18 April 2013

Ms Anna Stepanova
Department for the Execution of Judgments
Secretariat of the Council of Europe
Strasbourg, France

By email to Anna.STEPANOVA@coe.int
Copy to follow by courier

Dear Ms. Stepanova,

Please find attached a submission made under Rule 9 of the Committee's Rules on behalf of Russian Justice Initiative and the Center of Assistance to International Protection concerning the execution of *general measures* in the *Khashiyev* group.

Thank you for your attention.

Sincerely yours,

Vanessa Kogan
Executive Director, Russian Justice Initiative (Utrecht, The Netherlands)
Director, Legal Assistance Organization Astreya (Moscow)

Karinna Moslakenko
Director
Center for the Assistance to International Protection (Strasbourg)

SUBMISSION FROM NGOS RUSSIAN JUSTICE INITIATIVE AND THE CENTRE OF ASSISTANCE TO INTERNATIONAL PROTECTION

TO THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE CONCERNING THE FUNCTIONING OF ARTICLE 125 OF THE RUSSIAN CODE OF CRIMINAL PROCEDURE IN IMPLEMENTATION OF JUDGMENTS FROM THE *KHASHIYEV AND AKAYEVA* GROUP

18 April 2013

Introduction

1. The present submission is made under Rule 9 (2) of the Committee of Ministers Rules by the following non-governmental organizations: Russian Justice Initiative, the European Human Rights Advocacy Centre, The Centre for International Protection and the Memorial Human Rights Centre (hereinafter, "the signatory NGOs"). We intend this submission to be considered in the context of *general measures* relevant for the execution by the Russian Federation of cases from the North Caucasus (the *Khashiyev* group). Namely, this submission addresses the ineffectiveness of the judicial review mechanism provided by **Article 125 of the Code of Criminal Procedure** (hereinafter the "Article 125 CCP procedure").

2. Although this submission concerns general measures, the content of applicants' submissions in specific cases is discussed in detail, given that the submissions address many of the crucial issues identified by the Committee during its monitoring of execution of the *Khashiyev* group cases—such as victims' access to case materials and individual accountability. **The satisfactory resolution of these issues depends in part on the successful functioning of the Article 125 CCP complaint procedure, since it is the only domestic judicial review mechanism available in the vast majority of *Khashiyev* group cases to address investigative shortcomings identified by the European Court.**

3. Since 2010, *Khashiyev* group applicants have attempted to make use of the Art. 125 CCP procedure following the entry into force of the ECtHR judgment in **at least six cases**.[1] For its part, the Russian Government has cited the Article 125 CCP procedure as a remedy to address procedural violations of Articles 2 and 3 of the European Convention on Human Rights (the Convention) established by the Court.[2] The latest Information Document issued by the Secretariat concerning the *Khashiyev and Akayeva* group of 27 May 2010 states that the "ultimate purpose of the remedy provided by Article 125 CCP should be to rectify the shortcomings of domestic investigations" and solicits information on the results of the application of the remedy following the guidance issued by the Russian Supreme Court on the subject of Article 125 CCP.[3]

4. Here we present the results of applicants' attempts to make use of Article 125 CCP with the aim of obtaining access to case materials or challenging investigative shortcomings in three cases concerning disappearances and killings. Aside from revealing a range of substantive obstacles to implementation

[1] On 3 November 2010, Russian Justice Initiative, one of the signatory NGOs, reported to the Committee on the results of applicants' submissions in three cases in the context of individual measures. In this submission it was argued that the Article 125 CCP procedure could not adequately address investigative shortcomings in cases from the North Caucasus examined by the European Court, in particular, the repeated re-opening and suspension of investigations without any concrete progress being achieved. See *Communication from the representatives of the applicants in 3 cases of the Khashiyev group against the Russian Federation*, DH - DD(2010)587E, 1100th DH meeting (December 2010), pages 6-7.

[2] CM/Inf/DH(2010)26, 27 May 2010, paras. 57-63. See also speech of Mr. Georgy Matyuskin's of 11 September 2009 dedicated to execution of ECtHR judgments in cases concerning actions of security forces in North Caucuses, on page 6 (in Russian).

