Chechen Compensation Cases: War Crimes, Domestic Litigation and Moral Harm in the Russian Federation

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During the 2005 criminal trial of Sergei Lapin, a Lieutenant in the Russian Army, observers emphasized the exceptional nature of the event that was taking place in the Chechen Supreme Court at first instance. In the words of one Russian journalist: "This is the first time in the entire history of the second Chechen war that a criminal case for something very common – the abduction and torture of a civilian – has been brought against a federal officer in Chechnya".[1] A steady stream of commentators referred to it as the "biggest trial",[2] a "unique case",[3] and a "sensation",[4] as widespread consensus emerged that the trial of Lapin for the torture and disappearance of Zelimkhan Murdalov was an anomaly, a deviation from the routine whitewashing of war crimes committed by Russian Armed Forces.[5] But this was not the case for Chechen civilians seeking vindication in the trial for the violence inflicted on their society. The trial raised hopes that more such cases would follow.[6] Natalya Estemirova, the esteemed Chechen human rights monitor, noted that "this trial could be the beginning of an entire series of similar cases".[7]

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1 Anna Politkovskaia, quoted in D. Jackman, "Campaigning for Justice in Dark Times: Politkovskaya's Network and the Lapin Case" (2015), p. 273 (PhD diss., University of Melbourne).

2 Irina Vlasova, «Преступление назвали преступлением» [A Crime is Called a Crime], Новые известия [New News], 30 March 2005 (available online).

3 Natalya Estemirova, quoted in Kazbek Tsurayev, "Chechnya: Russian Convicted of Abuses", *Institute for War and Peace Reporting*, 17 November 2005 (available online).

4 Ruslan Alieev, «Милиционер осужден за пытки» [Policeman Convicted for Torture], Русский курьер [Russian Courier], no. 54 (30 March 2005) (available online)

5 Zoia Svetova, «Правозащитники развеяли миф о стабилизации в Чечне» [Human Rights Defenders Shatter the Myth of Stabilization in Chechnya], Русский курьер [Russian Courier], no. 129 (24 June 2004) (available online).

6 Viacheslav Feraposhkin, «'Международная амнистия' огорчена решением ВС по делу Лапина, виновного в пытках в Чечне» ["Amnesty International" Upset by Decision of Supreme Court in Lapin Case, Guilty of Torture in Chechnya], Кавказский узел [Caucasian Knot], 17 January 2007 (available online); Vladimir Kravchenko, quoted in Vladimir Barinov, «Приговор. 11 лет заключения за командировку в Чечню получил ханты-мансийский омоновец» [Judgment. A Member of Khanty-Mansiisk Special Forces (OMON) Received 11 Years Jail after a Business Trip to Chechnya," Газета [Newspaper], no. 56 (30 March 2005) (available online); See also Anna Politkovskaia, «Судья никого не винит» [Judge Convicts No-one], Новая газета [New Newspaper], no. 93 (20 December 2004) (available online).

7 Tsurayev, note 3 above.

The Lapin case proved to be a fleeting victory that marked the beginning of a deeply flawed post-conflict transition in Chechnya. The few criminal trials that followed confirmed that the skeptical view was correct: the prosecution of the so-called "Cadet" did little to alter the widespread practice of exonerating war criminals who had served in the region. The decision to try Lapin was rejected by both Chechen separatists who loathed the return of Russian law to Chechen territory and by the Russian Military Procurator who resented the trial being held in Grozny rather than in the North Caucasus Military Court, 760 kilometers away in Rostov-on-Don.[8] Over the decade that followed, the Russian Federation failed to establish the most rudimentary reconciliation commission and has never instituted a viable framework for compensating material damage. Lieutenant Lapin's co-conspirators, implicated in the torture and disappearance of Murdalov, were amnestied in February 2016 before standing trial.[9]

Although the criminal prosecution of perpetrators for war crimes in Chechnya is a study in failure, the civil demands for compensation of moral harm are not. Notwithstanding a hostile legal and political environment, regional lawyers began submitting demands to civil courts for compensation of moral harm (возмещение морального вреда) for violations committed by the Russian State during both Russo-Chechen wars (1994-1996 and 1999-2005) and won their cases. Their success was unexpected. This article examines these civil demands for non-pecuniary moral damages and evaluates how courts in Chechnya resolved the question of the intangible injuries of war, the "*préjudice moral.*" The legal arguments made by local courts are considered herein, as are the social and political circumstances that made compensation for military crimes viable. It is concluded that despite the frequently unprofessional nature of the judicial process, these cases display an important social interaction between Chechen civilians, legal professionals, Russian law, and regional human rights law that sought to make the Russian State accountable for its actions. While by no means an ideal reparations model, this article shows how partial satisfaction for civilian demands became a routine practice for a brief historical period in Chechnya between 2010 and 2015.

Research on the Chechen justice system has been largely confined to analyzing Chechen submissions to the European Court of Human Rights (ECtHR) in Strasbourg, a system that allows claimants to appeal for adjudication and monetary compensation under the 1950 European Convention on Human Rights (ECHR). The doctrinal literature[10] is dominated

[8] Jackman, note 1 above, p. 270.

[9] «Прекращено уголовное дело против силовиков, обвиняемых в избиении жителей во время спецоперации в Чечне» [Criminal Case Terminated Against Special Forces Accused of Violence Against Inhabitants during Special-Operation in Chechnya], Новая газета [New Newspaper], 22 February 2016 (available online).

[10] Bill Bowring, "Russia's Cases in the ECtHR and Question of Implementation", in Lauri Mälksoo and Wolfgang Benedek (eds.), *Russia and the European Court of Human Rights: The Strasbourg Effect* (2018) pp. 188-221; Anton Burkov, "The Use of European Human Rights Law in Russian Courts", in ibid., pp. 59-92. Kirill 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,* I (2010), pp. 275-303; Philip Leach, "Egregious Human Rights Violations in Chechnya: Appraising the Pursuit of Justice," in Mälksoo and Benedek, note 10 herein, pp. 255-294; 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*, XXXVIII (2013), pp. 363-388; id, "Seeking Life, Finding Justice: Russian NGO litigation and Chechen Disappearances before the European Court of Human Rights", *Human Rights Review,* XIII (2012), pp. 303-325; Lisa McIntosh Sundstrom, "Russian NGOs and the European Court of Human Rights: A Spectrum of Approaches to Litigation", *Human Rights Quarterly,* XXXVI (2014), pp. 844-868; René Provost,

by this field of inquiry for a number of reasons, notably the common understanding that the judicial system in Chechnya is unprincipled and ineffective and subject to the demands of Russia's larger power structures. This reading, while largely accurate, has also diminished the importance of a deeper inquiry into local legal practices.

This article poses a different set of questions. They relate not only to institutional obstacles within the investigative agencies and judicial system, but to methods employed by individual judges to grant moral compensation *in spite* of the political landscape. It raises intriguing questions about exactly how these local legal strategies developed and why they received a positive hearing from the Chechen judiciary. What legal provisions were invoked, what evidence was deemed sufficient, and what general amounts were awarded? To what extent have the judgments and the court process established the truth of violent repression in Chechnya and demands for justice for its victims? And in the almost complete absence of public rituals and commemorations for those injured, to what extent did money come to represent a tangible confirmation of responsibility inside the republic?[11] In short, did the process of civil accountability function as a form of remedial justice in Chechnya?

It is argued that the rise of civil law in Chechnya as a form of moral remedy for human rights abuses was a response to a range of historical factors both regional and domestic. Three intersecting arguments are posed to explain the specific political, social, and legal conditions that allowed domestic lawyers to develop a practice of strategic litigation through the civil courts. First, the political considerations that drove the appearance of these compensation cases were two-fold. By 2009, the regional human rights system embodied in the judgments of the ECtHR had reached into Russian domestic life. The court had become a significant force with the number of complaints reaching 119,300, representing 28.1%[12] of the total waiting for consideration in Strasbourg in that year alone. In response, the Russian Government announced a so-called war on legal nihilism (правовой нигилизм) to restore public faith in the domestic legal system and to counter what it saw as the regional maneuvering of the European Court. This concern with the shifting balance of power compelled the Medvedev administration to loosen the domestic constraints on civil litigation for Chechen plaintiffs from 2009 until 2015, when the administration's position changed for reasons discussed below.

Furthermore, at the domestic political level, this pursuit of civil justice happened to fall in line with the broader societal goals of President Kadyrov's regime that had arisen in the exact same years. The Chechen president was not particularly concerned with military crimes that had been committed prior to his appointment in 2007, so long as individual Russian servicemen were not criminally prosecuted (in keeping with the demands of the Ministry of Defense and the presidential administration) or that the egregious crimes conducted by his own special forces were not at the center of a public investigation by human rights activists. Politically, the moral compensation rulings turned out to be more than ideal: civilian victims were compensated by the Russian federal treasury for the death

"Teetering on the Edge of Legal Nihilism: Russia and the Evolving European Human Rights Regime", *Human Rights Quarterly*, XXXVII (2015), pp. 289-340.

[11] See Dinah Shelton, "Concepts and Theories of Remedies," in *Remedies in International Human Rights Law* (2d ed.; 2006), pp. 1-4.

[12] "Russia in the Lead in 2009 by Number of Cases Submitted to the ECtHR", *Caucasian Knot*, 29 January 2010 (available online).

of a relative or bodily harm (ostensibly re-investing those funds in the local economy), whereas Kadyrov was seen to be serving the interests of the victims of the Russo-Chechen wars.

Second, from a sociological perspective, this historic opportunity for moral compensation was a result of the rise of a professional class of lawyers inside Chechnya. In addition to the growing reach of the European court, lawyers both Chechen and Russian pursued a campaign of pressure to force the domestic legal system to uphold basic legal norms and standards of professional accountability that grew out of twenty-five years of NGO work in the region. Indeed, the opportunities afforded by Russian civil law and a notable rise in the number of cases for moral compensation across Russia more generally facilitated this approach to compensation for the commission of military crimes. Applying the Russian Civil Code was complicated by the complete failure of the Russian criminal justice system to identify individual perpetrators in criminal cases, a fact that persuaded local lawyers to shape their arguments for compensation under Chapter 59 of the Russian Civil Code together with Articles 52, 53, and 120(1) of the 1993 Constitution of the Russian Federation. As we shall see, many Chechen judges deemed this legal framework sufficient for awarding compensation, especially given the failure of criminal investigators to pursue timely and comprehensive investigations. Equally important was the way in which local lawyers and the judiciary deployed regional and international human rights law to build legitimacy within their own domestic legal institutions. The repeated use of comparative citations, especially of cases from the ECtHR, significantly accelerated the decision-making process and afforded a high and unexpected level of authority to Russia having ratified the ECHR.

Finally, as the ECtHR has often reiterated, civil-law remedies are inappropriate to deal with human rights abuses of the scale seen in Chechnya. A civil court, the argument goes, is unable to pursue a truly independent investigation and is incapable, without the benefit of the conclusions of a criminal investigation, of establishing the identity of the perpetrators of fatal assaults, still less of establishing their responsibility. While accepting the argument that civil compensation is not an acceptable or comprehensive approach to mass human rights abuses,[13] it is suggested herein that the traditional torts approach was effective in Chechnya as a way to pass judgment on the daily life of the Russo-Chechen wars. The civil cases did add to the truth-finding function of reparations,[14] despite the often repetitive and pro-forma approach to awarding compensation, an approach that evolves largely into a model of administrative rather than judicial compensation. What matters then is how Chechen society used its legal system to serve its own interests despite the obstacles and

[13] Cristián Correa, "Reparation Programs for Mass Violations of Human Rights: Lessons from Experiences in Argentina, Chile and Peru", in Félix Reátegui (ed.), *Challenging Impunity in Domestic Courts: Human Rights Prosecutions in Latin America* (Brasília, 2011), p. 409. She notes that "… one wonders if these traditional mechanisms for obtaining truth, justice and reparations in cases of ordinary crimes, which derive from notions of tort liability related to property damage or responsibility of the State for acts by the Administration that cause damages, where appropriate, are the most suitable for cases of mass and systematic violations. The commission of mass human rights violations requires us to search for mechanisms and principles other than those used in cases of individual property damages".

[14] To speak of a transitional justice framework in Chechnya is impossible. There was no state-sponsored program (except for administrative compensation for material damage) or any effort to design a transitional justice policy that might include an apology, public commemoration, historical memory projects, education, or recognition of pending cases.

how judicial activism worked to serve those who had suffered. Of course, the steps taken by the Chechen and Russian judiciary are compromised, politically manipulated, and eventually reversed. But they are more than symbolic gestures and represent an important historical opening for those civilians subject to the trauma of the Russo-Chechen wars.

ORGANIZATION

This article proceeds by establishing the historical framework of civil accountability for moral harm for State-inflicted crimes, then by examining and evaluating specific aspects of the court decisions for compensation. Part I tracks and evaluates how international organizations and the Russian government defined the second Russo-Chechen war and examines the implications of that debate for justice at the domestic level. It illustrates how the failure of the criminal justice system to execute a fair and comprehensive process shaped subsequent claims in the civil courts. Part II explains historically why and how there emerged this opening for civil claims. It examines eighty-five civil judicial decisions litigated between 2010 and 2017 in response to the failure of the State to implement a comprehensive reparations policy.[15] The eighty-five cases are used to identify patterns within the moral compensation claims with regard to four specific points: the behavior of judges, the amounts awarded, the crucial role of regional human rights law (ECtHR Chechen judgments) in domestic litigation, and the role of claimant testimony in the court proceedings. This section focuses on several key aspects of this jurisprudence, including the burden of proof used by the courts and the hierarchy of pain and suffering used to determine the compensation award. Part III examines the institutional interests of the Russian power ministries that finally brought the Chechen compensation cases to an end. Part IV raises the question of what other specific benefits this civil litigation approach served. In examining the truth-finding function of these trials, how and to what extent tort law helped to better establish the structural and legal truths that shaped the second Russo-Chechen war, guided by the extensive literature on transitional accountability and justice mechanisms, is considered.

METHOD AND EVIDENCE

The study is shaped by unique evidence obtained though my chance discovery in March 2018 of eighty-five court decisions on the website RosPravosudie, a database of court decisions from across the Russian Federation.[16] These cases will be referenced collectively as the Chechen Compensation Cases (CCC). It is precisely these decisions and one-to-one qualitative interviews conducted by the present author with key domestic actors that has made it possible to investigate how the lower district courts worked to provide compensation for civilian victims in Chechnya. Several months after this discovery,

[15] It is known how many cases in total were considered between 2010 and 2017. According to one lawyer interviewed, the courts were "overwhelmed with these claims". Subject 5, Interview № 3 August 2018.

[16] The website https://rospravosudie.com has since been removed from the internet. On 17 June 2018, Roskomnadzor blocked the site for the illegal distribution of personal information. See «Роскомнадзор заблокировал сайт «Росправосудие» по жалобе о распространении персональных данных» [Roskomnadzor Blocked the Website "Rospravosudie" after Receiving a Complaint about the Spread of Personal Information Online], Медиазона [Mediazone], 18 June 2018 (available online). All copies of the decisions are held by the author.

Roskomnadzor, the state censorship agency, blocked the RosPravosudie website for the "illegal distribution of personal information", forcing the agency to take down all the court decisions. Only occasionally could similar judgments be found on local district court websites in Chechnya.

Most of the eighty-five decisions were posted on the internet database under the name of the district court and the names of the sitting judges (see bias discussion below). They contain anonymized names, dates and places, making it difficult to ascertain either the exact date of the actual events or where they took place (although many decisions included this information). Most decisions were rendered by the courts of first instance and information on whether court decisions were appealed at later stages, except for what was available on the website under appeal, was not available. The selected cases have been localized to Chechnya, and it is unclear whether similar cases have been dealt with in other parts of Russia.[17] The search terms were "moral contributory compensation" (моральная компенсация) under subject No. 20 of the Russian Federation, the "Chechen Republic".

It is clear from the interviews that not all Chechen court decisions have been posted. All cases available online have been used. It may be that a select publication of decisions has taken place, as has often been a rule in Russian and Soviet practice. As Vereshchagin argues, many judges exercise control over the process of reporting, deciding which judgments should become available to the public and which should not.[18] A bias, therefore, possibly exists in the cases posted, a point that will be discussed in Part II. Of the eighty-five cases analyzed here six of them began in 2011, eight in 2012, twenty-five in 2013, twenty-nine in 2014, twelve in 2015, three in 2016 and two in 2017.

Although each case has peculiarities of its own, all court decisions respond to two fundamental complaints. The first relates to a broad rubric in tort law of moral harm inflicted by State officials, actions that inflict physical damage such as the death of a close relative, or serious bodily harm (вред). The second relates to the courts in question awarding compensation for moral harm inflicted as a result of the State's failure to conduct effective investigations into criminal cases, specifically the disappearance, murder, or bombing of civilians. That is, an award of compensation for intentional violations of guaranteed rights. The crimes articulated in these decisions embody three categories: murder or bodily harm as a result of bombings/aerial attacks (21), disappearances (32), intentional or negligent homicide (30), torture (1), and other (1).

It is important to comment on the quality of these court decisions. Seventy-percent of the court decisions examined here are reasonably well framed with the judge duly setting out the facts and then applying the law. Those decisions reflect in large part the skill and aptitude of the plaintiff's counsel, who has carefully extracted information from the criminal file, re-interviewed witnesses, and presented valid arguments on how and why the Russian State is responsible for the harm inflicted from the perspective of both Russian civil law, constitutional law, and regional human rights law. But the judge rarely clarifies his or her own thoughts or communicates in detail the reasons for the decision to the public. There are generally so few reasons presented that it would be almost impossible for an appeal court to consider a disputed claim. The result is more often than not a formalistic

[17] It is known that Russian plaintiffs have filed demands across Russia in relation to moral compensation for their deceased or wounded sons who served in the Russian armed forces.

[18] A. Vereshchagin, *Judicial Law Making in Post-Soviet Russia* (2007), p. 151.

citation of the applicable laws – a practice that makes it that difficult to understand the motivation and reasoning of the court.

Therefore, if one is seeking a fully reasoned pronouncement by a judge on a disputed legal question, these decisions usually do not meet such criteria. It is sometimes impossible to ascertain the reasoning of the judge because of the brevity of judicial commentary across many of the eighty-five cases. The themes are not always developed in logical sequence from the opening to the conclusion and one-fifth of the cases present what might be described as a jumble of facts. Some are so poorly articulated that it is often impossible to understand even the basic facts of the case. Sections of judgments are frequently cut and pasted wholesale from other decisions or from the arguments of the claimant's lawyer or the plaintiff's statement resulting in a confusion of syntax and lack of concision with no distinguishable authorial voice.

We can speculate as to why these decisions were presented in this state. Had more reasoning been included, more judges might have had to incriminate the Russian State as the inflictor of harm (причинитель вреда). A judge's reasoning must also stand up to public or professional scrutiny and also by the higher courts, urging a degree of caution on the part of the judge. It might also be that the judge did not want the decision cited or that the plaintiff's lawyer presented a poorly conceived case. But the reason might just as well be a lack of professional standards. As Vereshchagin has argued in his discussion of court practice in Russia, decisions are generally poorly composed and reasoned. There are no grounds to suggest that this would have been any different in Chechnya. As one local lawyer noted about judicial behavior in general, "This is a huge problem for Chechnya – the absence of qualified judges".[19]

The methodology used herein also includes fifteen qualitative one-to-one interviews with six regional Chechen lawyers, one former criminal investigator, one human rights activist, three Russian lawyers, and five plaintiffs conducted over a two-year period during two field trips to the Southern Caucasus region, Washington D. C., and Norway. Each interview is given a subject number in order to protect the anonymity of the interviewee. Those who were interviewed several times are given additional numbers for each interview conducted. Further materials include statistical data from internet sources, Russian newspaper sources, and published appeals. In some instances, such as the massacre in Novyie Aldi and the bombing in Katyr Yurt in February 2000, I was able to view additional case notes and legal briefs from the claimant files.

THE FAILURE OF INDIVIDUAL CRIMINAL RESPONSIBILITY

> *Chechen lawyers learnt one main thing from these cases. If you work, then you can achieve some success. You just have to work more. This is one result. This second is – as they say – that the Russians will not take down their own. It is very complicated to prosecute someone.*
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> Chechen Defense Lawyer[20]

[19] Subject 5, Interview № 5, October 2018.
[20] Subject 5, Interview № 5, October 2018.

We first examine how international organizations and the Russian Federation defined the second Russo-Chechen war and the implications of that debate for justice at the domestic level. The rebuilding of Chechnya's judicial infrastructure is analyzed as part of the "chechenization" or "normalization" campaign that took place in the aftermath of the 1999-2005 war by focusing on two key aspects of this period: the reassertion of Russian civil and criminal procedural law and the obstacles established to avert individual criminal responsibility for massive human rights abuses. The government repeatedly failed to uncover the truth about particular incidents, including the human rights violations suffered, the identity of the victim, the identity and responsibility of the perpetrator and, for disappearances, the victim's whereabouts. As this section illustrates, the crimes committed during the second Russo-Chechen war that actually did reach the courts were treated as ordinary crimes under the Russian Criminal Code, largely within the military courts. These issues are illustrated by three exceptional criminal cases litigated against the Russian Armed Forces between 2006 and 2007 that influenced local legal practices in distinct ways; the public attention generated by the judgments is believed to have elevated civil society's understanding of its chances for redress inside Chechnya. This section provides the background necessary for examining how this highly corrupted legal environment shaped later litigation strategies for compensation in civil courts at the domestic level.

