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Date: 31/07/2014

**DH-DD(2014)892**

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

Item reference: Action plan (24/07/2014)

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

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

Référence du point : Plan d'action

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

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DGI

24 JUILLET 2014

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

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

### **I. The violation**

In its' judgements in *Khashiyev* group of cases the European Court of Human Rights (hereinafter - the European Court, the ECHR) found the violation by the authorities of the Russian Federation of Articles 2, 3, 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter - the Convention), Article 1 of the Protocol no.1 to the Convention, in view of violation of citizens' rights during the counter-terrorism operation in the Chechen Republic and failure to provide the effective investigation into the violations.

The Russian authorities have repeatedly informed the Committee of Ministers of the Council of Europe (hereinafter - "the CMCE") of the general measures adopted, *inter alia*, in action plans DH-DD(2011)130E, DH-DD(2011)977E, DH-DD(2012)488 part 1, DH-DD(2012)757 and DH-DD(2013)935E.

The Action Plan DH-DD(2013)935E contained the Strategy for execution by the Russian authorities of the judgments of the European Court in *Khashiyev* group of cases (hereinafter - the Strategy) with a view to the conclusions, stated in the judgment *Aslakhanova and others v. Russia*.

The CMCE decision of 6 March 2014 noted the above Action Plan and the Strategy and at the same time suggested to introduce additional adjustments to them, with a view to the above judgment *Aslakhanova and others*. It was also decided to continue discussion on the subsequent meetings of the CMCE, *inter alia*, in September 2014 – with regard to questions identified by the authorities in the course of consultations with the Secretariat of the CMCE.

### **II. General measures**

In the course of consultations with the CMCE Secretariat it was decided that by the CMCE meeting the authorities would submit the additional Action Plan with regard to the issues specified in the *Aslakhanova and others* judgment, regarding the necessity to establish the single centralized and independent mechanism of search for missing persons (paragraph 5 of the CMCE decision).

The judgment on application *Aslakhanova and others v. Russia* contains recommendations for consideration of the issue on establishment of the uniform centralized and independent mechanism of search for missing persons, including:

- establishment in the region of "the single specialized high-level body", mandated with the search for missing persons, providing it with the opportunity to create and maintain a database on such persons, with unlimited access to all necessary information, and organisation of work with relatives of the persons concerned on the basis of "trust and partnership";
- allocating to the specialized independent institutions specific and adequate resources for fulfilment of the "large-scale forensic medical and research work on-site,

including establishment of burial places, exhumation, collection, keeping and identification of remains, their systematic comparison with the constantly updated genetic data banks" as well as work of such institutions under the auspices of the above mentioned "single specialised high-level body", or in close cooperation with it.

Taking into account recommendations of the ECHR and CMCE decision of 6 March 2014 the competent state authorities have given additional consideration to the issue of necessity to establish the uniform centralized and independent mechanism of search for missing persons, as well as necessity to adopt additional measures on improvement of effectiveness of the relevant work.

As the result of elaboration it should be noted that the uniform centralized and independent mechanism of search for missing persons has already been established in the Russian Federation, and it functions successfully. At the same time additional measures have been taken and planned in order to enhance it.

1. In accordance with the Federal law "On police"<sup>1</sup> (hereinafter - the Police Act) the function of searching for missing persons was assigned to the internal affairs bodies, which compose the uniform centralized system of the Ministry of Internal Affairs of the Russian Federation (hereinafter - the MVD of Russia).

Within this system the search for missing persons is conducted by the criminal investigation departments, which is also true for the territory of the North Caucasian Federal District (hereinafter - the SKFO).

The criminal investigation departments realise this function on the basis and in accordance with the Police Act and the Federal law "On Operational and Search Activity"<sup>2</sup>, which adequately regulate the order of relevant actions.

The officers of the criminal investigation departments are invested (on conditions and in accordance with the procedure, prescribed by law) with wide-ranging powers during conduction of operational and search activities, which include *inter alia* performing questioning, making inquiries, collecting samples for comparative examination, examination of items and documents, inspection of premises, buildings, constructions, terrains and vehicles, etc.<sup>3</sup>

2. In accordance with the requirements of the Police Act and the Federal law "On Operational and Search Activity", the search activities start immediately upon receipt of the information on disappearance or kidnapping, irrespective of the fact of the criminal case initiation. The Russian authorities earlier informed of the order of this work in more details.

The most experienced officers of the criminal investigation departments of the internal affairs bodies are involved in operational and search activities with regard to the messages on the crimes concerned.

In order to improve activity on establishment of the whereabouts of the abducted and missing persons, the memo-note on the procedure of reception, registration and examination of messages on disappearance or kidnapping of persons and finding of the

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<sup>1</sup> Article 12 §1 (12) of 7 February 2011 no.3-FZ "On Police"

<sup>2</sup> Federal law of 12 August 1995 no.144-FZ "On Operational and Search Activity"

<sup>3</sup> Article 6 of the Federal law "On Operational and Search Activity"

unknown corpses was developed by the MVD for the Chechen Republic and brought to attention of police stations of the territorial bodies.

3. The issue on initiation of the criminal case is examined in accordance with established procedure in relation with applications on alleged abduction of a person or receipt of information on abduction in the course of the operational and search activities.

