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Chechens Win First Claims in the European Court of Human Rights in *Khashiyev & Akayeva v. Russia*

Tarik Abdel-Monem†

In *Khashiyev & Akayeva v. Russia*,¹ the European Court of Human Rights unanimously found Russia in violation of Article 2—right to life—and Article 3—prohibition of torture—of the European Convention on Human Rights (“the Convention”)² for its military operations in the Republic of Chechnya. The Court also found Russia in violation of Article 13—right to an effective remedy—by a vote of five to two. *Khashiyev* and *Akayeva* were the first of six claims filed with the Court in early 2000³ against Russia for alleged violations of the Convention in its war against Chechen nationalists.

The plaintiffs in *Khashiyev* were nationals of the Russian Federation living in Grozny.⁴ In the fall of 1999, elements of the Russian army attacked and gradually encircled Grozny in an attempt to engage Chechen separatist forces,⁵ suffering significant casualties in the process.⁶ By January 20, 2000, after fierce fighting, the Russian military had gained control of the city.⁷ In early February of 2000, Western human rights organizations began issuing reports alleging that Russian forces had engaged in

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1. *Khashiyev & Akayeva v. Russia*, App. Nos. 57942/00 and 57945/00, Judgment, Eur. Ct. H.R. (Feb. 24, 2005), available at <http://www.echr.coe.int/echr/> (select “case-law” hyperlink; then follow “HUDOC” hyperlink; then enter applicant number 57942/00 in applicant number search field; then select “Search”).

2. Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature Nov. 4, 1950, 213 U.N.T.S. 221, available at <http://conventions.coe.int/treaty/en/Treaties/Html/005.htm> [hereinafter Convention for Human Rights].

3. *Khashiyev*, *supra* note 1, ¶ 1; Press Release, European Court of Human Rights, Chamber Judgments in Six Applications Against Russia (Feb. 24, 2005), available at [http://press.coe.int/cp/2005/088a\(2005\).htm](http://press.coe.int/cp/2005/088a(2005).htm) (discussing judgments in cases involving six separate applicants’ charges against Russia for violations of the European Convention on Human Rights).

4. *Khashiyev*, *supra* note 1, ¶¶ 1, 10.

5. See Marina Koreneva, *Russian Troops Break into Chechnya as Grozny Threatens Deadly Reprisals*, AGENCE FRANCE PRESSE, Sept. 30, 1999 (reporting that Russian soldiers had entered Chechen territory and suggesting that the Russian army would invade Chechnya); *Russian Tanks Pounding Grozny From Three Directions*, N.Y. TIMES, Dec. 18, 1999, at A10 (describing the Russian forces’ encirclement and bombardment of Grozny).

6. *Russian Tanks Pounding Grozny from Three Directions*, *supra* note 5, at A10.

7. *Khashiyev*, *supra* note 1, ¶ 16 (noting that Russian forces established control of Grozny between December 27, 1999 and January 20, 2000).

summary executions of civilians in Grozny and other areas.⁸ Plaintiffs Khashiyev and Akayeva both claimed that during this period of time, Russian soldiers tortured and killed their relatives.⁹ They later appealed to the European Court of Human Rights for relief.¹⁰ On December 19, 2002, the Court joined their Article 2, 3, and 13 claims and admitted the case for review.¹¹

According to Khashiyev, he left Grozny prior to the fighting and returned in late January of 2000 to visit relatives who stayed in Grozny.¹² Upon his return, he found the dead bodies of his sister and nephew lying outside his sister's house.¹³ Khashiyev also discovered the body of Akayeva's brother in the same location.¹⁴ All three individuals allegedly had multiple bullet wounds and were carrying identity cards.¹⁵ Khashiyev transported the bodies to the neighboring Russian Republic of Ingushetia, where Akayeva viewed the bodies prior to their burials.¹⁶ Days later, Khashiyev returned to Grozny to search for additional relatives and discovered the dead bodies of his brother and another nephew, along with a neighbor, in similar conditions.¹⁷ He photographed the bodies and took them back to Ingushetia, where government officials examined them before they were buried.¹⁸ According to a Human Rights Watch report, witnesses allegedly last saw Khashiyev's two relatives and the neighbor in the custody of Russian soldiers and the witnesses claimed that they saw the soldiers beat the detainees.¹⁹

