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Communication from the Russian authorities in the Khashiyev group of cases against the Russian Federation (Application No. 57942/00)

Information made available under Rule 8.2.a of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Référence du point : 1128e réunion DH (novembre-décembre 2011)

Communication des autorités russes dans le groupe d'affaires Khashiyev contre la Fédération de Russie (requête n° 57942/00) (**anglais uniquement**).

Informations mises à disposition en vertu de la Règle 8.2.a des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

* In the application of Article 21.b of the rules of procedure of the Committee of Ministers, it is understood that distribution of documents at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers (CM/Del/Dec(2001)772/1.4). / Dans le cadre de l'application de l'article 21.b du Règlement intérieur du Comité des Ministres, il est entendu que la distribution de documents à la demande d'un représentant se fait sous la seule responsabilité dudit représentant, sans préjuger de la position juridique ou politique du Comité des Ministres CM/Del/Dec(2001)772/1.4).

REPORT

on the measures, adopted by the Russian authorities, to ensure search for missing persons and on implementation of limitation period for bringing to criminal responsibility (in the cases connected with violation of human rights during settlement of the crisis in the Chechen Republic)

One of the priority tasks, which are being resolved in the course of investigation of criminal cases connected with disappearance of nationals during settlement of the crisis on the territory of the Chechen Republic, is to discover further fate of the missing persons. The Russian authorities have organized complex approach to resolution of this issue.

On the basis of the requirements of Federal Law of 7 February 2011 no. 3-FZ *On Police* (in the past, these issues were regulated by Law of the Russian Federation of 18 April 1991 no. 1026-1 *On Militia*) and of Federal Law of 12 August 1995 no. 144-FZ (as amended on 28 December 2010) *On Operational Search Activities*, the activities aimed at search of abducted persons are initiated immediately after receipt of the information about the crime commission, irrespective of the fact of a criminal case initiation. Pursuant to Article 144 of the Code of Criminal Procedure of the Russian Federation (hereinafter – “the CCP RF”) a decision on initiation of the criminal case under the application on abduction is delivered by the preliminary investigation bodies within three days from the moment of the application registration. According to Article 151 § 2 (a) of the CCP RF preliminary investigation into criminal cases of such category is carried out by the divisions of the Investigative Committee of the Russian Federation.

In all the cases subject to examination by the European Court measures were taken to eliminate found violations and to ensure effective investigation, including discovery of further fate of the missing persons, pursuant to the Court’s conclusions and Russian legislation requirements.

In the named category of criminal cases, within the established procedure, operational record cases were opened in the district departments of the interior, in the frames whereof operational search activities are carried out in order to establish the whereabouts of the abducted persons and identify the persons involved into the crimes. Such operational record cases were opened in respect of all the missing persons under the cases subject to examination by the European Court.

Pursuant to Federal Law *On the Prosecutor’s Office of the Russian Federation*, supervision over execution of Federal Law *On Operational Search Activities* upon carrying out of the operational search measures by the investigating body is performed by prosecution authorities. The prosecutors monitor the operational record cases on a regular basis and, in case of establishment of violations, make submissions for elimination of the violations and bringing the guilty officials to disciplinary responsibility. Grounded motions for inspection of the operational record cases of the heads of the investigative bodies can also constitute a reason for the prosecutor’s inspections in case of failure of the body of inquiry to fulfill certain orders of the investigator, in case they were not fulfilled in full or in time, such inspections may also be reasoned under the result of analysis of other operational search activities results contained in the criminal case, that prove the violations and defects.

During their visit to the city of Grozny of the Chechen Republic, in the prosecutor’s office the members of delegation of the Secretariat of the Committee of Ministers of the

Council of Europe (hereinafter – “CMCE”) were informed in detail of the procedure and active realization of the relevant powers by the prosecutors.