Under 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 application on abduction or report on discovery of indications of crime is issued by the preliminary investigation bodies within three days from the moment of registration of the relevant application or report<sup>4</sup>.

According to the legislation<sup>5</sup> preliminary investigation of the criminal cases of the category concerned is performed by specialized units of a completely independent body - the Investigative Committee of the Russian Federation (hereinafter - the SK of Russia). At that, as it was previously reported, the special unit was established within the Investigation Committee structure for investigation of cases connected with violation of citizen’s rights (including disappearance of citizens) during the counter-terrorism operation in the Chechen Republic, that became subject of the ECHR analysis. A number of organizational and administrative measures was also taken, aimed at improvement of effectiveness of the relevant investigations.

In accordance with the legislation,<sup>6</sup> criminal investigation departments execute orders of an investigator, including orders concerning operational and search activities, certain investigative and other procedural actions. They also take part in activities on establishment of burial places, exhumation of corpses, collection and identification of remains.

Therefore, upon receipt and registration of the message on the crime, establishing of the fate of missing persons and circumstances of their supposed abduction is performed both by the investigative body and the criminal investigation department. At that, according to the legislation requirements, their work is interrelated.

The above mechanism provides the opportunity for quick check by way of investigative actions (by means of interrogations, face-to-face confrontation, forensic studies, seizure of documents, etc.) of the information, received in the course of operational and search activities, and vice versa - the results of investigative actions allow to define the necessity for immediate operational and search activities (as opposed to the countries where a search for missing persons is conducted at first, and after that, sometimes after a significant amount of time has passed, investigation into the circumstances of disappearance is organised).

Moreover, this approach ensures access to any necessary materials, including archival documents, because the legislation grants the investigators authority to request these

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<sup>4</sup> According to Article 144 §3 of the CCP RF in exceptional circumstances the term of pre-investigation check under a motivated petition of an investigator can be prolonged up to 10 days. In exceptional circumstances and if documentary checks, forensic expert examination, examination of documents, items, corpses etc. are needed - the term of check can be prolonged up to 30 days. In any event concrete factual circumstances that served as a basis for such prolongation must be stated.

<sup>5</sup> Article 151 §2 (a) of the CCP RF

<sup>6</sup> The Police Act, Federal law "On Operational and Search Activity", the CCP RF

documents and seize them. If any obstacles arise preventing access to these documents, the investigator has the authority to request removal of these obstacles through the court procedure (as opposed to countries where missing persons investigations are conducted by services or organisations, including non-governmental ones, which do not have such authority).

At that, the investigators and heads of investigative bodies within their authority provided by the CCP RF, take measures for intensify the work of internal affairs bodies on search for the missing persons by means of necessary orders according to Article 38 of the CCP RF and control over their execution, as well as by means of response acts, aimed at elimination of existing violations. The Russian authorities have provided in their action plans the examples of effective and essential actions of investigators with the purpose of proper fulfilment of duties by officials of the internal affairs bodies. During the period after submission of the latest Action Plan this practice was continued (in situations where it was necessary).

For example, in the course of the operational and search activities, performed in the course of investigation of criminal case upon the fact of abduction of A. the owner of the car, mentioned in the case files, was not established during the long period of time (with reference to impossibility to execute the investigator's order and establish the relevant person). Upon results of examination of the case files in the department of procedural control of the Directorate of the SK of Russia for the Chechen Republic and of the meeting with the criminal investigation officers, the incompleteness of operational search actions was established, and the ways to eliminate the shortcomings were determined. As the result, the detected violations were remedied, the identity of the car owner was established in the course of operative actions, and then he was interrogated as a witness in the criminal case.

The similar situation took place in the criminal cases on abductions of I. and G. After meetings the officers of the MVD for the Chechen Republic, who were impossible to establish according to operative officers, were established in the course of operative actions and interrogated as witnesses.

4. In the course of investigations an investigator can engage any specialists, if necessary *inter alia* for collection of samples for comparative examination, search and inspection of corpses and alleged places of burial, conduction of research etc. The law also provides the investigator with opportunity to schedule any expert examination necessary to ensure effective investigation. Investigators widely use these opportunities.

4.1 Thus, in the bodies of the SK of Russia, including bodies existing in the territory of the North Caucasian Federal District, the obligatory practice of conducting molecular genetic examinations was introduced. For example, in the investigation Directorate of the SK of Russia for the Chechen Republic 190 such examinations were scheduled, as of June 2014, of which 170 have been performed.

4.2 The legal basis, principles of organization and main directions of state forensic examination activities in the Russian Federation are determined in Federal law no.73-FZ (as amended on 25 November 2013) "On State Forensic Examination Activities in the Russian Federation".

Pursuant to the above law, the basic principles of state forensic examination activities are: lawfulness, observance of human and civil rights and freedoms as well as rights of

legal entities, independence of the expert, objectiveness, comprehensiveness and the completeness of examinations conducted with use of modern scientific and technical achievements. The above law also defines the list of objects of forensic studies, professional and qualification requirements for the experts, their rights and obligations, limitations imposed on them during conduction of expert examination, requirements to the expert report, the norms relating to financial, organizational, scientific-methodological and information support of the activity of the state forensic expert institutions.