From February to April of 2000, local government authorities in Ingushetia certified the deaths of Khashiyev's and Akayeva's relatives.²⁰ The Grozny Town Prosecutor's Office, a civilian entity, opened a criminal investigation into the "mass murder" of civilians by a Russian military unit on May 3, 2000.²¹ The military prosecutor for Chechnya reviewed Khashiyev's allegations in April but decided not to open an investigation.²² However, the civilian prosecutor in Ingushetia opened a criminal case

8. See HUMAN RIGHTS WATCH, CIVILIAN KILLINGS IN STAROPROMYSLOVSKI DISTRICT OF GROZNY, (2000) [hereinafter CIVILIAN KILLINGS], http://www.hrw.org/reports/2000/russia_chechnya/ (describing alleged massacres of civilians in Grozny).

9. Khashiyev, *supra* note 1, ¶ 3.

10. See *id.* ¶¶ 1-4.

11. *Id.* Khashiyev & Akayeva v. Russia, App. Nos. 57942/00 and 57945/00, Decision as to the Admissibility of Khashiyev and Akayeva, Eur. Ct. H.R. (Dec. 19, 2002) (decision on admissibility), available at <http://www.echr.coe.int/> (select "case-law"; then follow "HUDOC" link; then select "Decisions"; then search for "Khashiyev v. Russia").

12. See Khashiyev, *supra* note 1, ¶¶ 14, 17 (noting Khashiyev's departure and return to Grozny).

13. *Id.*

14. *Id.* ¶ 17.

15. *Id.*

16. *Id.* ¶¶ 18, 20.

17. *Id.* ¶¶ 24-26.

18. *Id.*

19. See CIVILIAN KILLINGS, *supra* note 8 (outlining accounts of the disappearances of Magomet Goigov, Risvan Taimaskhanov, and Khamid Khashiyev on January 19, 2000).

20. Khashiyev, *supra* note 1, ¶¶ 28-30.

21. *Id.* ¶¶ 31, 48.

22. *Id.* ¶ 32.

investigating the deaths of Khashiyev's brother and second nephew.²³ Both criminal inquiries were later joined into one investigation by the Grozny Town Prosecutor's Office in September of 2000, but the investigation did not produce any results and was closed and reopened multiple times.²⁴ In late 2002, Khashiyev submitted a request for civil damages from the Ministry of Finance to an Ingushetian court for the deaths of his relatives.²⁵ During this period of time, another criminal investigation was opened but it could not identify the responsible soldiers.²⁶ Nonetheless, the Court awarded Khashiyev civil damages because—although the exact perpetrators could not be identified—the court recognized that the Russian federal forces were in firm control of that part of Grozny at the time of the deaths, and thus concluded that the killings should be attributed to the army.²⁷

In its review of the domestic investigations, the European Court observed that the Russian authorities had provided only a portion of the investigation file to the Court.²⁸ Of the documents that the Russian authorities did provide, the Court found the most important records to be the decision by the Grozny civilian prosecutor to open the criminal investigation and the applicants' and witnesses' testimonies as to the deaths of the two applicants' relatives and conditions of their bodies.²⁹ The Court also noted that since 2000 the criminal investigation of the deaths was transferred four times between the Grozny Town Prosecutor's Office and the Republic of Chechnya prosecutor, it was adjourned seven times, and it was reopened eight times.³⁰

Russia's sole objection to the claims brought against it was that the plaintiffs had failed to exhaust domestic remedies³¹ prior to suing Russia in the European Court of Human Rights—a requirement of the Convention for admissibility before the Court.³² The Russian government acknowledged that the court system in Chechnya was not a viable forum to adjudicate the claim since the outbreak of hostilities in 1996, but it noted that

23. *Id.* ¶ 33.

24. *Id.* ¶ 37.

25. *Id.* ¶ 39.

26. *Id.*

27. *Id.* ¶¶ 40–41. Specifically, the court noted that the bodies were discovered holding their identity papers and since only Russian forces were permitted to conduct identity checks, it appeared they had been killed during an identity check. *Id.* ¶ 41. The exact unit responsible for the deaths could not be established, but “all military units were State bodies and therefore pecuniary damage should be paid by the State.” *Id.*

28. *Id.* ¶ 46 (stating that only 88 of a listed 130 documents from the original criminal investigation file originating in Grozny were provided to the Court).

