



STICHTING
RUSSIAN JUSTICE INITIATIVE

Правовая инициатива

REPLY

**TO THE RUSSIAN GOVERNMENT'S SUBMISSION OF 25
FEBRUARY 2011 REGARDING THE EXECUTION OF THE
JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS
FROM THE NORTH CAUCASUS**

19 MAY 2011

1. On 25 February 2011 the Russian authorities lodged with the Committee a submission on individual measures in the “Chechen cases” (*Khashiyev and Akayev* group). Several cases of the Russian Justice Initiative (RJI) are mentioned in the Government’s submission, such as: *Akhmadova and Others v. Russia* (3026/03), referred to in our submission of 26 May 2010; *Rasayev and Chankayeva v. Russia* (380003/03), mentioned in our submission of 3 November 2010; and *Akhiyadova v. Russia* (32059/02), on which RJI has not recently reported to the Committee. The present submission is made in the context of commentary on *general measures*, given that the Russian Government’s submission was also made in this context; however, commentary is also provided on the above-mentioned cases in which RJI continues to act as representative for the applicants.
2. RJI is a Dutch non-governmental organization based in Russia which, as of 1 May 2011 was representing Applicants in 102 out of almost 170 cases decided to date concerning grave violations of the European Convention on Human Rights (the Convention) in the North Caucasus (NC).
3. The present submission aims to draw the Committee’s attention to the overall lack of substantive information provided by the Government regarding the progress of investigations in these cases in general, and to dispute the accuracy of certain information provided on specific cases. Each of the following sections below presents commentary on a specific aspect of the Government’s submission and includes questions which RJI believes should be brought to the immediate attention of the Russian delegation, for close follow-up by the Committee.

On the overall effectiveness of domestic investigations

4. The Government’s submission makes several blanket statements, unsupported by specific evidence, intended to demonstrate the increased effectiveness of investigations on the domestic level post-ECtHR judgment. We find many of these statements misleading, given that almost all of the information received to date on progress in a significant number of *specific cases* contradicts these statements. An example is addressed below.
5. The Government claims that in cases in which the ECtHR criticized the failure of the Russian investigative authorities to question state officials who were participants or witnesses to the violations examined by the ECtHR, that: “[...] the investigation authorities have interrogated the relevant officials.”¹

¹ See “Information concerning measures taken by the authorities of the Russian Federation in the course of execution of the European Court of Human Rights judgments regarding issues of violation of human rights during the crisis in the Chechen Republic”, available at:
<https://wcd.coe.int/wcd/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1802959&SecMode=>

6. In our experience representing applicants from the North Caucasus whose cases have become final, we have never been informed about the interrogation of any officials purportedly responsible for the violations committed against the applicants or their relatives since a judgment has become final.
7. Rather, our experience points to the consistent failure of the investigating authorities to recognize involvement of military and security officials in crimes even in those cases in which such involvement is supported by very strong evidence collected by the domestic investigation or the applicants, and cited by the ECtHR.² In this connection we refer to the authorities' statement in their current submission that:

“... in the course of the criminal proceedings under cases which were subject of consideration by the European Court in connection with violations of human rights in the Chechen Republic, *no evidence giving grounds for charging top officers of the military, law enforcement bodies and security agencies with criminal liability had been obtained* (emphasis added).”³

8. We note with dismay that this statement amounts to continuing official denial of alleged crimes committed by members of military and security personnel of various ranks in the NC, whose identities in some cases have been clearly established by the domestic investigation and cited in turn by the ECtHR. At the same time, this statement is not surprising given that the investigative authorities routinely suspend cases on grounds of a failure to identify the perpetrators even in cases where the identity of the perpetrators is known or could easily be established. We have reported extensively on this problem to the Committee in previous submissions.⁴
9. In regard to both of the above assertions by the Government, RJI refers once again to several cases on which it has reported separately to the Committee on [25 May 2010](#) and on [3 November 2010](#) in which the ECtHR as well as the domestic investigation established the involvement of specific military servicemen or their units in the commission of crimes against the applicants or their relatives. These cases include:

