

## SECRETARIAT GENERAL

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Meeting: 1236 meeting (22-24 September 2015) (DH)

Item reference: Updated Action plan (17/07/2015)

Communication from the Russian Federation concerning the case of Khashiyev and Akayeva Group and others against the Russian Federation (Application No. 57942/00).

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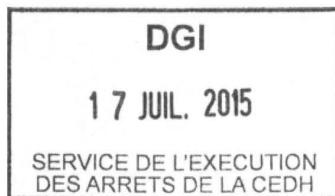
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Réunion : 1236 réunion (22-24 septembre 2015) (DH)

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Communication de la Fédération de Russie concernant l'affaire Groupe Khashiyev et Akayeva et autres contre la Fédération de Russie (Requête n° 57942/00) (**anglais uniquement**)

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Prepared for the 1236<sup>th</sup> CMCE meeting  
(22–24 September 2015)

## **ACTION PLAN** **for execution of judgments of the European Court of Human Rights** **in the *Khashiyev* group of cases**

### **I. Essence of the violation**

In its judgments in the *Khashiyev* group of cases, the European Court of Human Rights (“the Court”) found violations of Articles 2, 3, 5, 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”), Article 1 of the Protocol no.1 to the Convention by the authorities of the Russian Federation in view of violations of citizen’s rights during the counter-terrorism operation in the Chechen Republic and failure to ensure effective investigation into violations.

The Russian authorities have previously repeatedly informed the Committee of Ministers of the Council of Europe (“CMCE”) of the general measures taken, the information being provided by action plans DH-DD(2011)130E, DH-DD(2011)977E, DH-DD(2012)488 part 1, DH-DD(2012)757, DH-DD(2013)935E, DH-DD(2014)1117E) and DH-DD(2015)257E.

The Action Plan set out in document DH-DD(2013)935E reflects the Strategy for Execution of the Judgments of the Court by the Russian authorities in the *Khashiyev* group of cases, in view of conclusions of the judgment in *Aslakhanova and Others v. Russia*.

Action Plan DH-DD(2014)1117E contains detailed information on the measures taken and planned by the Russian authorities to ensure effective functioning of the single independent body and mechanism of search for missing persons.

Action Plan DH-DD (2015) 257E has been prepared by the Russian authorities in the light of the measures, additionally taken and planned by the Russian authorities in this regard, and issues specified by delegations in accordance with CMCE decision CM/Del/OJ/(2014)1208/17 of 26 September 2014.

### **II. General measures**

The present Action Plan contains information on the measures additionally taken and planned by the Russian authorities to execute the judgments of the Court in *Khashiyev* group of cases in view of the issues specified by CMCE in decision CM/Del/Dec/(2015)1222/14 of 13 March 2015.

**1.** Regarding the issues specified by the CMCE and related to the expert institutions' activities, the following should be noted.

**1.1.** As it was previously reported, the state-funded institutions “Republican Forensic Medical Examination Bureau” of the ministries of healthcare of the relevant republics have been established and function in all constituent entities of the Russian Federation of the North Caucasus Federal District, including in the Chechen Republic.

Republican Forensic Medical Examination Bureau, established in the Chechen Republic (“Bureau”), is fully funded from the budget. In 2013, the volume of financing of the Bureau amounted to about RUB 35,000,000; in 2014, the equipment and consumable materials were additionally purchased amounting to more than RUB 1,600,000, and to more than RUB 1,400,000 correspondingly due to budget allocations; expenditures for the pur-

chase of equipment and materials for a total amount of more than RUB 46,600,000 are planned for 2015. The total area of the interior premises of the Bureau is about 1,400 sq m, the total number of staff is 121 persons.

The Bureau conducts: expert examinations and check-ups of living persons and corpses, histological studies, complex expert examinations, forensic and biological examinations and studies, medical and criminalistics examinations and studies. In particular, in 2014, there were conducted about: 4,300 forensic medical examinations of victims, accused and other persons; 1,000 forensic medical examinations of corpses; 40 forensic histological studies; 500 complex forensic medical examinations; 100 forensic biological examinations; 100 forensic chemical examinations; 60 medical and criminalistics examinations.

**1.2.** It is worth noting that Forensic and Criminalistics Centre of the Main Directorate of the Ministry of Internal Affairs of Russia for the Stavropol Territory, DNA laboratory of the Main Investigation Department of the Investigative Committee of Russia for the North Caucasus Federal District, as well as Branch no. 2 of the “111th Main State Centre of Forensic Medical and Criminalistics Examinations” of the Ministry of Defence of Russia (previously the 16th State Centre of Forensic Medical and Criminalistics Examinations“) are functioning in the North Caucasus Federal District along with the Republican Forensic Medical Examination Bureau.

Special attention should be drawn to the fact that although the above institutions are located outside the territory of the Chechen Republic, they are geographically in close proximity to the region, as well as to other regions of the North Caucasus Federal District. This allows performing all expert examinations, including genetic, required for the investigation into the criminal cases in the Chechen Republic and other constituent entities of the Russian Federation of the North Caucasus Federal District effectively and within reasonable time.

