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Meeting: 1193 meeting (4-6 March 2014) (DH)

Item reference: Communication from NGOs (The Russian Justice Initiative, Astreya and The Human Rights Centre "Memorial" (Moscow)) (10/01/2014) in the Khashiyev group of cases against Russian Federation (Application No. 57942/00)

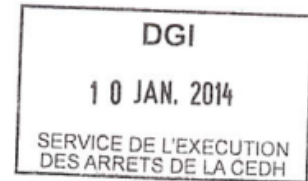
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Réunion : 1193 réunion (4-6 mars 2014) (DH)

Référence du point : Communication d'ONG (The Russian Justice Initiative, Astreya et The Human Rights Centre "Memorial" (Moscow)) (10/01/2014) dans le groupe d'affaires Khashiyev contre Fédération de Russie (Requête n° 57942/00) (**anglais uniquement**)

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.



MEMORANDUM TO THE COMMITTEE OF MINISTERS

APPLICANTS' OBSERVATIONS REGARDING THE EXECUTION OF THE JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS IN CASES FROM THE NORTH CAUCASUS (*Khashiyev and Akayeva* group of cases)

SUBMITTED BY NGOS (REPRESENTATIVES OF THE APPLICANTS)
RUSSIAN JUSTICE INITIATIVE,
ASTREYA, AND HUMAN RIGHTS CENTRE "MEMORIAL"

10 January 2014

1. The present submission is made under Rule 9 (2) of the Committee of Ministers Rules by the non-governmental organizations Russian Justice Initiative, Astreya, and the Memorial Human Rights Centre (hereinafter the "signatory NGOs") regarding the execution of the over 150 judgments in the *Khashiyev* group. The present submission is 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 signatory NGOs have brought over 85% of the cases in the *Khashiyev* group concerning grave human rights abuses in the North Caucasus (NC) currently on the agenda of the Committee of Ministers.
3. Although the present submission details progress or lack thereof in several individual cases, the submission is made in the context of *general measures* relevant to the execution of the *Khashiyev* group, insofar as the results in individual cases disclose systemic obstacles to meaningful implementation. This submission focuses on access to case files, including the growing practice of full or partial classification of case materials, as well as other investigative trends that continue to render the vast majority of investigations in this group ineffective.
4. Post-judgment developments in the investigations of the following individual **20 cases** are discussed:
 1. *Khaydayeva v. Russia* (1848/04), judgment of 5 February 2009, final on 14 September 2009;
 2. *Luluyev and Others v. Russia* (69480/01), judgment of 9 November 2006, final on 9 February 2007;
 3. *Arzu Akhmadova and Others v. Russia* (13670/03), judgment of 8 January 2009, final on 14 September 2009;
 4. *Beksultanova v. Russia* (31564/07), judgment of 27 September 2011, final on 8 March 2012;
 5. *Baysayeva v. Russia* (74237/01), judgment of 5 April 2007, final on 24 September 2007;
 6. *Akhmadova and Others* (3026/03), judgment of 4 December 2008, final on 5 June 2009;
 7. *Astamirova and Others* (27256/03), judgment of 26 February 2009, final on 14 September 2009;
 8. *Aziyevy v. Russia* (77626/01), judgment of 20 March 2008, final on 29 September 2008;
 9. *Murtazovy v. Russia* (11564/07), judgment of 29 March 2011, final on 15 September 2011;
 10. *Dubayev and Bersnukayeva v. Russia* (30613/05 and 30615/05), judgment of 11 February 2010, final on 28 June 2010;
 11. *Abdulkadyrova and others v. Russia* (27180/03), judgment of 8 January 2009, final on 5 June 2009;
 12. *Musayev and others v. Russia* (57941/00 58699/00 60403/00), judgment of 26 July 2007, final on 31 March 2008;
 13. *Khatsiyeva and Others v. Russia* (5108/02), judgment of 17 January 2008, final on 7 July 2008;
 14. *Alikhadzhiyeva v. Russia* (68007/01), judgment of 5 July 2007, final on 30 January 2008;
 15. *Albekov and others v. Russia* (68216/01), judgment of 9 October 2008, final on 6 April 2009;

16. *Israilova and Others v. Russia* (4571/04), judgment of 23 April 2009, final on 6 November 2009;
17. *Vakayeva v. Russia* (2220/05), judgment of 10 June 2010, final on 4 October 2010;
18. *Isigova and Others v. Russia* (6844/02), judgment of 26 June 2008, final on 1 December 2008;
19. *Isayeva v. Russia* (57950/00), judgment of 24 February 2005, final on 6 July 2006;
20. *Abuyeva and others v. Russia* (27065/05), judgment of 2 December 2010, final on 11 April 2011.

5. The present submission has the following sections:

(1) **Section A** provides preliminary general commentary on the problem of classification of case materials, or other obstacles hindering access to materials, observed by the applicants in several of the above cases;

(2) **Section B** provides general commentary on other problems not related to the issue of access to case materials;

(3) **Section C** lays out the legislation referred to by counsel and the authorities relevant to the issue of classification, including the Federal Law on State Secrets;

(4) **Section D** contains an overview of the results of the applicants' submissions to the authorities in each of the 20 cases listed above. Each section is organized so as to show the dynamic in each case in regard both to requests to undertake specific investigative measures and to grant access to case materials, where relevant;

(5) **Section E** contains recommendations in the area of access to case materials in order to comply with the judgments of the European Court and relevant domestic legislation.

Section A – General commentary on classification of case materials and other obstacles to access

6. On the one hand, Russian law clearly disallows classification of materials pertaining to human rights violations or crimes committed by the authorities. In practice, however, applicants and their counsel have faced the following problems gaining access to case materials, mainly on the grounds of classification of the case file:

- **Access to the materials is denied on the basis that all or part of the case file is classified** (cases 1, 2, 3, 8, 18, 19, 20 from the list). Article 7 of the **Federal Law on State Secrets** prohibits classification of information concerning human rights violations and crimes committed by state authorities. In all of the cases examined below, the European Court found the Government responsible for grave violations of the Convention, in particular the right to life.
- **Access to the materials is denied on the grounds that the investigation has not been completed, under Article 42 of the Criminal Procedure Code** (cases 1 and 16). Although there has been noticeable improvement over the past several years, denials of access to case materials on the grounds that the investigation has not been completed unfortunately continue to occur. This issue has been extensively examined by the European Court and by the Committee of Ministers, and the Russian authorities have also conceded that the “current Russian legislation does not always clearly provide for the victims’ rights pending investigation, in particular with regard to the right to receive information on the progress of the investigation,” and that “they are currently reflecting on the measures necessary to improve this situation, not least through amendments to the relevant legislation.”¹ In this regard we also note that in two cases, **the authorities have denied access to case materials first on one ground, and then on another**: in *Khaydayeva v Russia*, the investigative authorities denied the applicant access to the case materials for over two years on the grounds that the file was classified as “absolutely secret.” Most recently, however, the applicant has been denied access on the grounds that the

¹ Committee of Ministers Information Document, “Action of the security forces in the Chechen Republic of the Russian Federation: general measures to comply with the judgments of the European Court of Human Rights,” CM/Inf/DH(2010) 26 May 2010, para. 54. Available at: <https://wed.coe.int/ViewDoc.jsp?id=1626557&Site=CM>.

investigation has not been completed (see below paras. 13-15). In *Baysayeva v Russia*, the applicant was denied access to the materials in 2009 on the grounds that the investigation had not been completed²; more recently, in 2012-2013 the applicant had difficulty accessing the materials because most of the case files had been classified (see below paras. 34-35).

