
**Request for the initiation of Infringement Proceedings by the
Committee of Ministers in relation to the judgment of the
European Court of Human Rights in *Isayeva v Russia* (No.
57950/00, 24 February 2005)**

***European Human Rights Advocacy Centre
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A. Summary

- i. This is a formal request for the initiation of infringement proceedings by the Committee of Ministers under Rule 11 of the Rules of the Committee of Ministers, pursuant to Article 46(4) of the European Convention on Human Rights (the Convention) in relation to the judgment of the European Court of Human Rights (the Court) in *Isayeva v Russia* (No. 57950/00, 24 February 2005). The case concerns the aerial bombardment of the village of Katyr-Yurt in Chechnya in February 2000 by the security forces of the Russian Federation.
- ii. The European Human Rights Advocacy Centre (EHRAC) and Memorial Human Rights Centre (Memorial) communicate this request as non-governmental organisations under Rule 9(2) of the Rules of the Committee of Ministers.
- iii. *Isayeva* is one of more than 200 cases involving violations of fundamental human rights by Russian state agents in Chechnya and the other Republics of the North Caucasus Region, in which the Russian Federation has failed to provide effective accountability. These cases have been recognised as contributing to a culture of impunity that is damaging both to the authority of the Court and to the protection of the Convention system. Furthermore, the possible application of limitation periods under the Criminal Code of the Russian Federation, which bars the prosecution of crimes either 10 years or 15 years after the commission of an offence, has become a critical factor underlining the urgency of these cases, the majority of which relate to incidents which took place between 2000 and 2003.
- iv. The Committee of Ministers has supervised the enforcement of the *Isayeva* judgment since October 2005. Despite this supervision – and the explicit dismay expressed by the Court in 2010 in *Abuyeva and Others v Russia* (No. 27065/05, 2 December 2010) (a case concerning the same incident) for the “manifest disregard” by the Russian Federation of its binding judgment in *Isayeva* – in the seven years since the judgment, there has been no effective investigation and no one has been held accountable for the deaths of the villagers of Katyr-Yurt.
- v. The Committee of Ministers has been explicitly urged to take firmer measures against States that persistently or flagrantly fail to comply with the Court’s judgments by the Parliamentary Assembly, the Secretary General of the Council of Europe and by State parties themselves in the recent Brighton Declaration.
- vi. EHRAC and Memorial submit that invoking Article 46(4) of the Convention is the next logical procedural step for the Committee of Ministers to take with respect to a state party that is persistently failing to implement judgments despite long-term supervision. The infringement proceedings mechanism was

introduced by Protocol 14 and ratified by State Parties for this purpose. It is evident from the Explanatory Report to Protocol 14 that it was introduced to strengthen the measures available to the Committee of Ministers, in particular in relation to cases concerning structural problems, and explicitly in order to prevent repetitive applications.

- vii. EHRAC and Memorial submit that the grounds of Article 46(4) of the Convention are met in respect of the *Isayeva* case. Protocol 14 and the Rules of the Committee of Ministers require that infringement proceedings should be brought only in exceptional circumstances. The case of *Isayeva* meets this pre-condition of exceptionality not only due to the scale and gravity of the violations found by the Court but, critically, also due to the systemic and continuing nature of the human rights violations.
- viii. The objective in invoking the infringement proceedings mechanism under Article 46(4) in this case is to achieve an effective investigation into the aerial bombardment of Katyr-Yurt, with those responsible being held to account. This objective reflects the Court's explicit finding in 2010 that the failings of the original investigation in this particular case are "easily rectifiable". Further, by ensuring a proper investigation in this case, the Committee of Ministers will contribute directly to addressing systemic failings in the investigation of human rights violations at the national level.
- ix. EHRAC and Memorial accordingly request that the Committee of Ministers initiate infringement proceedings in accordance with Article 46(4) in relation to the judgment of the European Court of Human Rights in *Isayeva v Russia*. In order to do so, EHRAC and Memorial further request the Committee of Ministers, in accordance with Article 46(4), to serve formal notice on the Russian Federation by means of an interim resolution and, thereafter adopt a decision referring to the Court the question whether the Russian Federation has failed to fulfil its obligation under Article 46(1) of the Convention. This decision should be taken by means of a reasoned interim resolution.

B. Introduction

1. This is a formal request for the initiation of infringement proceedings by the Committee of Ministers under Rule 11 of the Rules of the Committee of Ministers,¹ pursuant to Article 46(4) of the European Convention on Human Rights (the Convention) in relation to the judgment of the European Court of Human Rights (the Court) in *Isayeva v Russia* (No. 57950/00, 24 February 2005).
2. It is submitted jointly by the European Human Rights Advocacy Centre (EHRAC) and Memorial Human Rights Centre (Memorial). EHRAC is a UK-based NGO which assists individuals, lawyers and NGOs within the Russian Federation, Georgia, Armenia and Azerbaijan to bring applications to the European Court of

¹ Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, 10 May 2006.