In development of the above law, the Ministry of Healthcare<sup>7</sup> (the body, authorised for implementation of the uniform state policy in the field of organization and conduct of medical examinations) according to its competence has adopted the Procedure for organization and conduct of forensic medical examinations in the state forensic expert institutions of the Russian Federation<sup>8</sup>.

The abovementioned Procedure regulates all the issues of organization and conduct of forensic medical expert examinations, including forensic medical expert examination of the material evidence and examination of biological objects (biochemical, genetic, forensic and criminalistic, spectrographic, forensic biological, forensic histological, forensic chemical, forensic cytological, chemical-toxicological), forensic medical expert examination and examination of corpses.

The above Procedure also regulates the procedure for reception and registration of the materials of examination, its organization and conduct, specific issues of procedure for organization and conduct of the expert examination of a living person and a corpse, for collection and forwarding of the corpse or other biological material for laboratory and instrumental survey, as well as for instrumental forensic studies themselves, for organization and conduct of additional, repeated, commission and comprehensive examinations, as well as the procedure for forwarding of materials of examination to the authority or person who scheduled it, storage of items received for examination, organization of control and recording of examinations. The standards of manning of the state expert institutions and expert subdivisions of the healthcare system, as well as the standards for their equipping with medical devices and equipment for conduction of the main types of forensic medical examinations, developed by the Ministry of healthcare, are the integral part of the Procedure.

By its Order no. 764 of 20 July 2011 (as amended on 27 September 2012) the Ministry of healthcare approved the Charter of the Federal State-Funded Institution *The Russian Centre of Forensic Analysis* of the Ministry of healthcare of the Russian Federation.

The said state institution organises and conducts the most difficult forensic examinations, and is at the same time a scientific-research organisation. Aims and subjects of its activities include developing scientific basis for organisation and conduction of forensic examination, developing a unified methodological approach to expert practice;

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<sup>7</sup> Article 14 of Federal law no.323-FZ of 21 November 2011 (as amended on 14 June 2014) "On the Fundamentals of Public Health Protection in the Russian Federation"; Regulation on the Ministry of Healthcare of the Russian Federation, approved by the Government of the Russian Federation decree no.608 of 19 June 2012 (as amended on 18 March 2014)

<sup>8</sup> Order of the Ministry of Healthcare of the Russian Federation no.346-n of 12 May 2010 "On approval of the procedures for organization and conduct of the forensic medical examinations in the state forensic expert institutions of the Russian Federation"

researching and implementing innovative approaches to forensic examinations; organisation, coordination and planning of scientific researches in various areas of forensics; implementing research results into court practices.

The results of these activities are reflected in the abovementioned legislation adopted by the Russian Ministry of healthcare, the relevant work is being continued presently.

4.3. A number of forensic institutions are functioning in the territory of the SKFO: the Forensic and Criminalistic Centre of the Main Directorate of the MVD of Russia for the Stavropol Territory, branch no.2 of the "111th Main State Centre of forensic medical and criminalistic examinations" of the Russian Ministry of Defence (previously - 16th State Centre of forensic medical and criminalistic examinations"), DNA laboratory of the Main investigative Directorate of SK of Russia for the North Caucasus Federal District functions in the territory of the SKFO. Also Forensic medical examination Bureaus of the Ministry of Healthcare of Russia are located in each constituent entity of the Federation in the territory of the SKFO.

In the course of investigations and operational and search activities on searching and establishment of fate of the missing persons the opportunities of the above expert institutions are widely used for conduction of various forensic medical examinations, including genetic examinations (some statistical data is provided in paragraphs 4.1. and 5.4. of this document). At the same time, investigators can schedule examinations in other expert institutions if needed.

4.4. According to legislation, the activity of the state forensic expert institutions is financed through the state budgetary allocations<sup>9</sup>.

Thus, in the course of the centralized purchases for the Forensic and Criminalistic Centre of the Main Directorate of the MVD of Russia for the Stavropol Territory during 2011-2013 the criminalistic equipment and expendable materials were supplied in the amount of more than 49.4 mln roubles. In 2014 the supplies are planned in the amount of about 7.5 mln roubles, as well as the purchase of expendable materials and chemical reagents for conduct of the DNA examinations through the federal budget to the amount of about 43 mln roubles.

46.8 mln roubles were allocated to the material and technical support of the activity of branch no.2 of the "111th Main State Centre of forensic medical and criminalistic examinations" of the Russian Ministry of Defence (Rostov-on-Don) between 2011 and 2013. etc.

A DNA Laboratory was founded in the Main Investigative Directorate of the SK of Russian for the Northern Caucasus Federal District in 2012. It is equipped with the modern equipment that complies with the best modern international standards, and is one of the best laboratories in Russia.

5. The establishment in the Russian Federation of the uniform information databases is of significant importance for the effective functioning of the mechanism of search the missing persons. These databases were established *inter alia* with regard to the European Court practice and the CMCE recommendations, and the criminal investigation departments and the investigation bodies have unimpaired access to them.

