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### DH-DD(2020)943

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Meeting: 1390<sup>th</sup> meeting (December 2020) (DH)

Communication from NGOs (European Human Rights Advocacy Centre and Memorial Human Rights Centre) (21/10/2020) concerning the case of KHASHIYEV and AKAYEVA group v. Russian Federation (Application No. 57942/00).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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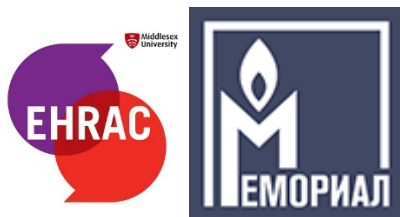
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Réunion : 1390<sup>e</sup> réunion (décembre 2020) (DH)

Communication d'ONG (European Human Rights Advocacy Centre et Memorial Human Rights Centre) (21/10/2020) concernant le groupe d'affaires KHASHIYEV et AKAYEVA c. Fédération de Russie (Requête n° 57942/00) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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**Rule 9(2) submission to the Committee of Ministers' of the Council of Europe concerning  
implementation of *Isayeva v Russia, Abuyeva and Others v Russia, and Abakarova v Russia* in the  
'Khashiyev & Akayeva group' of cases (57942/00).**

21 October 2020

**Introduction**

1. This submission is communicated by the European Human Rights Advocacy Centre [‘EHRAC’] and Memorial Human Rights Centre [‘Memorial HRC’] as non-governmental organisations under Rule 9(2) of the Rules of the Committee of Ministers.<sup>1</sup>
2. The purpose of this submission is to request that the Committee of Ministers:
  - a) Include *Isayeva* and its related cases in the agenda for consideration at the next or future meetings;
  - b) Request information from the Russian Federation on the fresh investigative activities it intends to undertake to comply with the judgment in *Abakarova*; and
  - c) Request information from the Russian Federation on how it intends to implement further measures required by the Court, including the admission of State responsibility, the creation of non-judicial mechanisms aimed at learning lessons and ensuring non-repetition, and the creation of a mechanism for obtaining reparation for the harm suffered by the victims.

**The Cases of Concern**

3. This submission concerns litigation undertaken by EHRAC and Memorial HRC regarding the indiscriminate bombing by Russian aircraft and artillery of the town of Katyr-Yurt during the second Chechen war, in early 2000, leading to 46 civilian casualties officially acknowledged by the Russian Federation, although the Court has suggested the figure is likely much higher.<sup>2</sup>

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<sup>1</sup> EHRAC has submitted a previous Rule 9 submissions with respect to *Isayeva* and related cases in March 2015 with Memorial HRC ([DH-DD\(2015\)257](#)).

<sup>2</sup> *Isayeva v Russia* ([App. No. 57950/00](#)), judgment of 24 February 2005 at [197]

4. In 2005, the judgment in *Isayeva v Russia*<sup>3</sup> found a violation of the substantive limb of Article 2, holding that the primary aim of the military operation should have been to protect lives and that:

*“The massive use of indiscriminate weapons stands in flagrant contrast with this aim and cannot be considered compatible with the standard of care prerequisite to an operation of this kind involving the use of lethal force by State agents.”*<sup>4</sup>

The Court also found that the domestic investigation into the bombing contained “serious flaws”<sup>5</sup> and violated the procedural limb of Article 2, as well as a violation of Article 13.

5. Following this, in 2010 and 2015, were two further judgments relating to the same event – *Abuyeva and Others v Russia*<sup>6</sup> and *Abakarova v Russia*<sup>7</sup> respectively – both of which, for the same reasons as found in *Isayeva*, held that there were substantive violations of Article 2. As to the procedural limb, when finding violations of Article 2 the Court issued increasingly robust and critical judgments of the investigations.
6. In *Abuyeva*, with respect to a re-opened investigation commencing 2005 and terminated in 2007, the Court held that “it has suffered from exactly the same defects as those identified in respect of the first set of proceedings which had been terminated in 2002.”<sup>8</sup> In *Abakarova*, concerning a third re-opened investigation commencing in 2012 and terminated in 2013, the Court held that “none of the issues raised in the *Abuyeva and Others* judgment has been resolved.”<sup>9</sup> In particularly robust language, the Court concluded that:

*“Overall, the Court cannot but conclude that the inadequacy of the investigation into the deaths and injuries of dozens of civilians, including the deaths of the applicant’s family, was not the result of objective difficulties that can be attributed to the passage of time or the loss of evidence, but rather the result of the investigating authorities’ sheer unwillingness to establish the truth and punish those responsible.”*<sup>10</sup>

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<sup>3</sup> ([App. No. 57950/00](#)), judgment of 24 February 2005 (final on 6 July 2005)

<sup>4</sup> At [191]

<sup>5</sup> At [218]

<sup>6</sup> ([App. No. 27065/05](#)), judgment of 2 December 2010 (final on 11 April 2011)

<sup>7</sup> ([App. No. 16664/07](#)), judgment of 15 October 2015 (final on 14 March 2016)

<sup>8</sup> At [215]

<sup>9</sup> At [95]

<sup>10</sup> At [98]

7. In its Article 46 indications, in addition to continuing to insist on an effective investigation, the Court indicated further measures, including the admission of State responsibility for the bombardment, the creation of non-judicial mechanisms aimed at learning lessons and ensuring non-repetition, and the creation of a mechanism for obtaining reparation for the harm suffered by the victims.<sup>11</sup>
8. Finally, EHRAC and Memorial HRC reapplied to the Court on behalf of the victims in *Abuyeva* in 2014, claiming a continued violation of the procedural limb of Article 2, due to the ongoing failure by the Russian authorities to effectively investigate. This was communicated to the Russian authorities on 6 September 2018.<sup>12</sup>

### **Current Status of Implementation Review**

9. These trio of cases have been subject to implementation as part of the Khashiyev and Akayeva group of cases, which concern cases in the North Caucasus, particularly Chechnya, of killings or presumed killings, unjustified use of force, disappearances, unacknowledged detentions, torture and ill-treatment, mental suffering of the victims' relatives, unlawful search and seizure operations, destruction of property, and failure to co-operate with the Convention organs. These cases also concern the lack of effective investigations into the alleged abuses and the absence of effective domestic remedies.
10. Much of the recent focus in implementation of this group of cases has concentrated on measures – both forensic and investigatory – concerning enforced disappearances. Until the most recent decision of the Committee of Ministers to re-consolidate all these cases together,<sup>13</sup> the *Isayeva* trio of cases was reviewed in a cluster of cases concerning the effectiveness of investigations of events of 1999–2006. The last review of these cases occurred in September 2018.<sup>14</sup> The decision that followed timetabled the next review of these cases for the meeting in March 2020. The scheduled March 2020 session did not in fact review these cases. These cases are not specifically named in the most recent calendar of the list of future cases for consideration. It has now been over two years since the last

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<sup>11</sup> Ibid at [111]-[114]

<sup>12</sup> ([App. No. 63329/14](#)), communicated 6 September 2018

<sup>13</sup> See decision of 1377bis meeting ([CM/Del/Dec\(2020\)1377bis/H46-31](#)), para 14. EHRAC in partnership with Stichting Justice Initiative and Human Rights Watch submitted a Rule 9(2) on this issue in September 2020 – see [DH-DD\(2020\)739](#)

<sup>14</sup> 1324<sup>th</sup> meeting ([CM/Del/Dec\(2018\)1324/H46-18](#))

review, and there is no indication in any public material that any planned review is on the horizon. In light of the decision to re consolidate the entire group of cases in 2021, we urge the Committee of Ministers to ensure that this trio of cases is included into the review cycle and given meaningful consideration at regular intervals.

### **Summary of Russian Federation’s implementation of Isayeva and related cases**

11. A full chronology of implementation is annexed to this submission.
12. In short summary, the Russia Federation’s first plan for implementation was submitted in 2006.<sup>15</sup> Despite a request from the Committee of Ministers for an update in 2007<sup>16</sup>, based on publicly available information it took six years – until 2012 – and a further judgment against Russia (*Abuyeva and others*) for failing to carry out an effective investigation – for the Russian Federation to provide further updates,<sup>17</sup> stating that, as a result of the decision in *Abuyeva*, an additional investigation would be organised. In 2012, EHRAC and Memorial HRC made a formal request for initiation of infringement proceedings.<sup>18</sup> Between 2012 and 2015, the Committee of Ministers made three requests for the Russian Federation to provide an update to the individual measures.<sup>19</sup> In February 2015, EHRAC and Memorial HRC, in their Rule 9(2) submission, described the persistent failure of the Russian Federation to implement the Court’s judgment in *Abuyeva and Others* and again requested infringement proceedings.<sup>20</sup> In July 2015, the Russian Federation submitted its action plan with respect to the implementation of *Abuyeva and Others*.<sup>21</sup> However, the Committee of Ministers did not then review these cases until December 2016,<sup>22</sup> after the date of judgment in *Abakarova* (see above), where the Committee was guided by the findings of the Court that the new investigations were ineffective. The Committee expressed “grave concern about the continuing failure to address the shortcomings of the successive investigations.”<sup>23</sup>

