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| Meeting: | 1150 DH meeting (24-26 September 2012) |
| Item reference: | Communication from the authorities (30/08/12) |

Communication from the Russian Federation concerning the Khashiyev group of cases against 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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| Réunion : | 1150 réunion DH (24-26 septembre 2012) |
| Référence du point : | Communication des autorités |

Communication de la Fédération de Russie relative au groupe d'affaires Khashiyev contre 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.

Prepared for the 1150-th meeting of the CMCE
(24-26 September 2012, DH-level)

**Additional action plan/report**
**presented to the 1150-th meeting of the CMCE on 24-26 September 2012**
**on the measures taken by the Russian authorities to execute**
**the judgments of the European Court of Human Rights**
**in the Khashiev group of cases**

The Russian authorities continue taking measures aimed at the elimination and further prevention of the violations of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention") found by the European Court of Human Rights (hereinafter referred to as "the European Court") in the group of cases connected with the violations of the rights of citizens in the Chechen Republic.

The authorities of the Russian Federation previously informed the Committee of Ministers of the Council of Europe (hereinafter referred to as "the CMCE") of the taken measures, including reports no. 14–1189–11 of 25 February 2011, no. 14-6303-11 of 1 November 2011, and no. 14-1990-12 of 14 May 2012.

This is additional information on the questions in connection with the CMCE decision CM/Del/Dec(2012)1144/19 of 6 June 2012 (hereinafter referred to as "the decision of 6 June 2012").

**1. On the application of amnesty in respect of individuals who have committed crimes during the settlement of the crisis in the Chechen Republic.**

According to Article 84 of the Criminal Code of the Russian Federation, persons who have committed crimes may be relieved from criminal responsibility or criminal punishment under an act of amnesty.

According to Article 103 of the Constitution of the Russian Federation, amnesty is proclaimed exclusively by supreme legislative body of the country – The State Duma of the Federal Assembly of the Russian Federation (hereinafter - "the State Duma").

Amnesty is proclaimed by the State Duma by adopting the resolution proclaiming amnesty (hereinafter - "the Act of Amnesty") and the resolution on the procedure of its application (hereinafter - "the Resolution on the application of amnesty") which contain inter-related provisions. These resolutions are necessarily published.

The Act of amnesty contains categories of persons covered by the amnesty, conditions of its application, as well as the categories of persons not covered by the amnesty.

In the Resolution on the procedure of application of amnesty the state agencies, which are entrusted with the implementation of the act of amnesty, are specified and certain provisions of the Act of amnesty which provide maximum legal certainty in the application of the Act of amnesty are clarified.

The decision on amnesty is taken by the competent authority individually for each person. Suspect, accused and defendant, and also victim have a right to object against the decision on the amnesty. In the case of taking decision to close the examination of the criminal case by the fact the amnesty, the named persons can appeal it to investigator, prosecutor or court. So, in case of the application of the act of amnesty, effective mechanisms, including judicial, for the protection of human rights exist at the national level.

Thus, reasons, conditions and procedure for applying amnesty in all cases are clearly defined and completely eliminate the arbitrary application of the Act of amnesty by enforcement agencies.

On 22 September 2006, the State Duma took resolutions no. 3498-4 "On Declaring Amnesty in Respect of Individuals who had Committed Crimes during the Period of the Counter-Terrorist Operation in the Constituent Entities of the Russian Federation located within the Southern Federal District" (hereinafter referred to as - the act of amnesty of 22 September 2006) and no. 3500-4 "On the procedure of applying of the resolution taken by the State Duma On Declaring Amnesty in Respect of Individuals who had Committed Crimes during the Period of the Counter-Terrorist Operation in the Constituent Entities of the Russian Federation located within the Southern Federal District" (hereinafter referred to as - resolution on the applying of the act of amnesty of 22 September 2006).