Human Rights.² Memorial is one of the leading human rights NGOs in the Russian Federation, with 58 branches across Russia. It focuses on human rights violations arising from armed conflict, discrimination and politically motivated persecution.³ EHRAC and Memorial have represented applicants in numerous applications to the Court concerning, inter alia, violations of the Convention by Russian security forces in Chechnya and in other regions of the North Caucasus.

3. EHRAC and Memorial submit this request as representatives of the applicants both in *Isayeva v Russia* and in the related case of *Abuyeva and Others v Russia* (No. 27065/05, 2 December 2010). Both cases concern the bombing of the village of Katyr-Yurt in February 2000 by the armed forces of the Russian Federation.
4. EHRAC and Memorial communicate this request as non-governmental organisations under Rule 9(2) of the Rules of the Committee of Ministers, regarding the execution of judgments under Article 46(2) of the Convention.
5. The request is submitted pursuant to the enhanced measures afforded to the Committee of Ministers by Article 46, as amended by Protocol 14, introduced specifically to address situations of persistent non-implementation of the Court's judgments. Despite the supervision undertaken by the Committee of Ministers in relation to the case of *Isayeva*, and the explicit dismay expressed by the Court in 2010 in *Abuyeva v Russia* as a result of the "manifest disregard" by the Russian Federation of its binding judgment in *Isayeva*,⁴ in the seven years since that judgment there has been no effective investigation and consequently no accountability for the serious human rights violations found.
6. *Isayeva* is one of more than 200 Court judgments finding violations of fundamental human rights by Russian state agents in Chechnya and the other Republics of the North Caucasus region, and in respect of which the Russian Federation has failed to provide effective accountability. These cases – and the response of the Russian Federation to them – have been recognised as contributing to a culture of impunity that is damaging both to the authority of the Court and to the protection of the Convention system. As such, these cases are a source of considerable concern to the Committee of Ministers, the Parliamentary Assembly of the Council of Europe, and a number of UN bodies, including the Human Rights Committee,⁵ the UN Commissioner for Human Rights,⁶ and the Working Group on Enforced Disappearances.⁷

² For further details, see EHRAC's website at www.londonmet.ac.uk/ehrac.

³ For further details, see Memorial's website at www.memo.ru/eng/memhrc/index.shtml (English) or <http://ehracmos.memo.ru/index.php?section=> (Russian)

⁴ *Abuyeva and Others v Russia* (No. 27065/05), 2 December 2010, para.241.

⁵ See, for example, CCPR/C/RUS/CO/6, para.14.

⁶ *Human rights chief calls for accountability on her mission to Russia*, 23 February 2011 available at <http://www.ohchr.org/EN/NewsEvents/Pages/HCMissionToRussia.aspx> (accessed 14 July 2011).

⁷ A/HRC/4/41, para.354. See also A/HRC/7/2, para.317.

7. Furthermore, the possible application of limitation periods under the Criminal Code of the Russian Federation,⁸ which bars the prosecution of crimes either 10 years or 15 years after the commission of an offence,⁹ has become a critical factor in the urgency of these cases, the majority of which relate to incidents which took place between 2000-2003.
8. EHRAC and Memorial submit, therefore, that the requirements of Article 46(4) of the Convention are met in the *Isayeva* case.

C. The power to bring Infringement Proceedings

9. In its judgment in *Abuyeva*, the Court reiterated that “in accordance with Article 46 of the Convention, a judgment in which it finds a breach imposes on the respondent State a legal obligation under that provision to put an end to the breach and to make reparation for its consequences in such a way as to restore, to the fullest extent possible, the situation existing before the breach”.¹⁰
10. The power to bring infringement proceedings under Article 46(4) of the Convention was introduced into the Convention when Protocol No. 14 entered into force on 1 June 2010. Article 46(1) provides:

The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

11. Article 46(4) of the Convention states:¹¹

If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two-thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1.

12. The Explanatory Report to Protocol No. 14 explains the reason for the introduction of this new procedure as follows:

Rapid and full execution of the Court’s judgments is vital. It is even more important in cases concerning structural problems, so as to ensure that the Court is not swamped with repetitive applications. For this reason, ever since

⁸ Article 78 of the Criminal Code of the Russian Federation.

⁹ 10 years for ‘grave crimes’ (resulting in a prison sentence less than 10 years) and 15 years for ‘especially grave crimes’ (resulting in a prison sentence more than 10 years). See further: *Submission to the Committee of Ministers concerning Statutes of Limitation in the Khashiyev Group*, Russian Justice Initiative, EHRAC and Memorial, 22 November 2011, available at:

<http://www.londonmet.ac.uk/fms/MRSite/Research/HRSJ/EHRAC/SoL%20FINAL%2022%20November%202011.pdf>.