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<sup>15</sup> See [CM/Inf/DH\(2006\)32](#)

<sup>16</sup> [CM/Inf/DH\(2006\)32-rev 2](#)

<sup>17</sup> [DH-DD\(2012\)488-part2](#); and [DH-DD\(2012\)757](#)

<sup>18</sup> See <http://ehrac.org.uk/wp-content/uploads/2014/10/EHRAC-Memorial-Infringement-Proceedings-Request-FINAL-25.07.2012.pdf>

<sup>19</sup> [CM/Del/Dec\(2012\)1150/19](#); [CM/Del/Dec\(2014\)1193/17](#); [CM/Del/Dec\(2015\)1222/14](#)

<sup>20</sup> DH-DD(2015)257, para.4.12

<sup>21</sup> [DH-DD\(2015\)773](#)

<sup>22</sup> [CM/Notes/1273/H46-25](#); [CM/Del/Dec\(2016\)1273/H46-25](#)

<sup>23</sup> [CM/Del/Dec\(2016\)1273/H46-25 para. 3](#)

13. In September 2018, the Russian Federation provided its most recent action plan on the individual measures undertaken.<sup>24</sup> With respect to individual measures, this document, in nearly all material respects, is *largely identical* to its 2015 action plan. The only substantive difference between the 2015 and 2018 plans is that, after the judgment in *Abakarova*, authorities re-examined the criminal case file. In direct contrast to the Court's findings, this re-examination concluded that "the violations found by the European Court in its judgment in the case of *Abakarova* had already been remedied during the additional investigation carried out after...the case of *Abuyeva*."<sup>25</sup> It further noted that the decision to end the criminal case cannot be cancelled.<sup>26</sup>

14. On 20 September 2018, the Committee of Ministers, for the 1324<sup>th</sup> meeting, last considered the matter. In the agenda notes, it stated that

*"it is clear that the Court in its Abakarova judgment of 2015 assessed the reopened investigations, closed in 9 March 2013, expressly finding that none of the investigation shortcomings identified earlier had been resolved. The information furnished by the authorities to the Committee shortly before the Abakarova judgment contained certain additional information on the measures taken with regard to these shortcomings. Nevertheless, in the light of findings of the European Court in the Abakarova judgment, the Committee may conclude that information on further investigatory steps is still awaited"*<sup>27</sup>.

The Committee of Ministers' decision "stressed again the necessity of exploring in parallel other remedial actions, including public acknowledgment and public condemnations of serious violations of the right to life"<sup>28</sup> but made no specific decision on the adequacy of the individual measures outlined by the Russian government.

15. Finally, in September 2018, a fresh application for the victims in *Abuyeva and others* was communicated to the Russian government concerning the continuing failure to conduct an

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<sup>24</sup> [DH-DD\(2018\)798E](#)

<sup>25</sup> *Ibid*, p.18

<sup>26</sup> *Id.* The rationale given by the Russian Federation was that, according to Russian Constitutional Court decisions, terminated criminal cases "which poses (*sic*) a constant threat of the criminal prosecution of the person in respect of which the criminal case was terminated, cannot be resumed in an arbitrary manner".

<sup>27</sup> [CM/Notes/1324/H46-18E](#)

<sup>28</sup> [CM/Del/Dec\(2018\)1324/H46-18E](#), paras 2 and 7

effective investigation.<sup>29</sup> All observations have been submitted, and the Court's judgment is awaited.