Recently, the Russian authorities took a number of measures to ensure appropriate material and technical support of the mentioned institutions. Thus, during the centralized purchasing for the Forensic and Criminalistics Centre of the Main Directorate of the Ministry of Internal Affairs of Russia for the Stavropol Territory for 2011–2013, criminal investigation technique, equipment and consumable materials for a total amount of more than RUB 49,400,000 were supplied; in 2014, the corresponding supplies amounting to about RUB 7,500,000 were provided, as well as consumable materials and reagents for conducting DNA analysis amounting to about RUB 43,000,000 were purchased. It was spent RUB 46,800,000 for the material and technical support of activities of branch no. 2 of the “111th Main State Centre of Forensic Medical and Criminalistics Examinations” of the Ministry of Defence of Russia (Rostov-on-Don) in the period from 2011 to 2013, etc. In 2012, DNA laboratory of the Main Investigation Department of the Investigative Committee of Russia for the North Caucasus Federal District was established. The level of its material and technical equipment meets all the existing international standards. The laboratory is one of the best in Russia. More detailed information on this issue was reported earlier (see document DH-DD(2014)1117E)

**1.3.** Thus, the measures taken to create expert institutions in the territory of the North Caucasus Federal District, to provide their equipment and methodological support allowed to ensure proper performance of expert and scientific studies, as well as actually to solve

the problem of carrying out the examinations, including genetic, in the cases of the category in question.

Statistical accounting of the examinations by the expert institutions is not stipulated with regard to the *Khashiyev* group of cases. However, according to the data of the Investigative Committee of Russia, performance of the required examinations is ensured in all cases of the category in question at the present time, including molecular and genetic examinations of close relatives of the persons abducted or missing persons (whose whereabouts are not identified till now) for establishment of their genotypes and creation of the database for further comparison with the unidentified corpses found in the territory of the Chechen Republic. To the present day, by orders of investigative bodies of the Chechen Republic, more than 500 genetic expert examinations were carried out.

**1.4.** With regard to the participation of specialists and experts in the examination of the corpses found, selection of samples for comparative study and exhumation of corpses (in case of finding the burial places), the attention shall be again drawn to the fact that the Russian legislation provides sufficient legal regulation to ensure appropriate participation.

As it was previously reported in detail, the employees of the Criminal Investigation departments (within the framework of fulfilling the function of searching for missing persons) and investigators (within pre-investigation inquiries and investigation into the criminal cases) are empowered with broad authorities to involve, if necessary, any professionals, to seize samples for comparative study, to search and examine the corpses and the alleged burial places, to conduct studies, etc. In accordance with Article 178 of the Code of Criminal Procedure of the Russian Federation, the exhumation shall be carried out by the decision of an investigator with mandatory participation of a forensic medical expert.

**1.5.** As it was previously reported, in accordance with the Federal Law *On State Genomic Registration in the Russian Federation* and using the funds of the federal budget, the Single Federal Database of Genomic Information (“Single Database of Genomic Information”) has been created and functions now at the Forensic and Criminalistics Centre of the Ministry of Internal Affairs of Russia.

**1.5.1.** In accordance with the requirements of the above-mentioned law, the required data for maintaining the Unified Database of Genomic Information are received from the state institutions of forensic medical examination, bodies of the preliminary investigation, inquiry, bodies authorized to carry out operational-search activities to search for missing persons and identification of persons by unidentified corpses, etc. It means that this database includes information of all types of primary records, including the above-mentioned databases of the expert institutions, the Forensic and Criminalistics Centres of the Ministry of Internal Affairs of Russia and software system of the Investigative Committee of Russia.

In accordance with the law, mandatory state genomic registration and recording of the genomic information related to unidentified corpses, unidentified persons, the biological material of whom is taken in the course of the performance of investigative activity, as well as the traces containing biological material derived from missing persons, shall be conducted particularly. Herein, the received genomic information is verified within the framework of the database created.

**1.5.2.** At the present time, the Single Database of Genomic Information contains the genomic information on more than 4,700 genetic profiles of persons whose corpses

could not be identified by other means, including 233 genetic profiles of unidentified corpses received from the constituent entities of the Russian Federation of the North Caucasus and Southern Federal Districts (163 of which are genotypes received from the Chechen Republic in the *Khashiyev* group of cases). At the present time, the work on verifying the genomic information based on the Single Database of Genomic Information is conducted (the results of verification partly conducted has not yet allowed to identify persons in the *Khashiyev* group of cases, although it had given the results in relatively recent cases).

**1.5.3.** The measures were taken to improve statutory regulation in the field of functioning the Single Database of Genomic Information. In particular:

- as part of implementation of the activities previously planned, a draft resolution of the Government of the Russian Federation *On some issues of implementation of the Federal Law On State Genomic Registration in the Russian Federation* was prepared (the introduction thereof to the Government is planned in the near future);
- at present time, the Ministry of Internal Affairs of Russia, acting in cooperation with the Investigative Committee planned to study the question on amendments to the Federal Law *On State Genomic Registration in the Russian Federation*, in terms of expanding the list of persons, being subject to mandatory state genomic registration.