29. *Id.* ¶¶ 47–62 (outlining “[t]he most important documents” from the Russian government's criminal investigation file that were provided to the Court).

30. *Id.* ¶¶ 67–68.

31. *Id.* ¶ 99.

32. See Convention for Human Rights, *supra* note 2, art. 35(1) (“The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.”).

civil legal remedies were still available in other republics of Russia.³³ In particular, Russia pointed to the fact that Khashiyev himself had successfully applied for and obtained civil damages for the deaths of his relatives by the order of a district court in the Republic of Ingushetia.³⁴

Khashiyev and Akayeva, however, argued that the Convention's obligation to exhaust domestic remedies was inapplicable because the available government remedies were "illusory, inadequate and ineffective."³⁵ The plaintiffs claimed that domestic avenues for judicial relief were negated by the fact that the Russian government, with full knowledge that human rights violations had been and were occurring in Chechnya, directed and supported its military campaign there.³⁶ To support this claim, the plaintiffs asserted the existence of a pattern of impunity for: (1) violations by Russian soldiers committed in the first Chechen war of 1994-96; (2) violations that occurred and were still occurring since the outbreak of the second war in 1999; and (3) violations, such as abuse and torture, committed by the police throughout Russia.³⁷ Documentation from various human rights groups, media reports, and the Council of Europe itself supported the allegations of an ongoing impunity.³⁸ Additionally, although Khashiyev had applied for and obtained civil damages for the deaths of his relatives, the plaintiffs argued that an adequate and effective remedy had to include a viable criminal investigation and not just the issuance of monetary compensation.³⁹

The Court had not addressed the Convention's exhaustion of domestic remedies requirement⁴⁰ in its 2002 admissibility decision because it believed that the issue was deemed too closely connected to the merits of

33. Khashiyev, *supra* note 1, ¶ 100.

34. *Id.* ¶ 103.

35. *Id.* ¶ 104.

36. *Id.* ¶¶ 105-07 (outlining the plaintiffs' reasons why the pursuit of domestic remedies would be illusory).

37. *Id.* ¶ 108.

38. See *id.* ¶ 109. The Parliamentary Assembly of the Council of Europe has repeatedly issued statements critical of Russian operations in Chechnya. See Eur. Parl. Ass., *The Conflict in Chechnya*, 2000 Sess., Res. No. 1444, ¶ 8 (Jan. 27, 2000) ("The Russian Federation is thus found to be violating some of her most important obligations under both the European Convention on Human Rights and international humanitarian law . . ."); Eur. Parl. Ass., *Developments in the Russian Federation in Relation to the Situation in Chechnya*, 1996 Sess., Res. No. 1086, ¶ 10 (Apr. 24, 1996) ("The Assembly reminds the Russian authorities of their commitment . . . to ensure that 'those found responsible for human rights violations will be brought to justice—notably in relation to events in Chechnya,' and demands that documented human rights abuses . . . be investigated, and the guilty punished."); Eur. Parl. Ass., *Russia's Request for Membership in the Light of the Situation in Chechnya*, 1995 Sess., Res. No. 1055, ¶ 2 (Feb. 2, 1995) ("The Assembly thus unreservedly condemns the indiscriminate and disproportionate use of force by the Russian military, in particular against the civilian population . . .").

39. Khashiyev, *supra* note 1, ¶¶ 113-14. The applicants were interested in more than damages as "their principal objective was to see the perpetrators brought to justice." *Id.* ¶ 113.

40. Convention for Human Rights, *supra* note 2, art. 35(1) ("The Court may only deal with the matter after all domestic remedies have been exhausted . . .").

the case.⁴¹ Revisiting the requirement issue, the Court noted that although domestic remedies must first be exhausted before a claim is admissible for the Court's review, those remedies must be accessible and effective both in theory and practice and, moreover, plaintiffs should not be obligated to pursue domestic remedies that are inadequate.⁴² The Court emphasized that "the application of the rule of exhaustion of domestic remedies must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting States have agreed to set up."⁴³ In sum, the Court must examine the exhaustion requirement in terms of the overall context of the case and the applicant's ability to pursue effective remedies domestically.⁴⁴