- **Counsel is required to go through an intrusive “check” for gaining access to classified material**, which is not provided for under the Criminal Procedure Code in the regulation of rights of counsel in criminal proceedings, and thus is unlawful (cases 2, 5, 18 from the list).
 - **Counsel or the applicant is required to sign a non-disclosure agreement, which prevents the transfer of information concerning the progress of investigations to any third parties, including monitoring bodies of the Council of Europe, which undermines supervision of implementation of cases in the entire *Khashiyev* group** (cases 5, 9, 10, 12, 14, 19, 20 from the list). A non-disclosure agreement may pertain both to classified information as well as to other non-classified information concerning the investigation.
 - **Even if access is granted via written decision with no restrictions specified, the applicant may in practice receive only a very small portion of the case file on the grounds that part of the case file is classified, or for other reasons.** This situation often occurs when counsel for the applicant has already arrived at the investigator’s office with the goal of studying the case materials, and he is presented with a “take it or leave it” proposition from the investigator; in some cases the reason for withholding the materials is not clarified until a later date (**cases 5, 6, 14, 15, 16 from the list**)
 - **Even in one case in which domestic courts have adopted a progressive interpretation of implementation of ECtHR judgments in regard to access to case materials and have sanctioned access for applicants, the courts’ decisions have not been enforced** (case 1 from the list).
7. As illustrated below, in their submissions regarding access to case materials, counsel acknowledged **the potential need to protect information such as the personal data of servicemen who participated in counter-terrorist operations** (the interest of protecting confidential information is pointed out in paragraph 236 of the Court’s judgment in *Aslakhanova and others v Russia*). In several cases, counsel requested access to case materials with an accompanying request that the names of servicemen be replaced with their initials, or that other sensitive information be “encoded” by investigators as appropriate. In other cases where the investigators informed counsel that part of the case file had been classified, but without specifying which particular documents had that label, counsel requested information about the number of classified materials out of the overall number of case materials, in order to specifically request those materials that were not classified and to gauge the total volume of the case materials.
8. However, in general, the authorities responded passively to such requests; **investigators did not inform applicants of the breakdown between classified and non-classified materials in the case files, making it difficult to draw conclusions about the extent of the classification in their cases.** Also, where the requested that the authorities prepare the materials with due regard for sensitive information, in only one case did the authorities hand over a document (the decision of an investigator) in which the names of the suspects and investigators in the case had been replaced by their initials (case 3 from the list).
9. Despite the modest yet important progress made in obtaining full access to case materials in certain cases, including in some which are not included in the present report, the apparently **growing practice of obstruction of access to case materials on the pretext of secrecy** is disturbing for several reasons, including:

² See Russian Justice Initiative, Submission Under Rule 9 of 16 May 2012, para. 26

- As a general rule, incomplete disclosure of case files due to classification leads to a **decrease in the ability of the applicant and counsel to effectively participate in the investigation and evaluate investigative measures, which means that the investigation is unlikely to progress.**
 - Denial of access to case materials on the grounds of classification may in some cases be based on quasi-normative acts (such as departmental instructions), which are also in their turn classified (or “for official use only”). Without access to such materials, the potential to abuse the practice of classification becomes greater, and may be utilized by the authorities for a wider-scale obstruction of access to an ever-wider range of cases (see below para. 43-44).
 - There is a lack of an **intelligible legal position** on the part of investigators, as well as the heads of investigative departments and the courts, with regard to the procedures of classification, appeals against classification decisions, and the granting of access to case materials that are only partly classified. **Without a uniform position on these issues applicants spend months applying a “trial and error” approach in their appeals against classification or in trying to obtain partial access to the materials.**
 - The investigative bodies appear confused in their interpretation of the norms of the Federal Law on State Secrets, which requires that a justification for classifying information be provided by way of an opinion of a special commission. This confusion is to an extent justified, given that **the requirement to provide the opinion of the special commission is absent from the Criminal Procedure Code.** For example, in case 4 from the list, the response of the investigative authorities suggests that the expert opinion was not appended to the case materials, although such an opinion had likely been issued. In case 6 from the list, however, the position of the investigative bodies suggested that the expert opinion would not be provided because there was no such procedure provided for under current legislation. **It remains unclear whether investigators obtain access to materials from archives and departments which have already been classified, but do not obtain access to the expert opinions citing the reasons for the classification; or whether investigators do not even request that such expert opinions are appended to the case materials, due to the absence of such a requirement in the current criminal code.**
10. The signatory NGOs also point out a separate but related problem concerning the **access of investigators to classified documents contained in the central archives of the Ministry of Interior or Defence** (see for example 10, 11 and 18 from the list). Over and above the normal logistical difficulties of obtaining access to archived documents, obtaining access to classified archived documents presents additional burdens for investigators. The unwillingness of federal agencies to hand over material that may implicate representatives of the same agency in criminal acts is one difficulty; another is that the investigators may not make use of their procedural ability under Article 29(7) and 183 CPC to apply to a court for permission to remove archived documents containing state secrets. In certain cases where the investigators obtained judicial authorisation to access classified documents from the Ministries of Interior and Defence archives, they were refused access and then took no further action to gain it via administrative or judicial routes (see para. 49 below).

B) Other problems not related to the issue of access to case materials remain prevalent

11. Over the past six months applicants have made more use of the prosecutorial appeal procedure under Art. 124 CPC as opposed to the judicial appeal procedure under Art. 125 CPC. Although the general trend points towards a greater number of successful prosecutorial appeals under Article 124 in which applicants request the carrying out of specific investigative measures (usually, the interrogation of persons identified in the ECtHR judgment), in practice, a great number of problems remain, such as:
- a) In certain cases the authorities **refuse to undertake further investigative measures following the decision of the European Court, despite the fact that the Court’s judgment directly contradicts the finding of the domestic investigation** and cites strong evidence in the

possession of the domestic authorities as to the existing elements of a crime and to the identities of the perpetrators (see in particular cases 3 and 8);

- b) In certain cases the fulfilment of the prosecutor's instructions depends on the establishment of the whereabouts of the suspects. At the same time, in the vast majority of cases, according to information from the investigative authorities, **their whereabouts have not been established, for unknown reasons** (see for example cases 4, 5, 17). In certain cases, requests to carry out investigative activities have been left without an answer from the authorities.
- c) We also note the non-execution of critical commentary of supervising prosecutors (case 18) and the evident inertia of the authorities in making use of evidence provided by the applicants themselves to the investigation (for example the videotape in case 5).