¹⁰ *Abuyeva and Others v Russia* (No. 27065/05), 2 December 2010, para. 236.

¹¹ See also Rule 11 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, 10 May 2006.

*the Rome ministerial conference of 3 and 4 November 2000 (Resolution I), it has been considered essential to strengthen the means given in this context to the Committee of Ministers. The Parties to the Convention have a collective duty to preserve the Court's authority – and thus the Convention system's credibility and effectiveness – whenever the Committee of Ministers considers that one of the High Contracting Parties refuses, expressly or through its conduct, to comply with the Court's final judgment in a case to which it is party.*¹² [emphasis added]

13. It is evident from this explanation that Protocol 14 was introduced specifically to strengthen the measures available to the Committee of Ministers, in particular in relation to cases concerning structural problems, explicitly in order to prevent repetitive applications and to preserve the credibility and effectiveness of the Court and the Convention system, that otherwise will be undermined by the persistent non-implementation of the Court's judgments.
14. This is reinforced by the explanation in the Explanatory Report (para. 100) that: "*it appeared necessary to give the Committee of Ministers, as the competent organ for supervising execution of the Court's judgments, a wider range of means of pressure to secure execution of judgments.*"
15. The Committee of Ministers has been explicitly urged to take firmer measures against States that persistently or flagrantly fail to comply with the Court's judgments by the Parliamentary Assembly,¹³ the Secretary General of the Council of Europe¹⁴ and by States Parties themselves in the recent Brighton Declaration.¹⁵
16. Article 46(4) is thereby intended to provide the Committee of Ministers with an effective alternative to the extreme sanction of Article 8 of the Council of Europe's Statute (suspension or expulsion of a member State) (see paragraph 100 to the Explanatory Report).
17. The text of Article 46(4) provides that it is for the Committee of Ministers to infer a refusal by a state party to abide by a final judgment rather than requiring an explicit refusal by the State itself.

D. Judgment in *Isayeva v Russia* (2005)

18. On 24 February 2005, the European Court of Human Rights published its judgment in the case of *Isayeva v Russia* (No. 57950/00). *Isayeva* was one of the first three judgments of the Court relating to human rights violations by the

¹² Explanatory Report to Protocol No. 14, para.98.

¹³ See, for example, PACE Recommendation 1955 (2011) Implementation of judgments of the European Court of Human Rights.

¹⁴ Speech by Thorbjørn Jagland, Secretary General of the Council of Europe at the Brighton Conference, April 2012.

¹⁵ High Level Conference on the Future of the European Court of Human Rights: The Brighton Declaration 2012, paras. 27 and 29.

Russian military and security forces in the Chechen Republic.¹⁶ The case concerned the bombing of the village of Katyr-Yurt by the Russian armed forces on 4-7 February 2000. The military operation took place after the village (which had a population of between 18,000 and 25,000 people) had been captured by Chechen insurgents on 4 February 2000.

19. The applicant, Ms Zara Isayeva, complained that her 23 year old son and her three nieces, aged respectively 15, 13 and 6 years, had been killed by the bombing. The applicant and her relatives were trying to escape from Katyr-Yurt on 4 February 2000 when a bomb from an aircraft exploded near their minivan.
20. The Court unanimously held that there had been a violation of Article 2 of the Convention in respect of Russia's failure to protect the lives of the applicant, her son and three nieces.
21. The Court criticised the use of heavy, free-falling high-explosion aviation bombs (from fighter jets), finding that

"using this kind of weapon in a populated area, outside wartime and without prior evacuation of the civilians, is impossible to reconcile with the degree of caution expected from a law-enforcement body in a democratic society" (para.191).

22. The Court also criticised the delay by military commanders in providing villagers with information about, and access to, a safe passage (para.193). Indeed, it found that for a certain period villagers were prevented from leaving the scene of the fighting on the order of the operation's commanders (para.194) and found no evidence of an order to stop the attack, or reduce its intensity, once villagers began to leave *en masse* (paras. 195-196).
23. The Court criticised the failure of the investigation to draw a comprehensive picture of the human losses and to identify all the victims of the attack (para.197) and concluded that the operation had not been "*planned and executed with the requisite care for the lives of the civilian population*" (para.200).
24. The Court found a separate violation of Article 2 in relation to the failure to conduct an effective investigation into the circumstances of the bombardment of Katyr-Yurt. The Court was critical of the "*considerable delay of at least seven months before a criminal investigation was opened into credible allegations of dozens of civilian deaths*" (para.217).
25. The Court identified a number of 'serious flaws' in the subsequent investigation, including:

¹⁶ The other two cases published on the same day were *Khashiyev and Akayeva v Russia* (57942/00) and (57945/00) and *Isayeva, Yusupova and Bazayeva v Russia* (57947/00, 57948/00, 57949/00).