[3] CM/Inf/DH(2010)26, 27 May 2010., paras. 69-71. The Secretariat's assessment of Article 125 as a whole is provided in paras. 64-75.

of the Court's judgments, the results demonstrate that the Article 125 CCP procedure *itself* remains inadequate for two main reasons:

i. The dynamic between the investigative and judicial authorities fundamentally damages the capacity of the courts to respond objectively and independently to complaints about the lawfulness of decisions taken by the investigative authorities.

ii. There is a lack of knowledge and consensus among judges at the local about whether the mechanisms available for implementing the Chechen judgments and how they should function.

5. **Section A** presents a brief *factual background* to the cases discussed in the present submission. In **Section B** the applicants present an overview and evaluation of the *results* of their submissions under Article 125 CCP. **Section C** gives an overview of the *content* of the applicants' submissions under Article 125 CCP, and the specific responses of the local courts to their complaints. In **Section D** the applicants draw the Committee's attention to the wider implications of the ineffectiveness of the Article 125 CCP procedure and recommend measures the Russian authorities should undertake to improve the situation.

A. Factual Background to Cases discussed

6. This submission refers to the results obtained in post-judgment Article 125 CCP submissions in the following cases:

(i) *Akhmadov and Others v. Russia* (no. 21586/02), judgment of 14 November 2008, final on 6 July 2009 (violations of Arts. 2, 3, and 13 ECHR)

7. On 27 October 2001 the applicants' relatives were driving to the village of Komosomolskoe to deliver a harvest when their car was fired upon by a military helicopter and then attacked from the ground by machine gun fire. The victims' bodies were removed to Khankala and subsequently were mutilated by explosion. Civilian investigators established the identity of the servicemen, including the head of the division, Captain S., who were involved in the operation. In May and July 2005, and again in July 2011, criminal proceedings against Captain S. were terminated on charges of kidnapping, causing death by negligence and abuse of dead bodies on the grounds of an absence of the constituent elements of a crime. Additional charges of abuse of power were also terminated due to the application of the 2003 amnesty legislation. Subsequently, following the entry into force of the ECtHR judgment, charges of abuse of power were dropped due to the application of a statutory limitation period.

(ii) *Khaydayeva and Others v. Russia* (no. 1848/04), judgment of 5 February 2009, final on 14 September 2009 (violations of Articles 2, 3, 5 and 13 ECHR)

8. On 9 June 2002 Suliman Malikov, Adlan Khatuyev, Aslam Khatuyev, Sayd-Salu Akhmatov and Mansur Ismailov were stopped at a checkpoint manned by federal forces in Duba-Yurt, Chechnya. The men were detained and placed in a truck escorted by an armoured personnel carrier, and were never seen again. Several eyewitnesses, including two members of the special police forces employed at the checkpoint, subsequently stated to investigators that soldiers belonging to unit no. 6779 of Interior Ministry troops had detained the men. For several years the authorities denied that they had ever arrested the five men. In October 2007 the Russian government informed the Court that it had detained the five men on 9 June 2002 but they had been released on 10 June 2002. However, it failed to produce any documents showing that the men were released.

(iii) *Luluyev and Others v. Russia* (69480/01), judgment of 9 November 2006, final on 9 February 2007 (Violations of Arts. 2, 3, 5 and 13 ECHR).

9. On 3 June 2000, armed masked men on an armoured personnel carrier detained Nura Luluyeva, her cousins and several other people at the Northern market in Grozny, where they had been selling

strawberries. In March 2001, Luluyeva's body and those of her cousins were discovered among those retrieved from a mass grave in Zdorovye village, outside Grozny. No full forensic examination was conducted on the body, and physical evidence, including clothing and blindfolds, was not saved as material evidence.[4] In 2012 Human Rights Centre Memorial issued the publication *Fate Unknown: Residents of the Chechen Republic arrested by federal law enforcement agencies in the course of the armed conflict, and the missing or dead,* paragraphs 26-64 of which contain comprehensive statements and evidence on crimes committed in Zdorovye village in 1999 and 2000.[5]

10. RJI has already reported to the Committee of Ministers on its post-judgment correspondence with the authorities in all three cases.[6] However, this is our first report on the attempt to improve the effectiveness of the investigations in the applicants' cases through recourse to Article 125 CCP.