Defining the Second Russo-Chechen War

From the outset of the second Russo-Chechen war, the Russian government was under constant pressure to define the conflict according to international law, but consistently failed to do so. The inadequacy of its response was frequently criticized and, unlike the first Russo-Chechen war when the Constitutional Court of the Russian Federation recognized that there existed a prolonged internal armed conflict in which Additional Protocol II to the Four Geneva Conventions was applicable,[21] the Russian Federation consistently denied the existence of an armed conflict. This failure to adequately define the nature of events from 1999 to 2005 had serious consequences for legal redress at the domestic level. The Russian Federation has continued to insist that the crimes that took place in Chechnya be treated as ordinary crimes on the basis of the Federal Law Anti-Terrorist No. 35-ФЗ of 1998.[22] Originally designed for regional, short-term security operations, Federal Law No. 35-ФЗ allows for the limitation of rights and liberties of Russia's citizens without introducing a state of emergency. It imposes the same restrictions as a state of emergency, but has no limitations in time or space and is not restricted by parliamentary or international oversight. The Russian Federation remained insistent that what had taken place in Chechnya was a "law enforcement operation" and that any criminal cases or civil litigation connected to the conflict was to be dealt with under the rubric of Russian domestic law as ordinary crimes.

[21] Постановление Конституционного Суда РФ от 31 июля 1995 г. No. 10-П [Decree of the Constitutional Court of the Russian Federation, 31 July 1995, № 10-п] (available online); See also: Paola Gaeta, "The Armed Conflict in Chechnya before the Russian Constitutional Court," *European Journal of International Law,* VII, no. 4 (1996), pp. 563-570.

[22] CAT, 37th Session, "Information from the Russian Federation concerning the list of issues prepared by experts of the Committee against Torture". U.N. Doc. CAT/C/RUS/Q/4/add.1, October 18, 2006, §39.

The government's insistence that the conflict be defined as a "law-enforcement operation" did not go unchallenged by international organizations.[23] In July 2006 the United Nations Committee against Torture (CAT) released a list of issues to be considered during the examinations of the fourth periodic report of the Russian Federation.[24] The CAT reminded Russia that it needed to clarify the jurisdiction over the events in Chechnya.[25] In its concluding observations, it called upon Russia to clarify the applicable legal regime that then prevailed in Chechnya as "there is no state of exception and there is also a non-international armed conflict in progress".[26] The position adopted by CAT differed from the ECHR, which argued that Russia had not derogated from the ECHR under Article 15. The court examined the crimes inside Chechnya as crimes committed during a lawful but not properly executed civil policing operation. Indeed the ECtHR, having to adjudicate on the basis of the ECHR, determined that it could apply the ECHR (despite the context of an armed conflict), especially Article 2 on the right to life. Doing so meant that the usual strictures laid down by Article 2 (as to prevention of fatalities, use of proportionate force, and the investigation of fatalities) could be applied to the situation in Chechnya.[27] In many respects the Court was insisting on imposing ("ordinary" human rights) standards that are in fact stricter for the State than international humanitarian law standards. But the fact that the Court did not explicitly use international humanitarian law terminology to discuss the events in the region disturbed some.

In a dissenting opinion, Judge Malinverni argued: "I therefore regret the fact that in the present case the Court made no mention whatsoever of the principal rules governing the conduct of combatants in situations such as that dealt with in this case, namely the rules of international humanitarian law. In addition to Article 3 of the Fourth Geneva Convention of 12 August 1949, the conduct of combatants in a non-international armed conflict such as the one in question here is governed first and foremost by the Protocol Additional to the Geneva Conventions (Protocol II) of 8 June 1977, which was ratified by Russia on 29 September 1989 … I regret the fact that in the present judgment (as indeed in other similar cases), the Court made no reference to these rules".[28]

While the Court no doubt fully acknowledged the seriousness of the violations that took place during the second Russo-Chechen war, the fact that a fully-fledged international criminal tribunal was never established had long-term and irrevocable consequences on everyday legal practices inside Chechnya. As we shall see, the absence of strict oversight of

[23] ICTY, *Prosecutor v. Fatmir Limaj et al.*, 30 November 2005, Case № IT-03-66-T, §170 (available online). I fully concur with the ruling of the International Criminal Tribunal on the Former Yugoslavia in its Limaj judgment that: "the determination of the existence of an armed conflict is based solely on two criteria: the intensity of the conflict and organization of the parties".

[24] According to paragraph III, A of the working methods of the CAT, CAT can draw up a list of issues at the session prior to the one at which a periodic report will be examined. This list is prepared by the two country Rapporteurs on the basis of the information contained in the report, previous concluding observations addressed by the Committee to the State and information originating from other treaty bodies, special procedures and from the United Nations system as well from others sources, including regional human rights mechanisms, NHRI and NGO. CAT, 37th Session, "List of issues to be considered during the examination of the fourth periodic report of the Russian Federation", U.N. Doc. CAT/C/RUS/Q/4/Rev.1, 18 August 2006, §39.

[25] "List of issues", §39.

[26] CAT, 37th Session, "Conclusions and Recommendations of the Committee Against Torture: Russian Federation", U.N. Doc. CAT/C/RUS/CO/4, 6 February 2007.

[27] Thanks to Philip Leach for highlighting this important point.

[28] *Abuyeva and Others v. Russia*, (№ 27065/05), 2 December 2010.

Russia's procuracy agencies and military and criminal courts ensured that the interests of the power ministries (namely, the Ministries of Defense and Internal Affairs and the Federal Security Service) managed to shape an institutional culture that routinely sabotaged criminal investigations within the procuracy and investigative agencies. The strategy of the Russian government had been to reassert the applicability of Russian law to counter the Sharia courts that first appeared under former Chechen President Aslan Maskhadov (1951-2005) and were subsequently dismantled.[29] The formal legal system, therefore, was rebuilt as part of a broader peace-building strategy, an effort that included a decade long infrastructure project, broadly applied military amnesties, and the formation of a National Reconciliation Commission whose sole mandate was to negotiate the end of blood feuds. There was never any discussion of a broader engagement with international humanitarian law, regional human rights law, or international oversight, and the republic was required to uniformly apply the 1995 Criminal Code of the Russian Federation and 1994 Civil Code of the Russian Federation, as amended, as were other subjects of the Russian Federation.[30] Because Russia refused to acknowledge the existence of a non-international armed conflict in Chechnya, there was no comprehensive State-sponsored reparations program (except for a failed material damages program and military amnesties) or any effort to design an inclusive transitional justice policy that would include an apology, public commemorations, historical memory projects, recognition of pending criminal cases, or a truth commission. This failure to uncover both the legal and historical truths of the Russo-Chechen wars has thwarted societal reconciliation, a theme to be discussed below. The military and criminal courts were directed to accept criminal or civil petitions to sue, as well as criminal cases against Chechen separatists who were not amnestied under the 2003 and 2007 Amnesty Laws. Contrary to these developments, *intra*-Chechen blood feuds (ostensibly a result of the wars) were dealt with through the Commission for National Reconciliation established in September 2010 under the direction of President Kadyrov and led by clergy and village imams. The Commission mandate was to reconcile families engaged in blood feuds, and according to State statistics (difficult to confirm), over 400 families were reconciled.[31] The extent of its effectiveness is unknown, and such an approach has not necessarily diminished the number of trials against Chechens not amnestied under the general military amnesties.

The above Commission was an exception to the general predominance of Russian law over traditional customs in post-conflict Chechnya.[32] The Russian judicial system

[29] Sulyan Yandarov had been appointed chairman of the Urus-Martan City Court as early as 2000 by presidential edict.

[30] President Putin said during his meeting with religious authorities of Chechnya on 17 March 2003: "Another key question is the organization in the republic of a judicial system. Unfortunately, the commonly adopted attitude to a court judgment as one final and binding is currently lacking in Chechnya. Judicial practice encounters here both the contradictions in law sources and, let us say frankly, the unsatisfactory organization of the work of the courts themselves. Although, it has to be admitted, the very fact of their existence is already an achievement. The judicial system is being strengthened". Vladimir Putin, "Opening Remarks at a Meeting with Religious Leaders of the Chechen Republic", 17 March 2003, Official Internet Resources of the President of Russia, transcript (available online).

[31] «Комиссия по национальному примирению в Чечне [sic] примирило более 427 семей 'кровников'» [National Reconciliation Commission in Chechnya Reconciled over 427 Families Engaged in Blood Feuds], e-Islam, 16 September 2011 (available online).

[32] In the majority of cases Chechens prefer formal legal avenues based on Russian law, with obvious exceptions, especially with regard to marriage disputes. On private issues related to divorce, for example, and child custody, or family disagreements, Chechens might first appeal to the local Mullah trained in Islamic theory to seek guidance on how to resolve their arguments in accordance with Shariat. Not an official path, it is an informal dispute resolution mechanism. It is also clear from discussions with lawyers that if the participants are not satisfied with the Mullah's recommendation, they also appeal to local courts where Russian law is

was re-established in Chechnya from 2000 when Ziyavdi Zaurbekov, a former Supreme Court judge of the Chechen-Ingush Republic, was appointed chairman of the Chechen Supreme Court for a term of six years. A presidential edict issued on 22 March 2003 on the "Appointment of Judges to Regional Courts" included appointing regional judges to Achkoi-Martan, Vedeno, Nadterechnyi, Naurski and Urus Martanovskii regions, as well as Zavodskii, Leninskii, Oktyabyskii and the Staropromyslovskii regions of Grozny.[33] Zaurbekov noted publicly that, "This [edict] will allow us to fully enter the legal field of Russia, forming one of the three branches of power in the territory of the republic".[34]

Zaurbekov provided updates on the state of the judiciary, the number of appointments, and the number of courts equipped to function.[35] The final aim was to have 73 judges of various levels working in the republic, the majority of whom would be Chechen-born.[36] Whereas most judges appointed were local, other short-term appointees were sent to a number of district courts from various regions across Russia for a term of one year. Criminal cases that could engage a punishment of more than five years deprivation of freedom were sent for judicial review to other entities across Russia's Southern Federal District.[37] Although the courts began to accept petitions to sue, it is also well known that these temporary judicial structures, which were not fully staffed, struggled to execute their responsibilities. Many district courts existed formally on paper but were non-functioning.[38]

Failures in Criminal Investigation

The rebuilding of the judicial infrastructure inside Chechnya was an important component of the larger peace-building strategy of the Russian Government during the post-war period. While signaling a step toward restoring State institutions, the policy failed to deal with the almost complete breakdown and corruption of the investigative agencies, a factor that shapes the entire future of legal accountability at the domestic level. Because civil court cases for moral compensation must prove that the harm was caused "by the illegal actions (or omissions to act) of agencies of State power or their officials",[39] the outcome of these criminal investigations was indispensable to the success of later civil litigation. Yet the law enforcement structures repeatedly failed to perform the simplest of investigative tasks from visiting crime sites, conducting forensic tests, to interrogating witnesses both during and after the conflict. All branches of power, including the criminal, civil and military procurators or special investigative units adopted the practice of suspending or

applied. Subject 2. Interview № 1, June 2016. Subject 4, Interview № 1, December 2017. Subject 5, Interview № 1, December 2017. Subject 6, Interview № 1, December 2017. Subject 7, Interview № 1, December 2017.

33 «Зиявди Заурбеков назначен председателем Верховного суда Чечни» [Ziyavdi Zaurbekov Appointed Chairman of the Supreme Court of Chechnya], Вести [News], 22 March 2003 (available online).

34 Musa Khasanov, «Референдум в Чечне. Повлияет ли назначение председателем Верховного суда Чечни Зиявди Заурбекова на восстановление законности в республике?» [Referendum in Chechnya. Will the appointment of Ziyavdi Zaurbekov, the Chairman of the Supreme Court of Chechnya, Reinforce the Rule of Law in the Republic?], Радио Свобода [Free Radio], 26 March 2003 (available online).

35 Ibid.

36 Ibid.

37 «Судебная система Чечни работает, испытывая дефицит судей» [The Chechen Judicial System is Working, Experiencing a Shortage of Judges], *Regnum*, 25 September 2005 (available online).

38 Khasanov, note 34 above.

39 Article 53, Constitution of the Russian Federation, transl. in William E. Butler, *Russian Public Law: The Foundations of a Rule-of-Law State: Legislation and Documents* (3d ed.; 2013), p. 12.

terminating criminal cases in the hope that the applicant would give up in frustration or that the case would remain unsolved until the period of limitations forced its termination.[40] Occasionally, the investigative agencies themselves noted these procedural illegalities and acted on their own to re-open cases, something that only happened after non-government organizations such as the Joint Mobile Group complained repeatedly to different bodies. Case files generally were simply transferred back and forth between the offices of the district and republic procurators, as well as the Military Procuracy of the United Force Group (Военная прокуратура Объединенной Группы Войск) with repeated requests for further information, clarification, or elucidation.

Whether the office fulfilled that request at all is a central question, but clearly this process failed, on the whole, to indict individual perpetrators.[41] Such examples are seen in the requests (отписки) that were leaked in 2011. District investigative units were making repeated requests to the archives of the Ministry of Internal Affairs and the Ministry of Defense for information about servicemen or police officers directly involved in certain counter-terrorism operations in order to establish a circle of witnesses who could testify,[42] despite the provisions of Federal Law on Counteracting Terrorism, No. 35-ФЗ (2006) discussed below.

Indeed, investigators noted their concern with even requesting information from the archives of the Russian Ministry of Internal Affairs and the Ministry of Defense on persons who had carried out special operations (зачистка), fearful that a criminal case would be opened against them personally.[43] Equally troubling, personnel from the Ministry of Internal Affairs are said to have openly warned investigators that they did not have any real power to question those in the so-called "untouchable" divisions.[44] In the dominant sense, there is little doubt that investigators were subject to the institutional interests of the power ministries; in another they were driven by their own professional ambitions. Because investigators are bound to conduct the core of an investigation prior to initiating criminal proceedings, they are compelled to act only when they feel assured that a conclusion to indict is well-founded.[45] If they initiate proceedings without sufficient evidence or against the will of the Procurator, they are subject to internal review and possible criminal sanctions.[46] As one regional lawyer argued:

[40] Subject 2, Interview № 1, June 2016. Subject 2, Interview № 2, March 2018.

[41] From 2011 the Investigative Committee replaced the Russian Procurator General Investigative Committee as the main investigative authority in Russia. From 2007-2011 it was still under the remit of the General Procuracy. Of the 17 requests available to me, all were initiated by the regional offices of the Investigative Committee in Chechnya.

[42] Elena Khrustaleva, «Налаева: в Чечне не составляется список участников боевых действий, а ведется следствие по преступлениям времен многолетней КТО» [Interview with Maryam Nalaeva: A List of Individual Soldiers Involved in the Hostilities in Chechnya is Not Being Compiled, but an Investigation of the Crimes for the Longstanding Counterterrorism Operation is being Conducted], Кавказский узел [Caucasian Knot], 5 July 2011 (available online).

[43] Subject 2, Interview № 1, June 2016. Subject 5, Interview №. 5, October 2018.

[44] Subject 2, Interview № 1, June 2016. Subject 2, Interview № 2, March 2018.

[45] Polina Levina, "Links between Criminal Justice Procedure and Torture: Learning from Russia" *New Criminal Law Review*, XVI, no. 1 (Winter 2013), p. 117.

[46] Ibid., p. 117; See also Olga Sadovskaya, «Заместитель председателя Комитета против пыток Ольга Садовская выступила на конференции ОБСЕ в Варшаве» [Olga Sadovskaya, Deputy Chair of the Committee against Torture, Speaks at the OSCE Conference in Warsaw], Комитет против пыток [Committee Against Torture], 5 October 2010 (available online).

> For example, in the Achkoi-Martan inter-regional investigative unit there are … one-hundred and fifty criminal cases on disappearances. One hundred and fifty … a direct instruction has been given to him not to investigate. And if they want to advance in their careers, they have to take all measures to ensure that no one is found.[47]

This sabotaging of criminal investigations has continued for nearly two decades. By 2005, however, Russian service personnel were no longer completely shielded from persistent lawyers, concerned family members, and human rights activists who were conducting their own so-called "public investigations" into crimes, especially in the wake of the trial of Sergei Lapin.[48] In response to these public investigations, authorities instituted further legal obstacles, including amendments to Federal Law No. 35-ФЗ "On Counteracting Terrorism." By 2006, the Law provided that among the fundamental principles to counteract terrorism, there will be "confidentiality of information concerning special means, techniques and tactics of taking measures against terrorism, *as well as concerning the composition of their participants* [my emphasis]".[49] This provision was used to deny access to the personal data of operatives taking part in counter-terrorist operations, thus preventing the identification of law enforcement agency staff who might be or have been involved in criminal acts.[50] Such information was classified, by order of the Ministry of Internal Affairs, as a military and State secret.[51] According to a former procuracy investigator, Ministry of Internal Affairs representatives also cited the practice of blood feuds as an additional reason that criminal cases could not be investigated for fear of blood revenge against Russian soldiers and their families.[52]

In this context the Russian government also applied limitation periods to the crimes in the region in accordance with the Russian Criminal Code. Because the crimes committed in Chechnya were dealt with as ordinary crimes, they often carried periods of limitation ranging from 10 to 15 years. In their written replies to the Committee of Ministers of the Council of Europe, the Russian Government noted that it would also apply such periods to the Chechen cases at the European Court of Human Rights. They have since been used to avoid criminal prosecution of perpetrators (ibid., para 3.4.) and the State has argued that "the limitation periods will not serve to terminate the on-going investigations, but merely to release identified perpetrators from criminal responsibility".[53] "These problems exist at the very top," argued one local lawyer. "In those cases when two or more people have died, there is no period of limitations … when a person is disappeared, there is no limitation period at all until the corpse is found …".[54]

[47] Subject 5, Interview №. 5, October 2018.
[48] Subject 3, Interview №. 1, September 2016. Subject 1, Interview №. 1, April 2016.
[49] «Федеральный закон № 35-ФЗ "О противодействии терроризму"» [Federal Law No. 35-ФЗ "On Counteracting Terrorism"], КонсультантПлюс [ConsultantPlus], 6 March 2006 (available online).
[50] Parliamentary Assembly of the Council of Europe, "Legal Remedies for Human Rights Violations in the North-Caucasus Region", § 33, 4 June 2010.
[51] Subject 5, Interview № 5, October 2018.
[52] Subject 2, Interview № 1, June 2016.
[53] Parliamentary Assembly of the Council of Europe, "Human rights in the North Caucasus: What Follow-up to Resolution 1738 (2010)?", Doc.14083, 8 June 2016, para. 67.
[54] Subject 5, Interview № 3, December 2017.

Each State response had a detrimental effect on holding alleged war criminals accountable.[55] Together with the military amnesty laws that were adopted in 2003 and 2006, they constituted a systemic practice that sought to protect Russian armed service personnel from prosecution. Whereas President Putin's argument that such amnesty laws were essential to "the establishment of a peaceful life in the Chechen Republic" might well be true,[56] the provisions that applied to both Russian federal servicemen and the Chechen armed forces were meant only to apply to those who had committed lesser crimes. Despite the exclusion of grave crimes (*inter alia*: homicide, intentional infliction of a grave bodily injury; kidnapping; illegal deprivation of freedom; human trafficking; rape; desecration of bodies of the deceased and their burial places; and genocide), amnesty was repeatedly granted due to the down-grading of such crimes by the investigative authorities.[57] Ultimately, the amnesties are one more factor in the erosion of legal accountability for crimes committed during the active phase of the second Russo-Chechen war. The privileging of amnesty laws over victim rights and the failure of criminal investigations, however, did not close the door to civil liability options for compensation.

Exceptions: Cases against Russian Servicemen 2005-2006

The three criminal cases discussed below are exceptions to the general failure of criminal investigations and legal accountability inside Chechnya. They are discussed here because they offer a useful prism through which to examine a variety of political dynamics in a system otherwise distinguished by a lack of transparency. They also illustrate an important social development that was to have a significant impact on litigation in general in Chechnya. First and foremost, they allowed Chechens to take control of their own legal space in ways that might seem trivial to outsiders, but which drew respectful attention from local lawyers and activists. This highly opportunistic focus on individual criminal responsibility brought together a mix of local and regional actors and marked an important shift away from the dominant strategy of human rights monitoring to a specific focus on individual complaints and criminal responsibility for the crimes committed between 1999 and 2005.

The reason for this shift can be partly explained by the growing professionalization and experience of the domestic Chechen and Russian legal class by 2005. It systematized its approach to the legal challenges by developing and following a "working model" that had taken shape in the early 2000s, but by 2005 had developed into a coherent and comprehensive approach fine-tuned by experience with the ECtHR and daily interactions with the local Procuracy and its opening and termination of criminal cases. This activism grew into what Russian human rights activists and lawyers have since been calling "public investigations", whereby NGOs, lawyers, and active family members collaborate to build criminal or civil cases. They realized that in order to bring a case to trial they needed to have the right combination of local networks, international backing, and media coverage. It is clear that at least for this period, they grew stronger as a result, pushing from multiple

[55] Yurii Filippov, «Последняя амнистия в Чечне подводит черту под войной» [The Latest Amnesty in Chechnya Brings Closure to the War], РИА Новости [RIA News], 22 September 2006 (available online).

[56] President Vladimir Putin to Chairman of the State Duma Gennadii Seleznev, 15 May 2003, *Official Internet Resources of the President of Russia*, (available online).

[57] Highlighted by the RJI and EHRAC in the Council of Minister submissions.

angles and adopting an expansive view that included doing the work of the defeated investigative agencies.