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<sup>9</sup> Article 37 of Federal law no.73-FZ of 31 May 2001 (as amended on 25 November 2013) "On state forensic expert activity"

5.1. According to the Order of the MVD of Russia no.70 of 10 February 2006 "On organization of Use of the Forensic and Criminalistic Records of the Russian Federation Internal Affairs Bodies" (hereinafter - the order of the MVD of Russia no.70) provides, *inter alia* for the uniform forensic and criminalistic records of the DNA data of the unknown corpses and biological objects, collected at the places of crime, which is performed. The relevant forensic and criminalistic information is formed in the forensic and criminalistic centres of Directorates of Internal Affairs of the Russian Federation constituent entities, and then is consolidated in the uniform base of the Forensic and Criminalistic Centre of the MVD of Russia.

5.2. The data bases of the software system "Legend (SK)", that are constantly updated, were created and are functioning properly in the Main Investigative Directorate of SK of Russia for the North Caucasian Federal District. They contain information on more than 3 thousand criminal cases, 25 thousand persons, including, 1.9 thousand genetic profiles of persons, among which there are missing persons.

5.3. Genome information databases are formed in the state expert institutions. Thus, the database, formed by the 16th State Centre of forensic and criminalistic examinations contain (as of 1 June 2014) the information on the genotype of 1.8 thousand persons and unknown corpses.

5.4. For the purposes of improving and providing completeness of the relevant records the Federal law no. 242-FZ "On State Genome Registration in the Russian Federation" was adopted. It provides for creation of the uniform federal database of genome information (hereinafter - the Uniform database of genome information) in the Forensic and Criminalistic Centre of the MVD of Russia.

- In accordance with requirements of the above law, the information necessary for maintaining the Uniform database of genome information is received from the state institutions of forensic medical examination, preliminary investigation agencies, inquiry bodies, bodies authorized for performance of operational and search activities for search for the missing persons and identification of person by the unidentified corpses, etc. That is, this base includes the data of all types of primary records, including those of the above expert institutions, Forensic and Criminalistic Centres of the MVD of Russia and the software system of the SK of Russia.

- Since 2011 the specifically allocated financing of the activities on the said state genome registration is prescribed and is made out of the federal budget funds.

- In accordance with the law, the compulsory state genome registration and the records of the genome information of the unknown corpses, unidentified persons, whose biological material was collected in the course of the investigative actions, and the remnants, containing biological material of missing persons, is performed. At that, the comparison of the obtained genome information is made within the base formed.

- At present, the Uniform database of genome information contains the records about genome information on 40 thousand objects from the places of undiscovered crimes under 31.6 thousand criminal cases, as well as about 4.7 thousand genetic profiles of people, whose corpses could not be indentified by other means.

During the period between 1 January 2013 and April 2014 about 2.3 thousand expert examinations and inquiries were performed in the Forensic and Criminalistic Centres of the MVD of Russia territorial bodies upon the discovery of unknown corpses. At that, 766

unknown corpses were identified, 852 genetic profiles of persons, whose corpses could not be identified by other means, were entered into the Uniform database of genome information.

Between 1 January 2013 and June 2014 565 requests for the check of the genome information in the Uniform database of genome information of the missing persons' relatives were received from the law enforcement agencies of the Russian Federation. Among them 306 were received from the SKFO, 77 - from the Chechen Republic (the statistical data on the results of the relevant checks will be prepared later).

Throughout 2013 and the first half of 2014, the DNA Laboratory in the Main Investigative Directorate of the SK of Russian for the SKFO has conducted inquiries and expert examinations of unidentified corpses which led to establishing the identity of 225 individuals while 34 individuals were entered into the Unified Database of Genome Information after the examinations.

- At present the work on improvement of the State genome registration in the Russian Federation is organised, including the work on formation of the Uniform database of genome information, with regard, *inter alia* to recommendations, stated in the European Court's judgment in the case of *Aslakhanova and others v. Russia* and the CMCE decisions. In this connection the preparation of the relevant Decree of the Russian Federation Government is planned (preparation time - July 2015).

**5.5.** Within the framework of earlier planned measures on 12 February 2014 the interdepartmental order was issued, that provides for the organization and the procedure for maintenance of centralized records (apart from the Uniform database of genome information) , including the record of missing persons.

Thus, according to the above order, forming and keeping of the centralized records is performed under the procedures, established by the order, within the integrated databases IBD-F and IBD-R at the federal level (in the Main Information and Analysis Centre of the MVD of Russia) and at the regional level (in Information Centres of the internal affairs bodies of the MVD of Russia for the Russian Federation constituent entities, including the Chechen Republic).

"FR-Informing" is one of the subsystems of the integrated data banks. It takes into account information about missing persons being on the wanted list. At present, the formation of the centralized recording of persons in the subsystem "FR-Reporting" is performed automatically in real time. The updated data on the wanted persons (including their photos) is forwarded to the information centres of the territorial bodies of the MVD of Russia at the regional level, including those located on the territory of the SKFO, in electronic format 4 times per day, through the communication channels.

According to the data of the MVD of Russia, as of 1 May 2014 the subsystem "FR-Informing" contains information about 66.9 thousand missing persons. About 4.5 thousand missing persons were put on the wanted list between January and April 2014, including 216 persons - in the SKFO, and 43 - in the Chechen Republic.