B. Summary of the Aims and Results of the Applicants' submissions under Art. 125 CCP

11. The applicants in the above cases made use of the Article 125 CCP procedure between April and November 2012 in two main contexts:

    (i) In *Khaydayeva* and *Luluyev,* to challenge **denial of access to the case files** and various aspects of decisions taken to **classify** all or part of the case files;

    (ii) In *Akhmadov,* to **challenge a specific decision** taken by the investigative authorities—to terminate criminal proceedings against an identified perpetrator—which the applicant considered unjustified, based on the information contained in the case files already in his possession.

12. The potential of the Article 125 CCP mechanism to address the applicants' complaints was fundamentally undermined by the following dynamics.

I. Local courts continue to dismiss applicants' complaints on procedural grounds, avoiding an examination on the merits.

13. This dynamic was present in all three cases, but had its most troubling manifestation in the *Khaydayeva* and *Akhmadov* complaints.

14. In these two cases, the local court exhibited a pattern that has been observed by the signatory NGOs since 2010 and described extensively in the submission to the Committee of 3 November 2010.[7] It 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 discontinues further examination of the complaint. In *Khaydayeva,* the first instance court dismissed the applicant's complaint on the grounds that on the same day as the court received the case for re-examination on appeal, the investigative authorities had overturned the decision being appealed against. In *Akhmadov,* the court also dismissed the applicant's complaint on the ground that on the same day as the lodging of the judicial appeal, the investigative authorities quashed the decision being complained against. In the latter case it is also essential to note that several days after the applicant's judicial complaint was dismissed, the investigative authorities issued **a new decision to discontinue criminal proceedings against the alleged perpetrator for the same reasons cited by the applicant in his complaint before the court.**

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[4] See also *Magomed Musayev and Others v. Russia*, judgment of 23 October 2008.
[5] Available at: www.memo.ru/2012/02/27/kvi.pdf .
[6] Regarding *Khaydayeva*, see RJI's communication of 17 May 2012 (DH - DD(2012)524, 1144th DH meeting (June 2012). Regarding *Akhmadov* see RJI's communications of 25 August 2010 (on 29 cases) and of 29 November 2011 (on statute of limitation - DH - DD(2011)1144, 1136th DH meeting (March 2012). Regarding *Luluyev* see RJI's communication of 4 May 2009.
[7] *Supra* note 1, at paras. 5, 52-62.

15. This pattern is facilitated by the prevailing interpretation by local courts of **Paragraph 8 of the Plenum of the Supreme Court of the Russian Federation** on the application of Article 125 CCP (the **Plenum Ruling**). Although applicants have contested this interpretation in several cases—emphasising the practical results it has produced—the interpretation of the Plenum given by the local court was upheld by the district court in 2010[8] and in November 2012 (see below para. 27).

II. There is a lack of clarity on the part of judges about whether the Art. 125 CCP procedure is the appropriate one to pursue to implement ECtHR decisions, and if so, how it should operate in practice to address shortcomings established by the ECtHR.

16. The *Khaydayeva* case is one of the few cases that, over the course of two years, has been heard on the merits in the context of the Article 125 CCP procedure by the Grozny Garrison Court and, on appeal, by the North Caucasus District Military Court.

17. The local court's decisions, in particular, highlight the lack of clarity concerning the role and function of the Art. 125 CCP procedure in facilitating implementation of ECtHR judgments. In two decisions from April 2011 and August 2012, the local court stated that ECtHR judgments have "direct effect" in Russia and that their implementation was mandatory for the State; the local court deduced from this that there was no need to "reproduce" the ECtHR judgment in the local court's decision or to instruct the investigative authorities. However, this *prima facie* progressive statement about the "direct effect" of ECtHR judgments has, in reality, been used as an argument to **evade due examination** of the applicant's criticisms of the investigation vis-à-vis the ECtHR judgment. Moreover, in its decision of August 2012, the local court states that Article 125 CCP *is not an appropriate mechanism to facilitate implementation of the court's judgments*, without elaborating on this claim in any way. After the district court sent the applicant's case back for re-examination to the first instance court in January 2013 with instructions to thoroughly examine the applicant's complaints and correct the errors in the judgment of August 2012, the local court instead discontinued examination of the applicant's complaint when the investigative authorities quashed the decision at the heart of the applicant's appeal. This action amounted to disregarding the instructions of the higher court.