Persistent international pressure was a factor in the emergence of these trials. In fact, it was the call by the Council of Europe for the establishment of an International War Crimes Tribunal on Chechnya in 2003 that pushed the Russian Government to respond by initiating a number of criminal trials *in situ*. The proposal itself put Russian action in Chechnya on par with Serbian violations in the former Yugoslavia and Hutu violence against Tutsis in Rwanda. It could not be dismissed with the standard rhetorical outrage, although that did happen.[58] This call for an international tribunal coincided with the 2003 Chechen referendum and the establishment of a new government in the republic. To some extent the Russian government created a loophole by insisting that it had the right to try its own criminals in response to the criticism coming from Europe. This approach also had a certain logic for Chechen leaders, as they sought to shore up local investment in the legal system, restore domestic legitimacy, and distinguish their rule from that of the Russian forces. The former president, Akhmat Kadyrov, had already blamed the Russian Armed Forces for abductions in 2003.[59] His successor Alkhanov sponsored large public billboards responding to the Russian practice of *zachistki* (the cleansing of villages and towns) and declared forthrightly, "No to *zachistki*!, No to Terror!, No to War!"[60] Later, on 31 January 2005, the head of the regional operative headquarters of the North Caucasus, noted that unfortunately, besides the separatists, representatives of the federal forces and law enforcement structures also take part in the kidnapping of citizens of the republic.[61]

To be clear, the number of serious criminal cases tried in the period was negligible in comparison with the actual number of crimes committed over the course of the second Russo-Chechen war, and the majority of trials took place in military courts outside Chechnya.[62] The three criminal cases that took place inside Chechnya have several distinguishing features. Then Deputy Prime Minister, Ramzan Kadyrov, demanded that the trial of Sergei Lapin, for example, take place in Grozny, defending domestic legal mechanisms. "The court system is starting to operate here", claimed Kadyrov, and "the law enforcement agencies are bringing to justice all those responsible for the deaths, disappearances, and summary executions".[63] Kadyrov's parliamentary press secretary, Khasan Gapuraev, commented in the Chechen government newspaper Возрождение Чечни [Renaissance of Chechnya] that as long as Russian law enforcement agencies were

[58] Emma Gilligan, *Terror in Chechnya* (2010), p. 182.
[59] Ibid., p. 88.
[60] Ibid., p. 90.
[61] «Безнаказанность: движущая сила непрекращающихся массовых нарушений в Чечне» [Impunity: The Driving Force Behind the Ongoing Mass Violations in Chechnya], Кавказский узел [Caucasian Knot], 19 May 2005 (available online).
[62] Ibid. In 2004 the Russian Human Rights Ombudsman, Vladimir Lukin, requested information from the General Procuracy on the 84 soldiers convicted by the military courts in Rostov-on-Don. Some 22 were sentenced to imprisonment, 29 received suspended sentences, 3 were punished by restricted military service, 7 were fined, and a further 23 cases against soldiers were terminated as a result of a general amnesty. In April 2005, former Chairman of the Grozny Military Garrison Court, Aleksandr Kuznetsov, said that from the moment when the work of the court began in September 2003 he had studied more than 600 criminal cases opened against military personnel. Only 5% of those cases involved crimes committed against civilians. See Timur Aliev, «Грозненский Военный гарнизонный суд вынес уже 600 приговоров» [Grozny Military Garrison Court Rendered 600 Judgments], *Prague Watchdog*, 15 April 2005.
[63] Jackman, note 1 above, p. 266.

protecting Lapin, blood revenge would be launched against him and his colleagues.[64] It seems more than likely that such a direct threat was deployed to warn the Ministries of Defense and Internal Affairs that as long as the trial was going to take place in Grozny, they would be wise not to sabotage the proceedings.

The fact that the case was removed from the military courts and put into the hands of a district court in the capital, Grozny was a remarkable achievement. Mairbek Mezhidov, a local Chechen judge, adjudicated the court case at the Oktiabr'skii regional court on 29 March 2005, where Sergei Lapin was charged with the torture and disappearance of Zelimkhan Murdalov. The victim's father, Astemir Murdalov, was Director of "Grozny Power", the main electricity company in Chechnya, and he also served on Kadyrov's Presidential Security Council. This unusual access to the republic's circle of power had advantages and limitations. Murdalov was able to place constant pressure on the local procuracy to gather evidence in support of his son's case. The family was central to convincing other victims to testify in court.[65] But Murdalov's political connections did not protect his family. In retaliation, the Khanty-Mansiisk OMON unit (Special Purpose Mobile Unit under the auspices of the Federal Police) that was responsible for the crimes against his son, made threats and constant night raids against his home in a spectacular display of intimidation.[66]

The balance of powers between the Russian defense and law enforcement ministries and the procuracy agencies was at the center of this legal battle. Not only did the Khanty-Mansiisk OMON unit ignore the threat of blood revenge, but it stormed and ransacked the Grozny Procuracy when its soldiers were summoned for questioning and it demolished the Oktyabr'skii regional detention center that housed those who had been tortured alongside Murdalov's son.[67] In doing so, its monopoly on violence stood in direct opposition to the social and administrative pressures being placed on the local procurator to conduct a thorough investigation. The success of the Murdalov case was in fact completely contingent upon the support of the Procurator General of the Russian Federation, who ultimately supervised the lower Chechen procuracy agencies; that is, those carrying out operational-search activities, inquiries, and preliminary investigations and who were subject to the commands, regulations, and instructions of the federal agencies. Once Russian Procurator General, Vladimir Ustinov, visited the regional procurator's office in Grozny in March 2005 and called for a re-examination of the case under direct orders from Moscow, the investigation began in earnest.[68] The trial went ahead and Lapin was sentenced to deprivation of freedom for 9 years.[69]

[64] Jackman, ibid., p. 269. The fear that Russian soldiers had about blood revenge is evident in the public response to inquiries (запросы) for information about the military personnel who were serving in Chechnya at the moment of particular crimes. One journalist interpreted the request for this information as a means to target individual Russian servicemen for blood revenge. See «Следователи из Чечни разыскивают русских солдат» [Chechen Investigators Searching for Russian Soldiers], Военное обозрение [Military Review], 11 June 2011 (available online)

[65] Jackman, note 1 above, p. 159.

[66] Ibid., p. 152.

[67] Ibid., pp. 151, 154.

[68] Jackman, "Partial Russian Justice in Chechnya: The Lapin Case, Anna Politkovskaya and Transnational Activism", *Journal of Soviet and Post-Soviet Politics and Society*, II, no. 2 (2016), p. 145.

[69] Jackman, note 1 above, p. 143.

Although it is important not to exaggerate the impact of the Lapin case, to ignore its social resonance would be to unduly minimize how it empowered the local courts and legal professionals. Its success can certainly be understood within the framework of traditional patronage, but in the broader context it also prioritized the law over violence. The Office of the Russian Procurator General used the trial to showcase the "return" of Russian norms and to send a direct message that Russian law would define Chechnya's future. The family's insistence that it would utilize the local justice system to punish the perpetrator of their son's disappearance and would pay neither bribes or pursue blood revenge was central to this messaging. The trial indicated that such violence against civilians might get a response from the relevant law enforcement agencies and that local courts could operate as they should.[70] What was once construed as a way to restore political legitimacy abroad ended up empowering internal forces to litigate the first criminal case inside Chechnya.

Equally significant was what happened to the appeals later lodged by Lapin's lawyer, Grigorii Degtiarev. Hearing the court case inside Chechnya also meant that all subsequent appeals had to be considered through domestic intermediary courts, thereby giving local judges the opportunity to exert their influence once again. Only later would it become clear how important this domestic appeal process was to establishing and pursuing the practice of contributory compensation for moral harm in the civil courts. The Chechen Supreme Court rejected Degtiarev's first appeal. His next appeal was considered by the Judicial Division for Criminal Cases of the Supreme Court of the Republic of Chechnya on 16 April 2008, and then a supervisory appeal, which was considered by the Presidium of the Supreme Court of the Republic of Chechnya on 14 January 2010. In both instances the appeals were rejected. The Supreme Court of the Russian Federation also quashed Lapin's appeal.[71]

As far as we know, only two subsequent criminal cases were considered that involved crimes against civilians. These took place in lower military courts inside the republic. The first case involved the murder of 13-year old Ayub Salatkhanov, who died as a result of shots fired from a BMP-2 in broad daylight in 2000. The suspect was detained and several witnesses, including his fellow servicemen, confirmed the accounts. In July 2006, the court found V. G. Makarov ("Chernomaz") guilty and sentenced him to 10 years deprivation of freedom. On appeal, the North Caucasus District Military Court upheld the judgment on 23 November 2006. The other case was brought against Russian servicemen, Aleksei Krivoshonok and Pavel Zinchuk. The case was based on the murder and bodily harm inflicted on three civilians after intoxicated officers pulled them from their cars in order to extort money. The main perpetrator, Aleksei Krivoshonok, was sentenced to 18 years deprivation of freedom by a military court in Rostov-on-Don on 13 May 2006, and one of his two accomplices, Pavel Zinchuk, was sentenced to 7 years deprivation of freedom on 12 April 2006 by the Garrison Court based at the Khankala military base.[72] In an unprecedented decision, the families of the victims also received compensation for moral harm totaling

[70] Stanislav Markelov, "The Power of Law versus the Law of Power", interview by Aude Merlin, *The Journal of Power Institutions in Post-Soviet Societies*, VIII (2008), p. 42.

[71] "Supreme Court cuts 'Cadet' Lapin's sentence", Memorial Human Rights Center, 28 July 2011 (available online). This was in line with a change to Article 111 of the Criminal Code and not the qualifications of his actions.

[72] Обвинительное заключение по обвинению Кривошонка Алексея Юрьевич [The indictment on charges of Krivoshonok Alexei Yuryevich], 24 January 2006 (available online)

200,000 rubles paid by military unit 98311 under the Ministry of Defense.[73] The Committee against Torture concluded that the investigators and the judges had conducted a thorough investigation and trial.

The risks, however, of using the ordinary criminal justice system were obvious from every conceivable angle by the end of the Lapin trial. From the perspective of the judge adjudicating the case to the safety of the victim's family, counsel, and human rights activists, the process was exhausting and dangerous. Because the intention of the authorities had been to placate international and Chechen critics, the political will to pursue such criminal cases also lapsed. By 2007 there was also an important change in attitude to human rights activists working in Chechnya. Ramzan Kadyrov, once elected in 2007, began an aggressive campaign against those who were exposing the abuses perpetrated by his law enforcement and security agencies. Such monitoring not only now covered the defense and law enforcement ministries, but Kadyrov's private forces. Three major activists were murdered in broad daylight.[74]

These few criminal cases alarmed the power ministries, as witnessed by the violent physical and verbal attacks on the Procuracy and Murdalov's family during the Lapin trial. In the end, however, it was the failure to prosecute individual perpetrators, alongside, as we shall see, a failed material compensation strategy that shaped the future of civil litigation in Chechnya.[75] Determined to find another venue to defend the rights of war victims, lawyers began to seek compensation for moral harm in civil suits.

CIVIL COURT SYSTEM AND MORAL COMPENSATION DEMANDS

We turn to the demands for compensation for moral harm and the decisions of eighty-five cases considered in Chechnya courts. As noted above, there has been no sustained criminal justice, and the refusal of the Russian Government to identify individual perpetrators left legal professionals with one domestic option: civil suits. We focus on key aspects of this jurisprudence, including the standard of proof required by the courts and the hierarchy of types of pain and suffering used to determine the awarding of compensation. Although this opening for civil compensation was the direct result of a failed criminal justice system, it also shows a semi-authoritarian regime using the courts to build local legitimacy, albeit in a circumscribed manner. The Government had a certain legitimacy problem in the wake of a disastrous State policy for material compensation for Chechen war victims. It discovered a useful mechanism in the courts. This, along with the ability of human rights professionals to engage in deliberate, strategic, and repeated litigation campaigns, explains their emergence. The idea of "repeat players", as argued by Marc Galanter, proposes that such groups, when highly organized and committed to maintaining pressure on the legal system, can uphold certain rights at the margins of political life.[76] Each explanation

[73] Северо-Кавказский окружной военный суд: приговор именем российской федерации г. Ростов-на-Дону [North Caucasus District Military Court, Rostov-on-Don] 6 April 2006 (available online).

[74] Natalya Estemirova (2009); Stanislav Markelov (2009); and Anna Politkovskaya (2006).

[75] Tamir Moustafa and Tom Ginsburg, "Introduction: The Function of Courts in Authoritarian Politics", in Tom Ginsburg and T. Moustafa (eds.), *Rule by Law: The Politics of Courts in Authoritarian Regimes* (2008), pp. 6-22.

[76] Marc Galanter, "Why the 'Haves' Come out Ahead: Speculations on the Limits of Legal Change", *Law & Society Review,* IX, no. 1 (Autumn 1974), pp. 95-160.

presented below posits a deeper understanding of why this short period of justice emerged for crimes committed against Chechen civilians.

Compensation in Russian Law

The appearance of cases seeking compensation for moral harm for victims of the Russo-Chechen wars did not occur in a legal vacuum. The Russian Civil Code has various provisions for the payment of compensation that will be addressed below. In the beginning, however, it was the Chechen authorities quest for *material* compensation for wartime destruction that shaped the history of compensation claims. This took place in a complicated administrative environment defined by a surplus of presidential edicts rather than a specific body of legislation on postwar reparations. These historical developments show the inadequacy of the response by the federal authorities to material demands and illustrate how the Chechen authorities lobbied to include a one-time compensation payment for a generalized notion of "suffering" in the broader material compensation package. Arguably, this local campaign, alongside the "public investigations" and persistence of lawyers and human rights activists, contributed to the later success of civil litigation in the courts.

By 2003 there were three separate decrees for compensation claims, the majority of which dealt with material harm only. There was no specific law for the civilian victims, and the practice of paying material compensation was shaped entirely by a tradition in Russian law of issuing edicts and decrees to avoid the legislative process and then failing to repeal those that were obsolete.[77] In sum, the edict and decrees stipulated the following. Edict №. 898 "On Additional Contributory Compensation Payments to Persons Who Suffered as a Result of the Resolution to the Crisis in the Chechen Republic", signed by President Yeltsin on 5 September 1995, was a response to the first Russo-Chechen conflict.[78] It called for the

[77] William Pomeranz, (Deputy Director of the Kennan Institute, Woodrow Wilson Center for International Scholars), in discussion with author, 15 February 2019.

[78] In relation to the first Russo-Chechen war a "Procedure for Additional Compensation Payments to Persons affected by the Resolution of the Crisis in the Chechen Republic" was confirmed on 5 November 1995 by the Deputy Prime Minister of the Russian Federation, O. N. Soskovets. Point 7 of the Procedure provided that the basis for the payment of material assistance in cases of death was a personal written statement of the family members of the deceased with copies of documents confirming their relationship; a passport or other document temporarily replacing the identity of the plaintiff and his family members; death certificate of a family member. That is, only a few documents were required to receive this one-time financial assistance. These documents were to be submitted to district (or city) commissions established under the executive authorities of the Chechen Republic at the place of permanent residence. In pursuance of the Edicts of the President of the Russian Federation of 6 December 1995, No. 1216, "On the Federal Target Program for the Recovery of the Economy and Social Sphere of the Chechen Republic for 1996" and of 24 January 1996, No. 86, Decree "On Measures for the Recovery of the Economy and Social Sphere of the Chechen Republic for 1996; Decree of the Government of the Russian Federation of 6 March 1996, No. 241 "On the Federal Target Program for the Recovery of the Economy and Social Sphere of the Chechen Republic for 1996 (amended)" which provided for, among other things, the financing of these payments. On 6 August 1996, Chechen armed units seized Grozny and military action intensified. Under these circumstances, the Edict of the President of the Russian Federation, dated 18 August 1996, No. 1208, "On Urgent Measures to Ensure the Economy in the Execution of the Federal Budget in the Second Half of 1996" was issued, in which financing for the Federal Target Program for the Restoration of the Economy and Social Sphere of the Chechen Republic of September 1996 was suspended, and the allocation of funds for the payment of one-time material assistance to the affected citizens discontinued. However, the Edict of the President of the Russian Federation of 5 September 1995, №. 898, was not repealed. «О дополнительных компенсационных выплатах лицам, пострадавшим в результате разрешения кризиса в Чеченской Республике» ["On Additional Contributory Compensation Payments to Persons Who Suffered as a Result of

provision of a one-time extra-judicial financial payout in the amount of 2,000 rubles for those who had "suffered" (with no definition of the term) and 20,000 rubles to the families of those killed, also guaranteeing access to other forms of compensation established of the Russian Federation".[79] In addition to this one-time payment for suffering, the Edict included an additional provision for persons who had suffered material harm, meaning in these cases, the loss of a primary residence.[80]

Because there was no law underlying Edict №. 898, details on how to apply it were absent.[81] Two subsequent decrees of the Government provided details: №. 510 (1997) and №. 404 (2003) regulate the system for compensating material damage. These implementing decrees made no reference to the notion of "suffering" and did not contain a provision relating to the families of those killed, nor did they provide an allowance for access to other forms of compensation provided by Russian law. Decree №. 510 applies only to victims who had suffered material damage during the first war and had left Chechnya permanently. Decree №. 404 applies to both Russo-Chechen wars and covers only those individuals residing permanently in Chechnya. Decree №. 404 establishes a fixed amount of compensation: 300,000 rubles (approx. USD 10,000) for lost housing (immovable property) and 50,000 rubles (approx. USD 1,700) for lost property (belongings, movable objects).[82] As a lump-sum payment, the amount is not dependent on the value of the lost housing and/or movable property. The implementation of the decrees was assigned to the Plenipotentiary Representative of the President of the Russian Federation in the Chechen Republic and to the Chairman of the State Commission for Restoring the Economy and Social Sphere of the Chechen Republic. A working group was established to compile a "List of Destroyed Housing in the Chechen Republic" and to determine eligibility requirements. Only one member of a family could apply for a single home or apartment regardless of the number of people registered living in the house.[83] One group remained excluded from all three decrees: the victims of the second Russo-Chechen war who had left Chechnya permanently.

It was Nurdi Nukhazhiev, the Chechen Human Rights Ombudsman, who tried to resolve the issue of paying compensation for "suffering" to civilian victims. In 2009, he stated that his aim was to reduce the number of Chechen appeals to the ECtHR and called for a one-time payment for "suffering" in accordance with Presidential Edict №. 898 for the wounded, the families of the deceased, and abducted citizens.[84] His tactic was to

Settlement of the Crisis in the Chechen Republic"] (available online).

79 Edict №.898, ibid.

80 Ibid.

81 The only amendment to Edict №. 898 was in 2001 when the amount of contributory compensation was adjusted from the minimum payment model to a fixed payment of 2,000 rubles (approx. $70 USD dollars) for suffering and 20,000 rubles to the families who had lost a relative (approx. $679 USD). The amount has not been adjusted further to account for inflation.

82 «Постановление Правительства Российской Федерации № 404 'О порядке осуществления компенсационных выплат за утраченное жилье и имущество пострадавшим в результате разрешения кризиса в Чеченской Республике гражданам, постоянно проживающим на ее территории (с изменениями на 4 июля 2013 года)'» [Decree of the Government of the Russian Federation №. 404 "On the Procedure for the Effectuation of Contributory Compensation Payments for Lost Housing and Property to Citizens Who Suffered as a Result of Settlement of the Crisis in the Chechen Republic Permanently Residing on its Territory (with changes of 4 July 2013)"] (available online).

83 Ibid.

84 «Государство обязано выплатить компенсации жертвам войны» [The State is Obliged to Pay Contributory Compensation to War Victims], Грозный Информ [Groznyi Inform], 6 November 2012 (available

resuscitate the forgotten Edict №. 898 issued in 1995, the only edict that had a provision for "suffering," a payout for the families of the deceased, and a provision for access to other forms of compensation. His efforts were largely thwarted.[85] The one-time material payouts under Edict №. 898 and decrees №. 404 and №. 510 were inadequate and unpredictably awarded. The distribution of payments was also undermined by large-scale corruption that, being well covered in the press, severely undermined public trust. Moreover, since the material contributory compensation did not equate to the scale of the damage, any argument for a deterrence rationale; that is, the cost would deter similar action in the future, was impossible to assert in this case. Kadyrov's legal office reported, however, that contributory compensation payments had been made to some 85,000 plaintiffs (under Decree №. 404) from 2003 to 2014,[86] whereas other sources cite 151,000[87] -- but there is no easy way to verify which figure is correct. The Chechen Ombudsman's office reported that there were still 17,468 citizens awaiting compensation as of 2012. Soon after, the secretariat of the Commission was liquidated,[88] and it was announced that the funds allocated from the federal budget had been spent in full and no further payments would be made.[89] To date, no official data has been published regarding the amounts of the reparations paid, making it impossible to estimate the resources that the State has allocated for the implementation of the edict or decrees.[90]

Unexpectedly, in 2008, an inter-departmental working group was formed under President Medvedev to draft a law to respond to persons who had suffered during the crisis in Chechnya and were seeking compensation, ostensibly at the urging of Nukhazhiev.[91] That same year Medvedev conducted a public campaign to reform Russian courts with a view to reducing the flow of people applying to the ECtHR for justice, a cause for embarrassment for some and a reflection of the low level of public confidence in the legal system in Russia.[92] The Ministry of Justice under Alexander Konovalov directed

online). See also Anastasiia Kornia and Vera Kholmogorova, «Жертвам войны начнут платить» [They Begin to Pay War Victims], Ведомости [Gazette], 28 May 2009 (available online).

85 «Доклад уполномоченного по правам человека в Российской Федерации за 2014 год» [Report of the Plenipotentiary for Human Rights in the Russian Federation for 2014] (available online).

86 Ibid. Subject 5, Interview № 3, August 2018.

87 Subject 5, Interview № 3, August 2018.

88 «Указ главы Чеченской Республики № 10 "О внесении изменений в положение об администрации главы и правительства Чеченской Республики и об организации хранения материалов по заявлениям граждан о компенсационных выплатах за утраченное в результате разрешения кризиса в Чеченской Республике жилье и имущество"» [Edict of the Head of the Chechen Republic, № 10, "On Making Changes in the Statute on the Administration of the Head and Government of the Chechen Republic and on the Organization of Keeping Materials Relating to Applications of Citizens concerning Contributory Compensation Payments for Housing and Property Lost as a Result of Settlement of the Crisis in the Chechen Republic"] (available online).

