

Russia, Constitutionality of Decrees on Chechnya

[Source: *Human Rights Journal*, vol. 17 (3-6), 1996, pp. 133-138; the authentic text is published in *Rossijskaia Gazeta* of August 11, 1995, p. 3 (judgement), pp. 4-7 (separate opinions).]

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION, MOSCOW Presidential Decrees and Federal Government's Resolution on the Situation in Chechnya

JUDGEMENT OF JULY 31, 1995

"In the name of the Russian Federation regarding the examination of the constitutionality of the Decree of the President of the Russian Federation of November 30, 1994, No. 2137 on Measures to Restore Constitutional Legality and Law and Order on the Territory of the Chechen Republic; the Decree of the President of the Russian Federation of December 9, 1994, No. 2166 on Measures to Stop the Activities of Illegal Armed Formations on the Territory of the Chechen Republic and in the Zone of the Ossetian-Ingush Conflict; the Resolution of the Government of the Russian Federation of December 9, 1994, No. 1360 on Ensuring State Security and Territorial Integrity of the Russian Federation, Rule of Law, the Rights and Freedoms of Citizens and Disarmament of Illegal Armed Formations on the Territory of the Chechen Republic and Adjacent Areas of the Northern Caucasus; Decree of the President of the Russian Federation of November 2, 1993, No. 1833 on the Main Provisions of the Military Doctrine of the Russian Federation.

The Constitutional Court of the Russian Federation [...] has considered in open session the case on examining the Constitutionality of the Decrees. [...]

The grounds for considering the case, under part 1 of Article 36 of the Federal Constitutional Law on the Constitutional Court of the Russian Federation were an interpellation of a group of deputies of the State Duma of the Federal Assembly of the Russian Federation to check the constitutionality of the Decree [...] on the Main Provisions of the Military Doctrine of the Russian Federation in the part concerning the use of the armed forces of the Russian Federation in resolving internal conflicts [...], the interpellation of the Federation Council of the Federal Assembly of the Russian Federation to check the constitutionality of the Decrees [...] No. 2137 and [...] No. 2166, as well as the Resolution of the Government of the Russian Federation [...] No 1360, as well as the interpellation of a group of deputies of the Federation Council of the Federal Assembly of the Russian Federation of the same content.

[...] These interpellations, [...] were merged into a single proceeding. [...]

[T]he Constitutional Court of the Russian Federation found:

1. The Federation Council of the Federal Assembly of the Russian Federation [...] insists that the challenged decrees [...] and the resolution of the Government [...] formed a single system of normative legal acts and resulted in an unlawful use of the Armed Forces of the Russian Federation since their use on the territory of the Russian Federation as well as the other measures and actions stipulated [...] are legally possible only within the framework of the regime of a state of emergency or a state of martial law. It is stressed in the interpellation that these measures resulted in unlawful restrictions and mass-scale violations of the constitutional rights and freedoms of Russian citizens. [...]

2. In 1991-1994 an extraordinary situation arose on the territory of the Chechen Republic which is a subject of the Russian Federation. The validity of the Constitution of the Russian Federation and federal laws was denied, the system of legitimate bodies of power had been destroyed, regular unlawful armed formations were created, armed with the latest weaponry, and widespread violations of the rights and freedoms of citizens took place. [...]

This extraordinary situation is historically stemming from the fact that in the period of Stalin's repressions the Chechen people had been deported and the consequences of that deportation had not been properly rectified. The State power first in the USSR and then in Russia has been unable to correctly assess the legitimate bitter feelings among the Chechens, the developments in the Republic and their motive forces. The federal bodies of power of the Russian Federation relaxed their law enforcement activities in the Chechen Republic, failed to ensure the protection of the State ammunition dumps on its territory and for several years exhibited passivity in addressing the problems with that Republic as a subject of the Russian Federation. [...]

The constitutional goal of preserving the integrity of the Russian State accords with the universally recognised international legal principles concerning the right of nations to self-determination. It follows the Declaration of the principles of international law pertaining to friendly relations and co-operation between

States in accordance with the Charter of the United Nations, adopted on October 24, 1970, that the exercise of the right to self-determination “should not be construed as sanctioning or encouraging any acts leading to the dismemberment or complete disruption of territorial integrity or political unity of sovereign independent States acting pursuant to the principle of equality and self-determination of nation”.

Mindful of this, the federal authorities, the President, the Government and the Federal Assembly made repeated attempts to overcome the crisis in the Chechen Republic. However, they did not lead to a peaceful political solution.

The Decrees [...] prescribed the use of measures of State coercion to ensure the State security and territorial integrity of the Russian Federation, disarmament of illegal armed formations on the territory of the Chechen Republic.

Under part 2 of Article 3 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation does not consider the political opportuneness of the decisions made or the appropriateness of the actions earned out on their basis. [...]