**1.5.4.** For the purposes of optimal financing and maximal filling of the Unified Database of Genomic Information, a number of measures to increase awareness and the level of training for the employees, involved in the sphere of relations under consideration, are planned and implemented:

- on the basis of the Forensic and Criminalistics Centres of the Main Directorates of the Ministry of Internal Affairs of Russia for the North Caucasus Federal District and for the Rostov Region, training and special practical studies of experts of regional forensic and criminalistics centres are organized, in particular, for the Chechen Republic. The subjects of training and probation were the priority and perspective trends of forensic and criminalistics activities, modern techniques used in solving and investigation of crimes.

In addition, special training and qualification courses are organized for the employees of the Forensic and Criminalistics Centre of the Ministry of Internal Affairs of Russia for the Chechen Republic at the Forensic and Criminalistics Centre of the Ministry of Internal Affairs of Russia in order to improve their professional education and obtain the right to perform independently the relevant forensic examinations directly in the Chechen Republic;

- lectures and classes on the rules of retrieval, packaging, transportation of biological material (in particular, fragments of unidentified corpses) with the staff of the bodies of the preliminary investigation and inquiry, as well as the bodies carrying out operational-search activities, are organized on a regular basis in the Forensic and Criminalistics Centre of the Ministry of Internal Affairs of Russia for the Chechen Republic.

**2.** As it was previously reported in detail, after the judgment in *Aslakhanova and others v. Russia* had been delivered, a centralized automated database of missing persons and informational-search system “Opozvaniye” (Identification) was created that contains extended data on missing persons and on unidentified corpses, their distinguishing characteristics, description of clothes, etc. Moreover, for the improvement of the effectiveness of this system, the special software was developed, which allows using the algorithm of iden-

tification by a face photo. The previously planned measures aimed at its improvement are being taken.

The aforesaid database is formed automatically, and updated information on missing persons is sent to all territorial bodies of the Ministry of Internal Affairs, including those located in the North Caucasus region. The information in details on this issue is contained in Action Plans DH-DD(2015)257E and DH-DD(2014)1117E.

Thus, the above-mentioned databases have combined previously disparate information, and are currently accessible for all competent authorities, including criminal investigation departments and investigators in the North Caucasus investigating into the *Khashiyev* group of cases.

3. With regard to the issue specified by the CMCE as to establishing the fate of missing persons the following is reported.

3.1. In the course of operational-search activities and investigations into the cases concerning the problem under consideration, that has become the subject of the Court's examination, the fate of 67 missing persons were established, including through finding the corpses, identification thereof and expert studies. They include: 1 person whose corpse was brought to the Centre of Forensic Medical Examination as a corpse of the member of an illegal armed group (*Malika Alikhadzhiyeva v. Russia*, no. 37193/08), 1 person whose corpse was found near Shali (*Askharova v. Russia*, no. 13566/02), 9 persons whose corpses were found near Serzhen-Yurt (*Bitiyeva and Others v. Russia*, no. 36156/04), 3 persons fragmented remains of whose corpses and their clothing were found in a forest near Darbankhi (*Khachukayevy v. Russia*, no. 34576/08, the judgment has not been delivered by ECHR yet), 7 persons whose corpses were found in a forest near Vinogradnoye and Khankala (*Shakhgiriyeve and Others v. Russia*, no. 27251/03), 26 persons whose corpses were found in a mass grave in the abandoned holiday village "Zdorovye" (ECHR examined a number of cases with regard to these persons), 1 person whose corpse was found in a burial place near the Urus-Martan Poultry Plant (*Khutsayeva v. Russia*, no. 32782/10, the judgment has not been delivered by ECHR yet), 1 person, whose corpse was found in a burial place near Argun (*Akhmadova and Sadulayeva v. Russia*, no. 40464/02), 1 person whose corpse was found in non-residential premises in Grozny (*Magomadov and Magomadov v. Russia*, no. 68004/01), 2 persons remains of whose corpses were found in a burial place near Gekhi (*Musayeva and Others v. Russia*, no. 72439/01), 2 person fragments of whose corpses (as a result of the explosion) were found near the farm Sernovodskaya (*Khadzhialiyeve and Others v. Russia*, no. 3013/04), 6 persons whose corpses were found near Staryye Atagi (*Arzu Akhmadova and Others v. Russia*, no. 13670/03), 1 person remains of whose corpse were found near Goyty (*Khachukayev v. Russia*, no. 28148/03), 3 persons remains of whose burnt corpses were found in Mesker-Yurt (*Nasukhanov v. Russia*, no. 1572/07), 3 persons remains of whose corpses were found near Dzhalka, Kurchaloy, Michurin Farm (*Dovletukayev and Others v. Russia*, no. 7821/07).

3.2. At the same time, the Russian authorities refer to the previously submitted action plans (DH-DD(2015)257E and DH-DD(2014)1117E), which include information and statistics on the results of searching and establishing the fate of missing persons with regard to the cases relating to comparatively recent events. This statistics evidence the progress in carrying out the operational-search activities and investigation into the incidents relating to missing and abducted persons.