89 Note 83 above.

90 Unlike Edict № 898, the other decrees do not mention contributory compensation for "suffering". Nukhazhiev's appeal to the federal authorities in 2008 stressed precisely Point 1 of Edict №. 898 that was still subject to execution under Article 90(2) of the Russian Constitution, to the broad concept of "those who had suffered". Despite attempts by the government to apply a period of limitations on payment of contributory compensation as early as 2001, the Supreme Court ruled that there was no period of limitations and the amendment was illegal. By introducing a deadline, the court found that the Government was violating the right to contributory compensation. See Решение Верховного Суда РФ от 26 сентября 2001 г. N ГКПИ01-1347 [Decision of the Supreme Court of the Russian Federation, 26 September 2001, № 1347] (available online).

91 «Как получить компенсацию за смерть близкого человека во время военной компании в Чеченской Республике?» [How to Receive Contributory Compensation for the Death of a Relative During the Military Campaign in the Chechen Republic?], European Ombudsman, 16 March 2013 (available online).

92 "Medvedev Urges Court Reform to Restore Judicial Faith", *Radio Free Europe*, 2 December 2008 (available

this working group, with representatives from the Supreme Court, the then Supreme Arbitrazh Court (abolished in 2014), the Procurator General, the Investigative Committee attached to the Procuracy, Ministry of Internal Affairs, Ministry of Foreign Affairs, and the Federal Treasury.[93] It was assigned to "prepare and submit before 1 June 2009 proposals for the legislative regulation of the issue of contributory compensation for harm to persons affected during the crisis and restoration of the constitutional order in the territory of the Chechen Republic".[94] The working group announced that a separate law was inadvisable (нецелесообразный) as a means of regulating the compensation of harm.[95] Instead, civilians who sought compensation for war injuries and contributory compensation for moral harm for lost relatives were encouraged to apply to a court of general jurisdiction.
To all intents and purposes, the Government had decided to delegate a sensitive political question to the judiciary by refusing to pass a specific law. While limited information is available on this working group, any proposed legislation would have been controversial. The diversity of the inter-agency representation in the working group must have given the leadership a sense of the problems of finding agreement across the power ministries. Nukhazhiev responded quickly by insisting that his office had never lobbied for a separate law. He simply wanted the Russian Government to abide by the obligations outlined in Edict №. 898 that was still in force and to address the remaining problem of contributory compensation for "suffering". His office reported that it was nevertheless going to help war victims prepare their court applications under Edict №. 898 and for moral suffering under Article 53 of the Russian Constitution which guarantees "Each shall have the right to compensation by the State for harm caused by the illegal actions (or omissions to act) of agencies of State power or their officials".[96] By 2012, Nukhazhiev reported that sixty cases had been decided with positive results in the district courts for the one-time payment only.[97] More complex, he noted, were the lawsuits for the redress of moral harm that will be discussed below.

Nukhazhiev complained bitterly that there was no federal initiative to resolve this ongoing problem; it was unacceptable that citizens had to find their own way, at their own expense, through the legal system. It was clear that contributory compensation cases for moral harm inflicted during the second Russo-Chechen war could proceed through local courts only. While this decentralization of the legal process was an active barrier to the exercise of victim rights and the expectation that all victims would be treated equally, it also became an important domestic framework for post-conflict remedies inside Chechnya. Moreover, this channeling of such a controversial political question into the hands of the judiciary suggests that Medvedev's working group could not reach a consensus on the issue, but that some political elites approved of the idea, even if they themselves could not champion it.

online).

93 «Распоряжение Президента Российской Федерации № 758-рп» [Regulation of the President of the Russian Federation No. 758-rp], Президент России [President of Russia], 7 December 2008 (available online).

94 Ibid.

95 «Государство обязано выплатить компенсации жертвам войны», note 82 above.

96 Article 53, Constitution of the Russian Federation.

97 Note 82 above.

Calculating Pain and Suffering

Despite the conclusion of Medvedev's working group, there was no expectation that the Chechen judiciary would respond positively to such claims.[98] These cases for non-pecuniary damage under the Civil Code had been heard as early as 2000 in Moscow (largely for aggravated deliberate destruction of, or damage to, property lost as a result of the war) and all failed to win: the court ruled that under Articles 1069, 1071, and 1100 of the Russian Civil Code, the State was only liable for damages caused by the *unlawful* actions of its agents. The courts found that the actions of the Russian federal troops in Chechnya had been lawful. Both judgments were upheld upon appeal.[99]

The strategy, for regional lawyers, had hitherto been to maintain a steady pressure on the courts to abide by Russian law and to exhaust domestic remedies to support further claims to the ECtHR. When one of the first lawsuits was heard in a Chechen court in Achkoi Martan in 2010 for the murder of Gandaloyev and Badayev in a forest plot near the village of Yandi in 2003, the judgment was surprising. The circumstances of the murder of A. A. Gandaloyev had been the subject of proceedings at the ECtHR in the case of "Gandaloyeva v. Russia"[100] two years before. The ECtHR ruled that the Russian Federation was responsible for the death of both victims and had violated its obligations under Articles 2 and 13 of the ECHR. After Gandaloyev's wife won her case, Badayev's relatives submitted a claim at the local level to the Achkhoi-Martanovskii District Court. On 22 November 2010, the local court directed the Federal Treasury to pay two million rubles in compensation for non-pecuniary damages in favor of the plaintiff in connection with the killing of V. V. Badayev by representatives of the federal forces, an amount almost equivalent to the award from the ECtHR. The Ministry of Finances appealed the decision but on 28 December 2010 the Judicial Division for Civil Cases of the Supreme Court of the Chechen Republic upheld it.

In the same way that the Supreme Court of the Chechen Republic upheld the Lapin ruling, this decision by the Judicial Division on 28 December was decisive. Yet the issue remained, how to resolve the question of measuring pain and suffering in civil tort cases.[101]

[98] Subject 5, Interview № 3, August 2018.

[99] *Kerimova and others v. Russia,* (№s 17170/04, 20792/04, 22448/04, 23360/04, 5681/05 and 5684/05), 3 May 2011. For the provisions of the Civil Code, see Butler, *Civil Code of the Russian Federation* (2016), pp. 453-454.

[100] *Gandaloyeva v. Russia,* (№ 14800/04), 4 December 2008.

[101] Neither before or after the 1917 Revolution did Russia have any generally agreed upon norms for providing compensation for moral damages for "psychological or physical pain and suffering". In 1905 the framers of the Civil Code did include several articles that referred to moral harm. In the Soviet period moral harm was considered "alien to the socialist sense of justice". It was not until the 1990s that the concept of "moral harm" re-emerged in legislation, first mentioned in the Federal Law of 12 June 1990 "On the Press and Other Mass Media" and the 1991 Fundamental Principles of Civil Legislation of the USSR and Union Republics (Article 131). See Vadim Kolosov, "Compensation for Moral Damages", Ежегодная международная студенческая конференция ЮрФака СПбГУ "300 лет Санкт-Петербургу – 300 лет развитию правовых систем" [Annual International Student Conference of the Faculty of Law of St. Petersburg State University "St. Petersburg's 300 Year Anniversary - 300 years of Developing Legal Systems"] (St. Petersburg, 2003) (available online). For a historical narrative of particular types of renumeration in the Imperial period and the attempts to introduce moral compensation, see A. K. Sisak'ian, «История компенсации морального вреда потерпевшим от насильственных преступлений в истории права России XIX-XX веков» [The History of Contributory Compensation for Moral Harm for Victims of Violent Crimes in the History of the Law of Russia of the 19th-20th Centuries], Вестник Уральского Института Экономики, Управления и Права [Herald of the Ural Institute of Economics, Management, and Law], III, no. 12 (2010), pp. 36-42.

The categorization and calculation of pain and suffering is one of the most difficult in damages, and this legal reality is no different in Russia. By 2017, Russian lawyers were requesting that more specific criteria be implemented to avoid vast discrepancies in compensation payouts.[102] The absence of such criteria to guide judges was resulting in similarly placed litigants being treated differently from one court to another. Decree №. 10 on "Some Questions of the Application of the Law on Contributory Compensation for Moral Harm"[103] continued to confer a virtually unrestricted freedom of discretion: "The degree of moral or physical suffering is assessed by the court in view of the actual facts of causing moral harm, specific features of the victim, and other concrete circumstances proving the extent of suffering endured by him".[104]

Such judgments are usually shaped by one of two approaches: "functional" and "diminution of value".[105] The first seeks to replace the loss through a series of financial benefits that seek to restore a measure of comfort or solace to the victim. The argument is that the loss itself cannot be replaced and this is the approach favored by judges in Chechnya. The second approach is linked to the seriousness of the harm, to the individual particularities of the person who has suffered the loss and or damage or whether the person who was harmed was the sole breadwinner. Usually differences are most profound when judges or juries assess subjective elements such as compensation for physical pain or bereavement in case of death.[106] These later elements are not entirely dismissed by Chechen judges, but are rarely elaborated.

The Crimes: Bombing, Disappearances, Summary Executions and Bodily Harm

The violations litigated following the decision at the Achkoi-Martanovskii District Court after November 2010 can be condensed quickly because the judgments show us little that is not already known about the nature of the military crimes in Chechnya.[107] The crimes involved in the eighty-five cases fall into three categories: homicide or bodily harm as a result of bombings/aerial attacks (21), disappearances (32), intentional or negligent homicide (30), torture (1), and other (1).

Indiscriminate aerial bombings constitute one-quarter of the judgments examined here. Two well-known events dominate the court cases: the aerial bombing of a refugee column on 29 October 1999 on the Rostov-Baku highway and the bombing of the village of Katyr-Yurt on 4 February 2000. In the first case, a column of thousands of civilians was waiting at the Ingush-Chechen border preparing to leave the republic at the height of the conflict. The column was fired upon by two low flying attack aircraft with air-to-ground missiles for up

[102] Irina Fast, «Как оценить моральный вред» [How to Assess Moral Harm], Ведомости [Gazette], 22 November 2017 (available online).

[103] Постановление Пленума Верховного Суда РФ № 10 «Некоторые вопросы применения закона о компенсации морального вреда» от 20 декабря 1994. [Decree of the Plenum of the Supreme Court, 20 December 1994, No. 10, "Some Questions of the Application of the Law on Contributory Compensation for Moral Harm", as amended 6 February 2007] (available online).

[104] Ibid.

[105] Irina Fast, «Компенсация морального вреда при причинении вреда жизни и здоровью: практические итоги после 25 лет существования института в РФ» [Compensation for Moral Harm When Causing Harm to Life and Health: Practical Results after 25 years of the Existence of the Institute in the Russian Federation], *Eurasian Advocacy*, V, no. 36 (2018), pp. 58-75.

[106] Shelton, note 11 above.

[107] Gilligan, note 58 above, pp. 21-91.

to four hours.[108] In the second incident, Chechen fighters entered the village of Katyr-Yurt in February 2000, then populated by approximately 25,000 civilians. The village had been declared a "safe zone", but its residents had not been warned in advance of the ensuing fighting or about safe exit routes. The bombing started suddenly in the morning and the planes reappeared, descended, and bombed cars on the road.[109]

The next category of crimes relates to disappearances, constituting one-third of the cases documented. Forcible disappearances are an enduring hallmark of the conflict in Chechnya. The ECtHR found that the disappearances amounted to a systematic practice in Chechnya,[110] and the Russian human rights organization Memorial has estimated that 3,000-5,000 people disappeared between 1999 and 2005. The Chechen Compensation Cases here illustrate both the practice of large-scale sweep operations (зачистка), as well as targeted operations (адресная зачистка) and nighttime abductions (ночные похищения). These took place across a range of sites from temporary filtration points, during house-to-house searches, at or near roadside checkpoints.[111] The bodies in the majority of cases were rarely found, although some were later discovered in the dacha complex "Prigorodnyi" or "Bodrost" near the Khankala Russian Military Base with signs of a violent death – hands bound, ears cut off, multiple skull fractures, bruised and broken fingers.

Two additional categories included here are the intentional homicide or harming of civilians and what appear to be incidents of negligence. They encompass egregious cases such as the attack on the village of Novye Aldi in February 2000 when St. Petersburg OMON forces surrounded the village and murdered 51 civilians. Some were shot, whereas others died from small grenades affixed to their doors or after their homes were set alight with kerosene. This exceptional case is underscored by a number of other judgments illustrating intentional homicides that took place in broad daylight during passport checks on the streets, at checkpoints, or in the woods, some with witnesses present.[112] The final category is made up of isolated incidents involving mortar strikes, artillery fire, or stray fire on civilians – constituting just under a quarter of the cases. It is by no means clear to what extent these cases are accidental or intentional, but such judgments alert us to the fact that these events were far from uncommon but rarely litigated at the European Court. They usually include events such as the firing on residential housing or schools from tanks,[113] the dropping of shells where shrapnel kills or wounds civilians,[114] and the firing on civilian cars.[115]

The final category was for crimes committed under Article 208 of the Criminal Code: criminal cases called "ineffective investigations." Criminal cases for grave crimes, including homicide and disappearances, were being opened and terminated up to ten times over

[108] *Isayeva, Yusopova and Bazayeva v. Russia*, (№ 57947-49/00), 24 February 2005.

[109] *Isayeva, Yusopova and Bazayeva v. Russia*. There is no solid data on the number of lives lost in both these campaigns. There is only one estimate that approximately 150 persons died in the village of Katyr-Yurt.

[110] Leach, note 10 above, p. 287.

[111] Gilligan, note 58 above, pp. 77-91.

[112] *Gandaloyeva v. Russia*, note 100 above.

[113] Решение Урус-Мартановского городского суда [Decision of the Urus-Martanovskii City Court], 12 May 2015, № 2-250/2015 ~ M-236/2015.

[114] Решение Грозненского районного суда [Decision of the Groznenskii District Court] 2013 (no day/month provided), № 2-2029/13.

[115] Решение Октябрьского районного суда [Decision of the Oktyabr'skii District Court], 20 March 2015, № 2-231/2015 ~ M-227/2015.

a period ranging from 7 to 10 years.[116] Lawyers argued that investigative units of the Investigative Committee had not only failed to conduct comprehensive investigations, but also that the cases had been terminated and suspended illegally.

Defining the Person Who Suffered (пострадавший)

The vast majority of plaintiffs in the Chechen Compensation Cases were family members who had lost a close relative during the second Russo-Chechen war: parents, siblings, and extended family. They were claiming monetary compensation for the moral harm suffered as a result of the actions of the State. Although close family members constitute the majority of cases and nearly all are Chechen, other extended family members were sometimes also included if the evidence permitted a reasonable assessment that they had also suffered morally. For instance, an aunt was granted compensation for the pain and suffering she endured while seeking to identify her young nephew after being forced to view tortured corpses on a repeated basis inside State morgues. Of the eighty-five cases examined here, only one refers to a young Russian sergeant who was killed in action during the first Russo-Chechen war (1994-1996). After an extensive search effort by the soldier's father, the son's body was returned to his family eight months later.[117] His parents applied for but were denied compensation for moral harm because the State had already made a one-time payment to the family in addition to standard military insurance payments.

The Defendant (ответчик)

What ties these civil cases together is that the defendant was the Russian State, or more precisely, the Russian Federal Treasury (казначейство) whose interests in the regions were represented by proxy (subject of the Russian Federation or municipality).[118] The Russian Ministry of Finances was responsible for providing the compensation payout in accordance with Article 52 of the Russian Constitution ("The rights of victims of crimes and abuses of power shall be protected by a law. The State shall ensure the victim access to justice and contributory compensation for damage caused"),[119] and Article 53 of the Russian Constitution ("Each shall have the right to compensation by the State for the

[116] The cases of Kasumova and Sup'yan, for example, had been suspended without reason between 6-8 times over a time frame ranging from 7 to 10 years. The plaintiffs charged the Investigative Committee of the Russian Federation of the Chechen Republic: in this case, the Shalinskii interdistrict unit, the Grozny MCO CY CY and the Zavodskoi inter-regional investigating organs with failing to conduct effective investigations and thereby inflicting moral harm on the plaintiff. In its factual findings, the Leninskii District Court found that on June 7, 2003 Ruman Kosumova's daughter was traveling by car from the village of Vedeno to the village of Kharachoi, Vedeno District. On the way, she was hit by a mortar strike launched by Russian military personnel. At the time of her death, the Senior Deputy of the Chechen Prosecutor's office suspended the preliminary investigation, after which it was re-opened and suspended six times from 2003 to 2010. The investigators concluded that they were unable to establish which military unit dropped the mortar strike that resulted in her death. In a similar case, also in the Leninskii District Court, Sup'yan's brother was detained during a special operation (зачистка) and subsequently disappeared. The case was suspended and re-opened 8 times. Both Kasumova and Sup'yan were paid out the small sum of 30,000 rubles each. See Решение Ленинского районного суда [Leninskii District Court Decision] 29 September 2011, № 2-567/2011-M-571-2011; Решение Ленинского районного суда [Leninskii District Court Decision], 15 October, 2014, № 2-1729/2014-M-1700/2014.

[117] Решение Ленинского районного суда [Leninskii District Court Decision], 22 October 2013, № 2-1648/2013.

[118] Such damage must be indemnified out of the treasury of the Russian Federation. Article 1071, Civil Code of the Russian Federation.

[119] Article 52, Constitution of the Russian Federation.

harm caused by the illegal actions (or omissions to act) of agencies of State power or their officials").[120] A representative of the Russian Ministry of Finances was almost always present in the court proceedings along with a procurator. Although the procuracy does not usually participate in civil cases, it has the legal right to intervene in non-penal areas of law that relate to moral or material harm for death or bodily injury.[121] The early compensation cases under Chechen Procurator Mikhail Savchin attracted little attention, and his office played a largely unremarkable role. It was only later under Chechen Procurator Sharpuddi Muaidovich Abdul-Kadyrov that the office began to provide the court with opinions at the end of proceedings supporting or rejecting the evidence, commenting on the amount of compensation requested.[122]

There were several occasions when Chechen lawyers jointly sued the Russian Ministry of Finances, along with the Russian Ministry of Defense (MOD) or Ministry of Internal Affairs (MVD). If we recall, in the criminal case of Aleksei Krivoshonok discussed above, his military unit was forced to pay 200,000 rubles in compensation for moral harm, as is customary in criminal cases. Such tensions arise in several decisions concerning these civil claims. In one case, the plaintiff's lawyer specifically identifies Military Unit 99311 of the Ministry of Defense as the perpetrator in the bombing of Katyr-Yurt in February 2000, highlighting the use of heavy aviation bombs FAB-250 and FAB-500 by fighter planes (SU-24). Apparently using these proceedings to establish the responsibility of a specific military unit for the death of nine relatives of the plaintiff and the wounding of five others, the decision concluded that, "it is namely the pilots who committed the aerial attack on peaceful civilians, whose names have been changed and classified … Russia must know that these very heroes are actually criminals".[123] This was a major departure from precedent. In the end, there was no representation from either the Ministry of Defense or from Military Unit 99311, and further attempts to name them as co-defendants happened rarely, either by procedural error or as a deliberate but highly perilous decision to sue the ministries directly. The MOD did send written objections, noting that all law-enforcement organs took part in the counter-terrorism operation, and it was impossible to identify the role of the MOD without a full and thorough investigation. "There was no irrefutable evidence in the materials of the case that the defendant committed the violation", the Ministry stated.[124] There was one exception to this general overview, that is when Military Unit 6779 was forced to pay 10,000 rubles for inflicting bodily harm.[125] The judge, however, usually ignored the Ministry of Defense as the co-defendant, and proceeded strategically to demand that the Ministry of Finances pay compensation to the victims.

[120] Article 53, Constitution of the Russian Federation.
[121] Article 45, Civil Code of the Russian Federation.
[122] It rejected 22 of the demands, supported 36, and was either not present or offered no commentary on 26 cases.
[123] Решение Ачхой Мартановского районного суда [Decision of the Achkhoi Martanovskii District Court], 14 June, 2012, № 2-15/2012 ~ M-8/2012.
[124] Ibid.
[125] Решение Веденского районного суда [Decision of the Vedenskii District Court], 2 February 2014, № 2-43/14.

Evaluating Evidence

The notion of a standard of proof as used in the Anglo-American system is not widely deployed in Russia's civil-law system. "Each party must prove those circumstances to which they refer as the basis of their demands and objectives"[126]. No evidence is accorded any *a priori* weight,[127] and as Butler notes "a court is required to weigh evidence according to its own inner convictions based on a comprehensive, full and objective consideration of the case looked at as a whole and being guided by the law and its legal consciousness".[128] Judges in Chechnya adopted an expansive view that combined substantive evidence and presumption, not dissimilar to the approach of the ECtHR.[129] As we will see below, the quality of the evidence presented really does matter in civil litigation in Chechnya. The lawyers generally worked hard to persuade the courts of the factual basis of their claim and the methods used by the Court can generally be regarded as legitimate.