According to these provisions, the criminal cases are not initiated, and the criminal cases being examined shall be closed in respect of:

- civilians, who had committed crimes during the period of the counter-terrorist operation in the constituent entities of the Russian Federation located within the Southern Federal District, who voluntarily refused to participate in illegal armed groups or settled armed groups (gangs), laid down weapons and military hardware;
- in respect of servicemen, personnel of law-enforcement bodies of the Russian Federation, employees of facilities and bodies of the penitentiary system, civilian personnel of the Armed Forces of the Russian Federation, other troops, military formations and bodies, who have committed crimes during the above-mentioned period.

The above-mentioned categories of persons who have committed crimes in the territory of the Republic of Dagestan, the Republic of Ingushetia, the Republic of Kabardino-Balkaria, the Republic of Karachay-Cherkessia, the Republic of North Ossetia - Alania, the Chechen Republic and the Stavropol region during the period from 15 December 1999 until the date when the act of amnesty of 22 September 2006 came into the force (i.e., until 23 September 2006) are subject to the amnesty according to the act of amnesty of 22 September 2006 (came into force on 23 September 2012).

The amnesty, in accordance with the act of amnesty of 22 September 2006, doesn't cover the following categories of persons:

- individuals, who committed the particular crimes the list of which was stipulated by the act of amnesty of 22 September 2006;
- servicemen, personnel of law-enforcement bodies of the Russian

Federation, employees of facilities and bodies of the penitentiary system, civilian personnel of the Armed Forces of the Russian Federation, other troops, military formations and bodies, who have stolen firearms, ammunition, explosives and explosive devices and distributed it to the participants of illegal armed groups or stable armed groups (gangs), or others persons, who resisted to counter-terrorist operations in the constituent entities of the Russian Federation located within the Southern Federal District;

- persons, who have committed crimes recognised as specially dangerous recidivism;
- foreign nationals and stateless persons

In accordance with the resolution on the procedure of application of the amnesty of 22 September 2006, the amnesty is applied by:

- bodies of inquiry and preliminary investigation – in respect of persons, who committed crimes and whose criminal case files are being examined by these bodies.
- courts - in respect of persons whose criminal cases at the moment of coming into force of the act of amnesty dated 22 September 2006 are at the stage of court proceedings and not examined, or serving a sentence is delayed or suspended;
- law-enforcement bodies of the Russian Federation - in respect of persons convicted to imprisonment, not in detention, whose sentences became final;
- penal institutions and detention facilities – in respect of persons convicted to imprisonment, whose sentences became final;
- correctional inspections – in respect of persons serving compulsory community service, correctional labor, including persons deprived of the right to occupy certain positions or perform certain activities;
- command of military units - in respect of servicemen serving a sentence of deprivation of the right to occupy certain positions or perform certain activities, as well as in the form of restrictions on military service, or detention in disciplinary military units.

The application of the act of amnesty to the accused B. and Z. in the criminal case, initiated on the fact of infliction of the bodily harm to Sadykov A.M was carried out in strict compliance with the Russian legislation. B. and Z., who were officers of internal affairs bodies, committed an offense under Part 3 Art. 286 of the Criminal Code of the Russian Federation (exceeding official powers with the use of violence) in the territory of the Chechen Republic during the period of the counter-terrorist operation. So, with regard to B. and Z. the act of amnesty was applied lawfully and was well-founded according to the criteria defined in the legislation and resolutions of the State Duma.

The application of the act of amnesty and the termination of the prosecution against the above-mentioned persons were checked and found lawful by the Prosecutor's Office of the Chechen Republic.

It should be noted that the act of amnesty dated 22 September 2006 applies equally to all categories of persons which it covers. According to the National Anti-Terrorist Committee (http://nak.fsb.ru/nac/activity/detail.htm!id%3D10285288%

40cmsArticle.html) the act of amnesty was applied in respect of the 546 members of illegal armed groups.

**2. Concerning the impact of the statutes of limitation for criminal prosecution and their expiration on the investigation efficiency and the bringing perpetrators of crimes to criminal responsibility**

The legal concept of statute limitation is based on the humanistic idea, according to which, firstly, the threat of criminal prosecution cannot last all the person's life long, and secondly, the bringing to criminal responsibility after the expiration of a certain term becomes an unjustified revenge and, therefore, loses sense and necessity, though objectively the action committed by a person did not completely reduce its social danger.