At the same time the centralized automated informational-search system "Identification" (AIPS "Identification") was created and is functioning. This system contains extended data on missing persons, persons that are unable to provide the information on their personality in view of their health condition or age, and on unidentified corpses. AIPS "Identification" contains information on the relevant persons

and unidentified corpses, their distinguishing characteristics, description of clothes, etc. This system is aimed at identification and search for missing persons and unknown corpses.

According to the MVD of Russia, as of 1 May 2014 the information on 174.9 thousand relevant persons and unidentified corpses (including, 6.3 thousand for the SKFO and 2.1 thousand for the Chechen Republic) is registered in the centralized recording of AIPS "Identification".

The database formed earlier in the Chechen Republic, containing the data on missing persons, is no more relevant at present, in view of its inclusion into the centralized recording system of missing persons.

For the improvement of the effectiveness of using the centralized recording AIPS "Identification" (within the research and development work on the topic: "Development of the automated informational-search system "Identification", with regard to the standards of EITKS<sup>10</sup> of the internal affairs bodies of the Russian Federation) the special software (hereinafter - the SPO) was developed, that allows to use the identification algorithm by a person's photo.

At present the elaboration is planned for relevant technical solutions ensuring information security when using this SPO for formation and maintenance of the centralized recording of missing persons, persons that are unable to provide the data regarding their personality, in view of their health condition or age, and on unidentified corpses (the completion of this work is scheduled till the end of 2015).

6. The procedure for establishment of the fate of missing persons and circumstances of their alleged abduction, existing in the Russian Federation, provides for the participation of the relatives of such persons, citizens and representatives of non-governmental organizations in the relevant work.

- Thus, pursuant to the Police Act, the police bodies, including the subdivisions of criminal investigation, shall ensure trust in them and support on the part of citizens and non-governmental organizations, engaging the citizens and public associations in implementation of their functions<sup>11</sup>. The relevant bodies are obliged to cooperate with citizens and non-governmental organizations and use their opportunities in accordance with the procedure, established by the Russian legislation<sup>12</sup>.

- Federal law no.44-FZ "On participation of citizens in public order protection" was adopted on 2 April 2014. This law regulates legal conditions, principles and main forms of participation of citizens in public order protection and in search of missing persons<sup>13</sup>. Pursuant to this law<sup>14</sup> the citizens of full legal age are engaged on a voluntary basis in search for missing persons. At that, they have a right to assist internal affairs bodies (police) and other law enforcement agencies during relevant search activities, receive from the police bodies publicly available information on missing persons, places of their supposed search, another publicly available information, necessary for effective search of these persons under the established procedure.

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<sup>10</sup> Uniform Informational Telecommunication System of the internal affairs bodies

<sup>11</sup> Article 9 of the Police Act

<sup>12</sup> Article 10 §§ 3 and 4 of the Police Act

<sup>13</sup> Article 1 of Federal law "On participation of citizens in public order protection"

<sup>14</sup> Article 9 of Federal law "On participation of citizens in public order protection"

- It is also noted that after the latest Action Plan was submitted by the Russian authorities, the work on implementation of the complex program on organization of the work with victims was continued (on a systematic basis). In particular, the practice of meetings with victims for discussion of problems that investigation faces and possible ways for their solution was continued, as well as the practice of submission of extended reports on the course and results of investigation to victims.

- For the purposes of improvement of cooperation with civil society institutions and victims in criminal cases of the said category, effective ensuring of their rights, the Prosecutor's office for the Chechen Republic and the MVD for the Chechen Republic became parties to agreements on organization of cooperation with the Ombudsman for the Chechen Republic, the Public Chamber of the Chechen Republic and the Council of non-governmental human rights organizations, operating in the Chechen Republic. The relevant agreements were also concluded in other constituent entities of Russian Federation, including those within the territory of the SKFO.

- Between the higher authorities of Prosecutor's Office, military prosecutor's office dislocated in this region, the investigation Directorate of the SK of Russia for the Chechen Republic, the MVD for the Chechen Republic and the heads of human rights organizations, including the International Committee of the Red Cross, NGO "Committee Against Torture", Human rights Centre "Memorial" was organized systematic cooperation. Arising problems and ways of their solution are discussed during the meetings, the experience is also exchanged and accumulated. The meetings for exchanging information on the known facts of persons' abductions are held within the cooperation, for the purposes of organization of the relevant inquiries, and concrete measures are elaborated for prevention of abductions and disappearance of citizens.

- The Committee for the search of persons who disappeared during the counterterrorism operation in the territory of the Chechen Republic is established in the Parliament of the Chechen Republic. It cooperates with the Investigation Directorate for the Chechen Republic and the MVD for the Chechen Republic on issues of establishment of the missing persons' fate.

Therefore, the existing procedure for search of the missing persons and establishment of their fate provides for the work of the competent state authorities, implementing it on the basis of trust and partnership with the relatives of the missing persons, the citizens and non-governmental organizations, as it is provided for in paragraph 225 of the European Court judgement in *Aslakhanova and others v. Russia*.