Compensation claims for moral harm were grounded, in large part, on existing criminal files which lawyers repeatedly requested access to see in order to establish the factual basis for a claim. It was also not unusual for military or criminal procurators to refuse to hand over criminal files. Even when a file was handed over, it was common for lawyers to petition investigators to re-interview witnesses if it showed that the investigatory organs had failed to sufficiently interrogate them. If the investigator refused to respond to such a petition, the plaintiff's lawyer appealed directly to the court to summon and cross-examine witnesses throughout the proceedings. As one interviewed lawyer noted: "I regularly file such motions for every case".[130]

It is clear that local judges were well aware of the failures of the investigative organs to meet the most basic professional standards. In response, they argued that, "the inaction of the organs of the State powers cannot act as the basis for the rejection of the claimants".[131]The proceedings went ahead regardless of whether a criminal case was open, suspended, or closed, with most judges asserting that the case had to be considered on the "basis of the evidence the court has and not be limited by the conclusions of the preliminary investigation".[132] The absence or non-disclosure of key evidence posed distinct challenges. One judge noted, for example, that when a T-72 battle tank fired on a civilian residence resulting in the death of five civilians, that "From the very outset it is necessary to note that the ability of the court to evaluate the planning and conduct of the operation was limited by the deficit of information available to it".[133] The courts regularly urged the State to submit material that might prove, for example, that the use of aerial force did not go beyond what was "absolutely necessary" to achieve certain ends. Yet such requests were never answered, and one judge noted in relation to the above case: "The defendant did not present to the court any plan of the operation. Copies of orders, notes registered in journals or evaluations of the results of the military operation, in essence, it did not present

126 Butler, *Russian Law* (3d ed.; 2009), p. 243.
127 Ibid., p. 257.
128 Ibid.
129 The ECtHR has a higher burden of proof for Articles 2 and 3 of the ECHR.
130 Subject 5, Interview № 4, October 2018.
131 Решение Грозненского районного суда [Groznenskii District Court Decision] 6 December 2013, № 2-2029/2013 ~ M-1908/2013.
132 Решение Ленинского районного суда [Leninskii District Court Decision] 28 January 2014, № 2-58/2014.
133 Решение Урус-Мартановского городского суда [Urus-Martanovskii City Court Decision] 12 May 2015, № 2-250/2015 ~ M-236/2015.

any information, or explanation of what was done to evaluate and warn of possible harm against the civilian population in X in the event of the use of serious weapons".[134]

The courts routinely asserted that because knowledge of such grave crimes rested with the authorities, the authorities were obliged to prove that there had been no violation. Not unlike the practice of the ECtHR, the courts argued that if the plaintiffs made a prima face case of abduction, for example, the government must discharge the burden of proof, "either by disclosing the documents in its possessions or otherwise providing 'a satisfactory and convincing explanation of how the events in question occurred'".[135] Yet the State's failure to provide sufficient counter arguments forced the courts to work through a process of elimination by using the evidence provided by the plaintiff. In disappearance cases, for example, the court usually considered whether a curfew had been introduced or a sweep operation was taking place on the day the victim disappeared. Most judgments argued that during a sweep operation the Russian military had "indisputable effective control over the said territory" and were the only "persons who could move about unhindered".[136] The defendant often tried to suggest the contrary. But it was a challenging argument. Chechen insurgents did not have access to military vehicles such as APCs nor were they likely to be travelling around a village populated by federal troops. If the plaintiff could prove to the court that the territory had been under the exclusive control of the Russian Armed Forces who were refusing to acknowledge that the individual had been deprived of his/her liberty – then the plaintiff could also argue that their disappeared relative had been abducted and placed in a position outside the protection of the law.[137]

The Chechen compensation cases usually turned on proving factual questions; that is, whether and how something happened. Such questions as the placement of checkpoints within the village were examined when considering disappearance cases: whether they were within walking distance of each other, the scale of the sweep operation, and if others had been detained on the same day. What matters in the case of disappearances is proving the presence of Russian Armed forces at the scene of the crime. This is consistently corroborated by four vital findings: the presence of BTRs, APCs or UAZ military vehicles at the crime scene, men wearing camouflage uniforms marked OMON, wearing metal helmets, using walkie talkies, and speaking in unaccented Russian (after 2003 some spoke with accents). One might have expected the courts to eschew identifying particular military units for fear of inciting a response from the MOD or MVD. Generic phrases such as "Russian Armed Forces", "federal forces", or "unidentified military" are used repeatedly, but it is also abundantly clear that every effort was made – where possible – to identify and name the particular unit, brigade, individual soldier, or commander allegedly responsible for the crime.[138] This information was often retrieved from the criminal file where more conscientious investigators might have identified a unit of the MVD known to

[134] Решение, note 131 above.
[135] Leach, note 10 above, pp. 188-221.
[136] *Khalidova and Others v. Russia,* 2 October 2008, № 22877/04. *Ganatova and others v. Russia,* (№ 44776/09) 24 September 2019; *Baysultanova and other v. Russia,* (№ 12642/13) 24 September 2019,
[137] Решение Урус-Мартановского городского суда [Urus-Martanovskii City Court Decision], 24 January 2014, № 2-9/2014.
[138] Examples of such cases include: Решение Урус-Мартановского городского суда [Urus-Martanovskii City Court Decision], 12 May 2015, № 2-250/2015 ~ М-236/2015; Решение Грозненского районного суда [Groznenskii District Court Decision], 3 October 2013, № 2-1769/2013 ~ М-1662/2013; Решение Грозненского районного суда [Groznenskii District Court Decision], 29 July 2013, № 2-1497.

have conducted a sweep operation on that day and in that region, or a unit responsible for manning specific check points or the names of battalions based at nearby military bases. Such information was also gathered as part of the "public investigation" conducted on behalf of the plaintiff. Eyewitness testimony, of course, was always considered the most convincing form of evidence, and there were almost always direct witnesses, that is, family members, neighbors who heard noises and came out of their homes, or those who just happened to be at checkpoints who could corroborate the facts. In seven of the thirty-two cases such witnesses noted down the government number plates of official vehicles at the scene of the crime.[139]

In the absence of a comprehensive crime scene investigation, the court's evidentiary challenges were no easier – even if the corpses of the disappeared were later uncovered. However, it was not uncommon, as discussed earlier, to discover that the criminal investigation had failed to gather the most basic witness testimony or forensic evidence, including photographs and physical evidence. There was no follow-up by a forensic scientist to analyze valuable trace evidence, the type of bullet (if extracted), and no DNA analysis (if the remains were highly decomposed). In one case, four corpses were removed with an earth excavator, obliterating important trace evidence in the clothing that was not removed from the corpses. In the clearest cases, the plaintiff provided the court with a copy of the death certificate that noted where a victim had been found and the cause of death: for example, shot to the head or chest and/or signs of torture. In four cases, the plaintiff provided a death certificate to the courts or a court-issued document stating that the individual had disappeared and was presumed to be dead.

Claims were commonly rejected when direct witnesses were absent. Twenty-two of the eighty-five cases were rejected for this reason, and the courts were consistent in this regard. The Ministry of Finances and the Procurator's office had more than substantial grounds for arguing that the plaintiff could not satisfy the evidentiary standard in these cases. Examples included two young men digging for wild garlic in the woods who heard the whistle of bullets from the side of the road. One was hit directly in the head and the other was wounded in the scapula.[140] The witness had not seen who fired the shots, and there was no direct evidence of the presence of the Russian Armed Forces. Even though the decision mentions that the bullet was extracted, no testing was undertaken to match the bullet to the weapon. "Guesses and speculation", concluded the judge "that are laid out on the basis of the claimant's demands in agreement with Article 55 of the Civil Procedural Code cannot serve as evidence in the current civil case".[141] Similarly, the case of an alleged torture victim was fraught with evidentiary problems. The plaintiff complained that he had been seized from his home by Voronezhskii OMON forces and taken to SIZO at

[139] Решение Урус-Мартановского городского суда [Urus-Martanovskii City Court Decision], 30 March 2012, (no case number provided); Решение Грозненского районного суда [Groznenskii District Court Decision], July 29 2013, № 2-1497; Решение Грозненского районного суда [Groznenskii District Court Decision], 3 October 2013, № 2-1769/2013 ~ M-1662/2013; Решение Грозненского районного суда [Groznenskii District Court Decision], 6 July 2012, № 2-263/2012 ~ M-216/201; Решение Октябрьского районного суда [Oktiabr'skii District Court Decision], 25 March 2015, № 2-129/2015 ~ M-125/2015; Решение Заводского районного суда г. Грозного [Zavodskoi District Court Decision, Grozny], May 7 2013 (no case number provided); Решение Октябрьского районного суда [Oktiabr'skii District Court Decision], 2 April 2012 (no case number provided).

[140] Решение Ачхой Мартановского районного суда [Achkhoi Martanovskii District Court Decision], 25 June 2012, № 2-290/2012 ~ M-2/2012.

[141] Решение, note 137 above.

Chernokozovo, where he was allegedly beaten and tortured. His statement describes his transfer to the "White Swan" prison in Pyatigorsk where he was released on amnesty in late 2000. He filed for compensation for physical and psychological harm. According to the applicant, he had tried six times to persuade the Achkoi-Martan inter-regional investigation division to open a case. He was told that there was no factual basis to his claims and that Russian servicemen had not been implicated in the crime. The applicant never received victim status, no investigation was ever conducted, and no witness testimonies or medical certificates were gathered to verify the alleged physical attacks against him. From the wording of the decision, it appears that his lawyer was unable to find anyone to testify to his physical and/or psychological suffering. The same pattern held true for various cases where the investigatory bodies simply refused to open criminal investigations and no relative had acquired victim status. As it turns out, it was not unusual for the investigatory organs to simply refuse to open a criminal case in the first place, thus denying an unclear number of victims access to justice.

The situation is more straightforward in the case of aerial attacks. Plaintiffs who lost relatives in the aerial bombings in Katyr Yurt or on the Rostov-Baku highway rarely had the problem of finding witnesses or proving their claims. Courts nevertheless relied upon witnesses to testify to the facts in relation to the plaintiff's statement, as well as on reports from Memorial, Human Rights Watch, and quotes from news or radio broadcasts. Both bombings were well covered in the press, and there were hundreds of witnesses who could confirm the existence of the corpses of women, children and men lying on the road as they attempted to leave by foot or the burnt-out cars with people caught inside them. A great deal of descriptive detail was given to evoke the trauma experienced by the victims. Such narratives are not uncommon. "The freeway (trasse) on which the civilians were moving", concluded one decision "was attacked by a storm of aerial attacks and helicopters. The massive bomb strike, the "air-to-ground' rocket fire from the helicopters and lead rain from the sky plunged the residents of the republic, in particular the residents of the village of Shami Yurt, Zakan-Yurt, Achkoi Martan, Katyr-Yurt, into horror".[142] In sum, most judges were highly critical of the use of high-explosive aerial weaponry in areas populated by civilian residents or IDPs. They concentrated on the facts, the measures deployed by the Russian Armed Forces, and the failure to protect the civilian population situated in safety zones or humanitarian corridors.

In such well-known and documented cases, any attempt to deflect the blame away from the State had no effect. On several occasions, the defendant tried to reason that "foreign governments" had fired upon civilians.[143] No explanation or material evidence was provided, and most judges rejected the minimal arguments offered by the Ministry of Finances, at least from what we know of those arguments as presented in the final judgments. It is striking that the judge usually dismissed the counter-arguments, stating decisively in one particular case "that these facts are well-known across the entire world.

[142] Решение Ачхой Мартановского районного суда [Achkhoi Martanovskii District Court Decision], 10 April 2012, № М-883/2011.

[143] On the basis of the cases examined here, the defendant made this argument during proceedings taken by the Groznenskii District Court. See, Решение Грозненского районного суда [Groznenskii District Court Decision], 26 March 2015, № 2-42/2015 ~ М-22/2015; Решение Грозненского районного суда [Groznenskii District Court Decision], 25 November 2014, № 2-1242/2014 ~ М-1148/2014; Решение Грозненского районного суда [Groznenskii District Court Decision], 10 July 2013, № 2-1509/13.

In this sense, the court considers the fact of the bombardment by military forces of peaceful civilians as generally acknowledged and does not seek additional proof".[144] One judge bluntly stated in the case of a disappearance: "The court believes that … the objections stated by the representatives of the defendant and the conclusions of the Procurator's aide on the case, called upon to defend the legal interests of the victims, lack objectivity and are not based on the law".[145]

Indeed, the success of such claims came down to the ability of the plaintiff to establish three facts: (1) that the relative(s) had died as a result of the bombing campaign, (2) that he/she was not a Chechen fighter, and (3) that the applicants were genuine family members. Evidence for proving these facts is consistent across most of the cases. Important to the court was whether the plaintiff had been granted victim status and whether a criminal case had been opened. Standard items such as death certificates, copies of passports, marriage certificates, medical records, birth certificates, burial registration from local imams, and documentation proving the relationship between the plaintiff and the victims are all applied consistently. Most of this is straight forward, except in one case where a Chechen couple was married under Muslim law with no formal registration from the Russian Civil Registry Office (ZAGS). On one occasion this clearly resulted in a reduced amount of compensation for a plaintiff who was unable to formally document the marriage or the parentage of the couple's children.[146]

In order to substantiate their evidentiary claims, the judges relied not only on witness testimony and the material evidence presented by the plaintiff, but on the factual findings and the reasoning of the ECtHR. Strasbourg litigation played a compelling role at the domestic level in Chechnya, serving as *de facto* legal precedents. Judges routinely cited the courts obligation to follow international customary law under Article 15(4) of the Russian Constitution. This gives domestic legal force to international treaties signed by the Russian Federation: "Generally-recognized principles and norms of international law and international treaties of the Russian Federation shall be an integral part of its legal system. If other rules have been established by an international treaty of the Russian Federation than provided for by a law, the rules of the international treaty shall apply".[147]

Indeed, the most persuasive domestic cases repeatedly cite not only the Convention, but ECtHR judgments, especially in relation to serious violations under Article 2 (right to life) and Article 13 (right to effective remedy). Here we note – for the first time in such cases – the willingness of Chechen courts to apply the ECtHR body of precedent. These citations were clearly prompted by the memorandum of the plaintiff's lawyer where the arguments based on ECtHR case-law and the Convention were duly outlined for the court. In doing so, they noted the obligation of the courts to employ the provisions of the ECtHR as a framework for analyzing the facts, legal principles, and procedures of the case.[148] The

[144] Решение Ачхой Мартановского районного суда [Achkhoi Martanovskii District Court Decision], 14 June 2012, № 2-15/2012 М/8-2012.

[145] Решение Веденского районного суда [Vedenskii District Court Decision], 25 December 2014, № 2-795/2014 М-795/2014.

[146] Решение Гудермесского городского суда [Gudermesskii City Court Decision], 29 April, 2013 № 2-846/2013 ~ М-885/2013. There is one decision where the applicant is given the full award of 1 million rubles despite the fact that her marriage was not officially registered. See Решение Заводского районного суда г. Грозного [Zavodskoi District Court Decision, Grozny], 17 April 2013, 2-251/2013 ~ М-320/2013.

[147] Butler, note 39 above, p. 7.

[148] As discussed earlier, this is clear from reading the court decisions. For more discussion, see also, A. Burkov,

ECHR itself ranks first in the national hierarchy of norms cited in the domestic decisions (Articles 2 and 13 of the ECHR, followed by Article 15(4), Article 52, and Article 53 of the Russian Constitution, and Articles 1066, 1069, and 1064 of the Civil Code). The Strasbourg judgments played the most visible role during the litigation of the same event, such as the bombing of Katyr Yurt, or on thematic issues, such as disappearances.[149] Notably, the courts not only referred to the jurisprudence in relation to Russia, but also to other parties to the Convention, notably Turkey and Ireland. The judgments routinely cited include: *Isayeva, Yusopova and Bazayeva v. Russia* (2005);[150] on the bombing of the refugee column on the Rostov-Baku highway in October 1999; *Abuyeva and Others v. Russia* on the bombing of the village of Katyr Yurt in February 2000; *Musayev, Labazanova and Magomadov v. Russia* (2007) on the massacre of 51 civilians in the village of Novyie Aldi in February 2000; and the disappearance cases such as *Luluyev v. Russia* (2007) and *Imakayeva v. Russia* (2007).[151] Judgments from Turkey and Ireland include *Aksoi v. Turkey* (1996*), Kaya v. Turkey* (1998),[152] and *Airey v. Ireland* (1979). Overall, 64 out of 85 judgments cited case law.

Whereas some decisions go to extensive lengths to prove the facts of the case, others rely almost solely on the factual findings of the ECtHR. For example, in three cases litigated at the Leninskii District Court with respect to the Novyie Aldi massacre in early 2011, local court judgments are surprisingly perfunctory. The decision simply notes that, "the European Court of Human Rights issued a ruling on this case, recognizing that the Russian Federation bore responsibility for the death of civilians in the village of Novyie Aldi and that the criminal case has not been accompanied by an effective investigation".[153] All three cases were litigated on the same day, in the same court, and the decisions themselves provide surprisingly few details and no judicial commentary whatsoever. The plaintiff was awarded compensation for moral harm and the only response from the defendant was that the "Federal Treasury was the inappropriate defendant in this case".[154]

Although citation of the judgments of the ECtHR was routine, judges rarely provided an extensive evaluation of the arguments offered by the plaintiff. It is also noteworthy that neither the Ministry of Finances nor the Procuracy appear to have engaged with arguments on the ECHR or ECtHR case-law. As noted, the ECtHR judgments not only employed a "beyond reasonable doubt" standard to confirm the facts, but the case-law provided the domestic courts with a precedent on matters of principle and procedure. There are clear citations, for example, of the right to life principle set out in the cases of *Isayeva v. Russia* and *Abuyeva and Others v. Russia,* with more than one court having argued that the "Russian Federation was responsible for the death and injury in the period from 4-7 February 2000 of citizens in the village of Katyr-Yurt and the Russian Federation violated

The Impact of the European Convention on Human Rights on Russian Law (2014).

149 Решение Ленинского районного суда [Leninskii District Court Decision], 18 March 2011, № 2-486/2011 M-449/2011.

150 *Isayeva, Yusopova and Bazayeva v. Russia,* (№ 57947/00, 57948/00 and 57949/00), 24 February 2005.

151 *Luluyev and Others v. Russia,* (№ 69480/01) 9 November, 2006; *Imakayeva v. Russia,* (№ 7615/02), 9 November 2006.

152 *Kaya v. Turkey,* (№ 158/1996/777/978) 19 February 1998.

153 Решение Ленинского районного суда [Leninskii District Court Decision], 18 March 2011, № 2-486/2011 M-449/2011. See, *Musaev and others v. Russia* 2005.

154 Решение, note 150 above.

Articles 2 and 13 of the ECHR", adding "that the act was not done with the requisite care for the lives of the civilian population".[155]

In contrast to well-known cases of disappearances, aerial attacks and killings, cases of willful or accidental firings make up just over a third of the decisions. The standard of proof in these cases did not differ significantly. On the whole, they were single events that took place as a result of alleged tank or machine-gun fire from APCs or other military vehicles at university buildings, residential homes or against individuals on the streets or in cars. Such examples include repeated machine-gun fire directed at a Pedagogical Institute that resulted in the death of five students and the wounding of seven, or the case of two young men shot while driving their car. These cases come under the same (if not more) scrutiny, and the evidentiary demands such as the presence of witnesses and death certificates were no different than the expectations linked to the well-known cases described above. Such cases as the accidental firing by the Russian Armed Forces on a young man who is then taken to a hospital by the perpetrators themselves also resulted in compensation, although no further inquiry into the events was undertaken by the investigative agencies. What is striking is not only the frequency with which these events occurred, but the fact that the majority took place in daylight with multiple witnesses, furnishing a deeper picture of the scale and types of crimes happening during the war.

On the other hand, the standard of proof used to reach a decision on the final category of such cases, that is "ineffective investigations" conducted by the investigative units of the procuracy agencies, was not particularly onerous. This legal strategy became a significant part of the work of the Joint Mobile Working Group (JMG), a consortium of lawyers and activists from Memorial and the Committee against Torture working in rotation in the Northern Caucasus; there are a number of successful cases litigated for moral harm.[156] The decisions routinely cite Article 13 (right to effective remedy) of the ECHR as the legal basis for their claim. In 2011, Ramun Kasumova, for example, filed a claim against the Shalinskii district inter-regional investigation division for having suspended her case six times after her daughter came under mortar bombardment in 2003.[157] Similarly, the case of Alikhan Akhmedov, a former police investigator, litigated the State's failure to investigate alleged torture against him by OMON Special Forces. In this particular instance, the Procurator agreed to the damages and proposed a higher sum than the defendant had proposed.[158]

Ample evidence was usually available to prove that a Chechen investigation had been ineffective. Simply consulting the correspondence between the procuracy agencies and the plaintiff or within the criminal file itself was usually more than sufficient. The status of a case was generally reported to the plaintiff over the years as either ongoing, suspended, re-opened, or closed for "inability to identify a suspect". The criminal files, however, were especially persuasive, usually consisting of multiple directives by various inter-regional investigation divisions cancelling old directives or issuing new ones. Sometimes

[155] Решение Ачкой-Мартановского районного суда [Achkoi-Martanovskii District Court Decision], 22 November 2012 (no case number provided).

[156] Subject 1, Interview № 1, April 2016. Subject 1, Interview № 2, May 2016.

[157] Решение Ленинского районного суда, [Leninskii District Court Decision], 29 September 2011 (no case number provided).

[158] See also «Жителю Чечни суд присудил 30 000 рублей компенсации за действия следователя» [The Court Awarded 30,000 rubles to a Resident of Chechnya for the Unlawful Actions of an Investigator], Кавказский узел [Caucasian Knot], 1 September 2010 (available online).

plaintiff counsel had access to the notes of the investigative organs where procedural irregularities were noted and acted upon, sometimes resulting in the re-opening of cases. Especially telling is when the investigator depicts what has *not* been done over the course of an investigation, such as the failure to secure copies of the military's operational notes (журнал боевых действий) on the date of a particular violation from the Ministry of Defense archive (as discussed earlier).[159] One such example was the investigation conducted by the Zavodskoi inter-regional investigation division into the disappearance of a plaintiff's brother. It was clear from the file that no witness testimony from those detained at the same time as her brother had been gathered, nor had the VOVD soldiers known to be at the crime scene been summoned for interrogation.[160] This information was usually enough to show in court that the Chechen investigatory bodies were unwilling or unable to execute their professional responsibilities.

Motivation

Not unlike the ECtHR, the Chechen courts largely avoided any attempt to establish whether discriminatory attitudes played a role in the Russo-Chechen wars. The Strasbourg court has been criticized for ignoring the impact of discrimination on the dignity of the individual and thus for providing no deterrence to discrimination. The argument goes that a violation of Article 14 of the ECHR "should be considered an aggravating factor in the assessment of moral damages because it normally causes further harm to a victim to know that the violation was motivated by racial, religious or linguistic prejudice".[161] But the court never broached the question of Article 14 in the Chechen cases and stayed away from reasoning the difficult standard of proof for racial discrimination. Indeed, the domestic Chechen cases appear to be a combination of intentional torts (where the accused is acting with intent) and negligence cases (failure to exercise the reasonable degree of care) but since no effort was made by the judges to differentiate between these categories, examining the question of "motivation" became a moot point.