During the reporting period, these positive tendencies have continued. The measures taken and more principled approach to solve the problems specified by the Court resulted in increase of the number of cases initiated according to the results of consideration of the claims on missing of citizens, and almost twofold increase (compared with 2011) of the number of the detected persons, along with significant (almost in 1.5 times) reduction in the total number of such claims, in the North Caucasus Federal District. Thus, during consideration of the claims on missing citizens received in 2014, the whereabouts of 1,897 persons was established, what exceeds the similar index of 2011–2013 (1801, 1467 and 1165 correspondingly). The number of abductions in the District has decreased in 3 times (to 20 facts), and the “criminal” facts relating to missing citizens — in 2 times (to 48). The District courts convicted 99 perpetrators of such criminal offences.

The investigation into the criminal case, initiated on 9 December 2013 in view of D.'s missing in Grozny (the Chechen Republic) can serve as the example of the effective activities. In the course of the effective operational-search and investigative activities, it was found that D. was murdered by her father who confessed in committing the crime. Later, on-site verification of evidence, inspection of the place where D.'s corpse was buried and the further exhumation of her remains have been carried out with his participation. According to the results of molecular genetic examination it was established that those remains belonged to D. The person, being guilty of the murder, was charged on the basis of the evidence, obtained in the case.

Although these information and statistics cannot be classified as individual measures in the *Khashiyev* group of cases, it is an evidence of the effectiveness of the general measures taken.

**3.3.** Once again the authorities draw attention to the objective reasons that did not yet allow ensuring the compliance with all conventional requirements, in particular, to establish the fate of missing persons in the *Khashiyev* group of cases and those guilty of their disappearance. These reasons include the loss of the required archive documents as a result of their destruction during the combat operations or terrorist acts, participation of employees of the different bodies from different regions in counter-terrorism operation on a temporary basis according to the principle of rotation, irretrievable loss of evidence at the initial stage of the investigation, prevention from exhumation of corpses and conducting expert studies on behalf of the relatives of the persons killed due to the national traditions and canons of Islam, etc.

**3.4.** The authorities also draw attention to the fact that in a number of cases, the alleged missing persons not always appear to be missing, and some are even actively involved in terrorist activities.

- Thus, in 2009, the applications were lodged with the Court by the relatives of Sh., T. and G. who, as the applicants alleged, were missing in view of illegal actions of the representatives of federal forces. In these applications, the applicants asked the Court to take urgent measures according to Rules 39–41 of the Rules of Court.

In July 2009, the above applicants withdrew their applications since the missing persons had come back home. Thereupon, all three of them, refusing to state where they had been all this time, lodged submissions with ECHR that they had no claims against the Russian authorities.

- No confirmation has been found with regard to the statement on disappearance

of Ts. in the Malgobekskiy District of the Republic of Ingushetia. According to the Investigative Committee of Russia, during the verification of the application filed by Ts.'s father, information on Ts.'s joining the ranks of the illegal armed groups was obtained. Consequently, Ts. together with other persons attacked the officers of the Ministry of Internal Affairs for the Chechen Republic in the village of Muzhichi of the Republic of Ingushetia. In the course of the military clash, Ts. was detained and he confessed the fact of participation in the activity of an illegal armed group. The case was remitted to the Sunzhenskiy District Court that convicted Ts. under Article 208 § 2 of the Criminal Code of the Russian Federation (“Participation in Illegal Armed Groups”).

- As a result of the investigation into the criminal case initiated under the application on alleged abduction of M. (*Doshukayev and Doshukayeva v. Russia*), it was found that the allegations of M.'s mother about abduction of her son M. were based solely on the fact that abduction incidents increased in the Chechen Republic and she was afraid that he might have been abducted. In the course of the investigation, it was found that M., contrary to his mother's allegations, had not been abducted or detained by law enforcement agencies, and in fact had left home himself. Persons who met M. after his alleged disappearance were identified, and he explained that he worked at a construction site in Grozny. In view thereof, the criminal case was terminated due to the lack of evidence of a crime.

- In 2014, the cases were identified when the applications on missing residents of the North Caucasian republics who actually had been involved in armed groups (gangs) that participated in the infringements on lives of law enforcement officers and in extremist activities, were filed.

For example, in the Kabardino-Balkar Republic, K., G., T. and Sh., put on the wanted list, appeared to be the participants of armed gangs. Three of mentioned persons were killed in the course of armed resistance during the detention, and one of them is currently hiding from the law enforcement agencies and is put on the wanted list in connection with the participation in an illegal armed group.

In 2014, it was established that 11 residents of the District, who were wanted as missing, participated in the activities of criminal underworld.

A number of facts was also established related to involvement of persons aged 18–25 years who had been wanted as missing, on the illegal armed groups within the territory of foreign states. For example, in the Chechen Republic, 59 criminal proceedings were initiated for these causes on the grounds of a crime under Article 208 § 2 of the Criminal Code of the Russian Federation (Participation in Illegal Armed Groups).

4. As for the issue of the limitation periods for prosecution of crime and application thereof in the cases of the category under consideration, the Russian authorities have repeatedly given detailed reasoned explanations (DH-DD(2013)935E — § 7.7; DH-DD(2015)257E — § 4).