Although Khashiyev did successfully apply for and obtain monetary compensation for the deaths of his relatives, this remedy did not seek to identify the perpetrators of the alleged killings nor bring them to justice.⁴⁵ Therefore, the Court held that the plaintiffs were not required to pursue a civil action to comply with the exhaustion of domestic remedies requirement.⁴⁶

The criminal investigation opened as a result of Khashiyev and Akayeva's complaints—which the plaintiffs had brought shortly after the deaths of their relatives in February 2000—had yet to be resolved.⁴⁷ Accordingly, the Court noted that a review of the criminal investigation as part of the exhaustion of domestic remedies requirement was linked to the merits of the case and should therefore be reviewed under the provisions of the Convention that the plaintiffs invoked.⁴⁸

With respect to the Article 2 claim—right to life⁴⁹—the Court found Russia in violation because the deaths of the plaintiffs' relatives were attributable to the state and the authorities had failed to properly investigate the deaths after the fact.⁵⁰ On the first count, the Court noted that the deaths, which had occurred during government custody, gave rise to strong presumptions of fact against the government and shifted the burden of proof to the defendant.⁵¹ In addition, the Court acknowledged that proof of wrongful deaths satisfying the "beyond reasonable doubt" threshold could

41. See *Khashiyev*, *supra* note 1, ¶ 115.

42. *Id.* ¶ 116.

43. *Id.* ¶ 117.

44. *Id.*

45. See *supra* note 38 and accompanying text.

46. *Khashiyev*, *supra* note 1, ¶¶ 121–22.

47. *Id.* ¶ 123.

48. *Id.* ¶ 124.

49. Convention for Human Rights, *supra* note 2, art. 2(1) ("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.").

50. *Khashiyev*, *supra* note 1, ¶¶ 147, 166.

51. See *id.* ¶ 133:

Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in detention, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded

be derived from “the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact.”⁵² Thus, the Court found that the government was directly responsible for the alleged deaths based on a number of factual inferences. First, Russia had only submitted about two-thirds of the files from the criminal case opened in February of 2000 to the Court—conduct that allowed the Court to draw pronounced inferences against Russia.⁵³ Within the files that had been turned over, the Russian investigators themselves noted numerous times that the deaths were an unlawful “mass murder” committed by soldiers—although none had been specifically identified—who had obtained control of the Grozny neighborhood where the deaths occurred. The testimony of both plaintiffs and other witnesses supported this presumption.⁵⁴ Reports from human rights organizations further supported these accounts.⁵⁵ Finally, the civil court in Ingushetia—which had awarded Khashiyev civil damages for the deaths of his relatives—had concluded that only the government forces could be responsible for the killings given the circumstances that existed at that time—a finding that substantiated the conclusion that Russian forces were responsible for the deaths.⁵⁶ Taken together, the Court held that Russian soldiers had killed the applicants’ relatives. Therefore, the deaths were attributable to the state, amounting to a direct violation of Article 2 of the Convention.⁵⁷

Moreover, the Court held that Russia had violated Article 2 of the Convention by also failing to properly investigate the deaths of the plaintiffs’ relatives. The obligation to conduct effective investigations of alleged killings accomplished by force is based on a reading of Article 2 with Article 1, which states that “[t]he High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in . . . this Convention.”⁵⁸ This presumably would apply to the deaths of individuals while in government custody. This obligation was first recognized in the case of *McCann & Others v. United Kingdom*,⁵⁹ and later developed in *Kaya v. Turkey*.⁶⁰ Both cases involved alleged extrajudicial killings of individuals by government agents.⁶¹

as resting on the authorities to provide a satisfactory and convincing explanation.

Id.

52. *Id.* ¶ 134.

53. *Id.* ¶¶ 136–39.

54. *Id.* ¶¶ 141–42.

55. *Id.* ¶ 144.

56. *Id.* ¶ 145.

57. *Id.* ¶ 147.

58. Convention for Human Rights, *supra* note 2, arts. 1–2. Although the text in the convention does not explicitly mention an obligation that the government conduct effective investigations, courts have interpreted that the obligation arises from a reading of Article 2 in conjunction with Article 1. See, e.g., *Khashiyev*, *supra* note 1, ¶ 153.