C. Summary of content of the applicants' submissions under Article 125 CCP and the courts' response

18. In *Khaydayeva* and *Akhmadov,* the Article 125 CCP complaints were heard at first instance by the **Grozny Garrison Court** (military jurisdiction). The complaint in *Luluyev* was heard by the Staropromyslovsky district court (civilian jurisdiction). Appeals against decisions at first instance in *Khaydayeva* and *Akhmadov* were heard by the **North Caucasus District Military Court** in Rostov-on-Don, Stavropol region.

(i) *Akhmadov and Others v. Russia*

19. On 10 May 2012 the applicant's counsel filed a motion to the investigative authorities requesting rectification of omissions and lapses in the investigation which had been revealed by the case materials, and requested that a decision of 7 July 2011 terminating the criminal case against Captain S. be overturned.[9]

20. On 14 May 2012 the applicant's complaint was dismissed on the grounds that the decision of 7 July 2011 had terminated the investigation of the applicant's case as well as the criminal prosecution against Captain S. The investigator also informed the applicant that the decision of 7 July 2011 had been recognized by the Military Prosecutor's Office as "legal and reasonable."[10]

[8] See submission of 3 November 2010, *supra* n. 1, paras. 30, 31, 32, 36.
[9] Attachment 1
[10] Attachment 2.

21. On 6 July 2012 the applicant's counsel submitted a complaint under Article 125 CCP to the Grozny Garrison Court (GGC) against the decision to terminate the criminal investigation of 7 July 2011.[11]

22. Specifically, counsel disputed the decision of the investigator to qualify the most serious criminal charge against Captain S. as **causing death during pursuit,**[12] when evidence contained in the case materials pointed to the **crime of murder with intent**, given the circumstances of the case. In particular, the force used by Captain S. and the unit under his command had been grossly **disproportionate** to the threat posed by the victims of the attack. Counsel also disputed termination of the investigation on charges of **kidnapping and abuse of power** in relation to the removal of the applicants' relatives' bodies and their subsequent mutilation by explosion.

23. Counsel drew extensively on information in the case materials in order to support the following arguments against termination of the investigation:

- The instructions given to Captain S. before the operation of 27 October 2001 were to locate and arrest, or, if arrest was impossible, to eliminate Aslan Maskhadov, then-leader of the Chechen separatist movement. Maskhadov was allegedly travelling in a "Niva" model car, but the unit was not provided with any further details to identify the vehicle (i.e. the colour, license plate number, etc.). thus placing any potential drivers of a "Niva" model—an extremely common car model in Chechnya—in grave danger. In this context, the unit's attack on the applicants' relatives' car infringed several regulations concerning the conduct of patrols.

- The attack on the victims' car took place from behind, giving the unit a distinct visual advantage;

- Witness statements from the commander as well as other members of the unit indicated that throughout the operation, none of the victims showed any signs of resistance towards the unit, either during the chase or during the actual attack;

- The assertion by investigators that the weapons allegedly found in the boot of the victims' car posed a threat to the unit was unsupported by evidence that the weapon in the boot of the car (an F1 grenade) was covered by a large amount of turnips that had just been harvested;

- According to witness statements from members of the unit, the victims at no point moved inside or outside of the car;

- After firing on the victims' car, there was a chance that the victims were still alive. However, no members of the unit provided any medical attention (Russian military servicemen are provided with compulsory medical training) or even checked whether the victims were alive, even after the victims were brought to *Khankala* military base. The lack of conclusive evidence as to whether the victims were actually killed in the attack sufficed to continue the investigation on the charge of kidnapping;

- Shortly after the removal of their bodies to Khankala, according to witness statements contained in the case materials, the captain attempted to hide the bodies by transporting them to a mountainous and deserted region of Chechnya and exploding the remains;

- On 12 December 2006 a military forensic expert report was conducted which examined the legitimacy of the unit captain's order to open fire on the victims' car. The test found that the order had been justified. In coming to the conclusion that the unit captain's actions did not constitute a crime, investigators relied mainly on the findings of this report. However, in 2007, the supervising

[11] Attachment 3.

[12] Article 108 (2) of the Russian Criminal Code is "causing death by use of force while in pursuit of persons suspected of committing a crime."

prosecutor found that the test had been carried out with several deficiencies and ordered that a new test be conducted. According to the case file, the investigative authorities have never complied with the order to conduct a new military forensic report.