Some bolder judges, especially those involved in the first judgments in the Achkoi Martanovskii District Court and Leninskii City Court, made allowances for the appearance of such terms as "deliberate" or "intentional" crimes, as well as the word "reprisal" (расправа) against the civilian population. It appears that these terms are part of counsel's summary and not the direct reasoning of the judge. Nevertheless, such expressions are allowed to remain in the judgments. One statement notes that: "The commanding unit of the troops of the Russian Federation in the North Caucasus under General FIO7 acted deliberately and with a brutality that surpassed his predecessor General Yermolov, the Tsar's Satrap in the North Caucasus".[162] Such historical allusions are rare, but the majority of cases suggest that the Russian Armed Forces deliberately inflicted harm or failed to exercise a reasonable degree of care. That the actions of the Russian forces were based on

[159] Решение Ленинского районного суда, [Leninskii District Court Decision], 29 September 2011 (no case number provided).
[160] Решение Ленинского районного суда [Leninskii District Court Decision], 27 September 2011, 2-567/2011 ~ M-571/2011.
[161] Shelton, note 11 above, p. 354.
[162] Решение Ачкой-Мартановского районного суда [Achkoi-Martanovskii District Court], 10 April 2012, № 2-6/2012(2-884/2011).

"national hatred" is stated outright only once,[163] but the concept of discrimination (direct or indirect) is implied across the majority of cases; that is, that these acts were broadly driven by racial discrimination against the Chechen people.

This assumption of prejudice is framed in the repeated claim that Russian actions were reprisals (расправа) not motivated by necessity.[164] As one decision noted: "They were prepared to fire and kill and execute the criminal order of General Shamanov who was … responsible for the operation of the federal forces in [X] that is, this was not a military operation, but a reprisal against the civilian population".[165] Such pronouncements are never complemented by judicial commentary, and evidence of discrimination in the form of abusive slurs, for example, appears only once.[166]

It is clear that the courts did not want to argue that the discrimination had been intentional or to take a stance on the role of ethnic or racial attitudes in the provocation of the Russo-Chechen wars. Several judges referred to Article 2 of the Constitution of the Russian Federation that guarantees "equal rights and freedoms of the person" and limits "any restrictions of the rights of citizens on social, racial, national, linguistic or religious grounds"[167] – but these instances were rare and without sufficient elaboration on the evidence. There are good reasons for this, including the political constraints of the legal environment in which they were operating. Such an attempt would probably have been futile in a legal setting already so compromised and constrained by what it could do. One local lawyer, however, claimed that the reason why one judge had been later removed from his post was that he allowed the inclusion of the word "genocide" in his final judgments.[168] But there was still no real precedent for how the concept of racial discrimination might be addressed. Since the ECtHR could not provide a workable framework, it was largely marginalized in the domestic court decisions.

A Hierarchy of Suffering?

Is it possible to speak of an underlying approach adopted by the courts in Chechnya in relation to compensation for moral harm, that is, a hierarchy of suffering? The Chechen courts concentrated almost solely on proving the facts of the case and the responsibility of the Russian State as the inflictor of harm. Subjective elements, such as the scale of bereavement in the case of the death of close relatives or subjective feelings of happiness or unhappiness of the victim were indeed mentioned, but rarely elaborated. Whereas no specific methodology or criteria is available to define the amount of moral damage in Russia (a practice not uncommon in France, Germany, England, or Japan), the approach

[163] Решение Гудермесского городского суда [Gudermesskii City Court Decision], 29 April 2013, № 2-846/2013 ~ M-885/201.

[164] The reason for using the argument that the violence was not the result of necessity was to ensure that the claim was given due consideration under Article 2 on the right to life of the ECHR.

[165] Решение Ачкой-Мартановского районного суда [Achkoi-Martanovskii District Court Decision], 10 April 2012, № 2-6/2012(2-884/2011).

[166] Решение Ленинского районного суда [Leninskii District Court Decision], 26 October 2011, № 2-447/2011 ~ M-340/2011.

[167] Решение Грозненского районного суда [Groznenskii District Court Decision], 6 July 2012, № 2-263/2012 ~ M-216/201; Решение Грозненского районного суда [Groznenskii District Court Decision] 10 July 2013, № 2-1509/13; Решение Ленинского районного суда [Leninskii District Court Decision], 24 May, 2017 (no case number provided).

[168] Subject 5, Interview № 4, October 2018.

in Chechnya was almost entirely functional: it was based on the plaintiff having been deprived of an asset that had objective value. There was almost no discussion of subjective elements such as compensation for bereavement in the case of the death of a relative – at least not in the available decisions.

Many judges were able to imagine the lived experience of the civilians of the Russo-Chechen wars. Many had experienced the wars themselves, and their decisions often address the emotional suffering and pain inflicted on a plaintiff's family. It is well known that the extensive human rights violations experienced during the Russo-Chechen wars severely affected the mental and physical health of its victims. Many experienced emotional and psychosomatic problems, including anxiety, depression, and sleep disorders. The cases themselves drew attention to the psychosocial and psychological consequences of human rights violations, specifically torture and the disappearance of family members, as well the constant fear for the fate of other family members, especially young men. In certain cases, relatives had to visit morgues to identify corpses, some of which had been tortured. As one judge noted in the case of a disappearance: "Every such case inflicted deep spiritual wounds on him, evoking fear for his closest relative who also could be subject to torture".[169]

These remarks across the majority of the decisions are no doubt heartfelt, but they are far from original. Since many decisions were literally cut-and-pasted out of others, it is difficult to argue that the court took into account the "individual peculiarities of the citizen to who harm was caused".[170] Certain phrases were continuously repeated: "She and other members of her family endured and continued to endure grave moral suffering", cites one decision.[171] "She was in shock at what happened. She experienced extreme stress, was ill for a long time and confined to bed where her condition worsened",[172] acknowledges another. She continues to experience "spiritual (*душевная*) trauma"[173] and has suffered an "entire series of illnesses".[174] And finally, "The absence of an effective investigation to this day has not allowed her to heal her mental wounds".[175]

The judges routinely cited Article 1101 of the Civil Code that the "character of physical and moral sufferings shall be valued by the court by taking into account the factual circumstances under which the moral harm was caused and the individual peculiarities of the victim".[176] Yet there was complete inattention to such questions as to whether certain plaintiffs in urgent need deserved preferential treatment. Whether an applicant was widowed with children or had substantial psychological or physical problems. The courts treated all in largely the same way by adopting a standard approach that, although not unusual for such cases, did not always address the particularities of an individual's

[169] Решение Грозненского районного суда [Groznenskii District Court Decision] 16 December 2013, № 2-1920/2013.

[170] Article 151, Civil Code of the Russian Federation.

[171] Решение Грозненского районного суда [Groznenskii District Court Decision], 12 December 2014, № 2-1368/2014 М-1268/2014.

[172] Решение Ачкой-Мартановского районного суда [Achkoi-Martanovskii District Court Decision], 10 April 2012, № 2-6/2012, 2-884/2011 М-883/2011.

[173] Ibid.

[174] Решение Грозненского районного суда [Groznenskii District Court Decision], 3 October 2013, № 2-1768/2013 ~ М-1661/2013.

[175] Решение Шалинского городского суда [Shalinskii City Court Decision], 14 April 2015, № 2-277/2015 ~ М-325/2015.

[176] Решение, note 169 above.

suffering or circumstances.[177] As noted above, the applicant was not treated equally if his/her marriage had not been registered by ZAGS but by customary Islamic law. In one of the best-written and incisive judgments, the judge awarded only half of the generally awarded amount because the applicant was unable to prove that her husband was the father of her two children.[178] The courts never stated their reasons for not distributing a share of the award between family members. Except in one case, the court never divided the damages between the children, spouse, and parents of the victim.[179]

Frequent wording such as the "complete indifference to this crime by the investigative organs who have been unable to bring the criminal case to a conclusion have subjected the plaintiff and the rest of his family members to moral and physical harm which until this day is still as acute as the first day of his son's death".[180] An argument constantly invoked was that the victim had been a civilian who had not done anything "illegal to provoke the Russian authorities".[181] To portray the shock and astonishment experienced by a family, the courts repeatedly noted: "It is difficult for him and his family to comprehend that a close person became the victim of illegal actions of the representatives of the authorities as far as the victim himself did not do anything illegal".[182] This concept of fear as a constant backdrop to the daily lives of the war victims was most pronounced in the Chechen Compensation Cases. The decisions repeatedly stated that family members maintained a well-founded fear of torture and suffered extreme anxiety when around armed forces or law enforcement officers and had made them distrustful of the legal system and investigatory agencies.

Amounts of Compensation

Instead of considering each claim on the basis of its own merits and distinct circumstances, the Chechen courts were clearly ordered not to exceed a million rubles in compensation.[183] This practice was linked to budgetary lines created by the "Government Reserve Fund for the Prevention and Elimination of the Consequences of Emergencies and Natural Disasters", instituted by Decree №. 750 of 13 October 2008. By 2012, it had become clear that Decree №. 750 had become the statutory basis for assigning the monetary compensation for moral harm in Chechnya. Point 10, added on 22 November 2011, categorically stated that a lump sum payment was to be made to "family members (spouse, children, parents and dependent persons) of citizens who died as a result of a terrorist act and (or) in the

[177] Only in one case of the eighty-five cases examined here is the compensation split between the mother and the daughter: 500,00 rubles each. See, Решение Гудермесского городского суда [Gudermesskii City Court Decision], 29 April 2013, 2-830/2013 ~ M-869/2013.

[178] Решение Гудермесского городского суда [Gudermesskii City Court Decision], 29 April 2013, № 2-846/2013.

[179] Решение Гудермесского городского суда [Gudermesskii City Court Decision], 29 April 2013, № 2-830/2013 ~ M-869/2013.

[180] Решение Ленинского районного суда [Leninskii District Court Decision], 26 September 2013, № 2-2141/2013 ~ M-2298/2013.

[181] Решение Ленинского районного суда [Leninskii District Court Decision], 27 March 2014, № 2-59/14.

[182] Решение, note 178 above.

[183] Subject 5, Interview № 5, April 2019. In one interview, the plaintiff noted that the judge said he could not exceed 1 million rubles in the award, otherwise the judgment would be struck down. Subject 10, Interview № 1, January 2019.

event of the suppression of a terrorist act by lawful actions, in the amount of one million rubles for each deceased".[184]

Based on the eighty-five decisions examined herein, the courts complied fully with these requirements. It is unclear whether judges were issued "methods letters" (методическое письмо) that provided instructions on how the compensation would work. With few exceptions, the cases reviewed under Judge Yakubov in the Achkoi-Martanovskii District Court over 2010-2011 on the bombing of Katyr Yurt and the murder of A. A. Gandaloyev and V. H. Badayev were the only awards in which the plaintiff received 2.2 million rubles, the largest payment ever made in these civil disputes.[185] One infers that the State essentially implemented an "administrative" framework for compensating plaintiffs, despite the application of tort law. That is, victims were defined in "standardized terms in a statute that provides a relatively fixed, tabulated amount of compensation for all, which is typically smaller than judicial compensation".[186]

That is not to say that arguments were not made for higher awards. In nearly all the cases examined, the plaintiff demanded much more, usually between 2 million and 20 million rubles, depending on the violation and number of litigants. In general, the requests made to the court were based on the average awards of the ECtHR of sixty thousand Euros (approximately 2.4 million rubles). But despite the argument posed by many lawyers that the award be commensurate with amounts given out by the ECtHR,[187] these sums were almost uniformly rejected by the federal treasury and the Procuracy, who insisted that the judge consider the "requirements of reasonableness and justness"[188] when deliberating on the requested amounts. The Federal Treasury and the Procuracy systematically requested that a lower amount be awarded without explaining their reasons.

Two of the most common counter-arguments presented by the plaintiff's lawyer were based on the payouts under the Law on "On Obligatory Insurance for Civil Responsibility of Carriers for Causing Harm to Passengers"[189] in the case of an individual's death while travelling on transport. The Government had determined in a number of cases that the carrier was obliged to pay the family of the victim compensation in the amount of at

[184] The rest of the decree notes that to citizens who have suffered harm to health as a result of a terrorist act and (or) when a terrorist act is suppressed by lawful actions may be compensated depending on the severity of the harm from 400 thousand rubles per person, and for light damage - 200 thousand rubles per person. «Постановление Правительства Российской Федерации № 110 'О выделении бюджетных ассигнований из резервного фонда Правительства Российской Федерации по предупреждению и ликвидации чрезвычайных ситуаций и последствий стихийных бедстви'» [Decree of the Government of the Russian Federation №. 110 "On Budget Appropriations from the Reserve Fund of the Government of the Russian Federation for the Prevention and Liquidation of Emergency Situations and Consequences of Natural Disasters"], 15 February 2014 (available online); СЗ РФ (2008), no. 42, item 4822.

[185] Решение Ачкой-Мартановского районного суда [Achkhoi Martanovskii District Court Decision], 10 April 2012, № 2-6/2012.

[186] Jaime E. Malamud-Goti and Lucas Sebastián Grosman, "Reparations and Civil Litigation", in Pablo De Grieff, *The Handbook of Reparations* (2006), p. 540.

[187] Решение Ачкой-Мартановского районного суда [Achkoi-Martanovskii District Court Decision], 22 November 2012 (no case number provided).

[188] Article 1101, Civil Code of the Russian Federation.

[189] «Федеральный закон № 67-ФЗ 'Об обязательном страховании гражданской ответственности перевозчика за причинение вреда жизни, здоровью, имуществу пассажиров и о порядке возмещения такого вреда, причиненного при перевозках пассажиров метрополитеном'» [Federal law No. 67-FZ "On Obligatory Insurance of Civil Responsibility of a Carrier for Causing Harm to Life, Health, Property of Passengers and on the Procedure for Compensation for such Harm Caused during Carriages of Passengers by the Subway"], КонсультантПлюс [ConsultantPlus], 14 June 2012 (available online).

least two million rubles.[190] The second and more frequent argument was the comparison drawn between the victim payouts for those who suffered as a result of the terrorist act at Domodedovo International Airport in January 2011 when each victim was paid three million rubles for moral harm.[191] This analogy was constant in the decisions. As one lawyer noted: "everyone received compensation after the terrorist act in Domodedovo. In Chechnya so far, although a counterterrorist operation was also carried out, it is very difficult to get anything. The big difference is the attitude of the state to what happened in Chechnya and to what is happening in other regions. Yet the same law against terrorism governs the events that took place in Chechnya and in other regions. That is, there is quite an obvious discrimination".[192] It should be noted, however, that the families of those who died or were injured at Domodedovo International Airport were awarded compensation from a private fund, the so-called "Aviation Fund," made up of private philanthropic donations and not from the Federal Treasury.[193]

After the case at Achkoi Martanovskii District Court in 2010, the payouts never exceeded a million rubles. Although no explanation was provided as to why no payments were given that matched either the Domodedovo or the ECtHR payouts, it was clear that an order had been given to follow Decree №.750 at the local level. The Procuracy and the Ministry of Finances started to mention the Reserve Fund for the Prevention and Elimination of the Consequences of Emergencies and Natural Disasters in decisions in 2012.[194] Those who had already received compensation for the same violations from the ECtHR could not receive additional benefits.

Death (willful or not) and disappearances received the maximum amount of a million rubles, compensation for bodily harm was usually between 200,000 and 500,000 thousand rubles. The three criteria provided by Russian civil law in relation to bodily harm range from "light" (легкий вред), "medium" (средний вред) to "grave" (тяжкий вред) harm, and these criteria were applied in these cases. To evaluate an injured party's suffering, the court needed to establish not only what suffering had occurred but also how much might occur in the future (for example, the loss of a limb can result in obvious complications in one's private life, the loss of opportunity to be employed in one's chosen field, and so on). To prove injuries, plaintiffs overall were expected to present clinical records, a copy of the judicial ruling that had validated them, and their medical or clinical history from an official health institution.

In these decisions, most instances of bodily harm were compensated as "medium" harm.[195] Some plaintiffs decided to apply separately for compensation for bodily injury even if they had already received compensation as a result of a deceased relative. The harm ranged from gunshot wounds and loss of limbs, trauma from explosives, and shrapnel, splinters including chronic deafness due to nerve damage and psychological

[190] See, Решение Ленинского районного суда [Leninskii District Court Decision] 18 March 2011(no case number provided).

[191] Решение, note 187 above.

[192] Subject 5, Interview № 4, October 2018.

[193] «Открыт сайт благотворительного фонда 'Авиационный'. Более 120 пострадавших получили выплаты» [The Website of the Aviation Charitable Fund has been Launched. More than 120 Victims Received Payments], AVIA.RU Network, 30 June 2016 (available online).

[194] Решение Грозненского районного суда [Groznenskii District Court Decision], 26 March 2015, № 2-42/2015 ~ М-22/2015.

[195] Решение Грозненского районного суда [Groznenskii District Court Decision], 29 July 2013, № 2-1461/2013.

problems. Most plaintiffs provided the required medical documents (*spravka*); but there were instances when no records were presented and no analysis of the exact type of harm was conducted. One plaintiff was allegedly beaten and tortured along with his brother, who later disappeared. The court rejected the request for 500,000 rubles because he was unable to "present any evidence", but nevertheless awarded him 400,000 rubles "for bodily harm resulting from torture" on the basis of testimony of some of the other fourteen detainees who had been released along with him. But this was an exception. Most other cases were more detailed, with one plaintiff providing documentation of his treatment at the Urus Martan hospital over a period of years. There is only the one case where the court actually qualified the extent of bodily harm with respect to working capacity stating that the "bodily harm has led to the loss of general working capacity, of more than 1/3 qualifying this as a grave harm to health".[196]

But there are serious discrepancies when it comes to the awarding of monetary compensation. As described above, if the plaintiffs lost a single relative, they were commonly awarded one million rubles. A brother who lost his sister as a result of multiple shrapnel during a rocket attack received only 20,000 rubles when he based his claim on Edict №. 898.[197] The plaintiff's lawyer had requested a one-time payment in accordance with Edict №. 898 and had not litigated under the designated articles of the Russian Civil Code or the Russian Constitution in which the plaintiff could have received considerably more, as was standard by 2013. Under the same judge from the Leninskii District Court, payouts of a million rubles had been made in at least ten similar cases.

These compensation awards are consistent according to the appropriate articles of the Russian Civil Code, the Russian Constitution, and the ECHR. For those who applied for one-time payments under Edict №. 898, however, the discrepancy between their monetary compensation and those discussed here is disturbingly unequal; that is, from 2,000 to 20,000 rubles as opposed to a million rubles. This conflict between the two approaches illustrates the disparities and inequalities of access for plaintiffs, as well as violating the plaintiff's right to be judged according to coherent legal practice. Some applicants ended up being caught in a system that promoted tort law as a means to evaluate and award damages, but which nevertheless imposed a ceiling on the award (not unlike the models of administrative compensation witnessed in Chile or Argentina). Those who sought compensation under Edict №. 898, on the other hand, had no access to the specialized district commissions after they were suspended in 1996 and who had issued administrative compensation. The edict remained in force, but applicants had to apply through the civil courts for a negligible award that had not been adjusted to account for inflation since 2001.

The cases of compensation for "ineffective investigations" (неэффективное расследование) were awarded between 10,000 to 30,000 rubles and, in those rare cases where the monies came directly from the Ministry of Defense, the plaintiff received only 10,000 rubles after proving, for example, that a Ural- 4230-10 vehicle (C 902 XX 95) attached to Military Unit 6779 backed into his house, killing a family member and causing bodily harm to another.[198] Such disparities in compensation no doubt contributed to a sense of

[196] Решение Ленинского районного суда [Leninskii District Court Decision], 10 June 2015, № 2-1157/2015.
[197] Решение Ленинского районного суда [Leninskii District Court Decision], 12 September 2013 № 2-1999/2013 М-2147/2013.
[198] Решение Веденского районного суда [Vedenskii District Court Decision] 3 February 2014, № 2-43.

disappointment in the administration of post-conflict justice in Chechnya. Cases before the civil courts could only be litigated by those who could afford to hire counsel and the awards obtained through the courts greatly surpassed those offered by the material damages program. It is difficult to interpret these minimal payouts for "ineffective investigations" as anything more than efforts to discourage further claims.[199]

Moreover, there was not always a fair distribution of funds for those plaintiffs who had lost more than one relative. Distinction with regard to proximity of relationship (for example, the death of a nephew as opposed to that of a son) never seems to have been made. In one case, a plaintiff was awarded a million rubles for the death of his son and half a million for the death of each grandchild.[200] Similarly, one plaintiff was awarded a million for the death of her nephew, although it also seems that she was the sole caregiver. Although in most cases the plaintiff received a million rubles for the loss of each relative,[201] there were occasional unexplained discrepancies. One plaintiff lost five family members during an aerial bombardment; instead of considering how this loss of five family members might inflict additional pain and suffering, the court only awarded the plaintiff a million rubles. This was in stark contrast to a 2015 decision by the Leninskii district court that correctly followed Decree №. 750 and awarded a sole plaintiff eight million rubles for the loss of each of her eight family member and 400,000 rubles for the bodily harm she sustained as a result of the loss of her left foot during an aerial bombardment.[202] Clearly a discrepancy in interpreting the ceiling of the award occurred here. Were the victims to receive only a million rubles for moral harm (regardless of the number of family members killed) or were they entitled to a million rubles for each of their deceased family members? According to the stipulation of the Fund mentioned earlier, "family members (spouse, children, parents and dependent persons) of citizens who died (deceased) as a result of a terrorist act and (or) while suppressing a terrorist act with lawful actions, are entitled to the amount of 1 million rubles for each dead (deceased) in equal shares to each family member".[203]

How then did the Russian Ministry of Finances and Procuracy respond to these requests for compensation? The finance ministry rejected the State's role as the inflictor of harm in over half of the cases (46). It supported close to a third of the claims (30) and was not present at 10% of the court hearings (9). Surprisingly, it attempted to dismiss the claims of the plaintiff in the well-documented events of Novyie Aldi. Indeed, the essence of the defense's position was that the plaintiff had failed to prove which specific State organ or official was responsible for the harm, citing the frequent response that "there is no evidence to show that the government is responsible" or "the perpetrator of the crime

[199] Indeed, by April 2019 we see the Committee against Torture win its first case in Strasbourg for an ineffective investigation in the case of *Anoshina v Russia* in which the applicant was awarded 36.6 thousand Euros. This was for a case in Nizhni-Novgorod, not Chechnya but may establish a new precedent in Russia. See Zinaida Pavlova, «Юристу удалось добиться в ЕСПЧ 17-кратного увеличения компенсации за дефекты расследования убийства» [Lawyer Secures a 17-fold Increase in Compensation from the ECHR for Irregularities in a Murder Investigation], Адвокатская Газета [Lawyer Newspaper], 3 April 2019 (available online).