### Submissions of the Inadequacy of Implementation

16. Based on its 2018 action plan, it would appear that the Russian Federation does not propose to remedy the defects found by the Court in *Abakarova*. According to the 2018 action plan, the Russian Federation considers the matter adequately investigated in 2013 and does not intend to undertake any further investigatory activities. It asserts that it is domestically prevented from doing so (in spite of the findings of the Court that the renewed investigation constituted a procedural violation of Article 2). It is therefore unclear, at this stage, what *fresh* investigative activities the Russian Federation intends to undertake to comply with the judgment in *Abakarova* and in particular, whether and by what means, it intends to conduct an investigation that, as indicated by the Court in *Abakarova*:

*“establish[es] the relevant factual circumstances concerning the events, including a complete list and causes of the deaths and injuries, [and] carrying out – on the basis of these factual findings – an independent expert report of the compatibility of the lethal force used with the principle of “absolute necessity”, [and] attributing individual responsibility between the commanders and the civilian authorities for the aspects of the operation which led to the breach of Article 2.”<sup>30</sup>*

17. We therefore ask that the Committee of Ministers request information from the Russian Federation on these fresh investigative activities. Any such update could helpfully include specific details as to how, in these future investigations, victims will be fully informed, be provided with all necessary information, and be able to effectively participate.
18. Additionally, the 2018 action plan is silent on the further measures indicated by the Court, including the admission of State responsibility for the bombardment, the creation of non-judicial mechanisms aimed at learning lessons and ensuring non-repetition, and the creation of a mechanism for obtaining reparation for the harm suffered by the victims. A current update from the Russian Federation in respect of these cases could also be helpfully address its proposals for implementation of these measures.

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<sup>29</sup> [\(App. No. 63329/14\)](#)

<sup>30</sup> *Abakarova* at [111]

## Conclusion

19. 20 years on from the bombing of Katyr-Yurt, there is yet to be a domestic investigation that meets the procedural requirements of Article 2 of the Convention. We therefore request that the Committee of Ministers includes review of the *Isayeva* and related cases into its calendar of future cases, and continues to urge the Russian Federation to comply with the judgment in *Abakarova* by supplying information on how it intends to conduct fresh investigations, and how it intends to implement broader general measures on admissions of State responsibility, lessons-learning, non-repetition, and the creation of a mechanism for obtaining reparation for the harm suffered by the victims.



## **ANNEX: Chronology of Judgments, Implementation of Individual Measures and Communications from the Russian Federation**

**24 February 2005:** Judgment in *Isayeva v Russia* handed down (made final on 6 July 2005).

**29 June 2006:** Committee of Ministers provided the first information note on the initial implementation of the judgment in *Isayeva*.<sup>1</sup> It summarised the first action plan from Russia, dated March 2006, noting a reopening of the criminal case into the event, an extension of time limit for the investigation, and gathering of additional information and conducting an operational tactical expert examination. It noted that the Committee welcomed these further investigations<sup>2</sup> but expected further information on the progress on the investigation, particularly on the operational tactical expert examinations, and clarification whether applicants were granted victim in these newly opened investigations or were otherwise informed.<sup>3</sup>

**12 June 2007:** Revised information note from the Committee of Ministers secretariat noted that, with respect to the individual measures identified above, “no development [on individual measures] has been reported since March 2006. Information is therefore urgently requested on their progress and/or outcome”.<sup>4</sup>

**2 December 2010:** Judgment in *Abuyeva and Others v Russia* handed down, with respect to the deaths and injuries sustained by 29 applicants and their families in the bombing of Katyr-Yurt. The Court reviewed those investigative measures undertaken by the Russian authorities, as outlined in the above action plan. Additionally, it described procedural events not described in the action plans, particularly a decision of 14 June 2007 to close the re-opened domestic criminal investigation, and quashing the grant of victim status to 95 people. It noted that the re-opened domestic investigation came to the same conclusion as the original one criticised by the Court in *Isayeva*. The Court was not provided with a copy of the above-mentioned tactical expert examination, nor was this disclosed to the applicants. The Court found a violation of both the substantive and procedural limb of Article 2, and Article 13. The substantive limb made identical findings to that found in *Isayeva*. With respect to the procedural limb:

*“all the major flaws of the investigation indicated in 2005 persisted throughout the second set of proceedings, which ended in June 2007. Most notably, [the Court] cannot discern any steps taken to clarify the crucial issues of responsibility for the safety of the civilians' evacuation and of the “reprisal” character of the operation against the*

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<sup>1</sup> CM/Inf/DH(2006)32

<sup>2</sup> 22 February 2006 - [CM/DEL/DEC\(2006\)955-FINAL](#)

<sup>3</sup> Ibid, para.10

<sup>4</sup> CM/Inf/DH(2006)32-rev 2, executive summary

*population of Katyr-Yurt. It does not appear that any additional questions about these aspects of the operation were posed to the military or civilian authorities or to the servicemen involved at ground level. No one was charged with any crime.”<sup>5</sup>*