At the same time, the national legislation and practice of its application are in compliance with the standards of the Convention. In this context, attention is drawn to the fact that a criminal case is initiated under a certain Article of the Criminal Code on the basis of existing and established evidence and circumstances at the time of delivering a decision to initiate a case (under Article 105 of the Criminal Code of the Russian Federation — murder, Article 126 of the Criminal Code of the Russian Federation — abduction of a

person, Article 286 of the Criminal Code of the Russian Federation — abuse of powers, etc.). Due to the investigation and establishment of new circumstances and evidence, the classification can be changed.

However, in any case, as the Russian authorities have repeatedly explained, termination of a criminal case in view of the expiration of limitation periods and the release of a person from criminal liability are possible only after the establishment of all factual circumstances and guilty persons. Correspondingly, the crime will be finally classified after the establishment of the relevant circumstances. In cases in which these circumstances and guilty persons have not been established, the decision to terminate criminal proceedings and to release a person from criminal liability in connection with the expiration of limitation periods cannot be delivered (both by the investigative authorities and courts). Therefore, in such cases, it is untimely to raise a question on correctness of classification. At the same time, it shall be pointed out that as of today, none of the cases in the *Khashiyev* group of cases is terminated due to expiration of limitation periods.

In addition, if based on the results of the investigation, the factual circumstances and guilty persons are established, and there are grounds for termination of the criminal proceeding by an investigation authority in connection with the expiration of limitation periods, victims and/or their representatives are entitled to appeal against the procedural decision to the court, including on the grounds of improper classification of a criminal act. At the present time, there are no evidence (including the relevant judgments of the Court) that this remedy is ineffective.

**5.** A number of other additional measures have been taken within the framework of enforcement of the judgments in the *Khashiyev* group of cases in the reporting period.

**5.1.** As part of implementation of the previously planned measures, within the framework of the mechanisms created in Russia (which were previously reported in detail), the activities for searching and determining the fate of missing persons, conducting effective investigations into the case of this category and preventing further violations, found by the ECHR, have been carried out.

**5.2.** The additional measures aimed at inter-departmental coordination of the relevant work, including:

**5.2.1.** On 27 February 2015, under the chairmanship of Deputy Prosecutor General of the Russian Federation, the inter-departmental meeting of the heads of the law-enforcement authorities of the North Caucasus Federal District relating to prevention of abductions and ensuring search of missing persons was held in Grozny. The issue related to implementation of the Complex Program on struggle against abductions and search for missing persons, of which the Russian authorities informed in detail earlier, was discussed at the meeting. In the course of the meeting, a set of specific measures aimed at improvement in the effectiveness of the work and coordination of the joint actions in this regard has been developed.

**5.2.2.** The joint order of the Ministry of Internal Affairs of Russia, Prosecutor's Office and Investigative Committee no. 38/14/5 of 16 January 2015 was issued, by which the *Instruction on the Procedure for Examination of Applications, Reports of the Crimes and Other Information of Incidents Connected with Disappearance of Persons* was approved. This Instruction provides for the clear algorithm of the activities carried out by both investigators and operational criminal investigation units of the Ministry of Internal

Affairs of Russia, aimed at searching of missing persons.

**5.2.3.** On 3 December 2014, for the purpose of optimizing the cooperation between the military and civil investigators (within the structure of the Investigative Committee of Russia), order no. 64/176 *On the Procedure for Referring the Criminal Cases Related to Crimes Committed within the Territory of the Chechen Republic from the Investigative Directorate of the Investigative Committee of the Russian Federation for the Chechen Republic to the Military Investigative Directorate of the Investigative Committee of the Russian Federation for the Southern Military District* was issued. The above-mentioned order contains the detailed regulation of issues related to referring the cases for the purposes of excluding the errors when determining the jurisdiction, as well as to referring the relevant cases.

### **III. Measures aimed at investigation into the criminal cases**

This Section contains the information related to investigation into the criminal cases, being examined by ECHR in the *Khashiyev* group of cases, in respect of which CMCE expressed a wish to receive the relevant information in its decision of 11 March 2015.

#### **1. Judgment of the Court in *Trapeznikova v. Russia*, no. 21539/02.**

The above-mentioned case was related to the murder of the applicant's husband and 3 other persons by the unidentified person (allegedly named Khalid) in January 2000. The Court recognised that the investigation into this case, conducted by the Russian authorities, was ineffective. It pointed out the delays in exhumation of the bodies and in conducting forensic examinations, as well as that the proper measures, aimed at searching for a person named Khalid, were not taken.

The delay in exhumation of the bodies and conducting forensic examinations was caused by the active phase of the counter-terrorism operation which had been under way in the Chechen Republic. After the application had been admitted for examination by the Court, the criminal case was referred to the special investigative unit of the Investigative Committee for the Chechen Republic, which sped up the activities on investigation.

In the course of the investigation, the victim was questioned in detail. The victim said that she saw what was going on but managed to hide and survive. Her neighbours and other possible eye witnesses of the crime were also interrogated. A number of operational and search activities were conducted as well.