Investigators and heads of investigative authorities, within their powers established by the CCP RF, independently take measures to enhance the work of the bodies of the interior on search of the missing persons both by giving direct necessary orders and supervising over their execution and by introduction of response acts aimed at elimination of the violations at hand. An example of such response is submission of the head of the Directorate of the Investigative Committee for the Chechen Republic of 17 August 2010 to the Minister of Interior of the Chechen Republic concerning undue organization of operational search activities in some criminal cases (a copy of the submission was presented in the CMCE by the Interregional Public Organization Committee Against Torture). According to the Russian Ministry of Interior, following examination of the above submission certain measures were taken to eliminate the violations found. Guilty officials were brought to disciplinary responsibility. The Minister of Interior for the Chechen Republic issued an order to dismiss the head of the Department for prevention of Abductions of the Main Department of the Ministry of Interior of the Chechen Republic. According to the Investigative Committee of the Russian Federation, currently cooperation of the investigators of the Investigative Directorate of the Investigative Committee of the Russian Federation for the Chechen Republic with the third department of the Military Investigative Directorate of the Investigative Committee of the Russian Federation for the Southern Military District does not give rise to criticism.

A set of measures was taken to strengthen inter-departmental coordination for search of missing persons. Among such measures, carried out recently, there can be named the coordination meeting of the heads of the law enforcement authorities of the Chechen Republic, held on 23 December 2010, concerning organization of work of the law enforcement authorities aimed at resolution and investigation of grave and especially grave crimes, including those connected with disappearance of persons.

In order to execute the decision of the above meeting, the Criminalistics Department of the Investigative Directorate of the Investigative Committee of Russia for the Chechen Republic analyzed execution of the requirements of Order of the Prosecutor General of the Russian Federation and the Minister of Interior of the Russian Federation no. 70/122 of 27.02.2010 *On Establishment of the Instruction on the Procedure for Examination of the Applications, Communications of the Crimes and Other Information of Incidents Connected with Disappearance of Persons*; it also analyzed promptness and lawfulness of initiation of criminal cases into the facts of disappearance of persons.

Moreover, cooperation into this issue was organized between the investigators of the Military Investigative Directorate and the Investigative Directorate of the Investigative Committee of Russia for the Chechen Republic. According to joint order no. 19/6 of 31.01.2011, the heads of the Military Investigative Directorate of the Investigative Committee of Russia for the Southern Military District and the Investigative Directorate of the Investigative Committee of Russia for the Chechen Republic established a joint working group, in which there was organized studying of the criminal cases on abductions and murders of persons, committed over the past years, where there is sufficient data proving involvement of military servicemen into these crimes. For nine months of the year 2011, the investigators of the Third Military Investigative Directorate in the Investigative Directorate of the Investigative Committee of Russia for the Chechen Republic have studied 59 criminal cases into which there are grounds to assume involvement of military

servicemen. It has been found in 22 cases that involvement of military servicemen into these crimes had been established and presently a set of necessary investigative and operational search activities is carried out into these cases under the established procedure.

Within the frames of investigation of such category of criminal cases, there were established operational search groups with participation of the representatives of different bodies depending on the circumstances of the crime. In all the cases a set of necessary investigative activities was implemented, including those, which necessity was indicated by the European Court (excluding the cases where it appeared impossible due to objective reasons). The course and results of the investigation are set forth in detail in the statements presented by the Russian authorities to the 1115DH meeting of the Ministers' Deputies (7 June 2011 – 8 June 2011) and 1128DH meeting of the Ministers' Deputies (29 November 2011 – 2 December 2011).

Along with the set of standard investigative and operational search activities, all the abducted and missing persons are checked in the automated informational databases “Opozvaniye” and “Rozysk-Magistral”.