- a lack of reliable information about the declaration of safe passage for civilians (para.219);
- inadequate attempts to investigate the serious and credible allegations that the residents of Katyr-Yurt were ‘punished’ for their apparent lack of cooperation with the military authorities (paras. 220-221);
- the failure to identify victims and witnesses to the attack (para.222);
- the failure to provide information about the investigation to the applicant or other victims (para.222); and
- the absence of any realistic possibility for the applicant to challenge the conclusions of a military experts’ report or those of the investigation (para.223).

26. Finally, the Court found that Russia had failed to provide the applicant with an effective domestic remedy in violation of Article 13 of the Convention. The Court found the lack of an effective criminal investigation into the attack undermined the effectiveness of any other remedy that may have existed.

27. The *Isayeva* judgment became final on 6 July 2005.

E. Judgment in *Abuyeva and Others v Russia* (2010)

28. On 29 July 2005, a further application was lodged at the European Court against the Russian Federation regarding the aerial bombardment of Katyr-Yurt in February 2000. *Abuyeva and Others v Russia* (No. 27065/05) was brought by a further 29 villagers from Katyr-Yurt who complained of deaths or injuries caused to members of their families during the military operation.

29. In its judgment published on 2 December 2010, the Court confirmed its findings in the *Isayeva* judgment (para.202) and found a substantive violation of Article 2 of the Convention as a result of the killing of 24 of the applicants’ relatives and the wounding of 16 of the applicants or members of their families.

30. The Court again found a separate violation of Article 2 as a result of the failure to conduct an effective investigation into the use of lethal force by State agents, as well as a violation of Article 13 (in conjunction with Article 2) because of the failure to provide an effective domestic remedy.

31. The Court noted that, since the *Isayeva* judgment, a new investigation had been conducted (between 14 November 2005 and 14 June 2007) into the operation at Katyr-Yurt but, critically, the Court found that “*all the major flaws of the investigation indicated in 2005 persisted throughout the second set of proceedings*” (para.210).

32. The Court identified other serious concerns about the investigation, including the lack of independence of the investigation and the failure to inform the applicants about the proceedings.¹⁷
33. The Court expressed its “*great dismay*” that, with respect to the *Isayeva* case, “...*the respondent Government manifestly disregarded the specific findings of a binding judgment concerning the ineffectiveness of the investigation*” (paras 238 and 241), particularly given that it found the failings in the previous investigations to be “*easily rectifiable*.” The Court specifically noted that there had been “*no independent study of the proportionality and necessity of the use of lethal force*”, nor “*any attribution of individual responsibility for the aspects of the operation which had caused loss of life*” (para.242).
34. The Court was explicit in concluding that it considered it “*inevitable that a new, independent, investigation should take place*” under the supervision of the Committee of Ministers in the light of its conclusions (para.243).
35. The *Abuyeva* judgment became final on 11 April 2011.

F. Supervision of enforcement of the *Isayeva* judgment by the Committee of Ministers

36. The Committee of Ministers has supervised the enforcement of the *Isayeva* judgment since October 2005, in tandem with other judgments relating to violations of the Convention committed by the Russian security forces in Chechnya.¹⁸
37. In February 2006, the Committee of Ministers welcomed the notification of a new investigation into the events at Katyr-Yurt by the Russian military prosecutor and encouraged the authorities “*to make rapid and visible progress in the conduct of the new investigations*” in order to remedy “*to the extent possible, the shortcomings in the earlier investigations impugned by the judgments of the European Court*.”¹⁹
38. Fifteen months later, in June 2007, the Committee of Ministers recorded that no developments in the progress of the investigation had been reported since March 2006, and accordingly it urgently requested further information about its progress or outcome.²⁰
39. Since that time, the Committee of Ministers has continued to supervise the measures taken by the Russian Federation in response to the judgments relating to Chechnya (for a list of the principal documents issued by the Committee of Ministers, see Annex 2).

¹⁷ *Abuyeva and Others v Russia* (No. 27065/05), 2 December 2010, paras 212-214

¹⁸ 181 cases in the Kashiyevev and Akayeva Group against the Russian Federation: Council of Europe - Committee of Ministers - CM/Del/OJ/DH(2012)1144list21

¹⁹ CM/Inf/DH(2006)32E, 29 June 2006, para. 8.

²⁰ CM/Inf/DH(2006)32 revised 2, 12 June 2007, Executive Summary.