59. *McCann v. United Kingdom*, App. No. 18984/91, 21 Eur. H.R. Rep. 97, 98–99 (1996).

60. *Kaya v. Turkey*, App. No. 22729/93, 28 Eur. H.R. Rep. 1, 2, 25–28 (1998).

61. See Tarik Abdel-Monem, *The European Court of Human Rights: Chechnya’s Last Chance?*, 28 VT. L. REV. 237, 275–79 (2004) (outlining *McCann* and *Kaya* cases and the

In *Khashiyev*, the Court noted that the payment of monetary damages could not satisfy the obligation to conduct an Article 2 investigation following a death in custody. It also held that Article 2 required that the authorities conduct an investigation capable of identifying and punishing the perpetrator(s).⁶² In the investigation at issue, there was no attempt to locate the whereabouts of the military unit active in Grozny at the time of the deaths or to identify its officers or servicemen.⁶³ Moreover, the government's attempts to identify or locate other witnesses or to conduct proper autopsies of the bodies were insufficient and inadequate.⁶⁴ Additionally, the criminal investigation was adjourned and reopened eight times between May 2000 and January 2003 and transferred between prosecutors at least four times "with no clear explanation."⁶⁵ For these reasons, the Court found that Russia had violated its Article 2 obligation to effectively investigate the deaths of the plaintiffs' relatives.⁶⁶

Khashiyev and Akayeva also claimed that Russia violated Article 3 of the Convention—prohibition of torture—given the reported state of their deceased relatives' corpses.⁶⁷ Although testimony existed alleging the existence of multiple bullet and stab wounds, there was insufficient evidence to prove beyond a reasonable doubt that the decedents were tortured prior to being killed.⁶⁸ However, like Article 2, Article 3 read together with Article 1 imposes a positive obligation upon governments to conduct effective investigations into allegations of torture conducted by the State.⁶⁹ For such an investigation to be effective, it "should be capable of leading to the identification and punishment of those responsible."⁷⁰ Just as the Court held that Russia had failed to conduct an effective investigation into the deaths of the deceased, the Court also found that Russia had failed to do so with regards to the claims of torture. Therefore, the Court concluded that Russia had violated Article 3 for failing to conduct an adequate investigation into the claims of torture.⁷¹

positive obligation of Article 2 to effectively investigate deaths involving the use of force by state authorities).

62. *Khashiyev*, *supra* note 1, ¶ 153.

63. *See id.* ¶ 158 ("In the absence of an attempt to establish any details of the military unit which had been referred to by name, it is difficult to imagine how the investigation could be described as efficient.").

64. *Id.* ¶¶ 160, 163.

65. *Id.* ¶ 164.

66. *Id.* ¶ 166.

67. *See id.* ¶¶ 19-20, 51, 54 (outlining witness testimony as to the condition of the bodies and describing the cursory post-mortem examination conducted by medical investigators); *see id.* ¶ 168 (describing plaintiffs' claim that there was an Article 3 violation).

68. *See id.* ¶¶ 172-74 (noting that although it was clear the plaintiffs' relatives had been killed by military forces, it could not be proven beyond a reasonable doubt that they were tortured to death, and therefore Russia was not in direct violation of Article 3).

69. *Id.* ¶ 177.

70. *Id.*

71. *Id.* ¶¶ 179-80.

Finally, the Court found Russia in violation of Article 13⁷²—right to an effective remedy—for the same reasons that it held Russia in violation of the positive obligations to conduct Article 2 and Article 3 investigations into the deaths and alleged torture of the deceased.⁷³ For the combined violations, the Court awarded non-pecuniary damages in the amount of 15,000 euros (\$19,810) to Khashiyev, and 20,000 euros (\$26,413) to Akayeva as well as litigation costs for both plaintiffs.⁷⁴

Analysis

The Court's holding in *Khashiyev* comports with decisions involving Turkish military operations against Kurdish separatists and claims of Articles 2, 3, and 13 violations. Most notably, the decision in *Khashiyev* is in line with the rulings found in *Çakici v. Turkey*⁷⁵ and *Timurtaş v. Turkey*.⁷⁶ Those two cases marked the Court's emerging willingness to rely on circumstantial evidence to find governments in direct violation of the Convention for extrajudicial killings of civilians in their custody.⁷⁷ The cases were also characterized by factual scenarios in which government forces were conducting military operations in civilian areas, and impunity for soldiers who committed human rights abuses was pronounced.⁷⁸

