MEMORANDUM TO THE COMMITTEE OF MINISTERS

APPLICANTS'OBSERVATIONS REGARDING THE EXECUTION OF THE JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS IN THREE CASES FROM THE NORTH CAUCASUS

3 November 2010

Introduction

1. The Russian Justice Initiative (RJI) is submitting these observations to the Committee of Ministers (the Committee) in accordance with Rule 9 of the Committee of Ministers' Rules for consideration during the Committee's 1100th DH Meeting from 30 November to 3 December 2010. They are copied to the Department for the Execution of Judgments of the European Court of Human Rights as well as to the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe.

2. The Russian Justice Initiative is a Dutch non-governmental organization based in Russia which as of 15 October 2010 was representing Applicants in 93 out of 151 cases decided to date concerning grave violations of the European Convention on Human Rights (the Convention) in the North Caucasus. This submission discusses recent developments on the domestic level in the following cases:

   (i) *Khadisov and Tsechoyev v. Russia* (no. 21519/02), judgment of 5 February 2009, final on 5 May 2009.

   (ii) *Rasayev and Chankayeva v. Russia* (no. 38003/03), judgment of 2 October 2008, final on 6 April 2009.

   (iii) *Isigova and Others v. Russia* (no. 6844/02), judgment of 26 June 2008, final on 1 December 2008.

3. This submission presents the preliminary results of our attempts to address procedural shortcomings in domestic investigations identified in judgments of the European Court of Human Rights (ECtHR or the Court) via the procedure provided for under Article 125 of the Russian Code of Criminal Procedure (CCP). The Russian authorities have asserted that pursuit of this remedy will effectively address applicants' complaints concerning the ineffectiveness of investigations in their cases.[1] As the Secretariat has noted, the Court in its case-law on Chechnya does not, as a general rule, require applicants to resort to the Article 125 CCP procedure because it has been shown, in the vast majority of cases, to have little effect on the course of the investigation, even when the procedure is successfully exercised.[2] In this regard, the Court almost always finds a violation of Article 13 ECHR in conjunction with violations of Articles 2 and 3.

4. In the context of implementation, the Russian authorities have stated in regard to the Article 125 CCP procedure that:

   a) victims or other parties to judicial proceedings are able to lodge complaints with local courts to challenge procedural actions, omissions or decisions which affect victims' constitutional rights and freedoms. The judge is empowered to evaluate the lawfulness of the decision in question without however having the authority to annul decisions found unlawful; rather, he orders the investigator to rectify any violations found. If the investigating authorities do not comply with a decision on a 125 complaint, the complainant may challenge their inactivity and the judge may issue an injunction to ensure compliance.

   b) on 10 February 2009 the Plenum of the Supreme Court of the Russian Federation adopted a

[1] See Ministers' Deputies' Information documents, CM/Inf/DH (2010) 26 of 27 May 2010, available at: https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH%282010%2926&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864, at paras 57- 60.
[2] *Ibid* at para. 74.

Ruling to guide lower courts in their application of Article 125 CCP (the Plenum Ruling).[3]

5. For the purposes of the present submission, Articles 8 and 12 of the Plenum Ruling are the most relevant. **Paragraph 8** provides in part:

> […]
>
> Bearing in mind that a complaint on the basis of Article 125 CCP (Code of Criminal Procedure) can be filed with a court, as well as simultaneously with a prosecutor or a head of an investigative organ on the basis of Article 124 of the CCP, it is recommended that the judge clarify whether an applicant has availed him/herself of the right provided by Article 124 and whether there has been a decision on the granting of satisfaction of that complaint.
>
> In case it is established that a complaint containing the same arguments has already been satisfied by a prosecutor or a head of an investigative organ, then due to a lack of grounds upon which to verify the legality and reasonableness of the actions (omissions) or decisions taken by the law enforcement official in charge of the preliminary investigation, the judge shall rule to dismiss the complaint filed with the Court…
>
> Where an applicant disputes the decision taken by a prosecutor or head of an investigative organ, or when the complaint was satisfied only in part, then the complaint lodged under Article 125 CCP should be examined by the Court…

Paragraph 12 provides in part:

> […]
>
> In preparation for the examination of the complaint, the judge issues a request…for delivery of the materials upon which the official based his decision or actions, and also other data required to assess the validity of the arguments put forward in the complaint…[4]

6. In light of the assertions made by the Government regarding the suitability of the Article 125 CCP procedure to address procedural violations of Article 2 and 3 of the European Convention, counsel for the applicants in several cases brought by RJI submitted Article 125 CCP complaints to the local courts to address the issue of access to case files as well as investigative failings.

7. At the same time, counsel for the applicants also submitted motions to the relevant investigative authorities with identical requests, in order to ensure that recent responses from those authorities could, if needed, be challenged in court via Article 125 CCP in the event that complaints based on the last known decision should be rejected by the court.

8. In the present memorandum we report on the preliminary results of these submissions in the three cases mentioned above by presenting both the responses to the motions lodged before the relevant investigative bodies, as well as the outcome of the Article 125 CCP complaints, which were heard before the Garrison Court in Grozny. Further submissions on these and other cases will be submitted to the Committee of Ministers in due course.

9. In all motions and appeals submitted to the domestic authorities discussed in this submission, the applicants' counsel appealed the last known decision taken by the military investigative authorities to terminate or to suspend an investigation which had, at some point, established either the identities of the state agents involved in the crimes committed, or else the detachments to which they belonged at the material time. These investigations had nonetheless been repeatedly suspended on the grounds of a "failure to identify the perpetrators," and the alleged perpetrators themselves had not been compelled to participate in the investigations after their involvement in the crimes was established.

10. RJI has already reported to the Committee of Ministers on its post-judgment correspondence with the authorities in the three cases discussed of the present submission.[5] Nonetheless a brief

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[3] Постановление Пленума Верховного Суда Российской Федерации от 10 февраля 2009 г. N 1 "О практике рассмотрения судами жалоб в порядке статьи 125 Уголовно-процессуального кодекса Российской Федерации".

[4] English translation is unofficial. For the Russian text of the Plenum Ruling, see: http://www.rg.ru/2009/02/18/zhaloby-dok.html.

[5] See Communication from the representatives of the applicants in the group Khashiyev against the Russian Federation of 26 May 2010. DH – DD (2010)291, 28 May 2010, available at: https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1619821&S

background regarding the domestic investigation in each case is provided below in **Section A**.

11. **Section B** presents a summary of the requests submitted on the applicants' behalf both to the investigative authorities (motions) as well as within the framework of the Article 125 CCP procedure. The responses of the courts and of the investigative authorities to these submissions are also presented in detail in **Section B**. but at the outset the applicants wish to draw the Committee's attention to the overall result of their efforts:

- **Regarding motions submitted to the investigative authorities for access to case files and remedying of investigative shortcomings identified by the ECtHR:**
    - In two cases the authorities either refused or disregarded counsel's motions regarding the undertaking of specific investigative measures or the re-opening of a criminal case. Notably, one of these refusals was motivated by the fact that further criminal investigation into the crime was time-barred because the statute of limitations had run out. In one case the authorities disregarded the majority of investigative measures requested by the applicant, but undertook several steps. In two cases counsel's motion requesting access to case files was refused; access was granted in one case.
- **Regarding complaints lodged with the local court pursuant to Article 125 CCP:**
    - In all three cases the court did not examine the applicants' complaints on the merits, regardless of the strong evidence available in each case as to the identities of the perpetrators. Rather, the courts relied on a dubious interpretation of Paragraph 8 of the Plenum Ruling in order to dismiss the applicants' complaints on procedural grounds.
    - In all three cases counsel for the applicants were not permitted to study relevant case materials in order to adequately prepare for the hearings; in one case, counsel was granted access to case materials pursuant to his Article 125 CCP complaint.