*“an effective investigation could not be achieved without identifying the individual agents in the military and, possibly, civilian administration, who had borne responsibility for the taking and implementation of the decisions which had entailed such a heavy toll on the civilian population”<sup>6</sup>*

*The “the decisions to terminate the proceedings – taken by the military prosecutor's office on the basis of the expert reports prepared by army officers – raise serious doubts about the independence of the investigation from those implicated in the events at issue.”<sup>7</sup>*

In the Court’s Article 46 indicative guidance, it stated that “[t]o this day no independent study of the proportionality and necessity of the use of lethal force has been carried out, nor has there been any attribution of individual responsibility for the aspects of the operation which had caused loss of life and the evaluation of such aspects by an independent body, preferably of a judicial nature.”<sup>8</sup> The Court therefore “considers it inevitable that a new, independent, investigation should take place.”<sup>9</sup>

**12 May 2012:** Russian Federation provided information<sup>10</sup> to the Committee that, as a result of the decision in *Abuyeva*, the decision of 2007 to close the criminal investigation and remove victim status was quashed and reopened as a new criminal case. 44 new victims were identified as a result of the new investigative measures. The report states that no new facts was forthcoming due to the remoteness of the events.<sup>11</sup> A new tactical examination was carried out by the Military Academy. The rationale for using the Military Academy was that “[i]t is not possible to entrust conducting of the examination to other specialists including civilian experts due to the specific character of the raised

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<sup>5</sup> *Abuyeva and Others v Russia* at [210]

<sup>6</sup> *Ibid*, at [211]

<sup>7</sup> *Abuyeva and Others v Russia* at [212]

<sup>8</sup> *Ibid* at [242]

<sup>9</sup> *Abuyeva and Others v Russia* at [243]

<sup>10</sup> 1144th meeting DH (June 2012) - Communication from the Government of the Russian Federation in the Khashiyev group of cases against Russian Federation (Application No. 57942/00) - Information made available under Rule 8.2.a of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements - DH-DD(2012)488-part2

<sup>11</sup> *Ibid*, Report on the course and results of investigation in the cases *Isaeva v. Russia*, *Abueva v. Russia*, p4

issues which refer to the armed group actions; it is also not possible to do so due to the specific character of the documentation submitted for expertise as most of the documents are secret.”<sup>12</sup> The experts concluded that the “actions with regard to planning and effecting the operation were reasonable and in compliance with domestic legislation”, and the report notes that the criminal case was terminated on 16 March 2012.

**27 July 2012:** EHRAC and Memorial HRC make a formal request for initiation of infringement proceedings.<sup>13</sup>

**31 August 2012:** Russian Federation submitted an action plan<sup>14</sup> that noted that the above-mentioned decision to close the criminal investigation was quashed on 28 August 2012, and an additional investigation was organised. The action plan stated that Committee of Ministers would be informed of the results of the investigation.<sup>15</sup>

**26 September 2012:** Committee of Ministers, in its 1150<sup>th</sup> meeting, summarised the procedural history of the investigations into the bombing of Katyr-Yurt, and, noting the additional investigation mentioned above “called upon the Russian authorities to ensure that this additional investigation eventually addresses all the shortcomings repeatedly identified by the Court and invited them to provide detailed information in this respect so as to enable the Committee to ascertain that this investigation has effectively paid due regard to all the Court’s conclusions.”<sup>16</sup>

**6 March 2014:** Committee of Ministers, in its 1193<sup>rd</sup> meeting, “regretted that no information has been provided demonstrating progress in the ... additional investigation conducted in the cases of *Isayeva and Abuyeva and others* and, consequently, insisted that such information is transmitted without delay.”<sup>17</sup>

**19 February 2015:** EHRAC and Memorial HRC submit Rule 9(2) submission describing the consistent failure of the Russian Federation to implement the Court’s judgment in *Abuyeva and Others* and submitted that the Committee of Ministers “would appear to have little option but to commence infringement proceedings”.<sup>18</sup>

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<sup>12</sup> Ibid, Report on the course and results of investigation in the cases *Isaeva v. Russia, Abueva v. Russia*, p4

<sup>13</sup> See <http://ehrac.org.uk/wp-content/uploads/2014/10/EHRAC-Memorial-Infringement-Proceedings-Request-FINAL-25.07.2012.pdf>