From an evidentiary standpoint, *Khashiyev* is particularly analogous to the circumstances in *Çiçek v. Turkey*,⁷⁹ in which the Court held that missing Kurdish men allegedly detained by Turkish forces were presumably killed by security forces in an extrajudicial fashion.⁸⁰ The Court in *Çiçek* based its conclusions on the consistent testimony of witnesses stating that the men were last seen alive in the control of Turkish forces, had been missing for over six years, and the circumstances surrounding Turk-

72. Convention for Human Rights, *supra* note 2, art. 13 ("Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.").

73. *Khashiyev*, *supra* note 1, ¶¶ 184-86.

74. *Id.* ¶ 199 (setting damages in euros to be converted to Russian roubles at the rate applicable at the date of settlement). The conversion to dollars calculated at the rate prevailing on the date of the judgment.

75. *Çakici v. Turkey*, 1999-IV Eur. Ct. H.R. 583.

76. *Timurtaş v. Turkey*, 2000-VI Eur. Ct. H.R. 303.

77. *See Çakici*, 1999-IV Eur. Ct. H.R. at 610 (finding that sufficient circumstantial evidence existed to find Turkey had executed an individual it had taken into custody); *Timurtaş*, 2000-VI Eur. Ct. H.R. at 330-31 (finding that a missing Kurdish man had been detained and presumed killed by Turkish forces based on witness testimony, duration of time the man had been missing, and the overall lawless environment of Southeastern Turkey at the time of the killing). *See also* Gobind Singh Sethi, *The European Court of Human Rights' Jurisprudence on Issues of Forced Disappearances*, 8 HUM. RTS. BRIEF 29 (2001) (describing the treatment of disappearance cases by the Court and the impact of *Çakici*, *Timurtaş*, and other cases on the Court's approach towards disappearances).

78. *See Timurtaş*, 2000-VI Eur. Ct. H.R., at 331 (recognizing the overall environment of Southeastern Turkey at the time of military operations and how it fostered a "lack of accountability of members of the security forces").

79. *Çiçek v. Turkey*, App. No. 25704/94, 37 Eur. H.R. Rep. 464 (2003).

80. *Id.* at 495.

ish operations against Kurdish separatists were marked by a general lack of accountability for abuses committed by government soldiers.⁸¹ Like *Çiçek*, the rationale employed in *Khashiyev* indicates that the Court is still willing to presume that an extrajudicial killing has occurred if sufficient witness testimony affirms that the victim was last under the custody or control of government forces, and a record of such abuses already exists.⁸² Given the extent to which human rights groups have documented allegations of extrajudicial detentions and killings by government forces in Chechnya,⁸³ the *Khashiyev* holding could be the first of many cases finding Russia in direct violation of Article 2 of the Convention.

In addition to the liberal evidentiary threshold that the Court is seemingly willing to use to presume direct violations of Article 2, *Khashiyev* also indicates the Court's receptiveness to impose positive Article 2 and Article 3 obligations on Russia to conduct effective investigations of alleged abuses. As the court holdings in Turkish cases suggest, this positive obligation is heightened when the government allegedly responsible for the violation is investigating itself, particularly during a military conflict.⁸⁴ Additionally, the Court's willingness to find violations for inadequate criminal investigations comports with the Council of Europe's long standing frustration with Russia for its failure to hold its forces accountable for human rights violations in Chechnya, and the Republic's overall absence of rule of law.⁸⁵ Continued judgments against Russia might serve to undermine the government's credibility—both domestically and internationally—with respect to its stance that it is fighting a legitimate and necessary war against international terrorism.

81. See *id.* at 493, 495 (outlining circumstantial evidence that was sufficient to prove that an extrajudicial killing had occurred).

82. *Khashiyev*, *supra* note 1, ¶¶ 142–47.

