the limited scope of investigation, which

¹¹⁴ Leach, "The Chechen Conflict."; Russian Justice Initiative, "Communication from a NGO in the Case of Khashiyev Group of Cases against Russian Federation."

¹¹⁵ Russian Justice Initiative, "Communication from a NGO in the Case of Khashiyev Group of Cases against Russian Federation."

¹¹⁶ Buchanan, " *Who Will Tell Me What Happened to My Son?*," 11-15.

¹¹⁷ *Ibid.*, 19-24.

¹¹⁸ "Time for Justice: Ending Impunity for Killings and Disappearances in 1990s Turkey," accessed March 30, 2014, <http://www.hrw.org/node/109658>.

¹¹⁹ *Ibid.*, 3.

failed to establish chain of command liability of higher-ranking authorities.¹²⁰ However, as these observations only concern one trial of a member of security forces, it does not constitute sufficient evidence to draw general conclusions on the state of effective investigations into right to life cases with regards to South East Turkey.

Statute of limitations

A major obstacle that provokes great concern with regards to the seeking of accountability in both case groups is the statute of limitations. Article 78 of the 1996 Russian Criminal Code puts a ten to fifteen year time-bar to prosecution for murder and kidnapping, depending on the gravity of the crime.¹²¹ The former Turkish Criminal Code, which is applicable to crimes committed earlier than 2005, subjects murder to a time-bar of twenty years.¹²² Given that violations in Kurdish cases were at their peak in the early 1990s and in Chechnya between 2000 and 2003, this is a serious obstacle to accountability.¹²³ In light of this, the protracted investigations and lack of prosecutions in Chechen cases, and lack of information thereof in the Kurdish cases, may have serious implications for accountability of the security forces and redress for the applicants.

Nonetheless, both the Russian and Turkish time-bar provisions are subject to exceptions. In Turkey, the statute of limitations may be halted if legal action is somehow impeded.¹²⁴ Human Rights Watch has argued the issues raised in ECtHR judgments can be construed as such obstacles.¹²⁵ In the case of Russia, the statute of

¹²⁰ Ibid., 2.

¹²¹ Aslakhanova and Others v. Russia, 2944/06, 8300/07, 50184/07, 332/08, 42509/10 HUDOC (ECtHR (First Section) 2012): paras. 43-45.

¹²² "Time for Justice."

¹²³ "Strasbourg: Supreme Court of the North Caucasus," *openDemocracy*, accessed March 30, 2014, [http://www.opendemocracy.net/od-russia/grigor-avetisyan/strasbourg-supreme-court-of-north-caucasus](http://www.opendemocracy.net/od-russia/grigor-avetisyan/strasbourg-supreme-court-of-north-caucasus;).; "Time for Justice," 4.

¹²⁴ "Time for Justice," 5.

¹²⁵ Ibid.

limitations does not apply to crimes against humanity.¹²⁶ This is compatible with Russia's commitment to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, to which it is a party.¹²⁷

However, there is no centralized supranational body mandated with the authority to interpret and qualify such crimes. Also in the case of Turkey, obstacles to legal proceedings are a matter of interpretation. So although these exceptions are a welcome caveat to statutory limitations, they wholly depend on the political will of the respective states to invoke them. Perhaps only ECtHR can offer solace by reading a prohibition into the Convention on statutory limitations to the crimes committed over the course of armed conflict in Russia and Turkey. Since this is based on evidence from one trial, it can hardly be conclusive in its findings that these are the main areas of concern regarding investigation and prosecution.

Conclusion

Regarding Turkey, more research is needed to systematically follow up on cases from the *Aksoy* group so as to see what progress has been made with regards to investigations and where the shortcomings lie. The Chechen cases offer more evidence for conclusions. They suggest renewed activity on the part of investigative authorities, and cosmetic changes, but the same shortcomings as before the ECtHR judgment. In both Turkey and Russia general measures have been introduced, and although based on the NGO experience these have not proven efficient. Despite the legal and institutional framework being in place for the implementation of judgments, neither Russia nor Turkey has displayed significant progress with regards to

¹²⁶ *Aslakhanova and Others v. Russia*, 2944/06, 8300/07, 50184/07, 332/08, 42509/10 HUDOC (ECtHR (First Section) 2012): para. 45.

