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Meeting: 1208 meeting (23-25 September 2014) (DH)

Subject: Proposals from the Russian Federation concerning the
Khashiyev group against Russian Federation

Document distribué à la demande de la: Fédération de Russie

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Réunion : 1208 réunion (23-25 septembre 2014) (DH)

Objet : Propositions de la Fédération de Russie concernant le
Groupe Khashiyev contre Fédération de Russie

**Comments of the Russian authorities
to the draft Order of business of the 1208th meeting
of the Committee of Ministers of the Council of Europe 23-25 September (DH)
with regard to the *Khashiyev* group of cases
(to para. 3 subsection 3 “Questions raised by the Committee at its 1193rd meeting
(March 2014) (DH)” section “status of execution”)**

The Russian authorities in accordance with existing procedures have prepared amendments to the draft Order of business of the 1208th CMCE meeting (DH) with regard to consideration of the *Khashiyev* group of cases. This was done because the summary of information submitted by the Russian authorities distorts their position.

The said amendments were partly taken into account.

The Russian authorities believe that the summary of their position reflected in the draft Order of business with regard to mechanism of search and establishing of fate of missing persons does not reflect its essence. As the previous meetings have shown, lack of such objective reflection makes objective evaluation impossible.

In particular, it does not follow from the summary that the mechanism of search and establishing of fate of missing persons is of complex nature, as well as the measures realized within its framework. However, the complex nature of this mechanism is its main feature.

The draft Order of business does not reflect a number of important features of the mechanism and respective measures on its realization. Although other elements of the mechanism of missing people search and measures for its realization are named in the draft Order of business, but they are presented outside of the mechanism’s framework. This effect deepens in the light of comments, prepared by the Secretariat.

Therefore an alternative **variant of presentation** has been prepared with regard to para. 3 subsection 3 “Questions raised by the Committee at its 1193rd meeting (March 2014) (DH)” section “status of execution”, **which reflects the actual position of the Russian authorities. This variant is presented for consideration of the participants of the meeting.**

“In response on 24 July 2014 the Russian authorities submitted an updated action plan, giving additional explanations with regard to planned and adopted measures for creation of the mechanism of search and establishing of fate of missing persons. In particular, it is informed that in Russia, including the North Caucasian Federal District (the SKFO), a relevant unified centralized independent mechanism has been created and is successfully operating. This mechanism was improved with due regard to the ECHR practice, including judgment in the case “*Aslakhanova and others v. Russia*”, and keeps being improved in the light of realization of measures adopted and planned by the Russian authorities.

This mechanism contains the following important elements, corresponding to the recommendations of the ECHR, including those from “*Aslakhanova and others v. Russia*” judgment:

- Search and establishing of fate of missing persons, including in the SKFO, is the field of responsibility of special divisions of interior affairs bodies which form a centralized system – the criminal investigation departments of the MVD of Russia. Lately the divisions are manned with the most qualified personnel, who have completed required training in the light of the ECHR practice.

The search activities start immediately after receiving a report of missing or abduction, irrespective of initiation of criminal proceedings on that fact.

- In connection with an application or report on alleged abduction the search of missing people is conducted under investigators' mandate and in close cooperation with them. The investigation on such cases is conducted by special divisions of completely independent body – The Investigative Committee of the Russian Federation (the SK of Russia). Investigators control fulfillment of their mandates within their competence and, if there are grounds, take measures to increase efficiency of operational-search activity in particular cases (the authorities demonstrated concrete examples of investigation effectiveness).

- The activity of criminal investigation departments of the MVD of Russia and investigators on searching missing persons is of interrelated nature and provides for possibility to promptly verify information gained in result of operational-search activities, and vice versa – the results of investigation allow to define, whether there is a need to conduct actual operational-search activities.

Such mechanism, as it was noted above, allows to simultaneously conduct search activities and investigation, and to have full legal access to any information and materials, including archival ones (unlike the situation in another countries, which faced similar problems during the search of missing people and identification of persons).

Employees of criminal investigation departments of the MVD of Russia and investigators have wide powers to conduct operative-search activities (to conduct interrogations, make inquiries, acquire samples for comparative analysis, examine objects and documents, inspect houses, building, constructions, ground areas and vehicles etc.) and investigative activities (engagement of experts for acquisition of samples for comparative analysis, search and examination of corpses and alleged burial places, conduction of research, schedule of expert examinations, necessary to ensure effective investigation etc.) accordingly.

- The practice of conduction of molecular genetic expert examinations in the course of search of missing people in the SKFO is introduced as mandatory.

There have been created all the necessary conditions for conduction of all kinds of forensic expert examinations within investigations, including in NCFD (Forensic and criminalistics Centre of the Main Directorate of the MVD of Russia for the Stavropol Territory, branch № 2 of the “111th Main State Centre of forensic medical and criminalistics examinations” of the Russian Ministry of Defence, DNA-laboratory of the Main Directorate of the SK of Russia for the SKFO, and also Forensic medical examination Bureaus of the Ministry of Healthcare of Russia in each constituent entity of the Russian Federation in the territory of the SKFO).