- *Bazorkina v Russia* (69481/01), in which Colonel-General Baranov was identified as the official who ordered the execution of the applicant's son.
- *Estamirov and Others v. Russia* (60272/00), in which it was established that the killings of the applicants' family members were committed by servicemen from the special task forces (OMON) of the Ministry of Interior from St. Petersburg and Ryazan.
- *Isigova and Others v. Russia* (no. 6844/02), in which the domestic investigation identified the commanding officers of the sweep operation during which the victims disappeared: Colonels Berezovsky A.V. and Veger E.N.
- *Akhmadova and Others v. Russia* (no. 3026/03), in which the domestic authorities established that the applicants' relative was delivered shortly before his disappearance to the headquarters of

[1&DocId=1703650&Usage=2](#), on page 2 (bottom), last accessed on 6 April 2011 (hereinafter referred to as “Government's Submission”).

² RJI's submission of 26 May 2010 (available at:

<https://wcd.coe.int/wcd/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1619821&SecMode=1&DocId=1582768&Usage=2>, last accessed on 4 April 2011).

³ Government's Submission, page 3.

⁴ See Submission of 26 May 2010, *supra n. 2*, and of 3 November 2010, available on:

<https://wcd.coe.int/wcd/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1735462&SecMode=1&DocId=1659198&Usage=2>, esp. at paras. 9, 28, 38, 60, 78-81

the 51-st airborne regiment in the village of Khatuni and there transferred to the field subdivision of the FSB (Federal Security Service) based at the same camp.

- *Khadisov and Tsechoyev v. Russia (21519/02)*, in which the domestic investigation established the precise chain of custody of the applicants before their transfer to Khankala military base, where they were tortured for five days. Specifically, Mr. Isachenko, an Interior Ministry official stated in the course of the investigation that on orders from his commander Mr. Zolotunin he transferred the applicants into federal custody and received a written confirmation of the transfer from Lieutenant Colonel Ivaneev.

10. Despite the availability of all the above information, the investigative authorities have failed to indict any suspected perpetrators in the above cases. Furthermore the applicants and their representatives are unaware of any substantial progress made post-judgment in the investigation of these cases. For the most part, it remains unclear whether any of the suspects identified by the domestic investigators have been questioned since the ECtHR judgments became final.

11. In this regard we would also cite the general observations of PACE Rapporteur Mr. Dick Marty of 31 May 2010 that out of the 150 judgments to date in which the ECtHR had found procedural failures, only two had been resolved; in one of these two, the main suspect had died and in the other, the suspect was on the run.⁵

Questions on effectiveness of domestic investigations:

1. *In which cases have military officials been interrogated pursuant to findings by the ECtHR? What was the outcome of these interrogations and were the applicants informed of these actions?*

Regarding General Measures Reported on to the Committee – The “Special Investigative Unit”

12. On page 2 of its submission, the Government refers to “a number of general measures aimed at elimination and prevention of the Convention violations” which have been “favorably received.” Presumably, reference is being made to the creation of two special investigatory units—the Special Investigatory Unit (SIU) and the Unit of Procedural Control No. 2—established under the umbrella of the Investigative Committee of the Russian Federation. While no further mention is made of these particular units in the Government’s submission, we nonetheless urge the Committee to carefully scrutinize the lack of any tangible positive impact on the quality of investigations since the creation of these units.

13. RJI believes that the creation of a special unit devoted to dealing with this category of cases is an appropriate and necessary measure. However, we note with regret that the correspondence we have maintained post-judgment with all investigatory bodies, including the SIU, has in most cases pointed to the lack of any tangible positive impact on the quality of investigations. Indeed we have generally observed that the SIU, as well as the Unit of Procedural Control No.2, appear either powerless to eliminate systemic failures within the domestic investigatory machinery which led the applicants and their relatives to apply to the Court in the first place, or else to simply perpetuate them.⁶ RJI’s most

⁵ “Legal remedies for human rights violations in the North-Caucasus region”, available at: http://www.assembly.coe.int/CommitteeDocs/2010/20100531_caucasus_E.pdf

⁶ See RJI’s communications on behalf of the applicants : (1) of 26 May 2010, *supra* n.2; (2) of 25 August 2010, available on: <https://wcd.coe.int/wcd/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1644958&SecMode=1&DocId=1616786&Usage=2>, and 3 November 2010, *supra* n. 4.

current submission on individual measures in 22 cases of May 2011 makes clear that such problems have not gone away.