¹²⁷ United Nations, *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity*, 1970, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-6&chapter=4&lang=en.

individual measures, either for lack of genuine activity or lack of information. If statutory limitations for the crimes committed in Chechnya and South East Turkey are not lifted, this may be yet another obstacle to accountability and remedies.

Conclusion

The duty to investigate has made a remarkable progress in the Court's jurisprudence. From an implied duty in *McCann* it progressed through *Ergi*, *Kelly* and other judgments to attain a high level of detail, as the Court has permitted itself to scrutinize such details of the investigation as the quality of autopsies and the forensic steps taken. While some observers have raised questions into the compatibility of such scrutiny with the margin of appreciation in military operations, this thesis submits that the duty to investigate attains aggravated significance in the context of armed conflict. Not only is there support for the Court's position from other sources of international law, in the absence of jurisdiction of international criminal tribunals the Court is in a unique position to demand accountability and offer a remedy for victims of armed conflict in Russia and Turkey.

In spite of the proclaimed significance attached by the Court to this duty, it has been reluctant to order renewed investigations as a non-monetary remedy in addition to its 'just satisfaction' awards. This is in stark contrast to the more victim-oriented approach of the Inter-American Court and goes at the expense of effective and systemic implementation supervision and denies substantive remedies to applicants. A renewed approach by the European Court could be instrumental in making the supervisory process by the Committee of Ministers more efficient. This is currently left to the ability of the Committee to translate the Court's judgments into general and individual measures, and the ability of NGOs to push the execution agenda. This, however, causes asymmetry in the way similar groups of cases are addressed. In this sense, the *Aslakhanova* judgment has been hailed by NGOs, as it precisely orders for

the requisite investigative steps to be taken. It is to be hoped that this represents the beginning of a new trend.

The cases of Russia and Turkey demonstrate that the current approach taken by the Court and the Committee of Ministers has not rendered the desired results. Although both countries have adopted measures of a general character, by removing legislative barriers to prosecution and setting up specialized institutions for implementation, individual measures have lacked in substance. In the case of Russia, it is evident that, despite general measures, the same shortcomings to investigating Chechen cases remain as prior to the ECtHR judgments. With regards to Turkey, information remains scant, not in the least due to the fact that NGOs are not involved with the *Aksoy* group of cases. With few watchdogs and little involvement of the Committee of Ministers, the progress made in this group, if any, is confined within the knowledge of the Turkish authorities. If implementation is to at this rate, applicants may see justice becoming subject to statutory limitations.

This demonstrates that the legal frameworks currently in place display significant shortcomings that, if not adequately and timely remedied, shall continue to impede the European human rights system through repetitive cases and lax implementation. Importantly, this will deny the remedying effect of judgments to relatives of persons killed or disappeared persons during the military operations in Chechnya and South East Turkey.