12. In **Section C** the Applicants will draw the Committee's attention to the circumstances which currently undermine the potential effectiveness of the remedy provided for by Article 125 of the CCP, and which, if left unaddressed, will render the procedure a futile exercise for applicants in similar circumstances.

13. In **Section D** the applicants will also provide their observations on the general course of the domestic investigations, as their recent attempts to make use of the Article 125 CCP procedure have further illuminated continuing shortcomings which bear mentioning at the present time.

14. In **Section E** the Applicants indicate appropriate measures to be taken by the Russian authorities to positively impact the investigations in their cases.

A. Background to Cases Discussed

(i) Khadisov and Tsechoyev v. Russia (no. 21519/02), judgment of 5 February 2009, final on 5 May 2009.

15. Salambek Khadisov and Islam Tsechoyev were detained on 23 September 2001 in the Sunzha district of Ingushetia and taken first to a military base near Nazran, Ingushetia. Later they were transferred by helicopter to Khankala, the main Russian military base in Chechnya where they were held for 5 days and interrogated. During the interrogations they were severely tortured. The two men were subsequently transferred to the Sixth Department of the Organized Crime Unit of the

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ecMode=1&DocId=1582768&Usage=2 , last accessed on 14 October 2010 and Communication from the representatives of the applicants in the group of cases Khashiyev against the Russian Federation of 25 August 2010. DH-DD (2010) 384E, 6 September 2010, available at: https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1644958&SecMode=1&DocId=1616786&Usage=2, last accessed on 14 October 2010.

Staropromyslovskiy district of Grozny and finally released on 12 October 2001. Under threat of further torture, both men signed statements to the effect that neither had been ill-treated during detention.

16. The Sunzha District Prosecutor's Office during its preliminary investigation established the identities of the commanders involved in the detention of the applicants:

    - Mr. Magomed Yevloyev, a local Interior Ministry official, had handed over Salambek and Islam to another Interior Ministry official, Mr. Isachenko A.M., on the same day that the Sunzha district court had sanctioned the two men's administrative detention.
    - Mr. Isachenko had then transferred Salambek and Islam into federal custody when they were flown via helicopter to the Khankala federal military base in Chechnya.
    - Mr. Isachenko during questioning stated that on 24 September 2001 he had carried out an order from his commander Zolotuhin S.M to transport the applicants from the Sunzha ROVD to the territory of a military unit in Nazran. Once there, he had transferred the two men to federal servicemen from Khankala. Mr. Isachenko had received a written confirmation of the transfer from Lieutenant Colonel Ivaneev A.V. Mr. Zolutuhin confirmed this testimony and stated during questioning that he had received an order from Khankala to transfer the applicants to federal custody, and had ordered Mr. Isachenko to transport the applicants to the helicopter.

17. At some point after these facts were established by the preliminary investigation, the case was transferred to military prosecutors, who promptly discontinued the investigation on the grounds of the absence of corpus delicti. A separate investigation conducted by the prosecutors of Ingushetia was repeatedly suspended on the same ground.

18. There are two separate investigations ongoing in this case—one conducted by the Investigative Committee in Ingushetia, and one carried out by military prosecutors. The extent to which the case materials overlap between the civilian and military authorities is as yet unclear.

***(ii) Rasayev and Chankayeva v. Russia (no. 38003/03)*, judgment of 2 October 2008, final on 6 April 2009.**

19. On 25 December 2001, Russian federal forces, including units of the Ministry of Defence, Ministry of Interior, and Federal Security Service (FSB) carried out a special operation in the village of Chechen-Aul. The Applicants submitted that the operation was conducted by special reconnaissance unit no. 352 of the interior troops (*352й отдельный разведывательный батальон внутренних войск*) under the command of Major General Bogdanovsky N. During the operation the villager Ramzan Rasayev was detained at his home and taken to a filtration point on the outskirts of the village. Other residents of Chechen-Aul detained along with Ramzan reported seeing him there. Ramzan subsequently disappeared.

20. The Government confirmed that a special operation had been carried out in Chechen-Aul between 24 and 26 December 2001 and that Ramzan Rasayev had been abducted by unknown armed men on the same date. However, the Government submitted that Ramzan was not delivered to the filtration point and that his name was not on the list of detainees.[6]

21. During the course of the investigation, the Grozny District Court on 21 December 2005 found the Grozny District Prosecutor's office negligent and ordered a resumption of the investigation, including the questioning of fifteen witnesses named in the complaint who had seen Ramzan Rasayev at the filtration point, and also allowed the applicant to make copies of the case files. The order to question the witnesses was upheld on appeal by the Supreme Court of the Chechen Republic.

[6] See *Rasayev and Chankayeva v. Russia*, Judgment, para 13.

22. To the best of the applicant's knowledge, the authorities never questioned either these witnesses or the officials who took part in the operation, including Major General Bogdanovsky and the servicemen who handled Ramzan Rasayev at the filtration point.

***(iii) Isigova and Others v. Russia* (no. 6844/02), judgment of 26 June 2008, final on 1 December 2008.**

23. During a sweep operation in Sernovodsk on 2 July 2001 Russian troops detained hundreds of men including Apti Isigov and Zelimkhan Umkhanov. Most of the men were released the same evening but Apti and Zemlikhan disappeared. The European Court found the lapses in the domestic investigation "appalling," given that the identities of the commander and subordinates of the detachment involved in the operation had been established by the preliminary investigation[7]as servicemen from military units nos. 6783 and 6785 under the command of Lieutenant Colonel Mezentsev and Senior Lieutenant Kroshin.

24. A Mr. Galyamin had also been questioned as a witness and had told investigators that Ministry of Interior troops had breached the orders of Colonel Berezovsky by independently carrying out the detentions of 2 July 2001 in Sernovodsk. Mr. Galyamin had informed a Colonel Veger of the detentions, but the latter had ignored the information. It was submitted to the Court that on 16 March 2003 Mezentsev had died. Mr. Kroshin was said to have retired from military service and resident in Russia. In May 2003 the case was transferred to military investigators, who on 21 March 2005 discontinued the case due to a failure to identify the perpetrators following a determination that neither Colonel Mezentsev nor Lieutenant Kroshin could be implicated in the commission of a crime.

B. Summary of submissions

***(i) Khadisov and Tsechoyev v. Russia* (no. 21519/02)**

25. In April and May 2010 the Applicant's counsel submitted two motions requesting the Investigating Department of the Ingush Republic to sanction familiarization with all case materials[8] and, citing the findings of the ECtHR, to undertake a series of investigative measures.[9] The latter authority on 7 May 2010 informed the Applicant's counsel that the investigation into the Applicant's case had been terminated because the statute of limitations for criminal prosecution had run out. Therefore, the request to undertake measures in accordance with the judgment of the ECtHR had been dismissed.[10] As regards the access to the case materials, the Applicant's counsel was invited to get acquainted with the case files in accordance with Article 42 CCP.[11] The Applicant's representatives are currently in the process of arranging to study the case file. RJI will inform the Committee of the results of its examination it its further submissions.