12. **It should be emphasised that these problems rarely occur in isolation; in many cases applicants are faced with several obstacles to implementation of their cases, due to the dysfunction or ineffectiveness of several domestic law remedies, which have been detailed in this or other submissions to the Committee.** For example, an applicant who is denied access to case materials for whatever reason cannot effectively obtain judicial review of this decision; or an applicant who has been told that specific investigative measures have been carried out is denied access to the case materials and thus cannot evaluate how the measures were carried out or learn of their outcome.

C) Legislation referred to by counsel and the authorities relevant to the issue of classification, for reference:

1. **Article 7 of the Law on State Secrets**, which prohibits classification of information concerning human rights violations and crimes committed by state authorities.
2. **Article 21 (1) of the Law on State Secrets** which 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.
3. **Article 6 of the Law on State Secrets**, which stipulates that the determination to classify a document as a state secret is made by an expert evaluation taking into account the advisability of classifying concrete information, and the likely economic or other consequences of classification based on the balance of vital interests of the state, society and the citizen.
4. **The Constitutional Court Ruling of 27 March 1996 (N 8-II)** on the verification of the constitutionality of the Law on State Secrets, which reaffirms the right of counsel to access classified case materials.
5. **Section 4 of the Instructions on Provisions of State Security of the Russian Federation**, issued by a decision of the Government of 5 January 2004 No. 3-1, which establishes the protocol of the security check counsel must successfully pass to gain access to classified materials. The Instructions are themselves classified and thus the full text of the instructions is not available. As explained in one procedural decision, the security check requires that counsel fill out an application form and provide his or her passport, labour book, marriage certificate, birth certificate, diploma and a special certificate issued by a psychiatrist confirming that counsel does not suffer from any organic mental disorders, as well as schizophrenia, mood disorders, habit and impulse disorders, mental deficiencies, drug-induced mental illness or behavioural disorders, or epilepsy.
6. **Articles 53 and 42 of the Criminal Procedure Code (hereinafter CPC)**, which stipulate the right of victims and their counsel to acquaint themselves with the materials of a criminal case.
7. **Article 13 of the Law on State Secrets**, which sanctions the declassification of material on the grounds of a change in objective circumstances, in light of which further classification is not advisable.
8. **Article 15 of the Law on State Secrets**, which contains the right of citizens and organizations to request the declassification of information.
9. **Article 29 (7) and 183 of the CPC**, which provides for a court-sanctioned removal of materials and documents containing state secrets or other federally protected information, in order to study them.

10. **Article 24 (2) of the Russian Constitution**, which ensures a citizen's right to get acquainted with materials directly affecting his or her rights and freedoms.

D) Results of the applicants' submissions to the authorities (regarding specific investigative measures and in regard to requests for access to case materials)

(1) Khaydayeva v. Russia

-concerning access to the case files

13. RJI has already reported on the present case, focusing mainly on the applicant's attempts to make use of Article 125 of the CPC.³ Here we draw attention to the applicant's attempts post-judgment to obtain access to the case materials.
14. In November 2010 the applicant's request for access to case materials was denied on the grounds that the entire case file had been classified as "absolutely secret." **Since April 2011, the applicant has appealed this decision four different times at first instance and in the court of appeal.**⁴ In this case, despite the unorthodox approach of the domestic courts to the applicant's complaints and the appeal court's full satisfaction of the applicant's request to access the case materials—including a finding by the appeal court judge that nothing in the case materials suggested that they had indeed been classified to the extent stated by the investigators—the applicant has not been able, in practice, to gain access to the materials to date.
15. The latest response⁵ from the investigating authorities on 18 February 2013 suggested that the applicant could gain access to the materials after the investigation had been completed—a new ground for refusing access to the materials.

(2) Luluyev and Others v. Russia

-concerning access to the case files

16. RJI has already reported on the present case, focusing mainly on the applicant's attempts to make use of Article 125 of the CPC.⁶ Here we draw attention to the applicant's attempts post-judgment to obtain access to the case materials. In May 2012 the 3rd Department for especially important cases stated that the applicant's counsel could gain access to the materials, which included the personal data of servicemen from the Ministry of Internal Affairs, only if counsel submitted to a "security check."⁷ Counsel appealed this decision arguing that current legislation did not provide for the requirement of submitting to the proposed check. The appeal was however not examined on the merits,⁸ and to date the applicant has not been acquainted with the case file.⁹

(3) Arzu Akhmadova and Others v. Russia

-concerning specific investigating steps

17. On 5 July 2012 counsel for the applicant filed a motion¹⁰ to the *Military Investigating Department and to the Military Prosecutor's Office of the United Group of Alliance* requesting to rectify omissions made during the investigation, as established in paras. 194-198 of the ECtHR judgment, in particular:

³ See Russian Justice Initiative, Submissions of 25 August 2010, 18 May 2012, and 18 April 2013.

⁴ RJI, Submissions of 18 May 2012 and 18 April 2013.

⁵ Attachment: Decision of the head of the 3rd Department Mr. Menchinsky K. M. of 18 February 2013

⁶ RJI, Submission of 18 April 2013.

⁷ Ibid.

⁸ Ibid.

⁹ Attachment: Counsel's request to the 3rd Department of 5 March 2013.

¹⁰ Attachment: Counsel's motion of 5 July 2012.

- a) To establish the officials responsible for the planning and preparation of the special operation in the village of Starie Atagi which took place between 6 and 11 March 2002 and to question those officials. There was a particularly acute need to question *Major General Borisov G.S.* and *General Kolbaskin N.A.*, who had told the relatives of one of the disappeared men that all of the detainees had been brought by *Gen. Kolbaskin* to the police station and to the Federal Security Service (FSB) after their apprehension.
 - b) To establish and question military servicemen of the military unit 3228, who on the day of the disappearance of the applicants' relatives (9 March 2002) took part in an armed clash and checked the vehicles of the disappeared men.
18. On 24 July 2012 the motion was rejected in a decision¹¹ by military investigator, Mr. Korneev Ye. P. on the grounds that the applicants' disappeared relatives, who were all members of illegal armed groups, had been killed during a special operation after launching an attack on the federal forces, or had escaped during a transfer several days later. On 26 March 2007 the **investigation into the criminal case had been discontinued** by the Deputy Prosecutor of the United Group Alliance, Mr. Guseinov, on the grounds of the absence of the elements of a crime. The investigator found that since all of the actions undertaken by military personnel in the present case could be deemed legal and reasonable, and all the facts regarding the applicants' relatives had been established, there was no need or requirement to undertake additional investigative steps.
19. In an appeal¹² to the supervising prosecutor against the above decision lodged under Art. 124 CPC, counsel argued that:
- a) The witness statements quoted in the ECtHR judgment **directly contradict the investigator's assertion that the applicants' relatives had been killed during an attack on the federal forces**. According to witness statements, none of the applicant's relatives had taken part in clashes with the federal forces; all of them had been arrested in the village of *Starie Atagi*, having either been taken from their homes or arrested on the street. Several witnesses **identified the military units** which had arrested the men as the "Alfa" and "Don" units of the Russian Federal Security Service,¹³ and also identified the servicemen who had either carried out the arrests of the young men, or who had been in charge of their arrest and detention. For example, in paragraph 21 of the judgment, the Court states:

While his son was being apprehended, the third applicant talked to two officers. One of them introduced himself as *Oleg* and promised that [the applicant's son] would be released as soon as the operation was over. According to the third applicant, he saw *Oleg* on TV on 9 and 12 March 2002 standing next to *General Moltenskiy*, who was giving an interview. The other officer's surname was *Tolstykin*. The third applicant also saw him on TV in the news report on the military operation in the village of Uluskert. The third applicant submitted that he was able and willing to identify those two officers.
 - b) Counsel for the applicant challenged the investigator's assertion that the applicant's relatives had escaped in light of the fact that the Government, in its submissions before the European Court in *Arzu Akhmadova v Russia*, had confirmed that the applicant's relatives had been apprehended by unidentified persons in camouflage uniform in cars and armoured vehicles and had made no arguments regarding any of 'escape' by the detainees.¹⁴ In this regard, the Court had stated in para. 213 of its judgment that:

The Court has found it established that State servicemen apprehended [Messrs Akhmadov, Kanayev, Pokayev and Chagayev] on 6 March 2002, Mr Ibragim Magomadov on 8 March 2002, Mr Magomed Isambayev on 9 March 2002, and [Messrs Baysarov, Khadzhayev, and Zakayev] on 10 March 2002. [Messrs Akhmadov, Kanayev, Pokayev, Chagayev and Magomadov] were killed by servicemen on 7

¹¹ Attachment: Decision of the investigator Mr. Korneev Ye.P. of 24 July 2012.

¹² Attachment: Counsel's complaint of 25 October 2012.

¹³ Paras. 12-17, 18-23, 24-27, 28-32, 33-37 of *Arzu Akhmadova and Others v. Russia*

¹⁴ Paras. 107 and 121 of *Arzu Akhmadova and Others v. Russia*

and 9 March 2002, and *no information has been provided by the State concerning their possible release and escape between the dates of their apprehension and the dates of their death* (emphasis added).

20. On 4 February 2013 the military prosecutor refused the applicant's appeal¹⁵ on the grounds that:

- a) Between 6-13 March 2002 a group of servicemen from the military unit No. 6783 (*Messrs Yu.M., A.A., Sh.N.*) had arrested the applicant's relatives and brought them to the Special Consolidated Mobile Group No. 2 of the FSB, where FSB officers checked their alleged involvement in the murder of FSB servicemen. After the check the young men were released by identified servicemen from the Chechen FSB. Subsequently, some of the applicant's relatives had been killed as members of an illegal armed group while resisting the federal forces, while others had been arrested but had escaped on 12 March 2002.
- b) The investigator refused to satisfy the applicant's request to rectify violations established by the ECtHR on the grounds that the authorities had undertaken all the necessary steps to investigate the criminal case and that all the decisions taken in the case had been in accordance with the law.

-concerning access to the case files

21. The investigator refused a motion¹⁶ filed by the applicant's counsel on 5 July 2012 requesting access to all of the case materials in the criminal case, on the grounds of their classification as "absolutely secret."
22. On 25 October 2012 counsel appealed¹⁷ this decision under Article 124 CPC to the supervising prosecutor, relying on Articles 6 and 7 of the Law on State Secrets, as well as Articles 42 and 53 CPC and the ruling of the Constitutional Court (see above Section C, page 5), and the principles laid out in the ECtHR's judgment in the case of *Moiseyev v. Russia* (no. 62936/00).¹⁸
23. Counsel further argued that, if the case file contained classified information, the names of the servicemen should be changed to initials, and information concerning operational investigative activities (such as planning, conduct, or methods) should be redacted accordingly.
24. Finally, counsel requested to be provided a copy of, at the very least, a copy of the decision of 26 March 2007 of UGA Deputy Prosecutor Mr. Guseinov to discontinue investigation, without which the applicant was not in a position to challenge the decision to discontinue the investigation.
25. On 4 February 2013 by written decision¹⁹ Mr. Menchinsky K. M. satisfied the applicant's complaint in the part of access to the case materials, noting specifically:
 - a) There was no lawful reason for depriving the applicant access to the case materials.
 - b) The copy of the expert opinion containing the justification for the classification of the materials was not attached to the case files. At the same time, it was confirmed that the materials contained classified documents.
 - c) Counsel would be provided with a copy of the decision of 26 March 2007 to suspend the criminal investigation, in which the servicemen would be identified by their initials only.

¹⁵ Attachment: Decision of 4 February 2013 of the head of the 3rd Department Mr. Menchinsky

¹⁶ Attachment: Counsel's motion of 5 July 2012 and Investigator's Refusal of 24 July 2012.

¹⁷ Attachment: Counsel's appeal of 25 October 2012.

¹⁸ In *Moiseyev v. Russia* (no. 62936/00) the Court states: "... 'the national security considerations may [...], call for procedural restrictions to be imposed in the cases involving State secrets. Nevertheless, even where national security is at stake, the concepts of lawfulness and the rule of law in a democratic society require that measures affecting fundamental human rights, such as the right to a fair trial, should have a lawful basis and should be appropriate to achieve their protective function.'"

¹⁹ Attachment: Decision of Menchinskiy, 4 February 2013.

(4) Beksultanova v. Russia (31564/07)

-concerning specific investigative steps

26. On 28 November 2012 the applicant filed a motion²⁰ to investigative department in which she requested to address shortcomings in the domestic investigation identified by the ECtHR, namely, to establish the whereabouts of and to question *Mr. M.I.* and other officers of the OMON regiment of the Russian Ministry of Interior, who on 2 October 2004 took part in the arrest of the applicant's son.²¹
27. On 14 December 2012 the investigator informed the applicant that her request to interview *Mr. M.I.* and other members of the OMON regiment should be dismissed on the grounds that their whereabouts had not been established, but that her request to establish the whereabouts of *Mr. M.I.* and the other OMON regiment members should be satisfied.²²

-concerning access to the case files

28. On 14 December 2012 an investigator via written decision²³ granted the applicant access to the case materials, as she had requested on 28 November 2012. However, the decision noted that some of the documents in the case materials had been classified as secret; the decision did not specify the total number of materials and out of these the total number of classified materials.
29. On 1 April 2013 the applicant requested²⁴ to be informed of:
- a) The total number of files contained in criminal case N 28001, and out of these the total number of classified materials;
 - b) The procedure to be followed for examining classified case files;
 - c) Whether the authorities had established which units were responsible for carrying out the arrest of her son in October 2004, and whether and when the authorities had requested these units for information, and if so had any responses been received. If the investigation had failed to establish the units responsible, the applicant requested the reason for this failure.
30. Despite the three-day time limit established by Article 121 CPC for responding to the motion in the form of a resolution, the applicant has not yet received a reply to date.

