
**Request for 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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27 July 2012

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A. SUMMARY

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.

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.

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 application of the limitation period 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 in the urgency of these cases, most of which took place between 2000-2003.

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 v Russia* (a related case) 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.

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.

EHRAC and Memorial submit 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. This mechanism was specifically 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, explicitly in order to prevent repetitive applications.

EHRAC and Memorial submit that the grounds of Article 46(4) of the Convention are met in 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 due not only to the scale and gravity of the violations found by the Court but, critically, due to the systemic and continuing nature of the human rights violations.

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 Katr Yurt, with those responsible held formally to account. This objective reflects the Court's view that the failings of the original investigation are "easily rectifiable". Further, by ensuring a proper investigation in this case, the Committee will contribute directly to addressing systemic failings of investigation of human rights violations at the national level.

On the grounds set out above, EHRAC and Memorial 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 involving serious human rights violations to the European Court of 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 (discussed below) 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).
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* for the "manifest disregard" by the Russian Federation of its binding judgment in *Isayeva*,⁴ in the seven years since the initial judgment there has been no effective investigation and consequently no accountability for the serious human rights violations found.

¹ Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements adopted by the Committee of Ministers on 10 May 2006 at the 964th meeting of the Ministers' Deputies.

² For further details, see EHRAC's website at www.londonmet.ac.uk/research-units/hrsj/affiliated_centres/ehrac/home.cfm.

³ For further details, see Memorial's website at www.memo.ru/eng/memhrc/index.shtml.

⁴ *Abuyeva v Russia*, para.241.

6. *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 – 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, 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
7. Furthermore, the application of the limitation period 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, most of which took place between 2000-2003.¹⁰
8. EHRAC and Memorial submit, therefore, that the grounds of Article 46(4) of the Convention are met in the *Isayeva* case.

C. Power to bring Infringement Proceedings

9. In its judgment in *Abuyeva*,¹¹ 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” (para. 236).
10. The power to bring infringement proceedings under Article 46 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.

⁵See, 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.

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).

¹⁰ See Russian Justice Initiative, EHRAC and Memorial *Submission to the Committee of Ministers concerning Statutes of Limitation in the Khashiyev Group*, 22 November 2011, available at: <http://www.londonmet.ac.uk/fms/MRSite/Research/HRSJ/EHRAC/SoL%20FINAL%2022%20November%202011.pdf>.

¹¹ *Abuyeva and Others v Russia* (No. 27065/05).

11. Article 46(4) of the Convention states:¹²

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 (“the Explanatory Report”) 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 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.*¹³

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. 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.

15. This is reinforced by the further statement in the Explanatory Notes: “*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.*”

16. 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;¹⁴ the Secretary General of the

¹² 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.

¹³ Explanatory Report to Protocol No. 14, para.98.

¹⁴ PACE Recommendation 1955 (2011) Implementation of judgments of the European Court of Human Rights.

Council of Europe¹⁵ and by State Parties themselves in the recent Brighton Declaration.¹⁶

17. 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).

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

18. On 24 February 2005, the European Court of Human Rights ("the Court") 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 Russian military and security forces in the Chechen Republic.¹⁷ 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) stating,

"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).

¹⁵ Speech by Thorbjørn Jagland, Secretary General of the Council of Europe at the Brighton Conference, April 2012.

¹⁶ High Level Conference on the Future of the European Court of Human Rights: The Brighton Declaration 2012, para.s 27 and 29.

¹⁷ 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).

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 ‘serious flaws’ in the subsequent investigation, including:
- 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 of *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.¹⁸
33. The Court expressed its “*great dismay*” that, with respect to the *Isayeva* case, “*...the respondent Government [the Russian Federation] manifestly disregarded the specific findings of a binding judgment concerning the ineffectiveness of the investigation*” (para.s 238 and 241), particularly given that it found the failings in the previous investigations to be “*easily rectifiable.*” The Court specifically noted that there has been, to this day, “*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 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 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.¹⁹
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.*”²⁰
38. Fifteen months later, in June 2007, the Committee of Ministers recorded that no developments of the progress of the investigation had been reported since March

¹⁸ *Abuyeva* paras 212-214

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

²⁰ CM/Inf/DH(2006)32E, 29 June 2006, para. 8.

2006, and accordingly it urgently requested further information about its progress or outcome.²¹

39. Since that time, the Committee of ministers has continued to supervise the measures taken by the Russian Federation in response to the two judgments,²² (for a list of all documents issued by the Committee of Ministers, see Annex 2). The subsequent memoranda issued by the Committee of Ministers concerned general measures, rather than individual measures, as the Court itself noted in *Abuyeva*.²³
40. In December 2010, the Parliamentary Assembly of the Council of Europe (PACE) Committee on Legal Affairs and Human Rights 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.²⁴
41. The Committee of Ministers, in December 2011, 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...’*²⁵

42. In 2011, PACE issued a Recommendation²⁶ addressing the general problem of implementation, that 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*”.²⁷

²¹ CM/Inf/DH(2006)32 revised 2, 12 June 2007, Executive Summary.

²² CM/Inf/DH(2008)33, 11 September 2008; CM/Inf/DH(2010)26, 27 May 2010.

²³ See: CM/Inf/DH(2008)33, 11 September 2008; CM/Inf/DH(2010)26, 27 May 2010.

²⁴ 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).

²⁵ Int Res CM/ResDH(2011)292, 2 Dec 2011.

²⁶ Recommendation 1955 (2011) Implementation of judgments of the European Court of Human Rights.