The facial composite of the alleged perpetrator was constructed based in the victim's testimony. This composite was sent to the competent law-enforcement authorities for the purpose of identification and search for him. In response thereto, the intelligence information that the murder of the applicant's husband and other victims had been committed by Khalid I, was received. It was also informed of the alleged perpetrator's occupation. It appeared that between 1996 and 1999 Khalid had been an officer of a security service which had operated when A. Maskhadov, former President of the self-proclaimed Republic of Ichkeriya, had been in power and at the date, when the crime had been committed, he had been a member of an illegal armed group.

In order to establish Khalid I.'s whereabouts, the investigators conducted a considerable amount of investigative and search activities, following which they identified A.I., Khalid I.'s cousin. As a result of the right tactics chosen by the investigator during the in-

terrogation of A.I., the latter made incriminating statements against his cousin in respect of the above-mentioned crime. In particular, he told that at the material time, he lived in Grozny and met with his cousin Khalid I., who had already been a member of an illegal armed group opposing the federal troops by that time. He also testified that Khalid told him that in early January 2000 he had killed four civilians among the Russian population of Grozny in a basement of a block of flats at Revolyutsii Avenue in Grozny, having shot them with the assault rifle. After the federal troops took Grozny, Khalid I. left for the Republic of Ingushetia together with the refugees and later went back to his village Sernovodsk where he died from an illness in 2003.

Due to the measures taken, Khalid I.'s photo was received from his relatives. Thereafter, identification was conducted. In the course of identification, victim Trapeznikova identified Khalid I. as a person, who committed murder of her husband and other persons in January 2000.

Therefore, the investigative authorities obtained sufficient evidence that gave grounds for charging Khalid I. with the above-mentioned crime.

In order to verify whether Khalid I. had actually died and had been buried, the investigators identified the persons who had taken part in the ablution and burial of his body; when interrogated, they confirmed that those events had actually taken place.

In order to prove that Khalid I. had indeed died, the remains of his body were exhumed from the burial place indicated by his relatives, and then samples of the bone tissue of the corpse and those of blood of T., Khalid I.'s sister, were taken in order to establish the genotype of the remains. As a result of a forensic genetic examination, it was established that the exhumed remains indeed belonged to Khalid I.

Following the investigation, on 21 April 2010 the investigative authorities decided to terminate the criminal case in view of the accused person's death.

The victim was informed of the course and results of the investigation and even expressed her gratitude to the investigative authorities for the work they had performed to identify the perpetrator.

## **2. Judgment of the Court in *Taziyeva and others v. Russia*, no. 50757/06.**

The applicants complained about conducting search in their home by the officers of the federal security forces, alleged stealing of the documents, belonging to them, as well as damages to house.

The Court considered the applicants' complaint of alleged stealing of the documents to be manifestly ill-founded. It also concluded that the applicants were not victims of violation of the Convention in respect of damage to the house, as they failed to provide any evidence confirming their title thereto.

However, violation of Article 8 of the Convention was found, as the house, where the applicants lived, was searched by the representatives of the federal security forces under the provisions of Federal Law no. 130-FZ of 25 July 1998 *On the Fight Against Terrorism* ("Law no. 130-FZ"), which was formulated in vague and ambiguous terms, did not provide an effective protection against arbitrariness and could not be sufficient ground for conducting search.

After delivering of the judgment by the Court, the decision to dismiss initiation of the criminal case, delivered previously, was quashed, and the additional procedural verification was conducted.

It was established that the officers of the Federal Security Service of Russia and the Ministry of Internal Affairs for the Republic of Ingushetia conducted the search of the premises, where the applicants lived, within the powers, provided for by Law no. 130-FZ. At that, the applicants, who lived in the above-mentioned residential premises, were relatives of A.T., concealing the active participant of the armed gang, which attacked the Republic Ingushetia in June 2004, and there were grounds to believe that A.T. could be in this premises, as well as the items related to the relevant terrorist act could be kept therein (later A.T. was arrested, brought to the criminal responsibility, and on 15 October 2013 he was convicted for the active participation in armed gangs and terrorist acts, resulted in severe consequences, in particular causing death, and sentenced to imprisonment for life).

It was also established that the representatives of the federal security forces, who conducted the search, acted within the powers, provided for by Law no. 130-FZ, and, therefore, they could not be responsible for deficiencies of this Federal Law (Law no. 130-FZ is not void now, the new federal law was adopted, which provides the clear procedure for application of the restrictive measures while exercising the powers related to prevention of terrorism).

Therefore, the additional verification showed that the search of the residential premises, where the applicants lived, was not arbitrary; it was caused by the objective necessity, and the relevant representatives acted within the powers, provided for by the federal law being in force at the material time.

In view of the foregoing, according to the results of the verification, a decision to dismiss initiation of a criminal case was delivered for lack of corpus delicti. The above-mentioned procedural decision was verified by the Main Military Prosecutor's Office and was recognised lawful and reasonable.

### **3. Judgment of the Court in *Abdurashidova v. Russia*, no. 32968/05**

The above-mentioned case was related to the applicant's daughter (S.A.) death in the course of the special operation of the federal forces when arresting two armed men (Ya. and Yu.), suspected of committing the crimes related to the terrorist activities and active involvement in illegal armed groups ("suspects"). Two suspects were killed, and two police officers were wounded in the course of the operation.