24. On 13 August 2012, the local court discontinued examination of the Article 125 CCP complaint on the grounds that on the same day of the submission of the applicant's complaint, the supervising investigator had overturned the decision of 7 July 2011.[13]

25. On 16 August 2012, several days after the investigative authorities overturned the decision of 7 July 2011 and the court had dismissed the applicant's complaint under Article 125 CCP, **a new decision was taken by the investigative authorities to discontinue criminal proceedings against Captain S. <u>for the same reasons</u> (absence of the elements of a crime, and a limitation period).**[14]

26. On 23 August 2012 counsel for the applicant lodged a cassation complaint with the North Caucasus District Military Court against the decision of the Grozny Garrison Court.[15] In his appeal the applicant made the following main arguments:

- The tactic employed by the investigative authorities (to immediately overturn the decision complained against) and the interpretation by the first instance court of paragraph 8 of the Plenum Ruling had unjustifiably left the merits of the applicant's complaint unexamined. The applicant's complaint contained a detailed examination of the case files and addressed problems in the investigation that went beyond the scope of the decision of 7 July 2011 to terminate the criminal case. Therefore the first instance court had not been justified in dismissing the applicant's complaint solely on the grounds that the decision of 7 July 2011 had been quashed;

- In the context of the obligation of the Russian Federation to comply with the final judgment of the European Court and to conduct an effective investigation, the applicant referred to the statement made in November 2009 by the Representative of the Russian Federation to the ECtHR, Mr Georgy Matushkin, in which Mr Matushkin describes the Article 125 CCP mechanism as an effective tool to implement ECtHR judgments from Chechnya;[16]

- The applicant also referred to the Interim Resolution of the Committee of Ministers of 2 December 2011 in which the deputies expressed their concern that in none of the then 154 *Khashiyev* group cases have the authorities held perpetrators to account.[17]

27. On 18 October 2012 the district court upheld the decision at first instance. In particular, the appeal court found that the interpretation of Paragraph 8 of the Plenum Ruling given by the local court was lawful and well-founded.[18]

(ii) *Khaydayeva and Others v. Russia*

28. The applicant's submissions in this case between November 2010 and May 2012, including one complaint submitted under Art. 125 CCP, are described in Russian Justice Initiative's submission to the Committee of 18 May 2012.[19] While the applicant's first complaint under Art. 125 CCP obliged

[13] Attachment 4.
[14] Attachment 5.
[15] Attachment 6.
[16] Attachment 7: Mr. Matyuskin's speech of 11 September 2009 dedicated to execution of ECtHR judgments in the cases concerning actions of security forces in North Caucuses, on page 6 (in Russian).
[17] Interim resolution of the CoM of 2 December 2011 (CM/ResDH(2011)292.
[18] Attachment 8.
[19] *Supra* note 6, at paras 44-50.

the investigative authorities to properly respond to her request for access to the case file, she was subsequently informed that the case files **had been classified as "absolutely secret"** and thus denied access to all of the materials.

29. On 9 July 2012 counsel for the applicant appealed against the classification of the case files as "absolutely secret" under Article 125 CCP to the Grozny Garrison Court (GGC), arguing that in accordance with the Law on State Secrets, information concerning human rights violations and crimes committed by state officials could not be classified. The applicant also appealed the quality of the information provided by the investigators in response to her questions concerning the investigation, which in her view were cursory and moreover provided no information not already contained in the ECtHR judgment.[20]

30. On 3 August 2012 the court issued a decision which satisfied the applicant's complaint[21] in the part concerning the provision of more substantive information to the applicant's questions on the conduct of the investigation.

31. In refusing to satisfy the applicant's other requests, the GGC made a number of unorthodox conclusions, such as:

- The court stated that it could not order the investigating authorities to comply with the ECtHR judgment, citing the previous judgment of the GGC of 20 April 2011in the same case (see submission of 17 May 2012 at para. 45), which found that ECtHR judgments had "direct effect" in Russia and therefore there was no need for domestic courts to duplicate in their decisions the findings of the ECtHR judgment.

- When the investigative authorities failed to implement a judgment of the ECtHR, the applicant should seek a different means of appealing against the failure to implement the judgment. However, the court did not specify any other means supposedly available to the applicant for implementing the decision of the ECtHR.

- On the issue of classification of case materials, the judge found that nothing in the case materials attested to their official classification as secret. However, the judge stated that he himself had evaluated the case materials and declared them to contain state secrets.