(5) Baysaveva v Russia (74237/01)

31. RJI has already reported on the present case.²⁵

-concerning specific investigating steps

32. On 9 April 2012 the investigative authorities refused counsel's motion to undertake specific investigative steps, without providing a motivation for the refusal.²⁶

-concerning access to the case files

33. On 12 May 2012 the decision made by an investigator to deny access to the case materials was overturned on appeal by the head of the Investigative Department of the Directorate of the Chechen

²⁰ Attachment: Submission of the applicant's counsel of 28 November 2012

²¹ Para. 9 in *Beksultanova v. Russia*.

²² Attachment: Decision of the investigator of the 3rd Department Mr. Khashiyev of 14 December 2012

²³ Attachment: Decision of the investigator of the 3rd Department Mr. Khashiyev of 14 December 2012.

²⁴ Attachment: Counsel's motion of 1 April 2013.

²⁵ See RJI's submission of 18 May 2012, para. 26.

²⁶ Attachment: Counsel's complaint of 3 April 2012 and Response of 9 April 2012.

Investigative Committee. No restrictions on access were listed in the decision to grant counsel access to the case materials.²⁷

34. On 21 June 2012 counsel for the applicant was provided, out of 13 total files or tomes, only one file from the case materials, in addition to two other procedural documents from 2000 and 2011, regarding the opening and suspension of the criminal case. Counsel was requested to sign a form confirming that she had been granted access to tome no. 2 of 13, and to sign a non-disclosure agreement. According to the agreement, the remaining files had been classified as “absolutely secret.”
35. On 25 October 2012, after examination of the files in her possession, the applicant appealed²⁸ against the incomplete disclosure of the case materials, arguing in particular that:
- a) The procedural decisions of 2000 and 2011 on the opening and suspension of the criminal investigation provided no information not already established by the ECtHR judgment. Thus, provision of access to these documents could not be regarded as implementation of the Court’s judgment.²⁹
 - b) From the one case file provided by the investigation, it had proved impossible to determine if and how the authorities had utilized a unique piece of evidence in the present case, namely a videotape, which showed the applicant’s husband being apprehended by military servicemen. Most importantly, the applicant wished to determine whether the investigation had been able to establish the identities of the servicemen in the videotape (the content of which is described in paras. 88-94, 128 of the *Basayeva* judgment).
 - c) From the one case file provided by the investigation, it proved impossible to find out whether the investigation had been able to rectify other shortcomings in the investigation, mentioned by the Court in para. 128 of its judgment, namely: the developments in the investigation post-2005, when photographs of servicemen from OMON units from the Moscow Region who had detained the applicant’s husband had been collected; whether or not the investigation had identified and questioned the servicemen of the military units who were manning roadblock no. 53, or those servicemen who had carried out the “sweeping operation” in Podgornoe village; and whether the authorities had pursued the information provided by the applicant about the possible burial place of her husband.
 - d) From the one file provided, it proved impossible to determine whether the instructions given by the supervising prosecutor on several occasions to rectify many of the above omissions had indeed been followed (para. 129 of the judgment). The nature of the instructions given by the prosecutor’s office coincides with the violations found by the ECtHR. Therefore, information as to the extent to which the instructions had been followed was a key indicator of the extent of implementation of the ECtHR judgment.
 - e) The investigation had failed to provide a copy of the expert opinion which had authorized classification of the case materials, as prescribed by Article 6 of the Law on State Secrets.

²⁷ Attachment: Counsel’s complaint of 3 May 2012 and Decision of the Head of the Investigating Department Mrs. Anikeeva Ye.S. of 12 May 2012.

²⁸ Attachment: Counsel’s complaint of 25 October 2012.

²⁹ In relation to the investigation the Court notes, *inter alia*: “In the present case there existed a unique piece of evidence in the form of a videotape which showed the applicant’s husband being apprehended by servicemen and which could have played a key role in the investigation. It was available to the authorities as far back as 2000. The Court finds it astonishing that in February 2006 the persons depicted in it had still not been identified by the investigation, let alone questioned (see the prosecutors’ orders in paragraphs 88-94 above). It appears that in June 2005 the investigation collected photographs of the servicemen of the OMON units from the Moscow Region, but no information has been provided to the Court about a follow-up to this action. It does not appear that the investigation identified and questioned the servicemen of the military units who manned roadblock no. 53 or those who carried out the “sweeping” operation in Podgornoye. It also appears that the information referred to by the applicant about the possible burial place of her husband was not adequately pursued.” *Basayeva v Russia*, para. 128.

- f) Counsel for the applicant furthermore argued that limiting the applicant's access to important case materials, contained in the other classified files, constituted continuing violations of the applicant's rights established by the Court in its judgment. Counsel pointed out that by providing access to all the case materials, the authorities would have partially restored the applicant's rights, as well as contributed to the effective investigation of her case.
- g) Limited disclosure of the case files went contrary to Articles 6 and 7 of the Law on State Secrets, as well as the Constitutional Court Ruling of 27 March 1996 (N 8 – II) and Article 42 CPC (see above Section C, page 5).
- h) The applicant requested:
 - i. to be granted access to all case materials.
 - ii. to provide an inventory of all the case materials of the criminal case and copies of documents indicating that the shortcomings established by the ECtHR in paras. 127-129 of the judgment had been rectified.
 - c) to provide a copy of the expert opinion containing the justification for the classified nature of the materials;
 - iii. to examine and provide a motivated response to the applicant's motion in the part of undertaking specific investigative measures.

36. On 3 November 2012 the applicant's motion was partially satisfied,³⁰ on the grounds that:

- a) Counsel had been granted access only to non-classified case materials; classified materials contained information on investigative steps undertaken with the participation of servicemen whose personal information had been classified. Counsel would be given the opportunity to undergo a security check if she wished to obtain access to the classified materials;
- b) Counsel was refused a copy of expert opinion attesting to the classified nature of the 13 case files because such a procedure was not provided for by the CPC.
- c) The applicant's motion should be satisfied in the part of undertaking a series of specific investigative steps with the participation of Moscow Region OMON who had manned the road checkpoint no. 53, after their identities had been established.

37. On 5 March 2013 counsel for the applicant lodged a motion³¹ requesting:

- a) To specify which case materials had been classified as state secrets and which materials could be accessed without a security check;
- b) To prepare the case materials for examination by counsel so that the personal information of the servicemen and/or information on conduct of the secret operations be redacted so as not to disclose these classified details.
- c) To undertake other measures necessary to protect information which is not subject to disclosure without compromising the applicant's right to access all of the case materials.