26. On 28 April 2010 the Applicant's counsel filed an Article 125 CCP complaint with the Grozny Garrison Court appealing the decision of the investigator of the Military Investigating Department no. 505 Mr. Lebedev S.A. of 2 October 2008 on the refusal to open a criminal investigation into the

[7] See *Isigova v Russia,*Judgment, para. 107.
[8] See in Attachment: Motion requesting access to the case files (case *Khadisov and Tsechoyev v. Russia*).
[9] See in Attachment: Motion requesting undertaking of investigative steps (case *Khadisov and Tsechoyev v. Russia*).
[10] See in Attachment: Letter from the Investigative Department of Ingush Republic of 7 May 2010 (case *Khadisov and Tsechoyev v. Russia*).
[11] See in Attachment: Letter from the Investigative Department of Ingush Republic of 7 May 2010 (case *Khadisov and Tsechoyev v. Russia*).

Applicant's unlawful detention and ill-treatment by servicemen of the Ministry of Defense.[12] On 17 May 2010 the Grozny Garrison Court gave notice that it would hear the complaint.[13]

27. On 18 May 2010 the Applicant's counsel filed a motion in which he requested the court to allow examination of the case materials in the possession of the military investigators (as opposed to the materials in the possession of the civilian body in Ingushetia) before the appointment of a court session.[14]

28. On 25 May 2010, in response to the Grozny Garrison Court's request to submit the case materials to the court, the Military Investigating Department no. 505 informed the court that it was unable to submit the case materials because they had been transferred to the Military Investigating Department of the Investigating Committee of the Russian Federation. Contrary to the request of the applicant's counsel, it appeared that the court did not request the entire case file but only certain procedural documents such as copies of decisions made by investigative officials to suspend or resume the investigation. It turned out there were many such decisions of which the applicant had not been made aware dating from 14 May, 25 May, 15 June, 24 June 8 August and 26 August 2009.[15]

29. On 26 May 2010 the Military Investigating Department of the Investigating Committee of the Russian Federation informed the Grozny Garrison Court that it was unable to provide the court with the case materials. They also informed the court that the decision of 2 October 2008 at issue in the complaint before the court had been quashed on 14 May 2009. Furthermore, the case materials requested by the court had been transferred to the head of the Military Investigating Department of the North-Caucasus Military District and UGA (the Military Investigating Department of the NCMD and UGA) because they were needed for further procedural determinations, namely to annul a decision from 26 August 2009 on the refusal to open a criminal investigation.[16] Eventually, the Military Investigating Department no. 505 submitted the procedural decisions requested by the Court shortly after its request.[17] However, the applicant's counsel gained access to these documents only on 1 June 2010, after the court hearing had taken place.[18]

30. On 31 May 2010 the applicant's complaint was heard by the Grozny Garrison Court, which established that on 14 May 2009 the Military Investigating Department of the NCMD and UGA had quashed the decision of 2 October 2008 and, with reference to paragraph 8 of the Plenum Ruling, discontinued the examination of the Applicant's complaint.[19]

31. On 10 June 2010 the Applicant's counsel lodged a cassation complaint with the North Caucasus district court appealing the decision of 31 May 2010.[20] The Applicant argued in the appeal that Paragraph 8 of the Plenum Ruling, contrary to the interpretation relied upon by the Grozny Garrison Court, provides for the dismissal of a complaint under Article 125 CCP only upon a finding by the court that the prosecutor or lead investigator has already reviewed a complaint identical to the one before the court and replied to the complaint on substance. The Applicant maintained that he had

[12] See in Attachment: Article 125 complaint of 28 April 2010 (case *Khadisov and Tsechoyev v. Russia*).
[13] See in Attachment: Letter from the Grozny Garrison Court of 17 May 2010 (case *Khadisov and Tsechoyev v. Russia*).
[14] See in Attachment: Motion requesting access to the case files of 18 May 2010 (case *Khadisov and Tsechoyev v. Russia*).
[15] See in Attachment: Letter from the Military Investigating Department no. 505 of 25 May 2010 (case *Khadisov and Tsechoyev v. Russia*).
[16] See in Attachment: Letter from the Military Investigating Department of the Investigating Committee of the Russian Federation of 26 May 2010 (case *Khadisov and Tsechoyev v. Russia*).
[17] See in Attachment: Letter from the Military Investigating Department no. 505 (*case Khadisov and Tsechoyev*).
[18] See in particular the date of the photograph in the top right corner of the front page of the letter of 26 (or 28) May 2010 from the Military Investigating Department no. 505, indicating the date on which counsel was able to gain access to the document.
[19] See in Attachment: Decision of the Grozny Garrison Court of 31 May 2010 (case *Khadisov and Tsechoyev*).
[20] See in Attachment: Cassation complaint of 10 June 2010 (case *Khadisov and Tsechoyev*).

never lodged an identical complaint with any investigatory body. Accordingly, the Grozny Garrison Court could not rely upon the fact that the decision complained of had already been quashed as a basis for the dismissal of the applicant's complaint because the applicant had a right to have the specific arguments raised in the complaint examined on the merits. The Military Prosecutor of Military Unit no. 20102 lodged its objections to these arguments on 19 June 2010.[21]

32. On 22 July 2010 the North-Caucasus District Court upheld the decision of the Grozny Garrison Court. In particular, the District Court found that the fact that the decision of 2 October 2008 had been overturned independently by the head of the investigative unit did not affect the outcome of the applicant's complaint before the court. Thus the decision to dismiss the complaint had been lawful.[22]

***(ii) Rasayev and Chankayeva v. Russia* (no. 38003/03)**

33. In mid-June 2010 the Applicant's counsel submitted two motions to the Special Investigative Unit (SIU): the first requested access to all case materials related to the investigation of the Applicant's case[23] and the second requested that a series of investigative measures be undertaken.[24] The SIU forwarded the first motion to the Military Investigating Department of the North Caucasus Military District (NCMD) and United Group Alliance (UGA). [25]

34. On 19 July 2010 this first motion was rejected by the head of the Military Investigating Department of the NCMD and UGA Mr. Pekhlivan T.B. on the grounds that Article 42 of the Russian CCP prohibits a victim's access to the case file when the investigation has not been closed. The decree of Mr. Pekhlivanov T.B. did not clarify the procedural status of the applicant's case as of 19 July 2010 and whether it was suspended, closed or was still ongoing.[26]

35. On 15 June 2010 the Applicant's counsel filed a complaint with the Grozny Garrison Court pursuant to Article 125 CCP[27] appealing a decision of 9 December 2009 to suspend the investigation into the Applicant's case taken by an investigator with the Military Investigating Department no. 310.[28]

36. On 29 July 2010 the Grozny Garrison Court established that on 21 July 2010 the Military Investigating Department of the NCMD and UGA had quashed the decision of 9 December 2009 and, relying on paragraph 8 of the Plenum Ruling, discontinued the examination of the Applicant's complaint. The court however satisfied the counsel's request to examine the case files.[29] The Applicant's counsel will inform the Committee about the results of the examination in its further submissions.