Bibliography

- Aksoy v. Turkey, 21987/93 HUDOC (ECtHR (Chamber) 1996).
- Anagnostou, Dia. *The European Court of Human Rights: Implementing Strasbourg's Judgements on Domestic Policy*. Edinburgh University Press, 2013.
- Antkowiak, Thomas. "Remedial Approaches to Human Rights Violations: The Inter-American Court of Human Rights and Beyond." *Columbia Journal of Transnational Law* 46, no. 2 (2008).
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1329848.
- Ariav, Roe. "National Investigations of Human Rights Between National and International Law." *Goettingen Journal of International Law* 4, no. 3 (2012).
- Aslakhanova and Others v. Russia, 2944/06, 8300/07, 50184/07, 332/08, 42509/10 HUDOC (ECtHR (First Section) 2012).
- Bazorkina v. Russia, 69481/01 HUDOC (ECtHR 2006).
- Buchanan, J. "Who Will Tell Me What Happened to My Son?": Russia's Implementation of European Court of Human Rights Judgments on Chechnya. Human Rights Watch, 2009.
- Buyse, by Antoine. "ECHR BLOG: Protocol 14 Enters into Force." Accessed March 23, 2014. <http://echrblog.blogspot.hu/2010/06/protocol-14-enters-into-force.html>.
- Çalı, Başak. "The Logics of Supranational Human Rights Litigation, Official Acknowledgment, and Human Rights Reform: The Southeast Turkey Cases before the European Court of Human Rights, 1996–2006." *Law & Social Inquiry* 35, no. 2 (2010): 311–37.
- Chevalier-Watts, Juliet. "Effective Investigations under Article 2 of the European Convention on Human Rights: Securing the Right to Life or an Onerous Burden on a State?" *European Journal of International Law* 21, no. 3 (2010): 701–21.
- . "Military Operations and the Right to Life: The Uneasy Bedfellows." *Hum. Rts. & Int'l Legal Discourse* 5 (2011): 207.
- . "The Phenomena of Enforced Disappearances in Turkey and Chechnya: Strasbourg's Noble Cause?" *Human Rights Review* 11, no. 4 (2010): 469–89.
- Committee of Ministers. *Execution of the Decisions of the European Court of Human Rights in Thirteen Cases against Turkey. Resolution CM/ResDH(2014)7*, 2014. <http://tinyurl.com/m9bm2vr>.
- . *Execution of the Judgments of the European Court of Human Rights - Actions of the Security Forces in Turkey: Progress Achieved and Outstanding Issues. Interim Resolution CM/ResDH(2008)69*, 2008.
<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-88557>.
- . *Execution of the Judgments of the European Court of Human Rights in 154 Cases against the Russian Federation Concerning Actions of the Security Forces in the Chechen Republic of the Russian Federation. Interim*

Resolution CM/ResDH(2011)292, 2011.

https://wcd.coe.int/ViewDoc.jsp?id=1881949&Site=COE#P52_5166.

———. *Procedures and Working Methods*, March 28, 2014.

http://www.coe.int/T/CM/iguideCM_en.pdf.

———. *Rules of the Committee of Ministers for the Supervision of the Execution of Judgments and of the Terms of Friendly Settlements*, 2006.

<https://wcd.coe.int/ViewDoc.jsp?id=999329&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

———. “Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights.” Council of Europe. Accessed March 30, 2014.

http://www.coe.int/t/dghl/monitoring/execution/Presentation/Pres_Exec_en.asp.

———. *Supervision of the Execution of Judgments of the European Court of Human Rights*. Annual Report, 2007.

http://www.coe.int/t/dghl/monitoring/execution/Source/Publications/CM_annr_eport2007_en.pdf.

———. *Supervision of the Execution of Judgments of the European Court of Human Rights*. Annual Report, 2012.

http://www.coe.int/t/dghl/monitoring/execution/Source/Publications/CM_annr_eport2012_en.pdf.

Constitution of the Republic of Turkey, 1982.

http://global.tbmm.gov.tr/docs/constitution_en.pdf.

Council of Europe. *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 1950.

———. “Pending Cases: Current State of Execution.” Accessed March 21, 2014.

<http://tinyurl.com/p5kzz9t>.

———. *Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms*, 2010.

Cyprus v. Turkey, 25781/94 HUDOC (ECtHR (Grand Chamber) 2001).

Department for the Execution of Judgments of the European Court of Human Rights.

Update of the Memorandum CM/Inf/DH(2008)33, 2010.

<http://tinyurl.com/p8gufxu>.

“Dmitrievsky Is Suspected of Extremism - HRO.org in English.” Accessed July 6,

2013. <http://hro.rightsinrussia.info/archive/anti-extremism/dmitrievsky/suspected>.