According to the information submitted by the Ministry of the Interior of the Russian Federation, the information concerning all wanted persons is constantly registered in the constantly updated automated database, according to which all persons delivered to the departments of the interior of the Ministry of Interior for the Chechen Republic and to the department of the interior for other republics of the North Caucasian region are checked. Constant working cooperation is carried out with the Directorates of the FSB (Federal Security Service) of the Russian Federation and the Directorates of the Federal Penal Service (FSIN) of the Ministry of Justice of the Russian Federation for these republics.

Specialized information centers, unified databases operate in the Ministry of Interior of Russia and the Ministry of Interior for the Chechen Republic, where there is information concerning abducted, missing persons on the territory of all the regions of the Russian Federation and concerning unidentified corpses. Investigators send corresponding requests for the required information in each criminal case to these centers.

In order to collect information of abduction of persons on the territory of the Republic from 1999 till present, in the Investigative Directorate of the Investigative Committee of Russia for the Chechen Republic an informational analytical database is operating under Article 126, 127 of the Criminal Code of the Russian Federation (CC RF), where information concerning the circumstances of the crimes, the abducted nationals and persons involved in committing crimes is recorded. In each of such facts an analytical reference is drafted which inter alia contains information concerning the activities carried out by the investigation in order to enhance the investigation, the victims and relatives of the abducted, their testimonies on the merits.

Pursuant to the Rules of compilation and submission of registration documents and records on crime, of criminal cases and materials, information of the criminal investigation results from the moment of initiation, information of the persons responsible and victims, in case they are found victims in a criminal case, is collected and updated regularly in the military prosecution authorities and the military investigative bodies (information and search complex “Prestupnost”).

Pursuant to the provisions of Federal Law of 3 December 2008 no. 242-FZ On State Genome Registration in the Russian Federation, a federal database of genome information

(hereinafter "FBDGI") was set up in the federal state institution Center of Criminalist Examinations of the Ministry of Interior of the Russian Federation, where DNA data of unidentified corpses and missing persons are allocated from different bodies. Genotype of the relatives of the missing persons is verified under the FBDGI.

DNA data bases were established and are supplemented in the forensic-medical expert institutions of the Ministry of Defense of Russia. There is such a database in the 16th State Center of Forensic and Criminalist Examinations (Rostov-on-Don) which is applied for identification of unidentified corpses of military servicemen, local residents and members of illegal armed groups who died on the territory of the Chechen Republic. In the course of molecular genetic examinations, the genetic material received from the close relatives of the abducted is compared with the genotypes base of unidentified corpses found in different periods on the territory of the Chechen Republic, which is owned by the 16th State Center of Forensic and Criminalist Examinations.

For nine months of the year of 2011, in order to create a DNA database of missing persons, molecular genetic examinations were assigned under 120 criminal cases, subject to examination by the European Court; those examinations were entrusted to the experts of the Expert and Criminalistic Center of the Main Department of the Ministry of Interior of Russia for the Stavropol Territory and the 16th State Center of Forensic and Criminalist Examinations (Rostov-on-Don). Thus, in 2011, molecular genetic examinations have been carried out within the frames of the criminal cases, subject to examination by the European Court, no. 6844/02 *Isigova and Others v. Russia*, no. 29958/04 *Tsurova and Others v. Russia*, no. 21539/02 *Trapeznikova v. Russia*, no. 3026/03 *Akhmadova and Others v. Russia*, no. 40464/02 *Akhmadova and Sadulayeva v. Russia*, no. 69481/01 *Bazorkina v. Russia*, etc.

Presently, conclusions on 97 criminal cases have been obtained with registration of the DNA results. The work on carrying out molecular genetic examinations in the criminal cases of the named category is ongoing.

At the same time, in the number of cases it appeared impossible to carry out necessary molecular genetic examinations.

One of the reasons of that issue is that the bodies of the persons killed in the course of the hostilities on the Republic territory were buried right after appearance of such a possibility in the conditions connected with the threat to lives of the persons who did it, and it was impossible to wait until the bodies would be examined and forensic medical examinations would be carried out. At the same time, it is not always possible to exhume the bodies of the deceased in order to carry out examinations due to the reasons which do not depend on the investigators.