37. Following the above-mentioned decision of the Grozny Garrison Court, the Military Investigating Department of the NCMD and UGA undertook certain investigative steps which counsel had indicated in his motion submitted in June 2010. In this regard, the Department questioned the applicant and 6 witnesses (out of an initial 15 witnesses indicated by the applicants) who had been detained with Ramzan Rasayev at the filtration point after his arrest. According to the information at

[21] See in Attachment: Objections of the Military Prosecutor of Military Unit no. 20102 of 19 June 2010 (case *Khadisov and Tsechoyev v. Russia*).
[22] See in Attachment: Decision of the Cassation court of 22 July 2010 (case *Khadisov and Tsechoyev v. Russia*).
[23] See in Attachment: Motion requesting access to the case files (case *Rasayev and Chankayeva v. Russia*).
[24] See in Attachment: Motion requesting investigative steps (case *Rasayev and Chankayeva v. Russia*).
[25] See in Attachment: Letter from the Special Investigating Unit within the Directorate of the Investigative Committee of the Chechen Republic to the Military Investigating Department of the NCMD and UGA of 12 July 2010 (case *Rasayev and Chankayeva v. Russia*).
[26] See in Attachment: Decision of the head of the Military Investigating Department of the NCMD and UGA of 19 July 2010 (case *Rasayev and Chankayeva v. Russia*).
[27] See in Attachment: Article 125 complaint of 15 June 2010 (case *Rasayev and Chankayeva v. Russia*).
[28] See in Attachment: Decision to re-open investigation into the applicant's case of the Military Investigating Department of the NCMD and UGA of 21 July 2010 (case *Rasayev and Chankayeva v. Russia*).
[29] See in Attachment: Decision of the Grozny Garrison Court of 29 July 2010 (case *Rasayev and Chankayeva v. Russia*).

the disposal of the Department, at least two of the witnesses named by the applicants had died in 2010.[30] The Department also requested the delivery of documents from the archives of the Ministries of Defense and of the Interior and also filed a series of requests to various state agencies which were involved in the planning or conduct of the operation in the village of Chechen-Aul in December 2001. The Ministries of Defense and of the Interior responded that they have no relevant documents in their archives pertaining to the operation in Chechen-Aul at the material time. RJI is not aware of any responses from other state agencies which were contacted by the Department.[31]

38. On 19 August 2010 the investigation into the applicant's case was once again suspended on the grounds of a failure to identify the perpetrators of the crime.[32]

(iii) Isigova and Others v. Russia

39. On 6 May 2010 the Applicant's counsel, citing the ECtHR's findings that the Applicant had not had adequate access to the case file, requested access to all case materials in a motion addressed to the Directorate of the Investigating Committee in the Chechen Republic.[33] Counsel also requested the latter authority to undertake a series of investigative measures to remedy the shortcomings identified by the ECtHR.[34] On 17 May 2010 the latter authority informed the Applicant's counsel that one of the motions lodged on 6 May 2010—it did not specify which one—had been forwarded to the Special Investigating Unit within the Directorate of the Investigative Committee of the Chechen Republic (the SIU).[35] The Applicant's counsel has not since then obtained any further information on the results of the examination of his motions by the investigative authorities.

40. On 6 May 2010 the Applicant's counsel submitted a complaint to the Grozny Garrison Court under Article 125 CCP appealing a decision of 21 March 2005 taken by an investigator of the Military Prosecutor's Office of Military Unit no. 20102 (the Prosecutor's Office) to terminate the criminal case opened in regard to Messrs. Mezentsev V.V., Kroshin A.G. and other servicemen who took part in the special operation on 2 July 2001 after which the applicant's relatives had disappeared.[36]

41. On 14 May 2010 the Grozny Garrison Court gave notice that it would proceed to examine the Applicant's complaint.[37] On 8 June 2010 the Applicant's counsel filed a motion in which he requested that the court to sanction examination of the case materials in preparation for the court session.[38] Subsequently, the hearing was significantly delayed. After more than 30 days had elapsed since the court had received the complaint without holding the hearing, the presiding judge explained to the applicant's counsel that the delay was due to the refusal of the investigative authorities to provide the court with the relevant case materials.

42. On 15 June 2010, the Applicant's counsel submitted a complaint (*частная жалоба*) to a higher court against the presiding judge.[39] By law, the judge is required to examine such a complaint within five days of its receipt.[40] Counsel for the applicant in his complaint argued in particular that the judge's tolerance of obstructive behavior on the part of the investigating authorities was hindering the Applicant's effective access to the remedy provided by Article 125 CCP.

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[30] See in Attachment: Information provided by the administration of Chechen-Aulsky settlement of 10 August 2010 confirming that Mr. Amhadov Vakha Imranovich and Yakubov Khamid died on 30 April 2010 and 5 July 2010 respectively (case *Rasayev and Chankayeva v. Russia*).
[31] See in Attachment: Letter from the Military Investigating Department of the NCMD and UGA of 19 August 2010 (case *Rasayev and Chankayeva v. Russia*).
[32] *Ibid*.
[33] See in Attachment: Motion requesting access to the case files (case *Isigova and Others v. Russia*).
[34] See in Attachment: Motion requesting investigative steps (case *Isigova and Others v. Russia*).
[35] See in Attachment: Letter from the Directorate of the Investigating Committee in the Chechen Republic of 17 May 2010 (case *Isigova and Others v. Russia*).
[36] See in Attachment: Article 125 complaint of 6 May 2010 (case *Isigova and Others v. Russia*).
[37] See in Attachment: Letter from the Grozny Garrison Court of 14 May 2010 (case *Isigova and Others v. Russia*).
[38] See in Attachment: Motion requesting access to the case files of 8 June 2010 (case *Isigova and Others v. Russia*).
[39] See in Attachment: Complaint (частная жалоба) to a higher court against the presiding judge of 15 June 2010 (case *Isigova and Others v. Russia*).
[40] See in Attachment: Annex from Article 125 (3) of Russian CCP.

43. On 7 July 2010 the Grozny Garrison Court sent a request to the Investigating Committee of the Russian Federation to submit the case materials in case No 59114.[41] The Applicant's counsel was not made aware of the volume of files eventually transferred to the court and in any event was not able to acquaint himself with the case files before the court session, although the case materials were clearly in the possession of the court during the hearing.

44. On 20 July 2010 the Applicant's complaint was heard before the Grozny Garrison Court. Counsel for the applicant submitted a motion requesting access to the case file which had been delivered to the court by the investigative authorities. The court refused his motion. Following the Court's determination that the decree of the Prosecutor's Office of Military unit no. 20102 of 21 March 2005 had been overturned in 2009, the Applicant's counsel withdrew his complaint[42] with the intention of appealing the most recent decision of the investigative authorities at a later time. RJI will inform the Committee of further developments in this case in its further submissions.

C. Applicants' observations

1. Summary of the responses of the domestic authorities to the Applicants' submissions

a) Responses of the investigative authorities to the motions filed on access to case materials and investigative failings.

45. In two cases the investigative authorities disregarded or refused motions requesting undertakings of specific investigative measures to remedy shortcomings identified by the ECtHR.[43] In *Rasayev and Chankayeva* the authorities questioned only 6 out of 15 witnesses who saw the applicant's relative at the filtration point after his arrest and omitted to question officials who were in charge of the operation at the material time, including the officials who were operating the filtration point where the victim was detained. The authorities also failed to establish to which agencies the vehicles employed in the arrest of the applicant's relative belonged.[44]

46. In *Isigova* and *Rasayev and Chankayeva* the authorities refused or disregarded the Applicants' requests for access to the case materials.[45]

47. In *Khadisov and Tsechoyev* the applicants were granted access to the case materials in the possession of the civilian authorities.[46] RJI will inform the Secretariat of the results of examination it its further submissions.

b) The outcome of the Applicants' complaints lodged under Article 125 CCP

48. In the cases of *Khadisov and Tsechoyev* and *Rasayev and Chankayeva* the local courts dismissed the applicants' complaints following a finding that the investigations had already been resumed, citing Paragraph 8 of the Plenum Ruling. Regarding the latter case, it should be noted that the court dismissed the applicant's complaint under Article 125 CCP even though it had been lodged *prior* to the decision taken by the investigative authorities to resume the investigation, which was cited by the court as the basis for dismissal.[47] In *Isigova*, the Applicant's counsel opted to withdraw his application to the court following the discovery that the decision complained of had already been overturned by the investigative authorities,[48] and to appeal the latest decision by the investigative authorities at a later time.