In addition, the legal basis, principles of organization and main directions of state forensic examination activities are determined by the federal legislation, the procedure for organization and conduct of medical examinations was adopted. The scientific researches in this area were organized as well, along with ensuring financing of the forensic expert and scientific activities through the budgetary allocations.

- In order to successfully implement the mechanism of search of missing persons on the basis of the data of all types of primary records including the bases of the expert institutions, the Uniform database of genome information has been created (contains genome information of unknown corpses, unidentified persons, whose biological material was col-

lected in the course of investigative actions, and remnants containing biological material of missing persons)

- Following the Court's recommendations, in 2014 a centralized database for disappeared persons put on the search list was created. Along with this, the centralized automated information search system "Opozvaniye" has been created. It contains detailed information about the missing persons and unidentified corpses, their distinguishing features, description of clothing, etc. Moreover, in order to improve the efficiency of this system the special software was developed that allows to apply an algorithm of identification by the photographic image of the face. The measures for its improvement are scheduled for implementation.

This database is updated automatically and the most recent information on the searched persons is forwarded to all territorial bodies of the Ministry of the Interior, including in the North Caucasus region. Thus, these databases have consolidated the previously fragmented information, and all competent authorities have access to it, including the departments of criminal investigation and investigators in the territory of the North Caucasus. We suppose that this is likely to play a crucial role in improving the efficiency of search for missing persons. The Court itself encouraged the authorities to create such a database.

- The procedure for establishment of the fate of missing persons and circumstances of their alleged abduction provides for the participation of citizens and representatives of non-governmental organizations which provides implementation of the humanitarian functions during the relevant work.

In order to improve this work the Federal law no.44-FZ "On participation of citizens in public order protection" was adopted (this law regulates legal conditions, principles and main forms of participation of citizens in public order protection and in search of missing persons). A number of measures to implement the rules of the Police Act and the earlier adopted complex program on organization of the work with victims, as well as intensification of cooperation with non-governmental organizations were carried out.

- In order to successfully realize the mechanism for searching and establishing the fate of missing persons, there was adopted and planned a number of measures aimed to ensure coordination of state authorities' activities involved in this process within the SKFO (including measures on implementation of Complex Program on struggle against persons' abductions and search of missing persons for 2011-2014).

The cooperation of territorial bodies of the MVD of Russia was organized on a constant basis both inside the Chechen Republic and with the bodies, located in other constituent entities of the Russian Federation, including within the SKFO.

The practice of organization and conduct of joint operational and search, operational and preventive, operational and investigative activities on establishment of the whereabouts of the abducted persons and (or) the missing persons (by the subdivisions of the bodies of the MVD of Russia, Ministry of Defence of Russia and the Federal Security Service) was introduced.

During the period after submission of the latest Action Plan by the Russian authorities the meetings of boards and interdepartmental meetings were held in all relevant state bodies with discussion of issues of the topic concerned and elaboration of concrete measures, oriented at the improvement of work on search and establishment of the fate of the missing persons. Appropriate measures are planned for the subsequent period.

Special high-level bodies established in the SKFO have an important role, including ensuring of interdepartmental coordination. They include a Directorate of the Prosecutor General Office as well as the Main Directorates of the SK of Russia and the MVD of Russia. These offices coordinate activities of the law enforcement agencies within the SKFO, which include activities related to search and establishing the fate of missing persons and implementation of the above Complex Program. These Directorates are directly supervised by the Deputies of the Prosecutor Attorney General, the Chairman of the SK of Russia and the Minister of Internal Affairs respectively.

Certain results (which are reflected in updated Action Report) were achieved lately within the undertaken measures aimed to ensure interdepartmental coordination.

- A number of measures oriented at the improvement of the prosecutor's supervision and judicial control over the implementation of the existing mechanism of search of the missing persons was adopted and planned.

- The Russian authorities encountered a number of objective difficulties at carrying out the so-called "historical" investigations during search and discovering the fate of the missing persons (under the improved mechanism) in the cases, that became subject to ECHR examination. That "historical" investigations remain valid today and does not allow to ensure observation of all the Convention requirements and to establish the fate of missing persons and the guilty persons (for example, the loss of the necessary archival documents as a result of armed conflict or terrorist acts, participation of employees from different state agencies from various regions of Russia in the counter-terrorism operation on a rotational basis, irreversible loss of the most important evidence at the primary stage of investigations, missing persons' relatives prohibition to the exhumation of bodies and conduction of expert analysis according to their customs and Islamic canon etc., as well as the fact that in a number of cases it was established that the allegedly missing persons were not in fact missing).

In this context it is noted that other countries (in which there are other mechanisms) have difficulty carrying out "historical" investigations".