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Rule 9.2 submission on the implementation of individual and general measures in the group of cases “Mazepa and others v. Russia” prepared by the NGOs Memorial Human Rights Defence Centre and European Human Rights Advocacy Centre (EHRAC)

Introduction

This submission is prepared by the NGOs Memorial Human Rights Defence Centre and European Human Rights Advocacy Centre (EHRAC).

Memorial Human Rights Defence Centre¹ is a non-governmental organization founded in June 2022 by supporters of Memorial Human Rights Centre (dissolved on 29 December 2021) to continue the work of the latter NGO. Memorial Human Rights Centre was founded in 1993 in Moscow and became one of the first human rights NGOs in modern Russia. It worked with grave human rights violations in (post-)conflict areas, civil and political rights and vulnerable groups. It represented hundreds of victims both domestically and before the European Court of Human Rights.

European Human Rights Advocacy Centre (EHRAC)² is an independent human rights centre that uses international legal mechanisms to challenge serious human rights abuses in Russia, Georgia, Azerbaijan, Armenia, and Ukraine, in partnership with committed local lawyers and NGOs. EHRAC aims to secure justice for victims of human rights violations and their families, and to bring about lasting systemic change in the region.

In this submission we will examine the main findings of the ECtHR in three judgments of this group of cases, identify the main possible individual and general measures of implementation, examine the current situation with the implementation of the cases and provide recommendations concerning the implementation of these cases.

¹ See the website: <https://memorialcenter.org/> (in Russian)

² See www.ehrac.org.uk

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I. Main findings of the ECtHR in the judgments no. 15086/07 “*Mazepa and others v. Russia*”, no. 20914/07 “*Carter v. Russia*” and no. 42705/11 “*Estemirova v. Russia*”

a. Main findings of the ECtHR in the judgment “*Mazepa and others v. Russia*”

1. In this judgment of 17 July 2018, the Court found the Russian Government responsible for failing to conduct an effective investigation into the murder of “*Novaya Gazeta*” journalist Anna Politkovskaya in violation of procedural obligations under Article 2 (right to life) of the European Convention on Human Rights (Convention). For instance, the Court noted the following:

- that, in cases where the victim of a killing is a journalist, it is of utmost importance to check a possible connection of the crime to the journalist’s professional activity (para. 73). However, this connection was not properly examined during the investigation (paras. 73-84).
- that the investigation in this case brought tangible results as it led to the conviction of five persons directly responsible for the killing. At the same time, the Court took the view that the investigation into a contract killing cannot be considered adequate in the absence of genuine and serious investigative efforts taken with the view to identifying the intellectual author of the crime, that is, the person or people who commissioned the assassination (para. 75). However, during the investigation the

Government focused only on one version - that the victim was killed by “a well-known Russian former politician in London” without explaining what were the arguments in support of this version and why other versions had not been examined (para. 77). The Government did not examine the applicants’ version concerning the commission of the crime by FSB officials or those of the administration of the Chechen Republic, especially given that Anna Politkovskaya’s journalistic work covered the conflict in Chechnya (para. 78).

- The Government did not provide the Court with any documents from the investigation file. The only materials they submitted were copies of the domestic courts judgments convicting the five perpetrators after the second round of judicial proceedings (para. 75).

b. Main findings of the ECtHR in the judgment “Carter v. Russia”

2. In this judgment of 21 September 2021, the Court found the Russian Government responsible for poisoning and assassinating Russian dissident Alexander Litvinenko, who was living in the United Kingdom, by two persons acting as Russian state agents, and failing to conduct effective investigation into his death. The Court found the Russian Government responsible for violations of Article 2 of the Convention (right to life) under both substantial and procedural limbs:

- The Court was satisfied by the inquiry conducted in the United Kingdom into this case, which concluded that there was sufficient evidence to the criminal standard of proof that Mr. Lugovoy and Mr. Kovtun poisoned Mr. Litvinenko, and that they were acting on behalf of others, with a strong possibility that the poisoning was under the direction of the FSB. The investigation was conducted by an independent tribunal, which invited the cooperation of all concerned parties, examined different versions of the crime, heard a large number of witnesses and made a serious consideration of all relevant evidence (paras. 100-109). The Court noted that it could not disregard the findings of the inquiry into the death of Mr. Litvinenko conducted in the United Kingdom solely because the Russian authorities abstained from exercising their right to participate in those proceedings (para. 110), and included the inquiry in its evidence.
- On the substantive obligation, the Court found, beyond reasonable doubt, that Mr. Litvinenko was poisoned with polonium-210, a rare radioactive isotope, and that this was administered by Mr. Lugovoy and Mr. Kovtun (paras. 154-157). The Court found that Mr. Lugovoy and Mr. Kovtun exercised physical power and control over the victim, and acted under the control of the Russian Government, thus establishing the Russian Government’s jurisdictional link (paras. 125-130). There was no evidence that either of them had any personal reason to kill Mr. Litvinenko and it was not plausible that, if acting on their own behalf, they would have had access to the rare radioactive isotope used to poison him. The use of polonium-210 strongly indicated that Mr. Lugovoy and Mr. Kovtun were acting with the support of a State entity which enabled them to procure the poison. A radioactive isotope was an unlikely murder weapon for common criminals and must have come from a reactor under State control (para. 163).

- On the procedural obligations, the Court held that, although the crime had been committed on the territory of the United Kingdom, the Russian Government's refusal to extradite Mr. Lugovoy and Mr. Kovtun to the UK constituted a special feature which made the Russian Government responsible for its proper investigation and for bringing the persons responsible to justice (paras. 133-135). Although the Russian Government formally made its own investigation of the crime, it had numerous shortcomings. For instance, no efforts were made to deprive Mr. Lugovoy of his immunity as a member of Russian parliament and to properly investigate his role in the crime; to identify those responsible for the production of the poison polonium-210 and to properly investigate all the circumstances of the crime; and not enough efforts were made to cooperate with the UK investigative authorities (para. 138-148). Further, given that the Russian Government refused to submit to the Court materials of the criminal file, the Court held that it could draw negative inferences that it had failed to discharge its burden of proof that it had carried out an effective investigation (para. 143).

c. Main findings of the ECtHR in the judgment "Estemirova v. Russia"

3. In this judgment of 31 August 2021, the Court found the Russian Government responsible for failing to conduct an effective investigation into the killing of the human rights defender Natalia Estemirova in violation of the procedural obligations under Article 2 (right to life) of the Convention:
 - The investigators identified one of the alleged perpetrators of the crime, Mr. Bashayev, and charged him with participation in an illegal armed group, illegal storage of firearms and ammunition, the abduction of Natalia Estemirova and her murder. Notwithstanding the above, the documents in the Court's possession cast doubt on the thoroughness of the investigation, particularly on the quality of the investigators' analysis of the evidence and the validity of their conclusions. For example, the experts were unable to conclude with sufficient certainty:
 - whether the bullets and the cartridges from the scene were parts of the same firearm ammunition;
 - whether the camouflage uniforms from Mr. Bashayev's address were in contact with Ms. Estemirova's clothes;
 - whether the silencer was used with the gun which allegedly belonged to Mr. Bashayev;
 - whether the fiber elements from the car belonged to Ms. Estemirova. (paras. 68-69).
 - The Court found that the investigators did not explain why no traces of Mr. Bashayev's DNA or DNA of other members of the illegal armed group were found on Ms. Estemirova's body, at the crime scene or inside the car (para. 69), nor whether the investigators made a genuine attempt to identify all the members of the group that allegedly killed Natalia Estemirova (para. 69).
 - The Court noted that most of the materials from the investigation file were not disclosed by the Government (para. 68).

- The Court acknowledges that the circumstances of the case should not be seen in isolation from Natalia Estamirova’s professional activity as a human rights defender (para. 66).
4. However, despite complaints from the applicants that the abduction of Natalia Estamirova was at the hands of state agents, the Court considered that it has not been established to the required standard of proof – “beyond reasonable doubt” – that the State agents had perpetrated the crime.

II. The current situation with the implementation of these cases

5. As a preliminary remark, we note that the Russian Government has provided no action plans/reports related to this group of cases, and given the non-cooperation of the Russian Government with the Council of Europe, we do not expect that one is forthcoming.

a. Implementation of individual measures

6. We claim that the individual measures under these three judgements were not implemented. Russian authorities made no progress in investigating these cases.