38. Despite the three-day time limit established by Article 121 CPC for responding to the motion in the form of a resolution, the applicant has not yet received a reply to date.

(6) Akhmadova and Others v. Russia (3026/03)

39. RJI has already reported on the present case.³²

³⁰ Attachment: Decision of the head of the 3rd Department Mr. Kerimov A.B. of 3 November 2012.

³¹ Attachment: Counsel's submission of 5 March 2013.

40. From May 2012 until March 2013, the applicant, despite having formally been granted access to the case materials, was unable to access the materials on account of the fact that the materials had been moved to the custody of the Central Direction of the Investigative Committee for approval of their transfer to the military investigatory authorities.³³ The applicant's last request to be informed of the date from which she could obtain access to the case materials, submitted in September 2013, has never been answered.³⁴

(7) Astamirova and Others v. Russia (27256/03)

41. On 21 September 2012 a decision by the investigator left unaddressed the applicant's motion³⁵ in the part of specific steps to rectify the shortcomings established by the ECtHR in paras 90-94 of the judgment. The investigator satisfied the applicant's request for access to the case materials, but emphasized that access was allowed only to unclassified documents.³⁶
42. On 5 March 2013 counsel filed two motions. In the first motion she requested to be informed of the total number of files in the case, and out of these, the total number of classified case files, and to exclude all classified materials from the case files so that she could examine the remaining unclassified materials.³⁷ In the second motion the counsel repeated her request to undertake specific investigative measures.³⁸ No response has been received to date to either motion.

(8) Aziyevy v. Russia (77626/01)

43. RJI has already reported on the present case.³⁹ It recalls that since the judgment became final over five years ago, it has filed a series of submissions to the authorities requesting to rectify shortcomings established by the Court and to provide the case materials for examination. All of these requests have been rejected. In December 2008 the senior deputy prosecutor of the Chechen Republic informed RJI that the Ministry of Internal Affairs of the Republic of Mari El refused to forward to the Prosecutor of Chechnya a list of the servicemen who were manning checkpoint No. 13 on the night of the applicants' relatives' arrest and disappearance. The refusal was made on the grounds of Order No. 750-dsp ("dsp" signifying "for official use only") issued by the Ministry of Interior of the Russian Federation, which apparently makes it unlawful to disclose the personal data of servicemen who took part in counter-terrorist operations.⁴⁰ Subsequently, in February 2009, RJI received a letter from the Investigative Committee of the Chechen Republic stating that no violations of Articles 2, 3 and 13 of the Convention had taken place in the present case.⁴¹
44. On 14 August 2009 in response to RJI's request to provide a copy of Order No. 750-dsp, the RF Interior Ministry refused to forward a copy of the Order on the grounds that the document is strictly restricted to official use only.⁴²

(9) Murtazovy v. Russia (11564/07)

45. On 28 June 2012 counsel for the applicant was granted full access to the case materials.⁴³ A motion to rectify specific shortcomings enumerated in paras. 94-99 of the ECtHR judgment was left unaddressed.

³² See RJI's submissions of 14 August 2009, of 26 May 2010, of 19 May 2011, of 17 May 2012.

³³ Attachments : Counsel's complaint to the Head of the Investigating Department of 3 May 2012; Letter from Ms. Anikeeva Ye. S. of 12 May 2012; Motions of the counsel of 2 of November 2012 on investigating measures and on access to the case files; Letter from the investigator Madayev B.Kh. of 8 November 2012; Counsel's submission of 5 March 2013 and Response of 5 March 2013.

³⁴ Attachment: Counsel's submission of 24 September 2013.

³⁵ Attachment: Counsel's motion of 6 September 2012

³⁶ Attachment: Decision of the investigator of the 3rd Department Mr. Gairbekov S-Kh.R. of 21 September 2012.

³⁷ Attachment: Counsel's motion of 5 March 2013.

³⁸ Attachment: Counsel's motion of 5 March 2013.

³⁹ See RJI's Submission of 4 May 2009, para. 14, and of 25 August 2010.

⁴⁰ Attachment: Letter of 19 December 2008.

⁴¹ See RJI's Submission of 4 May 2009, para. 14.

⁴² Attachment: Letter of 14 August 2009 from the Ministry of Internal Affairs of Russia.

46. On 19 September 2012 counsel for the applicant signed a non-disclosure agreement. However, subsequently counsel for the applicant could not get access to case materials because the investigator in charge was several times not in the office.

47. On 5 March 2013 counsel for the applicant filed a complaint⁴⁴ concerning the lack of response to the motion of 25 June 2012 regarding rectification of shortcomings established by the ECtHR, but no response has been received to date.

(10) Dubayev and Bersnukayeva v. Russia (30613/05 and 30615/05; (11) Abdulkadyrova and others v. Russia (27180/03); (12) Musayev and others v. Russia (57941/00 58699/00 60403/00)⁴⁵

48. On different dates between early 2012 and late 2013 counsel for the applicants in cases (10) and (12) was granted access to the case-file on the condition of signing a non-disclosure agreement. In case (11) counsel for the applicant was granted access in the first half of 2012 to part of the case-file, mainly to documents dated prior to 2011.

49. In cases (10) and (11) the investigators also tried to access military archives with the sanction of the domestic court, but were refused access for the reason that only the Minister of Defence, via written permission, could grant them access to classified information in the archives.⁴⁶ To the applicant's knowledge, the investigators took no further action to attempt to obtain access to the classified documents, or to request a review of the classified status of the documents.

(13) Khatsiyeva and Others (5108/02)

50. RJI has already reported on the present case.⁴⁷ On 29 November 2012 counsel was granted access to the case files.⁴⁸

(14) Alikhadzhiyeva v. Russia (68007/01); (15) Albekov and others v. Russia (68216/01)

51. In case (14) counsel for the applicants in cases was granted access to the case-file on the condition of signing a non-disclosure agreement. In case (15), counsel for the applicant was granted access to a part of the case-file in December 2012 concerning only one of the victims, that is Mr. Minkailov. Access was granted to a part of the documents concerning Mr. Minkailov up to 2007.

(16) Israilova and Others v. Russia (4571/04)

52. RJI has already reported on the present case.⁴⁹

-concerning specific investigating steps

53. On 14 April 2011 the Deputy Prosecutor of the Southern Military District quashed⁵⁰ the decision to suspend the criminal investigation into the applicant's case and in the same resolution identified a number of significant shortcomings in the investigation of the case. Specifically, he pointed out that the investigation had failed to check for the involvement of FSB officers in the arrest and disappearance of the applicants' relatives.

54. Subsequently the investigation into the applicant's case was re-opened and suspended again (on 11 and 27 May 2011 respectively). On 14 November 2011, the Deputy Prosecutor, with reference to violations

⁴³ Attachments: Counsel's motion of 25 June 2012 and decision of the investigator of the 3 Department of 28 June 2012.