The statutes of limitation for bringing to criminal responsibility for the relevant crimes provided for by the Russian legislation are not so different from the periods of limitation for bringing to criminal responsibility for the similar crimes in other States Parties of the Convention.

In accordance with national legislation in force, the statutes of limitation are calculated from the moment of the commission of a crime and till the moment when the judgment became final (Article 78 Part 2 of the Criminal Code of the Russian Federation). The person is being released from criminal responsibility if the following periods have expired: 2 years after the commission of an offence of small gravity; 6 years after the commission of an offence crime of a less serious gravity; 10 years after the commission of a serious crime; 15 years after the commission of a particularly serious crime.

In accordance with Article 78 Part 2 of the Criminal Code of the Russian Federation, the decision on the application of the statutes of limitation to a person having committed the crime being subject to the death penalty or life imprisonment can be decided exclusively by the court. In this respect, the expiration of the 15-years period from the moment of the commission of the mentioned crime is not an impediment for the initiation of a criminal case, investigation, indictment and forwarding the criminal case to the trial court, which will consider the application of the statutes of limitation to the defendant at the preliminary hearing (in case the defendant is not objecting to such a decision) or according to the usual procedure (in case the defendant is objecting to the termination of the criminal case due to the expiration of the statutes of limitation for criminal prosecution).

According to Article 78 Part 3 of the Criminal Code of the Russian Federation, the period of limitation is being suspended in case the person who has committed the crime absconds from investigation and trial.

Therewith, according to Part 2 Article 27 of the Code of Criminal Procedure of the Russian Federation, the termination of the criminal prosecution upon expiration of the statutes of limitation is impossible in case the defendant or the accused is objecting to it.

Therefore the national criminal procedural legislation provides that the application of the statutes of limitation for criminal responsibility for the committed crimes is only possible if the perpetrators are identified.

In elaboration of the provisions of the Code of Criminal Procedure of the Russian Federation, the Chairman of the Investigative Committee of the Russian Federation issued on 15 January 2011 Order no.2 "On the organization of the preliminary investigation in the Investigative Committee of the Russian Federation". In this Order, it was pointed out that, in accordance with the requirements of the Code of Criminal Procedure of the Russian Federation, the criminal case cannot be terminated before the person who has committed the crime is identified.

In case the persons who have committed the offence have not been identified, the expiration of the periods of limitation, including for the criminal cases in the Khashiyev group of cases, cannot constitute a basis for the termination of the criminal case and, in fact, none of the criminal cases, which became subject of examination by the European Court in the judgments in the Khashiyev group of cases, was terminated based on the expiration of the statute of limitation period for bringing to criminal responsibility.

In view of the above, the expiration of the statute of limitation for the criminal cases of the category under consideration is not an impediment for the execution of the operational search actions and investigation, establishment of the factual circumstances of the case and identification of persons who committed crimes in the Khashiyev group of cases.

However, in case of identification of the perpetrator of the crime, the expiration of the statute of limitation period can serve as the basis for release of the person from criminal responsibility (if the statute of limitation is not applied because the person is absconding from investigation and trial).

It should be emphasized that the continuation of a criminal investigation after the expiration of the statute of limitation, even if it cannot result in the punishment of perpetrators, still contributes to the achievement of other important goals, such as the establishment of the circumstances of the incident, the fate of the missing persons, the circumstances of the death and the identification of burial places etc.

## 3. The use of molecular genetic examinations during the investigation of criminal cases in question

The investigative bodies continue the work aimed at the improvement of the practice of carrying out molecular genetic examinations of close relatives of the abducted or missing persons (the location of which has not been identified at present) in order to identify their genotypes and creating the database for further identification of the unidentified bodies discovered in the territory of the Chechen Republic. In 2012, more than 80 genetic examinations were conducted at the request of investigative bodies.

In medical forensic expert institutions, the creation of the DNA databases is being continued. Currently, alongside with the database existing in the State forensic bureau No. 16 (Rostov-on-Don), examinations related to the DNA-analysis of unidentified bodies, are also conducted in the state forensic bureau at the Main Department of the Ministry of Internal Affairs for the Stavropol region.