83. See INT'L HELSINKI FEDERATION FOR HUMAN RIGHTS [IHF], CHECHNYA: ENFORCED "DISAPPEARANCES", EXTRAJUDICIAL KILLINGS AND UNLAWFUL DETENTIONS - AN UPDATE (2004), available at http://www.ihf-hr.org/viewbinary/viewdocument.php?doc_id=6069; Human Rights Watch, Russia: Nine Civilians Extrajudicially Executed in Chechnya, HUMAN RIGHTS NEWS, Apr. 13, 2004, <http://hrw.org/english/docs/2004/04/12/russia8424.htm>; Press Release, Int'l Helsinki Federation for Human Rights, A Human Rights Activist is Kidnapped, Tortured, and Murdered In Chechnya (Jan. 23, 2004), available at http://www.ihf-hr.org/viewbinary/view.html.php?doc_id=5281.

84. See *Timurtaş v. Turkey*, 2000-VI Eur. Ct. H.R. 303, 332–33 (finding Article 2 violation for failing to conduct an effective investigation of alleged death); *Kaya v. Turkey*, App No. 22729/93, 28 Eur. H.R. Rep. 1, 46 (1998) (finding Article 2 violation for failing to conduct effective investigation of death despite the "prevalence of violent armed clashes [and] the high incidence of fatalities").

85. See Eur. Parl. Ass., *The Political Situation in the Chechen Republic: Measures to Increase Democratic Stability in Accordance with Council of Europe Standards*, 2004 Sess., Res No. 1402, ¶ 1 (July 10, 2004) ("The Parliamentary Assembly of the Council of Europe reaffirms its commitment to further human rights, democracy and the rule of law in the Chechen Republic - as an integral part of the Russian Federation - and deplores the grave situation in which the people of Chechnya still have to live."); Eur. Parl. Ass., *The Human Rights Situation in the Chechen Republic*, 2003 Sess., Doc. No. 9732, § II, ¶ 3, (Mar. 13, 2003) (proposing creation of an international war crimes tribunal to prosecute human rights abuses in Chechnya).

With little political resolution to the conflict in Chechnya in sight, the council of Europe's only recourse to address the Chechnya problem will likely play out in the European Court of Human Rights. Similar to the council's stance towards Turkey and that nation's poor human rights record vis-à-vis its military operations against Kurdish separatists, the council will likely continue to berate Russia for its own abuses but fail to take any overt political action outside of the Court's legal judgments. The European Court of Human Rights may thus serve as the only forum for imputing responsibility for human rights violations in Chechnya. In this sense, the ruling in *Khashiyev* is a victory for Chechen victims, and marks the beginning of claims against Russia for Convention violations. In fact, already over one hundred cases have been filed with the Court involving abuses in Chechnya.⁸⁶ However, this is no compensation for the lives already lost⁸⁷ in Europe's marginalized war.

86. See *Strasbourg Court Sets Undesirable Precedent for Russia*, RIA NOVOSTI (Moscow), Mar. 3, 2005, available at <http://www.lexis.com> (follow "News & Business" hyperlink; then follow "Country & Region" hyperlink; then follow "Europe" hyperlink; then follow "News" hyperlink; then follow "European News Sources File" hyperlink; then search for "Strasbourg Court Sets Undesirable Precedent for Russia"):

The European Court for Human Rights has already received more than 150 "Chechen cases", i.e. complaints from Russian citizens who suffered in military operations during the counter-terrorist operation in Chechnya, writes *Izvestia*. The European court upheld the first lawsuits last week, ruling that the Russian side should pay about 170,000 euros to the plaintiffs. This sets a dangerous precedent for Russia. Experts believe that subsequent lawsuits could inflict serious financial losses and tarnish Russia's image.

Id.; Nikki Tait, *Court Condemns Russia over Chechnya Deaths*, FIN. TIMES (Asia), Feb. 25, 2005, at 4.

Yesterday's decisions by the European Court of Human Rights in Strasbourg, in claims brought by six Chechens who blamed the Russian government for deaths of relatives, are likely to pave the way for other incidents involving alleged human rights violations in the war-torn region to be heard by the court. Lawyers say "well over" 100 cases, based around claims of abuse by the Russian military during their crackdown on separatist rebels in the breakaway republic of Chechnya, are currently stacked up in the Strasbourg court.

Id.

87. See Rajan Menon, *Russia's Quagmire: On Ending the Standoff in Chechnya*, BOSTON REV., Summer 2004, at 26, available at <http://www.bostonreview.net/BR29.3/menon.html> (outlining estimates ranging from 34,000-180,000 deaths in Chechnya since 1994).