The Court dismissed the applicant's complaint that S.A.'s death was caused by the actions of the representatives of the federal security forces. The ECHR agreed with the evidence, obtained by the authorities during the investigation, that the death of the applicant's daughter resulted from the use of hand grenades by the suspects, as well as that there were no grounds to recognise the state representatives to be responsible for this death. However, it was found a violation of Article 2 of the Convention in view of the failure to take sufficient measures aimed at ensuring S.A.'s right to life, as well as at ensuring an effective investigation into her death.

With regard to the ineffectiveness of the investigation, the Court noted that sufficient measures aimed at clarification of the circumstances of A.S.'s death, including, the issues related to conducting the special operation, were not taken, in particular, the witnesses were not interrogated, and the additional examinations were not ordered, as well as that the applicant was not granted a victim status in the criminal case and the interests of the close relatives of the person killed were not taken into account during the investigation.

As it is seen from the case-file, the subject of examination by the Court were the doc-

uments, submitted as of August 2005, notably not to the full extent. In view thereof, the Government of the Russian Federation provide information which was not examined by the Court.

Initially, the circumstances of S.A.'s death were examined in the course of investigation into the criminal case, initiated due to the crimes, committed by Ya, and Yu., in particular, a number of investigative activities, of which the Court was informed, were carried out. These activities allowed concluding that there was no evidence confirming that S.A.'s death was caused by the federal security forces' actions. In 2008, a number of criminal cases, related to the criminal actions, committed by the armed gang, members of which were Ya. and Yu., were joined into one proceeding. The investigation into the circumstances of S.A.'s death continued within the framework thereof. The investigation was transferred to the special division for investigation of particularly important cases.

According to the investigator's decision of 18 October 2008, the applicant was granted a victim status, but she was not informed of this decision, as she left the Russian Federation, and there was no possibility to contact her.

In the course of investigation, a number of examinations (forensic, medical and criminalistic, biological, explosive, ballistics examinations etc.) were ordered and carried out. Other measures aimed at eliminating the shortcomings found by the Court were also taken. In particular, S.A.'s relatives as well as the persons involved in the incident and all identified persons, who were eye witnesses of what happened, or could hold the relevant information, were interrogated. According to the results thereof, it was established that the actions of the federal security forces representatives in the course of the operation, corresponded to the situation, were reasonable, and S.A.'s death was caused by Ya. and Yu's criminal actions.

In view of the fact that Ya. and Yu. died, the decision to terminate the criminal case against them due to the suspects' death was delivered.

#### **4. Judgments of the Court in *Isayeva v. Russia*, no. 57950/00, and *Abuyeva and others v. Russia*, no. 27065/05.**

These cases are related to the special operation with the use of artillery and other military equipment, conducted by the federal forces on 4–7 February 2000 in Katyr-Yurt after this village had been captured by the numerous group of the armed Chechen militants. The civilians were killed as a result thereof.

The Court found a number of shortcomings in the investigation in its judgments. After delivering of the judgment by the Court in *Abuyeva and others v. Russia*, the central bodies of the main Military Prosecutor's Office and the Investigative Committee of the Russian Federation organised the verification of lawfulness and reasonableness of the decision to terminate the criminal case. On 28 August 2012, according to the results thereof, the procedural decision was quashed, and the additional investigation was carried out.

It is to inform of the results of the investigation (within the context of the specific shortcomings, found by the ECHR).

##### **4.1. The Court's position:**

- *the complete list of the victims was not drawn up, not all victims were granted a victim status in the criminal case;*
- *the victims were not informed of the most important procedural decisions, delivered in the case; the provisions of the domestic legislation were violated at that.*

The following measures were taken for the purpose of eliminating these shortcomings:

In the course of the additional investigation, as a result of the measures taken, the persons, who suffered from bombardment and shelling of Katyr-Yurt by the federal forces, were identified and granted a victim status. Moreover, a number of the relatives or the persons killed were granted a victim status. Therefore, all persons, suffered from the incident in Katyr-Yurt, were identified and, if possible, granted a victim status.

The Code of Criminal Procedure of the Russian Federation provides the victims in the criminal case, with the procedural rights, including the rights to be notified of suspension or termination of the criminal case, to appeal against the investigator's actions to the prosecutor or the court. In the course of the preliminary investigation, the victims actively exercise the rights, granted to them by law, in person or through their representatives without any restrictions. In particular, as it will be noted below, the right to appeal against the procedural decision delivered in the case was exercised.

#### 4.2. The Court's position:

*the decisions to dismiss investigation were taken by the Military Prosecutor's Office on the ground of the examination, conducted by the military (specialists of the Combined Arms Academy), what raised serious doubts regarding independence of the investigation from the persons, involved in the events in question.*

#### Information from the authorities of the Russian Federation

The investigation into the criminal case after delivering the judgment in *Abuyeva v. Russia* was conducted by the investigators of the 3rd Military Investigation Department of the Investigative Committee of the Russian Federation for the Southern Military District.

The military investigative bodies and the military prosecution authorities are included into the structure of the Investigative Committee of the Russian Federation and Prosecutor General's Office of the Russian Federation accordingly. They are not subordinated to the command of the Armed Forces or the Ministry of Internal Affairs of Russia, and, therefore, they cannot be interested in pursuing their departmental interests.