Thus, in the criminal case in the fact of murder of the members of the Estamirovs family (application to the European Court no. 60272/00 *Estamirov and Others v. Russia*) a number of additional investigative and operational search activities was carried out in order to eliminate the violations found by the European Court. Among them, measures were taken to exhume the corpses of the Estamirovs family, there were prescribed forensic medical examinations of deceased Kh.Kh. Estamirov, Kh.-A.Kh. Estamirov, T.Kh. Estamirova, Khassan Estamirov Hassan and S.-A.A. Masarov. However, it appeared impossible to carry out examinations due to the reasons which did not depend on the preliminary investigation authorities.

According to the national traditions and canons of Islam, burial is conducted on the day of death. For the same reason, the removal of organs for examination is not allowed. In view of the above, victim M. sent a request to the Prosecutor's Office of the Oktyabrskiy District of Grozny concerning disagreement with the exhumation of the corpses of his relatives, as it was against the customs of Islam. This request was dismissed. According to the investigator's request, exhumation of the corpses was permitted by the court. However, the relatives hampered this investigative measure by surrounding the grave of the deceased relative and not letting the investigators to approach it.

There are also cases when the relatives of the abducted persons waive their participation in the investigation activities, in particular, giving testimonies and giving to the investigators DNA samples within the procedure established by the CCP RF.

An example is criminal case no. 30012 (application no. 15569/06 *Asadulayeva and Others v. Russia*) initiated on 4 February 2004 on the basis of elements of the crime, provided for by Article 126 § 2 (a, d) of the CC RF on the fact of abduction of B.A. Asadulayev, whose whereabouts have not been established so far.

In 2011, in order to use the possibility to check the DNA genotype of B.A. Asadulayev in the DNA-database of unidentified corpses, the necessity of submission of their DNA samples was repeatedly explained to Ms. A. (sister of the abducted) as well as other relatives of the abducted (siblings). However, Ms. A. and other relatives of the abducted flatly rejected submission of their DNA (blood) samples. Therefore, presently, the investigation lacks an objective possibility to assign molecular genetic examination in order to compare the DNA genotype of the abducted person relatives with the samples of DNA genotypes of unidentified corpses.

The Russian authorities have to draw attention to the fact that in some cases in the course of investigation it was established that the allegedly missing persons, even in case of lodging applications with the European Court, were not missing in fact.

Thus, in 2009, applications were lodged with the European Court by relatives of Sh., T. and G. who, as the applicants alleged, had been missing due to unlawful actions of the federal forces representatives. In these applications the applicants asked the Court to apply urgent measures within Rules 39-41 of the Rules of Court.

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

It should be noted that such cases are not unique. As follows from the information of the Investigative Committee at the Prosecutor's Office of the Russian Federation, received within the investigation of other criminal cases, on 13 April 2009, the Malgobek Town Investigative Department of the Investigative Directorate of the Investigative Committee at the Prosecutor's Office of the Russian Federation for the Republic of Ingushetia received an application on disappearance of Mr. Ts., lodged by his father.

In the course of the application verification, information was obtained that Ts. had become a member of an illegal armed group. Consequently, on 8 June 2009, Ts. together with other persons attacked the officers of the Ministry of Interior for the Chechen Republic in the village of Muzhichi of the Sunzhenskiy District of the Republic of Ingushetia. In the course of the fight Ts. was detained and acknowledged the fact of

participation in the activity of illegal armed groups. The above case had been forwarded to the Sunzhenskiy District Court. By the sentence of 28 December 2009, delivered by the Sunzhenskiy District Court, Ts. was convicted under § 2 Article 208 of the Criminal Code of the Russian Federation (“Participation in illegal armed groups”).