Case of Mazepa and others v. Russia

7. 17 years after the killing of Anna Politkovskaya, the investigation into her murder is still ongoing. Despite the fact that the perpetrators of the murder have been convicted, the criminal case against the intellectual author of the crime, that is, the person or people who commissioned the assassination, has not been closed and is being formally investigated. The case is being transferred to different investigators and the priority level of this case has been downgraded. Investigators regularly send notices to lawyers to extend the investigation, but no successful steps have been taken to establish the identity of the perpetrator.
8. According to Article 78 of the Criminal Code, a person is released from criminal liability 15 years after committing an extremely grievous crime such as murder. Thus, even if the investigation determines the intellectual author of the murder, he or she may be released from liability unless the court considers otherwise.

Case of Carter v. Russia

9. In 2021, the press secretary of the Russian President Dmitry Peskov explicitly stated that the Kremlin will not implement this ruling and the investigation into this case has not brought any results.³

³ “The Kremlin called the ECHR’s statement about Russia’s responsibility for the murder of Litvinenko unfounded”, Kommersant, 21 September 2021, URL: <https://www.kommersant.ru/doc/4996703>

Case of Estemirova v. Russia

10. After the adoption of the judgment of the ECtHR the authorities have not informed the relatives of Natalia Estemirova of any new investigative steps. This means that the authorities have probably not undertaken any effort to eliminate the shortcomings established by the ECtHR and thus are not implementing the individual measures of implementation of the judgment of the ECtHR.
11. On the basis of the currently accessible materials of the criminal file we can notice the following: Many colleagues of Natalia Estemirova gave detailed statements to the investigators that, before her death, Natalia investigated and denounced grave human rights violations committed in Chechnya including killings, kidnappings and tortures. Natalia provided evidence that these crimes were committed by the Chechen policemen controlled by the Russian State.⁴ Ms Estemirova and her colleagues from the Grozny's office of the "Memorial" Human Rights Center regularly received threats from the representatives of Chechen Government. Although during the first six months of the investigation the investigators collected a large amount of evidence in support of the possible link of the crime to the professional activity of Ms Estemirova, from January 2010 only one version of the crime was investigated, relating to the commission of the crime by the paramilitaries not controlled by the Russian State. The numerous contradictions of this version were described in the ECtHR's judgment, as well as in the report of "Memorial", FIDH and *Novaya Gazeta*.⁵

b. Implementation of general measures

12. All three cases concern the killings of the critics of the Russian authorities. These cases are not isolated, as other critics were also killed, including the killing of Boris Nemtsov,⁶ the attempts to kill Alexei Navalny,⁷ Vladimir Kara-Mursa,⁸ Sergei and Yulia Skripal.⁹ In 2023, two major attacks on journalists of "*Novaya Gazeta*" were reported: the poisoning of Elena Kostyuchenko¹⁰ and the beating of Elena Milashina.¹¹ Russian authorities have

⁴ See the case of the public execution of Rizvan Albekov investigated by Natalia Estemirova before her death: <http://old.memo.ru/d/3624.html>

⁵ Please read: <http://old.memo.ru/2011/07/14/1407111.pdf>

⁶ "How Boris Nemtsov was killed. Full chronology of calls and movements, communication with Kadyrov's associates and new group members", Mediazona, 1 March 202, URL: <https://zona.media/chronicle/nemtsov-chronicle>

⁷ "Russia: UN experts say Navalny poisoning sends clear, sinister warning to critics", Ms. Agnès Callamard, Special Rapporteur on extrajudicial, summary or arbitrary executions and Ms. Irene Khan, Special Rapporteur on the right to freedom of opinion and expression, 1 March 2021, URL: [https://www.ohchr.org/en/press-briefing-notes/2021/03/russia-un-experts-say-navalny-poisoning-sends-clear-sinister-warning#:~:text=GENEVA%20\(1%20March%202021\)%20%E2%80%93,ensure%20accountability%20of%20those%20responsible](https://www.ohchr.org/en/press-briefing-notes/2021/03/russia-un-experts-say-navalny-poisoning-sends-clear-sinister-warning#:~:text=GENEVA%20(1%20March%202021)%20%E2%80%93,ensure%20accountability%20of%20those%20responsible).