40. In December 2010, the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe (PACE) highlighted the failure of the measures taken by the Russian Federation to achieve “any *tangible results*” with respect to investigations into the actions of the security forces in Chechnya.²¹

41. In December 2011, the Committee of Ministers itself acknowledged the lack of progress in relation to the enforcement of judgments in the Chechen cases, expressing concern that,

*‘more than six years after the first judgments of the Court, in the vast majority of cases, it has not yet been possible to achieve conclusive results and to identify and to ensure the accountability of those responsible, even in cases where key elements have been established with sufficient clarity in the course of domestic investigations...’*²²

42. In 2011, PACE issued a Recommendation²³ addressing the general problem of implementation, which urged the Committee of Ministers to “*increase pressure and take firmer measures in cases of dilatory execution and/or continuous non-compliance with the Court’s judgments by states parties*” (para.1.4) and to “*ensure, in cases of persistent and flagrant disregard of the Court’s case law, that recourse be made to Article 8 of the Council of Europe’s Statute of 1949 (suspension/withdrawal from the Organisation)*” (para.1.5).

43. In its reply of November 2011 to these specific recommendations to take firmer action in respect of dilatory and/or persistent non-compliance, the Committee of Ministers made express reference to the enhanced measures introduced by Protocol 14, recalling the “*important addition to the means at its disposal provided by the entry into force of Protocol No. 14 on 1 June 2010*”.²⁴

44. The concern expressed by PACE about non-compliance and the need for firmer and more effective measures to be taken against dilatory, flagrant or persistent offenders was equally evident at the 2012 Brighton Conference, where it was reiterated that the non-implementation of judgments is a priority for the Convention system. The Brighton Declaration stated that

“The Committee of Ministers must therefore effectively and fairly consider whether the measures taken by a State Party have resolved a violation. The Committee of Ministers should be able to take effective measures in respect of a State Party that fails to comply with its obligations under Article 46 of the

²¹ PACE Doc. 12455 Implementation of judgments of the European Court of Human Rights (20 December 2010) Report of the Committee on Legal Affairs and Human Rights. Rapporteur: Mr Christos POURGOURIDES, Cyprus. (para. 7.7.2).

²² Int Res CM/ResDH(2011)292, 2 Dec 2011.

²³ Recommendation 1955 (2011) Implementation of judgments of the European Court of Human Rights.

²⁴ Implementation of judgments of the European Court of Human Rights” – Parliamentary Assembly Recommendation 1955 (2011) (Reply adopted by the Committee of Ministers on 23 November 2011 at the 1127th meeting of the Ministers’ Deputies), para. 8.

*Convention. The Committee of Ministers should pay particular attention to violations disclosing a systemic issue at national level...*²⁵

Furthermore, the Brighton Declaration also invited the Committee of Ministers “to consider whether more effective measures are needed in respect of States that fail to implement judgments of the Court in a timely manner” (para.29(d)).

45. Mr Thorbjørn Jagland, Secretary General of the Council of Europe, reiterated this point: *“I therefore support the idea to reflect on more effective measures that could be taken in respect of States that persistently fail to implement judgments of the Court, notably those relating to repetitive cases and serious human rights violations.”*²⁶ In his speech at Brighton Mr Jagland identified two main challenges still to be met, the first of which was to improve national implementation of the Convention - specifically, to resolve structural and systemic problems and ensure rapid and full execution of the Court’s judgments.
46. Sir Nicolas Bratza, President of the Court, also referred to this point in his speech at Brighton, stating, *“We should not forget the Convention’s special character as a treaty for the collective enforcement of human rights... Failure to implement the Convention properly at national level is a primary source of the accumulation of meritorious cases which constitute the most serious problem that the Court has to cope with.”*²⁷
47. At its most recent meeting on 4-6 June 2012, during the discussion of the *Khashiyev and Akayeva* Group of cases, the Committee of Ministers specifically requested information from the Russian Federation about the progress of its third investigation into the cases of *Isayeva* and *Abuyeva*.²⁸
48. Despite the measures which have been taken by the Committee of Ministers in order to achieve the implementation of the *Isayeva* judgment, at the date of this submission – some seven years after the judgment in *Isayeva* – there has been no effective investigation and no one has been held accountable for the deaths of the villagers of Katyr-Yurt.²⁹

G. Request for initiation of Infringement Proceedings

49. In the light of the lack of any tangible progress in achieving accountability in the *Isayeva* case, and the increasing unwillingness of states to tolerate the persistent non-implementation of judgments of the Court, EHRAC and Memorial request the

²⁵ Brighton Declaration, para. 27 - <https://wcd.coe.int/ViewDoc.jsp?id=1934031>.

²⁶ Speech by Thorbjørn Jagland (Secretary General of the Council of Europe): <http://www.coe.int/20120419-brighton>.

²⁷ Speech by Sir Nicolas Bratza (President of the European Court of Human Rights): <http://www.coe.int/20120419-nicolas-bratza>.

²⁸ 1144 (DH) meeting, 4-6 June 2012 - Decision cases No. 19 - *Khashiyev and Akayeva* Group against the Russian Federation, available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2011\)1144/19&Language=lanEnglish&Ver=original&BackColorInternet=DBC2F2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2011)1144/19&Language=lanEnglish&Ver=original&BackColorInternet=DBC2F2&BackColorIntranet=FDC864&BackColorLogged=FDC864).