²⁷ 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)

44. The concern expressed by PACE about non-compliance and the promulgation of firmer and more effective measures against dilatory, flagrant or persistent offenders was equally evident at the 2012 Brighton Conference, when it was reiterated that the non-implementation of judgments is a priority for the Convention system. In the Brighton Declaration,²⁸ State Parties agreed,

“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 Convention. The Committee of Ministers should pay particular attention to violations disclosing a systemic issue at national level... (para.27).

Significantly States Parties 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. Thorbjørn Jagland, Secretary General of the Council of Europe, reiterated this point, stating “I therefore support the idea to reflect on more effective measures 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.”²⁹ In his speech at Brighton he 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 the 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.”³⁰
47. At its most recent meeting of 4-6 June 2012, during the discussion of the *Kashiyev 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*.³¹
48. Despite the supervision of the Committee of Ministers, at the date of this submission – some seven years after the judgment in *Isayeva* – there has been

²⁸ Brighton Declaration at <https://wcd.coe.int/ViewDoc.jsp?id=1934031>.

²⁹ Speech by Thorbjørn Jagland (Secretary General of the Council of Europe): <http://www.coe.int/20120419-brighton>.

³⁰ Speech by Sir Nicolas Bratza (President of the European Court of Human Rights): <http://www.coe.int/20120419-nicolas-bratza>.

³¹ [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2011\)1144/19&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2011)1144/19&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864).

no effective investigation and no one has been held accountable for the deaths of the villagers of Katyr-Yurt.

G. Request for initiation of Infringement Proceedings

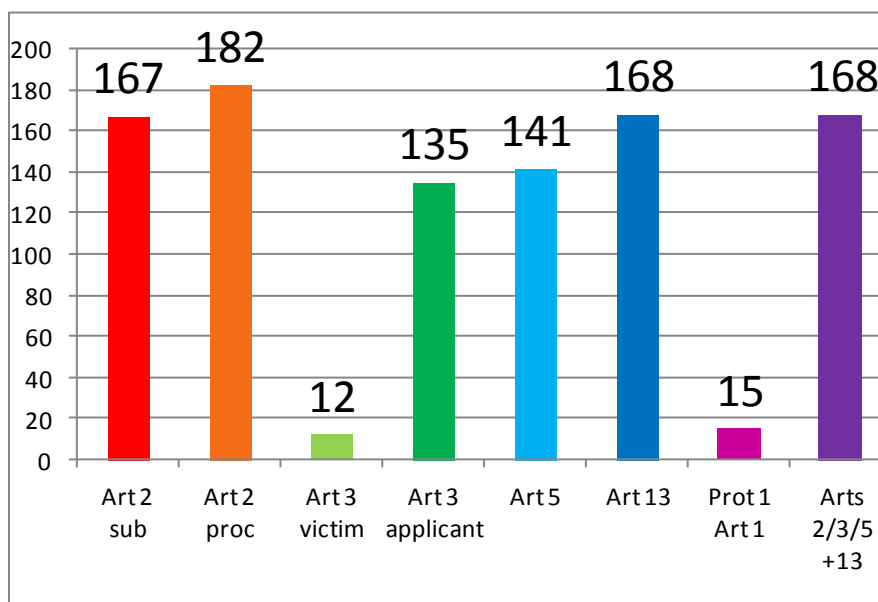
49. In the light of the lack of any tangible progress towards accountability in the Katyr Yurt cases, and the increasing unwillingness of states to tolerate the persistent non-implementation of judgments of the Court, EHRAC and Memorial request the Committee of Ministers to initiate infringement proceedings, 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. This 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 Katr Yurt, with those responsible held formally to account. This objective reflects the Court's view 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 will contribute directly to addressing systemic failings of investigation of human rights violations at the national level.

Pre-condition of exceptional circumstances

52. The Explanatory Report and the Committee of Ministers' Rules require that the Committee of Ministers should bring infringement proceedings only in exceptional circumstances. 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, 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 (a database detailing all cases from the Region decided by the Court is attached 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).

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

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



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 *Aslakhonov 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:

“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 also 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

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

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 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 Torture³⁶.

The nature of the obligation to investigate

59. The duty to investigate under Articles 2 and 3 is absolute, as recognised by the Committee of Ministers own 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
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 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

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.

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

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. The Committee of Ministers’ Guidelines on Eradicating Impunity⁴² emphasises that “*the full and speedy execution of the judgments of the Court is a key factor in combating impunity*”⁴³ and the explicitly state that “[c]ombating impunity requires that there be an effective investigation in cases of serious human rights violations.” (para.V(1)).
65. The Parliamentary Assembly of the Council of Europe is unambiguous about the damaging impact of non-implementation: “*the importance of eradicating impunity 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 (para.33).

Urgency of Action

66. 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 far more wide-reaching than simply on the applicants in the case.
67. There is an urgent need for the Committee of Ministers to take definitive steps now for the following reasons:
- The majority of Chechen cases concern events of 1999-2003.
 - A number of criminal prosecutions have already been terminated due to the expiry of the Russian federation’s criminal limitation period (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.

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 *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.

⁴³ *Committee of Ministers Guidelines on Eradicating Impunity for Serious Human Rights Violations*, Preamble.

⁴⁴ PACE CLHR Doc 44 2011 *Guaranteeing the authority and effectiveness of the European Convention on Human Rights Report*.

- The non-execution of the judgments undermines the credibility of the Court and the Convention system itself.

H. Conclusion

68. On the grounds set out above, EHRAC and Memorial 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*.
69. 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 (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
 - 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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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.