⁸ "Bellingcat linked FSB officers monitoring Navalny to the poisoning of Kara-Murza", BBC Russia, 11 February 2021, URL: <https://www.bbc.com/russian/news-56005011>

⁹ "Two Russians accused of poisoning the Skripals with Novichok", Mediazona, 2 November 2018, URL: <https://zona.media/chronicle/rusk>

¹⁰ "I want to live. That's why I'm writing this text. Journalist Elena Kostyuchenko tells how, apparently, they tried to poison her in Germany", Meduza, 15 August 2023, URL: <https://meduza.io/feature/2023/08/15/ya-hochu-zhit-poetomu-ya-pishu-etot-tekst>

¹¹ "Russia: UN experts dismayed at violent attack against journalist Yelena Milashina and lawyer Alexander Nemo in Grozny", Mariana Katzarova, Special Rapporteur on the situation of human rights in the Russian Federation; Irene Khan, Special Rapporteur on the right to freedom of opinion and expression; Mary Lawlor, Special Rapporteur

equally failed to effectively investigate these cases, including the involvement of state agents in these crimes. Therefore, Russia continues to systematically target journalists, human rights defenders and other civil society representatives.

13. Russian law has a specific crime concerning attacks against journalist activities.¹² However, this law is not effectively implemented. The use of this article of the criminal code is very rare: from one to several cases per year.¹³ Moreover, we submit that there should be similar provisions providing special protection to human rights defenders and opposition activists. Obstruction of their activities, physical and other attacks must be effectively investigated and those responsible held accountable. The cases outlined in this submission, and those in the paragraph above (amongst many others), demonstrate that the lack of effective investigations into these cases is a systemic problem which requires particular attention from the Russian authorities. In particular, these cases highlight a particular deficiency in adequately and effectively determining whether the case involved participation of, or direction by, State agents - indeed this theory is often ignored or unconvincingly dismissed. In addition, the authorities fail to consider the professional activity as a human rights defender or a journalist of the victim as an aggravating circumstance or circumstance requiring special attention during investigation.
14. In these cases subject to supervision by the Committee, the Court also emphasized that it is not sufficient to simply identify the direct perpetrator of the crime, but also who ordered and organized the crime. However, we see in such types of cases that even when a direct perpetrator is established, this does not lead to the adequate investigation or identification of the organizer of the crime. For example, in the case of the killing of Boris Nemtsov, where the direct perpetrators of the crime were identified, one of them was artificially declared as an organizer of the crime, although he did not have a proper motive and means to organize such a crime.¹⁴ We submit that the real reason for this unwillingness to investigate the organisers of these crimes may be that it will lead to State agents, including the FSB and members of government.
15. This issue arises not only due to deficiencies in the work of the investigators but also the general attitude of the authorities to the investigations of such crimes, and to the implementation of the ECtHR's judgments. For example, in 2021, the press secretary of the Russian President Dmitry Peskov called the ECtHR judgment in the Litvinenko case unfounded and emphasized that the Kremlin will not implement this ruling.¹⁵ As such,

on the situation of human rights defenders; Dr. Alice Jill Edwards, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; Reem Alsalem, Special Rapporteur on violence against women and girls, its causes and consequences; Margaret Satterthwaite, Special Rapporteur on the independence of judges and lawyers, 7 July 2023, URL:

<https://www.ohchr.org/en/press-releases/2023/07/russia-un-experts-dismayed-violent-attack-against-journalist-yelena>

¹² Article 144 of the Russian Criminal Code:

https://www.consultant.ru/document/cons_doc_LAW_10699/4e55ae6b39c49996e745765a7f188b8cbe54fb0a/

¹³See:

<https://mmdc.ru/blog/2020/11/30/ugrozy-napadeniya-porcha-oborudovaniya-kak-zakon-zashhishhaet-zhurnalistov-v-takih-sluchayah/>

¹⁴“The investigation was deliberately led to a dead end”, Novaya Gaveta, 28 February 2023, URL:

<https://novayagazeta.ru/articles/2023/02/28/rassledovanie-soznatelno-zavedeno-v-tupik-media>

¹⁵ “The Kremlin called the ECHR's statement about Russia's responsibility for the murder of Litvinenko unfounded”, Kommersant, 21 September 2021, URL: <https://www.kommersant.ru/doc/4996703>

there is unwillingness from both investigatory and political bodies to investigate and implement judgments calling for robust investigations into high profile killings.