The investigation of criminal case No. 14/90/0025-11, initiated on the fact of the abduction of Mr. A. by unknown persons (application no. 37198/08 'Malika Alikhadzhiyeva vs RF') can serve as an example. As a result of the conducted molecular genetic examination, the corpse of an unknown man examined in the above center was with high probability identified as missing A. Presently, activities in this criminal case are being carried out with the purpose of identifying the circumstances of A.'s death.

Another positive example is the criminal case initiated on the fact of the abduction of G. (application no 7821/07 'Dovletukayev and others v. Russia'). During the investigation it was established that G. was abducted by unidentified persons on 30 December 2002 from the house in the village of Kurchaloy of Kurchaloy district of the Chechen Republic. During the investigation, information was received on the discovery at the outskirts of the village Kurchaloy of the human remains belonging to an unknown person suffered from the explosion. Collected boots were identified by the father of the abducted as belonging to his son G. After the search and identification of the location of the body's burial place, on 16 November, 2011 its exhumation was carried out and a genetic examination was conducted, that allowed to establish that the body's bone fragments belonged to the abducted person.

A seminar was organized in Paris by the On 20-21 June 2012 by the Department for the execution of judgments of the European Court of Human rights, with participation of the representatives of the Investigative Committee of the Russian Federation, Ministry of Justice of the Russian Federation, Prosecutor's Office bodies, police and judges, as well as representatives of the European Court and Council of Europe experts on the issues related to the search for missing persons. During the seminar, representatives of the competent Russian state bodies were familiarized with the experience of foreign governmental and non-governmental organizations that deal with the missing people search. A discussion was also held regarding the Russian investigative bodies' practice on the search of missing persons within the limits of the investigation of cases of the category in question. It is expected that the results of the seminar will positively influence the organization of the work on the search of missing persons and progress in the investigations.

**4. Measures taken and planned aimed at solving the problems connected with the investigation of the remote events, including access to archive documents**

The legal basis for storage, establishing, registration and use of Archive Fund and other archive documents in the Russian Federation are established by the Federal Law of 22 October, 2004 no. 125-FZ "On Archive keeping in the Russian Federation" (hereinafter - the Archive Act), as well as specific agencies regulations.

The Archive Act establishes that the Archive Fund of the Russian Federation includes archive documents which are located in the territory of the Russian Federation, regardless of their origin, time and manner of creation, type of media, ownership and place of storage. Under Article 6 of the Archive Act of the Russian

Federation, documents are included in the Archive Fund of the Russian Federation on the basis of examination of their value. Archive documents are to be kept in storage within the terms established by the Lists, established by the authorized executive bodies.

Pursuant to Art. 23 of the Archive Act, authorized executive bodies are responsible for the development and approval of the Lists of documents produced in the course of their activities, including the term of their storage.

In accordance with these provisions of the Archive Act, the procedure and terms of storage of certain types of documents are established in the Ministry of Interior and the Ministry of Defence of the Russian Federation. According to the information provided by these state agencies, there were no incidents of violations of the order of destruction of the documents in their activities.

There are references to the destruction of some documents that have a limited storage period (registration books of reports of crimes, some documents relating to the personnel) in previous information on some criminal cases sent to CMCE. According to the report of the Investigative Committee of the Russian Federation, additional materials are requested in order to confirm that the documents concerned were destroyed in compliance with the relevant procedures.

However, in some cases, destruction of documents took place under conditions of an armed conflict, as a result of military actions or acts of terrorism (explosions, fires, etc.), In this connection, currently it's not possible to obtain documentary evidence of their destruction. At present time, within the framework of the investigation of criminal cases, efforts are made to search for relevant documents and/or evidence of their irreversible destruction.

On the other hand, in some cases the investigation and search for the archive files is complicated by the fact that state officials from the various regions of Russia were engaged in participation in the counter-terrorist operation on a temporary and rotation basis, and the documents of such detachment have been destroyed due to the expiration of the period for their storage. It was difficult to identify persons who were involved in the arrests, because they used nicknames.