5. In accordance with the principle of a law governed State, fixed in the Constitution of the Russian Federation, the bodies of power in their activities are bound both by internal and international law. The universally recognised principles and norms of international law and international treaties are, under Article 15, part 4 of the Constitution of the Russian Federation a component part of the legal system and must be observed in good faith, including by being taken into account in internal legislation.

The Supreme Soviet of the USSR in ratifying, on 29 September 1989 [...] Protocol II [...] directed the Council of Ministers of the USSR to prepare and submit to the Supreme Soviet proposals on making corresponding amendments in the legislation. However, that direction was not followed. Nevertheless, the provisions of this additional protocol on human treatment of all the persons who were not directly involved or have ceased to take part in hostilities, on the wounded, the sick, on the protection of civilians, of the facilities required for the survival of the civilian population, the installations and structures containing dangerous forces, on the protection of cultural values and places of worship are binding on both parties to the armed conflict.

At the same time improper consideration of these provisions in internal legislation has been one of the reasons of non-compliance with the rules of the above-mentioned additional protocol whereby the use of force must be commensurate with the goals and every effort must be made to avoid causing damage to civilians and their property. [...]

6. [...] International treaties in which the Russian Federation participates also proceed from the possibility of using armed forces to defend the national unity and territorial integrity of the State. According to Article 15 part IV of the Russian Constitution they are a constituent part of its legal system. Taking into account the

possibility of such situations, the international community formulates in [...] Protocol II [...] rules on the protection of victims of non-international armed conflicts. [...]

7. [...] The main provisions of the Russian Federation's military doctrine contain no normative precepts. For this reason, the Presidential Decree [...] whereby they were adopted, also lacks normative content. Therefore, these documents do not fall within the category of legal acts that can be verified by the Constitutional Court of the Russian Federation [...]

8. [...] On the other hand, the stipulations of part V paragraph 1, point 3 of the resolution "On the expulsion out of the Chechen Republic of persons who pose a threat to public security and to the personal security of citizens, who do not live on the territory of the said Republic", cannot be regarded as being tantamount to what has been established by point 22, Article 11 of the Law of the Russian Federation on the Militia as the right of the militia to keep citizens away from certain localities, facilities, to oblige them to stay there or to leave these localities and facilities with the aim of protecting the health, lives and property of citizens, conducting search and investigation measures. [...]

On the basis of the outlined and proceeding from part I of Article 71, Articles 72 and 87 of the Federal Constitutional Law on the Constitutional Court of the Russian Federation, the Constitutional Court of the Russian Federation: [...]

(3) It shall be recognised that the provisions on evicting persons posing threats to public safety and to the personal safety of citizens out of the territory of the Chechen Republic, contained in Resolution No. 1360 of the Government of the Russian Federation of December 9, 1994, "On Ensuring State Security and Territorial Integrity of the Russian Federation, Rule of Law, the Rights and Freedoms of the Citizens and Disarmament of Illegal Armed Formations on the Territory of the Chechen Republic and Adjacent of the Northern Caucasus", part V of paragraph 1, clause 3, and also on depriving journalists working in the armed conflict zone of their accreditation, paragraph 2 of clause 6, do not conform to the Constitution of the Russian Federation [...]

(4) Under Article 68 and paragraph 1, part 1 of Article 43 of the Federal Constitutional law on the Constitutional Court of the Russian Federation, hearings on the case with regard to the examination of the constitutionality of Decree No. 1833 of the President of the Russian Federation of November 2, 1993, on the main provisions of the military doctrine of the Russian Federation, and also with regard to the examination of the constitutionality of the main provisions of the military doctrine of the Russian Federation, shall be closed.

(5) The examination of the practical actions of the parties in the course of the armed conflict from the point of view of compliance with [...] Protocol II in accordance with Article 125 of the Constitution of the Russian Federation, and parts I, II and III of Article 3 of the Federal Constitutional Law on the Constitutional Court, may not be a subject for consideration by the Constitutional Court of the Russian Federation and ought to be

performed by other competent organs. In accordance with Articles 52 and 53 of the Constitution of the Russian Federation and the International Covenant on Civil and Political Rights, part III of Article 2, victims of any violations, crimes and abuses of power shall be granted efficient remedies in law and compensation of damages caused.

(6) The Federal Assembly of the Russian Federation shall settle the legislation on the use of the armed forces of the Russian Federation, as well as on the regulation of other conflicts and issues arising out of extraordinary situations, including those falling under [...] Protocol II. [...]

Discussion

1. How does the Court qualify the conflict in Chechnya? Under what conditions could the conflict be qualified as international?
2. Is Protocol II applicable to the situation? Does the Court apply it? Why not? Are international treaties not directly applicable in the Russian Federation? Does the Court consider that the rules of Protocol II are not self-executing and therefore need national legislation before they can be invoked before the Court? Why should a State enact implementing legislation even for the self-executing norms of a directly applicable treaty?
3. Does the resolution “[o]n the expulsion out of the Chechen Republic of persons who pose a threat to public security” violate Protocol II? Does Art. 11(22) of the Law of the Russian Federation on the militia violate it? (P II, Art. 17)