²⁹ See also the letter from Memorial Human Rights Centre to the Department of Execution of Judgments dated 24 October 2011, DH- DD(2011)922E, 28 October 2011.

Committee of Ministers to initiate infringement proceedings, pursuant to Article 46(4) of the Convention, in relation to the Russia Federation's refusal to comply with the Court's final judgment in *Isayeva v Russia*.

50. It is submitted that invoking Article 46(4) is the logical next procedural step for the Committee of Ministers to take with respect to a state party that is persistently failing to implement judgments despite long-term supervision, the consequence of which is the promotion of a culture of impunity for the most serious human rights violations and a weakening of the Convention system. The infringement proceedings mechanism was specifically introduced by Protocol 14 and ratified by State Parties for this purpose.
51. The objective of invoking the infringement proceedings mechanism under Article 46(4) in this case is to achieve an effective investigation into the aerial bombardment of Katyr-Yurt, with those responsible being held to account. This objective reflects the Court's explicit finding in the *Abuyeva* judgment that the failings of the original investigation are "easily rectifiable" (see para. 33 above). Further, by ensuring a proper investigation in this case, the Committee of Ministers will contribute directly to addressing systemic failings in the investigation of human rights violations at the national level.

Pre-condition of exceptional circumstances

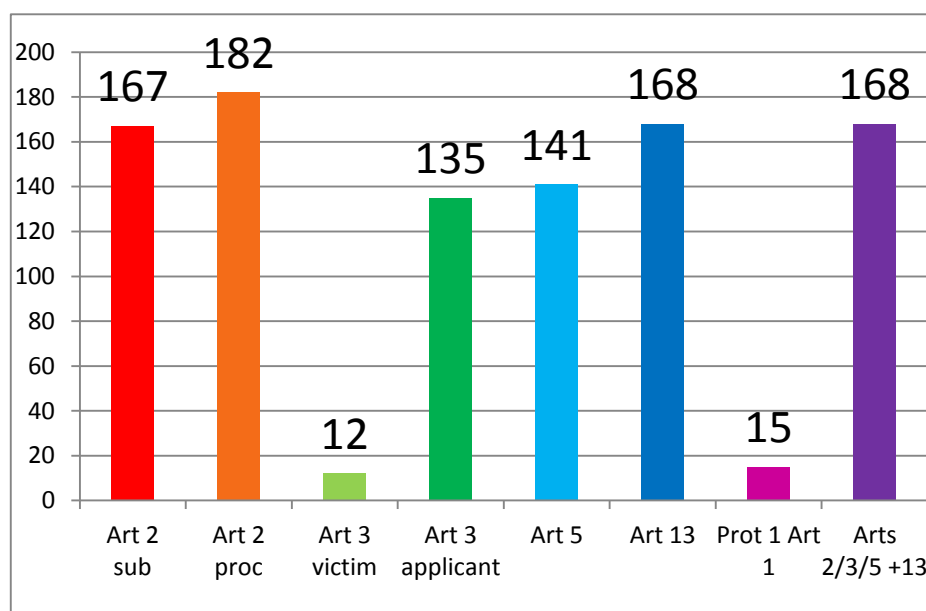
52. The Committee of Ministers' Rules stipulate that infringement proceedings should only be brought in exceptional circumstances.³⁰ The case of *Isayeva* meets this pre-condition of exceptionality due, not only to the scale and gravity of the violations found by the Court but also, critically, due to the systemic and continuing nature of these violations.
53. First, the *Isayeva* case does not stand in isolation. Since 2005 the European Court has found multiple violations of the Convention perpetrated by the Russian security forces in Chechnya and other Republics in the North Caucasus region – to date, the Court has found violations in more than 200 cases from the region arising from unlawful killings, enforced disappearances, unacknowledged detention, torture and ill-treatment, and the destruction of property (see the EHRAC Database of North Caucasus Region European Court of Human Rights Judgments (to July 2012) at Annex 1).
54. Second, the inadequacy of official investigations has been a feature of almost all of these cases, resulting in findings of procedural violations of Article 2 and/or Article 3, together with Article 13 (the right to an effective remedy). Failings consistently identified by the Court include: delays in the investigation of crime scenes (or the failure to do so); delays in the opening of investigations; the failure to identify and question victims and witnesses; the failure to question the applicants (or delays in doing so); the failure to carry out appropriate autopsy,

³⁰ Rule 11 (2). See also Explanatory Report to Protocol No. 14, para. 100.