[41] See in Attachment: Letter from the Grozny Garrison Court to the Investigating Committee of the Russian Federation of 7 July 2010 (case *Isigova and Others v. Russia*).
[42] See in Attachment: The court record of 20 July 2010 (3 pages) and Decision of the Grozny Garrison Court of 20 July 2010 (1 page) (case *Isigova and Others v. Russia*).
[43] See paras 25, 39 above and paras 1-10; 13-18 in Annex 2.
[44] See para 37 above and paras 29-36 in Annex 2.
[45] See para39 above.
[46] See para 25 above.
[47] See paras 30, 32, 35, 36 above.
[48] See paras 35, 36 above.

49. In all three cases, the court did not satisfy requests lodged by the Applicants' counsel to examine the case materials in preparation for the hearings on the Article 125 CCP complaints as provided for by Paragraph 12 of the Plenum Ruling. Only in *Rasayev and Chankayeva* was the Applicant granted access to the case files as a result of his complaint under Article 125 CCP. Furthermore, in the case of *Khadisov and Tsechoyev,* notwithstanding counsel's request for delivery of all case materials, the military court requested delivery only of a small portion of the case file, namely decisions to re-open or suspend the criminal case. Even so, the applicant's counsel was able to gain access to these few documents only after the hearing of his Article 125 CCP complaint.

2. The Applicants' Observations on the effectiveness of Article 125 CCP to address violations of Articles 2 and 3 ECHR

50. With regard to the above overview, the Applicants have serious reservations about the potential effectiveness of the Article 125 CPP procedure to address investigative shortcomings in their cases. They submit that their attempts to utilize this procedure were, on the whole, unsuccessful, and moreover provided an indication of the courts' unwillingness to examine their complaints on the merits—the minimum required in order to remedy investigative shortcomings.

51. If the Article 125 CCP procedure is to provide relief in practice for unlawful decisions by investigatory bodies, the applicants wish to alert the Committee that the following specific problems currently threaten to undermine wholly or in part its potential effectiveness:

- **The prevailing interpretation of Paragraph 8 of the Plenum Ruling on which the court based its decision to dismiss the applicants' complaints essentially renders the remedy inaccessible in practice. Unless this interpretation is found to be incorrect, it is likely to completely impede the effectiveness of the Article 125 remedy in addressing investigative shortcomings identified by the ECtHR.**
- **The courts remain unwilling or unable to provide the case materials for examination prior to hearings on Article 125 complaints, impeding counsel's ability to adequately prepare their arguments, and in general prove passive in the face of obstructive behavior by the investigative authorities.**

These two problems and their consequences are examined in detail below.

(i) Interpretation of Paragraph 8 of the Plenum Ruling by the domestic courts during examination of the Applicants' complaints lodged under Article 125 CCP

52. The applicants recall the court's interpretation of Paragraph 8 of the Plenum Ruling in the cases discussed above, which can be summarized as follows: If the decision complained of by the applicant in his Article 125 CCP complaint has already been procedurally amended by the investigative authorities, then the court should dismiss further examination of the complaint under Article 125 CCP.

53. By contrast, the applicants submit that Paragraph 8 of the Plenum Ruling instructs the court to dismiss a complaint lodged under Article 125 CCP only following a finding that a prosecutor or investigator satisfactorily reviewed a complaint with identical arguments and issued a response.

54. In essence, Paragraph 8 underpins the applicant's right to choose to submit his complaint for judicial review. The applicants refer in this context to Article 46 (2) of the Russian Constitution, which provides that:

> […] Decisions and actions (or inaction) of State government bodies, local self-government bodies, public organizations and officials may be appealed in court. […].[49]

55. Paragraph 8 of the Plenum Ruling also provides guidance in the event of a jurisdictional conflict in

[49] Article 46 is referred to extensively in the opening paragraph of the Plenum Ruling of 10 February 2009.

case an applicant has lodged identical complaints both via Article 124 CCP (an administrative review procedure), and via Article 125 CCP (a judicial review procedure).

56. The applicants note in this regard that in order to avoid a restrictive interpretation of Paragraph 8 of the Plenum Ruling, which, if and when applied by the courts, potentially limits an applicant's constitutional right to resort to judicial review, the Supreme Court in its Plenum Ruling leaves open the option of disputing decisions before the court even where an applicant has already successfully sought administrative review of the same complaint:

> […] where an applicant disputes the decision taken by a prosecutor or head of an investigative organ, or when the complaint was satisfied only in part, *then the complaint lodged under Article 125 should be examined by the Court (emph. added)* […][50]

57. The applicants do not attempt to convince the Committee of the correctness of their interpretation of Paragraph 8 of the Plenum Ruling. However, they maintain that the current interpretation upheld by the local courts—and which was upheld in a cassation ruling in *Khadisov and Tsechoyev*[51]— risks to render the Article 125 CCP procedure wholly ineffective to address similar complaints, unless the interpretation is struck down by a higher authority or further guidance is provided.

58. The applicants also submit that the current interpretation of Paragraph 8 relied upon by the courts in the above cases in practice deprived the applicants of the right to challenge decisions taken by state bodies via the courts. Furthermore, as the applicants had never sought to challenge the decisions complained of via an administrative appeal to a higher investigative authority, they have in effect been deprived of any recourse to appeal procedures guaranteed under Russian law.

(ii) The consequences of the interpretation of the Plenum Ruling given by the domestic courts on the implementation of ECtHR judgments in the Applicants' cases

59. As a result of the refusal of the domestic court to examine the Applicants' Article 125 complaints on the merits, the shortcomings identified by the ECtHR regarding the investigation were not taken into account by either the domestic court or the investigative authorities. In each case the investigative authorities had re-opened the case independently without due regard for what the ECtHR had found wrong with the investigation in the first place. For example, the Applicants in *Isigova* and *Khadisov and Tsechoyev* point out that the decisions to re-open (upon which the court based its decision to dismiss complaints under Article 125) did not cite any specific problems identified and criticized in the judgments of the ECtHR in those cases.[52] The Applicant in *Rasayev and Chankayeva* submits that although the Deputy Head of the Military Investigating Department of the NCMD and UGA in his decision to re-open the investigation stated that "*…during the course of the preliminary investigation the arguments of the European Court of Human Rights … were not rectified and there was a failure to undertake adequate measures which would lead to the establishment of the whereabouts of Mr. Rasayev*," the decision does not cite the specific failures in the domestic investigation criticized by the ECtHR in paragraphs 72-74 of its judgment. Without further elaboration of these failures, they are unlikely to be addressed as the investigation continues.