14. We would draw the Committee's attention to another vital question regarding the competence and jurisdiction of the SIU to investigate crimes committed by military servicemen, given that in the majority of cases the ECtHR has established the responsibility of state agents often belonging to local, regional or federal military structures. The competence of the SIU to effectively address the military's participation in these crimes should be clarified, given that its jurisdiction to investigate crimes committed by members of the military has never been clearly established. We would also point out in this regard that a significant number of cases decided by the ECtHR are *prima facie* not being investigated by the SIU, but rather appear to have been transferred to various military investigative departments within the Investigative Committee of the Russian Federation.⁷
15. Finally, the work of the SIU should be evaluated keeping in mind its position within the Investigative Committee of the Chechen Republic as a whole. In this context, recent correspondence made public between the Investigative Committee and the Nizhny Novgorod Committee Against Torture (which represents applicants in over 60 cases at the ECtHR) deserves the Committee's attention, as it exemplifies the extent to which the Investigative Committee is in practice unable to effectively carry out investigations due to systematic non-cooperation from the Ministry of Interior and various other governmental agencies. In their joint letter of 20 April 2011 to Russian President Dmitry Medvedev, the Committee Against Torture, Human Rights Watch and Memorial cite the following commentary by the Deputy Prosecutor of the Chechen Republic regarding the work of the Investigative Committee:

“The investigative authorities fail to carry out urgent investigative actions and organize proper cooperation with the operational services in order to solve crimes. In fact, **top-ranking officials of the Investigative Committee have no departmental control over criminal investigations.** No concrete steps are taken to eliminate the violations of law identified by the agencies of the prosecutor's office. **The perpetrators are not held accountable.** There have been cases where crimes linked to the abductions of people were actually concealed by investigators of the Investigative Directorate of the Investigative Committee for the Chechen Republic under the Prosecutor's Office of the Russian Federation... As a result of **delayed initiation of criminal proceedings and inactive and passive nature of investigations**, the perpetrators flee and the whereabouts of the affected [abducted] persons are not established...”⁸

16. We urge the Committee to clarify how these specially-created units ensure inter-agency cooperation during the course of investigations and to request *specific examples* of progress made in *specific cases* examined by the European Court, other than in *Salatkhanovy v Russia* and *Trapeznikova v Russia*, two cases referred to, misleadingly, as examples of positive results in investigating this category of cases.⁹ *Salatkhanovy* is the only case examined by the ECtHR from the NC in which the Court found no Convention violations; the military servicemen responsible for the murder of the applicant's son was sentenced by a domestic court in 2006, long before the implementation of the *Khashiyev* group cases was on the agenda of the Committee. In *Trapeznikova*, the applicant's husband was killed by a private individual, while the majority of the cases at hand concern crimes committed by state agents.

⁷ For instance, according to responses from the investigative authorities, the cases *Bazorkina v. Russia* (69481/01), *Akhmadova and Others v. Russia* (3026/03), *Khadisov and Tsechoyev v. Russia* (21519/02), *Rasayev and Chankayeva v. Russia* (no. 38003/03), *Akhmadov and Others v. Russia* (21586/02), *Khaydayeva and Others v. Russia* (1848/04), *Israilova and Others v. Russia* (4571/04), are being investigated by various military investigative authorities, see RJI's submission of 25 August 2010. Also see the structure of the Investigative Committee of the Russian Federation available at: <http://en.sledcom.ru/organizational-structure/> (in English), last accessed on 4 April 2011.

⁸ See Human Rights Watch, 20 April 2011, “Russia: Joint Letter to President Medvedev Regarding Human Rights Situation in the North Caucasus,” available at: <http://www.hrw.org/en/news/2011/04/20/russia-joint-letter-president-medvedev-regarding-human-rights-situation-north-caucasus> (last accessed 15 May 2011).

⁹ Page 7 of the Government's submission.