The Investigative Directorate of the Investigative Committee of Russia for the Chechen Republic on a constant basis cooperates by means of bilateral meetings with international organizations, such as International Committee of the Red Cross and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, empowered with special jurisdiction to search the victims of forced disappearance. During the meetings the parties’ jurisdiction in investigation of such crimes, arising problems and ways of their resolution are discussed, experience is shared and accumulated, etc.

In the Parliament of the Chechen Republic there was created the Committee for Search of Persons Who Disappeared during the Antiterrorist Operation on the Territory of the Chechen Republic which closely cooperates with the Directorate of the Investigative Committee for the Chechen Republic and the Ministry of Interior of the Chechen Republic on the matters of discovery of fate of the missing persons.

Moreover, in order to inform the residents and to resist abduction of people in the Chechen Republic, photographs and sketches of the abducted and missing persons, contact telephone numbers, which people may use to give any information, including anonymously, are published in weekly TV programs “Dezhurnaya Chast” and “Kriminalnaya Khronika” of Chechen state public broadcasting companies “Vaynakh” and “Grozny”.

2. Prescription limit for criminal prosecution established by the Russian legislation is not an obstacle for investigation of the category of cases under consideration.

The grounds for relieve from criminal responsibility due to expiration of time limits for prosecution are stipulated by Article 78 of the CC RF.

The criminal cases of the category under consideration, as a rule are initiated and investigated under elements of the crimes treated as grave or especially grave pursuant to Article 15 of the CC RF. It is stipulated by Article 78 of the CC RF that the persons having committed the crimes of the above categories are relieved from criminal responsibility in case 10 or 15 years respectively have passed after committing of the crime.

The authorities of the Russian Federation note that in Europe there is no unified standard concerning the prescription limit for criminal prosecution. The analysis shows that the prescription limits for criminal prosecution set forth by the Russian authorities for corresponding crimes do not differ significantly from the prescription limits for criminal prosecution for similar crimes in other member states of the Convention (for example, Azerbaijan, Armenia, Bulgaria, Hungary, Germany, etc.).

Moreover, pursuant to Article 10 of the Criminal Code of the Russian Federation, the criminal law, stipulating criminality of an action, or intensifying the punishment or otherwise aggravating the position of a person, has no retroactive effect. Application of retroactive effect of criminal law, aggravating the position of a person, is prohibited also by Article 7 of the Convention.

Therefore, even in case of increase of time limits for criminal prosecution, the newly set time limits cannot be applied to the persons, who committed crimes during settlement of the crisis and restoration of constitutional order in the Chechen Republic.

On the other hand, the departmental regulatory act – Order of the Chairman of the Investigative Committee of the Russian Federation no. 2 of 15.01.2011 *On Organization of Preliminary Investigation in the Investigative Committee of the Russian Federation* – sets up the procedure, according to which criminal cases may be terminated upon expiry of the prescription limit for prosecution only after identification of persons to be brought to responsibility as accused, if the named person do not object to this decision.

In case it appeared impossible to identify persons to be brought to responsibility as accused or establish their whereabouts in a criminal case, the investigators are not entitled to deliver procedural decisions on termination of the criminal cases on the grounds provided for by Article 24 § 1 (3) of the CCP RF.

In case of identification of guilty persons and expiry of the prescription limits for criminal prosecution, according to Article 78 § 4 of the CC RF the issue of application of the time limits to a person having committed the crime punishable with capital punishment or life imprisonment is resolved by court. A conclusion can be drawn from this provision that termination of a criminal case (criminal prosecution) in the crimes of the category under consideration due to time limit expiry is impossible on the preliminary investigation stage since this issue is considered to be exclusive court jurisdiction according to law.

In other categories of cases (according to Article 24 § 1 (3) of the CCP RF) upon identification of the guilty person and expiry of prescription limits, criminal prosecution against the person, having committed the crime, as well as the criminal case initiated are to be terminated (an exception from this rule is the case, according to Article 27 § 2 of the CCP RF, when the suspect or accused objects to such termination).