7. The implementation of the existing mechanism of search of the missing persons provides for the prosecutor's supervision and judicial control over this activity. The legal basis for it are the norms of the Federal law "On the Prosecutor's Office of the Russian Federation" and the CCP RF. The Russian authorities have earlier informed about it in detail.

7.1 In 2014, upon the results of the analysis conducted, the Deputy of the General Prosecutor forwarded the informational letter to the prosecutors of the SKFO. The letter contained analysis of the state of work of the law enforcement agencies in the field of struggle against persons' abductions and search of missing persons in 2013, as well as concrete recommendations for improvement of work of the prosecution authorities on supervisory action in the field concerned.

For 2014 the prosecution authorities of the SKFO constituent entities, including the Chechen Republic, have planned and are presently implementing the activities on examination, within their jurisdiction, of cases of operative recording upon applications on abductions and disappearances, with issuing of documents of the prosecutor's response upon their results (if there are any grounds), discussion of established violations and problems at the board meetings and interdepartmental meetings (the period of implementation - during 2014 on a regular basis).

In 2013 the practice of quarterly meetings proved itself positive. The meetings were conducted with the heads of the Criminal Investigations Department of the MVD for the Chechen Republic in the Chechen Republic's Prosecutor's Office, with examination of the results of the operational service activity on search of the missing persons, disclosure of grave and especially grave crimes that are under the control in the Russian Federation General Prosecutor's Office, as well as those, in view of which the applications were lodged with the ECHR. The additional plans of operational and search activities, implemented under the control of the Criminal Investigations Department of the MVD for the Chechen Republic are prepared upon the results of such meetings. The continuation of this work is planned (period of implementation - during 2014 on a regular basis).

**7.2** In accordance with the work plan of the Judicial Division on criminal cases of the Supreme Court of the Russian Federation for the 2nd semester of 2013 and the 1st semester 2014, the reviews of the ECHR legal positions, including those expressed in judgements on the cases of the category concerned, were discussed during seminars with participation of judges and officials of the Supreme Court.

In the 1st semester 2014 the Department for systematization of legislation and analysis of the judicial practice of the Supreme Court made a list of ECHR legal positions, including those contained in judgements regarding criminal investigation procedure (with publishing of generalisation analysis in information system "International law", available to all courts of general jurisdiction). The Russian authorities believe that these measures shall also facilitate improvement of the effectiveness of judicial control in the field of search of missing persons and establishment of their fate.

The relevant work is planned further (the period of implementation - 2014-2015, on a regular basis).

**8.** The Russian authorities presume that ensuring of proper coordination of the activity of all state authorities, involved in the process concerned is of prime importance for successful implementation of existing mechanism of search and establishment of the fate of missing persons.

**8.1.** As it was submitted earlier, for the purposes of solution of the task at issue the Complex Program on struggle against persons' abductions and search of missing persons for 2011-2014 has been adopted on the coordination meeting of law-enforcement bodies of the SKFO, which is presently implemented. It includes the complex of joint actions of all the bodies fighting crime.

Attention is particularly brought to the fact that special high-level bodies have been established in the North Caucasus Federal District. 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.

The said program gave the new impulse to the activity on struggle against the persons' abductions and search of the missing persons in every constituent entity of the Federation in the territory of the North Caucasian Federal District, including the Chechen Republic.

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.

**8.2.** 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.

**8.3.** In the course of implementation of the previously adopted Order of the Directorate of the SK of Russian for the Chechen Republic and MVD of Russian for the Chechen Republic "On approval of the Regulation on interdepartmental meeting regarding criminal cases on grave and especially grave crimes, that became subject of examination of the European Court of Human Rights" the information about ongoing investigation of 37 criminal cases was heard and discussed at interdepartmental meetings between July 2013 and June 2014. The plans of further investigation of the relevant cases were adjusted upon the results.

The specially established department in the structure of the Criminal Investigation Department of the MVD for the Chechen Republic and bodies of procedural control of the SK of Russia have organised the work on control over execution of the decisions adopted upon the results of discussion at the interdepartmental meeting, as well as on coordination of the activity of the internal affairs bodies of the Republic on search of missing persons.

**8.4.** An interdepartmental meeting is planned for 2014 which will be attended by all state bodies dealing with search and establishing the fate of missing persons and supervising activities in this field. It is planned that during the meeting there will be discussed the state of the lawfulness and the practice of examining messages related to the disappearance of citizens (during 2012-2013 and the first 6 months of 2014) conducted by the bodies performing operative and search activities and by investigative bodies (to be held by October 2014).

**8.5.** Certain results were achieved lately within the framework of implementation of the Complex Program.

- In particular, as it was mentioned above, the measures planned under the Complex Program were implemented with regard to improvement of the records of disappeared persons, unidentified corpses and genome information (with establishment of uniform databases containing relevant information).

A number of individuals was identified as the result of expert examinations.

Specialists from the Branch no.2 of the 111<sup>th</sup> 111th Main State Centre of forensic medical and criminalistic examinations of the Ministry of Defence of the Russian Federation (Rostov-on-Don) were able to establish the identity of 196 unidentified civilian bodies in the SKFO in the framework of criminal cases investigations initiated by the territorial investigative bodies of the SK of Russian and the MVD of Russia.