<sup>14</sup> DH-DD(2012)757

<sup>15</sup> Ibid, p.9

<sup>16</sup> CM/Del/Dec(2012)1150/19, para. 11

<sup>17</sup> CM/Del/Dec(2014)1193/17

<sup>18</sup> DH-DD(2015)257, para.4.12

**12 March 2015:** Committee of Ministers, in its 1222<sup>nd</sup> meeting, noted: “as regards the cases of *Isayeva and Abuyeva and Others*, reiterated their call upon the Russian authorities to provide detailed information on the additional investigation conducted and copies of decisions taken in this context”.<sup>19</sup>

**24 July 2015:** Russian Federation submitted an update to the individual measures on these cases, in its action plan for the 1236<sup>th</sup> meeting of the Committee of Ministers.<sup>20</sup> This action plan summarised the results of the additional investigation, with reference to the shortcomings of the investigation as identified in *Abuyeva*:

- a) With respect to victims not being informed of the most important procedural decisions, it noted that, as a result of the additional investigation, “all persons, suffered from the incident in Katyr-Yurt, were identified and, if possible, granted a victim status”, and that “victims actively exercised their procedural rights”.<sup>21</sup>
- b) With respect to the decision to dismiss the investigation by the Military Prosecutor’s Office based on a military tactical examination, it notes that the additional examination was conducted by the Military Investigation Department of the Investigation Committee, which is independent of the Armed Forces or Ministry of Internal Affairs.<sup>22</sup>
- c) With respect to a new tactical expert report, a panel of non-military experts from the Southern Federal University was convened to complete this examination such that “the maximum possible measures were taken for the purpose of ensuring impartial and independent investigation”<sup>23</sup>.
- d) The action plan outlined non-specific activities conducted by the new investigation:
  - Search for the persons who suffered;
  - Interrogations of victims and witnesses;
  - Interrogation of officers of the command staff;
  - Performance of examinations; and
  - Clarification of the circumstances of the events, including the issues relating to planning and conducting the special operation, taking measures to ensure the safety and evacuation of the civilian population.<sup>24</sup>

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<sup>19</sup> CM/Del/Dec(2015)1222/14

<sup>20</sup> DH-DD(2015)773

<sup>21</sup> Ibid, p.13

<sup>22</sup> Ibid, p.13

<sup>23</sup> Ibid, p.14

<sup>24</sup> Ibid, p.14

Based on evidence “in their aggregate” the investigation concluded that “the damage, caused by these means, was proportionate and compatible in view of the situation and the measures taken to minimise the losses among civilians and servicemen of the federal forces.”<sup>25</sup> The investigation found that the preparation and conduct of the operation was compatible with the requirements of manuals, instructions and regulations, and was lawful. It found that the “Commander’s actions...were aimed at eliminating the danger. This danger could not be eliminated by other means, and limits of urgent necessity were not exceeded.”<sup>26</sup> Relying on Article 39(1) of the Russian Criminal Code, by which infliction of harm in state of urgent necessity not a crime, the investigation terminated the criminal case on 9 March 2013 based on the lack of *corpus delictii*.

Additionally, the 2015 action plan declared that “All persons concerned, including the victims, were informed of the procedural decision, as well as of the terms and procedure for appealing it.”<sup>27</sup> It noted that the applicants<sup>28</sup> had appealed the decision, which was dismissed on 6 December 2013, and that this decision was upheld in a judgment of the Judicial Division for Criminal Cases of the North Caucasus District Military Court on 6 March 2014.

**22 September 2015:** Analysis by the Secretariat, for the Committee of Ministers’ 1236<sup>th</sup> meeting,<sup>29</sup> proposes that “in view of the large amount of information provided by the Russian authorities”, this case would be assessed in its March 2016 meeting.

**15 October 2015:** Judgment in *Abakarova v Russia* handed down. This concerned the serious injuries sustained by a young girl in the bombing of Katyr-Yurt, and the loss of her entire family. This case was communicated to the Russian Federation in 2010. For the same reasons found in *Isayeva* and *Abuyeva*, the Court found a substantive violation of Article 2. The Russian authorities, in their observations supplied in 2010, only provided procedural information that was already subject to examination by the Court in the earlier judgments.<sup>30</sup> However, the applicants supplied to the Court an update of procedural developments, including the above-mentioned decision to terminate the investigation on 9 March 2013, and the judicial review of March 2014. They also supplied to the Court a 20 page extract of the decision to terminate the investigation by the Military Investigations Unit of the Investigation Committee. This extract included summaries of the operational tactical expert report, as well as a list of names of those found to be killed in the bombing. This failed to

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<sup>25</sup> Ibid, p.14-15

<sup>26</sup> Ibid, p.15

<sup>27</sup> Ibid, p.15

<sup>28</sup> Note: presumably it meant the applicants in *Abuyeva*

<sup>29</sup> [CM/Del/Dec\(2015\)1236](#)

<sup>30</sup> *Abakarova* at [93]

mention relatives of the applicant killed in the bombing, as well as five relatives of two of the applicants in *Abuyeva*.