[200] Решение Ачкой-Мартановского районного суда [Achkoi-Martanovskii District Court Decision], 14 June 2012, № 2-15/2012 М/8 2012.

[201] Решение Ленинского районного суда [Leninskii District Court Decision], 31 March 2014 (no case number provided); Решение Ленинского районного суда [Leninskii District Court Decision] 10 June 2015, № 2-1157/2015.

[202] Решение Ленинского районного суда [Leninskii District Court Decision] 10 June 2015, № 2-1157/2015.

[203] Note 183 above.

has not been established".[204] Later a new argument was introduced that the victim had not been the family's sole "breadwinner",[205]and therefore compensation was not necessary. Similarly, the Procuracy rejected twenty-five cases, but supported thirty-six (and failed to appear at the proceedings in twenty-four instances).

How do we account for these similar responses by the Chechen Procuracy and the Ministry of Finances? One might suggest that the cases they agreed to compensate were only those with a solid evidentiary base. But that is far from the reality, as the rejection of the Novyie Aldi case illustrates. Moreover, the Procuracy lack of interest is evident in its absence from proceedings in twenty-four instances as opposed to the nine absences of the Ministry of Finances. Indeed, since how and when either office supported or rejected a case was not driven by any discernible rationale, their responses may have been simply guided by corrupt practices, informal requests, financial constraints on the treasury, or all of the above. Every respondent interviewed alleged that corruption took place. Yet the scale or exact amounts that were exchanged are impossible to determine and only one respondent provided exact percentages, which are difficult to verify.[206] Given the amount of corruption that characterized the material compensation payouts, the practice was most likely built into the process. But whether it was the defining factor in determining the outcome of the cases is debatable. For instance, there are several cases when the prosecutor and the Ministry of Finances both agreed to award compensation, but the judge rejected the findings for lack of evidence.[207] Overall, the twenty-two cases that were rejected by the courts provided reasonable grounds for refusing to award compensation. As Olga Yegorova has argued regarding post-Soviet judges in general: "All judges are in the public eye, and people know all about them—who takes bribes, who allows telephone calls, and similar approaches to solve some problems. To those who do not allow it, nobody calls or will call because they know that this judge will not cooperate and will take one's own, rather than the suggested decision".[208] Because the civil courts in Chechnya already had jurisdiction to hear compensation cases for moral harm after the recommendations of the Medvedev working group, the courts were free to assert their own authority in these cases, but the possibility that judges accepted bribes is probable.

The payment of bribes to State representatives from the Procuracy and the Ministry of Finances is likely to have taken place. But there also appears to be administrative pressure on or "directives from above" issued to State representatives to object to cases. The same

[204] This argument is made in many cases. See, for example, Решение Ачкой-Мартановского районного суда [Achkoi-Martanovskii District Court Decision] 30 March 2012, № 2-58/2012 ~ M-51/2012; Решение Грозненского районного суда [Groznenskii District Court Decision] 26 March 2015; 2-42/2015 ~ M-22/2015; Решение Ленинского районного суда [Leninskii District Court Decision] 22 September 2014, № 2-1770/2014 M-1710/2014.

[205] This is for disappearance cases, Решение Грозненского районного суда [Groznenskii District Court Decision] 3 April 2014, № 2-213/2014 ~ M-186/2014.

[206] One interviewee stated that the plaintiff must pay the judges, the procurator and representatives of the State; that is, the Ministry of Finances. According to Subject 4, Interview №. 2, December 2017- for compensation cases for moral harm the lawyer might take between 10-30 percent, the judge and State representatives between 15-20 percent and the remaining 50% goes to the plaintiff.

[207] Решение Октябрьского районного суда [Oktyabr'skii District Court Decision], 22 October 2015, №. 2-874/2015; Решение Грозненского районного суда [Groznenskii District Court Decision], 18 April 2013, №. 2-609 ~ M-556/2013; Решение Заводского районного суда г. Грозного [Zavodskoi District Court Decision (g. Grozny]) №. 2-251 (no dates provided).

[208] Cited in Alena Ledeneva, "Telephone Justice in Russia", *Post-Soviet Affairs*, XXIV (2008), p. 331.

argument on the failure of the plaintiff to "identify a suspect" as the inflictor of harm was deployed repeatedly, and the significance of this argument grows much clearer by 2015. It is possible that the Ministry of Finances was under pressure to stall payouts out of concern about the pressure that hundreds of cases might have on the federal budget. It certainly would explain the high number of objections between 2011 and 2017, but there is little evidence to verify this claim.[209]

THE MINISTRY OF DEFENSE AND SUPREME COURT APPEALS

Since late 2015 the courts in the Chechen Republic have refused to award compensation for moral harm to war victims. As noted above, this was unusual, but not entirely uncommon for the Ministry of Defense to be petitioned as a co-defendant in civil compensation cases. The standard objection provided by the MOD to the court (usually in written form) was that the plaintiff had failed to present a court judgment establishing the fault of a State official in the execution of the alleged crime. It was precisely this legal argument that led the MOD successful counter-attack against the Chechen compensation claims in the Russian Supreme Court during 2015 and 2016 with three rulings that created enormous unease inside Chechnya. These appeals are worth describing here in detail for what they tell us about the continuing concerns of the MOD with regard to the information stemming from civil court proceedings, its unyielding position in quashing the Chechen compensation claims, and the legal arguments used to support it.

The MOD lodged its appeals in response to what was by then fairly standard civil cases for moral compensation. In the first case, the plaintiff, A. A. Khamazalatova had lost her son during a mortar strike that killed five students at Grozny State University on 18 December 2000. Her lawyer filed for moral compensation against the Ministry of Finances and named the Ministry of Defense as the co-defendant. Litigated in the Leninskii District Court (g. Grozny) on 20 December 2013, Khamazalatova was awarded a million rubles in compensation for moral harm. The MOD refused to accept the rulings of both the Chechen Supreme Court and the Russian Supreme Court that had both upheld the original ruling. Judge V. S. Kirillov of the Russian Supreme Court argued that no violation of Article 387 of the Civil Code had taken place with regard to material and procedural rights as stated by the ministry.[210] He dismissed the defendant's motion to dismiss either in whole or in part. On a second attempt, Judge V. I. Nechaev deemed the ministry's appeal admissible.

On 2 March 2015 Judge Pchelintseva ruled in favor of the Ministry of Defense by arguing that the courts of the first and appeal instances had not taken into account the guiding explanations (руководящие разьяснения) contained in paragraph 1 of the Decree of the Plenum of the Supreme Court of the Russian Federation of 20 December 1994, №. 10 "On Questions of the Application of the Law on Compensation for Moral Harm";[211] that is, that the courts had failed to introduce a judgment establishing the relevant person guilty

[209] Subject 5, Interview № 4, October 2019.

[210] Определение ВС РФ от 2 марта 2015 года По делу № 23-КГ14-9 Принято Верховным Судом Российской Федерации [Ruling (23-KG14-9) of the Judicial Division for Civil Cases of the Supreme Court of the Russian Federation], 2 March 2015.

[211] Постановление Пленума Верховного Суда РФ "Некоторые вопросы применения закона о компенсации морального вреда" от 20 декабря 1994 [Decree of the Plenum of the Supreme Court of the Russian Federation, 20 December 1994, No. 10 "Some Questions of the Application of the Law on Contributory Compensation for Moral Harm" (as amended 6 February 2007, No. 6)].

of causing the death of Khamazalatova's son. The Supreme Court recognized the right of A. A. Khamzalatova to damages at the expense of the treasury, but only if she established the necessary conditions of Chapter 59, "Obligations as Consequence of Causing Harm", of the Civil Code, especially Articles 1064 and 1069. As stated by the court, Decree №. 10 explained the application of Articles 1064 and 1069. According to them, as a general rule, the necessary conditions for imposing a duty to compensate for moral damage are: the occurrence of harm, the wrongfulness of the behavior of the person causing the harm, the presence of a causal link between the occurrence of harm and the wrongfulness of the person causing the harm, the fault of the person causing the harm.

These last words (the fault of the person causing the harm) meant that a previous court decision had to exist in order to make a civil claim for moral harm. The problem for local lawyers working inside Chechnya was that for such a decision to exist there had to have been a comprehensive criminal investigation. As noted earlier, the criminal investigatory bodies failed to conduct the most rudimentary investigations, thereby sabotaging the possibility of bringing cases in the process. The civil courts in Chechnya had proceeded on a case-by-case basis as to whether a person had died or been injured as a result of the actions of the State in which a fairly high evidentiary standard was applied. The local lawyers interviewed for this study argued that it was physically impossible to establish the demands of Articles 1064 and 1069 alone, but if taken together with the following constitutional guarantees and court decrees, the claims for compensation for moral harm were entirely legitimate and within the spirit of Russian law:

> Generally recognized principles and norms of international law and international treaties of the Russian Federation shall be an integral part of its legal system. If other rules have been established by an international treaty of the Russian Federation than provided for by a law, the rules of the international treaty shall apply (Article 15(4), Russian Constitution).[212]
>
> The rights of victims of crimes and abuses of power shall be protected by the law. The State shall ensure the victim access to justice and contributory compensation for damage caused (Article 52, Russian Constitution).[213]
>
> Each shall have the right to compensation by the State for the harm caused by the illegal actions (or omissions to act) of agencies of State power or their officials (Article 53, Russian Constitution).[214]
>
> Judges are independent and subject only to the Constitution of the Russian Federation and federal law (Article 120(1), Russian Constitution).[215]
>
> Judges cannot be bound by the decision taken by either the preliminary investigation or another court and should base its decision on the court's own investigation (Article 120(1), Russian Constitution).[216]

[212] Butler, note 39 above, p. 7.
[213] Article 52, Constitution of the Russian Federation.
[214] Article 53, Constitution of the Russian Federation.
[215] 1. Judges shall be independent and submit only to the Constitution and the federal law. 2. If after considering a case, the court of law decides that an act of a state or other body contradicts the law, it shall pass an appropriate decision according to the law.
[216] Butler, note 39 above.

> It is constitutionally important that the victim have legitimate access to justice, is given the opportunity to be heard by the court and to ensure the effective restoration of his rights (point 5, Decree No. 7-п, 24 April 2003).[217]
>
> Everyone has the right to an independent and impartial court hearing (Article 6(1), ECHR).[218]

The Decree of the Plenum of the Supreme Court of the Russian Federation, №. 10, posed a serious challenge to the application of the above articles. A special mechanism in the practice of the Plenum of the Supreme Court had been established for the unified application of the country's laws that continued to hold substantial binding authority in Russia.[219] The Ministry of Defense argued that if the court proceeds from the explanation of Decree №. 10, then the decisions adopted by the courts in Chechnya for the compensation of moral harm were illegal because the plaintiffs never submitted any sentences against the perpetrators to the courts. Moreover, according to Decree №. 10, a judge who is considering a claim for compensation for harm cannot determine whether, for example, a person was killed as a result of a bombing attack by Russian aviation.[220] To do this, the judge needs to bring as proof the sentence of another court, which has convicted the pilot of the plane that dropped the bomb.

This argument posed by the MOD was challenged by a Supreme Court decision eight months later. The second appeal was based on the murder and bodily harm inflicted on three civilians after intoxicated officers pulled them from their cars in order to extort money in the village of Staraya Sunzha on 16 November 2005.[221] The main perpetrator, Aleksei Krivoshonok, had been sentenced to 18 years deprivation of freedom by the North Caucasus District Military Court on 13 May 2006 (discussed previously).[222] The Supreme Court had confirmed the court judgment that determined Krivoshonok was the inflictor of harm. Moreover, the families of the victims were also awarded compensation for moral harm totaling 200,000 rubles each paid by Military Unit 98311 attached to the Ministry of Defense. The Usmanov family filed for additional damages of three million rubles in civil court against the Financial Services Department of the Ministry of Defense of the Russian Federation for North Ossetia-Alania in 2015.[223]

The MOD appealed the decision after the Supreme Court of North Osetia-Alania upheld the decision of the court of first instance that satisfied the claim in the amount of 1 million rubles. The Ministry set out two new lines of argument in its appeal. The first was that the murder of the Usmanov's son by Krivoshonok was not the result of any direct order from his military command, but the result of disorderly conduct; that is, hooliganism. Krivoshonok had *not* shot the Usmanov's son, Y. K. Usmanov within the

[217] Subject 5, Interview № 2, December 2017.
[218] Article 6(1), ECHR.
[219] Burkov, note 145 above, p. 78.
[220] Note 211 above: "In accordance with existing legislation, one of the obligatory conditions of establishing the responsibility for the infliction of moral harm is the guilt of the inflictor" (point 3).
[221] Верховный суд РФ определение от 3 октября 2016 г. No. 22-КГ 16-7 [Ruling of the Supreme Court of the Russian Federation, 3 October 2016, No. 22-KG16-7].
[222] Обвинительное заключение по обвинению Кривошонка Алексея Юрьевич [The Conclusion to Indict with Regard to the Accusation against Alexei Iurevich Krivoshonok], 24 January 2006 (available online).
[223] Управление финансового обеспечения Министерства обороны Российской Федерации по Республике Северная Осетия-Алания.

meaning of Article 37(1) of the Federal Law of 28 March 1998, No. 53-FZ "On Military Duty and Military Service".[224] As argued by the MOD, his actions were not linked to his "military service duties", nor were they "dictated by the nature of the assignments to this soldier".[225] The second argument was that Krivoshonok's firearm could not be considered a "source of increased danger" (источник повышенной опасности) in the context of the provisions of Article 1079 of the Civil Code of the Russian Federation.

Article 37 of the Federal Law "On Military Duty and Military Service" provides that:

> 1. A serviceman, a citizen undergoing military training, and a citizen serving in a mobilization reserve shall be considered acting military service in the following cases:
>
> (a) when participating in military actions, executing tasks in a state of emergency or martial law, armed conflict, as well as participating in activities to maintain or restore international peace and security or to suppress international terrorist activities beyond the limits of the territory of the Russian Federation;
>
> Military personnel who are foreign citizens participating in the execution of tasks under conditions of martial law, as well as in conditions of armed conflict in accordance with generally-recognized principles and norms of international law, international treaties of the Russian Federation and the legislation of the Russian Federation;
>
> (b) execution of official duties;
>
> (c) carrying out combat duty, combat service, service in a garrison unit, and performing duties as part of a daily duty;
>
> (d) participation in exercises or campaigns of ships;
>
> (e) execution of service obligations
>
> (f) fulfillment of an order or instruction given by the commander (chief);
>
> (g) situated on the territory of a military unit during the time determined by the daily routine or at other times if caused by official necessity;
>
> (h) being on a business trip;
>
> (i) having medical treatment, on route to the place of treatment and on return;
>
> (j) on route to place of military service and on return;
>
> (k) during military training;
>
> (l) being held captive (except in cases of voluntary surrender), as a hostage or interned person;

[224] Федеральный закон «О воинской обязанности и военной службе» от 28.03.1998 N 53-ФЗ [Federal Law On Military Duty and Military Service," 28.03.1998 N 53-F3] (available online).

[225] Верховный суд РФ определение от 3 октября 2016 г. No. 22-КГ 16-7 [Ruling of the Supreme Court of the Russian Federation, 3 October 2016, No. 22-KG16-7].

(m) an unknown absence - until a soldier is recognized as missing in the manner prescribed by the law or is declared dead;

(n) the protection of life, health, honor and dignity of the person;

(o) providing assistance to internal affairs agencies and other law enforcement agencies in protecting the rights and freedoms of man and citizen, protecting the rule of law and ensuring public safety;

(p) participation in the prevention and liquidation of consequences of natural disasters, accidents and catastrophes;

(q) other actions recognized by the court as committed in the interests of the individual, society, and the State.

2. Serviceman or citizen taking part in military training, not recognized as dead (deceased), injured (wounded, traumatized, concussed) or ill in the performance of military duties, if this was the result of:

(a) an unauthorized stay outside the location of a military unit or a place of military service established outside a military unit, with the exception of cases provided for by subparagraphs "l", "m", "n", "o", "p" and "p" of paragraph 1 of this article:

(b) in a state of voluntary self-intoxication;

(c) the commission of an act recognized in the established manner as socially dangerous.

The Ministry of Defense played down the existence of certain evidence already established by the criminal case. Krivoshonok and his fellow servicemen (of the first motorized rifle battalion of Military Unit 983111) were on duty at the time of the murder of the civilians, en route back to the military base in Khankala after "a search and ambush operation" (поисково-засадные действия). They were still on Patrol Duty. This was a well-established fact, confirmed by the decision of the North Caucasus District Military Court back in 2006.[226] It is difficult to find the argument that Krivoshonok's actions were not at all connected to his "military service duties" persuasive since he was on duty and under the instruction of his command at the time of the crime. The MOD argued that Krivoshonok did not shoot the civilians on the basis of a direct order from his commander while in active combat. It is true that the whereabouts of the commander of the reconnaissance group at the time of the crime, Captain Aleksei Pyatnitskii, was never established. Yet the assertion by the MOD that Pyatnitskii had never ordered Krivoshonok to shoot the civilians was also never confirmed.[227] Such a case may have been handled through Article 342 of the Russian Criminal Code; that is, responsibility in cases of unlawful orders or commands. But Aleksei Pyatnitskii was never brought to trial.

[226] Приговор именем российской федерации Кривошонка Алексея Юрьевича. г. Ростов-на-Дону 6 апреля 2006 г. (Judgment in the Name of the Russian Federation of Aleksei Iur'evich Krivoshonok, Rostov-on-Don, 6 April 2006). See also "Солдат взял командиров в свидители" [Soldier Took Commanders as Witnesses], *Новая Газета* [New Newspaper], 9 April, 2006.

[227] Ibid.

Krivoshonok's status can be determined on the basis of Article 37(1) of the Law "On Military Duty and Military Service":

> 1. A serviceman, a citizen undergoing military training, and a citizen serving in a mobilization reserve shall be considered acting military service in the following cases: a) when participating in military actions, executing tasks in a state of emergency or martial law, armed conflict, as well as participating in activities to maintain or restore international peace and security or to suppress international terrorist activities outside the territory of the combat service, service in a garrison unit, and performing duties as part of a daily duty. Russian Federation; b) executing military duties and c) carrying out combat duty.

Second, the MOD reasoned that there were no legal grounds for applying Articles 1079 and 1100 of the Civil Code. Whereas all the previous Chechen compensation cases studied herein focused exclusively on Articles 151, 1069, and 1071, plaintiff's counsel added Articles 1079, 1100, and 1101 to its claim. Article 1079 articulates responsibility for harm caused by individual activity "connected with an increased danger for surrounding persons (that is, use of means of transport, mechanisms, high tension electric power, atomic power, explosive substances, virulent poisons, and so on; effectuation of construction and other activity connected therewith, and others) shall be obliged to compensate the harm caused by a source of increased danger unless it is proved that the harm arose as a consequence of insuperable force or the intent of the victim".[228] Article 1100 on "Grounds for Contributory Compensation for Moral Harm" emphasizes harm that is "caused to the life or health of a citizen by a source of increased danger".[229] And 1101 on "Means and Amount of Contributory Compensation of Moral Harm".[230]

Since the murder of the civilians was a result of Krivoshonok's disorderly conduct connected to the use of a firearm, namely a "AKM machine gun No. SSH 6740" that belonged to Military Unit 98311, the MOD argued that the use of a firearm could not be interpreted as a "source of increased danger" in the context of the provisions of Article 1079 because this Article refers to the work of production, enterprises and transport vehicles, "associated with the high probability of harm due to the impossibility of full control over it on the part of a individual". "In the present case", the MOD argued, "K.'s deliberate shot from a firearm is not a consequence of the manifestation of the properties of an object of increased danger".[231] In a similar appeal heard six months later on the disappearance and then discovery of a body (the victim was last seen in the hands of the Russian Armed Forces when he was detained), the MOD argued that the "The harm was inflicted not by a source of increased danger but as a result of the illegal actions of unidentified persons".[232]

The Russian Supreme Court accepted this line of reasoning, citing on several occasions that the application of Articles 1079 and 1100 of the Civil Code was one of several violations of substantive and procedural law by the lower courts. Yet some local lawyers

[228] Article 1079, Civil Code of the Russian Federation.
[229] Article 1100, Civil Code of the Russian Federation.
[230] Article 1101, Civil Code of the Russian Federation.
[231] Верховный суд РФ определение от 3 октября 2016 г. No. 22-КГ 16-7 [Ruling of the Supreme Court of the Russian Federation, 3 October 2016 No. 22-KG16-7].
[232] Определение ВС РФ от 16 марта 2015 г. N 23-КГ14-8 [Ruling of the Supreme Court of the Russian Federation, 16 March 2015 N 23-KG14-8].

strongly opposed the Supreme Court ruling. There are several questions at issue here. First, what constitutes "a source of increased danger" and how important is the source in the application of Article 1079? For some, the list is strictly confined to those objects that interpret a "source of increased danger" as those items identified above and "other activity connected therewith, and others". Since the end of the sentence includes the phrase "and others", some have interpreted this to be an open-ended list.[233]

The categories are usually broken down into four groups: physical, physical-chemical, chemical, and biological, and the courts are free to recognize other sources falling within that meaning. The question is: could an argument be made that under specific circumstances the possession of a gun by an intoxicated soldier might qualify as "a source of increased danger" in accordance with Articles 1079 and 1100? In relation to this case, one might also consider a case heard in the Leninskii district court in North Ossetia-Alania in which L. K. Kargaeva claimed moral damages for the death of her relative, B.Y. Slanov, a senior officer with the Department of Internal Affairs. The family filed for damages after Slanov sustained injuries to his head and died for alleged mishandling of a firearm.[234] The court of first instance accepted the premise that the weapon (9 mm. caliber series) was a source of increased danger because the weapon is intended for killing living organisms, including humans, and its "harmful properties are manifested in the form of a shot by 9 mm bullets". In this regard, the court concluded that the Ministry of Internal Affairs of the Republic of North Ossetia-Alania had the obligation to pay the victim's family moral contributory compensation.[235]

In the appeal by the Ministry of Internal Affairs of North Ossetia-Alania to the Russian Supreme Court, the latter recognized that because the list of sources of increased danger was not exhaustive, the court of first instance was entitled to recognize the gun as such a source. It also recognized that the firing of that gun was a manifestation of its harmful properties. Yet because the victim shot himself, allegedly by mistake, and he was in his office alone, his activity was not "connected with an increased danger for surrounding persons", as provided by Article 1079. Nor was the Ministry of Internal Affairs of North Ossetia-Alania responsible for creating conditions in which there was an increased likelihood of harm due to the impossibility of full control of the weapon on the part of the victim. The Russian Supreme Court reversed the decisions of the trial court and the intermediate court of appeals. It argued that given that a mistake had been made in the application and interpretation of substantive law, the Supreme Court refused to satisfy the claim for moral compensation.