The Forensic and Criminalistic centres of the territorial bodies of the MVD of Russia between January 2013 and April 2014 have conducted forensic analysis under orders of the law enforcement agencies from various constituent entities located within the SKFO and were able to identify 46 unidentified corpses.

The DNA Laboratory of the Main Investigative Directorate of the Russian Investigative Committee for the Northern Caucasus Federal District has been able to identify 315 unidentified corpses through forensic examinations and inquiries between 2012 and the first half of 2014.

- The improvement of search of missing persons was noted in the Chechen Republic during 2010-2014. Thus, in 2011 the percent of search of the missing persons made 16.3%, in 2012 - 17.4%, in 2013 - 31.8%.

The statistical data confirm the increase of the solved crimes, provided for by Article 126 of the Russian Criminal Code (abduction of a person). Thus, in 2012 5 crimes were solved (the crime solving rate made 33.3%), in 2013 - 10 crimes (the crime solving rate made 66.7%), during the 4 months of 2014 - 2 crimes (the crime solving rate made 66.7%).

The number of unidentified corpses also reduced. In 2011 7 corpses were found in the territory of the Republic, in 2012 - 5 corpses, in 2013 - 1 corpse. More than half of them have already been identified.

**8.6.** Implementation of the improved mechanism of search and discovering the fate of the missing persons in the cases, that became subject to ECHR examination, and which are supervised by the Council of Ministers, allowed the authorities to achieve certain progress in investigations, including in several cases establishing the fate of the missing persons. Additionally, it should be stressed again that this discussion is related to a specific group of so-called "historical" cases dealing with human rights violations of citizens of the Chechen Republic during the counter-terrorism operation held in the 2000s. In these cases, due to a number of objective reasons, which remain valid today, it appeared impossible yet to ensure observation of all the Convention requirements and to establish the guilty persons.

Among the main reasons that did not yet allow to finalize investigations into the cases that became subject of examination of the European Court and to completely establish the circumstances of incidents and the guilty persons it should be underlined that the primary stage of investigations were conducted during an armed conflict when a significant part of the Chechen Republic was controlled by illegal armed groups and many state institutions were not functioning at the time.

This also led to irreversible loss of the most important evidence, as well as the samples necessary to conduct forensic expert examinations.

Identifying the individuals who were involved in the arrests was further complicated by them using cover names and the absence or loss of the necessary archival documents

(for example, the documents being destroyed as a result of armed conflict or terrorist acts such as bombings, arson, etc.).

The investigators have obtained court orders in a number of cases in order to gain access to the preserved archival documents that contained information classified as state secret. However, no information that the investigation has looked for have been found in the relevant archives yet.

Furthermore, during the period at issue employees from different state agencies from various regions of Russia were engaged in participation in the counter-terrorism operation, and those worked temporarily and on a rotational basis.

It cannot be denied that in some cases, as was established by the European Court, violations were committed during the initial stage, that are impossible to remedy at present.

Unfortunately, it is not always possible to conduct the necessary expert examinations, for example DNA tests, due to various reasons that are beyond the investigation control.

One of the reasons for this issue is that the bodies of those killed in the course of hostilities in the Republic were buried as soon as the relevant opportunity appeared, and because the persons burying these bodies were risking their lives it was impossible for them to wait for the bodies to be examined and for forensic analysis to be conducted.

Due to national custom, the relatives of missing persons often object to the exhumation of bodies because, according to their customs and Islamic canon, an individual is buried on the day he dies. For the same reason the relatives protest against recuperation of organs for examination. There are also cases where the relatives of the abducted persons refuse to participate in the investigation, particularly refusing to give testimonies and DNA samples to the investigator in the procedures established by the Russian Criminal Code (the Russian authorities cited specific examples of this, see DH-DD(2013) 935E).

The Russian authorities also cannot but draw attention to the fact that in a number of cases, during the investigation it was established that the allegedly missing persons were not in fact missing, even in cases where applications were lodged with the European Court.

In the Action Plan submitted earlier (DH-DD(2013)935E), the Russian authorities also cited a number of such examples, including with respect to individuals who lodged applications with the European Court regarding alleged disappearances.

After the abovementioned Action Plan was submitted, investigative operations established the whereabouts of several individuals who had supposedly disappeared, been abducted or murdered, and criminal cases were initiated for them.

Thus, in 2014 at the Identity Check Point, located in the Republic of Dagestan on the border with the Chechen Republic, during the verification of documents A., who was in the wanted list, was identified. Previously, on 10 October 2000 the Prosecutor's Office of Grozny initiated the criminal case in view of his disappearance under Article 105 of the CC RF (murder).

In 2014 the location of M. was also determined in the Kursk District (the Stavropol Territory). In 2000 the criminal case was investigated under Article 105 of the CC RF (murder) in view of her disappearance, etc.

### **III. Conclusions:**

The Russian authorities believe that the Russian Federation has created a unified, centralised and independent mechanism for searching and establishing the fate of missing persons in the Northern Caucasus Federal District which is successfully carrying out its objectives. This mechanism has been improved in accordance with the practice of the ECHR, including in view of the judgement in the case *Aslakhanova and others v Russia* and is continuing to improve in accordance with the framework of measures planned by the Russian authorities. This mechanism is made up of the following important components which comply with the recommendations of the European Court, including those provided in the *Aslakhanova and others* judgement.