60. The consequences of the interpretation of the Plenum Ruling must be understood, in the applicants' view, within the broader context of the practice of the investigative authorities in these kinds of cases. Understood in this context, the applicants submit that the re-opening of the investigations in their cases do not indicate a likelihood that the investigation will become more effective. Rather, the investigation is likely simply to be suspended again in a few months' time, given the well-known practice in cases from the North Caucasus in which the ECtHR has found that federal military or security forces are responsible for serious violations of the Convention. As the applicants have pointed out previously, this pattern of re-opening followed again by inevitable suspension, regardless of the strength of the evidence, persists even after the ECtHR issues its judgment.[53] Finally, the reasons behind the cycles of re-opening and suspension still remain hidden from public

[50] See Paragraph 8 of the Plenum Ruling, *supra n*. 3-4
[51] See para 32 above.
[52] See paras. 105-109 in *Isigova and Others v. Russia* and paras. 117-122 in *Khadisov and Tsechoyev v. Russia*.
[53] See Communication from the representatives of the applicants, DH-DD (2010) 384E, *supra note 5,* at para 63.

scrutiny.[54]

61. The Applicants submit that any future attempts to appeal further decisions to suspend investigations via Article 125 CCP are likely to be treated in a similar manner by the courts and thus that Article 125 is unlikely to provide redress for the applicants' complaints. In this regard the applicants refer to the outcome of the Article 125 complaint submitted in *Rasayev and Chankayeva,* which they believe provides an example of the futility of resorting to judicial review in such cases. The applicant in *Rasayev* recalls that although his complaint was lodged 36 days *prior* to a decision by the investigative authorities to re-open the case, the court refused to hear the complaint on the merits. Subsequently, as noted above, the investigation was then promptly suspended less than one month later by the same authorities on the grounds of a failure to establish the perpetrators.[55]

62. If the current interpretation of the Plenum Ruling prevails, and if the practice of the court as described in *Rasayev and Chankayeva* continues to be sanctioned, an Article 125 CCP complaint which relies on the last known decision regarding a suspension or a refusal to open an investigation will stand a minimal chance of being heard on the merits by the court, as the investigative authorities can, at any time, assert that the decision complained of has already been remedied. Moreover given the lack of opportunities for public scrutiny of the actions of the investigative authorities, decisions to re-open or suspend may be taken for the purpose of avoiding a hearing on substance, and generally in disregard for the applicant's procedural rights as victims. Indeed the fact that the applicants in each of the cases discussed in the present submission had not been made aware of the latest decisions to re-open the investigation underscores the continual lack of appropriate consideration for the rights of the applicants as victims in their respective cases.

(iii) The court's response to requests by counsel to examine case materials in preparation for the hearings on the Article 125 CCP complaints

63. The Applicants' counsel in cases *Isigova* and *Khadisov and Tsechoyev* submitted requests to study the relevant case materials in accordance with paragraph 12 of the Plenum Ruling.[56] Presumably, the court forwarded these requests for delivery of the case materials to the investigative authorities based on counsel's motions but the materials were not made available.[57] Unable to examine the case materials before the hearings, counsel for the applicants could not prepare their arguments effectively.

64. Requests to grant access to the case files during the actual hearings on the Article 125 CCP complaints were not granted in *Isigova* and *Khadisov and Tsechoyev.* In the applicants' opinion, they were refused because the courts continue to tolerate uncooperative and obstructive behavior by the investigative authorities.[58] Regardless of whether it is the prerogative of the investigative authorities not to provide the court with the case file, the applicants believe that the refusals by those authorities were spurious and unjustifiable. If the authorities consistently refuse to surrender the case materials contrary to Article 12 of the Plenum Ruling—or if their justifications as to why delivery is impossible will always trump the court's requests—this significantly impedes the potential effectiveness of the entire procedure in similar cases.

(iv) The court's inability to instruct the investigative authorities under the Article 125 CCP procedure

65. The applicant in *Rasayev and Chankayeva* welcomes the local court's decision to grant access to the case materials pursuant to his Article 125 CCP complaint.

[54] See (*inter alia) Zaurbekova and Zaurbekova v. Russia* (no. 27183/03), 22 January 2009, para 85; *Nenkayev and Others v. Russia* (no. 13737/03), 28 May 2009, para. 15, para 103.
[55] See para. 38 above.
[56] See para. 27 above.
[57] See paras. 28, 29 above.
[58] See paras. 28, 29 and 41-44 above.

66. On the other hand, the court's decision to grant access in this case unfortunately represents an exception rather than a rule. In the other cases discussed in this submission, the applicants were not granted access to the case materials pursuant to their Article 125 CCP complaints because, as they believe, the courts are generally not empowered to instruct the investigative authorities to satisfy their specific requests in this regard. For example, during the hearing in *Khadisov and Tsechoyev* the court, in its refusal of the applicant's request for access to the case materials, stated that it *"does not have authority to instruct the investigative authorities…"*[59]

67. In general, therefore, access to the case materials is unlikely to be forthcoming via a complaint pursuant to Article 125 CCP. As pointed out in the section above, access to case files was also not forthcoming via a pre-trial request by the court in accordance with Paragraph 12 of the Plenum Ruling. As a whole, therefore, the procedure cannot be regarded as effective as far as access to case materials is concerned.

(iv) The court's interaction in general with the investigative authorities

68. The applicants reiterate their dismay that the courts proved largely passive in the face of the refusals by the domestic authorities to provide the relevant case materials, as described in the section above.

69. Furthermore, the applicants in *Khadisov and Tsechoyev* express their concern that the court requested only the decisions to open or suspend the investigation in their case as this indicates, in the applicants' view, the court's predisposition not to examine the case on the merits. The applicant's arguments could not have been assessed on substance without examining further essential documents from the case file.

70. The applicants in *Rasayev and Chankayeva* recall the arguments introduced above regarding the consequences of the current interpretation of the Plenum Ruling in the broader context of the approach of the investigative authorities to such cases.[60] They once again remind the Committee that the court refused to examine their Article 125 CCP complaint on the merits because the decision complained of was *subsequently* quashed by the investigative authorities. Given the particular characteristics of their case and many similar cases from Chechnya, in which the investigative authorities continually re-open and suspend cases as an arbitrary routine, the applicants assert that the current approach of the court implicitly sanctions the practice of the investigative authorities.

71. Therefore if the courts continue to look to future decisions of the investigative authorities as grounds for dismissing a complaint for judicial review, very few complaints will ever reach the court.

D. Further observations on the general course of investigations illuminated by the Article 125 CCP complaints

72. The applicants in *Khadisov and Tsechoyev* wish to draw the Committee's urgent attention to the response they received from the Investigating Department of Ingushetia to one of their counsel's motions, in which the latter authority argued that criminal investigation into the circumstances of their case was time-barred because the statute of limitations had run out.[61]

73. The applicants maintain that if this argument pertains to the criminal investigation into the torture they suffered while in state custody, then it is deeply flawed. In addition to the obligation upon the government following from the judgment of the ECtHR to investigate allegations of torture, the Russian Federation also carries responsibility for acts of torture under the International Convention Against Torture as well as under customary international law and arguably, under international humanitarian law, given that the applicants were tortured in the context of an armed conflict.

[59] See in Attachment: Decision of the Grozny Garrison Court of 31 May 2010 (case *Khadisov and Tsechoyev*).
[60] See above paras. 60-62.
[61] See para. 25 above.

74. Several provisions of Russian law allow for the direct application of international treaty requirements, including the Law on International Treaties of the Russian Federation of 15 June 1995, and the Ruling of the Plenum of the Supreme Court of the Russian Federation of 10 October 2003, "On application of customary international law by the courts of general jurisdiction." Furthermore, Article 15 of the Russian Constitution recognizes **"**universally recognized principles and norms of international law as an integral part of Russian law" and establishes the superiority of international over domestic law.