forensic or ballistic reports (or delays in doing so); the failure to identify and question state officials; the failure to identify military units, or to establish where or when operations have been conducted; the failure to grant applicants 'victim status' or to inform families about developments in the investigation; the repeated transfer of complaints between investigative departments and repeated adjournments and re-opening of investigations. In a number of cases, the Court has suggested that investigators' inaction in response to families' complaints established "a strong presumption of at least acquiescence in the situation", as well as calling into question the objectivity of the investigation.³¹

55. The table below indicates the nature of human rights violations found by the Court in the North Caucasus cases.

Judgments of the European Court of Human Rights relating to the North Caucasus Region by nature of violation (as at April 2012)



Sub – Substantive violation, Proc – Procedural violation

Source: EHRAC database (see Annex 1)

56. Third, the gravity and exceptionality of this group of cases has been explicitly recognised by the European Court itself: in *Aslakhanova v Russia* (No. 2944/06), at the communication stage of the proceedings (June 2011), the Court put the following question to the parties regarding disappearances:

³¹ See, for example, *Akhmadova and Sadulayeva v Russia*, No.40464/02, 10 May 2007, para. 106; *Alikhadzhiyeva v Russia*, No.68007/01, 5 July 2007, para. 61; *Aziyevy v Russia*, No.77626/01, 20 March 2008, para. 78; *Baysayeva v Russia*, No.74237/01, 5 April 2007, para. 119; *Imakayeva v Russia*, No. 7615/02, 9 November 2006, para. 155; *Magomadov and Magomadov v Russia*, No.68004/01, 12 July 2007, para. 98; *Utsayeva and others v Russia*, No.29133/03, 29 May 2008, para. 164.

“Having regard to numerous judgments of the Court finding a breach of the positive obligation to investigate effectively the abductions of individuals in Chechnya and Ingushetia in 1999-2006, does the non-investigation of such crimes constitute a systemic problem and/or practice incompatible with the Convention...?”

Reference is made to over 100 judgments finding violations of the obligation to investigate under Article 2 of the Convention, as well as, in many instances, violations of Articles 3, 5 and 13....”

57. Fourth, the exceptionality of the North Caucasus group of cases, and the endemic problem of ineffective investigations, has been expressly and repeatedly recognised by the Council of Europe Commissioner for Human Rights³² and the Parliamentary Assembly of the Council of Europe.³³ In its latest report on the implementation of judgments of the European Court, the Parliamentary Assembly described the non-investigation of violations committed by the security forces in the Chechen Republic as a major systemic deficiency.³⁴
58. Fifth, the failure to carry out effective investigations into abuses perpetrated by the security forces in Chechnya has also been a consistent focus of reports published by United Nations bodies, including the Human Rights Committee³⁵ and the Committee against Torture.³⁶

The nature of the obligation to investigate

59. The duty to investigate under Articles 2 and 3 is absolute, as is recognised by the Committee of Ministers’ Guidelines on Eradicating Impunity for Serious Human Rights Violations (March 2011).³⁷
60. The Committee of Ministers has also emphasised its *continuing* nature (in relation to procedural violations of Articles 2 and 3 of the Convention), noting that *“the respondent State has a continuing obligation to conduct effective investigations inasmuch as procedural violations of Articles 2 or 3 have been found.”*³⁸

³² See, e.g., Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to the Russian Federation (Chechen Republic and the Republic of Ingushetia), on 2 -11 September 2009, CommDH(2009)36, 24 November 2009 (noting “the lack of effective investigations into repeated human rights violations”).

³³ See, e.g., Situation in the North Caucasus Region: security and human rights - Second information report , AS/Jur (2009) 43, 29 September 2009 (“the necessary investigations aimed at identifying and prosecuting those responsible for murders, disappearances, torture or other crimes continue to be ineffective and a matter of mere form. Even in cases where the responsibilities have been fairly clearly established by the Court itself, the members of the security forces concerned have not been brought to justice”, para.66); Implementation of judgments of the European Court of Human Rights, Assembly document 12455, of 20 December 2010 (Rapporteur, Mr Pourgourides); States with major structural/systemic problems before the European Court of Human Rights: statistics, AS/Jur/Inf (2011) 05 rev 2, 18 April 2011 (referring to 117 cases concerning violations in Chechnya).

³⁴ Implementation of judgments of the European Court of Human Rights, 7th report, AS/Jur (2010) 36, 9 November 2010, pp.1-2, 23-27.

³⁵ See, e.g., CCPR/CO/79/RUS, para.13.

³⁶ See, e.g., CAT/C/RUS/CO/4, para.24.

³⁷ *Guidelines of the Committee of Ministers of the Council of Europe on Eradicating Impunity for Serious Human Rights Violations*, as adopted by the Committee of Ministers at their 1110th meeting, 31 March 2011.

³⁸ CM/Inf/DH(2006)32E, 29 June 2006, para.1.

61. Despite the fact that the Committee of Ministers has prioritised the supervision of this group of cases, no discernible progress has been made in terms of the conduct of effective investigations.