32. On 25 August 2012 counsel for the applicant appealed the decision to the North Caucasus District Military Court[22] citing the following arguments:

- Despite the first instance court's statements that ECtHR judgments have direct effect in Russia and must be implemented by the state, on the practical level the court evades engagement with the applicant's arguments concerning the shortcomings of the investigation vis-à-vis the ECtHR judgment.

- The first instance court states that the Article 125 CCP procedure is not the appropriate procedure to pursue to implement a judgment by the ECtHR. Such an interpretation was at odds with the public position articulated by the Representative of the Russian Federation before the European Court, who stated that the Article 125 CCP mechanism should effectively address investigative shortcomings.

- The judge at first instance did not have the right to determine that the case materials should be classified as secret based on his own evaluation. According to the Law on State Secrets, such an

[20] Attachment 9.
[21] Attachment 10.
[22] Attachment 11.

evaluation may only be made by a special commission. The judge stated in the decision that nothing in the case materials attested to a classification of "absolutely secret." Thus there was no evident reason not to grant the applicant access to the case materials.

- Given the lack of consensus regarding the means by which the state should discharge its obligation to implement the ECtHR judgment, the applicant requested the district court to initiate a request to the Russian Constitutional Court under the procedure provided in Chapter 13 of the Law on the Constitutional Court.

33. On 15 November 2012 the district court **satisfied the applicant's complaint in full**—with the exception of sending the request to the Constitutional Court—and sent the case back for a re-examination to the first instance court by a different judge.[23] With regard to the question of access to the case materials and the victim's right to be informed of the progress of the investigation, the court stated the following:

    - Article 24 (2) of the Russian Constitution ensured the right to get acquainted with materials directly affecting an applicant's rights and freedoms and Article 21(1) of the Law on State Secrets ensured the right of lawyers to access classified case materials—guarantees which the first instance court had not taken into account. The court noted that the applicant in the case had been granted victim status and thus had a right to access the case materials.

    - The judge's determination that the case materials contained state secrets was ill founded.

34. The district court left unaddressed the issue of the interpretation of the role of Article 125 CCP in the implementation of ECtHR judgments.

35. Finally, the district court instructed the first instance court that upon re-examination of the case, the court ***should thoroughly check the arguments*** of the applicant and issue a decision in compliance with the requirements of Article 125 CCP.

36. In January 2013 the case was sent back to the first instance court for re-examination. On 14 January 2013 the court discontinued examination of the case on the grounds that on that same day, a supervising investigator had overturned the decision of 14 May 2012 against which the applicant had lodged her complaint. The court did not evaluate the applicant's complaints as instructed by the district court.[24]

37. On 24 January 2013 counsel for the Applicant lodged an appeal with the district court against the decision of 14 January 2012[25] to North Caucasus District Military Court, arguing that the local court's dismissal of the applicant's complaint on the grounds of Para. 8 of the Plenum Ruling had left the decision of the higher court enforced. The district court upheld the decision of the first instance court to dismiss the applicant's appeal on 14 March 2013.[26]

(iii) *Luluyev and Others v. Russia*

38. On 25 May 2012 counsel for the applicant submitted a motion to the investigative authorities in which she requested that a series of investigative measures be undertaken and access to the case materials granted.[27]

[23] Attachment 12.
[24] Attachment 13.
[25] Attachment 14.
[26] Attachment 15.
[27] Attachment 16.

39. On 22 June 2012 the investigating unit informed counsel that the case files contained the personal data of employees of the Ministry of Internal Affairs who had taken part in counter-terrorist or special operations, as well as information on the methods and tactics of operational activities. Therefore counsel would have to complete an extensive security check, which if passed successfully would allow her to access the case materials. The proposed security check would have required that counsel fill out an application form, as well provide her passport, labour book, marriage certificate, birth certificate, diploma, and a special "certificate" issued by a psychiatrist confirming that counsel was not suffering from any organic mental disorders, schizophrenia, mood disorders, habit and impulse disorders, mental deficiencies, drug-induced mental illness or behavioural disorders, or epilepsy.

40. The investigative authorities refused counsel's motion in the part of conducting investigative measures on the ground that the authorities had already undertaken "comprehensive measures" aimed at establishing the location of the APC with hull number 110 which was used during the special operation of 3 June 2000 and at establishing the identity of the members of Special Forces who took part in the operation.[28]

41. Counsel for the applicant lodged a complaint against this decision under Article 125 to the Staropromyslovsky district court of Grozny,[29] relying on the following main arguments:

- The proposed security check, aside from being excessive and not in accordance with the law, should not be required in order to allow the applicant access to a part of the case materials, since it followed from the investigator's decision that only some of the documents had been classified as secret.