Questions on the Special Investigative Unit

1. *By what logic are cases assigned to various investigative units?*
2. *What is the precise competence and jurisdiction of the SIU?*
3. *What measures have been taken to ensure inter-agency cooperation between the SIU, other departments of the Investigative Committee, and other relevant government bodies?*

Regarding difficulties in investigating crimes of the past

17. In the context of the difficulties inherent in conducting investigations into crimes that occurred many years ago, the Russian authorities state the following:

“Given the fact that the substantial period of time has passed since the commission of the alleged offences, the substantial volume of evidence in these cases had been irretrievably lost, therefore, it is impossible to conduct some investigation activities, including expert examinations, crime scenes inspections etc. Nevertheless, the authorities of the Russian Federation take all possible measures to ensure the conduct of effective investigation into the mentioned cases.”¹⁰

18. While there are undeniable and numerous difficulties in investigating crimes of the past, we would note in this context that the lack of progress in investigating this category of cases is in large part due to a proven reluctance on the part of the authorities to pursue evidence of the involvement of military officials. At the same time, the authorities appear capable of investigating crimes of the past in which the main suspects are not state agents. This bias is reflected in the statistics available on the website of the *Investigative Committee of the Russian Federation for the Chechen Republic* concerning investigations into crimes of the past.¹¹ The website contains information on investigations into such crimes for the period from 28 April 2010 to 4 April 2011, which includes reports of three successful investigations of three separate crimes committed between the years 1997 and 2000, two of which were committed by members of illegal armed groups against members of the federal troops¹² and one of which, an armed robbery, was committed by a civilian.¹³

Questions on difficulties investigating crimes of the past:

1. *In which cases of the relevant category have the investigatory authorities concluded that expert examinations can no longer be carried out and why?*
2. *In case certain investigative measures cannot be undertaken given the long passage of time, what other measures are possible in such cases?*

¹⁰ Pages 1-2 of the Government’s submission.

¹¹ See the website of the Investigative Committee of Chechen Republic, at: <http://www.suskchr.ru/index.php/news.html>, last accessed on 5 April 2011. All information provided on the website is available only in Russian.

¹² In the first instance, on 15 March 2010 the Department completed the investigation in the case of a certain Mr. Z.M. (who at the time had already been found guilty of terrorism and was serving his sentence) who was charged with the attempted murder of a former police officer in October 2000 in the city of Grozny. As of 17 March 2010, the information was available on the website of the Investigative Department of Investigative Committee of the Russian Federation for Chechen Republic on: <http://www.suskchr.ru/news.html>. The above address is currently not valid. A copy is on file with RJI. In the second instance, according to information current as of 17 December 2010, the Department was investigating an attack on federal forces which took place in 2000. As result of the investigation, the Department has established the identities of three suspects who allegedly took part in the attack. See “The Department of very special crimes charged two alleged participants of the military clash in the vicinity of the village Ulus –Kert in 2000”, available at <http://www.suskchr.ru/index.php/news/154--2000-.html> , last accessed on 5 April 2011.

¹³ According to information current as of 16 September 2010, the Gudermes Interregional Investigative Department was investigating the case of a 42-year old inhabitant of the village of Nozhay-Yurt who was suspected of armed robbery committed in 1997. See “The Gudermes Interregional Investigative Department Investigated the Crime of Past”, available at: <http://www.suskchr.ru/index.php/news/125-2010-09-16-11-05-00.html> , last accessed on 5 April 2011.

Regarding access to archived materials

19. The Government stated that there had been no refusals to requests made by investigating authorities to government archives in the course of investigating this category of cases.¹⁴
20. This statement is contradicted by information received by applicants post-judgment. For example, according to documents from the domestic case file of *Rasayev and Chankayeva v Russia* (no. 38003/03), obtained by counsel for the applicant in mid-2010, a series of requests were sent by the investigating authorities in 2010 to the archives of the Ministry of Interior of the Russian Federation and of the Federal Security Service, whose senior officials were involved in planning and carrying out the special operation during which the applicant's relative disappeared, almost all of which were dismissed by the above agencies.¹⁵ Furthermore, the military investigating authorities, who at the time were conducting the investigation in this case, did not appeal the refusals received from the archives. In a separate instance from the same case file, certain information was provided by the archives of the North Caucasus Headquarters regarding the conduct of the special operation at issue. Yet, the rest of the documents in the case file make clear that the information provided was not utilized by the investigators in any concrete way.