⁴⁴ Attachment: Counsel's complaint of 5 March 2013.

⁴⁵ The Human Rights Centre "Memorial" Submission to the Committee of 31 July 2013 deals extensively with the problems arising from investigations in these cases.

⁴⁶ Attachment: Letter of (?) April 2009 from the Central Archive of the Ministry of Defense of the RF (O. Pankov) to the Investigative Directorate of the Investigative Committee under the Prosecutor's office of the Chechen Republic (last page).

⁴⁷ See RJI's submission of 24 May 2011.

⁴⁸ Attachment: Letter of 29 November from the deputy of the head of the investigating department Mr. Pekhlivan.

⁴⁹ See RJI's submission of 25 August 2010.

⁵⁰ Attachment: Decision of Deputy Prosecutor Prihodchenko of 14 April 2011.

of Articles 6 and 13 of the Convention, again quashed⁵¹ the decision on suspension of the investigation of 27 May 2011, pointing out that the investigation had clearly failed to undertake measures to solve the crime committed against the applicant's relatives, to collect relevant evidence, and to charge those responsible for the crime. The Prosecutor ordered to rectify these shortcomings. On 12 December 2011 the investigation was re-opened and prolonged for one month.⁵² On the same day, the investigator requested⁵³ a molecular-genetic examination and ordered to compare the blood samples of the applicant with DNA samples from unidentified bodies found in the Chechen Republic from 11 February 2009 to 12 December 2011. The applicant and her counsel are not aware of the measures undertaken, if any, by the investigative authorities, following that decision.

55. On 19 December 2011 the applicant filed a motion with the investigative authorities to request from the archive of the Chechen FSB information regarding the identification of bodies found on the territory of the North Caucasus region from 30 December 2002 to December 2011. On 20 December 2011 this motion was satisfied in full.⁵⁴ The applicant however is not aware whether the authorities have indeed undertaken any subsequent measures.

-concerning access to the case files

56. On 18 February 2011 the authorities via written decision⁵⁵ satisfied the applicant's request for access to the case files. No restrictions were listed in the decision to grant the applicant access. However, when the case materials were passed on to the applicant, it turned out that the authorities had disclosed only 52 pages out of the entire, presumably much larger, file. Neither the applicant, nor her counsel were ever informed about the total number of files, and the reason for the only partial disclosure of the case materials was not revealed until the applicant submitted further complaints, described below.

57. On 27 December 2012, after examination of the disclosed materials, the applicant submitted a complaint,⁵⁶ arguing that:

- a) The information contained in the disclosed materials indicated that the authorities had clearly failed to rectify the shortcomings established by the ECtHR. For example, although the ECtHR had found that the applicant's relative had been kidnapped by FSB servicemen (paras. 113, 117 of the judgment), the orders of supervising investigators to establish the perpetrators, as well as a series of requests for information made by the investigators to the FSB, had been disregarded.
- b) The applicant further indicated that the then Deputy Head of the FSB of the Chechen Republic, *Mr. Ya. S.D.*, had confirmed that the FSB regiment from Sverdlovsk regiment had taken part in the operation during which the applicant's son had disappeared. Also in a decision of 14 April 2011 the Deputy Prosecutor had emphasized that a copy of the documents confirming the participation of the Sverdlovsk FSB regiment in the operation were kept in the Office of Sverdlovsk FSB. However from the disclosed case materials it did not follow that the investigators had requested the Sverdlovsk FSB for copies of the documents, or that they had established those officers who took part in the operation or interrogated them.
- c) While it clearly followed from the case materials that the investigation had requested information from the Central Archive of the Ministry of Interior, the Ministry had disregarded those requests. The applicant noted that although the investigative authorities were empowered by law to apply to a court to sanction the seizure of the documents requested from the Central Archive, they had not done so, for an unknown reason.

⁵¹ Attachment: Decision of the Deputy Prosecutor Prikhodchenko of 14 November 2011.

⁵² Attachment: Decision of the Deputy Head of Investigative Department Mr. Martynov A.N. of 12 December 2011.

⁵³ Attachment: Decision of the Deputy Head of Investigative Department Mr. Martynov A.N. of 12 December 2011.

⁵⁴ Attachment: Decision of Investigator Korneev Ye. P. of 20 December 2011.

⁵⁵ Attachment: Decision of the Investigator Chernogryvov of 18 February 2011.

⁵⁶ Attachment: Counsel's complaint of 27 December 2012.

- d) Despite the fact that the identities of some of the key witnesses, who were FSB servicemen, had been established by the investigators, it followed from the documents disclosed that none of them had ever been questioned. Finally, the applicant pointed out that she had never received the results of the DNA test that had been conducted. The applicant requested to rectify the shortcomings established by the ECtHR and to grant access to all the case materials.

- 58. On 29 December 2012 the investigator refused the applicant's complaint in part of access to the materials on the grounds that the investigation into her case had not been completed (Article 42 of the CPC). In the same decision the investigator informed the applicant that he had requested a number of officials for information concerning the circumstances of the case, which the investigation considered significant.⁵⁷ Subsequently the applicant appealed the decision not to grant access to the case materials via Article 125 of the CPC to the Grozny Garrison Court.⁵⁸
- 59. On 19 July 2013 the Grozny Garrison Court discontinued examination of the applicant's complaint without a hearing on the merits, relying on legislation that allows a judge to discontinue the examination of a judicial review request if the decision being appealed against is overturned before the date of the court hearing.⁵⁹ In this case the decision of 29 December 2012 was overturned on the day of the court hearing.⁶⁰
- 60. Wishing to have her case heard on the merits, the applicant appealed the decision of the Grozny Garrison Court to the Military Court of Appeal in Rostov-on-Don.⁶¹ The appeal was heard on 28 November 2013 and the first instance court's judgment upheld. During the hearing, the Prosecutor stated that he found the applicant's complaint to be "morally well-founded" but to have no basis in law. The applicant is awaiting the written decision of the Court of Appeal.

(17) Vakayeva and Others v. Russia (2220/05)

- concerning specific investigative steps

- 61. RJI has already reported on the present case.⁶²
- 62. On 6 February 2013 the applicant requested the investigating authorities to establish the whereabouts of and to interview the former prosecutor of military unit No. 20116, *Mr. P.V.*, who took part in the arrest of the applicant's son on 15 March 2001. On 11 February 2013 the applicant submitted another motion⁶³ requesting to establish the whereabouts of and to interview the following persons, all of whom took part in the special operation on 15 March 2001 during which the applicant's relative had disappeared: the former prosecutor of the city of Shali, Chechnya, *Mr. A.V.*, who had allegedly been injured during the arrest of the applicant's relative; the former prosecutor of military unit No. 20116 *Mr. S. Yu.*; the former deputy military prosecutor of military unit No. 20116 *Mr. L.A.*; the former military prosecutor of the United Group Alliance *Mr. M.A.* In the same motion the applicant requested to re-open the investigation into his case.
- 63. On 13 February 2013 the investigator refused to satisfy the applicant's motion in the part of re-opening the criminal investigation. The decision however stated that the state officials named by the applicant would be interviewed after their whereabouts had been established.⁶⁴
- 64. On 27 February 2013 the authorities informed the applicant that measures had been taken to establish the whereabouts of *Mr. P.V.*, that he would be interviewed if located, and that the applicant would be informed about any testimony provided by *Mr. P.V.* regarding the applicant's son.⁶⁵

⁵⁷ Attachment: Decision of Investigator Korneev Ye.P. of 29 December 2012.