The investigators in a number of cases had to obtain relevant judicial decisions in order to receive some documents containing information with a state secret status. However, for the time being, no information relevant to the investigation has been found in the archives concerned.

*However*, despite the existing difficulties, the investigation continues and investigators take all possible efforts to ensure its effectiveness, including the search for relevant documents.

**6. Regarding the investigation of specific criminal cases being the subject of the European Court.**

The reports on investigation of specific criminal cases of the category at issue were previously sent to CMCE (Ref. No. 14-1883-12 of 11 May, 2012). We hereby send further information concerning investigation of these criminal cases.

On the case which became the subject of the European Court examination in its judgment on application no. 41840/02 "Sadykov v. Russia" (judgment of October 7, 2010, final on January 7, 2011):

As it was stated earlier, the investigation of the criminal case found out that D. and S. were *involved* in the infliction of serious bodily harm to A.M. Sadykov. The above persons were declared *in absentia* suspect and accused respectively.

Currently, measures are taken to search for these individuals.

As part of this activity during the reporting period a database search was made to identify persons called to administrative account for traffic violations and other offenses. It was established that in the current year S. was brought to administrative responsibility for offenses committed on the Perm-Yekaterinburg highway (Suksunsky District). In this regard, additional measures are being taken in that region, aimed at establishing the whereabouts of the said persons, their circles of contacts, and individuals who may have information on their whereabouts.

During the period reported the victim and his representative did not appeal against the procedural decisions and actions of the investigators in this case.

On the case, which became the subject of the European Court examination in its judgment on application no. 69481/01 "Bazorkina v. Russia" (judgment of 7 October, 2010, final on 7 January, 2011):

As it was reported earlier, the abduction of H.-M.A. Yandiyev is investigated within the framework of this criminal case, different versions of his disappearance are verified by the investigation, such as his escape, his transfer to a Department of Internal Affairs for criminal prosecution and his current participation in the illegal armed groups.

In order to verify whether H.-M.A. Yandiyev might have been transferred to the representatives of the Ministry of Internal Affairs (hereafter – MVD of Russia) or the representatives of the Federal Security Service of the Russian Federation (hereafter – FSB of Russia) the investigating authorities have previously sent relevant requests to several Departments of the MVD of Russia and FSB of Russia. As it seen from the received replies, the requests for information concerning the whereabouts of H.-M.A. Yandiyev, the materials of the pre-investigation checks of Mr. Yandiyev as well as information on individuals allegedly involved in his disappearance brought a negative response.

Currently, operative search activities aimed at locating Yandiyev and persons allegedly involved in his disappearance are in progress.

F.S. Bazorkina is regularly informed of all procedural decisions taken in the case. During the reporting period the victim and his representatives did not appeal against the procedural decisions and actions of the investigators in this case.

On the case which became the subject of the European Court examination in its judgments on applications nos. 57950/00 "Isayeva v. Russia" and 27065/05 "Abuyeva and others v. Russia" (judgments of February 24, 2005 and December 2, 2010, final on July 6, 2005 and April 11, 2011 accordingly):

The decision to close the investigation was quashed by on 28 August, 2012, the decision to close the criminal proceedings was quashed by the Deputy Head of the Military Investigation Department for the South Military District of the Investigative Committee of the Russian Federation. An additional investigation was organized.

CMCE will be informed additionally of the results of the investigation.

On the case, which became the subject of the European Court examination in its judgment on application no 3026/03 "Akhmadova v. Russia" (judgment of 4 December, 2008, final on 4 January, 2009):

The criminal investigation produced the evidence that M.M. Ahmadov was detained by the 3rd special purpose interservice team of the Ministry of Justice of the Russian Federation and then transferred, with the participation of the regimental combat team of the military unit No. 33842, to one of the military units for the inspection of his involvement in terrorist activities.

In connection with the above, currently the criminal case is under transfer to the Central Military Investigation Department of the Investigation Committee for South Military District for further investigation.

On the case, which became the subject of the European Court examination in its judgment on application no 21519/02 "Khadisov and Tsechoyev v. Russia" (judgment of 5 February, 2009, final on 5 May, 2009):

As it was reported earlier, currently the military and civilian investigative agencies are unable to locate I.I. Tsechoyev and to grant him victim status in accordance with the legislation in force.