Questions on access to archived materials:

1. *Are the applicants informed when requests to archives are made by the investigating authorities and of the outcome of the requests?*
2. *In which specific cases have requests to the archives been made and what was the outcome of those requests? How has any information received been utilized by the investigators to identify and question witnesses or to establish elements of the case such as the chain of command during the operation?*
3. *What measures can be undertaken by the investigators in case of refusal by the archives to provide the requested documents?*

Regarding progress in specific cases mentioned by the Government

21. We draw the Committee's attention to the following misleading statements made by the Government regarding the investigation of particular cases in which RJI has acted as representative for the applicants.
22. In referring to the complaint lodged in the case *Rasayev and Chankayeva*, on which RJI reported in its submission of 3 November 2010, the Government stated that
- “After examination of this application, the applicants were fully informed about the state and progress of the investigation.”¹⁶
23. In fact, although the applicant in this case was granted access to the case materials by the court (after his request for access was refused by the relevant investigating authority), only some of the investigative measures requested by the applicant were actually carried out pursuant to his motion. Furthermore, the investigation in his case was suspended again very shortly—less than one month—after submitting his motion on resumption of the case to the investigatory authorities.¹⁷

¹⁴ Page 3 of the Government's submission.

¹⁵ See Attachment 1 (on 5 pages).

¹⁶ Page 6 of the Government's submission.

¹⁷ See para 38 of RJI's submission to the Committee of 3 November 2010, *supra n. 4*.

24. In referring to the cases of *Akhmadova and Others v. Russia* (3026/03) and *Akhiyadova v. Russia* (32059/02) the Government stated that in these cases the authorities had obtained information regarding the involvement of particular military units in the crimes at issue.¹⁸
25. However, according to the most recent information available to the applicants and their representatives in the case *Akhmadova and Others v. Russia*, the investigation into the applicant's case (No. 73023) was suspended on 5 June 2009, because the investigation had carried out all possible measures in the absence of any identified suspects.¹⁹ No further information has been received on the progress of investigation in this case. Regarding *Akhiyadova v. Russia*, neither the applicants nor their representatives have been informed that the authorities had supposedly established the involvement of military personnel in this case. The applicants' representatives were last informed of the procedural status of the case on 21 April 2009, when the Prosecutor's Office of the Chechen Republic informed RJI that the investigation was being carried out by Special Investigating Unit No. 2 (the SIU) within the Directorate of the Investigative Committee for the Chechen Republic.²⁰

Questions on Akhmadova and Others v Russia and Akhiyadova v Russia:

1. *Were the applicants in these cases informed that the investigation had established the involvement of military servicemen in the violations?*
2. *What further actions were undertaken by the authorities to uncover the identities of the possible perpetrators and to ensure their participation in the investigation?*

On data submitted by the Government

26. The data submitted by the Government regarding the status of investigations is confusing and should be clarified.
27. For example, on page 2 of its submission the Government states that according to the Investigative Committee of the Russian Federation, 118 criminal cases decided by the ECtHR are being investigated by the Investigating Committee. On page 8, the Government states that out of 136 cases in the relevant group, 67 cases are currently being investigated. This data leaves unclear how many cases are currently being investigated by the authorities.
28. The Government also refers to 600 criminal cases examined between 2001-2008 by local courts in the North Caucasus, which resulted in over 200 convictions of military servicemen, police officers and other state agents for "murders, robberies, culpable negligence, exceeding of power and other offences."²¹ It is unclear how this data is relevant to the group of cases at hand or how it exemplifies progress made in cases examined by the ECtHR from the NC.
29. It should also be noted that other data provided by the Government do not allow for a qualitative assessment on the conduct of investigations. Pages 6 and 7 of the submission present statistics which, for the most part, are not explained. It is not clear, for example, why only half (45 out of 81) of the motions regarding investigatory activities received by the "unit for special cases investigation"²² were granted, nor why none of the three reported complaints lodged concerning acts or omissions of investigatory authorities were granted. Finally, it is not clear why only 4 out of 10 complaints lodged under the Art. 125 CCP procedure were granted, or what the majority of these complaints concerned.