16. These cases also highlight a systemic issue on the transparency of the investigation and with access to the materials of the criminal files. Russian authorities fail to provide access to the materials of the cases to international bodies, especially the ECtHR. The reason for reluctance to disclose the materials may be the presence of evidence incriminating State agents and other sensitive information for authorities.
17. Finally, the individual and general measures in such cases are interrelated. The best way to prevent such new crimes is to bring to responsibility those responsible for the already committed crimes.

III. Recommendations

a. Recommendations on implementation of individual measures

Case of “Mazepa and others v. Russia”

18. We recommend the Committee of Ministers to indicate to the Russian Government the following individual measures in this case:
 - To adequately investigate the connection of the murder with Ms Politkovskaya’s journalist’s professional activity;
 - To investigate and identify the intellectual author of the crime and bring them to justice;
 - To meaningfully investigate whether the crimes were committed, directed, or organised by FSB officials or the administration of the Chechen Republic;
 - To provide the applicants access to all the materials of the criminal file;
 - To bring all the perpetrators to justice.

Case of “Carter v. Russia”

19. We recommend the Committee of Ministers to indicate to the Russian Government the following individual measures in this case:
 - To meaningfully investigate whether Mr. Litvinenko was killed by State agents, due to his criticism of the Russian authorities;
 - To take into account the findings of the investigation conducted in the United Kingdom and to cooperate with the investigative authorities of the United Kingdom;
 - To examine the role of Mr. Lugovoy and Mr. Kovtun in the crime, to establish their possible supervisor and to investigate their link with the Russian Government;

- To investigate who was responsible for the production of the poison polonium-210 used during the crime, and how it came into the hands of Mr. Lugovoy and Mr. Kovtun;
- To provide the applicants access to all the materials of the criminal file;
- To bring all the perpetrators to justice.

Case of “Estemirova v. Russia”

20. We recommend the Committee of Ministers to indicate to the Russian Government the following individual measures in this case:

- To reinvestigate the murder of Natalia Estemirova;
- To investigate and to resolve all the contradictions established by the ECtHR concerning the version that the crime had been committed by Mr. Bashayev;
- To investigate whether Ms. Estemirova’s abduction and murder was organised or directed by State agents;
- To investigate the connection of the murder with Ms. Estemirova’s human rights professional activities;
- To give the applicants access to all the materials of the criminal file;
- To bring all the perpetrators to justice.

b. Recommendations on implementation of general measures

21. We recommend the Committee of Ministers to indicate to the Russian Government the following general measures in this group of cases:

- To cease its policy of general intolerance of the Government towards its critics, to abolish the repressive laws and practices towards them and to discontinue hate speech used by the authorities which provokes the killings and creates a general atmosphere of impunity;
- To amend legislation to provide effective protection of journalists, human rights defenders, opposition figures and activist from the attacks of state and non-state agents;
- To create a truly independent national mechanism for the investigation of the killings of Government’s critics and to include in this mechanism parliamentary investigations and the cooperation with the human rights ombudsman and independent NGOs;
- To investigate or reinvestigate all known killings of Governmental critics, with the focus on the possible links of the crimes to the professional or other public activities of the victims;

- To adequately investigate State agent participation in the relevant killings;
 - To open new investigations of such cases in light of the findings of the ECtHR;
 - To meaningfully cooperate during the investigations of these crimes with international bodies (including UN and the Council of Europe), independent NGOs and, where relevant, foreign countries;
 - To provide, in all cases, full access to the materials of the criminal files to the families of the victims and to international human rights mechanisms;
 - To ensure that all perpetrators, including state agents of the killings, are brought to justice for these crimes.
22. Due to the lack of the political will of the national authorities to investigate such crimes, we also recommend the Committee of Ministers to undertake the following measures:
- To propose to the international community the creation of an independent international mechanism for investigation of such cases where it is possible;
 - To act as a coordinator of international efforts for the alternative investigation of such cases and the establishment of facts recognized at the international level;
 - To bring these cases to the attention of the UN Human Rights Committee, UN Human Rights Council, the UN Special Rapporteur on extrajudicial executions, UN Special Rapporteur on human rights in Russia and other relevant international human rights mechanisms.