Climate of impunity as a result of the failure to Investigate

62. The consequence of the Russian authorities' persistent failure to investigate human rights violations is a lack of accountability, the consistent feature of which is the refusal to hold state agents responsible for human rights abuses committed by them or under their authority. This on-going lack of accountability creates a climate of impunity and systematically prevents the effective protection of Convention rights. This has been recognised by both United Nations and Council of Europe organs.
63. For example, in 2006, the Working Group on Enforced or Involuntary Disappearances noted the overall climate of impunity as regards the practice of disappearances in Chechnya.³⁹ In 2009, the Human Rights Committee expressed its concern that the perpetrators of human rights violations in the North Caucasus appeared to enjoy "widespread impunity" due to a "systematic lack of effective investigation and prosecution".⁴⁰ During her mission to Russia in February 2011, the UN High Commissioner for Human Rights stated that a lack of accountability and respect for the rule of law had been particularly acute in relation to the North Caucasus.⁴¹
64. Furthermore, statistics related to cases occurring in the period from 2010 to 2012 provided by Memorial also clearly establish that cases of abduction, arbitrary killings and the disproportionate use of lethal force by state agents continue to persist in the republics of the North Caucasus.⁴² This is a direct consequence of the well-established culture of impunity in the region. As a result, applications arising from such cases continue to be submitted to the Court.
65. The Committee of Ministers' Guidelines on Eradicating Impunity emphasise that *"the full and speedy execution of the judgments of the Court is a key factor in combating impunity"* and also explicitly state that *"[c]ombating impunity requires that there be an effective investigation in cases of serious human rights violations."*⁴³
66. The Parliamentary Assembly of the Council of Europe is unambiguous about the damaging impact of non-implementation: *"the importance of eradicating impunity*

³⁹ A/HRC/4/41, para.354. See also: A/HRC/7/2, para.317.

⁴⁰ CCPR/C/RUS/CO/6, para.14.

⁴¹ *Human rights chief calls for accountability on her mission to Russia*, 23 February 2011, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/HCMissionToRussia.aspx> (accessed 14 July 2011).

⁴² See the Memorial database: <http://www.memo.ru/hr/hotpoints/caucas1/index.htm>

⁴³ *Guidelines of the Committee of Ministers of the Council of Europe on Eradicating Impunity for Serious Human Rights Violations*, as adopted by the Committee of Ministers at their 1110th meeting, 31 March 2011, preamble and para. V.1.

*cannot be overstated, not only in the North Caucasus region of the RF, although this problem is the most virulent there... Failure to implement judgments of the Court in such instances gravely undermines the value of the protection system established by the Convention"*⁴⁴ (emphasis added).

Urgency of Action

67. It is demonstrably clear that the persistent failure of the Russian authorities to hold any of its security agents accountable for the multiple deaths in Katyr-Yurt in 2000 is having an impact which is far more wide-reaching than simply on the applicants in the case.
68. There is a compelling and urgent need for the Committee of Ministers to take definitive steps now for the following reasons:
- The majority of the judgments in the Chechen cases concern events which occurred between 1999 and 2003.
 - A number of criminal prosecutions have already been terminated due to the expiry of the limitation period, in accordance with the domestic Criminal Code (see para.7 above).
 - The cases concern the most grave human rights abuses: enforced disappearances and killings by state agents.
 - There is an almost complete absence of prosecutions resulting in the continuing impunity of the perpetrators.
 - These cases reveal structural and systemic problems that are well-known and longstanding.
 - The non-execution of the judgments undermines the credibility of the Court and the Convention system itself.

H. Conclusion

69. On the grounds set out above, EHRAC and Memorial request that the Committee of Ministers initiate infringement proceedings in accordance with Article 46(4) of the Convention in relation to the judgment of the European Court of Human Rights in *Isayeva v Russia*.
70. In order to do so, EHRAC and Memorial further request the Committee of Ministers, in accordance with Article 46(4), to:

⁴⁴ PACE CLAHF Doc 44 2011 Guaranteeing the authority and effectiveness of the European Convention on Human Rights Report, para. 33.

- i. serve formal notice on the Russian Federation by means of an interim resolution (by a majority vote of two-thirds of the representatives entitled to sit on the Committee, and giving six months' notice before the lodging of proceedings);⁴⁵ and, thereafter
- ii. adopt a decision (by a majority vote of two-thirds of the representatives entitled to sit on the Committee) referring to the Court the question whether the Russian Federation has failed to fulfil its obligation under Article 46(1) of the Convention. This decision should be taken by means of a reasoned interim resolution.⁴⁶

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30 July 2012

⁴⁵ In accordance with Rule 11(2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, 10 May 2006.

⁴⁶ In accordance with Rule 11(3) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, 10 May 2006.