In order to establish his whereabouts and question him as a witness, a number of actions were taken. In particular, in order to check the version that he was serving his sentence, the requests were sent to the Departments of the Federal Service for the Execution of Sentences for the subdivisions of the Russian Federation. The responses as to his whereabouts were negative.

The investigating authorities planned a number of other activities aimed at establishing his location. In particular, additional questioning of his mother, sending enquiries to the bodies of internal affairs and the Federal Security Service regarding the availability of information on his current involvement in the illegal armed groups, etc.

The search for persons who may have been involved in the commission of the illegal actions in respect of S.D. Khadisov and I.I. Tsechoyev is in progress.

A number of other operative and investigative activities are planned, including: sending enquiries to the bodies of the Federal Security Service as to the whereabouts A.B. Ivaneev, who was named by the applicants as a person who was involved into commission of unlawful acts against them; additional questioning of S.D. Khadisov in the capacity of a victim, questioning of his close relatives about the circumstances of the events; additional questioning of Kh., former Head of the Department of Internal Affairs of Sunzhensky District, concerning the circumstances of the transfer of administrative detainees to the representatives of the mobile group of the Ministry of Internal Affairs of the Russian Federation in the Republic of

Ingushetia; requesting additional materials, including the procedural decision taken on the communication about the illegal detention of S.D. Khadisov and I.I. Tsechoyev in the village of Khankala, Chechen Republic.

Taking into account the information obtained during the investigation, sending additional requests to the Central Archives of the RF Ministry of Defense as regards service members of the helicopter aviation unit, who were on an official assignment in the village of Khankala, Chechen Republic, in September 2001 to identify the helicopter crew that delivered Khadisov and Tsechoyev to the village of Khankala is also planned.

S.D. Khadisov in the capacity of a victim was regularly informed in writing of all procedural decisions taken in the case. The representative of S.D. Khadisov, lawyer M.M. Tsitskiyeva fully acquainted with the materials of the criminal case on April 13, 2012. During the reporting period the victim and his representatives did not appeal against the procedural decisions and actions of the investigators in this case.

On the case, which became the subject of the European Court examination in its judgment on application no 12703/02 "Musayeva v. Russia" (judgment of 3 July, 2008, final on 1 December, 2008):

As it was submitted earlier, the said criminal case was initiated upon the fact of abduction of Iznaurov Ya.A.

At present operative and search activities are conducted upon the order of the investigator in the case with the aim to establish the whereabouts of both the abducted Y.A. Iznaurov and the persons who might have commited the crime, as well as of additional witnesses thereof.

According to the information obtained as a result of the work, Y.A.Iznaurov was detained in one of the remand prisons of the city of Pyatigorsk and the village of Chernokozovo of the city of Grozniy.

In order to verify the said information the relevant requests to check if Y.A.Iznaurov had been detained in remand prisons during the period from 5 February, 2000 until now were sent to the Heads of Divisions of the Federal Service for the Execution of Sentences (hereinafter – "the FSIN") in the Chechen Republic and in the other constituent entities of the Russian Federation. As follows from the replies of the relevant FSIN bodies Y.A.Iznaurov is not detained and had never been detained in any facilities of the penal system of the Russian Federation.

For the purposes of locating Y.A.Iznaurov the data on his possible staying in any medical institutions was also checked. In particular, requests were sent to the medical institutions of the Chechen Republic and the neighboring regions of the Russian Federation about the existence of any data on Y.A.Iznaurov' delivery to those medical institutions or his own applications for medical assistance. According to the data received Y.A.Iznaurov has never applied to, nor has he ever been delivered to the medical institutions.

The investigators sent a request to the expert criminological centre to check the DNA profile based on the data of A.T.Iznaurov in their database. As can be seen from the reply to the request, no matches were established as the result of the check.

Upon request of the investigation the supervising prosecutor checked the fulfillment by the interior officers of the requirements of the Federal Law "On Operational Search Activities".

The work on the said criminal case is continuing.