Droege, Cordula. “Interplay between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict, The.” *Isr. L. Rev.* 40 (2007): 310.

Ergi v. Turkey, 23818/94 HUDOC (ECtHR (Chamber) 1998).

European Court of Human Rights. “Factsheet - Right to Life.” Council of Europe,

June 2013. http://www.echr.coe.int/Documents/FS_Life_ENG.pdf.

Harris, D., K. O’Boyle, and Colin Warbrick. “Law of the European Convention on Human Rights.” *London, Dublin, Edinburgh*, 1995.

- Hugh Jordan v. the United Kingdom, 24746/94 HUDOC (ECtHR (Third Section) 2001).
- Ilhan v. Turkey, 22277/93 HUDOC (ECtHR (Grand Chamber) 2000).
- Isayeva, Yusupova and Bazayeva v. Russia, 57947/00, 57948/00 and 57949/00 HUDOC (ECtHR (First Section) 2005).
- Kaya v. Turkey, 22729/93 HUDOC (ECtHR 1998).
- Kelly and Others v. the United Kingdom, 30054/96 HUDOC (ECtHR (Third Section) 2001).
- Khashiyev and Akayeva v. Russia, 57942/00 and 57945/00 HUDOC (ECtHR (First Section) 2005).
- Kogan, Vanessa. "Protecting Human Rights Defenders in the North Caucasus: Reflections on Developments from 2009 to the Present." *Journal of Human Rights Practice* 5, no. 3 (November 1, 2013): 500–511.
doi:10.1093/jhuman/hut015.
- Korff, Douwe. "The Right to Life: A Guide to the Implementation of Article 2 of the European Convention on Human Rights." *Council of Europe-Human Rights Handbook*, no. 8 (2006).
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1288555.
- Koroteev, K. "Legal Remedies for Human Rights Violations in the Armed Conflict in Chechnya: The Approach of the European Court of Human Rights in Context." *Journal of International Humanitarian Legal Studies* 1, no. 2 (2010): 275–303.
- Kukayev v. Russia, 29361/02 HUDOC (ECtHR (Fifth Section) 2007).
- Kurban, Dilek, Ozan Erözden, and Haldun Güllalp. "Supranational Rights Litigation, Implementation and the Domestic Impact of Strasbourg Court Jurisprudence: A Case Study of Turkey." *Prepared for the JURISTRAS Project Funded by the European Commission, DG Research, Priority 7* (2008).
[http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/721BB5400A7C66F6C1257643005C088E/\\$file/casestudyreportturkeyfinal.pdf](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/721BB5400A7C66F6C1257643005C088E/$file/casestudyreportturkeyfinal.pdf).
- Lapitskaya, J. "ECHR, Russia, and Chechnya: Two Is Not Company and Three Is Definitely a Crowd." *NYUJ Int'l L. & Pol.* 43 (2010): 479.
- Leach, P. "Article 2 ECHR (the Right to Life) – Positive Obligations." European Human Rights Advocacy Center. Accessed March 17, 2014.
https://metranet.londonmet.ac.uk/fms/MRSite/Research/HRSJ/EHRAC/Reports/Art%20%20positive%20obligations%20-%20Law%20Soc%205_11%20PL.pdf.
- . "The Chechen Conflict: Analysing the Oversight of the European Court of Human Rights." *European Human Rights Law Review* 6 (2008): 2008–2732.
- Luluyev and Others v. Russia, 69480/01 HUDOC (ECtHR 2006).
- McCann and Others v. The United Kingdom, 18984/91 HUDOC (ECtHR (Grand Chamber) 1995).
- McKaskle, Paul L. "European Court of Human Rights: What It Is, How It Works, and Its Future, The." *USFL Rev.* 40 (2005): 1.