¹⁸ Government's Submission, page 7 (second half).

¹⁹ Attachment 2: Letter from the Directorate of the Investigative Committee of the Chechen Republic of 2 June 2010.

²⁰ Attachment 3: Letter from the Prosecutor's Office of Chechen Republic of 21 April 2009.

²¹ Government's submission, page 1.

²² Presumably, the Special Investigative Unit (SIU).

30. Moreover, *it is not clear whether the granting of any such complaints or motions led to substantive improvements or progress in investigations*. Against the backdrop of the case-law of the European Court in this group of cases, in which violations of Art. 13 have been found in every case due to the lack of an effective domestic remedy, the Government should be encouraged to report in detail on how purported remedies have functioned successfully in practice. In this context, RJI would refer to the well-documented tendency of the investigative authorities to re-open and suspend cases repeatedly without making any tangible progress.²³

Questions on data submitted by the Government:

1. *What is the total number of cases in the Khashiyev and Akayeva group that are currently being investigated by the domestic authorities? What is the outcome of the investigation in these cases?*
2. *How many of the 200 state agents reported as having been convicted by local courts in the NC between 2001 and 2008 were involved in violations established by the ECtHR? How many were convicted for violations of the right to life or the right to be free from torture?*
3. *What is the current status of the investigations in cases on which motions, appeals or other requests were granted by the investigative or judicial authorities since the ECtHR judgment became final?*

Regarding statutes of limitation

31. The important question of statutes of limitation was surprisingly not addressed at all in the Government's submission. However, it is of vital importance in this category of cases, the majority of which concern alleged grave crimes committed as many as 11 years ago. We recall that, according to Article 78 of the Russian Criminal Code, "especially grave crimes" carry a 15-year limitation period; less grave crimes may carry less than 10.
32. In this regard we would recall the recent example of the case *Khadisov and Tsechoyev v Russia*,²⁴ concerning torture at the Khankala military base, in which the Investigating department of the Republic of Ingushetia, in response to the applicants' motion to undertake a series of investigative measures in line with the ECtHR judgment, informed the applicants in May 2010 that their motion had been dismissed because the statute of limitations for criminal prosecution in their case had run out.²⁵
33. The application of statutes of limitation to torture, war crimes, or crimes against humanity would run counter to Russian law as well as to Russia's obligations under several international treaties.²⁶ Yet there can be no doubt that a single unified approach to the inevitable question of statutes of limitation in this category of cases must be developed at the highest level in order to prevent a potential systematic termination of investigations.
34. We urge the Committee to address this issue with the Russian delegation as soon as possible.

²³ See *supra* n. 4. See also Human Rights Watch, *Who Will Tell Me What Happened to My Son?* Pages 24-25. Available at: <http://www.hrw.org/en/reports/2009/09/28/who-will-tell-me-what-happened-my-son-0>.

²⁴ Highlighted above, para.9

²⁵ See RJI's submission of 3 November 2010, *supra* n. 4, para. 25.

²⁶ *Ibid.*, paras. 73-76.

Questions on the applicability of statutes of limitation

1. *What legal approach has been developed regarding the issue of statutes of limitation in this category of cases and by whom? Has this approach been codified in law or in practice?*
2. *What guidance has been issued to prosecutors and investigators regarding the applicability of statutes of limitation to this category of cases?*

Public access to the materials provided by the Government

35. The Government on page 8 of its submission refers to an attachment which provides details on the progress of investigations in 10 particular cases. As of now this attachment has not been made public and we believe that the Government may ask the Committee to classify this attachment.
36. As the applicants' representatives we oppose classifying this attachment and we urge the Committee to reject the Government's request for classification. The attachment may contain information relevant to applicants in various cases which might furthermore affect follow-up on their cases on the domestic level. In the interests of protecting the applicants' access to justice, the applicants should be made aware of what the Government is reporting to the Committee.

**UTRECHT, THE NETHERLANDS
19 MAY 2011**