75. The application of a statute of limitations to the crime of torture in any circumstances is inconsistent with Russia's obligations as a party to the UN Convention Against Torture. The UN Committee on CAT has noted that "taking into account the grave nature of acts of torture, the Committee is of the view that acts of torture cannot be subject to any statute of limitations."[62]

76. In the context of internal armed conflict, torture is a war crime.[63] Russia is a party to the International Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity. Furthermore, the non-applicability of statutes of limitation to war crimes is an established norm of customary international humanitarian law.[64]

77. The applicants request the Committee to clarify the position of the Russian authorities with regard to criminal prosecution in their case.

78. The applicants in *Khadisov and Tsechoyev* also wish to draw the Committee's attention to the fact that it was only through the Article 125 CCP procedure that they were made aware of procedural decisions made by the investigative authorities throughout 2009.[65] The applicants are dismayed that they were not informed of these decisions in a timely manner. At the same time, the applicants wish to draw the Committee's attention to the nature of these decisions—to re-open or suspend the investigation—as well as to their number—there were six such decisions within a four month period. In the applicants' view, the sheer number of such decisions within such a short span of time serves as a particularly sharp example of the inevitable cycle of re-opening and suspension of criminal investigations with no tangible progress made. That such a cycle is still ongoing over a year following the entry into force of the relevant judgment by the ECtHR is disturbing and indicates the authorities' continual unwillingness to carry out an effective investigation. In this regard the applicants refer to the most recent Memorandum concerning Russia's compliance with ECtHR judgments, in which the Secretariat observes that:

> [an] important reason justifying the European Court's refusal to recognise th[e] remedy [under Article 125 CCP] as effective was the victims' lack of access to the case file and *scarce information they were receiving about the progress of domestic investigations* (emph. added).[66]

79. The applicants submit that, given their recent experience, the Article 125 CCP remedy risks to continue to be ineffective for this same reason, i.e. the scarce information forthcoming regarding the progress of the investigation.

80. The applicants in *Rasayev and Chankayeva* wish to draw the Committee's attention to another example of this inevitable procedural cycle, brought to light most recently by their attempt to utilize the Article 125 CCP procedure. After their case was re-opened on 21 July 2010 by the investigative authorities, it was promptly suspended again by the same authorities on 19 August 2010, barely one month after it had been re-opened. In addition, as the applicants have indicated above, the authorities

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[62] Conclusions and recommendations of the Committee against Torture on Denmark, CAT/C/DNK/CO/5, July 16, 2007, para. 11.
[63] See ICC Statute, Article 8(2)(c)(i) and (ii); ICTR Statute, Article 4(a) and (e); Statute of the Special Court for Sierra Leone, Article 3(a) and (e).
[64] International Committee of the Red Cross, "Customary International Humanitarian Law: Rules," Rule 160. Text available at: http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule160.
[65] See para 28, 29 above.
[66] See CM/Inf/DH(2010)26 27 May 2010, *supra n.* 1, para. 68.

did not undertake all the measures required in order for the investigation to qualify as effective—a point they would have attempted to raise before the court had their complaint been heard on the merits, which it was not.

81. In the face of the continuing practice by the investigating authorities to routinely re-open and suspend the investigation—and the court's demonstrated unwillingness to hear the applicants' complaints on the merits—the applicants wish to reiterate the findings of the European Court in many cases from Chechnya regarding the effectiveness of the Article 125 CCP procedure, in which it was rarely shown to be "capable of providing redress in the applicants' situation – in other words that it would have rectified the shortcomings in the investigation and would have led to the identification and punishment of those responsible for the deaths of their relatives."[67]

82. In particular, the applicants in all three cases submit that, given their recent experience, the Article 125 CCP Procedure remains riddled with the same problems which have led the ECtHR to deem it ineffective in the majority of cases from Chechnya, including:

    a. The court is obliged to hear the complaint within 5 days of its receipt, although this time-limit is often not observed by the courts. As underscored by the applicants' recent experience in the cases described in the present submission, this entails a high probability that the procedural status of a case will have changed by the time the complaint is heard before the court, given the frequency with which cases are suspended and re-opened.

    b. Article 125 stipulates that a complaint can be filed against the action(s) or inaction(s) (negligence) of the inquirer, the investigator or the prosecutor. This requires that the applicant is informed about the conduct of the investigation. Although the Criminal Procedure Code of the Russian Federation stipulates that the aggrieved party in the criminal proceedings must be informed of certain steps in the criminal investigation (according to Article 42 CCP) applicants in cases from the North Caucasus are informed only occasionally or not at all about the conduct of the criminal investigation, and in general are subject to severe restrictions in their rights to access the case files. Therefore the applicants cannot effectively exercise their rights under Article 125 because they are unaware of which actions the inquirer, the investigator or the prosecutor has or has not undertaken;[68]

    c. The effectiveness of the complaint mechanism under Article 125 is further undermined by the fact that the courts lack the authority to instruct the investigative authorities in the case.[69]

83. The applicants also refer to the recent statement of the CoE Secretariat that "the ultimate purpose of the remedy provided by Article 125 CCP *should be to rectify the shortcomings of domestic investigations* (emph. added)"[70] and submit that this goal remains illusory given the current interpretation of the relevant law by domestic courts as well as the broader context of the continuing practice of the investigative authorities to re-open and suspend investigations routinely.

E. Measures which should be undertaken by the Russian authorities to impact on the investigations in the Applicants' cases

84. The Applicants in all three cases discussed in this submission reiterate that no effective investigation appears to be forthcoming despite the strong evidence at the disposal of the investigative authorities and the courts.

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[67] See, for example, *Khatsiyeva and Others v. Russia*, judgment of 17 January 2008, para. 150; see also *Khashiyev and Akayeva v. Russia,* judgment of 24 February 2005, para. 165; *Chitayev & Chitayev v. Russia*, judgment of 18 January 2007, paras 139-140.

[68] See, for example, *Khatsiyeva and Others v. Russia,* judgment of 17 January 2008, para. 150; *Dzhambekova and Others v. Russia,* admissibility decision of 13 March 2008, page 16, *Elsiyev & Others v Russia*, judgment of 12 March 2009, para. 166*; Ilyasova & Others v. Russia,* judgment of 4 December 2008, paras. 77-78.

[69] See paras. 65-67 above.

[70] See CM/Inf/DH(2010)26 27 May 2010, *supra n.* 1, para 70.

85. The Applicants submit that in order to rectify the shortcomings in the domestic investigations the authorities should take all necessary steps, including investigating measures, requested by the Applicants in their motions and Article 125 CCP complaints, which are described in detail in Annex 2.[71]

86. Below the applicants provide a summary of the requests in each case.

***(i) Khadisov and Tsechoyev v. Russia* (no. 21519/02)**

87. To identify all the detachments of the military and security forces which were involved in the arrest, detention, questioning and ill-treatment of the applicant during his detention from 24 September until 12 October 2001 at the *Khankala* military base and to identify all persons who had custody over the applicant after his transfer to *Khankala* and in particular the commander of the personnel serving at *Khankala.*[72]

88. To establish whether the authorities have questioned Lieutenant Colonel *A.V. Ivaneev* since the decision of the Court has become final, given that in a decision of 26 September 2005 the first deputy prosecutor of Ingushetia specifically stated that it was necessary to question *Lieutenant Colonel Ivaneev* who had provided written confirmation of having taken the applicants into his custody. However no information was submitted to the Court in respect of any efforts to question either *Ivaneev* himself or the officers under his command.[73]