- Article 7 of the Law on State Secrets prohibits classification of information concerning human rights violations and crimes committed by state officials.

- Article 21(1) of the Law on State Secrets stipulates that counsel involved in a criminal case in which materials have been classified as state secrets are exempt from security checks when accessing those materials.

- The Constitutional Court Ruling of 27 March 1996 (N 8 - П) on the verification of the constitutionality of Articles 1 and 21 of the Law on State Secrets reaffirms the right of counsel to access to classified case materials. The ECtHR judgment in *Luluyev v Russia* established that the applicants were not fully informed on the progress of the investigation, despite being afforded victim status.

- The investigative authorities should append to the case materials the publication of Human Rights Centre Memorial, *Fate Unknown: Residents of the Chechen Republic arrested by federal law enforcement agencies in the course of the armed conflict, and the missing or dead. Fall 1999-2000,* paragraphs 26 – 64 of which contain comprehensive statements and evidence on atrocities committed in Zdorovye village, outside Grozny in 1999 and 2000.

42. On 31 October 2012 the Staropromyslovsky district court of Grozny refused to examine the complaint on the merits on the grounds that the crime under investigation had been committed outside of the court's jurisdiction.[30]

43. Counsel for the applicant is currently preparing a new complaint to the same court contesting the grounds for refusing to examine the complaint. Article 125 CCP stipulates that decisions of the

[28] Attachment 17.
[29] Attachment 18.
[30] Attachment 19.

investigative authorities may be appealed to the district court of the **jurisdiction in which the preliminary investigation is being conducted.**[31]

D. Applicants' concluding observations on the effectiveness of Article 125 CCP in their cases and recommendations

44. The signatory NGOs reiterate that none of the applicants in the three cases discussed above obtained any substantive outcome through recourse to the Article 125 CCP procedure in the areas of obtaining access to case materials, challenging the legal basis for classifying case materials, or challenging the effectiveness of the investigation. **This outcome is especially surprising given that in the *Khaydayeva* case, the district court at one point satisfied the applicant's complaint on appeal.**

45. Not all of the problems cited above stem directly from deficiencies in the operation of the Article 125 CCP procedure, but rather concern broader substantive issues (i.e. allowing access to classified materials) or arise from errors that may be rectified via appeal (i.e. the procedure for determining the status of case materials). Nonetheless, the trends observed by the applicants in their attempts to make use of the Article 125 CCP procedure post-judgment lead to the conclusion that the **remedy itself has a limited potential to increase effectiveness of investigations.** The signatory NGOs submit that the current situation is untenable, given that over 160 judgments have entered into force concerning procedural violations of the obligation to investigate torture, killings and disappearances in Chechnya and Ingushetia, and the Article 125 CCP procedure appears to be the only mechanism available to applicants who wish to bring judicial scrutiny to bear on the conduct of investigations in their cases.

46. The signatory NGOs submit that the Russian Government should ensure the effective functioning of the remedy provided under Article 125 CCP and put forth the following recommendations in this regard:

- As a priority, **further guidance should be issued regarding the interpretation of paragraph 8 of the Plenum Ruling on Article 125 CCP**, given that the current interpretation often completely prevents applicants from obtaining judicial scrutiny over investigations. More specifically, the courts must not dismiss complaints on the basis that the investigative authorities have overturned the decision at the heart of the applicant's complaint, which as experience shows, usually has no bearing on the effectiveness of the investigation.

- Local judges, and particularly those whose jurisdiction extends over investigations currently being conducted in *Khashiyev* group cases, must be made aware of the **overall investigative dynamics inherent** in these cases and be instructed as to their role in providing proper oversight and scrutiny.

- Local courts, particularly those whose jurisdiction extends to supervision over investigations in *Khashiyev* group cases must take a **proactive stance** in interpreting the role of the Article 125 CCP procedure as a mechanism of judicial supervision and should critically examine the actions of the investigative authorities vis-à-vis violations established by the ECtHR and by domestic investigators, as well as arguments presented by the applicants based on information contained in the case materials.

[31] Art. 125(1) of the Code of Criminal Procedure.