The Court, like in previous judgments, noted that the expert report was neither provided to the Court nor the applicant, such that it could not evaluate the relevance of it, save for the extracts produced by the applicant.<sup>31</sup> On what was provided to the Court, it concluded that “this latest round of proceedings is hardly any different from the two previously examined by the Court. The factual basis and the reasons cited in the decision of the military investigator of the Investigative Committee of 9 March 2013 are similar to those contained in the military prosecutors’ decisions of 13 March 2002 and 14 June 2007”. For this reason “since 2007 none of the issues raised in the *Abuyeva and Others* judgment has been resolved. The names of the victims’ deceased relatives have not been recorded by the investigation: the list cited in the decision of 9 March 2013 still failed to include the names of at least ten of the deceased relatives of applicants to this Court who were granted the victim status in the investigation in relation to their deaths. It is difficult to interpret this attitude as anything other than a disregard for the suffering of the victims and the memory of the deceased.”<sup>32</sup>

The Court, like in the previous cases, found a violation of the procedural limb of Article 2 and Article 13, concluding that “overall, the Court cannot but conclude that the inadequacy of the investigation into the deaths and injuries of dozens of civilians, including the deaths of the applicant’s family, was not the result of objective difficulties that can be attributed to the passage of time or the loss of evidence, but rather the result of the investigating authorities’ sheer unwillingness to establish the truth and punish those responsible”.<sup>33</sup>

In its guidance on measures under Article 46, the Court indicated that the still-existing failures in the criminal investigations

*“should be addressed by a variety of both individual and general measures consisting of appropriate reactions from the State institutions, aimed at drawing lessons from the past, raising awareness of the applicable legal and operational standards and at deterring new violations of a similar nature. Such measures could include recourse to non-judicial means of collecting information and establishing the truth about these tragic events; public acknowledgement and condemnation of a serious violation of the right to life in the course of security operation; assessing the adequacy of the national legal instruments pertaining to large-scale security operations and the mechanisms governing military-civilian cooperation*

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<sup>31</sup> Ibid, at [94]

<sup>32</sup> Ibid at [95]

<sup>33</sup> Ibid at [98]

*in such situations; and greater dissemination of information and better training for both military and security personnel in order to ensure strict compliance with the relevant legal standards, including human rights and international humanitarian law.”<sup>34</sup>*

Additionally, the Court drew attention to the need to ensure the proper protection of victims, including being properly informed of all procedural steps and provided all necessary information and legal advice to effectively participate in proceedings. Finally, the Court indicated the need to set up and implement an accessible and effective mechanism for seeking adequate reparation for the harm suffered by the applicant and other victims.<sup>35</sup>

**8 March 2016:** Committee of Ministers does not review *Isayeva* and related cases but timetables review for December 2016.<sup>36</sup>

**6 December 2016:** Notes for the Committee of Ministers for the 1273<sup>rd</sup> meeting reviewed *Isaveya* and related cases, confirming the findings on the lack of effective investigation found in *Abakarova* and emphasised what was indicated in the *Abakarova* judgment, namely the need to explore avenues “aimed at learning lessons and ensuring the non-repetition of similar occurrences in the future”, and examine the issue of effective redress to victims.<sup>37</sup> The Committee of Ministers, in its decision, “expressed, in this context, their grave concern about the continuing failure to address the shortcomings of the successive investigations carried out into the events at issue in the *Isayeva* case, as evidenced by the *Abuyeva* and others judgment (concerning the second investigation) and the recent *Abakarova* judgment (concerning the third investigation)”.<sup>38</sup>