The question is whether Articles 1079 or 1100 were drafted with the intention of including weapons and firearms as such. The original discussions related to the drafting of these Articles strongly suggest that they were not.[236] Since then, discussions related to the comparative merits of an exemplary and exhaustive list has centered on the problems of devising such a list as technologies continue to change. There is general consensus that the definition of Article 1079 includes certain objects that might be harmful in the process

[233] Interview Subject 13, Interview № 1, October 2019.

[234] It is unclear whether this was a suicide or not.

[235] Определение ВС РФ от 19-ого апреля 2013 г. № 22-КГ13-3 [Ruling of the Supreme Court of the Russian Federation, 19 April 2013, № 22-КГ13-3].

[236] My thanks to Professor Christopher Osakwe who kindly engaged in an extended email exchange with me on this point.

of their use (operation), are not always fully amenable to human control, and can endanger those surrounding.[237] The important point is that the legislative debate during the adoption of the Civil Code provides a clear explanation for the restrictive interpretation of Articles 1079 and 1100. That is, the legislators were less concerned with the "source of increased danger" than with the concepts of "activity" (*деятельность*) and "action" (*действие*) that are distinct in Russian. According to Osakwe, "activity" connotes an on-going enterprise, a repetitive conduct, a chain/stream of consecutive behavioral pattern. By contrast, an "action" is a one-time act, an *ad hoc* behavior whether or not premeditated. Articles 1079 and 1100 deliberately chose the term "activity" rather than "action". Thus, the legislative intent of Articles 1079 and 1100 is to impose civil responsibility on an "activity", an ultra-hazardous enterprise, not on a one-time "use" of an albeit ultra hazardous instrumentality, such as a firearm".[238]

The Supreme Court decrees on Articles 1079 and 1100 are therefore substantive. Even when the court had a criminal judgment, as in the Krivoshonok case, the MOD fought back. It was given the direct chance to do by the inclusion of Articles 1079, 1100, and 1101 by plaintiff's counsel. In changing its argumentative framework, the plaintiff had opened an otherwise new argument that had been largely ignored in the district court decisions. The judgment, of course, was manifestly inconsistent with the satisfaction of prior claims in district courts analyzed here. Ultimately, what these appeals illustrated was the inability of the courts to address the gravity of the crimes in Chechnya, absent a specific legislative framework.

These Supreme Court appeals were a setback to efforts to establish civil responsibility for military crimes in Russia. Of importance is the effect these Supreme Court decisions had at the local level. A case soon appeared in the Urus-Martan district court on 27 September 2017 that reflected the consequences of the MOD appeals at the local level. According to one lawyer, "judges were fearful of losing their status (that is, their work)" if they did not follow the Supreme Court decrees. Whereas the evidence presented to the Urus-Martan district court was not dissimilar to many cases that had been awarded compensation in the past, the court refused to satisfy the plaintiff's claim for the recovery of either a million rubles as a lump-sum benefit or even for the minimal payout provided for by Presidential Edict №. 898 in connection with the death of the plaintiff's father as a result of airstrikes in December 1999. The court reasoned its decision in two ways: (1) the claimant had not submitted a judicial act that established the fault of an official of a public body, and therefore there were no grounds for satisfying the claim in accordance with the requirements of Article 1069 of the Civil Code; (2) the Federal Law on Counteracting Terrorism applied only to one particular terrorist act, and the plaintiff did not provide evidence that a terrorist act was committed on 5 December 1999, or that a counter-terrorism operation was conducted by federal forces.[239] It is noteworthy that there is no mention

[237] Leonid Varlygin, «О понятии источника повышенной опасности» [On the Concept of Source of Increased Danger], Вестник экономической безопасности [Journal of Economic Security], no. 2 (2016), pp. 53-56 (available online).

[238] My thanks again to Osakwe who kindly engaged in an extended email exchange with me on this point.

[239] Another case was rejected for similar reasons. See Решение *Ленинского* районного суда [Leninskii District Court Decision], 24 May 2017, № 2-1188/2017 ~ M-1062/2017. Months later, however, Judge Dadakov of the Leninskii District Court awarded 1 million rubles for a similar bombing case. See Решение *Ленинского* районного суда [Leninskii District Court Decision], 26 July 2017, №. 2-1944/2017 ~ M-1882/2017.

of the judgments of the ECtHR or the obligatory standards of the ECHR, either in the Supreme Court decree or in the Urus Martanovskii District decision mentioned above. The plaintiff appealed the court decision, but by a decision of 12 December 2017, the Judicial Division for Civil Cases of the Supreme Court of the Chechen Republic left the decision of the Urus-Martan City Court of the Chechen Republic unchanged. It provided no legal reasoning to justify its decision. "Now I am even filing lawsuits in accordance with Edict №. 898 and the second conflict. That is on the basis of the events of 1999", noted one lawyer. "These cases are based on such serious evidence, but I do so understanding that the court will reject them in order for me to take them to the European Court".[240]

The argument that the inflictor of harm be identified is not unfamiliar to civil courts, specifically in cases regarding State-sponsored human rights violations during conflict. It was a decisive impediment in cases in Chile and Argentina when the identification of the perpetrator was impossible, either as a result of amnesty laws or simply because the State refused to hold war criminals accountable. Yet, as argued by Malamud-Goti and Grosman there have been cases when courts have circumvented the "difficulties faced by plaintiffs in cases where the strict application of certain legal requirements would lead to unjust results. In common law, for instance, one such doctrine is *res ipsa loquitur*, which has been invoked by courts to relieve the plaintiff of the burden of proving the identity of the actual tortfeasor".[241] Judges in Argentina, for example, interpreted the period of limitations less rigidly in order to allow victims to recover compensation through civil litigation.[242]

Yet the political situation shifted against these compensation claims in Chechnya. The Ministry of Defense was surely concerned by the increased access to criminal files by local lawyers, however poorly the investigation may have been conducted. This slow accumulation of facts was accompanied by the increased practice of recalling witnesses, as well discovering new ones. The MOD had made its will known to the Chechen judiciary by seeking to strengthen its influence over it with the Supreme Court appeals. To what extent other forms of subtle pressure were brought to bear is unclear. But the determination to stop these cases is witnessed not only in the above decision, but in the subsequent trial of Chechen lawyer, Shamil Musaev, who was imprisoned for six years for alleged fraud and falsification of procedural documents in a civil case for compensation for moral harm.[243] Musaev had secured 25 million rubles in compensation in a class suit on behalf of fourteen families. He was accused of forging documents – that is, of changing the reason why the case had been closed, for example, the expiration of the period of limitations rather than the absence of a crime (as argued by the defendant). Thirty lawyers came to his defense, but they were prohibited from attending his trial. Even the Vice-President of the Chechen Advokatura, Adam Abubakarov, stated publicly: "We think that if this trial goes through, then by way of analogy, all the circumstances of these past judgments will be re-examined and the money taken back, and criminal cases will be opened against lawyers and their clients".[244] The concern of the Advokatura that the Musaev case would establish a

[240] Subject 5, Interview № 3, August 2018.
[241] Malamud-Goti and Grosman, note 183 above, p. 551.
[242] Ibid., p. 551.
[243] «Адвокат осужден за мошенничество в особо крупном размере» [Advokat Convicted of Large-Scale Swindling], Прокуратура Чеченской Республики, официальный сайт [Chechen Procurator, Official website], 16 June 2016 (available online).
[244] Note 220 above.

precedent in which there would be a massive re-examination of earlier judicial judgments did not happen.[245] However, certain judges were transferred to other regions and others were encouraged to retire.[246]

THE SEARCH FOR TRUTH

As we seek to understand the significance of the Chechen Compensation Cases, it is important to consider what function they served apart from providing monetary compensation. In the present writer's view, the local court decisions served an important truth-telling function in Chechnya, even if not as a matter of design. There were no measures aimed at truth-seeking in general, either by the Russian Government or by President Kadyrov's administration that might have acknowledged the importance of establishing truth for the purposes of reparations. As a result, not only was the "truth" element omitted from the justice process in Chechnya, but victims and courts have not been able to employ facts established through a truth-seeking mechanism to support their claims. Moreover, as outlined earlier, freedom of information was scarce and accessibility to any documents in the government's possession was fraught with problems,

Even by allowing a degree of judicial autonomy, both the Russian and Chechen administrations failed to overcome a tremendous legitimacy deficit internally and externally.[247] As Shelton has argued, it is important that reparations programs deliver more than one kind of benefit: "These may include symbolic as well as material reparations, and each of these categories may include different measures and be distributed individually or collectively". To reach the desired aims, it is important that benefits internally support one another. Thus, arguably, "US reparations for Japanese Americans that included an apology with the reparations check give expression to an internally more coherent plan than Brazil's which distributed money with no official acknowledgment of responsibility".[248]

Yet if uncovering the legal (whether or not the accused committed the crime) and structural (general context of events) truths[249] of the Russo-Chechen wars was not an aim of the Russian government, many facts, as they allegedly happened in reality between the parties are publicly aired in these civil claims. Indeed, in the absence of a domestic truth commission or criminal accountability, the truth-seeking function of civil litigation in Chechnya became much more important, especially in relation to incident-specific truths. Ideally, such facts need to be tested through a deliberative process with experts and preferably through the criminal justice system alongside the work of a truth and reconciliation commission that seeks to understand the societal and historical causes of the conflict. The criminal justice system is the best route to truth and punishing the perpetrator is probably the most important way of restoring a victim's dignity (as discussed below by

[245] Magomed Tuaev, «Адвокат подозревается в мошенничестве при взыскании морального вреда из бюджета в пользу семьи из Чечни» [Advokat Suspected of Swindling When Recovering for Moral Harm from the Budget to the Benefit of Chechen Families], Кавказский узел [Caucasian Knot], 12 April 2015 (available online).

[246] Subject 5, Interview № 5, October 2018.

[247] Moustafa and Ginsburg speak of a "legitimacy deficit". Note 73 above, p. 6.

[248] Pablo De Grieff, *The Handbook of Reparations* (2006), p. 11.

[249] Martti Koskenniemi, "Between Impunity and Show Trials", *Max Planck Year Book of U.N Law,* VI (2002), pp. 1-35.

the plaintiffs). But the virtues of using civil judicial proceedings to uncover further truths is not to be dismissed simply because it is unable to satisfy the expectations of all parties.

The decisions forced the State, for example, to accept that a civilian had been allegedly kidnapped by State agents and that he or she never appeared again, dead or alive. It is important that the counsel, as well as the court, stated that the disappeared would be declared as such; that is, disappeared rather than dead. Once the courts established the facts in one case, those facts became the basis for understanding the truth that benefitted other victims.[250] Such proceedings also forced the State to acknowledge the pain and suffering that was caused as a result of its actions and to give public recognition to its victim.

Unlike Argentina, however, there is no national law, such as the Law of Absence by Forced Disappearance [*Ley de Ausencia por Desaparición Forzada*] that formalized the meaning of disappeared or a program such as the Investigation Program Regarding the Final Whereabouts of the Victims [*Programa de Investigación sobre el Destino Final de las Víctimas*] as in Chile. The ultimate whereabouts of the disappeared had not been solved in the cases examined here. The response by plaintiffs interviewed for this study reflects the disturbing emotional cost such state negligence has had on their lives.[251] All those interviewed were awarded compensation, but the extent to which the proceedings re-built civic trust was negligible. There was general agreement among them that they had been treated with respect by the judicial organs, with one noting that: "I can say that my trust in the courts in Chechnya grew after my decision. At the same time, I can say that the judge would never have taken such a decision without consulting with his supervisor. I know that later the courts were ordered not to make such judgments. Now the courts deny residents of the Chechen Republic the recovery of compensation".[252] For another, however: "This compensation has not strengthened my confidence in the authorities or the judicial system. Trust cannot be built when people are abducted and then you are cynically told, we know nothing about this. I was treated with respect in the Court. The judge was a Chechen. I think he understood perfectly. In any case, I did not detect any disdain towards me. The judge said that he could not award any more since his decision would be quashed by the Supreme Court of the Chechen Republic".[253]

All plaintiffs were dissatisfied with the amount awarded, noting that the compensation was hardly enough to re-build their lives in the wake of the war. While none equated the size of the monetary award with the degree of their suffering, citing a common response that money cannot compensate for such a loss – it also did little to ease the economic burdens that have continued to make their lives difficult. "The amount received is not enough to improve or even bring our life back to normal. It is impossible, for example, to build a house with this money. And I have two children. But, of course, this money did help us for a while", said one plaintiff.[254] For another: "if we compare this amount with the prices in the Chechen Republic then this is a small amount. Therefore, I'm not satisfied with the amount of compensation received. But what can you do about it? Now even

[250] Malamud-Goti and Grosman, note 183 above, p. 551.
[251] 1 was a victim of a summary execution, 3 disappeared.
[252] Subject 9, Interview № 1, January 2019.
[253] Subject 10, Interview № 1, January 2019.
[254] Subject 9, Interview № 1, January 2019. Subject 10, Interview № 1, January, 2019. Subject 11, Interview № 1, January 2019, Subject 12; Interview № 1, January 2019. Subject 13, Interview № 1, January 2019.

these meager sums are not being paid out. You could say I was lucky. Nonetheless, it is impossible to count on this money as a way to build a better life".[255] One plaintiff noted: "the court neither fully acknowledged or took into account the extent of my psychological (*душевный*) suffering".[256]

Neither did the plaintiffs equate the payment of compensation to a stable peace in Chechnya. As one noted: "I have not noticed Chechnya transitioning to peace. We have a lull, which is sometimes interrupted by reports that someone has been kidnapped or tortured again".[257] The plaintiffs were clearly prepared to continue pursuing avenues for justice. "We have just appointed a lawyer to try and get the investigation completed".[258] "We do not have any kind of stable peace. The payment of compensation, in my opinion, does not mean that the authorities have completely compensated my suffering. So long as my husband has not returned home, for me and for my children this means that the 'conflict' is not over. Let them return these people and then there will be peace. I will continue to write and to insist that the disappearance of my husband and his brother be investigated".[259] For another: "the war is not over and will not end until my son is returned. And the best compensation would be to investigate the criminal case that the prosecution instituted in connection with the abduction of my son … I have been waiting for my son for many years".[260]

CONCLUSION

It would be misleading to argue that in allowing Chechen civilians to initiate civil litigation there has been a dramatic shift in expectations inside the republic. Curtailing moral compensation to the degree that the State has only managed to destroy what little legitimacy might have been restored with these cases. The civil litigation illustrated how the Russian Government continued to send contradictory messages to the region, trying in the late Medvedev presidency to encourage a degree of inclusiveness while not becoming totally repressive. Yet weighing its efforts to maintain regional hegemonic status while avoiding complete polarization is a fraught and unstable policy strategy. From Laurelle's perspective, the administration continues to try and reduce civil society's expectations of the state and to de-mobilize it in the process.[261] This approach is also apparent in Chechnya.

Yet the institutional interests of the Russian Ministry of Defense, the Ministry of Finances, and the Ministry of Internal Affairs always outweighed the judicial autonomy granted in Chechnya. First, the appeal by the Ministry of Defense to the Russian Supreme Court in 2015 illustrated the extent to which it was concerned about the accumulation of evidence that was emerging in the civil trials. The civil cases no doubt broadened access to criminal files and positioned civil lawyers to request that witnesses be interviewed again or that additional witnesses be found. The MOD responded by deploying the legal avenues available to it through the civil system. For many, the Supreme Court ruling of March

[255] Subject 10, Interview № 1, January 2019.
[256] Subject 11, Interview № 1, January 2019.
[257] Subject 10, Interview № 1, January 2019.
[258] Subject 9, Interview № 1, January 2019.
[259] Subject 11, Interview № 1, January 2019.
[260] Subject 12, Interview № 1, January 2019.
[261] M. Laruelle, "Russia's Ideological Ecosystems: What Are the Interactions between Nationalists and the Kremlin?", Presentation, Kennan Institute, Woodrow Wilson Center, 21 February 2019.

2015 was intended to send a pointed political message that compelled local judges to stop accepting cases. To what extent other power holders influenced this judicial outcome is a matter of speculation, but the effect was nevertheless the same: to constrain the ability of local civil society and the judiciary to mobilize power.

The imbalance of power between a small weak republic of just over a million people and the Russian State is clear. The degree to which the one needs the other is complicated and the approach to compensation for moral harm and peace building in general reflects this complex relationship. What we have witnessed in Chechen civil courts, however, is an extremely important and complex interplay of national and regional human rights law to a degree quite unexpected in post-war Chechnya. This recognition of the European judgments offered the courts a powerful tool for signaling their commitment to good governance both to domestic and international actors. By acting at its own discretion and adopting widely acknowledged regional human rights norms, the domestic courts lent authority to their own decision-making.

It would be difficult to argue that there was any real reconciliation motive at work at the Russian federal level. There has been no evidence of a comprehensive strategy intended to serve a larger reconciliation purpose. The Russian Government does not stand out for its efforts regarding truth telling, prosecution of the military or economic reparations for victims. In sum, although there was never any genuine expectation that the Russian Government would meet the ethical demands of reconciliatory justice, the Chechen compensation cases were nonetheless made possible by Medvedev's working group and implemented with the reluctant consent of the General Procuracy and the Ministry of Finances. A reconciliatory motive was evident at the level of domestic civil courts, the plaintiffs and their lawyers who deployed the legal resources available to them; the Russian Civil Code, the Russian Constitution, Edict №. 898, and Russia's commitment to the ECHR to guarantee a degree of satisfaction, in spite of the Government's position. No doubt, for some within the Chechen judiciary, the compensation claims were labeled pejoratively as the "political cases".[262] Federal tolerance for these cases was to buy political silence with a fixed compensation award, a payout that that never really sought to assess the true damages and harm of each victim based on individual merit.

Yet the satisfaction of these civil claims continues to encourage plaintiffs and their litigators to pursue criminal accountability. As the plaintiff interviews show, victims of enforced disappearances want to know what happened to their family members and are prepared to pursue criminal litigation to find out. Such attempts to push the legal system to re-open criminal cases continues to be challenged in the courts, despite ongoing opposition.[263]

[262] Subject 5, Interview № 3 August 2018.

[263] There is no more concrete example of this ongoing legal challenge than the 2013 case litigated by Kiril Koroteev and Sultan Tel'khigov on behalf of Marusa Abueva in the Grozny Garrison Court. This attempt to convince the courts to intervene and re-open the Abueva case failed and their request was denied. Appeal of the decision was rejected by the Judicial Division for Criminal Cases of the North Caucasus District Military Court in Rostov-on-Don on the grounds that the previous judge had reliably established that the investigative body, when deciding to terminate the criminal case, had taken all the appropriate factors into account. See Апелляционное постановление, № 22КА-67/2014, Судебная коллегия по уголовным делам Северо-Кавказского окружного военного суда г. Ростова-на-Дону [Appellate Decree № 22KA-67/2014, Judicial Division for Criminal Cases of the North Caucasus District Military Court, Rostov on Don], 6 March 2014.

Because the Russian approach has been to privilege a peace building strategy built on military amnesties, the negotiation of blood feuds, and the rebuilding of infrastructure, civilian plaintiffs and their advokats have relied upon an entire constellation of political forces and the activism or passivity of the Chechen judiciary. The domestic civil courts proved unwilling or unable to challenge the State any further on the question of compensation for multiple and complex causes. Nor were they able to affect a public policy strategy that might have addressed the unresolved question of reconciliation in Chechnya. But it is equally true that that this legal debate is not over. Concerned parties continue to deploy the regional human rights system and pressure domestic courts in any way possible, if only to restore a measure of dignity to the victims of the Russo-Chechen wars.