- The search and establishment of fate of missing persons, including in the North Caucasus Federal District, has been assigned to the special departments within the internal affairs bodies which comprise a uniform centralised system that includes criminal investigation divisions that are manned with the most qualified personnel who have undergone the necessary training with regard to the ECHR practice.

Officers of the criminal investigation divisions have been given wide-reaching powers in terms of conducting operational and search activities (according to conditions and in the order specified by law).

- Search activities (within the procedures set forth by law) begin as soon as a message is received with respect to the disappearance or the abduction of an individual, regardless of whether a criminal case is opened or not.

- The search and establishment of fate of missing persons upon the message or report on alleged abduction is conducted according to orders of the investigators and in close cooperation with them. At the same time, the investigators supervise the execution of their orders in accordance with their competence and, if there is reason to, take measures improving efficiency of operation and search activities in concrete cases.

A criminal investigation in the cases at issue is conducted by specialised units of a completely independent investigative body - the SK of Russia, and a number of necessary organisational and administrative measures has been undertaken to improve efficiency of corresponding investigations.

- The work of criminal investigation divisions and the investigators on establishing the fate of missing persons is of interrelated character and provides an opportunity to quickly examine evidence obtained during operative and search activities by way of investigative actions, and vice versa - the results of the examination allow to establish the necessity of conducting immediate operative and search activities.

Such a mechanism allows to conduct search and investigative actions at the same time, and in accordance with the law gives unhindered access to any information and materials, including archives (as opposed to the situation in some countries that faced similar problems during the work of search for missing persons and identification of persons).

- During investigation and operative and search activities any specialists may be engaged upon necessity, including for the purposes of collecting samples for comparative analysis, locating and examining bodies and supposed burial locations, conducting forensic inquiries etc. The law also provides the investigator with the authority to schedule

any expert examinations and investigators widely exercise this power.

- The necessary prerequisites were created in the Russian Federation, including the territory of SKFO, for conducting all types of needed expert examinations within investigations, by way of creation of a system of expert institutions (their functioning, order of conducting expert examinations and scientific research activity being duly regulated by law) and by way of financial support of their activities with budget allocations.

- Creation of centralised registers in Russia (the Unified Database of Genome Information and Missing Persons Databases), to which criminal investigation divisions and investigative authorities have unhindered access, plays an important role in ensuring the effective functioning of the mechanism for searching and establishing the fate of missing persons.

- The existing mechanism of establishing the fate of missing persons and the circumstances of their alleged abduction allows for the participation of citizens and non-governmental organizations in the relevant work.

- The realisation of existing mechanism for establishing the fate of missing persons includes prosecutor and court supervision over the relevant activity with the legal basis for it provided by federal legislation, and lately a number of measures were taken to improve the relevant activities.

- In order to successfully realize the existing mechanism of search and establishing the fate of missing persons, a number of measures was taken and planned to ensure adequate coordination of activities of all state bodies involved in the process, located in in the North Caucasus Federal District. This includes measures for realization of the on struggle against persons' abductions and search of missing persons for 2011-2014 (adopted at the coordination meeting of the SKFO law enforcement agencies).

An important role is played by the specially created high level Directorates in the North Caucasus Federal District, including the Directorate of the Prosecutor General Office as well as the Main Directorates of the SK of Russia and the MVD of Russia. These bodies coordinate the activities of law enforcement agencies in the SKFO, which includes activities for search and establishing of fate of missing persons, as well as 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.

- Realization of the Complex Program with the usage of improved methods of search and establishing the fate of missing persons has given concrete positive results which are illustrated in the Action Plan.

- During search operations (within the improved mechanism) to establish the whereabouts and fate of missing persons in the cases that became subject to the ECHR examination, the Russian authorities have encountered a number of objective difficulties which have not yet allowed to ensure observations of all Convention requirements, including establishing the fate of missing persons and establishing persons who are guilty of their disappearance.

That being said, particular attention is drawn to the fact that the mechanisms that exist in other countries, who are also dealing with the issue of so-called "historical" investigations, have also not ensured the conduct of investigations which would allow the

supervision of this issue to be closed by the CMCE.

At the same time the Russian authorities are taking all possible measures to ensure that effective investigations are carried out in light of the conclusions provided by the European Court and the recommendations of the Council of Ministers, including investigation into the "historical" cases.

- Attention is also drawn to the fact that in the judgement for the case *Aslakhanova and others v Russia*, the European Court gave recommendations to the Russian authorities for improving internal mechanisms, those recommendations being not imperative in nature and, as the European Court has himself repeatedly stated, do not deprive the national authorities of the possibility to independently built their own legal system taking into account its distinctive features.

The measures taken and planned for execution of the judgements of the European Court in the *Khashiyev* group of cases, including those aimed at improving the mechanism of search and establishing fate of missing persons, take into account the practice of the ECHR to a maximum possible extent, including the recommendations expressed in the *Aslakhanova and others* judgment.