- Ministry of Justice of the Russian Federation. *Order of the Ministry of Justice of Russia from 30.06.2009 № 196 “On Approval of the Regulations on the Office of the Representative of the Russian Federation at the European Court of Human Rights - Deputy Minister of Justice of the Russian Federation” (as Amended by the Order of the Ministry of Justice of 10.08.2010 N 191)*, 2009. <http://minjust.ru/node/1387>.
- Moeckli, Daniel, Sangeeta Shah, Sandesh Sivakumaran, and David Harris. *International Human Rights Law*. Oxford University Press, 2010.
- Mowbray, Alastair. “Duties of Investigation under the European Convention on Human Rights.” *International and Comparative Law Quarterly*, 2002, 437–48.
- . *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights*. Hart Publishing, 2004. <http://archive.equal-jus.eu/976/>.
- Pomeranz, William E. “Uneasy Partners: Russia and the European Court of Human Rights.” *Human Rights Brief* 19, no. 3 (2012): 3.
- Russian Justice Initiative. “Communication from a NGO in the Case of Khashiyev Group of Cases against Russian Federation.” Secretariat of the Committee of Ministers, May 30, 2011. <https://wcd.coe.int/ViewDoc.jsp?id=1794099&Site=CM>.
- Schmitt, Michael N. “Investigating Violations of International Law in Armed Conflict.” In *Essays on Law and War at the Fault Lines*, 587–635. Springer, 2012. http://link.springer.com/chapter/10.1007/978-90-6704-740-1_12.
- Shelton, Dinah. *Remedies in International Human Rights Law*. Oxford University Press, 1999.
- Stichting Russian Justice Initiative. “European Court Criticizes Russia for Systemic Non-Investigation of Disappearances in Chechnya and Recommends Measures to Address Continuing Violations,” December 18, 2012. <http://srji.org/en/news/2012/12/115/>.
- “Strasbourg: Supreme Court of the North Caucasus.” *openDemocracy*. Accessed March 30, 2014. <http://www.opendemocracy.net/od-russia/grigor-avetisyan/strasbourg-supreme-court-of-north-caucasus>.
- Sundstrom, L. M. I. “Advocacy beyond Litigation: Examining Russian NGO Efforts on Implementation of European Court of Human Rights Judgments.” *Communist and Post-Communist Studies*, 2012. <http://www.sciencedirect.com/science/article/pii/S0967067X12000384>.
- Taqi, Irum. “Adjudicating Disappearance Cases in Turkey: An Argument for Adopting the Inter-American Court of Human Rights’ Approach.” *Fordham Int’l LJ* 24 (2000): 940.
- The Constitution of the Russian Federation*, n.d. <http://archive.kremlin.ru/eng/articles/ConstIntro01.shtml>.
- “Time for Justice: Ending Impunity for Killings and Disappearances in 1990s Turkey.” Accessed March 30, 2014. <http://www.hrw.org/node/109658>.

- United Nations. *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity*, 1970.
https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-6&chapter=4&lang=en.
- Van der Vet, Freek. "Transitional Justice in Chechnya: NGO Political Advocacy for Implementing Chechen Judgments of the European Court of Human Rights." *Review of Central and East European Law* 38, no. 3–4 (2013): 363–88.
- Velásquez-Rodríguez v. Honduras, Series C No. 4 (Inter-Am. Ct. H. R. 1988).
- Vet, Freek van der. "Seeking Life, Finding Justice: Russian NGO Litigation and Chechen Disappearances before the European Court of Human Rights." *Human Rights Review* 13, no. 3 (September 1, 2012): 303–25.
doi:10.1007/s12142-012-0226-2.
- Yilmaz, Ece. "Domestic Implementation of the Judgments of the European Court of Human Rights at the National Level: Turkey." *Ankara B. Rev.* 2 (2009): 85.
- Zwaak, L. F. "The Role of the Council of Europe and Its Committee of Ministers: Analysing the Efficiency of Measures Taken under Article 46 (2) of the ECHR," 2008. <http://igitur-archive.library.uu.nl/law/2009-0304-201629/UUindex.html>.