However, taking into account the position of the Court and CMCE, the special joint investigative group, comprising, in particular, the civil investigators, was created.

As regards the Court's note that the military tactical examination was conducted by the military experts and it reduces its evidentiary value, the following shall be noted.

In accordance with the Code of Criminal Procedure of the Russian Federation ("CCP"), all evidence shall be assessed from the viewpoint of relevance, admissibility and credibility. All evidence collected shall be assessed as a whole from the viewpoint of sufficiency for the solution of the criminal case. Therefore, in accordance with the CCP RF, the expert report itself cannot be ground for charging a person or terminating a criminal case, if it is not confirmed by the other evidence.

According to Article 195 of the CCP RF, the examination shall be carried out by the experts — persons, possessing the special knowledge. The performance of examinations by the experts of the Military Training and Research Center of the Ground Forces of the Armed Forces of the Russian Federation "Combined Arms Academy of the Armed Forces

of the Russian Federation” was conditioned by the specificity of the issues raised relating to the activities of armed groups, as well as by the peculiarity of the documents submitted for the study, a part of which in this case constitutes the information, being a state secret.

However, taking into account the position of the Court and CMCE, in the course of the additional investigation, the expert panel operational and tactical forensic examination was held by the external experts (who were not military) of the Southern Federal University.

Therefore, in the course of the additional investigation, taking into account the Court's findings, the maximum possible measures were taken for the purpose of ensuring impartial and independent investigation.

#### 4.3. The Court's position:

*no measures were taken in the course of the investigations, previously examined by the Court, to clarify the key issues related to responsibility for the safety during evacuation of the civilian population, as well as the “punitive” nature of the operation and whether it was directed against the population of Katyr-Yurt. The military or civil control agencies, or military servicemen involved in the operation, apparently, were not interrogated about these aspects thereof.*

#### Information from the authorities of the Russian Federation

A large number of investigative activities were carried out in the course of the additional investigation, including: search for the persons who suffered from the incident; interrogations of victims and witnesses, officers of the command staff, who planned and conducted the special operation; performance of a number of examinations (including, as noted above, expert panel operational and tactical examination by the civil experts); clarification of the circumstances of the events, including the issues relating to planning and conducting of the special operation, taking of the measures to ensure the safety and evacuation of the civilian population, etc.

The investigative authorities analysed the evidence obtained in the course of the investigation in their aggregate. All circumstances of the events and the role played by the militants and representatives of the federal forces, including the command, therein, were established.

It was taken into account that the actions of the members of the illegal armed groups (capture of Katyr-Yurt by the militants, amounting to 3,000 – 4,000 persons, creation of well-fortified positions in the residential buildings from the engineering viewpoint, armament not only with small arms, but also with grenade launchers, fire launchers, flamethrowers, heavy machine guns, man-portable air defence missile systems, equipment with armoured vehicles; their refusal to yield themselves prisoners of war; use of the locals as human shield while resisting etc.), taken together, constituted a real danger to the locals' life and health, avoidable casualties among servicemen, acting in the field.

It was noted that these circumstances required from the command to take the adequate measures to avert the danger arose — armed interference with the rights and interests of the persons who lived in Katyr-Yurt, and the servicemen of the federal forces, protected by law, as well as those of the society and state — restoration of the constitutional order in the Chechen Republic.

It was also established that after preliminary informing and providing the civilians to

leave the village using the humanitarian corridors, the further fire damage (to the centres of armed resistance, fire weapons, fortified support points) by aviation and artillery means was in compliance with the procedure for their use, as envisaged by the plan of the special operation, however it did not exclude losses among civilians. However, according to the evidence obtained, it was noted that the damage, caused by these means, was proportionate and compatible in view of the situation and the measures taken to minimize the losses among civilians and servicemen of the federal forces.

It was also established that, when preparing and conducting the special operation in Katyr-Yurt, the commanders' actions were compatible with the requirements of the manuals, instructions and regulations, and were lawful.

Therefore, the commanders' actions, when conducting the special operation in question, were aimed at eliminating the danger, directly threatening the person and the persons' rights, the interests of society and state protected by law. This danger, as it was established, could not be eliminated by other means, and the limits of urgent necessity were not exceeded. As in accordance with Article 39 § 1 of the Criminal Code of the Russian Federation, the infliction of harm in a state of urgent necessity shall not be deemed to be a crime, on 9 March 2013 the decision to terminate the criminal case against the former commanders of the special operation (named in the decision) for the lack of *corpus delicti*.

All persons concerned, including the victims, were informed of the above-mentioned procedural decision, as well as of the terms and procedure for appealing against it. The applicants' representative appealed against the decision in question to the Grozny Garrison Military Court, which examined the arguments, set out in the appeal, in detail, and, following the results thereof, it dismissed the appeal on 6 December 2013. The above-mentioned decision was upheld, and the appeal of the applicants' representative was dismissed by the judgment of the Judicial Division for Criminal Cases of the North Caucasus District Military Court, delivered on 6 March 2014.