⁵⁸ Attachment: Counsel's complaint under Art. 125 CCP.

⁵⁹ This problematic dynamic is explained in detail in RJI's submission of 18 April 2013.

⁶⁰ Attachment: Decision on Art. 125 of the Grozny Garrison Court of 19 July 2013.

⁶¹ Attachment: Counsel's appeal and pleadings to the Military Appeal Court.

⁶² See RJI Submission of 23 May 2011, paras. 81-82.

⁶³ Attachment: Applicant's motion of 11 February 2013.

⁶⁴ Attachment: Decision of Investigator Polyanskiy V.V. of 13 February 2013.

(18) Isigova and Others v. Russia (6844/02)

- concerning access to the case files

65. RJI has already reported on the present case.⁶⁶

66. On 5 May 2012 the investigator informed counsel that some materials held in the case files had been classified as secret. Therefore counsel would have to complete a security check.⁶⁷

67. On 9 September 2012 counsel for the applicant lodged a complaint⁶⁸ against this decision under Article 124 CPC, relying on the fact that partial classification of case materials could not lead to restriction of access to the whole case file; Articles 7 and 21 (1) of the Law on State Secrets; the Constitutional Court ruling of 27 March 1996 (N 8 - II) and Article 42 of the CPC (see above Section C, page 5).

68. Despite the 10-day time-limit established by Article 124 CPC for responding to such complaints, the applicant's counsel has not received a reply to date.

(19) Isayeva v. Russia (57950/00) and (20) Abuyeva and others v. Russia (27065/05) (concern the same facts and same investigation file)

-concerning access to the case files

69. The victims' lawyer was initially refused access to the case-file.

70. On 18 July 2013 military investigator Mr. Polyanskiy ruled⁶⁹ that because some of the documents from the case-file had been classified, access could only be granted to a lawyer who had been formally authorised to access State secrets. The lawyer appealed against this order to the Grozny Garrison Military Court. On 30 September 2013 the Director of the Military Investigative Department Mr. Menchinsky quashed⁷⁰ the order of 18 July 2013. He ruled that nothing prevented access to the unclassified documents, so the initial order contravened the State Secrets Act.

71. On 1 October 2013 the Grozny Garrison Military Court held a hearing. The military prosecutor present at the hearing submitted that the lawyer and the investigator, "both well-educated men," would find a way to arrange the lawyer's access to the case-file. The judge dropped the case for the reason that the order challenged by the applicants' counsel had been quashed. Following the hearing the Director of the Investigative Department orally promised to grant the lawyer access to all the documents except those classified as State secrets and to delete information identifying military servicemen where necessary.

72. However, because counsel had also applied for judicial review of the decision to close the investigation for the lack of *corpus delicti* in the actions of the military, the case-file was transferred from the Military Investigative Department to the Grozny Garrison Military Court in October 2013. There counsel for the applicants could only familiarise himself with the documents upon the authorisation of the presiding judge. The documents to which the decision to close the investigation referred were read out at the court hearings in November 2013. The victims' lawyer was required to sign a non-disclosure undertaking in respect of the documents read out in what technically was an open court hearing. The appeal is currently pending before the Military Court of Appeal of the North Caucasus Military Circuit in Rostov-on-Don.

⁶⁵ Attachment: Letter from Korneev Ye.P. of 27 February 2013.

⁶⁶ See RJI submissions of 26 May 2010, 25 August 2010, 3 November 2010, 17 May 2012.

⁶⁷ Attachment: Letter from Investigator Guchigov Kh.V. of 5 May 2012.

⁶⁸ Attachment: Counsel's appeal under Art. 124 CPC of 9 September 2012.

⁶⁹ Attachment: Decision of Mr. Polyanskiy V.V. of 18 July 2013.

⁷⁰ Attachment: Decision of Mr. Menchinskiy of 30 September 2013.

Section E: Recommendations regarding access to case materials

73. As stated above, **incomplete disclosure of case files leads to a decrease in the ability of the applicant and counsel to effectively participate in the investigation and evaluate investigative measures, which means that the investigation is unlikely to progress.** In order to promote implementation of judgments of the European Court from the North Caucasus, particularly in the area of victim's rights, the Russian authorities should:
- a) **Adhere to the legislative norm stipulated in the Federal Law on State Secrets** that information relating to human rights abuses and information about crimes committed by officials cannot be classified;
 - b) **Publish an Official Order** on the basis of the current legislative mechanism provided for by Article 13 of the Law on State Secrets ("Change in objective circumstances") to **re-examine the advisability of continued classification of data** contained both in criminal case files and in the central archives of the Interior and Defence Ministries in cases examined by the European Court from the North Caucasus;
 - c) **Instruct Prosecutors and Investigators** who need to gain access to classified documents contained in the central archives to apply to the court for a review of the classified status of the documents and to argue for **de-classification of the documents** on the basis of Article 7 of the Law on State Secrets;
 - d) **Discourage the use of non-disclosure undertakings** in criminal cases that have been examined by the European Court of Human Rights in order to make sure that the applicants and their counsel can freely communicate with the Committee of Ministers of the Council of Europe on progress of implementation in their cases;
 - e) **Discourage the use of reliance on Article 42 of the CPC** to refuse access to case materials on grounds that the investigation has not been completed; the vast majority of cases in the *Khashiyev* group have not been "completed" and this ground for refusal continues to be abused, leading to the paradoxical situation in which it is in the applicants' interest to have the investigation terminated, rather than continued, in order to receive access to the case materials, and if needed, apply for judicial or prosecutorial review.
74. In those cases where the authorities consider the presence of classified documents an obstacle to access to the case materials, they should:
- a) **Follow the procedure for classifying materials** as set out in Article 6 of the Law on State Secrets;
 - b) **Clarify the procedure for appealing** the classified label on documents, for applicants and investigators;
 - c) **Undertake without delay the following measures** in order to demonstrate good will and a spirit of cooperation to the applicants and to the Committee:
 - i. In the case of the presence of classified data in the case files, systematically prepare case materials for applicants' examination by redacting the data accordingly (i.e. changing full names to initials);
 - ii. Inform applicants, as a rule, of the total number of case materials and the total number of classified materials, if any, contained in their case files;
 - iii. Provide to applicants and their counsel the opinion of the special commission regarding the justification for classifying the materials.