89. To identify to which agency belonged the helicopter on which the Applicant was taken to the Khankala military base from the territory of the military base of the 99th division, which was located not far from Nazran city.[74]

***(ii) Rasayev and Chankayeva v. Russia* (no. 38003/03)**

90. To confirm whether or not *Major-General N. Baranovsky* —commander of the special reconnaissance unit no. 352 of the interior troops involved in the operation of 25 December 2001 in the village of Chechen-Aul—was indeed questioned by the investigation, and if not, to question him.[75]

91. To confirm whether or not the commanding officers of the units from the Ministry of Defence and Federal Security service (FSB) which, according to information provided by the Russian Government, had taken part in the special operation of 25 December 2001, were ever questioned during the course of the investigation, and if not, to question them.[76]

92. To confirm whether or not the authorities have complied with a decision by the Supreme Court of the Chechen Republic to question fifteen witnesses named by the applicants including residents of Chechen-Aul detained at the filtration point with Ramzan Rasayev, and if not, to question them.[77]

***(iii) Isigova and Others v. Russia* (no. 6844/02)**

93. To ensure the participation in the investigation of the commanding officers of the sweep operation during which the victims disappeared (Colonels *A.V. Berezovsky* and *E.N.Veger*).[78]

94. In view of the statements of *Colonel I.K. Galaymin* that the latter had informed *Colonel Veger* of unlawful arrests conducted by the Ministry of the Interior troops, and that *Colonel Veger* had ignored that information, to determine whether *Colonel Veger* was ever questioned about the

[71] See Annex 2.
[72] See para 119 of the Court's judgment.
[73] See para 119 of the Court's judgment.
[74] See paras 26, 76, 88 of the Court's judgment.
[75] See para 6 of the Court's judgment.
[76] See para. 13 of the Court's judgment.
[77] See para.73 of the Court's judgment.
[78] See para 52 of the Court's judgment.

assertions of *Colonel Galaymin.* at any time over the course of the investigation?[79]

95. To establish the whereabouts and to question *Mr. A.G. Kroshin*, the commander of military unit no. 6785, whose subordinates detained the victims in the case.[80]

96. To establish the circumstances of the victims' delivery to the Achkhoy-Martan VOVD and to question the officials who at the time worked at the Achkhoy-Martan VOVD. In particular, to establish how the names of the victims appeared on the list of detainees at the Achkhoy-Martan VOVD on 3 July 2001.[81]

Moscow, November 2010

List of attachments

1. Annex 2: Description of the Content of the Applicants' Motions and Complaints under Article 125 CCP.

2. Motion requesting access to the case files (case *Khadisov and Tsechoyev v. Russia*) (3 pages).

3. Motion requesting the undertaking of investigative steps (case *Khadisov and Tsechoyev v. Russia*) (4 pages).

4. Letter from the Investigative Department of Ingush Republic of 7 May 2010 (case *Khadisov and Tsechoyev v. Russia*) (1 page).

5. Letter from the Investigative Department of Ingush Republic of 7 May 2010 (case *Khadisov and Tsechoyev v. Russia*) (1 page).

6. Article 125 CCP complaint of 28 April 2010 (case *Khadisov and Tsechoyev v. Russia*) (5 pages).

7. Letter from the Grozny Garrison Court of 17 May 2010 (case *Khadisov and Tsechoyev v. Russia*) (1 page).

8. Motion requesting access to the case files of 18 May 2010 (case *Khadisov and Tsechoyev v. Russia*) (1 page).

9. Letter from the Military Investigating Department no. 505 of 25 May 2010 (case *Khadisov and Tsechoyev v. Russia*) (1 page).

10. Letter from the Military Investigating Department of the Investigating Committee of the Russian Federation of 26 May 2010 (case *Khadisov and Tsechoyev v. Russia*) (1 page).

11. Letter from the Military Investigating Department no. 505 (case *Khadisov and Tsechoyev v. Russia*) (14 pages).

12. Decision of the Grozny Garrison Court of 31 May 2010 (case *Khadisov and Tsechoyev v. Russia*) (2 pages).

13. Cassation complaint of 10 June 2010 (case *Khadisov and Tsechoyev v. Russia*) (3 pages).

14. Objections of the Military Prosecutor of Military Unit no. 20102 of 19 June 2010 (case *Khadisov and Tsechoyev v. Russia*) (1 page).

15. Decision of the Cassation court of 22 July 2010 (case *Khadisov and Tsechoyev v. Russia*) (2 pages).

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[79] See para 52 of the Court's judgment.
[80] See para 61 of the Court's judgment.
[81] See paras 21, 66 of the Court's judgment.

16. Motion requesting access to the case files (case *Rasayev and Chankayeva v. Russia*) (3 pages).

17. Motion requesting investigative steps (case *Rasayev and Chankayeva v. Russia*) (5 pages).

18. Letter from the Special Investigating Unit within the Directorate of the Investigative Committee of the Chechen Republic to the Military Investigating Department of the NCMD and UGA of 12 July 2010 (case *Rasayev and Chankayeva v. Russia*).

19. Decision of the head of the Military Investigating Department of the NCMD and UGA of 19 July 2010 (case *Rasayev and Chankayeva v. Russia*).

20. Article 125 complaint of 15 June 2010 (case *Rasayev and Chankayeva v. Russia*) (6 pages).

21. Decision to re-open investigation into the applicant's case of the Military Investigating Department of the NCMD and UGA of 21 July 2010 (case *Rasayev and Chankayeva v. Russia*) (2 pages).

22. Decision of the Grozny Garrison Court of 29 July 2010 (case *Rasayev and Chankayeva v. Russia*) (5 pages).

23. Information provided by the administration of the Chechen-Aul settlement of 10 August 2010 confirming that Mr. Amhadov Vakha Imranovich died on 30 April 2010 (case *Rasayev and Chankayeva v. Russia*) (1 page).

24. Information provided by the administration of Chechen-Aul settlement of 10 August 2010 confirming that Yakubov Khamid died on 5 July 2010 (case *Rasayev and Chankayeva v. Russia*) (1 page).

25. Letter from the Military Investigating Department of the NCMD and UGA of 19 August 2010 (case *Rasayev and Chankayeva v. Russia*) (2 pages).

26. Motion requesting access to the case files (case *Isigova and Others v. Russia*) (3 pages).

27. Motion requesting investigative steps (case *Isigova and Others v. Russia*) (7 pages).

28. Letter from the Directorate of the Investigating Committee in the Chechen Republic of 17 May 2010 (case *Isigova and Others v. Russia*) (1 page).

29. Article 125 complaint of 6 May 2010 (case *Isigova and Others v. Russia*) (7 pages).

30. Letter from the Grozny Garrison Court of 14 May 2010 (case *Isigova and Others v. Russia*) (1 page).

31. Motion requesting access to the case files of 8 June 2010 (case *Isigova and Others v. Russia*) (1 page).

32. Complaint (частная жалоба) to a higher court against the presiding judge of 15 July 2010 (case *Isigova and Others v. Russia*) (2 pages).

33. Annex: Article 125 (3) of Russian CCP (1 page).

34. Letter from the Grozny Garrison Court to the Investigating Committee of the Russian Federation of 7 July 2010 (case *Isigova and Others v. Russia*) (1 page).

35. The court record of 20 July 2010 (case *Isigova and Others v. Russia*) (3 pages).

36. Decision of the Grozny Garrison Court of 20 July 2010 (case *Isigova and Others v. Russia*) (1 page).