**28 August 2018:** Russian Federation submitted its most recent action plan for the 1324<sup>th</sup> meeting.<sup>39</sup> Although the plan mentions updated general measures, with respect to the individual measures for the effective investigation of the bombing in Katyr-Yurt, it is in most respects identical to the action plan submitted on 24 July 2015.<sup>40</sup> The only matter of substance added that occurred prior to the decision in *Abakarova* was that the Russian Supreme Court, on 25 September 2014, upheld the rejection to judicially review closing the criminal case.<sup>41</sup>

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<sup>34</sup> Ibid at [112]

<sup>35</sup> Ibid at [113]

<sup>36</sup> See Adoption of the Order of Business and preparation of the next Human Rights meeting (1259th meeting, June 2016) ([CM/Del/Dec\(2016\)1250/itemA](#))

<sup>37</sup> CM/Notes/1273/H46-25E

<sup>38</sup> CM/Del/Dec(2016)1273/H46-25

<sup>39</sup> DH-DD(2018)798E

<sup>40</sup> See, *ibid*, pp. 13-17

<sup>41</sup> *Ibid*, p.17

This action plan noted that the Committee of Ministers did not address the 2015 action plan until after the decision in *Abakarova*, nor did the HUDOC EXEC database make reference to the 2015 Action Plan.<sup>42</sup> The action plan states that the European Court made its findings based only on information provided in 2010 from the Russian authorities and those extracts submitted by the applicants, with the Court not requesting any further information from the Russian Federation.<sup>43</sup>

The only action that has occurred after the judgment in *Abakarova*, according to the action plan, is the re-examination of the criminal case file by the Military Investigative Directorate of the Investigative Committee and the Military Prosecutor's Office. This re-examination concluded that the criminal investigation identified those who commanded the operation, "thus the investigative authority took all reasonable actions to identify the perpetrators,"<sup>44</sup> and that the evidence collected, including that by "qualified civil experts... show that the use of force in a manner it had been applied during the special operation was proportionate and adequate in view of the situation at hand and measures taken to minimize the casualties among civilians and federal military personnel."<sup>45</sup> Based on this assessment, the re-examination concluded that "the violations found by the European Court in its judgment in the case of *Abakarova* had already been remedied during the additional investigation carried out after the delivery of the European Court's judgments in the case of *Isayeva* and in the case of *Abuyeva*."<sup>46</sup> It further noted that these decisions to end the criminal case cannot be cancelled, as according to Russian Constitutional Court decisions, terminated criminal cases "which poses a constant threat of the criminal prosecution of the person in respect of which the criminal case was terminated, cannot be resumed in an arbitrary manner."<sup>47</sup>

**6 September 2018:** Fresh application from the victims in *Abuyeva and others* concerning the continuing failure to conduct an effective investigation was communicated to the Russian Federation (App. No. 63329/14) (this application was submitted in 2014).

**20 September 2018:** Committee of Ministers, for the 1324<sup>th</sup> meeting, considered the matter. In the agenda notes, it stated that "it is clear that the Court in its *Abakarova* judgment of 2015 assessed the reopened investigations, closed in 9 March 2013, expressly finding that none of the investigation shortcomings identified earlier had been resolved. The information furnished by the authorities to the Committee shortly before the *Abakarova* judgment contained certain additional information on the measures taken with regard to these shortcomings. Nevertheless, in the light of findings of the

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<sup>42</sup> Note: whether this was previously the case, the action plan is now available on HUDOC EXEC

<sup>43</sup> Ibid, p.18

<sup>44</sup> Ibid, p.18

<sup>45</sup> Ibid, p.18

<sup>46</sup> Ibid, p.18

<sup>47</sup> Ibid, p.18



European Court in the *Abakarova* judgment, the Committee may conclude that information on further investigatory steps is still awaited”.<sup>48</sup> The Committee of Ministers decision “regretted that the [2018 action plan] plan was submitted so shortly before the meeting that a detailed assessment thereof was significantly complicated” and “stressed again the necessity of exploring in parallel other remedial actions, including public acknowledgment and public condemnations of serious violations of the right to life”<sup>49</sup> but made no specific decision on the adequacy of the individual measures outlined by the Russian government.

**18 January 2019:** Russian Federation submitted observations in renewed *Abuyeva* case, largely mirroring the 2015/2018 action plan.

**14 March 2019:** Applicants in renewed *Abuyeva* application file observations in reply.

**22 April 2019:** Russian Federation submitted further observations in reply in renewed *Abuyeva* application.

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<sup>48</sup> CM/Notes/1324/H46-18E

<sup>49</sup> CM/Del/Dec(2018)1324/H46-18E, paras 2 and 7